TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

**APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

SUPREME COURT OF THE UNITED STATES

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232—Cablegram to Howard B. Dean from Harold J. Roig, dated January 6, 1944	547	815
233—Letter to Harold J. Roig from Evan E. Young, dated January 7, 1944	548	816
234—Letter to Evan Young from Harold J. Roig, dated January 10, 1944	550	818
235—Letter to Harold J. Roig from Howard B. Dean, dated March 13, 1944	551	819
236—Letter to Howard B. Dean from Harold J. Roig, dated March 21, 1944	552	820
238—Letter to Harold J. Roig from Howard B. Dean, dated June 29, 1944	555	821
239—Letter to Howard B. Dean from Harold J. Roig, dated July 5, 1944	557	823
240—Letter to Harold J. Roig from Howard B. Dean, dated July 20, 1944	558	824
241—Letter to Howard B. Dean from Harold J. Roig, dated July 25, 1944	560	827
242—Letter to Harold J. Roig from Howard B. Dean and Erwin Balluder, dated July 27, 1944	562	828
VOLUME III		
243—Minutes of special meeting of the board of directors of Pan American-Grace Airways, Inc. held on July 31, 1944	564	831
244—Letter to W. R. Grace & Company from J. T. Trippe, dated April 3, 1945	572	838
245—Minutes of regular meeting of the board of directors of Pan American-Grace Airways, Inc., held on April 4, 1945	573	840
246—Letter to the president of Pan American Airways Corporation from D. S. Iglehart, dated April 10, 1945	586	851
247—Letter to W. R. Grace & Company from J. T. Trippe, dated April 14, 1945	587	852

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
248—Telephone conversation between Mr. Dean and Mr. Roig on July 11, 1945, as recorded by Howard B. Dean	589	854
249—Letter to Harold J. Roig from Howard B. Dean, dated August 13, 1945	590	855
250—Letter to Howard B. Dean from Harold J. Roig, dated August 27, 1945	592	858
251—Letter to Howard B. Dean from Harold J. Roig, dated January 17, 1946	595	860
252—Letter to Harold J. Roig from Howard B. Dean, dated February 21, 1946	596	861
254—Letter to Howard B. Dean from Harold J. Roig, dated April 11, 1946	599	863
255—Letter to Harold J. Roig from Henry J. Friendly, dated April 15, 1946	601	864
256—Letter to John C. Cooper from Harold J. Roig, dated May 24, 1946, enclosing a memorandum entitled "Pan American-Grace Airways, Inc., notice of special meeting of board of directors, May 28, 1946," dated May 24, 1946, by W. F. Cogswell	603	866
257—Letter to J. T. Trippe from J. P. Grace, Jr., dated May 31, 1946	605	869
258—Memorandum of extracts from minutes of Pan American Airways Corporation, board of directors meeting, June 4, 1946	608	872
259—Minutes of adjourned special meeting of board of directors of Pan American-Grace Airways, Inc. held on June 5, 1946	609	873
260—Minutes of an adjourned special meeting of the board of directors of Pan American-Grace Airways, Inc. held on June 11, 1946	614	878
261—Minutes of board of directors of Pan American dated July 2, 1946	615	879

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued.		
262—Excerpts from minutes of meeting of board of directors of W. R. Grace & Company, dated July 3, 1946	618	881
263—Letter to Howard B. Dean from Prescott S. Bush, dated July 8, 1946, and attached thereto a memorandum entitled "Subject: P.A.A.-Grace"	619	883
264—Excerpts from minutes of executive committee meetings of Pan American, dated July 9, 1946, July 16, 1946, July 23, 1946, July 30, 1946, and a meeting of the board of directors of Pan American, dated August 6, 1946	623	886
265—Extracts from the minutes of Pan American Airways, Inc., dated July 30, 1946, and August 6, 1946	625	888
266—Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc., dated July 30, 1946 (commonly referred to as the through-flight agreement)	626	889
267—Agreement between W. R. Grace & Company and Pan American Airways Corporation dated July 30, 1946, (commonly referred to as the parent company agreement)	629	892
268—Letter to James M. Landis, Chairman, Civil Aeronautics Board, from Henry J. Friendly, Cahill, Gordon, Bailey & Reissel, and Gerhard A. Gesell, dated August 19, 1946	636	899
269—Excerpts from memorandum agreement regarding services rendered and to be rendered to Panagra by the parent companies and compensation therefor, dated July 14, 1948, and signed by Harold J. Roig for Panagra; E. Balluder for Pan American, and Andrew B. Shea for W. R. Grace & Company	638	901

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
PAN AMERICAN-PANAGRA COMPETITION		
270—Letter to R. H. Patchin from Harold J. Roig, dated October 30, 1930	645	906
271—Letter to D. S. Iglehart from Harold J. Roig, dated December 9, 1930	647	907
272—Memorandum entitled "Pan American-Grace Airways," dated March 2, 1931, by Harold J. Roig	648	909
273—Letter to J. D. MacGregor from G. Vidal, dated October 23, 1931	651	911
276—Letter to J. D. MacGregor from H. R. Harris, dated October 27, 1933	656	912
277—Letter to H. R. Harris from J. D. MacGregor, dated November 6, 1933	657	913
278—Letter to J. D. MacGregor from H. R. Harris, dated November 20, 1933	659	914
279—Letter to Harold J. Roig from A. Garni, dated February 22, 1934	660	915
280—Letter to Harold J. Roig from D. S. Iglehart, dated August 6, 1934	662	917
281—Letter to Harold J. Roig from D. S. Iglehart, dated August 13, 1934	663	918
282—Memorandum of conversation with J. T. Trippe, September 14, 1934	666	920
284—Letter to A. Garni from D. S. Iglehart, dated March 26, 1935	670	921
286—Letter to A. Garni from Harold J. Roig, dated May 11, 1935	673	922
287—Letter to A. Garni from J. D. MacGregor, dated January 24, 1936	679	926
288—Letter to C. V. Whitney from D. S. Iglehart, dated August 4, 1936	681	927
289—Pan American intercompany memorandum entitled "BUE Sales Folder," by Ernest L. Foss, dated February 8, 1947	684	929

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
294—Intercompany Pan American memorandum by Amos Hiatt, dated June 19, 1947	689	930
295—Pan American intercompany memorandum entitled "Panagra Through Flight Agreement" by R. G. Ferguson, dated June 24, 1947	691	931
296—Pan American-Grace intercompany memorandum addressed to J. T. Shannon from James W. Walker, Jr., dated May 21, 1948	693	933
298—Pan American intercompany memorandum entitled "Buenos Aires Sales to the United States," by F. H. Sheldon, dated August 17, 1948	695	934
299—Pan American intercompany memorandum entitled "Buenos Aires Sales to the United States," by Mario J. Martinez, dated August 25, 1948	696	935
300—Memorandum to A. B. Shea from J. P. Grace, Jr., dated April 22, 1949	697	936
301—Pan American intercompany memorandum entitled "MIA-BUE Tourist Fares" by Willis G. Lipscomb, dated May 26, 1949	699	938
302—Letter to J. W. Walker, Jr., from Douglas Campbell, dated June 23, 1949	700	938
303—Letter to Porter Norris from Juan Homs, Jr., dated September 1, 1949	701	939
304—Pan American intercompany memorandum entitled "Panagra Representation-Buenos Aires," by Porter Norris, dated September 7, 1949	703	942
306—Pan American intercompany memorandum by John E. Muhlfeld, dated November 29, 1949	706	943
307—Letter to Douglas Campbell from Andrew B. Shea, dated January 10, 1950	708	945

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
308—Memorandum to A. B. Shea from J. P. Grace, Jr., dated January 13, 1950	711	947
309—Memorandum to Andrew B. Shea from J. P. Grace, Jr., dated January 18, 1950	713	948
311—Pan American intercompany memorandum entitled "Panagra" by E. Balluder, dated July 28, 1950	715	949
313—Memorandum to Andrew B. Shea from J. P. Grace, Jr., dated August 13, 1950	719	951
314—Note to Admiral Towers, by R. W. B., dated January 29, 1951	721	953
316—Memorandum entitled "Report of Call Covering Several Meetings on Pan American Airways," dated March 30, 1951	723	954
317—Pan American intercompany memorandum by Juan Homs, Jr., dated April 4, 1951	724	955
318—Pan American intercompany memorandum entitled "Panagra Promotion" by Porter Norris, dated April 4, 1951	726	957
320—Memorandum to Andrew B. Shea from J. P. Grace, Jr., dated April 28, 1951	729	958
324—Letter to Porter Norris from Juan Homs, Jr., dated May 18, 1951	735	960
325—Memorandum by Howard L. Clark, dated May 25, 1951	737	961
328—Pan American intercompany memorandum entitled "Panagra Sales Force," by Erwin Balluder, dated June 26, 1953	740	962
329—Letter to Edward G. Bern from Roger V. Rowe, dated August 13, 1953	741	963
332—Pan American intercompany memorandum entitled "Monthly Sales Report—Buenos Aires, September 1953," by Fred F. Plimpton	745	965

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
GRACE LINE-PANAGRA COMPETITION		
333—Letter to Harold J. Roig from D. S. Iglehart, dated March 13, 1930	747	966
334—Memorandum for Mr. Garni from D. S. Iglehart, dated April 21, 1930	749	968
335—Memorandum to Roig, Patchin and Cogswell from D. S. Iglehart, dated October 15, 1931	751	969
336—Memorandum for Mr. Zalles from W. F. Cogswell, dated March 29, 1932	753	970
337—Letter to G. Vidal from J. D. MacGregor, dated May 17, 1932	754	971
338—Letter to Grace Line, Inc., from W. R. Grace & Co. at Lima, dated January 20, 1933	756	972
339—Letter to J. D. MacGregor from Harold R. Harris, dated February 17, 1933	758	974
340—Letter to J. M. Van Law from J. D. MacGregor, dated March 18, 1933	759	975
341—Memorandum to Mr. Mann from W. F. Cogswell, dated March 21, 1933	761	976
342—Letter to A. Garni from D. S. Iglehart, dated April 26, 1933	762	977
343—Memorandum for Mr. Garni from W. F. Cogswell, dated May 24, 1933	763	978
344—Letter to J. D. MacGregor from T. J. Kirkland, dated September 26, 1933	764	979
345—Letter to H. H. G. Redshaw from A. Garni, dated October 27, 1933	766	981
346—Memorandum by G. P. Smith, dated December 17, 1934	770	983
347—Letter to G. Vidal from H. R. Harris, dated August 26, 1935	771	985
348—Pan American-Grace intercompany memorandum entitled "Platinum Shipments from Buenaventura" by G. P. Smith, dated December 20, 1935	772	986

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
349—Pan American-Grace intercompany memorandum entitled "Platinum Shipments Buenaventura/New York" by G. P. Smith, dated December 27, 1935	773	987
350—Pan American-Grace intercompany memorandum entitled "Platinum Shipments URA/NYK" by G. P. Smith, dated January 4, 1936	775	989
351—Pan American-Grace intercompany memorandum entitled "Platinum Shipments" by G. Vidal, dated January 20, 1936	776	990
352—Pan American-Grace intercompany memorandum entitled "Gold / Platinum Shipments" by G. Vidal, dated February 7, 1936	779	991
353—Letter to J. T. Kirby from Harold J. Roig, dated February 10, 1936	780	992
354—Letter to A. Garni from Manuel Holguin, dated February 22, 1936	783	994
355—Cablegram to A. Garni from Holguin, dated March 4, 1936	785	996
356—Letter to Manuel Holguin from A. Garni, dated March 9, 1936	786	997
357—Letter to J. E. Zalles from Manuel Holguin, dated March 9, 1936	787	998
358—Pan American-Grace intercompany memorandum entitled "Platinum Shipments" by G. P. Smith, dated March 10, 1936	788	999
359—Letter to Manuel Holguin from A. Garni, dated March 21, 1936	790	1001
360—Letter to Panama Agencies Co., agents for Panagra, from G. Vidal, dated March 26, 1936	791	1002
361—Letter to Manuel Holguin from Harold J. Roig, dated March 30, 1936	792	1003

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
362—Letter to H. R. Harris from A. E. Sinclair, dated June 4, 1936	793	1003
363—Letter to J. D. MacGregor from H. R. Harris, dated July 16, 1936	794	1005
364—Letter to A. E. Sinclair from G. Jimenez Arrarte, dated August 24, 1936	795	1006
365—Letter to G. Vidal from J. D. MacGregor, dated September 19, 1936	798	1009
366—Letter to G. Vidal from J. D. MacGregor, dated October 7, 1936	799	1010
367—Letter to J. D. MacGregor from J. E. Muhlfeld, dated April 10, 1937	800	1011
368—Memorandum to J. E. Muhlfeld by G. Vidal entitled "Passenger Tariffs" dated July 19, 1937	801	1012
369—Letter to Panagra, Cristobal, Panagra, Lima, etc., from J. E. Muhlfeld, dated August 3, 1937	802	1013
370—Letter to John E. Muhlfeld from A. F. Mata, dated August 17, 1937	803	1014
371—Letter to H. R. Harris from J. E. Muhlfeld, dated September 17, 1937	804	1016
372—Letter to J. E. Muhlfeld from G. Vidal, dated September 24, 1937	807	1019
373—Letter to D. S. Iglehart from Harold J. Roig, dated September 28, 1937, enclosing a memorandum entitled "Increase in Rates" by H. J. Roig, dated September 28, 1937	808	1020
374—Letter to A. E. Sinclair from G. Jimenez, dated March 8, 1938	812	1022
375—Letter to J. D. MacGregor from J. E. Muhlfeld, dated April 4, 1938	813	1024
376—Letter to Harold J. Roig from Robert H. Patchin, dated April 20, 1938	815	1025
377—Letter to R. H. Patchin from Harold J. Roig, dated April 27, 1938	816	1026

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
378—Draft of letter to Pan American Airways Corp. from W. R. Grace & Co., dated July 28, 1941	818	1027
379—Letter to James Magner from R. C. Lounsbury, dated February 25, 1942	819	1028
380—Letter to H. Helbling from J. E. Muhlfeld, dated March 4, 1942	820	1029
381—Letter to George L. Rihl from S. J. Roll, dated January 12, 1943	821	1030
382—Confidential memorandum from Mr. A. E. Sinclair to Mr. R. Ferguson, dated January 20, 1943	822	1031
383—Letter to Carlos Velarde C. from George G. Mason, dated May 13, 1949	824	1034
384—Pan American-Grace inter-company memorandum to John T. Shannon from John E. Muhlfeld, dated July 7, 1949	825	1035
385—Grace cablegram to W. R. Grace, Lima, dated July 26, 1949	826	1035
386—Letter to J. T. Shannon from G. G. Mason, dated August 27, 1949	828	1037
387—Memorandum to J. W. Starbuck, Jr. from G. F. Sorgatz, Jr., dated January 26, 1951	830	1039
388—Letter to John D. J. Moore from Tolbert A. Rice, dated May 11, 1951	831	1040
389—Note to R. G. L. from H. A. B., dated November 7, 1951	832	1040
390—Letter to Fausto Moscoso from P. Gjertsen, dated November 16, 1951	833	1041
391—Note to Assistant Vice President Traffic/Sales-C. W. Moore from W. H. R., dated November 19, 1951	834	1042
392—Pan American inter-company memorandum entitled "Pepsi-Cola Company—Colon Free Zone," by J. A. Soto, dated May 27, 1952	836	1043

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
393—Letter to Louis A. Person from R. C. Lounsbury, dated September 4, 1952	838	1045
394—Pan American inter-company memorandum entitled "Monthly sales report—Buenos Aires, January, 1953," by Fred F. Plimpton, dated February 11, 1953	839	1046
395—Cablegram to Valverde from Harold J. Roig, dated July 23, 1935	841	1047
GRACE CONTROL		
400—Memorandum for Patchin and Cogswell, unsigned, dated April 18, 1929	847	1048
401—Letter to J. H. Parmerton from Zalles, dated June 8, 1929	849	1050
402—Letter to L. Valverde from Howard J. Roig, dated January 30, 1930	851	1051
403—Letter to Harold J. Roig from D. S. Iglehart, dated March 7, 1930	852	1052
404—Letter from H. R. Harris to Pan American-Grace Airways, Inc., dated April 9, 1930	855	1054
405—Memorandum dated August 18, 1930, by H. R. Harris	856	1055
406—Letter to Harold J. Roig from D. S. Iglehart, dated October 10, 1930	858	1057
408—Letter to W. R. Grace & Company, Lima, by Thommen, dated November 27, 1930	860	1058
409—Letter to H. R. Roig from J. J. Heavey, dated July 24, 1931	863	1060
410—Letter to H. R. Harris from J. D. MacGregor, dated May 6, 1932	865	1061
411—Letter to D. S. Iglehart from Harold J. Roig, dated June 15, 1932	867	1063
412—Letter to L. Valverde from Harold J. Roig, dated July 15, 1932	868	1064
413—Letter to Harold J. Roig from Valverde, dated July 30, 1932	869	1065

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
414—Letter to Harold J. Roig from Valverde, dated August 5, 1932	871	1067
415—Letter to Harold J. Roig from Valverde, dated August 6, 1932	874	1069
416—Letter to A. Garni from Harold J. Roig, dated February 24, 1933	876	1071
417—Letter to Harold J. Roig from A. Garni, dated March 6, 1933	880	1073
418—Letter to A. Garni from Harold J. Roig, dated April 6, 1933	882	1074
419—Letter to Harold J. Roig from A. Garni, dated April 18, 1933	884	1076
420—Letter to H. R. Harris from J. D. MacGregor, dated September 6, 1933	886	1077
421—Letter to J. D. MacGregor from H. R. Harris, dated September 13, 1933	888	1079
422—Letter to J. D. MacGregor from H. R. Harris, dated October 2, 1933, enclosing letter to H. R. Harris from T. J. Kirkland, dated September 28, 1933	889	1080
423—Letter to Valverde from A. Garni, dated October 27, 1933	892	1082
424—Letter to A. Garni from Harold J. Roig, dated January 31, 1934	893	1083
425—Letter to A. Garni from Harold J. Roig, dated March 9, 1934, enclosing as an attachment a letter to Valverde from A. Garni, dated March 12, 1934	895	1085
426—Letter to Harold J. Roig from A. Garni, dated March 15, 1934	898	1087
427—Letter to John T. Kirby from A. Garni, dated April 3, 1934	899	1088
428—Letter to A. Garni from J. T. Kirby, dated April 23, 1934	900	1089
429—Letter to J. T. Kirby from Harold J. Roig, dated May 3, 1934	902	1090
430—Letter to A. Garni from J. T. Kirby, dated October 24, 1934	903	1091

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
431—Letter to A. Garni from Harold J. Roig, dated March 30, 1935	905	1093
432—Letter to A. Garni from Harold J. Roig, dated April 6, 1935	907	1094
433—Letter to A. Garni from Harold J. Roig, dated May 28, 1935	909	1095
434—Letter to Harold J. Roig from Andrew B. Shea, dated January 22, 1936	910	1096
435—Letter to Harold J. Roig from J. T. Kirby, dated April 17, 1936	912	1098
436—Letter to Harold J. Roig from R. H. Patchin, dated May 12, 1936	913	1098
437—Letter to Panagra, New York, from H. R. Harris, dated August 29, 1936	914	1099
438—Memorandum to H. J. Roig from R. H. Patchin, dated September 18, 1936	915	1100
439—Memorandum for Mr. Kirby from Douglas Campbell, dated October 23, 1936	916	1102
440—Memorandum for Mr. Roig from Douglas Campbell, dated December 23, 1936	918	1103
441—Letter to H. J. Roig from Andrew B. Shea, dated December 31, 1936	922	1106
442—Letter to J. D. MacGregor from H. R. Harris, dated March 11, 1937	924	1108
443—Letter to J. D. MacGregor from H. R. Harris, dated April 5, 1937	926	1110
444—Letter to J. E. Muhlfeld from J. D. MacGregor, dated June 23, 1937	927	1111
445—Letter to Harold J. Roig from A. Garni, dated September 29, 1937	928	1112
446—Memorandum entitled "Traffic reorganization and correspondence" by J. E. Muhlfeld, dated December 28, 1937	930	1114
447—Memorandum from D. S. Iglehart, dated February 18, 1938	932	1116
448—Letter to Harold J. Roig from D. S. Iglehart, dated February 28, 1938	933	1117

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
449—Memorandum to Mr. Iglehart from R. H. Patchin, dated April 5, 1938	936	1119
450—Letter to H. R. Harris from J. D. MacGregor, dated April 14, 1938	938	1120
451—Letter to Harold J. Roig from A. Garni, dated May 4, 1938	940	1122
452—Memorandum for Roig and Garni from D. S. Iglehart, dated August 10, 1938	942	1124
453—Memorandum to H. R. Harris from G. P. Smith, dated March 8, 1939	943	1124
454—Memorandum entitled "Services rendered Pan American-Grace Airways, Inc. by W. R. Grace & Co." by W. F. Cogswell in late 1939	946	1128
455—Letter to Harold J. Roig from G. Vidal, dated November 7, 1940	951	1131
456—Letter to Harold J. Roig from G. Vidal, dated November 21, 1940	952	1132
457—Letter to D. S. Iglehart from Andrew B. Shea, dated November 26, 1940	953	1134
458—Letter to Harold J. Roig from G. Vidal, dated December 17, 1940	957	1136
459—Letter to Harold J. Roig from Douglas Campbell, dated March 17, 1941	959	1138
460—Letter to D. S. Iglehart from Andrew B. Shea, dated April 19, 1941	962	1140
461—Pan American-Grace inter-company memorandum entitled "Ticket offices" to C. de Groot from J. E. Muhlfeld, dated May 7, 1941	965	1143
462—Letter to Douglas Campbell from Harold J. Roig, dated June 4, 1941	967	1144
463—Letter to Harold J. Roig from Douglas Campbell, dated June 9, 1941	968	1145
464—Letter to H. J. Roig from T. J. Kirkland, dated February 3, 1942	969	1146
465—Letter to A. C. Poole from J. E. Muhlfeld, dated March 13, 1942	972	1149

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
466—Letter to J. E. Muhlfeld from A. C. Poole, dated October 24, 1942	973	1150
467—Cablegram to Roig from Garni, dated February 27, 1946	987	1167
468—Pan American inter-company memorandum addressed to Trippe, Friendly and Balluder entitled "Pan American-Grace Airways Operations" by Howard B. Dean, dated May 20, 1946	989	1169
471—Letter to J. W. Walker, Jr., from G. Vidal, dated July 23, 1948	999	1172
476—Letter to Andrew B. Shea from Harold J. Roig, dated October 29, 1948 and attached thereto memorandum entitled "Agency functions and responsibilities with respect to Panagra," by Harold J. Roig	1009	1174
477—Memorandum by Howard B. Dean, dated December 2, 1948	1013	1177
478—Letter to Ernesto Aranibar from John T. Shannon, dated April 2, 1949	1014	1179
479—Letter to D. Campbell from John T. Shannon, dated April 22, 1949	1015	1180
480—Memorandum to Mr. Shea from J. P. Grace, Jr., dated April 27, 1949	1017	1181
481—Letter to J. T. Kirby from Andrew B. Shea, dated August 26, 1949	1019	1182
482—Pan American inter-company memorandum entitled "South America—Passenger Fares" by John E. Muhlfeld, dated March 3, 1950	1022	1184
483—Memorandum to Howard L. Clark by M. Bellefond, dated July 11, 1950	1024	1186
484—Letter to Raul Simon from J. T. Kirby, dated June 27, 1951	1027	1188
485—Memorandum to Andrew B. Shea from J. P. Grace, Jr., dated September 26, 1951	1030	1191

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
486—Letter to T. F. Williams from J. H. Stebbins, dated November 25, 1952	1031	1191
487—Pan American inter-company memorandum by Juan Homs, Jr., dated February 21, 1953	1032	1192
489—Memorandum by M. J. Martinez, dated March 4, 1953	1035	1194
JOINT OFFICES PUBLICITY		
491—Letter to H. R. Harris from J. D. MacGregor, dated September 3, 1930	1037	1195
492—Letter to Pan American-Grace Airways, New York, from H. R. Harris, dated September 11, 1930	1038	1196
493—Letter to J. D. MacGregor from Harold R. Harris, dated May 31, 1932	1039	1197
494—Letter to G. Vidal from J. D. MacGregor, dated June 2, 1932	1040	1198
495—Letter to H. R. Harris from J. D. MacGregor, dated July 6, 1932	1042	1199
496—Letter to J. D. MacGregor from Harold R. Harris, dated December 8, 1932, enclosing copy of letter to George L. Rihl from Harold R. Harris, dated December 8, 1932	1044	1200
497—Letter to H. R. Harris from J. D. MacGregor, dated December 20, 1932	1047	1204
498—Letter to A. Garni from Harold J. Roig, dated June 8, 1935	1050	1206
503—Pan American Airways system memorandum entitled "Representation of Pan Grace" by C. E. Moore, dated July 21, 1937	1060	1208
504—Letter to D. S. Iglehart from Harold J. Roig, dated October 22, 1937	1061	1209
505—Letter to Harold J. Roig from A. Garni, dated April 18, 1938	1064	1211

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
506—Letter to Juan Trippe from A. Garni, dated May 3, 1938	1067	1213
507—Memorandum to Mr. Young entitled "B. A. office" by H. J. Roig, dated January 9, 1940	1069	1214
508—Letter to H. J. Roig from T. J. Kirkland, dated June 19, 1942	1071	1216
509—Memorandum to Douglas Campbell from E. Balluder, dated April 15, 1948	1073	1217
510—Letter to J. T. Trippe from R. H. Patchin, dated August 1, 1929	1075	1219
512—Letter to Harold J. Roig from D. S. Iglehart, dated January 18, 1932, enclosing a letter to D. S. Iglehart from J. T. Trippe, dated January 9, 1932	1078	1220
513—Letter to J. D. MacGregor from H. R. Harris, dated January 29, 1934	1081	1222
515—Letter to Iglehart from Helen R. Quilty, enclosing a letter to J. T. Trippe from D. S. Iglehart, dated November 29, 1935, and a letter to J. T. Trippe from A. Garni, dated February 25, 1936	1083	1223
517—Letter to D. S. Iglehart from J. T. Kirby, dated October 31, 1938	1089	1226
519—Letter to V. E. Chenea from H. J. Roig, dated October 24, 1939, enclosing a number of recorded interviews with travel agents in New York City	1092	1227
520—Letter to C. V. Whitney from Harold J. Roig, dated January 24, 1941, enclosing an organizational chart of the Pan American system	1103	1235
522—Memorandum to Evan Young entitled "Publicity - transfer of Mr. Arthur Curtis," by H. J. Roig, dated April 3, 1941	1105	1236
526—Letter to Thomas A. Morgan from D. S. Iglehart, dated May 29, 1942	1109	1237

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
531—Memorandum to H. J. Roig entitled "Grand tour - joint advertising," by Benjamin H. Oehlert, Jr.	1116	1238
532—Letter to Howard B. Dean from Harold J. Roig, dated June 1, 1948, enclosing a letter to J. T. Shannon from James W. Walker, Jr., dated May 21, 1948, and a memorandum of Benjamin Oehlert's interview with a Pan American counter clerk at the Air Terminal Building in New York City on May 26, 1948	1118	1239
533—Memorandum to J. P. Grace, Jr. from R. E. Montgomery, dated June 2, 1948, enclosing an attachment relative to publicity	1124	1244
534—Memorandum to Shea from J. P. Grace, Jr., dated June 3, 1948	1129	1247
543—Memorandum to B. H. Oehlert, Jr., from R. Matthes, dated July 5, 1950	1149	1251
NATIONAL INTERCHANGE		
547—Letter to Juan T. Trippe from G. T. Baker, dated December 15, 1948	1159	1254
548—Letter to G. T. Baker from J. T. Trippe, dated January 5, 1949	1160	1255
549—Telegram from J. T. Trippe to G. T. Baker, dated January, 1949	1161	1256
550—Letter to G. T. Baker from Harold J. Roig, dated January 6, 1949	1162	1256
551—Letter to Juan T. Trippe from G. T. Baker, dated January 14, 1949	1163	1258
552—Letter to Harold J. Roig from G. T. Baker, dated January 14, 1949	1165	1259
553—Letter from Howard B. Dean to G. T. Baker, dated January 25, 1949	1166	1261

	Original	Print
Record from the ... d States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
554—Letter to Howard B. Dean from G. T. Baker, dated February 24, 1949	1167	1262
555—Letter to G. T. Baker from Howard B. Dean, dated February 28, 1949	1168	1263
556—Letter to W. R. Grace & Company from G. T. Baker, dated February 28, 1949	1169	1264
557—Letter to G. T. Baker from J. P. Grace, Jr., dated March 2, 1949	1171	1267
558—Excerpts from the minutes of a special meeting of the board of directors of National Airlines, Inc., March 4, 1949	1172	1267
559—Letter to National Airlines, Inc. from W. F. Cogswell, dated March 29, 1949	1173	1269
560—Memorandum entitled "Memorandum of understanding," dated March 30, 1949, signed by G. T. Baker for National Airlines, Inc., J. P. Grace, Jr. for W. R. Grace & Company, Juan T. Trippe for Pan American Airways, Inc. and Harold J. Roig for Pan American-Grace Airways, Inc.	1174	1269
561—Minutes of special meeting of board of directors of Pan American-Grace Airways, Inc. held on March 31, 1949	1180	1273
562—Unsigned memorandum specifying a series of events relative to National Interchange dating from January 21, 1949, through March 29, 1949	1182	1275
563—Excerpts from meeting of board of directors of W. R. Grace & Company dated March 3, 1949, and April 7, 1949	1184	1277
564—Minutes of adjourned regular meeting of board of directors of Pan American-Grace Airways, Inc. held on May 12, 1949	1185	1278
566—Memorandum by Andrew B. Shea dated November 9, 1950	1188	1280

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
567—Memorandum entitled "Telephone conversation with G. T. Baker—November 13, 1950," dated November 13, 1950, by Andrew B. Shea	1190	1281
568—Memorandum by J. T. Trippe dated December 20, 1950	1191	1281
569—Memorandum entitled "Memorandum of discussions with W. R. Grace & Co. (dictated January 20, 1951)" by Friendly	1192	1283
570—Letter to D. W. Rentzel, Chairman, Civil Aeronautics Board, from Andrew B. Shea, dated January 25, 1951	1202	1293
571—Letter to Peter Grace from J. T. Trippe, dated January 29, 1951	1211	1300
572—Letter to A. B. Shea from Balluder, Friendly, Leslie and Morrison, dated February 5, 1951	1213	1302
573—Letter to Erwin Balluder from Andrew B. Shea, dated February 9, 1951	1216	1304
575—Letter to Civil Aeronautics Board from E. Balluder, dated February 21, 1951	1224	1308
576—Letter to James W. Walker, Jr. from Andrew B. Shea, dated March 22, 1951	1226	1310
577—Minutes of adjourned regular meeting of the board of directors of Pan American-Grace Airways, Inc., held on March 30, 1951	1229	1312
578—Cable to J. T. Kirby from H. L. Clark, dated April 13, 1951	1236	1318
579—Minutes of annual meeting of board of directors of Pan American-Grace Airways, Inc. held on May 10, 1951	1238	1320
580—Letter to President, Pan American World Airways, Inc., from Andrew B. Shea, dated May 11, 1951	1242	1323

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
581—Pan American inter-company memorandum entitled "Presidency of Panagra," by Henry J. Friendly, dated May 11, 1951	1244	1324
582—Letter to Civil Aeronautics Board from J. T. Trippe, dated May 29, 1951	1245	1325
583—A letter to the President of Pan American-Grace Airways, Inc. from J. T. Trippe, dated May 29, 1951	1247	1327
584—Letter to Civil Aeronautics Board from John T. Cahill; dated June 6, 1951	1249	1330
585—Letter to J. S. Phipps from W. G. Holloway, dated June 21, 1951	1250	1331
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586—Cablegram to Peter Grace from Andrew B. Shea, dated July 7, 1951	1252	1333
587—Cablegram to Andrew B. Shea from Peter Grace, dated July 9, 1951	1255	1336
588—Opinion of the Civil Aeronautics Board relative to National Airlines, Inc., Pan American-Grace Airways, Inc. interchange agreement, docket No. 3785, dated July 13, 1951	1257	1338
589—Minutes of adjourned regular meeting of the board of directors of Pan American-Grace Airways held on July 18, 1951	1270	1347
590—Cablegram to Henry Friendly from John W. Cross, dated July 23, 1951	1275	1352
591—Memorandum by J. T. Trippe dated January 17, 1952	1276	1352

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Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits:		
PRELIMINARY STATEMENT WITH RESPECT TO CERTAIN STATISTICAL SOURCES USED		
1—Passengers carried by air and by sea between United States and South America, 1931-1957	1288	1359
3—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag carriers, March and September, 1957	1290	1360
4—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag carriers, March and September, 1956	1291	1361
5—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag carriers, March and September, 1955	1292	1362
6—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag carriers, March and September, 1954	1293	1363
7—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag carriers, March and September, 1953	1294	1364
8—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag carriers, March and September, 1952	1295	1365
9—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag carriers, March and September, 1950	1296	1366
10—Passengers traveling by air between United States, or Eastern United States, and Western South America using U. S. flag carriers, March and September, 1957	1297	1367

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
11—Passengers traveling by air between United States, or Eastern United States, and Western South America using U. S. flag carriers, March and September, 1956	1298	1368
12—Passengers traveling by air between United States, or Eastern United States, and Western South America using U. S. flag carriers, March and September, 1955	1299	1369
13—Passengers traveling by air between United States, or Eastern United States, and Western South America using U. S. flag carriers, March and September, 1954	1300	1370
14—Passengers traveling by air between United States, or Eastern United States, and Western South America using U. S. flag carriers, March and September, 1953	1301	1371
15—Passengers traveling by air between United States, or Eastern United States, and Western South America using U. S. flag carriers, March and September, 1952	1302	1372
16—Passengers traveling by air between United States, or Eastern United States, and Western South America using U. S. flag carriers, March and September, 1950	1303	1373
17—Passengers traveling by air between United States, or Eastern United States, and Eastern South America using U. S. flag carriers, March and September, 1957	1304	1374
18—Passengers traveling by air between United States, or Eastern United States, and Eastern South America using U. S. flag carriers, March and September, 1956	1305	1375
19—Passengers traveling by air between United States, or Eastern United States, and Eastern South America using U. S. flag carriers, March and September, 1955	1306	1376

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
20—Passengers traveling by air between United States, or Eastern United States, and Eastern South America using U. S. flag carriers, March and September, 1954	1307	1377
21—Passengers traveling by air between United States, or Eastern United States, and Eastern South America using U. S. flag carriers, March and September, 1953	1308	1378
22—Passengers traveling by air between United States, or Eastern United States, and Eastern South America using U. S. flag carriers, March and September, 1952	1309	1379
23—Passengers traveling by air between United States, or Eastern United States, and Eastern South America using U. S. flag carriers, March and September, 1950	1310	1380
24—Passengers traveling by air between United States, or Eastern United States, and Buenos Aires using U. S. flag carriers, March and September, 1957	1311	1381
25—Passengers traveling by air between United States, or Eastern United States, and Buenos Aires using U. S. flag carriers, March and September, 1956	1312	1382
26—Passengers traveling by air between United States, or Eastern United States, and Buenos Aires using U. S. flag carriers, March and September, 1955	1313	1383
27—Passengers traveling by air between United States, or Eastern United States, and Buenos Aires using U. S. flag carriers, March and September, 1954	1314	1384
28—Passengers traveling by air between United States, or Eastern United States, and Buenos Aires using U. S. flag carriers, March and September, 1953	1315	1385

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
29—Passengers traveling by air between United States, or Eastern United States, and Buenos Aires using U. S. flag carriers, March and September, 1952	1316	1386
30—Passengers traveling by air between United States, or Eastern United States, and Buenos Aires using U. S. flag carriers, March and September, 1950	1317	1387
32—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag and foreign flag carriers, 1957	1319	1388
33—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag and foreign flag carriers, 1956	1320	1389
34—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag and foreign flag carriers, 1955	1321	1390
35—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag and foreign flag carriers, 1954	1322	1391
36—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag and foreign flag carriers, 1953	1323	1392
37—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag and foreign flag carriers, 1952	1324	1393
38—Passengers traveling by air between United States, or Eastern United States, and South America using U. S. flag and foreign flag carriers, 1950	1325	1394

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
39—Passengers traveling by air between United States, or Eastern United States, and 4 Western South American Countries using U. S. flag and foreign flag carriers, 1957	1326	1395
40—Passengers traveling by air between United States, or Eastern United States, and 4 Western South American Countries using U. S. flag and foreign flag carriers, 1956	1327	1396
41—Passengers traveling by air between United States, or Eastern United States, and 4 Western South American Countries using U. S. flag and foreign flag carriers, 1955	1328	1397
42—Passengers traveling by air between United States, or Eastern United States, and 4 Western South American Countries using U. S. flag and foreign flag carriers, 1954	1329	1398
43—Passengers traveling by air between United States, or Eastern United States, and 4 Western South American Countries using U. S. flag and foreign flag carriers, 1953	1330	1399
44—Passengers traveling by air between United States, or Eastern United States, and 4 Western South American Countries using U. S. flag and foreign flag carriers, 1952	1331	1400
45—Passengers traveling by air between United States, or Eastern United States, and 4 Western South American Countries using U. S. flag and foreign flag carriers, 1950	1332	1401

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
46—Passengers traveling by air between United States, or Eastern United States, and 7 Eastern South American Countries using U. S. flag and foreign flag carriers, 1957	1333	1402
47—Passengers traveling by air between United States, or Eastern United States, and 7 Eastern South American Countries using U. S. flag and foreign flag carriers, 1956	1334	1403
48—Passengers traveling by air between United States, or Eastern United States, and 7 Eastern South American Countries using U. S. flag and foreign flag carriers, 1955	1335	1404
49—Passengers traveling by air between United States, or Eastern United States, and 7 Eastern South American Countries using U. S. flag and foreign flag carriers, 1954	1336	1405
50—Passengers traveling by air between United States, or Eastern United States, and 7 Eastern South American Countries using U. S. flag and foreign flag carriers, 1953	1337	1406
51—Passengers traveling by air between United States, or Eastern United States, and 7 Eastern South American Countries using U. S. flag and foreign flag carriers, 1952	1338	1407
52—Passengers traveling by air between United States, or Eastern United States, and 7 Eastern South American Countries using U. S. flag and foreign flag carriers, 1950	1339	1408

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
53—Passengers traveling by air between United States, or Eastern United States, and Argentina using U. S. flag and foreign flag carriers, 1957	1340	1409
54—Passengers traveling by air between United States, or Eastern United States, and Argentina using U. S. flag and foreign flag carriers, 1956	1341	1410
55—Passengers traveling by air between United States, or Eastern United States, and Argentina using U. S. flag and foreign flag carriers, 1955	1342	1411
56—Passengers traveling by air between United States, or Eastern United States, and Argentina using U. S. flag and foreign flag carriers, 1954	1343	1412
57—Passengers traveling by air between United States, or Eastern United States, and Argentina using U. S. flag and foreign flag carriers, 1953	1344	1413
58—Passengers traveling by air between United States, or Eastern United States, and Argentina using U. S. flag and foreign flag carriers, 1952	1345	1414
59—Passengers traveling by air between United States, or Eastern United States, and Argentina using U. S. flag and foreign flag carriers, 1950	1346	1415
60—Passengers traveling by air between United States, or Eastern United States, and Colombia using U. S. flag and foreign flag carriers, 1957	1347	1416
61—Passengers traveling by air between United States, or Eastern United States, and Colombia using U. S. flag and foreign flag carriers, 1956	1348	1417

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
62—Passengers traveling by air between United States, or Eastern United States, and Colombia using U. S. flag and foreign flag carriers, 1955	1349	1418
63—Passengers traveling by air between United States, or Eastern United States, and Colombia using U. S. flag and foreign flag carriers, 1954	1350	1419
64—Passengers traveling by air between United States, or Eastern United States, and Colombia using U. S. flag and foreign flag carriers, 1953	1351	1420
65—Passengers traveling by air between United States, or Eastern United States, and Colombia using U. S. flag and foreign flag carriers, 1952	1352	1421
66—Passengers traveling by air between United States, or Eastern United States, and Colombia using U. S. flag and foreign flag carriers, 1950	1353	1422
68—Passengers carried by sea in liner service between United States Coastal Areas and the West Coast of South America, 1957	1355	1423
69—Passengers carried by sea in liner service between United States Coastal Areas and the West Coast of South America, 1956	1356	1424
70—Passengers carried by sea in liner service between United States Coastal Areas and the West Coast of South America, 1955	1357	1425
71—Passengers carried by sea in liner service between United States Coastal Areas and the West Coast of South America, 1954	1358	1426

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
72—Passengers carried by sea in liner service between the Atlantic Coast of the United States and the West Coast of South America, 1951-1953 (Trade Route 2)	1359	1427
COMPARISON OF PANAGRA AND GRACE PASSENGER TRAFFIC:		
74—Passengers carried by air with Panagra participation between certain Eastern Sections of the United States and Countries on the West Coast of South America, March and September, 1956 and 1957	1361	1428
75—Passengers carried by air with Panagra participation between certain Eastern Sections of the United States and Countries on the West Coast of South America, March and September, 1954 and 1955	1362	1429
76—Passengers carried by air with Panagra participation between certain Eastern Sections of the United States and Countries on the West Coast of South America, March and September, 1952 and 1953	1363	1430
77—Passengers carried by the Grace Line between the Atlantic Coast of the United States and the West Coast of South America, 1955-1957	1364	1431
78—Passengers carried by the Grace Line between the Atlantic Coast of the United States and the West Coast of South America, 1952-1954	1365	1432
79—Comparison of average monthly passenger traffic carried by air with Panagra participation and by sea on Grace Line between Northeastern United States and West Coast Countries of South America, 1956 and 1957	1366	1433

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
80—Comparison of average monthly passenger traffic carried by air with Panagra participation and by sea on Grace Line between Northeastern United States and West Coast Countries of South America, 1954 and 1955	1367	1434
81—Comparison of average monthly passenger traffic carried by air with Panagra participation and by sea on Grace Line between Northeastern United States and West Coast Countries of South America, 1952 and 1953	1368	1435
CARGO AND MAIL STATISTICS		
AIR CARRIERS:		
82—Overseas cargo carried by air into and out of New York, by years, 1953-1957	1369	1436
83—Cargo and mail carried by air between Miami and points outside Continental United States, by years, 1951-1957	1370	1437
84—Freight, express and mail carried by air on U. S. flag airlines serving Latin America, 1957	1371	1438
85—Freight, express and mail loaded on U. S. flag airlines serving South America, 1957	1372	1439
SEA CARRIERS:		
86—Cargo carried by sea in liner service between the United States and Latin America, by years, 1951-1957	1373	1440
87—Cargo imports carried by sea in liner service to United States Coastal Areas from the West Coast of South America, 1957	1374	1441
88—Cargo imports carried by sea in liner service to United States Coastal Areas from the West Coast of South America, 1956	1375	1442

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Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
89—Cargo imports carried by sea in liner service to United States Coastal Areas from the West Coast of South America, 1955	1376	1443
90—Cargo imports carried by sea in liner service to United States Coastal Areas from the West Coast of South America, 1954	1377	1444
91—Cargo imports carried by sea in liner service to the Atlantic Coast of the United States from the West Coast of South America, 1951-1953 (Trade Route 2)	1378	1445
92—Cargo exports carried by sea in liner service from United States Coastal Areas to the West Coast of South America, 1957	1379	1446
93—Cargo exports carried by sea in liner service from United States Coastal Areas to the West Coast of South America, 1956	1380	1447
94—Cargo exports carried by sea in liner service from United States Coastal Areas to the West Coast of South America, 1955	1381	1448
95—Cargo exports carried by sea in liner service from United States Coastal Areas to the West Coast of South America, 1954	1382	1449
96—Cargo exports carried by sea in liner service from the Atlantic Coast of the United States to the West Coast of South America, 1951-1953 (Trade Route 2)	1383	1450
COMPARISON OF PANAGRA AND GRACE CARGO TRAFFIC:		
97—Freight, express, and mail loaded on Panagra planes, by cities, 1957	1384	1451
98—Cargo carried by Panagra planes between Miami or the Canal Zone and five cities in West Coast Countries of South America, 1957	1385	1452

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Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
99—Cargo carried by the Grace Line between the Atlantic Coast of the United States and the West Coast of South America, by cities (Trade Route 2), 1957	1386	1453
100—Comparison of cargo traffic carried by Panagra planes and by Grace Line between indicated United States Atlantic Coast Points and specified cities in West Coast Countries of South America, 1957	1387	1454
Government's Exhibits:		
1119—Excerpts from the testimony of Juan Trippe in CAB docket 779	1387a	1455
1120—Excerpts from the testimony of Harold Roig in CAB docket 779	1424a	1491
1121—Excerpts from the testimony of H. C. Dobbs, A. E. Sinclair, Robert H. Patchin, Adolph Garni and W. F. Cogswell in CAB docket 779	1445a	1512
1122—Excerpts from the testimony of Juan Trippe in CAB docket 3589	1471	1535
1123—Stipulation between Pan American, W. R. Grace and Panagra with respect to various personnel of the three companies	1485	1547
1124—Stipulation between the United States and Pan American with respect to various acquisitions of airlines in South America by Pan American	1490	1552
1128—CAB opinion in docket No. 4882 et al. dated March 26, 1954 (No. E-8189)	1493	1555
1129—CAB opinion in docket No. 4882 et al. dated November 23, 1954 (Nos. E-9109 and E-9110) and appendices	1502	1570
1131—Letter to Board of Directors, Pan American-Grace Airways, Inc. from Andrew B. Shea dated November 26, 1956	1550	1662

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
1132—Letter to Andrew B. Shea from Roger Lewis dated November 30, 1956	1560	1668
1134—Letter to Andrew B. Shea from Erwin Balluder, Henry J. Friendly, Roger Lewis, Wilbur L. Morrison, Directors of Pan American-Grace Airways, Inc., dated January 10, 1957	1562	1669
1135—Minutes of adjourned regular meeting of Board of Directors of Pan American-Grace Airways, Inc. held January 10, 1957	1568	1673
1139—Pan American-Grace Airways, Inc. Route Extension Study dated November 1956	1573	1677
General Statement	1574	1677
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Miami–New York	1626	1719
Balboa–Mexico City–Los Angeles/San Francisco	1674	1760
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Pan American World Airways, Inc. Exhibits:		
Documentary Evidence:	1772	1851
1—Letter to Wilbur L. Morrison from R. C. Shrader dated October 11, 1946	1777	1856
2—Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated July 30, 1946	1779	1859
Annex	1799	1879
3—Letter agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated May 28, 1947	1803	1884
4—Letter agreement between W. R. Grace and Co. and Pan American Airways Corporation dated May 28, 1947	1804	1885

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
5—Supplement No. 2 to Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated January 9, 1948	1805	1887
6—Supplement No. 3 to Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated January 28, 1949	1828	1908
7—Supplement No. 4 to Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated February 9, 1949	1830	1910
8—Supplement No. 5 to Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated May 11, 1949	1831	1911
9—Amendment No. 1 to application of Pan American World Airways, Inc. for approval of Supplement No. 5 to the Through Flight Agreement dated April 25, 1951	1839	1919
10—Supplement No. 6 to Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated October 18, 1949	1844	1923
11—Supplement No. 7 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated January 31, 1950	1847	1925
12—Supplement No. 8 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated December 26, 1950	1849	1927

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
13—Supplement No. 9 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated January 24, 1951	1872	1952
14—Supplement No. 10 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated June 29, 1951	1875	1955
15—Supplement No. 11 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated January 1, 1952	1883	1964
16—Supplement No. 12 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated April 10, 1952	1891	1971
17—Supplement No. 13 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated September 25, 1952	1902	1986
18—Supplement No. 14 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated May 8, 1953	1903	1987
19—Supplement No. 15 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated January 20, 1954	1918	2009
20—Supplement No. 16 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated June 29, 1954	1934	2031

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Record from the United States District Court for the Southern District of New York Continued		
Pan American World Airways, Inc. Exhibits—Continued		
21—Supplement No. 17 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated September 7, 1955	1935	2032
22—Supplement No. 18 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated August 4, 1955	1955	2065
23—Supplement No. 19 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated August 7, 1957	1962	2070
24—Supplement No. 20 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated July 11, 1958	1964	2072
25—Supplement Nos 21 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated December 23, 1958	1966	2074
26—Equipment Interchange Agreement between National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. dated August 4, 1955	1978	2088
27—Supplement No. 1 to Equipment Interchange Agreement between National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. dated August 9, 1955	2020	2126

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
28—Application as amended by Amendment No. 1 of National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. for approval of Equipment Interchange Agreement and amendment to Through Flight Agreement under Section 412 of the Civil Aeronautics Act and; if deemed necessary, for approval under or exemption from Section 408 of the said Act dated August 4, 1955	2033	2138
29—Amendment No. 1 to application of National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. for approval of Equipment Interchange Agreement and amendment to Through Flight Agreement under Section 412 of the Civil Aeronautics Act and, if deemed necessary, for approval under or exemption from Section 408 of the said Act dated August 10, 1955	2079	2177
30—Letter to Civil Aeronautics Board from K. A. Lawder dated August 29, 1955	2084	2181
31—Supplement No. 2 to Equipment Interchange Agreement between National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. dated August 22, 1955	2085	2182
32—Letter agreement between Pan American-Grace Airways, Inc. and National Airlines, Inc. dated August 24, 1955	2089	2185
33—Letter agreement between Pan American-Grace Airways, Inc. and National Airlines, Inc dated November 28, 1955	2091	2186

	Original	Print
Record from the United States District Court for the Southern District of New York - Continued		
Pan American World Airways, Inc. Exhibits—Continued		
34—Supplement No. 3 to Equipment Interchange Agreement between National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. dated November 28, 1955	2093	2188
35—Letter agreement between Pan American-Grace Airways, Inc., National Airlines, Incorporated, and Pan American World Airways, Inc. dated April 16 1957	2102	2196
36—Statement of references and cost determination set forth in financial supplement dated August 9, 1955, to the Equipment Interchange Agreement dated August 4, 1955, between National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc.	2106	2200
Pan American Documentary Evidence—Agreements filed with the CAB	2108	2204
37—Agreements on Interline tickets between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated from January 26, 1932, to October 1, 1945	2113	2209
38—Letter agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated June 11, 1937	2126	2220
39—Letter agreement between Pan American-Grace Airways, Inc. and Pan American Airways, Inc. dated May 13, 1942	2128	2222
40—Letter agreement between Pan American-Grace Airways, Inc. and Pan American Airways, Inc. dated October 28, 1942	2129	2223

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
41—Agreement between Pan American-Grace Airways, Inc. and Pan American Airways, Inc. dated May 25, 1944	2131	2225
42—Contract between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated August 23, 1945	2134	2227
43—Agreement between Pan American, Panagra and Grace dated March 3, 1948	2140	2233
44—Letter agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated July 14, 1948	2163	2250
45—Memorandum agreement regarding services rendered and to be rendered to Panagra by the parent companies and compensation therefor between Pan American-Grace Airways, Inc., Pan American Airways, Inc., and W. R. Grace and Co., dated July 14, 1948	2168	2256
46—General Traffic and Sales Agency Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated September 10, 1948	2180	2263
47—Letter agreement between Pan American Grace Airways, Inc. and Pan American World Airways, Inc. dated December 10, 1951	2213	2297
48—Letter agreement between Pan American-Grace Airways, Inc. and Pan American World Airways, Inc. dated March 6, 1956	2215	2299
49—Letter agreement between Pan American-Grace Airways, Inc. and Pan American World Airways, Inc. accepted April 25, 1956	2217	2301

	Original	Print
Record from the United States District Court for the Southern District of New York Continued		
Pan American World Airways, Inc. Exhibits—Continued		
50—Exchange of correspondence between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated respectively June 26, 1957, June 3, 1957 and June 7, 1957	2220	2303
51—General Traffic Agreement between Pan American Airways, Inc. and Sociedad Colombo-Alemana de Transportes Aereos dated March 11, 1952	2227	2309
52—General Traffic and Sales Agency Agreement between Pan American Airways, Inc. and Aerovias Nacionales de Colombia, S.A. dated November 1, 1949	2242	2324
53—General Traffic and Sales Agency Agreement between Pan American World Airways, Inc. and Aerovias Nacionales de Colombia, S.A. dated December 3, 1954	2271	2353
54—Letter agreement between Aerovias Nacionales de Colombia, S.A. and Pan American World Airways, Inc. dated December 3, 1954	2288	2368
55—Letter agreement between Pan American World Airways, Inc. and Aerovias Nacionales de Colombia, S.A. dated December 3, 1954	2291	2371
56—Interline Traffic Agreement signed by Pan American Airways, Inc. dated December 3, 1954	2292	2372
VOLUME VI		
57—Amendment No. 1 to General Traffic and Sales Agency Agreement between Pan American World Airways, Inc. and Aerovias Nacionales de Colombia, S.A. dated June 18, 1957	2300	2383

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
58—Amendment No. 2 to General Traffic and Sales Agency Agreement between Pan American World Airways, Inc. and Aerovias Nacionales de Colombia, S.A. dated January 30, 1958	2302	2385
59—Amendment No. 3 to General Traffic and Sales Agency Agreement between Pan American World Airways, Inc. and Aerovias Nacionales de Colombia, S.A. dated March 31, 1958	2304	2387
60—Amendment No. 4 to General Traffic and Sales Agency Agreement between Pan American World Airways, Inc. and Aerovias Nacionales de Colombia, S.A. dated October 30, 1958	2306	2389
61—Agreement for ground services and use of ground facilities by scheduled operators between Pan American Airways, Inc. and Braniff Airways, Inc. dated April 27, 1948	2308	2391
62—Amendment No. I to Ground Facilities and Services Agreement between Pan American Airways, Inc. and Braniff Airways, Inc. dated September 27, 1948	2314	2399
63—Amendment II to Ground Facilities and Services Agreement between Pan American Airways, Inc. and Braniff Airways, Inc. dated October 31, 1949	2318	2404
64—Amendment No. III to Ground Facilities and Services Agreement between Pan American Airways, Inc. and Braniff Airways, Inc. dated December 7, 1949	2321	2407
65—Amendment IV to Ground Facilities and Services Agreement between Pan American World Airways, Inc. and Braniff Airways, Inc. dated July 20, 1950	2324	2410

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
66—Assignment agreement between Pan American World Airways, Inc. and Aeropuertos Unidos, S.A. dated April 30, 1952	2327	2412
67—Letter agreement between Pan American World Airways, Inc. and Braniff Airways, Inc. dated November 18, 1954	2328	2413
68—Amendment No. V to Ground Facilities and Services Agreement between Pan American World Airways, Inc. and Braniff Airways, Inc. dated June 20, 1957	2331	2416
69—Amendment VI to Ground Facilities and Services Agreement between Pan American World Airways, Inc. and Braniff Airways, Incorporated dated October 21, 1957	2332	2417
70—Letter agreement between Pan American Airways, Inc. and Panair Do Brasil, S.A. accepted November 16, 1943	2334	2420
71—Agreement between Pan American Airways, Inc. and Panair Do Brasil, S.A. dated January 1, 1944	2337	2423
72—Letter agreement between Pan American Airways, Inc. and Panair Do Brasil, S.A. accepted June 28, 1944	2346	2431
73—Letter agreement between Pan American Airways, Inc. and Panair Do Brasil, S.A. accepted December 30, 1946	2351	2436
74—Letter agreement between Pan American Airways, Inc. and Panair Do Brasil, S.A. accepted October 21, 1947	2352	2437
75—Letter agreement between Panair Do Brasil, S.A. and Pan American Airways, Inc. accepted January 13, 1947	2354	2439

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
76—Letter agreement between Pan American World Airways, Inc. and Panair Do Brasil, S.A. accepted May 14, 1952	2355	2440
77—General Traffic and Sales Agency Agreement between Pan American World Airways, Inc. and Panair Do Brasil, S.A. dated January 1, 1955	2357	2441
78—Letter agreement between Pan American World Airways, Inc. and Panair Do Brasil, S.A. accepted December 28, 1955	2379	2459
79—Amendment No. 1 to General Traffic and Sales Agency Agreement between Pan American World Airways, Inc. and Panair Do Brasil, S.A. dated July 1, 1957	2380	2460
80—Amendment No. 2 to General Traffic and Sales Agency Agreement between Pan American World Airways, Inc. and Panair Do Brasil, S.A. dated December 11, 1957	2382	2462
81—Letter from R. H. P. to C. J. Bilwiller dated August 30, 1927	2384	2463
82—Letter from R. H. Patchin to Mr. Carter dated August 31, 1927	2385	2464
83—Letter from J. T. Trippe to Harold R. Harris dated December 23, 1927	2386	2465
84—Letter from J. T. Trippe to Harold R. Harris dated December 30, 1927	2389	2468
85—Letter from Huff Daland Dusters, Inc. to Juan Trippe dated January 3, 1928	2390	2470
86—Memorandum of conversation with Dr. von Bauer by R. H. Patchin dated January 3, 1928	2392	2472
87—Letter from J. T. Trippe to Harold R. Harris dated January 13, 1928	2395	2474
88—Letter from J. T. Trippe to Edgar N. Gott dated February 21, 1928	2397	2476

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
89—Letter from Juan Trippe to Richard F. Hoyt dated February 23, 1928	2398	2477
90—Letter from Atlantic, Gulf and Caribbean Airways, Inc. to Edgar N. Gott dated April 10, 1928	2399	2479
91—Informal memorandum report by JTT dated April 27, 1928	2403	2482
92—Memorandum by JTT dated May 7, 1928	2414	2494
93—Supreme Resolution of Peru regarding the Huff Daland Dusters, Inc. dated May 29, 1928	2418	2498
94—Agreement between the General Administration of Posts and Telegraphs of Peru and the Huff Daland Dusters, Inc. dated June 27, 1928	2420	2500
95—Advertisement for foreign airmail service by Post Office Department dated May 31, 1928	2436	2514
96—Memorandum from C. E. to H. & I. dated June 5, 1928	2440	2520
97—Memorandum to J. T. Trippe from P. E. D. Nagle dated June 26, 1928	2443	2524
98—Airmail route proposal bond and oath by Pan American Airways, Inc. dated July 2, 1928	2445	2525
99—Memorandum to Iglehart from Patchin dated July 11, 1928	2449	2531
100—FAM contract No. 5 between United States of America and n American Airways, Inc. dated July 13, 1928	2450	2532
101—Acceptance of Pan American Airways, Inc. proposal to carry mails between Key West, Florida, and Cristobal Canal Zone by W. Irving Glover, Second Assistant Postmaster General, dated July 13, 1928	2457	2538

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
102—Memorandum from Robert G. Thach to J. T. Trippe dated August 1, 1928	2458	2538
103—Grace memorandum believed to be by Iglehart to Patchin dated August 3, 1928	2460	2541
104—Letter from C. E. to H. & R. dated August 6, 1928	2461	2542
105—Letter from Juan Trippe to Richard F. Hoyt dated August 14, 1928	2462	2543
106—Certificate of incorporation of Peruvian Airways Corporation dated September 4, 1928	2463	2544
107—Minutes of meeting of board of directors of Peruvian Airways Corporation held September 6, 1928	2472	2555
108—Memorandum to John D. MacGregor from J. T. Trippe dated September 10, 1928	2475	2558
109—Letter from J. T. Trippe to John D. MacGregor dated September 10, 1928	2478	2562
110—Letter from J. T. T. to Richard F. Hoyt dated September 11, 1928	2480	2564
111—Letter from J. T. T. to R. B. Bevier dated September 11, 1928	2481	2565
112—Letter from J. T. Trippe to William F. Cogswell dated September 20, 1928	2482	2566
113—Letter from W. Irving Glover to Trippe dated October 4, 1928	2483	2567
114—Letter from R. H. Patchin to Richard F. Hoyt dated November 23, 1928	2484	2568
115—Change of route of FAM contract No. 5 announced by W. Irving Glover, Second Assistant Postmaster General, dated November 24, 1928	2485	2569
116—Letter from J. T. T. to C. V. Whitney dated November 27, 1928	2486	2569

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
117—Memorandum for Mr. Hoyt from R. H. Patchen (sic) dated November 27, 1928	2487	2571
118—Letter from Peruvian Airways Corporation by H. R. Harris to Peruvian Airways Corporation, New York, dated December 5, 1928	2491	2575
119—Memorandum re operating history of Pan American Airways, Inc. by J. T. T. dated December 22, 1928	2494	2578
120—Letter to Henry Breckinridge from J. T. T. dated December 24, 1928	2500	2584
121—Letter to H. Case Willcox from J. T. Trippe dated January 5, 1929	2504	2588
122—Memorandum to Valverde from Patchin dated January 12, 1929	2508	2593
123—Letter to the representative of Huff Daland Dusters, Inc. from Postal and Telegraph Administration of Peru, A. S. Salazar, Secretary General, dated January 19, 1929	2509	2594
124—Memorandum re tentative estimate of proposed airway service between Colon, C.A. and Santiago, Chile, by Walter P. Jacob dated January 23, 1929	2510	2595
125—Pan American Airways, Inc. memorandum to J. T. Trippe from Walter Phelps Jacobs, dated January 25, 1929	2523	2608
126—Letter to Pan American Airways, Inc. from SCADTA dated January 28, 1929	2524	2609
127—Advertisements for foreign airmail service Post Office Department from Cristobal Canal Zone to Santiago, Chile, dated January 31, 1929	2525	2610
128—Pan American Airways, Inc. memorandum to R. H. Patchin from Walter P. Jacob dated February 19, 1929	2529	2615

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
129—Department of State press release re aircraft facilities in United States, Panama Canal Zone, and Colombia (Kellogg-Olaya Agreement) dated February 23, 1929	2530	2616
130—Airmail proposal, bond and oaths by Pan American-Grace Airways, Inc. dated February 26, 1929	2532	2618
131—Letter to the Postmaster General from Pan American-Grace Airways, Inc. dated March 1, 1929	2536	2622
132—Post Office Department press release re award to Pan American-Grace Airways of mail contract between Cristobal Canal Zone and Santiago, Chile, dated March 2, 1929	2537	2623
133—Acceptance of proposal of Pan American-Grace Airways, Inc. to carry mails between Cristobal, Canal Zone and Santiago, Chile, by Harry S. New, Postmaster General, dated March 2, 1929	2540	2625
134—FAM Contract No. 9 between United States of America and Pan American-Grace Airways, Inc. dated March 2, 1929	2541	2625
135—Memorandum on behalf of Pan American-Grace Airways, Inc. in the matter of the protest against this award of foreign airmail contract No. 9 dated March 26, 1929	2548	2633
136—Telegram to Pan American-Grace Airways from Irving Glover, Second Assistant Postmaster General, dated May 3, 1929	2600	2680

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
137—Post Office Department press release re award of mail contract to Pan American-Grace Airways, Inc. dated May 3, 1929	2601	2680
138—Letter to R. E. Hoyt from J. D. MacGregor dated May 9, 1929	2602	2681
139—Memorandum to the directors of Pan American-Grace Airways, Inc. from J. D. MacGregor attached to letter to Hoyt from MacGregor dated May 9, 1929	2603	2682
140—Order signed by W. Irving Glover, Second Assistant Postmaster General, dated August 20, 1929	2614	2692
141—Letter to Walter F. Brown, Postmaster General, from Pan American Airways, Inc. dated October 24, 1929	2615	2692
142—Letter to Pan American Airways, Inc. from W. Irving Glover, Second Assistant Postmaster General, dated October 28, 1929	2619	2695
143—Traffic agreement between Pan American Airways, Inc., Pan American-Grace Airways, Inc. and SCADTA dated February 28, 1930	2620	2696
144—Letter to J. T. Trippe from E. E. W. dated May 2, 1930	2628	2701
145—Cable to MacCracken, O'Neill from Bunge Bilbao dated May 14, 1930	2632	2705
146—Letter to Pan American Airways, Inc. from James D. Summers dated June 4, 1930	2636	2707
147—Memo to J. T. Trippe from Pan American-Grace Airways, Inc. dated June 12, 1930	2639	2710

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
148—Letter to Walter F. Brown from Pan American-Grace Airways, Inc. dated June 18, 1930	2641	2712
149—Memorandum by MacCracken, Jr. and J. T. Trippe dated July 22, 1930	2645	2716
150—Memorandum in regard to the proposed acquisition by Aviation Corporation of the Americas of the assets of New York, Rio & Buenos Aires Line, Inc. prepared by Root, Clark, Buckner & Ballantine, counsel for Pan American, dated July 28, 1930	2646	2718
151—Letter to Root, Clark, Buckner & Ballantine from John Lord O'Brian, Assistant Attorney General, dated August 1, 1930	2687	2749
152—Post Office advertisement for foreign airmail service between Paramaribo and Santos dated August 20, 1930	2688	2750
153—Contract for foreign airmail service route No. 10 between United States of America and Pan American Airways, Inc. dated September 24, 1930	2696	2760
154—Extension of service and agreements, foreign airmail route No. 10, agreement between the United States of America and Pan American Airways, Inc., dated October 15, 1931	2709	2774
155—Memorandum to directors, Pan American-Grace Airways, Inc. from J. D. MacGregor dated September 26, 1930	2715	2782
156—Letter to Pan American Airways, Inc. from E. R. White, Director, Post Office Department, dated December 13, 1930	2721	2787

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
157—Law No. 8 of 1931 of Colombia dated January 9, 1931	2722	2788
157A—Memorandum to Trippe from Evan E. Young dated March 6, 1931	2733	2797
158—Letter to the Postmaster General from J. T. Trippe dated April 7, 1931	2735	2799
159—Letter to the Postmaster General from J. T. Trippe dated April 7, 1931	2737	2800
160—Letter to the Postmaster General from J. T. Trippe dated April 7, 1931	2739	2803
161—Letter to J. T. Trippe from Francis White dated April 9, 1931	2740	2804
162—Letter to President of Pan American from Washington Representative (Nagle) dated June 17, 1931	2741	2805
163—Letter to Walter F. Brown from Thomas B. Doe dated July 2, 1931	2744	2808
164—Letter to Thomas B. Doe from Walter F. Brown dated July 7, 1931	2746	2810
165—Cable to J. T. Trippe from Tietjen dated July 10, 1931	2748	2811
166—Telegram to Tietjen from Trippe dated July 11, 1931	2749	2812
167—Letter to President from J. T. Trippe dated September 4, 1931	2750	2813
168—Agreement between Uraba, Medellin & Central Airways, Inc. and Gonzalo Mejia dated September 10, 1931	2753	2815
169—Clipping from the New York Times dated December 12, 1931	2759	2819
170—Translation of deed of assignment of the Mejia Concession to Uraba, Medellin & Central Airways, Inc. dated January 11, 1932	2760	2821
171—Letter to Harold R. Harris from Geo. L. Rihl dated December 24, 1933	2770	2830

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
172—Letter to Geo. L. Rihl from H. R. Harris dated December 30, 1933	2772	2833
173—Memorandum of conference with Francis White by H. J. F. dated February 23, 1934	2774	2836
174—Letter to A. Garni from Harold Roig dated March 18, 1935	2780	2840
175—Letter to Chief of Engineering at New York from Pan American Operations Manager, Caribbean, Miami, dated June 19, 1935	2785	2844
176—Letter to J. D. MacGregor from H. R. Harris dated November 28, 1936	2787	2848
177—Confidential memorandum re airmail service U.S.A. to Buenos Aires via west coast of South America by Garni attached to letter from Harris to MacGregor dated November 28, 1936	2792	2855
178—Memorandum re extension of FAM 9 through Bolivia to the Argentine attached to letter from Harris to MacGregor dated November 28, 1936	2796	2861
179—Letter to J. D. MacGregor from H. R. Harris dated December 7, 1936	2803	2867
VOLUME VII		
180—Memorandum to Vice President Young from M. J. Rice dated June 3, 1937	2805	2869
181—Letter from M. J. Rice to Evan E. Young dated June 16, 1937	2806	2870
182—Letter to Evan E. Young from M. J. Rice dated June 17, 1937	2807	2872
183—Letter to J. D. MacGregor from H. R. Harris dated August 7, 1937	2811	2877

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
184—Agreement between Pan American-Grace Airways, Inc. and Compania de Aviacion Pan American Argentine, S.A. dated September 1, 1937	2813	2880
185—Cable to Roig from Garni dated October 14, 1937	2817	2884
186—Minutes of adjourned special meeting of board of directors of Pan American-Grace Airways, Inc. held January 27, 1938	2822	2890
187—Exhibit B memorandum by Rihl dated January 27, 1938	2826	2893
188—Memorandum for A. Garni from J. D. MacGregor dated April 29, 1938	2830	2895
189—Letter to A. Garni from Harllee Branch, Second Assistant Postmaster General, dated June 30, 1938	2833	2899
190—Letter to Evan E. Young from M. J. Rice dated November 11, 1938	2834	2900
191—Letter to Trippe from von Bauer undated	2838	2905
192—Memorandum of conference relating to proposed agreement between Pan American Airways Corporation and W. R. Grace and Company on February 14, 1939, by Henry J. Friendly	2840	2908
193—Translation of confidential memorandum by A. Villegas Restrepo dated June 13, 1939	2842	2910
194—Memorandum of telephone conversation between Mr. Latchford and Mr. Young by E. E. Y. dated July 15, 1939	2844	2913
195—Letter to P. P. von Bauer from Evan E. Young dated August 7, 1939	2845	2914
196—Letter to President, Executive, New York, from Evan E. Young dated September 6, 1939	2846	2915

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
197—Letter to Evan E. Young from F. Powers dated September 28, 1939	2848	2917
198—Letter to Thomas Burke from George L. Rihl dated November 13, 1939	2852	2923
199—Letter to Rihl from Thomas Burke dated November 18, 1939	2853	2923
200—Letter to Ellis O. Briggs from George L. Rihl dated December 16, 1939	2854	2924
201—Letter to Martin del Corral from George L. Rihl dated January 18, 1940	2859	2931
202—Letter to George L. Rihl from Jose Joaquin Castro M. dated January 23, 1940	2861	2933
203—Letter to Juan T. Trippe from George L. Rihl dated January 25, 1940	2862	2934
204—Memorandum by J. T. Trippe dated January 29, 1940	2870	2943
205—Minutes of regular meeting of executive committee of Pan American Airways, Inc. dated May 14, 1940	2872	2945
206—Minutes of regular meeting of executive committee of Pan American Airways, Inc. dated May 24, 1940	2877	2948
207—Minutes of regular meeting of executive committee of Pan American Airways, Inc. dated May 28, 1940	2878	2948
208—Letter to J. T. Trippe from M. J. Rice dated June 8, 1940	2879	2949
209—Memorandum of conference with the Civil Aeronautics Authority reference SCADTA by Cooper of Pan American, dated June 13, 1940	2880	2950
210—Minutes of adjourned regular meeting of executive committee of Pan American Airways, Inc. dated November 12, 1940	2883	2953
211—Minutes of regular meeting of executive committee of Pan American Airways, Inc. dated November 19, 1940	2884	2954

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
212—Memorandum of telephone conversation between Messrs. Ribl and Harding by G. L. R. dated July 10, 1941	2885	2954
213—Memorandum to President, Executive, New York, from Evan E. Young dated July 15, 1941	2886	2956
214—Telegram to Panair, Young, New York, from Cauby dated July 15, 1941	2888	2958
215—Letter to C. V. Whitney from D. Stewart Iglehart dated July 18, 1941	2889	2959
216—Letter to Civil Aeronautics Board from W. R. Grace and Co. dated July 21, 1941	2890	2960
217—Memorandum of points to be considered in connection with charter of equipment by Henry J. Friendly, dated August 2, 1941	2892	2962
218—Letter to Harold J. Roig from J. T. T. dated October 29, 1941	2894	2965
219—Letter to W. R. Grace and Company from Pan American Airways Corporation dated November 4, 1941	2895	2966
220—Letter to Pan American Airways Corporation from W. R. Grace & Co. dated November 12, 1941	2899	2970
221—Letter to Pan American Airways from Pan American-Grace Airways, Inc. dated December 16, 1941	2902	2973
222—Letter to the Postmaster General from Pan American Airways, Inc. dated January 27, 1942	2903	2974
223—Letter to Evan E. Young from Smith W. Purdum, Second Assistant Postmaster General, dated January 28, 1942	2904	2976
224—Letter to Smith W. Purdum from John C. Cooper dated March 12, 1942	2905	2977

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
225—Letter to John C. Cooper from Smith W. Purdum dated June 11, 1942	2906	2979
226—Petition of the Department of Justice for leave to intervene in CAB docket No. 779, dated September 24, 1942	2907	2980
227—Confidential summary of agreement and action taken regarding reimbursement for costs of De-Germanization services in Brazil: Pan American internal memorandum dated December 21, 1942	2912	2984
228—Letter to Harold J. Roig from Howard B. Dean dated February 4, 1944	2916	2988
229—Memorandum of conference by H. J. F. dated May 16, 1944	2917	2989
230—Memorandum of conference by H. J. F. dated May 18, 1944	2921	2993
231—Memorandum of luncheon conference by H. J. F. dated May 19, 1944	2925	2998
232—Memorandum of conference by Henry J. Friendly dated July 12, 1944	2928	3001
233—Memorandum to Mr. Friendly by H. B. D. dated July 19, 1944	2932	3006
234—Letter to Harold J. Roig from Howard B. Dean dated February 21, 1946	2933	3007
235—Memorandum by H. B. Dean dated February 21, 1946	2934	3009
236—Letter to Messrs. Dean, (illegible), Morris and Friendly from H. J. F. dated March 13, 1946	2937	3012
237—Letter to Harold J. Roig from Howard B. Dean dated April 8, 1946	2940	3015
238—Letter to Harold J. Roig from E. Balluder dated April 15, 1946	2941	3016
239—Memorandum to Marshall Skadden from David E. Grant dated May 31, 1946	2942	3018

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Pan American World Airways, Inc. Exhibits—Continued		
240—Petition of Pan American Airways, Inc. before the Civil Aeronautics Board dated August 1, 1946	2952	3032
241—Letter to James M. Landis from Henry J. Friendly, counsel for Pan American Airways Corporation and Pan American Airways, Inc.; Cahill, Gordon, Zachry & Reindel, counsel for W. R. Grace and Co.; and Gerhard A. Gesell, counsel for Pan American-Grace Airways, Inc., dated August 19, 1946	2956	3036
242—Reply brief for Pan American-Grace Airways, Inc. in CAB docket No. 2423, dated November 25, 1946	2958	3038
243—Reply brief for Pan American Airways, Inc. in CAB docket No. 2423, dated November 25, 1946	2965	3045
244—Memorandum to Vice President Balluder from W. L. Morrison dated February 27, 1947	2968	3048
245—Summary of distribution of Argentine Company expense attached to memorandum to Vice President Balluder from W. L. Morrison, dated February 27, 1947	2970	3051
246—Memorandum to Vice President Morrison from H. Brock dated March 25, 1947	2976	3057
247—Memorandum to Vice President Lipscomb from J. E. Muhlfeld, dated August 26, 1947	2977	3058
248—Advertising and sales policy for Argentina attached to memorandum to Vice President Lipscomb from J. E. Muhlfeld, dated August 26, 1947	2978	3059

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249—Memorandum to Pan American District Sales Managers, Sales, United States, from John E. Muhlfeld, dated September 26, 1947	2979	3060
250—Memorandum to Regional Sales Managers, United States, Central, Eastern, Western from John E. Muhlfeld, dated October 9, 1947	2980	3062
251—Letter agreement between Pan American Airways, Inc. and Gonzalo Mejia accepted November 7, 1947	2981	3063
252—A letter agreement between Gonzalo Mejia and Uraba, Medellin & Central Airways, Inc. dated November 8, 1947	2982	3064
253—Letter from Gonzalo Mejia to Board of Directors, Uraba, Medellin & Central Airways, Inc., dated November 8, 1947	2983	3065
254—General release to Uraba, Medellin & Central Airways, Inc., Pan American Airways Corporation, Pan American Airways, Inc., et al. by Gonzalo Mejia dated November 10, 1947	2984	3065
255—Letter to E. Balluder from H. Max Healey dated November 15, 1947	2985	3067
256—Telegram to Balluder from Morrison dated January, 1948	2986	3068
257—Letter to Paulo Sampaio, President, Panair Do Brasil, from J. T. Trippe, dated January 29, 1948	2987	3069
258—Pan American-Grace Airways, Inc. memorandum outlining Panagra arrangement with P.A.A. concerning the services which P.A.A. will render in connection with traffic, publicity and advertising in 1948, dated February 3, 1948	2988	3070

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Pan American World Airways, Inc. Exhibits—Continued		
259—Telegram to Charles E. Beard from Pan American Airways, Inc. dated March 9, 1948	2991	3073
260—Memorandum to Erwin Balluder from Douglas Campbell dated March 19, 1948	2992	3074
261—Memorandum to Douglas Campbell from E. Balluder dated March 31, 1948	2993	3075
262—Memorandum to District Sales Managers U. S., Regional Sales Managers U. S. from John E. Muhlfeld dated June 7, 1948	2994	3075
263—Memorandum to General Sales Manager, Sales, New York, from Joseph P. Riley dated June 14, 1948	2996	3077
264—Memorandum to General Sales Manager, Sales, New York, from Kenny J. Fromm dated June 15, 1948	2997	3078
265—Memorandum to General Sales Manager, Sales, New York, from A. D. Mikkelsen, dated June 15, 1948	2998	3079
266—Memorandum to General Sales Manager U. S., New York, from L. W. Lee dated June 15, 1948	2999	3080
267—Memorandum to General Sales Manager, Sales, New York, from D. R. Taylor dated June 21, 1948	3000	3081
268—Memorandum to General Sales Manager from Richard A. Catoni, dated June 21, 1948	3001	3082
269—Memorandum to General Manager, Sales, New York, from Stuart Wooster, dated June 22, 1948	3002	3083
270—Memorandum to General Sales Manager, Sales, New York, from W. H. Zeiser dated June 23, 1948	3003	3084

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Pan American World Airways, Inc. Exhibits—Continued		
271—Letter to Erwin Balluder from G. Vidal dated July 16, 1948	3004	3084
272—Report of Examiner Richard A. Walsh in CAB docket No. 3272, Pan American Airways, Inc. and Uraba, Medellin & Central Airways, Inc., served August 2, 1948	3005	3086
273—Letter to H. J. Roig from J. P. G. dated December 5, 1948	3023	3101
274—Letter to Harold J. Roig from National Airlines, Inc. dated December 15, 1948	3035	3114
275—Letter to Juan T. Trippe from Paul R. Scott dated January 24, 1949	3036	3115
276—Letter to Douglas Campbell from Pan American Argentina, S.A. dated January 26, 1949	3039	3117
277—Letter to Division Advertising Manager, LAD, Miami, from Juan Homs, Jr., dated February 17, 1949	3040	3118
278—Memorandum to Acting Public Rel. and advertising manager P.A. Argentina, S.A. from Ernest L. Foss dated July 26, 1949	3042	3121
279—Letter to H. W. Toomey from George P. Smith dated October 12, 1949	3043	3122
280—Letter to George P. Smith from Erwin Balluder dated September 13, 1949	3045	3124
281—Letter to Porter Norris from G. P. Smith dated May 29, 1950	3047	3126
282—Note to Mr. Toomey from W. F. Reves dated August 21, 1950	3054	3134
283—Memorandum to Division Sales/Advertising Manager from Mario J. Martinez dated June 11, 1950	3055	3135
284—Letter to Douglas Campbell from George P. Smith dated August 19, 1953	3057	3137

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Pan American World Airways, Inc. Exhibits—Continued		
285—Letter to James T. Scholtz from George P. Smith dated September 21, 1953	3059	3139
286—P.A.A.-Panagra Exhibit No. 7, CAB docket No. 2423, Panagra Passenger Traffic for 1945 and first six months of 1946 destined to or originating in the Continental United States	3061	3141
287—Pan American Exhibit P-50 in CAB docket No. 779, comparison of equipment	3062	3142
288—Pan American Exhibit No. P-6 and 7 in CAB docket 779, passengers carried from Buenos Aires to points indicated 1929-1942	3064	3144
289—Pan American Exhibit No. P-37, CAB docket No. 779, excerpts of minutes of Pan American Executive Committee and Pan American Board of Directors from December 19, 1939, to December 8, 1942	3065	3145
290—Pan American Exhibit No. P-37 in CAB docket No. 779, excerpts of minutes of Pan American Executive Committee and Pan American Board of Directors from April 21, 1937, to October 31, 1939	3076	3158
291—Consolidated exhibit No. 19 in CAB docket No. 3500, statement listing dates and subject matter of negotiations pertaining to the agreements between National, Pan American, Panagra and Grace from the summer of 1948 to May 11, 1949	3079	3161
292—Pan American Exhibit No. P-21 in CAB docket No. 779, route miles of Latin American operations	3081	3165

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293—Pan American Exhibit No. P-15 in CAB docket No. 779, passenger fares and air express rates, 1930 to date	3083	3168
294—Senate document No. 15, 74th Congress first session, Federal Aviation Commission, message from the President of the United States transmitting a report of the Federal Aviation Commission dated January 30, 1935	3085	3170
295—Exhibit from the record in CAB docket No. 779 by Research and Analysis Division, Economic Bureau, Civil Aeronautics Board	3094	3179
296—Pan American Exhibit No. P-2 in CAB docket No. 779, total volume of passenger traffic out of Miami, 1929-1942	3095	3180
297—Pan American Exhibit No. P-198 in CAB docket No. 779, Pan American Latin American operations route mileage as of December 31, 1929	3105	3190
298—Pan American Exhibit No. P-199 in CAB docket No. 779, study showing relative size of Pan American-Grace passenger revenue to Pan American Airways system passenger revenue, 1929-1942	3106	3191
299—Aviation Corporation of the Americas, excerpts of minutes of meetings of the executive committee and of the board of directors from February 27, 1930, to May 6, 1931	3107	3192
300—Pan American Exhibit No. P-37 in CAB docket No. 779, excerpts of minutes from Pan American Executive Committee and Pan American Board of Directors from March 16, 1937, to August 31, 1937	3112	3200

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301—Pan American Exhibit No. PA-1 in CAB docket No. 3272, Pan American Airways, Inc. acquisition of property and certificate of Uraba, Medellin & Central Airways, Inc. dated February 13, 1948	3115	3204
302—Consolidated exhibit No. 24 in CAB docket No. 3500, statement of negotiations relating to agreements between National, PAA, Panagra, and W. R. Grace and Co.	3123	3210
303—CAB order serial No. 3728 dated June 5, 1945	3135	3220
304—CAB order serial No. 4525 dated February 19, 1946	3137	3222
305—CAB order serial No. E-1227 dated February 20, 1948	3139	3224
306—CAB order No. E-9305 dated June 15, 1955	3147	3231
307—CAB order No. E-13631 dated March 19, 1959	3150	3235
308—Letter to J. T. Trippe from D. W. Rentzel, Chairman, Civil Aeronautics Board, dated May 4, 1951	3154	3240
309—Letter to J. T. Trippe from Donald W. Nyrop, Chairman, Civil Aeronautics Board, dated November 9, 1951	3158	3246
310—Letter to J. T. Trippe from Oswald Ryan, Acting Chairman, Civil Aeronautics Board, dated April 30, 1952	3163	3251
311—Letter to J. T. Trippe from Donald Nyrop, Chairman, Civil Aeronautics Board, undated	3171	3257
312—Letter to Willis G. Lipscomb from Oswald Ryan, Chairman, Civil Aeronautics Board, dated October 26, 1953	3174	3261

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313—Letter to Willis G. Lipscomb from Chan Gurney, Chairman, Civil Aeronautics Board, dated September 23, 1954	3183	3268
314—Letter to Willis G. Lipscomb from James R. Durfee, Chairman, Civil Aeronautics Board, dated May 16, 1956	3190	3273
315—CAB order serial No. E-570 dated May 5, 1947	3197	3282
316—CAB opinion in docket No. 2423 dated May 5, 1947	3199	3284
317—CAB order serial No. E-2651 dated March 30, 1949	3226	3307
318—CAB order serial No. E-4130 dated May 4, 1950	3227	3308
319—CAB order serial No. E-4575 dated August 29, 1950	3231	3311
320—CAB order serial No. E-5282 dated April 12, 1951	3233	3313
321—CAB opinion in docket No. 3785 and docket No. 3787 dated April 12, 1951	3236	3317
322—CAB order serial No. E-5842 dated November 8, 1951	3250	3330
323—CAB order serial No. E-6048 dated January 22, 1952	3251	3331
324—CAB order serial No. E-6476 dated June 3, 1952	3253	3333
325—CAB order serial No. E-6587 dated July 9, 1952	3257	3337
326—CAB order serial No. E-6945 dated November 7, 1952	3261	3341
327—CAB order serial No. E-7165 dated February 17, 1953	3262	3342
328—CAB order serial No. E-7416 dated May 27, 1953	3264	3345
329—CAB order serial No. E-8862 dated December 29, 1954	3266	3347

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Pan American World Airways, Inc. Exhibits—Continued		
330—CAB order serial No. E-9130 dated April 25, 1955	3268	3349
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331—CAB order serial No. E-9481 dated August 10, 1955	3271	3353
332—CAB order serial No. E-9562 dated September 12, 1955	3277	3360
333—CAB order serial No. E-9654, dated October 13, 1955	3278	3362
334—CAB order serial No. E-10669 dated October 15, 1956	3281	3365
335—CAB order serial No. E-11789 dated September 13, 1957	3284	3368
335A—Pan American Exhibit No. P-154 in CAB docket No. 779, preliminary estimate of proposed airline services between Cristobal, P.C.Z. and Valparaiso, Chile, dated October 1, 1928	3287	3372
336—Letter to J. D. MacGregor from Harold J. Roig dated June 21, 1929	3298	3385
337—Letter to D. S. Iglehart from H. J. R. dated December 5, 1930	3304	3390
338—Cable to Roig from Trippe dated December 12, 1930	3306	3392
339—Minutes of special meeting of Board of Directors of Pan American-Grace Airways, Inc. held January 28, 1931	3310	3397
340—Memorandum to the Directors of Pan American-Grace Airways, Inc. from J. D. MacGregor dated March 4, 1931	3314	3399
341—Memorandum to the Directors of Pan American-Grace Airways, Inc. from J. D. MacGregor dated March 6, 1931	3317	3402
342—Letter to J. T. Trippe from C. A. Lindbergh dated March 11, 1931	3328	3410

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343—Minutes of special meeting of Board of Directors of Pan American-Grace Airways, Inc. held March 18, 1931	3329	3411
344—Memorandum to the Directors of Pan American-Grace Airways, Inc. from J. D. MacGregor dated April 11, 1931	3334	3415
345—Memorandum by W. F. C. dated May 6, 1931	3342	3422
346—Letter to H. R. Harris from J. D. MacGregor dated May 13, 1931	3345	3424
347—Letter to Harold J. Roig from R. H. Patchin dated May 21, 1931	3347	3428
348—Letter to J. T. Trippe from R. H. Patchin dated May 27, 1931	3350	3430
349—Letter to Robert H. Patchin from J. T. Trippe dated May 29, 1931	3352	3432
350—Letter to Chase C. Gove from Pan American Airways, Inc. dated October 8, 1931	3354	3434
351—Letter to H. R. Harris from J. D. MacGregor dated November 3, 1932	3359	3439
352—Letter to J. D. MacGregor from Harold R. Harris dated February 17, 1933	3361	3441
353—Letter to H. R. Harris from J. D. MacGregor dated October 19, 1933	3362	3443
354—Memorandum to J. D. MacGregor from G. Vidal dated December 20, 1933	3367	3446
355—Letter to J. D. MacGregor from G. Vidal dated February 5, 1935	3370	3449
356—Letter to H. J. Roig from D. S. Iglehart dated May 5, 1936	3376	3454
357—Letter to Pan American-Grace Airways, Inc. from H. R. Harris dated August 29, 1936	3377	3455
358—Letter to A. Garni from Harllee Branch dated June 30, 1938	3378	3457

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359—Letter to C. V. Whitney from D. S. Iglehart dated January 19, 1939	3379	3458
360—Memorandum edited by Rihl dated January 31, 1939	3381	3459
361—Memorandum to H. R. Harris from G. P. Smith dated March 8, 1939	3384	3462
362—Letter to Pan American-Grace Airways, Inc. from T. J. Kirkland dated August 7, 1940	3396	3478
363—Letter to Panagra, New York, from J. E. Muhlfeld dated March 17, 1941	3399	3483
364—Letter to Pan American-Grace Airways, Inc. from J. E. Muhlfeld dated May 7, 1941	3401	3486
365—Letter to Douglas Campbell from H. J. R. dated June 4, 1941	3403	3489
366—Letter to H. J. Roig from Douglas Campbell dated June 9, 1941	3404	3490
367—Memorandum to Director, Public Relations, New York; from Francis Walton dated August 1, 1941	3405	3491
368—Memorandum re work performed for Pan American-Grace Airways, Inc. by Pan American Airway System public relations department (New York) dated about July 1, 1941	3411	3499
369—Letter to Pan American Airways, Inc. from J. E. Muhlfeld dated September 26, 1941	3423	3510
370—Letter to Panagra, New York, from J. E. Muhlfeld dated December 19, 1941	3424	3511
371—Letter to Pan American-Grace Airways, Inc. from H. R. Harris dated January 29, 1942	3425	3512
372—Letter to South American General Office, Lima, Peru, from Grace & Cia., (Chile) S.A. dated September 24, 1942	3426	3514

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373—Letter to Grace & Cia., (Chile), agents for Panagra, from J. E. Muhlfeld, dated December 15, 1942	3428	3517
374—Memorandum to O. G. Balz from G. Vidal dated January 27, 1943	3429	3518
375—Letter to Harold J. Roig from Howard B. Dean dated February 21, 1946	3433	3522
376—Letter to Charles E. Beard from W. L. Morrison dated September 2, 1946	3434	3523
377—Letter to Andrew B. Shea from J. T. T. dated July 8, 1954	3435	3525
378—Memorandum to files re Los Angeles/West Coast through flight by John C. Leslie dated July 21, 1954	3436	3526
379—Letter to Andrew B. Shea from Henry J. Friendly dated July 23, 1954	3438	3528
380—Memorandum to Douglas Campbell from A. B. S. dated August 20, 1954	3439	3528
381—Memorandum to J. C. Leslie from Douglas Campbell dated August 20, 1954	3440	3529
382—Letter to A. B. Shea from Douglas Campbell dated August 18, 1954	3441	3530
383—Memorandum to Vice President and General Manager Campbell from John C. Leslie dated August 26, 1954	3445	3534
384—Memorandum to A. B. Shea from John C. Leslie dated September 9, 1954	3447	3537
385—Memorandum to John C. Leslie from Andrew B. Shea dated September 15, 1954	3448	3538
386—Memorandum to A. B. Shea from John C. Leslie dated September 16, 1954	3449	3538
387—Memorandum to A. B. Shea from John C. Leslie dated September 27, 1954	3450	3539
388—Memorandum to John C. Leslie from Andrew B. Shea dated October 4, 1954	3451	3540
389—Memorandum to Andrew Shea from John C. Leslie dated October 21, 1954	3453	3542

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390—Minutes of regular meeting of Board of Directors of Pan American-Grace Airways, Inc. held November 2, 1955	3456	3545
391—Minutes of adjourned regular meeting of Board of Directors of Pan American-Grace Airways, Inc. held December 20, 1955	3461	3549
392—Memorandum re Panagra jet program, meeting held November 17, 1955, by Henry J. Friendly	3466	3553
393—Minutes of regular meeting of Board of Directors of Pan American-Grace Airways, Inc. held April 6, 1959	3472	3559
394—Application of Uraba, Medellin & Central Airways, Inc. before the Civil Aeronautics Board, docket No. 10324, dated March 18, 1959	3475	3562
395—Excerpt from hearings before Sub-committee of House Committee on Appropriations on Post Office Appropriation Bill, 1931, dated 1930	3478	3565
396—Public counsel exhibit in CAB docket No. 779, weight of airmail dispatched to Antigua and other points in Latin America	3480	3567
397—Public counsel exhibit in CAB docket No. 779, weight of airmail received from Antigua and other points in Latin America	3492	3579
398—CAB March and September, 1957, re current reports and international O & D surveys, Panagra participation in passenger traffic between Buenos Aires on the one hand and northeast U. S., Canada and Europe on the other hand as a percentage of Panagra System scheduled operations—March and September, 1957	3503	3590

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399—Pan American annual report for the war year 1942, 15 Years of Pioneering, pp. 22, 23	3504	3591
400—Treaties and other international acts, Series 1900, Air Transport Services, agreement between the United States of America and Brazil signed September 6, 1946, effective October 6, 1946	3506	3593
401—Treaties and other international acts, Series 2190, Air Transport Services, agreement between the United States of America and Brazil amending the agreement of September 6, 1946, signed December 30, 1950, effective December 30, 1950	3547	3612
402—Treaties and other international acts, Series 4143, Air Transport Services, agreement between the United States of America and Brazil amending agreement of September 6, 1946, as amended, signed December 1, 1958	3553	3616
403—Agreement between Western Air Express Corporation and United Airlines Transport Corporation dated March 17, 1939	3561	3621
404—Draft Equipment Interchange Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. submitted by Pan American to H. J. Roig in 1941 (introduced as Grace Exhibit 58 in CAB docket No. 779)	3575	3635
405—Excerpts from the testimony of H. J. Roig in CAB docket No. 779	3585	3649
406—Map: Latin American foreign airmail contracts awarded 1927-1930	3586	3651

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407—Map: Routes awarded in docket No. 525 et al., order No. 4793, dated May 17, 1946, and the NAL-PAA-PGR and EAL-BNF interchanges approved in 1955	3587	3653
408—Map: Foreign flag airlines operating to South America and Panama, April, 1959	3588	3655
409—Map: Principal Latin American airline service (Appendix B to pretrial brief of Pan American)	3589	3657
410—Excerpts from the testimony of Juan T. Trippe in CAB dockets 779 and 3500	3590	3658
411—Excerpt from the testimony of R. C. Lounsbury in CAB docket 779	3656	3714
412—Excerpts from the testimony of Harold J. Roig in CAB dockets 779, 525 and 3500	3657	3715
413—Excerpts from the testimony of Robert H. Patchin in CAB docket 779	3679	3734
414—Excerpts from the testimony of William F. Cogswell in CAB docket 779	3683	3738
415—Excerpts from the testimony of Douglas Campbell in CAB docket 3500	3685	3740
416—Excerpt from the testimony of Thomas J. Kirkland in CAB docket 3500	3686	3741
417—Excerpts from the testimony of W. Irving Glover before Congressional Committees, 1928-30	3687	3742
418—Excerpts from the testimony of Walter F. Brown before Senate Special Committee, 1934	3696	3749
419—Excerpts from oral argument of counsel before the Civil Aeronautics Board in CAB docket 2423	3710	3763

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419—Excerpts from oral argument of counsel before the Civil Aeronautics Board in CAB docket 2423—Continued		
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420—Transcript of hearing in CAB docket 2423 (excerpts)	3915	3916
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421—Transcript of hearing in CAB docket 2423 (excerpts)	4204	4142
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422—Transcript of hearing in CAB docket 2423 (excerpts)	4317	4227
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423—Transcript of hearing in CAB docket 2423 (excerpts)	4319	4229
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424—Additional excerpts from testimony of Juan T. Trippe in CAB docket 779	4330	4237
425—Excerpts from the testimony of Christopher De Groot in CAB docket 779	4353	4258
426—Excerpts from the testimony of A. B. Shea in CAB docket 4882	4354	4259
427—Excerpts from the testimony of Juan T. Trippe in hearings before the Antitrust Subcommittee (Subcommittee No. 5) of the Committee on the Judiciary, House of Representatives	4362	4266
428—Minutes of composite and joint meetings, Traffic Conferences 1, 2 and 3 of International Air Transport Association held May 8-28, 1951	4364a	4269
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428—Minutes of composite and joint meetings, Traffic Conferences 1, 2 and 3 of International Air Transport Association held May 8-28, 1951—Continued		
429—CAB order serial No. E-5623 dated August 17, 1951	4539	4483
Pan American World Airways, Inc. Statistical Exhibits:	4549a	4495
1—Pan American World Airways, Inc.—Description of aircraft used by Latin American division, years 1929-1958	4552	4498

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2—Pan American World Airways, Inc.—History of changes in flight equipment and sectors of route on which aircraft types used, years 1928-1942	4553	4499
3—Pan American World Airways, Inc.—History of Miami-Canal Zone operations, years 1930-1958	4568	4514
4—Pan American World Airways, Inc.—Pan American's through service via various points on the East Coast of South America as of December, years 1931-1958	4578	4524
5—History of Panagra's Balboa-Buenos Aires service, years 1929-1958	4580	4526
6—Pan American-Grace Airways, Inc.—Costs, revenues and mail pay, years 1929-1958	4582	4528
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67—Letter to Iglehart from Roig, dated June 17, 1932	4845	4782
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107—Letter to Iglehart from MacGregor, dated July 10, 1933	4980	4905
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157—Memorandum dated November 10, 1948	5204	5098
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159—Cable to Shea from Roig, dated February 27, 1948	5213	5103
160—Statement of Negotiations Relating to Agreements between National, PAA, Panagra, and Grace, dated 1949	5214	5104
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[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-239

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

COMPLAINT—Filed January 11, 1954

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and the jurisdiction of this Court is invoked under Section 4 of the Act of Congress of July 2, 1890 (c. 647, 26 Stat. 209; 15 U.S.C. 4), as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, to obtain civil relief against said defendants because of their violations, as hereinafter alleged, of Sections 1, 2, and 3 of said Act.

2. Each of the defendants transacts business and is found within the Southern District of New York.

II

Description of Defendants

3. Defendant Pan American World Airways, Inc. is a corporation organized in 1927 under the laws of the State

of New York as the Pan American Airways, Inc. Its [fol. 2] corporate name was changed to the present one in 1950. From 1928 until December, 1949, this defendant was a wholly owned subsidiary of a corporation, organized in 1928 under the laws of the State of Delaware as the Aviation Corporation of the Americas, which name was changed in 1931 to Pan American Airways Corporation. Pan American Airways Corporation was a holding company having various subsidiaries, including foreign corporations, engaged in the transportation by air of persons, property, and mail throughout the world. In December, 1949, Pan American Airways, Inc. acquired all of the assets and assumed all of the liabilities of Pan American Airways Corporation. Defendant Pan American World Airways, Inc. directly operates routes in air transportation of persons, property, and mail between the United States and various points in Europe, Asia, Africa, Australia, and South America. The term "Pan American" is hereinafter used in this complaint to refer to defendant Pan American World Airways, Inc., and to Pan American Airways, Inc., Pan American Airways Corporation, and Aviation Corporation of the Americas as the meaning may require. Defendant Pan American has its principal offices at 135 East 42nd Street, New York, New York.

4. Defendant W. R. Grace and Company, hereinafter called Grace, is a corporation organized in 1899 under the laws of the State of Connecticut. Defendant Grace is a holding corporation having subsidiaries which engage in numerous aspects of industry, trade and commerce, including steamship transportation between the United States and Latin America. Defendant Grace owns all of the capital stock of Grace Line, Inc., which operates steamship lines for the transportation of persons, property and mail between ports of the United States and the west coast of South America. Defendant Grace has its principal office at 7 Hanover Square, New York, New York.

[fol. 3] 5. Defendant Pan American-Grace Airways, Inc., hereinafter called Panagra, is a corporation organized in 1929 under the laws of the State of Delaware. Defendant Panagra is engaged in air transportation of persons, prop-

erty and mail over routes between the Canal Zone and Buenos Aires, Argentina, via the countries on the west coast of South America. It is wholly owned by defendants Pan American and Grace, each of which owns 50 per cent of the stock thereof. The principal office of defendant Panagra is located at 135 East 42nd Street, New York, New York.

III

The Trade and Commerce Involved

6. Prior to 1928 virtually all transportation between the United States and the nations of Latin America was conducted by steamship. Grace Line, Inc., the wholly owned subsidiary of defendant Grace, was at that time and has remained until the filing of this complaint the largest company engaged in steamship transportation between the United States and countries located on the west coast of South America. Grace Line, Inc. operates steamship routes from New York City southward along the Atlantic coast of North America through the Caribbean Sea to ports located on the north coast of South America, and through the Panama Canal to ports located on the west coast of South America. In 1950 Grace Line, Inc. transported about 90 per cent of the passengers travelling by liner service over the steamship trade route between United States Atlantic ports and the west coast of South America and about 60 per cent of the total commercial cargo carried in all liner service over said route. Over this trade route, Grace Line, Inc. transports virtually all of the passengers and commercial cargo carried in United States flag ships. In addition to its dominant position through Grace Line, Inc. in transportation between the countries on the west coast of South America and between those countries and the United [fol. 4] States, defendant Grace occupies an important position in Latin American trade through a banking subsidiary and numerous other subsidiaries located principally in South America. For nearly 100 years defendant Grace and its predecessors have been engaged in numerous phases of industry, trade and commerce in the countries located on the west coast of South America.

7. In 1928 air transportation service over local and limited trunk line routes was being furnished in a number of South American countries by carriers other than United States flag air carriers. Such service was fragmentary and did not reach north of South America. The potentialities of air transportation between the United States and Latin America had for some years attracted groups and individuals interested in the development of aviation. In 1928 Pan American Airways Corporation (then called the Aviation Corporation of the Americas) was formed to effectuate the acquisition of a number of aviation companies for the purpose of acquiring, developing and operating air routes from the United States to the Caribbean, Central America, the Canal Zone, and down the east coast of South America to Rio de Janeiro and Buenos Aires. Pan American rapidly acquired a dominant position in air transportation between the United States and Latin America by the development of new routes and by the acquisition of competing trunk and local air line companies serving countries on the east coast of South America.

8. The extensive system of Latin American air transportation operated by defendant Pan American comprises over 60,000 route miles certificated by the Civil Aeronautics Board. It extends from points in the United States to Latin America, including the Caribbean Sea, Mexico, and Central America to the Canal Zone, and by way of the north and east coasts of South America to Rio de Janeiro and Buenos Aires, linking the United States with the principal [fol. 5] traffic centers in Latin America. Aside from its 50 per cent ownership in Panagra, and its ownership of stock in Aerovias Nacionales de Colombia, which operates primarily in Colombia, Pan American does not engage in air transportation between countries located on the west coast of South America.

9. In 1928 Pan American acquired an option on a Peruvian air mail contract and concession which had been secured by an American transportation company operating in Peru. Operating rights in Peru were essential to the establishment of a west coast air route paralleling and competitive with the established west coast steamship routes

of Grace's subsidiary, Grace Line, Inc., whose steamships at that time provided most of, if not virtually all, the transportation connecting the countries on the west coast of South America with each other and with the United States. In 1929 Pan American and Grace, pursuant to agreement hereinafter alleged, formed Panagra and have since participated equally in its control. Panagra's line comprises over 10,000 route miles certificated by the Civil Aeronautics Board. It extends from its terminal at the Canal Zone southward through the principal traffic centers of countries located on the west coast of South America and across the Andes to Buenos Aires, Argentina.

10. Until about 1946, Pan American was the only United States flag air carrier operating scheduled service between the United States and the countries on the north and east coasts of South America. For many years it has dominated and at the present time continues to dominate air transportation between the United States and South America. About nine-tenths of all passengers travelling by United States flag air carriers between points in the Eastern coastal states of the United States and countries on the north and east coasts of South America are carried by Pan American. Defendants Pan American and Panagra, connecting at the Canal Zone, carry about four-fifths of the passengers trav- [fol. 6] elling by United States flag air carriers between points in the Eastern coastal states of the United States and countries on the west coast of South America, including passengers travelling over the west coast route to Buenos Aires. Foreign flag carriers, during the twelve-month period ending June 1951, transported less than one-fourth of the air passenger traffic between the United States and the Canal Zone and between the United States and South America.

11. Pursuant to contracts, agreements, and understandings, hereinafter alleged, Panagra does not serve any points served by Pan American on its east coast route, except that Pan American and Panagra have common terminals at the Canal Zone and at Buenos Aires. A substantial part of the traffic of both Pan American and Panagra handled at Buenos Aires is through traffic to or from the United States. The distance from United States terminals to

Buenos Aires is substantially less by way of Panagra's west coast route than by way of Pan American's east coast route. Prior to the passage of the Civil Aeronautics Act in 1938, Panagra never operated its own air transportation service north of the Canal Zone, and since that time Panagra has never sought from the Civil Aeronautics Board authority for the operation by it of such transportation service. Most of the traffic which Panagra handles at the Canal Zone originates in or is destined to the United States. This traffic is dependent for through United States service upon operations furnished by Pan American between the United States and the Canal Zone.

12. Panagra's route along the west coast of South America serves many of the ports and the principal cities in the countries served by the steamship routes of Grace Line, Inc., which link the Atlantic coast of the United States to ports on the west coast of South America. Both Panagra [fol. 7] and Grace Line, Inc. carry a substantial number of intermediate passengers travelling within or between the countries served by Panagra. Defendant Panagra and Grace Line, Inc. are potentially competitive with each other in the transportation of passengers, property and mail.

13. The growth of air transportation of persons, property and mail in competition with water transportation to Latin America has been extremely rapid. During the twelve months ending June 30, 1951, air transportation accounted for about 70 per cent of the total sea and air passenger traffic between the United States and the Canal Zone and between the United States and South America. In that year air transportation accounted for about one-half of the passenger travel between the United States and the Canal Zone, about 85 per cent between the United States and Colombia, about 75 per cent between the United States and Venezuela, about 70 per cent between the United States and Brazil, about 70 per cent between the United States and Argentina, and about 75 per cent between the United States and other countries of South America. The total ton miles of express and freight carried by United States flag air carriers between the United States and South America

increased from approximately 10,800,000 ton miles in 1946 to approximately 29,000,000 ton miles in 1951.

14. During the year 1949, Pan American carried approximately 700,000 air passengers over its Latin American routes. Its total operating revenue for that year from its Latin American air line operations amounted to about $65,500,000, of which about $40,500,000 was revenue from passengers, about $15,800,000 revenue from United States and foreign air mail, and about $9,200,000 from cargo and other sources. During the same period Panagra carried about 90,000 passengers (including intermediate traffic between and within countries in South America as well [fol. 8] as passengers travelling to and from the United States) and its total operating revenue amounted to about $16,800,000 of which about $10,800,000 was revenue from passengers, about $4,400,000 was revenue from foreign and United States air mail, and about $1,600,000 from cargo and other sources. During the year 1950, Grace Line, Inc. carried a total of about 4,000 passengers on its steamship line operating on the through route between the United States Atlantic ports and the west coast of South America (excluding intermediate South American traffic). During the same year Grace Line, Inc. carried about 600,000 tons of cargo over this route.

IV

Offenses Charged

15. Beginning in or about 1928 and continuing up to the date of the filing of this complaint, the defendants have been parties to and have operated under contracts, and have been engaged in a combination and conspiracy to restrain the aforesaid trade and commerce in the transportation of passengers, property and mail, and to monopolize the aforesaid transportation by air of passengers, property and mail, and during said period have attempted to monopolize and have monopolized the aforesaid transportation by air of passengers, property and mail, in violation of Section 1, 2 and 3 of the Act of Congress of July 2, 1890 (c. 647, 26 Stat. 209, 15 U.S.C. 4), as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful

Restraints and Monopolies," commonly known as the Sherman Act. Defendants threaten to continue and will continue such offenses unless the relief hereinafter prayed for is granted. The aforesaid contracts, combination, conspiracy, attempt to monopolize and monopolization, and certain of the acts, agreements and understandings which formed a part thereof and were used in their effectuation, are hereinafter more fully set forth and described.

[fol. 9] 16. For the purpose of obtaining and maintaining domination and control by Grace and Pan American of air transportation between the United States and countries along the west coast of South America and to exclude the establishment of an independent air line which would be competitive with the parallel steamship route of Grace Line, Inc., or with Pan American, Pan American and Grace in 1928 entered into an agreement for the establishment of Panagra. Under the agreement defendant Panagra was to establish and operate an air line on the west coast of South America and was to be jointly owned and controlled in equal shares by Pan American and Grace.

17. Defendant Panagra was established thereafter in January 1929 and 50 per cent of its stock was transferred to Pan American and 50 per cent to Grace. Panagra acquired the Peruvian rights and concessions described in Paragraph 9 above from Pan American pursuant to the agreement described in Paragraph 16 above, and in 1929 began operations as an air carrier on the west coast of South America. In May, 1929 Panagra commenced operations between the Canal Zone and Mollendo, Peru. In October, 1929 its operations were extended to Buenos Aires, Argentina, and Panagra has since that time operated an air line from the Canal Zone, along the west coast of South America, and across the Andes to Buenos Aires, Argentina.

18. As a part of the understanding between Pan American and Grace in the formation of Panagra, it was agreed that the sphere of operations of Panagra would be confined to the west coast of South America and that Pan American would operate air routes on the east coast of South America and between the United States and the Canal Zone. Pursuant to this unlawful agreement and understanding,

Panagra has refrained from acquiring or applying for operating rights or concessions and from operating an air line on the east coast of South America and Pan American [fol. 10] has refrained from applying for operating rights and from operating an air line along the west coast of South America. For its connections at the Canal Zone and for the transportation of its traffic between the United States and the Canal Zone, defendants made and have kept Panagra dependent on Pan American.

19. The general purpose to maintain Panagra under the joint ownership and control of Pan American and Grace has been continuously adhered to. Defendants Pan American and Grace have entered into agreements and understandings for the management and conduct of the affairs of Panagra. Pursuant to such agreements and understandings, the management and operation of Panagra have been kept under the control of Pan American and Grace.

20. Pursuant to such agreements and understandings and by virtue of the control exercised by defendants Pan American and Grace, defendant Panagra has been prevented from establishing and maintaining research, procurement, advertising, sales and commercial services in the United States independently of Pan American, and has been prevented from establishing and maintaining facilities, sales, and commercial representation in South America independently of Grace.

21. Pursuant to their unlawful agreements and understandings, Pan American and Grace each has retained ownership of 50 per cent of the voting stock of Panagra, and each has retained an equal number of representatives on Panagra's Board of Directors. Because of this control, Panagra has been and is required to adhere and has adhered to the unlawful agreements between Pan American and Grace and to the unlawful purposes and objectives of Pan American and Grace, or either of them.

[fol. 11] 22. By virtue of their equal division of control, Pan American and Grace each has had and now has the power of preventing the exercise of Panagra's corporate powers and functions and each has exercised this power to

block and prevent any action by Panagra considered by Grace or Pan American to be contrary or detrimental to its own particular interests. As a consequence, the development of Panagra's routes and operations in South America and their extension to the United States have been blocked, the acquisition of flight equipment and the development of ground facilities by Panagra have been retarded and prevented, and Panagra has been impeded and restrained from developing and expanding competitively, from rendering improved and competitive transportation service and from otherwise independently exercising lawful competitive practices.

23. Throughout the period covered by this complaint, Pan American, in accordance with its unlawful agreements and understandings with Grace to form Panagra and to divide and allocate the areas of air transportation, has used its 50 per cent control over Panagra to block and prevent Panagra from securing requisite authority from the Civil Aeronautics Board to extend its route from the Canal Zone to the United States. Pan American has also used its 50 per cent control over Panagra to block and prevent Panagra from effectuating any agreement with any air line other than Pan American or a designee of Pan American to establish, extend, or improve through air transportation service between the United States and South America. Such restraining action has been persisted in by Pan American despite repeated expressions by the Civil Aeronautics Board that it would be in the interest of the proper development of air transportation for defendant Panagra to be freed from such restraints. So long as Pan American and Grace retain the power to control [fol. 12] action by Panagra through their respective 50 per cent stock ownership, Panagra's development and operations will be substantially and unreasonably restrained.

24. During the period covered by this complaint, defendants Pan American and Panagra, in furtherance of the unlawful purposes hereinbefore alleged, have acquired the stock or assets of, or other interests in, competing lines operating in Latin American countries. Pan American and Panagra (controlled by Pan American and Grace) have used the dominant position and power attained by the

defendants in air transportation to impede and restrain the establishment and development of competition in air transportation between the United States and Latin America by United States flag air lines authorized in and after 1946 by the Civil Aeronautics Board to develop and engage in such transportation. Pan American and Panagra have engaged in restrictive practices to restrain and impede such air lines from utilizing established airports, terminals, communications and other facilities in Latin American countries necessary to the inauguration and development of such air transportation.

V

Effects of the Violations

25. The aforesaid acts, combination, conspiracy, contracts, agreements, understandings, and concert of action hereinabove alleged have had, as intended by the defendants, the following effects among others:

(a) Defendants unlawfully acquired the power to monopolize and restrain air transportation between the United States and Latin America;

[fol. 13] (b) competition in air transportation between the United States and Latin America has been restrained, suppressed and prevented;

(c) competition in transportation by air with transportation by water between the United States and Latin America has been restrained, suppressed and prevented;

(d) defendants have arbitrarily divided and allocated between and among themselves air transportation between the United States and South America;

(e) trade and commerce with foreign nations has been dominated, controlled and monopolized.

Prayer

Wherefore the Plaintiff Prays:

1. That the Court adjudge and decree that the defendants have contracted, combined and conspired in restraint

of the trade and commerce hereinabove described, have combined and conspired to monopolize, have attempted to monopolize and have monopolized that trade and commerce, in violation of Sections 1, 2 and 3 of the Sherman Act.

2. That the Court adjudge and decree that the stockholdings in and control of defendant Panagra by defendants Pan American and Grace have operated so as to restrain and to monopolize trade and commerce, as hereinabove described, in violation of Sections 1, 2 and 3 of the Sherman Act.

3. That the Court order and direct defendants Pan American and Grace to divest themselves of all stockholdings and other interests in defendant Panagra, held directly or through subsidiaries, under terms and conditions [fol. 14] which will accomplish effective divorcement and complete elimination of control of the operation and management of defendant Panagra from defendants Pan American and Grace.

4. That the defendants, and each of them, be perpetually enjoined from combining and conspiring to restrain or monopolize, or from monopolizing or attempting to monopolize the trade and commerce hereinbefore alleged, and from engaging in any practice, relationship, contract, agreement or course of conduct having the purpose or effect of continuing or renewing any of the violations hereinbefore alleged.

5. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

6. That plaintiff recover the costs of this suit.

Herbert Brownell, Jr., Attorney General, Stanley N. Barnes, Assistant Attorney General, James E. Kilday, Special Assistant to the Attorney General, Frank F. Vesper, Special Assistant to the Attorney General, J. Edward Lumbard, United States Attorney, John Guandolo, Trial Attorney.

[fol. 14a] [File endorsement omitted]

[fol. 15]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ANSWER OF W. R. GRACE & CO.—Filed April 27, 1954

W. R. Grace & Co., one of the above named defendants, by its attorneys, Cahill, Gordon, Reindel & Ohl, answers the complaint herein as follows:

First Defense

1. Admits that the complaint is filed under Section 4 of the Sherman Act, but denies that W. R. Grace & Co. (hereinafter "Grace") is engaged in any violations of Sections 1, 2 and 3 of the Sherman Act, as alleged in Paragraph "1" of the complaint.

2. Admits the allegations contained in Paragraph "2" of the complaint.

3. Admits upon information and belief the allegations contained in Paragraph "3" of the complaint.

4. Admits that Grace is a corporation duly organized in 1899 under the laws of the State of Connecticut and has [fol. 16] its principal office located at 7 Hanover Square, New York, N. Y.; that Grace has subsidiaries which engage in various aspects of industry, trade and commerce including Grace Line, Inc., all of whose capital stock is owned by Grace; that Grace Line, Inc. operates a steamship route, among others, for the transportation of persons, property and mail between the United States and the west coast of South America; except as hereinabove admitted, denies each and every allegation contained in Paragraph "4" of the complaint.

5. Admits the allegations contained in Paragraph "5" of the complaint.

6. Admits that prior to 1928 substantially all transportation between the United States and Latin America was

conducted by steamship; that Grace Line, Inc. in 1928 and thereafter was and continues to be one of the largest companies engaged in steamship transportation between the United States and the west coast of South America; that Grace Line, Inc. operates a steamship route, among others, from New York City southward along the Atlantic Coast of North America through the Caribbean Sea to ports located on the north coast of South America and through the Panama Canal to ports located on the west coast of South America; that in 1950 Grace Line, Inc. transported approximately 90% of the passengers traveling by liner service between the United States Atlantic ports and the west coast of South America and approximately 60% of the total commercial cargo in liner service between said points and transports substantially all of the passengers and commercial cargo in United States flag ships between these points; that Grace occupies an important position in Latin American trade through its various subsidiaries some of which are located in South America; that for many years Grace has been engaged in various phases of industry, trade and commerce in countries located on the west coast of South America; except as hereinabove admitted, [fol. 17] denies each and every allegation of Paragraph "6" of the complaint.

7. Admits upon information and belief the allegations contained in Paragraph "7" of the complaint.

8. Admits upon information and belief the allegations contained in Paragraph "8" of the complaint; except denies knowledge or information sufficient to form a belief as to the truth of the allegation that the extensive system of Latin American air transportation operated by Pan American comprises over 60,000 route miles certificated by the Civil Aeronautics Board (the term "Pan American" is used in this answer to refer to Pan American World Airways, Inc., Pan American Airways, Inc., Pan American Airways Corporation and Aviation Corporation of the Americas as the meaning may require).

9. Avers that the Peruvian Government by Supreme Resolution on May 28, 1928 granted Huff-Daland Dusters,

Inc., a corporation organized under the laws of the State of Louisiana, permission to engage in transportation by air of mail, cargo and passengers between Peru and the United States; that thereafter Huff-Daland Dusters, Inc. pursuant to permission granted by the Peruvian Government in November, 1928, transferred the rights granted to it under said Supreme Resolution to Peruvian Airways Corporation, an American corporation owned by Grace and Pan American each holding 50% of its outstanding capital stock; that Grace and Pan American each owned a one-half interest in Peruvian Airways Corporation; that Grace and Pan American organized Pan American-Grace Airways, Inc. (hereinafter "Panagra") in January, 1929 under the laws of the State of Delaware; that Grace and Pan American each subscribed to 50% of Panagra's stock which they have held to date and each had and continues to have equal representation on the Board of Directors of Panagra; that Panagra succeeded to all the rights assigned to Peruvian Airways Corporation by Huff-Daland Dusters, Inc.; that [fol. 18] Panagra's unduplicated weighted average route mileage certified by the Civil Aeronautics Board is approximately 6,000 miles and extends from its terminal at the Canal Zone southward through the principal traffic centers of countries located on the west coast of South America and across the Andes to Buenos Aires, Argentina; that said routes were duly certificated in 1940 by the Civil Aeronautics Board issuing a certificate of public convenience and necessity under the "grandfather" clause of the Civil Aeronautics Act of 1938 (49 U. S. C. Sec. 401(e)); that under a Through Flight Agreement with Pan American dated July 31, 1946, approved by the Civil Aeronautics Board on May 5, 1947 (Order Serial No. E-570) and again on May 4, 1950 (Order Serial No. E-4130) Panagra's aircraft operate over Pan American's route between the Canal Zone and Miami to provide direct one-plane service between Buenos Aires and Miami; except as hereinabove admitted, denies each and every allegation contained in Paragraph "9" of the complaint.

10. Admits upon information and belief the allegations contained in Paragraph "10" of the complaint.

11. Avers that Panagra's certificated routes do not duplicate those of Pan American in any part except that both have common terminals at the Canal Zone and at Buenos Aires; that a part of the traffic of both Panagra and Pan American handled at Buenos Aires is through traffic to or from the United States; that the distance from United States terminals to Buenos Aires is less by way of Panagra's west coast route than by way of Pan American's east coast route as presently operated; that most of the traffic which Panagra handles at the Canal Zone originates in or is destined to the United States; that prior to 1938 Panagra did not engage in air transportation north of the Canal Zone; that Panagra has not filed an application with the Civil Aeronautics Board for authority to operate air transportation north of the Canal Zone; that under the Through Flight Agreement referred to in Paragraph "9" [fol. 19] hereof and with the approval of the Civil Aeronautics Board, Panagra's aircraft operate over Pan American's route between the Canal Zone and Miami to provide direct one-plane service between Buenos Aires and Miami; except as hereinabove admitted, denies each and every allegation contained in Paragraph "11" of the complaint.

12. Denies each and every allegation contained in Paragraph "12" of the complaint except admits that Panagra serves some of the ports and principal cities served by Grace Line, Inc. and that both Panagra and Grace Line, Inc. carry intermediate passengers traveling within or between some of the countries served by Panagra.

13. Admits upon information and belief the allegations contained in Paragraph "13" of the complaint except denies each and every allegation contained in the first and last sentence of said paragraph "13".

14. Admits upon information and belief the allegations contained in Paragraph "14" of the complaint except denies upon information and belief that Panagra's total operating revenue for the year 1949 amounted to $16,800,000 and that of this amount $4,400,000 was revenue from foreign and United States air mail and avers that such revenues amounted to $15,035,000 and $2,645,000, respectively.

15. Denies each and every allegation contained in Paragraph "15" of the complaint.

16. Denies each and every allegation contained in Paragraph "16" of the complaint except admits that Grace and Pan American in 1928 agreed to establish a pioneer United States flag carrier which was to be owned in equal shares by Grace and Pan American.

17. Avers that Panagra was duly organized under the laws of the State of Delaware in January, 1929 by Grace [fol. 20] and Pan American each of which purchased and has at all times since then owned 50% of Panagra's outstanding capital stock; that Panagra acquired all the rights assigned to Peruvian Airways Corporation by Huff-Daland Dusters, Inc. as alleged in Paragraph "9" of this answer; that Panagra was awarded a mail contract by the Postmaster General of the United States, with the approval of the Attorney General, for the transportation of mail between the Canal Zone and Santiago, Chile with the option in the Postmaster General to require extension of the service to Buenos Aires, Argentina and Montevideo, Uruguay; that in May, 1929 Panagra commenced operations under the said contract between the Canal Zone and Mollendo, Peru; that in October, 1929, its operations were extended to Buenos Aires, Argentina and since that time Panagra has transported persons, property and mail over its entire route between the Canal Zone and Buenos Aires, Argentina; except as hereinabove admitted, denies each and every allegation contained in Paragraph "17" of the complaint.

18. Denies each and every allegation contained in Paragraph "18" of the complaint.

19. Admits that Grace and Pan American at all times since the incorporation of Panagra have each owned 50% of its stock and elected an equal number of its directors; that Grace and Pan American and Panagra have entered into agreements with respect to the management and operation of Panagra; except as hereinabove admitted, denies each and every allegation contained in Paragraph "19" of the complaint.

20. Avers that certain of the advertising, sales and commercial services of Panagra are handled by Grace and Pan American; except as hereinabove admitted, denies each and every allegation contained in Paragraph "20" of the complaint.

[fol. 21] 21. Denies each and every allegation contained in Paragraph "21" of the complaint.

22. Denies each and every allegation contained in Paragraph "22" of the complaint.

23. Denies each and every allegation contained in Paragraph "23" of the complaint except admits that Pan American has opposed the extension of Panagra's route to the United States; that in 1951 Pan American opposed approval by the Civil Aeronautics Board of an interchange of equipment agreement between Panagra and National Airlines, Inc.; that the Civil Aeronautics Board has determined that it would be in the public interest for Panagra to provide one-plane through service between its terminal in Buenos Aires and the northeastern sector of the United States.

24. Denies each and every allegation contained in Paragraph "24" of the complaint except admits upon information and belief that Pan American has acquired the stock or assets of, or other interests in, air carriers operating in Latin American countries and that Panagra has acquired minority stock interests in two local air carriers operating within Bolivia and Peru.

25. Denies each and every allegation contained in Paragraph "25" of the complaint.

Second Defense

26. A decree of divestiture against Grace should not be granted because

(1) It is unnecessary, unreasonably punitive and contrary to the public interest.

(2) Grace in itself or in its capacity as a 50% stockholder of Panagra, not a monopoly in air transportation nor has it acquired the power to monopolize and restrain air transportation.

[fol. 22] (3) There is no clear, wilful, serious and continuing violation of the antitrust laws.

(4) Any agreement, understanding or transaction alleged in the complaint in which Grace has participated or to which it has been a party was disclosed to, acquiesced in or approved by the Civil Aeronautics Board over a period of many years.

27. Grace's interest in air transportation and its investigation into the possibility and desirability of establishing the same in South America dates back to Lindbergh's transatlantic flight in 1927 demonstrating the feasibility of air transportation. In 1928 Grace agreed with Pan American to organize a company to engage in transportation by air of persons, property and mail along the west coast of South America. Prior to the organization of that company, Grace had no interest in any phase of aeronautics and was not in any respect competitive with Pan American. Panagra was organized in January, 1929 and its charter authorized it to engage in air transportation "when and where lawful". Grace by agreement or otherwise has never limited or attempted to limit the areas of Panagra's operations.

28. Panagra commenced operations in May, 1929 under an airmail contract with the Postmaster General of the United States. In October, 1929 it became the first United States flag carrier to establish scheduled air service with through connections to Buenos Aires. Its record since that time has been one of continuous growth—by extensions of its route, improvement of its flight equipment, additions to its schedules and expansion of services.

29. The Civil Aeronautics Board on July 22, 1940 recognized Grace's right to hold its stock interest in Panagra when it issued a certificate of public convenience and necessity to Panagra under the "grandfather" clause of the Civil Aeronautics Act (49 U. S. C. Sec. 401(e)) covering its operations at that time. The extensions of its route since [fol. 23] then have been authorized by amendments of its certificate.

30. Panagra as a certificated air carrier regulated under the Civil Aeronautics Act has promptly and regularly notified the Civil Aeronautics Board of its operations and its relations with its stockholders through the filing of periodic reports, agreements and understandings.

31. The Civil Aeronautics Board by order dated May 5, 1947 (Serial No. E-570) approved the Through Flight Agreement between Panagra and Pan American dated July 31, 1946 providing for direct one-plane service by Panagra's aircraft between Buenos Aires and Miami and approved the Parent Company Agreement of the same date between Grace and Pan American. The Civil Aeronautics Board found that the arrangement under these agreements was "beneficial to the public," and that "such transaction does not result in creating a monopoly." The Civil Aeronautics Board by order dated May 4, 1950 (Serial No. E-4130) has continued its approval of these agreements to date.

32. Grace in continuing its efforts to extend Panagra's service as required in the public interest and in the interest of Panagra negotiated with National Airlines, Inc. and Pan American to the end of working out an interchange of equipment which would permit Panagra to extend to the public through one-plane service between Buenos Aires and Washington and New York. An agreement was finally entered into by Panagra and National Airlines, Inc. and was filed with the Civil Aeronautics Board for approval (The New York-Balboa Through Service Proceeding, Docket No. 4882).

33. The Civil Aeronautics Board on April 12, 1951 (Order Serial No. E-5282) in the light of the strong public desire for this through service tentatively approved of the interchange of equipment agreement. In approving the [fol. 24] agreement the Civil Aeronautics Board determined that such agreement "is in the public interest, is not in violation of the Civil Aeronautics Act and will not create a monopoly or monopolies and thereby jeopardize any other carrier not a party thereto."

34. By Order dated July 13, 1951 (Order Serial No. E-5541) the Civil Aeronautics Board rescinded the aforesaid order of tentative approval in view of various objections raised by certain parties to the proceeding and postponed further consideration of the agreement.

35. Subsequently Pan American and Eastern Airlines, Inc. filed an agreement with the Civil Aeronautics Board providing for an interchange of equipment between Pan American and Eastern Airlines, Inc. with provisions for participation by Panagra. Grace and Panagra have endorsed this agreement which is presently pending approval by the Civil Aeronautics Board.

36. Grace in its relations with Panagra has at all times cooperated, and is continuing to cooperate, to the end of developing and expanding Panagra in conformity with the public convenience and necessity standard of the Civil Aeronautics Act.

Third Defense

37. Repeats and realleges each and every allegation contained in Paragraphs "27" through "36" of this answer with the same force and effect as if herein fully set forth.

38. Any agreement, understanding or transaction alleged in the complaint in which Grace has participated or to which it has been a party has been in conformity with and within the rulings, decisions and orders issued by the Civil Aeronautics Board under the Civil Aeronautics Act of 1938 and the exemptions, privileges and immunities provided thereby.

[fol. 25]

Fourth Defense

39. Repeats and realleges each and every allegation contained in Paragraphs "27" through "36" of this answer with the same force and effect as if herein fully set forth.

40. The relief sought against Grace herein—with respect to transactions disclosed to, acquiesced in or approved by plaintiff over a period of many years—should under principles of equitable estoppel and laches be denied.

Wherefore, the defendant, W. R. Grace & Co. prays that the complaint herein be dismissed as to it, with costs.

Dated: New York, N. Y., April 27, 1954.

Cahill, Gordon, Reindel & Ohl, By John T. Cahill, Attorneys for Defendant, W. R. Grace & Co., 63 Wall Street, New York 5, N. Y.

[fol. 26] Proof of Service (omitted in printing).

[fol. 27] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ANSWER OF DEFENDANT PAN AMERICAN-GRACE AIRWAYS, INC. —Filed April 27, 1954

Defendant, Pan American-Grace Airways, Inc. (hereinafter referred to as "Panagra"), by its attorneys, answers the complaint herein as follows:

1. Admits so much of paragraph 1 of the complaint as alleges that the complaint is filed and that jurisdiction of this Court is invoked under the provision of the statute therein referred to. Except as so admitted, denies each allegation of paragraph 1 of the complaint.

2. Admits the allegations of paragraphs 2 and 5 of the complaint.

3. Denies upon information and belief so much of paragraph 3 of the complaint as alleges that subsidiaries of Pan American Airways Corporation were engaged in the transportation by air of persons, property and mail throughout the world. Except as so denied, admits each allegation of paragraph 3 of the complaint.

4. Admits so much of paragraph 4 of the complaint as alleges that defendant W. R. Grace & Company is a cor-

poration organized in 1899 under the laws of the State of Connecticut; that it has subsidiaries which engage in various aspects of industry, trade and commerce, including steamship transportation between the United States and Latin America; that it owns all of the capital stock of Grace Line, Inc., which operates steamship lines for the transportation of persons, property and mail between ports of the United States and the west coast of South America; and that it has its principal office at 7 Hanover Square, New York, New York. Except as so admitted, denies knowledge or information sufficient to form a belief as to each allegation of paragraph 4 of the complaint.

5. Admits each allegation contained in paragraph 6 of the complaint except denies knowledge or information sufficient to form a belief that Grace Line, Inc., was and is the [fol. 28] largest company engaged in steamship transportation between the United States and countries located on the west coast of South America; that in 1950 Grace Line, Inc. transported about 90% of the passengers traveling by liner service over the steamship trade route between United States Atlantic ports and the west coast of South America and about 60% of the total commercial cargo carried on all liner service over said route; that Grace Line, Inc. transports virtually all of the passengers and commercial cargo carried in United States flag ships over this trade route and that in addition to its dominant position through Grace Line, Inc. in transportation between the countries on the west coast of South America and between those countries and the United States, defendant Grace occupies an important position in Latin American trade through a banking subsidiary and numerous other subsidiaries located principally in South America.

6. Admits so much of paragraph 7 of the complaint as alleges that in 1928 air transportation service was being furnished in a number of South American countries by carriers other than United States flag air carriers. Except as so admitted, denies knowledge or information sufficient to form a belief as to each allegation of paragraph 7 of the complaint.

7. Admits so much of paragraph 8 of the complaint as alleges that the unduplicated weighted average route mileage of the Latin American air transportation system operated by Pan American is approximately 15,000 route miles certificated by the Civil Aeronautics Board and extends from points in the United States to Latin America, including the Caribbean Sea, Mexico and Central America to the Canal Zone, and by way of the north and east coasts of South America to Rio de Janeiro and Buenos Aires, linking the United States with the principal traffic centers in Latin America served by Pan American and that aside from its 50% ownership in Panagra and its ownership of stock in Aerovias Nacionales de Colombia, Pan American does not engage in air transportation between countries located on the west coast of South America unless this phrase could be construed to cover Uraba, Medellin & Central Airways, Inc., all of the capital stock of which is owned by Pan American, which operates between Panama and Medellin, Colombia, pursuant to a certificate issued under the Civil Aeronautics Act. Except as so admitted, denies knowledge or information sufficient to form a belief as to each allegation contained in paragraph 8 of the complaint.

8. Admits so much of paragraph 9 of the complaint as alleges that in 1929 Pan American and Grace caused Panagra to be formed and have since its formation each owned 50% of its authorized issued and outstanding stock; that Panagra's unduplicated weighted average route mileage, certificated by the Civil Aeronautics Board is approximately 6,000 miles which extend from its terminal at the Canal Zone southward, through principal traffic centers of [fol. 29] countries located on the west coast of South America and across the Andes to Buenos Aires, Argentina. Except as so admitted, denies knowledge or information sufficient to form a belief as to each allegation contained in paragraph 9 of the complaint.

9. Admits so much of paragraph 10 of the complaint as alleges that from 1930 until 1946, Pan American was the only United States flag air carrier operating scheduled service between the United States and the countries on the

north and east coasts of South America and admits that about nine-tenths of all passengers traveling by United States flag air carriers between points in the Eastern coastal states of the United States and countries on the north and east coasts of South America are carried by Pan American and that Pan American and Panagra carry about four-fifths of the passengers traveling by United States flag air carriers between points in the Eastern coastal states of the United States and countries on the west coast of South America, including passengers traveling over the west coast route to Buenos Aires and admits that during the twelve month period ending June, 1951, foreign flag carriers transported less than one-fourth of the air passenger traffic between the United States and the Canal Zone and between the United States and South America. Except as so admitted, denies knowledge or information sufficient to form a belief as to each allegation of paragraph 10 of the complaint.

10. Admits so much of paragraph 11 of the complaint as alleges that Panagra does not serve any points served by Pan American on its east coast route except that Pan American and Panagra have common terminals at the Canal Zone and at Buenos Aires; that a part of the traffic of both Pan American and Panagra handled at Buenos Aires is through traffic to or from the United States; that the distance from United States terminals to Buenos Aires is less by Panagra west coast route than by way of Pan American's east coast route as presently operated; that prior to the passage of the Civil Aeronautics Act in 1938, Panagra never operated its own transportation service north of the Canal Zone and since that time Panagra has not filed an application with the Civil Aeronautics Board for authority to operate such air transportation; that most of the traffic which Panagra handles at the Canal Zone originates in or is destined to the United States and is dependent for through United States service upon operations furnished by Pan American between the United States and the Canal Zone. Except as so admitted, denies each allegation contained in paragraph 11 of the complaint.

11. Admits so much of paragraph 12 of the complaint as alleges that Panagra's route along the west coast of

South America serves some of the ports and the principal cities in the countries served by the steamship routes of Grace Line, Inc., which link the Atlantic coast of the United States to ports on the west coast of South America; that both Panagra and Grace Line, Inc. carry a number of inter-[fol. 30] mediate passengers traveling within or between the countries served by Panagra; and avers that Grace Line, Inc. carries passengers, freight and mail between New York and points on the west coast of South America; that Panagra carries passengers, freight and mail between the Canal Zone and points on the west coast of South America and Buenos Aires, Argentina; that there are various differences in circumstances, terms and conditions under which passengers, freight and mail are carried by Grace Line, Inc. and Panagra including the flying time between New York and Valparaiso, Chile which is approximately 22 hours by air and approximately 18 days by steamship; freight by water transportation primarily consists of bulk cargo such as heavy machinery, automobiles, etc., while that carried by air consists chiefly of medicines, perishables, etc.; the highest freight rate charged by Grace Line, Inc. is less than 2¢ per ton mile compared with Panagra's average charge per revenue ton mile of approximately 41¢. Except as so admitted, denies each allegation contained in paragraph 12 of the complaint.

12. Admits each allegation contained in the second and third sentences of paragraph 13 of the complaint and denies each allegation contained in the first and last sentence of said paragraph 13 of the complaint.

13. Admits so much of paragraph 14 of the complaint as alleges that during the year 1949 Pan American carried approximately 700,000 air passengers over its Latin American routes and its total operating revenue for that year from its Latin American airline operations amounted to $65,500,000, of which about $40,500,000 was revenue from passengers; about $15,800,000 revenue from United States and foreign air mail and about $9,200,000 from cargo and other sources, and during the same period Panagra carried about 90,000 passengers, including intermediate traffic between and within countries in South America, as well as

passengers traveling to and from the United States; and its total operating revenue amounted to about $15,035,000 of which about $10,800,000 was revenue from passengers, and about $2,645,000 was revenue from foreign and United States air mail, and about $1,600,000 from cargo and other sources. Except as so admitted, denies knowledge or information sufficient to form a belief as to each allegation of paragraph 14 of the complaint.

14. Denies each allegation contained in paragraphs 15, 20, 23 and 25 of the complaint and in the last two sentences of paragraph 18 of the complaint; and with respect to the allegations in the first sentence of said paragraph 18 denies that it has knowledge or information sufficient to form a belief.

15. Admits so much of paragraph 16 as alleges that Pan American and Grace entered into an agreement for the establishment of Panagra, and that Panagra was to establish and operate an air line on the west coast of South America and was to be owned in equal shares by Pan [fol. 31] American and Grace. Except as so admitted, denies each allegation of paragraph 16 of the complaint.

16. Denies, upon information and belief, so much of paragraph 17 of the complaint as alleges that Panagra acquired the Peruvian rights and concessions described in paragraph 9 of the complaint from Pan American pursuant to the agreement referred to in paragraph 16 of the complaint. Except as so denied, admits each allegation contained in paragraph 17 of the complaint.

17. Admits so much of paragraph 19 of the complaint as alleges that Pan American and Grace have entered into agreement and understandings for the management and conduct of certain of the affairs of Panagra. Except as so admitted, denies each allegation contained in paragraph 19 of the complaint.

18. Admits that defendant Pan American and Grace each has retained ownership of 50% of the voting stock of Panagra and each has retained an equal number of representatives on the Board of Directors of Panagra. Except

as so admitted, denies each allegation of paragraph 21 of the complaint.

19. Admits that Pan American and Grace have the powers incident to their stock ownership in Panagra. Except as so admitted, denies each allegation contained in paragraph 22 of the complaint.

20. Admits that Panagra has acquired a minority stock interest in two air lines which operate local services in Latin American countries not substantially competitive with those of Pan American or of Panagra and admits that Pan American has acquired the stock or assets of, or other interests in, air lines which operate in Latin American countries. Except as so admitted, denies each allegation contained in paragraph 24 of the complaint.

Wherefore, defendant Pan American-Grace Airways, Inc., demands judgment dismissing the complaint, with costs.

Dated April 27, 1954.

White & Case, Attorneys for defendant, Pan American-Grace Airways, Inc., By Thomas Kieruder, A Member of the Firm, 14 Wall Street, New York 5, N. Y.

[fol. 32] Proof of Service (omitted in printing).

[fol. 33] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ANSWER OF DEFENDANT PAN AMERICAN WORLD AIRWAYS, INC.—Filed April 27, 1954

Defendant Pan American World Airways, Inc. (hereinafter called "Pan American"), by its attorneys, answers the complaint herein as follows:

I.

1. Denies paragraph 1 except that it admits that plaintiff seeks to invoke jurisdiction on the basis of the provisions of the statutes referred to therein.

2. Admits paragraph 2.

II.

3. Admits paragraph 3 except the fourth sentence of said paragraph, as to which it denies that subsidiaries of Pan American Airways Corporation were engaged in the transportation by air of persons, property and mail throughout the world.

4. Admits that W. R. Grace and Company (hereinafter called "Grace") is a corporation organized under the laws of the State of Connecticut, that Grace has subsidiaries which engage in numerous aspects of industry, trade and commerce, including steamship transportation between the United States and Latin America, that Grace owns all of [fol. 34] the capital stock of Grace Line, Inc., which operates steamship lines for the transportation of persons, property and mail between ports of the United States and ports in South America, including the west coast, and that Grace has its principal office at 7 Hanover Square, New York, New York, and alleges that it is without knowledge or information sufficient to form a belief as to the other allegations of paragraph 4.

5. Admits paragraph 5.

III.

6. Admits paragraph 6 except that it alleges that it is without knowledge or information sufficient to form a belief as to the percentage of passengers and cargo carried by Grace Line, Inc. and as to whether Grace Line, Inc. transports virtually all of the passengers and commercial cargo carried in United States-flag ships between the United States and the west coast of South America.

7, 8, 9, 10, and 11. Denies paragraphs 7, 8, 9, 10 and 11, except that it admits and avers as follows:

A. In the years immediately after the conclusion of World War I air transportation developed much more intensively in Europe than in the United States. European-owned airlines established themselves in Latin America at a relatively early date. German air services had commenced operations in Latin America as early as 1921, and the French had followed shortly thereafter. By 1928 both the Germans and the French had built up substantial systems in South America. The German-controlled Scadta was operating in interior Colombia and between Colombia and Ecuador and was seeking to cross the Panama Canal and extend its operation up through Central America to Cuba and the United States. Another German company, Lloyd Aero Boliviano, was operating in Bolivia and had projected services reaching through Brazil to the Atlantic seaboard [fol. 35] at Rio de Janeiro. Sindicato Condor, an affiliate of the German Lufthansa, was operating on a 900-mile route on the Brazilian coast south of Rio and had projected a line across the South Atlantic to Europe. The French international airline, Aeropostale, had initiated service between Natal, Brazil, and Buenos Aires, Argentina, in November, 1927. Early in 1928 it established service between France and Buenos Aires, utilizing fast destroyers, made available by the French Government, as a link for transporting mails between Dakar, Africa, and Natal. The destroyers were later superseded by mail planes. Aeropostale and its subsidiaries supplemented these services by routes in Argentina and Chile. Aeropostale also held concessions to extend its service from Natal to Trinidad and the French West Indies and between Trinidad and Venezuela and was actively negotiating for an exclusive international mail contract in Peru. Both the French and the Germans had projected air routes across and around the South American continent and even to the United States.

B. Until late in the 1920s it was exceedingly difficult to obtain the capital needed to develop air transportation within the United States. It was even more difficult to obtain the capital required to develop air transportation under the American flag between the United States and Latin America, where the operator was obliged to provide not only flight equipment, maintenance facilities and working

capital, but also airports and meteorological and communication services which within the United States were normally provided by governmental entities. Until 1928 there was no legislation under which the Federal Government could grant the financial assistance that was essential if air transportation to Latin America under the American flag was to be established.

[fol. 36] C. United States interest in international air transportation was stimulated by the Lindbergh flight across the Atlantic in the early summer of 1927. Pan American was formed in that year and made its first flight from Key West to Havana in October, 1927. At the end of 1927 Pan American's entire fleet consisted of two Fokker F-7s and one Fairchild C-2.

D. On March 8, 1928, there was enacted the Foreign Air Mail Act, 45 Stat. 248. This authorized the Postmaster General to enter into contracts for not more than ten years for the air transportation of United States mail to foreign countries or insular possessions of the United States at rates not exceeding $2.00 per mile. The Postmaster General was to award each contract to the lowest responsible bidder who he should find "can satisfactorily perform the service required to the best advantage of the Government."

E. Pan American Airways Corporation (originally known as "Aviation Corporation of the Americas") was formed in June, 1928, as a means for obtaining the capital required to enable Pan American, its operating subsidiary, to enter bids for foreign airmail contracts to Latin America which were being or were about to be advertised by the Postmaster General pursuant to the Foreign Air Mail Act of 1928 and to conduct operations under such contracts as might be awarded to Pan American.

F. During May and July, 1928, the Postmaster General awarded to Pan American three ten year contracts for air service to Latin America under the Foreign Air Mail Act of 1928. Among these was a contract, awarded to Pan American on July 13, 1928, for Foreign Air Mail Route No. 5 from Miami, Florida, to the Canal Zone, with an option in the Postmaster General to extend the contract

along the North Coast of South America via Trinidad as far as Paramaribo, Dutch Guiana. Another contract, also [fol. 37] awarded to Pan American on July 13, 1928, was for Foreign Air Mail Route No. 6 from Miami to Puerto Rico, with an option in the Postmaster General to extend the contract to Trinidad.

G. Prior to the award of these contracts, Pan American had formulated plans for the extension of its projected Miami-Canal Zone operation down the West Coast of South America. By the end of July, 1928, Pan American had instituted negotiations for operating rights in Panama, Colombia and Ecuador, held an option on an operating concession in Peru which another company had obtained for Pan American's account, and had ordered sufficient aircraft to operate the northern portion of the route from the Canal down the West Coast in addition to its other routes.

H. At the end of 1928 the capital of Aviation Corporation of the Americas amounted to only $3,379,000, Pan American, its operating subsidiary had little more than 100 employees, and the total horsepower and passenger capacity of Pan American's 12 aircraft were roughly equivalent to those of one modern airplane.

I. In the fall of 1928, Aviation Corporation of the Americas entered into an agreement with Grace, evidenced by two letters dated respectively August 31 and September 7, 1928, copies of which are annexed hereto as Annex A and made a part hereof. By this agreement each of the two companies agreed to subscribe $25,000 to the capital stock of a corporation to be formed under the laws of Delaware to operate an airplane service in Peru. The agreement provided that the two companies would cooperate in studying the costs of operation "on a route from the Panama Canal to Valparaiso" and that if Aviation Corporation of the Americas determined "that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso", the amount contributed by Grace to the [fol. 38] stock of the company which was to operate in Peru should be treated as a contribution to the stock of the company making the bid and Grace was to have an

option to take an additional interest in such a company not to exceed 50% of the total capitalization. Pan American was to "have charge of the operation of the service from the Canal to Valparaiso" and the Grace houses on the West Coast of South America were to act as agents for the company. The Delaware corporation referred to in the letters was formed under the name "Peruvian Airways Corporation", Grace and Aviation Corporation of the Americas subscribed $25,000 each to its capital, and it began operations in Peru in September, 1928.

J. On January 31, 1929, the Post Office Department issued an advertisement for a contract for Foreign Air Mail Route No. 9, from the Canal Zone down the West Coast of South America to Santiago, Chile, with an option in the Postmaster General to extend the service from Santiago across the Andes to Buenos Aires and Montevideo. Pan American-Grace Airways, Inc. (hereinafter referred to as "Pan American-Grace") was incorporated to bid for this contract, Grace availed itself of the option which Aviation Corporation of the Americas had granted to it in the fall of 1928 to acquire a 50% interest in the company, and, with the assent of its two owners, Pan American-Grace submitted a bid for the mail contract. Accordingly, Aviation Corporation of the Americas and Grace each subscribed to the capital stock of Pan American-Grace $500,000, including the amounts previously subscribed by them to the stock of Peruvian Airways Corporation.

K. On March 2, 1929, there was enacted the Foreign Air Mail Act of 1929, 45 Stat. 1449. This differed from the Foreign Air Mail Act of 1928 primarily in that it authorized the Postmaster General to pay for transportation from foreign countries to the United States as well as in the [fol. 39] outbound direction and provided for the amendment to this end of contracts which had been entered into under the 1928 Act. On March 2, 1929, the Postmaster General, pursuant to the Foreign Air Mail Act of 1929, awarded to Pan American-Grace the contract for Foreign Air Mail Route No. 9. A number of other companies also submitted bids for this contract. The Postmaster General found that although Pan American-Grace was not the low

bidder, it was the lowest responsible bidder that could satisfactorily perform the service to the best advantage of the Government. Among the principal grounds for such finding were the two years of negotiation and preparation for the service down the West Coast in which Pan American had engaged, Pan American's record of successful operations in the Caribbean, and the facilities of Grace along the line of the proposed route. It was not the policy of the Postmaster General at this or any other date to have more than one company operate under the Foreign Air Mail Act over the same route. The financial assistance from the plaintiff provided by a contract under the Foreign Air Mail Act was essential to the institution of air service from the Canal down the West Coast and remained essential to the maintenance of such service until it was replaced by financial assistance from the plaintiff under the Civil Aeronautics Act of 1938, 52 Stat. 980, and such assistance under that Act has since been so essential.

L. The award of Foreign Air Mail Contract No. 9 to Pan American-Grace was protested by the low bidder. The Postmaster General under the Hoover Administration, which had come into office shortly after the award of the contract, requested the opinion of the Department of Justice as to the legality of the award. Attorney General Mitchell, in an opinion dated May 6, 1929, which is reported in 36 Opinions of Attorney General 33, sustained the action of the Postmaster General under the previous Coolidge Administration in making the award. The papers before the Attorney General fully disclosed the identity of the two owners of Pan American-Grace and the circumstances of its formation.

[fol. 40] M. Pan American-Grace commenced operations under Foreign Air Mail Contract No. 9 on July 12, 1929. Until the end of 1929 operations as far south as Guayaquil, Ecuador, were conducted by aircraft and personnel of Pan American. The Postmaster General having extended the contract from Santiago to Buenos Aires, Pan American-Grace operated its first flight across the Andes to Buenos Aires on October 12, 1929.

N. During 1928 and 1929 Pan American expanded and extended its operations in the Caribbean area and on the North and East Coasts of South America. By the end of 1929 Pan American was operating regular service down the East Coast to Paramaribo, Dutch Guiana. In September, 1930 Pan American acquired the assets of New York, Rio and Buenos Aires Line, Inc., a company which had been formed by persons independent of Pan American and Grace with the purpose of operating an airline through Puerto Rico and Trinidad down the East Coast of South America to Buenos Aires. Pan American was urged by the Postmaster General to make this purchase. It declined to do this unless it received assurance that the Department of Justice would not regard the purchase as violating the anti-trust laws. Such assurance was obtained by letter from the Department of Justice dated August 1, 1930. The papers before the Department again disclosed the facts as to the formation of and stock ownership in Pan American-Grace. On September 24, 1930, the Postmaster General awarded to Pan American a contract for Foreign Air Mail Route No. 10 from Paramaribo, Dutch Guiana, to which Pan American was already operating under its contracts for Foreign Air Mail Routes 6 and 5, to Santos, Brazil, with an option in the Postmaster General to extend the contract to Buenos Aires. Pan American commenced service to Buenos Aires down the east coast pursuant to this contract in 1931. This [fol. 41] completed a circle of Pan American routes around South America from Miami to Buenos Aires—the entire eastern half, from Miami through Puerto Rico, Trinidad and Rio, and the northern portion of the western half, from Miami to the Canal, being operated by Pan American itself, and the southern portion of the western half from the Canal down the West Coast and over the Andes being operated by Pan American-Grace as an extension of Pan American's service in line with the agreement pursuant to which Pan American-Grace had been formed. All these operations were conducted under contracts awarded by the plaintiff with full knowledge of the facts as to the formation of Pan American-Grace and could not have been initiated or thereafter conducted but for the financial assistance given by plaintiff under such contracts.

O. The Civil Aeronautics Act of 1938, 52 Stat. 980, 49 U.S.C. §401 ff., directed in Section 401(e), 49 U.S.C. §481(e), that certificates of convenience and necessity should be issued to Pan American and Pan American-Grace for the operations which had been conducted by them under the various foreign airmail contracts and such certificates were issued by the Civil Aeronautics Board in the name and on behalf of the plaintiff.

P. The services of Pan American and Pan American-Grace are not competitive but complementary and have always been so intended. Pan American-Grace was formed and has existed as an extension of Pan American's service to the Canal to give Pan American access to the West Coast of South America. The bulk of Pan American-Grace's traffic on the segment immediately south of the Canal moves north of the Canal on Pan American's routes to various gateways in the United States—Miami, New Orleans, Houston and Los Angeles. Similarly, a very large percentage of the traffic carried by Pan American on its routes between the Canal and these United States gateways moves [fol. 42] south of the Canal over Pan American-Grace. Of all the points which Pan American-Grace serves, Pan American competes only at Buenos Aires, (where Pan American had not operated prior to its purchase of New York, Rio and Buenos Aires Line, Inc. with the approval of the Department of Justice) and there the passenger's origin or destination in the United States and his desires as to stop-overs enroute generally determine his selection of route, so that in fact the competition is negligible.

Q. By reason of the facts set forth above, Pan American has every interest in the provision of the best possible service for traffic between the United States and points on the Pan American-Grace sector of its System. In pursuance of proposals made by Pan American many years before, an arrangement was made in 1946 and approved by the Civil Aeronautics Board in 1947 whereby certain aircraft of Pan American-Grace, operated by that Company on its route south of the Canal, are chartered to Pan American for through operation by Pan American, along with other Pan American equipment, on one of the Pan

American routes connecting the Canal with the United States, namely, that between the Canal and Miami. This agreement, known as the Through Flight Agreement, provided that the charter of the aircraft of Pan American-Grace to Pan American should be extended from Miami on to New York in the event that, pursuant to a then pending application to the Civil Aeronautics Board, Pan American should be certificated for this route. In 1949 Pan American and Pan American-Grace entered into an arrangement with National Airlines, Inc. whereby the aircraft of Pan American-Grace which were chartered to Pan American for operation between the Canal and Miami should be further chartered to National for operation over that Company's route between Miami and New York. National repudiated this arrangement at the end of 1950, and Pan American immediately instituted negotiations with Eastern [fol. 43] Air Lines, Inc. for an arrangement which included, subject to agreement by Pan American-Grace, the chartering to Eastern, for operation over its Miami-New York route, of the aircraft of Pan American-Grace which were chartered to Pan American for operation by Pan American between the Canal and Miami. This proposal, to which Pan American-Grace has agreed, has been pending before the Civil Aeronautics Board since January, 1951.

R. With respect to certain allegations of paragraphs 7, 8, 9, 10 and 11 not specifically heretofore answered, Pan American:

(1) Admits that it operates routes in Latin America under certificates issued by the Civil Aeronautics Board as set forth in the second sentence of paragraph 8, and avers that the unduplicated weighted average mileage of the routes so operated is approximately 15,000 route miles rather than the 60,000 route miles alleged by plaintiff.

(2) Admits that aside from Pan American-Grace and Aerovias Nacionales de Colombia, Pan American has no financial interest in any company engaged in air transportation between countries located on the west coast of South America unless this phrase be construed to cover Uraba, Medellin & Central Airways, Inc., all of the capital stock of which is owned by Pan American, which operates be-

tween Panama and Medellin, Colombia, pursuant to a certificate issued under the Civil Aeronautics Act.

(3) Admits that Pan American-Grace's line is as described in the last sentence of paragraph 9 and avers that the unduplicated weighted average route mileage of Pan American-Grace is approximately 6,000 miles rather than the 10,000 alleged by the plaintiff.

(4) Admits that from 1930, when it acquired the assets of New York, Rio and Buenos Aires Line, Inc. at the in- [fol. 44] stance and with the approval of the plaintiff as set forth above, until 1946, Pan American was the only United States-flag air carrier operating scheduled service between the United States and the countries on the North and East Coasts of South America, and avers that this resulted from policies adopted by the plaintiff, both before and after enactment of the Civil Aeronautics Act of 1938.

(5) Admits the allegations of paragraph 10 with respect to the proportion of passengers carried by United States-flag air carriers carried by Pan American and Pan American-Grace, but avers that in computing these proportions plaintiff has included points in South America to which, as a result of actions and policies of plaintiff, no other United States-flag air carrier has been authorized to operate.

(6) Admits the allegations of paragraph 10 with respect to the proportion of air passenger traffic carried by foreign-flag lines between the United States and the Canal Zone and between the United States and South America during the twelve months period ending June 30, 1951, but avers that foreign-flag carriers cannot lawfully carry traffic between the United States and the Canal Zone and that the proportion of traffic carried by foreign-flag carriers between the United States and South America has increased since 1951 and, on the basis of developments in other parts of the world, can be expected to increase further.

(7) Admits that neither prior to nor since passage of the Civil Aeronautics Act of 1938 has Pan American-Grace ever operated its own transportation service north of the Canal or sought authority for the operation of such trans-

portation service, and avers that Pan American-Grace was organized to operate the portion of the Latin American services of the Pan American Airways System from the Canal down the west coast of South America under the circumstances set forth above, and was not intended to operate north of the Canal.

[fol. 45] 12. Admits paragraph 12.

13. Denies the first and last sentences of paragraph 13 and admits the second and third sentences of said paragraph.

14. Admits the first, second and third sentences of paragraph 14, except that it denies upon information and belief that Panagra's total operating revenues and mail revenues in 1949 were as alleged in said paragraph 14, and alleges that it is without knowledge or information sufficient to form a belief as to the fourth and fifth sentences.

IV.

15. Denies paragraph 15.

16. Denies paragraph 16 except that it admits and avers that the circumstances under which Pan American-Grace was formed were as set forth in paragraphs 7, 8, 9, 10 and 11 above.

17. Denies paragraph 17 except that it admits and avers that Pan American-Grace was organized and has operated as set forth in paragraphs 7, 8, 9, 10 and 11 above.

18. Denies paragraph 18 except as admitted and averred in paragraphs 7, 8, 9, 10 and 11 above and that it further admits that, as a consequence of the function which Pan American-Grace was intended to serve and has served in the Pan American Airways System, Pan American has not, since the formation of Pan American-Grace, applied for or operated for its own account an airline along the west coast of South America and that, pursuant to authorizations granted by plaintiff, Pan American furnishes to Pan American-Grace at the Canal both through and connecting service to various points in the United States.

19. Denies paragraph 19 except that it admits that since the formation of Pan American-Grace, Pan American (or its predecessor company) and Grace have each owned 50% of its stock, have elected an equal number of its directors, and from time to time have entered into agreements with respect to the management and conduct of its affairs, which agreements and understandings have been fully disclosed to plaintiff.

[fol. 46] 20. Denies paragraph 20.

21. Denies paragraph 21 except that it admits that Pan American (or its predecessor company) and Grace have each retained ownership of 50% of the voting stock of Pan American-Grace and have elected an equal number of representatives on Pan American-Grace's Board of Directors.

22. Denies paragraph 22 except that it admits that Pan American and Grace have the powers incident to their stock ownership in Pan American-Grace and the agreements between them.

23. Denies paragraph 23.

24. Denies paragraph 24 except that it admits that Pan American acquired the assets of New York, Rio and Buenos Aires Line, Inc. at the instance and with the approval of the plaintiff as set forth above and that Pan American (and its predecessor company) and Pan American-Grace have from time to time acquired stock interests in certain other air lines operating services in Latin American countries not substantially competitive with those of Pan American and Pan American-Grace.

V.

25. Denies paragraph 25.

For a First Affirmative Defense
Pan American Alleges:

26. The agreement whereby Pan American's predecessor company granted Grace an option to acquire up to a 50% interest in Pan American-Grace as the west coast link of the Pan American system and Grace acquired such an interest was fully disclosed to and approved by the

plaintiff in 1928. The participation of Pan American's predecessor company and Grace in Pan American-Grace was considered by the plaintiff to be a reason for the selection of Pan American-Grace for the difficult task of pioneering air service from the Canal down the west coast of South America in 1929. Pan American and its prede- [fol. 47] cessor company have invested and kept invested large amounts in Pan American-Grace in reliance on the foregoing. Plaintiff is estopped from now contending that these very facts were a violation of the anti-trust laws. Alternatively, plaintiff has been guilty of unreasonable and inexcusable delay and laches in asserting any such claim.

For a Second Affirmative Defense
Pan American Alleges:

27. The facts as to the stock ownership of Pan American-Grace and as to the limited character of its operation were known to the Congress and the President at the time of the enactment of the Civil Aeronautics Act of 1938. By said Act plaintiff ratified and confirmed said ownership and limitation.

For a Third Affirmative Defense
Pan American Alleges:

28. Pan American-Grace has derived great benefits from its participation in the Pan American Airways System. All of Pan American-Grace's sales activities, apart from points on its own route, are conducted by Pan American on its behalf. As a result Pan American-Grace enjoys the advantages of Pan American's 43 sales offices in the United States, Pan American's 64 sales offices in Latin America, and Pan American's 128 sales offices in other parts of the world. Pan American's System timetables, which are published monthly with a distribution of approximately 275,000 copies, show the services of Pan American-Grace integrated with the services of Pan American. So likewise do Pan American's many insertions in aviation and other travel guides. Since 1947 Pan American-Grace's major aircraft and engine maintenance and flight training have likewise been performed by Pan Ameri-

can for its account. Pan American-Grace likewise enjoys the benefits of Pan American's technical, research, purchasing and other services at a cost far below that which Pan American-Grace would have for performing the same services. All these arrangements have been approved by [fol. 48] plaintiff, acting through its duly constituted regulatory agency, the Civil Aeronautics Board. Divorced from Pan American, Pan American-Grace could enjoy no similar advantages except at a prohibitive cost.

29. The relief sought by the plaintiff against Pan American would be contrary to the public interest. For the reasons set forth above, divorce of Pan American-Grace from Pan American would decrease its revenues and increase its costs, and would likewise increase the net costs of United States-flag air transportation generally. In view of the provisions of Section 406(b) of the Civil Aeronautics Act, 49 U.S.C. §486(b), for the subsidization of air carriers, this would require the plaintiff to pay added subsidies for the maintenance of United States-flag air carriers abroad, thereby imposing increased and unnecessary burdens upon the plaintiff and its taxpayers in direct contravention of policies which are currently being announced by responsible officers of the plaintiff.

For a Fourth Affirmative Defense
Pan American Alleges:

30. Both Pan American and Pan American-Grace are air carriers subject to the regulation and control of the plaintiff. The routes which they operate, their right to operate in any area, and the amount of competition which they are to have, are determined by the plaintiff, and the plaintiff has approved the area and scope of their operations.

Wherefore, judgment is demanded dismissing the complaint herein against the defendant Pan American World Airways, Inc., with costs.

Cleary, Gottlieb, Friendly & Hamilton, Attorneys for Defendant Pan American World Airways, Inc., By Fowler Hamilton, A Member of the Firm, 52 Wall Street, New York 5, N. Y.

[fol. 49] ANNEX A TO ANSWER

August 31, 1928

Aviation Corporation of the Americas,
100 East 42nd Street,
New York City

Attention: Mr. J. T. Trippe

Dear Sirs:

This will confirm arrangement under which we will associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff-Daland Dusters, Inc. the sum of $15,000 for an assignment which will convey all of the rights of that company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by this company in Peru and every effort will be made to put the business there on a paying basis.

We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U.S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Com-

pany shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South America will be the agents of the company on a reasonable compensation basis, such agency to continue during the life of transportation contracts undertaken by the company.

The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

Very truly yours,

W. R. Grace & Co.

William F. Cogswell,
Assistant Secretary.

WFC:GVB

[fol. 50] September 7, 1928

W. R. Grace & Company,
10 Hanover Square,
New York City

Attention Mr. William F. Cogswell.

Dear Sirs:

We beg to confirm the arrangement set forth in your letter of August 31st.

Supplementing paragraph four, however, we would point out the fact that in the event you decide not to take up a substantial interest in a jointly owned Company, organized or to be organized for the purpose of submitting a bid on the contract for carrying mails between Panama Canal and Valparaiso then, and in that event, we would prefer to bid on the contract through the medium of Pan American Airways, Inc., or some other wholly owned subsidiary.

If this were done, we would arrange to allow you, if you desired, to take a further stock interest in Aviation Corporation of the Americas, in addition to the $25,000 referred to in paragraph five.

Our Directors are delighted that we are to be associated with your firm in the development of air transportation on the West Coast of South America, and we look forward to a most pleasant and profitable relationship.

We would appreciate your advising us if this letter, in connection with yours of August 31st, covers your understanding of our arrangement.

Yours very truly,

AVIATION CORPORATION OF THE AMERICAS

By J. T. Trippe,
Vice President.

JTT B

[fol. 51] Proof of Service (omitted in printing).

[fol. 1]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. No. 90-259

UNITED STATES OF AMERICA, Plaintiff,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

Before: Hon. Thomas F. Murphy, District Judge.

Transcript of Testimony

New York, May 4, 1959,
10:30 A.M.

APPEARANCES:

Edward R. Kenney, Esq., E. Riggs McConnell, Esq., Herbert F. Peters, Esq., Joseph H. Shortell, Esq., Trial Attorneys, Department of Justice, For the Plaintiff.

[fol. 2] Cahill, Gordon, Reidel & Ohl, Esqs., Attorneys for Defendant W. R. Grace and Co., Laurence McKay, Esq., William E. Hegarty, Esq., Raymond L. Falls, Jr., Esq., of Counsel.

Cleary, Gottlieb, Friendly & Hamilton, Esqs., Attorneys for Defendant Pan American World Airways, Inc., James W. Lamberton, Esq., John K. Mallory, Esq., David W. Peck, Esq., Edward A. Woolley, Esq., of Counsel.

White & Case, Esqs., Attorneys for Defendant Pan American Grace Airways, Inc., Thomas Kiernan, Esq., Thomas

* * * * * * *

Leary, Esq., Lowell Wadmond, Esq., of Counsel.

[fol. 16] S. ROBERT MITCHELL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kenney:

* * * * * * *

[fol. 20] Q. Mr. Mitchell, how does Pan American World Airways compare in size with other international airlines of the world?

A. According to the statistics that I have been able to observe, Pan American is by far the largest international air carrier in the world, whether you measure that in terms of passenger miles flown or number of passengers carried, or ton miles flown, or various other measures.

Q. Do you have some basis for your statistics?

A. That information can be observed from a study published by the International Civil Aviation Organization, which is an organization of governments of the world with respect to aviation matters, of which the United States [fol. 21] and over 70 other nations are members, and which publishes a number of studies on transportation trends and traffic information.

Q. Have you seen the digest of the ICAO for the 1947-1957 period?

A. Yes, sir. It is called a Digest of Statistics on Traffic for the period 1947-1957, and from that study you can observe the number of passengers carried or ton miles flown, or passenger miles flown by the various airlines of the world, and from that information I observed that Pan American flew approximately three and one-half billion passenger miles in the year 1957.

Q. Who was the second largest international carrier?

A. The British Overseas Airways Corporation was the second largest. The Pan American was over two and one-half times the size of BOAC, as it is referred to. It had approximately one and a third billion passenger miles of traffic in that same year.

Q. Could you tell us what share of Pan American's business is in its Latin American division?

A. Approximately one-third.

Q. Could you tell us how that compares with other international operators?

[fol. 22] A. That is almost as large as the second largest international air carrier in the world, the BOAC, which I just referred to.

Q. That is, Pan American Latin American division?

A. They carried about one and a quarter billion passenger miles in 1957, according to the ICAO, which was that organization I referred to, reports.

Q. Mr. Mitchell, can you tell us about the growth of Panagra as compared with the growth of Pan American during the period since the formation of the two companies?

A. Yes. We requested information from Pan American and from Panagra on the growth of the two companies, and I have a chart here which was developed from that information, which, I think, clearly illustrates how the two companies have grown during that period of time.

Along the bottom are the years from 1929, which was the first date that Panagra could give us information for, through 1957, at the end, and on the side here are the passenger miles scale flown by these two airlines.

The red line shows the passenger miles flown by the entire Pan American system on all of its routes and the [fol. 23] dashed red line is the Latin American division of Pan American. The Latin American division was the entire system in the early years, of course.

Panagra is indicated by these green lines.

You will see, in the early days the companies had very modest operations. Since the late 1930s, however, and particularly in the last ten years, the Pan American system has grown tremendously, as you can see there to its worldwide operations. The Latin American division of Pan American has also grown quite rapidly.

You will notice, on the other hand, that Panagra has not grown substantially despite the fact that they started operations about the same time in the same general area.

OFFER IN EVIDENCE

Mr. Kenney: May I have this chart, please? I intend to offer this in evidence.

(A pause)

Mr. Kenney: May it please the Court, I offer Government's statistical Exhibit No. 101 into evidence.

Mr. McKay: No objection.

(Marked GSX 101.)

Q. Mr. Mitchell, Pan American's growth since those [fol. 24] early days has been worldwide in scope, has it not, while Panagra has continued to operate in the same areas it did several decades ago?

A. Yes, that is correct. I think that the growth of the Pan American system on a worldwide basis as opposed to Panagra's continuation in the same general area in which it started can be shown by three maps which I have here.

This first map shows the routes of Pan American and Panagra as of the end of 1930, and they were developed from information provided to us by Pan American and Panagra at our request.

The red line shows Pan American's route at that time and the dashed green line is the route of Panagra.

You will see that Pan American at that time, the end of 1930, covered the Caribbean area and went down along the east coast of South America to a point a little south of Rio de Janeiro, while Panagra extended from the Canal Zone down the west coast of South America into Chile and across the Andes to Buenos Aires. Pan American had not yet reached Buenos Aires at that time. In fact, about a year before this, Panagra had already obtained this route structure. Panagra, a year before, was about the [fol. 25] same as it is now, it was running all the way to Buenos Aires, while a year before this chart, at the time of this chart, Pan American only went into Gandia and was only a few months before this, the date of this chart, that Pan American had extended its route that far. So that as of the end of 1929 Panagra was the longest, had the longest international air route of any air carrier in the world, much longer than Pan American.

Here is a chart which compares the two companies eight years later, in 1938. It shows that Pan American had by that time extended its route clear down to Buenos Aires and taken in certain other points in South America and in the Caribbean and, in addition, it had already gone into

other areas outside the Latin American areas. It had moved across the Pacific. It had gone up into Alaska, and had a route into the Atlantic, out to Bermuda.

Panagra, on the other hand, had basically the same route structure that it did back in 1929 and 1930, with some extensions within that route.

The terminal, the northernmost terminal of Panagra, was still Balboa, and the southernmost point was Buenos Aires.

[fol. 26] We will see what the two companies looked like in 1957, about 20 years later. You will see now that Pan American criss-crosses the entire world with routes all around the world, while Panagra is still in the same general area.

* * * * * * *

[fol. 41] Q. Do you have any figures on the participation of Panagra with Pan American?

A. Yes. Between the United States and South America in the period 1950 through 1957 Pan American and Panagra participated in carrying three-quarters or more of the traffic using participation as I have defined it.

I have also broken that down to show the participation by Pan American and Panagra in what is called Eastern United States, which is a band of states, as you can see on this map here, along the coast of the United States which takes in approximately 16 states in a band of some two or 300 miles along the coastal area of the United States. [fol. 42] Over two-thirds of the traffic moving between the entire United States and South America originates in this Eastern area, or the traffic moving from South America to the United States is destined for that area.

It is therefore a very high generating area so far as traffic is concerned.

Q. Do you have the extent of the participation of Pan American and Panagra in that traffic?

A. Yes. Between the United States and Eastern United States Pan American and Panagra have carried about nine-tenths or more.

Q. Between South America and the Eastern—

A. Between the entire South America and Eastern United

States. Eastern United States is the area, of course, where Pan American and Panagra generate most of their traffic.

The remaining exhibits, 10 through 30 in this section you asked me about compare traffic between the United States or Eastern United States with three areas of South America which are illustrated on this map. These areas are also indicated in Exhibit GS 2 in the document that I have before me.

The red line separates countries in South America into Eastern and Western South America. The division between [fol. 43] Eastern and Western South America was made after an examination and consideration of the areas in which Panagra is operating or can serve in a general way.

I can illustrate this by showing you that the blue pins in here are all the points at which Panagra picked up passengers on original journeys in South America, and they are all to the west of this red line which I have used as a division. It includes the countries of Ecuador, Peru, Bolivia, Chile, and in some of the earlier years Panagra did participate in carrying a few passengers into Argentina, but they have not in recent years; at least they have not been loading people at points in Argentina except at Buenos Aires which is served by both Pan American and Panagra.

Panagra is certificated to operate in certain points in Argentina but is not doing so because of local conditions down there.

Q. Did you say they both served Buenos Aires?

A. Yes, sir.

Q. Can you give us the percentage of American passengers carried on certificated flag carriers between the United States and Buenos Aires which was carried by Pan Ameri- [fol. 44] can and Panagra or either one?

A. Yes, sir. Those are shown in Exhibits 24 through 30 of the period 1950 through 1957, and throughout this period over nine-tenths of the passengers were carried with Panagra or Pan American participation.

Throughout most of the period Panagra, primarily in participation with Pan American, participated in carrying more than one-half of the passengers, while Pan American with no Panagra participation carried about two-fifths of

the passenger traffic between the United States and Buenos Aires during that period of time.

Of course now Panagra operates by the Western route and Pan American by the Eastern route. Panagra must connect with another airline at Balboa in order to carry passengers into the United States, which is another reason why Panagra must participate with another airline, and 90 percent or more of that participation is with Pan American.

There is one other area that I have not yet mentioned that is in Western South America, and that's what I have called Western Colombia which for all practical purposes [fol. 45] is traffic to the United States or from the United States and Cali, Colombia. It embraces, as a matter of fact, three departments of Colombia which are specified in the exhibits. They are the departments of Valle del Cauca, Cauca and Narino, and any passengers who originate in the United States and fly to a destination in those three departments would be counted in Western South America. However, practically all the traffic is to Cali which is the northern part of this area and the only point at which Panagra serves in Colombia.

People can fly from some point in the United States to Cali and then take some other airline, like Avianca, to a point below Cali, which is the reason I embrace the entire area there rather than just stopping with Cali.

Similarly, Avianca can compete with Panagra by carrying passengers entirely to some point within Western South America, but they would not, of course, be included in the OD surveys unless they participate with some other U. S. Flag airline, but they would compete with Panagra in the foreign flag statistics.

The red pins are points at which Pan American had passenger originations in the year 1957, according to information that they submitted to the CAB, and you will see [fol. 46] that they are all well to the east of the dividing line that I have set up between the two areas.

This area setup is not a comparison of one airline against another. It is a comparison of the generation of traffic in one area moving to another area. It is not a comparison of the movement of traffic between the United States and Rio de Janeiro, for instance, on Braniff.

Panagra can't get into Rio de Janeiro. They cannot get into Bogota. Panagra cannot get into Asuncion. Therefore these areas cannot be served by Panagra and should not properly be included in an area that Panagra serves.

Panagra has repeatedly stressed before the CAB that it cannot serve Bogota on traffic between the United States and South America. They have an application before the CAB now, unless it has been recently acted upon—I am not positive whether it has or not—in which they say they cannot complete with Bogota traffic, and therefore it would have been very erroneous on my part to have included Bogota as an area served by Panagra or an area that could be served by them.

[fol. 47] Q. In Western Colombia, you mean?

A. In Western Colombia.

I have put Paraguay in the Eastern part of the United States because Pan American is certificated to carry passengers there, although it has not in recent years, although it has indicated to the CAB that it plans to have a non-stop flight operating very shortly between Caracas and Asuncion, so that is Pan American's territory. Panagra does not get into there.

Now, as I think we have already indicated, the third area that I set up was Buenos Aires because that is the area that is served by both Pan American and Panagra.

Q. Panagra coming down the West Coast and Pan American coming down the East Coast?

A. Yes, sir. So this is a division of South America into areas served by the individual companies, Pan American and Panagra, or competing against each other in the third area at Buenos Aires.

Q. Are you through with the map, Mr. Mitchell?

A. We might leave the map there if you want me to discuss the traffic that actually moved between these different areas.

[fol. 48] All right. Well, turn your attention, if you will, to Exhibits GS 32 through 66.

A. Yes, sir.

Q. Which deal with passenger traffic on United States Flag and foreign flag carriers, and tell us what they show, please.

A. These are statistics that combine the United States Flag figures from the OD survey of the CAB with the INS statistics for foreign flag carriers, and I think I have made it clear that there is no other organization that collects statistics on foreign flag traffic between the United States and South America comparable to that—exactly like that compiled by the CAB.

However, I think the INS statistics are the best available that can be used along with the CAB figures in order to arrive at an approximation of the total traffic that is carried by air between the United States and South America, and by comparing Pan American and Panagra's participation against this total we can see where they stand in the traffic picture.

Would you like me to explain what some of these results are?

[fol. 49] Q. Yes.

A. As shown by these exhibits 32 through 66?

Q. Yes.

A. Exhibits 32 through 37 show the passengers carried between the United States and South America on U. S. and foreign flag lines in the years 1952 through 1957, and on the basis of this information it appears that Pan American and Panagra have participated in transporting somewhere around one-half of the passengers, the foreign flag airlines carried around one-third of the total, and the remainder of the traffic was divided among other U. S. Flag airlines that had no Pan American or Panagra participation.

Q. Can you tell us, Mr. Mitchell, in that connection approximately how many airlines participated in the traffic that was not carried by Panagra or Pan American?

A. Well, I am sure that is going to be very carefully brought out in the course of this trial as to exactly how many would participate.

In 1957 there were at least eight foreign flag airlines that [fol. 50] carried traffic all the way between the United States and South America. There were other participating lines in between, as I am sure will be brought out by others. You can add to that the many other airlines that are involved in this traffic on a participation basis. But so far

as through traffic is concerned, one-plane traffic, I would say there were probably eight foreign flag airlines and two other United States airlines that had through-flight traffic between the United States and South America in 1957.

That means then that half of the traffic that is not participated in by Pan American and Panagra is divided into eight or ten or more ways.

Q. Yes, sir.

A. So that when a pie is divided that much you are going to have rather small slices for the remaining companies after you have accounted for Pan American and Panagra.

And in addition I might point out that, at least two of the foreign flag airlines are affiliates of Pan American. Avianca, for instance, which is a very important foreign flag airline flying between the United States and South America, is controlled about 38 per cent, I believe—at least [fol. 51] it was as of the end of 1957—and Avensa is another airline which carries passengers between the United States and South America which is controlled at least 30 per cent by Pan American as of the end of 1957.

There are other airlines operating in the South American area that are also controlled to some extent—foreign flag airlines that are controlled to some extent by Pan American.

Mr. Peck: Wold you mind having him say what he means by "controlled"?

The Witness: I am simply referring to the share of the stock held by Pan American which I indicated is approximately 30 per cent as of the end of 1957 for—

Q. Avensa?

A. —Avensa, and about 38 per cent for Avianca.

Q. You have discussed GS 32 through 37. Will you get to GS 39 through GS 66?

A. Yes. The next group of exhibits 39 through 44, shows the passenger traffic carried between the United States and four Western South American countries on U. S. and foreign flag lines.

The INS statistics are not available for individual cities. They are only available on a country basis. Therefore, I [fol. 52] could not segregate out this section of Colombia where Panagra serves, and I eliminated it from my com-

parison in Exhibits 39 through 45, and only dealt with Ecuador, Peru, Bolivia and Argentina, and traffic between the United States and those four Western South American countries was participated in to the extent of about one-half of Panagra in the years 1952 through 19—excuse me.

Q. You meant Chile instead of Argentina, didn't you, Mr. Mitchell?

A. I am sorry. The four countries are Ecuador, Peru, Bolivia and Chile.

Q. Yes.

A. Argentina I treated separately because it is nearly all Buenos Aires traffic.

Coming back, I want to correct that one-half of the traffic being participated in by Panagra to the year 1957 only, and in the years 1952 through 1956 Panagra carried somewhere around three-fourths of the passengers on a participation basis.

Between the United States and seven Eastern South American countries, which run from Venezuela through the three Guianas, Brazil, Uruguay and Paraguay, Pan Ameri-
[fol. 53] can, without any participation from Panagra, of course, carried about two-fifths of the traffic in the period 1952 through 1957.

And now I treat Argentina separately, since practically all the traffic between the United States and Argentina is concerned with Buenos Aires, and for all practical purposes you can consider these figures to be traffic figures between that city and the United States. Pan American and Panagra shared in approximately three-quarters of the traffic moving between Argentina and the United States carried by all United States and foreign flag airlines.

Colombia I had to treat as a whole, and therefore we will have a mixture of traffic carried by Pan American and Panagra as well as the foreign flag airlines, and we find that Pan American and Panagra participated in carrying around one-third of the traffic in the 1952 through 1957 period.

Foreign flag carriers accounted for about three-fifths of the total. Most of this foreign flag traffic was accounted for by Avianca in the year 1957 which, as we have already pointed out, is owned 38 per cent by Pan American. So

[fol. 54] that Pan American, Panagra and Avianca would possibly account for somewhere around nine-tenths or more of traffic moving between Colombia and the United States.

Q. Does that finish you with that map, Mr. Mitchell?

A. Yes.

The Court: Would you like a recess now?

Mr. Kenney: Yes, sir, if you don't mind.

(Short recess.)

By Mr. Kenney:

Q. Will you please now describe what is shown by Exhibits GS 66 through 72 on the next section? That is the section concerned with passenger traffic carried by carriers in sea liner service?

A. Yes, sir. First of all, I think I might use this map to explain what sea routes are covered by these exhibits.

This is a Maritime Administration map showing sea routes operated throughout the world which are called trade routes. I have colored in blue here, which may be a little difficult to see, trade route No. 2, which extends along the East Coast of South America. Grace Line is a liner operato ron that trade route.

Trade route No. 25 extends along the Pacific Coast of the [fol. 55] United States and along the West Coast of South America.

Trade route 31 operates between the Gulf of the United States and the West Coast of South America.

Q. You mentioned trade route No. 25. Does Grace operator on that trade route.

A. Grace operates on 25 and 2 on its traffic to the West Coast of South America, while its affiliate, Gulf & South American Steamship Company, operates on trade route 31 which also serves the West Coast of South America.

These statistics show the share of the passenger traffic in liner service carried by Grace and its affiliate on these trade routes. In the years 1954 through 1957 Grace and its affiliate carried 90 per cent or more of the passenger traffic by sea on these three trade routes combined.

Q. Does that apply to both United States and foreign vessels, do you know?

A. That includes United States and foreign flag lines combined. Ninety per cent or more was carried by Grace or its affiliate. The great bulk of these passengers come [fol. 56] from the Eastern Seaboard on trade route No. 2.

Q. Could you tell us what percentage comes by that trade route, if you know?

A. Grace is the only United States Flag airline—is the only United States sea carrier in liner service that carries passengers on trade route 2 here.

Q. As compared with the other two trade routes, could you tell us what percentage is carried over trade routes?

A. I think it is about four-fifths of the total passenger traffic that is generated on that one trade route out of the three.

Grace carries all of the United States Flag traffic in liner service on trade route 2 here from the East Coast of the United States to the West Coast of South America, except in 1952 when the percentage was 81 per cent. It has been well above 90 per cent in recent years.

Grace operates a combination ship service on this route, while on the other routes only freighters operate which carry limited passenger traffic.

Q. Do Grace and Panagra appear to have been in competition with each other in carrying passengers between the [fol. 57] Eastern part of the United States and the Western part of South America?

A. I think there is an indication that they have. We have put on this map the through-flight one-plane service route on which Panagra participates with Pan American and National Airlines which will carry passengers all the way from New York on the same plane to points along the West Coast of South America and on over to Buenos Aires.

The black dashed line here is the segment of that route which is operated by National Airlines, the red line is that portion operated by Pan American and the green dashed line is that section operated by Panagra.

It is the same plane all the way, of course. It is simply that different airlines are responsible at different points along the route, and you can see that a passenger at New York who wants to leave New York to fly to points along the West Coast of South America has a definite choice be-

tween whether to take the steamship line of Grace or fly on this one plane all the way to a point in South America.

[fol. 58] Q. Is that where most of the Grace passengers come from?

A. In 1957 all of Grace's passengers on trade route No. 2, got on or got off at New York. There has been an occasional passenger in the past who has gotten on at other points along the East Coast, but Grace discourages that; and, if you were to walk into a Grace office and try to get passage at any point other than at New York, they would tell you that they will not do it, as they told me once.

Therefore people must get on Grace at New York according to my information from the Grace Line, and they will get off at points along the West Coast of South America.

If I may have this other map, I would like to illustrate how this competition between Grace and Panagra can exist. This is the map that we had up before when I described the different areas in which the airlines operate. I did not explain what these yellow pins were. That is Grace's trade route No. 2. It is the most important trade route along the West Coast of South America.

The yellow pin up here is the point at which passengers can get on the Grace Line vessel, and the yellow points [fol. 59] along here are at places and points where they disembarked in 1957 according to Maritime Administration records.

Grace serves other points on a freight basis, but in this year those were the only points at which passengers got off or got on and traveled back up to New York.

Q. Does Panagra also serve some of these points?

A. I think that is very clearly evident here by the location of the blue pins which are places where Panagra picks up or starts passengers. You will see that these two points here are very close together. One is Valparaiso and Santiago and San Antonio. Santiago is served by Panagra, and Santiago and San Antonio are served by Grace.

Q. You mean Valparaiso?

A. I am sorry. Valparaiso and—

Q. San Antonio.

A. —and San Antonio are served by Grace and Santiago by Panagra. Antofagusta, which is served by both, and

Lima, Peru which is served by Panagra is only eight miles from Callao, which is a principal port served by Grace in [fol. 60] Peru. I am only mentioning the more important points where the great bulk of the passengers get off. There are other points like Arica, Mollendo. Arica is served by both Pan American and Grace.

Q. Panagra and Grace?

A. By both Panagra and Grace, yes, and Mollendo in Southern Peru is served by Grace, and there is Arequipa which is served by Panagra.

Then moving north we have Guayaquil which is served by both Grace and Panagra, and we have up here in Colombia, Buenaventura which is the seaport which serves Cali, Buenaventura being served by Grace and Cali by Panagra.

All of the passengers in 1957 got on at New York on Grace's trade route No. 2, the points in Western South America. Or, if they got on at Western South America, they all got off at New York.

It is in New York and the vicinity of New York, therefore, that you would find the greatest competition between Grace and Panagra for moving passengers between the United States and points along the West Coast of South America.

I did not limit Panagra's passenger originations, that [fol. 61] is, passengers who travel with Panagra participation, to just points at New York, at or near New York, but I have looked at an area which I call Northeastern United States which runs all the way out to Ohio and takes in Maryland, the District of Columbia and all states to the north, all the New England states, as points of origin in which passengers could give serious consideration as to whether they would fly to South America with Panagra participation or take a Grace Line ship to some point along the West Coast of South America.

Over 55 per cent in September, 1957 of Panagra's traffic to South America originated in this area. That means the people got on their plane in that area. It could be that people might have moved from Chicago into that area by train or some other method and took a plane from New York to South America. However, it is the majority of traffic on Panagra and it is the traffic area in which the

people could give most consideration to which mode of traffic they wanted to take.

I have another map to illustrate the South American areas where Panagra and Grace compete to the greatest extent.

[fol. 62] I have spotted with yellow pins five cities at which Grace discharges or picks up passengers along the route in South America. These are Valparaiso, Antofagusta, Callao, Guayaquil and Buenaventura. Those five points account for about nine-tenths of all of the passenger traffic on Grace Line's route No. 2 from New York to South America or from South America to New York. When I refer to South America, of course, I am talking about the West Coast of South America.

So these are the five most important points and account for all but 10 per cent or less of the passenger traffic on that trade route No. 2 carried by Grace.

Near these cities are cities served by Panagra which are indicated in blue. Here is Santiago, Antofagusta is served by both, Lima which is very near Callao, and Guayaquil which is served by both, and Buenaventura which is not far from Cali.

I have compared the traffic that has moved from Northeastern United States to those specific points by each of the two carriers in Exhibits 79 through 81, and you will see that from an examination of the figures alone, for in-

[fol.63] stance, in Exhibit 79, that Panagra carried 224 passengers between Northeastern United States and Santiago.

Q. That is per month?

A. Per month, in 1957, while Grace carried 121 passengers between Northeastern United States and Valparaiso which is not far away.

There is very good train service between Valparaiso and Santiago, and a passenger has his choice as to which service he wants to take in traveling between those points.

If we look up in Peru there, Panagra carried 484 passengers per month in 1957 to Lima, and Grace carried 108.

In Guayaquil Panagra carried 130, Grace 16.

At Buenaventura we have Grace with 20 and Panagra went to Cali with 108.

Those figures do not indicate that Grace's traffic is insignificant in relation to that of Panagra in serving these points, and I have only taken five points. I have not attempted to compare other points where people may get off and travel to the same final destination after they leave the Grace ship.

If I didn't mention that, I want to point out, too, that these five points account for these—these five Panagra [fol. 63a] points that are shown here account for about 90 per cent of Panagra's traffic between Northeastern United States and these four West Coast countries of South America.

[fol. 64] Q. I didn't think of doing that. I am glad you pointed that out.

A. In other words, for both Grace and for Panagra, those spots account for 90 per cent of the traffic.

Q. Mr. Kenney, let us turn to cargo and mail traffic that are presented in the document. What do your exhibits show with respect to the growth of overseas air cargo in recent years?

A. In Exhibits 82 and 83, they show that there has been a very substantial growth in recent years in cargo traffic overseas.

In Exhibit 82 you can see that overseas cargo carried by air into and out of New York more than double from 1953 through 1957. In the segment of this traffic that was destined for Latin America, or came from Latin America, it increased by two and a half fold during that period of time.

In Exhibit 83, which is concerned with traffic in and out of Miami, traffic doubled in the period 1952 through 1957, that is, cargo carried by air into and out of Miami.

In the year 1956 to 1957 there was an increase of more than 25 per cent at Miami between these—from that point. [fol. 65] Now, in Exhibits 84 and 85 the share of the Latin American traffic that is carried by Pan American and Panagra is indicated. We couldn't get, for individual airlines, the volume of freight carried from one point to another on a very extensive basis, so that in Exhibit 84 the comparison is confined to all operations of Pan American's Latin American division and each of the other airlines that

operate in that area which have been certificated by the CAB. In other words, this tabulation is confined to U.S. flag airlines.

Q. Do you have any exhibit which would show the relation of the growth of cargo traffic by air to that of cargo traffic carried by sea service?

A. Well, I have an Exhibit 100 here—

Q. Specifically referring to South America, what does your Exhibit GS 86 show?

A. That exhibit deals with all traffic carried in liner service between the United States and points in Latin America, and it showed that from 1952 to 1957 there was an increase of around 20 per cent in the cargo carried by sea as opposed to those increases that I referred to, over 100 per cent, for the air traffic moving into and out of [fol. 66] New York and Miami.

Q. Mr. Mitchell, could you tell us how Pan American compares with the other United States flag airlines in the movement of cargo in South America?

A. Yes. Exhibit 84, Pan American carried about two-thirds of a ton miles of freight, express and mail carried by all U.S. flag certificated airlines that operate in the Latin American area. There are—11 other carriers, I believe it is, other than Pan American and Panagra that operate in that area.

Panagra carried about six per cent of ton miles of passenger—freight, express and mail, giving you nearly 70 per cent for Pan American and Panagra combined.

The nearest competitor of Pan American was Riddle, which was only about one-fifth the size of Pan American's Latin American division on the basis of the traffic figures that I have described.

Q. Mr. Mitchell, I believe you testified that the Panagra carried about 6 per cent of the freight and mail. That is not accurate, is it?

A. That is in the entire Latin America area, in relation to the total ton miles of freight, express and mail carried by all U.S. certificated flag airlines that serve Latin [fol. 67] America.

Q. Doesn't Panagra carry about 13 per cent of the mail?

A. Mail alone, 13.5, as shown in the exhibit.

Q. You were speaking of everything, all three?

A. I was speaking of everything. Freight, express alone is 5.6 per cent. The combination is 6.4.

Q. Could you tell us how much of the cargo carried by sea in liner service between the United States and the west coast of South America is accounted for by Grace and its affiliate?

A. Only three routes I described, from all the major posts of the United States to the West Coast of South America, Grace and its affiliate accounted for about two-thirds of the imports and for about one-half of the exports during the years 1954 through 1957.

Q. Can we refer specifically to trade route 2?

A. Yes, on trade route number 2, which accounts for the bulk of that traffic, Grace carried about three-fifths of the liner service traffic in the 1951 through 1957 period, including in the total that I am comparing that with all foreign flag ships that operate in liner service. In the case of exports, Grace accounted for about half of the liner service exports in the 1951 through 1957 [fol. 68] period. The remaining half was divided amongst at least five other ships—ship operators, the largest of which was not a third the size of Grace.

Q. Isn't it true that on trade route 2, from the Atlantic coast of the United States to the west coast of South America, that Grace accounted for all the American flag liner traffic?

A. I believe that is correct. I would like to check that to make sure, if I may. I know they carried all the passengers.

Yes, in all those years, exports or imports, Grace was the only United States flag operator on trade route number 2 in liner service.

Q. Do you have any statistical information which would indicate at all that any significant competition is developing between Grace and Panagra in the transportation of cargo between the eastern part of the United States and the west coast of South America?

A. My last five exhibits are intended to present information that would assist us in that respect.

Exhibit 97, I have listed all the points at which Panagra has loaded traffic in the South American area, and I have

indicated by an asterisk the same areas or cities or nearby cities that are served by Grace. There is a similar table [fol. 69] for Grace, in Exhibit 99, which shows the points at which Grace picked up or discharged cargo from the east coast of the United States or to the east coast of the United States and the corresponding points that are served by Panagra.

Now, Exhibit 98 does contain some data on cargo carried by Panagra between certain points between the United States and certain points on its route in South America. Miami is the only point, however, for which such information was available.

In Exhibit 100 I have compared that traffic carried between these particular points in South America with the Miami traffic, carried by Panagra, and amount carried by Grace between the same points and any point along the east coast of the United States. Grace is substantially larger than Panagra but it does indicate that there is developing some cargo competition between Grace and Panagra.

Q. Panagra just started its cargo service in 1957?

A. That is right.

Q. In July.

A. These figures are for 1957, and Grace only started its all cargo operation in the middle of that year.

Q. Panagra only started?

[fol. 70] A. Panagra.

Mr. Kenney: That is all.

* * * * * * *

[fol. 72] L. Peter Cornwall, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. McConnell:

Q. Mr. Cornwall, by whom are you employed?

A. I am with Pan American World Airways.

Q. In what position?

A. I am the cargo sales manager for the United States.

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[fol. 75] Preliminary cross examination.

By Mr. McKay:

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[fol. 78] Q. Are you familiar with and have you had any experience in the air cargo movement to the west coast of South America as distinguished from the movement from the United States to the east coast of South America?

A. I have had general experience, yes.

Q. What has that general experience been?

A. In line with my normal duties as cargo sales manager.

Q. But you have no particular knowledge about that—

A. No.

Q. —movement?

A. No, sir.

Direct examination (continued).

By Mr. McConnell:

Q. Could you briefly describe the air cargo operations of Pan American? In a sort of brief way.

A. Well, it has grown tremendously over the past three years, which is a matter of record borne out, I think, by some figures that we have here. So far as air cargo is concerned, we have come a long way. We have gotten away from the purely emergency type of shipment. We are [fol. 79] moving into bulk commodities. We are pretty well into that. We operate any number of fairly—good number of all cargo aircraft for the handling of bulk commodities, I would say.

Q. Could you describe some of the commodities of that character?

A. Well, we carry a good deal of livestock, we carry a good deal of consumer items, such as refrigerators and electric fans, and that sort of thing. We carry some new furniture; a good many household effects, used furniture,

people moving back and forth. We carry automobile parts, aircraft parts, machine parts of various sorts which are other than, perhaps, pure emergencies. The list is very long. We have at least a hundred items.

Q. Would you say that you have expanded that type of carriage a great deal in the past few years? Do you have any figures on that, just to the extent to which you have?

A. Pan American's cargo revenue in 1946 was only nine million dollars, nine and a half million dollars, approximately. By 1950 it had gone up to fourteen million. In 1950 to twenty million plus. And in 1958, the figure I have here is $33,400,000, rounded, which indicates the rate of growth. [fol. 80] I have no doubt that it should exceed that amount this year.

Q. In terms of tons, do you have any figures?

A. I don't have ton miles figures. We did pass 100,000 ton miles this past year, however. We topped that.

Q. What percentage of this traffic that you are referring to, is in what we would call the North American-South American trade?

A. In so far as my cargo sales in the United States are concerned, historically, that is to say, in recent years, a little more than half of air cargo revenue we have created here in the United States has been in connection with South American cargo, Latin American cargo.

Q. Do you have a pretty good back haul of that cargo?

A. In the past it has not been, but the back haul situation is improved now.

Q. From your point of observation would you say that there is an active area of competition there in international trade between air carriers and ships?

Mr. McKay: I object on the ground that the question obviously calls for a conclusion by this witness.

[fol. 81] The Court: I will permit him to answer. You have an exception.

A. I would say—

Q. Do you have an opinion?

A. Well, yes. I believe there is an active area of competition between surface and air at the present time.

Mr. McKay: May I please have the answer read? I wasn't able to hear it.

(Record read.)

Q. Would you explain, generally, the nature of this competition, pointing to the various factors which enter into the choice of either the one form or the other?

A. As I had said earlier, we are well beyond the purely emergency type of traffic that had been the mainstay many years ago. We are now into regular movements of traffic, in some cases very substantial movements, which are sold and generated primarily on the economic basis, that is, on the direct comparison of all the costs related to distribution by one means as compared with all the costs of distribution by another.

Q. Will you spell that out?

[fol. 81a] The Court: Before he does, it is almost one o'clock, we should adjourn now. Is an hour enough?

Mr. Kenney: Rather an hour and 15 minutes or an hour and a half would be preferable to us.

The Court: Is that agreeable to everybody?

2:15.

(Recess to 2:15 P.M.)

[fol. 82] AFTERNOON SESSION

(2:15 p.m.)

L. PETER CORNWALL, resumed.

Direct examination (continued).

By Mr. McConnell:

Q. Mr. Cornwall, before the recess you testified to the fact that from your point of observation there was active competition between steamships and the airplanes as far as cargo was concerned, and then you started in with the explanation of some of the factors that go into the choice

of one mode over the other. Could you go forward with that, please, sir?

A. Yes, sir. I have here some papers of my own which are taken at random from the work of our various cargo sales representatives in the field which show the type of expense that they go into in making comparisons of surface and air. Sometimes these rather exhaustive comparisons are favorable to air and sometimes they are not.

You have export packing by surface. That is essentially a surface cost more times than not. You have various port charges by surface which don't apply, at least in the same [fol. 83] degree, to air. You are apt to find forwarders' fees are higher by surface and more numerous in some instances. Consular fees are sometimes higher by surface. Insurance is usually higher by surface, so we include that always.

There are very often carriage charges by land, overland, associated with steamship shipments, such as rail to the port or truck from the port to an inland city or something of that sort. These may or may not apply by air. Usually they would not because there is an airport nearer the point of origin of the goods.

Q. Do you have in mind a typical situation where that factor comes into play.

A. Well, you would perhaps find it—well, let's see. In Colombia, for example, Bogota is inland. The steamship doesn't get up to Bogota. It doesn't get quite up to Lima and various other cities in South America. That is, there is an area, perhaps rail or highway, between the port area and the true destination of the goods.

Q. What about, say, for example, in the European trade where you have all these interior points? Does the fact of the surface haul after the ship—

A. That is always a consideration. Let's say the haul [fol. 84] in from Hamburg or Antwerp into Munich or Vienna, into Switzerland, something like that; that is always a consideration, and it may, in combination with other things, make air desirable. It is particularly pronounced, however, in the backward countries, the so-called backward countries, the Middle East and certain South American countries.

European ground transportation is excellent by and large.

In a very few circumstances duty at destination will be different by air and by surface depending on the rules of the particular country relating to assessment on a gross basis or something of that sort.

Then there are some pretty abstract but, nevertheless, important factors that are recognized by our clients, such as the interest charges on the goods while in transit or the interest charges in the high level of inventory required at destination in anticipation of surface shipping. Those interest charges can be a real factor.

Q. Will that apply to automobile dealers and men of that sort?

A. Well, it could apply to automobiles certainly, but [fol. 85] automobile parts, I'd say generally parts is the more important thing, particularly where you have many models from many past years and that sort of thing to keep in stock.

Q. Just go ahead.

A. I will give you a couple of examples of these. We have one that intrigues us at the moment considerably. We have a man at Boston who has been giving us, oh, anything from a few hundred up to a few thousand pounds a week of automobile parts for Germany. This has been going on now, I'd say, for something over a year. Actually he ships—he states, and we believe him—something in the neighborhood of ten to 15,000 pounds of parts a week.

We have only gotten the more important, the more necessary, the more urgent parts, because our rate, in combination with the other costs, was not competitive with surface, particularly on an excellent trade route such as from Boston to Europe.

On May 1st, however, our rate applicable to this particular traffic dropped down from 55 cents a pound to 37 cents a pound. This is quite a dramatic reduction. The [fol. 86] net result is that the cost analysis worked by our people in Boston shows that for a given shipment, which happened to have an invoice value of $1,780, considered typical, air in the past would have cost $570 as against surface of $415.

Now with these new charges you come out to $384 as being the new air charge; in other words, a saving of

roughly $30, $35 over the steamship. It is too soon to tell, but we rather hoped that this man would see fit to put his entire merchandise up in the air.

That is a lucky one. We have a great many that are unlucky. Here is one where we didn't work out at all well. This is well known to all our competitors, and I am afraid it is water over the dam now.

It concerns jet engines from England to California and, to some extent, up to the Boeing plant at Washington. We worked a very careful cost comparison which was concurred in by the consignees who were paying the charges on this shipment. That is to say, they agreed with our reasoning; they agreed with the numbers that we had put down as [fol. 87] representative of the shipment of jet engines.

So for a given quantity—it happened to be 5,500 pounds—we figured a cost of $3,318 on the basis of using deferred air freight within the United States plus our own commodity rates trans-Atlantic. This is as low as we could get.

We felt, because of certain collateral benefits upon which you could not put a price, that the business would move air despite the fact that the steamship costs showed out as $3,178.

However, effective in March, I believe—I do not have the date of the tariff reference, but I know that we have lost the business because of the effect in March of a new and reduced steamship rate which was of sufficient incentive to put this business firmly on the surface.

Q. Did you formerly have the business?

A. I beg your pardon?

Q. Did you formerly have the business before they lowered the rate?

A. No, the entire business was in prospect of movement of these Rolls Royce jet engines to be installed in DC-8's and Boeing aircraft. So the business never moved, but we had all known it was going to move.

[fol. 88] Q. Do you have any other comparative illustration?

A. Here is a fairly typical shipment of refrigerators and freezers, in two bids, from Connorsville, Indiana, to Barbados, British West Indies. Here the surface charges show out at $892 and the air charges show out at $881, a very

close margin, but still very possibly one that would be persuasive in moving this cargo by air.

Q. You haven't moved that?

A. This particular traffic is—has moved but in the particular quantity shown here. This is rather high quantities.

Q. Did you move it?

A. Yes, we have moved traffic from this company to Barbados, different quantities.

Q. Do you have any other illustrations?

A. Somewhere over a year ago, my recollection is it would have been during the summer of 1957, we completed some cost analysis, cost comparison work, which showed that certain electric devices for the home could be moved into Venezuela at a slightly lower unit cost by air than was possible by surface at that time. This business started to move from two very large firms here in the United States to Venezuela in very satisfactory quantity from [fol. 89] our point of view until in February, 1958, a new steamship rate was put in, and I have it here. This rate dropped the steamship cost from $39 to $20 a ton for refrigerators and from $35 down to $20 for washing machines, to major commodities. This naturally took us out of the business.

Q. Is that a commodity rate which is put into this one plan?

A. It was a surface commodity rate.

I can recall we have lost business to surface carriers for other reasons. Some years ago there was a very substantial and continuing movement of nylon stockings to Europe before the mills had either the materials or the techniques, apparently, to make them, and we lost this business because the steamships were able to come up with better security on their ships. The big problem had been pilferage. So, there are other than rate reasons occasionally for losing business.

Household effects is very often favorable to air; one of our big commodities.

Q. Have you had any direct competition with respect to the price in the movement of household goods?

A. Well, since new traffic is a large part of our concern.

since most new traffic comes to us on the basis of freight, it is [fol. 90] correct to say that certainly price has had an effect on moving household goods by air. Again, it is not purely the rate. It includes many other factors, such as the packing, which is a big thing. You don't need the things packed for air as you need by surface.

Q. Can you think of any other specific, drawing on your experience, instance in which the steamships have undercut something?

A. I am sure I could come up with any but I don't have any specifically where a steamship company has specifically undercut us, that I have right here.

Q. You say that the cost element in air is a very important factor in this charge of the two modes. If the air cargo operators could reduce their costs considerably, do you think that would, maybe, increase the business?

A. Yes, it certainly would. The example of from Boston to Germany was a good case in point, where the rate dropped from 55 to 37 cents, and we have every anticipation of having all the business from that particular source.

Q. Most of the airplanes used in air cargo are converted passenger planes at the present time, isn't that correct? [fol. 91] A. There are—

Q. Modified.

A. (Continuing) —the DC8 and Lockheed 1049H are essentially cargo airplanes, although they have much of the appearance of passenger airplanes, but they were built as cargo airplanes.

Q. About what does it cost per ton mile to move a typical air cargo now?

A. Well, my concern is less with the cost of moving it and more with the price that I must sell it for. My prices are, in some cases as low as 15 to 18 cents a ton mile, more typically, however, in the neighborhood of 20 and 30, even 40 cents a ton mile, in certain instances. I suppose an average return would certainly be more than 25 cents a ton mile.

Q. Looking at the map here, from your observation of this industry, would you say that, with these routes and contiguous ports of call, in your opinion would there be an

active area of competition between Panagra and Grace Steamship Company?

A. Yes, sir, I would say so.

Mr. McConnell: That is all I have.

[fol. 92] Cross examination.

By Mr. McKay:

Q. Mr. Cornwall, does Pan American make a profit on its all-cargo operations between the United States and the east coast of South America?

A. I don't know.

Q. You don't know whether you make a profit or not?

A. No, sir.

Q. When did Pan American start its all cargo operations to the east coast of South America?

A. I don't recollect for certain. It would have, perhaps, been about 1950, but I don't recollect.

Q. You have been with Pan American all during this period?

A. That is correct.

Q. But you cannot recall. Your best estimate is 1950. From 1950 to this date, 1959 you cannot tell us whether Pan American has made a profit on its all cargo operations from the United States to the east coast of South America, is that correct?

A. I cannot tell you. I don't know.

Q. Mr. Cornwall, Pan American represents Panagra in the United States both with respect to passenger and air cargo, is that correct?

[fol. 93] A. That is correct.

. . . . . .

Q. Mr. Cornwall, do you have any criticism of the air cargo operations of Panagra?

A. As regards?

Q. Their efforts to move air cargo between the United States and South America.

A. They have been—

Q. Could you answer that yes or no in the first instance?

A. Exactly what do you mean by criticism?

Q. Do you think that Panagra has made the best efforts it could in the generation of carriage of air cargo, having in mind that you and your company represent Panagra in the United States? And I would like you to answer that question, if you can, yes or no.

A. I would have to answer that question, no.

Q. Mr. Cornwall, what other air cargo carriers are there between the United States and South America, specifying, [fol. 94] if you will, the east coast and the west coast separately.

A. I am afraid I cannot list the carriers for you.

Q. There are any number of them, though, aren't there?

A. There are a great number of carriers.

Q. Both U.S. flag and foreign flag?

A. Yes, sir, a great number.

* * * * * * *

[fol. 95] Q. Are you familiar, Mr. Cornwall, with the rates charged by surface carriers, namely, the sea carriers as distinguished from air carriers?

A. No, sir.

Q. Are you familiar with the rates that Panagra charges as distinguished from the rates that Grace Line charges?

A. I am—no, no, I am not.

Q. Then, Mr. Cornwall, how can you say there is an active area of competition when you don't even know the rates that one carrier charges as against the other? Hasn't rate a lot to do with whether or not you ship by air or by sea?

A. The rates certainly do—they have a great deal to do with it.

Q. Mr. Cornwall, are you familiar with the total cargo movement between the United States and the east coast of South America, and by total I mean to include both sea and air.

[fol. 96] A. Well, I am aware of the total cargo movement as the rates or any other thing in general terms, that is, I have.

Q. Do you know the ton—pardon me?

A. I have access to statistics, comparative figures, but I don't carry that information in my head.

Q. Have you ever had occasion to refer to the figures that are available to you as to what constitutes the total cargo movement, sea and air, between the United States and the east coast of South America?

A. I have from time to time read reports with particular attention to commodities that we thought at the time might be susceptible to air carriage.

Q. But you have no knowledge at the present time of the total movement?

A. No, sir.

Q. Air and sea?

A. No.

Q. That would also hold true between the Atlantic coast U.S. and the west coast of South America?

A. That is correct, sir.

Q. Have you any idea, Mr. Cornwall, what percentage of that total movement Pan American carries down between the United States and the east coast of South America, [fol. 97] what percentage of the total movement?

A. Of air—of—

Q. Sea and air.

A. Of cargo?

Q. All cargo.

A. I would like to guess that it is less than—

Q. I wouldn't want you to guess.

A. All right, I cannot answer that question.

The Court: You may use the word "estimate."

Q. Have you an estimate?

A. I would estimate that it is less than one per cent, Judge.

Q. Less than one per cent?

A. Yes.

* * * * * * *

[fol. 102] Q. Isn't it a fact, Mr. Cornwall, that in the past and, generally speaking, up to today the commodities carried—let us restrict it to between the United States and South America—either consist of emergency items, commodities which inherently could not be carried, such as orchids, by steamship, or commodities such as jewels and precious metals which have an inherent value to them but a very low weight? Is that correct?

A. Those are very important categories.

Q. Isn't it the fact that that is the majority of the categories that the airlines carry?

A. I would want to—

Q. By dollar revenue, if I may put it that way.

A. I could not answer that question by either dollar revenue or pound.

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[fol. 105] Recross examination.

By Mr. Peck:

Q. You were asked by Mr. McKay something about Panagra, whether according to your observation it was doing the best it could, considering that you were their agent and I understood you to say no. Now I am not interested in pursuing the question as to what you think Panagra is doing or is not doing, but what I would like to make clear is as to whether or not your organization in selling this air freight is doing the best job you know how to do.

A. I think we are, sir.

Mr. Peck: That is all.

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Victor B. Carmichael, Jr., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McConnell:

Q. Mr. Carmichael, where is your home, please, sir?

A. My home is near St. Petersburg, Florida.

[fol. 106] Q. What is your business or profession?

A. My profession, business is air cargo transportation, and I am the president and general manager of Aerovias Sud Americana, Inc., certificated U. S. all-cargo carrier.

Q. Roughly what areas do you operate in?

A. Our route pattern is air freight route 113 stemming from Tampa and St. Petersburg as co-terminals; Havana, Cuba; Merida, Mexico; Belize, British Honduras; Guatemala, Salvador, Panama, Bogota and Quito and Guayaquil, Ecuador. That is our certificated route pattern.

However, we have suspended service to Havana, Cuba for the present, and our operation is direct from St. Petersburg to Guatemala, direct to Salvador, direct to Panama, and from Panama direct to Bogota and then to Ecuador.

. . . . . .

[fol. 108] Q. Briefly could you describe some of the commodities that you ship in your trade and operation at St. Pete's?

A. The commodities that we transport by air are most commonly referred to as consumer goods, being the majority of our traffic, supplemented with livestock as a specialty, automobiles, machinery, and most recently household effects, personal effects, and agricultural implements and parts and automobiles.

Q. You would say that it is not confined just to small items; is that correct?

A. No, sir. Our business is a mixture of all kinds of freight.

Q. In your opinion, Mr. Carmichael, from your observations of your operations in Aerovias Sud, would you say there is an active area of competition there between steamships and air cargo carriers?

A. Well, our particular phase of operations I consider most definitely competitive.

Q. Could you give some illustrations of actual situations in which you competed pricewise with the ships for certain cargo?

[fol. 109] A. Well, if I might go back to the early days of ASA, one of the first commodities that we developed into Guatemala was automobiles where we successfully sold the distributor in Guatemala on carriage by air on the basis that the overall costs from factory to distributor were competitive with ocean. These costs are developed on the basis of the surface transport to St. Petersburg, air to the destination which is an interior point in this case, making it more easy to compete, easier to compete

with surface by virtue of a surface haul from the port in Guatemala to the interior.

We handled this commodity as the foundation of our service into Guatemala.

Q. Was there a considerable volume of that traffic?

A. There was a considerable volume, probably as many —frequently as many as two or 300 units a month.

The units were competitive on the basis of weight versus cubic volume. Certain of the vehicles became uncompetitive for air because of the heavier weight. They originally started out with lighter jeeps, and they became so heavy [fol. 110] that then the ocean was able to bring them back.

From there we developed a steady business of automobiles into other markets.

Q. If you will excuse me, did the steamship companies come down in their rates at that time to recapture that traffic?

A. No, at that time the automobiles got heavier so that we were not competitive on a weight basis versus a volume basis for ocean. But most recently, well, within the last year, our volume of automobiles has dropped about 60 per cent because the combination surface, which is steamship and inland transport in Guatemala—the inland transport cut their rates about 50 per cent which gave the advantage back to surface in this case.

But I have with me approximately 50 comparisons of ocean and air which I drew out of the files.

Q. Fifty instances where you have actually competed?

Q. These are on consumer goods. They are not specifically automobiles but all types of commodities.

Q. Can you just at random pick out a few that would be [fol. 111] illustrative?

A. We have developed this concept of ocean-air comparison in about 1954-55. Our sales department will take a specific shipment and compare the surface with air on existing rates at that time.

Here is a case of household goods plus an automobile to Panama in which the total shipment, figuring by ocean, including the dock and wharfage charges, the ocean freight and the export packing ran $2,191. The shipment weighed 11,640 pounds.

By air—I am sorry. This is a shipment from Panama to the United States, but it is still a good example.

By air that same shipment moved at $1,514.

Here is a comparison to Guatemala which is a commodity of cabinets and sinks. The shipment originated in Maumee, Ohio, and it weighs 11,983 pounds. The inland freight charges from Maumee, Ohio to the nearest seaport for ocean was $275. The ocean-air freight or ocean freight was $1,583, charges at port 50, inland freight charges at destination from port to Guatemala City $159, and miscellaneous charges $16 for a total of $2,344 for that shipment. By air the shipment was $2,137.

[fol. 112] Q. You got the shipment?

A. We handled that shipment. That is an example of how we developed—

Q. Can you think of another illustration where it is a rather heavy commodity like automobiles?

A. Here is a shipment of typewriters as an example, also to Guatemala, and the shipment weighed 2,750 pounds. Delivered by ocean it was $1,065 and 40 days transit time. Delivered by air it was $1,067 in 10 days.

I could go on and on. There is a current shipment of stoves and refrigerators to Panama on which we have developed the ocean-air comparison. It turns out to be a local contractor, and it is so competitive, that is ocean to air, that in the final analysis for a shipment of 91,000 pounds delivered to Panama ocean it was $35 less to deliver by air than by ocean. And then the steamship line, apparently able to amend their rates or tariffs, have offered a 15 per cent reduction over their existing rates, so it is still in the mill. But that is a current example of how close the competition is.

This is refrigerators and stoves, a rather sizable shipment.

[fol. 113] Q. And the steamships have lowered their rates to capture that business.

A. They have indicated they have.

Mr. McKay: I didn't hear that answer.

The Court: "They have indicated they have."

A. The shipper has indicated that he has had an offer for a discount from the steamship.

Q. Was Grace and Company involved?

A. I do not know if they are involved in this particular instance—

Mr. McKay: Do you mean Grace Lines?

Mr. McConnell: Grace Lines; excuse me.

A. There is a quotation now from the Port of New York which is the conference that I think Grace is in.

Q. It is a conference.

A. I don't know that that quotation has—this discount was offered at Tampa port by a non-conference carrier, to the best of my knowledge.

Q. With your technical knowledge of the airplane itself, as a trained pilot, do you anticipate that in the near future there will be some developments in cargo planes that will greatly reduce the direct and indirect cost of operating the plane?

[fol. 114] A. Yes, I think it is inevitable. I think the industry—the air transport industry, in particular the air freight carriers, know that in order to develop the additional volume which we know is available from surface transport we must have a better developed, better designed aircraft, and I don't think it is more than, at the most, two years away. Certain types will be phased in by then. For our own operation and for different carriers' operations it takes a different type, different range aircraft. We have looked at all existing models and haven't found one yet suitable to our purposes.

Q. In most of the models that have gone into operation, as I take it military requirements are predominant; is that correct?

A. That's correct.

Q. About how much do you think that these new planes will decrease the cost of air operations, in your opinion?

A. Well, I can state from what I know of our business that a rate decrease in cents per pound of, say, 20 per cent, or just state a rate decrease of 20 per cent overall, should double our existing volume.

[fol. 115] These true air freight aircraft offer two advantages. One is the additional speed, and the other is the rear loading feature which is an absolute necessity for

the time factor. Intermediate aircraft, I believe, will be the surplus propeller airplanes.

Q. These new cargo planes that are on the drawing boards, speaking from your standpoint as an air transport pilot in the Burma-India Theatre, would have tremendous use for us in military operations, would they not?

Mr. McKay: Your Honor, I did not hear the entire question. May I have it repeated?

(Question read.)

Mr. McKay: I object, your Honor, as totally irrelevant to the issues in this case, and the witness has not indicated any familiarity with the planes that are on what Mr. McConnell chooses to call the drafting boards.

Mr. McConnell: Well, you can be certain, my only idea, if your Honor please, and we do not want to get far afield, but we might as well face the fact that since the Russians have surrounded us with submarines and from a logistical point of view—

[fol. 116] The Court: Let's try this lawsuit.

Mr. McConnell: That is all I have.

Cross examination.

By Mr. McKay:

Q. Mr. Carmichael, you are president and general manager of Sud Americana?

A. Yes.

Q. How long have you been president and general manager?

A. Since 1949.

Q. Is that when Sud Americana went into business?

A. No. It was organized in 1947.

Q. 1947. Your first contact with it was in '49, or had you been associated with it prior thereto?

A. I was one of the founders.

Q. Isn't it a fact, Mr. Carmichael, that the operation of your company is still in an experimental and development stage? I would like you to answer it yes or no, if you can.

A. No. No would be my answer.

Q. It is not in an experimental stage?

A. It is not in an experimental stage.

Q. Mr. Carmichael, are you familiar with the recommended decision of the chief examiner, Francis Brown, in [fol. 117] the Civil Aeronautics Board that was handed down February 19, 1959?

A. I am.

Q. Have you read that?

A. Yes. If you are referring to the ASA case—

Q. That is right.

A. —that's right.

Q. You are familiar with his recommended decision?

A. That's right.

Q. Do you recall the following sentence which I quote from that decision:

> "The operation of this company"—referring to Sud Americana—"in the Latin-American area is still in an experimental and development stage"?

Do you recall that statement?

A. I recall it.

Q. Do you disagree with it?

A. I disagree with the "experimental." I agree with the "developmental." And your question, I believe, was as to whether it was an experimental only. And it is develop- [fol. 118] mental, very definitely, but I don't consider it an experiment.

Q. Mr. Carmichael, is the operation of Sud Americana a marginal one at the present time?

A. Yes, it is a marginal operation.

Q. Mr. McConnell asked you on two occasions, the latter occasion being whether or not Grace Line had indicated it would reduce its charges for surface transportation in connection with a certain instance that you gave. Do you recall that?

A. Yes.

Q. And you indicated there was an indication that the reduction was by a non-conference member; is that a fact?

A. The original—

Q. Is that a fact, Mr. Carmichael?

A. Yes. I indicated that the steamship line competing for this traffic locally is a non-conference carrier.

[fol. 119] Q. You know that Grace Line is a Conference member, do you not?

A. Yes, I do.

Q. So you didn't have Grace Line in mind, is that a fact?

A. I might add that—

Q. Yes or no? You haven't answered my last question.

A. I didn't have Grace in mind from Tampa port.

Q. When you say there was an indication of lower rates, do you have any knowledge of whether any steamship company lowered its rates in that instance that you refer to?

A. We are dealing—

Q. You said you had an indication from the shipper, I believe.

A. We had an indication from the contractor.

Q. But you had no personal knowledge as to whether any steamship company lowered its rate?

A. Only what the contractor informed us.

Q. No personal knowledge yourself?

A. No personal knowledge, other than as reported to me by my sales department.

Q. Mr. Carmichael, you have testified that when you [fol. 120] looked into the future you could foresee a 20 per cent decrease in the cost of air transportation; am I correct?

A. No, I didn't state it that way.

Q. Will you please restate it?

A. I say, looking into the future, year, with a 20 per cent decrease in the present operating cost of the aircraft, that, I believe, I am talking of an overall decrease now in the rate structure, that in our particular area, the traffic would double.

Q. What is the particular area, Caribbean?

A. I described it as central and northern South America, excluding Venezuela.

Q. Your testimony is if you can decrease your—by 20 per cent—your overall cost, you will double your volume. Can you tell us, Mr. Carmichael, that your costs will decrease by 20 per cent in the next year?

A. Any further reduction in costs will be almost entirely

dependent upon the type of equipment applied to the air lift.

Q. Mr. Carmichael, you selected the figure as 20 per cent and, for the moment, I want to stay with that figure. If you care to decrease it or increase it, you may. I am asking [fol. 121] you, on what basis do you predict, if you can predict, that your costs will decrease by 20 per cent in the next year?

A. I think I answered the question by saying if we applied a different aircraft, that will operate at a lower cost per ton mile, in direct flying cost. I am not referring to the overhead of the operation. I am referring to the direct flying cost of the machine.

Q. Your testimony is if you can get an airplane that will have the effect of reducing your cost by 20 per cent you predict that your volume will double, is that correct?

A. I don't want to be indicating that we intend to reduce in the next year the rate structure by 20 per cent. I simply stated, with the proper application of equipment, a 20 per cent decrease in rates, general overall rates into our area of operations, I believe, to the best of my knowledge, and on the basis of surveys that we have made, would double the business.

Q. But you cannot tell us now when this 20 per cent decrease will take place, can you?

A. We haven't planned a 20 per cent increase as yet.

Q. Decrease?

[fol. 122] A. Decrease. I am sorry.

Q. What is the frequency of your operations, Mr. Carmichael, to the various points that you have previously testified?

A. Frequency to Central America is a flight every other day to Guatemala, DC4 aircraft, and alternate days to Salvador, and two to three flights per week to Panama, supplemented by C46 aircraft.

Q. You formerly flew into Havana?

A. Formerly.

Q. How long did you continue that operation?

A. We suspended that operation about a year and a half ago.

Q. How long were you in it?

A. We originally were in Havana before we became a certificated carrier, and then we reinstituted the service when Havana was—when we obtained Havana as a scheduled route. We operated it for about one and a half years.

Q. As a sched or non-sched?

A. As scheduled. However, we were unable to compete effectively with other air carriers based in Miami. That was the reason.

Q. What were those air carriers?

[fol. 123] A. Principally Cuban flight operations.

Q. Mr. Carmichael, do you consider that your rates are competitive with the rates of the steamship companies?

A. In many cases, I do.

Q. In many? In the majority or in limited degree?

A. I would say that 40 per cent—well, possibly 40 per cent of our traffic is competitive with ocean at the present time.

Q. 40 per cent?

A. Bulk.

Q. And 60 per cent is not competitive?

A. It may be competitive. We find it not necessary to prove the competitive position because that traffic is merchandise that has been in there so long, this has proven its value on inventory, replacement, against surface transport and time involved, that we don't find that to be competitive with surface. That is competitive with other air carriers with a service matter.

Q. Let us go back over that, Mr. Carmichael, because I want you to lay down a very positive statement for this testimony. Am I correct in saying that you have testified that 40 per cent of the cargo you move is competitive with [fol. 124] steamship companies, is that correct?

A. Yes. I will make that statement.

Q. What is the nature of that movement of the cargo?

A. That cargo is principally white goods, which are refrigerators, stoves, household appliances, livestock, automobiles, household effects, and sea food, coffee, and boats, that is, pleasure boats, personal effects in both dir ions, and household appliances.

Q. What is—are you through?

A. And fresh killed beef.

Q. What is the rate that you charge for that movement?

A. That rate is about one-third—one third of the southbound rate. I might add—.

Q. I would like it in dollars and cents.

A. I will give you a comparison to Panama. Our average rate is approximately 14 cents per pound. Northbound it is 10 cents per pound.

Q. Moving from Miami or Tampa, Jacksonville, Florida, rather.

A. St. Petersburg.

Q. Tampa, St. Petersburg, to Panama, you move the [fol. 125] white goods, etc., at 14 cents a pound?

A. The white goods we have a lower rate on.

Q. What is that?

A. The specific rate on refrigerators and certain other commodities with a minimum of 5,000 pounds per shipment, ten cents a pound.

Q. You make a profit on that at ten cents a pound?

A. We make a profit on ten cents a pound when it is balanced with the northbound.

Q. What's that?

A. When it is balanced with northbound.

Q. Apart from northbound, do you make a profit in carrying—to carry these refrigerators, and so on, ten cents, from Tampa, St. Petersburg, to Panama, is that above or below your cost?

A. That is above—that is below cost.

Q. Below cost?

A. Ten cents per pound is below. In other words—

Q. Does the distance—

A. I want to clear that point. The southbound movement returns more than the cost of the operation of the aircraft.

Q. I am not clear now. I was clear before. Now I am not. Will you please repeat that?

[fol. 126] A. Well, I think that I would rather state my answer on the basis that our concept in the development of southbound traffic, it also is inherently tied in with the development of northbound traffic, and in the past few years the rate structure on northbound has improved considerably by virtue of new products being developed for import into the United States.

Q. Putting it another way, Mr. Carmichael, what you lose on your southbound traffic you hope to or you do make up on your northbound?

A. No, we only apply—well, let me put it another way: Our load factor is around 87 to 90 per cent on the round trip, and that is consistently 80 to 90 per cent. Maybe that answers your question. We base our rate structure on the experience load factors and predicted load factors. And the rate southbound, while it may be low, balanced with the known load factor is a profitable operation.

Q. You operate on a frequency of every other day, is that right?

A. That is our present schedule.

Q. On your present schedule do you have an 87 to 90 per cent load factor every other day?

A. Yes.

[fol. 127] Q. Mr. Carmichael, you cite these prices of 14 cents and 10 cents per pound. That is per mile?

A. That per pound.

Q. Per mile?

A. No, per pound delivered to the destination.

Q. What would your rate be per pound if you flew it from Tampa or Jacksonville, say, to Santiago, Valparaiso?

A. We don't provide a poundage rate for Santiago. It would be a combination of our rate as far as our service goes, which is Guayaquil field at Panama, but I can say, offhand, that the rate amounts to about 70 cents per pound delivered to San Diego, combination.

Q. What I was trying to bring out, and I think your answer shows you are in agreement, that the longer the haul the more expensive it is—

A. That is right.

Q. —to the shipper. Are you familiar with the rates of steamship companies?

A. Generally speaking, I am.

Q. Generally speaking?

A. The Central American area more so than South American area.

Q. Are you familiar at all with steamship company rates, [fol. 128] say from, let us say, the Atlantic Coast of the United States down the west coast of South America?

A. I am familiar with the fact that the rates don't change too much for the long distance.

Q. Isn't it the fact the rates for the steamship company are much, much lower than the air cargo rate from the Atlantic coast of United States down the west coast of South America? And only answer that if you know.

A. I think it is, of course, a known fact that the basic steamship rate is much lower than any basic air rate, but that is not how we compete. We compete on the overall transportation from the manufacturer to the destination.

Mr. McKay: Would you bear with me one moment, your Honor?

(A pause)

Q. Just one more question, Mr. Carmichael. Is it not a fact that Panagra is one of the competitors of Sud Americana?

A. Yes, sir, that is a fact.

* * * * * * *

[fol. 129] GEORGE L. GILES, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. McConnell:

* * * * * * *

[fol. 131] Q. You are now the president of Riddle Airlines and have been such since that time?

A. Yes, sir.

[fol. 132] Q. What was the situation, do you recall, in Riddle that you had to deal with particularly?

A. In December of 1957 the principal stockholders of Riddle Airlines tried to determine whether they should close down the operation due to expenditures, loss of money. They determined, however, to put in new management and to make an honest attempt in streamlining the operation to see if it could be re-evaluated and put into a profitable operation. At that time they were losing at the rate of $285,000 a month. I went into the operation and reviewed it to determine, first, what was the directive of the opera-

tion, in other words, that is the certification placed by the CAB. That spelled out one thing and one thing only, and that was the movement of materials by air. Riddle Airlines certificate does not allow them to carry passengers. It is purely an all cargo airline. So we eliminated some of the activities that Riddle had been engaging in, such as pipe line manufacture, installation of air conditioning sets in automobiles, and the movement of flowers, bouquets clubs, a few things not pertaining to the movement of air cargo.

[fol. 133] We reduced our personnel from a thousand to around 560, representing almost a hundred thousand dollar savings in the payroll.

Since that time we have been able to bring the airline to a point where today we are averaging around $35,000 loss, cash loss, on the operation.

Q. In connection with the management of the company that had the problems of Riddle, you made very detailed studies with respect to the cost of operating air cargo transport?

A. That is correct. Once we confined ourselves to the basic principle of carrying cargo we had to evaluate the type of equipment that the company owned.

Q. Would you briefly describe the operations of Riddle at the present time?

A. Riddle Airlines is certificated under two particular routes, route number 109, which is from New York to San Juan, San Juan-Miami, Miami-New York; route 120, which is basically from Miami through Toronto into Chicago, Toronto into Cleveland and Detroit. There are intermediate cities within those two routes.

[fol. 134] Q. Would you operate in Puerto Rico from New York; is that correct?

A. Correct.

Q. And from Miami.

A. Correct.

. . . . . .

Q. As domestic air carriers how do you rank in size?

A. Classified on air freight, that is, the freight that you have to go out and generate through sales, in 1958 we ranked third.

Q. Who ranks second?

A. Flying Tigers.

Q. Flying Tigers. Mr. Giles, from your point of observation as president of Riddle at the present time would you say that there is an active competition in international trade between air carriers and ships?

A. Yes, there is.

Q. Will you explain generally some of the factors that enter into this competition and the nature of them?

A. There are certain commodities in which the tariff itself is very compatible. Then, when you add the benefit [fol. 135] of speed to that, you get to a point where you can obtain the contract for movement of material.

There are other categories of materials where the basic rates are not compatible. However, when you analyze them and add to the basic ocean freight the necessity for the export packing, for the domestic haulage to the wharfs, for the documentations at the origin station, and also the same activities at the destination, add to that your speed which is available through the movement by air, we then find that in a great number of cases on general commodities we can be very, very competitive.

Q. Can you give some actual illustrations just drawn from your files—

A. Yes, sir.

Q. —where you actually have competed with ships?

A. Yes. I could cite one that happened recently where our sales personnel became aware of a movement of fire bricks from St. Louis to Venezuela. Our sales personnel approached the purchaser and showed them through speed and through the use of aircraft charter that they would be able to put their thermal station into operation and be [fol. 136] deriving benefit from it prior to the bricks ever arriving in Venezuela had they gone through New Orleans and across to Venezuela by water.

Q. Were the ships soliciting that particular shipment when you did that?

A. This happened to be one case where the Ocean Transportation Company had the contract. We were able to take it away from them.

Q. Take it away from them.

A. Yes, sir.

Q. Do you have any other illustrations that just come to mind?

A. Yes. I can illustrate the case of the movement of Sunbeam Products, basically hair driers, during this last Christmas.

Normally hair driers are shipped north to New York by ocean vessel and across to Chicago by truck. We were able to show the distributor in Chicago that if he shipped by air he would not have to, first, pack for export, secondly he would not have an inventory tied up during a number of days of traffic by ocean vessel and by truck, and thirdly he would have the type of commodity that he wanted for immediate retail sale in Chicago within a matter [fol. 137] of 12 hours. This shipment of 80,000 pounds we were able to handle.

Q. I know you have not searched your file, but is there another illustration?

A. Just another illustration.

Q. Do you have another illustration?

A. Yes. I can even point one out where we moved a circus from Miami across to Puerto Rico, an entire circus which included three elephants. It was possible for the circus operator to have the circus under performance prior to the time of arrival had the animals been sent by surface.

Q. Do you have any other illustration?

A. Yes, I could illustrate, for instance, the textile movement from New York to Puerto Rico where the raw materials are shipped from New York in what we call pre-cut, shipped into Puerto Rico where the hand embroidering is completed, immediately turned around and shipped back to New York and placed on the markets here in New York.

The elapsed time for doing that is many, many days less than it would be for surface, and apparently the industry finds it to their advantage economically to do business that way.

The Court: That must have been some years ago; isn't [fol. 138] that right?

The Witness: No, sir, that is as of today. Each day we have shipments going, every day, five days a week, from New York to Puerto Rico and back.

The Court: Don't they have to pay the same Fair Labor Standard Wages in Puerto Rico?

The Witness: No, they do not. That was one of the attractions that Puerto Rico had to offer through this industrial move of Bootstrap. Over the past five years the labor unions have been bringing considerable force to bear, and the basic wage is being reviewed twice a year. It is now approaching one dollar which is quite equivalent to what it is in the States.

As a result of this it appears that Puerto Rico may not be the heart of the textile embroidering industry, but there is a trend and it is moving toward the Philippines where lower labor is the deciding factor.

Q. What are some of the other commodities that just happen to come to your mind that you ship down to Puerto Rico, back and forth?

A. Goodness, we ship everything. Every day we are shipping bread, we are shipping pies, we ship raw material in the form of aluminum extrusions which are manufactured into jalousied windows in Puerto Rico, then we carry [fol. 139] the jalousied windows back to Miami.

We send down raw materials which are, as I mentioned, embroidery; also send down raw materials for carpet and rug manufacture, electrical, livestock.

Q. All of those—

A. You name it; we have it.

Q. All of those items would go by ship were it not for the air lift; is that not true, sir?

A. That is the type of item that would go by ship, yes.

Q. In connection with your study of the problems of Riddle I suppose you have made very careful analyses of the costs of operations; have you not?

A. Correct.

Q. How much do you figure it costs to operate an airplane?

A. Our present fleet of C-46s and C-54s cost us 25 cents a ton mile.

. . . . . .

[fol. 143] Q. To recapitulate, you say at the present time your cost per ton mile operating a C-46, both direct and indirect, is what, 24?

[fol. 144] A. No, our overall company costs, which would take in our indirect, our direct and our amortization and so forth, is running very close to 25 cents.

Q. What would the use of the Argosy reduce that to, do you think?

A. I might be telling a trade secret. I believe realistically we should be able to operate between 18 and 20 cents without difficulty.

Q. How much would it reduce your direct costs?

A. It will reduce it from the 15.6 to 10 cents.

Q. By 5 cents?

A. That is correct.

Q. And the indirect costs, I take it, just from pure operation of the airplane, it would reduce that by 30 per cent?

A. By 30 per cent, yes.

Q. Do you think a reduction in costs that would take place by the use of this new plane would greatly increase your traffic?

A. Yes, sir.

Q. Can you estimate by about what per cent?

A. I believe that we would be able to increase our traffic 300 per cent by the use of this aircraft over our current and existing routes as we operate today.

[fol. 145] Q. Do you think that that would get Riddle back on its feet financially?

A. That's what we are definitely trying to do, yes, sir.

Q. That increased traffic would be drawn from the surface carriers, would it not?

A. Yes, sir.

Mr. McConnell: That is all I have.

Cross examination.

By Mr. McKay:

Q. Mr. Riddle, Mr. McConnell was—

A. May I correct that? Mr. Giles.

Q. Yes. Mr. Giles, I am sorry.

Mr. Giles, Mr. McConnell has been asking you to speculate as to what would get Riddle back on its feet. I would like to question you as to why Riddle has to get back on

its feet. What happened? Isn't it a fact that Riddle's condition has been described to the Civil Aeronautics Board as critical?

A. That is correct.

Q. And that is your belief, too, is it not, Mr. Giles, that its condition is critical?

A. That is correct.

Q. Is this critical condition of Riddle due to a lack of air cargo to carry?

[fol. 146] A. No, sir. It is due to mismanagement.

Q. Mismanagement?

A. Yes, sir.

Q. When were you first associated with Riddle, Mr. Giles?

A. February 17, 1958.

Q. And who was the prior management that you accuse of mismanaging?

A. Mr. John Paul Riddle.

Q. How long had he been associated with Riddle Airlines?

A. From the inception of the airlines.

Q. And when was that, Mr. Giles?

A. 1946.

Q. Did Riddle lose money from 1946 down to the time you took over?

A. Except for one year.

Q. What year was that?

A. That was in 1947.

Q. And is it your testimony that Mr. Riddle mismanaged his airline from the very inception of it down to the time you took over?

A. Yes, sir.

Q. Mr. Riddle's fault alone?

[fol. 147] A. After all, he was the president.

Q. You have been in office now four months?

A. No, sir. I have been in office a year and three months.

Q. Is Riddle today making a profit?

A. No, sir.

Q. What is this loss?

A. Its cash loss is approximately $35,000 a month.

Q. A month?

A. Yes, sir.

Q. Riddle is a domestic air carrier, is it not?

A. Domestic on one route and international on the other one.

Q. And international only to the extent of San Juan.

A. Correct.

Q. It is a short haul operator.

A. On the domestic, yes, sir.

Q. Do you regard it as a long haul operator from New York to San Juan?

A. Correct.

Q. That is its longest haul, however.

A. That is correct.

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[fol. 149] Q. Do you hold yourself out here, Mr. Giles, as an expert on the international air cargo movement on a long haul basis?

A. I do not hold myself out as an expert, no, sir.

Q. Do you know Arthur Vining Davis, Mr. Giles?

A. Yes, sir.

Q. Mr. Davis advanced the Riddle Airlines more than $2,000,000 during 1958, did he not?

A. No, sir. In 1958 Mr. Davis did not advance Riddle Airlines one dollar.

Q. I may be in error. Would you pardon me a moment?

A. Yes, sir.

Q. Are you familiar with the application, which I believe you signed, Mr. Giles, to the Civil Aeronautics Board dated March 24, 1958?

A. Yes, sir.

Q. That was an application asking the Civil Aeronautics Board to grant a subsidy to Riddle, was it not?

A. Correct.

Q. In view of its critical condition.

A. Correct.

Q. That without this subsidy it was represented Riddle couldn't continue.

[fol. 150] A. Correct.

Q. You don't recall the statement in that application as follows:

"Mr. Davis advanced the company more than $2,000,000 during the last fiscal year."

A. That is 1957, I believe.

Q. My error. I said it was 1958. You are quite accurate. So that in 1957 Mr. Davis advanced the company $2,000,000.

A. Yes, sir.

Q. And did he thereafter refuse to advance Riddle any further sums?

A. No, sir. I did not ask him for one dollar.

Q. Do you know whether Mr. Riddle did?

A. Mr. Riddle had no association with Riddle Airlines during that period, so I do not know what he did.

Q. You do not know whether or not Mr. Vining Davis refused; all you know is that you did not ask him.

A. No. I will correct that. I know he did not refuse because he was not asked.

Q. Because what?

A. Because he was not asked.

Q. I read you another statement. Perhaps again I am [fol. 151] technically in error, but let me read this statement to you, Mr. Giles, on page 3 of this application which I believe you signed:

"Mr. Arthur Vining Davis, a principal source of funds in the past, has determined that he will put no additional capital in the company."

Is that correct?

A. That is a statement he made at the time he wanted to change the management, yes, sir.

* * * * * * *

[fol. 153] By Mr. McKay:

Q. Mr. Giles, do you blame Riddle's critical condition on the management of Mr. Riddle?

A. Correct.

Q. Isn't it a fact that when you were obliged to apply to the Civil Aeronautics Board for an exemption in order to take you out of this critical situation, that three other air cargoes at or about the same time also applied for a similar exemption on the ground that they, too, were in a critical condition? Is that a fact, Mr. Giles?

A. It is a fact, but I do believe that they were taking advantage of Riddle Airlines having gone in and made

this application. As you might say they were riding in on our coattails.

Q. Have you read their applications, Mr. Giles?

A. Oh, yes.

Q. Do you disagree with anything contained in their applications?

A. Yes.

Q. Do you accuse them of misrepresenting their financial situation to the Civil Aeronautics Board?

A. No, I do not.

Q. And if they say their financial situation is critical, [fol. 154] then you would not disagree?

A. No, I would not disagree.

Q. Do you know whether the Flying Tiger Line has been mismanaged in the past?

A. No, I believe it has been managed very well.

Q. Do you know anything about Slick?

A. Yes, I am aware of their operation.

Q. What about their management? Has that been mismanaged?

A. I believe their failure was through mismanagement, yes, sir.

Q. And what about the other one, Mr. Giles, if I pronounce it correctly, Aaxico Airlines?

A. Aaxico.

Q. Was that mismanagement?

A. No. That is a very healthy little airline.

Q. But they, too, were in a critical situation as far as their application goes and as far as your knowledge goes?

A. I do not believe that they represented their case as being in a critical position. As I recall, they represented their case as the fact that they believed that the all-cargo [fol. 155] carriers should have the right of subsidy in view of the subsidy that had been granted to other carriers.

Q. Isn't it a fact that they said they would be forced out of business unless they get this relief, this subsidy?

A. In Aaxico's case, to my knowledge I am not sure that they made that statement.

Q. I am reading from Aaxico's application to see if it refreshes your recollection, Mr. Giles, at page 5:

"Aaxico is one of four domestic cargo carriers which must inevitably be forced out of business unless some temporary relief is granted by the Board."

Have you any reason to disagree with that statement as far as your knowledge goes?

A. No, in that they say inevitably in the future they would be forced out. I do not believe that represents that they are in financial difficulties at the present time.

Q. But in any event, Mr. Giles, as far as Riddle was concerned, unless it gets this exemption it is a very critical situation, is it not?

[fol. 156] A. Certainly it is critical. As long as you are losing money it is critical.

Q. You made the statement, Mr. Giles, I assume only half seriously, to Mr. McConnell: "You name it; we have it." I assume you meant: you name it, we carry it; is that correct?

A. Well, I believe that is more than just half comical. I believe it would be very difficult for you to name a commodity that we have not carried at some time.

Q. Let's start off with the obvious. You can't carry bulk ore, can you?

A. Bulk ore?

Q. Yes.

A. We have carried bullion.

Q. I am talking about bulk ore.

A. No, in that particular instance to my knowledge we have not.

* * * * * * *

[fol. 158] Q. Isn't it true that a good part of Riddle's business is with the United States Government, moving military cargo?

A. No, sir.

Q. What portion of Riddle? Does it do business and move military cargo?

A. It does business with the United States military which is about one-third of what its overall business is.

Q. I considered that a good portion. I am sorry. But it is one-third?

A. Approximately one-third.

* * * * * * *

[fol. 159] Q. Well, do you consider yourself an expert, Mr. Giles, on international air cargo movement on a long-haul basis? And I don't mean by long haul the 600 miles from New York to San Juan. I am talking New York to the West Coast of South America. You said you weren't familiar with the steamship rates.

A. Correct.

Q. Are you familiar with the rates of the airline over that route, New York to the West Coast?

A. Not to the West Coast, no. That is the West Coast of South America.

Q. Mr. Giles, you said that Riddle had a tentative order for new planes?

A. Correct.

Q. And if you made the commitment you expected a reduction in costs and to increase the volume?

[fol. 160] A. Correct.

Q. Why is the order tentative, Mr. Giles?

A. That happens to be the way that almost every airline places an order. You never go in and buy a new airplane outright. You always place a tentative order whereby it gives you authority to go in and make further evaluation of that airplane.

Q. I see.

A. For one thing, for instance, a cockpit evaluation, the cargo-handling facility evaluation, radar evaluation. Those are all things that you go in and due to your particular airline you have particular characteristics that you want to have included in that airplane.

Q. So it is tentative up to the point that you satisfy yourself that the plane that you have tentatively ordered satisfies your needs and requirements; is that correct?

A. That's correct.

Q. And your order is still tentative, isn't it?

A. That's correct.

Q. I think you said, Mr. Giles—and you correct me if I am wrong—that with this new airplane which is on ten-

[fol. 161] tative order and which you are still debating whether it satisfies your needs or not that you believe that you will increase your volume over 300 per cent?

A. That is correct.

Q. What is the basis of that belief?

A. On the basis of the capacity of the airplane; 27,000 pounds, against 11,000 pounds for a C-46.

Q. Have you estimated your costs, cost of the plane and your other costs?

A. Comparing them to what?

Q. What I wanted to know is this: You say you will increase your volume by 300 per cent?

A. Correct.

Q. By that you do not mean that you are going to increase your air cargo movement by 300 per cent, do you?

A. Yes, sir.

Q. In other words, you would expect to run at 100 per cent load factor?

A. No, you never run at 100 per cent load factor.

Q. Then I am lost. Would you explain?

A. I will be glad to.

[fol. 162] Q. Thank you.

A. You run approximately 80 per cent load factor, and if you take 80 per cent of 27,000 pounds, you will have to take 80 per cent of 11,000 pounds, and with 27,000—let's use 27,000 as a round figure—so it gives you almost three—it gives you two times the capacity plus the speed of the airplane, which is 300 miles an hour, as against 186 or 185 miles an hour for a C-46, you can replace three C-46s with one Argosy.

Now I will go one step further. Today we are carrying around 56 million pounds of cargo a year.

Q. Fifty-six?

A. Million; that's correct. We could continue to operate on exactly the same pattern but with equipment, and I am confident, and this is only my own personal opinion, but I am confident that we could increase it close to three times.

Q. Increase the 56 million pounds?

A. That's correct.

Q. On what do you base that confidence?

A. On the operation as I see it today, evaluating the application of new equipment to it as to what can be done.

[fol. 163] Q. Have you made any study on that? Have you any figures on that, just what cost factors you took into consideration?

A. Certainly. I have repeated them a short time ago.

Q. I am asking you if you have any in writing. This is distinct from the other personal notes. Has Riddle Airlines under your management made any study?

A. Oh, yes. We made a route analysis. We made our cost analysis as to how to pay off on the aircraft.

Q. Have you those with you, Mr. Giles?

A. I do not have them with me, no, sir.

Q. Would you be willing to produce them?

A. I can give them to you. I will be glad to.

* * * * * * *

[fol. 164] By Mr. McKay:

Q. Mr. Giles, do you have the capital with which to buy these planes of which you speak?

A. Not at the present time, no, sir.

Q. Where do you expect to get it, from the subsidy that you are hopeful of?

A. No, sir.

Q. Where is that from?

A. The purchase of new aircraft is a relatively easy thing to do nowadays.

Q. Borrow money?

A. That's correct. You can borrow capital against—finances against your capital equipment, or there are companies who are financing aircraft and leasing them back lease purchased. I would like to bring up, however—you brought up the subject—

Q. You just answer my questions, if you will, Mr. Giles. I am sure Mr. McConnell will bring out anything you care to say.

A. All right.

[fol. 165] Q. You testified on direct examination, Mr. Giles, as to your direct and indirect costs in connection with these new planes. I was wondering if you had figured in depreciation at all.

A. Correct.

Q. You have?

A. We have, yes, sir.

Mr. McKay: That is all.

The Court: Any redirect?

Redirect examination.

By Mr. McConnell:

Q. I know it would be going back, but what idea was it that came into your mind?

A. Thank you.

Mr. McKay: I won't object to the question.

The Court: It might be about going to a show. Can't we confine it to some particular part of this examination.

A. It is a very interesting feature about financing.

The Court: The witness said it relates to a very interesting feature of financing.

Q. What financing does it relate to?

Mr. McKay: I object to the form of the question.

[fol. 166] The Court: I will allow it. Maybe we will get finished.

What financing, Mr. Giles?

The Witness: In this particular instance the English company, through the Export Credits Bank Association, is requiring 10 per cent down on the aircraft. On four aircraft which were delivered in Miami at six and a half million dollars, which includes your 12 per cent import tariff and 15 per cent operational spares, is roughly $650,000. There will be no payment whatsoever during the first year of operation. Then payments will be made at the quarterly rate of roughly 5 per cent interest. If you turn around and run some quick mathematics you will find that that means that you can procure new aircraft delivered in the United States into operation at a monthly figure which is less than what you can lease DC-6 aircraft for today.

[fol. 168] New York, May 5, 1959.
10.30 a.m.

Mr. McConnell: May we recall Mr. Giles for just one brief question?

The Court: All right.

GEORGE L. GILES, was recalled and, having been previously duly sworn, testified as follows:

Direct examination.

By Mr. McConnell:

Q. Mr. Giles, in your operations at Riddle, do you participate at the present time in any traffic coming up from the West Coast of South America?

A. Yes, sir.

Q. Which would be competitive with Grace and the other surface carriers operating on the West Coast of South America?

A. Yes, sir.

[fol. 169] Q. Could you describe that traffic?

A. There is a movement of Bermuda onions which are grown in Chile. A group of planters have selected air transportation to place Bermuda onions in the New York market.

Q. Is that a substantial traffic?

A. Yes. That traffic this past year has amounted to probably 500 tons.

Q. Five hundred tons?

A. Yes.

Q. That traffic formerly moved by ship; is that correct?

A. Yes, sir.

Mr. McConnell: That is all that I have.

Mr. McKay: No cross.

The Court: All right.

(Witness excused.)

STANLEY H. BREWER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McConnell:

. . . . . .

[fol. 173] Q. Will you describe the methods used by you in preparing these studies, Professor Brewer.

A. Well, the analysis is fairly technical.

We spent a very large number of man hours with a fairly big staff of technicians.

We first looked at the traffic moved by every form of transportation at the present moment.

We looked at the rate of charge by these various forms of transportation, including truck carriers, rail carriers, freight forwarders and shipping companies.

[fol. 174] Then we analyzed this traffic commodity by commodity to try to determine what would be considered to be air potential.

We looked at growth in the economy out into 1965 in these particular reports, forecasted gross national product, population, foreign trade, various other things that are normally used in forecasting anything in our economy and deduced from this what we considered to be the potential air cargo.

Once we had arrived at what we considered to be potential, we then looked at what we thought could be observed within the immediate future. We looked at the cost of the operation of airplanes; we looked at possible technological break throughs in airplanes; we looked at management interest in air cargo; and from this arrived at what we thought was achievable within the next four or five years.

We are somewhat pessimistic because we saw very little in the way of management interest on the part of the major airlines in air cargo. They were so very concerned with passenger operations, with mail and with other things that they hadn't really spent too much time with this. They didn't have airplanes that could economically carry cargo.

[fol. 175] So that, as we forecast into 1965, we didn't see too much growth in this particular picture.

We saw that the rate of growth in the domestic market would probably continue at about the same rate for the next few years.

We saw a little bit of a break through in the international market simply because we saw that the distances were somewhat greater and that this would multiply our common denominator which we used, which was ton miles of movement.

Since that time we have become a little more optimistic about this because we have become acquainted with the aircraft that is available to operators at the moment.

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[fol. 179] Q. In your studies did you come to the conclusion that ..e present time there is an area of competition [fol. 180] between air carriers and ships?

A. Well, I would say that there is probably an area of competition, but there are substantial cost differentials at the moment, so this competition now is probably relatively slight.

Q. Will you explain some of the factors that enter into that?

A. Would you be more specific in your question, sir?

Q. When a shipper chooses between modes of transportation, the ship and the air carrier, what are the considerations that go into his choice of the air or the ship?

A. Well, certainly speed is the most important factor in choosing air over ship because the cost of moving by air is considerably greater.

There are other considerations. Certainly, when you move by ship, you have to put materials into what is called an export pack. This pack is much more expensive. It has to stand the rough handling that goes into movement by ship, and it adds considerably to the weight of the product.

Certainly a shipper interested in things that he needs on an emergency basis will weigh the increased cost of [fol. 181] air over ship from what it is costing him to keep a machine tied down for a period of time, waiting for spare parts or something like that.

Certainly we know that insurance costs by air are somewhat lower than they are by ship. We know that in a steamship movement there are a great number of handlings of the freight in terms of moving it from its origin point maybe to the transit sheds, in terms of moving it from the place of location of the transit shed to the apron, in terms of putting it into the hold of the vessel, in terms of breaking it back out of the hold of the vessel, back to the apron, back to the transit shed, maybe to a warehouse and from a warehouse on in.

We think that the air carrier can eliminate at least some of these handlings.

Q. What is your conclusion from your studies of the future of air cargo?

A. Could I ask you what you mean by the future, sir?

Q. Ten years, I think your study encompassed.

A. These particular studies that you are presenting in evidence only go up to 1965 which is now only six years [fol. 182] away. We have forecast the future out to 1975 in more recent studies, and that is why I asked the question.

We see in this immediate future period a period of some turmoil, a period of phasing out of a piston-engineered plane which is much less economical in a cargo operation, a phasing in of what we call a turbine-power airplane.

We see that here is a period of transition; here is a period when the vehicle that the operator will use in the future will become much more economical in freight movement.

We see a period of time in the not too distant future where maybe the airplane carrying freight will be even more economical as a freight-carrying vehicle than it is now as a passenger-carrying vehicle.

We have seen this, of course, happen in every other form of transportation. We talk about the automobile. It was first used for passengers, and then specialized vehicles for freight hauling. We saw it in railroad transportation. To some extent we saw it in ship transportation. We see that the potential in freight movement is so many times greater [fol. 183] than it is in passenger movement that the airplane will come into its own as a routine mover of freight.

We see a major breakthrough in this industry coming some time between about 1961 and maybe 1964.

Q. Will you explain concretely what you refer to as a major breakthrough?

A. Well, a period of time when the operators will undoubtedly start cutting rates very drastically, and as they cut rates, why, of course we know that there is very substantial elasticity of demand for freight movement, this is going to encourage a lot of people to start moving by air.

We think that a lot of firms are going to start taking a very careful look at what we call distribution cost analy-

sis, where they consider all of the factors, the pipeline costs, the warehousing costs, the insurance costs, their capital costs and so forth, and that as they do this, and this is going about in the country at the present time—practically every major producer is beginning to look at this concept—as the rates come down, why, of course, here is when the [fol. 184] traffic starts to snowball as far as the air carriers.

So that by comparison, why, we are talking about a forecasted total movement in international trade, if you want to separate these things, of something over two billion ton-miles by 1965; by 1975, why, we are talking about perhaps 20 billion ton-miles.

Q. About how big an increase will that be percentage-wise?

A. Well, what is it? A thousand per cent? Is that what it adds up to. I don't have my slide rule.

Q. A thousand per cent.

A. Well, if you want to put it—if you are talking about two billion and 20 billion, it is a very substantial increase.

Q. In your studies have you familiarized yourself with the new planes that are being developed for the purpose of expanding air cargo?

A. Well, I am on the consulting staff of the preliminary design department of the Boeing Airplane Company, and this gives me an opportunity to look over the shoulders of those people who are thinking ahead 10 years in terms of the products that they are going to produce.

[fol. 185] Q. Is that confidential?

A. Not for the immediate future, not the things that they are talking about being able to deliver within the next year or two years. Things that they are thinking about, talking about that are out ahead six or seven years are still very much confidential.

Q. Could you describe the plane that they intend to deliver in the next two years?

A. Well, they are talking about a vehicle that will carry 50 tons of cargo—

Mr. McKay: Your Honor, may we have the name of the manufacturer who has this plane?

The Witness: The Boeing Airplane Company for one

A. We have spent time in the last few weeks with both the Boeing people and the Douglas people on this particular thing, and we did a major analysis of airplanes that the military is looking at to fulfill their lift requirements as the people are well aware, that spend time with this, the military has what they call a general operational requirement for 78 large jet airplanes out, and a source selection board is in session on this at the moment and will come [fol. 186] to a decision within the next 30 days, and the airplanes these people are looking at have been designed and delivery dates committed by Boeing, by Douglas, by Convair and perhaps other manufacturers; I don't know. I've had access to that information at least.

So that we know that at least these three manufacturers are talking about delivering any one of these planes to either the military or to a commercial operator within a period of two years' time.

Q. How much do you estimate that these new planes that will be delivered will reduce the cost of air cargo?

A. Well, when you talk about cost, this is a very technical thing, and we just about have to define terms.

Q. Please do that, sir.

A. Well, we normally compare costs on the basis of what is called the ATA formula. This is a formula that was devised by the airline operators and is published by their association, the Air Transport Association of America.

This formula perhaps needs some revision because it was [fol. 187] originally designed to cost out the piston engine airplane, but it can be used as a rough comparison of costs, and it enables us to reduce cost to a common term called ton-mile cost, per ton mile cost.

So that when we talk about present piston-engine airplanes, why, we are talking about costs of around eight to nine cents a ton-mile for the most efficient piston engine airplanes at the present time, and, if we go on up to the cost of some of the airplanes that are being used as freight haulers at the moment, why, we are talking about costs of perhaps 15 cents a ton-mile.

When we start talking about the long-range, high-capacity jet airplanes, by comparison these things enable the operators to move cargo at a direct operating cost of around 4 cents a ton-mile.

[fol. 188] Q. It will reduce the cost from the lowest cost, 9 cents, is that correct?

A. The lowest cost airplane now is around 9 cents a ton mile, and these things will get it around about 4 cents. So you can see, if you add 4 cents for indirect, and maybe another couple of cents for profit, why, this enables the operator to move freight at a cost of, maybe, 10 cents a ton mile.

Q. In your studies have you paid any particular attention or given any particular attention to the South American market?

A. No, sir, we haven't. In the international study we did an analysis of all of the world's markets. In doing so we looked at origin, destination points in 14 major customs districts of the United States. Then we broke the world down into 17 major world areas. One of these world areas was the west coast of South America, and certainly some of these major customs districts, customs districts like Philadelphia and New York, are here on the east coast, but we didn't, at least I didn't spend any great amount of time dwelling on the South American market.

Q. It was part of a study, however?

A. It was part of a study, yes, sir.

[fol. 189] Q. Would the airplanes which you have referred to, that are going to be delivered in the near future, be suitable for the South American-North American trade?

A. I have no idea. This is a very technical problem that is concerned with airport adequacy, it is concerned with volume of lift, concerned with other things. My recollection is that the South American operators have purchased some of the large, long range jet airplanes for passenger operations, and certainly, if they can use them in passenger operations, they can use them in freight operations.

Q. As air cargo grows in importance, do you think that the area of competition between it and ships will correspondingly increase?

A. I don't think there is any doubt about that. If the operators—I have to deal with averages. We are talking about average rates in international movement at the present time of 30 to 32 cents a ton mile. If these people are able to even cut those costs in half, say to 15 cents a ton

mile, they are certainly going to become much more competitive with steamships, and if they get down to 10 cents —we forecast maybe 8 or 10 cents a ton mile, maybe, by [fol. 190] 1975—we think that by that time the manufacturers will have airplanes that can move cargo at a direct operating cost of something around 2 or 2½ cents a ton mile—so you can see here is an opportunity, if these people get into a potential pricing structure, as I think they may do, to move—if we take the average rate of 8 cents a ton mile, here is an opportunity for them to talk about some rates as low as 3 or 4 cents a ton mile and then, of course, some higher. So I think you will see a period of time in the next 10 or 15 years where you will see a substantial amount of competition between the ship and the airplane, especially for the high value item, and I think we will see, probably, quite a new and different concept in distribution in the area of foreign trade.

Mr. McConnell: Thank you, sir.

. . . . . .

Cross examination.

By Mr. McKay:

Q. Professor Brewer, is it not a fact that there have been predictions of mountains of cargo moving by air which have been made by individual government agencies, [fol. 191] by aircraft manufacturers and others, for the past decade and a half?

A. Yes, sir, it is.

Q. Isn't it true that somehow or other the movement hasn't come up to those expectations?

A. Only because they haven't had an economical aircraft.

Q. They haven't come up?

A. They haven't had an economical aircraft. They haven't come up.

Q. Isn't it a fact, Professor, that the future of air cargo lies in the economics of the aircraft?

A. Yes, sir.

Q. Those that have been put into service in the past two years and those that may be produced in the future?

A. Would you clarify the question? I am not sure I understand what you mean by the last two years.

Q. I am asking, Professor, if you agree with the sentence in the prologue of your report which reads as follows:

"We believe that the future of air cargo lies in the economics of the aircraft that have been put into service in the past two years and those that will be produced in [fol. 192] the future."

A. Yes, sir.

Q. It is true, is it not, Professor, that vast quantities of material are moved in international trade by ship?

A. Yes, sir.

Q. And most of this will continue to move by vessel for many years to come?

A. Yes, sir.

Q. That the cost of the airplane cannot in the foreseeable future compete on a straight cost basis? Yes or no, Professor, if you will, if you can answer.

A. It needs qualification very badly.

Q. I was reading from your report, Professor, page 2. I don't believe there was any qualification in your report.

A. Yes, but you are lifting something out of context.

Q. Can you tell me what I am lifting out of context?

A. When we talk about a future in air cargo we are talking about something less than 1 per cent of the total amount. When we talk about something—

Q. Pardon me. Less than 1 per cent—

[fol. 193] A. Of the total movement.

Q. —of the total amount, sea and air?

A. In terms of total ton miles, but this 1 per cent, you see, is the high value packaged goods. This still leaves petroleum and all of the low value things that move in tremendous quantities by ship.

Q. Isn't it a fact that the vast majority of export freight, tons and ton miles, were of commodities that couldn't possibly be carried by airplane?

A. The vast majority, yes, sir.

Q. As far as you can see and look into the future, they never will?

A. Absolutely right.

Q. Isn't it also a fact that only a relatively few of the many thousands of commodities that are now moved in world commerce can be considered to be candidates in the foreseeable future?

A. Yes, sir, that is right.

Q. Is it true that as of exports, the potential of the aircraft and bringing to United States imports was a very small percentage of the total?

A. Oh, yes, that is absolutely right.

Q. At page 58 of your report, Professor, there is a chart printed which summarizes the total ton miles of imports [fol. 194] to the 14 customs districts of the United States from specified areas, and you show for the various areas that go to make up Latin America figures there detailed, and I think you have a total of 151 billions. Would you care to have the report in front of you? Perhaps it might make it a little easier for you.

A. It could.

At page 58, you say?

Q. Page 58. I was pointing out, if I am correct, that you have a total figure of 151 billions as representing the total movement from Latin America to the 14 customs districts.

A. When you talk about Latin America are you adding up the northern South America, southern South America, west, east South America? You have added it up. It isn't added in the table.

Q. It is approximately in excess of 151 billions?

A. Yes, sir.

Q. At page 80 of your report, Professor, you listed a total ton miles of traffic moving to those same customs districts from Latin America, which is valued in excess of 70 cents per pound, is that correct?

A. This is from Latin America to the United States?

[fol. 195] Q. Yes.

A. Right.

Q. And this gives—you arrive at a total import traffic value in excess of 70 cents per pound—of some 336 million ton miles, is that correct?

A. Assuming that this adds crossways. This is east

coast, south coast, west coast, southern North America and northern South America.

Q. Isn't it true, Professor, that according to your own survey the potential air traffic in the import trade between the United States and Latin America is only approximately one-fifth of 1 per cent of the total traffic?

A. That is at the present time, yes, sir.

Q. Is that the present or is that the potential, Professor?

A. We did this analysis of commodities that moved in 1955. So when you forecast out, why, this is something different, and this is what we are thinking about in terms of present rate.

Q. Professor Brewer, have you made any study of the future of the surface cargo, steamships, on a long haul basis?

A. Well, we have forecast this growth, roughly. We—

[fol. 196] Q. Have you made any study of it, Professor? I am talking about you personally, Professor. Have you participated in or have you made a study, as you did of international air cargo? Have you done that with the international surface cargo?

A. Well, may I clarify this just a little bit?

Q. Surely.

A. I don't like to be in the position of not answering your question directly, but when we look at these things here, we are looking at steamship movements. You see—

Q. Present or future?

A. We are looking at the present, and then the only basis of forecast is by correlating this thing to the growth in the economy, and if you will notice in here, we did this kind of correlation study and we found that there was almost perfect correlation between the growth of gross national product, for example, and growth in foreign trade. So, in forecasting out to 1975, for example, we know that at present there is something like a trillion three hundred million ton mile of cargo moved, by that time we increase this by 85 to 90 per cent.

[fol. 197] Q. My question, really, is simple, Professor. At least I intended that it should be. It is this: You have forecast future for air cargo.

A. Yes.

Q. You based that on bigger and better airplanes, more economic—

A. Yes.

Q. —in freight, at least.

A. Yes.

Q. Have you given any consideration to more economic ships in the future?

A. We have given some consideration.

Q. Will you point in your report to where that consideration was given?

A. No, I cannot point to it in this particular report. We have done that in another report we are working on at the moment.

Q. It is not taken into consideration in this report?

A. No, sir, we haven't.

Q. Is it true, Professor, that accurate data as to historical trends in the United States air cargo movement is deceptive and difficult to interpret?

A. It is very difficult to interpret.

[fol. 198] Q. Is it not also true, Professor, that steamship rates on quantity movements are far below attainable cost for moving freight by air in the foreseeable future?

A. Yes, way below.

Q. Is it not also the fact, Professor, that intense competition between air cargo carriers will develop as more of these planes become available?

A. It will depend on what areas of the world you are talking about.

Q. It will develop in some areas.

A. Oh, my, yes. We see intense competition developing right now.

Q. Isn't it true that there are many factors that will hold back rapid development of air cargo movements in addition to the right kind of airplane?

A. We see this is one of the major limiting factors in the potential growth, development of terminals, airports.

Q. So there are other factors in addition to getting the right kind of airplane?

A. Oh, yes, my, yes.

Q. I believe on direct examination, Professor, you stated, and if I am wrong, you correct me, that the international

[fol. 199] forecast presented a rosier future for air cargo than the domestic forecast, and I would like you to be a little more specific, if you can.

A. I would like to explain that because it isn't understood. When we look at movement, we see one of the plain advantages of the speed of the airplane in terms of distance. The greater the distance the greater the advantage, obviously. So that when we look at a forecast and we reduce these things to a ton mile basis, to get it down to a common denominator, why, we are looking at these distance factors, and where we talk about domestic movement, and maybe we can talk about an average length of haul of, perhaps, a thousand miles, we look at an average length of haul in the international market of 2,000, 2,500, 3,000. For the purpose of explanation, let us look at 2,000 miles so that if we move one ton of cargo 1,000 miles, why, you have 1,000 ton miles. If you move that same ton of cargo 2,000 miles, you have 2,000 ton miles. So that we say, in terms of ton mile growth, we see a more rapid acceleration of that growth simply because the distance factor is somewhat greater.

Q. Don't you run into cost factors on the short as distinguished from the long haul?

[fol. 200] A. Well, yes, and once again, in the—historically, you see, the airplane has been a relatively short haul carrier. So your extremely short haul costs are considerably than they are in the longer haul in the domestic market. In the international market distance has been especially a limiting factor because the carriers of the past or airplanes in the past had not been able to fly sufficient range to get over the water. They had to either stop at an island some place to refuel or they had to leave off payload in order to carry enough gasoline to get over there. These airplanes coming out in the future are long range so they can fly non-stop these distances with full payload.

Q. Perhaps I didn't make my question clear. What I was talking about is the cost to the shipper, as distinguished from the short to the long haul. It is very expensive, for instance, to ship a commodity that could move, forgetting about emergency shipments now, from New York to Valparaiso by steamship than it would be by air? It would be

uneconomical to do so, would it not, if there was no emergency involved?

A. I think we have to define terms. It isn't a question that I could answer yes or no.

[fol. 201] Q. Are you familiar with rates charged by air carriers for freight moved from, say, the U.S. Atlantic ports down the west coast of South America as contrasted with steamship rates?

A. No, sir. No, this isn't anything that we have looked at.

Q. And I think in answer to one of Mr. McConnell's questions on direct examination you said you made no particular study or concentration on the west coast of South America?

A. That is correct.

Q. I think you testified, Professor, that a turbine aircraft may be more economical in carrying cargo than in carrying passengers in about 1961 or 1965, is that correct?

A. No, sir. I said, I suggested that this would be out, maybe, in 1964, 1965, something like that. I don't think it is going to happen that fast, although it might, I mean.

Q. You just don't know? It could possibly happen?

A. In 1961, 1962?

Q. Yes.

A. Oh, yes, if people got the orders in.

[fol. 202] Q. What aircraft particularly were you referring to, Professor? Did you have anything particular in mind, any particular aircraft?

A. The things that we have analyzed in detail are such things as the Boeing—if you want the commercial version, it is called the Boeing 735, another that is being operated by the military at the moment.

Q. I was talking of commercial.

A. Yes. That is the designation of it, 735. Douglas has a similar airplane. Convair has a similar airplane. I am told, but not my knowledge, that Convair has a Convair C-34 that is being offered to the operators at the moment. There are a number of different airplanes.

Q. They are on the drawing boards at present?

A. I would say that they are more than on the drawing boards.

Q. Just what status do they have at the present time, best you can tell us?

A. Airplanes are born in families, as a general proposition, and the airplane that Boeing, for example, is flying, 707, which we must forget, just because it has in operation-

Q. That is passenger.

[fol. 203] A. Well, there are several versions of this thing. The one that is in operation at the moment is called 707-20, and it is a relatively small airplane. Pan American, for example, will take delivery of what they call the larger intercontinental version, called 320, within the next few months, and it is this larger intercontinental version that Boeing Company is talking about putting larger doors in, increasing the floor strength, and this airplane will lift 50 tons of cargo at a time.

[fol. 204] Q. And you say Boeing is talking about doing that?

A. They have offered them to the operators.

Q. Who have they offered them to, do you know, Professor?

A. Well, I am not qualified to testify to this because it would be purely hearsay. I have talked to their salesmen. They tell me that they have talked to Pan American, they have talked to Flying Tigers, they have talked to most of the operators that they think are vitally interested in cargo.

Q. This is not the plane, however, that you are talking about that can operate at costs of 4 cents a ton-mile?

A. Yes, sir, it is.

Q. It is.

A. Yes, sir.

Q. With regard to your testimony on this 4 cents, that on long-range turbine aircraft there will be costs of 4 cents a ton-mile, is this the all-out costs conformable to a shipping rate?

A. No, this is direct operating costs that we are talking about.

Q. Just direct operating costs?

[fol. 205] A. Just direct operating costs.

Q. It doesn't include loading or unloading or any of the other costs?

A. No, these are direct costs.

Q. Professor, you listed certain factors for Mr. Metcalf that might induce or incline a shipper to choose air transportation. Can you tell us what factors there are that might lead a shipper to choose surface or sea transportation?

A. Yes. Costs primarily.

Q. That is a big factor, is it not?

A. That is a big factor.

Q. In view of the big differential?

A. If you are going to move freight in large quantities, this is the big thing. If you are moving package freight, this is something else.

Q. If you are moving package freight, Professor, if you are in no hurry, there is no emergency, isn't it more economical to move it by sea?

A. By all means. There is just no question about it.

Q. Can you name any other factors, Professor, that might incline a shipper towards sea rather than air?

[fol. 206] A. I am sure there are many.

Q. They just don't come to mind.

A. I don't know what they are offhand. I think that maybe some people might like to keep their inventory tied up for weeks at a time, for example.

Q. Professor, I understand the purpose of your report to be setting forth what could be the potential growth of air cargo transportation over the next six or seven years; is that correct?

A. I would have to answer that no, if I were asked to answer yes or no.

Q. What is the purpose of your report?

A. To forecast what is obtainable.

Q. What is obtainable?

A. What we think is going to happen in this field.

Q. It is a prediction?

A. It is a forecast.

Q. This was made at the request of the Boeing Airplane Company?

A. We had a contract from the Boeing Airplane Company to do this study. We contract with many, many firms to do studies of this nature.

[fol. 207] Q. Is it a fair summary of your report, Professor, that you first state the volume of U. S. imports and exports in ton-miles as being roughly one trillion ton-miles?

A. Something like this, yes.

Q. Per year?

A. Per year.

Q. And then you assume that commodities having a value of 70 cents per pound can stand to pay for air movement; is that correct?

A. That is not quite correct, no.

Q. Could you correct me on that?

A. Yes, sure. I would be delighted to.

When we looked at values of commodities, we were looking at gross weights, and we were dividing these gross weights into the values that were given to us by the Department of Census.

Well, in so doing we had to say to ourselves: Well, inasmuch as these are gross weights, they include weight of packaging. If you were to move these same items by air you would probably have a much lighter pack, and we looked at studies that the Department of Commerce and other people had made and found out that these gross [fol. 208] weights inflated shipping weights by as much as 30 per cent.

We also looked at the rising spiral of inflation somewhat realistically and said that prices are going up, that by 1965 we will have some inflation. If we strip this packaging off of these things, this 70-cent value that we are talking about becomes a value of approximately a dollar a pound.

This isn't really scientific because you are talking about thousands of items. If you analyze it one by one you might come up with an average of something more than that or something a little less, but it is about a dollar a pound.

Q. Just how did you arrive at this figure, Professor, the 70 cents or the dollar per pound? What mechanics did you go through? Was it by a sampling process?

A. The Department of Commerce—I am not sure that we documented this. The Department of Commerce had a major study on the extent to which packaging inflated weights in the ocean shipping industry. This was a factor.

And, if we can use a figure of 20 per cent, which is a median type figure, why we can say that 100 pounds of material, [fol. 209] shipping weight, becomes 120 pounds.

So that, if we divide this into the total value of the thing, you see, the shipping weight tends to deflate the value. So that we had to throw this factor in there.

Then we had to look at average increases of price over a period of the last six or seven years, and we indicated that there would be some increases in price in the next few years. And this is the way we arrived at it.

Q. At the 70 cents?

A. Well, we determined that this 70 cents was actually about a dollar a pound we are talking about.

Q. That is what I want to determine, Professor, if you can tell us. Just precisely how did you arrive at the 70 cents or the dollar? You do mention the 70 cents per pound as possible potential candidates for air movement, anything 70 cents or over.

A. Can we talk about a dollar?

Q. May I ask, Professor, one question? Why don't we talk about 70 cents? I just want to get clear in my own mind. You do in your report speak of the 70-cents-per-[fol. 210] pound item as being a possible potential candidate for air movement. I don't understand the objection to the 70 cents. I am willing to go to the dollar, but I would like to understand why.

A. Well, perhaps I should explain it again. When you look at shipping weights in air and sea commerce, you will admit as a shipping man you have to put a lot heavier pack for ship movement than you do in air movement.

Q. You may or may not, Professor.

A. So that the added weight tends to—and of necessity we have to deal in broad averages when you are looking at the total world movement. This tends to deflate the actual value of the material because of the added weight.

So we are talking about something that has to be on an average more than 70 cents, and the present time it is probably—we thought in terms of this being 90 cents at the present time and a dollar a pound the actual value of the material in 1965. This is what the shipper looks at, and he says—and once again we have to—you can criticize me

for being too general when you want to get down to specific [fol. 211] cases, but I have done work for a very substantial number of shippers as a freight traffic consultant, and we know that their average distribution cost, their average freight cost runs from, oh, values of one per cent of the value of the product up to 50 per cent of the value of the product.

Q. Believe me, Professor, I don't mean to be critical with you at all. I am trying to understand this. This 70-cent figure you use, or take your dollar figure, that is a more-or-less figure; it could be off. It is a rough approximation, the best one you could make in this difficult area?

A. That's right.

Q. If it was off, say, 5 per cent one way or the other, what effect would that have on the forecast you made, on the possible potential candidate items for air movement? It would have a very great effect, would it not? If you moved that 70 cents one way or another by, say, 5 cents, that would affect your prediction, would it not?

A. I don't think so, not at this moment of time. It might have at that time. But we have decided that there is so much potential in self-generated traffic in air that wasn't [fol. 212] even considered in here that these things may be way low.

Q. Quite apart from the things that you did not consider, Professor, it would make a difference. I am asking you to consider the things that you considered at that time. Following the formula that you—

A. You see, the only things we looked at here were the things that were moving by ship that were possibly potential, and—

Q. I want you to keep looking at that, Professor.

A. We didn't look at anything that was moving by air or anything that the aircraft was generating.

Q. I want you to keep looking at what you were looking at, Professor.

A. Fine.

Q. If your 70 cents were 65 or 75, that would have a major effect on the prediction that you made.

A. I am not sure that it would make a major difference because we—

Q. How much of an effect would it have? Could you tell us?

A. We saw that the potential was so tremendously vast, and the things we were predicting for the future were [fol. 213] so very small as compared to that, that if we are talking about a potential of 60 billion ton-miles or some such matter and we are only predicting an achievable of two billion, you have to throw these factors into it.

Q. We can agree it would affect your prediction?

A. If we were off 10 per cent and we say that we thought that the potential was 60 billion, and we are off 10 per cent, this means that the potential is only 54 billion. Out of that we thought that the achievable that is in this area was in the ability of the air carrier to absorb or develop additional traffic. It had nothing to do with the potential particularly.

Q. Is it a fact, Professor, that your ultimate conclusion is that between one and 2 per cent of the total traffic might be called an air potential, given the right circumstances?

A. That is what we said, yes.

Q. And by the right circumstances—I think we have been over that—that is, given the right plane, the right airports, right terminal facilities and all the other factors that [fol. 214] enter into air cargo movement in the future.

A. If they could possibly achieve this 2 per cent, why, we would be talking about a total movement in excess of 100 billion ton-miles by 1970 and we are predicting something around 30 or 40 billion ton-miles.

Q. But still only 2 per cent at the rosiest?

A. The rosiest is 2 per cent. We are thinking in terms of achievement in terms of 7/10 of one per cent.

Q. Professor Brewer, is it your belief that in the foreseeable future this one per cent will come about?

A. No, sir. I have forecast to 1975, and at that time I am looking at 7/10 of one per cent.

Q. Professor, do you know whether or not your report has been used by Boeing in any of its sales promotions? Has it been distributed to customers, potential or otherwise?

A. Well, my recollection is that they have had requests for over a thousand copies of this report. It is the kind

of report that would be of interest to customers or potential customers.

Mr. McKay: That is all.

. . . . . .

[fol. 215] Redirect examination.

By Mr. McConnell:

. . . . . .

[fol. 225] By the Court:

Q. My recollection is that you said that your forecast based upon your studies is that, looking into 1975, there will be about 8 billion dollars revenue by the airplane companies and of that 50 per cent you estimate would be from cargo.

A. Yes, sir.

Q. Do you have any figures or have you been able to determine what percentage of the total tonnage that is now, say, imported into the country is represented by such bulk commodities as oil and ore and lumber perhaps?

A. We find that of the total tonnage moved in and out something less than 10 per cent is what we call a dry freight package freight, and the rest of it is bulk, when [fol. 226] we talk about ton-miles.

Q. So it roughly is 90 per cent of this bulk merchandise?

A. Yes, sir, on a ton-mile basis.

The Court: Thank you.

Mr. McKay.

Recross examination.

By Mr. McKay:

Q. Professor, am I correct that the basic assumption of your report is that the higher valued merchandise is more likely to go by air? Is that your basic assumption?

A. That is one of the basic assumptions, yes, sir.

Q. What basis have you for that assumption, Professor? Do you anywhere demonstrate that assumption in your report?

A. In the international report?

Q. Yes, sir. I am trying to find out how you substantiate that.

A. I am trying to think back to this particular thing.

Q. And do you do so in your report?

A. My only answer to it has to of necessity be—

[fol. 227] Q. Pardon me?

A. My only answer to it has to of necessity be that this was demonstrated in the first part of the report which we call "Air Cargo—The Next Ten Years," where we show how much of the total traffic and what kinds of traffic moved by truck as compared with forwarders, as compared with rail carload, and so forth. So we saw that the faster means of transportation tended to move greater quantities of the high-value commodities.

Q. And you say that is substantiated in the first part of your report?

A. Yes.

Q. Could you point to where that is substantiated, Professor, in the report that is in front of you now?

A. No, sir. The part I am referring to is the one that—

Q. The Air Cargo?

A. Yes, sir.

Q. Can you point to it, Professor, if I show you a copy?

A. I will be delighted to.

(Document handed to witness.)

[fol. 228] A. This material is scattered pretty well throughout here. One of the places that we show this is that—

Q. Could you refer me to the page?

A. Page 48. We show the extent to which the motor vehicle has grown in terms of the total intercity ton-miles. We show the growth from 1939 through 1955. We show that this percentagewise has grown in terms of the total. We show that the air-carrier has grown in terms of the total. We show in other parts of the report that on an average basis motor carrier rates are considerably higher

than the rail rates and that here there is an apparent need for the faster forms of transportation and that these faster forms of transportation—the shippers are willing to pay higher rates for the faster forms of transportation for the service that they get.

Q. Steamships, Professor, also carry high-value commodities, don't they?

A. Yes, they have.

Q. So it is only where there is an emergency or a hurry to get the product from one point to another that you might use air. I know there are other factors, but the cost [fol. 229] of transportation, lack of emergency and what not would not necessitate, require or perhaps even make practical shipping by air, isn't that true, quite apart from the value of the commodity? The value of the commodity in and of itself, in other words, does not dictate to a shipper that he ship by air.

A. Well, depending upon what you mean by cost. If you talk about freight rates, you are talking about one thing. If you are talking about total cost, you are talking about something entirely different.

Q. Take either one, Professor.

A. If we compare ocean freight rates with air freight rates at the moment, why, there is little to compare. But when you start talking about savings in packaging costs, savings in inventory, savings in capital costs from having these things tied up in transit, why, we are talking about costs of an entirely different nature.

Q. Professor, isn't it a fact that your predicted growth of air cargo, namely, 4 billion dollars, as I recall it, is in part based upon your prediction of an increase in the gross national product?

[fol. 230] A. All forecasting has to be based on forecasts of economic growth.

Q. And if your prediction is correct on an increase in the gross national product, that would have a similar effect on sea cargo, would it not?

A. Oh, by all means, surely. We see direct correlation between sea cargo and gross national product.

. . . . . .

RAYMOND A. NORDEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Peters:

Q. Mr. Norden, will you state to the Court your occupation, please, sir?

A. I am the president of Seaboard & Western Airlines.

Q. How long have you been in this position?

A. Almost 13 years.

* * * * * * *

[fol. 232] Q. Now to get back to the Seaboard & Western certificate, under your certificate to what places do you operate.

A. We operate from New York to Gander, to Shannon in Ireland, and we serve some 19 cities in the British Isles, France, Belgium, Holland, Germany and Switzerland.

* * * * * * *

[fol. 235] Q. Turning to your practical operation as a cargo carrier, how do you set about—first, let's name it. Can we name a few of the commodities which you carry presently on your international route between the United States and Europe?

A. Well, we carry literally thousands of commodities. They come under a general classification of all kinds of manufactures and semi-manufactures, and some foodstuffs, generally processed foodstuff, not foodstuff of grain and so on, and we carry significant volumes of live animals.

Q. Have you ever considered carrying iron ore or oil?

A. No, sir. We excluded that 12 or 15 years ago from our—

Q. Do you think there is any possibility in the future there will be any such volume of carriage of these commodities by air?

A. Well, sir, I could not look that far in the future. I wouldn't plan on it.

Q. Are there various products which probably you can carry which cannot be carried for one reason or another by ships?

[fol. 236] A. (No answer.)

Q. Let me rephrase the question. You have just testified that there are certain areas of bulk commodities, oil, minerals, etc., which are carried by ship which the airplane would not be interested even in attempting to go into that particular market. Is there a market, on the other hand, which might be considered the exclusive domain of the airplane as opposed to the ship?

A. Well, I think that is a fairly elastic domain, as you have made reference to it. Certainly there exists today certain kinds of highly stylized goods and articles. Take, for example, newsreel film and so on. It has a value of only X hours of life. I would say that it certainly could be carried on a boat too but it would not be productive to ship it and spend 12 or 14 days waiting for it, not today. Perhaps it would have 20 years ago. But the quantities today are those particular items which come to one's mind would not today be significant—volumes would not today be significant.

Q. Then can you state, Mr. Norden, that in between these extremes that there is an area composed of commodities for which there is an intense competition between [fol. 237] the air and sea?

A. Yes. I would say, again, the intensity of the competition would have to be a little bit qualified. It covers the whole range, I would say, of the manufactured and semi-manufactured goods. These are very substantial elements in what might be more generally described as dry cargo, and this whole field, in my opinion, is going to be subjected to intense competition. It is a gradual, developing intensity. We have been developing it in the last 12 years. I think, certainly, in our planning, the intensity of the competition is going to become much more severe in the next two to three years.

Q. Can you state, Mr. Norden, the relative value of this in between area, these manufactured and semi-manufactured goods or dry goods, the relative value as opposed to the bulk or the tonnage shipped?

A. Well, sir, we made a number of studies in developing our material for certificate process. It is hard to average values, in my opinion, because there is such a wide

range of articles that come within the heading of manufactured or semi-manufactured goods, and one has to be a little more specific, I think in the—at least this is the way we view it in our business. For instance, there are [fol. 238] textiles which are not sold by the pound and they are not valued by the pound. They are valued by the square yard.

And one has to develop on his own initiative, as a competing company, what the weight of a square yard is of a particular textile or group of textile products in order to arrive at a value per pound. These can vary widely.

We did some work in trying to establish a sort of a reasonable yardstick on a value per pound basis in our certificate case, and, if my recollection is good, I believe that we went as low as 50 cents per pound, and that was based on 1947 and 1948 data, which we upgraded to 1951. To a 1951 basis on general economic factors that we employ.

Q. Getting into the general economic factors a little bit more, as between air cargo and ocean carrier, can you describe to us the factors which you take into consideration in going after the transportation of various products or of a given product?

A. The major factor, of course, we take into account what it costs us to carry, and we do that on the basis of ton mile at a 100 per cent load factor. That is one of the ingredients that we inject into it.

[fol. 239] Then we study the economics of, say, an industry or an industry group, an association of marketers, or importers, exporters and so on, and we study the economics of the particular product that they are dealing in. We study the value of the product; we study the present mode of transportation which, in our international business, is always primarily ocean, but it almost always involves some surface transport to inland points.

We study the cost of that surface transportation from the point of origin, say, to the port of export. We study the actual cost of a shipment in terms of the shipping company's charge for carrying from port to port, and then we study the inland transportation costs from port of entry to point of final destination, and these include, that is, charges I was speaking of, that would include such

things as loading, unloading ports, drayage, perhaps, to a rail center, or two, perhaps, if it is going by surface by long haul trucker, the final destination.

There are multiple handlings involved. There are customs and documentation charges, so on.

In the case of surface transport we find that, as articles are shipped, to interior points, they may be crossing many [fol. 240] international boundaries and we find that in such surface transport there are multiple handlings required, multiple sets of documentation and that sort of thing. So there are many additive actual bill charges to a shipment, for instance, that may be originating in an interior point in middle Europe and destined to a point in Cleveland or some such place in the United States.

Then we take into consideration, if we are at or near a point where we think that a sufficient volume of business could be attracted to air on a regular basis, we study the warehousing costs, we study the insurance charges, etc., which are not part of the direct shipment necessarily but have to be part of the structure of the exporter or importer.

When these things are added together, we then find out what we call landed cost, that is the expression we use, and this is the real charge that the customer is paying for, and this is what we are competing against in terms of price, we in the airplane business.

Q. In connection with this landed charge, are you familiar, generally, with the way a steamship company derives its charges on dry goods commodities?

A. Well, in a general way, yes.

[fol. 241] Q. Would you state?

A. Well, charges are very often on a basis of so many dollars per ton, and they might vary. I am more particularly familiar with reference to the Atlantic area than any other area.

Q. I understand.

A. Charges might vary from $25 to 40, 50, $60 per ton.

Q. What does that mean? Does that have any effect on the kind of commodity that is transported?

A. Yes, it does. It has a significant factor.

Q. What effect?

A. Because those charges are assessed in many cases

on the basis of weight or measurement and what would appear at a very rough glance to be a price with which one might say he could never compete, that is, an airplane could never compete, when it applies to a particular product, the density of the article in question is such that it does not qualify for paying for just one ton.

I believe in the Atlantic conference—at least in the Atlantic conference—a ton, for rating purposes, is equal to 40 cubic feet, and the ton of which I speak if a long ton, that is, 1,000 kilos, and if you do the arithmetic on it, [fol. 242] you will find that every pound has to weight 56—every cubic foot has to weigh 56 pounds, and this is pretty generally the area of things like coal, and I am—some of the ores, anyway, that range in that area of having a density of that type, but there are many, many items in the manufactured and semi-manufactured field, literally thousands of them, that do not qualify on the basis of poundage for the simple ton charge. For instance, the textile business is one of our very big fields. The density of textiles, in clothing and footwear and that sort of thing, taken as a sort of composite group, would be such that it would take four to five times the quoted tonnage rate if you were to move a full ton of them because they would occupy about four or five times as many cubic feet as is permissible for the long ton.

Q. When you are calculating for a product, the transport of a particular product, do you take into consideration the actual price it will be then to the shipper?

A. Oh, yes.

Q. Rather than the $40?

A. Yes.

Q. That you gave?

[fol. 243] A. Yes, and actually, when we make the studies on an industry basis or an association basis, as we have done, they examine the files, they do the examination, and they tell us and so on.

Q. You testified a moment ago that the airplane is not competing against a steamship rate as such but against the landed charge. Do we take from that that the actual steamship rate is not so particularly important?

A. Well, it doesn't have the import that one would attribute to it if one hadn't made a real examination of it.

To put it another way, I think generally speaking, in the air industry, the large part of the air industry has not, in prior years, studied and determined the more limited importance which we attribute to the low ocean shipping rate as such.

Q. What is your recommendation along that line? What is your suggestion?

A. My suggestion?

Q. What is your opinion with respect to this more or less oversight?

A. Well, suggestion along the line of—

Q. Yes, where is the error? What is the basis of this error?

[fol. 244] A. I think it is one that has not been made consciously. It is just the overall impact. Even people in trade, even traffic managers themselves, have assumed, quite arbitrarily, well, the airplane that they—50 cents a pound to fly freight from New York to Europe, this couldn't possibly be a good idea for him because he could get it shipped for $50 a ton, if he had it to ship, and it is the wide variance between air freight rates, as we have known them, and shipping rates, as we know them, that has been so startling that people really haven't thought it was worthwhile examining, and it isn't until you examine into it that you find a good part of the trade doesn't, in fact, go at $50 a ton on the surface, it goes at 150, and it goes at 200 and, in some cases, $250 a ton.

This immediately narrows the gap between the surface ship, in the field of commodities to which I have reference, and the airplane because the cargoes that are now being charged for at $200 a ton, and I am speaking now of a measurement ton, are not as widely separated in basic transportation charge from the air rates, many of which are in the vicinity of $800 a ton today on the Atlantic.

Q. Let us see if we can expand a little bit here in terms [fol. 245] of weight. We seem to be emphasizing, as you noticed, from the first witness the idea of weight, a ton mile. Does it appear that, as far as the ton miles carried, that the air carrier will ever take up a large share of the market measured in ton miles?

A. I could answer your question: Ton miles in our busi-

ness, as such, are an interesting statistic but that's all. We don't measure, ourselves, in terms of ton miles.

Q. What is your measurement?

A. Well, our measurement is in tons. This may be our own fault, I am speaking now of the industry; speaking internationally, but, to be truthful, we have to think, really, in terms of the tons, or pounds, kilos, or weight measurement, because we are unable to associate ton miles on any basis of what the international air carriers are doing, as that would serve as an index to progress in increasing the air share of the surface ton mileage traffic. The reason is that we don't report origin, destination of traffic. It is a jealously guarded secret and the industry doesn't report it.

So if we had all the ton miles of all the international carriers, why, we would be in overlapping areas and we [fol. 246] would not—we would have just an interesting statistic, so many ton miles carried, but it wouldn't reveal—

Q. What is your yardstick?

A. We stick to the tonnage, and we so report, and the industry. For instance, on the north Atlantic, I think, there are 16 air carriers, including Seaboard, we report total tons, kilos, pounds, numbers of passengers, etc., that fly over the Atlantic, but no one reports how far over the Atlantic they flew, or where they got off or where they got on.

Q. Now, in connection with this measure of pounds which you fly as measured to the total amount of pounds or tons carried by ships and the total pounds carried by air, that figure is ridiculously low, is it not?

A. Yes, sir, it certainly is.

Q. Are we using the proper—are we using the proper measurement in using this figure of weight to measure the competitive effect between air and sea?

A. No, I would say not. I think the competitive effect comes into revenue.

Q. In revenues?

A. Yes.

[fol. 247] Q. How do you go about measuring the competitive effect in connection with revenues, or what is your analysis of the competitive effect as measured in terms of revenue between air carrier and ocean carrier?

A. Well, I could say, generally, that the competitive effect will be—the adverse competitive effect on steamship operators would be disproportionate to the effect one might deduce by examining the tonnage loss from surface to air. I have not made a study of that.

Q. Well, let's see. This area of competition in dry goods, which you have already set forth, is measured in terms of high value, is it not?

A. Yes, and my interpretation of high value is, as I understand it, when I say yes, is the kind of values that have been talked about, 50, 70 cents a pound, that sort of thing, and in our view these are high values as compared to the values of the bulk, of the bulk goods, which are the ores and the oils, and grains, and that sort of very heavy cargo, which are carried by the bulk carriers.

Q. Can you tell us whether or not in your opinion the shipper is interested in the dry goods market—

A. Dry cargo market.

[fol. 248] Q. Dry cargo market.

A. Yes, very definitely.

Q. Would you have any idea as to what relation that plays to the bulk market?

A. No, sir, I don't, because when we first started our studies, 1946, we just eliminated the chorse of looking into that volume of bulk cargo carriage. I just don't know what it is. We have never looked at anything except what I generally refer to as the dry cargo potential.

Q. Drawing your attention now, Mr. Norden, to the development of aircraft—

The Court: Excuse me. If this is a new subject, maybe it would be appropriate to adjourn now for lunch.

Mr. Peters: All right. Thank you.

The Court: 2:15. If it makes any difference, there is a judges' meeting today at 4, so we will have to adjourn at 4 o'clock.

(Recess until 2:15 P.M.)

[fol. 249] Afternoon Session

2:15 P.M.

RAYMOND A. NORDEN, resumed.

Direct examination (continued).

By Mr. Peters:

Q. Mr. Norden, will you please state for the Court the range of products which Seaboard and Western carries in air cargo transportation?

A. Yes, sir, if I may refer to a listing that I made.

Q. Yes.

A. Carried live animals, foodstuff, furs, skins, leather goods, tobaccos, essential oils, textiles, clothing, footwear, silverware, cutlery, aircraft, aircraft engines, aircraft parts, surface vehicles and surface vehicle parts, heavy machinery and heavy machinery parts, business and office equipment, electrical equipment and electrical appliances, machines and machine tools, hand tools, ceramics and glassware, synthetic stones, chemicals, drugs, pharmaceuticals, cosmetics, newspapers, scientific instruments, dental and surgical instruments, musical instruments, radios, phonographs, phonograph records, microscopes, spectroscopes, optical goods, newsreel films, watches, clocks, jewelry, toys, handbags, furniture, household goods and personal effects. [fol. 250] Q. You had reference back there to surface vehicles. What does that term include?

A. Well, that includes all kinds of surface vehicles, whether they be automobiles, trucks, self-propelled ground power units, tow trucks, that sort of thing, the kind of vehicles you find in warehousing operations.

The Court: Excuse me. What was the total tonnage, the payload? How much does that weigh? In your Super Constellation what is the maximum load you carry?

The Witness: 18 tons, sir.

By Mr. Peters:

Q. Among this range of products which do you carry in significant proportion?

Mr. McKay: Your Honor, I would like counsel to explain what he means by "significant proportion."

The Court: Well, somebody is going to explain it. Let's try this answer first.

Do you understand the question?

The Witness: Yes, I understand the question.

The Court: What products or what merchandise?

The Witness: As I mentioned earlier, textiles is a product of which we are very much aware. Textiles, cloth and [fol. 251] clothing, that general group we carry in what we consider to be substantial volume.

The Court: In other words, you meant by "significant" substantial.

The Witness: Yes, sir.

By Mr. Peters:

Q. Can you state the significance in terms of dollar value or, if not in dollar value, by pound value? I mean in terms of number of pounds carried, say.

A. Yes, I could more easily state it that way. I would say our volume—and I am speaking now of Seaboard's volume, not the total volume in the air—in that group approximates 600,000 pounds a year.

Q. Of each of these products?

A. Well, this general group of which I spoke. Household furniture and personal effects I would say is very close to a million pounds a year that we carry.

Q. Are these same products carried by the ocean carriers?

A. Oh, yes.

[fol. 252] Q. Who carried the products before you started to carry them?

A. Well, in our business there were only boats between the United States and Europe.

Q. Could you state to us, Mr. Norden, some of the advantages about air cargo transport over ocean carriage?

A. I think the biggest single factor is the factor of time and that in itself produces a number of advantages. With the shorter transit time, let us say, a day or two days, compared to 14 to 18 days, in our area, it makes possible reduction in warehousing facilities. These are physical properties that have to be maintained, leased, owned and

depreciated and have with them, have associated with them, labor cost for personnel to run them and so on.

Reduction in time reduces the need for warehousing facilities.

The reduction in time results in a significant reduction in the dollar value tied up in the pipeline, the importer's or exporter's dollar which is tied up in his surface moving pipeline for a greater number of days. This can reflect itself in his ability, by using air, of doing many times the [fol. 253] volume of business that he can do if he uses surface with the same capital. Also reduces the cost of capital, cost of interest of the capital that is tied up, and so on, for the longer period.

Another advantage is the question of insurances, which must be borne somewhere, either by the exporter or the importer. Insurance by air is, as the air has developed—is significantly lower than the cost of insurance by ocean primarily due to the pilferage problems, I would say, on the order of—ocean shipment methods would carry insurance rates that are four to five times as high as air rates.

Those are some of the advantages that come immediately to mind.

The Court: You explained the different advantages that flow from the saving in time. Are there any other advantages like time that you can relate?

The Witness: Yes, it is a very significant matter, which is the ability of the customer to measure its market more nearly at the time that his market is turning from a projection into a reality.

With the use of air as a method of distribution, the customer can, as a regular basis of distribution, the customer can tailor his requirements more nearly to the conditions [fol. 254] as they actually pertain, more or less of a concept that it is easier to predict tomorrow's weather than it is the weather a month from tomorrow or six months from tomorrow.

Those are significant, especially in terms of wholesale and retail trade, because they have to project their requirements to a future market and they run two risks, which are calculated risks, one, when the market actually takes place, they may have considerably less on hand than

they could sell and, two, they could have much more on hand of the wrong kind of article and are unable to sell, which result in post-season sales, and all that sort of thing, where they attempt to just get their actual cost out of the goods that are excess to the market requirements.

Q. Mr. Norden, I would like to turn your attention a little bit to the future. I believe you have referred to a recent period of the history of the air cargo transportation as the developmental period. What are the prospects for round the corner?

A. Well, I am very bullish. I think the prospects of the next—of the period in from two or three to five years are very substantially greater than, I think, anyone has ever envisioned.

[fol. 255] Q. Would you state the basis of this opinion?

A. Well, my basis for it is that all the years that we have been developing this air cargo to attempt to make it into a business we have been fighting the fact that we have to use vehicles that were not intended, were not designed and, therefore, have none of the features that make them really desirable or adaptable for the carriage of cargoes. This has been a period in which we have had to make do the vehicles that result as a by-product of the passenger airplane, we will say.

Many of the airplanes that had been in prior years used in the airplane freight business were in fact just converted from passenger airplanes into freight, and whilst they did a job of carrying, they did so at a very high cost. This is expressed in various terms but most commonly in terms of ton mile cost.

Q. In a comparison of your present airplane with the new airplane, in respect to this cost per ton mile, what is your present cost on your Constellations?

A. On our routes our direct costs, I will put it on that basis for comparability, would be between 10 and 11 cents per ton mile, per available ton mile, and our indirect costs [fol. 256] would be about 5 cents, something slightly less than 50 per cent of our direct costs per available ton mile.

Q. So that the projected cost per ton mile will be reduced—what would be reduced?

A. You mean with the kind of airplanes which the industry is examining today?

Q. Yes.

A. And so on?

Q. Yes.

A. Well, I think there is a range of airplanes, certainly three or four, five, that we have examined in considerable detail and, broadly speaking, they all can be operated at a direct cost of between three and a half and four cents per available ton mile.

Q. What do you predict to be the significant result of this reduction in cost per ton mile?

A. Well, the big significance is, of course, that the air carriers can, with a vehicle that operates at these much lower costs, can set in a rate structure that is considerably lower than the one that pertains today with the vehicles we operate today, and with the lowered rate structure we have no doubt at all about the penetration that can [fol. 257] be made in surface moving cargoes.

Q. I believe in response to the Court's question awhile ago you stated that the available tonnage of your present airplane was around 18 tons?

A. Yes, sir, on our routes we can operate—

Q. Can you project a little bit into these airplanes which you refer to as their tonnage capacity?

A. Yes, sir, the airplane which we have examined we have examined on the basis of putting them in operation on our routes, and on our routes, the different airplanes will carry from about 34 tons to 50 tons, or slightly over 50 tons, depending on which airplane is in question.

Mr. Peters: You may examine.

[fol. 258] Cross examination.

By Mr. McKay:

Q. Mr. Norden, how long has Seaboard & Western been in business?

A. Since the fall of 1946, and our first revenue flight was in May of 1947.

Q. Approximately 12 to 13 years.

A. Yes, that's right.

Q. I think you and Mr. Peters referred to your operation as being in a development stage?

A. Yes, sir, that's true.

Q. Would you regard it, Mr. Norden, as being in the experimental stage?

A. The first nine years, I would say, we were in the experimental stage. I don't regard it as being in the experimental stage any longer. We are in the development stage now.

Q. You are aware of the fact, however, are you not, Mr. Norden, that the Civil Aeronautics Board just a month or two ago has said that "scheduled trans-Atlantic air freight transportation is in the experimental stage"?

A. I believe they said that.

Q. You disagree with them?

A. Yes, sir.

[fol. 259] Q. When you say you believe they said that, are you familiar with the Board's decision in Seaboard & Western Airlines' application, the decision dated April 7, 1959?

A. Very much so.

Q. You have no doubt that they did say it. I can show it to you if you have.

A. Oh, I didn't mean to—yes, I know they said it.

Q. Thank you. Mr. Norden, where does Seaboard & Western derive their income from? What are the various sources of their income? Breaking down this general cargo, have you any passenger business at all?

A. We are not authorized and never have been to engage in the carriage of passengers. We have—

Q. Pardon me.

A. I have to amplify the answer.

Q. Surely.

A. We have from time to time and in very small volumes carried passengers pursuant to special exemptions which the Board has from time to time granted. For instance, in the movement of some of the what is generally termed refugee movements and that sort of thing, we have en-

[fol. 260] gaged in very limited, not significant volumes of that pursuant, in each case, to special exemptions.

Q. Could you subdivide, if you will, the income? In other

words, do you carry cargo for the military under contract to the military?

A. Under contract? You mean as contract carriers?

Q. Do you carry military cargo, Mr. Norden?

A. Yes.

Q. And do you do that under contract with the Government?

A. Oh, we do it under charter. Is that what you mean?

Q. Charter?

A. Yes.

Q. Is that the only way you do it, Mr. Norden?

A. That's all.

Q. And then you have commercial cargo.

A. We have commercial cargo.

Q. Have you any other sources of income?

A. Yes.

Q. What are they?

A. We have for many years engaged in what is termed [fol. 261] wet lease operation for other airlines.

Q. You lease your planes to other airlines?

A. Wet lease.

Q. Would you please define that term for me?

A. Yes, sir. Perhaps a better definition can be found in the CAB orders, but roughly it means that you operate the airplane, you furnish the gas and oil, the maintenance, the flight crews, all the enroute services and so on to the vehicle for which you are paid a price. The airline to whom you so lease the property and facilities furnishes all the traffic, whether it be cargo or passengers and so on.

Our wet lease operations have been primarily in the passenger field, to other airlines on the North Atlantic.

Q. Do you lease these planes under a wet lease, as you call it, Mr. Norden, because of a lack of cargo business of Seaboard & Western?

A. I can't subscribe to your terminology.

Q. Has Seaboard & Western an excess of planes?

A. No, sir.

Q. Could you explain to us, Mr. Norden, why you wet lease your planes rather than use them in the air cargo business? Is it more profitable to wet lease them than [fol. 262] carry air cargo? Or what is the reason? That is what I am trying to get at.

A. In a development business such as we are in and have been in it is necessary to maintain a certain structure in a far-flung route system. In order to give proper service to your essential business, which in Seaboard's case is freight, to do so in a developing business you can take two roads: You can amass a great amount of capital and keep spending your capital and concentrate solely on the development of the freight, taking the losses as they come as a part of your capital cost of investment; or, if you don't have that very substantial volume of capital, you can engage in other activities which are economic and which contribute, make a significant contribution to the burden, the cost, the size of the structure, minimum size of structure that is necessary in order to service your basic business. That is why we have engaged in wet lease operations.

Q. Certainly, Mr. Norden, you would not, as a prudent business man, lease, wet lease or otherwise, your planes if you had air cargo to move, would you?

[fol. 263] A. That's correct.

Q. If you had use of those planes to move your air cargo?

A. That's correct.

Q. In fact, Mr. Norden, isn't it true that Seaboard & Western at times has found it necessary to cancel flights and to cancel various points of call because of a lack of air cargo?

A. I think that's true. I think it is generally true in the airplane business.

The Court: Even passenger planes?

The Witness: Oh, yes, certainly.

By Mr. McKay:

Q. How frequently have you found it necessary to cancel flights or points of call because of a lack of air cargo? I know it is hard to give a precise figure, but can you say it occurs frequently, occasionally or very seldom?

A. I would say that up until the last year it has occurred occasionally. During the last year it has occurred to a much lesser degree.

Q. And prior to that?

A. To a more substantial degree.

Q. Is that what occasioned the Civil Aeronautics Board [fol. 264] to call Seaboard & Western's performance a poor performance in this decision that I have referred to?

A. I don't know.

Mr. Peters: This witness cannot know what is in the mind of the Civil Aeronautics Board.

Mr. McKay: He is familiar with the application that the company made.

The Court: You did ask him as to whether he knew the reason why somebody said something. They might have been mad at him.

By Mr. McKay:

Q. Do you agree with the Civil Aeronautics Board when they state that Seaboard & Western's performance has been a poor one?

A. Sir, I don't know what they are talking about there. If you will let me read it, I will refresh myself. I haven't looked at that.

Q. Have you seen that before?

A. Oh, sure. I was interested in the end of it.

(Document handed to witness.)

Q. To save you time, Mr. Norden, as far as I am concerned, you may read the whole decision, but I am referring [fol. 265] only to that one sentence, and I would like to know whether you agree with their description of Seaboard & Western's performance or not.

A. Well, I think what they were referring to there was a particular period of time. If I recall correctly, it was a period of about two months or something like that.

Q. It is your understanding that—

A. Occurring in 1958, and that—

Q. It is your understanding with reference to this Board's decision that, when they characterized Seaboard & Western's performance as an poor one, they were referring to only two months in early 1958?

A. Yes, I believe so.

Q. I see. Let us take the year 1957, Mr. Norden. Isn't it a fact that Seaboard & Western lost $401,000?

A. Whatever we lost is in the annual statement, sir.

Q. You don't know?
A. I haven't looked at it lately.
Q. Do you know?
A. Somewhere like that, yes.
Q. Approximately.
[fol. 266] A. That's right.
Q. Isn't it a fact that Seaboard & Western ended the year 1958 by incurring substantial operating losses?
A. Yes, sir.
Q. Staying with the year 1957, Mr. Norden, what percentage of Seaboard & Western's business was with the military, approximately?
A. I would have to refresh myself with an annual report.
Q. If I were to tell you that your annual report shows it was 47 per cent, would that refresh your recollection?
A. If it is in the annual report, it is accurate.
Q. Do you know what percentage of Seaboard & Western's business in 1957 was commercial cargo?
A. As a percentage?
Q. Yes, sir.
A. I don't recall whether we so described it in the annual report.
Q. If I were to say that it was approximately 30 per cent, would that be roughly accurate?
[fol. 267] A. If it is in the annual report, it is absolutely accurate.

The Court: That leaves me in the dark.
Mr. McKay: I know, your Honor. We will obtain a copy.

By the Court:

Q. Can't you say now from your recollection as president approximately what was the revenue, your gross revenue from commercial cargo?
A. Well, sir, this is a statistic which, if I may explain why, I can tell you—
Q. The answer is no, you can't say?
A. I can't say with preciseness related to the percentage figures because this is a statistic which some years ago the SEC insisted we put in in an offering prospectus, and it is a constructed statistic, and they have asked in 10-Ks

and other required reporting forms that we continue to do it, and it became a habit. It really has no significance in the management of the company and in the affairs of the company. It is a statistic, and we have been putting it in because it was required by the SEC.

Q. You are not able to give an estimate as president of the company as to what percentage of your revenue [fol. 268] came from commercial cargo?

A. I don't believe that is—I don't believe that is the percentage statistic.

By Mr. McKay:

Q. What would you say, Mr. Norden, is your best estimate as president of the company?

A. We did about a little over $7 million in cargo in 1957.

Q. Military and civilian or just civilian?

A. Both combined in cargo. I don't believe our military cargo in 1957 was very significant. I doubt if it was a million dollars.

The Court: Well, you just told the lawyer that your military cargo represented about 47 per cent of your revenue.

The Witness: I don't believe that is what the statistic—that is a conclusion, I believe, sir. I believe that refers to total revenues, and in 1957 we did many millions of dollars in revenues for the military in the carriage of dependent personnel across the Atlantic in both directions.

* * * * * * * *

[fol. 269] Q. Are you familiar, Mr. Norden, with the fact that four domestic cargo carriers have described their condition as critical and have applied to the Civil Aeronautics Board for a subsidy?

A. Yes, sir.

Q. One of the witnesses here yesterday, Mr. Giles of Riddle, explaining his company's critical condition, described it as due to mismanagement. Would you say that [fol. 270] your losses have been incurred by reason of mismanagement?

A. No, sir.

By the Court:

Q. Prior to getting your certificate, you never got any subsidies from the Government, did you?

A. No, sir, we get no subsidy from the Government even now, sir.

Q. Even now, carrying mail?

A. No, sir. That green order that counsel referred to specifically sets it forth; not eligible.

* * * * * * *

[fol. 271] Q. What do you carry for the military, Mr. Norden?

A. All manner of routine resupply items that military forces need in the field and routine—

Q. Could you give us some examples, Mr. Norden?

A. Sir, the best way I could cite it to you is to say that, if you went to a department store, you would see everything that we carry to the military.

Q. Do you carry household effects for the military?

A. Yes, sir. We carry everything you can buy in a drug store, everything you can buy in any bargain basement or clothing, spare parts for radios, radio equipment. Everything you could find in any general merchandise store we carry for the military as a routine resupply job.

I might say, sir, that's exactly the kind of item which the military send on Government bills of lading on ocean vessels and surface rail and truck freight. We are unique in the air business that it is grouped together and handled [fol. 271a] in the agency within which it is handled. This does not occur within the military organization in any other military department except the Air.

This kind of volume in all the statistics of rail, freight and ocean carriers is all regarded as freight. It is not distinguished from commercial shipments.

[fol. 272] Q. I inquired of you, Mr. Norden, concerning the year 1957. Can you tell the Court today what percentage of your business is with the military, and what percentage is civilian, and what percentage is leasing—whether leasing or otherwise, currently speaking.

A. Our business has undergone considerable revamping in the last year. Some very significant matters occurred.

During part of 1957—of 1958 and a month and a half of 1959, at various times; we did have a right to carry mail pursuant to an exemption. At other times court actions intervened and the order of the Board was rendered null and void for temporary periods. In those periods we did not carry mail. This inability to carry mail, even though it was temporary, caused us to shift more of our vehicles into air freight service as such. That, plus the fact that the military procurement concepts underwent another of a long series of changes last year, and the business to which I alluded a little bit ago; namely, the carriage of passengers for the military, which was a very substantial volume in almost every one of our—of the past four or five years.

Q. Seaboard Western did carry military personnel at [fol. 273] least four or five years?

A. That was pursuant to contract for carriage of passengers.

Q. You could say the Seaboard Western was very dependent on its military contract, wouldn't you?

A. Sir, Seaboard & Western is dependent on all the business that it can do.

Q. Without the military contract, on the shifting of Seaboard & Western to civilian cargo movement your losses would be much greater than they are, is that not a fact?

A. If we maintained the identical structure that we maintain, having such business, you are correct.

Q. You could always—

A. Arithmetically it could be arrived at.

Q. You could always sell off the company's planes and what not and reduce your company down to a few planes just to contain the civilian cargo, is that what you meant, if you kept the same structure, planes not necessary for the movement of military personnel and cargo?

A. It isn't only the cost of the airplane, sir. It is, for instance, the cost of maintaining equipment. These are very, very substantial to do the job properly. The main- [fol. 274] tenance, installation, all by itself, has to be a very sizable proportion to do it effectively and render service.

Mr. McKay: Will the Court bear with me for a moment?

(A pause)

Mr. McKay: That is all.

Mr. Peters: A couple of questions.

Redirect examination.

By Mr. Peters:

Q. Mr. Norden, how is the stock of Seaboard & Western distributed?

A. Well, our stock is registered and traded regularly on the American Stock Exchange. I believe we registered it, I think, in 1952. It is traded daily. We have about 4,000 shareholders in every state of the Union—perhaps in excess of that, there being so many—

The Court: I think he wanted to know how many shares were outstanding.

The Witness: Is that what you are asking?

Q. How are they distributed?

The Court: Keep your voice up so everybody can hear you.

A. You mean how many shares of stock are outstanding? [fol. 275] Q. Yes.

The Court: Yes.

A. Just short of a million shares.

Q. Do you know what the going rate of that stock is on the Exchange?

A. I think it is probably between thirteen or fourteen dollars. Somewhere like that.

Q. Do you think, Mr. Norden, that Seaboard & Western is a going outfit?

A. Yes, sir.

Q. Do you have any knowledge of whether or not Grace Line gets a subsidy from the Federal Government?

The Court: Let us get on here. Haven't shipping companies, since they started building ships, gotten something?

Mr. Peters: I suppose so. I was just going to ask the witness whether he thought- -

The Court: I know what they get. They are doing all right.

Q. How about the National—

Mr. Peters: Well, all right.

Mr. McKay: Your Honor, I am advised by my associates that we looked at the 1957 annual report of the American Stock Exchange. We haven't got a copy available.

[fol. 276] The Court: I think counsel agreed you could offer it in evidence.

Mr. McKay: I was wondering whether Mr. Norden would supply us with a copy? Ours is in the American Stock Exchange.

The Witness: Gladly.

Mr. McKay: Thank you.

Q. Do you know whether or not, Mr. Norden, Panagra lost money last year?

A. I would be guessing. I don't really know.

Q. Do you know whether or not Panagra has applied for a six million dollar subsidy?

A. Yes, I know.

Q. Would you say that was because of the mismanagement of Panagra?

A. No, sir, I would n't say that.

The Court: All right, next witness.

(Witness excused.)

Robert Stossel, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

[fol. 277] Direct examination.

By Mr. McConnell:

. . . . . .

[fol. 278] Q. Are you familiar with the developments made by Lockheed in cargo planes?

A. I think so, yes.

Q. Using the chart, could you explain to the Court what Lockheed has done in the way of payload ranges? Does Lockheed have a large cargo plane in operation at the present time?

A. Yes, Lockheed a Super Constellation in operation at the present time commercially and it has the Hercules C-130 in operation militarily.

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[fol. 279] Q. Have you developed another plane?

A. We have developed the C-130, originally designed in California by the same people as designed the Super Constellation and then put into production in our Georgia Division and over 200 of those are now flying with U.S. Force and also with the Royal Australian Air Force.

Q. None of those planes are in commercial use at the present time?

A. None as yet, no.

Q. Can you describe in detail some of the problems which you solved when you made this plane?

A. I think one of the biggest problems, and one that we wouldn't have been able to solve, nor would, I think, anybody in the industry have been able to solve 15 years ago was the ability to have an end load airplane with a door, [fol. 280] maximum door and width of cargo compartment and still have it pressurized. That was a structural job which was almost beyond, I think, in fact beyond the state of the art 15 years ago.

Q. Is this a picture of the plane that you are referring to?

A. That is right, the picture of the back end of the plane showing the big door.

Q. What is the payload of that plane?

A. The military airplane is not on those charts, but the commercial derivative is the red line and, for international operation, which means with international equipment, etc., it is 42,000 pounds to about 2,200 statute miles.

Q. Have you gotten this plane, the Hercules, into advanced state of production, advanced state of development?

A. Yes, I think so. It is in advanced state of production, as this military version, and the commercial is in advanced state of design.

Q. What else does Lockheed have as plans for the future?

A. We also have the Super Hercules, which was announced, as a matter of fact, in Las Vegas about two weeks [fol. 281] ago, and it is shown on that chart with the designation GL, for Georgia Lockheed, 207. That airplane has been stretched both as regards increasing the length of the fuselage and as far as increasing the wing area and the fuel capacity, and it is an intercontinental type of airplane.

Q. Payload 80,000?

A. That is right, 78,000 pounds to about 1,700 miles.

Q. Part of this line, this point, is 1,500 miles?

A. That is the point at which the maximum take-off we think has been attained, and any additional fuel required to make a greater distance at that point must be loaded on at the expense of payload.

Q. In other words, this is for a flight of 6,000 miles, is that correct?

A. 6,000 is what we call the theory range of distance which it can carry a verbal message.

Q. Is this plane specifically designed for commercial cargo?

A. That plane is designed specifically for commercial military logistic support or commercial— ;

[fol. 282] Q. Commercial cargo. Are you familiar with what the other manufacturers are doing at the present time?

A. Yes, I believe we are. We try to keep up to date.

Q. What is Douglas—I don't want to get you into a competitive situation. They have made great advances, have they not?

A. Douglas is one of the manufacturers who is proposing an intercontinental air freighter, yes.

Q. Is Convair doing the same?

A. Yes.

Q. Boeing doing the same?

A. Yes.

Q. How long do you think it will be before this fleet is in actual operation in commercial cargo?

A. You mean the large airplane; the 207 type or all of these?

Q. The first is going to be the Hercules that is going to break through?

A. That is right, and that would be delivered the last part of 1960, and the Super Hercules can be delivered in the last part of 1961.

Q. By how much do you think the putting into operation [fol. 283] of the Hercules and similar planes will increase the carriage of air cargo?

A. I would have to run a check, if I may

I would judge 20 to 25 fold because of the decrease in rates which can be afforded with that airplane.

Q. That is the Super Hercules?

A. That is right.

Q. How about the Hercules that is coming in just now?

A. That is about five times. This is the estimate of one forecaster and forecasters have variations in their manner of making estimates.

* * * * * * * *

[fol. 289] Q. So that how much do you think the Super-Hercules will decrease or the Hercules family will decrease the indirect costs?

[fol. 290] A. The indirect costs, that portion or those portions attributable to documentation and loading, will be decreased by a system such as this mechanized loading, and I really think that all in all we will get our indirect costs down to about half of the present values. We estimate 2.5 cents per available ton-mile.

Q. So that would make a total ton-mile of the Hercules of about 7 cents?

A. About 8 cents or 8½ cents in the Hercules and about 6½ cents—

Q. Six and a half cents?

A. —on the Super-Hercules, yes.

Q. Ten years ago what would have been the cost of the airplanes and the operation at that time?

A. Well, 10 years ago you had the C-54, about 10 cents per ton mile.

Q. That is just the direct?

A. That is the direct.

Q. And combined with the indirect?

A. I think the indirect in that case, with the magnitude of the movement of freight, was at least 6 cents per available ton-mile, so that would have been a total operating cost, at 100 per cent load factor, of at least 16 cents per [fol. 291] ton-mile.

Q. And in that time you are now going to reduce it to around 8 cents a ton-mile?

A. And even less than that with the Super-Hercules.

Q. With the Super-Hercules?

A. Six and a half cents with the Super-Hercules compared with 16.

Q. And you feel that with these new vehicles the tonnage of air cargo carried will increase twenty-fold?

A. I think it will. According to the data which our own people have worked up, it will increase twenty to twenty-fivefold compared with the tonnage today with the DC-6As and the Super-Constellations.

. . . . . .

[fol. 359]

New York, May 18, 1959,
10.30 a.m.

. . . . . .

S. Robert Mitchell, resumed.

Cross examination.

By Mr. Mallory:

Q. Mr. Mitchell, in your long experience in the Government in your economic and statistical positions have you ever had occasion to engage in research or economic study relating to international air transportation before this case? [fol. 360] A. No, sir, not on a very extensive basis.

Q. Before we get into questions relating to specific exhibits of yours it might be helpful to put your statistics into some proper perspective. In that connection I believe you quite candidly acknowledged in your direct testimony that Exhibits 32 through 66 were not completely accurate; is that correct?

A. I don't think your word "accurate" is quite right. I don't know whether that is quite what you mean to say. I presume they were collected accurately by the Immigration

and Naturalization Service. I have no knowledge that they were incorrectly—inaccurately collected by that agency. What I have indicated in my statement is what they purport to show, but I presume they are accurate.

Q. Do you have a copy of your testimony, Mr. Mitchell?

A. Yes, I have.

Q. Would you turn to page 31 of your testimony, Mr. Mitchell.

A. Yes, sir.

Q. Question in the middle of the page, referring to the statistics:

[fol. 361] "Q. Are they completely satisfactory, Mr. Mitchell?

"A. No, they are not completely satisfactory."

Is that your testimony, Mr. Mitchell?

A. Not completely with respect to the Immigration and Naturalization statistics.

Q. All right.

A. That was a statement with respect to—

Q. That is all. I have finished my question.

A. I haven't finished explaining what my answer referred to.

Q. That is responsive to my question.

A. No. The only question was was that what you said on page 31.

Q. Would you turn to page 32 of your testimony, Mr. Mitchell?

A. Yes, sir.

Q. You were describing on page 32, I believe, Mr. Mitchell, the limitation of the OD series used by you in your statistics, were you not?

A. Yes, sir.

Q. Would you turn to page 33 of your testimony, Mr. Mitchell?

[fol. 362] A. Yes.

Q. At the bottom of that page you state, I believe, Mr. Mitchell—you may correct it if you wish now—that the coverage of INS statistics is larger than the OD series and that therefore it may slightly overstate the position of Pan American and Panagra when you use these statistics; is that correct?

A. No, sir. I submitted a correction of that sentence to all the defendants in which the word "larger" should be changed to "different" and the word "overstate" should be "affect."

Q. How does it affect the statistics, Mr. Mitchell?

A. The coverages of the two series are different. In one way it may affect it upward. In another way it may affect it downward. There are compensating effects.

Q. And does that make for complete accuracy, Mr. Mitchell?

A. The series as individually reported are accurate to the best of my knowledge and belief, yes, sir.

Q. Completely accurate?

[fol. 362a] A. To my knowledge they have been collected accurately by the CAB and the Immigration and Naturalization Service.

[fol. 363] Q. Now, on page 34 of your testimony, Mr. Mitchell, you say that the results would not be significantly different than you would get from an elaborate detail than costly study, that there may be a few percentage points either way; is that correct?

A. That was with reference to the use of both I.N.S. and CAB figures in combination with each other.

Q. You mean comparing the two?

A. No, using them together. I wouldn't say I am comparing the two, no. I am using them in conjunction with each other. If you were to prepare the statistics from one source rather than from two, where different collection procedures are used, there may be a little difference in the result because of the difference in the collection procedures.

Q. There is a difference in the collection procedures in the two series.

A. Yes, sir.

Q. Then, do you now state that to the best of your knowledge, your figures, these statistics, are completely accurate?

A. Oh, no, sir.

Q. All right. Now, let us look at your Exhibit 32 for the [fol. 364] moment, as an example. You compare their March and September figures for U.S. flight carriers; is that correct?

A. From the O.D. survey of the CAB I show March and September figures.

Q. And for the I.N.S. statistics for foreign flag carriers, you average or make a monthly average from the entire year's figures, do you not?

A. That is correct.

Q. Did you make any tests, Mr. Mitchell, to determine whether March and September are representative months for flag travel, air travel, between the United States and South America?

A. You said "flag travel"; do you mean—

Q. Air travel?

A. Did you mean U.S. flag travel?

Q. Air travel of any kind?

A. I only used March and September for the U.S. flag airlines, as is clearly shown in the exhibit.

Q. I repeat—

A. (Continuing) There are not available from the O.D. survey, except for March and September—

The Court: The question was whether you made an independent search to determine whether March and Septem-
[fol. 365] ber were the correct months to show the good average?

The Witness: It is a little hard to make a comparison when figures are not available.

The Court: The answer is no?

Q. Mr. Mitchell—

A. I will say this:—

Q. I think you have answered the question, Mr. Mitchell, and I take it your answer is that you did not make any test to determine whether March and September were representative months—

A. That is not—

Q. —for air travel between the United States and South America as a whole; is that corerct?

A. That is not completely correct.

Q. What tests did you make?

A. I could not make any test based on the O.D. survey or the CAB, but I did compare statistics for the I.N.S., for the months of March and September, with the O.D. figures for the months of March and September, and I can give you those results right here.

Q. Mr. Mitchell—

A. (Continuing) I have not completed my answer to that question.

[fol. 366] The Court: No, but so far it is not responsive. The only thing that counsel seems to be interested in is whether you made an independent search to determine whether March and September were the reasonable average months for air traffic?

A. I made some study, yes.

Q. What study did you make?

A. All right. I compared statistics from the Immigration and Naturalization Service, U.S. flag total for the year, divided by 12, which would make a monthly average, with the monthly average for the two months, which may be compared with the average for the two months of March and September.

Q. Did you compare the March and September I.N.S. statistics for foreign flag carriers with your average monthly statistic for foreign flag carriers in your GS32?

A. Yes, I did. For the—

Q. What is the result of that comparison?

A. For the months of March and September the Immigration and Naturalization figures for foreign flag traffic show an average per month between the United States and South America of 8,074 passengers.

Q. As opposed to the statement in your statistics of the [fol. 367] 7,126; is that correct?

A. That is correct.

Q. That would be a percentage of variation of roughly 10 per cent or so, wouldn't it?

A. That is correct.

Q. Again, let's use Exhibit 53 as an example, Mr. Mitchell. You compared there, as I understand it—

A. Excuse me. Did you say 53?

Q. Yes, GS53, traffic between the United States and Argentina.

A. Yes, sir.

Q. You compared there O.D. statistics for U.S. flag carriers, which showed true origin and destination, with I.N.S. statistics for foreign flag carriers, which do not

show true origin and destination necessarily; is that correct?

A. That is basically correct, yes, sir.

Q. Now, did you make any statistical studies to determine the exact extent of the variation caused by this comparison of I.N.S. statistics with O.D. survey statistics?

A. Yes, I have figures on that. They may not be right at my fingertips here. The O.D. survey figures are much [fol. 368] more reliable than the I.N.S. statistics. So therefore, I use them for the United States flag carriers, inasmuch as they show a more accurate reflection of the traffic actually moving to Argentina; whereas the foreign flag figures only show the passengers who flew on the same plane all the way to Argentina.

Q. Do they even show that, Mr. Mitchell, if the passenger made a stopover of several days before resuming his journey?

A. I said all the way, so it would not include stopover, no, sir.

Q. You mean he had to stay on that plane all the way down?

A. He had to—at least he was manifested on that plane all the way.

Q. Well, the result of comparing O.D. statistics for United States flag carriers with I.N.S. statistics for the foreign flag is to result in an over-statement, or to put it conversely, an under-statement of U.S. flag traffic between the United States and Argentina, isn't it?

A. Would you repeat that last about an under-statement? I didn't get that.

[fol. 369] Q. Of foreign flag traffic between the United States and Argentina?

A. You say foreign flag traffic is under-stated?

Q. That is—yes, that is my question to you.

A. It depends on what you mean by "traffic". Now, these O.D. survey figures do include some foreign traffic that moved between the United States and some segment of a trip of a passenger going all the way to Argentina. The comparison I was making here was to build up a total, U.S. and foreign flag total, against which Pan American and Panagra's position could be compared with the overall

total. You would not be including in that total all the passengers unless you counted those who had stopovers, and that is why I used the O.D. survey figures.

Q. For the U.S. flag traffic you used O.D.

A. And I also—

Q. So that you included stopover passengers?

A. And they also included stopover passengers, who used foreign flag carriers where they participated on part of their trip with U.S. flag carriers.

[fol. 370] Q. But comparing OD statistics for U. S. flag carriers with INS statistics for foreign flag carriers, you included stopover passengers in your U. S. carrier figures—

A. And also on foreign flag traffic, yes.

Q. And also some—

A. There is some foreign flag traffic in the U. S. flag carrier figures as explained in my statement—

Q. Yes, all right.

A. —at the beginning of my report.

Q. Let's take the person, then, who goes on Pan American from New York to Buenos Aires; he stops over at Port au Spain for a couple of days and at Rio for a couple of days before continuing his journey. He is included in your OD statistics in Exhibit 53 as a United States-Argentine passenger, is he not?

A. Yes, sir.

Q. Let's take the same passenger, but instead of having him go on Pan American he goes on Aerolineas Argentina, a foreign flag carrier, from New York to Buenos Aires. He stops off at Port au Spain for a couple of days and at Rio for several days before continuing his journey to [fol. 371] Buenos Aires. Is he included in your INS statistics—

A. He is included—

Q. —as a foreign flag traveler?

A. He is included in the OD survey figures if he took a U. S. flag airline for part of his trip.

Q. Please use my example. I had him on Aerolineas Argentine on the whole way down. And my question to you

is: Is he included in the INS statistics as a foreign flag passenger?

A. If he had a stopover, he is not.

Q. So, if he had gone Pan American, he would be included in the OD survey statistics, whereas if he took Aerolineas Argentine he is not included in the foreign flag statistics; is that correct?

A. No, sir. He is included in foreign flag if he participated with a U. S. flag carrier.

Q. Please use my example.

A. You should have said INS statistics.

Q. He was on Aerolineas Argentina the whole way down. Is he included in the INS statistics as a foreign flag passenger?

A. If he had a stopover?

Q. He had two stopovers, one at Port au Spain and one at Rio.

[fol. 372] A. He is not included in the INS statistics, no.

Q. Let's take the same passenger coming from Buenos Aires to New York, on Pan American first. He stops off at Montevideo, Rio and Jamaica before coming on to New York. He is included in your OD statistics as a Pan American passenger, isn't he?

A. Yes, sir.

Q. Take the same passenger, again coming north on, say, Aerolineas Argentina the whole way, making the same stopovers. Is he included in your INS figures as a foreign flag passenger?

A. No, sir, he is not.

Q. And you made some studies, you say, to determine the variation caused by this different reporting system between INS and OD survey statistics?

A. The only information I had—

Q. Did you make any studies, Mr. Mitchell? That's my question.

A. I discussed the problem with—

Q. Did you make any studies, Mr. Mitchell? Please answer my question.

A. What do you mean by "study"?

Q. Did you make any statistical or economical studies [fol. 373] by yourself or with people working under your

supervision to determine the variation in the statistics caused by this different reporting method?

A. No study could be made because I know of no information that would provide the basis for making such a study. I used what was available.

Q. That answers my question, Mr. Mitchell. I wish you would just respond and not go beyond it.

Then my question to you, Mr. Mitchell, is: Do you know the exact percentage variation that is caused by this different reporting method between OD statistics and INS statistics?

A. Yes, I think I can show you the effect of the two.

Q. Good. Between the United States and Argentina.

A. I am sorry, I don't have that readily available, but I can show you what the difference is—

Q. That's all right. You have answered the question.

A. —for U. S. flag to South America.

Q. I think those statistics will be in the record, Mr. Mitchell.

Again take Exhibit 53 as an example, Mr. Mitchell. [fol. 374] Would you tell us again what you mean by PAA participation?

A. It means that Pan American carried these passengers on the entire trip between the United States and, in this case, Argentina or carried the passenger part of the way on that trip, as reported in the OD survey.

Q. Then, if the passenger took Pan American from, say, Buenos Aires to Montevideo, a distance of about 125 miles, and took Varig, a Brazilian carrier, the rest of the way to New York, the passenger would be included in the Pan American statistics as an Argentine-United States passenger on Pan American; is that correct?

A. With Pan American participation.

Q. If the same passenger flew on Varig from Buenos Aires to Montevideo and then took Pan American the rest of the way to New York, would he be included in your statistics as a—

A. Would you repeat the points? I was a little confused on that.

Q. All right. Take the same passenger flying on Varig from Buenos Aires to Montevideo and then taking Pan

American the rest of the way to New York. First my ques-
[fol. 375] tion is: Would he be included in your statistics as a Pan American passenger from Buenos Aires to New York?

A. Yes, sir.

Q. And my next question is: Would he be included as a foreign flag passenger from Buenos Aires to New York?

A. Would you repeat the legs of that trip so I can answer your question correctly?

Q. All right. He is on Varig from Buenos Aires to Montevideo.

A. Yes.

Q. Then he took Pan American the rest of the way to New York. You have answered that he would be included in the Pan American statistics as a passenger from Buenos Aires to New York even though he got on the Pan American plane at Montevideo.

A. In the OD survey series, yes.

Q. Now my question to you is: Is he also included in your foreign flag statistics as a Buenos Aires-New York passenger on Varig or on a foreign airline?

A. Not on that particular trip, no, sir.

Q. So that again makes for some discrepancy in your
[fol. 376] figures, doesn't it?

A. There are minor differences. You would have to count those passengers to see how important they are.

Q. What tests have you made to determine the extent of the inaccuracy caused by this method of counting PAA participation and not foreign flag participation?

A. I have a little table here which explains what the effect is, and I would like very much to give you the result.

Q. All right. I would like to hear the result for United States or Argentine traffic.

A. I don't have it for the individual—

Q. All right.

A. I can show it to you for certain other—

Q. All right. You have answered my question.

A. I can work that up.

Q. You testified, Mr. Mitchell, I believe, that Pan American is the largest international air carrier in the world by any measure; is that correct?

A. I don't think I quite said that. Can you recall the page where I said that?

[fol. 377] Q. No. You don't know whether it is or not, I take it, by any measure.

A. In terms of route miles—

Q. Just please answer my question.

A. Well, I thought I was. I am sorry.

Q. I say by any measure do you know? Let me rephrase that. Do you know whether Pan American is the largest carrier in the world, using any measure?

A. I don't think it is.

Q. All right. Indeed, it is not even the largest United States carrier that engages in international air transportation, is it, Mr. Mitchell?

A. In international operations I believe that it is.

Q. Did you make any studies as to how large Eastern, TWA, United or American are?

A. In their international operations?

Q. No. How large they are.

A. I know how large they are, yes.

Q. Considerably larger than Pan American, aren't they?

A. Not in international operations, no, sir.

Q. They are considerably larger than Pan American, [fol. 378] aren't they?

A. Including their domestic operations, yes.

Q. And they do engage in international air traffic, don't they?

A. To some extent; not to the extent that Pan American does.

Q. Pan American doesn't engage in domestic transportation, does it?

A. That is right. I believe that is correct, yes, sir.

Q. You testified at page 40 of your testimony, Mr. Mitchell, that the great bulk of international traffic is on one plane for the entire international route; is that correct?

A. I did not say the same plane there. I said the same airline or I implied the same airline, not the same plane.

Q. Same airline. All right. I will take that correction.

A. That makes a big difference in the statistics.

Q. Did you make any test to determine the difference?

A. Yes, sir.

[fol. 379] Q. As to whether it was the same plane or the same airline?

A. Same airline.

Q. Take again your Exhibit 53, United States-Argentina. Did you make any tests or studies to determine the exact percentage of traffic which flies on the same carrier on that entire international flight?

Mr. Kenney: I am sorry. May I have that exhibit number?

Mr. Mallory: 53.

A. Yes, sir, I did. I did with respect to the month of September.

Q. The month of September?

A. Yes, sir.

Q. Of what year?

A. 1957.

Q. What was that percentage?

A. Would you just wait a moment, please?

Q. Oh, yes.

A. You were referring to U. S.-Argentina traffic?

Q. Yes, I am.

A. This is almost the same, Mr. Mallory. It is based [fol. 380] on the OD survey of the CAB, and it is between the United States and Buenos Aires. Will you accept that?

Q. I will take it.

A. Pan American did not participate with any other international air carrier in carrying about 60 per cent of that traffic. Now another 6 per cent approximately was carried by Panagra with another U. S. airline but with no foreign carrier. Another 4 per cent was carried with another U. S. airline and with a foreign flag airline. Pan American participated with a foreign airline but no other U. S. airline in carrying about 31 per cent of the traffic.

Q. Weren't there CAB studies, Mr. Mitchell, that show that approximately 25 per cent of the passengers fly on more than one carrier on a voyage between the United States and Argentina?

A. I don't know what studies you are referring to.

Q. You did not examine any studies?

A. I may have, but I don't know which one you are referring to.

Q. I am just asking you if there are any studies of the CAB which would show that.

[fol. 380a] A. I couldn't answer that.

Mr. Mallory: All right. That completes my cross.

[fol. 381] Q. Mr. Mitchell, on your direct testimony you were asked the following questions and gave the following answers:—

A. Would you give the page, please?

Q. 69:

"Q. Panagra just started its cargo service in 1957?

"A. That is right.

"Q. In July.

"A. These figures are for 1957, and Grace only started its all cargo operation in the middle of that year."

Are you not aware of the fact, Mr. Mitchell, that Panagra started cargo operations in 1948?

A. Oh, yes, sir, but they suspended them after that.

Q. Do you know why they suspended them, Mr. Mitchell?

A. (No response)

Q. Yes or no, Mr. Mitchell?

A. No; in detail, I don't.

Q. Are you familiar with the decision of the Civil Aeronautics Board, where they found that all cargo operation by Panagra was not reasonably required?

[fol. 382] A. I have seen that statement, yes, sir.

Mr. McKay: That is all.

Cross Examination.

By Mr. Kiernan:

Q. Mr. Mitchell, will you turn to your Exhibit GS2 for a moment, please?

A. Yes, that is the map.

Q. That is the map. And in that map you have defined western South America as a portion of Colombia, Ecuador, Peru, Bolivia, Chile; and is that a portion of the Argentine,

or does that include the whole of the Argentine, your definition of western South America?

A. It includes all of Argentina, actually, but there is practically no traffic between the United States and Argentina, other than to book Buenos Aires. So for practical purposes, whether it is in or out makes no difference. However, Panagra is certificated to fly into points in Argentina other than Buenos Aires.

Q. Well, for purposes of this map, as I understand it, you have taken as your definition of western South America only that portion of South America served by Panagra?

A. It is the area of effective competition in which Panagra operates.

[fol. 383] Q. You have excluded in your definition of western South America those portions of South America which are served by Braniff, but which are not served by Panagra; is that correct?

A. To the right of this line that divides western South America from eastern South America, that is correct. Within western South America I included all points where they are served by Braniff, Panagra or anybody else.

Q. Well, the test of that was laid down by you in arriving at your definition of western South America, as indicated on your Exhibit GS2, was whether or not the area was served by Panagra; isn't that so?

A. I don't believe that is stated in this exhibit.

Q. No, but I am talking about what the result of your exhibit is.

A. The result of my exhibit is the area of effective competition in which the defendant Panagra operates.

Q. So that anything, any area of South America which is served by one of its competitors, namely, Braniff, which is not also served by Panagra, has been excluded by you from—

A. It hasn't been excluded if it is within this western [fol. 384] South America, the geographic area that I have set up here.

Q. I think we are arguing around the corner.

A. Why don't you make a specific example and I can say yes or no?

Q. What I am trying to bring out is, the theory upon which you constructed this map, so as to define western South America, is to take only those areas which are served by Panagra and not all of the areas served by Braniff?

A. That is quite true. And with respect to anywhere that Braniff serves, you mean?

Q. That's right.

A. That is correct, yes.

Q. And, thereby you have excluded Bogota and Colombia from western South America.

A. Yes, sir.

Q. And you have also excluded Paraguay.

A. Yes, sir.

Q. And Uruguay.

A. Yes, sir.

Q. Now turn to Exhibit 10, will you, please? You notice there that you arrive at a percentage total of Pan America [fol. 385] Panagra under average per month percentage of total, and isn't the figure 84.2 there?

A. Pan America and Panagra combined, yes, sir.

Q. Now do you notice the figure, Panagra participation, 79.6 per cent?

A. Yes, sir.

Q. Do you know to what extent that percentage figure would be varied if you included all of Braniff's competition in South America?

A. Yes, I think I do. I assume you are referring to the areas in which—

Q. No, I am asking you whether if you included all of the passengers carried by Braniff into South America?

A. Well, I don't have information for Braniff separately, sir, but I do have information how much was carried between the United States and the different countries of South America by these categories of carriers that I have listed in the exhibit.

Q. You don't have the information then that I have asked you about, to what extent that percentage, 79.6, would vary if all of the passengers carried by Braniff into South America were included in your computations?

[fol. 386] A. I don't have figures for Braniff, no, sir.

[fol. 387] Redirect examination.

By Mr. Kenney:

Q. Mr. Mitchell, will you turn to page 31 of your testimony?

A. Yes.

Q. And will you explain what you meant when you said that the figures referred to therein were not completely satisfactory?

A. Well, Mr. Kenney, I only had a limited time in which to compile these statistics for this trial. Up until late in January there was talk about settling this case. I was not authorized by the antitrust division to bring any of these statistics up to date until his Honor made a ruling on that settlement matter and set a trial date for May 4th.

Between that time and May 4th is a very short length of time in which to put together figures covering a period of four or five years. I could only use the available sources. I did not have the time. I could not, even with the financial resources, go into an exhaustive study to get exact statistics like I would like to have had them for preparation, for presentation at this trial.

I used, therefore, just what was available, recognizing [fol. 388] that some statistics are compiled in different ways by different agencies. Some agencies collected information on U.S. flag participation, while other agencies collected information on foreign traffic, but in a different way.

I think that all I could under the circumstances, unless we wanted to delay the trial, was to present what was available, explaining how it was compiled, and let the results speak for themselves.

Q. Do you feel that your statistics are accurate?

A. The basic statistics I used are accurate.

Q. Now you have referred to INS and OD statistics; could you explain what they are?

The Court: Well, hasn't he?

Mr. Kenney: Well, I think he does in his exhibit, your Honor.

The Court: Yes, I thought so.

Q. Do you feel that the OD statistics are the more accurate of the two, Mr. Mitchell?

A. Oh, very definitely. Anyone recognizes that.

Q. Have you had occasion to examine any of the defendants' statistical exhibits?

A. Yes, I have, some of them.

Q. Do you know whether they also use INS figures?

[fol. 389] A. Oh, yes, they do. In fact, they use INS statistics for U.S. flag as well as foreign flag. I used the better figures for U.S. flag. I used the OD survey figures.

Q. And they used the INS figures for both?

A. In some exhibits I have seen they used them for both, yes.

Q. Now, why did you use the figures of March and September in your calculation, Mr. Mitchell?

A. Those were the only months which were reported in the OD survey of the CAB. There is no other period covered except those two months.

Q. And have you supplied statistics for the total 12-month traffic in certain years between United States and South America?

A. What type of statistics, Mr. Kenney?

Q. Well, you used the March and September; did you also prepare total figures for the years 1957, '56, '55, and so on?

A. Yes, I did do that on a yearly basis, using the Immigration and Naturalization statistics, but I could not use it from the OD survey.

Q. Now, could you tell us, Mr. Mitchell, if you can, what the difference is between U.S. flag to South America when [fol. 390] you used OD figures and INS figures?

A. For the year 1957, by my Exhibit 32, it shows that Pan American—excuse me. Were you referring to U.S. flag or Pan American-Panagra's participation in the total traffic?

Q. Pan American-Panagra's participation?

A. My Exhibit 32 shows that Pan American-Panagra carried 47 per cent, that is, participated in 47 per cent of the U.S. and foreign flag traffic.

Now, if you use strictly March and September for the INS, rather than for the whole year, and you use the CAB

for March and September you will get a Pan American-Panagra participation of 45 per cent, or roughly 2 percentage points less.

Q. A slight difference; is that right, sir?

A. A slight difference.

Q. Now, Mr. Mitchell—

A. (Continuing) But if you were to use the Immigration and Naturalization figures for U.S. flag for the year and divided that by 12, and then you compared Pan American and Panagra, as reported by the CAB in the two months, divided by 2, in other words, putting all the figures on a monthly basis, Pan American-Panagra participated in car-
[fol. 391] rying 51.7 per cent of the total.

Q. So—

A. (Continuing) However, the series are not completely comparable, and I didn't feel that I was justified in using U.S. flag totals from one source, and another source for CAB. So I think I was a little conservative when I reduced the figures to 47 per cent, using the OD survey exclusively for U.S. flag.

Q. In one instance it is a little below, and in one instance a little above your figures.

A. Above, and I used the in between figures.

Q. Mr. Mitchell, do you know whether the Civil Aeronautics Board uses March and September as representative months?

A. They were established many, many years ago, and were, according to information that I received from people that are there now, that they were generally conceded to be representative months. I could not actually put my finger on the man that selected those two months. I think perhaps the airlines themselves had something to do with it. But I do know that counsel for Pan American has stated to antitrust officials that they are considered to be repre-
[fol. 392] sentative, so that—at least that was done in a conference one time in the antitrust offices in Washington, a few years back, by counsel for Pan American.

* * * * * * *

[fol. 403] R. G. Ferguson, called as a witness by defendant Pan American World Airways, Inc., being first duly sworn, testified as follows:

Direct examination.

By Mr. Peck:

Q. Mr. Ferguson, by what company are you employed?

A. Pan American World Airways, Inc.

Q. And what is your position with that company?

A. I am the treasurer of the company.

Q. How long have you held that position?

A. Since 1949.

Q. Did you have experience with the company prior to that year?

A. Yes. I actually joined the company in 1929.

[fol. 404] Q. And would you tell us, please, the work you have done and the positions you have held since 1929?

A. From 1942 until 1949 I served as the assistant treasurer of Pan American. Prior to that I served as the division accountant of our trans-Atlantic division, and prior to that served in financial and accounting matters in Brownsville, Texas for a period of about three and a half years during the early days of Pan American's operation through Mexico and Central America.

Q. How long have you been stationed here in New York in the general offices?

A. About 18 years.

Q. What do your duties encompass?

A. I am responsible for fiscal management, including banking and corporate finance, preparation of budgets and economic studies, preparation of economic and financial data, traffic data in connection with CAB proceedings, economic material and cost material having to do with the making of rates, both CAB-wise and in so far as IATA determination of commercial rates are concerned, and finan-

[fol. 405] cial and fiscal forecasts in connection with contracts and the negotiation of contracts.

Q. You might tell us what the IATA is, Mr. Ferguson.

A. The IATA is an international air transport association which has to do with regulation of international car-

riers. One of its primary functions being the determination of rates by conferences, somewhat similar to steamship rate conferences.

Q. Are you called upon frequently to prepare and support estimates of traffic markets, the distribution of traffic between the carriers and estimated financial results?

A. Yes, particularly for the CAB in both rate cases and route cases covering applications for new routes. My department is saddled with the responsibility for preparing and presenting such cases before the Civil Aeronautics Board, and I believe we probably prepared some 40 cases in the last 18 years, possibly more, having to do with economic phases of air transportation.

Q. Have you appeared as an expert witness in such matters?

A. Yes, I have.

[fol. 406] Q. Now, did your preparation of the data and your testimony include the proceeding known as Docket 779, which was the 1943 investigation of Panagra's routes?

A. Yes, sir.

Q. By the CAB?

A. It did.

Q. Did it likewise include Docket 325, in which Braniff was certified in Latin America?

A. That is correct.

Mr. Peck: Certificated, I should say, not certified.

Q. Did you assist, Mr. Ferguson, in the preparation and negotiation of the 1946 through flight agreement between Pan American and Panagra?

A. Yes, I did, particularly with regard to the various financial provisions of the agreement, distribution of advertising costs, compensation for use of aircraft and ground facilities, and maintenance work which we were to do for Panagra. This also entailed the determination of investment on which Panagra would be paid a return.

Q. In your connection with your preparation of budgets and forecasts and your presentations to the CAB and the [fol. 407] IATA contract negotiations, do you maintain familiarity with the company's policies and procedures re-

specting such matters as contracts of sales procedures and other operations?

A. I do. I try to keep up with them.

Q. Now, I hand you this group of exhibits under one binder, PS for Pan American statistical Exhibits 1 through 23, and ask you if these exhibits were prepared by you or under your direct supervision?

A. They were.

Q. And do they correctly reflect the material which is included in them?

A. I think they are true and correct.

Mr. Peck: Would you please mark them in evidence? You need not do it now, as I understand, but you can do it later.

If your Honor please, may I hand you a set?

Counsel for the Government and for the other defendants have a set.

Mr. McKay: Your Honor, may we have the same understanding as with the Government exhibits this morning?

The Court: Yes.

Mr. McKay: Thank you.

[fol. 408] By Mr. Peck:

Q. Mr. Ferguson, would you describe generally the relationship with the Pan American and Panagra route structures in Latin America?

A. Yes. I think it might be well to refer to our Exhibit No. PA22, which is in the binder of exhibits, which shows a map of the Pan American routes and the Panagra routes. I have a large chart here, which was the chart from which the exhibit has been made.

As you will see from the chart—

Mr. Kenney: Would you please talk louder, sir?

The Witness: I will try.

A. (Continuing) As you will see from the chart, the Pan American routes are primarily east coast routes and the Panagra routes are west coast routes, both winding up at Buenos Aires. These routes and also at Canal Zone or Panama City.

Other routes of Pan American serve other areas of Latin America, including the Caribbean, Central America, Mexico, et cetera.

If you will look at the map you will find no duplication of route at all. On the contrary, the two routes actually [fol. 409] feed each other with traffic, providing a single integrated service.

Q. Would you give us some fuller picture of the feeding of one system and the other?

A. Yes. Pan American's routes, looking at the north coast of South America and the area north of that, feed traffic to Panagra at the Canal Zone, and this comes from several directions. The most important route is the Miami-Canal Zone sector, which feeds traffic from the northern part of the United States through Miami to the Canal Zone. This operation closely integrates the Pan America and Panagra operations.

In addition to that, you will find service from New Orleans down through Central America through the Canal Zone. You will also find service from Houston through Mexico City, and you will find service from San Francisco and Los Angeles, all coming into the central point, Panama City, and providing traffic at that point for the west coast of South America.

In addition, the route across the north coast provides service from Caracas, Curacao, Maracaibo, Barranquilla and Kingston, and even the Kingston-Barranquilla service is a collection point from which passengers can get from the island between Cuba and Puerto Rico into the Panama [fol. 410] City connecting point.

We have made a check of the amount of this traffic which flows into Panama City and connects with Panagra, and from these areas, including Central America and Mexico, we have found that there are about 4,000 passengers delivered by Pan American to Panagra at that point.

Q. That is described as the feeding of Pan American to Panagra, and I take it the reverse is true, that Panagra feeds into Pan American traffic to be dispersed to the points—

A. Yes, the interchange, the interchange actually is twice that, or approximately twice that. We have taken both directions and it is approximately twice.

Q. How would you describe the services of the two carriers to Buenos Aires?

A. Well, it is an east coast service for Pan American and a west coast service for Panagra.

Q. Does that mean that the two carriers compete for that Buenos Aires traffic?

A. Well, I would say only to a minor extent.

Q. Why do you say only to a minor extent, Mr. Ferguson? [fol. 411] A. Well, first let's take Latin America as such. It is no competition for Buenos Aires traffic to points in Latin America as such. For example, Panagra cannot compete for traffic from Buenos Aires to Rio or Belem, Porto Spain, spots like that. Nor can Pan American compete for traffic from Buenos Aires to Lima or Santiago or Guayaquil, they are just not competitive.

The traffic from and to Buenos Aires of this nature amounts to 62 per cent of the total traffic carried by American carriers in and out of Buenos Aires.

Q. To make that perfectly clear, you mean that 62 per cent of the traffic carried by the two carriers to and from Buenos Aires originates, on the one hand, or has destination on the other, in some place in Latin America, not touching the United States?

A. That is correct. That is on American carriers.

Q. Yes. As to which routes there are no common points of call, just the terminal at Buenos Aires.

A. That is correct.

Q. Now, the 4,000 passengers a year that you were speaking about being interchanged, is that just Latin American traffic now, or do you include in that your 4,000 traffic [fol. 412] between South America and the United States?

A. The 4,000 passengers are the passengers from the United States, points such as San Francisco, Los Angeles, from Houston, from New Orleans.

Q. Well, pardon me. Let's see that we understand each other, and we may have some misunderstanding, I don't know, but let's get it clear in any event. You mentioned 4,000 passengers exchanged each year, 4,000 moving south, 4,000 moving north, at the Canal, between Pan American and Panagra. I confess that my impression had been—correct me if I am wrong—that that 4,000 was just Latin American passengers, in other words, passengers coming

from some place in Latin America, moving into South America, or coming from South America and moving some place in Latin America, and my impression was that the 4,000 did not include passengers either to or from the United States. Now correct me if I am wrong.

A. You are wrong. This includes passengers which would not be over the Miami-Balboa route, but would have come from New Orleans, from Los Angeles, San Francisco.

Q. Now, before that step backwards to understand that [fol. 413] figure, you had stated that 62 per cent of all the traffic of the two carriers in South America either originated in or was destined to some point in Latin America; right?

A. That is correct.

Q. What about traffic between the United States and Buenos Aires? Do the two carriers compete for that traffic?

A. Only, again, to very slight extent.

Q. Well, now, why do you say that, Mr. Ferguson?

A. Well, there are two reasons. First and foremost important is that passengers select their routings primarily to cover their stopover desires. The second reason is that for all areas other than, let's say, the northeastern area of the United States, the west coast route to BA is appreciably shorter than the east coast route, and—

Q. Well, now, let's break—well, go ahead. Pardon me.

A. (Continuing) And would naturally draw the traffic which is indifferent to routing, and the principal interest is in the best service from the standpoint of time.

Q. Let's break those two considerations down and explain [fol. 414] them each a little more fully. Explain for us, please, how the stopover requirements or wishes of a passenger determine his selection of route in most cases?

Mr. Kenney: I have to object to that question, your Honor. That is calling for a statement from this witness as to what is in the passenger's mind. I don't think he is qualified to answer it.

The Court: I will allow it.

You may tell us.

Q. Go ahead.

A. Well, I think it is perfectly clear that very few people make trips of almost 6,500 miles between the United States

and Buenos Aires for the sole purpose of purely visiting Buenos Aires and returning. They're interested also in the major cities in Latin America, such as Rio and San Paola, on the east coast, and Lima, B.A. Quito—Lima, Santiago, Quito, on the west coast. Hence the routing in effect governs the coast and the stopovers govern the coast which the passenger uses.

This is apparent if we consider the various types of travel—

Q. Yes, I was going to ask you to do that.

A. —which are involved here. We know that almost 50 [fol. 415] per cent of the traffic to and from South America is for business purposes. There are few business men who would make a trip just to B.A and return and spend about a thousand dollars on a ticket and three days' traveling time purely to do business in B.A. unless there was some very urgent matter involved. Most U.S. firms who have traveling representatives in Latin America have offices in the various major cities on the east coast and west coast, or they have affiliates or dealers or some concern with which they have to do business.

A banker, for example, who is making a trip around South America probably has correspondents in most of these cities, and he will want to make his call on these correspondents in all cities, not just in B.A.

Consequently, the business men seeks to make the maximum out of his trip and plans his routing accordingly.

Q. What about the people who are bent on pleasure?

A. In the case of the vacationer, there is no reason in the world why he would want to take a trip to B.A when he could make stops at Rio, San Paola, Lima, Santiago, without any additional cost whatsoever.

Q. Well, do you know from your experience and observa [fol. 416] tion that that is exactly what they do, make stopovers?

A. We certainly do. We have estimated that the round South America passengers account for some 53 per cent of the United States-B.A traffic. This was in 1958.

Q. What do you mean by "round South American traffic"?

A. Well, I mean they go down the east coast and make

their stops in various cities on the east coast and return via the west coast, making stops in Santiago, Lima and the various resort areas on the west coast.

Q. That is 53 per cent of the passengers, you say, that are going to BA from the United States make the circular tour?

A. That is correct.

Q. Do the two carriers, Panagra and Pan American, make a joint effort to get them to make that grand tour?

A. Oh, very definitely. We spend substantial sums of money in advertising and developing and promoting the around South America services.

Q. Is that a sizable proportion of the joint advertising? [fol. 417] A. Yes, it definitely is.

Q. Do you have some of that advertising?

A. We have included in our exhibits, in Exhibit PA23—

Q. That is the last one in this group?

A. It is the last one in the book—some samples of advertising. The last one in the book actually is a sample of the round South America advertising.

Q. Do you have some others with you?

A. Yes, we do. We have some color exhibits.

Q. I would like to see them. And is the material in this folder typical advertising material in magazines, newspapers and folders covering—

A. Yes, they are.

Q. —round South America tour?

A. Round South America. It is done in two ways. There are tour folders which we have used, and also national advertising in magazines, which are paid for jointly by Pan American and Panagra.

[fol. 418] Q. I understand that you are short of these and you don't want these marked in evidence? Is that right?

A. That's correct. We can have them reproduced if it is necessary.

Q. Well, I would just like to have the Court see them.

The Court: Don't you think the Government should have one look?

Mr. Peck: I am sure that the Government is familiar with it, but we will give them a look but not a ticket.

There is no objection to the Court having a look.

It might whet your Honor's appetite. It whets mine, I must say.

The Court: I don't know what I am going to do about mine, though.

Q. And these folders are typical?

A. They are.

Q. I believe that covers, Mr. Ferguson, the bulk of the traffic which you said is not competitive. Now would you—

The Court: May I interrupt a minute, Judge?

[fol. 419] Mr. Peck: Yes.

By the Court:

Q. You said that your estimate that 53 per cent of the passengers take this sort of round trip on both coasts?

A. Yes.

Q. That is almost very close to saying that 50 per cent go down one coast and come back the same coast?

A. Well—

Q. Isn't it?

A. No, I wouldn't say that is quite true.

Q. Well, it says in effect that 47 per cent of the people don't take the round trip.

A. Yes. That is correct. However, within that 47 per cent are those that, due to requirements for their stopovers, will use one coast or the other coming back to the stopover desires of the passenger.

Q. And what is the basis that you use to determine whether a person is traveling on business or pleasure?

A. We have used the survey which has been made by the [fol. 420] Port of New York Authority on traffic to South America going through the Port Authority's airports.

Q. Maybe I didn't make myself clear. You said that 50 some-odd per cent of the passengers—in trying to break down why they went one way as distinguished from another, you said that 50 per cent are business people.

A. Yes.

Q. And I was curious as to how you determined who was traveling for business and who was traveling for pleasure.

A. We did not make a survey ourselves. We used what

the Port of New York Authority—their survey, to determine that.

Q. They found out by their survey who was traveling for business and who for pleasure?

A. That's correct.

The Court: All right. Fine.

By Mr. Peck:

Q. Let us move now, Mr. Ferguson, to the second important consideration which you said would determine routing, and that is the relative distances and time required to go one route or the other to Buenos Aires. Would you explain that, please?

[fol. 421] A. Yes. It is a fundamental fact of geography that the South American continent lies entirely east of the North American continent. Hence the shortest route from the United States, from most points in the United States, between the United States and B.A. is down the West Coast, and this is exemplified by the fact that New York, the Canal Zone and Lima lie on a straight north-south line. The East Coast of South America, if used, would mean a substantial detour around the South American continent, and the further west or south the origin of the passenger within the United States, the greater the detour would become by using the East Coast.

Q. Can you give us some figures, for example, as to how much longer it would be down the East Coast route from San Francisco and Los Angeles?

A. From San Francisco and Los Angeles the passenger would save almost 1300 miles by using the West Coast routing as compared to the East Coast routing to B.A.

Q. Supposing he was going from Chicago or Miami?

A. Well, from Chicago or Miami via the East Coast would be something over 900 miles longer than the use of [fol. 422] the West Coast.

Q. When you move into the Northeast part of the United States, what is the differential there?

A. The mileages become much more comparable at that point. For example, New York-B.A. mileage via the East Coast is 6,267 miles, and via the West Coast it is 5,728 miles.

Q. Then what is the difference in traveling time from New York to Buenos Aires by the two routes?

A. My Exhibit No. 17 indicates that for current services the time New York-B.A. via the West Coast is 22 hours and 45 minutes and via the East Coast 25 hours and 20 minutes.

Q. And I presume that as you move west the time difference would preponderate substantially in favor of the quicker West Coast route; is that right?

A. I think that's correct.

Q. Can you give us any statistics from the Civil Aeronautics Board as to the origin and destination of passengers traveling between the United States and South America in relation to the Western part of the United States and the Eastern part?

A. Yes. We made some studies with regard to how these [fol. 423] people travel, and if you take San Francisco and Los Angeles, 60 per cent of the U. S. or the San Francisco, Los Angeles B.A. traffic uses the West Coast of South America, and 40 per cent the East Coast.

On Chicago the distribution is about 63 per cent West Coast and about 37 per cent East Coast.

Q. How about Miami?

A. On Miami it is about 67 per cent West Coast and 33 per cent East.

Q. When you are in the Northeast part of the United States how does the traffic divide between the East and West Coast routes?

A. It divides approximately equally. Our figures, based on September of '57 and March, '58 indicate that 49.4 per cent use the West Coast and 50.6 per cent use the East Coast.

Q. In view of the great distance and time advantage of the West Coast route from all areas of the United States other than the Northeast, how do you account for the fact that according to the statistics you have just given us about 40 per cent of the United States traffic from these other areas of the United States elects to use the East Coast route?

[fol. 424] A. That percentage in my opinion represents what I have been explaining before, the portion of the

traffic choosing to use the East Coast despite the greater distance entirely or primarily for stopover reasons. In other words, there is no reason for this traffic to use the East Coast except for this purpose.

It seems logical to conclude that if 40 per cent of passengers elect to use the East Coast for stopover purposes, at least an equal percentage would choose the West Coast for the same reason. So it seems to us that about 80 per cent of the U.S.-B.A. passengers select one Coast or the other for the stopover reason.

Q. Then as to the remaining 20 per cent, what is your opinion as to the extent of the competition between the two carriers for that 20 per cent of the traffic from the United States?

A. Well, I have concluded that the remaining 20 per cent consist of passengers who for family reasons or government travel or assignment desire the fastest possible service between U. S. and B.A.

Q. Then how does that 20 per cent travel, according to the figures here, from the United States other than from [fol. 425] the Northeast?

A. Well, I think that it is influenced or can be influenced to use the East Coast or the West Coast routes depending on which route provides the best service, the best departure times as far as his plans are concerned, the availability of space on the airplane when he wishes to travel, and the type of accommodations which he may desire, such as tourist or first-class service.

Q. Now are you talking in that respect just about the Northeast part of the United States?

A. No. I am talking about the entire U. S.

Q. Well, if I have understood you correctly the time factor preponderates so definitely in favor of the West Coast route for any passenger coming from the United States other than from the Northeast, that, regarding the passengers who you are now classifying as being bent on getting there and back as quickly and directly as possible, I am asking you whether that 20 per cent then, which you estimate is the percentage of such passengers, wouldn't travel the West Coast route from all parts of the United States other than the Northeast part of the United States.

A. I think that is correct.

[fol. 426] Q. Then let me ask you this: Whether as to that 20 per cent you regard the two carriers as being in competition for areas of the United States other than the Northeast.

A. May I have the question, please?

(Question read.)

A. No, I think that they are not competitive in the areas other than the Northeast, in effect.

Q. Then you come down to what proportion of the traffic do you say that they are competitive for, that 20 per cent from the Northeast?

A. Twenty per cent of the Northeast. The Northeast accounts for 54 per cent of the total U.S.-B.A. traffic, and 20 per cent of 54 per cent would amount to about 10.8 per cent of the total U.S.-B.A. traffic.

Q. And what would be, on that basis, the maximum percentage of Panagra's total traffic that could be deemed to be competitive with Pan American?

A. My analysis would indicate about 2 per cent of Panagra's total passenger miles as being competitive.

Q. Explain that for us, would you please?

A. Yes. In the year ended June 30, 1958, Panagra de-

[fol. 427] rived 16,442,000 passenger miles from the Northeastern portion of the United States between the U.S. and Buenos Aires. We have previously indicated that only 20 per cent—

Q. What is that figure, please?

A. That is the passenger mileage on—

Q. From—

A. —on U. S.-Buenos Aires traffic from the Northeast area.

Q. And that figure is what?

A. 16,442,000 passenger miles.

Q. Yes. Now go ahead, please.

A. We previously established that only 20 per cent of this traffic is competitive or 3,288,000 passenger miles. This compares with Panagra's system passenger mileage for the year ending June 30, 1958, of 162,013,000 passenger miles or 2 per cent.

Q. Tell us, please, Mr. Ferguson, what are Pan American's policies with respect to selling the two services down the East Coast and down the West Coast?

A. Well, our primary policy is to sell the service which the passenger wants. If the passenger desires the shortest [fol. 428] service or a stopover on one coast or the other, and comparable services are available, we quote both and let the passenger make his choice. There are a few passengers who fail, however, to express their desires.

Q. Does Panagra have its own independent means of acquainting the public with its services?

A. Yes, indeed. Panagra has its own advertising and publicity. Exhibit PA-19 would indicate that Panagra spends about 8 per cent of its passenger and cargo revenues for this purpose. These are substantially higher percentages than Braniff and Delta spend in selling their Latin-American services.

Pan American spends about a little less than 4½ per cent of these revenues for its Latin-American services. Panagra has a sales staff in the U. S. which contacts the Pan American offices as well as travel agents.

I think that the two groups, Pan American's district sales offices and the Panagra staff who are doing selling, cooperate very fully in their work with the agents and generally they go to call on agents as a team. However, Panagra on the other hand is perfectly free to call on agents as it will.

[fol. 429] Q. And does?

A. And does.

Q. Now we will come to a different subject, Mr. Ferguson. Paragraph 18 of the complaint in this action is addressed to the sphere of operations of Pan American and Panagra, Panagra operating on the West Coast of South America and Pan American operating on the East Coast of South America and from Miami to the Canal without duplicating services between them.

Would you please tell us what would have been the economics of duplicating services between Pan American and Panagra for these various areas over the period from 1928 to 1946?

A. Yes. First I think that we should recognize the con-

dition of development of airline operation in this early period, and I might say that that was in the early period of my connection with Pan American in the Latin-American area.

It is unrealistic to think of airline operations as we know them today at that period. We were confronted with—

Q. What period are you discussing now?

A. The period from beginning through 1938.

[fol. 430] Q. All right.

A. The equipment which was available to operate the routes was slow, short range, high cost, and had very little carrying capacity. The airports and airways which were put in were the result of a gradual development by the airlines as opposed to having these things made available to them by governments, et cetera, and were done as the developments came about and as there were funds available to put them in.

There were no established markets at that time, as you might say, with a large potential of passengers and cargo as we know traffic markets today. If we are speaking about the first decade of Latin-American operations, we just can't speak of them as just normal commercial enterprises. The economics of the situation are about what one would imagine under these conditions.

Q. Would you give us some detail, then, as to the economics of competition during that decade and then move on thereafter up to 1946?

A. Yes. I think a number of the exhibits which I have in the binder will demonstrate the type of operation which was prevalent at that time.

[fol. 431] Q. All right. As you go ahead and give us this economic picture, Mr. Ferguson, refer us as you go along to the exhibits which demonstrate your observations.

A. Well, let's refer to PS-5.

Q. Yes.

A. PS-5 indicates the frequency of operation which Panagra was able to maintain through the period we are now discussing. In the period up through 1939 frequency of operation over the Balboa-B.A. route never got higher than two frequencies a week, and that was effective from 1930 through 1939. The aircraft which were available in

the early years, some part of them were single-engine. We finally developed to the tri-motor and the Sikorsky S-38, which was an eight-passenger plane amphibian which was used where no airports were available down the West Coast. The DC-2, which was a forerunner of the DC-3, which was a 12-passenger airplane as I remember it, came in in '35, and we finally got up to the DC-3, which was the work horse of the last war, in 1937.

So that the operation on that route during that period was pretty thin.

[fol. 432] If you look a little further down, we never got to daily service, and again with DC-3s in 1943 Exhibit PS-7 shows passenger loads which were available for carriage during this period.

Q. Now you are talking, I take it, at least I want to break this up, Mr. Ferguson—let's talk about the West Coast and then talk about the East Coast and then talk about the Balboa—the Miami-Balboa segment, and I take it what you are discussing now are the economics of competition during this period on the West Coast of South America; is that right?

A. That's correct.

Q. All right. And you have talked about them—PS Exhibit 5, what was the Pan American part of that West Coast service, is that right, which was Miami-Balboa?

A. That's correct.

Q. All right. Now you are going to move over to the Panagra part of it?

A. PS-5—

Q. Which is PS-7?

A. —is Balboa to B.A. which is the Panagra route.

Q. Yes.

[fol. 433] A. Now PS-7 is also the Panagra route.

Q. Pardon me, yes.

A. From Balboa to B.A.

Q. Yes, right, right.

A. And this indicates the average passenger load per airplane mile during the period 1929 through 1945. The maximum achieved during this period on an average was slightly over 13 passengers. Such loads are well below what might be considered compensatory requirements for single

line operations. It would be impossible, therefore, on any sound economic basis, to attempt to set up competition or competitive operations over a route with as thin a market as this.

Q. Can you translate these figures into dollar figures, the economics of the story?

A. In PS-6 we have shown for Panagra in terms of dollars and in terms of cents per mile flown the various economic factors which go into arriving at the result of the operation of the route. Let's take, for example, the year 1932. In that period, 1932, the passenger load was about 3.1 passengers. Passenger revenues of Panagra amounted to $287,000 for the year or 25 cents of revenue per plane [fol. 434] mile. Cargo represented $9,000 for the full year or one cent per mile. Other revenues, and this excludes U. S. mail paid, amounted to $70,000 or 6 cents per revenue mile for a total revenue for the year of $366,000 which, in terms of plane-mile earnings, amounted to 32 cents.

The total operating expenses for that year were $1,837,000 or a per plane-mile cost of $1.60.

The next item shows the operating profit or loss again before U. S. mail paid, and this would show a loss of $1,471,000 or a per plane-mile loss of $1.28.

Under the mail contracts Panagra received in 1932 $1,618,000 or $1.41. This means that with the mail pay—contract mail paid in Panagra was able to show a profit in 1932 of $147,000 or a per plane-mile profit of 13 cents.

As you can well see, without the contract mail pay Panagra would have been in quite a pickle.

Q. If I read this correctly, the total per plane-mile revenue of Panagra from 19—from the beginning to 1938 ran from about 22 cents to 70 cents and the cost of operation per plane-mile ran from $1.26 to $2.70; is that right? [fol. 435] A. That's correct.

Q. Now, again, that would show that Panagra's commercial revenues never got more than 50 per cent of its expense; is that right?

A. On the average I think that is true.

Q. Now take the period after 1938. Up until 1945 were Panagra's revenues sufficient to break even in any of those years?

A. No, they were not, except in the year 1945 when they made one cent per mile.

Q. And your exhibit shows the subsidy that was paid, mail pay, all during those years; is that correct?

A. That's correct. Those are since 1939 mail pay was determined by the Civil Aeronautics Board on the basis of the need of the carrier and includes both the payment for the carrying of mail plus the subsidy amount. The largest portion of the payment is represented by subsidy.

Mr. Peck: Shall we move on to the East Coast now, your Honor, or shall we lunch in between?

The Court: Yes. A quarter after 2.

(Recess taken until 2:15 p.m.)

[fol. 436] AFTERNOON SESSION

2:20 P.M.

R. G. FERGUSON resumed.

Direct examination (continued).

By Mr. Peck:

Q. Mr. Ferguson, would you now please discuss the economics of competition on the east coast of South America?

A. Yes.

Q. During this period from 1929 to '38, and then on to '46?

A. Yes. I would like to refer you to Exhibit PS4, included in the binder.

This exhibit shows the frequencies of operation on the Pan American east coast route of South America. I think it should be noted that on this route prior to 1942 the top frequency which we attained was four trips a week, and not until 1942 were we able to attain a daily frequency.

I think also that you ought to know something about the operation. During this period the route was around the periphery of the east coast, all the way out to Recife, which is the farest east point in the Latin American continent.

[fol. 437] and that it was entirely, at least up until 1937, a flying boat operation. The first airplane used, the S38, was an 8-passenger airplane, and amphibian. The S41 was slightly larger. The Commodore, as I remember it, had a capacity of about 12 to 16 passengers. The S42, which finally got into operation in 1936, was about 28 to 30 passengers, as I remember it. The DC2, again, was a 12-passenger airplane; and finally, in 1940 the first DC3 was in operation.

Q. Which had a capacity of how many passengers?

A. 21 passengers.

Q. The route around the hump of South America on the east coast was used until 1942, when we started a service which operated with an intermediate point from Belem, Brazil, across the jungle to Rio.

Q. How about the passenger loads during this period?

A. Again, if we refer to the exhibits PS11, prior to 1933 our records are just not of sufficient magnitude to have come to an average load per airplane mile, and for the years '36, '39, '42 and '45 it was necessary that we take what were known as weight report summaries to derive this average load. These weight report summaries showed [fol. 438] from point to point the passengers that were carried, and I think there were some between Port of Spain and Rio, there were some 12 or 14 sectors that had to be analyzed, as well as a sector south of Rio, in order to come to these figures. It was quite a job. So we attempted to get it down by purely taking representative years to arrive at the average loads on this route.

During the period this would indicate a peak load in the year 1945 of 12.4 passengers. As far as the mail and cargo are concerned during this early period, we believe that the load shown for the Miami-Balboa route would approximate what we would have had on this east coast and that is shown on page—or PS10, where the maximum load attained of both passengers—I mean, of cargo and mail, was ninety-five hundredths of a ton.

Exhibit PS14 shows information with regard to the Latin American division as a whole, for the years 1929 to 1958, and is prepared in the same way in which we prepared the

data for Panagra in PS6, showing the dollar revenues as well as the revenues per plane mile for passengers, cargo and other, the total operating expenses and operating profit or loss before mail pay, then showing the mail pay received and the net profit or loss on the operation during [fol. 439] these years.

This shows that during this period of 1929 to 1945, only in the years 1942 and 1945 did commercial revenues cover operating expenses, and that is without regard to any return on investment.

Q. Am I correct at a glance here that even if you carried those figures through to the year 1958 that still the years 1942 and 1945 are the only years of that entire operation where the revenue equaled the expense, not including mail pay?

A. That is correct.

Q. What would you say, then, as to the feasibility all during those years—let's just take it from 1929 to 1946—of competition down the East Coast of South America?

Mr. Kenney: Your Honor, I object to that question. It calls for a man's opinion; it calls for a conclusion.

The Court: Yes, but he qualified him as an expert. I will allow it.

A. I think the answer is pretty obvious. PS-6 and PS-14 show the expensive nature of the subsidy support that is required for these operations. No airline could have operated during these years without subsidy. This situation [fol. 440] has continued, and at least for the earlier years.

The Court: Was that your question, sir?

Mr. Peck: Yes.

Q. The answer, as I got it from you, was that you couldn't stay in business except for subsidy; is that right?

A. That's correct.

Q. And that was true of one group down there, one airline, Pan American going to the East Coast; is that right?

A. Yes.

The Court: Would you read the question to me, Mr. Reporter.

(The question was read by the reporter as follows:

"Q. What would you say, then, as to the feasibility, all during those years, let's just take it from 1929 to 1946—of competition down the East Coast of South America?)

The Court: And you are satisfied with the answer?

He said in substance, as I understood him, that no line could operate without a subsidy.

[fol. 441] Mr. Peck: That's right, yes.

By Mr. Peck:

Q. And that was a subsidy during all those years to one air line which had all the business down the East Coast; is that correct? All the American flag business down the East Coast?

A. All the U. S. flag service, yes.

Q. Now, if that had been duplicated by another American flag carrier during those periods, what would have been the consequences?

A. I think the cost to the Government would have been doubled, and it might have been even more than doubled because of the splitting of traffic between two carriers.

Q. Now, can you tell us what was the Government's policy prior to 1946 with respect to subsidizing duplicate airline operations in South America?

A. Well, I think we can split that into two pieces. For the period up to 1938, which is the date of the Civil Aeronautics Act, the operations were carried on under U. S. mail contracts with the Post Office Department, and I know of no place where the Post Office issued more than one mail [fol. 442] contract for a particular route. In other words, there were no places in the international field where two contracts were issued to support competitive services.

With regard to the 1939—

Q. Those contracts were for what period? How long did they run?

A. Ten years.

Q. All right. Go right ahead.

A. From 1939 to 1945 the Board did not find that du-

plicate service on these routes was required. By the Board I mean the Civil Aeronautics Board.

Q. In other words, after 1938 the Civil Aeronautics Board had the authority and discretion about mail pay or subsidy; is that correct?

A. That's correct.

Q. And at least up until 1946 had not done anything about duplicating routes?

A. That is correct.

The Court: Were there applications for certificates which were denied in those years?

The Witness: My recollection is I do not believe that there was any denial of a certificate during that period. However, I may be wrong about that.

[fol. 443] By Mr. Peck:

Q. Would it have been possible at any time during those years for duplicate service to be established and be maintained except by at least a duplication of mail pay or subsidy?

A. In my opinion it would not.

Q. Now let's move over on to the Miami-Balboa segment, if you will, Mr. Ferguson, and indicate the economics of a duplicated service on that segment for the years 1928 to 1946.

A. Again I do not think that competition on this route was economically feasible during this period.

Q. Why not, please?

A. Well, I think we had better look at Exhibit PA-3—

Q. Yes.

A. —which shows the operations over this route. During this period and up through 1937 again the frequency of service which could be maintained was two services a week. It was not until 1942 that we got to a daily service on this route, and by the end of 1942, which I might comment is the first year of the Second World War, we were up to two frequencies a week to Balboa and that the service at that [fol. 444] point was serving the demand for communications between the Canal Zone and the United States in view of the large military installation at the Canal Zone.

Q. After the war did it fall off?

A. After the war it got back down to a daily service.

Q. All right. Go right ahead.

A. PS-9 shows the average passenger loads on this route. The maximum up through 1938 got up to 12.3 passengers per airplane-mile. During the entire period from '29 to '38 the average loads were about 6.3 passengers, and even for the period from '39 to '45, the maximum loads carried per mile were about 20 passengers and the average—I thought I had figured the average, but it would run somewhere around 16 passengers.

If you look at PS-10, which follows, you will note that in the first period we could not break out—that is from '36 to '41 and we had no statistics prior to that—the load of mail and cargo got up to a high in 1940 of 64 100 of a ton, and in the period of '42 to '45 got up to a maximum of 95 100 of a ton.

[fol. 445] You will note that the average mile load got as high as about 4 10 of a ton and the cargo load about ½ ton.

Q. What is the significance of those figures in economic terms?

A. Well, if we put it in terms of revenues based on these average loads, the passenger and cargo loads for the period '28 to '38 would have produced about 90 cents per plane mile. Operating expenses, as shown in PS-14 for this period, and we have had to use here the average expense for the Latin-American operation because there was no breakdown as to costs applicable to any particular aircraft type the average for Latin-American operation was $1.76 per plane-mile. In other words, operating revenues were slightly more than half the cost of operating the route. Obviously a route which could not half support one airline could not support two.

Q. Now will you take the period from 1938 to 1946 and discuss it in the same terms, giving your opinion as to the economic feasibility or competition between Panagra and Pan American on that route during that period?

A. Well, again, if we look at PS-3

[fol. 446] Q. Discuss that, if you will, please, first in the terms of the traffic?

A. Well, as I stated before, the average passenger load

between Miami and Balboa for the '39-'45 period was about 16 passengers. Even with this kind of a load we could not produce a profitable operation as a single carrier on the route. If you project the 16 passengers into revenues at the average yield per passenger mile, this would produce about $1.68 of passenger revenue; and if you assume about a half a ton of cargo on board, and assume also a dollar per ton mile as the cost of revenue from the carriage of cargo, you come up with a figure of about $2.18 as the revenue derived from the traffic on this route.

During the period '41 through '45 we were operating Boeing 307, four-engine aircraft, on this Miami-Balboa route, which created a cost which was somewhat higher than the divisional average. If you assume this cost with its related overhead, the cost on this route during the '41-'45 period would be about $2.53 per mile. This certainly would not be a place where an additional carrier would aid the situation at all.

[fol. 447] Q. Did Pan American break even at any time on that route for the years up to and through 1945?

A. There were two years in there in which the commercial revenues covered costs on the basis of average cost for the division. But if you take these costs based on the 307 operation, I do not believe that it would break even.

Q. Was the service subsidized all during these years?

A. Yes, it was, very heavily.

Q. Now, would you say there was any reason other than the thinness of traffic which you have detailed that would enter into a judgment as to whether competition between Pan American and Panagra was feasible on that sector?

A. Well, the fact that a carrier, confined to this route, as Pan American would have been under competition with Panagra, would make quite a difference.

Q. That is, you are assuming now, I take it, and addressing yourself to that assumption, that the Pan American service from Miami to Balboa was duplicated by Panagra, but that the Panagra service from Balboa down the west coast of South America was not duplicated by Pan American; is that right?

[fol. 448] A. That is correct.

Q. All right.

A. (Continuing) And in which case there would have been very little chance that Pan American could have survived on this route. I think we have to distinguish here between a sector of route, such as is here envisioned, and competition on such a sector, as compared to full route competition, where there is access to full traffic markets. For example, Braniff, extension down the east coast permitted full competitive operations. Each carrier had a route structure which linked major traffic points and traffic generating areas, and thus made it reasonably able to provide competitive service.

However, in the case of Pan American and Panagra, where the two services complement each other and are complementary rather than separate, the carriers are completely interdependent, one upon the other. As I explained before, the Pan American Miami-Canal Zone link meets head on with Panagra at the Canal Zone, thus providing a through service.

If, for example, Pan American were in competition on this route and we were competing for the traffic over the sector, Pan American would be at a very great disadvan[fol. 449] tage.

If you look at PS16 of our exhibits, you will note here that we have made a segregation of the amount of local traffic over the sector, and the amount of through traffic to points south of Balboa. This shows that in the year—well, it is based on the months of September, '57, and March, '58, on those two months—that of the total traffic over the sector, about 58 to 65 percent is represented by through traffic.

The question which this raises is, what would be the result if Panagra had been extended with Pan American on this route?

Q. And Pan American not extended down the west coast?

A. And Pan American not extended down the west coast?

Q. But deadended at Balboa?

A. That is correct. The result would be that Panagra would probably have taken almost all of the through traffic from over the Miami-Canal Zone sector, because it can serve it with a one carrier service from Miami to destination.

Q. One airplane, no change.

[fol. 450] A. One airplane and no change. And this would mean that Pan American would be in a position where it could, or where it might get as much as one-third of the local traffic.

Q. Well, let's see. The local traffic is about, you say, somewhere between 40, 35 and 40 per cent.

A. That is correct.

Q. Now, you wouldn't say that Pan American and Panagra would about break even on the local traffic?

A. Oh, definitely not. The Panagra, with two-thirds of the traffic, and let's just say for the moment some portion of the local traffic, would be able to build frequencies which Pan American could not match except at a very high cost in subsidies or in loss to Pan American as such. Actually, with all the traffic, all the through traffic on Panagra and a substantial portion of the local traffic, Pan American would be able to operate at a very, very meager service over the route, and even if they were to have a service which can once or twice a week, it is only the passengers that would travel on that day, which would be divided between the two carriers, and people don't wait around for one or two frequencies a week if there is a daily service on which they [fol. 451] can travel. In other words, they don't pile up a third of the traffic for the two days that Pan American is going to operate.

Q. Well, with what consequence then if Pan American was going to compete at all for the local traffic?

A. Well, the consequence would be that we might operate as much as one and a half frequencies during a week, or if we operated a daily frequency in trying to compete, we would probably have a couple of passengers aboard per day.

Q. Well, if you were going to stay in the market and have what you call competition, how many frequencies would you have had to operate?

A. Well, we would have had to operate at least a daily frequency.

Q. And what would have been the economics of that with the passenger loads you would have had?

A. Well, I think under that circumstance, Pan American would have had to abandon the route. I do not think that

Pan American could operate a daily frequency during this period between Miami and Balboa and carry two passengers per day or three and hope to have the Civil Aeronautics Board find that under honest, economic and efficient management we had operated this route. I think they would [fol. 452] have found that we had operated excessive capacity when there was no traffic to be carried, which would mean in the final analysis, in determining subsidies, that the Board would not support this service.

Q. Let's get that clear. If the service was going to be there, wouldn't the Board automatically have subsidized it to the fullest extent necessary to maintain it?

A. I don't think they would have.

Q. Why not? What is the policy of the Board and the practice in this respect?

A. Well, the Board reviews the operations of a carrier, and where they find that a carrier has put on more service than is required, their policy is not to recognize costs of such service in determining subsidy.

Q. And the alternative aside from abandonment would have been what?

A. The alternative aside from abandonment would have been that the stockholders would have paid the bill, and I don't think they would have stuck very long with that.

Q. Let us move now, Mr. Ferguson to the through flight agreement between Panagra and Pan American in 1946. Would you first please give us the principal terms of that [fol. 453] agreement, so that the Judge will have it in his mind?

A. Yes. Under the agreement Pan American leases aircraft and crews from Panagra for operation over the Miami-Canal Zone sector. The aircraft, although operated by Panagra crews, are on this sector of route providing the Pan American service between Miami and the Canal Zone. This provides for the public a one plane service from Miami, straight through the Canal Zone, to destinations on the west coast and BA. Pan American pays all of the expenses, including the overhead on the operation incurred by Panagra for flying this sector.

Q. Now, let's see. That would represent—what does that represent to Panagra, reimbursement for the cost of oper

ating the plane by its pilots and completely handling the operation?

A. That is correct. It is reimbursement for all costs which you consider as direct flying costs as such.

Q. Well, then, what does Panagra get out of this operation? That is just breaking even, isn't it, up to now?

A. That is correct. They are made whole for all costs involved in this operation.

[fol. 454] Q. How can they make a profit?

A. Well, in the first place, there is no time when they have a risk in so far as traffic is concerned. In other words, if the traffic drops below what is required to provide a profit, Panagra has no risk involved whatsoever.

In addition, Pan American guarantees Panagra a maximum return on their investment which has been found to be reasonable by the Civil Aeronautics Board.

Q. Investment in what?

A. Investment in the equipment used in this operation over the Miami-Canal Zone sector which includes the aircraft, engines, spare parts, any maintenance, ground facilities which they may have. It also provides a return on investment in funds which have been earmarked for replacement of aircraft which would be used on this route and a return on investment in the working capital which represents the cash expenses involved which they have employed in this operation.

Q. And what is that guaranteed rate of return on the investment?

A. The rate originally was set by the Civil Aeronautics [fol. 455] Board as 10 per cent return after provision had been made for taxes. In other words, the 10 per cent is a net after the taxes. This was later reduced to 9 per cent for international operations.

There is also a rate which has been employed where there is no risk involved. The Civil Aeronautics Board stated that as 7 per cent. However, in a case of this kind where there is no risk whatsoever, it would seem to me that a fair rate might have been a rate such as you would have for borrowing money, even a primary of 4 or 5 per cent.

Q. In any event, Pan American pays Panagra 9 per cent; is that correct?

A. That's correct, and that is better than they can earn on their own operation below the Canal Zone.

Q. How does it compare with what Pan American can earn on its own operation?

A. It is substantially higher than we have earned on our own operation.

Q. Are there any other costs that Pan American is required to absorb in connection with the through-flight oper- [fol. 456] tion other than the ones that you have detailed?

A. Yes. At the time that the through-flight agreement was signed we had a contract with our flight crews which we thought would permit us to use the Panagra flight crews of this sector of Pan American route. However, it finally turned out that for every crew, Panagra crew, used over this route Pan American had to have a crew standing by on the ground under the labor contract. This meant that, in other words, we were paying for the Panagra crews through the through-flight agreement and in addition were paying our own crews for not flying.

Q. What did that amount to in 1958?

A. In 1958 this amounted to $168,000.

Q. Don't you get that back through a subsidy?

A. No, we do not. The Board decided to disallow that as not being justifiable or eligible for subsidy support.

I might say that we have brought this matter up with our partners to see if we couldn't get an adjustment of some kind in this matter of payment, but our partners have not seen fit to recognize it.

Q. The question has been raised about a possible Lima [fol. 457] Rio operation for Panagra. Would you comment upon the economics of such an operation, Mr. Ferguson?

A. Yes. I think that the operations over this route have been submarginal practically from the beginning.

Q. What are the operations over at the present time?

A. At the present time Braniff has a service from Lima to Rio, and Panair do Brasil has.

Q. What has been the Braniff experience?

A. The Braniff experience—

Mr. Kenney: Your Honor, even as an expert how can this man speak of the Braniff experience? I object to the question.

Q. Do you know what the Braniff experience has been as far as how often, the frequencies with which they have operated that route?

The Court: Do you know?

A. Yes. Braniff has been operating or is now operating about three frequencies a week over the route, and average passengers per day on the route amount to about 13.2 round trip passengers per day.

As far as the—

[fol. 458] Q. What about Panair do Brasil's experience?

A. As far as the Brazilian experience is concerned, Panair do Brasil started its operation in February, 1951, with one round trip per week. The service was suspended in July due to lack of traffic and was reinstated in April, 1954, with one round trip per week.

Q. With one carrier operating one round trip a week and another three with an average passenger load of around 14 passengers a round trip, what would you say as to the economics of putting another operation in?

A. It doesn't look to me like it would support the service of an additional operator.

Q. I would like to have you now explain to the Court the exhibits which you have not already referred to during the course of your testimony, Mr. Ferguson. First PS-1, the very first one; would you tell us what that shows?

A. Well, this exhibit shows the number of aircraft which were owned by Pan American's Eastern Division and Western Division, which is the Latin-American operation, during the years through 1942, I believe.

[fol. 459] Q. This is PS-1 you are talking about?

A. PS-1.

Q. That goes through 1958, doesn't it?

A. No, it does not.

Q. It does on mine. According to the heading on my PS-1 it covers Pan American aircraft used by the Latin-American Division for the years 1929 to 1958. Correct?

A. That is correct. I was looking at Exhibit PS-2.

This exhibit summarizes the capacity and speed of various aircraft types used by Pan American's Latin-American Division from the start of operations to date. It is here

purely for informational purposes to show the characteristics of the aircraft which were used primarily during the early stages of operation in Latin America.

Q. Now PS-2. What is that, please?

A. That indicates by sectors the type of equipment used in the Latin-American operations up through the year 1942. The exhibit was initially submitted in Docket 779, and we have not attempted to bring it up to date at this point.

Q. I notice you referred to the Western Division in this. [fol. 460] What do you mean by the Western Division?

A. Well, in the early days of the Latin-American operation there were two separate divisions. The Eastern Division operated from Miami into the Caribbean to the Canal and down the East Coast of South America. The Western Division was responsible for operation to and through Mexico and Central and South America to the Canal Zone in the early stages, and in the late 1930s its operation was extended across the North Coast to Port au Spain.

Q. I think you have sufficiently covered PS-3 in your previous testimony. Tell us what PS-4 is, would you please?

A. PS-4 is a record of Pan American's operations down the East Coast of South America to which I previously referred.

Q. Yes, you have mentioned it.

A. To aid in understanding the exhibit it should be noted that from 1931 until the middle of '48 all services were operated out of Miami, and beginning in 1946 services were inaugurated from Miami through San Juan and Port au Spain down the East Coast.

[fol. 461] I think also that it might be noted that Pan American began its cargo service down the East Coast in 1946 and has continued that service throughout. The service in 1954 was transferred, however, with New York as the origin point rather than Miami.

Q. I notice you were having from New York as many as two flights day in 1947, '48, '49 I guess, and you haven't had that many since out of New York.

A. We ran into an international problem with the government of Brazil in which restrictions were put on the amount of capacity which Pan American could operate between the United States and Brazil and Rio and between

Rio and Buenos Aires. These restrictions have been in effect since, I believe, 1946 and are in effect today, as a matter of fact.

Q. Do you have any comment to make also about competition?

A. The competition on this route has been growing materially during the last—I would say the last eight or 10 years with both Brazilian carriers and Argentine carriers getting into the market in a very strong way.

Q. Do you have any comment upon PS-5, Mr. Ferguson?

[fol. 462] A. PS-5, of course, is the history of the Panagra, Balboa, B.A. services, and I would only like to note that beginning in 1947 the Pan American through-flight services were inaugurated. This has led to a very healthy growth as you will note by the increase in frequencies up to date, and also to note that the frequencies of the Panagra service from the U. S. to B. A. substantially exceed those which are provided by Pan American.

Q. On the East Coast?

The Court: Excuse me. It seems to me that from 1942 the frequency was the same.

The Witness: From '42 to—

The Court: You said it increased in '47.

The Witness: Yes. Oh, I am sorry. '49 is the first year in which there is an increase over daily except for the cargo service, one cargo service in '48. But passengerwise the frequencies were increased to nine frequencies in '49 and to 11 frequencies in '58.

The Court: Is that because of the cargo?

The Witness: No, that is passenger.

The Court: DC-14s are passengers?

The Witness: That represents tourist class.

[fol. 463] The Court: Yes. All right.

May I just interrupt? Would a tourist plane be classified under your concept of people traveling on business?

The Witness: Well, I think generally, your Honor, that business people travel first class.

The Court: I would guess. At least they charge it to business.

The Witness: That's right.

The Court: All right.

By Mr. Peck:

Q. I know you have commented pretty fully on PS-6 and 14, but I want to be sure that it is clear as to what is included in the headings here total mail pay in PS-6 and 14. You have got total U. S. mail pay.

A. Yes. In the early days of the operation, as I pointed out, through 1938 these were payments made under mail contracts. Thereafter, up to 1953, the mail pay was determined by the Civil Aeronautics Board and paid by the Post Office as a lump sum on the basis of a rate per mile flown in most cases. As a matter of fact, in all cases it was stated that way.

That included both subsidy and what is known as com-
[fol. 464] pensatory mail pay which is the pay for the actual service of carrying the mail.

From 1954 on the subsidy payment was separated from the compensatory mail paid, the Post Office paid the compensatory mail pay which was for the service of carrying the mail, and the Civil Aeronautics Board paid the subsidy amount. However, the CAB or Civil Aeronautics Board determined the level of subsidy and the rates per ton-mile to be applied in arriving at the compensatory mail pay, and the Post Office Department accepted the rates which were made by the Civil Aeronautics Board in arriving at the amounts to be paid to the carriers for compensatory mail pay:

[fol. 465] Q. So when you talk about total mail pay, you are talking about total government payment, whether by way of carrying mail subsidy or both together, and any combination.

A. That is correct.

Q. And during the early years, is it true that practically all that so-called mail pay was a subsidy, and really, very little of it related to carrying the mail?

A. That is correct.

Q. Now, what is the purpose of PS15, Mr. Ferguson?

A. Well, as I pointed out in my previous testimony, we wanted to try to get to a cost which was representative of the cost on the Miami-Canal Zone route. This exhibit shows operating costs per revenue plane mile for aircraft employed by Pan American on this route for services during

the years 1941 through 1945. In effect, this exhibit supplements PS14, which shows average division cost per mile for the period 1929 through 1938, and beyond.

Q. How about after '38? Have you been able to segregate it?

A. Actually, it is only after 1938 that we have been able [fol. 466] to segregate costs by types of equipment employed, and have come to these figures.

Q. What about Exhibits PS18 and 18-A? What are they in here for?

A. This exhibit is prepared in rebuttal to the Government Exhibit 101, GS101, which purported to show a comparison of the growth of Pan American and Panagra in terms of passenger miles for the period 1929 through 1957.

The exhibit, in the form presented by the Government, I think, is quite misleading. One thing, the period prior to the adoption of the Civil Aeronautics Act in 1938, was a period of route development.

Q. That exhibit was a map, by the way, was it not, a chart, rather. It was a chart, was it not?

A. It was a chart.

Mr. Peck: Is it here?

I thought I would like to hand it to the Court so his Honor would know exactly what we are talking about. It is this chart.

Q. All right, go ahead, Mr. Ferguson.

A. Once the route from the Canal Zone to Buenos Aires, the Panagra route, was established, it seems to me that the objective of the Panagra development was pretty well [fol. 467] established. On the other hand, much of Pan American's route pattern developed in Latin America, such as the extension down the east coast, was not undertaken until a later date, during 1931-32. Since the Pan American route encompasses a larger overall objective, and the development came later and took longer, it is our feeling that Pan American growth, in terms of passenger miles, was substantial—would substantially exceed those of Panagra's up to the end of 1938, purely from the standpoint of development of the route deal.

You start with zero as a base for the two years, and one carrier has a more extensive assignment than the other, as

was certainly true with Pan American as compared to Panagra, one carrier is bound to show substantially more growth than the other. I do not believe, therefore, the comparison made by the Government is one which actually shows the story. I think it would be much fairer to make the comparison on the basis of the two operations after this development period through '38, and at such time as the Civil Aeronautics Board, or Civil Aeronautics Act was adopted.

We have therefore made the comparison from 1939 through 1957, to see how the two companies have fared. [fol. 468] We have made one adjustment in our figures, in that we have eliminated the passenger miles which were developed on the New York-San Juan route. We feel that that route is much more in the nature of a domestic route; that there were so many items influencing the development of this route and influencing it, I would say, outside of Pan American, such as government agencies and the territory of Puerto Rico insisting that we make available very economical fares on this route in order to develop a free exchange of Puerto Rican population with the United States.

I might say that Pan American put in its first tourist service on this route at rates of about four and a half cents per passenger mile, and we also inaugurated—and that was in 1948—and we also inaugurated in 1956 the first, what is known as thrift service. Under the thrift service rate you can fly from Puerto Rico to New York, a flight of some 1,600 miles, for about $46, which, if computed out to a passenger mile rate, comes somewhere between two and a half or three cents per passenger mile. I believe it is the lowest rate in the world, actually, for air transportation on a scheduled operation basis.

The Court: I don't understand why you did that? You [fol. 469] say the government asked you to, originally?

The Witness: There was great pressure put on Pan American by the government of Puerto Rico to provide a very inexpensive service, so that the Puerto Rican people could fly from the island to the States.

The Court: You are not talking about the thrift service?

The Witness: Well, I was talking—

The Court: Of both?

The Witness: Tourist service.

The Court: But the pressure came from the Puerto Rican Government?

The Witness: The pressure came from the Puerto Rican Government, and it was supported by the Department of Interior.

We put this service in, and the amount of traffic that has been developed the route is fantastic. The San Juan—the New York-San Juan sector itself, on local service only, has amounted to better than a third of the passenger miles of our Latin American operation. I thought I had figures here, but I don't seem to. Actually, in some instances I think it was even pressing 40 per cent of the total passenger [fol. 470] miles of the Latin American operation. So that we felt that this service was not in the same category as the international service, where the development of traffic was quite a different thing, so we decided to make the comparison by the elimination of the New York-San Juan service, and on that basis, as you can see, our growth from 39 to 57 has been about 1587 per cent, as compared to Panagra's 1,717 per cent.

Q. And is that relative growth then charted on PS-18a, which is your full blown up versions on the easel there?

A. That is correct.

Q. The broken line being Panagra and the solid line Pan American; is that correct?

A. That is correct, and it is charted in terms of percentage growth by years. I might say that taking the same period, 1939 to 1957, and without the elimination—

Q. Yes, I was going to ask you, what happens if you keep Puerto Rico in?

A. If we keep Puerto Rico in and make the comparison on the basis of growth in revenues, Panagra comes up to about the same figure as they have in passenger miles, slightly less, and our figure is slightly less than the [fol. 471] figure we show for Pan American, in terms of percentage growth.

Q. You mean slightly less than Panagra or—

A. Let me state it this way:—

Q. All right. Pardon me. I don't want to confuse you. I want to be sure that we get it right, that is all.

A. Well, the Pan American percentage, as I remembered, is approximately 1500 per cent, and that includes the revenues from the New York-San Juan operation.

Q. Yes?

A. And that compares with the growth of about 1700 per cent for Panagra.

Q. I see. Now what is the purpose of PS-20?

A. PS-20, as I pointed out—

Q. No, I don't think you pointed that out before.

A. No, I have not. I have not referred to that before. I am sorry.

Q. I think that is the first reference to PS-20.

A. The Department of Justice—

Q. Just tell us why we have got PS-20 here.

A. Well, PS-20 is in here in rebuttal to an exhibit which [fol. 472] the Government has submitted, which was a letter from Mr. Clark, the vice president of W. R. Grace, which pointed out that the Pan American sales effort was selling only about three and a million dollars of revenues, and that Panagra was selling about six and a half million in its operation.

Q. Exhibit 541, that exhibit, is Mr. Clark's. All right, go right ahead.

A. We decided to take some figures of our own and see what they look like on our own records, and this shows that in 1949, which was the year covered by this

Q. Pardon an interruption, Mr. Ferguson. I would like to make one thing clear about that exhibit, to begin with. Government's Exhibit 541, which was talking about sales by Panagra for Panagra's account in South America, as compared with Pan American sales for Panagra's account in the United States. Would you make a comment as to whether those are comparable figures in any event?

A. No, they are not. Panagra's sales might not have been for Panagra. It could have been for most anybody. They could have been for connecting carriers. They could have been for Pan American; they could have even been for [fol. 473] domestic carriers, in that if they sold transportation from Lima, let's say, to New York, in 1949, they

would be selling, for example, for Pan American, they would have been selling for Eastern or National and themselves.

Q. And I have got in mind what I would assume is more important, check me, is that it would have included all the sales for Panagra's account of South American traffic which doesn't come to the United States at all.

A. That is correct.

Q. Wouldn't that be right?

A. That is correct.

Q. That must be a tremendous percentage of the Panagra traffic, isn't it?

A. I think it is quite substantial, and their local traffic on the west coast.

Q. Whereas Pan American sales for Panagra would all be sales from passengers in the United States, wouldn't it, or practically?

A. Well, they would—the sales which we segregate would be the actual sales which wound up in Panagra's revenues.

Q. But I mean, they would be passengers, wouldn't they, [fol. 474] traveling from the United States, wouldn't they?

A. No, it would be passengers, any passengers, that Pan American sold for them, whether it would be from the United States, whether it be from Latin America, whether it would be from Europe.

Q. Well, I mean, you wouldn't sell much for Panagra, would you, from Lima to—well, Lima to BA, or from any other place along the route, South American traffic that didn't come to the United States?

A. Our Rio office could very easily sell Rio-BA-Lima.

Q. Yes, but as I understood these figures, were sales in the United States by Pan American in the United States for the account of Panagra.

A. Oh, well, that is a different kettle of fish.

Q. Yes. Well, that is the comparison.

A. Well, I wasn't sure that that was true. Maybe it is.

Q. I am quite sure that it is true. Well, you accept that assumption for the moment, that you are comparing Pan American sales in the United States for the account of Panagra with Panagra's sales in South America for the account of Panagra; are they comparable at all?

[fol. 475] A. I don't think they are. I don't think the two figures are comparable.

Q. And am I not right that Pan American in the United States would not be making any appreciable sales for the account of Panagra just within South America?

A. You mean as a local flight?

Q. Yes.

A. On the west coast?

Q. Yes.

A. I think there would be very few of those.

Q. All right. Go ahead then with what you have done with PS-20.

A. Well, we have taken the—let me talk about the year 1949 first. In that year Pan American made the sales and credited to Panagra the amount of those sales, which represented travel over Panagra's route, and in that year the Panagra sales represented 49.1 per cent of Panagra's total passenger revenue.

In the years 1954 through 1958, the figures under Panagra total passenger revenue, under the figure passenger revenue sold by PAA, represent direct billings from Panagra for tickets sold by Pan American, which were picked up on the Panagra routes and then billed to Pan [fol. 476] American. So that there is no question that these amounts actually represent amounts of revenues which Panagra has derived from sales by Pan American, and the year, as you can see, the trend, '54 to '58, it has gotten up to almost 61 per cent of the total Panagra revenue which was sold by Pan American.

Q. Now, what is the purpose of Exhibit PS-21, Mr. Ferguson?

A. This exhibit shows the subsidy accruals as estimated by the Civil Aeronautics Board for Pan American's Latin American operations for Panagra and for Braniff, in their Latin American operations. I previously explained that the shift at the end of 1953, when the CAB commenced making separate determinations of subsidy requirements, for the period prior to 1954 the figures shown are taken from a study made by the Civil Aeronautics Board staff, purely for information purposes, and they have determined in these years what the estimated actual subsidy was as opposed to the compensatory mail pay.

Q. Do these figures include full year subsidy in all instances, and are they complete?

A. No, they are not. Under the Pan American heading, the year 1948 represents subsidy only for the three months, [fol. 477] and through June, 1948, and the item of fifteen hundred dollars—a million five hundred thousand dollars, for the year 1957 is for the three months, July to September, 1956.

Q. Well, how about the fact that no subsidy is shown for 1958? Does that mean that there was no need for a subsidy?

A. Not necessarily. The Pan American rates or subsidy have not been determined for the period October 1, 1956, to the end of December, 1958.

Q. Are you asking for subsidy for that period?

A. Yes, we are asking for subsidy for that period.

Q. Has the Board made any calculations in reference to it?

A. Well, in their recent order, or rather, show cause order, in which they ask Pan American to show cause why its—why the mail rates should not be closed as of January 1, 1959, they computed the amount of the need of Pan American for the period October 1, 1956, through December 31, 1958, and if deferred taxes, which are an item that is in question as to the policy which the CAB will follow in determining need, are included, they determined our need for subsidy to be for this period about $23,000,000 for the Latin American operation.

[fol. 478] Q. I notice that your exhibit here does not have anything down for subsidy for Panagra after 1956. Does that mean that Panagra isn't seeking and doesn't need any subsidy for that period?

A. No. Well, I will take that back. Let me say first that the subsidy shown for fiscal year 1955 of $1,100,000 is only for the last six months of 1954. For the period from January 1, 1955, through—well up to about October, 1958, Panagra's rates have been closed and no subsidy will be paid up to that time. In October, however, 1958, Panagra filed a petition with the Civil Aeronautics Board to reopen its rates and to establish a subsidy—establish the annual subsidy requirements for their operation.

Q. What did they say their requirement was?

A. The amount shown in their petition was approximately $6,800,000.

Q. Per year?

A. Per year.

Q. During the course of your testimony you made some comment about IATA, but I am not sure that you covered the last thing that I wanted to ask you here, the next-to-the-last. Are the rates charged by American flight carriers [fol. 479] in Latin-America governed by resolutions of the International Air Transport Association as approved by the Civil Aeronautics Board?

A. They are. Rates for Argentina, Brazil, Chile, Uruguay and Paraguay were fixed—have been fixed and set since about 1950 by IATA, and for other countries in the Western Hemisphere they have been established since about 1951.

Q. Is this all approved by the Civil Aeronautics Board?

A. The right for the carriers to participate is approved.

Q. In a resolution of the Board?

A. That's correct.

Q. My final question, Mr. Ferguson: Can you tell us what the investment of Pan American was in the Rancho Boyeros Airport in Cuba in the year 1947? What was it at that time?

A. In '47?

Q. Yes.

A. I have not got it broken down in that way.

Q. How close can you come to it?

A. Well, I would say that in 1947 it was approximately a million dollars, and up through '52, the year in which [fol. 480] the airport was sold by Pan American, we had invested $1,372,000.

Mr. Peck: I think that is all on direct, your Honor.

The Court: We will take a short recess.

(Short recess.)

Cross examination.

By Mr. Kenney:

Q. Mr. Ferguson, you testified about a number of different subjects, and the last one you finished with was IATA, and that is the one I am going to begin with.

Are you an expert in IATA procedure?

A. As far as the economics which go into rates are concerned, I am.

Q. Do you have knowledge of the way the question of setting fares is handled by IATA?

A. Generally, yes.

Q. As I understand it, and I hope you will correct me if I am wrong, these fares are supposed to be arrived at actually at the time of the IATA conventions; is that not so?

A. By a unanimous adoption of fares by the conference.

Q. There is not supposed to be any exchange of infor- [fol. 481] mation or any settling of fares between the airlines prior to the convention; is that not true?

A. I think that is correct.

Q. By the way, Mr. Ferguson, did you testify in CAB Docket No. 2423?

A. I don't recognize it by number. Maybe if you can tell me what it is.

Q. That was the through flight.

A. I did.

Q. You did testify?

A. I did.

Q. Wasn't your testimony on the subject of fares to some extent?

A. Not that I remember.

Q. You don't recall that?

A. No, I do not.

Q. Isn't it also true under the IATA rules that the fares which are arrived at at the conventions apply only to the members of the IATA?

A. That is correct.

Q. In other words, there are no provisions under IATA which would permit an IATA carrier to agree on a rate with a non-IATA carrier, is there, Mr. Ferguson?

[fol. 482] A. No, not agree if you mean together they agree, no.

Q. That's right. Do you know whether in 1953 Aerolineas Argentinas was an IATA carrier?

A. I do not remember whether they were members of IATA at that point or not.

Q. Do you know that Pan American had a rate agreement with them?

A. No, I do not.

Q. You do not know that?

A. No.

Q. Mr. Ferguson, I believe you testified that 53 per cent of the tourists go on round-South American trips; is that right?

A. No, I did not testify to that. I testified that of the total U.S.-B.A. passengers 53 per cent purchased round-South America tickets.

Q. That is the total. Of the total, 53 per cent do that?

A. That's correct.

Q. Mr. Ferguson, you were not trying to establish by your testimony, were you, that there is no competition between Pan American and Panagra?

A. I think my testimony speaks for itself.

[fol. 483] Q. Well, I will ask you if that is what you were trying to establish.

A. I was trying to establish the extent of competition in so far as Pan American and Panagra are concerned.

Q. There is competition; is that right?

A. I told you the limited extent to which it was established.

Q. Isn't it a fact that as far as Buenos Aires is concerned, that the Pan American people down there look upon Panagra as their chief competition?

A. May I have that question, please?

(Question read.)

A. To the extent that there is competition that is probably true. On the other hand you have also Aerolineas, you have Transcontinental, both Argentine carriers, and you have Braniff.

Q. Well, I am going to read you from Government's Exhibit 316 which is a memorandum dated March 30, 1951,

and it covers a meeting of the Pan American people in Buenos Aires with the Walter R. Thompson agency, and it says the primary competition is with Panagra and the secondary with Argentine airlines and Braniff. Would you agree that that condition still exists today?

[fol. 484] A. It depends on what you are talking about. It depends on the extent to which you can compete, and I think you have to measure that quantitatively.

Q. Let us put it this way, Mr. Ferguson: Isn't it a fact, although you talk about the Canal Zone, that Panagra, through the use of interchange agreements, actually has its terminal in New York and in Buenos Aires?

A. You mean with the through flight?

Q. That's right.

A. May I have the question again, please?

Q. Well, let me rephrase it. As a practical matter Panagra flies from New York to Buenos Aires, does it not?

A. That's correct.

Q. And so does Pan American?

A. That's correct.

Q. And they compete for passengers on that run; is that not correct?

A. I admitted that they competed for a certain phase of the traffic, that's true.

Q. They compete for all the traffic that goes from New York to Buenos Aires, don't they?

[fol. 485] A. No, they do not.

Q. Don't they each try to sell people going from New York to Buenos Aires and Buenos Aires to New York tickets?

A. We try to sell both services.

Q. Isn't it true, Mr. Ferguson, that if Pan American had not stopped the development of Panagra throughout the years there would be even a great deal more competition today?

Mr. Peck: I object to the form of the question.

The Court: Sustained.

By Mr. Kenney:

Q. Let's take the case of Miami. Pan American prevented Panagra from coming into Miami for a long time, didn't it, sir?

Mr. Peck: If he knows.

Q. If you know.

A. I don't know whether you would call it prevent or not. Panagra came into Miami on the basis of Pan American's permission for them to come in.

Q. Are you familiar with the CAB hearing in Docket 779? [fol. 486] A. Yes, I am.

Q. Do you know whether or not in that hearing Pan American took the position that if Panagra was allowed to come through to Miami it would be in direct competition with Pan American?

A. I know of Docket 779, and I know the basis of the case as far as that part is concerned.

Q. Are you not familiar with Pan American's position which I have just—

A. It opposed permitting Panagra to file an application for the route.

Q. Because it would put it in competition with Pan American: isn't that correct?

A. Because it would put Pan American out of business.

Q. And would put Panagra in competition with Pan American?

A. The reason for it was because it would put Pan American out of business on Miami-Balboa.

Q. It would also put Panagra in competition with Pan American, would it not, sir?

A. I don't think there would be any competition under the circumstances that I see.

Q. You are familiar with the fact that the Board has on [fol. 487] several occasions made the statement that Panagra should have been allowed to come through to Miami on its own certificate; are you not, sir?

A. I don't know the utterance to which you referred.

Q. Let's take Docket 779. Isn't it true that the Board took the position that Panagra should be allowed by its parents to come through to Miami?

A. I don't think so. I think they decided they had no jurisdiction.

Q. Didn't they later urge that the owners take some action to see that Panagra is given its own certificate to come through to Miami?

A. I don't remember that.

Q. You don't know, sir?

A. No.

Q. Well, do you know whether they urged that Panagra be allowed to come through to the Eastern United States in connection with Docket No. 525 which was a Latin-American route case?

A. No, I don't know that.

Q. You don't know those things.

A. No.

Q. You did testify about the economics of the Rio-Lima [fol. 488] run. It is true, is it not, Mr. Ferguson, that Panagra wanted to get a certificate to operate from Rio to Lima and from Lima to Rio?

A. Yes, I think they did.

Q. And Pan American didn't permit it; isn't that correct?

A. Pan American didn't think they should operate it because it was not economically feasible.

Q. And because of the peculiar way in which Panagra is set up, one of the partners can stop action by the other; isn't that right, sir?

A. Well, sometimes they don't agree.

Q. Well, you have been with Pan American since 1929, I believe you testified.

A. That's correct.

Q. Are you familiar with the early history and the formation of Panagra?

A. I know the early history through Docket 779.

Q. You were not one of the 12 young men that founded Pan American; is that right?

A. I was a young man and joined Pan American after college, poor.

[fol. 488a] Q. Do you know anything of the territorial arrangement which was agreed upon between Grace and Pan American prior to the formation of Panagra?

A. Just what I know about what the objective of Panagra

was to be which was to operate a connecting line between the Canal Zone and Buenos Aires.

[fol. 489] Q. Do you know anything —

A. It was to be to operate a connecting line between the Canal Zone and Buenos Aires.

Q. Do you know anything personally of the arrangement that was made by Grace in Pan American prior to the formation of Panagra?

A. I had nothing to do with the conversations.

Q. You do know that Pan American has always taken the position that there was a division of territory agreement which applies to the situation here?

A. I do know what the objective was in so far as Panagra was concerned, at the time that Panagra was formed.

Q. You also know that Pan American said that it wouldn't apply for routes on the west coast to South America prior to the time this case was filed, don't you?

Mr. Mallory: Could I have that question again, please?

(Question read.)

A. No, I do not know.

Q. You know nothing of the agreement on the division of territories between the parties of this case, Mr. Ferguson?

[fol. 490] A. I know what I learned in Docket 779. First-hand information with regard to the division of territories, I do not know.

Q. Well, you say what you learned in Docket 779; did you read Docket 779?

A. I listened to most of it.

Q. Well, didn't you hear the terms "spheres of operation" and "division of territories" mentioned in that hearing?

A. My primary memory of the purpose of Panagra was described in the history of the formation of Panagra.

Q. Well, don't you know, as a matter of fact, Mr. Ferguson, from listening to Docket 779, that there was an agreement between Pan American and Grace, that Panagra would operate down the west coast of South America and Pan American would operate down the east coast of South America?

Mr. Peck: I think, your Honor, I will object to this. I don't think it is proper cross-examination. I didn't ask him anything about any agreements. I don't object to having the witness testify to what he knows about something, but he has told us what he knows, and I think that there is no purpose to be served by continuing to cross-examine the witness about agreements which he has no [fol. 491] firsthand knowledge of, and which I didn't ask him anything about.

The Court: That doesn't limit the Government in its cross, because you didn't ask him. But perhaps it might cause the Government to ask the question differently. However, I will allow it.

Mr. Kenney: Thank you, sir.

Q. Now, will you answer the question if you can, Mr. Ferguson?

Mr. Kenney: Would you read the question to him?

(Question read.)

A. As to firsthand knowledge, I do not know of such an agreement.

Q. There would be others in your company who would know more about that; isn't that right, sir?

A. I am sure there are.

Q. Now, if Panagra had been allowed to fly from Rio to Lima and Lima to Rio wouldn't that have put it in a competitive position with Pan American for Rio traffic?

A. To the extent that it was competitive, yes.

Q. And we can agree certainly that during the years, if Panagra had been allowed to fly under its own certificate [fol. 492] from the Canal Zone to Miami, there would have been a good bit of competition between Pan American and Panagra.

A. Oh, no, there wouldn't have been much competition at all, because Pan American—

Q. You mean Pan American would have gone out of business.

A. —Pan American would have gone out of business on the route.

Q. So the competitive situation thus created would have put it out of business?

A. Would have put it out of business, and instead of making more competition, would make less, unless we are certificated on the west coast.

Q. Well, the Civil Aeronautics Board pretty much decides the route pattern and thinness of the market, doesn't it, sir?

A. Oh, yes, certainly does.

Q. Now in the latter part of 1956, isn't it true that Panagra wished to obtain a certificate under its own name to fly to the West Coast of California?

A. In the latter part of 1956?

Q. That is correct.

[fol. 493] A. I can't remember whether they filed an application or not.

Q. Well, I am asking you, sir, if you know whether they expressed this wish to Pan American?

A. Well, I think they made a management study, which indicated that they had an interest in the route, yes.

Q. Do you know whether Pan American flatly refused to join the Grace directors in enabling Panagra to serve this part of the country?

A. Well, I think if they had, application would have been filed.

Q. And it hasn't been?

A. It has not been filed.

Q. Now, if Panagra were to fly to the west coast of California, say to San Francisco and Los Angeles, wouldn't that also put it in competition with Pan American?

A. Very much so.

Q. Now isn't it true, Mr. Ferguson, that Pan American is soon going to inaugurate a direct service from New York Caracas-Buenos Aires?

A. We hope to do—

Mr. Peck: Can we get that question again? Would you give me the question, please?

[fol. 494] (Question read.)

A. We hope to do so by Asuncion.

Q. That would be by jet?

A. That's right.

Q. Now, will that route to be operated in that way make you nearer on a route mileage basis to Buenos Aires than Panagra is with its route down the west coast?

A. I don't believe it will. I think it would make it just about equal.

Q. It certainly won't be any longer, will it, Mr. Ferguson?

A. No, I think it will probably take up the slack in the differential between the present routings. On the other hand, my memory is that it is about two or three hundred miles involved. I think it would still be a mileage advantage via the west coast.

Q. I think you might find that it would be even a little shorter in mileage, operating that route. Now, I might be wrong about that. But in any case, the problem of Panagra having the shorter route will no longer be such a problem, will it?

A. Well, I don't, I don't frankly think that since the operation out of New York in 1955 that it really has cre-
[fol. 495] ated very much of a problem.

Q. Well, I understood you to say that one of the selling points on the Panagra route was that it was shorter?

A. Well, that is from all areas of the United States except in the case of New York, where the mileage differential is small enough that it doesn't make too much difference.

Q. It won't make much difference at all under this route, will it?

A. I don't think it will. I think we'd have pretty equal routes as far as BA is concerned, which is what seems to be so important here.

Q. Now, Mr. Ferguson, in mentioning statistics, you used the months of March and September; are those representative months?

A. I think they are.

Q. Now, Panagra has not always been happy in the past with Pan American's conduct and efforts in the sale of its tickets and its advertising, have they, sir?

A. There have been, I presume, some kicks about the Pan American service; on the other hand, it seems to me that certainly in the last eight or ten years that we
[fol. 496] have had very few problems in so far as—

Q. Well, we have a number of letters in the record here,

sir, that indicate in 1949-1950 there were still a number of complaints?

A. Well, let's take the nine years then.

Q. You say the situation no longer exists?

A. I don't think so. I think there are always differences between two partners, there is no question about that, and they are small in most cases.

Q. They are small?

A. Yes, I think they are small.

Q. These differences haven't let up much, have they, over a period of some 30 years?

A. Well, we seem to be getting along pretty well with Panagra in our sales effort, for example. I have discussed the matter with our U.S. sales manager, for example, who thinks the thing is running very smoothly, as a matter of fact.

Q. Your manager does?

A. Our manager, and he ought to know if there are complaints. We have a completely cooperative arrangement in so far as sales are concerned, where the Panagra sales people cooperate completely with the Pan American sales [fol. 497] people in the various districts over the country. They go together to call on agents, to set forth the various advantages of service, and that sort of thing, and I think as far as advertising is concerned, that there were some problems with regard to that. It is certainly my impression that the advertising programs, which are in some cases joint, and in some cases entirely separate programs, are going along very well.

Q. Panagra still doesn't have its own advertising under its control, does it? Pan American—

A. Oh, certainly does.

Q. Isn't Pan American the representative in this country that handles Panagra's advertising?

A. Panagra has perfect freedom in its advertising program. It can put as much advertising in papers or magazines as it pleases. That is up to their board of directors as to what they spend. As far as joint advertising is concerned, it is always on the basis of an agreement on the advertising to be done, and the costs are split on a reasonable basis between the two carriers.

Q. Now, I think you testified that Panagra presently had its own representatives in this country selling passages over [fol. 498] Panagra?

A. That is correct.

Q. Now, when a Panagra representative here sells a passage over his line, does Pan American get a commission on that sale?

A. That's right. We are the general agents for Panagra. As a matter of fact, as far as the Panagra representative actually making the sale is concerned, I don't believe that is quite the picture. The sales effort is almost entirely as between the passengers and Panagra—between Pan American and the passenger. The staff of Panagra is the staff which is promoting Panagra in Pan American's offices and with agents.

Q. Mr. Ferguson, I believe you testified at some length about the thinness of the market; are you familiar at all with the Board's decision in Docket 4882, the so-called Balboa Through Flight proceedings?

A. Yes, generally.

Q. Are you familiar with the fact that in that decision, which was issued in 1955, the Board stated that "The Latin America area is today the largest foreign air transportation market to which American flight carriers have access"?

A. No. I think you are relating my testimony, however, [fol. 499] to a period which is not being discussed in Docket 4882.

Q. Well, I was asking you, sir, if you were familiar with the fact that the Board so stated its decision, in its opinion, in Docket 4882?

A. And what was the quotation?

Q. "The Latin American area is today the largest foreign air transportation market to which American flight carriers have access."

A. I wonder if they would say it today?

Q. Well, they said, "Moreover, it is a market which has expanded tremendously in the past and which may be expected to continue to grow in the immediate as well as the more distant future."

A. Well, I can say it hasn't, it hasn't grown any more near, at anywhere near the rate where other areas have, such as your trans-Atlantic, trans-Pacific.

Q. You are familiar with the fact that the Board put Braniff down there in 1946, aren't you, sir?

A. Oh, yes, I am very familiar with that fact. But I also say that I don't think there is an area in the world where the competition is so keen as it is in the Latin American area.

[fol. 500] Q. Well, let's see how Pan American got started in the Latin-American area. I think you testified at some length about the fact that Panagra had to have a subsidy to get started down there. Pan American didn't make any money without mail pay in the early years either, did it?

A. Oh, it certainly has not. It hasn't made any money with mail pay either.

Q. As a practical matter, don't they all get mail pay?

A. No, not without subsidy.

Q. Isn't mail pay a form of subsidy?

A. It is not. It is compensation for doing a service.

Q. Doesn't the Civil Aeronautics Board look upon mail pay as a form of subsidy, to your knowledge?

A. It certainly does not.

Q. Are you saying that they only actually get paid for the mail they carry?

A. That's what some people get. Other people get subsidy which is identified as such.

Q. Does Braniff get subsidy?

A. Yes.

[fol. 501] Q. In addition to its air mail pay?

A. That's right.

Q. Does it today?

A. I think you will find, if you look at the Board's estimate of subsidy requirements for international carriers, that there is only one there and that is Braniff.

Q. Panagra has requested a subsidy; is that right?

A. That's correct; and so have we.

Q. And so has Pan American. Now, this through-service agreement or the through service that you talked about was approved by the Board in 1946, wasn't it?

A. That's correct.

Q. Are you familiar with that proceeding? I think I asked you that before and you said no.

A. Yes, I participated in those proceedings.

Q. You did participate?

A. That is right.

Q. You know, don't you, that the Board approves these things at certain periods of time; approves this through-flight agreement?

[fol. 502] A. I don't remember what the approvals were. It seems to me that the first one was for three years or something like that, and then it was extended.

Q. Don't you know that the last one was until 1960 or the conclusion of this case?

A. I don't remember the terms of the approval.

Q. You do know that the Board keeps some sort of control over this through-flight agreement.

A. Well, if you mean control by being able to bring it up for approval again, why, I suppose that's right.

Q. They have to approve it from time to time; is that right?

A. That's right.

Q. Do you know anything about the 1939 agreement between Grace and Pan American and Panagra?

A. Only the fact that at that time it was determined that one of the Grace directors would become the president of Panagra.

Q. Do you know whether it is your company's position that that particular agreement ratified the understanding on the division of territories?

A. No, I do not.

Q. At the time that Panagra wished to fly from Lima [fol. 503] to Rio, Panair do Brasil was not operating the route, was it?

A. As I remember it, they started the operation in '51 and then suspended, and then reinstituted it in '54.

Q. They were not doing it in 1949, were they, sir?

A. No.

Q. Or in 1950?

A. I don't think they were, no.

Q. You spoke of some difficulty with regard to Brazil. Could you tell me again what you meant by that, sir?

A. Yes. The United States has a bilateral agreement with Brazil which provides for the operation of United States flag carriers and Brazilian carriers between Brazil

and the United States. Under that agreement there are certain provisions whereby a carrier is not permitted to operate what might be considered excess capacity which would injure the airline—the national airline of the second party to the agreement, which in this case would be Brazil.

We had been operating twice daily with DC-3s and then had cut back to a DC-4 service which we had in what we [fol. 504] called a sleeperette configuration which provided for some 30 to 35 seats on a DC-4 airplane at first-class fares. We also operated those flights south of Rio in which case we picked up what might be called third-country traffic, in other words, traffic that originated in Brazil, and carried it to Buenos Aires.

The Brazilians felt that we were offering and carrying more of that type of traffic than we should carry, so they put a limitation on us both north of Rio and south of Rio as to the number of seats which we could offer for sale. This has been—this restriction has been in effect ever since, and we are limited by that.

Q. Will this new direct flight, New York, Caracas, Asuncion, Buenos Aires, help you in that respect?

A. Well, it is an improvement in service. As far as we are concerned, we will have an improvement of service when the jets are in operation, and by the same token so will Panagra when they get their jets in operation, which should be some time in 1960.

The Court: What counsel meant was you wouldn't be limited by this Brazilian limitation for the simple reason [fol. 505] that you wouldn't be stopping there.

The Witness: We would be by-passing Brazil.

Mr. Kenney: That is what I was about to ask.

The Court: Would this be a convenient time to adjourn?

[fol. 506] New York, May 19, 1959,
10.30 a.m.

R. G. FERGUSON, resumed.

Cross examination (continued).

By Mr. Kenney:

Q. Mr. Ferguson, as the treasurer of Pan American you are the chief fiscal officer of that company; is that not right, sir?

A. That's correct.

Q. As I recall your testimony yesterday, you stated that approximately 54 per cent of the traffic between the United States and Buenos Aires originating and terminating in the Northeastern part of the United States—that that percentage is correct; is that right, sir? 54 per cent?

[fol. 507] A. Yes.

Q. Now, could you tell us what percentage of Pan American and Panagra's participation originates in the Northeastern part of the United States?

A. I don't think I have that figure.

Q. Would the figure 90 per cent seem high to you?

A. I would think that would be quite high.

Q. Well, it is a much higher figure than 54 per cent, is it not, sir?

A. I think that the 54 per cent as a figure is representative in so far as all American carriers are concerned.

Q. That's right. But I am asking you now about Pan American and Panagra.

A. Well, I have no basis for stating that the amount of the traffic would be any different there than any place else.

Q. Well, isn't it a fact that at the present time Panagra has 11 weekly flights from New York to Buenos Aires?

A. Yes, sir.

Q. And Pan American has six?

[fol. 508] A. That's correct.

Q. And Braniff has one?

A. To Buenos Aires?

Q. One.

A. I thought they had more than that to B.A.

Q. Well, a Panagra exhibit which shows the operations of the various airlines operating between New York and Buenos Aires as of April, 1959, says that Braniff has one. This is Panagra Exhibit 194.

A. I am not familiar with the exhibit.

Q. And certain other foreign airlines also have a couple of weekly flights, do they not?

A. Yes, Aerolineas has, I think, two flights or three flights; I am not sure. Real—VARIG, rather, has flights down the East Coast, as does Aerolineas and—

Q. Transcontinental?

A. Transcontinental and Real and the other Brazilian airline which operates into Miami.

Q. Aerovias Peruvianas?

A. Well, I only know it as Real.

Q. And LAN, L-A-N?

A. I'm not sure about that.

Q. Well, you are not sure either that the figure 54 per [fol. 509] cent reflects the actual percentage of passengers carried by Pan American and Panagra from the Northeastern part of this country, are you, sir?

A. I am referring to the percentage of the traffic carried as shown in the CAB reports.

Q. And that is 54 per cent by all lines?

A. It is the American carriers.

* * * * * * * *

[fol. 510] Q. Mr. Ferguson, as I recall your testimony yesterday, you spoke, I think, of 40 per cent of the Pan American and Panagra passengers being stopover passengers; is that right?

A. That's correct.

Q. Now, that is an assumption on your part, isn't it, sir?

A. Well, it is an assumption which is supported by what happens in other parts of the country, and the only basis on which we can determine why passengers use various routes is the basis that, if they wanted just to go straight to B.A. by the shortest distance in the best time, take, for example, the point San Francisco and Los Angeles, they could [fol. 511] have done it without using the East Coast, for example, and we therefore assume that the 40 per cent of the traffic does select the East Coast or West Coast because of their desires for stopovers.

Q. I didn't interrupt you, Mr. Ferguson, but the fact remains that you have never made a survey to determine this, have you?

A. You mean by asking the passengers?

Q. That's right.

A. No, we have not.

Q. And so it is an assumption on your part?

A. It is an assumption which is based on fact.

* * * * * * *

[fol. 514] Q. Now, as chief fiscal officer of Pan American, you would obviously prefer for your passengers to use Pan American all the way, wouldn't you, sir?

A. Well, to the extent that they do, why, we are better off, of course.

Q. Well, wouldn't any loyal employee of Pan American want the company to receive the full fare?

A. Not necessarily.

Q. You don't think so?

A. No. I think he wants to sell what the passenger wants. In any public service, that is the way it is done.

[fol. 515] Q. You don't think that Pan American employees would be loyal enough to the company to want to realize all the money the company could for the company; is that right, sir?

A. Well, it is all the money it could. We also have an interest, as you may know, in Panagra.

Q. Yes, I have just explained that interest. You get a percentage of the fares over Panagra's lines, but you get the full fare over your line; is that right, sir?

A. Well, I don't think you are saying it right. Pan American, directly, for the service which it renders, would receive its share of a round South American fare for service rendered between New York and BA. It would also receive directly its fair share of the fare from BA to New York via the west coast over the Miami-Canal Zone sector. That is for service rendered.

Q. Yes, I understand that.

A. We also have an interest in Panagra as such, a one half interest.

Q. Right.

A. It is not a hundred per cent interest.

Q. That's right.

[fol. 516] A. It is a one-half interest. So that we do have an interest—

Q. In fact—

A. —we do have an interest also in what happens as far as Panagra is concerned.

Q. Well, I don't want to go all over this again, but the fact is that Pan American makes more money when a passenger travels on its line all the way to Buenos Aires and back than it does when he goes one way on Pan American and comes back on Panagra; is that right?

A. I think that is axiomatic.

Q. And the same thing is true when you can persuade him to come down the east coast and fly back the east coast, you get the whole income; is that right, sir?

A. That is exactly the same question.

Q. And your answer is the same.

A. That's right.

Q. It is axiomatic. Now, Mr. Ferguson, does Pan American engage in publicity efforts to sell passengers on the idea that an air trip is more pleasant than a sea trip?

A. Oh, I am sure we do.

[fol. 517] Q. Pan American goes to Buenos Aires and Rio de Janeiro; is that not right?

A. That is correct.

Q. And certain steamship companies also go to these points.

A. Yes.

Q. Do you consider that Pan American is in competition with these steamship lines?

A. Very definitely. We are both trying to get the same market.

Q. Would you also apply that thinking to Europe?

A. Oh, yes.

Q. Even more so?

A. No, I think the situation is about the same.

Q. You definitely consider that you compete with steamship lines in the routes.

A. Certainly do.

Mr. Kenney: That is all.

Cross examination.

By Mr. McKay:

* * * * * * *

[fol. 518] Q. Mr. Ferguson, as an expert in this airline business, you recognize, do you not, that one carrier service is to the advantage of the public and to the carrier itself?

A. There is no question about that.

Q. And you recognize also, Mr. Ferguson that an interchange is a poor substitute for one carrier service, do you not?

A. Well, let's say it's a substitute.

Q. It is not as good as the one through plane service?

[fol. 519] A. Well, I would say—

Q. One carrier service?

A. I would say it is the next best, and if the two parties to the interchange do a good job, they can supply quite good service all the way through.

Q. There is no question in your mind though, as far as your company is concerned, if you were offered your own route you would prefer that to an interchange.

A. I think that is correct.

Q. Are you familiar, Mr. Ferguson, with Pan American's application to come from its present terminal in Los Angeles or San Francisco into New York and the mid-western cities, in order to serve Tokyo and the Far East?

A. Yes, I am. Not, I think—

Q. Generally.

A. I think the application is to come into New York for Tokyo service.

Q. You are familiar also, are you not, that domestic carriers, flying across the United States, oppose the Pan American's application?

[fol. 520] A. They will oppose it, I think. I think that the opposition, in so far as the American carriers, however, would be primarily based on the scope of the proceeding, and I think the primary problem in so far as the American carriers are concerned is whether or not Honolulu as such will be excluded in the case.

Q. But you are familiar with the fact that Pan American

has an application to extend its present route from the Far East to the western coast of the United States.

A. That is correct.

Q. To the eastern coast.

A. In order to compete with Northwest Airlines.

Q. Pan American, if it gets that application approved, will be taking business away from United and TWA, and so forth, that fly from New York to California, would it not?

A. There might be some diversion, yes.

Q. Well, if someone wants to go to Tokyo, you say there might be some; there will be some, will there not?

A. There will be diversion to the extent that Pan American takes connecting traffic from the eastern part of the [fol. 521] United States.

Q. And you will be taking that connecting traffic, will you not, Mr. Ferguson?

A. I hope so, if we get the route.

Q. That is the whole purpose of the application, is it not?

A. In order—no, the purpose of the application is in order to provide the subject with good service.

Q. And to make money for Pan American?

A. That's right.

Q. Would you say that the present pattern, air pattern now, where a passenger leaving New York and wanted to go to Tokyo on Pan American, has to take a United or TWA plane to the coast, then trans planes on to Pan American, that that is an antiquated route pattern?

A. I think it is antiquated, and I think it will become more so when the jets come into the picture.

[fol. 522] Q. Do you know whether Panagra has jets on order?

A. Yes, they do.

Q. When do they get delivery of those jets, Mr. Ferguson?

A. My recollection is that it will be some time in 1960.

Q. Do you know whether Panagra has plans or intends to fly non-stop New York to Lima?

A. No, I do not of my personal knowledge.

Q. To get the best utilization out of a jet plane it would be desirable to fly non-stop, would it not, New York to Balboa, overfly Miami, say?

A. Yes, I think probably that is true. I think even on an interchange that could be arranged.

Q. But as you said previously, Mr. Ferguson, an interchange is not as desirable as one's own route.

A. Well, when you get into situations—

Q. Yes or no, Mr. Ferguson. If you cannot answer that yes or no, I will go to another question. Did you so testify? The answer is either yes or no.

A. Yes, I did testify.

Q. That is all. Mr. Ferguson, on direct I believe you [fol. 523] testified that prior to the Civil Aeronautics Act, which went in in 1938, subsidy was in the form of 10-year contracts awarded by the Post Office.

A. That's correct.

Q. And it was a policy of the Post Office at that time not to subsidize, if you will, to competing carriers along the same route?

A. That's correct.

Q. And then in 1938 under the Civil Aeronautics Act the CAB obtained jurisdiction over subsidies and it was within their discretion as to whether there should be one or more carriers on the same route.

A. That's correct.

Q. And isn't it true in 1946 the Civil Aeronautics Board awarded a fairly heavy subsidy to Braniff, paralleling Panagra's route in the main?

A. Yes, they did. That was a Presidential decision, not the Civil Aeronautics Board, as I remember it.

Q. Let us say the Government.

A. The Government. There are many times when, if I may complete my answer, the President, who has the final say in matters of this kind, may make decisions not based on economics but on political situations.

[fol. 524] Q. The fact is that a parallel carrier was authorized under the law?

A. That is true, but certainly not from an economic point of view.

. . . . . .

Redirect examination.

By Mr. Peck:

Q. Mr. Ferguson, I would like to clear up one thing in your testimony from yesterday. We had some discussion of a 4,000 figure, you remember, as the number of passengers which were exchanged each way between Pan American and Panagra at Balboa, and there was some question as to just what that 4,000 was, whether it was all the passengers coming into Balboa from Pan American and all the passengers going into Balboa from Panagra or something less than that.

Now, would you tell us precisely and exactly what that 4,000 figure is?

A. Yes. If you remember my testimony, I was describ- [fol. 525] ing the route structure of Pan American as such, and my first description was the description of the route connecting Balboa with Miami, Miami-Balboa. I then went on to describe the routes other than the Miami-Balboa route which feed into Balboa as such.

The figure of 4,000 passengers is the figure of the number of passengers brought into Balboa and delivered to Panagra on all routes except the Miami-Balboa route, and the points of origin of those passengers were the points that I had described in my testimony in describing the routes, including traffic from the West Coast of the United States, from Central America and Mexico, through the Houston route to Balboa, through the New Orleans route to Balboa, the route from across the North Coast into Balboa, and the routes via Kingston into Balboa.

Q. But not passengers coming over the Miami-Balboa circuit?

A. That's correct.

Q. Which would be many times 4,000 passengers a year?

A. That's correct.

Q. I want to get perfectly clear for the Court, Mr. [fol. 526] Ferguson, the IATA procedures—this is a matter of law, I guess, but you can sufficiently confirm it—that under Section 412 of the Civil Aeronautics Act the airlines are authorized within the IATA conference to agree

upon rate schedules subject to the submission to and approval of the Civil Aeronautics Board; is that correct?

A. That is correct.

Q. And the carriers do gather in these conferences and establish rates; is that correct?

A. They do, which are subject to approval of all of the governments which have airlines participating in IATA.

Q. And the decisions of IATA in that respect are incorporated in formal public resolutions?

A. They are.

Q. And those resolutions are submitted to the Civil Aeronautics Board?

A. They are.

Q. And approved, if they are approved?

A. And approved or disapproved.

Q. And, if they are not approved, they are washed out?

A. They are.

[fol. 527] Q. And, if they are approved, they become effective and official?

A. That's correct.

Q. Mr. Kenney asked you about any preliminary conferences between carriers in advance of an IATA conference, and you answered him that there were not preliminary consultations between the carriers; is that correct?

A. That's correct.

Q. Again I want to be precise about it. However, there are consultations, are there not, before an IATA conference between the carriers and the Civil Aeronautics Board, in other words, an around-the-table discussion of matters to come up at the conference with officials of the CAB?

A. That's correct. Prior to—let me start again. In recent years the Civil Aeronautics Board has adopted the practice of calling the American carriers to a conference with the—normally it is with a member of the Board and staff, to discuss the positions which the American carriers will take at the conferences. In recent years—well, as a matter of fact, from the beginning—Pan American has been a champion of low rates. We sponsored the tourist [fol. 528] rates in IATA trans-Atlantic. We then sponsored the economy class rates which were even lower than the tourist rates. These matters were discussed with the

Civil Aeronautics Board prior to our making these proposals, and with their agreement and concurrence we promoted within IATA the adoption of such rates.

There may be other matters such as the level of cargo rates which will be discussed with the Board. They are normally matters of position to be taken rather than that the rates shall be X dollars. On the other hand, there have been cases where the Civil Aeronautics Board has indicated the level which rates should take.

Mr. Peck: Might I call your Honor's attention in this connection just to typical extracts of certain exhibits in evidence, Pan American's Exhibits 308, 309 and 314?

I would like to just read to your Honor a few sentences in this connection.

Exhibit 308 is a communication from the chairman of the Civil Aeronautics Board to Mr. Trippe of May 4, 1951, which says:

"Dear Mr. Trippe: On April 4, 1951 a meeting was [fol. 529] held between the Board staff and the United States members of the IATA in order to ascertain the positions of the carriers with respect to agreements to be reached at IATA traffic conference meetings beginning May 6 in Bermuda. The Board has carefully considered the position of the carriers, the data bearing upon these positions, and their relationship both to the sound economic development of international air transportation and the level of mail pay requirements.

"Keeping in mind the objective of building a rate structure which will contribute most substantially to a prosperous industry through the broadening of the air traffic base and the maximizing of carrier revenues, the Board offers the following as its suggestions for the guidance of the U. S. flag carriers in the forthcoming IATA discussions,"

and then proceeds to discuss it.

November 9, 1951, in Pan American's Exhibit 309, from the chairman of the Board to Mr. Trippe:

"On November 9 the Board sent you a statement of its [fol. 530] position regarding the issues expected to arise at the Nice meeting of the IATA rate conference. In view of the great importance of the specific North Atlantic issues and the extended controversy that these have engen-

dered in the past the Board deems it of the highest importance that the two United States carriers primarily involved in this area work closely together to obtain conference agreement on these issues. Only through the closest cooperation between the United States carriers will it be possible to successfully achieve the necessary support for the United States position as stated in the Board's letter of November 9."

And Exhibit 314 of May 16, 1956, from the chairman of the Board to Mr. Lipscomb, vice president of Pan American:

"A meeting was held between the Board and the United States carrier members of IATA on April 17, 1958, at which the carriers presented their respective positions concerning various issues which are to be considered at the forthcoming IATA conference in Cannes. The Board under-[fol. 531] stands that the United States carriers will support its position in their negotiations within IATA."

OFFERS IN EVIDENCE

By Mr. Peck:

Q. I hand you a document under the heading "International Air Transportation Association" and ask you as to whether that is a typical minute of an IATA conference.

A. I am sure it is.

Mr. Peck: We offer it in evidence, please.

Mr. Kenney: Would it be possible to get a copy of this, Judge Peck?

Mr. Peck: The answer is yes.

The Court: What number do you suggest for this?

Mr. Peck: 428, if you please.

(Marked Pan American Exhibit 428 in evidence.)

[fol. 532] Mr. Kiernan: If your Honor please, may we arrange to substitute a copy? That document came out of our files, and we would like to substitute a copy for the original.

The Court: All right.

By Mr. Peck:

Q. In order that we may have in the record a sample copy of an order of the Board on IATA proceeding, would you identify this document as such an order?

A. This is order serial No. E5623, adopted by the Civil Aeronautics Board on August 17, 1951. The order is with regard to resolutions which were adopted by IATA.

Mr. Peck: I offer it in evidence.

This, I understand, approves the fixing of rates between the United States and various South American countries. I understand that this is connected with the previous exhibit as being the order which approves the rates reached at the conference, of which the minutes are Pan American Exhibit 428.

That will be 429.

(Pan American Exhibit 429 received in evidence.)

Q. Now, Mr. Kenney asked you, at page 482 of the min-
[fol. 533] utes, yesterday, as to whether you knew whether in 1953 Aerolineas Argentinas was a IATA carrier, and you said you did not know. Have you looked it up overnight to see whether or not Aerolineas Argentinas was a IATA carrier in 1953?

A. Yes, they were. As a matter of fact, they have been members of the IATA since at least 1947.

Q. And he asked you whether you knew that Pan American had a rate agreement with Aerolineas Argentinas, and you said you did not know.

Mr. Kenney: I don't believe I asked him that, sir, did I?

Mr. Peck: Well, page 482, yes, you said:

"Do you know that Pan American had a rate agreement with them?

"A. No, I do not.

"Q. You do not know that?

"A. No."

Q. Will you tell us what you know this morning on the subject?

A. Yes. We reviewed the situation in Argentina, and

also the IATA resolutions which have to do with rates of exchange. In traffic conference No. 1, which represents the whole western hemisphere, including North and South [fol. 534] America, rates are quoted for all countries in terms of dollars. In selling in foreign countries, however, the sales may be made in terms of local currency. In the case which I believe Mr. Kenney is talking about, we had a problem, because—

Mr. Peck: Well, in order that we will know exactly what we have assumed Mr. Kenney was talking about, it is Government's Exhibit—

Mr. Kenney: 666.

Mr. Peck: Is that what this is?

Mr. Kenney: Yes.

Mr. Peck: Yes, Mr. Kenney is good enough to confirm that we were right in our supposition as to what he was talking about, which is Government's Exhibit 666, which is a memorandum from Mr. Juan Homs.

Q. Where was he, from the Latin American Division of Pan American?

A. That is correct.

Mr. Peck: (Continuing) To the division traffic sales manager, and he had this to say, under date of March, 1951:

"Negotiations to induce Aerolineas to raise their tariffs to the level of Pan American Airways has been successful, [fol. 535] and as from the beginning of March we have equal rates. Formerly they were using 9.02 pesos per dollar rate against our 14.03 pesos per dollar. In this case we are regaining a number of lost clients."

Q. Now, will you explain this exhibit in reference to the IATA proceedings?

A. Yes. Under IATA resolutions, as I stated, all rates are in terms of dollars. At the conferences—and specifically I will talk about 1951—the rates for local currency purchase of tickets, which are normally stated in dollars, are set forth. However, if due to changes in the rate of exchange of local currency to dollars, and assume, for ex-

ample, that the rate went from 9.02 to 14 pesos to the dollar, the IATA resolutions provide for the carriers who are serving that particular country to get together and determine what change should be made in that local currency rate. There should be unanimous agreement.

However, it always—not always happens, and in this case all of the carriers, except Aerolineas, who was a member of IATA, agreed to increase the rate from 9 to 14 pesos to the dollar. Now, there would be no reason in the world why we shouldn't continue to work with Aerolineas to ask them to get in line in so far as their sales are con- [fol. 536] cerned, and to come up to meet the rates which all other IATA carriers were charging.

The purpose, the whole purpose of IATA as such, is to provide an orderly manner of developing business for all carriers in IATA, and if we had, everybody had different rates for the same service, the thing would eventually turn into chaos and nobody would make any money, and we would find a very unhealthy industry. So that there was nothing out of line here. This was done under the resolutions of IATA, to try and get agreement between the carriers who were serving that country with regard to that rate.

Q. I asked you—

A. May I finish?

Q. Pardon me. I am sorry.

A. I might say this is not a single instance. The situation in Brazil has been fantastic. The rates in the last three or four years—

Mr. Kenney: Well, now, your Honor, we were talking about Argentina, and now we have gotten to Brazil.

Mr. Peck: All right, we won't have him go to Brazil.

A. (Continuing) All I wanted to do is to show that this [fol. 537] is not a specific instance.

Mr. Kenney: We would be glad to have more instances of it if you have them, sir.

The Witness: Well—

Mr. Kenney: I mean in writing, like the one we have here.

The Witness: I don't have any on hand.

By Mr. Peck:

Q. Mr. Ferguson, you were asked yesterday about the Grace suggestions of a Lima-Rio route for Panagra; when was that suggestion made, according to your knowledge?

A. To my recollection it was '49 or '50.

Q. Do you have any recollection of any renewal of that suggestion within the last several years?

A. I have not any information with regard to it.

Q. Would you have been likely to hear of it if there had been such a suggestion?

A. I think so.

Q. Was an application for such a route included in the application filed by Grace in CAB Docket 8511, in the year 1957?

A. No, it would not.

Q. You were asked something this morning about the west coast route coming east; how long has Pan American [fol. 538] been operating its service out of the California gateway to the Canal Zone?

A. I think since 1948.

Q. Since when?

A. 1948.

Q. What is the current frequency of that service?

A. We operate five times a week.

Q. Have you ever considered operating more often than that?

A. Yes. As a matter of fact, we would like to have a daily service.

Q. Why don't you have a daily service?

A. Just because there isn't enough traffic to justify it.

Q. I want to touch for a moment on an interchange, raised by Mr. McKay. It is quite obvious, as he pointed out, that an interchange doesn't produce as much revenue for a carrier as having its own route all the way, but I want to ask you about the passenger. So long as a passenger is getting upon an airplane at one point and going to his destination on the same plane, does he care whether it is an interchange, a through flight or a single route, the passenger now?

A. No, if the personnel on board remain the same, and [fol. 539] so on.

Mr. Peck: Pardon me for just a moment.

Q. Has there been any discussion at any time between the domestic carriers, going to the west coast, and Pan American about any interchange arrangements between the Pan American Pacific flights and the domestic carriers' American flights?

A. I do not know of my own knowledge of any.

Q. So fa. as you know, the subject hasn't come up?

A. That is correct.

Mr. Peck: That is all.

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[fol. 554] Redirect examination.

By Mr. Peck:

Q. Mr. Ferguson, this agreement or discussion between representatives of Pan American and Aerolineas Argentinas in 1951, was that part of an IATA conference?

A. Well, it is part of the IATA procedures, and it is perfectly normal for carriers serving a particular country [fol. 555] where there has been a substantial change—as a matter of fact, the IATA resolutions say that if there is a 5 per cent change in the exchange rates that they can get together and unanimously decide to adopt a new rate of exchange.

In Brazil in the last two or three years the matter has been a very serious one with the exchange rates changing from somewhere around 25 and a fraction up to 170 to the dollar—cruzeiros to the dollar, and actually the meetings of the group serving Rio have been practically monthly in order to keep the rates in line with the change in the rate of exchange, and, as I said before, in so far as Aerolineas was concerned, they did not go along and there was no unanimous action taken. All other carriers did go along with raising the exchange rate from the 9.02 which was the

rate at the time of the resolutions to the 14 and a fraction pesos.

Mr. Peck: All right.

Mr. McKay: I have but one brief question, your Honor.

Recross examination.

By Mr. McKay:

Q. Mr. Ferguson, one of the exhibits that you sponsored, [fol. 556] Pan American Exhibit PS-7, which shows the average passenger load per plane-mile flown on Panagra's route, that was a period up to 1945; and Exhibit PS-9, that was a period up to 1945, as well as PS-11. Would you please tell me why the exhibits terminate with the year 1945, if you know?

A. My testimony has been primarily covering the period up to the end of the war and the early developments. I believe that the exhibits of Professor Cherington will cover the period beyond that.

Q. Beyond '45?

A. Yes. I may be mistaken about that; but I think they will.

* * * * * * *

[fol. 560] Redirect examination.

By Mr. Peck:

Q. Mr. Kenney asked you about the percentage of Pan American-Panagra traffic to Buenos Aires which originated in the northeast part of the United States. You said when you were on the stand that you couldn't supply that information. Have you checked up on it during the recess?

A. Yes, I have.

Q. What is that percentage, please?

A. The percentage is 57 per cent.

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[fol. 563] PAUL W. CHERINGTON, called as a witness on behalf of the defendant Pan American, having been duly sworn, testified as follows:

Direct examination.

By Mr. Peck:

Q. Professor Cherington, what is your occupation?

[fol. 564] A. I am a professor of business administration at the Harvard Business School, and I am also a director and consultant to United Research, Incorporated, Cambridge, Massachusetts.

Q. What degrees do you hold?

A. I hold a BS from Harvard, and a Doctor of Business Administration from the Harvard Business School.

Q. Do you have some particular area of specialization?

A. I do. I specialize in transportation, air transportation in particular, and the area of business and government.

Q. And how long have you specialized in that field?

A. Well, including time as a graduate student, approximately 20 years.

Q. Have you written for any professional publications in this field?

A. Yes. I published a book on airline price policy, a report on the status of the financing program for the airline jet aircraft, and I was editor of a study on Air Force logistics, general supervisor of a study on international air cargo, and I have written various miscellaneous [fol. 565] articles.

Q. Over what period of time have these been done?

A. Oh, this would be over the last ten years.

Q. What are your duties at Harvard University?

A. Well, my duties are divided approximately equally between research and the area of aviation and air transportation and teaching, either in the area of business and government, or in the area of transportation.

Q. And what is your connection with United Research?

A. I am a director of United Research and a consultant on a continuing basis and a part owner.

Q. Tell us what is United Research?

A. United Research is a group of approximately 50 people in Cambridge, which specializes in economic research and technical research in the instrumentation area. It draws some of its professional staff on a consulting basis from either Harvard University or Massachusetts Institute of Technology, and it is a successor organization to the Aeronautical Research Foundation.

Q. Have you personally conducted studies in the field [fol. 566] of air transportation?

A. Yes, sir.

Q. And has United Research, while you have been associated with it, conducted such studies?

A. Yes, sir.

Q. Will you describe some of the studies which have been made by United Research, of this nature?

A. Well, a good deal of our work is in the air transportation area, and either under United Research or under the Aeronautical Research Foundation. I would say that our principal studies include a fairly extensive study on international air cargo, that Aeronautical Research did for U.S. Air Force. We did a long run forecast for the President's special assistant on aviation facilities, General Curtis, on national aviation activity. We have done, just completed, a fairly detailed study on mail rates for local service carriers. We have done a series of studies for a number of airline or aircraft manufacturing or other industrial clients, having to do with air transportation. We have also done some work in the railroad area.

Q. Could you give us the names of some of the organizations in whose account United Research has prepared [fol. 567] reports or studies in the field of air transportation?

A. In the field—yes, the U.S. Air Force, the U.S. Navy; the Executive Office of the President; ALTA, the local service carrier group; the Air Transport Association; three good sized manufacturing companies, including North American Aviation; a number of airlines, Bonanza, North Central, Allegheny, and of course, Pan American.

Q. Have you testified as an expert witness before?

A. In administrative proceedings at the CAB, yes, sir.

Q. On many occasions, or several occasions?

A. Not many. As I recall, it is either three or four.

Q. Were you requested by Pan American to prepare certain studies in connection with this lawsuit?

A. Yes, sir; we were. We were asked to essentially look at the situation in South America as it was affected by the competitive status there, to make an examination of the strength of the market down there, the operating results in terms of financial return that had been obtained by the [fol. 568] carriers. We were also requested to take a look at the influence of foreign flag carriers on the competitive situation; and finally, we were asked to make two studies in the past decade as to what the South American routes would have looked like under somewhat changed conditions, as to carriers and certifications.

Q. What source material did you have available for these studies, Professor Cherington?

A. Generally speaking, we relied on public sources. These includes the Form 41 reports, filed by our carriers with the Civil Aeronautics Board. These are fairly extensive and elaborate financial, accounting and statistical reports, which show balance sheet information; income statements, various breakdowns by accounts. They also show station analysis and traffic handled at stations, and so on.

We also used the Board's origin and destination traffic surveys, which are, for the period we are dealing with, were made in March and September of each year, except for 1951. We use the official guide for the schedules. We use the Immigration and Naturalization statistics. In some instances we also used the ICAO data. That is the International Civil Aviation traffic data, and in some instances [fol. 569] we relied, we requested information from Pan American, from the Pan American organization.

OFFERS IN EVIDENCE

Q. Have your studies been incorporated into a number of exhibits?

A. Yes, sir. Our studies are incorporated in Exhibits PS-101 through PS-129.

Q. Put together in the folder which I now show you?

A. Yes, sir.

Q. And were these exhibits compiled under your direction?

A. Yes, sir; they were. A great deal of the work on them was done by the staff at United Research, including Mr. Nathan Simat, who is a transportation economist, but under my general direction.

Q. And are the figures from the sources indicated here correct?

A. To the best of my knowledge and belief.

Q. And to the extent that they represent judgment or estimates, do they represent your best judgment as an expert in this field?

A. Yes, sir.

Mr. Peck: I offer them in evidence. The material is in the hands of the Government counsel and other defense [fol. 570] counsel, your Honor, although, as Mr. Kenney said, only recently in their hands.

The Court: Well, he used a different word. He said "last night."

Mr. Kenney: No, yesterday, sir.

Mr. Peck: I think you did have some of it earlier, didn't you, but not all of it?

May I hand one to your Honor?

Let those be marked, if you may, PS-101 through PS-129 marked at your convenience.

(Defendant Pan American Exhibits PS-101 through PS-129 received in evidence.)

By Mr. Peck:

Q. What is the period covered by your study in these exhibits, Professor Cherington?

A. Generally speaking, it is the post-World War II period, from 1947 down to the present time that these were being prepared. 1957 was, generally speaking, the last full year for which data was available.

Q. Now, you have told us, I think, generally, what these studies are, but I'd like to get it sort of 1, 2, 3. Just what are the subjects of this study?

A. The subjects are, in the first instance, in Exhibits 101 to 106, what we call the economic profile of the routes in

[fol. 571] South America, that is, their economic strength in terms of likelihood that they will generate traffic, and these exhibits compare the economic strength of these South American routes and points with other routes and other points elsewhere.

The second set, the second compartment in these exhibits, 107 and 8, show the financial operating results for the three U.S. carriers, Pan American, Panagra and Braniff, in South America, essentially in the post-war period.

The third set of exhibits, Exhibits PS 109 to 113, show the effect of foreign flag competition in the South American markets. The two studies that I made are included in Exhibits PS-114 to 129, and these studies were based on two assumptions, dealing with routes. The first route assumption was that Panagra would have been given and would have operated in the years 1952, and again in 1957 its own route from Balboa into Miami, with essentially the other routes left as they are. The second—and it shows the economic consequences, to the best of our judgment, as to what would have happened under that route assumption.

The second study indicates or assumes that Panagra would have received a route from Balboa into Miami, [fol. 572] and that simultaneously, Pan American would have been given a competitive route down the west coast of South America, paralleling Panagra, and the second—and the economic consequences of that kind of route alteration are also shown in the study.

Q. Now we will come first, then, to your Exhibits 101 to 106 which I believe you said are the economic profile of air transportation on American flag lines between the United States and South America. Correct?

A. Yes, sir. And this set of exhibits here runs from PS-101 to 106. The PS-101—

Q. Have you told us sufficiently what you mean by an economic profile of this route pattern?

A. It is essentially the strength of the routes in terms of traffic.

Q. All right. Now, take up PS-101 and tell us what that exhibit shows and what the figures therein are and indicate.

A. PS-101 compares what we call route density for various classes of operation with the Pan Am, Panagra and

Braniff routes in South America. By route density we mean the number of passenger miles per route mile on a daily [fol. 573] basis. In other words, this is the number of passengers essentially flowing over the route on a daily basis, and it includes traffic both going and coming.

The domestic trunk lines, which are the larger carriers—

Q. Pardon me just a moment. To get clear, what is a revenue passenger-mile?

A. A revenue passenger-mile is simply a single passenger carried one mile. So that, if the distance from here to Boston, let's say, is 184 miles, and you make a one-way trip, that would be 184 revenue passenger-miles.

Q. And is that the accepted way of measuring the density on an air route?

A. That is the accepted way of measuring the volume of traffic. The density would be the revenue passenger-miles per route mile.

Q. All right. Go right ahead now with 101.

A. Generally speaking in transportation, in order to have a strong system, there has to be a fair amount of density on a route, and this is true not only in airlines but also in railroads or truck lines or any other form of transportation.

The last column in 101 there compares the route densities [fol. 574] first of all for the domestic trunk lines which have a fairly high density, even though there is considerable competition among them, of 917 revenue passenger-miles per route mile per day.

Very much smaller than that is the figure of 80 for the local service carriers in this country. Now, the local service carriers are designed by the Civil Aeronautics Board in laying out their certificates to be essentially non-competitive, and they are supposed to serve the smaller communities and feed traffic in from the smaller communities to the larger centers.

The local service carriers have been and are at the present time very heavily subsidized and, as you can see, their traffic density is comparatively low.

The next item is all of our foreign and overseas operations with the exception of the Pan Am, Panagra and Braniff routes in South America, and these have a density of 142 revenue passenger-miles per day.

Then we come to the various operations involved in this proceeding, and the figures there, whether measured on the Pan Am figures within South America or within South [fol. 575] America plus Miami Balboa, indicate that that route density is pretty much on a par with the density of the local service lines and is considerably below the foreign and overseas operations and of course very much weaker than the domestic trunk operations.

The Panagra figure of 84.6 is approximately on a par, and the Braniff routes, either south of Balboa or for the whole international division, are very low.

Q. What is your interpretation—

The Court: Excuse me.

Will you tell me again what domestic trunk operations means?

The Witness: The domestic trunk lines, your Honor, are the 12 larger carriers operating within the continental United States. They are American, United, TWA domestic, Eastern, National, Capitol, and so on.

The Court: But within the territorial limits of the United States?

The Witness: Yes, sir.

The Court: Yes, I see. Thanks.

The Witness: There are 12 of those trunk lines, and then [fol. 576] there are 12 local service lines such as Alleghany, Mohawk, and so on.

By Mr. Peck:

Q. What is your interpretation of the figures in PS-101, Professor Cherington?

A. My interpretation is that the route density of these South American routes is extremely light, and this seems to raise serious doubts as to the degree of competition that either should or can be supported over those routes.

As I indicated for the local service carriers that have a comparable density, they are specifically designed to be non-competitive, and, generally speaking, of course, the effect of competition is to reduce the density since the traffic that is available has to be shared.

Q. Does the traffic flow in column 3 include one-way traffic, or is that round trip?

A. Well, it represents traffic moving in both directions over the route. In the case of within South America, Pan American is 71.2 in both directions; and, if you assume the flow is balanced, it would be 35 passenger-miles per route mile per day in each direction.

[fol. 577] Q. All right. Let's move to 102, please, and tell us what that exhibit shows and what its significance is.

A. PS-102 is essentially supplemental to the preceding exhibit. It shows the same type of information, but here the local service carriers, which as we saw in the preceding exhibit have comparable route densities, are broken out individually and compared with the three carriers in South America.

You will notice that five of the local service carriers have densities considerably above those of either Pan Am, Panagra or Braniff.

One indication of the general policy of the Board on these light traffic density, local service routes is that in some cases they have decertificated or suspended service by trunk line carriers in order to give the local service carriers essentially a monopoly of some of the smaller points.

For example, American was suspended across Southern Michigan, their route there serving local points, and North Central was given that route on a non-competitive basis, and this exhibit simply supplements 101 along the same lines, that the South American routes are pretty light [fol. 578] density routes.

Q. Why are these local carriers so heavily subsidized, Professor?

A. In part because of their light traffic densities and in part because of the short-haul nature of their operations.

Q. All right. Let's take up Exhibits 103 and 104 and tell us, please, what they are and show.

A. Exhibits 103 and 104 show traffic at individual points within South America, and these two exhibits I would like then to compare with Exhibit 105.

103 is on the basis of emplaned passengers. By emplaned passengers I mean everyone who is loaded aboard an American flag carrier at one of these cities listed down

the left-hand side of the sheet. These people are emplaned or loaded for all destinations, not only to and from the United States but also locally, let's say, within South America.

The second column, the number of U. S. carriers serving, indicates the total number of carriers presently offering [fol. 579] service. In a few of the cases where there is only one carrier shown the asterisk at the very left-hand side of the table indicates that the Board has certificated, for example, a second carrier in Quito but the carrier is not offering service at the present time.

Generally speaking—well, in the case of Balboa and B.A., Buenos Aires, Pan Am and Panagra are treated here as one carrier. Essentially this shows that the first 15 points, generally speaking, have two carriers either serving or authorized, and then below that number there is only one carrier authorized or serving.

In terms of daily passengers emplaned, Asuncion, for example, at 3705 passengers emplaned, this is about 10 a day or five passengers a day emplaned per airline, and this is getting to be fairly light traffic.

I should mention the case of Balboa which is, I think, probably high in terms of the actual emplaned passengers. This is a statistical problem. The through-flight passengers are remanifested again at Balboa on Panagra, so they are essentially double counted in some instances at Balboa.

[fol. 580] Q. Take 103 here for the moment. I take it that the number of passengers there from any point are passengers that took off on a plane from that city to go anywhere.

A. That's correct.

Q. So for Buenos Aires, for example, that means 37,000 passengers in a year that took an American carrier to go any place in South America, Latin America, United States.

A. Yes, sir. That is approximately a hundred a day on Pan Am, Panagra and Braniff.

Q. Together?

A. Together.

Q. Let's turn to 104 which is traffic exchanged between the United States and South America on United States carriers; is that right?

A. That is correct. And here arriving passengers and departing passengers are counted, provided they move between the city named and the United States.

Q. So let's take that Buenos Aires figure, for example, of 19,116. What does that mean as to how many passengers came and went between the United States and Buenos Aires a day on all the American carriers?

[fol. 581] A. Well, it means that approximately slightly less than 30 came and 30 went on the average on the three carriers, and if this traffic broke down equally there would be 10 a day coming and 10 a day going on each carrier.

Q. Now turning to 105, have you sufficiently explained that, Professor Cherington?

A. This 105 compares some of these points in South America with points, international points, elsewhere in the world in terms of the passengers exchanged, either arriving or departing to the United States, and breaks this down on a number-of-passengers-per-carrier basis.

Take the top line. For example, Nassau and the Bahamas is served by two carriers, and each carrier has an average of 86,000 passengers per year to and from the United States.

I think that it is clear that the South American points tend to fall well towards the bottom of the table, indicating that these two carrier points in South America are relatively light density.

It may be pertinent to point out that in a good many [fol. 582] places, international points, the Board has seen fit to certificate only one carrier. For example, at Milan, there is only one carrier with about 12,000 passengers; Munich has pretty close to 12,000; Zurich, 10,400, and so on. But as far as we could see, in terms of the multi-carrier, two carrier or more points, the Latin-American cities tended to fall well down the line relative to those in Europe and elsewhere.

Q. And what conclusion would you draw in that respect of 105, Professor Cherington?

A. This, again, goes to what we regarded as the basic thinness, if you like, of the South American points and the South American routes either in absolute terms or relative to other points on our international air network.

Q. Now turn to Exhibit 106, please, and tell us what that shows and why you did it the way you did.

A. The prior exhibits essentially went to the traffic which had been developed by the three carriers in South America. We wanted to get some measure of whether the developed traffic represented a reasonable amount of the potential, [fol. 583] and for this reason we ran out PS-106 which essentially compares on a gross-national-product basis South America with Europe and Australia and Asia.

Gross national product, as far as we could see, was perhaps the best single indicator of the wealth or economic potential in a country, and if there were a good many passengers per million dollars of gross national product this would indicate that a high proportion of the traffic potential had been developed; and, as you can see, in South America the potential is pretty well developed, 7.3 as against 3.7 for Europe. This, of course, don't go to the absolute size of the potential but to the relative degree to which what potential there is has been developed.

I think, again, what this leads to is the conclusion that these South American points and routes are weak by and large, but to the extent that they have any economic strength the carriers have developed air transportation over them to a reasonable degree; in fact, to a greater degree than in the other two areas involved.

Q. Would this comparison be any different if Panama and the Canal Zone were excluded from the South American statistics?

[fol. 584] A. Yes. The figure would be reduced to 5.7, I believe. But, even so, this would have been well above Europe or Australia, Asia.

Q. I notice you use Immigration and Naturalization figures here. Why do you use those figures and not O and D in some respects?

A. Well, we were talking here about the total air travel picture between the U. S. and these various countries. The Immigration and Naturalization Service figures cover the departures and arrivals of both aliens and U. S. citizens on foreign flag and U. S. flag carriers. The CAB's origin and destination figures do not cover passengers traveling on foreign flag carriers, who go all the way on a foreign flag carrier and who originate at one of the so-called gateway points in the United States, such as Miami, New York, and the like.

Q. So to get comparable and consistent figures you have to use the same source for both foreign flag and American flag; is that correct?

A. Yes.

Q. Now, taking Exhibits 101 to 106 together, which you have said—

The Court: I am just wondering, Judge. It is almost [fol. 585] one o'clock.

Mr. Peck: If you will give me just one question, it will be a perfect break, if your Honor please.

Q. 101 and 106, you have said, present the economic profile of this South American market. Now, having looked at it, summarize, please, your conclusions on that profile.

A. As far as we can see, these routes and points are relatively thin, but to the extent that potential traffic does exist, it seems to have been pretty well developed by the carriers.

Mr. Peck: Very good. May we then adjourn?

The Court: We will adjourn until 2:15.

(Recess taken until 2:15 p.m.)

[fol. 586] AFTERNOON SESSION

2:15 P.M.

PAUL W. CHERINGTON resumed.

Direct examination (continued).

By Mr. Peck:

Q. Let us now take up Exhibits 107 and 108, Professor Cherington, and I will ask you to explain them to the Court.

A. These two exhibits essentially go to the financial operating results of the three U.S. carriers, Pan American, Panagra and Braniff, in their operations in the post-war period. The first, PS-107, deals with, shows the operating ratios of the three carriers, separately and combined, and compares these operating ratios with those of the domestic trunk lines. The operating ratio is essentially the extent

to which operating expenses absorb total operating revenues, and generally speaking, a low operating ratio is better than a high one, indicating that the margin remaining after operating expenses is greater.

In the case of Pan American, Panagra and Braniff, for most of the years—well, subsidy is included in the operating expenses of those carriers, to the extent that it was paid. [fol. 587] For the domestic trunk lines, of course, subsidy is also included, but by and large most of the trunk lines were all subsidy after about 1951.

The Pan Am, Panagra and Braniff subsidy figures are set forth in PS-21, that Mr. Ferguson talked about yesterday.

Q. In other words, in the operating revenues for Pan American, Panagra and Braniff are included the subsidy?

A. Yes, sir.

Q. And the operating ratio shows the ratio of expense to revenue, including subsidy?

A. That is right, yes, sir.

Q. Well, now, what is Exhibit 108? Tell us.

A. Well, just, if I may, I think it is clear from the operating ratio figures that by and large the three South American carriers have had fairly high operating ratios over this period. This is particularly true of Pan Am and Braniff, and it is also true of the three combined, and these high ratios are reflected in the relatively low rate of return on their investment which these carriers earned, and which are shown in PS-108.

The rate of return is usual profit on total investment. [fol. 588] Generally speaking, the Board has found that for international carriers a 9 per cent rate of return is a reasonable rate of return. There is some indication that the Board's staff in the domestic passenger fare investigation will urge a somewhat higher rate of return for international operations, but 9 per cent is the present standard of reasonableness, if you like.

The figures show that Pan Am almost got 9 per cent one year, but one year only. Panagra earned 9 per cent, or better in three years, and Braniff in one year. But for the rest of the period they were considerably less than 9 per cent, and the averages of course over the period of time

are substantially less, ranging from a loss operation for Braniff, to Panagra's 4.8.

The Court: Excuse me. When you computed the net profit, did you include the subsidy?

The Witness: Yes, sir.

The Court: Thank you.

Well, if you didn't include it, what would be the rate of return on the investment?

The Witness: It would be disastrous, your Honor. I don't think we made that computation, but I think I am [fol. 589] correct in saying that for the period all three carriers would have a substantial negative return. But these figures here do include the subsidy, so that the low rate of return is including that.

By Mr. Peck:

Q. Would you express an opinion, Professor Cherington, as to the economic satisfaction, if we might call it that, in returns of this kind in the operation of airlines?

A. Well, these are pretty low rates of return in the airline business. The Braniff operation of course is particularly poor, but the Pan Am and Panagra are far from being what could be regarded as satisfactory earnings.

The Court: Excuse me. Do railroads get a return as high as these?

The Witness: No, sir—well, I think they tend to get a return as high as these, perhaps, but generally speaking, the fair rate of return in the railroad business is considerably less than it is in the airline business, by virtue of their very heavy investment, and usually their very heavy fixed charges.

The Court: Is risk one of the elements in determining [fol. 590] a fair rate of return?

The Witness: Yes, sir; that would be an element.

The Court: Thank you.

By Mr. Peck:

Q. Have you made an investigation, Professor Cherington, of post-war competition in South America between United States flag and foreign flag carriers?

A. Yes, sir. We took a look at that, and the results of our examination are set forth in PS-109 through 113.

Q. All right. Would you take us through those exhibits, explaining each one, please, as to its showing and significance?

A. PS-109 shows for the various overseas areas a breakdown of total air passengers moving to and from the United States and shows the split between aliens and citizens, and generally speaking you can see that the South American area, that is continental South America including the Canal Zone and Panama, has the highest percentage of aliens moving.

Q. What is the significance of that?

A. 52.3 per cent. Generally speaking, in air transportation it is usual for aliens to travel on foreign flag carriers [fol. 591] more heavily than on U. S. carriers. I think that this is true for a variety of reasons. Foreign governments tend to route their government traffic via foreign flag carriers; there is a good deal of business pressure to travel in this way, and so on. But as we will see presently a higher percentage of aliens travel on foreign flag carriers than of U. S. citizens.

Q. Does this exhibit give you some indication as to the comparative extent of the tourist trade between the United States and the geographical areas which are listed in PS-109?

A. This plus the other exhibits do, and we know from the Port of New York Authority study that was mentioned yesterday that the proportion of total air passengers who are traveling for business as against non-business reasons is higher in South America than it is, let's say, across the Atlantic. The figure on that is that 44.8 per cent total air travelers traveling to South America are traveling for business across the Atlantic. That comparable figure is only 31.4.

In terms of our own citizens—not citizens but U. S. residents who are traveling for business purposes, 55.8 per [fol. 592] cent of U. S. residents going to South America are traveling for business, and this compares with 26.8 per cent in the Atlantic.

So that I think you can deduce from that that there is a relatively smaller number of tourists in the South American market, and this I suppose is as you would expect by virtue of the fact that there aren't anything like the number of tourist attractions down there that you would find in, let's say, Europe.

By the Court:

Q. What is the basis of these last two percentages you gave? Is that the Port Authority survey?

A. That is the Port Authority survey, and they interviewed and had questionnaires filled out by travelers leaving New York and arriving in New York, both U. S. carriers and foreign flag carriers, and one of the questions they asked them was what the purpose of their trip was: was it business or other than business.

Q. I suppose for tax purposes they would answer it differently. In any event, it is not your study?

[fol. 593] A. No, sir.

By Mr. Peck:

Q. But I take it you do find a relation between those figures and the figures in 109. In other words, the high percentage of aliens traveling to South America in relation to other geographical areas indicates business travel more than tourist travel.

A. Yes, sir. Going on into PS-110, this exhibit essentially shows that the percentage of aliens in the Latin American or South American market has stayed relatively constant in terms of percentage in the last decade, so that the 52.3 per cent figure that is given in PS-109 is not unusual. It has been typical of the post-war period.

In PS-111, this table breaks down the alien travelers moving between the U. S. and South America by whether or not they used a foreign flag carrier, and this indicates the rise of the use of foreign flag carriers in the post-war period.

Essentially this reflects the growing strength and improved service of some of the South American carriers and also reflects what we believe to be the natural tendency

[fol. 594] of foreign nationals to travel on the airlines of their country. But obviously this alien traffic, which is a large percentage of the South American market, is increasingly using foreign flag carriers.

By the Court:

Q. Isn't there another factor other than nationality which would cause them to use their own flag ships? Isn't currency one of the big things?

A. Currency would be definitely one of the reasons.

By Mr. Peck:

Q. What about the other side of the picture, the Americans using American carriers or foreign flag carriers?

A. This is set forth in PS-112, which shows that the percentage of U. S. citizens using foreign flag carriers to and from South America has been growing since or during this decade. It is not as high as the aliens, but it is still an increasing percentage of the traffic. This, again, I think, reflects the fact that at least in some countries in South America, particularly recently, some carriers have begun to give very good service, which was not true in the im-[fol. 595] mediate post-war period. So that, for example, Aerolineas has greatly improved service; VARIG, a Brazilian carrier, advertises a very deluxe service, and so on.

This general trend of where U. S. citizens tend increasingly to use foreign flag carriers I think can also be noted in the Atlantic where something in the order of 67 per cent of the total passengers are U. S. citizens, but our carriers have only approximately 40 per cent of the total traffic, indicating a substantial number of U. S. citizens in the Atlantic also use foreign flag carriers.

Finally, in PS-113 we show some of these figures, and to the extent that breakdowns are available in the Immigration and Naturalization Service statistics we show separate figures for the Argentine and Colombia. This indicates the wide variation that there is in some of these countries which tends to be obscured in the total figures. For example, between U. S. and Argentina in the last six years the percentage of traffic that our carriers have han-

dled has dropped from 81 down to 58.9, indicating essentially improved service by the foreign flag carriers.

[fol. 595a] In Colombia the percentage has been continually fairly low in this period of time from '53 to '58, indicating the relatively strong position of Avianca in that market.

[fol. 596] Q. Well, I notice that between the United States and South America as a whole the showing isn't so bad, the decrease in percentage of U. S. flag carriers. Would you comment upon that in relation to the relatively bad showing or lessening showing between U.S. and Argentina?

Well, of course a number of countries in South America don't have what could be described as competitive flag carriers as yet. The general trend seems to be that these will, will in many cases ultimately be established. It won't—so that it may, the pattern may ultimately look more like the U.S.-Argentine pattern.

Q. Well, now, taking these exhibits overall, from 109 through 113, what is your conclusion as to the position of the United States flag carriers in the South American market, vis-a-vis foreign flag carriers?

A. I would say that it was—that there had been some decline in recent years. Generally speaking, the U.S. carriers thus far have maintained a reasonable share of the traffic, but this may very well, and I would guess probably would be threatened as the foreign flag carriers become increasingly competitive. So that I would say, prospectively, [fol. 597] we could expect a diminishing share of the market in South America.

Q. Why have you used Immigration and Naturalization Service figures here in PS-113?

A. Well, here again, as we mentioned before lunch, the Immigration and Naturalization figures permit you to pick up the passengers who fly on foreign flag airlines all the way to their destination, or from their point of origin, and who disembark or embark at a gateway point, such as New York and Miami, and those passengers would not be picked up in the CAB origin and destination surveys.

Q. Why didn't you use the O and D figures for the U.S. carriers?

A. Well, we wanted to make these comparisons between

U.S. flag and foreign flag carriers, and this would essentially have been comparing apples and oranges, as between the two sets of figures.

Q. So in order to get a true comparison you had to use the same figures for both foreign flag and American flag.

A. Yes, sir.

Q. Now would you tell us, Professor Cherington, what the next set of exhibits are?

[fol. 598] A. As I indicated before lunch, we made two studies, where we essentially made differing route assumptions than what actually was the case in the last decade.

Exhibits 114 to 129 set out the results of these studies and they are summarized on Exhibit 114.

As I indicated, what we were trying to get at here was the economic consequences of two different route patterns in South America. We have expressed them in, for this study, in PS-114, as the amount of increased subsidy that would be required under the two route assumptions, and we essentially did this because under Section 406(b) of the Civil Aeronautics Act, we believe that if these two route assumptions had been in effect in the last decade, the Civil Aeronautics Board would have been required to have supported them with subsidy. If they hadn't, then the increase need set forth here would either have been met by the public in the form of higher fares, or it would have been met by the stockholders and owners of the carriers through losses or even lower earnings; or it would have been met in part by subsidy, in part by the public and in part by investors. But essentially, what we have [fol. 599] tried to show here is the economic impact of changes under the two assumptions we made.

Q. Now what are those assumptions?

A. Assumption number 1 is that Panagra would have operated a route from Balboa to Miami, and they would have operated the through service themselves over this segment and would have continued it north into New York with an interchange at Miami.

Braniff would have essentially operated its own routes, and Panagra—and Pan American would have continued to operate its present Miami-Balboa route for essentially local traffic. That was essentially assumption number 1, and

the results of that study for the impact on Pan American and Panagra, and in total, in terms of increased need for subsidy, and these—the net figures are set forth in PS-114.

We used two years for both sets of assumptions, 1952, which is about in the middle of the period we were looking at, and 1957, which was—well, which was the last year for which we had complete figures.

Q. Now, what is assumption number 2?

A. Assumption number 2 again includes a Panagra route from Balboa up into Miami; no change in Braniff; Pan American operating its Miami-Balboa route, and then [fol. 600] extended down the west coast, essentially paralleling Panagra, all the way to Buenos Aires, and the impact on Pan Am and Panagra, and the total, in the two years we studied, again '52 and '57, are set forth in PS-114.

Q. All right. Would you tell us what those figures are, and say something about the significance of it?

A. Yes, sir. Under assumption 1, which is the extension of Panagra into Miami in 1952, we estimate that Pan Am would have needed two million approximately seven hundred thousand dollars in additional subsidy; Panagra would have needed 1.3 million and a total increase subsidy requirement or economic impact, if you prefer, would have been $4,000,061.

Under the same assumption, five years later, the same figure would have been $4,708,000.

Now under assumption 2—and this is the assumption where Pan Am is parallel down the west coast—the Pan American subsidy requirement and that additional subsidy requirement in 1952 would have been a shade over four million, four million eighty thousand; Panagra's requirement would have been two million one and the total bill would have been six million one eighty three.

Coming down to 1957 these requirements would have [fol. 601] been slightly increased, Pan American's four million seven six four; Panagra's two million two one three; and the total bill, almost $7,000,000.

And as I indicated before, this can be regarded either as increased subsidy requirements or as overall economic impact.

Q. That is, these are the amounts which these carriers would have required over and above all present income and subsidy.

A. Yes, sir.

Q. To get a return on their investment, their added investment for the services, at the accepted rate of 9 per cent; is that right?

A. That is correct; yes, sir, the net additional requirement.

Q. Would you say that these additional subsidy requirements, as you have put them, or economic impact, significant in amount?

A. I would say that they were significant in amount. I think they are fairly large as airline subsidies go. They are relatively large as compared to the subsidies that had been paid, as set forth in PS-21. I think they are particularly large when you consider the amount of increased or [fol. 602] improved service that would have been offered to the public under these route extensions.

Q. That increased service being what?

A. Well, it would essentially added a—under assumption 1, it would have added a third service, largely local in character, between Miami and Balboa, over and above the two services that already would be operating there. In the case of assumption 2—

Q. And which I take it could easily and amply take care of all the local traffic, couldn't it?

A. Yes, sir.

Q. Is there any question at all, Professor Cherington, that if you had two carriers conducting a through service and also conducting a local service, that there is absolutely no need or use whatever for a third carrier conducting really a local service?

A. I think that is correct.

Q. All right, go ahead.

A. And under assumption 2, you would be essentially laying down a third, a third carrier in along the west coast, in South America, over and above two carriers which are now providing what appears to be a perfectly adequate service. So that in terms of the net gain to the [fol. 603] traveling public, I think these increased subsidy

requirements, or the economic impact of these new authorizations would be pretty steep.

Q. Now perhaps you have sufficiently explained the meaning of the subsidy requirement, I am sure you have as a measure, but I would just like to get clear as to whether this is an amount which the Government would have been compelled to pay?

A. Well, let me—not being a lawyer, I don't know whether they could legally have been compelled, but I think that clearly, under the language and spirit of Section 406(b), that if the Board and the President had certificated either the new routes under assumption 1 or the new routes under assumption 2, there would have been a strong presumption and moral obligation that the Government would have had to have met the need of the carriers in this respect.

[fol. 604] Q. Yet they don't always do it, do they?

A. No, sir, they do not.

Q. But the CAB does take into consideration, does it not, the reasonable use of frequencies in relation to the number of passengers to be carried?

A. They do. On the other hand, where there is an existing certificate they, generally speaking, expect the carrier to offer at least a minimum service, and in competitive situations, if you expect the carrier to compete, this may be a somewhat larger number than if there was no competition, if the carrier wants to stay in the market at all.

Q. As you have explained your calculations are for just two years, 1952 and 1957. Would you comment as to whether they have a similar significance or not in respect to other years?

A. I believe they do. These are essentially, as I indicated, the net additional figures, and as far as we can see these are pretty much typical of the early and middle part of the period, and 1957 is pretty much typical of the more recent period in terms of this increased subsidy need.

Q. Looking ahead, what would you anticipate the sub-
[fol. 605] sidy requirements, as you have phrased it, would be, more or less than these figures?

A. Well, I think you will probably have two trends here operating in different directions. One would be the build-up

in traffic over the next few years which would have the tendency probably, if it built up fast enough, of producing these needs. On the other hand, you have coming in the larger jet aircraft which might very well, as you split up and chop this available traffic finer and finer, lead to increased needs under a minimum frequency pattern.

Q. Explain a little more fully what the impact of the jet is in a market.

A. Well, the jets for the most part have a capacity that is roughly twice of the existing planes in terms of seats, and although their seat-mile costs are hopefully going to be about the same, their total plane-mile costs are considerably in excess of the present airplanes. So that you would immediately be putting on to this relatively thin route competitive jet service, and we would expect that unless traffic built up very fast, that the load factor, that is, the percentage of seats occupied, would drop very, very sharply.

[fol. 606] Q. Reducing the need for frequencies.

A. Reducing the theoretical need for frequencies, but under competition it is a little difficult to see how far down you could cut the frequencies.

Q. But, as the frequencies are maintained, unless the traffic develops in proportion to the increased seat capacity, it means seats empty, doesn't it?

A. Yes, sir, and this would tend to send the subsidy requirement up.

Q. Now, what are Exhibits 115 to 129, Professor Cherington?

A. These essentially are the back-up for the conclusions of the studies as set forth in PS-114 dealing with the various rules or assumptions that were made for the study, the traffic estimates, and the revenue calculations, the cost and the return on investment calculations.

Q. Would you take us through them as simply and as quickly as you can so that we will understand what the steps were in your study?

A. Yes, sir. In PS-115 we set forth for the two route assumptions the rules that we made or the assumptions that we made for making the study, and these deal with [fol. 607] both the question of routes as set forth on page 1

of 115, schedules as set forth on page 1, and thereafter. There is considerable detail here so that it is possible to follow these assumptions. The station codes on pages 3 and 4 are interpreted with a station decoding sheet on page 5.

I might say that under the scheduling assumptions we have included under assumption 1 a daily round trip for Pan American between Miami and Balboa in both 1952 and 1957. This would compare with the 10 Panagra trips in 1952 and the 14 in 1957. We felt that if Pan Am was going to stay in this market at all that seven trips a week would essentially be the minimum service pattern, particularly when Panagra was operating more trips and Braniff was operating an equal number or more trips.

As I indicated, 115 gives the assumptions.

In 116 we essentially took the traffic in 1952 and 1957 under the route assumptions and redivided it under the two route studies, and it is basically divided in accordance with schedule frequencies. So at the conclusion of these tables you get estimates as to the number of revenue passenger-miles which shift back and forth from one car-
[fol. 608] rier or another.

Q. With Panagra being assigned all the through traffic which is now carried by Pan American/Panagra; is that right?

A. Yes.

Q. And dividing the local traffic on the basis of frequency of service?

A. That is correct.

Q. Go right ahead, please.

A. That is under assumption 1.

And under assumption 2 the through schedules south of Balboa are split and the traffic is essentially split.

In PS-117 we essentially convert the changes in revenue passenger-miles to passenger revenues by assigning or by multiplying by their estimated yield per passenger-mile, and the footnotes essentially indicate the basis for that estimated yield. So we now have the passenger revenue side of the picture under these two assumptions.

When then want to adjust this for non-passenger revenue, and this is done in PS-118 on a factor basis, and this

is the revenue for cargo, mail, excess baggage and the like. [fol. 609] So that completes the revenue side. Those figures taken together complete the revenue side of the picture.

In PS-119 we start in on the costs, and we start in by setting forth the airplane miles that will be flown under the various assumptions. I might mention that the figure for assumption 1, the change in plane-miles, is two lines up from the bottom in the tables, Miami-Balboa footnote 2, and then the assumption 2 changes are given in the total which do not include that Miami-Balboa footnote 2 figure, but this gives us the change in plane-miles under each of the assumptions in the two years.

And these in PS-120 are broken down by aircraft types in view of the fact that different airplanes have different cost characteristics. That is shown in PS-120. Certain aircraft operating costs for Pan Am and Panagra in the two years are shown in PS-121.

These are ultimately used in the summary tables that we will come to in a moment to get the expenses of these operations to the extent that they relate to aircraft operations.

PS-122 sets forth our estimates as to the additional city [fol. 610] ticket offices that we believe Panagra would be required to establish under either assumption 1 or under assumption 2. We feel that, if they were going to go it alone, they would want to establish their own sales offices essentially in Boston, New York, Los Angeles, San Francisco, Chicago, Miami, Dallas and Washington.

Furthermore, under assumption 2 we feel that they would want to, if they were in competition with Pan Am down the West Coast, have an independent office at Rio, Montevideo and Caracas.

We essentially got our office size and our annual rentals by making a survey of rental costs in these various cities. The employees are essentially related to the expected traffic that could be generated, and the other expenses are a factor to the employees. So that would be an additional cost item for the two assumptions in the two years.

Under assumption 2 in PS-123, furthermore, we believe that—well, we were sure that Pan Am would have some

additional station expenses down the West Coast, and this exhibit essentially shows the calculations for those Pan Am stations.

Finally, in Exhibit 124 we show in summary form but [fol. 611] with explanatory footnotes the actual calculations for the two assumptions in 1952, and those are the figures that are essentially transferred back to PS-114, the summary sheet.

The footnotes to these tables in 124 and again 125 give the basis for the various dollar estimates in the cost area. This takes us on through PS-127.

Then in PS-128 we present our estimates to either the increase or decrease in investment that would be required under the two alternatives for Pan Am and Panagra and in total. Some of this is in aircraft and spare parts, some in ground equipment, and some in the area of net working capital.

And finally in PS-129 the rate of return estimate is set forth for the various assumptions.

Those figures, as I indicated, are all essentially the back-up or the detail or the summary, PS-114, where these are all added up.

Q. Mr. Mallory has suggested to me that it may not be altogether clear yet what this 9 per cent is on to get the required subsidy. What we are talking about getting 9 per cent on is only the additional investment which would be [fol. 612] required for these extensions that you are talking about under assumptions 1 and 2; is that not correct?

A. That is correct.

Q. In other words, we are not talking about going back and making up a 9 per cent return on their present investment which neither Panagra or Pan American has been fortunate enough to make 9 per cent on very often?

A. I am sure they would be happy to get it, but for these purposes we just showed 9 per cent on this additional investment arising under assumption 1 or 2.

Q. And PS-114, I think, as you say, is the summary statistical table which reflects all of the calculations which are in Exhibits 115 to 129.

A. Yes, sir, that is correct.

Q. Coming down, as you have described it, to the addi-

tional subsidy requirements or at least the economic deficit that somebody would have to make up—is that a fair way of putting it?

A. Yes.

Q. —either the Government or the traveling public or the stockholders of these companies.

A. Yes, sir.

[fol. 613] Q. Separately or in some combination.

Now, just a final question: Would you comment, please, and express your opinion as to the effect of the creation of these services under assumption No. 1 or No. 2 on the traveling public, the taxpaying public and the carriers involved, meaning their stockholders?

A. In terms of the carriers I think that the effect on Pan American under either assumption 1 or assumption 2 would be serious; it would entail substantial either loss or increased subsidy requirements. As far as we can see the same thing is true of Panagra: the effect would be bad. The effect on either the taxpayers or the traveling public in our opinion would be much heavier than the benefits that they would be apt to get out of this increased competitive service.

Q. And as far as Panagra alone is concerned, do you see any possible advantage to Panagra on either of these assumptions?

A. If they got all of this money from the Government in the form of subsidy you might make the argument that they would like this in view of their desire to get into [fol. 614] Miami. But as an economic proposition I can't see that it would improve their position.

Q. I think I detected while going through here there was one slight mistake on a footnote.

A. Yes, sir. I would like to mention that on 116, PS-116, page 6 of that table, in the heading of the table where it says "Actual Revenue Passenger-Miles," then there is a footnote 1, that footnote 1 symbol should be struck out.

Q. You mean there is no footnote 1—should be no footnote 1 on PS-116 on page 6?

A. Well, there shouldn't be the symbol. You shouldn't refer—the symbol 1 should be struck out there in the heading of the table.

Q. And where should it be?

A. Well, it is back on a preceding page.

Q. I see, on a preceding page.

A. All the way back on page 1.

[fol. 615] The Court: I got lost on that. Should footnote 1 be there with that caption?

The Witness: Yes, but this little one up here should be struck out.

The Court: And what would the note refer to?

The Witness: That refers all the way back to page 1, these ones here.

The Court: The footnote number 1 on the bottom of page 6 of Exhibit 116 refers generally to the entire exhibit?

The Witness: No, it refers to three numbers all the way back to page 1 of the exhibit.

By Mr. Peck:

Q. Would you be prepared then to adopt the statement, Professor Cherington:

"We are convinced that the available traffic potential in South American will not warrant the subsidy support of three such services and that their existence would lead to 'a waste of public money or private investment'"?

A. Yes, sir.

Mr. Peck: I am quoting, your Honor, from the CAB's decision in the Balboa case.

[fol. 616] Q. Now one thing more, Professor Cherington, and I will be finished. Mr. Kenney read to Mr. Ferguson from the decision of the Board in Docket No. 4882 the following quotation:

"The Latin American area is today the largest foreign air transportation market to which American flag carriers have access. Moreover, it is a market which has expanded tremendously in the past and which may be expected to continue to grow in the immediate as well as the more distant future. The importance of this market and the

rapidity of its growth is illustrated in the table set forth below"—

and that table below shows travel by air into Latin America of 928,157 passengers in the year 1951.

Now, would you comment upon that in the light of the testimony you gave about the relative thinness of the South American market and the high degree of development of that market?

A. I think, sir, that essentially the problem here is that we have to differentiate between the South American routes and points which we were talking about, which include the points and routes within the continental limits [fol. 617] of South America, plus the Canal Zone, and what the Board is referring to there as "Latin America," which includes the Caribbean, Central America, Mexico and, if I recall correctly, Bermuda, a great deal of traffic, let's say, moving between the States and Havana, and if my memory serves, out of that figure of nine hundred and—

Q. 28,000.

A. —28,000, the South American portion of that, that we have been talking about, amounts to some—to only about 140,000.

Q. Well, let's see. I hand you what I believe are supposed to be the exact figures of the breakdown on that. Verify it if you will and give it to us, as to how that 928,000, which makes up the total Latin American market, is broken down by various countries?

A. Well, these—

Q. Or categories of countries?

A. These, to the best of my belief, are the Immigration and Naturalization statistics for fiscal 1951, that is, the year ending June 30, 1951, and the total, as described "Latin America", is 928,157. Then included in that total, and what it is, I am not sure, Canada and Newfoundland, [fol. 618], 26,071; Bermuda, 103,492; South America and the Canal Zone, 141,669; Central America and the Caribbean area, 656,926.

Now of that last figure that I read, 656,926, 387,723, or a little more than a third of Latin America, moved between the States and Cuba, and 166,230 moved to the British West Indies, Jamaica, and so on.

So that out of the 928,157 figure that you mentioned, only 142,000 roughly, concerned the traffic that I have been talking about in my testimony.

Mr. Peck: Very good. Thank you.

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[fol. 619] Cross examination.

By Mr. Kenney:

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[fol. 620] Q. Now, Professor, you mentioned some figures early in your testimony, having to do with people taking trips on business, and tourists, and first you mentioned the figure 44-8/10 per cent as business travelers. Is that to South America?

A. Yes, as I recall.

Q. And that would mean that 55.2 per cent would be tourists; is that correct, sir?

A. That's right—well, not tourists, but all other.

Q. All other?

A. All non-business.

Q. Now breaking it down to American travelers, I believe you said that 55-8/10 per cent of the Americans that went to South America traveled there on business.

A. Yes, sir.

Q. Would that mean that the other 44-2/10 per cent would be tourists, or would it include different classifications?

A. No, sir; there are only two breakdowns in the survey going for business, going for everything else, so they would [fol. 621] be going for everything else, including tourees.

Q. Do you know what the figure on tourists would be?

A. No, I do not.

* * * * * * *

[fol. 626] Mr. Mallory: We have no objection to 1125, 1126 and 1127, and I understand the Government will stipulate that Pan American had not seen these prior to the [fol. 627] time the deposition of Mr. Faucett was taken.

Mr. Kenney: I so stipulate.

(Marked Government Exhibits 1125, 1126 and 1127 in evidence.)

[fol. 628] Mr. Kenney: Yes.

I intended to offer in evidence a series of communications between Pan American and Grace and Panagra in November, 1956, January, 1957, and a board meeting of January, 1957, of Panagra, and a further letter of January 11, 1957, together with a survey report prepared by Panagra in connection with a proposed West Coast United States service.

Mr. McKay: No objection.

Mr. Kenney: Do you want to see these?

Mr. Mallory: I would like to, yes.

Mr. Peck: Mr. Kenney, would you tell us who prepared this survey?

Mr. Kenney: I think it was prepared by Panagra.

Mr. Peck: We would be interested in learning what individuals prepared it.

[fol. 629] Mr. Kenney: I don't know. It was obtained from their files.

Mr. Kiernan: I think I can state it was prepared under the supervision of Mr. Farrell.

Mr. Mallory: Could you identify him directly?

Mr. Farrell: If it please the Court, the route study and the recommendations were prepared under the general supervision of Mr. Shea who is president of Panagra, and I as assistant to Mr. Shea was directly involved in the preparation of it with Panagra officers, Panagra personnel, and some Grace personnel who did some statistical work.

Mr. Peck: Could we just identify in addition to the Grace personnel who did the statistical work, and the identity of Mr. Shea and Mr. Farrell with Grace? Then that would be sufficient.

Mr. Kiernan: Mr. Shea, of course, is president of Panagra and he is also executive vice president of W. R. Grace and Company.

Mr. Peck: Does Mr. Farrell have any connection with Grace?

Mr. Farrell: I am a director of Panagra, Judge Peck, and a vice president of Panagra.

[fol. 630] Mr. Peck: And are you an officer of W. R. Grace and Company?

Mr. Farrell: I am not an officer of W. R. Grace and Company.

Mr. Peck: Do you have any connection with W. R. Grace and Company?

Mr. Farrell: I am employed by W. R. Grace and Company.

Mr. Peck: In other words, your total salary comes from W. R. Grace and Company, is that it?

Mr. Farrell: Reimbursed in part by Panagra; that is correct.

Mr. Mallory: It can go in subject to a motion to strike.

(Marked Government's Exhibits 1131 through 1139 in evidence.)

. . . . . .

[fol. 634] New York, May 22, 1959, 10.30 a.m.

The Court: Did you want to cross examine the professor?

Mr. McKay: Yes.

Mr. Peck: Professor Cherington.

PAUL W. CHERINGTON, resumed.

Cross examination.

By Mr. McKay:

Q. Professor, as I understand it, you are a director of and a consultant with the United Research Corporation?

A. Yes, sir.

Q. Is the predecessor of United the Aeronautical Research Institute? Is that a predecessor company?

A. Not, I guess, in the strict legal sense, but the group [fol. 635] is the same. The Aeronautic Research Foundation, it was.

Q. And you and your company, United, were retained by Pan American to make certain studies in this case?

A. Yes, sir.

* * * * * * *

[fol. 636] Q. To your knowledge, has United made any previous studies for Pan American?

A. No, they had not.

Q. Has Aeronautic Research, to your knowledge, made any previous studies for Pan American?

A. No, sir.

The Court: You don't make a distinction between the word "studies" and collection of data or something. I understood you to say that one of your clients, prior to your testifying, was Pan American.

The Witness: Well, we have done—since we took on this assignment for this case we have done some other work in unrelated areas for Pan American.

The Court: Nothing previously?

The Witness: No, sir.

* * * * * * *

[fol. 638] Q. Did you hear Mr. Ferguson testify here earlier this week, I believe, in this case?

A. I am not sure that I heard all of it. I certainly heard the bulk of it.

Q. Have you examined the exhibits that he sponsored as a witness, that is, Pan American's Exhibits 1 through 23?

A. Generally speaking, yes.

Q. Did you have anything to do with the preparation of those exhibits?

A. No, sir.

Q. You had seen them prior to their being introduced in evidence here.

A. Yes, sir.

Q. Professor, do you recall three of those exhibits, namely, Pan American's Exhibits PS-7, 9 and 11, which set out figures representing the average passenger load per plane-mile for Panagra's routes, Pan American's Miami-Balboa route and Pan American's East Coast route?

A. Not specifically.

Q. Have you got a copy?

A. I have a copy. 7, 8 and 9?

[fol. 639] Q. 7, 9 and 11. You perhaps might recall that I inquired of Mr. Ferguson why the statistics compiled in those exhibits terminated with the year 1945, and he testified that he believed that your testimony and exhibits would cover the subsequent period. Do you recall that?

A. Yes, sir, I do.

Q. Your exhibits, Professor, PS-101 to 106 relate to density of air traffic in the year 1957 and for no other year; is that correct?

A. That is correct.

Q. And having examined Mr. Ferguson's exhibits, if I may refer to them as such, PS-7, 9 and 11 show average passenger load on several routes for a number of years, the last of which is 1945; is that correct?

A. As far as I can see, that is correct.

Q. Now, Professor, is it possible to compare the passenger density figures contained in your Exhibits 101 to 106 for the year 1957 with the information set forth in Mr. Ferguson's Exhibits 7, 9 and 11 for the year 1945 and earlier years?

A. I believe not directly.

Q. Well, do you believe that Mr. Ferguson's method of approaching the question of traffic density is as valid as [fol. 640] the method you have followed? As I understand it, Mr. Ferguson uses passengers per plane-mile while you use revenue passenger-miles per route mile per day.

The Witness: Would you read the question again, please?

(Question read.)

A. I believe, frankly, that our figures on route density are somewhat more meaningful in terms of getting a measure of the overall strength of a route.

Q. Professor, could you explain to us what you mean by more meaningful?

A. It essentially takes into account the overall miles and the total traffic moving over those miles rather than simply related to the plane-miles operated, so that it relates directly to the economic strength of the route itself.

Q. Professor, looking at Mr. Ferguson's Exhibits 7, 9 and 11 and your Exhibits 101 to 106, is it possible to determine what change has taken place in the density of traffic during that period, namely, 1945 to 1957?

[fol. 641] A. Looking at his exhibit?

Q. And yours. In other words, Mr. Ferguson ends with the year 1945; your exhibits relate solely to the year 1957. Isn't it a fact that it is impossible to determine, by looking at those exhibits, what change, if any, has taken place in the density of traffic?

A. Except in a most general way I would say the two figures simply are not comparable.

Q. Did you in connection with the study made for Pan American make any investigation of the development or change in traffic density over Pan American and Panagra's routes during the period since the war?

A. I really don't recall whether we ran it out for every year or not. We certainly looked at the general—

Q. Did you run it out for any year other than for 1957?

A. In terms of our density figure?

Q. Yes, sir.

A. I don't think so, no.

Q. Do you know of any reason for not doing so, Professor?

[fol. 642] A. You mean in order to get the trend of the growth?

Q. Yes, sir.

A. We were trying to essentially take a look at the current density of the route in comparison with those of other routes.

Q. But you did not think it necessary in connection with this study to make a study of the changed density of traffic between the years 1945 and 1957 or '58.

A. I think, not in view of the low density at present.

Q. Professor, let me refer to the quotation from the Civil Aeronautics Board opinion in Docket 4882 which was put to you the other day by Judge Peck.

So the record may be clear, the opinion was that of November 23, 1954, released on Apr. 20, 1955, and the quotation appears at pages 5 to 6.

The Civil Aeronautics Board statement was as follows:

"The Latin-American market is today the largest foreign air transport market to which American flag carriers have access. Moreover, it is a market which has expanded tre-
[fol. 643] mendously in the past and may be expected to continue to grow in the immediate as well as the more distant future. The importance of this market and the rapidity of its growth is illustrated in the tables set forth below."

The table referred to by the board compared total travel by air with Latin America in the year 1951 with such travel in the year 1938. Do you recall that generally, Professor?

A. Generally, yes.

Q. Judge Peck asked you to comment on that statement in light of your testimony concerning relative thinness of the South-American market. In commenting upon the testimony you did not address yourself to the factor of growth noted by the CAB but rather to the definition of the Latin-American market as including within a number of areas other than South America. Do you recall that?

A. I do.

Q. Can you tell us now, Professor, whether you have any information or opinion with respect to the extent of the growth which has taken place in air travel between the United States and South America during the period 1945 to 1957?

[fol. 644] A. Oh, I think it has increased, beyond doubt.

Mr. McKay: Your Honor, we have made a number of calculations here which I would like to present to the professor. I would like to have this marked for identification, if I may. I think the number is on there, 174, I believe.

(Marked WRG-174 for identification.)

By Mr. McKay:

Q. Professor, I have handed you a copy of Grace's Exhibit 174 for identification, and I think it will assist you in following certain of the questions I am about to ask.

It is true, is it not, that you testified that the air travel between the United States and South America and the Canal Zone in 1951 was 141,669 passengers based upon INS statistics? Is that correct?

A. That's what I recall.

Q. It is also true, is it not, that your Exhibit PS-110 shows that the total air travelers between the United States and South America similarly defined in 1957 was 272,059 and that in 1958 it was 342,859; is that correct?

[fol. 645] A. I believe so, yes.

Q. That means, does it not, that total air traffic between the United States and South America almost doubled between 1951 and 1957 and substantially more than doubled between 1951 and 1958? Is that correct?

A. That is correct.

Q. I would like to turn, now, Professor, to the specific sector between Miami and Balboa to which much of your study was directed.

It is true, is it not, that revenue passenger-miles is the accepted way of measuring volume of traffic?

A. That is correct.

Q. And comparison of revenue passenger-miles in various years would indicate the change in volume of traffic, would it not?

A. But not necessarily density.

Q. Change in volume?

A. Yes.

Mr. McKay: Please mark this as 175.

(Marked Exhibit WRG-175 for identification.)

[fol. 646] By Mr. McKay:

Q. Professor, if you will turn to Mr. Ferguson's Exhibit 9, that gives the Pan American passenger-miles over the Miami-Balboa sector as 20,928,000, does it not?

A. That's correct.

Q. It is true, is it not, that the Pan American revenue passenger-miles for 1952 over the sector can be derived by totaling the third column on page 1 of your Exhibit 116?

A. Yes, I believe so.

Q. And if you will accept the figure, we have totaled them up subject to correction, that figure is 42,880,000.

Now it is also true that with respect to 1957 Pan American's revenue passenger miles over the Miami-Balboa

sector can be obtained by adding the figures in the third column on page 2 of that exhibit; is that correct?

A. Yes, sir.

Q. And, if you will accept this sum subject to correction, it is 68,284,000.

That means, Professor, does it not, that the volume of [fol. 647] Pan American's traffic over this sector somewhat more than doubled between 1945 and 1952 and that it more than tripled between 1945 and 1957? Is that correct?

A. Assuming these figures are correct, yes.

Q. Well, if you find any error in them, Professor, advise us.

Professor, I would like you to consider your analysis of traffic density in 1957 as shown in your Exhibit 101.

(Marked Exhibit WRG-176 for identification.)

Q. Professor, I have handed you a copy of Grace's Exhibit 176 for identification to assist you in the following question:

You show, Professor, do you not, the revenue passenger-miles flown, the route miles operated, and the revenue passenger-miles per route mile per day for Pan American within South America plus the Miami-Balboa sector? Is that right?

A. Yes, sir.

Q. Professor, you don't give any indication in this exhibit, however, of these figures with respect to the Miami-Balboa sector alone, do you?

A. No.

[fol. 648] Q. It is true, is it not, that the revenue passenger-miles flown for this section, according to your figures on that exhibit, can be obtained by deducting the figure for within South America from the figure you set forth for South America plus the Miami-Balboa sector?

A. That is correct.

Q. And by the same process it is possible for us to obtain the route miles operated over the Miami-Balboa sector?

A. That is correct.

Q. Once these two figures are obtained it is possible to derive the revenue passenger-miles per route mile per day in accordance with the formula revenue passenger-

miles flown divided by the product of 365 times route miles operated; is that correct?

A. Yes, sir.

Q. And that gives us a density figure, Professor, of 161.5 revenue passenger-miles per route mile per day over the Miami-Balboa sector, does it not?

A. Yes, sir.

Q. Isn't it true, Professor, that this route density is more than twice the average density on Pan American's [fol. 649] routes within South America as shown by your Exhibit 101?

A. That is correct.

Q. Isn't it also true, Professor, that this figure is substantially in excess of the average density for foreign and overseas operations generally as shown by your Exhibit 101?

A. Well, I wouldn't say substantially, but it is somewhat above that, yes.

Q. Isn't it also true, Professor, that the figure of 71.2 representing the revenue passenger-miles per route mile per day on Pan American's routes within South America is an average figure?

A. In the sense that it covers all the traffic and all the routes, yes.

Q. And isn't it true that the density on Pan American's routes within South America varies widely above and below the 71.2 figure?

A. I would imagine so, yes.

Q. And isn't it true, Professor, that some of the routes on which Pan American provided service had a density substantially less than 71.2 revenue passenger-miles per route mile per day?

A. Well, I don't know that I have seen the figures showing the dispersion around this average.

[fol. 650] Q. Your answer is you don't know?

A. I don't know.

Q. Professor, turn to the figures shown on your PS Exhibit 101 for foreign and overseas operations. That is the figure for all foreign overseas operations on all types of routes excluding only Pan American's Latin-American Division, Panagra and Braniff; is that correct?

A. That is correct.

Q. In arriving at this density figure you relied, as your exhibit shows, upon the monthly report of air carrier traffic statistics for December, 1957, issued by the Civil Aeronautics Board, did you not?

A. I believe so, yes.

Q. Now turning to Grace's Exhibit 176 for identification, a copy of which you have before you, as indicated on that exhibit that report gives certain figures for the foreign and overseas operations of Northwest Airlines which indicates a traffic density of 53.6 revenue passenger miles per route mile per day, does it not?

A. Yes, it does.

Q. That figure is substantially below the figure for [fol. 651] foreign and overseas operations shown in your exhibit, is it not?

A. Yes, it is.

Q. Is it not the fact, Professor, that the principal international route of Northwest is its route to Japan?

A. Yes.

Q. Isn't it also a fact, Professor, that Pan American has applied for a route which would substantially, if not precisely, parallel Northwest's route?

A. So I understand, yes.

Q. Now, Professor, you do not in any of your exhibits, as far as I can see, that is, with respect to the density of traffic, compare the situation in 1957 with the situation at the beginning of the period you have said was covered by your study. I think you said the post-war period down to 1957. Is it correct that none of your exhibits cover that period but only relate, as you previously testified, to the year 1957?

A. That is correct.

(Marked Exhibit WRG-177 for identification.)

[fol. 652] By Mr. McKay:

Q. Professor, with Grace's Exhibit 177 for identification before you, is it not a fact that from your Exhibit 101 it is possible to derive the density of traffic for the Miami-Balboa sector? We just went over that earlier: is that correct?

A. Yes.

Q. And we found that to be 161.5 for 1957.

A. That's correct.

Q. I would like to bring your attention to the traffic density in 1945 on the Balboa-Miami sector. We can obtain this, can we not, by taking the passenger-miles flown in that year, as shown by Mr. Ferguson's Exhibit PS-9, the route miles operated in 1944 as shown by Mr. Ferguson's Exhibit PS-12, and they may be assumed to be substantially the same as the '45 figure, I would think; wouldn't you, Professor?

A. Yes.

Q. Do you agree that with these figures we derive a density figure of 47.7 for 1945 on the Balboa-Miami sector?

A. That is correct, and the mileage difference I, believe, is one stop somewhere along the line at Camaguay.

[fol. 653] Q. That would be a minor difference, though, wouldn't it, Professor?

A. Well, that, as I recall, is the difference in the mileage.

Q. Doesn't that indicate the density on this sector has more than tripled between 1945 and 1957?

A. Yes, it does.

* * * * * * *

Q. Professor, I would like to turn to the criterion employed by Mr. Ferguson in the exhibits sponsored by him which do not go beyond the year 1945 and see if we can't bring the figure up to date.

(Marked Exhibit WRG-178 for identification.)

By Mr. McKay:

Q. Professor, with Grace's Exhibit 178 for identification before you, it is true, is it not, that the average passenger load shown by Mr. Ferguson's Exhibit PS-9 for Pan Amer-

[fol. 654] ican's Miami-Balboa sector in 1945 is 17.6?

A. I believe so, yes.

Q. You show, Professor, in your Exhibit 120, the aircraft-miles for 1957 over this sector, do you not?

A. Yes.

Q. And we have previously derived from your exhibits the passenger-miles over this sector in 1957, have we not?

A. Yes.

Q. It appears, then, Professor, does it not, that in 1957 the average passenger load was 39.3?

A. I would imagine so.

Q. This represents a doubling over the last figure provided by Mr. Ferguson, does it not?

A. You mean the 17.6?

Q. Yes.

A. Yes.

Q. Professor, turning to your Exhibit 102, there is one figure of revenue passenger-miles per route mile per day for North Central that I just can't follow through. I wonder if you would help me. See opposite North Central.

[fol. 655] A. I would imagine that there was a typographical error in their revenue passenger-miles. I would be glad to check that.

Q. Well, what my trouble was: I was wondering whether someone forced a balance here. If you were to divide 24,355 and the figures you have of 10,350,000, you don't come out with 120.4, do you, Professor?

A. No, you do not.

Q. You come out with a 12.04.

A. That is correct. On the other hand, from what I know of North Central, they have a good deal more traffic than what we show here. In other words, they would have many more than 10,000,000 passenger-miles.

Q. More like 110,000,000, wouldn't it be, Professor? I was just wondering how you got the 120.4.

A. I would have to check that.

Q. Well, I have checked it, Professor, and it is 110,743,000 revenue passenger-miles and 2,355, and that comes out to 117.2. Do you accept that correction, Professor, subject to check?

A. Yes.

Q. This Exhibit 102, Professor, compares the Pan American Latin-American Division, Panagra and Braniff with [fol. 656] the so-called local service carriers in accordance with your criterion of traffic density, does it not?

A. That is correct.

Q. Isn't it true, Professor, that this exhibit, like Exhibit 101, fails to show the density on the Miami-Balboa sector?

A. Well, as you can see, it shows it in two ways. One was for the whole system within South America plus Balboa-Miami, and one within South America, but it does not show Miami-Balboa separately.

Q. You did not think it was necessary to show that separately, Professor. That is the 161.5.

A. That's right.

Q. Isn't it true that the density of 161.5 revenue passenger-miles per route mile per day on this sector is comparable to the highest density shown on that exhibit?

A. Yes, it is.

Q. It is also your testimony, Professor, is it not, that these Exhibits 101 to 105 are designed to show what you referred to as the economic profile of these routes in terms of traffic; is that correct?

[fol. 657] A. That is correct.

Q. Professor, aren't there other factors which are relevant to what you call the economic profile of a route?

A. There may be, yes. Length of haul would be one which I would be able to mention.

Q. The difference between a short-haul operator and a long-haul operator; that is one factor, isn't it?

A. In terms of traffic density, this factor doesn't enter into it.

Q. You testified, Professor, that the local service carriers have been heavily subsidized, and I quote, "in part because of the short-haul nature of their operations." Is that correct?

A. That is correct.

Q. Referring to the book that I believe you wrote, "Air Line Price Policy," which was published in 1958—

A. Yes.

Q. —at page 442 you state, and I quote:

"It is generally agreed that costs per passenger mile for such traffic"—and by traffic there you are referring to short-haul traffic—"are relatively high compared to those for long-haul traffic."

[fol. 658] Is that correct?

A. Yes.

Q. And you also state in general, and I quote, "There seems to be little doubt that the short-haul market is under

today's operating procedures less attractive than long-haul traffic." Is that correct, Professor? And you believe those statements to be true, do you not?

A. As they have an impact on cost of operation, which is what I was talking about in that section, as I recall.

Q. It is true, Professor, that a route segment of 1,166 miles, such as the sector between Balboa and Miami, is a long haul and not a short haul?

A. That is correct.

Q. Is it your expert opinion that a meaningful comparison can be made between short-haul carriers, such as the local service carriers listed on your Exhibit 102, and international carriers, such as Pan American and Panagra, simply in terms of traffic density on their respective routes?

A. I think that is very significant, yes.

Q. You think that is a meaningful comparison.

A. Yes, I do, in terms of traffic density.

[fol. 659] Q. I would like to turn to your Exhibit 103. In that exhibit with respect to Balboa and Buenos Aires you state the two U. S. carriers are serving those points by considering Pan American and Panagra as one with Braniff being the second carrier; is that correct?

A. That is correct.

Q. It is a fact, Professor, as you know, that Pan American, Panagra and Braniff are each separate, certificated carriers?

A. Yes.

Q. There is, then, is there not, three-carrier competition rather than the two-carrier competition as your exhibit implies?

A. Well, this exhibit goes to the number of carriers serving. By no means all of these would necessarily be competitive ones.

Q. Well, Professor, there are three carriers, Pan American, Panagra and Braniff, are there not?

A. Yes, and we recognize this with this footnote.

Q. Why was the footnote necessary, Professor? Why did you combine Pan American and Panagra?

A. Essentially we combined it because of the through-
[fol. 660] flight agreement, the joint ownership involved in

Panagra. It is a little hard to tell whether you should count it as 2 or 3 or 2½.

Q. Was this your own idea, Professor?

A. Yes, sir.

Q. Professor, I would like to turn to your Exhibit 105 in which you list the volume of air passenger traffic between the United States and foreign cities served by two or more U. S. flag carriers for the year 1957. Have you that before you, Professor?

A. Yes, I do.

Q. Let me ask you whether there are any other foreign points not listed on your exhibit which in that year were served by two or more U. S. carriers, if you know?

A. I think that we tried to put them all in in here.

Q. To the best of your knowledge and belief all such cities are in there.

A. I believe so, yes.

Q. According to your testimony, Professor, the right-hand column on that exhibit breaks down the number of passengers on a number-of-passengers-per-carrier basis; is that a fact?

[fol. 661] A. That's correct.

Q. And in your testimony you took as an example the first line with respect to Nassau and the Bahamas; is that correct? Do you recall that?

A. Right.

Q. And you stated that each of the two carriers, and I quote, "has an average of 86,000 passengers per year to and from the United States." Do you recall that testimony, Professor?

A. Yes.

Q. Do you know that two U. S. carriers were serving Nassau in 1957, Pan American and Mackey Airlines?

A. Yes.

Q. Do you mean to imply that the traffic was divided equally between Mackey and Pan American?

A. No, I don't believe I so stated.

Q. Do you know what the division of the traffic was?

A. At Nassau? Not offhand, no.

Q. What did you mean to imply by this 86,000? Was it just an arbitrary division by two?

A. Essentially, yes.

Q. Professor, your Exhibit 106 is designed, is it not, to [fol. 662] show the comparative development of air passenger traffic between the United States and South America and between the United States and other areas in the world; is that correct?

Q. Isn't it true, Professor, that there are many other factors besides gross national product which might be used to measure the comparative development of air passenger traffic?

A. Yes, there are certainly others.

Q. Can you name some of these other indicators, as I think you referred to them?

A. Well, I suppose that if you did enough adjusting, for example, of types of commodities there would be some correlation perhaps between foreign trade and passengers. But this would have to be pretty carefully adjusted and either in terms of tonnages, which certainly isn't too meaningful, or in terms of dollars which may not be too meaningful either.

Q. Have you any other indicators that you could specify besides foreign trade?

A. As an indicator of the number of passengers?

Q. Yes. To be used along the lines that you used the gross national product.

A. I suppose that you might run this out on the basis [fol. 663] of resident aliens in the United States or first place of birth of the naturalized citizens to get some kind of a relationship.

Q. Any other indicators, Professor?

A. None that occur to me offhand.

Q. Isn't it true, Professor, that gross national product fails to take into account important factors affecting the potential air passenger traffic which may be developed in certain areas? Yes or no in the first instance, Professor, if you can answer it yes or no.

The Witness: Could you read the question again?

(Question read.)

A. Well, aside from the point of tourist attractions—

Q. First, Professor, can you answer it yes or no?

A. I don't think I can, no.

Q. Would you say, Professor, that the gross-national-product criterion, as you use it, takes into account all important factors?

A. All of the basic economic factors.

Q. Is that the only standard or criterion that takes in all such factors, in your opinion, Professor?

[fol. 664] A. I think it is probably the best single economic indicator.

Q. Professor, is gross national product an adequate standard, for example, in measuring the traffic potential of the Bahamas which your Exhibit 105 indicates to be a top traffic generator?

A. You mean because of the tourists?

Q. I am just asking the question, if you would please respond to it, Professor.

A. I think not, no.

Q. For example, Professor, doesn't gross national product fail to take into account the closer ties and greater community of interest between the United States and South America as compared with other areas of the world?

A. The closer ties to South America?

Q. And the greater community of interest between the United States and South America as compared with certain other areas of the world.

A. Well, I am not at all sure the ties are closer or the community of interest greater than with some of the other areas.

Q. Does it take into consideration, however those two [fol. 665] factors?

A. Probably not.

Q. Professor, would not the amount of American investment abroad been an appropriate measure of the potential passenger traffic between the United States and various areas, in your opinion?

A. It would be one indicator.

Q. Would not the total amount of trade moving between the United States and a particular area be an appropriate measure of potential passenger traffic?

A. Not in gross, no.

Q. Pardon me?

A. Not either in gross dollars or gross tons, I would think.

Q. In any respect, Professor.

A. If you analyzed it down to particular types of trade and particular commodities, you might get a pretty good correlation.

Q. Professor, when you used this standard or criterion, gross national product, did you have to make any adjustments? Or does that automatically apply and get the result?

You were indicating previously that you might use this indicator or that; you have to make certain fine adjustments. Did you have to make any adjustments when you [fol. 666] used the gross national product?

A. No, I believe not.

Q. You just used it as an absolute.

A. As I recall, yes.

Q. Professor, would you think that the gross national product might be a good standard to be applied to countries such as India which has a very high per capita?

A. For measuring potential air traffic?

Q. Yes.

A. I think it would be reasonably good, yes.

Q. Do you know what the average income is? Have you any idea of the average income of the people of India?

A. It is low.

Q. It is very low, isn't it, Professor?

A. Yes, it is.

Q. But you regard this class of very low income traffic as potential passenger traffic on international routes?

A. We aren't talking about per capita income here. We are talking about gross national product.

Q. But you do say that the gross national product standard would be, in your opinion, the standard to be [fol. 667] applied in the case of a country like India?

A. I think it would be a good indicator, yes.

Q. The best you know?

A. Probably.

Q. Have you any doubts, Professor?

A. No.

Q. Professor, I have handed you a copy of Grace's Exhibit 179 for identification. This exhibit sets out the total export and import trade moving between the United States and the three areas listed in your Exhibit 106. The figures contained in this exhibit have been taken from the statistical abstract of the United States for the year 1958, and the figures are for the year 1957. If we were to take total trade as a measure of potential passenger traffic, wouldn't this exhibit demonstrate that air passenger traffic between the United States and South America is comparatively less developed than the traffic between the United States and Europe and that it has reached approximately the same stage of development as the traffic between the United States and Australia and Asia in your exhibit?

[fol. 668] A. If you wanted to make this comparison this way, but your trade with South America is a very different kind of trade than it is with Europe, with most of the imports from South America being bulk commodities such as petroleum, ores and one thing or another, which I would say is not at all comparable to the type of freight that we have with Europe.

Q. In other words, Professor, is it your testimony that the only standard or criterion that you can use absolutely, without considerations of various factors of type of trade, is the gross national product?

A. I would say that that was the best single indicator.

Q. Without any adjustments being required or refinements such as you have indicated in certain of the other standards or criterion?

A. Generally speaking, yes.

Q. Professor, in your Exhibits 101 and 102 you have made some comparisons between the United States carriers serving South America and the domestic local service carriers; is that correct?

A. That is correct.

Q. Would you turn to your Exhibit 107 which compares the operating ratio of the domestic trunk line carriers with [fol. 669] the United States carriers serving South America —is that correct?

A. Yes.

Q. Your Exhibit 107, Professor, gives no indication of

the operating ratio of any of the domestic local service carriers, although you considered the traffic density on their routes relevant in the earlier exhibits, namely, 101 and 102; is that correct?

A. That is correct.

(Marked Exhibit WRG-180 for identification.)

Q. Professor, with Grace's Exhibit 180 for identification before you, I would like to point out that it compares with the figures contained in your Exhibit 107, the operating ratios in 1956 and 1957 for the five domestic local service carriers which, according to your Exhibit 102, had the greatest density of traffic on their routes. Do you see that, Professor?

A. That's right.

Q. It is true, is it not, Professor, that the operating ratio of these five carriers is very substantially above the operating ratio in 1956 and 1957 of Panagra?

[fol. 670] A. That is correct.

Q. This difference would indicate, would it not, Professor, that factors other than traffic density are of importance in comparing the economic strength of carriers?

A. Of carriers, yes.

Q. It is also true, is it not, Professor, that local service carriers are very heavily subsidized?

A. That is correct.

Q. In preparing your Exhibit 107, Professor, did you at any time ascertain what the operating ratio was for the local service carriers?

A. Not that I recall, but we knew—from my general knowledge I knew it was high.

Q. You decided not to explore that and put that in your Exhibit 107?

A. I did not think it was particularly pertinent.

Q. Professor, let us turn to Exhibit 108 where, in comparing rates of return, you have eliminated not only the local service carriers but the domestic trunk line; is that correct?

A. That is correct.

[fol. 671] (Marked Exhibit WRG-181 for identification.)

By Mr. McKay:

Q. Professor, with Grace's Exhibit 181 for identification before you, I would like to point out that that exhibit takes the rates of return shown in your Exhibit 108 and compares them with the rates of return for domestic trunk lines and local service carriers, this as reflected in the quarterly report of the air carriers' financial statistics for the CAB for December, 1957.

Now, Professor, it appears, does it not, the rate of return in 1956 and 1957, even for the domestic, even for the domestic trunk lines with their very high traffic density, is on the order of that shown by you for the Pan American Latin-American Division and Panagra? Is that correct, Professor?

A. According to these figures I am not sure whether these particular trunk operations reflect the adding back of interest or whether they are as reported.

Q. All right, Professor. Apart from that one factor, can you answer my question, or with that reservation?

[fol. 672] A. That is correct.

Q. Did you at any time, Professor, in preparing the material appearing in your Exhibit 108, consider the rates of return for the domestic trunk lines and domestic local service carriers?

A. In connection with 108?

Q. Yes. Did you consider?

A. I think not, no.

Q. Professor, is the net profit in investments shown by you with respect to the Latin-American Division of Pan American necessarily or indeed in fact the same as that considered by the CAB for subsidy purposes, if you know?

A. I don't know what they would consider.

Q. Do you know what you considered, Professor?

A. Yes.

Q. What is included in that investment figure?

A. It is explained on the footnote on the following page. The average quarterly balance is of net worth, long-term debt and notes payable, and in the case of divisional carriers which have various divisions the total system investment has been prorated on the basis of divisional operating expenses.

Q. Now, Professor, as an expert in this field you know, [fol. 673] for instance, that the Civil Aeronautics Board will not take into consideration equipment which they regard as affording excess capacity, do you not?

A. That is correct.

Q. And there are many other items covered by company investments which the CAB has from time to time disallowed?

A. Yes.

Q. Professor, would you turn to that Exhibit 108, page 2. The second footnote refers to a decision of the Civil Aeronautics Board in Docket No. 1706 as finding that a 10 per cent return was reasonable with respect to the operations of Pan American. Do you see that?

A. Yes.

Q. You know, do you not, that the decision established a 10 per cent rate only for the period until December 31, 1953; is that not correct?

A. That is correct.

Q. And thereafter the rate established by that decision was not ten but, rather, 9 per cent?

[fol. 674] A. That is correct, and I believe I so testified.

Q. Your exhibit does not so show, however, does it, Professor?

A. No, sir.

Q. Aren't you also aware, Professor, that the reason for reducing the rate for the more recent years was, in the Board's own words, and I quote, "the lesser risks of the more mature, well-established international industry," if you know, Professor?

A. I don't recall.

[fol. 675] Q. Professor, would you turn to your Exhibit 115 where you describe the route structure and schedules assumed in connection with your Exhibits 114 through 129. Have you those before you, Professor?

A. Yes.

Q. I note, Professor, that under Assumption 1 in paragraph B in Exhibit 115 there is assumed the extension of Pan American to the west coast of South America in accordance with the application it has made in Docket No. 8597. Do you see that, Professor?

A. That is correct.

Q. Are you aware of the fact, Professor, that W. R. Grace and Co. has filed an application on behalf of Panagra in Docket Nos. 8511 and 8512 for an extension of Panagra's route from Balboa to New York and from Balboa to Los Angeles and San Francisco?

A. I am generally familiar with that, yes.

Q. The extension applied for in behalf of Panagra is not that which has been assumed in your exhibit, is it, Professor?

A. I am sorry?

Q. I say the extension applied for on behalf of Panagra by W. R. Grace and Co. is not the extension you are talking about, the application you are talking about in your As- [fol. 676] sumption No. 2.

A. No, we just covered the extension of Panagra from Balboa to Miami.

Q. And your Assumption No. 2 was the extension of Pan American down the west coast of South America; is that correct?

A. That is correct.

Q. You made no third assumption, did you, Professor, in any of your studies?

A. No.

Q. Were these route pattern assumptions which are set forth in 115 made by you, or were they determined or suggested by Pan American?

A. As I recall, we proposed them and we discussed them with the Pan American people.

Q. When you were retained, Professor, did a representative of Pan American explain to you what this antitrust case was about, what the issues were?

A. I already knew of the pendency of the case. I don't recall that they explained the issues.

Q. Well, is it your understanding that there is as an issue in this case Pan American's application for an extension of its route down the west coast of South America? [fol. 677] A. Pending in this case?

Q. Yes.

A. No, I don't think it is.

Q. Professor, why did you make Assumption No. 2? You said you proposed it to Pan American, had a discus-

sion, and then you went forward with your study and you prepared these exhibits or they were prepared under your general supervision. I am asking you why you proposed Assumption No. 2 to Pan American.

A. We wanted to show essentially the effects of additional competition within this general ar[illegible] of South America.

Q. And you just used this as one possible example, is that correct?

A. That is correct.

Q. Did you at any time, Professor, consider using as a basis for an assumption, either a third, an additional one or not, the extension of Panagra's route from Balboa to Miami and to New York?

A. In running up these studies?

Q. Yes, Professor.

A. We may have. I am sure we didn't seriously consider them.

Q. When you say "We may have," Professor, give your [fol. 678] best recollection.

A. My recollection is that we considered it and picked out as Assumption No. 1 Balboa-Miami.

Q. You did consider, however, the extension of Panagra's route from Balboa to Miami to New York, or did I mishear you?

A. Well, I really—

Mr. Peck: May I interrupt for a moment, Mr. McKay, to find out whether you understand that Assumption No. 2 includes the extension of Panagra from Miami to Balboa? You understand that, don't you?

Mr. McKay: I do, Judge Peck.

Q. Proceed, Professor, if you will.

A. I really don't recall the extent to which we considered this doing our study on the basis of the Miami-New York extension as well as Miami-Balboa.

Q. You do not recall.

A. I don't recall that, no, sir.

Q. Have you any recollection, Professor, that you considered the extension of Panagra up the west coast of the United States in accordance with the application filed on its behalf by W. R. Grace and Co.?

A. We had not considered that.

Q. Now, Professor, in this Exhibit 115 you made certain [fol. 679] scheduling assumptions, did you not?

A. That is correct.

Q. Did you determine those assumptions, or did Pan American?

A. We did.

Q. And would that hold true as to the assumptions regarding routing?

A. Yes.

Q. Professor, I would like to have you focus your attention on Assumption No. 1 for the moment, that is, the extension of Panagra's route to Miami. Is it not true that the route pattern assumed here as a major assumption that Pan American would institute seven round trips a week?

A. They would operate seven trips a week between—round trips between Miami and Balboa.

Q. Professor, is it your expert opinion that Pan American could not operate on this route without having seven frequencies a week?

A. Well, operationally they could have more or less. This was our best judgment as to what they would offer if they were going to stay on the route and compete for the local traffic.

Q. If they were to stay on the route and compete, is it [fol. 680] your opinion that they could not have less than seven frequencies a week?

A. It was our opinion they could not have less than seven frequencies and still maintain any kind of competitive strength against Braniff and Panagra.

Q. They would go out of business if they did not have seven frequencies a week?

A. They would tend to lose whatever local traffic there was and to which they were entitled as they scaled down their frequencies. At what point it would pay them or make it necessary to give up the route altogether, I really don't know.

Q. You can't say that they couldn't operate with six or five.

A. We think they could not from a competitive standpoint.

Q. Isn't it true, Professor, that there are instances in which a carrier offers less than seven frequencies in a route on which it faces U.S. flag competition? If you know, Professor.

A. There may be such cases.

Q. Do you know of any?

A. I don't think of any offhand, no.

[fol. 681] Q. Isn't it true, Professor, for example, that on your own Exhibit 115, if you will turn to page 4, that there are many competitive points between which Braniff offers only two frequencies a week?

A. Is this page 3 you are speaking of?

Q. 4, Professor.

A. Under the assumptions or under the present?

Q. Under the actual, Professor.

A. Yes, that is true. But this is quite different traffic that we are talking about here than the local traffic between Balboa and Miami.

Mr. McKay: I move to strike the latter part of the answer, your Honor.

The Court: It doesn't matter.

Q. Professor, it is true, is it not, that the assumption that you made, and it is your own assumption, of seven frequencies per week for Pan American is a substantial factor in your projection of subsidy needs?

A. Yes, it is.

Q. And it is correct, is it not, Professor, that the statutory criterion for the award of subsidies, as set forth in Section 406(d) of the Act, is the need of a carrier "under [fol. 682] honest, economical and efficient management to develop air transportation"? Is that correct, Professor?

A. That is correct.

Q. Under that statutory criterion the Board has on many occasions eliminated expenses incurred by carriers as, for example, in the operation of excess capacity; is that correct?

A. Usually not right after they have certificated a third carrier.

Q. That is correct, Professor, if you will be responsive to my question. Have they or have they not?

A. Made disallowances?

Q. Yes, yes.

A. They have.

Q. I would like to refer again, Professor, to the Civil Aeronautics Board decision in Docket 4882. You are aware, are you not, that the Board said in that decision, at page 33, that if traffic volumes did not increase substantially air service capacity can and should be reduced so that an economic load factor will be obtained. Do you recall that?

A. I don't recall it specifically, no.

Q. Do you disagree with it?

[fol. 683] A. Do I disagree that they said it?

Q. No, do you disagree with the thought behind the statement?

A. As applied to that particular instance, probably not.

Q. To the particular instance in that docket?

A. That is correct.

Q. The CAB went on to say:

"We hereby stress the need for a careful monitoring by all carriers of schedules and services to be flown to South America, for we have been forced several times in the past to refuse to underwrite with subsidy support large amounts of excessive capacity operated by the South American System of Pan American."

Do you recall that statement?

A. No, I don't.

Q. Do you recall Mr. Ferguson's testimony in this case that, if Pan American had operated on a daily frequency between Miami and Balboa, the Civil Aeronautics Board would have found that Pan American "had operated excessive capacity" and that "the Board would not support this service."? Do you recall his testimony to that effect?

[fol. 684] A. I don't recall the period. I don't know that I do recall that testimony now.

Q. Do you agree with Mr. Ferguson's statement, Professor?

A. You would have to give me the year or the period.

Q. Let me show you the transcript, Professor. Read that question and answer at the bottom of page 451 to the top of page 452.

I was just referring to that one particular question and answer, Professor, at the bottom of 451 and going over to 452.

A. Yes. Well, I was trying to identify this with what period he was talking about and in what connection.

Q. It is my understanding, Professor, he was talking about the period covered by his exhibits up to 1945.

A. Without any competition, if there is no competition over the route, and the loads are very light, then I think probably the Board might very well have disallowed them. If the Board itself has certificated competition, it seems to me to change the facts quite a bit.

[fol. 685] Q. Professor, what about the period from 1945 up to the present time? Your study has covered, as I understand it, while your exhibits don't portray the results of those studies except for one year, 1957—

A. And what is the question?

Q. Well, would Pan American, in your opinion, if it operated the daily frequency that you assume that it would, namely seven frequencies a week, in competition with Panagra—

A. And Braniff.

Q. —and Braniff, be subsidized by the Civil Aeronautics Board?

A. For those seven trips? I think that is a reasonable assumption.

Q. Isn't it true, Professor, that, if Pan American had either instituted a lesser frequency on this sector or if it had abandoned that service, the consequences you predict under Assumption No. 1 would no longer follow?

A. They couldn't abandon without the Board's permission.

Q. Obviously, Professor, if they had abandoned it with the Board's permission.

A. Well, we would have to rerun the numbers to see what [fol. 686] the effect would be.

Q. It would be in your opinion, would it not, substantially different, Professor?

A. I think, if you simply substitute Panagra for Pan Am on the route, the results would obviously be quite different here.

Q. Your study does not show, Professor, does it, that there would be any economic detriment either to Panagra or to the general public if Panagra was substituted for Pan American on this route?

A. And Pan Am's certificate was lifted or suspended?

Q. Yes, Professor.

A. We didn't go into that.

Q. It is true, Professor, is it not, that the bulk of the traffic presently moving on the Miami-Balboa sector is through traffic moving to and from points served by Panagra?

A. A considerable volume is, yes.

(Paper marked Defendant W.R.G. Exhibit 182 for identification.)

Q. Professor, with Grace Exhibit 182 for identification before you, this summarizes certain figures which were derived from your Exhibit 116. It is true, is it not, that [fol. 687] that exhibit, Grace's Exhibit, correctly shows that in the year 1957 the local traffic between Balboa and Miami was between eighteen and nineteen million revenue passenger miles, whereas the through traffic was somewhat in excess of 49 million revenue passenger miles? Is that correct?

A. That is correct.

Q. Do you agree with Mr. Ferguson, Professor, that, if Panagra secured its own route between Miami and Balboa, it would have been impossible for Pan American to secure any significant amount of this through traffic?

A. We made that assumption. I think probably they would get a little.

Q. Not a significant amount.

A. That is correct.

Q. Did you, Professor, take into account in your Assumption No. 1 that Pan American, in offering local service between Balboa and Miami, might adopt routes which would enable it to serve points intermediate between Miami and Balboa?

A. No, we did not.

Q. You know, do you not, that until 1953 Pan American operated flights which were routed Miami, Camaguey, [fol. 688] Kingston and Balboa?

A. Yes, I am generally familiar with that.

Q. And in 1955 Pan American operated flights routed Miami, Kingston, Balboa.

A. I will take your word for it.

Q. And that presently Pan American is operating a flight which is routed Miami, Managua, San Jose and Balboa. They are taken from the official Airline Guide, Professor, in May, 1959.

If Pan American adopted one or more of these routings for some or all of its Miami-Balboa service under Assumption No. 1, that might increase its passenger traffic and passenger revenues, might it not?

A. I would guess that with the through flights by Panagra and Braniff they would then lose the share of the local traffic that we have given them.

Q. Professor, you said you guessed. Have you any basis for your opinion? Are you able to give us your opinion rather than a guess?

A. My opinion is they would lose a substantial amount of the local traffic, that is, the local Miami-Balboa traffic.

Q. But they would pick up other passenger traffic, would [fol. 689] they not?

A. Presumably.

Q. And you are not able to say whether they would come out ahead or not, are you?

A. No, I am not.

Q. Professor, turning to your Exhibit 114, which summarizes your conclusions with respect to Assumptions 1 and 2, it indicates, does it not, that for the year 1957 under Assumption 1 you conclude that Panagra would have suffered an "added operating loss" of $319,000? Do you see that, Professor?

A. That is correct.

Q. That exhibit further indicates that your conclusion is that this operating loss combined with a $400,000 loss of interchange income and a $256,000 added requirement for return on investment would have required an addi-

tional subsidy for Panagra of $975,000 for that year; is that correct?

A. That is correct.

Q. Turning first to the item designated "Return on investment," this figure is based, is it not, on a 9 per cent return on the additional investment which you estimate Panagra would be required to make in order to provide the [fol. 690] additional service under Assumption 1?

A. That's right.

Q. Professor, isn't it true that this 9 per cent return is more than three times the return which Pan American has actually earned on its investment during the period 1947 to 1957 as shown by your Exhibit 108?

A. 9 per cent is higher than the actual return, yes.

Q. And the actual return was what, Professor? My figures show it was more than three times.

A. Well, the actual return is 4.8 over the 1947 to 1957 period, so 9 is a little more than twice 4.8.

Q. You say it was 4.8 for the period 1947 to 1957? I was talking of Pan American.

A. Oh, Pan American. I am sorry, yes.

Q. It is more than three times, Professor, the 9 per cent.

A. That is correct.

Q. Isn't it also true, Professor, that this 9 per cent which you have used is nearly twice the return which Panagra has earned on its investment during that same period as shown by your Exhibit 108?

[fol. 691] A. That is correct.

Q. Professor, why do you assume that Panagra and Pan American must earn on the new investment, which would be required under your assumptions, more than they are earning on their present investment?

A. Because, generally speaking, the 9 per cent return has been declared by the Board to be a reasonable rate of return for this kind of operation.

Q. So you have used this 9 per cent rather than the actual rate experienced by Pan American and Panagra.

A. That's right.

Q. Solely because the Board as found it to be a reasonable rate of return.

A. That's right.

Q. Professor, turning to what you call the added operating loss of $319,000 which you conclude Panagra would have suffered, isn't it a fact that Panagra made an operating profit in the year you were talking about, 1957? I am puzzled by your description of "added operating loss." It had been my understanding, and Mr. Ferguson so testified, that in that year Panagra had an operating profit.

[fol. 692] A. Well, I think that is correct.

Q. That is an error in your exhibit, then, Professor?

A. If you wish to interpret it so, yes.

Q. So, if your estimate is accurate, Professor, it would rather be a reduction in operating profit, would it not?

A. You might phrase it that way, yes.

Q. You wouldn't object if it was phrased that way, Professor, would you? How else could it be phrased, Professor?

A. Change in operating result.

Q. There is nothing wrong in referring to the word "profit," is there?

A. No.

Q. Isn't it a fact, Professor, that the accuracy of your estimate depends on the accuracy both of the operating revenue estimate set out on your Exhibit 127 and also on the accuracy of each of the operating expenses set out in that exhibit?

A. The 319 figure depends on that, yes.

Q. Turning first to your estimate of revenue for Panagra in 1957 under Assumption No. 1, have you taken into account the increase in total traffic which might be expected [fol. 693] to result from the operation of additional competitive services?

A. I am sorry; I don't know that I understand your question.

Mr. McKay: Would you read the question back, please?

(Question read.)

A. I think not, no.

Q. Professor, you assume, do you not, that Panagra under this Assumption No. 1 would establish additional sales offices throughout the country at a very substantial expense? Is that not correct?

A. That is correct.

Q. Have you taken into consideration in connection with this assumption that the addition of these sales offices and the additional promotional activities might result in an increase in traffic?

A. No. We have—

Q. Yes or no, if you can, please.

A. No.

Q. Are you familiar, Professor, with the statement of the Civil Aeronautics Board in Docket 4882 where, in discussing the desirability of a Braniff/Eastern interchange providing service between western South America and New York, [fol. 694] they stated:

"The stimulas derived from more effective competition should in this instance have a promotional effect on total traffic carried by these carriers, so that the overall effect of our action may not be merely to transfer traffic from one carrier to another but to increase the total traffic of both and thus to decrease total mail pay support for both carriers."?

My question, Professor, is whether or not you are familiar with that statement.

A. No, I am not.

Q. Do you agree with the statement, Professor, generally speaking?

A. I don't know that I would agree with that, no.

Q. You would disagree with it, Professor?

A. I think I would, yes.

* * * * * * *

[fol. 695] Cross examination (continued).

By Mr. McKay:

Q. Professor, turning now to the non-passenger revenues in your Exhibit 118, that exhibit indicates, does it not, Professor, that you have used Braniff's experience ratio of non-passenger to passenger revenues in determining what Panagra's non-passenger revenues would be?

A. That is correct.

Q. Your source, Professor, for the Braniff ratio was indicated in PS-118 to be the Form 41 reports to the CAB; isn't that true?

A. That is true.

Q. Isn't it a fact, Professor, that Panagra's filed Form 41 indicates that the ratio of non-passenger revenue to passenger revenue in 1957 was 26 per cent?

A. I don't know.

Q. You never checked it, Professor?

A. I beg your pardon?

Q. You never checked it?

A. I didn't, personally. As far as I know—

Q. Did any member of your staff, who worked under your close general supervision, Professor, check it?

A. I would—yes.

[fol. 696] Q. Pardon me?

A. Yes.

Q. You know that to be a fact, Professor?

A. Yes.

The Court: Do I understand the import of your question, Mr. McKay, that the actual 41 report filed by Panagra showed—

Mr. McKay: 26 per cent.

The Court: And not something like 16?

The Witness: Oh, I'm sorry. I thought you asked about Braniff.

Q. No, Panagra.

A. Well—

Q. You used the Braniff ratio, as indicated in their Form 41 report; you said yes; is that correct?

A. That is correct.

Q. Now, I asked you if you had checked, or any member of your staff checked Panagra's Form 41 to see what its ratio was?

A. I am sure they did.

Q. Did you, Professor?

A. I did not.

Q. Did any member of your staff do it?

A. Yes.

[fol. 697] Q. You know that to be a fact?

A. I believe it to be a fact.

Q. You don't know what ratio was shown in Panagra's Form 41, however?

A. I don't know.

Q. You have no idea?

A. No. We used this because of Braniff's—the fact that Braniff operates both north and south of the Canal.

Q. Well, accepting, if you will, Professor, the 26 per cent figure, and you can check that from the work sheets of your members of your staff whom you say did look at Form 41 for Panagra, it is true then that Panagra's experience ratio was 50 per cent higher than Braniff's?

A. South of the Canal, yes.

Q. And this reflects Panagra's greater volume of freight and domestic and foreign mail, does it not?

A. Foreign and domestic mail?

Q. Yes.

A. Foreign and U.S. mail moving overseas?

Q. Yes.

A. I don't know whether it would be greater or not.

[fol. 698] Q. Professor, if you had used Panagra's actual experience rate, its non-passenger revenues would have been $421,000 more than those shown for 1957 in your Exhibit 118, would it not?

A. If that would have been an applicable figure to this Miami-Balboa sector. We felt that the Braniff experience was somewhat more applicable.

Q. Professor, turning now to your computation of expenses on Exhibit 127, it shows for 1957, under your route assumption No. 1, a flying operation expense of $1,539,000; correct?

A. Correct.

Q. And that was computed by multiplying the increased mileage required by the proposed route extension by the per mile flying operation expense for Panagra for DC-6s and 7s, as set out in your Exhibit 121.

A. That is correct.

Q. Now Exhibit 12 indicates, doesn't it, Professor, that you have assumed that it would cost Panagra 88.14 cents per revenue mile to operate 6s in '57, whereas it would

only cost Pan American 75.88 cents per revenue mile to operate the same plane over the same route in the same year; isn't that correct?

[fol. 699] A. That is correct.

Q. Professor, what is your basis for assuming that the flying operation expense for Panagra would be substantially in excess of that for Pan American for the same plane over the same route, for the same year?

A. Our figures in PS-127 are based on Panagra's reported costs in '57.

Q. Well, now, Professor, in computing these flying operation costs per revenue mile for Panagra, have you taken into account the difference in cost between operations over the Miami-Balboa sector, and operations within South America?

A. Well, the basis that we had to go on was Panagra's reported cost, as I indicated.

Q. I ask you, Professor, if you had taken into account the difference in cost between operations over Miami-Balboa sector and operations within South America? I would think you could answer that yes or no.

A. We had no basis for using any other figure than the purported cost.

Q. The answer then, Professor, is no; correct?

A. Correct.

[fol. 700] Q. Thank you. Did you take into account, Professor, the difference between, say, the cost of gasoline in South America and the cost in Miami?

A. We had no basis on which to—

Q. Professor, will you please answer that yes or no, unless you say you cannot answer it yes or no? Did you or did you not?

A. We considered that.

Q. Did you take it into account?

A. We did not.

Q. Isn't it also true, Professor, that in Exhibit 121, in computing maintenance costs for operating DC-7s, you have assumed that it would cost Panagra 69.58 cents per mile, but that it would cost Pan American only 50.91 cents per revenue mile for the same planes over the same route; is that correct?

A. We did, based on Panagra's experience.

Q. And if I were to ask you the same questions as to whether you took into account various other factors on the difference in costs and operations on the west coast of South America as distinguished from the Miami-Balboa, would your answers be the same, Professor?

A. We considered some upward and some downward [fol. 701] adjustments in these costs, and concluded that we should use Panagra's experience, because we had no firm basis for making these adjustments.

Q. Even though, Professor, you appreciate that there are differences in cost in operation within South America as distinguished from operations over the Miami-Balboa sector?

A. And for this segment, some of those are increased and some of those are decreased costs, as against the present situation.

Q. And you weighed them, the increases and the decreases, and you did make that study, Professor?

A. Yes.

Q. Of those computations. Can you tell us now just how you came out, what those computations were?

A. Well, the principal ones are between the gasoline on the Miami-Balboa segment, and the station expenses at Miami and Balboa.

Q. Any others?

A. Not that I recall. Those were the principal ones, and these apparently would just about awash. In other words, the gasoline would be somewhat cheaper when bought at Miami. On the other hand, there would be increased station expenses at Miami and Balboa, and we [fol. 702] essentially washed one against the other and relied on Panagra's reported experience.

Q. What about the difference in cost and maintenance in South America as distinguished from Miami; did you take that into consideration, Professor? Yes or no?

A. No.

Q. Professor, turning next to the item of $968,000, which you show as added reservation and sales cost for Panagra 1957, under route Assumption No. 1, that is Exhibit 127, that is, that figure is based on the assumption, is it not, that

Panagra would replace its sales agency arrangement with Pan American with an extensive ticket office program; which would result in a projected expense of $1,169,000; is that correct?

A. Less the commissions they now pay Pan American.

Q. Now, Professor, if Panagra either continued its sales agency relationship with Pan American, or entered into a similar arrangement with some other air carrier, such as National or TWA, this expense would not be incurred? Isn't that a fact?

A. That is correct. That is the net figure.

Q. They would not incur this additional expense, Pro-
[fol. 703] fessor; is that correct?

A. The additional over and above the commissions.

Q. Yes, Professor, is that correct?

A. That is correct.

Q. Thank you. Would you say the choice of sales arrangement is a matter solely within the business judgment of Panagra's board of directors, whether to set up this elaborate sales office program, that you assumed they would, rather than to enter into an arrangement similar to the one they have with Pan American and some other airline?

A. I think the board would make you set these up or make you set up some different kind of arrangement than what you have now.

Q. Do you know whether the board would so require, Professor?

A. No, but generally speaking, where competitors are involved, they don't permit these general sales agency arrangements.

Q. Would you say that TWA is a competitor of Panagra?

A. A competitor of Panagra?

Q. Yes.

[fol. 704] A. No.

Q. Thank you. Turning next, Professor, to the item of $411,000 for additional advertising, isn't that based on your assumption that Panagra will spend, in addition to its present advertising expense, the same percentage of its new revenues which it now spends of its present revenues?

A. It certainly is.

Q. Isn't it quite possible that Panagra's board of direc-

tors will not choose to spend this percentage of its new revenue for advertising?

A. We feel they would be foolish to so choose.

Q. That is your personal opinion, Professor?

A. Yes, sir.

Q. Professor, since the proposed route extension is over a route which Panagra is already serving and advertising, isn't it quite possible that Panagra might find it necessary to spend little if any additional money on advertising in connection with this proposed route extension?

A. We felt that if they wanted to generate this traffic, that they would essentially maintain the percentage level of their advertising as applied to this new revenue.

[fol. 705] Q. Now, Professor, with respect to general and administrative expense in Exhibit 127, that exhibit indicates, does it not, that you have assumed this category of expense would have increased for Panagra in '57 under Assumption 1 by some $453,000; correct?

A. Correct.

Q. That is based on the assumption, is it not, that this expense would maintain the same percentage relationship to total cash expenses as it has in the past.

A. That is correct.

Q. Isn't it likely, Professor, that many of the expenses under this category will not increase at all by a change from a through flight operation to an operation by Panagra over its own route between Miami and Balboa?

A. We felt otherwise, based on what seems to be the general trend in the industry, that as volume and so on builds up, this expense ratio tends to be pretty much constant.

Q. Well, you will agree with me, Professor, would you not, that each of the items of expense in Exhibit 127 is based on a series of assumptions; correct?

[fol. 706] A. On assumptions and Panagra's reported experience.

Q. And these assumptions that you made, they may not correspond with actual experience under the proposed route extension; you will agree with that, will you not, they may not correspond with actual experience under the proposed route extension?

A. That is correct.

Q. Professor, it is true, is it not, that your Exhibits 114 through 129 relate to only one possible route extension of a number for which Panagra might apply and which might be granted to it.

A. That is correct. The other seemed even less attractive from an economic point of view, as far as we could see.

Q. Did you, Professor—I believe I asked you this earlier—did you make any studies of the proposed route extension of Panagra up the west coast of the United States?

A. Not a detailed study, no.

Q. Professor, can you say in your expert opinion that there is no possible route structure which might be offered, which would result in Panagra's coming to the United States and which would not require additional subsidy?

[fol. 707] A. All other things being equal?

Q. Yes, Professor.

A. At the present time, I think it is hard for me to conceive, conceive of this.

Q. But you couldn't say and give your expert opinion that there is no possible route structure which might be offered, which would result in Panagra's coming to the United States, and which would not require additional subsidy?

A. At the present time, I think not.

Q. Professor, as I understand the ultimate conclusion to which these Exhibits 114 through 129 are directed, is that the particular extension of Panagra's route which you have considered would not be economically desirable; is that correct?

A. That is correct.

Q. But you do not suggest that it would be economically impossible, do you, Professor?

A. With additional subsidy?

Q. With or without?

A. With additional subsidy, I think it would be possible.

Q. Would you say it was economically impossible without [fol. 708] additional subsidy?

A. I would say so, yes.

Q. Professor, you recognize that the Civil Aeronautics Board and the President have exclusive jurisdiction in awarding routes and needed subsidy support, do you not?

A. Yes.

Q. You also recognize, Professor, do you not, that since the enactment in 1938 of the Civil Aeronautics Act, competing routes may be and have been authorized, although this required additional subsidy?

A. Yes.

* * * * * * *

[fol. 711] PAUL W. CHERINGTON, resumed.

Redirect examination.

By Mr. Peck:

OFFERS IN EVIDENCE

Q. Professor Cherington, would you refer to Grace Exhibit 176 which was introduced on your cross-examination.

The Court: It was marked for identification.

Mr. Peck: Yes, it was marked.

Mr. Kenney: For identification only.

Mr. McKay: I will offer them in evidence. I marked them for identification merely as an aid or for assistance to the witness, the Court, and myself. I am willing to offer them in evidence, if there is no objection. Otherwise I will leave them for identification, if there is objection.

Mr. Kenney: No objection from the Government.

Mr. Peck: It doesn't make any difference to us one way or the other.

Mr. McKay: I will offer them in evidence.

The Court: Let's consider them in evidence, and the Clerk will mark them later.

(W.R.G. Exhibits 174 to 182 for identification received in evidence.)

[fol. 712] The Court: Do you want the witness to look at Exhibit 176?

Mr. Peck: Yes, I would like the witness to look at 176, if your Honor please.

A. Yes, sir, I have it.

Q. I would like to call your attention to the item of revenue passenger miles per route miles per day for Northwest

Airlines, that figure of 53.6. I want to ask you whether that figure, 53.6, represents the density of traffic over that route, and by the route I mean between the United States and the Orient.

A. Well, it does not include the Pan American traffic which is carried on the route at present.

Q. And what is the Pan American traffic on that route? Can you tell us that?

A. No, sir, I don't have that figure. But it is my understanding that Pan American has as much or, if not, a good deal more traffic than does Northwest.

Mr. McKay: Judge Peck, would you permit one interruption which perhaps is an error on our part? When we were referring to Northwest, we were referring to Northwest Airlines. We should have inserted that word. I don't know whether that will clear up the situation. It may not. But—

[fol. 713] Mr. Peck: I understood that you were referring to Northwest Airlines, yes.

By Mr. Peck:

Q. In other words, that represents the density on Northwest's route alone; is that correct?

A. So I understand, yes.

Q. And has no regard to the fact that Pan American goes out there and has a greater density.

A. I believe that is correct, yes.

Q. Now some question was raised as to whether Pan American was seeking to duplicate the Northwest route. Pan American is already there, is it not?

A. Yes, sir.

Q. And was there, I take it, before Northwest was there, was it not?

A. Yes.

Q. What is this application that Pan American has in so far as that route is concerned across the Pacific?

A. My understanding is that under the existing Pan American certificate between the west coast of the United States and Japan, for example, Pan American is required to stop at Hawaii, and I believe that their present applica-

tion is to get non-stop rights from the west coast to Japan [fol. 714] which would give them, via the Great Circle, operating rights approximately equivalent to those which Northwest has.

Q. The only difference is over flying Hawaii, is it not?

A. Yes, sir.

Q. On a route which is otherwise established for Pan American.

A. Yes, sir.

Q. Mr. Mallory suggests to me that you do have there some place the figure of the density over Pan American's trans-Pacific route.

The Court: Let's not keep it a secret. Why don't you tell him?

A. I think it is 110.2.

Q. 110.2.

Now, if you are going to consider the economics of a route and the economic justification of competition, you would have to take into consideration the traffic of all carriers, would you not?

A. Yes, sir.

[fol. 715] Q. Now next I want to refer you, please, to Grace Exhibit 180, which was introduced to add to figures which you hadn't in your Exhibit 107, figures ending with the operating ratio for domestic trunk lines and U.S. local carriers, and first I will call your attention to the operating ratio of the local carriers for the years '56 and '57, respectively, of 103.3 and 100.4, and ask you to comment upon those figures in relation to the other figures which you have?

A. As has been mentioned several times, those local service carriers are heavily subsidized by the government. During the period of '56 and '57 a substantial number of them were on what is called open rates, that is, their final subsidy for the period had not yet been determined, so that what they were receiving was essentially temporary subsidy payments; and generally speaking, the Board has pursued a policy of paying the local service carriers that were operating on temporary rates only enough subsidy to break them even on their operating expenses without incorporating any rate of return element.

Now, I don't recall exactly how many carriers were on open rates during this period, but my recollection is that [fol. 716] it was a considerable number of the local service carriers.

Q. Does it sound right to you, 11 out of 13?

Mr. McKay: I object to the form of the question, your Honor, whether it sounds right to the witness.

• • • • • • •

Q. Let me ask you this: Do you know or don't you know that more than half of them were on an open rate?

A. More than half were on an open rate.

[fol. 717] Q. And does that mean that in the course of time there is going to be a recalculation of subsidy and that they are going to get more?

A. Yes, sir.

Q. Now reverting to the domestic trunk line corresponding figures of operating ratios for the year 1956 of 92.1 and 97 for 1957, would you comment, please, upon those figures?

A. Well, the operating ratio of 97 in 1957 is undoubtedly much below—it is very, very—it is a high ratio. This essentially reflects the deteriorating position of the domestic trunk lines during 1957 due to increased capacity, increased costs and so on. As a result of this, their general poor condition, the Board early in 1958 granted them a passenger fare increase, and there was a good deal of discussion in the industry as to what could be done to help these carriers get back on a more profitable basis. The Board gave them a second fare increase late in 1958. The White House exhibited enough concern about this problem so that it had a study made of the situation; and generally speaking, I think this operating ratio is certainly not typical of the recent experience of the domestic trunk carriers.

[fol. 718] Q. And it is an operating ratio without subsidy, is it not?

A. Virtually without subsidy.

Q. I will ask you to refer to Exhibit 181, and along the same line address your attention to the rate of return for the domestic trunk carriers for the years '56 and '57 of 3.2 per cent and 2.4 per cent respectively, and I will ask you

first whether those years are representative years of the experience of the trunk carriers?

A. No, sir. I would say that they were substantially below the experience of, let's say, the last ten years, where—

Q. All right, will you tell us what the experience has been of the domestic trunk carriers, year by year, for the last ten years?

A. Well, generally speaking, the rate of return for the trunk lines has been, since 1948 or '49, has been somewhere in the vicinity of 10 per cent. All years since 1949 have been above 10 per cent, with the exception of 1949, 1956 and 1957.

Q. And then what comment would you make, and further comment, in relation to this return for the year 1957?

[fol. 719] A. Well, it is untypically low.

Q. And does it enter accordingly into the observation that you made about the high operating ratio in 1957, leading to a rate increase?

A. Yes, sir.

Q. And as far as the Pan American and Panagra figures are concerned in these exhibits, both of operating ratio and rate of return, they include subsidy, do they not?

A. Yes, sir; they do.

Q. Will you now turn to your own set of exhibits, 114—

Mr. Peck: Could I have those?

Q. Turn, please, to Exhibit 114, about which there was some discussion by Mr. McKay and you about the added operating loss figure of 319,000 for Panagra under Assumption No. 1. I want to get it perfectly clear as to what that is and what you have described it as you have.

A. Well, we believe that this language was clear in the context of the exhibit. This was the operating loss resulting from operating over this additional segment. It can be regarded either as being an additive to other losses [fol. 720] or deducted from profits, if there were any. But there was a loss in the operating account in each of these categories, and we thought that this was a reasonable way of describing it.

Q. Now counsel asked you this morning, Mr. McKay,

about added competition by Panagra, including opening of Panagra's sales offices throughout the United States, as to whether that would not generate additional traffic; would you comment a little more fully upon that, Professor Cherington?

A. Well, we felt that it would probably not. Eventually, what you were doing here was to put in the sales offices for Panagra, but at the same time you were, through the termination of the general agency agreement with Pan American, taking away their effort in this field. This is applied—the sales effort would be applied to a route which has had competition for a number of years between—with Braniff, and we felt that it would be impossible to trace any additional traffic arising from these new sales offices, and that this was essentially a substitution of Panagra's somewhat reduced effort by Panagra, as against the agency effort by Pan Am.

Q. Yes, I was going to ask you, what is this added competition that we have been speaking about?

[fol. 721] A. It is for the local traffic essentially between Miami and Balboa.

Q. In other words, there would be no more through carriers then there are now; is that right?

A. That is correct.

Q. The through carriers now are Braniff and Pan American and Panagra, the combination.

A. Yes.

Q. And the through carriers, under your assumption, would be Braniff and Panagra, all the way.

A. That is correct.

Q. And the only difference in the situation would be Pan American competing on a local basis.

A. That is correct.

Q. And in sum, is it your opinion that that change in the competitive pattern and the introduction of additional independent Panagra offices would make any change in the traffic?

A. No, we think not.

Q. Now, would you comment, please, as to what you regard as the relative merits and the likely action of prudent management, assuming an independent Panagra carrying

through from Miami to the west coast of South America, as regards establishing offices at various locations, or turn-
[fol. 722] ing their sales over to another airline like the TWA?

A. Well, I have a good deal of difficulty with the assumption that if the general agency agreement with Pan Am were terminated, that Panagra would be—would enter into an agency agreement with TWA, which has no knowledge of the area, no particular interest in the area or anything else. They are pretty busy with their own routes, which are essentially quite different. I think it was our general approach that if Panagra were to operate this Balboa-Miami route, they would essentially have to get into their own independent sales activity and it was for this reason that we added these traffic offices.

[fol. 723] Q. You were asked also this morning as to whether maintenance costs would be cheaper on the Miami-Balboa sector because the maintenance would be performed in the United States instead of South America. What is your comment on that, please?

A. The maintenance costs, as I indicated this morning, are the reported costs. They are the maintenance work, or they reflect essentially the maintenance work done in Miami at the present time, and we assume no change in this.

Q. I think the only other comment I would like to have you make in reference to this morning's cross-examination is in regard to your Exhibit 118 concerning your use of the Braniff experience on the ratio of non-passenger to passenger revenue rather than the Panagra experience below the Canal.

Would you comment further on that, please, and add the significance of it one way or the other.

A. As I tried to indicate to Mr. McKay, we had the Braniff experience which covers their routes both north and south of the Canal, we had the Panagra experience south of the Canal, and we had no figures or data for this factor on Pan American between Miami and Balboa.

[fol. 724] The indications are that as far as we can make out south of Balboa there was a substantially higher proportion of non-passenger revenue to passenger revenue than there is or would be between Miami and Balboa. Part

of this, as I recollect, is cargo, part of it is foreign mail which is handled, and so on.

So that the Braniff figure of 16.1 or 16.6 is the best approximation that we could get for this ratio as it might apply to the Miami-Balboa segment. It seemed inappropriate to use the existing Panagra ratio, and, as I indicated, we had no figure for Pan American.

Q. I am going to ask you some questions, Professor Cherington, about the route study, Government Exhibit No. 1139, which I shall refer to as the Grace study.

Are you familiar with that study, Professor Cherington, Government Exhibit 1139?

Mr. Kenney: Your Honor, may I make a point? It appears to me we are getting outside the cross-examination here.

Mr. Peck: Yes, I would say that that is possibly so, but I wouldn't suppose it made any difference one way or the other.

[fol. 725] The Court: No, I don't suppose so either. You can go through the formality of asking me whether or not you couldn't cover something that you forgot.

Mr. Peck: Well, you see, it is something which was put in by Mr. Kenney after I had finished the examination of the witness.

The Court: Yes. All right.

By Mr. Peck:

Q. Was that exhibit available to you during the preparation of the exhibits which have been offered under your testimony?

A. Yes, sir.

Q. And are you generally familiar with its contents?

A. Generally.

Q. Are you aware that that exhibit forecast a profit for operations by Panagra on the Miami-Balboa route in 1957 as contrasted with the loss shown in the exhibits which were offered on your examination?

A. Yes.

Q. In summary will you tell us whether you consider the

figures in the route study of Grace or in your forecast the more accurate and reliable?

A. We prefer our figures.

[fol. 726] Q. Now let us get down to the difference between them. What are the principal differences between the two studies?

A. Well, there are two principal areas of difference. One is that the Panagra-Grace study does not include any return element, whereas our study includes a rate of return on the additional investment required of 9 per cent; and since this is what essentially the return is now, we considered it reasonable to include this. This is the return that Panagra gets from Pan Am.

The second area of difference essentially is in the operating expenses, and here there are differences of about $650,000 in direct operating expenses and about $625,000 in the indirect areas.

So far as I can see the revenue figures, although there is a slight difference between passenger and non-passenger revenues, are about equal.

Have you put in exhibit form a comparison of the estimated financial results contained in Pan American Exhibit PS-114 through 129 with the estimates contained in the Grace study?

A. Yes, sir.

Q. And are these documents which I hand you such [fol. 727] comparisons?

A. Yes, sir.

Mr. Peck: I offer them in evidence, if your Honor please, as Pan American Statistical Exhibits 130 and 131.

(Marked Pan American Exhibits 130 and 131 in evidence.)

Q. Now would you run through these exhibits with us, please, Professor Cherington, and summarize what they show?

A. Well, I should explain first that on January 1, 1957, the Board's accounting system was somewhat altered and our study was run out on the basis of the new accounts, whereas the Panagra-Grace study was run out on the basis of the old chart of accounts.

Basically the changes that the Board made in its accounting system included the consolidation of direct and indirect maintenance into one account, the consolidation of ground and aircraft depreciation into one account, the spreading of expenses related to personnel out of general administrative expenses and through the functional accounts, and some rearrangement of the indirect expense accounts as between aircraft and traffic servicing and res- [fol. 728] ervations and sales as against the previous system.

So that we have done our best here to put the Panagra-Grace figures and our own figures on a comparable basis in terms of this revised chart of accounts which, as I indicated, went into effect January 1, 1957.

But with that adjustment, and this is essentially an internal accounting problem, we believe that the right hand column here, the amount of difference, shows the comparison between the two studies and shows that in the revenue field we were very close, $97,000 apart; in the expense field, as I previously mentioned, we were higher than the Panagra-Grace study by $658,000; and in the indirect expense area by $626,000.

These are the broad areas of difference.

Q. And do both estimates include the loss of interchange returns?

A. Yes, sir, they both do. But ours goes on and includes the return on additional investment.

Q. Now take the first difference between the two estimates, that of direct expense. Would you please discuss those differences?

[fol. 729] A. Well, there are two areas essentially. One is in flying operations where the difference is $374,000. As I indicated this morning, we base our estimates essentially on the actual reported experience of Panagra in 1957. The Panagra-Grace study, in running out their estimates for flying operations and maintenance, used a number of different bases for flying operations. They used the first 11 months of 1955; for direct maintenance they used the calendar year 1955; and then in estimating their results for their existing system they used still a different base, which was the first three-quarters of 1956, blown up to a full

year by adding the highest of the first three-quarters of 1956.

We couldn't find any explanation as to why they used these varying bases, and as far as we could see the basis they used wholly failed to take into account the inflationary trends that were going on during this period.

Q. Can you give us some examples as to the comparative expenses for the years 1955, 1956, and 1957?

A. Yes, sir. In 1955, for example, DC-6B flying operations were 77 cents a plane mile, by 1957 these had increased to 83 cents, and it was the 83-cent figure that we [fol. 730] used converted to a revenue plane mile basis.

Similarly in 1955 the DC-6B direct maintenance expense was 21 cents a plane mile. By 1957 it had increased to 27 cents.

There were similar increases in the DC-7B operating accounts: Flying operations from 84 cents to 87 cents, and direct maintenance from 31 cents to 36 cents.

So that there were significant cost increases down to 1957 from the base periods that Panagra-Grace appears to have used in their study.

Q. And are the differences in such costs a primary reason for the $600,000 difference in direct expense shown between the two studies?

A. With one exception they are, yes.

Q. What is the exception?

A. The exception is in this question of gasoline that we got into this morning.

Basically, as I indicated, we used 1957 system experience. We had no real data to go on as to what the gasoline cost to Panagra might be on the Miami-Balboa segment. I think it is probably fair to say that it would have been somewhat less. It conceivably might have been as high as [fol. 731] $200,000 a year, but we think it probably would have been somewhat less.

Q. By virtue of what, buying gasoline in Miami or Balboa as distinguished from buying it in South America?

A. South America, where the cost presumably is somewhat higher than it is at Miami and Balboa.

Q. Now you say that difference as a maximum would be how much?

A. Well, it might be as high as $200,000; but, again, we had no real data for making this estimate, so we used their experience.

Q. Well, if it were as much as $200,000, would that put your expense estimates out of order by that amount or have them overstated to that extent?

A. We think not because there are some other estimates where essentially the numbers run the other way; that is, we have essentially under-estimated, and those occur basically in the station expenses that Panagra would experience at Miami and Balboa if they were to get into this operation.

Q. What kind of expenses are station expenses?

A. Well, this is the cost of employees and so on to run the station, fuel the aircraft, and the like, and they are [fol. 732] included in indirect expenses in aircraft and traffic servicing, whereas, it will be noted, we are under Panagra-Grace's estimate by $174,000.

Q. That is, the estimate in the Grace study for these expenses is how much?

A $458,000.

Q. And you have used what figure?

A. $284,000.

Q. So that at that basis you have understated by $174,000.

A. Yes, sir.

Q. In the area of station expenses which you were not able to identify.

A. That is correct.

Q. All right. Now what is the next principal area of difference between your study and the Grace study?

A. As I indicated, there are differences in the various indirect expense accounts, the first one on the exhibit being in the area of reservations and sales.

Q. When you talk about the exhibit, you are talking about PS-130, is that right?

[fol. 733] A. PS-130.

Q. All right. Go ahead.

A. Where we show expenses of approximately $318,000 more than the Panagra-Grace figures, and this is essentially a reflection of the ticket office costs we previously mentioned minus the commissions that are now being paid to Pan American.

Q. Those are expenses which are run out in detail in your Exhibit PS-122; is that right?

A. Yes, sir.

Q. Now, what about the rest of the difference?

A. There is a difference in the advertising expense of $161,000. The Panagra-Grace study indicates that their ratio of advertising expense to commercial revenues, at the time they drew up their figures, was seven and a half per cent. They reduced this for the Balboa-Miami segment down to, I believe, five per cent, on the grounds that they were better known between Miami and Balboa than they were south of Balboa. We were unable to go along with that kind of reasoning, and we essentially based our estimates on their actual 1957 figure, which I believe was 7.7 per cent, on the ground that they would have to put as much advertising effort into this new segment as they were [fol. 734] in their present system.

Next, the—

Q. Further in that connection have you an opinion as to whether Panagra's selling facilities and personnel, entirely independent from Pan American advertising, publicity and the like, whether wise and prudent management would require at least the amount of expenditure which had previously been incurred by Panagra, or if anything more? Would you express an opinion on that?

A. Well, we felt that if they were to go on their own in this segment their advertising ratio would have to be at least as high as their current experience.

Q. Now, is there any other category of expense difference?

A. Yes, sir. There is the category of general and administrative expenses. Apparently the Panagra-Grace estimates are founded on the belief that they could take over the Miami-Balboa segment and operate it themselves for very little increased general and administrative expense. It was our feeling that essentially this expansion in their routes and operations, amounting to roughly a third in [fol. 735] terms of plane miles and traffic, would essentially create a substantial pool of additional G & A expense, and we based our figures on their '57 experience of a ratio of 9.7 per cent for the general and administrative expense

account to total cash expenses. Now this seems to, generally speaking, bear out the experience of the industry. As carriers grow larger their expense ratio tends to be maintained. Whether this is because of Parkinson's law or something else, we don't know. But for example, between '56 and '57 Northwest international's operations increased in terms of volume by about three million dollars, and their ratio went from 9.94 to 10.04. Braniff's international operations increased from, oh, roughly, 20 per cent, and their ratio of G & A to total cash expenses went from 8.65 to 8.74. And generally speaking, although in theory the bigger the operation, the lower the ratio of overhead, it just doesn't seem to work this way in the airline industry.

Q. Are there any services which are performed by Pan American for Panagra at the present time in this field of G & A that would have to be picked up anew by Panagra?

A. Yes, sir. As I understand it, Panagra would have to [fol. 736] set up its own revenue accounting setup for this segment. It would have to set up its own revenue collection setup, and I believe there are some others.

Q. Now, is it your conclusion overall, Professor Cherington, that Panagra could have operated the Miami-Balboa sector in 1957 without incurring a substantial loss?

A. I believe they would have incurred a substantial loss.

Q. I want to get as briefly as possible some other aspects of the Grace study which goes beyond Miami and Balboa. Have you considered the portions of the study relating to the proposed Miami-New York route and the proposed Balboa-California route?

A. In general terms. Our own study of course focused down on the Balboa-Miami segment, because at the outset it appeared that this was the more attractive, or the most attractive of the three. It also was the segment where most of the controversy has been over the past few years.

When we saw the results of our analysis on the Miami-Balboa segment, it didn't really seem to be necessary to work out detailed analysis and the kind of thing we did [fol. 737] for Miami-Balboa; for either the New York-Miami or the west coast of the U.S.-Balboa routes.

Q. Well, let's see if you can make some comments at least on the Miami-New York segment. Could you com-

ment, for example, on the estimated results, as set forth in the Grace study, dealing first with the matter of revenues?

A. Is this the New York-Miami segment?

Q. Yes.

A. Well, the revenues look, look pretty optimistic to us. In the first place, the Panagra-Grace study assumes a passenger load factor of 71 per cent for this operation, which would essentially involve two round trips a day between Miami and New York. We don't have any segment load factors for the—or for the domestic carriers that now operate, but we know, for example, in the case of National, a very high percentage of their traffic consists of this New York-Miami traffic, and in 1957 National's load factors were 59.7, and 56.1 in 1958. Northeast, which is the newest carrier in the route, had load factors in 1957 of 47.4, and they just held their own at the same level in 1958. Eastern, of course, has a much more extensive system, but a con-
[fol. 738] siderable proportion of their traffic is involved in the New York-Miami run, and their load, system load factors, were 59.5 and dropped to 52.8 in 1958.

So frankly, we have a good deal of difficulty in seeing how Panagra, with two round trips a day, originating down in South America as against the 50 or 60 one-way trips that there already are in this market from domestic carriers, could reasonably hope to obtain a 71 per cent load factor.

Q. Does the Grace study assume something in regard to increases in international first class traffic and the tourist traffic?

A. Yes. They assume—the Grace-Panagra study assumes that over, if I recall, over the New York-Miami segment, international first class traffic would increase by 20 per cent in the year from 1956 to 1957, and that coach traffic, international coach traffic, or tourist traffic, would increase by 30 per cent in the same period. This compares with their estimated increase over the Miami-Balboa segment of only 10 per cent.

Q. You think there was realism in this assumed increase?

A. It seemed to us that this was fairly optimistic, in
[fol. 739] view of their general position in this market.

They also included 50—about 35,000, as I remember, New York-Miami passengers, or 53 per cent of the total number of passengers that they planned to handle, and I think that we have some—we have serious reservations about their getting this much domestic traffic.

Q. I want to make that clear. In other words, they figure that 53 per cent of the passengers that they carried over this projected route would be passengers who would not be through traffic to South America or into Central America, but would be domestic passengers between New York and Miami and between Miami and New York; is that correct?

A. That is correct.

Q. Now, what are your reflections about the likelihood of their realizing any such hope?

A. Well, we believe that their traffic would have been considerably less, but we did not make any detailed estimate of this.

Q. Do you think there would have been any likelihood of their getting the right to carry any domestic traffic at all?

A. Well, the Board has had this issue with respect to [fol. 740] Pan Am before it on two separate occasions, one, in the domestic route case in 1945 or '46, when Pan Am had an application in for this route and was turned down; and more recently in the New York-Florida case, where Pan Am had an application and the Board awarded the route by a 3 to 2 vote to Northeast, the other two members voting for Delta.

So I think that we certainly have reservations or real doubts as to whether it is realistic even to assume that Panagra would get certificated.

Q. Do any international carriers carry any domestic traffic?

A. Any pure international carriers?

Q. Yes. I mean, which come into a market then and pick up some domestic traffic on their international routes?

A. Not at the present time, but those carriers that operate, of course, in both areas.

Q. TWA, for example?

A. Yes.

Q. Now, do you have some observations on the cargo estimates in the Grace study?

A. Well, it is going to be pretty crowded in the cargo holds, as far as we can see. They assume that they will [fol. 741] be carrying somewhat more than 3,200 pounds of cargo southbound, as I recall, on each flight, some of which, approximately 40 per cent of which, will be domestic cargo. They also include some mail, and of course excess baggage.

As far as we can see, this is fairly optimistic again, in fact, very optimistic. The cargo business is essentially a 10 P.M. to 3 A.M. business, that is, when the cargo arrives at the terminal, and at least, according to the present schedules, Panagra takes off a good deal earlier on most of its flights.

Q. How many all purpose carriers are there on the New York-Miami route at the present time?

A. All purpose?

Q. Yes.

A. There are three.

Q. And is there any other all cargo carrier on the route?

A. Yes, sir. There is one all cargo. Riddle is an all cargo carrier, certificated on that route.

Q. What about expenses in the Grace study? What are your observations about them?

A. We did not do a detailed analysis of all their expenses. I believe it is fair to say that by and large our— [fol. 742] if we had done one, it would have come out essentially in the same general direction as our detailed comparative cost study on the Miami-Balboa route.

Q. You think their estimates are unrealistically low?

A. Yes.

Q. In your opinion, would such a route make money or lose money between Miami and New York?

A. Well, the Panagra-Grace estimates indicate a profit on the route of $81,000. We believe that this would, in fact, if you made realistic assumptions and estimates for revenue and for expenses, we believe it in fact would result in a loss operation.

Q. Turn now to the proposed Mexico-California extension; what is your opinion as to the economic feasibility of such additional service by Panagra?

A. As far as we can see, again, this is not a promising route, from an economic standpoint, either for Panagra or for the public in general.

Q. Why not?

A. Well, turning in the first place to one of their basic assumptions, the question of whether they would be able to get traffic rights in Mexico City, without those rights their [fol. 743] load factor on that run would be 44 per cent, as I recall. Our aviation relations with Mexico have had a long and very trying career. Western Airlines was certificated from Los Angeles into Mexico City in 1946, and due to difficulties with the Mexican Government they didn't actually begin operating until, well, either late '57 or early '58, I don't remember which. I think that it is very unlikely that the Mexicans would permit a second U.S. carrier on the Los Angeles-Mexico City route, and I am not even sure that we would at the present time ask them for a second carrier.

Now, without the Mexico City stop, the route is very substantially weakened. Pan American has had an operation from Los Angeles to Guatemala City, and then down toward Balboa, and in some cases beyond. They got that route, as I recall, about 1950, and because they couldn't stop in Mexico City on the route, they have only been able to build up, I think, five schedules a week over the route.

Q. How many frequencies is proposed in the Grace study?

A. Three trips weekly, one operating through to Buenos Aires and two, as I recall, terminating at Lima.

[fol. 744] Q. And after you excluded the Mexico traffic, what would that leave as the load factor?

A. It is my recollection it is 44½ per cent.

Q. Could that possibly be a compensatory operation?

A. No, I think it clearly would not be.

Q. Do you have any other comments with respect to the manner in which study has been prepared?

A. Well, one aspect of the study is that within the revenues which the Panagra-Grace study shows for the route, they have included some revenues south of Balboa, and this—their net transfer, in other words, from their existing routes onto this new route segment, were $646,000. In other words, they now pick up south of Balboa some traffic which

is turned over to them by Pan American or foreign flag carriers, which they assume they would handle on these new trips, and they have transferred from their existing system this net revenue of $646,000. The effect of this is essentially to strengthen the Balboa-Los Angeles route and to reduce somewhat the strength of their present routes.

Q. Now, you have been discussing the individual parts of the Grace study; will you now summarize your conclusions [fol. 745] as to the total effect that the projected extensions would have on Panagra?

A. Well, our general conclusions are that either the Miami-Balboa route or the three proposed routes, Miami-Balboa, Miami-New York and Balboa-Los Angeles would essentially have a weakening effect which, if not up through subsidy, would certainly weaken Panagra. So that it is essentially either bad for Panagra or bad for the taxpayer, or conceivably bad for the travelers if it was taken out in increased fares.

Q. Does the Grace study lead to any different economic conclusion on your part than that reached in the study which you have sponsored?

A. Not, we believe, when properly analyzed.

Q. Does the Grace study include any evaluation of the effect of its projected operations of Panagra upon Pan American subsidy needs or any other carrier's needs or effects?

A. No, sir.

Q. Would you comment on that, just to the significance of it, please?

A. Well, as I think is made clear from our Exhibits 114 [fol. 746] to 129, with respect to the Balboa-Miami route, the impact of this on Panagra—on Pan American, or the impact of a Panagra route on Pan American, is fairly critical. In the case of Balboa-Los Angeles, we believe there would be a similar impact upon Pan American's existing Los Angeles-Guatemala City-Balboa route.

Q. With a consequence of further requirement of subsidy there?

A. Yes, sir.

Q. And are any other carriers involved here, who would be affected by extensions of the Panagra routes?

A. Well, of course, Panagra could in fact get a Mexico City-Los Angeles route, Western would be seriously affected, and on the east coast, Riddle, Northeast, National and Eastern would be adversely affected.

Q. And does that bear upon your opinion as to the likelihood of Panagra getting such routes?

A. Yes, sir. I think it makes it less likely.

Q. Do you have an opinion as to whether there would be any passenger benefits out of these extensions?

A. We don't really see any, no, sir.

[fol. 747] Q. And you have concluded that such extension would represent an economic loss to Panagra on all routes.

A. Yes.

Q. And increased losses and requirement for subsidy on the part of Pan American and certain local carriers, whose names you have mentioned; is that correct?

A. Yes, sir.

Mr. Peck: All right, that is all.

• • • • • • •

[fol. 751] Recross examination.

By Mr. McKay:

• • • • • • •

[fol. 752] Q. Would you say, Professor, that the estimates on revenue passenger-miles in that study could be considered as fairly conservative, or didn't you run that out?

A. I think I have already indicated that the revenue passenger-mile figures on New York-Miami are optimistic.

Q. What about the Miami-Balboa?

A. Generally speaking, if I recall, we don't quarrel too much with those.

Q. In fact, actual experience, as shown from your exhibits, shows that the figures were conservative and the projection was less than was actually experienced in 1957; isn't that correct?

A. I think that is approximately correct.

• • • • • • •

[fol. 754] Q. Professor, you testified in answer to Judge Peck's questions that with these added offices that I think

will cost us some million dollars under your assumption it wouldn't generate any new traffic; am I correct?

A. That's right.

Q. Why would a company invest a million dollars in new ticket offices if it wouldn't generate any new traffic?

A. Because they were giving up their general agency agreement with their present sales force.

Q. I know we went over this on cross. Do you say it is impossible for Panagra to work out an arrangement with TWA or some other non-competitive carrier and do just as well as they are doing today with Pan American, or [fol. 755] haven't you got an opinion on that?

A. My opinion is, if they work out an arrangement like that with a carrier like TWA, they would do less well than they do now.

Q. What about National, the company that they are interchanging with at the present time? Is your opinion the same?

A. Give up the Pan American general agency agreement and go with National?

Q. Yes, sir.

A. I think they would do less well.

* * * * * * *

[fol. 756] Q. I know we have covered this, Professor, I will be very brief, but I just want to make it absolutely clear. As I understand your testimony, the basis used by you for operating and maintenance costs for Panagra under assumption No. 1 is Panagra's experience over its present system in South America; correct?

A. Correct.

Q. And these costs are higher than those experienced by Pan American.

A. That is correct.

Q. However, when you consider the non-passenger versus the passenger revenue ratio, you take Braniff which is less than the Panagra experience ratio; correct?

[fol. 757] A. Correct.

Q. The result of your choice in both cases is to reduce Panagra's revenue and increase its expenses; correct?

A. That is right.

Q. You testified, Professor, I think in answer to one of Judge Peck's questions on redirect, that you doubted very much whether the government of Mexico would approve of this proposed route extension in the Panagra study. Are you familiar with the thinking of the government of Mexico in aviation matters?

A. I followed our aviation relations with Mexico since I was with the Board.

Q. And you keep current?

A. Generally speaking.

Q. And can you say today that you are very doubtful the government of Mexico would approve the route extension?

A. I can.

Q. And, if so, on what basis?

A. On the grounds that to permit this second carrier in the Mexico-Los Angeles route would be essentially a reversal of the position that they have adhered to for a [fol. 758] long time.

Q. It wouldn't be the first time a government reversed itself, however, would it, in matters of policy?

A. No, it would not.

Q. One last question, Professor. This study that you referred to as the Panagra-Grace study, have you seen any Panagra-Pan American study along the same lines proposing route extensions for Panagra?

A. For Panagra?

Q. Yes.

A. No, I haven't.

Q. Do you know, Professor, whether Pan American has submitted any study to the board of directors of Panagra proposing route extensions?

A. Not that I know of.

• • • • • • • •

[fol. 774a] Reporters' Certificate to foregoing transcript (omitted in printing).

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 257

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 583

UNITED STATES, APPELLANT,

vs.

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APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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171—Letter to Harold J. Roig from D. S. Iglehart, dated October 21, 1937	385	669
172—Letter to Harold J. Roig from A. Garni, dated October 27, 1937	387	670
173—Letter to Harold J. Roig from A. Garni, dated October 28, 1937	390	673
174—Letter to A. Garni from Harold J. Roig, dated November 5, 1937	393	676
175—Letter to Harold J. Roig from A. Garni, dated November 8, 1937	395	677
176—Letter to Mr. Iglehart from Harold J. Roig, dated December 24, 1937, and attached ther to are two drafts of a letter to C. V. Whitney from D. S. Iglehart and a memorandum entitled "Suggested Plan for Reorganization of Pan American-Grace Airways, Inc."	399	681
177—Letter to C. V. Whitney from D. S. Iglehart, dated January 7, 1938	411	692
178—Letter to A. Garni from Harold J. Roig, dated April 6, 1938	413	694
179—Letter to A. Garni from Harold J. Roig, dated April 21, 1938, and the attachment of a letter to H. R. Harris from T. B. Rodenbaugh, dated April 12, 1938	416	696

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
180—Letter to Harold J. Roig from A. Garni, dated April 29, 1938	419	699
181—Memorandum dated September 12, 1938 by Harold J. Roig	423	703
182—Series of minutes of Executive Committee meetings and Board of Directors meeting of Pan American, dated September 8, 1938, September 20, 1938, October 4, 1938 and December 28, 1938	431	710
183—Letter to Adolf Garni from Juan T. Trippe, dated September 24, 1938	432	712
185—Letter to C. V. Whitney from D. S. Iglehart, dated November 15, 1938	437	714
186—Letter to Sonny Whitney from D. S. Iglehart, dated November 29, 1938, and attached thereto a memorandum to Mr. Iglehart from Harold J. Roig, dated November 29, 1938	439	715
187—Letter to D. S. Iglehart from Harold J. Roig, dated December 31, 1938	447	722
188—Letter to Iglehart from C. V. Whitney, dated January 17, 1939	450	726
189—Letter to C. V. Whitney from D. S. Iglehart, dated January 19, 1939	451	728
190—Memorandum of agreement between Pan American and Grace, dated February 14, 1939	453	729
191—Memorandum dated December 28, 1940 by A. Garni	454	731
192—Series of Executive and Board meeting minutes of Pan American dated December 30, 1940, January 6, 1941, January 7, 1941, January 14, 1941 and January 28, 1941	457	733
193—Letter to Civil Aeronautics Board from D. S. Iglehart, dated May 2, 1941 and an attachment dated May 2, 1941 from D. S. Iglehart	460	735

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
194—Minutes of special meeting of the board of directors of Pan American-Grace Airways, Inc. held on June 18, 1941	462	737
195—Minutes of adjourned special meeting of board of directors of Pan American-Grace Airways, Inc. held on June 20, 1941	467	740
196—Minutes of executive committee held on June 24, 1941, and board of directors on July 1, 1941	468	741
197—Minutes of special meeting of board of directors of Pan American-Grace Airways, Inc. held on June 26, 1941	470	743
198—Minutes of adjourned special meeting of the board of directors of Pan American-Grace Airways, Inc. held on June 27, 1941	471	744
199—Minutes of adjourned special meeting of board of directors of Pan American-Grace Airways held on June 30, 1941	472	745
200—Letter dated June 30, 1941, from George L. Rihl to Harold J. Roig	473	746
201—Minutes of adjourned special meeting of board of directors of Pan American-Grace Airways, Inc., held on July 1, 1941	474	747
202—Minutes of adjourned special meeting of board of directors of Pan American-Grace Airways, Inc. held on July 2, 1941	479	752
203—Special stockholders' meeting of Pan American-Grace Airways, Inc., July 2, 1941	480	753
204—Letter dated July 2, 1941, from George L. Rihl to Harold J. Roig	482	754
205—Letter dated July 3, 1941, from Harold J Roig to George L. Rihl	483	755

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
206—Letter dated July 22, 1941, from H. Preston Morris to W. R. Grace & Company	486	757
207—Letter dated July 24, 1941, from D. S. Iglehart to Pan American Airways Corporation	488	759
208—Memorandum dated August 9, 1941, by Iglehart	491	762
209—Letter to J. T. Trippe from A. Garni, dated October 2, 1941	492	762
210—Memorandum entitled "Panagra, Miami/New Orleans connection," by Harold J. Roig, dated October 6, 1941, and an attachment of a note to C. V. Whitney, undated	493	763
211—Letter to J. T. Trippe from Harold J. Roig, dated October 9, 1941	496	766
212—Letter to W. R. Grace & Company from Evan E. Young, dated October 22, 1941	498	767
213—Letter to Pan American Airways Corporation from A. Garni dated October 27, 1941	500	770
214—Letter to Pan American Airways Corporation from Harold J. Roig, dated October 27, 1941	503	772
215—Letter to H. J. Roig from Evan E. Young, dated November 4, 1941	508	776
216—Letter to H. J. Roig from Evan E. Young, dated November 4, 1941	513	780
217—Letter to Pan American Airways Corporation from Harold J. Roig, dated November 7, 1941	515	782
218—Letter to T. J. Kirkland from H. R. Harris, dated January 5, 1942, and attached thereto a memorandum to Roig from H. R. Harris, dated January 3, 1942	516	783

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
219—Memorandum to J. T. Trippe from Evan E. Young, dated January 6, 1942	519	787
THRU-FLIGHT—PART II		
220—Letter to Civil Aeronautics Board from D. S. Iglehart, dated April 27, 1942	520	788
221—Letter to George L. Rihl from Harold J. Roig, dated May 29, 1942	522	790
222—Letter to Harold J. Roig from George L. Rihl, dated June 5, 1942	523	791
223—Letter to George L. Rihl from Harold J. Roig, dated June 11, 1942	524	792
224—Memorandum entitled "Miami-Balboa Service," by George L. Rihl, dated June 13, 1942	525	793
225—Memorandum entitled "Miami-Balboa Delays," by George L. Rihl, dated June 18, 1942	526	794
226—Memorandum entitled "Status of arrivals Balboa 307's," by W. O. Snyder, to E. E. Young, dated July 7, 1942	527	796
227—Memorandum entitled "Status of arrivals Balboa 307's," by W. O. Snyder to E. E. Young, dated August 4, 1942	528	798
228—Memorandum entitled "Status of arrivals Balboa 307's," by Evan E. Young, dated August 7, 1942	529	799
229—Minutes of adjourned regular meeting of board of directors of Pan American-Grace Airways, Inc. held on September 22, 1942	530	800
230—Letter to L. Welch Pogue from A. Garni, dated October 28, 1942	542	811
231—Minutes of annual meeting of the board of directors of Pan American Grace Airways, Inc. held on April 27, 1943	543	812

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
232—Cablegram to Howard B. Dean from Harold J. Roig, dated January 6, 1944	547	815
233—Letter to Harold J. Roig from Evan E. Young, dated January 7, 1944	548	816
234—Letter to Evan Young from Harold J. Roig, dated January 10, 1944	550	818
235—Letter to Harold J. Roig from Howard B. Dean, dated March 13, 1944	551	819
236—Letter to Howard B. Dean from Harold J. Roig, dated March 21, 1944	552	820
238—Letter to Harold J. Roig from Howard B. Dean, dated June 29, 1944	555	821
239—Letter to Howard B. Dean from Harold J. Roig, dated July 5, 1944	557	823
240—Letter to Harold J. Roig from Howard B. Dean, dated July 20, 1944	558	824
241—Letter to Howard B. Dean from Harold J. Roig, dated July 25, 1944	560	827
242—Letter to Harold J. Roig from Howard B. Dean and Erwin Ballinder, dated July 27, 1944	562	828

[fol. 1]

GOVERNMENT'S EXHIBIT 1

December 1st, 1927

Mr. Richard F. Hoyt,
25 Broad Street,
New York City.

My dear Mr. Hoyt:—

On behalf of Atlantic, Gulf & Caribbean Airways, Inc., I wish to confirm my understanding of the informal agreement between yourself, representing Keystone Aircraft Corporation, holding notes and/or other similar obligations of Huff Daland Dusters, Inc., and the writer, representing Atlantic, Gulf & Caribbean Airways, Inc., as follows:

1. No effort will be made, at this time, to combine, or affiliate, by formal contract, or otherwise, Huff Daland Dusters, Inc., and the Holding Company, Atlantic, Gulf & Caribbean Airways, Inc.

2. Huff, Daland Dusters, Inc., will attempt to negotiate and acquire, with privilege to transfer advantageous concessions for commercial air operations, including actual contracts for the transportation of mail by air from the Governments of Chile, Peru and Ecuador and, possibly, Colombia.

3. Atlantic, Gulf & Caribbean Airways, Inc., shall assist Huff Daland Dusters, Inc., in securing such concessions, through such contracts as they now have or may acquire, with the United States Government.

4. Atlantic Gulf & Caribbean Airways, Inc., shall assist Huff Daland Dusters, Inc., in framing said contracts and concessions, with the end in view of having said contracts return at least sufficient revenue to cover scheduled operating costs, and over a period of years, the maximum net revenue to the Company.

5. When any or all concessions as outlined above shall have been secured, then the Stockholders and/or Directors

of Atlantic, Gulf & Caribbean Airways, Inc., and Huff Daland Dusters, Inc., shall merge the two interests, through an equitable exchange of stock, the consideration in each case being the actual market value of the aircraft and other fixed equipment of each Company, at the time the merger or consolidation shall have been effected.

If this arrangement is in accordance with your understanding, will you please initial and return this letter, retaining the enclosed carbon for your files.

Yours very truly,

J. T. TRIPPE.

JTT/s

[fol. 2]

GOVERNMENT'S EXHIBIT 2

F-O

Private #5538

No. 10

LIMA,
April 10th, 1928

NEW YORK HOUSE

AVIATION.

In reference to your letter #5906 there has been efforts on the part of German interests and American interests to secure a concession from the Peruvian Government for the establishment of an Air Service on the Peruvian Coast and from Peru to Panama.

As we were anxious to find out what was going on we have been in touch with Mr. Woolman, Vice President of the Huff Daland Dusters, who has represented the American interests, acting in behalf of his Company. You may be aware that this Company for the past few years has had contracts with cotton interests here to spray the crops.

For a while Mr. Woolman was worried that the Germans would secure the concession but has recently told us that the President personally advised that it had been definitely decided to grant the concession to the Huff Daland Dusters.

The working arrangements and details of the service have not been divulged and we are inclined to think nothing concrete has been decided on up to the present, the main object being to secure the concession.

G006733

In order to keep Mr. Woolman interested in giving us information we advised him that no doubt the service could

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10-26
D.L.A.

[fol. 3] be worked to advantage in combination with Grace Line steamers, our idea being that a passenger by a Grace Line steamer, in order to have more time in Lima, might take a plane from Talara to Lima and board the steamer again on her arrival at Callao. Also, we pointed out to him that with our organization on the Coast it might suit him to appoint us Agents and have us work on a commission basis.

As previously advised this was more to keep Woolman talking as we had nothing definite to work on and could make no headway on any sound arrangement.

In regard to commercial justification for our entering into the establishment of such a service we consider it a risky business. In the first place mail from Peru is carried by steamers free of charge in return for Government concessions on lighthouse dues. Whether the Government would pay a large amount for quicker service when they now pay nothing is doubtful. With reference to the passenger end, the Peruvian Coast for flying, on account of heavy fogs and the Andes coming pretty close to the sea is not too safe. If a Company gave good service with no accidents for a reasonable period there might be a fair traffic. On the other hand, a few bad accidents would kill the project. There might be occasions which would cause passengers to necessitate a quick trip to New York but we do not think that the Grace Line at least for the immediate future would suffer from Aeroplane competition.

G006734

For your information, Mr. Woolman advised us that GR-5
[fol. 4] his Company is part of a strong group in the United States and that some of their connections had already progressed in the establishment of a service from New York to Panama, which is no doubt the Company you mention in your letter and points to the fact that the service is intended to be extended to Valparaiso. One of the Companies he mentioned was the Keystone Aircraft Corporation.

We advised him that it might be well for his people to talk the matter over with yourselves and we trust this information will give you something to work on. Meanwhile we will keep you posted of any new developments at this end."

Yours very truly,

p. p. W. R. GRACE & Co.,

GGB/h.

G006735

GR-6

[fol. 7]

GOVERNMENT'S EXHIBIT 4

No. 21

May 23, 1928

Major H. A. Dargue, U.S.A.,
Office, Chief of Air Corps,
War Department,
Washington, D.C.

Dear Major Dargue:—

Referring to our conversation in Washington, last week, we would be very glad if you could prepare for us as comprehensive a report as you can on air transport route from Colon to Valparaiso.

As I told you, I think the best way to write the report is to put yourself in the position of one who is going to

seek to establish such a service and then muster all possible data, conclusions, recommendations, etc.

I would like to get it at as early a date as is practicable and will greatly appreciate your doing this and will be glad to compensate you for the time you put into it.

I may be in Washington next week, in which event I will call you up, but meanwhile would thank you to advise me if you will proceed with it.

With kindest regards, I am,

Very truly yours,

G006726

W. R. GRACE & CO.

PATCHIN
Manager

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RHP:C

[fol. 8]

GOVERNMENT'S EXHIBIT 5

Peruvian Aerways

New York, May 23, 1928.

MEMORANDUM FOR MR. IGLEHART

MEMO OF CONVERSATION WITH R. H. HOYT OF HAYDEN, STONE & CO.

Mr. Hoyt who is Chairman of the Wright Aeronautical Engine Co. and who also has a substantial interest in the Keystone Aircraft Company said that the Pan-American Airway Co. was organized with the idea of developing a service through-out Latin America and that his idea was to obtain the participation and co-operation of the principal steamship concerns in each region, i.e., United Fruit in

Central America, Agwi in Cuba, Porto Rico, Colombia, etc., and Grace on the West Coast of South America. He said he felt that one large company could do the job better than a number of separate and smaller concerns.

He said he had intended to approach Grace & Co. as soon as plans had been further matured. It is his understanding that the Post Office Department will soon advertise for bids for mail services from Cuba to Colon via Central America and later will advertise for bids on a mail contract from Colon to Valparaiso. An appropriation of $1,750,000. for carriage of the mails to foreign countries is provided in the urgent efficiency bill which is expected to pass Congress this week.

I told Mr. Hoyt that we regarded aviation as simply a new development in transportation and as we had always been interested in transportation to the West Coast of South America we were following the matter closely and had had some studies made of the problem of providing air transport for mail and had discussed the matter with the Post Office Department. He said that he recognized that we were in an advantageous position which was the reason why he hoped he would co-operate with the Pan-American

[fol. 9] Aerways, but that if we were disposed to go ahead on our own, he would be inclined to stand aside and not compete as he felt we would be in better position than anyone else to undertake it. He was especially interested to know that we were active with regard to coffee and further to Panama Mail in Central America. He had not realized this before.

He confirmed the information which we already have from Lima that the Huff Daland Dusters outfit was seeking to buy a Peruvian concession of air transport between Peru and Panama, but had added that he did not know whether they were going to be successful.

We have separate information that the Post Office Department has asked South American Governments not to give any exclusive franchises for any air transport.

Mr. Hoyt said that as soon as the Post Office Department advertises the Havana and Colon route for bids; the Pan-AMERICAN Airways will require about $2,000,000 capital and he proposes to invite various interests in the Caribbean, such as Agwai, United Fruit, etc., to participate.

On the "technical" side his idea is that passenger business should be developed along with the mail, that multi-motored planes be used and that flying be confined to daylight hours.

By reason of his having been closely identified with the Wright Aeronautical Engine Co. ever since it started and with the Keystone Aircraft Co., Mr. Hoyt appears to be in a pretty strong position in the foundation situation. He is also a participant in the company which has employed Lindbergh in the trans-continental air transport company and he stated he has an option on Lindbergh's services as an advisor in the development of South American air routes.

PATCHIN
R. H. P.

GR-11

G006724

[fol. 10]

GOVERNMENT'S EXHIBIT 6

No. 71

Ministry of Government & Police

Lima, May 29, 1928

The Huff Daland Dusters, Inc.

On May 28 the following Supreme Resolution was issued.

In view of the petition presented by the Huff Daland Dusters Inc. which Company was incorporated in the State of Louisiana, United States of America, to establish an air service between Peru and the United States under the conditions it outlined; and in view of the reports issued and considering the proposal convenient, it is hereby resolved to grant permission for the establishment of said air service under the following conditions:

1. This service to include the air transportation of mail, cargo and passengers.

2. The service shall commence at the earliest possible date which shall not be later than one year from the date of this resolution.

3. The Company will have full freedom in the selection of its employees and pilots who will be subject to all of the obligations imposed by law for the residence of the Republic, and that the Company shall agree to use the largest possible number of employees of Peruvian nationality, bearing in mind the class of service which it is required to render in accordance with this Resolution.

4. The Company waives all rights to diplomatic intervention and all differences which may arise under this agreement shall be dealt with by the courts of the Republic.

5. Authorization is granted for the landing of the Company's aircraft at any airport of the State.

[fol. 11]

6. The Company agrees to cover by insurance all risks in connection with the aircraft, mail, passengers and cargo.

7. The postal service shall be established by the Company in mutual agreement with the Post Office Department of Peru.

8. It is understood tariffs and other necessary conditions in connection with this service shall be approved by the Government, and that the official correspondence shall be carried free of charge, which mail will receive preferential treatment for transportation.

9. In the event of serious internal disturbances, epidemics, or any other public calamity, the aircraft supplies and personnel of the Company will be placed at the disposition of the Government free of charge.

10. In the event of internal war aircraft and supplies of the Company will become the property of the State.

11. The Company shall at an early date submit its articles of incorporation.

12. The Company is required to deposit with the "Caja de Depositos y Consignaciones" within ten days from this date, the sum of One Thousand Peruvian Pounds (1,000 Peruvian pounds) as a guarantee for the fulfillment of its obligations.

13. The Company in view of the nature of the services it is required to perform, will receive preference in clearances over land transportation companies, in the customs houses, post offices and immigration departments of the Republic.

14. Any conditions which may not be covered by this Resolution will be contemplated separately.

To be registered, communicated, and filed.

Seal of the President of the Republic.

[fol. 12]

GOVERNMENT'S EXHIBIT 7

F-O.

Private. #6300

6215
Valpo-2261

LIMA,
June 13th, 1928.

NEW YORK HOUSE:

AERIAL SERVICE - PERU/UNITED STATES.

Referring to our private letter #6215 of the 6th. inst. on the above subject we enclose herewith copy of legal report on the concession secured by the Huff Daland Dusters Inc. for an aerial service between Peru and the United States. The report in question is in Spanish and we have

not had an opportunity of making a translation but presume you will be able to arrange this at your end.

Referring further to the subject of the aerial service we enclose herewith clipping from the West Coast Leader from which you will note that the same concession as granted to the Huff Daland Dusters Inc., has been given to the Cia. Aviacion Faucett, S.A., and to Sr. Rodolfo Beek, special representative of the Netallbauten G. M. B. H. Friedrickshafen, about which we wrote you in our previous letter. From this you will see that none of the Companies have a sole concession and should you want to start a service, as far as the Peruvian Government is concerned we do not think there would be any difficulty in getting the same concession as given to the three Companies above mentioned.

For your information Mr. Woolman of the Huff Daland Dusters Inc., advised us personally that he had made an agreement with the Marconi Co. to carry air mail from

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[fol. 13] Peru and on the Peruvian Coast. Naturally if this is the case the other two Companies will not be able to carry mail which means that they will not secure this revenue for their line. However, we have had no official confirmation on what Mr. Woolman says and will naturally keep you posted with any interesting developments with regard to the Aerial Service in this country.

Yours very truly,

p. p. W. R. Grace & Co.,

Harris

CCB/h.
enclo.

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[fol. 14]

GOVERNMENT'S EXHIBIT 8

June 20th, 1928

Mr. J. T. Trippe,
Atlantic Gulf & Caribbean Airways, Inc.,
New York City.

Dear Mr. Trippe:

In accordance with Mr. Hoyt's desires, I confirm the following understanding between Huff Daland Dusters and Atlantic, Gulf & Caribbean Airways, Inc.

1. That Huff Daland Dusters will grant to Atlantic, Gulf & Caribbean in return for the sum of $4,000 paid to Huff Daland an option upon the concession for air mails with the Peruvian Government for a period to run until June 1st, 1929.

2. In addition to the $4,000 to be presently paid to Huff Daland Dusters, it is understood that if the option shall be exercised by Atlantic, Gulf & Caribbean that they will pay to Huff Daland Dusters the actual cost of securing this concession, and in addition if at that time the situation warrants it a proper profit to be determined by Messrs. Hoyt, Trippe and Gott, and that this profit shall be added to the above mentioned amounts.

Very truly yours,

HUFF DALAND DUSTERS, INC.

By Edgar N. Gott
Pres.

[fol. 15]

GOVERNMENT'S EXHIBIT 9

U.S. ARMY PAN AMERICAN FLIGHT

July 7, 1928.

Mr. R. H. Patchin,
Manager, W. R. Grace & Company,
P.O. Box 286,
Hanover Square,
New York, N.Y.

Dear Mr. Patchin:

Under separate covers I am mailing you the following:

(a) Study on a proposed commercial air line between Colon and Valparaiso, with Exhibits "A", "D" and "E" (large envelope)

(b) Exhibit "B" (large roll of maps)

(c) Exhibit "C" (large envelope of maps)

This is the report you asked me to prepare and I regret that I have been unable to get it to you sooner but interruptions and correspondence to the Pacific Coast, as well as considerable research that I felt necessary, have taken up the time since you made your request.

There is much more detail that might be added and I should be glad to help further in this respect but consider work on additional data can better proceed after preliminary decisions by your company to go ahead on the organization of the air line have been made. I have left out all consideration of costs in accordance with your verbal instructions.

Trusting I may be of further assistance and assuring you of my earnest desire to hear that W. R. Grace & Company have decided to establish the "Grace Air Line", I am, with kindest regards,

Very truly yours,

/s/ H. A. DARGUE

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[fol. 16]

GOVERNMENT'S EXHIBIT 10

July 20, 1928

Keystone Aircraft Corporation
Bristol, Pa.

Attention: Mr. Edgar N. Gott, President

Gentlemen:

Referring to your letter of June 25th and our acknowledgment thereof under date of the 26th:

Enclosed herewith please find your invoice, dated June 25th, 1928, in the amount of $4,000.00 and our check for a like amount, in full payment thereof.

We would confirm in detail, the transaction between Huff Daland Dusters, Inc. and Atlantic, Gulf & Caribbean Airways, Inc., referred to in the attached invoices as follows:

1. Huff Daland Dusters, Inc. grants to Atlantic, Gulf & Caribbean Airways, Inc., in consideration of the sum of $4,000.00, attached herewith, an option for the period through June 1st, 1929, on the concessions for Air Mail already held or presently to be acquired by Huff Daland Dusters with the Peruvian Government.

2. In addition to the $4,000.00 being paid Huff Daland Dusters, Inc. referred to above, it is understood that if the option is exercised by Atlantic, Gulf & Caribbean Airways, Inc., they will pay to Huff Daland Dusters, Inc., the actual cost of securing the concessions in question. Furthermore, if the situation warrants it, at the time such options are taken up, a proper profit to be determined by Messrs. Hoyt, Trippe and Gott shall be paid, and this sum added to the costs of securing the concessions.

In connection with paragraph one above, it is understood that the "Concession for Air Mails" includes all aviation concessions covering the operation of Commercial Aircraft other than dusting, and in particular all contracts between

Huff Daland Dusters and the Peruvian Government and/or the British Marconi Company, having to do with the carrying of mails by air.

Yours very truly,

ATLANTIC, GULF & CARIBBEAN AIRWAYS, INC.,

J. T. Trippe
President

[fol. 17]

GOVERNMENT'S EXHIBIT 11

AVIATION CORPORATION OF THE AMERICAS

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS

JULY 18, 1928.

* * * *

Upon motion duly made and seconded, and after consideration, the following resolution was adopted:

RESOLVED, that the proper officer or officers of this Corporation be and they hereby are authorized, empowered and directed to cause to be organized under the laws of Peru a corporation having as its general objects and purposes the conduct, management and/or supervision of aviation activities, said corporation to have such authorized capital stock as shall be determined and designated by Messrs. Richard F. Hoyt, C. V. Whitney and J. T. Trippe, and that upon the completion of the organization of such Peruvian corporation, the proper officer or officers of this Corporation be and they hereby are authorized, empowered and directed to subscribe and pay for the capital stock of said Peruvian corporation up to but not exceeding the amount of $10,000, and to transfer or cause to be transferred to such Peruvian corporation the options and concessions for aviation activities in Peru heretofore obtained by Huff-Daland Dusters, Inc., and here-

tofore transferred to Atlantic, Gulf & Caribbean Airways, Inc. and included in the assets and property of said Atlantic, Gulf & Caribbean Airways, Inc., recently acquired by this Corporation.

[fol. 20]

GOVERNMENT'S EXHIBIT 13

MEMORANDA

August 1st, 1928.

Mr. Trippe:

I lunched with Mr. Iglehart, Mr. Patchin, Mr. Garney; all vice-presidents of W. R. Grace and Company. These gentlemen are very much interested in the proposed West Coast Air Mail Line but feel it would be a great mistake to make it a passenger line primarilly. (Of course this would interfere with their passenger traffic.)

They talked at length regarding the small Peruvian operation as a starter and mentioned the fact that they would probably be interested in putting in about $25,000 to be matched against $25,000 of A. C. A. money, in order to try out the Peruvian line for a few months. Incidentally they feel, or rather Mr. Iglehart expressed the belief that it would not be desirable to form a Peruvian Company for this work but that an American Company should be formed. He thought that a transfer of mail contracts two or three times would simply be a waste of time and energy and he also feels that with international expansion an American company would be very much better. They also talked at length about putting in more capital right away and operating a through line from Panama to Calla, the idea being to purchase two Loening Amphibians similar to the one Mr. Hoyt is now using. These two planes to be used in conjunction with planes already arranged for in Peru.

The advantages of associating with Grace & Company are of course, self evident particularly in view of the fact that they have good political backing in the various coun-

tries involved and in addition have already established necessary agencies for the sale of air mail stamps and air passenger tickets. Also the various port facilities as well as wireless service could be made available to us without requiring special investment for such equipment.

A press report states that the Germans have made the first flight on an air-mail to Guayaquil from Colombia and that this will be a regular mail route.

(sgd) HAROLD R. HARRIS
Harold R. Harris

MAG

The Grace people want to see a budget on this line. [In handwriting]

(sgd) H.

[fol. 21]

GOVERNMENT'S EXHIBIT 14

EXHIBIT "A"

August 13, 1929.

DRAFT MEMORANDUM

WEST COAST OPERATIONS

It is proposed to undertake development work leading up to the installation of a regular tri-weekly service between Cristobal, Canal Zone and Valparaiso, Chile, and or Buenos Aires, Argentine Republic, as follows:

1. Aviation Corporation of the Americas, hereinafter known as A.C.A., to advance Harold Harris, as Trustee of the Peruvian National Company now being organized, the sum of $25,000. This sum later to be transferred to the new Peruvian Company and to cover A.C.A.'s subscription to $25,000 of its capital stock.

2. The Grace Steamship Company and/or an affiliated Company, hereinafter known as Grace, to subscribe to

$25,000 of the new Peruvian Company's stock, such subscription to be dated August 15th, 1928, and to carry interest at the rate of 6% until called.

3. Harold Harris to purchase and ship to Lima, through Huff Daland Dusters, Inc., and for the account of the new Peruvian Company, one Fairchild Cabin Monoplane, with necessary spares.

4. The Board of the new Peruvian Company to consist of five Directors:

.....
.....
.....
.....
.....

The Officers of the new Peruvian Company to be:

President	(A. C. A. nominee)
Vice President & General Manager	(Harold R. Harris)
Secretary	(Grace nominee)
Treasurer	(" ")

G066043

GR-11215

[fol. 22] 5. The new Peruvian Company to purchase from A.C.A. for the sum of $4.000.00, the option to the Peruvian Concession and mail contracts negotiated by Huff Daland Dusters, Inc., the new Peruvian Company to reimburse Huff Daland Dusters, Inc., for the expenses actually incurred in securing concessions and mail contracts through September 1st, such sum not to exceed $.....

6. The new Peruvian Company to take up this option from Huff Daland Dusters, Inc., and have transferred to it said concessions and mail contracts. In transferring said concessions and mail contracts from Huff Daland Dusters, Inc., a foreign corporation to the new Peruvian Company, a domestic corporation, said concessions and contracts to be broadened and improved with the help of A.C.A. and

the local Grace interests. In general, A.C.A. Draft B concession to be used by new Peruvian Company as a model in seeking to improve said concession and mail contracts.

7. Service between Lima and Paita to commence on October 1st, under the direction of Mr. Harris. The Fairchild Cabin Airplane and one dusting Airplane, to be chartered from Huff Daland Dusters, Inc., to service as equipment. No passengers will be transported for the first month and or until the service has been found to be technically feasible and safe.

8. For the first six months operations shall be restricted to one round trip weekly between Lima and Paita. The estimated results for this period are outlined in Exhibit "A" attached herewith.

9. A.C.A. will forthwith hand over to Grace its draft "B" model concession, together with other economic data already compiled, having to do with the proposed air transport service on the West Coast, Grace will forward copies of its documents to its agents on the West Coast for study. As soon as practical, an attempt will be made by their agents in Ecuador and Chile to secure such concessions in the name of ..... Corporation or Pan American Airways, Inc., a New York corporation. All such concessions to carry the privilege of transfer to another entity with the consent of the Government concerned.

10. Pan American Airways, Inc., to attempt to acquire operating rights and legal standing in Colombia, either in its own name or in the name of a local national Company formed to hold them. (These rights will be required in connection with the proposed extension of Pan American Airways, Inc., service along the North Coast to Trinidad and the Guianas).

11. A.C.A. and Grace to consider the local situation in Bolivia and the Argentine and to jointly select individuals to negotiate concessions in these countries.

G066044

12. Mr. Harold Harris is to devote the first two months of his time after arriving in Lima to the organization and

installation of the Lima-Paita service. As soon as the one GR-11216
[fol. 23] round trip weekly service is in regular operation, Mr. Harris is to devote considerable time to the survey of technical conditions on the West Coast, commencing with the section between Cristobal and Lima, that he be in a position to recommend proper equipment to extend the initial service following the contemplated acquisition of a United States mail contract.

13. The A.C.A. traffic department to map out a survey covering estimated passenger, mail and express service, including international Northbound air mail, for the territory between Colon, Lima, Valparaiso and Buenos Aires. Mr. Harris with the cooperation and help of local Grace agents, to conduct such traffic survey and have same completed before November 1st, 1928.

14. Messrs. Trippe and Patchin to continue negotiations with the United States Post Office Department toward the early advertisement for mail service from Cristobal South, via Valparaiso to Buenos Aires. Messrs. Trippe and Patchin to advise the Post Office Department that they would be interested in a contract which would permit of their retaining an option to inaugurate service contingent on the securing of proper operating rights and legal standing in the countries concerned. Also, contract which would permit of a year within which to commence service, following official notice of award, and which, in general, would be placed in operation section by section from Cristobal South as "operating conditions will permit and economic conditions justify". There is some doubt as to whether or not the Comptroller will pass for payment mail contracts made by the Post M-G. under the May 8th Foreign Mail Act. It is believed that the contract for same under the existing legislation, along the general lines indicated. Also that the contractor would be amply protected against loss through permission, obtained in supplementary letter, to defer separations to inaugurate service pending enactment

of clarifying retroactive legislation at forthcoming short session.

15. Negotiations with any European Transport Companies in which the proposed West Coast operations are concerned would be deferred until the matter of the selection of the Corporation which would undertake the West Coast service had been agreed upon by A. C. A. and Grace.

16. No attempt to include data on financial requirements, operating costs or estimated revenue, has been made.

In general, the round figure of $250.00 per airway mile for three-times-a-week service by multi-engined 2,000 pound payload airplanes, will be of value.

Operating costs including all proper indirect charges should be under $2.00 per airplane mile. With a proper load factor and under efficient management, the cost figure should approach $1.60 per airplane mile.

GR-11217

G066045

[fol. 24]

GOVERNMENT'S EXHIBIT 15

August 31, 1928.

Aviation Corporation of the Americas,
100 East 42nd Street,
New York City.

Attention: Mr. J. T. Trippe

Dear Sirs:—

This will confirm arrangement under which we will associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be

subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff-Daland Dusters, Inc. the sum of $15,000 for an assignment which will convey all of the rights of that company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by this company in Peru and every effort will be made to put the business there on a paying basis.

We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U. S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

You will have charge of the operation of the service

G 4351

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10-25-54 PJS

[fol. 25] from the Canal to Valparaiso and our houses on the West Coast of South America will be the agents of the company on a reasonable compensation basis, such agency to continue during the life of transportation contracts undertaken by the company.

The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

Very truly yours,

W. R. GRACE & Co.

COGSWELL
Assistant Secretary

WFC:GVB
GR-28

G 4352

[fol.26]

GOVERNMENT'S EXHIBIT 16

Private # 8196

3.15

New York, Sept. 4, 1928.

W. R. Grace & Co.,

Lima, Peru.

Dear Sirs:

We have entered into an arrangement with the Aviation Corporation of the Americas (which owns all the stock of the Pan-American Airways, Inc.) to form a Delaware Corporation under the name of Peruvian Airways Corporation, of which we will each own 50% of the stock. This Corporation will operate a weekly air service between Callao and Talara. For your private information, the ultimate purpose is to use this Corporation, if the operation justifies it, as a nucleus for the inauguration of an airmail service between the Canal and Valparaiso, for which our West Coast houses will act as agents.

The officers of the Corporation are to be: President, J. T. Trippe; Vice-President and General Manager, Harold H. Harris; Vice-President, R. H. Patchin; Secretary, William F. Cogswell.

We should like to have a member of the Lima Office act as Treasurer as Mr. Harris intends to spend considerable time studying aviation conditions on the Coast and it will be necessary to have someone to disburse the company's funds during his absence. We will accordingly elect Mr. Bush to such position but if for any reason this is not agreeable, we will elect another Treasurer at your cabled request.

Mr. Harris, who is to have charge of the operation of

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10-22-54
WAK

[fol. 27] the Company, is proceeding to Callao on the next voyage of the S/S "Santa Luisa". He will first arrange for the assignment to the new company of the Mail Contract and concession now held by Huff Daland Dusters Inc. and for the commencement of the service as soon as possible. We should appreciate any assistance you can give him in this connection and in seeing that the company is legally qualified to do business in Peru. ((We will make payment for the assignment when you advise us by cable that it has been effected and that it carries with it the equity of $4,000. in security which was deposited by the Huff Daland Co. with the Peruvian Government.))

We will send you next week a copy of Mr. Harris' power of attorney and further details as to the method of putting Mr. Harris in funds. Our present idea is to send you a credit note for the account of the Airways Co. which Mr. Harris can draw upon as the necessity arises.

While Mr. Harris will have to work out the details of the schedule to be maintained, it is our idea that a plane will pick up the mail from the Grace Line ships southbound at Talara and carry it to Callao and northbound catch the P.S.N.C. and C.S.A.V. ships at Paita. While the flying time will be only one day less than the steaming time, it may well be that by use of the air service a whole week's time will be gained. For example, the P.S.N.C. and C.S.A.V. boats leave Callao northbound the day after the Grace boats arrive southbound. There would seem to be very

little opportunity to have a reply to a letter arriving on the Grace boat go forward on the P.S.N.C. or C.S.A.V. boat

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GR-30

[fol. 28] the next day. On the other hand, if the letter should be taken off at Talara and carried by plane to Callao, there would probably be sufficient time to have the reply go forward on one of those boats two days later, and an additional day would be added by having a reply carried to Paita and placed on the northbound ship at that port.

Northbound the Grace boats leave one day and two days respectively after the arrival of the P.S.N.C. and C.S.A.V. boats southbound. There would be an extra day to reply to letters arriving on the southbound ships if it should be carried by plane to Talara.

The success of this operation naturally will depend on keeping expenses at a minimum and obtaining as much business as possible. It is the intention for the present to concentrate on air mail and express and not carry passengers at least until the line has been in operation for several months. We trust that our houses in Peru will use every effort to stimulate interest in this business and be of all assistance possible. Of course, when they act as agents in any of the cities, they will receive reasonable agency fees which should be along the lines of those paid by the steamship company, and we should like to have your ideas as to what would be a reasonable charge. You would probably be in a better position, however, to determine this after operations have been commenced.

Very truly yours,

W. R. GRACE & Co

COGSWELL
Assistant Secretary

G 4343

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WFC:HM

[fol. 21]

GOVERNMENT'S EXHIBIT 18

AVIATION CORPORATION OF THE AMERICAS

100 East 42nd Street New York

September 7, 1928.

3.15

Received at N.Y.
Sep 10, 1928

W. R. Grace & Company,
10 Hanover Square,
New York City.

Attention Mr. William F. Cogswell

Dear Sirs:

We beg to confirm the arrangement set forth in your letter of August 31st.

Supplementing paragraph four, however, we would point out the fact that in the event you decide not to take up a substantial interest in a jointly owned Company, organized or to be organized for the purpose of submitting a bid on the contract for carrying mails between Panama Canal and Valparaiso, then, and in that event, we would prefer to bid on the contract through the medium of Pan American Airways, Inc., or some other wholly owned subsidiary.

If this were done, we would arrange to allow you, if you desired, to take a further stock interest in Aviation Corporation of the Americas, in addition to the $25,000. referred to in paragraph five.

Our Directors are delighted that we are to be associated with your firm in the development of air transportation on the West Coast of South America, and we look forward to a most pleasant and profitable relationship.

We would appreciate your advising us if this letter, in connection with yours of August 31st, covers your understanding of our arrangement.

Yours very truly,

AVIATION CORPORATION OF THE AMERICAS

By J. T. TRIPPE

J. T. Trippe,
Vice President.

JTT:B

G 4349

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10-25-54
PJS

[fol. 32]

GOVERNMENT'S EXHIBIT 19

PERUVIAN AIRWAYS CORPORATION

September 7, 1928.

Mr. Harold R. Harris,
Vice President and General Manager,
Peruvian Airways Corporation,
100 East 42nd Street,
New York City.

Dear Sir:

In taking up your duties and responsibilities as Vice President and General Manager of the Peruvian Airways Corporation, you will follow, in general, the program hereinafter set forth.

1. You will proceed to Lima, from either New York City or New Orleans, in time to make connection at the Canal Zone, with the Grace Line steamer leaving New York City on Thursday, September 13th.

2. Upon arriving in Lima, you will call on Mr. Charles G. Bush, one of the Managers of the local Grace house. Cooperating with him and other local Grace officials,

you will transfer the Air Mail Contract, granted to Huff Daland Dusters, Inc., by the Peruvian Government, to the Peruvian Airways Corporation.

3. Coincident with this transfer, you should attempt to improve the general concession, by having inserted as many as possible of the additional privileges set forth in the Model B concession, attached herewith. Those paragraphs having to do with the right to sell Air Mail Stamps directly, of course are not essential, inasmuch as Peruvian mails are handled by a private Corporation.

4. While transfer of the permits and contracts is being completed, you should arrange, if possible, for desk room and office service, at reasonable charges, at the local Grace house.

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10-26-54
SLA

[fol. 33] 5. You will endeavor to negotiate agreements with W. R. Grace and Company at Lima, whereby the various Grace Company houses in Peru will represent Peruvian Airways, Corporation, as General Agents, to handle the solicitation of mail, express, and possibly later passenger traffic. At Talara, you should attempt to negotiate similar contracts with the International Petroleum Company. It is possible that you will have time to close this matter en route to Lima. A letter of introduction to the local official in charge is being handed you.

6. You should qualify this Company to conduct business in Peru, and for this purpose there is being handed you certified copy of its charter, properly attested by the Peruvian Consul.

7. You will arrange to have transferred from Huff Daland Dusters, Inc., to Peruvian Airways Corporation, the Fairchild cabin monoplane, purchased by them, as agent. As soon as this transfer has been completed,

cable me, that funds advanced to Huff Daland Dusters, Inc., by Aviation Corporation of the Americas, covering the purchase of this ship may be remitted by Peruvian Airways Corporation to Aviation Corporation of the Americas. Payment will be made out of the New York City funds of the Company. Upon receipt of proper vouchers, covering the purchase and shipment of certain spares for the Fairchild Airplane, by Huff Daland Dusters, Inc., and upon delivery of same to you in Peru, same should be paid by you out of local funds.

8. Upon completion of the transfer of the air mail permit and contract referred to in paragraph two above, you will cable me, in order that payment of $15,000. to Huff Daland Dusters, Inc., and $4,000. to Aviation Corporation of the Americas, as provided for under existing agreements, can be made.

9. Following the transfer referred to, you should arrange to operate the Lima-Tafara route as nearly as possible under the budget you submitted to me with your letter of July 26th, 1928, copy of which budget is attached herewith. Until such transfer has been completed, no air mail operations should be attempted by Peruvian Airways Corporation, either directly or through another Company for its account. Local commitments and disbursements should be deferred as much as possible until transfer has been made.

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10-26-54
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[fol. 34] 10. After Air Mail operations commence, every effort should be made by you to keep costs of operation to a minimum and you should seek to develop other possible sources of revenue, not only from mail and express, and later from passenger traffic, but also from all other forms of aerial service.

11. Such insurance as you consider advantageous to the Company's interests, should be taken out.

12. Negotiations should be entered into with the officials of the Peruvian Post Office (The British Marconi Co.) in an attempt to secure their special assistance in connection with Air Mail shipments, by some method of increased revenue to the Post Office Department.

13. No passengers should be carried on the Air Mail flights until the line has been completely organized. At such time as you consider the operations have advanced to a point to warrant carrying passengers, please cable me for authority to proceed. The matter will then be considered by the Board of Directors.

14. Additional flying equipment can be purchased or leased from outside Companies on such terms as you consider most advantageous to the interests of the Peruvian Airways Corporation.

15. At such time as the Lima-Talara Line is operated to your satisfaction, you will commence a survey of the airway between the Panama Canal Zone and Talara. Later, this survey should be extended South to Valparaiso.

16. A record of all disbursements and all income should be kept, and a monthly report covering same should be forwarded to me at the New York Office of the Company—Room 2327, 100 East 42nd Street.

17. All correspondence on Company business should be official correspondence, bearing serial numbers. The correspondence should be divided into two series; first, the regular series bearing the serial numbers 1, 2, 3, etc., and, second, a private series, bearing the series A, B, C, etc. Letters of the private series will not be

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10-26-54
SLA

[fol. 35] opened by anyone but Mr. Cogswell or myself. Similarly, you should advise persons having to do with the receipt of correspondence addressed to you that all letters bearing the caption "Private Series" on the envelope, should not be opened except by yourself or such other person as you might designate.

All cable correspondence between New York and Lima will be handled through the courtesy of W. R. Grace & Company, under their private code. Where this is impractical, Bentley's Complete Phrase Code (Reprint of First Edition).

Regular serial letters should be addressed to me—Room 2327, 100 East 42nd Street—and there should be attached a carbon copy with each letter. Furthermore, the second carbon should be addressed to Mr. W. F. Cogswell, Treasurer of the Company, 10 Hanover Square, New York City.

18. There is being prepared, and will be forwarded you shortly, a general program to be followed by you, in mapping out the technical and traffic survey, referred to in Paragraph 15. Also, copies of ticket forms and general information, with reference to passenger solicitation and the legal liability in connection therewith, are being prepared and will be forwarded shortly. The question of passenger liability and the ticket forms being forwarded, of course, should be cleared with your local attorney. For your information in this connection, in many Latin American countries, releases are binding, not only in the event of accident, but also any properly drawn release precludes an estate from collecting damages in the event of death.

19. Funds will be advanced from time to time, to the Grace house at Lima, against whom you can draw. This matter is covered in your Power of Attorney, being handed you today. There is also being advanced to you, as an advance against traveling expenses and other proper disbursements, the sum of $1,000.00.

20. The technical surveys referred to in Paragraph 15 are being conducted with the end in view of establishing passenger, mail and express service between Canal Zone, Callo and Valparaiso, subject to the acquisition, by an affiliated Company, of a United States Mail Contract over this route. The general plans of this

[fol. 36] Corporation and its affiliated interests, contemplate delegating to you the supervision of all flight operations, following the inauguration of the proposed through service.

21. I will keep you informed as to developments, in connection with the acquisition of the United States Mail Contract.

Wishing you every success in the installation and operation of the Transport Service in Peru, I remain,

Very truly yours,

PERUVIAN AIRWAYS CORPORATION

By .....
J. T. Trippe
President.

JTT:B

CC: Messrs. Cogswell
Hoyt
Patchin

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[fol. 37]

GOVERNMENT'S EXHIBIT 20

September 12, 1928.

Aviation Corporation of the Americas,
100 East 42nd Street,
New York City.

Attention: Mr. J. T. Trippe

Dear Sirs:—

This will confirm that arrangement outlined in your letter of September 7th is in order upon the understanding

that by the words "substantial interest" in the second paragraph thereof is meant ten percent or more at our option.

Very truly yours,

W. R. GRACE & Co.

COGSWELL
Assistant Secretary

WFC:GVB

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10-26-54
PJS

[fol. 38]

GOVERNMENT'S EXHIBIT 21

Private No. 8292

Aviation
Corr wi West Coast House

September 12, 1928.

W. R. Grace & Co.,
LIMA

Dear Sirs:

Referring to our private letter No. 8198 of September 4th, we beg to confirm our cable of September 10th, as follows:

"110s Our 98 - 16th to 28th word with them we have formed Peruvian Airways Corporation Incorporated here Harris will arrive Lima 'Santa Luisa' writing fully".

The Aviation Corporation of the Americas, which owns all the stock of the Pan American Airways Inc., and which, in turn, has a contract for carrying the United States mails from Key West to Colon and from Key West to Perto Rico, is further advanced than any other concern in this country

in the matter of carrying foreign mail by air and we felt it highly advisable to accept their invitation to associate with them in a company to develop the concession of the Huff Daland Dusters, which will be taken over by the Peruvian Airways Corporation which has just been formed.

The purpose and policy of Peruvian Airways Corporation is set forth in the enclosed letter of instructions from Mr. J. T. Trippe, President of the Pan American Airways and of Peruvian Airways Corporation to Mr. Harold R. Harris, Vice President and General Manager, who is leaving this week from New Orleans for Colon where he will embark on the "Santa Luisa".

Mr. Harris appears to have an excellent knowledge of flight operations and to be earnest and reliable, but he has not had extensive general business experience and, possibly, may not realize the extent of the preparation and investigation required before any transportation enterprise

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11-16-54

G006703

[fol. 39] can be inaugurated in a country like Peru. You will note from the instructions that it is understood he will work closely with you and is to appoint you as general agents for the airways service all along the Peruvian coast. The general idea is that W. R. Grace & Co. will be the agents, not only in Peru but wherever it may be extended. If it is extended a new and larger company will be required in which the extent of our participation remains to be determined.

Mr. Bush has been elected treasurer, with the idea, on our part, that he is the one in your organization most familiar with the problems that will arise and can most effectively assist the development of this service.

Mr. Harris appears to attach high value to Grace assistance in every direction and as he seems to be of a frank and candid nature we have no doubt he will carry out his intention to keep you fully informed of all his work. If he does not please advise us. We feel strongly that you should be closely associated with the enterprise in order

that you, as well as we here, may become well informed in the general technique of air transport.

The U. S. Post Office Department is desirous of inaugurating air mail service at an early date from the Canal south to Valparaiso. We do not wish to hurry into bidding on such a contract but we feel that we should make as rapid progress as possible towards the point where we can decide whether or not a service can be established from Colon to Valparaiso that can pay, or nearly pay, expenses at $2.00 per mile on the southbound voyage, which is the maximum now obtainable under U. S. foreign air mail contract, plus such mail, freight and, ultimately, passenger revenue as is obtainable on the northward operations. Lines which have daily flights in this country operate at a total cost, including capital, depreciation, etc. of 78/80 cents per mile. That is operation but as a West Coast service would hardly fly more than twice a week at best, it is doubtful whether the line could be operated for the $2.00

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G006704

[fol. 40] mile of the outward voyage payable under mail contract, which makes an average of $1.00 a mile for round voyage. The postal revenue under a United States contract is the only assured, certain, large income in sight. Therefore, the commercial feasibility of the service would seem to depend on the additional revenue obtainable from other sources and the first purpose of the Peruvian Airways is to develop these possibilities in Peru.

We would like you to cooperate with Mr. Harris in obtaining the assignment of the Huff Daland concession to the Pan American Airways and if possible, broadening the concession. The press reports that Mr. Faucett recently received a concession to carry the mail from Callao to Talara, but we have no knowledge of the details.

If it is decided to bid on a through mail contract a pretty large organization will be required. One of the difficulties and heaviest items of expense will be to get competent personnel. It occurs to us that, in the event of a through service being established, it might be possible to work out

some plan of absorbing Faucett's company on a reasonable basis, if it has assets or personnel of value. This is, however, a matter to be approached pretty carefully and the subject was purposely omitted from Harris' instructions. He told him we thought you would be in a better position than he to develop this possibility.

The Huff Daland Dusters incurred considerable legal expense in getting their concession which ought not to be repeated in having it broadened, as indicated on the instructions to Mr. Harris.

Very truly yours,

W. R. GRACE & Co.

PATCHIN

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ENC.

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[fol. 41]

GOVERNMENT'S EXHIBIT 22

chieftain 224 to METZNER. 11.9.28

1 224: your 163
peruvian airways request us to inform them necessary steps obtain in chile form B concession which you request them to send us shall we approach Chilian government

2 we and pan american airways
3 jointly own
4 peruvian airways corporation operating
5 lima talara
6 sentence ends as chilian government
7 urging united states
8 hasten air
9 mail service

we and pan american airways
now discussing
formation jointly
owned american company
to operate mail
passenger service
valparaiso arica
intermediate port-a
connecting as soon as practicable
with through
service peru
panama canal sentence ends form
B sent for your information
study closely
cable before our
meeting pan american airways
wednesday your opinion
how much of it
obtainable from chile
sentence ends avoid any
commitment-s but have no objection to
telling chilian government
our general idea
also consult
american ambassador telling
him as result
his representation
washington we and
pan american airways cooperating
actively sentence ends
are there any competent
american aviators
now in chile

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Mr. Valvardo
Mr. Patchin
Mr. Cogswell

GR-5

1-5-54 APS

[fol. 42]

GOVERNMENT'S EXHIBIT 23

AVIATION CORPORATION OF THE AMERICAS

BOARD OF DIRECTORS

SEPTEMBER 17, 1928.

"Upon motion, duly made and seconded, the following preamble and resolution were adopted:

WHEREAS, certain officers of this corporation heretofore purchased 250 shares of the capital stock of Peruvian Airways Corporation, a Delaware corporation, at the aggregate price of $25,000.00.

RESOLVED, that the purchase of the aforementioned shares of said Peruvian Airways Corporation be and the same hereby is ratified, approved, confirmed and adopted.

On motion, the following preambles and resolution were adopted:

WHEREAS, this corporation heretofore loaned to Huff-Daland Dusters, Inc. the sum of $11,800.00 for the purpose of enabling said Huff-Daland Dusters, Inc. to purchase one FC-2 Type of Fairchild Cabin Monoplane upon the understanding that said Huff-Daland Dusters, Inc. would, if requested by this corporation, transfer said plane to a corporation proposed to be organized to undertake certain aviation operations in Peru whereupon such loan from this corporation to said Huff-Daland Dusters, Inc. would be cancelled and deemed repaid: and

WHEREAS, Peruvian Airways Corporation has been organized for the purpose of conducting such aviation activities in Peru and has made an agreement with this corporation whereby this corporation will request said Huff-Daland Dusters, Inc. to transfer said plane to Peruvian Airways Corporation upon the agreement by said Peruvian Airways Corporation with this corporation to pay to this corporation the said sum of $11,800.00,

RESOLVED, that the aforementioned agreement between this corporation and said Peruvian Airways Corporation be and the same hereby is ratified, approved, confirmed and adopted, and that the proper officer or officers of this corporation be and they hereby are authorized, empowered and directed to request said Huff-Daland Dusters, Inc. to transfer the aforementioned plane to said Peruvian Airways Corporation upon the condition that said Peruvian Airways Corporation pays to this corporation the sum of $11,800.00 upon the delivery of the possession of said airplane to Peruvian Airways Corporation and the execution and delivery by said Huff-Daland Dusters, Inc. of a bill of sale to said Peruvian Airways Corporation covering said airplane."

[fol. 43]

BOARD OF DIRECTORS

NOVEMBER 19, 1928.

"Mr. Trippe thereupon outlined the progress being made in the development of the company's plans for operations along the west coast of South America. He also reported briefly upon the activities of Peruvian Airways Corporation, a subsidiary of this corporation, the development of foreign competition in Chile, Argentina and Brazil, anticipated domestic competition, and the discussions had with W. R. Grace & Co. relative to the policy to be adopted on the west coast of South America.

On motion, duly made and seconded, it was

RESOLVED, that the President or Vice-President be and he hereby is authorized, empowered and directed to cause to be organized under the laws of Delaware, or such other state as may be advised by counsel, a corporation for the purpose of carrying on operations in South America, with an authorized capital stock of $2,000,000.00, and to subscribe on behalf of this corporation for one-half of such authorized capital stock of said corporation, and to offer to W. R. Grace & Co. for subscription, or purchase, the remaining one-half

of such authorized capital stock in accordance with the agreement between this corporation and said W. R. Grace & Co., dated August 26, 1928."

BOARD OF DIRECTORS

DECEMBER 20, 1928.

"On motion, duly made and seconded, the following resolution was adopted:

RESOLVED, that Mr. J. T. Trippe, the Vice-President of this Corporation, be and he hereby is authorized and empowered to cause to be organized under the laws of the State of Delaware a corporation to be known as Chilean Airways Corporation, or such other name as may be selected by said Vice-President, with a total authorized capital stock of $50,000.00, and to cause the proper officer or officers of said corporation to offer one-half of such total authorized capital stock, namely, $25,000.00, to W. R. Grace & Co. for subscription, pursuant to an existing agreement between this Corporation and the said W. R. Grace & Co., and that the said Vice-President or the Treasurer of this Corporation be and he hereby is authorized and empowered to purchase and pay for the remaining one-half of the authorized capital stock, namely, $25,000.00, of said proposed corporation."

[fol. 44]

BOARD OF DIRECTORS

FEBRUARY 21, 1929.

"On motion, duly made and seconded, the following preambles and resolution were adopted:

WHEREAS, Pan American-Grace Airways, Inc. has been incorporated under the laws of the State of Delaware, with an authorized capital stock consisting of $1,000,000, divided into 10,000 shares of the par value of $100. each, for the purpose of engaging in aerial transportation; and

WHEREAS, said Pan American-Grace Airways, Inc. contemplates the submission of a bid or proposal to the United States Government for the transportation of mail by air over a certain route from Cristobal, Canal Zone, to Santiago, Chile, and return; and

WHEREAS, this corporation desires to subscribe for 50% of the authorized capital stock of said Pan American-Grace Airways, Inc.; and

WHEREAS, W. R. Grace & Co. have agreed to subscribe for the remaining 50% of the capital stock of said corporation,

RESOLVED, that the proper officer or officers of this corporation be and they hereby are authorized, empowered and directed to subscribe for a total of 5,000 shares of the capital stock of said Pan American-Grace Airways, Inc. at the aggregate price of $500,000, payable in cash, and to make payment for such shares of stock out of funds of this corporation when and as required.

On motion, duly made and seconded, the following resolution was adopted:

RESOLVED, that the proper officer or officers of this corporation be and they hereby are authorized, empowered and directed forthwith to sell, assign, transfer and deliver to Pan American-Grace Airways, Inc. the 250 shares of the capital stock of Peruvian Airways Corporation, owned by this corporation, at the aggregate price of $25,000.00 cash, to be paid on or before the 15th day of March, 1929, and also to sell, assign, transfer and deliver to said Pan American-Grace Airways, Inc. the 250 shares of the capital stock of the Chilean Airways Corporation, owned by this corporation, at the aggregate price of $25,000.00 cash, to be paid on or before the 15th day of March, 1929, and to endorse and deliver, in the name and on behalf of this corporation, to said Pan American-Grace Airways, Inc. the certificates representing the aforementioned shares of capital stock."

[fol. 45]

BOARD OF DIRECTORS

MARCH 26, 1929.

"Mr. J. T. Trippe, the Vice-President of the Corporation, thereupon reported briefly on the present status of the proceedings before the United States Post Office Department with reference to the protest heretofore filed against the recent award to Pan American-Grace Airways, Inc. of the air mail contract for the Route along the west coast of South America."

BOARD OF DIRECTORS

MARCH 31, 1931.

"Mr. Trippe reminded the Board that, for some time prior to the negotiation of the above mentioned agreements, the operating companies of the Pan American Airways System had enjoyed the cooperation of Scadta, and that this cooperation had been of the utmost value in securing operating rights for Pan American Airways, Inc. on the north coast and for Pan American-Grace Airways, Inc. on the west coast of Colombia; that Scadta was the oldest successful commercial air transportation company in the world, having been established in 1921; that throughout its operation it had made a remarkable record as to earnings; that it enjoyed to a marked degree the confidence and the cooperation of the Colombian Government and people; and that it operated its own air mail service in Colombia and between Colombia and certain adjacent countries, held long term air mail contracts with the Colombian Government under which it enjoyed the right to sell its own stamps, as well as mail contracts with the governments of Panama, Ecuador and Venezuela, and had recently been recognized as the

[fol. 46]

GOVERNMENT'S EXHIBIT 24

Translation of Supreme Resolution, dated 26th of November 1928, transferring Huff Daland Dusters, Inc. concession to Peruvian Airways, Inc.

Ministry of Government
and Police.

Lima, 28th of November, 1928.

Mr. Harold R. Harris,
Representative of the Huff Daland Dusters, Inc.

On the 26th of the present month the following Supreme Resolution was issued:

"In view of the petition presented by the Huff Daland Dusters, Inc. by which it requests that permission be granted to transfer to Peruvian Airways Corporation, Inc. the authorization given it by Supreme Resolution of the 28th of last May, to establish aerial service in the country:— And in accordance with the report made by the Administration of the services of Mails and Telegraphs, by the General Aeronautical Inspection and the Military Cabinet:— It is Resolved:— To grant the permission requested by the Huff Daland Dusters, Inc. to transfer to Peruvian Airways Corporation the authority given by the Resolution of the 28th of May, last, to establish an air service for the transportation of mails, cargo and passengers in the country.—Register, communicate and file.—Rubrica of the President of the Republic.—SALAZAR".

Only in Peru

Which I transcribe to you for your information and use.

(Sgd.) RAUL REY Y LAMA

[fol. 47]

GOVERNMENT'S EXHIBIT 25

MINUTES OF FIRST MEETING OF INCORPORATORS

—of—

SOUTH AMERICAN AIRWAYS CORPORATION

....

The first meeting of incorporators of

SOUTH AMERICAN AIRWAYS CORPORATION

was held on the 25th day of January, 1929, at 9:30 A.M., at the office of the UNITED STATES CORPORATION COMPANY, No. 19-21 Dover Green, in the City of Dover, Delaware, pursuant to a written waiver of notice signed by all the incorporators, fixing said time and place.

The following incorporators were present in person:

Name	*No. of Shares*
E. E. Craig	4
A. L. Raughley	3
M. S. Cook	3

being all the incorporators of the company.

On motion, E. E. Craig was elected Chairman, and A. L. Raughley was appointed Secretary of the meeting.

[fol. 48] The Chairman reported that the Certificate of Incorporation of the company had been filed in the office of the Secretary of the State of Delaware, on the 25th day of January, 1929, and a certified copy thereof duly recorded in the office of the Recorder of Deeds of the County of Kent, on the 25th day of January, 1929, and presented a copy of said Certificate of Incorporation. A copy thereof was ordered to be inserted in the minute book.

The Secretary presented a code of By-Laws for the regulation of the affairs of the company, which was read, article by article, and unanimously adopted.

Messrs. RICHARD F. HOYT
J. T. TRIPPE
R. H. PATCHIN
W. F. COGSWELL

were nominated for directors of the company, to hold office for the ensuing year.

No other nominations having been made, a ballot was duly taken, and all the incorporators having voted, and their ballots duly canvassed, the Chairman declared that the above-named persons had been elected directors of the company by the unanimous consent of all the incorporators.

[fol. 49] Upon motion duly made and seconded, it was

RESOLVED, that the directors be and they hereby are authorized to issue the capital stock of this company to the aggregate amount of ONE MILLION DOLLARS ($1,000,000) for money, labor done, personal property, real estate or leases thereof, or any of such considerations, as they shall from time to time deem advisable.

The Secretary presented the following transfers of subscriptions:

From	*To*	*No. of Shares*
E. E. Craig	W. R. Grace & Co.	4
A. L. Raughley	W. R. Grace & Co.	3
M. S. Cook	W. R. Grace & Co.	3

and upon motion duly made and seconded, the same were approved.

The meeting thereupon adjourned.

/s/ A. L. RAUGHLEY
Secretary of the Meeting.

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GOVERNMENT'S EXHIBIT 27

(First page of Original Certificate of Incorporation as filed and recorded January 25, 1929)

CERTIFICATE OF INCORPORATION

—of—

SOUTH AMERICAN AIRWAYS CORPORATION

FIRST: The name of the corporation is

SOUTH AMERICAN AIRWAYS CORPORATION.

SECOND: The principal office of the corporation in the State of Delaware is located at No. 19/21 Dover Green, in the City of Dover, Kent County. The name and address of its resident agent is the United States Corporation Company, No. 19-21 Dover Green, Dover, Delaware.

THIRD: The nature of the business, or objects or purposes proposed to be transacted, promoted, or carried on, are:

(a) To carry, convey, transmit, or transport, as, when and where lawful, goods, freight, express, articles of merchandise of every nature and description, securities, passengers, mails and intelligence by means of air craft.

(b) To design, manufacture, assemble, build, repair, maintain, operate, own, lease, let, purchase, sell and deal in air craft of every kind and description, by whatever power actuated and by whatever agency or method sustained or stabilized including (without limitation) balloons, dirigibles, aeroplanes, hydroplanes, hydro-aeroplanes, and all kinds and types of vehicles, mechanisms and devices now known or which may hereafter be discovered or invented for navigating the air, for purposes of pleasure, commerce, warfare or otherwise.

(c) To build, acquire, maintain, own, operate, let, lease, sell and otherwise dispose of air navigation facilities of every nature and description, including (without limitation) terminal landing fields, emergency land-

ing fields, aviation fields, hangars, land lighthouses, storage space, systems of radio, communications, air craft repair stations, mooring masts, landing buoys, air ports, either land or

[fol. 53]

(First page of Amended Certificate of Incorporation as filed and recorded February 21, 1929)

CERTIFICATE OF INCORPORATION

—of—

PAN AMERICAN-GRACE AIRWAYS, INC.

FIRST: The name of the corporation is

PAN AMERICAN-GRACE AIRWAYS, INC.

SECOND: The principal office of the corporation in the State of Delaware is located at No. 19-21 Dover Green, in the City of Dover, Kent County. The name and address of its resident agent is the United States Corporation Company, No. 19-21 Dover Green, Dover, Delaware.

THIRD: The nature of the business, or objects or purposes proposed to be transacted, promoted, or carried on, are:

(a) To carry, convey, transmit, or transport, as, when and where lawful, goods, freight, express, articles of merchandise of every nature and description, securities, passengers, mails and intelligence by means of air craft.

(b) To design, manufacture, assemble, build, repair, maintain, operate, own, lease, let, purchase, sell and deal in air craft of every kind and description, by whatever power actuated and by whatever agency or method sustained or stabilized including (without limitation) balloons, dirigibles, aeroplanes, hydroplanes, hydro-aeroplanes, and all kinds and types of vehicles, mechanisms and devices now known or which may hereafter be discovered or invented for navigating the air, for purposes of pleasure, commerce, warfare or otherwise.

(c) To build, acquire, maintain, own, operate, let, lease, sell and otherwise dispose of air navigation facilities of every nature and description, including (without limitation) terminal landing fields, emergency landing fields, aviation fields, hangars, land lighthouses, storage space, systems of radio, communications, air craft repair stations, mooring masts, landing buoys, air ports, either land or water, plants, works, [fol. 54] stations, depots, and all equipment incidental to the proper maintenance thereof, and all other conveniences and appurtenances appropriate to any of its business.

(d) To design, manufacture, purchase, sell and trade in, and to install upon air craft, weapons and armor or other protective coverings, apparatus for measuring height and distance, determining location and direction, and for signalling or communicating in any way, and all apparatus, equipment and devices designed for use in connection with the navigation of the air.

(e) To conduct experiments on its own account and for others, to apply for, obtain, purchase, or otherwise acquire, patents, licenses, trade marks, trade names, processes, improvements, inventions, formulae, and the like, and to sell, mortgage, pledge, let or otherwise dispose of, or deal in, and to use, exercise and develop, grant licenses and other rights and privileges in respect to, and to experiment upon, test or develop any process, improvement, invention, patent, or patent right, or the like.

(f) To purchase, lease, hire, or otherwise acquire, hold, own, develop, operate, improve, sell, assign, transfer, exchange, mortgage, pledge or otherwise dispose of, or turn to account and convey, and to aid and subscribe toward the acquisition, development or improvement of, real and personal property and rights and privileges therein of every nature whatsoever, whether tangible or intangible, in the State of Delaware, and in all other states, territories, districts, colonies, and dependencies of the United States of America and in all foreign countries, including the good will of any,

corporation, copartnerships and/or individuals, suitable or convenient for any business of the corporation; and to acquire, take, hold, own, construct, erect, improve, manage, and operate, and to aid and subscribe toward the acquisition, construction or improvement of, buildings, mills, storehouses, warehouses, factories, machinery, apparatus, equipment, locomotives, cars, and other rolling stock, roads, bridges, docks, piers, wharves, ships, vessels, boats, dry and floating docks, marine railways, trucks, wagons, cars, and other vehicles, engines, motors, conveyances, rolling stock and other works, property or appliances which may appertain to, or be useful in, the conduct of any business of the corporation but only to the extent authorized by the laws of the State of Delaware.

(g) To acquire by purchase, subscription, or other- [fol. 55] wise, and to hold, sell, assign, transfer, exchange, lease, mortgage, pledge, or otherwise dispose of, any shares of the capital stock of, or voting trust certificates for any shares of the capital stock of, or any bonds or other securities or evidences of indebtedness issued or created by, this corporation or any other corporation or association organized under the laws of the State of Delaware or of any other state, territory, district, colony or dependency of the United States of America, or under the laws of any foreign country; to pay therefor in cash or property or to issue in exchange therefor shares of the capital stock, bonds or other obligations of this corporation; and, while the owner or holder of any such shares of capital stock, voting trust certificates, bonds or other obligations, to possess and exercise in respect thereof any and all rights, powers and privileges of individual holders, including the right to vote on any shares of stock so held or owned (provided, however, that this corporation shall not use its funds or property for the purchase of shares of its own capital stock when such use would cause any impairment of its capital, and provided further that shares of its own capital stock belonging to this corporation shall not be voted upon directly or indirectly;) and upon a distribution of the

assets or a division of the profits of this corporation, to distribute any such shares of capital stock, voting trust certificates, bonds, or other obligations, or the proceeds thereof, among the stockholders of this corporation.

(h) To organize subsidiary corporations and to convey and assign all or any part of the assets to any such subsidiary corporation or corporations in exchange for shares of the capital stock or other securities of such subsidiary corporation or corporations.

(i) To acquire, from time to time, in exchange for shares of the capital stock of this corporation as herein fixed or as may hereafter be increased, such property or shares of the capital stock of any other corporation or corporations, as the Board of Directors shall deem of advantage to this corporation, at such valuation of the property or shares so acquired as in the judgment of said Board of Directors shall be fair and just.

(j) To purchase, lease or otherwise acquire, in whole or in part, the business, good will, rights, franchises, and property of every kind, and to undertake the whole or any part of the assets or liabilities of any person, firm or association or corporation, engaged in or authorized to conduct any business authorized to be conducted by this corporation, or owning property neces- [fol. 56] sary or suitable for its purposes, and to pay therefor in cash or in stock or bonds, or any other evidences of indebtedness of this corporation or otherwise; to hold or in any manner dispose of the whole or any part of the business, good will, rights, franchises, or property so acquired and to exercise all the powers necessary or incidental to the conduct of such business.

(k) To borrow or raise moneys for any of the purposes of this corporation, issue bonds, debentures, notes or other obligations of any nature, or in any manner, for moneys so borrowed, and to secure the payment thereof and of the interest thereon, by mortgage upon, or pledge or conveyance or assignment in trust of, the whole or any part of the property of this

corporation, real or personal, including contract rights, whether at the time owned or thereafter acquired, and to sell or pledge such bonds or notes or other obligations of this corporation for its corporate purposes.

(l) To aid, in any manner, any corporation or association any of whose shares of stock, bonds, or other evidences of indebtedness are held by or for this corporation, or in which, or in the welfare of which, this corporation shall have any interest, and to do any acts or things designed to protect, preserve, improve or enhance the value of, any such shares of stock, bonds or evidences of indebtedness, or the property of this corporation.

(m) To guarantee the payment of dividends upon any shares of the capital stock of, or the performance of any contract by, any other corporation or association in which, or in the welfare of which, this corporation has an interest, and to endorse or otherwise guarantee the payment of the principal and interest, or either, of any bonds, debentures, notes, securities, or other evidences of indebtedness created or issued by any such other corporation or association.

(n) To carry out all or any part of the foregoing objects as principal, factor, agent, contractor, or otherwise, either alone or in conjunction with any person, firm, association or other corporation, and in any part of the world; and in carrying on its business, and for the purpose of attaining or furthering any of its objects, to make and perform such contracts of any kind and description, to do such acts and things, and to exercise any and all such powers, as a natural person could lawfully make, perform, do or exercise.

(o) To remunerate, in cash, shares of stock, bonds, or other securities or evidences of indebtedness or [fol. 57] otherwise, any person, firm, syndicate, association, or corporation, for services rendered, directly or indirectly, in selling, placing or guaranteeing the selling or placing of any shares of the capital stock, bonds, debentures, or other securities or evidences of indebted-

ness, issued, owned or controlled by this corporation or by any other corporation in which this corporation is interested, or in connection with the formation, promotion, or operation of this corporation, or of any other corporation in which this corporation is interested, or in connection with the conduct of the business or affairs or the protection of the property and interests of this corporation.

(p) To conduct its business in all its branches at one or more offices in the State of Delaware and in any or all other states, territories, districts, colonies, and dependencies of the United States of America and in any or all foreign countries.

It is the intention that the objects and purposes specified in the foregoing clauses of this Article THIRD, shall, except where otherwise expressed in this Article, be in no wise limited or restricted by reference to, or inference from, the terms of any other clause of this or any other article in this certificate, but that the objects and purposes specified in each of the clauses of this Article shall be regarded as independent objects and purposes.

It is also the intention that said clauses be construed as powers as well as objects and purposes; and, generally, that the corporation shall be authorized to exercise and enjoy all other powers, rights, and privileges granted by the General Corporation Law, being Chapter 65 of the Revised Statutes, of the State of Delaware, to corporations of this character, as well as all the powers conferred or which may be conferred upon such corporations by the then [fol. 58] existing laws of the State of Delaware, so far as not in conflict therewith, or by all laws and acts heretofore or hereafter amendatory of, or supplementary to, said General Corporation Law, or of any or all of said laws or supplements thereto, but the enumeration of certain powers as herein specified is not intended as exclusive of, or as a waiver of, any of the powers, rights, or privileges granted or conferred by said General Corporation Law or the laws of said State now or hereafter in force; provided, however, that this corporation shall not have the power to carry on the business of constructing, maintaining or operating rail-

roads or railways within the State of Delaware; nor shall it possess the right of taking and condemning lands in the State of Delaware. This corporation shall not carry on any business, or exercise any powers, in any state, territory, or country which a similar corporation organized under the laws of such state, territory, or country could not carry on or exercise, except to the extent permitted or authorized by the laws of such state, territory, or country.

FOURTH: The total authorized capital stock of this corporation is One Million Dollars ($1,000,000), divided into Ten Thousand (10,000) shares of the par value of One Hundred Dollars ($100) each.

[fol. 59]

Amended September 8, 1939

FOURTH. The total number of shares of stock which the corporation shall have authority to issue is one hundred thousand (100,000); all of such shares shall be without par value.

Such stock may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the board of directors thereof.

Amended December 27, 1935

FOURTH. The total number of shares of stock which the corporation shall have authority to issue is ten thousand (10,000); all of such shares shall be without par value.

Such stock may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the board of directors thereof.

FIFTH: The amount of capital stock with which this corporation will commence business is ONE THOUSAND DOLLARS ($1,000).

SIXTH: The names and places of residence of the [fol. 60] original subscribers to the capital stock and the number of shares subscribed for by each, are as follows:

Name	Residence	No. of Shares
E. E. CRAIG	DOVER, DELAWARE	4
A. L. RAUGHLEY	DOVER, DELAWARE	3
M. S. COOK	DOVER, DELAWARE	3

SEVENTH: The existence of this corporation is to be perpetual.

EIGHTH: The private property of the stockholders of this corporation shall not be subject to payment of corporate debts to any extent whatever. No transaction entered into by the corporation shall be affected by the fact that the Directors of the corporation, or any of them, were personally interested in it; and every Director of the corporation is hereby relieved from any disability that might otherwise prevent his contracting with the corporation for the benefit of himself, or of any firm, association, or corporation in which he may be in any wise interested.

NINTH. At all elections of Directors of the corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of Directors to be elected, and he may cast all of such votes for a single Director or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting.

TENTH: In furtherance, and not in limitation of the powers conferred by statute, and without prejudice to the right hereby conferred on the corporation to vest additional [fol. 61] powers in the Board of Directors in its By-Laws, the Board of Directors of the corporation is expressly authorized, except as otherwise expressly provided by law:

1. To exercise all corporate powers, including the sale, mortgage, hypothecation and pledge of the whole or any part of the corporate property, except as otherwise expressly provided by law.

2. To make, alter, amend, and repeal By-Laws of the corporation, and to increase and reduce (but not to

less than three (3)) the number of the members of the Board of Directors, and from time to time to make and change rules and regulations, not inconsistent with the By-Laws for the management of the corporation's business and affairs.

3. To purchase or otherwise acquire for the corporation, any property, rights, or privileges which the corporation is authorized to acquire, at such price or consideration, and generally on such terms and conditions as they may see fit, and at their discretion, to pay for any property or rights acquired by the corporation, either wholly or partly in money, stock, bonds, debentures or other securities of the corporation.

4. To create, make and issue mortgages, bonds, notes, debentures, deeds of trust, trust agreements and negotiable or transferable instruments and securities of all kinds secured by mortgages or otherwise, and to do every other act and thing necessary to effectuate the same.

5. To sell or dispose of any real or personal estate, property, rights, franchises or privileges belonging to the corporation, whenever in their opinion its interests would be thereby promoted, on such terms as they may see fit, and to sell, assign, transfer or otherwise dispose of the whole property of the corporation; to appoint any person or corporation to accept and hold in trust for the corporation, any property belonging to the corporation, or in which it is interested, or for any other purposes, and to execute and do all such acts and things as may be requisite in relation to any such trust.

6. To delegate, during the intervals between meetings of the Board, all or any of the powers of the Board to an Executive Committee, of not less than two of its members, or to any officer or agent, and to delegate the duties of any officer or agent to any other officer or agent; to appoint subordinate officers, agents, employees and delegates to have such powers (including the power to choose, remove or suspend subordi-
[fol. 62] nate officers, agents, employees or servants,

and to sub-delegate) upon such terms as they may see fit; and at their discretion to remove the same with or without cause, and to so remove any executive officer.

7. To provide for and to pay to Directors rendering unusual or exceptional services to the corporation, such special compensation appropriate to the value of such services as they may in their discretion see fit.

8. To declare dividends out of the profits of the corporation at such times and in such amounts as they may from time to time determine and before payment of any dividend or dividends, to set aside out of the net profits of the corporation, such amount or amounts as they may in their absolute discretion think proper as reserve to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for any such other purposes as the Directors may deem beneficial to the interests of the corporation, to apply the surplus earnings or accumulated profits of the corporation, otherwise by law to be reserved, to the purchase or acquisition of property to such an extent and in such manner and upon such terms as the Board may determine.

9. To determine, subject to the laws of the State of Delaware, and if allowed, when and under what conditions and regulations the records and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are and shall be restricted and limited accordingly.

ELEVENTH: Both stockholders and directors shall have power, if the By-Laws so provide, to hold their meetings either within or without the State of Delaware, and to have one or more offices within or without the State of Delaware, in addition to the principal office in Delaware, and to keep the books and records of the corporation (subject to the provisions of the statutes) outside the State of Delaware, at such places as may be from time to time designated by the directors or officers.

TWELFTH: The corporation reserves the right to amend, alter, change, or repeal any provisions contained in

[fol. 63]

(Tenth page of Amended Certificate of Incorporation as filed and recorded February 21, 1929)

this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on officers, directors and stockholders herein are granted, subject to this reservation.

WE, THE UNDERSIGNED, being the incorporators named in the original Certificate of Incorporation of SOUTH AMERICAN AIRWAYS CORPORATION, and the original subscribers to its capital stock, do hereby make and file this Certificate pursuant to the provisions of Section 25 of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof and supplementary thereto, for the purpose of changing the name of the corporation to PAN AMERICAN-GRACE AIRWAYS, INC., and we do hereby declare and certify that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth and do hereby certify that no payment of any of its capital has been made, and accordingly have hereunto set our hands and seals this 21st day of February A. D. 1929.

E. E. CRAIG (L.S.)

A. L. RAUGHLEY (L.S.)

M. S. COOK (L.S.)

In the presence of:

C. H. JARVIS
as to all

STATE OF DELAWARE)
: ss:
COUNTY OF KENT)

BE IT REMEMBERED, that on this 21st day of

(Eleventh page of Amended Certificate of Incorporation as filed and recorded February 21, 1929)

[fol. 64] February, A. D. 1929, personally came before me C. H. JARVIS, a Notary Public for the State of Delaware, E. E. CRAIG, A. L. RAUGHLEY and M. S. COOK, parties to the foregoing Certificate of Incorporation, known to me personally to be such, and severally acknowledged the said Certificate to be the act and deed of the signers respectively, and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

C. H. Jarvis
Notary Public.

[fol. 65]

(Tenth page of Original Certificate of Incorporation as filed and recorded January 25, 1929)

this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on officers, directors and stockholders herein are granted, subject to this reservation.

WE, THE UNDERSIGNED, being each of the original subscribers to the capital stock hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof and supplementary thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals this 25th day of January, A.D. 1929.

E. E. Craig (L.S.)
A. L. Raughley (L.S.)
M. S. Cook (L.S.)

In the presence of:

C. H. Jarvis
as to all

STATE OF DELAWARE)
: ss:
COUNTY OF KENT)

BE IT REMEMBERED, that on this 25th day of January, A.D. 1929, personally came before me C. H. JARVIS, a Notary Public for the State of Delaware, E. E. CRAIG, A. L. RAUGHLEY and M. S. COOK, parties to the foregoing certificate of incorporation, known to me personally

(Eleventh page of Original Certificate of Incorporation as filed and recorded January 25, 1929)

[fol. 66] to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively, and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

C. H. JARVIS
Notary Public.

[fol. 67]

GOVERNMENT'S EXHIBIT 28

BY-LAWS

ARTICLE I.

Name and Seal

Section 1. *Name.* The name of this corporation is

PAN AMERICAN-GRACE AIRWAYS, INC.

Section 2. *Seal.* The corporate seal shall be in the form of a circle and shall contain the words "PAN AMERICAN-GRACE AIRWAYS, INC., CORPORATE SEAL, DELAWARE 1929."

ARTICLE II.

Location

Section 1. *Delaware.* The principal office of the corporation in the State of Delaware, shall be at No. 1921 Dover

Green, in the City of Dover, Kent County, and the name of the resident agent in charge thereof shall be United States Corporation Company.

Section 2. *Elsewhere.* The corporation may also have an office or offices at such other place or places as the Board of Directors may from time to time appoint or the business of the corporation may require.

ARTICLE III.

Stockholders' Meetings.

Section 1. *Place.* All Stockholders' Meetings shall be held within or without the State of Delaware as determined by the Board of Directors.

Section 2. *Annual.* The Annual Meeting of the stockholders for the election of Directors, and for the transaction of such other business as may properly come before the meeting, shall be held commencing with the year 1930 on the second Tuesday of April of each year, at 1:30 o'clock, P.M. If such Tuesday be a legal holiday, the meeting shall be held on the next succeeding business day.

Section 3. *Special.* Unless otherwise provided by statute, special meetings of the stockholders may be called by the president, or by resolution of the Board of Directors, at any time, and must be called by the President or Secretary at the written request of a majority of the Directors, 2114[

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[fol. 68] or by the owners of record of twenty per cent (20%) of the outstanding capital stock of the corporation. Such request must state the purpose of the meeting. The business of special meetings shall be confined to that stated in the notice and incidental matters germane thereto.

Section 4. *Notice.* Notice of all meetings of stockholders shall be mailed to each stockholder of record, at his address appearing on the books of the corporation, at least ten (10) days before the date of the meeting. Notice may

be given personally, by telephone or by telegraph, in which case, one (1) days' notice shall be sufficient. Meetings may be held without notice if every stockholder shall be present in person or by proxy or those absent shall waive notice in writing.

Section 5. *Quorum.* At all meetings of the stockholders, except where otherwise provided by law, or by these By Laws, the holders of a majority of the capital stock issued and outstanding, present in person or by proxy, shall be requisite to, and shall constitute a quorum. If a quorum shall not be present, a majority in interest of the stockholders present, may adjourn from time to time, and from place to place, without other notice than by announcement at the meeting. At any such adjourned meeting at which a quorum shall be present, any business may transacted which might have been transacted at the meeting as originally called.

Section 6. *Voting.* At all meetings of the stockholders, each stockholder shall be entitled to cast one vote in person or by proxy for each share of stock standing registered in his name on the books of the corporation at the time of the closing of the transfer books for the meeting. Except where otherwise provided by law, or by these By-Laws, a majority vote of all stockholders present in person, or by proxy, shall be determinative of all questions, except in election of Directors where plurality vote shall govern. Interest of a stockholder in any question shall not disqualify him from voting thereon, or in any way invalidate such vote. Proxies must have been granted not more than three years prior to the stockholders' meeting, at which they are used. No stock shall be voted on at any election which has been transferred on the books of the Corporation within twenty (20) days next preceding such election.

Section 7. *Stock List.* A full list of the stockholders entitled to vote at the ensuing election, arranged in alphabetical order, with the residence of each, and the number of shares held by each, shall be prepared by the Secretary and filed in the office where the election is to be held, at least ten (10) days before every election, and shall at all

times during the usual hours of business, be open to the examination of any stockholder. Such list shall be produced and kept at the time and place of election during the whole time thereof.

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ARTICLE IV.

Directors.

Section 1. *Number and Powers.* The Board of Directors shall consist of eight (8) members. The Board may increase and reduce the number of its members from time to time, provided that the number at no time shall be less than four (4). The Board shall elect officers of the corporation, and shall have general control and management of all the property, business and affairs of the corporation, with authority (without consent of the stockholders of the corporation, except where specifically required by law) to exercise and carry into effect all the purposes for which the corporation is organized and all the powers vested in this corporation by law.

Section 2. *Election, Tenure, Removal and Vacancies.* Directors shall be elected annually at the Annual stockholders' Meeting, and shall, unless sooner removed or disqualified, hold office until others are chosen and qualified in their stead. Directors may be removed at any time with or without cause, by a vote of the stockholders holding at at least two-thirds of the issued and outstanding stock, at any stockholders' meeting. Vacancies occurring the Board of Directors by reason of death, resignation, retirement, disqualification, removal from office or otherwise, and additional Directorships created by an increase in the Board, may be filled either by the stockholders or by the unanimous vote of the Directors remaining or then in office.

Section 3. *Meetings.* The Board of Directors may hold their meetings within or without the State of Delaware, as they see fit. The Annual Meeting for the election of officers and for the transaction of such business as may be deemed

desirable by the Directors present, shall be held immediately following the Annual Stockholders' Meeting. Special meetings may be called by the President at any time, and shall be called by the President or Secretary on the written request of two Directors. Such request shall state the purpose of the meeting. Stated meetings of the Board may be held at such time and place, without notice or, on such notice as the Board may from time to time prescribe.

Section 4. *Notice.* Notice of all meetings of the Directors, except stated meetings, shall be mailed to each Director at his address appearing on the books of the corporation, at least two (2) days before the date of the meeting. Such notice may be given personally, or by telephone, or telegraph, in which case, one (1) days' notice shall be sufficient. No notice shall be required of meetings at which every Director shall be personally present; or of which notice has been waived by those absent either before or after the meeting.

Section 5. *Quorum and Voting.* At all meetings of the Board of Directors, a majority of the Directors shall be

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[fol. 70] necessary and sufficient to constitute a quorum. Each Director sholl be entitled to one vote. Majority vote of those present, shall govern, except where otherwise provided by laws, or by the Certificate of Incorporation, or by these By-Laws.

ARTICLE V.

Officers

Section 1. *Titles, Qualifications and Terms of Office.* The Executive Officers of the corporation shall be President, one or more Vice Presidents and one or more Assistant Vice Presidents as the Board of Directors may from to time to time determine; Secretary, Treasurer, Comptroller, and such number of Assistant Treasurers, Assistant Secretaries and Assistant Comptrollers as the Board may from time to time determine. The President must be a Director of the corporation. The same person may hold any two

offices, except the offices of the President and Vice President, Secretary and Assistant Secretary, or Treasurer and Assistant Treasurer. Each of the officers of the corporation shall hold office until the annual meeting of the Board of Directors next succeeding his election or until his sooner resignation or removal by the Board of Directors as provided in Section 10 of this Article.

Section 2. *Other Officers. Delegation.* The Board may appoint such other officers and agents as it may deem necessary, who shall have such title and authority, and perform such duties as from time to time may be prescribed by the Board. The Board may also, in the absence of any officer, or for any reason that it may deem sufficient, delegate the powers and duties of any officer to any other officer, or to any director.

Section 3. *President.* In addition to the duties herein elsewhere specified, the President shall be the chief executive officer and head of the corporation. He shall, subject to the control and supervision of the Board of Directors, have the general supervision, management and control of the business, property, and affairs of the corporation. He shall preside at all meetings of the Stockholders and Directors, at which he may be present.

Section 4. *Vice-Presidents.* In addition to the duties herein elsewhere specified, the Vice-President or Vice-presidents shall be vested with all the powers and shall perform the duties of the President in his absence or disability, and such other duties as may be assigned to him or them by the Board.

Section 4a. *Assistant Vice Presidents.* The Assistant Vice Presidents, if and when elected, shall have and perform the same duties as the Vice President, subject, however, to the discretion of the latter, and subject always to the orders of the Board.

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[fol. 71] Section 5. *Secretary.* In addition to the duties herein elsewhere specified, the Secretary shall keep the minutes of all meetings of the Stockholders and of the

Board of Directors. He shall be the custodian of the Corporate Seal and of the Stock-Books and records of the corporation. He shall prepare and file the stock list required by Section 7 of Article III of these By-Laws. He shall, when authorized, affix the corporate seal to instruments requiring the same and attest the same by his signature. He shall be sworn to the faithful discharge of his duties.

Section 6. *Assistant-Secretary.* The Assistant Secretary, if, and when elected, shall have and perform the same duties as the Secretary, subject, however, to the discretion of the latter, and subject always to the orders of the Board.

Section 7. *Treasurer.* In addition to the duties herein elsewhere specified, the Treasurer shall have the custody of all the corporate funds and securities, and shall keep full and accurate account of receipts and disbursements in books belonging to the corporation. He shall deposit all money in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors. He shall pay out the funds of the corporation as may be ordered by the Board of Directors and by the proper officers of the corporation, taking proper vouchers for such disbursements. He shall render a report and account of all of his transactions, and of the financial condition of the corporation whenever so required by the President or Board of Directors. He shall, if required, give bond in such form and amount as the Board may require.

Section 8. *Assistant Treasurer.* The Assistant Treasurer, if and when elected, shall have and perform the duties as the Treasurer, subject, however, to the direction of the latter, and subject always to the orders of the Board.

Section 8a. *Comptroller.* The Comptroller shall have general control, charge and supervision of the accounts of the corporation and all branches thereof. He shall see that the corporation's subsidiaries keep proper accounts, and that all accounts (including those of subsidiaries) are properly audited from time to time.

Section 8b. *Assistant Comptroller.* The Assistant Comptroller, if and when elected, shall have and perform the same duties as the Comptroller, subject, however, to the direc-

tion of the latter, and subject always to the orders of the Board.

Section 9. *Vacancies.* If any office becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, the Directors may choose a successor or successors, who shall hold office for the unexpired term in respect of which such vacancy occurs.

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[fol. 72] Section 10. *Removals.* Any officer or agent of the corporation may be removed at pleasure by a vote of not less than a majority of the entire Board of Directors at any meeting. The President, Vice President, or other officer may, at any time, remove from office, any subordinate officer or agent whom he has appointed.

Section 11. The President or any Vice President and the Secretary or any Assistant Secretary shall be authorized and empowered in the name and as the act and deed of the corporation to name and appoint general and special agents, representatives and attorneys to represent the corporation in the United States or in any foreign country or countries, and to prescribe, limit and define the powers and duties of such agents, representatives and attorneys, and to make substitution, revocation or cancellation in whole or in part of any power or authority conferred on any such agent, representative or attorney. All powers of Attorney or other instruments under which such agents, representatives or attorneys shall be so named and appointed, shall be signed and executed by the President or any Vice-President, and by the Secretary or any Assistant Secretary, and the corporate seal shall be affixed thereto. Any substitution, revocation or cancellation shall be signed in like manner, provided always that any agent, representative or attorney when so authorized by the instrument appointing him may substitute or delegate his powers in whole or in part and revoke and cancel such substitutions or delegations. No special authorization by the Board of Directors shall be necessary in connection with the foregoing, but this By-Law shall be deemed to constitute full

and complete authority to the officers above designated to do all the acts and things above referred to, and any and all such further acts and things as they may deem necessary or incidental thereto or in connection therewith.

ARTICLE VI.

Capital Stock

Section 1. *Amount.* The capital stock of the corporation shall be one hundred thousand (100,000) shares without par value.

Section 2. *Certificates.* Stock certificates shall be in such form as may be approved by the Board of Directors. They shall be signed by the President, or any Vice-President, and by either the Treasurer or any Assistant Treasurer, or by the Secretary or any Assistant Secretary, and shall bear the corporate seal.

Section 3. *Transfers.* Stock shall be transferable only on the books of the corporation by the person named in the Certificate, or by his legal representatives or attorney thereto, lawfully authorized in writing, and upon surrender of such certificate, accompanied by all transfer stamps required by law. Unless otherwise expressly provided by the laws of Delaware, the corporation shall be entitled to treat

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[fol. 73] the registered holder of any share as the absolute owner thereof, for all purposes whether or not it have express or other notice of any equitable or other interest or claim therein.

Section 4. *Closing of Books.* The Board of Directors may close the transfer books in their discretion for a period not exceeding twenty (20) days preceding any annual or special meeting of the stockholders, or the date appointed for the payment of any dividend.

Section 5. *Lost Certificates.* The Board of Directors may direct the issue of new certificates on such terms not in contravention of statute, as they may see fit, to replace any certificates lost or destroyed.

ARTICLE VII.

Signature.

Section 1. *Signatures.* Except as may be otherwise authorized by the Board of Directors from time to time, all deeds, mortgages, contracts and other agreements of the corporation, and all notes, checks, drafts, bills or orders for the payment of money and any and all other written obligations of the corporation, shall be signed by any two of the executive officers of the corporation, provided, however, that any one of such officers may endorse for deposit or collection, and provided also, that the signature of any executive officer attesting the corporate seal to any instrument shall be deemed one of the two required signatures within the meaning of this Section.

ARTICLE VIII.

Amendments.

Section 1. *By Stockholders.* The stockholders by the affirmative vote of a majority of the stock issued and outstanding, may, at any regular or at any special meeting, alter or amend these By-Laws, if notice thereof be contained in the notice of the meeting.

Section 2. *By Directors.* The Board of Directors, by the affirmative vote of a majority of its members, may alter or amend these By-Laws, provided that By-Laws so made or amended may be altered or repealed by the Directors or Stockholders.

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GOVERNMENT'S EXHIBIT 29

Minutes of the first meeting of the Board of Directors of Pan American-Grace Airways, Inc., held at 25 Broad Street, New York City, on the 21st day of February, 1929 at 11 A.M.

PRESENT:

Messrs. J. T. Trippe
Richard F. Hoyt
R. H. Patchin
William F. Cogswell

being all of the Board.

Mr. Trippe called the meeting to order and on motion duly made and seconded, was appointed Chairman of the meeting. On motion duly made and seconded, Mr. Cogswell was appointed Secretary of the meeting.

The minutes of the first meeting of the Incorporators of this Corporation, held January 25, 1929, and the minutes of the second meeting of the Incorporators of this Corporation, held February 21st, 1929, were read and approved.

On motion duly made and seconded, the following resolutions were duly adopted:

RESOLVED that the By-Laws which were adopted at the first meeting of the Incorporators be, and the same hereby are, approved and adopted as the By-Laws of this Corporation.

RESOLVED that the seal, an impression of which is affixed in the margin hereof, be, and the same hereby is, adopted as the seal of this Corporation.

RESOLVED that the form of stock certificate presented at this meeting, be, and it hereby is, approved and adopted as the stock certificate for the capital stock of this Corporation, and that a specimen thereof be inserted in the Minute Book of this Corporation following the minutes of this meeting.

RESOLVED that the Treasurer or other officers of [fol. 75] this Corporation be, and they hereby are, authorized and directed to pay from the corporate funds the expenses incident to the organization of this Corporation.

Nominations for officers of the corporation for the term ending with the next annual stockholders' meeting were called for, and nominations having been made and ballot having been duly had, the following persons were unanimously elected to the offices set before their respective names:

Vice-President	J. T. Trippe
Vice-President	R. H. Patchin
Treasurer	P. H. Caine
Secretary	William F. Cogswell

The Chairman stated that W. R. GRACE & CO. and the AVIATION CORPORATION OF THE AMERICAS had each offered to purchase at par for cash one-half of the authorized capital stock of PAN AMERICAN-GRACE AIRWAYS, INC., if, as and when issued.

On motion duly made and seconded, it was unanimously

RESOLVED that the subscriptions of W. R. Grace & Co. and Aviation Corporation of the Americas to purchase one-half each of the capital stock of this Corporation at par of One Hundred Dollars ($100) per share be, and they hereby are, accepted, and that the Secretary be, and he hereby is, directed to call all of the said subscriptions for payment at once.

RESOLVED that the officers of this Corporation be, and they hereby are, authorized and directed to issue Five Thousand (5,000) shares of the capital stock of this Corporation to W. R. Grace & Co. and Five Thousand (5,000) shares of the capital stock of this Corporation to the Aviation Corporation of the Americas, and to deliver to the same duly executed certificates for the said shares in exchange [fol. 76] for the payment of subscriptions, as above.

On motion duly made and seconded, it was unanimously

RESOLVED that GRACE NATIONAL BANK OF NEW YORK be and hereby is designated as a depositary of the funds of this Corporation; and further

RESOLVED that any two of the following officers, viz: President, any Vice-President, Secretary, and or Treasurer, be and they hereby are authorized from time to time, for and on behalf of this Corporation, to sign checks, drafts or orders for the payment or withdrawal of funds of this Corporation; and further

RESOLVED that said Bank be and hereby is authorized to pay any and all said checks, drafts or orders drawn on the account of this Corporation with said Bank and signed as above provided, including such as may be drawn to the order or endorsed in favor of the officer signing and/or endorsing the same; and further

RESOLVED that the Secretary of this Corporation be and hereby is authorized and directed to certify to said Bank under the seal of this Corporation, a copy of these resolutions and to certify, from time to time, to said Bank the names, and to deliver to said Bank the specimen signatures of the persons at the time of such certification holding the respective offices hereinabove mentioned; and further

RESOLVED that until said Bank shall receive a certificate under the seal of this Corporation as to the expiration or termination of office of any person so certified to be an officer of this Corporation, said Bank may rely absolutely upon the authority of such person to sign as such officer as herein provided; and further

RESOLVED that these resolutions shall continue in force until formally rescinded and written notice of such rescission filed with said Bank.

[fol. 77] RESOLVED that Messrs. W. F. Cogswell, R. F. Hoyt, R. H. Patchin and J. T. Trippe, Directors of this Corporation, be and each of them is hereby severally authorized, empowered and directed, as agent for this Corporation, or any one of them acting alone, in the name and on behalf of this Corporation, and under its corporate seal or otherwise, to make, sign, execute, acknowledge, to affix the seal of this Corporation to, and to deliver to the official or officials of the Post Office Department of the United States Government authorized to receive the same, a bid or proposal for the transportation of United States mail by air, for a term of ten years, from April 1, 1929, or such subsequent date as may be ordered by the Postmaster General, on the route from Cristobal, Canal Zone, by Buenaventura and Tumaco, Colombia, Esmeraldas and Guayaquil, Ecuador, Talara, Trujillo, Lima, Lomas and Mollendo, Peru, Arica, Iquique, Antofagasta, Caldera and Coquimbo, to Santiago, Chile, and return in accordance with an existing advertisement for bids or proposals for the transportation of United State mail over such route, at such rate as such agents, or any one of them, may determine, and that each of said agents, or any one of them acting alone, be and he hereby is authorized, empowered and directed, to deposit with such bid or proposal such bonds or other security as may be required and to do all such acts and things, and to execute any and all such instruments and documents as he may deem necessary, or advisable in connection with said bid or proposal, and the submission of same, and to affix the seal of the corporation to any such instrument as may be required, and that each of said agents, or any one of them acting alone, or the Secretary of this Corporation, be and he hereby is authorized, empowered and directed, to attest the seal of the Corporation so affixed to any such instrument; and

RESOLVED FURTHER that the proper officer or officers of this Corporation be and they hereby are authorized, empowered and directed to procure for

submission with the aforesaid bid or proposal such surety bond or other security as may be required; and

[fol578] On motion duly made and seconded, it was unanimously:

RESOLVED that THE COMMERCIAL NATIONAL BANK AND TRUST COMPANY OF NEW YORK be and hereby is designated as a depositary of the funds of this Corporation; and further

RESOLVED that any two of the following officers, viz: President, any Vice-President, Secretary, and or Treasurer, be and they hereby are authorized from time to time, for and on behalf of this Corporation, to sign checks, drafts or orders for the payment or withdrawal of funds of this Corporation; and further

RESOLVED that said Bank be and hereby is authorized to pay any and all said checks, drafts or orders drawn on the account of this Corporation with said Bank and signed as above provided, including such as may be drawn to the order or endorsed in favor of the officer signing and or endorsing the same; and further

RESOLVED that the Secretary of this Corporation be and hereby is authorized and directed to certify to said Bank under the seal of this Corporation a copy of these resolutions and to certify, from time to time, to said Bank the names, and to deliver to said Bank the specimen signatures of the persons at the time of such certification holding the respective offices hereinabove mentioned; and further

RESOLVED that until said Bank shall receive a certificate under the seal of this Corporation as to the expiration or termination of office of any person so certified to be an officer of this Corporation, said Bank may rely absolutely upon the authority of such person to sign as such officer as herein provided; and further

RESOLVED that these resolutions shall continue in force until formally rescinded and written notice of such rescission filed with said Bank.

On motion duly made and seconded, the following resolution was adopted:

[fol: 79] RESOLVED FURTHER that in the event a contract for the transportation of mail by air is awarded to this Corporation upon the aforesaid bid or proposal, each of said agents, or any one of them acting alone, be and he hereby is authorized, empowered and directed to execute, sign and deliver, in the name and on behalf of this Corporation, and under its corporate seal, or otherwise, the formal contract prescribed by the Postmaster General or the Post Office Department of the United States Government, and to deposit with the United States Government such surety bond or other security as may be required to secure the performance of such contract.

On motion duly made and seconded, the following resolution was unanimously adopted:

WHEREAS, this Corporation heretofore authorized the submission to the Post Office Department of the United States Government of a bid or proposal for carrying mail on Air Mail Route from Cristobal, Canal Zone, by Buenaventura and Tumaco, Colombia, Esmeraldas and Guayaquil, Ecuador, Talara, Trujillo, Lima, Lomas and Mollendo, Peru, Arica, Iquique, Antofagasta, Caldera and Coquimbo, to Santiago, Chile, and return: and

WHEREAS, this Corporation has authorized the deposit with such bid or proposal of such bond or other security as may be required as security for the performance by this Corporation of all of the conditions and stipulations in said bid or proposal: and

WHEREAS, this Corporation intends to deposit with W. Irving Glover, the Second Assistant Postmaster

General, certain bonds notes in the principal sum of $25,000 as security for the performance by this Corporation of all of the conditions and stipulations in the aforementioned bid or proposal; and

WHEREAS, it is desired to appoint the proper bond approving officer representing the United States Government, and his successors in office, as attorney for this Corporation, for and in the name of this Corpo- [fol. 80] ration, to collect or to sell, assign and transfer such bonds notes in case of any default in the performance of any of the conditions and stipulations of the aforementioned bid.

RESOLVED that W. Irving Glover, Second Assistant Postmaster General, and his successors in office, be and each of them is hereby constituted and appointed attorney for this Corporation for and in the name of this Corporation to collect or to sell, assign, and transfer said bonds notes aggregating $25,000 to be deposited with the said United States Government as security for the faithful performance of any and all of the conditions or stipulations of the aforementioned obligation, and that this Corporation agree, and it does hereby agree, that in case of any default in the performance of any of the conditions and stipulations of said undertaking, its said attorney shall have full power to collect said bonds notes or any part thereof, or to sell, assign and transfer said bonds notes or any part thereof, without notice at public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right of redemption being waived, and to apply the proceeds of such sale or collection, in whole or in part, to the satisfaction of any damages, demands or deficiency arising by reason of such default, as its said attorney may deem best. And this Corporation for itself, its successors and assigns, ratifies and confirms whatever its said attorney shall do by virtue of the aforementioned powers; and

RESOLVED FURTHER that Messrs. W. F. Cogswell, R. F. Hoyt, R. H. Patchin and J. T. Trippe, Directors

of this Corporation, be and each of them hereby is authorized, empowered and directed, as agent, any one of them acting alone, to execute and deliver, in the name and on behalf of this Corporation, and under its corporate seal, one or more powers of attorney and agreements embodying all the powers, terms and provisions set forth in the foregoing resolution, and that Mr. W. F. Cogswell, the Secretary of this Corporation, be and he hereby is authorized, empowered and directed to affix the seal of this Corporation to such one or more powers of attorney and agreements and to attest the same.

[fol. 81] On motion duly made and seconded, it was unanimously

RESOLVED that the officers of this Corporation be and they hereby are authorized to purchase and pay for $35,000 in par value Liberty Bonds.

On Motion duly made and seconded, it was unanimously

RESOLVED that the officers of this Corporation be and they hereby are authorized to purchase and pay over at par for cash all of the outstanding stock of Peruvian Airways Corporation and Chilean Airways Corporation.

There being no further business, the meeting adjourned.

/s/ J. T. Trippe
Chairman of the Meeting

/s/ W. F. Cogswell
Secretary of the Meeting

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GOVERNMENT'S EXHIBIT 30

February 28, 1929.

Pan Am
Grace

The Honorable,
The Postmaster General,
Washington, D. C.

Sir:

Pan American-Grace Airways, Inc., a Delaware Corporation, was organized to operate an air transport service between Cristobal, C.Z., via the West Coast of South America, to Santiago, Chile, Buenos Aires, Argentina, and Montevideo, Uruguay.

The Company is jointly owned by Aviation Corporation of the Americas, a Delaware Corporation, which also holds all the capital stock of Pan-American Airways, Inc., and W.R. Grace & Co., a Connecticut Corporation, which also holds the capital stock of the Grace Steamship Company, the Panama Mail Steamship Company as well as other Grace transportation, commercial and industrial enterprises throughout the West Coast of South America.

Pan American-Grace Airways, Inc., owns the entire capital stock of the Peruvian Airways Corporation and of the Chilean Airways Corporation. Its authorized capital stock is $1,000,000 divided into 10,000 shares of $100 par value. Statement of our bankers is attached herewith (a). The capital structure of Pan American-Grace Airways, Inc., has been limited to 10,000 shares to reduce qualification

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[fol. 83] and similar foreign taxes—additional funds as required being advanced through loans as is the case with

Pan American Airways, Inc. The resources and reputation of Aviation Corporation of the Americas and W. R. Grace & Co., joint owners of Pan American-Grace Airways, Inc., vouch for the fact that a type of air transport service will be rendered between the Canal Zone and Argentina commensurate with the dignity of the United States in this territory.

The rapidly expanding net of foreign subsidized air transport enterprises in South America (b), nearly two years ago led Pan American Airways, Inc. to carefully survey the investment requirements and estimated operating results of a service between the Canal Zone, Chile, and Argentina.

The attitude of the Administration, as evinced by your desire as Postmaster General to see American Air Transport service established on the West Coast at the earliest opportunity strengthened the decision to proceed. Published statements of the Presidents and other members of his Cabinet and the appointment of the Inter-Departmental Committee to further this general program, confirmed the Government's position.

The results of its operation of the first American international air mail and passenger route between Florida and Cuba, as well as the results of its West Coast survey indicated to Pan American Airways that conditions did not

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[fol. 84] justify its installing air transport service in this distant territory even with a possible additional revenue of a United States air mail contract netting $2 per flying mile. (This rate being considerably lower than that received by subsidized foreign companies operating in this territory. (c))

The air transport operations between the United States and Cuba had developed heavy direct expenses not encountered in domestic service. Among other items may be mentioned:

(a) Clearance expenses aggregating 36 cents per flying mile.

(b) Airway construction and maintenance, including airports, intermediate fields, radio aids, night lighting, etc.—facilities usually provided by the Federal or municipal governments in the domestic service—approximating on a three round trips per week schedule, over 50 cents per mile.

(c) Costs of maintaining adequate representatives in foreign countries, expenses of maintaining local national companies and increased costs of transporting and maintaining efficient American flying and ground personnel.

(d) High duties and delays in importing technical material, plus the always present increased cost of conducting a public utility in foreign countries.

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[fol. 85] W. R. Grace & Co. also began investigating the possibility of installing air service along the West Coast of South America, the territory covered by its existing steamship and rail service and other commercial enterprises.

By merging their interests in Pan American-Grace Airways, Inc., Pan American and Grace came to the conclusion that they could operate on the West Coast of South America more economically than could any other air transport company, including the French and German companies.

All the facilities of the Grace organizations' sixty or more branch houses—their personnel, their radio-equipped steamships plying along the coasts, the marine equipment at all ports, the traffic organization and the widespread commercial contacts—are available to the continued development of our enterprise.

Pan American and Grace interests, with the support of the Department of State, together proceeded to attack the many obstacles in the path of extending an American Air Transport Service along the West Coast to Valparaiso and over the Andes to Buenos Aires and Montevideo.

Qualified representatives were assigned to the countries concerned and in addition, to Venezuela and Brazil. French

air transport interests were active in Argentina, Chile, and Peru. German interests were already well entrenched in Colombia, Ecuador, Peru, Bolivia, and Argentina. Efforts

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[fol. 86] were therefore directed—

(a) To prevent the securing of additional monopolistic concessions pending at many points on the part of these foreign interests.

(b) In securing adequate operating rights and legal standing and where possible international mail contract in all these countries.

In carrying out this plan, initiated eighteen months ago, and developed at very considerable expense, we believe we have been entirely successful.

We have arranged for service between Cristobal, C.Z., and Guayaquil, Ecuador, through sub-contract to Pan American Airways, Inc., our affiliated company, which already holds foreign mail contracts with your Department in the Caribbean, in Mexico, and along the North Coast of South America.

Pan American Airways, as the result of many months efforts, is qualified and bonded to operate in the Canal Zone under the executive orders dated September 28, 1928, and February 18, 1929. (e),

In Panama, Pan American Airways holds adequate operating rights. The company already operates into David and Panama City, important points in the Republic. A long term exclusive mail contract is now pending and about to be executed.

For over two years, Pan American Airways has been attempting to secure operating permits from the Colombian Government. In this connection conferences have been had with executives of the SCADTA, the German controlled

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[fol. 87] Colombian Air Transport Company, over a period of years, in New York, in Berlin and Colombia. Through these conferences, an agreement was finally reached with SCADTA whereby Pan American Airways enjoys the exclusive use of SCADTA's technical facilities on the coast of Colombia. These facilities built over a period of years at a cost of over a quarter of a million of dollars are essential to the early operation of the dangerous section of this route owing to the prevalent fog and extreme tide conditions. (f) and (g) It is expected that Pan American-Grace Airways will have acquired proper facilities equal to those now owned by SCADTA at the points of call between the Canal Zone and Ecuador, a distance of 900 miles, would require at least eight months.

Through our 100% owned subsidiary, Peruvian Airways Corporation, we have secured in the face of strenuous German competition in Peru and Ecuador over a period of many months, broad operating permits and an exclusive international air mail contract. (h) Operations were inaugurated in September, 1928. Regular transport and air mail service is now maintained between Guayaquil, Ecuador, and Mollendo, Peru, near the Chilean frontier, a distance of 1,490 miles, and over 62% of the entire distance between Cristobal and Mollendo.

In Chile, through a 100% owned subsidiary Chilean Airways Corporation, we have for many months been negotiating for adequate operating rights and legal standing. The French Air Transport Company, the Aeropostale, already holds broad concessions and mail contracts to the east and to Europe, which they were attempting to extend northward

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2197 cc

[fol. 88] through Peru and Ecuador to the Panama Canal. (i) The American Ambassador has been advised by the Chilean Government that permission, including the temporary use of Chilean military airports, would be formally granted this week to Chilean Airways Corporation, permitting the prompt extension of our through service to Santiago. (j)

With reference to the Postmaster General's option to require extension of this service to Argentina, we are

negotiating with the Argentine Government for an adequate concession. An Assistant Vice-President of Pan American Airways, Inc., J.D. Sommers, is in Buenos Aires where he is assisted by distinguished Argentine counsel. They report negotiations progressing favorably.

SUMMARY

Summarizing, our present position and existing service we would point out that:

1. We are now operating 62% of the entire route between the Canal Zone and Molleno, Peru, carrying passengers and international mail under exclusive contract.

2. We are in a position, now that obstacles at Colombia have been removed and airway facilities assured, to promptly operate the intermediate section between the Canal Zone and Guayaquil as well as to extend to Santiago.

3. Foreign countries operating in this territory are receiving a direct subsidy in excess of $2.10 per mile, exclusive of air mail revenues. (k) Pan American-Grace Airways, Inc., and subsidiary operating com-

2197 cc

[fol. 89] panies, is now operating at a heavy loss. To develop and furnish the type of transport service in the international field maintained by its affiliated company, Pan American Airways, Inc., the additional revenue from the transportation of American mail is essential, without the cooperation of the Grace organization, along the route, and the benefit of the experience and engineering assistance of Pan American Airways, Inc., including the services of Colonel Charles A. Lindbergh, Technical Adviser—all available to Pan American-Grace Airways, Inc.—we maintain that no American Air Transport Company could economically survive in this territory. Furthermore, Pan American-Grace Airways, Inc., is in actual operation and we maintain that no other company, with the exception of the

Aeropostale, the French National Air Transport monopoly, that might consider bidding under your advertisement for air mail service on the West Coast, is in a position to attempt to render air mail service on this route during the year 1929.

The Governor of the Canal Zone, and American Embassies and Consulates in the countries concerned are thoroughly familiar with the position of our company and its operations. We believe they will be glad to

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[fol. 90] substantiate, through the Department of State, the statement set forth herein.

Respectfully submitted,

PAN AMERICAN-GRACE AIRWAYS, INC.

By .....
Agent and Director.

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P A A—5520
C

[fol. 91]

GOVERNMENT'S EXHIBIT 31

A special meeting of the Board of Directors of PAN AMERICAN-GRACE AIRWAYS, INC. was held at the office of the Pan American Airways, Inc., No. 122 East 42nd Street, New York City, N.Y. on the 29th day of March, 1929 at 12:00 o'clock noon.

PRESENT: Messrs. R. F. Hoyt
J. T. Trippe
R. H. Patchin
William F. Cogswell

being all of the Board.

Mr. Trippe called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr. Cogswell, Secretary of the Corporation, acted as Secretary of the meeting.

The minutes of the first meeting of the Board of Directors, held on the 21st day of February, 1929, and of a special meeting of the Board of Directors, held on the 2nd day of March, 1929, were read and approved.

On motion duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED that the proper officers of this Corporation are hereby authorized to enter into an agreement in the name and on behalf of this Corporation with Pan American Airways, Inc. for the subletting to Pan American Airways, Inc. of service on so much of Foreign Airmail Route No. 9 as extends from Cristóbal, Canal Zone, to Guayaquil, Ecuador, or at the option of this Corporation to Talara, Peru.
>
> FURTHER RESOLVED that compensation for such service shall be at the rate of One Dollar Eighty Cents ($1.80) per mile each way, plus the rate of Ninety Cents ($.90) per pound per one thousand miles, or pro rata thereof, for greater or less mileage for any excess [fol. 92] mails required to be carried in the same aircraft, payment to be made as and when received by this Corporation from the Post Office Department.
>
> FURTHER RESOLVED that said agreement shall extend for a period of one year with an option by this Corporation to cancel it at any time on sixty days' notice.

On motion duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED that this Corporation purchase at face value, plus interest, from W. R. Grace & Co. and Aviation Corporation of the Americas the promissory notes of Peruvian Airways Corporation, and that this Corporation thereupon cancel said notes and carry the amount thereof as an indebtedness on open account with that corporation.

The Chairman stated to the meeting that Pan American Airways, Inc. had committed itself for the purchase of

three Sikorsky Amphibians with the idea of using them on the northern part of Foreign Airmail Route No. 9 under a subletting agreement with this Corporation. He also stated that this Corporation should be responsible for the purchase of the three Sikorsky Amphibians just mentioned. Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED that this Corporation will be responsible for three Sikorsky Amphibians ordered by Pan American Airways, Inc. in anticipation of performing service over the northern part of said route.
>
> FURTHER RESOLVED that if Pan American Airways, Inc. should use three Sikorsky Amphibians on the northern part of F.A.M. Route No. 9, the respon-[fol. 93] sibility of this Corporation will be fulfilled by purchasing said three Sikorsky Amphibians at their depreciated value.

There being no further business, the meeting adjourned.

/s/ J. T. TRIPPE
Chairman of the Meeting

/s/ W. F. COGSWELL
Secretary

[fol. 94]

GOVERNMENT'S EXHIBIT 32

EXHIBIT "C-1"

PAN AMERICAN-GRACE AIRWAYS, INC.

I lunched today with Richard Hoyt. We agreed that we would authorize the employment of MacGregor as Executive Vice-President of this Company at a salary of $18,000. per year and that we would ask him as promptly as possible to lay out an organization and plan of action.—this to be submitted to the Executive Committee for their modification or approval. I stated that I would like to have an opportunity of discussing it with him in case there was a failure on the part of our men to agree on a line of action.

I indicated that I hoped MacGregor would favor the naming of Jacob as one Vice-President and of Harris as another. We decided that MacGregor should be instructed to use the Grace organization in South America as far as he found it practicable to use it in the same way as he was to use the Pan American Airways in New York as far as he found it practicable to do so.

It was understood that he would say to Mr. Trippe and I would say to Mr. Patchin that it was to be understood that MacGregor was to run this business in the same way as Trippe was running the Pan American Airways, that he was to report to his Executive Committee but that all actual administrative business responsibility should be placed directly on MacGregor's shoulders and that he should be given all the prerogatives necessary to the successful carrying of this responsibility.

D.S.I.

April 3, 1929.

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[fol. 95] A special meeting of the Board of Directors of PAN AMERICAN-GRACE AIRWAYS, INC. was held at the office of the Pan American Airways, Inc., No. 122 East 42nd Street, New York City, N.Y., on the 8th day of April, 1929 at 5:00 o'clock P.M.

PRESENT: Messrs. R. F. Hoyt
J. T. Trippe
R. H. Patchin
William F. Cogswell

being all of the Board.

Mr. Trippe called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr. Cogswell, Secretary of the corporation, acted as Secretary of the meeting.

The minutes of a special meeting of the Board of Directors, held on the 29th day of March, 1929, were read and approved.

On motion duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED that the By Laws of this Corporation be and they hereby are amended in the following respects: The first sentence of Section 1 of Article V shall hereafter read—"The Executive Officers of the Corporation shall be President, one or more Vice Presidents and one or more Assistant Vice Presidents, as the Board of Directors may from time to time determine, Secretary, Treasurer, and such number of Assistant Treasurers and Assistant Secretaries as the Board may from time to time determine".
>
> There shall be inserted a new section to be numbered "4a" of Article V which shall read—"Assistant Vice Presidents—The Assistant Vice Presidents, if and when elected, shall have and perform the same duties as the [fol. 96] Vice President, subject, however, to the discretion of the latter, and subject always to the orders of the Board."

Mr. J. D. MacGregor was nominated as Vice President and General Manager and was unanimously elected. On motion duly made and seconded, it was

> RESOLVED that Mr. J. D. MacGregor's salary shall be at the rate of Eighteen Thousand Dollars ($18,000) per year, commencing April 9th, 1929.

Mr. Harold R. Harris was nominated as Vice President and was unanimously elected. The Secretary stated to the meeting that Mr. Harris's salary as Vice President of Peruvian Airways Corporation was at the rate of Nine Thousand Six Hundred Dollars ($9600) per year. On motion duly made and seconded, it was unanimously

> RESOLVED that Mr. Harris's salary from this Corporation and its subsidiaries shall be at the rate of $12,000 per year, commencing April 9th, 1929;
>
> FURTHER RESOLVED that so long as Mr. Harris is being paid his salary at the rate of $9600 per year by Peruvian Airways Corporation, his salary from

this Corporation shall be at the rate of $2400 per year, commencing April 9th, 1929.

Mr. Walter P. Jacob was nominated as Assistant Vice President and was unanimously elected. On motion duly made and seconded, the following resolution was adopted:

RESOLVED that Mr. Jacob's salary from this Corporation shall be at the rate of $8500 per year, commencing April 9th, 1929.

[fol. 97] On motion duly made and seconded, it was unanimously

RESOLVED that GRACE NATIONAL BANK OF NEW YORK be and hereby is designated as a depositary of the funds of this Corporation; and further

RESOLVED that any two of the following officers, viz: President, any Vice-President, any Assistant Vice President, Secretary, Treasurer, and/or Comptroller, be and they hereby are authorized from time to time, for and on behalf of this Corporation, to sign checks, drafts or orders for the payment or withdrawal of funds of this Corporation; and further

RESOLVED that said Bank be and hereby is authorized to pay any and all said checks, drafts or orders drawn on the account of this Corporation with said Bank and signed as above provided, including such as may be drawn to the order or endorsed in favor of the officer signing and/or endorsing the same; and further

RESOLVED that the Secretary of this Corporation be and hereby is authorized and directed to certify to said Bank under the seal of this Corporation, a copy of these resolutions and to certify, from time to time, to said Bank the names, and to deliver to said Bank the specimen signatures of the persons at the time of such certification holding the respective offices hereinabove mentioned; and further

RESOLVED that until said bank shall receive a certificate under the seal of this Corporation as to the

expiration or termination of office of any person so certified to be an officer of this Corporation, said Bank may rely absolutely upon the authority of such person to sign as such officer as herein provided; and further

RESOLVED that these resolutions shall continue in force until formally rescinded and written notice of such rescission filed with said Bank.

[fol. 98] On motion duly made and seconded, it was unanimously

RESOLVED that THE COMMERCIAL NATIONAL BANK AND TRUST COMPANY OF NEW YORK be and hereby is designated as a depositary of the funds of this Corporation; and further

RESOLVED that any two of the following officers, viz: President, any Vice President, and Assistant Vice President, Secretary, Treasurer, and/or Comptroller, be and they hereby are authorized from time to time, for and on behalf of this Corporation, to sign checks, drafts or orders for the payment or withdrawal of funds of this Corporation; and further

RESOLVED that said Bank be and hereby is authorized to pay any and all said checks, drafts or orders drawn on the account of this Corporation with said Bank and signed as above provided, including such as may be drawn to the order or endorsed in favor of the officer signing and/or endorsing the same; and further

RESOLVED that the Secretary of this Corporation be and hereby is authorized and directed to certify to said Bank under the seal of this Corporation, a copy of these resolutions and to certify, from time to time, to said Bank the names, and to deliver to said Bank the specimen signatures of the persons at the time of such certification holding the respective offices hereinabove mentioned; and further

RESOLVED that until said Bank shall receive a certificate under the seal of this Corporation as to the

expiration or termination of office of any person so certified to be an officer of this Corporation, said Bank may rely absolutely upon the authority of such person to sign as such officer as herein provided; and further RESOLVED that these resolutions shall continue in force until formally rescinded and written notice of such rescission filed with said Bank.

[fol. 99] There being no further business, the meeting adjourned.

/s/ J. T. TRIPPE
Chairman of the Meeting

/s/ W. F. COGSWELL
Secretary

[fol. 100]

GOVERNMENT'S EXHIBIT 33

W. R. Grace & Co.
New York

April 19, 1929.

MEMO. TO:
Mr. J. D. MacGregor.

Referring to your recommendations for Pan American-Grace Airways Inc. forwarded with your letter of April 16th to me, I think we ought to have before our Board meeting as much of an estimate as you can give of the cost of flying and ground equipment and the cost of operations.

This company has a capital of $1,000,000. which was estimated to be sufficient to equip it in every respect to carry out the contract. No provision has been made for increased capital, therefore, the operations and plant must be laid out within the limits of the present capital. We do not wish to increase the capital or to carry on an expansion as rapid as that of Pan American Airways.

Mr. Jacob prepared an estimate of investment in working capital which was the basis of the capitalization of the company at $1,000,000. and I think this should be adhered to in all plans and, of course, no commitment taken in excess thereof without approval by the Board.

With reference to your detailed recommendation, as previously stated I think that the New York office should be the head office and that it should be adequately staffed.

As you and Mr. Jacob are shortly to be absent at the same time I understand it is your idea that the controller should be in charge of the office.

I note that you recommend that the accounting to be

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RLA

[fol. 101] handled in the several sections by W. R. Grace & Co. be under the general supervision of a chief accountant and traffic manager located at the Canal Zone. If this means that the different sections are to forward their accounts to be consolidated at the Panama Canal I think a good deal of motion will be wasted and that it would be far better, in fact, indispensable, to have the chief accountant in New York. Complete accounts cannot be made up at the Canal because there will be large expenditures for equipment and supplies at New York and all of the mail revenue will be paid to the New York office. This being the case, I think the New York office is the only place for chief accountancy because it is the only point where all of the accounting reports can be concentrated for prompt monthly consolidation so that the directors can have a continuous picture of the operating results.

The only way in which the New York office as head office can keep in control of the business is to have all the separate sections report to New York and have the accounts and expenditures controlled from New York.

Sufficient copies of accounting reports should be sent to the Vice President in charge of operations at Cristobal to enable him to do his work intelligently throughout the area which it is ultimately determined as in his jurisdiction.

W. R. Grace & Co. will be glad to assign a first class man in each section to supervise all of the accounting

and to render the reports in the form adopted and approved by the Vice President and General Manager and the Board.

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10-26-54
RLA

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[fol. 102] With reference to the Canal Zone I feel that the arrangements for use of airports, repair shops and traffic facilities are desirable but as to sharing the cost or expense of a staff house I am a little doubtful. I do not think married employees care much about living in a staff house and there are sometimes difficulties.

The Board has decided that the service from Cristobal to Guayaquil should be sub-contracted to Pan American Airways only until Pan American-Grace can get rights of its own.

How long will it be before Pan American Airways contract is approved by the Congress at Panama?

My understanding is that there is now no obstacle to any American company obtaining operating rights in Colombia. I am not informed of the nature of the negotiations being carried on by Pan American Airways in Colombia or as to their duration, but I think that operating rights should be obtained by Pan American-Grace from the Colombian Government without delay. This can raise no question in the mind of the Colombian Government as between Pan American and Pan American-Grace, for the reason that Pan American does not propose to operate on the West Coast of Colombia but only on the Northern coast.

Any contract to carry Colombian mail South to Peru and other South American countries is negligible in importance for the volume is insignificant.

I assume the transfer of the West Coast landing rights from SCADTA can be readily arranged as these were obtained for the benefit of the jointly-owned Pan American-Grace company.

GR-83
10-26-54 6653A R. H. Patchin
RLA

[fol. 103]

GOVERNMENT'S EXHIBIT 34

Harbinger =38 to
PANAMA AGENCIES CO. CRISTOBAL 6.12.29

24.29

	1	38 of wednesday
		following is for H. J. Roig
	2	referring to 's letter No. 1
	3	Harris to
	4	MacGregor
		reference
	5	operation service
	6	canal to
	7	Guayaquil by
	8	Pan American Airways it would
	9	seem utmost importance
	10	in view of continued
	11	expansion by that
Ans.	12	company and
Harb. 38	13	probable shortage
	14	personnel
	15	and equipment
	16	that we take over
	17	service and have
	18	Sikorsky airplanes allocated
	19	to us at earliest possible moment
	20	sentence ends as one
	21	Sikorsky airplane in operation
	22	and one in
	23	reserve sufficient for
	24	weekly service large
	25	force should not be
	26	required sentence ends
	27	we think in principle
	28	our business
	29	must stand
	30	on its own
	31	feet and we

32 must be developing
33 our own operating
34 men who
35 give us their
36 entire time
37 and are responsible
38 us only
39 sentence ends
we feel (that)
40 it is in the
41 best interests of the
42 business to handle
43 this work
44 out of Panama
45 in the same way

(Mr. Cogswell)

(see page two)

G 5642

GR 126
10 26 54

[fol. 104

Harbinger 2738 to
PANAMA AGENCIES CO. CRISTOBAL C.Z. 29

46 that Harris
47 has handled
48 it out of
49 Lima sentence ends we think
50 it most important
51 to work out
Ans. 52 with MacGregor
Harb. 1 53 now a very
54 accurate operating
55 budget to be
56 sure that
57 each of the
58 three units are to be
59 put on a
60 paying basis.

61 from to
month
62 month and that
63 the men
64 in charge (of) the
65 units appreciate
66 that they have the
67 direct responsibility for
68 making their
69 unit pay
70 and that if they do not
71 do so we will
72 consider that they
73 have failed in their
74 task suggest that you
75 and MacGregor
76 indicate to the
77 head office here
78 the sense
79 in which you
80 want us (to) cable
81 Harris and
82 Jacob on this
83 point unless you
84 think it preferable to cable direct
85 sentence ends
due
86 Hambleton death
87 Trippe returned
88 New York sentence ends
89 as date of arrival
90 Panama uncertain
91 we will advise as soon as
92 definitely ascertained

(Mr. Cogswell)
G 5642A

[fol. 105]

GOVERNMENT'S EXHIBIT 35

harbinger 42 to PANAMA 6.13.29
24.29

1 42: following for Roig
2 we cabled MacGregor
3 Trippe does not want
4 carry passengers
5 while northern
6 route operated
7 by pan american airways sentence ends
8 while we are of opinion
9 it is probably
10 too soon to do so
11 nevertheless this is
12 additional argument
13 should take over
14 operation as soon as possible

Mr. Cogswell.
G 5638

GR-127
10 26 54

[fol. 110]

GOVERNMENT'S EXHIBIT 37.

PAN AMERICAN-GRACE AIRWAYS, INC.

2.2.A3

No. 2.

Cristobal, Canal Zone,
June 21st, 1929.

Mr. J. D. MacGregor,
Vice President & General Manager,
Pan American-Grace Airways, Inc.,
c/o W. R. Grace & Company,
Lima, Peru.

Lulsluti this is carbon of original letter previously sent.

W.R.

Dear Mr. MacGregor:

This will serve as a memorandum of matters discussed with you and Mr. Harris in connection with the preparation of an operating budget for our Company.

PERSONNEL:

Mr. Harris will be in charge of operations of the entire Line with headquarters at Cristobal. The Line will be divided into three divisions:

No. 1—from the Canal Zone to Guayaquil in charge of Mr. Gillespie as Flight Superintendent.

No. 2—covering the Line in Peru in charge of Mr. Travis as Flight Superintendent.

No. 3—covering the Line in Chile and an extension to Argentine in charge of Mr. Williams as Flight Superintendent.

It is estimated that we will require three Pilots in Chile including the Flight Superintendent, three in Peru including the Flight Superintendent, and two in the Canal Zone including the Flight Superintendent. We will require six mechanics to travel with the planes, that is, one with each

Ford and one with the Sikorsky. It is, of course, understood that not all of these will be required until all of the Fords are in operation. There will also be required two or three wasp mechanics for shop overhaul work and about fifteen
10/21/54 G 926
GR-148
[fol. 111] assistant mechanics and miscellaneous laborers.

OVERHAUL SHOPS:

These are suggested at Lima, Santiago and at the Canal Zone, although at the latter point we may be able to make some arrangements to share at least some of the facilities of the Pan American Airways. It was suggested that shop buildings would cost about $5,000. and the equipment about $15,000. at each point. The shop building item, however, is to be omitted at least for the present and we will use space in the rear of the hangars. The item of $15,000. for equipment is believed to be unnecessarily high and the actual cost of this item should work out substantially less. You indicated that the shop equipment required would consist of Universal metal work machinery, lathe, shaper, drill press and wasp repair equipment.

W. R. Grace & Company, as you know, controls the International Machinery Company, which has offices in Lima and Santiago, and which will be in a position to quote prices on shop equipment, and I think prices should be obtained from them as well as the Pan American Airways, and purchase made where they can be made the cheapest.

HANGARS:

These were suggested for Lima and Santiago and perhaps at one other point to be decided upon.

At the Canal Zone it is hoped that we will be able to arrange for space in the Pan American hangar.

Size of the hangar proposed is 100' by 100' by 18'. On the basis of a price which you secured from Rieter and Pineus of £575 CIF Callao, for a hangar 55' by 75' by 18'
GC-149 G927

[fol. 112] and price of $24,000. at which the Peruvian Government was negotiating for two hangars 100' by 200', it would seem as if we should be able to arrange for these at a cost of not over $12,000. erected. It was suggested that some saving in the original cost and maintenance might be effected by using adobe side walls. Before contracting hangars I think we should obtain competitive prices in the United States, England and Germany. W. R. Grace & Company, as you know, has the agency for Milliken Brothers, and I believe we could secure foreign prices thru our subsidiaries. The British Foreign Machinery Company, London, and Kiefer Helmke & Company, Hamburg. In case the U. S. price is practically the same as foreign prices, it should, of course, have the preference; if, however, there is a substantial difference, we should endeavor to use the less expensive equipment provided we can do so without violation of our Mail Contract.

FLYING FIELDS:

Guayaquil—It is understood that we can use the Government field by incurring a few minor expenses.

Peru—It is understood that we can use the Government fields and arrange to have them under our control by small expenditures on the fields not exceeding an average of $500. per field. A field of 140 acres at Lima can be purchased for about $20,000., but we are to endeavor to avoid this capital investment as long as possible.

Chile—We are to use the Government fields as long as possible, in the meantime, Mr. Hoyt, Mr. Trippe and I decided before I left New York that we would ask Mr. Metzner to quietly investigate available locations in such a way that it would not appear that either Pan American Air-

[fol. 113] ways or Grace were interested parties in order to get in hand, when needed, some suitable field near Santiago at a reasonable price. I would suggest that you discuss this with Mr. Metzner, and the same procedure incidentally might be followed with Mr. Redshaw in Lima.

PASSENGER AND SHORT STOP ACCOMMODATIONS:

At fields where short stops are made it was suggested that a Milliken portable sheet metal house, obtainable from local offices of W. R. Grace & Co., or a small thatch building each costing about $500. be arranged. It was indicated that 10 or 15 of these would be required. They would be as small as practicable to provide minimum passenger accommodations and storage for gasoline, oil and supplies. A watchman at a salary of $20. per month may be required at each of these places and it was suggested that he might live in the building. In that case, it may be necessary to provide outside under-ground gasoline storage and I think it will also be necessary that we find watchmen with little or no family.

At Lima and Santiago better passenger accommodations will probably be required, but here again we are to adhere to strictest economy. While it will, of course, be a short-sighted policy to have our accommodations too small, I believe it will be equally bad policy to be too far-sighted in this matter. Our passenger movement is not going to assume enormous proportions over night and we cannot afford to provide accommodations too far ahead of the trade. If we proceed on a moderate basis, I believe by the time larger passenger accommodations are required, our original facilities will be written off and we will, in the meantime, have saved interest and maintenance charges on idle

GR-151 G929

[fol. 114] capital for a period of years, and when larger passenger movement comes, we will have the income to provide better accommodations. You considered that at Guayaquil in addition to some passenger accommodations you would probably require a ramp to bring planes ashore which might cost as much as $5,000.

MOTOR CARS:

It was stated that you would require a Ford station wagon costing about $1200. at Guayaquil and Talara and

perhaps a car at Lima. My feeling is that we should only purchase cars where absolutely essential and then only when we have actual figures showing the comparative cost of owning cars and paying hire. As long as we have only a weekly service we are not going to have much active service for a car in most places. We will never-the-less have the constant expense of paying some one to run the car while interest and depreciation at a heavy rate will be adding materially to our operating cost.

It is my experience that when actual comparisons are made between the cost of owning a car and hiring one, it is surprising to find how often the figures strongly favor the latter course.

GENERAL:

It is understood that upon completion of this survey you and Mr. Harris will submit to the Directors a complete detailed budget showing total capital investment required for the service and an operating budget. It is likely that Mr. Vidal will be in Lima upon your return from Chile, and, if so, you will, I take it, find it convenient to avail of his assistance in preparing your actual budgets. These figures should be prepared on the ground so as to avoid

[fol. 115] any misunderstanding between you and Harris, and in order that points of doubt, which always arise at the last moment, may be immediately straightened out. No commitments are to be made until we have this complete picture, because if we go about it piece-meal, we are not only likely to get a non-standardized miscellaneous layout, but we are very likely to spend in the aggregate much more than originally contemplated. Moreover, it will be necessary to go over the whole lay-out with Mr. Trippe before going ahead, as it was impossible to do so before you left.

We should not, therefore, start in on any program covering the matters mentioned in this letter until the Directors have the whole program before them in its entirety so that they can decide how much is to be appropriated for the entire operation.

Preliminary estimates indicate a total cost with Fords considerably in excess of our mail revenue of $1.80 per mile, even working along the conservative sane and sound lines which have been followed by Peruvian Airways and which we desire to adhere to on the extended routes. Unless these estimates can be very materially reduced, therefore, the Company will show a heavy loss, which I am sure will not be satisfactory for any length of time and will not make for the best results in the long run. We cannot, in my opinion, rely upon reducing this cost by considering our depreciation and crash reserve excessive. While it certainly is to be hoped that experience will show them to be excessive, there is not enough actual experience to date to enable us to rely on this with any certainty, and until we have actual experience to go by, I think we must accept the Pan American Airways' basis of depreciation and crash reserve, which we are following, as a reasonable and nec-

G 931

GR-153

[fol. 146] essary expense. This means that we can only break even by keeping down our plant investment with its inevitable fixed charges by exercising eternal vigilance in respect of unnecessary expenses, and by making the greatest possible effort to secure passengers and other local business.

This is of the greatest importance because even ten years runs off pretty quickly and we must be constantly striving to get in a position where we are not dependent on our subsidy. In other words, we should not rely on the subsidy as a permanent source of income, but rather should regard it as a temporary assistance while we are getting our business on a thoroughly sound commercial basis.

I entirely agree with the proposition that safety of our passengers and crew must always be our first consideration. This we must provide for by furnishing the best type of equipment, maintaining it at all times in the highest state of efficiency and operating it with the best personnel obtainable. Nothing I have said herein is to be interpreted as in contravention of the principle of "Safety First". Here conveniences and luxuries, however, not contributing to this

principle, we can get on without until we can pay for them out of earnings.

I have dwelt upon all of the foregoing so often that I have hesitated to repeat it here, but the subject is of such vital importance that I have ventured to do so once more, even at the risk of boring you. The thing which gives me confidence is that both you and Harris see eye to eye with me on all these fundamental considerations.

Yours very truly,

HJR/CAM

G 932

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[fol. 117]

GOVERNMENT'S EXHIBIT 38

PAN AMERICAN GRACE AIRWAYS, INC.
122 East 42nd Street, New York City

Cable Address
All Offices
"Panagra"

Mr. Cogswell
Please
return to
Mr. Roig.

LIMA,
September 3rd, 1929.

Rec'd
9/19/29

Mr. H. Roig.
C/o. W. R. Grace & Co.,
NEW YORK

Dear Mr. Roig,

I am delighted to receive the information that you have been placed on the Board of Directors of the Pan American-Grace Airways, Inc., and know that the work of the Board will be very much assisted by your presence.

With regard to your letter of August 6th the following points are noted.

PERSONNEL: Gillespie has written me that he is perfectly willing to take a position with us at any time that he loses any other job which he may have. In other words he seems to think that we will hold a position open for him, but he is very much mistaken as our work must go forward. Richardson of the Mexican section of the Pan American Airways has written to me with regard to a man named Bradley who is working for him and who he recommends highly as a possible flight superintendent. I have written to Richardson suggesting that Bradley come on down at our regular pilot's salary rate so that I may look him over. As you already know, Travis has gone to Chile to take William's place.

HANGARS: With regard to Hangars I feel that it is extremely important that we have a hangar at Lima as soon as possible. As you already know we have been having considerable discussion between Richter & Pickis and Milli-

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11-5-54
D.L.A.

G018780

[fol. 118] kin Bros. bids and the question now seems to hinge on the relative life of the sheeting furnished by the two manufacturers. Richer & Pickis hangar seems to have a thickness of material more than twice that of the Millikin Bros. hangar.

I have received a quotation of approximately ten thousand dollars for the erection and instaliation of either hangar complete with lights, cement floor, toilet, etc. This would make the total cost in the vicinity of $20,000.00 not including duties which we believe we will be able to avoid.

With regard to our not making any capital commitments until we have our full capital budget arranged, I agree with you in principle but feel that particularly in the case of Lima the deterioration of the airplanes which are at present standing out in the open, far outweighs the question of studying the investment analysis before purchasing a hangar.

I am very anxious to get together with Mr. MacGregor with regard to capital and operating budgets but it seems that various organization and operating questions have been so acute that it has been impossible for us to see each other.

I believe that we will be able to make a satisfactory arrangement with the Peruvian Government authorities to use the various Government fields throughout Peru for the erection of hangars or any other facilities which we may desire to instal.

With regard to Guayaquil and other Ecuadorian airports I have covered this separately in my letter to the Pan American Grace Airways Inc. #49. With regard to Buenaventura, we are at present using a float at this point and I
GR-65 G018781
[fol. 119] do not believe it is necessary to build a ramp there. However, I think it is very wise to consider the question of securing the use of the large island at Tumaco where we can build a ramp and landing field so that in case it becomes desirable we can ferry land machines through to Panama and can beach for repairs and take off or land our amphibians on the landing field at Tumaco. The securing of this island is I understand a matter which will require negotiation with the Colombian Government in Bogotá and should be undertaken at the earliest opportunity.

I am completely in accord with your statement that capital investments in aviation industry today are likely to be obsolete tomorrow on account of equipment improvements. However, there are certain fundamental considerations such as the arrangement of ramps and landing fields which it would seem cannot be dispensed with until entirely new types of aircraft are in existence and it is believed that with our present investment in our present types of flying equipment we are justified in spending a considerable amount of money in order to preserve that equipment particularly in view of the fact that no startling invention in aircraft types are at all obviously looming on the horizon, the chief points of development at present being in the shape of improved efficiency in engines and propellers.

With regard to motor cars, the Pan American Grace Airways now own one Ford touring car in Talara which has not yet been assembled from the crate. At all other points motor transportation is handled by rental arrangements.

With regard to fare tariffs, we have just been informed by Faucett that he is going to reduce his tariff rates on the

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G018782

[fol. 120] opening of his operations on September 15th. I have discussed this matter with the officers of the Grace organization here and they are unanimously of the opinion that we must meet Faucett's rates. Incidentally, Faucett has prevailed upon the Government to notify us that we should reduce our tariff. The Government has considerable power under our contract to control our tariffs and it is therefore necessary for us to take some action in this regard. Therefore we have arranged a conference with Faucett at which the entire question will be studied. He has suggested a cut of 20% on our present tariffs but I believe that I can arrange for this cut to be considerably less in most instances although we may have to reduce by this amount to a few places.

In this connection you will be pleased to know that the Ford northbound tomorrow is carrying ten paying passengers out of the thirteen seats available. We have instituted a rather intensive passenger solicitation in conjunction with the Steamer Department of the Grace office here and believe that we are securing results in this regard already. We find that the luxury, comfort and safety of the Ford planes is a very great advantage in soliciting passenger traffic. The second ford will be flown tomorrow in Guayaquil and I understand that Mr. MacGregor is anxious to have it come immediately to Chile for the survey flight to Buenos Aires.

With best personal regards, I am;

Yours very truly,

/s/ Harold R. Harris

HRH/h:
copy to Mr. MacGregor.

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G018783

[fol. 121]

GOVERNMENT'S EXHIBIT 39

EXHIBIT "H"

AGENTS

In accordance with my instructions I very carefully investigated the possibility of the use that could be made of the various organizations of W. R. Grace & Company along our route. I am glad to be able to have the opportunity of placing on record my appreciation of the way in which I was received by all the Grace & Company officials, and the enthusiastic co-operation shown by them at all times in matters concerning our aviation activities.

In the chief centers, at Lima and Santiago, sufficient space was placed at our disposal to enable us to carry on such work as it was found necessary to do with our own employees. We were able to secure from the Grace organization men well suited for handling the business needs of our Company. Rentals were agreed to for the space occupied and we, of course, took entire charge of reimbursing the employees we secured from Grace.

The fact that we must institute a system of very complete accounting, and that other business activities require so much time to commence and finish, makes it impossible for the employees of Grace & Co. to handle this work in addition to the work they are now doing. The Grace managers themselves were the first to point this out to us after they had had a chance to familiarize themselves with our needs. We have found it necessary, therefore, to take into our organization, on a 100% basis, various employees whom we had though previously could have done our work in conjunction with the work they are doing for Grace & Co.

I consider, however, that remuneration should be made for the work done for us by the higher officials in the various Grace Companies in South America in return for the great assistance they have rendered and the time they have given, and will give, in aiding us to solve our many complicated problems. These officials are extremely busy, and the

time and thought they give to us, and without which our task would be infinitely harder, is difficult to describe but is always evident. In view of the fact that we are paying for office space separately, that we have found it necessary to secure our own personnel for accounting, that all incidental expenses are paid directly by us, I consider that the reimbursement for the higher officials for goodwill and for legal counsel by Grace Lawyers should be placed upon a flat basis as follows:

$18,000 per annum while we are operating on a once-a-week schedule;

$22,000 per annum on a twice-a-week schedule;

$25,000 per annum on a three times a week schedule.

GR-11237

G066065

[fol. 122] My reason for not placing this remuneration upon a mileage basis is that the greater amount of work done for us by the Grace & Co. higher officials is during the period when we are operating only once a week. After we have secured our operating rights and have shown the countries through which we fly that we are worthy of trust and confidence, our political and international problems will not be so complex, and we hope that we shall have to impose less upon the expensive time of the Grace managers and their assistants.

I repeat again that it is hard to estimate in dollars and cents the benefit we receive from the Grace organization, but I recognize these benefits and the work already done, and to be done, for us by the powerful Grace interests, and I have recommended what I think is a fair compensation for benefits received.

PAN AMERICAN AIRWAYS INC.

There is no question that in order to operate successfully a 4,800 mile air line at all, a great deal of technical skill and brains must be required. Panagra is fortunate in having the offer of the services of Pan American Airways, Inc. with an already established and competent supervisory operating personnel.

It is my understanding that the Pan American Airways, Inc. offer includes engineering supervision and advice, purchasing of airplanes, equipment and supplies, radio supervision, and whatever advice or assistance we may need in establishing, soliciting and regulating our passenger traffic. We are also to have the privilege of using, wherever practicable, the accounting system originated by Pan American Airways, Inc., and to be permitted to purchase at cost the Code Book prepared by them for the cheap and intelligent despatch of cabled messages. We are also to have the privilege of consulting, and the assistance where necessary, of the Pan American Airways, Inc. Washington office.

My recommendation is that remuneration for these services should be placed upon a mileage basis rather than a flat basis, because the work to be performed by Panair will always bear a distinct relation to the amount of miles flown by Panagra airplanes. My recommendation as to reimbursement for these services is not to exceed 9¢ per mile. This is in line with what I am informed the Pan American Airway, Inc. technical and supervisory overhead figures out on the basis of the present mileage flown by Panair and affiliated Companies. It is my understanding that as the mileage increased the above figure will be reduced, and therefore, the above maximum price per mile be correspondingly modified.

I should wish to point out that we not only receive the assistance of Panair Purchasing Department, but are also permitted to avail ourselves of the discounts for which

[fol. 123] Panair has been able to arrange on account of large scale purchases. We will also be able to avail ourselves of the work already done by Panair in building and testing special airplane radio sets for use in our operations. Not only would this radio equipment cost us, if we purchased it from manufacturers, a great deal more than Panair proposes to charge us, but I am afraid we would find, after the purchase had been made, that it was not suitable for

our requirements. I am also informed that it would be several months, possibly a year, before we could secure suitable radio sets from any other source.

The above would constitute a modification of the amount shown in the estimated budget for the year 1930, under the heading of ESTIMATED PAYMENT TO PAN AMERICAN AIRWAYS, INC.

It is, I understand, the intention of neither W. R. Grace & Company nor Pan American Airways, Inc. that any large profit be made for the services rendered by their respective organizations to Pan American-Grace Airways, Inc. On the other hand, neither organization wishes to lose money, and to the best of my belief the figures recommended will attain that desirable end.

GR-11239

G066067

[fol. 124]

GOVERNMENT'S EXHIBIT 40

Send FJH
Copy of Agreement

Asked Tappan to
do so.
2/26/30

MEMORANDUM FOR MR. GARNI:

PAN AMERICAN-GRACE AIRWAYS, INC.

PROPOSED AGENCY AGREEMENT WITH
W. R. GRACE & CO.

1. Subject to working out the terms to mutual satisfaction it has been agreed that W. R. Grace & Co. will be appointed general agents of Pan American-Grace Airways over their entire line from Cristobal to Montevideo. I would, therefore, appreciate it greatly if you could discuss the matter with Mr. Redshaw and Mr. Rebstock and let me have their views in detail. I am sending copy of this memorandum to Mr. Valverde with covering letter requesting that he take the matter up with Mr. Metzner. Please bear

in mind that as this matter has not yet been put in definite shape, it has not been discussed at all with Mr. Harris or the other Pan American-Grace or Pan American people on the Coast and it is, therefore, desired that the matter be kept strictly confidential unitl it is closed and we can advise the Pan American-Grace people from here. This is of great importance.

2. The general idea is that Pan American-Grace will conduct its own flying operations including flying personnel, equipment, landing fields, maintenance and everything directly connected with the business of flying. All other operations of the company in South America will be handled by the general agents. This will include all the local business of the company and all matters in connection with traffic including receipt and dispatch of planes under which head-

[fol. 125] ing it should be possible for the agents to exercise considerable control over at least the business side of operations. This division between the flying and business sides of the venture may not be entirely sound but so far we have been unable to reach any agreement carrying the agent's functions into the flying side as our partners feel that this part of the business calls for specialists and that a separate organization of this character should be built up. I believe, however, that by close cooperation between our Houses and the Panagra flying organization, there should be no serious difficulties arising from this division of functions. It is, of course, apparent that the functions of the general agent go far beyond that of an ordinary steamship agent and our Houses should approach the matter with this viewpoint. Their function is really to act as principals on the business side and through their control of finances and accounting they should be able, by harmonious cooperation with the Panagra organization, to exercise a very important influence in controlling expenditures, etc. of Panagra's operating organization.

3. The theory of the agency arrangement is that one house in each of the four divisions into which our operations

are divided, will be responsible for the discharge of the agents duties in that division. Thus Panama Agencies Company, Cristobal will be responsible for Division No. 1 (Cristobal to Talara); W. R. Grace & Co., Lima, for Division No. 2 (Talara to Arica); Grace y Cia (Chile), Santiago, for Division No. 3 (Arica to Santiago) and Division No. 4 (Santiago to Montevideo). This means that Pan American-

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G019485

[fol. 126] Grace, New York, will deal directly only with these three offices. These three offices will appoint and respond for the agents at the various points where the planes call including outside agents at points where we have no organization of our own. The idea is that these three offices would take into their respective organizations such general personnel as Panagra now has at these three points, or such part of it as we wish to take over. Thereafter Panagra's business under this general agency agreement will become a department of each of these three main offices and the business will be handled precisely the same as that of any other department of the respective houses. It will not be necessary that the Houses maintain in any sense a separate Panagra organization but it will be necessary that they delegate to this work one good man as head of this department who can be responsible to see that the work is properly organized and effectively carried on. It may be that in some cases there will have to be an assistant. It is not our intention, however, to prescribe in detail how the separate offices shall carry out their responsibilities under this contract. They will know better than we how best to secure the desired results. It will, however, be strictly incumbent upon them to adopt such method as will guarantee these results.

4. The question of compensation is one on which we have not as yet reached any agreement with our partners and the plan of compensation submitted herewith is accordingly strictly tentative. Our theory, however, is to pay to each of these three division headquarters offices an

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[fol. 127] amount sufficient to cover their out-of-pocket for services which we estimate will be required under this agency agreement, plus a reasonable amount in respect of overhead. Additionally we will pay a fixed agency fee for each port of call and a slightly larger fee where there is an overnight stop or other special consideration. The agents will also receive a commission on passenger and freight bookings and will be entitled to bill as disbursements various items not included in the fixed fee. All of these payments will be made to these three main offices. They will make their own arrangements with outlying agencies and outside agents and will pay these outside agents such amounts as they may arrange. In case they have to pay more than the amount allowed, however, they will have to absorb this difference. Similarly, the booking commission may be apportioned in such manner as the main offices see fit and the monthly fee may be applied by them as they deem best.

5. Herewith is a draft form of agency agreement and a draft of proposed fee basis which will indicate how the foregoing works out in detail. If any part of this is not clear or if our managers are not in agreement on any point, I would be glad if they would cable me promptly in order that the matter may be taken care of while the contract is under negotiation.

6. We have secured this agency agreement because of our unqualified assurances to our partner that in this way Panagra can have the work covered by the agency contract better done and for less money than by setting up their own organization. We can only retain the agency if these assur-

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G019487

[fol. 128] ances are substantiated by actual performance. In our estimates we have calculated fees on what we believe to be a liberal basis and we will not accept the agency except on such a basis. But it goes without saying that we expect corresponding service. This business is a new one and it is expected that the agents will approach it enthusiastically with a view to building up a commercial business and not merely with the idea of administering a going one.

Personnel should be selected of a type to do this kind of a job. Our mail revenue is not sufficient to pay expenses today and we must develop a large passenger and express business in order to make this venture pay. Moreover, neither we nor the United States Post Office regard the mail revenue as anything except a subsidy during the pioneer period to enable us during that period to build up a real commercial business. Our mail contract calls for three trips per week but so far the Post Office has given us only one trip. We are hopeful of getting a second trip beginning July 1st but whether we get and retain this second trip, to say nothing of the third, is very largely dependent on increase of use of air mail. We are, therefore, interested in stimulating the air mail movement even though that does not directly swell our income account. We must also develop passenger and express business not only to make the business pay on its own feet but also because the policy of the United States Post Office Department is not to foster lines which merely carry the mail but the Postmaster has stated very emphatically they are only interested in lines which under the protection of the mail subsidy are building up a real air transportation business on a commercial basis. It

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G019488

[fol. 129] is, therefore, the function of the general agents not merely to administer the business and sell tickets to people who ask for them but to actively and vigorously go after and build up traffic in every possible direction. In this connection it should be borne in mind that Pan American Airways have a very effective traffic organization of their own which is building up a very considerable business on their lines. As our partners in this venture they will always be comparing the results of their traffic organization with ours. With our many years of experience in this field we ought to be able to show a much better performance than they and I do not think we will have made good on this contract unless we do.

7. It is believed that the compensation provided should be adequate to take care of all expenses of the agency and that the booking commission, with the development of busi-

ness, ought to make the agency distinctly profitable to the Houses. I see no reason why the Houses, therefore, should not undertake the business with enthusiasm and if they do I feel certain that it will be made a great success.

/s/ Harold R. Harris

January 29, 1930

P.S. The agreement between Pan American-Grace Airways and Pan American Airways referred to in the "Second" paragraph of the agreement relates merely to Panama and the Canal Zone and provides that at that point the Government negotiations shall be carried on by Pan American Airways. This is thought desirable because of their extended operations at this point, and because of the fact that the France Field arrangements are in their name.

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G019489

[fol. 130]

GOVERNMENT'S EXHIBIT 41

February 19, 1930

MEMORANDUM FOR MR. TRIPPE:

PAN AMERICAN-GRACE AIRWAYS

After most careful consideration of the points discussed in our various conversations, I have reached the conclusion that it would not be practical to turn over the entire operation of Pan American-Grace to Pan American Airways and that the soundest policy would be to continue the plan of having the flying operations (including maintenance, landing fields, etc) in the hands of a separate organization under the control of a general manager responding to the Pan American-Grace Board of Directors.

My reasons are, briefly, as follows:

1. Whether it be a happy incident or not, the fact is that Pan American-Grace has a separate capital owned by two disassociated interests which, it seems to me, re-

quires that the company be, to some extent at least, maintained as an independent entity with an independent management.

2. The foregoing consideration is of the greater importance because the entire life of the company depends on a separate and independent mail contract on which it has bound itself to the United States Government for a period of ten years. Performance of this contract is, therefore, the company's paramount problem. As a matter of sound policy it does not seem to me that the company is warranted in turning over responsibility for performance of this paramount obligation to any third party, even though that party be a 50% owner of the company. Under your plan I feel that in practice our whole operating organization and personnel would, in fact, become a part of the Pan American organization and that Pan American-Grace would have divested itself of any machinery whatever for performing its obligations under its mail contract. While such a contingency is hardly to be contemplated, I think that in view of your recent

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10-28-54 P.J.S.

G010712

[fol. 131] proposal of one stockholder of Pan American-Grace buying from or selling to the other, we must take into consideration the possibility of a situation arising where such a condition might again arise and perhaps under strained circumstances. In such a situation, Pan American-Grace, having no operating organization of its own and being obligated to maintain operations under its mail contract.

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G010713

[fol. 132]

GOVERNMENT'S EXHIBIT 42

Buenos Aires, Argentine
Feb 27, 1930

Mr. Harold R. Harris,
Vice President
Pan American Grace Airways, Inc.
Lima, Peru

Dear Mr. Harris:

Was not particularly surprised to see your letter of Feb 20th but hardly expected exactly your attitude in advising that Pan American Grace agents should not accept instructions from Pan American Airways officials. I think this was quite unnecessary and probably due to your misunderstanding of what occurred. I issued no instructions to your people. I requested Summers to have the motor changed, after finding out that it had 362 hours and was expected to fly to Santiago and return without being changed. Mr. Summers, as your representative, had a perfect right to refuse my request but he did not do so, as he agreed with me that the Pan American Grace should not take the chance of a forced landing in the face of the competition that Nyrba was going to give them on the East coast. Had I known in time that you had a motor in the Ford that had 362 hours and you expected it to make the trip to Santiago and return, I would have taken the matter up with you direct.

I happened to be in Montevideo on Thursday and as a matter of curiosity asked Williams what time his motors had. My only reason for doing this was to get an idea of what would be needed in the near future. I was dumbfounded to learn that he had two new motors but one of 362 hours. I made no request to Williams but spoke directly to Summers.

The motor had to be changed on Friday or the plane had to go out as it was. I had no time to wire you and I am glad I did not as from the tone of your letter and the

reasons you give for not having the motor changed here convince me that you would have refused my request and I would have had to have appealed to New York.

You undoubtedly realize that Pan American Airways owns 50% of the Pan American Grace Airways. You probably do not realize that the Washington post office does not look to Pan American Grace for results on the operation of the line from Cristobal to Montevideo, but to Pan American Airways. Pan American Airways has entirely too much at stake for one of its officers to take into consideration the feelings of a Pan American Grace official when the action under consideration may cause an irreparable loss.

We know of your ability as an operator and had always thought that you were handicapped in your operation of the Pan American Grace by lack of equipment. I personally had never thought that you would operate the line as it is being run if you had full control over the purchasing of equipment. It was because I knew that Pan American

GR-6655

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[fol. 133]. Airways interests were demanding that Pan American Grace put in necessary spares that I considered I was perfectly justified in suggesting that your only spare motor be used. If you consider it good operating to use a Ford over the Andes that has one motor with 362 hours, then you and the Pan American Airways are miles apart.

I only trust that such is not the case and that your letter was inspired from your fear of not being able to get more spares as quickly as you may need them.

In closing I may say that I had no idea of indicating that the Pan American Airways is going to hold a spare Wasp motor in reserve for you at Montevideo. Your idea of flying the Ford to Lima for replacement seems hardly economic as in view of the cost of gasoline and equipment I rather think that it would cost much less to ship your three motors for overhaul to Miami or Cristobal, than it would be to fly the Ford from Santiago to Lima to say nothing of the risk being run. Pan American Airways is

always willing to cooperate with you and if it is necessary for you to use any motors that we may have here, they will be at your disposition providing it is possible. I am not sending a copy of this letter to New York but you of course are free to do so, should you wish.

With kindest personal regards,

Yours faithfully

George L. Rihl
Vice-President

GR-6656

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[fol. 134]

GOVERNMENT'S EXHIBIT 43

New York, March 4, 1930.

D. S. Iglehart, Esq.,
Delray, Florida

Dear Mr. Iglehart:

We were all delighted to get your telegram of a few days ago and I hope I am not imposing too much on the privilege by this letter. I have, however, delayed taking this matter up with you for several weeks but I cannot keep it in abeyance much longer and it is so serious that we do not want to make a decision without the benefit of your views.

About a month ago after one of our usual unsatisfactory Directors' meetings, Trippe told me that Hoyt and Whitney had seen him after the meeting and had told him that this dual management could not go on any longer and that we should either liquidate the company or one party sell out to the other, Hoyt's idea on the latter point being that each should submit a sealed bid for the other's interest and the high man become the buyer. I told Trippe that we were quite as much concerned about the management problem as he was but that we were not prepared to settle it on a gambling basis and saw no reason for liquidating,

that in my opinion the idea of a separate management for this company was entirely sound and the only reason it had not worked was because of our unfortunate selection of a general manager and that the thing to do was to correct this mistake but not change our general policy. He replied

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[fol. 135] that while he agreed that the manager was inadequate he did not consider that anyone, however competent, could do the job with dual control and that the only reason he had hesitated to carry out the decision about MacGregor promptly was that Harris had told Whitney at the Canal recently in effect that he had some sort of a commitment with MacGregor to step out if MacGregor did.

Trippe's idea was that the solution of the management problem was to turn over the entire management to Pan American for a fee and let them run the line as a part of their organization, going back to the original idea when the company was formed under which Grace would attend to the business on the Coast and Pan American would attend to the operations. You will recall that this was the original idea as embodied in letters exchanged at the time. Trippe also made the point that experience had demonstrated that it was utterly impractical for his technical organization to work effectively with Pan American-Grace when they occupied the position of an outside independent company and that it did not suit them as stockholders to have the Pan American-Grace setup a wholly complete separate organization as that would mean from their standpoint duplication of expense and unnecessary loss to them. I objected to turning the matter over to them entirely on the ground that whether happily or not, the fact was that Pan American-Grace had a separate capital with separate

G132

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[fol. 136] stockholders and with a separate obligation to the United States under its mail contract and that they must maintain a separate identity for these reasons and that some way ought to be found of doing this while at the

same time getting full advantage of Pan American's operating experience. It was at this point that I suggested to Mr. Grace as a compromise the plan of keeping a separate company, making Trippe President of it in direct charge of operations and with myself as Chairman so that Trippe and I would constitute something of an executive committee. We can then pay Pan American a fixed sum for their operating services, including Trippe's services as President while maintaining the separate identity of Pan American-Grace, and Trippe, being in charge of operations in general, will be able to use his own organization to the best possible advantage.

While matters were in this state, a wholly new situation developed which made matters still more acute. The Nyrba people you may recall had succeeded some time ago in persuading the Post Office Department to ask for an appropriation for the establishment of an East Coast line. This did not at the time suit Trippe because he felt that in competition with the Nyrba he would have to take the line at a very low figure whereas by delaying matters the Nyrba might fade out of the picture. He succeeded sufficiently in persuading the Post Office Department as to the inad- [fol. 137] visability of advertising an East Coast line so.

G 133

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that it looked very much as if this project might be dropped. At the same time we had been urging additional service on the West Coast. As a result of a good many factors which I need not detail here, the Post Office Department suddenly decided definitely not to advertise a complete East Coast line but merely a line from Rio to Buenos Aires, the mail being carried from there on over our line and in this way make the money originally intended for the East Coast line available for giving us a second trip a week beginning July 1st.

While Trippe was perfectly satisfied and even anxious to see us get a second trip a week and to see the East Coast line held in abeyance for a time, this new plan of the Post Office did not suit him at all because he felt that the short line from Buenos Aires to Rio might very well have to be taken at a ruinous price or fall into the hands of Nyrba

which would make impossible his later getting a through East Coast line. He had also in the meantime made certain arrangements on the East Coast which he felt would put him in a very favorable position to get the East Coast line if it were advertised as a whole. It thereupon immediately became to his interest to have a complete East Coast line advertised even if we had to be denied one second trip in order to make funds available.

He thereupon came to me with a proposition which he stated represented Hoyt's views as well as his own that, in

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[fol. 138] view of this conflict of interest as well as impending future conflict growing out of negotiations he has under way with Scadta and greater efficiency in management if the whole system were run as one, some form of merger or consolidation ought to be effected between Pan American and Pan American-Grace. While he suggested that failing this, they would be willing to sell to us, I think he was really more anxious to buy than sell and personally I do not see how it would suit us to buy especially if we are to have competition from a cheaper East Coast line.

Mr. Grace and Mr. Holloway sat in with us one whole afternoon going over this business and I have had several long talks with Trippe since. I need not trouble you with all this beyond saying that without committing ourselves to sell at any price, I did, by a roundabout calculation, indicate that we consider our half interest worth $2,500,000 of which we would want $500,000 cash and $2,000,000 in Aviation Company stock at a fair figure. Trippe, by an equally roundabout process, indicated his idea as $750,000, of which $500,000 might possibly be cash with perhaps a little time on some of it. I think he could probably be got up to about $1,000,000 but from there on it would be slow going so we were too far apart to get anywhere. Hoyt, having left on a six weeks' trip to the West Indies could not be reached.

Finally I insisted definitely that we waste no more time discussing mergers but get down to the problem of manage-

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[fol. 139] ment of the line we already had. In a talk this afternoon I told Trippe that I would submit to him in writing a possible form of management so that I might get his ideas in concrete shape which we might have to submit to you. I am enclosing herewith copy of the memorandum I have sent Trippe.

While we are in no way committed to this plan, I feel that something along this line is the best we can do at this time and that it is more important to get matters lined up on some fairly satisfactory basis at once than to permit them to drift any longer in the hope of something better. Mr. Grace, Mr. Holloway and Mr. Patchin approve this plan under the circumstances. Mr. Cogswell is more doubtful about it than the rest of us. Vidal, who is just back from Panama where he saw a good deal of Pan American's operations, feels that it is highly desirable to give Pan American a larger hand in operations and that this will in the end prove much cheaper than going on as we are where saving in maintenance is seriously increasing our depreciation charge. Before Garni and Valverde left I discussed with them the possibility of dividing the business along the lines now proposed and although originally opposed, after a full discussion they concurred in this plan. I enclose copy of memorandum Mr. Garni took with him and which I have sent Mr. Valverde by mail. Two letters from Garni enclosed show his reactions since he has been on the ground. While I do not consider the plan ideal, I

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[fol. 140] feel pretty clearly that it is the best we can hope for with 50/50 ownership where both interests are determined to have a part in the management and neither is satisfied with the position of a mere investor. Pan American are just as determined on this point as we are and they will under no circumstances turn over the whole control to us any more than we would to them. Unless some such plan as this, therefore, can be worked out, my feeling is that we might better sell out to them even at a modest price than to let matters go on as they are.

As to the need of some radical reorganization of operations, I would prefer not to go into details here but from reports received not only from Pan American people but from several wholly disinterested sources, I feel satisfied that there is great urgency for prompt action.

I hope I have succeeded in making at least the high points of the problem clear. The whole story would fill a book.

Sincerely,

Encs.

P.S. For your information especially in connection with the merger question, the entire Pan American system showed a profit of $30,000 for the month of January.

In explanation of the reference to Pan American servicing our planes at the Canal Zone, this contract provides

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[fol. 141] for our paying a fixed pro-rata of the rent and other fixed charges and their actual direct labor cost for maintenance plus 150% and cost of spares plus 33⅓%. I discussed these percentages with Mr. Doubleday who considers the former very modest and the latter perhaps a little high. As spares are not a very large item, however, I may be forced to accept this figure as it is a distinct advantage to us not to have to carry a stock of spares for machinery which is changing as rapidly as aviation equipment. Vidal saw this plan in actual operation in the month of January at the Canal and reports that the service our planes are receiving is most satisfactory and the total cost of this first class maintenance is less than it would cost us to keep one mechanic at the Zone.

All of these contracts which we propose making can be cancelled on reasonable notice if they do not work out.

H.J.R.

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[fol. 142]

GOVERNMENT'S EXHIBIT 44

March 5, 1930

J. T. Trippe, Esq.,
Pan American Airways,
122 East 42nd Street,
New York City

Dear Trippe:

I enclose memorandum promised yesterday.

As this plan represents such a departure from the present setup, I do not wish to be committed to it until I have had opportunity to get Mr. Iglehart's views. I believe, however, that the thing for you and me to do is to get this in concrete shape so far as we are concerned as soon as possible.

To that end I would be glad to have your comments on this memorandum.

Very sincerely yours,

(sgd) HAROLD J. ROE.

Enc.

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[fol. 143] COPY

PAN AMERICAN-GRACE AIRWAYS

PLAN OF ORGANIZATION

While availing of the facilities of its two stockholders to the fullest extent possible, it is necessary that Pan American-Grace Airways maintain its separate identity because of its separate capital, separately owned, and because of its separate liability under its mail contract.

The following plan of organization is intended to preserve the necessary balance between these factors while at the same time giving the company an effective management.

1. The company retains its present Board of Directors, Mr. Trippe, however, becoming President of the company and Mr. Roig Chairman of the Board and these two constituting an executive committee.

2. The New York office of the company to be closed and its personnel dismissed with the exception of Mr. Vidal who will be continued as Comptroller with such accounting assistance as he requires.

3. Mr. Trippe as President will be in responsible charge of operations, including flying, equipment, maintenance, ground stations, and everything directly connected with flying. In the discharge of this responsibility he will bring to his assistance such departments of the Pan American organization as necessary and employ them in such manner as he deems best. Pan American Airways will be paid an agreed fee for their services hereunder, including Mr. Trippe's services as President.

4. Mr. Roig as Chairman, in addition to presiding at Directors' meetings, will be in general charge of the work of W. R. Grace & Co. as agents, whose functions shall be as outlined in the form of agency contract submitted to Mr. Trippe on January 31, 1930. The fee paid W. R. Grace & Co. shall include Mr. Roig's services as Chairman.

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[fol. 144] 5. Matters not falling under the heading "operations" or under the agency contract, shall be handled by the Executive Committee or in such manner as they or the Directors may from time to time decide.

6. In order to bring about proper coordination between the operations and the functions covered by the agency contract, there must be close contact and cooperation between both personnels on the Coast and between Messrs. Trippe and Roig in New York. Without undue interference in the other's field, it would be expected that both members of the Executive Committee would be in more or less constant

touch with each other and would keep each other more or less posted (through copies of cables and otherwise) of what was going on in their respective fields and would exchange views freely with the idea of bringing about the closest possible synchronization between the two ends of the business.

7. Mr. Harris will continue as Vice-President in charge of operations under Mr. Trippe but his activities will, of course, be restricted to operating matters, the other business which he now handles being taken over by the agents. In order that there may be a complete understanding with Mr. Harris regarding the plan of organization and the policy of the company and complete mutual confidence established between him and Mr. Trippe, he is to be asked to make a short trip to New York or Miami to go over the whole matter with Messrs. Trippe and Roig. It goes without saying that it is essential to the success of the plan that Mr. Harris be in accord with it and that Mr. Trippe be assured of his full cooperation in carrying out the operating program.

8. As soon as possible after this plan becomes effective, and every six months thereafter, the President will submit to the Board of Directors a budget giving his recommendations of capital expenditures to be made during the ensuing six months. These recommendations will, of course, be made in consultation with the Vice-President in charge of operations and will, so far as possible, represent the joint views of the President and this Vice-President. The Board of Directors will authorize such of these expenditures as they deem best and no capital expenditures will be made except those so recommended and approved by the Board.

9. On or before the first of each month, the President will submit to the Board of Directors a budget giving

[fol. 145] an estimate of operating expenses for the ensuing month. The Board may approve or amend this budget and the President will be expected to see to it that the expenses are kept within the approved amount.

10. The company will keep its own accounts and maintain its own separate financial structure both under the jurisdiction of the Comptroller whose signature or that of his assistant shall be required to all checks and obligations. Pan American Airways will not be expected to make any advances in connection with operations, all such expenses being paid by Pan American-Grace Airways itself. The Comptroller will be expected to see that expenditures are kept within approved budget amounts and in order that he may do this shall have access to all necessary sources of information.

11. Pan American Airways will service our planes at the Canal Zone under contract substantially in the form now under discussion. Some joint working arrangement may be desirable in the Argentine. But except where special arrangements of this kind are made, neither W. R. Grace & Co. nor Pan American Airways will be expected to perform any services outside of those covered by the general contracts referred to in paragraphs "3" and "4" above nor to look to the company for any compensation or expenses other than those therein provided.

12. The fee of Pan American Airways should, in my opinion, be a fixed amount per month the same as the Grace fee. I am perfectly willing, however, to discuss this with Mr. Trippe further and if he desires, to go over his figures with him with a view to deciding on the fairest basis for both sides.

H.J.R.

[fol. 146]

GOVERNMENT'S EXHIBIT 45

Lima Peru
5 March 1930

Mr. George Rihl,
Vice-President, Pan American Airways, Inc.
Buenos Aires, Argentine

Dear George:

I was very glad to get your letter of Feb. 27, 1930 on the subject of the motor change in the San Cristobal, since it puts on paper for the first time in my experience with the Pan American Grace Airways, the feeling that I have suspected exists in the minds of many Pan American Airways people with regard to the position and functions of the Pan American Grace Airways. As you well realize, my own position has been quite difficult at times, and this is one of them. You must remember that I am employed by 100% of our stockholders, and am held answerable to them, through our General Manager, Mr. MacGregor. A number of times in the past I have found exactly your attitude with regard to the Pan American interests, expressed in practically the same way by officials of the Grace Co. with regard to the Grace interests. My only hope of getting along is to make my plans and carry on as best I can, keeping both sides of the picture in mind. It is quite possible that eventually the operations of the Pan American Grace Airways will be under the Pan American Airways, but until that time comes, I am charged with the responsibilities of our operations, and will continue to carry on as best I can under all the conditions existing.

With regard to your statement that "You probably do not realize that the Washington post office does not look to

[fol. 147] Pan American Grace for results on the operation of the line from Cristobal to Montevideo, but to Pan American Airways." is odd since as far as I know, the only operation than Pan American Airways has ever done on this FAM #9 has been the operation for several months of the Cristobal-Guayaquil run. Since the first of Jan. 1930 this section has also been operated by the Pan American Grace Airways.

I am in complete accord with your remark "I personally had never thought, that you would operate the line as it is being run if you had full control over the purchasing of equipment". However, since I have been repeatedly warned that all expenditures must be curtailed, it is necessary for me to get along with the minimum of shop facilities, personnel, and spares.

As far as the use of the motor in question for one round trip between Santiago and Montevideo, you may be sure that I personally would have been glad to have made this trip with this motor, since I had information from my crew that this motor was in excellent condition. For your information, we are operating on the principle that our motors are changed when they require overhaul, and not on the basis of a blanket overhaul after so many hours. This is a safe method when the operation is only once a week, and there is time for personal attention and work on each piece of equipment. As a proof of this statement, I need only point out that to date from the commencement of our operations in South America on Sept. 13, 1928, we have only had one forced landing on account of motor failure, which occurred Nov. 11, 1928, on account of a burned out piston in a J5 Whirlwind motor.

Best personal regards. I hope to see you soon

(sgd) Harold R. Harris
Vice Pres., Pan American Grace

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F

[fol. 148]

GOVERNMENT'S EXHIBIT 46

PAA

PAN AMERICAN AIRWAYS, INC.

GENERAL OFFICES—
122 EAST FORTY-SECOND STREET—
NEW YORK CITY

Office of the
President

March 8th, 1930.

Mr. H. J. Roig,
c/o W. R. Grace & Co.,
10 Hanover Square,
New York, N. Y.

Dear Mr. Roig:

Receipt is acknowledged of memorandum enclosed with your letter of March 5th, in connection with the reorganization on the West Coast.

The plan as outlined, in my opinion, is unsatisfactory with respect to important details. Rather than attempt to outline my views herein, I would suggest we go over them when we meet Monday morning.

Sincerely,

J. T. Trippe

JTT:B

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[fol. 149]

GOVERNMENT'S EXHIBIT 47

Letter No. 2

New York, March 10, 1930

D. S. Iglehart, Esq.,
Delray, Florida

Dear Mr. Iglehart:

Your wire was very helpful in enabling me to shape my conversation with Mr. Trippe this morning.

The difficulty you mention as to Trippe's having a 100% interest on one side and a 50% on the other, is absolutely fundamental and he has repeatedly said himself in connection with this East Coast negotiation that he did not see how he could fail to be governed by his greater interest much as he regretted to be forced into this position. Whether I could ever assume the position in the picture which you very correctly state is essential to its satisfactory working, is also a matter of considerable doubt in my mind because of the fact that Trippe seems unable to stay put. This morning's conversation, for instance, was largely given over to his raising points about the working agreement which had never been raised before and some of which were inconsistent with the tentative understanding previously reached. Ironing these out is going to be a l g and unsatisfactory job, especially since they will no sooner be disposed of than others will be brought forward.

He again renewed this morning the question of our selling out as the only method of solving our various conflicting

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10-18-54 PJS.

[fol. 150] interests. There is unfortunately a good deal of basis for this view. If Trippe were a more normal person to get along with it would be different but it is almost impossible to get anything finished with him and Hoyt, ex-

cept on the high spots, is not available and will not trouble to go into the details. Unhappily it is the details that make the trouble because without Trippe carrying along on these any general decisions Hoyt makes are meaningless and their execution can be evaded eternally. I have personally spent an enormous amount of time with Trippe in the past month trying to get some workable organization plan set up. We have repeatedly spent solid half days on it for days running but just as we are apparently ready to close, he is off on some tangent and in ten minutes we are back to scratch. I do not see how a partnership where such basic differences of opinion exist as here can get very far for I am afraid that the time diverted from the business of the company to ironing out these differences and reaching in the best of cases a more or less unsatisfactory compromise, is not conducive to building up a new business.

Quite apart from this mental incompatibility which makes a satisfactory management for Pan American-Grace well nigh impossible, there are unhappily several very serious points of directly conflicting interest where Trippe refuses to recognize that his 50% interest in our company precludes him from following what he conceives to be a more important 100% interest. The East Coast situation is the most glaring example of this. We have all taken a hand at trying

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[fol. 151] to persuade him that his interest in Pan American-Grace precludes him taking any position regarding the East Coast which is prejudicial to the West Coast. He simply refuses to recognize this beyond arguing that he clears himself by his offer to merge and by undertaking to keep us posted in what action he takes regarding the East Coast. Moreover, it seems very likely that sooner or later he will reach some agreement with Von Bauer for taking over Scadta. Scadta is operating in direct competition with Pan American-Grace yet Trippe feels that if Pan American absorbs Scadta he would be under no obligation to discontinue this competition. Moreover, he feels that in this event Scadta should operate the entire north coast of South America and that Pan American

should sublet to them their line from the Canal to Paramaribo and Pan American-Grace should sublet to them our line from the Canal to Guayaquil, —or at any rate that this is the efficient way to operate, — his idea of efficiency being always determined by his 100% interest. Finally, there is the old question of an interior line from Bolivia to Buenos Aires which he constantly comes back to as a scheme which Pan American may have to undertake in order to keep someone else out.

I agree with you that $750,000 is not an adequate price. In my talk with Trippe this morning, however, it became very apparent that this is by no means his ultimate price. I have always told him that we did not care to either buy or

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[fol. 152] sell but when I suggested to him this morning that if the property were to be given away at any such price as $750,000. we would rather buy than sell, he immediately explained that that figure did not by any means represent his limit of what he ought to pay. My own figure of a valuation of $5,000,000 for the line was based on the fact that presumably if they had had the money this is what Montgomery's group would have paid for it on the day we got the mail contract since on that day we had $1,000,000 of cash in the company and a mail contract at forty cents a mail more than they were willing to take it for. This, on a basis of two trips a week, or say 20,000 miles per week, or 1,000,000 miles per year, made our contract worth $400,000 per year, or $4,000,000 for ten years, making the line worth $5,000,000 and our half $2,500,000. I have also said that I believe we could sell our half for at least this to Nyrba or some other outside interest and that if it came to a question of sale there was no reason that we should sell to him for less than we could get for the line in any other direction.

If we could get anything like this for our interest, payable $500,000 in cash and the balance in Aviation Company stock at a fair valuation, I would much rather sell than buy and provided we get some sort of an agency contract,

believe that sale would be preferable to going on with a 50/50 company with so unsatisfactory a partner. I believe the Aviation Company stock would be worth a good deal

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[fol. 153] of money in the course of time as Pan American made $30,000 in January. Trippe says they made more than that in February which if true would seem to indicate they have turned the corner. Moreover, owing to their connection with experts in creating stock market values, it is entirely likely that some time or other they will run up the price on the stock very considerably. If we are to sell at all I believe, therefore, that the best time to do it is now when we can get Aviation Company stock at a lower valuation than it may be possible later and when they are particularly anxious to buy us out because of the imminence of the East Coast situation.

When it comes to buying them out, I think we have to consider in the first place that they would probably be willing to pay prima facie so much more than we that for us to top them at all would mean going up a pretty high figure. We would then have to, in addition to the purchase price, provide the additional capital which the company will need in the near future which Trippe estimates at about $1,500,000. I consider this very high but at any rate this is his figure. We would then have to go into the aviation business very seriously with a complete organization which would be a fairly considerable undertaking in itself. Finally, we would have to face active competition from Pan American on the East Coast and Scadta on the North Coast. While I see no reason to believe that in the end we could not make a success of it despite these difficulties, I fear that it would be a long while before

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[fol. 154] we could take out as profit anything approximating what we would have on a sale now provided we can get a satisfactory price.

I would be glad if you would think over the general question of the advisability of selling provided we can get a satisfactory price and an agency agreement and let me have your ideas on the whole subject.

Sincerely yours,

P.S. Indications are that Pan American-Grace will show a loss of about $100,000 for last year assuming Pan American's bill for general services is within reason. This will be after payment of at least the following fees:

Lima	$10,000
Santiago	10,000
Guayaquil	7,500
Bolivia	2,000

H. J. R

GR-237E

G130E

[fol. 155]

GOVERNMENT'S EXHIBIT 48

EXHIBIT "Q"

New York, N. Y.,
March 28th, 1930.

AGENCY AGREEMENT
BETWEEN PAN AMERICAN-GRACE AIRWAYS, INC. AND W. R. GRACE & CO. PROPOSED IN CONNECTION WITH GENERAL PLAN OF REORGANIZATION OF PAN AMERICAN-GRACE AIRWAYS, INC.

Pan American-Grace Airways, Inc. (hereafter called "Panagra") proposes the following agreement with W. R. Grace & Co. (hereafter called "Grace") covering the services to be rendered in connection with the air transport services which Panagra is now operating from Cristobal, Canal Zone to Montevideo, Uruguay, by the West Coast of South America.

It is understood that where reference is made to either Panagra, Pan American Airways, Inc., or Grace in this memorandum, such reference to either includes its subsidiary companies or companies affiliated under the same ownership control.

The services of Grace, as agent, to be rendered shall consist of the following duties:

1. Grace shall conduct and handle all negotiations and arrangements on behalf of Panagra, as the necessity may arise or as may be requested by Panagra, with the Governments of Ecuador, Peru and Chile (or subdivisions thereof), and with any officials and agencies of said Governments. Such services shall be deemed to include all legal matters connected with the business of Panagra in such countries, and also the supervision of other agency services furnished by Grace at ports-of-call in these countries, where Panagra has no employee-representative. Similar services in the United States, Canal Zone, Republic of Panama, Colombia, Argentina and Uruguay are now being rendered to Panagra by its affiliated air transport company, Pan American Airways, Inc., which is conducting or about to conduct scheduled air transport operations in these countries and is maintaining local organizations for this purpose. In the event that Panagra should, during the continuance of this agreement, desire Grace to render such services in any of the latter named countries, including Bolivia, Grace will provide such services upon terms to be mutually agreed upon.

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[fol. 156] As compensation for its services provided in this Paragraph 1, Panagra will pay Grace a fixed monthly fee of $..... per month. In addition to the above fee, Panagra will reimburse Grace for its actual proper disbursements, provided that, with the exception of cables and other routine disbursements, no expenses shall be incurred without the previous authorization of Panagra.

2. At all regular ports-of-call of Panagra's aircraft, where Panagra has no employee-representative, Grace shall handle the sale to the public, at such rates and tariffs and under such regulations as Panagra may establish, of tickets for passage and of transportation of baggage or merchandise upon the aircraft of Panagra from such ports-of-call to all points to which the services of Panagra or any of its affiliated or subsidiary companies now exist or may in the future be established. Such services shall include the keeping of all necessary records covering reservations for transportation and cancellations thereof, and correspondence necessary thereon, and the preparing of all such papers as may be necessary in connection with the transportation of passengers, baggage and air mail, including the weighing of same, and the issuance of receipts and or the securing of receipts therefor and, in general, all such traffic duties as usually appertain to the arrangements and relations with the public in connection with the operation of an air transport service, including (but this enumeration is not intended to be exclusive), the solicitation, receipt and despatch of passengers, merchandise, air mail and special flights, and when and where necessary, the entry and clearance of, the foregoing, together with the aircraft and flight crews of Panagra, the protection and safe-keeping of cargo and air mail at the airports of Panagra, and the handling of all advertising and publicity.

As compensation for Grace's services provided in this paragraph, Panagra shall pay Grace a fixed fee of $7.50 per plane on weekly service and $5.00 per plane on semi-weekly service. At all over-night stops, the above fees shall be increased by $5.00 per plane. At all scheduled ports-of-call involving entry into or clearance from a country by Grace for Panagra's aircraft, etc., the above fees shall be increased by $2.50 per plane. Panagra shall also pay Grace a commission of five per cent. (5%) upon the sale of all passenger tickets (including special flights) and merchandise booked for transportation, at each such office where the arrangement provided in this paragraph is applicable. In addition to the

foregoing fees, Panagra shall reimburse Grace for its

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[fol. 157] actual proper disbursements for landing-fees, Customs charges, warehouse charges, not incidental to the carrying out by Grace of the routine duties herein specified, advertising, cables, and all out-of-pocket expenses, provided that, with the exception of cables, landing-fees, Customs charges and warehouse charges, no expenses shall be incurred without the previous authorization of Panagra.

Grace shall furnish, at its own expense, all personnel necessary for the performance of such services, it being understood that such personnel shall be employees of Grace, responsible to and paid by it, except at points where Grace has no office. At such points, Grace will arrange that the services herein required be furnished by outside agents satisfactory to Panagra, and Grace will pay the compensation of such sub-agents out of Grace's compensation herein provided.

3. Grace shall handle the receipt on behalf of, and accounting to, Panagra of all funds collected in connection with Panagra's business, and the handling of such funds and accounting therefor shall be performed in accordance with the attached separate memorandum.

4. At each regular port-of-call of Panagra where Panagra has an employee-representative performing certain traffic functions, and Panagra notifies Grace to this effect, the services of Grace as agent shall consist of only the following: Grace shall furnish such employee-representative of Panagra with desk-space in Grace's office and, in the event of the absence from the office of such representative of Panagra, shall answer any inquiries from the public regarding the schedules and rates of Panagra's transportation services and shall receive payment for tickets and other transportation services and also receive forms (the blank forms to be furnished by Panagra) containing the necessary information filled in by the customer, and turn over such payments and filled in forms to Panagra's employee-representative. Grace

shall not be required to keep any records or handle any correspondence pertaining to such transportation services, nor have any responsibility in connection with any papers or documents required in the entry and clearance or receiving and despatching of any passengers, baggage, merchandise or air mail. Grace agrees to place posters furnished by Panagra in conspicuous places in its office or premises and will prominently display and keep readily available to the public such folders, pamphlets, booklets and other literature as Panagra may furnish for distribution by it. Grace will, at its own expense, display prominently at the entrance or upon the

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[fol. 158] door of its office and premises, a sign or signs announcing to the public that the Agency of Panagra is therein located and that Grace is the Agent of Panagra for the sale of its tickets and other transportation services.

As compensation for its services provided in this paragraph, Panagra will pay Grace a commission of five per cent (5%) on the sale of all passenger tickets (including special flights) and cargo booked at each such office where the arrangement provided in this paragraph is applicable.

All amounts payable to Grace by Panagra hereunder for its fees, commissions and disbursements shall be payable monthly. Grace shall present detailed statements covering such items for each month to Panagra's designated representative on or before the tenth day of the following month, and Panagra will pay Grace therefor not later than the twentieth day of such following month, but in the case of delay by Grace in the presentation of any such statements, payments thereof shall in no event become due and payable prior to ten days after the presentation of such statements. Interest at the rate of six per cent (6%) per annum will be charged by Grace on all such disbursements made by Grace from the date made, and on fees and commissions from the date when the same are due and payable.

as hereinabove provided. Any credit balance of Panagra with Grace will be credited with interest at the same rate.

It is understood that Grace will incur no liability or responsibility to third parties merely by reason of its acting as Panagra's agent hereunder, on account of the operations of Panagra, and Panagra agrees to fully indemnify and hold Grace harmless from all such demands and expenses, including counsel fees for defending any such claims and demands.

The agreement covered by this memorandum shall become effective on the first day of January, 1930, and shall remain in force for a period of twelve (12) months thereafter.

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[fol. 159]

GOVERNMENT'S EXHIBIT 49

EXHIBIT "N"

April 9th, 1930.

Mr. H. J. Roig, Vice President,
W. R. Grace & Co.,
7 Hanover Square,
New York, N. Y.

Dear Mr. Roig:—

I am enclosing an informal memorandum in connection with the draft plan of reorganization for Pan American-Grace Airways, Inc., received from you last week, also draft of a proposed agreement between Pan American Airways System and Pan American-Grace, covering supervisory services. I sent you a preliminary draft of our ideas of an Agency Agreement covering services by W. R. Grace & Company on the West Coast.

I am also attaching supplementary memorandum covering our ideas of the method of financial control and account-

ing procedure we should adopt in Pan American-Grace to afford the proper control of the operations of this Company.

During the past several days I have asked the Pan American Accounting Department to summarize, by departments, the approximate monthly cost of conducting services under your Agency Agreement proposal, received February 2nd. Also for comparative purposes, an approximate summary of the actual present cost to Pan American Airways, broken down by departments, of conducting service on the Porto Rico, Trinidad and Paramaribo route, where service is rendered on a once a week basis, under service and schedule conditions very similar to those now obtainable on the West Coast.

I think the figures will be interesting to check over before our meeting at 2:30 tomorrow.

Sincerely,

(sd) J T Trippe

JTT:B

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[fol. 160]

Government's Exhibit 50

PAN AMERICAN AIRWAYS, INC.

General Offices—122 East Forty-Second Street—
New York City

Office of The
President

April 9th, 1930.

Mr. H. J. Roig, Vice President,
W. R. Grace & Company,
7 Hanover Square,
New York, N. Y.

Dear Mr. Roig:

Referring to your memorandum of last week outlining a plan of organization for the Pan American-Grace Air-

ways, Inc., I would summarize, for your consideration, certain thoughts in reference to several of the numbered paragraphs as discussed over the telephone, and in several later conferences between us.

Paragraph one provides for the Company retaining its present Board of Directors, together with an Executive Committee of two. This small Executive Committee would appear desirable in view of the fifty-fifty division of stock ownership, making possible Executive Committee meetings at frequent intervals and assuring the availability to both stockholders of full information covering the Company's operations at all times.

In paragraph two, the plan contemplates closing the New York Office of the Pan American-Grace Airways, Inc., and dismissing its personnel. Separate books and records of the Company would be maintained, I assume, in one small room at the office of the Pan American Air-Out ways System. With reference to retaining Mr. Vidal as Comptroller, I would suggest, for your consideration, the attached plan of financial control and accounting procedure, which would contemplate our removing to the proper point on the Airways, the books containing accounts having to do with field operations, under the personal control of Mr. Vidal as Assistant Comptroller.

The monthly statements to Directors and Operating Executives now in force in Panagra are most unsatisfactory, to my mind. I would suggest the desirability of installing the system outlined in the attached memorandum headed "Plan of Financial Control and Accounting Procedure" modelled after Panair's. Should you wish to personally inspect the monthly financial reports and statistical information now available to the Directors and officials of Pan American Airways System covering the previous month's

[fol. 161] operations on or before the sixteenth of the following month, I am sure you will agree with the above observation. Furthermore, the cost of securing this information to Panair has been less that $2.50 per month at ports of call, and less than $15.00 per month at overnight stops on routes where one trip a week schedule is in effect.

Paragraph three refers to the supervisory services of Pan American. I would suggest these be determined by the following yard stick, and made available to Pan Grace at actual cost, without profit to Panair. The length of airways flown by Pan Grace in relation to the rest of the System would be determined each month: the number of ship miles flown by Pan Grace in relation to the rest of the System would be determined each month. The mean of the above two fractions would determine the overhead monthly charges to be allocated to Panagra. No Foreign Department representatives or attorneys in the foreign field would be included and should the Directors of Panagra accept the proposal of Pan American to Mr. MacGregor to operate their entire Communications System, including, in general, the supplying of both ship and ground operators and the leasing and maintenance of apparatus at *10¢ per airplane mile*, the services of Pan American's Communications Engineer and his assistants would also be struck out of the Pan American supervisory charge. I am attaching a draft of proposed resolution relating to Pan American supervisory charges.

Referring to paragraph four, I do not believe that the work of the Grace Agents on the West Coast, or, for that matter, any other agents of the Company in Argentine or elsewhere, should be directed in any way by W. R. Grace & Company here. Their agency activities before the Government should be directed, I believe, by the Executive Department of the Company. Their activities in clearing and fueling ships should be directed by the Operating Department of the Company. Their activities in the solicitation of traffic should be directed by the men in responsible charge of coordinating in the traffic solicitation activities of the Company. I believe, therefore, that Mr. Roig's services as Chairman, and as a member of the Executive Committee,

should be handled on a separate fee basis in proportion to the amount of time made available to the Company.

Referring to paragraph five, I believe that the Executive Committee and/or the full Board, should be in touch with all corporate activities.

With reference to paragraph six, it would be expected that Messrs. Trippe and Roig would be in more or less constant touch with each other and that both would receive copies of cables and important letters of every description.

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[fol. 162] With reference to paragraph seven, most certainly Mr. Harris should be asked to make a short trip to both New York and Miami, immediately after placing into effect the plan of organization. It should be understood, however, that the President of the Company would be held entirely responsible to the Executive Committee and Directors for the proper management of the Company and that Mr. Harris and all other employees should understand that there is one single directing head and not two or more directing heads.

With reference to paragraph eight, a budget should of course, be submitted by the President as soon as practicable and thereafter every six months. The budget would be developed after consultation with executives in charge of operations and other officials concerned. The Board will authorize such of these expenditures as they deem best, or such additional expenditures as they consider proper. No capital expenditures will be made except those so recommended and approved by the Board.

Referring to paragraph nine. The President will also submit, as soon as practicable after the installation of the plan of organization, a budget covering operating expenses and expended income for the ensuing three months period. I am of the opinion that the paper work involved in budgeting operating costs and incomes for periods shorter than three months, would cost more than the information would be worth either to the Directors, Executive Committee, or officials concerned. It might be well that an income and

expense budget for a six months period would be in order after the first few months, after a proper system of Company organization has been established.

Paragraph ten has to do with the financial control. My views have been covered under the separate memorandum on this subject, previously referred to.

In paragraph eleven, you refer to possible working arrangements in the Argentine. I am of the opinion that some arrangement should be worked out here and that both Pan American affiliated company Alas and Panagra would mutually benefit thereby. I believe that neither W. R. Grace & Company or Pan American should be expected to perform services outside of those covered by specific contracts.

In paragraph twelve, you suggest a fixed fee per month for both W. R. Grace and Pan American Airways, Inc. I suggest, for your consideration, a fee with set limits, as outlined in the Pan American supervisory service draft,

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[fol. 163] based on a definite yard stick—miles of route operated and ship miles flown in the case of Pan American, and on an agency basis with set fee plus commission, in the case of W. R. Grace & Company, as submitted in our draft last week.

Very truly yours,

/s/ J. T. T.

JTT:B

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[fol. 164]

GOVERNMENT'S EXHIBIT 51

April 10, 1930

MEMORANDUM FOR MR. ROIG:

In more than one instance, on matters of importance affecting both Pan American Airways and Pan American Grace Airways, the former, without consulting Pan American-Grace Airways, have carried negotiations with the Post Office Department so far that it would have been difficult to have altered them.

As specific examples, I might cite the general reduction in airmail rates and the revised schedule. In respect to the former, an entire new rate schedule affecting not only mail to the United States and the Canal Zone, but also between foreign countries, was approved by the Post Office before Pan American-Grace was consulted. My own opinion is that the rates from South America are too high, but it is naturally more to the interest of Pan American Airways to keep these rates high as they have to carry everything which we do plus whatever they accumulate en route. In respect to the schedule, it was of course necessary to make it connect with the various services of Pan American arriving at the Canal Zone from Brownsville and other points and, on the whole, I consider the schedule as established the satisfactory one. I doubt, however, if any real effort was made to prepare a schedule which would be helpful to Pan American-Grace.

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JPC

[fol. 165]

GOVERNMENT'S EXHIBIT 52

EXHIBIT "J"

RELATIONS
PAN AMERICAN AIRWAYS AND PAN AMERICAN GRACE AIRWAYS

At the meeting at Mr. Hoyt's home in January and subsequent meetings of the Directors, it was definitely agreed that the original policy of having Pan American Airways and W. R. Grace & Co. rendering each the maximum service of which they were capable at New York and in the countries traversed by the Pan American-Grace Airways should be pursued and developed.

After the meeting of January 10th at a conference between Messrs. Hoyt, Trippe, Whitney, Roig and Patchin, it was agreed that a change should be made in the executive management, that an agency contract with W. R. Grace & Co. and a definite arrangement made with Pan American Airways for technical and other services at New York should be immediately drawn.

Subsequently an alternative proposal was brought under discussion but about February 1st, Mr. Trippe was advised that this was unacceptable to Grace. Mr. Roig sought to advise Mr. Hoyt to the same effect only to find that he had left for the West Indies. Shortly thereafter Mr. Roig submitted to Mr. Trippe an agency contract for W. R. Grace & Co. to act as agents along lines discussed from the time when the Pan American-Grace Airways was organized. Mr. Trippe has submitted no comment or modification of this agency agreement, but last week submitted a counter proposal contemplating but little more than an option on the part of P. A. A. to avail of the services of the Grace organization when convenient and placing upon W. R. Grace & Co. the responsibility of governmental negotiations and regulations without giving Grace Houses any authority in

[fol. 166] the management of the company for whose interest it is expected to be responsible before the various governments.

During the last two months Pan American Airways has practically withheld service and cooperation in the following particulars:

RADIO—Mr. Trippe has declined to provide the Trans-Andine or other planes with Pan American Airways radios unless Pan American-Grace should agree to allow Pan American Airways to install and operate all radio communication throughout Route #9. He has failed to submit, upon request of other Directors of Pan American Airways, estimate of what such service would cost. He has stated that he was unwilling to put Pan American Airways radio sets in the planes because such sets could not possibly be operated satisfactorily without the entire system being installed by Pan American Airways. Several of the Governments have made it clear that they will not permit the installation of ground-sets by Pan American-Grace or anyone else in view of radio being a Government monopoly. Pan American Airways provided Lieutenants White and McMullen with a Pan American Airways set for use on their five day Newark-Buenos Aires flight. Lt. White has stated it gave good service and communication with various government radio stations down the West Coast. We are informed that Mr. Summers caused a Pan American Airways radio set to be installed in a Trans-Andine plane and that it maintained good communication with Buenos Aires throughout its flight. It has since been taken out by Mr. Summers.

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PAN AMERICAN AIRWAYS TECHNICAL AND ENGINEERING SERVICE—At the Directors meeting on January the desirability of having Mr. Priester make GR-11242

[fol. 167] a trip to the West Coast was discussed and there was general agreement that it would be a good plan. Mr. Trippe has since stated he would not let Mr. Priester pro-

ceed on such a journey unless there was some arrangement under which Pan American Airways would have definite authority over Pan American-Grace operations. Mr. Trippe has stated repeatedly that Messrs. Priester and Gledhill are in a practical state of revolt against rendering any service of more than routine character to Pan American-Grace and that it is difficult for him to get them to do anything.

INCREASED SERVICE ON THE WEST COAST—Mr. Trippe told Mr. Patchin that he had told Mr. MacCracken of Nyrba that he, Trippe, would take no side in the controversy as to whether additional appropriations should be devoted to increasing the service on the West Coast to two trips a week or providing new service on the East Coast. He told Mr. Patchin he felt at entire liberty to work against the allocation of these appropriations to the West Coast because Pan American Airways has a 100% interest on the East Coast as against 50% on the West Coast. He has repeatedly stated that he could not support the effort to hold these appropriations to the West Coast because he would thereby seem hostile to the East Coast service. He has said that the alternative proposition he had made to Pan American-Grace to merge with Pan American Airways completely cleared his skirts of any blame in case he opposed the Post Office Department's declared intention to increase the service via the West Coast route. He has had frequent conversations with Mr. MacCracken who pointedly avoids discussion with anyone exclusively interested in Pan American-Grace. The whole burden of

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[fol. 168] supporting the increase of service on the West Coast has fallen on Grace Directors.

ACCOUNTS—Mr. Trippe has failed to comply with repeated requests to submit a bill for Pan American Airways services during the year 1929, although Mr. Patchin in accordance with the instructions of the Directors, has passed on all pending bills rendered by W. R. Grace & Co. and Pan American-Grace Airways. Although Pan American-

Grace has agreed to pay one-half of Mr. Summers salary and experses chargeable to negotiations and representation in Argentina, Mr. Summers has apparently been subject to no restriction and his salary and expense account in the last part of 1929 was running at the rate of $5,000 per month without adequate or convincing supporting details.

INEQUITABLE PROPOSALS—Mr. Trippe proposed to Mr. Patchin that Pan American-Grace should contribute an amount, not specified, to offset a supposed or anticipated loss to Pan American Airways in making direct flight across the Caribbean in order to shorten the through schedule. He also proposed to Mr. Patchin that Pan American-Grace should share a portion of the expenses of the East Coast trip of Mr. Rihl if the frequency of service on the West Coast should be increased but no charge should be made in case Pan American Airways should decide to work for the diversion of appropriations from the West Coast to the East Coast.

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[fol. 169]

GOVERNMENT'S EXHIBIT 53

April 22, 1930

MEMORANDUM FOR MR. IGLEHART:

PAN AMERICAN-GRACE AIRWAYS
PLAN OF ORGANIZATION

Paragraphs "3" and "4" of my memorandum provide in part as follows:

Paragraph "3"

> "Mr. Trippe as President will be in responsible charge of operations including flying, equipment, maintenance, ground stations, and everything directly connected with flying".

Paragraph "4":

> "Mr. Roig as Chairman, in addition to presiding at Directors' meetings, will be in general charge of the work of W. R. Grace & Co. as agents whose functions shall be as outlined in the form of agency contract submitted to Mr. Trippe on January 31, 1930".

In case the compromise plan is adopted, it would be very helpful if you in your talk with Mr. Hoyt can help to get him more fully aboard on the theory back of the two sentences above which constitute the heart of the whole plan. The essence of the plan is that Pan American's activity, through Trippe, is to be limited to the points mentioned in Paragraph "3" and that our activities are not to be limited to that of mere traffic agents but that we are to have general charge of the commercial end of the business in South America.

In other words, as I see it, if Trippe and I were partners in this business we would presumably divide the work be-

[fol. 170] tween us by his taking charge of the flying end and I of the commercial end. This is what I think we should do under the proposed plan of organization, the only difference being that Trippe has back of him on the flying side the Pan American organization and I have back of me on the commercial side, the Grace Coast organization.

But this means that the Grace agency contract be in the nature of a partnership agency and not merely an employee agency. The same, of course, applies to the Pan American contract. The difficulty I have with Trippe is that he sees Pan American in the light of the *sole* owner of the business with W. R. Grace & Co. as an outside agent just as we might employ Boyd Brothers at the Canal Zone, for example, or Delfino in Buenos Aires. There is nothing in my plan at all unless there is a large element of mutuality

in it and unless it is carried out in a true partnership spirit, Trippe and myself being the personifications of the two owners of the business.

H. R.

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[fol. 171]

GOVERNMENT'S EXHIBIT 54

EXHIBIT "T"

April 22, 1930.

MEMORANDUM

PAN AMERICAN-GRACE AIRWAYS

Mr. Hoyt came down to see me today at my request.

I explained to him that after an absence of some months I found the discussions going on with his group regarding the Airways business were taking a course that might lead to confusion and were apparently not leading to any beneficial or practical results. I recalled the fact that he, in his first meeting with me, suggested that we should become partners in this business because, on the one hand, his group could contribute to it a knowledge of the air business, whereas our group could contribute a knowledge of South American business, and that working together we should be able to develop a successful enterprise.

I recalled the fact that in our second conversation he had stated to me that their theory of running a business was to select a competent man and put him in charge of the business and let him run it, giving him full support and full confidence. He said at that time that their theory was to give such a man not only a salary but also an interest in the profits. At the time I agreed to this policy and Mr. MacGregor was selected for the post of General Manager. I stated that Mr. MacGregor for one reason or another had made a failure, and Mr. Hoyt attributed this to a swelled head.

I told him that I thought we ought to endeavour to find a man to take Mr. MacGregor's place and he suggested that we should bring up Harris and look him over as to fitness for the post. I told him I agreed to this provided it was understood that if we found him competent, we would put him in charge and let him determine to what extent he could use the services of Pan American Airways and what was a reasonable compensation for those services, in the same way that he was to decide to what extent he could use W. R. Grace & Co.'s services in South America and to determine what a reasonable compensation for these services was.

Mr. Hoyt then referred to the memorandum which Mr. Roig had drawn up as to a modus operandi. I replied that Mr. Roig's plan in principle was perfectly sound, but it involved the two partners working in complete harmony and that up to the present time they had not been able to do this. He replied that Mr. Trippe is a very difficult man to deal with, but that he is competent and that he felt that, if we could arrive at a basis, that Mr. Trippe, once having accepted that basis, would not be difficult to deal with.

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[fol. 172] I explained I felt that we ran against a fundamental difficulty due to the fact that Mr. Trippe conceived of the Pan American-Grace Airways as a mere department or subsidiary of Pan American Airways and that he looked upon it in the same way as he looked upon his Mexican service or his Caribbean service, and would not be satisfied unless he dominated the business in the same way that he dominated them. Mr. Hoyt replied that Mr. Trippe was under this misconception, and that this point would have to be cleared, but he thought to might be cleared by bringing Harris up here and having him, in case we decided him to be competent, undertake the more or less independent administration of the business, using Mr. Roig's suggested basis of direction. I told him that I rather feared it would be difficult to work out Mr. Roig's basis in practice, as it seemed that to get Mr. Trippe to agree to the exact spirit

of an agreement was seeking a millennium. I told Mr. Hoyt, however, that if he felt this could be worked out by having Mr. Harris come up here, I was entirely agreeable to doing so, but that I wanted to have it clearly established that whatever arrangement was worked out for the administration of the business, it was to be an independent administration and in no sense to be a department of their business any more than it was a department of ours. Mr. Hoyt agreed definitely to this understanding.

In leaving, Mr. Hoyt stated that he had been discussing with Curtiss the idea of taking over their interest in the Faucett business.

Inglehart

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[fol. 173]

GOVERNMENT'S EXHIBIT 55

EXHIBIT "U"

April 28, 1930.

MEMORANDUM

PAN AMERICAN-GRACE AIRWAYS

Mr. Hoyt telephoned to me today stating that he wanted to see me, and came down at 2.30 p.m.

He said that, after our conversation of April 22nd, he saw Mr. Trippe at once and told him of our tentative understanding. Mr. Trippe was very much upset and claimed that Hoyt was interfering and that if he had left him (Trippe) alone he would have been able to work out with Roig in two hours that afternoon a definite understanding based on Roig's memorandum that would have been quite practicable of carrying out. Hoyt replied to him that even if he (Trippe) had reached such an understanding, I would not have agreed to it for two fundamental reasons.

1) I was definitely opposed to dual management, particularly in view of the fact that the two elements that composed it had not up to the present time been able to work in the close harmony in which two successful partners must necessarily work.

2) I was definitely opposed to Pan American-Grace Airways being run as a department of Pan American Airways.

Trippe replied that he felt that he at least should have been given an opportunity to place his case before me and he was satisfied that he would have convinced me of the merit of it. Hoyt suggested then that he (Trippe) should come down and see me at once, but Trippe advised that, as he was sailing for Europe, this was impossible and that he would like to have the matter left until his return.

I made it clear to Mr. Hoyt that Trippe's contention that he would have reached a basis of understanding with Roig in two hours and that this understanding would have been a practical basis of operation, was entirely erroneous, and, although Hoyt did not definitely state so, he gave me the impression that he entirely agreed with me.

I explained to Hoyt that all of my dealings had been with him, that I wanted to continue my dealings with him; furthermore, that my one conversation with Trippe had given me the impression that it was quite an impractical thing for me to start any negotiations with him. Hoyt sympathized with this view, but said that he thought it would help in reaching an understanding if I would at least give

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[fol. 174] an hour or half an hour of my time to listen to Trippe's story, and then stating in a pleasant but very determined way the attitude that we propose to take. He said that he thought if I did this, they would be able to bring Trippe into line. I told him that I was willing to do this on one definite understanding and that is that my future dealings are to be with him, i.e. Hoyt, and that he would assume the task of getting his associates into line with whatever policy we agreed upon.

I explained to him that while interminable and futile discussions were going on, the business was not being managed, and I told him that our Houses on the Coast have not as yet really begun to contribute to the success of the enterprise the effort that we had agreed to exert when we originally undertook the business with him. I told him I had great confidence in the future of this business, but that it must be managed and that we could not afford to delay even another week in beginning an effort to gradually throw about the business the men and the influences necessary to push it ahead. I explained to him that I had suggested to Mr. Roig this morning that he should go down to the Coast at once and begin to study the business at close range to form a definite opinion of Harris and his work, to study the opportunities for building up the business and controlling it, and prepare a plan for getting all of our Houses to working in close synchronism with the management of the business; and, I suggested that he (Hoyt) should name someone from his organization to accompany Mr. Roig on the understanding that they were to work out a plan which, though not definite, would in practice be confirmed on their return to New York. He said that he did not know who he could send and feared that if he suggested to Trippe that they should send someone, he would object or he would give instructions to that man as to what plan he was to lay out and would tie his hands to such an extent as to make the success of the trip impractical. He said that the only man who might go down with a free hand was Whitney, but that he was inexperienced and would probably have to take a competent man with him. I suggested that he should consider this idea as I was afraid that even after Trippe's return, discussion would go on for a long time before a definite understanding was reached and that it meant a great prejudice to the business to lose this time, and that it was very dangerous to the business to allow it to continue in its present loose administration. He said that he would talk the matter over with Whitney at once and see whether anything practical could be worked out regarding my suggestion.

Inglehart

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[fol. 175]

GOVERNMENT'S EXHIBIT 56

SANTIAGO, 18th. August 1930

MEMORANDUM TO ALL CONCERNED

All general policies with regard to PAN AMERICAN GRACE AIRWAYS INC. are determined in our New York office and are enunciated either direct by Mr. MacGregor or through the undersigned in Lima. As far as possible the local divisions will have a free hand in working out their local problems, based on the general policies laid down by New York.

In order to definitely provide for the proper allocation of local responsibilities and duties as well as to reduce to a minimum any questions which may arise, the following duties and responsibilities are allocated to the companies and persons connected with PAN AMERICAN GRACE AIRWAYS, INC. organization operating in Chile:

W. R. Grace & Co. will be responsible for the following *local* functions:

1) Agencies and representations
2) Negotiations
3) Traffic, including mail, cargo and passengers (When carried)
4) Advertising
5) Purchases, including checking of presupuestos
6) Accounts, including checking and payment of all income and expenditures
7) Legal representation, including—
   a) Registration of PAN AMERICAN GRACE AIRWAYS INC. to do business in Chile, if necessary
   b) Determination of Governmental fees and taxes
8) Employment of personnel except operations personnel.
9) Securing of requisite office space, furniture and office personnel where necessary.

10) Cables, telegrams and telephones.
11) Distributing all PAN AMERICAN GRACE AIRWAYS INC correspondence and checking to make sure that *all* correspondence is promptly answered with copies to all concerned.
12) All local insurance
13) Movements of aircraft, except test flights

The necessary personnel will, for the carrying out of these functions, be employed by W. R. Grace & Co. for the account of PAN AMERICAN GRACE AIRWAYS, INC. Such employees will be under the direct supervision and control of a Grace representative having Power of Attorney for PAN AMERICAN GRACE AIRWAYS INC. Up to 50% of this representative's salary will be payable by PAN AMERICAN GRACE AIRWAYS INC. to W. R. Grace & Co. for his work in charge of the various functions allocated to W. R. Grace & Co.

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W455

[fol. 176] PAN AMERICAN GRACE AIRWAYS INC. will be responsible for:

1) Operation and maintenance of aircraft and motors.
2) Spare parts and supplies
3) Operation and maintenance of PAN AMERICAN GRACE AIRWAYS INC automobiles
4) Care of hangars, both of PAN AMERICAN GRACE AIRWAYS INC and/or rented ones.
5) Efficiency of aircraft movement
6) Employment of operating personnel
7) Efficiency of operating personnel
8) Appearance and conduct of pilots and flight mechanics while on duty
9) Proper maintenance of all operations reports and record and prompt forwarding of necessary operations reports to all concerned
10)

PAN AMERICAN GRACE AIRWAYS INC personnel will at all times maintain complete co-operation with W. R.

Grace & Co. employees or representatives engaged in PAN AMERICAN GRACE AIRWAYS INC. work.

It will be the duty of both PAN AMERICAN GRACE AIRWAYS INC employees and W. R. Grace & Co. employees to report in writing to PAN AMERICAN GRACE AIRWAYS, INC., New York, with copies to PANAIR, New York, W. R. Grace & Co., New York and the undersigned in Lima, a weekly summary of the general situation as regards PAN AMERICAN GRACE AIRWAYS INC interests, activities and plans. There will also be reported any points of discussion or differences of opinion on questions of policy on any other questions that may arise in the minds of any one group with regard to the functioning of the other group. Since neither organization has control of the other, the best way to further the interests of PAN AMERICAN GRACE AIRWAYS INC, with the minimum friction is to attempt to visualize the problem presented by the general situation (including international as well as local problems) and to co-operate in every way possible in order that the PAN AMERICAN GRACE AIRWAYS INC may become a self-supporting organization based upon a solid economic foundation.

PAN AMERICAN-GRACE AIRWAYS, INC.

H. R. Harris
Vice President

W455

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[fol. 177]

GOVERNMENT'S EXHIBIT 57

LETTER NO. —2—
W. R. Grace & Co. New York

ORIGINAL AIR MAIL LETTER

Regular Mail Copy Follows

New York, September 25th, 1930

H. J. Roig Esq.
Pan American-Grace Airways Inc.
Lima, Peru.

Dear Roig:

Met with Trippe September 22nd to discuss the bills, but made little progress, and this will be continued Friday when we will also have a meeting on the Chilean situation.

Trippe led the conversation to management arguing that PanAir should take over the administration of Panagra in the interest of economy, avoidance of duplicate effort etc., etc. I replied we considered the question settled when the separate company was organized and that the results which were now leaving a profit proved that method the most satisfactory and economical. I pointed out that on this basis the enterprise promised to be permanently successful which was its object, but that with the present costs of PanAir, being substantially higher than Panagra, the results would be disastrous. You can imagine his line of argument against this, namely, that the Panagra results were due to inadequate organization and operating standards, including lack of radio. When I replied that the satisfactory performance of all divisions except the trans-Andean in bad months proved that operating standards could not be so faulty as he alleged, he said that "Washington" was concerned over the general conditions of the service on Route #9.

I replied this was surprising because none of the many officials with whom I had frequently discussed the service had made any complaints whatever, on the contrary, the

Post Office Department seemed quite well satisfied. I pressed him to be specific. After a number of general statements he stated that Clarence Young, whom he saw last week, had expressed himself very strongly, alleging inadequate operating standards and stating that some of the inspectors had asked to be relieved of the responsibility of passing on the equipment. (I suppose this refers to Wooten). I told Trippe much of this was doubtless the result of unfavorable atmosphere created by Nyrba and others, including some in PanAir, that such conditions as might be justly complained of were rapidly being remedied and that this was one reason why you had wished him or Whitney to go to the West Coast with you and why, long ago, we had wanted Priester or himself to go for the purpose of inspection.

This conversation went on for some time, pleasantly enough, but without producing anything else new. To me it indicated the usual effort to push things along toward Trippe's never forgotten goal but I made clear that our attitude was entirely unchanged.

As MacGregor saw Young at Washington last week I asked *him* what Young said about our service. MacG. replied that Young said he had some reports which were unfavorable, whereupon MacG. explained the situation as fully as he could, emphasizing the performance record and stating that Panagra "Had never had an engine failure." He said he thought he left Young satisfied, particularly as he designated Cole to be Department's inspector of our equipment.

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[fol. 178] While this solves the difficulty of getting inspection it seems to me it might possibly be awkward in case of controversy arising from any serious accident.

MacGregor says that Cole has been sending in substantial requests for supplies. Cogswell says Panagra has $50,000. worth of spare parts, tools, etc. in Lima alone ex-

clusive of motors. Certainly the plane and motor equipment is ample as I calculate the planes are averaging less than two flying hours per day.

I think Panagra management ought finally to refutes the haywire reproach by assembling at the New York Office evidence in contradiction of disparaging statements and generalities that are false and by correcting any conditions that may be at fault. I suggested to MacGregor that he submit a performance report to the next Board Meeting showing how well the schedule has been maintained.

While the New York Office has photographs of the planes, it would be well to have some more showing planes arriving and departing from landing fields, the embarkation of passengers, new hangars in course of construction and anything else that shows progress in the provision of facilities. Photographs of the pilots and mechanics *in uniform* would make a good impression. Mr. MacG. says that an artist who recently went over the line spoke very highly of the attention given the passengers by the stewards on the Fords. Photographs of our store house showing the spare motors and parts would be useful. Duplicates of the literature and posters already sent here I can use to advantage in Washington.

Trippe said he had heard reports that we were considering selling our interest in Panagra and referred to a remark you made about our having an inquiry from a possible buyer. Also, "Didn't I think" that each side ought to give the other the first call in case of an opportunity to sell. I replied that, in general, I thought one's partner ought to have prior consideration. He said he thought there ought to be an agreement to this effect and I said that a hard and fast option was something else again on which I could express no opinion.

We are having a Directors' Meeting tomorrow to consider the Chilean situation. Trippe said he thought that Bihl, if given the opportunity, could work out a very much better settlement in Chile.

I hope we will make some progress with the bills before you get to Chile, if not, I will bring them up in the next following Directors' Meeting and request that the Directors as a committee of the whole dispose of them.

We are obtaining letters from various prominent patrons of Panagra testifying to the usefulness of the service to their business. Similar letters from Americans and others interested in South America would be helpful. Mr. Van Deusen of the Banco Central of Chile told me this week that the Vice President in charge of the National City Branches in South America is moving his headquarters to New York as he finds he can better supervise them from here with the air mail and the telephone. West India Oil Co. says air mail is a wonderful help to their business. We are endeavoring to make up an impressive record with such letters.

Very truly yours,

/s/ R. H. Patchin

GR-354

G 1008

[fol. 179]

Government's Exhibit 58

1930

Under date of August 13, 1928 Mr. Trippe submitted the attached Draft Memorandum on West Coast Operations (Exhibit A).

Under date of August 31, 1928 we wrote Pan American Airways, Inc. as per letter, copy attached (Exhibit B). Subsequent correspondence modified this to the extent that if we did not take at least 10% of the stock of the new company our interest in the venture would be in the form of stock of Aviation Corporation of the Americas.

On September 4, 1928 Peruvian Airways Corporation was formed. About the middle of September, 1928 Mr. Harris, Vice President and General Manager of Peruvian

Airways Corporation, left for Peru to commence service there.

About this time Mr. Trippe submitted a "Preliminary Estimate of Proposed Airline Services between Cristobal, P.C.Z., and Valparaiso, Chile" as a West Coast division of Pan American Airways, Inc. System. This showed, on a three times weekly service, a capital investment of $1,689,990 and annual operating costs of $1,971,900, or $1.69 a mile. Copy of the portion of such estimate for "Executive and General Expense" is hereto annexed (Exhibit C).

Pan American-Grace Airways, Inc. was incorporated on January 25, 1929 under the name of South American Airways Corporation, the name being changed on February 21, 1929 before the company commenced business. Messrs. Patchin and Trippe were elected Vice Presidents, Mr. Cogswell Secretary and Mr. Caine Treasurer.
GR-11210 2/10/55 JPC

G066038

[fol. 180] On April 3rd, 1929 Mr. Iglehart had a conference with Mr. Hoyt relative to the employment of Mr. MacGregor and his management of the line. Memorandum of conference is attached and marked Exhibit C-1. On April 8, 1929 Mr. MacGregor was elected Vice President and General Manager, Mr. Harris Vice President and Mr. Jacob Assistant Vice President. On April 23rd Mr. Vidal was elected Comptroller. Immediately following the election of Mr. MacGregor the following cable was sent to Mr. Harris:

"Following for Harris from directors Pan American Grace Airways Inc. we have appointed J D MacGregor executive head of Pan American Grace Airways Inc. with title Vice President and General Manager and headquarters New York J D MacGregor retires from Pan American Airways to accept this position sentence as mark appreciation your highly satisfactory service directors appoint you Vice President Pan American Grace Airways Inc. and increase your salary to $12,000 per year sentence J D MacGregor will reach

Cristobal about end of April and will wish to confer with you there sentence our intention you take charge of flight operations sentence it might become advisable you be stationed canal zone in that case have you in Peru anyone capable act as flight superintendent Peruvian Airways Corporation under your supervision from Cristobal"

After his election it was determined that Mr. MacGregor should make a trip to South America and before going he submitted to the Directors the annexed memorandums (Exhibits D and E).

In May, 1929 we prepared drafts of agreements with Panair and W. R. Grace & Co., as per Exhibits F and G, but there is no record of their having been submitted to Panair. As the agreement with W. R. Grace & Co. was to be used for discussion with the West Coast Houses, it presumably was not submitted to Panair.

Mr. MacGregor left for South America in May, 1929 GR-11211

G066039

[fol. 181] and returned at the end of the year. On January 6, 1930 he submitted an estimated budget for the year 1930 with written report based thereon. Extracts of such report in reference to services of W. R. Grace & Co. and Pan American Airways, Inc. are annexed (Exhibit H). At a conference at Mr. Hoyt's house in the evening the principal discussion was as to the authority of the Grace Houses, Mr. Trippe taking the position that they should have nothing to do with operations and further that a separate organization on the coast was necessary. At this meeting it was definitely agreed that the original policy of having Pan American Airways and W. R. Grace & Co. rendering each the maximum service of which they were capable at New York and in the countries traversed by Pan American-Grace Airways, should be pursued and developed. Under date of January 18, 1930 Mr. Roig sent Mr. Hoyt a tentative chart of organization which gave the agents no control over flying operations (Exhibit I).

Subsequently, at a meeting between Messrs. Roig, Patchin, Hoyt, Trippe and Whitney, it was agreed that a change should be made in the executive management; that an agency contract with W. R. Grace & Co. and a definite arrangement with Pan American Airways for technical and other services at New York should be immediately drawn. See Mr. Patchin's memorandum "Relations Pan American Airways, Inc. and Pan American-Grace Airways, Inc. (Exhibit J) which was made about April 15th, 1930.

Under date of January 31, 1930 Mr. Roig wrote Mr. Trippe enclosing proposed W. R. Grace & Co. agency agreement as per Exhibit K.

GR-11212

G066040

[fol. 182] Shortly thereafter Mr. Trippe suggested that the capital of the corporation be increased to $2,500,000 and that Panagra be run as a division of Panair. Mr. Trippe was advised that this was unsatisfactory.

Letter from Mr. Roig to Mr. Iglehart of March 4th, 1930 (Exhibit L) outlines the situation at this time.

Under date of March 5th, 1930, Mr. Roig wrote Mr. Trippe enclosing memorandum of plan of organization (Exhibit M). Under date of April 9th, 1930 Mr. Trippe wrote Mr. Roig as per Exhibit N. The various papers referred to in this letter are annexed and marked as follows:

Exhibit O—Informal memorandum in connection with draft of reorganization.

Exhibit P—Draft of proposed agreement between Pan American Airways and Panagra for supervisory services.

Exhibit Q—Draft of ideas of agency agreement covering the West Coast.

Exhibit R—Supplemental memorandum covering ideas of method of financial control and accounting procedure.

Exhibit S—Comparison of cost of Grace agency fees and cost of similar services as rendered under Panair operations.

On April 22nd, 1930 Mr. Iglehart had a conference with Mr. Hoyt in which it was agreed that the administration of the business should be independent and in no sense a department of either W. R. Grace & Co. or Pan American Airways, Inc. Memorandum of conference is attached and marked Exhibit T.

GR-11213

G066041

[fol. 183] On April 28, 1930 Mr. Iglehart had a further conference with Mr. Hoyt as per memorandum attached (Exhibit U).

In the summer of 1930 Mr. Harris spent several weeks in this country but no important changes in the organization were agreed upon as a result thereof.

On September 15, 1930 Panair purchased certain assets of the Nyrba. It was distinctly understood while the negotiations leading up to this purchase were in process that Pan American-Grace Airways were not to be committed in any way without specific authorization by its Board of Directors.

In September, 1930 Mr. Roig left for the West Coast, returning in January. The principal question under consideration by the Board during this period and until January 30, 1931 was the Chilean concession.

On February 2nd, 1931 Mr. Roig sent Mr. MacGregor draft of agency agreement covering services of Grace y. Cia. in Chile (Exhibit V).

GR-11214

G066042

[fol. 184]

GOVERNMENT'S EXHIBIT 59

January 27, 1931

MEMORANDUM FOR MR. MACGREGOR:

GRACE AGENCY CONTRACT

Although we have now been operating for two years, there has never been any agency agreement between Panagra and our West Coast Houses. In the light of our actual experience it ought now to be possible to agree upon mutually satisfactory terms.

The attached draft covers proposed agreement for Chile only but can, of course, serve as a model for the other countries. The draft follows in general the same form as the agency agreement made with Pan American Airways in Buenos Aires except that it covers the following additional services:

1. Pan American's agency contract applies to the single city of Buenos Aires. The Chile contract includes not only Santiago but the stops at Ovalle, Antofagasta and Arica as well. Additionally, it includes supervision of the accounts of the Buenos Aires and Montevideo agencies which respond in the first instance to the Santiago office and in the nature of the case a somewhat more extended administrative job.
2. The Chile contract includes legal services and Government negotiations neither of which is included in the Pan American agreement.
3. The Chile agreement covers an airline 1,800 miles long (including the Santiago/Montevideo division) whereas the Pan American contract is applicable over a distance of only 800 miles even including the run to Montevideo. In the section east of the Andes we have three stops only one of which (Montevideo) is an overnight stop, in Chile we have four stops of which two are overnight. In the section east of the

Andes we have separate agents who have to be paid separately at two (Mendoza and Montevideo) of the three stops. Moreover, both Santiago and Arica are points where planes from two divisions meet so that

1-10-55 F
GR-8781

[fol. 185] the handling involves not merely that of a through plane but that of termini for two planes.

4. In both contracts sub-agents are placed at the service of Panagra in the sale of passages but Pan American has no sub-agents whereas we have them throughout the whole of Chile.

The fee has been arrived at as follows:

Present Panagra personnel to be taken over by W. R. Grace & Co.	$ 7,400.—
Rent Santiago office (front space on first floor in place of present space)	2,500.—
Manager	5,000.—
Three agencies. (Ovalle, Antofagasta and Arica) at the rate of $12.50 per plane for overnight stops and $10. per plane other stops	6,760.—
Legal and general supervision	5,000.—
	$26,660.—
Or say, per month	$ 2,250.—

GR-8782

G049707

[fol. 186]

GOVERNMENT'S EXHIBIT 60

PERSONAL

NEW YORK,
March 21, 1931.

Mr. H. R. Harris,
Lima, Peru.

My dear H. R.:

In anticipation of a strenuous kick from you because you received no official letters from me this airmail, I am writing this little note to tell you that I have been in a tail spin, and simply couldn't get to it.

I have been busy every day trying to reconcile conflicting views of the Directors with regard to present and future policy. Pan American Airways wishes to spend money ahead of results. Grace wishes to get the income before spending it. Pan American feel we should place multi-motored equipment, radio equipped, along the whole line at once. Grace wishes to do it by sections. Pan American wish to start passenger service over the entire line and put in passenger stations and hangars. They say that, granted we do not own the fields, we can make a deal with the Governments and put in facilities on Government owned fields on some kind of a basis.

The fundamental difference in the view-point of the two stockholders, apart from the above, is whether the Post Office, if we do not put in these facilities, will curtail the service and the frequency. Pan American insist that they will. Grace is not willing to allow that contention.

I think you will agree with me that there is something to be said on both sides. Pan American have thoroughly sold

PAG-W 75
9/30/54
JPC 3

[fol. 187] their service to the Post Office and to President Hoover, on the basis of a large investment. Panair does

W 678

not propose to insist that we make a similar investment, but they do insist that we put in something, which, all along the entire route, would be an evidence of our willingness to co-operate with the American Government in establishing a service which would be a monument to American initiative, skill and forethought.

This letter is very sketchy, but you can readily see how divergent the views are, and the greater the delay, the wider the divergence.

At the last meeting of the Board of Directors, I was requested to prepare a program and estimate of facilities which I would consider necessary to carry out the Panair program. I made it very plain that my program would be without relation to the present cash position or to our capital structure, and that whatever amount I arrived at might be very greatly increased through the fact that where it is necessary to build facilities on Government property, the plans have to be approved by the Government, and the Government's ideas would naturally tend to the installation of facilities very much more elaborate than we, as a Corporation, would consider necessary. However, I shall make a stab at preparing something for them on the basis that we put hangars at overnight stops and passenger stations at regular stops (excluding flag stops) and see what the figures look like.

If you have any suggestions, wire me privately to White Plains, on receipt of this letter, as I would not wish the letter drawn to our Directors' attention by mention in a Company cable.

Very truly yours,

J. D. MacGregor.

JDM/Q

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W 678 4

[fol. 188]

GOVERNMENT'S EXHIBIT 61

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

Harold R. Harris
Enroute Antofagasta
August 29, 1931

Mr. MacGregor, New York

USE OF PANAIR EMPLOYEES

As I told you over the phone Captain Roy Odell, Chief Airport Engineer of Panair, was in Buenos Aires during my stay there. I was able to get quite a good deal of information from Odell including the complete supervision of the final plans submitted for the Buenos Aires hangar. The hangar contract was almost entirely dictated by Odell and he made a number of interesting and important observations with regard to this and similar buildings.

Odell would have come north with me over the Panagra route if Rihl had not been afraid that Trippe would be angry at our use of a Panair expert's services without first securing his personal authorization. I do not know what the answer to a thing of that sort is. I am sure it has given you many headaches. It strikes me that if possible we should arrange with Panair to take advantage of their experts on some sort of a cost plus basis. I do not believe you have ever told me what your deal with Zalduondo is but it seems to me that we might make similar deals for other Panair employees in the same way that we used Laidlaw.

/s/ H. R. HARRIS

Harold R. Harris

HRH:CBR

PAG-W142
9/30/54
J.P.C.

W.667

[fol. 189]

GOVERNMENT'S EXHIBIT 62

RICHARD F. HOYT
25 Broad Street
New York City

August 17, 1928.

Mr. Juan Trippe,
Pan-American Airways, Inc.,
100 E. 42nd Street,
New York City.

Dear Juan:

My understanding of our arrangement with the Grace Line is that it is only to cover the South American route from Colon down the west coast, but I notice in the memo. you have submitted to them you include operations in Colombia.

Sincerely,

(Sgd.) DICK

RFH-W

[fol. 190]

GOVERNMENT'S EXHIBIT 63

copy of cable from Panagra referred to in annexed letter #63

TO PAN AMERICAN GRACE AIRWAYS INC
SANTIAGO

#106 DATED 10/18/29 #12635

---

1 #106 OF FRIDAY REFG. YOUR #85
2 PANAIR AND
3 WE AGREED THEY SHOULD
4 HANDLE ALL
5 PURELY DOMESTIC
6 BUSINESS ARGENTINE

AND PANAIR
ORGANIZED ALAS
FOR THAT PURPOSE
SENTENCE ENDS HOWEVER
PANAIR AND
OURSELVES IN ACCORD WITH
THAT WE INSTITUTE
LOCAL TRANSPORTATION
BUSINESS ON
INTERNATIONAL MAIL LINE
SENTENCE ENDS WE CONSIDER
SHOULD COMMENCE
CARRY PASSENGERS
AS SOON AS POSSIBLE BETWEEN
MENDOZA (ARGENTINE) BUENOS AIRES
AND INTERMEDIATE
POINTS AND SHOULD
STUDY ADVISABILITY (OF)
RUNNING EXTRA
TRIP WITH
FORD BETWEEN — AND —
MENDOZA (ARG.) BUENOS AIRES
MIDDLE (OF) WEEK
REFG. YOUR #90
WILL REPLY AS SOON AS POSSIBLE
IN THE MEANTIME ARRANGE
WITHHOLD MAHAN
REPORT SENTENCE ENDS
$37 PER SHARE

[fol. 191]

GOVERNMENT'S EXHIBIT 64

J.D.M. Series #63

New York
November 14, 1929
Excerpt (P2).

Mr. J. D. MacGregor,
Pan American-Grace Airways, Inc.,
c/o W. R. Grace & Co.,
Lima, Peru

Dear Mr. MacGregor:

In reply to the enquiry in your letter #16 in reference to the joint activities of ourselves and the Pan American Airways, in the Argentine, you have received our cable in which we outlined the general agreement between the two Companies on this matter. The understanding is that we will have the through route and any local business in connection with the operation thereof. Pan American Airways, on the other hand, through their subsidiary, Wings, will carry on all local business not in connection with the operation of the through route. This, of course, is a broad statement of the general understanding, and specific instances will have to be settled as they come up.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

Secretary.

WFC/Q

[fol. 192]

GOVERNMENT'S EXHIBIT 65

PAN AMERICAN-GRACE AIRWAYS, INC.

ACQUISITION INTEREST IN BOLIVIAN COMPANY

1. The capital of Pan American-Grace is not sufficient to permit of its investment of approximately one-third thereof in the acquisition of a 51% interest in a small company operating in the interior of Bolivia.

2. In my opinion, this company is not of sufficient value to make it worthwhile considering increasing our capital in order to acquire it because:

(a) Its concession and subsidy, whatever they may be worth, have only about a year and a half to run and even with these advantages, they are only showing results by providing inadequate depreciation and otherwise forcing their figures.

(b) When this concession and subsidy run out they will probably have nothing of interest to our operations which we cannot acquire directly for less cost at such time, if ever, as it suited us to do so.

(c) The question of connecting this interior service with the West Coast by air appears to present serious difficulties.

(d) The purchase is of little value to us or anyone else as a means of reaching the Argentine.

3. The policy of attempting to maintain a monopoly by purchasing inconsequential services at extravagant prices, merely to prevent their falling into the hands of competitors, is not, in my opinion, sound. I do not see how we can ever hope to continue buying off such competitors. It is too easy to set up in this business to make this course practical and the capital diverted in the purchase of competition at fancy prices will be far better employed in beating competition in actual operations. I

GR-213
11-4-54
RLA

G013359

[fol. 193] think that we are always going to have a certain amount of competition but in combatting it we have the important advantage of our mail subsidy and will have, in my opinion, an added advantage if our competitors acquire their facilities on any such basis as that proposed in connection with this Bolivian company. The risk of disaster from over extension of our capital and operating ability is far greater than that from unsubsidized and overcapitalized competition.

4. Bolivia is a West Coast country and accordingly comes within the sphere of operations of Pan American-Grace. That company's through service is, accordingly, entitled to secure as much of the Bolivian business as possible and to make traffic arrangements to that end compatible with its financial and other limitations. For Pan American, therefore, to buy this Bolivian company with a view to diverting traffic to the East Coast is not, in my opinion, correct and is in effect setting up direct competition with Pan American-Grace. For Pan American to acquire the company in this connection giving Pan American-Grace an option to repurchase at cost does not cure the situation. It merely tends to force the hand of Pan American-Grace.

5. Pan American-Grace should endeavor to make some working arrangement with this Bolivian company for exchange of traffic and if necessary or desirable to that end, purchase a small block of stock in order to secure a seat in the company's Board.

GR-2184

May 23, 1929.

6013360

[fol. 194]

GOVERNMENT'S EXHIBIT 66

PAN AMERICAN-GRACE AIRWAYS, INC.
122 EAST 42nd STREET NEW YORK, N.Y.

NEW YORK
September 12, 1930.

Memorandum to:

Mr. J. T. Trippe, President,
Pan-American Airways, Inc.,
New York City.

I am in receipt of the following cable from Mr. Metzner at Valparaiso:

"'Alas' plane apparently making trip Mendoza Chile daily. We understand Bradley, Secretary Civil Aviation, Argentine, Manager of Alas, coming Chile next Saturday.

that is September 13th, to get a concession from Chilean Government. We understand they (Alas) have been subjected to continuous fines beginning with first trip."

In conversation with you some weeks ago, I understood you to say that NYRBA would ask for a cancellation of its contract with the Chilean Government, and that the route between Santiago and Buenos Aires and Montevideo would be left free for Panagra.

It would seem from the above cable that Alas planes are making frequent trips to Santiago. It may, of course, very readily be that until September 15th Alas is complying with obligations incurred by NYRBA. I thought it well, however, to draw this matter to your personal attention in the hope that you would confirm the intention of Pan American Airways, Inc. not to compete with Panagra between Santiago and the Uruguayan and Argentine Republics.

PAN AMERICAN-GRACE AIRWAYS, INC.

(sgd.) J. D. MACGREGOR
J. D. MacGregor.

JDM/Q

PAA-5707
3/3/55
JPC

W99C

[fol. 195]

GOVERNMENT'S EXHIBIT 67

COPY

CABLEGRAM TO BUENOSAIRES, ARGENTINE

(INCONFIDENTIAL CODE)

Dated Sept. 13, 1930.

PANAIR
BUENOSAIRES, ARGENTINE

TWOHUNDREDEIGHT: IT IS REPORTED ALAS HAS MADE SEVERAL TRIPS SANTIAGO STOP AS

SUME FLIGHTS MADE IN CONNECTION CANCELLATION NYRBA URUGUAY ARGENTINE MAIL CONTRACTS TO CHILE STOP CONFIRMING PREVIOUS ADVICES AGREEMENT BETWEEN PANAMERICAN AIRWAYS AND PAN AMERICAN GRACE AIRWAYS PROHIBITS PANAMERICAN AIRWAYS OR ALAS OPERATING BUENOSAIRES MENDOZA SANTIAGO LINE ALTHOUGH PERMITTED OPERATE ANY OTHER ROUTES EAST OF ANDES INCLUDING BUENOSAIRES MONTEVIDEO STOP AGREEMENT LIKEWISE RESTRICTS PANAMERICAN GRACE AIRWAYS OPERATIONS EAST OF ANDES TO SANTIAGO MENDOZA BUENOSAIRES MONTEVIDEO LINE CONFIRM RECEIPT

TRIPPE

NOTE: This wire sent at telephonic request of Mr. Cogswell and cleared through him before sending.

cc: MESSRS: TRIPPE
WYMAN
RIHL
THACH
YOUNG
MACGREGOR
WOODBRIDGE

W99C

PAA-5710
C

[fol. 196]

GOVERNMENT'S EXHIBIT 68

AIR MAIL COPY
M. Roig

Chieftan 208 to METZNER (Valparaiso) 9.13.30

1

Alas plane apparently making daily trip
Mendoza Chile etc.

2 for your information PanAir
3 advises-s know
4 nothing of and
5 do not approve they assume
6 operation-s may possibly
7 have arisen from a
8 contract Nyrba
9 had for
10 operation-s between
11 Uruguay and Chile
12 but they have
13 today cabled
14 Summers that they
15 have agreed with
16 Panagra that
17 Panair including
18 Alas shall not
19 operate between
20 Argentine and Chile
21 or Uruguay and
22 Chile keep us posted

Mr. Valverde
Mr. Patchin

GR-357

G 1010A

[fol. 197]

GOVERNMENT'S EXHIBIT 69

LETTER NO. 1

2.21B1

W. R. Grace & Co. New York

ORIGINAL AIR MAIL LETTER

Regular Mail Copy Follows

September 16th, 1930.

Dear Roig:—

After your departure it took a couple of days to get in touch with Trippe regarding the situation created by the Alas invasion of Chile, but he finally sent a cable to Summers of which a copy is enclosed, and we sent a Grace private cable to Metzner advising him of the situation.

* * * * *

Very truly yours,

/s/ R. H. PATCHIN

H. J. Roig Esq., Vice President,
W. R. Grace & Co.,
Lima, Peru

G-1009

P.S.—As I will endeavor to keep you posted and informed on all important matters, I am starting a private letter series of which this is the first.

GR-355

[fol. 198]

GOVERNMENT'S EXHIBIT 70

HRH #581

NEW YORK,
September 17, 1930.

Mr. H. R. Harris, Vice President,
Pan American Grace Airways, Inc.,
Lima, Peru

Dear Mr. Harris:

Referring to your letter #223 of September 11th on the subject of our representative in the Argentine, you may be sure that we have this question very much in mind.

The allocation of passenger traffic, to which you refer, as between Panagra, Panair and Alas, was settled by our Directors whilst I was in South America. We have exclusive right as between the two Companies to passengers between Buenos Aires and Mendoza, along our present route. Panair can compete with us between Buenos Aires and Montevideo only. Panair or Alas have the exclusive right to passenger service, as far as we are concerned, anywhere else in the Republic.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

J. D. MacGregor
Vice President & General Manager.

JDM/Q

329

[fol. 199]

GOVERNMENT'S EXHIBIT 71

Cable Address
All Offices
"Panagra"

PANAGRA Files
Pan American-Grace Airways Inc.

Lima
Grace Bldg
Casilla 2488

LIMA, Sept. 18, 1930

Pan American-Grace Airways, Inc.
New York

JIRH #246
PAN AMERICAN-GRACE AIRWAYS, INC.
OCT 3, 1930
RECEIVED BY ORDINARY MAIL

Dear Sirs:

I am very much surprised to learn from Mr. Van Law that Summers sent a passenger, presumably paying, by our regular Fairchild from Buenos Aires to Mendoza. This was a Mr. Adams, South American representative of the Anglo-French bank. He was presumably a paying passenger for Panair between Mendoza and Santiago. I was also surprised to learn that Mr. Summers had apparently on his own responsibility started a passenger service between Mendoza and Santiago with a Nyrba Ford previous to the day on which the Nyrba assets were taken over by Panair. This Nyrba Ford was piloted by Pilot Lansing of Panair.

I again call to your attention the danger of allowing such conditions to exist in Argentine where there will inevitably arise a conflict between Panair and PANAGRA unless these conditions are corrected by a final assignment of the sections over which each organization will hold jurisdiction. I am sure that these matters have already been

brot to your attention and that you have taken the requisite action but I wish again to emphasize the situation.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS INC.

/s/ HAROLD R. HARRIS
Vice President

HRH/CBR

air mail copy
cc to Panair, N.Y. & Grace, N.Y.
138 330

[fol. 200]

GOVERNMENT'S EXHIBIT 72

2.21B1

SANTIAGO, 19th November, 1930.

R. H. Patchin Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Patchin,

P., A. A. Argentine Situation

Panamerican have no basis in the Argentine today, and even if they get the U. S. mail contract extension they will have no basis for their present layout there.

As partners in Panagra they should consider that they are already serving Argentine over the West Coast, and should retire from that field entirely, at least beyond Punta Alegre. This would not only be playing the game with their partners, but would be making money for themselves, instead of losing it at a frightful rate. Rihl sees this, but Trippe will never see it until the loss has become so colossal that someone stops it. Happily this will not take long at the rate they are going, and if we can only keep the Post Office from extending the East Coast mail contract for say one more year it will be of very great value to our line. If they do not get the appropriation for the Fiscal

year beginning July 1st, next. I do not see how they can stand the pace of waiting another whole year, and they may become sane and quit.

. . . . . .

Very truly yours,

/s/ Rose

GR-411

G-1025

Omit

HJR/El.

[fol. 201]

GOVERNMENT'S EXHIBIT 73

EXECUTIVE COMMITTEE

APRIL 8, 1931.

"A general discussion ensued relative to a possible conflict of interests with Pan American-Grace Airways, Inc. arising out of the fact that the United States Post Office Department, in the interests of the postal service, might decide to temporarily reduce service between Santiago and Montevideo under F. A. M. contract No. 9 held by Pan American-Grace Airways, Inc. from two trips per week each to one trip per week—providing for one trip per week between the United States, Argentine and Uruguay, via the west coast and a second trip per week between these points via the east coast. Mr. Trippe pointed out that the past understanding between this Company and W. R. Grace & Company at the time of the organization of Pan American-Grace Airways, Inc. contemplated that Pan American Airways, Inc. would operate along the east coast to Buenos Aires and that domestic service within Argentina with the exception of the route between Buenos Aires and Mendoza to Santiago, would be served by Pan American Airways, Inc.

Following a detailed discussion, at which the past agreements and understandings between this Company and W. R. Grace & Company were reviewed, a letter from this Company to Pan American-Grace Airways, Inc. was drafted. The letter, in addition to summarizing the past under-

standings and agreements, pointed out the possible conflict of interests between the two companies that might arise out of this Company's efforts to obtain support of a United States Post Office contract for the route between Santos and Buenos Aires, and also stated that Messrs. Hoyt, Trippe and Whitney, since they are directors of Pan American Airways, Inc., would refrain from influencing in any way the conduct of Pan American-Grace Airways, Inc., in respect to any matters in which there is a conflict of interest, but would, of course, attend any meeting of the Board of Directors of Pan American-Grace Airways, Inc., for the purpose of establishing a quorum, if requested to do so, but would refrain from voting.

[fol. 202] Upon motion, duly made, seconded and carried, such letter was approved and the President was authorized to forward same, and to send a copy to each representative of W. R. Grace & Co. on the Board of Directors of Pan American-Grace Airways, Inc., and a copy was ordered filed with the minutes of this meeting."

[fol. 203]

GOVERNMENT'S EXHIBIT 74

Office of the President — PAA

PAN AMERICAN AIRWAYS, INC.
General Offices — 122 East Forty-Second Street — New York City

April 8, 1931.

Pan American-Grace Airways, Inc.,
122 East 42nd Street,
New York City.

Attention of Mr. John D. MacGregor,
Vice President and General Manager.

Dear Sirs:

Referring to our previous discussions, we wish to inform you that service on the route on the east coast of South

America between Santos and Buenos Aires, which was temporarily suspended to permit the rehabilitation of equipment after the acquisition by us of the assets of New York, Rio & Buenos Aires Line, Inc., will soon be resumed. In order to cover even the direct out-of-pocket expenses of operation between Santos and Buenos Aires, a United States postal contract is, of course, essential, and accordingly we are taking up with the United States Post Office Department the extension of our Contract No. 10 to Buenos Aires.

The contemplated extension of our service to Buenos Aires is in fulfillment of plans developed by us prior to the formation of your Company, and which have been assented to by W. R. Grace & Company and by your Company. The arrangement between Aviation Corporation of the Americas and W. R. Grace & Company, as a result of which your Company was formed, contemplated that the sphere of operation of your Company should be confined to the west coast of South America. When it was later decided that your operations should be extended over the Andes to Buenos Aires and Montevideo, it was understood by all parties that our Company was to retain full rights to operate air transport lines in the eastern or central part of South America; that Pan American, during the term of your United States mail contract, would use your services on the west coast of South America and your present Trans-Andean route to Buenos Aires, and, except between Buenos Aires and Montevideo, you would use Pan American's services elsewhere in the Argentine and South America, the two companies cooperating in their respective spheres.

We realize that there is in the proposed extension a possibility of a conflict of interest between Pan American Airways and Pan American-Grace Airways, Inc., just as there is a possibility of conflict of interest on other matters between the interests of W. R. Grace & Company and Pan American-Grace Airways, Inc.

We do not intend and have never intended to suggest to the Post Office Department that, in connection with an ex-

tension of Contract No. 10 to Buenos Aires, it should reduce

PAG—W 77
9/30/54 JPC 4

W 1456

[fol. 204] the number of trips to be flown by, or the rate of compensation to be paid to, your Company. The whole matter appears to us to be a question of postal policy, as to which the officers of the Department must necessarily be the judges.

Mr. Hoyt, Mr. Trippe and Mr. Whitney have authorized us to inform you that since they sit on the Board of Directors of Pan American Airways, they will, of course, refrain from influencing in any way the conduct of Pan American-Grace Airways, Inc., in respect to any matters in which there is a conflict of interest. If the presence of any of them is required for the purpose of affording a quorum for Board action of Pan American-Grace Airways, Inc. relating to any such matter, they will attend for the purpose of establishing a quorum, if requested to do so, but will refrain from voting.

We are sending copies of this letter to Mr. Patchin, Mr. Roig and Mr. Cogswell.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.,

By J. T. TRIPPE
President

JTT:B

PAG—W 78

[fol. 205]

GOVERNMENT'S EXHIBIT 75

Panagra

New York, April 10th, 1931.

MEMORANDUM FOR MR. ROIG

In our conversation this morning, Mr. Trippe showed me a draft of a letter from Panair to Panagra stating they were about to resume service between Santos and Buenos

Aires and that postal aid would be necessary to its Maintenance.

The letter developed the idea that it had always been understood that Panair should operate down the East Coast of South America, that Panagra was interested in the West Coast only; that the question of obtaining mail pay for this extension of the East Coast made a conflict of interest between Panair and Panagra, in view of which Messrs. Hoyt, Trippe and Whitney as Directors of Panagra would refrain from voting but would be willing to make a quorum at any meeting where this question might come up. The letter also stated that the extension was a question of postal policy.

Mr. Trippe wished to discuss the letter but I told him that as it had been prepared very carefully for the purpose of making record, I did not wish to make an offhand comment upon it. I repeated that we (Grace Directors) were interested only in preserving the two trips a week on the West Coast and that I proposed to do everything possible to protect the company's interest in this regard, that the interest of the Post Office service plainly called for continuation of not less than two trips a week via the West Coast, since it carries the mail by the shortest route at the lowest rate to Buenos Aires and Montevideo. Also that the

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[fol. 206] extension while entirely justified if the Post Office Department had sufficient appropriations, was not necessary in order to give air mail service to Buenos Aires.

Mr. Trippe intimated that Panair ought to have the support of Panagra in getting a contract for the extension and I replied that this was not the case if in any way the payment was to be taken from the West Coast service either by reduction of frequency of the service, curtailment of route or rate of pay.

RHP
RHP

60180[illegible]

[fol. 307]

GOVERNMENT'S EXHIBIT 76

NEW YORK,
April 16, 1931.

Pan American Airways, Inc.,
Suite 4200, Chanin Building,
New York City.

Att. Mr. J. T. Trippe, President

Gentlemen:

I beg to acknowledge receipt of your favor of April 8th, 1931 with regard to the contemplated extension of the service of Pan American Airways, Inc. to Buenos Aires.

We have carefully noted your advice as to the course that will be pursued by Pan American Airways Directors who are also members of Pan American-Grace Airways Board in the event of a meeting of a Board of Pan American-Grace Airways called to take action on a possible conflict of interest of the two Companies resulting from that extension.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

85

J. D. MacGregor
Vice President & General Manager.

JDM/Q

PAG-W79
9/30/54
JDC

NP56

[fol. 208]

GOVERNMENT'S EXHIBIT 77

April 23, 1931

J. T. Trippe, Esq.,
Pan American Airways, Inc.,
122 East 42nd Street,
New York City

Dear Trippe:

I beg to acknowledge your recent letter enclosing copy of Pan American Airways, Inc.'s letter of April 8th addressed to Pan American-Grace Airways, Inc.

While I do not know when your plans for extension to Buenos Aires were developed, I do know that the decision that Panagra's operations should be extended over the Andes to Buenos Aires and Montevideo was not a "later" decision in any relevant sense, as evidenced by the fact that this extension is included in our original Post Office mail contract of March 2, 1929. I also knew, of course, that Pan American have for some time contemplated extending their East Coast line to Buenos Aires and operating in the Argentine (except between Santiago and Montevideo via Buenos Aires) and that Panagra have not contemplated operations east of the Andes except between Santiago, Buenos Aires and Montevideo.

Your letter states that Pan American "are taking up with the United States Post Office Department the extension of contract No. 10 to Buenos Aires" and that "we do not intend and never have intended to suggest to the Post Office Department that, in connection with an extension of contract No. 10 to Buenos Aires it should reduce the number of trips to be flown by or the rate of compensation to be paid to" Panagra. W. R. Grace & Co. as a stockholder of Panagra accepts and relies upon these assurances as given in good faith; as including any action (whether of the kind specifically mentioned or otherwise) calculated to divert any United States mail pay from con

tract No. 9 to contract No. 10; and as including not only Pan American as a company but also anyone on its behalf. Almost simultaneously with receipt of your letter under reply Mr. MacGregor brought me a proposal from you that Panagra join Pan American in suggesting to the Post Office that in order to provide funds for your East Coast extension Panagra give up one trip a week between Santiago and Montevideo. This is, of course, entirely unacceptable. I understand your assurances to mean that this suggestion has not been made and will not be made to the Post Office Department without authorization of Panagra's Board of Directors.

Referring to paragraph "3" of letter exchanged by Mr. Rihl and myself at Buenos Aires dated November 16, 1930, it is, of course, understood Pan American is not at liberty to operate the proposed East Coast extension under this contract of Panagra's without express authorization of Panagra's directors and in case they grant such authorization it must, naturally, be conditioned on Pan American's furnishing adequate guaranties holding Panagra harmless from any claims against its bond deposit or otherwise arising out of Pan American's operation of this East Coast service.

GR 6750
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145

[fol. 209] There is no conflict "between the interests of W. R. Grace & Co. and Panagra" which bears the remotest resemblance to the situation presented by your letter and proposal.

While we appreciate the spirit of the next to the last paragraph of your letter, it is only fair to say that W. R. Grace & Co. do not consider that the proposed procedure covers the full measure of a director's responsibility in the premises and our acquiescence in this procedure is not to be construed as carrying any other implication.

I am sending copies of this letter to Messrs. Hoyt and Whitney.

Very truly yours,

(sgd) HAROLD J. ROW
Vice-President

cc
Mr Hoyt
Mr Whitney

G031766

GR 6751

146

[fol. 210]

GOVERNMENT'S EXHIBIT 78

Berengaria 3 4

LONDON, April 30, 1931.

Dear Whitney,

Just before sailing from New York I received advices from Washington which were surprising and indeed, very disappointing to me. They were to the effect that one of your associates, a director of our Pan American Grace Airways, had suggested to the Post Office Department that the service on our line from Santiago to Buenos Aires be cut down from two trips to one trip a week.

While the Washington officials declined to interfere with our service, the incident may result in a very heavy financial loss to our company, as my advices indicate that it may lead to an effort to force us to accept for our second weekly trip $1.60 a mile instead of the $1.80 to which under our contract we are entitled after July 1st, 1931. This would mean a loss to our company of $100,000. a year, which is a most serious matter. I think we should carefully consider how the company is to obtain redress and I should like to talk this over with you on my return.

I am giving you these facts confidentially as I feel that you should have them in order that you may be in a position to take any steps that you may consider necessary

or advisable to right the wrong that has been done and to provide against the repetition of such an incident.

GR-501
10/24/54 PJS· G 1941

[fol. 211] I feel confident in placing this whole matter before you for your consideration and solution.

I have not intervened in the management of Panagra and am not too anxious to take on anything new. But I have enough confidence in *you* to believe that you and I can sit down and work out a plan of action. We would, however, have to sit down with full authority and independent of the opinion of anyone. I am sure that you would look at the whole matter with a spirit of fair dealing and understanding; and I would endeavor to do the same.

I expect to be back in New York early in June.

I am, with kind regards,

Sincerely yours,

(Sgd) D S Iglehart

C. V. Whitney, Esq.,
New York.
GR-502

G 1942

[fol. 212]

GOVERNMENT'S EXHIBIT 79

1237 A
5cc.

CABLEGRAM TO BUENOSAIRES (ARG.)
(IN CONFIDENTIAL CODE)

DATED: MAY 1, 1931.

PANAIR
RIHL
BUENOSAIRES (ARG.)

TWENTYSEVEN FOR YOUR CONFIDENTIAL INFORMATION ON ACCOUNT OF SITUATION HERE

MAKE NO AGREEMENT WITH PANAMERICAN GRACE AIRWAYS REGARDING SCHEDULE DEPARTURES STOP POSTOFFICE HAS UNDER CONSIDERATION EXTENSION EAST COAST TO BUENOSAIRES TENTATIVELY FOR END OF JUNE STOP DUE LACK APPROPRIATIONS TEMPORARY CURTAILMENT SOME OTHER FOREIGN CONTRACT PROBABLY NECESSARY AFTER JULY FIRST IF EXTENDED STOP UNDER DATE OF APRIL TWENTYSECOND THACH REPLIED HAROLD J. ROIG LETTER OF APRIL FOURTH THEREFORE YOUR LETTER OF THE TWENTIETH INSTANT TO HAROLD J. ROIG NOT DELIVERED ACCOUNT CONFLICT POSITION STOP OUR POSITION AGENCY AGREEMENT NOVEMBER SIXTEENTH LAST YEAR REQUIRES PANAMERICAN AIRWAYS USE ONLY ORDINARY EFFORTS COLLECT PANAMERICAN GRACE AIRWAYS MAIL ACCOUNTS STOP NO OBLIGATION FURNISH POLITICAL INFLUENCE STOP UNDERSTAND PANAMERICAN GRACE AIRWAYS CONSIDERING EMPLOYING BRADLEY FROM HERE STOP CONSIDER IT WOULD BETTER PAN AMERICAN AIRWAYS POSITION FOR US REEMPLOY BRADLEY AND NEGOTIATE HERE WITH PANAMERICAN GRACE AIRWAYS FOR REIMBURSEMENT TO PANAMERICAN AIRWAYS HALF OF ADDITIONAL EXPENSE TELEGRAPH YOUR VIEWS

PAA-5627
3/3 55 C
J P C

TRIPPE

2199

Cosv $24.78

MESSRS: TRIPPE-HANDLING, WYMAN, THACH, YOUNG, FILE

[fol. 213]

GOVERNMENT'S EXHIBIT 80

Panagra
No. 9

PAN AMERICAN AIRWAYS, INC.

General Offices — 122 East Forty-Second Street —
New York City

Office of the
President

May 4 1931. Rico 5/6/31

Harold J. Roig, Esq., Vice President,
W. R. Grace & Company,
Hanover Square,
New York City.

Dear Roig:

I have your letter of April 23 commenting on Pan American Airways, Inc.'s letter of April 9, addressed to Pan American-Grace Airways, Inc.

As I understand it, while there may be a minor difference of opinion between us in regard to the date of the decision that Panagra's operations be extended over the Andes to Buenos Aires and Montevideo, you confirm that, as stated in our letter of April 9, it had been understood from an early date that Pan American Airways, Inc., might extend its East Coast line to Buenos Aires and operate in the Argentine (except between Santiago and Montevideo via Buenos Aires). Since, obviously, such operations could not be conducted without a United States mail contract, this understanding necessarily implied that Pan American Airways, Inc., should be free to make proper representations to the Post Office Department to this end, in the same way that W. R. Grace & Company might make representations to secure ocean mail contracts on the West Coast. In our letter of April 9, we assured Pan American-Grace Airways, Inc., that, in making such representations, we did not intend

to suggest to the Post Office Department that, in order to provide funds for this purpose, it should reduce the number of trips to be flown by, of the rate of compensation to be paid to, that company, and we do not now intend to make any such request.

* * * * *

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JPC

Very truly yours,

/s/ J. T. TRIPPE
President.

JTT:B

G018008

GR-505

[fol. 215]

GOVERNMENT'S EXHIBIT 81

W. R. GRACE & CO.
NEW YORK

2.210

New York, May 5th, 1931.

H. J. Roig Esq.,
c/o Grace Brothers & Co., Ltd.,
London, England.

PAN AMERICAN-GRACE AIRWAYS INC.

Dear Roig:—

In Washington April 28th the Postmaster General confirmed that Trippe and MacCracken had sought to bring about cancellation of one of our trips from Santiago to Buenos Aires. He said he asked them what Mr. Patchin thought about it and they had given him to understand that I was indifferent. Of course he knew from me previously that this was not true. The Postmaster General said he told Trippe and MacCracken that if this were true the best way to handle the matter was for them and us to come down

together to discuss it. Needless to say we have since had no request from Trippe to do anything of this kind.

The Postmaster General told me, as had Glover previously, that he was not disposed to penalize the pioneers on the West Coast route to Buenos Aires, that nobody had contended more strongly than Mr. Trippe had originally that the West Coast route to Buenos Aires was the logical route. While the Department would rather like to see the extension made to Buenos Aires on the East Coast he was not disposed to do it at the expense of the Pan American-Grace Airways Inc.

The Postmaster General added that Trippe had stated that Pan American-Grace Airways expects to have its pay "raised" to $1.80 in the next fiscal year and that he had told Trippe that this was not his understanding. You see Trippe,

G 1936

GR-507
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PJS

[fol. 216] characteristically, did not ask that our pay be kept at $1.60 in order to provide funds to help out East Coast extension but he precipitated the issue and the Postmaster General immediately took the attitude that he was going to require continuance of the $1.60 rate.

After making the obvious reply regarding the $1.60 rate, I asked the Postmaster General if any decision in this matter couldn't be deferred until your return and he said that he was not inclined to hasten the matter so long as the Post Office did not, by its silence, commit itself to a resumption of the $1.80 rate, but that it might be necessary to write us a letter asking us to continue at $1.60 for another year. Meantime, I found that White had the impression from Glover that the Postmaster General has practically made up his mind on this question and intends to hold to the $1.60. We are evidently going to have a struggle to get the full rate restored with the chances, I think, rather against us. Postmaster General said he was going to read over our contract again.

While this might have happened in any event, Trippe's action made it inevitable.

The Postmaster General did not repeat to me what I understand Trippe told him about Grace hanging back, being opposed to passenger business, etc. He, however, asked particularly about the percentage of performance on the Trans-Andean run, volume of mail, rate of increase of use of mail, the extent of our present passenger traffic and when we were going to carry passengers in Chile. Glover later told me Trippe is making a great play on the fact Pan-Air is giving highclass passenger service and we are not. I think it very important we start complete passenger service very soon.

G 1937

GR-508

[fol. 217] The present status, therefore, is that one trip a week is not to be cut off at the expense of Pan American-Grace Airways but I feel that Trippe is working in every possible way to bring that result about. I am going down to the International Chamber of Commerce Meeting at Washington on Thursday, May 7th, for a day, and will doubtless hear more.

I read the Postmaster General Trippe's pledge that he did not intend and had never intended to suggest curtailment of service or compensation on Route #9 as a means of helping the East Coast extension. I think he had already heard of this from Glover and it evidently had its effect. He said he expected people to deal honestly and frankly with him and nobody got very far who did not.

He assured me that there would be no change in policy without sending for me and discussing the matter with me. "There will be no dark lantern business" he said.

I discussed the advisability of writing a letter to Trippe regarding the violation of his pledge with J.P.G. who was firmly of the opinion that it would do no good as he would go on working against us anyway. He felt we had better let the record stand as it now is. We have, therefore, not discussed the Washington situation with Trippe or his associates any further.

We have heard nothing further from them regarding arbitration. There has been further discussion of radio but it is not definite enough to warrant writing.

We had no Directors' Meeting on Monday, the fourth, but one has been set at Trippe's request for Monday the eleventh. I may telephone you before than.

G 1938

GR-509

[fol. 218] I have been following your progress in the cables. Hope you have been having a little fun along with the hard work. Business sentiment here seems to be a little more cheerful the last few days. President Crowley of the New York Central says he notices a "spotty improvement and hopes it will continue.

Regards to all hands.

Faithfully yours,

/s/ R. H. Patchin

GR-510 G 1939

[fol. 219]

Government's Exhibit 82

9793

PAN AMERICAN-GRACE AIRWAYS, INC.
122 East 42nd Street New York, N. Y.

NEW YORK,
May 6, 1931.

Memo. to Mr. J. T. Trippe, President,
Pan American Airways, Inc.,
New York City.

As you are aware, Panagra has refrained from carrying local passengers along the west coast of Colombia because we did not wish to do anything that would disturb the relations with Mr. von Bauer. You are also aware that SCADTA has discontinued service between Guayaquil and Buenaventura. I am not sure whether the SCADTA plane runs as far as Tumaco, but I am inclined to think that it now goes no further than Buenaventura.

Under these circumstances, is there any objection to Panagra requesting the right to carry passengers between Colombian ports on the west coast?

Your advice will be appreciated.

PAN AMERICAN-GRACE AIRWAYS, INC.

/s/ J. D. MACGREGOR.
J. D. MacGregor.

JDM/Q

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[fol. 220]

GOVERNMENT'S EXHIBIT 83

PAN AMERICAN AIRWAYS

BUENOS AIRES
Argentina

JW

Av R. S. Pena 940
U T 35 Lib 1800 y 2892

Buenos Aires,
August 13th 1931.

Mr. Juan T. Trippe, President,
Pan American Airways Inc.,
122 East 42nd St.,
New York, U.S.A.

Dear Juan:

The question of charter flights will frequently arise between Panagra and ourselves; it seems to me that it might be well to settle between the two companies who is to have the first call on them.

I understand it has always been arranged that we would operate local services, Panagra being confined to the operation of the direct line.

At the present time we are the only ones who have multi-motored equipment in reserve, and so we are the only ones at present in a position to take care of charter flights calling for this type. Panagra has a Fairchild in reserve and we will have one as soon as the overhaul job is completed. Our Fairchild is at the ramp and cannot be used unless we take it to Moron. There is no reason why we should not store this machine there in a small garage which we could put up with little expense. This would put us in the same position as Panagra for handling charter flights that require single motored equipment.

Will appreciate your letting me know your attitude in the matter.

With kindest regards.

/s/ Geo. L. Rihl
Geo. L. Rihl

GLR-pg

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[fol. 221]

Government's Exhibit 84

PANAIR DO BRASIL S. A.
EDIFICIO DA A. NOITE—RIO DE JANEIRO

October 8th, 1931.

Via "Air Mail"

Mr. J. D. MacGregor, Vice President & General Manager
Pan American Grace Airways, Inc.
910 Av. Roque Saanz Pena
BUENOS AIRES, Argentina.

Dear Mac,

I had explicit instructions from Mr. Trippe to settle with you the question of charter business arising at Buenos

Aires. Unfortunately I forgot all about bringing this point up.

* * * * *

My understanding is that Pan American has the right to any aviation business in the Argentine not directly connected with the operation of the international service via the West Coast. If my assumption is correct there will be no argument as to who will take the charter flights.

* * * * *

In order to avoid complications it would seem to me that both companies should abide by the original understanding. I will appreciate your advising me as to what you recommend to your Directors.

With kindest regards.

Yours faithfully,

/s GEO L RIHL

Geo. L. Rihl, Vice President
Pan American Airways, Inc.

cc. Mr. Trippe, President
Mr. Young

GLR/PS.

PAG — W 161
9/30/51
JPC

W418

PAN AMERICAN AIRWAYS SYSTEM, A MAJOR REDE DE TRANSPORTES AEREOS DO MUNDO

[fol. 222]

GOVERNMENT'S EXHIBIT 85

BUENOS AIRES
November 11, 1931.

Mr. Geo. L. Rihl, Vice President,
Pan American Airways, Inc.,
New York.

Dear George,

With reference to your letter to me of October 8, my answer to you under date October 12 and your letter of October 20 to your employees and agents, all referring to the question of charter flights in the Argentine:

Your letter of October 20 does not set forth the complete understanding as arrived at by our previous exchange of letters. Your local company will have the right to all charter flights originating in the Argentine, EXCEPT ALONG THE ESTABLISHED PANAGRA ROUTE FROM BUENOS AIRES TO MENDOZA. It will also have prior right to charter flights from the Argentine to Uruguay, but Panagra will have equal rights to flights originating in Uruguay for the Argentine or to the interior of Uruguay; this latter until such time as Panair forms a local company in Uruguay to engage in cabotage business.

• • • • •

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

Vice President & General Manager

JDM/FL
cc Mr. Harris, Lima

N. York.
PA W 171
9/30/54
JPC

W 401

[fol. 227]

GOVERNMENT'S EXHIBIT 88

VIA
Correo Aereo
PANAGRA

Letter No. 61
(D.S.I. Trip series)

En route Valparaiso
On board s/s "Boskeep"
June 27th, 1932.

Rico
7/6/32
Arica
7/8/32

H. J. Roig, Esquire,
New York.

Dear Roig,

AIRMAIL TUMACO — Your No 7

• • • • •

If I were you I would get directly in correspondence with Harper regarding this and get his views as to what he considers he will be able to accomplish and how he proposes to go about doing it. You then can decide whether anything would be gained by taking the matter up with Trippe. In accordance with our general understanding with Trippe, Panagra was to operate on the whole West Coast of South America and across to Buenos Aires and, I think, Montevideo. The operating by them of a service from Buenaventura to Tumaco is not compatible with this arrangement and, as I do not think that Scadta can possibly be making anything out of this service, it would seem a very natural thing for them to retire from it; in fact, I think we really have a right to ask them to retire, particularly if they suffer no prejudice by doing so.

• • • • •

Very truly yours,

/s/ D. S. IGLEHART

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GR 682

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G 452
G 453
G 454

[fol. 228]

GOVERNMENT'S EXHIBIT 89

COPY

July 12, 1932.

Memorandum to Mr. J. T. Trippe, President,
Pan American Airways, Inc.,
New York City

It develops that there is a possibility of quite some little passenger traffic between San Juan and Mendoza. For your information, San Juan is located some 150 kilometers north of Mendoza and, although it is a town of importance in the wine and mineral business, it is very much isolated due to poor and infrequent railroad service.

During my stay in Buenos Aires, Mr. Bradley informed me that there was every possibility of securing a subsidy from the Province of San Juan of approximately two Argentine pesos per kilometer if the Company was willing to insure twice a week service by airplane to Mendoza. As you are aware, Pan American-Grace Airways maintains a spare Fairchild at the Mendoza airport for use on its Transandean service, and it would be possible to locate also at Mendoza one of two or three mechanics now on our payroll who possess a commercial pilot's license.

Under ordinary circumstances, I would recommend that our Directors authorize me to instruct Bradley to secure this subsidy if possible and start a twice weekly mail and passenger service to San Juan as a feeder to our international line. I do not wish to make this recommendation without your consent because of the intercompany agreement that Pan American-Grace Airways will confine its operations strictly to its mail route between Mendoza and Buenos Aires. As the town of San Juan is located near to the extreme western terminal of our line in the Argentine, it occurs to me with San Juan to the north and possibly

San Rafael to the south, an exception might be made. Will you kindly advise.

J. D. MacGregor

JDM/G

G020955

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11-19-54 PJS

[fol. 229]

GOVERNMENT'S EXHIBIT 90

Letter No. 104
(D.S.I. Trip series)

CORPORACION MARITIMA COLOMBIANA.
Buenaventura — Colombia

7/25

On board m/v "Santa Barbara",
July 21, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

PANAGRA

Your letter No. 20.

I have answered most of the points in this letter.

Regarding the Lima field, the fog conditions vary in different seasons of the year but I think near Callao they rule better. I would ask for full data, a survey and a studied opinion.

TUMACO

Pan American have no right under their agreement with us to be interested in a service along the West Coast of South America. I believe we can get the Colombian Government to grant us coastwise rights. Panagra have no right to give their agents orders to keep their hands off of Seadta.

Our answer to this would be to threaten to form the cabotaje companies in Peru and Chile ourselves rather than have Panagra form them. Scadta must get out of the West Coast Colombian trade. I think now is the time to make an issue of this and tell Scadta that either they must get out of the North and South trade on the Pacific or we will go after them in Colombia. They are not strong and there is a good deal of feeling against them in Colombia. Please let me have your view about this.

Very truly yours,

/s/ D. S. IGLEHART

Enc.

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GR-708

10-19-34 PJS G 429

[fol. 230]

GOVERNMENT'S EXHIBIT 91

PAN AMERICAN-GRACE AIRWAYS, INC.
122 East 42nd Street New York, N. Y.

Cable Address
"PANAGRA"

November 16, 1932

Memorandum to Mr. R. H. Patchin, Vice President,
W. R. Grace & Co.,
New York City.

* * * * *

The route Santiago/San Rafael/Mendoza entails a flight of some 450 kilometers, or 270 miles, as against approximately 150 miles Santiago via Uspallata to Mendoza. I believe that a better idea would be a single motored shuttle between San Rafael and Mendoza to make connection with our through planes. That I have had this in mind for some time you can see by the attached copy of my memorandum to Mr. Trippe in which I requested that the policy, by which

Panagra operations in the Argentine are restricted to the carrying of passengers only along its present Mendoza/Buenos Aires route, be modified so that we might, if necessary, establish a shuttle between San Juan and Mendoza on the north, and San Rafael and Mendoza on the south. Although there is railroad connection between both of these towns and Mendoza, the trains run slowly and it has very often been suggested to us that there was a possibility of building up air traffic in connection with our trunk line.

That I have not pushed this matter to a decision recently has been due to the fact that until the recent purchase of two additional Fords the loss of the SAN JOSE in the middle of the winter season tied up the flying equipment I had in mind for this shuttle service. I also thought it better to wait until the effect in Mendoza of the loss of the SAN JOSE had been minimized by lapse of time. However, as this subject has come to your personal attention, I shall place it on the agenda for the Directors' Meeting next Monday in order, if possible, to secure a modification of what I understand is the gentlemen's agreement between Pan American-Grace and Pan American Airways with regard to additional services in the Argentine.

/s/ J D MacGregor.
J. D. MacGregor.

G026953

GR-5001
11-19-54 PJS

JDM/Q
Enc.

G026954

GR-5002
11-19-54 PJS

[fol. 231]

GOVERNMENT'S EXHIBIT 92

PERSONAL 1019

CHARTER HIRE—MORON AIRPORT

NEW YORK
February 11, 1933.

Mr. H. R. Harris,
LIMA.

My dear H.R.:

I note in a letter written by Dr. Lopez to Mr. Young of Panair that Lopez suggests the advisability of always having at Moron a small plane which could be used for visiting neighboring "haciendas", on charter, because, as Dr. Lopez points out, with the crisis there is a great deal of mortgaging of land going on and representatives of Banks and other interests can examine a property much more quickly by air than otherwise.

I do not know whether you have a Fairchild located at Moron at present. If not, it might be well to study this feature a little and slip a plane in there and tell Lopez quietly that Panagra has a plane there which can be used for charter hire.

Of course, charter business out of Buenos Aires belongs to Panair, but if Panair has not the equipment available, we have the refusal.

Please think this over and let me know your reaction.

J. D. MacGregor

PAG-W287
9/30/54
JPC

JDM/Q
W449

[fol. 233]

GOVERNMENT'S EXHIBIT 94

August 23, 1934

MEMORANDUM TO MR. GARNI
MR. PATCHIN
MR. COGSWELL

PANAGRA

As Mr. Roig will be seeing Mr. Trippe I think it might be advisable to give him by cable our views with reference to the two handwritten letters to me and also with reference to his letter No. 13 addressed to me.

With reference to the handwritten letters, I think we might say that we are particularly in favor of a plan to extend to Bolivia and also to serve the interior points in Peru; furthermore, if we do develop Bolivia I think we ought to study very carefully the plan to extend to Salinas. We should be able to get very interesting figures with reference to travel movement, possibility of getting income from local mails and express and some estimates as to cost.

* * * * *

Buenaventura—Cali:

It is a practical matter to decide whether our planes ought to call at Buenaventura or Cali or both. The figures and information that Roig gives us regarding the competition of Scadta on through traffic from Miami are surprising to me as I think they also are to him. My strong impression is that this movement is a violation of the general agreement that we had with Pan American to the GR-

11/26/54
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5109

G030744

[fol. 234] effect that we would stay on the West Coast and they would stay on the East Coast of South America with the one exception that we could fly across to Buenos Aires

and Montevideo. Pan American's failure to give a direct service to Panama for the through movement and their availing of the indirect routes and of Scadta to compete with us on the West Coast is a violation of our agreement which should be remedied promptly and provided you agree I think Roig should take a very strong attitude with Trippe on this point.

* * * * *

D. S. I.

GR-
5110

G030745

[fol. 235]

GOVERNMENT'S EXHIBIT 95

New York, January 9, 1935

J. D. MacGregor, Esq.,
Santiago, Chile

Dear MacGregor:

Harris has written you fully regarding Bolivian developments.

Pan American have not yet indicated their willingness to have Panagra undertake this extension. Guzman Tellez cables that the time element is of great importance. If Panagra is ultimately to undertake the service it is obvious that the sooner the matter is decided the better. If W. R. Grace & Co. undertakes it there will naturally be expenses incurred which would be unnecessary if Panagra does it. Our idea in volunteering to undertake it was to protect Panagra's position by enabling Guzman Tellez to act promptly (pending decision of Mr. Trippe who was then very much occupied in Washington) thereby securing to Panagra the important benefits which I believe will accrue from having this Bolivian concession. While Guzman Tellez has applied for the concession in the name of W. R. Grace & Co and we are going right ahead on that basis, the business seems to me to be one which Panagra should undertake.

It occurs to me that if you think well of Panagra's undertaking this extension it might be advisable for you to cable Panagra New York your recommendation in the premises.

Very truly yours,

(sgd) HAROLD J. ROIG

GR-11467
1/20/55.
JPC

G057814

[fol. 236]

GOVERNMENT'S EXHIBIT 96

A.G. No. 11,034

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

W. R. Grace & Co.
Lima-Peru
Mr. Holloway
Mr. Roig
Mr. Cogswell
P. M. Roig
Mr. Zebates
A. Garni, Esq.,
NEWYORK.

Lima, 12/1/35.
NY, 17/1/35.
No.....

Lima, January 10th, 1935.

Attention Mr. H. J. Roig

Rec'd JAN 16

LA PAZ SERVICE

Dear Mr. Garni:

During this week we have discussed fully with J. Guzman Tellez the various details in connection with the proposed service to La Paz.

Shea and Thommen have enlightened him regarding the general mechanism of postal arrangements, etc.

He is sending you by this mail a draft of the proposal which he intends to submit to the Bolivian Government if you approve of it.

The purpose of this letter is to specifically refer to your cable No. 98, where you suggested to Guzman Tellez that he discuss with me the possibility of securing operating rights for a Grace company for the Peruvian portion of the La Paz extension. G061267

Although it is premature to be going into these details, I should just like to leave on record that we feel strongly that if it is not possible to arrange with Panagra to carry on this service, and it is necessary to form a separate company, this company should by all means be an American company. We feel that we shall always have a certain amount of difficulty in arranging an operating permit for another company in addition to Panagra's and Aerovias' operating permits, but we feel that there will be more chance of success in this direction if the company is American and not, for example, Bolivian.

Correspondingly, it would seem to us that it would be easier in Bolivia if this were an American company than if, say, it were attempted to have Aerovias Peruanas go into Bolivia.

1-28-55 mfr
GR 11468

[fol. 237] MacGregor has evinced considerable interest in the newspaper reports of the La Paz service, but unless authorized to do so by you neither Guzman Tellez nor ourselves will discuss the matter with anyone in Panagra.

Yours truly,

I thought you cabled J. G. T. to discuss with MacGregor

/s/ KIRBY

JTK/t.

Yes, Jan. 11
Campbell

Ans. 1/19/35
by H. J. R.
Campbell

G061268

1-28-55 mfr
GR-11468A

[fol. 238]

GOVERNMENT'S EXHIBIT 97.

W. R. Grace & Co.
New York

Letter No. 25
(E.J.R. Trip Series)

Copy follows by steamer

New York, April 13, 1935

Harold J. Roig, Esq.,
Santiago, Chile

Dear Mr. Roig:

BOLIVIA

* * * * *

You will have noted that the cable above referred to does not constitute a definite authorization for Panagra to inaugurate the

JMrG 11-3-54 9 R-932 G014391

Page 2

service and the reason for this is that Trippe is again insisting on a written declaration from Panagra that his acquiescence to the Bolivian service will not prejudice what he calls "the existing agreement between Panair and Panagra with regard to business in the Argentine". I enclose copy of letter which Vidal discussed with Rihl, the latter suggesting that it be modified to read as quoted above. The discussion was solely on the basis of what would suit Panair, as we have not agreed to any letter. I am passing this information on to you to serve as a reference in case the matter comes to a head within the next few days.

* * * * *

Very truly yours,

/s/ DOUGLAS CAMPBELL

enc.

GR-933 G014392

[fol. 239]

(Proposed letter)

Mr. J T Trippe
Pan American Airways, Inc.
Chrysler Building
New York City

Dear Sir:—

Referring to Bolivian concession which we are endeavouring to secure along lines discussed with you, this is to confirm understanding that your acquiescence in Panagra's undertaking, this concession is without prejudice to any existing arrangements between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. with regard to business in the Argentine.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

GR-934 G014393

[fol. 240]

GOVERNMENT'S EXHIBIT 98

Letter No 48 Airmail 4.24.35
(HJR trip series) NY 5. 1.35

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

Mr. Holloway
Mr. Cogswell
Mr. Campbell
Mr. Patchin P

Buenos Aires, April 21, 1935

A. Garni, Esquire,
New York

EXCERPT P 1-2-3-4 Rec'd. MAY 1

Dear Garni,

BUENOS AIRES—SALTA—BOLIVIA LINE

You may or may not recall that in the early days when we were running out our line there was considerable doubt

whether we should go beyond Santiago. Our Post Office contract gave us an option to proceed to the Argentine and Uruguay, and, for reasons of expediency at that time rather than because of any carefully considered plan to go beyond Santiago, we exercised this option. Pan American had a local company ("Alas") here at that time through which they were intending to develop cabotaje business and, as I recall it, it was part of the understanding under which they agreed to our exercise of the Argentine option that Panagra was not to compete with them for local Argentine business except along our main line. That is how the understanding came about that we would not be interested in cabotaje in the Argentine except to the extent indicated.

The above represents my recollection of the matter at this time but my memory of the details is not too clear and the above statement may not be 100% correct. Patchin may have a clearer recollection of the circumstances. I mention this, however, because if this question is coming up for discussion it is just as well that you have some general idea of where this understanding came from. It was never reduced to writing any more than was our general understanding, of which it was a part, that our interests were in general to be confined to the West Coast

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GR-8863

G046743

[fol. 241] countries while Pan American's were confined to the East Coast.

A good deal of water has gone under the bridge since that time and, while the understanding still remains and I would not for a moment think of questioning it, it may be that as matters stand today it would be in the interests of all concerned to consider modification of this understanding by mutual consent and perhaps Trippe's request for a letter on the matter may afford an opportunity for discussing the question with him. Hence the suggestion in my cable No 25 that, if feasible, the delivery of such a letter be deferred until you received this line.

Incidentally, if a letter has been or is to be delivered in compliance with Trippe's request I see no objection to the form enclosed with your letter No 25 which, as I recall it, is in conformity with the draft which I prepared some time

ago when there was some possibility of our having to give such a letter as a condition to Panagra's taking over the Bolivian concession. Even if this letter is delivered it would not, of course, preclude in any way the possibility of a discussion of a modification of the understanding.

G046744

Trippe has mentioned to me on a number of occasions what he has evidently repeated to you—that the Argentine Government was very much interested in the development of interior lines and was contemplating subsidies for such lines and that Pan American was expecting to bid on such lines. In fact, if I am not mistaken, on one occasion not very long ago when we were discussing this understanding and I suggested that if I wished to be technical I might suggest that the understanding had lapsed by reason of their long delay in developing interior lines, he suggested GR-8864
[fol. 242] that the reason for this delay had been the various "Tramites" in connection with the development of the plan now referred to.

There has been an Argentine Aeronautical Conference going on here ever since I arrived which Bradley has been attending and I have therefore not seen much of him. In the short talk I had with him the other day, however, I asked him if the development of this plan was being discussed at the Conference and whether there was any prospect of progress being made on it. He said that there had been no serious discussion of the matter at the Conference; that the project was not new but had been under discussion for a long time but had not yet taken any definite shape. I will follow this matter up with him as well as in other directions and will try to get something really definite on the subject in the next day or two.

In a broad way, however, the idea contemplates several lines,—one of which would be between Buenos Aires and Salta by way of Rosario, Cordova and Tucuman. This is of course the one in which we are interested. Trippe will also be interested in it and perhaps in some of the others.

G046745

This line would tap a large population (the four principal cities alone having about a million) where railroad service is not as good or as inexpensive as between here and Mendoza, and for that reason ought to offer excellent cabotaje possibilities. Harris has had his eye on it for a long time and we discussed it quite a bit last Summer; in fact, at that time, at my suggestion, he mentioned it to Trippe in B.A., suggesting that since Panair were evidently GR-8865
[fol. 243] not making any plans in that direction, Panagra would take it under consideration. Trippe categorically rejected this suggestion reminding Harris of the understanding between the two companies above referred to.

• • • • •

Very truly yours,

/s/ Roig

GR-8866

G046746

[fol. 244]

GOVERNMENT'S EXHIBIT 99

Dictated by
Mr. Campbell
Apr. 23, '35
Nah

PANAGRA

Re: Bolivian Concession

When Pan American Airways purchased the Nyrba Line which was the line running down the East Coast, and started to operate it about 1930, for a short time they ran services to Buenos Aires and Mendoca which was in competition with our main line to Buenos Aires. Panagra protested this and a verbal gentlemen's agreement was then made that Panagra only would do business between Mendoca and Buenos Aires and Pan American Airways, through a subsidiary which they were forming for that purpose, would operate all other routes in the Argentine. They did form the company, but they never operated any routes in Argentina. This year when the question came up

as to whether Panagra would take over a concession to operate in Bolivia, which was being sought in its preliminary stages by W. R. Grace & Co., Mr. Trippe stated that as a condition to his approval of Panagra's taking on this Bolivian concession, he would require a letter from Pan American-Grace Airways stating that his acquiescence in this matter should not be considered as prejudicial to what is called the existing agreement with regard to business in the Argentine. Mr. Roig replied that he did not see any need for this as the operation at present contemplated in Bolivia did not effect in any way the business in the Argentine and while Mr. Trippe did not specifically acquiesce in this, he gave his consent to Panagra, making commitment with the Bolivian Government which bound Panagra to inaugurate a service between Tacna and La Paz within six months.

After this concession was obtained and the obligation assumed by Panagra, Mr. Trippe very properly insisted that the operating management of Panagra make a detailed study of the route and submit a report describing the manner in which they proposed to operate this service. This

GR-6623 G031694
12/14/54 aa 119

[fol. 245] was done and their proposed plan of operation approved with suggestions for minor changes, but at the insistence of Pan American Airways, Panagra's operating management in South America was advised by cable that they would be instructed later as to the date of inauguration of this service. On this point, Mr. Trippe stated that before he would consent to authorize an inauguration of the service, he must have a letter from Panagra along the lines of the one which he had previously asked for before approving Panagra's acceptance of the Bolivian concession.

The objection to giving him the letter would be that the verbal agreement above referred to was made four or five years ago under conditions which may or may not prevail in the future, particularly with regard to the right of Panagra to operate its international line through Chile. In other words, although the Chilean concession has recently

been renewed for four years, if at some future time passage through Chile should be refused and Panagra should find it expedient for this reason or for other reasons to operate its international line through Bolivia to Buenos Aires, a formal agreement of this nature would cut Panagra off at the border between Bolivia and Argentina.

120

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GR-6624.

[fol. 246]

GOVERNMENT'S EXHIBIT 100

Letter No. 59
(HJR trip series)

Airmail 5.2.35
NY 5.8.35

(Dictated in) Buenos Aires, April 24, 193

A. Garni, Esquire,
New York.

Dear Garni,

BUENOS AIRES — SALTA — BOLIVIA LINE

Referring to my letter No. 48 just by coincidence I am in receipt of a letter from Harris from which I quote the following:

"In connection with the claim that Panair make as regards their prior rights to institute local services in the Argentine except on the Buenos Aires/Mendoza section, it seems that inasmuch as we have made no move to expand our local operations in the Argentine for a period of years in view of their statement that they are about to commence local services, we would be perfectly justified in limiting our recognition of their claims to a definite period of time. In other words, if service from Buenos Aires to Bolivia, B.A. to Rosario, B.A. to Asuncion, etc., etc. were not instituted by a Panair company say by January 1, 1937, Panagra would

have a right to institute such services as they saw fit without further prior claims by Panair on this territory."

If we really feel that we would be interested in developing the Salta line and other methods failed, this might be a way to bring the matter to an issue. Naturally, however, we could not expect to get Trippe's acquiescence in Panagra's giving such a notice or instituting such a service if he had declined to agree to it in some other form. It would, therefore, like Bolivia have to be a case of W. R. Grace & Co. stepping into the breach.

Very truly yours,

/s/ Roig

Copy K D.S.O.

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GR-970
11-4-54 PJS

[fol. 247]

GOVERNMENT'S EXHIBIT 101

W. R. GRACE & CO.
NEW YORK

Letter No. 46
(H.J.R. Trip Series)

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

NEW YORK, May 6th, 1935.

	Arica	3	
	Buenos Aires	4	
Harold J. Roig, Esq.,	Santiago	1	
Santiago, Chile.	Bolivia	1	Arrived 5/13/35

Dear Harold:—

BOLIVIA. My recollection is that when Trippe acquired Nyrba, there was some question of competition between

Santiago and Buenos Aires, and at that time it was agreed that our operations east of the Andes would be limited to that line and Panair would not compete with us there. In other words, the arrangement was from the point of view of competition. A great deal of water has gone over the dam since that time and it might well be argued that Trippe is not in a position now to stop our operating to Buenos Aires through Bolivia. At any rate, the latter might well be the case if and when we should decide that such operation became necessary. Accordingly, a letter to the effect that any agreement which may exist would not be affected would seem to be in order.

While discussing the letter, Trippe suggested that this might be a good time to clear the whole matter up and he has suggested that if we do extend to Buenos Aires through Bolivia, we should pay a part of Nyrba's development expense which was taken over by Panair. As I understand it, the letter would be along the lines that Panagra would have the option to extend to the Argentine and if such option should be exercised would pay a specified amount to Panair. We are now waiting to hear from Trippe what that amount should be. If it is at all reasonable, it might be well to clean [fol. 248] the matter up along these lines as it would be settled definitely and it is our idea that the option of extending service should then be left with the Grace directors.

Very truly yours,

W. F. Cogswell
g m-1005

G014323

[fol. 249]

GOVERNMENT'S EXHIBIT 102

Air Mail 5.17
Stgo 5.17

Original Letter
Steamer copy follows

No. 50
(HJR Trip Series)
W. R. GRACE & CO.
7 Hanover Square, New York

NEW YORK, May 8, 1935.

SANTIAGO, Chile 5/17

A. Garni
Pres. & Treas.

Harold J. Roig, Esq.

Dear Roig:

PANAGRA

Bolivian Service: This air business is certainly a fast-moving enterprise and between calling up Washington and looking for Trippe there is very little time left for anything else.

Just after I finished my letter to you of today trying to keep you up to date on what developed regarding the Bolivian situation, somebody at Panair called me up to say that Trippe had telephoned up instructions to inform me that he agrees to have us start the Bolivian service just as soon as Panagra is in a position to do so, on the understanding, however, that after six months' operations the position should be reviewed to determine whether or not it suits to go on.

I told my informant that we would want to review the position from month to month, not so much with the idea of seeing whether we should go on but to determine whether the service should be extended, and that while I had no illusions as to the first six months' results, I felt very con-

fident that in the long run a well studied and well organized service in Bolivia will give satisfactory results.

Since Cogswell telephoned to me at noon about the file memorandum I have heard nothing further from him, but in view of this very latest development I take it that he and Trippe agree on the wording of that memorandum. I think

JMcG 11-3-54 GR-1022 G014300

[fol. 250] I made it clear that no letter will be written to him, nor do I imagine that he will get a copy of this file memorandum, although he probably has made a copy himself while discussing it with Cogswell. At any rate I think a well worded file memorandum is not as bad as a similarly worded letter and I think we also agree that the present solution is far better than some far-fetched option agreement to buy out his so-called rights.

* * * * *

Very truly yours,

/s/ A. GARNI.

GR-1023 G014301
GR-1024 G014302

[fol. 251]

GOVERNMENT'S EXHIBIT 103

PAN Air Mail 5.11
Stgo 5.17

No. 51
(HJR Trip Series)

NEW YORK, May 9, 1935.

Harold J. Roig, Esq.,
SANTIAGO, Chile.

Dear Roig:

BOLIVIA

In furtherance to my letters Nos. 49 and 50 of yesterday's date, I now want to attach a copy of a memorandum which

landed on my desk this morning and which I presume is the agreed-to file memorandum which Trippe wanted me to leave on our files.

Very truly yours,

(Signed) A. GARNI

Enclosure

(x) 5.10.35
P. S. Cogswell just returned and confirms that the attached memorandum is the final form agreed to by Trippe
GR-7060
12/13/54
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G031224

[fol. 252]
PAN

L:

Mr. Campbell
pl. note and
return
Campbell *AG*

File this. *file*

MEMORANDUM

In discussing the question of Panagra's starting service to La Paz, Mr. Trippe made the point that it should not be construed to affect arrangement between Panair and Panagra entered into in connection with extension of Panagra service from Santiago to Buenos Aires, whereby Pan American (or its affiliated national company) was free to operate in Argentine, with the exception of the Mendoza-Buenos Aires route, to which Panagra's operations would be limited. I stated I was not familiar with the arrangement, but agreed that, upon Mr. Roig's return, Panagra would write a letter to Panair to the effect that their consent to the extension to La Paz should not be construed as affecting any arrangement which *might* exist between the two companies in reference to the sphere of operating in the Argentine. He suggested that I make this memo as a

record of the position, in order not to hold up Pan American-Grace pending Mr. Roig's return.

/s/ A. Garst

GR-7071
12/13/54
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G031221

[fol. 253]

Government's Exhibit 104

Letter No 12
(Trip series)

On board "Santa Lucea".
May 1, 1936.

H. J. Roig, Esquire,
New York.

Dear Roig,

INTERNATIONAL TRAFFIC

I asked for figures regarding the number of passengers that come from Panair and went to Panair from Panagra and I got the attached. From this it seems clear that our traffic connection with Panair is bringing us almost nothing and that our international movement moves mostly by steamer to and from the U.S. This is merely an impression and I want to suggest that you should set someone on the task of analyzing all of our movement so that we would know how many people are coming into Cristobal and out, where they are coming from and where they go to and what medium of transportation they use for the whole journey. The same information might be obtained from Lima, Santiago and Buenos Aires and with this we might begin to see the conditions and handle our problem more intelligently.

I talked to Smith and Brown together of the importance of working in very close harmony and of the steamers and Panagra using one another to the fullest. I explained what great mutual advantage they could get by having each of

these services work for the other and they were both, I think, quite impressed with the benefit that might come from such an effort. Smith said as I left that he thought it was a despairing task to build up traffic relying on Pan air but that if the Grace Line got back of the effort he would not worry about the results. I told him that I did not know to what extent this could be brought about but that he and Brown might develop this idea and they both said they were going to work hard to do it.

COLOMBIA—EQUADOR

I am sending you a cable with reference to my old idea of
GR-1199 G019323
[fol. 254] flying over Colombia and Ecuador instead of flying over the sea.

* * * * *

I feel, however, that Colombia is so much of a key country for us that we must get our foot in the door and endeavor to get hold of the Western side of the country which belongs to us. I know how difficult it is to bring this about; in fact, it may be impossible. I however thought it worth while putting the matter before you again with a few additional facts to see whether you could not devise some means of taking a step forward now that we are going to have an adequate unit that could fly over the mountains, has the speed to make the run with the stops that would be necessary.

* * * * *

Very truly yours,

(sig) D. S. Iglehart

GR-1200 G019324

[fol. 255]

GOVERNMENT'S EXHIBIT 105

10 HANOVER SQUARE, NEW YORK

JUN 15 1936

ORIGINAL AIR MAIL LETTER

REGULAR MAIL COPY FOLLOWS

Letter No 43
(Trip series)

On board "Santa Clara".
June 11, 1936.

H. J. Roig, Esquire.
New York.

Dear Roig,

PANAMA

Harris met me in Buenaventura and went up to Panama with me. Helbling arrived from the interior just as the steamer was about to leave so I had him come along to Panama also. I was glad that I had done so as I let Harris hear my talk with Helbling in which I emphasized as I have with all managers all along the Coast the fact that our primary interest is transport and that the first attention of all our managements must be given this - both steamer and air.

COLOMBIA

I attach a note of the further conversation and have nothing to add to this except to say that two things become clearer and clearer to me. The first is that the Western part of Colombia belongs to us and that there is a potential movement south from Medellin at least as far as Tumaco which would be very important. Scadta is running a service from Medellin to Cali five days a week both ways and Helbling tells me that they are running full all the time. The Commodore which arrived from the north while

I was in Buenaventura had eleven passengers of which ten got off at Buenaventura. I am convinced that we can get as intensive a movement in Western Colombia as we have in Peru and that we will eventually operate an international service twice a week and a local service of about the frequency of Aerovias and connecting up with it.

* * * * *

Very truly yours,

(Sig.) D. S. ILLKHART

GR-1351 10-18-54 PJS G 33

[Vol. 256]

GOVERNMENT'S EXHIBIT 106

New York, July 22, 1936

E. T. Allen, Esq.,
care Grace y Cia (Chile) S.A.
Santiago, Chile

* * * * *

Dear Ed:

As you are probably aware, the Argentine Government recently authorized an appropriation in favor of the Direccion de Aeronautica Civil to be used in subsidizing airlines to the interior of the country and we have reason to believe that in the near future the Director de Aeronautica Civil, Senor Mendez Goncalves, will advertise for bids covering two routes, i.e., from Buenos Aires to Asuncion, Paraguay, and Buenos Aires to Salta via Rosario, Cordoba, Santiago del Estero and Tucuman. It is not known whether the entire appropriation for subsidy which we understand to be 750,000 Argentine pesos, will be used on these two routes only or whether other routes are also contemplated.

* * * * *

The route from B.A. to Salta is in Panagra territory and is one in which Panagra is greatly interested in view of the possibility at some future time of operating from Peru to

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F

B.A. by way of Bolivia. Consequently it is entirely possible that Panagra in its own name or through the information of an Argentine subsidiary might make a bid for the

subsidy on the Salta line. It is also not unlikely that Panair might be interested in the Asuncion route.

Since you will undoubtedly be in very close personal contact with a great many military and civil aviation officials during your stay in the Argentine, I have no doubt that you will be able in a casual and personal way and without reference to Panagra's interest in the matter, to obtain GR-11526 G039802
[fol. 257] a good deal of information regarding the general policy which the Government will follow in connection with these lines as well as the operating requirements which will be demanded of bidders in order to qualify. I would greatly appreciate any advice you can give me on these matters as well as on the activities of prospective Argentine bidders as at the moment we are somewhat in the dark with regard to this proposed development.

* * * * *

Very sincerely yours,

(Signed) Douglas Campbell

GR-11527 G039803

[fol. 259]

GOVERNMENT'S EXHIBIT 108

W. R. Grace & Co.
NEW YORK

New York, September 23, 1936.

Dear Mr. MacGregor:

George Rihl came down and had lunch with me last Friday.

We talked about the Argentine situation in a general way but it was impossible to arrive at any definite conclusion as the whole matter is so very much up in the air. I explained that while we do not want to lay down in any definite way until the situation was clearer what we would and would not do, we were in general of the opinion that

nothing would be gained by our taking a small stock interest in a large company which operated all the routes in the Argentine and that the only plan I could see for a combination with anyone would be a combination with Dodero on the Salta route. While even this would not be too satisfactory it would probably be better, provided a reasonable basis could be worked out, than being excluded entirely from this operation. The main thing is that we know what is going on and have an opportunity to come in if we want to on the best plan that can be worked out but we really cannot know much about this and have much of an opinion about this until you and George get on the ground.

I also discussed with George the Panagra situation with reference to the West Coast of Colombia. I pointed out that under our original arrangement with Pan American the West Coast of South America was Panagra territory and that this agreement had really been breached when Panair bought control of Seadta. In view of the foregoing their interest in Seadta should certainly not be used to prevent Panagra's having a normal and proper development on the western side of Colombia and that such development would certainly mean at present going into Cali and perhaps at a later date entirely overland via Medellin. Under the circumstances I told him that it seemed to me that the least Panair should do would be to tell Panagra that it was in order for them to get Colombian permit to go to Cali at this time and make this change in the route if corresponding permission was obtained. This would mean facing opposition from Seadta but Panair should at least be neutral in the matter. George seemed to feel that this was a reasonable attitude but stated very clearly that the matter was entirely out of his province and that even Young could not pass on it and that no one could except Mr. Trippe. I nevertheless have in mind going over the same ground with Mr. Young at the first opportunity.

* * * * *

Very sincerely yours,

(Sgd.) H. J. Roig

J. D. MacGregor, Esq.,
Pan American-Grace Airways,
Lima, Peru.

[fol. 261]

GOVERNMENT'S EXHIBIT 110

To ROIG (LONDON)

november 16th 1936.

roig h. 8
1 8;
2 before leaving
3 today
4 by air
5 for buenosaires
6 peace
7 conference
8 miguel
9 lopez
10 colombian minister
11 to
12 washington
13 left a
14 message
15 just
16 transmitted to
17 us by
18 colombian consul
19 to the effect that
20 president of colombia
21 would like
22 to see
23 panagra
24 include
25 cali
26 in its
27 regular schedule
28 including
29 buenaventura
30 tumaco
31 sentence ends this
32 looks like
33 real
34 opportunity
35 to improve

36 panagra
37 position
38 along lines
39 frequently
40 discussed
41 and as
42 colombian consul
43 requests
44 panagra
45 answer
46 to be transmitted
47 by him
48 to president of colombia
49 would appreciate your
50 discussing matter
51 with juan
52 cabling us
53 your
54 his views
55 as promptly as possible

Mr. Garni.

GR-1488
11-4-54
RLA

G 1908

[fol. 262]

GOVERNMENT'S EXHIBIT 111

to ROIG (LONDON)

roigh 11
1220pm

november 17th 1936

. . . . . .

NEW YORK SAYS: president of colombia would like to see panagra include cali in its regular schedule including buenaventura tumaco

. . . . . .

61 sentence ends as
62 adoption

63 foregoing
64 plan
65 distinctly
66 well
67 within
68 panagra
69 territory
70 we do not consider
71 there can be
72 any
73 question
74 on part of
75 panair

G022688

GR-5278
11/18/54
Olt

G022689

GR-5279

[fol. 263]

GOVERNMENT'S EXHIBIT 112

from ROIG (LONDON)

roigh 8
9am

november 18th 1936.

NEW YORK SAYS: as adoption foregoing plan distinctly well within panagra territory etc.

65 have
66 appointment
67 with
68 juan
69 5 pm today (i.e. Wednesday november 18th)
70 sentence ends
71 have you
72 discussed

73 cali or
74 third
75 trip
76 with
77 thatch
78 er
79 rihl
80 I will not
81 discuss
82 latter ?
83 with
84 juan
85 unless you advise to the contrary

• • • • • • •

Mr Garni

GR-1490
11-4-54
RLA

G 1925

G 1926

GR-1491
11-4-54
RLA

[fol. 264]

GOVERNMENT'S EXHIBIT 113

roig 9 from ROIG, London Nov. 19, 1936
9. am

1 9 your 18?
2 your 11
3 1/60 words
kirby returned advising etc.
4 shown
5 to juan
6 and
7 pointed (out)
8 feasibility
9 and

10 desirability (of)
11 operation-s
12 and
13 importance (of)
14 availing (of)
15 this opportunity
16 suggesting
17 if his
18 seadta
19 interest-s
20 conflicting
21 he
22 remain neutral
23 leaving
24 matter
25 our hands
26 XX he
27 advanced
28 no
29 argument-s
30 contra
31 but
32 took
33 position
34 proposal
35 was
36 impossible
37 because
38 his
39 original
40 agreement with
41 van bauer
42 and
43 colombian government
44 and
45 purchase
46 seadta
47 stock
48 making
49 possible
50 treaty-ies

51 under which
52 we were
53 enabled

GR-7238 12/14/54 G03

[fol. 265]
54 bid on
55 our
56 route and
57 operate
58 in colombia
59 imposed (by)
60 obligation-s
61 not to
62 operate
63 in the interior
64 colombia
65 S.E.
66 he says
67 situation
68 fully
69 explained
70 at
71 early
72 meeting
73 hoyts
74 office
75 at which
76 Patchin
77 cogswell
78 present
79 XX I
80 stated
81 we were
82 never
83 party (to)
84 such
85 agreement-s and
86 president-s
87 action-s
88 made

89 present situation
90 force majeure
91 and we
876 92 could
93 rely (on)
94 president
95 deal with
96 seadt
97 but he
98 replied
99 will/would create
100 impossible
101 position
102 and on my
103 continuing
104 press
105 suggested
106 settlement
107 colombian
108 question

GR-1582
[fol. 266]
109 by WRG
110 purchasing
111 part of
112 pan
113 air
114 interest in
115 seadt
116 which we
117 think we should
118 consider
119 sentence ends although
120 he
121 would not agree!!
122 I think
123 we should
124 reply to
125 president

126 that
127 suggestion
128 is
129 most
130 interesting
131 and we are
132 investigating
133 and
134 taking up
135 with our
136 associates
137 sentence ends
138 meanwhile
139 should
140 study
141 operating
142 plans
143 sentence ends juan
144 left
145 London
146 due new york
147 december 2nd
148 your 11
149 98th to 213th word

G1920

GR-1503

[fol. 267]

GOVERNMENT'S EXHIBIT 114

11/19/36

Mr. Roig's cable states that Mr. Trippe took the position it was impossible for Pan American-Grace Airways to operate through Cali because his original agreement with Von Bauer and the Colombian Government and the purchase of the Scadta stock making possible treaties under which we were enabled to bid on our route and operate in Colombia, imposed the obligation not to operate in the interior of Colombia.

The facts as I can gather them are as follows:

Scadta was for a number of years refused permission to land in the Canal Zone. Accordingly, when the airmail service was started, there was an obstacle to obtaining landing rights on either the east coast or the west coast of Colombia. The State Department was then willing to let Colombia into the zone in exchange for reciprocal rights, but the situation then was that Scadta was more anxious to keep American companies out of Colombia than get into the Canal Zone.

In December 1928, preliminary discussions were begun between the Department of State and the Colombian minister to Washington. As a result of these negotiations, there was a formal exchange of notes dated February 23, 1929 whereby reciprocal rights were granted.

G061930

During January 1929, negotiations had been conducted by Pan American Airways with Scadta for the reciprocal use of the two companies of the facilities of each in the Canal Zone and in Colombia. This resulted in arrrangement of January 28, 1929, copy of which is hereto annexed.
GR-11568

In February 1929, Pan American Airways posted a bond of $25,000 with the Colombian Government in exchange for procuring flying rights. Under date of February 28, 1929,

1-31-55
F

[fol. 268] Mr. Trippe, in behalf of Pan American-Grace Airways, Inc., submitted letter to the Post Office in reference to its bid, in which was stated:

> "We have arranged for service between Cristobal, C.Z. and Guayaquil, Ecuador, through sub-contract to Pan American Airways, our affiliated company which already holds foreign mail contracts with your Department in the Caribbean, in Mexico and along the North Coast of South America.
>
> Pan American Airways, as a result of many months efforts, is qualified and bonded to operate in the Canal

Zone under the executive orde , dated September 28, 1928 and February 18, 1929.

• •

For over two years, Pan American Airways has been attempting to secure operating permits from the Colombian Government. In this connection conferences have been had with executives of the Scadta, the German controlled Colombian air transport company, over a period of years in New York, in Berlin and in Colombia. Through these conferences an agreement was finally reached with Scadta whereby Pan American Airways enjoys the exclusive use of Scadta's technical facilities on the coast of Colombia. These facilities built over a period of years at a cost of over a quarter of a million dollars are essential to the early operation of the dangerous section of this route owing to the prevalent fog and extreme tide conditions. (f) and (g) It is expected that Pan American-Grace Airways will have acquired proper facilities equal to those now owned by Scadta at the points of call between the Canal Zone and Ecuador, a distance of 900 miles, would require least eight months."

When service was started on Route No. 9, it was carried on by Pan American Airways between Cristobal and Guayaquil due to the fact that Pan American-Grace Airways did not have operating rights in Colombia. These rights were obtained under date of November 4th, 1929, at which time bonds were deposited with the Colombian Government by Pan American-Grace Airways.

G061931

GR-11569

If Mr. Trippe means that there was an agreement with the Colombian Government that if they would enter into the reciprocal agreement with the United States we would not fly in the interior of Colombia, this, of course, could be changed by mutual agreement with the Colombian Government at any time. If he means that he made such an agree [fol. 269] ment with Scadta in order to induce them to withdraw their objections to the reciprocal agreement, I

can find no evidence that we had notice thereof. There is no reason why we should be bound by such an agreement any more than any other American company which undoubtedly could qualify under the reciprocal arrangement.

Certainly, to have had the effect stated by him, such an arrangement must have been made before February 23, 1929 and I am almost certain Panair had no interest in Scadta at that time and absolutely certain that if they did we had no notice thereof. I do not know when Panair did acquire their interest in Scadta or when we received notice thereof, but I do know that under date of January 1931, an arrangement was signed with Von Bauer in connection with Ecuador when Von Bauer was in New York and at that time we did not consider Panair had any agreement with Scadta.

If the arrangement claimed by Mr. Trippe was actually made, it is difficult to understand how UMCA is operating in the interior of Colombia.

W F C

G061932

GR-11570

[fol. 279]

GOVERNMENT'S EXHIBIT 115

Air Mail 11.20.36
Stgo 11.24

CCJTK NEW YORK, November 20, 1936.

John D. MacGregor, Esq.,

BUENOS AIRES (Copy to Santiago).

Dear Mac:

In my cable to you of today regarding the third trip, Argentine, etc., I added a few words to the effect that I was air mailing you today a letter with details regarding an interesting Colombian development.

Before leaving by air for the Buenos Aires Peace Conference, Miguel Lopez, who as you know is the Colombian Minister to Washington, left a message which has just been transmitted to us by the Colombian Consul. This message is to the effect that the President of Colombia would like to see Panagra include Cali in its regular schedule including Buenaventura and Tumaco.

G061927

Kirby returned on Monday of this week from Colombia and he advises that when he visited President Lopez last week the latter informed him that he had already written to Miguel. Kirby explained to President Lopez that if the line were deviated through Cali the entrance to Colombia would probably be Bahia Solano where the planes might possibly refuel, and President Lopez raised no objection to the elimination of the Buenaventura call nor to the route as outlined, which would continue from Cali to Papayan and down the coast either via Tumaco or eliminating Tumaco when the more direct route Popayan/Guayaquil had been thoroughly surveyed.

1-31-51
F

We transmitted all of the foregoing information to Roig in London, requesting that he discuss it with Trippe with whom he had an appointment yesterday.

GR-11571
[fol. 271]

In our cable to Roig we added that as the adoption of the foregoing plan is distinctly well within Panagra territory, we did not consider there could be any question on the part of Panair.

Roig discussed it with Trippe pointing out the feasibility and desirability of this operation and the great importance to Panagra of availing of this opportunity.

Roig suggested that if his Scadta interests were conflicting, that he remain neutral, leaving the matter in our hands.

G061928

In a cable from Roig today he advises that Trippe advanced no arguments in contra, but took the position that the proposal was impossible because his original agreement with Van Bauer and the Colombian Government and purchase of Scadta stock making possible treaty under which we were enabled to bid on our route and operate in Colombia, imposed an obligation not to operate in the interior of Colombia, saying that the situation had been fully explained at an early meeting in Hoyt's office at which Patchin and Cogswell were present.

Roig stated we were never party to such an agreement and the President's action made the present situation force majeure and we could rely on the President to deal with GR-11572
Scadta; but Trippe replied that this would create an impossible position and on Roig's continuing to press Juan suggested a settlement of the Colombian question by W. R. Grace & Co. purchasing part of Panair interest in Scadta. [fol. 272] While Trippe did not agree, Roig feels very strongly that we should reply to the President of Colombia that the suggestion is most interesting and that we are investigating and taking up this matter with our associates and that meanwhile we should study the operating plans.

We have discussed this matter today with Patchin and Cogswell, neither of whom have any recollection of the obligation not to operate in the interior of Colombia referred to, nor has Mr. Inglehart who, as you will recall, discussed a great many of these matters with Hoyt at the beginning.

Irrespective of any opposition on the part of Scadta, we feel that the proposed operation is so manifestly in the interest of Panagra and to the convenience of Colombia that we should never lose sight of this objective and see that it is achieved.

I shall take advantage of my presence at the Canal to discuss this matter with Harris, who I understand has a detailed knowledge of Colombia, as has also Campbell who accompanies me on my trip.

I do not expect to remain at the Canal for more than two days.

With best regards,

Sincerely yours,

G061929

(Signed) A. GARNI

GR-11573

[fol. 273]

GOVERNMENT'S EXHIBIT 116

Rec'd—9 DEC

PANAIR DO BRASIL, S. A.
EDIFICIO A NOITE—RIO DE JANEIRO

Rio de Janeiro,
November 30th, 1936.

Mr. A. Garni, Vice-President,
W. R. Grace & Co.,
7 Hanover Square,
NEW YORK CITY.

My dear Adolf:

I have your letter of November 20th which reached me from Buenos Aires yesterday.

What you have to tell me with regard to the Colombian situation is extremely interesting. Frankly I think we are headed for a complete show down with our associates. I had, of course, anticipated opposition on the question of running into Cali. It is rather surprising however to learn of the very arbitrary interpretation given to the Tri-Partite agreement you mention in the fourth paragraph of the second page of your letter. We had, as you say, no intervention of any kind in the Scadta deal and I can readily see your point of view that where we had no knowledge we could not be bound by the terms of any agreement which might at any time affect the efficient operation of our services. The suggestion made in the last paragraph of the

second page is quite naive. I think the deal you mention must stand on the books of our associates at somewhere in the neighborhood of $1,000,000 and I have no doubt that the investment you mention would be offered at about a fourth of that sum for a 25% interest of our associates' participation which I think is 85%. That would be a hefty price to pay for an interest in a company in which, according to our associates, there is no voice in the management. I am basing my assumption on the attitude assumed by our associates in connection with the extension to Salta. I believe they have in mind whatever they can get over $50,000 for releasing us from what has never been anything more than a gentlemen's aggreement and an agreement which could never, for obvious reasons, be reduced to writing.

I am hoping that in addition to your conversation with Harris at the Canal you are taking steps to have at least a survey, made from the ground, of the Cali and Popayah regions. Possibly you will use Douglas Campbell for this assignment although I would prefer to see a survey made by a purely Grace or outside individual, as Douglas has been closely affiliated with Panagra of late months and has an official title in our company.

Yours truly,

/s/ J. D. MacGregor

1-31-55
E

GR-11577
MeC:OF

G061922

PAN AMERICAN AIRWAYS SYSTEM, A MAIOR REDE DE TRANSPORTES AEREOS DO MUNDO

[fol. 275]

GOVERNMENT'S EXHIBIT 118

March 1, 1937.

Mr. Roig

Memorandum for Mr. Garni:

PANAGRA

You will take up the matter where Roig left off and concentrate on an endeavor to obtain three things:

(1) An adequate service to Panama.

(2) Entry into Cali.

(3) Service through Bolivia.

The task of accomplishing this is a very difficult one and I do not think you will get Trippe to come along unless you build a pretty big fire under him. It will perhaps be big but not so big that we can't put it out at any time.

PANAMA SERVICE

I attach herewith copy of Lima's Pansago cable No. 30 and also copy of a letter written by Boxhorn to Mr. Henry Morgan and you can get further details about this incident which brings out very clearly the fact that we are not going to be able to build up an international service unless we get a really adequate service between here and Panama, and unless it is closely correlated with Panagra. There are several things that you might do. One is to talk it over pretty frankly with Harllee Branch. The second is [fol. 276] that Douglas Campbell might begin a careful study looking toward our putting in our own service from Miami to Cristobal and possibly continuing on to Cali by way of Medellin. Douglas might speak to Rickenbacker to see whether we could use his terminal at Miami for amphibians and get him to do our terminal shop work. This would give our service a great advantage as it would connect up on the same field with Eastern Air Lines and we

could run a complete direct service from New York through Buenos Aires.

The third thing that might be done is that Douglas might go down to Colombia stopping off in Havana and having our lawyer there begin a thorough study of the question of our getting permission to land in Cuba. He might also stop off at Kingston and see whether we could get a permit to stop there, after which he could proceed to Columbia to study the question of getting permission to go to Medellin and/or Cali by acquiring one of the old connections or getting a new one.

I think you ought to see Trippe and give him a clean-cut notification that if he backs Scadta in going to Guayaquil or Quito or helps them to do so, we will be entirely free to [fol. 277] enter into competition with him as we would consider it a definite breach of his agreement with us.

I think that our activities as above indicated will reach Trippe and once he sees that we are serious about it, I think we will be able to make a trade with him on the three points to which I have referred above.

I would suggest that you should study this all out and let me have your views discussing them with Roig by telephone if necessary.

D. S. I.

(Dictated by telephone
from Florida)

* * * * * * *

[fol. 281]

GOVERNMENT'S EXHIBIT 119

GASPARILLA INN
Boca Grande, Florida

copy of handwritten letter

Dear Garni:

I have sent Miss Boucher a memo for you, with copy to Mr. Inglehart, regarding his memo of March 1st, points

"2" and "3", just in case I did not make the points I have in mind entirely clear to Cogswell and Campbell. I have not gone into point "1" as that is a larger subject which will probably be open when I get back. Whether it suits to meet one breach of agreement by threatening another is a point I find it hard to decide. It may depend somewhat on whether we would prefer to scrap Panagra at the expiration of the present mail contract and form a company of our own to compete with Panair on the new contract. There is a good deal to be said for this but I confess I haven't yet been quite able to bring my mind around to it. The risk, of course, is that the new mail contract might go at a ruinously low figure and if we got it we might still have Panair competition direct or through Scadta. I doubt, however, that this would suit Trippe any better than it would us. I do not see, therefore, but what we are in a position to take as strong a stand on any of these points as necessary for their accomplishment.

• • • • •

GR-5307

Very sincerely,

(sgd) HAROLD J. ROIG

11/22/54
JPC

G029253

March 5, 1937

[fol. 282]

GOVERNMENT'S EXHIBIT 120

March 8, 1937

MEMORANDUM FOR MR. GARNI

PANAGRA

I explained fully to Cogswell and Campbell my ideas regarding Items "2" and "3" in Mr. Inglehart's memorandum of March 1st.

Briefly I think you should first be actually elected to the Board. This is definitely arranged and it has just been a case of getting Trippe to attend a meeting to do. It was to have been done at last week's meeting which was postponed on account of his absence in Washington. I hope it was held this week and this matter disposed of. The next thing is to get the two DC-3's definitely ordered and allocated against Panair's option with Douglas in order to get a prompt delivery. This was practically agreed to last week and has I hope been closed by now.

With these two matters out of the way my thought was to put it definitely up to Trippe that we must go into Cali and that he must control Scadta's competing with us on the West Coast; the former on the ground that Cali is definitely in Panagra's territory under our agreement and the latter on the ground that Scadta's expansion on the West Coast is in direct violation of that agreement.

G029251

If he objects to Cali on the same ground he did in London we should at least be freed to handle the matter with the Colombian Government and Panair should take a neutral position. If he refuses or claims to be unable to control Scadfa's expansion in our territory I think we should tell him that then Scadta simply becomes a part of the foreign competition which, with the cooperation of the State and Post Office Departments, we are now battling on the West Coast and that we will take it up with those departments in

GR-5305
11/29/54 PJS

[fol. 283] the same way that we have Condor and other foreign competition, and this, if he fails to come along, I should do. After all the recent talks with the Government about foreign competition and the interest they have shown in helping us to meet it, it is simply unthinkable that we should be cherishing and protecting a foreign competitor right in the Panair family.

Regarding Bolivia/B.A. extension, you will have seen on your return that he had arranged so far as Bolivia was concerned, to go right through to the Argentine border. We

also proposed starting in April provisional service between Cordoba and Tucaman. Trippe refused to agree to this until the "Nybra settlement" was agreed to. We asked Panair for details of the $90,000 but while these have been prepared Trippe had not yet released them. If, as I assume they are on a mileage basis, it is obvious that these particular miles are not worth anything like the East Coast Nyrba mileage which Trippe had to buy in order to get a satisfactory East Coast mail contract. If we valued them at 1/10th it would be liberal. The many reasons for this are well known to you. Any idea that Panair is entitled to any consideration for having "kept the flag flying" in the Argentime is, of course, unfounded. We are the ones who have done that for Panagra has paid ⅔rds of the B.A. office expense and I had thought to throw into this discussion the idea that the time had now come for us to definitely take charge of that office.

Campbell is familiar with the discussion I had with MacGregor and Harris about moving Kirkland to B.A. Whatever we do in this connection, I think we should be careful not to weaken Santiago's control. I spoke to both Campbell and Simon about this.

H.J.R.

GR-5305

G029251

[fol. 284]

GOVERNMENT'S EXHIBIT 121

PANAMA AGENCIES CO.
CRISTOBAL, C.Z.

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

Mr. Garni
Mr. Campbell
Please return to

Rec'd
3/16/37

ans'd
3/25/37

VIA AIRMAIL

Cristobal, C. Z.
March 12th, 1937

#3 (HJR Panagra Series)

Mr. Harold J. Roig, Esq.,
Vice-President
W. R. Grace & Co.
7 Hanover Square
New York, N.Y.

Dear Mr. Roig:

We received this morning a new page for Panair system Tariff giving time tables ten and eleven covering their joint service in Colombia with Scadta. This page is shown as being effective February 15th, 1937. You may have already seen this time table but if not, I suggest that you secure one as it shows the projected service of Scadta from Cali to Quito, with a weekly plane in either direction. Also shown on the Tariff is the rail connection which is made from Cali to Buenaventura.

If Panair Scadta inaugurate this extension of their service from Cali to Quito they will be paralleling our route

between here and Ecuador, and no doubt it would not be long before they further extend their line from Quito to Talara where they could easily hook up with Fawcett and compete with us through Peru and even through to Chile by using the Chilean Government service.

This appears to be a serious threat to Panagra service and especially since the projected service of Scadta from Cali to Quito will be serving the interior capitals of Colombia and Ecuador, whereas Panagra skirts the coast.

Very truly yours

PANAMA AGENCIES COMPANY

/s/ E J BROWN
MANAGER

EJB:PB

GR-1566
10-26-54 PJS

G007007

[fol. 285]

GOVERNMENT'S EXHIBIT 122

Mr. Roig

SANDOWAY EAST
DELRAY BEACH, FLORIDA

J. L. BROWN
Manager

Mar 13, 37.

Dear Garni,

. . . . . .

Panagra.

This is a very perplexing problem. I appreciate the danger of starting competition with him. But *he* has already started competition with us of the most Machiavellian and effective type. Talking with him will get nowhere. It never has, only pressure counts.

W. R. Grace & Co. might advise Pan Am officially of what is happening regarding Bolivia-Argentine extension and

Panama Scadta situation and state that in order to prevent serious prejudice to Panagra W. *R. G. & Co. proposes to start the service in the Argentine and start a direct service Miami to Cristobal* but offering these services to Panagra at cost, etc. etc. Making clear that our interest is merely to obtain fair treatment for Panagra and to give that company the great development to which its accomplishments and its preferential geographical position entitles it. Think this over and talk it over with Rôig.

Yours sincerely,

s/ D. S. L.

GR-1567
11-5-54 PJS
GR-1568
GR-1569

G019215

G019216
G019217

[fol. 286]

GOVERNMENT'S EXHIBIT 123

3/26/37 2.42A

Panagra

In the early days of Panagra and before Pan American had purchased Nyrba, it was felt that in view of the general relationship between Panagra and Panair and the interest of Panair in Panagra, there should be some general understanding as to the respective sphere of activity of the two companies. A gentlemen's agreement was accordingly reached that Panagra's activities would cover the West Coast of South America and Pan American the East Coast and that in respect of the Argentine, Panagra's only interest would be in the line between Mendoza and B. A. and thence to Montevideo. This was definitely a gentlemen's agreement covering the respective ideas of policy as they existed at that time. It was not contemplated that this understanding was not subject to change when it suited the mutual interest or that in the event of such change money payment should be required by one company to the other as a condition to such change.

G037160

Pan American departed from this agreement when they purchased Scadta to the extent that Scadta operates on the West Coast of South America, violated again in the organization of Umca to the extent that this company diverts West Coast traffic and will violate again if Scadta extends to Quito. Panagra and W. R. Grace & Co. did not object or ask for any money payment from Pan American in connection with any of these operations because at the time they were not prejudicial to Panagra or in any event Panagra was not in a position to give the corresponding service. Similarly, when in the interest of Panagra it was necessary to take prompt action in order to secure the La Paz service, W. R. Grace & Co. secured operating rights in their own name and took the full responsibility for having to operate this service until Panagra was prepared to take it over. They transferred these operating rights to Panagra without receiving or even asking any payment and they

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GR-7264

[fol. 287] have ever since provided Panagra with full service in Bolivia including not only routine handling of the service but constant concession and other governmental negotiations without receiving or asking any increase in their annual agency fee.

G037161

Pan American at that time did not own the Argentine and do not own it now. They did not at that time have and have not now any tangible or intangible rights or operating permits or other facilities to be turned over to Panagra in connection with the Scadta service.

When about a year ago in the interests of Panagra it became desirable to divert the Mendoza Buenos Aires service through Cordoba Mr. Trippe made it a condition to his giving consent to this as a director of Panagra that they recognize some payment to Panair if later on Panagra should wish to extend to Salta, and this was agreed to in order to make possible this necessary Panagra development. This was the first time that any suggestion was made of a money payment to Panair in the event of any departure from the gentlemen's agreement above referred to. This

money payment was related to Nyrba and it was known that the amount could not be large as no part of Panair's purchase price of Nyrba had been paid to secure the Salta service but rather to secure an East Coast mail contract. The first amount mentioned by Mr. Trippe was $25,000. This was subsequently increased to $90,000. During the last month this has been further increased to a minimum of $125,000, a maximum of $345,000 and an offer of settlement based on payment of $50,000 cash and the balance up to $245,000 out of earnings. In agreeing to Panagra's operation of the Salta service Panair are turning over nothing to Panagra and are depriving themselves of nothing except an academic right to run a service to Salta themselves which they have not exercised during the past eight years. GR-7265

fol. 288 which they could not exercise now in connection with their Asunción cut-off as their schedule does not permit of time for such diversion and which they could not operate as a separate service except at a loss. Their talk of operating the Salta service themselves now, therefore, is a mere specious make-weight to justify impossible and entirely unreasonable demands.

's Rois.

March 26, 1937

6037162

GR-7269

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fol. 289

GOVERNMENT'S EXHIBIT 124

Panair files

Claimed payment based on Panair losses and expenses in the Argentine is without basis:

1—There was never any agreement to recognize these expenses, the only expense undertaken to be recognized being that in connection with the purchase of Nyrba.

2—Under the agreement Panagra agreed to a "hands off" policy in the Argentine to enable Panair to develop that field if they wished to and were able to. Their efforts

in this direction have been a complete failure and nothing whatever has been developed which they are turning over to Panagra. There is certainly no moral obligation to contribute to these fruitless attempts carried on for Panair's own benefit and resulting in nothing.

3—A not inconsiderable part of these "expenses" represent work done by Panair's B.A. office organization (Bradley, etc.) to the expense of which Panagra have already contributed two-thirds of the annual budget and at the beginning contributed also to a large amount of Argentine development expense. It is fair to bear in mind, however, that in these earlier expenses there was always a certain amount allocated to Panair's special activities.

4—The present Panagra Argentine program has not been facilitated in any way by the above activities and would have been just as feasible if these activities had never occurred.

5—The present Panagra Argentine plan offers the best possibility for Panair's making money in the Argentine and they have a better chance of recouping their losses in this way than any other but there is no basis for them in addition claiming special payment.

Delay in air mailing a/c Pan Air delayed schedule

G037606

March 31, 1937

GR-7268
12-20-54
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[fol. 290]

GOVERNMENT'S EXHIBIT 125

Memorandum of conversation at the University Club, on the morning of April 6, 1937

* * * * *

The Colombian situation was again discussed from various angles but without concrete results. Mr. Trippe repeated what he had said the night before, namely, that

should Scadta extend to Ecuador against the wishes of Pan American-Grace, Pan American would have no recourse but to dispose of its interests, but he felt that some agreement could be reached which would not necessitate this step. Mr. Trippe again insisted that there was an agreement between the W. R. Grace interests and Pan American covering the territory in which Pan American-Grace was to be dominant and without competition on the part of Pan American or its subsidiaries, and that while he felt it would be quite in order for Pan American-Grace to operate through Cali, he did not think it would be equitable for that company to expect to be allowed to serve Medellin. He also said he believed that now was the time to put in writing exactly what Pan American-Grace could and could not do, as well as Pan American, and he thought this agreement should be signed by Pan American Airways and W. R. Grace & Co., Pan American undertaking to see that Scadta lived up to the arrangement or sold out. Mr. Roig agreed that a written statement of the position of both companies would be desirable if an agreement could be reached, and Mr. Trippe suggested that he draft up something that would be acceptable to the Grace interests, which Mr. Roig promised to do.

George L. Rihl
105

[fol. 291]

GOVERNMENT'S EXHIBIT 126

JDM-GV #16

AIR FRANCE—PARAGUAY
PANAIR PANAGRA—ARGENTINA COLOMBIA

NEW YORK
April 7, 1937.

Mr. G. Vidal,
SANTIAGO

We are at present in the thick of a battle royal with Panair on both the Argentine and Colombian questions.

We are demanding the right to go through Medellin, if necessary, as well as to divert our line via Cali. We have also taken the position that a survey flight by SCADTA to Quito would be an infringement of our agreement with Panair as to division of territory. Von Bauer is here at present and I believe is showing himself completely recalcitrant and unreasonable.

* * * * *

PAG - W 612
10-1-54
J. D. MacGregor. ACD

JDM/Q
cc: HRHarris

W342 40

[fol. 292]

GOVERNMENT'S EXHIBIT 127

PRIVATE AND CONFIDENTIAL

April 12, 1937

MEMORANDUM TO MR. ZALLES:

COLOMBIA

1—The Kellogg-Olaya treaty made between the United States and Colombia about 1929, provides:

> "Commercial aircraft of U. S. registry will be permitted to fly along the Atlantic and Pacific Coast of Colombia and over the territory immediately adjacent to them; to land on land or water, take fuel, make repairs, discharge and receive passengers, mail and freight in the Colombian port where there are authorities capable of enforcing the regulamentory formalities, subject to the regulations and dispositions equivalent to those established for commercial aircraft of Colombian registry annexed to this note."

This is, I believe, the only treaty giving American planes any flying rights in Colombia. You may recall that in

return Colombia received the right to fly to and over the Canal Zone. It is under this treaty that Panair have operated their line along the north coast of Colombia and Panagra theirs along the west coast, actual operations being conducted under permit from the Colombian Government, subject to termination on sixty days' notice. You will note that under the treaty, Panagra operations are practically limited to over-water flying but it is to be borne in mind that at the time of the treaty this is the way the route was being operated and in fact the only way it could have been operated as land planes at that time had not been developed suitable for overland operation along the west coast of Colombia.

G031046

GR-7271
12/13/54
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2—Early in the association between Panair and W. R. Grace & Co. and the formation of Panagra, there was a gentlemen's understanding between the two interests that Pan American's field of activity should be the East Coast of South America and Panagra's, the West Coast, plus the international line in the Argentine between Mendoza and B.A. Under this arrangement, it was always our under-

6

standing that although we were flying over the Pacific, [fol. 293] the West Coast of Colombia, with whatever that might include, was within our sphere of activity. We, of course, realized that Scadta was operating throughout the interior of Colombia but that, as we understood until some time later, was a wholly independent operation which had no bearing on the Panair/Panagra understanding. Along about 1932, we learned for the first time that Panair had acquired a large interest in Scadta, the extent of which we did not know until the Post Office mail contract investigation when it appeared to be about 84%. This we have since learned is now about 72%.

3—With the improvement in land planes inaugurated by the Douglas DC2 (which we are now using in our land operations south of Colombia), furthered by the DC3 (some

of which we now have on order), and probably brought to a high state of development by the proposed Douglas 4-engine plane, the time is not far distant when we will be able to operate our international line overland across Colombia, thereby, of course, greatly improving the service we are able to give to that section of the country. Panagra is contributing, along with other American airlines, to the experimental and development expense in connection with the 4-engine Douglas land plane above referred to. With a view to preparing ourselves for the above development we recently took up with Pan American the question of diverting our international line to go through Cali entering Colombia by way of Bahia Solano, omitting Buenaventura and coming out at Tumaco. We have made one flight over part of this route and while our investigations have not been completed, reports to date indicate that this is a feasible route. We have also taken up with Panair the possibility of later developing the main line south of Cali overland to Guayaquil, connecting by shuttle service to Quito and later on, if it proves feasible, running the direct line through Quito. Similarly, north of Cali we have suggested the later

[fol. 294] possibility of running overland to Cristobal, possibly by way of Medellin and Turbo. All of these extensions would, of course, involve permit from the Colombian government which would include not merely the right to run the international line over the routes indicated *but also to carry cabotaje passengers mail and express.* Panair have stated in these discussions that in order to make possible the Kellog-Olaya treaty they had purchased the major portion of the stock of Scadta and in connection with that purchase had made an agreement with Scadta that Panair and Panagra would combine their operations to the Atlantic and Pacific Coasts and would leave the interior business in Colombia to Scadta. Panagra was not a party to this agreement and knew nothing of it until it was mentioned in these discussions and are of course not bound by it. Nevertheless it seemed advisable to consult Von Bauer's views and on his recent visit to New York, George Rihl, of Pan American, talked to him and has reported to us that Von Bauer

stated that he had no objection to Panagra's going into Cali and diverting their international line north and south of Cali on the routes indicated even including Medellin, provided we did not carry cabotaje traffic between Cali and Medellin. Pan American, however, object to Panagra's going to Medellin partly because they consider that Medellin is not western Colombia and partly because Panagra would compete with Umca between Medellin and Cristobal. Umca is owned by Panair and prima facie their operation of this line would be in violation of their understanding with Scadta regarding interior services in Colombia but they state that Von Bauer was agreeable to this at the time as he preferred that Mejia who had the Cristobal Turbo Medellin concession work with Panair rather than outside interests who might be hostile to Scadta.
GR-7273

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[fol. 295]

GOVERNMENT'S EXHIBIT 128

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9am

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GR-1577
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continued:

[fol. 296]
53 approach
54 colombian minister
55 washington
56 explaining
57 to him
58 reason
59 for
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62 induce him
63 to cable
64 president
65 endorsing
66 our plan
67 sentence
68 at present
69 venezuelan
70 diplomatic
71 mission
72 here
73 discussing with
74 scadta
75 establishment
76 service
77 caracas
78 bogota
79 quito
80 sentence
81 will cable later
82 further developments

ZALLES

G 1866.

GR-1578

[fol. 297]

GOVERNMENT'S EXHIBIT 129

COPY

Memorandum of telephone conversation between Mr. Garni and Mr. Rial on the morning of Monday, April 19th '37

Mr. Garni called me shortly after I had finished talking with Mr. Roig. He said he wanted to call my attention to what might happen in case we went through with the sale of stock to von Bauer that is being contemplated. He stated that when W. R. Grace was making an agreement with the Chilean Navigation Company, regarding traffic agreements on the west coast, etc., it was found necessary to consult the various departments at Washington as even the War and Navy Departments were interested, and that they filed a copy of the agreement as finally signed. Mr. Garni pointed out that the amount offered by von Bauer for approximately 53 or 55% of the Scadta stock was, in his opinion, four times what it was worth from a commercial viewpoint, taking into consideration the balance sheet that Mr. Roig had shown him. Mr. Garni further stated that the only reason von Bauer could be interested in the stock at such a figure was because he had a government back of him, and it was to be supposed it was Hitler. I told Mr. Garni that I would mention the matter to Mr. Trippe but that the price being offered us was not as much as we had originally paid von Bauer. I stated that we gave von Bauer something over $400,000 in cash and 23,000 shares of Pan American Airways stock. Mr. Garni did not seem to understand at first what I had said about the number of shares of stock being in addition to the cash, as he said that paying von Bauer something over $400,000 was less than Mr. Trippe stated the company had cost, which Mr. Garni understood to be around $1,300,000. I repeated to Mr. Garni that in addition to the cash, we had paid von Bauer 23,000 shares of our stock, and then he said we had made a bad deal. I told him it was necessary to pay this in order to get hold of Scadta, which was important at that time in order that we could get rights through Colombia.

Mr. Garni stated that the W. R. Grace interests were very much concerned over the happenings of the weekend,

and I asked him what he would have us do. My memory is that Mr. Garni said he could not advise us in that as it was a matter for us to settle ourselves. He brought up the question of Pan American-Grace immediately proceeding to try to get permission to go into Cali, and I told him the same as I had told Mr. Roig previously, namely, that I thought it best to wait to see what kind of a deal we could make with Scadta for their cooperation. I further stated it was my understanding that Mr. Trippe hoped to work out some agreement with Scadta that would not mean cut-throat competition between the respective companies, and that it was also my understanding that von Bauer was agreeable to such arrangements.

I also told him that Mr. Trippe had agreed to send over to Dr. von Bauer a draft of an agreement. I might say here, that I also told Mr. Roig in my conversation with him, that the deal with Scadta was to be contingent upon some working agreement between Pan American and Scadta which would, of course, compromise Pan American-Grace to a certain extent. Mr. Roig insisted that any agreement that was made should be shown to Pan American-Grace, and I said undoubtedly that would happen as probably the agreement would provide for some kind of guarantee of performance, and Pan American-Grace would naturally be in a position to break any agreement made by Pan American.

Mr. Garni asked me to talk the matter over with Mr.

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fol. 298 Trippe and arrange a meeting between Pan American and the Grace interests when the subject could be discussed again.

G.L.R.

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[fol. 299]

GOVERNMENT'S EXHIBIT 130

COPY

Memorandum of conversation held between Messrs. Trippe, Garni, Roig and Rihl in Mr. Trippe's office on the morning of April 22, 1937

Mr. Garni opened the conversation by asking Mr. Trippe what was to be done in view of the recent developments in Colombia, i.e., survey flight by Scadta to Quito and the information received from von Bauer regarding the cancellation of Scadta's basic contract. Mr. Trippe replied that he did not quite know, but thought we should work out some arrangement whereby Pan American-Grace interests could be protected in line with the original understanding as to its sphere of activity in relation to Scadta's. Mr. Trippe further explained that the probabilities were that the cancellation of Scadta's concession was due directly to the delay in that company making a survey flight to Quito, which was made necessary at the direct request of the President of Colombia. Both Messrs. Garni and Roig stated that they did not believe the delay in making the flight had anything to do with the cancellation, but rather it came as a result of the enmity of some local official, as they had received advice that the Postmaster was not friendly towards Scadta, and the probabilities were there were other interests that were trying to encroach on the Scadta operation.

Mr. Trippe then explained that it was not his desire to hold the W. R. Grace interests responsible, and that Pan American was perfectly willing to take any loss that might be due to the cancellation of Scadta's concessions. However, he did feel that Pan American-Grace should buy half of the interest Pan American held in Scadta, the price to be determined by arbitration if it was not possible to arrive at a price by mutual agreement. Both Messrs. Garni and Roig objected to arriving at a price by arbitration and stated that they did not feel Pan American-Grace could afford to buy an interest in Scadta, even though the price was very considerably lower than the figure mentioned by

Mr. Trippe as what he considered our interests worth, and what von Bauer had offered for 15,000 shares of Scadta. Von Bauer offered, previous to the receipt of information about the cancellation of the contract, 10,000 of P.A.A. stock, or approximately $667,000 for 15,000 shares of stock. Mr. Trippe stated that he realized that the cancellation of the Scadta concession would probably mean that von Bauer could not uphold his offer, but insisted that Pan American-Grace should participate in the ownership of the stock in order to avoid conflicting interests. There was a great deal of discussion on this subject, with the final result that Messrs. Garni and Roig flatly refused to consider the purchase by Pan American-Grace of an interest in Scadta as they felt that Pan American-Grace could get into Colombia through a local subsidiary on much more favorable terms than would be possible by making a deal with Pan American. They stated that Pan American-Grace had been requested to make a survey flight via Cali with a view to eliminating Buenaventura as a stop on their regular service, the request coming from the Colombian Government. Mr. Trippe did not oppose the idea of making a survey flight but did state that he felt some formal arrangement ought to be made with Scadta. He stated that von Bauer had already advised Scadta to tell the Colombian Government that they could not establish a regular service from Cali to Quito, and had also given instructions that no opposition was to be made to Pan Grace deviating from their present route to allow the inclusion of Cali, and that this procedure was what he, Mr. Trippe, had promised would be done. Mr. Trippe further stated that he could see no reason why it would be inimical to Pan American-Grace interests to make a formal agreement [fol. 300] which would compromise Pan American-Grace not to go to other points in Colombia not on the route that would be necessary to be flown by including Cali, without the consent of Pan American and Scadta. Mr. Garni objected to making any formal agreement and brought up the question of Medellin. We discussed the possible inclusion of Medellin at some future date, and both Messrs. Trippe and Ribl opposed any such action as being in no way obligatory on the part of Pan American or Scadta

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to agree to. Mr. Rihl stated that it did not seem equitable for Pan American-Grace to be allowed to compete with the Umca operation, inasmuch as that operation had been carried on at a loss by Pan American, and at the time it was initiated it was to the best interests of Pan American-Grace to have this line in the hands of Pan American. Mr. Rihl also stated that certainly at the present time Pan American could operate it much more cheaply than could Pan American-Grace on account of having surplus crews and equipment at the Zone. Mr. Trippe stated that the question of Pan American-Grace purchasing Umca could be discussed later on, but he did not feel that it was necessary to compromise Pan American at the moment.

Mr. Trippe again insisted that some sort of arrangement be made whereby Pan American-Grace interests could be protected without prejudicing the interests of Pan American-Grace, Pan American and Scadta. He repeated that he had talked the matter over not only with the Board but with certain officials in Washington, and it was felt absolutely essential that Scadta remain in the hands of American interests, and that if it was allowed to fall into foreign hands it would very greatly prejudice the interests of Pan American-Grace. Mr. Rihl pointed out that even though the present contracts of Scadta were to be cancelled undoubtedly others would be made, and that Scadta would continue to operate, and that while it was possible that the Pan American interests were not worth what von Bauer had offered before the talk of cancellation came up, it is more than probable that von Bauer would still be interested in buying. Mr. Rihl stated that both Messrs. Garni and Roig had expressed very great alarm over the possibility of von Bauer buying the Pan American interests, as they figured that would mean German competition. Mr. Rihl asked whether they thought it equitable for Pan American to be expected to carry the load of keeping Scadta from competing with Pan American-Grace. He also stated that Pan American would naturally have to do everything in its power to see that new concessions were obtained for Scadta, as it could not be expected to liquidate Scadta. No definite answer was given to this question.

The final result of the meeting was that Messrs. Garni and Roig promised to study the question of making a definite agreement on the territory in which Pan American-Grace could operate and advise Mr. Trippe later. There was no undertaking, however, to make any agreement with Scadta, nor would Messrs. Garni and Roig agree that Pan American-Grace or W. R. Grace should assume any responsibility regarding the Scadta operation. The question did not come up as to whether W. R. Grace, as such, should purchase an interest in Scadta, but Mr. Garni did refuse to compromise W. R. Grace to increase the capital of Pan American-Grace in conjunction with Pan American, which would permit Pan American-Grace to take over, wholly or in part, Pan American's interests.

G.L.R.
102

[fol. 301]

GOVERNMENT'S EXHIBIT 131

Mr. Iglehart

New York, April 30, 1937

G. Vidal, Esq.,
Santiago, Chile

Dear Vidal:

ARGENTINE

I have read your cables and letters on this subject with the greatest interest.

In the first place, I think you are to be congratulated on on the very able manner in which you handled the whole matter of procuring Panagra's operating rights for the Salta line. Your analysis of the situation has been accurate from the outset and your procedure in every step admirable. It also seems increasingly clear that your action was taken none too soon and I am glad we were able to get the necessary clearance here in time to enable you to act when you did.

While we were naturally a good deal concerned with the indications we received from Rice of possible attack upon our operating permit, we decided to cable you last night,

leaving it to you to decide what had best be done to protect the situation. We are very hopeful that the U. S. subsidy for this extension will come through and naturally do not wish when that has been settled, to find ourselves in difficulty in operating the line. We realize, however, that you are fully aware of this situation and are so much more familiar with the actual situation in the Argentine that you will know what is best to be done to safeguard the position. It is, as you say, unfortunate that Panair did not secure their permit at the same time we did and that their application may now encounter difficulties. There is always the possibility, however, that this may react to the prejudice of our permit and this is naturally what we wish to avoid. You will know how best to accomplish this.

* * * * *

Very truly yours,

H. J. Roig

12/21/54
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GR-7295

G037155

[fol. 302]

G-131

EXECUTIVE COMMITTEE

APRIL 21, 1937.

"The meeting ratified an agreement between W. R. Grace & Co., Pan American-Grace Airways, Inc. and this Corporation, relating to intercompany transfer of position on Buenos Aires-Salta route."

EXECUTIVE COMMITTEE

NOVEMBER 16, 1937.

"The meeting thereupon considered, and authorized, new operating schedules of the Eastern and Western Divisions of this Corporation and of Pan American-Grace Airways, Inc. to become effective December 1, 1937."

BOARD OF DIRECTORS

JUNE 28, 1938.

"Mr. Trippe reported to the meeting on the following:

* * * * * * * * *

(e) Loss of Douglas transport by Pan American-Grace Airways, June 20, 1938."

[fol. 303]

GOVERNMENT'S EXHIBIT 132

PERSONAL 1920

CRISTOBAL/CALI ROUTE

NEW YORK,
May 5, 1937.

Mr. H. R. Harris,
LIMA.

I note Mr. Beatty's letter to you, 4640-P of April 27th.

I am sorry that at present we are at somewhat of an impasse in connection with the Cali deviation. The matter, as you know, is intimately connected with a proposed division of territory between Panair and ourselves, in which SCADTA, as a subsidiary of Panair, is involved.

Incidentally, the sale to SCADTA of the Panair interest has not yet taken place. Von Bauer says he is afraid his contract will be cancelled and, for that reason, he is pushing his service to Quito.

Until I can get the situation cleared I cannot talk about Quibdo or any other place that has previously been considered SCADTA territory. It may be that Zalles can get a general radio permit, which would help matters considerably, but that would still not give us the right to land at Quibdo.

You can readily understand that our efforts of the past few weeks have thoroughly aroused SCADTA as they see where their invasion of our zone has brought a counter attack and they resent this. You can well imagine that when

a Company has had a monopoly, such as SCADTA has enjoyed, for almost 17 years, it views with extreme distaste any competition such as we contemplate.

You must give me time to clear the situation as the Panair financial interest in SCADTA impells them to try to block our game.

J. D. MacGregor.

JDM/Q

[fol. 304]

GOVERNMENT'S EXHIBIT 133

Dear Garni,

We had two conferences with Juan regarding the organization plan before I left. At neither of them was the question of any change of Grace functions even mentioned. Juan never left the chart out of his hands and I never saw the idea Grace Company Pan Am until George arrived in Lima. Our only discussion in New York was with reference to the single point of the change in operating organization as contract with Priester. If Juan had had any idea of including any change in Grace functions that was certainly the time to mention it.

While I suspect the question was answered before we got through I gave Juan the benefit of the doubt and your letter No. 1 while it crystalized my suspicion that he was beginning to chisel did not indicate that he has indicated any real change of functions or any specific change whatever. When George arrived in Lima he certainly had no idea that any change in Grace functions were contemplated for when I asked that the additional words be inserted so that we would be in no doubt on the point, I agreed. Even now I do not know which of our functions Juan objects to.

It seems perfectly clear to me that somewhere along the line after George and I left, Juan got the idea of using this opportunity to revive again the whole question of parent company functions and that he is now trying to get this afterthought into the picture just, as you will recall,

when we agreed sometime ago to stay out of a certain portion of Colombia, he forced in a proposed agreement under which we agreed to stay off the whole Caribbean and most of the rest of the world.

Grace functions and Panair's are always open to discus- [fol. 305] sion. There is no agreement covering either. But forcing changes of a dog in the manger attitude on an operating matter of this seriousness is no way to go about it. We are consistently making changes in our functions. Even now pursuers are being transferred to operations (from traffic) to conform to change in Panair practice. If we are doing anything that can be better done otherwise I will be glad to discuss it and the carrying out of the plan will not prejudice the question in any way. But lets discuss this question on its merits and stop playing poker. I can't see what objection there is to Vidal's language but if there is any, why not strike out all description of Grace and Panair functions from the chart (and omit paragraphs VII and VIII of this memo) except traffic and operations and simply put in the names of the companies with a statement on the chart or in this memo that the chart reflects only the traffic functions performed by Grace and the operating and traffic functions performed by Panair and does not purport to reflect or show the other functions performed by the two parent companies.

You will recall Juan wanted Mr. Burns to adopt the plan before I left. I wanted to discuss it first with Mac and Harris but agreed to submit it as a plan on which the Board were definitely agreed in principal. George and I handled the matter in this form and for us to stall now after the management has agreed, if it were not so serious would be childish and ridiculous. Surely George can find something to avoid putting the Board in such an utterly absurd position and to spare this line from the prejudice which delay in this matter involves.

Very sincerely,

/s/ Harold Roig

Santiago 28 Oct 37

[fol. 308]

GOVERNMENT'S EXHIBIT 135

letter J.D.

April 29, 1938

Memorandum for Mr. A. Garni,
Vice President
W. R. Grace & Co.,
New York.

Please be advised that today, at five minutes to one, I received a telephone call from Mr. Evan Young requesting me to have lunch with him. Upon my arrival at his office I found Doctor Von Bauer and Mr. Rihl, and we all went to lunch together. I had no previous intimation that I was to lunch with Doctor Von Bauer.

During lunch I took the opportunity of thanking Mr. Von Bauer for the actions of the Scadta Company in not opposing: first, our request to the Colombian Government to operate through Cali, and second, that they did not oppose our request to change our route from the sea route to the over land route.

I went on to say that I had recommended to my Directors that Panagra enter into a traffic and airmail agreement with Scadta and Adelca along the lines and for the period of the contracts those companies had with Pan American Airways. I mentioned that the only reservation I had was that I should like to have some assurance that Scadta would not operate into Quito and in that way enter into competition with our West Coast international service. Doctor Von Bauer vigorously confirmed what we had been told by Mr. Trippe. He said that Scadta had no desire to operate to Quito.

He stated that President Lopez had told him that he wished to leave some personal monument to his administration, that he had not the money to build roads as his predecessor had attempted to do, and that in his opinion the easiest way to do something of a striking nature was to develop air services in Colombia and connect that with the neighboring roads of Venezuela and Ecuador.

Doctor Von Bauer stated that he had suggested to the President that he could best develop Colombian aviation by putting in decent airports, but that that did not appeal to the President because it represented a large investment of funds which were not available; and the President, there-

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[fol. 309] fore, requested that Scadta make surveys to both Quito and Caracas, the President undertaking to get the necessary permits. In that way the President figured on leaving some important executive act without cost to him by which his administration would be patriotically remembered.

Doctor Von Bauer said that, speaking for Scadta, he still did not wish to operate internationally but that, although at the present moment, with the imminent change of administration in Colombia, the matter of the Quito connection had been dropped, he could not guarantee that a succeeding administration would not revive the question. What he would state was that the question would not be revived by him or by Scadta and that, if the question arose through the instigation of a succeeding Government, the problem would have to be restudied and some method devised to solve it.

Doctor Von Bauer said that he wished that Pan American-Grace would give some consideration to Scadta problems. He said that, upon my assurance that we had no present intention of engaging in cabotaje in Colombia, he asked why then did we ask for landing rights at Turbo and Medellin. He intimated that asking for these landing rights was not necessary if we did not intend to engage in cabotaje, that the mere fact that a route via Turbo/Medellin/Cartago to Cali was granted would give by Colombian law automatically the right to land there for emergency purposes, whether for refueling or for refuge from weather.

Doctor Von Bauer stated that, just as the Colombian Government might, on account of public or political pres-

sure, try to force him to go to Quito, we might be faced with an attempt to make us serve the cities of Antioquia and Medellin, near which we pass on the new route. Doctor Von Bauer stated that Scadta naturally would deprecate the running of a lot of international airlines across Colombia, because sooner or later it would bring a demand that the international planes deliver mail and engage in international traffic in the interior, which would greatly prejudice the Scadta position. He said very frankly that Buenaventura was the hub of his activities and that his entire organization was built to function from that outlet, and the loss of revenue to international operators would mean the death of Scadta.

I said I could see his position very well but that the prime object of Panagra's existence was to carry airmail to Buenos Aires via the West Coast of South America

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[fol. 310] in as speedy a fashion as possible, and in order to accomplish this, we could not make a number of stops at Colombian cities, and that we would in every way fight for only a limited number of stops throughout the line, in order that a fast schedule might be maintained.

Doctor Von Bauer said that he had spoken to Mr. Kuhl about the agreement with Panagra and that Kuhl had told him that two years ago a draft was prepared but that nothing had come of it, but that he would again write to Mr. Kuhl, and he suggested that we send Mr. Kuhl our ideas of the contract in writing in order that it might be studied.

Doctor Von Bauer intimated that in all probability Scadta would have to establish, at quite some expense, a redespatch point at Cali and the Scadta schedules would have to be studied, so that if possible a rearrangement could be made which would provide for the rapid transfer and transmission of airmail and express in Colombia in connection with Panagra's departures and arrivals.

In conclusion, Mr. Von Bauer was extremely regretful that he was unable to arrange for luncheon with Messrs.

Iglehart and Garni. In his own words, he said: "You know I am just like any other employee, at the end of a string waiting for the latch-door to open". He said that it was imperative that he leave for Europe tomorrow and he wished me to personally convey his remarks to you. If he finds that, in spite of his urgency to leave (because of serious business complications in Austria), he is not able to settle certain business matters pending in New York, he will at once advise us and accept with great pleasure an invitation to any function you might care to extend.

He stated that on one of his first visits to the States, I believe in 1925, he endeavored to interest Mr. Joseph P. Grace in the Scadta Line but that there was some hitch and that Pan American jumped right into the picture. He wished me to convey to you that he still remembers with a great deal of pleasure the kind and courteous way he was received by Mr. Grace at the time he visited him in Hanover Square.

Apart from the above, Mr. Von Bauer said that he thought some study should be given by Pan American Grace to the portion of the route lying between Turbo and Antioquia. He said that, as I was aware, Buenaventura was the wettest place in Colombia and that the weather extended

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[fol. 311] inland very often as far as Antioquia. The Doctor thinks that we should arrange for meteorological information from that section by the establishment of proper facilities. He also said that, while he could give radio service from Turbo and from Medellin, neither of these stations could give meteorological information from a part of the sector we would fly, and which he considers the most difficult part of the new route. I shall discuss this further with Pan American Airways on account of their flying experience on the FMCA route.

J. D. MacGregor

c.c. HJ Roig
JDM:MD
GR-2012

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[fol. 312]

GOVERNMENT'S EXHIBIT 136

not Pan-Air

NEW YORK, September 7, 1938.

MEMORANDUM:

Bolivian Extension: When we first sensed the advisability of giving La Paz an air connection, Panair objected to our going into Bolivia and after numerous efforts to get them to see the advisability of this step failed, we decided to ask for operating rights in our own name.

These were granted to W. R. Grace & Co. for a service connecting the international service at Tacna, thus laying the foundation to give the capital of Bolivia airmail service to and from the United States. After this was accomplished Panair changed their mind and W. R. Grace & Co. turned over the corresponding concession to Panagra at no cost to the latter.

Diagonal Extension: When it further became apparent that this first step was insufficient to meet threatened European invasion we pointed out the advisability of extending the above service right through to Buenos Aires. At that particular time we did not receive much support nor enthusiastic response from Panair, and I recall that the situation appeared so urgent that we opened pourparlers with the Post Office Department and I personally proceeded to Panama to discuss this new development with the Second Assistant Postmaster General.

Our direct and more or less unsupported efforts resulted
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RLA.

[fol. 313] in United States aid to establish what is now called the Diagonal Service. About the time this was accomplished Panair was negotiating with the Asunción cut-off and at that time they wanted us to form some joint local company for the purpose of handling questions such as the

securing of Argentine operating rights over this new route into that country. We considered it unnecessary to take this step and likewise did not approve of handling the East and West Coast problem through one Argentine company, and sent Vidal to Buenos Aires to handle this matter independently, with the result that our Diagonal Service between Bolivia and Buenos Aires was operated many months before Panair's Asunción cut-off began to function.

I merely cite these instances to point out the difficulties we were up against at a time when it was advisable to act very quickly and with united support, which latter was not forthcoming.

Caribbean: The question of getting more adequate service between Miami and Panama was discussed during many months and on two or three occasions when it was apparent that no headway could be made, I indicated that Panair's refusal might force us to ask for an extension of Panagra's line to a United States terminal.

Speaking from recollection, these indications were made as far back as three years ago. Some time later, say early 1937, when the question of Colombia was under active dis-

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[fol. 314] cussion, Panair, as a quid pro quo to agree to let us go into Colombia, amongst other conditions wanted us to sign an agreement not to attempt to operate in the Caribbean. We took exception to this at the time, stating that there never has been any such understanding and we felt that the discussion about our not entering the Caribbean was entirely irrelevant.

I believe that one of the reasons why no particular agreement was drawn up at the time covering our operations through Colombia, was the unusual condition which Panair put forward with reference to our signing off whatever rights we had, to extend Panagra's operations through the Caribbean to a United States terminal.

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GOVERNMENT'S EXHIBIT 137

Minutes of Adjourned Special Meeting of Board of Directors of Pan American-Grace Airways, Inc held at the office of Pan American Airways, Inc, 135 East 42nd Street, New York, N Y on the 18th day of October, 1938 at 4 o'clock in the afternoon, pursuant to call of the Chairman of the Special Meeting of the Board held October 14, 1938.

PRESENT:

Messrs W F Cogswell
H Preston Morris
R H Patchin
G L Rihl
E E Young

being a quorum of the Board.

Mr. J D MacGregor, Vice President and General Manager of the corporation, was also present.

Mr. G L Rihl called the meeting to order and on motion duly adopted acted as Chairman of the meeting. Mr. W F Cogswell, Secretary of the corporation, recorded the minutes.

On motion duly made and adopted, it was unanimously

RESOLVED, that J. D. MacGregor, Vice President and General Manager, H. R. Harris, Vice President and Operations Manager, and J. S. Woodbridge, Treasurer, of this Corporation, be, and they hereby are, jointly authorized, in the name and on behalf of this Corporation, to execute and file with the Civil Aeronautics Authority an application, in the form submitted to this meeting, for a permanent certificate to be issued under Section 401 (e) (1) of the Civil Aeronautics Act of 1938 to engage in scheduled air transportation in the carriage of passengers, property and

mail on the general route between Cristobal (Canal [fol. 316] Zone) and Buenos Aires (Argentine), with intermediate stops in Colombia, Ecuador and Peru, and thence (a) with intermediate stops in Chile and Argentina with connecting service between Chile and Bolivia; and (b) with intermediate stops in Bolivia (or in Chile and Bolivia) and Argentina.

It was expressly understood between the Directors present and the stockholders they represent, that approval of the execution of the foregoing application is without prejudice to past questions or pending or future questions which have arisen or which may arise with respect to changes in the Company's route or to any understandings there may be between the stockholders of the Company with respect to its routes or changes therein.

There being no further business, the meeting adjourned.

G. L. Rihl
Chairman of the Meeting

W. F. Cogswell
Secretary

[fol. 317]

GOVERNMENT'S EXHIBIT 138

Mr. Roig.

November 15, 1938

G013152

C. V. Whitney, Esq.,
230 Park Avenue,
New York City.

Dear Mr. Whitney:

Since meeting with your Executive Committee we have continued to seek a solution of our common problem.

We have considered various alternatives to the route previously discussed with you in an effort to work out a plan in harmony with your ideas. Mr. Roig and Mr. Douglas Campbell have made a trip to Mexico and Central America in connection with the suggestion of your Committee that a

solution of the matter might lie in our purchasing your properties there as well as your half of Panagra.

Regarding the right of Panagra to come through to an American terminal, I have given a great deal of thought to your indication that ethically we were not entitled to do so. I have weighed this question from every standpoint and have taken independent advice and counsel to be sure that we were taking no action which could give any just cause for criticism on this score. I have reached the conclusion, and those whom I have consulted are without exception of the same view, that Panagra is not only ethically entitled to come to an American terminal but that its duty in the public interest is to do so.

I am particularly anxious to guide our action in the friendliest possible course and in that spirit we have worked

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[fol. 318] out a new plan for bringing Panagra to a United States terminal and greatly improving the present schedule. We are prepared, if need be, to protect Panagra's position by going ahead with this in our own name. Before doing so, however, I would like to have an opportunity of discussing the plan with you as I believe you will see the wisdom of Panagra's undertaking it.

If you do not object, I would like to treat this whole matter with you personally. If you will obtain authority from your Board, I will do so also, so that we may then act to end this endless discussion which has doubtless been quite as unattractive to you as it has been to me.

Yours sincerely,

(Sgd) D. S. IGLEHART

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[fol. 319]

GOVERNMENT'S EXHIBIT 139

COPY

Rec'd 11/23/38

PAN AMERICAN AIRWAYS, INC
General Offices—Chrysler Building—New York City

November 19, 1938

Mr. D. S. Iglehart
President
W. R. Grace & Company
7 Hanover Square
New York, N. Y.

Dear Mr. Iglehart:

I wish to acknowledge your letter of November 15, 1938, which I have referred to our President, Mr. Trippe, and which we have discussed with our Executive Committee.

We are all appreciative of your earnest efforts to work out a solution of our common problem that would be satisfactory to all concerned, and we are ready, as in the past, to meet with you and to discuss any proposal to that end. With the approval of all concerned, however, the discussions to date have been with our Executive Committee and a committee of your Directors, and it would appear to me that the meeting which you suggest should therefore include the same group.

You refer to our suggestion that a solution of the problem, arising through your request that our joint company be turned over to Grace management and that its operations be extended to New Orleans, might lie in your purchasing our half interest in Panagra and our properties in Mexico and Central America.

This proposal, as well as that of Pan American's purchasing your half interest in Panagra, were both advanced. However, the question of Pan American selling to Grace was abandoned before the trip of Mr. Roig and Mr. Campbell to Central America, when it developed, as stated in our

letter of September 24th, that Pan American valued their respective half interest in Panagra at a much higher figure than did Grace & Company.

In substantiation of our evaluation of Panagra, as you know, we were actually willing to pay you a sum considerably higher than your maximum offer to us for our half interest in the joint company.

As to the right of Panagra to operate north of Cristobal, I must repeat that we are entirely unable to see how you have either a moral or a legal right to insist that this should be done. Under our original agreement, it is clear that Panagra was organized to operate from Cristobal south —along the west coast of South America, and to bid on a Foreign Air Mail Contract on that route, if advertised, and you were given an option to participate up to 50% therein. It was certainly not your intention or ours that this new company was organized to compete with Pan

[fol. 320] American then or any other time; for local or through traffic, between the United States and Cristobal, —a territory which we have always served.

We are, of course, interested in doing everything possible to improve Panagra's service and schedules, not only in the public interest, but to build up our through traffic as an end-on connecting air carrier. In fact, you will recall, that Pan American's proposal of last June to maintain a second direct service from Miami to the Canal Zone via Jamaica at a low rate of compensation, although acceptable to the Post Office Department insofar as Pan American was concerned, was held in abeyance by the Department until Panagra could arrange to provide an improved schedule along the west coast.

I still hope that we may be able to persuade you that it is unfair to ask us to agree that Panagra should be permitted to apply for an extension to Miami or New Orleans in competition with ourselves, and that we can cooperate

in the friendliest way in approving at an early date a program that will improve and expedite Panagra's service along the west coast of South America to Buenos Aires.

Will you not be good enough to let us know at what time and place you desire to have the meeting which you mentioned? If more convenient to you, our directors would be glad to come down town.

Yours sincerely,

(sgd) C. V. WHITNEY

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GOVERNMENT'S EXHIBIT 140

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TELEGRAM TO MR. CAUBY, RIODEJANIERO
(PT TWS TO MIAMI-PAA RADIO
TO RIODEJANIERO)
(PARTIALLY IN CONFIDENTIAL CODE)

SENT: APRIL 24, 1941 626P

PAN AMERICAN AIRWAYS
COMMUNICATIONS DEPT
MIAMI FLORIDA

CAUBY PINE RIO 181 COPY SNYDER MIAMI REFERRING YOUR TWO SIXTEEN YOU MAY FURNISH PANGRACE WITH INFORMATION RESPECTING SHIPMENT IN THEIR BEHALF OF GASOLINE TO CORUMBA BUT NO OTHER ACTION SHOULD BE TAKEN PENDING FURTHER INSTRUCTIONS FROM HERE STOP THE INCLUSION OF RIODEJANEIRO IN THE PROJECTED SERVICE REFERRED TO BY SHANNON WAS ERRONEOUS AS OF COURSE ANY SERVICE OPERATED WITHIN BRASIL WOULD BE HANDLED EXCLUSIVELY BY OUR COMPANY AS

YOU WILL HAVE INFERRED FROM MY PREVIOUS RADIOGRAM NUMBER ONE SEVENTY EIGHT

YOUNG

CC: MESSRS: TRIPPE
RIHL
YOUNG
ROIG
HARRIS
RICE

545

PAA-1837
12-13-54 PJS

[fol. 324]

GOVERNMENT'S EXHIBIT 143

October 20, 1943

SUBJECT: PAN AMERICAN-GRACE AIRWAYS EXTENSION TO IQUITOS

J. T. T.:

Mr. Campbell came to my office last evening and urgently requested an answer to the question of the joint airline extending to Iquitos and Tabatinga on a permanent certificate, stating that they must clear with the Peruvian Government and file with Washington before November 1. I advised him that in my opinion the extension to Tabatinga was neither necessary nor proper, and suggested the possibility, subject to profit and loss figures and your final approval, of our not opposing their extension to Iquitos, and that they in turn aid Panair do Brasil with the Peruvian Government to get permission to extend from Tabatinga to Iquitos. (I stated that as a result of the survey flights made by both Mr. MacGregor and Jay Rice some years ago, we did not consider Iquitos as west coast territory. Mr. Campbell said that he was aware of the survey flights but he thought he had correspondence which would conclusively

prove that we had agreed that all of the country of Peru was Pan American-Grace territory.)

Mr. Campbell returned this morning and said that he thought the following could be worked out:

(1) Pan American-Grace would apply for a permanent certificate to Iquitos, which could at a later date be extended to a border point in Peru upon the completion of the land field.

(2) They would assist Panair do Brasil in obtaining a temporary certificate to fly to Iquitos until such time as this new land airport was available.

(3) The actual operating loss in the first year is estimated at just under $15,000 without any Peruvian subsidy at all, and there is a possibility of obtaining some subsidy on this route.

Without in any way threatening any such action, Mr. Campbell indicated that if we were unwilling to give them an immediate answer, it might be necessary for them to take action to protect this route for themselves against the applications of both Braniff and Eastern, and in doing so it might be necessary to cite this as an incident of non-cooperation by Pan American Airways.

I don't like the position in which we are placed, or the pressure which is being applied at this time, but from a long-range point of view and the uncertainty of the future due to the present hearing, I recommend that we supply a quorum to enable Pan-American Grace to accomplish this extension as outlined.

H. B. D.

bcc: Vice President Young

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12-13-54 PJS

[fol. 325]

GOVERNMENT'S EXHIBIT 144

Pan Grace
Operation Iquitos

October 20, 1943

H. J. F.:

Mr. Trippe has approved this memorandum subject to:

(1) Pan American Airways shall have the right to approve the location of any land airport which will be built to the east of Iquitos in Peru.

(2) The actual application before the CAB and all other papers, including the resolution to be adopted by the Pan American-Grace Airways Board, will be subject to the approval of our counsel, which means you.

Due to the November 1 deadline in Washington, it is necessary to proceed as rapidly as possible with the conclusion of this matter.

H. B. D.

ENC

bcc: Vice President Young

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PAA-1884
12-13-54 PJS

[fol. 326]

GOVERNMENT'S EXHIBIT 145

Minutes of Adjourned Regular Meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways Inc., 135 East 42nd Street, New York, N. Y. on the 8th day of November, 1943 at 4:00 o'clock in the afternoon.

PRESENT:

Messrs W F Cogswell
Howard B Dean
A Garni
H P Morris
H J Roig

being a quorum of the Board.

Mr H J Roig, President of the corporation, called the meeting to order and presided. Mr W F Cogswell, Secretary, acted as Secretary of the meeting.

Minutes of Adjourned Regular Meeting of August 12th were read and approved.

The President reported that Mr Vidal, who is leaving on a trip to South America would proceed directly to the Argentine to go into the situation in respect to the Cordoba airport and arrange for a license for night lighting.

The President stated that in connection with the CAB general South American route case, prehearing conferences in which were beginning on November 16th, he had engaged the services of Mr. Gerhard A. Gesell, of the firm of Covington, Burling, Rublee, Acheson & Shorb, to represent the Company's interests. On motion duly adopted, this action was approved.

The President then submitted to the meeting a form of application drafted by counsel applying for the certain routes therein described. The President stated that the [fol. 327] routes numbered 4(b) and 4(c) would probably

be suggested as alternate routes and that it might also be suggested that their operation was rather a matter for future development than for the immediate present. He also stated that the local Buenos Aires/Montevideo service proposed was a matter which would require considerable further study and would probably best be worked out through a local company in conjunction with local interests. It seemed desirable, however, to include this route in the present application in order to have the matter before the Board in connection with the general South American discussion.

Mr. Dean then made the following statement on behalf of himself and his associates representing Pan American Airways Corporation and on behalf of that Corporation with respect to the proposed application to the Civil Aeronautics Board for amendments of the certificate of convenience and necessity of Pan American-Grace Airways, Inc.:

1. The Pan American Directors, apart from the question of surface carrier control or affiliation referred to in paragraph 2 below, consider the routes applied for to be in the public interest and approve the form of the application as drafted by counsel for Pan American-Grace Airways, Inc. and attached to these minutes.

2. Pan American considers it to be established that the public interest, as defined in the Civil Aeronautics Act, does not permit an air carrier which is controlled by a surface carrier, or a company affiliated therewith, to be awarded any new route or any major extension of an existing route. Whether this principle applies likewise to minor extensions [fol. 328] or route modifications by such an air carrier within the same general territory which the carrier already serves, such as are involved in the proposed application, has not yet been determined, and Pan American has instructed its Directors on the Pan American-Grace board to take such action as will permit Pan American-Grace Airways to present this latter question to the Civil Aeronautics Board for determination. For the reasons stated in this paragraph, the Pan American Directors are not willing to vote in favor of the proposed application but they are will-

ing to furnish a quorum that will permit the Grace Directors to vote through a resolution to that effect so that the application may be filed with the Civil Aeronautics Board.

3. Pan American considers that the various points on the proposed route covered by the application are within the territory in which Pan American-Grace Airways was formed to operate under the original agreement of August 31, 1928, as later modified by consent of the two owners.

4. Pan American wishes to indicate that it considers Buenos Aires rather than Montevideo as the logical terminal for Pan American-Grace Airways, Inc. international service and questions whether, from a long-range point of view, it is desirable for the Company to engage in a local shuttle service between Buenos Aires and Montevideo.

5. With respect to the proposed Pan American-Grace Airways route between Chiclayo and Ramon Castilla, Peru, via Iquitos and other intermediate points, Pan American understands and its representatives are taking the action [fol. 329] above set forth upon the understanding,

(a) that Pan American-Grace Airways and W. R. Grace & Co. will consent to Panair do Brasil rendering connecting service from the east to Ramon Castilla or some other point in Peru in the vicinity of Ramon Castilla close to the Peruvian-Brazilian border and rendering temporary connecting service between Tabatinga and/or Ramon Castilla and Iquitos until such time as Pan American-Grace Airways, Inc. is able to operate between Iquitos and Ramon Castilla; and

(b) that Pan American Grace Airways will assist Panair do Brasil in obtaining the necessary permits for such service from the government of Peru, in the same way that Panair do Brasil assisted Pan American-Grace Airways in obtaining permission to land at Corumba, Brazil, in the establishment of the joint Pan American-Grace-Panair do Brasil transcontinental route through that part of South America.

6. With respect to the proposed Pan American-Grace Airways route between Cali, Colombia, and Buenos Aires,

Argentina, via Iquitos, Peru, and a point in Bolivia, Pan American is advised that operation of this route will require flight over a portion of Brazil. Pan American understands and its representatives are taking the action above set forth upon the understanding (a) that such action does not constitute a precedent with respect to operation by Pan American-Grace in Brazil, Pan American taking the position that Brazil is not within the agreed scope of the operations of Pan American-Grace and its consent to the flight over Brazil involved in the operation of the proposed route [fol. 330] being given only to permit a cut-off route between points within the territory served by Pan American-Grace; and (b) that in the event that Pan American should at some future time desire to apply for a route between Bogota and Buenos Aires via points in Brazil and/or Paraguay which would involve flight over a portion of Bolivia neither Pan American-Grace nor Grace will raise objection thereto.

Referring to the statement made by Mr. Dean, Mr. Garni made the following statement on behalf of himself and his associates representing W. R. Grace & Co.:

1. We do not agree in principle or detail with the interpretation of the Civil Aeronautics Act suggested by the Pan American directors as related to new routes, route modifications or extension of Pan American-Grace Airways, Inc., nor do we recognize that Pan American-Grace Airways, Inc. is in fact or ever has been controlled by a surface carrier.

2. In one form or another Mr. Dean's statement makes several references to an agreement between Pan American and Grace, or statements from which the existence of such an agreement might be inferred, relating to the scope of the operations of Pan American-Grace Airways, Inc. We do not concur that there is or ever was any agreement between Pan American and Grace limiting the scope of the operations of Pan American-Grace Airways, Inc., and no statement made by Mr. Dean or by us and no action taken by us at this meeting is to be construed as indicating the contrary or as involving the making of such an agreement at this time.

[fol. 331] 3. We are willing to commit Pan American Grace Airways to the proposition that the operation of a service between Cali and Buenos Aires via Iquitos and a point in Bolivia, which would involve flight over a portion of Brazil, shall not constitute a precedent with respect to operation by Pan American-Grace Airways in Brazil; and that Pan American-Grace Airways will not object in the event Pan American should at some future time desire to apply for a route between Bogota and Buenos Aires via points in Brazil and/or Paraguay on the ground such a service would involve flight over a portion of Bolivia, upon the understanding that this shall not constitute a precedent with respect to operations by Pan American in Bolivia.

As far as W. R. Grace & Co. is concerned, we are authorized by that company to state that it will not at any time object to Panair do Brasil rendering connecting service at Ramon Castilla or some other point in that vicinity close to the Peruvian-Brazilian border, or operating temporary connecting service between Ramon Castilla or some other point in that vicinity close to the Peruvian-Brazilian border as far as Iquitos until connection at such point becomes possible; and, further, that Grace will not object in the event that Pan American should at some future time desire to apply for a route between Bogota and Buenos Aires via points in Brazil and/or Paraguay on the ground such a service would involve flight over a portion of Bolivia. In making this statement, we wish it to be clearly understood, however, that W. R. Grace & Co. is not acknowledging that there is now or ever has been any agreement be- [fol. 332] tween it and Pan American involving the scope of the operations of Pan American-Grace Airways.

* * * * *

(signed) H J Roig
Chairman

(signed) W F Cogswell
Secretary

[fol. 333]

GOVERNMENT'S EXHIBIT 146

Minutes of Adjourned Regular Meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at 135 East 42nd Street, New York, N. Y. on the 11th day of April, 1944 at 2:15 o'clock in the afternoon.

PRESENT:

Messrs W F COGSWELL
HOWARD B DEAN
A GARNI
H P MORRIS
R H PATCHIN
H J ROIG

being a quorum of the Board.

Mr. H J Roig, President of the corporation, called the meeting to order and presided. Mr W F Cogswell, Secretary, acted as Secretary of the meeting.

The President reported that pursuant to the authorization of the Board the firm of Milbank, Tweed & Hope had been retained as counsel in Docket No. 525.

This action was approved.

The President proposed that the Company file with the CAB an application for amendment to its certificate of public convenience and necessity so as to authorize temporary air transportation between Chiclayo, Peru and Iquitos, Peru until final decision and order of the CAB in respect to its application for a permanent amendment to its certificate authorizing operation between Chiclayo and Ramon Castillo. The Pan American directors stated that their position on such an application was the same as that stated at the meeting of November 8, 1943 with respect to the application for a permanent amendment of the Company's certificate, and that for that reason they were not vote against it, on the understanding that any applica- not willing to vote in favor of the proposal but would

[fol. 334] tion filed with the CAB would contain an appropriate reference to Pan American's position along the same lines as in the application filed pursuant to the action taken at the meeting of November 8, 1943. Messrs. Roig, Garni, Patchin and Cogswell stated that their position was the same as that stated by Mr. Garni at such meeting of November 8, 1943. Authorization to the President to file the application was given on this basis.

The President reported that no action is being taken towards filing application with the CAB for a new rate at least until the return of Mr Vidal.

The President submitted and commented on:

(1) A comparison of earnings for the years 1942 and 1943.

(2) A comparison of traffic figures between the year 1932 and 1942.

(3) Certain points raised by the CAA inspectors, whose report is expected to be received in the near future.

There being no further business, the meeting adjourned.

(signed) H J Roig
Chairman

(signed) W F Cogswell
Secretary

[fol. 335]

GOVERNMENT'S EXHIBIT 147

JANUARY 11, 1945

Vice President Dean	The Executive Assistant
Executive	Executive
Miami and Rio	New York

PANAIR DO BRASIL—SERVICE TO IQUITOS

Dr. Sampaio's memorandum January 2 to me

While you are in Rio I would very much appreciate your discussing with Mr. Rihl my memorandum to him of December 5, 1944 and Dr. Sampaio's memorandum to me of January 2. You will of course understand that in my memo of December 5 I was simply transmitting information given me by Panagra and, while I am very happy indeed to have the very complete information from Dr. Sampaio regarding Panair's side of the story covering the application for a permit from the Peruvian Government to operate to Iquitos, it is evident that he does not have the whole story regarding the Peruvian end of this deal. Certainly Mr. Vidal did not invent anything when he reported the reaction of the Peruvian authorities as conveyed to Panagra at that end.

Irrespective of what may have actually occured in the past, we are now most interested in a smooth operation for Panair do Brasil to Iquitos. Panagra is naturally much interested in assisting Panair in this matter because they themselves are anxious to connect with Panair at Iquitos.

In his memorandum to me Dr. Sampaio does not mention whether he desires to take advantage of the offer of Panagra to act as Panair do Brasil's agent in Peru for the purpose of maintaining the necessary contacts with the Peruvian authorities.

You of course understand the difference in the positions of the two companies. Panair do Brasil was interested in a service to Iquitos on the basis of its Brazilian contracts.

Panagra was vitally interested in the establishment of a transcontinental line in combination with Panair do Brasil, with a territorial division of activities at the Brazilian-Peruvian border. The international character of the joint operation was essential for the continuance of Panagra's cabotage privileges in Peru. The territorial division was in accordance with the long-established policy between PAA and Panagra. Perhaps an explanation of Panagra's motives might help to satisfy Dr. Sampaio that there never was any intention of complicating matters for Panair but, on the contrary, that we have only been motivated by the desire to assist in establishing the functioning of a transcontinental line through cooperation between Panagra and Panair do Brasil.

(signed) E. Ballijder

PAA-1920
542 12-13-54 PJS

[fol. 336]

GOVERNMENT'S EXHIBIT 148

2/14.41

January 22, 1946.

H.J.F.:

Jan. 18

Attached hereto is a *Pan American-Grace* cable. As you know, all copies of their cables are sent to me. I have advised Vidal that Pan American Airways has no intention of permitting Pan American-Grace to extend to Bogota and that we consider Bogota in the Pan American sphere.

I did agree some months ago that there would be no objection in having Avianca extend from Cali to Quito via Ipiales and to have Pan American-Grace extend from Quito to Cali also via Ipiales. This extension was in line with a request made by Dr. del Corral when he was last in New York, and since Pan American-Grace also operated between Quito and Ipiales and between Guayaqnil and Cali, I saw no objection to permitting direct flights by both Avianca and Pan American-Grace between Cali and Quito. Avianca was most anxious to serve the capitol of Ecuador

because TACA de Colombia has announced that they propose to fly there.

This is another indication of inching by Pan American-Grace without any consultation by Pan American-Grace with us about their plans. I have quite clearly expressed myself to Vidal both as to how I feel about the extension and the method with which it was being approached.

HBD
(signed) H.B.D.

Attachment

3558

PAA-6221
5/18/55
JPL.

[fol. 338]

GOVERNMENT'S EXHIBIT 150

DC TJK#-272 MQ/TJ

COLOMBIA ECUADOR TRAFFIC

NEW YORK
February 1, 1946

Mr. Douglas Campbell
Pan American-Grace Airways, Inc.
Lima, Peru

Dear Doug:

With reference to our private cable No. 53 of January eighteenth and Quito's private letter to you #9347 of January twenty-second, I haven't had a chance to let you know that when Howard Dean saw the first of the above messages, he telephoned me to say that it would be useless for us to suggest to them or to Avianca that Panagra fly between Cali and Bogota in exchange for Avianca flying between Bogota and Quito. You will recall that Panair takes the position that our operations in Colombia are restricted to the area west of the Andes.

Even if we could go to Bogota, it may not suit to have Avianca fly between Colombia and Ecuador. It would,

therefore, be my suggestion that we simply make plans to operate Panagra services between Quito and Cali non-stop, in addition to the services now operated between Quito and Ipiales in conjunction with the Avianca service between Ipiales and Cali. The non-stop operation by Panagra between Quito and Cali does not seem to require any special permission from either Ecuador or Colombia, or if it does it should be relatively easy to obtain, and inasmuch as we did operate that route up to a few years ago, we are assuming that neither the CAA nor the CAB would object.

Sincerely yours,

(Sgd.) G VIDAL

(signed) G VIDAL

GV:JK
cc: HJRoig
TJKirkland

PAG-C 265
10-7-54
PJL

[fol. 339]

GOVERNMENT'S EXHIBIT 151

GARNI
GRACE
march 8th
FILED 210AM from ROIG(santiago) march 8th 1946.

1 see our cable
2 83
3 palmetto
4 if
5 avianca
6 in which
7 pan american
8 own 40
9 ODD PC
10 can
11 invade
12 west coast
13 we consider

14 we are
15 entitled
16 serve !!
17 all
18 colombian
19 points
20 sentence if
21 pan american
22 cannot control
23 situation
24 they
25 certainly
26 cannot prevent
27 us
28 taking
29 necessary
30 action
31 self
32 defence
33 sentence while
34 have
35 no
36 reason
37 believe
38 pan american
39 backing
40 aviancas
41 BVT/ !! (course !!)
42 or any
43 way of
44 knowing
45 if they
46 received
47 any
48 specific
49 benefit
50 in
51 transatlantic service
52 SVC OR

continued:

[fol. 340]

53 agreement
54 stay
55 out of
56 east coast
57 in exchange (for)
58 british
59 NY/WC
60 line
61 strangling
62 effect
63 these
64 two
65 development-s
66 on
67 panagra
68 obvious-ly
69 your 10
70 under present conditions
71 do not see how
72 grace
73 ecuador
74 can
75 represent
76 both
77 panagra
78 avianca

for your information panagra lima will be communicating with you concerning reported intention avianca open own office etc

ROIG

MR GARNI
G019161

[fol. 341]

GOVERNMENT'S EXHIBIT 152

J.P.G., JR. TRIP SERIES-LETTER NO. 1

AG
WGH

November 1, 1948
Recd. 11/5/48

Mr. H. J. Roig
7 Hanover Square
New York 5, New York

Dear Mr. Roig,

COLOMBIA

We were rather surprised when we read on Page 283 of the Aviation Daily of October 25th of Schneider's argument before the C.A.B. against Pan American's application to be authorized to operate a Bogota/Miami direct service.

It had been our understanding that it had been agreed at the time that the Panagra Through-Flight Agreement was signed that Western Colombia was Panagra's territory and furthermore that a Gentlemen's Agreement was made that Panagra could at any time petition the C.A.B. for inclusion of Bogota and Medellin on its route between Balboa and Lima and also that if it would facilitate this in any way, Panair would sell Panagra U.M.C.A.

We heartily agree with Schneider's argument that any Bogota/Miami direct service would prejudice the possibility of the Colombian Government's approving of any other U.S. flag service into that city, not only Braniff's, but also Panagra's if we were to decide to take up what might be considered to be an option on Bogota and Medellin. We did not have the opportunity of discussing this

GR-3739
10-19-54 PJS

G 251

[fol. 342] whole matter with you in New York and we were wondering just what your ideas are and whether or not you agree with us that this so-called route consolidation application of Panair prejudices our rights in Colombia.

It would also appear that this is an opportune time to take up actively again the extension of Panagra's route to include Bogota and Medellin since with the new mail pay, the P/L might look attractive.

We plan to discuss the whole matter of the Colombian Government's attitude on permitting U. S. flag carriers into Bogota with Latorre while we are there as well as the possibility of their allowing Panagra to go into Bogota and Medellin and we would like very much to hear from you on this subject before we get to Bogota.

With the DC 6 service coming through Balboa both northbound and southbound at around midnight, Panagra's service to and from Bogota and Medellin would be pretty good especially the northbound trip and particularly when we get through to New York. With night flying into Balboa it wouldn't be too inconvenient for passengers on the northbound DC 3 to deviate to Bogota and Medellin as they would have to wait in Balboa until around midnight anyway to pick up the northbound DC 6 or to pick up Panair's Central American Flight which leaves at around midnight and which will offer a direct connection with our northbound DC 6 when the Consolidated Vultee 240's start in the Central American service.

Very truly yours,

(signed) J P G, Jr.

GR-3740 G 252

[fol. 349]

GOVERNMENT'S EXHIBIT 155

May 19, 1950

Memorandum to Mr. J. P. Grace, Jr.

I called Henry Friendly today to ask him about Rio. He said he had spoken to Trippe with absolutely no success. He said he frankly does not know whether Trippe considers it a matter of principle or what but said he can do nothing further. I asked him what he would think of our approaching Juan and he said he thought that that was the only thing left to do.

We had also asked Balluder to talk with Trippe re the opening of a Panagra Sales Office in Buenos Aires and word came back from Mr. Balluder that Trippe would not hear of such a thing, that he thought that now is the time with Braniff coming into Buenos Aires for Panagra and Pan American to present a united front to the competition. When I was talking to Henry about the other matter I also mentioned this and told him I thought it was very short-sighted. We discussed the matter at some length and he said he was inclined to agree with Juan but I asked him to think it over and we decided to talk it over again in a few days.

It looks to me as though we are heading for another showdown and I think that when you get back we had better sit down with him (J. T.) and thrash a few of these things out. Henry thought this would be advisable.

GR-13397
7/6/55
JPC

G075160

[fol. 350] This has not been one of our better Panagra days.

A. B. S.

P.S. As far as we know Diaz is still due to arrive in New York Monday.

A. B. S.

GR-13398

G075161

[fol. 353]

GOVERNMENT'S EXHIBIT 157

November 6, 1950

MEMORANDUM TO MR. J. P. GRACE, JR.

You asked for a memorandum on the status of the Manaos/Goiania cut-off route through Brazil; what applications are pending, when we should apply, etc.

(1) As described in the U.S./Brazilian Bilateral, the route is as follows:

"*Description of Route*

From the United States of America via intermediate points in the Caribbean, South America, to Manaos, Goiania and Rio de Janeiro or Sao Paulo."

(2) *Pending Applications*

Based on a check and re-check with the dockets section of the CAB, Ed Howard confirms that the following applications are pending:

(A) Braniff has an application pending for a route from Bogota to Rio via Manaos and Goiania. This application was filed November 6, 1946 under Docket 2622. The Latin American decision was dated May 17, 1946, prior to this application. I understand a pre-hearing conference was held on this application but in May 1947, over the protests of Panagra, they obtained permission to postpone further proceedings on this application.

(B) Pan American has applications pending for:

(i) Caracas to co-terminal Rio and Sao Paulo via Manaos and Goiania.

(ii) Caracas to Asuncion via Manaos, Goiania and Guaira.

GR-12491
2/10/55
JPC

G0653965

[fol. 354] These applications were filed December 17, 1946 under Docket 2720.

(C) Chicago & Southern has an application pending for a route, U.S. to Buenos Aires via Kingston, Manaos, Goiania, Sao Paulo, Rio de Janeiro, Asuncion and Montevideo. This was filed August 29, 1949 under Docket 3724. C & S's application to serve Maracaibo has been severed from this application.

(3) *Time Action Likely on Above Applications.*

With respect to the various Manaos routes discussed in the Latin American decision, the Board stated:

> "In view of the substantial improvements made available by the routes established herein (that is, the Latin American decision), the limited volume of traffic to be expected from the proposed cutoff routes, and the substantial capital costs to establish airway aids and airport facilities, we conclude that these routes are not required by the public convenience and necessity."

Douglas Campbell investigated the status of development of the Manaos route while he was in Rio this June and Robert Harmon also discussed development of this route during his recent stay in Rio. Both of them were told by members of the Brazilian Ministry of Aviation that it would probably be a minimun of two years before the route was developed to the extent necessary to permit regular international air service. Based on this information, and the statement in the Latin American decision, it would appear that no action by either the carriers or the CAB would be taken on this route in less than 18 months to 2 years.

There is however one current matter which might bring this subject to a head sooner. The attached letter was re-
GR-12492

G065966

[fol. 355] ceived today by Panagra stating Braniff's objections to Pan American's proposed cutoff route, Caracas/Asuncion to Buenos Aires. You will notice that Braniff protests on the ground that Pan American's cutoff route may lead the Brazilians to claim that the Manaos route is operable and that, therefore, Braniff's temporary East/West

Coast route should be eliminated (as per the terms of the Bilateral Agreement) and, secondly, that the Manaos route has been earmarked for Braniff. By this last assertion, Braniff apparently assumes for itself the functions of the CAB to determine and grant routes in accordance with public convenience and necessity and we contemplate that we will be able to use this statement to the discomfort of Braniff. It is conceivable, and this is confirmed by Ed Howard, that this letter could lead to an early discussion of the Manaos route and it is conceivable that awarding of the route might be speeded up.

(4) *When Should Panagra Apply for the Route*

Panagra could not be excluded from applying for the Manaos route until a pre-hearing conference is held on the other applications; obviously all applications will be joined into one docket. I discussed with Gesell how long it would take us to go through the necessary routine resulting in a Panagra or Grace application, and he felt that it would only take about a week or two. Because of Docket 3500 we do not wish to make any application at this moment but will have to watch developments closely both in Docket 3500 and the Manaos dockets, so as to be prepared to jump in at the appropriate moment.

(5) *Routes for which Panagra Should Apply*

If Panagra gets through to New York under the National Interchange Agreement or under an extension of the Through Flight Agreement, it seems to me that Panagra should apply for both:

GR-12493

G065967

[fol. 356] (a) A route, New York/Caracas Manaos Rio and probably beyond to Montevideo and Buenos Aires, and

(b) A route, Balboa/Bogota Manaos Rio and probably beyond to Montevideo and Buenos Aires.

Inasmuch as this application would probably be the cause of a fight with Pan American, it would seem under present circumstances that we might as well apply for both (a) and (b) in the hope of obtaining what we really want. Obviously the (a) route above would be preferable to (b) and so long as we were already flying to New York, there would be no problem about getting our planes to Miami for maintenance even if we were not awarded an East Coast route between Rio and B. A.

H.L.C.
Clark

cc: ABShea

P.S.—As a footnote to the foregoing, we have just learned that Pan American may have lost its operating rights to Paraguay. This information was just received from Lima based on a decree issued by Paraguay. Doug Campbell does not feel that PAA will have a difficult time re-establishing its right to serve Asuncion but this development should at least slow down inauguration of their new proposed service. We will watch developments.

P.P.S. Since the Bilateral description says: "From the United States of America", we may have some trouble in establishing a route starting from Balboa under the Brazilian interpretation of the Bilateral.

GR-12494

G065968

[fol. 357]

GOVERNMENT'S EXHIBIT 158

NOTES ON TELEPHONE CONVERSATION WITH MR. ANDREW SHEA AND MR. BALLUDER ON 12/19/50

Mr. Shea called Mr. Balluder to discuss two topics: First, the Panair do Brasil intentions to serve Santiago and Lima from Rio, and second, the bonus situation in Panagra.

The bonus question was cleared affirmatively by Mr. Balluder after consultation with Mr. Friendly and a separate memorandum on this subject was prepared on the 20th.

With regard to the Panair do Brasil developments, Mr. Shea expressed great unhappiness over the plans of Panair do Brasil to establish routes from Rio to Santiago and Lima respectively. He felt that this would only be the beginning of further developments. He saw the possibility of ambitious plans developing under which Panair do Brasil would eventually want to operate along the west coast of South America to the west coast of the United States. He expressed considerable concern over the effects of such moves on the business of Panagra. He seemed to feel especially bitter because Panagra could not serve the Lima Rio route in competition with Braniff and was disappointed because Panair do Brasil, in which Pan American Airways held a substantial interest, was entering Panagra field on the west coast of South America.

Balluder tried to explain to Mr. Shea that the most recent developments in Brazil which led to Panair do Brasil's undertaking the operation of the Rio-Santiago route via Asuncion and the Rio-Lima direct route had no connection whatever with the Brazilian government's demand for a route to the west coast of the United States. Balluder told Shea that several years ago, Panair do Brasil had thought that it would be a good idea for them to ask for a route from Brazil via the east coast to Havana and then on to Los Angeles and or San Francisco but at that time, Balluder very strongly tried to discourage Panair do Brasil because he felt that this would not be a commercially productive operation unless very heavily subsidized by the Brazilian

733

PAA-427
11:30:54
RLA

[fol. 358] Government. At the time of the Brazilian bilateral discussions and consultations on capacity and routes which were held during 1949/1950 in Rio. At that time, Sampaio had definitely stated that Panair do Brasil was not interested in any route via the west coast of South America to points on the west coast of the United States. Without going into the details just given, Balluder explained to Shea that Panair do Brasil had completely shelved the idea of operating to the west coast of the United States.

Aerovias do Brasil, formerly TACA, is certificated to serve Miami and Chicago and more recently, under the presidency of Canby Araujo, they have activated this matter in Rio in an endeavor to get the government to obtain an extension of the route to Los Angeles and or San Francisco. The Brazilian Government became very insistent with the U. S. Government on this point during their recent discussions and have shown considerable resentment because the U. S. Government would not readily accede to their demands for an extension of the route to Los Angeles and or San Francisco. I repeated on various occasions to Mr. Shea that Panair do Brasil had not activated the matter and was not now interested in the route to the west coast of the U. S., but quite apparently, he did not believe me. I went further to say that I expected sooner or later to see Panair do Brasil under pressure from the Brazilian Government again consider the possibility of operating from Rio to Bogota. The Rio-Bogota route was under consideration especially at the time of the tragic Bogota meeting. Balluder mentioned that if Panagra were to apply to the U. S. Government for the right to fly from Lima to Rio, this could not be obtained in less than a year or 18 months and even then, the matter was very doubtful in view of the Brazilian position on that particular route but that the Panair do Brasil competition move against Braniff was immediate. Balluder reminded Shea of the fact that during the summer of this year, Mr. Campbell had spent three months in Rio in an effort to retain Panagra's rights to serve the Lima Campo Grande connection with Panair do Brasil. During the consultation between the United States and Brasil on the subject of capacities and routes, it was very evident that

733 PAA-428

[fol. 359] Brazil strenuously objected to the continuance of the Panagra services to Campo Grande and in effect, completely rejected any talks on this subject. Balluder reminded Shea that the Lima-Rio route of Braniff was a temporary route under the bilateral and that sooner or later Braniff would be forced from that route in order to operate the Bogota-Manaos-Rio report in accordance with the bilateral route descriptions. Balluder expressed the belief

that if Panagra were successful in obtaining from our Government an extension of their routes through Lima to Rio, it would mean that our government would be committed to maintain Braniff's rights on that routing. The result of this would be that three operators would serve that route. Balluder considered it entirely impossible to dissuade Panair do Brasil or for that matter, the Brazilian Governments from their idea of serving directly from Rio the other capitals of South America. Balluder reminded Mr. Shea that Panair do Brasil's operations from Rio to Buenos Aires certainly were not very agreeable to Pan American Airways because it meant that a large portion of our Buenos Aires-Rio business had been taken away from us by Panair do Brasil. But we considered it inevitable and knowing the pressure which had been exerted during the past few years on Panair do Brasil, we also felt the Rio Santiago, Rio Lima and eventually the Rio-Bogota routes would be performed by Brazilian carriers. If we accepted these developments as inevitable then, of course, it was natural for us to hope that Panair do Brasil would be given those routes with the corresponding subsidy. Balluder felt that Panair do Brasil could develop a very valuable volume of business between points like Santiago and Lima via Rio to Points in Europe, and vice-versa. Such business would undoubtedly result in Panair do Brasil's feeding passengers into Panagra at Lima. Mr. Shea, while admitting that this might be true, felt very strongly that Panair do Brasil's entry into Santiago meant very strong competition for Panagra because heretofore Panagra had carried passengers from Santiago via Buenos Aires or via the Canal Zone to connections for Europe.

PAA 423
733

[fol. 360] Balluder answered that it was not logical to think that we could stem the natural development of routes representing the shortest possible connection between two points. Balluder went on to say he felt that in effect, the Rio-Lima Panair do Brasil route would mean very effective competition for Braniff. Balluder explained to Shea that after discussion with Mr. Campbell, Mr. Sampaio had agreed to establish his schedules in such a manner that they would afford advantageous connections with Panagra's Inter-Americano in both directions north of Lima. Balluder

thought that these connections would feed to Panagra a considerable amount of the business from Rio to points on the West Coast of South America and the West Coast of North America, and would offer effective competition with Braniff from Rio via Lima to the Canal Zone and USA terminals for points in the Middle West and East of the United States.

Mr. Shea did not seem convinced by Balluder's arguments that the Panair do Brasil-Rio-Lima connection would be advantageous to Panagra. Shea showed considerable scepticism of the intentions of Panair do Brasil and repeatedly mentioned the possibility of Panair do Brasil's expansion on the west coast of South America to connecting points like Santiago and Lima with points north with a terminal in California. On several occasions, Balluder asked Shea what he thought Balluder could do to dispel Shea's suspicions. Mr. Balluder repeatedly explained that Panair do Brasil was acting under pressure from the Brazilian Government. Over a period of the last few years, Balluder had exercised all possible persuasion on Paulo Sampaio in order to prevent him from undertaking operations of new routes unless he could be certain of some very substantial subsidies from the Brazilian Government. Now that the Brazilian Government was willing to pay Panair do Brasil such a subsidy for the operation of the Rio-Santiago and Rio-Lima routes, Balluder saw no way in which Panair do Brasil could be stopped and Campbell had seemed to think favorably of Panair's operations since he was willing to have Panagra act for them as sales and handling agent.

733 PAA-430

[Vol. 361] During the course of the conversations, Mr. Shea repeated several times that he thought Balluder could not blame him for feeling very much frustrated by these Panair do Brasil developments.

733 PAA-431

[fol. 367]

GOVERNMENT'S EXHIBIT 161

COPY

HLC

PAN AMERICAN WORLD AIRWAYS SYSTEM
Chrysler Building, 135 E. 42 St.
N.Y. 17, N.Y.

Office of The President

December 29, 1950

PERSONAL

Mr. J. Peter Grace, Jr., President
W. R. Grace & Co.
7 Hanover Square
New York 5, New York

Dear Peter,

When you called me at home from Washington one evening last week in connection with the proposed Rio-Lima service by Panair do Brasil, we arranged to meet, you will recall, early in the week of January 2 to discuss the matter.

Unfortunately, I was unable to get away this week due to my daughter's illness and *I have therefore been able to check the* question you raised with Henry and Erwin.

The background facts as I understand them are as follows:

Although we have only one representative on the Board of Panair do Brasil, we have for a number of years urged its President, Mr. Sampaio, to concentrate on domestic services even at the expense of its European and other international services. Particularly, we opposed, for business reasons, the extension of their international services from Rio to other South American capitals.

During April 1948, however, Panair extended service paralleling us from Rio to Montevideo and Buenos Aires,

Later we were advised that the Brazilian Government were again insisting on Brazilian flag service from Rio via Asuncion to Santiago, Chile and to Lima. Again, we counseled against such an expansion by Panair because we felt such extensions would be commercially unwise, even though these new services might be justified by Panair as end-on extensions of its European services. Such services could perhaps also be justified as direct contiguous services to neighboring countries by a Brazilian carrier, particularly as most of the traffic would be third and fourth freedom traffic for Brazil.

2-9-55 F
GR-12538

G064560

[fol. 368] ? Recently, Mr. Sampaio advised us that he had been designated to operate the Rio-Santiago and Rio-Lima services by the Brazilian government, and that *Panagra had also confirmed the agreements* previously ? made to provide him handling services at the Santiago and Lima airports as well as traffic representation in Chile and Peru.

He informed us that he has been *requested by Panagra* to arrange his schedules so as to provide through connecting services with Panagra, which he has arranged to do. I believe Erwin Balluder sat in on certain of these discussions during his recent visit to New York.

In view of these developments, I am at a loss to understand why you feel we should now seek to have Panair withdraw from these proposed cross continent operations *in favor of some other Brazilian* carrier, and, *in fact,* ? *why it is not in your interests to have Panair provide these new services*—but this subject, of course, we can discuss when we meet.

Sincerely,

sgd. JUAN

makes us look bad ?

Written to Grace!

GR-12539

G064561

[fol. 369]

GOVERNMENT'S EXHIBIT 162

H-5060

W. R. GRACE & CO.
7 Hanover Square, New York, N. Y.

Office of the President — January 9, 1951

Juan T. Trippe, Esq.,
President
Pan American World Airways System,
135 East 42nd Street,
New York 17, New York.

Dear Juan,

Thank you for your letter of December 29th. I was very sorry to learn of your daughter's illness and hope she has fully recovered and that you have been able to get away for some rest.

With respect to our telephone conversation of December 21st, it appears to me from your letter that I may not have made myself entirely clear. My point was and is that despite our many requests to you, you have consistently declined to agree to an application by Panagra for an extension of its route from Campo Grande to Sao Paulo and Rio. As a result, Panagra's route into Brazil still terminates at Campo Grande and the service on even this short Brazilian segment is in imminent danger of cancellation by the Brazilian authorities.

You will recall that I have mentioned to you several times in the past the fact that Braniff is flying into Rio direct from Lima renders the joint service that Panagra

2078

PAA 3827
1/3/55

[fol. 370] and Panair do Brasil have been furnishing far less attractive to the transcontinental flying public. You have taken the position that there was no necessity for

Panagra to come into Sao Paulo and Rio, stating that this joint service was thoroughly adequate.

The very fact that your affiliate, Panair do Brasil has decided that it is now necessary to provide the service which in our judgment Panagra should have applied for long ago, and would have applied for had you agreed as we have often requested, appears to me to prove precisely what we have been saying all along.

The purpose of my telephone call was to again request you to agree to the filing of an application by Panagra for the short extension of the route from Campo Grande to Rio even though at this late date the likelihood of securing such a route extension might have diminished greatly.

I did not propose that you seek to have Panair withdraw from its projected cross-continent operations and as a matter of fact, proceeded on the assumption that those operations would become effective in the near future.

As indicated in your letter, we should sit down and discuss this and related matters, and Andy Shea and I look forward to the pleasure of doing so at your earliest convenience.

Sincerely yours,

/s/ PETER

2078

PAA 3828

[fol. 371]

GOVERNMENT'S EXHIBIT 163

February 25, 1936

D. S. Iglehart, Esq.,
Delray, Florida

Dear Mr. Iglehart:

PANAGRA

• • • • •

In connection with direct Kingston/Cristobal route, I enclose copy of report prepared by Dunn showing the comparison of this route with the present Kingston/Barranquilla route. There seems to be nothing inherently more dangerous in the Cristobal route except whatever hazard there may be in a somewhat longer flight. This is important among other things in its effect on arrival time at destination. This in turn is controlled to a considerable extent by departure time from Miami which ought to be earlier than it is. Trippe always claims it cannot be earlier because of late arrival of Eastern Air from New York but we have had this up with the Post Office and it may be that some time can be picked up here.

Sincerely yours,

Rou

GR-1152

GR-1153
10-20-54 PJS

G 1634

G 1635

[fol. 372]

GOVERNMENT'S EXHIBIT 164

Personal

SANTIAGO, August 21, 193

Robert H. Patchin, Esq.,
NEW YORK.

Dear Bert:

* * * * *

Regarding my trip by air, you will probably have seen my letters covering my observations. The service rendered by Panagra is superior in many respects to that rendered by Panair. Regarding the speeding up of the Miami/Panama route, there is no doubt in my mind but that this can be done without any risk if Trippe wants to do it.

Since the inauguration of the new itinerary only about two voyages were made on time on the northern section and from what I know it seems that the Miami departures are invariably late. Just why this should be so, is a puzzle to me, as they have more margin at that point than anywhere else and there is no reason why they should not take off on time, which is 8 A.M., and if they want to they can take off at 7:30, making Panama that same afternoon if they choose to go from Kingston direct instead of going to Barranquilla. It will be a little difficult to persuade Trippe to do this but I have no doubt that in the course of time he will have to adopt the one-day schedule to Panama. As far as Panagra is concerned, they have frequently demonstrated, including the trip I took, that they can make Panama/Lima and Lima/Santiago in one day each. Personally I am not particularly proud of this performance during the winter months as to arrive at Lima at night i during the winter months as to arrive at Lima at night is a little disagreeable, particularly when there is a great deal of fog, as was the case during my trip.

* * * * *

Sincerely yours,

(Signed) A. GARNI

GR-5275 G028436

[fol. 373]

GOVERNMENT'S EXHIBIT 165

Air Mail 9.10
Washington 9.14

SANTIAGO, September 9, 1936.

Harllee Branch, Esq.,
Second Assistant Postmaster General,
Washington, D. C.

Dear Mr. Branch:

* * * * * *

You have, I take it, heard before now that since the new schedule has been inaugurated there have been frequent delays between Miami and Barranquilla, originating at Miami. These innocent looking delays of one hour to one hour and a half become cumulative very rapidly, because they are just enough to provide an inducement to remain at Kingston overnight instead of making Barranquilla, thereby losing about three hours of daylight flying time, as these planes, even leaving late from Miami, as we did, arrive at Kingston a little before 3 P. M.

* * * * * *

This sort of a performance by Pan American, not to arrive in Barranquilla until the second morning, which has occurred quite frequently, completely demoralizes the whole West Coast schedule because, as indicated, by the time the plane is ready to take off from Barranquilla the passengers and mail corresponding to that particular trip should already be nearing Ecuador, so that before the mail gets to Panama the whole benefit of the one-day cut made by the new schedule is under these circumstances entirely wiped out.

* * * * * *

1-31-55
GR-11541
GR-11542

G061985
G061986

[fol. 374] The West Coast route being the shortest and most dependable route to B. A. ought not be delayed and hindered in capitalizing these natural advantages which will put this important commercial center within flying time of New York comparable or superior to that from European centers, by the purely artificial consideration which now makes Barranquilla the first overnight stop. The importance of the Canal Zone to the United States in itself and quite apart from any other consideration, also makes the best possible service to Cristobal imperative.

The port of entry to South America of the important United States West Coast trunk line ought to be in United States territory and not in a foreign country. Experience has shown that a steamship port of entry tends to become an important center. One need only look at the port and dock development, etc., at Cristobal to realize what this means. The same is true of an airline port of entry and as air transportation develops this will become more and more apparent. For obvious reasons this development financed by the United States Government ought to take place in United States territory. The time to insure this is now when the development is just starting. To delay it until facilities have been created, lines of travel established and custom and habit grown up at some other point will be fatal.

* * * * *

Yours sincerely,

(Signed) A. Garni

GR-11543 G061987

GR-11544 G061988

GR-11545 G061989

[fol. 375]

GOVERNMENT'S EXHIBIT 166

Mr. Iglehart
Mr. Roig
Mr. Cogswell

POST OFFICE DEPARTMENT
SECOND ASSISTANT POSTMASTER GENERAL
WASHINGTON

file

pl. return
AG

October 3, 1936.

Mr. A. Garni,
Vice President,
W. R. Grace & Co.,
7 Hanover Square,
New York, N. Y.

My dear Mr. Garni:

I have carefully read your letter of September 22, in further reference to maintenance of satisfactory air mail schedules from Miami by the Canal Zone and other intermediate points to Buenos Aires.

The Department is disappointed in the failure of Pan American Airways to maintain regular through flights in a day from Miami to Barranquilla. Very much longer daily flights are made by some of the European companies on their international routes and it would appear that with efficient equipment the Miami-Barranquilla flight should be regularly made.

We have this matter up with Pan American Airways and that company is making increased effort to comply with the schedule. We are glad to have your suggestions for consideration in working out a service that will facilitate an

expeditious delivery of the mails with the lowest practicable cost to the Department.

Sincerely yours,

G061970

/s/ HARLLEE BRANCH
Harllee Branch
Second Assistant
Postmaster General.

1-31-55
F
GR-11549

[fol. 376]

GOVERNMENT'S EXHIBIT 167

NY-22

MIAMI-BARRANQUILLA OPERATIONS

Buenos Aires
October 15, 1936

Mr. G. Vidal
New York,—

I was glad to see by your JDM-22 of October 2nd that Panair is going to make an attempt to reach Barranquilla at 4.50 instead of 5.43 PM by leaving an hour earlier from Miami, and omitting Havana. I use the word "attempt" advisedly; if I am not mistaken, Panair planes have been late in reaching Cristobal subsequent to your letter on at least two additional occasions.

This situation is so highly undesirable, that it would not surprise me if very strong representations are made in Washington by the Post Offices on the West Coast with whom we have contractual obligations.

The situation may be a little better on the East Coast, but I surmise that Panair arrives late in Buenos Aires about 50% of the trips.

Very truly yours,

J. D. MacGregor

JDM:PG

P.S. Re. last paragraph. I have since been able to check my surmise and find it is correct.

cc HJRoig
RHPatchin
HRHarris

GR-1470
11/16/54
JPC

6013198

[fol. 377]

GOVERNMENT'S EXHIBIT 168

March 15, 1937

MEMORANDUM FOR FILE:

MIAMI CRISTOBAL IN ONE DAY

History—In view of the importance to the U. S. Post Office and to Panagra, of reducing the elapsed time from the United States to Buenos Aires, via F.A.M. 9 as much as possible, the Panair Miami Cristobal schedule (*formerly 2 days*, now 1¼ days) has for some time been decidedly unsatisfactory. Owing to the spacing of the important local passenger traffic sections of Panagra's route and the location of the Andes crossing with respect to the rest of the route, an efficient schedule Cristobal Buenos Aires requires a dawn southbound departure from Cristobal. This requires arrival by Panair at Cristobal on the evening of the previous day.

For two or three years, the U. S. Post Office and W. R. Grace & Co. have been advocating a one day service Miami Cristobal.

Routes—There are several possible operations which would effect this improvement on the southbound trip. (The

northbound trip has been made in one day, on occasion, under the existing setup.)

1. Present route Miami/Kingston/Barranquilla/Cristobal, the Barranquilla/Cristobal leg (or part of it) to be made after dark.

   (a) Panair at first objected to this on the ground that weather conditions at Cristobal were unsafe for night arrival. In view of the weather information supplied by the Army and Navy establishments at Cristobal, and from other sources (see exhibits I-VI), this position has now apparently been abandoned, and Mr. Trippe now states that

   (b) In view of the "mountains" which must be crossed on his route approaching Cristobal, this leg is unsafe for night flying.

2. Miami/Kingston/Cristobal, with direct flight from Kingston to Cristobal.

   (a) Length of this route would be 1395 miles if a stop were made at Cienfuegos, and present offi-

GR-5308
11/22/54 G029248
JPC

[fol. 378] cial mileage route taken, or 1208.5 miles if direct great circle flight Miami/Kingston (580.5 miles) were made. A schedule with S-43 at 50% power Miami/Kingston/Cristobal is attached (Exhibit VII), showing 9 hours 53 minutes elapsed time. This route was actually flown, on ferry flight, October 15, 1936, in 8 hours 20 minutes elapsed time. Exhibit VIII gives data and schedule possibilities on Miami/Cienfuegos/Kingston/Cristobal operation.

Present Panair schedule calls for departure southbound from Kingston at 1:25 PM. If direct flight to Cristobal were made, arrival would be about 5:30 PM, one hour earlier than the hour of total darkness (6:30 PM) on shortest day of year.

(b) It has been stated that the Kingston/Cristobal flight is not feasible, owing to unfavorable winds. A report (Exhibit IX) based on an exhaustive study of wind data from Hydrographic charts, shows that these wind conditions are not only not prohibitive, but that they favor the southbound trip, on which heavier pay loads are to be expected than on the northbound trip, owing to volume of mail and express.

(c) The undersigned understands that the committee of Panair pilots appointed to study schedule improvement in 1936, recommended direct flight Kingston/Cristobal.

3. Miami/Havana/Grand Cayman Island/Old Providence Island/Cristobal. Total distance 1178 miles. Longest leg (Grand Cayman Island to Old Providence Island)-413 miles.

(a) Schedule with S-43 at 50% power, on the assumption of average headwind condition, is given in Exhibit X, and shows 10 hours 34 minutes elapsed time, allowing 20 minutes at all stops.

General Discussion. G029249

Barranquilla Route

The "mountains" to which Mr. Trippe refers appear to be those inland from Porto Bello promontory, about 35 miles east of Cristobal. The highest of these are not over 3100 feet high, and would scarcely interfere even with a normal descent into Cristobal from the east. Moreover, in case of questionable weather over these mountains, or in

5309

[fol. 379] night operation, there is no reason why the aircraft should not skirt the coast, avoiding the hills altogether, and approach Cristobal from the unobstructed harbor side. I believe this is done at present on most trips.

Kingston Route

Although from a purely operating point of view the route via Grand Cayman and Old Providence Islands possesses outstanding advantages, the route via Kingston with direct flight Kingston/Cristobal is very little longer, especially if Cienfuegos is omitted. It is definitely superior to the Barranquilla route as a means of reaching Cristobal in one day, as there is ample margin of time to allow on all-daylight operation.

Other advantages of this route are outlined in Exhibit XI.

The 628 mile overwater flight Kingston/Cristobal cannot be considered as a serious obstacle from an operating point of view, in view of the facts brought out in Exhibit IX, and as substantiated by flights already made and on record. Although less payload could be carried on this flight than on the present Kingston/Barranquilla flight, the present heavy traffic between Miami and Kingston would automatically result in some space being unoccupied south of Kingston in any case.

On the trans-Pacific service, Panair makes a 2400 mile flight, terminating at a point (Alameda, California) where weather conditions are frequently worse than at Cristobal, and where surrounding mountains make the approach a much more difficult problem than at Cristobal, which is unobstructed on the ocean side. It does not seem reasonable that trans-Caribbean operations, frequently spoken of as the "laboratory of ocean flying", can be "stumped" by a flight of 828 miles from Kingston to Cristobal.

G029250

[fol. 380]

GOVERNMENT'S EXHIBIT 169

Form No. 146

Via aac

W. R. GRACE & Co.
LA PAZ

PRIVATE Cable

Filed LA PAZ, October 15th, 1937.

Memorandum of cablegram to Mr.D.S.Iglehart, New York.

Cable Address IGLEHART. No. #7.

Time received ____ M

Time Sent 8.59 pm M

CODE WORD	TRANSLATION
Imp. Electrica-41,559	
1. Cable #7 Refg. your cable # 5	
2. 15 to 27 words	(Juan definitely opposed to continuance operations via Cali with any type plane for the present in which I agree)
3. This should be	
4. settled	
5. in accordance with our	
6. Palmetto	
7. # 21	
8. Words 163 to 188	
9. surely	
10. you	
11. do not mean	
12. 22 to 24 words	
13. for	
14. unless	
15/16. Scadta Umca	
17. operations	

18. unsound
19. our
20. Palmetto
21/22. # 29 Words 142/163
23. entirely
24. feasible as
25. discussed with
26. Rihl
Sentence ends.
27. Words 60 to 77 (It is our understanding that th
would enable us to carry out Ju
15th schedule northbound whe
as at present this is subject to
hours delay of which Juan co
plaining)
28. Whatever
29. pros and cons
30. *purchase of*
31. second
32. S.43
33. this is

G0135

GR-1687
11-1-54 PJS
[fol. 381]

34. no reason for
35. doing so
36. Sentence ends.
Our
37. whole
38. difficulty has arisen
39. through
40. undertaking
41. July 15th
42. schedule
43. relying on them to
44. make
45. Cristobal
46. one day
47. which
48. they are not
49. doing

50. and they cannot
51. therefore
52. complain of
53. northbound
54. schedule
55. and I
56. see no reason for
57. straining
58. to make
59. in
60. 3 days
61. as long as
62. southbound
63. present situation
64. exists
65. words 177-8
(overnighting Cali)
66. seem inconsistent with
67. words 15-27
(see 2. above)
68. and accommodation(s).
69. Buenaventura
70. so bad
71. that
72. regular
73. overnight
74. there
75. must not be considered
76. which means
77. if omit
78. Cali
79. schedule
80. must
81. overnight
82. Guayaquil Sentence ends.
83. Words 181-187 (whenever necessary to prevent arrival Guayaquil after dark)
84. it is
85. not enough

86. to have this
87. as an alternative
88/89. as it means that we
90. have no
91. regular
92. schedule
93. at all
94. as at present
95. which is
96. thoroughly
97. demoralizing. Sentence E
We
98. must have
99. safe
100. schedule

GR-1688

G013564

[fol. 382]

101. definitely
102. based on
103. either . . . or
104. Cali
105. Guayaquil
106. but not
107. both.
Sentence ends.
108. Will cable again
109. when we hear from
110. H.R. Harris
111. in accordance with
112. words 28/36 (G.V. will discuss it by cable with Panagra West Coast Management, you and J.D.M.)
113. but
114. bear in mind
115. our
116. Palmetto = 24
117. 151 to 179 words
118. and that I
119. do not think we should
120. in any case

121. undertake
122. one day
123. Lima
124. Cristobal
125. until
126. land
127. operation(s)
128. complete.
Sentence ends.
129. J.D.M.
130. has seen and
131. approves
132. foregoing.
Sentence ends. I Roig
133. have no copy of
134. this cable
135. until
136/8. reach Santiago (Chile).

G013565

GR-1689

[fol. 383]

GOVERNMENT'S EXHIBIT 170

W. R. Grace & Co.
New York

No. 7
(HJR Trip Series)

New York, October 18, 1937

Harold J. Roig, Esq.,
Santiago, Chile

Dear Roig:

Your No. 12. I was very happy to learn that Kirkland was put in charge of operations and Shannon in charge of maintenance, and particularly happy to know that Harris had accepted the new set-up. You have made great progress toward the solution of your administrative problem.

The discussion still continues as to the advisability of the purchase of the S-43 and furthermore as to the fixing of

schedules. Garni is handling the whole matter and will be writing to you fully about it. Meanwhile, my own view is that Trippe can go to Cristobal in a day and *should be made to do so at once*. We cannot do anything with regard to establishing an adequate schedule on our line until Trippe goes to Cristobal in a day. I believe it is a perfectly feasible thing to work toward a definite schedule of one day from Cristobal to Lima, and a second day from Lima to Santiago. This requires adequate lighting and emergency fields and adequate ground direction equipment; and furthermore, a thorough education of pilots in instrument flying. You are working on all of these points and will have them all in shape in a relatively short time.

This plan would be greatly facilitated by land flying from Guayaquil to Cristobal. My feeling is that if practicable you should go to Colombia on your return from the south and form your opinion on the spot, in view of the investigation that is being made, whether or not we are going to be able to use fast land planes for the northern section, and if so, how long it will take to equip ourselves for doing this.

GR-1697 G 1963

10-21-54 PJS

[fol. 384] Then can decide whether or not to buy an S-43.

Trippe's objection to calling in Cali was not the S-43 but a lack of adequate ground equipment. I fancy this can be provided promptly.

Yours very truly,

/s/ D. S. IGLEHART

P.S. Am just off for Washington and can therefore not write you by this mail.

Trippe is now definitely contemplating operating DC 3's between Brownsville and La Guayra via Central America and Panama.

This makes land operations Panama-Ecuador look fairly simple. Don't you think so?

/s/ DSI

GR-1698 G 1964

[fol. 385]

GOVERNMENT'S EXHIBIT 171

No. 9
(HJR Trip Series)

New York, October 21, 1937

Harold J. Roig, Esq.,
Lima, Peru.

Dear Roig:

Garni, Daulton, Patchin, Cogswell and Kirby have all been in Washington working over our steamer problem there, and although we are not making progress very rapidly, we have, I think, laid out a course of action that should ultimately result successfully.

Panagra—I am referring all of your letters to Garni and he will be taking up the different points constantly with you, and what I say is merely as a corollary.

Colombia—Trippe's tenacious insistence on making Barranquilla the central distributing point, and particularly now, his plan to run a service through Central America that actually flies through Cristobal to Barranquilla and on to Venezuela, and his having his Miami service hooked up with that line at Barranquilla instead of at Cristobal, all emphasizes the seriousness of our problem of getting satisfactory schedules and satisfactory service through from here to Buenos Aires. From the standpoint of our Government it would seem obvious that the thing to do is to demand a direct service from Miami via Kingston to Cristobal, and then to distribute to Colombia by land route directly from Cristobal to Medellin and to Cali for further distribution from these points. Here the Scadta interest intervenes and the mystery of Trippe's relation to Scadta makes it difficult to decide what our relation to Scadta should be.

In this connection I notice a report from the Colombian Consul, which says, "A bill which authorizes the Government to purchase shares of the SACO Air Transportation Company up to $200,000 has been approved in third de-

bate". When you go up to Colombia I think you should
GR-1700 10-21-54PJS G 1961

[fol. 386] on the ground decide whether we want to alter our policy. In my opinion we will never get a satisfactory schedule over our route which will make Buenos Aires in 3½ days until Trippe has been forced to fly from Kingston to Cristobal.

* * * * * *

Yours very truly,

(signed) D S IGLEHART

GR-1701 G1962

[fol. 387]

GOVERNMENT'S EXHIBIT 172

Personal

Washington, D. C., October 27, 1937.

Harold J. Roig, Esq.,

SANTIAGO, Chile (Copy to Lima)

Dear Roig:

I have before me Santiago Palmetto No. 24 as also Lima Palmetto No. 52, commenting on the advantages or disadvantages of Schedule C. In order that you may appreciate the position at this end I want to describe briefly the developments since you left.

Mr. Iglehart, as you know, is insistent on two points: First that we should force the issue now and prevail on the Post Office Department to eliminate Barranquilla entirely, making the southbound trip to Panama in one day via Kingston direct, and second, he is entirely opposed to the purchase of another S-43, on the grounds that this might well result in an unnecessary investment and in a plane that he considers unsuitable for reasons frequently discussed, as also for the reason that the acquisition of an additional S-43 might well retard the ultimate inauguration of an all-land plane service from Panama to B. A.

With reference to the first point (i.e., total elimination of Barranquilla) while I seriously doubt that it can be accomplished at this time I have nevertheless pressed this subject with Juan and on Columbus Day went to Washington to discuss it with Lamiell. The former has for some time agreed to make a direct trip via Kingston on the condition that this be the third trip which he wants to apply for. Outlining to Juan the great difficulty to get the money for a third trip as quickly as it was desirable to solve this problem, he has finally, under great pressure, agreed to a change in the program in the sense that he would run one

GR-1710
10-21-54 PJS

G 1956

[fol. 3 8] of the two existing trips in one day to Panama via Kingston direct, continuing the other trip as at present, overnighting at Barranquilla.

I thought this denoted quite a little progress and I hooked onto this suggestion, which is really the so-called C Plan. Knowing how anxious you and everybody else are to improve our whole itinerary situation, I thought the C Plan presented about as good a solution as could be hoped for under the circumstances and therefore approved the plan in principle when discussing it with Vidal, who accompanied me Monday night as far as Philadelphia, and I authorized him to send out the corresponding message, to which there seems to be so much opposition.

As far as my discussion with Lamiell is concerned I have made "theoretical" progress inasmuch as I got him to agree in principle that the proper thing to do would be for him to forget all about Barranquilla and to meet Trippe's argument with reference to the enormous amount of mail movement to Colombia and passenger movement to Venezuela (all via Barranquilla) by saying that as far as the Colombian mail is concerned this should be taken right into Cali by Panagra and redistributed from there to Bogota, Medellin, etc., by local services; with reference to the alleged large movement to Venezuela, I told him that with the improved East Coast schedule Venezuela should logically be served

via Trinidad rather than give that country four services a week—two via Barranquilla and two via Trinidad—which has so far placed that country in a preferential position for no particular reason whatever.

Lamiell meekly agreed to the soundness of this suggestion but brought out the fact that Panair has a large investment in Barranquilla; also that Colombia would object to the elimination of Barranquilla, etc., etc., so that his

GR-1711

G 1957

[fol. 389] acquiescence really does not amount to very much. My impression, therefore, was, and still is, that if we keep harping on the total elimination of Barranquilla we will stymie ourselves and get nowhere to improve the present unsatisfactory schedule position.

For these reasons I felt I had made quite a little progress in inducing Trippe to agree to deviate one of the existing trips, as this is at least half a loaf, which is always better than none, and if we should be successful in getting the Post Office Department's approval to this program (which incidentally would mean an additional appropriation to finance a weekly shuttle from Kingston to Barranquilla) we would thereby definitely establish the feasibility of the direct route and gradually bring out the great improvement thereby to the entire West Coast service.

* * * * *

Yours sincerely,

(signed) A. Garni

GR-1712

G 1958

[fol. 390]

GOVERNMENT'S EXHIBIT 173

PERSONAL

Washington, D. C., October 28, 1937.

Harold J. Roig, Esq.,

SANTIAGO, Chile (Copy to Lima).

Dear Roig:

Since writing you my letter under yesterday's date I had an all-evening session with Juan on the subject of running both services direct to Panama, as also on the subject of the organization chart.

The position described in my yesterday's letter, regarding the deviation of one of the existing trips, is in accordance with the outline given me by Vidal last Monday but differs somewhat from Juan's basic idea, which is that he is ready to run one of the existing trips from Kingston direct to Panama, provided the Post Office Department subsidizes one additional trip (not a Kingston-Barranquilla shuttle as indicated by me but an additional trip from Miami to Barranquilla).

This differs somewhat from my outline inasmuch as Juan is unwilling to run one of the existing trips from Kingston direct to Panama unless he gets support for one extra trip from Miami to Barranquilla to take care of the movement in that section. On this latter point he says that due to various readjustments in Mexico, together with the fact that he is getting a substantial subsidy from Jamaica, he is in a position to run this extra Miami-Barranquilla trip for a relatively small sum, which the Post Office Department has available and which he is confident they will grant him.

Itinerary Situation: I have discussed this at great length and on further reading the many cables and letters on this subject, believe that the whole issue is becoming entirely too controversial.

I have also discussed with Juan the question of early

GR-1716
10-21-54 PJS

G 1952

[fol. 391] inauguration of land operations and found him to be more insistent than ever that this should be approached with a great deal of care, in which we, of course, all concur, as no one wants to do anything that would in any way lessen the safety factor. On reviewing the whole situation my present opinion is that if we can arrange to run one of the existing trips to Panama in one day (Kingston direct) and assuming that land operations all the way from Cristobal south cannot be resorted to as early as would be desirable for the purpose of an improved itinerary, we should adopt the following itinerary:

On trip going Panama direct:

First night	Panama
Second night	Trujillo
Third night	Antofagasta
Fourth night	Buenos Aires

On trip via Barranquilla:

First night	Barranquilla (sorting mail there)
Second night	Guayaquil
Third night	Arica
Fourth night	Santiago
Following noon	Buenos Aires

This would give one trip to B. A. in four days and another in 4½ days, but on returning north both trips would be made in four days from B. A. to Miami, the itinerary northbound being:

First day to	Antofagasta
Second day to	Trujillo
Third day to	Panama
Fourth day to	Miami

arriving New York early the following morning.

In expressing this view I am well aware of certain objections but I am brushing aside entirely the passengers' con-

venience or desire to overnight in a capital rather than in Trujillo, Arica or Antofagasta, as this is of secondary importance; I feel that very few, if any, will be deterred GR-1717

G 1953

[fol. 392] from taking this trip just because we overnight in Trujillo instead of in Lima, or in Antofagasta instead of in Santiago. The plan has certain objections inasmuch as the mail does not get to Lima until the morning of the third day (I am speaking of the faster of the two trips); on the other hand, it has the advantage of eliminating daybreak departure from Lima south with a rather long trip all the way to Santiago.

This sort of an itinerary distributes the 4,400-odd miles between Cristobal and Buenos Aires in a much more even way than the July 15 schedule, which contemplated Lima-Santiago in one day each, with fairly heavy mileage the first two days and insufficient mileage the last day. After seeing the Post Office Department, which I still hope to do today, I may again communicate with you by mail or by cable, preferably after you receive this letter, so that we can get our ideas together on a new schedule.

Organization Chart: I have also had a long powwow with Juan about this, the net of which is that I feel it better to discuss this further on your return. He thinks that the agent's functions on the Coast should be defined; also financial and accounting control should be centered in New York and not with the agent on the Coast. I told him that it is my impression that your reference in this respect applied specifically to financial and accounting functions *on the Coast* and did not refer to the Company's *general* financial or accounting position. It would be a long story to give you all the pro's and con's discussed and as you will prob ably be back here in the near future I see no point in pursuing this matter further, particularly as with you and George Rihl absent I doubt that Juan and I could reach an agreement.

Sincerely yours,

/s/ A. GARNI

GR-1718

G 1954

[fol. 393]

GOVERNMENT'S EXHIBIT 174

copy of handwritten letter

PERSONAL

Dear Garni,

Your Personal Letters Oct 27, 28

I feel that the progress you have made, as indicated both by "Plan C" and by Palmetto #80, in the direction of getting one day direct service Miami/Cristobal is most satisfactory indeed. I fully realize also the importance to your efforts in this direction of our showing correspondingly improved Panagra schedules and have had this constantly in mind in formulating my views on the Panagra schedules we have had under consideration.

While we have pointed out certain traffic difficulties resulting from undesirable overnight stops etc which have been suggested in this connection, I am perfectly willing to forget these (even tho I still feel it means some considerable financial loss) if you feel that the general interest, and particularly the facilitation of the one day direct trip Miami/Cristobal, makes it expedient. This leaves in the picture just the factors required for a sound operation which is, of course, the thing to which we all give primary consideration.

While it is true that "Plan C" and later proposals make equal division of mileage *quantitatively*, I do not feel that they do so *qualitatively*. In other words, the miles between Antofagasta/B.A. for one reason, and the miles between Cristobal/Lima for another, are not the same kind of miles as those between, let us say, Lima/Santiago. In the two sections referred to, we have certain definite facts which simply cannot be ignored and which must be dealt with as they are in formulating any schedule.

(1) Under certain conditions, one day Antofagasta/B.A. is perfectly feasible. We have done it on a number of occa-

sions,—the last only a few days ago,—without the slightest
GR-1719
10/19/54

G 1256

[fol. 394] difficulty. I feel, however, that it is a very different thing to do this on occasion and to make a fixed schedule based on doing it regularly. With conditions as they are at Antofagasta and B.A. and with the Andes crossing in between, I feel that a regular one day schedule between these points at the present time is unsound.

* * * * *

Very sincerely,

(Sgd) HAROLD J. ROIG

Lima 5 Nov '37
GR-1721

G 1258

[fol. 395]

GOVERNMENT'S EXHIBIT 175

Inf. file

11/22/37

Washington, D. C., November 8, 1937.

Harold J. Roig, Esq.,
LIMA, Peru.

Dear Roig:

PANAGRA SCHEDULES

Ever since you left I have been battling with all concerned over the question of schedules as I fully appreciate the importance of doing something promptly with reference thereto. I have had a number of rounds with Juan, the Post Office, Bob Tlach, etc., all in an effort to press for a direct service to Panama in one day.

The Post Office Dept. concurs entirely with our views in this respect and are ready to authorize this direct service, provided it does not cost them any more money. They

have even worked out a scheme of their own, connecting at Kingston with the through service, running two separate legs from that point, one to Barranquilla and the other to Panama direct and cutting out the shuttle between Barranquilla and Kingston. This scheme would not require any additional funds but Juan vigorously objected to it, advancing numerous reasons, some of which are sound and some unsound. I pressed very hard to get this adopted but Juan insists that the only satisfactory solution would be for the Post Office Department to authorize two brand new trips from Miami to Panama direct, leaving the two trips from Miami to Barranquilla undisturbed, or in other words, to give him four independent trips per week between Miami and the Canal and/or Barranquilla.

Theoretically such an improvement would cost the Post Office Dept. approximately $600,000, but knowing that this sum will not be available Juan has leaned over backwards to cut this down to a figure that might go by. In the first place, he offered to cut out the service between Havana and Belize, in which a substantial subsidy is involved; in

GR-1723
11-16-54 PJS

G016117

[fol. 396] the second place he offered to cut out the subsidy between Barranquilla and Cristobal, even if he were obliged, for reasons of his own, to continue running that section. With these two contributions the figure of $600,000, above referred to comes down to $285,000.

He then proceeded to further reduce this by offering to waive one northbound trip Barranquilla to Miami, which brought the final figure of additional money required down to $142,500. I told the Post Office Dept. that I felt that Panair had gone a long distance to make it possible to solve this whole problem and that they ought to find ways and means to find this sum, which, compared to the important improvement accruing to the whole West Coast route as also to the Caribbean service generally, is really a

trifling matter. However, in the existing atmosphere it is useless to talk about additional appropriations and I am afraid that it will be some time before we get a direct one-day service to Panama *twice* a week.

I have been groping around for some other solution and the net of protracted conversations in this respect is that I believe 50% of our problem can be solved, but even this may require our giving up the Montevideo-Buenos Aires service, which incidentally is not much of an asset. Juan is ready at the moment to run one of the two trips via Kingston direct to Panama in one day and the Post Office Dept. while formerly objecting to two distinct services, this afternoon felt that while this solves only half their problem, or to use their own words, "is only half of what we are aiming for" now seems to be willing to accept this change as a temporary solution.

As far as the other service via Barranquilla is concerned, Panair is ready to cut out Cienfuegos, thus saving approximately half-an-hour, and they are also ready to run the Cristobal-Barranquilla section with DC3s, thus
GR-1724

6016118

[fol. 397] saving a further half hour. It is expected that with these two savings the present 2½ or 3 hours' delay at the Isthmus in sorting the mail could be done away with to a large extent for the reason that the Cienfuegos saving would be used for a correspondingly later take-off at Miami to enable them to do more sorting there, whereas the Barranquilla-Cristobal saving would give them a half hour at the Isthmus over what they now have available, and it is calculated that in this way Panagra could take off at Cristobal at 9 A.M. This would be an improvement over the present performance, whereas the direct trip would be a definite step forward.

My feeling is that if we try to make a clean job of the whole business, continuing to harp on two direct trips to Panama via Kingston, we will be discussing this for another year or two, whereas if we accept the foregoing set-up we improve both of our existing services, get 50% of what we

are after as far as one day to Panama is concerned, and once we get this program going the rest will probably solve itself in the course of six to twelve months. In other words, I believe that if we get one trip on a direct basis now, the second one will come along before the end of next year.

I discussed this whole matter this afternoon with Grayson and will discuss it further tomorrow with Lamiell and Harllee Branch, but do not think the position will be any different to what I now describe it to be. In talking to Grayson this afternoon I told him that we are very anxious to get this question of schedules settled but that as long as the Miami-Panama route is in such an undefined, not to say sloppy, state, we are really stymied and I then launched a new attack on the subject of eliminating Barranquilla entirely, running both services direct to Panama and dropping all Colombian mail at Cali. As a result of this the

GR-1725

G016119

[fol. 398] foregoing developed and I am satisfied that while the Post Office Department sympathizes with our views we would be just wasting a lot of time by pressing for a *complete* solution of our problem at this time, and as far as I am concerned I would accept the idea of running one trip direct and speed up the mail sorting on the indirect trip and get going.

If in principle you concur with these views I will try to get everybody to agree before the idea gets cold again and I would appreciate it, therefore, if you would cable me as soon as practicable just what you think ought to be done.

* * * * *

Colombian Survey: New York just advised me of your cable saying that Campbell's survey is complete and I read between the lines that the conclusions are favorable to land operations. As Trippe has always volunteered to have this survey checked up by his experts and as I do not believe he has any intention of doing this, I suggested that Vidal submit the gist of your message to Rihl and Trippe, asking them whether they want to send Priester down to Colombia to check up this survey or if they prefer to have King and Campbell return to New York to discuss it.

I feel that Trippe should declare himself *now*; otherwise he will stall along indefinitely as he still seems to be opposed to *any* move that will improve the West Coast service.

. . . . . .

Yours sincerely,

/s/ A. Garni

GR-1726 G0016120
GR-1728 G0046122
GR-1729 G0046123
LAKE EXDS

[fol. 399]

Government's Exhibit 176

I had memo of all instances.
Roy Howard

WH 6-4890

W. R. Grace & Co.
New York

In resolution have record of conflicting interest and fact that Pan Air moving overland. Venezuela to Calif. B.A. to Rio.

December 24, 1937

Dear Mr. Iglehart:

Herewith I am sending you a clean copy of your handwritten draft letter to Mr. Whitney (marked "Draft No. 1"), and draft of another letter (marked "Draft No. 2") which attempts to adapt your draft to the later suggestion made in your confidential letter of December 20th. Referring to our telephone conversation, I intentionally omitted from my draft reference to the Grace Line Caribbean development as I feel that the introduction of this, coupled with indication of possibility of similar development in air will in view of Panair's large Caribbean aviation picture, inject a new and highly controversial issue

into the discussion which is apt to further complicate agreement on the main issue. I have amplified the draft as I read it to you over the telephone by adding some further particulars supporting the charge of subordination of Panagra's interests to those of Panair.

I also enclose copy of the resolution which we offered at yesterday's Board meeting. After considerable discussion, the matter was deferred to next week's meeting on the understanding that if agreement had not been reached by that time, our motion would go in yesterday's minutes if we desired.

Both Garni and I thoroughly agree that rather than write any letter to Mr. Whitney, it would be better if you were to telephone him as you suggest. Our ideal of the telephone conversation would be that it follow more or less the lines of draft No. 2 enclosed with various amplifications which you can add in a telephone conversation more satisfactorily than in a letter and winding up with the suggestion you indicated that as a favor to you, Mr. Whitney bring about GR-7350

G031015 58

[fol. 400] this meeting between us and two of the Panair directors not including Trippe. We are inclined to believe that it would be better not to make the definite suggestion of liquidation at this time but if you feel that it should not be entirely omitted, introduce it not as a threat but as a statement of the inevitable condition into which we are drifting unless the course you suggest is taken.

As I told you, Trippe is also thinking a good deal about this organization problem and in the last conversation Garni and I had with George Rihl last week, a good part of the time was devoted to this subject. They claim that their plan is actuated by the desire to give the company a wholly independent management. In fact, however, what their plan really comes down to is eliminating a good part of the present Grace intervention while retaining and increasing the Pan American intervention. This is, I think, quite plain from the memorandum on the subject which Rihl left

with its entitled "Suggested Plan for Re-organization for Pan American-Grace Airways", copy of which is enclosed.

Sincerely yours,

/s/ HAROLD J. ROSS

D. S. Iglehart, Esq.
Delray, Florida

P.S. and I are going to Washington Monday afternoon and will probably be there 2 or 3 days

HJR

Enclosures

GR-7351

G031016 59

[fol. 401] Draft No. 1

C. V. Whitney, Esq.,
Chairman of the Board,
Pan American Airways,
New York City

Dear Mr. Whitney:

In representation of my firm as owner of half of the shares of the Pan American Grace Airways, Inc., I write to you as the representative of the owner of the other half.

I have once or twice appealed to you to intervene in settling problems connected with this enterprise and you have in each case responded in a very kindly way and with effectiveness.

Now a situation has arisen which has been accumulating for some time and which has now become so grave as to require some radical action for its remedy. I must ask again for your cooperation and assistance.

years ago in the last conversation which I have had with Mr. Trippe, your senior representative on the Board of Directors of Pan American Grace Airways, he stated that where there was a possible conflict between the interests of

the Pan American and Panagra, he felt that he had a right, in fact, it was his duty, to favor his 100% interest as against his 50% interest. I replied that in my opinion he should when sitting on the Board of Panagra, either act in its interest or retire from the Board.

Mr. Trippe has, however, since that time, constantly followed the policy of placing obstacles in the way of the development of Panagra whenever he considered that by so doing he might further the interest of Panair.

His attitude in this respect has, in my opinion, been unethical and in fact indefensible. I could place before you countless instances of action and inaction to support this opinion. As I say, I have not seen Mr. Trippe since he enunciated his above mentioned attitude. My associated GR-1747 10-20-54 PJS G1753 [fol. 402] have, however, been constantly in touch with him and have had most unusual patience and forbearance in their dealings with him.

The business has been kept going and was remarkably successful until about two years ago when it became large and its administrative problems became greater and required prompt decisions. As the business grew and as it became more and more apparent that Panagra was the direct and logical route to Buenos Aires, Mr. Trippe's opposition increased and he sought every means of retarding and obstructing our company's normal development. His 100% interest was in running a clipper service around the East Coast of South America and his 50% interest was in the direct route (Panagra). The more Panagra has grown and developed, the more he has opposed its development. We now have really serious problems such as the extension of land service from Guayaquil to Cristobal, the obtaining of a semi-weekly direct service from Cristobal to Miami, the working out of an adequate administrative program, the obtaining from Pan American Airways of adequate technical assistance. These in addition to the daily problems of management are meeting with tacit and active hindrance and opposition.

The time has come when this must be stopped. We could run this business successfully ourselves. We have been in the transportation business for generations and our numerous South American houses and we have been working actively over the aviation business for ... years. We have competent, in fact, highly expert aviation men in the employ of W. R. Grace & Co. We could manage the Panagra company far more safely and far more profitably than it is being managed at present.

We do not ask that you should permit us to run the business. We feel that Panair and W. R. Grace & Co. should cooperate in its management.

GR-1748 G1754

[fol. 403] We, after ... years of patient effort, my associates have now definitely decided that Mr. Trippe will not in good faith cooperate with us. I feel, therefore, that if Panagra is to return to successful operation, Mr. Trippe must be retired from the Panagra Board and someone named in his place who will have authority from your Board to act independently of Mr. Trippe and who will be instructed to act in the interest of Panagra. That man should begin by going over our line and should try to gain an intimate knowledge of it. Mr. Trippe has never even been over the line, nor has his senior technical man notwithstanding our constant effort to get them to look at the business. Instead of his being a partner and daily helper and cooperator in making the business a success, we have at no time received any bonafide cooperation from him. Furthermore he has while sitting on the Board of Panagra been guilty, in our opinion, of the most surprising acts of disloyalty to the company's interest.

Mr. Trippe has frequently contended that in the same way that he had a 100% interest in Panair and only a 50% interest in Panagra, we had a 100% interest in the Grace Line which was a competitor of Panagra. It will be obvious to you that we could not with delicacy allow any of our Panagra directors, in their decisions to take into consideration a conflicting interest that we may have in the Grace Line. I have myself from the time that Panagra was founded seen to it that this should be avoided and I

know of no instance where there has been the least breach of this attitude. On the contrary sacrifices have been constantly made to assure a mutually helpful attitude. The Grace Line is about to enter the Caribbean trade in an important way following our purchase of the Red D Line service to Puerto Rico and Venezuela and will on January 7th initiate a rapid and modern service to Colombian and

GR-1749 G1755

[fol. 404] Venezuelan and other Caribbean ports. Here again I am anxious that our steamship services should cooperate with the air services and avoid conflict with them, provided some plan for real cooperation can be reached.

Panagra's contracts with our Government will shortly expire and it is therefore urgent in my opinion that you should consider immediate and decisive action on my suggestion.

It might be advisable that you should name a committee of say 3 of your directors to meet with 3 of ours in order that detailed facts may be put before them and endeavor to reach a solution of this grave impasse. I feel that Mr. Trippe should not be a member of that Committee as discussions would be endless and nothing would be accomplished. I would prefer not to take part in the discussions either as I feel rather too strongly on the subject. It is distressing for me to have to write in this way but on the one hand Mr. Trippe has completely exhausted our patience and endurance and on the other hand W. R. Grace & Co. must during the first two weeks in January lay out its plans for the coming year. Mr. Roig and Mr. Garni will be at your disposal, along with any other of our directors, at any time that you may send for them.

GR-1750 G1756

[fol. 405]

Draft No. 2

C. V. Whitney, Esq.,
Chairman of the Board,
Pan American Airways, Inc.
New York City.

Dear Mr. Whitney:

In representation of my firm as owner of half of the shares of the Pan American Grace Airways, Inc. I write to you as the representative of the owner of the other half.

I have once or twice appealed to your to intervene in settling problems connected with this enterprise and you have in each case responded in a very kindly way and with effectiveness.

Now a situation has arisen which has been accumulating for some time and which has now become so grave as to require some radical action for its remedy. I must ask again for your cooperation and assistance.

I refer to the fact that the business has reached a size and is confronted with problems which call for a radical change in our management setup if it is to continue to be a success. I mean by this not only a management stronger than the present one in its authority but a management which is free to function in a manner dictated solely by what is in the best interests of Pan American Grace Airways. This latter point is of outstanding importance.

_____ years ago in the last conversation which I had with Mr. Trippe, he stated that where there was a possible conflict between the interests of Pan American and Panagra, he felt that he had a right and in fact it was his duty to favor his 100% interest as against his 50% interest. His adherence to this policy has been constantly apparent in many different situations which have arisen since that time.

1. He has consistently opposed giving a one day direct service between Miami and Cristobal which would

enable Panagra to improve its schedules between the United States and the countries which its line serves.

GR-1743 G1749

[fol. 406] He has preferred to give a better service to Barranquilla than to Cristobal which suits the interests of Scadta, as frankly stated in Scadta's last annual report, and holds back the naturally faster West Coast route to Buenos Aires and keeps it more nearly in pace with the slower East Coast route. Only after the greatest pressure from us and the Post Office has he finally been induced to run one trip per week direct to Cristobal.

2. He has long opposed normal Panagra development in the Argentine and only finally agreed to diversion of the line to Cordoba and later to the extension through the Argentine via Salta to La Paz on conditions coupled with outrageous demands for money payment to Pan American. Although Panagra's business and interests in the Argentine are much larger than Panair's and Panagra pays two-thirds of the expenses of the Buenos Aires office, he insists on Panair's retaining control of that office.

3. Panagra's publicity in the United States which is handled by Pan American and for which Panagra pays a substantial amount annually is almost invariably in a form which favors Pan American at the expense of Panagra whenever there is any conflict of interest involved.

4. He has made full cooperation of Pan American's engineering department, for which Panagra also pays a substantial amount annually, subject to conditions from time to time which it has not been reasonable that Panagra should comply with, with the result that the engineering assistance paid for has not been furnished.

5. In Colombia where Panagra's interests are in conflict with Umca and Scadta, he has long opposed and is

GR-1744. G1750

[fol. 407] now opposing the normal development of Panagra's route to an overland route which would be faster and more economical and would enable the company to improve its revenue by serving the large available Colombian traffic.

These and other instances which might be mentioned serve to indicate the manner in which his policy has for several years and is now definitely standing in the way of Panagra's reasonable and normal progress and development. In view of all this and with the company's earnings at low ebb in 1937 and a loss confronting us for 1938 unless prompt action is taken, I feel that the time has come where this intolerable situation must be remedied.

I feel that the most expeditious and practical solution is to put responsibility for the conduct of the business in our hands, placing one of the Grace directors in the Presidency of the company with ample authority, and having it definitely understood that when questions arise on which there is any conflict of interest between the two companies, the Pan American directors are to be disqualified from acting and the action of a majority of the other directors is to be decisive. I feel that only in this way can we secure the prompt decision of questions which cannot continue to be deferred for long periods by endless discussions and that only in this way can we be assured of questions involving conflict of interest between the two companies being decided solely from the standpoint of Panagra's best interests.

The Grace organization (with the cooperation of several of Pan American's departments which could be of great assistance if made free to cooperate fully) is abundantly able to assume this responsibility. We have been successfully engaged in the transportation business for generations. Not only in New York but all along the Panagra

GR-1745 G1751

[fol. 408] route in South America our organization has been working actively in the aviation business for the past eight years. We have competent, in fact, highly expert

aviation men in our employ. We could manage the business effectively and profitably.

In order to bring this vitally important matter to prompt decision, I suggest that you name a committee of yourself and another Pan American director to meet with Mr. Garni and Mr. Roig, directors of W. R. Grace & Co. and of Panagra, to go over the whole situation in detail and agree upon a plan of action along the above lines. I feel that Mr. Trippe should not be a member of this committee as that would lead to endless and fruitless discussion. I also would prefer not to take part in the discussions as I feel rather too strongly on the subject. Mr. Roig and Mr. Garni along with any other of our directors will be at your disposal at any time that you may send for them.

Sincerely yours,

GR-1746 G1752

[fol. 409]

SUGGESTED PLAN FOR REORGANIZATION OF PAN AMERICAN-GRACE AIRWAYS, INC.

Pan American-Grace Airways, Inc., while a corporate entity, does not operate as such for the following reasons:

1. The General Manager is now allowed to function as is customary in corporations that do not have active Presidents.

2. It is not possible, under the present procedure, for officers of the company to communicate directly with each other by code due to the fact that the company has no code of its own and all code messages are sent through W. R. Grace & Co., which does not permit the use of its code by Pan American-Grace employees.

3. Correspondence from the New York office of Pan American-Grace to the field operation of the company is nearly always directed to W. R. Grace Agents and, therefore, cannot reach the company personnel without first passing through the hands of a third party.

4. Accounting at Lima and the Canal Zone is directly under W. R. Grace as at neither of these points does

Pan American-Grace have its own employee in charge, although the clerks are on the payroll of the company.

5. The system is divided into three divisions which are in charge of pilots who are on regular runs though not with the same frequency as the ordinary pilots, but which necessitates their absence from division headquarters at very regular intervals. Because of this distribution of operating authority without sufficient company personnel to actually handle these operating units the custom has grown up in the company to rely on senior officials of W. R. Grace, who maintain extensive offices where all division headquarters are located.

In order to make Pan American-Grace an operating corporate entity as it is generally understood, it will be necessary to

(a) Give the General Manager, in the absence of a President, full authority to operate the company, making periodic reports to the Board of Directors, as is customary, in addition to which he could report at more frequent intervals to an Executive Committee, which Committee would have such powers as the Board saw fit to grant it.

(b) Provide a company code, or at least allow the
GR-1741 G1747
[fol. 410] company to use a code that would be available to such personnel as the General Manager saw fit to designate, with all messages being sent on company business directly to company personnel.

(c) Routine correspondence to be directed to and received by company personnel in the ordinary manner.

(d) Accounting to be reorganized in such a manner as to make available to field executives monthly full financial operating results at the earliest possible moment. In order to do this it is recommended that the operations accounts for the system be concentrated at Lima, with reports to be sent to the New York

office where they can be consolidated with expenses incurred in the United States, on which the field organization has no interest in or authority over. Inasmuch as W. R. Grace acts as Agents for the company, and as such at many places handle the finances of the company, they probably could undertake the field accounting quite readily, but wherever they do such work the Company should not have accounting employees.

(c) Consolidate the system into one operating division, establishing sections, if necessary, with local authority over the sections vested in ground personnel.

To accomplish the above recommended reforms the Board of Directors should approve an organization chart for the guidance of the General Manager, an example of which is attached, together with an outline of how the organization would function if the chart is followed.

GR-1742 G1748

[fol. 411]

GOVERNMENT'S EXHIBIT 177

January 7, 1938.

C. V. Whitney, Esquire,
230 Park Avenue,
New York City.

Dear Mr. Whitney,

I have been here for a few days and am sorry not to have had the pleasure of seeing you.

I find on careful study that the methods of active obstruction and of passive procrastination which have been employed over a period of years have now brought about a situation in Pan American-Grace Airways which is even more serious than I thought it, when I spoke to you by telephone.

I see no remedy for the situation except that you should agree to the naming of one of our men as President of the Company and our assuming the responsibility for the

management and for the success of this enterprise. I feel that we are now equipped with men and with experience to assume this responsibility, but I would not agree to doing so unless I could have your assurance that your representatives on the Board of Pan American-Grace Airways would work loyally and wholeheartedly in its individual interest. Furthermore, I would like to have your assurance that Pan American-Grace Airways would receive from the Technical, and Publicity Departments of the Pan American Airways an enthusiastic and effective support, which up to the present time we have not considered adequate.

G031810

GR-7358
12 14 54 ab

178

[fol. 412] I would be very grateful to you if you would send for Messrs. Roig and Garni and receive from them the detailed facts that support the conclusions which I have reached.

I feel confident that after doing so you will agree to and will support these conclusions.

I have learned with regret from Messrs. Roig and Garni that Mr. Trippe has complained that my having approached you as I have was unethical on my part. I am sure you do not share this view. It seems to me most logical and legitimate that you and I, as heads of the two owning concerns, should confer and confer frankly as to the welfare of the jointly owned concern. It is superfluous to say that it is farthest from my mind or my desire to do an injury to any individual. My interest is solely the welfare of this Company and to establish and develop a spirit of friendly and helpful cooperation between our respective companies.

I am, with kind regards,

Sincerely yours,

(Sgd) D. S. Ingleheart

GR-7359

G031811

179

[fol. 413]

GOVERNMENT'S EXHIBIT 178

(Mr. Cogswell)
(Mr. Parchin) (Copy)

No. 9

(April 11, 1938)

(pl. return)
(*AG*)

Lima, Peru
April 6, 1938

Mr. A. Garni,
W. R. Grace & Co.,
New York

Dear Garni,

I have been looking into the schedule performance out of Cristobal since the December 15th schedule went into effect.

The figures, which I think you will find interesting, are as follows:—

"PANAGRA DELAYED DEPARTURES
FROM CRISTOBAL
"December 15, 1937—April 3, 1938

	Miami/Cristobal direct	Via Barranquilla
Total trips	16	16
Delayed trips	3	12
Delayed trips due PAA and/or P.O.	1	10
Delayed trips due Panagra	2	2
Delayed trips resulting overnight off schedule	2	8

(G049095)

As you will see from the above there have been 32 trips out of Cristobal since the new schedule went into effect, sixteen connecting with Panair's one day Miami/Cristobal run and a like number connecting with the run via Barranquilla. On Panagra's sixteen trips connecting with Pan

air's d[illegible] trip, its departure was delayed only once due to Pana[illegible]nd or the Post Office. On this one trip we were delayed 4.15 hours from our scheduled departure time of 9:30 and as a result we had to overnight at Buenaventura.

1-7-55 [illegible]
GR 89[illegible]

[fol. 111] On two of the other trips we were 1.30 hours late in getting off due to reasons of our own. I think the performance on the one day schedule with only one serious delay can be regarded as just about 100%.

On the other schedule via Barranquilla the picture is very different. Out of sixteen trips on that schedule, we were delayed in taking off from Cristobal on twelve trips or [illegible]n or over 60% of the total trips were due to Panair and or Post Office delays. On one of these ten trips it is true that after being delayed 4.25 hours due to Panair and or the Post Office we had to put back to Cristobal for reasons of our own, but, as we could not have gone on to Buenaventura in any case, I include this trip in the Panair and or Post Office delays. These delays ran [illegible] the way from five trips where we were 1.00 to 1.[illegible] late in starting, three where the delay was 3.00 hours, 4.25 hours and two trips a whole day late.

These delays resulted, in a considerable number of the cases, in our being forced to make off-schedule overnight stops which cost us a great deal of money to say nothing of the effect on our record for schedule maintenance.

(G5049096)

Unfortunately I cannot tell from the statistics available in Lima how many of these delays resulted from Panair's failure to reach Cristobal on time and how many resulted from delays by the Post Office in working the mail. I am getting this information and will advise you in due course, but I think the records will show that a good many of the delays were on account of late arrival by Panair. The result[illegible] as we are concerned is the same in either

1-7-55 [illegible] GR-8989

[fol. 415] ease. You appreciate, of course, that Panair's DC-3 which comes to Cristobal on the trip via Barranquilla is the La Guaira plane which overnights at Barranquilla. On time arrival at Cristobal by Panair on the indirect trip is therefore contingent on possible delays between any one or more of three sections, namely, Miami Cristobal, La Guaira Barranquilla and Barranquilla Cristobal. This puts a good many contingencies on this trip between Panagra and Miami.

The figures seem to show pretty clearly that the direct Miami/Cristobal schedule is far preferable from the standpoint of dependability and schedule maintenance.

Yours sincerely,

HAROLD J. ROE (signature)

G049097

1-7-57 np
GR-8981

[fol. 416]

GOVERNMENT'S EXHIBIT 179

PAN AMERICAN AIRWAYS, INC.

New York City

COPY

Cristobal, Canal Zone
April 12, 1938

Mr. H. R. Harris,
Vice President
Pan American-Grace Airways
Lima, Peru.

Dear Sir:

In answer to your letter of April 8, regarding arrivals of our planes from Barranquilla on Wednesdays and departure of your plane southbound on the same day, we are

attaching hereto this information which we hope is that which you desired.

Yours very truly,

PAN AMERICAN AIRWAYS, INC.

Signed: T. B. RODENBAUGH
Section Superintendent

Attachment 6049077
cc Northern Div. Supt. CRI
Operations Manager BRO.
GR-8986

[fol. 417]

No. 21

Lima, Peru
April 24, 1938

(April 25, 1938)

Mr. A. Garni,
W. R. Grace & Co.,
NEW YORK

Dear Garni,

(probably means #9)

Referring to my letter #19, page 2, last paragraph

I now enclose letter from Rodenbaugh, Pan American's Section Superintendent at Cristobal, showing exact time lost by Panagra in Cristobal on the trips via Barranquilla since December 1st, last year.

Panair is scheduled to arrive at Cristobal on these trips at 8:00 AM. You will note that they have been on time just once out of nineteen trips. A number of the delays have, it is true, been inconsequential but you will note that the number of trips where they have arrived more than twenty minutes or a half hour late, which is not inconsequential, is very considerable. In a general way the figures appear to show that our delayed departures have been due to Panair's late arrivals rather than to time consumed in working the mail. There are, however, some exceptions where the time consumed in working the mail seems ex

cessive. Note, for example, the three hours and ten minutes on the one trip where Panair arrived on the dot.

I think it better in any discussions you may be having on this subject not to disclose the source of our information.

Yours sincerely,

604-9076

Harold Roe (signature)

enclosure

P. S. My #14 mailed a week ago got in some mix-up and yesterday was returned to Lima. I am mailing it again today.

1-7-55 np
GR-8985

[fol. 418]

Date	*PAA Arrival*	*Panagra Dept.*	*Time in Port*
12-1-37	0822 (1)	1105	2:43
12-8-37	1008	1225	2:17
12-15-37	0824	1030	2:06
12-22-37	0810	1035	2:25
12-29-37	1004 (2)	1200	1:56
1-5-38	0822	1030	2:08
1-12-38	0802	1010	2:08
1-19-38	1146 (3)	1355	2:09
1-26-38	0832	1035	2:03
2-2-38	1746 (4)	0600 2-3-38	
2-9-38	1015	1239	2:23
2-16-38	0826	1105	2:39
2-23-38	0800	1110 (668M)	3:10
3-2-38	0813 (5)	1320 (668M)	5:07
3-9-38	1115 (6)	0615 (668M) 3-10-38	
3-16-38	0813	1033	2:20
3-23-38	0810	0941	1:31
3-30-38	0803 (7)	0630 3-31-38	
4-6-38	0805	1053	2:48

(1) Last arrival S-42 from Barranquilla.

(2) Western Division DC-3 overnighted Maracaibo instead of Barranquilla

(3) Southbound Miami plane overnighted Cienfuegos, Cuba, instead of Barranquilla

(4) Westbound DC-3 overnighted Coro, Venezuela, instead Barranquilla, Colombia. Arrived Cristobal too late for Panagra departure same day.

(5) Panagra NC 668M overnighted Buenaventura March 1 and flew Buenaventura Cristobal early morning March 2, returned Cristobal early afternoon.

(6) Panagra NC 668M unable clear Cristobal before deadline March 9.

(7) Panagra NC 16928 delayed Cristobal account engine trouble, departed 3:31:38

GR-8987 6049078

[fol. 419]

GOVERNMENT'S EXHIBIT 180

Air Mail 4.29
Lima 5.2

No. 25
(HJR Trip Series)
W. R. GRACE & CO.
7 HANOVER SQUARE, NEW YORK

A. GARNI
FIRST VICE PRESIDENT

NEW YORK, April 29, 1938

Harold J. Roig, Esq.

LIMA, Peru.

Dear Roig:

Your No. 24:

I had a fairly long talk with George Ribl yesterday afternoon just about the time I received this letter.

I think we all agree with the views expressed by you and as far as I am concerned I think I would carry out your suggestion irrespective of whether or not we succeed in

the efforts we are again making to have a definite realignment of the management set-up of Panagra.

I have discussed your letter with George and he not only concurs with the views expressed by you but added that he formed this same opinion when he was last in Lima.

The object of my "tete-a-tete" with George was to reopen the discussion I had with Juan in Washington just before you left regarding the management of Panagra. I started off by acquainting George with what I had so far discussed with Juan, telling him that I intended to continue the conversation until we reach an agreement one way or another but that for various reasons it has been impossible to get hold of Juan.

It would be impossible to recite the many points I brought up in my talk with George, with most of which you are familiar anyhow. While I went somewhat into the back history I did concentrate on two major recent incidents

GR-2001 11-4-54 PJS

G016980

[fol. 420] with which neither you nor George were familiar. I told him that when, some two weeks ago, Juan pressed us about five o'clock one afternoon to agree to the general outline of an agreement with Lufthansa, we felt strongly that before opening serious pourparlers the matter should be discussed with the Washington officials, going on to say that Juan registered very definite objections to this but that we insisted in our views as we felt that the most important partner should at least be talked to before we enter into an agreement which might ultimately have far-reaching consequences.

Juan finally sent word that he thought it was a mistake but that if we insisted upon doing it he could not insist in his objections.

All this happened on a Friday and Patchin and I went down the following Tuesday evening, discussing the matter with Harllee Branch, Grayson, and at Branch's suggestion Patchin also discussed the matter with Judge Moore of the Interdepartmental Committee on Aviation, all of which you know from my letter No. 21.

Branch asked me whether Juan knew of my visit and the purpose thereof, and when I answered in the affirmative he said, "Well, Juan has beaten you to it as he came down yesterday and talked to me about this same matter."

Patchin's experience with Judge Moore was similar as Juan had also discussed the Lufthansa negotiations with him.

I told George that this is not the way we do business

GR-2002

G016981

[fol. 421] with any of our partners and that this was just one of many incidents tending to undermine our confidence.

I also spoke to George about another matter in which Juan does not appear to have acted strictly according to Hoyle. You will recall that when some four weeks ago the Post Office Department suddenly decided to advertise the foreign routes coincident with the intention we then had to send in that letter the draft of which you prepared, giving reasons for suspending the 20c cut, we temporarily abandoned the idea of making that presentation. However, as the idea of advertising those foreign routes has been temporarily dropped I revived the idea of presenting that letter, and after having made two or three changes to take care of some of Juan's objections I sent a clean draft to MacGregor, asking him to get Juan's approval. An answer came back that the Post Office Department has no available funds and that this is a very inopportune time to start a discussion along those lines.

The following day I learned that Juan is very active trying to get additional subsidy on one of his routes, which is in direct contradiction with the excuse he gave for not sending in that letter.

I outlined all this to George, asking him how, under the circumstances, we could have the confidence we ought to have in our partner. I talked about the handling of our affairs in the Argentine and a good many other things and wound up by saying that we now make a definite request

that the management of Panagra be turned over to us and GR-2003

G016982

[fol. 422] that I looked to him to take the matter up with Juan.

George made a suggestion of airing all this with the Executive Committee of Panair but I told him I did not think well of this.

At the end of the conversation George asked whether I felt that a realignment of the management duties such as we had in mind would affect Panair's fees. I told him that we had given this no thought and that I assumed Panair would continue rendering the same service they are now rendering to Panagra and that I did not therefore see why there should be any material change in the fee arrangement. I did say, however, that if we were to take over the management, liquidate the uptown office and generally rearrange the staff necessary to control and supervise Panagra's functions, our own direct expense account would probably be somewhat higher, but that this is a matter on which we could no doubt reach an agreement.

The upshot of the conversation with George was that he will have a serious talk with Juan and then get in touch with me again.

There are a number of other matters I would like to write to you about but doubt that I can do so by today's air mail.

Hoping that you are well, I am

Yours sincerely,

(signed) A GARNI

GR-2004

G016983

[fol. 423]

GOVERNMENT'S EXHIBIT 181

September 12, 1938

The discussion regarding New Orleans at Thursday's meeting brought out very graphically the real root of the difficulty between us.

Panagra maintained that the importance of its 6,000 mile international line warranted its seeking an American terminus and that this represented the next step in its natural development and was essential to its permanent security.

Pan American's answer in effect was that Panagra having begun ten years ago as a line terminating at Cristobal should never aspire to anything more and that Panagra should not even consider any development however otherwise normal or proper which might in any way or to any extent prejudice the interests of Panair. It was noteworthy throughout Thursday's discussion that on the New Orleans question none of the Pan American directors made any remarks or suggestions of any kind which would give the slightest indication that they had considered or were prepared to consider to any extent the position and welfare of Panagra as a separate entity in this matter, or to weigh the equities of its position against those of Panair. Their sole consideration was the possible adverse effect of the New Orleans development on Panair and they showed no concern or interest in the possible beneficial effects of this development for Panagra. Their only concession to Panagra's welfare was to promise *at this late date* that Panair would *in the future* give Panagra a satisfactory service to Cristobal, a thing which Panair should have been doing for years, and which up to now they have consistently failed to do in spite of repeated pressure from us for such service.

We cannot accept the theory that Panagra is not entitled to normal development and we are not impressed with Pan

G042028

GR-9009
1-3-55 nfr

[fol. 424] air's *promise* only at long last *after all these years*

and only under all this pressure to give us an adequate connecting service at Cristobal.

The theory that Panagra must never expand or develop beyond its original route is not a new one. We have been battling against this theory of our partners for many years.

1. Our route as originally laid out did not include Bolivia, that being the only South America West Coast country not provided with airmail service. From early in our history we began pressing the idea of a Bolivian extension. We received no encouragement from our partners. Finally, some two or three years ago, a point was reached where an opportunity presented to extend to Bolivia and receive a subsidy from the Bolivian Government for so doing. Prompt action was necessary to secure this subsidy and prevent its going to a German company. Our partners' consent could not be secured, with the result that it was necessary for W. R. Grace & Co. actually to enter into an agreement in its own name to operate the La Paz Arica service. Having secured this contract with its corresponding Bolivian subsidy equal to $1,200 per month, we offered it to Panagra without any compensation to ourselves for securing the concession or even for our expenses. In due course our partners acquiesced in Panagra's accepting the contract and the line has been successfully operated as a part of Panagra's route ever since.

2. When our line between Santiago and Buenos Aires was originally laid out it followed a practically straight line between these points. There was little way to way business between these points. A few years ago with the additional speed and payload provided by the DC2s it was felt that we could advantageously divert the line about 80 miles so as to pass through Cordoba, a city of about 250,000, and thereby improve our way to way traffic. This seemed like a perfectly natural and very simple development and we

[fol. 425] anticipated no difficulty in securing our partners' approval to so obvious a step. In this, however, we were disappointed. When we suggested this development we were told that the Argentine was Pan American territory

except on the straight line Mendoza Buenos Aires and that they could not agree to our going through Cordoba unless we compensated them for some part of the purchase price of Nyrba. At the time Panair purchased Nyrba, the latter operated a line from Buenos Aires through Cordoba to Salta; Panair after the purchase promptly discontinued this service and never operated it thereafter. We were told, however, as we are now with respect to New Orleans, that they were planning to operate through Cordoba Salta and that if we went to Cordoba we would take the most attractive part of this traffic. We did not deny that the Argentine was Pan American territory—of that there was no question under our East Coast West Coast understanding. We did contend, however, that since our partner was not operating to Cordoba or Salta and to the best of our belief had no real intention of doing so, and since as things had developed the logical and effective way to serve Cordoba and Salta was for Panagra to run this service, that our partners should not block it by a dog in the manger attitude. To make a long story short, our partners finally agreed to permitting Panagra to take in Cordoba upon the understanding, however, that if we should later extend to Salta we would compensate Panair in some reasonable amount based on the proportion of the purchase price of Nyrba which corresponded to the Buenos Aires Salta service, and thus, after a long struggle and on this basis, the second development of Panagra's route was made.

3. Sometime later it became apparent that in order to anticipate German competition, strengthen position in the Argentine and Bolivia and to provide an alternate Panagra

[fol. 426] route to Buenos Aires to that through Chile, we should run a line from Cordoba north through Tucuman and Salta to La Paz in Bolivia and thence connecting with the main line at Arequipa. After the usual struggle our partners' consent to this was obtained leaving the amount to be paid them for later determination and without their assistance we secured U.S. mail subsidy over this diagonal route between Cordoba and Arequipa. Our idea was always that the payment to Panair should be nominal. They originally

mentioned a figure which while not nominal might at least have been a basis for discussion but they soon ran this up to an exorbitant and wholly unreasonable amount. Our idea that the payment should be nominal was based on the fact that Panair had paid nothing to Nyrba for the Cordoba-Salta service and had never operated the service and had no real intention of doing so. There was no way that this line could be hooked up with Pan American's East Coast route. As a strictly local Pan American line in the Argentine it could never have been profitable because it could never have secured a U. S. subsidy. There was, therefore, no profitable way for Panair to operate this line. On the other hand, operated by Panagra it could be and was made a part of their international service and, therefore, could be and was subsidized by the United States and could be made a profitable service. Thus Panagra was in a logical position to develop this line and Panair, through their 50% interest in Panagra, were in position to benefit from such development of the line which otherwise could be of no possible interest to them. The statement that Panair in the purchase of Nyrba paid nothing for the Cordoba-Salta service is based on the well-known fact that the reason why Pan American purchased Nyrba was to secure a United States mail subsidy to Buenos Aires on a satisfactory basis, which would have been impossible had they had to enter competitive bidding with Nyrba for this route. They purchased Nyrba to eliminate this competition for the East Coast mail contract to B.A. The price they paid to Nyrba was based on GR-9012

G042031

[fol. 427] this consideration and on this consideration alone and would not have been a dollar less if the Cordoba-Salta service had not been included and was not a dollar more because it was included.

4. The next question which arose in connection with Panagra's normal development was the connection with Cali. When the northern section of Panagra's line began to be operated with S-43s in place of S-38s, it became feasible to divert the overwater line down the West Coast, inland to take in Cali on the Panagra route. Cali is the principal commercial city of western Colombia; there is no question

that it is on the western side of South America and therefore within Panagra's territory and it is obviously a point which should be served by Panagra. In opposition to the Cali development, Mr. Trippe brought up the whole question which was discussed at Thursday's meeting regarding original Colombian situation.

Our view regarding this is as follows:

When the East and West Coast lines to South America were originally established, it was necessary to have operating and landing rights on both coasts of Colombia. Pan American sent their Mr. Wilcox to Colombia as joint representative of the two companies to arrange this for both companies and Panagra contributed $20,000 toward the expense of this mission. When the job was finished, we had the right to fly over water down the West Coast of Colombia touching at Buenaventura and Tumaco, but no right to fly inland and Pan American, as we then understood it, had the right to fly over water down the East Coast calling at Barranquilla. We were not told directly or indirectly, nor was it in any way even remotely intimated to us, that Panair had in the course of the same negotiations purchased for their own account a large interest in Scadta, which at that time they considered a very fine investment, nor were we given any opportunity to participate in that purchase. Mr.

GR-9013

G042032

[fol. 428] Trippe's statement at Thursday's meeting that the matter was so confidential that it could not be intelligently recorded in Pan American's minutes and that the directors present at the meeting when it was discussed were warned not to mention the matter outside of the board room, makes it perfectly apparent that there was no intention that we should know anything about this transaction, much less be consulted regarding it or offered a participation in it. The first knowledge that we had that Panair had an interest in Scadta was long afterwards when the item appeared in their balance sheet and we did not know what this interest was until the facts appeared in the Black Committee report. The first time we were offered any participation in the venture was in a discussion between Mr. Trippe and

Mr. Roig in London some three years or so ago when the Cali diversion was under discussion. By that time, and increasingly since, it was apparent that the Scadta investment was attended with many headaches and was not the attractive investment it was originally thought to be.

5. After our partners had reluctantly consented to our diverting our line to Cali, Grace arranged the necessary permit with the Colombian Government and with the United States Post Office. The line was operated for some months when, for technical operating reasons, it was decided to discontinue it temporarily. With the advent of DC3s about two years ago, it became practical to operate overland across Colombia and resume the Cali service on this route. Overland operation obviously involved many advantages to Panagra, but our suggestion of this change in the route met again with vigorous opposition from our partners. This opposition again was for months based on no consideration except possible injury to Scadta (although at the last minute other objections were raised also) and was coupled with renewed pressure that we purchase an interest in Scadta, which we declined to do. Protracted discussions ensued on

GR-9014

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[fol. 429] the question as to whether the line should be permitted to call at Medellin, based on whether this was to be considered on the East Coast or West Coast of South America. We were never able to reach an agreement on this point and were finally able to start the Colombian overland route only on the basis of omitting (without prejudice to the above question) the call at Medellin and making Cali our only stop in Colombia. Pan American's directors refrained from voting on the Panagra resolution authorizing this change of route. Grace had to do most of the work in making the surveys, negotiating the change of route with the Colombian Government and arranging the matter with the United States Post Office.

6. For years Panagra has been struggling for adequate connecting service between Miami and Cristobal. For several years it had been apparent that a direct one-day service between Miami and Cristobal was practicable. It had also

become obvious, and was not disputed at Thursday's meeting, that such a connecting service was necessary to Panagra's welfare. Panair resisted this on every conceivable ground and only beginning December 1, 1937, under the combined pressure of ourselves and the United States Post Office, did they finally agree to running one service a week direct one-day Miami Cristobal. Experience since then has shown that this service is entirely feasible and gives a far superior connection to the service by way of Barranquilla, which is the only connection with Panagra they still provide on one of our two weekly trips. In arriving at any complete understanding of Panair's reasons for so long resisting a reasonable Cristobal connection it is impossible to ignore the following translated extracts from Scadta's Annual Report for the year 1936:

"The transportation of air mail on the interaational lines which leave Barranquilla and Buenaventura for all countries of North and South America, has been

GR-9015

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[fol. 430] speeded up by the new schedule of Pan American Airways, Inc., in accordance with which flights between Miami and Barranquilla are made in one day by daylight. In this way an airmail letter is carried in less than 24 hours from New York to Barranquilla, and vice versa, and in a day and a half between New York and Bogota. This new development in the transportation of international air mail has resulted in a considerable increase in the volume of air mail carried by both companies.

We are happy to acknowledge the full spirit of cooperation shown at all times by the high officials of Pan American Airways, inc., with reference to establishing and maintaining the most effective international connections between Colombia and other countries. To this acknowledgment must be added the fact that the services mentioned are being rendered with great efficiency and that Colombia can well be proud, not only of having the best local air service in South America but also the most efficient international connections."

It thus appears that every development of Panagra's route has been made at the instigation of the Grace directors and under great pressure from them and has had to encounter the vigorous opposition of our partners. Pan American, which has been conspicuously aggressive in developing their own lines, has been conspicuously reactionary in endeavoring to prevent Panagra from having any development at all. On every question which has arisen the predominant thought in their minds has been possible prejudice to Panair no matter how slight or how remote and at no time has there been any disposition to consider the rightful progress of Panagra or even fairly to weigh the relative equities of Panagra in any particular situation against those of Panair. Through the Scadta situation at the northern end of the line and the purely artificial and unnatural control of the Buenos Aires office at the southern end of the line, Panair has been in a position to follow a continuous obstructionist policy with regard to Panagra's development and has followed this policy on all occasions. Their position regarding New Orleans is no different than it always has been regarding every other development of Panagra's route.

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[fol. 431]

GOVERNMENT'S EXHIBIT 182

EXECUTIVE COMMITTEE

SEPTEMBER 8, 1938.

"The meeting thereupon considered a conference which had been held with officials of W. R. Grace & Co."

EXECUTIVE COMMITTEE

SEPTEMBER 20, 1938.

"The meeting considered the following:

(c) Series of conferences with W. R. Grace & Co., including their proposal relating to extension of Pan American-Grace Airways, Inc. beyond its territory to New Orleans, the request that the management of Pan American-Grace Airways, Inc. be transferred to W. R. Grace & Co. and the offer of that Company to supply additional capital for the suggested extension thereby assuming voting control of the Company."

EXECUTIVE COMMITTEE

OCTOBER 4, 1938.

"Mr. Trippe reported to the meeting on the following:

. . . . . .

(e) Further conferences with officials of W. R. Grace & Co."

BOARD OF DIRECTORS

DECEMBER 28, 1938.

"Mr. Trippe reported to the meeting on the status of negotiations with W. R. Grace & Co. It was the sense of the meeting that it would not be in the interest of our stockholders for our directors to authorize an application by Pan American-Grace Airways, Inc. to extend north of Cristobal in competition with Pan American Airways, Inc."

[fol. 432]

GOVERNMENT'S EXHIBIT 183

PAA PAN AMERICAN AIRWAYS SYSTEM

GENERAL OFFICES—CHRYSLER BUILDING
NEW YORK CITY

OFFICE OF THE
PRESIDENT

file

Rec 9/26

September 24
1 9 3 8

Mr. Adolf Garni
W. R. Grace & Company
7 Hanover Square
New York, N. Y.

Dear Adolf:

The storm raging Wednesday during our conference that morning and at luncheon struck my home at East Hampton that afternoon. Fortunately the children and the members of my household escaped, but the house was pretty badly wrecked. Thursday and most of yesterday I was tied up with personal problems at East Hampton, and so was unable to get on to the Pan American-Grace question with all our people until this morning.

Your office reports that you are out of town today. Inasmuch as I expect to be tied up with Mr. Noble and the members of the C. A. A. safety board on Monday and possibly Tuesday morning, I want to take this opportunity to let you know that our Executive Committee does not feel that the figure you mentioned of $1,250,000 for our interest in Pan American-Grace is at all satisfactory.

Inasmuch as you stated this would be Grace and Company's maximum offer there appears to be no solution of our difficulties in this direction, and no useful purpose would be served by further negotiations on the part of the sub-committee appointed by our respective Directors relat

ing to selling you our airline interests in the territory under discussion. In other words, we are both still confronted with the problem arising out of Mr. Iglehart's suggestion that Pan American-Grace be extended to New Orleans and the management of our joint company be taken over by Grace.

GR-7574 G032911
12/15/54 aa 216

[fol. 433] The other possible solution you mentioned Wednesday of our making an offer to buy Grace's interest in Pan American-Grace is one we are not enthusiastic about. For one thing, Pan American is confronted with a substantial new equipment program which complicates the question of taking on further capital commitments at this particular time.

Nevertheless, our Executive Committee, as you suggested, has considered the question of making you an offer for your interest in Pan American-Grace. Pan American would be willing to pay you a figure substantially in excess of the amount you have offered us for our half interest in the company. If your board would like to have us submit a definite figure with a view to purchasing your interest, we would be glad to do so.

I do hope that you find your house at Montauk escaped serious damage from the hurricane. Mine was pretty badly messed up.

Sincerely,

(signed) Juan

GR-7575 G032912
217

[fol. 437]

GOVERNMENT'S EXHIBIT 185

W. R. GRACE & CO.
7 HANOVER SQUARE, NEW YORK

OFFICE OF THE PRESIDENT

November 15, 1938

C. V. Whitney, Esq.,
230 Park Avenue
New York City

Dear Mr. Whitney:

Since meeting with your Executive Committee we have continued to seek a solution of our common problem.

We have considered various alternatives to the route previously discussed with you in an effort to work out a plan in harmony with your ideas. Mr. Roig and Mr. Douglas Campbell have made a trip to Mexico and Central America in connection with the suggestion of your Committee that a solution of the matter might lie in our purchasing your properties there as well as your half of Panagra.

Regarding the right of Panagra to come through to an American terminal, I have given a great deal of thought to your indication that ethically we were not entitled to do so. I have weighed this question from every standpoint and have taken independent advice and counsel to be sure that we were taking no action which could give any just cause for criticism on this score. I have reached the conclusion, and those whom I have consulted are without exception of the same view, that Panagra is not only ethically entitled to come to an American terminal but that its duty in the public interest is to do so.

I am particularly anxious to guide our action in the friendliest possible course and in that spirit we have worked

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GR-2246
11-1-54

[fol. 438] out a new plan for bringing Panagra to a United States terminal and greatly improving the present schedule. We are prepared, if need be, to protect Panagra's position by going ahead with this in our own name. Before doing so, however, I would like to have an opportunity of discussing the plan with you as I believe you will see the wisdom of Panagra's undertaking it.

If you do not object, I would like to treat this whole matter with you personally. If you will obtain authority from your Board, I will do so also, so that we may then act to end this endless discussion which has doubtless been quite as unattractive to you as it has been to me.

Yours sincerely,

(signed) D. S. IGLEHART

G013109

G-2247

[fol. 439]

GOVERNMENT'S EXHIBIT 186

handwritten

November 29, 1938

Dear Sonny,

I turned over to Roig the letter that I received from you and he has handed me the attached memorandum. It might be well for you to read this carefully so that you may see clearly the other viewpoint. Your letter and this memorandum must make it evident to you, as it has to me, that there is a great divergence of view in the Board of Pan-Grace, and that there is little hope of bringing these elements together. I feel, however, encouraged to think that you and I may reach an agreement provided you can come to see that it suits your interest to give Pan-Grace its logical development under our management. I will tomor

row put before you some facts and figures bearing on this question.

Yours sincerely,

(sgd) D. S. IGLEHART

C. V. Whitney, Esq.,
435 East 52nd Street
New York City

G013142

GR-2237
11-1-54
RLA

[fol. 440] November 29, 1938

MEMORANDUM TO MR. IGLEHART:

Mr. Whitney's letter of November 19th received Nov 23rd

The letter states

"With the approval of all concerned, however, the discussions to date have been with our Executive Committee and a committee of your Directors"

The facts are:

The discussions began between you and Mr Trippe, were continued with Pan American's Executive Committee and ended with four Panagra directors, Trippe, Rihl, Garmi and myself. The net result was a stalemate and when yours of November 15th was written it was quite in order to seek a fresh method of approach.

The letter states

"the question of Pan American selling to Grace was abandoned before the trip of Mr. Roig and Mr. Campbell to Central America ....."

"as you know, we were actually willing to pay you a sum considerably higher than your maximum offer to us for our half interest in the joint company."

The facts are:

Mr. Trippe's letter to Garmi of September 24th while stating that "no useful purpose would be served by further

negotiations" regarding Mexico and Central America did not definitely withdraw the suggestion. Mr. Trippe never put any price on these properties or gave us any information about them.

Despite Garni's unequivocal oral request prior to September 24th that Pan American make an offer for our half of Panagra they have never made us an offer or indicated any definite figure they would pay.

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GR-2238
11-1-54
RLA
[fol. 441] *The letter states*

"As to the right of Panagra to operate north of Cristobal, I must repeat that we are entirely unable to see how you have either a moral or a legal right to insist that this should be done."

The facts are

The question of "legal right" has not heretofore been seriously raised. There is no legal conclusion to be drawn from the letter of August 1928 or from the territory covered by Panagra's original route that it was to be forever confined to that territory. The original route has already been modified on several occasions and normal and logical growth and development with a view to best serving the public interest is obviously Panagra's legal right and duty. Except for Panagra's undertaking not to operate on the East Coast of South America in exchange for Pan American Airways' similar undertaking with respect to the West Coast, there is no agreement or undertaking of any kind, express or implied, restricting the operations of either company or of W. R. Grace & Co.

The letter states

"It was certainly not your intention or ours that this new company was organized to compete with Pan American Airways then or at any other time for local or through traffic between the United States and Cristobal—a territory which we have always served."

The facts are:

Panagra was organized for the purpose of providing and maintaining an air service to the West Coast of South America and B.A. in the form that would at all times best serve the public interest.

But at that early date, ten years ago, there was no intention one way or the other as to Panagra's coming through to a terminus in the United States. The point was simply not present in anybody's mind any more than at that time Pan American had any intention of flying the Pacific or the Atlantic. But from this complete absence of any affirmative intention one way or another at that time, there cannot

G013144

GR-2239
11-1-54 RLA

[fol. 442] ten years later be imputed a negative intention prohibiting a course which experience and new conditions now indicate to be in Panagra's interest and in the public interest.

So far as competition with Pan American is concerned, the extent and the whole extent to which that was limited is defined by the East and West Coast agreement above referred to. The objection to Panagra's coming to a U. S. terminal in the Gulf on the ground of competition with Pan American is based on the assumption that Pan American control all routes from the United States to Cristobal. This was not a fact at the time Panagra was organized and it is not a fact today. The fact that Pan American then had and now have two relatively indirect routes to Cristobal and Brownsville and Miami gives them no exclusive title or claim to a direct route to Cristobal from a Gulf port such as we have in mind.

After all the traffic to Cristobal and the West Coast of South American and B.A. which Pan American have been serving badly for years in favor of other more lucrative business is business which is entitled to be well served and which cannot be kept in a step-child position forever. Not only is it unreasonable that matters of large importance to Panagra should always be sacrificed to Pan American's

interests, no matter how slight, but it is even more unreasonable that the public interest in the best possible air service to the West Coast and B.A. should be sacrificed because of some possible small loss of business to Pan American.

As Mr. Branch stated at a hearing before the Civil Aeronauties Authority in Washington some months ago, this whole question cannot be approached from the standpoint of relative advantages to the two companies but must be approached from the standpoint of the public interest. And this, as he stated, includes not only the question of which

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[fol. 443] course will result in the best service but also the question of avoiding monopolistic control by one company of all U. S. foreign air routes. So long as both of these companies derive their main support from the U. S. Treasury the question of public interest is paramount and other questions must yield to that consideration.

The letter states

"We are, of course, interested in doing everything possible to improve Panagra's service and schedules not only in the public interest but to build up our through traffic as an end-on connecting air carrier."

The facts are:

The record unfortunately shows a primary concern in the development of routes in which Pan American has a 100% interest or an 84% interest (Scadta) and only a very secondary concern in Panagra in which they have a 50% interest.

As long ago as an article appearing in the New York World Telegram of September 5, 1934, based on an interview with Mr. Trippe, this point of view appears. After describing the performance record of Pan American, the article continues:

"This—safety and efficiency—has been their experience on the east coast of South America. The west coast routes present a different situation. There the lines

> are owned 50-50 by the Grace Lines and Pan American. Because of this set-up neither side has control. Whether this has brought about a condition of less efficiency it is a fact that the major crack-ups in South America have occurred in the Andean sector."

Neither prior to that time nor at any time since had Mr. Tripp travelled over any part of Panagra's line.

Panagra has from the outset paid Pan American each year for services rendered to Panagra. These services include publicity in the United States. In spite of this, Panagra, has, except on a few isolated instances, never received adequate or appropriate publicity through this channel. On the contrary by distortion of maps and by resort to arbi-

[fol. 444] trary charts such as those now appearing in the Pan American System timetable, persistent effort has been made to conceal the longer East Coast route and to ignore the fact that Panagra's present schedule between Miami and B.A. is 4½ days southbound as against Pan American's 6 days. The most recent illustration of the treatment accorded Panagra in this connection is in the exhibition of Pan American's latest film just now being shown to travel agencies and others to stimulate air travel to South America. No one looking at this presentation could escape the conclusion that the east coast route was the way to go to B.A. and only by close attention would one learn from this presentation that Panagra even ran to B.A. If we had not so repeatedly called these shortcomings to their attention and been assured, without result, of their correction it might be possible to regard them as unintentional.

The inadequacy of the Miami Cristobal service in the past and today is admitted. The reason for this is to be found in the following statement in Scadta's Annual Report for the year 1936:

> "We are happy to acknowledge the full spirit of cooperation shown at all times by the high officials of Pan American Airways, Inc. with reference to establishing and maintaining the most effective international con-

nections between Colombia and other countries. To this acknowledgement must be added the fact that the services mentioned are being rendered with great efficiency and that Colombia can well be proud, not only of having the best local air service in South America, but also the most efficient international connections."

While Pan American have been conspicuously aggressive in developing their own lines they have been conspicuously reluctant to permit Panagra any development at all. Every extension of Panagra's route has been undertaken at the instigation of the Grace directors and in the face of Pan American's opposition. Their present attitude is no different from the one we have had to face in every development of Panagra's route. Only with the very greatest difficulty

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[fol. 445] was Panair's acquiescence secured to Panagra's extension to Bolivia, to their making the Cali call, to the Cordoba diversion, to the Diagonal service and to the overland route through Colombia. Wherever Panagra has wished to develop, opposition has been raised on the ground that Panair had some superior rights. Bolivia is the only instance where their opposition was not based on this ground. In Colombia some interest of Scadta or Tanca had always to be given preferential consideration. In the Argentine it has been a dog in the manger attitude for years. Unmitigated self-interest, and pretty unenlightened self-interest at that has guided their policy on every major question which has arisen regarding Panagra.

The letter states:

"In fact you will recall, that Pan American's proposal of last June to maintain a second direct service from Miami to the Canal Zone via Jamaica at a low rate of compensation, although acceptable to the Post Office Department insofar as Pan American was concerned, was held in abeyance by the Department until Panagra could arrange to provide an improved schedule along the west coast."

The facts are:

The proposal for a second direct service from Miami to the Canal Zone did not originate with Pan American but with the Grace directors. Pan American agreed to it only after many months of pressure from us. When last June they finally agreed to running this second direct service their agreement was not simply to make their indirect service a direct one but was conditional on various rearrangement of their services, the net result of which was an additional expense to the Post Office Department of $90,000. But for this additional expense there would have been no question of the Post Office Department holding the service in abeyance. Not only this but Pan American did not agree to our pressing for the second direct service even on this condition until after they had rearranged certain of their other Caribbean services (unrelated to the Miami Cristobal service) on a basis involving considerable additional pay-

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[fol. 446] ments to them by the Post Office Department making acquiescence of the Department in the further expenditure involved in this second direct service more difficult.

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[fol. 447]

GOVERNMENT'S EXHIBIT 187

W. R. GRACE & CO.
NEW YORK

December 31, 1938

D. S. Iglehart, Esq.,
P. O. Box 1268,
Delray Beach, Florida

Dear Mr. Iglehart:

PANAGRA

I have been thinking over some of the details which lie behind the general basis of proposed settlement and have

been wondering how far it suits to try to get some of these in the form of more specific agreement before we actually close the proposed compromise. I would be glad to have your views as to how best to approach this, having in mind that perhaps the best time to get all these details agreed upon may be while the general settlement is being concluded rather than afterwards when resistance on relatively minor points may develop.

Back of the memorandum and not referred to therein are, of course the matters of Medellin and the Argentine. Trippe indicated to me that he was prepared to discuss with us the sale of UMCA to Panagra, thus giving us an entry to Medellin. Agreement on the price, however, is not likely to be easy. In connection with the Argentine, the settlement we should have should include Pan American's release of any claim to money payment in connection with the Diagonal and satisfactory arrangement regarding the B.A. office which should include Panagra's at least taking over the management of that office if not the actual ownership of it and failing this, reorganization of the personnel of that office. Trippe has assured me of his disposition to settle these matters to my satisfaction but nothing specific has been agreed upon.

GOODALE

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[fol. 448] Turning now to the particular numbered paragraphs of the settlement memorandum, the following points arise:

1. Our taking over the management should involve transfer of the Panagra personnel to 7 Hanover Square and the various changes in that personnel which we have discussed. Additionally, I would like to see Campbell given some definite status, his position and perhaps title, corresponding to that of Assistant to the President.

2. Adequate direct connecting service between Miami and Oriental should include at least the following:

all of which except item "(a)" have been discussed with Trippe and agreed to by him:

(a) Immediate inauguration of a second direct service with present equipment and irrespective of whether or not Pan American can secure subsidy for this extra service. Trippe promised this at a lunch last September but I have not discussed it with him recently.

(b) Inauguration of a direct non-stop service with Boeing 307s as soon as they are available.

(c) Working out in connection with the direct non-stop Boeing service a schedule which will make New York to Cali in one day and the schedule in connection with the direct service to be worked out to our satisfaction with the primary objective of accomplishing this purpose; The President of Panagra being authorized to handle this schedule discussion with the CAA.

(d) The direct non-stop Boeing Miami/Cristobal service to be increased from twice a week to three times a week if Panagra is granted a third service.

(e) The connecting service with Panagra Cristobal to be called the "Panagra Special", "South American Special", "South American Express" or some other appropriate name earmarking it as a Panagra service, and to be publicized as such. The idea here is that this connecting plane should be handled as far as publicity is concerned, in much the same way as the Seaboard, for example, publicize The Orange Blossom Special as their fast train from New York even though they run over the Pennsylvania right of way for part of the trip. In other words, to all intents and purposes so far as the public is concerned, this connecting plane is to be part of the Panagra service.

[fol. 449] (f) I have also discussed with Trippe the possibility of working out some arrangement if desirable at some future date under which Panagra might use their Boeing 307s between Cristobal and Cali. He has expressed general acquiescence in this idea but no specific plan has been discussed.

3. I consider it of the very greatest importance that the arrangement be discussed with the CAA not only because of the previous discussions we have had with them but because of the provision by which Pan American guarantees satisfactory service and undertakes to turn over the route to Panagra if they do not furnish it. This should go a long way towards satisfying the CAA that the previous unsatisfactory service will not be continued. I see no possibility at all of the CAA objecting to the management arrangement but if for any reason they do object to this or any other part of the plan, I think that now rather than later is the time to work it out to their satisfaction.

4. The way this sentence is worded is evidently designed to maintain Pan American's proportion of the total service fees, including the $5,000 differential. While I realize that it may be necessary, for obvious reasons, to agree to this, it does seem a little strong in view of the fact that the new arrangement in its very essence contemplates increased services on our part and the wording as it stands would require the same proportion of service fees even though the proportion of services rendered, while satisfactory in quality, were greatly reduced in quantity. It would, therefore, be a little more accurate if we could add at the end of this sentence, the words "and renders a corresponding proportion of services". I have explained to Trippe that my idea of satisfactory service on their part would be that their departments be fully and in every respect available to Panagra in the same way that they are now available to Panair and that they render in every respect the same kind of service

to Panagra that they render to Panagra, their department heads carrying out whatever instructions they receive from Panagra and responding to Panagra therefor.

Sincerely yours,

(signed) H. J. Hoo

GR 7632

[fol. 450]

GOVERNMENT'S EXHIBIT 188

C. V. WHITNEY
230 Park Avenue
New York

January 17, 1939

My dear Mr. Iglehart:

We had a very long meeting of Panam Executive Committee this afternoon at which, to my great distress, I found the situation still at odds, mostly in an effort to define the meaning of "adequate service".

I feel now that the best solution would be one you originally made to me. In other words, let us take the memorandum you and I wrote (with such minor changes as seem to be advisable and necessary), and then leave every phase of it to be arbitrated by yourself and me.

In other words, broadly speaking, we will turn over the Presidency of the Company to you and agree to give you an *adequate connecting service*. The *interpretation of "adequate"* is to be left to you and me. If we fail to be able to agree, Panagra will be allowed to apply for a certificate on the route we, of course, reserving a right to defend our position.

This is my interpretation of what we have to agree to accomplish, and if it is yours, I will give my best effort to seeing that it is put in effect immediately. This would eliminate the necessity of trying at this time to define what was meant by an adequate service which I thought you agreed was a very difficult thing to do at this time, in this type of business and which is certain to be controversial with a group of men sitting around a table. On the other hand, I am sure that you and I could always reach a fair solution.

I believe Mr. Trippe and Mr. Roig have gone over the minor changes in wording which were necessary in paragraphs 1, 2, 3, and 4 of our memorandum. If paragraph 5 were changed to cover any suggestion above, I would be enthusiastic to see the plan put into effect at once. If this is satisfactory to you, I suggest that you redraft the memo, and have Mr. Roig present it to Mr. Trippe as your final word on the matters.

I can be reached at Hobe Sound, Florida, 2901 Thursday evening. I am now convinced that our future relations depend on this solution to the matter.

I remain,

Sincerely yours,

(signed) Sidney Weinberg

(handwritten)

P.S. I do not believe it is your intention to impose a service upon us which might be impractical or unsound economically, and to commit the Companies to such a course would be disastrous. Let me repeat, however, that it is our intention to give you the best service we can reasonably be expected to give, and if you and I cannot agree that this is being done, I am willing that you should have the right to apply to paddle your own canoe.

Mr. D. Stewart Iglehart

(continued)

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[fol. 451]

GOVERNMENT'S EXHIBIT 189

January 19, 1939

C. V. Whitney, Esq.
Hobe Sound,
Florida

Dear Sonny,

I have just received your letter of yesterday.

I have been over the minor changes which Mr. Roig and Mr. Trippe suggested to the memorandum that you and I agreed upon. They seem to be in order and Mr. Roig is taking to Mr. Trippe a clause "5" which I have endeavored to revise, as per attached, in the sense of our telephone discussion. As you indicate, Mr. Roig will take this to Mr. Trippe as my final word in the matter, and I hope that now we may proceed to carry out the arrangement.

As I indicated to you on the telephone, we will consider the memorandum regarding adequate service, which Mr. Roig and Mr. Rihl had tentatively agreed upon, as merely an indication of a general viewpoint and neither will consider that it is to be followed to the letter.

The thing that pleases me in this whole matter is that your mind and my mind have met; that we understand exactly what we are driving at; and, I feel entirely confident that we will see that all friction is eliminated and that everyone bends his efforts to constructive accomplishment.

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[fol. 452] the results of which are bound to be successful.

Yours sincerely,

(sgd) D. S. ELLEHART

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[Vol. 453]

GOVERNMENT'S EXHIBIT 190.

Copy of signed original

Discussion with Panair 6-1-39

1. One of the Grace directors of Panagra (who shall also be a director of Grace) will be elected President of Panagra and placed in responsible charge of the management of the Company. If at any time the Company's affairs are not being conducted to Pan American's reasonable satisfaction, then the President will resign.

2. Pan American will inaugurate on or before April 1, 1939, a second direct trip between Miami and Cristobal and will maintain an adequate direct connecting service between Miami, or some other U. S. port agreed upon, and Cristobal connecting with Panagra's through mail schedules. If at any time Pan American shall not comply with the foregoing, then Pan American will cause its directors on the Board of Panagra to take such action as will permit Panagra's applying to the C.A.A. for a certificate to operate this connecting service, provided that, irrespective of any determination made as provided in paragraph 4, Pan American shall not be in any way precluded from maintaining before the C.A.A. that its service is satisfactory and should be continued and that no other service is required in the public interest. With the exception of the second direct trip between Miami and Cristobal above referred to, Pan American shall not be obligated to operate any schedules and services not designated by the Post Office Department as mail schedules but will use their best efforts to have designated as mail schedules any additional trips required to make connection with any increase in Panagra's through mail schedules.

3. It is agreeable to the parties that Pan American-Grace shall continue to utilize the respective services of Grace and Pan American and pay service fees in the same proportion as presently allowed, provided that the services

to be rendered by the respective parties are satisfactory to Pan American-Grace.

4. Any disputes arising under this general plan and every phase thereof, including, without limiting the generality of the foregoing, determination of "Pan American's reasonable satisfaction" referred to in paragraph 1 above and of "adequate direct connecting service" referred to in paragraph 2 above, which cannot be settled by the Board of Panagra, shall be determined by Messrs. D. S. Iglehart and C. V. Whitney. If Mr. Iglehart or Mr. Whitney shall be unable to act, or unable to agree in connection with any matter arising under the foregoing paragraphs, then, unless otherwise agreed between Grace and Pan American, such matters shall be determined by arbitration by an arbitrator or arbitrators appointed by Messrs. Iglehart and Whitney, or failing such appointment, by three arbitrators, one appointed by Grace, one by Pan American and a third by these two, and the party adjudged in default shall, at the discretion of the Arbitrator, be given such reasonable time to correct the default as the Arbitrator may fix.

5. This agreement shall continue to February 1, 1944, and thereafter until cancelled by Pan American or Grace on six months' written notice.

AGREED—February 14, 1939.

W. R. GRACE & Co.

By (Sgd) HAROLD J. ROIG—Vice-Pres.

PAN AMERICAN AIRWAYS CORPORATION

By (Sgd) J. T. TRIPPE, Pres.

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[fol. 454]

GOVERNMENT'S EXHIBIT 191

NEW YORK, December 28, 1940.

MEMORANDUM

When I first learned of the American Export Lines' interest in a Caribbean service, at that time reported to begin at New Orleans and stop at Panama, my immediate reaction was that such a move by a third party constitutes a definite danger, as if such third party were to operate this service they could not in practice stop at New Orleans, nor at Panama, and in the course of a relatively short time Panagra would be definitely parallelled.

Since I formulated this view I have learned that the American Export Lines have acquired the Taca Line in Central America and appear to have a very definite program to extend their operation down the West Coast of South America and up the East Coast. In my opinion the establishment of such a third line would be highly destructive as in the long run the United States Government could not afford to pay sufficient subsidy to two lines to enable each line to operate with the present high degree of efficiency.

Neither line could show a reasonable return on its investment and could therefore not afford to supply all the modern safety improvements, etc., nor could it afford to replace its equipment by more modern, faster and larger craft.

I feel strongly, therefore, that the Export Lines' efforts

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[fol. 455] to maneuver themselves into aviation in South America constitutes a real danger from the standpoint of the progress of American aviation, and the future development of Panagra will, in my opinion, depend on the Export Lines' success or failure in their present attempt.

It is of paramount importance, therefore, to show that it is not in the public interest to encourage a newcomer in that trade.

However, I believe that even by marshalling the most convincing arguments for this purpose it will be very difficult to convince some of those in power that to give this new service to Pan American Airways would not tend to further strengthen what some people believe to be a monopoly.

Assuming that I am right in my reasoning up to this point, it seems to me that Pan American Airways and W. R. Grace & Co., as joint owners of Pan American-Grace Airways, have a better chance to defend the future of Panagra by combining their efforts and show cause why Panagra, which now has its terminal at the Isthmus, should extend its service to New Orleans, there to connect with Eastern Air Lines. I further believe that such an application may even be stronger if it were supported by Eastern Air.

Whereas Eastern Air has hitherto definitely frowned upon any idea of going beyond the United States borders and still does not want to have any direct responsibility in what they call foreign operations, I believe that they realize that their own business would be definitely preju-

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[fol. 456] diced if the American Export Lines or some other third party were to establish a service between New Orleans and Panama, and for this reason I feel that Eastern Air would be willing to support an application in the above sense, making itself a minority partner in an application between Pan American Airways and Pan American-Grace Airways.

The many advantages accruing to Panagra and Eastern Air Lines by combining their facilities in such a service are obvious and it is my opinion that no time should be lost in moving this whole question with Washington.

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[fol. 457]

GOVERNMENT'S EXHIBIT 192

EXECUTIVE COMMITTEE,

DECEMBER 30, 1940.

"Mr. C. V. Whitney referred to a proposal which had been offered by Mr. Harold J. Roig, of W. R. Grace & Co., relating to the filing of an application for a certificate of convenience and necessity between New Orleans and the Canal Zone. Upon the invitation of the Committee, Mr. Roig entered the meeting, and outlined a proposal that this Company acquiesce in the filing by Pan American-Grace Airways with the Civil Aeronautics Board of an application for a certificate of convenience and necessity on the aforementioned route, or the filing of such an application by a new company to be organized, two-thirds of the capital stock of which would be owned by Pan American-Grace Airways, Inc. and one-third by Eastern Airlines, Inc. Mr. Roig was informed that his proposal would be given consideration, and that he would be advised of the Company's action with respect thereto at a later date. Thereupon, Mr. Roig withdrew from the meeting."

EXECUTIVE COMMITTEE

JANUARY 6, 1941.

"A discussion thereupon ensued regarding the proposal made by Mr. Harold J. Roig, of W. R. Grace & Co., relating to the filing by Pan American-Grace Airways, Inc. of an application to the Civil Aeronautics Board for a certificate of convenience and necessity between New Orleans and the Canal Zone, or possibly the filing of such an application by a new company to be organized which would be jointly owned, one-third by Eastern Airlines and two-thirds by Pan American-Grace Airways, Inc. The Committee was of the opinion that this Corporation should not approve the organization of such new company, and that in no event should the pending application of Pan American Airways, Inc. for a certificate of convenience and necessity on this [fol. 458] route be withdrawn. No final action was taken on the question of whether this Corporation should acqui

esce in the filing of such an application by Pan American-Grace Airways, Inc., inasmuch as the Committee desired to consult counsel for the Company and to give the matter further consideration."

BOARD OF DIRECTORS

JANUARY 7, 1941.

"A discussion thereupon ensued regarding a proposal to have Pan American-Grace Airways, Inc., or another company in which it would be interested, apply for authority to operate between New Orleans and the Canal Zone. It was the sense of the meeting that such proposed action should be opposed."

EXECUTIVE COMMITTEE

JANUARY 14, 1941.

"The meeting proceeded to consideration of a proposal made by Mr. Harold J. Roig, of W. R. Grace & Company, that the Corporation should acquiesce in the filing by Pan American-Grace Airways, Inc. of an application for a certificate of convenience and necessity between the Canal Zone and New Orleans, Louisiana, and of a notice of a meeting of the Board of Directors of Pan American-Grace Airways, Inc. which had been called for the afternoon of January 14, 1941, to consider the same matter. Mr. Henry J. Friendly, of Root, Clark, Buckner & Ballantine, counsel for the Corporation, was invited to enter the meeting at this point. Mr. Friendly presented a legal opinion rendered by his firm and participated in the discussion. After full consideration, it was, upon motion duly made and seconded, unanimously

RESOLVED, that the Corporation, as owner of half of the stock of Pan American-Grace Airways, Inc., should decline to acquiesce in the filing by Pan Ameri- [fol. 4594] can-Grace Airways, Inc. of an application for a certificate of convenience and necessity between the Canal Zone and New Orleans, Louisiana, and that the representatives of the Corporation upon the Board of Directors of Pan American-Grace Airways, Inc

should not attend the meeting of such Board of Directors called for the afternoon of January 14, 1941, to act upon such proposal, or any adjournment thereof, and; except upon further instructions from the Executive Committee or the Board of Directors, should not attend any other meeting of the Board of Directors of Pan American-Grace Airways, Inc. at which action is to be taken upon the subject matter above described.

It was further determined that the proper officers of the Corporation should promptly communicate with Mr. Roig, and discuss the matter with him so that the position of the Corporation might be fully understood. A form of letter to be addressed to Mr. Roig, in the event that, after such conversations, he was nevertheless determined to proceed with the meeting of the Board of Directors of Pan American-Grace Airways, Inc., was approved."

EXECUTIVE COMMITTEE

JANUARY 28, 1941.

"Mr. Trippe reported to the meeting on a conference which had been held with Messrs. Garni and Roig relative to the filing of an application by Pan American-Grace Airways, Inc. for a certificate of convenience and necessity on a route between the Canal Zone and New Orleans, via Guatemala."

[fol. 460]

GOVERNMENT'S EXHIBIT 193

May 2, 1941

Civil Aeronautics Board
Washington, D.C.

Dear Sirs:

We are enclosing herewith copy of notice which we have mailed to the list of air carriers issued by the Civil Aeronautics Board under date of March 11, 1941.

Pursuant to said Notice of Intention, we hereby apply, in behalf of ourselves or of a subsidiary corporation, for

a Certificate of Convenience and Necessity authorizing ourselves or such subsidiary to engage in air transportation on the route therein described, namely: between New Orleans, Louisiana and Cristobal and or Balboa, Canal Zone, via Merida, or via other Mexican and or Central American ports.

We have not been able to prepare for filing a formal application in accordance with the forms prescribed by the Board. Such application, however, will be prepared as promptly as possible and it is expected that it can be completed in the course of a month.

In view of the fact that the route covered by the application is the same in substance as those covered in the applications now pending and on which hearings are to be held in Docket #373 and Docket #497, we respectfully request that hearings on these applications be postponed for a month so that our application can be considered at the same time. If the hearing is not postponed we request that we be permitted to intervene as a party therein.

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[fol. 461]

New York, N. Y.
May 2, 1941

TO WHOM IT MAY CONCERN:

The undersigned intends to file application, in behalf of itself or of a subsidiary corporation, with the Civil Aeronautics Board for a Certificate of Convenience and Necessity authorizing ourselves or such subsidiary to engage in air transportation between New Orleans, Louisiana and Cristobal and or Balboa, Canal Zone, via Merida, or via other Mexican and or Central American ports.

W. R. Grace & Co.

signed D. Stewart Iglehart
President

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fol. 462

Government Exhibit 211

"Minutes of Special Meeting of the Board of Directors of Pan American Grace Airways, Inc. held at the office of Pan American Airways, Inc., 135 East 42nd Street, New York, N.Y. on the 18th day of June, 1941 at 4:00 o'clock in the afternoon.

PRESENT: Messrs. W. F. Cogswell
A. Garbi
R. H. Patchin
H. J. Roig

being less than a quorum of the Board.

Mr. H. J. Roig, President of the corporation, presided. Mr. W. F. Cogswell, Secretary, acted as Secretary of the meeting.

The Secretary presented Call of the Meeting dated June 13th, 1941 and the notice of meeting, together with affidavit of mailing thereof on June 16th, 1941 to all of the Directors of the company.

Mr Roig thereupon made the following statement:

"At the close of our last regular meeting, Mr Garbi brought up the question of this Company's applying for the route between New Orleans and the Canal Zone. Mr Trippe stated that he did not know that this question was to be brought up, that the views of Pan American on the subject were well understood as a result of discussions which had been had and that if the matter was to be discussed by the Panagra Board, he felt that a special meeting for this purpose should be called. The subject was accordingly dropped with the understanding that such a special meeting would be called.

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fol. 463 In accordance with the above understanding on June 13th I called a special meeting of the Board of D

rectors of this Company to be held June 18th, 1941 at 4:00 PM for the purpose of considering a proposal that this Company apply for the route between New Orleans and the Canal Zone.

At the time I called this meeting I was not aware that Mr. Trippe was leaving for London. When I learned of this I told Mr. Ribi that in Mr. Trippe's absence it would be entirely in order for any other Pan American officer or director to come to the meeting to present their views. As none of the Pan American directors is present at this meeting, we have no quorum. In the absence of a quorum, this meeting can only adjourn and I would suggest such adjournment in order to give the Pan American directors a further opportunity to be present. In connection with this adjournment, I would like, however, to submit the following facts:

Ever since the Export Line filed an application for the New Orleans route, the Grace directors have felt that a situation was presented of the very first importance to the welfare of Pan American Grace Airways. As President of the Company as well as one of the Grace directors, I have been particularly concerned by this development. Should the Export Line be granted this certificate, it would mean that they would have a direct connection between continental United States and the northern terminus of the Panagra Route with the constant possibility of their extending their route south of Cristobal paralleling the

GR 13107

[fol. 464] Panagra line and thus being in a position to compete with us with the great advantage on their side of being able to come through to the United States and with every likelihood that with this last important South American gateway preempted, it would be many years before our company could provide a similar connection to the United States if, indeed, they were ever able to do so.

The disadvantage of our not having a terminus of our line in the United States is continually becoming more apparent. While this disadvantage has been mitigated by our having a connection through an allied company, Pan American Airways, through Miami, if this new competing

service through New Orleans should not be awarded to Pan American Airways and if it should be awarded to Export, permanent and irrevocable damage would be done to our Company and our whole future development seriously prejudiced and even possibly destroyed.

Even if the route were awarded to Pan Americans this would be far short of our having our own direct connection. Having during the past twelve years pioneered and developed a 6,000 mile route serving seven South American countries, it is a natural and logical development for us to bring our line through to a terminus in the United States. This would improve our ability to serve the South American countries through which we operate. It would stimulate traffic by providing a direct service. With the coming use of four engine land planes, of which we have
GR:13108
[fol. 465] three DC-4s on order, it would make for economy and efficiency of operation as these planes are suitable for use over the New Orleans Canal Zone sector as well as from Cristobal south. This development is not only in the interest of Panagra but is manifestly in the national interest.

For more than six months [illegible] and others have endeavored to persuade the Chairman of the Board of Pan American Airways and other members of their Executive Committee of the seriousness and importance of this problem and to enlist their support for Panagra's applying for this route. As long ago as January 10th, I called a special meeting of this Board to be held on January 14th to consider the problem but that meeting was allowed to lapse in order to permit of further opportunity for this discussion with the Pan American officials. Up to this time Pan American have refused to agree to Panagra's applying for this New Orleans route.

I do not feel that I should take the responsibility of letting this matter of such serious and far-reaching importance be disposed of in this fashion without the directors of this Company taking official cognizance of it and sharing the responsibility for whatever action is taken or not taken by Panagra. This meeting was accordingly called in order

that the matter might be submitted to the responsible directors of this Company for their consideration solely as directors of this Company and from the standpoint of this company alone and for their determination of what

GR 13109

[fol. 466] under all the facts and circumstances of the situation had best be done to safeguard the interests of this Company which are so vitally concerned in this problem."

The directors present expressed their concurrence in the above views but in the absence of a quorum action in the matter was impossible.

The meeting thereupon adjourned to June 20th at 9:00 AM at the same place.

Chairman

W. F. Cogswell
Secretary

GR 13110

[fol. 467]

GOVERNMENT'S EXHIBIT 195

Meeting called for
June 2nd, 1945
Did not convene.

Minutes of Adjourned Special Meeting of the Board of Directors of Pan American Grace Airways, Inc. held at the office of Pan American Airways, Inc. 135 East 42nd Street, New York, N Y on the 20th day of June, 1941 at 9:00 o'clock in the forenoon.

PRESENT:

Messrs W F Cogswell
A Garmendia
H J Roig

being less than a quorum of the Board.

Mr H J Roig, President of the corporation, presided, Mr W F Cogswell, Secretary, acted as Secretary of the meeting.

Owing to the lack of a qhorum, the meeting was adjourned to June 24th, 1941 at 4:00 o'clock in the afternoon at the office of W R Grace & Co. 7 Hanover Square, New York, N Y.

s/ HJR
Chairman

s W F Cogswell
Secretary

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2 16 55
JPC

[fol. 468]

GOVERNMENT'S EXHIBIT 196

EXECUTIVE COMMITTEE

JUNE 24, 1941.

"Mr. Trippe read to the meeting a copy of a letter dated June 19, 1941, written by Mr. Geo. L. Rihl, a Vice President of the Corporation, to Mr. Harold J. Roig, relating to a special meeting of the Board of Directors of Pan American Grace Airways, Inc. which had been called for June 18, 1941, and which had been adjourned to June 20, 1941, for the purpose of considering a proposal that Pan American Grace Airways, Inc. extend its route from Cristobal and or Balboa to New Orleans and, an application to the Civil Aeronautics Board for the necessary certificate of convenience and necessity. Such letter was approved, as being in line with the previous position of the Company, and ordered filed with the Secretary's records."

BOARD OF DIRECTORS

JULY 1, 1941.

"Mr. Trippe reported to the meeting on developments to date in connection with a proposal submitted by W. R.

Grace & Co. relating to an extension of the operations of Pan American-Grace Airways, Inc. from the Canal Zone to New Orleans, and the filing of an application with the Civil Aeronautics Board for a certificate of convenience and necessity on such route. He referred to the special meeting of the Board of Directors of Pan American-Grace Airways, Inc., which had been called for June 18, 1941 to act upon such proposal, and the subsequent adjournments of such meeting. Mr. Trippe pointed out that in January, 1941, a meeting of the Board of Directors of Pan American-Grace Airways, Inc. had been called to act upon the same proposal, and recalled that the Board of Directors of Pan American Airways Corporation, as also its Executive Com- [fol. 469] mittee, had determined that the Company should decline to acquiesce in such proposal, and that the Executive Committee had issued instructions to the representatives of Pan American Airways Corporation on the Board of Directors of Pan American-Grace Airways, Inc. not to attend any meetings of the Board of Directors of Pan American-Grace Airways, Inc. at which such proposal was to be acted upon. He also stated that, at the request of Pan American Airways Corporation, a special meeting of the stockholders of Pan American-Grace Airways, Inc. had been called to be held on July 2, 1941, at which it was intended that a statement would be submitted on behalf of Pan American Airways Corporation setting forth its position with respect to such proposal, and that it was expected that the representatives of W. R. Grace & Co. at such stockholders' meeting would submit a statement on behalf of that Company respecting such proposal.

At the conclusion of the discussion which ensued, the Board reaffirmed the position which had been previously taken by the Board and the Executive Committee that it would not be in the interest of Pan American Airways Corporation or of Pan American-Grace Airways, Inc., or in the public interest for Pan American Airways Corporation to acquiesce in the proposal.

Upon motion, duly made and seconded, the following resolution was adopted:

RESOLVED, that the President, or any Vice-President, of this Corporation be, and each of them hereby is, authorized and empowered, in the name and on behalf of this Corporation and under its corporate seal or otherwise, to execute and deliver a proxy in favor of Geo. L. Rihl, John C. Cooper or J. Clawson Roop, Vice-Presidents of this Corporation, whereby the said Geo. L. Rihl, John C. Cooper or J. Clawson Roop will be authorized to attend a special meeting of the stockholders of Pan American-Grace Airways, Inc. to be held on July 2, 1941, or at any meeting of such stockholders adjourned therefrom, and to vote the shares of stock held by this Corporation in said Pan American-Grace Airways, Inc. at such special meeting to be held on July 2, 1941, and at any meeting adjourned therefrom, and that the Secretary, or any Assistant Secretary, of this Corporation be, and each of them hereby is authorized and empowered to affix the seal of this Corporation to such proxy so executed and to attest such seal so affixed."

[fol. 470]

GOVERNMENT'S EXHIBIT 197

Minutes of Special Meeting of the Board of Directors of Pan American Grace Airways, Inc. held at the Office of Pan American Airways, Inc., 135 East 42nd Street, New York, N. Y., on the 26th day of June, 1941 at 4:00 o'clock in the afternoon.

PRESENT:

Messrs. W. P. Cogswell
H. P. Morris
G. L. Rihl

being less than a quorum of the Board.

In the absence of the President of the corporation, Mr. G. L. Rihl called the meeting to order and acted as Chair

man. Mr. W. F. Cogswell, Secretary, acted as Secretary of the meeting.

The Secretary presented the call to the meeting dated June 24th, 1941 and the notice of meeting, together with affidavit of mailing thereof on June 24, 1941 to all of the directors of the corporation.

Owing to the lack of a quorum, the meeting was adjourned to June 27th, 1941 at 2:00 o'clock in the afternoon at the office of W. R. Grace & Co., No. 7 Hanover Square, New York, N. Y.

Chairman of the Meeting

/s/ W. F. COGSWELL
Secretary

GR-13094
2/16/55
JPC

[fol. 471]

GOVERNMENT'S EXHIBIT 198

Minutes of Adjourned Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc held at the office of W R Grace & Co, 7 Hanover Square, New York N Y on the 27th day of June, 1941 at 2:00 o'clock in the afternoon.

PRESENT:

Messrs W F Cogswell
A Garni
H J Roig

being less than a quorum of the Board.

Mr H J Roig, President of the corporation, presided. Mr W F Cogswell, Secretary, acted as Secretary of the meeting.

Owing to the lack of a quorum, the meeting was adjourned to June 30th, 1941 at 2:00 o'clock in the afternoon at the same place.

H R
Chairman

W F Cogswell
Secretary

GR-13095
2/16/55
JPC

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fol. 472

GOVERNMENT'S EXHIBIT 199

Minutes of Adjourned Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc held at the office of W R Grace & Co, 7 Hanover Square, New York, N Y on the 30th day of June, 1941 at 2:00 o'clock in the afternoon.

PRESENT:

Messrs W F Cogswell
A Garni
R H Patchin

being less than a quorum of the Board.

In the absence of the President of the corporation, Mr A Garni called the meeting to order and acted as Chairman. Mr W F Cogswell, Secretary, acted as Secretary of the meeting.

Owing to the lack of a quorum, the meeting was adjourned to July 31, 1941 at the same time and place.

/s/ A GARNI
Chairman of the Meeting

/s/ W F COGSWELL
Secretary

[fol. 473]

GOVERNMENT'S EXHIBIT 200

copy

PAN AMERICAN AIRWAYS CORPORATION
15 Exchange Place
Jersey City, N.J.

June 30, 1941.

Mr. Harold J. Roig, President, and
Mr. W. F. Cogswell, Secretary,
Pan American-Grace Airways, Inc.,
c/o W. R. Grace & Co.,
7 Hanover Square,
New York, N. Y.

Dear Sirs:

Pursuant to the By-Laws of Pan American-Grace Airways, Inc., and particularly to Section 3 of Article III thereof, the undersigned corporation, being the owner of record of 50% of the outstanding capital stock of Pan American-Grace Airways, Inc., hereby requests that a special meeting of the stockholders of Pan American-Grace Airways, Inc. be called for the purpose of considering the proposal made by the President of Pan American-Grace Airways, Inc. at the Special Meeting of the Board of Directors held on the 18th day of June, 1941 with reference to the filing by Pan American-Grace Airways, Inc. of an application for a certificate of public convenience and necessity between New Orleans and the Canal Zone.

We further request that such meeting be called for Wednesday, July 2, 1941, and that notice thereof be given personally, by telephone or by telegraph.

Very truly yours,

GR-9112

PAN AMERICAN AIRWAYS CORPORATION
By (sgd) GEO. L. RIHL
Vice President

Attest:

(sgd) C. M. BLASKE
Asst. Secretary

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[fol. 474]

GOVERNMENT'S EXHIBIT 201

Minutes of Adjourned Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of W R Grace & Co, 7 Hanover Square, New York, N Y on the 1st day of July, 1941 at 2:30 o'clock in the afternoon.

PRESENT:

Messrs A Garni
H J Roig

being less than a quorum of the Board.

Mr H J Roig, President of the corporation, presided. In the absence of the Secretary, Mr A Garni acted as Secretary of the meeting.

Mr Roig presented to the meeting letter addressed to the Board of Directors from Mr D S Iglehart, President of W R Grace & Co, dated June 17, 1941, letter of June 19, 1941 from Mr George L. Rihl to Mr Harold J Roig, and Mr Roig's reply dated June 26, 1941, which letters were ordered spread upon the minutes:

"W. R. Grace & Co.
7 Hanover Square, New York

June 17, 1941

To the Board of Directors,
Pan American Grace Airways, Inc.,
New York, New York.

Dear Sirs:

We refer to the pending question as to the assignment by the Civil Aeronautics Board of the route from Panama to New Orleans. We understand that discussions have been going on for several months as to the advisability of your company applying for this route

and that your 50% stockholder, Pan American Airways Corporation, has refused to agree to your doing so.

GR-13096
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[fol. 475] Some time since we took the matter up with Pan American Airways Corporation, explaining fully our reasons for feeling that it was a serious mistake for them to refuse to permit your company to apply for this route. The matter was taken up with their Executive Committee and Board of Directors and we were advised that they had decided that they could not agree to your company's applying for this route.

We believe it to be in the national interest that the great trunk lines that you have built up in South America should be extended to an American port. In fact, your service will be fragmentary and runs the constant risk of being interrupted and incomplete until the time comes when your own your own connections with this country.

In view of the existing situation and in order to protect our investment in Pan American-Grace Airways, Inc., pending consideration of this matter by your Board, we advised Pan American Airways Corporation that we felt compelled to notify the Civil Aeronautics Board of our intention to apply for the route in question. The latter recognized our interest by permitting us to intervene in a proceeding involving the application of Pan American Airways Corporation and American Export Lines for this route. Although we believe we can successfully compete for this New Orleans route and are preparing to form a company to undertake this service, and any other aviation services, we feel that it is more logical and more in the national interest that your company should file such an application in its own right.

You have on order three DC-4 planes that would be capable not only of serving the proposed Panama New Orleans route in an adequate way, but their acquisition

would also enable you to provide the increased capacity on your existing route that appears to be required urgently. We learn that you are now considering whether or not you will cancel your order for these planes. We urge upon you to study carefully the advisability of acquiring these planes and using them for the above purposes.

We furthermore feel that you should consider carefully the advisability of issuing further stock and of offering this stock to us in order that our Government may have two distinct entities to deal with and in order that the question which has constantly arisen as to the interest of your company being made subservient to that of the Pan American Airways Corporation interest may be definitely removed.

GR-43097

[fol. 476] We have been somewhat disturbed by certain recent developments with which you are undoubtedly familiar and which need not be elaborated upon in this letter, particularly the current charges of monopoly in the field of foreign air transportation. For this reason we believe it absolutely essential that the affairs of your company, in which we have a definite and substantial interest, be so conducted as to preserve its present independent status and to avoid any situation which would carry with it any possible implication that it does not occupy such an independent status.

We are taking the liberty of submitting a copy of this letter to the Chairman of the Pan American Airways Corporation.

Very truly yours,

W. R. Grace & Co.

(Dictated by) D. S. Ingalhart
President EB

"PAN AMERICAN AIRWAYS SYSTEM

Office of
G. L. Rihl, Vice-President

June 19 1941

Mr. Harold J. Roig
W. R. Grace & Co.
7 Hanover Square
New York City"

Dear Harold:

"I have been advised that the special meeting of the Board of Directors of Pan American-Grace Airways, Inc., called for June 18th, has been adjourned to June 20th at 9:00 A.M., and that the purpose of the meeting is to consider a proposal that Pan American-Grace Airways, Inc. extend its route from Cristobal and/or Balboa to New Orleans and apply to the Civil Aeronautics Board for the necessary Certificate of Convenience and Necessity.

When a similar proposal was advanced last January, our Executive Committee and Board of Directors felt unable to acquiesce in the proposal. I understand that this attitude of our Board and Executive Committee was explained to you.

GR-13098

[fol. 477] We considered that this proposal involved such a fundamental change in the venture into which our two companies had entered in 1928 as to be beyond the proper scope of action by the Board of Directors of Pan American-Grace Airways, Inc. in the absence of prior agreement by the two stockholders. For this reason we do not believe that any useful purpose would be served by attendance on the part of our representatives at the meeting tomorrow and rather that any discussion of the proposal should be between the two stockholders.

If you do not wish to await the return of Mr. Trippe, which I think will be shortly, I will be glad to discuss

the matter informally with you and report to members of our Executive Committee.

With kindest regards, I am

Yours faithfully,

(sgd) GEORGE L. RIHL"

"June 26, 1941

Mr. George E. Rihl,
Vice-President,
Pan American Airways System,
135 East 42nd Street,
New York City.

Dear George:

In view of pending discussions it does not seem necessary to reply in detail to yours of the 19th instant.

Referring to the next to the last paragraph of your letter, however, I would like to make it perfectly clear that I know of no such agreement or understanding which bars Pan American-Grace Airways from a normal and natural development of its route. The extension under discussion is not only that but a development which may prove vital to the integrity of even our present route.

Very sincerely yours,

(sgd) HAROLD J. ROIG"

GR-13099

[fol. 478] Due to the lack of a quorum, the meeting was adjourned to July 2nd, 1941 at 9:45 o'clock in the forenoon at the same place.

/s/ H. R.
Chairman

/s/ A. GARSI
Secretary of the Meeting

GR-13100

[fol. 479]

GOVERNMENT'S EXHIBIT 202

Minutes of Adjourned Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc held at the office of W. R. Grace & Co, 7 Hanover Square, New York, N Y on the 2nd day of July, 1941 at 9:45 o'clock in the forenoon.

PRESENT:

Messrs W F Cogswell
~~A Garni~~
~~H J Roig~~

being less than a quorum of the Board.

Mr. H J Roig, President of the corporation, presided, Mr W F Cogswell, Secretary, acted as Secretary of the meeting.

Mr. Roig stated that he had hoped that Mr. Trippe, who had returned from Europe on June 23rd, would be able to attend the meeting, but that he had just been advised that he would not be able to do so; that in view of Mr Trippe's continued failure to attend, he saw no course but that the meeting adjourn sine die.

The meeting thereupon adjourned sine die for want of a quorum.

/s/ H.J.R
Chairman

/s/ W F COGSWELL
Secretary

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JPC

[fol. 480]

GOVERNMENT'S EXHIBIT 203

PAN AMERICAN-GRACE AIRWAYS, INC.

Special Stockholders' Meeting

July 2, 1941

A special meeting of the stockholders of PAN AMERICAN-GRACE AIRWAYS, INC. convened at the office of W. R. Grace & Co., 7 Hanover Square, New York, N. Y. on the 2nd day of July, 1941 at 10:00 o'clock in the forenoon.

Mr. H. J. Roig, President of the corporation, called the meeting to order and Mr. W. F. Cogswell, Secretary of the corporation, acted as Secretary of the meeting.

The following stockholder was present by proxy when the meeting was called to order:

NAME	PROXIES	NO. OF SHARES
W. R. Grace & Co.	*D. S. Iglehart*, President of W. R. Grace & Co.	50,000
	A. Garnis, 1st Vice President of W. R. Grace & Co.	
	Harold J. Roig, Vice President & Secretary of W. R. Grace & Co.	

The Secretary presented the request for the call of the meeting signed by Pan American Airways Corporation, and the call of the meeting issued pursuant thereto. The Secretary stated that in accordance with the request, telephonic notice of the time and place of the meeting had been

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[fol. 481] given to W. R. Grace & Co. and Pan American Airways Corporation, the holders of record of all of the issued and outstanding capital stock of the company. Copies of the proxy, request for call of the meeting, and the call of the meeting are annexed hereto.

The meeting remained open until 11:00 o'clock in the forenoon and no representatives of Pan American Airways Corporation having appeared, adjourned sine die for want of a quorum.

.....
Chairman

.....
Secretary

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[fol. 482]

GOVERNMENT'S EXHIBIT 204

copy

PAN AMERICAN AIRWAYS CORPORATION
15 Exchange Place, Jersey City, N.J.

July 2 1941

Mr. Harold J. Roig
c/o W. R. Grace & Co.
7 Hanover Square
New York City

Dear Mr. Roig:

As Mr. Rihl just explained to you on the telephone, the representatives of Pan American Airways Corporation who had expected to attend the Special Meeting of Pan American-Grace Airways, Inc., called for this morning at 10 o'clock, were unexpectedly required to go to Washington last night in connection with matters relating to national defense. For this reason Pan American Airways Corporation requests that the Special Meeting of stockholders be adjourned to next Tuesday, July 8th.

We would appreciate your cooperation in arranging such an adjournment.

Very truly yours,

PAN AMERICAN AIRWAYS CORPORATION

By (Sgd) GEO. L. RIHL
Vice President

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GR 9114

GLR:FP

[fol. 483]

GOVERNMENT'S EXHIBIT 205

July 3, 1941

George L. Rihl, Esq.,
Pan American Airways System,
135 East 42nd Street,
New York City

Dear George:

Yours of July 2nd.

While under ordinary circumstances, I would have been delighted to suggest to the stockholders' meeting that they adjourn in compliance with your request, I frankly felt that to do so in this case would serve no useful purpose.

In our telephone conversation to which your letter refers, you stated that the representatives of Pan American Airways Corporation who had expected to attend the special stockholders' meeting were Messrs. Trippe and Cooper. The stockholders' meeting of July 2nd was called at the request of Pan American Airways Corporation and on a day fixed by them. If Messrs. Trippe and Cooper were unable to attend, certainly from among all the directors, officers and counsel of the Pan American Airways Corporation, some suitable proxies could have been found to do so.

We have been postponing consideration of this New Orleans/Panama route matter by the directors of Pan American-Grace Airways, Inc. for about six months. I have recently been adjourning special directors' meetings called to consider this subject ever since June 18th. Seven meetings (five since Mr. Trippe's return from London) have been held in the effort to get a discussion of this subject. The Pan American directors have declined to

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GR-9115

[fol. 484] attend any of these meetings except on one occasion for the purpose of adjournment only. Last week I was advised that while Mr. Trippe, who returned from Europe about ten days ago, could not attend a meeting earlier than July 2nd, he could attend on that day. He was, of course, not present at the adjourned directors' meeting held at 9:45 AM on that day and I have had no word when he would attend. On the record, it would appear that the Pan American Airways directors have no present intention of attending a Pan American-Grace directors' meeting to discuss this subject.

As long ago as April 29th, I advised Mr. Trippe that Mr. Garni and I wished to discuss the New Orleans/Panama matter with him. The following day Mr. Garni and I called at his Washington office for this purpose. He was not in and although we left word of our call, he has made no attempt from that time to this to discuss this subject with us.

Hearings on this New Orleans route matter were begun before the C.A.B. two months ago and were concluded several weeks ago. Briefs are to be filed on the 15th of July. The matter is accordingly a very pressing one where if anything is to be done to protect Panagra's position, time is of the utmost importance. A point has been reached where further postponement and delay may render discussion academic. Under these circumstances and in view of all the foregoing, the last minute suggestion of this long adjournment with the absence of any indication of any

intention on the part of the Pan American Directors to

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[fol. 485] attend a directors' meeting at any time to discuss the subject in question did not appear to me to be in order.

Very truly yours,

(Sgd) HAROLD J. ROIG

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GR-9117

[fol. 486]

GOVERNMENT'S EXHIBIT 206

Delivered by hand to
HJR Jul 23—1 P.M.

PAN AMERICAN AIRWAYS CORPORATION

15 Exchange Place, Jersey City, N. J.

July 22, 1941

W. R. Grace & Company,
7 Hanover Square,
New York, N. Y.

Dear Sirs:

A special meeting of the Board of Directors of Pan American-Grace Airways, Inc. was called for June 18th to consider a proposal that Pan American-Grace Airways, Inc. extend its route from the Canal Zone to a terminal in the United States at New Orleans and apply to the Civil Aeronautics Board for the necessary certificate of convenience and necessity.

The proposal that Pan American-Grace Airways, Inc. or, in the alternative, W. R. Grace & Company should apply for a certificate to New Orleans was made in the fall of 1938, prior to the agreement of February 14, 1939,

between W. R. Grace & Company and Pan American Airways Corporation. When the matter was again brought up by you in January, 1941, we stated that the position was fully covered by that agreement. When the matter was further raised by you in June, our representatives on the Pan American-Grace Airways, Inc. Board referred this matter to the Executive Committee of Pan American Airways Corporation.

The proposal was considered at ensuing meetings of the Executive Committee. The matter was also considered by our Board of Directors at a meeting on July 1st in line with the suggestion in Mr. Iglehart's letter of June 20th to Mr. Whitney.

As you have since been advised, our Board of Directors, after mature deliberation, has unanimously reached the conclusion that it would not be in our Company's interest, or in the interest of our jointly owned Company, or in the public interest, for our representatives on the Pan American-Grace Airways, Inc. Board of Directors to approve this proposal.

In line with the agreement of February 14, 1939, between W. R. Grace & Company and Pan American Airways Corporation, however, we are glad to submit the matters in-

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[fol. 487] volved to arbitration as therein provided, and we confirm the request that Mr. Whitney made yesterday to Mr. Iglehart, that such arbitration be held at once.

Very truly yours,

PAN AMERICAN AIRWAYS CORPORATION

By H. PRESTON MORRIS
H. Preston Morris
Secretary

HPM:mlc

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[fol. 488]

GOVERNMENT'S EXHIBIT 207

July 24, 1941

Pan American Airways Corporation,
135 E. 42nd Street,
New York City, N. Y.

Dear Sirs:

This will acknowledge your letter of July 22, 1941, in which the suggestion is made that your company and W. R. Grace & Co. submit to arbitration the question of whether Pan American-Grace Airways, Inc. or, in the alternative, W. R. Grace & Co. may, under the terms of the agreement of February 14, 1939, apply for a route from the Canal Zone to New Orleans.

We are somewhat confused and surprised to note that you believe this matter can be arbitrated under the agreement of February 14, 1939. This appears to be at variance with the position taken by Mr. Trippe in conversations with Mr. Roig in which Mr. Trippe maintained that any such arbitration was not covered by the terms of the agreement and would have to be considered outside of it. Be that as it may, however, we shall endeavor to express our views with respect to both positions, first, as to the possibility of arbitration under the agreement, and secondly, as to the possibility of arbitration outside of the agreement.

The agreement of February 14, 1939, although an agreement between W. R. Grace & Co. and Pan American Airways Corporation, in no way was intended to limit the freedom of action of W. R. Grace & Co. Paragraph 4 of the agreement specifically provides that only "disputes * * * which cannot be settled by the Board of Panagra" shall be determined by arbitration. The question of whether W. R. Grace & Co., directly or through a wholly owned subsidiary, may file an application with the Civil Aeronautics Board for a route is not a matter over which the Board of Panagra has any control or which can be settled by the Board of Panagra. Under these circumstances, I

must respectfully reject your suggestion of arbitration in so far as W. R. Grace & Co. is concerned.

In so far as Pan American-Grace Airways, Inc. is concerned, however, I am glad to submit to arbitration under paragraph 4 of the agreement of February 14, 1939, the question of whether Pan American-Grace Airways, Inc. may file an application in its own name for a route from the Canal Zone to New Orleans without violating any provision of that agreement. It has always been our position that the most logical applicant for the proposed route is Pan American-Grace Airways, Inc., and for the past several months we have endeavored repeatedly to persuade the

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[fol. 489] Board of Directors of Panagra to this view. As you know, the Directors on the Board of Panagra representing your company have consistently refused to sanction any such action. I, therefore, welcome any procedure which may make it possible for Panagra to file for the proposed route in its own name, and I shall immediately undertake to discuss with Mr. Whitney the details of arbitrating this question under the agreement.

It is recognized, however, that arbitration proceedings of the nature contemplated by the agreement of February 14, 1939, will consume a considerable period of time. The hearings in connection with the application of Pan American Airways Company and American Export Airlines, Inc. have already been concluded and briefs filed with the Examiner, and these cases now stand submitted to the Examiner for his report. It is, therefore, urgent that some application be filed with the Civil Aeronautics Board by W. R. Grace & Co. or by one of its wholly-owned subsidiaries immediately in order to preserve our rights in the matter. Under these circumstances, it is our present intentoon to file immediately an application with the Civil Aeronautics Board by Gulf & Caribbean Airways, Inc., a wholly-owned subsidiary of W. R. Grace & Co., and to advise the Civil Aeronautics Board at that time that arbitration proceedings are presently pending between your company and this

company as to whether Pan American-Grace Airways, Inc. should be permitted to file for the route, and that in the event it is determined that Pan American-Grace Airways, Inc. may file for the route, the application of Gulf & Caribbean Airways, Inc. will be withdrawn and substituted by the application of Pan American-Grace Airways, Inc.

As to Mr. Trippe's suggestion that this matter be arbitrated outside of the agreement, we know of no person or body better qualified to arbitrate this entire question than the Civil Aeronautics Board. In your letter of July 22nd, you state that your Board of Directors has concluded that it would not be in the *public interest* for Panagra to file for the proposed route. As you know, we have heretofore taken the contrary view, and it would seem that the best judge on any question of *public interest* would be the Civil Aeronautics Board, and we shall be glad to submit it to them for their consideration and determination.

If it is now your desire to follow Mr. Trippe's suggestion and arbitrate this entire matter outside of the agreement rather than under it, please advise me to that effect immediately, so that appropriate steps may be taken quickly to place this matter in the hands of the Civil Aeronautics Board for arbitration. In the meantime, however, we shall proceed with the filing of the application of Gulf & Caribbean Airways, Inc. As you know, this matter has been under discussion for many months without any conclusion having been reached. We do not feel that we can let this

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[fol. 490] matter carry on this way any longer, and, although willing to submit to arbitration on the terms herein set forth, we are unwilling to jeopardize our interests in this matter by withholding the application of Gulf & Caribbean Airways, Inc.

Very truly yours,

W. R. Grace & Co.,

By .....

President

[fol. 491]

GOVERNMENT'S EXHIBIT 208.

8/9/41

MEMORANDUM

Subject only to some further study of the questions of crews and reciprocal mileage, and of course agreement on details, Messrs. Trippe and Roig have agreed in principle on a plan under which Panagra can operate through to terminals in the United States and Mr. Friendly is preparing a draft agreement to carry out the understanding. The plan is to follow the general lines of the United Air/Western Air Express agreement and is to include Miami as well as New Orleans. Regarding Miami, while Mr. Trippe has stated that he was personally agreeable to its inclusion, this would require the approval of his Executive Committee.

G041875

1-3-55 np
GR-9222

[fol. 492]

GOVERNMENT'S EXHIBIT 209.

W. R. GRACE & CO.
7 Hanover Square, New York

October 2, 1941.

2

Pan American Airways Corporation,
Chrysler Building,
New York City

Attention: Mr. J. T. Trippe, President

Dear Sirs:—

On August 26th, 1941, Pan American-Grace Airways, Inc. inaugurated a fourth through United States mail schedule over its route between Cristobal and Buenos Aires via Santiago.

To the best of our knowledge, you have not to date taken any steps to provide an adequate direct service between Miami, or any *other United States port agreed upon*, and Cristobal or Balboa connecting with this fourth mail schedule in accordance with agreement between us dated February 14, 1939.

We hereby require that you furnish such service promptly. In the event of your failure to do so, we shall expect you to comply with the requirement of such agreement that you cause your Directors on the Board of Pan American-Grace Airways, Inc. to take such action as will permit that company to apply to the Civil Aeronautics Board for a certificate to operate this connecting service.

Very truly yours,

W. R. GRACE & Co.

A. GARST (signature)
First Vice President

PAA-5540
3-3-55

2197-d np

[fol. 493]

GOVERNMENT'S EXHIBIT 210

Please return to
Mr. Roig 2-14-39

PANAGRA

Miami New Orleans Connection

The following procedure is suggested:

1. As Trippe evidently does not intend to go ahead with the agreement in principle regarding New Orleans, Mr. Iglehart might write Mr. Whitney as per copy "A" attached.

2. As Miami connection is in any event much preferable to New Orleans, steps should be taken to put Panagra in position to apply for a Miami connection under agree-

ment between Grace and Pan American (copy "B" attached) as follows:

(a) Grace has already written Pan American demanding Miami connection for Panagra's fourth flight (copy "C" attached).

(b) Panagra should now write pointing out inadequacy of existing three connecting trips (copy "D" attached).

(c) Unless these letters result in Panair's providing additional services or raising questions making next step undesirable, next step would be for Panagra to proceed to apply for Miami route under agreement and if Panair failed to provide necessary directors' consent as they probably would, the officers of Panagra to make the application anyhow.

(d) In connection with the above the arbitration clause of the agreement must be considered and suitable reply made to Pan American's letter of July 22nd (copy "E" attached).

(e) Simultaneously with above proceeding, might be instituted before CAB under Sections 408, 409 and 411 looking to removal of Mr. Trippe as Panagra director on ground of prejudicial interlocking directorships the application explaining failure to ask for removal of other Panagra directors on ground that they are under Trippe's orders.

(f) Press for increase of capital in connection with needs of the business, rate case, etc. and endeavor to arrange that W. R. Grace & Co take this new capital or majority of it in line with Mr. Iglehart's letter to the Panagra Board of Directors dated June 17th in which it is stated:

"We furthermore feel that you should consider carefully the advisability of issuing further

[fol. 494] stock and of offering this stock to us in order that our Government may have two distinct entities to deal with and in order that the question which has constantly arisen as to the interest of your company being made subservient to that of the Pan American Airways Corporation interest may be definitely removed."

October 6, 1941

GR-9232 G041845

A

[fol. 495]

Dear Sonny,

Since I wrote you on August 11th, Mr. Roig has been constantly endeavoring in every possible way to bring to a conclusion the plan that was agreed upon in principle between him and Mr. Trippe on August 9th. As his repeated efforts to secure the draft contract which it was agreed should be prepared as a basis for discussion of details have failed completely, it seems clear that Mr. Trippe does not wish to carry out the understanding in principle which was reached practically a month ago.

Under these circumstances, unless you have some alternative course to suggest, it would appear to be necessary for us to abandon the possibility of a solution of Panagra's problem along the line you and I discussed and for Panagra and W. R. Grace & Co to seek a way in some other direction for safeguarding Panagra's interests and making possible its reasonable growth and development.

GR-5737 G030419

11/24/54

F

[fol. 496]

GOVERNMENT'S EXHIBIT 211

PAN AMERICAN-GRACE AIRWAYS, INC.
Executive Offices
CHRYSLER BUILDING, NEW YORK, N. Y.

October 9, 1941

Pan American Airways,
Chrysler Building,
New York City

Attention: Mr. J. T. Trippe, President

Dear Sirs:

We beg to bring to your attention the inadequacy of the existing connecting services between Miami and the Canal Zone.

There is, as you know, no direct Miami connection for our fourth trip. Quite irrespective of this, however, the space available on the three existing trips is insufficient to accommodate our traffic. Passengers and express destined to and from our line are constantly being excluded from your planes for lack of space. Just as an example, a letter from Lima dated September 23rd states that "during the last four trips Panagra requested 15 seats of Panair but secured only 3, two of which were confirmed at the last minute." This appears to be the result of a division of the available payload between Panagra traffic and other traffic in this sector. We require sufficient space by direct connecting service to accommodate our traffic promptly irrespective of other movement in the area. This we are not now receiving. Rebooking of some of the excluded traffic days or weeks later does not change this fact.

We have had under discussion with the proper authorities in Washington for some time the question of providing additional trips over our route between Cristobal-Balboa and Buenos Aires. In connection with our pending rate proceeding we propose to request a rate based on daily services which will mean the addition of three trips per week to our present four trips. We will require direct

connecting service for these trips between Miami and or some other United States port agreed upon and the Canal Zone.

We would appreciate your advising us what steps you propose taking to meet the present situation and to provide the additional direct connecting services required in the event of increase in our schedules. In this connection we beg to state that the alternate indirect routes via Barranquilla and Brownsville do not provide satisfactory con

PAA-5541
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2197-d

[fol. 497] necting service nor would a stop at Camaguay (at the expense of depriving us of direct service and slowing down our entire schedule) provide a satisfactory solution of the problem.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.,

HAROLD J. ROSE
President

2197-d

PAA-5542

[fol. 498]

GOVERNMENT'S EXHIBIT 212

PAN AMERICAN AIRWAYS CORPORATION
45 Exchange Place, Jersey City, N. J.

October 22, 1941
Received at (Oct. 23, 1941)

W. R. Grace & Company
7 Hanover Square
New York, N. Y.

Gentlemen:

We desire to acknowledge receipt of your letter of October 2, referring to the fourth weekly trip undertaken by our jointly owned company, Pan American Grace Airways, Inc., between Cristobal, Santiago, and Buenos Aires

The letter has been given careful consideration by Mr. Rihl and other of our System officials concerned. As you know, Mr. Rihl has recently been called out of the country and I am replying for him in his absence.

Prior to receipt of your letter our officials concerned had given the matter careful consideration. This fourth trip was scheduled to depart from Cristobal at 5:30 A.M. on Tuesday of each week, the same day on which one of the three regular trips is scheduled to depart. Obviously, this fourth trip is not properly spaced to provide adequate through mail or passenger service, and apparently it was set up in this manner due to the exigencies of Pan American-Grace's equipment situation, and without prior consultation with Pan American Airways. Obviously, it would not be in the public interest for Pan American Airways to operate an additional trip to Cristobal to provide a fourth through service of this sort.

Our System officials have, however, been considering four properly spaced schedules from Miami to Cristobal, there to connect with our jointly owned Company service to West Coast countries and Buenos Aires. They would be glad to confer with Mr. Roig or Mr. Harris with a view to arranging suitable schedules providing for four adequately spaced trips per week. As soon as a satisfactory fourth weekly schedule is worked out between us we will be glad to take the matter up immediately with the Post Office Department.

However, even when this step has been taken, we are of the opinion that the connecting services which would be provided by our jointly owned Company would still be far from satisfactory. We continue to hold that through services to points on the West Coast and Buenos Aires, connecting with our services at Cristobal, should be speeded up and greatly expanded. Four-engine equipment, capable of providing as efficient, comfortable and fast service to this important area as is planned by Pan American Airways for other parts of Latin America, should be provided.

[fol. 499] Four years ago, Pan American's Directors on the Board of our jointly owned Company favored providing service with four-engine equipment of large capacity to avoid the traffic bottleneck which still exists with respect to Pan American-Grace Airways' through traffic to all West Coast countries other than Colombia. Even today the passenger capacity of the DC-3's, on the sector between Cristobal and Ecuador, is limited to approximately twelve seats.

A year and a half ago, Pan American Airways placed orders for twenty-two forty passenger four-engine transports (type L-49), having a contract cruising speed well in excess of 250 miles per hour, for use on our principal Latin American trunk lines. This equipment would provide for four-engine service via Central American points to the Canal Zone in addition to daily express service between Miami and the Canal Zone. Other daily express services would run to Barranquilla with direct connections on to the Canal Zone. Daily service along the East Coast to Rio and Buenos Aires was also included.

Mr. Roig and Mr. Harris last year advised us that they were unwilling to support an order for suitable four-engine aircraft in addition to the three DC-4s which Pan American has on order for account of Pan American-Grace Airways. We would hope, however, that the Directors on the Board of our jointly owned Company representing Grace & Company will now join with us to permit the Company to place orders for sufficient four-engine equipment.

To improve the present unsatisfactory situation on the northern part of the Pan American-Grace Airways' route, Pan American Airways is prepared to conclude an agreement with Pan American Grace, subject to the approval of the Civil Aeronautics Board, along the lines of the Western Air-United Air Lines agreement. Such agreement would permit Pan American Airways to charter to Pan American-Grace, if the Grace interests were willing, four engine equipment for use on certain operations on this connecting West Coast service, thereby helping to provide a more efficient express service and to eliminate present

bottlenecks. A draft of such agreement will be forwarded within a few days to Pan American-Grace Airways.

Very truly yours,

PAN AMERICAN AIRWAYS CORPORATION

Evan E. Young
Vice President

GR-9248 G041821

[fol. 500]

GOVERNMENT'S EXHIBIT 213

W. R. GRACE & CO.
7 Hanover Square, New York

October 27, 1941

A. GARNI
First Vice President

Pan American Airways Corporation,
15 Exchange Place,
Jersey City, New Jersey.

Dear Sirs:

We beg to acknowledge receipt of yours of October 22nd.

It is true that Panagra's fourth trip leaves Cristobal southbound at 5:30 A.M. on Tuesdays and that one of their other trips leaves Cristobal at 1:50 P.M. on the same day. Your comments, however, overlook the fact that this trip is one day ahead of the 1:50 P.M. trip at all points south of Cali. A connection for this 5:30 A.M. Tuesday southbound trip would naturally leave Miami sometime on Monday either making the run at night or with overnight in Panama. You have no Panagra connecting trip out of Miami on Monday. Your comments also entirely overlook the fact that northbound Panagra's fourth trip, equally without direct connection to Miami, arrives at Balboa Friday night and, with present daylight flying, your connecting trip would in normal course leave Balboa on Saturdays, a day on which there is no other direct connecting schedule. With the increased frequencies which are inevitable with the increase of traffic, spacing of trips by a full intervening

day becomes more and more impractical and with the daily trips we anticipate shortly, will be impossible. We note that your letter makes no concrete suggestion of any schedule which would be an improvement over the present. We see no basis for your statement that Panagra's "fourth trip is not properly spaced to provide adequate through mail or passenger service".

PAA-55.46
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[fol. 501] This fourth trip schedule was not, we are advised, "set up in this manner due to the exigencies of Pan American-Grace's equipment situation". It is obvious that Pan American was advised of the proposed schedule since Pan American's Traffic Department attended to the filing of schedule with the Civil Aeronautics Board and with the United States Post Office. As a matter of fact, one of the reasons leading to the present schedule was the necessity of an early Tuesday southbound departure from Cristobal in order to connect with Panair do Brasil at Corumbá. Panagra's fourth trip, as you will recall, being related to the provision of an American transcontinental service via Peru, Bolivia and Brazil to replace the German service.

While we mention the foregoing to avoid misunderstanding, the agreement of February 14, 1939 provides that your company will maintain adequate direct connecting services "connecting with Panagra's through mail schedules". It contains no provision that Panagra's schedules shall be arranged to suit your convenience. Your statement that "it would not be in the public interest for Pan American Airways to operate an additional trip to Cristóbal to provide a fourth through service of this sort" is unwarranted since the governmental authorities charged with responsibility for determining the "public interest" in these matters, viz., the United States Post Office Department and the Civil Aeronautics Board have approved the Panagra schedule in question in the manner provided by law.

2197d PAA-5547

[fol. 502] Your letter is, in effect, a categorical refusal to provide connecting service for Panagra's fourth trip as at present operated. The many wholly unrelated matters

which you bring into the discussion serve no constructive purpose whatever and if we may be permitted to say so, only becloud, delay and avoid the issue. In view of your refusal to provide connecting service as required by the agreement of February 14, 1939, we shall expect you to take the action necessary to permit Panagra to itself apply for this connecting service in accordance with the provisions of that agreement.

As all of the other matters discussed in your letter relate to business of Pan American-Grace Airways, unrelated to the agreement of February 14, 1939, we have referred them to the President of Pan American-Grace Airways for attention.

Very truly yours,

W. R. GRACE & Co.

/s/ A. GARNT
First Vice-President

2197d PAA-5548

[fol. 503]

GOVERNMENT'S EXHIBIT 214

Telephone
MUrray Hill 6-7100

Cable Address
"PANAGRA"

PAA Grace

PAN AMERICAN-GRACE AIRWAYS, INC.
Executive Offices
Chrysler Building—New York, N.Y.

October 27, 1941

Pan American Airways Corporation,
15 Exchange Place,
Jersey City, New Jersey

Dear Sirs:

I refer to yours of October 22nd addressed to W. R. Grace & Co.

The portion of your letter criticizing the Panagra service gives a rather incomplete and inaccurate impression regarding the matters to which you refer.

The idea which you state you "continue to hold" that Panagra service "should be speeded up and greatly expanded" neither originated with your company nor have you held it continuously. On the contrary, you have held on more than one occasion in the past and are, at the present time, in connection with Panagra's proposed extension to a terminal in the United States, holding quite contrary views. Since early 1939, in line with the view that Panagra's services "should be speeded up and greatly expanded", Panagra's management has with the support of its entire Board of Directors, among other constructive steps:

(1) Cut one full day from its schedule between the Canal Zone and Buenos Aires via the fourth trip and-half a day via the other trips.

(2) Doubled its frequencies (from two trips per week to four) over its entire route; increased frequencies between a number of local points on the route and in its pending rate application is seeking daily service over its entire route. You have failed to provide adequate connecting service for the fourth trip and have to date given no assurance of providing such connec-

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[fol. 504] tion for the three additional trips in connection with our daily service.

(3) Expanded its route mileage about 30% by the addition of extensive new services in Ecuador and Bolivia.

(4) Undertaken a complete revision of its radio setup in anticipation of increased frequencies and faster schedules (including night flying) and greatly expanded and improved its facilities (including purchase of four engine equipment as hereafter referred to), organization and service in all departments.

(5) Expanded and developed its traffic on every section of its route with resulting large increases in revenue from passengers, express and foreign mail.

I have at no time been advised that the progress being made was not entirely satisfactory to you. Certainly none of your directors on the Board of Panagra has ever given any indication to that effect. On the contrary, they have from time to time indicated satisfaction with the progress being made.

As you know, I have for some time with the support of the Grace directors on the Board of Panagra, been urging upon your company that Panagra's services be "speeded up and greatly expanded" by their coming through to a terminal in the United States, a step which, for reasons with which you are familiar, we consider of the utmost importance to the company's welfare. By persistent refusal to permit this normal and logical expansion of Panagra's service, your company and your directors on the Board of Panagra have taken a course which to date has made impossible the most important single step by which "through service to points on the West Coast and Buenos Aires" could be "speeded up and greatly expanded".

The statement that "four years ago" your Panagra directors "favored providing service with four engine equipment" between Cristobal and Ecuador refers, I assume, to the effort of your directors on the Panagra board in 1938 to bar Panagra from an overland route across Colombia
2197 d. PAA-5550
[fol. 505] and to commit Panagra to an overwater route between Cristobal and Guayaquil operated with four engine seaplanes. There were no four engine land planes four years ago. If your views had been followed at that time Panagra would have been committed to a form of seaplane operation which has long since become obsolete on routes of this character and is rapidly becoming obsolete everywhere.

A year and a half ago, after exhaustive study of the then prospectively available four engine land planes, I recommended to the Board of Panagra the purchase of three Douglas DC4s. At a meeting of the Board held March 18,

1940, this purchase was authorized and correspond-
Wid ing contract entered into with the Douglas Air-
PAA craft Company. The contract called for deliveries
in July, August and September 1941 and but for the war these planes would doubtless be in service by now. Your letter states that about this same time you purchased a number of Lockheed 149s. You are as well advised as I regarding the present delivery prospects of the DC4. I know nothing as to the delivery prospects on the L49s. I understand, however, that although you ordered no DC4 until
recently you have within the past few months placed
17 orders for a number of these planes. Neither at the meeting of March 18, 1940 nor at any time before or since have any of your representatives stated to me or any of the Grace directors that you felt that Panagra should order an additional number of four engine planes. I do not know what conversations you may have had with Mr. Harris who is at present in Bolivia. If your directors on the Panagra board have any specific proposal to make they are, of course, at liberty to make it at any meeting of the
2197 d PAA-5551
[fol. 506] Board and you may rest assured that the Grace directors will give such proposal full consideration and take whatever action in the premises is in the best interests of Panagra.

On July 28th last, I suggested to Mr. Trippe the possibility of an arrangement along the lines of the Western Air United Air Lines agreement under which Panagra might bring its equipment through to New Orleans and Miami under Pan American's franchises. The suggestion was made as a possible compromise substitute for Panagra's bringing its line through to a United States terminal. It was suggested that, incidental to this main purpose, Pan American equipment might perhaps to meet schedule convenience, be operated over the Panagra route as far south as Cali. On August 7th an agreement in principle was reached and counsel was to prepare draft agreement. I have endeavored repeatedly since then to secure a draft of this agreement but as these efforts have been wholly unsuccessful, I was forced to the conclusion some time since

that you did not desire to proceed further along this line. From the last paragraph of your letter it would now appear that this idea has been turned entirely around, the main purpose totally eliminated and the incidental suggestion developed into the sole object of the agreement. While I will, of course, be glad to consider the draft agreement provided it is in Panagra's interests, I do not see how Panagra's traffic problem arising not out of the matters to which you refer but out of its great increase in traffic, have any bearing on or can be availed of to divert attention from your failure to provide Panagra with adequate direct connecting service between Miami and the Canal Zone. Moreover, I do not see how Panagra can have the

2197 d PAA-5552

[fol. 507] slightest interest in the suggested agreement if its effect is to turn over the operation of our Northern Sector to Pan American. Panagra is not interested in seeing the scope of its operations as an independent air carrier restricted. It is interested only in seeing them developed and enlarged.

Very truly yours,

/s/ H. J. Roig

2197 d PAA-5553

[fol. 508]

GOVERNMENT'S EXHIBIT 215

PAA

PAN AMERICAN AIRWAYS, INC.
General Offices—Chrysler Building—New York City

November 4, 1941

Pan American-Grace Airways, Inc.
Chrysler Building,
New York, N.Y.

Attention of Mr. H. J. Roig, President

Dear Sirs:

We have your letter of October 9th regarding our service between Miami and the Canal Zone. We were surprised to note that you complained as to the accommodations

afforded to your traffic by this service. We have investigated the matter and we find that out of a total of 99 flights from the Canal Zone to Miami between February 13 and September 30, 1941, only 40 seats were refused your passengers on our service, while during the same period your reservations office released a total of 176 seats which had been allotted to it. We also find that during the same period you refused us space South of the Canal Zone for 55 passengers for whom we had available space on trips from Miami to the Canal Zone.

In the light of these figures it seems to us that if criticisms of this sort are to be made between partners at a time of acute shortage in equipment, such criticisms would more appropriately come from us than from you. This seems particularly evident when it is recalled that we came

PAG-XP 65
10/12/54
RLA

[fol. 509] to your assistance with a loan of equipment which was urgently needed on certain of our own operations and that we also released multi-engine transports to the British, at great sacrifice to ourselves, without calling on Pan American Grace to release their proportionate share of the System's contribution.

In this connection, we may say that we have always been somewhat puzzled as to the basis for the position apparently taken by the Grace interests that Pan American Airways was obligated to maintain operations between the United States and the Canal Zone with types of equipment vastly superior to those which the Grace interests have been willing to have the joint company acquire for its own use. This question, however, is in a sense academic, since Pan American Airways recognized many years ago that operations between the United States and the Canal Zone could best be conducted by 4-engine equipment. The S-42s were put on this run as early as 1937 at a time when the joint company was using S-43s. In the same year, Pan American Airways ordered the first 4-engine land aircraft with cabins, supercharged to permit flight at high altitudes the Boeing S-307. When these aircraft were delivered, Pan American utilized them to provide service between the

Canal Zone and the United States, notwithstanding the fact that Pan American-Grace Airways continued to supply limited capacity south of the Zone to the detriment of both the company and the travelling public.

It is true, of course, that pending the improvement of a landing field between Miami and the Canal Zone, suitable

PAG-XP 66

[fol. 510] for regular use by the S-307, the capacity of these aircraft on this service has been limited by the long non-stop flight of 1,170 miles. This, however, is merely a temporary situation and happily, as you know, is about to be remedied by the availability of the new landing field at Camaguey. We note that in your letter you are at pains to reject in advance the inclusion of a stop at this point. There is no justification for this position. The inclusion of a stop at this point will permit the S-307s to carry some 1,350 additional pounds of payload on this service, and with this stop the route between Miami and the Canal Zone will be traversed in 6 hours and 55 minutes. We know of no such fast time over an equivalent distance made by our joint company. Furthermore, the use of this stop will still leave a non-stop flight mileage between Camaguey and the Canal Zone of 867.5 miles, a flight considerably longer than any maintained on the jointly owned company's service.

Any contention on the part of the Grace interests that the service between Miami and the Canal Zone must with present equipment be a non-stop service is utterly without basis. The direct connecting service referred to in the agreement of February 14, 1939, was a service by S-42s, including stops at Cienfuegos and Kingston, and the service with the S-307s via Camaguey will of course be far speedier than was the flying boat service via those points and over a shorter and more direct route. Indeed, your opposition at this time to the stop at Camaguey which will so greatly increase the capacity of aircraft destined to the Canal Zone, and in this manner will benefit the commerce

PAG-XP 67

[fol. 511] of the United States and the national defense, seems to us to throw significant light upon your letter.

Two other matters are mentioned in your letter, viz. a fourth service from Miami to the Canal Zone with which

your fourth trip might connect, and the possibility that at some future date you may inaugurate daily connecting services at the Canal Zone. These matters are the subject of a letter which Pan American Airways Corporation, one of your joint owners, addressed under date of October 22nd to W. R. Grace & Company, your other joint owner, a copy of which letter you already have. As stated in that letter, we have long since placed firm orders (involving substantial down payments) for suitable 4-engine equipment for operation of daily service to the Canal Zone and also, for operations through Central America to the Canal Zone as well as between the United States and Barranquilla, with direct connecting service to the Canal Zone. You will also see from that letter that it is again urged that steps be taken to put the jointly owned company in a position at the earliest possible date where it can render a comparable service having sufficient capacity to move connecting traffic along the west coast to Santiago and Buenos Aires.

Without waiting, however, for delivery of the limited amount of 4-engine equipment which you have on order, we are prepared to enter into an agreement with you, subject to approval of the Civil Aeronautics Board, which would not only permit the exchange of such equipment if and when obtained, with our 4-engine equipment, but also in the meantime an arrangement for charter of our B-307s to you on certain of your operations. The charter of 307

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[fol. 512] equipment for use by our joint company on certain of its operations would permit a more efficient express service and the partial elimination of the traffic bottleneck which has so long existed with respect to your through traffic to all west coast countries other than Colombia. Enclosed is a draft of such agreement.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.

s/ EVAN E. YOUNG
Evan E. Young
Vice President

Enclosure

PAG-XP 69

[fol. 513]

GOVERNMENT'S EXHIBIT 216

PAN AMERICAN AIRWAYS CORPORATION
15 Exchange Place, Jersey City, N. J.

November 4, 1941

Mr. H. J. Roig, President,
Pan American-Grace Airways, Inc.
Chrysler Building,
New York City.

Dear Sir:

We have your letter of October 27th wherein you undertake to reply in part to our letter of October 22nd to W. R. Grace & Company.

We are very much surprised that you should take our statement that the services of Pan American-Grace "connecting with our service at Cristobal, should be speeded up and greatly expanded" and by distorting it make it a pretext for raising again the proposal that the operations of Pan American-Grace be extended north of the Canal Zone. We are hardly less surprised that, in answer to a suggestion that certain admitted defects in Pan American-Grace's service be remedied, you should bring into the discussion a great many other extraneous matters.

We do not propose to become involved in a discussion of any of these irrelevant matters or to bring up at this time matters relating to your management's operating policies. We will limit our comments here to the following:

(1) You must know that such an extension of Pan American-Grace's service would be directly contrary both to the agreement under which Pan American-Grace was formed and to the agreement made between its two stockholders on February 14, 1939, and

(2) You must also know that there is not the slightest reason to think that such an extension (which, with the limited number of 4-engine aircraft which Pan American-Grace has on order, could only be achieved

at the expense of service on the route for the operation of which the company was formed) would speed up through service between the United States and the Canal Zone which is now being operated by Pan American Airways with the fastest and most modern aircraft in use in any international operation anywhere in the world.

With respect to your version of the negotiations in regard to the exchange of 4-engine equipment, you are, at the least, badly confused. You state that you suggested "an arrangement along the lines of the Western Air United Air Lines agreement under which Panagra might bring its equipment through to New Orleans and to Miami under Pan American's franchises."

PAG-XP-70
10-12-54
RLA

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[fol. 514] If you will read the Western Air United Air Lines agreement you will see that your statement is self-contradictory. The Western Air United Air Lines agreement was one for a reciprocal interchange of equipment. It was not a unilateral agreement whereby one company would operate its aircraft over the lines of another. From our standpoint the arrangement discussed was simply regarded as a constructive step in the development of air transportation to Latin America which would be in the public interest as well as to the mutual advantage of the parties.

The difficulty in any such arrangement was that Pan American-Grace's had, and still has, no 4-engine equipment to interchange. It is for that reason that, as indicated in our letter of October 22, 1941 we would be willing, in order to alleviate the bottleneck on the northern part of Pan American-Grace's route, to permit Pan American 4-engine equipment to operate over that sector even before Pan American-Grace is able to reciprocate. Your characterization of such an offer, made in a spirit of good partnership, as indicating desire on the part of Pan American to take over the northern part of Pan American-Grace's route is

such an obvious distortion of the facts as to make us doubt whether the effort that has been expended on the proposed interchange of equipment has not been wasted.

Very truly yours,

PAN AMERICAN AIRWAYS CORPORATION

EVAN E. YOUNG (Signature)
Evan E. Young
Vice President

PAG-XP 71
15

[fol. 515]

GOVERNMENT'S EXHIBIT 217

November 7, 1941

Pan American Airways Corporation,
15 Exchange Place,
Jersey City, New Jersey

Dear Sirs:

Yours November 4th.

I greatly regret that the very personal tone of your letter leaves me no alternative but to reply in a personal sense.

I am not aware of having distorted anything or of having brought any extraneous or irrelevant matters into this discussion. My only interest in such matters has been to see fully and correctly stated those which you have introduced.

I do not know either of the propositions as stated in your indented paragraphs marked "(1)" and "(2)" to be correct. On the contrary, both are, in my opinion, incorrect.

I am neither badly confused nor self-contradictory with regard to the Western Air/United Air Lines agreement nor with respect to my view of the negotiations in regard thereto. After all, it was I who brought that agreement into the discussion as a possible way out of our difficulty. I never for a moment suggested an exact literal counter-

part of that agreement to meet our situation. In my conversations with Mr. Trippe, among other differences, I repeatedly pointed out that since what Panagra was interested in was a means of coming through to the United States I would not be interested in the reciprocal features of the Western Air United Air Lines' setup beyond the barest schedule convenience which might in the most extreme case involve operating Pan American planes as far south as Cali.

It so happens that I know exactly how this particular idea came under discussion, whose offer it was, how it was received and just what the discussion of it has been. The last three paragraphs of your letter under reply are obviously based on inadequate information regarding these matters.

Very truly yours,

(Sgd.) HAROLD J. ROIG
President

PAG-YP 72
10-12-54
RLA

17

[fol. 516]

GOVERNMENT'S EXHIBIT 218

MQ-TFK/PER

PERSONAL

NEW YORK,
January 5, 1942.

Mr. T. J. Kirkland,
LIMA.

Dear Tom:

Attached herewith please find copy of my memorandum to Mr. Roig of January 3rd with regard to a possible fifth trip. I would appreciate your remarks.

With regard to your personal letter of December 31st which has just reached me, please advise whether your discussion with Dobbs indicated that nothing could be done to speed up the present 307 arrivals in the Canal Zone, now delayed because of the Army requirements for approach. I believe that we may be able to exert sufficient pressure on Panair at this end to see that they get away from Miami somewhat earlier in order to avoid the continuous overnights in the Canal Zone on all 307 connections southbound.

Yours very truly,

H. R. Harris.

HRH/Q
Enc.

PAG-C-188
10/7/54
JCL

[fol. 517] January 3, 1942.

Memorandum to Mr. H. J. Roig:

With further reference to a possible fifth trip on Panagra as outlined in my memorandum to you of November 29th, I have discussed this matter with Pan American Airways on the basis that an additional Boeing 307 operation can be instituted from the Canal Zone to Miami northbound on Saturday and southbound on Sunday. This would mean that we would operate our fifth trip from Balboa to Cali Sunday afternoon; Cali/Lima on Monday; Lima/Santiago on Tuesday; Santiago/Buenos Aires on Wednesday, giving four direct connections from Miami to Buenos Aires via Panagra, arriving in Buenos Aires on Sunday, Tuesday, Wednesday and Friday. We also have a Thursday arrival in Buenos Aires which leaves Brownsville Sunday morning on regular Panair operation, or Sunday afternoon on the present Panair special operation which may be discontinued in February.

Northbound, our present schedules leave Buenos Aires on Monday, Wednesday, Thursday and Saturday. The present Wednesday departure is a one-day operation be-

tween Lima and the Canal Zone on Friday. This would be changed to Lima Cali on Friday; Cali Balboa Saturday to connect with the new 307 operation Balboa Miami the same day. The fifth northbound trip could operate Buenos Aires Santiago Tuesday; Santiago Lima Wednesday; Lima Balboa Thursday to arrive in Brownsville Saturday afternoon on regular Panair schedule, or Saturday morning on the present Panair special schedule.

An alternate northbound schedule would be to leave Buenos Aires on Friday instead of Tuesday, operating Santiago Lima Saturday; Lima Balboa Sunday which, if we could get Panair to change their present S 42 Miami Barranquilla service to southbound Sunday and northbound Monday, would give us direct passenger service from Buenos Aires to Miami in 3½ days. From the standpoint of spacing of service for Santiago passengers northbound, the latter arrangement would be desirable since it would give Santiago departures direct for the United States on Tuesday, Friday and Saturday as compared with the present Tuesday, Friday and Sunday. There is, however, considerable merit in the idea of giving Buenos Aires a mail and passenger service to the United States on Tuesday.

If a fifth trip is to be operated as indicated above, be southbound leaving Balboa Sunday, the present U.S. mail pay and plane operation between Arequipa and Santiago on Monday would be transferred to Tuesday, and the pres-

PAG C-189
10 7 54
JPL

[fol. 518] ent U. S. mail trip operated on Sunday Santiago Arequipa would be transferred to Saturday provided it was decided to operate the fifth trip out of Buenos Aires on Friday. If the trip is made out of Buenos Aires northbound on Tuesday, the present Sunday mail trip would be transferred to Wednesday.

Assuming that Panair will agree to operate a 307 Balboa Miami Saturday and Miami Balboa Sunday, and shift their S-42 Miami-Barranquilla service to southbound Sunday and northbound Monday, it is recommended that the following steps be taken by Panagra

(1) Our present three basic trips and our southbound fourth trip be continued as at present.

(2) The Corumba services to continue as at present.

(3) The northbound fourth trip operate Friday Lima Cali instead of the present Friday Lima Balboa. This would then give a direct connection Cali Miami on Saturday.

(4) Panagra to operate Balboa Cali Sunday, Cali Lima Monday, Lima Santiago Tuesday and Santiago Buenos Aires Wednesday which is the southbound leg of the fifth trip.

(5) The northbound fifth trip to operate Buenos Aires Santiago Friday, Santiago Lima Saturday, Lima Balboa Sunday

The net result of the above would give us five passenger services with a 3½-day schedule Buenos Aires Miami and four 3½-day passenger services Miami Buenos Aires. The additional southbound passenger service would require from 2:30 PM Sunday leaving Brownsville to 2:15 PM Thursday arrival Buenos Aires.

Certain changes in the trips to be paid Panagra by the Post Office Department would be required in connection with the above additional services offered. These will be the subject of a separate memorandum report.

The total additional flying by Pan American Airways in connection with this program would be one 307 roundtrip Miami Balboa per week (2336 miles). For Panagra the additional flying would be one DC-3 roundtrip per week Balboa Arequipa (4525.4 miles).

H. R. Harris.

HRH Q

PAG C 190

[fol. 519]

GOVERNMENT'S EXHIBIT 289

Operations

B

(Phoned Mr. Cooper
Washington, D. C.
request memo to W.O.S.
1/7/42 File)

January 6, 1942

J. T. T:

RE: PAA MIAMI-BALBOA SERVICE

(1) As you know, Pan-Grace is now operating four scheduled services per week into and out of the Canal Zone. It is putting on an additional service, making five in all, in the immediate future and is definitely planning on operating a sixth weekly service so soon as possible.

(2) We are as you know operating a thrice weekly service Miami-Balboa, and can put on an additional round trip service (307) at any time. The only way however that a fourth service can be operated is to have a plane which makes the southbound trip on Saturday (and overnights at Balboa) return on Saturday to Miami, and then make a round trip on Sunday. It is my understanding, though I may be in error, that the U. S. Post Office Department has no funds with which to accord us mileage pay for the fourth trip, and that it is not inclined to ask for additional funds for that purpose. I am however bringing to your knowledge the fact that we can operate a fourth Miami Balboa service because (1) of the action of Pan-Grace in augmenting its services into the Canal Zone and (2) the action of W.R. Grace & Company in applying for a certificate for Pan Grace for the route Canal Zone-Miami, or other point.

E. E. Y.

PAA 157
1-2-1-54
PJS

[fol. 520]

GOVERNMENT'S EXHIBIT 220

W. R. GRACE & CO.
7 HANOVER SQUARE, NEW YORK

Office of the President April 27, 1942

To the Civil Aeronautics Board,
Washington, D. C.

Dear Sirs:

Pan American-Grace Airways, Inc. has become one of the foremost air carriers in the world. Its route comprises not only one of the longest but also one of the strategic international air routes. As a result of competent and experienced management and operating organization, Pan American-Grace Airways, Inc. has attained a stature which not only justifies but requires its existence as a completely independent air carrier. At the present time its ability as an independent air carrier to fulfill its obligations to the public, and to the Governments of the United States and the eight South American countries which it serves, is being suppressed and its growth and development are being restricted by Pan American Airways Corporation, one of its own stockholders, in order that such developments may not interfere with Pan American's own interests and conflict with its own supposed monopoly of foreign air transportation.

Facts constituting the basis of this allegation are set forth in the memorandum submitted herewith. We stand ready to submit to the Civil Aeronautics Board such further information as may be required by it in making a full and complete investigation of the matters referred to herein.

We have long hesitated to place this matter before you, hoping that some other solution might be possible; but we have been reluctantly forced to the conclusion that there is no other way of remedying the existing situation. The

urgent war needs, the need for better service, for economy of men and equipment, and for erasing the obstacles and impediments to these accomplishments, the need to extend and make more valuable and effective the great organization which Pan American-Grace Airways, Inc. has built up, and to give it full opportunity to render the service to the nation which it is highly competent to render and anxious to perform—these urgent needs, as well as the long-range interests of the line itself, make it impossible to leave unremedied the difficulties under which Pan American-Grace Airways, Inc. has so long labored.

We, therefore, respectfully request that the Civil Aeronautics Board require Pan American Airways Corporation to cease and desist from the matters and things complained [fol. 521] of and require Pan American Airways Corporation to divest itself of its ownership of the stock in Pan American-Grace Airways, Inc. to such extent as may be necessary to divest itself of its present negative control of Pan American-Grace Airways, Inc., all in accordance with and as required by Section 411 of the Civil Aeronautics Act of 1938, and Sections 18 and 21 of the Clayton Act (Title 15, U. S. Code) and we further respectfully request that the Civil Aeronautics Board consider and grant the petition dated December 16, 1941 (Docket No. 707) and amend the Certificate of Public Convenience and Necessity of Pan American-Grace Airways, Inc. so as to name a point within the United States as a terminal of the route of Pan American-Grace Airways, Inc.

Respectfully submitted,

W. R. GRACE & CO.

By D. S. Iglehart
D. S. Iglehart
President

[fol. 522]

GOVERNMENT'S EXHIBIT 221

Camagney

May 29, 1942

Mr. George L. Rihl,
Pan American Airways,
Chrysler Building,
New York City.

Dear George:

The more or less continuous record of delayed schedules in the Miami/Balboa service indicates that much still remains to be done at Miami to facilitate prompt dispatch and that the Camagney stop is definitely making a bad matter worse without any real advantage as even the contemplated additional payload seems to be frequently unavailable on account of the necessity of carrying additional gasoline because of weather conditions making the stop at Camagney impractical. Experience has shown that the average time required for the Camagney stop is far in excess of your expectations as indicated to the CAB when the stop was authorized.

It seems clear, therefore, that the time has come to discontinue the Camagney stop and to take such steps in connection with Miami dispatch as will permit of schedule departure,—including such changes as may be necessary to insure dispatch of the Rio plane without its holding up departure of the Balboa plane.

Very truly yours,

PAG-XP 87
10-12-54
RLA

[fol. 523]

GOVERNMENT'S EXHIBIT 222

PAA

Camaguey

PAN AMERICAN AIRWAYS SYSTEM
General Offices, Chrysler Building, 135 East 42nd Street,
New York, N.Y.

Office of
G. L. Rihl, Vice-President

June
5
1942

Mr. Harold J. Roig
President
Pan American-Grace Airways, Inc.
c/o W. R. Grace & Co.
7 Hanover Square
New York City

Dear Harold:

I am sorry I have delayed answering your letter of the 29th, regarding the Miami-Balboa service.

I have just looked up the schedules from May 16th through June 3d inclusive, and find that out of the nineteen flights only three were more than thirty minutes late, 3 of which one was more than an hour late, but this 6 was due to mechanical trouble. Six flights were from 7 twenty to thirty minutes late, and seven were less 3 than twenty minutes, the remaining three being on, or ahead of, time. I think you will agree that the operation has been greatly improved, and considering all the elements involved is not bad and hardly justifies the elimination of the Camaguey stop. We do have a considerably increased pay load southbound, which should be of benefit to Pan American-Grace.

It may be of interest to you to know that we begin loading the plane at four o'clock in the morning in order to avoid posible delays due to inspection of baggage, etc. Of course, we still cannot leave without the mail, although we do not have to wait for E.A.L. mail as that is all censored. A couple of times when we have been late leaving it has

been due to the late arrival of the mail from Miami, for which we hardly can be blamed.

I think you will find my information correct.

Yours faithfully,

/s/ Geo. L. Rihl.
Geo. L. Rihl

Mg 12E
Missed connection Mg 31—mechanical trouble

PAG-XP 88
10-12-54
RLA

[fol. 524]

Government's Exhibit 223

Camaguey

June 11, 1942

Mr. George L. Rihl,
Pan American Airways,
Chrysler Building,
New York City

Dear George:

Yours June 5th.

I am very glad to note improvement in Miami/Balboa service. The improvement is, of course, pretty recent but I hope it may continue. In any event, I agree with you that so long as present schedule performance is maintained, we may well defer consideration of the elimination of the Camaguey stop.

The thing I am primarily concerned with is, of course, that our passengers, mail and express should not be required to overnight in Balboa. Nevertheless you appreciate that even twenty or thirty minutes delay in the arrival of

your plane is not unimportant. The time available for the transfer at Balboa in order not to overrun our deadline is not excessive. When your plane arrives late we have just that much less time in which to handle the transfer which means that we have not only lost all the advantage of the one hour's extra time made available by U. S. War Time but must also manage somehow to save at our end the additional time which has been lost in Miami or en route to Balboa. For example, while I find that between May 12th and June 4th we were required to overnight only once on account of delay in your arrival, it is a pretty safe guess from the number of moderately late arrivals mentioned in your letter, that many transfers had to be made very expeditiously indeed to avoid overnight stay. I trust, therefore, that the progress indicated by your letter may be continued to the point when even these twenty and thirty minute delays may be substantially reduced.

Very truly yours,

PAG-XP 89-
10-12-54
RLA

[fol. 525]

GOVERNMENT'S EXHIBIT 224

June 13, 1942

Vice Pres Young NY
President (Pan-Grace) NY Manager Vice Pres. Rihl
Vice Pres Harris " NY
Eastern Division Executive
operations Miami New York

MIAMI-BALBOA SERVICE

I have a letter from Mr. Roig calling my attention to the fact that while there has been an improvement in our performance we should constantly keep in mind the fact that

the Pan-Grace connection is at best close, and that even a twenty minute delay might cause them to have to over night at Balboa, which naturally is very undesirable at the present time, particularly in view of the available accommodations. I know that you realize the closeness of the connection, but I thought it just as well to bring it to your attention again in order that Operations might bear in mind that while a twenty minute delay is not ordinarily serious, it can be in this particular instance.

Geo. L. Rihl

804

PAA-153
12-1-54
PJS

[fol. 526]

GOVERNMENT'S EXHIBIT 225.

June 18, 1942

Vice Pres Young	NY	Manager Eastern Division	Vice President Rihl Executive
operations		Miami	New York

MIAMI-BALBOA DELAYS

I was very much interested in reading Mr. Critchley's memorandum to you of June 15th, on the above mentioned subject. It is very apparent that you are making a great effort to maintain schedules.

Considering the length of the operation, twenty or thirty minutes after scheduled arrival time should not be judged a bad operating performance, and would not be, under ordinary circumstances. I realize perfectly that the connecting schedule of Pan American-Grace is too tight, but there is nothing to be done about that, for reasons you know.

In checking over the causes of the delays I note that there are five serious ones, due to maintenance trouble. That does seem to me a fairly high percentage for a month's operation. Operations certainly cannot be blamed, but unless we are getting a tremendously high use out of the 307's it would seem to me Maintenance difficulties ought not to be responsible for 33% of the departures more than thirty minutes late out of Miami.

I also note that dispatching the Rio ship has a high percentage. It would seem possible that the Balboa ship could be given preference, and is, in the timetable. You can readily see that delaying Balboa passengers, or the ones destined for the West Coast, due to our favoring the East Coast operation could cause criticism that might be difficult to explain. As a matter of fact, it has already been called to my attention.

If we can better our performance for the two above mentioned causes I don't believe we will have any more trouble.

Geo. L. Rihl

804 PAA-140

[fol. 527]

GOVERNMENT'S EXHIBIT 226

PAA MEMORANDUM

Send Original By		DATE	July 7, 1942
TO	Vice President Young	FROM	Manager
DEPT. OR DIV.	Executive	DEPT. OR DIV.	Eastern
LOCATION	New York	LOCATION	Miami

Std. Form 9-29 B Copy sent Friendly 7/9/42

Received by E.E.Y.
JUL 8-1942
/s/EEY

SUBJECT: STATUS OF ARRIVALS BALBOA 307'S

REFERENCE:

With the thought of keeping you informed concerning the success of our combined efforts to eliminate delays in arrival of our 307's in Balboa, we are attaching hereto a summary of arrivals with pertinent comment relative to the cause of delays. There has been a marked improvement over our record for the month of May and, while a repetition, we are repeating at this time a comparison of the average of arrivals in Balboa for the period February to June inclusive:

February	1 hour 23 minutes late
March	1 hour 31 minutes late
April	41 minutes late
May	37 minutes late
June	2⅝ minutes late

It seems pertinent to mention that during the month of June our aircraft arrived in Balboa on 8 occasions on time or ahead of time, whereas 4 delays were of less than 15 minutes duration; 13 from 15 to 30 minutes; 3 from 30 to 45 minutes; and 2 over 45 minutes.

In our memorandum of June 8 we outlined the action that was being taken to minimize and eliminate delays, and there is very little which can be added in this respect other than to state that this important matter is continually under study in order to obtain closer adherence to schedule.

Insofar as July is concerned, the results to date appear rather encouraging. For your information we are indicating the pertinent data for the trips July 1 to 6 inclusive:

July	1	28 minutes ahead of schedule
	2	23 minutes late
	3	20 minutes ahead of schedule
	4	4 minutes ahead of schedule
	5	34 minutes ahead of schedule
	6	27 minutes late

encl.

/s/ W. O. Snyder

W. O. Snyder

cc: 1 extra for Vice President Young, New York (encl)
Operations Manager, Miami (encl)
Division Traffic Manager, Miami (encl)
Vice President Rihl, New York (encl)

PAA-137
12-1-54
PJS

804

Show copies in above space, giving name or title, location, and mailing instructions

[fol. 528]

GOVERNMENT'S EXHIBIT 227

PAA MEMORANDUM

Send Original By		DATE	August 4, 1942
TO	Vice President Young	FROM	Manager
DEPT. OR DIV.	Executive	DEPT. OR DIV.	Eastern Division
LOCATION	New York	LOCATION	Miami

Std. Form 9-29 B 8/7 Reply

Received by E.E.Y.
AUG 5 1942
File .....
Referred to .....

SUBJECT: STATUS OF ARRIVALS BALBOA 307'S

REFERENCE:

Pursuant to our recently established policy of reporting at the end of each month on the success of our efforts to adhere to our Miami-Balboa schedule with particular reference to arrivals at the latter point, we are attaching hereto a statement covering the month of July, indicating comparison of arrivals to published schedules with a brief comment regarding any delays concerned.

We feel that we have made considerable progress during the month of July, as our planes arrived at Balboa on time, ahead of time, or less than five minutes late on eighteen occasions; between five and ten minutes late, twice; fifteen to thirty minutes late, four times; thirty to forty-five minutes late, twice; and over forty-five minutes late, five times.

While the average delay for the month of June was twenty-eight minutes, for the month of July it was thirty-six minutes; however this was brought about by lengthy delays on several different occasions, which you will note from the enclosure.

All concerned here are carefully following the scheduled performance over the Miami-Balboa sector and we would be interested in knowing if the improvement to date in any way reduced the complaints from the connecting carrier.

/s/ W. O. Snyder
W. O. Snyder

cc: 1 extra for V. P. Young, NY (encl)
Vice President Rihl, NY (encl)
Operations Mgr., Mia (encl)
Div. Traffic Mgr., Mia (encl)

PAA-133
12-1-54
PJS

804

Shop Copies in Above Space, Giving Name or Title, Location, and Mailing Instructions

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[fol. 529]

GOVERNMENT'S EXHIBIT 228

August 7, 1942 EEY:RB

Manager Eastern Miami — Vice President Executive New York — operations

STATUS OF ARRIVALS BALBOA 207'S.

Your memorandum of August 4th.

Referring to the last paragraph of your memorandum, no complaints from Pan American Grace Airways regarding this matter have been made for quite some weeks past.

I do hope that it will be practicable for the Division to keep up the good record made of recent months, and possibly even improve it.

Evan E. Young

Vice President Rihl-NY
Extra copy for Div. Mgr.-Miami

PAA-132
12-1-54
PJS

804

[fol. 530]

GOVERNMENT'S EXHIBIT 229

Minutes of Adjourned Regular Meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways, Inc., 135 East 42nd Street, New York, N. Y. on the 22nd day of September, 1942 at 2:30 o'clock in the afternoon.

PRESENT:

Messrs. W. F. Cogswell,
A. Garni,
H. Preston Morris
R. H. Patchin
G. L. Rihl
Harold J. Roig
J. T. Trippe
E. E. Young

being all of the members of the Board.

Mr. Roig, President, presided. Mr. Cogswell, Secretary, acted as such.

Mr. Garni moved the following resolution which was seconded by Mr. Patchin:

RESOLVED that the President of the Company is hereby authorized to retain Counsel to represent the Company in connection with CAB Order Docket No. 779 dated September 10, 1942 and to take all necessary action to present to the CAB the Company's position with respect to said order to the end that the CAB authorize and require the amendment to the Company's Certificate of Convenience and Necessity in the manner referred to in said Order, U.S. terminals to be Miami and such other terminal as may be agreed upon between Mr. Roig and Mr. Rihl or, failing such agreement, by the CAB.

Vote being had said resolution failed to pass, Messrs. Roig, Garni, Patchin and Cogswell voting in favor and Messrs. Trippe, Young, Rihl and Morris voting against.

Mr. Young stated that the proposal of the Grace interests that Pan American Grace should apply for a certificate of convenience and necessity, between the Canal Zone and [fol. 531] the continental United States had been discussed so often and at such length by the parties that no useful purpose would be served by further extended discussion. However, he desired briefly to state for the record:

1. Pan American Grace now operates on the west coast of South America and across the Andes. Its only American flag competitor is the Grace Steamship Line, competition for air traffic between the United States and Buenos Aires being nominal. It enjoys end-on connecting services at the Canal Zone furnished by the three trunk lines of Pan American Airways across the Caribbean and through Central America. The best interests of the Company require that its energies should be devoted to the intensive development of this important route, utilizing fully the technical, sales and traffic organizations of Pan American Airways; and that its energies should not be dissipated by attempted extensions into territories already served by Pan American.

2. An extension of the route of Pan American-Grace Airways from the Canal Zone to the United States would bring it into direct competition with the routes which Pan American Airways, 50% owner of Pan American-Grace, has operated for more than 13 years and for which it holds a certificate of convenience and necessity, as well as with the northern portion of the route of the Grace Steamship Line. Such a situation would be directly contrary to the public interest, as recently enunciated by the Civil Aeronautics Board, which said that there would be "inherent in such an arrangement, the possibility, where the interests of air and steamship transportation come into conflict, that an impasse would be reached concerning the policies of [fol. 532] the joint company which might obstruct or retard its activities and the development of air transportation."

3. Pan American-Grace Airways, in view of its obligations to the War Department and on its own route, has neither the equipment, the personnel nor the facilities required for even a limited twin-engined service between the Canal Zone and the United States. The proposal is therefore wholly academic.

4. The proposal is contrary to the basic agreement between Pan American Airways Corporation and W. R. Grace & Co., under which the two companies associated themselves to form Pan American-Grace. This agreement provided that the Company was to operate "on the route from the Panama Canal to Valparaiso," that Grace was to have an option to acquire an interest therein not to exceed more than 50% of the total capitalization, and that Pan American was to have charge of the operation. A departure from this basic agreement of the two stockholders has not and cannot be made without their agreement, and is outside the appropriate scope of action by the directors.

Mr. Trippe, Mr. Rihl and Mr. Morris concurred in these views.

Mr. Garni then made the following statement in which Messrs. Roig, Patchin and Cogswell concurred:

"I quite agree with Mr. Young's statement that no useful purpose will be served by extended discussion at this time. I will not attempt therefore to state our position fully.

"It does seem to me, however, that the position taken by Messrs. Young, Trippe, Rihl and Morris overlooks the fact that the matter is before this meeting in quite a different light than at any previous time. The CAB has by its [fol. 533] Order in Docket 779, made this company a party to a proceeding instituted by the CAB and in our opinion it is plainly the company's duty to appear in this proceeding and present its case from its standpoint as an independent entity. The object of my resolution is to enable the company to do this. The effect of the vote of Messrs. Trippe, Young, Rihl and Morris is to make this impossible. The CAB by its Order in Docket 778 has instituted an investigation of the entire situation in the Caribbean area on the ground that there exists in that area "a serious shortage of transportation facilities due to the war, which may

adversely affect the national defense and the relations of the United States with Latin American countries." The Order invites anyone able to do so to apply for temporary certificate to operate in this area to assist in relieving this war emergency. It seems to me that it is the duty of this company to respond to this invitation to the limit of its ability with due regard to its other obligations.

Commenting seriatim and very briefly on the four points raised by the Pan American Directors, I would merely like to say:

1. The relevancy to the present resolution of the reference to the Grace Line in this and in the next paragraph is not apparent. Competition for air traffic between the United States and Buenos Aires is not nominal and will become increasingly important. Panagra is devoting and will devote its energies to the intensive development of its main route as it has in the past. In doing this experience shows that it can count on very little constructive assistance from Pan [fol. 534] American Airways. We believe that extension of the company's route to a terminal or terminals in the United States is in no way inconsistent with the development of its present route but is essential to such development; that such extension is in the best interests of the company and in the public interest and that the company should present its position in this regard to the CAB in response to its Orders in Dockets 778, 779 and should offer any services within its power to the CAB to meet the war emergency.

2. There is nothing in the instant situation comparable to that before the CAB in the decision to which Mr. Young refers. The CAB with all the facts before it can determine the principles applicable to the present problem.

3. The statements in this paragraph are incorrect. Mr. Bibl, after a complete study, has stated to this meeting that it is entirely possible for Panagra to undertake, commencing now, three trips per week with a DC-3 airplane between Balboa and Miami. This service,

if begun now under the Order in Docket 778 may or may not have to be interrupted later owing to the company's obligations to the Air Transport Command depending on the time when the Air Transport Command is able to make equipment available to the company for this service. It is entirely possible that we may be able to run both services. Our feeling is that in view of the war emergency referred to in No. 778 the company should submit all the facts to the CAB and indicate its willingness to be of such help as it [fol. 535] can with due regard to its other obligations and that it should not totally decline any offer of assistance. As far as No. 779 is concerned that does not in any case contemplate immediate operation and there is no reason whatever to suppose that any Order of the Board issued in this proceeding will not afford ample opportunity to the Company to provide any equipment, personnel and facilities which may be necessary.

4. The proposal is not contrary to any agreement between W. R. Grace & Co. and Pan American Airways Corporation and the matter is not one to be determined by the stockholders of Panagra rather than by its directors. By agreement between W. R. Grace & Co. and Pan American Airways dated February 14, 1939 it is provided that if the Pan American connecting service between Miami and the Canal Zone is at any time inadequate Panagra shall be permitted to apply to the CAB for a certificate to operate this connecting service. Under this agreement the Pan American directors are clearly obligated to vote in favor of the resolution.

Messrs. Trippe, Young, Rihl and Morris dissented from the views expressed by Mr. Garni for the reasons set forth in the above statement made by Mr. Young. Mr. Rihl thereupon moved the following resolution which was seconded by Mr. Young:

WHEREAS, the Civil Aeronautics Board has instituted a proceeding known as Docket No. 779, "to de-

termine whether the public convenience and necessity require that the certificate of public convenience and necessity of Panagra should be altered, amended, and modified to authorize and require (a) that Panagra's route terminate in the United States at Miami or [fol. 336] Tampa, Florida; New Orleans, Louisiana; Brownsville or El Paso, Texas; Los Angeles, California; or at two or more of said points; and (b) in the event a terminal or terminals in the United States are authorized and required pursuant to this proceeding, that Panagra reserve one or more intermediate points between the Canal Zone and said terminal or terminals in the United States"; and

WHEREAS, the Board has made Panagra as well as Pan American Airways, Inc. and W. R. Grace & Co. parties to the said proceeding; and

WHEREAS, half of the capital stock of Panagra is owned by Pan American Airways Corporation and half by W. R. Grace & Co., and four of the directors of Panagra are officers of Pan American and the other four are officers of Grace; and

WHEREAS, an amendment of the certificate of public convenience and necessity of Panagra so that Panagra's route should terminate in the United States is favored by Grace and by the four directors of Panagra who are officers of Grace, and is opposed by Pan American and the four directors of Panagra who are officers of Pan American; and

WHEREAS, while in view of the foregoing Panagra as a corporation is not authorized to take any position in the said proceeding, it nevertheless requires the services of counsel, in order that all relevant facts desired by the Civil Aeronautics Board or by the parties to the proceeding may be elicited.

NOW, THEREFORE, BE IT

RESOLVED, that

If the retainer by Panagra of Gerhard A. Gesell, Esq. of Washington, D. C. [illegible] he shall be

unavailable, such other attorney as may be approved by Harold J. Roig, President, and [fol. 537] by either George L. Rihl, Vice President, of Panagra, or E. E. Young, Director of Panagra) to represent Panagra in C.A.B. Docket No. 779 be and the same hereby is authorized and approved;

(2) the two said officers of Panagra shall jointly request counsel to act and shall inform counsel that the proposed retainer is pursuant to this resolution of the Board of Directors;

(3) counsel shall be instructed that he is not to take any position in respect of the merits of the said proceeding, but that he shall see to it that all relevant information in the possession of Panagra which may be desired by the Civil Aeronautics Board or by the parties to the said proceeding, is made available to the Board and such parties, respectively, under such reasonable limitations as counsel may deem necessary in the interests of Panagra; and that counsel shall report to the said Harold J. Roig and the said George L. Rihl (or in the absence of said George L. Rihl, the said E. E. Young) jointly, shall act only on their joint instructions, and in the event of any difference of opinion between them shall report for instruction to the Board of Directors.

Vote being had on the above resolution same was passed. Messrs. Roig, Garni, Patchin and Cogswell in voting in favor of the resolution stated that Mr. Garni's resolution represented their views in the matter but they were voting in favor of Mr. Rihl's resolution in a spirit of compromise and to avoid a deadlock but without any implication from the preambles to said resolution that Panagra is not an independent entity or any implication except for the purpose of this resolution that Panagra should take merely a neutral position in the proceedings.

On motion of Mr. Garni, and seconded by Mr. Patchin, the following resolution was moved:

RESOLVED, that the proper officers of this corporation are hereby authorized to file application pursuant to Order of the CAB in Docket 778 dated September 10, 1942 for a temporary Certificate of Convenience and Necessity for operation between Miami and Balboa subject to our commitments to the Air Transport Command, under advice to the Air Transport Command, and to retain Counsel and take all steps necessary in the premises; said application to the CAB to contain full statement of our equipment and personal position with respect to our ATC commitment and to our other services.

[fol. 538] Vote being had, said resolution failed to pass, Messrs. Roig, Garni, Patchin and Cogswell voting in favor and Messrs. Trippe, Young, Rihl and Morris voting against.

Mr. Rihl stated that he desired to have recorded in the minutes a statement in explanation of his vote against the resolution just voted on.

He said that, in addition to the various fundamental objections which had been stated by Mr. Young on the resolution offered by Mr. Garni at the meeting of September 22 with reference to the permanent amendment of the certificate of Pan American-Grace in C.A.B. Docket No. 779, the comment made by Mr. Young as to the lack of equipment, personnel and facilities on the part of Pan American-Grace was peculiarly applicable to the temporary service covered in Mr. Garni's last resolution.

He stated that there had been no effort on the part of Mr. Roig and his associates to deny that if the Air Transport Command delivers planes in November and December of this year,—which was a month later than originally agreed to and which Mr. Rihl had confirmed to be the intention of the Air Transport Command—the lack of crews would make it impossible for Pan American-Grace to operate the planes to which it was committed even though the proposed temporary service were to be suspended. Fifteen additional crews would be needed for the Transport Command planes. As against this the Operations Department of Pan American-Grace has stated that it expects

to have two additional crews ready on December 1st, and four on January 1st with three others by the first of February—or six less than will be required for the Transport Command planes by the end of December.

[fol. 539] Moreover, from information submitted to the meeting it can be said without contradiction that the load factor of the Company is very high, averaging 75%, and between Balboa and Cali well over 90%, from the latest figures available. While high load factors are common under present conditions, it does seem plain that a company in the position of Pan American-Grace, i.e., unable to acquire additional commercial flight equipment and with limited available pilot personnel, should not think of taking on additional commercial commitments in new territory. This would seem particularly true when there is every indication that additional traffic will have to be handled by the Company immediately on its own route. Pan American Airways is doubling its commercial services to Balboa, and while a part of the traffic on this increased service will be local to the Zone, the remainder that will be destined to or originate at points on the West Coast cannot be handled except by increased utilization of the present equipment available to the Company,—particularly because of the limited capacity on the "bottleneck" between the Canal Zone and Cali. A three times a week service to Miami, which would have to be terminated in any event upon delivery of the Air Transport Command aircraft, would be of much less value to the war effort than the greatest possible utilization of the equipment and facilities available to the Company on its certificated route to meet acute traffic demands.

In the light of the above facts, the statement of Mr. Roig and his associates that they hoped and felt that some way could be found to continue the temporary service as well as operate the planes that are to be delivered by the Air Transport Command appears to be simply wishful thinking.

[fol. 540] Mr. Rihl stated that, believing that the facts in this statement were not subject to dispute, he felt that the only possible basis for Mr. Garn's resolution was a desire to extend the operation of Pan American-Grace to a

terminal in the United States without awaiting the decision of the Civil Aeronautics Board on that question in the proceeding (Docket No. 779) which had been initiated by the Board for that very purpose.

Messrs. Trippe, Young and Morris concurred in this statement.

Mr. Rihl asked that the letter of the Air Transport Command dated July 21, 1942, and the letters of Mr. Roig and Mr. Campbell to the Air Transport Command dated July 22 and August 6, 1942, be made part of the record of this meeting. Such letters are as follows:

"ARMY AIR FORCES
HEADQUARTERS FERRYING COMMAND
WASHINGTON

July 21, 1942.

"Pan American-Grace Airways, Inc.,
Attention: Mr. Douglas Campbell, Vice-President
New York, N. Y.

Gentlemen:

In connection with the plan of the Army Air Forces to utilize to the fullest extent possible the personnel and facilities of the civil air carriers, we would be interested in the operation by your company of services between Miami and Canal Zone, via Cozumel Island and Puerto Cabezas.

On the basis of present equipment figures, it is believed that three C53 or C47 aircraft can be assigned to this service in the month of October, with an additional two aircraft in the month of November. On that basis, one round trip should be available in the month of October and two round trips per day in the month of November.

It is expected that you would take responsibility for the maintenance of aircraft assigned to you and for the flight operation of such aircraft. Please inform us if maintenance facilities can be provided for such pur-

[fol. 541] pose and if flight crews sufficient for the operation can be made available by the dates given.

For the Commanding General:

C.R. Smith, Colonel, AUS
Chief of Staff
The Air Transport Command"

"PAN AMERICAN-GRACE AIRWAYS, INC.
NEW YORK

July 22, 1942.

"Commanding General
Air Transport Command
Washington, D. C.

Attention: Colonel C. R. Smith, Chief of Staff

Sir:

We beg to thank you for yours of July 21st and to advise that we will be glad to undertake the service between Miami and the Canal Zone via Cozumel Island and Puerto Cabezas.

We are in a position to make use of existing maintenance facilities at Miami and the Canal Zone and to provide such facilities at other necessary points.

We are entirely confident that flight crews sufficient for the operation can be made available by the dates indicated in your letter.

Awaiting your further instructions, we are

Respectfully yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

(signed) H. J. Roig
President."

[fol. 542]

GOVERNMENT'S EXHIBIT 230

October 28, 1942.

L. Welch Pogue, Esq., Chairman,
Civil Aeronautics Board,
Washington, D. C.

Dear Sir:

We wish to confirm our position taken at this morning's conference.

We accept your suggestion in principle and, for the duration of the war, agree to the immediate addition to Panagra's Board of an odd director (satisfactory to both stockholders) who might also serve as Chairman of the Board, with the understanding that this individual will be free to decide independently and without limitation, and on the basis of Panagra's being an independent entity, all matters involving Panagra's operations with regard to which the Pan American and Grace directors may be unable to agree. Such an arrangement accomplished the same purpose as establishing a voting trust along the lines you suggested, while being less complicated and more easily put into effect.

For reasons pointed out this morning, the suggestion of Pan American that there be an odd director appointed, who would only have "power to break any deadlock on any questions arising in connection with operations of the company *that fall within the scope of the dedication of capital made by the two stockholders*" begs the entire question. Grace and Pan American are not in agreement as to what is the proper scope of the company's operations, and fourteen years' experience has shown that such deadlocks as arise almost invariably revolve around this very issue which Pan American Airways wishes to exclude from the jurisdiction of the odd director.

Very truly yours,

W. R. GRACE & Co.

(signed) A. GARSI
First Vice President

Copies to: Pan American Airways Inc.
Pan American Airways Corporation
Henry Friendly, Esq.

GR-2522 GC13035
11-1-54
RLA

[fol. 543]

GOVERNMENT'S EXHIBIT 231

Minutes of Annual Meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways, Inc., 135 East 42nd Street, New York, N.Y. on the 27th day of April, 1943 at 3:30 o'clock in the afternoon.

PRESENT:

Messrs W F Cogswell
Howard B Dean
H P Morris
R H Patchin
H J Roig
E E Young

being a quorum of the Board.

Mr H J Roig, President of the corporation, presided. Mr W F Cogswell, Secretary, acted as Secretary of the meeting.

Mr. Cogswell nominated the following to be officers of the corporation. Mr. Patchin seconded the nominations. No other nominations were made.

Harold J Roig	President
R H Patchin	Vice President
G L Rihl	Vice President
Douglas Campbell	Vice President
G Vidal	Vice President and Comptroller
Thomas J Kirkland	Vice President
John T Shannon	Vice President
W F Cogswell	Secretary
J S Woodbridge	Treasurer
H Preston Morris	Assistant Secretary

Mr. Young then made the following statement:

"The agreement between W. R. Grace & Co. and Pan American Airways Corporation, dated February 14, 1939, provides in part as follows:

> 'One of the Grace directors of Panagra (who shall also be a director of Grace) will be elected President of Panagra and placed in responsible charge of the management of the Company. If at any time the Company's affairs are not being conducted to Pan American's reasonable satisfaction, then the President will resign.'

[fol. 544] The affairs of Pan American-Grace Airways are not being conducted by the President to Pan American's reasonable satisfaction. The President has devoted himself to efforts to procure a compulsory extension of the route of the Company into an area beyond the scope of the original dedication of its capital. Such action, in the opinion of Pan American, would not only be contrary to the agreement under which the Company was formed but would be adverse to the Company's true interests. These efforts actually have as one of their principal objects the compulsory divestment of the interest of one of the two stockholders in the Company. Pan American cannot regard activities of this sort as consistent with the duties of the President.

Moreover, Pan American considers that Grace, both by its persistent refusal to submit to arbitration in compliance with paragraph 4 of the contract and by the general course of action which it has followed in the past eighteen months

has breached the agreement of February 14, 1939, so that Pan American is no longer obligated to comply therewith.

However, the agreement of February 14, 1939, may be terminated on or after February 1, 1944, which is prior to the next annual stockholders' meeting of Pan American-Grace Airways. By that time a decision may have been rendered in the proceeding (Docket No. 779) now pending before the Civil Aeronautics Board. Pan American believes that under these circumstances a dispute over the election of a president at this time would not be in the best interests of Pan American-Grace Airways, Inc. Accordingly, while the representatives of an American on the Board of Pan [fol. 545] American-Grace are unwilling to cast their votes for the reelection of Mr. Roig as President, they are attending the meeting for the purpose of furnishing a quorum and permitting the election of Mr. Roig by the directors representing W. R. Grace & Co. Messrs. Dean and Morris concurred in these views."

Mr. Roig thereupon made the following statement:

"In reply to Mr. Young's statement I would like to say simply that I have devoted my best efforts as President of this company to the administration of its affairs and to its sound development and progress.

In my honest opinion an extension of the company's route to a terminus in the United States is not beyond the scope of the company's purposes, nor contrary to the Agreement under which the company was formed, nor adverse to its true interests. On the contrary, in my judgment, such extension is in the public interest and in the best interests of the company. I cannot, therefore, consider such action as I have taken in this regard, which has not been activated by the ulterior motive suggested, to be inconsistent with my duties as President. Grace has not, in my opinion, breached the Agreement of February 14, 1939. I sincerely regret that the Pan American directors do not share these views."

Mr. Dean thereupon left the meeting. Vote being had, Mr Roig was elected President, Messrs Young and Morris refraining from voting.

[fol. 546] Mr Dean returned to the meeting and the remaining officers as nominated by Mr Cogswell were thereupon unanimously elected.

There being no further business, the meeting adjourned.

/s/ H. R.
Chairman

/s/ W. F. Cogswell
Secretary

[fol. 547]

GOVERNMENT'S EXHIBIT 232

PAN AMERICAN AIRWAYS, INC
DIVISION MANAGER MIAMI
RECEIVED
JAN 6-1944
A.M.

[Date illegible]

CT13 NEWYORK JAN 6 1944 NFT

FOLLOWING IS FOR MR HOWARD B DEAN PAN AMERICAN AIRWAYS MIAMI FLORIDA FROM MR HAROLD J ROIG

CABLE JUST RECEIVED FROM LIMA STATES PANAGRA HAS RECEIVED NO UNITED STATES MAIL AT BALBOA FOR ON-CARRIAGE SINCE JANUARY SECOND STOP ASSUME THIS MEANS THAT DISRUPTION MIAMI BALBOA SERVICE WHICH BEGAN DECEMBER SIXTEENTH HAS NOW REACHED POINT OF COMPLETE SUSPENSION STOP WOULD APPRECIATE YOUR INVESTIGATING AND ADVISING ME AT ONCE REGARDING EXACT SITUATION AND WHAT SPECIFIC STEPS ARE BEING TAKEN TO REMEDY IMMEDIATELY STOP AS I TOLD YOU BY PHONE I CONSIDER THIS DISRUPTION CONNECTING SERVICE DIRECT RESULT OF FACT THAT PAN AMERICAN HAVE TAKEN ON ADDITIONAL SERVICES WHICH THEY WERE NOT IN POSITION TO UNDERTAKE IN VIEW EQUIPMENT AVAILABLE AND REQUIREMENTS MIAMI BALBOA SERVICE STOP THIS WAS POINTED OUT TO CAB

IN CONNECTION NEW ORLEANS ROUTE AND UNLESS 307 NOW ON THAT RUN RETURNED TO MIAMI BALBOA ROUTE AND OTHER NECESSARY ACTION TAKEN IMMEDIATELY TO RESTORE MIAMI BALBOA SERVICE FEEL THAT I SHOULD TAKE MATTER UP WITH CAB REQUESTING THEY TAKE NECESSARY ACTION TO GIVE THIS SERVICE PREFERENTIAL EQUIPMENT ASSIGNMENT TO WHICH IT IS ENTITLED STOP GIVING EVAN YOUNG COPY OF THIS MESSAGE

1533 HM

PAA-2785
12-17-54 PJS

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[fol. 548]

GOVERNMENT'S EXHIBIT 233

PAN AMERICAN AIRWAYS SYSTEM

Office of
Evan E. Young, Vice-President

January
7
1944

Dear Harold:

I received yesterday a copy of your telegram to Howard Dean (in Miami) in regard to the Miami-Balboa service, which he has asked me to answer.

I am glad to advise you that the Martin M-130 departed from Miami Wednesday night on schedule, and we have every reason to believe that this schedule will now be maintained. If there should be any further difficulty with the Martin M-130 before the return of the Boeing 307s to service, we are making arrangements to operate the Miami Balboa service by temporary use of an S-42B, which is now operating to San Juan. The Boeing 307s will be returned to service within ten days to two weeks after receipt of new spars which are expected to arrive in Miami this week.

The difficulty with the service between Miami and Balboa is temporary and due to causes entirely beyond our control. That structural trouble should develop simultaneously in two of the 307s was a circumstance for which we can hardly

be held responsible. It was extremely fortunate that just at this time we had been able to re-purchase the Martin M-130 from the Navy, and although this plane had been re-acquired by us for use in quite different service, we immediately placed it on the Miami-Balboa run. The difficulty since January 2 to which you refer was due to the facts that this plane developed engine trouble, and we had not yet received from the Navy the necessary parts which would have enabled us to have available built-up engine mounts to effect an immediate engine change, in accordance with our usual procedure, and therefore were delayed in correcting the engine trouble. We have been and are endeavoring to expedite the delivery of such additional parts from the Navy.

We do not agree with the remarks in your telegram concerning the New Orleans service. The structural difficulties which developed with the 307s would, of course, have developed regardless of the routes on which these planes were operated. It is true that these planes have been intensively utilized, as I know you will agree that they should be, but our figures show that utilization since the inauguration of GR-2582

10-21-52 PJS G-3509

[fol. 549] the New Orleans service has not been materially greater than during January and February 1943, when the planes were exclusively used in operating a second section in addition to the regular schedule between Miami and Balboa.

You may be sure that the matter referred to in your telegram is receiving *most earnest and continuous attention*, both in Miami and here.

Sincerely,

Evan E. Young (signed)

Evan E. Young
Vice President

Mr. Harold J. Roig
President
Pan American-Grace Airways, Inc.
7 Hanover Square
New York, N.Y.

GR-2583 G3509A

[fol. 550]

GOVERNMENT'S EXHIBIT 234

January 10, 1944

Mr. Evan Young
Pan American Airways
Chrysler Building
New York 17, N. Y.

Dear Evan:

Thank you for yours of January 7th and the news contained therein.

I understand that there has been no trip completed since Friday (January 7th) and that there is no indication when service will be resumed.

Referring to the next to the last paragraph of your letter, I am afraid my telegram did not make entirely clear what I had in mind. Granting the intensive use of equipment would have lead to difficulty with two of the three 307's wherever operated, my point is that the third 307 which has developed no difficulty and which is now being operated on the New Orleans run should be transferred to the Miami/Balboa run. My reason for this is, or course, that the Miami/Balboa service is of much greater importance than the other and that this important and long established route should have equipment preference in an emergency like this over the New Orleans route which was established (whether providently or otherwise) only a few months ago.

Very sincerely yours,

GR-2584
10-20-54 PJS

G 1559

[fol. 551]

GOVERNMENT'S EXHIBIT 235

W

March 13, 1944

8

Mr. Harold J. Roig, President
Pan American-Grace Airways, Inc.
7 Hanover Square
New York 5, New York

Dear Harold:

I wrote you on February 4th as to the desirability, in connection with the exhibits to be presented to the Civil Aeronautics Board in the pending Latin American certificate case, of providing for interchange of four-engine equipment between Pan American Airways and Pan American-Grace Airways at the Canal Zone.

The desirability of providing for such an interchange seems particularly clear in view of the express schedules which Pan American-Grace proposes to show in its exhibits.

As you know, the exhibits are due on March 30th and while I understand that an application for an extension of time may be made, the matter is one requiring prompt decision.

Yours very truly,

Howard B. Dean

bcc: Vice Pres. Young
Vice Pres. & Treas.

bcc: H. J. Friendly

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[fol. 552]

GOVERNMENT'S EXHIBIT 236

CABLE ADDRESS
"PANAGRA"

PAA GRACE

PAN AMERICAN-GRACE AIRWAYS, INC.

OFFICE OF THE PRESIDENT
7 HANOVER SQUARE
NEW YORK 5, N. Y.

March 21, 1944

Received
Mar 23 1944
H. B. Dean

Mr. Howard B. Dean
Pan American Airways
Chrysler Building
New York 17, N. Y.

Dear Howard:

Yours March 13th.

Your letter of February 14th was, by no means, overlooked. On the contrary, I have been considering the matter from a good many different angles. In this connection the testimony pro and con in Docket 519 is interesting.

As you know, my past experience under this heading has not been such as to lead me to believe that there is any possibility of working out a satisfactory basis.

It is rather difficult at this time to accurately weigh the merits and demerits of equipment exchange in connection with the Constellation without really knowing definitely what the schedules will be with this equipment and whether or not passenger schedules will be operated with sleeper planes.

Extension of Panagra's route to Miami would, of course, eliminate the whole question so far as Miami is concerned and would solve the problem in a way in which no equipment exchange can ever do.

Have you considered the question of equipment exchange to Brownsville, New Orleans, Los Angeles and/or possibly other gateways which may be opened as a result of various

applications now pending? Similarly, have you considered equipment exchange with domestic lines from the various gateways through to New York, Chicago, San Francisco and other important interior points?

These are by no means all of the angles I have been considering but they are enough to indicate to you that the matter has been having attention.

Sincerely yours,

H. J. R.

copied 2/24/44 for Vice Pres. Young, H. J. Friendly PAA-2810 12-14-54 PJS 814

[fol. 555]

GOVERNMENT'S EXHIBIT 238

PAN AMERICAN AIRWAYS SYSTEM

General Offices, Chrysler Building, 135 East 42nd Street, New York 17, N.Y.

Office of
Howard B. Dean, Vice-President

June 29, 1944

Mr. Harold J. Roig, President
Pan American-Grace Airways, Inc.
7 Hanover Square
New York 5, New York

Dear Harold:

During my recent trip to South America, two of Pan American's representatives on the Pan American-Grace board took up with you the question of the four-engined equipment which our joint company should plan to utilize for its future express services between the Canal Zone, Lima and Buenos Aires, with particular reference to the estimates in the pending *Latin American Certificate Case*, Docket 525 et al. They disclosed to you in confidence that Pan American Airways was planning to utilize, on certain

Latin American routes, four-engined land aircraft of larger and even more advanced type than the Constellation, and recommended that Pan American-Grace should plan to use this same type of aircraft for its express service between Balboa, Lima and Buenos Aires. These discussions were pending when, on May 18, 1944, all parties to the case were advised that the date for filing exhibits would be postponed to a date to be subsequently announced.

Now that exhibits are required to be filed on July 21, 1944, it is necessary to arrive at a prompt decision on this matter, as well as on the related subject of the through operation of equipment as to which I wrote you on February 4, 1944 and again on March 13, 1944.

Pan American's present plans include service to Balboa with the large equipment discussed, both from Miami and from Los Angeles as well as additional service from New Orleans with Constellation aircraft, all three of these connecting at Balboa with our joint company's express service.

In my judgment and in line with our past policy the way to keep the west coast service most effective is for Pan American-Grace to use the best possible equipment and where advisable in the interest of both parties make fair

PAG-X P 97
10-12-54
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[fol. 556] and appropriate arrangements for its through operation. The Miami-Canal Zone-West Coast service seems to me an absolutely ideal situation for equipment interchange. In the light of the C.A.B.'s recent opinion, our joint efforts should be devoted to making Pan American-Grace the most effective possible "connecting carrier as to through traffic between the United States and South America"—to use the C.A.B.'s words.

If an arrangement for equipment interchange can also be made with the domestic airlines at Miami, so much the better; but I hardly think the present is the moment to take this up with them.

What we *can* do now is agree between us on this matter of equipment and interchange. In view of the early date

set for the exchange of exhibits, I am obliged to ask both that the subject matter of this letter receive immediate consideration and decision—and also, of course, that it continue to be treated on a confidential basis.

Sincerely yours,

/s/ Howard B. Dean

Howard B. Dean
Vice President

cc: Mr. J. T. Trippe
Mr. Harrison Tweed
Mr. H. J. Friendly

PAG-XP 98

[fol. 557]

Government's Exhibit 239

Cable
"Panagra"

PAN AMERICAN-GRACE AIRWAYS, INC.

Office of The President
7 Hanover Square
New York 5, N.Y.

July 5, 1944

2 copies sent
H.J. Friendly
7/12/44

Mr. Howard B. Dean
Pan American Airways
Chrysler Building
New York 17, N. Y.

Dear Howard:

Yours June 29th.

I am not entirely clear what you have in mind with reference to equipment interchange particularly in view of the next to last paragraph of your letter. You refer to your letters of February 4th and March 13th but do not refer to my reply of March 21st to which I have had no answer.

Mr. Friendly and Mr. Balluder discussed with me and Mr. Tweed, in confidence, the question of using a larger

type of ship on our express service. As they have doubtless reported to you, the subject was discussed from several angles without reaching a conclusion. Then came the adjournment and there it rests.

Perhaps it would be better if we deferred invoking the C.A.B. in this matter until we have their final word.

If results and time savings are desired, I suggest that we sit down right away and talk these matters out instead of writing letters. At the same time, I think things would be greatly facilitated if the "confidential basis" to which you refer were removed so that I might discuss the proposition with my associates. There is certainly no mystery about the plane under discussion and I am sure that open discussion will not prejudice Pan American in any conceivable way and will greatly facilitate prompt and correct decision by our joint company in a matter of such great importance.

Sincerely yours,

/s/ HAROLD J. ROIG

PAA-2811
12-14-54 PJS

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[fol. 558]

GOVERNMENT'S EXHIBIT 240

Equipment

PAN AMERICAN AIRWAYS SYSTEM
General Offices, Chrysler Building, 135 East 42nd Street, New York 17, N.Y.

Office of
Howard B. Dean, Vice-President

July 20, 1944

Mr. Harold J. Roig, President
Pan American-Grace Airways, Inc.
7 Hanover Square
New York 5, New York

Dear Harold:

This is in reference to your letter of July 5, 1944 in answer to mine of June 29 on the subject of equipment interchange.

Accepting the suggestion in the last paragraph of your letter that "if results and time savings are desired,—we sit down right away and talk these matters out instead of writing letters," Henry Friendly and I met with you and your counsel, Mr. Tweed, at the latter's apartment on the afternoon of July 11. We presented to you at that time Pan American's program for equipment interchange with Pan American-Grace. We explained that what we had in mind was an interchange similar to that between United Air Lines and Western Express approved by the Civil Aeronautics Authority in its Docket No. 215, whereby each carrier's pilots operate the equipment on its own route, and revenues earned and expenses incurred in such operation are for the account of the carrier over whose route the equipment is being operated. You seemed to agree that such an interchange would be of advantage both in promoting the convenience of the travelling public and in reducing the number of four-engined aircraft that Pan American-Grace Airways would be required to purchase. You did not point out any respect in which such an equipment interchange would be anything but beneficial either to the public interest or to the interest of Pan American-Grace Airways.

Although you undertook to consider the matter and advise us promptly, ten more days have now gone by, and August 4, the date on which we and Pan American-Grace Airways, Inc., must submit our program for future air transport service in Latin America, is rapidly approaching.

I would be less than candid if I did not state that, in Pan American's opinion, the negative attitude which you have taken toward equipment interchange, both in the past and now, has been motivated, not by consideration of the

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[fol. 559] true interests of Pan American-Grace Airways as "a connecting carrier as to through traffic between the United States and South America"—to use the words of the Civil Aeronautics Board—but by a fear that the very advantages that would accrue from making of such an

arrangement would have an adverse effect upon the ambitions of W. R. Grace & Co. to change the status of Pan American-Grace Airways. Manifestly, we cannot permit our interest in Pan American-Grace Airways to be jeopardized by such a point of view.

As to your discussing with your associates the large equipment which we have proposed for operation by Pan American-Grace, we stated to you on July 11 that we had no objection to your doing this on a confidential basis if you were yourself prepared to consider the type of equipment under discussion.

Also, if you or your associates are not prepared to accept the idea of equipment larger than the Lockheed Constellation on Pan American-Grace's Canal Zone-Buenos Aires express service, we would be willing to arrange for an interchange at the Canal Zone on the basis of Lockheed Constellation equipment, in spite of our belief that larger aircraft should be used, as a temporary measure, and with the hope that you and your associates will reconsider their views on the equipment problem.

May I ask that this matter receive your prompt consideration.

Sincerely yours,

/s/ HOWARD B. DEAN
Vice President

PAG-XP 101

[fol. 560]

GOVERNMENT'S EXHIBIT 241

Cable Address
"PANAGRA"

PAN AMERICAN-GRACE AIRWAYS, INC.

Office of the President
7 Hanover Square
New York 5, N.Y.

July 25, 1944

Mr. Howard B. Dean
Pan American Airways
Chrysler Building
New York 17, N. Y.

Dear Howard:

I really do not feel that your letter of July 20th is either accurate or fair. In the midst of preparation of Panagra's case in Docket 525, I have not the time to go into details but my omission to do so is not to be construed as an admission of any of the statements or conclusions in your letter.

The plan you and Mr. Friendly presented on July 11th and the point particularly played up, as Mr. Tweed and I understood it, was an exchange through to New York between Panagra, Pan American and Eastern. It later developed that you had never discussed such an exchange with Eastern and upon my suggestion, at our meeting on July 19th, that we do so now, you said that this was impossible for reasons which you mentioned. Your proposal, therefore, fell of its own weight and left nothing to be considered except the plan of exchange between Panagra and Panair previously discussed,—a very different idea.

PAA-6504
813 6/13/55

[fol. 561]

I see no reason for apology for the ambitions of W. R. Grace & Co. to promote Panagra's welfare and the public

interest by the best possible service between Panagra's line and the United States. If it be your interest in *Panagra* that concerns you, obviously the best way to avoid jeopardizing that would be for you to permit Panagra to extend its route to the United States by joining with the position taken by W. R. Grace & Co. in the still pending Docket 779. Certainly a through route is far better than any exchange agreement.

I have discussed this whole matter with Mr. Tweed, counsel for Panagra in Docket 525, and we do not see that Panagra's interests would be served by further discussion of this subject at this time.

Yours very truly,

/s/ H. J. Roig

813 PAA-6505

[fol. 562]

GOVERNMENT'S EXHIBIT 242

July 27, 1944

Mr. Harold J. Roig, President
Pan American-Grace Airways
7 Hanover Square
New York 5, New York

Dear Harold:

I received this morning, July 27, your letter bearing date of July 25, 1944, in reply to mine of July 20.

Your characterization of what took place at Mr. Tweed's apartment is not accurate. Henry Friendly and I made it quite clear that although we did not believe a discussion of interchange with Eastern and National at this time would be profitable, we favored going ahead immediately with an interchange agreement between Pan American Airways and Pan American-Grace. That was the proposition which we left with you and on which you undertook to advise us.

Our position in this matter of interchange is perfectly simple and clear. We believe that an interchange of equipment between Pan American Airways and Pan American-Grace at the Canal Zone would enable Pan American-Grace better to discharge its function as a connecting carrier as to through traffic between the United States and South America. We understood at the meeting at Mr. Tweed's apartment that you felt so, too. If we are right, we want the interchange and want it now. If there are any reasons why we are wrong, we want to know from you definitely and specifically what these are.

We cannot accept your view that this matter, which vitally affects Pan American-Grace Airways, is one to be decided by you and Mr. Tweed. Will you please therefore consider this letter as a formal request for the calling of a special meeting of the Board of Directors of Pan American-Grace to consider and take action upon a proposal for interchange of equipment with Pan American Airways at the Canal Zone.

PAA-6507
813 6/13/55
JPC

[fol. 563] We request that this meeting be set for as early an hour as possible on Monday, July 31, or, if you would prefer, we would be glad to waive the formality of two days notice and have the meeting at any hour tomorrow, Friday, July 28, that would be convenient to you and your associates.

We also request that you come to this meeting prepared with full details as to the nature of the presentation to be made on behalf of Pan American-Grace Airways in Docket 525, so that I and my associates may have an opportunity to know what our company is proposing and to express our views about it.

In order to comply with legal formalities, I am having this letter signed also by Mr. Balluder.

Very truly yours,

Original Signed By
Howard B. Dean

.....

Howard B. Dean

EB

.....

Erwin Balluder

Directors of
Pan American-Grace
Airways, Inc.

HJF:ELG

bcc: President
Vice President Dean
Secretary & Gen. Attorney
The Executive Assistant
H. J. Friendly

813

PAA-6508

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NO. 23 FILED JULY 24, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 257

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 583

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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294—Intercompany Pan American memorandum by Amos Hiatt, dated June 19, 1947	689	930
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308—Memorandum to A. B. Shea from J. P. Grace, Jr., dated January 13, 1950	711	947
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313—Memorandum to Andrew B. Shea from J. P. Grace, Jr., dated August 13, 1950	719	951
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351—Pan American-Grace intercompany memorandum entitled "Platinum Shipments" by G. Vidal, dated January 20, 1936	776	990
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354—Letter to A. Garni from Manuel Holguin, dated February 22, 1936	783	994
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359—Letter to Manuel Holguin from A. Garni, dated March 21, 1936	790	1001
360—Letter to Panama Agencies Co., agents for Panagra, from G. Vidal, dated March 26, 1936	791	1002
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375—Letter to J. D. MacGregor from J. E. Muhlfeld, dated April 4, 1938	813	1024
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377—Letter to R. H. Patchin from Harold J. Roig, dated April 27, 1938	816	1026
378—Draft of letter to Pan American Airways Corp. from W. R. Grace & Co., dated July 28, 1941	818	1027
379—Letter to James Magner from R. C. Lounsbury, dated February 25, 1942	819	1028
380—Letter to H. Helbling from J. E. Muhlfeld, dated March 4, 1942	820	1029
381—Letter to George L. Rihl from S. J. Roll, dated January 12, 1943	821	1030
382—Confidential memorandum from Mr. A. E. Sinclair to Mr. R. Ferguson, dated January 20, 1943	822	1031
383—Letter to Carlos Velarde C. from George G. Mason, dated May 13, 1949	824	1034
384—Pan American-Grace inter-company memorandum to John T. Shannon from John E. Muhlfeld, dated July 7, 1949	825	1035
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386—Letter to J. T. Shannon from G. G. Mason, dated August 21, 1949	828	1037
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392—Pan American inter-company memorandum entitled "Pepsi-Cola Company—Colon Free Zone," by J. A. Soto, dated May 27, 1952	836	1043
393—Letter to Louis A. Person from R. C. Lounsbury, dated September 4, 1952	838	1045
394—Pan American inter-company memorandum entitled "Monthly sales report—Buenos Aires, January, 1953," by Fred F. Plimpton, dated February 11, 1953	839	1046
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402—Letter to L. Valverde from Howard J. Roig, dated January 30, 1930	851	1051
403—Letter to Harold J. Roig from D. S. Iglehart, dated March 7, 1930	852	1052
404—Letter from H. R. Harris to Pan American-Grace Airways, Inc., dated April 9, 1930	855	1054
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410—Letter to H. R. Harris from J. D. MacGregor, dated May 6, 1932	865	1061
411—Letter to D. S. Iglehart from Harold J. Roig, dated June 15, 1932	867	1063
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421—Letter to J. D. MacGregor from H. R. Harris, dated September 13, 1933	888	1079
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427—Letter to John T. Kirby from A. Garni, dated April 3, 1934	899	1088
428—Letter to A. Garni from J. T. Kirby, dated April 23, 1934	900	1089
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434—Letter to Harold J. Roig from Andrew B. Shea, dated January 22, 1936	910	1096
435—Letter to Harold J. Roig from J. T. Kirby, dated April 17, 1936	912	1098
436—Letter to Harold J. Roig from R. H. Patchin, dated May 12, 1936	913	1098
437—Letter to Paragra, New York, from H. R. Harris, dated August 29, 1936	914	1099
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447—Memorandum from D. S. Iglehart, dated February 18, 1938	932	1116
448—Letter to Harold J. Roig from D. S. Iglehart, dated February 28, 1938	933	1117
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453—Memorandum to H. R. Harris from G. P. Smith, dated March 8, 1939	943	1124
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456—Letter to Harold J. Roig from G. Vidal, dated November 21, 1940	952	1132
457—Letter to D. S. Iglehart from Andrew B. Shea, dated November 26, 1940	953	1134
458—Letter to Harold J. Roig from G. Vidal, dated December 17, 1940	957	1136

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462—Letter to Douglas Campbell from Harold J. Roig, dated June 4, 1941	967	1144
463—Letter to Harold J. Roig from Douglas Campbell, dated June 9, 1941	968	1145
464—Letter to H. J. Roig from T. J. Kirkland, dated February 3, 1942	969	1146
465—Letter to A. C. Poole from J. E. Muhlfeld, dated March 13, 1942	972	1149
466—Letter to J. E. Muhlfeld from A. C. Poole, dated October 24, 1942	973	1150
467—Cablegram to Roig from Garni, dated February 27, 1946	987	1167
468—Pan American inter-company memorandum addressed to Trippe, Friendly and Balluder entitled "Pan American-Grace Airways Operations" by Howard B. Dean, dated May 20, 1946	989	1169
471—Letter to J. W. Walker, Jr., from G. Vidal, dated July 23, 1948	999	1172
476—Letter to Andrew B. Shea from Harold J. Roig, dated October 29, 1948, and attached thereto memorandum entitled "Agency functions and responsibilities with respect to Panagra," by Harold J. Roig	1009	1174
477—Memorandum by Howard B. Dean, dated December 2, 1948	1013	1177
478—Letter to Ernesto Aranibar from John T. Shannon, dated April 2, 1949	1014	1179

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
479—Letter to D. Campbell from John T. Shannon, dated April 22, 1949	1015	1180
480—Memorandum to Mr. Shea from J. P. Grace, Jr., dated April 27, 1949	1017	1181
481—Letter to J. T. Kirby from Andrew B. Shea, dated August 26, 1949	1019	1182
482—Pan American inter-company memorandum entitled "South America—Passenger Fares" by John E. Muhlfeld, dated March 3, 1950	1022	1184
483—Memorandum to Howard L. Clark by M. Bellefond, dated July 11, 1950	1024	1186
484—Letter to Raul Simon from J. T. Kirby, dated June 27, 1951	1027	1188
485—Memorandum to Andrew B. Shea from J. P. Grace, Jr., dated September 26, 1951	1030	1191
486—Letter to T. F. Williams from J. H. Stebbins, dated November 25, 1952	1031	1191
487—Pan American inter-company memorandum by Juan Homs, Jr., dated February 21, 1953	1032	1192
489—Memorandum by M. J. Martinez, dated March 4, 1953	1035	1194
JOINT OFFICES PUBLICITY		
491—Letter to H. R. Harris from J. D. MacGregor, dated September 3, 1930	1037	1195
492—Letter to Pan American-Grace Airways, New York, from H. R. Harris, dated September 11, 1930	1038	1196
493—Letter to J. D. MacGregor from Harold R. Harris, dated May 31, 1932	1039	1197
494—Letter to G. Vidal from J. D. MacGregor, dated June 2, 1932	1040	1198
495—Letter to H. R. Harris from J. D. MacGregor, dated July 6, 1932	1042	1199

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
496—Letter to J. D. MacGregor from Harold R. Harris, dated December 8, 1932, enclosing copy of letter to George E. Rihl from Harold R. Harris, dated December 8, 1932	1044	1200
497—Letter to H. R. Harris from J. D. MacGregor, dated December 20, 1932	1047	1204
498—Letter to A. Garni from Harold J. Roig, dated June 8, 1935	1050	1206
503—Pan American Airways system memorandum entitled "Representation of Pan Grace" by C. E. Moore, dated July 21, 1937	1060	1208
504—Letter to D. S. Iglehart from Harold J. Roig, dated October 22, 1937	1061	1209
505—Letter to Harold J. Roig from A. Garni, dated April 18, 1938	1064	1211
506—Letter to Juan Trippe from A. Garni, dated May 3, 1938	1067	1213
507—Memorandum to Mr. Young entitled "B. A. office" by H. J. Roig, dated January 9, 1940	1069	1214
508—Letter to H. J. Roig from T. J. Kirkland, dated June 19, 1942	1071	1216
509—Memorandum to Douglas Campbell from E. Balluder, dated April 15, 1948	1073	1217
510—Letter to J. T. Trippe from R. H. Patchin, dated August 1, 1929	1075	1219
512—Letter to Harold J. Roig from D. S. Iglehart, dated January 18, 1932, enclosing a letter to D. S. Iglehart from J. T. Trippe, dated January 9, 1932	1078	1220
513—Letter to J. D. MacGregor from H. R. Harris, dated January 29, 1934	1081	1222
515—Letter to Iglehart from Helen R. Quilty, enclosing a letter to J. T. Trippe from D. S. Iglehart, dated November 29, 1935, and a letter to J. T. Trippe from A. Garni, dated February 25, 1936	1083	1223

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
517—Letter to D. S. Iglehart from J. T. Kirby, dated October 31, 1938	1089	1226
519—Letter to V. E. Chenea from H. J. Roig, dated October 24, 1939, enclosing a number of recorded interviews with travel agents in New York City	1092	1227
520—Letter to C. V. Whitney from Harold J. Roig, dated January 24, 1941, enclosing an organizational chart of the Pan American system	1103	1235
522—Memorandum to Evan Young entitled "Publicity - transfer of Mr. Arthur Curtis," by H. J. Roig, dated April 3, 1941	1105	1236
526—Letter to Thomas A. Morgan from D. S. Iglehart, dated May 29, 1942	1109	1237
531—Memorandum to H. J. Roig entitled "Grand tour - joint advertising," by Benjamin H. Oehlert, Jr.	1116	1238
532—Letter to Howard B. Dean from Harold J. Roig, dated June 1, 1948, enclosing a letter to J. T. Shannon from James W. Walker, Jr., dated May 21, 1948, and a memorandum of Benjamin Oehlert's interview with a Pan American counter clerk at the Air Terminal Building in New York City on May 26, 1948	1118	1239
533—Memorandum to J. P. Grace, Jr. from R. E. Montgomery, dated June 2, 1948, enclosing an attachment relative to publicity	1124	1244
534—Memorandum to Shea from J. P. Grace, Jr., dated June 3, 1948	1129	1247
543—Memorandum to B. H. Oehlert, Jr., from R. Matthes, dated July 5, 1950	1149	1251

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
NATIONAL INTERCHANGE		
547—Letter to Juan T. Trippe from G. T. Baker, dated December 15, 1948	1159	1254
548—Letter to G. T. Baker from J. T. Trippe, dated January 5, 1949	1160	1255
549—Telegram from J. T. Trippe to G. T. Baker, dated January, 1949	1161	1256
550—Letter to G. T. Baker from Harold J. Roig, dated January 6, 1949	1162	1256
551—Letter to Juan T. Trippe from G. T. Baker, dated January 14, 1949	1163	1258
552—Letter to Harold J. Roig from G. T. Baker, dated January 14, 1949	1165	1259
553—Letter from Howard B. Dean to G. T. Baker, dated January 25, 1949	1166	1261
554—Letter to Howard B. Dean from G. T. Baker, dated February 24, 1949	1167	1262
555—Letter to G. T. Baker from Howard B. Dean, dated February 28, 1949	1168	1263
556—Letter to W. R. Grace & Company from G. T. Baker, dated February 28, 1949	1169	1264
557—Letter to G. T. Baker from J. P. Grace, Jr., dated March 2, 1949	1171	1267
558—Excerpts from the minutes of a special meeting of the board of directors of National Airlines, Inc., March 4, 1949	1172	1267
559—Letter to National Airlines, Inc. from W. F. Cogswell, dated March 29, 1949	1173	1269
560—Memorandum entitled "Memorandum of understanding," dated March 30, 1949, signed by G. T. Baker for National Airlines, Inc., J. P. Grace, Jr. for W. R. Grace & Company, Juan T. Trippe for Pan American Airways, Inc. and Harold J. Roig for Pan American-Grace Airways, Inc.	1174	1269

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
561—Minutes of special meeting of board of directors of Pan American-Grace Airways, Inc. held on March 31, 1949	1180	1273
562—Unsigned memorandum specifying a series of events relative to National Interchange dating from January 21, 1949, through March 29, 1949	1182	1275
563—Excerpts from meeting of board of directors of W. R. Grace & Company dated March 3, 1949, and April 7, 1949	1184	1277
564—Minutes of adjourned regular meeting of board of directors of Pan American-Grace Airways, Inc. held on May 12, 1949	1185	1278
566—Memorandum by Andrew B. Shea dated November 9, 1950	1188	1280
567—Memorandum entitled "Telephone conversation with G. T. Baker—November 13, 1950," dated November 13, 1950, by Andrew B. Shea	1190	1281
568—Memorandum by J. T. Trippe dated December 20, 1950	1191	1281
569—Memorandum entitled "Memorandum of discussions with W. R. Grace & Co. (dictated January 29, 1951)" by Friendly	1192	1283
570—Letter to D. W. Rentzel, Chairman, Civil Aeronautics Board, from Andrew B. Shea, dated January 25, 1951	1202	1293
571—Letter to Peter Grace from J. T. Trippe, dated January 29, 1951	1211	1300
572—Letter to A. B. Shea from Balluder, Friendly, Leslie and Morrison, dated February 5, 1951	1213	1302
573—Letter to Erwin Balluder from Andrew B. Shea, dated February 9, 1951	1216	1304
575—Letter to Civil Aeronautics Board from E. Balluder, dated February 21, 1951	1224	1308

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
576—Letter to James W. Walker, Jr. from Andrew B. Shea, dated March 22, 1951	1226	1310
577—Minutes of adjourned regular meeting of the board of directors of Pan American-Grace Airways, Inc., held on March 30, 1951	1229	1312
578—Cable to J. T. Kirby from H. L. Clark, dated April 13, 1951	1236	1318
579—Minutes of annual meeting of board of directors of Pan American-Grace Airways, Inc. held on May 10, 1951	1238	1320
580—Letter to President, Pan American World Airways, Inc., from Andrew B. Shea, dated May 11, 1951	1242	1323
581—Pan American inter-company memorandum entitled "Presidency of Panagra," by Henry J. Friendly, dated May 11, 1951	1244	1324
582—Letter to Civil Aeronautics Board from J. T. Trippe, dated May 29, 1951	1245	1325
583—A letter to the President of Pan American-Grace Airways, Inc. from J. T. Trippe, dated May 29, 1951	1247	1327
584—Letter to Civil Aeronautics Board from John T. Cahill, dated June 6, 1951	1249	1330
585—Letter to J. S. Phipps from W. G. Holloway, dated June 21 1951	1250	1331

[fol. 564]

GOVERNMENT'S EXHIBIT 243

Minutes of Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways, Inc., 135 East 42nd Street, New York, N.Y. on the 31st day of July, 1944 at 3:00 o'clock in the afternoon.

PRESENT:

Messrs	Erwin Balluder	A Garni
	W F Cogswell	H P Morris
	Howard B Dean	R H Patchin
	H J Friendly	H J Roig

being all the members of the Board.

There was also present Mr Tweed, Counsel for the company in Docket No. 525.

Mr H J Roig, President of the corporation, presided. Mr W F Cogswell, Secretary, acted as Secretary of the meeting.

The Secretary presented Call of the Meeting dated July 28, 1944 and the notice of the meeting, together with affidavit of mailing thereof on July 28, 1944 to all of the directors of the corporation.

At Mr Dean's request, Mr Roig summarized briefly our proposed presentation in Docket No. 525 and answered inquiries in respect thereto. Mr Dean voiced the regret of Pan American Airways that Mr Roig had not seen fit to adopt Pan American's suggestion as to the use of DC-7 equipment which Mr Dean believed to be more economical and to permit a greater reduction in passenger fares, and also that the presentation was not to include a more definite statement as to such a reduction.

Mr Dean stated that it was well known to the directors that Pan American Airways had long entertained the view that the operation of equipment through the Canal Zone under an appropriate equipment interchange agreement between Pan American Airways and Pan American-Grace Airways would be in the public interest and in the interest

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[fol. 565] of Pan American-Grace Airways. He said that it was unnecessary to recall all of the various proposals for such an interchange which the representatives of Pan American Airways had made and the representatives of W R Grace & Co had rejected over the years, since these were a matter of record and he had no intention of engaging in controversy as to the merits or demerits of any of these past proposals.

Mr Dean said that in Pan American's opinion the pendency of the *Latin American Certificate case* (Docket No. 525 et al.) made it of the utmost importance that arrangements for such an interchange of equipment should be made, at least in principle. This would enable Pan American-Grace Airways to represent to the Civil Aeronautics Board that it was in a position to offer through plane service between the continental United States and points on the west coast of South America and Buenos Aires. He stated that in order that the management of Pan American-Grace Airways might have ample time to consider this matter, he had brought it up as early as February 4, 1944. In the interval since that date a considerable number of letters had been exchanged and conferences held. It appeared to Mr Dean, from the remarks made by Mr Roig at a conference held on July 11, that Mr Roig also considered that such an equipment interchange agreement would be in the interests of the traveling public, particularly in avoiding the danger of missed connections and change of plane at the Canal Zone, and that such an arrangement might also result in equipment economies for Pan American-Grace Airways. However, these discussions had had no result, and had culminated in a letter from

Mr Roig dated July 25, which in Mr Dean's judgment simply evaded the issue and ended with a statement that Mr Roig and Mr Tweed did not feel that Pan American-
GR-9410 G051462
[fol. 566] Grace's interest would be served by further discussion of the subject at this time. Mr Dean said that in his opinion this was a matter which neither Mr Roig nor Mr Tweed had authority to decide for the company and that he had therefore requested this meeting.

Mr Dean stated that he was authorized on behalf of Pan American Airways, Inc., to enter into and conclude with Pan American Grace Airways arrangements for the interchange of four-engined equipment at the Canal Zone, subject to approval by the Civil Aeronautics Board. Mr Dean stated that while Pan American had considered that the large carrying capacity and low passenger mile cost of the DC-7 made it the ideal plane for operation both on Pan American's express service between Miami and the Canal and on Pan American-Grace's express services south of the Canal, Pan American was entirely willing to discuss the interchange of any other type of four-engined equipment. Mr Dean stated that Pan American hoped that a similar interchange agreement might eventually be concluded with the domestic airlines operating from the gateways but that the fact that discussion of such an agreement at a time when these airlines themselves hoped to extend their lines into Latin America would hardly be profitable was no reason why Pan American and Pan American-Grace should not unite in doing what could now be done, namely, conclude an interchange agreement at the Canal.

Mr Dean said that the advantages to Pan American-Grace Airways of an equipment interchange agreement with Pan American Airways along the lines of the United Air Lines-Western Air agreement seemed to Pan American to be evident. He said that he had heard of no argu-
GR-9411 G051463
[fol. 567] ments to the contrary, but that if there were any reasons making such an interchange agreement undesirable from the standpoint of Pan American-Grace Airways, he wished that the Grace directors would state them

so that the Pan American directors should be able to consider them.

Mr Dean thereupon made the following motion:

WHEREAS, Pan American Airways Corporation believes that it is in the interest of the traveling public, in the public interest, and in the interest of Pan American-Grace Airways, that an agreement be entered into by Pan American-Grace Airways, Inc. with Pan American Airways, Inc., the holder of certificates for operation between the United States and the Canal Zone, for the interchange of four-engined equipment at the Canal Zone which would permit the through operation of four-engined equipment between a point or points in the continental United States and points on the routes of Pan American-Grace Airways, such agreement to be substantially along the lines of the agreement between United Air Lines and Western Air Express, approved by the Civil Aeronautics Board in said Board's Docket No. 215; and

WHEREAS, Pan American Airways, Inc. has proposed the making of such an interchange agreement with respect to DC-7 aircraft, or if Pan American-Grace Airways is of the opinion that the utilization by it of equipment of such size is not presently warranted, then with such other type of four-engined equipment as may be presently agreed upon by the appropriate officers of the respective companies; and

WHEREAS, Pan American Airways Corporation, as owner of 50% of the stock of Pan American-Grace Airways, considers that the conclusion of such an arrangement would enable Pan American-Grace Airways more effectively to perform its duties as "a connecting carrier as to through traffic between the United States and South America" as set forth in the opinion of the Civil Aeronautics Board in said Board's Docket No. 779; and

WHEREAS, Pan American Airways Corporation, considers that it will be seriously detrimental to Pan

American Grace Airways if the presentation to be made on behalf of Pan American Grace Airways in Docket No. 525 does not include a statement that

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[fol. 568] arrangements for such an interchange agreement have been or will be made; and

WHEREAS, Pan American Airways has stated its willingness to discuss at an appropriate time arrangements with domestic carriers serving Pan American Airways' gateways in the United States for the through operation of the equipment to be so interchanged with Pan American-Grace Airways;

NOW, THEREFORE, BE IT RESOLVED (1) That the President of the Company be, and he hereby is, authorized and directed to enter into negotiations with Pan American Airways, Inc., with respect to an interchange of four-engined equipment at the Canal Zone, as described in the preambles to this resolution, to conclude an agreement for such interchange with all practicable speed, and to present such agreement when concluded for the approval of the Civil Aeronautics Board; and (2) That the President of and counsel for this Company be directed to include in the presentation to be made on behalf of this Company in Docket No. 525 a statement that this Company intends to make, or has made, such an equipment interchange arrangement.

Vote being had, said resolution failed to pass, Messrs Ballinger, Dean, Friendly and Morris voting in favor and Messrs Cogswell, Garni, Patchin and Roig voting against.

Mr Patchin then made the following statement:

"On my own behalf and on behalf of Messrs Garni, Roig, and Cogswell, I should like to state our reasons for voting against the motion." While the proposal is not a new one, we do not agree with Mr Dean's summary at the opening of his statement regarding what has previously taken place concerning it. It was thoroughly ventilated in the hearing in Docket 779. We have considered it anew during the

past few days. We do not understand just why Pan American should be attempting to force the proposal at this time. We can see no reason for doing so from Panagra's standpoint and it seems clear that their concern must be related to the interests of Pan American rather than to
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[fol. 569] those of Panagra.

"In view of Mr Dean's reference to certain letters exchanged with Mr Roig, I would like copies of all of those letters to be attached to the minutes as a part of this statement. As only a few minutes have been available to study Mr Dean's statement, I would like to reserve the right to amplify my statement if I deem it advisable later.

"We consider that the proposed equipment exchange agreement between Pan American and Panagra would not be in the best interests of Panagra for these reasons:

"1. In Docket No. 525 Eastern Air Lines, National Airlines and perhaps others have applied for a route between Miami and Balboa, while several applicants propose direct service between New York and Balboa. When the Board has decided what carriers are to operate between the United States and Balboa, that will be the time for Panagra to consider equipment exchange agreements with one or more of the carriers operating to the Canal Zone. Clearly, it is not in the interest of Panagra to limit its freedom of action, negotiation and contract by entering into an exchange agreement at this time with Pan American involving only the sector between Miami and Balboa, to the exclusion of other arrangements which may be much more beneficial to Panagra, particularly with reference to direct connections with New York.

"2. At the present moment any exchange agreement between Pan American and Panagra would be purely theoretical. The different type of equipment operated by the
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[fol. 570] two companies makes such an exchange at this time physically impossible. The date when it would be even possible to have uniform equipment is some time in the future. Under these conditions and in view of all the uncertainties which the future holds, the making of an

equipment exchange agreement now which can be relied upon to prove as beneficial to Panagra as one made in the future is a practical impossibility.

"3. An extension of Panagra's route to a terminal in the United States is manifestly more in Panagra's interest than the proposed equipment exchange agreement. So long as the question whether the Civil Aeronautics Board will direct such an extension remains pending in Docket No. 779 or in the courts, it is not good judgment for Panagra to enter into an arrangement which constitutes a far less favorable solution of the problem. Mr Dean recognizes this when he states that discussion of exchange with domestic lines would be unprofitable at this time when they themselves hope to extend their lines to Latin America.

"Accordingly, we propose that the Board of Directors adopt a solution to the problem which is obviously in Panagra's best interest as well as in the interest of the public—namely, the extension of the Company's route to a terminal in the United States. The Civil Aeronautics Board has frequently referred to the advantages of single carrier direct through service. This is preferable to the adoption of an inferior and temporary expedient, for equipment interchange between two carriers is at best a poor substitute for direct through service by a single carrier.

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[fol. 571] "Consequently, I move the adoption of the following resolution:

> RESOLVED that the Company take action forthwith to secure the extension of its route from Balboa to a terminal in the United States, as is required in the interests of this Company and in the public interest; and
>
> RESOLVED FURTHER that the President is hereby authorized to file an application on behalf of the Company for the extension of its route from Balboa to Miami or such other point in the United States as the Civil Aeronautics Board may determine."

Vote being had, said resolution failed to pass, Messrs Cogswell, Garni, Patchin and Roig voting in favor and

Messrs Balluder, Dean, Friendly and Morris voting against. Mr Dean stated that the reasons prompting himself and his colleagues to vote against this resolution appeared in the minutes of earlier meetings and in the presentation made on behalf of Pan American Airways in Docket No. 779, and that there was no need of repeating them here.

There being no further business, the meeting adjourned.

(sgd) H J Roig
Chairman

(sgd) W F Cogswell
Secretary

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[fol. 572]

GOVERNMENT'S EXHIBIT 244

2.10D

PAN AMERICAN AIRWAYS CORPORATION
15 EXCHANGE PLACE, JERSEY CITY, N.J.

April 3, 1945

W. R. Grace & Co.
7 Hanover Square
New York 4, New York

Dear Sirs:

It is our understanding that at the meeting of the Board of Directors of Pan American-Grace Airways, Inc. which is to take place tomorrow, your representatives may again bring up the question of that company's applying to the Civil Aeronautics Board for a certificate to operate a connecting service between the Canal Zone and the continental United States.

As you are aware, we take the position that this question is governed by the agreements between our two companies. We refer in particular to the original agreement of August 31, 1928, under which our two companies agreed to "as-

sociate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile," and to the further agreement of February 14, 1939. This latter agreement, which was made for the purpose of settling this identical question, provided that one of your representatives on the Board of Pan American-Grace would be elected President of that Company, and that on the other hand that we were to cause our Directors on the Board of Pan American-Grace to take action that would permit an application for a route between the Canal Zone and the United States only if Pan American Airways, Inc. failed to supply "an adequate direct connecting service."

The agreement of February 14, 1939, also provided that any disputes arising under the general plan embodied in the agreement, including any question as to the adequacy of Pan American's direct connecting service, should be determined by arbitration. We therefore request arbitration pursuant to the terms of that agreement.

Very truly yours,

PAN AMERICAN AIRWAYS CORPORATION

By J. T. Trippe
President

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[fol. 573]

GOVERNMENT'S EXHIBIT 245

Minutes of Regular Meeting of the Board of Directors of Pan American-Grace Airways, Inc., held at the office of Pan American Airways, Inc., 135 East 42nd Street, New York, N. Y. on April 4, 1945 at 9:15 o'clock in the forenoon.

PRESENT:

Messrs. Erwin Balluder
W F Cogswell
Howard B Dean
Henry J Friendly
A Garni
H Preston Morris
R H Patchin
H J Roig

being all the members of the Board.

Mr. H J Roig, President of the corporation, presided. Mr. W F Cogswell, Secretary acted as Secretary of the meeting.

• • •

Mr. Garni thereupon made the following statement in which Mesrs. Roig, Patchin and Cogswell concurred:

"As reported to the Board at the meeting of March 15, 1945, the Report of the Examiners, Francis W. Brown and H. Heinrich Spang, served March 5, 1945, in the Proceeding before the Civil Aeronautics Board, designated Docket 525, contains recommendations which raise questions of the greatest importance to this company's welfare.

A service by Eastern from Miami to Balboa and by Braniff from Houston to Balboa combined with an extension of Pan American's East Coast route to provide through service to New York, all of which the Examiners recommend, while this company remains with no through service at all, would result in very great injury to this company.

While the company, through its counsel, has filed exceptions to these recommendations it cannot adequately maintain them or fully defend its position in Docket 525 unless [fol. 574] it file application for extension of its route from Balboa to a terminal or terminals in the United States.

The purpose of the Proceeding in Docket 525 is to establish a postwar air service pattern for United States air carriers in Latin America. Unless this company be given its proper place in such pattern now, it will be unable to secure it later. If that pattern is established in such fashion that this company remains dead ended at Balboa while domestic carriers such as Eastern and Braniff take over its proper role as a through carrier to the United States and are placed in position to become potential competitors in South America while at the same time Pan American's competitive East Coast line is given a through service to New York, this company must look forward to gradual weakening of its position and even possible elimination as an American international air carrier.

The extension of the routes of Eastern and of Braniff to Balboa would not only indefinitely defer if not completely destroy all possibility of the route of this company ever being extended to a terminal in the United States but would largely destroy the benefits of such extension if it were later secured. On the other hand, it would make the extension of the routes of Eastern and Braniff southward from Balboa into territory served by this company almost inevitable. Both Eastern and Braniff, in their original applications applied for routes in the continent of South America and Braniff is still pressing its application. Such routes would result in irreparable injury to this company [fol. 575] since an American international airline operating exclusively abroad without even a terminal in the United States cannot compete effectively with American domestic airlines with through services and extensive domestic networks within the United States. Additionally the lack of a United States terminal would greatly weaken this company's position with respect to foreign competition which, under the terms of the International Air Transport Agreement, is free to operate to and from the United States terminals. Meanwhile extension of Pan American's East

Coast South America route to New York, without simultaneous extension of the route of this company via the West Coast of South America to the United States, would result in great disadvantage to and discrimination against the West Coast countries of Ecuador, Peru, Bolivia, and Chile and would give the East Coast service to Buenos Aires an overwhelming advantage which would result in the diversion to the East Coast route of the greater part of this company's normal traffic between the United States and Buenos Aires.

The Examiners Report states in effect that in the Latin American air service pattern Panagra is the logical operator to serve the sector between Balboa and the United States and that they recommend the extension of Eastern's route into this sector because Panagra has not filed application for extension of its route to the United States. The language of the Report indicates that this is the reason Eastern is recommended for the route between Miami and Balboa and that this or some other route extending Panagra to the United States would have been recommended by the Examiners had Panagra filed an application for such extension. Similarly Public Counsel in their brief find this company entitled to be certificated for the Balboa-New York [fol. 576] service and that "such an authorization would also provide the greatest public convenience" (Brief p. 59). The Examiners' Report states:—

> "Another consideration which is of considerable importance is the need of Panagra for an independent connection to the United States. As heretofore indicated, at the present time Panagra is dependent upon connections with Pan American at Balboa for traffic from the United States to points along its route. A substantial portion of the traffic moving over Panagra's route originates or terminates in the United States, as demonstrated by the fact that during the year 1941 almost 40 percent of the Canal Zone traffic from the United States consisted of passengers received from or transferred to Pan American at Balboa. In view of the conclusion heretofore reached that the traffic potential south of the north coast of South America is not suffi-

cient to justify the establishment of an additional American flag carrier, Panagra should be in a position to compete on an equal footing with Pan American for the traffic destined to the common terminal point of Buenos Aires. In order to accomplish this purpose it should be relieved of its dependence upon Pan American for connecting service from the United States.

W. R. Grace in a petition filed in this proceeding and in its brief urged that the Board find that the public convenience and necessity require the extension of Panagra's route from Balboa to the United States and that a certificate be issued to it authorizing such a service. A similar proposal was before the Board in the so-called *Panagra Terminal Investigation* case (*Panagra Terminal Investigation*, Docket No. 779 decided May 24, 1944). In that case after an extended hearing, the Board concluded that the extension of Panagra's route from the Canal Zone to the United States would not be an alteration, amendment, or modification of its certificate within the meaning of section 401 (h) of the Act in the sense that the Board could compel such an extension in the absence of an application from Panagra. Since there is no application by Panagra in the present case the reasoning of the Board would appear to apply with equal force and accordingly the petition of W. R. Grace should be dismissed. In view of this recommendation and the previous conclusions it follows that an independent operation should be authorized between the United States and the Canal Zone."

[fol. 577] We and W. R. Grace & Co. have sought continuously over several years to secure the approval of Pan American and of its directors and of its President, Mr. Juan T. Trippe and of its directors on the Board of this company to the filing of an application by this company for an extension of its route from Balboa to the United States. Such approval has at all times been refused. W. R. Grace & Co. brought the matter to the attention of the Civil Aeronautics Board and sought their assistance. The Proceeding before the Civil Aeronautics Board known as Docket

779, to which the Examiners refer, was thereupon instituted by the Board under Section 401 (h) of the Civil Aeronautics Act to determine whether in the public interest the Board should compel an extension of Panagra's route to the United States. Pan American vigorously opposed such extension in that proceeding and the Civil Aeronautics Board, on Motion of Pan American, ruled that it was without jurisdiction to order the extension in the absence of an application by this company therefor. In Docket 525, W. R. Grace & Co. is again seeking relief from the Civil Aeronautics Board as indicated in the above quotation from the Examiners' Report. Pan American is opposing the granting of the petition of W. R. Grace & Co. and the Examiners have found that by reason of the Board's ruling in Docket 779 they are unable to recommend extension of the company's route in Docket 525 in the absence of application by this company therefor.

In order that this company may protect itself in the crisis which now confronts it (as Pan American is itself doing in numerous applications for extensions it has filed with the Civil Aeronautics Board including its recent application for routes within the continental United States) and if possible avoid the great damage it will sustain [fol. 578] through its having in the past failed to avail of the opportunity open to it, as indicated in the Examiners' Report, of securing a through route from Balboa to the United States, it is desirable and necessary that this company file without delay an application to extend the route of this company from Balboa, Canal Zone to the United States. What we originally sought as an advantageous development of this company's air service has now become necessary to the preservation of its very existence. Failure to secure such extension to the United States in connection with Docket 525 will not only deprive this company of the highly advantageous opportunity to enlarge and improve its service but will imperil its very existence as an American international air carrier and will result in great injury and damage to the company and to its stockholders;—a damage for which those responsible must assume full liability.

In view of all the foregoing, I move the adoption of the following resolution:—

RESOLVED

1. That this company apply forthwith for an extension of its route from Balboa to New York and New Orleans and in the alternative to Miami and New Orleans as the Civil Aeronautics Board may determine and via such intermediate points as they may designate.

2. That this company take such further action incidental to or relating to any and all of the foregoing matters as the President may deem appropriate including, if he deem it advisable, the formation of a 100% owned and integrated subsidiary company and the filing of application for the routes referred to by said company.

3. That the President of the company and other officers be and they are hereby authorized to do all such things as they may deem desirable to carry out the foregoing.

[fol. 579] Mr. Cogswell seconded Mr. Garni's motion.

Mr. Dean stated that the directors who were representatives of Pan American Airways Corporation were fully aware of their responsibilities but that it must be plain that they could not agree to the resolution proposed by Mr. Garni. The subject had been discussed on so many occasions and at such length that he would not attempt to make a full statement of Pan American's position. However, he did wish to refer back to the minutes of the meetings of September 22, 1942 and July 31, 1944 and to make the following additional remarks:

(1) Pan American Airways Corporation considers the subject-matter of the proposed resolution to be covered by the agreement of the two stockholders dated August 31, 1928 and the supplementary agreement dated February 14, 1939. It renews its previous offers to submit the question under discussion to arbitration, as provided in the 1939 agreement, and asks to have incorporated in the record of these proceedings a letter to W. R. Grace & Co. reaffirming that offer. It considers its position as to the effect of the agreements to be directly supported by the opinion of the Civil

Aeronautics Board in Docket 779 in which the Board stated "that to extend the Panagra system from the Canal Zone to a point in Florida would constitute a basic transformation of the character of the carrier."

(2) Pan American Airways Corporation believes also that the evidence both in Docket 779 and Docket 525 et al. demonstrates that service by two American-flag carriers between the Canal Zone and the Eastern United States [fol. 580] would be uneconomic. This would very definitely be the case on the basis of the traffic estimates submitted in Docket 525 by Pan American-Grace itself.

(3) Pan American Airways Corporation and Pan American Airways, Inc. have long been of the view that, in order to eliminate the necessity of a change of plane at the Canal Zone, it would be advantageous for Pan American Airways, Inc. and Pan American-Grace to enter into arrangements for equipment interchange, but all efforts to secure the assent of the Grace directors to such arrangements have been unavailing. Recent opinions of the Civil Aeronautics Board have shown great interest in this type of arrangement on the part of the Board. Pan American Airways, Inc. wishes to reiterate to Pan American-Grace its desire to make such interchange arrangements with Pan American-Grace at the Canal Zone as would best serve the public interest.

While the directors representing Pan American Airways Corporation are thus unable to join in the action sought by the directors representing W. R. Grace & Co., they would of course, be glad to join with the Grace representatives in discussions with any appropriate Governmental authorities.

Letter referred to in Mr. Dean's statement:—

"W. R. Grace & Co.
7 Hanover Square
New York 4, N. Y.

April 3, 1945

It is our understanding that at the meeting of the Board of Directors of Pan American-Grace Airways, Inc. which is to take place tomorrow, your representatives may again bring up the question of that company's applying to the Civil Aeronautics Board for a certificate to operate a connecting service between the Canal Zone and the continental United States.

As you are aware, we take the position that this question is governed by the agreements between our [fol. 581] two companies. We refer in particular to the original agreement of August 31, 1928, under which our two companies agreed to "associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile," and to the further agreement of February 14, 1939. This latter agreement, which was made for the purpose of settling this identical question, provided that one of your representatives on the Board of Pan American-Grace would be elected President of that Company, and that on the other hand that we were to cause our Directors on the Board of Pan American-Grace to take action that would permit an application for a route between the Canal Zone and the United States only if Pan American Airways, Inc. failed to supply "an adequate direct connecting service."

The agreement of February 14, 1939 also provided that any disputes arising under the general plan embodied in the agreement, including any question as to the adequacy of Pan American's direct connecting service, should be determined by arbitration. We therefore request arbitration pursuant to the terms of that agreement.

Very truly yours,

PAN AMERICAN AIRWAYS CORPORATION

By J. T. Trippe, President"

Vote being had said resolution failed to pass, Messrs. Roig, Garni, Patchin and Cogswell voting in favor and Messrs. Dean, Balluder, Morris and Friendly voting against.

Messrs. Garni, Roig, Patchin and Cogswell requested that the following statement appear in reply to Mr. Dean's statement:

1. Regarding the subject of arbitration we refer to W. R. Grace & Co.'s reply to Pan American Airways Corpora-

tion's letter dated April 3rd, copy of which will be attached to these minutes. The agreement dated February 14, 1939 was not "supplementary" to the letter of August 31, 1928 which you refer to as "the agreement of the two stockholders dated August 31, 1928."

[fol. 582] 2. This company submitted no estimates in Docket 525 relating to the routes referred to in the application we now propose. We believe the routes we propose would be profitable in themselves and would add greatly to the strength and earning power of this company's route in South America. The problem now confronting this company, however, is not whether or not a route between Balboa and the United States would in itself be "uneconomic" or otherwise. The fact is that such a route is necessary to protect the company's route in South America.

3. Our position with reference to Pan American's current proposals of equipment interchange is stated in the minutes of the meeting of July 31, 1944 to which we refer. The validity of the suggestion of Pan American's directors of this solution of the problem may be judged by contrasting it with Pan American's consistent insistance on through routes instead of equipment exchange in their own operations including the statement in their recent application for extension to interior points in the United States that the granting of foreign routes to domestic airlines "would make it impracticable for Pan American to continue to offer the character and quality of service under the certificates held by it which the public convenience and necessity requires, unless Pan American were itself to engage in domestic air transportation." That is precisely the reason we desire to apply for the proposed extension and the reason why equipment exchange is no more a solution in our case than in Pan American's. The merit of their [fol. 583] suggestion may further be weighed in the light of the unwillingness of Pan American's directors to give any indication in reply to our question as to whether, if Eastern is ultimately extended to Balboa, the Pan American directors would agree to this con-

pany's entering into an equipment exchange with Eastern through to New York which would obviously be greatly preferable to an exchange with Pan American merely as far as Miami.

Referring to the last paragraph of Mr. Dean's statement, we would be delighted to join with the Pan American representatives "in discussions with any appropriate Governmental authorities" and request that you forthwith designate your representative or representatives to join with the President of this company as our representative in discussions as suggested. We propose Mr L. Welch Pogue, Chairman of the Civil Aeronautics Board as the Governmental authority with whom such discussions be begun.

• • •

Mr. Friendly requested that the following additional statement on behalf of Messrs. Dean, Balluder, Morris and himself should appear in answer to the foregoing statement of Mr. Garni:

1. We wholly disagree with the interpretation of the agreement of February 14, 1939, set forth in Mr. Inglehart's letter of April 10, 1945, and in the opinion of Mr. Fred J. Knauer dated April 9, 1945. This subject is dealt with in the reply of Pan American Airways Corporation dated April 14, 1945 to Mr. Inglehart's letter and in the opinion of counsel to Pan American, copies of which we ask to have included in these minutes.

[fol. 584] 2. It is realized that Pan American-Grace submitted no evidence in Docket 525 relating to routes north of the Canal Zone. However, the Company did submit estimates in that Docket as to the amount of traffic south of the Canal Zone, and it is quite possible to derive from these estimates, as well as from the data presented in Docket 779, an indication of the estimated traffic between the Canal Zone and the Eastern United States. The very arguments which have been made by Pan American-Grace as to the uneconomic character of certifying additional carriers in

South America apply equally between the Canal Zone and the Eastern United States.

3. The third paragraph of Mr. Garni's statement does not correctly set forth the position taken by the Pan American directors at the meeting in answer to a question then propounded by Mr. Roig whether if Eastern were ultimately extended to Balboa, they would agree to Pan American-Grace's entering into an equipment exchange with Eastern. The statement of the Pan American directors was that they would be quite prepared to consider this matter if Eastern were certificated and if Eastern were then to be willing to enter into an equipment interchange with Pan American-Grace, but that in view of the facts that Eastern had not been so certificated and that Eastern had consistently opposed the whole idea of equipment interchange, there was no purpose in discussing the matter at this time.

In connection with the last paragraph of Mr. Garni's statement accepting the proposal made by the Pan [fol. 585] American representatives at the meeting of April 4 that they "would be glad to join with the Grace representatives in discussions with any appropriate Governmental authorities," it should be clear for the record that this acceptance did not occur at that time but only in an extension of Mr. Garni's remarks which was not received by the Pan American representatives until April 12. Pan American hereby designates Mr. Friendly as its representative to join in such discussions with Mr. Roig as a representative of W. R. Grace & Co. It welcomes the suggestion that these be begun with Mr. L. Welch Pogue, Chairman of the Civil Aeronautics Board.

* * *

There being no further business, the meeting adjourned.

Harold J. Roig
Chairman

W. F. Cogswell
Secretar

[fol. 586]

GOVERNMENT'S EXHIBIT 246

—COPY—

April 10, 1945

Pan American Airways Corporation
Chrysler Building
135 East 42nd Street
New York 17, N. Y.

Attention of the President

Gentlemen:

We acknowledge receipt of your letter of April 3rd.

This letter was obviously written before Mr. Garni's statement to the meeting of the Board of Directors of Pan American-Grace Airways, on April 4th, copy of which we enclosed.

In substance your letter asks that we should arbitrate the pending issue. This issue is not morally legally or practically a subject for arbitration. We attach herewith opinion of Counsel making clear the legal question. Having personally made the agreement of February 14, 1939 with Mr. Whitney, I know that it never contemplated arbitration of any such issue as the present one.

The real issue is the choice between permitting Panagra to realize its normal destiny to come through to a terminal in the United States as part of the Latin American air pattern being worked out by the Civil Aeronautics Board in Docket 525 or of abandoning this opportunity and allowing this service to be taken over by one of the domestic airlines and, so creating a competition to Panagra that would seriously prejudice your interests and ours and that would, we believe, prejudice rather than benefit the national interest. The Examiners' Report in Docket 525 makes it reasonably clear that Panagra rather than Eastern would have been recommended for the Balboa United States connection if you had permitted Panagra to apply therefor.

We have had reason to believe but have hesitated to accept the theory that you were willing to sacrifice Panagra's interest in this matter in order to avoid possible prejudice to the interests of your company in connection with the plan you are advocating of a "Chosen Instrument" to control all American international aviation. In view, however, of the critical condition that has arisen and of the refusal of your representatives on the Panagra Board to agree to action necessary to meet it, we need hardly call your attention to the serious responsibility that this places on Pan American Airways Corporation and its Directors.

We are sending copies of this letter with enclosures to the members of your Board of Directors.

Very truly yours,

W. R. Grace & Co.

D. S. Iglehart, President

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[fol. 587]

Government's Exhibit 247

PAN AMERICAN AIRWAYS CORPORATION

15 EXCHANGE PLACE, JERSEY CITY, N. J.

April 14, 1945

W. R. Grace & Company
7 Hanover Square
New York 4, New York

Attention of the President

Dear Sirs:

We acknowledge receipt of your letter dated April 10th in response to ours of April 3rd.

It is correct, of course, that our letter of April 3rd was written prior to Mr. Garni's statement to the meeting of the Board of Directors of Pan American-Grace Airways, Inc. on April 4th. However, previous discussions between our representatives and yours had accurately indicated the nature of the proposal which Mr. Garni would make and the grounds that he would advance, and nothing in his statement would alter the position taken in our letter.

We wholly disagree with your statement that the pending issue "is not morally, legally or practically a subject for arbitration." Our counsel have advised us that legally it is subject to arbitration under our agreement of February 14, 1939. We enclose a copy of their opinion. Aside from the legal obligation to arbitrate we are at a loss to understand why any business man having confidence in the equity of his position would consider a question of this nature not to be "morally" or "practically" a subject for arbitration.

You refer to the possibility that in Docket 525 the Civil Aeronautics Board might authorize service between the United States and the Canal Zone to be conducted by a domestic airline, thus "creating a competition to Panagra." If such action were to be taken, the domestic airline competition would be for Pan American's wholly owned service between the United States and the Canal and not for the West Coast portion of the System conducted by Pan American-Grace Airways.

You refer to the fact that our Company has taken the position that the interests of the United States would be

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[fol. 588] best served if its international air transportation were to be conducted by a community company uniting all interests able to contribute to the development of this service,—including not merely the existing international operators but also the domestic airlines, the railroads and the steamship companies. We sincerely believe this policy to be in our country's best interest, for reasons which have

been publicly presented at a recent hearing before the Senate Committee on Commerce. However, our attitude with respect to the subject of this letter is based upon the particular facts and circumstances relating to Pan American-Grace Airways, which have been repeatedly discussed between your representatives and ours, and not upon the general questions to which you refer.

Very truly yours,

PAN AMERICAN AIRWAYS CORPORATION,

By /s/ J. T. TRIPPE
President

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[fol. 589]

GOVERNMENT'S EXHIBIT 248

TELEPHONE CONVERSATION BETWEEN MR. DEAN & MR. ROIG 11:00 a.m. JULY 11, 1945

Dean telephoned Mr. Roig and advised him that he had had an opportunity last night to discuss with Mr. Trippe the conversation which Mr. Roig and Mr. Dean had had on July 9, previous to the Pan-Grace Board Meeting. Dean told Roig that he had tried to present to Mr. Trippe as accurately as possible the reasons why Mr. Roig felt it was imperative at this time, as a result of the North Atlantic Certificate decision, again to consider the desirability of having Pan American-Grace Airways extended to a point in the United States.

Mr. Dean further informed Mr. Roig that, as a result of this conversation with Mr. Trippe, it had been decided that this whole matter would be referred again by Mr. Trippe to the Executive Committee Meeting to be held on Tuesday, July 17, and that if there were any additional points which Mr. Roig or his associates wished to bring up before that date, Mr. Dean would like to have them presented for consideration.

Mr. Roig made no comment at all other than thanking Mr. Dean for so promptly taking up the matter with Mr. Trippe.

* * * * *

Mr. Roig telephoned Mr. Dean at 1:00 p.m. and requested that he be allowed to appear before the Executive Committee Meeting next Tuesday, for the purpose of being able to answer any questions that might come up and to present his views on this matter. Mr. Dean advised Mr. Roig that Mr. Trippe was out of town, and that he would let him know after Thursday or Friday.

/s/ H B D
H. B. D.

Copies to: Mr. Trippe
Mr. Balluder
Mr. Friendly

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[fol. 590]

GOVERNMENT'S EXHIBIT 249

PAN AMERICAN AIRWAYS CORPORATION
15 EXCHANGE PLACE, JERSEY CITY, N. J.

August 13, 1945

Return to

Harold J. Roig, Esq.
Vice President, W. R. Grace & Co.
7 Hanover Square
New York, New York

Dear Harold:

Over the past month our Executive Committee and Board of Directors have given most careful consideration to the questions concerning Pan American-Grace Airways, Inc., which formed the subject of your talk with Mr. Trippe and myself on July 17, of your memorandum of July 17, and of your letter of August 7. Your memorandum was sub-

mitted to our counsel for comment; and the entire matter was thoroughly canvassed at two meetings of our Executive Committee and at the August 7 meeting of our Board. At the latter the attention of our directors was specifically called to Pan American's petition for rehearing in the *North Atlantic* cases, as requested in your letter of that day.

As I have already told you on the phone, our Board was unanimously of the opinion that we should not now depart from the position which we have previously taken.

We are unable to agree with the position taken by you that we are obliged to consider this question without regard to the fact which, we believe, was demonstrated in C.A.B. Docket 779, that Pan American-Grace Airways was intended from the outset to be an integral part of the Pan American Airways System, operating as an extension down the West Coast of South America of the service for which Pan American had already received a mail contract between the United States and the Canal—an extension which was well under way when, in August, 1928, we granted your Company an option take up to a 50% interest in it. We are likewise unable to agree, as your memorandum seems to imply, that we are likewise bound to eliminate from consideration the agreement between us of February 1939, with its arbitration provision, and our repeated offers to arbitrate thereunder.

However, even on the approach taken in your memorandum, our directors do not believe that the best interests of Pan American-Grace Airways would be served by seeking to be allowed to compete between the Canal Zone and the continental United States with Pan American Airways and the other possible American-flag connections referred to in your memorandum, with the almost certain result of stim-

[fol. 591] ulating these connecting carriers to press for extensions down the West Coast of South America.

At our meeting on July 17 you asked whether, if we determined to adhere to our position in regard to Pan American-Grace Airways, we would be willing to sell our

interest in that company to you. Apart from the fact that your steamship interests would almost certainly prevent approval of such an acquisition, we entertain no fears as to the future of Pan American-Grace Airways as a part of the Pan American Airways System. On the other hand, since you have indicated that W. R. Grace & Co. is of the opinion that failure to apply for an extension of Pan American-Grace's route to the continental United States threatened a loss of the shareholders' investment in that company, our directors have thought it would be appropriate that Pan American Airways Corporation should offer to purchase your half interest in Pan American-Grace, at its fair value, to be determined by agreement or, in the event that we are unable to agree, by a disinterested arbitrator or arbitrators. This offer we now make.

Sincerely,

/s/ Howard B. Dean
Howard B. Dean
Vice President

cc: Mr. Trippe

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[fol. 592]

GOVERNMENT'S EXHIBIT 250

COPY

W. R. GRACE & CO.
7 Hanover Square, New York

Airways
4112

HAROLD J. ROIG
Vice President

August 27, 1945

Mr. Howard B. Dean
Pan American Airways
Chrysler Building
New York 17, N. Y.

Dear Howard:

I refer to your letter of August 13th and my acknowledgement of the 14th.

Your letter was a very great disappointment. After, as you say, a month's consideration by your Executive Committee and Board of Directors, I felt that the least we might expect was a frank and fair statement in reply to the submission I made to Mr. Trippe.

You will recall that at the very opening of my conversation with Mr. Trippe he agreed with me that the present discussion should be on the basis of conditions as they exist *today* and what is in the best interests of our joint company under these conditions. There is nothing to prevent Panagra's stockholders from agreeing now on any action necessary in that connection. The legal quibbling of the third paragraph of your letter has, accordingly, no relevancy to the present discussion. Our position on the points mentioned in this paragraph is well known to you and I shall not repeat it. Suffice it to say that not only do I not agree with the statements in this paragraph but I feel that Pan American is hardly in position to make deductions on the

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[fol. 593] facts from the record in Docket 779 in view of its insistent efforts to prevent us from securing a determination by the CAB of what that record establishes.

Your only other point, and the single argument you advance related to the best interests of Panagra, is that such interests would not be furthered by an extension to the United States with the result of stimulating domestic carriers in the area to press for extensions down the West Coast of South America. The bona fides of this contention may, I think be best judged by the fact that Pan American has applications already granted or pending to bring all of its own divisions and associated companies to United States' terminals and, at almost the very time your letter was being written, the press services were announcing that Avianca of which Pan American owns 64% and Cia. Mexicana de Aviacion, S. A. of which you own 56% were applying for such extensions, Avianca's extension being actually from Balboa. The idea that Panagra is the only line or company associated with Pan American whose interests are best served by remaining without a United States terminal is simply too absurd for comment.

Your letter, as I see it, merely reflects a continuation of the policy in respect of a United States terminal for Panagra consistently followed by Pan American Airways and its representatives on Panagra's Board, of always sub-

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[fol. 594] ordinating Panagra's interests to their own. The latest action not only denies Panagra the benefit of the honest and independent judgment of its four Pan American directors to which it is entitled but is on its face an admission that this action is without even plausible justification under today's condition. Quite apart from any legal considerations, I think that we had a right just as men and partners to expect fairer treatment.

While your letter is addressed as a personal one to me and I am, therefore, replying in the same form, this matter is by no means personal. I accordingly request that you

bring this letter to the attention of Pan American's Board of Directors.

Very truly yours,

/s/ HR

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[fol. 595]

GOVERNMENT'S EXHIBIT 251

Cable Address
"PANAGRA"

PAN AMERICAN-GRACE AIRWAYS, INC.

Office of the President
7 Hanover Square
New York 5, N. Y.

January 17, 1946

Mr. Howard B. Dean
Pan American Airways
Chrysler Building
New York 17, N. Y.

Dear Howard:

In two letters from South America, received yesterday, I am advised:

(1) of a project to establish an international line between Lima and Toronto, Canada, presumably via United States points, under the auspices of our old friend Webster.

(2) of a proposal to extend T.A.C.A. to Peru. T.A.C.A., as you know, already has extension existing and projected to the United States.

(3) of a projected Peruvian national line to enter the international field as an offset to the projected Chilean C.S.A.V. line which, as you know, proposes

to paralled us all the way from Santiago and to proceed to New York via Havana.

In our discussion at Judge Burns' office the other day, you suggested that the reason you were acquiescing in Avianca, Panair do Brasil (and other subsidiaries in which you had a stock interest) coming to the United States, was that as long as national lines from those countries were coming through, the company in which you had a stock interest might just as well come through. Why does not that reasoning apply to Panagra in view of projects such as those above referred to?

Yours very truly,

HJR

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[fol. 596]

GOVERNMENT'S EXHIBIT 252

bcc: Mr. Trippe
Mr. Friendly

HBD

February 21, 1946

Mr. Harold J. Roig, President
Pan American-Grace Airways, Inc.
135 East 42nd Street
New York, New York

Dear Harold:

We have discussed the matter of your proposed operation of the two Pan American-Grace Constellations with Mr. Shannon and Mr. Vidal on the basis of Mr. Shannon's memorandum to me of February 16th. This matter was referred to our Executive Committee meeting on February 19th. The Committee felt that the operation as outlined would result in excessive cost to Pan American-Grace as well as providing uneconomical utilization of this equipment.

I have been requested by the Committee to submit to you a plan whereby Pan American Airways, Inc. would be willing to contribute two Constellation aircraft to a pool to be formed with Pan American-Grace's two Constellation aircraft making a total of four aircraft of this type. With this fleet, an efficient operation could be conducted from the Miami base serving both the East and West coasts of South America by providing a daily service from Miami to Lima and a three times weekly service from Miami to Rio. This would result in a utilization of a little over nine hours per day per unit which could be still further improved, as for example, through a second daily service between Miami and Balboa, if warranted, or a daily Miami-Barranquilla trip. In support of our plan, I attach a memorandum outlining in detail the economic disadvantages of the proposal submitted in Mr. Shannon's memorandum and justifying in every respect our suggestion that a pool of equipment be formed to increase the utilization of the equipment to a satisfactory point, where the cost per mile will be comparable to that which we expect to obtain in our Constellation operations elsewhere.

I need hardly elaborate on the point that a through service from Miami to Lima, such as would be provided by the proposed equipment interchange, would be highly desirable from the standpoint of the traveling and shipping public.

We are confident that our proposal is entirely practical and in the interest of Pan American-Grace Airways, as well as the public interest. If you will kindly advise me that you concur in principle, I shall immediately take the necessary steps to coordinate this program, and put it into effect at the earliest possible moment.

Very truly yours,

Original Signed By
HOWARD B. DEAN

Howard B. Dean
Vice President

Attachment
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Feb. 25, '45
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[fol. 599]

GOVERNMENT'S EXHIBIT 254

Cable Address
"Panagra"

PAN AMERICAN-GRACE AIRWAYS, INC.

Office Of The President
7 Hanover Square
New York 5, N.Y.

April 11, 1946

Mr. Howard B. Dean,
135 East 42nd Street,
New York 17, New York

Dear Howard:

Yours April 8th received yesterday.

I really haven't time just now for letter writing. So please consider all rights reserved in respect of yours under reply as well as yours of February 21st which I referred to at the last Board meeting.

Your enumeration of the advantages of pooling compared with our present position dead-ended at Balboa seems to be based on essential acceptance of the arguments for a U. S. Terminal which I have been urging for so many years. The only trouble is that you do not go far enough. What I am interested in is the comparison between our present position *and a U. S. Terminal*,—not comparison with a poor substitute for that terminal through a pooling agreement with all its infirmities and inadequacies. It is obvious that a U. S. Terminal for Panagra is of far more vital concern to the public service as well as to Panagra's very existence than the half-way financial advantages to which you refer,—even assuming that they would be realized.

But quite apart from this, as I explained at our Board meeting, Mr. Gerhard A. Gesell, Panagra's Counsel, is of

the opinion that entering into a pooling agreement pending decision in Docket 525 would be prejudicial to the company's interest. Moreover, as stated at that meeting, I am

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[fol. 600] of the opinion that while Docket 779 is pending, Pan American having insisted that Panagra maintain a strictly neutral position in respect of the entire U. S. Terminal question, it is not appropriate for Pan American to put Panagra in a position of violating this neutrality by forcing it to take action which could in any way or to any extent have the effect of prejudicing the terminal question. The Constellations were not tied into any pooling arrangement when they were bought and pooling arrangements have nothing to do with the changes in our equipment program which we now have under consideration.

I am writing you separately regarding the action the Panagra Management proposes taking at this time regarding equipment.

Sincerely yours,

/s/ H. R.

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[fol. 601]

GOVERNMENT'S EXHIBIT 255

April 15, 1946

Mr. Harold Roig, President
Pan American-Grace Airways, Inc.,
7 Hanover Square,
New York 5, N.Y.

Dear Harold:

Howard Dean has transmitted to me your letter of April 11, 1946 in answer to his of April 8.

As I understand it, you do not question that an arrangement for the interchange of Constellation or C-54 equipment with Pan American would provide substantial economies and better service to the public. If so, why should not Pan American-Grace have the advantages of these economies and the public the benefit of that service while the controversy over the proposed extension to the continental United States goes on? Surely the answer that successful operation of such an interchange might militate against the efforts of W. R. Grace & Company to force such an extension is not one which you can expect us to regard as consistent with the duties of the management of Pan American-Grace.

I am quite unable to understand your suggestion that acceptance of our interchange proposal would put Pan American-Grace's management in a position of violating neutrality on this issue of the extension. So long as Pan American-Grace's route is what it is, the duty of Pan American-Grace's management is to operate that route in the most economical and efficient manner and give the best possible service to the public. Refusal by that management to make an interchange arrangement because of fear that this might demonstrate the lack of necessity for a route extension seems to us not only to be taking a decidedly unneutral position but, what is more important, to constitute a breach of fiduciary responsibilities.

There would, of course, be no objection to postponing this matter for a short time pending the expected decision in Docket 525, were it not for the fact that the imminent delivery of four-engined equipment makes time of the essence.

In view of your continued refusal to consider an inter-

PAA-2891
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[fol. 602] change arrangement, we are willing to approve certain proposals made in your other letter of April 11, as

outlined in a letter from Erwin Ballnder which goes forward to you simultaneously with this.

Sincerely yours,

Henry J. Friendly
Vice President and General Counsel

HJF/vb

bcc—Vice President Dean
E. Ballnder

1563 PAA-2892

[fol. 603]

GOVERNMENT'S EXHIBIT 256

Cable Address
PANAGRA

PAN AMERICAN-GRACE AIRWAYS, INC.

Office of the President
7 Hanover Square
New York 5, N.Y.

May 24, 1946

John C. Cooper, Esq.
Director, Pan American Airways Corporation
135 East 42nd Street
New York 17, N. Y.

Dear Sir:

According to the Record in C.A.B. Docket 779, at a meeting of the Board of Directors of Pan American Airways Corporation, held January 7, 1941, the following resolution was adopted:

> RESOLVED, that the Corporation, as owner of half of the stock of Pan American-Grace Airways, Inc. should decline to acquiesce in the filing by Pan American-Grace Airways, Inc. of an application

for a certificate of convenience and necessity between the Canal Zone and New Orleans, Louisiana, and that the representatives of the Corporation upon the Board of Directors of Pan American-Grace Airways, Inc., should not attend the meeting of such Board of Directors called for the afternoon of January 14, 1941, to act upon such proposal, or any adjournment thereof, and except upon further instructions from the Executive Committee or the Board of Directors, should not attend any other meeting of the Board of Directors of Pan American-Grace Airways, Inc., at which action is to be taken upon the subject matter above described.

In view of this action by Pan American's Board of Directors of which you are a member, I am enclosing herewith a copy of the Notice of a Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc. which I have called to be held on May 28, 1946 for the purposes stated in said notice.

Very truly yours,

(signed) HAROLD J. ROIG
Harold J. Roig
President

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[fol. 604]

PAN AMERICAN-GRACE AIRWAYS, INC.

NOTICE OF SPECIAL MEETING OF BOARD OF DIRECTORS

May 28, 1946

Pursuant to call of the President, a special meeting of the Board of Directors of PAN AMERICAN-GRACE AIRWAYS, INC. will be held at the office of Pan American

Airways, Inc., 135 East 42nd Street, New York, N. Y., on the 28th day of May, 1946, at 4:00 o'clock in the afternoon, for the purpose of complying with the decision of the Civil Aeronautics Board in Docket No. 525 approved by the President of the United States, in which they state:

> "The importance of providing service between the traffic generating areas of the northeast is recognized. It should be pointed out, however, that in extending Pan American from New York to San Juan, this area will be afforded a substantially improved service to the Caribbean area and to the east coast of South America. In addition, we have long recognized the desirability of an application to the Board which would permit a determination of the question of extending Pan American Grace Airways from its present terminal at Balboa to a point in the United States. If such an extension were made to Miami or New York, or some other point on the eastern seaboard, the eastern part of the country would be afforded a fast direct service to the west coast of South America and to Buenos Aires."
>
> ••••••••••••••
>
> "In view of the facts above outlined we feel that the joint owners should in the public interest cooperatively enable Panagra to apply for access to the east coast of the United States."

by authorizing the application by Pan American-Grace Airways, Inc. to the Civil Aeronautics Board for an amendment of its Certificate of Convenience and Necessity so as to extend its route from Balboa to New York via Havana, Cuba and/or Miami, Florida and/or such other intermediate points as may seem advisable, and for the transaction of such other business as may properly come before the meeting.

W. F. COGSWELL
Secretary

Dated May 24, 1946

[fol. 605]

GOVERNMENT'S EXHIBIT 257

W. R. GRACE & CO.
7 Hanover Square, New York 5, N.Y.

Office Of The President — May 31, 1946

Mr. J. T. Trippe
Director, Pan American Airways Corporation
135 East 42nd Street
New York 17, N. Y.

Dear Sir:

By their decision in Docket 525 (Latin American Route Case) the Civil Aeronautics Board and the President of the United States have placed the responsibility upon Pan American Airways Corporation and W. R. Grace & Co., as the owners of Panagra, to implement the decision "that the joint owners should in the public interest cooperatively enable Panagra to apply for access to the east coast of the United States."

W. R. Grace & Co. is prepared to discharge this responsibility by enabling Panagra forthwith to apply for corresponding extension of its route to New York. With a view to making this possible cooperatively we have already discussed the matter with your President, Mr. Trippe, and feel that we should briefly state our position to the members of your Board.

The decision in Docket 525, unless Panagra obtains this extension, involves potentially tragic consequences to our joint company. That decision introduces into the Latin American and adjacent field for the first time certificated routes by six aggressive American airlines, Braniff, National, Eastern, Western, Colonial and Chicago & Southern. Braniff is granted a route the full length of South America to Rio and Buenos Aires, tapping en route many of Panagra's principal traffic points on the west coast of South America and tying in with its own network in the United

C

[fol. 606] States and with those of National and Chicago & Southern at Havana. Unless Panagra is put in position to meet this new setup, Braniff may well become the principal American airline to the west coast of South America and, by improvements in its route, which will doubtless be effected in the course of time, the principal American operator to all of South America. This decision with its far-reaching consequences to the American flag South American route pattern comes at a time when not less than six foreign flag operators, paralleling all or part of Panagra's route and with projected terminals in the United States, are well advanced in their plans:

An Argentine line (Dodero) up the West Coast from B.A.

A Chilean line (CSAV) paralleling our route from Santiago with terminal in New York

A British line between New York and B.A. via the West Coast

A Canadian/Peruvian line operating between Lima and Canadian points via the United States

AVIANCA, a Colombian company; 48% owned by Pan American, which has extended its route to Ecuador, and is applying for extension northward to the United States

TACA which has extended from Colombia to Ecuador and is extending to Peru, and has applied to come to the United States

Bad as the situation is for Panagra, the Civil Aeronautics Board has left the door open for Panagra to make a battle for its existence. The omission of the decision to authorize any direct route between Balboa and the east coast of the United States and the denial of Eastern's and Colonial's applications, coupled with the language of the decision itself leaves no doubt that it is the intention to award this route to Panagra if it is applied for promptly. If this opportunity is lost there can be little doubt that the route will be granted to some other carrier, thus giving

them a foothold on the South American continent. Even since the Board's decision in 525 Colonial has moved for reconsideration of its application for the New York/Balboa route on the ground among others that the granting of the route to Colonial would "relieve the Board of further appeasement efforts as mediator between Pan American and Panagra."

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[fol. 607] We believe that in the light of this decision the pros and cons of Panagra's extension previously considered are hardly open for further discussion. The Civil Aeronautics Board with the approval of the President of the United States has decided that the extension is in the public interest as it is obviously in the interest of the joint owners of Panagra. It is manifestly in the public interest as in Panagra's interest that the west coast countries of South America should have an American flag air service equal to that provided on the east coast. This can only be done by Panagra's extending to the United States in the same way that Pan American has so extended or is seeking to extend all of its own routes and those of all of its affiliates except Panagra. That the decision had this clearly in mind in granting Pan American's extension between San Juan and New York clearly appears from the language of the decision where referring to a Panagra extension, it is stated: "If such an extension were made to Miami or New York, or some other point on the eastern seaboard, the eastern part of the country would be afforded a fast direct service to the west coast of South America and to Buenos Aires."

We need not review Panagra's record of accomplishment nor dwell upon the value of our joint property. We feel that unless immediate action is taken along the lines indicated our joint investment of capital and of eighteen years of pioneering and development work by which we have built up a great international trunk line will be seriously damaged if not destroyed.

We most earnestly urge that you cooperate with us in enabling Panagra to secure this extension so vital to its

success in meeting the very difficult situation which lies ahead of us.

Very truly yours,

W. R. GRACE & CO.

/s/ J. P. GRACE, JR.
President

Enclosures:
Extracts from Decision
CAB Docket 525
Extracts from Colonial's
petition for reconsideration

PAA 5720

[fol. 608]

GOVERNMENT'S EXHIBIT 258

EXTRACTS FROM MINUTES OF PAN AMERICAN AIRWAYS CORPORATION

Board of Directors
June 4, 1946

The Directors took up the request of W. R. Grace & Co. that this Corporation, as owner of half of the stock of Pan American-Grace Airways, should take action to authorize an application by that Company for an amendment of its certificate of convenience and necessity so as to extend its route from Balboa to New York and/or Miami.

Grace's request was discussed at length. Several Directors to whom representatives of W. R. Grace & Co. had presented that Company's views stated to the meeting the various arguments advanced by Grace. These were thoroughly considered, particularly in the light of the competitive situation created by the certification of Braniff Airways, as a result of the action of the President, as a second American-flag air carrier to Lima, Rio de Janeiro and Buenos Aires and probably foreign-flag competition.

After such discussion, upon motion duly made and seconded, it was unanimously:

RESOLVED, that in the opinion of this Board an extension of Pan American-Grace Airways, Inc. from Balboa to Miami or New York would not be in the best interests of Pan American-Grace Airways, Inc., and likewise would not be in the best interests of this Corporation or its stockholders, and that consequently the representatives of this Corporation on the Board of Directors of Pan American-Grace Airways, Inc. be instructed not to take action authorizing an application for such an extension by that Company.

GR-2951 G007857

[fol. 609]

GOVERNMENT'S EXHIBIT 259

Minutes of Adjourned Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc., held at Room F, 66th Floor, No. 135 East 42nd Street, New York, N. Y. on the 5th day of June, 1946, at 1:00 o'clock in the afternoon.

PRESENT: Messrs. William F. Cogswell
Howard B. Dean
A. Garni
H. Preston Morris
R. H. Patchin
Harold J. Roig

being a quorum of the Board.

Messrs. Henry J. Friendly, J. Clawson Roop, Samuel F. Pryor, Jr. and J. A. Woods were also present.

• • •

The President referred to the decision of the Civil Aeronautics Board in the Latin American Route case, Docket 525. He referred specifically to the following statements in the Board's decision:

"The importance of providing service between the traffic generating areas of the northeast is recognized. It should be pointed out, however, that in extending Pan American from New York to San Juan, this area will be afforded a substantially improved service to the Caribbean area and to the east coast of South America. In addition, we have long recognized the desirability of an application to the Board which would permit a determination of the question of extending Pan American-Grace Airways from its present terminal at Balboa to a point in the United States. If such an extension were made to Miami or New York, or some other point on the eastern seaboard, the eastern part of the country would be afforded a fast direct service to the west coast of South America and to Buenos Aires.

Such an extension of Panagra was the subject of an investigation instituted by the Board in 1942, which terminated in a dismissal on the ground that the Board [fol. 610] was without power to accomplish the compulsory extension of Panagra to the United States. This case has recently been remanded to the Board by the Circuit Court of Appeals for the Second Circuit for further consideration.

Before instituting the *Panagra Terminal Investigation* the Board explored the possibility of working out a voluntary settlement of the controversy between Pan American and W. R. Grace & Co. Several conferences were held with both parties. Finally the Board suggested that the parties enter into an agreement under which sufficient shares of the two stockholders would be transferred to an independent voting trustee or trustees to permit the election to the Panagra board of an independent director or directors, or under which such an independent public director or directors might otherwise be appointed, who would be able to break the deadlock resulting from the equal division of ownership of Panagra stock between the two companies. After it became apparent that no satisfactory voluntary agreement could be reached by the parties and

that all efforts to mediate the differences between them would be unsuccessful, the Board issued its order instituting the *Panagra Terminal Investigation* proceeding.

In the *Panagra Terminal Investigation* the Board took note of the unhealthy condition existing in the internal affairs of that company by reason of its joint ownership and control by Pan American and W. R. Grace & Co., and pointed out that deadlock between the two interests equally represented in the ownership of Panagra was likely to occur again in view of the conflicting interests of the two co-owners.

In view of the facts above outlined we feel that the joint owners should in the public interest cooperatively enable Panagra to apply for access to the east coast of the United States."

Mr. Roig stated that this meeting had been called to enable the joint owners cooperatively to enable Panagra to apply for access to the East Coast of the United States in accordance with the said opinion.

[fol. 611] Mr. Garni thereupon offered the following resolution which was seconded by Mr. Patchin:

WHEREAS in the decision of the C.A.B. approved by the President of the United States it is stated "we feel that the joint owners should in the public interest cooperatively enable Panagra to apply for access to the east coast of the United States", and

WHEREAS the joint owners of this company, Pan American Airways Corporation and W. R. Grace & Co., are desirous of complying with this decision of the C.A.B. and of the President of the United States,

NOW THEREFORE BE IT

RESOLVED that the President of this corporation be and he hereby is authorized and directed to file with the Civil Aeronautics Board in the name and on behalf of this corporation, application for appropriate amendment of the Certificate of Convenience and Neces-

sity of this corporation so as to authorize extension of its route from Balboa to New York via Havana, Cuba and/or Miami, Florida.

RESOLVED FURTHER that, in the discretion of the President, such application may contain an expression of willingness on the part of this corporation that the amendment of its Certificate of Convenience and Necessity, in lieu of the extension requested, provide for service to such other point on the east coast of the United States and via such intermediate points as the Civil Aeronautics Board might require.

Mr. Garni stated that it was the desire of W. R. Grace & Co. to comply with the decision of the C. A. B. and the President of the United States and that the resolution he was offering, and which the Grace directors were prepared to vote for, was intended to implement such compliance. He stated that in his opinion the most satisfactory route from the point of view of the public interest and of Pan- [fol. 612] agra which would comply with the foregoing should be from Balboa to New York via Havana, Cuba and/or Miami, Florida, as proposed in the resolution and he recommended that we apply for that route. He stated that he was, however, entirely willing to consider any reasonable amendment with regard to the route proposed in the resolution which Pan American might consider to constitute more appropriate or acceptable compliance with the decision.

Mr. Dean stated that the subject matter of Mr. Garni's resolution had been discussed at great length at a meeting of the Board of Directors of Pan American Airways Corporation held on the previous day, and that after such discussion the Pan American Directors had unanimously adopted the following resolution:

RESOLVED that in the opinion of this Board an extension of Pan American-Grace Airways Inc. from Balboa to Miami, or New York, would not be in the best interests of Pan American-Grace Airways Inc. and likewise would not be in the best interests of this corporation or its stockholders, and that consequently the

representatives of this corporation on the Board of Directors of Pan American Airways Inc. be instructed not to take action authorizing an application for such an extension by that company.

Mr. Dean stated that as a matter of record he wished to make it clear that in the opinion of Pan American the portions of the C.A.B. decision which were quoted by Mr. Roig had not been approved by the President and that the President had merely approved the Board's order and the certificates. Mr. Dean on behalf of the Pan American Directors and Pan American Airways Inc. urged that consideration be given to an arrangement whereby Panagra's planes might operate over one or more Pan American routes north [fol. 613] of the Canal Zone.

Mr. Garni's resolution was thereupon put to a vote and failed of passage. Messrs. Garni, Roig, Patchin and Woods voting in favor of such resolution and Messrs. Dean, Pryor, Roop and Morris in opposition thereto.

Discussion of Mr. Dean's proposal with respect to the operation of Panagra's planes over one or more Pan American routes north of the Canal Zone, was thereupon had. The Directors who had voted in favor of Mr. Garni's resolution expressed a desire to confer among themselves with respect to this proposal and the meeting thereupon adjourned to June 10, 1946, at 9:30 o'clock in the forenoon.

HJR
Chairman of the Meeting

/s/ W. F. Cogswell.
Secretary of the Meeting

[fol. 614]

GOVERNMENT'S EXHIBIT 260

A.G.
J.P.G. J.R.
ABS

Minutes of an Adjourned Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways, Inc., 135 East 42nd Street, New York, N. Y., on the 11th day of June, 1946 at 9:30 o'clock in the forenoon.

PRESENT:

Messrs. Howard B Dean
A Garni
H Preston Morris
R H Patchin
Samuel F Pryor, Jr
Harold J Roig
J Clawson Roop
J A Woods

Mr. Henry J Friendly was also present.

Mr. H J Roig, President of the corporation, presided. Mr. W F Cogswell, Secretary, acted as Secretary of the meeting.

The President stated that as a result of further consideration and discussion, the Directors who had voted in favor of Mr. Garni's resolution felt that it would be worthwhile to explore the suggestion made by Mr. Dean and see whether a mutually satisfactory agreement could be worked out between Pan American-Grace Airways Inc. and Pan American. It was decided that the company should instruct counsel to endeavor to work out such an agreement with counsel for Pan American for further consideration by the Board of Directors.

The meeting thereupon adjourned subject to the call of the Chair.

.....
Chairman of the Meeting

.....
Secretary of the Meeting

GR-2945 G007851

[fol. 615]

GOVERNMENT'S EXHIBIT 261

Board of Directors
July 2, 1946

Mr. Trippe reported on the status of negotiations with W. R. Grace & Co. for a settlement of the controversy arising out of that company's desire that Pan American-Grace Airways, Inc. be extended to the continental United States. At the Board meeting of Pan American-Grace Airways, Inc. held on June 5, 1946, the Pan American representatives had proposed as a basis for settlement a long-term arrangement whereby Pan American-Grace aircraft and flight crews would fly north of the Canal Zone under charter over the certificated routes of Pan American Airways, Inc. so as to permit through service between the continental United States and points on Pan American-Grace's route in South America. Drafts recently presented on behalf of W. R. Grace & Co. were based on a completely different theory, namely, that Pan American-Grace would itself operate its aircraft north of the Canal Zone over Pan American's certificate, simply paying to Pan American a share of the profits of the operation.

Mr. Trippe then asked Mr. Bush to report certain conversations which he had had with Mr. Adolf Garni, Co-Chairman of the Board of W. R. Grace & Co.

Mr. Bush stated that the first of these conversations had occurred shortly after the Pan American Board of Directors, at their meeting on June 4, had, by unanimous vote, adopted a resolution against the representatives of this Corporation on the Board of Directors of Pan American-Grace Airways, Inc. taking action to authorize an application for an extension by Pan American-Grace Airways, Inc.

GR-2955 G007861

[fol. 616] to the continental United States. Mr. Garni had requested Mr. Bush to come to the former's office at W. R. Grace & Co. Mr. Garni had stated at this meeting that while others in W. R. Grace & Co. favored the proposed method of settling the controversy through an interchange agreement, he felt that a sale of the interest in Pan American-

Grace Airways, Inc., held by W. R. Grace & Co. might be preferable as a permanent solution. Mr. Bush had reported this conversation to Mr. Dean. Mr. Dean had felt that, in view of the pending negotiations for an interchange agreement, it would not be wise to pursue Mr. Garni's suggestion. However, at Mr. Dean's request, Mr. Bush had had a further talk yesterday with Mr. Garni at which Mr. Garni named a price of 700,000 shares of Pan American Airways Corporation as a fair consideration for W. R. Grace & Co.'s interest in Pan American-Grace Airways, Inc., which Mr. Garni valued at $14,000,000.

Mr. Trippe reported that the Executive Committee had discussed the basis on which Mr. Garni had arrived at this figure and other data relating to the value of Pan American-Grace Airways, Inc. The Committee had decided to recommend that, in view of the difficulties that were being encountered in working out an interchange agreement, the Board of Directors authorize the purchase of W. R. Grace & Co.'s holdings in Pan American-Grace proposed by Mr. Garni and that in view of the difference of opinion as to the value of these holdings, if the representatives of the parties were unable to agree upon a figure, a suitable way to determine any difference of opinion, and one which

GR-2956 G007862

[fol. 617] could hardly be unacceptable to W. R. Grace & Co., would be that, after both parties had had an opportunity to present the necessary data, the figure should be set by Judge John J. Burns, who had been acting as attorney for W. R. Grace & Co. in this controversy. It was felt that Judge Burns' reputation and judicial qualities were such that the Corporation could afford to leave the matter to him for settlement.

Upon motion, duly made and seconded, it was thereupon unanimously

RESOLVED, that the representatives of this Corporation be authorized to enter into a contract with W. R. Grace & Co. for the purchase of the latter's interest in Pan American-Grace Airways, Inc., as proposed by Mr. Adolf Garni of W. R. Grace & Co., at a price to be negotiated or, if an agreement upon such

price could not be reached within fifteen days after signature of the contract, then at a price to be settled by John J. Burns, Esq., or, in the event of his inability to act, by such other person as was mutually agreed upon, such contract to be subject to any necessary approval by the Civil Aeronautics Board.

"While the general feeling was that the Grace proposal with respect to interchange constituted such a departure from the proposal originally made by Pan American (which was approved in principle by this meeting) as to be unacceptable, it was determined to take no action with respect to the Grace proposal pending the outcome of the negotiations for the purchase of W. R. Grace & Co.'s interest in Pan American-Grace Airways authorized by this meeting.

GR-2957 G007863

[fol. 618]

GOVERNMENT'S EXHIBIT 262

July 3, 1946

COPY

Directors' Meeting

The regular meeting of the Board of Directors of W. R. Grace & Co. was held at the company's office, No. 7 Hanover Square, New York City, on July 3, 1946, at 11:30 O'clock AM.

PRESENT:

Messrs. M. Bouvier
Gale H. Carter
Geo. Doubleday
W. G. Holloway
A. Garni
Harold J. Roig
J. H. H. Phipps

E. A. Eyre
J. T. Kirby
J. P. Grace, Jr.
Andrew B. Shea

being a quorum of the Board.

Mr. Holloway, Chairman, presided. Mr. Cogswell, Secretary, acted as such.

******

There was reported to the meeting discussions being held with Pan American Airways in connection with contract proposed by them to bring Panagra into the United States over the former's route and also indication on the part of Pan American Airways of their desire to acquire our stock in Panagra issuing their own stock in exchange.

The following resolution was duly made and seconded:

RESOLVED that it is the sense of this meeting that we continue to attempt to negotiate a contract with Pan American Airways as proposed by them to bring Panagra into the United States and advise them that we are not interested in the sale to them of our Panagra stock.

Extended discussion ensued. Before completion of the vote on this resolution the meeting turned to other business *********

Mr. Layman thereupon joined the meeting and there was further discussion on the aforementioned resolution in respect to Panagra. Vote then being completed, such resolution was adopted.

There being no further business, the meeting adjourned.

A true record.

.....
Chairman

.....
Secretary

[fol. 619]

GOVERNMENT'S EXHIBIT 263

59 WALL STREET, NEW YORK

CABLE ADDRESS "SHIPLEY-NEW YORK"

BROWN BROTHERS HARRIMAN & CO.

BUSINESS ESTABLISHED 1818

PRIVATE BANKERS

July 8, 1946.

Mr. Howard B. Dean,
Pan American Airways System,
135 East 42nd Street,
New York 17, New York

Dear Howard:

I thought it might be useful to have in my files a memorandum outlining briefly my talks with Adolf Garni. I hand you herewith a copy of the memorandum.

Sincerely yours,

Pres.
Prescott S. Bush.

Enc.

PSB:K.

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[fol. 620]

2114.42

Memorandum.

Subject: P. A. A.—GRACE.

At the P. A. A. directors' meeting on June 4th the request of Grace interests in Panagra that P. A. A. join in an application to extend the Panagra route to North

America was considered. Unanimously, the P. A. A. directors voted to disapprove that request.

On the following day Mr. Adolf Garni, of W. R. Grace & Co., asked me to go to his office, which I did. He said that personally he felt that a sale of Grace interests in Panagra to P. A. A. was desirable; that he did not like the proposal of an "interchange" contract and did not think it would work out satisfactorily, although Mr. Roig strongly favored that course. He said he had been giving some consideration to the price which Grace might receive for its 50% in Panagra. He showed me a lot of figures which he had prepared comparing the value of Panagra stock to the stock of various airlines quoted in the open markets. On the basis of these calculations he thought that the price of 700,000 shares of P. A. A. stock was fair for the Grace 50% interests in Panagra.

I reported this conversation to Howard Dean, of P. A. A., on the following morning.

At the July meeting of P. A. A. directors, Mr. Trippe informed us of the contract negotiations indicating that our representatives and the Grace representatives were working on a contract which would permit Panagra to fly north over the P. A. A. certificated route. After a rather full explanation of the course of the negotiations on this contract he asked me to explain to the directors the nature of my conversations with Mr. Garni. This I did.

Mr. Trippe then informed the directors that the Executive Committee that morning had considered the Garni proposal. Our management had presented some figures to the Executive Committee indicating a much lower price
Really there were two meetings— PAA
one on June 5 the other on July 1. 2111 1 1/4/55
TJK 4005
[fol. 621] for Panagra stock as being of some possible interest to P. A. A. The Committee thought it desirable to present to the Board the following proposition for consideration, i. e., that P. A. A. enter into an agreement with the Grace interests providing that the two interests negotiate on price and terms for the sale of the Grace interests

in Panagra. If, after a period of fifteen days no agreement could be reached, then both sides would refer the case to Mr. John Burns, who would make a final decision as to the price and terms. His decision would be subject only to C. A. B. approval and would be binding on both Grace and P. A. A.

At the suggestion of Mr. Trippe the Board asked me to present this proposition to Mr. Garni immediately. This I did the following morning (July 3rd). W. R. Grace & Co. had a Board meeting that day and in the afternoon Mr. Garni telephoned to me. He said that the Grace Board had asked him to say the following to me:

1—They were very much disappointed that the contract negotiations had been sidetracked and that this proposal of sale had been introduced at this time. I reminded him that the proposal came from him and that it was presented to P. A. A. directors at the first opportunity, namely, the next meeting following our conversations.

2—He said that the Grace interests were not at all interested in the sale.

3—On their behalf he urged that negotiations on the contract should proceed at once. They had been led to understand from Mr. Friendley that the contract might receive favorable consideration. They were very much disappointed at the delay—felt that time was of the essence.

2111 e PAA 4006

[fol. 622] I immediately telephoned Howard Dean and reported the conversation with Mr. Garni at 3:15 on July 3rd.

In connection with all of the above it must be said for Mr. Garni that he indicated in our conversations that he was talking as an individual, that he was not speaking for the Grace interests. Nevertheless, it is important to note that he initiated these conversations of his own volition.

PAA 4007

[fol. 623]

GOVERNMENT'S EXHIBIT 264

Executive Committee
July 9, 1946

The Chairman reported to the meeting on current conference with W. R. Grace & Co. After discussion, the meeting approved the submission by Pan American Airways, Inc. of a proposal for inter-change of equipment arrangement with Pan American-Grace Airways, Inc. on the basis of cost plus return on investment.

Executive Committee
July 16, 1946

The Chairman reported to the meeting on current conferences with W. R. Grace & Co.

Executive Committee
July 23, 1946

The Chairman reported to the meeting on the status of current conferences on proposed arrangement between Pan American-Grace Airways, Inc. and Pan American Airways, Inc. for interchange of equipment.

Executive Committee
July 30, 1946

Upon motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, that the President of this Corporation be, and he hereby is, authorized, in the name and on
GR-2958 G007864
[fol. 624] behalf of this Corporation, and under its corporate seal or otherwise, to execute and deliver an agreement, in the form or substantially the form submitted to this meeting, with such changes therein as said officer may be the execution thereof approve, between W. R. Grace & Co. and this Corporation relating to the agreement between Pan American Air-

ways, Inc. and Pan American-Grace Airways, Inc. concerning the operation of the aircraft of Pan American-Grace Airways, Inc. over certain routes of Pan American Airways, Inc. north of the Canal Zone and other matters, said contract to be subject to approval by counsel for this Corporation, and that the Secretary of this Corporation be, and he hereby is, authorized to affix the seal of this Corporation to such agreement so executed and to attest such seal so affixed.

Board of Directors,
August 6, 1946

Upon motion, duly made and seconded, the following resolution was adopted:

RESOLVED, that the agreement dated July 30, 1946 heretofore entered into between W. R. Grace & Co. and this Corporation, copy of which has been submitted to this meeting, relating to the agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. concerning the operation of the aircraft of Pan American-Grace Airways, Inc. over certain routes of Pan American Airways, Inc. north of the Canal Zone and other matters, and the action of J. T. Trippe, President of this Corporation, in heretofore executing and delivering said agreement in the name and on behalf of this Corporation, and the action of H. Preston Morris, Secretary of this Corporation, in annexing the seal of this Corporation to such agreement so executed and attesting such seal so affixed, be, and the same hereby are, ratified, approved, confirmed and adopted.

[fol. 625]

GOVERNMENT'S EXHIBIT 265

EXTRACTS FROM MINUTES OF PAN AMERICAN AIRWAYS, INC.

Executive Committee
July 30, 1946

Upon motion, duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED, that the President of this Corporation be, and he hereby is, authorized, in the name and on behalf of this Corporation, and under its corporate seal or otherwise, to execute and deliver an agreement, in the form or substantially the form submitted to this meeting, with such changes therein as said officer may by the execution thereof approve, between Pan American-Grace Airways, Inc. and this Corporation relating to the operation of aircraft of Pan American-Grace Airways, Inc. over routes of this Company north of the Canal Zone and other matters, said agreement to be subject to approval by counsel for this Corporation and to become effective upon approval thereof by the Civil Aeronautics Board, and that the Secretary of this Corporation be, and he hereby is, authorized to affix the seal of this Corporation to such agreement so executed and to attest such seal so affixed.

Board of Directors
August 6, 1946

The minutes of the meetings of the Executive Committee held on July 9, 16, 23 and 30, 1946 and August 6, 1946 and the action and proceedings stated therein taken by said meetings (except as to those matters with respect to which action by the Board of Directors was recommended) were approved and ratified.

[fol. 626]

GOVERNMENT'S EXHIBIT 266

OFFICE OF GENERAL SALES MANAGER

FILE COPY

NOT TO BE REMOVED FROM FILE

JEN

AGREEMENT

BETWEEN

PAN AMERICAN AIRWAYS, INC.

AND

PAN AMERICAN-GRACE AIRWAYS, INC.

DATED JULY 30, 1946

PAA 663
12-3-54
RLA

[fol. 627] AGREEMENT made and entered into this 30th day of July, 1946 by and between PAN AMERICAN AIRWAYS, INC., a New York corporation (hereinafter called PAA), and PAN AMERICAN GRACE AIRWAYS, INC., a Delaware corporation (hereinafter called Panagra):

RECITALS

A. PAA holds various certificates of convenience and necessity for routes between the continental United States and the Canal Zone, and Panagra holds a certificate of convenience and necessity for a route between the Canal Zone and various points in South America.

B. A substantial amount of the passenger, air express, mail and cargo traffic proceeding between the continental United States and the Canal Zone originates at or is destined to points on Panagra's certificated route in South America.

C. PAA and Panagra believe it is in the public interest that such through traffic should be enabled to proceed by fast direct flight without change of plane at the Canal Zone and that the making of arrangements to that end is desirable in order that they may compete effectively with foreign-flag and other American-flag carriers operating or contemplating operations between the continental United States and the countries of South America which Panagra is certificated to serve.

D. Because of the foregoing and a desire to settle outstanding differences, PAA and Panagra desire to make arrangements, as hereinafter set forth, whereby PAA will charter aircraft of Panagra to be operated with Panagra flight crews over PAA's certificated routes between the Canal Zone and the continental United States.

• • •

PAA 664
12-3-54
RLA

[fol. 628] In Witness whereof each of the parties hereto has caused this agreement to be executed at New York, New York, in its respective corporate name and its respective corporate seal to be hereunto affixed and attested by its respective officer or officers thereunto duly authorized as of the day and year first above written.

PAN AMERICAN AIRWAYS, INC.

By J. T. TRIPPE
J. T. TRIPPE, President

Attest

H. PRESTON MORRIS
H. PRESTON MORRIS, Secretary

PAN AMERICAN-GRACE AIRWAYS, INC.

By HAROLD J. ROIG
HAROLD J. ROIG, President

Attest

W. F. COGSWELL
W. F. COGSWELL, Secretary

PAA 683

[fol. 629]

GOVERNMENT'S EXHIBIT 267

AGREEMENT

between

W. R. GRACE & CO.

AND

PAN AMERICAN AIRWAYS CORPORATION

Dated July 30, 1946

PAA—4937
2/25/55 mfr

[fol. 630] AGREEMENT made and entered into this 30th day of July, 1946 by and between W. R. GRACE & CO., a Connecticut corporation (hereinafter called Grace), and PAN AMERICAN AIRWAYS CORPORATION, a Delaware corporation (hereinafter called Pan American).

RECITALS

A. Grace is the owner of 50% of the stock of Pan American-Grace Airways, Inc., a Delaware corporation (hereinafter called Panagra).

B. Pan American is the owner of 50% of the stock of Panagra and of 100% of the stock of Pan American Airways, Inc., a New York corporation (hereinafter called PAA).

C. Panagra and PAA have entered into a certain contract dated July 30, 1946 (sometimes hereinafter called the Panagra-PAA contract).

TERMS OF AGREEMENT

Now, therefore, in consideration of the mutual covenants herein contained, it is agreed as follows:

1. *Ratification of Panagra-PAA Contract.* Grace, as owner of 50% of the stock of Panagra, and Pan American, as owner of 50% of the stock of Panagra and all of the stock of PAA, ratify the provisions of the Panagra-PAA contract, and each agrees to use its best efforts to facilitate the carrying out of said contract in accordance with the terms thereof and not to exercise its rights as owner of voting shares in such a manner as to interfere with or impede the performance of said contract in accordance with its terms.

2. *Representation of Panagra in Matters under Panagra-PAA Contract.* Pan American agrees that any action to

[fol. 631] make any claim, to take any position, or to enforce any rights of Panagra under the Panagra-PAA con-

tract may be taken on behalf of Panagra by its President, or if the President shall deem that such action requires authority from Panagra's Board of Directors, Pan American will cause its representatives on the Board of Directors of Panagra to attend a meeting for the purpose of furnishing a quorum and at such meeting to abstain from any action which would cause a deadlock within the said Board of Directors with respect to such action; provided, however, that the foregoing shall not be deemed to withdraw from the Board of Directors of Panagra its function of determining such questions of general business policy relating to the conduct of Panagra's affairs (such as the purchase of equipment, the establishment of equipment reserves and the fixing of depreciation rates) as are determined by a board of directors in accordance with law or normal corporate practice.

3. *Management of Panagra.* (a) Pan American agrees that during the term of this agreement it will cast its votes for the election as President of Panagra of one of the directors of Panagra nominated by Grace and approved by Pan American, which approval shall not be unreasonably withheld. The President of Panagra shall be in responsible charge of its management. If at any time Pan American shall be dissatisfied with the conduct of the affairs of Panagra by the President so elected, Pan American shall give notice to Grace stating the respects in which it is dissatisfied. Grace shall thereupon take appropriate steps to remedy the matters set forth in Pan American's notice, unless Grace shall be of the opinion that Pan American's dissatisfaction is unreasonable, in which event the matter shall be referred to arbitration as provided in paragraph 9 of this agreement. If Pan American prevails in such arbitration, Grace shall be bound to take the action recommended by the arbitrators and thereafter diligently proceed with the same. If the arbitrators shall have found, pursuant to a request of Pan American, that the then President of Panagra should resign, Grace will take appropriate action to procure such resignation and nominate his successor. The arbitrators may, upon the failure of Grace to

[fol. 632] take the action recommended by the arbitrators, relieve Pan American of further obligation under this subparagraph (a) of paragraph 3.

(b) From time to time the President of Panagra shall nominate, with the approval of Pan American, which shall not be unreasonably withheld, a person to hold the office of Vice President-Operations of Panagra and the parties will cause such person to be elected to such office.

(c) If a vacancy shall arise in the Board of Directors of Panagra at any time by reason of the death, resignation or inability to act of a director of Panagra who shall have been nominated by one of the parties, both of the parties will cooperate to cause such vacancy to be filled by a person nominated by the party who shall have nominated the director who shall so have died, resigned or become unable to act.

4. *Services of PAA as Sales Agent for Panagra.* If Grace shall at any time be of the opinion that the continuance of the services of PAA as general sales agent for Panagra under paragraph 10 of the Panagra-PAA contract is unsatisfactory and that the best interests of Panagra require that other arrangements for sales representation of Panagra should be made, Grace shall give notice thereof to Pan American, stating in detail the defaults complained of. Pan American shall thereupon cause PAA to take appropriate action to remedy such defaults unless Pan American shall dispute the defaults complained of, in which event the matter shall be referred to arbitration as provided in paragraph 9 of this agreement. If the arbitration determines that Grace's complaints are well founded, Pan American shall be bound to cause PAA to take the action recommended by the arbitrators and thereafter diligently proceed with the same. The arbitrators may, upon the failure of PAA to take the action recommended by the arbitrators, direct that PAA's sales agency should be terminated and that other plans for sales representation of Panagra should be made.

5. *Effect of Cancellation of PAA's Certificates.* In the event of violation by PAA of its obligations under para-
3491 PAA-4940
[fol. 633] graph 18 of the Panagra-PAA contract (whereby PAA agrees that, except with Panagra's written consent, it will not transfer or abandon any of its certificates covering routes over which Panagra aircraft may be operated under charter to PAA or seek to modify such certificate or certificates in any manner which would prevent or adversely affect the operations contemplated thereunder) or in the event that any such certificate of PAA is canceled by action of the Civil Aeronautics Board or otherwise and such cancellation becomes final, Pan American will consent to Panagra's making application to amend its own certificate so as to include the route for which PAA has so violated its obligations or for which PAA's certificate has been so cancelled.

6. *Pending Litigations.* The parties will forthwith make suitable application to the Supreme Court of the United States and to the Civil Aeronautics Board requesting that the proceedings now pending in the said Court and before the said Board relating to the controversies between them shall be kept *in statu quo* until the Civil Aeronautics Board shall have made a final order in the proceeding relating to the Panagra-PAA contract contemplated by paragraph 20 thereof and, if a timely proceeding to review any such order shall be instituted, until such proceeding for review shall have been finally determined. Upon an order of the Civil Aeronautics Board approving said contract having been made and become final, the parties will make appropriate applications for the dismissal of all such proceedings.

7. *Term.* Except for paragraphs 6 and 8, which shall become effective immediately, this agreement shall take effect simultaneously with the Panagra-PAA contract and shall remain in effect during the term of such contract.

8. *Non-prejudice.* If this agreement does not become effective or if, having become effective, this agreement

should be terminated or canceled, the negotiation and the terms of this agreement and all applications filed and acts done hereunder shall be without prejudice to the rights or future position of the parties.

3491 PAA-4941

[fol. 634] 9. *Arbitration.* Any and all disputes as to the construction or operation of this agreement shall be submitted to arbitration pursuant to the rules of the American Arbitration Association having general application in the manner hereinafter provided. The party requesting arbitration shall notify the other party naming its arbitrator in the notice. The other party shall appoint an arbitrator within ten (10) days after the receipt of such notice. Within ten (10) days after such appointment, the two arbitrators shall appoint a third arbitrator and the decision or the award of any two of such three arbitrators shall be final, binding and conclusive upon the parties. If either party fails to appoint the arbitrator to be appointed by such party, or if the arbitrators appointed by or for the respective parties shall fail to appoint such third arbitrator, then and in either such event such then unappointed arbitrator shall be appointed by the then President of the American Arbitration Association or in the event such President shall be disqualified by reason of his association with either party or otherwise, then by the next highest ranking official of such Association. Any such arbitration shall be conducted in accordance with the law of the State of New York and held in New York City, New York, unless the parties shall otherwise agree in writing.

10. *Termination of Prior Agreement.* The agreement between the parties dated February 14, 1939, shall be terminated upon this agreement becoming effective.

11. *General Provisions.* (a) Nothing in this agreement shall be deemed to require either of the parties to take any action in violation of any applicable law, regulation, or order.

(b) The various headings herein and the grouping of the provisions of this agreement into separate paragraphs shall not be construed to limit or restrict the meaning or application of any provision hereof, and are for the purpose of convenience only.

(c) All references in this agreement to the Civil Aeronautics Board shall include any Federal agency having jurisdiction similar to that now exercised by said Board.

3491 PAA-4942

[fol. 635] In witness whereof each of the parties hereto has caused this agreement to be executed in its respective corporate name and its respective corporate seal to be hereunto affixed and attested by its respective officer or officers thereunto duly authorized as of the day and year first above written.

W. R. GRACE & CO.

By J. P. GRACE, JR.
J. P. Grace, Jr., President

Attest

W. F. COGSWELL
W. F. Cogswell, Secretary.

PAN AMERICAN AIRWAYS CORPORATION

By J. T. TRIPPE
J. T. Trippe, President

Attest

H. PRESTON MORRIS
H. Preston Morris, Secretary

3491 PAA-4943

[fol. 636]

GOVERNMENT'S EXHIBIT 268

Correspondence
File 2

PAA
PAN AMERICAN WORLD AIRWAYS SYSTEM
CHRYSLER BUILDING, 135 EAST 42ND STREET,
NEW YORK 17, N. Y.

EXECUTIVE OFFICERS

August 19, 1946.

Hon. James M. Landis, Chairman,
Civil Aeronautics Board
Washington 25, D. C.

Dear Sir:

Since the decision of the Circuit Court of Appeals for the Second Circuit remanding the Panagra Terminal Investigation, Docket 779, for further proceedings before the Civil Aeronautics Board and the order of the United States Supreme Court of June 10, 1946 granting a writ of certiorari to review that decision, agreements have been reached between W. R. Grace & Co. and Pan American Airways Corporation and between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. (Panagra) which, upon becoming effective, will dispose of the controversy between Pan American and W. R. Grace & Co. which gave rise to CAB Docket 779 as well as to CAB Dockets 707 and 744.

On August 5, 1946, Pan American Airways, Inc. filed an application under Section 412 of the Civil Aeronautics Act for approval of the Pan American-Panagra agreement. The agreement between Grace and Pan American Airways Corporation was also annexed to the application for the information of the Board since it relates to the subject matter of the agreement between Pan American and Panagra and its effectiveness is dependent on the approval of such agreement. Paragraph 6 of the Grace-Pan American agreement provides:

"6. *Pending Litigations.* The parties will forthwith make suitable application to the Supreme Court of the United States and to the Civil Aeronautics Board requesting that the proceedings now pending in the said Court and before the said Board relating to the controversies between them shall be kept in *statu quo* until the Civil Aeronautics Board shall have made a final order in the proceeding relating to the Panagra-PAA contract contemplated by paragraph 20 thereof and, if a timely proceeding to review any such order shall be instituted, until such proceeding for review shall have been finally determined. Upon an order of the Civil Aeronautics Board approving said contract having been made and become final, the parties will make appropriate applications for the dismissal of all such proceedings."

Under the terms of these agreements, the subject matter of the controversies presented in CAB Dockets 779, 707 and 744 will be disposed of and application for dismissal

2111a

PAA 4072
1/4/55
YK

[fol. 637] made both by Pan American and by Grace upon the Panagra-Pan American agreement being approved by order of the Civil Aeronautics Board and such order becoming final. It is respectfully requested, therefore, that CAB Dockets 779, 707 and 744 be kept in *statu quo* until the Board shall have made a final order in the proceeding relating to the Panagra-Pan American agreement and any timely review of such order finally determined.

Very truly yours,

(signed) Henry J. Friendly
Counsel for Pan American Airways Corporation and Pan American Airways, Inc.

(signed) Cahill, Gordon, Bailey & Reissel
Counsel for W. R. Grace & Co.

Pan American-Grace Airways, Inc.
joins in the foregoing request.

GERHARD A GESELL.
Counsel for Pan American-Grace
Airways, Inc.

Copies to all parties.

2111a PAA 4073

[fol. 638]

GOVERNMENT'S EXHIBIT 269

EXCERPTS FROM MEMORANDUM AGREEMENT REGARDING SERVICES RENDERED AND TO BE RENDERED TO PANAGRA BY THE PARENT COMPANIES AND COMPENSATION THEREFOR

This memorandum sets forth the understanding between Pan American-Grace Airways, Inc. (herein called "Panagra"), Pan American Airways, Inc., (herein called "Pan American"), and W. R. Grace & Co., (herein called "Grace"), regarding certain services to be performed, the method of determining compensation for such services and the amount to be paid for certain of such services for 1947-1948.

. . . . . .

2. Panagra shall act as General Sales Agent in Ecuador, Peru, Bolivia and Chile for Pan American and for each of Pan American's affiliated carriers in those of said countries for which said affiliated carrier shall have at the time appointed Pan American and its affiliated carriers general sales agent, except that it shall not so act for Avianca in Ecuador. Panagra may at any time on ninety days' written notice decline to act for any affiliated carrier in one or more of the countries for which it is General Sales Agent. In the event the President of Panagra fails to approve or requests termination of the designation of an affiliated carrier of Pan American under paragraph 1 above, then that affiliated carrier may on ninety days' written notice discontinue Panagra as its general sales agent in any of

[fol. 639] said countries. Panagra shall delegate to Grace its full responsibility for the performance of this general sales agency, and Grace shall hold Panagra harmless for the performance of Panagra's obligations to Pan American and its affiliated carriers. Panagra shall continue to be responsible to Pan American and its affiliated carriers for acts of Grace pursuant to such delegation and such delegation shall not constitute Grace a sub-agent.

3. Grace shall continue to act as General Sales Agent for Panagra in Panama City, Canal Zone, Colombia, Ecuador, Peru, Bolivia and Chile and shall be responsible to Panagra for carrying out of all Panagra's obligations arising from the appointment of Panagra as General Sales Agent by Pan American and its affiliated carriers as specified in paragraph 2 above.

4. (a) For services rendered as General Sales Agents, in accordance with the foregoing paragraphs 1, 2, and 3, commissions shall be paid at the following rates, namely, a 10% commission on all passenger traffic, including excess baggage, and 7½% commission on all cargo and express traffic sold; and in addition Panagra may at its discretion pay to Grace for handling or other services a 5% commission on its revenues from incoming cargo and express on shipments on which Panagra determines such payment to be justified. Where sales are made by a sub-agent, the General Sales Agent shall be entitled to retain an over-

GR-9893 G043287

[fol. 640] riding commission of 2½%. These commissions shall be payable commencing January 1, 1948. No other compensation shall be paid for the services rendered by Panagra, Grace or Pan American as such General Sales Agents except to the extent specifically provided herein or in any General Sales Agency Agreement.

(b) Panagra shall turn over to Grace the full amount of all General Sales Agent commissions paid to it by Pan American and its affiliated carriers and the full amount of any other sales commissions paid to Panagra under interline agreements or otherwise resulting from traffic sold by Grace as General Sales Agent for Panagra.

(c) In connection with the assumption by Grace of responsibilities as General Sales Agent at various points, particularly Lima and Santiago, Panagra will discontinue its existing general selling activities at these points. Certain expenses incurred by Panagra at the above and other points in 1947, as set forth in more detail in Annex A attached, shall be assumed by Grace. Grace shall assume the similar expenses incurred by Panagra in 1948.

G043288

5. General Sales agency agreements covering the understandings recorded in paragraphs 1 to 4 inclusive of this memorandum and otherwise describing and clarifying the obligations of the parties will be prepared promptly. Nothing in such agreements shall relieve Pan American of any obligation to Panagra already assumed under the Through Flight Agreement; provided, however, that the said agree-
GR-9894
[fol. 641] ment shall be modified in the event of the contingency specified in paragraph 1 hereof.

. . . . . .

8. In addition to the sales, purchasing and shipping services provided for above, Pan American will continue to make available to Panagra the services and facilities of its general and administrative organization in New York. Grace will continue to make available to Panagra the services and facilities of its entire organization both in the United States and in South America. The nature of the services which the companies will render Panagra is more fully described in the attached memorandum entitled "Payment to Parent Companies for Services", dated March 3, 1948. In order that Panagra may obtain the fullest advantage of the availability of these services and facilities, it is agreed that Panagra may from time to time indicate in writing to Pan American and Grace the precise type of available services, facilities, information and consultation desired, and Pan American and Grace agree that they will use their best efforts to provide service to Panagra of the type and character specified and in the manner so indicated.

Panagra agrees to credit Pan American and Grace as full compensation for services rendered by such companies

to Panagra during 1947 with and
of which represent sales commissions paid or
payable by Pan American and its affiliated carriers through
GR-9895 G043289
[fol. 642] Panagra, respectively, less amounts heretofore paid on account of such services to Pan American and Grace respectively in respect of 1947 and, in the case of Grace less expenses assumed by Grace hereunder amounting to . These amounts were computed in accordance with the said memorandum entitled "Payments to Parent Companies for Services", and cover the services referred to therein. The foregoing amounts do not include sales commissions paid or payable by Panagra to foreign affiliates of Pan American; nor do they include sales commissions paid to sub-agents.

For services referred to above to be furnished during the year 1948, excluding services as General Sales Agent and services of Pan American covered by Paragraph 6 of this memorandum, which are to be compensated on the commission basis herein described, Panagra agrees to pay Pan American and to pay Grace

The amount payable to Grace and Pan American for years subsequent to 1948 for services other than sales, purchasing and forwarding for which specific commissions are provided, will be determined in the manner described in the memorandum entitled "Payments to Parent Companies for Services", dated March 3, 1948, and an effort will be made to agree upon the amounts payable for each year as promptly as possible after the beginning of such
GR-9896 G043290
[fol. 643] year. It is understood that while Pan American and Panagra each maintains seperate general offices in New York for its own account, certain office functions such as telephone switchboard and mail handling are now pooled and will continue to be pooled for convenience, and the payment herein provided for covers Panagra's full share of such pooled services. In accordance with past practice, Pan American shall continue to charge Panagra with out-of-pocket expenses, such as postage, specifically incurred

at the request of Panagra and resulting from such pooled services. Long distance telephone calls made by Panagra through Pan American's switchboard, except calls made over existing tie lines with Washington or other tie lines not charged by Pan American directly to its divisions shall be charged to Panagra.

In accordance with past practice, Grace shall continue to charge Panagra with out-of-pocket expenses incurred at the request of Panagra by the Grace offices in New York and Washington, such as postage, the cost of cables, long distance telephone calls, travel expenses and the medical examination of Panagra employees assigned for service abroad.

GO43291

. . . . . .

11. To facilitate operation of all phases of this agreement, both immediate and long term, Grace and Pan American will each designate one of its officers stationed in the

GR-9897

[fol. 644] United States and authorize him to act for Grace or Pan American, as the case may be, in the resolution of any problems referred to him by Panagra's executive management which may arise under this arrangement and which have not promptly been solved to Panagra's satisfaction by the Administrative sales or operating personnel immediately concerned.

12. This agreement shall in no respect alter or repeal any provision of the Through Flight Agreement; provided, however, that the said agreement shall be modified in the event of the contingency specified in paragraph 1 hereof.

13. This agreement shall remain in effect until May 5, 1950, and thereafter until terminated by any party hereto by six months' written notice to the other two parties. In the event of such termination, Pan American and Grace shall continue to make available to Panagra the services and facilities being provided at the date of the execution of this agreement, and Panagra shall continue to avail

itself of such services and facilities and compensate therefore at amounts then to be determined.

G043292

Dated: July 14, 1948.

PAN AMERICAN-GRACE AIRWAYS, INC.

BY s/s H. J. ROIG
President

PAN AMERICAN AIRWAYS, INC.

BY s/s E. BALLUDER
Vice-President

W. R. GRACE & CO.

BY s/s ANDREW B. SHEA
Vice-President

GR-9898

[fol. 645]

GOVERNMENT'S EXHIBIT 270

No. 5.

SANTIAGO, 30th October, 1930.

R. H. Patchin Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Patchin,

Our Santiago-Buenos Aires Division is, I believe, at the moment, and will continue increasing to be the object of Trippe's desire.

From what I can gather from conversations with Rihl and others, Panair, since the absorption of NYRBA, find themselves with an enormous expense account in Buenos Aires and no business. They have taken over the huge NYRBA offices, hangars and shops, but, apart from using the latter for reconditioning the Commodores also taken over from NYRBA, they have no manner of use for all this

show, as the only service they are running is a daily service between Buenos Aires and Montevideo, which Rihl states does not pay of itself, and which we know from experience never will pay without some form of subsidy. They are, of course, talking about running passenger line to connect with their mail line at Santos and also talking of other passenger lines to other points in the Argentine, but these too we know will never pay without a subsidy, because one of the few thoroughly well established facts with regard to commercial aviation is that a well equipped passenger line with multi-motor planes cannot be made to pay, even if it carries maximum loads every mile flown. I reckon that Panair cannot be losing less than between $50,000 and $100,000 U sg. per year in the Argentine at present, and I would not be surprised if it were in excess of the latter figure.

The result of all this is that Panair are going to be desperate to get their East-Coast line extended to Buenos Aires in one form or another. Rihl states that he sees no reason why the United States Government should subsidize two air services to the Argentine and that therefore so long as our line runs to the Argentine there is no reason why the United States should extend their East Coast line beyond Punta Alegre. This is perfectly obvious, but it of course concentrates the pressure on our line as about the only way Panair can get their East Coast line extended to Buenos Aires is by discontinuing our line from Santiago. I cannot escape feeling that this is behind Trippe blocking all efforts to get the Chilean situation settled on a reasonable basis and a good deal of his other conduct. You may recall that he suggested to me a long while ago that we ought to turn over the operation of this line to them, which would probably be the first step in getting it discontinued and switched to the East Coast.

[fol. 646] In my low moments I have sometimes thought that it might be worthwhile falling in with Trippe's idea and stopping our line at Santiago, provided we can in exchange get a controlling stock interest in Panamerican Grace, which might not be utterly impossible. This would certainly be worth some sacrifice, and we would not be

giving up very much in direct revenue, because the Buenos Aires run is not going to be very profitable anyhow. I have always abandoned this idea, however, because of the fear that if our line stopped at Santiago the shrinkage in our mail movement would be such that there would be little possibility of a third trip, and we might even lose our second trip. The loss of either of these would, of course, offset any financial disadvantage from the operation of the Buenos Aires Division; I am therefore of the opinion that we should hold on to this Division, which, in my opinion, means that we must fight for it, because our friend in his usual relentless fashion will never let up unless he has his way.

* * *

Very truly yours,

HJR/FL.

[fol. 647]

GOVERNMENT'S EXHIBIT 271.

SANTIAGO, 9th December, 1930.

D. S. Iglehart Esq.,
W. R. Grace & Co.,
N E W Y O R K.

Dear Mr. Iglehart,

"P A N A G R A"

Fifty-fifty control has just about reached a breaking point, so far as I am concerned, in connection with this Chilean negotiation.

No man can be left on a limb the way I have been and be expected to get results. What has happened to me is just typical of the way the Company's business is being handled. It will get worse as conflict of interest becomes more and more intensified.

If the Panamerican directors are going to vote en bloc it simply means that one man is going to run the Company or prevent its being run, and this man I fear would be equally satisfied with either alternative.

The Company cannot hope to succeed under such conditions.

Although we have never done it, Trippe has on a number of occasions suggested submitting controvertial points to arbitration. In line with this thought what would you think of the idea of adding an odd man to our Board, such man to be someone of high type, absolutely free from bias in favour of either side? Do you think Panamerican would agree to this idea? We would probably have to pay such a man a substantial director's fee, but this is the only way to go on which I can think of at the moment.

Yours very sincerely,

HJR/FL.

[fol. 648]

GOVERNMENT'S EXHIBIT 272

March 2, 1931

PAN AMERICAN-GRACE AIRWAYS

Mr. Patchin and I had a talk with Hoyt this morning. After some discussion of radio, pending bills and agency contracts, we got to the question of general management.

I recalled conversations that had taken place about a year or so ago about MacGregor and told Hoyt that I had recently learned that these had been carried directly back to MacGregor so that he felt that we were the people anxious to be rid of him although the decision was that of the entire Board. Hoyt promptly denied that this had gone back to MacGregor through him which I said I of course understood and had in fact already accused Trippe of having done this.

A general discussion followed during which the name of Grow was discussed for a moment but Hoyt finally said that, of course, the difficulty was that Trippe wished to take over the management of this line and that we recog-

nized that if MacGregor were let out without a successor being appointed Trippe would never consent to the appointment of a successor with the result that he would accomplish his result by indirection and that accordingly we were at a stand-off. He said that Trippe had some support among the directors for this view, mentioning Groveneur particularly, [fol. 649] although he, Hoyt, personally sympathized with our view. I explained once more the reasons why we could not agree to Pan American's taking over the operation. The net of it all was that Hoyt finally said he did not see how anything could be done at the moment except to get along as best we could from day to day as we had been doing.

* * *

In the course of the conversation I told Hoyt that I had formed the impression from a conversation with Trippe some time ago that he was figuring on some way of getting the money for his Argentine extension out of our contract, —perhaps by keeping us from the $1.80 rate on our second trip after July 1st and that we naturally felt it was highly irregular and would not for a moment tolerate any attempt in this way or any other to finance his Argentine extension at our expense. Hoyt admitted that Trippe had had some such idea and that he had told him that it was out of the question and suggested that I write Trippe stating my views which I shall do.

In spite of all this I still do not feel that we have enough to gain by trying to get Trippe off the Board, even if we can accomplish it, to offset the fact that by so doing we would make him an absolutely free lance against us. He would continue to run whoever took his place and we would [fol. 650] lose whatever slight restraint his dual position imposes on him. You will promptly question this view but I can only express it as my honest opinion. The fact that Whitney and Trippe are endorsing notes does not seem to me to indicate any weakening in their position and I am wondering if Hoyt's marital situation may not weaken his. I do not set much store by his suggestion of buying out Pan American's interest in Panagra but it may be a very faint ray of hope.

[fol. 651]

GOVERNMENT'S EXHIBIT 273

J.D.M. Series
No. 31-57

NEW YORK,
October 23, 1931

Mr. J. D. MacGregor,
Vice President & General Manager,
Pan American-Grace Airways, Inc.,
Santiago, Chile.

Dear Mr. MacGregor:

AIR EXPRESS

Mr. French of the Panair Express Department has just called my attention to the fact that our air express rate between Montevideo and Buenos Aires, both ways, is equivalent to 30¢ a pound, whereas the Panair rate between those two points amounts to only 25¢ a pound.

This being the only point where direct competition exists between the two companies, in addition to Miami/Buenos Aires, I have told French that we shall revise our rate to the equivalent of 25¢ a pound provided this meets with your approval.

If it does, kindly notify Messrs. Van Law and Zalduondo that they may adjust their tariffs accordingly.

Yours very truly,

PAN AMERICAN-GRACE AIRWAYS, INC.

Comptroller

c.c. to Mr. Van Law, Lima.

GV/MD

[fol. 656]

GOVERNMENT'S EXHIBIT 276

PAN AMERICAN-GRACE AIRWAYS, Inc.
135 East 42nd Street, New York, N.Y.

PERSONAL Letter No. 1632 Cable Address

SUBJECT: PANAGRA DIRECTORS

HRH/FL

LIMA, October 27, 1933.

Mr. J. D. MacGregor, New York.

Your personal #1395 (Oct. 19):

In connection with Mr. Trippe's suggestion that we pool the revenue from passengers that might take either the West or East coast routes to B.Aires, it strikes me that our Grace friends might see in this an opportunity for Trippe to tremendously increase his passenger comfort and accomodations on the East coast run during the period when the pooling arrangement was in effect, permitting at the same time the West coast passenger accomodations to stay as they are, or increase only slightly, and then at the end of this pooling agreement to have a very strong argument in his own favor on the East coast with regard to his passenger accomodations and also a strong argument with the U.S. postal authorities in connection with the question of subsidies for the East and West coasts. It would seem, therefore, that this pooling arrangement might possibly meet with considerable opposition.

I am indeed interested to note your idea that at present there may be some incentive on the part of Panair in booking passengers from the States to favor the East coast over the West coast route. I trust that this is not a fact, since I believe that if it is arrangements might be made to counteract this if possible. For instance all Grace agencies throughout the United States might be persuaded by Grace to put on an intensive campaign in connection with the West coast air route.

H.R. HARRIS

[fol. 657]

GOVERNMENT'S EXHIBIT 277

PERSONAL 1426

FOUR-DAY SCHEDULE

NEW YORK,
November 6, 1933

Mr. H. R Harris,
LIMA.

My dear H. R.:

With reference to your personal letter =1619 of October 30th, I do not know where you got your information that Panair is planning to institute a fast service on the East coast by January 1, 1934. I presume that this is an optimistic estimate made by George Rihl. As a matter of fact, Panair is figuring on a one-day faster schedule, but, so far, all the talk has been January 1, 1935.

It is pretty self-evident that Panair cannot accomplish this with their present slow Commodores.

. . . . .

You can be sure that we will not allow Panair to have the jump on us in this matter, and I think you also agree that we should not try to get the jump on them by extending our flying time with our present equipment.

. . . . .

I do not think that we should enter into a speed competition with Panair. From what I am able to gather, the United States Government is just as anxious for us to [fol. 658] increase our passenger traffic as it is for us to increase the speed of the airmail. By running at a reasonable speed, with later departures and earlier arrivals, and with more modern equipment, we can satisfy our passengers and, at the same time, decrease our lapsed time.

. . . . .

J. D. MacGregor.

JDM/Q

[fol. 659]

GOVERNMENT'S EXHIBIT 278

Pan American-Grace Airways, Inc.
135 East 42nd Street, New York, N.Y.

PERSONAL Letter No. 1674

Subject: NEW EQUIPMENT

HRH/FL

LIMA, November 20, 1933.

Mr. J.D. MacGregor, New York.

Your personal #1426 (Nov. 6) four-day schedule:
#1428 (Nov. 7) " ".

Thank you very much for giving me this very interesting information about the possibility of Panair and Panagra speeding up schedules to and from B.Aires. One way of looking at our Panagra service would be that we should give the best service we can, regardless of what our affiliated company find they can do, since it is unquestionably true that we were in B.Aires long before Panair ever got there, and we have the shorter route, so from one way of looking at it we are justified in operating as we like over the route which we pioneered. It is quite true that if we did today speed up to four days between Cristobal and B.Aires and still had the same arrival and departure days at Cristobal as at present, we would be arriving in B.Aires on Friday, the same day as Panair arrives from the north, and leaving on Thursday, the same day as Panair leaves for the north, which would, of course, be undesirable both to the U.S. Post Office and the Argentine Post Office. However, I assume that you will be willing to authorize this four-day schedule, even with our present equipment, if we should suddenly have Panair pull a fast one on us and institute a faster service from B.Aires than they are carrying on at present. I, of course, am completely in agreement with you that we cannot enter into a speed-competition with Panair, since if it should ever come to actual competitive effort between the two companies, Panair could, of course, throw a good deal of money into high-speed

equipment to compete with us, whereas we would be unable to make any expenditures for our own high-speed equipment due to their failure to approve such expenditures in Board meetings.

* * * * *

H. R. HARRIS
H. R. Harris

[fol. 660]

GOVERNMENT'S EXHIBIT 279

No. 29 (AG Trip Series) Air Mail 2.24 New York 2.28

NEW YORK, February 22, 1934.

Harold J. Roig, Esq.,
NEW YORK.

Dear Roig:

PANAGRA

I have had several long talks with Harris with reference to Panagra in general, and in one of my recent conversations led up to the new schedule, primarily for the purpose of understanding some things which were not very clear to me before I sailed.

* * * * *

I then led up to the bottle-neck, which will be the northern section, i.e., Panama-Guayaquil or Panama-Talara, saying that it seemed to me that until we replace the Skorskys with a larger and faster seaplane we have a definite bottle-neck up there as regards passenger accommodations, and that from the little I knew about this aviation business it seemed to me that sooner or later we would have to find a faster and larger seaplane, adding that from what I heard, this kind of a plane is still to be designed.

Harris then opened up and said that this kind of a plane is already in existence and he explained to me in detail what

Redshaw tried to bring to your attention in his cable No. 17. I am enclosing herewith a copy of a letter from the Con- [fol. 661] solidated Aircraft, who are manufacturing this particular type of plane, which I understand has a capacity for 20 passengers and is supposed to cost about $110,000. per plane. In addition to this letter I also enclose marginal comments submitted by experts. Harris feels very definitely that this is the type of plane we should ultimately have on the northern run.

After we finished this part of the conversation I remarked that the two-day run from Miami to Panama seemed rather too long, and he immediately opened up, showing me a very detailed letter on the subject written by him to MacGregor under date of October 27. In this letter Harris submits very definite recommendations to cut the time of that trip down and to rearrange the routing. Harris says it is perfectly ridiculous that the Canal Zone gets a secondary mail service whereas Colombia gets a first-class service. It is his idea that Trippe should run the Panair planes from Miami to Panama in one day by running via Puerto Cabezas and then take care of Colombia with some sort of a shuttle service. He is quite frank to say that while in his opinion this is the correct thing to do, he does not think it would suit Panair to cut the trip from Miami to Buenos Aires by an additional day as this would only increase the differential against the East Coast run.

* * * * *

Very truly yours,

Enclosures

(Signed) A. Garni

[fol. 662]

GOVERNMENT'S EXHIBIT 280

Westbury 124

LA GRANJA
WESTBURY
LONG ISLAND
AUG. 6th, 34

Dear Roig,

In casting about for a suggestion that might be useful to you on the one hand to offset Trippe's East Coast propaganda and on the other, the move in Washington toward cancellation or modification, I decided to put forward to you the idea of preparing and presenting a constructive and progressive program. The strength of the west coast position is that we can use fast land planes and availing also of the shorter distance can make faster time. If we could add night flying to our program and could find a way to beat the French record of 30 days, Paris to B. A., then I would feel that we could hold our own.

I know that I am suggesting a tall order and am also not unmindful of the necessity of avoiding risks. The Douglas plane is however such an enormous step ahead that I believe that with them we are going to be able to do something notable. Furthermore the moment is ripe. The enclosed card greatly impressed me and yesterday Tommy Hitchcock who had just arrived from Los Angeles by this route and who is well posted on planes told me that this Douglas service is unbelievable in its security and comfort. Should we not order some more, and meanwhile make a little sensation by trying to inaugurate our Douglas service with an eye opening performance?

I have been away from my desk for a fortnight but am feeling better and will be back in a day or two. Hope you are fine.

Yours, Iglehart

[fol. 663]

GOVERNMENT'S EXHIBIT 281

W. R. Grace & Co.
New York

Letter No. 15
(D.S.I.Series)

ORIGINAL AIR MAIL LETTER
copy follows by steamer

New York, August 13th, 1934

Harold J. Roig, Esq.,
Lima, Peru.

Dear Roig,

. . . . .

A good many matters have come up and are still pending with reference to Panagra, and I am asking Cogswell, who is more conversant with them than I, to write you fully with reference to them. One matter came up, however, in my discussions with Clark, of which I want to acquaint you. I told Clark of the difficulty we are having in the administration of Panagra due to the character and attitude of Trippe and called his attention to the matter we are now discussing, namely, the advisability of speeding up the West Coast schedule. Clark felt so keenly the advisability of doing this that I asked him to discuss it with Root and see if he agreed to its importance, and if so, Root should make the suggestion to Trippe. Clark talked to Root and the latter said that Trippe was in favor of speeding up the service on the West Coast but that he was holding back as he was at odds with us with reference to the general plan of administration of Panagra. Clark called me up [fol. 664] yesterday and suggested that it might be a good thing for me to have a talk with Root to see whether we could not work out some suggestion for solving the fundamental difficulty we have with Trippe. I called Root on the telephone but find that he is away on his boat but expects to be back shortly, and I left word for him that I would be glad to see him as soon as it is convenient.

Meanwhile, regarding the question of the improved West Coast schedule and the question of the equipment for the northern section, I see very little prospect of our making very much progress with Trippe here and feel that, burden-some as it will be to you, our best chance will be for you to work this out with Trippe. You have more influence with him than any of us, and although I think he will vigorously resist any schedule from the West Coast to B.A. that is faster than his East Coast schedule, I should think that Washington would support us in an effort to make as fast a schedule to B.A. by the West Coast as is safely practicable. It seems to me that it would be difficult for Trippe to sustain the attitude that no advantage is to be taken of the shorter distance, or of the faster land equipment, or of the possible saving of time by night flying or otherwise that is practicable on the West Coast in order to avoid getting to B.A. in quicker time than that of the East Coast service. [fol. 66]

Regarding the airmail hearing, and particularly regarding the danger of Trippe's taking any action which might be prejudicial to Panagra, this again is a matter of conjecture. I am going to make an effort to get at some basis with Root that will put an end to our impasse with Trippe, and although I have no reason to think I will be successful, I am certainly going to try hard to get at some suggestion to put before you, and if by chance I am successful in this, then the atmosphere will be clear and your task made easier.

Yours very truly,

[fol. 666]

GOVERNMENT'S EXHIBIT 282

MEMORANDUM OF CONVERSATION WITH J. T. TRIPPE, SEPTEMBER 14, 1934 AT HIS OFFICE 4:00 PM

oooOooo

After discussing various general matters, I said that we had all become convinced as a result of certain recent developments and particularly various matters which had come to my attention on my trip, that a serious situation existed with regard to Panagra which we would have to find a way to remedy and, painful though it might be to do so, I felt that we should discuss the matter with the utmost frankness.

* * * *

I replied that I was sure there was some way of making the trip in one day to the Canal if he wanted to do so and felt that the real reason for their not doing so was to prefer the East Coast Line in every possible way over the West Coast. I pointed out that this was further emphasized at the other end of the line where every effort was made in B.A. to emphasize the fact that Panagra was merely a West Coast line and that the only way to the States was via the East Coast.

* * * *

I called attention to the fact that although he had radioed me that he invited the people in the Brazilian Clipper to return by the West Coast, I knew for a fact that he had on the contrary urged even those who wanted to come that way [fol. 667] not to do so and that upon my return I had found him knocking our line in the newspapers and that the only conclusion that could be drawn from his attitude in all these matters was that he was seeking in every way to prejudice the West Coast line to the advantage of the East Coast and that this was no way for a partner to act.

— ROOT

[fol. 670]

GOVERNMENT'S EXHIBIT 284

DELRAY BEACH,
FLORIDA

March 26th, 1935.

A. Garni, Esq.
c/o W. R. Grave & Co.,
7 Hanover Square,
New York City, N.Y.

Dear Garni:

PANAGRA.

I think we ought to get definite information as to the number of passengers we are turning away on the West Coast trips. It seems to me that for Trippe to be building up this system of the East Coast, with all the expense of publicity and that at the same time he should be spending a year in futile discussion and in an endeavor to prevent the logical development of our West Coast business is something that is little short of criminal. I think that you ought to get Grenville Clark to put the whole thing on a piece of paper in such a form and in such a powerful light that it will bring Trippe to his feet and to immediate action. I am not sure that in doing this it may not be advisable to leave a very strong position on record so that we will have Trippe in our fingers in the future, and at all times.

Yours sincerely,

DSI/KH.

[fol. 673]

GOVERNMENT'S EXHIBIT 286

GRACE y Cia (Chile) S.A.
SANTIAGO

Letter No. 75 Airmail 5.12.35
(HJR trip series) NY 5.18.35

ORIGINAL AIR MAIL LETTER

Copy follows by steamer

Santiago, May 11, 1935.

R. Garni, Esquire,
New York.

Dear Garni,

BUENOS AIRES TRAFFIC

This letter was begun in Buenos Aires after extended discussions with Messrs. Dagnino, Moore and Martin there but I have delayed putting it in final form until after an opportunity to turn the subject over in my mind a bit.

In my discussions in both Buenos Aires and Santiago I have endeavored to emphasize that we must have more through traffic from both of these points. While we want every possible passenger between Buenos Aires and Santiago, we cannot consider that either of these offices is entitled to any particular credit for getting this traffic since to so large an extent it comes to us automatically because of conditions on the Transandine. The traffic effectiveness of these offices must be judged almost entirely by the traffic which they secure for points north of Arica and particularly for Cristobal and points north, which, in the case of Buenos Aires, means to Miami since passengers for Central [fol. 674] America and the West Coast of the United States would normally favor our Line in any case. We must have long-haul business from Buenos Aires and Santiago, not only because of the greater revenue, but because so long as we cannot carry local traffic through Chile, this is the only way we can fill our planes over that long run between San-

tiago and Arica. This, as I see it and have tried to develop both with Dagnino and Moore, is the nub of our traffic problem in the Southern and Eastern Divisions.

The obvious inadequacy of the present movement is apparent from the following figures for the year 1934:

	No. of passengers to Miami	Passages issued against: Cash Sales	CTC	Exchange Orders	PAA or Panagra Flight Coupons
Buenos Aires	25	8	1	4	12
Santiago	12	8	3	0	1

These figures show, not only that the total movement from both of these points was wholly inadequate, but, what is more specifically to the point here, that the number of through passengers directly influenced from these points, —i.e. their cash sales plus CTC—was insignificant being only 9 from Buenos Aires and 11 from Santiago. The out- [fol. 675] standing problem at both points, therefore, is the development of more through business. The explanation given in Buenos Aires for the small movement is that the field of prospects is limited largely to Around South America tourists and to commercial travellers, the latter being considerably restricted by the fact that American interests are not of a size in proportion to the city. Argentineans travelling abroad are more likely to go to Europe than to the States and even when going to the States the problems of baggage and much greater expense by air are serious ones. I feel *that the long-haul problem has not been scratched* and that we need a thorough study and specialized attack on it in both Buenos Aires and Santiago. The problem will involve devising selective media of approach which will reach at reasonable expense the selected list of prospects on which we must rely, and a carefully worked out system of contact and follow-up.

The question immediate presents itself whether a joint office with Pan American in Buenos Aires or a separate office will get the best results. A joint office is certainly less

expensive. I doubt if we could run an adequate traffic office of our own in Buenos Aires for what our present contribution to the joint account now amounts to and certainly not [fol. 676] for what that contribution will be when reduced to the 50% basis. There is some risk that separate offices might lead to destructive competition where each office would be pointing out the disadvantages of the other's route, the result being definitely prejudicial to travel on both lines.

The share of the Buenos Aires traffic which we have received to date from the joint office is less than we would be entitled to on a strictly mathematical basis. In 1934 there were 33 passengers from Buenos Aires to Miami. Of these, 25 travelled via Panagra and 8 via Panair, but, of these 25, 12 travelled on Panair or Panagra flight coupons and 4 on exchange orders. Most, if not all, of these 16 passengers were probably Around South America tourists who had been routed down the East Coast and up the West. No choice of route was involved in these cases and had their tour proceeded in the opposite direction the purely superficial conclusion which might be deduced from the above figures would be entirely reversed. Eliminating these 16 cases from the above 25 leaves 9 West Coast passengers (including 1 CTC and 1 passage issued in connection with Panair ticket) who might possibly have been influenced in choice of route by the Buenos Aires office, against 8 East Coast passengers (including 1 CTC). As we have twice [fol. 677] as many trips as Panair, we should mathematically have had at least twice as many passengers, but where the total is so small conclusions from this comparison cannot be pressed too hard. Special and personal considerations become too large a factor where such small figures are involved. On the other hand the fact cannot be ignored that with a service one day shorter to Miami than the East Coast we have so far enjoyed a natural advantage which will cease to exist when the schedules become the same. I discussed frankly with Moore and Martin how they proposed to see at that time that each company received fair treatment. Their only answer was that the passenger determines the route he will take for reasons of his own. With equal time schedules I doubt that this will serve our purpose.

Taking all things into consideration, my feeling is that we have not sufficient reason at this time to warrant considering a separate office and that we should continue with the joint office with certain changes. In doing so, however, we must be constantly alive to the risk we are running and continually on the lookout to see that we are not being prejudiced. Once it became apparent that even with the changes proposed we were being prejudiced there would be no escape from a separate office.

[fol. 678] The changes we have under consideration are:

(1) The entire Panagra traffic organization should concentrate more attention on the long haul traffic problem from Buenos Aires. Moore fully understands that, as the agency of Panagra, the Buenos Aires office is under the general instructions of the Panagra traffic organization, subject to the policy of avoiding antagonistic competition between East and West Coast Lines. By constant contact with the office, supplying them with more distinctively Panagra literature and Panagra traffic ideas and seeing that these are carried out, we can, I believe, impress the position of our Line on that office. The fact that our business over the Andes supplies a predominant part of their current movement assists to keep the position of our Line prominently in the foreground.

* * * *

If you have any definite ideas on any of the above suggestions it might be well *to cable promptly on receipt of this* letter as the matter is likely to be moving right along.

Very truly yours,

[fol. 679]

GOVERNMENT'S EXHIBIT 287

PAN AMERICAN-GRACE AIRWAYS, Inc.
135 East 42nd Street New York, N. Y.

CABLE ADDRESS
"PANAGRA"

Private & Confidential

January 24, 1936.

Memorandum to Mr. A. Garhi,
First Vice President,
W. R. Grace & Co.,
New York City.

* * *

I suggest for your consideration the purchase of two Northrup Gamma airplanes, equipped with F-53 Cyclone motors, which would cruise at 200 miles per hour using 70% power, gassed for a range of 1760 miles and which would then carry over 800 lbs. of mail. The plane would be manned by a pilot and equipped with radio, the weights thereof having been included in calculating the above payload. The Gamma has a maximum range of 2,120 miles, at which range the payload would be over 400 lbs.

* * *

In developing this thought I have considered:

1. That it would put us beyond the reach of Panair east coast competition.

2. We would not infringe Panair rights by flying over their territory or that of their affiliates.

3. It would practically assure us a monopoly of U.S. and intercountry mails.

4. It would permit PanGrace passengers to continue on the present 3½ day schedule which would not be too onerous.

5. The propaganda value would be enormous and our place in the sun would be restored.

[fol. 680] 6. My discussions with Mr. Allen and Mr. Campbell have shown this operation to be feasible.

J. D. MacGregor.

J. D. MacGregor.

[fol. 681]

GOVERNMENT'S EXHIBIT 288

August 4, 1936.

C. V. Whitney, Esq.,
230 Park Avenue,
New York City

Dear Whitney:

Once or twice in the past I have asked for and received your help in an endeavour to keep the affairs of our jointly owned enterprise, the Pan American-Grace Airways, moving in a satisfactory way. Now I come to you again with a matter which has great importance to this enterprise.

I have recently returned from South America, and while there looked carefully over the business and was impressed with the fact that our company is receiving from the Pan American Airways very little traffic. In fact, I estimate roughly that there are only about 1½ passengers per trip coming to Panagra at Cristobal from the Pan American services from Miami and Brownsville combined. On looking for the cause of this condition I think that I have found it in the fact that we are not getting adequate publicity and traffic solicitation in the United States. As you probably know, we are paying the Pan American Airways a substantial amount each year for attending to publicity and traffic work, but notwithstanding our efforts to obtain adequate service, we have up to the present time found it impossible to do so. Publicity in respect to the Pan Ameri-
[fol. 682] can-Grace Airways and its services is not only not obtained but it is systematically suppressed by the Pan American Airways. I hand you herewith a memorandum

which will give you an idea of what is occurring in this respect.

Now the point that I want to bring out is this. I believe that not only is Panagra suffering from a lack of publicity and traffic service in the United States, and not only is the company paying amply for something which it is not receiving, but I venture the opinion that the Pan American Airways itself is suffering a prejudice by failing to sell the service of our joint company. I believe the physical conditions and weather conditions of the route to the Argentine via the West Coast are so far superior to those of the route on the East Coast, and due to this and the reduced distance it is so much more practicable to give a fast and satisfactory service to Buenos Aires via the West Coast than the East Coast, that if the Pan American Airways were to devote their effort to building up business via the West Coast it would probably make more money in the end with a half interest in our joint company than it would make with 100% interest in the East Coast service south of Rio or possibly Santos.

The situation of our company, giving as it does today one of the finest air services in the world and having no adequate publicity or traffic solicitation in this country is [fol. 683] quite anomalous and obviously cannot be allowed to continue. We have endeavoured to be as patient as possible but I fear that we have reached a point where we cannot continue to tolerate the treatment which our company is receiving, and I believe, after looking over the position, you will agree with me that it should be modified.

I appreciate the fact that you will eventually have to take up this matter with your associates, but, I would be very much indebted to you if you would treat the matter as confidential until you have gone over it carefully yourself and given me an opportunity to discuss it with you.

Yours sincerely,

(Sgd.) D. S. IGLEHART

[fol. 684]

GOVERNMENT'S EXHIBIT 289

FEB. 8, 1947

Asst. in chg Production — Div. Advertising Mgr.,

Traffic, Advertising — LAD

Miami — RIO, Protem

BUE Sales Folder

* * *

We've really got a competitive situation in Argentina now and apparently no holds-barred as to what we do about it insofar as to the quantity of advertising we put out to hold and improve on our market. Panagra is advertising right and left about their "Thirty Hours to the U.S.A." and their "Naturally Air Conditioned West Coast Route" so we've got to get on our toes and sell the East Coast—but good.

We'd also like to adapt the BUE folder for DEO and print a quantity of them there later but we'll have to wait 'till the BUE art work can be sent over to DEO for a local quotation.

Ernest L. Foss,
Div. Advertising Mgr.

cc: DvTM-MIA
Reg. Rep. PAA-RIO
Asst. to DvTM-Sales-MIA
Mr. Cameron, Grant-MIA

[fol. 689]

GOVERNMENT'S EXHIBIT 294

Mr. J. W. G. Ogilvie
Express Traffic Manager — Assistant Comptroller
Traffic — Executive
New York — New York

June 19, 1947

* * *

It is my understanding from you that some sort of agreement exists under which we are supposed to send about half of the Miami-BA shipments via Pan-Grace with the apparent intent of giving them about half the revenue.

You told me that the Miami Express Department has been sending about half of the Miami-BA shipments by way of Pan-Grace but as you know, Miami has not been marking the Airwaybills so as to enable G.A.O. to distribute this revenue to Pan-Grace. Alternative methods of making this distribution appear to be as follows:

1. You suggested that Pan-Grace bill us based on Shipping and Discharge lists maintained by them. Since distribution of revenue originates in G.A.O. and since the revenue would be distributed before billings would originate from Pan-Grace, G.A.O. is not in a position to accept this method.

2. Miami Express could enter the flight number on each Airwaybill and G.A.O. would distribute accordingly. You state that this is not possible to accomplish.

3. Arrangements could be made (if such is the intent of the deal) to have G.A.O. distribute half of the Miami-BA express revenue to the West Coast route of which Pan-Grace would receive its share. If this were done, Miami Express would have to develop a definite control of shipments to make sure that half of the shipments went via the West Coast as otherwise L.A.D. would be carrying some for which it would not receive revenue. This same control of shipments would have to exist at Balboa to avoid shipments being diverted there and sent to Buenos Aires via the North coast.

[fol. 690]

In this connection, it should be noted that the C.A.B. in authorizing the thru flight agreement with Pan Grace specifically denied a provision in paragraph 13 of that agreement which provided for sharing the Miami-BA revenue in a manner similar to that contemplated in the deal we are discussing. It is suggested that you might want to refer this entire matter to the Legal Department before taking any further action.

Amos Hratt
Assistant Comptroller

AH:FP

cc: Chief Accountant—GAO

[fol. 691]

GOVERNMENT'S EXHIBIT 295

Received in the office of
Vice Pres. & Gen'l. Counsel

Vice President Ballinger Assistant Treasurer July 25, 1947
Referred to:

Executive Financial HJF JCP JJC FJC
New York New York GF JHW JMS Files

June 24, 1947

PANAGRA THROUGH FLIGHT AGREEMENT.

* * *

In addition to the special advertising campaign for the through flight service, Mr. Gunter points out that in October and November, Pan American is planning a national advertising campaign aimed at the development of business to South America with major emphasis on the Argentine which will cost approximately $60,000. As originally planned, this was primarily for development of PAA business via the east coast. However, it is believed that with the development of the through flight service, it might be

that the emphasis on east coast and west coast could be balanced and that the amount of money involved could be considered as 50% applicable to east coast and 50% applicable to west coast. If such a program were followed through, it would mean that $30,000 of the total of $60,000 would be applicable to the through flight service.

In connection with this matter, a study has been made of the amount of traffic between the U. S. and the west coast (including B. A.). We have considered that under the through flight agreement, ⅔ of the total traffic between B. A. and Miami would go via the west coast. On this basis, traffic has been projected to revenues which total for the year 1946 approximately $1,900,000. This revenue is based on one-way fares in effect for PAA and Panagra. Of this total revenue approximately $465,800 was for the account of PAA and the remainder of $1,435,000 for the account of Panagra or approximately 31½% and 68½% of the total revenue on this route would accrue to PAA and Panagra respectively. It occurs to me that the participation [fol. 692] in revenues of the service from Miami to B. A. via the west coast would be a fair basis for participation in the cost of advertising. If there is agreement in this premise, PAA would accept 31½% of the U. S. advertising program ($100,000) covering the through flight service, 31½% of the cost of the advertising program of Panagra on the west coast ($65,000) and 31½% of ½ of the cost of the national magazine advertising program ($30,000).

With regard to advertising at B. A., it is assumed that the advertising of PAA and Panagra will be directly competitive from the standpoint of the B. A.-U. S. traffic. It would appear, however, that we would require agreement with Panagra as to the amount of money each company will spend in advertising through service to the U.S. As I understand it, we are currently in agreement in spending $3,000 per month. However, I am not informed as to whether this $3,000 is entirely directed toward the development of traffic to the U.S. If it is based on the revenue principle of distribution, it would be necessary for

PAA to absorb 31½% of the cost of Panagra's advertising of the through flights in B.A.

Original signed by R. G. Ferguson
R. G. Ferguson

cc: Vice President Dean
Vice President & General Counsel
Assistant General Counsel

[fol. 693]

GOVERNMENT'S EXHIBIT 296

Subject: Miami Traffic Office
Handling of Passengers — May 21, 1948

Pan American-Grace Airways, Inc.
New York

Attention Mr. J. T. Shannon

Gentlemen:

Ex-employee Robert Kelly, who has just returned from the states, visited this office yesterday and reported the following:

A friend of his whom he met in Miami inquired of him why it took so long to travel Miami Buenos Aires. Kelly asked to see his tickets and he was sold over the East Coast route. Mr. Kelly proceeded with his friend to the downtown Pan American Airways Traffic Office and when he asked the Traffic Clerk why he sold this passenger over the East Coast, the Clerk replied: "We are instructed to sell all passengers over the Pan American Airways route unless the passenger particularly specifies the West Coast or Panagra."

In addition Captain Achilles on Monday evening May 17, was standing in this same office when a passenger inquired if he could travel on the DC-6. The Traffic Clerk replied that there was no DC-6 that evening, whereupon Captain Achilles reminded him that we were now into daily service

with DC-6's. The Traffic Clerk in front of the passenger refuted this argument and went further by saying that there was a DC-4 the evening before (May 16) and Captain Achilles of course told him he was incorrect. The rest of the discussion is wordage but the point is clear.

Reasons such as the above are probably partially responsible for the falling off in our southbound loads over El Interamericano. We trust you will be able to use this information advantageously.

Yours very truly,

Jim
/s/ JAMES W. WALKER, JR.

[fol. 695]

GOVERNMENT'S EXHIBIT 298

August 17, 1948

Regional Traffic Manager	Division Sales Manager
Latin American	Latin American
Rio de Janeiro	Miami

BUENOS AIRES SALES TO THE UNITED STATES

Please refer to your copy of Mr. Homs' memorandum of August 13 showing comparative PAA-Panagra sales ex Buenos Aires and Montevideo to the United States. As you are aware, Panagra during the months of June and July far outsold PAA on both one way and round trip tickets.

I would very much like to receive your thoughts as to what we can do in Buenos Aires to offset this alarming increase in Panagra sales to the States. A short time ago, I wrote you on the same subject and you, in turn, wrote Buenos Aires indicating that every effort should be made to plug our guest houses along the route which seemed to be the only weapon we have to counteract the Panagra DC6 service. If, However, you feel that any other steps can be

taken from a sales or advertising standpoint, I would certainly appreciate receiving your ideas.

F. H. Sheldon

FHS/gb
cc Advertising Mgr-MIA

[Tr. 696]

GOVERNMENT'S EXHIBIT 299

SEND ORIGINAL BY PAA MEMORANDUM

TO: Division Sales Manager FROM: Regional Traffic Manager

DEPT. OR DIV.	LAD	DEPT. OR DIV.	LAD
Location	Miami	LOCATION	Rio de Janeiro

DATE: 25 August 1948

SUBJECT: BUENOS AIRES SALES TO THE UNITED STATES

REFERENCE:

In reply to your memorandum of August 17th with further reference to our diminishing sales to the United States in Argentina as compared to the increasing sales for Panagra we advise you frankly that the only solution we foresee to this competition is the use of competitive equipment by LAD. I do not believe that efforts from a sales or advertising standpoint beyond what we are now doing could conceivably result in offsetting this competition or placing Argentine sales to the United States on a comparable basis for both companies. We are satisfied our Buenos Aires office is plugging our East Coast guest houses and is offering our service to the United States on an impartial basis. However, we cannot ignore the difference in equipment and service aloft in favor of Panagra.

We have discussed this matter of service in a round-about way with Mr. Fernandez, assistant flight superintendent

who is now in Rio, and we find that, for example, there is no comparison in the presentation of meals aloft between the two companies. Whereas Panagra offers meals in a very attractive plastic tray with all items complete, we in turn offer the same meal but in a less attractive manner. Then we have the comfort and speed of the DC 6 as against the DC 4.

We do not mean to be overly pessimistic, but we cannot help feeling that until we have DC 6 Constellation or other comparable equipment we will have to be content with receiving our share of Panagra's income from Argentine sources.

Mario J. Martinez
Mario J. Martinez

MJM/DNP

cc: Division Traffic Manager, MIA
Advertising Manager, MIA

[fol. 697]

GOVERNMENT'S EXHIBIT 300

April 22, 1949

Memorandum to: Mr. A. B. Shea

The following statement shows the passages sold by Pan American Argentina S.A. to New York out of Buenos Aires via east and west coasts respectively for the year 1948:

Month	*East Coast*	*West Coast*
January	176-1/2	34
February	82-1/2	63
March	241-7/2	42
April	230-4/2	82
May	142-6/2	142
June	154-2/2	83-4/2
July	93-3/2	84-1/2
August	101-3/2	88-3/2
September	133-5/2	106-2/2
October	146-10/2	106-3/2
November	94-3/2	107-3/2
December	106-2/2	110-1/2

The interesting item in these figures is that during the second half of the year Pan American carried approximately 15% more than Panagra to New York, whereas during the first half Pan American carried 130% more than Panagra. For the year 1948 Pan American carried approximately 60% more than Panagra.

The improvement during the last half of 1948 is very encouraging, but I still cannot see why we cannot get better than a 50-50 division of this traffic when we are flying DC-6's and Pan American is flying DC-4's.

The record during the first half of 1948 is absolutely amazing and I would like very much to hear from somebody in Panagra the reasons for Pan American's having [fol. 698] carried 130% more traffic out of Buenos Aires to New York than we did when we were flying DC-6's and Pan American was flying DC-4's.

We have to particularly watch this situation now that Pan American have their Sleeperettes on the run, and an encouraging feature of this point is that we seem to be holding more than 50% of the traffic during the month of February. I am sure you will agree with me that this trend must be maintained and that we have to hold the Buenos Aires business.

We have the handicap of the changeover at Miami, but this still will not explain the very poor performance of 1948, particularly the first half.

J.P.G., Jr.
J.P.G., Jr.

[Handwritten notation at top of 1st page of Memorandum]

J.P.G., Jr.

I think the explanation is entirely the fact that we were running DC-4's through April and the resumption of the DC-6 service explains the improvement that started in May. I agree of course that we should get more of the business.

A.B.S.

[fol. 699]

GOVERNMENT'S EXHIBIT 301

General Traffic Manager
New York

Vice President
Traffic and Sales
New York

May 26, 1949

MIA-BUE TOURIST FARES

It is highly important that the MIA-BUE tourist fare be equalized east coast versus west coast as we cannot afford to permit the west coast routing to undercut the east coast. The absence of a tourist service from Miami to San Juan necessitates the absorption of the differential, but that action is entirely justifiable under the circumstances.

Therefore, let's immediately move up on equalizing the east coast tourist fare with that published by Panagra.

Willis G. Lipscomb

WGL/eff
cc--General Sales Manager

[fol. 700]

GOVERNMENT'S EXHIBIT 302

PERSONAL

SERVICE ON TOURIST FLIGHTS

NEW YORK,
June 23, 1949

Mr. J. W. Walker, Jr.
LIMA

Dear Jim:

*****

In this instance I do not feel that modification of the aforementioned instructions with regard to food service and cabin attendants on the tourist class flights ~~was~~ is

justified by the facts stated in your two letters above referred to, and it seems possible that perhaps your staff does not have the picture as to our concept of the tourist class service. We are operating this service (a) for the purpose of meeting the competition of the tourist class service of Braniff on the West coast of South America and of PAA at Buenos Aires; (b) to improve our capacity and frequency of service for cargo and express; and (c) to determine by actual experiment whether a substantial new traffic market can be tapped in our area at substantially lower rates. All of this is being done at the very considerable risk of diverting to this service passenger traffic which would otherwise travel on El Interamericano at full rates.

....

Sincerely yours,

Douglas Campbell

DC/Q

[fol. 701]

GOVERNMENT'S EXHIBIT 303

COMPANIA DE AVIACION PAN AMERICAN ARGENTINA, S. A.

33-8581

Avenida Roque Saenz Pena 788
Buenos Aires, Argentina

Buenos Aires, September 1st, 1949.

Mr. Porter Norris, Traffic Manager
Latin-American Division
MIAMI.

Personal

Dear Porter

I have been meaning to write to you about a certain situation here in Argentina for some time but refrained from doing so while our one-way sales restrictions were on as we had so many problems at that time that this matter was rather insignificant by comparison.

Now that we are back in business down here we are making every effort to get everybody sales-minded again and I am certain that the figures in our monthly sales reports will be more encouraging from now on. We have some nice training programs organized and if we can get a few raises for some of our personnel we expect CAPAASA to be back competing with New York for the title of "Number One System Sales Office".

The problem I am writing about at this time is a very delicate matter but one about which you should definitely be informed as it is having an increasing daily effect on LAD's efforts to sell their excellent "El Panamericano" and "El Turista" services. As you know, I have always conducted myself on an entirely neutral basis when it came to the question of selling Panagra or Pan American to the United States or other competitive points. I feel quite certain that all of the CAPAASA employees are likewise following this procedure and all of us will continue along these lines until instructions to the contrary are received. Hardly a day passes but what personal friends in the American colony ask me about our services from Buenos Aires to the States and I always quote both impartially and let the passenger make his own decision as to what route he prefers. Unfortunately for LAD, there is a group of airline personnel here in town whose sole interest is in selling Panagra. I refer to the personnel in the Panagra Sales Office here in Buenos Aires and I am calling this matter to your attention at the present time because the effect of their presence here is increasing every day and as long as they continue to be here the LAD is not getting the neutral representation in the local market which they had a right to expect. The personnel in this office consisting of *Mr. Bourne*, *Mr. McCoun*, *Mr. Pickering* and *Mr. Earsman* have developed a great number of contacts in the English speaking colony here, especially among the Americans, and naturally not being held down to the neutrality policy on U.S. sales, such as George and I are, the promotional efforts which they are able to do through [fol. 702] their social contacts, is an important factor to be

considered in analyzing LAD's position in the Argentine market. You can rest assured that when any of the personnel of this office have a chance to discuss transportation to the United States at cocktail parties, luncheons, American Club functions, etc., they do a very enthusiastic job for Panagra. Whenever George and I have similar occasions we are supposed to give enthusiastic support to both Pan American and Panagra, so that over a period of time this influence is bound to result to the sales detriment of your Company.

I do not want you to feel that I am bringing this matter to your attention on a personal basis. I have the highest regard for all of the employees of Panagra Buenos Aires Sales Office and socially our relationships are on a most excellent basis. What I am trying to say is that the presence of the local Panagra Sales Office, regardless of the personnel involved, increasingly tends to upset the balance of promotional power and works against the sales neutrality position which Mr. Dean so strongly emphasized to me before I came down here. Whether or not you wish to do anything about this matter is not my concern, but I feel that it is my duty to make the situation known to the persons in the LAD who are responsible for getting their share of business out of the Argentine market.

Best personal regards.

Sincerely,

/s/ Juan

Juan Honis, Jr.

JH eck

[fol. 703]

GOVERNMENT'S EXHIBIT 304

Division Manager,
Latin American
Miami, Florida.

Division Traffic Manager,
Latin American,
Miami, Florida.

September 7, 1949.

PANAGRA REPRESENTATION BUENOS AIRES.

CONFIDENTIAL AND PERSONAL.

Some months ago, when Panagra made known their plans to open a local office in Buenos Aires where certain Panagra personnel would be assigned, I opposed it on the basis that it would give Panagra a selling advantage over PAA in that important revenue producing city.

I discussed this with Mr. Morrison, who brought up the subject during a visit of Mr. Douglas Campbell in Miami, and I was invited by Mr. Morrison to his office to discuss this possibility with Mr. Campbell.

Mr. Campbell pointed out the reason for the move of the advertising office from Lima to Buenos Aires was because of the lack of vendors in Lima to print the type of advertising that Panagra desired. Mr. Campbell further informed us that the activities of this group would be limited directly to preparation of advertising for papers, magazines and brochures.

For your information, the personnel in this office now consists of Mr. Bourne, Mr. McCoun, Mr. Pickering and Mr. Earsman, which enables Panagra to enjoy a great number of personal contacts daily in the English speaking colony of Buenos Aires especially among the Americans.

Let us not forget that George Smith and Juan Homs find it necessary to retain neutral attitude in their sales promotion contacts and efforts. From the above, you may well realize that Panagra is beginning to enjoy a distinct sales advantage.

It is my belief that it is timely and necessary that Panagra again be cautioned the men assigned to their advertising office in Buenos Aires should be limited to their definite assignment, preparation of advertising material and if they persist in their present indirect solicitation promotion efforts that PAA will find it necessary to assign a Regional Traffic office in Buenos Aires to counteract their activities.

Original signed by Porter Norris
Porter Norris.

PN:b

cc: VP:LAD:MIA
Gen.Mgr.PAArg.VUE

[fol. 706]

GOVERNMENT'S EXHIBIT 306

Division Traffic Sales Mgr.
Atlantic
New York

General Sales Manager
Sales
New York

November 29, 1949

You will be interested in a memorandum dated November 25 which I have received from John Shannon, Vice President of Panagra, which I quote in full.

"In the latter part of October a Major General Appleyard of the National Provincial Bank of London, who is making a trip around South America from New York, came to see Mr. Campbell, and during the course of the conversation expressed great surprise that it is possible to go from New York to Buenos Aires via El Interamericano in 26 hours rather than the longer period required via the east coast. He indicated that had he had this information when he bought his tickets in London he would have requested to be routed via the west coast, both because he preferred the shorter route and because he could have used an extra day in New York to great advantage. Unfortunately, at the time he was given the foregoing

information from Mr. Campbell he was unable to change his plans because after he had bought his ticket via Rio he made appointments to see some people in Rio, although he would not have gone via Rio specifically for that purpose.

"He stated that when he was discussing his trip with travel agents and the Pan American office in London, no one gave him any information with regard to the existence of the route via the west coast, much less any information with regard to the service available via that route, and he was quite put out that he had not been completely advised concerning the service available between New York and Buenos Aires at the time of buying his tickets in London.

"It appears from the foregoing that PAA offices abroad are not aware of their responsibilities as our General Agents, both with regard to their own personnel and the advice to travel agents. It would be appreciated if you would have the necessary action taken to correct this obviously unsatisfactory situation.

"Thank you for your cooperation."

[fol. 707] Please take the necessary action to be sure that all our personnel quote both services in South America—i.e., the west coast as well as the east coast.

John E. Muhlfeld

JEM ail

cc: John T. Shannon—Panagra
Vice President—Traffic & Sales
Regional Sales Manager—London

[fol. 708]

GOVERNMENT'S EXHIBIT 307

A.B.S. PANAGRA TRIP SERIES
No. 3

BOGOTA, January 10, 1950

Douglas Campbell, Esq.

NEW YORK, N.Y.

Dear Doug,

I have just read a copy of Bourne's letter #3749 and of McCoun's letter to Bourne dated December 19th, both reporting on their respective trips to Montevideo and Rio. I am frankly very poorly impressed by these letters and will cover this fully later on in this letter.

The outstanding impression I got from both letters, with respect to Montevideo, was that Bourne and McCoun are thinking primarily, if not exclusively, of getting a share of the passengers who might otherwise travel via Braniff from Rio and secondly of getting passengers who do travel via Braniff to change to Panagra at Lima. It seems to have escaped both men that as far as Montevideo is concerned our principal competitor is Pan American Airways. I am unable to find any indication in either of the letters that we are going to put on a real drive in Montevideo to get through long haul passengers destined to points in the United States.

I have had to do a lot of adding and subtracting and dividing of the figures given in McCoun's letter. From that it appears that in 11 months Pan American's sales to New York, Miami, Los Angeles, Houston and San Francisco [fol. 709] totalled 372 passengers, or an average of 34 passengers per month. McCoun states that the breakdown showing passengers travelling PAA vs. Panagra is not available. What must be available, however, is the breakdown of the Panagra vs. Pan American sales in Montevideo for that period and from that we can work out some idea

as to how much of the U.S. movement we were getting. My opinion is that we are getting little or none.

McCoun's letter shows that Pan American's sales (which include Panagra) amounted to $730,000.—for the first 11 months of 1949.

I feel that Bourne and McCoun should be impressed with the fact that our principal objective in Montevideo is to get through passengers away from Pan American. We have the best service and the fastest service and I presume the same tariff. Therefore, we want to go out and get business from Pan American, just as much as we want to take business away from Braniff. I do not understand the apparent failure to grasp this very obvious principle on the part of two of our own top sales promotion men.

With respect to Bourne's letter, two of the three pages are devoted entirely to a discussion of the Rio picture, the fare differential in Braniff's favor on his through service Rio/Havana and the necessity of eliminating it. In the rest of the letter comments on Montevideo are limited to the statement that we are faced there with the problem of "competitive carriers waging an exchange war and by selling in Argentine pesos or Brazilian Cruzeiros or a [fol. 710] combination of both, underselling us very seriously". The remainder of the letter is devoted principally again to Rio and Braniff.

There is not one word of explanation in the letter as to why the Montevideo market has been so completely neglected by the Buenos Aires sales promotion staff. The only encouraging statement in the letter is that Bourne's office will call weekly on Montevideo.

I think this is pathetic.

McCoun's letter contains a good deal more meat principally, I think, because he undertook to secure some sales statistics requested by New York. However, there is no attempt to analyze these statistics and the monthly sales were not added up to give 11-month totals, and the letter generally has quite an amateurish tinge. Here again, however, the last two pages of the four-page letter are devoted

to the Braniff/Panagra competition to such an extent that one of the immediate steps McCoun is taking is to complete breakdown of the "Elapsed Times" out of Montevideo to Buenos Aires connecting Panagra to all South American west coast points and principal cities in the United States, as compared to Braniff "Elapsed Times" via PAA to Rio with connections there with Braniff. (underlining mine). Far more important than this is a breakdown of our "Elapsed Times" vs. those of Pan American and the active selling of Panagra for travel to the United States vs. Pan American.

****

Sincerely yours,

sgd. ANDREW B. SHEA

c.c. Mr. John T. Shannon

[fol. 711]

GOVERNMENT'S EXHIBIT 308

January 13, 1950

MEMORANDUM TO: MR. A. B. SHEA

Do you see any significance in the fact that southbound out of Miami Pan American is carrying 25% of the movement to Buenos Aires, whereas northbound to Miami they are only carrying approximately 15% of the movement? In other words, Pan American seems to be getting a better share of the business out of the United States than they are to the United States.

Furthermore, with our running DC-6's versus their DC-4's, actually Pan American carries 709½ passengers down the East Coast to Buenos Aires versus Panagra's 708½. Don't you think we ought to get at least ⅔'s of the movement?

If these figures are another proof that Pan American is not handling our sales as carefully as they should be, can't we get any breakdown showing the number of through non-stop passengers who travel to and from New York/Washington and Buenos Aires?

It is difficult to see why anyone would travel down the east coast on a trip involving fourteen hours more time if they knew the facts. This would be a very strong indication that prospective passengers are not being told all the facts.

Are we continuing to have checks made at the different [fol. 712] Pan American counters and at the different tourist agencies in Chicago, Los Angeles, San Francisco, New Orleans, etc., to see whether or not Pan American is telling people about Panagra's better service?

J.P.G., Jr.

[fol. 713]

GOVERNMENT'S EXHIBIT 309

MIAMI, January 18, 1950

MEMORANDUM TO MR. ANDREW B. SHEA

In a discussion with Baker, at one point he said he would rather have a deal with Braniff if he goes to Buenos Aires since Braniff does a much better selling job than Panagra's agents in the Argentine or than Panagra's agents in the U. S. and even possibly better than Panagra's agents in Lima.

Both he and Sternberg said that Pan American was selling their own service over ours constantly, and attempted to prove his point by asking me to go down and look at the Pan American, Miami Beach office where there was no Panagra literature, also to check in Cuba where Pan American is selling Braniff to Lima and Pan American to Rio. Baker also cited the Montevideo situation as showing that we are not at all aggressive saleswise.

I naturally answered by stating that you were taking all these things in hand etc. but I think the Pan American Miami Beach window and the Havana situation should be checked into and the Uruguay situation fixed immediately along the lines of your letter to Doug Campbell concerning

Bourne's and McCoun's reports. On this latter point, how long do we keep people who write reports like that?

J.P.G. Jr.

cc: Mr. H.L. Clark—You might get started on the Miami Beach window immediately and find out from Kirkland why he doesn't check these things.

J.P.G Jr

[fol. 715]

GOVERNMENT'S EXHIBIT 311

Vice President Morrison	E. Balluder
Latin American	Executive
Miami	New York
July 28, 1950	CONFIDENTIAL

PANAGRA

I had lunch yesterday with Howard Clark and Gustave Vidal who discussed with me some of their ideas about non-cooperation on the part of Pan American.

1. They again brought up the question of separation of sales activities in Buenos Aires which had been discussed between Mr. Peter Grace and Mr. Trippe, and on which Mr. Grace still expects a decision. I told Messrs. Clark and Vidal that to the best of my understanding the decision had already been made negatively.

2. Assuming that our relations in Buenos Aires continue as at present, they talked about the advisability of having Bourne and his secretary take space in our offices in the Shell Building to which I had previously agreed.

3. They brought up the case of Smith. Panagra has lost confidence in Smith whom they consider a one-hundred percent Pan American man. They are annoyed because Smith leans toward Pan American for what they call "favors".

They are very jealous because Smith talks to us about his housing problem, his automobile plans, his vacation plans, etc. They again bring up the fact that his bonus is paid by Pan American without participation from Panagra and that consequently Smith has become a Pan American man who does not serve their purposes well any more. I expressed my surprise at their attitude because after all CAPAASA is a one-hundred percent owned Pan American company and Smith as an employee of that company should naturally look to his employers for the matters they mentioned. They referred to our contractual understanding that we would consult with them on CAPAASA matters, but I told them that these were small routine affairs with which nobody in New York should be bothered, and that they themselves should not be worried about because they had competent men in the field like Jimmy Walker, with whom Smith was in constant contact, and Campbell who spent a great deal of time down the line. Obviously they are building up a case against Smith. They suggested the [fol. 716] advisability of transferring Smith out of Buenos Aires to be replaced by a new man who was not prejudiced against Panagra. I told them that was impossible and that I felt that Smith had served them satisfactorily as an agent and that their apprehensions about his discriminatory attitude were unfounded. I did not convince them and I expect further trouble along this line.

* * *

5. They again discussed the division of express out of Miami. Mr. Dean at one time had agreed with them that we would endeavor to split the volume of express from Miami to Buenos Aires on a fifty-fifty basis with Panagra. They now feel that they should have the entire volume because Pan American gets the whole movement out of New York. I informed them that I could not understand what New York had to do with it, that Pan American had a certificate to serve New York while Panagra had not, that we had tried to live up to our agreement about Miami and saw no reason why their share of the volume should be increased. They brought up the fact that they had the fastest service to Buenos Aires and should have the right

to carry all the express to that point instead of it being routed via the circuitous route down the East Coast which required trans-shipment. I agreed to ask you to look into this matter further. Therefore, please let me have some information on the volume of express being carried respectively over the the East and West Coasts to Buenos Aires from Miami.

6. In a subsequent conversation with Mr. Shannon, he suggested that Pan American should permit the whole Miami/Balboa route to be referred to as the Panagra West Coast route to Argentine as contrasted with Pan American's East Coast services. In other words, he wants the name Panagra to describe a route comprising both the present Pan American and Panagra sections. In effect their present advertising campaign which is being done over our protest is endeavoring to do precisely that.

E. Balluder

[fol. 719]

GOVERNMENT'S EXHIBIT 313

LIMA, August 13, 1950

MEMORANDUM TO MR. ANDREW B. SHEA

As you will note from the attached, John Kirby's flight was delayed in departing from Miami, by ten hours.

When he received the standard Porter Norris letter of apology there were, of course, the usual references to "clipper" flights which, in my opinion, is wrong (and I haven't changed on this in the last four years), and what is really out of this world in ridiculousness, an advertisement for the "El Pan Americano".

How Pan American thinks it is fair for them to circularize our passengers, explaining what was a lousy performance, and then to hit them with propaganda on what is really our toughest competition today down the East Coast, is be-

yond me and it shows again that we are dealing with a bunch of chiselers who have to be watched every inch of the way.

Why can't the reference to "Clipper" be taken out, including the hope that future "Clipper" flights will be better, etc.?

This is a clear invitation to fly on Pan American World Airways and the flight that should be referred to is, of course, El Interamericano. Can't we get this agreed to?

I feel that the attached letter from John Shannon to Porter Norris, with a copy to Balluder, is one of the worst possible ways to get any action out of Pan American on this matter. [fol. 720] It seems to me that we should scream to the high heavens concerning Pan American's having sent a pamphlet advertising "El Pan Americano" right at the top and not bring this out in a letter to Porter Norris as "an additional point", stating that it might be "inferred".

If we go after Pan American in this Mamby-Pamby way, we can expect a continuation of the kicking around we have been getting for years, which brings me to the fact that the following clause in the Panagra-Pan American General Sales Agency Agreement was interpreted by a Panagra executive as precluding Panagra salesmen making solicitation calls on travel agencies without being accompanied by a Pan American representative:

> Pan American Airways . . . . "making personal visits in the United States to the sales representatives, to sub-agencies, and to persons and firms which have been or which are potential customers, for transportation via Panagra, it being understood that, if Panagra so requests, a representative of Panagra may accompany Pan American's sales representatives on any such visit"

I am not a lawyer but there doesn't seem to be any preclusion in this clause to Panagra's making individual unaccompanied visits and no exclusive right to Pan American to make sales contacts. The point I am making is how has

this been interpreted in the exact opposite way (which seems particularly stupid now that Pan American has agreed to the reverse) for so many years by the Panagra executives. Isn't this just another proof that you don't have any aggressive associates?

J. P. G. Jr.

Enc. letter of 7/20/50 from Porter Norris to JTK
letter of 7/25/50 from JTShannon to Porter Norris

[fol. 721]

GOVERNMENT'S EXHIBIT 314

29 January 1951

NOTE TO ADMIRAL TOWERS:

The following summarizes impressions gained from a review of the Executive files.

CAPAASA: (Compania Argentina Pan American Airways S.A.)

This organization is the General Sales Agent, 100% PAA-owned, which is responsible for the traffic and sales activities in B.A. for the three companies, PAA, PGA, and PAB. Mr. Balluder is the President, Dr. Negri Morano is the Vice President and Mr. George P. Smith is the General Manager. Mr. Juan Holms is the Traffic Manager and Mr. Rodrequis is in charge of Sales.

The major operating problem of CAPAASA appears to be that it is working for three carriers who to a certain extent are competing with each other for available traffic. The major contention of course is in the Argentine-U.S. sales via Panagra's west coast route vs PAA's east coast route. CAPAASA personnel are reported as trying to sell these impartially but it does not work out in actuality because of 1) presence and influence of Panagra's sales, advertising, and airport operating staff in B.A. 2) Constant pressure by Panagra officials, which is understandable since

B.A. is probably the major traffic generating station for PGA hence of very major importance to them, and 3) PAA officials are too busy with other System affairs to devote as much time to B.A. as Panagra officials do.

R. W. B.

[fol. 723]

GOVERNMENT'S EXHIBIT 316

WALTER THOMPSON ARGENTINA

Report of call covering several meetings on Pan American Airways

Present for Clients: Messrs Juan Honas,
Enrigue Silvetti,
George Smith.

Present for J W T: Messrs M L Stiver,
Juan E Claus,
J B Robinson.

Mr. Watson's memo of March 12th was reviewed in detail, as well as the layouts which accompanied his memo of March 19th. Everyone agreed with the basic premises, subject to some modification due to local conditions.

The client feels that the "world's best airline" theme should be included in each advertisement, but that the primary emphasis should be on positive selling features aimed at regaining the US traffic which has been lost mainly to Panagra's El Interamericano as well as to the Argentine Airlines. Competition from the latter is not as serious now that (as of a month ago) the Argentine Airlines revised its rate structure upward to a par with PAA and Panagra.

****

3) The primary competition is with Panagra, and secondary with Argentine Airlines and Braniff, all of which have DC-6 service at present.

4) Over 80% of the US traffic originates in greater Buenos Aires, and the balance primarily in the larger interior metropolitan areas.

.....

March 30th, 1951

AW Barnett
cc: Messrs. JHoms,
ESilvetti,
EFoss,
CHWatson,
JBRobinson,
JEClaus,
MLStiver.

Encls:

[fol. 724]

GOVERNMENT'S EXHIBIT 317

April 4, 1951

Div. Traffic Sales Mgr.
Latin American
MIAMI

Traffic Manager
Pan American Argentina, SA
BUENOS AIRES

Private & Confidential

From the recent exchange of correspondence between your office and Mr. Muhlfeld's office we note that both of you are preoccupied with the preponderance of Panagra over PAA's sales to the USA in the Buenos Aires territory. Most of the factors contributing to this situation have already been discussed and are being worked upon by those who are in a position to contribute.

At various times I have called to your attention the direct sales activities undertaken by the personnel in the local Panagra office. At first this started out to be merely social contacts at the homes of these persons and at the American Club. Later, we were requifed to permit the Panagra representatives themselves to contact the local travel agents

(accompanied by one of our CAPAASA employees) and the Panagra personnel told the story of Panagra to the travel agents even though this already had been done by our CAPAASA personnel.

The next step taken was that some six months ago Mr. Jorge Milberg was hired by the local office and under direct instructions from the executives of Panagra office he was to contact all RSA passengers of any importance arriving from the East Coast via PAA or arriving via the West Coast by Panagra and render them special attentions in the direct name of Panagra. This contact work was in direct duplication of work which was already performed in a *neutral* basis by local CAPAASA personnel and there were frequent occasions when this duplication created confusion to the annoyance of some of our passengers.

It now appears that the local Panagra office has instructions to proceed to engage in direct sales activities both in Argentina and Uruguay. I already reported to you on the two weeks trip to Punta del Este by Mr. Bourne and Mr. Milberg to contact the movie stars and reroute their return to the United States via Panagra (this trip entailed considerable expense and, as you know, PAA will probably be required to pay 50% when the final accounting is made). [fol. 725] The latest and more barefaced violation of the neutral sales position which George Smith and I have always tried to preserve here in Argentina came to my attention last week. It seems that some time last December a *Mrs. Keller from the Memorial Hospital in New York City came to Argentina for the purpose of selecting 14 Argentine nurses who were to be awarded two years scholarships in the United States. Apparently Mr. Bourne was the only one in Argentina who new about this mission and he proceeded to make the contact with Mrs. Keller upon her arrival and even arranged to have himself appointed chairman of the Committee who were to select these nurses for scholarship.* Mrs. Keller returned to the United States and Mr. Bourne and his committee selected the nurses. Mr. Bourne booked 13 "no name seats" for these nurses on El Interamericano flight of March 31st and it was not until two days prior to the departure of these nurses that anyone

in the CAPAASA office now of this movement of passengers. The point I would like to make about this case is that *while every sales representative at CAPAASA, including George Smith and myself, is constantly impressed by Panagra's and the need by CAPAASA personnel remaining neutral in regard to competitive traffic, as you can see the Panagra personnel on data here in Argentina do not feel required to preserve this same neutrality and protect PAA interests.* The many social and other contacts made by Mr. Bourne, Mr. Milberg and the many Panagra vice presidents who visit Buenos Aires permit them to promote Panagra wholeheartedly to the complete exclusion of PAA. CAPAASA personnel are always required to tell both sides of the story and it is this situation which I wish to call to your attention once again which is certainly one of the factors contributing to the fact that in 1950 this office sold 1662 seats via Panagra to the United States against 787 for Pan American World Airways System.

Juan Homs, Jr.

JH:eck

cc: General Sales Mgr. NY
V P W.L.Ipscomb NY
General Manager—Bue

[fol. 726]

GOVERNMENT'S EXHIBIT 318

General Sales Manager. Divn. Traffic Sales Manager.

Sales. Latin American.

New York, N. Y. Miami, Florida

April 4, 1951

PANAGRA PROMOTION.

Attached you will find copy of memo just received from Juan Homs, which is self explanatory.

We in this Division have been aware of these practices for some time and I think we should not hesitate any longer in bringing this to the attention of top management to find out just where the line is going to be drawn.

.....

Only recently the Panagra representative and Mr. Bourne proceeded from Buenos Aires to Montevideo to pirate members of the group of movie stars who had flown on a charter from New York to Montevideo. The Panagra representative offered these passengers every inducement to return via the West Coast. As we all know, Panagra maintains a staff of representatives in Buenos Aires, who evidently spend most of their time pirating business which has been already sold, instead of creating new sales.

I sincerely hope that this pirating can be stopped and that the efforts of Panagra as well as ours be used to create and develop new business, and if we have to pirate, let's be sure and see that the victim is Braniff or some other competitor and not one of the family.

Original signed by PORTER NORRIS
Porter Norris

PN:b
cc: VP,LAD,MIA
VP,T&S,NYC
Dv Mgr,LAD,MIA
Dv Acctnt,LAD,MIA
Traf Mgr,PAArg,BUE
Gen Mgr,PAARg,BUE

[fol. 729]

GOVERNMENT'S EXHIBIT 320

Pereira April 28th, 1951

MEMORANDUM TO MR. ANDREW B. SHEA

I don't see how Pan American can make anyone believe that the situation that existed when the 1929 letters were exchanged, continued on indefinitely.

What about the extension of Panagra over the Andes to Buenos Aires which is so lightly glossed over by Pan American's petition? Didn't this immediately make Pan American and Panagra competitive? How would the Department of Justice feel about Pan American Airways con-

trolling both coasts and both services to Buenos Aires when there should be competition there which we fortunately have provided them despite their misleading allegations?

There have been any number of changes in the pattern which they went along with and which are completely inconsistent with the letters which they are now screaming about, proving that both partners agreed to changes, nowhere near enough, of course, as circumstances changed.

With all the screaming about Grace and its railroads, etc. I hope that the Government will not lose sight of the main issue—Panagra, which has lagged behind the entire certificated aviation industry in growth of revenue plane miles, revenue passenger miles, air express and freight on miles, etc.

Name any yardstick and Panagra will be shown to have failed to have kept the pace—so much so in fact that J O'C said "I would think it should be L'd if I were a government official".

[fol. 730] If the figures were this bad, why not use them to prove that Panagra must get its airplanes through to New York immediately?

When we get all finished, the proof of the pudding is in the fact that Panagra is the only airline that has been unable to obtain what the President of the United States and the CAB itself have recommended for it. It is the only airline that has not come through to its main terminal. It is the only airline that covers its main route by interchanges. The cause of this uniquely unfavorable position is Pan American and only Pan American.

The record shows that Grace did everything in its power to get Panagra's own certificate for its main line terminus to terminus which every other airline has.

It seems to me that this is the point that we should stress in our answer to Pan American's petition.

I hope, in the light of their lies, smoke-screens, distortions, etc. that you, Burns, Cahill, and O'Connel, will throw the book at them with everything that you have.

J. P. G. Jr.

[fol. 735]

GOVERNMENT'S EXHIBIT 324

COMPANIA DE AVIACION PAN AMERICAN
ARGENTINA, S.A.

AVENIDA ROQUE SAENZ PENA 788
BUENOS AIRES, ARGENTINA

T. E. 33-8581

Buenos Aires, May 18th, 1951.

Mr. Porter Norris
Division Traffic Sales Manager
Latin American Division
MIAMI.

Personal

Dear Porter:

Many thanks for sending me a copy of John Muhlfeld's report of April 25th. I only hope you will reread two sentences of this report, namely, "The situation in Buenos Aires, however, instead of improving is deteriorating to the extent that it is no longer possible for Capaasaeto maintain System policy and a neutral sales position because of the direct sales activities of Panagra representatives who are based there". . . . . "The situation in Buenos Aires requires immediate attention for it concerns System sales policy, not necessarily individuals". For over three years now I have had to put up with this situation and I can assure you that it just about has ruined my disposition. The best example I can think of is that of the boxer, who knows he is just as good as his opponent, to be put into the ring with both hands tied firmly behind his back and his opponent with both arms free jabbing at him from all angles while the referee calls foul on the boxer with his hands tied for butting with his head. This example is absolutely no exaggeration and I can assure you that if I ever had to do it again I would not let myself be put into this very disheartening and demoralizing situation.

The best solution I can think of, providing the big fight in the Chrysler building does not result in the elimination

of the local Panagra office, is to place me in the same position as Bourne on the PAA side of this situation and let me go to work on them. I guarantee I will get my year's salary back for PAA within one month. I am really quite serious about this proposal and wish you would discuss it with Mr. Morrison as just during the past few days I have discovered that the only thing that is wrong with my disposition is the frustration of the sales situation I find myself in. It has made me difficult to get along with both in the office and at home and unless Bourne and his activities are taken out of here I am going to find it very very difficult to ever take a neutral view of things as I find a terrific sensation of well-doing comes over me when I can route some of my Panagra minded friends on "El Presidente".

[fol. 736] You and I have seen eye to eye on almost everything. Both of us have been salesmen all of our lives and both of us have the PAA System deep in our hearts. Just stop for a moment and imagine yourself in the exact same position which I have been for three years and then I think you will have a clear conception of the frustration of which I speak. I would certainly like to come up to Miami in a few weeks to discuss all these matters with you and also to attend to some important matters concerning some investments of my fathers. I would appreciate it very much if you could arrange this for about the second week in June.

Kindest personal regards,

Sincerely,

Juan Homs, Jr.

JH/eck

[fol. 737]

GOVERNMENT'S EXHIBIT 325

MEMORANDUM

Yesterday afternoon Willis Lipscomb repeated to me in front of Jim Nason that Pan American did not intend in any way to promote sales over PAB's Lima Rio route as far as U.S. passengers were concerned. He said that they

would not help to develop sales because this route when used by U.S. passengers was competitive with Pan American.

Pan American is of course PAB's general sales agent in the U.S. and in addition PAB is a part of the "System".

This is an interesting position taken by Pan American in view of the fact that they are also general sales agents for Panagra and Panagra competes with PAA for U.S. traffic to and from Buenos Aires.

I understand that Lipscomb has made the same statement to Ed Bern and I believe others in Panagra.

H. L. C.

cc: ABShea

[fol. 740]

GOVERNMENT'S EXHIBIT 328

Mr. George Smith — Vice Pres. Balluder
General Manager

CAPAASA — Executive

Buenos Aires — New York

June 26, 1953

Panagra Sales Force

CONFIDENTIAL

Mr. Morrison tells me that Panagra have increased their sales force in Buenos Aires to six men on the street promoting Panagra transportation and that Panagra is outselling LAD, Buenos Aires USA five to one.

I spoke to Mr. Bern who tells me that Panagra has not increased their traffic representation for the past few years and it still consists only of Rowe and his assistant, Jorge Milberg.

In order to clear up this matter, please advise me just how this situation stands.

Erwin Balluder

EB:mae

[fol. 741]

GOVERNMENT'S EXHIBIT 329

COPY

PERSONAL

BUENOS AIRES
August 13, 1953

Mr. Edward G. Bern
Vice President & Sales Manager
Pan American-Grace Airways, Inc.
New York City.

Dear Mr. Bern:

For your private information and further to our recent telephone conversation, I would like to give you the details and background of various comments concerning the Sales Promotion Office which were made to me by George Smith during the occasion of Mr. Wilbur Morrison's visit to Buenos Aires.

Approximately a month and a half ago the CAPAASA Personnel manager requested me to advise him of the specific functions performed by the various members of our office. After complying with his request I casually inquired as to why this information was needed and was advised that Mr. Smith had asked for it. Several days later, I asked George Smith the same question, and he informed that the LAD people in Miami were interested in this office and wanted to know how many people were involved and the functions of each.

I heard nothing further in this connection until George Smith took me aside on the occasion of a cocktail party he offered for the top employees of CAPAASA in honour of Mr. Morrison. He indicated at that time, in a confidential manner, that Mr. Morrison had questioned him at length regarding the Sales Promotion Office and had shown great interest in its functions. Mr. Smith alluded to the possibility of there being some changes at a future date as regards the existence of the Sales Promotion Office and the things we were presently doing. I asked him exactly what he meant, but was told that he would discuss the mat

ter with me after his return from a two week trip to the U. S. He did mention, however, that he thought that neither I nor Milberg would be able to continue to visit the local travel agencies independently, and that in all probability we would have to go back to the old arrangement where contacts were always made in the company of a CAPAASA representative.

• • • •

It is my feeling that this renewal of interest in the Sales Promotion Office on the part of the LAD people can prob- [fol. 742] ably be attributed in part to a desire to strengthen PAA sales in this market now that they will shortly be operating DC-6B equipment on all of the East Coast flights. In this connection, and as we have already advised you by cable, we have learned that the CAPAASA Advertising Department will break large size ads in most of the B.A. newspapers on August 19th, announcing PAA's new East Coast service. These single ads, apparently will constitute the only deviation from their regularly scheduled advertising campaign.

As I feel certain that with the incorporation of the new DC-6B equipment, effective August 16th, LAD will put the pressure on CAPAASA for increase of sales in PAA's behalf, you may be sure that I will keep my eyes open for any activity which may be prejudicial to Panagra's interest.

s/ R. V. Rowe
Roger V. Rowe

RVR:GMH

cc: Mr. D. Campbell—NYC

[fol. 745]

GOVERNMENT'S EXHIBIT 332

FOR USE BY ADDRESSEE

MEMORANDUM

SEND ORIGINAL BY DATE October 10, 1953

TO Div. Trf. Sales Manager

FROM Traffic Sales Manager

DEPT.
OR DIV. Latin American

DEPT.
OR DIV. Pan American Argentina, S.A.

LOCATION MIAMI

LOCATION BUENOS AIRES

STD. FORM. 9-29

SUBJECT: MONTHLY SALES REPORT BUENOS AIRES, SEPTEMBER 1953.

REFERENCE:

CAPAASA System sales for the month of September totalled $588,945.00 dollars. This marks the third consecutive month of sales above those of the same months of 1952 and it now appears more than likely that this will be true for our sales for the rest of the year. If this should prove to be the case, the half million dollar gap between 1952 and 1953 sales first noted in the July report, will no longer exist when the final figures are in.

For the fourth consecutive month, Pan American gross passenger sales exceeded those of Panagra. Pan American accounted for 48.32% and Panagra 41.31% and interline 8.81% of the total. Only 1.36% was for Panair do Brasil.

At the same time agency production went down again a couple of points to 61.71% for PAA and 60.53% for Panagra. It is also interesting to know that the agents did not sell Panagra in preference to Pan American

by more than 2 to 1. This time, taking the first 15 agents as a reference, they sold 57.39% for Panagra and 42.61% for Pan American. Apparently, the fact that Pan American now offers on-time performance with DC-6B equipment has finally begun to influence on agents and the travelling public in their choice of routes, particularly to the United States.

* * *

[fol. 746] COMPETITION.

* * *

Pan American's gain of one percentage point so far has been at Braniff's expense and since Aerovias do Brasil is now a negligible quantity and the traffic of Aerolineas is a matter of discounts, a future Pan American gain can only be a Panagra loss.

* * *

Fred F. Plimpton

cc: VP Traffic & Sales—NYC
General Sales Mgr.—NYC
Sales Advertising Mgr—LAD—MIA
Sales Analyst—NYC
Div. Sales Analyst—MIA
General Manager—BUE
Accountant—BUE

[fol. 747]

GOVERNMENT'S EXHIBIT 333

Copy of handwritten letter—

Delray, Florida
March 13, 1930

Dear Roig,

AVIATION—I have your No. 2. We went into this business because we felt that in view of our big investment in steamers we should become a party to this new branch of transportation which will yearly become more important and which in ten years will be a real competitor of our steamers. We felt that if we got the mail subsidy we could

put ourselves in a position in ten years to meet any flying competition.

We have had difficulties but for a new business it has worked out quite well. In fact remarkably well considering the fact that none of us have as yet made an intensive study of it on the ground.

Now to consider selling out and abandoning aviation in South America because we find it difficult to deal with Trippe is I think a mistake. The amount of profit that we could make by doing so is to me quite immaterial.

We started out on a project which we considered would have future importance to us. We knew when we did so that a 50 50 partnership might be difficult to work out. I am not in favor of quitting now.

I do not think that Trippe will last because he has no ability except as a promotor. I know nothing of the reported January profit of $30,000. How is it figured and [fol. 748] on what capital? January, February and March are the big months of the year and are not a criterion.

As an operator of a business enterprise I do not think he will last—I know the type quite well. Meanwhile I appreciate that we will have to have patience, infinite patience, and that is a *wearysome* task. Furthermore we will have to avail of our superior knowledge of South American business and our superior ability to manage it and get out on the ground and make a success of it. I do not believe that Trippe can sustain his claim to a right to sacrifice Pangrace interest for the benefit of Pan Am. That is illogical, it is utterly unfair, and we can certainly make Hoyt see it.

If Trippe gets into his head the idea that he is going to be able to buy us out, then your task will be greatly increased in difficulty and in fact made almost impossible. He will have no interest in making Pangrace a success until he has got rid of us in fact will try to induce a failure so as to buy us cheap.

My opinion is that the first thing to do is to convince Trippe that under no conditions are we going to sell and

then to shift the real management of the business *to the other end* and *get on top of it* and *manage* it. You can then reduce the talking to Trippe to a minimum.

Even if we decided today that we *wanted to sell*, this would be the best plan to follow.

Yours sincerely,

D.S.Iglehart

[fol. 749]

GOVERNMENT'S EXHIBIT 334

April 21, 1930

MEMORANDUM FOR MR. GARNI

AVIATION

I noticed in Redshaw's letter No. 957 that he recommends our getting out of this business. I think it would be opportune to write quite a strong letter to him telling him definitely that we are not going to get out of this business. We went into the business because we felt that in ten years from now air transport would be an important competitor of steamer transport in which we have so large a capital investment, and we felt that we, as a matter of policy, should begin to learn and develop this air transport work. From a broad standpoint we must be in this competitive line and with the American mail contracts we have an exceptional opportunity, not only of developing a successful business, but of making money out of it. But, it can only be done if all of our men and particularly our men on the Coast are giving enthusiasm and confidence and a very strong effort to making it a success. Therefore, I think it important to write to Redshaw a strong letter, telling him that we are not going to sell and that we expect him to get his back and his shoulders into the support of this business. We expect him and all of his men to give the time and attention to it. We consider it is up to him more than anyone else to see that this business is made a success in Peru. [fol. 750] I think you should consult Roig as to the exact terms of this letter, as obviously you want to say nothing

that would conflict with his views as to our relation with our partners. We must get it into their heads.

D. S. I.
D. S. Inglehart

[fol. 751]

GOVERNMENT'S EXHIBIT 335

October 15, 1931

MEMORANDUM TO: MR. ROIG
MR. PATCHIN
MR. COGSWELL

AIRWAYS

I am anxious, as I know you are anxious, to see the traffic of our planes built up in a very agressive way.

We know from our experience with steamers that the handling of the whole problem of passenger traffic is a highly specialized one and that this traffic is satisfactorily developed only in the hands of men of specialized experience and capacity. You know what Crowder has done and is doing in our passenger traffic at present, and what Young did. Now I think the time has arrived to get hold of a passenger traffic man who understands all of the tricks of the trade including publicity, and set him to work on our passenger traffic problem with the idea that he will work out a program with you here and then go down and move from point to point developing that program and educating our men in carrying it out. I believe that if you get the right man and get the right program it might result in a very great increase in your movement.

Why not talk over the idea with Mann, Crowder and Young, who are all here now, and see whether you cannot get a practical suggestion and get hold of a man who would not only build up the air traffic but would build it up in a [fol. 752] way in which it would not necessarily draw traffic away from our steamship line, but on the contrary would tend to build up the whole movement to and about South America and by getting these steamer and air traffic men

working together, we would build up a movement that would be reciprocally beneficial to the two interests.

I appreciate the fact that steamer and air traffic are competitors, but I believe that by handling the whole matter as I have indicated we may avoid the prejudice of competition and even get general benefit from it.

D. S. I.

[fol. 753]

GOVERNMENT'S EXHIBIT 336

March 29, 1932.

MEMORANDUM FOR MR. ZALEES:

Mr. Hargy, the Panagra traffic man at Cristobal, after a trip over the lines, has made the statement in a report that he considers Panagra would do better in the sale of passenger tickets at Buenaventura and Guayaquil if represented by agents who do not also represent steamship lines, which may, in a sense, be considered competitors; he recommends that at all events in each office one man be delegated whose sole duty will be to attend to Panagra business and who will have nothing to do with the sale of steamship tickets.

This is a criticism which, in view of our partnership arrangement, we would like if possible to avoid. Our position has always been that inasmuch as each particular agency receives the same commission from Panagra as it does from the steamship company there is in effect more of an incentive to sell an airplane ticket than a steamship ticket in view of the fact that the fare in the former case is generally higher than the latter. There is somewhat the feeling in Panagra, however that the agents do not go out and attempt to sell tickets, pointing out the advantages of airplane travel, but rather wait until approached by prospective passengers. In other words, their position is passive rather than active.

I should appreciate it if you could instruct Buenaventura and Guayaquil to make more intensive efforts to build up the Panagra Passenger business.

W. F. COGSWELL.

[fol. 754]

GOVERNMENT'S EXHIBIT 337

PAN AMERICAN-GRACE AIRWAYS, Inc.
122 East 42nd Street New York, N. Y.

GV 85

ORIGINAL AIR MAIL LETTER
Copy follows by steamer

NEW YORK
May 17, 1932

Mr. G. Vidal.
SANTIAGO.

PASSENGER TARIFFS

When you are in the south, I wish you would study the question of making a lower passenger rate between points on our system other than Cristobal to Montevideo.

Our through rate, as you know, figures out 10.8c per mile. Our rate from Lima to Buenos Aires is $303.00 for 2,505 miles or 12.1c per mile. I have an idea that before long the question will come up on the reduction of these rates. I know that it is complicated due to the fact that 10c a mile on Panair from Miami to Montevideo means a $666.00 fare and if we have to preserve that fare even though our mileage is shorter there should be no reason why we should not establish a 10c rate as an international rate on our own line where a long haul of, say 2,000 miles is involved. This is necessary for us if we are to compete with the lower [fol. 755] steamship through rates now being studied by the Grace Line.

I am informed that when the $375.00 through rate New York to Buenos Aires was published, the Grace offices at Cristobal and Lima immediately demanded a lower rate from their points to Buenos Aires. I was asked to maintain my arrangement for passengers proceeding from Cristobal and Lima to Buenos Aires who travel by airplane over the Andes and I consented as a temporary measure, but I think we can use this as a lever to reduce our airplane

rates between these points, at which time the Andes portion of the route would be reduced and we would ask the steamship Companies to pay us full airplane fare on an airplane/steamer tie-up.

J. D. MacGregor.

P. S. Since dictating this letter, we have received the attached Foreign Airmail Contract mileages from Washington as of April 15, 1932. You will note that this new mileage sheet gives our route an additional six miles.

JDM/Q
Enc.

[fol. 756]

GOVERNMENT'S EXHIBIT 338

No. 1480

F. O.
AIR MAIL.

Lima, 20th January 1933.

Messrs.
Grace Line Inc.
NEW YORK.

Dear Sirs:

PASSENGER RATES

On several occasions recently we have pointed out to you the competition we are up against on the Coast; particularly with the Chilean Line, from which you will have noted that our rates are such that it is going to make it difficult to secure our share of passengers from Callao south.

It is also well to note that the aviation services are taking away first class passengers—especially coastwise. Between the Panagra and the Faucett Co., they are carrying 700 to 800 passengers a month, who would be travelling by steamer, first class, if these companies did not exist.

At one time the aeroplane fare was double that of steamers. However, Panagra have been reducing consider-

ably, and are giving a 75% reduction on the return portion of round trip tickets in Peru.

Enclosed herewith is a statement of first class fares on our steamers as compared with fares of the Panagra.

In this we have given the straight fare one way and the round trip. Also we have indicated the shore expenses on steamers, which include transportation of ordinary luggage, gasoline launch to go on board and other small items. This expense, of course, does not apply to planes.

Although the straight one way ticket of the steamers on the Coast is still lower than that of the plane, considering the conveniences of the latter and the saving in time, even this rate makes the aeroplane far mor attractive than formerly when there a greater difference in the rates.

[fol. 757] On the other hand, the round trip rate taking in the shore expenses, is practically the equivalent of the steamship rate. Especially to Mollendo southbound, the cost on this basis is more than by steamer and yet the time by plane from Lima to Arequipa is 4¾ hours, and by steamer, two days.

Undoubtedly all of this will be of interest to you and is well worth while studying in connection with the other facts we have already mentioned on competition rates with other steamers.

Yours very truly,

p.p. W. R. GRACE & CO.
C. G. Bush

CGBd

[fol. 758]

GOVERNMENT'S EXHIBIT 339

PAN AMERICAN-GRACE AIRWAYS, INC.
122 East 42nd Street New York, N.Y.

Letter No. PERSONAL 1251

ORIGINAL AIR MAIL LETTER

Copy follows by second airmail

Subject: GRACE LINE MEETING

LIMA, February 17, 1933.

Mr. J. D. MacGregor, New York

Dear Mac,

Yesterday I gave a luncheon for the Grace Line people now here, that is, Adams from the New York office, Rebstock from Cristobal, Marshall from Buenaventura, Holguin from Guayaquil, Bush from Lima, Heavey from Valparaiso and Redshaw from Lima. . . . .

. . . . .

Adams also told me that he felt our rates were now at too low a figure compared to the steamer rates: in other words that we were not on a reasonably competitive basis in that our operating costs should be much higher than steamer operating costs, and that consequently our tariffs ought to be much higher. I did not discuss this point with him, knowing that when the time came we could make as much or little of the economies as we cared to, depending upon the point to be gained.

. . . . .

Harold R. Harris

HRH/FL

[fol. 759]

GOVERNMENT'S EXHIBIT 340

Private 3186

ADVERTISEMENTS

NEW YORK
March 18, 1933.

S.A.G.O.,
LIMA
Attention Mr. J. M. VanLaw

I have in front of me a Peruvian Airways Corporation advertisement which has a red background, an airmail cover on the right-hand side, and what looks very much like a Grace steamship on the left-hand lower corner. This advertisement carries the caption AIRMAIL GETS THERE THREE TIMES FASTER. This advertisement seems to have been taken from the WEST COAST LEADER.

As I wrote you some time ago, I believe in connection with the editorial you prepared for my signature in the Panagra Magazine, it is against the policy of this Company to make invidious comparisons with other means of transportation. Such a policy would have the undoubted effect that our own service would be the subject of invidious comparison. There is nothing to be gained by placing ourselves in this position.

I have never, in any of the advertisements issued by the Grace Line or by the Munson Line, seen anything which would intimate that their attitude toward Panagra service was in any way approaching the attitude we have assumed [fol. 760] in the advertisement under criticism.

I shall ask you to bear this in mind as a policy of the Company and one which I should wish ~~to be~~ strictly adhered to. You will, therefore, kindly revise any advertisements which would have the above unsatisfactory tinge and place them in line with the above policy. I have written about this before, as I mentioned, and I should not wish to have to insist that all advertisements be sent to this office for examination before being published.

I am aware that the advertisement is taken from the Pan American Airways System Folder, of which copies are sent to all agents, but information that we give to agents is a very different question in relation to what we publish as a Panagra advertisement.

J. D. MacGregor.

JDM/Q

[fol. 761]

GOVERNMENT'S EXHIBIT 341

March 21st, 1933.

MEMORANDUM FOR MR. MANN:

I am returning herewith private letter 15015 from Lima in reference to Panagra propaganda, together with copy of advertisement in "West Coast Leader", which was enclosed with said letter.

Instructions have been issued to Panagra office in Lima that no invidious comparisons between steamers and airplanes are to be made in connection with Panagra advertising. In view of this, I trust you will find your way clear to instruct that the same of course should be applied in the case of steamers.

W. F. COGSWELL

[fol. 762]

GOVERNMENT'S EXHIBIT 342

Letter No. 206
(D.S.I. Series)

Air Mail 4-28-33
Lima 5-5-33

New York, April 26, 1933

A. Garni, Esq.,
Lima, Peru

Dear Garni,

PANAGRA

I notice your No. 210 to Roig. There is one point that has not been touched upon by you and that is the relative rates of our steamers and of Panagra.

I think that if you will check it up you will find that with the reduced value of Peruvian currency and with the discount for a round trip that you can go from Lima to Arequipa cheaper by plane than you can by steamer and rail. This is a condition which does not exist anywhere, and seems to indicate to me that air rates are getting too low in comparison with steamship rates.

I think you might have Bush put all the facts before you and see whether your Panagra rates have not actually got too low and whether or not there isn't some way of jacking them up, not suddenly or in a radical way but gradually, for we know that these things can be done gradually without calling attention or creating any opposition, whereas if anything radical is done it is spotlighted and always causes difficulty.

Yours very truly,

IGLEHART

[fol. 763]

GOVERNMENT'S EXHIBIT 343

May 24th, 1933.

MEMORANDUM FOR MR. GARNI:

I am returning herewith Lima's letter #1055 in reference to Panagra passenger rates. My own opinion is that we should discontinue all or a greater part of the 75% discount on round trips. However, it is my understanding that this would be inadvisable at the present time from a political point of view in view of the fact that Faucett has given up service and turned over his planes to the government.

While the steamer fare is undoubtedly a factor to be taken into consideration, this would seem to be only the case where steamers and planes both go to the same points and I do not believe we should go as far as Mr. Bush does in the next to last paragraph of his letter of January 20th, in which he compares the cost between Lima and Arequipa including, in the case of the steamship company, the rail fare from Mollendo and comparing the time of $4^3/_4$ hours by air to two days by steamer. The fact that the plane goes directly is an inherent advantage and there would seem to be no reason at all why the fact that the steamer passenger has to go indirectly via Mollendo should be taken into consideration. A more important point is, are the fares on Panagra high enough to enable it to do business on a profitable basis, and my opinion is that they are not.

W. F. COGSWELL.

[fol. 764]

GOVERNMENT'S EXHIBIT 314

PAN AMERICAN-GRACE AIRWAYS, INC.
135 East 42nd Street, New York, N.Y.

Letter No. 3010—PRIVATE

Subject: AIR AND STEAMER PASSENGERS—COLOMBIA Ref. your #2988

CRISTOBAL,
September 26, 1933.

Mr. J. D. MacGregor,
New York.

I have your above numbered letter, and the information contained therein is certainly very interesting.

The difference in the percentage of passengers we are getting by air in and out of Buenaventura as compared with those procured by Panair in and out of Barranquilla certainly, on the surface, appears to indicate that there is something wrong somewhere. However, I feel that there are contributing factors in comparing these two particular ports which lead to this difference, other than the important one which you mention in your letter under reply, as being due to the net work in the interior of the country; and, as a matter of interest, I will state these factors which, in my opinion, contribute in the main to this differential.

1. The greater frequency of boat service in and out of Buenaventura as compared with Barranquilla. Both the Grace Line and the Hamburg have weekly sailings at Buenaventura, both northbound and southbound. The Dutch Line has a fortnightly sailing in and out of Buenaventura, northbound and southbound; whereas, at Barranquilla, the United Fruit is the only line which has a weekly service, and Grace, of Course, a fortnightly service.

2. The fact that embarkation and disembarkation of passengers entering and leaving Barranquilla has to be effected

at Puerto Colombia has indeed resulted in passage by air in lieu of steamship in view of the greater convenience [fol. 765] of embarking and disembarking directly at Barranquilla via plane.

• • •

Another contributing factor which, while a most ticklish one to mention, nevertheless exists, is that our Colombian representatives are primarily steamship men. I do not at all wish to make again a mis-statement which this office once before made to the effect that our agents are our biggest competitors, but I still feel that the major portion of their contact work and solicitation is obviously along the lines of steamship business. One possible remedy for a condition of that kind, in my humble opinion, is one which would greatly concern the matter of policy with our affiliated companies. Nevertheless, with the growth of passenger traffic by air, as we have observed it in the last two years, I have often wondered whether or not eventually the time would come when we might find it profitable to desire to place in each of our principal agencies a traffic man who would do exclusively airways business and whose salaries, of course, would be borne by us. As stated above, this is purely a matter of opinion and, of course, in view of policy which such a move would involve, thought along this line is not being entertained by us further than an idea of a possible future solution for increasing our passenger traffic.

PAN AMERICAN GRACE AIRWAYS, INC.

T. J. Kirkland

TJK AW
cc HRH

[fol. 766]

GOVERNMENT'S EXHIBIT 345

No. 10,629
(A. G. Series)

Air Mail 10.
Lima 11.1

NEW YORK, October 27, 1933.

H. H. G. Redshaw, Esq.
LIMA, Peru.

Dear Redshaw:

PANAGRA AGENCY COMPENSATION

I think you have already been advised from another desk that we have finally reached an agreement with Panair with reference to a basis for compensating Panair, as well as W. R. Grace & Co. and their affiliates, for services rendered to Panagra.

At a distance it must seem difficult to appreciate that there should have been any delay in arriving at such an agreement but having been close to the conversation, especially during the last few months, I can assure you that to reach a final settlement was indeed a most laborious task and as strange as it may seem to you I might also tell you that not the smallest of the difficulties were the culmination of numerous incidents on the West Coast of minor and greater importance.

In making this indication I do not want to go over the whole ground again in detail but in order that you may appreciate the situation I want to say that an incident such as was reported earlier in the year with reference to the lack of intelligent passenger solicitation in the Arequipa [fol. 767] and other districts, or incidents such as that of one of our employees openly stating and confirming it in a memorandum that when a passenger turns up with an exchange order for a ticket on passage it does not suit

that particular office to encourage a trip by air because if he sold an air passage he would get no commission whereas if he supplies such a client with a ticket by that particular railroad the Grace House would receive a commission of $2.45, have been greatly magnified in the various discussions. I could give you a number of other similar incidents but I just refer to these specific cases which are foremost in my mind at the moment to bring out the very great importance of seeing to it that every man in your organization is made to understand in unmistakeable form that the Pan American-Grace Airways Co. is not only of great importance but will develop very rapidly and as far as our organization is concerned must receive the very best service and that in rendering such service the people serving the Airways must leave on one side what they may consider conflicting interests, particularly the maritime traffic, or in other words the Grace Line.

Not very long ago someone presented himself at an office of the Grace Line inquiring as to the quickest way to get to a given point. The particular employee behind the [fol. 768] counter talked nothing but Grace Line and when the client inquired about air service the ticket seller admitted there was an air service but that steamer travelling was a great deal safer.

These incidents should not and must not occur. When we reached a settlement with reference to the general compensation for services rendered we promised to issue definite instructions to all our Managers to the effect that incidents of the above or similar character must not under any circumstances recur and that everyone of our Agents should get whole-heartedly behind this business and not subordinate it in any way to our steamers. I appreciate that this may divert a few passengers from our steamers to Panagra but this is relatively unimportant as in the first place it cannot amount to much per annum and in the second place travelling by air, particularly on the West Coast, is bound to develop very rapidly anyhow over the next few years.

There is another thing I want to mention and that is the fact that especially during the initial stages some of

our agents on the Coast took quite a while to warm up to the idea that Panagra is an important enterprise and a definite part of the Grace Organization and one that will develop rapidly and should, therefore, get first class service. I think this feeling developed during the first year or two on account of the fact that compensation for services [fol. 769] rendered to Panagra did not come forward as rapidly as desirable and perhaps not in the amounts it was expected. The amounts now fixed for 1932 and 1933, however, will, I believe, leave no cause for dissatisfaction on this score and there can therefore be no excuse whatsoever on the part of any of our West Coast Agencies for not rendering services that will be beyond criticism.

If our head men on the Coast issue definite instructions in about the foregoing sense to every employee who has anything to do with Panagra, all of these difficulties will be definitely overcome and I expect you to make it a point to issue such instructions to each one of the Panagra agents in your territory.

Very truly yours,

(Signed) A. Garst.

[fol. 770]

GOVERNMENT'S EXHIBIT 346

COPY

Letter 1738.

Subject: Misses Nathalie Boshko Brown and Elizabeth Hammond

CRISTOBAL,
December 17, 1934.

Panagra—Lima.

Please be advised that on board the "Santa Cecilia", southbound at the present time, are Miss Nathalie Boshko Brown and Miss Elizabeth Hammond. These ladies intend to go to Cuzco but apparently furnished erroneous information in the Grace New York office as to connections between Lima and Cuzco, and now find their plans somewhat out of kilter, as the time required will not permit their

proceeding as they intended. Unfortunately, Miss Brown is not much in favor of flying *anywhere*, but we believe that circumstances make these two ladies extremely good prospects for us, and suggest that they be contacted on arrival at Callao.

Miss Brown is a well known violinist. Her trip is apparently sponsored by Yale University, and is for the purpose of recording Indian music on a 100-pound instrument which she has along. The other lady is a member of the same expedition.

In connection with the above, these ladies stated that no information was supplied them as regards our service in the New York office of the Grace Line, although it is perfectly obvious that the use of Panagra would, and we trust yet will, greatly simplify their problems. It was interesting to note that the local Grace people used our literature to dig out information as to train connections, etc., required by this party, and had to refer to us for "dope" on several pertinent subjects about that part of the country.

PAN AMERICAN GRACE AIRWAYS INC.

(Sgd) G. P. SMITH

cc—NY HRH

[fol. 771]

GOVERNMENT'S EXHIBIT 347

PRIVATE

Pan American-Grace Airways, Inc.
135 East 42nd Street New York, N.Y.

Cable Address
"Papagra"

Letter No. SAGO 5726

NORTHERN DIVISION—
Subject: ORGANIZATION CHARTS

Private—Sago 5726

LIMA
August 26, 1935.

Mr. G. Vidal,
NEW YORK.

Receipt is acknowledged of your private letter of August 21st on the subject of "Organization Charts—Northern Division."

I believe that the entire question of whether Panama Agencies should head the "Traffic" and "Administration" on Northern Division organization charts should be held in abeyance pending the temporary duty of Mr. C. E. Blow at Cristobal, as acting accountant during Spencer's vacation, and receipt of Blow's ideas.

There are a number of reasons for delaying action on the final decision in regard to this matter. In the first place, the Grace organization at the Canal Zone is completely a Grace Line office rather than a diversified Grace & Company office such as we find elsewhere at points touched by us. A number of times in the past Brown has shown his inability to look on Panagra business as other than competition—even going so far as to inquire of George Smith what he was doing aboard the Grace steamers soliciting Panagra business. And it also appears that a recent Douglas wing shipment was delayed through action of the Panama Agencies in leaving the wing at Balboa in favor

of a shipment of other freight, thus delaying delivery in Callao by approximately ten days.

• • •

With regard to the point #1 in your letter, inasmuch as ninety percent of our local purchases are made from the U. S. Government Departments in the Canal Zone, none of the Grace organization could be of any assistance in securing lower tariffs than the standard prices fixed for all purchasers by the U. S. Departments involved.

Inasmuch as Mr. Brown has no interest in Panagra matters I can see no advantage in his becoming familiar with our disbursements before they reach the commitment stage, particularly since most local purchases in the Canal Zone are purchases made for other points on the Panagra system—especially the Lima repair shop.

• • •

H. R. Harris.

HRH:KW

cc—JDM
2nd airmail

[fol. 772]

GOVERNMENT'S EXHIBIT 348

CABLE ADDRESS "PA
PAN AMERICAN-GRACE AIRWAYS, INC.
135 42nd STREET NEW YORK, N. Y.

LETTER NO.
4581—PRIVATE

Subject: PLATINUM SHIPMENT
FROM BUENAVENTURA

CRISTOBAL
December 20, 1935.

Panagra—New York

We have unofficial information, just received at 7:00 p.m. this date, to the effect that 25 cases of platinum will be available for shipment from Buenaventura to New York on or about December 23rd. On this date the Grace Line

have a vessel leaving Buenaventure, and they will undoubtedly lift this shipment unless we are able to offer a competitive freight rate. In this connection, we refer you to our numerous letters on this subject, which we do not have time now to refer to by number, and ask that you give this matter your best attention and advise us by cable if we can make a reasonable offer to the shippers.

We understand that the consignees, and probably the owners of this platinum are the American Gold and Platinum Co. of New York, and no doubt they control the routing of same ex Buenaventura. Perhaps if you could contact them immediately with a definite offer as to rates, the shipment could be secured for our Company.

Please regard this information as being completely confidential, as our tip came from a source which we most emphatically do not wish to close. We are sending you a week-end cable on this matter which we trust will arrive at yours about the same time as this letter. As we are very much interested in the outcome of this business, we rely on you to give it your prompt attention.

PAN AMERICAN-GRACE AIRWAYS, INC.

G. P. SMITH

G. P. SMITH

GPS: AW

cc HRH

[fol. 773]

GOVERNMENT'S EXHIBIT 349

4584—PRIVATE

PLATINUM SHIPMENTS
BUENAVENTURA NEW YORK

CRISTOBAL
December 27, 1935.

Panagra—New York

This will serve to confirm our cable No. 13 to MACOR New York, in which we advised you that the platinum shipment, Buenaventura New York, for which we were

negotiating, had eventually gone to our competitors. At this time, we cannot tell just why our agents were unsuccessful in their efforts to secure this business but presume that one of the major factors must have been the absence of any news as to rates until too late. There may have been other reasons as well.

* * *

We have now had some additional word on the shipment of 25 cases which went forward on the "Santa Clara". It will be discussed in detail further along in this letter, but we have been given to understand that the shippers demurred from giving our proposition their serious consideration because of the fact that they carry outside insurance on their shipments and claim that the premiums immediately go up tremendously when air shipment is contemplated. In view of the fact that our insurance rates are quite reasonable, we wonder if something cannot be done about this. It should be fairly easy to discover who Choco's underwriters are.

* * *

Someone from this office will be in Colombia before the end of January and an opportunity will be had to contact the Choco people personally. We very much hope that you will have worked out something by then which we can offer them and in which they will be interested. Meanwhile, it certainly would not do any harm if one of your staff could [fol. 774] contact the consignees, American Gold and Platinum, in New York.

* * *

PAN AMERICAN-GRACE AIRWAYS, INC.

(sgd) S

G. P. Smith

gps aw
cc HRH JVL

[fol. 775]

GOVERNMENT'S EXHIBIT 350

4611—PRIVATE

PLATINUM SHIPMENTS
URA/NYK

CRISTOBAL
January 4, 1936.

Panagra—New York

We attach hereto your copy of our #3694—Private to SAGO Lima in connection with a platinum movement ex Buenaventura for New York.

. . .

We are certainly deeply interested in this matter, and will be particularly glad to hear from you as to what progress is being made in regard to establishing a competitive rate for the class of traffic involved. There are several other shippers of treasure located on the west coast whom we would like to go after in case we find that we can compete on even terms with our surface competitors. One of them, as you may know, is the South American Development Corporation, who are primarily gold miners. Owing to their peculiar geographical location, it is possible that a chance exists for us to bring their produce from the mines, at least as far as the coast, and possibly all the way through to final destination if our rates compare in any way favorably with those of the competition. As matters now stand, our carriage rates are based almost entirely on a "distance haul" basis, whereas ocean freights pay very little, if any, attention to this point. Therefore, while water freights from Ecuador might be the same as those obtaining from Colombian ports, ours would be quite different; though, as a matter of fact, we believe we could actually accomplish carriage from Ecuador to New York at a cost to ourselves of little, if any more, than our cost Buenaventura/New York.

PAN AMERICAN-GRACE AIRWAYS, INC.

G.P. Smith

GPS AW

[fol. 776]

GOVERNMENT'S EXHIBIT 351

4788 PRIVATE

PLATINUM SHIPMENTS

NEW YORK
January 20, 1936

Panagra
CRISTOBAL

We refer to your recent letters on the subject of platinum shipments, and thank you for the information supplied which has enabled us thoroughly to study the entire problem.

We agree with you that it is most important that we make a determined drive to secure this business. It is believed that the contents of this letter will enable you to obtain results.

Attached herewith you will find cost estimates for air/rail, all air and steamer shipments of platinum proceeding from Buenaventura to New York. These figures are based upon values, weights and number of packages making up the hypothetical shipments mentioned in the last paragraph of your Private letter No. 4584.

A study of comparative costs indicates that air/rail platinum shipments between Buenaventura and New York can be handled more economically and in less elapsed time at our standard rates than if the ores were shipped by [fol. 777] steamer, with the possible exception of lots valued at over $250,000. The accumulation of such a large amount is unquestionably a costly proposition for the shipper, because of interest and insurance charges incurred while the ores are being held in the warehouse awaiting shipment. It is entirely possible that our costs are lower even on $250,000 shipments.

It is evident, therefore, that our present standard rates are decidedly competitive, and we are relying upon you and upon our agents at Buenaventura thoroughly to explain to all interested parties the definite advantages of

air rail shipments. It should be an easy matter to make a sale on the strength of lower costs and speedier transportation. We know from your recent correspondence on this subject that you will spare no effort to overcome any difficulties which might arise and to secure the business starting with the next available lot.

. . . .

G. Vidal

GV:G
cc Buenaventura
SAGO

[fol. 779]

GOVERNMENT'S EXHIBIT 352

PRIVATE 4846

GOLD/PLATINUM
SHIPMENTS

NEW YORK
February 7, 1936

Panagra
CRISTOBAL

. . .

In summary it would appear that, while the platinum shipments out of Buenaventura can be secured by Panagra at competitive rates, gold shipments out of Guayaquil by air rail would be rather expensive as compared with steamer shipments, even after taking into account the interest saving because of faster transportation and after allowing for the annual discounts based upon accumulated freight charges between Guayaquil and Miami.

We have no intention of going into a cut-rate war with the steamship companies and we recommend that you attempt to secure frequent gold shipments of smaller sizes. These can be handled at competitive rates by air/rail.

G. Vidal

GV:G
cc SAGO

[fol. 780]

GOVERNMENT'S EXHIBIT 353

Letter No. 4
(H.J.R. Panagra Series)

New York, February 10, 1936

J. T. Kirby, Esq.,
Lima, Peru

Dear Kirby:

I am particularly interested in what you say in your No.11317 (A.G.Series) with reference to the 40-passenger Douglases. I am a bit at a loss, however, to know the reasons for the feeling both you and Valverde have that we should go into this business and as the matter is of great importance to us, I would be glad if you would let me have your considered opinion in detail. I will have a chance to discuss it with Valverde when he is here.

* * *

Unless local traffic in the various divisions could be counted on to fill the planes, we would be thrown back on international traffic, including tourist business. Assuming we had capacity in the northern division equal to the new Doublases we would have with those planes accommodations for 4160 passengers a year, each way. Grace Line in the "A" and "B" services at present has accommodations for 7000 passengers per year, each way. During the last boom period when Grace Line was operating weekly services and PSNC and CSAV were also operating, combined passenger accommodations were 8000 passengers per year, each way. I assume that these figures more or less reflect the extent of the first class international passenger movement at present and during the last period of good [fol. 781] times. I realize that this does not include the movement by coastal vessels but I should think our rates would hardly enable us to hope to get much of this traffic. The question then is whether there is a good possibility of our getting enough of this steamer movement to fill the planes or whether increase in the movement is likely to be sufficient to fill them. Mr. Trippe counts heavily on the

latter factor as he feels that this improved equipment will develop a large volume of tourist business. Our experience with the "Santa Lucia" has, I am bound to say, given a good deal of support to this idea but I still somehow have the feeling that a large percentage of the tourists make the trip because of the time on the steamer and would not be interested in making it by air. I would not from the foregoing be understood as meaning that past experience constitutes an indication of the maximum traffic possibilities. That is not my opinion at all. I believe that traffic will increase. The question is rather as to the rate of increase which we may reasonably anticipate, and looking back over a number of years I think the record shows that this increase has been gradual, with occasional sharp ups and downs, and the question is whether it is not likely to continue more or less in this way rather than by any dramatic permanent increase. In other words, it looks to me as if our next step might logically be a plan with capacity for 20 or 25 passengers with a jump to 40 following after that rather than coming now.

[fol. 782] I realize that all the foregoing will sound very negative but it is not my intention to approach the matter in that way. I would really like to see our way clear to go ahead with this equipment. Unless we join the syndicate owing to the way it is being set up, we may find it very difficult to get this equipment three or four years from now if we should want it and it may even be that if development in this country follows along the lines of these large units, we may find it extremely difficult to get any suitable equipment between that size and our present DC2s. In pointing out the above considerations I have done so primarily with the idea of eliciting your answers to these objections if you feel that the objections are not well founded. I would be glad to find sound answers which would make it possible for us to go into the syndicate. I do not, however, without very compelling reasons to the contrary, want to find ourselves in the position of having taken on a "Normandie" or a "Queen Mary", much less a whole fleet of them.

Very truly yours,

(Sgd.) Howard J. Rose

[fol. 783]

GOVERNMENT'S EXHIBIT 354

C
O
P
Y

#11103
(J.E.S. Series)

Guayaquil, February 22, 1936.

A. Garni, Esq.
NEW YORK.

Dear Mr. Garni:

GOLD SHIPMENTS FROM ECUADOR

During 1935 the Banco Central del Ecuador effected four shipments of gold bars to New York, all of which moved on the Grace Line, who received revenue therefrom amounting to over $15,000 USC. Panagra have recently been working very quietly on this business and a few days ago their traffic representative from Cristobal proceeded to Quito to get in touch with the management of the Banco Central there. A comparison of the Panagra rates for this gold movement shows that these are $238.16 cheaper than the steamer rates for a shipment valued at $346,000, which was the amount of the last shipment per Grace vessel.

* * *

In view of this saving, the Banco Central have expressed their intention of making their next gold shipment (sometime next week) by Panagra plane.

I have recalled to the Banco Central management in Guayaquil their experience with us on all their gold shipments last year. Practically all these were made in the most private and confidential circumstances, and many times I have been called from my home at all hours of the night, sometimes having worked from 11 pm until 2 am sending cables effecting insurance, etc. for their a/c. They feel, therefore, very appreciative to the Guayaquil Agencies Company for the services thus rendered.

I feel that to have Grace Line lose this business to Panagra after having handled it successfully for so long, would be most unfair. In addition, I have in mind the fact that when shipments are made on Grace Line steamers the whole of the revenue remains in the organization, which is not the case should Panagra transport the gold. After the Panair's proportion of the traffic is deducted, I believe that the Grace share of the revenue would only amount to some 20% of the total freight, since I presume Panagra would [fol. 784] take the shipment to the Canal, at which point it would be turned over to Panair as far as Miami, and from Miami to destination some other Line would take a hand in the business. Therefore, on the run Guayaquil/Cristobal Panagra would, I presume, receive say 40% of the total freight paid, and only one half of that amount would remain with the Grace organization.

* * *

The Banco Central would be interested in having their shipments continue to be made on Grace Line vessels, provided freight rates could be shaded to meet the difference between plane and steamer transportation. They state that in order to make this worth while to them the rates would have to be rather lower than those of Panagra. As you will see from the comparison given, shipments on Panagra pay a much higher rate of insurance, although the Banco Central inform us that they could probably get this rate very much reduced, which would increase the difference in favour of Panagra transportation. It is noteworthy that the actual freight rates of Panagra are some $500 lower on the shipment last made valued at $346,000 than the steamer rates, while an additional 350.00 would have been saved in interest, so that any reduction in insurance rates would make the difference a very large one indeed.

If you agree with my views that Grace Line should retain this movement because of the benefits derived by the organization therefrom, I would appreciate your kindly passing the information on to the Grace Line and have them take steps to reduce freights immediately, preferably through the Conference, or if this is impossible due to the need to make an immediate decision in order to obtain the

next shipment which the Banco Central will shortly make, then if you consider it advisable for the Grace Line to authorize me to make a confidential refund on freights to the Banco Central equal to the difference between plane and steamer rates, I would appreciate prompt advices so that no time may be lost in assuring the Grace Line of this revenue.

Very truly yours,

c.c. Mr. J. E. Zalles (sgd) MANUEL HOLGUIN

[fol. 785]

GOVERNMENT'S EXHIBIT 355

C
O
P
Y

holguinzal 87 from HOLGUIN (guayaquil) march 4th 1936
1150 am

1 87: our letter
2 11103
gold shipment from ecuador:
3 first shipment
4 amounting to
5 81,000 dollars us currency
6 expected to
7 move
8 pan american grace airways
9 march 6th,
i.e. friday march 6th
10 transport
11 charge
12 567 dollars us currency
13 as compared with
14 grace line
15 1,030 dollars us currency

Mr. Garni
Grace Line
Mr Cogswell
Insurance

[fol. 786]

GOVERNMENT'S EXHIBIT 356

No. 11081
(JEZ SERIES)

Air mail 3.9
Arrive 3.12

New York, March 9, 1936.

M. Holguin, Esq.,

GUAYAQUIL, Ecuador.

Dear Holguin:

GOLD SHIPMENTS FROM ECUADOR

Your No. 11103 (JEZ series).

In the matter of placing maritime freight rates on gold shipments from Ecuador on a competitive basis with those quoted by Panagra, the Grace Line have been giving this matter their study and cabled you with their No. 71 and will be writing you separately with their views on the subject.

In the first page of your letter and taking a shipment valued at $346,000. as a criterion, I notice that even under existing freight rates the shipment of gold by steamer works out at a little more than $100.00 cheaper than by air (exclusive of interest calculation). I also notice that in calculating interest advantage you figure on the basis of 6% per annum for the five days by which transit is reduced through the use of the air service. I am very interested in knowing where the Banco Central del Ecuador can earn 6% on gold deposits in New York, unless the shipment of the gold is in liquidation of an indebtedness involving a 6% interest payment, and for this reason cabled you with our No. 72 as follows:

"72—YOUR LETTER 11103 PAGE 1 ENTIRE DIFFERENCE DUE TO INTEREST CALCULATION AND UNLESS GOLD SHIPPED IN LIQUIDATION OF A 6% DEBT WE DOUBT GOLD WILL EARN ANY INTEREST VERIFY AND ADVISE"

From a net revenue point of view, there is, of course, an added advantage to the Grace organization through the retaining of these shipments for the Grace Line, but I do not consider that as a general rule, we can take a 6% interest calculation as a basis for the adjustment of rates, even though in this particular case, there may be some reason for using the 6% rate.

Very truly yours,

(Signed) A. Garay

[fol. 787]

GOVERNMENT'S EXHIBIT 357

Copy

#11105 Guayaquil, March 9, 1936.

J. E. Zalles, Esq.
NEW YORK.

Dear Mr. Zalles:

GOLD SHIPMENTS

I duly received your Balcoff cable #72 in which you pointed out that the entire difference is due to interest calculation and that unless gold is shipped in liquidation of a 6% debt you doubted whether gold would earn any interest. I replied to this to the effect that while this was true on the shipment which we gave to you as an example in my #11103, because of its size and weight, on shipments of lower valuation there was a marked difference in Panagra's favour on transport charges alone, viz. without counting insurance or interest charges.

For instance, I am attaching herewith, for your information, a copy of waybill covering a shipment made last week via Panagra on 189 kilos of gold valued at $78,000. While the actual transport charges via Panagra amount to under $600, you will see that by calculating the shipment via Grace Line at the rates listed at the bottom of the second page of my letter #11103, that Grace Line transport charges alone would amount to about $1,000, and it was just this great difference which prompted the Banco Cen

tral to respond to Panagra's overtures. They are very much inclined to reckon on these actual transport charges without taking into consideration the comparatively high rate of insurance on air express shipments, as they believe they can get these down to the level of the insurance levied on shipments via steamer.

I am very pleased, therefore, that you have since authorized me to accept the gold shipments for Grace Line at the standard rate of [illegible] of 1% ad valorem, with similar charges as have previously been assessed, and had this rate been applied on the shipment covered by enclosed Panagra airbill, actual transport charges would have been [illegible] $5060 as against Panagra's actual charges of more or less the same amount. I am very glad you have authorized me to go ahead and close a contract at the fractional rate named, and although I have not yet succeeded in having the contract signed, as the Bank officials here have found it necessary to take up the matter through rather drawn out channels in Quito, I am sure that we shall be able to obtain all future shipments for the Grace Line. Many thanks for your cooperation towards this end.

Very truly yours,

(sgd) Manuel Holguin.

[fol. 788]

Government's Exhibit 358

4780

PRIVATE

PLATINUM SHIPMENTS

CRISTOBAL
March 10, 1936.

Panagra—New York

We are now about ready to begin negotiations with the Choco-Pacifico people for the handling of their platinum movement between Buenaventura and New York but, in view of the contents of your letter No. 4902-Private, feel that, in fairness to our prospective client, we must hold off

until we have something more definite to offer. We believe it can readily be appreciated that shippers would be placed at a very real disadvantage in coming to any agreement with us for a movement such as this Choco-Pacifico platinum if they could not be given sufficient *exact* data beforehand to enable them to determine, before commencing shipments, what the final cost of the movement would come to. For example, at present rates, and with a predictable rebate, Choco might determine that movement by air would be more economical than by other means. Later on, because of an increased air freight rate, the reverse could easily be true, even taking the rebate into consideration, and Choco would then feel bound to revert to water shipments. If this happened to be the case, the predicted rebate due on shipments made by air, but not received by Choco at the time shipment was made, would be materially altered. We hardly believe Choco or anybody else would be willing to give any serious consideration to any such grab-bag proposition, and are convinced that the only way we can hope for any progress in dealing with such important shippers will be to follow the lead of our surface competitors [fol. 789] and offer freighting agreements based on firm prices, unalterable during the life of the agreement. We feel sure that there is nothing unorthodox in making the above suggestion as we have convinced ourselves that it is common practice with such an established firm as the Grace Line, Inc., by their own admittance.

Having had no experience in dealing with the states on-carriers, we hesitate to make any suggestions as to the manner in which our case might be best presented to them. However, we certainly feel that the least we can ask is that they co-operate with us to the extent of offering a firm price for their services for a year, at least.

PAN AMERICAN-GRACE AIRWAYS, INC.
Original
Signed by G. P. SMITH
G. P. Smith

GPS AW
cc HRH

[fol. 790]

GOVERNMENT'S EXHIBIT 359

No. 11,091
(JEZ SERIES)

Air Mail 3.23
Arrive 3.26

NEW YORK, March 21, 1936.

Manuel Holguin, Esquire.,
GUAYAQUIL, Ecuador.

Dear Holguin:

GOLD SHIPMENTS

Your letter No. 11,105.

I am glad to note that with the adjustment of the maritime rate on gold you expect to be able to secure all of the future shipments of the Banco Central via the Grace Line.

In the second paragraph of your letter you indicate that the bank is somewhat inclined to disregard the high rate of insurance on air express and that they expect they will be able to bring the insurance rate by air down to the level of that charged for ocean transport.

In checking this matter over here, I am inclined to believe that the rate for air transport of 30¢ per $100.00 is very reasonable, and it does not seem probable that the Underwriters will take this risk for any less. It seems somewhat illogical that the Bank should disregard a difference in insurance rate, and on the other hand figure closely on interest for the difference in time between ocean and air transit.

While on the subject of interest I would advise you that the Underwriters will only give the 30¢ rate by air provided that the gold is shipped over land routes. In other words, from Cristobal gold would have to be carried by the Central American route and this makes the period of transit 5 days, rather than 4, as you figured in your letter No. 11,103. The difference between ocean transit 10 days and air transit 5 days on the basis of the very low interest

rates prevailing here, would make the advantage of air travel, from an interest point of view, practically negligible, and certainly not sufficient to offset the difference in insurance.

Very truly yours,

(signed) A. GARNI

[fol. 791]

GOVERNMENT'S EXHIBIT 360

Private
4972

GOLD SHIPMENTS
CORRESPONDENCE

NEW YORK,
March 26, 1936

Panama Agencies Co.,
Agents for Panagra,
CRISTOBAL.

* * * * * *

As stated previously, our present rates on gold shipments to the country compare favorably with those of steamship lines on small lot shipments and we are confident that your splendid efforts will be successful in obtaining a good volume of such business at our established tariffs. We cannot afford to enter into a cut-rate war with steamship companies for this business.

c. c. SAGO

G. Vidal

OCB:MD

[fol. 792]

GOVERNMENT'S EXHIBIT 361

Letter No. 1

(W.J.R. Panagra Series)

New York, March 30, 1936

M. Holguin, Esq.,
Guayaquil, Ecuador

Dear Holguin:

My attention has been called to correspondence with reference to recent gold shipments from Ecuador.

This happens to be one of the few instances which have arisen involving a conflict of interest between Panagra and the Grace Line. I recognize that in this situation your position as representing both concerns is a difficult one. When such questions arise, however, they cannot be resolved on the basis of relative stock ownership and the interests of Panagra subordinated because our stock interest in that company is only 50%. If this were to be the test we would be automatically disqualified from acting as Panagra's representative.

I do not mean by this that the interests of Grace Line are to be subordinated to those of Panagra. Their representation is also entitled to be properly served. What I do mean, however, is that where a question of conflict of interest is presented, it is incumbent on you as representative of both companies to occupy a neutral position, reporting the facts to the corresponding principals and letting them decide what action is to be taken.

I am bringing this matter to your particular attention as it is one of the first instances of the kind which has arisen and I want to make sure, for your guidance, that our position is fully understood.

Very truly yours,

(Sgd.) HAROLD J. ROE.

[fol. 793]

GOVERNMENT'S EXHIBIT 362

NEW YORK COPY

PERSONAL

CRISTOBAL
June 4, 1936.

Mr. H. R. Harris,
Cristobal, C. Z.

Dear Mr. Harris:

I would enormously appreciate it if you could find it possible to bring up the subject in the attached letter in any conversation in which Mr. Iglehart and Mr. Holguin may participate.

We have been obtaining fine cooperation from Guayaquil, but the matter in question has been held up on two counts:

First—Mr. Holguin is holding up decision until he knows definitely whether Guayaquil will continue as an overnight stop. I have pointed out to him that this is entirely immaterial as, whether Guayaquil remains as such or not, we still need some one dedicated to getting business for us.

Second—In an indefinite manner I have understood that a question of policy is involved, more or less "How can someone go out and drag in business for Panagra, when no one is doing so for Grace Line". I believe this is the more important of the two reasons; and in view of Mr. Iglehart's expressed goodwill you may be able to get us over this hurdle.

A. E. Sinclair

AES/JW

[fol. 794]

GOVERNMENT'S EXHIBIT 363

SUBJECT: M. HOLGUIN—TRANSPORTATION

LIMA
July 16, 1936.

Mr. J. D. MacGregor,
NEW YORK.

Attached herewith please find copy of a letter from Mr. Sinclair to Mr. Beatty, together with Beatty's remarks and also Van's remarks. I am forwarding this matter to you for action since I feel that this is a policy question which I would rather put up to you.

In the first place, while I feel that Holguin has done a great deal for Panagra in many ways, at the same time I feel that he definitely has steered the Ecuadorean gold his shipment from Panagra to the Grace Line, and in ~~such~~ dual capacity has never been prone to give Panagra any breaks which he could give to Grace. In the second place, I have forwarded you a memorandum from Van pointing out that the Grace agency in Guayaquil is apparently doing some tricks in connection with exchange transactions to and from sucres in connection with advances to our employees. In the third place, I feel that if we give the Grace manager in Guayaquil a free pass we can't very gracefully refuse to give a free pass to other Grace managers from time to time, which might not be desirable.

I suggest that you advise Cristobal direct in regard to this matter, sending me a copy of your letter.

/s/ H. R. HARRIS
H. R. Harris

HRH:KW
CC—2nd airmail

[fol. 795]

GOVERNMENT'S EXHIBIT 364

(TRANSLATION)

PERSONAL

Guayaquil, August 24, 1936

Mr. A. E. Sinclair
Cristobal

Dear Sinclair:

The fears which I have so often expressed to you have finally materialized; today I was called to the Manager's office and severely reprooved because of my atitude towards Guayaquil Agencies.

You have no idea how badly I feel, having been so completely absorbed by my work, practically tearing myself apart in an effort to find something new and to experiment with some new idea—I have never forgotten my work even at home or in the street—just continually thinking in terms of my job and nevertheless getting nowhere.

I have never found anything but misunderstanding and I don't know but it seems to me that everything related to Panagra is looked upon with a jaundiced eye, they are jealous of it and I cannot understand why they can't be more broadminded and permit each Company to carry about its own business in the best way possible.

As you can very well understand my situation is a most difficult one even though Mr. Kolditz has told me that based on reports he has had about me in the short time he has been in this Office, he had formed a good opinion of me and it is because of this that he is not now doing what he should do, though that would be his duty, and it probably would be different after New York writes him about it—in other words, I can state that I am in the dog house.

If all this came about because I do not perform my duties; because of any misconduct on my part, etc., well and good, but since it is only because of the very contrary, because I am, as someone said jokingly, too conscientious, that really hurts.

The blame for this is mine, and I say mine because it may result from my having tried to give another person something of the same full confidence which I have placed [fol. 796] in you; the reason for this; my great interest in my work; my decision to try to solve my problem as quickly as possible, my belief that because you were not here to serve as my adviser I would therefore need someone else with mature judgment to help me—and so it was that I find myself in my present jam because of a mistake in choosing that person, no one else, but Mr. J. M. Van Law.

If I could have only imagined for even a moment that Mr. Van Law could be so tactless! When I got to the Airport last Friday I asked him if I could talk to him a little later that afternoon, and he was very agreeable so we made a date for 9 o'clock when I would go to see him at the Grand Hotel where he was stopping; and this I did at the time set whereupon he listened to my story and asked me to write to Cristobal regarding the matters I had mentioned and other things listed in a memorandum I handed to him during this meeting.

This memorandum was simply a sheet of paper on which, when returning from the Airport, I had made a few notes regarding things I wanted to discuss with him and that perhaps he might be able to settle that very night so that I might forget some of my problems. Among the ideas and suggestions listed there was: Why couldn't we print some of the Panagra advertisements, our tariffs to the more important cities (passenger fares) in the same way that Grace does, in view of the fact that some of our fares for these

points are lower than theirs—this was more or less the way I presented the matter.

Van Law took the memorandum and I left shortly thereafter—on Saturday I did not see Kolditz, and so it was only this morning that he sent for me and that I talked to him and you can hardly imagine my surprise when he charged me "how is it that you who are an employee of Guayaquil Agencies and not of Panagra, have begun to work against this Office—how can you suggest plans that are against our interest, such as the proposal to print the tariffs and passenger fares on airplanes in comparison to steamships, in the way you have done in a memo you have given to Mr. Van Law, *who has turned it over to me!*"

[fol. 797] As I already told you, I just cannot believe that this has happened—perhaps Mr. Van Law just did not understand the importance of all this and so turned over my paper to Mr. Kolditz. Well, the fat is in the fire and what I have so long feared would happen has happened—and what can I do about it?

Among the things which they told me is that they are going to write to New York complaining about you for wiring to me directly and not to the Guayaquil Agencies—the same goes for Lima.

As was to be accepted I have no friend on my side at Guayaquil, I am completely alone and I don't know what to do now. Do you think I should ask them to be transferred to another department? I would have against me the whole management, MacLean and Arrarte—the latter has a very special dislike for Panagra, although I cannot understand why. It is because of this that they loathe me, just because I don't agree with them on this.

Well, please don't speak of this to anyone and I won't say anything about it to Van Law when he comes back—all

the "staff offices" will go to meet him then; I wouldn't be surprised that this were not the last letter you get from me as an employee of Guayaquil Agencies, although I shall always be your friend.

I hope the situation isn't as serious as it seems to me now and in the assurance that you will be able to help me as well as to show me how best to carry on, I am, as always,

Your sincere friend,

(signed) G. JIMENEZ ARRARTE

[fol. 798]

GOVERNMENT'S EXHIBIT 365

PAN AMERICAN-GRACE AIRWAYS, Inc.
135 E. 42nd St. New York, N. Y.

Letter No.

Subject:

CRISTOBAL
September 19, 1936

Mr. G. Vidal
NEW YORK

Dear Vidal:

Incidentally, I do not see very much good in continuing our intensive efforts to have the Panair-Panagra schedules and other literature distributed to the Grace Liners. Muhlfeld handed a number of schedules to the purser on the SANTA ROSA. The schedules were placed in the rack used for steamship folders, so I took occasion to ask for a copy of the Panair schedule, and the assistant purser fished for one, which he found at the bottom of his desk drawer, and handed it to me. I asked him why a supply was not in the rack. At that time the purser came up and said:

"Of course, they should be in the rack", and a dozen were placed there. The next day they were gone again. In the evening I went to the Captain's cabin for cocktails, and facetiously asked him why he had given orders to remove the folders. The Captain flatly replied: "Who do you think I am working for—the steamer company or the airline". I think there is no question that the open animosity of Ed. Ford, President of the Grace Line, is responsible for this attitude on the part of the steamer personnel. I think you should not retell this conversation as I have written it to you, but it would be in order, when next you see Cogswell or Roig, to state I had written you that no airline folders were in the SANTA ROSA folder-rack. Please have a supply of folders sent to the other Grace boats as they arrive in New York, and I shall ask one of our men here to look at the rack and see whether he can find any there. I think we shall have to follow out a plan of just attrition, on the same theory of rock corrosion through the constant dripping of water. If we make a fight about it we will simply increase the opposition.

* * * *

Kind regards.

J. D. MacGregor

[fol. 799]

GOVERNMENT'S EXHIBIT 366

NY 13

ALL AIR TOUR—PANAGRA.

SANTIAGO,
October 7, 1936.

Mr. G. Vidal,
NEW YORK.

I am in receipt of your JDM #15 of September 28th, and am glad to note that the matter of an all air—all expense tour is approaching a definite conclusion.

It is rather strange and is, of course, one of the handicaps with which we have to contend, that the Grace Directors themselves do not seem to be in accord concerning these tours. Possibly this arises from the fact that certain of them are more closely aligned with the Grace Line than others.

In connection with Mr. Roig's suggestion that we submit a similar tour involving steamer transportation to and from the Canal Zone, it would seem to me that we are in danger of falling between the nether and the hither millstone, by having a multiplicity of tours rather than settling on one specific tour and pushing it in every way we possibly can.

J. D. MacGregor

JDM:EG
cc: HRH

[fol. 800]

GOVERNMENT'S EXHIBIT 367

CTC CHILE EXPLORATION CO.
ROUND TRIP DISCOUNT STEAMER AIR-PASSAGE

LIMA, April 10th, 1937.

Panagra, New York

Att. Mr. J. D. MacGregor:

We have learned that the Grace Line are granting 5% discount to employees of the Chile Exploration Co. and it is my understanding that they grant similar discounts to many other important American business firms in South America.

I believe we should also give due consideration to this as we are in many instances competing with other surface transportation and naturally we should take into account not only their tariffs, but also special discounts, such as Grace Line are granting.

We would like to have your views on the above.

Original
signed by J. E. MUHLFELD

cc HRH GV
2nd airmail
RVEC—NY

JEM/ES

[fol. 801]

GOVERNMENT'S EXHIBIT 368

PASSENGER TARIFFS

LIMA
July 19, 1937

MEMORANDUM

Mr. J. E. Muhlfeld,
S.A.G.O.

As the Grace Line, and apparently other steamship companies, have and are revising their passenger rates upwardly because of increased operating costs, and as our own costs are also on the increase, it may well be that this would be an opportune moment for Panagra to raise the prevailing passenger rates throughout the line.

Regardless of the merits of the above possibility, I would appreciate your ideas in writing as to what upward rate adjustment could be made if it were decided to take action at this time intended to offset the higher operating costs.

It is my idea that the present through rate between Miami and Buenos Aires could perhaps be raised from $500. to $600., an increase of 20%. Other tariffs could be adjusted more or less in the same proportion by bearing in mind competitive and pay load conditions over the various sections of the line.

I would appreciate your written report on the above not later than August first next.

G. Vidal

GV:KBW

cc—JDM
HRH

[fol. 802]

GOVERNMENT'S EXHIBIT 369

J.D.M. COPY

11313

PRIVATE AND CONFIDENTIAL

PASSENGER RATES

Lima, August 3rd, 1937.

Panagra, Cristobal
Panagra, Lima
Grace y Cia., Santiago
W. R. Grace & Co., La Paz
Pan American Arg. S. A., Buenos Aires

Attached please find a rate sheet showing on the lower line existing rates between Los Angeles, Brownsville, Miami and all points served by Panagra.

By return private airmail, will the *manager* of your agency advise us specifically by referring to each individual rate whether in your honest and frank opinion you believe traffic will stand the increases as shown on the top line and which represent a general 20% increase over existing tariffs.

Bear in mind that, because of general improvement in business throughout the world and increase in operating costs, other surface carriers have increased their rates on both the east and west coast of South America and that ocean freights and passenger rates throughout the world are on a general increase; that between certain sections of our line we are shutting out business, even during the seasonal low months of May, June and July; that next October we will operate DC-3 equipment probably between Buenos Aires and Cali, and extra sections between Cali and Cristobal; that traffic will probably increase approximately 28 to 30% this coming year over last year; that we still depend about 98% upon commercial travel although we are just commencing to obtain pleasure and tourist travel; and any other pertinent facts of a local or other nature which may affect traffic movement in the present and near future.

Will you please indicate in figures the highest rates which you believe the traffic will bear after taking into consideration the above factors or any additional facts affecting your own local picture.

• • •

J. E. Muhlfeld

Encl.
cc: JDM, HRH, Cali, Buenaventura, Guayaquil, Talara, Arequipa Antofagasta, Mendoza, Cordoba, Montevideo, Div. Supt. Stgo. T—GU, R.
JEM/ES

[fol. 803]

GOVERNMENT'S EXHIBIT 370

NEW YORK COPY

Private and Confidential

PASSENGER RATES 8038

August 17th, 1937

Mr. John E. Muhlfeld
S A G O
Lima

• • •

We agree thoroughly with all of the factors considered in your letter which affect the traffic and rate structure and in view of present existing conditions we too, are of the opinion that you are justified in raising the fares and are just as confident that the traffic will bear the increase.

The steamer fares we are using for comparison are minimum first class on vessels that appear to be your strongest competitors for passengers to these destinations, with the possible exception of Talara, and are quoted to the port nearest the destinations of the planes.

The proposed rates to Lima and Cristobal appear to us to be fair and reasonable and we consider them very much in order. Talara, we believe would stand considerable increase over what you suggest, say $35.00. The rate to Buenaventura is what we think of as part fare to Cali

and other interior points of Colombia because obviously most of the travellers are enroute to these places. Now that you have the direct service to Cali we believe that the rate could safely be increased to at least $90.00. Please, consider here not only the saving in time over other means of travel, which is tremendous, but also the difficult and sometimes uncomfortable travel encountered in the alternative routes. The Miami/New York and Santiago rates which you propose we consider in order as they are. While they are much higher proportionately over steamer fares than your rates to other points, we believe that the trip is sufficiently long and the time saved sufficiently great to warrant the higher rate. Of course, we understand that your rate affects only a minor proportion of the through rate to Miami/New York.

We trust that the foregoing observations will be of interest to you and we await news of your action.

pp PAN AMERICAN GRACE AIRWAYS INC
pp THE GUAYAQUIL AGENCIES COMPANY
A. F. MATA

cc: HRH
NY
CRISTOBAL

[fol. 804]

GOVERNMENT'S EXHIBIT 371

PAN AMERICAN-GRACE AIRWAYS, INC.

Private 8964

Subject: U. S. CURRENCY PASSENGER TARIFFS

LIMA, September 17th, 1937.

Panagra, New York
Att. Mr. J. D. MacGregor:

Panagra, New York
Att. Mr. Vidal:
(Ref. your memo of
July 19 to JEM.)

Mr. H. R. Harris,
SAGO, Lima.

At Mr. Vidal's suggestion the undersigned, with the assistance of Messrs. Zalles and Van Law, has studied our present US Currency passenger tariffs to determine whether they should be raised. The conclusion to be drawn, as will be seen from the analysis given below, is that the only section of our line which can stand a raise in tariffs is that comprised between Cristobal and Lima. All other tariffs should not be raised because of competition from other air lines and surface means of transportation.

* * *

In each group consideration has been given to (1) competitive conditions offered by other airlines and surface means of transportation, (2) carrying capacity of our schedules at present and in the near future, (3) political considerations, (4) potential volume of traffic, (5) type of traffic, business or pleasure, and (6) inherent advantages of air travel over other means of transportation, in order to arrive at the highest possible fare under the circumstances in each case or in other words to determine what the traffic will bear.

* * *

1-b) *Through Fares from Los Angeles and Brownsville*:

Steamer fares from Los Angeles to West Coast ports compared to the air tariff indicate that a raise would be in order. This raise is obtained by adding the present Western Division fares to Cristobal to the proposed higher fares from Cristobal south. A similar raise is likewise obtained in the Brownsville through fares, which would seem warranted because of the comparatively small movement involved.

[fol. 805]

2—*Northern Division Tariffs*:

It is felt that tariffs in this sector can be raised because (1) steamer rate between points in this sector are very close to present airline rates, (2) it is a bottleneck in our line since the carrying capacity is very limited and (3) there is hardly any competition from other airlines.

• • • •

4—*Lima-Santiago Tariff*:

It is considered that this important fare cannot be raised because (1) it is at present 37% over the comparative steamer fare, (2) the competition of the LAW-Faucett combination, and (3) traffic over this section has not been heavy. Similarly the Arequipa-Santiago fare was not raised. The through tariffs to Santiago from all points north of Lima are set at the sum of the fares to Lima.

5—*Santiago-Buenos Aires Tariff*:

The Santiago-Buenos Aires tariff has been left at $109.-USCy, but it must be borne in mind that Air France and Sindicato Condor have already advised they are lowering this fare effective October 1, 1937, and that if they actually do so, we may have to follow suit. With few exceptions, through fares to Buenos Aires are the fares to Santiago plus the Santiago-Buenos Aires fare and will therefore reflect any reductions in the latter fare.

• • • •

9—*U. S. Currency Tariffs With Peru*:

As Mr. A. B. Shea's recommendation that the present Panagra *soles* tariffs be raised 20% would place them above the present U. S. currency tariffs at present rates of exchange, the proposed soles tariffs have been converted to dollars at an exchange rate of 4:1. This would place the dollar tariffs and the local currency tariffs very close at present exchange rates and any future exchange fluctuations would merely determine whether the local currency or dollar tariffs would be effective in practice. The actual raise in U. S. currency tariffs under present conditions ranges from 6% to 8%.

[fol. 806] In view of the continuous passenger movement between Lima and Guayaquil by the combination Faucett to Talara and Panagra to Guayaquil, the fare Talara-Guayaquil was raised to $45.-USCy., which also brought this fare more in line with comparative steamer fares.

As noted above the Lima-Guayaquil fare was not raised in same proportion as the Lima-Cristobal fare because of this travel movement, however, it is also recommended that Aerovias be authorized to quote an inter-line fare AVP-Panagra equal to the sum of Faucett's fare to Talara plus Panagra's fare Talara-Guayaquil so as to get at least a share of this traffic for Aerovias.

* * *

Respectfully,

J. E. Muhlfeld

Original delivered to
Mr. MacGregor in Lima.
cc 2nd airmail
T - R

RZZ/ES

Encl.

[fol. 807]

GOVERNMENT'S EXHIBIT 372

PRIVATE 10146

INCREASED PASSENGER TARIFFS

NEW YORK
September 24, 1937

SAGO
LIMA

ATTENTION: Mr. J. E. Muhlfeld

Receipt is acknowledged of your Private letter 8964 which is receiving our careful attention. Its contents are also under study by Panair's Traffic Department.

Yesterday we cabled you as follows (Palmetto 58):

"YOUR LETTER 8964 PANAIR PLANNING ESTABLISH $550 USCY MIAMI BUENOS AIRES THROUGH RATE. INCREASE OTHER RATES FROM 5% to 25% EFFECTIVE NOVEMBER 1st. FORWARD PROMPTLY ADDITIONAL RECOMMENDATIONS BASED ON FOREGOING."

You will note that Panair has also come to the conclusion that rising operating costs and the higher passenger rates being established by steamship lines justify similar action by the System.

Inasmuch as the table attached to your Private letter 8964 is based upon a through rate of $500. between Miami and Buenos Aires and as Panair is planning to establish a $550. rate between those two points, it is entirely possible that you may want to modify your recommendations in some respects.

As stated in our cable, Panair is planning to raise other rates from 5% to 25%, leaving some unchanged where an increase does not appear justified at this time.

G. Vidal

cc JDMacGregor

[fol. 808]

GOVERNMENT'S EXHIBIT 373

No 1

Dear Mf. Iglehart:—

FARE INCREASES

As Muhlfeld is leaving on tomorrow's plane I have had a wholly inadequate time to go over traffic matters with him and most of them will have to await his return. I have, however, spent today with him mostly on rates. He will be taking these up in New York and will I think need some encouragement to get them up enough. Attached memo touches some of the high spots.

I think he is unduly concerned about getting the air rates too much over steamer rates. In making his comparisons, moreover, he takes as the steamer the minimum on the Clara etc. which I think gets him off to too low a start. He feels, however, that with the last increase Grace Line fares are already losing the line business and he is fearful of a similar result if air rates are stepped up too much. Here again I think he may be too pessimistic. I mention these things because you will be seeing him and can doubtless buck him up a bit as I have tried to do.

The whole question is, of course, a difficult one and I shall continue to work on it and let you know any further ideas which may develop.

I think it is fair to say that Muhlfeld has gone about this job in a pretty intelligent way. He has had the matter up both personally and by letter with all our people and [fol. 809] his schedule seems to be in line with their recommendations.

Very sincerely,

(sig) HAROLD J. ROE

Lima 28 Sept 37
-1662
-Enc.

[fol. 810]

PAN AMERICAN GRACE AIRWAYS INC.

MEMORANDUM

[Handwritten]
Enclosed with
Letter
No. 1

INCREASE IN RATES

Mr. Muhlfeld has prepared a new rate schedule over the whole line which starts with the $50.00 increase in the through rate Miami to Buenos Aires and makes corresponding increases to a number of way points and in way-to-way rates.

The following may be noted with reference to the proposed schedule. The changes have been made after extended studies by the Panagra Traffic Department in consultation with Grace and other agents.

1. It will be noted that there is no increase suggested in the rate from Miami to any point on the West Coast north of Santiago, although rates between Cristobal and these points are increased.

2. On the strong recommendation of W. R. Grace & Company, La Paz, no increase is made in Bolivian rates except from La Paz to points north of Lima.

3. In Peru, local currency rates on Panagra planes are increased about 20%, which works out about 6% to 8% in the dollar rates. This difference in percentage results from the fact that heretofore there has been a currency rate which, converted to dollars, worked out materially lower than the dollar rate. The new schedule does not deal in any way with Aerovias Peruanas rates.

4. The new rate of $550, between Miami and Buenos Aires will presumably be pro-rated between Panair and Panagra on a mileage basis as heretofore.

5. Pro-ration of through rates between Brownsville and Buenos Aires will have similarly to be worked out along the same lines as the present rates. The mileage basis should not be entirely controlling here, as Panair may rea-

sonably make some concession in respect to their Central American mileage in order to equalize rates from western United States points via Brownsville with Miami rates, allowing, of course, in the Brownsville rate for the additional cost of traveling from United States West Coast points to Miami.

[fol. 811] 6. Mr. Muhlfeld will be discussing the new rates with Mr. Vidal and Mr. Chenea, and they will have to decide whether some of the increases may not be larger than indicated in order to keep pace with rising costs. In a broad way, the increases proposed seem to run between 5 and 10 percent. Changes in specific rates—except perhaps in a few special cases—over those suggested by Mr. Muhlfeld may be difficult, as this might result in upsetting the whole formula on which the rates are based. It may, however, be worth considering increasing all of his new rates by some definite percentage. In my opinion, an overall increase in present international rates of 30 percent would be very moderate in these times.

H.R.

H. J. Roig
Lima, Perú
Sept. 28, 1937.

[fol. 812]

GOVERNMENT'S EXHIBIT 374

1118

TRANSLATION

Guayaquil March 8, 1938

Mr. A. E. Sinclair
Panagra, Lima

Dear Sinclair:

I found out only today that you are again in Lima so I hasten to write you to inform you directly about something you probably already have heard: my being laid-off by this office, "for reasons of economy".

When I was advised that this was about to happen I wrote about it to G.P. Smith and told him that if I do not bring

any income to the Grace Line, I certainly do bring in good profits to Panagra, so that if the Grace Line decides to fire me on the score of economy Panagra could very well afford to take me on. This because in less than two years I have brought in about $12,000 U.S.Cy. in a Department which, as you know, was completely unknown in this city.

I have no need to talk to you about my work, since you instructed me in it and therefore know more about it than anyone else and therefore you know also better than anyone else that in throwing me out for "economy" I am being treated with the utmost injustice.

But we also know the real reasons and that is that it has been brought about by the Grace Line, and by no one else because of the last gold shipment which they lost and which meant $3700 U.S.Cy. for Panagra. They also know that the Central Bank plans to make many large gold shipments during the coming year and they know that if I am let out there will be nobody to handle the competition against them.

* * *

Your friend

G. Jimenez

Gustavo Jimenez
Casilla 320
Guayaquil, Ecuador

[fol. 813]

GOVERNMENT'S EXHIBIT 375

PAN AMERICAN GRACE AIRWAYS, INC.
35 East 42nd Street New York, N.Y.

Cable Address

LETTER NO. 9806
PRAVATE

AIR MAIL Trip 53

Subject:

UNACCOMPANIED BAGGAGE - GRACE LINE

Lima, April 4, 1938.

Panagra, New York

Att. Mr. J. D. MacGregor:

During my absence from Lima, while I was on a recent trip to Buenos Aires, all our offices on the West Coast were advised by Grace Line they would not accept unaccompanied baggage belonging to Panagra passengers as outlined in Traffic Bulletin No. 725, dated June 15, 1938.

To date we have not received reply to our letter 9633 on this subject and the purpose of this letter is to point out to you that the action taken by Grace Line will seriously affect our passenger sales.

If it were not for excess baggage we would sell a great deal more business from South America to the United States, especially where families are concerned and I consider this one of the principal obstacles with which our selling offices are confronted at the present time.

Do not know what Grace Line objective was in cancelling their agreement with Panair System, however, I wish that you would bring this matter to the attention of the proper authorities in W. R. Grace & Co. and endeavor to have them cancel their recent instructions to their West Coast offices.

I am sending a copy of this letter to Mr. Chenea as undoubtedly he will be interested in discussing this subject with you and the Grace people as well.

I do not believe it was Grace Line's intention to divert traffic from Panair System, however, I would like to know the reasons behind their cancelling their intercompany arrangement with us.

[fol. 814] I am attaching my copy of Santiago's 3107 of March 28th to Valparaiso and Mr. McPhee's (Grace Line Manager) letter 15319 of March 26th to Grace Line Inc., New York, on this subject.

cc VEC-NY VS-Stgo.
JVL S T
JEM ES

J. E. Muhlfeld

[fol. 815]

GOVERNMENT'S EXHIBIT 376

Letter No. 17
H.J.R.—Trip Series

W. R. Grace & Co.
New York

New York, April 20th, 1938.

H. J. Ros, Esq.,
LIMA, PERU.

Dear Harold:

...

I found Chena very appreciative of Mann's recent prompt modification of the Grace Line ruling against unaccompanied baggage, but he feels that the general run of Grace *Line* traffic people are unsympathetic, if not hostile, to air traffic and cited the fact that he couldn't get the Pan American Airways schedules, including Panagra, on the Grace Line steamers departing from here but that they had to be slipped on board by the Panagra office at the Canal.

...

Sincerely yours,

Robert H. Patchin

[fol. 816]

GOVERNMENT'S EXHIBIT 377

W. R. Grace & Co.
New York

No. 30

Lima, Peru,
April 27, 1938

Mr. R. H. Patchin,
W. R. Grace & Co.,
NEW YORK

Dear Bert,

Your #17.

I agree that the Miami-Kingston-Cristobal-Lima Tour is an easier selling possibility than the Chilean Tour but I think Panagra gets very little benefit out of it. The chilean Tour is undoubtedly much harder to sell but from Panagra's standpoint, one passenger on that trip is worth several to Lima.

We have no shortage of traffic to Lima especially north of Guayaquil and, even with our somewhat larger payloads on the overland route, I think this will still be true, after taking care of Cali business. Where we are short of traffic is south of Guayaquil and especially Trans-Andean as I have pointed out in several of my recent letters. Our Trans-Andean passenger traffic is off over $4,000 a month for the first three months of this year compared with last year. This is a real problem and if you or Chenea can work out any suggestions to help this very acute situation they will be very greatly appreciated. I am glad you are working with Daulton on a closer tie-in with Grace Line. I think you will find that Grace Line sells very little air transportation in connection with steamship com-
[fol. 817] bination or otherwise. Our Grace Line propaganda for the Chilean Lake Section, for which I do not blame them in the slightest as it is one of their selling points to get tourists to go to Chile at all, is also diverting to this route many tourists who would otherwise fly over

the Andes. Perhaps we ought to set up a counter-propaganda for the Trans-Andean trip.

No one can expect Grace Line to sell air transportation at the expense of steamer transportation any more than Panagra or Panair would be expected to do the reverse, but there must be some points where we can work together to much advantage. To date we have somehow not succeeded in finding them. This is another point where anything you can do will be most helpful. As you say, our reduced Grace Line passenger service might fit in very nicely with this program.

I hope you will soon find a suitable assistant and get started on this whole matter of getting more traffic for Panagra in the United States. The problem is urgent and every day's delay is costing us money. While Panair's sales for carriage on Panagra are impressive, I imagine they represent tickets bought and not sold. I mean that when anyone is going to a point on Panagra on the West Coast, no doubt in part because of their general propaganda, he goes to Panair to buy his ticket but when they are interesting a tourist in a trip to South America they push the East Coast. Just a glance at the literature in any of their sales offices makes this apparent.

Yours sincerely,

H. J. Roig

[fol. 818]

GOVERNMENT'S EXHIBIT 378

Draft 7.28.41

Pan American Airways Corporation

Dear Sirs:

...

Panagra is a direct competitor of the Grace Line and has, year by year, eaten into that line's passenger business in a surprising way. Mr. Roig is a Director of the Grace Line and has seen his efforts in favor of Panagra resulting in prejudice to the Grace Line.

...

[illegible]

[fol. 819]

GOVERNMENT'S EXHIBIT 379

February 25, 1942

Mr. James Magner, Vice President
Grace Line
10 Hanover Square
New York City

Dear Mr. Magner:

It has come to our attention that the Grace Line offices on the West Coast for some reason are not permitted to endorse the unused value of tickets to PANAGRA although we understood originally that that was perfectly permissible.

We have instructed our offices that in case it is necessary to endorse the unused value of one of our tickets to a steamship line like the Grace Line we should lift the unused portion of our ticket and draw an exchange order on the other for the unused value of our own ticket. I should think that your offices could be instructed to follow the same practice and doubtless the present situation may have arisen because of some misunderstanding or lack of definite instructions on the subject.

I would be very grateful for any comments you may have on this point since it has come to my attention in a number of instances during the past year that both the Grace Line and PANAGRA have been given a black-eye by passengers when after deciding to change their reservations they have found out that the Grace Line will not endorse tickets to PANAGRA.

With kind regards, I am,

Sincerely yours

R. C. Lounsbury
Passenger Traffic Manager

RCL/f

bc: VP & GTM-NY
SAGO Sales-Lima

[fol. 820]

GOVERNMENT'S EXHIBIT 380

260 PRIVATE

NEW YORK COPY

GOLD SHIPMENTS

LIMA, March 4, 1942.

Grace & Cia, C. A.,
Agents for Panagra,
Bogota.

Attn: Mr. H. Helbling, Mgr.

Dear Mr. Helbling:

Our Frieght Representative referred to in the attached letter gathered the impression, during his recent visit to Cali, that no attempt had been made to secure for Panagra the shipments of gold which, I understand, are now going forward by steamer from Colombia to the United States. I wish, therefore, that you would give the necessary instructions to the Cali office to actively promote this business.

• • • •

J. E. Muhlfeld, GSM

Encls.

cc NY (2)
SAGO
WBurdette

JEM:ES

[fol. 821]

GOVERNMENT'S EXHIBIT 381

COMPANIS DE AVIACION PAN AMERICAN
ARGENTINA, S. A.
AGENTE DE: PAN AMERICAN-GRACE AIRWAYS,
INC. · PAN AMERICAN AIRWAYS, INC.

Avenida Roque Saenz Pena 788 - U. T. 33, Avenida 8581

BUENOS AIRES

January 12, 1943.

Mr. Geo. L. Rihl, Vice President,
Pan American Airways Inc.,
New York.

Dear Mr. Rihl:

Reference is made to our confidential letter of October 16, 1942, with which we enclosed an informal agreement between the Grace Line and our Argentine Company. We never received a reply and we assume that Grace Line must have informed you of their intention to close their representation here.

We attach hereto copy of a memorandum from Mr. H.J. Aller, Grace Line Representative, informing us of the decision to close the Grace Line Agency in Buenos Aires as of December 11, 1942 on which date Mr. Aller moved out of the office which had been set aside for their use, and turned it and the furnishings over to us in perfect condition.

• • • •

This closes the Grace Line representation case as far as we are concerned, and we are (personally) very happy about it because we do not believe it is a good idea to have an Airline-steamship combination here. Before steamship services was suspended too many people made remarks such as, "If you don't get them one way you get them another".

We should very much appreciate being informed of the final settlement made with Grace Line, and we await your reply with interest.

With kindest personal regards,

Sincerely yours,

/s/ S. J. ROLL
S. J. Roll

cc: Vice President-EE.Young-NY
Senior Repr. F.Powers-Rio

SJR:ECK

P.S. We are enclosing 2 extra copies in the event that you wish them for the comptroller or some other Department.

El Sistema De Transportes Aereos Mas Grande Del Mundo

[fol. 822]

GOVERNMENT'S EXHIBIT 382

January 20, 1943

CONFIDENTIAL MEMORANDUM FROM MR. A. E. SINCLAIR TO MR. R. FERGUSON

* * * * * *

... Panagra employees who boarded Grace Line steamers in order to leave timetables on board were ordered off the steamers and in some cases not allowed to go on board, and any literature, even for some time thereafter, would be taken out of racks and destroyed. Mr. J. M. Van Law, now with PAA, was by then Traffic Manager and can probably add a great deal of information as he was for many years thereafter the head of the Panagra Traffic Department. I am sure it was at a later period, although I might just as well mention it here, that the Grace management in Peru periodically refused to authorize the purchase of instruments, spare parts or other items considered necessary by the technical personnel, creating considerable excitement from time to time until this situation was eventually placed on a normal footing as Captain Harris gained more and

more direct power. As an example, I recall the refusal of Grace to authorize the purchase of Kollsman altimeters for the use at the various airports, since this was considered an exhorbitant and unnecessary expense, the argument then being that these instruments in the opinion of the Grace executive responsible were for use aboard aircraft and not on the ground.

* * * * * *

I made frequent inspection and business solicitation trips over the territory encharged to me. I cannot say that in Cali I received anything but extreme cooperation from the Grace representatives. In Ecuador, however, the situation was altogether different, and my every move was watched with suspicion and my efforts were frequently checkmated. I finally arranged for a meeting of the Manager in Ecuador and his local executives in order to get all our cards on the table.

At that time my main efforts were being directed towards the securement of air freight. The Manager of the Guayaquil Agencies Company and his assistants contended that I must abstain from soliciting effective or potential Grace Line cargo and confine my efforts to soliciting such items as might be "Parcel Post" material. The manager pointed out to me that the commissions earned by his organization in Ecuador (which is 100% Grace-owned) from Grace Line business were enormously more important to him compared to anything he got out of Panagra, with the further consideration that any profits that might be earned on Grace Line business accrued entirely to Grace interests, whereas Grace only obtained 50% of any profits on Panagra business. The discussions were long, to some extent heated—net result an impasse.

G-382

[fol. 823] Naturally my job was to secure all the business I could for Panagra and I therefore continued in my efforts. I got wind of gold shipments being made by the Bank of Ecuador and went to see the Manager of the Bank in Guyaquil, who informed me that the matter would have to be discussed with the Director General in Quito. I therefore immediately proceeded to Quito. By a lucky fluke, the wife

of the Director General of the Bank of Ecuador, the man I had to see, was a very dear friend of my mother-in-law. I had never met fer or her husband, but using thix family connection and armed with "Whitman Sampler" candies and flowers I called at their house. I received a very warm reception, was invited to dinner one day, to a movie the next—and in the midst of all this arranged for an appointment at the Bank with the Director General and some other bank executives whom he called to hear my story. With this lucky break I made the sale and it was arranged that the next shipment of gold would go—and did go—via Panagra.

On my return to Guayaquil I came in for bitter remarks on the part of the Grace manager and his assistants, who had been informed of my activities by their Quito representative, and I know that they did not cease their efforts to secure this and other business that I solicited for the Grace Line. It is nearly five years since I left Panagra and, in the meantime, I understand and believe that the above conditions have radically changed and that as a matter of policy dictated by New York Grace Headquarters, all offices of Grace now watch without bias or even preferentially the interests of Panagra, but obviously if at any time a greater Grace interest were to be adversely thereby affected it is only natural to suppose that the major interest would gain supremacy.

* * * * * *

I hope the above note will be of some use.

Kindest regards.

A. E. SINCLAIR

[fol. 824]

GOVERNMENT'S EXHIBIT 383

4907

SOLICITATION.

Limatambo
May 13th, 1949.

W. R. Grace & Co.
Agents for Panagra
Lima, Peru.

Attention: Mr. Carlos Velarde C.

One of our employees called at my office this morning in connection with the attached "tip slip" which was submitted to your office for the current Panagra Employees Sales Contest. Although Mr. Koehler, the prospective client and his family have indicated a preference for steamer travel, nevertheless we feel that every effort should be made to follow up and sell this good lead on the advantages of air travel.

• • •

Original Signed By
G.G. Mason
George G. Mason

GGM:bvv.
cc: JTShannon—NYC
CdeGroot—NYC
ABShea—NYC
JWWalker—LBO
GBBourne—LBO

[fol. 825]

GOVERNMENT'S EXHIBIT 384

Mr. John T. Shannon
Vice President

General Sales Manager

Sales

New York

PANAGRA
New York
July 7, 1949
SALES

. . . .

During recent months we have been concerned about sales for Latin America as a whole and we have endeavored to determine to our own satisfaction the reasons contributing to the low figures mentioned above. In our opinion the following factors must be taken into consideration:

1. Air and surface competition, in particular Braniff.

. . . .

John E. Muhlfeld

cc: Vice President, T & S., NYC.

Enclosures

jem md

[fol. 826]

GOVERNMENT'S EXHIBIT 385

PALMETTO 6 to LIMA (Pelmette) July 26, 1949
750pm

1 6 your $2
gold bullion shipments—confirm not in accordance with previous advice from miami or lounsbury transmittal C44 to CAB, etc.
2 suggest that you
3 leave
4 (in) abeyance
5 our 96

6 55/78

for your information into resolution requires application bullion surcharge only from NY boston montreal to area two and honolulu to eyes three, our tariff should be interpreted this sense:

7 as well as
8 our letter 6198
9 of
10 july 21st

application of gold bullion rate:

11 sentence
12 we prefer
13 have you
14 contact
15 braniff
16 representatives
17 and
18 attempt
19 persuade
20 them
21 interpret
22 IATA
23 resolution
24 so as to
25 require
26 bullion
27 charge
28 to and from
29 point of origin
30 and
31 destination
[fol. 827] 32 in south america
33 sentence
34 we are inclined (to)
35 doubt
36 business
37 would be
38 lost
39 to

40 steamers
41 but we
42 expect you (to)
43 watch
44 developments
45 carefully
46 and
47 let us know
48 if any
49 diversion
50 from
51 air
52 to
53 steamers
54 actually
55 takes place
56 because of
57 extra charges

MR SHEA
MR CAMPBELL
MR VIDAL

MR ROIG
MR HAYES
MR GEHLERT
MR COGSWELL
$15.58

[fol. 828]

GOVERNMENT'S EXHIBIT 386

8/26/49

TRAFFIC AND SALES—CHILE.
(YOUR PALMETTO 10 TO LIMA)

SANTIAGO,
August 21st, 1949.

Pan American-Grace Airways, Inc.,
NEW YORK

Attn.: Mr. J. T. Shannon.

Reference is made to the attached copies of our Palmettos 61, 62, 63 and yours 79 and 82, in connection with Chilean traffic and sales matters.

Our company restrictions effective August 5th, 1949 against the acceptance of Chilean pesos for round trip passages between Santiago and New York sold to Chilean nationals and bona fide residents was sharply at a variance with the policy of other transportation agencies in Chile. As explained in our cables all of the steamship carriers and air lines serving Chile are offering round trip tickets in pesos. Panagra's demand of dollars to cover the return portion of a ticket to the United States forced prospective passengers to expend double the amount of pesos in order to secure dollars at the present street rate of exchange which is $83.—. A comparison of the following fares indicates how we priced ourselves out of the Chilean market until this policy was reversed upon receipt of your Palmetto 82 on August 19th.

[fol. 829] It is most unfortunate that the Grace Line was quot—more attractive rates than Panagra by accepting not only round trip passages in Chilean pesos but also pasajes de llamada. We were losing traffic every day to the Grace Line, especially return business, booking by steamer to take advantage of the facility of purchasing the passage in pesos. As requested in our Palmetto 63 it is urged that a decision is reached as quickly as possible with respect to our position on pasajes de llamada, which the Grace Line is currently offering to the public. This feature now gives them an important sales advantage and we feel that both carriers should maintain the same policy towards pasajes de llamada.

Yours very truly,

G. G. Mason

cc: ABShea—NYC
DCampbell—NYC
GVidal—NYC
TJKirkland—NYC
CdeGroot—NYC
JWWalker—LBO
JTKirby—NYC
WKoch—SCL
CHBrunson—SCL
GBBourne—Bue

GGM/bm.—

[fol. 830]

GOVERNMENT'S EXHIBIT 387

Pan American-Grace Airways, Inc.
135 East 42nd Street, New York 17, NY

Cable
"Panagra"

January 26, 1951

MEMORANDUM TO MR. J. W. STARBUCK, JR.

Reference our discussion with Mr. Stevens of the Dickie Raymond Co. of a supplementary survey of the Grace Log circulation list. Mr. Stevens makes a suggestion that the Grace Lines run off their list on plain 3"x5" cards of salmon color so that Dickie Raymond in Boston may check for duplication between the Log names and those already on Panagra's list. By keeping the cards in salmon, all unduplicated names can be put directly into the file without retyping, and the color will be distinctive from any other colors presently used in the list and will identify the names as having come from the Grace Line.

Believe you should discuss this matter directly with Grace Line officials before releasing the list or cards on Panagra to Dickie-Raymond. There may be some objection within the Grace Line to our use of their list.

We at Panagra should have a clear and detailed idea of what the Grace Line list comprises, i.e. past passengers, shippers, exporters, wealthy persons, and so forth, before we embark upon any promotion. And the Grace Line should clearly understand that we intend to be competitive for travel business that may be developed out of this list. However, since it is all in the family, there may be no objections.

G. F. Sorgatz, Jr.
G. F. Sorgatz, Jr.

GFS:aa
cc: JTShannon
HLClark
EGBern

[fol. 831]

GOVERNMENT'S EXHIBIT 388

May 11, 1951

Mr. John D. J. Moore
Assistant Vice-President
W. R. Grace and Company
914 Fifteenth Street, N. W.
Washington, D. C.

Dear John:

In view of the above, we would like to accept your kind offer of assistance to the extent of specific advice as to the several Embassies in which you have noted a plentiful supply of Braniff pamphlets, etc. Speaking of assistance, one of your W. R. Grace & Co. employees recently solicited our most lucrative Panagra account with the stated objective of diverting passengers from Panagra to Grace Line ships. We certainly meet ourselves coming around the block, don't we?

With kind personal regards,

Sincerely,

PAN AMERICAN WORLD AIRWAYS

Tolbert A. Rice
District Manager

TAR:MGR

[fol. 832]

GOVERNMENT'S EXHIBIT 389

Pending
November 7, 1951

NOTE TO R.G.L.

On May 17th the Graces Line asked our approval of an agreement on "Round South America" tours at less than the normal one-way fares which the Grace Line had con-

cluded with the Delta Line and which named Pan American and its affiliates as connecting carriers.

Paragraph 4 of this agreement states, "Passengers proceeding independently between Valparaiso and Buenos Aires shall have the privilege of purchasing locally transportation for that portion of their tour, in which event no other connecting carrier need be employed."

Based on this provision, train transportation is being sold between Buenos Aires and Santiago and its effect creates an open jaw or RSA trips contrary to our tariff provisions. This also gives Grace and Delta, the sales advantage of offering this train transportation while Pan American and PANAGRA cannot.

H. A. B.

[fol. 833]

GOVERNMENT'S EXHIBIT 390

P.G. Series # 540

New York
November 16, 1951

Fausto Moscoso, Esq.

GUAYAQUIL, ECUADOR

Dear Fausto,

PANAGRA GRACE LINE PUBLICITY

I refer to the attached leaflet, which is representative of the type of publicity you are at present putting out for Panagra and Grace Line and which I consider to be most effective. The point has been raised here that the fact that Panagra and Grace Line, which to a certain extent are competitive services, are advertised together in a single leaflet might give rise to criticism or misinterpretation. I feel that there are some grounds for this thinking and consequently consider that in the future any leaflet or publicity material of the type attached to this letter should not advertise both Panagra and Grace Line but should only mention

one or other of these services. Although this will possibly signify a slight increase in the cost of your local publicity, the cost of such leaflets is not very high and I shall appreciate it if you will proceed accordingly in the future.

Yours very truly,

Original)
Signed)
P. Gjertsen

[fol. 834]

GOVERNMENT'S EXHIBIT 391

November 19, 1951

Note to Assistant Vice President Traffic Sales—
C. W. Moore

* * * * *

4) With respect to items 8 and 9 of Mr. Friendly's memorandum, a few days ago Mr. Rice was asked by Mr. Shannon, Panagra, and Mr. John Moore, Assistant Vice President, Grace, Washington, D. C., to furnish Grace the complete lists of the names of all passengers booked on Panagra by Washington. The alleged purpose was for Grace to determine which of these passengers would be considered VIP's so that Grace employees in Washington could extend special courtesies. Messrs. Shannon and Moore explained to Rice that our office in Washington is not capable of determining those people who are VIP's as far as the Grace Company is concerned. Rice replied to the effect that it would be a hardship to obtain this information for Grace and that he could not authorize it locally. Mr. Shannon intends to take this up with Mr. Lipscomb.

Howard Williard advises that W. R. Grace, New York, has a direct teletype line to the Panagra Traffic Office, Miami. He also informs us that Messrs. Eben Baker and Robert Golden were hired by W. R. Grace and assigned to the Panagra Traffic Office, Miami. An investigation should be made with respect to whose payroll they are now on as they

are referred to as being with Panagra's Traffic Office, Miami.

The Grace activities with regard to solicitation of the UN and the Pan American Olympic Games are fully outlined in the General Sales Manager's report. In addition Mr. Nagel submits the solicitation of the Hochschild charter as an example of Grace's activities in New York. The attached memorandum dated November 12, signed by Mr. Sylvester of Panagra, outlines Grace's interest in this charter.

Finally, as an indication of the problem confronting us in Washington, attached are two letters, both signed by James P. Freeborn. One dated March 16, 1951, is on Grace Lines' stationery. The other, dated April 11 is on W. R. Grace [fol. 835] stationery. This raises a competitive problem in view of the fact that any information concerning our passengers submitted to W. R. Grace in Washington becomes available to our competitor, Grace Line, as long as the same individuals represent both companies.

If I can be of further assistance, please advise.

WHR

[fol. 836]

GOVERNMENT'S EXHIBIT 392

Division Traffic/Sales Manager

Actg. Dist. Traf/Sales Mgr.

LAD — LAD

Miami — Colon, R. P.

May 27, 1952.

PEPSI-COLA COMPANY—COLON FREE ZONE

* * *

The foregoing represents an actual annual tonnage from this firm of 2,001,000 pounds. However, the future potential cannot be appraised as Pepsi-Cola is undergoing an expansion program in Latin America which, if exchange

and regulations permit, could easily double their exports to some of the countries in the Western Hemisphere. Example of this is the probability of six new bottling plants in Colombia, which are awaiting dollar exchange permits in order to establish the bottlers in business.

• • •

It is worth while noting that the actual Clipper Cargo rates to the countries having the largest volume of these imports are substantially high when compared to steamship rates. There is a probability of a need to establish a commodity rate with a high minimum weight to offset or lower this differential in order to gain over the largest portion of this volume. However, we should wait until our Sales Representative surveys are completed in order to determine if there is such need for a reduction of rate to apply to soft drink concentrates or not. For this information, steamship rates Ex Colon to Central American ports is $6.41 per unit and to La Guaira is $5.78 per unit.

As the cost of insurance is absorbed by the shipper, Mr. Romero has promised to push Clipper Cargo service as much as possible, as this item represents a saving to his Company of 35 to 43 cents per each $100.00, the average cost of maritime insurance being 50 cents per $100.00 compared to ours of 7 cents to 15 cents per $100.00.

[fol. 837] By copy of this memorandum to Cargo Traffic Supt., we are requesting his investigation on the acceptability for carriage of the phosphoric non-anhydrous acid used in the preparation of soft drink products and to advise us as soon as possible in order to pass this information on to Mr. Romero.

This office will continue our contact with this firm and will advise the corresponding offices of any new developments.

J. A. Soto

No. 146

cc: Cargo Traffic Supt.—LAD—Miami
Cargo Sales Supt.—Miami
Senior Representative—Panama City

COPY

[fol. 838]

GOVERNMENT'S EXHIBIT 393

Interline—
Braniff

September 4, 1952

Mr. Louis A. Person
Traffic Manager
Braniff International Airways
Love Field
Dallas, Texas

Vice President
Rec'd
New York
Sept 4 1952
Traffic & Sales
(seal)

Dear Lou:

I have your joint letter of August 28th regarding the arrangements for handling items of passengers' baggage to which the luxury tax would apply. Since the law permits passengers to avoid payment of this tax by acceptance of these items on board vessels or aircraft departing from the United States and since we have found it necessary to be competitive with steamship services in this respect we have had such arrangements in existence for many years. While the number of people who take advantage of it are not very numerous we would not wish to give it up because of the competitive steamship situation.

Sincerely yours,

R. C. Lounsbury
General Traffic Manager

rcl/c

bcc: Willis G. Lipscomb, PAA—NYC

[fol. 839]

GOVERNMENT'S EXHIBIT 394

February 11, 1953

Div. Traffic Sales Mgr. — Traffic Sales Manager

Latin American — Pan American Argentina, S.A.

MIAMI — BUENOS AIRES

MONTHLY SALES REPORT—BUENOS AIRES, JANUARY 1953

* * *

COMPETITION.

* * *

Actually the most important competition we have here is not Braniff or Aerovias or Aerolineas but the steamships. The "Augustus" and "Julio Cesare" of the Italian Line, and the "Andes" of the Royal Mail Line and the "Luis Lumiere" of the French Line all offer excellent second-class accommodations at prices that are so much lower than those of the airlines that most travellers to Europe go by sea. The situation is less acute on the run north because Moore-McCormack is more expensive than the airlines and Delta only a bit cheaper but every month Flota Mercante, the state-owned steamship line of Argentina, is taking a bigger number of American passengers at least one way to or from the United States.

To meet this competition I am trying to work out an agreement with Flota Mercante of the sale type as we now have with the American steamship lines. I have also looked into the problem of a similar air-sea agreement with at least one of the European steamship lines, please refer to my memo to General Traffic Manager, New York, of July 25, 1952.

More important, I am analyzing at the moment the comparative costs to American companies of air versus sea transportation for their personnel. Roughly, the idea is this. An American company gives an employee a States-side vacation once every three years. The vacation begins when the employee reaches the States. That is to say, the

five to six weeks spent on the sea coming and going is additional vacation time which the company accepts by reason of the fact that it does not insist that the employee travel by air. Now if it can be shown that the cost to a [fol. 840] company will be less to send an employee and his family home every two years by air than once every three years by sea, say over a six-year period, then this home leave traffic will be ours.

* * *

LOCAL BUSINESS AND ECONOMIC TRENDS.

* * *

Erec. F. Plimpton

cc: VP Traffic & Sales—NY
General Sales Mgr.—NY
Sales/Adv. Mgr.—Mia
Sales Analyst—NY
Div. Sales Analyst—Mia
General Mgr.—Bue
Treasurer—Bue

[fol. 841].

GOVERNMENT'S EXHIBIT 895

valverde 56 to VALVERDE SANTIAGO) July 23rd 1935
1220 pm

1 64: re
2 panair
3 party
4 due at yours on the 31st
i.e. friday July 31st:
5 think it important
6 that
7 party be
8 very well
9 attended
10 that
11 thach
12 get
13 clear

14 idea
15 character
16 and
17 scope of
18 service-s
19 rendered
20 panagra
21 by W. H. Grace and Co.
22 and that
23 Crowley
24 and
25 newspaper men
26 get
27 full
28 picture
29 grace line
30 as well as
31 panagra
32 and see
33 santa lucia

[fol. 847]

GOVERNMENT'S EXHIBIT 400

April 18, 1929

MEMORANDUM FOR: MR. PATCHIN
MR. COGSWELL

I looked over Mr. MacGregor's undated memorandum.

• • •

CRISTOBAL OFFICE

The way that he has this laid out makes it the head office rather than New York, and I think it is a mistake. My ideas is that the operation should be in three distinct units and that in all matters except the actual operation of the ships, these three units should report direct to New York. The only way in which New York can keep any grip or control on that business is to have all the units lined up here; to have accounts kept here; and, to have control

of expenditure, etc. all dominated entirely from New York. Sufficient copies should be sent to the Operating Vice-President in Cristobal to enable him to do his work intelligently.

The matter of handling accounts ought to be worked out carefully, and my feeling is that the accounts of the three units ought to be handled in our Coast office and that all cash disbursements should be made through our Cashier's Departments. I think the practical way for doing this is for us to have a special employee to handle this work in our Coast offices, and that this employee should be a regular part of our staff and entirely controlled by our management. I think that one man in our office in Cristobal, one in Lima and one in Santiago, with possibly one in [fol. 848] Guayaquil, should be able to attend to all of this work in an entirely satisfactory way. I don't think that the Pan American-Grace Airways needs to have any independent employees in any of these places, except pilots and mechanics, in other words, men who have to do with the actual operation of the planes. This plan means minimum expenditure and maximum control.

I should therefore have answered Redshaw in that sense and told him that he was to delegate a man of our own staff to handle this work, and that this man should be our employee, rather than have cabled in the sense that you did.

I think it most important to get this matter of handling of accounting control, of cash and clerical work into the shape that I have indicated and to lay down a definite policy with reference to it at the start.

[fol. 849]

GOVERNMENT'S EXHIBIT 401

Confidential

No. 175

June 8th, 1929

Mr. J. H. Parmerton,
Corperacion Maritima Colombiana,
Buenaventura, Colombia.

Dear Parmerton:

As Buenaventura is a port in which aeroplanes of the Pan American Grace Airways are going to land and as you are going to look after the business of this Company in Buenaventura, I wish to advise you that our theory is, that this business should be developed in the same way as we have developed all of our businesses, namely, that we should make very careful estimates before we go ahead with anything; that we should work on a budget of expenditure as well as on a very carefully estimated budget of income; that we should watch every item of expenditure with the greatest care, and that we should follow a policy of the strictest conservatism that is compatible with a sound and enterprising development.

As far as your territory is concerned, we look to you to watch this business carefully and guide it along a policy of conservatism and profitable administration. We want your ideas continually and quite apart from the regular official correspondence that is carried on with your office and the head office of the Pan American-Grace Airways here. We will want your personal views on all subjects of importance to guide us in generally directing the course of this enterprise.

There is a tendency on the part of most aviation developments in this country to go ahead very rapidly with extensions and in many cases to lose sight of the importance of measuring expenditure and of making the business pay from day to day. We want to avoid any tendency in this direction on the part of the Pan American-Grace Airways, and we rely upon you in a tactful way to guide and gen-

erally direct the activities in your territory on the lines of a sound businesslike policy.

Mr. MacGregor with Mr. Harris and Mr. Jacob, and Mr. Vidal assisting him, have the direct responsibility for the [fol. 850] administration of this business, and in exercising any influence that we will want exercised, it will obviously have to be done in such a way that we do not relieve these men of the responsibility of handling this business and making a success of it. Nevertheless we must not lose sight of the fact that we own 50% of the shares of the company; furthermore, that we have a knowledge of South American enterprises and must gradually acquire a knowledge of the air business in South America, and that we must avail ourselves of our knowledge of local conditions and our experience in business management in order that this whole enterprise is well managed and profitably administrated from day to day.

Consider this letter strictly confidential and for yourself and for your guidance in everything pertaining to the above company.

Yours very truly,

ZALLES

[fol. 851]

GOVERNMENT'S EXHIBIT 402

New York, January 30, 1930

L. Valverde, Esq.,
c/o W. R. Grace & Co.
Valparaiso, Chile

Dear Valverde:

The outstanding features of the Grace agency agreement is, of course, that it places the whole growth and development of the Airways business in the hands of the Grace Houses. It is nothing like an ordinary steamship agency where the home office at one end of the line at least is providing traffic. Under this contract Airways will have no traffic organization at all outside of that which this agency agreement provides but the whole affair will be in the

agent's jurisdiction and we must look to them to originate our entire movement. This somewhat anomalous situation is only possible because of our stockholdership in Airways and the position of our Coast Houses is, therefore, really that of principals rather than agents.

Sincerely,

H. J. R.

Encs.

[fol. 852]

GOVERNMENT'S EXHIBIT 403

COPY OF HANDWRITTEN LETTER

DELRAY, FLA. March 7, 1930

Dear Roig.

I have your letter of the fourth. The basic difficulty that I see in letting Trippe take over the administration of Panagrace is that he will be President of a 100% company and of a 50% company and no human can resist the tendency to pass the peaches to one and the lemons to the other. There is graphic evidence in his blocking Panagrace from getting the logical and necessary increase in service because it does not suit their East Coast programme. I fear that Trippe will think in terms of Pan Am. and will run Panagrace in these terms and that it will become impossible to get a square deal from day to day. If however you feel that you as Chairman can overcome that difficulty to the extent of getting a fair deal, then I think the plan may be feasible. The decision turns on the question as to whether as Chairman you feel that you can dominate the situation to the extent of protecting our interest against unfair or incompetent management. If so then I am ready to accept the plan. If not, then the plan means capitulating to Trippe who may be managing Pan Am. successfully altho reports until very recently were to the contrary; who knows nothing of S.A. conditions and who in his dual capacity might seriously prejudice our interest particularly if they decided they were going to buy us out. Now I am emphasizing the [fol. 853] dangers and difficulties because they are serious and we must face them squarely. Nevertheless I believe

that you can control Trippe to the extent that I indicate and am sure that you can do so if you can spare the time. It will be necessary that you go to S.A. promptly and repeat the trip frequently so that you will get to know the business thoroughly and in short will very soon get to know more about it than Trippe does. You should lay your plans so that not only will you gradually become expert in this business but that you will build up in South America Grace men who will gradually become dominating influences in the business. I believe in the business and think it may become one of great importance to us. To make it so, we must concentrate on it until we thoroughly master it ourselves; and as in all business, the partner who is most competent is the one who will effectively run it. I am not sure that it is wise to do away with the New York Office as I feel we should hold to the idea of an independent life. (I am not sure however how important this is as the business will be run in South America).

If you decide to carry out the plan you will of course have a very frank talk to Trippe and Hoyt and make clear the delicacy of the position Trippe will occupy and the necessity that Trippe in handling and discussing Panagrace matters should do so independently of Pan Am. interests. As President of Panagrace he must be working in their interest and do so honestly.

[fol. 854] The fees you fix for W.R.G. & Co. agencies appear to me very moderate. I am not sure that you have figured enough overhead provided our head men are to give the attention they must give to the success of the enterprise. You will find that our overhead runs about 100% of departmental salaries. If you figure less than this I think we will be out of pocket.

I hope you are fine.

Yours,

IGLEHART

I appreciate how much worry you have had over this matter and am confident that you will work out a solution on the lines on which you are thinking.

[fol. 855]

GOVERNMENT'S EXHIBIT 404

PAN AMERICAN GRACE AIRWAYS, INC.
122 EAST 42ND STREET, NEW YORK CITY

H.R.H. No.

CABLE ADDRESS
ALL OFFICES
"PANAGRA"

LIMA, PERU
9th April 1930

Pan American Grace Airways Inc.
NEW YORK.

Dear Sirs,

This will acknowledge your letter H.R.H. 294 of March 30th.

. . . . . .

It is my impression that no propoganda with regard to air travel is being carried out by the Panama Agencies in either Cristobal or Balboa, and this has been our experience in general in most of the large Grace offices. They are perfectly willing to sell passages on planes if the customer goes in and asks but do very little to increase sales.

Yours very truly,

H. R. Harris

Copy to:
Mr. J. D. McGregor.
" R. F. Hoyt.
" J. T. Trippe.
" R. H. Patchin.
" W. F. Cogswell.

[fol. 856]

GOVERNMENT'S EXHIBIT 405

W. R. Grace & Co. will be responsible for the following local functions:

1) Agencies and representations
2) Negotiations
3) Traffic, including mail, cargo and passengers (When Carried)
4) Advertising
5) Purchases, including checking of presupuestos
6) Accounts, including checking and payment of all income and expenditures
7) Legal representation, including—
   a) Registration of Pan American Grace Airways Inc. to do business in Chile, if necessary
   b) Determination of Governmental fees and taxes
8) Employment of personnel except operations personnel.
9) Securing of requisite office space, furniture and office personnel where necessary.
10) Cables, telegrams and telephones.
11) Distributing all PAN AMERICAN GRACE AIRWAYS INC correspondence and checking to make sure that all correspondence is promptly answered with copies to all concerned.
12) All local insurance.
13) Movement of aircraft, except test flights.

The necessary personnel will, for the carrying out of these functions, be employed by W. R. Grace & Co. for the account of PAN AMERICAN GRACE AIRWAYS, INC. Such employees will be under the direct supervision and control of a Grace representative having Power of Attorney for PAN AMERICAN GRACE AIRWAYS INC. Up to 50% of this representative's salary will be payable by PAN AMERICAN GRACE AIRWAYS, INC to W. R. Grace & Co. for his work in charge of the various functions allocated to W. R. Grace & Co.

PAN AMERICAN GRACE AIRWAYS INC WILL be responsible for:

1) Operation and maintenance of aircraft and motors.
2) Sapre parts and supplies
3) Operation and maintenance of PAN AMERICAN GRACE AIRWAYS INC automobiles
4) Care of hangars, both of PAN AMERICAN GRACE AIRWAYS INC and/or rented ones.
5) Efficiency of aircraft movement
6) Employment of operating personnel
7) Efficiency of operating personnel
[fol. 857] 8) Appearance and conduct of pilots and flight mechanics while on duty
9) Proper maintenance of all operations reports and record and prompt forwarding of necessary operations reports to all concerned
10) PAN AMERICAN GRACE AIRWAYS INC personnel will at all times maintain complete cooperation with W. R. Grace & Co. employees or representatives engaged in PAN AMERICAN GRACE AIRWAYS INC work.

It will be the duty of both PAN AMERICAN GRACE AIRWAYS INC employees and W. R. Grace & Co. employees to report in writing to PAN AMERICAN GRACE AIRWAYS, INC. New York, with copies to PANAIR, New York, W. R. Grace & Co., New York and the undersigned in Lima, a weekly summary of the general situation as regards PAN AMERICAN GRACE AIRWAYS INC interests, activities and plans. There will also be reported any points of discussion or differences of opinion on questions of policy on any other questions that may arise in the minds of any one group with regard to the functioning of the other group. Since neither organization has control of the other, the best way to further the interests of PAN AMERICAN GRACE AIRWAYS INC. with the minimum friction is to attempt to visualize the problem presented by the general situation (including international as well as local problems) and to cooperate in every way possible in order that the PAN AMERICAN GRACE AIRWAYS INC.

may become a self-supporting organization based upon a solid economic foundation.

PAN AMERICAN-GRACE AIRWAYS, INC

H. R. Harris
Vice President.

[fol. 858]

GOVERNMENT'S EXHIBIT 406

Copy via Air Mail
Original by steamer

New York, October 10, 1930

Dear Roig,

I lunched yesterday with Rentschler of the City Bank, and among other things he brought up the subject of Aviation. He said that his brother had been talking to him about it and that they felt rather strongly that the Pan American Airways was not being well managed. He felt that they had very valuable contracts and that if the company were managed economically and in a close business-like way it should be on a profitable basis.

He asked my opinion of Trippe. I told him that I thought Trippe had great ability as a negotiator and a promotor, but that he had little business experience and furthermore that he was so much occupied with his negotiations that he had little time for administrating the business. Rentschler said that they had formed exactly the same impression and that he felt some steps would be taken shortly to put the administration of that company on a business basis. I told him that you were now in South America working over the details of administration of the Pan American-Grace Airways, and explained to him just the policy that we were following, and made clear to him that we were really running that company and that it was now on a paying basis.

* * * * * *

I hope you are well, and with kind regards, I am,

Yours, very truly,

[fol. 860]

GOVERNMENT'S EXHIBIT 408

Lima, November 27th. 1930.

Messrs. W. R. Grace & Co.,
LIMA.

Dear Sirs,

We regret to have to make a complaint against the service which we have received from the Furniture Department of your organization.

Shortly after lunch on November 26th. we approached this department with the request that they furnish us with two letter size filing cabinets. We were informed that while it was certain that they had one of these cabinets in stock in the deposit at Chacra Colorado, it was doubtful whether there were two available. We were informed by telephone about 3.30 p.m. that we could have two cabinets as requested and that they would both be delivered to our office before 5.30 p.m. We also understood that the price would be the same as we had previously paid for Art Metal steel filing cabinets, viz. $90.00 u.s.g. each (or S/.295.00 approx. at the present rate of exchange).

About 5.00 p.m. these two cabinets were delivered and we were rather surprised to note that one of them was an "Armor" cabinet, manufactured by the Corry Jamestown Mfg. Corpn., smaller and of much inferior structure to the Art Metal cabinets which we have been using previously and which have proved themselves to be very satisfactory. [fol. 861] The other cabinet which was delivered against our order from outside appearances seems to be equal in quality to the Art Metal, although we have been unable to inspect the interior due to the key not fitting the lock. This cabinet is made by the Yawman & Erbe Mfg. Co. and is stamped "Agente Exclusivo Lima—Const. H. Zollner."

In spite of the fact that the Furniture Department have always supplied us with Art Metal cabinets in the past and also in spite of the exclusive Lima Agent's name ap-

pearing on one of the cabinets just delivered to us, we were informed that these two cabinets were delivered from the Furniture Department stock and that the price would be the same as previously charged (viz. $90.00). We need hardly state that had the Furniture Department informed us in the first place that they had no cabinets in stock but could purchase same for us locally from one of their friends, charging us a reasonable price, we would no doubt have accepted their offer. However, we can under no circumstances agree to pay $90.00 u.s.g. for a filing cabinet which we could have purchased from Zollner direct for less than S/.220.00. On the basis of Zollner's price we estimate that the value of the other cabinet delivered to us to be not more than S/. 160.00 and this cabinet is also being charged to us at $90.00 u.s.g. We might mention that this cabinet is entirely unsuitable for our needs and would not be acceptable to us at any price.

It is therefore apparent that the Furniture Department have decided to use us as a means of making an exhorbitant [fol. 862] profit on a simple local purchase and under the circumstances we would prefer to cancel our order for these two cabinets and purchase same ourselves on the local market. Please therefore advise your furniture department to collect the two cabinets at their earliest convenience.

We might also mention that after considerable delay in fulfilling our order for office furniture, the glass tops for the tables were first delivered all out to the wrong size and it has been necessary to make new tops for these tables to fit the glasses. Said table tops have been delivered to date.

One of the office chairs was so well constructed that it after one week's continued use. Kindly have same replaced immediately.

Yours very truly

Thommen

[fol. 863]

GOVERNMENT'S EXHIBIT 409

GRACE Y CIA. (CHILE) S. A.

SANTIAGO CONCEPCION VALDIVIA

Private Airmail No. 10145 Airmail 7/29/31
arrives 8/4/31.
"S. Barbara" 8/7/31.
arrives 8/26/31

SANTIAGO, July 24, 1931.

Messrs. W. R. Grace & Co.,

NEW YORK.

Attention Mr. H. J. Roig

Dear Sirs,

Panagra Representative Ovalle

Some misunderstanding must have arisen in the mind of Mr. Harris with regard to the Grace representative attending to Panagra planes at Ovalle, to judge from copy of H.R.H. No. 717 addressed to Panagra New York which we enclose. In regard to this matter we also attach copies of our private letter No. 9548 to Grace Valparaiso, of our private letter to Mr. Harris No. 339 and of private letter No. 810 to Panagra, New York, all of which are self explanatory and calculated to remove from Panagra's mind any doubts with regard to Grace representatives attending to their planes in Chile.

Just recently we have noticed a certain spirit prevailing once more inclining towards the idea of registering the Panagra in Chile, with the aim, so far as we can judge, of establishing separate offices throughout Chile. From where this idea has originated we cannot tell, but, in conversation with pilots coming from the North, the subscriber has gathered this.

We have no hesitation in saying we consider the Grace organization more competent and better equipped to attend to the interests and work of the Panagra than any separate entity that might be contemplated or established,

as apart from the saving in expense alone there are hundreds of other advantages accruing to them. We feel confident that the enclosed letters will meet with your full approval, and wish to state once more that we have an [fol. 864] extraordinary interest in the welfare and working of Panagra in Chile and do not believe that their business is conducted more efficiently in any other Division.

Yours very truly,

p.p. Grace y Cia. (Chile) S.A.

JJH/FL.
encs. by airmail.

[fol. 865]

GOVERNMENT'S EXHIBIT 410

NEW YORK,
May 6, 1932.

Mr. H. R. Harris,
LIMA.

My dear H. R.:

CONVERSATION WITH MR. TRIPPE

I have had a long talk with Mr. Trippe and find a little change in his attitude in regard to the distribution of payments between Panair and Grace & Co.

He makes the flat statement that the Grace influence as agents in South America is very much exaggerated. He points out that Grace have not assisted us notably in any really constructive fashion. He mentions the necessity for paying for our rights in Chile and the seeming impossibility of securing "cabotaje" rights without a further payment.

He also says that the Grace influence did not prevent the Peruvian Government from taking away "cabotaje" mail rights in Peru.

He is willing to approve the $6,000 I told him I thought I should pay at Santiago for the supervision and legal ser

vices of Dagnino, Bulnes, Heavey, Metzner, etc. He would also approve the $5,000 payment in Lima of which, as you recall, $4,000 was to cover Thommen's salary. He considers, however, that it is ridiculous that we should cover Thommen's salary and not have Thommen definitely on our pay-[fol. 866] roll and subject entirely to our orders. As you will recall, Grace at present refuse to transfer Thommen to our payroll, for obvious reasons.

Mr. Trippe also considers we are paying far too much for agency services at Guayaquil as compared with what he is paying in Brazil for similar services. He knows that when we really wanted something in Ecuador either you went up to Quito personally or we assigned Zalduondo to the work. Therefore, he considers we benefit nothing from having Guayquil Agencies in any other capacity than in charge of clearances, etc.

Mr. Trippe also says that we are paying too much at Buenaventura; that the SCADTA Company will attend to clearing our planes and give us launch hire for an additional $7.50 per plane.

As you can see, the situation has not changed and I expect the Directors' Meeting next Wednesday, which is the first one since I came back, will be anything but amicable.

You will, I know, keep this letter as extremely confidential.

J. D. MacGregor.

JDM/Q

[fol. 867]

GOVERNMENT'S EXHIBIT 411

Letter No. 3
(H. J. R.)

New York, June 15, 1932

D. S. Iglehart, Esq.,
Lima, Peru

Dear Mr. Iglehart:

You may recall that almost immediately upon Shannon's arrival in Santiago friction arose with our people there in connection with changes which Shannon proposed to make in the way of administration of Panagra's business. One point which Metzner particularly objected to was Shannon's proposal that all Panagra mail be handled directly in Panagra's name without going through our office. You may recall my stating at the time that I felt Vidal was in some way responsible for this. This is now confirmed from the cross correspondence. A recent letter from Harris to Vidal stated:

> "Hope that the situation in Santiago is progressing satisfactorily and that Shannon is not having the same opposition that he seems to have met with at first. I will write Mr. MacGregor about addressing everything Panagra Santiago *as you suggest.*"

While all of the above has now been straightened out by Mr. MacGregor I am not sure how long it will stay in that condition and I am passing this to you with the idea that in your talks with Harris and Vidal you may, without disclosing the above, assist to keep the matter on the rails.

Very sincerely yours,

(Sgd.) HAROLD J. ROSE

P.S. For obvious reasons you will appreciate that it is highly desirable that the fact that we have seen the above letter from Harris to Vidal be kept strictly private.

H.J.R.

[fol. 868]

GOVERNMENT'S EXHIBIT 412

New York, July 15, 1932

L. Valverde, Esq.,
Valparaiso, Chile

Dear Valverde:

I understand that Nyquist has ceased to be an employee of Grace y Cia. and has entered into a definite contract with Panagra. While this particular instance may not be of very great importance, it raises rather definitely the question of what our policy should be in reference to assigning to Panagra the men in our coast houses who are devoting all or a part of their time to its business.

While it is a temptation to get these men off our pay-roll in these times I think in the long run we lose money by doing so. After all, we have always sooner or later collected for the time of these men and a little more with it and I think we will continue to do so. But when the question of compensation for Grace services comes up at the end of the year the first question our partners always ask is what have you done—not in general, but specifically. The more people we can point to devoting time to this agency the better off we are. We cannot collect for work done by men on the Panagra pay-roll. We always take the position here that a personnel with many years' experience on the coast is a valuable part of our contribution to the business and that we should not be called upon to turn them over to Panagra for the asking and once we do so we have given away our asset. Panagra management is constantly pressing to do everything and leave us as agents on a limb. When we turn over important men to them we facilitate this and greatly weaken our own position.

This question is really involved in the larger one of the relations between Panagra and its two parent companies and I would therefore appreciate it if you would advise the Santiago management to consult with us before indicating to Panagra officials their acquiescence in their taking over any of our personnel.

Very truly yours,

(Sgd.) HAROLD J. ROW

[fol. 869]

GOVERNMENT'S EXHIBIT 413

Airmail Leave Stgo July 31
Due N Y Aug 6
Copy by Maria Aug 4
Due N Y " 22

Grace Y Cia. (Chile) S. A.

ORIGINAL AIR MAIL LETTER

Regular Mail Copy Follows

Santiago, July 30th, 1932.

Harold J. Roig, Esq.,
New York.

Dear Roig:

You remember the conversations I had with you and MacGregor in connection with Shannon's activities here. At that time I wrote to Metzner my letter No. 10267 copy of which I enclose herewith to refresh your memory, and which letter was verbatim a transcription of MacGregor's statements and was also approved by you before sending it out.

As you see from that letter MacGregor was going to write to Harris regarding the situation along the lines indicated in my letter. In other words, the idea as expressed by MacGregor was that Shannon was going to be in charges of operations practically in the same form that Robinson had been previously.

I have been discussing this matter with Harris and Metzner and the former tells me that the letter received by him from MacGregor does not define the situation as clearly as it was expressed by MacGregor during our discussings and it is Harris' understanding up to now that Shannon's position is not exactly as described in my letter after our interview with MacGregor.

The understanding in Chile is that Grace's responsibilities cover everything connected with Panagra with the exception of operations and certainly this was what MacGregor told us at that time.

In order to make clear what is the understanding under which Grace, Chile, have been working so far I refer to the memorandum drawn up by Harris in August 1930, dated from Santiago, copy of which I enclose and on which [fol. 870] are defined the responsibilities of W. R. Grace & Co., and of the Operations Department. It is true that this memorandum was cancelled some time later, but I think it was principally in connection with the question of division of payment of some of the employees, but it is also true that so far, according to Metzner, they have continued working practically within this program, until the arrival of Shannon. Since his arrival here, notwithstanding our conversations, there have been some deviation from the mechanism of the work within this plan in order to avoid misunderstanding, but since the matter is not clear I think it would be a good thing if you took the matter up with MacGregor and arrived at a definite understanding.

******

It is the understanding of Grace in Chile that whilst the staff is in Panagra payroll attending to the 13 points of Grace's responsibilities, all those men are actually responsible to Grace and should be completely controlled by them.

Very truly yours,

/s/ L. VALVERDE

LV:JR

[fol. 871]

GOVERNMENT'S EXHIBIT 414

Airmail Leaves Stgo Aug 7
Due N Y " 14
Copy by Barbara " 18
Due N Y Sep 5

Grace Y Cia (Chile) S. A.

ORIGINAL AIR MAIL LETTER

Regular Mail Copy Follows

Santiago, August 5th, 1932.

Harold J. Roig, Esq.,
New York.

Dear Roig:

I confirm my cable No. 10 in answer to your No. 3. In view of the cable sent by Harris I had to *****.

As you know, I wrote the previous letter in front of Harris and he told me that he, in turn, was going to write to New York on the subject. From my conversations with Harris and from the correspondence that he had received, it seems that there is a fundamental misunderstanding with reference to the question of personnel of the Panagra. The whole staff of Panagra, with the exception of the operating men, has been always considered as Grace staff and under their responsibility and direction and I am told that it was only left on the payroll of Panagra in order to comply with the law that obliges them to have 75% of Chilean personnel.

[fol. 872]

Grace Y Cia. (Chile) S. A.

ORIGINAL AIR MAIL LETTER

Regular Mail Copy Follows

Santiago, August 5th, 1932.

Harold J. Roig, Esq., New York

I take it that you have a clear understanding on this point as the whole Traffic Section has been always considered belonging to Grace, as undoubtedly Grace are the ones that engaged the men and always gave them all instructions up to the moment that Shannon arrived.

As I told you in the cable there is no doubt that Harris must have given instructions to Shannon to take over the traffic work and he has been actually doing so and Metzner has allowed this to go on, pending clearing up this matter with Harris and myself. There is no doubt that Harris' ambition is to handle the whole thing themselves; in fact, he actually said so in our interview, but of course, I do not believe that his intention would be to contradict his superiors' views if clearly put before him.

Although Shannon is actually doing this work I do not think there should be any difficulty in reinstating the modus operandi that existed until his arrival.

*****

[fol. 873]

Grace Y Cia (Chile) S A

ORIGINAL AIR MAIL LETTER

Regular Mail Copy Follows

Santiago, August 5th, 1932.

Harold J. Roig, Esq., New York.

****** In other words, the point that should be cleared up is that the Traffic Section here has been built up and managed by Grace and not by the Panagra.

*****

Very truly yours,

/s/ L. VALVERDE

LV:JR

[fol. 874]

GOVERNMENT'S EXHIBIT 415

Airmail Leaves Stgo Aug 7
Due N Y " 14
Copy by Barbara " 18
Due N Y Sep 5

Grace Y Cia. (Chile) S. A.

ORIGINAL AIR MAIL LETTER

Regular Mail Copy Follows

Santiago, August 6th, 1932.

Harold J. Roig, Esq.,
New York.

Dear Roig:

Your letter of July 15th. There is no question that the policy as outlined in your letter is the one that should be

invariably followed. I have taken the matter up with Metzner and he understands the situation thoroughly. The thing, however, boils down to the question of whether Panagra accepts the situation that all men handling Traffic and Accounting are actually Grace men. In the minds of the management here there is no doubt whatsoever that this is the case and that the men are only left on the Panagra payroll for convenience sake. I think this is clearly proved by the form in which the fees are disected in letter No. 10218, of my series, to Metzner and written by you, where it is clearly stated that there is a fee for general supervision, a charge for rent and a clearance fee. From that clearance fee the payroll of Panagra is deducted, but [fol. 875] to my mind it seems that this is merely a convenience and that Panagra should recognize that that Staff actually belongs to Grace, as it has always been the understanding in Chile.

There is no doubt that the whole Traffic business has been created from its infancy by Grace and I do not think that it should be fair for Panagra to consider those sections as belonging to them or getting any credit for them, merely because for convenience sake their salaries are on their payroll. I don't think there would be a doubt in anybody's mind that when operations were in charge of Robinson he had any interference whatsoever with any of these activities.

Very truly yours,

L. Valverde

LV:JR

[fol. 876]

GOVERNMENT'S EXHIBIT 416

Letter No. 118

Airmail 2/25/
Santiago 3/4/3

New York, February 24, 1933

A. Garni, Esq.,
Santiago, Chile

Dear Garni:

I enclose memorandum of Mr. Cogswell which is self-explanatory.

Perhaps you have some ideas on the subject and if so, we would be glad to get them.

Please understand that Mr. MacGregor is not making any complaint and Cogswell's idea and mine in writing to you is not primarily to make any complaint but rather, if possible, to anticipate complaint.

The matter is particularly acute in connection with the secondary service we have started in Peru. Mr. Iglehart is very keen about this service and the idea of having it worked into a Peruvian company with the many collateral advantages which that would give us. We are always in danger of losing our cabetaje rights in Peru and if we could get a Peruvian company going to carry on this secondary service it might at any time be of the very greatest assistance to us in this connection. For this reason, quite apart from the business itself, we are very anxious to make a success of this service. We will not be able to do [fol. 877] so unless we get business for it. This means active solicitation of passengers and other business and this job is the job which our houses and agencies are expected to do and ought certainly to be able to do in a far more effective and economical way then the Panagra organization. Nevertheless, the proof of the pudding is in

the eating and we are very definitely being put to that proof right now.

Very truly yours,

(Sgd.) HAROLD J. ROIG

[fol. 878]

New York, February 23rd, 1933

COPY

MEMORANDUM FOR MR. ROIG

Mr. MacGregor has several times stated to me that in his opinion the Grace Houses on the Coast do not actively go after business, either steamer or air, but rather take the attitude that they are glad to sell tickets to anyone who will come in and buy one. While I have naturally taken the position with him that I do not think his impression is correct, nevertheless, I must confess that I have gathered in a general way, in the case of Panagra at any rate, that there is something in what he says. Most of the activity and original ideas for getting new business, which is extremely necessary in the case of the airways, has originated with Panagra personnel.

I might cite as one instance the question of traffic from Arequipa. Mr. Farris took a trip to Cuzco to inspect the landing field and on his return to Arequipa by train procured five plane passengers who otherwise would not have flown. He called attention to the fact that at that time apparently no effort had been made by the agents to endeavor to get passengers from these trains or to acquaint them with our service.

[fol. 879] I am attaching herewith copy of letter No. 756 from Peruvian Airways Corp. to Grace y Cia., Arequipa, from which it is perfectly evident that very little initiative is being used by Arequipa Agencies in the question of the commencement of the service between Arequipa and Cuzco

which we are interested in starting, and very probably if anything is to be done Panagra will have to send their own man.

W. F. Cogswell

[fol. 880]

GOVERNMENT'S EXHIBIT 417

W. R. Grace & Co.
New York

Air Mail 3
New York 3

No. 156
(AG Trip Series)

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

SANTIAGO, March 6, 1933

Harold J. Roig, Esq.,
NEW YORK.

Dear Roig:

PANAGRA

Your 118:

As you know, I was only in Lima a very short time and have not really had an opportunity to get any reliable impressions, but offhand I would say that the situation as portrayed in Cogswell's memorandum to you probably corresponds to facts as they exist. I have, however, seen a great deal of the Panagra office here and have been in fairly close contact with Shannon. I must say that Panagra's affairs are well looked after by Shannon and his staff.

One of the first subjects Metzner took up on my arrival here was the lack of sufficient authority over Panagra. I asked him just what he had in mind and he said that they should have broader general authority with reference to administrative matters that have to be decided from time to

time. I then asked him whether he thinks Panagra's business would be better handled by him than it is being handled at present, and much to Valverde's and my surprise, he answered in the negative. This talk closed the doors behind him and Valverde was rather disappointed at Metzner's confession in the above sense.

[fol. 881] Shannon is a very good man and has his heart and soul in anything that concerns Panagra, and if anyone should ever suggest going back to the previous system, I, for one, would vote against it.

Coming back to the criticism bought out in the memorandum enclosed with your letter No. 118, I can do nothing until I get to Peru, which as I told you today, should be the case in about two weeks. If I get my work here sufficiently advanced in time to take the plane on the 16th instant, which is about the time you will get this letter, I will probably decide to go by air as it would mean a saving of almost a week.

Very truly yours,

/s/ A. Garni

[fol. 882]

Government's Exhibit 418

Letter No. 180

Air Mail
Lima

New York, April 6, 1933

A. Garni, Esq.,
Lima, Peru

Dear Garni:

PANAGRA

Your No. 156, I take it that you will follow up this matter further while in Peru.

The difficulty in Santiago as well as in Lima is not that the work is not being well done by the Panagra staff but

that they are increasingly taking over the work which it was always intended that our offices should perform as agents and if the development along this line continues, our offices are likely to find themselves performing no functions at all and accordingly when it comes to securing compensation for them it will become increasingly difficult as our partners here will naturally take the position that the agents are not rendering any services.

Obviously, the answer is for our offices as agents to see to it that they are in a position to render these various services and that they keep themselves constantly in the picture and in a position to do so. I think this contact is pretty well maintained in Lima through Thommen but my constant concern is that beyond that and consultation with Miranda when various problems arise, we do not keep our hand in [fol. 883] the picture as much as we should. Panagra would very much like to take over Thommen but I have always resisted this for the reasons above indicated.

For your information, there seems some considerable likelihood of our having to locate at some new airport in Lima and I have heard some rumors that in this connection the idea is growing of moving the whole Panagra staff to this airport which would result in further separation. If you run into this idea in conversation with Harris or others, you might avail of the opportunity to discourage it. My own feeling is that just as Pan American and we keep very close touch on the Panagra organization at this end, our houses on the Coast should maintain a similar position there and I believe that in the long run the best results will be accomplished in this way.

Very truly yours,

(Sgd.) Harold J. Roe.

[fol. 884]

GOVERNMENT'S EXHIBIT 419

Original Letter — Air Mail 4.22
Steamer Copy Follows — New York 4.26

No. 214
(AG Trip Series)

W. R. GRACE & CO.

7 HANOVER SQUARE, NEW YORK

A. GARNI
VICE-PRES & TREAS. — LIMA, April 18, 1933

Harold J. Roig, Esq.,
LIMA, Peru.

Dear Roig:

PANAGRA

Your No. 180: I went over the whole question of passenger solicitation with Thommen, starting out on the premise that past performance was not satisfactory and that an intelligent system of passenger solicitation has to be laid out and initiated.

*****

My provisional idea is that while Lima and Arequipa, which seem to be the pivotal points, should have a man especially detailed to passenger solicitation, the agency managers of the smaller outlying places ought to be able to attend to this job satisfactorily if they are properly coached and kept after from time to time. This, however, has to be done by the management of the Lima House, and Thommen, who really ought to be the connecting link between Panagra and ourselves, can do a great deal in this direction, in which sense I have spoken to him.

[fol. 885] While speaking to Thommen he said that in fairness to ourselves he must say that the atmosphere in the above respect has improved considerably within the last few months. I told him as well as Redshaw, that Panagra's and our own staff should establish much closer rela

tions. My own feeling is that the continual picking on W. R. Grace & Co.'s organization by the Panagra people, or vice versa, is to a large extent the result of a certain tension that exists between the two organizations. I noticed this particularly in Chile and to some extent also here.

Too much importance seems to be attached to the collection of as large an agency fee as possible instead of to the rendering of first class service and the establishment of close contacts.

. . . . .

Very truly yours,

s A. Garns

[fol. 886]

Government's Exhibit 429

PERSONAL 1291

SANTIAGO OFFICE—DAGNINO

NEW YORK
September 6, 1933.

Mr. H. R. Harris,
LIMA.

My dear H.R.:

I am rather disturbed at the information given me in your personal letter #1506 of August 26th, and I am just wondering whether all is as pleasant as it might seem. What I am particularly thinking about is—on what Panagra business can Dagnino spend 100% of his time? Do I understand that Dagnino is to handle some of the matters which have heretofore been handled by Shannon and, if so, has this departure from our recent policy been approved by you?

Confidentially, my own impression is that Grace & Co. have no work for Dagnino but wish to retain him, and if they can do so at our expense, they are that much ahead of the game. I am not at all sure how Mr. Trippe will view

this arrangement as he has constantly taken the position that Grace & Co. are our agents in South America and that the management of the concern is vested in Pan American Airways, Inc., through me as head executive.

In your personal letter #1495 you told me that Valverde was taking the position that accounting, traffic and all other kinds of business matters aside from strictly operations were the province of Grace & Co. In this same letter you stated that you had told Valverde that the Company was in a "state of flux at all times", whatever you mean by that.

I am particularly anxious to definitely know what led Valverde and Jory to make this decision. The Thommen case was different. As I recall it, we asked for his services on a 100% basis, and even in this case Mr. Trippe has several times stated to myself and to some of the Directors [fol. 887] that Thommen should be on the Panagra payroll and not on the Grace payroll. I should hesitate quite some time before I would consent to having Dagnino on the Panagra payroll, as, although he is valuable as a contact man, it would be extremely dangerous to charge him with responsibility for handling even negotiations with the Government.

I should like to hear from you further and very definitely as to what is in Valverde's mind so that when I take up the matter, as I shall, with the Grace Directors, it will not be with any misunderstanding as to what has been done by the Grace representative in Chile without, as I understand it, your approval and certainly without mine.

J. D. MacGregor

JDM/Q

[fol. 888]

GOVERNMENT'S EXHIBIT 421.

PAN AMERICAN-GRACE AIRWAYS, INC.
~~122 East~~ 42nd Street New York, N. Y.

PERSONAL. Letter No. 1536

SUBJECT: TRAFFIC DEPARTMENT

CRISTOBAL,
September 13, 1933.

Mr. J. D. MacGregor,
New York.

With regard to Van Law's private unnumbered letter to me of August 18, which I sent on up to you in New York asking you to note and return, it would seem that since you have returned this to me without initialling it, that you did not see it. What Van Law suggests is the desirability of a down-town ticket office at both Lima and Santiago, either in addition to other offices in the Grace Building in these places, or else as a self-contained unit, removing all our offices from the Grace buildings. I agree with Van Law that the present locations in both Lima and Santiago are not the most satisfactory, from a standpoint of traffic appeal. I feel that eventually we shall have to make an extensive study and come to a final decision on whether or not we should be satisfied to give up a certain amount of possible Panagra traffic in order to retain our offices in the Grace building at these two points.

(Sgd) H. R. HARRIS

H. R. Harris

HRH AW
cc JMVL

[fol. 889]

GOVERNMENT'S EXHIBIT 422

Cable Address "PANAGRA"

PAN AMERICAN-GRACE AIRWAYS, INC.
122 East 42nd Street, New York, N. Y.

PERSONAL Letter No. 1578

Subject: GUAYAQUIL AGENCY

HRH/FL
enc.

LIMA, October 2, 1933.

Mr. J. D. MacGregor, New York

Your attention is invited to the attached copy of Kirkland's private SAGO No. 1752 (Sept. 28) to me on the subject of Guayaquil agency.

The information contained therein is in line with what I have previously written you about our agent in Guayaquil and would indicate that he, like some of our other Grace friends, seems to think that Panagra is something to be exploited for the benefit of the agency, regardless of how unethical his actions may be. I am not taking any action on this matter pending advice from you.

(Sgd.) H. R. HARRIS

H. R. Harris

[fol. 890]

GUAYAQUIL AGENCY

1752 SAGO (Private)

CRISTOBAL,
September 28, 1933.

Mr. H. R. Harris,
Lima.

Mr. Searl advised me that he paid for the round trip passage of Mrs. Searl, Salinas, Cristobal and return in Sucres. This passage was paid for at 6.60 to the dollar.

the official rate of exchange being 6. On Guayaquil's credit memorandum covering tickets sold in sucres they invariably use a rate of exchange of 6 to the dollar, as applied to the regular dollar tariff. In this particular case, however, they gave us credit in the amount actually collected. However, the agency did not give Mr. Searl 10% discount for the round trip. Should New York, through copy of this letter, desire to look up this particular credit note from Guayaquil, it is attached to our Cash Receipt Voucher No. 8/162.

We know definitely of one other case where Guayaquil charged an irregular rate of exchange for passage collected in sucres. In this other case we did not, unfortunately, retain definite proof, but the circumstances were as follows: A passenger through from Guayaquil showed me a receipt which he had compelled the Guayaquil Agency to give him covering his passage. I noticed immediately the rate of exchange used as being 6.80 or 7. A few days later Guayaquil's credit memorandum came through covering this passage and crediting us only at the rate of 6 to the dollar, there being a discrepancy of 90 or 100 sucres on the amount credited us as compared with the amount indicated on the passenger's receipt as collected.

One other condition exists at Guayaquil which hardly seems right to me. We have received practically no credit for passages sold in dollars. As a matter of fact, the only ones which we have received from Guayaquil Agencies since establishment of the local currency account were for passages which Mr. Mackay sold in Salinas in dollars. Invariably Guayaquil indicates that they have never succeeded in selling passages in dollars. However, on passages sold in sucres they waste no time in forwarding us a debit note covering their commission payable in dollars; in other words, they are expecting us to accept the proposition which calls for their getting dollars in commission on tickets sold in sucres.

Furthermore, it seems that Guayaquil should be successful in selling at least a portion of their passages in dollars, particularly when you consider the fact that strict Grace

[fol. 891] Line regulations now prevent them from selling steamship passage out of Guayaquil except in dollars, and practically every ship leaving Guayaquil carries about 20 passengers. Also, on numerous occasions they have sold passages Guayaquil/Miami or Guayaquil/Brownsville, and, while successful in collecting dollars to cover the Panair portion, Cristobal/Miami or Cristobal/Brownsville, invariably their credit notes come through covering the Panagra portion as collected in sucres.

The above information is forwarded to you with the thought that possibly you may desire to use this in discussing the Ecuadorean situation with our people in New York.

PAN AMERICAN-GRACE AIRWAYS, INC.

T. J. Kirkland

TJK AW
cc HRH
NY

[fol. 892]

GOVERNMENT'S EXHIBIT 423

Air Mail 10/28
Stgo. 11/3

No. 462
(A. G. Series)

NEW YORK, October 27, 1933.

Luis Valverde, Esq.
SANTIAGO, Chile

Dear Valverde:

PANAGRA/AGENCY COMPENSATION

To save repetition I attach hereto copy of letter No. 10,629 to Redshaw.

In citing examples which were used by Panair to prove that our services were to some extent ineffective and in fact prejudicial to Panagra's operations, I have endeavored

to avoid any direct reference with the exception of the Arequipa incident.

You will, however, notice from my letter to Redshaw that I spoke of a man who openly stated that it did not suit him to issue an air ticket on an exchange order because by doing so he would lose $2.50 which he would get if he supplied the same passenger with a railroad ticket. This is the kind of thing which depreciates our services out of all proportion to its importance.

. . . . . .

Yours very truly,

(signed) A. GARNI

Enclosure

[fol. 893]

GOVERNMENT'S EXHIBIT 424

Letter No. 3

Airmail
Lima 2/7/34

New York, January 31, 1934

A. Garni, Esq.,
Lima, Peru

Dear Garni:

CHILE CABOTAJE

. . . . . .

LIMA AIRPORT

. . . . . .

While the plan even if handled along simple and safe lines would involve our increasing our investment over what we have at present, there are some pretty important compensating advantages in owning our own airport and further very important indirect advantages in that as a part of the plan we would get our present concession extended for fifteen years from 1943 when it now expires.

One objection to the plan which is to be borne in mind is that it would probably mean a considerable concentration of Panagra activities at the airport and the consequent removal from our Lima office. Harris' idea is that the passenger station should contain office accommodations for the Panagra force now quartered in our office. This will, of course, have a tendency to remove the Panagra management from our supervision and guidance which I would consider unfortunate. I would appreciate it if you could discuss this whole matter with our people in Lima as well as with [fol. 894] Harris and let me have the benefit of your views as to the necessity or desirability of the move and if you consider that it should be made, your assistance in putting the arrangement on the best possible basis will be very helpful.

PERUVIAN COMPANY

We have as you know had this for a long time under consideration. Decision on the question has been deferred from time to time awaiting the arrival of Fawcett in New York with the idea that a plan might be worked out under some arrangement with him. He is now expected in New York shortly but may or may not come and in the meantime if you have any suggestions from the ground we will be glad to have them.

You are familiar with the general problem and the fact that our principal interest in this development is in connection with cabotaje business.

Very truly yours,

(sgd.) HAROLD J. ROIG

Encl.

[fol. 895]

GOVERNMENT'S EXHIBIT 425

Letter No. 68

Airmail 3/10/34
Lima 3/14/34

New York, March 9, 1934

A. Garni, Esq.
Lima, Peru

Dear Garni:

THOMMEN

Your No. 25.

Harris' memorandum to you of February 17th with reference to Thommen omits the following duties which were included under Harris' memorandum to me of September 25, 1930:

1. All traffic, including mail, cargo and passengers
2. Advertising
3. Local purchases, including checking of "presupuestos".
4. Control, through his traffic assistant, Mr. Matellana, of movement of all aircraft of Peruvian Airways Corporation, except test flights.

Some of these functions may be included under Thommen's duties as Comptroller but I should doubt if all of them were. The item I particularly do not like to see removed from Thommen's sphere of activity is the item of traffic (No. 1 above). This is an essential part of our Grace agency arrangement and should not be released. As I wrote you I think once before this problem may become acute with the new airport where I am afraid Harris will want to move most all of the activities now carried on in our office. If that comes to pass we should at least have some of our people also at the airport looking after such items as traffic.

Sincerely yours,

(sgd.) HAROLD J. ROIG

[fol. 896]

No. 25
(AG Trip Series)

LIMA, March 12, 1934.

Enis Valverde, Esq.,
SANTIAGO, Chile

Dear Valverde:

PANAGRA/CABOTAJE RIGHTS

* * * * *

Incidentally MacGregor is here and when he gets to Chile he will no doubt take up this question and will want to interest himself directly in it. While his presence may be useful, you will, of course, not relinquish the captaincy in this very important matter, as it is quite important that while availing of MacGregor's assistance, Grace y Cia, Santiago should keep control over every move that is to be made in connection with these negotiations. Very privately I might mention that in a similar question we have here with the Government with reference to the new airport, I had to do some skillful maneuvering in order to get the management and direction of the negotiations out of Panagra's hands into the hands of the management of our Lima House.

The Panagra people are all very efficient in their own way when it comes to operations of planes, handling of passenger movement, etc., but I feel so strongly that when it comes to a negotiation with a government on a matter which must of necessity be distasteful to that government, as in the case under discussion, they are simply not competent to handle the corresponding conversations. By this I do not in any way want to throw any reflection on their general ability, but do want to emphasize the importance of your making yourself the *principal responsible* party for the handling of whatever discussions you decide must take [fol. 897] place with the Chilean authorities with reference to the effort it is now felt should be made to secure the cabotaje rights in Chile.

If your views should differ totally from those expressed in this letter, do not fail to telephone or cable to Mr. Roig, to whom I am sending a copy of these lines.

Very truly yours,

(Signed) A. GARNI

[fol. 898]

GOVERNMENT'S EXHIBIT 426

No. 70
(AG Trip Series)

On Board M/S "Santa Clara".
March 15, 1934.

Harold J. Roig, Esq.,
NEW YORK

Dear Roig:

* * * * *

One thing occurred to me as soon as I left Lima, and that is that if it had been possible it would have been better to have one of the Grace Panagra directors come with MacGregor on this trip. Of course, we have people like Kirby and Valverde at the pivotal points, but there are a good many problems with reference to landing places, change in equipment, etc., on which MacGregor will have to reach definite conclusions, and I think he would be steered and held in check if he had someone, trained in the Grace money-spending policy, alongside of him morning, noon and night.

* * * * *

With best regards,

Yours sincerely,

(Signed) A. GARNI

[fol. 899]

GOVERNMENT'S EXHIBIT 427

No. 10,723
(A. G. Series)

Air Mail 4.7
Lima 4.11

NEW YORK, April 3, 1934.

John T. Kirby, Esq.,
LIMA, Peru.

Dear Kirby:

PANAGRA THOMMEN

I enclose herewith a copy of my No. 25 and 58 to Mr. Roig, as well as a copy of his No. 68 and his memorandum of March 16 to me.

Mr. Roig is still somewhat afraid that the transfer of certain duties from Thommen to one of the Panagra people as a result of the recent realignment of Thommen's duties, may somewhat weaken our position. He feels strongly that if Thommen has not time to attend to the duties which were included in the memorandum of September 1930 and excluded in my memorandum of February 20 to Mr. Harris, he should be given an assistant of our staff.

I have also discussed the whole subject with Vidal, who also feels that we should not transfer any of Grace's duties to Panagra and that Thommen should really have an assistant.

* * * * *

Very truly yours,

(Signed) A. GARNI

Enclosures

[fol. 900]

GOVERNMENT'S EXHIBIT 428

No. 10,830

Lima 24/4/34
NY. 28/4/34.

W. R. Grace & Co.
Lima, Peru

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

A. Garni, Esq.,
NEW YORK.

Lima, April 23rd, 1934.

Dear Mr. Garni:

PANAGRA THOMMEN

After the receipt of your letter No. 10,723 I was not able to take this matter up immediately with Harris as I was remaining in the hospital with my wife.

However, last week I had several conversations with Harris along the lines that it was your feeling in New York as well as my own, that Grace were not fulfilling the function it was intended of them by not attending to traffic. I thought it advisable to concentrate on this important item as it is the one that Mr. Roig in his letter No. 68 to you particularly stresses.

. . . . .

Harris volunteered that as regards going back to the original set up as a justification for making a change in the handling of traffic that it was the idea originally that Panair should handle operations which, as he said, if carried out now would make him "de mas".

As you will recall I was in Santiago last September when the Panagra arbitration question was pending and I took the opportunity to privately recommend to Mr. Valverde the assigning of Dagnino entirely to Panagra, and I was able to bring in this question indirectly as evidence of how incorrect the Lima set up is and has been. In this connection I went over with Harris the form in which Panagra

[fol. 901] affairs are handled in all our agencies and there we, of course, handle all functions including traffic.

Another point came up which I made use of in connection with this question of traffic and that is, the idea of having a small outside sales office in Lima for tickets in the store of a Kodak agent. When Harris brought this to me for my opinion, I told him that it was an example of the necessity for our handling their traffic as I obviously could not sympathise with the idea of an outside sales office over which we had no control. In this connection this idea has been worked up by Jardine as Acting Division Superintendent and who has already commenced to show a considerable amount of commercial ability, a point to be borne in mind in connection with the idea of getting back traffic handling to Graces.

Yours truly,

J. T. Kirby

JTK/T.

* * * * *

[fol. 902]

GOVERNMENT'S EXHIBIT 429

Letter No. 10,753
(A.G. Series)

New York, May 3, 1934

J. T. Kirby, Esq.,
Lima, Peru

Dear Mr. Kirby:

PANAGRA-THOMMEN

Your No. 10,830.

I am not at all in favor of having Panagra take over Thommen. This question has come up repeatedly in the past and I have always taken this position for the reason that if Panagra are permitted to take over our people who are performing certain functions, it simply means that the functions will go with the man and our whole position will be gradually washed out. It is precisely because Lima

has pursued a too easy going policy in this regard that the present traffic difficulty arose. The original understanding, clearly expressed in written memorandum of September 25, 1930, was that the Grace offices were to handle traffic and Lima should never have permitted this important function to drift away from them. Certainly we cannot consider another step now which would mean parting with still other functions. s'

* * * * *

Very truly yours,

Harold J. Roig

[fol. 903]

GOVERNMENT'S EXHIBIT 430

W. R. GRACE & CO.
Lima-Peru

Due New York October 31st.

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

—A. G. Series—

No. 10940

Lima, October 24th, 1934.

A. Garnie, Esq.,
NEW YORK

Attn: Mr. Harold J. Roig

Dear Mr. Garni:

PANAGRA—THOMMEN

Rather close contact with Panagra matters and with Thommen during the last few months has led us to the conclusion that his handling of the departments of Panagra's Peruvian business for which W. R. Grace & Co. is responsible, leaves much to be desired.

He does take care in A-1 fashion of routine Government negotiations, such as straightening out Custom House dif-

ficulties, collection of Post Office accounts, settlement of minor controversies arising at Las Palmas, the following up of matters pending in Government offices, etc. He also contributes materially to the handling of matters which really should be taken care of by the local Division Operations Department, such as the purchase and shipment of gasoline and other supplies.

At least two other departments, however, for which Grace is directly responsible, have received very little attention. These are the Accounting Department of Peruvian Airways Corporation and the supervision of Grace agencies in their representation of Panagra.

• • •

[fol. 904] Needless to say, the situation above outlined will be emphasized with the continuous development of Panagra's Peruvian business, specifically, and in the very near future, when CADA and Aerovias Peruanas commence operations. It is simply too much to expect that Thommen is or will be able to bring to his work the degree of alertness and the grasp of Panagra affairs that we should have the right to expect of him.

We are particularly a little fearful that criticism will become more and more frequent from Panagra sources and that unless some steps are taken to avoid such criticism, the deficiencies of our present set-up might afford an excuse for attempted gradual encroachment of Panagra personnel on our functions.

This is exactly how we lost control of the handling of Panagra traffic, which got away from us in fact, though not in theory, long before the discussions of last February.

• • •

Yours very truly,

J. T. Kirby

/s/ ABS
ABS/ABL

GOVERNMENT'S EXHIBIT 431

[fol. 905]
W. R. Grace & Co.
New York

Letter No. 15
(HJR Trip series)

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

Lima, March 30, 1935.

A. Garni, Esquire,
New York.

Dear Garni,

PANAGRA LIMA BUSINESS MANAGEMENT

Referring to the last part of my letter No. 13 the more I think of the business side of Panagra's problem here the more hopeless it seems to arrive at an effective solution without some rational plan under which we can exercise direct controls. Kirby has been up at the sugar estates since the day after my arrival so I have not had an opportunity to go over the matter with him. I have, however, discussed it at considerable length with Shea and the more we get into the matter the more difficult it seems to evolve an effective remedy merely by the process of adding further patches to the machinery.

This naturally brings me back to the famous scheme worked out some four years ago and which Taipe in the last few months has been very anxious to revive, under which Pan American would assume responsibility for operations and we for West Coast business management. If we had the business end in our hands along the lines of that plan the whole picture would certainly be greatly simplified and it may be that the necessity of this will become so great that it may be worth considering paying the price, [fol. 906] which would, of course, be letting Panair attend to the operation, along the lines of that plan. I am not sure that this price is as bad as we may think it to be at

that we cannot by certain modifications of the plan make it more to our liking.

In any event I wish you would ask Miss Boucher to dig the plan out of my files, give you a copy and send one along to me. I would like to think it over again on the ground and perhaps make such changes in it as the situation here may suggest and then take it up with you again after I have reached a more considered opinion.

The plain fact is that on the business side we have a rapidly growing enterprise which ought to be provided with an organization in many ways more effective than the present one, and, in view of our peculiar setup I really do not see how we are going to provide this going along as we are. Some really radical change in the whole setup is necessary and so far I do not see how this is going to be brought about unless it can be worked out along some line analagous to that provided in the above plan.

Very truly yours,

Harold J. Roig

[fol. 907]

GOVERNMENT'S EXHIBIT 432

Letter No 27
(HJR trip series)

Santiago, April 6, 1935.

A. Garni, Esquire,
New York.

Dear Garni,

PANAGRA OWNERSHIP

With Trippe's Transpacific development, doubtless followed by plans looking toward transatlantic service, Panagra is going to become an increasingly unimportant part of his kingdom. The time and thought which he is able to give to Panagra problems, always extremely slight, are likely to reach the vanishing point.

From Panagra's viewpoint, on the other hand, the association with Pan American, at one time an asset, may with this expanding program, become a positive liability. Not only will all this expansion undoubtedly be a drain on Pan American's financial structure, but it will put them more and more at the mercy of ample government subsidies, while at the same time their entry into the complicated political situation in the East will make them more exposed to political attack at home. As a part of the system we are likely to bear a part of the brunt of this exposure without any opportunity to benefit.

All of the above is fairly obvious, but the conclusion I draw from it is that, even more than heretofore, it might [fol. 908] suit us to acquire Pan American's stock in Pan American-Grace Airways and a situation might possibly arise where it would suit Trippe to turn his interest into cash.

Very truly yours,

(sig) H. J. Roe.

[fol. 909]

GOVERNMENT'S EXHIBIT 433

W. R. GRACE & CO.
Lima-Peru

Letter No 88 (Trip series) Airmail 6.
NY 6.

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

Lima, May 28, 1935.

A. Garni, Esquire,
New York.

Dear Garni,

PANAGRA FINANCIAL &
COMMERCIAL CONTROL

I was glad to get your cable N 57 and your cable N 4 to Kirby of the 28th inst.

The plan we have worked out for financial and commercial control has the complete and enthusiastic support of the Panagra management including Mr. Harris and I feel confident that it ought to go a long ways towards solving what has always been a very difficult problem.

It is thoroughly understood that Shea here and Tschumper in Sanitago are to supervise the control of the Panagra movement in exactly the same way as they would any part of the Grace business and that it is the Grace Organization, as Agents, which is assuming this responsibility and these two men are to act merely as instrumentalities of the Grace Organization. They will, of course, respond to the Grace Management in the respective offices where they are located but they will maintain direct contact as the Grace representative with Vidal in connection with this new aspect of the agency service.

* * *

Very truly yours,

Harold J. Roig

[fol. 910]

GOVERNMENT'S EXHIBIT 434

Lima 1/23/36
NY 1/27/36

No. 4
(H.J.R. PANAGRA SERIES)

Lima, January 22nd, 1936

H.J. Roig, Esq.,
NEW YORK.

Dear Mr. Roig:

We have had occasion several times since your departure for New York to devote some serious thought to our future relations here with Harris and the Sago organization generally, especially in the handling of Panagra Peruvian Traffic. Since Harris' departure, as you probably realize, we have been able, with the authority left in our hands,

to accomplish a good many things in a comparatively short space of time. We feel that we have kept scrupulously withingthe authority given us both prior to and after your departure by the Panagra office in New York, and we have received the highest degree of cooperation from the entire Panagra staff here. We are a little bit afraid that this cooperation will disappear to a very considerable extent with Harris' return, and, to make a long story short, we feel that while he is in New York it should be definitely decided whether we are to be responsible hereafter his return, to him and to the Sago organization or to the New York office of Panagra in handling the phases of Panagra Peruvian business which we are now managing. If we are to be responsibles to Sago, we believe that our efficiency will be seriously impaired. One or two incidents will illustrate the point.

[fol. 911] A few minutes before the departure of yourself, Harris, and Vidal from Limatambo, Harris called Mr. Kirby and myself aside in the Waiting Room. Naturally, in view of the many important matters pending at that time, we thought that he was about to give us a few last-minute suggestions as to how some of them should be handled. Much to our surprise, however, he said that he just wanted to let us know that a good many people in the Panagra organization had the feeling that W. R. Grace & Company, Lima, was interfering too much in Panagra business; that in some cases these people were wrong but that in other respects they were right; and that he hoped that during his absence we would keep these remarks in mind. He then walked away.

. . . . .

Very truly yours,

/s/ Andrew B. Shea

ABS/EPB

[fol. 912]

GOVERNMENT'S EXHIBIT 435

NO. 28
(HJR PANAGRA SERIES)

Lima, April 17th, 1936

H. J. Roig, Esq.,
NEW YORK

Dear Mr. Roig:

Receipt is acknowledged of your letters Nos. 7 and 8.

You may rest assured that Shea and myself have been watching very closely the Panagra results, and with Worsley's assistance we shall be very happy to exercise over this business as you say, "the same control as we do over the sugar estates or any of our other businesses". Moves that you have made recently will be of great assistance to us in this direction, citing as the best example the new capital appropriation form that gives us the opportunity to be in on Panagra expenditures from the time of their conception. Needless to say, our approval will not be placed on any such recommendation if we are not entirely in accord.

* * * * *

Yours truly,

(Sgd) J. T. KIRBY

* * * * *

[fol. 913]

GOVERNMENT'S EXHIBIT 436

W.R. GRACE & CO.
NEW YORK

May 12th, 1936.

MEMO TO MR. ROIG

Herewith some interesting figures on express traffic.

I find that Vidal has a very definite idea that Grace solicitation for express traffic on coast is not active, is largely

left in the hands of juniors who do not understand the schedules and that the loss of business in 1935 as compared with 1934 is due to this.

Of course Smith has now been over the system and will be here next week and he will undoubtedly work some improvement, but the actual solicitation in all countries will have to be carried on by Grace and I suggest that the attached memo be sent to Grace management in all countries with the request to give this matter more attention and to make some senior official responsible for its development.

R.H.P.

[fol. 914]

GOVERNMENT'S EXHIBIT 437.

PAN AMERICAN-GRACE AIRWAYS, INC.
135 East 42nd Street New York, N.Y. Cable Address

LETTER NO. Sago 7420

PRIVATE

SUBJECT: REQUEST FOR CAPITAL APPROPRIATION

LIMA
August 29, 1936.

Panagra,
NEW YORK.

Your attention is invited to your letter #4445-P of April
~~August~~ 10, 1936, to W. R. Grace & Company, Lima, on the subject of "Request for Capital Appropriation." This letter is not sufficiently complete in that it does not cover special cases, or rather, it covers special cases but in a way which is not satisfactory.

A particular instance has just arisen where it has been decided to purchase Kollsman altimeters as standard equipment for our various radio stations throughout the Panagra line. Under the pending instructions the local Grace office

is supposed to approve an R.C.A. form to be made out for purchase of these altimeters. Mr. Shea, the Grace local manager, has failed to approve this R.C.A. form as yet due to lack of knowledge of the reason for which these altimeters are required. Very obviously Mr. Shea has no knowledge of the requirement of these special instruments, particularly for use outside of Peru, and in future cases of Sago requisitions of this nature no time will be spent in trying to explain these matters to the local Grace people, but requisitions and R.C.A. forms will be forwarded direct to you containing the Sago section head's signature and the signature of the undersigned.

It is not often that such global purchases are required, and usually, as you know, the present method of handling R.C.A. forms has proven to be reasonably satisfactory.

H. R. Harris.

H. R. Harris.

HRH:KW

cc—Sago comms.
" Traffic
" Ops.
" Maintenance
NYX
2nd airmail

[fol. 915]

GOVERNMENT'S EXHIBIT 438

W. R. Grace & Co.
New York

September 18, 1936

MEMO TO MR. H. J. ROIG:

With the appointment of Muhlfeld as Panagra Traffic Manager, the designation of Smith to push air express and the education of Zalles in modern methods of traffic solicitation, I fear Panagra administration, when all of these

men are on the job, will become dissatisfied with the traffic solicitation by W. R. Grace & Co. as Agents for Panagra.

Muhlfeld told me that when he was stationed at Havana, he found it impossible to get any cooperation out of Chile and that Chile did not even answer letters regarding traffic which the Havana office wanted to develop. I gather that he has mentioned to Vidal his fear that he will be up against the same difficulty when he goes to the coast.

This may produce a state of mind rather menacing to Grace's position as Traffic Agent unless more thorough traffic solicitation is made apparent by Grace, not only at the principal cities, but throughout the provinces. Vidal has the idea that at lesser points the Panagra work is left to persons who do it rather perfunctorily and who do not exhaust the full possibilities. I have no personal knowledge, but I can imagine this may be true.

Kirby tells me that although W.R. Grace & Co. at Lima is the Traffic Agent, the actual traffic solicitors in Lima are on Panagra payroll. Possibly this impairs the effectiveness of Grace's supervision of the traffic solicitation. Generally speaking, pep can be infused only by the man who hands out the pay check.

I hope the letter to Shea, which I showed you and which goes forward today, will have the desired effect. It seems to me our head offices everywhere should be impressed with the necessity of giving all the traffic effort a big shove forward before Muhlfeld goes to the coast so that his obvious expectation of the lack of cooperation will be contradicted.

/s/ R.H.P.

[fol. 916]

GOVERNMENT'S EXHIBIT 439

MEMORANDUM FOR MR. KIRBY:

October 23, 1936

PANAGRA—COLOMBIA

I. *General Set-Up.*

At the present time, although the Grace organization in Colombia is the agent for Panagra in that country, it functions almost solely in matters of traffic and takes very little direct part in administrative or government problems. The result of this is that when Panagra has some important matter to take up with the government, it is generally done through the New York office of Panair (Mr. Evan Young), who in turn takes it up either through their lawyer in Bogota, Juan Uribe Holguin, or through Scadta. As Panagra's interests in Colombia are in some cases at variance with the ideas of Scadta, and probably Panair (who own 85% of Scadta, but claim that they do not give Scadta definite instructions in administrative matters), the result is that Panagra's affairs in Colombia are handled by entities which cannot be expected to enter enthusiastically into their successful solution, to put it mildly.

I believe that we should strive gradually to make the Grace organization in Colombia the representative of Panagra to the same degree that the Grace organizations in Ecuador, Peru, Bolovia and Chile are functioning. As a first step in this direction, I would suggest that the Grace manager in Colombia be instructed to commence a series of private correspondence with the Panagra New York office along the lines of the series of letters which he has been addressing to Mr. Roig. Copies of these would, of [fol. 917] course, be sent to Mr. Roig with covering letter in the H.J.R. Series or, in other words, he would follow the same procedure which Shea uses in regard to correspondence about Panagra problems in Peru.

* * * * * *

DOUGLAS CAMPBELL

[fol. 918]

GOVERNMENT'S EXHIBIT 440

December 23, 1936

MEMORANDUM FOR MR. ROIG:

PANAGRA - PERU MANAGEMENT

During my recent stay at Panama, Mr. Harris on three or four occasions brought up the question of the scope of the participation of W. R. Grace & Co. Lima in the management of Panagra and Aerovias affairs in Peru, which seemed to be a matter of considerable concern to him.

In general his attitude appeared to be that during the last year W. R. Grace & Co. had been taking over more and more of the functions of management of the airways in Peru. I pointed out to him that it had been agreed by all concerned that Grace was to play a more active part in the supervision of accounts and expenditures and in the development of traffic, as well as matters of local policy, to which he agreed but said he felt that there was a tendency for the Grace organization to attempt to take over the entire management in the course of time and he felt that since he, as Vice President of Panagra, was responsible to Pan American Airways as well as to Grace, that he should oppose this tendency.

His point of view in this matter may be the result of his personal reaction to having his own authority somewhat curtailed by the arrangement giving the Grace management a greater measure of control in Panagra matters; on the other hand, certain points which he mentioned specifically would seem to give some basis for his point of view unless they have other aspects which were not brought out in [fol. 919] my conversation with him. I would suggest that these matters be taken up with Mr. Shea with a view to developing a more complete picture of the situation.

Panagra Budget Meetings

Mr. Harris stated that the first of the meetings to determine the budget for the succeeding month in accordance with

the policy suggested by Mr. MacGregor some months ago, was called by Mr. Worsley and was attended by the Panagra department heads but no notice of it was given to Mr. Harris himself. It appears that Mr. Worsley on the following day merely advised him that it had been held and stated that he had assumed that Mr. Harris would not be particularly interested in attending it.

Budgets for a subsequent month, according to Mr. Harris, were prepared by Mr. Worsley practically single-handed without even calling in department heads of Panagra and this, it appears, gave him the idea that the Grace organization was working toward taking over the entire management. I told Mr. Harris that while it had been agreed that the Grace management would exercise close control over expenditures of Panagra and Aerovias, it was certainly not my understanding that they would prepare these budgets without consulting the Panagra people, and suggested that perhaps it had not been possible for Mr. Worsley to get all the men together before the deadline date. He still seemed to feel, however, that this procedure had been followed with the express approval, if not instruction, of the Grace management at Lima.

[fol. 920] *Aerovias*

Mr. Harris expressed himself as being dissatisfied with the way in which Aerovias is being managed as he feels that it is merely going along on its own momentum and that there is no single person in authority to tie all the phases of it together and push the business as it should be pushed. He repeated his remarks about being the only representative of Panair on the West Coast of South America and said that he felt that he should manage Aerovias and have some definite title in the company. I pointed out that the necessity of making Aerovias appear to be a Peruvian concern as much as possible made the question of a title for Mr. Harris rather difficult, but he felt that he should have at least a nominal title and that all concerned should be instructed that he was the person in authority.

I pointed out to him that since Aerovias was a local company in Peru, the question whether its manager was tech-

nically a representative of Panair did not seem to me to make much difference so long as the company was well managed, to which he replied that even on this basis, he thought he ought to run it. I then asked him whether the development of Ayulo to take charge of Aerovias would not solve the problem of tying the organization together and pushing its development, to which he replied that he did not consider Ayulo an effective man and that Ayulo had taken very little hold of the business. I then mentioned having seen in correspondence that Ayulo had done some [fol. 921] effective work in connection with permission for Aerovias to use a leased Panagra Ford on the freight contract and he admitted that possibly Ayulo had been useful in this respect but that in the active management of Aerovias Ayulo had done very little. He described Ayulo as being of a somewhat retiring nature and not the type to jump in and take hold of things.

He brought up as a further grievance the fact that in connection with proposed Aerovias sightseeing flights over Lima, he had been overruled by the Grace management and finally wound up by saying that somebody had to step in and really manage Aerovias and that as long as he was there he proposed to do it unless he received definite instructions to the contrary.

I have, of course, heard only one point of view on these questions and I believe it would be desirable to take these matters up with Mr. Shea and get his ideas on all of the points raised by Mr. Harris in order to determine whether some further steps are necessary to coordinate the Aerovias management more effectively. While it would be undesirable to take any action which would tend to weaken the position of the Grace management in carrying out its proper functions of control over Panagra and Aerovias matters in Perú, I believe something should be done to change Mr. Harris' attitude toward a situation which seems to exist, perhaps only in his own mind, between the Grace management and himself, and which cannot help but prejudice the best interests of the companies if it is allowed to continue or become further aggravated.

/s/ Douglas Campbell

[fol. 922]

GOVERNMENT'S EXHIBIT 441

No. 100
(H.J.R. Panagra Series)

W. R. GRACE & CO.
LIMA-PERU

Lima 1 4 37
NY. 1 4 37
No.

Lima, December 31st, 1936

H.J. ROIG, Esq.,
NEW YORK.

Dear Mr. Roig:

I am sorry to have to write you of a serious error of judgment on Worsley's part which I am absolutely at a loss to explain and of which you will undoubtedly be hearing from Panagra.

A short time ago Worsley made a trip to La Paz to look over the accounts, and arrange certain details in connection with expenses, control, etc. While he was there our office in La Paz made the suggestion to him that Panagra might agree to a reduction of 50% in the postal tariffs covering Christmas and New Year's cards mailed from La Paz by air mail. Worsley, without consulting anyone authorized this action, and La Paz on the strength of his authorization officially notified the Post Office that the reduction was effective.

The first that I or anyone else knew of this action was when Panagra received La Paz letter, No. 417, a copy of which I enclose, to which were attached copies of the correspondence exchanged with the Bolivian Post Office on the subject. Harris brought this letter to me yesterday afternoon and I immediately called Worsley in with Harris present, and he admitted that he had given this authoriza-

action on his own initiative, with no explanation other than that he had done so without thinking. I told him in force [fol. 923] ful terms that his action constituted an absolutely unwarranted assumption of authority which could not be justified and that it was incredible that he had so conducted himself, especially as it was his job to see that the funds of Panagra are not disbursed except with proper authorization. I also told him that it seemed to me that the only possible explanation of his action was that he disliked to admit to the La Paz people that he lacked the authority to approve any such suggestion affecting postal tariffs.

There is nothing more to be said of the incident except that I fear that it will impair his relations with Harris and will give a good deal of color to the feeling on the part of a good many Panagra people here that Worsley carries out his duties in too high-handed a way. This feeling to my mind is unwarranted but it is most unfortunate that he has now done something which might be considered as a justification for it.

Very truly yours,

ANDREW B. SHEA

Enc.
ABS FPB

June 7th I enclose a copy of a letter written by Harris to MacGregor today, which requires no comment.

[fol. 924]

GOVERNMENT'S EXHIBIT 442

PAN AMERICAN-GRACE AIRWAYS, INC.
135 EAST 42nd STREET, NEW YORK, N.Y.

LETTER NO. JDM 2154

SUBJECT: OFFICE FURNITURE FOR SANTIAGO

LIMA
March 11, 1937.

Mr. J. D. Mac Gregor,
NEW YORK.

Attached herewith please find signed R.C.A. form for office furniture for Santiago. You will note that all copies are attached herewith in spite of the fact that Santiago has definite instructions to send one copy to you prior to my signature, to avoid delay.

You must have received your copy of Santiago's letter #4794 to Sago on the subject of office furniture in the last mail. This is the letter to which these R.C.A. forms were attached. I have just received a cable from Santiago as follows:

"35 REFERENCE TO OUR LETTER #4794 AFTER DISCUSSING WITH VIDAL SUGGEST THAT YOU CABLE NEW YORK FOR APPROVAL AS FURNITURE MUST BE ORDERED WELL IN ADVANCE."

I am at a complete loss to know why after a great many months of work on this office it suddenly becomes necessary to cable about furniture. Therefore I am not following their suggestion of cabling you for approval on this R.C.A. since I feel that better results can be obtained if you have the whole story before you rather than have to depend upon a sketchy cable for your decision.

I don't know whether the desks already in use by our Santiago office are to be used, since it is my understanding that we have not taken on any additional employees, ref

tainly not six additional employees. I have discussed this with Muhlfeld, and he thinks that the general idea is to have new desks and fittings to harmonize with the Grace Line desks and fittings, which I think is a good idea and worth the investment. However, there is one very important matter that Muhlfeld told me about on my inquiry, and that is that there is not going to be enough space for Panagra in the new arrangement. He drew up a cable to me on February 16th when he was in Santiago, as follows:

[fol. 925] "PALMETTO NEWYORK
FOLLOWING IS FOR H R HARRIS FROM J. E. MUHLFELD LOOKING OVER FLOOR SPACE ALLOTMENT PANAGRA SECTION SANTIAGO BELIEVE SAME DEFINITELY INADEQUATE ACCOMMODATE MINIMUM FORCE REQUIRED TO EFFICIENTLY HANDLE OUR BUSINESS. SIMON NOW NEWYORK KNOWS SMALL ADDITIONAL SPACE REQUIRED AS DISCUSSED WITH HIM BY SHANNON CONSISTING ONE THIRD SPACE NOW ASSIGNED TEXTILES SENTENCE SUGGEST YOU PUT MATTER BEFORE PROPER AUTHORITIES WITH IDEA THEY GIVE GRACE Y CIA (CHILE) S.A. NECESSARY INSTRUCTIONS TO PROPERLY PROVIDE PANAGRA OFFICE SPACE HERE. SUGGEST CABLE REPLY IN ORDER ALTER CONSTRUCTION PLANS NOW UNDERWAY WITHOUT ADDITIONAL EXPENSE"

The Grace people refused to allow the cable to go out, and Muhlfeld was at a loss to know what to do. Unfortunately, Muhlfeld was so anxious not to cross wires with our Grace friends that as a result of their turn-down of his cable he did not forward me the letter which he wrote on February 17th giving further details on the matter. In order that you may be familiar with all of the background of this matter I am attaching herewith a copy of Muhlfeld's letter which, as noted above, was not sent.

If Simon is still in New York I believe you should discuss this matter in detail with him since apparently our Grace friends in Santiago failed to provide any means for

Panagra expansion in their new office setup, which, incidentally; was never approved, as far as I know, by either me or you for Panagra.

H. R. Harris

H. R. Harris

HRH:KW

cc—NYX
2nd airmail

[fol. 926]

GOVERNMENT'S EXHIBIT 443

Copy of letter from H. R. HARRIS to J. D. MACGREGOR

Subject: ECUADOR

On business at Guayaquil,
April 5, 1937

Mr. J. D. MacGregor,
NEW YORK.

Dear Mr. MacGregor:

This will confirm the various exchange of cables between you and me during the week I have been in Quito.

. . . . . .

On Friday, the President sent for me again, and again I was accompanied by Flores Guerra. The President made some very startling remarks about Grace's lack of interest in Ecuador, . . .

. . . . . .

I feel very strongly that when Campbell arrives in Ecuador he must be a direct representative of Panagra New York and not a representative of W. R. Grace & Co., if our interests are to be properly served. I naturally pointed out to the President that I was not a representative of W. R. Grace & Co. but that Grace acted as our agents at various points for business reasons, that Pan American-Grace Airways was an international operator entirely dependent

upon U. S. Government subsidy and that consequently we have to be neutral in every country through which we operate, since our business is not primarily with any particular country with which we are working, but with all of the countries. * * *

* * * * * *

Yours very truly,

(Signed) H. R. HARRIS

HRH/WD
cc D. Campbell
cc G. Vidal, Buenos Aires
cc Manuel Holguin Guayaquil

[fol. 927]

GOVERNMENT'S EXHIBIT 444

9745-P

TRAFFIC CONFERENCES
PERUVIAN AGENTS

NEW YORK,
June 23, 1937.

S. A. G. O.,
LIMA.

Att: Mr. J. E. Muhlfeld

* * * * * *

I note the various recommendations made by agents. These agents, of course, speak entirely from one point of view, which is to make it easier to sell and anything that will make it easier to sell is always their first thought. They, of course, do not have the background in connection with the Faucett competition and the reasons which dictated our present differential. Nor are they cognizant of the costs of running extra services. Nor do they see the red figures which so many of our extra services have occasioned.

In connection with recommendation #3. Here is a prime case in which a salesman may be distinguished from a

man who sells tickets. The Grace agents, for so many years, have sold tickets that they know very little about selling service. Yet I have never heard that they raised any strenuous objection to the differential between the SANTA INEZ and the SANTA LUCIA. Why, then, should they object to a differential between the DC-2s and Fords?

* * * * * *

J. D. MacGregor.

JDM/Q
cc: HRHarris

[fol. 928]

GOVERNMENT'S EXHIBIT 445

No. 1
(HJR Trip Series)
W. R. GRACE & CO.
7 HANOVER SQUARE, NEW YORK

Air Mail
Lima 10.4

A. Garni
First Vice President

NEW YORK, September 29, 1937.

Harold J. Roig, Esq.,
LIMA, Peru.

Dear Roig:

PANAGRA

I had a session with Juan last night, the purpose of which was to go over that chart, which he has covered with a memorandum.

As before, I feel that he is on pretty sound ground and that, generally speaking, the new alignment of responsibilities should be adopted. It is understood, however, that if in your talks with Harris, you and George should find it necessary to make some minor modifications, there will be no objection.

Looking over the chart carefully as well as the memorandum, it will, of course, be apparent to you that Grace & Co.'s direct authority over the local management is somewhat curtailed. This, however, does not mean that they have not every opportunity to confer with Harris, etc., making suggestions, but the final decision rests with the president of the company and his respective advisers, particularly with reference to maintenance and operations. With reference to traffic matters, that, of course, will be the direct responsibility of the local representatives.

[fol. 929] Personally I see no objection and I believe that if the new set-up is accepted with enthusiasm the company will be more efficiently run and with much less trouble than before. I told him that in principle I thought well of the set-up and saw no objection to his sending the chart and memorandum to you by George Rihl for further discussion, emphasizing, however, that I wanted to make two reservations: First, that neither this nor any other system is going to function unless we get a competent man to take the presidency of the company, and second, I wanted it understood that while *on paper* it would look as if Grace & Co.'s direct activities or intervention were somewhat curtailed, I did not want this to be used as an argument against us when we next discuss the making up of our respective expense accounts.

* * * * *

Very truly yours,

(s) A. Garni

[fol. 930]

GOVERNMENT'S EXHIBIT 446

NEW YORK COPY

PRIVATE

TRAFFIC REORGANIZATION
AND CORRESPONDENCE

LIMA, December 28, 1937.

Panagra, Agents, Lima
La Paz
Santiago
Buenos Aires
Cristobal (for record only)

Effective January 1st, 1938, Panagra traffic in South America will be established by countries and not by divisions.

The head Grace office in each country, and Buenos Aires in the Argentine, will be responsible directly to SAGO Traffic for the traffic work of all Panagra agencies in their country.

Inasmuch as Argentina, Bolivia, Chile and Peru are already organized on this basis, the principal change occurs in the Northern Division.

In this respect Cristobal office will supervise traffic in the Canal Zone and Republic of Panama; Bogota in Columbia, and Guayaquil in Ecuador.

As Buenaventura and Cali have at various times been on line stations, correspondence between national head offices should be directed to Buenaventura or Cali, as the case may be, with copies to Bogota.

For obvious reasons we wish the national head offices in each country to maintain complete control over their national territory.

In order to accomplish this, national head offices are requested to write directly only to other national head offices.

In like manner SAGO Traffic will address correspondence only to the national head offices in each country and will expect the latter to follow the same procedure.

In those cases where time does not permit, offices will, of course, be obliged to divert from the above procedure and correspond directly with other than th national head of- [fol. 931] fices, however, in all such cases copies should be sent to the national head offices concerned.

In addition to the above each national head office must refrain from corresponding with New York direct on traffic matters. All correspondence must be addressed to SAGO Traffic.

Following the same procedure we have arranged with New York to refrain from writing national head offices directly on traffic matters.

Naturally occasions will arise when this procedure cannot be strictly followed because of lack of time, however, if everyone will follow as closely as possible the above plan, we feel certain that much lost motion will be eliminated, greater attention will be given to your work by this office, and it will be possible to coordinate the efforts of all offices to carry out the principal function of traffic department, which is to promote business.

In line with the above the so-called national head offices will be Cristobal, Bogota, Guayaquil, Lima, La Paz, Santiago, and Buenos Aires. Montevideo will come under Buenos Aires.

For your further information and so you will appreciate the System organization, SAGO Traffic is in direct contact with the Panair System Division Offices and the Panair General Traffic Manager, New York.

We believe the above is clear, however if you have any questions to ask, please communicate with us immediately as the above becomes effective on January first.

J. E. Muhlfeld

J. E. Muhl

cc XY HRH
Buenaventura
Cali
Guayaquil
Bogota
Montevideo
S T fls
R

JEM/ES

[fol. 939]

GOVERNMENT'S EXHIBIT 447

W R. Grace & Co

New York

Private and Confidential

February 18, 1938

MEMORANDUM

Garni and Roig were in Washington, and Garni took advantage of the opportunity of talking frankly to Harllee Branch about our problem of control and management of Panagra.

Branch appreciates the situation, sees the difficulty of dealing with Trippe, and says that they have somewhat the same problem in endless conversations, etc., etc., with him.

Branch expressed a definite opinion that Panagra ~~should be separated from Pannir, and~~ should have its own independent life and management.

It is very clear to me that Panagra, once it gets into the heart of Colombia, and, provided we can put on a service

three times a week, would become the most important and dominating trunk line through South America. If this can be brought about promptly we need not fear competition from Europe.

D.S.I. (Ogleby)

[fol. 933]

GOVERNMENT'S EXHIBIT 448.

W. R. Grace & Co.

New York

Delfax, February 28, 1928

Dear Roig:

Your letters on the subject of Panagra I find extremely interesting, and I am happy to have the opportunity, in view of a more complete knowledge of what is going on, to express an opinion on various points which you raise.

Expenses—

I quite agree with you that we should cut out unprofitable mileage, and I am entirely in sympathy with the idea of cutting out all local lotsipes from which we cannot make money.

The most important task, I think, that you have to perform in going to the Coast is to begin to educate all of Panagra's men in a spirit of strict and studied economy, and you will decide whether or not it is going to be a practical thing to get Harris to really understand the value of money. After all, it is a pretty inexcusable thing for us to suddenly wake up to the fact that we are making such enormous losses in Aerovias, which losses have been going on for some time. The probability of such losses should have been sensed by the local management and their action guided by a desire to make money rather than a desire to expand in a thoroughly uneconomical way.

I think it is of tremendous importance to concentrate on getting a third trip a week from Washington, and I feel

rather confident that we will get it. Garni, with Patchin's assistance, should in your absence press to obtain this, for without it I don't see how we are going to get Panagra into the black. But it is to be kept in mind that even if we get this [fol. 934] third trip, the increased income will be consumed before long unless we can dominate the management and force upon it a spirit of economy.

As I have said, Harris is a great fellow in many respects, but he doesn't understand a P and L account and he doesn't really understand the value of money. MacGregor also is extravagant.

I agree with you that Douglas Campbell is going to be needed in Colombia for the present, but after all, this matter of economy is going to be a long pull and there will be plenty of time, after Douglas has finished his task in Colombia, for him to get steadily to work on the plan of dominating the spirit of the administration of Panagra. He is the only man that I can see who is equipped with the knowledge, character and experience to accomplish the task. Therefore, I would keep him closely posted as to what is going on and prepare to have him jump into the task once he is finished in Colombia and once you have laid out with Rihl the general lines of policy which the management of the business is to follow.

After you have worked out a plan for putting out unprofitable mileage, and have carried out your excellent idea of simplifying operations, then it seems to me that the business divides itself into two broad phases, one is operation, including maintenance, and the other is developing international traffic through improved publicity and solicitation, both there and *particularly here*.

The plan that I suggest for Campbell will set the stage for dropping him into the South American management a [fol. 935] little later in case you find it feasible or advisable to do so.

* * *

D. S. Iglehart

Harold J. Roig, Esq.,
New York, N.Y.

[fol. 936]

GOVERNMENT'S EXHIBIT 449

W. R. Grace & Co.
New York

April 5th, 1938

MEMO TO MR. IGLEHART

PANAGRA TRAFFIC

At the present time Panagra head office in New York has no Traffic Department and no person in any way steadily occupied with the promotion of traffic or publicity.

W. R. Grace & Co. has done much more to promote the interest of *Panagra traffic in the United States* than Panagra itself but this effort is and has been intermittent for lack of a man working on it exclusively.

My idea is that the new traffic man to be employed by W. R. Grace & Co. should occupy the same relation to Panagra operations in South America that the New York Traffic Representative of the Union Pacific or Santa Fe do to those lines. He should be constantly visiting all sources of air travel or combined steamer and air travel agents and stimulate travel by air either by steamer or air to be routed via Panagra.

He should work up and push closer interchange of traffic between Grace Line and Panagra. Now that Grace Line is giving first-class passenger service to the west coast only fortnightly instead of weekly there ought to be a considerably larger opportunity than hitherto for interchange of passengers.

I am prepared to direct this effort and to get the best results would like this man to be one who has already acquired traffic experience, has acquaintance among the travel agencies, railroads, etc.

[fol. 937] This work ought to dove-tail with Grace Line and in view of the close association with Grace Line it would be desirable to have somebody who understands steamship traffic and for this reason Mr. Shiner seems to

me to be the best suggestion yet, but I do not think he would care to undertake it unless the job offered some real future.

* * * * *

(signed) R. H. P.

[fol. 938]

GOVERNMENT'S EXHIBIT 450

PERSONAL 2105

REED CHAMBERS' COMMENTS

NEW YORK,
April 14, 1938

Mr. H. R. Harris,
LIMA

Mr. Vidal and myself had lunch yesterday with Reed Chambers, who was good enough to communicate quite freely, and with very little reservation as far as I can see, upon the impressions he gained during his recent visit to South America.

* * * * *

The second matter of vital interest to Chambers was developed in the course of a conversation concerning the Fawcett Company. I made the remark that both Lufthansa and Fawcett, as concrete examples, overloaded their planes and took chances which were against our Company policy, and in spite of that fact they were lucky enough to escape accidents, whereas we had them. Chambers said that, from his personal observation, my statement that we did not overload our planes was made under a very grave misapprehension of what actually is taking place.

Reed stated that upon his arrival at Talara he found an Aeroxias Ford was delayed there because of motor change. The pilot of the plane expressed himself as extremely annoyed because his plane had been overloaded en route and he said there was nothing he could do about it. It seems that at one of the stops the Grace Agent had booked three passengers in excess of the loading limits. This Agent insisted that the passengers be taken, and in order to get the passengers aboard he loaded a Peruvian lady of about 45 years of age at half fare as a minor, instructing her to set on her husband's lap from airport to destination.

Chambers said that the Grace Agent seemed to, as he put it, "rule the roost" and force the pilots to do something in fringement of our loading regulations.

He said that the situation at Talara demonstrated that there seemed to be nobody charged with the responsibility of making arrangements for handling either planes or passengers on off schedule non stops. It would seem that a motor was sent to Talara to be installed when occasion offered for little other reason, according to him, than to give the personnel at Talara some work. The motor was installed on the Aeroxias Ford by the Talara mechanical force and on the test flight "the bottom almost dropped off". I did not ask him just exactly what he meant, but it was very evidently a serious mechanical error.

[fol. 939] On other matters not particularly connected with his own mission, but commenting as a passenger, he considered that we were miles behind the Panair service on the East Coast as far as looking out for the comfort of passengers, and of course the purveyance of meals, was concerned. He stated that several passengers with whom he had talked who were Americans and accustomed to flying told him that they would prefer to travel via the West Coast on account of the saving of time, but that this time saving was far outbalanced by the courtesy and prompt attention to passengers' wants on the East Coast. He gave numerous examples of what he meant. He mentioned particularly the careless way in which the comfort of passengers was provided for at Arica, Talara and Buenaventura. I believe you are familiar with his comments from what Kirkland must have told you. I of course explained that Talara was an off schedule stop and that we had always had difficulty with the International Petroleum about accommodations for both personnel and passengers. There was, however, no excuse that I could offer for the perfectly awful meals served at Buenaventura and for the fact that, although the plane left Talara at the crack of dawn or possibly earlier, after the passengers had had the skeletonest possible kind of breakfast, there was no offer of bouillon and saltines, or any kind of food, before the arrival at Buenaventura approximately at one o'clock in the afternoon. As a matter of fact, the passengers did not even know they were to be

fed at Buenaventura until one of the ground personnel informed them of the fact as they left the plane.

Chambers is of the distinct impression that our stewards are put on the planes without any sort of training whatsoever. He said that one of the stewards was so untrained that, after the pilot had rung for him five or six times, Chambers had to go forward and wake him up and send him to the cockpit. This was on an international plane. Of course Chambers was at Lima when one of the stewards was killed and he attributed the accident entirely to lack of training.

J. D. MacGregor

JDM:MD
c.c. HJ Roig (blind)

[fol. 940]

GOVERNMENT'S EXHIBIT 451

No. 33
(HJR Trip Series)

Air Mail 5.6
Lima 5.9

W. R. GRACE & CO.
7 Hanover Square, New York

A. Garni
First Vice-President

NEW YORK, May 4, 1938.

Harold J. Roig, Esq.,

LIMA, Peru.

Dear Roig:

CENTRALIZATION OF CONTROL, ACCOUNTING ETC.

Your No. 24:

I think I touched upon this briefly in my letter No. 27, wherein I endeavored to report to you the net of my conversation with George Rihl.

There never has been any doubt in my mind as to where the control, accounting, etc., should be concentrated and I

heartily subscribe to the views expressed by you to this effect in your various letters, quite irrespective of how this might affect our firm's direct intervention in Panagra's local activities.

Here again, however, I think no definite move should be contemplated until we get the major question of management settled in one form or another. When that is done, and I hope successfully so, very few people will be required at this end and I feel sure that with concentration of control on the Coast rather than here, together with concentration of accounting in perhaps less detail than is now done, the general supervision over Panagra's functions will become infinitely easier at this end and the final result will be eminently more satisfactory than it is now.

During one of my talks with Vidal, I led up to the above [fol. 941] ideas and he immediately took advantage of the occasion and said that he would like to refer to some previous conversation in which he expressed a very definite desire to come back to our firm. It occurred to me that if we all agree, as appears to be the case, to transfer the accounting and the direct control to Lima, and provided we can take over the full management of Panagra's affairs, Vidal, instead of being transferred to Lima as Comptroller, might possibly be the very man required here as the president's righthand man.

With such a man, plus a technical man—perhaps Harris or someone else a little less rigid and more conservative when it comes to money matters—plus a stenographer and a bright young boy, it ought to be easy sailing.

In all these discussions I am, of course, somewhat incensed over the impossibility of making any further headway with Juan. However, I have not given up hope to make some progress under this heading and I am, in fact, at the moment endeavoring to contact him here in New York, with a view to resuming my conversation where I left off some few months ago.

Very truly yours,

(signed)
A. Garni

[fol. 942]

GOVERNMENT'S EXHIBIT 452

August 10, 1938

MEMORANDUM FOR MESSRS. ROIG AND GARNI

I think it important that you, one or both, should see Mr. Trippe as promptly as you can arrange it and endeavour to get him to agree to a plan under which Panagra will have an independent management and name a president who would take the responsibility for the administration of the company.

If you can agree with him in principle as to the advisability of following this procedure, then the question comes of the selection of the man. I am hopeful that you will be able to agree with him as to this selection.

I think it would be well for you to advise Mr. Trippe that we have taken an interest in Eastern Air Lines and that our idea in doing so was to develop a collaboration that would result in a traffic benefit that was mutual.

I think you will be able to make clear to Mr. Trippe that in view of the train of thought both of the public and of the Government, the theory of a monopoly of foreign aviation in the hands of Panair is a mistaken one.

D.S.I.

Iglehart.

[fol. 943]

GOVERNMENT'S EXHIBIT 453

PRIVATE March 8, 1939

Memorandum To: Mr. H. R. Harris

Following your instructions, the following observations on last year's results are submitted. In addition I would like to make several general observations in which you may be interested.

* * * * *

One or two general observations regarding the Panagra picture as a whole may be in order here.

It is my frank opinion that after ten years of operation, Panagra finds itself, so far as the Sales Department is concerned, miserably represented throughout the majority of its territory. This may not be at all true and probably is not where operations and executive affairs are concerned, but in matters of this type the local agency manager or a competent assistant handle them. Not so with sales. This branch of work, which is certainly not unimportant, is left as a general thing, to a local employee of a not-too-high type. Where this condition obtains, and it does rather generally throughout the line, results have been very poor indeed, though probably no poorer than might have been anticipated long ago. SAGO Traffic has spent much time and effort in trying to convince various agency managers to assign better personnel to its work, but so far with comparatively little success. My own experience has been that the local managers do not believe that the amount of extra business a better staff might obtain would, in agency commissions, justify an increased salary expense. This, almost invariably, has been the excuse given when we have found it necessary to demand better attention from the smaller agencies. On several occasions it has been definitely pointed out to SAGO Traffic that despite what might be heard to the contrary, our West Coast agents are very well paid indeed for handling our work. If this is the case, it occurs to me that the method of compensating them might be improved upon from the Sales Department's point of view. If the agents regard their Panagra representation and the direct compensation therefrom, as being relatively unimportant as compared with some of their other activities, but are nevertheless properly compensated, would it not be a good idea to find some way to rectify their ideas in this regard? One way of doing this might be to pay them as, if and when they accomplish something for us and only then. This is the way we are presently operating along the Diagonal in Argentina and except for the stations where we obviously have the wrong man acting for us, it works very well.

[fol. 944] SAGO Traffic regards, for example, the Salta and Tucuman representatives far superior to most of those on the West Coast in similar posts. There is plenty of reason for this feeling. These two agents are always on their toes, know all there is to know about our rules, regulations, what we have to sell and how to sell it, because their only hope of making anything out of their Panagra representation lies in their ability to obtain business for us. If these agents have not so far set the world on fire with sales, it is certainly not because they have not tried, but almost entirely because we have given them, up to this time, so very little to sell.

Another indication that we may not be following the right plan as regards dealings with our agents, can be drawn by making a comparison of the results obtained in Peru by Faucett's agents as compared with those obtained by our own. Certainly few of Faucett's representatives have anything like the standing in their respective communities that our own agents do. They get better results and there can be no question but what they do and and have done for years, simply because they know that they must pay attention to their representation, or, in other words, sell, if they mean to stay in business. This is not so vitally important to our own agents, and the results are only what we might have expected, which is to say that Faucett out-sells us by a wide margin.

With but very few exceptions our Agency managers and sub-managers are unable, as pointed out above, to take a long view of the situation and remember that in the long run their Panagra representation really is a rather good thing. On the other hand, they do keep a very close watch on current receipts and there is some justification for this reason in believing that our sales work is for them a relatively unimportant matter. Where this is not the case, for example, in Cali, Colombia, we are, in my opinion, quite ably represented, although in the case of this particular station the staff is comparatively small. The personnel that they have assigned to our work, however, is distinctly high class. To some extent the same might now be said of the Guayaquil Agency, where a competent foreign

employee is directly in charge of all phases of Panagra work and does not forget that sales are a very important part thereof.

Other considerations may of course, make it impossible to follow the course suggested above, which is paying for actual accomplishments when they are effected and not at any other time. If it is impossible to follow a plan of [fol. 945] this kind, then some other means should be found to make it very clear to our agents that we expect the kind of attention to our sales work as they give, for example, to Grace Line sales. In a great many of the Coast agencies the Grace Line has succeeded in obtaining services of the very best employees of the individual agencies, in some cases having supplied Grace Line trained men to the agencies, whose salaries, we believe, are nevertheless for the account of the local agency.

Merely in passing it might be worthwhile mentioning here that no later than yesterday, while lunching with a former passenger, whose company gives us a considerable amount of business first and last, I was frankly told that the attention this man received on the West Coast—and apparently the attention shown several of his acquaintances who have made the same sort of trip he had—was markedly inferior to that received on other sections of the system. I personally have heard the same story so many times during the past two years, that there must be some truth in it unpleasant as it is to believe it. However, in the last analysis it is only reasonable to believe that if our routine affairs are not handled to our satisfaction, as they certainly are not, there is no reason to believe that this particular phase of the work is handled any better. Indeed there seems to be quite a sufficient amount of evidence to support the theory that we are not up to scratch in handling passenger traffic, and I believe that the failure occurs largely on the ground and not in the air.

* * * * *

G. P. Smith

GPS:ER

[fol. 946]

GOVERNMENT'S EXHIBIT 454

SERVICES RENDERED PAN AMERICAN-GRACE AIRWAYS, INC BY W. R. GRACE & CO.

In South America

The South American houses and subsidiaries of W. R. Grace & Co., including Panama Agencies Company in Panama and the Canal Zone, Grace & Co. C.A. in Colombia, Guayaquil Agencies Company in Eduador, the Lima office of W. R. Grace & Co in Peru, Grace y Cia (Chile) in Chile, and the La Paz office of W. R. Grace & Co. in Bolivia, act as the general agents of Pan American-Grace Airways, Inc. in the countries named and in the various cities of those countries where the planes of the Company call or where the Company has business. W. R. Grace & Co. maintains (and has done so for many years) offices in the capitals and principal cities of all of these countries and the personnel of these offices, a considerable number of whom devote their entire time to this work, perform these functions. These general agency functions do not include intervention in any way in the flight or ground operations of the line, which are under the control of the Company's own staff. They do include all of the general commercial, financial, legal and governmental phases of the Company's business in all of the countries on the West Coast of South America through which the line operates.

1. Executive and General

The executives in charge of these respective territories handle personally the negotiation of government conces-
[fol. 947] sions, post office contracts and the Company's arrangements with local competitive lines, national and foreign. Such negotiations are, of course, carried on in strict accordance with the Company's instructions and in consultation with Company's executives both in its South American General Office in Lima and in New York. The Company's current day to day relations with the govern-

ments of the respective countries in which the line operates (viz., Canal Zone, Panama, Colombia, Ecuador, Peru, Bolivia and Chile) are also maintained under the supervision and in more important matters, with the personal intervention of the local Grace executives stationed at the respective capitals of these countries. In Peru, the W. R. Grace & Co. management also attends to the commercial, governmental and financial activities of Cia. Administradora de Aeropuertos, a subsidiary of the Company, which owns and operates the official public commercial airport of Lima and operates under government contract the official public commercial airport at Arequipa, Peru. As illustrating the extent of these services, the negotiation of the purchase of the site of the Lima airport and of the government concessions under which both airports are operated, required a substantial percentage of the time of the Peruvian Manager and his associates over a period of two years. The Company's relations with local government officials are also maintained by the Grace agency heads at points such as Cristobal and Balboa in the Panama Canal Zone; Panama City in Panama; Bogota and Cali in Colombia; Quito and Guayaquil in Ecuador; Chiclayo, Trujillo, Lima and [fol. 948] Arequipa in Peru; La Paz, Oruro, Uyuni and Villazon in Bolivia; and Arica, Antofagasta, Valparaiso and Santiago in Chile.

Employees of W. R. Grace & Co. are especially designated in each of the countries mentioned who handle under the supervision of the local W. R. Grace & Co. management, routine day to day dealings with the several governments and the various departments thereof in connection with operations, changes of route, schedules and tariffs, airports, radio, and the constant mass of detailed departmental matters arising in connection with the conduct of the Company's business in each of the territories specified.

2. Traffic

Traffic work in connection with passengers, mail and express is performed either directly by the South American houses of W. R. Grace & Co. or under their immediate supervision over the entire West Coast. This includes so-

licitation of traffic, publicity, sale of tickets, attending to customs and collections on air express and guaranteeing COD charges, attention to incoming and outgoing passengers, mail and express, attending to overnight accommodations, and in general, the whole matter of traffic sales administration. Grace employees are in charge of the Panagra traffic staffs in Lima and Santiago where Panagra has its own traffic personnel and in Cristobal, Balboa and Panama City in Panama; Bogota and Cali in Colombia; Guayaquil and Quito in Ecuador; Chiclayo, Trujillo [fol. 949] and Arequipa in Peru; La Paz, Uyuni, Oruro, and Villazon in Bolivia; and Arica, Antofagasta and Valparaiso in Chile; where Panagra has no traffic staffs, all of this work is done directly by Grace employees alone. The local Grace management in each of the countries named is responsible, under the general direction of the Panagra Traffic Sales Manager, for the development of traffic and for traffic results. In addition to traffic sales and the other matters referred to, attention to receipt and dispatch of planes in the year 1938 involved 2,432 Panagra arrivals and departures (apart from Lima and Santiago where Panagra's own staff assisted by W. R. Grace & Co. personnel does this work) at 13 different ports of call in Colombia, Ecuador, Peru, Bolivia and Chile, and 650 Aerovias Peruanas arrivals and departures in Peru at the regular Panagra ports of call and at Cartavio, Casma, Chimbote, Ica, Pisco, Mollendo, Pacasmayo, Paita, Paramonga, Piura and Sullana, not on the regular Panagra schedules.

3. Financial

All capital expenditures of the Company in South America are passed upon by the local management of the W. R. Grace & Co. offices as well as by the South American General Office of Panagra. In each of the countries named, the Grace accounting and cashier's departments attend to the handling of receipts and disbursements; collection of accounts and guaranteeing certain of them; preparation of payrolls, including the proper deduction from salaries [fol. 950] and wages of income tax, social security and other contributions required by law; the handling of workman's compensation insurance and insurance claims in connection

with passengers public liability, automobile transportation, marine air express, etc; the provision of foreign exchange; the keeping of special local books of account where required to comply with local laws; and the invoicing and collecting of mail charges due from local post offices.

* * * * *

[fol. 951]

GOVERNMENT'S EXHIBIT 455

PRIVATE

AGENCY PERSONNEL IN ECUADOR

QUITO
November 7, 1940

Mr. Harold J. Roig
Pan American-Grace Airways, Inc.
New York, New York

Dear Mr. Roig;

I am writing to you privately in connection with an important problem requiring attention.

With a view to overcoming the general inefficiency prevailing in Ecuador and maintaining Panagra standards and the type of service to which our passengers are entitled, it appears essential that Grace Agency personnel attending to Panagra business be well paid and carefully selected, irrespective of the type of personnel which the other businesses being handled by the Agencies may require.

Berenson has just spent three days with me in Quito and he is very anxious to render an A-1 service. He is, however, handicapped by the fact that he is under general instructions to reduce expenses in Ecuador and, apparently, has not been told specifically that any such instructions do not apply to Panagra as our business is expanding. The net result is that all sorts of serious mistakes are being made in connection with our operations, such as mishandling of the U. S. mail, over-carriage of passenger's baggage, etc., all of which must appear unexplainable to airmail users and to passengers who pay adequate rates for the services we offer.

I would urge that the Grace management in Ecuador be advised that Panagra is making adequate payments in New York for Agency services and that it expects and should receive excellent attention under all headings, including suitable office space, and that the attention given to Panagra passengers should be of a type comparing favorably with that provided by the domestic airlines in the United States and by Panair.

It seems to me important that the retrenchments that may be necessary in connection with the other Grace business should not be extended to Panagra.

Yours sincerely,

G. Vidal

GV:DM

[fol. 952]

GOVERNMENT'S EXHIBIT 456

PERSONAL

QUITO
November 21, 1940

Harold J. Roig, Esq.
New York, New York

Dear Mr. Roig:

Your personal letter of November 14 renders it evident that my private letter to you of November 7 was not clear to the extent that I seemed to be referring to the Quito Agency, whereas I was actually speaking of all agencies in Ecuador and I had in mind particularly the Agency at Guayaquil, which is responsible for most of the recent mistakes.

Holguin has been in Quito since then and he also appears anxious to render A-1 service at all points. I hope that his recommendations to New York will be approved without delay.

As I see it, the basic problem in Ecuador, so far as Panagra is concerned, is that the nature of our service requires higher standards than those generally prevailing

in the country. I am citing but one or two examples: In November 1939 I pointed out that the inside appearance of the Quito office was most unsatisfactory, particularly the paint job. Today, a year later, the situation is exactly the same and Holguin tells me that, as the lease expires next June, it is no longer worthwhile to paint the office. An international passenger stepping from one of our planes into the Quito office has every right to be somewhat shocked.

The plane dispatcher at Guayaquil, until recently, the source of the majority of the mistakes made, has the mentality of a 15-year old and was paid a salary of 600 sucres ($40 USC) a month. In an effort to assist the Ageney at Guayaquil we offered the services of Panagra pûrser Gonzalez, a very bright young man possessing all the necessary qualifications and earning a salary of about 1200 sucres ($80 USC) a month. Some doubt has arisen as to whether the Ageney can afford such a salary in view of those paid to employees handling other work.

This is why I feel that the Grace management in Ecuador should be told by Grace, New York, that Panagra operations are being compared constantly by passengers and others with domestic operations in the U. S. and with Panair's and that, regardless of what the local standards or the requirements of the other departments may be, Panagra must have excellent attention under all headings, suitable, clean and well furnished offices, and the highest type of personnel available, particularly so far as intelligence is concerned.

. . . . . .

Yours very truly,

G. Vidal

GV:DM

[fol. 953]

GOVERNMENT'S EXHIBIT 457

W. R. GRACE & CO.
NEW YORK

Letter No. 42
A. B. S. Trip Series

Air Mail: 11/27
New York: 11/29

Lima, November 26, 1940

D. S. Iglehart, Esq.
New York, N. Y.

Attention: Mr. H. J. Roig

Dear Mr. Iglehart:

CIVIL AERONAUTICS BOARD
GATES/HARDIN TRIP

Your letter No. 7.

Mr. Gates and Mr. Hardin arrived here Sunday afternoon from the South. You will, I presume, be hearing from Harris as to the details of his trip with them.

Gates was especially interested in the relationship between the Grace organization on the Coast and Panagra, and Garcia and I have spent practically the entire day with him today, with Harris and Campbell present, discussing this whole subject. Gates practically conducted an examination, and rather surprised me with the thoroughness with which he went into every phase of the agency arrangement. I explained to him in detail the way we are set up in Lima to handle the Grace agency functions, just what these functions are, the facilities available, and the men in our management and associated with us (Miranda and Ayulo) who are charged with the responsibility and who are available for consultation in connection with this phase of our business.

[fol. 954] Gates touched, among others, on two rather familiar themes. One of these was the competition which he said he presumed existed between Panagra and the Grace Line. Both Harris and I explained to him that this

supposed competition had never existed to any great degree and that with the development in air transportation and the trend of business travel away from steamers and toward the planes, it had grown and is growing steadily less.

The other subject which we discussed at some length was the possible detrimental effect which might result to Panagra's business by reason of its association with a firm such as ours, whose interests are so extensive and perhaps conflicting at times with those of Panagra. He stressed particularly the growing nationalistic feeling which he has observed in the South American countries which might lead to hostility against the Grace interests and therefore against Panagra. This, of course, was easily answered, and I went rather fully into detail in describing the policy which has been and is being steadily followed of associating ourselves ever more closely with influential and friendly national interests in all the countries in which we operate.

A third subject in which Gates displayed great interest was the matter of the compensation paid to Grace & Co. as Panagra agents. I told him that I was not prepared to discuss in any way the basis on which the Grace compensation has been fixed, as this is a subject of which I [fol. 955] know nothing, and that full information on this point was available to him in New York. He persisted in returning to this frequently in the course of our discussion and evinced particular interest in the method in which the compensation received by Peru is distributed among the Grace agencies here. We explained this to him fully, and finally he asked point blank how much Lima had received in 1939 from New York. As the only alternative to giving him this figure was to refuse to do so, I gave it to him as $34,507, but without any details.

In this connection you will, of course, appreciate that Garcia and myself went into the fullest description of the services performed by Grace in Peru and impressed upon him that the same functions as we attend to here are also performed by the Grace offices in the other countries on the West Coast.

Gates made copious notes of everything that was said and stated that he was doing so simply in order to refresh his own recollection.

Time will not permit me to go further into detail as to our conversation, which extended all told over four and one half to five hours, but I believe I have covered the high points of the talk.

Harris and Campbell were, of course, of great assistance in backing up and supplementing my description of the advantages to Panagra of having our firm as its agent on [fol. 956] the West Coast, and Gates expressed himself as being thoroughly appreciative of the time we had given him and of our discussion, which he said gave him an excellent picture of the arrangement under which we operate. I believe he grasped the picture quite thoroughly.

Very truly yours,

/s/ ANDREW B. SHEA

[fol. 957]

GOVERNMENT'S EXHIBIT 458

COPY

PERSONAL

NEW YORK COPY
ECUADOR AND COLOMBIA

QUITO
December 17, 1940

Mr. Harold J. Roig
New York, New York

Dear Mr. Roig:

COLOMBIA—What I am about to say is written in a constructive spirit, is intended for both you and Kirby and is based upon my own observations during the 30-day period I spent in Colombia last year and upon the comments made by responsible men in our organization who have had occasion to spend some time in that country more recently.

You will recall that I have felt for years that one of the important reasons why Panagra was pretty much of a stranger in Colombia until recently, was the fact that the Grace Agencies in that country did not have the time, the inclination or the knowledge to become interested in our problems and to protect us against moves made by Scadta's local management. In my opinion there has been a decided improvement since the Buenaventura stop was shifted to Cali and we are now much better known, particularly in the Cauca Valley. The fact that we are now in direct communication with Dr. Juan Uribe-Holguin, and that he understands the Panair-Panagra set-up better than he did a year ago, has also improved the situation in Bogotá quite a bit.

What I think still remains to be done is for Helbling and the rest of the management in Bogota and Cali to become faully familiar with our operations and with our problems, and for them to realize that our business has now grown to a point requiring a great deal of attention. Coffee and shipping have been their livlihood to-date and, whether they realize it or not, they have looked at Panagra as a relatively small business more or less foreign to them, causing a great deal of work and yielding little.

* * *

[fol. 958] Just an example: In Quito the Agency now has on its payroll, in addition to a first class Ecuadorean like Colonel Flores Guerra, Ballantyne, Cabeza de Vaca, Contreras, Barona, Vallejo (four of these speaking English fluently) and two other men, in addition to a secretary. This group is devoting approximately 95% of their time to Panagra matters and are busy every minute of the day with our four trips per week and incidental problems. The only addition since the domestic service started was Cabeza de Vaca.

In Cali, on the other hand, Morison, with one assistant given to him a few months ago, has been attempting to handle all Panagra work. It must be remembered that since September 1st Cali has been an overnight stop, whereas Quito is not. Airport Manager Wiggins at Cali, trained

by Panagra, is handling so many Avianca and Panagra schedules that, for all practical purposes, he is less available to Panagra in Cali than Airport Manager Vasquez is in Quito, for the latter handles only Panagra work.

* * *

Very truly yours,

(Sgd.) G. VIDAL

cc: H.R.H.
D.C.

[fol. 959]

GOVERNMENT'S EXHIBIT 459

PAN AMERICAN-GRACE AIRWAYS, INC.
135 East 42nd Street New York, N. Y.

LETTER NO. DC-74

Mar 22 1941

SUBJECT: LA PAZ OFFICE

Lima
March 17th, 1941

Mr. Harold J. Roig
Pan American-Grace Airways, Inc.
New York City, New York

Dear Mr. Roig:

I enclose copies of our letter No. 1823-P to La Paz and of their reply No. 728-P, which are self-explanatory.

As I recall it, when discussing the matter of Sheldon's assignment a year ago with Dr. Guzman Tellez, he did not have any definite plan for re-engaging Brito, but he is correct in stating that he did not commit to take Sheldon permanently, having agreed to take him "for at least a year".

Personally, I feel that we should leave Sheldon in La Paz for an additional period and, in fact, figure on having

an American at the office there indefinitely, if not Sheldon, then someone else of the same type. Although Brito has his good points and can probably be of considerable assistance as a general contact man, the fact remains that, even during his period in charge of the Panagra work at the office, the actual work of selling, ticketing, and handling traffic was pretty sloppy, owing, I think, to the fact that there was simply no one at La Paz who had a real appreciation of how it ought to be done. Furthermore, with the development of the tourist business, some of which has already started to flow to La Paz, I feel that we should have a man in the office there who can speak the same language, literally and figuratively, as our passengers and can help us in our task of polishing up all phases of [fol. 960] our service to passengers and contact with them.

Another reason why I do not think Brito would be a good man to count on for this routine work is that he has always seemed to be pretty much interested in politics and there is no reason to believe that he would not leave us again, if a really good Government job were offered to him, as was the case before. I feel, however, that, if Guzman Tellez is so very anxious to re-engage him, that there is no reason why both Brito and Sheldon should not be in the Agency's employ to handle Panagra work, Brito to handle more general matters of Government contacts and Sheldon to handle the strictly sales and traffic handling matters.

This effort of the La Paz office to eliminate Sheldon seems to me to be rather important in principle, as it places somewhat of a stumbling block in the way of the training program on which we have embarked, namely, that of training young men for this type of work in the Panagra organization and then turning them over to the agencies to handle our work there. Naturally, if the agencies are going to oppose this program, except as a stopgap measure and are going to offer the young men in question no incentive for getting ahead, the whole program will bog down, and I believe Panagra work at the agencies will suffer.

As you know, in many cases it has been a pretty constant problem to get the agencies to be willing to employ and

pay the type of men we think are required for our work; and, although some improvement has taken place in recent years, it is always a real struggle at some points. If the agencies, such as the La Paz office, are opposed to employing this type of man or are opposed to paying the salaries required to engage and keep them, the only alternative left to us is to have some of the office personnel on our own payroll, as we do at Lima and Santiago; but I can fully appreciate that you would prefer to try and work the matter out with the agents, before resorting to this step.

In view of Dr. Guzman Tellez' positive statement in his letter attached hereto, I am afraid it is going to be difficult to get him to change his mind. I had thought some [fol. 961] of perhaps making a short trip to La Paz for the purpose, among other things, of selling him the idea of keeping both Brito and Sheldon; but, first, I would like to have your reaction to the problem as a whole and your approval of my approaching it in the manner I have indicated.

Sincerely yours

Douglas Campbell

Douglas Campbell

DC:DM
cc:Ex.

[fol. 962]

GOVERNMENT'S EXHIBIT 460

Letter No. 4

A. B. S. Trip Series

Lima, April 19, 1941

D. S. Iglehart, Esq.
NEW YORK

Dear Mr. Iglehart:

PANAGRA

In line with our conversation in New York, I have discussed at length with Campbell, Kirkland and Stebbins, as

well as with Garcia, the question of the housing of the Panagra Staff.

With respect to Stebbins, I spoke with him privately and took him severely to task for his action in approving Kirkland's recommendation in the form in which it reached New York.

It is quite apparent that Stebbins signed the RCA form without giving the subject very much thought and upon the urging of Kirkland. Kirkland told him that the idea of putting up a new building in Limatambo had been approved in principle by everyone concerned and while Stebbins did raise the point as to the provision of space for the SAGO staff, he states that he finally signed the application in order to "raise the issue". He then wrote a letter on the side, calling our attention to his action but the letter, as you know, is so weak that it was hard to determine from it just what Stebbins' attitude was on the matter. I told him in Garcia's presence that he had no business to sign the application unless he approved the whole project and I also reminded Garcia, whom Stebbins had consulted, that the signing of these forms is by no means an empty formality. I repeated that the purpose [fol. 963] of requiring Lima's approval of the applications is to exercise control over proposed capital expenditures and that if they are to be signed simply to complete the form then the signature will become meaningless.

It is evident of course that Stebbins' action was taken without due thought. He has admitted his mistake as has Garcia and after the discussion we had on the whole subject, I am sure that matters of this nature will be studied in the future with great care by the Lima Management before its approval is given.

I then asked Garcia and Stebbins how they felt as to the merits of the proposal that Kirkland's department and the Accounting Department move out from Lima to Limatambo. I explained fully to them our policy with respect to Panagra affairs as covered in our discussion in New York and they both agree that it would be wholly undesirable to make this move.

I then discussed the whole subject fully with Campbell and with Kirkland. Campbell, of course, had been absent in Chile when the RCA form was signed and forwarded and he told Kirkland upon his return that he thought the latter had gone much too far. I explained to each of them clearly the importance we attach to the maintenance of contact between them and our organization here and Campbell very readily admitted that if he had an office in Limatambo he would undoubtedly spend practically all of his time out there and as a result his contact with Garcia and Stebbins would probably diminish to the vanishing point.

Both Campbell and Kirkland also agreed that in view of the fact that either of them is almost constantly absent from Lima and as it is desirable that the head of the Panagra [fol. 964] business keep in constant touch with the Grace Management here, it would be undesirable for Kirkland to move to Limatambo.

With respect to the Accounting Department the principal object in view apparently is to have both the SAGO Accounts and the Limatambo Accounts under one head. I agree with this which I also discussed with Nelowet and which simply means that we shall have to provide additional space in Lima for approximately 14 employees now occupied in the accounting section at the field.

I must say that as a result of my discussion of this subject with the men concerned I feel that there was no deliberate or concerted effort to lessen the present influence of the Grace Management here on Panagra matters. There is no doubt at all in the case of Campbell and as far as Kirkland is concerned, I believe that he looked only at what he considers to be the practical advantage of installing himself and his assistants in Limatambo.

. . . . . .

Very truly yours,

SHEA

[fol. 965]

GOVERNMENT'S EXHIBIT 461

PAN AMERICAN-GRACE AIRWAYS, INC.
135 East 42nd Street, New York, N.Y.

LETTER NO.
5634

SUBJECT: TICKET OFFICES

Lima, May 7, 1941.

PANAGRA NEW YORK

Att: Mr. C. de Groot

LIMA OFFICE:

Further to our letter #5572, the other day I arranged a meeting with Messrs. Shea, Stebbins and Woll during which I pointed out the need for providing Panagra with a first class modern air line ticket office, located either in the Hotel Bolivar or near vicinity, with neon sign, modern show windows and all the other trimmings which go to make up a modern airline office. Three years ago I had a similar meeting in which the idea was turned down but after pointing out to Mr. Shea that Panagra was now selling more passenger business than Grace Line he took the attitude that whatever was best for Panagra's interest should be carried out.

As a result of our conversation we decided that Mr. Woll would submit to me a budget with full details regarding the proposed new office and that in the meanwhile both Mr. Shea and myself would write to New York to inform Messrs. Iglehart and Roig. Mr. Shea pointed out that Mr. Iglehart had definite ideas regarding Grace offices on the west coast, and it is my understanding that his ideas are that Panagra should be located in the Grace buildings. In any event, it appears that Mr. Iglehart will have to approve the plan of separating the ticket office from Grace & Co., therefore, it is my suggestion that you speak to Mr. Roig and explain to him the need for making the change and also point out that the change in no way affects

the Grace Co. organization insofar as Panagra's representation is concerned.

Regarding this last point I would like to state that when Mr. Shea asked me whether this would bring about a change in the Management, I advised him that it would not for the reason that it would merely mean that the ticket office would be moved out of the Grace building to a new location with no change whatsoever in personnel or management. In other words, insofar as Panagra is concerned, we will continue to address our letters to Grace & Co., agents for [fol. 966] Panagra, and as far as running the ticket office is concerned, Mr. Woll, Sales Manager, will continue to work directly under Mr. Stebbins and the Grace Management in Lima.

I believe the above should be carefully explained to Messrs. Roig and Iglehart at the time you bring this matter to their attention, otherwise I am afraid it will be a difficult job to sell Grace on the proposed plan.

* * *

/s/ J. E. Muhlfeld

J. E. Muhlfeld, GSM.

JEM/EP
cc: (2)NY SAGO T S
HJRoig-NYK

[fol. 967]

Government's Exhibit 462

64

HJR Series

Ticket Office

New York, June 4, 1941

Mr. Douglas Campbell,
Lima, Peru

Dear Douglas:

When I first read Lima's No. 5634 regarding Lima Sales Office, I did not take it very seriously. In speaking with

Woll the other day, however, it appears that he regards this change not only seriously but imminent. I am therefore calling the matter to your attention in order to prevent time being unnecessarily wasted in this connection.

It is my understanding that the facilities provided by the proposed extension to the Grace Building will give ample opportunity for a Panagra Ticket Office in whatever form seems most suitable. I see no reason for considering any change in the meantime. I have no objection to trying on an experimental basis, the idea of having a representative on an inexpensive basis at the Hotel Bolivar but I see no reason for considering a complete removal of the traffic office.

Very truly yours,

Roig

[fol. 968]

GOVERNMENT'S EXHIBIT 463

PAN AMERICAN-GRACE AIRWAYS, INC.
135 East 42nd Street New York, N. Y.

Letter No.
DC-87

Lima, June 9, 1941.

Mr. H. J. Roig,
NEW YORK.

Dear Mr. Roig,

With reference to your letter No. 64, you have no cause for concern with regard to my own point of view on this matter as I have repeatedly told Muhlfeld that any consideration of moving the entire traffic office to another location would simply be a waste of time.

This whole matter is to a certain extent the outgrowth of DeGroot's recommendation that our ticket offices at all points be "streamlined" in order to make them similar to modern travel ticket offices in the States, and also his suggestion that some of them could be better located in the re-

spective cities in order that the traveling public would be more likely to see them. However, DeGroot was looking at this from the point of view of the American tourist who is still only a small part of our business and I think that he overlooked the fact that in a town such as Lima any one who is likely to travel by plane is fully aware of the location of the office.

I am in favor, however, of having a representative with a desk in the Hotel Bolivar or vicinity with proper telephone connections to the ticket office, airport and Reservations Control, as I feel that our tourist clients as well as overnighting in transit passengers are entitled to the additional convenient service that such a setup would make possible.

As Muhlfeld is leaving for New York tomorrow on account of the unfortunate critical illness of his father, you may have an opportunity to point out to him your ideas and general policy with respect to the above.

Sincerely,

(Sgd) DOUGLAS CAMPBELL

Douglas Campbell

[fol. 969]

GOVERNMENT'S EXHIBIT 464

PAN AMERICAN-GRACE AIRWAYS, INC.
135 East 42nd Street New York, N. Y.

Cable Address "PANAGRA"

Letter No.
TJK-8

Subject: ECUADOR

Lima, February 3, 1942.

Mr. H. J. Roig,
NEW YORK

Dear Mr. Roig:

I refer to your letter No. 7 dated January 16th on the above subject.

I believe that you will find that a large number, if not all, of the points mentioned in your letter are covered in my letter No. 7222-P which is going forward by this same mail.

We cannot, in my opinion, be content to blame these recent flare-backs in Ecuador on one specific thing such as maintenance. That item as well as many others should come in for its share of corrective measures and we intend to spare no effort in what we can do towards making improvements in the situation when even so it is not as bad as it sounds.

* * * * *

In any event, we have the problem ahead of us in Ecuador to combat the feeling that the DC-2 is an obsolete and worn-out type of aircraft. I made progress with Minister Long in giving him the details of the amount of money we have recently spent on keeping the DC-2 aircraft modernized, and so forth. I also went into further detail with Mr. Long pointing out the demands now on us regarding our mainline operation, etc. I further reminded him of the investments we had effected in making the airport in Ecuador all-weather year-around fields. Points such as Cuenca, Manta and Esmeraldas were this year enjoying uninterrupted service on all-weather fields whereas a year ago these points either had no air service whatsoever or were having interrupted service when field conditions were wet. I feel certain that considerable progress was made with Mr. Long in outlining these facts to him.

Mr. Moscoso and I called on the President of the Republic and spent a very worthwhile visit with him. He was [fol. 970] most cordial and again reiterated his understanding of our problems, but he did wish to advise us that he had heard certain criticism on the part of the public and certain Ecuadorean officials as regards the use by Panagra of obsolete type of aircraft. He said that he felt this was the result of an abnormal number of delayed schedules, a number of which had resulted from mechanical difficulties. He also said that this unfortunately came immediately on the heels of Panagra's withdrawal of the international planes from the Quito stop and consequently this did not

help us any in the public reaction. This conversation with the President was, in our opinion, very favorable. We did not find anything in his attitude to make us feel unduly concerned.

• • •

In the meantime, I am in receipt of a cable from Shannon in Bolivia urging that we approve the exchange of Griffis for Stringer and stating that after going over the situation with Shea that the latter also heartedly agrees with our opinion in the plans of exchanging Griffis for Stringer.

While I have a high regard for Mr. Moscoso and the intelligent manner in which he and his office appreciates and helps with our problems in Ecuador, I must confess that I am somewhat taken aback by his letter of January 29th to you on the subject of Ecuador. Our agents there have already been aware for sometime that the criticism around our service in Ecuador is only in part due to the remarks stressed in Moscoco's letter to you as to maintenance and Operations. It seems that all our agents should realize that they share with us in the responsibilities of conducting an efficient service and should not appear too ready and willing to duck out from under by laying the blame to the strictly technical end of the business. The handling of our passengers, reservations, and counter, and information service in Ecuador shares equally in the blame in the recent flare-up of criticism and complaints. We have many cases of mishandling of passengers and misrouted express and baggage etc, over that part of the route. Perhaps, sitting at this distance we are inclined to misinterpret and overshoot on our own importance, but when we notice what far reaching effects this recent criticism in Ecuador can bring about, I often wonder whether I am out of order in think- [fol. 971] ing that in Ecuador possibly our agents should set themselves up primarily on footing required to properly handle Panagra business and to take their other activities in the stride, rather than appear to take Panagra business in the stride. I am, of course, in communication with Mr. Moscoso with the details of the problem we were confronted with last week and I hope to receive his usual good cooperation.

In conclusion, I again reiterate that we are sparing no effort to keep behind this matter and I will keep you well advised of anything out of the ordinary.

Yours very truly,

(sgd) T. J. KIRKLAND
T. J. Kirkland

cc: Extra

[fol. 972]

GOVERNMENT'S EXHIBIT 465

NEW YORK COPY 2624-P

AIR FREIGHT STUDY SERVICE

Lima, March 13th 1942.

W. R. Grace & Co.
La Paz.

Att: Mr. A. C. Poole

* * * * *

In connection with my recent trip to Bolivia, I found that our interior Agents are making any number of errors because they have not been properly trained as regards ticketing, airway billing and traffic handling. Furthermore, I noticed a definite lack of coordination between pursers, dispatchers and city Traffic Representatives, all of which has resulted in our giving poor service to the public.

* * * * *

In connection with your reports following each inspection trip, please limit same to what has been done, and minimize what must be done. In other words, what we want here is a report on what progress has been made, and not a report loaded up with detail as to what should be done, unless, of course, certain matters require action being taken here at S.A.G.O., in which case you should carefully present to us each problem and, in your opinion, its proper solution. As stated, therefore, your work should be largely one of on-line inspector and prompter.

* * * * *

J. E. Muhlfeld
General Sales Manager

cc: SAGO

[fol. 973]

GOVERNMENT'S EXHIBIT 466

2349. Private.

SALES AND SERVICE—BOLIVIA

La Paz, Bolivia
October 24, 1942.

South American General Office
LIMA.

Attention: Mr. J. E. Muhlfeld

Having completed an inspection trip with stopovers between schedules at each of the Bolivian Sawtooth stations, the undersigned wishes to submit the following report for your information.

Our agents at these points can be made to handle the simple duties required of them only under the strictest supervision from our central office. Following a careful check with the municipal authorities at each town and from first hand observation, I am certain that the individuals now acting as our agents are better qualified to represent us than any other men we could obtain locally, yet it must be borne in mind that under the present W. R. Grace budget, living conditions in this region require us to find our agents from among established residents of these villages. The alternative, of course, is to send down trained employees from La Paz or Cochabamba on short-term assignments at salaries adequate to maintain them as full-time agents and compensate for the miserable standard of living such agents would have to put up with. Since this is an expense W. R. Grace & Co. is not in a position to assume, we must do our best with the poor material on hand, and by steadily pounding away with first hand instruction, make the present organization operate to our satisfaction.

Such supervision must take the form of inspection trips involving stopovers at the points concerned by a responsible member of the central office at least once every two months, notwithstanding the fact that such a tour takes nearly three

weeks according to schedules and represents some physical discomfort of an enlightening variety. While from time to time we have sent subordinate employees from La Paz and Cochabamba on training assignments to the Sawtooth stations, the unsatisfactory progress made to date clearly shows that such field work must be undertaken only by our chief traffic representatives if we are to achieve the required results. It has been found that circular instructions emanating from La Paz, regardless of simplicity and clarity, are of only partial effectiveness in dealing with employees of limited education and intelligence.

At Concepcion, our agent is Mr. Juan Asin Jemio, a man of two years experience with Lloyd Aereo Boliviano under former management. In addition to his agency fee [fol. 974] he earns an income from the Bolivian state radio at Concepcion, where he spends two hours of the day working as operator. His work to date has been fair, yet discrepancies have been reported in his gasoline statements, now being investigated, which may disclose manipulation of funds which will require his dismissal.

At San Ignacio our agent is Mr. Carlos Mayser, a German of Bolivian citizenship and a former employee of LAB. The question of Mayser's nationality has been under discussion for some time. In December of last year we advised the U.S. Embassy of this man's status and it was suggested that he be removed. Subsequently Grace & Co. attempted to find a replacement in San Ignacio without success, and since there appeared to be no danger from this quarter the matter was dropped. The undersigned made a point of investigating this man's activities in conversation with people in San Ignacio, in particular with Mr. Samuel Decker and Mr. Frank Pickering, american missionaries stationed at Concepcion and San Ignacio respectively, both of whom have known him for a number of years. Mayser has lived in San Ignacio for thirty years, is married to a Bolivian and has four children, none of whom speak German, the eldest of whom fought in the Chaco war with the Bolivian army. He is a respected citizen of San Ignacio with a good reputation, and in partnership with is brother represents the only business unit in the town. Under one roof is the

Post Office (his brother is Postmaster) consisting of a battered desk and shelves at one end of the room, while at the other end is the "Panagra Office". In the center is the General Store, run by both brothers. My personal impression of Mayser during four days stay in San Ignacio confirms all reports I have heard regarding his character, namely that he is 100% honest (a rare virtue in these parts) and loyal to the company. While we cannot be certain that his private sympathies are not on the side of Germany, he has kept his views to himself and steered clear of political activities, nor has he been known to have expressed any opinion derogatory to the company. On the contrary he has shown more interest in the company's welfare and a greater conscienciousness toward his job than any of our agents in this sector, and we firmly believe that Mayser would be in a position to do us greater harm in San Ignacio if we dismissed him for political reasons than if we maintained him as our agent, a job he is handling satisfactorily. Recently Mr. Shea of the United States Embassy visited San Ignacio and has reported to his superiors that this man is harmless. We have outlined the above for your information in case the question of our agency in San Ignacio should come up for discussion again in the future.

Our agents at San Jose are La Torre Hermanos, two brothers who own the town's general store. These are the only agents on the Sawtooth who have not had previous [fol. 975] experience with LAB, having been appointed as replacements to the former agent, Neptali Cuellar, when it was discovered that the latter, an old LAB employee, was engaged in anti-american activities. La Torre has shown interest in his work and as he and his brother are young men we should be able to build up an adequate permanent agency at San Jose, which point, located on the line of the projected transcontinental railroad, will increase in importance in the coming years. At present there are a number of Brazilians of the Comision Mixta Ferroviaria working on the railroad project at San Jose, promising an increase in traffic between that point and Corumba, headquarters of the comission.

In Robore our agency is managed by Luis N. Landivar, with two assistants. This man has had five years' experience with LAB, and is the only employee on the Sawtooth who does not run a private business on the side. He is the most intelligent and capable of our Sawtooth agents, yet dissatisfaction with his salary has recently expressed itself in drink and a lack of interest in his job; the cure, stricter control and increased salary. More serious is the probability that he has been selling company gasoline against falsification of his gas reports, now being investigated by Mr. Brookshire. Here is a situation similar to that in Concepcion, which, if proved, would under normal circumstances demand the immediate dismissal of these agents, yet in view of the impossibility of finding qualified local replacements, we must think twice before taking the obvious measures and look for a way to bring these men into line.

Robore is probably the only village in the Oriente region which should show real signs of material progress in the near future. As the center of activity for engineers of the Comision Mixta, it provides a growing movement to and from Brazil, while the town itself has natural resources in the form of agricultural land, good sanitary conditions, and a potential source of hydro-electric power which should insure its rapid development as soon as the railroad line reaches it in an estimated eighteen months' time. Stoppage of supplies due to Brazil's entry into the war will handicap progress on the railroad to a serious degree, and, with the exception of Robore, it is doubtful whether this project will alter the primitive and poverty-stricken aspects of the towns served by Panagra in Eastern Bolivia for a number of years.

In April Mr. Federico Knaudt was sent to Puerto Suarez to replace Antonio Rivero, now assistant to Miranda in Cochabamba. Knaudt is a third-generation Bolivian of German origin, former cashier of LAB's Cochabamba office, and a high type of employee who has done an excellent job at Puerto Suarez in spite of a lac of familiarity with Panagra methods at the time of his transfer. Our staff at Puerto Suarez consists of the agent and two assistants, with a spacious office which on arrival of new furniture

[fol. 976] and fixtures being shipped from Cochabamba will be well equipped. From the standpoint of traffic movement this is by far our most important agency east of Santa Cruz. Excessive heat, mosquitos, poor food and sanitation plus the exhorbitant cost of all prime necessities make living conditions in Puerto Suarez a real hardship for any man assigned to that point from La Paz or Cochabamba, and unless a system of station allowances is set up, a matter which will be discussed further in this letter, our personnel turnover at this and other points will remain a chronic problem.

As outlined in my letter of October 5th, adequate passenger overnight facilities at Corumba are now available with inauguration of the new guest house, and we assume that you are taking up with Rio the question of joint payment of costs. Panair do Brasil has opened a new office, and the deficiencies resulting from Rocha's lack of experience, involving reservations handling and mail transfer documentation as noted in my letter No. 2 from Corumba of last April 15th, have been straightened out to our satisfaction. You will be interested to know that Panair has nearly completed installation of a powerful new receiving and transmitting station at Corumba which will provide direct circuits to Lima and vastly improve our local communications to that point.

Training activities of the undersigned at the stations listed above covered all aspects of traffic handling involved in the work required of these agencies, including the following basic points: (1) Review of reservations procedure, disposition of allotments, use of purser's control card, etc. (2) Handling of express, with particular emphasis on tracing of claims, filing of claim forms, use of revised express receipt procedure, documentation of valuable shipments. (3) Mail handling, reception and delivery to planes and routing in accordance with new schedules. (4) Drill in passenger and express tariff calculations, particularly as applied to international rates to Brazil. (5) Revision of discount procedure to be followed on extension of special rates under CL-19, CL-20D, members of the Comision Mixta, etc. (6) Use of Weight Report, AUL's, and general

dispatch. (7) Handling of reservations requested by blocked nationals. (9) Complete revision of files and inventory of accountable forms on hand. (10) Establishment of requisition vouchers whereby inventory of supplies will be submitted monthly to La Paz, which office now controls distribution of all traffic forms.

It was found that the filing of circulars and tariff revisions at all of these agencies was in a thoroughly disorganized state, while stocks of accountable forms and office supplies, dependent on the former uncertain distribution system out of Cochabamba, were incomplete and in some cases lacking in the most fundamental necessities. Accordingly the undersigned devoted considerable time to [fol. 977] sorting out the files, revising tariffs, dividing correspondence into separate folders and arranging circulars for ready reference. Large accumulations of old english circulars from Sago, which are useless for these agents who understand only Spanish, were thrown away, and the whole filing system pared down to the simplest essentials. As you know, for the last six months all bulletins from Lima have been cleared through La Paz, edited, and redistributed to the interior stations in the form of highly simplified instructions in Spanish. We have gone to a lot of trouble at La Paz to cover important phases of traffic handling in this manner for the benefit of our smaller agencies, yet, while each station was found to have this series of circulars on file, their comprehension and adherence to these instructions, due to the mental limitations of the agents themselves, will never be satisfactory unless backed up by periodic first-hand supervision.

We can state that there has been a definite improvement in reservations handling along this route, through a better understanding of procedure by the agents, revision of allotments, and a more efficient control of space maintained at Cochabamba. In hand with a smoother operation of reservations, dispatch problems in the nature of overloads have been cut down substantially. Poor radio service as a result of inadequate equipment and a serious shortage of trained operators will remain a handicap to our reservations set-up until this problem is finally straightened out by the Communications Department.

Our most important objective toward improving service along the Sawtooth is in seeing that mail and express is handled in strict accordance with documentation and receipt procedures standard over the rest of the system. In sounding out the status of our public relations at these stations, I have found that complaints are limited almost exclusively to mishandling of mail and express. Our training efforts along these lines have resulted in some improvement, but the few cases of mail overcarriage, loss or damage to express caused by sheer carelessness, represent irritations to the parties concerned which go a long way toward wearing down progress made in other directions. Some of the technical aspects of this problem have been covered in our recent correspondence to Sago. Primarily we are interested in speeding up payments on claims, which you will agree is a service of vital importance to our public relations. Delays due to lack of familiarity with claims procedure on the part of our agents is one side of the picture we are doing our best to improve; on the other hand, the [fol. 978] fact that claims must be cleared through Lima and sometimes through the insurance company represents an additional delay which, though largely unavoidable, does not sit well with the Bolivian public accustomed to the less formal methods of LAB. It is obvious that the delayed payment of a claim, rather than satisfying the claimant, leaves him with a feeling of resentment that he has been casually treated by a company which has little interest in the satisfaction of its customers, and, while he is waiting for his reimbursement, feels free to air his criticisms among his friends, a type of adverse publicity which spreads like wildfire in the small communities served on our Bolivian routes. With improved express handling our claims are becoming less frequent with each month, and those that are encountered involve insignificant sums which should make the whole problem a very minor matter, were it not that delayed settlements cause irritations entirely disproportionate to the original injury incurred. If our recent efforts at training agents to speed up tracing and filing of claims, coupled with the streamlining of Sago's claims department, fail to improve this service, we intend to propose a system whereby La Paz may be authorized to effect immediate pay-

ment on claims up to a limited value per month, pending receipt of Lima's credit against clearance of the proper documents through the customary channels.

All agents have been drilled by the undersigned in the new express receipt procedure which has replaced the old Lista de Embarque system with use of purser's waybook sheets. We have prepared at La Paz fifty new special mail sacks, designed for the carriage of paid and company only, for use within Bolivia. On arrival of the Transcontinental at La Paz, twelve of these sacks will be put on board, tagged with the names of each local station, and as mail is received en route, it will be placed by the purser according to destination in its corresponding sack. On arrival at destination sacks will be emptied at the field and the contents delivered, but under no circumstances will the sacks themselves be turned over to the agents, since these will remain on board the plane, to be offloaded at La Paz on the return trip to Lima. Such a system will avoid the dangerous practice of loading mail in express sacks subject to offloading due overloads en route, and will further prevent overcarriage of small mail packages which are often piled indiscriminately on the rear seat by the purser. These sacks are now ready for use. We have further suggested to Sago Operations the construction of detatchable metal shelves, with [fol. 979] compartments marked for each station for insertion in the rear parcel racks, as a means of filing documents and remesas for delivery along the route, in addition to ordering a number of large expanding leather briefcases for the same purpose. With little more than half an hour between stations on the Sawtooth the purser is obliged to be a sleight-of-hand expert. With mail, mail guias, express lists, weight reports, company mail and all sundry documents stuffed into his clipboard or piled on the rear seat he must rush to make up his transit weights, load distribution, discharge lists, and gather together his papers for delivery to the next station while passengers are clamoring for his attention up and down the aisle. Our job, then, it to simplify the purser's functions as far as possible, and one way this can be done is to set up a physical filing system on board the planes, as outlined above, so

that distribution of documents can be effected in an orderly manner.

It is clear that any amount of efficiency we can develop in our agents can be nullified by sloppy work on the part of pursers. This subject has been covered at length in previous correspondence but we are still not satisfied that pursers assigned to this route are the best men available. If a new man is to be assigned to the Transcontinental run, he should not be allowed to work alone until he has completed at least two trips as extra crew, travelling NSPL, under the guidance of an experienced purser. Since his work on this sector is highly specialized, involving use of forms and procedures not encountered on our coastal services, a new man is bound to be at sea if he is sent out green without proper instruction. The agent at San Jose mentioned that one of the new pursers stepped off the plane at that point and asked the agent the name of the station! I have found new pursers with only a hazy comprehension of the reservations charts placed on board the planes at Cochabamba, with Guias de Remesas, the new running load chart, and other fundamental documents. We cannot afford to run these risks, and it is essential that new men be sent out on the line under the direction of experienced pursers before assuming responsibilities on their own.

Unless we can count on the establishment of training courses at Limatambo, under the control of a purser's technical department dependent on Sago Sales, and *not* under the Steward's Department, it does not seem likely that we [fol. 980] will ever satisfactorily solve the problem of obtaining efficient service from pursers operating out of Lima. Besides the actual handling of their duties, which depends on training and experience, these men are under a considerable physical strain in flying from Lima up to the Altiplano and down again to the heat of the Oriente region, and it is only natural that they lose their normal efficiency when working under pressure in the face of these conditions. Hence it seems difficult to break them away from the attitude that they are travelling on a barnstorming operation, a frame of mind enhanced by the physical strain they are working under which in some cases develops impatience and

irritability in dealing with our local passengers and agents along the line. As a rule Bolivians have a national inferiority complex and sensitivity which resents a lack of the proper deference from a Peruvian or an Argentine, so that it is all the more important that our pursers be trained to give efficient and courteous service.

The root of the problem lies in the fact that pursers have become so bogged down in paper work that they no longer exercise the function for which they were originally intended, namely service to passengers on board the aircraft. In Bolivia, where there are a greater number of stops in one day's run than on any sector of our international routes, the problem is accentuated to a point where, unless these men are rigidly trained, we may either have to revise the whole theory of pursers' functions or fly with two pursers, one to handle the load documents, and the other to attend passengers, an extreme measure which should not be called for were the system properly organized. Thus our efforts should be directed toward freeing the purser of as much paper work as possible, and as an example, we have been working at Cochabamba on an idea developed by Mr. Sampson, Airport Manager, whereby transit weights and discharge lists can be radioed between stations from the ground thereby relieving the purser of his two most complicated duties. While the theory looks fool-proof on paper, its execution depends on a highly efficient radio service which as yet does not exist in Bolivia, and we shall have to try it out in practice between Santa Cruz and La Paz before proposing its operation to Lima.

Recently an operations circular was published announcing the adoption of waybook sheets in place of the old Lista de Embarque system. We accordingly instructed our agents [fol. 981] in this procedure, yet we have not seen a single purser handling these documents correctly. As a matter of fact we do not think much of the system itself, a question we are taking up in a separate letter, but that is beside the point; the fact remains that the pursers are not following it out. We must insist on their filing express receipts in the Waybook designed for that purpose, instead of stuffing them at random into their clipboards; we must insist

on their collecting their mail packages, discharge lists, and express lists for orderly delivery to the next station, and insist on their cooperating with agents in checking cargo on and off the planes. There is nothing unduly difficult in this procedure, yet to date there has been no organization set up at Limatambo capable of training pursers to a point where they will show a better comprehension and sense of responsibility in the handling of their documents.

Obviously the Chief Steward has neither the technical experience nor the inclination to instruct pursers in this aspect of their work. We understand that at present Mr. Fuentes is in charge of documentary matters. It would appear, however, that there is a crying need for the establishment of a full-fledged purser's control section independent of the Stewards Department, as an integral part of either Sago Sales or Sago Operations, under the jurisdiction of a specialized administrator. This man should remain constantly in touch with purser's handling problems, investigate deficiencies, and take frequent trips over the line to consult with agents and examine documentation on board the planes. In view of the increasing complexity of the paper work required of pursers we can no longer afford to leave purser's training in the hands of the Stewards Department. We do not doubt that you already have this situation in mind, and look forward to the opportunity of inviting the chief of the purser's handling department to take a trip over our local routes, so that we can finally get down to business in straightening out these deficiencies.

[fol. 982] Last week, following a planned investigation, we succeeded in clearing up the express losses at Santa Cruz which have been puzzling us for the last two months—nothingless than a series of robberies committed by the assistant express clerk of that office. In addition to the Gonzales case, and a subsequent discovery of thefts at Cochabamba in August, this makes the *third* example of air express robberies committed by agency personnel in Bolivia during the last six months. We have turned the case over to the Santa Cruz police with the recommendation that it be dealt with in the strictest manner possible, and will advise you of the full details as soon as the prosecution has been carried out.

How are we going to avoid this sort of thing in the future? There is only one answer, and that is the payment of adequate salaries to agency personnel. The employee caught in the Santa Cruz robberies, responsible for the reception and delivery of hundreds of valuable local and international express shipments per week, was receiving a wage of Bs. 1500, or $33. U Sey per month, after one year's service with the company. In Santa Cruz, where the cost of living is exorbitant, such a wage scarcely permits subsistence on the lowest level. Is it any wonder, then, that a man employed under such conditions fails to value his job highly enough to dissuade him from resorting to dishonest means in order to increase his income? If the budget of W. R. Grace & Co. prevents us from obtaining high-grade, satisfied personnel, then we must continue to hire and fire, at the expense of efficiency and prestige, around a diminishing nucleus of those rare employees whose ambition surmounts considerations of gain.

It is indeed discouraging to have to report that after a year's effort the development of Panagra's sales and service organization in Bolivia is still hopelessly handicapped by low-scale agency payrolls, and we cannot emphasize too strongly our contention that it is high time the matter was brought to a showdown. I am not exaggerating when I say that unless the Bolivian payroll is increased by at least $2000. per month, spread over all twelve agencies, our organization stands in real danger of disintegrating. Such a figure will strike W. R. Grace & Co.'s comptrollers as an appalling expense which will create a prohibitive disproportion between the wage scale of employees engaged in Panagra work and employees engaged in the merchandizing line of W. R. Grace & Co.'s business, yet it seems difficult to get the idea across that the duties performed by a Panagra employee, down to the lowest counter clerk, demand a knowledge of complex procedures and above all involve individual responsibilities far and above other types of selling jobs. As an illustration, we need only cite the case of the express clerk at Santa Cruz, a low salaried, dissatisfied employee, who in committing a series of air express robberies has done irreparable harm to our public relations and prestige in Santa Cruz.

[fol. 983] The nature of our work calls for an intelligent, educated employee who in many cases must speak English. In Bolivia such a type comprises only a tiny fraction of the population, limited to the highest social levels, consequently in great demand by the government, banks, and all large commercial houses. So far we have been very lucky in obtaining a few exceptionally capable employees of the best type, boys who through ambition and a genuine interest in Panagra have stuck to their jobs with a loyalty well out of proportion to their wages, yet any one of these men can walk across the street and in twenty-four hours land a job with the Foreign Office, Hoschild, Aramayo Mines, the U. S. Embassy, at double the salaries they are paid by Grace. Today the glamor is wearing thin. After two months' travel in the interior listening to a monotonous chorus of salary complaints at all our agencies, I have returned to La Paz to find that the situation in this office has reached critical proportions. Four of our men have announced their intention to resign within a month, while I have found specific cases of other employees deliberately slacking on their jobs in order that the company shall fire them, and in so doing pay the indemnizations required by law. Morale throughout Bolivia is deteriorating so fast that we shall need more than a prayer to hold the structure together in the coming months, and it is quite correct to state that if we were to lose three key men tomorrow, let us say Ballivian at La Paz, Miranda at Cochabamba, Pictor at Santa Cruz, our traffic organization would fold up overnight. This is a very real possibility. As one example out of many, Ballivian, chief traffic representative at La Paz, last week was offered a job by Aramayo Mines, Inc. at a salary just *double* the Bs. 3500 ($75. U.S.cy. per month.) he now receives. Ballivian, however, happens to be one of those rare people who have our company's problems at heart, so he refused the offer; but of course we can't expect him to display such gallantry indefinitely.

In taking this matter up with the local W. R. Grace management I expect to receive a very understanding response, and as in the past, several salary increases will be authorized. These increases, however, will be tied to the strict

budget scale set up by New York, with the result that token increases will be apportioned in small amounts just barely sufficient to persuade the employees that it may be worth their while to hang on a little longer. This won't do. For in another three months, the pressure of dissatisfaction will build up again, and we have gotten nowhere.

Fundamentally we are working against a time-honored policy of getting as much as possible for as little as possible, of squeezing payrolls down to a point where the organization will just get by on the lowest required minimum of efficiency. Thus our personnel structure remains one step behing the normal development of our business, and in [fol. 984] Bolivia, with traffic increasing month by month, promising the establishment of additional schedules in the near future, we are faced with a continuation of the uphill battle to adjust our agency payrolls to meet the growing demand. While we are spending thousands of dollars on airport expansion and technical equipment, our agency sales organization lags dangerously far behind, when a revision of policy, involving relatively low expenditures, can rapidly provide us with the quality of personnel we so urgently require.

I believe the local management of W. R. Grace & Co. are sincerely endeavoring to better these conditions, while forced to operate under a rigid expense control established by the executive offices in New York. The problem goes far deeper. It calls for a revision in our way of thinking, the abolishment of a wage policy which has brought W. R. Grace & Co. a very distasteful reputation throughout Bolivia. Until we adopt the theory that salaries must be calculated to give us satisfied, enthusiastic employees with *pride* in their jobs, we are simply fighting a losing battle.

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In order to round off my report on our traffic and service set-up, I wish to outline briefly our projected program.

Regarding agency personnel at Santa Cruz and Puerto Suarez, the volume of business at these points requires us to place responsible employees from our central offices in

charge, since it has been impossible to obtain sufficiently qualified local men. Chief of the Panagra section at Santa Cruz is Mr. John Pictor Blanco, formerly of our Cochabamba office. Working under him are five employees, natives of Santa Cruz, each with from eight to twelve months experience with the company. Within the limits of Grace & Co.'s wage scale, these men are the best obtainable, but like most Cruzenos, are basically lazy and unreliable. Add to this racial characteristic wage dissatisfaction which saps enthusiasm for their jobs, and you can understand why we have so far seen no possibility of being able to staff Santa Cruz and Puerto Suarez with 100% local personnel, where increasing traffic demands a first-rate organization.

In order to develop a more flexible organization in Bolivia, we plan to send our advanced employees from the La Paz office on six-month assignments to the smaller stations. Such a procedure is necessary, for example, at points such as Puerto Suarez and Santa Cruz, where the poor caliber of local employees requires us to place these offices in charge of trained men from La Paz or Cochabamba. Santa Cruz, beyond the robbery incident mentioned above, has been working excellently to date, but only through the efforts of Pictor, who has had to supervise and drive his [fol. 985] subordinates to a point where he has been carrying most of the weight on his own shoulders. By obtaining a small salary increase he has been willing to stick to the job, although overwork, illness from bad food, and the necessity to help support his family in Cochabamba makes it a tough proposition. No one-man show is a healthy condition, so that we must lend Pictor a well-trained assistant, and subsequently relieve him for another post, replacing him with two men from La Paz who will take charge of the office for a limited period. At the end of six months, these men in turn will be shifted, in line with a definite program which aims at giving our more promising personnel a broad background of experience on different sectors of the line. This is just wishful thinking at a time when we have little more than a skeleton staff to spread over our Bolivian stations, but we confidently hope, with a reform of agency policy, to build up a reserve of trained personnel at La Paz,

where a higher type of employee can be obtained. In order to send men from La Paz and Cochabamba on long-term temporary assignments to our interior stations, it is absolutely essential that special allowances be set up at these points. The exhorbitant cost of all price necessities at Santa Cruz and Puerto Suarez, not to speak of the physically harmful living conditions, make it almost impossible to maintain an employee sent down from our central offices at his regular base salary. We have already encountered this problem in the case of Pictor at Santa Cruz and Knaudt at Puerto Suarez. Each have had their salaries increased in a small amount as an adjustment to their local expenses, but in consideration of the fact that an increase adequate to meet their demands would throw their salaries out of proportion to the normal scale upon return to their bases, the adjustment has remained only a half-way measure. Consequently the agency wage policy, as applied to temporary assignment of this nature, should be revised in accordance with Panagra practice over the rest of the system, which establishes the payment of special tropical allowances over and above the base salary, which should remain pegged to the average scale of periodic increases.

In order to perfect the coordination of agency traffic handling methods, it has been our purpose during the last months to centralize control of sales and service activities, insofar as possible, at La Paz, and we are pleased to report that much progress has been made in this direction. Copies of tracer radios relating to claims between agencies will be sent to La Paz for our supervision of procedure; TRF's, claim forms, and other traffic documents are now being funelled through La Paz for our inspection before being sent on to Lima; we have set up an orderly system of monthly inventories as a means of controlling and supplying each agency with accountable forms and office supplies from a large reserve stock requisitioned from Lima and printed locally; Sago sales bulletins and tariff revisions are edited at La Paz and sent out in the form of simplified [fol. 986] circulars in Spanish adapted to our local requirements, while these in turn we are now consolidating in a revision of the Bolivian domestic traffic manual.

Our training program has been set up as follows. For the next six months and until we can develop equally qualified personnel, this work will be handled exclusively by Mr. Ballivian and myself, one of whom will be out on the line at all times. It has been decided that one should remain at La Paz in a supervisory capacity over all domestic traffic while the other is out on training work, and whenever possible both should not have to stand by together at La Paz for longer than two week-intervals. This program recognizes the necessity for stopovers at the Sawtooth stations at least once every two months, and is based on the rule that only by constant, painstaking review and repetition of all fundamental traffic instructions can progress be made toward developing higher standards of service at our interior stations. There are obvious advantages in carrying out this program with two men working jointly. Supposing the job were confined to one man, he would have to layover at La Paz several weeks between trips in order to catch up with local events and keep up to date on developments directed through Sago Lima. With two men working in rotation, we have a supervisor continually on tour, while his partner on duty at La Paz keeps him posted on instructions from Lima and at the same time transposes the former's reports from the interior into circulars for general distribution. Ballivian and I are coordinating our training schedules in such a way that one will be able to review and expand upon the other's work along the line, and we expect to make headway in the coming months by steady repetition of the type of first-hand treatment recently applied by the undersigned along the Sawtooth.

We are going to work on three important items relating to our Bolivian services. First, a study of proposed rate increases over the entire line, in accordance with LAB's petition to the government. Our tariffs should be drawn up ready for presentation just as soon as LAB's revisions have been approved. Second, an up to date survey of sales reported by all local agencies during the current year. Third, a study of space refusals and traffic growth in connection with the very apparent necessity for inaugurating a third transcontinental service in the near future.

Such is the rough framework of our traffic program for the coming months. We cannot, however, begin to carry it out until the personnel situation is drastically reformed, and to this end I feel it is important that you come up to La Paz as soon as possible, so that we can work on the problem at first hand.

(Sgd) A. C. Poole

A. C. Poole

ACP
cc: Dr. Guzman Tellez
J.T. Shannon
New York
Sago

[fol. 987]

Government's Exhibit 467

ROIG CARE
GRACE 10 to SANTIAGO (ROIG) feb 27, 1946
5pm

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2 for your information
3 Panagra
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MR. GARNI

[fol. 989]

GOVERNMENT'S EXHIBIT 468

[Handwritten—Confidential
H. B. Dean]

May 20, 1946

Messrs: Trippe
Friendly
Balluder

PAN AMERICAN-GRACE AIRWAYS OPERATIONS

As a result of my recent trip over the lines of Pan American-Grace Airways, Inc., I feel it necessary to make the following report and recommendations. Operations and traffic were well handled in Buenos Aires and Santiago, Chile and this is the only constructive remark that I can make in this report.

On arriving at Lima, I found that the entire operation and management were in a state of complete bewilderment and inefficiency. I talked at length with Captain Discher, Operations Manager, Captain James Walker, loaned by Pan American Airways as Technical Advisor to help straighten out the CAA difficulties, Mr. Goakes, local representative of the CAA, and many other department heads. As a result of these conversations, I believe that it is impossible for Pan American Airways to go along any further supporting the present management. By this I mean both the direction furnished through W. R. Grace and Company and the actual department heads in the airline itself.

On May 7th I spent three hours at the Limatambo Airport during which time there were continuously on the ground two DC-2's, nine DC-3's and one C-54. My inquiries into this situation were answered by various people in a most unsatisfactory and inconclusive way. Walker and Goakes both report that the airline is operated and managed in "country club style". There is no discipline, there is no leadership and, as a result, there is very little morale.

I had a long private conversation with Goakes in which he told me that on December 23, 1945, and again on April 30, 1946, he had written to the CAB suggesting that the management of Pan American-Grace Airways be taken away from the present operators and turned over to Pan American Airways. I requested copies of these letters but was advised that undoubtedly I could secure the same from Washington and that he felt it inappropriate to furnish them himself. The pilots have gone to Captain Walker and suggested that they unanimously refuse to fly for the air- [fol. 990] line unless the management is changed. Captain Walker advised me that he could get this expression in writing if I thought it would be helpful. I told him that it would be most unfortunate to have such an expression made formally at this time in view of the fact that there was considerable rumor and a second U. S. airline operating down the West Coast and that I would advise him later if we desired to have any formal action from this source. Mr. Goakes further stated that in his opinion the Grace agencies were "choking" the life of this airline through their complete control of traffic, purchasing and policy matters and that it was inconceivable that we, as half owners, should sit blandly by and take no action to protect our property.

As a result of my questioning about when we could expect to have the onerous CAA restrictions lifted—1,000 foot ceiling, two miles visibility, contact flying—Mr. Goakes replied that only this morning had two incidents occurred which made it impossible for him to make such a recommendation. The first was that he went through the pilots records and found that seventeen pilots were overdue—some as much as four months—on their regular six monthly

CAA pilot check and, secondly, that three months ago he had reported to the management that the standby power plant was not being adequately maintained so that it could operate in the case of an emergency. On May 6th the city of Lima had a power failure which resulted in a shut-down of all city power for three hours. When the standby unit, which the CAA requires to be maintained, was turned on, it failed to function and, as a result, there was no power at the airport during the period of the city failure. Mr. Goakes further stated that there were only three men in the whole organization who seemed to have any idea of how to conduct the operation of an airline or who he could depend upon to correct situations which were contrary to CAA regulations. These three men were Captain Walker, Captain Nelson and Captain Achilles. He further stated that the Chief Dispatcher of the airline resigned in December, 1945, and that, notwithstanding his continued requests, to date there had been no replacement and that there had not been a check of the dispatching system over the airline, outside of Lima, in years.

There were many other smaller matters discussed, all contributing to the reason for Mr. Goakes' refusal to remove present restrictions. As a result of my talks with others, I am convinced that Douglas Campbell is unsuited and incapable for the position which he holds. I am also satisfied that while Captain Discher is personally a fine man, he has not got the experience and the ability to hold the position of Operations Manager. I am further convinced that with Kirkland, Shannon and Vidal all in New York trying to run an airline from 4,000 miles distance, the results will never be satisfactory.

[fol. 994] I recommend that Pan American Airways immediately make known to W. R. Grace and Company their position with regard to continued management and supervision by them and that we insist upon providing at least three key men; namely, the Operating Vice President, Operations Manager and Maintenance Superintendent for the continued operation of this airline. The results of this inefficient operation are reflecting very seriously on the good name of Pan American throughout, not only Latin America,

but also throughout the United States and the public demand, as a result of this condition, for competition on the West Coast, is greater than I had ever realized.

HBD

Howard B. Dean

[fol. 999]

GOVERNMENT'S EXHIBIT 471

RM-153

ARRANGEMENTS WITH PARENT COMPANIES

July 23, 1948

Mr. J. W. Walker, Jr.
Pan-American-Grace Airways, Inc.
Lima, Peru

Dear Jim:

Herewith the following documents:

1. Memorandum Agreement regarding services rendered and to be rendered to Panagra by the Parent companies and compensation therefor. This agreement was signed on July 14, 1948 by Panagra, Panair and Grace.

* * * * * * *

A. *Transfer of Activities to Grace*

The spirit of the agreements is that, aside from our Regional Manager's office, Panagra will not have on its payroll anywhere along the line any personnel other than that required for all phases of operations, namely Maintenance, Communications, Meteorology and Operations, including Passenger Service. In other words, any sales and promotion, accounting and other administrative personnel presently on Panagra's payroll (except for the Regional Manager's group) are either to be taken over by the Grace organization or eliminated.

* * * * * * *

Since Panagra personnel are theoretically being taken over by Grace as of January 1, 1947, the question of Social Law reserves becomes somewhat involved, both as to the extent that the salaries of such personnel have increased since that date and as to the accrual to such reserves for services since that date. The only practical solution that we can think of is that either we make a liquidation with such employee and obtain from him a signed release, and collect from Grace the portion of such payments as pertain to longevity and salary increases made subsequent to January 1, 1947, or that we turn over to Grace the corresponding reserve as of January 1, 1947, and obtain a full release from Grace that all Social Laws liabilities will be covered by them on all employees taken over by the Grace organization. We recommend that the latter method be adopted since we believe this has been our policy in the past. The local attorneys in each country must, however, approve the method adopted. Naturally, no contingent reserves (such as dismissal payment reserves) would in any case be transferrable or payable to Grace or to employees.

. . . . . .

[fol. 1000] Mr. J. W. Walker, Jr.

Sincerely yours,

G. Vidal

GV:sd
Enc.
cc: HJRoig
DCampbell
TJKirkland
JTShannon
AJPhelan
WFLewis

[fol. 1009]

GOVERNMENT'S EXHIBIT 476

ABS Trip Series No. 8

W. R. GRACE & CO.
Hanover Square, New York

Harold J. Roig
Vice Chairman

New York, October 29, 1948
Santiago, 11-3-48

Andrew B. Shea, Esq.
Santiago, Chile

Dear Andy:

I was glad to note from your Trip Series No. 1 that Shannon and Mason have expressed themselves as "very well pleased with what has been done" in connection with the General Traffic agreement.

Now that that is on the rails, I would like to find a way to move in with equal effectiveness on the portions of the Three Cornered Agreement related to Grace financial control. While Panagra has always received assistance under this heading, it has not been as effectively organized under an overall plan as it might be. Vidal feels that very important results can be attained if this is done. The desirability for moving in on this in connection with our continuing drive to reduce expenses is obvious.

Some months ago Walker worked out, in a good deal of detail, a proposed outline of Agency functions including the functions under the heading of Financial Control. Correlated with these he prepared memorandum instructions for Superintendents of Stations and Station Managers. We have now modified all of these somewhat to pick up ideas of Vidal and Lanning. Copies of these memo-
[fol. 1010] randa, as so modified, are enclosed. I would appreciate it if you could look them over and, if you think well of it, give copies to the Heads of our Houses concerned for their comments and suggestions. With these in hand we would then make necessary changes in the

memoranda and send them out as definite instructions. Do not, however, give these to the Heads of Houses until I cable you to do so as I want to check over the changes we have made with Walker first to be sure he is fully aboard. I am sending them along meanwhile to gain time in the mail in an effort to get the matter cleared before you leave the Coast.

What Panagra is getting at is obvious. They would like to see their expenditures in South America controlled in the same rigorous manner by the Agents as the Agents control their own business. This is easy to say but carrying it into effect without too much conflict between the Agency and the local Panagra management is not easy. Panagra is prepared to cooperate to the fullest extent to that end. It seems to me that the way to accomplish what we have in mind is to reach a clear agreement as to the points of control at which the Agents are authorized to intervene and then see to it that they are freed of all inhibitions and really do intervene effectively at these points.

Sincerely yours,

Roy

[fol. 1011]

TO ALL AGENTS

Subject: AGENCY FUNCTIONS AND RESPONSIBILITIES WITH RESPECT TO PANAGRA

In an effort to avert possible future misunderstandings, we outline, as follows, our ideas of Agents' functions and responsibilities in connection with the handling of Pan American-Grace Airways, Inc.'s affairs:

1. Handling of governmental relations for Panagra, including contracts between Panagra and the various governments in South America.

2. Sales efforts and sales administration, in accordance with the General Sales Agency Agreement between Panagra and W. R. Grace & Co.

3. Handling of commercial problems and negotiations relating to the business phases of technical transactions.

4. All legal work.

5. Acting as commercial advisors.

6. Handling of all Panagra accounting work (excepting only maintenance and flight operations accounting at airports) including our collections and disbursements.

7. In matters of personnel policy, Panagra representatives will make the decisions, but will request the advice of the Agency in every case prior to taking action.

Personnel records, which will be maintained by the Agency, must be approved and initialled by the Station Manager at each airport. Payrolls, etc., must also bear the Station Manager's approval prior to their being sent by the Agent to the Lima office of Panagra.

The interviewing and employment of employees and "obreros" will be under the supervision of the Station Manager, or duly authorized Panagra representatives. In every case, however, the advice of our Agents will be sought. On the other hand, dealings with "Sindicatos" or governmental agencies will be handled directly by the Agency, with Panagra representatives in attendance.

[fol. 1012] In the case of dismissal of personnel, Panagra will consult with the Agency. When, after consultation between Panagra and the Agency, a decision has been reached to dismiss personnel, the Agency will sign the necessary papers to effect the dismissal. In all cases where an employee's or "obreros'" connection with Panagra is severed for any reason, the Agency will handle all financial and legal details, including the calculation of amounts due the employee or "obrero" under social laws.

8. Agents will receive copies of Panagra's station budgets and are expected wholeheartedly to assist in controlling expenses at the airports. Panagra requests the Agents to watch these budgets carefully and to consult with Panagra regularly concerning any ideas

the Agents may have with respect to expenses at the airports. The Agents, of course, will control disbursements for airport expenses by means of the dual signature system presently in effect.

9. Insofar as it is possible, the Agents will inform the New York and the Lima Managements of Panagra of the activities of all competitors.

The foregoing outline is in no way intended to *limit* the activities of the Agents on behalf of Panagra. On the contrary, at all times, the Panagra Management expects and welcomes the suggestions and recommendations of the Agents with regard to any matter affecting the interest, welfare and development of Panagra. The main purpose of this memorandum is an effort to make clear the functions and responsibilities of our Agents and to further develop the existing esprit-de-corps between our Agents, on the one hand, and the Panagra Management, Station Managers and Operating Superintendents, on the other hand.

To assist our Agents in understanding fully our ideas regarding the necessity for complete cooperation on the part of everyone connected with Panagra, we attach copies of instructions which have been issued to our Department Heads, Station Managers, and Operating Superintendents on this subject.

[fol. 1013]

GOVERNMENT'S EXHIBIT 477

December 2, 1948

MEMORANDUM

Captain James W. Walker, Operations Manager for Pan-American Grace Airways in Lima, stopped in to say goodbye to me this morning as he is on his way back to Peru.

He told me that he had had several very frank talks with Mr. Roig during his stay in New York and that he had told Mr. Roig that the operation of Panagra was an abso-

lute disgrace as far as the cost and efficiency of the service were concerned. He pointed out the fact that they run five DC-6s, one C54, and a handful of DC-3s at the largest operating cost of any airline in the world.

He said that Lima should be nothing more than a line station such as Santiago or Balboa; that to have five vice presidents, a traffic manager and an assistant traffic manager and their staffs in New York was absolutely unnecessary; that it was only a question of a very short time before Panagra would lose cabotage rights in Peru, Ecuador, and Bolivia and that this would make Panagra's operation simply a Miami-Buenos Aires through flight.

He told Mr. Roig that he felt that the Grace Agency was milking the airline dry and the only solution he could see was to throw the operation into Pan American's Latin American Division as a subdivision of that operation; that because there were two stockholders there would have to be separate accounting for that operation but otherwise the entire show could be run out of Miami and the savings would be gigantic.

He said that Mr. Roig had listened to him very carefully but had made no comment. He also said that he did not know whether he would be fired for having made these remarks, but that his conscience would not let him continue in Panagra's service without doing so, and that if he lost his job he hoped that I would try to help him find another.

I telephoned Morrison and told him about this conversation and asked him to meet Walker in Miami on his arrival this afternoon and to have dinner with him. I suggested that he get detailed figures and facts from Walker and send them to me in a confidential memorandum.

Howard B. Dean

[fol. 1014]

GOVERNMENT'S EXHIBIT 478

PERSONAL

Limatambo
April 2, 1949

Mr. Ernesto Aranibar
Grace & Cia., S.A.
La Paz, Bolivia

Dear Ernesto:

I am greatly perturbed over a report of an incident which occurred in your office about one month ago concerning the action of one of your employees in the handling of a reservation.

In the presence of Mr. Haro of our Lima office, your employee advised a prospective customer that no space was available on a flight scheduled from La Paz to Lima on the following day. On overhearing this remark, Haro, who was aware that space existed on the trip in question, intervened and saw to it that the customer was given correct information.

Your employee gave as a reason for stating that no space was available that the papers for the flight were already closed and that it would be too much trouble to re-open them to include additional passengers.

Naturally, this is not the type of service we want to give to the public, nor the service which results in the greatest possible revenue for the Company and, for that matter, your agency.

* * *

This subject has become particularly pertinent in view of the preoccupation which already seems to exist concerning our reservations procedure within Bolivia. Naturally, no procedure is any better than the people who manipulate it and, as a consequence, we cannot emphasize too greatly

the importance of having it handled by our very best and most competent employees.

* * *

With kindest personal regards, I am

Sincerely yours,

John T. Shannon

JTS:mfl
cc: DCampbell
JWWalkerJr

[fol. 1015]

GOVERNMENT'S EXHIBIT 479

JTS-NY-21

QUITO, Ecuador
April 22, 1949

Mr. D. Campbell
Pan American-Grace Airways, Inc.
New York

Dear Doug:

This will confirm our telephone conversation of yesterday in which I suggested that you again approach the proper officials of W. R. Grace & Co. in New York in an endeavor to secure action on the filling of two important posts in their Panagra Sales organization in South America.

Several months have elapsed since there was a head to the Panagra sales section in the Agency in Lima. Actually, the last man who filled the post only worked for a few months and you might say was really ineffective. Hence, to be realistic about it, we can say that there has not been a proper head to this section since it was decided that Braman would not be taken over by our agents. This is very unfortunate since Lima is now the most competitive spot on the line and one where our competitor is gaining ground every day.

Mr. Aranibar wrote to W. R. Grace & Co. in New York stating that he was ready and willing to take on a young

American to strengthen the Panagra Sales section of his organization in Bolivia. Since writing this letter he has not heard from New York and apparently no action has been taken to fulfill his request.

Even disregarding the competitive angle for a moment, I feel that the posts described should not be allowed to be vacant and taking into consideration the competitive angle which cannot be ignored, filling them becomes a "must". The man for Lima is, of course, the more urgent of the two.

I know that there must be very good reasons why proper action has not been taken with regard to this matter, how- [fol. 1016] ever, I feel that the time has come now that we must again bring it to the attention of our General Sales Agents for South America in the most forceful manner possible.

Sincerely yours,

J. T. Shannon

JTS/bs

cc: HJRoig
GVidal
TJKirkland
CdeGroot

[fol. 1017]

GOVERNMENT'S EXHIBIT 480

April 27th, 1949

MEMORANDUM TO MR. SHEA

One thing to be remembered in this mail pay case is the fact that 7,100,000 revenue passenger miles (which as you will recall is the top figure on which we get the 4.35c mail pay) means a load factor on the basis of available seat miles flown in 1948 of 47%.

We have often discussed the fact that every one percentage point drop in revenue passenger load factor means a drop of $4,000 a week or about $15,000 a month in revenue. This will still be true for every drop in load factor down to 47% but from there on down we will be losing

not only the $15,000 a month in commercial revenue but also $6,500 in mail pay, so the one-percentage point drop below 47% means a drop in revenue of $21,500 a month or approximately $5,000 a week.

In other words, we get more mail pay with a load factor of 47% than we do with a load factor of anything below that so we have a double reason not to have our load factor go below 47%—commercial revenue and mail revenue.

The formula in the mail pay case seems to me to be a severe detriment to lowering passenger rates since not only would you lose all the revenue involved in such reduction [fol. 1018] but you *might* increase the number of passengers carried by lowering the rate and therefore lose mail pay.

This case gives every incentive to increasing passenger rates to the point where we would get the maximum commercial revenue and still have 7,100,000 revenue passenger miles per month less than we now have.

miles per month, i.e. about 2,000,000 revenue passenger

J.P.G. Jr.

[fol. 1019]

GOVERNMENT'S EXHIBIT 481

JTK TRIP SERIES NO. 66

AIRMAIL

NEW YORK, August 26, 1949

J. [redacted] Kirby, Esq.

BOGOTA, Colombia

Dear John,

HANDWRITTEN
(no copy available)

Enclosed is copy of Mason's report on Santiago. As you may know, we instructed him, a short time ago, to proceed to Buenos Aires, Santiago, La Paz, Lima, and Guayaquil to exert every effort personally, and working with our own

offices, to reverse the serious downward trend in our load factors which has been evident for the last two months.

As a result of his recommendations and those of our own office we authorized, while he was there, a reversal of the tariff policy put into effect a short time ago of collecting all southbound passages in dollars as it was very evident that this was causing serious inroads into our movement and was starting to build up BSAA movement to the U. S.

As you will see from the enclosures, Mason devotes the major part of his letter to comments on the sales effort of our Santiago Organization. Unfortunately, assuming, of course, that his facts are correct, it appears that we are open to very serious criticism because of the failure of our [fol. 1020] Santiago management to remedy any of the outstanding defects in our handling of Patagra traffic and sales promotion which we all have known for some time existed in Santiago. For example, on page 5 of his letter Mason says "During July our solicitation fell off sharply and the records show fewer calls being made each week. During the week of July 25th to 30th, according to the reports, there were no official solicitation calls." Mason says, however, that this situation has improved in August and that the salesmen are now attempting to contact eight clients every day.

He further says that the card files for direct mail and solicitation purposes were not completed and when he arrived there only 300 cards had been made out, while more than 5,000 names of firms and individuals, clients and potential clients, were waiting transfer from the various lists to the cards. He says that only one passenger direct mail letter with a circulation of 1,200 and one cargo mailing piece with a circulation of 400 have been sent out to Santiago clients all this year. Further, he says that new sales stationery was designed by J. Walter Thompson in Buenos Aires, and the mats are in Santiago but the letter heads have not been printed. There are other comments which you will read, but I have mentioned the foregoing

particularly as they emphasize very sharply the lack of the [fol. 1021] intensive, active sales and solicitation effort which Panagra must have in the face of the increasingly sharp competition we are meeting in all countries.

Aside from the specific criticisms made by Mason (and, by the way, he praises very highly the public relations and free newspaper publicity we get there), the conclusion to be drawn is, of course, an obvious one and that is, that our responsibilities as Panagra's general sales agents are not being discharged in a way that is at all satisfactory and that the outstanding deficiency is the lack of top direction and management.

Yours very truly,

(sgd) A.B. Shea

Enc.

(written in by A.B.S.)

John: Shannon told me you were fully cognizant of these matters and are in the process of correcting them. The trouble seems to be that Koch and Davila promise a lot of things and don't come through with them.

Best regards,

A.B.S.

[fol. 1022]

Government's Exhibit 482

MEMORANDUM

To:	Vice President	From:	General Sales Manager
Dept.	Traffic & Sales	Dept.	Sales
Location	New York	Location	New York

Date: March 3, 1950

Subject: SOUTH AMERICA—PASSENGER FARES

Reference:

With reference to the enclosure which you gave me yesterday, I believe you will be interested in the following in-

formation which explains why Panagra's rates are on the high side. My comments are based on the nine years during which I was General Traffic Manager of Panagra, and I request that you treat them as confidential.

1. Historically it has been the policy of W. R. Grace & Company to follow a high tariff policy with respect to Panagra. This policy was maintained during the nine years that I was connected with the company, and from all indications there has been no change to date, although I believe that Panagra's new president and several of its officials are now in a receptive mood to at least consider a modification of this policy.

2. It is interesting to note that Panagra's high rates are in those areas where historically Panagra has not been confronted with local competition. Also please note that the high rates correspond to Panagra's operations across the Andes, the reason for this being that payloads used to be restricted for operating reasons and rates of surface carriers were also high for the same reason. This explains the lopsided tariff which Panagra now has, with rates ranging from a high of 29.04¢ per mile to a low of 5.78¢ per mile.

• • • •

5. Panagra has participated in through rates with PAA, but here again the competitive factor has always been the primary reason for so doing. Also I can recall many instances when Pan American was unable to go through with a rate program at least carried out to the extent desired—because Panagra's management was unwilling to make full reductions. On the other hand, Panagra initiated a rate program and was the first to establish commodity rates as far back as 1936 and long before Pan American got into the picture. In fact, Pan American was not interested in establishing through [fol. 1023] commodity rates, so Panagra was forced to restrict such rates to it's own routes.

6. In the past Panagra has also been somewhat reluctant to take its share of reductions where through rates have been considered, but I see no reason why this

policy should be continued as there is no reason at all why Pan American should maintain a lower rate structure than Panagra on through rates.

To summarize, Panagra's past policy has been indicated by W. R. Grace & Co. on the basis that high rates should be maintained, with few exceptions.

John E. Muhlfeld

JEM mil J. E. Muhlfeld

[fol. 1024]

GOVERNMENT'S EXHIBIT 483

July 11, 1950

MEMORANDUM TO MR. HOWARD L. CLARK

Subject: BOLIVIA—PANAGRA OFFICE

With reference to your request I herewith submit the following memorandum on the Bolivian office.

1. It was my understanding that the sole reason for inaugurating DC 4 service into Bolivia in this particular instance was to combat our competition. Actually what has been accomplished up to date has been to offer the traveling public two additional days DC 4 service to Lima with connections to the North.

As a result we still do not know actually how strong Braniff really is. If a potential traveler wants to leave for Lima on the day when we have a DC 3, and our competitor has a DC 4, it is almost impossible to sell. It is the old story, two engines versus four engines.

You asked me why we lost so many passengers to Braniff. One of the main reasons especially during the rainy season, is the fact that the DC 3 flying the Jungle Run east of Santa Cruz due to weather, would be anywhere from three to twenty four hours delayed enroute and the majority of passengers booked with us would cancel and have their tickets endorsed over to our competition. I understand that this situation will be remedied somewhat

due to the fact we are now flying into Santa Cruz and turning around there the following morning with DC 4.

2. The two travel agencies that we do business with (Exprinter and Tur-Bol) have repeatedly expressed their complete dissatisfaction with the way they have been treated by Grace in Bolivia. They maintain that the Grace Company is in open competition. Mr. Keiler, of Tur-Bol [fol. 1025] and Mr. Hecksner, of Exprinter, have told Mr. McCoun of that treatment, and I know that they sent a very strong cable of protest to Mr. Masson of Lima. I understand a letter from Mr. Shea to the Grace office in Bolivia explaining and clarifying the Grace Agency situation was sent, but I am sorry to state there is still quite a bit of bitterness left. It is my firm opinion that unless this situation is immediately rectified the travel agencies will end up by giving Panagra as little business as possible. One of their main complaints is that we contact the passenger that they have already booked on a purely social and personal basis and have passenger cancel with the travel agency and make the reservation with us. When one passenger asked the Grace management what the difference was with who he made the reservation with as long as he was traveling Panagra, the answer was that we get the full commission. The agencies are being run by German Jewish refugees, and a good percentage of the people who travel in Bolivia fall into that category. I know that Mr. Hecksner of Exprinter is still quite bitter. On the Cochabamba-Santa Cruz highway, which was awarded to MACO, Pan Pacific Construction Company, Hecksner became very friendly with a Mr. Thompson and also a Mr. Abbot of the above company. Before I left he told me he was going to obtain an exclusive on handling all of MACO's transportation needs, and he was leaving for Los Angeles, to discuss this further with them. I don't know if he has left or not as yet. This movement I understand involves round trips from the western part of the United States of some 150 technicians. With a volume of business of this magnitude and Mr. Hecksner feeling as he does toward us. You can readily see how ticklish this situation could develop into.

[fol. 1026] Another sore point with travel agencies is the fact we do not issue them our tickets so they may make them out right on the spot for their customers. They claim we do not trust them. This again creates a very unfavorable opinion for us, in view of the fact that Braniff does issue tickets, and we do also in every other office with the exception of Bolivia.

* * * * *

5. I realize that the following subject is very ticklish at best. Quite a few of the Americans on the various missions resent pressure tactics employed by Dr. Elio. The case I recall particularly was that of Mr. Arthur Jenkins, formally of the CAA mission. Mr. Jenkins preferred to travel to Lima on several occasions with Braniff. Dr. Elio has seen and talked to Mr. George Benson, Chief of the mission in an effort to find out the reason for Mr. Jenkins preference. Mr. Benson talked to Mr. Jenkins who in turn told me about it and he very much resented that he was being questioned as to his preference in travel. I have heard the same story from several other people to the point where some individual groups flatly refuse to do business with Panagra in the Grace office. If they fly with us they will do so only through travel agencies.

[fol. 1027]

GOVERNMENT'S EXHIBIT 434

JTK/RS Series
Letter No. 225

NEW YORK
June 27, 1951

Mr. Raul Simon
SANTIAGO, CHILE

Dear Raul:

PANAGRA LIQUIDATIONS

We have carefully reviewed the contents of your JTK/RS Series letter #597 of June 8th, and our comments are as follows:

You state that as of March 1st Panagra was indebted to you to the extent of 583,000 pesos. Panagra advises that Lima's books on February 28th showed a balance against you of 743,000. What are the items making up the differential of 1,326,000 pesos, and what was the correct balance as of February 28th? Panagra has instructed the Lima group in the future to analyze and dispose of pending items promptly after the close of each month, and Lawder solicits your cooperation under this heading.

Panagra and we agree that outstanding accounts representing uncollected sales need not be remitted to Panagra until actually collected, to the extent that credit has been extended in accordance with Panagra's written concurrence. If you desire, it will be in order for you to adjust February and subsequent remittances to conform. Panagra suggests [fol. 1028] that a separate current account be opened to include credit sales approved by Panagra and not subject to be remitted until collected. Do you concur?

You advise that March sales can be broken down as follows:

Dollar fare travel	4,167,000 pesos
Peso fare travel	7,292,000
	11,458,000 pesos

According to Panagra's records, dollar fare travel amounted to 9,029,000 pesos during March, and only the balance represented peso fare travel. We suggest that you verify your figures and then adjust your March remittance accordingly, submitting full details to Panagra both in Lima and in New York.

On the subject of buying and selling exchange rates, in our JTK/WFK Series letter #335 of March 29th, we expressed our views as follows:

> "As for exchange rate differentials, it appears to us that since Panagra could cover its entire peso disbursements by means of its peso collections, the average daily rate for the month used for the conversion of Panagra peso disbursements into dollars

should be based upon the daily buying rates (actually used during the month for the conversion of Panagra peso collections into dollars) rather than on the daily selling rates (applicable to the purchase of pesos with dollars). Otherwise Panagra would be subjected to an unjustifiable exchange loss caused by the spread between buying and selling rates."

So long as its peso collections exceed its peso disbursements, Panagra could not be expected to agree to the conversion of peso collections into dollars at the *selling* rate of exchange, and to the conversion of peso disbursements [fol. 1029] into dollars at the *buying* rate of exchange, only to incur an exchange loss. Panagra would simply apply peso disbursements against peso collections. The Grace Line situation is different, for they are faced with large peso disbursements and they have practically no peso collections to cover them. We see no basis for comparison between Panagra and the Grace Line.

The plan developed last February in connection with Panagra peso collections and disbursements was intended to be of benefit to the Grace organization. In other words, by converting Panagra peso collections into dollars—as is currently being done—it became possible to provide additional profit cover for the Chilean territory to the extent that we collect dollars from Panagra in New York for peso disbursements you make in Chile for their account. It follows that any exchange differentials should be absorbed by Grace and not by Panagra, and we do not understand your reference to your being penalized under this heading.

Very truly yours,

Original signed by J. T. Kirby

[fol. 1030]

GOVERNMENT'S EXHIBIT 485

Enroute Recife/Rio de Janeiro
September 26, 1951

MEMORANDUM TO MR. ANDREW B. SHEA

PANAGRA

I consider your letter of September 17th to Jim Walker concerning the program to continue Panagra as the "World's Friendliest Airline" a masterpiece of administrative direction and encouragement.

On this program and reputation, in my opinion, stands or falls the good-will that Grace hopes to obtain from Panagra.

J.P.G. Jr.

[fol. 1031]

GOVERNMENT'S EXHIBIT 486

PG-TFW SERIES
NO. 93

NEW YORK
November 25, 1952

Mr. T. F. Williams

BOGOTA, Colombia

SALE OF SALTINES TO PANAGRA

Dear Frank:

Further to my letter No. 86 and to your No. 84, we are, of course, most interested in continuing to sell saltines to Panagra and it would therefore be interesting to follow up with Panagra, presumably through Manuel Arevalo, the fate of the 17 cartons recently sold to them and get an idea, if possible, of what their monthly requirements will be.

Andy Shea's memorandum to me of November 14, a copy of which was sent to you, of course, speaks for itself and

it is perhaps needless for me to say to you that I feel all concerned, including myself, are most anxious that La Rosa get the business and we do not want Panagra to take their trade elsewhere nor give it to Arturo Field in view of previous experience.

Very truly yours,

J. H. J.

cc: Messrs. Grace
Shea
Latorre

[fol. 1032]

GOVERNMENT'S EXHIBIT 487

MEMORANDUM

FOR USE BY ADDRESSEE

SEND ORIGINAL BY

TO Vice President — FROM Reg. Traffic/Sales Mgr.

DEPT. OR DIV. LAD — DEPT. OR DIV. Latin American

LOCATION Miami — LOCATION Lima, Peru

9259-00291E

DATE: February 21, 1953

SUBJECT: REPORT #26 February 1-15

REFERENCE:

Copy forwarded from Exec VP Morrison's office to: VP Alvin Adams-NYK

CONFIDENTIAL

* * *

PANAGRA-GRACE REORGANIZATION

It has been noted in a previous report that I felt that the Panagra-Grace office in Santiago was lacking in basic

organization, delineation of individual duties and supervisory procedures. I was extremely happy, therefore, to find on my recent trip to Chile that Mr. Don Huff of the Panagra staff in NYC had been sent to Santiago to assist in setting up an organization chart for this office and to establish efficient sales office procedures. Mr. Huff had done a similar job in Lima which would have shown excellent results if the Panagra-Grace officials had carried out his plans and ideas. Even so, his Lima re-organization permited the elimination of at least six employees from the payroll without hardship or loss of effort whatsoever. Mr. Huff has had a wealth of experience in this type of work and if Mr. Brunson and Mr. Burke will continue his good work I am certain that all of us will benefit.

The amazing thing to me is that in all of these Grace offices there is practically no way that officials of Panagra can insist that their plans and ideas be carried out. The chain of authority is so long in numbers of people, in files of correspondence and in geographical distances and the follow up is so uncertain and so uncoordinated that a person like Mr. Brunson in Santiago and Mr. Velarde in Lima can show complete unconcern towards any plans for suggestions submitted by a person like Mr. Huff unless these happen to strike their fancy at that particular moment.

[fol. 1033] I am attaching copies of the functional and personnel assignment charts which Mr. Huff prepared for the Panagra-Grace organization in Chile. I feel that all System offices should be set up in this manner to achieve maximum efficiency of personnel and materials.

CHILEAN AGENCY SALES 1952

Attached is a summary of sales made by Chilean travel agencies in 1952.

Juan Homs, Jr.

Juan Homs, Jr.

JH/ba
Attchs:
cc: VP Traffic/Sales NYC
Traffic Sales Mgr. LAD Miami

[fol. 1035]

GOVERNMENT'S EXHIBIT 489

March 4, 1953

CONFIDENTIAL

NOTE TO: DIVISION MANAGER

You will recall that a year or two ago we were endeavoring to assemble evidence which might support the contention that the other ownership interests in Panagra exercised undue control and influence over their policies even to the extent of being detrimental from the standpoint of a purely airline operation.

As this subject tends to flare up from time to time, the attached piece of evidence may be of interest to the top levels of our company. You will note that this evidence consists of a routine reservations and VIP teletype message in which it is indicated that a flag stop will be made at Antofagasta, Flight 300 March 30, to pick up the Executive Vice President of Anaconda Copper per okay by Grace Line, New York. Anaconda Copper, of course, is an important ore shipper on the Grace Line.

A check has been made to see if the okay for the flag stop might be tied in with a minimum revenue figure, but apparently this is not the case and it is clearly the case of the airline effecting a flag stop to pick up an executive who is important to the steamship company.

M. J. Martinez

M. J. Martinez

Encl.
cc: Exec. VP—LAD

[fol. 1037]

GOVERNMENT'S EXHIBIT 491

HRH #534

NEW YORK,
September 3, 1930.

Mr. H. R. Harris, Vice President,
Pan American-Grace Airways, Inc.,
Lima, Peru.

Dear Mr. Harris:

With regard to the Delfino representation at Buenos Aires, Panair has made us an offer to represent us through the Alas Company at a cost not to exceed the 15,000 Argentine pesos guarantee offered by Delfino.

Under ordinary circumstances this would be attractive because it would obviate the necessity for having two associated Companies in the Argentine with different headquarters. Unfortunately, your opinion of Mr. Summers, who, I understand, would be the active head of Panair's activities in the Argentine, makes us unwilling to have our Company occupy a position in which in any conflict of interests a man would be in charge of the joint operations who was not in sympathy with Panagra.

A number of things have happened which would seem to bear out your opinion that Summers will never give Panagra an even break.

A final decision of the Delfino proposition has been held pending, therefore, so as to give Mr. Roig another opportunity of discussing the matter fully with Mr. Trippe. I shall keep you advised as to the final result.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

J.D. MacGregor
Vice President & General Manage

JDM/Q

[fol. 1038]

GOVERNMENT'S EXHIBIT 492

PANAGRA

Pan American—Grace Airways

Cable Address
All Offices
"PANAGRA"

Lima
Grace Bldg
Casilla 2488

HRH # 223

Lima, Peru
September 11
1930

Pan American-Grace Airways Inc.
New York

Dear Sirs:

Receipt is acknowledged of your HRH # 534 on the subject of our possible representation in the Argentine by the Alas Company rather than Delfino. It impresses me that it is not desirable for us to be represented by Alas until we are convinced that Alas will give us genuine representation and not use their appointment as an opportunity to stifle our business. Whether or not Mr. Summers or any other Panair representative would give us the proper type of representation would depend entirely upon the instructions which the Alas Company received from Panair. Consequently the decision should be entirely based on the actual attitude which Panair will take toward us. If there is to be competition in passenger, mail and express between PAN AMERICAN-GRACE AIRWAYS INC. and Panair in serving Buenos Aires we should under no circumstances be represented by Alas. On the other hand if there is a definite allocation of traffic between PAN AMERICAN-GRACE AIRWAYS INC., Panair and Alas, which is satis-

factory to us, there is every reason to have Alas as our representative instead of Delfino.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS INC.

/s/ H. R. HARRIS

CBR

Vice President

HRH/CBR
air mail copy
cc to Panair, N. Y.
Grace, N. Y.
Dictated but not read

[fol. 1039]

GOVERNMENT'S EXHIBIT 493

LIMA, May 31, 1932. PERSONAL #595

Mr. J. D. MacGregor, New York.
NYQUIST

Dear Mac,

With reference to Mr. Vidal's letter to Panagra, New York, #96 of May 20 on the subject of agency fees at B. Aires, I note that he recommends Nyquist be sent back from B. Aires to Santiago. I do not agree with this at all since I feel that we must always have a competent Panagra man at B. Aires to keep us thoroughly informed of any Panair schemes which may develope and which we would have no knowledge of otherwise. I feel that the reason we have such a good arrangement at present is because of the effective work which Nyquist has done and am sure that we will again have trouble if we pull Nyquist out of B. Aires. I am not referring in this letter to operations problems but to the general Panair Panagra background in B. Aires.

H. R. Harris

Harold R. Harris

HRH/FE

cc Mr. Vidal
" Shannon

[fol. 1040]

GOVERNMENT'S EXHIBIT 494

Pan American-Grace Airways, Inc.
122 East 42nd Street New York, N.Y.

Cable Address

Private #102

ORIGINAL AIR MAIL LETTER

Copy Follows By Steamer

NEW YORK,
June 2, 1932.

Mr. G. Vidal,
SANTIAGO.

MR. OSCAR I. PEZET

As I cabled you today, I have just received a letter from Pezet stating that he has been hired by Rihl and yourself as contact man in Buenos Aires. This is something which should have been definitely referred to New York.

I received your cable asking whether I would recommend the employment of Pezet at a salary of 800 Argentine pesos per month. This cable was received the same day of the Directors' Meeting and was handed to me after the Meeting. I did not reply to the cable, but by next airmail I wrote Mr. Harris, with a copy to you, stating what had been done in the Directors' Meeting and informing you by means of this letter that I had been asked to make a Budget for the Argentine to cover the employment of two contact men. Although I do not think that I shall have any difficulty in confirming your actions, I would suggest that before committing yourself at any time, you await definite approval [fol. 1041] from this office.

In the case of the Buenos Aires personnel, you, of course, understand that the employment of Pezet is an additional expense not contemplated in the agency fee, and for that reason I presume you have already arranged with Rihl the proportion of the salary which should be assumed by

Panagra. I may state that even if you and Rihl agreed to a 50 50 split, I do not believe Mr. Trippe will agree to it. Mr. Trippe will consider the salary should be split on the basis of sailings and arrivals, that is, $^2/_3$ Panagra and $^1/_3$ Panair. That is another reason why I did not want to commit myself until I knew what percentage Panagra would have to assume.

I presume also that Pezet is hired and paid by Panair and is now an employee of our Panair agency. If this be so, I presume you have thoroughly explained to him the relations of Nyquist to the agency and the fact that Panagra operates as a separate entity with separate officials and separate organization. An explanation of this kind is due Mr. Pezet because, otherwise, he may think that Mr. Rihl or any other of the Panair officials can instruct him to travel on Panagra planes. Pezet should be thoroughly advised that matters pertaining to Panagra should be cleared through Nyquist. I am sure you see my point.

J.D. MacG

J. D. MacGregor.

JDM/Q

[fol. 1042]

GOVERNMENT'S EXHIBIT 495

PERSONAL #370

NEW YORK
July 6, 1932

Mr. H. R. Harris,
LIMA

My dear H.R.:

PANAIR FACILITIES AT MONTEVIDEO AND BUENOS AIRES.

* * * *

Mr. Trippe is still unwilling to concede that we should go fifty-fifty on expense and propaganda in the Argentine. He is sticking out for two-thirds for Panagra on the basis

of scheduled sailings. To my insistance that the fifty fifty deal is equitable because we have no control over the expenditure of the Panair office at Buenos Aires, he replies that if I consider the Panair office expenses too high a budget can be appropriated and jointly approved reducing these expenses to what we consider a fair figure. I wish you would, in your next visit to Chile, discuss with Shannon what it should cost us to run our own office at Buenos Aires. This would contemplate transferring the accounting to Santiago and maintaining Buenos Aires as a representation and traffic organization only. It seems to me that with Bradley, Nyquist, Pezet, Schurz, and Miss Grinham, we could carry the office along and not lose traffic. I should like [fol. 1043] to know whether the payment of 50% of Bradley's services and two-thirds of the salaries of the other employees mentioned, together with two-thirds of the office rent and general expenses would not be quite considerably less than $750. U.S.G. per month. Will you please advise.

J. D. MacGregor

JDM:G

[fol. 1044]

GOVERNMENT'S EXHIBIT 496

Pan American-Grace Airways, Inc.
122 East 42nd Street, New York, N.Y.

Cable Address

ORIGINAL AIR MAIL LETTER

Copy Follows by Steamer

SANTIAGO, December 8, 1932.
PERSONAL, #1055

Mr. J.D. MacGregor, New York.

B. AIRES SITUATION

Dear Mac,

Herewith you will find copy of letter I have written today to Geo. Ribl, which is somewhat rambling but almost self-explanatory.

I trust that you will be able to give this serious consideration, particularly with regard to the business of moving Shannon over to B.Aires, which strikes me as being a fine idea if a sale can be made of the scheme to Panair and Grace. My thought is that we would move our whole Southern Division headquarters to B.Aires, leaving Grace, Chile, to handle Chile in the same way that Guayaquil Agencies Co. handle Ecuador. It would, of course, be necessary for us to put a good operating man in Santiago, possibly Farris, who would naturally be under Shannon.

The accounting system I have mentioned to Rihl is really a keen thing, and although it may not be possible to put it into our organization, at the same time I know you will be very much interested in observing what can be done with this punch card system of recording and accounting.

HRH:FL
enc.

Harold R. Harris
Harold R. Harris

[fol. 1045]

SANTIAGO, December 8, 1932.

Mr. Geo. L. Rihl,
Panair do Brasil S.A.,
Rio de Janeiro.

Dear George,

My recent visit to B.Aires has impressed me more than ever with the disorganization of the joint set-up at that point. There seems to be misunderstanding and friction of a more or less serious nature between the various department heads, and there is apparently no centralized control of any movements or work of the personnel. I may be quite wrong and all may be lovely, but it impressed me that Bradley, who apparently considers himself to be the chief executive of the entire organization, is quite incompetent to handle any such important position, and is completely overcome by the sense of his own importance. In our own business we could not for an instant tolerate any such

office hours as Bradley keeps. He never arrives in the office before 10.30 am., and more often 11 am., and leaves promptly at noon, to return at or after 3.30 pm. in the evening, usually later. I agree that he has outside contacts which he is able to take advantage of in the evening, and I presume that occasionally he has similar contacts in the morning before he comes to the office, but you and I also have contacts which we take advantage of in the evening without interfering with our regular business day. You may think from the above that I have some personal prejudice toward Bradley—quite the contrary, but I do feel that he could spend a reasonable time in the office and accomplish a great deal more than he is now accomplishing. In addition to the fact that the presumed general manager of the B.Aires set-up is not on the job, I feel that even if he were on the job he is not competent to handle the problems which present themselves, in a first class manner.

It seems to me that we might consider very seriously the question of a completely new set-up in the Argentine. One possibility which appeals to me is a combination of joint Field Manager, a scheme which you have previously suggested, with a General Manager idea for the joint office. It seems quite feasible, if Panair will agree to it, to have the Division office of our Southern Division moved to B.Aires from Santiago, in which case it would be possible to put Shannon in charge of the joint office at B.Aires, in addition to his Division duties with Panagra. Naturally I have not had an opportunity to discuss this matter with Mr. MacGregor yet and do not know what his reaction would be; he might have some very real reasons for not desiring such a shift. I feel that Shannon is quite competent to either make Bradley work, or make him resign under pressure of the work which he would be required to carry out, our requirements being met by either result in the long run, since we have either got to get work out of Bradley or get rid of him. In addition, the junior members of [fol. 1046] the staff, who are now working pretty well up to capacity, particularly Moore and his crowd, would be assisted and encouraged in their work, and their work coordinated with the other work of the office in a way which may now be lacking.

In addition to the institution of a joint manager scheme similar to the scheme which fell down so badly when it was attempted with Summers, we would have in Shannon a man who had had complete experience, with NYRBA background, and could in any emergency handle either land planes or seaplanes for either company, being thoroughly familiar with the operations in both directions.

*****

There seems to be a general feeling among our friends in the Argentine who are not in any way connected with the Company, that we do not have a sales organization, but rather the attitude of accepting any business which is offered us. I know you have given this a great deal more thought than I have, and it would seem that if we are to build up a selling organization we should either pay our present employees more, so that they can take their place among the class of society which is financially able to use air transportation, or else we should get rid of our present low price employees and take on people who would be paid a higher figure and who are already accepted socially in the proper spheres. There are, of course, any number of well connected Anglo-Argentines who might prove satisfactory for this work, but I feel that no change of this sort should be made until after a very exhaustive study of the background of the individual or individuals whom we have in mind, in order that no errors be made in selection of proper personnel.

* * * * *

Warm personal regards,

Sincerely,

HARRIS

[fol. 1047]

GOVERNMENT'S EXHIBIT 497

PERSONAL 829
1055
Personal

BUENOS AIRES SITUATION

NEW YORK
December 20, 1932.

Mr. H. R. Harris,
LIMA.

My dear H.R.:

Thank you for your personal letter #1055 of December 8th and for the copy of your letter to George Rihl of the same date.

Your idea of moving the whole Southern Division headquarters to Buenos Aires, leaving Grace & Co., Chile, to handle our Chilean business on a purely agency basis is, of course, not new to me as I have had the thing in mind for some time. The reason I have not written you about is because I wanted to find some good reason for making the change. As a rule, in these matters, we only have one section of the Board to contend with. In a scheme of this nature, I would have to buck both divisions.

Grace & Co. would undoubtedly oppose the scheme through a fear that their influence in our southern picture would be minimized beyond even the present almost vanishing point. They would, of course, not oppose, I think, the transferring of Shannon to the Argentine, because, as you know, they have never been pleased at having Shannon in Santiago, but they would undoubtedly say that the transferring of all the people who are at present working 100% for us, even although not on our payroll, would involve the leasing of an expensive office in a country in [fol. 1048] which their influence is not great, and would involve other expenditures foreseen and unforeseen.

Panair, on the other hand, would say that by an inter-Company agreement *it* is the prominent factor in Buenos Aires and that if it is felt, and if George Rihl agrees, that Shannon would be a good man to be placed in Buenos Aires as manager, he should be transferred to the Panair payroll and we would be charged $^2/_3$ of his salary on the basis of sailings. Grace & Co. would say, as they have already said, that if we pay $^2/_3$ of the expenses of the Buenos Aires office, we should run the office.

These are just some of the things that occur to me and which will give you an indication of the situation I would have to confront. I wanted, therefore, to let this year pass and liquidate our accounts with the parent Companies before starting something more than ordinarily controversial.

I also have in mind that Alessandri takes over at the end of December and that this change of administration is liable to bring our old friend Merino into the picture. If this happens, and we again have Merino on our neck, it would offer an added argument for transferring the Santiago office to Buenos Aires. I shall, therefore, ask you to go slow in this matter in the assurance that I have the matter before me and will handle it to our best advantage when I see the moment opportune. I am just as convinced as you are that the present set-up at Buenos Aires is not to the best interests of either Company. There has been bad [fol. 1049] blood, as I am sure you have found out, between Lopez and Bradley and I certainly do not think that Bradley would be any good as a manager, even if he kept decent office hours.

* * * * *

J. D. MacGregor

JDM/Q

[fol. 1050]

GOVERNMENT'S EXHIBIT 498

PAN AMERICAN-GRACE AIRWAYS, INC.
135 EAST 42ND STREET NEW YORK, N.Y.

LETTER NO. 100
(HJR trip series)

Cristobal, June 8, 1935.

A. Garni, Esquire,
New York.

Dear Garni,

PANAIR—CRISTOBAL OFFICE.

Owing to delay of cable company in not delivering your No 64 until this morning I had to continue my conversation with Rihl and Chenea without the benefit of your views. For reasons indicated below I rather discouraged their suggestion of moving into the Grace Building but the matter was handled in a way which leaves it open for further discussion and decision after we all return to New York.

While I agree in general with the principle that anything which helps to bring the two companies together is to be favored, I am not sure that this would have that effect, and, largely with the idea of making a memorandum of the points involved for use when the question comes up for decision, I am putting down here some of my thoughts on the subject.

* * * * *

From the standpoint of Grace Line, Brown does not feel that they lose anything by having Panagra in the same office or that they would lose anything by having Panair there also. He feels, just as I do, that there is an advantage to all concerned from combinations which bring the largest numbers of the travelling public into contact with both ser-
[fol. 1051] vices. It may be rather remote but I also feel that since most air travellers are businessmen and shippers to these countries, there is some little advantage to the Grace Line by reminding these people who may be travelling by air that the Grace Line is the way to ship their goods.

With two separate personnels of companies to some extent competing in the same office considerable friction might develop with bad results. Rihl has suggested that we ought to have a combined office the same as in Buenos Aires. I immediately pointed out that, while I considered they had a good office there, it was ridiculous that Panair with the smaller volume of business and paying the smaller part of the office expense, should be running the office which should really be run by Panagra; stating further that I was not satisfied with the total business which that office was sending to Miami or with the portion of it which was going via Panagra (that being less than twice the movement via Panair which we were entitled to) and, although in view of the small total I was not inclined to press the porportions at this time, I would always have that in mind and would never be satisfied unless we were getting our full share. He immediately replied that so far as he was concerned he would be perfectly willing that Panagra should control the Cristobal office. While that is obviously the only form in which we could consider a joint office, I do not much like it as we would be continuously in the [fol. 1052] position of having to lean backwards. Moreover, owing to the lower cost of doing business here as compared with Buenos Aires and the very favorable arrangements we have in the Grace building, the consideration of economy is not here of the same consequence that it is in Buenos Aires and I am inclined to feel that so far as Panagra is concerned the added expense of a separate office is offset by the added advantages.

Very truly yours,

[fol. 1060]

GOVERNMENT'S EXHIBIT 503

PAN AMERICAN AIRWAYS SYSTEM

MEMORANDUM

No. 383

DATE July 21st, 1937.

TO Regional Director

DEPT. Executive

LOCATION RIO DE JANEIRO.

FROM Commercial Manager

DEPT. Pan American Argentina, S. A.

LOCATION BUENOS AIRES.

SUBJECT REPRESENTATION OF PAN GRACE.

CONFIDENTIAL

Supplementing our memorandum n° 332 of May 31st, you are advised that Pan Grace appears to have definitely turned over to this office all details pertaining to traffic and accounting matters in connection with their Argentine sub-agents, and you will recall that Alejandro spent about a month between Salta, Tucuman and Cordoba in connection with the organization of their new Diagonal service to La Paz.

* * * * * * *

While handling these different agencies increases the burden of this office, it is felt that it is highly desirable from a political point of view, and we also believe it will be instrumental in dissipating any ideas that Pan Grace may have had for the organization of their own local Company.

Later on I hope to send one of our solicitors on a similar trip, and I am sure that this will also redound to the benefit of Pan American Airways through the dissemination of information regarding the services of the entire system.

(SHD) C. E. MOORE.

CEM:PG
np

[fol. 1061]

GOVERNMENT'S EXHIBIT 504

COPY OF HANDWRITTEN LETTER

No. 14
Argentine

Buenos Aires, 22 Oct. '37

Dear Mr. Iglehart,

The set-up here is far from satisfactory. Without going into details, the whole problem to my mind resolves itself down to the fact that we have no one really in command of the B.A. office where we should have a good business man on that job.

Bradley is the President of the local company but his activities are confined to governmental matters and endless diplomatic correspondence with Rio, Santiago and N.Y. Moore is in charge of traffic (he and Bradley working quite independently) and responds to Rice (in Rio) and Clemens? (in N.Y.) with reference to Panair matters and to Santiago and N.Y. with reference to Panagra. Panagra operations are controlled from Santiago. The inevitable result is scattered effort, lost motion and dissipated responsibility. With the growth in complexity and importance of Panagra problems here this is not good enough.

Nor do I think the idea of Panagra having a man of its own here in an indefinite status—as we did with Kirkland—will fill the bill tho concededly that is better than nothing. The trouble is that except in respect to operating matters a man in such a position cannot really make himself felt except in a very slow and roundabout way. My feeling is that we must have a competent man in full charge of all activities here—i.e. in charge of Pan-American Argentine S.A. As Panagra is paying 2/3rds of the expenses of the local organization, I think we should have the dominant voice in the selection of that man and that he should be someone [fol. 1062] we can depend upon to look after our interests.

If we could find a satisfactory Argentine for this job that would be best, but I fear this will take too long. I have

thought some of the second men in the Munson organization here who has just left them (he is not an Argentine) and is I think enroute to New York. I think his name is Colgan. Perhaps Daulton can find out about him. Everyone here speaks very highly of him but I am afraid he may be too much just a traffic man, and, of course, he knows nothing of our problems or of aviation problems in general.

The more I think of it, the more I feel that if Juan does not accept Douglas Campbell for the job we have in mind—or if there is long delay in filling that job—as there may be, he would be just the man for the post. He would get on well with everyone. He has just the qualifications we need. He would also have a fine opportunity to develop into the other job. Juan might not readily agree but I am not sure that it might not appeal to him for various reasons—and in any case be as acceptable to him as anyone else we would be likely to select. Of all the general jobs in the field this one properly handled should rank second only to Harris'.

I have stayed over here waiting for Rice. He and Simon will be here for the week-end when we will go into all the local problems in detail. I expect to urge the necessity of resident management but will not, of course, propose Campbell. I have, however, mentioned the idea to Mac who thinks very well of it volunteering that it would also be ad- [fol. 1063] vantageous as putting him in line for N.Y. I am just passing this suggestion along for your consideration.

I spoke to George in Lima about the Argentine agency contract of Sept. 1, 1937 which Mac signed without consulting anyone and he assured me if it was not satisfactory it would be cancelled. I also, of course, spoke to Mac about it.

Very sincerely,

Harold J. Roig

• • •

[fol. 1064]

GOVERNMENT'S EXHIBIT 505

No. 13
(HJR Trip Series)

Air Mail 4.1
Lima 4.21

W. R. GRACE & CO.
7 Hanover Square, New York

A. GARNI
First Vice-President

NEW YORK, April 18, 1938.

Harold J. Roig, Esq.,

LIMA, Peru.

BUENOS AIRES OFFICE

Dear Roig:

Your No. 12:

There is no question but that the whole set-up at that place is out of gear in every respect. As I understand that about 75% of the in and out traffic is Panagra's, it does seem rather anomalous that the office should be run by Pan American Airways, instead of by Panagra. In spite of the fact that our past efforts in the latter respect failed, I shall take this question up specifically with Juan, but have no particular illusions that he will agree to turn this office over to Panagra.

From the difficulty which arose some time ago with reference to the itinerary of the Diagonal line it is apparent that we will never get first class service in the Argentine as long as affairs are looked after there by Bradley, whom I happen to know and who in turn has to report to Rice in Rio. The other day I also met the latter in New York and was rather disappointed as I expected to see a man of a much broader calibre.

[fol. 1065] Mr. Iglehart, who saw a copy of your letter No. 12, returned it to me with a note saying, "Can't we get Sanchez Elia to recommend a man?" As it will probably take an unusual effort and considerable time to get Juan to agree, if indeed he ever will agree, to turn that office over to Panagra might not the first step be to get an "Argentine Simon" to be the head of that office and then put alongside of him somebody of the type of Kirkland and let Juan take over Bradley, Moore, etc.?

With such a set-up, together with Sanchez Elia's increasing interest in Panagra's affairs, the task of getting operations of this office under our own wings will become easier than it is under existing conditions.

While discussing this Buenos Aires situation with Mr. Iglehart he expressed the opinion that it is most important for you to go to Buenos Aires. I mentioned that it was not your idea to do this as you had just been there recently but in view of the ever-changing conditions and the rather precarious position Panagra is in, it now seems as if every place should be gone over with a fine-tooth comb so that on your return you have the most up-to-date facts, with which we could then confront Juan in an effort to shake down the whole picture.

While we are going over the situation at this end I will avail of every suitable opportunity to shake Juan down as [fol. 1066] much as I can as I fully appreciate that something radical will have to be resorted to not only with reference to the running of the Buenos Aires office but also with reference to the entire present form of managing this company, which I am sure you will agree is far from satisfactory and at best extremely painful.

Very truly yours,

A. Garni

[fol. 1067]

GOVERNMENT'S EXHIBIT 506

NEW YORK, May 3, 1938.

Personal

Juan Trippe, Esq.,
Pan American Airways, Inc.,
Chrysler Building,
New York, N. Y.

Dear Juan:

BUENOS AIRES OFFICE

As you know, we receive continual complaints with reference to the unsatisfactory service Panagra is getting from Panair's Buenos Aires representation.

* * * * *

The absence of a competent business man in charge of the Buenos Aires office seems to be the basic trouble there. Additionally, expense accounts incurred by Bradley and I believe some of the others, are unduly excessive, and all in all Panagra is exposed to the maximum expense and the minimum service.

* * * * * *

As you know, it is difficult to manage any business, even with well organized offices in full cooperation, but to manage a business with service such as we are receiving from the Buenos Aires office is quite impossible. We have, I think, discussed the Buenos Aires situation on previous occasions and I intended fully to discuss it again with you, together with other items which I have in my mind. However, time passes so quickly and both you and I are always [fol. 1068] so busy that it seems impossible to get together as promptly as is desirable. For this reason I am writing you specifically on the subject of the Buenos Aires office, asking you to give serious consideration to the suggestions made in the past to the effect that Panagra should have its own office and select its own personnel rather than continue

to have their affairs looked after by an incompetent and detached personnel.

I wish you would think this over so that we can get together in the near future in an effort to reach an agreement.

Very truly yours,

(Signed) A. GARNI

[fol. 1069]

GOVERNMENT'S EXHIBIT 507

January 9, 1940

MEMORANDUM TO MR. YOUNG:

B. A. OFFICE

The B. A. office was one of the major points of controversy in the discussions of a year ago. Its promised satisfactory solution was one of the essential inducements to the settlement reached at that time.

We (and by this I mean not only Grace but all of the operating officials of Panagra) felt then and still feel that in view of the relatively greater importance of Panagra's interests in the Argentine and the fact that Panagra contributes two-thirds of the expense of the office, Panagra should own and control the local company and the B.A. office. Our second choice would be a separate organization of our own. We are willing to acquiesce in Pan American's idea that we continue to endeavor to work out the problem through the joint office only on condition that there is a basic reorganization of the existing setup.

* * * * *

4. So far as Panagra's relations with the office are concerned, it is essential

(a) that it be understood that the office is a joint office maintained by Panagra as well as by Panair on a partnership basis and that the viewpoint be that of a joint enterprise and not that of a Panair office incidentally and secondarily serving Panagra.

[fol. 1070]

(b) that it be understood that the office is not a mere service station but on the contrary has the definite job of building up traffic in a very important way and that in view of the large unrealized potentialities of the Argentine nothing short of a very large increase in traffic movement will be considered a satisfactory performance.

(c) that Panagra through its Lima and New York offices deal direct with the B.A. office on all matters affecting any phase of Panagra's business and that the B. A. office deal direct with Panagra on these matters without going through the Regional Director in Rio or Pan American in New York.

(d) that it is not sufficient to merely deliver the Panagra route to those asking for it but that the route must be definitely and specifically sold and that we require a definite persistent sales campaign with reference to our route.

We realize, of course, that the foregoing cannot be accomplished overnight and that the personnel changes involved will have to be carried out carefully and with due regard to all concerned. We feel, however, that Roll should approach the problem with the foregoing objectives in mind and should be able to make this definite recommendations for their consummation within two or three months.

H.J.R.

[fol. 1071]

GOVERNMENT'S EXHIBIT 508

TJK-21

NEW YORK COPY

JOINT FACILITIES, ETC.

Lima, June 19, 1942.

Mr. H. J. Roig,
NEW YORK.

Dear Mr. Roig:

The present and future need for economy in our operations, as reflected by the contents of your Palmetto #73 and all that it implies, brings with it the thought that it may be about time for us to reconsider our position with regard to joint facilities arrangements we now have in effect with Panair, particularly at the Canal Zone. The way present costs are running leads us to believe that the $2,900. which we now pay per month (April 1942) is apt to increase steadily to the point where we might find it desirable again to have our own organization at the Canal. In order to complete the picture, we might also mention that we pay Panair about $1,200 a month for serving our aircraft at Balboa, in addition to the Joint Facilities charges.

* * *

In addition to the foregoing, we have a feeling that since we entered into the joint facilities idea in 1937, and particularly as a result of the elimination of our own division office in Cristobal in 1938, we have lost our identity in the Canal Zone area. We not only have lost our identity but we have in many ways put ourselves at the mercey [fol. 1072] of Penair in matters of financial control.

* * *

As to the Buenos Aires town office organization, we honestly feel that sooner or later we must work toward a setup where Panagra control of the office is made dominant. Aside from the fact that we have always paid the larger share of the office's running expenses, there is the

inescapable fact that the entire Argentine territory (all Panagra's) comes under its direction, whereas it is little more than a terminal office for Panair. Despite this preponderance of factors in favor of a dominant Panagra control, we believe the Buenos Aires organization has always felt that they are a Panair, rather than a Panagra, institution. Consequently, Rio has had more influence in shaping its morale, financial attitude, etc. than SAGO. Without any attempt to discredit the fine performance of that office in recent years, we have the belief that the same results might have been obtained under the admittedly stricter Panagra conception of operating economy and control.

We shall be pleased to have your reaction to all of the foregoing at your convenience. Once we have had the benefit of your general attitude on these rather large questions we will be able to proceed with a more detailed study of all factors involved.

Sincerely,

T. J. Kirkland

TJK/EP
cc: NY(2)
DCampbell

[fol. 1073]

GOVERNMENT'S EXHIBIT 509

April 15, 1948

MEMORANDUM TO MR. DOUGLAS CAMPBELL

Reference: Your memorandum of April 14th

I have already transmitted to the Latin American Division for comment the following excerpt regarding the facilities provided by our Argentine company from your draft of the proposed intercompany agreement between Pan American Airways, W. R. Grace & Company and Pan American-Grace Airways:

"Pan American will cause its subsidiary, Compania de Aviacion Pan American Argentina, S. A., to continue

to render sales and other services jointly to Panagra and Pan American in Argentina, and the same joint basis of reimbursement of Compania de Aviacion Pan American Argentina S. A. as is now in effect will continue. Pan American shall regularly consult with Panagra regarding the joint activities of Compania de Aviacion Pan American Argentina, S. A., and with particular reference to sales policies, personnel, the annual budget, advertising programs and expenditures, subject to joint reimbursement."

I am transmitting to Mr. Morrison your memorandum of April 14 and again requesting that matters of the type referred to be cleared through the New York office for "consultation with Panaga". As expressed to you yesterday we are most desirous of coordinating the activities of the Argentine company to meet the needs of ourselves and of Panagra and we shall at all times be willing to discuss the entire set-up with you from every angle including efficient sales activities, control of expenses and all other pertinent factors. We shall endeavor to discuss important changes with you in advance, and in every case will give full consideration to any observations and recommendations which you advance.

However, since the Argentine company is owned one hundred percent by Pan American Airways we wish to have it [fol. 1074] clearly understood that the ultimate decision regarding any action taken by or with respect to that company must rest with us.

E. Balluder

cc: Asst. General Counsel
Vice President Dean
Vice President Morrison

[fol. 1075]

GOVERNMENT'S EXHIBIT 510

August 1, 1929.

J. T. Trippe Esq., President,
Pan-American Airways Inc.,
122 East 42nd Street,
New York City.

Dear Mr. Trippe:

Mr. Van Dusen called us up this afternoon and inquired whether it would be acceptable for him to omit the name of Pan-American-Grace Airways from future publicity regarding South American service, and simply to use the term "Pan-American Airways System."

Mr. Rogers, with my approval, told him that this would be entirely unacceptable.

Mr. Van Dusen seems to have found it impossible to include, in many of his recent releases, the name of the Pan-American-Grace Airways, even when the news was news only because of developments in operations South of the Panama Canal. I enclose a copy of his release of yesterday which was sent to us only today.

We are proud of our association with Pan-American Airways and we like to have this association made publicly evident as in the name Pan-American-Grace Airways and if Mr. Van Dusen is to continue to make public news regarding any phase of the operations of Pan-American-Grace Airways, we respectfully insist that the name be fully and correctly included in his releases.

I am sorry to have to write you on this subject, but I am sure your views are identical with ours and that you will wish to see that future publicity conforms to the true situation.

Sincerely yours,

(Sgd) R. H. PATCHIN

RHP/ID.
ENCLOSURE.

[fol. 1078]

GOVERNMENT'S EXHIBIT 512

W.R. GRACE & CO.
NEW YORK

New York, January 18, 1932

Dear Roig,

I received a letter from Trippe as per copy attached.

My inclination is not to reply to it at all as I do not want to reply contentiously and I do not quite see how I could reply otherwise. Nevertheless it may be advisable to answer in some form. What do you want me to do?

Yours very truly,

D. S. Iglehart

[fol. 1079]

PAN AMERICAN AIRWAYS, INC.
General Offices—122 East Forty-Second Street
New York City

January
9
1 9 3 2.

Mr. D. Stewart Iglehart, President,
W. R. Grace & Company,
7 Hanover Square,
New York, N. Y.

Dear Mr. Iglehart:

On returning to New York today, after a week's absence, I am in receipt of your letter of December 29th, addressed to Mr. Whitney, which Mr. Whitney has forwarded to me for acknowledgment.

In your letter you refer to two recent matters that have come to your attention, prejudicial to the interests of our joint enterprise—Pan American-Grace Airways, Inc.

The first has to do with the recent traffic map issued by the Traffic Department of Pan American Airways, Inc. This map, following the usual practice, makes no pretext at geographical accuracy. I refer you to timetables and similar data, as released by our principal railroads. It does, however, accurately convey the arrival and departure days at all points covered, including points on the West Coast—the purpose for which it was conceived and released. Personally, I thought the information was presented in a very clear, concise and economical manner. In this connection, it has been favorably commented upon by other aviation officials in the United States and abroad.

* * *

The map should, however, as you have pointed out, contain the legend "Pan American-Grace Airways" appropriately placed. Also, the legend "Scadta Airways System" [fol. 1080] should have been included with the routes operated by that company. Furthermore, there should have been included in some clearer way, the fact that there is an over night stop in Haiti or Santo Domingo Southbound, and Porto Rico Northbound. A circle, with supporting arrows adjacent to the routes, would accomplish this result. I will call these matters to the attention of the Traffic Department, that our next map released contain these corrections.

* * *

I am sorry to hear that a friend of yours who applied at the Pan American traffic office here at New York regarding air passage to Buenos Aires, was not even advised of the West Coast Route.

* * *

Mistakes have been made in the past, no doubt, by both parties to our partnership. Pushing the East Coast to the detriment of the West Coast, in the case of your friend, mentioned in your letter, is an example of Pan American in the past, not having "played ball". However, on the other hand, our traffic people have felt that your steamship advertising might be improved from the point of view of Pan American-Grace Airways and also Pan American Airways. For instance, they feel that it would be more correct

were the constant reference to "the fastest service between the United States and the West Coast" changed so as to read "the fastest steamer service . . . etc." I am enclosing copy of a recent advertisement illustrating this point.

* * *

Yours sincerely,

J. T. Trippe

JTT:B
Enclosures

[fol. 1081]

GOVERNMENT'S EXHIBIT 513

PAN AMERICAN-GRACE AIRWAYS, INC.
13 First 42nd Street, New York, N.Y.

PERSONAL LETTER NO. 1786

SUBJECT: PANAIR PUBLICITY IN U. S.

HRH/FL

LIMA, January 29, 1934

Mr. J.D. MacGregor, New York.

Further to the question of whether or not we are part of the Pan American Airways System, I call your attention to the article in the New York Sunday "Times" for January 14, 1934, under the heading "Along the world's far-flung airways" and the sub-heading "Ocean line for Reich", where it is brought out how important it is for Panair to operate twice a week Miami to Rio in order to "result in closer affiliations between the businessmen of Brazil and the Argentine". The article also states that Panair have purchased twelve 200 mph. landplanes to be used between the U.S. and the Canal Zone on the overland route from Brownsville. Nowhere in the article, nor on the map, is any showing or mention made of the West Coast service, nor the fact that it is the fastest connection to B.Aires.

I presume you have seen the issue of "Cosmopolitan" with the Wilson and Knight article about Panagra. As you recall, we spent a large sum of money on these people, in addition to the time we spent on them, and we end up by only a word or two, and that word not too complimentary. I haven't personally seen the article, but have heard of it; it would seem that we are not getting a fair break on the publicity which I presume we are paying for.

H.R. Harris

H.R. Harris

[fol. 1083]

GOVERNMENT'S EXHIBIT 515

7 Hanover Square
NEW YORK

February 25, 1936

Dear Mr. Inglehart,

In accordance with your request I am sending you herewith copy of your letter of November 29th to Mr. Trippe re publicity. We do not appear to have received a reply to this letter, but Mr. Garni tells me that he and Mr. Roig took this matter up at a Panagra Board Meeting.

Mr. Garni has today written to Mr. Trippe as per attached copy of letter. He has asked me to tell you that he advised Mr. Harlee Branch of this incident when he was in Washington on February 22nd.

Yours very truly,

Helen R. Quilty

D. S. Inglehart, Esq.,
Delray, Florida

[fol. 1084]

NEW YORK, November 29, 1935.

Juan T. Trippe, Esq.
Pan American Airways, Inc,
Chrysler Building,
New York City.

Dear Mr. Trippe:

Some days ago I saw a copy of Pan American Airways System schedule corrected to November 1, 1935.

I am surprised to note that there is no reference by name to Pan American-Grace Airways, Inc, except in the Index to Airports, Traffic Offices and Agents. While as a matter of fact twice weekly service via the West Coast route is the only 5½ day service to Buenos Aires, the natural impression from the caption on the cover is that Pan American Airways is furnishing a 5½ day service three times a week with its clipper ships.

Today I saw a further notice with reference to express shippers; which says that elapsed time from the United States to Buenos Aires has been cut from 7 days to 5½ days, and to Rio de Janeiro, to 5 days, and that this improvement is a further contribution by Pan American Airways to American industry. This presentation is decidedly misleading as through this linking up of the 5½ day trip to Buenos Aires and the 5 day journey to Rio de Janeiro, [fol. 1085] anyone reading the circular who is not thoroughly familiar with the matter under discussion must take it for granted that the notice refers exclusively to the air service between the United States and Buenos Aires via the East Coast only.

The above are just two examples taken at random of the entirely inadequate publicity which Pan American-Grace Airways is receiving under the present arrangement. For some time I have felt that Pan American-Grace Airways should have its own publicity and publish its own schedules in this country and I am therefore asking our representative on its Board to discuss this whole matter at the next Board meeting.

Very truly yours,

(sgd) D S IGLEHART

[fol. 1086]

February 25, 1936

Juan T. Trippe, Esq.,
Pan American Airways, Inc.,
Chrysler Building,
New York City

Dear Juan,

I spent two weeks in Miami Beach and had occasion to visit the airport. While there one of the Pan American men, whose job it seems to be to enlighten the public on the mysteries of aviation, explained to Mrs. Garni and myself and others the qualities, etc. of the big clippers. He went on to say that these planes covered 15,000 miles on each round trip to Buenos Aires and that they are making the trip in 5½ days. I asked him whether this was via the East Coast, and when he answered affirmatively I said, "Is there not also a line to Buenos Aires via the West Coast, and is that route not somewhat shorter and quicker". He answered emphatically in the negative saying that the only way to get to Buenos Aires in 5½ days was via the East Coast, and I let the conversation go at that.

This incident, in which I am sure you will be interested, seems to jibe with other stories that reach us from time to time tending to put the West Coast service in the back-[fol. 1087] ground. While on this subject I am reminded of Mr. Iglehart's letter of the 29th of November addressed to you, to which he does not appear to have received a reply.

With best regards,

Yours very truly,

(Sgd) A. Garni

[fol. 1089]

GOVERNMENT'S EXHIBIT 517

W. R. Grace & Co.
New York

(JTK Trip Series Letter No. 55)

LIMA, Peru
October 31, 1938

D. S. Iglehart, Esq.
NEW YORK Attention: Mr. H. J. Roig

Dear Mr. Iglehart:

PANAGRA ADVERTISING

I was surprised to find that in the regular Panagra advertisement in "El Comercio" the name Pan American-Grace Airways, Inc. did not appear, although Pan American Airways, Systems did, as you will see from the advertisement attached hereto.

I asked Muhlfeld to explain this and he advises that in carrying out instructions concerning the reduction in the size of the advertisements, they failed to include the name of Pan American Grace Airways, Inc. as instructed.

He advises, however, that this advertisement will be corrected as from tomorrow on.

Yours very truly,

J. T. Kirby
A. CARNI

JTK/jb

HANDWRITTEN NOTE: Roig,
Should Panagra not stop using "Pan Airways System". This might become a liability.

[fol. 1092]

GOVERNMENT'S EXHIBIT 519

October 24, 1939

V. E. Chenea, Esq.,
Pan American Airways, Inc.,
Chrysler Building,
New York City

Dear Chenea:

Referring to our telephone conversation this morning, I enclose summary of Mr. Godoy's interviews with the travel agents, etc.

As I explained to you this morning, Mr. Godoy undertook this checkup on his own initiative from his home yesterday when he was laid up with a cold. Mr. Godoy has made his report in question and answer form as a convenient method of summarizing the interviews but the questions and answers are not verbatim as they were not taken by a stenographer at the time. They were written out, however, immediately following the interviews and may be taken as virtually literal. The interviews are a terrific shock to me and I know will be to you. They show the existence of a problem of the first magnitude in the immediate solution of which I know I can count on your fullest cooperation.

I would appreciate it if you would give me a ring after you have been over this memorandum. If you would like to check up on the interviews with Mr. Godoy, I would be glad to arrange for him to come in to see you.

Sincerely yours,

Enclosure

[fol. 1093]

American Express —65 Broadway

Q.—How can I travel by plane to B.A.?

A.—By way of Pan American Airways from Miami. The Clippers go from Miami to B.A. You can also go by airplane from New York to Miami.

Q.—How many departures a week are there?
A.—Only twice a week, leaving Wednesdays and Sundays from Miami, arriving at B.A. on Mondays and Fridays respectively. You must leave New York the day before in the morning plane. You can lease in the night plane, but you might miss your connection.

Q.—What are the rates?
A.—To B.A. from Miami, $550 one way, $990 round trip.

Q.—Don't you have a through rate New York to B.A.?
A.—No. You have to add to the above, the New York Miami rate, $71.75 one way, $129.20 round.

Q.—What's your baggage allowance?
A.—On through bookings from Miami to B.A., 77 lbs.

Q.—Does the same allowance apply to your trip from New York to Miami?
A.—Yes.

Q.—The trip you have described takes seven days, or at lease six days if you fly from New York to Miami at night. I thought you could make a faster trip. Isn't there a 5-day trip?
A.—Never heard of trip in five days. It cannot be done.

Q.—Why—isn't there a shorter route over the West Coast?
A.—There is no shorter route over the West Coast. The West Coast takes longer than the East Coast.

[fol. 1094] Q.—What is the West Coast Schedule?
A.—Leaves Miami Saturdays and Tuesdays, arrives B.A. Wednesdays and Saturdays.

Q.—What are your rates over the West Coast route?
A.—I am unable to give them to you now because they are not in the tariff. I will have to call the line.

Q.—Have you found out?
A.—Yes—the same as on the East Coast.

Q.—Which line is the one running the West Coast service?
A. Pan American Airways.

Q.—Why—isn't it the Pan American-Grace Airways?
A.—No, Pan American-Grace Airways is only from Chile to Argentina. From Cristobal to Chile is Pan American Airways.

American Express—605 Fifth Avenue

Q.—What companies are there running planes to B.A.?
A.—Only one—the Pan American Airways.

Q.—How many departures are there?
A.—Twice a week from Miami to B.A., via the East Coast, and twice a week via the West Coast.

Q.—What are the rates?
A.—From Miami to B.A., via East Coast, $550 one way, $990 round trip.

Q.—What about the rates via the West Coast?
A.—From Miami to Santiago, $488, and from Santiago to B.A. $100.

[fol. 1095] Q.—And what would be the through rate?
A.—The through rate would be the addition of the two, or $588, but you would not do it that way, as it would be more expensive.

Q.—Well, suppose I wanted to go down one way and up the other, what would the round trip be?
A.—Then you would take a Round South America trip, going from Miami down the West Coast to Santiago, then to B.A., and up the East Coast, and this would cost you $1150.

Q.—I don't understand this, as this would be more than the aggregate of the two one way fares.
A.—I find that my figures were wrong. The price of your Round South America ticket would be only $1007.

Q.—But, suppose I wanted to go to B.A. Via the West Coast, and return the same way, what would be the round trip fare?
A.—The figure I first gave you, of $100 from Santiago to B.A., is incorrect, as only $80 is added to the $488 from Miami to Santiago, so that your through rate Miami

to B.A. via Santiago is only $568, and your round trip would be only $1,022.40.

Q.—Which is the better way to go?

A.—If you go to B.A., the East Coast is better, because it is faster, less expensive, and saves you the trouble of passing through all those countries and getting visas. There's no point in going to Argentina with a stop at Santiago, when you can go direct via the East Coast.

[fol. 1096] Q.—I don't see where the East Coast is faster. Your East Coast schedules are six days. Aren't your West Coast schedules five days only?

A.—Yes, that's true. Still, the East Coast service is faster, and if it takes longer it is because the distance is greater.

Q.—What's your baggage allowance?

A.—From Miami to B.A., 77 lbs.

Q.—And from New York to Miami?

A.—If in connection with through passage, 77 lbs.

Q.—Who operates the West Coast line? Is it the Pan American Grace Airways?

A.—No. The only service is Pan American Airways. Grace is only a steamship line. There is no Pan American Grace Airways.

American Express—150 West 41

Q.—What airplane lines are there to B.A.?

A.—Only one—the Pan American Airways.

Q.—What departures have they?

A.—Two a week, leaving Miami Wednesdays and Sundays, arriving at B.A. Mondays and Fridays respectively.

Q.—Those planes take six days. Aren't there some faster planes?

A.—No.

Q.—What about a route down the West Coast?

[fol. 1097] A.—That's down to Chile. It is no good. It does not go through to Argentina.

Q.—Why—I thought that was a faster way.

A.—Will go to Chile if you go to Argentina. It would be like going to New York to Chicago by way of Miami. There is no through plane. You have to change planes at Santiago, and then go across the Andes.

Q.—What are your schedules on the West Coast route?

A.—Planes leave Miami Saturdays and Tuesdays, you arrive at Santiago on Tuesdays and Fridays, and at B.A. on Wednesdays and Saturdays respectively.

Q.—Well—doesn't that make five days instead of six?

A.—Still, one always takes the East Coast route, and there you need Brazilian and Argentine visas only. Over the West Coast route you need other visas.

Q.—What are your rates?

A.—$550 one way, $990 round, on either route.

Q.—What's your baggage allowance?

A.—77 lbs.

Q.—What about your rate from N.Y. to Miami?

A.—About $78 one way. Round trip, twice that less $10.

Cooks-Wagons-Lits—221 Broadway

Q.—What are your airplane departures for B.A.?

[fol. 1098] A.—The East Coast flyer leaves Miami twice a week, on Sundays and Wednesdays, by way of Porto Spain, San Juan, etc. This is considered the most direct route. Fare is $550 one way, $990 round.

Q.—Isn't there another route?

A.—Yes, by way of Cristobal, down the West Coast. These planes leave Miami twice a week, on Saturdays and Tuesdays. Fares are the same.

Q.—You referred to the East Coast as the most direct route. Wouldn't the West Coast seem more direct, since it takes one day less?

A.—Yes, but from our experience most people travel down the East Coast. However, at this time of the year the West Coast route may be very desirable over the Andes.

Q.—What do you mean?
A.—As the seasons down there are reversed from ours, it is not likely that they will have bad weather over the Andes now.

Q.—What route would you advise me to take?
A.—The West Coast, because it is shorter and the time of year is okay.

Q.—What company runs the West Coast service?
A.—Pan American Grace Airways.

Q.—Does the West Coast route have some special name, similar to the East Coast Flyer for the East Coast route?
A.—No.

Q.—What's your baggage allowance?
[fol. 1099] A.—77 lbs from Miami to B.A., but only 44 lbs. from N.Y. to Miami.

Cooks-Wagon-Lits—587 Fifth Avenue

Q.—What are your plane departures for B.A.
A.—Twice a week, leaving Miami Sundays and Wednesdays, arriving at B.A. Fridays and Mondays.

Q.—Isn't there another schedule?
A.—No.

Q.—I thought there must be another schedule. The above schedule takes six days, whereas I have been told of people making the trip in five days.
A.—I don't care what you have been told. I can tell you positively there is no other schedule. I am looking at my schedule, effective October 1939.

Q.—Still, I understand there is another schedule by way of the West Coast.
A.—But why go down the West Coast. Why go to that trouble.

Q.—What are your schedules on the West Coast route?
A.—You can leave Miami twice a week, on Tuesdays and Saturdays, stopping at Cristobal, and then stopping at Ecuador, and then stopping at Arica, and then stop-

ping at Santiago, and then crossing the Andes, and then arriving at B.A. on Saturdays and Wednesdays.

[fol. 1100] Q.—Well—doesn't that make a faster schedule, of only five days, instead of six days on the East Coast route?

A.—Yes, but the fare is about $100 higher.

Q.—What is the fare exactly?

A.—(After a long wait): $550 one way, $990 round—same as on the East Coast.

Q.—Which route would you prefer to take?

A.—I would go down the East Coast, as this saves high flight over the Andes, which some people can't stand.

Q.—Would you really prefer the East Coast route?

A.—Yes, especially on account of height and flight over the Andes. I have heard you have to fly as high as 20,000 feet, and the planes are equipped with "air tanks", with individual appliances enabling passengers to have the proper "air". I wouldn't take the chance, if I could avoid that route. Then, the East Coast gives you the chance to stop at Rio. Yes, I would much prefer the East Coast. Then again, from Miami to Trinidad you fly over a group of islands, visiting the most scenic part of the West Indies.

Q.—Doesn't the West Coast route also take you over the West Indies?

A.—Yes, I can see that you stop at Cienfuegos, and then at Kingston, and after that you fly to Cristobal—about the same distance as the flight to Bermuda.

[fol. 1101] *Eastern Air Lines—51 Vanderbilt Avenue*

Q.—I should like to have some precise information on airplanes services to B.A.

A.—Why don't you call Pan American Airways for more complete information. We can give you their number.

Q.—Can't you tell me yourself?

A.—There are two planes a week, leaving Miami on Sundays and Wednesdays, arriving at B.A. on Fridays and Mondays. Fare, $550 one way, $990 round.

Q.—Isn't there another schedule?
A.—No.

Q.—Are you sure there is no other schedule? I understood there were more frequent departures than two per week.
A.—There is absolutely nothing else.

Q.—Are you sure you have looked at all your schedules?
A.—I have the Aviation Guide in front of me.

Q.—What about the Pan American Airways schedules?
A.—That's what I am looking up in the Aviation Guide.

Q.—What about the route down the West Coast of South America?
A.—Oh, yes. You also have two weekly planes that way, leaving Miami on Saturdays and Tuesdays, arriving at B.A. on Wednesdays and Saturdays. Fares, the same as the East Coast route

Q.—What's your baggage allowance?
A.—From New York to Miami, 55 lbs. From Miami to B.A., 77 lbs.

[fol. 1102] Q.—I was told today by one source that your allowance from New York to Miami, in connection with a through passage to B.A., is 77 lbs. Another source said your allowance from New York to Miami is only 44 lbs.
A.—They are both wrong. 55 lbs from New York to Miami is the correct allowance.

Pan-American Airways—Reservation Department.

No memorandum was kept of this conversation, as the employee handling the inquiry was very obliging and efficient, and from the outset stated that there are four planes a week, two via the West Coast and two via the East Coast, also that the West Coast Route takes 4½ days and the East Coast 6 days.

October 23, 1939.

[fol. 1103]

GOVERNMENT'S EXHIBIT 520

Telephone
MUrray Hill 6-7100

Cable Address
"PANAGRA"

PAA Grace
PAN AMERICAN-GRACE AIRWAYS, INC.
Executive Offices
Chrysler Building—New York, N. Y.

January 24, 1941

C. B. Whitney, Esq.,
Pan American Airways,
Chrysler Building,
New York City

Dear Sonny,

My attention has been called to the Pan American Airways System Organization Chart effective January 15th, issued with Executive (System) Memorandum No. 55. This is the first time I have seen one of these charts.

In this chart Pan American-Grace Airways occupies merely the position of a division of the System.

This is obviously not a correct picture and I cannot but feel that it is definitely prejudicial in connection with the question of services of which I spoke to your Executive Committee on the 14th inst.

I would appreciate it if you would have appropriate correction made.

Sincerely yours,

H. J. R.

[fol. 1105]

GOVERNMENT'S EXHIBIT 522

COPY

April 3, 1941

MEMORANDUM TO MR. EVAN YOUNG

PUBLICITY—TRANSFER OF MR. ARTHUR CURTIS

Referring to your memorandum of March 27th, for the reasons there referred to and others which we have discussed, I entirely concur with your decision not to transfer Mr. Curtis to the position in question.

Much as I appreciate your efforts in this connection (and your cooperation has been 100% as always), I feel that I must again emphasize the importance of reaching a prompt solution of this really burning problem. Although it is no fault of yours, the fact remains that many weeks have been lost while Curtis was under consideration and the problem is no nearer solution than it has been for the past ten years.

Referring to the last sentence of your memorandum, for reasons which I will explain to you verbally and confidentially, I have reluctantly but definitely reached the conclusion since we last discussed the subject, that it is impossible for Panagra publicity to receive proper attention under Mr. Van Dusen. I therefore propose that as from January 1, 1941, the fee which Panagra pays Pan American be reduced by the sum of $50,000 per annum and that Panagra use this amount to set up its own independent publicity department and attend to its own publicity, Pan American being, of course, thereupon relieved of any further obligations in respect of our publicity work.

H.J.R.

[fol. 1109]

GOVERNMENT'S EXHIBIT 526

May 29, 1942

Thomas A. Morgan, Esq.,
Chairman, Executive Committee,
Pan American Airways Corporation,
Chrysler Building,
New York City.

My dear Mr. Morgan,

I am informed that Pan American Airways have engaged a new advertising agency and that an advertising campaign is proposed with the general objective, in effect, of selling the idea of the efficiency and desirability of world monopoly in American foreign aviation. I understand that the last Annual Report of Pan American Airways Corporation, featuring "Pan American World Airways System", is indicative of the general theme of this campaign.

Although Pan American-Grace Airways, Inc. is an independent company with its own directors and officers, the Annual Report referred to assumes to list Pan American-Grace Airways, Inc. along with various divisions and 100% subsidiaries of the so-called Pan American Airways System. It also shows as the so-called "Executive Officers" of the "Pan American Airways System" (and that in a manner clearly intended to indicate their seniority to the officials of the divisions and companies listed as a part of this [fol. 1110] System) various individuals who are, I understand, the officers of Pan American Airways Corporation or of Pan American Airways, Inc.

We do not subscribe to the idea of world monopoly in American foreign aviation. Pan American-Grace Airways, Inc. is not a subsidiary of any "World Airways System". For these reasons as well as because of the pending proceedings before the Civil Aeronautics Board, we must request that Pan American-Grace Airways, Inc. be not included in the proposed advertising campaign in any form implying its acquiescence in the above thesis or its being

a part of any such monopoly. Moreover, we must request that all such representations of Pan American-Grace Airways, Inc.'s status as that in the above mentioned Annual Report whether in publicity, advertising, annual reports or other publications of Pan American, be discontinued as we consider such statements to be unwarranted and damaging to Pan American-Grace Airways, Inc. and to its standing as an independent company.

Very truly yours,

D. S. Iglehart

[fol. 1116]

GOVERNMENT'S EXHIBIT 531

March 3, 1948

Memorandum to Mr. H. J. Roig

Grand Tour—Joint Advertising

Returned herewith is a copy of proposed joint PAA and Panagra ad for the New York Herald Tribune for March 21st.

The specific problem proposed by this script is the merger of the identity of Panagra into Pan American World Airways.

This type of advertising, selling the notion of the "Grand Tour", has obvious sales advantages. On the other hand, suggestions of the identity of the two airlines are not only factually inaccurate, but raise serious policy questions involving (a) Government control aspects and (b) Trademark identity.

On the first point, it is patently advantageous not to becloud the fact that Panagra and Pan American World Airways are in direct competition with each other.

On the second point, the trade-marks "Panagra" and "Pan American-Grace Airways" are valuable properties. The creation of a public impression that the service represented by these trade-marks is performed by Pan American

Airways Inc., instead of by the trade-mark owner Pan [fol. 1117] American-Grace Airways Inc., might be held to having vitiated the ownership of the trade-marks.

It is, therefore, recommended that all such expressions as "Only PAA system offers daily service to every major city on both coasts" and "Name any country in South America—Pan American flies you there" should be eliminated. This can be done without giving up the advantage of advertising the "Grand Tour".

* * * * * * *

Another objectionable feature of the ads in question is the use of a distorted map which conceals the advantages of the West Coast route to Buenos Aires. It should be noted here that Panagra over-emphasizes that advantage. It would seem highly desirable that all maps used depict accurately the relationship between the two routes regardless of which line creates the advertisement.

* * * * * *

Benjamine H. Oehlert, Jr.

[fol. 1118]

GOVERNMENT'S EXHIBIT 532

June 1, 1948

Mr. Howard B. Dean
Pan American World Airways System
Chrysler Building
New York 17, N. Y.

Dear Howard:

Referring to my telephone conversation last week, I enclose herewith letter received from Jimmy Walker and memorandum of Ben Oehlert's interview with a Pan American counter clerk at the Air Terminal Building in New York on May 26th.

It seems to me from these and other instances which have come to our attention that the understanding which exists

at the top is not getting down to the people who are actually in contact with the public. I know that you will agree that these instances call for some very specific action. My suggestion would be that a very specific set of written instructions be prepared with the approval of the Panagra Traffic Head and that these instructions be issued to all selling offices of Pan American, directly to counter clerks and all others having direct contact with the public in the sale of Panagra transportation.

Very truly yours,

/s/ HAROLD J ROIG

[fol. 1119]

RM-99

Miami Traffic Office Handling
of Passengers

May 21, 1948

Pan American Grace Airways Inc.
NEW YORK

Attention Mr. J. T. Shannon

Gentlemen:

Ex-employee Robert Kelly, who has just returned from the States, visited this office yesterday and reported the following:

A friend of his whom he met in Miami inquired of him why it took so long to travel Miami/Buenos Aires. Kelly asked to see his tickets and he was sold over the east coast route. Mr. Kelly proceeded with his friend to the downtown Pan American Airways traffic office and when he asked the traffic clerk why he sold this passenger over the east coast, the clerk replied, "We are instructed to sell all passengers over the Pan American Airways route unless the passenger particularly specifies the west coast or Panagra".

In addition Captain Achilles on Monday evening, May 17, was standing in this same office when a passenger in-

quired if he could travel on the DC-6. The traffic clerk replied that there was no DC-6 that evening, whereupon Captain Achilles reminded him that we were now into daily service with DC-6's. The traffic clerk in front of the passenger refuted this argument and went further by saying that there was a DC-4 the evening before (May 16) and Captain Achilles of course told him he was incorrect. The rest of the discussion is wordage but the point is clear.

Reasons such as the above are probably partially responsible for the falling off in our southbound loads over El Interamericano. We trust you will be able to use this information advantageously.

Yours very truly,

James W. Walker, Jr.

JWW:GKS

cc H. J. Roig
G. Vidal
T. J. Kirkland
D. Campbell

[fol. 1120] May 26, 1948

MEMORANDUM TO MR. H. J. ROIG

At lunch today John Shannon and I had a general discussion with Messrs. Lipscomb and Friendly of Pan American regarding advertising.

Both Mr. Friendly and Mr. Lipscomb agreed with John and me that a standard map of the Western Hemisphere should be agreed upon which would not have any distortions and which would be uniformly used. It is my understanding that John and Lipscomb will work this out together.

There was no such meeting of the minds on the question of Pan American's advertising, "Name any Country in South America—Pan American will Fly You There". Lipscomb took the position first that the words "Pan American" as used above mean "Pan American World Airways System"; second, that Panagra is a part of "Pan American

World Airways System" and third, that the type of advertising was good for Panagra anyway.

Henry Friendly agreed with Lipscomb, stating that there never had been any competition between Pan American and Panagra and never would be, but conceded that, had the issue come up with him, he would have felt it advisable to consult with Grace before running such an ad.

Although there is a basic disagreement as to whether Panagra is part of the "Pan American World Airways Sys- [fol. 1121] tem" in such a manner as to justify a statement such as "Pan American Will Fly You to Any Country in South America", we at least came to this general agreement—that so far as practical (meaning not including foreign advertising prepared by Pan American Regional Offices) Pan American would advise more closely than it has with us before running advertising referring to or featuring either Panagra or its routes.

When I left the Chrysler Building I walked across the street to the Air Terminal Building and at Pan American's counter inquired of the clerk for information regarding Buenos Aires, whereupon approximately the following colloquy took place:

Oehlert: I should like to have some information about flying to Buenos Aires.

Clerk: Yes sir, what would you like to know?

Oehlert: How much does it cost?

Clerk: How long will you stay in Buenos Aires?

Oehlert: About two weeks, why?

Clerk: A round-trip ticket good for 90 days is cheaper than one good for a longer period.

Oehlert: How much is the difference?

Clerk: About 10%.

Oehlert: What is the 90 day rate?

Clerk: It is $180 round-trip from New York to San Juan and $828 from San Juan to Buenos Aires for a total of $1,008.

[fol. 1122] Oehlert: When do the flights leave?

Clerk: Daily at 11:15 p.m. Eastern Standard Time.

Oehlert: When do they arrive in Buenos Aires?

Clerk: At 4:00 p.m. on the second afternoon.

Oehlert: How many hours is that?

Clerk: 37

Oehlert: What kind of plane do you use?

Clerk: DC-4 and you are entitled to 66 lbs. luggage.

At that point I turned away from the counter but immediately turned back and the following discussion took place:

Oehlert: 37 hours is a long time. Isn't there *something* quicker than that?

Clerk: Yes, you can go by way of Miami but you have to change planes there and it costs more.

Oehlert: How much does it cost?

Clerk: (looking at several books) Counting the extra constellation fare, it is $86.83 each way to Miami for a total of $173.66 round-trip and $928.80 round-trip from Miami to Buenos Aires for a total of $1,102.46 or about $100 more than the other way.

Oehlert: How long does it take?

Clerk: It is 20 hours from Miami and 4 or 5 hours from New York to Miami and a day over in Miami of 11½ hours.

[fol. 1123] Oehlert: That is about 26½ hours then.

Clerk: Well you leave New York at 6:30 p.m. and counting change-over arrive in Buenos Aires at 6:15 p.m. but, of course, there is a difference in time zone.

Oehlert: What equipment do you use on that flight?

Clerk: DC-6.

Oehlert: Is that your flight, too?

Clerk: Yes.

BENJAMIN H. OEHLERT, JR.

cc: Mr. J. P. Grace, Jr.
Mr. A. B. Shea
Mr. John Shannon

[fol. 1124]

GOVERNMENT'S EXHIBIT 533

June 2, 1948

W. R. Grace & Co.
Hanover Square
New York 5, N.Y.

MEMORANDUM TO MR. J. P. GRACE, JR.

It is apparent from the attached that there is a great deal of ignorance shown on all counts from both the agents and the airlines contained in this survey.

As far as the airlines are concerned you will note that both EAL and NAL quoted west coast connections. However, EAL referred to Pan American Airways with no mention of Panagra as opposed to NAL who quoted the connecting flight as Panagra. We would like to call your attention to the telephone conversation with PAA reservation bureau as compared with the personal contact with the downtown office. In the first case it becomes obvious that there is a definite tendency on the part of the main reservation of PAA to sell the east coast and avoid any mention of the west coast service to say nothing of using Panagra's name. This conversation is almost word for word what Mr. Oehlert received at the uptown counter. In the personal conversation at the downtown office it should be pointed out that although Mr. Ford of this department was unknown to the clerk in this office that nevertheless

a great deal of our business is done through this particular clerk whose name is Mr. Smyth and we feel because of the [fol. 1125] unusual amount of business that he does on the west coast and also because we know personally that he is a high type fellow and would react in a more reasonable manner. As for the "outside" airlines such as TWA, UAL, etc. we more or less expected them to refer us to Pan American Airways, but we feel that closer relationship with these airlines would be extremely helpful in obtaining sales as we know from personal experience a great many calls come to these airlines regarding travel to any point regardless of whether these airlines have routes to these points.

As far as the agencies are concerned, we feel that their tendency to sell PAA is completely due to lack of knowledge concerning Panagra rather than a preference to sell PAA. This is based upon the fact that the fastest and more comfortable service is offered on the west coast route and therefore it is to the benefit of the agent to sell this service rather than the other particularly in view of the fact that there is only a few dollars difference in the cost.

Our own personal opinion concerning PAA's tendency to sell the east coast over the west coast is not good judgment since Panagra although an affiliate is part of the PAA system and it is to the best interest of PAA to sell the best [fol. 1126] and the most comfortable service to any point on their system and that in failing to do so they are more apt to create ill will and lose repeat business than the gain they make by selling an inferior service. The point being that a passenger having arrived in Buenos Aires after flight on the east coast will unquestionably discover in due course that the trip could have been made with a good deal of time saved had he been told of the west coast service. It will be difficult to understand why he was sold this inferior route and not told of the Panagra route.

R. E. Montgomery

REM:DMcA

[fol. 1127] We list below several conclusions which we feel can be drawn from our contacts with the 22 agents listed:

1. In all but two of the conversations with the agents the name Panagra was not mentioned and it should be pointed out that in one of the two instances in which it was mentioned it was mentioned by a woman who had spent a great deal of her life in Buenos Aires and Santiago.

2. Most of the agents questioned had no or at the best very little knowledge of west coast service to Buenos Aires.

3. Sales effort in over 75% of the agents was directed to travel on the east coast.

4. In the majority of cases where west coast service was mentioned sales effort was directed in the following pattern.

   First, east coast reservations
   Second, Round South America
   Third, Information was given on west coast service.

5. Most agents showed a lack of knowledge of the Pan American schedules and rates and many quoted erroneous information.

6. All agents who were forced to consult the schedule either in the American Aviation Guide of the Pan American World Airways System Schedule invariably turned to the east coast service which is on the left hand page directly opposite the west coast service and their hands usually covered the west coast service. We believe that this is not a desire to hide the schedule but a lack of knowledge as to its existence.

[fol. 1128] 7. In some cases where agents knew of the existence of DC 6 service they were not cognizant of the fact that the service charge had been abolished or that there are now daily DC 6 flights out of Miami.

8. Most agents over emphasized the necessity of paying U. S. Transportation Tax between New York and Miami when using the west coast route.

9. Most agents emphasized that a change of planes occurred at Miami on the west coast in lieu of the through plane service offered on the east coast.

Comment

In those cases where knowledge of west coast service was present and east coast service was stressed, we feel that one reason for this may be the fact that passengers would be desirous of breaking the trip at known stop-overs en route, thereby enabling the agent to obtain a commission on the hotel reservation secured.

[fol. 1129]

GOVERNMENT'S EXHIBIT 534

W. R. GRACE & CO.
Hanover Square
New York 5, N.Y.

June 3, 1948.

MEMORANDUM TO MR. SHEA

Montgomery's representatives personally called on:

(1) 22 travel agencies

(2) PAA Reservations, 100 Broadway,

and further they telephoned six airlines as follows:

(1) PAA Reservations
(2) American Airlines Reservations "
(3) United Airlines "
(4) TWA Airlines "
(5) National Airlines "
(6) Eastern Airlines "

We can divide these various contacts into three groups:

(1) The personal contact with PAA Reservations, 100 Broadway, and the telephone conversation with PAA Central Reservations.

(2) The telephone call with each of the five other airlines.

(3) The personal visit with each of the 22 travel agencies.

CATEGORY I

With reference to Pan American, as explained in Montgomery's memorandum, the man who was seen at 100 Broadway works with our people all the time and is thoroughly familiar with the Panagra flights and, therefore, mentioned them right off the bat. He did say, however, that the flight leaving New York for the East Coast is simpler and more direct, which is wrong and shows what kind of instructions he is receiving:

PAA Reservations failed to mention Panagra at all until the mythical customer said, "I was just wondering would there be a shorter way of going". In other words, unless the customer had known about Panagra, Panagra would never have been mentioned. So much for Pan American Airways.

CATEGORY II—Telephone conversations with the 5 domestic airlines.

We can divide up this category into the following divisions.

(1) Those that mentioned the service out of Miami and called it "Pan American"—Eastern Airlines and National Airlines (obviously because they would benefit by it).

[fol. 1130] (2) Those who simply referred the applicant to Pan American Airways. TWA, United and American are also mentioned and Air France. This latter situation may be explained by the fact that Pan American handles all traffic in the United States and, therefore, it might be considered logical for the domestic airlines to refer the applicant to Pan American. But you can see what happens when they refer to Pan American as per the interviews that we have had at Pan American counters. So it is the same old run-around no matter where you go.

CATEGORY III—22 Travel Agencies

These can be sub-divided into the following main categories.

(1) Those who mentioned Panagra service right off the bat without any needling from the customer but called it Pan American.

(2) Those who mentioned Panagra service right off the bat without any needling from the customer and called it what it is, Panagra.

(3) Those who only mentioned Panagra service after they were needled and prompted by the customer.

(4) Those who failed to mention Panagra service at all, regardless of the amount of needling and prompting.

The analysis follows:

I Those who mentioned Panagra service right off the bat without any needling from the customer but called it Pan American	II Those who mentioned Panagra service right off the bat without any needling from the customer and called it what it is Panagra	III Those who mentioned Panagra service after they were needled and prompted by the customer	IV Those who failed to mention Panagra service at all regardless of the amount of needling and prompting
Paul Tausig & Son "Panagra a subsidiary of PAA"	Continental American Travel Inc.—	Embassy Tours—"Mentions PAA all the way but says DC-6 might be used northbound from B.A."	Gaul Travel Service (No amount of needling could evoke any mention of Panagra and the pay off was that they first mentioned a Constellation in th Pan American East Coast Route.) "El Interamericano poster on the floor."
Haley Corporation—"Mentions via Miami but better to go direct from New York to avoid changes and the possibility of missing connections".	Exprinter Travel Service "Best way down east coast, back via west coast."	A. T. Henderson Co., Inc. —"May go via Miami but it is a PAA flight".	
Columbia Tours, Inc.—"Mentions El Interamericano."	Travel Arrangements—"Mentions El Interamericano."	The House of Travel Inc., —"DC-6 best service but must pay service charge."	United States Travel Agency—"Pan American best and fastest way."
Volaye Air Inc.—"East Coast best way to go".			American Express Co.—"Constellation or DC-4." (Downtown)
American Express—"West coast faster, more comfortable, better equipped". (Uptown)			Overland Overseas Tours —"PAA best way of going".
Marcha Owen Travel—"Mentioned El Interamericano but called it a PAA Service".			Martin Travel Bureau—"East coast fastest and most direct route".
Marsh Tours—"West coast service takes longer than east coast service".			Ask Mr. Foster—"East coast best service to B.A."
Ambassador Travel Agency, Inc.—"PAA use consteilations all the way".			Thomas Cook & Sons—"PAA east coast best service to B.A."

J.P.G., Jr.

[fol. 1149]

GOVERNMENT'S EXHIBIT 543

July 5, 1950

INDUSTRIAL DEPARTMENT

MEMORANDUM TO MR. B. H. OEHLERT, JR.

NO. 2948

PANAGRA SURVEY

This memorandum is concerned with the results of a survey designed to evaluate the attitude of selected travel agencies toward Panagra. More specifically, we were interested to learn:

1. What recommendations the agents make with respect to plane travel to South America.
2. The general familiarity of the agents with the various airlines going to South America.
3. The attitude toward and familiarity with Panagra.

Our point of destination was Buenos Aires, since it is served by all of the major air lines flying to South America and is generally considered at the cross-roads of South American plane travel. Our list of travel agents was originally taken from the Manhattan Classified Telephone Directory, consisting of approximately 300, which was then checked and refined by Grace Line. The final list consisted of 88 agents, presumably above the average, from the point of view of knowing about the facilities available for travel in South America.

[fol. 1150] We made our contacts by telephone and assumed the position of an independent businessman contemplating a flight to Buenos Aires. We were generally concerned with convenience, time of travel and cost. Other than that we had no predetermined ideas and requested their suggestions. Our objective, of course, was to obtain noted above. If this was not adequately brought out, then the agents' viewpoint with respect to the three objectives we attempted to lead the conversation by asking them directly about Panagra and its service in relation to the

other services available. Of the 88 contacts made, representative replies were obtained from 65, the balance was not able to give the information immediately or, as in most instances, the office was closed on that day (July 3rd).

Analysis of the answers received indicates that the agencies contacted are generally familiar with the air routes to Buenos Aires, but there is some confusion as to the desirability of either route. While most agents seem to be aware that Panagra is an affiliate of PAA, others show remarkable ignorance of Panagra's identity. The general pattern of answers to our inquiries seem to be the following:

1. By far the greater portion of agents are plugging the new Stratocruiser service to Buenos Aires via San Juan, on grounds of luxury, convenience, directness and saving of time.

[fol. 1151] 2. Most agents suggest as second choice one of Pan-Americans other flights to Buenos Aires.

3. Most agents say the east coast is shorter to Buenos Aires since Buenos Aires is on the east coast, indicating lack of knowledge of geography.

4. With few exceptions, none recommended Broniff because it flies out of the Midwest. Some reported that Broniff has no service to South America.

5. None recommended PAEA, the Argentine line, although a few mentioned it as an alternative to PAA.

6. The majority recognize that Panagra is an affiliate of Pan-American, but they think in terms of one airline rather than two competing systems; consequently few proposed Panagra as such.

In response to our direct questioning about Panagra, the following answers are indicative of the agents' understanding of Panagra's position in South American plane service.

> Panagra is the South American Division of Pan-American.
>
> Panagra part of Pan-American.

Panagra same as Pan-American.

Panagra part of Pan American system.

Panagra works in conjunction with Pan American.

Panagra combination of PAA and Grace Line.

Panagra must be something new.

Panagra an associate of PAA.

Panagra a subsidiary of PAA.

[fol. 1152] Panagra best and most direct.

Panagra flies in Latin America or part of Pan American System.

Panagra is a little company owned by Pan American.

Panagra best for West coast.

Pan-American controls Panagra space.

Panagra is the South American name for Pan-American and is linked up with Grace Steamship.

Pan-American's Interamericano is best way.

All lines are subsidiaries of Pan-American. Rates are the same so why not take the best.

Panagra did have best service between New York and Buenos Aires prior to PAA's new Stratocruiser flight.

Don't know anything about Panagra.

Didn't know that there was any difference between Pan-American and Panagra.

Oh yes! they also fly down.

There were a number of variations of the foregoing but in the overall they represent the concensus of the travel agents surveyed. It is obvious that the identity and individuality of Panagra are lost in the offices of the travel agencies and that plane travel to South America is automatically associated with Pan-American Airway.

A number of agencies stressed the tax savings involved in a direct flight out of New York via San Juan as against the flight to Miami. As was pointed out before, the Stratocruiser flight of Pan-American has apparently been well [fol. 1153] sold to the agencies with the result that they are pushing it. This may well mean some diversion of air travel from the west to the east coast.

It is apparent from this brief survey that Panagra's promotional activities are not sufficiently effective to compete with those of Pan-American and immediate steps should be taken to correct this situation, especially in the light of recent activity by competing airlines, as exemplified by Pan American's Stratocruiser flight and Braniff's increased promotional campaign.

R. Matthes

jh

cc: Messrs. Grace, Shea (handwritten)

[fol. 1159]

GOVERNMENT'S EXHIBIT 547

Copied in Mr. Friendly's office for Messrs. Dean, Balluder, Hamst.

NATIONAL AIRLINES INCORPORATED

3240 N. W. 27th Ave.
Miami 37, Florida
December 15, 1948

Mr. Juan T. Trippe
President, Pan American World Airways, Inc.
Chrysler Building
135 E. 42nd Street
New York, N. Y.

Dear Juan:

Attached, please find copy of a letter to Mr. Harold J. Roig, President of Pan American Grace Airways, Inc., proposing an agreement for an interchange of equipment at Miami, Florida which would provide thru-service, without

change of planes, between the cities on National's routes north of Miami and the cities on Panagra's routes south of Miami in South America. This proposed thru-service would handle the majority, if not all, of Pan American's traffic through the Miami gateway to and from cities in South America.

For his information, I am sending a copy of this letter to Mr. Roig.

Awaiting your early reply, I am, with kind regards and greetings of the season,

Sincerely yours,

NATIONAL AIRLINES, INC.

G. T. Baker
President

[fol. 1160]

GOVERNMENT'S EXHIBIT 548

COPY

January 5, 1949

Mr. G. T. Baker, President
National Airlines, Inc.
3240 N. W. 27th Avenue
Miami, 37, Florida

Dear Ted:

Thank you for sending me a copy of your letter to Harold Roig proposing an interchange of equipment at Miami which, you state, would provide through service between cities on National's routes north of Miami and cities on Paragra's routes in South America.

* * * * *

You state in your letter that an interchange of equipment between Panagra and National at Miami "would handle the majority, if not all, of Pan American's traffic through the Miami gateway to and from cities in South America." Haven't you overlooked the bulk of traffic through the Miami gateway carried by Pan American to Colombia, Venezuela, Mexico, Central America, Nassau, Cuba, Ja

maica, Haiti, the Dominican Republic, and other points in the Caribbean, for which through service is just as essential as for traffic to points on Panagra's west coast route in South America?

Sincerely

JTT:ke

[fol. 1161]

GOVERNMENT'S EXHIBIT 549

COPY

MR. G. T. BAKER, PRESIDENT
NATIONAL AIRLINES
3240 N. W. 27th Avenue
Miami, Florida

NZLGA
071930 1/49

RECEIVED YOUR TELEGRAM AFTER SENDING MY LETTER JANUARY 5. CANNOT BELIEVE THAT IN VIEW OF OUR DIFFERENT ROUTES RADIATING FROM MIAMI AND OTHER REGIONS MERE INTERCHANGE AGREEMENT WOULD IN ANY WAY MEET OUR PROBLEMS. HOWEVER, I AM ALWAYS GLAD TO SEE YOU IN NEW YORK FOR DISCUSSION ANY MATTERS OF MUTUAL INTEREST. REGARDS.

J. T. TRIPPE

[fol. 1162]

GOVERNMENT'S EXHIBIT 550

copy

January 6, 1949

Mr. G. T. Baker, President
National Airlines
3240 N. W. 27th Avenue
Miami 37, Florida

Dear Mr. Baker:

This is in reply to your letter of December 15th proposing equipment exchange between Miami and New York.

The day after I received your letter and of course before I had an opportunity to reply, the newspapers announced that this and similar letters addressed to other airlines had been made the basis of some petition or representation to the Civil Aeronautics Board and since then I have noted repeated reference to these letters in connection with C.A.B. Docket No. 3500. All this has left me in considerable doubt as to how to reply to your letter.

You are aware of Panagra's interest in giving its traffic through service to New York and how vitally important I consider this to be. You are also aware of the great efforts we have made through the years (always with National's opposition) to accomplish this. At the present time we are, as you know, seeking this objective through C.A.B. Dockets No. 1803 and No. 3500. In the former the C.A.B. Examiner has recommended the award to Pan American of a route between Miami and New York which would be available to Panagra under our Through Flight Agreement with Pan American. For many reasons a Panagra interchange with Pan American would be more satisfactory than with any other line.

Until the determination of the above proceedings, obviously neither you nor we would be in a position to reach any final agreement or even to determine if such an agreement as you propose would to any extent assist to accomplish either your own or Panagra's proposes or would be consistent with the desires of the Civil Aeronautics Board in the premises. Nor would we be willing to take any action which would in any way prejudice our position in the above proceedings.

If you wish to discuss the matter without prejudice I would be willing to meet with you or your representatives.

Yours very truly,

Harold J. Roig

[fol. 1163]

GOVERNMENT'S EXHIBIT 551

Cable Address
"Natair"

NATIONAL AIRLINES
Incorporated
"Route of the Buccaneers"

3240 N.W. 27th Ave.
Miami 37, Florida

January 14, 1949

Mr. Juan T. Trippe, President
Pan American World Airways System
135 East 42nd Street
New York 17, N. Y.

Dear Juan:

I refer to your letter of January 5 and your wire dated January 7, 1949, on the subject of possible interchange agreements between Panagra and/or Pan American and National.

In your letter of January 5 you cite your efforts to obtain a Miami-Boston route and ask if I have not overlooked the traffic carried by Pan American from Miami to Colombia, Venezuela, Mexico, Central America, Nassau, Cuba, Jamaica and the Dominican Republic. As you are aware, much of this traffic such as that from Mexico, Venezuela and Cuba and the Dominican Republic, already has one carrier service to New York. An interchange involving Panagra's planes would serve all Colombian traffic except that from Barranquilla. This would mean that the only traffic areas in Latin America left without direct service to Northeastern United States would be Jamaica, Haiti and Barranquilla. The CAB traffic survey for March, 1947, reveals that the combined through traffic between these areas and the New York-Washington areas represents only seven passengers per day in each direction. The most originating in any area would average less than 3½ per day in each direction. (This is the Barranquilla, Kingston, Montego Bay, Camaguey traffic.)

Our conclusion that the Panagra entry would serve the bulk of the Latin America traffic now lacking one plane service to New York is borne out by these figures from the Board's survey. I am quite willing, however, to discuss an agreement where by National would operate one or more of Pan American's schedules through the Miami gateway to Washington and New York. Despite the position expressed in your wire of January 7th wherein you state your belief that "mere interchange agreement" would not meet your problems, we believe that upon reconsideration you will find that our proposal would provide a fully adequate pattern of through service for your Latin American [fol. 1164] traffic.

With best wishes, I am,

Sincerely,

NATIONAL AIRLINES, INC.

Ted

G. T. Baker, President

dlp

[fol. 1165]

GOVERNMENT'S EXHIBIT 552

—copy—

NATIONAL AIRLINES

Recd. Jan. 17, 1949

3240 N. W. 27th Ave.
Miami 37, Florida

January 14, 1949

Mr. Harold J. Roig
Office of the President
Pan American-Grace Airways, Inc.
7 Hanover Square
New York 5, N. Y.

Dear Mr. Roig:

I refer to your letter of January 6, 1949, in response to my proposal for an equipment interchange over National's

Miami-New York route. Frankly, I am disappointed that you feel it necessary to condition any such discussions on the proposition that any agreement would have to await decision in Docket 1803 and 3500. We are well aware of Panagra's long efforts, first, to enter the United States and later to obtain a New York entry, and we had felt that Panagra would be glad to accept National's practical suggestion for achieving this goal.

We want to make it clear that we have proposed an interchange with your company not only because we felt it mutually advantageous for both carriers but to provide an improved service for the public. It is apparent from Pan American's past and present actions that it is willing that such improvements be made only on its own terms or not at all. Pan American's action in blocking Panagra's entry into Miami until virtually ordered to permit such entry and its generous action in agreeing to let Panagra use the Miami-New York route (which Pan American does not yet have) speaks for itself in this respect. In this connection, if you will examine the record in the Panagra Through Flight Agreement Case you will find that National did not take a position in opposition to the agreement unless the CAB believed it would block the approval of National's then pending Balboa application.

Although I am not quite clear as to the meaning of the last sentence of your letter in which you express a willingness to discuss the matter "without prejudice", I am desirous of discussing an interchange proposal to be implemented within a reasonable period of time and will attempt to meet the convenience of you or your representatives.

With best wishes, I am,

Sincerely,

NATIONAL AIRLINES, INC.

/s/ G. T. BAKER
G. T. Baker, President

[fol. 1166]

GOVERNMENT'S EXHIBIT 553

COPY

January 25, 1949

Mr. G. T. Baker
National Airlines, Inc.
3240 N. W. 27th Avenue
Miami 37, Florida

Dear Ted:

Juan has asked me to reply to your letter in answer to his letter of January 5 and wire of January 7.

You refer to certain figures from the Board's March 1947 survey. It is well known that these survey figures are nowhere near the full traffic movement between points in the interior of the United States and points abroad. However, even forgetting this major factor, our analysis of the March 1947 figures shows through traffic approximately twice as great as that stated in your letter. For September, 1948, our figures, which we believe are still incomplete, show an even higher amount of through traffic for Pan American Airways alone. For example, these figures show an average of some 12 passengers a day in each direction for the Camaguey-Jamaica-Colombia area, in contrast to the 3½ for March, 1947, alleged in your letter.

Everyone knows that the northeastern area always has been and still is the great producer of traffic to Latin America. Even excluding the Panagra through flight and flights to Havana and Nassau, we are now operating five passenger schedules per day between Miami and the Latin American points mentioned in Juan's letter. You are going to have quite a task in convincing anyone that these schedules, and those operated by other lines, are filled primarily with traffic generated by Miami itself or by parts of the country that have never had the community of interest with Latin American possessed by the New York-Washington area.

With best regards, I am

Sincerely,

Howard B. Dean
Vice President

cc: H. J. Roig
VP Morrison—MIA
Ass't Treasurer

[fol. 1167]

GOVERNMENT'S EXHIBIT 554

Cable Address
"Natair"

NATIONAL AIRLINES INCORPORATED
"Route of the Buccaneers"

3240 N.W. 27th Ave.
Miami 37, Florida

February 24, 1949.

Mr. Howard B. Dean, Vice President,
Pan American World Airways System,
135 East 42nd Street,
New York 16, N. Y.

Dear Howard:

I refer to your letter of February 15, 1949. Frankly, I am very much disappointed with the statements and the attitude reflected in your letter in which you make it clear that Pan American has no desire to provide an improved service for its Latin American traffic except on conditions which will promote Pan American's selfish interests. National is sincere in its offer to provide improved through plane service by equipment interchange between points on the East Coast of the United States and points served by Pan American in Latin America.

Pan American's blunt refusal to give consideration to the interests of the traveling public in this instance is a clear continuation of the policy of Pan American over a long

period of time wherein it first blocked the entry of Panagra into the United States and later attempted to prevent creation of any one carrier service between the United States and overseas points. Your attitude appears to be inconsistent with the position which Pan American took in the *Latin American Case* illustrated by the following quotation from your Brief to the Examiner in that case: *** As a practical matter, only a few points in Latin America would appear at present to warrant through plane service even from the Northeastern United States which are the heaviest traffic producers. In such cases, interchange of equipment offers very largely all the advantages that could be afforded by through plane operations by a single carrier. Pan American has long advocated such arrangements. It reaffirms that position."

Best regards,

Sincerely yours,

NATIONAL AIRLINES, INC.

Ted

/s/ G. T. BAKER, President.

[fol. 1168]

GOVERNMENT'S EXHIBIT 555

PAN AMERICAN WORLD AIRWAYS SYSTEM
Chrysler Building, 135 East 42nd Street, New York 17, N. Y.

February 28, 1949

copy

Mr. G. T. Baker, President
National Airlines, Inc.
3240 N. W. 27th Avenue
Miami 37, Florida

Dear Ted:

I have your letter of February 24th. I though my last letter sufficiently indicated that we had had enough of this record-making correspondence which you began some months ago, but evidently you and John Cross decided there

had to be one more. Why dont you spend more time trying to get your airline on time and less time signing these letters written by your lawyers?

I am not going to take any time or ink answering the statements made in your letter, all of which we have heard many times before and which have been thoroughly answered in our corespondence and conversations. Therefore, you can consider this letter as a sign-off by me.

Looking forward to seeing this in the record in Docket 3500, I am

Sincerely,

Howard B. Dean
Vice President

Bcc: President Trippe—NYK
Vice President Friendly—NYK

[fol. 1169]

GOVERNMENT'S EXHIBIT 556

February 28, 1949

W. R. Grace & Co.
7 Hanover Square
New York 5, N. Y.

Dear Sirs:

Referring to our letter to Pan American-Grace Airways of December 15, 1948, their reply of January 6, 1949 and ours of January 14, 1949 and confirming our recent conversations with you, we make you the following offer, subject to the provisions of paragraph 8 hereof and approval of the Civil Aeronautics Board where required:

1. We will enter into an "equipment interchange" agreement with Pan American-Grace Airways (Panagra) in the form attached hereto and into any further agreements which may be necessary to make such "equipment interchange" agreement operate provided Panagra executes such "equipment interchange" agreement not later than March 30, 1949.

2. Provided we enter into the above "equipment interchange" agreement with Panagra we are also prepared to enter into a substantially similar "equipment interchange" agreement with Pan American Airways, Inc. (PAA) provided PAA shall notify us in writing not later than March 10, 1949 of its intention to execute such agreement and provided we can agree with PAA on the terms of such agreement not later than March 30, 1949.

3. Until the "equipment interchange" agreement or agreements referred to above have been approved or disapproved by the Civil Aeronautics Board, we will not enter into any "equipment interchange" agreement providing for the operation of airplanes over our certificated routes or any part thereof, with any other carrier operating in South or Central America, except interchange agreements which would provide only through service between cities on National's routes and cities located within the continental United States on the domestic routes of such other carriers.

4. We hereby grant you an option to purchase 174,000 shares of our stock at $5.50 per share, provided you exercise the same by payment in cash not later than March 30, 1949. Upon the approval by the Civil Aeronautics Board of the "equipment interchange" agreement referred to above between Panagra and ourselves, we will sell to you and you will buy from us 346,000 shares (or 172,000 shares in the event you purchase the 174,000 shares mentioned [fol. 1170] above) of our stock at the book value thereof (as agreed to by the parties or in the event of failure to agree then as determined by independent auditors mutually agreed upon)

* * * * *

It is understood that if at the time you are to purchase the above 346,000 shares or 172,000 shares, Pan American shall not have entered into the "equipment interchange" agreement with us referred to in paragraph 2 or said agreement shall not have been approved by the Civil Aeronautics Board or PAA shall not have purchased the stock of our company referred to in Paragraph 5 below, you shall have the right at your option to reduce your total purchase of

our stock referred to in this Paragraph 4 to the 174,000 shares mentioned above, purchased by you not later than March 30, 1949.

5. In the event that PAA shall enter into an "equipment interchange" agreement with us as provided above and said agreement is approved by the Civil Aeronautics Board, PAA shall have the right until ten days after such approval to purchase from us and we will sell to them, at book value as defined in Paragraph 4 above, up to the same number of shares of our stock as you may purchase. We may also sell to PAA such additional shares of our company at such price and terms as we may mutually agree with them.

6. It is agreed that should you sell to Panagra all or any part of the number of shares retained by you after the exercise of the rights provided for in Paragraphs 4 or 5 such sale shall be on the condition that the voting rights of the shares sold to Panagra may be exercised by the President of Panagra in his absolute discretion.

* * * * *

being awarded the route between Miami and New York, Panagra shall have the right at its option upon thirty days notice to terminate any "equipment interchange" agreement entered into with us pursuant to this offer.

Very truly yours,

NATIONAL AIRLINES, INC.

/s/ G. T. BAKER

President

[fol. 1171]

GOVERNMENT'S EXHIBIT 557

G. T. Baker, Esq., President,
National Airlines Inc.,
3240 N. W. 27th Avenue,
Miami 37, Florida.

Dear Ted,

We hereby exercise the option given us in the first sentence of Paragraph Four of your letter of February 28th to purchase one hundred seventy four thousand shares of the stock of National Airlines at $5.50 per share.

We are prepared to make payment for these shares upon delivery of certificates therefor. We understand that you are endeavoring to call a meeting of your Board on March 4th to authorize the issuance of these shares, and that you will be ready to make delivery immediately following this meeting.

Very truly yours,

W. R. GRACE & Co.

(signed) J P GRACE JR.

President

[fol. 1172]

GOVERNMENT'S EXHIBIT 558

EXCERPTS FROM THE MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF NATIONAL AIRLINES, INCORPORATED— MARCH 4, 1949

RESOLVED: that the offer of W. R. Grace & Co. to purchase 174,000 shares of the common stock of National Airlines, Incorporated for cash at the price of $5.50 per share be and the same is hereby accepted and that the Commercial National Bank and Trust Company of New

York as transfer agent and The Chase National Bank of the City of New York as registrar of the common stock of the company be and they are hereby authorized, empowered and directed to do all things necessary in connection with the issuance, delivery, registration and countersigning of said 174,000 shares of common stock of National Airlines, Incorporated and certificates therefor so as to give effect to the sale of such shares of stock and the powers, duties, directions and authority heretofore granted to these institutions with respect to the transfer and registration of the company's common stock and otherwise be and they are hereby enlarged and extended to cover every act which may be required in connection with the 174,000 shares of common stock of the company, including but not limited to the registration and countersigning of common stock certificates issued pursuant to the consummation of this sale, it being the intention and purpose of this resolution that the resolution heretofore passed and adopted by the Board of Directors and now effective with respect to these institutions being invested with certain powers as the company's registrar and transfer agent be fully applicable to the 174,000 shares of the common stock and common stock certificates therefor just as though said resolutions specifically named and included therein the 174,000 shares of the common stock and common stock certificates therefor.

[fol. 1173]

GOVERNMENT'S EXHIBIT 559

29th March 1949.

National Airlines, Inc.,
3240 N. W. 27th Avenue,
Miami 37, Florida.

Dear Sirs:—

On March 17, 1949 we acquired from you, pursuant to prior contract of purchase, 174,000 shares of National Airlines, Inc. common stock. We purchased these shares for investment and it is not our present intention to resell or redistribute the same by public sale.

There is a possibility, however, that we may decide to sell all or part of this stock to Pan American-Grace Airways, Inc., in which company we have a 50% interest, or a part of the stock to Pan American Airways Corporation, a company owning the other 50% of Pan American-Grace Airways, Inc.

Very truly yours,

W. R. Grace & Co.

(sgd) W. F. COGSWELL
Vice President.

[fol. 1174]

GOVERNMENT'S EXHIBIT 560

—Copy—

MEMORANDUM OF UNDERSTANDING

Subject to the approval of the Civil Aeronautics Board:—

1. National and Panagra will enter into an "interchange agreement" substantially in accordance with Paragraph "1" of National's Proposal to W. R. Grace & Co., dated February 28, 1949, except that the term of the "interchange agreement" shall be for a period terminating July 1, 1953 to be automatically extended to July 1, 1960 if Pan American and

Grace shall both exercise their respective stock options referred to in Paragraphs "4" and "5" below. Pan American will consent to such modification of the Through Flight Agreement dated July 30, 1946 as may be necessary for this.

2. National and Pan American will enter into an "interchange agreement" substantially in the form of the "interchange agreement" between National and Panagra except that

(a) The term of the "interchange agreement shall be for a period terminating July 1, 1953 to be automatically extended to July 1, 1960 if Pan American shall exercise its stock option referred to in Paragraph "4" below,

(b) said "interchange agreement" shall provide that National shall operate three daily round trips between Miami, Washington and/or New York, any of such three daily trips to operate as through flights to appropriate points in Latin America served by Pan American.

[fol. 1175] 3. Upon approval by the Civil Aeronautics Board of the Panagra and Pan American "interchange agreements" with National, Grace will sell to Pan American 30/48ths of the 174,000 shares of National which Grace has purchased (108,750 shares) at cost plus interest at 4 per cent per annum from date of purchase by Grace to date of purchase by Pan American less any dividends received on said shares during said period.

4. National will sell to Pan American at Pan American's option as specified below 30/48ths of an additional 518,000 shares of the capital stock of National (323,750 shares) at book value at time of purchase determined as provided by Paragraph "4" of National's Proposal payable, at Pan American's option, in cash or in the capital stock of Pan American at average closing price of said stock on the New York Stock Exchange during the period of 60 days immediately prior to the date of purchase.

5. National will sell to Grace at Grace's option as specified below 18/48ths of said additional 518,000 shares of

the capital stock of National (194,250 shares) at book value at time of purchase determined as provided by Paragraph "4" of National's Proposal Payable in cash.

[fol. 1176] 6. Pan American and/or Grace may exercise their respective options to purchase National stock under Paragraphs "4" and "5" above at any time within eight months after approval by the Civil Aeronautics Board of the "interchange agreements" between National and Pan American and/or between National and Panagra respectively.

7. (a) The capital stock of National referred to above is understood to be the presently authorized stock of this company, plus a contemplated duly authorized increase of 500,000 shares.

(b) If between the date of this Memorandum and the exercise of any of the options to purchase National's capital stock as herein provided, National should require additional financing by the issuance of stock in excess of its presently authorized stock and said financing is not provided by Pan American and Grace then exercising their options, National may secure such financing by selling such additional stock as it may be authorized to issue provided, however, that in such case National shall hold sufficient unissued stock subject to further options in Pan American and Grace and Pan American and Grace shall have further options to increase their purchases of National stock so that at the conclusion of such additional financing and by the exercise of all options by Pan American and Grace, they [fol. 1177] shall own 30% and 18% respectively, of the then outstanding capital stock of National. If Pan American and/or Grace shall elect to purchase such additional stock, National will sell it to them at the price and on the terms herein provided.

(c) If between the date of this Memorandum and the exercise of any of the options to purchase National's capital stock as herein provided, National shall merge or consolidate with, or sell substantially all of its assets to, any other air carrier, or issue stock for any purpose other than as provided in paragraph (b), Pan American and Grace shall have further options to increase their purchases of stock so

as to permit them, by the exercise of all options to own 30 per cent and 18 per cent, respectively, of the outstanding stock of National or of the continuing company, as the case may be. If Pan American and/or Grace shall elect to purchase such additional stock, National will sell it to them at the price and on the terms herein provided.

(d) Between the date of this Memorandum and the exercise of any of the options to purchase National's capital stock as herein provided, National will not increase its authorized capital stock beyond the amounts required for issuance pursuant to paragraphs (b) and (c), and for the exercise of said options, and stock sufficient for the exercise of said options shall be reserved until the same are exercised or expire.

[fol. 1178] 8. All obligations of Pan American and Panagra hereunder are contingent upon the Civil Aeronautics Board, as a part of the proceeding seeking the approval of the above "interchange agreements," continuing its approval of the Through Flight Agreement now in effect between Pan American and Panagra, dated July 30, 1946, for a period expiring July 1, 1960.

9. Upon confirmation of the sales of shares pursuant to Paragraph "4" or "5" it is understood that subject to the approval of the stockholders of National in the form prescribed by the laws of Florida National's certificate of incorporation and By-Laws will contain whatever provisions may be necessary to fix the total number of directors at eleven and to insure at all times cumulative voting rights in respect to the shares purchased under said Paragraphs.

10. All of the parties hereto agree forthwith to enter into such complete agreements as may be necessary to accomplish the objectives of this Memorandum of Understanding and to cooperate in expeditious presentation of these agreements to the Civil Aeronautics Board and prosecution of the proceedings for the approval thereof with a view to securing the earliest possible approval by the Civil Aeronautics Board, and Pan American, Panagra and Na-
[fol. 1179] tional agree immediately to petition the Civil Aeronautics Board for termination of its investigation of

National in Docket 3500. In the event of the Civil Aeronautics Board's disapproval of these agreements, all obligations of the parties hereto shall terminate and National shall be under no obligation to repurchase, or Pan American or Grace under any obligation to tender to National, any shares of National's stock which Pan American or Grace may have theretofore purchased.

NATIONAL AIRLINES, INC.
By /s/ G. T. BAKER

W. R. GRACE & CO.
By /s/ J. P. GRACE, JR.

PAN AMERICAN AIRWAYS, INC.
By /s/ JUAN T. TRIPPE

PAN AMERICAN-GRACE AIRWAYS, INC.
By /s/ HAROLD J. ROIG

Dated March 30, 1949

[fol. 1180]

GOVERNMENT'S EXHIBIT 561

Minutes of Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways, Inc., 135 East 42nd Street, New York, N. Y. on the 31st day of March 1949 at 4:00 o'clock in the afternoon.

PRESENT:

Messrs. Erwin Bailluder
Howard B. Dean
Henry J. Friendly
James V. Hayes
H. Preston Morris
B. H. Oehlert, Jr.
H. J. Roig

being a quorum of the Board.

Mr. H. J. Roig, President, presided. Mr. W. F. Cogswell, Secretary, acted as Secretary of the meeting.

There was presented to the meeting Memorandum of Understanding dated March 30, 1949 between National Airlines, Inc., W. R. Grace & Co., Pan American Airways, Inc., and Pan American-Grace Airways, Inc., executed in the name and on behalf of this corporation by Mr. Harold J. Roig, providing among other things for "Interchange Agreement" between National Airlines, Inc., and this corporation, and National Airlines, Inc., and Pan American Airways, Inc.

On motion duly made and seconded, it was unanimously

RESOLVED that the action of Mr. Harold J. Roig in [fol. 1181] executing, in the name and on behalf of this corporation, Memorandum of Understanding dated March 30, 1949 between National Airlines, Inc., W. R. Grace & Co., Pan American Airways, Inc., and Pan American-Grace Airways, Inc., be and the same hereby is in all respects approved, ratified and confirmed.

RESOLVED FURTHER that the officers of this corporation be and hereby are authorized, in the name and on behalf of this corporation, to enter into any and all agreements which may be necessary to carry out the objectives of said Memorandum of Understanding and cooperate in expeditious presentation to the Civil Aeronautics Board for approval of such of said agreements as require approval, provided any such agreements so signed shall have first been approved by Mr. Roig and Mr. Dean.

The President recommended purchase of an additional DC-6, either new or used, depending upon which could be purchased most advantageously. Such purchase was authorized, subject to the approval of Mr. Roig and Mr. Dean.

The officers were authorized, at such time as they should deem appropriate, to convert dollar fares into soles in the case of nationals or residents of Peru at the "street rate" of exchange rather than the official rate as at present.

There was discussion as to coach fares.

There being no further business, the meeting adjourned.

H. J. Roig
Chairman

W. F. Cogswell
Secretary

[fol. 1182]

GOVERNMENT'S EXHIBIT 562

January 21, 1949—Roig had lunch with Baker at Carlton discussing interchange as per previous correspondence. At same time Peter had lunch with Juan at India House in which Juan said was negotiating with "a domestic carrier" regarding interchange. Baker told Roig of his discussions with Pan American.

Week of January 24th—Shea and Roig discussed Pan American/National negotiations with Dean and Friendly; Roig and Peter discussed with Tripper, Dean and Friendly; and Roig, Peter and Shea had two or three talks with Baker and Scott.

February 8, 1949—(Date of Braniff informal conference when Roig went down with Friendly and Gesell). Friendly intimated that PAA/National discussions had terminated without result.

Week of February 7, 1949—Roig developed idea since National/PAA negotiations had broken off of trying to work out independently of Pan American, an offer from National to Grace covering both the Panagra and Pan American situations and endeavoring to bring Pan American in later. Shea advised Peter (who was on his South Carolina farm) of the plan. He approved it. Roig and Shea discussed with several Grace directors and arranged to meet Baker and Scott in New York the following week.

Week of February 14th—Roig, Peter and Shea met with Baker and Scott on two consecutive days and worked out outline of National proposal along above lines.

Weekend of February 26th—Roig, Peter and Shea spent weekend in Miami working out details with Baker and

Scott particularly the form of interchange agreement. Late in the afternoon of the 28th Baker signed and delivered the proposal.

March 2nd—Peter delivered National's proposal to Trippe and explained to him the circumstances under which it had been arranged. At the same time, Roig, Shea and Gesell informed Chairman O'Connell and Mr. Adams of the CAB regarding the proposal.

[fol. 1183] Week of March 14th—March 10th, the date fixed in the proposal for Pan American, having gone by without hearing from Pan American, Roig called up Dean and arranged a meeting to discuss Panagra's position with reference to National's proposal. Roig and Shea met with Dean and Friendly and following several meetings and telephone conversations a basis for further discussion with National was arrived at.

March 23rd—Peter and Shea went to Miami to discuss matter further with Baker and Scott and remained there until March 29th, Roig in the meantime carrying on the Pan American end of the discussion with Dean and Friendly.

March 29th—Panagra meeting to pass on proposal set for 4:00 o'clock. Early in the afternoon Peter and Trippe had conference on matter as a result of which basis of agreement was reached and Roig, Peter and Shea with Trippe and Dean went to Washington (Friendly was already there) and discussions were continued with Pan American and Baker leading to signing of Memorandum of Understanding dated March 30th.

[fol. 1184]

GOVERNMENT'S EXHIBIT 563

W. R. GRACE & CO. (CONN.)

Directors' Meeting—March 3, 1949

Purchase from National Airlines, Inc. of 174,000 shares of its unissued capital stock at $5.50 per share was approved.

Directors' Meeting—April 7, 1949

The Chairman presented Memorandum of Understanding between National Airlines, Inc., W. R. Grace & Co., Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated March 30, 1949, executed in the name and on behalf of this corporation by Mr. J. P. Grace, Jr., providing among other things for "Interchange Agreement" between National Airlines, Inc. and Pan American-Grace Airways, Inc. and National Airlines, Inc. and Pan American Airways, Inc. and, upon the approval of said "Interchange Agreements" by the Civil Aeronautics Board, for the sale by this corporation to Pan American Airways, Inc. of 30/48ths of 174,000 shares of National Airlines, Inc. recently purchased. Execution of said Memorandum of Understanding by this corporation was approved and its officers were authorized to take any and all action necessary to carry out the same.

[Jul 11 56]

Government's Exhibit 361

Minutes of Adjourned Regular Meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways, Inc. 135 East 42nd Street, New York, N Y on the 12th day of May, 1949 at 4:00 o'clock in the afternoon

PRESENT:

President and General Manager of this corporation, in executing in the name and on behalf of this corporation Interchange Agreement with National Airlines, Incorporated dated May 11, 1949 (a copy of such agreement having been submitted to this meeting), providing for the charter to National Airlines, Incorporated of the aircraft of this corporation which have been operated by Pan American Airways, Inc between the Canal Zone and Miami for operation by National Airlines, Incorporated over its Miami-New York route, be and the same hereby is in all respects approved, ratified and confirmed.

On motion duly made and seconded, it was unanimously RESOLVED that the action of Douglas Campbell, Vice President and General Manager of this corporation, in executing in the name and on behalf of this corporation Supplement No. 5 dated May 11, 1949 to Through Flight Agreement between this corporation and Pan American Airways, Inc (a copy of such Supplement No. 5 having been submitted to this meeting), amending said Through Flight Agreement in certain respects including provision as to the further charter to National Airlines, Incorporated of the aircraft of this corporation which have been operated by Pan American Airways, Inc between the Canal Zone and Miami for operation by National Airlines, Incorporated over its Miami-New York route, be and the same hereby is in all respects approved, ratified and confirmed.

* * *

H J Roy
Chairman

W J
Secretary

[fol. 1188]

GOVERNMENT'S EXHIBIT 566

November 9, 1950

MEMORANDUM

Baker called me this afternoon and proposed that W. R. Grace & Co. deliver to National a letter to the effect that W. R. Grace & Co. is willing to release National from the Grace option to acquire additional shares of National stock, the Panagra National and Pan American National interchange contract remaining in full force and effect; provided Pan American will also release National from the option now running to Pan American to acquire National stock.

I said that this would be most difficult but that we would think it over and I would consult my associates and would call him either tomorrow morning in Washington or later in Miami. He said that he is returning to Miami tomorrow morning and will probably be in New York sometime next week.

I told him, of course, that I saw the point of his request but asked him what he thought would happen from there on. He then said that he did not see how if Grace were willing to waive its option Pan American could insist on retaining its own option in effect. I told him I did not see anything in this but he assured me as he assured Peter that the thing could be worked out.

I asked him if has had any conversations with members [fol. 1189] of the Board and he said that he has not. I also asked him if he has had any conversations with Pan American and he said he has not.

The conversation was cordial.

A. B. S.

[fol. 1190]

GOVERNMENT'S EXHIBIT 567

MEMORANDUM November 13, 1950

Telephone conversation with
G. T. Baker—November 13, 1950

Pursuant to my conversation of November 9th with Mr. Baker I telephoned him today to say that after serious consideration W. R. Grace & Co. could not comply with his request that it deliver to National Airlines a letter waiving Grace's option on the terms he had proposed. He then asked me if I could give him my verbal assurances that the option would be waived on the same conditions and I replied that I could not give him such verbal assurance either. I said that the most I could tell him was that should he persuade Pan American to waive its option to acquire additional National stock Grace would give its sympathetic consideration to similar action on its part.

A. B. S.

[fol. 1191]

GOVERNMENT'S EXHIBIT 568

CONFIDENTIAL (Handwritten)

MEMORANDUM December 20, 1950

At a meeting in the Carlton Hotel in connection with the Air Transport Association Annual Convention on December 13, Eddie Rickenbacker approached me and stated he had heard that Baker was not going through with the National, Panagra, Pan American contract. He suggested he and I having lunch in New York the following week to discuss the possibility of a cooperative agreement with Eastern in the event the National deal blew up.

Eddie Rickenbacker and I were guests of Pete Jones at a large Christmas luncheon party today. Following the luncheon Eddie and I discussed the National situation. I confirmed that Baker yesterday had formally advised us

he was withdrawing from the National confract on account of being unwilling to go through with the stock option phase of the deal. Also that he had formally advised Grace in similar vein and had confirmed his action to the CAB.

I told him that public counsel for the CAB had indicated to us they were confused as to the position this left the CAB in, and that we felt public counsel would shortly ask the Board for instructions.

Eddie indicated he thought it would be distinctly to Eastern's advantage to make an interchange with Pan American although he still was not interested in an interchange to Mexico City (notwithstanding the fact that we might make such arrangement with C & S), which I told him we were considering). I told him that National had indicated they still favored an interchange independent of the stock option feature.

I asked him in view of the obvious traffic advantage of a deal with Pan American and Panagra, whether he would now favor an interchange at Miami to one daily Panagra DC-6 schedule, one through PAA Connie schedule, and one Boeing shuttle. (handwritten: JTT 12 20 50 on a basis similar to that offered by Nat'l)

Eddie advised he would like to study the matter further, but definitely he would favor "an equitable deal" and that he would let me know tomorrow afternoon if, in principle, he felt the above arrangement good business for Eastern.

J.T.T.
J.T.T.

CC: Mr. Friendly

[fol. 1192]

GOVERNMENT'S EXHIBIT 569

MEMORANDUM OF DISCUSSIONS WITH W. R. GRACE & CO.

(Dictated January 20, 1951)

Mr. Trippe and Mr. Friendly called on Mr. Peter Grace, President of W. R. Grace & Co., and Mr. Andrew Shea, Vice President of W. R. Grace & Co. and President of Pan American-Grace Airways, at the Grace office at about 10:15 A.M. on Friday, January 19, 1951.

Mr. Trippe said that he and Mr. Friendly had come down to give what he believed, and hoped would be considered, some very good news. This was that, as a result of negotiations with Eastern Air Lines, which had ben initiated at Captain Rickenbacker's suggestion, it had proved possible to work out arrangements whereby Panagra's and Pan American's planes could be operated from Miami to New York over Eastern's route. Mr. Trippe said that this gave Panagra what it had long wanted, namely, the right to have its airplanes operate directly into New York. Mr. Trippe felt certain that the relationship with Eastern would prove much more satisfactory than one with National would be since Mr. Baker's conduct had shown that he had no respect for contracts.

Mr. Shea inquired whether there was any stock arrangement with Eastern. Mr. Trippe replied that there was not. Mr. Shea inquired why we would be willing to make an arrangement with Eastern without stock participation, whereas we were not willing to do this with National. Mr. Trippe said that he felt that Eastern was an entirely different sort of company from National. It was one thing to deal with National when it appeared that Pan American and Grace, as large stockholders and with substantial board representation, could build National up. If, however, there was to be nothing but interchange, Eastern was clearly the better bet.

Mr. Grace said it was necessary to take a long view of these matters, Mr. Baker would not last forever, and neither would Captain Rickenbacker. National would ultimately get a professional management with which it would be possible to work. Mr. Friendly responded that this was looking a long while ahead; that Mr. Baker was always talking about quitting and going fishing but that [fol. 1193] he showed no signs of doing this; and that even if National had the same kind of management as Eastern, which it now did not, Eastern would be a stronger and better partner. Mr. Grace said that Eastern was no better than a merger of National and Delta. Mr. Friendly said this was going still more into the future.

Mr. Friendly explained in somewhat more detail the nature of the arrangements with Eastern. He also said that in his opinion an arrangement with Eastern was much more likely to win approval from the C.A.B. than one with National since it was not open to the objection of running counter to the intention of the C. A. B. to build up the connecting service of National and Braniff at Havana. Mr. Grace referred to the fact that Braniff in its original application had not sought Havana. Mr. Friendly said that Braniff had an answer to this, namely, that the important thing was not what Braniff had applied for but what the Civil Aeronautics Board had done.

Mr. Grace said that an arrangement with Eastern was less attractive than one with National in that it left National free to work with Braniff. Mr. Friendly said that, apart from the fact that an arrangement with National might not be approved for precisely this reason, he personally had always feared that if the arrangements with National were approved, the gap between Braniff and Eastern might be closed, and that such an alliance would be more serious to Panagra and Pan American than one between Braniff and National.

There was considerable discussion as to how long it would take to get the interchange agreement with Eastern approved. Mr. Grace and Mr. Shea talked of periods as long as two years. Mr. Friendly challenged these statements, saying that the long delay in the National case had

been due largely to the difficulties in arriving at agreements with National rather than to the C. A. B. procedures. Furthermore, the record which had been made in the National case would be of great help with respect to a hearing in the Eastern case since the basic traffic data was the same. Mr. Trippe emphasized that a part of the Eastern arrangement was a leasing of planes on regular schedule but not for through service, which Eastern thought could perhaps be put into effect immediately. Mr. Friendly expressed some doubts on this score.

[Fol. 1194] Mr. Grace stated that he and Mr. Shea were not in a position to give any answer to Mr. Trippe's and Captain Rickenbacker's proposal; but they would have to think about the matter and talk it over between themselves.

* * *

Mr. Grace raised question as to Panagra's being permitted to apply for a certificate expanding its operations from Lima to Rio. He made a long speech, citing figures, as to how Pan American and other airlines had expanded, whereas Panagra's business had not shown any growth in recent years. Mr. Friendly said that this was irrelevant, since Pan American had been free from the beginning to extend its lines to other parts of the world whereas Panagra had been formed to operate in a particular locality. W. R. Grace & Co. was similarly free to expand and had been doing so. Mr. Trippe added that so far as relative growth was concerned, a much fairer basis of comparison would be between Panagra and Pan American's operations on the East Coast of South America. Mr. Grace said he felt sure that the figures would show that even there Pan American had been doing better than Panagra. He called for the figures. These, however, showed the contrary.

Mr. Trippe stated that he did not consider a Lima-Rio operation a good one for an American-flag carrier from the longrun standpoint. He said that Pan American had not favored this operation by Panair do Brasil. However, it had not proved possible for that company to resist the desires of its own government for the inauguration of service between Brazil and other South American countries. Actually Panair's first extension had been to Buenos Aires where it was directly competitive with Pan American.

Mr. Grace complained of Panagra's loss of Rio business and of the fact that in all probability Panagra was going to be forced out of Brazil altogether. Mr. Friendly countered by the statement that Panagra's participation in Rio business had never been a part of the original plan but had come about in 1940 as a by-product of the Government's desire to have Panagra replace the German-controlled aviation company in Bolivia. It was as a result of this that a connection had been established between Panagra and Panair do Brasil at the Brazilian-Bolivian border.

[fol. 1195] Mr. Trippe stated that the Lima-Rio movement was one which would ultimately be handled predominantly by South American carriers, and that he felt the South American governments would insist on this. Mr. Grace countered that three-fourths of the Lima-Rio movement consisted of stop-over traffic in Lima enroute to or from the United States and said he had figures to prove this. Mr. Friendly said that if this were true, the Panair operation between Rio and Lima should be a substantial assistance to Panagra since it made possible a joint effort by Panair and Panagra to sell this stopover business which should afford very effective competition to Braniff. Mr. Grace demurred to this, stating that Americans would not fly in planes of a South American company. Mr. Shea disagreed with Mr. Grace. He felt that the Panair operation would result in Panair and Panagra taking away substantial business from Braniff, and that the foreign character of Panair was no real obstacle since it was regarded as part of the Pan American Airways System. Mr. Shea stated he had no doubt that Panair's Lima-Rio service would put a substantial "crimp" in Braniff's operations. Indeed, he felt that Panair's service to Lima and the improved PAA service between Rio and New York would reduce Braniff's load factor between Rio and Lima to a figure as low as between Lima and Buenos Aires. There was considerable discussion of this, ending with Mr. Shea making a $50 bet with Mr. Grace that this would occur in the last six months of 1951.

At the conclusion of the meeting, Mr. Grace repeated that he would have to consider the matter with his as-

sociates. It was agreed that the meeting should be resumed at 5:30 P.M. at the Pan American office uptown.

Mr. Grace telephoned Mr. Trippe shortly after 5:30 P.M. He stated that they had been discussing the matter with their lawyers; that their conclusion was that the arrangement with Eastern was designed to delay the operation of Panagra's airplanes into New York; that his lawyers told him that it would take two years to get such an arrangement approved; and that the arrangement upset all of Grace's plans for Panagra. Mr. Trippe replied that all these charges were wholly unjustified and that the arrangement with Eastern was designed to give Panagra access for its airplanes to New York in the most effective possible way. Mr. Grace requested that he be given a set of the [fol. 1196] papers to examine over the weekend and arranged to meet again Monday at 9:15 A.M. at the Chrysler Building. Mr. Trippe immediately sent the papers to Mr. Grace with a note stating that it was his understanding with Captain Rickenbacker that for the time being the papers were to be regarded as confidential.

(Dictated January 23, 1951)

On the morning of Monday, January 22, Mr. Grace and Mr. Shea again met with Mr. Trippe and Mr. Friendly.

Mr. Grace requested Mr. Shea to state their position.

Mr. Shea began by saying that they considered that the agreement which had been negotiated with Eastern was a remarkable achievement. If it had been available two years ago, they would have been for it. Now, however, they were concerned with the length of time which it would take to get such an agreement approved. Their lawyers had advised them that this would take two years. They feared that before that was over Braniff's application for a direct certificate to New York would have been heard and granted. Mr. O'Connell, who was now acting as counsel for Grace, had told them that there was a great sentiment in the Civil Aeronautics Board for granting this application of Braniff. This was because there was fear that Braniff would be starved out if it had only the middle

west business, with the eastern business going to Panagra and Pan American, and the far western business going to Pan American on its Guatemala route and thence via Panagra. Mr. Shea asked whether Pan American was aware of this.

***

Getting back to the main line of the discussion, Mr. Shea concluded by saying that Grace was, therefore, against the proposed agreements with Eastern because of the delay which would be incident to arranging for Panagra's planes to enter New York over Eastern's route.

Mr. Friendly went back to the objection made on the score of Braniff's certificate application and asked whether it was seriously suggested that Braniff, which now had direct access to the central United States, would be given [fol. 1197] a certificate for direct service to the Washington-New York area, which had been historically served by Pan American, but that Pan American would continue to be held off at Miami. He reminded Mr. Shea and Mr. Grace that Pan American also had an application for an international certificate to New York which was filed a few days after Braniff's. Mr. Grace said they were not that pessimistic. On the other hand, it would be a very bad thing for Braniff to get into New York, even if Pan American did also. They felt that once Panagra's aircraft were operating into New York, they could forestall a Braniff certificate application.

Mr. Friendly said that this was exactly what had always troubled him about the National deal, namely, that it was too rough on Braniff. So long as Braniff had the connection with National at Havana, which the Board had intended Braniff to have, there was a good deal of strength in the argument that Braniff should not have anything more. If, on the other hand, this connection was taken away, then he felt the "starvation" argument would be advanced with far more force than it could otherwise be.

Mr. Grace said that he believed in taking one thing at a time, that it was their policy to fight Braniff every inch of the way, and that if this course were followed, a time might come when the Government might reverse its policy with respect to having Braniff in South America.

Mr. Shea and Mr. Grace then launched an attack on Mr. Rickenbacker. They said they did not consider him any easier to deal with than Mr. Baker. They cited particularly his testimony in Docket 3500 in which he accused certain Grace officers and directors of going out and buying National stock in anticipation of a market rise. Mr. Trippe and Mr. Friendly said that there was no doubt that Captain Rickenbacker was a tough fighter who sometimes said and did things which were not liked by his opponents. On the other hand, there was quite a difference between a man who threw his weight against opponents in a fight where he owed them nothing and a man who would not stick to an agreement and made disagreeable remarks about persons with whom he was supposed to be working in close association. Mr. Trippe said that, in his long experience with Captain Rickenbacker, he had never known Captain Rickenbacker to go back on an agreement.

[fol. 1198] Mr. Shea criticized the proposed interchange agreement on the ground that the exclusive clause would not prevent an Eastern-Braniff combination at Havana. Mr. Friendly answered that such a combination was not possible at the present time since Eastern did not operate to Havana and would not be likely to be given that right if it had an interchange with Pan American. However, he did not believe there would be any great difficulty in having this clause amended if Grace so desired.

Mr. Grace repeated that their prime interest was to get Panagra's airplanes into New York. Mr. Friendly said there was no difference of opinion between Grace and Pan American on this; that we wished to accomplish this objective also and wished to do it in the most satisfactory and sound way from a long term standpoint. The advantages of a contract with Eastern appeared to him so great as compared to a similar one with National that it was hard to believe that such an arrangement would not be accepted by Grace if the interests of Panagra were what they really had at heart.

Mr. Grace and Mr. Shea then launched on an attack on Eastern's services. They criticized Eastern's flight attendants, saying that these were rude and that they would not like to have this the last impression of a Panagra

passenger. They also criticized Eastern's food. Mr. Trippe suggested that perhaps Captain Rickenbacker would be willing to let Panagra supply its own food, and he would be glad to take this up. Mr. Friendly pointed out that the agreement gave Panagra the right to supply all attendants except one, and he found it difficult to believe that the difference in quality between one Eastern flight attendant and a National flight attendant, if there be any at all, was really a serious matter.

Mr. Trippe said that the fundamental point was that a deal with Mr. Baker without a substantial stock interest was not a deal at all, as had been proven by the long road of difficulties which both Pan American and Grace had experienced. Mr. Friendly added that Pan American had done everything possible to preserve the arrangements with National and to get them approved. He cited as the latest instance that when it became evident that Mr. Baker was trying to take a walk by refusing to agree on a rate [fol. 1199] of return for the Pan American airplanes, he had gone down to Washington to appear with Mr. Grace and Mr. Shea before Chairman Rentzel.

Both Mr. Grace and Mr. Shea recognized that Pan American had loyally supported the National arrangements. Mr. Grace stated that "no one could have asked for better associates than Pan American had been" and that the Pan American officers had behaved like gentlemen in connection with the whole matter. They also stated that they did not for one moment condone Mr. Baker's welching on his agreements. However, they did not consider Eastern preferable to National and they were concerned about the timetable.

Mr. Friendly said that he thought there should be more discussion on the timetable, since he could not see that the difference in this respect between the two proposals was anything like what had been talked about. The National deal was itself a long way from approval. It had not yet approached the briefwriting stage and would not for some little time. The only added delay in the arrangement with Eastern would be the difference in time required to get the two proceedings to the end of a hearing. After that,

the timetables should be the same, with the Eastern proceeding, if anything, having the edge since it did not involve all of the other questions that were in Docket 3500. While the conference was going on, he had jotted down some figures as to the length of time which he thought it would take to get the two proceedings to the close of a hearing, starting from the date when agreements were signed with Eastern or revised agreements were signed with National. In the former case, he figured 20 days to prehearing conference, 60 days more for exhibits, 20 days more for rebuttal exhibits, 10 days more for the commencement of a hearing and 15 hearing days, for a total of 125 days to the close of the hearing. In the National case, he figured 10 days to a further prehearing conference on the subject of a fair rate of return, 15 days for exhibits, 10 days for the beginning of a hearing, and he had allowed nothing for the length of the hearing, for a total of 35 days. This meant a differential of 90 days between the two. If it were thought his estimates on Eastern were unduly liberal, another month would mean a difference of only 4 months between the two proceedings. He thought this inconsequential in view of the greater value of an arrangement with Eastern and the greater likelihood that it would ultimately be approved. He repeated that, in his [fol. 1200] judgment, the arrangement with National stood an excellent chance of not being approved because of the force of Braniff's arguments. Should this occur, Panagra and PAA would then be in a position, many months hence, not only of having to start over again, but of being in an exceedingly bad bargaining position with Eastern.

Mr. Grace again objected to any delay. He mentioned the fact that Pan American had not immediately accepted the deal that Grace had arranged with National in the winter of 1949. Mr. Friendly said that any delay at that time was due only to W. R. Grace & Co.; that Pan American by the end of January had arrived at a deal with National which Mr. Scott had recommended, but that Mr. Grace had then entered the situation and had given Mr. Baker the idea that he would play Grace against Pan American and get a better deal thereby. In fact, Mr. Friendly continued, Mr. Baker would never have repudiated his agreements

now if he had not felt sure that Grace would go along. Mr. Grace said that they had never indicated to Mr. Baker that they would do this and gave his "word of honor" to that effect. Mr. Friendly said that he had not accused Grace of having said this to Baker and had no basis for doing so, but repeated that in his opinion Mr. Baker would not have repudiated the agreements if he had not felt sure in his own mind that Grace would go along with him anyway. Mr. Baker would have been entirely justified in this belief, as was shown by the attitude presently being expressed. Mr. Friendly said he simply could not understand how an organization of the repute of W. R. Grace & Co. could consider the kind of appeasement that was incident with continuing to deal with Mr. Baker after the latter had broken his promises.

Mr. Grace said he would not delay one week to have an agreement with Eastern rather than National. Mr. Friendly said that he could not believe that this was really Grace's position, particularly since Grace must realize it was not able to decide this by itself, and that he would therefore like to get back to the claim of a two year delay in approval of the Eastern agreement and find out just how Grace's lawyers had worked this figure out. Mr. Shea asked whether Mr. Friendly's timetable had not assumed that the Board would give the Eastern interchange agreement a priority on its calendar. Mr. Friendly said he had assumed this, but felt entirely justified in doing so since the Board had always given priority to interchange agreements and [fol. 1201] there was no reason to suppose it would make an exception of this one. Mr. Shea agreed he would discuss the matter further with Panagra's counsel, Mr. Burns, and find out the basis for Mr. Burns' two-year estimate. Mr. Friendly said he would be glad to join in these discussions. It was left that after Mr. Shea had talked with Mr. Burns, he would report further.

N.J.F.

[fol. 1202]

GOVERNMENT'S EXHIBIT 570

PAN AMERICAN-GRACE AIRWAYS, INC.

Office of the President
7 Hanover Square
New York 5, N. Y.

January 25, 1951

Honorable D. W. Rentzel, Chairman
Civil Aeronautics Board
Washington 25, D. C.

My dear Mr. Chairman:

Re: Docket No. 3500

As you well know, Panagra has regarded as of primary importance to the public that it be permitted to have through service between Buenos Aires and Washington and New York via the West Coast of South America.

In attempting to bring about such a development Panagra and W. R. Grace & Co. have utilized every proper means, both judicial and administrative. We always believed that the best solution for Panagra was the direct extension of its route from Balboa through an amendment of its certificate. To date this has been impractical because of the problems of Panagra's divided ownership.

It was for the attainment of this objective of through service that Panagra and W. R. Grace & Co. entered into the interchange and collateral contract now pending before the Board in the above-entitled docket.

[fol. 1203] Under date of May 11, 1949 the following agreements were executed:

1) Interchange Agreement between Panagra and National Airlines Inc. (hereinafter called "National").

2) Interchange Agreement between Pan American Airways (hereinafter called "Pan American") and National.

3) Option Agreement for the acquisition of National stock between Pan American and National.

4) Option Agreement for the acquisition of National stock by W. R. Grace & Co. (hereinafter called "Grace").

5) Agreement between Grace and Pan American for the sale of National stock by Grace to Pan American.

These agreements were filed with the Civil Aeronautics Board and application was made to the Board on May 11, 1949 for approval of the agreements above designated as 1, 2, 3, and 5. All of the agreements are incorporated herein by reference.

By their terms all of said agreements are interdependent; i.e., none of said agreements is to become effective until and unless all of said agreements are approved by the Civil Aeronautics Board.

Public hearings have been held with respect to such applications and have been concluded except with respect to [fol. 1204] the rate of return payable by National to Pan American under the Pan American/National Interchange Agreement as part of the charter hire of Pan American equipment. The Board by Order dated October 23, 1950 directed National and Pan American to submit that issue to the Board for determination pursuant to the terms of the Pan American/National Interchange Agreement.

Subsequent to the issuance of the Order of October 23rd National Airlines delivered to Pan American and to Grace the letters transcribed below:

December 14, 1950.

Mr. Juan T. Trippe, President
Pan American-World Airways System
135 East 42nd Street.
New York 17, N. Y.

Dear Juan:

Not having heard from you in reply to my letter of November 29th, this is to notify you that the stock option agreement between Pan American and National,

dated May 11, 1949, is terminated and of no further force or effect. We do believe that an interchange of equipment between Pan American and National and between Panagra and National would be in the interest of both the public and the companies. Accordingly, we have advised the Civil Aeronautics Board of our willingness to go through with the interchange agreements when approved by the Board.

Very sincerely,

G. T. Baker, President
National Airlines, Inc.

[fol. 1295]

December 14, 1950

Mr. Andrew Shea, Vice President
W. R. Grace & Company,
7 Hanover Square,
New York, N. Y.

Dear Andy:

Herewith is a copy of letter which I am today sending to Juan Trippe in which we notify him, as we are notifying you herewith, that the stock option agreement, dated May 11, 1949, is terminated and of no further force or effect. We do believe that an interchange of equipment will be in the interest of both the public and the companies. Accordingly, we have advised the Civil Aeronautics Board of our willingness to go through with the interchange agreements when approved by the Board.

Very sincerely,

G. T. Baker, President
National Airlines, Inc.

Under date of December 19, 1950 Pan American replied to National's letter as follows:

December 19, 1950

Mr. G. T. Baker, President
National Airlines, Inc.
3240 N. W. 27th Avenue
Miami, Florida

Dear Ted:

I have for acknowledgment your letter of December 14, 1950, and your note of November 29, 1950, the latter of which I have held to present at a meeting of our directors today.

Our directors were astonished to learn of the position which your company has taken. They are quite at a [fol. 1206] loss to understand how you believe that National is in a position by unilateral action to terminate the contracts made by National, Panagra, W. R. Grace & Co. and Pan American in the spring of 1949, which the four companies have united in presenting to the Civil Aeronautics Board for approval and which the Board has recognized as all inter-dependent.

Sincerely,

J. T. Trippe,
President

and under date of December 29, 1950 Grace replied to National's letter as follows:

December 29, 1950

George T. Baker, Esq.
President
National Airlines Incorporated
3240 N. W. 27th Avenue
Miami 37, Florida

Dear Ted:

This will acknowledge receipt of your letter of December 14th with which you enclosed a copy of your letter to Juan Trippe of the same date and in which you also notified us that the stock option agreement

between W. R. Grace & Co. and National dated May 11, 1949 is terminated and of no further force and effect We must advise you that we do not recognize the right of National unilaterally to terminate in whole or in part the agreement referred to.

Sincerely yours,

J. P. Grace, Jr.

At a meeting held on January 22, 1951 between J. P. Grace, Jr., President and a Director of Grace, and myself representing Grace and Panagra respectively, and Juan [fol. 1207] T. Trippe, President and a Director and Henry J. Friendly, Vice President and a Director of Pan American, Mr. Grace and I stated to Messrs. Trippe and Friendly that Grace as owner of 50% of Panagra's stock and I as President of Panagra consider it in the best interests of Panagra that rather than risk the failure of all the interrelated agreements Pan American and Grace should accept the attempted cancellation by National of the National Pan American and National Grace stock option agreements and should so advise the Civil Aeronautics Board at the same time requesting the Board to proceed to a determination as to whether or not the Pan American National and Panagra National Interchange Agreements are in the public interest and should be approved. Messrs. Trippe and Friendly did not accept this proposal. Mr. Grace and I then proposed that Panagra advise the Board that Panagra accepts the attempted cancellation by National of the National Pan American and National Grace stock option agreements and that Panagra is prepared, upon approval by the Board of the Panagra National Interchange Agreement as filed with the Board for approval, to carry out the terms of such agreement regardless of whether or not the collateral agreements or any of them should become effective.
[fol. 1208] Messrs. Trippe and Friendly declined to accept this proposal also.

They proposed as an alternative that Panagra should withdraw from the National agreements and execute an equipment interchange agreement with Eastern Air Lines

on substantially the same terms and conditions as those of the National Interchange. This proposal was rejected by Mr. Grace and myself.

The reasons for our rejection of the proposal were twofold: In the first place, a new proceeding instituted by application for Civil Aeronautics Board's approval of Pan American/Eastern and Panagra/Eastern interchange agreements would probably extend over a period of approximately two years and would, therefore, involve undue delay in the establishment of a through one-plane service with Panagra equipment between Buenos Aires and New York and Washington via the West Coast of South America, a service provided by no carrier today. In the second place, we felt that ultimate approval of the contemplated interchange with Eastern might raise new issues which would be the subject of serious controversy with the outcome in doubt. On the other hand, the Board now has before it the Panagra/National Interchange Agreement. All the preliminary proceedings and public hearings have been completed and final determination of whether or not the [fol. 1209] agreement should become effective might reasonably be expected within a relatively short time. Moreover, upon approval of the interchange, establishment of the through one-plane service could be effected promptly. Then there would be for the first time between the points mentioned a through one-plane service really competitive with the through one-plane service operated by Pan American between New York and Buenos Aires via San Juan and the East Coast of South America since 1946.

The evidence presented at the public hearings with respect to the proposed Panagra/National Interchange, I submit, conclusively establishes that the public interest requires the immediate establishment of through one-plane service between Buenos Aires and New York and Washington via the Canal Zone and the Republics of Ecuador, Peru and Chile. There cannot be, I further submit, any clearer or stronger case made out for the establishment of this service regardless of what evidence might be introduced in a new proceeding. Thus from the viewpoint of the public interest nothing would seem to be gained by postponing

until some indefinite time in the future a result which could be accomplished promptly in Docket 3500.

[fol. 1210] As appears from the text of National's letters dated December 14, 1950 addressed to Pan American and Grace respectively, National has already stated its readiness and willingness to carry out the terms of the Interchange Agreements now before the Board independently of the stock option agreements with Pan American and Grace which in such letters National has attempted to cancel.

Speaking on behalf of Grace, the owner of 50% of Panagra's stock, and on behalf of the Panagra Directors nominated by Grace, and as President of Panagra, I therefore respectfully request that the Board issue an order in this proceeding approving the Panagra National Interchange Agreement dated May 11, 1949 and the Supplements thereto, except such part thereof as purports to make such agreement conditional upon the approval of the collateral agreements.

Respectfully yours,

/s/ ANDREW B. SHEA

Andrew B. Shea
President
Pan American-Grace Airways, Inc.

cc: All Airline Parties
W. R. Grace & Co.
Public Counsel

[fol. 1211]

GOVERNMENT'S EXHIBIT 571

PAN AMERICAN WORLD AIRWAYS SYSTEM
CHRYSLER BUILDING, 135 EAST 42nd STREET,
NEW YORK 17, N. Y.

January 29, 1951

Mr. Peter Grace, President,
W. R. Grace & Co.,
7 Hanover Square,
New York 4, N. Y.

Dear Peter:

When you and Andy Shea left Henry Friendly and myself after our meeting of January 22 to discuss the interchange arrangements with Eastern, following National's repudiation of its agreements with Pan American, Panagra and Grace, our understanding was as follows:

Andy was to find out from counsel for our joint company (in discussions in which Henry Friendly offered to join) the detailed support for their belief that proceedings before the C.A.B. for the approval of these arrangements with Eastern would take two years. He would then communicate further with us. We on our side undertook to ascertain whether Eastern would meet your objection that the exclusive clause, as originally drawn, would leave Eastern free to make an interchange arrangement with Braniff if Eastern were ever extended to Havana, and your desire that Panagra should be able to put its own food service on the aircraft chartered to Eastern between Miami and New York.

The next thing we heard from you was the receipt on January 26 of a mimeographed letter written to Chairman Rentzel of the Civil Aeronautics Board by Andy Shea in the name of Pan American-Grace Airways, Inc. This was done without any authority from the Board of Directors of that Company. The letter came to us not as a joint stockholder in Panagra, and not to any of our directors

on the Panagra board, but simply as a party to Docket 3500.

I am enclosing a copy of a motion which Pan American is filing with the C.A.B. to dismiss the proceedings for the approval of the various agreements between National, on the one hand, and Pan American, Panagra and W. R. Grace & Co., on the other, which the Civil Aeronautics Board has recognized to be inter-dependent and important features of which National has recently repudiated. I am also enclosing an application being filed by [fol. 1212] Pan American and Eastern for the approval of an equipment interchange agreement. You will note that Eastern has met your two criticisms of the previous form of the agreement which I have referred to above. We have also modified the agreement so that instead of requiring acceptance by Panagra within 30 days after execution, as was previously provided, this opportunity will remain available to Panagra from now on until 30 days after approval by the Civil Aeronautics Board.

We sincerely trust that on further consideration W. R. Grace & Co. will come to the same conclusion as has Pan American, namely, that the great advantages of this arrangement with Eastern are such as to require acceptance by Panagra, if Panagra's best interests are the guide for Grace's action.

I am sending a copy of this letter to Chairman Rentzel.

Sincerely,

Juan Trippe
J. T. Trippe,
President

[fol. 1213]

GOVERNMENT'S EXHIBIT 572

COPY

February 5, 1951

Mr. A. B. Shea, Vice President
W. R. Grace & Co.
New York, New York

Dear Andy,

Re: Docket #3500

We were surprised to read your letter of January 25th to Chairman Reintzel of the C.A.B. While the letter was signed by you as President of Pan American-Grace Airways, Inc. it was written without discussion with or authority of the Board of Directors of that Company and indeed came to our attention only because it was served on Pan American Airways as a party to Docket #3500 and via the Aviation Daily. Board of Directors' authority, of course, would be required for any such interchange, agreement with National as you propose.

• • •

People do not generally continue doing business with those who have broken contracts with them. Here is peculiarly little reason for doing this since Pan American has succeeded in arranging for itself and Panagra an interchange agreement with Eastern which is far more satisfactory than the one you now propose for Panagra with National. You yourself stated that you consider this agreement with Eastern a remarkable achievement and that you would have favored its acceptance had it been available two years ago when we concluded our agreement with National, since repudiated by that company.

[fol. 1214] We can see no sound reason from Panagra's standpoint (as distinguished from that of W. R. Grace & Co. as owner of 174,000 shares, or 17.4%, of National's stock) why Panagra should not accept the Eastern interchange agreement now.

We know now that any arrangement between our companies and National is open to serious attack on the ground, pressed so vigorously at the hearing in docket 3500, that it ran counter to the position of the C.A.B. laid down in its decision in the *Latin American Air Service Case*, No. 6 C.A.B. at 915, that National should cooperate with Braniff at Havana.

• • •

We believe Panagra's aircraft could be brought into New York sooner and better by an interchange arrangement with Eastern rather than by a new agreement with National which for the reason indicated is so likely to be disapproved by the C.A.B.

We are concerned lest in proposing an arrangement with National, W. R. Grace & Co. may be motivated by its ownership of the 174,000 shares of the stock of National acquired despite Grace's control of the steamship line linking New York with the West Coast of South America without approval of the C.A.B. in March 1949 and now representing an investment of nearly 2½ million dollars. This special interest of W. R. Grace & Co. however should not be a factor when the question is what is in the best interests of Panagra.

[fol. 1215] When you and Mr. Grace left Mr. Trippe and Mr. Friendly on January 22nd it was understood there were to be further discussions of the Eastern agreement after we had had an opportunity to find out whether Eastern would meet the objections which you and Mr. Grace had raised to the provisions of the then draft as to exclusivity and food service. These provisions we are glad to report have been modified to meet your views. Furthermore as you know the agreement with Eastern has been changed so as to be open to acceptance by Panagra at any time up to a date 30 days after approval by the C.A.B. We hope our Grace colleagues on the Panagra Board will join with us in action that will permit such acceptance at any early date and thus expedite the operation of Panagra's planes into New York.

Following your example we as Directors of Panagra are sending copies of this letter to Chairman Rentzel, to Public Counsel and to all airline parties to Docket #3500.

Sincerely yours,

/s/ Erwin Balluder
Henry J. Friendly
John C. Leslie
Wilbur L. Morrison
Directors Pan American-Grace Airways Inc.

[fol. 1216]

GOVERNMENT'S EXHIBIT 573

PAN AMERICAN-GRACE AIRWAYS, INC.

Office of the President
7 Hanover Square
New York 5, N. Y.

February 9, 1951

Erwin Balluder, Esq., Vice President
Pan American World Airways, Inc.
135 East 42 Street
New York 17, New York

Dear Erwin:

The letter of February 5th addressed to me by Henry Friendly, John Leslie, Wilbur Morrison and yourself arrived at the office while I was absent in California and I did not receive it until my return yesterday.

I thoroughly dislike the practice of writing letters for the record but I feel impelled to reply to your letter of the 5th in order to keep the record straight.

Your colleagues and yourself state that my letter of January 25th to Chairman Rentzel was written without discussion with or authority of the Board of Directors of Panagra. That statement is, of course, correct. However, discussion with your colleagues and yourself as Directors of Panagra or a request that you authorize the action taken

would have been an empty formality in view of the position taken by Messrs. Trippe and Friendly in the conversation had with them by Mr. Grace and myself on January 22nd. It is hardly necessary to say that it was a foregone conclusion that your colleagues and yourself as Directors of [fol. 1217] Panagra would not have taken a position different from that taken by Messrs. Trippe and Friendly.

You further state in your letter that Board of Directors' authorization would be required for "any such interchange agreement with National as you propose". I am advised by counsel (other than Panagra counsel) that such authorization would not be required under the present circumstances should I have proposed a new agreement with National. However, I have not proposed a new agreement but have merely asked the Civil Aeronautics Board to approve our existing one except such part of the agreement as was included therein for the sole benefit of Pan American.

You state that there is no disagreement between the Pan American Directors of Panagra and the Grace Directors of Panagra as to the desirability of working out arrangements for the through operation of Panagra's planes to New York but that you disagree radically as to how this could best be accomplished under the circumstances that have arisen. With respect to these statements I refer to the long history of the efforts and constant pressure of the Grace Directors of Panagra over the period of the last fifteen years to bring about the operation of through service by Panagra between the U.S. and the South American terminus of Panagra. In the course of this period and indeed until 1946 when the Through Flight Agreement was [fol. 1218] signed the Pan American Directors of Panagra successfully resisted those efforts by refusing to authorize the application by Panagra of an extension of its route for the stated reason that:

> "In the opinion of this Board* an extension of Pan American-Grace Airways, Inc. from Balboa to Miami or New York would not be in the best interests of Pan American-Grace Airways Inc. and likewise would

*Board of Pan American Airways

not be in the best interests of this Corporation or its stockholders and that consequently the Representatives of this Corporation on the Board of Directors of Pan American-Grace Airways Inc. be instructed not to take action authorizing an application for such an extension by that Company."

(See Minutes of Panagra Directors' Meeting dated June 5, 1946).

It was only under the pressure of the implications of the decision by the Second Circuit Court of Appeals and of the statement of the President of the United States and of the Civil Aeronautics Board in the Latin American Route Case that Pan American finally entered into the Through Flight Agreement with Panagra as a substitute for a route extension to Miami. Since 1946, however, Pan American has been operating a through one-plane service between New York and Buenos Aires via San Juan and the East Coast of South America and I think it is fair to say that the same competitive considerations which prompted Pan American's opposition to the extension of the Panagra route to [fol. 1219] the U.S. are still controlling as a guide for the position of the Pan American Directors of Panagra in this whole matter.

You say in your letter that I stated that I considered Pan American's agreement with Eastern a remarkable achievement. I do consider it a remarkable achievement in view of the unsuccessful efforts previously made by Pan American to reach agreement with Eastern. You further credit me with the statement that I would have favored acceptance of an agreement with Eastern had it been available two years ago when we concluded our agreements with National. I made no such statement.

It is very clear that given a choice between going ahead with the National interchange on the one hand, and on the other entering into a new agreement with Eastern Air Lines, the only sound and practical policy to pursue from the viewpoint of Panagra's interest and that of the public is to carry to a conclusion with the utmost despatch the proceedings looking toward the approval of the National in-

terchange. With respect to the National interchange, agreement has been reached on all points, public hearings have been completed (except perhaps on the single point of the agreed rate of return on investment) and the only remaining steps are the filing of the Examiner's Report and consideration and decision by the Board. On the other hand the execution by Panagra of a new agreement with Eastern Air Lines would mean the institution and comple- [fol. 1220] tion of a whole new proceeding with serious doubt as to the outcome. The other carriers concerned would oppose with the utmost vigor the approval of such agreements and in so doing they would unquestionably employ every possible device to make the proceedings as protracted as possible. This is standard procedure as you well know.

As a basis for your disagreement that a great length of time, say two years, would be required for approval of the Eastern interchanges (assuming that such approval would be forthcoming) you cite the periods required for approval of the Panagra Pan American interchange, the American Delta interchange and the Capital National interchange. The Panagra Pan American Through Flight Agreement had practically been invited by the Board and was actively opposed only by Eastern Air Lines; the American Delta agreement received only temporary approval pending the outcome of the Southern Service to the West Case (Docket 1102 et al.). On the other hand the TWA Delta agreement (8 C.A.B. 857) required 18 months for approval. The TWA Continental agreement was filed June 1950 and no date has as yet been set for public hearing. The American Braniff agreement was filed September 1950 and no date has been set for public hearing.

I submit that on the basis of experience an impartial opinion would be that Mr. Friendly's estimate of 15 months for the conclusion of the Eastern interchange proceeding [fol. 1221] is optimistic and that my estimate of two years is not pessimistic but is also on the optimistic side. I submit that there is nothing unreasonable in my estimate of the time factor involved in this discussion.

You state that when Mr Grace and myself left Messrs. Trippe and Friendly on January 22nd it was understood that there were to be further discussions of the Eastern agreement. I must make it clear that as far as Mr. Grace and I were concerned there were to be no such further discussions. The observation with respect to the exclusivity was merely a casual one on my part and the remarks with respect to food service made by us were incidental.

After full consideration of all the circumstances neither the other Grace Directors on the Panagra Board nor myself find any reason to modify the position taken in my letter of January 25th to Chairman Rentzel.

I am sending copies of this letter to Chairman Rentzel to Public Counsel, and to all airline parties to Docket 3500.

Sincerely yours,

/s/ Andrew B. Shea

Andrew B. Shea
President
Pan American-Grace Airways, Inc.

cc: Messrs. Henry J. Friendly
John C. Leslie
Wilbur Morrison

[fol. 1224]

Government's Exhibit 575

COPY

February 21, 1951

Civil Aeronautics Board
Washington 25, D. C.

Re: Docket No. 3500

Dear Sirs:

The Answer of National Airlines, Inc. in the above-described proceeding, served February 12, 1951, is founded on the altogether false premise that what has been done and said on behalf of W. R. Grace & Co. and the Panagra directors nominated by Grace constitutes action by Panagra as a company. The Answer refers to Mr. Shea's letter to

the Board, dated January 25, 1951, and states that since both Panagra and National desire that the Board approve the interchange agreement, there is no basis for dismissal of the agreements." Panagra as a company has expressed no such desire. Mr. Shea has collected a letter to me dated February 9, 1951 that his letter of January 25th was written without discussion with or authority of the Board of Directors of Panagra." Hence it can only be considered as having been written on behalf of Grace, also a substantial stockholder in National, and of the Panagra directors nominated by Grace. The Panagra directors nominated by Pan American take an entirely different view.

National, by its Answer, has admitted that the Pan American-National interchange and the stock acquisition agreements cannot now be consummated and that the Board ought to dismiss the proceedings relating thereto. The parties have always clearly understood, and the agreements specifically provide, that the Panagra-National interchange is interdependent with these agreements and with the Through Flight Agreement between Pan American and Panagra. Although the Through Flight Agreement can be severed, the other agreements cannot be separated from it or from each other and they cannot be rewritten without the consent of all parties. No such consent has been given or is likely to be forthcoming. Hence, by admitting that the Board should not go forward with the other agreements, National has admitted as well that the Board cannot go forward with the Panagra-National interchange.

In any event, it is impossible to see how an interchange respecting the widely separated services of National and Panagra would be practical in the absence of an interchange agreement between National and Pan American. The operations between Balboa and Miami are Pan American's, not Panagra's, and the aircraft are under Pan American control. A very large percentage of the traffic moving over that route and carried in Panagra aircraft operated by Pan American pursuant to the Through Flight Agreement consists of traffic originating in or destined to Balboa which is wholly Pan American's and not Panagra's.

[fol. 1225]

We are at a loss to understand what legitimate reason there can be for involving Panagra in all these difficulties when Panagra has available a simple and straightforward interchange arrangement with Eastern which we feel confident will merit speedy approval by the Board.

A copy of this letter has been sent to each person served with a copy of National's Answer.

Very truly yours,

/s/ E. Ballinder

Erwin Ballinder
Vice President and Director
Pan American-Grace Airways, Inc.

[fol. 1226]

GOVERNMENT'S EXHIBIT 576

March 22, 1951

Dear Jim,

DOCKET 3500

Dear Jim,

The Civil Aeronautics Board on March 19th issued an Order the substance of which is set forth in the enclosed summary.

The most important effect of the Order, insofar as Panagra is concerned, is that the Board will determine promptly and without formality of further hearing or submission of an Examiner's Report whether or not the Panagra/National agreement should be approved and become operative. We estimate despite this shortcut in procedure that such approval will not be forthcoming in less than between three and six months.

As you will see from the enclosure such approval if given will be temporary pending the outcome of a new proceeding in which the Board will pass on the following matters:—

(A) Whether or not Pan American and National should be ordered to enter into a compulsory interchange operation between New York and Balboa using only the Panagra aircraft operated under the Panagra Pan American Through Flight Agreement.

(I presume that the reason why it is suggested that this interchange will be made between Pan American and National rather than Panagra and National is to avoid the question of whether on arrival at Miami our aircraft are under the control of Panagra or under that of Pan American).

[fol. 1227] (B) Whether or not Eastern's route should be extended from Miami to Habana or Braniff's route extended to Miami and if either such extension is granted whether or not a compulsory interchange between Eastern and Braniff should be ordered for through service between New York and Balboa.

(C) Application for approval of the Pan American-Eastern interchange.

With respect to (B) it would, of course, have been much more satisfactory if a possible interchange between Eastern and Braniff for through New York Balboa operation had not been injected into the proceeding. However, the question of an extension of the Braniff operation in some form or other to New York has been with us for some time and it is a foregone conclusion that in view of the complicated nature of the new proceeding it will probably be a couple of years before the Board reaches a final decision in this as well as on the other matters involved in the new proceeding.

In the light of this if we get our temporary approval of the Panagra National interchange within, say, three to six months we shall start operating immediately and a lot of things may happen before the new proceeding is concluded.

I feel that on the whole the Board's Order constitutes a great step forward toward the realization of our ambition to start the through operation to New York.

[fol. 1228] With the foregoing before you you will be in a position to post all interested members of our flight and ground personnel as to what this new Order means.

Sincerely yours,

s/s Andrew B. Shea

Enc.

Mr. James W. Walker, Jr.
Pan American-Grace Airways, Inc.
Lampa 590
Lima, Peru

[fol. 1229]

Government's Exhibit 577

Minutes of Adjourned Regular Meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American World Airways, Inc., 135 East 42nd Street, New York, N. Y. on the 30th day of March, 1951 at 11:00 o'clock in the forenoon.

PRESENT:

Messrs Erwin Balluder
Howard L. Clark
Henry J. Friendly
John C. Leslie
B. H. Oehlert, Jr.
Andrew B. Shea

being a quorum of the Board.

Mr. Shea, President, presided. In the absence of the Secretary, Mr. Clark acted as Secretary of the meeting.

* * * *

At the time of the February 5 meeting, the directors nominated by Pan American had felt that consent by Panagra that its aircraft, which were chartered to Pan American for operation to Miami and return under the

Through Flight Agreement, should be further chartered to Eastern for operation to New York and return as contemplated by the agreement between Eastern and Pan American dated January 27, 1951, would be more in the interests of Panagra than any modified form of the agreement of May 11, 1949 with National, for the following reasons, among others:

(1) National's course of conduct, including particularly its repudiation of its contractual obligations, showed that National was not a desirable company with which to deal.

[fol. 1230] (2) An arrangement with National was inconsistent with the route pattern laid down by the Board at the direction of President Truman in May, 1946, whereby National was to cooperate with Braniff at Havana, and therefore was not likely to be approved.

(3) An arrangement with Eastern, on the contrary, would be directly in line with President Truman's plan and would give Panagra and Pan American greater traffic support, thus counterbalancing in part the advantage which Braniff had from its own network of routes in the United States.

Mr. Friendly stated that in his opinion, which he understood was shared by the other directors of Panagra who had been nominated by Pan American Airways, the case for the adoption of these resolutions had been strengthened by the order of the Civil Aeronautics Board, E-5205, dated March 16, 1951. He called attention particularly to the statements on page 13 of the Board's opinion that institution of a Panagra-National interchange or a compulsory through service between Pan American and National would destroy the "connecting link" between National and Braniff which was an integral part of the plan of Latin American air service adopted by the Board in compliance with President Truman's directive in May, 1946, and that "under such circumstances it might be necessary to extend Braniff to Miami, or Eastern to Havana, so that those carriers will connect with one another". He called attention also to the Board's statement that "this would not only serve [fol. 1231] to compensate for any diversion which Eastern

and Braniff would necessarily suffer from a Pan American-Panagra-National interchange, but would also preserve the competitive balance desired by the President and the Board and required by the Civil Aeronautics Act".

Mr. Friendly said that this made it clear that the insistence of the Grace representatives on dealing with National rather than Eastern was leading to a situation in which Braniff, in addition to the support of its own network of routes from Houston to Denver, on the one hand, and Chicago, on the other, (which now appeared likely to be supplemented by a through service agreement with Continental and American to Los Angeles and San Francisco) might have the support of Eastern's system, whereas Panagra would have the support only of National's East Coast route. By insisting on a course in violation of the plan laid out by the Board and the President in 1946, the Grace directors would thus seriously prejudice Panagra. The gain of a few months' time in establishing through-plane service, even if such a gain were attainable, would not justify action so detrimental to the true interests of Panagra, however it might be to the interests of W. R. Grace & Co as owner of 174,000 shares of National's stock.

Mr. Friendly thereupon moved the following resolutions, which were seconded by Mr. Balluder:

> RESOLVED: That the proper officers of this Company be authorized and directed to give notice, pursuant [fol. 1232] to paragraph 2 of the Agreement between Eastern Air Lines, Inc. and Pan American World Airways, Inc. dated January 27, 1951, of this Company's desire to have aircraft of Panagra which have been chartered to Pan American pursuant to Pan American-Panagra Through Flight Agreement for through operation by Pan American between the Canal Zone and Miami, Florida, leased to Eastern for through operation by Eastern over Eastern's Miami-Washington-New York-Boston route, as provided in said agreement; and
>
> FURTHER RESOLVED: That, in accordance with said paragraph 2 of said Agreement, the proper officers

of this Company be and they are hereby authorized and directed to enter into appropriate contracts with Eastern and Pan American of the nature contemplated by said Agreement (including in the case of Pan American any and all modifications of the Through Flight Agreement which are necessary or appropriate) so that aircraft of Panagra shall be included among the interchange aircraft which Eastern agrees to lease for through operation as provided in said Agreement; and

FURTHER RESOLVED: That is not in the best interests of Panagra to consent to any modification of the Agreement dated May 11, 1949 between Panagra and National Airlines, Inc. so that said Agreement might become effective otherwise than as therein provided, or that said Agreement should be approved by the Civil Aeronautics Board, either temporarily or otherwise.

Vote being had, said resolution failed to pass, Messrs Ballinder, Friendly and Leslie voting in favor and Messrs Clark, Ochlert and Shea voting against.

Mr. Friendly referred to a letter written by Mr. Shea under date of October 18, 1950 to Chief Examiner Francis W Brown of the Civil Aeronautics Board enclosing a copy of Supplement No. 2 (Revised) to the abovementioned interchange agreement with National Airlines, purporting to be signed on behalf of the Corporation by Howard L. Clark, Vice President, referring to a statement of counsel for National Airlines that this agreement was subject to [fol. 1233] approval by the Board of Directors of Panagra, and characterizing that statement as being "in error and due to a misunderstanding so far as our company is concerned as neither that agreement nor the enclosed which supersedes it are subject to the approval of our Board". Mr. Friendly stated that in the view of the Pan American directors the statement by National's counsel that Supplement No. 2 required approval by Panagra's Board of Directors was not in error or due to any misunderstanding, as such approval was required under general principles of corporate law, under the agreement between W R Grace

& Co and Pan American Airways Corporation dated July 30, 1946, and under the resolution of Panagra's Board of Directors dated March 31, 1949, wherein any and all agreements necessary to carry out the objectives of the Memorandum of Understanding dated March 30, 1949 between National Airlines, Inc., W R Grace & Co, Pan American Airways, Inc and Pan American-Grace Airways, Inc required approval by Mr. Roig and Mr. Dean—these gentlemen then being the senior representatives of the two owners on Panagra's Board of Directors. He stated that this agreement had been signed without any prior notice to the Pan American directors, that no representative of Pan American had ever approved it, and that he had vigorously objected to it immediately on the original agreement's being brought to his attention.

Mr. Friendly thereupon moved the following resolution, which was seconded by Mr. Balluder:

> [fol. 234] RESOLVED: That Supplement No. 2 (Revised) to the Interchange Agreement between National Airlines, Inc and Pan American-Grace Airways, Inc, purporting to be signed in the name of Pan American-Grace Airways, Inc by Howard L. Clark, Vice President, was executed by said Howard L. Clark without authority and that said agreement was not and is not the act or deed of this Corporation or in any way binding thereon.

Vote being had, said resolution failed to pass, Messrs Balluder, Friendly and Leslie voting in favor and Messrs Clark, Oehlert and Shea voting against.

Mr. Balluder brought up the question of counsel to represent Panagra in proceedings in respect of or arising out of Civil Aeronautics Board Order E-5205. As appeared from Mr. Burns' letter of August 9, 1949 to the Civil Aeronautics Board, Mr. Burns' retainer had been as trial counsel in Docket No. 3500, which had now been dismissed. Mr. Burns had been retained at a time when the two owners of Panagra were avowedly pursuing a common objective, and this retainer had been agreed on by the Pan American

directors in deference to the request of their Grace colleagues and despite the then expressed preference of the Pan American directors that Panagra should be represented by counsel who was less closely affiliated with either of the two owners. Since that time Mr Burns had become a director of W R Grace & Co and thus was disqualified from representing Panagra in a matter where W R Grace & Co had special interests which it might be pursuing to the prejudice of the true interests of Panagra. Mr. Balluder [fol. 1235] thereupon moved the following resolution, which was seconded by Mr. Leslie:

> RESOLVED: That the retainer of John J Burns, Esq. as trial counsel for this Corporation in Docket 3500 does not include any proceedings to be taken in respect of or arising out of Civil Aeronautics Board Order E-5205, and that Panagra should be represented in any such proceedings by disinterested counsel.

Vote being had, said resolution failed to pass, Messrs Balluder, Friendly and Leslie voting in favor and Messrs Clark, Oehlert and Shea voting against.

Mr Friendly stated that in view of the position taken by the Grace directors, the directors nominated by Pan American felt that they would be compelled to retain counsel to represent the Corporation who would defend what they deemed to be the best interests of the Corporation as distinguished from the special interests of W R Grace & Co. He thereupon moved the following resolution which was seconded by Mr. Balluder:

> RESOLVED: That in view of the position taken by the Grace directors and of the belief of the Pan American directors that W R Grace & Co has special interests which are adverse to those of the Corporation, the directors nominated by Pan American World Airways, Inc be authorized to retain counsel for the Corporation in order to present the true interests of the Corporation in any proceedings to be taken in respect of or arising out of Civil Aeronautics Board Order E-5205.

Vote being had, said resolution failed to pass, Messrs Balluder, Friendly and Leslie voting in favor and Messrs Clark, Oehlert and Shea voting against.

There being no further business, the meeting adjourned.

Andrew B. Shea
Chairman

W. F. Cogswell
Secretary of the Meeting

[fol. 1236]

GOVERNMENT'S EXHIBIT 578

TULLAROAN — LIMA — No. 14

from NEW YORK

April 13, 1951 10 pm

1 fourteen
2 O'Connell
3 reports
4 CAB
5 action
6 today
7 as follows quote
8 palmetto
9 nine
10 Joe
11 reports
12 CAB
13 action
14 today
15 as follows quote
16 this afternoon
17 the
18 CAB
19 with
20 all
21 five
22 members
23 participating (in)
24 issued
25 an
26 opinion -(of)
27 and
28 order
29 unanimously
30 approving (of)
31 the
32 interchange -s
33 agreement -s between
34 Panagra and
35 National
36 on a/an
37 temporary
38 basis
39 pending
40 disposition (to)
41 of new
42 omnibus -es

43 proceeding
44 recently
45 instituted
46 sentence
47 the
48 Board -s
49 similarly
50 approved
51 an
52 extension (of)
53 the
54 through
55 flight -s
56 agreement -s between
57 Pan American
58 and Panagra
59 as well as
60 the
61 companion
62 agreement'-s between
63 Pan American
64 and
65 Grace
66 ntence
67 the
68 Board -s
69 decision
70 is
71 comma
72 as
73 required by law
74 comma
75 issued
76 as a
77 tentative
78 opinion -s
79 and all
80 parties
81 are
82 given
83 thirty days
84 within
85 which to
86 except to
87 decisions
88 and to
89 file
90 briefs
91 in connection with
92 it
93 sentence
94 the
95 Board
96 imposed (by)
97 some
98 conditions
99 to its
100 interchange
[fol. 1237]
101 approval
102 but
103 initial
104 examination (of)
105 them
106 does not
107 indicate
108 that they be
109 are of
110 great
111 moment
112 unquote

[fol. 1238]

GOVERNMENT'S EXHIBIT 579

Minutes of Annual Meeting of the Board of Directors of Pan American-Grace Airways, Inc., held at the Office of Pan American World Airways, Inc, 135 East 42nd Street, New York, N Y on the 10th day of May, 1951 at 4:30 o'clock in the afternoon.

PRESENT:

Messrs Erwin Balluder
Howard L Clark
Henry J. Friendly
John C Leslie
B H Oehlert, Jr
Andrew B Shea

being a quorum of the Board.

Mr Shea, President, presided. Mr Cogswell, Secretary, acted as Secretary of the meeting.

The President called for nominations for President. Mr Clark nominated Mr Shea; Mr Oehlert seconded the nomination.

Mr Friendly stated that Mr Shea was not a director of Panagra nominated by Grace and approved by Pan American within the meaning of Section 3 of the Agreement dated July 30, 1946.

Mr Friendly thereupon nominated Mr Wilbur L Morrison for the office of President, which nomination was seconded by Mr Leslie. Mr Friendly stated that Mr Morrison had authorized him to state that, if elected, he would resign all offices that would create interlocking relationships within Section 409 of the Civil Aeronautics Act, pending reelection [fol. 1239] to such offices subject to Civil Aeronautics Board approval and action on an application therefor.

Mr Oehlert stated that Mr Friendly's statement and his nomination of Mr Morrison were out of order under Section 3 of the Agreement dated July 30, 1946 for the following reasons: First, such agreement requires that the Pan American votes be cast for the person nominated by Grace and approved by Pan American, which approval shall not be unreasonably withheld, and, second, Mr Morrison is not within the class described in such agreement.

Vote being had, neither Mr Shea nor Mr Morrison was elected, Messrs Clark, Oehlert and Shea voting for Mr Shea and Messrs Balluder, Friendly and Leslie voting for Mr Morrison.

Mr Shea thereupon stated that inasmuch as neither candidate had received a majority, he continued in office as President under Section 10 of the General Corporation Law of the State of Delaware.

Mr Friendly stated that this point would be decided by another tribunal and that he did not wish to remain silent as it might be construed as an agreement to Mr Shea's statement.

* * *

Mr Friendly thereupon moved the following preambles and resolution which were seconded by Mr Balluder:

> WHEREAS, by Order Serial No. E-5282 the Civil Aeronautics Board has tentatively proposed to grant temporary approval to an agreement between this cor- [fol. 1240] poration and National Airlines, Inc., dated May 11, 1949, on certain conditions set forth in the said Order; and
>
> WHEREAS, by reason of National's repudiation of other agreements made simultaneously with the said agreement of May 11, 1949, all of which agreements were made to carry out a Memorandum of Understanding dated March 30, 1949, between Pan American Airways, Inc., W. R. Grace & Co., National Airlines, Inc., and this Corporation, and of action taken by the Civil Aeronautics Board as a result of such repudiation, the said agreement of May 11, 1949 cannot become effective

in accordance with its terms and would require modification in essential respects both because of the foregoing and because of conditions proposed by the Board if these should be included in any final order; and

WHEREAS, in any event, for reasons indicated in the notice from Pan American World Airways, Inc., dated April 25, 1951, this Corporation is not in a position to charter aircraft to National at Miami for operation over National's Miami-New York route,

NOW, THEREFORE, be it resolved that by reason of the foregoing and of the opportunities afforded to this Corporation by the agreement between Pan American World Airways, Inc. and Eastern Air Lines, Inc., dated January 27, 1951, (1) this Corporation should not hold itself out as being able or desiring to charter the aircraft leased by it under its Through Flight Agreement with Pan American World Airways, Inc. to National Airlines, Inc. for operation over National's Miami-New York route otherwise than on the specific terms and conditions embodied in the agreement dated May 11, 1949, and (2) no officer of the Corporation shall enter into any agreement or understanding, oral or written, with National Airlines, Inc., modifying the said agreement dated May 11, 1949, or take any action to lease aircraft of the Corporation to said National Airlines, Inc. otherwise than on the specific terms and conditions embodied in the agreement dated May 11, 1949.

Vote being had, said resolution failed to pass, Messrs Ballinder, Friendly and Leslie voting in favor and Messrs Clark, Oehlert and Shea voting against.

[fol. 1241] Mr Friendly moved that the minutes of this meeting be promptly prepared and submitted to the directors for approval, and that a copy of such minutes and of the minutes of the meeting of March 30, 1951, when these are prepared and approved, should then be forwarded to the Civil Aeronautics Board. Mr Leslie seconded this motion.

Vote being had, said resolution failed to pass, Messrs Ballinder, Friendly and Leslie voting in favor and Messrs Clark, Ochlert and Shea voting against..

There being no further business, the meeting adjourned.

Andrew B. Shea
Chairman

.....
Secretary

[fol. 1242]

GOVERNMENT'S EXHIBIT 580

May 11, 1951

REGISTERED MAIL

President
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

Dear Sir:

In your letter of April 25, 1951, you purport to terminate pursuant to paragraph 59 thereof certain provisions which relate to the Panagra National Interchange of our "Through Flight Agreement—Supplement No. 5". This paragraph provides in part:

> "59. This Supplement No. 5 shall become effective only in the event that the agreement dated May 11, 1949 between Panagra and National shall become effective, . . ."

May we point out to you that the question whether the agreement of May 11, 1949 between Panagra and National shall become effective is now pending before the Civil Aeronautics Board pursuant to its Order No. E-5282, and your action is, in any event, inappropriate at this time. We cannot accept such withdrawal from Supplement No. 5.

You also filed on April 25, 1951 an "Amendment No. 1 to Application", seeking to amend the application for modification of the Board's Order Serial No. E-570 so as to elimi- [fol. 1243] nate reference to the provisions relating to the Panagra-National Interchange. Inasmuch as the said application now sought to be amended by you was actually a joint application which was filed in your name merely as a matter of convenience, this unilateral action is improper and cannot be recognized.

Very truly yours,

Andrew B. Shea
President
Pan American-Grace Airways, Inc.

[fol. 1244]

GOVERNMENT'S EXHIBIT 581

MEMORANDUM

To: Persons Named Below		From: Vice President and General Counsel	
Dept. or Div.	Various	Dept. or Div.	Legal
Location	Various	Location	New York

Date: May 11, 1951

Subject: PRESIDENCY OF PANAGRA

The annual meeting of the Board of Directors of Pan American-Grace Airways, Inc. was held on May 10, 1951. The Grace nominees to the Board of Directors nominated Mr. Andrew B. Shea, and the Pan American nominees nominated Mr. Wilbur L. Morrison. Each of the candidates received three votes.

Under these circumstances, there is legal doubt whether or not Mr. Shea continues as President of Panagra and, if he continues at all, whether as President *de jure* or *de facto*. It is important that so long as these legal doubts exist Pan American officers and employees should not do anything

which could be argued to be a recognition that Mr. Shea continues to be President.

• • •

Henry J. Friendly

[fol. 1245]

GOVERNMENT'S EXHIBIT 582

PAN AMERICAN WORLD AIRWAYS SYSTEM
Chrysler Building, 135 East 42nd Street, New York 17, N. Y.

Executive Offices

May 29, 1951

Civil Aeronautics Board,
Washington 25, D. C.

Dear Sirs:

Pan American World Airways, Inc. has received a letter dated May 11, 1951, signed by Mr. Andrew B. Shea, as President of Pan American-Grace Airways, Inc., in answer to Pan American's letter of April 25, 1951, a copy of which was attached to Amendment No. 1 to Pan American's application in Docket 3787.

At the organization meeting of the Directors of Pan American-Grace Airways, Inc. held on May 10, 1951, Mr. Shea failed of reelection as President. For this and other reasons, Pan American, and the directors of Pan American-Grace who are our nominees, do not consider that Mr. Shea is authorized to take any position on behalf of Pan American-Grace Airways, Inc. on the matter in question.

Mr. Shea's position with respect to Supplement No. 5 to the Pan American-Panagra Through Flight Agreement is completely untenable. Supplement No. 5 was to become effective only if the agreement dated May 11, 1949, between Panagra and National "shall become effective". This cannot occur, since, as a result of National's repudiation of its agreements and of the action of the Board in Order Serial E-5205, certain of the stated conditions to such effec-

tiveness can no longer be met. Pan American's consent in Supplement No. 5 to any charter to National of aircraft leased by Panagra to Pan American under the Through Flight Agreement was limited to a charter containing the "specific terms and conditions" of the agreement between Panagra and National executed on May 11, 1949. Plainly these cannot now be met.

Even, however, if the foregoing were not the case, Mr. Shea's position would not be aided. By virtue of paragraph 58 of Supplement No. 5, Pan American-Grace Airways, Inc. is under obligation, in the circumstances that have now [fol. 1246] arisen, to terminate the agreement dated May 11, 1949, between itself and National on Pan American's written request. Attached hereto is a copy of a letter dated May 29, 1951, in which Pan American makes such written request.

Mr. Shea is also in error when he refers to Pan American's application in Docket No. 3787 for approval of Supplement No. 5 to the Through Flight Agreement as being "actually a joint application which was filed in your [Pan American's] name merely as a matter of convenience". The application was filed as an individual application by Pan American and not as a joint application of Pan American and Pan American-Grace for reasons of substance and not at all "merely as a matter of convenience". These reasons go back to the original application for approval of the Through Flight Agreement in Docket No. 2423. The application under Section 408 in that docket was filed solely by Pan American as lessee and not jointly by Pan American and Pan American-Grace. This was done in an effort to avoid the difficulties arising out of the steamship control of that company. Pan American-Grace is "a person controlled by a carrier other than an air carrier, or affiliated therewith within the meaning of Section 5 (8) of the Interstate Commerce Act, as amended". If it had filed the application, the latter would have had to pass the test of the second proviso of Section 408 of the Civil Aeronautics Act, namely, that the Board could not approve the application "unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an

air carrier to use aircraft to public advantage in its operation and will not restrain competition". It was recognized that Pan American-Grace could not meet this test. See 8 CAB 50, 55-56. For the same reason Pan American was the sole applicant in Docket No. 3787 seeking approval of Supplement No. 5 to the Through Flight Agreement.

Pan American is, therefore, in a position to amend or withdraw its application in Docket No. 3787 without any need of obtaining the assent of Pan American-Grace. It has withdrawn from its application all provisions of Supplement No. 5 relating to the alleged agreement between Pan American-Grace and National, and there is nothing before the Board on that subject.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. T. TRIPPE
J. T. Trippe.
President.

[fol. 1247]

GOVERNMENT'S EXHIBIT 583

PAN AMERICAN WORLD AIRWAYS SYSTEM
Chrysler Building, 135 East 42nd Street, New York 17, N. Y.

Executive Offices

May 29, 1951

President,
Pan American-Grace Airways, Inc.
7 Hanover Square,
New York, N. Y.

Dear Sir:

Under Supplement No. 5 to the Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated May 11, 1949, paragraph 5a, Pan American-Grace Airways, Inc. agrees that upon our

company's written request Pan American-Grace Airways, Inc. "will exercise its right of termination under paragraph 19, sub-section (2), clauses (ii), (iii), (iv), (v), and (vi)" of the agreement between Pan American-Grace Airways, Inc. and National Airlines, Inc. dated May 11, 1949.

Paragraph 19, sub-section (2), clause (iv), of the agreement between Pan American-Grace Airways, Inc. and National Airlines, Inc. dated May 11, 1949, provides that said agreement shall terminate or may be terminated prior to the expiration of its stated term at the option of Pan American-Grace Airways, Inc. "if National or W. R. Grace & Co. shall fail to perform any of their respective obligations under the agreements between them" and our company referred to in paragraph 18 (4) of said agreement.

Paragraph 18 (4) of said agreement refers to an option agreement between our company and National Airlines, Inc. and an agreement between our company and W. R. Grace & Co., also executed under date of May 11, 1949.

On December 14, 1950, National Airlines, Inc. gave notice to our company that the said stock option agreement "is terminated and of no further force or effect".

Our nominees on the Board of Directors of Pan American-Grace Airways, Inc., and we, as half owner of Pan American-Grace Airways, Inc., have taken the position that the agreement dated May 11, 1949, between Pan American-Grace Airways, Inc. and National Airlines, Inc. cannot become effective by its terms and that it is not within the [fol. 1248] power of the Grace nominees to the Board of Directors of Pan American-Grace Airways, Inc., or the officers of Pan American-Grace Airways, Inc., to make the said agreement effective. Our company also takes the position that the portions of Supplement No. 5 to the Through Flight Agreement between our company and Pan American-Grace Airways, Inc., which relate to the said agreement dated May 11, 1949, between Pan American-Grace Airways, Inc. and National Airlines, Inc. cannot become effective, for reasons stated in our letter of April 25, 1951. Apparently the Grace nominees to the Board of Directors of Pan

American-Grace Airways, Inc. take an opposite position, although the grounds for this have not yet been stated.

Because of this and without prejudice to our position as previously stated, we therefo make formal written request, pursuant to paragraph 58 of the said Supplement No. 5, that Pan American-Grace Airways, Inc. terminate its agreement dated May 11, 1949, with National Airlines as therein provided.

Notice is being given in the manner provided in the Through Flight Agreement without prejudice to any position which our company may be advised to take with respect to the status of the presidency of Pan American-Grace Airways, Inc.

Very truly yours,

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. T. TRIPPE
President.

[fol. 1249]

GOVERNMENT'S EXHIBIT 584

CAHILL, GORDON, ZACHRY & REINDEL
(Cotton & Franklin)
Sixty-Three Wall Street
New York 5

European Office
52 Avenue Des Champs Elysées
Paris, France

John T. Cahill
Thurlow M. Gordon
Harold F. Reindel
James A. Fowler, Jr.
R. Graham Heiner
William W. Dulles
Charles F. Detmar, Jr.
John P. Ohl
Daniel James
Mathias F. Correa
George Nebolsine
Paul W. Williams
John F. Sonnett
Don B. Stookey
Neil C. Head
Fred J. Knauer
Jerrold G. Van Cise
Richard P. Loftus
Loftus E. Becker
John W. Nields

Radio and Cable Addresses
"Cottofrank New York"
"Cottofrank Paris"

June 6, 1951

Fredrick C. Kempner
Paris, France

Civil Aeronautics Board
Washington 25, D. C.

Dear Sirs:

This is with reference to a letter dated May 29, 1951 from Pan American World Airways, Inc., in which the

right and title of Andrew B. Shea to the office of President of Pan American-Grace Airways, Inc. is challenged.

We are enclosing a copy of an opinion from a distinguished law firm in the state of incorporation of Pan American-Grace Airways, Inc., which unequivocally upholds Mr. Shea's right and title to such office.

Cahill, Gordon, Zachry & Reindel.

By John T. Cahill
Attorneys for W. R. Grace & Co.

[fol. 1250]

GOVERNMENT'S EXHIBIT 585

June 21, 1951

Dear Jay:

You mentioned to me the other day that you felt that the Panagra investment has not been too profitable and I thought you would be interested in a few figures.

Attached is a comparison of the Panagra P/L for the first four months of 1951 as compared with the first four months of 1950.

This statement is summarized as follows:

	1950	*1951*
Net Profit After Taxes	$270,918.09	$545,126.16

As you know, our mail pay rate case is still pending before the C.A.B. We are accruing mail pay at the rate fixed by the Board in a Show Cause Order now under revision. We are receiving mail pay at a temporary rate intended to enable us to break even.

The mail pay accrual exceeded mail pay at the temporary rate by $381,553 in 1950 and by $126,555 in 1951.

On the temporary rate basis net income after taxes would be as follows:

	1950		1951
Loss	($ 19,047	Profit	$459,613

Should earnings continue at the same rate throughout the year net profit after taxes on the present mail pay accrual basis would be about $1,600,000 and on the temporary rate basis would be about $1,400,000. Earnings will [fol. 1251] not continue at that rate because of seasonal fluctuations in revenue passenger mileage. Nevertheless, I don't think it would be far out of line to say that on the temporary rate basis the company will net after taxes in the neighborhood of $1,000,000 of which the Grace share, of course, is $500,000.

I have no hesitation in saying either that if the Panagra/National Interchange becomes operative from say August on Panagra's earnings for the year will increase substantially over the million dollar figure.

It might be worth mentioning on the way by that even our efforts in the National case have not been unproductive of a substantial book profit for W. R. Grace & Co. As you know we purchased in March 1949 174,000 shares of National stock at $5.50 per share. The market price is now around $15.50 so that we have a paper profit of $1,740,000 in the stock. We may be forced to dispose of all or a substantial part of these holdings by C.A.B. order but I am sure that we could dispose of the entire holding in a secondary offer at a very slight discount below the market.

Sincerely yours,

J. S. Phipps, Esq.
465 East 57 Street
New York, New York

WGH
Holloway

P.S. I don't want to bore you with a lot of figures but I might mention also the facts that the initial Grace investment in Panagra was $500,000, the present net worth of the company is approximately $10,000,000 (increase entirely out of earnings) and since its inception the company has distributed $1,232,500 to W. R. Grace & Co. in dividends.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 257

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 583

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY, 1962

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78—Passengers carried by the Grace Line between the Atlantic Coast of the United States and the West Coast of South America, 1952-1954	1365	1432
79—Comparison of average monthly passenger traffic carried by air with Panagra participation and by sea on Grace Line between Northeastern United States and West Coast Countries of South America, 1956 and 1957	1366	1433
80—Comparison of average monthly passenger traffic carried by air with Panagra participation and by sea on Grace Line between Northeastern United States and West Coast Countries of South America, 1954 and 1955	1367	1434
81—Comparison of average monthly passenger traffic carried by air with Panagra participation and by sea on Grace Line between Northeastern United States and West Coast Countries of South America, 1952 and 1953	1368	1435
CARGO AND MAIL STATISTICS		
Air Carriers:		
82—Overseas cargo carried by air into and out of New York, by years, 1953-1957	1369	1436
83—Cargo and mail carried by air between Miami and points outside Continental United States, by years, 1951-1957	1370	1437
84—Freight, express and mail carried by air on U. S. flag airlines serving Latin America, 1957	1371	1438

	Original	Print
Record from the United States District Court for the Southern District of New York Continued		
Government's Statistical Exhibits—Continued		
85—Freight, express and mail loaded on U. S. flag airlines serving South America, 1957	1372	1439
SEA CARRIERS:		
86—Cargo carried by sea in liner service between the United States and Latin America, by years, 1951-1957	1373	1440
87—Cargo imports carried by sea in liner service to United States Coastal Areas from the West Coast of South America, 1957	1374	1441
88—Cargo imports carried by sea in liner service to United States Coastal Areas from the West Coast of South America, 1956	1375	1442
89—Cargo imports carried by sea in liner service to United States Coastal Areas from the West Coast of South America, 1955	1376	1443
90—Cargo imports carried by sea in liner service to United States Coastal Areas from the West Coast of South America, 1954	1377	1444
91—Cargo imports carried by sea in liner service to the Atlantic Coast of the United States from the West Coast of South America, 1951-1953 (Trade Route 2)	1378	1445
92—Cargo exports carried by sea in liner service from United States Coastal Areas to the West Coast of South America, 1957	1379	1446
93—Cargo exports carried by sea in liner service from United States Coastal Areas to the West Coast of South America, 1956	1380	1447
94—Cargo exports carried by sea in liner service from United States Coastal Areas to the West Coast of South America, 1955	1381	1448
95—Cargo exports carried by sea in liner service from United States Coastal Areas to the West Coast of South America, 1954	1382	1449

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Statistical Exhibits—Continued		
96—Cargo exports carried by sea in liner service from the Atlantic Coast of the United States to the West Coast of South America, 1951-1953 (Trade Route 2)	1383	1450
COMPARISON OF PANAGRA AND GRACE CARGO TRAFFIC:		
97—Freight, express, and mail loaded on Panagra planes, by cities, 1957	1384	1451
98—Cargo carried by Panagra planes between Miami or the Canal Zone and five cities in West Coast Countries of South America, 1957	1385	1452
99—Cargo carried by the Grace Line between the Atlantic Coast of the United States and the West Coast of South America, by cities (Trade Route 2), 1957	1386	1453
100—Comparison of cargo traffic carried by Panagra planes and by Grace Line between indicated United States Atlantic Coast Points and specified cities in West Coast Countries of South America, 1957	1387	1454
Government's Exhibits:		
1119—Excerpts from the testimony of Juan Trippe in CAB docket 779	1387a	1455
1120—Excerpts from the testimony of Harold Roig in CAB docket 779	1424a	1491
1121—Excerpts from the testimony of H. C. Dobbs, A. E. Sinclair, Robert H. Patchin, Adolph Garni and W. F. Cogswell in CAB docket 779	1445a	1512
1122—Excerpts from the testimony of Juan Trippe in CAB docket 3589	1471	1535

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Government's Exhibits—Continued		
1123—Stipulation between Pan American, W. R. Grace and Panagra with respect to various personnel of the three companies	1485	1547
1124—Stipulation between the United States and Pan American with respect to various acquisitions of airlines in South America by Pan American	1490	1552
1128—CAB opinion in docket No. 4882 et al. dated March 26, 1954 (No. E-8189)	1493	1555
1129—CAB opinion in docket No. 4882 et al. dated November 23, 1954 (Nos. E-9109 and E-9110) and appendices	1502	1570
1131—Letter to Board of Directors, Pan American-Grace Airways, Inc. from Andrew B. Shea dated November 26, 1956	1550	1662
1132—Letter to Andrew B. Shea from Roger Lewis dated November 30, 1956	1560	1668
1134—Letter to Andrew B. Shea from Erwin Balluder, Henry J. Friendly, Roger Lewis, Wilbur L. Morrison, Directors of Pan American-Grace Airways, Inc., dated January 10, 1957	1562	1669
1135—Minutes of adjourned regular meeting of Board of Directors of Pan American-Grace Airways, Inc. held January 10, 1957	1568	1673
1139—Pan American-Grace Airways, Inc. Route Extension Study dated November 1956	1573	1677
General Statement	1574	1677
Balboa–Miami	1579	1680
Miami–New York	1626	1719
Balboa–Mexico City–Los Angeles San Francisco	1674	1760
Annexes A–K	1712	1789

[fol. 1252]

GOVERNMENT'S EXHIBIT 586

PETER GRACE
RITTERSPARK HOTEL
BAD HOMBURG
No. 34 from NEW YORK July 7, 1951

1	thirtyfour
2	from
3	abs
4	cab
5	issued
6	order
7	friday
8	re
9	opening
10	docket
11	4893
12	national
13	grace
14	control
15	case
16	quote
17	to receive
18	evidence
19	solely
20	on the
21	issue of
22	whether
23	grace
24	have acquired
25	control (of)
26	national
27	within
28	the
29	meaning
30	of
31	section
32	fourzeroeight
33	unquote
34	sentence
35	this means
36	a
37	further
38	hearing
39	on
40	control
41	issue
42	with
43	all the
44	attendant
45	delays
46	and might
47	very well
48	consume
49	6 to 8 months
50	and perhaps
51	longer
52	before
53	decision
54	control
55	issue
56	sentence
57	I
58	fear that
59	in view of this
60	order
61	board
62	might
63	decide
64	on
65	own
66	motion
67	or that
68	of our

69 opponent
70 that
71 even
72 temporary
73 approval of
74 interchange
75 should be
76 deferred until
77 disposition
78 of
79 control
80 issue
81 which
82 of course
83 might mean
84 postponement (of)
[fol. 1253]
85 interchange
86 operation
87 for
88 say
89 1 year
90 of what
91 would be
92 worse
93 denial
94 of
95 temporary
96 approval (of)
97 pending
98 outcome
99 balboa
100 new york
101 route
102 pattern
103 proceeding
104 sentence
105 I
106 feel sure
107 that
108 in
109 control
110 case
111 board
112 will order
113 us to
114 sell
115 all or
116 major
117 part
118 our
119 stock (of)
120 interest
121 sentence
122 in view of
123 all of foregoing
124 all
125 here
126 think we should
127 sell
128 stock
129 now
130 thus
131 eliminating
132 control
133 issue
134 altogether
135 and
136 assuring
137 prompt
138 determination
139 interchange
140 sentence
141 from
142 business
143 viewpoint
144 feel that
145 disposing (of)
146 this
147 investment
148 at
149 todays prices

150 and
151 taking into account
152 teds
153 erratic
154 tendencies
155 and
156 probable
157 reduction (of)
158 national
159 mail
160 pay
161 would be
162 attractive
163 operation
164 sentence
165 from panagra
166 viewpoint
157 we might be able to
168 get
169 some
170 indication
171 from
172 board
173 that if
174 stock
175 sold
176 interchange
177 would be
178 approved
179 promptly
180 but even if
[fol. 1254]
181 this
182 impractical
183 action
184 could be
185 dressed
186 up
187 as
188 great
189 gesture
190 by
191 grace
192 again
193 proving
194 our
195 only
196 interest
197 is to
198 help
199 board
200 provide
201 through service
202 in
203 public
204 interest
205 etc.
206 sentence
207 while
208 no immediate
209 decision
210 required
211 please cable
212 your views
213 so that
214 can
215 discuss (with)
216 o'connell
217 cahill
218 both
219 now
220 absent
221 sentence
***

[fol. 1255]

GOVERNMENT'S EXHIBIT 587

TULLAROAN
NEW YORK
No. 45

from BAD HOMBURG

July 9, 1951
9:45 pm

1 45134

(45 your 34)
(34 from abs cab issued order friday re opening docket 4893 national grace control case, etc.)

2 shea
3 I agree
4 entirely
5 with your
6 views
7 as
8 feel
9 the
10 capital
11 gains
12 parade
13 is
14 over
15 in
16 national
17 and that
18 it will probably be
19 long time
20 before
21 it has
22 a
23 much better
24 year
25 than
26 the
27 one
28 closing
29 June 30
30 1951
31 which means
32 we
33 will probably be
34 selling at
35 about
36 the
37 top
38 sentence
39 further
40 as long as
41 baker
42 is about
43 he could
44 always
45 paint
46 any
47 issue
48 we had
49 to his
50 board
51 in such a way that
52 we would
53 probably
54 lose
55 even if

56 we had
57 minority
58 representation
59 sentence
60 only
61 matter
62 that
63 concerns
64 me
65 is
66 capital
67 gains
68 tax
69 and
70 onezerotwo
71 position
72 on
73 approximate
74 one
75 ¼
76 million dollars
77 profit
78 sentence
• • •
152 in any
153 event
[fol. 1256]
154 feel
155 stock
156 should be
157 disposed of
158 immediately
159 you
160 arranging
161 obtain
162 every
163 measure
164 good will.
165 this action
166 presumably
167 using
168 change consonant system
169 merrill
170 lynch
171 to handle
172 special
173 offering
174 if
175 cannot dispose of
176 in
177 manner
178 which would
179 aboid
180 tax
181 liabilities
182 sentence
183 bear in mind (that)
184 change consonant system
185 jock
186 whitney
187 might pay
188 substantial
189 premium
190 to obtain
191 such a
192 big
193 block of
194 an
195 air
196 line
197 as
198 night
199 other
200 large
201 investors
202 who could
203 rarely
204 pick up
205 in
206 one

207	block	212	air
208	this	213	line
209	much	214	sentence
210	of a	• • •	
211	successful		

[fol. 1257]

GOVERNMENT'S EXHIBIT 588

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served:

NATIONAL AIRLINES, INC.
PAN AMERICAN-GRACE AIRWAYS, INC.
INTERCHANGE AGREEMENT

Docket No. 3785

PAN AMERICAN WORLD AIRWAYS, INC.
PAN AMERICAN-GRACE AIRWAYS, INC.
THROUGH FLIGHT AGREEMENT

Docket No. 3787

Decided: July 13, 1951

Tentative opinion granting temporary approval of equipment interchange agreement between National Airlines, Inc., and Pan American-Grace Airways, Inc. (Docket No. 3785), rescinded.

Tentative opinion granting temporary approval of Supplement No. 5 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. (Docket No. 3787) rescinded.

Action certifying record to Board for initial decision on temporary aforesaid agreements rescinded.

• • •

BY THE BOARD:

This opinion involves our consideration of exceptions to our opinion and order of April 12, 1951 tentatively approving for a temporary period an interchange agreement (Docket No. 3785) between National Airlines, Inc. (National) and Pan American-Grace Airways, Inc. (Pan-[fol. 1258] agra) and a supplement to a through flight agreement (Docket No. 3787) between Panagra and Pan American World Airways, Inc. (Pan American).[1] The two agreements taken together provide for through one-plane service between the northeastern part of the United States and various points in South America utilizing Panagra aircraft over the routes of the three carriers parties thereto. Also before us are petitions for reconsideration of our action in the opinion and order of March 16, 1951 certifying the two agreements to the Board for initial decision.[2] In Order Serial No. E-5378, dated May 14, 1951, we consolidated the issues raised by these petitions for oral argument with the argument upon the exceptions to the tentative decision.

* * *

. . . . affect other carriers, and would interfere with a proper disposition of the problem of through service to South America in the *New York-Balboa Through Service Proceeding*. It was also argued that the Board could not [fol. 1259] legally approve the National-Panagra interchange without first deciding the issues raised by the stock holdings of W. R. Grace & Co. (Grace) in National, and that the agreements suffered from certain legal disabilities which made approval impossible. This last argument was

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[1] Order Serial No. E-5282. Pan American, the directors of Panagra who are Pan American nominees, Eastern Air Lines, Inc. (Eastern), Braniff Airways, Inc. (Braniff), Air Line Pilots Association, International (ALPA), the Pan American pilot councils, and the Dade County Port Authority (Greater Miami Traffic Association) filed such exceptions.

[2] Order Serial No. E-5205. Pan American, the directors of Panagra who are Pan American nominees, and Eastern filed such petitions.

predicated on the ground that the effectiveness of the National-Panagra interchange agreement depended on certain conditions precedent which have now failed.

The proponents of the tentative decision opposed each of these contentions. On the affirmative side they urged that the operation of the proposed through service was in the public interest and should be given a chance.

A brief resumé of the factual background of the two agreements before us will give a clear picture of the problems now faced by the Board.

Grace and Pan American are co-owners of Panagra, whose routes extend between Balboa and Buenos Aires, with each owning 50 per cent of the stock of the latter air carrier. The controlling interests were acquired prior to the effective date of the Civil Aeronautics Act and consequently the acquisition never came before the Board for approval. The situation has been productive of a long period of strife between the two co-owners which has principally centered around the future development of Panagra.

The earlier history of this controversy is set forth in our decisions in the Panagra Terminal Investigation[5] and in the [fol. 1260] Latin America Air Service Case.[6] Following the latter decision, which, among other things, awarded Braniff a certificate authorizing it to operate between the United States and South America, Pan American and Panagra (with Grace concurring) agreed upon an arrangement, known as the Through Flight Agreement, under which Panagra's planes with crews could operate between Balboa and Miami over Pan American's route under charter to the latter. This arrangement would enable the two air carriers to provide through one-plane service between Miami and various points on Panagra's routes in South America. There was also a companion management agreement. The whole package was presented to the Board as an effort to settle the long standing difficulties between

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[5] 4 C.A.B. 670 (1944).

[6] *Supra*, 6 C.A.B. at pp. 913-14.

Grace and Pan American. The arrangements were approved by us in May, 1947,[1] for a period of three years which was later extended pending decision on the agreements now before us.

During the winter of 1948-1949, while there was pending a Board investigation of National's routes and operations, National and Grace carried on negotiations for stock purchases and an interchange agreement. This resulted in the purchase by Grace during March, 1949, of approximately 174,000 shares of the stock of National or about 18 per cent of the latter's outstanding shares. Pan American also entered the negotiations with the result that there [fol. 1261] was presented to us for approval a series of transactions embracing the following:

(1) An option by Pan American to acquire 30 per cent of National's stock;

(2) An interchange agreement between National and Pan American by which planes of the latter would operate over National's New York-Miami route under charter to National;

(3) The interchange agreement between National and Panagra which we are now considering;

(4) Supplement No. 5 to the Through Flight Agreement, which we are here also now considering, to extend the latter to 1960 and to give Panagra the right to operate the Panagra aircraft coming into Miami under that agreement over National's route to New York pursuant to the National-Panagra arrangement.

The agreements were so drafted as to condition the effectiveness of the National-Panagra interchange upon Board approval of both the Pan American option to acquire National stock and the Pan American-National interchange.[2] The Supplement to the Through Flight Agreement also contained a provision giving Pan American the right to

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[1] Order Serial No. E-570.

[2] Paragraph 18 of the National-Panagra agreement.

require Panagra to termin · the Panagra-National interchange in the event the c ·aditions precedent noted above were not fulfilled.[9]

Public hearings were held on these arrangements under appropriate provisions of the Civil Aeronautics Act as part of the consolidated proceeding in Docket No. 3500 involving our investigation of National's routes. National, Pan American, Panagra, and Grace all supported the arrangements in these hearings. A substantial delay in the processing of the agreements occurred as a result of the inability of National-Panagra-Pan American to agree on a rate of [fol. 1262] return applicable to the investment in leased aircraft which would be a part of the fee for the lease therefor under the interchange agreements. At one time we ordered dismissal of the arrangements because of the inability of the parties to complete their transactions. We finally concluded, however, that, after the time and effort expended, the public interest lay in our considering the transactions on their merits in spite of the lack of agreement on a rate of return. We, therefore, in the fall of 1950 moved toward a completion of this consideration.

At that juncture National advised Pan American that it did not wish to go forward with the option arrangement by which Pan American was to acquire 30 per cent of its stock but that it did desire to put into effect the two interchange agreements to which it was a party. Pan American refused to go ahead with the interchanges without the stock options and advised both National and Grace accordingly. Pan American also moved the Board to dismiss all of the applications for approval of the transactions. It further made an effort to obtain the consent of the Grace interests to the participation of Panagra in an Eastern-Pan American interchange agreement which was then being negotiated. This was refused and the Panagra management advised the Board that it desired to go forward with the Panagra-National interchange.

This was the situation which confronted us at the time we issued our March 16th order and our tentative opinion

[9] Paragraph 58 of Supplement No. 5.

of April 12th. It was clear that there was no purpose to be [fol. 1263] served in considering the Pan American-National stock option arrangement and the Pan American-National interchange since these had been presented as purely voluntary transactions and one of the two parties to each had withdrawn. We therefore dismissed the applications for their approval.

The National-Panagra interchange and Supplement No. 5 to the Through Flight Agreement appeared to present an entirely different problem. Both National and Panagra's management desired to place their agreement into effect.[1] Neither Panagra nor Pan American had requested dismissal of Supplement No. 5. Thus, it appeared to the Board that the actual parties to the two agreements might be willing to proceed. There also appeared to be general agreement that a through service between points in the northeastern part of the United States and South America was in the public interest and this view had in fact been urged by all parties to the agreements. In addition, more than two years of time and public money had been devoted to consideration of the arrangements. We did not believe that this effort should be wasted.

It was clear that a more comprehensive and long range solution of the through service problem must await further proceedings which in the light of legal requirements would [fol. 1264] take a substantial period of time. We felt that if it were at all feasible some through service should be provided during the interim. This could best be accomplished by a temporary approval of the National-Panagra interchange and the Supplement to the Through Flight Agreement. The facts all pointed to the desirability of considering the Panagra-National interchange and Supplement No. 5 as a means of providing an interim solution to the problem of through service between the northeastern part of the United States and Latin America, even though the National-Pan American transactions had failed.

[1] The management of Panagra asserted the authority to speak for Panagra despite an even split of the carrier's Board of Directors and a challenge to the management's authority by that 50 per cent of the Board of Directors who are Pan American nominees.

The briefs and oral argument have failed to alter our conclusion in the tentative opinion that an interim through service between the areas involved is in the public interest. However, the briefs and argument have focussed our attention upon a number of substantial problems which would have to be met before such an interim service could be put into operation. These are, among others:

(1) There have been emphasized the several procedural problems cited above. These raise substantial questions of law on which there is no clear authority.

(2) There has been raised the question of the impact of the proposed service upon air transportation in the areas involved by the Grace stock acquisitions in National regardless of whether these amount to control of National under section 408 of the Civil Aeronautics Act.

[fol. 1265] This is a problem which will be fully explored in Docket No. 4893, the proceeding inquiring into whether there is Grace control of National, and Docket No. 4882, the New York-Balboa Through Service proceeding.

(3) There has been raised the issue of the impact of the proposed interim service on both Eastern and Braniff, particularly the latter.

(4) Pan American has made it clear that it is unalterably opposed to the temporary operation of the National-Panagra interchange. It has contended that there is no valid agreement without its consent because of the conditions precedent to the effectiveness of the agreement (the National-Pan American interchange and the Pan American stock acquisition in National). It has also exercised the option expressly granted it by Supplement No. 5 to the Through Flight Agreement to call upon Panagra to terminate the Panagra-National interchange. In addition, on April 27, 1951, Pan American modified the application previously filed by it for approval of Supplement No. 5, to ask for approval of only such parts thereof as do not relate to the National-Panagra interchange.

The Panagra management and Grace have argued that the National-Panagra interchange and Supplement No. 5

are valid and existing agreements. They contend that Pan American's present opposition to the National-Panagra arrangement is part of an unlawful plan to restrain com- [fol. 1266] petition. They further argue that the various contract provisions cited above on which Pan American relies are restraining clauses forced on Panagra and are void and unenforceable as restraints of competition violative of public policy and the Sherman Act. They conclude that the National-Panagra interchange can be enforced without these clauses.

If we should make final our tentative opinion and order approving the two agreements now before us, it would be necessary to dispose of all of these serious problems. If we were here considering the question of permanent approval of the agreements and the provision of a permanent through service, such an undertaking would, of course, be a part of our normal responsibilities. However, in our opinion the advantages that would flow from an interim service are not sufficient to warrant undertaking the solution of the foregoing problems, particularly in view of the apparent fact that our efforts would end in a futility. Since the National-Panagra interchange was presented to us as a voluntary proposal, all that we can do by our order is to give it permission to operate. Its immediate activation depends upon the affirmative cooperation of three carriers—National, Panagra, and Pan American. The management agreement between Pan American and Grace with respect to the conduct of the affairs of Panagra obviously is not working. There was a short period of cooperation immediately following the entering into the management [fol. 1267] agreement subsequent to the certification of Braniff in the Latin American Case. As is evident, however, that cooperative effort did not last, and the breach between Grace and Pan American, which is made clear by the briefs and argument in this proceeding, has not only foreclosed such cooperation, but gives every prospect of positive opposition. Such opposition is obviously encouraged by the many substantial legal problems presented. National and Panagra might, of course, after prolonged judicial controversy, establish their right to operate the agreement

as it now stands. However, it is clear that whatever the ultimate outcome might be, there is no chance of the interim service by a cooperative effort of the air carriers concerned which we contemplated being established. There would be merely a further expenditure of the time and effort of the Board and its staff to establish the validity of arrangements which would never be activated. This effort we believe can better be expended in processing as expeditiously as possible our consideration of through service in the New York-Balboa through service proceeding where we have the power to direct through service found to be required in the public convenience and necessity.

National and the Panagra management have suggested that we here simply order the two agreements to be activated. We do not believe that in this proceeding we can take such action. The agreements were presented to us as voluntary arrangements and have so been considered all [fol. 1268] the way through the proceeding. At no time have the parties been given notice of possible compulsory action in the premises by the Board. As indicated above, the new through service proceeding in Docket No. 4882 does contemplate compulsory action to accomplish what may there be found to be in the public interest and the participants have so been placed on notice. However, such action is not here possible.

It is indeed regrettable from the standpoint of United States aviation that the situation created by the parties is such that they cannot voluntarily put into operation on an interim basis the voluntary agreements filed with us and supported by all of them during the public hearings thereon. The reasons therefor grow out of the relationship outlined above and our action here will not solve this inherent difficulty. In this situation we conclude that the balance of the public interest lies in getting on with our efforts in Docket No. 4882 in which the Board can take positive action by requiring the establishment of appropriate interchanges or the granting of appropriate route extensions.

We, therefore, find that it would be inconsistent with and adverse to public interest to make final the temporary ap-

proval tentatively granted the National-Panagra interchange and Supplement No. 5 to the Through Flight Agreement in our opinion and order of April 12th. Accordingly, we will rescind the tentative approval of the aforesaid [fol. 1269] agreements contained in our order of April 12, 1951, Serial No. E-5282, and also rescind paragraphs 5 and 6 of our order dated March 16, 1951, Serial No. E-5205, insofar as said paragraphs certified the record to the Board for initial decision on the issue of temporary approval of such agreements.

It is our intention to expedite the New York-Balboa Through Service proceeding as rapidly as possible to determine the issues surrounding through service to Latin America. A prehearing conference in the proceeding is already scheduled. We have further directed that hearings begin not later than October 1, 1951, and that later procedural steps not be delayed.

An appropriate order will be entered.

Nyrop, Chairman, Ryan, Lee, Adams, and Gurney, Members of the Board, concurred in the above opinion.

[fol. 1270]

GOVERNMENT'S EXHIBIT 589

Minutes of Adjourned Regular Meeting of the Board of Directors of Pan American-Grace Airways, Inc held at the office of Pan American World Airways, Inc, 135 East 42nd Street, New York, N Y on the 18th day of July, 1951 at 4:30 o'clock in the afternoon.

PRESENT:

Messrs Erwin Balluder
Howard L Clark
Henry J Friendly
John C Leslie
H J Roig
Andrew B Shea

being a quorum of the Board.

Mr Shea, President, presided. Mr Cogswell, Secretary, acted as Secretary of the meeting.

* * *

Mr. Balluder called attention to the fact that, by virtue of Civil Aeronautics Board Order No. E-5389, dated May 18, 1951, one of the issues to be considered in the *Through Service* proceeding was whether or not it would be in the public interest for Panagra to participate in the Agreement dated January 27, 1951 between Pan American World Airways, Inc and Eastern Air Lines, Inc, and that another issue to be considered in said proceeding was whether the Board should compel Pan American to enter into an interchange with National at Miami utilizing equipment chartered from Panagra for operation over Pan American's Panama-Miami route. Mr. Balluder stated that question might arise at the prehearing conference as to whether Panagra [fol. 1271] as a company would take any position as to the relative merits of these two proposals, and that he felt this was a matter which the director should discuss.

Mr Friendly stated that, when he and Mr Trippe had taken the proposed agreement with Eastern to Messrs Grace and Shea in January, 1951, the chief reason assigned by Messrs Grace and Shea for preferring an interchange with National was their claim that, because of the hearing which had already been had in Docket No. 3500, an interchange with National could be more readily implemented. This also was the reason assigned in Mr Shea's unauthorized letter of January 25, 1951 to Chairman Rentzel. This argument, of course, would not apply to Docket No. 4882, since the Civil Aeronautics Board would be here considering a permanent solution to the through service problem.

Mr Balluder stated that it seemed evident to Mr Leslie, Mr Friendly and himself that an interchange with Eastern would be far more in Panagra's interest than one with National. An interchange with Eastern would be consistent with the outstanding route pattern and would enable Panagra to compete more effectively with Braniff which had its own domestic system. Since the reason previously as-

signed by the Grace representatives for preferring an arrangement with National did not apply in Docket No. 4882, the directors nominated by Pan American wished to know what the views of their Grace colleagues on this question were.

[fol. 1272] Mr. Shea stated that the primary interest of the Grace representatives on the Panagra Board is that Panagra should come through to New York whether by means of an exchange with National or Eastern or on its own certificate, although the latter question is not presently in Docket No. 4882. He said he considers it in the best interest of Panagra to keep open all three possibilities and if Panagra should support an Eastern interchange, an interchange with National might be impractical.

Mr. Friendly stated that the directors nominated by Pan American were also in favor of a proper interchange arrangement that would bring Panagra's aircraft into New York. However, it seemed evident to them that an interchange with Eastern would be preferable from Panagra's standpoint to one with National, with the prospect of a concomitant Braniff-Eastern interchange which the Civil Aeronautics Board's opinion held out.

Mr. Balluder thereupon offered the following motion, which was seconded by Mr. Leslie:

> WHEREAS, participation by Panagra in the interchange agreement between Eastern Air Lines, Inc. and Pan American World Airways, Inc. dated January 27, 1951, would be consistent with the plan of Latin American air service adopted by the Civil Aeronautics Board and the President in 1946, and would be advantageous to Panagra; and
>
> WHEREAS, on the contrary, a compulsory interchange between Pan American and National at Miami, utilizing Panagra equipment chartered to Pan American for operation between the Canal Zone and Miami [fol. 1273] and return, would be destructive of the said plan of Latin American air service and, as indicated in opinions of the Civil Aeronautics Board, would probably lead to extension of Eastern to Havana to

connect with Braniff or of Braniff to Miami to connect with Eastern, either of which would be disadvantageous to Panagra;

NOW, THEREFORE, BE IT RESOLVED: That the officers of Panagra be and they hereby are authorized and directed to advise the Civil Aeronautics Board that Panagra is willing that its aircraft now chartered to Pan American for operation between the Canal Zone and Miami and return should be further chartered to Eastern for operation north of Miami substantially as provided for in the above-mentioned agreement between Pan American and Eastern, and to take all steps in proceedings before the Civil Aeronautics Board that are appropriate to obtaining approval thereof.

Vote being had, said resolution failed to pass, Messrs. Balluder, Friendly and Leslie voting in favor and Messrs. Clark, Roig and Shea voting against.

Mr. Friendly stated he could see why the directors nominated by Grace would not want to burn any bridges and that it had occurred to him that their negative vote on Mr. Balluder's motion might have been occasioned by objections to the preambles. The interest of the directors nominated by Pan American was in obtaining a declaration that Panagra would be willing to participate in an interchange with Eastern if this were approved by the Board, and it seemed to him that Mr. Shea's initial statement made it clear that this was in fact the case. He thereupon moved the following resolution, which was seconded by Mr. Balluder:

RESOLVED: That the officers of Panagra be and they hereby are authorized and directed to advise the [fol. 1274] Civil Aeronautics Board that Panagra would be willing that its aircraft now chartered to Pan American for operation between the Canal Zone and Miami and return should be further chartered to Eastern for operation north of Miami substantially as provided in the agreement dated January 27, 1951 be-

tween Pan American World Airways, Inc and Eastern Air Lines, Inc, in the event that such agreement should be approved by the Civil Aeronautics Board.

Voting being had, said resolution failed to pass, Messrs. Balluder, Friendly and Leslie voting in favor and Messrs Clark, Roig and Shea voting against.

In respect to the foregoing resolution, Mr. Shea pointed out that Panagra's position is a delicate one in view of pending decision of the Civil Aeronautics Board on the National interchange.

Mr. Balluder stated that, in view of the equal division of opinion among the directors, he assumed that Panagra as a company would take no position with respect to the relative merits of the proposals as to the further chartering to National, on the one hand, or to Eastern, on the other, of Panagra's aircraft which are chartered to Pan American for operation between the Canal Zone and Miami, and return. He asked for a confirmation from Mr. Shea on this point.

Mr. Shea stated that as chief executive he could not give this confirmation and that he intended to express the views that he thought would best serve the interests of the company.

* * *

There being no further business, the meeting adjourned.

.....
Chairman

.....
Secretary

[fol. 1275]

GOVERNMENT'S EXHIBIT 590

"WU021 LONG PD WASHINGTON DC JULY 23 1045A HENRY FRIENDLY PAN AMERICAN AIRWAYS INC THE FOLLOWING TELEGRAM HAS TODAY BEEN SENT TO EXAMINER JAMES S. KEITH. QUOTE G T BAKER HAS PURCHASED THE 174,000 SHARES OF NATIONAL AIRLINE STOCK FORMERLY OWNED BY W R GRACE & CO WE SUBMIT NOTHING WILL BE GAINED BY CONTINUING INVESTIGATION OS STOCK ACQUISITION DOCKET NO 4893 AND W R GRACE & CO JOINS NATIONAL IN REQUESTING DISMISSAL OF THIS PROCEEDING INCLUDING CANCELLATION OF PREHEARING CONFERENCE COPIES TO COUNSEL FOR PAN AMERICAN BRANIFF EASTERN AND BUREAU COUNSEL UNQUOTE

JOHN W CROSS

[fol. 1276]

GOVERNMENT'S EXHIBIT 591

CONFIDENTIAL January 17, 1952

MEMORANDUM

At Mr. Peter Grace's request, I met with him at lunch today at the Cload Club. During the luncheon, he stated his objectives were:

(1) To ask whether we would be willing to vote in favor of Mr. Howard Clark as President of Panagra so as to relieve Mr. Shea whom he said was too valuable a man to be occupied to the extent required as President of Panagra. He stated that Grace & Co. had taken a 20% interest in a Baltimore chemical company and had become very active in that industry both here and in Germany—that he personally had made a half a dozen trips to Europe and also to South America during the past year on general Grace business and wanted to use Mr. Shea's full time to take over more of this work.

(2) He wished to inquire whether we were not prepared to drop the pending action before the CAB. He stated that if it went forward, the Department of Justice would probably intervene, and that the ultimate result could well be both Grace and Pan American being separated from Panagra.

He stated the fight, if it went forward, could be a dirty one with no holds barred; that Mr. Cahill had planned on a number of maneuvers which would be most embarrassing to Pan American inferring that the Grace directors, with this objective, would soon make a request on the Panagra Board for authority to apply for new routes.

He stated that the Government had supported Panagra through subsidies as an "independent entity" over the years, and that as such it was entitled to operate entirely independent of Pan American and to achieve its ultimate destiny of operating an airline between Buenos Aires and New York.

He stated Grace & Co. was unhappy with the interchange agreement which contemplated its aircraft being turned over to Pan American at the Canal Zone. He pointed out that some of his friends had complained about the kind of breakfast that Pan American had placed aboard the ship at the Zone stating this adversely affected Panagra although Panagra was not responsible.

I briefly referred to the fact that Pan American also was unhappy; that we had entered a partnership with Grace in [fol. 1277] good faith in 1928 under certain definite provisions contemplating the West Coast extension would operate under our management and as an extension and integral part of the Pan American system. This relationship has been amended with respect to management in an effort to appease Grace in 1939, and further amended in 1946, all in an effort to bring about peace and harmony between the two stockholders. Mr. Grace stated that the 1946 agreement was simply a reaffirmation of the 1939 agreement—no new changes in control were provided for. He went on to say that the situation continued unchanged until the meetings in January between Mr. Shea and himself and Mr. Friendly and myself when he and Mr. Shea refused to acquiesce in our suggestion that an interchange agreement

be made with Eastern. He readily admitted that he and Mr. Shea had made a grave mistake at that time and were now publicly admitting it before the Board. It was for that reason he said that he had taken his pride in his hands and asked for the meeting today.

Mr. Grace stated were we to withdraw our petition before the CAB, the situation would revert to that which obtained a year ago when Mr. Shea and he had refused to join us in having Panagra conclude an interchange agreement with Eastern. Were we to withdraw our petition to oust them from the management, he felt there could be harmony between the two stockholders—there being no other present differences between us that he knew of.

He reaffirmed, however, that under no conditions would Grace willingly relinquish its management of Panagra. He said he considered Grace was turning in a fine management job and he questioned whether this would be the case under Pan American management because of the, as he saw it, serious conflict of interests and competitive nature of the two operations in Latin America.

He reaffirmed his view that the Government had invested much money in subsidizing Panagra, and that the company was therefore entitled to operate as an independent enterprise. His ultimate objective, he stated was to have Panagra operate in its own name between New York and Buenos Aires, and he knew this never would be achieved under Pan American management.

He stated Pan American had done a magnificent job—the best in the industry. He said its management was considered "absolute tops" and he paid me the compliment of saying that he thought I was one of the best executives in the country.

He stated if we went ahead with the petition to oust Grace from the Panagra management, all his directors knew they [fol. 1278] were in for the toughest sort of fight, and that there was a real chance they would ultimately be ousted—but in the fracas he stated he was confident Pan American also would be hurt.

Mr. Grace stated he was leaving for California the end of next week, and he would hope that by Wednesday, January 23, I would let him know whether (a) Pan American would agree to withdraw its petition before the CAB, and (b) Whether, in that event, we would agree to elect Mr. Howard Clark as President of Panagra. I indicated I would let him know our decision at that time or before after conferring with my associates.

J. T. T.

[fol. 1284]

Preliminary Statement With Respect to Certain Statistical Sources Used

INS statistics

The Immigration and Naturalization Service of the U.S. Department of Justice has for many years compiled statistics on passenger travel by air and by sea from manifests or lists of passengers entering or leaving the United States. These statistics, referred to herein as "INS statistics," include both revenue and non-revenue passengers traveling on commercial (either scheduled or non-scheduled) and private vessels or planes, but exclude crew personnel, U.S. military personnel on military craft, and sea cruise traffic.

The passengers are recorded by the INS according to the foreign country at which they disembarked from the craft that carried them out of the U.S., or the foreign country at which they embarked on the craft that brought them into the U.S.[1] Thus, the U.S.-South American traffic presented herein from this statistical source includes only those passengers who sailed or flew all the way to South America (or from South America) on the same vessel or plane on which they left the U.S. (or arrived in the U.S.). Passengers traveling between the U.S. and South America who changed vessels or planes at some Central American or Caribbean Island point are not covered by these statistics.

[fol. 1285] The point of departure from the U.S. (or point of arrival in the U.S.) is recorded by the INS according to the place at which the passenger boarded (or disembarked from) the same vessel or plane that sailed or flew him out of the U.S. (or into the U.S.). No information is tabulated by the INS on the origin or destination of the complete journey of the travelers, nor on the names of the operators of the ships or planes involved, but a breakdown is provided which shows the number of passengers who used U.S. flag and foreign flag carriers.

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[1] No data are tabulated for individual ports within a foreign country.

O-D Survey of CAB

The Civil Aeronautics Board compiles statistics on passengers traveling by air outside the United States in two months of each year—March and September—which are presented in the International Section of a report entitled *Origin-Destination Airline Revenue Passenger Survey*, referred to herein as the "O-D Survey." These statistics are compiled on the basis of tickets lifted from revenue passengers in the two months on scheduled flights in which a certificated U.S. flag air carrier participated. This survey does not cover any non-revenue passengers and any passengers on non-scheduled flights or on private craft (these types of passengers are included in the INS statistics). The O-D Survey data presented herein were derived from a special machine tabulation prepared by the CAB from the same punch cards that were used in preparing the International Section of the report referred to above.

[fol. 1286] The O-D Survey provides the points of origin and destination of the complete air journeys of the passengers (as indicated by their tickets), and the names of the U.S. flag air carriers (including also connections with U.S. domestic air carriers and foreign flag air carriers, if any) who participated on such journeys. Passengers originating air journeys in the U.S. and completing such journeys in South America (or completing journeys in the U.S. which originated in South America) are included in the U.S. South American air traffic figures for U.S. flag carriers in the exhibits herein which were compiled from the O-D Survey. It is to be noted that these data include passengers who changed planes at Central American or Caribbean Island points (such passengers are missed by the INS statistics, as noted above).

It should also be observed that the O-D Survey figures reflect more precisely than the INS statistics the sections of the United States from (or to) which the U.S.-South American traffic is generated (or destined), and the South American countries of final destination (or origin) of such traffic. In addition, the O-D Survey provides information (not available from the INS) which makes it possible to determine how many of the U.S.-South American air pas-

sengers were carried on their journeys with Pan American or Panagra participation, as indicated herein in the exhibits which present data for U.S. flag carriers from that Survey. (Note: No data are presented for 1951 since the O-D Survey was not published for either March or September of that year.)

[fol. 1287] Maritime Administration Records

The Maritime Administration maintains machine tabulation records which include data on the number of passengers and tons of dry cargo carried each year by all U.S. flag and foreign flag vessels on designated sea trade routes connecting certain coastal areas of the United States with specified foreign coastal areas. These records were prepared on the basis of reports filed for individual voyages on Forms MA-7801 and 7802 by the ship operators of dry cargo vessels that entered or cleared United States ports during the year. Statistics compiled from these records are presented herein for liner service operations on three trade routes—two of which are served by the Grace Line and one by a Grace affiliate (Gulf and South American Steamship Co.)—which link the principal U.S. coastal areas with the West Coast of South America. Data for the Grace Line and its affiliate were secured largely from these machine tabulation records, but in certain instances when sufficiently detailed information was not shown (such as data for separate ports) a special hand tabulation was made from information appearing on the forms filed with the Maritime Administration by the Grace Line for individual voyages.

The classification of vessels in liner service is that used by the Maritime Administration. The Grace Line and its affiliate (Gulf and South American Steamship Co.) are liner service operators, which means they are common carriers that conduct scheduled berth-service operations. Liner service does not include industrial service operations (sailings in connection with the industrial operation of a specific firm), tramp vessels, and other types of irregular or unscheduled sailings.

[fol. 1288]

GOVERNMENT'S STATISTICAL EXHIBIT 1

PASSENGERS CARRIED BY AIR AND BY SEA BETWEEN THE UNITED STATES AND SOUTH AMERICA, 1931-57

Year 1/	Total Number of Passengers	By Air		By Sea	
		Number	% of Total	Number	% of Total
1931	23,784	130	.5	23,654	99.5
1932	17,948	269	1.5	17,679	98.5
1933	15,294	339	2.2	14,955	97.8
1934	17,397	522	3.0	16,875	97.0
1935	19,250	576	3.0	18,674	97.0
1936	24,011	640	2.7	23,371	97.3
1937	27,123	1,522	5.6	25,601	94.4
1938	27,426	1,390	5.1	26,036	94.9
1939	30,123	2,254	7.5	27,869	92.5
1940	38,284	2,662	7.0	35,622	93.0
1941	42,439	3,769	8.9	38,670	91.1
1942	33,138	12,495	37.7	20,643	62.3
1943	43,657	40,957	93.8	2,700	6.2
1944	27,495	24,954	90.8	2,541	9.2
1945	21,716	18,762	86.4	2,954	13.6
1946	37,135	24,400	65.7	12,735	34.3
1947	73,525	53,707	73.0	19,818	27.0
1948	130,121	91,113	70.0	39,008	30.0
1949	135,871	90,180	66.4	45,691	33.6
1950	130,812	88,179	67.4	42,633	32.6
1951	157,106	122,835	78.2	34,271	21.8
1952	163,737	127,940	78.1	35,797	21.9
1953	160,593	127,250	79.2	33,343	20.8
1954	174,348	140,635	80.7	33,713	19.3
1955	189,979	154,930	81.6	35,049	18.4
1956	212,213	178,844	84.3	33,369	15.7
1957	252,252	211,641	83.9	40,611	16.1

1/ Fiscal years ending June 30 for 1931 through 1949; calendar years for 1950 through 1957.

SOURCE: Immigration and Naturalization Service, United States Department of Justice.

[fol. 1290]

GOVERNMENT'S STATISTICAL EXHIBIT 3

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1957

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and South America				
Total U.S. flag	10,819	13,447	12,133	100.0
Pan American and Panagra	8,481	9,770	9,126	75.2
Pan American 1/	5,260	6,668	5,964	49.1
Panagra participation	3,221	3,102	3,162	26.1
With Pan American	2,900	2,893		
With other airlines	321	209		
Other U.S. flag carriers	2,338	3,677	3,007	24.8
Between Eastern U.S. 2/ and South America				
Total U.S. flag	6,658	8,713	7,685	100.0
Pan American and Panagra	6,067	7,493	6,779	88.2
Pan American 1/	3,856	5,137	4,496	58.5
Panagra participation	2,211	2,356	2,283	29.7
With Pan American	2,022	2,222		
With other airlines	189	134		
Other U.S. flag carriers	591	1,220	906	11.8

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-1 Survey of CAB.

[fol. 1291]

GOVERNMENT'S STATISTICAL EXHIBIT 4

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1956

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and South America				
Total U.S. flag	9,042	11,642	10,342	100.0
Pan American and Panagra	7,280	9,052	8,166	79.0
Pan American 1/	4,480	5,675	5,078	49.1
Panagra participation	2,800	3,377	3,088	29.9
With Pan American	2,672	3,293		
With other airlines	128	84		
Other U.S. flag carriers	1,762	2,590	2,176	21.0
Between Eastern U.S. 2/ and South America				
Total U.S. flag	5,956	7,551	6,754	100.0
Pan American and Panagra	5,433	6,859	6,146	91.0
Pan American 1/	3,369	4,304	3,836	56.8
Panagra participation	2,064	2,555	2,310	34.2
With Pan American	1,977	2,504		
With other airlines	87	51		
Other U.S. flag carriers	523	692	608	9.0

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1292]

GOVERNMENT'S STATISTICAL EXHIBIT 5

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1955

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and South America				
Total U.S. flag	9,327	10,355	9,841	100.0
Pan American and Panagra	7,608	8,039	7,824	79.5
Pan American 1/	4,597	4,987	4,792	48.7
Panagra participation	3,011	3,052	3,032	30.8
With Pan American	2,833	2,960		
With other airlines	178	92		
Other U.S. flag carriers	1,719	2,316	2,017	20.5
Between Eastern U.S. 2/ and South America				
Total U.S. flag	5,909	6,859	6,384	100.0
Pan American and Panagra	5,355	6,119	5,737	89.9
Pan American 1/	3,317	3,853	3,585	56.2
Panagra participation	2,038	2,266	2,152	33.7
With Pan American	1,945	2,199		
With other airlines	93	67		
Other U.S. flag carriers	554	740	647	10.1

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1293]

GOVERNMENT'S STATISTICAL EXHIBIT 6

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1954

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and South America				
Total U.S. flag	7,656	10,322	8,989	100.0
Pan American and Panagra	5,976	8,290	7,133	79.3
Pan American 1/	3,923	5,458	4,691	52.2
Panagra participation	2,053	3,002	2,528	28.1
With Pan American	1,987	2,932		
With other airlines	66	70		
Other U.S. flag carriers	1,680	2,032	1,856	20.7
Between Eastern U.S. 2/ and South America				
Total U.S. flag	5,071	7,073	6,074	100.0
Pan American and Panagra	4,475	6,479	5,475	90.1
Pan American 1/	3,079	4,199	3,639	59.9
Panagra participation	1,396	2,277	1,836	30.2
With Pan American	1,358	2,240		
With other airlines	38	37		
Other U.S. flag carriers	596	602	599	9.9

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1294]

GOVERNMENT'S STATISTICAL EXHIBIT 7

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1953

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and South America				
Total U.S. flag	6,803	8,451	7,627	100.0
Pan American and Panagra	5,162	6,555	5,858	76.8
Pan American 1/	3,232	4,063	3,647	47.8
Panagra participation	1,930	2,492	2,211	29.0
With Pan American	1,880	2,433		
With other airlines	50	59		
Other U.S. flag carriers	1,641	1,896	1,769	23.2
Between Eastern U.S. 2/ and South America				
Total U.S. flag	4,565	5,855	5,210	100.0
Pan American and Panagra	3,966	5,311	4,639	89.0
Pan American 1/	2,523	3,354	2,939	56.4
Panagra participation	1,443	1,957	1,700	32.6
With Pan American	1,411	1,913		
With other airlines	32	44		
Other U.S. flag carriers	599	544	571	11.0

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1295]

GOVERNMENT'S STATISTICAL EXHIBIT 8

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1952

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and South America				
Total U.S. flag	7,793	8,338	8,065	100.0
Pan American and Panagra	6,562	6,361	6,461	80.1
Pan American 1/	4,780	4,179	4,479	55.5
Panagra participation	1,782	2,182	1,982	24.6
With Pan American	1,750	2,133		
With other airlines	32	49		
Other U.S. flag carriers	1,231	1,977	1,604	19.9
Between Eastern U.S. 2/ and South America				
Total U.S. flag	5,835	5,787	5,811	100.0
Pan American and Panagra	5,422	5,118	5,270	90.7
Pan American 1/	4,048	3,398	3,723	64.1
Panagra participation	1,374	1,720	1,547	26.6
With Pan American	1,363	1,691		
With other airlines	11	29		
Other U.S. flag carriers	413	669	541	9.3

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1296]

GOVERNMENT'S STATISTICAL EXHIBIT 9

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1950

Areas	Number of Passengers March	Number of Passengers September	Average per month Number	Average per month % of total
Between U.S. and South America				
Total U.S. flag	4,734	9,695	7,214	100.0
Pan American and Panagra	4,006	8,703	6,354	88.1
Pan American 1/	2,652	6,321	4,486	62.2
Panagra participation	1,354	2,382	1,868	25.9
With Pan American	1,336	2,359		
With other airlines	18	23		
Other U.S. flag carriers	728	992	860	11.9
Between Eastern U.S. 2/ and South America				
Total U.S. flag	3,593	8,175	5,884	100.0
Pan American and Panagra	3,467	7,859	5,663	96.2
Pan American 1/	2,328	5,822	4,075	69.2
Panagra participation	1,139	2,037	1,588	27.0
With Pan American	1,134	2,003		
With other airlines	5	12		
Other U.S. flag carriers	126	316	221	3.8

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1297]

GOVERNMENT'S STATISTICAL EXHIBIT 10

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1957

Areas	Number of Passengers March	Number of Passengers September	Average per month Number	Average per month % of total
Between U.S. and Western South America 3/				
Total U.S. flag	2,633	2,895	2,764	100.0
Pan American and Panagra	2,271	2,381	2,326	84.2
Pan American 1/	123	131	127	4.6
Panagra participation	2,148	2,250	2,199	79.6
With Pan American	1,937	2,133		
With other airlines	211	117		
Other U.S. flag carriers	362	514	438	15.8
Between Eastern U.S. 2/ and Western South America 3/				
Total U.S. flag	1,757	2,079	1,918	100.0
Pan American and Panagra	1,600	1,824	1,712	89.3
Pan American 1/	72	64	68	3.6
Panagra participation	1,528	1,760	1,644	85.7
With Pan American	1,400	1,678		
With other airlines	128	82		
Other U.S. flag carriers	157	255	206	10.7

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

SOURCE: O-D Survey of CAB.

[fol. 1298]

GOVERNMENT'S STATISTICAL EXHIBIT 11

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1956

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Western South America 3/				
Total U.S. flag	2,438	3,042	2,740	100.0
Pan American and Panagra	2,203	2,663	2,433	88.8
Pan American 1/	183	97	140	5.1
Panagra participation	2,020	2,566	2,293	83.7
With Pan American	1,934	2,496		
With other airlines	86	70		
Other U.S. flag carriers	235	379	307	11.2
Between Eastern U.S. 2/ and Western South America 3/				
Total U.S. flag	1,753	2,191	1,972	100.0
Pan American and Panagra	1,623	2,015	1,819	92.2
Pan American 1/	107	67	87	4.4
Panagra participation	1,516	1,948	1,732	87.8
With Pan American	1,459	1,907		
With other airlines	57	41		
Other U.S. flag carriers	130	176	153	7.8

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

SOURCE: O-D Survey of CAB.

[fol. 1299]

GOVERNMENT'S STATISTICAL EXHIBIT 12

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1955

Areas	Number of passengers March	Number of passengers September	Average per month Number	Average per month % of total
Between U.S. and Western South America 3/				
Total U.S. flag	2,415	2,776	2,596	100.0
Pan American and Panagra	2,116	2,379	2,248	86.6
Pan American 1/	129	163	146	5.6
Panagra participation	1,987	2,216	2,102	81.0
With Pan American	1,858	2,158		
With other airlines	129	58		
Other U.S. flag carriers	299	397	348	13.4
Between Eastern U.S. 2/ and Western South America 3/				
Total U.S. flag	1,698	2,061	1,880	100.0
Pan American and Panagra	1,521	1,840	1,681	89.4
Pan American 1/	72	132	102	5.4
Panagra participation	1,449	1,708	1,579	84.0
With Pan American	1,387	1,660		
With other airlines	62	48		
Other U.S. flag carriers	177	221	199	10.6

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

SOURCE: O-D Survey of CAB.

[fol. 1300]

GOVERNMENT'S STATISTICAL EXHIBIT 13

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1954

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Western South America 3/				
Total U.S. flag	1,585	2,456	2,021	100.0
Pan American and Panagra	1,335	2,217	1,776	87.9
Pan American 1/	62	67	64	3.2
Panagra participation	1,273	2,150	1,712	84.7
With Pan American	1,235	2,100		
With other airlines	38	50		
Other U.S. flag carriers	250	239	245	12.1
Between Eastern U.S. 2/ and Western South America 3/				
Total U.S. flag	1,067	1,819	1,443	100.0
Pan American and Panagra	949	1,708	1,329	92.1
Pan American 1/	38	42	40	2.8
Panagra participation	911	1,666	1,289	89.3
With Pan American	893	1,637		
With other airlines	18	29		
Other U.S. flag carriers	118	111	114	7.9

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

SOURCE: O-D Survey of CAB.

[fol. 1301]

GOVERNMENT'S STATISTICAL EXHIBIT 14

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1953

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Western South America 2/				
Total U.S. flag	1,879	2,279	2,079	100.0
Pan American and Panagra	1,498	2,001	1,749	84.1
Pan American 1/	81	52	66	3.2
Panagra participation	1,417	1,949	1,683	80.9
With Pan American	1,371	1,905		
With other airlines	46	44		
Other U.S. flag carriers	381	278	330	15.9
Between Eastern U.S. 2/ and Western South America 3/				
Total U.S. flag	1,311	1,759	1,535	100.0
Pan American and Panagra	1,129	1,612	1,371	89.3
Pan American 1/	60	50	55	3.6
Panagra participation	1,069	1,562	1,316	85.7
With Pan American	1,039	1,530		
With other airlines	30	32		
Other U.S. flag carriers	182	147	164	10.7

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

SOURCE: O-D Survey of CAB.

[fol. 1302]

GOVERNMENT'S STATISTICAL EXHIBIT 15

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1952

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Western South America 3/				
Total U.S. flag	1,588	2,001	1,794	100.0
Pan American and Panagra	1,344	1,656	1,500	83.6
Pan American 1/	44	44	44	2.4
Panagra participation	1,300	1,612	1,456	81.2
With Pan American	1,276	1,570		
With other airlines	24	42		
Other U.S. flag carriers	244	345	294	16.4
Between Eastern U.S. 2/ and Western South America 3/				
Total U.S. flag	1,222	1,503	1,363	100.0
Pan American and Panagra	1,084	1,310	1,197	87.8
Pan American 1/	36	32	34	2.5
Panagra participation	1,048	1,278	1,163	85.3
With Pan American	1,043	1,253		
With other airlines	5	25		
Other U.S. flag carriers	138	193	166	12.2

1/ With no Panagra participation.

2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

3/ Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

SOURCE: O-D Survey of CAB.

[fol. 1303]

GOVERNMENT'S STATISTICAL EXHIBIT 16

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1950

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Western South America 3/				
Total U.S. flag	1,111	1,793	1,452	100.0
Pan American and Panagra	959	1,600	1,279	88.1
Pan American 1/	21	35	28	1.9
Panagra participation	938	1,565	1,251	86.2
With Pan American	928	1,555		
With other airlines	10	10		
Other U.S. flag carriers	152	193	173	11.9
Between Eastern U.S. 2/ and Western South America 3/				
Total U.S. flag	878	1,498	1,188	100.0
Pan American and Panagra	831	1,423	1,127	94.9
Pan American 1/	18	28	23	2.0
Panagra participation	813	1,395	1,104	92.9
With Pan American	812	1,388		
With other airlines	1	7		
Other U.S. flag carriers	47	75	61	5.1

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

SOURCE: GPD Survey of CAB.

[fol. 1304]

GOVERNMENT'S STATISTICAL EXHIBIT 17

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1957

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Eastern South America 3/				
Total U.S. flag	6,391	9,186	7,788	100.0
Pan American and Panagra	4,485	6,155	5,320	68.3
Pan American 1/	4,321	6,027	5,174	66.4
Panagra participation	164	128	146	1.9
With Pan American	134	114		
With other airlines	30	14		
Other U.S. flag carriers	1,906	3,031	2,468	31.7
Between Eastern U.S. 2/ and Eastern South America 3/				
Total U.S. flag	3,792	5,669	4,730	100.0
Pan American and Panagra	3,393	4,788	4,090	86.5
Pan American 1/	3,294	4,702	3,998	84.5
Panagra participation	99	86	92	2.0
With Pan American	83	75		
With other airlines	16	11		
Other U.S. flag carriers	399	881	640	13.5

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Eastern Colombia, Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: O-D Survey of CAB.

[fol. 1305]

GOVERNMENT'S STATISTICAL EXHIBIT 18

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1958

Areas	Number of passengers March	Number of passengers September	Average per month Number	Average per month % of total
Between U.S. and Eastern South America 3/				
Total U.S. flag	5,390	7,418	6,408	100.0
Pan American and Panagra	3,967	5,302	4,634	72.3
Pan American 1/	3,821	5,207	4,514	70.4
Panagra participation	146	95	120	1.9
With Pan American	124	87		
With other airlines	22	8		
Other U.S. flag carriers	1,431	2,116	1,774	27.7
Between Eastern U.S. 2/ and Eastern South America 3/				
Total U.S. flag	3,406	4,550	3,978	100.0
Pan American and Panagra	3,055	4,076	3,565	89.6
Pan American 1/	2,966	4,005	3,485	87.6
Panagra participation	89	71	80	2.0
With Pan American	71	63		
With other airlines	18	8		
Other U.S. flag carriers	351	474	413	10.4

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Eastern Colombia, Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: O-D Survey of CAB.

[fol. 1306]

GOVERNMENT'S STATISTICAL EXHIBIT 19

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1955

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Eastern South America 3/				
Total U.S. flag	5,248	6,327	5,787	100.0
Pan American and Panagra	3,911	4,536	4,223	73.0
Pan American 1/	3,800	4,437	4,118	71.2
Panagra participation	111	99	105	1.8
With Pan American	102	93		
With other airlines	9	6		
Other U.S. flag carriers	1,337	1,791	1,564	27.0
Between Eastern U.S. 2/ and Eastern South America 3/				
Total U.S. flag	3,218	4,024	3,621	100.0
Pan American and Panagra	2,887	3,560	3,223	89.0
Pan American 1/	2,819	3,483	3,151	87.0
Panagra participation	68	77	72	2.0
With Pan American	63	71		
With other airlines	5	6		
Other U.S. flag carriers	331	464	398	11.0

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Eastern Colombia, Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: O-D Survey of CAB.

[fol. 1307]

GOVERNMENT'S STATISTICAL EXHIBIT 20

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1954

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Eastern South America 3/				
Total U.S. flag	4,723	6,670	5,696	100.0
Pan American and Panagra	3,396	4,928	4,162	73.1
Pan American 1/	3,345	4,817	4,081	71.7
Panagra participation	51	111	81	1.4
With Pan American	49	109		
With other airlines	2	2		
Other U.S. flag carriers	1,327	1,742	1,534	26.9
Between Eastern U.S. 2/ and Eastern South America 3/				
Total U.S. flag	3,133	4,407	3,770	100.0
Pan American and Panagra	2,696	3,951	3,323	88.1
Pan American 1/	2,670	3,872	3,271	86.7
Panagra participation	26	79	52	1.4
With Pan American	24	77		
With other airlines	2	2		
Other U.S. flag carriers	437	456	447	11.9

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Eastern Colombia, Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: O-D Survey of CAB.

[fol. 1308]

GOVERNMENT'S STATISTICAL EXHIBIT 21

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1953

Areas	Number of Passengers March	Number of Passengers September	Average per month Number	Average per month % of total
Between U.S. and Eastern South America 3/				
Total U.S. flag	3,994	5,318	4,656	100.0
Pan American and Panagra	2,778	3,744	3,261	70.0
Pan American 1/	2,722	3,701	3,211	68.9
Panagra participation	56	43	50	1.1
With Pan American	54	41		
With other airlines	2	2		
Other U.S. flag carriers	1,216	1,574	1,395	30.0
Between Eastern U.S. 2/ and Eastern South America 3/				
Total U.S. flag	2,603	3,461	3,032	100.0
Pan American and Panagra	2,207	3,086	2,646	87.3
Pan American 1/	2,166	3,050	2,608	86.0
Panagra participation	41	36	38	1.3
With Pan American	39	35		
With other airlines	2	1		
Other U.S. flag carriers	396	375	386	12.7

1/ With no Panagra participation.

2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

3/ Includes Eastern Colombia, Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: O-D Survey of CAB.

[fol. 1309]

GOVERNMENT'S STATISTICAL EXHIBIT 22

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1952

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Eastern South America 3/				
Total U.S. flag	3,995	5,527	4,761	100.0
Pan American and Panagra	3,066	3,948	3,507	73.7
Pan American 1/	3,019	3,891	3,455	72.6
Panagra participation	47	57	52	1.1
With Pan American	47	56		
With other airlines	-	1		
Other U.S. flag carriers	929	1,579	1,254	26.3
Between Eastern U.S. 2/ and Eastern South America 3/				
Total U.S. flag	2,703	2,664	2,683	100.0
Pan American and Panagra	2,467	3,213	2,840	89.2
Pan American 1/	2,437	3,177	2,807	88.2
Panagra participation	30	36	33	1.0
With Pan American	30	35		
With other airlines	-	1		
Other U.S. flag carriers	236	451	343	10.8

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.
3/ Includes Eastern Colombia, Vepezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: O-D Survey of CAB.

[fol. 1310]

GOVERNMENT'S STATISTICAL EXHIBIT 23

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1950

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Eastern South America 3/				
Total U.S. flag	2,937	6,370	4,653	100.0
Pan American and Panagra	2,364	5,631	3,997	85.9
Pan American 1/	2,335	5,556	3,945	84.8
Panagra participation	29	75	52	1.1
With Pan American	29	71		
With other airlines	-	4		
Other U.S. flag carriers	573	739	656	14.1
Between Eastern U.S. 2/ and Eastern South America 3/				
Total U.S. flag	2,141	5,411	3,776	100.0
Pan American and Panagra	2,062	5,184	3,623	95.9
Pan American 1/	2,047	5,125	3,586	94.9
Panagra participation	15	59	37	1.0
With Pan American	15	57		
With other airlines	-	2		
Other U.S. flag carriers	79	227	153	4.1

1/ With no Panagra participation.

2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

3/ Includes Eastern Colombia, Venezuala, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: O-D Survey of CAB.

[fol. 1311]

GOVERNMENT'S STATISTICAL EXHIBIT 24

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1957

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Buenos Aires				
Total U.S. flag	1,795	1,366	1,581	100.0
Pan American and Panagra	1,725	1,234	1,480	93.6
Pan American 1/	816	510	663	41.9
Panagra participation	909	724	817	51.7
With Pan American	829	646		
With other airlines	80	78		
Other U.S. flag carriers	70	132	101	6.4
Between Eastern U.S. 2/ and Buenos Aires				
Total U.S. flag	1,109	965	1,037	100.0
Pan American and Panagra	1,074	881	977	94.2
Pan American 1/	490	371	430	41.5
Panagra participation	584	510	547	52.7
With Pan American	539	469		
With other airlines	45	41		
Other U.S. flag carriers	35	84	60	5.8

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1312]

GOVERNMENT'S STATISTICAL EXHIBIT 25

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1956

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Buenos Aires				
Total U.S. flag	1,206	1,182	1,194	100.0
Pan American and Panagra	1,110	1,087	1,099	92.0
Pan American 1/	476	371	424	35.5
Panagra participation	634	716	675	56.5
With Pan American	614	710		
With other airlines	20	6		
Other U.S. flag carriers	96	95	95	8.0
Between Eastern U.S. 2/ and Buenos Aires				
Total U.S. flag	797	810	804	100.0
Pan American and Panagra	755	760	762	94.8
Pan American 1/	296	232	264	32.8
Panagra participation	459	536	498	62.0
With Pan American	447	534		
With other airlines	12	2		
Other U.S. flag carriers	42	42	42	5.2

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1313]

GOVERNMENT'S STATISTICAL EXHIBIT 26

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1955

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Buenos Aires				
Total U.S. flag	1,604	1,252	1,458	100.0
Pan American and Panagra	1,561	1,124	1,353	92.8
Pan American 1/	668	387	528	36.2
Panagra participation	913	737	825	56.6
With Pan American	873	709		
With other airlines	40	28		
Other U.S. flag carriers	83	128	105	7.2
Between Eastern U.S. 2/ and Buenos Aires				
Total U.S. flag	993	774	883	100.0
Pan American and Panagra	947	719	833	94.3
Pan American 1/	426	238	332	37.6
Panagra participation	521	481	501	56.7
With Pan American	495	468		
With other airlines	26	13		
Other U.S. flag carriers	46	55	50	5.7

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1314]

GOVERNMENT'S STATISTICAL EXHIBIT 27

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1954

Areas	Number of passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Buenos Aires				
Total U.S. flag	1,348	1,196	1,272	100.0
Pan American and Panagra	1,245	1,115	1,180	92.8
Pan American 1/	516	374	445	35.0
Panagra participation	729	741	735	57.8
With Pan American	703	723		
With other airlines	26	18		
Other U.S. flag carriers	103	81	92	7.2
Between Eastern U.S. 2/ and Buenos Aires				
Total U.S. flag	871	852	861	100.0
Pan American and Panagra	830	817	823	95.6
Pan American 1/	371	285	328	38.1
Panagra participation	459	532	495	57.5
With Pan American	441	526		
With other airlines	18	6		
Other U.S. flag carriers	41	35	38	4.4

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1315]

GOVERNMENT'S STATISTICAL EXHIBIT 28

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1953

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Buenos Aires				
Total U.S. flag	930	854	892	100.0
Pan American and Panagra	886	810	848	95.1
Pan American 1/	429	310	370	41.5
Panagra participation	457	500	478	53.6
With Pan American	455	487		
With other airlines	2	13		
Other U.S. flag carriers	44	44	44	4.9
Between Eastern U.S. 2/ and Buenos Aires				
Total U.S. flag	651	635	643	100.0
Pan American and Panagra	630	613	622	96.7
Pan American 1/	297	254	276	42.9
Panagra participation	333	359	346	53.8
With Pan American	333	348		
With other airlines	-	11		
Other U.S. flag carriers	21	22	21	3.3

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1316]

GOVERNMENT'S STATISTICAL EXHIBIT 29

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1952

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Buenos Aires				
Total U.S. flag	2,210	810	1,510	100.0
Pan American and Panagra	2,152	757	1,454	96.3
Pan American 1/	1,717	244	980	64.9
Panagra participation	435	513	474	31.4
With Pan American	427	507		
With other airlines	8	6		
Other U.S. flag carriers	58	53	56	3.7
Between Eastern U.S. 2/ and Buenos Aires				
Total U.S. flag	1,910	620	1,265	100.0
Pan American and Panagra	1,871	595	1,233	97.5
Pan American 1/	1,575	189	882	69.7
Panagra participation	296	406	351	27.8
With Pan American	290	403		
With other airlines	6	3		
Other U.S. flag carriers	39	25	32	2.5

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1317]

GOVERNMENT'S STATISTICAL EXHIBIT 30

PASSENGERS TRAVELLING BY AIR BETWEEN SPECIFIED AREAS USING U.S. FLAG CARRIERS, MARCH AND SEPTEMBER, 1950

Areas	Number of Passengers		Average per month	
	March	September	Number	% of total
Between U.S. and Buenos Aires				
Total U.S. flag	686	1,532	1,109	100.0
Pan American and Panagra	683	1,472	1,078	97.2
Pan American 1/	296	730	513	46.3
Panagra participation	387	742	565	50.9
With Pan American	379	733		
With other airlines	8	9		
Other U.S. flag carriers	3	60	31	2.8
Between Eastern U.S. 2/ and Buenos Aires				
Total U.S. flag	574	1,266	920	100.0
Pan American and Panagra	574	1,252	913	99.2
Pan American 1/	263	669	466	50.6
Panagra participation	311	583	447	48.6
With Pan American	307	580		
With other airlines	4	3		
Other U.S. flag carriers	-	14	7	0.8

1/ With no Panagra participation.
2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

SOURCE: O-D Survey of CAB.

[fol. 1319]

GOVERNMENT'S STATISTICAL EXHIBIT 32

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1957

Areas	Number of passengers March	Number of passengers September	Average[1] per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and South America					
U.S. & foreign			19,285	100.0%	
U.S. flag carriers	10,819	13,447	12,133	62.9	100.0%
Pan Am & Panagra	8,481	9,770	9,126	47.3	75.2
Pan Am [2]	5,260	6,668	5,964	30.9	49.1
Panagra [3]	3,221	3,102	3,162	16.4	26.1
Other U.S. flag	2,338	3,677	3,007	15.6	24.8
Foreign flag (Total for year: 85,819)			7,152	37.1	
Eastern U.S. and South America					
U.S. & foreign			14,811	100.0%	
U.S. flag carriers	6,658	8,713	7,685	51.9	100.0%
Pan Am & Panagra	6,067	7,493	6,779	45.8	88.2
Pan Am [2]	3,856	5,137	4,496	30.4	58.5
Panagra [3]	2,211	2,356	2,283	15.4	29.7
Other U.S. flag	591	1,220	906	6.1	11.8
Foreign flag (Total for year: 85,518)			7,126	48.1	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1320]

GOVERNMENT'S STATISTICAL EXHIBIT 33

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS
ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1956

Areas	Number of passengers March	Number of passengers September	Average per month 1/	% of U.S. & foreign	% of U.S. flag
Between U.S. and South America					
U.S. & foreign			16,819	100.0%	
U.S. flag carriers	9,042	11,642	10,342	61.5	100.0%
Pan Am & Panagra	7,280	9,052	8,166	48.6	79.0
Pan Am 2/	4,480	5,675	5,078	30.2	49.1
Panagra 3/	2,800	3,377	3,088	18.4	29.9
Other U.S. flag	1,762	2,590	2,176	12.9	21.0
Foreign flag (Total for year: 77,720)			6,477	38.5	
Eastern U.S. and South America					
U.S. & foreign			13,106	100.0%	
U.S. flag carriers	5,956	7,551	6,754	51.5	100.0%
Pan Am & Panagra	5,433	6,859	6,146	46.9	91.0
Pan Am 2/	3,369	4,304	3,836	29.3	56.8
Panagra 3/	2,064	2,555	2,310	17.6	34.2
Other U.S. flag	523	692	608	4.6	9.0
Foreign flag (Total for year: 76,227)			6,352	48.5	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1321]

GOVERNMENT'S STATISTICAL EXHIBIT 34

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS
ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1955

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and South America					
U.S. & foreign			15,132	100.0%	
U.S. flag carriers	9,327	10,355	9,841	65.0	100.0%
Pan Am & Panagra	7,608	8,039	7,824	51.7	79.5
Pan Am 2/	4,597	4,987	4,792	31.7	48.7
Panagra 3/	3,011	3,052	3,032	20.0	30.8
Other U.S. flag	1,719	2,316	2,017	13.3	20.5
Foreign flag (Total for year: 63,491)			5,291	35.0	
Eastern U.S. and South America					
U.S. & foreign			11,662	100.0%	
U.S. flag carriers	5,909	6,859	6,384	54.7	100.0%
Pan Am & Panagra	5,355	6,119	5,737	49.2	89.9
Pan Am 2/	3,317	3,853	3,585	30.7	56.2
Panagra 3/	2,038	2,266	2,152	18.5	33.7
Other U.S. flag	554	740	647	5.5	10.1
Foreign flag (Total for year: 63,337)			5,278	45.3	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1322]

GOVERNMENT'S STATISTICAL EXHIBIT 35

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1954

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and South America					
U.S. & foreign			13,472	100.0%	
U.S. flag carriers	7,656	10,322	8,934	66.7	100.0%
Pan Am & Panagra	5,976	8,260	7,118	52.8	79.7
Pan Am 2/	3,923	5,258	4,590	34.0	51.1
Panagra 3/	2,053	3,002	2,528	18.8	28.3
Other U.S. flag	1,680	2,062	1,871	13.9	20.9
Foreign flag (Total for year: 53,875)			4,490	33.3	
Eastern U.S. and South America					
U.S. & foreign			10,556	100.0%	
U.S. flag carriers	5,071	7,078	6,074	57.5	100.0%
Pan Am & Panagra	4,475	6,476	5,475	51.8	90.1
Pan Am 2/	3,079	4,199	3,639	34.4	59.9
Panagra 3/	1,396	2,277	1,836	17.4	30.2
Other U.S. flag	596	602	599	5.7	9.9
Foreign flag (Total for year: 53,790)			4,482	42.5	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign-flag, INS statistics.

[fol. 1323]

GOVERNMENT'S STATISTICAL EXHIBIT 36

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1953

Areas	Number of passengers: March	Number of passengers: September	Average per month [1]	% of U.S. & foreign	% of U.S. flag
Between U.S. and South America					
U.S. & foreign			12,023	100.0%	
U.S. flag carriers	6,803	8,451	7,627	63.4	100.0%
Pan Am & Panagra	5,162	6,555	5,858	48.7	76.8
Pan Am [2]	3,232	4,063	3,647	30.3	47.8
Panagra [3]	1,930	2,492	2,211	18.4	29.0
Other U.S. flag	1,641	1,896	1,769	14.7	23.2
Foreign flag (Total for year: 52,753)			4,396	36.6	
Eastern U.S. and South America					
U.S. & foreign			9,605	100.0%	
U.S. flag carriers	4,565	5,855	5,210	54.2	100.0%
Pan Am & Panagra	3,966	5,311	4,639	48.3	89.0
Pan Am [2]	2,523	3,354	2,939	30.6	56.4
Panagra [3]	1,443	1,957	1,700	17.7	32.6
Other U.S. flag	599	544	571	5.9	11.0
Foreign flag (Total for year: 52,743)			4,395	45.8	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1324]

GOVERNMENT'S STATISTICAL EXHIBIT 37

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1952

Areas	Number of passengers March	Number of passengers September	Average per month 1/	% of U.S. & foreign	% of U.S. flag
Between U.S. and South America					
U.S. & foreign			11,907	100.0%	
U.S. flag carriers	7,793	8,338	8,065	67.7	100.0%
Pan Am & Panagra	6,562	6,361	6,461	54.2	80.1
Pan Am 2/	4,780	4,179	4,479	37.6	55.5
Panagra 3/	1,782	2,182	1,982	16.6	24.6
Other U.S. flag	1,231	1,977	1,604	13.5	19.9
Foreign flag (Total for year: 46,107)			3,842	32.3	
Eastern U.S. and South America					
U.S. & foreign			9,650	100.0%	
U.S. flag carriers	5,835	5,787	5,811	60.2	100.0%
Pan Am & Panagra	5,422	5,118	5,270	54.6	90.7
Pan Am 2/	4,048	3,398	3,723	38.6	64.1
Panagra 3/	1,374	1,720	1,547	16.0	26.6
Other U.S. flag	413	669	541	5.6	9.3
Foreign flag (Total for year: 46,075)			3,839	39.8	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1325]

GOVERNMENT'S STATISTICAL EXHIBIT 38

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1950

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and South America					
U.S. & foreign			8,691	100.0%	
U.S. flag carriers	4,734	9,695	7,214	83.0	100.0%
Pan Am & Panagra	4,006	8,703	6,354	73.1	88.1
Pan Am 2/	2,652	6,321	4,486	51.6	62.2
Panagra 3/	1,354	2,382	1,868	21.5	25.9
Other U.S. flag	728	992	860	9.9	11.9
Foreign flag (Total for 6 months: 8,862) 4/			1,477	17.0	
Eastern U.S. and South America					
U.S. & foreign			7,361	100.0%	
U.S. flag carriers	3,593	8,175	5,884	79.9	100.0%
Pan Am & Panagra	8,467	7,859	5,663	76.9	96.2
Pan Am 2/	2,328	5,822	4,075	55.3	69.2
Panagra 3/	1,139	2,037	1,588	21.6	27.0
Other U.S. flag	126	316	221	3.0	3.8
Foreign flag (Total for 6 months: 8,862) 4/			1,477	20.1	

1/ For U.S. flag, average of March and September; for foreign flag, total for 6 months divided by 6.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Last 6 months, July-December. Data not available for first 6 months of 1950.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1326]

GOVERNMENT'S STATISTICAL EXHIBIT 39

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1957

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and 4 Western South American Countries 4/					
U.S. & foreign			3,870	100.0%	
U.S. flag carriers	2,436	2,540	2,488	64.3	100.0%
Pan Am & Panagra	2,076	2,045	2,060	53.2	82.8
Pan Am 2/	71	78	74	1.9	3.0
Panagra 3/	2,005	1,967	1,986	51.3	79.8
Other U.S. flag	360	495	428	11.1	17.2
Foreign flag (Total for year: 16,580)			1,382	35.7	
Eastern U.S. and 4 Western South American Countries 4/					
U.S. & foreign			3,103	100.0%	
U.S. flag carriers	1,630	1,815	1,722	55.5	100.0%
Pan Am & Panagra	1,474	1,573	1,523	49.1	88.4
Pan Am 2/	48	42	45	1.5	2.6
Panagra 3/	1,426	1,531	1,478	47.6	85.8
Other U.S. flag	156	242	199	6.4	11.6
Foreign flag (Total for year: 16,574)			1,381	44.5	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Ecuador, Peru, Bolivia, and Chile.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1327]

GOVERNMENT'S STATISTICAL EXHIBIT 40

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1956

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and 4 Western South American Countries 4/					
U.S. & foreign			2,964	100.0%	
U.S. flag carriers	2,142	2,669	2,406	81.2	100.0%
Pan Am & Panagra	1,910	2,290	2,100	70.9	87.3
Pan Am 2/	101	58	80	2.7	3.3
Panagra 3/	1,809	2,232	2,020	68.2	84.0
Other U.S. flag	232	379	306	10.3	12.7
Foreign flag (Total for year: 6,690)			558	18.8	
Eastern U.S. and 4 Western South American Countries 4/					
U.S. & foreign			2,279	100.0%	
U.S. flag carriers	1,545	1,897	1,721	75.5	100.0%
Pan Am & Panagra	1,418	1,721	1,569	68.8	91.2
Pan Am 2/	62	43	52	2.3	3.0
Panagra 3/	1,356	1,678	1,517	66.5	88.2
Other U.S. flag	127	176	152	6.7	8.8
Foreign flag (Total for year: 6,690)			558	24.5	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Ecuador, Peru, Bolivia, and Chile.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1328]

GOVERNMENT'S STATISTICAL EXHIBIT 41

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1955

Areas	Number of passengers March	Number of passengers September	Average per month 1/	% of U.S. & foreign	% of U.S. flag
Between U.S. and 4 Western South American Countries 4/					
U.S. & foreign			2,495	100.0%	
U.S. flag carriers	2,141	2,350	2,246	90.0	100.0%
Pan Am & Panagra	1,849	1,959	1,904	76.3	84.8
Pan Am 2/	69	52	60	2.4	2.7
Panagra 3/	1,780	1,907	1,844	73.9	82.1
Other U.S. flag	292	391	342	13.7	15.2
Foreign flag (Total for year: 2,986)			249	10.0	
Eastern U.S. and 4 Western South American Countries 4/					
U.S. & foreign			1,871	100.0%	
U.S. flag carriers	1,508	1,747	1,628	87.0	100.0%
Pan Am & Panagra	1,333	1,526	1,430	76.4	87.8
Pan Am 2/	34	40	37	2.0	2.3
Panagra 3/	1,299	1,486	1,393	74.4	85.5
Other U.S. flag	175	221	198	10.6	12.2
Foreign flag (Total for year: 2,917)			243	13.0	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Ecuador, Peru, Bolivia, and Chile.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1329]

GOVERNMENT'S STATISTICAL EXHIBIT 42

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1954

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and 4 Western South American Countries 4/					
U.S. & foreign			1,804	100.0%	
U.S. flag carriers	1,387	2,046	1,716	95.1	100.0%
Pan Am & Panagra	1,141	1,813	1,477	81.9	86.1
Pan Am 2/	24	28	26	1.5	1.5
Panagra 3/	1,117	1,785	1,451	80.4	84.6
Other U.S. flag	246	233	239	13.2	13.9
Foreign flag (Total for year: 1,053)			88	4.9	
Eastern U.S. and 4 Western South American Countries 4/					
U.S. & foreign			1,292	100.0%	
U.S. flag carriers	919	1,492	1,205	93.3	100.0%
Pan Am & Panagra	803	1,385	1,094	84.7	90.8
Pan Am 2/	15	15	15	1.2	1.3
Panagra 3/	788	1,370	1,079	83.5	89.5
Other U.S. flag	116	107	111	8.6	9.2
Foreign flag (Total for year: 1,046)			87	6.7	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Ecuador, Peru, Bolivia, and Chile.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1330]

GOVERNMENT'S STATISTICAL EXHIBIT 43

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1953

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and 4 Western South American Countries 4/					
U.S. & foreign			1,973	100.0%	
U.S. flag carriers	1,687	1,998	1,843	93.4	100.0%
Pan Am & Panagra	1,306	1,724	1,515	76.8	82.2
Pan Am 2/	20	21	20	1.0	1.1
Panagra 3/	1,286	1,703	1,495	75.8	81.1
Other U.S. flag	381	274	328	16.6	17.8
Foreign flag (Total for year: 1,553)			130	6.6	
Eastern U.S. and 4 Western South American Countries 4/					
U.S. & foreign			1,486	100.0%	
U.S. flag carriers	1,168	1,544	1,356	91.3	100.0%
Pan Am & Panagra	986	1,400	1,193	80.3	88.0
Pan Am 2/	11	19	15	1.0	1.1
Panagra 3/	975	1,381	1,178	79.3	86.9
Other U.S. flag	182	144	163	11.0	12.0
Foreign flag (Total for year: 1,553)			130	8.7	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Ecuador, Peru, Bolivia, and Chile.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1331]

GOVERNMENT'S STATISTICAL EXHIBIT 44

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1952

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and 4 Western South American Countries 4/					
U.S. & foreign			1,732	100.0%	
U.S. flag carriers	1,442	1,807	1,624	93.8	100.0%
Pan Am & Panagra	1,198	1,462	1,330	76.8	81.9
Pan Am 2/	18	19	18	1.0	1.1
Panagra 3/	1,180	1,443	1,312	75.8	80.8
Other U.S. flag	244	345	294	17.0	18.1
Foreign flag (Total for year: 1,295)			108	6.2	
Eastern U.S. and 4 Western South American Countries 4/					
U.S. & foreign			1,339	100.0%	
U.S. flag carriers	1,109	1,354	1,232	92.0	100.0%
Pan Am & Panagra	971	1,161	1,066	79.6	86.5
Pan Am 2/	14	14	14	1.0	1.1
Panagra 3/	957	1,147	1,052	78.6	85.4
Other U.S. flag	138	193	166	12.4	13.5
Foreign flag (Total for year: 1,286)			107	8.0	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Ecuador, Peru, Bolivia, and Chile.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1332]

GOVERNMENT'S STATISTICAL EXHIBIT 45

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1950

Areas	Number of passengers March	Number of passengers September	Average per month [1]	% of U.S. & foreign	% of U.S. flag
Between U.S. and 4 Western South American Countries [4]					
U.S. & foreign			1,417	100.0%	
U.S. flag carriers	1,072	1,666	1,369	96.6	100.0%
Pan Am & Panagra	920	1,473	1,197	84.5	87.4
Pan Am [2]	6	24	15	1.1	1.1
Panagra [3]	914	1,449	1,182	83.4	86.3
Other U.S. flag	152	193	172	12.1	12.6
Foreign flag (Total for 6 months: 287) [5]			48	3.4	
Eastern U.S. and 4 Western South American Countries [4]					
U.S. & foreign			1,172	100.0%	
U.S. flag carriers	849	1,399	1,124	95.9	100.0%
Pan Am & Panagra	802	1,324	1,063	90.7	94.6
Pan Am [2]	6	19	12	1.0	1.1
Panagra [3]	796	1,305	1,051	89.7	93.5
Other U.S. flag	47	75	61	5.2	5.4
Foreign flag (Total for 6 months: 287) [5]			48	4.1	

1/ For U.S. flag, average of March and September; for foreign flag, total for 6 months divided by 6.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Ecuador, Peru, Bolivia, and Chile.
5/ Last 6 months, July-December. Data not available for first 6 months of 1950.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1333]

GOVERNMENT'S STATISTICAL EXHIBIT 46

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1957

Areas	Number of passengers March	Number of passengers September	Average per month 1/	% of U.S. & foreign	% of U.S. flag
Between U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			10,562	100.0%	
U.S. flag carriers	5,820	8,068	6,944	65.7	100.0%
Pan Am & Panagra	3,943	5,556	4,750	45.0	68.4
Pan Am 2/	3,781	5,432	4,607	43.6	66.3
Panagra 3/	162	124	143	1.4	2.1
Other U.S. flag	1,877	2,512	2,194	20.7	31.6
Foreign flag (Total for year: 43,415)			3,618	34.3	
Eastern U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			7,826	100.0%	
U.S. flag carriers	3,468	4,991	4,229	54.0	100.0%
Pan Am & Panagra	3,084	4,521	3,802	48.6	89.9
Pan Am 2/	2,985	4,436	3,710	47.4	87.7
Panagra 3/	99	85	92	1.2	2.2
Other U.S. flag	384	470	427	5.4	10.1
Foreign flag (Total for year: 43,167)			3,597	46.0	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1334]

GOVERNMENT'S STATISTICAL EXHIBIT 47

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1956

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			9,396	100.0%	
U.S. flag carriers	4,497	6,701	5,599	59.6	100.0%
Pan Am & Panagra	3,100	4,608	3,854	41.0	68.8
Pan Am 2/	2,972	4,514	3,743	39.8	66.8
Panagra 3/	128	94	111	1.2	2.0
Other U.S. flag	1,397	2,093	1,745	18.6	31.2
Foreign flag (Total for year: 45,563)			3,797	40.4	
Eastern U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			7,196	100.0%	
U.S. flag carriers	2,875	4,158	3,516	48.9	100.0%
Pan Am & Panagra	2,535	3,695	3,114	43.3	88.6
Pan Am 2/	2,450	3,625	3,037	42.2	86.4
Panagra 3/	85	70	77	1.1	2.2
Other U.S. flag	340	463	402	5.6	11.4
Foreign flag (Total for year: 44,166)			3,680	51.1	

1/ For U.S. flag, average of March and September; for foreign flag total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1335]

GOVERNMENT'S STATISTICAL EXHIBIT 48

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS
ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1955

Areas	Number of passengers March	Number of passengers September	Average[1] per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and 7 Eastern South American Countries [4]					
U.S. & foreign			7,809	100.0%	
U.S. flag carriers	4,300	5,438	4,869	62.4	100.0%
Pan Am & Panagra	2,995	3,671	3,333	42.7	68.5
Pan Am [2]	2,890	3,578	3,234	41.4	66.4
Panagra [3]	105	93	99	1.3	2.1
Other U.S. flag	1,305	1,767	1,536	19.7	31.5
Foreign flag (Total for year: 35,283)			2,940	37.6	
Eastern U.S. and 7 Eastern South American Countries [4]					
U.S. & foreign			5,976	100.0%	
U.S. flag carriers	2,619	3,466	3,042	50.9	100.0%
Pan Am & Panagra	2,300	3,010	2,654	44.4	87.2
Pan Am [2]	2,234	2,939	2,586	43.3	85.0
Panagra [3]	66	71	68	1.1	2.2
Other U.S. flag	319	456	388	6.5	12.8
Foreign flag (Total for year: 35,209)			2,934	49.1	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1336]

GOVERNMENT'S STATISTICAL EXHIBIT 49

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1954

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			6,942	100.0%	
U.S. flag carriers	3,950	5,341	4,645	66.9	100.0%
Pan Am & Panagra	2,655	3,664	3,159	45.5	68.0
Pan Am 2/	2,605	3,563	3,084	44.4	66.4
Panagra 3/	50	101	75	1.1	1.6
Other U.S. flag	1,295	1,677	1,486	21.4	32.0
Foreign flag (Total for year: 27,561)			2,297	33.1	
Eastern U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			5,329	100.0%	
U.S. flag carriers	2,611	3,467	3,039	57.0	100.0%
Pan Am & Panagra	2,195	3,040	2,617	49.1	86.1
Pan Am 2/	2,169	2,970	2,569	48.2	84.5
Panagra 3/	26	70	48	.9	1.6
Other U.S. flag	416	427	422	7.9	13.9
Foreign flag (Total for year: 27,483)			2,290	43.0	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

GOVERNMENT'S STATISTICAL EXHIBIT 50

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1953

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			6,002	100.0%	
U.S. flag carriers	3,260	4,319	3,789	63.1	100.0%
Pan Am & Panagra	2,055	2,786	2,420	40.3	63.9
Pan Am 2/	1,999	2,744	2,371	39.5	62.6
Panagra 3/	56	42	49	.8	1.3
Other U.S. flag	1,205	1,533	1,369	22.8	36.1
Foreign flag (Total for year: 26,555)			2,213	36.9	
Eastern U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			4,615	100.0%	
U.S. flag carriers	2,060	2,745	2,402	52.0	100.0%
Pan Am & Panagra	1,666	2,379	2,022	43.8	84.2
Pan Am 2/	1,625	2,344	1,984	43.0	82.6
Panagra 3/	41	35	38	.8	1.6
Other U.S. flag	394	366	380	8.2	15.8
Foreign flag (Total for year: 26,555)			2,213	48.0	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1338]

GOVERNMENT'S STATISTICAL EXHIBIT 51

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS
ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1952

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			5,770	100.0%	
U.S. flag carriers	3,311	4,367	3,839	66.5	100.0%
Pan Am & Panagra	2,389	2,788	2,580	44.8	67.4
Pan Am 2/	2,342	2,733	2,537	43.9	66.1
Panagra 3/	47	55	51	.9	1.3
Other U.S. flag	922	1,579	1,251	21.7	32.6
Foreign flag (Total for year: 23,172)			1,931	33.5	
Eastern U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			4,387	100.0%	
U.S. flag carriers	2,159	2,753	2,456	56.0	100.0%
Pan Am & Panagra	1,923	2,302	2,113	48.2	86.0
Pan Am 2/	1,893	2,267	2,080	47.4	84.7
Panagra 3/	30	35	33	.8	1.3
Other U.S. flag	236	451	343	7.8	14.0
Foreign flag (Total for year: 23,172)			1,931	44.0	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1339]

GOVERNMENT'S STATISTICAL EXHIBIT 52

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS
ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1950

Areas	Number of passengers March	Number of passengers September	Average per month 1/	% of U.S. & foreign	% of U.S. flag
Between U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			4,285	100.0%	
U.S. flag carriers	2,471	5,035	3,753	87.6	100.0%
Pan Am & Panagra	1,899	4,305	3,102	72.4	82.7
Pan Am 2/	1,871	4,230	3,050	71.2	81.3
Panagra 3/	28	75	52	1.2	1.4
Other U.S. flag	572	730	651	15.2	17.3
Foreign flag (Total for 6 months: 3,195) 5/			532	12.4	
Eastern U.S. and 7 Eastern South American Countries 4/					
U.S. & foreign			3,530	100.0%	
U.S. flag carriers	1,753	4,243	2,998	84.9	100.0%
Pan Am & Panagra	1,674	4,016	2,845	80.6	94.9
Pan Am 2/	1,660	3,957	2,809	79.6	93.7
Panagra 3/	14	59	36	1.0	1.2
Other U.S. flag	79	227	153	4.3	5.1
Foreign flag (Total for 6 months: 3,195) 5/			532	15.1	

1/ For U.S. flag, average of March and September; for foreign flag, total for 6 months divided by 6.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Includes Venezuela, Brazil, Paraguay, Uruguay, British Guiana, French Guiana, and Surinam.
5/ Last 6 months, July-December. Data not available for first 6 months of 1950.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1340]

GOVERNMENT'S STATISTICAL EXHIBIT 53

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS
ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1957

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and Argentina					
U.S. & foreign			1,936	100.0%	
U.S. flag carriers	1,813	1,368	1,591	82.2	100.0%
Pan Am & Panagra	1,742	1,236	1,490	77.0	93.7
Pan Am 2/	830	511	671	34.7	42.2
Panagra 3/	912	725	819	42.3	51.5
Other U.S. flag	71	132	101	5.2	6.3
Foreign flag (Total for year: 4,138)			345	17.8	
Eastern U.S. and Argentina					
U.S. & foreign			1,380	100.0%	
U.S. flag carriers	1,109	966	1,038	75.2	100.0%
Pan Am & Panagra	1,074	882	978	70.9	94.2
Pan Am 2/	490	372	431	31.2	41.5
Panagra 3/	584	510	547	39.7	52.7
Other U.S. flag	35	84	60	4.3	5.8
Foreign flag (Total for year: 4,099)			342	24.8	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1341]

GOVERNMENT'S STATISTICAL EXHIBIT 54

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1956

Areas	Number of passengers March	Number of passengers September	Average per month 1/	% of U.S. & foreign	% of U.S. flag
Between U.S. and Argentina					
U.S. & foreign			1,441	100.0%	
U.S. flag carriers	1,214	1,182	1,198	83.1	100.0%
Pan Am & Panagra	1,118	1,087	1,103	76.5	92.1
Pan Am 2/	484	371	428	29.7	35.7
Panagra 3/	634	716	675	46.8	56.4
Other U.S. flag	96	95	95	6.6	7.9
Foreign flag (Total for year: 2,921)			243	16.9	
Eastern U.S. and Argentina					
U.S. & foreign			1,042	100.0%	
U.S. flag carriers	802	810	806	77.1	100.0%
Pan Am & Panagra	760	768	764	73.1	94.8
Pan Am 2/	301	232	266	25.4	33.0
Panagra 3/	459	536	498	47.7	61.8
Other U.S. flag	42	42	42	4.0	5.2
Foreign flag (Total for year: 2,864)			239	22.9	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1342]

GOVERNMENT'S STATISTICAL EXHIBIT 55

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1955

Areas	Number of passengers March	Number of passengers September	Average per month 1/	% of U.S. & foreign	% of U.S. flag
Between U.S. and Argentina					
U.S. & foreign			1,999	100.0%	
U.S. flag carriers	1,074	1,252	1,463	80.1	100.0%
Pan Am & Panagra	1,587	1,124	1,356	74.8	92.7
Pan Am 2/	672	387	530	31.2	36.2
Panagra 3/	915	737	826	48.6	56.5
Other U.S. flag	87	128	107	6.3	7.3
Foreign flag (Total for year: 2,828)			236	13.9	
Eastern U.S. and Argentina					
U.S. & foreign			1,119	100.0%	
U.S. flag carriers	993	774	883	78.9	100.0%
Pan Am & Panagra	947	719	833	74.4	94.3
Pan Am 2/	426	238	332	29.6	37.6
Panagra 3/	521	481	501	44.8	56.7
Other U.S. flag	46	55	50	4.5	5.7
Foreign flag (Total for year: 2,828)			236	21.1	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1343]

GOVERNMENT'S STATISTICAL EXHIBIT 56

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS
ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1954

Areas	Number of passengers March	Number of passengers September	Average per month [1]	% of U.S. & foreign	% of U.S. flag
Between U.S. and Argentina					
U.S. & foreign			1,500	100.0%	
U.S. flag carriers	1,350	1,201	1,276	85.1	100.0%
Pan Am & Panagra	1,247	1,119	1,183	78.9	92.7
Pan Am [2]	518	374	446	29.7	34.9
Panagra [3]	729	745	737	49.2	57.8
Other U.S. flag	103	82	93	6.2	7.3
Foreign flag (Total for year: 2,687)			224	14.9	
Eastern U.S. and Argentina					
U.S. & foreign			1,088	100.0%	
U.S. flag carriers	872	856	864	79.4	100.0%
Pan Am & Panagra	831	820	826	75.9	95.6
Pan Am [2]	372	285	329	30.2	38.1
Panagra [3]	459	535	497	45.7	57.5
Other U.S. flag	41	36	38	3.5	4.4
Foreign flag (Total for year: 2,687)			224	20.6	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1344]

GOVERNMENT'S STATISTICAL EXHIBIT 57

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1953

Areas	Number of passengers March	Number of passengers September	Average per month [1]	% of U.S. & foreign	% of U.S. flag
Between U.S. and Argentina					
U.S. & foreign			1,046	100.0%	
U.S. flag carriers	930	855	893	85.4	100.0%
Pan Am & Panagra	886	811	849	81.2	95.1
Pan Am [2]	429	310	370	35.4	41.4
Panagra [3]	457	501	479	45.8	53.7
Other U.S. flag	44	44	44	4.2	4.9
Foreign flag (Total for year: 1,841)			153	14.6	
Eastern U.S. and Argentina					
U.S. & foreign			796	100.0%	
U.S. flag carriers	651	635	643	80.8	100.0%
Pan Am & Panagra	630	613	622	78.2	96.7
Pan Am [2]	297	254	276	34.7	42.9
Panagra [3]	333	359	346	43.5	53.8
Other U.S. flag	21	22	21	2.6	3.3
Foreign flag (Total for year: 1,839)			153	19.2	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1345]

GOVERNMENT'S STATISTICAL EXHIBIT 58

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1952

Areas	Number of passengers March	Number of passengers September	Average per month [1]	% of U.S. & foreign	% of U.S. flag
Between U.S. and Argentina					
U.S. & foreign			1,644	100.0%	
U.S. flag carriers	2,210	814	1,512	92.0	100.0%
Pan Am & Panagra	2,152	761	1,456	88.6	96.3
Pan Am [2]	1,717	247	982	59.8	64.9
Panagra [3]	435	514	474	28.8	31.4
Other U.S. flag	58	53	56	3.4	3.7
Foreign flag (Total for year: 1,588)			132	8.0	
Eastern U.S. and Argentina					
U.S. & foreign			1,398	100.0%	
U.S. flag carriers	1,910	623	1,266	90.6	100.0%
Pan Am & Panagra	1,871	598	1,234	88.3	97.5
Pan Am [2]	1,575	192	883	63.2	69.8
Panagra [3]	296	406	351	25.1	27.7
Other U.S. flag	39	25	32	2.3	2.5
Foreign flag (Total for year: 1,588)			132	9.4	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1346]

GOVERNMENT'S STATISTICAL EXHIBIT 59

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1950

Areas	Number of passengers March	Number of passengers September	Average per month [1]	% of U.S. & foreign	% of U.S. flag
Between U.S. and Argentina					
U.S. & foreign			1,268	100.0%	
U.S. flag carriers	686	1,532	1,109	87.5	100.0%
Pan Am & Panagra	683	1,472	1,077	85.0	97.1
Pan Am [2]	296	730	513	40.5	46.3
Panagra [3]	387	742	564	44.5	50.8
Other U.S. flag	3	60	32	2.5	2.9
Foreign flag (Total for 6 months: 954) [4]			159	12.5	
Eastern U.S. and Argentina					
U.S. & foreign			1,079	100.0%	
U.S. flag carriers	574	1,266	920	85.3	100.0%
Pan Am & Panagra	574	1,252	913	84.6	99.2
Pan Am [2]	263	669	466	43.2	50.6
Panagra [3]	311	583	447	41.4	48.6
Other U.S. flag	-	14	7	.7	.8
Foreign flag (Total for 6 months: 954) [4]			159	14.7	

1/ For U.S. flag, average of March and September; for foreign flag, total for 6 months divided by 6.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Last 6 months, July-December. Data not available for first 6 months of 1950.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1347]

GOVERNMENT'S STATISTICAL EXHIBIT 60

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1957

Areas	Number of passengers March	Number of passengers September	Average 1/ per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and Colombia					
U.S. & foreign			2,917	100.0%	
U.S. flag carriers	750	1,471	1,110	38.1	100.0%
Pan Am & Panagra	720	933	826	28.3	74.4
Pan Am 2/	578	647	612	21.0	55.1
Panagra 3/	142	286	214	7.3	19.3
Other U.S. flag	30	538	284	9.8	25.6
Foreign flag (Total for year: 21,686)			1,807	61.9	
Eastern U.S. and Colombia					
U.S. & foreign			2,502	100.0%	
U.S. flag carriers	451	941	696	27.8	100.0%
Pan Am & Panagra	435	517	476	19.0	68.4
Pan Am 2/	333	287	310	12.4	44.5
Panagra 3/	102	230	166	6.6	23.9
Other U.S. flag	16	424	220	8.8	31.6
Foreign flag (Total for year: 21,678)			1,806	72.2	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1348]

GOVERNMENT'S STATISTICAL EXHIBIT 61

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1956

Areas	Number of passengers March	Number of passengers September	Average per month [1]	% of U.S. & foreign	% of U.S. flag
Between U.S. and Colombia					
U.S. & foreign			3,019	100.0%	
U.S. flag carriers	1,189	1,090	1,140	37.8	100.0%
Pan Am & Panagra	1,152	1,067	1,110	36.8	97.4
Pan Am [2]	923	732	828	27.4	72.6
Panagra [3]	229	335	282	9.4	24.8
Other U.S. flag	37	23	30	1.0	2.6
Foreign flag (Total for year: 22,546)			1,879	62.2	
Eastern U.S. and Colombia					
U.S. & foreign			2,585	100.0%	
U.S. flag carriers	734	686	710	27.5	100.0%
Pan Am & Panagra	720	675	698	27.0	98.3
Pan Am [2]	556	404	480	18.6	67.6
Panagra [3]	164	271	218	8.4	30.7
Other U.S. flag	14	11	12	.5	1.7
Foreign flag (Total for year: 22,507)			1,875	72.5	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1349]

GOVERNMENT'S STATISTICAL EXHIBIT 62

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1955

Areas	Number of passengers March	Number of passengers September	Average per month 1/	% of U.S. & foreign	% of U.S. flag
Between U.S. and Colombia					
U.S. & foreign			3,129	100.0%	
U.S. flag carriers	1,212	1,315	1,263	40.4	100.0%
Pan Am & Panagra	1,177	1,285	1,231	39.4	97.5
Pan Am 2/	966	970	968	31.0	76.7
Panagra 3/	211	315	263	8.4	20.8
Other U.S. flag	35	30	32	1.0	2.5
Foreign flag (Total for year: 22,394)			1,866	59.6	
Eastern U.S. and Colombia					
U.S. & foreign			2,695	100.0%	
U.S. flag carriers	789	872	830	30.8	100.0%
Pan Am & Panagra	775	864	819	30.4	98.7
Pan Am 2/	623	636	629	23.3	75.8
Panagra 3/	152	228	190	7.1	22.9
Other U.S. flag	14	8	11	.4	1.3
Foreign flag (Total for year: 22,383)			1,865	69.2	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1350]

GOVERNMENT'S STATISTICAL EXHIBIT 63

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS
ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1954

Areas	Number of passengers March	Number of passengers September	Average per month 1/	% of U.S. & foreign	% of U.S. flag
Between U.S. and Colombia					
U.S. & foreign			3,232	100.0%	
U.S. flag carriers	969	1,734	1,351	41.8	100.0%
Pan Am & Panagra	933	1,664	1,298	40.2	96.1
Pan Am 2/	776	1,293	1,034	32.0	76.5
Panagra 3/	157	371	264	8.2	19.6
Other U.S. flag	36	70	53	1.6	3.9
Foreign flag (Total for year: 22,574)			1,881	58.2	
Eastern U.S. and Colombia					
U.S. & foreign			2,847	100.0%	
U.S. flag carriers	669	1,263	966	33.9	100.0%
Pan Am & Panagra	666	1,231	938	32.9	97.1
Pan Am 2/	543	929	726	25.5	75.2
Panagra 3/	123	302	212	7.4	21.9
Other U.S. flag	3	32	28	1.0	2.9
Foreign flag (Total for year: 22,574)			1,881	66.1	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1351]

GOVERNMENT'S STATISTICAL EXHIBIT 64

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1953

Areas	Number of passengers March	Number of passengers September	Average per month [1]	% of U.S. & foreign	% of U.S. flag
Between U.S. and Colombia					
U.S. & foreign			3,002	100.0%	
U.S. flag carriers	926	1,279	1,102	36.7	100.0%
Pan Am & Panagra	915	1,234	1,074	35.8	97.5
Pan Am [2]	784	988	886	29.5	80.4
Panagra [3]	131	246	188	6.3	17.1
Other U.S. flag	11	45	28	.9	2.5
Foreign flag (Total for year: 22,804)			1,900	63.3	
Eastern U.S. and Colombia					
U.S. & foreign			2,708	100.0%	
U.S. flag carriers	686	931	809	29.9	100.0%
Pan Am & Panagra	684	919	802	29.6	99.1
Pan Am [2]	590	737	664	24.5	82.1
Panagra [3]	94	182	138	5.1	17.0
Other U.S. flag	2	12	7	.3	.9
Foreign flag (Total for year: 22,796)			1,899	70.1	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1352]

GOVERNMENT'S STATISTICAL EXHIBIT 65

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1952

Areas	Number of passengers March	Number of passengers September	Average per month 1/	% of U.S. & foreign	% of U.S. flag
Between U.S. and Colombia					
U.S. & foreign			2,761	100.0%	
U.S. flag carriers	830	1,350	1,090	39.5	100.0%
Pan Am & Panagra	823	1,350	1,087	39.4	99.7
Pan Am 2/	703	1,180	942	34.1	86.4
Panagra 3/	120	170	145	5.3	13.3
Other U.S. flag	7	-	3	.1	.3
Foreign flag (Total for year: 20,052)			1,671	60.5	
Eastern U.S. and Colombia					
U.S. & foreign			2,526	100.0%	
U.S. flag carriers	657	1,057	857	33.9	100.0%
Pan Am & Panagra	657	1,057	857	33.9	100.0
Pan Am 2/	566	925	746	29.5	87.0
Panagra 3/	91	132	111	4.4	13.0
Other U.S. flag	-	-	-	-	-
Foreign flag (Total for year: 20,029)			1,669	66.1	

1/ For U.S. flag, average of March and September; for foreign flag, total for year divided by 12.
2/ No Panagra participation.
3/ With or without Pan American participation.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1353]

GOVERNMENT'S STATISTICAL EXHIBIT 66

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS ON U.S. FLAG AND FOREIGN FLAG CARRIERS, 1950

Areas	Number of passengers March	Number of passengers September	Average[1] per month	% of U.S. & foreign	% of U.S. flag
Between U.S. and Colombia					
U.S. & foreign			1,721	100.0%	
U.S. flag carriers	505	1,462	983	57.1	100.0%
Pan Am & Panagra	504	1,453	978	56.8	99.5
Pan Am [2]	479	1,337	908	52.7	92.4
Panagra [3]	25	116	70	4.1	7.1
Other U.S. flag	1	9	5	.3	.5
Foreign flag (Total for 6 months: 4,426)[4]			738	42.9	
Eastern U.S. and Colombia					
U.S. & foreign			1,580	100.0%	
U.S. flag carriers	417	1,267	842	53.3	100.0%
Pan Am & Panagra	417	1,267	842	53.3	100.0
Pan Am [2]	399	1,177	788	49.9	93.6
Panagra [3]	18	90	54	3.4	6.4
Other U.S. flag	-	-	-	-	-
Foreign flag (Total for 6 months: 4,426)[4]			738	46.7	

1/ For U.S. flag, average of March and September; for foreign flag, total for 6 months divided by 6.
2/ No Panagra participation.
3/ With or without Pan American participation.
4/ Last 6 months, July-December. Data not available for first 6 months of 1950.

SOURCE: For U.S. flag, O-D Survey of CAB; for foreign flag, INS statistics.

[fol. 1355]

GOVERNMENT'S STATISTICAL EXHIBIT 68

PASSENGERS CARRIED BY SEA IN LINER SERVICE BETWEEN SPECIFIED UNITED STATES COASTAL AREAS AND THE WEST COAST OF SOUTH AMERICA, 1957 1/

	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Number of passengers				
Total, all flags	4,447	3,934	265	248
U.S. flag lines	4,181	3,717	235	229
Grace and affiliate	4,167	3,717	221	229
Grace Line	3,946	3,717	-	229
Gulf & So. Am. SS Co. 2/	221	-	221	-
Other U.S. lines	14	-	14	-
Foreign flag carriers	266	217	30	19
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	94.0	94.5	88.7	92.3
Grace and affiliate	93.7	94.5	83.4	92.3
Grace Line	88.7	94.5	-	92.3
Gulf & So. Am. SS Co. 2/	5.0	-	83.4	-
Other U.S. lines	.3	-	5.3	-
Foreign flag carriers	6.0	5.5	11.3	7.7

1/ Northbound and southbound traffic combined.
2/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol. 1356]

GOVERNMENT'S STATISTICAL EXHIBIT 69

PASSENGERS CARRIED BY SEA IN LINER SERVICE BETWEEN SPECIFIED UNITED STATES COASTAL AREAS AND THE WEST COAST OF SOUTH AMERICA, 1956 1/

	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Number of passengers				
Total, all flags	4,709	4,056	365	288
U.S. flag lines	4,376	3,809	309	258
Grace and affiliate	4,340	3,807	283	250
Grace Line	4,057	3,807	-	250
Gulf & So. Am. SS Co. 2/	283	-	283	-
Other U.S. lines	36	2	26	8
Foreign flag carriers	333	247	56	30
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	92.9	93.9	84.7	89.6
Grace and affiliate	92.1	93.9	77.6	86.8
Grace Line	86.1	93.9	-	86.8
Gulf & So. Am. SS Co. 2/	6.0	-	77.6	-
Other U.S. lines	.8	*/	7.1	2.8
Foreign flag carriers	7.1	6.1	15.3	10.4

*/ Less than 0.05%.
1/ Northbound and southbound traffic combined.
2/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol 1357]

GOVERNMENT'S STATISTICAL EXHIBIT 70

PASSENGERS CARRIED BY SEA IN LINER SERVICE BETWEEN SPECIFIED UNITED STATES COASTAL AREAS AND THE WEST COAST OF SOUTH AMERICA, 1955 1/

	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Number of passengers				
Total, all flags	4,852	4,127	323	302
U.S. flag lines	4,446	3,809	358	28
Grace and affiliate	4,408	3,808	321	279
Grace Line	4,087	3,808	-	279
Gulf & So. Am. SS Co. 2/	321	-	321	-
Other U.S. lines	38	-	37	1
Foreign flag carriers	406	318	34	22
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	90.9	90.7	91.1	92.7
Grace and affiliate	90.1	90.7	81.7	92.4
Grace Line	83.9	90.7	-	90.4
Gulf & So. Am. SS Co. 2/	6.6	-	81.7	-
Other U.S. lines	.8	-	9.4	.3
Foreign flag carriers	9.1	9.3	8.9	7.3

1/ Northbound and southbound traffic combined.
2/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol. 1358]

GOVERNMENT'S STATISTICAL EXHIBIT 71

PASSENGERS CARRIED BY SEA IN LINER SERVICE BETWEEN SPECIFIED UNITED STATES COASTAL AREAS AND THE WEST COAST OF SOUTH AMERICA, 1954 1/

	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Number of passengers				
Total, all flags	4,900	4,188	399	313
U.S. flag lines	4,408	3,773	359	276
Grace and affiliate	4,394	3,772	349	273
Grace Line	4,045	3,772	-	273
Gulf & So. Am. SS Co. 2/	349	-	349	-
Other U.S. lines	14	1	10	3
Foreign flag carriers	492	415	40	37
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	90.0	90.1	90.0	88.2
Grace and affiliate	89.7	90.1	87.5	87.2
Grace Line	82.6	90.1	-	87.2
Gulf & So. Am. SS Co. 2/	7.1	-	87.5	-
Other U.S. lines	.3	*/	2.5	1.0
Foreign flag carriers	10.0	9.9	10.0	11.8

*/ Less than 0.05%.
1/ Northbound and southbound traffic combined.
2/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol. 1359]

GOVERNMENT'S STATISTICAL EXHIBIT 72

PASSENGERS CARRIED BY SEA IN LINER SERVICE BETWEEN THE ATLANTIC COAST OF THE UNITED STATES AND THE WEST COAST OF SOUTH AMERICA, 1951-1953 1/ (Trade Route 2)

	1953	1952	1951
Number of passengers			
Total, all flags	4,474	4,044	4,039
U. S. flag lines	4,072	3,934	3,799
Grace Line	4,072	3,934	3,799
Other U. S. lines	--	--	--
Foreign flag carriers	402	910	240
Percent of total			
Total, all flags	100.0	100.0	100.0
U. S. flag lines	91.0	81.2	94.1
Grace Line	91.0	81.2	94.1
Other U. S. lines	--	--	--
Foreign flag carriers	9.0	18.8	5.9

1/ Northbound and southbound traffic combined.

SOURCE: Maritime Administration records.

[fol. 1361]

GOVERNMENT'S STATISTICAL EXHIBIT 74

PASSENGERS CARRIED BY AIR WITH PANAGRA PARTICIPATION BETWEEN CERTAIN EASTERN SECTIONS OF THE UNITED STATES AND COUNTRIES ON THE WEST COAST OF SOUTH AMERICA, MARCH AND SEPTEMBER, 1956 AND 1957

	1957		1956	
	March	September	March	September
Between Eastern United States[1] and West Coast Countries of South America				
Total, 4 areas below	1,451	1,595	1,437	1,815
Western Colombia [3]	102	229	160	270
Ecuador	287	439	266	475
Peru	744	637	693	659
Chile	318	290	318	411
Between Northeastern United States[2] and West Coast Countries of South America.				
Total, 4 areas below	1,081	1,144	1,040	1,394
Western Colombia	64	152	100	166
Cali (near Buenaventura*)	64	152	100	166
Ecuador	200	291	192	365
Guayaquil*	104	156	105	191
Quito	96	135	87	174
Peru	547	455	486	486
Lima (near Callao*)	538	430	466	476
Talara*	8	21	15	9
Arequipa (near Mollendo*)	1	3	-	1
Tacna	-	1	-	-
Cuzco	-	-	5	-
Chile	270	246	262	377
Santiago (near Valparaiso*)	251	197	240	325
Antofagasta*	16	47	22	49
Arica*	3	2	-	3

* Served by Grace.

1/ Includes all of the "Northeastern U.S." states, plus Virginia, North Carolina, South Carolina, Georgia, and Florida.

2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia.

3/ Cali, Colombia.

SOURCE: O-D Summary of CAB

[fol. 1362]

GOVERNMENT'S STATISTICAL EXHIBIT 75

PASSENGERS CARRIED BY AIR WITH PANAGRA PARTICIPATION BETWEEN CERTAIN EASTERN SECTIONS OF THE UNITED STATES AND COUNTRIES ON THE WEST COAST OF SOUTH AMERICA, MARCH AND SEPTEMBER, 1954 AND 1955

	1955		1954	
	March	September	March	September
Between Eastern United States[1] and West Coast Countries of South America				
Total, 4 areas below	1,378	1,611	860	1,558
Western Colombia [3]	150	222	123	293
Ecuador	310	488	187	426
Peru	555	598	530	581
Chile	363	303	20	258
Between Northeastern United States[2] and West Coast Countries of South America				
Total, 4 areas below	968	1,139	519	1,075
Western Colombia	115	120	86	177
Cali (near Buenaventura*)	115	120	86	177
Ecuador	210	353	137	307
Guayaquil*	113	178	87	163
Quito	96	173	49	144
Cuenca	1	2	1	-
Peru	346	418	285	379
Lima (near Callao*)	334	404	272	366
Talara*	10	8	11	11
Cuzco	2	4	-	2
Arequipa (near Mollendo*)	-	2	2	-
Chile	297	248	11	212
Santiago (near Valparaiso*)	284	229	1	202
Antofagasta*	11	18	10	9
Arica*	2	1	-	1

* Served by Grace.

1/ Includes all of the "Northeastern U.S." states, plus Virginia, North Carolina, South Carolina, Georgia, and Florida.

2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia.

3/ Cali, Colombia.

SOURCE: O-D Survey of CAB.

[fol. 1363]

GOVERNMENT'S STATISTICAL EXHIBIT 76

PASSENGERS CARRIED BY AIR WITH PANAGRA PARTICIPATION BETWEEN CERTAIN EASTERN SECTIONS OF THE UNITED STATES AND COUNTRIES ON THE WEST COAST OF SOUTH AMERICA, MARCH AND SEPTEMBER, 1952 AND 1953

	1953		1952	
	March	September	March	September
Between Eastern United States[1] and West Coast Countries of South America				
Total, 4 areas below	1,026	1,495	937	1,200
Western Colombia[3]	94	181	91	131
Ecuador	150	336	164	301
Peru	555	702	444	572
Chile	227	276	238	196
Between Northeastern United States[2] and West Coast Countries of South America				
Total, 4 areas below	646	904	546	656
Western Colombia	71	120	71	90
Cali (near Buenaventure*)	71	120	71	90
Ecuador	122	242	100	180
Guayaquil*	82	141	74	127
Quito	40	101	26	53
Peru	277	349	205	231
Lima (near Callao*)	272	339	192	225
Talara*	5	4	4	1
Arequipa (near Mollendo*)	-	4	9	4
Cuzco	-	2	-	-
Chiclayo	-	-	-	1
Chile	176	193	170	155
Santiago (near Valparaiso*)	156	173	139	139
Antofagasta*	20	20	31	16

* Served by Grace.

1/ Includes all of the "Northeastern U.S." states, plus Virginia, North Carolina, South Carolina, Georgia, and Florida.

2/ Includes the New England States and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia.

3/ Cali, Colombia.

SOURCE: O-D Survey of CAB.

[fol. 1364]

GOVERNMENT'S STATISTICAL EXHIBIT 77

PASSENGERS CARRIED BY THE GRACE LINE BETWEEN THE ATLANTIC COAST OF THE UNITED STATES AND THE WEST COAST OF SOUTH AMERICA, 1955-1957 1/

	1957	1956	1955
Between Atlantic Coast of United States and West Coast Countries of South America			
Total, 4 areas below	3,717	3,807	3,808
West Coast of Colombia	235	275	319
Ecuador	308	269	354
Peru	1,407	1,431	1,418
Chile	1,767	1,832	1,717
Between North Atlantic Coast of United States 2/ and West Coast Countries of South America			
Total, 4 areas below	3,717	3,791	3,808
West Coast of Colombia	235	275	319
Buenaventura (near Cali*)	235	275	319
Ecuador	308	269	354
Guayaquil* (Puna)	192	233	354
La Libertad	116	36	-
Peru	1,407	1,421	1,418
Callao (near Lima*)	1,296	1,303	1,330
Talara*	104	105	77
Salaverry	1	2	-
Ilo	6	3	-
Mollendo (near Arequipa*)	-	8	8
Pisco	-	-	1
Paita	-	-	2
Chile	1,767	1,826	1,717
Valparaiso (near Santiago*)	1,448	1,527	1,380
Antofagasta*	213	191	211
Arica*	12	44	62
Chanaral	79	58	40
San Antonio	2	6	22
Coquimbo	13	-	-
Tocopilla	-	-	2

* Served by Panagra.

1/ Northbound and southbound traffic combined.

2/ Atlantic Coast ports from New York through Maryland.

SOURCE: Maritime Administration records.

[fol. 1365]

GOVERNMENT'S STATISTICAL EXHIBIT 78

PASSENGERS CARRIED BY THE GRACE LINE BETWEEN THE ATLANTIC COAST OF THE UNITED STATES AND THE WEST COAST OF SOUTH AMERICA, 1952-1954 1/

	1954	1953	1952
Between Atlantic Coast of United States and West Coast Countries of South America			
Total, 4 areas below	3,772	4,072	3,934
West Coast of Colombia	471	502	496
Ecuador	302	338	298
Peru	1,364	1,569	1,477
Chile	1,635	1,663	1,663
Between North Atlantic Coast of United States 2/ and West Coast Countries of South America			
Total, 4 areas below	3,730	4,067	3,910
West Coast of Colombia	471	501	496
Buenaventura (near Cali*)	471	501	496
Ecuador	302	338	296
Guayaquil* (Puna)	302	338	280
Puerto Bolivar	-	-	16
Peru	1,345	1,567	1,466
Callao (near Lima*)	1,151	1,329	1,269
Talara*	177	219	173
Mollendo (near Arequipa*)	14	12	19
Salaverry	3	7	1
Supe	-	-	1
Ancon	-	-	2
Paita	-	-	1
Chile	1,612	1,661	1,652
Valparaiso (near Santiago*)	1,348	1,344	1,304
Antofagasta*	165	214	262
Arica*	50	33	40
Chanaral	27	57	32
San Antonio	21	13	14
Iquique	1	-	-

* Served by Panagra.
1/ Northbound and southbound traffic combined.
2/ Atlantic Coast ports from New York through Maryland.

SOURCE: Maritime Administration records.

[fol. 1366]

GOVERNMENT'S STATISTICAL EXHIBIT 79

COMPARISON OF AVERAGE MONTHLY PASSENGER TRAFFIC CARRIED BY AIR WITH PANAGRA PARTICIPATION AND BY SEA ON GRACE LINE BETWEEN NORTHEASTERN U.S. AND WEST COAST COUNTRIES OF SOUTH AMERICA, 1956 AND 1957

Between Northeastern U.S. and:	1957		1956	
	Panagra 4/	Grace 5/	Panagra 4/	Grace 5/
All 4 areas below	1,113	310	1,217	316
Western Colombia	108	20	133	23
Cali or Buenaventura 1/	108	20	133	23
Ecuador	246	26	278	22
Guayaquil (Puna)	130	16	148	19
Other cities	116	10	130	3
Peru	501	117	486	119
Lima or Callao 2/	484	108	471	109
Other cities	17	9	15	10
Chile	258	147	320	152
Santiago or Valparaiso 3/	224	121	283	127
Antofagasta	32	18	36	16
Other cities	2	8	1	9

1/ Buenaventura (served by Grace) is near Cali (served by Panagra).
2/ Callao (served by Grace) is near Lima (served by Panagra).
3/ Valparaiso (served by Grace) is near Santiago (served by Panagra).
4/ In participation with Pan American and other airlines. Monthly averages were computed from data for March and September presented in Exhibit GS-74.
5/ Monthly averages were computed by dividing yearly totals shown in Exhibit GS-77 by 12.

SOURCES: O-D Survey of CAB and Maritime Administration records.

[fol. 1367]

GOVERNMENT'S STATISTICAL EXHIBIT 80

COMPARISON OF AVERAGE MONTHLY PASSENGER TRAFFIC CARRIED BY AIR WITH PANAGRA PARTICIPATION AND BY SEA ON GRACE LINE BETWEEN NORTHEASTERN U.S. AND WEST COAST COUNTRIES OF SOUTH AMERICA, 1954 AND 1955

Between Northeastern U.S. and:	1955		1954	
	Panagra 4/	Grace 5/	Panagra 4/	Grace 5/
All 4 areas below	1,054	317	797	311
Western Colombia	118	27	131	39
Cali or Buenaventura 1/	118	27	131	39
Ecuador	282	29	220	25
Guayaquil (Puna)	146	29	125	25
Other cities	136	--	97	--
Peru	388	118	332	112
Lima or Callao 2/	369	111	319	98
Other cities	19	7	13	14
Chile	272	143	112	132
Santiago or Valparaiso 3/	252	115	102	113
Antofagasta	14	18	9	14
Other cities	2	10	1	8

1/ Buenaventura (served by Grace) is near Cali (served by Panagra).
2/ Callao (served by Grace) is near Lima (served by Panagra).
3/ Valparaiso (served by Grace) is near Santiago (served by Panagra).
4/ In participation with Pan American and other airlines. Monthly averages were computed from data for March and September presented in Exhibit GS-75.
5/ Monthly averages were computed by dividing yearly totals shown in Exhibits GS-77 and GS-78 by 12.

SOURCES: O-D Survey of CAB and Maritime Administration records.

[fol. 1368]

GOVERNMENT'S STATISTICAL EXHIBIT 81

COMPARISON OF AVERAGE MONTHLY PASSENGER TRAFFIC CARRIED BY AIR WITH PANAGRA PARTICIPATION AND BY SEA ON GRACE LINE BETWEEN NORTHEASTERN U.S. AND WEST COAST COUNTRIES OF SOUTH AMERICA, 1952 AND 1953

Between Northeastern U.S. and:	1953		1952	
	Panagra 4/	Grace 5/	Panagra 4/	Grace 5/
All 4 areas below	775	339	601	246
Western Colombia	96	42	81	41
Cali or Buenaventura 1/	96	42	81	41
Ecuador	182	28	140	25
Guayaquil (Puna)	112	28	100	24
Other cities	70	--	40	1
Peru	313	131	218	122
Lima or Callao 2/	306	111	208	106
Other cities	7	20	10	16
Chile	184	138	162	120
Santiago or Valparaiso 3/	164	112	139	109
Antofagasta	20	18	23	22
Other cities	--	8	--	7

1/ Buenaventura (served by Grace) is near Cali (served by Panagra).
2/ Callao (served by Grace) is near Lima (served by Panagra).
3/ Valparaiso (served by Grace) is near Santiago (served by Panagra).
4/ In participation with Pan American and other airlines. Monthly averages were computed from data for March and September presented in Exhibit GS-76.
5/ Monthly averages were computed by dividing yearly totals shown in Exhibit GS-78 by 12.

SOURCES: O-D Survey of CAB and Maritime Administration records.

[fol. 1369]

GOVERNMENT'S STATISTICAL EXHIBIT 82

OVERSEAS CARGO CARRIED BY AIR INTO AND OUT OF NEW YORK, BY YEARS, 1953-57
(In short tons)

Year	Total Cargo Carried	North Atlantic Traffic	Latin American Traffic 1/
1953	14,424	10,023	4,401
1954	18,160	12,038	6,122
1955	22,658	15,692	6,966
1956	26,074	18,194	7,880
1957	31,266	20,292	10,974
% increase:			
1953 to 1957	+116.8	+102.5	+149.4
1956 to 1957	+19.9	+11.5	+39.3

1/ Overseas traffic to or from New York and Puerto Rico, Caribbean Islands, Central America, and South America.

SOURCE: Data supplied to CAB by Port of New York Authority, Aviation Department, Forecast and Analysis Division, in letter dated Nov. 20, 1958.

[fol 1370]

GOVERNMENT'S STATISTICAL EXHIBIT 83

CARGO AND MAIL CARRIED BY AIR BETWEEN MIAMI AND POINTS OUTSIDE CONTINENTAL U.S., BY YEARS, 1951-57 1/
(In short tons)

Year	Total	Cargo	Mail
1951	35,048	33,784	1,264
1952	40,005	38,625	1,380
1953	43,837	42,325	1,512
1954	51,268	49,564	1,704
1955	55,002	53,208	1,794
1956	64,252	62,336	1,916
1957	80,911	78,787	2,124
% increase:			
1951 to 1957	+130.9	+133.2	+68.0
1952 to 1957	+102.3	+104.0	+53.9
1953 to 1957	+ 84.6	+ 86.1	+40.5
1956 to 1957	+ 25.9	+ 26.4	+10.9

1/ Movements into and out of Miami.

SOURCE: Data supplied to CAB by Dade County Port Authority, International Airport Branch, Miami, Florida.

[fol. 1371]

GOVERNMENT'S STATISTICAL EXHIBIT 84

FREIGHT, EXPRESS AND MAIL CARRIED BY AIR ON U.S. FLAG AIRLINES SERVING LATIN AMERICA, 1957 1/
(In thousands of ton-miles)

Airline	Freight express, & mail	Freight and express	Mail (U.S. & foreign)
Total, all airlines	88,215	79,640	8,575
Pan American & affiliates	61,179	54,487	6,692
% of total	69.4	68.4	78.0
Pan American, LAD	55,534	50,001	5,533
% of total	63.0	62.8	64.5
Panagra	5,620	4,461	1,159
% of total	6.4	5.6	13.5
UNCA	25	25	--
Braniff	1,244	871	373
Delta	702	604	98
Aerovias Sud Americana	8,415	8,415	--
American	3,795	3,582	213
Caribbean	54	36	18
Eastern	2,194	1,129	1,065
National	525	416	109
Riddle	10,027	10,027	--
Mackey	34	34	--
Western	46	39	7

1/ Revenue traffic in scheduled services of certificated carriers in foreign and overseas operations.

SOURCE: Compiled from CAB's "Monthly Report of Air Carrier Traffic Statistics, Dec. 1957," pp. 51 and 53.

[fol. 1372]

GOVERNMENT'S STATISTICAL EXHIBIT 85

FREIGHT, EXPRESS AND MAIL LOADED ON U. S. FLAG AIRLINES SERVING SOUTH AMERICA, 1957
(In short tons)

Carrier	Total 3 areas	Loads originating in: United States	Central America 1/	South America
Freight and Express				
Pan American, LAD	36,222	22,714	12,200	1,308
Panagra	3,436	--	1,729	1,707
Braniff, International	356	201	76	79
Delta, International	515	326	172	17
Aerovias Sud Americana	7,930	4,547	3,253	130
Total, 5 airlines	48,459	27,788	17,430	3,141
Mail				
Pan American, LAD	3,277	2,260	846	171
Panagra	611	--	405	206
Braniff, International	156	70	44	42
Delta, International	62	54	1	7
Aerovias Sud Americana	--	--	--	--
Total, 5 airlines	4,106	2,384	1,296	426

1/ Includes Caribbean Islands as well as Central American countries.

SOURCE: Carrier Reports on Form 41, Schedule T-4 of CAB, for certificated carriers.

[fol. 1373]

GOVERNMENT'S STATISTICAL EXHIBIT 86

CARGO CARRIED BY SEA IN LINER SERVICE BETWEEN THE UNITED STATES AND LATIN AMERICA, BY YEARS, 1951-57 1/
(In short tons)

Year	Total exports & imports	Exports from U. S.	Imports to U. S.
1951	12,240,150	6,865,450	5,374,700
1952	11,113,850	6,398,700	4,715,150
1953	10,812,900	5,618,700	5,194,200
1954	10,578,150	5,685,950	4,892,200
1955	11,418,000	6,023,300	5,394,700
1956	12,393,200	6,901,550	5,491,650
1957	13,319,400	7,628,500	5,690,900
% increase:			
1951 to 1957	+ 8.8	+11.1	+ 5.9
1952 to 1957	+19.8	+19.2	+20.7
1953 to 1957	+23.2	+35.8	+ 9.6
1956 to 1957	+ 7.5	+10.5	+ 3.6

1/ Includes liner service traffic between all U.S. ports and foreign ports in the Caribbean Area, Mexico, Central America, and South America. The classification of vessels in liner service is based on the characteristics of each voyage (in scheduled berth operation, etc.) using the classification criteria of the Maritime Administration.

SOURCE: Bureau of the Census, U.S. Department of Commerce, from annual issues of Summary Report FT 985, U.S. Waterborne Foreign Trade (Summary Report FT 973 for 1951).

[fol. 1374]

GOVERNMENT'S STATISTICAL EXHIBIT 87

CARGO IMPORTS CARRIED BY SEA IN LINER SERVICE TO SPECIFIED UNITED STATES COASTAL AREAS FROM THE WEST COAST OF SOUTH AMERICA, 1957

Cargo in long tons (2,240 lbs.)	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Total, all flags	1,689,421	1,015,412	328,498	345,511
U.S. flag lines	1,119,361	655,521	198,887	264,953
Grace and affiliate	1,101,497	655,521	198,887	247,089
Grace Line	902,610	655,521	-	247,089
Gulf & So. Am. SS Co. 1/	198,887	-	198,887	-
Other U.S. lines	17,864	-	-	17,864
Foreign flag carriers	570,060	359,891	129,611	80,558
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	66.3	64.6	60.5	76.7
Grace and affiliate	65.2	64.6	60.5	71.5
Grace Line	53.4	64.6	-	71.5
Gulf & So. Am. SS Co. 1/	11.8	-	60.5	-
Other U.S. lines	1.1	-	-	5.2
Foreign flag carriers	33.7	35.4	39.5	23.3

1/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol. 1375]

GOVERNMENT'S STATISTICAL EXHIBIT 88

CARGO IMPORTS CARRIED BY SEA IN LINER SERVICE TO SPECIFIED UNITED STATES COASTAL AREAS FROM THE WEST COAST OF SOUTH AMERICA, 1956

Cargo in long tons (2,240 lbs.)	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Total, all flags	1,487,848	827,767	399,855	260,226
U.S. flag lines	973,149	525,189	233,626	214,334
Grace and affiliate	961,197	525,189	233,626	202,382
Grace Line	727,571	525,189	-	202,382
Gulf & So. Am. SS Co. 1/	233,626	-	233,626	-
Other U.S. lines	11,952	-	-	11,952
Foreign flag carriers	514,699	302,578	166,229	45,892
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	65.4	63.4	58.4	82.4
Grace and affiliate	64.6	63.4	58.4	77.8
Grace Line	48.9	63.4	-	77.8
Gulf & So. Am. SS Co. 1/	15.7	-	58.4	-
Other U.S. lines	.8	-	-	4.6
Foreign flag carriers	34.6	36.6	41.6	17.6

1/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol. 1376]

GOVERNMENT'S STATISTICAL EXHIBIT 89

CARGO IMPORTS CARRIED BY SEA IN LINER SERVICE TO SPECIFIED UNITED STATES COASTAL AREAS FROM THE WEST COAST OF SOUTH AMERICA, 1955

	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Cargo in long tons (2,240 lbs.)				
Total, all flags	1,456,008	809,869	384,448	261,691
U.S. flag lines	946,073	509,739	215,026	221,308
Grace and affiliate	943,354	509,739	215,026	218,589
Grace Line	728,328	509,739	-	218,589
Gulf & So. Am. SS Co. 1/	215,026	-	215,026	-
Other U.S. lines	2,719	-	-	2,719
Foreign flag carriers	509,935	300,130	169,422	40,383
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	65.0	62.9	55.9	84.6
Grace and affiliate	64.8	62.9	55.9	83.5
Grace Line	50.0	62.9	-	83.5
Gulf & So. Am. SS Co. 1/	14.8	-	55.9	-
Other U.S. lines	.2	-	-	1.1
Foreign flag carriers	35.0	37.1	44.1	15.4

1/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol. 1377]

GOVERNMENT'S STATISTICAL EXHIBIT 90

CARGO IMPORTS CARRIED BY SEA IN LINER SERVICE TO SPECIFIED UNITED STATES COASTAL AREAS FROM THE WEST COAST OF SOUTH AMERICA, 1954

	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Cargo in long tons (2,240 lbs.)				
Total, all flags	1,331,138	706,374	370,677	254,087
U.S. flag lines	839,525	445,440	206,390	187,695
Grace and affiliate	838,289	445,440	206,390	186,459
Grace Line	631,899	445,440	-	186,459
Gulf & So. Am. SS Co. 1/	206,390	-	206,390	-
Other U.S. lines	1,236	-	-	1,236
Foreign flag carriers	491,613	260,934	164,287	66,392
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	63.1	63.1	55.7	73.9
Grace and affiliate	63.0	63.1	55.7	73.4
Grace Line	47.5	63.1	-	73.4
Gulf & So. Am. SS Co. 1/	15.5	-	55.7	-
Other U.S. lines	.1	-	-	.5
Foreign flag carriers	36.9	36.9	44.3	26.1

1/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol. 1378]

GOVERNMENT'S STATISTICAL EXHIBIT 91

CARGO IMPORTS CARRIED BY SEA IN LINER SERVICE TO THE ATLANTIC COAST OF THE UNITED STATES FROM THE WEST COAST OF SOUTH AMERICA, 1951-1953 (Trade Route 2)

	1953	1952	1951
Cargo in long tons (2,240 lbs.)			
Total, all flags	848,305	810,427	708,373
U. S. flag lines	491,496	512,543	469,653
Grace Line	491,496	512,543	469,653
Other U. S. lines	--	--	--
Foreign flag carriers	356,809	297,884	238,720
Percent of total			
Total, all flags	100.0	100.0	100.0
U. S. flag lines	57.9	63.2	66.3
Grace Line	57.9	63.2	66.3
Other U. S. lines	--	--	--
Foreign flag carriers	42.1	36.8	33.7

SOURCE: Maritime Administration records.

[fol. 1379]

GOVERNMENT'S STATISTICAL EXHIBIT 92

CARGO EXPORTS CARRIED BY SEA IN LINER SERVICE FROM SPECIFIED UNITED STATES COASTAL AREAS TO THE WEST COAST OF SOUTH AMERICA, 1957

Cargo in long tons (2,240 lbs.)	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Total, all flags	1,145,207	548,869	401,356	194,982
U.S. flag lines	640,030	294,196	221,744	124,090
Grace and affiliate	639,371	294,196	221,085	124,090
Grace Line	418,286	294,196	-	124,090
Gulf & So. Am. SS Co. 1/	221,085	-	221,085	-
Other U.S. lines	659	-	659	-
Foreign flag carriers	505,177	254,673	179,612	70,892
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	55.9	53.6	55.2	63.6
Grace and affiliate	55.8	53.6	55.1	63.6
Grace Line	36.5	53.6	-	63.6
Gulf & So. Am. SS Co. 1/	19.3	-	55.1	-
Other U.S. lines	.1	-	.1	-
Foreign flag carriers	44.1	46.4	44.8	36.4

1/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol. 1380]

GOVERNMENT'S STATISTICAL EXHIBIT 93

CARGO EXPORTS CARRIED BY SEA IN LINER SERVICE FROM SPECIFIED UNITED STATES COASTAL AREAS TO THE WEST COAST OF SOUTH AMERICA, 1956

	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Cargo in Long tons (2,240 lbs.)				
Total, all flags	1,205,421	618,757	391,234	195,430
U.S. flag lines	621,005	288,468	202,986	129,551
Grace and affiliate	621,005	288,468	202,986	129,551
Grace Line	418,019	288,468	-	129,551
Gulf & So. Am. SS Co. 1/	202,986	-	202,986	-
Other U.S. lines	-	-	-	-
Foreign flag carriers	584,416	330,289	188,248	65,879
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	51.5	46.6	51.9	66.3
Grace and affiliate	51.5	46.6	51.9	66.3
Grace Line	34.7	46.6	-	66.3
Gulf & So. Am. SS Co. 1/	16.8	-	51.9	-
Other U.S. lines	-	-	-	-
Foreign flag carriers	48.5	53.4	48.1	33.7

1/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol. 1381]

GOVERNMENT'S STATISTICAL EXHIBIT 94

CARGO EXPORTS CARRIED BY SEA IN LINER SERVICE FROM SPECIFIED UNITED STATES COASTAL AREAS TO THE WEST COAST OF SOUTH AMERICA, 1955

Cargo in long tons (2,240 lbs.)	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U.S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Total, all flags	1,020,394	501,286	352,885	166,223
U.S. flag lines	518,842	227,316	192,944	98,582
Grace and affiliate	518,728	227,316	192,830	98,582
Grace Line	325,898	227,316	-	98,582
Gulf & So. Am. SS Co. 1/	192,830	-	192,830	-
Other U.S. lines	114	-	114	-
Foreign flag carriers	501,552	273,970	159,941	67,641
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	50.8	45.3	54.7	59.3
Grace and affiliate	50.8	45.3	54.7	59.3
Grace Line	31.9	45.3	-	59.3
Gulf & So. Am. SS Co. 1/	18.9	-	54.7	-
Other U.S. lines	*/	-	*/	-
Foreign flag carriers	49.2	54.7	45.3	40.7

*/ Less than 0.05%.
1/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol. 1382]

GOVERNMENT'S STATISTICAL EXHIBIT 95

CARGO EXPORTS CARRIED BY SEA IN LINER SERVICE FROM SPECIFIED UNITED STATES COASTAL AREAS TO THE WEST COAST OF SOUTH AMERICA, 1954

	All three U.S. Coastal areas	U. S. Atlantic Coast (T.R. 2)	U. S. Gulf Coast (T.R. 31)	U. S. Pacific Coast (T.R. 25)
Cargo in long tons (2,240 lbs.)				
Total, all flags	926,268	482,665	309,065	134,538
U.S. flag lines	455,847	211,655	185,533	58,659
Grace and affiliate	455,830	211,655	185,516	58,659
Grace Line	270,314	211,655	-	58,659
Gulf & So. Am. SS Co. 1/	185,516	-	185,516	-
Other U.S. lines	17	-	17	-
Foreign flag carriers	470,421	271,010	123,532	75,879
Percent of total				
Total, all flags	100.0	100.0	100.0	100.0
U.S. flag lines	49.2	43.9	60.0	43.6
Grace and affiliate	49.2	43.9	60.0	43.6
Grace Line	29.2	43.9	-	43.6
Gulf & So. Am. SS Co. 1/	20.0	-	60.0	-
Other U.S. lines	*/	-	*/	-
Foreign flag carriers	50.8	56.1	40.0	56.4

*/ Less than 0.05%.
1/ Grace owns 50% of capital stock; other 50% owned by Lykes Bros. Steamship Co., Inc.

SOURCE: Maritime Administration records and Moody's Industrial Manual, 1958. "T.R." followed by a number is the Trade Route designation used by the Maritime Administration.

[fol 1383]

GOVERNMENT'S STATISTICAL EXHIBIT 96

CARGO EXPORTS CARRIED BY SEA
IN LINER SERVICE FROM THE ATLANTIC COAST OF THE
UNITED STATES TO THE WEST COAST OF SOUTH AMERICA,
1951-1953 (Trade Route 2)

	1953	1952	1951
Cargo in long tons (2,240 lbs.)			
Total, all flags	503,769	533,379	515,322
U. S. flag lines	245,310	275,390	273,078
Grace Line	245,310	275,390	273,078
Other U. S. lines	--	--	--
Foreign flag carriers	258,459	257,989	242,244
Percent of total			
Total, all flags	100.0	100.0	100.0
U. S. flag lines	48.7	51.6	53.0
Grace Line	48.7	51.6	53.0
Other U. S. lines	--	--	--
Foreign flag carriers	51.3	48.4	47.0

SOURCE: Maritime Administration records.

[fol. 1384]

GOVERNMENT'S STATISTICAL EXHIBIT 97

FREIGHT, EXPRESS, AND MAIL LOADED ON PANAGRA PLANES, BY CITIES, 1957 1/
(In short tons)

Cities	Total	Freight and Express	Mail, U.S. and Foreign
Total, all cities	4,047	3,436	611
Canal Zone	2,134	1,729	405
Balboa	2,134	1,729	405
West Coast of Colombia	58	37	21
Cali (near Buenaventura*)	58	37	21
Ecuador	956	920	36
Manta*	63	62	1
Guayaquil*	416	400	16
Cuenca	110	107	3
Esmeraldas	17	17	--
Quito	350	334	16
Peru	169	122	47
Talara*	4	3	1
Lima (near Callao*)	163	117	46
Arequipa (near Mollendo*)	2	2	2/
Chile	385	349	36
Arica*	115	114	1
Antofagasta*	4	2	2
Santiago (near Valparaiso*)	266	233	33
Bolivia	192	171	21
Cochabamba	21	18	3
Concepcion	9	9	2/
La Paz	79	67	12
Oruro	3	2	1
Puerto Suarez	4	3	1
Robore	4	3	1
San Ignacio	13	13	2/
San Jose	13	13	2/
Santa Cruz	46	43	3
Argentina	153	108	45
Buenos Aires	153	108	45

* South American port served by Grace (see Exhibit GS-97).
1/ Data are for Panagra's on-line revenue traffic originations.
2/ Less than 1/2 ton.

SOURCE: Carrier Reports on CAB Form 41, Schedule T-4.

[fol. 1385]

GOVERNMENT'S STATISTICAL EXHIBIT 98

CARGO CARRIED BY PANAGRA PLANES BETWEEN MIAMI OR THE CANAL ZONE AND FIVE CITIES IN WEST COAST COUNTRIES OF SOUTH AMERICA, 1957
(In short tons)

	Total Cargo	Southbound flights	Northbound flights
Between Miami[1] or Canal Zone[2] and:			
Total, 5 cities below	1,080	964	116
Cali, Col. (near Buenaventura*)	239	214	25
Quito, Ecuador	167	138	29
Guayaquil*, Ecuador	171	163	8
Talara*, Peru	27	25	2
Lima, Peru (near Callao*)	476	424	52
Between Miami[1] and:			
Total, 5 cities below	677	606	71
Cali, Col. (near Buenaventura*)	110	96	14
Quito, Ecuador	98	89	9
Guayaquil*, Ecuador	98	93	5
Talara*, Peru	18	16	2
Lima, Peru (near Callao*)	353	312	41
Between Canal Zone[2] and:			
Total, 5 cities below	403	358	45
Cali, Col. (near Buenaventura*)	129	118	11
Quito, Ecuador	69	49	20
Guayaquil*, Ecuador	73	70	3
Talara*, Peru	9	9	3/
Lima, Peru (near Callao*)	123	112	11

* Served by Grace.
1/ Service between Miami and Balboa operated by Pan American.
2/ Balboa.
3/ Less than 1,000 pounds.

SOURCE: Compiled from Exhibit PGR-3 submitted by Panagra to CAB in connection with the Aerovias Sud Americana application for certificate renewal, CAB Docket No. 8614. Data for other cities served by Panagra were not included in that Exhibit.

[fol. 1386]

GOVERNMENT'S STATISTICAL EXHIBIT 99

CARGO CARRIED BY THE GRACE LINE BETWEEN THE ATLANTIC COAST OF THE UNITED STATES AND THE WEST COAST OF SOUTH AMERICA, BY CITIES, (TRADE ROUTE 2), 195?
(In long tons)

Between Atlantic Coast of U.S. and:	Total cargo	Southbound voyages	Northbound voyages
Total, West Coast of So. America	949,717	294,196	655,521
West Coast of Colombia	111,413	46,292	65,121
Buenaventura (near Cali*)	111,413	46,292	65,121
Ecuador	81,922	4,653	77,269
Manta*	929	--	929
Guayaquil* (Puna)	80,987	4,647	76,340
La Libertad	6	6	--
Peru	428,948	160,749	268,199
Talara*	11,299	11,098	201
Callao (near Lima*)	212,891	83,537	129,354
Mollendo (near Arequipa*)	5,399	5,399	--
Salaverry	27,631	2,146	25,485
Ilo	44,415	43,547	868
Pisco	2,094	197	1,897
Supe	3,287	--	3,287
San Juan	101,117	71	101,046
Paita	2,449	1,258	1,191
Mancora	304	--	304
Matarani	15,770	11,772	3,998
Chimbote	529	--	529
Pimentel	1,014	1,014	--
Eten	258	258	--
Ancon	299	260	39
Pt. Chicama	156	156	--
Pacasmayo	36	36	--
Chile	327,434	82,502	244,932
Arica*	6,465	3,336	3,129
Antofagasta*	83,008	22,948	60,060
Valparaiso (near Santiago*)	55,280	39,325	15,955
San Antonio (near Santiago*)	49,072	2,065	47,007
Chanaral	55,674	9,328	46,346
Coquimbo	48,405	19	48,386
Tocopilla	5,352	5,287	65
Caldera	17,983	--	17,983
Carrizal Bajo	6,001	--	6,001
Iquique	194	194	--

* Served by Panagra (see Exhibit GS-97).

SOURCE: Maritime Administration records.

[fol. 1387]

GOVERNMENT'S STATISTICAL EXHIBIT 100

COMPARISON OF CARGO TRAFFIC CARRIED BY PANAGRA PLANES AND BY GRACE LINE BETWEEN INDICATED U. S. ATLANTIC COAST POINTS AND SPECIFIED CITIES IN WEST COAST COUNTRIES OF SOUTH AMERICA, 1957
(In short tons)

	Panagra[1]	Grace[2]
Southbound		
Total, below cities	517	163,043
Cali or Buenaventura,[3] Colombia	96	51,847
Guayaquil (Puna), Ecuador	93	5,205
Talara, Peru	16	12,430
Lima or Callao,[4] Peru	312	93,561
Northbound		
Total, below cities	62	303,538
Cali or Buenaventura,[3] Colombia	14	72,936
Guayaquil (Puna), Ecuador	5	85,501
Talara, Peru	2	225
Lima or Callao,[4] Peru	41	144,876

1/ Includes traffic between Miami and indicated cities only (operations on segment between Miami and Balboa conducted by Pan American). See Exhibit GS-98.

2/ Includes traffic between all U.S. Atlantic Coast ports served by Grace and indicated cities (for purposes of comparability with Panagra figures, the Grace data in this exhibit are in short tons of 2,000 pounds, while those presented in Exhibit GS-99 are in long tons of 2,240 pounds).

3/ Buenaventura (served by Grace) is near Cali (served by Panagra).

4/ Callao (served by Grace) is near Lima (served by Panagra).

SOURCES: Compiled from sources indicated in Exhibits GS-98 and GS-99.

[fol. 1387a]

GOVERNMENT'S EXHIBIT 1119

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.
Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

Before The Honorable Thomas F. Murphy, District Judge

TRIAL BRIEF FOR UNITED STATES

PART II

EXCERPTS FROM TESTIMONY OF JUAN TRIPPE IN C.A.B. DOCKET 779

[fol. 1388]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 99-259

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

TESTIMONY OF MR. TRIPPE IN CAB DOCKET 779 WHICH THE GOVERNMENT INTENDS TO OFFER INTO EVIDENCE

I

Division of Territory

pp. 1521-22:

By Mr. Friendly:

Q. Is the letter which has been marked P-149, Mr. Trippe, a copy of a letter which you received from Mr. Hoit on or about the 18th of August, 1928?

A. It is.

Q. What did you do after you received Mr Hoit's letter?

A. I told Mr. Hoit that he had misunderstood my memorandum and that my understanding of the arrangement, as well as Colonel Hamilton's; who worked with me on the memorandum, was that the proposed joint company would operate only along the west coast of South America, and Pan American would operate in the interior of Colombia.

p. 1526:

Q. In conducting the affairs of Pan American, have you proceeded on the basis that the letter of August 31, 1928, has imposed on Pan American an obligation not to operate down the west coast of South America?

* * * * * * *

[fol. 1389] A. The answer is: we have.

p. 1544:

Q. After Pan American had acquired stock control of Scadta, did Dr. von Bauer withdraw the company from international operations?

A. He did, after a very short time. There may have been a few special flights later on, but no regular international service such as Dr. von Bauer was operating when we made our arrangement with him.

Q. Those international services which he was operating when you made your arrangements with him included services down the west coast?

A. They did, to Ecuador, and an operating concession in Peru was pending at the time.

pp. 1562-67:

A. After the advertisement on the West Coast Route was issued, we again discussed the matter with the Grace directors and Pan American agreed with them that the joint company should put in a bid which would contemplate possible subsequent operation by it from Santiago to Buenos Aires and Montevideo outside the territory of the joint company as originally agreed to.

By Mr. Friendly:

Q. The Grace directors at that time were Mr. Patchin and Mr. Cogswell; is that correct?

A. That is correct.

Q. I note also that the advertisement is for a route from the Canal Zone to Santiago rather than to Valparaiso. Did you consider that this change required any formal amendment of your agreement with W. R. Grace & Company?

. . . . . .

A. Certainly not. Our agreement had fixed the general territory to be covered by the Joint Company, and it never occurred to us that changing the terminus from Valparaiso to Santiago or for that matter anywhere else in Chile required an exchange of correspondence.

. . . . . .

[fol. 1390] Q. Did Pan American assist in obtaining the rights for Pan American-Grace to operate in the Argentine?

A. Yes. At the time when the advertisement was issued, Pan American already had an official in the Argentine negotiating for a concession for Pan American Airways. We arranged to have this issued in the name of Pan American-Grace Airways, but it included a right on the part of Pan American Airways also to carry the Argentine mail. As a matter of fact, our representative succeeded in getting the concession only on the very day when Pan American-Grace was to inaugurate the mail service from Santiago to Buenos Aires.

Q. Did any issue subsequently arise as to changes in the respective spheres of operation of Pan American of Pan American-Grace in the Argentine?

A. Yes, it did.

Q. When? A. In the fall of 1930.

Q. Will you tell us under what circumstances?

A. In the fall of 1930 Pan American had taken over a company known as Nyrba. A subsidiary of Nyrba known as Tri-motor Safety Airways had inaugurated service between Montevideo, Buenos Aires, and Santiago in August, 1929, and between Buenos Aires and Bolivia through the northern part of the Argentine later in that year. Our acquisition of Nyrba raised the question of the respective scope of our operations again and of Pan American-Grace's operation in the Argentine. We discussed this matter with the Grace people and we agreed that since the scope of operations of Pan American-Grace had been extended to include the Santiago-Mendoza-Buenos Aires route by mutual assent at the time when the advertisement for the mail contract was issued, Pan American was excluded from operations on the route, but was free to operate anywhere else in the Argentine, and that Pan American-Grace's operations were restricted to the route indicated.

[fol. 1391] Q. Did any incidents arise at about this time as to the respective scope of operations of the two companies in the Argentine?

A. Yes. Pan American had previously formed a national subsidiary in the Argentine for operations in that country known as Alas. Through a misunderstanding, our repre-

sentative in Argentina in September, 1930, when we were taking over Nyrba had Alas make certain flights between Mendoza, Argentine, and Santiago to Chile to carry out the commitments of the Tri-motor Safety Airways to the Argentine and Chilean Governments against which substantial bonds were on deposit. This operation was brought to my attention by Pan American-Grace. At Mr. Cogswell's request I immediately sent a cablegram to our office in Buenos Aires instructing them to discontinue this operation, by Alas, between Mendoza, Argentine, and Santiago, Chile.

. . . . . .

Q. When did the question of operations in the Argentine by the two companies come up again?

A. It came up again in the spring of 1931 in connection with the extension of Pan American's east coast route to Buenos Aires.

Q. What questions came up at that time?

A. There were two questions. One was the question of the availability of postal appropriations for the two routes, and the second was that the Grace directors wanted to have it perfectly clear that although we were, of course, free to extend our route to Buenos Aires, Pan American was not at liberty, under the agreement between the two companies, to compete with the jointly owned company between Buenos Aires and Santiago via Mendoza.

Q. By the way, Mr. Roig had jointe Mr. Patchin and Mr. Cogswell on the Pan American-Grace Board at this time, had he not?

A. That is my recollection.

Q. What position did Pan American take?

[fol. 1392] A. We took the position that, of course, we were free to operate down the east coast to Buenos Aires or anywhere else in the Argentine except that under the supplementary understanding between the two companies, had the sole right to operate between Santiago and Buenos Aires and Montevideo via Mendoza, and also that it was to operate on that route only.

Q. What was Pan American's reason for taking this position?

A. The reason for this was that Argentina was not a west coast country and that the only modification of the original agreement had been to permit Pan American-Grace to operate the route called for in the Post Office extension between Santiago and Buenos Aires and Montevideo when ordered by the Post Office Department.

pp. 1601-02:

Q. Were any proposals made about 1936 that Scadta should extend its operations into Ecuador and Venezuela?

A. Yes. About that time Pan American was informed that officials of the Colombian Government were interested in having Scadta extend service to the two neighboring countries.

Q. What was Pan American's position in regard to this?

A. We told Dr. von Bauer that such an operation was contrary to our agreement with him in 1929 and also that if Scadta were to operate a service to Ecuador, it would place us in the position of violating our agreement with Grace & Company.

pp. 1604-05:

Q. What position did Pan American take with the representatives of W. R. Grace & Company in regard to this? Before answering that question, I would like to have you define who were the representatives of Pan American and of W. R. Grace & Company who were in these discussions in 1937.

A. Mr. Rihl, the vice president of Pan American, and myself, and on occasion Mr. Young, and Mr. Roig, and Mr. Garni were representing Grace & Company.

[fol. 1393] Q. Now, will you go on and state what position Pan American took in these discussions with regard to the possible extension of Scadta's operations to Quito?

A. We said to them, among other things, that we felt that for a Colombian company of which we had stock control to operate internationally from Colombia to Ecuador would be a breach of our 1928 agreement with Grace, which we would not commit, that if no other solution could be worked out, we would dispose of our controlling interest in Scadta

but that we wished them to consider whether in lieu of this it would not be better for Pan American-Grace to become an equal owner in Scadta with Pan American.

Q. Did the Grace representatives take the position that if Pan American, as owner of a majority of the stock of Scadta, permitted that company to extend its lines into Ecuador, that would constitute a breach of the agreement between Grace and Pan American?

A. They did and we agreed with them.

p. 1613:

Q. Did Medellin come into the discussions that took place in 1937?

A. Yes, in a certain way.

Q. Would you please state how?

A. The Grace directors were interested in being able to utilize Medellin as a refueling stop.

Q. Was there any discussion of Pan American-Grace stopping at Medellin as a regular port of call for taking on and discharging traffic?

A. I think it was mentioned by the Grace directors, but we took the position that Medellin was not within Pan American-Grace's territory and I understood that they agreed.

pp. 1618-19:

Q. I note that Mr. Whitney's letter of November 19, 1938, which is Exhibit P-165, concludes by suggesting further conferences. Do you know whether such conferences were held?

A. Yes, including committees of directors of the respective companies designated for the purpose.

[fol. 1394] Q. During these discussions did Grace again urge that Pan American-Grace apply for an extension for service north of the Canal?

A. They did.

Q. And did the Pan American representatives report this to the Pan American Board of Directors?

A. They did.

Q. Would you please refer to Exhibit P-37, and more particularly to page 42, and still more particularly to the minute of the Board of Directors held on December—of the meeting of the Board of Directors held on December 28, 1938, at which this matter is discussed. Were the directors unanimous in taking the position which is set forth in those minutes?

A. They were.

Q. Has there ever been any dissent in the Pan American Board on the question of the extension of Pan American-Grace north of the Canal?

A. No. There never has been a single dissenting vote or votes.

pp. 1623-25:

Q. When did Grace next bring up the proposal that Pan American-Grace extend to the United States?

A. In the fall of 1940.

Q. What reason did they give for bringing up the matter at that time?

A. The reason given was the application which had been filed by American Export Airlines for a certificate between New Orleans and the Canal Zone. They said they were afraid that American Export would get this route as against Pan American, and would then find that the New Orleans-Canal Zone route did not offer sufficient traffic in and of itself, and would probably seek to extend its lines down the west coast in competition with Pan American-Grace.

. . . . . .

Q. What happened when the proposal was made?

A. We told the Grace people that we could see no reason for departing from our agreement of 1939 and that we [fol. 1395] were not impressed by the reasons which they had advanced.

Q. Was the proposal dropped?

A. We heard nothing further about it for some months.

Q. When did Grace again bring up this matter of extending Pan American-Grace north from the Canal?

A. They brought it up again in the spring of 1941.

Q. What reason did they give for bringing it up again at that time?

A. It was again the New Orleans issue, which was now about to be heard.

Q. Were there further discussions of the matter during the spring of 1941?

A. Yes, there were, largely with Mr. Rihl.

Q. Was there any change in Pan American's position?

A. No. Not at all.

pp. 1701-03:

Q. Some reference has been made to the question of Pan American's use of the phrase "dedication of capital" with respect to the present controversy. Is it a fact that this contention was first advanced in the answer that was filed by Pan American in this proceeding under date of October 26, 1942?

A. So far as I can recall, this was the first time that those precise words were used, but it certainly was not the first time that the contention was advanced. It has been advanced repeatedly in connection with a number of different matters relating to the scope of Pan American-Grace's operations. The letter of April 8, 1931, which appears on page 35 of Exhibit P-37, contains the following: "The arrangement between Aviation Corporation of the Americas and W. R. Grace & Company as a result of which your company was formed, contemplated that the sphere of operations of your company should be confined to the west coast of South America."

. . . . . .

[fol. 1396] Q. Will you proceed, Mr. Trippe?

A. In the discussions in 1937 in regard to Medellin the same point was emphasized by Pan American. The same position was taken by Pan American in the fall of 1938 when Grace, for the first time, seriously pressed this matter of the extension north of the Canal, and that position has since been constantly adhered to. Mr. Rihl's letter of June 19, 1941, to Mr. Roig, which appears on page 28 of Exhibit P-35, uses the phrase.

pp. 1714-18:

Q. Do you recall the various proposals that were made in regard to Pan American-Grace's operations into Bolivia?

A. Yes. The question of operating through Bolivia was discussed in the very early days when there was difficulty in making arrangements in Chile.

Although Bolivia was not on the route mentioned in the letter of August 31, 1928, it had been mentioned along with the Argentine in my original memorandum, and we agreed that the company's territory might be broadened to include Bolivia, which we considered to be definitely a west coast country, although not actually on the sea coast.

What was under discussion at this time was not a shuttle service but diverting the whole route to Buenos Aires through Bolivia if the Chilean situation could not be handled.

We rather favored this idea and had Mr. Rihl go to Bolivia to explore the situation.

However, the Chilean matter was subsequently worked out and the Bolivian proposal was dropped.

I have no recollection that the question of operating into Bolivia was raised by Pan American-Grace again for some time.

Q. Do you recall being told, around 1934, that an opportunity had presented itself for Pan American-Grace to establish a shuttle service from Tacna to LaPaz?

A. I recall the incident, although not the precise dates.

Q. What was Pan American's position?

[fol. 1397] A. We had some doubt about it, simply on the business side.

LaPaz was a high altitude airport, something over 13,000 feet, and with existing equipment only a small pay load could be available, particularly on westbound flights. Pan American was not sold on the operation as a business proposition with the equipment then available, and without United States mail pay.

Q. Did Pan American later agree to the inauguration of the Tacna-LaPaz service?

A. Yes, we subsequently did, suggesting amendments to the proposed franchise that were included.

Q. Did the question of an extension from Bolivia to the terminal at Buenos Aires subsequently arise?

A. Yes, some two or three years later.

Q. What attitude did Pan American take on this?

A. Pan American was quite agreeable to the operation of the Diagonal.

However, this matter was somewhat involved with the question which has previously arisen with respect to the inclusion of Cordoba on the Pan American-Grace operations in the Argentine.

Q. Would you tell us what that question was?

A. Sometime, I think, around 1936 a proposal was made that certain of the trips then being flown between Santiago and Buenos Aires should deviate to the north so as to serve Cordoba.

We had no objection to Pan American-Grace's serving Cordoba but since this was an alteration of the original agreement with respect to the respective spheres of operation of the two companies in the Argentine, we felt it was only fair that Pan American should be compensated for Nyrba's development work in this area, which we had taken over on our books when we acquired the assets of that company.

The route between Buenos Aires, Cordoba, and Salta, was one which Pan American had expected at some future time [fol. 1398] to operate itself, it being in Pan American's and not in Pan American-Grace's territory.

Q. Did you discuss this matter with representatives of Grace?

A. Yes, we did, and they agreed that if it was found desirable for Pan American-Grace to extend its operations to the Argentine north of Cordoba, payment should be made to Pan American, and the Cordoba stop was instituted on that understanding.

The operation of the Diagonal involved other stops in the northern part of Argentina. This brought up the question of the payment which Pan American-Grace should make.

We discussed the matter with the Grace directors and it was agreed that the amount of payment should be arbitrated by an individual to be mutually agreed upon.

Q. Who were the Grace directors who were active in this matter?

A. Mr. Roig and Mr. Patchin, Mr. Cogswell, and I believe Mr. Garni, although I am not sure whether Mr. Garni was on the Board at that time.

• • • • • • •

Q. What attitude did Pan American take with respect to the extension of the services of Pan American-Grace in Ecuador in 1940 and in Bolivia in 1941?

A. Both these matters related to the hemisphere defense program.

We told Mr. Roig, who by this time had become president of the company, that we wished our jointly owned company to cooperate one hundred percent in this program.

Q. Was there any question that these extensions were in Pan American-Grace's territory?

A. No. They were in Ecuador and Bolivia. The operation across the border into Brazil at Corumba was approved by Pan American because Corumba was the border airport.

pp. 1740-42:

Q. I think we have now reached a point where it is appropriate for me to ask you the question which was suggested be deferred yesterday:

[fol. 1399] To summarize the reasons why Pan American has refused to consent to Grace's request that Pan American-Grace be authorized to apply for an extension of its route north from the Canal.

A. Pan American Airways, as early as 1927, had taken steps to organize an airline from the United States to the Canal Zone, and from the Canal Zone down the West Coast of South America.

A United States airmail contract between the United States and the Canal Zone was awarded the company in July 1928.

Prior to that time the active steps which I have mentioned have been undertaken by Pan American to provide service along the west coast.

This was all sometime before there was any arrangement for any possible participation by Grace and Company.

When Grace and Company finally did come into the picture it was only to take a $25,000 participation in a small company which we were to operate in Peru, with an option

to buy a half interest in our west coast airline if they decided to do so at a later date.

It was understood that, in the event Grace should decide to exercise their option, our through airline down the west coast was to be under our management, and there was also a definite understanding outlining the territory to be served by the jointly owned company in relation to other parts of Latin America which were either already served or for which plans were under way on the part of Pan American.

* * * * * * *

Grace's suggestion that this west coast line of the Pan American system in which they are given the opportunity to acquire 50 percent of the stock be now made a competitor to Pan American Airways is, in our view, a breach of the agreement between the two companies, which was first made in 1928, and which was reaffirmed in 1929.

If this company, in which Grace has had an option to purchase up to 50 per cent were to be extended to Miami the company originally created to serve as our end-on connection for our Miami-Canal Zone service would be-[fol. 1400] come the means of destroying that service, at least so far as through traffic to the West Coast of South America is concerned, and thereafter Pan American-Grace Airways would not be part of the Pan American Airways system as it was set up to be; and which it has been all these years, but would be an airline competing with Pan American.

By Mr. Cahill:

pp. 2036-37:

Q. Now, Mr. Trippe, referring to your testimony at page 1610.

A. I have 1610.

Q. Particularly to the testimony at the top of the page—in fact, I am going to query you about the whole page before we are through, but let me put to you the first question: did you mean to state that at the time when the proposal to serve Cali by an overland route was under

discussion in the latter part of 1937 or the early part of 1938, that you never raised the question of how that service would affect your subsidiary Scadta?

A. Did I raise the question?

Q. No. Did you mean to state that you never did raise the question at that time of how that would affect your subsidiary Scadta?

A. Yes, I think I referred to that in my talk in London with Mr. Roig, that has been referred to.

Q. Do you recall making objections to the institution of the service because it would adversely affect Scadta?

A. No. I believe I referred to the fact, that we might have some problem with Scadta which I had hoped to get straightened out before we actually changed the route.

Q. Is it or is it not the fact that as a condition to permitting Panagra to institute the overland service to Cali, you asked them to agree not to serve Medellin or Turbo?

A. I know there was a general discussion of Medellin and Turbo.

Q. Did you ask Panagra to agree to that?

[fol. 1401] Mr. Friendly: Let the witness finish his answer?

A. I think we did on the basis that Medellin and Turbo were not in the territory to be served by Pan American-Grace as fixed by the agreement between its two owners.

Q. Now, will you just answer my question directly, not how it was done or why it was done, but was it done?

A. Yes, it was done.

pp. 2039-44:

Q. Do you recall still further that at the time you stated that if the Colombian government or the United States Postoffice required Panagra to call at Turbo or Medellin that in such event Panagra should withdraw?

A. Not at that meeting, no, but I recall that conversation came up at meetings outside this meeting at about that time.

Q. In which you so stated?

A. Conferences between Mr. Rihl and Mr. Garni and Mr. Roig and myself.

Q. Conferences in which you so stated?

A. In which I stated what?

Q. That if the Colombian Government or the United States Postoffice required Panagra to call at Turbo or Medellin that in such event Panagra should withdraw from the overland route?

A. No, I don't recall that statement. I recall the question coming up on the basis of whether the Colombian Government or the public at Medellin, directly or through —I think I used the word "synthetic"—pressure, urged that a refueling stop be turned into a regular traffic stop then, and in that event the route either ought to be shifted back to the company's own territory or provision made that would otherwise make it unattractive for Pan American-Grace to conduct commercial service in what we considered was Pan American's territory.

[fol. 1402] Q. Do you recall, still further, that later in the discussion you modified the suggestion to suggest that, in such a case, if Panagra were compelled to carry Medellin or Turbo traffic, it should pay 75 percent of the gross revenue to UMCA and Scadta?

A. I don't recall whom Pan American-Grace was to pay to, no, but I do recall that such a suggestion was made to show that there would not be any of this pressure which I have mentioned before. I might add there, to make the record clear—

Q. Just a moment please.

A. I don't think the record is clear unless I—

Examiner Brown: Go ahead.

A. That all four persons were in agreement that Pan American-Grace shouldn't carry traffic from those points because it was not in their territory, and we were seeking ways and means to take care of an eventuality that no four of us desired to happen—no one of the four desired to happen.

* * * * * * *

Q. You testified on Page 1613 that the question of stopping at Medellin was mentioned by the Grace directors, but Pan American took the position that Medellin was not

within Panagra's territory, and—I quote—"I understand that they agreed".

Will you tell us: What is the basis of your understanding on that matter?

A. My recollection of the discussions.

Q. With whom and where were they held and when?

A. One was held at Mr. Rihl's apartment at dinner, at which the four of us were present—the four directors that I have mentioned.

Q. That is?

A. Mr. Rihl, Mr. Garni, Mr. Roig, and myself. Another discussion, I think, a day or so later, we had breakfast together, if my recollection doesn't fail me, at the University Club in New York, when the matter came up.

[fol. 1403] Q. Anything else?

A. There may have been another meeting at some other place here.

Q. The same people?

A. I do recollect those two.

Q. The same people?

A. I think there were others, but I am not sure.

Q. That is the basis of this understanding you testified to?

A. Yes.

Q. Now, I put you the question: Did you ever hear any of the Grace directors state that Medellin was not within what you have chosen to call "Panagra's territory"?

A. Oh, yes.

Q. Who?

A. Well, I think Mr. Roig and Mr. Garni were both there with Mr. Rihl and myself.

Q. Which of them did you hear make that statement?

A. Well, I would say that both of them agreed that Medellin was not within the territory to be served by—

Q. (interposing) I am not asking you whether both of them agreed; I am asking you whether you heard one or both of them state that Medellin was not within what you have chosen to call "Panagra's territory" at any of these meetings that you have just described: that is my question, Mr. Trippe.

A. Yes. That would be my recollection of the general discussion at those meetings, that there was—

Q. (interposing) I am not interested in the general discussion.

Is it your recollection of what the Grace directors said?

A. I don't recall the exact words they said, naturally.

Q. What I want to know is whether it was the substance of what they said, or either of them.

A. That would be correct as to the substance of the meeting—of the discussions at the meeting.

[fol. 1404] Q. Of what one of them said or both of them said, Mr. Trippe?

A. Well, they were both there. I wouldn't recall whether it was one of them or both of them.

Q. Are you any more clear that it was said than you are as to who said it?

A. Yes, definitely. That was the impression I got, and I know Mr. Rihl got it.

Q. I am not interested in your impressions. I am asking you—

A. (interposing) That is the recollection that I got.

Q. Now, I press the question: Which of them said it, Mr. Trippe?

A. I think I have already answered that I don't recall which of them, or whether it was both of them. It was my recollection that at the meeting there was no question but what Medellin was being discussed as a refueling point and not a point to carry traffic.

p. 2102:

Q. I would like to direct your attention to another special meeting of the Panagra Board called for November 5 to consider the proposal that Panagra extend its route to the United States—November 5, 1941, again.

* * * * * * *

Q. Now, again, none of the Pan American directors attended this meeting. Was this pursuant still to the directions of the Pan American Board that they fail to attend?

A. If this was a meeting called to vote through an extension, which we considered contrary to our agreement, yes. If not, I don't know why they failed to attend.

By Mr. Harlan:

pp. 2130-31:

Q. Well, from what you say now, I can understand why you wouldn't want to sell out to Dr. von Bauer, but I don't see why it would be necessarily desirable, from that fact, that the control of Scadta eventually be placed in a group [fol. 1405] of native Colombians. Why did you consider it desirable to divest Pan American of control of Scadta and put that control in the hands of natives?

A. Well, as you will note by reference to the previous part of the exhibit, there was a possible conflict as between Scadta and Pan American-Grace Airways developing by virtue of the fact that the Colombian Government had indicated that they would like to see the Scadta Company operate both to Venezuela and to Ecuador, and we considered that if the Scadta Company did, in fact, operate to Ecuador, it would place us, for reasons beyond our control, in a position where we would be breaking our agreement with Grace & Company, and we felt that to remove that situation, it would be wise to transfer the ownership either to Pan American-Grace or, if possible, a group of native Colombians, but even in the latter event, there was no assurance, of course, that the stock wouldn't again come back into the hands of Dr. von Bauer.

pp. 2138-39:

Q. Mr. Trippe, on page 41 of Exhibit P-37, under date of April 21, 1937, reference is made to an "intercompany transfer of position on Buenos Aires-Salta route." Can you explain just what is meant by that reference?

A. Yes. It is my understanding that that referred to the transfer by Pan American to Pan American-Grace of the route to Salta in the Argentine with the exception of Santiago, the Mendoza via Montevideo route having been considered as Pan American territory, and this agreement provided for the transfer of the rights on that route as between the two companies, to Pan American-Grace Airways, and there was an arrangement with respect to fixing of a sum of money by arbitration representing certain

development costs that Pan American had on its books arising out of the purchase of the assets of Nyrba and Nyrba's development costs which had operated that route prior to the acquisition of that company by Pan American Airways.

[fol. 1406] Q. Were all of those terms included in the agreement that is referred to here as being ratified?

A. I don't think there was any formal agreement. It was just an understanding between the parties that Pan American-Grace would operate that route by agreement, and that the question of Pan American-Grace reimbursing Pan American for some of these expenses which I have referred to would be settled by arbitration.

Q. That was just an oral understanding, then?

A. That was an oral understanding, as I recall it.

By Mr. Reynolds:

p. 2187:

Q. Mr. Trippe, if your proposal at the time of the Cali issue originally was for the operation of a shuttle service or local service, how does it happen that the territorial arrangement with Scadta or the possible competition with Scadta ever was mentioned in your London conversations with Mr. Roig? I am not quite clear on that.

A. Well, I wasn't clear over there at that time, either, as to whether Dr. von Bauer or the Scadta directors who—with one exception, Colombians—felt that Cali was a west coast city. We felt so after a certain amount of salesmanship by Mr. Roig and his associates, and we felt that Cali was a west coast point within the purview of our agreement. We wanted to be sure that the Scadta people would also agree with that point of view in which they did, and I think agreed in '37 to interpose no objection and, in fact, I think to assist if they were called upon, for Pan American-Grace to serve Cali in lieu of Buenaventura, which was the point specified in the Government treaty, the Kellogg-Olaya Treaty.

pp. 2200-02:

Q. Now, Mr. Trippe, referring to your previous conversations with Mr. Roig in London in regard to this proposed operation to Cali, and ignoring the suggestions you made about equipment and traffic considerations, just for the purpose of summarizing, is it correct to say that you took [fol. 1407] the position, in your discussions with Mr. Roig and thereafter, that Panagra should not operate through Cali because your original agreement with Dr. von Bauer and the Colombian Government, and the purchase of Scadta stock, making possible treaties under which Panagra was enabled to bid on its route and operate in Colombia, imposed the obligation not to operate in the interior of Colombia?

A. Well, your question has to do whether that summarizes the discussion in London.

Q. Yes, except for the equipment and traffic features of it.

A. Well, I don't recall—

• • • • • • •

Mr. Reynolds: I would just as soon refer it to the specific discussions in the fall of '36, but I thought perhaps the question might be easier to answer and the summary more accurate if we did consider the following discussions, too.

• • • • • • •

The Witness: May I have the question read again, please?

(The question was read by the reporter.)

A. Well, I wouldn't think that was a proper summary, no.

By Mr. Reynolds:

Q. Well, what is wrong with it?

A. Well, first of all, I wasn't sure how Dr. von Bauer would feel about whether Cali was considered a west coast port or not. Second, one other problem we had with Dr. von Bauer was the pressure he was under to operate to Venezuela and Ecuador, and I was concerned at the meeting in London whether we shouldn't just get into a more or less unfortunate mess that would work to the disadvantage of Pan American-Grace and Pan American and Scadta, because of inability to discuss the problem with Dr. von

Bauer. I felt we could readily secure his support or at least his agreement not to oppose the Cali stop if an opportunity was had to discuss it with him.

[fol. 1408] Q. You didn't take a definite position that these entire arrangements actually did impose an obligation upon Panagra to keep out of the interior of Colombia?

A. Which obligations were those?

Q. The obligations arising out of your original agreement with von Bauer and the treaties and so on.

A. Oh, no. The arrangements I referred to were the agreements between Pan American and Grace & Company whereby Pan American-Grace would not operate in the interior of Colombia.

Q. What agreement was that?

A. That was the agreement entered into between the parties prior to the letter of August 31, 1928.

Q. That dates back to the organization?

A. Oh, yes, definitely. That had nothing to do with the question of any agreement between Pan American-Grace and Scadta or Pan American and Scadta, other than Dr. von Bauer was to continue in the management of Scadta when we purchased the stock.

pp. 2206-07:

Q. Now, referring to P-37 again page 4, minute of the executive committee of Pan American Airways Corporation for May 13, 1931, first sentence, what, Mr. Trippe was the position taken by the Postmaster General relative to the proposed extension from Santos to Buenos Aires?

A. I think the Postmaster General was very anxious to have the extension made. At that time, both French and German lines were preempting that sector of South America and it would be my recollection that he was anxious to provide for the extension.

Q. And when the matter came up in the Panagra minutes of March 18, 1931, of course, you are familiar with the fact that there was a discussion there as to possible conflict of interests and then there subsequently was some exchange of correspondence. Your original letter on the subject, appearing on page 35 of this same exhibit, dated April [fol. 1409] 8, 1931, which is referred to in the minutes on

the previous page, now, I would like to ask, Mr. Trippe, if this letter on page 35 contained a summary of past understandings and agreements with respect to territories in which your respective companies were to operate, particularly the second paragraph: is that an accurate summary of past agreements?

A. Yes, with the exception that the Colombian arrangement was not included in this particular paragraph.

Q. And these agreements which are referred to are only the August 31, 1928, letter and other original arrangements, there is no other writing, is that it?

A. No other writing that I know, and the arrangements prior to the letter, of course, were worked out by Mr. Hoit, and I believe Mr. Iglehart and perhaps Mr. Patchin. That was referred to in Mr. Hoit's letter that I believe was in the exhibit.

pp. 2210-11:

Q. Now, Mr. Trippe, referring to the operations which ultimately resulted in the diagonal route of Panagra, I believe Mr. Roig gave us the impression that the stop at Cordoba, which diverted the Santiago-Buenos Aires route slightly, was the first point which is now on the diagonal to which Panagra operated. Is that your recollection?

A. Yes. My recollection would be that the route between Mendoza and Buenos Aires was shifted to the north so as to embrace Cordoba.

Q. At that time you opposed that Cordoba service, did you not?

A. I think we took the position that that was a part of Argentine which was Pan American Airways territory as compared to Pan American-Grace under the original agreement, and we through some appropriate reimbursement to Pan American should be made by Pan American-Grace, particularly with respect to the development charges that we had on our books, having purchased Nyrba—or as a result of having purchased Nyrba.

Q. Your position, then was that the Cordoba service not only was east coast or east of the Andes service, but also was former Nyrba territory?

[fol. 1410] A. Well, it was, east coast territory, and we

felt that any change to include Cordoba or other points in the Argentine should be by agreement with Pan American, and we thought that it would be only proper that if we were going to abandon that sector of Argentine that at least certain development costs relating to the acquisition of Nyrba having to do with that territory should be reimbursed.

pp. 2228-30:

Q. Mr. Trippe, I believe that the record indicates so far that under the original 1928 agreement and the discussions that led up to it, the contemplation was that territories would be divided in the terms of east coast and west coast with the exception of Panagra operation to Buenos Aires. That is generally correct, is it not?

A. I don't believe so.

. . . . . .

A. My understanding is that the territory reserved for the joint company was the west coast of South America including in so far as Colombia was concerned the west coast of Colombia and that the interior and north coast of Colombia were reserved for Pan American.

Q. And south of Colombia, the west coast of South America was reserved for the joint company of Panagra?

A. That is correct.

Q. With the exception of the operation across the Andes to Buenos Aires?

A. Which was agreed to at a later date.

Q. At a later date?

A. That is correct. When the mail contract came out.

Q. And at the same time all the operations south of Colombia on the east coast of South America was reserved for Pan American and its future plans?

A. Well, wouldn't you describe it as the north coast of Colombia, you see, Colombia being a west coast country with the exception that it has a north coast and the interior territory.

[fol. 1411] Q. And in addition to Colombia, all of the east coast of South America was set apart for Pan American?

A. That is right. The caribbean and elsewhere in Latin America.

Q. And you are satisfied that there were discussions and negotiations that came to a definite agreement on that proposition?

A. Definitely.

Q. Now, when you sent the cablegram regarding the ALAS operation which has been marked P-157, I note that you referred to the territorial division in terms of east and west of the Andes, and what I am interested in knowing, Mr. Trippe, is whether there was a subsequent agreement or subsequent conversations that put the territorial division on the basis of a line running along the Andes with the exception of Colombia, we will say.

A. No, there was not. May I read the telegram?

Q. Yes, please.

A. I believe that language relates to the specific discussion relating to Argentina and Chile. That would be my interpretation of the cable.

Q. You yourself chose that manner of description in the cablegram, but there had been no previous discussions in terms of east and west of the Andes even in Argentina, and Chile?

A. No. The original arrangement of '28, as I said, related to the west coast of South America with the exception of the Colombian territory.

pp. 2232-35:

Q. Mr. Trippe, when the operation to Cali was authorized in connection with which there again had to be discussions regarding the sphere of influence on operations in Colombia, isn't it a fact that your authorizing to Cali stop by Panagra also included with it the understanding with the Grace directors that Panagra would not operate to Medellin and would not operate in UMCA territory.

[fol. 1412] A. Well, that came up in this way, as I recall it: it was suggested that Cali was on the west coast, it being the city served by the Port of Buenaventura, and the question discussed was what other cities were in the category of west coast cities, and it is my recollection that the Grace directors, and I believe Mr. MacGregor also, who sat in on a number of the conferences, was in agreement that Medel-

lin and Turbo did not consist of west coast cities in terms of our agreement.

Q. There were Grace directors in those conferences?

A. Oh, yes.

Q. And at that time wasn't there some discussion also about Panagra's keeping out of the Caribbean area? Even though you took the position that the original agreement covered that anyway, there was also discussion about that at that time, was there not?

A. Yes, I think there was an attempt made to reaffirm the original agreement, but the main question came up as to whether Grace & Company, having participated in the organization of Pan American-Grace should not operate. I think that was where the argument turned. I don't recall that there was any argument about Pan American-Grace at the time, but there was a definite question about Grace & Company itself.

Q. That is, applying for its own route through a different company?

A. We took the position at the time that they were partners with us in this enterprise and wasn't it fair that they should agree not to operate, and they took the position: No, that it wasn't fair, that they were not in a position to bind their principals. This was Mr. Roig and I think Mr. Garni that the conversations were had with.

Q. Did they come to a solution of any kind?

A. No, we did not get anywhere. The discussions also related to Scadta. In other words, that Scadta would be brought into the arrangement in some definite way to provide for a sphere of operation for Scadta as determined between Scadta and Pan American Grace as well.

Q. And you did come to an understanding on that feature?

[fol. 1413] A. No, I don't believe so. There was no memorandum agreed to at all or executed. The Grace directors took the position that if Scadta extended to Quito, it would conflict with the Pan American agreement with Grace, and we agreed with them. We said that if that actually developed, that we felt that we would have to dispose of a majority of the stock and that led into a discussion again of Pan American-Grace buying a part of our ownership in

Scadta to avoid what we thought was a most unfortunate possible contingency if Scadta were forced to extend, and we, therefore, were forced to divest in consideration of the general position at that time.

Q. And you proceeded upon the assumption or understanding that your obligations toward each other, as between Pan American and Grace or Panagra, affected not only Pan American Airways or Pan American Airways Corporation, but also the subsidiaries over which you had control?

A. Over which we were able to effect control, and while we didn't have direct control for the reasons that I mentioned yesterday over Scadta, we did sit with the actual ownership of the majority stock and we felt that would not be proper in relation to our agreement with Grace if Scadta should extend to Quito, by pressure or otherwise.

Q. You have also proceeded upon that understanding that your original agreement bound your subsidiary companies, with respect to any other subsidiaries of South America, have you not?

A. That is correct.

Q. ALAS, Panair do Brasil?

A. That is all correct.

Q. Is that all correct as of the present time?

A. Yes, so far as I know.

Q. Now, Mr. Trippe, there has been a proposal fairly recently within Pan American, has there not, that Panair do Brasil extend its operations from Corumba to LaPaz?

A. Not that I know of, no.

[fol. 1414] Q. No one in your own Board or executive committee or your own personnel in Pan American was agitating for an extension of Panair do Brasil to LaPaz?

A. If they did, I don't know anything about it.

Q. If they did, you would oppose it, as being contrary to the general policy since Panagra already operates there?

A. Unless we got the assent of Grace & Company.

Q. And you would do that because in your view there is a definite agreement covering that type of situation?

A. Definitely.

By Mr. Friendly:

pp. 2619-23:

Q. Mr. Trippe, you testified on cross examination at pages 2036 and following to a series of meetings between Mr. Rihl, Mr. Garni, Mr. Roig, and yourself, at which there was discussion among other things as to whether Medellin and Turbo were in Pan American-Grace territory.

I ask you now to give us your best recollection as to the date when those conferences occurred.

A. Well, my recollection is that they occurred in the spring of 1937 and not in the winter of '37 and spring of '38. As you say, in reading over my testimony on page 2036, I misunderstood Mr. Cahill's question and I would like to clarify my reply.

. . . . . .

Q. Now, is it your testimony that it was your understanding at this series of meetings that Mr. Garni and Mr. Roig agreed that Medellin and Turbo were not within Pan American-Grace's territory?

Mr. Cahill: I object to the understanding. I think we should be told what they said.

Examiner Brown: What was the question?

(The question was read by the reporter.)

Q. Tell us what was said at those meetings on the subject, Mr. Trippe.

[fol. 1415] A. Yes. It was my recollection of those meetings that while Cali—was that while Cali was agreed to have been within Pan American-Grace's territory, as defined by the original agreement, that Medellin and Turbo were not, and it is my recollection that Mr. MacGregor also at that time—

Mr. Cahill: I object to this. I move to strike out what was already given as not being responsive to the direction of the Examiner. Give us the conversation.

Examiner Brown: Give us as close as you can what was said at the conference with respect to the matter.

The Witness: Well, of course, Mr. Examiner, I can't recall the exact conversation.

Examiner Brown: Certainly, we don't expect you to.

A. It is my recollection that Cali was agreed to as being a west coast city.

Examiner Brown: That is, by all of the parties to the conference?

The Witness: By all who were included in the conference.

A. (Continuing) And that Medellin and Turbo, it was agreed, were not west coast cities. We were discussing this question, of course, from the point of view of our original understanding.

By Mr. Friendly:

Q. Tell us to what extent Mr. MacGregor participated in any of these discussions or as to any expressions that he made on this subject at about this time.

A. It is my recollection that Mr. MacGregor did not sit in the two meetings that I referred to in my direct testimony, namely, the dinner at Mr. Rihl's house or the breakfast at the University Club which I believe occurred either next day or shortly thereafter, but, of course, Mr. MacGregor was familiar with the general conversation, and it is my recollection that he also indicated that he did not feel Medellin and Turbo were west coast countries, within the purview of our agreement.

Q. You said west coast countries.

[fol. 1416] A. West coast cities, I mean.

* * * * * * *

Q. All the testimony you have given this morning, just so the record may be clear, relates to discussions in the spring of 1937 at the time of the institution of service to Cali when the S-43 was under discussion: is that correct?

A. That is correct, and some months, perhaps six months before the question of the operation of the overland route was up for consideration.

Q. Now, I ask you to proceed to this time when the dis- discussions of the overland route did take place, which I take it—which I think are shown by the record to be late in 1937 and early in 1938, and ask you how Medellin and Turbo entered into those discussions.

A. Well, the question of Medellin and also Turbo figured in those discussions as a possible emergency stop or refueling stop. Pan American felt that in view of the fact that these were not west coast points that it was obviously improper, from the point of view of the agreement between the parties that Pan American-Grace at any later time, due to pressure by the people of Medellin, either direct or indirect, were to make these emergency or refueling stops into what might become traffic stops—traffic stops in Pan American territory. In view of the fact that these stops were not in Pan American-Grace territory, we felt it fair that some definite arrangement should be worked out so as to avoid the possibility that Pan American-Grace serve these cities at a later date. Perhaps without the wishes of the Grace directors, and for that reason the two alternate proposals were made by Pan American at the time, namely, that if Pan American-Grace were forced to accept traffic at Medellin in our territory that they should give up Medellin as a stop, and, failing in that, some percentage of the commercial traffic originated at Medellin be turned over to us.

Mr. Cahill: By "us" you mean Pan American?

The Witness: Well, I am not clear at the time whether it was Pan American or UMCA. Of course, we owned a substantial part of UMCA at the time. I am not clear [fol. 1417] whether it was Pan American or UMCA. That, I can't recall.

By Mr. Friendly:

Q. Now, you have referred to this original agreement as to Pan American-Grace's territory, and I would like to have you state just what Pan American's position is with respect to that agreement.

A. Well, our position is that the original territorial agreement was made in the fall of 1928.

* * * * * * *

A. (Continuing) At that time we made the arrangements whereby Grace was to have an option to participate in the airline from the Canal Zone down the west coast. Pan American's position is that this agreement has always re-

mained in effect, that it has been liberalized from time to time to the advantage of our joint company by consent of Pan American Airways and finally that it was reaffirmed under the 1939 agreement with respect to any possible future operation in the Caribbean by Pan American-Grace Airways.

By Mr. Reynolds:

pp. 2741-42:

Q. Mr. Trippe, these early discussions about which you have again referred concerning Divisions of territory or sphere of operations in Colombia, I believe you corrected some dates as to when discussions occurred in the earlier testimony and testified to the effect that it was decided that Cali was a west coast city and that Medellin and Turbo were not. How does it happen that Medellin and Turbo were even mentioned in these earlier discussions, Mr. Trippe? What was their connection at the time?

A. Well, we were discussing the question of what constituted a west coast city or a west coast port, and the matter of Bogota and other places came up too, as I recall. It was just one of those general discussions.

[fol. 1418] Q. The real issue was over whether Panagra would be entitled to operate into Cali, was it not?

A. That is right. Whether Cali was a west coast port.

Q. And you agreed among yourselves that it was?

A. Within the terms of the original agreement between the parties.

II

Pan American-Panagra Competition

By Mr. Friendly:

pp. 1738-39:

Q. If the Board were to order an extension of Pan American-Grace's certificate to include an operation between the Canal Zone and Miami, and this should be placed

in operation, what would be the effect upon Pan American's service between Miami and the Canal?

A. It would be disastrous. In normal times the greater portion of the traffic carried by us on direct flights on our route between Miami and the Canal Zone was traffic destined for or originating at points on the routes of Pan American-Grace.

* * * * * * * *

If Pan American-Grace's own operations were ever to be extended to the United States northbound business from the West Coast to points most conveniently reached through the Miami gateway would be almost wholly diverted from Pan American, since Pan American-Grace, as the originating carried would control this traffic through to the United States.

Southbound the situation would be almost as bad since Pan American-Grace would naturally give preference in making reservations to through passengers originating on its own lines in Miami, rather than hold space at the Canal for Pan American bookings, which would be contrary to its own interest.

In other words, Pan American's route from Miami would be almost completely cut off from participation in the business to and from the west coast of South America, and the west coast operation would not be part of the Pan [fol. 1419] American Airways system service as it was set up to be and still is today, but would become an integral part of a competitive air route.

By Mr. Reynolds:

pp. 2178-79:

Q. Mr. Trippe, is there any question in your mind but what Pan American Airways Inc. and Panagra are in a competitive position—limiting it only to position—in part at least due to the connecting service between such common points as Miami and Buenos Aires?

A. Yes. I would state that with a small part, however, of the Buenos Aires traffic that might be said to be the case.

Our traffic department have reported to me that most passengers who go to Buenos Aires have some definite reason to go by one coast or the other coast, and tourists usually go by one coast and come back by the other coast, so that we have felt, from the point of view of practical operations, that there was very little or a competitive nature with respect to that traffic to Buenos Aires proper, and moreover that was only a very small part of the total traffic originated by or destined to points on Pan American-Grace route.

Q. The position itself is competitive, but there may be other factors which enter into the question of competition; that is your answer; is that right?

A. That is correct.

. . . . . .

Q. What about the service from the United States, particularly from Miami, to Cali? Is there any doubt but what, from the standpoint of position alone, Pan American and another subsidiary are in a competitive position with Pan American-Grace for at least a portion of the revenue, Mr. Trippe?

A. Well, there may be also a minor degree of competition there, but we have felt it very small, and in fact haven't advertised the through connection to Cali by way of Scadta.

[fol. 1420] III

Grace Line-Panagra Competition

By Mr. Friendly:

pp. 1496-97:

Q. Will you state what this map represents and conclusions that you draw from it.

A. Well, the International Trunk Line routes of the Pan American System in Latin America, together with the Grace Steamship routes as they existed in 1940 are shown.

This map illustrates the competitive position of the Grace steamship services and the Pan American Airways System including Pan American-Grace Airways. It shows

that while Pan American-Grace complements the other operations of the Pan American Airways System as an end-on carrier to Pan American, both it and the extension across the Caribbean are directly competitive with the Grace Line, the traffic between the United States and the West Coast of South America.

p. 1499:

Q. In your opinion, Mr. Trippe, has there been a conflict of interest between the Grace Line and Pan American-Grace Airways and the other routes of the Pan American Airways System with respect to passenger business?

A. There has.

Q. Is it your opinion that that will recur after steamships are restored to the West Coast trade?

A. It will, and will become even more acute, in my opinion, when cargo movement by air becomes more important than it now is.

pp. 1588-89:

Q. Has your connecting service between Miami and the Canal Zone been affected by the service operated by Pan American-Grace south of the Canal?

A. Definitely, from the very beginning.

[fol. 1421] Q. Has that sector of Pan American-Grace's route immediately south of the Canal been what is called a bottleneck?

A. Yes, it has.

* * * * * * * *

Q. In your opinion did the conditions that existed on this sector adversely affect the through business of Pan American-Grace Airways as against its steamship competitors?

A. They certainly did.

pp. 1612-13:

Q. Is it true, Mr. Trippe, that prior to the present proceeding Pan American had made no complaint that the Grace Line or W. R. Grace & Company was taking any

action prejudicial to the best interests of Pan American-Grace?

A. No, I don't think that is a correct statement.

Q. Had Pan American made such complaints to the Grace directors prior to the present controversy?

A. Yes, on many occasions. In the early days when the question of providing adequate facilities along the west coast as certain overnight stops came up, the Grace directors stalled on providing what we considered reasonable hotel facilities. Even prior to the letter which Pan American directors were forced to submit, complaining of the general equipment and facilities situation, a number of acrimonious discussions had taken place. We compared the accommodations and facilities Grace was holding out to the public as being offered on its steamship services, with the very rudimentary facilities available to passengers at some stops on the competing airline. In this connection we referred to the Grace Steamship advertisements featuring luxury, speed and gaiety to back up our position. This matter came up again in a large way in 1937 when the overland service via Cali was under discussion. We felt and said that the insistence on hauling the through international passengers by this circuitous route, which almost guaranteed the continuance of the bottleneck, was moti- [fol. 1422] vated by their more important competing steamship investments.

pp. 1739-40:

Q. Will you please explain what you mean by that?

A. The company would be placed in the position where there was a conflict of interest, not only between it and Grace, as has been true in the past, but with both of its two owners.

From the very onset the Grace Company as owner of the Grace Line has had an interest adverse to the through passenger business of Pan American-Grace.

While this adverse interest, of course, has been dormant since 1940, I think it will be revived when the Grace Line resumes passenger operations, and that it will be felt to the same extent in the field of air cargo when that part of the air transportation business develops.

By Mr. Reynolds:

pp. 2177-78:

Q. Now, Mr. Trippe, we have some testimony in the record about a map which the board probably will not see, but your statements to the effect that the Grace line was in a competitive position with Pan American-Grace Airways—by "position" there, Mr. Trippe, you referred to points of service, line of routes; is that correct?

A. Yes. We had reference to the fact that a competitive position existed between Grace and Company as steamship operators, and Pan American-Grace Airways.

Q. Well, the position has to do only with the position of the service—the territory served—is that correct?

A. And the ability to move traffic by either ship or by air.

In other words there was a competitive form of transporation between the Grace steamships and the airlines.

Q. Passengers and shippers had an option of using either type in reaching a certain destination point, did they not? [fol. 1423] A. For instance, between points in the United States and points on the west coast of South America.

IV

Price Fixing

pp. 2236-37:

Q. Now, referring to another matter: you came to an understanding early in Panagra's history, did you not, Mr. Trippe, that Panagra would clear with Pan American all mail, passenger, and express rates, so that there would be as few discrepancies as possible between the rate structure of the entire Pan American system, and you had definite correspondence on that, did you not, Mr. Trippe?

A. I don't recall any incident to which you refer. It is a fact that Pan American, I think, is the nominee of Pan American-Grace that actually files rate tariffs with the Civil Aeronautics Board. I understood that that arrangement is in effect, yes.

Q. You don't recall having written Mr. MacGregor under date of March 10, 1930, or thereabouts, definitely setting forth such an arrangement, and Mr. MacGregor's reply stating that you correctly set forth the understanding?

A. No, I don't recall it. I remember during those years there was a problem of—well, let me put it this way: that there was a certain amount of confusion from time to time, that Pan American's office in Washington handles nearly everything for Pan American-Grace as well as other units of the system. Pan American-Grace doesn't have any Washington office. And I think there was some discussion as to the machinery that would be set up so that the Washington office would be properly apprised of the steps being taken from time to time by both companies and would be kept informed of anything being done, so that it could properly act.

pp. 2239-41:

Q. You do have uniform passenger and freight fares also between Miami and Buenos Aires via either coast, Mr. Trippe?

[fol. 1424] A. Yes, sir. I believe that has been the practice of the companies.

Q. And is that by definite agreement, Mr. Trippe, or by what?

A. No agreement that I know of. It is just a kind of arrangement that is usually entered into by different carriers serving a common point.

. . . . . .

Q. Since your rates are uniform between the common points Miami and Buenos Aires, and further since the distance actually traveled by Panagra is shorter, Mr. Trippe, just why is it that Panagra can not operate at a lower rate for that through traffic than Pan American can on the east coast?

. . . . . .

Examiner Brown: I don't understand the question, Mr. Reynolds.

Mr. Friendly: I wonder if Mr. Reynolds could rephrase that.

. . . . . .

Q. As a matter of business operation, Mr. Trippe, couldn't Panagra operate more reasonably from Miami to Buenos Aires in conjunction with the connecting service that Pan American could from Miami to Buenos Aires down the east coast, and thereby afford a saving to the public in lower fares?

A. Well, I think that is a question difficult to answer, Mr. Reynolds. First of all, the difference in mileage is not very substantial, you appreciate, over the cut-off on the east coast. Second, even though there was a fairly substantial amount, isn't that the sort of thing that is often done by carriers working between common terminals?

[fol. 1424a]

GOVERNMENT'S EXHIBIT 1120

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants

Before The Honorable Thomas F. Murphy, District Judge

TRIAL BRIEF FOR UNITED STATES

PART II

EXCERPTS FROM TESTIMONY OF HAROLD ROIG IN C.A.B. DOCKET 779

[fol. 1425]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

TESTIMONY OF MR. ROIG IN CAB DOCKET 779 WHICH THE GOVERNMENT INTENDS TO OFFER INTO EVIDENCE

I

Division of Territory

By Mr. Cahill:

pp. 766-68:

A. • • •

While the matter has been discussed here as a difference of opinion regarding equipment, it was really nothing of the sort. I personally took part in the discussions with Mr. Trippe in New York and in London. Mr. Garni was also in the discussions. There was no nonesense about what the issue was at that time. It wasn't a question of a land operation or boat operation. It was a question of keeping Panagra out of Colombia because Pan American had acquired a large stock interest in Scadta from a German interest which had formed it and which continued to dominate its management, and they just didn't want Panagra to come into the interior of Colombia and they weren't at all bashful about saying so.

As a matter of fact, it was suggested—Mr. Trippe suggested to me in London, and the minutes of Pan American's Board of Directors show, that they offered to settle the

matter by having Grace [illegible] Panagra buy part of the Scadta stock and if we had accepted that offer, there wouldn't have been any discussion about equipment in connection with that operation.

. . . . . .

[fol. 1426] Pan American opposed it on the grounds that it would be competitive with their investment in Scadta and their investment in UMCA which was operating from the Canal Zone up to Medellin at that time, to the best of my knowledge.

p. 771:

Q. Now, is it your testimony that Pan American did not want Panagra to enter Colombia?

A. That is what we were told at the time.

Q. And by whom?

A. By Mr. Trippe and others.

p. 810:

Brazil: While, of course, we touch Brazil, that is essentially in the sphere of Pan American's activity, and I need not go into the local companies there. So that we have local national companies.

By Mr. Friendly:

pp. 843-45:

Q. There have been discussions, have there not, as to the respective scope of operations of Pan American and Pan American-Grace in South America?

A. Yes, sir.

Q. And has not W. R. Grace and Company taken the position that Pan American is obligated not to operate in west coast countries?

A. We haven't always. We didn't take that position when Pan American brought Scadta which operated in the western part of Colombia.

We didn't take it when they bought of organized UMCA which went to Medellin.

We haven't taken it yet in connection with the service that I understand they have started in the last few days in Peru, as far as Iquitos by Panair do Brasil. Of course, we would take it in that instance. We probably would take it in that instance; I don't know. It is a matter that is under discussion. No doubt it will be arranged.

Q. Do you construe the agreement as imposing any obli- [fol. 1427] gation on Pan American not to engage in operation, say, down the west coast to a point such as Lima?

Mr. Cahill: What agreement?

Mr. Friendly: Letter of 1928.

Mr. Cahill: Which letter?

Mr. Friendly: August 1931.

A. That letter contains nothing on the subject at all. It isn't even an agreement.

By Mr. Friendly:

Q. Is it your position, then, that Pan American is entirely free, so far as any agreement with W. R. Grace and Company is concerned, to start an airline down the west coast of South America?

. . . . . .

A. I know of no agreement in any enforcible sense covering that subject matter. Answering your question, Grace certainly would be as much surprised if Pan American should undertake to run a line down the west coast paralleling Panagra as I am sure they would be if Panagra contemplated similar action down the east coast.

pp. 886-87:

Q. Does the statement that "Mr. Trippe thinks it would be economically better for Panagra to charter a clipper for the service between Cristobal and Guayaquil than to invest a minimum of $250,000 in building two planes" correctly set forth Mr. Trippe's position, as you recall it?

A. Not as I understood it, and as I recall it, no. My recollection is that Mr. Trippe's reason for suggesting that we charter an S-42 was in order to put Pan American in control of the Northern Division o our line and to prevent us from going into Colombia. I was very much more fa-

miliar with Mr. Trippe's mental processes at that time than was Mr. MacGregor.

[fol. 1428] By Mr. Reynolds:

pp. 1085-88:

Q. As a matter of fact your extension to Buenos Aires came about at the instance of the Postoffice Department, did it not?

A. As I recall it we had the option under our mail contract to extend, and we exercised the option shortly after the execution of the contract.

Mr. Friendly: I think it was the other way.

The Witness: Was it the other way?

Mr. Friendly: Yes.

. . . . . .

Q. At the time that was done was it pointed out to you by any representatives of the Pan American interests that Buenos Aires was beyond the scope of the original purposes for which Panagra was formed?

A. Oh, no.

Q. Was there any discussion of that nature?

A. Oh, no. The entire board was in favor of it. All voted for it.

Q. That included Buenos Aires and Montevideo both, didn't it, at that same time?

A. Yes.

Q. Now, when the issue was presented regarding inclusion of Cordoba as a stop on the across-the-Andes operation, where there was some diversion, in the discussions that surrounded that question, was mention ever made of the fact then that you were operating at a point outside the territory mentioned in the original agreement?

A. I stated yesterday what the particular discussion did relate to.

Q. That had to do with the acquisition of Nyrba?

A. Yes.

Q. And the payment—

A. (interposing) Yes. I do not recall that the matter was brought up at that time. I am certain that no such argument

[fol. 1429] as is being made in this case was made at that time.

Q. And how about the extension to LaPaz?

A. No. There was no point made.

Q. No such point ever made?

A. No such point made in the extension of LaPaz.

• • • • • • •

Q. When the February 14, 1939, agreement was executed, during the negotiations for that agreement was the point ever raised that Panagra's extension to the United States was beyond the scope of the original purposes?

A. Yes. In those discussions this letter was produced, so far as I can recall, for the first time, and was argued to be an agreement that we would not extend beyond the limits referred to in that letter.

Of course, we took vigorous exception to that interpretation of the letter.

Q. Did you ever hear of the phrase "dedication of capital" in connection with those discussions?

A. I don't recall hearing of that phrase until these proceedings began.

pp. 1146-48:

Q. Now, Mr. Roig, if you will turn, please, to PG-2 on page 5, which is minutes of Pan American-Grace Airways meetings. The pages are not numbered, but it is the last page for the minutes of the meeting of March 18, 1931.

(Discussion had off the record.)

By Mr. Reynolds:

Q. Referring to the statement which you made, which begins the long paragraph on that page—if you want to read it while we wait—

The Witness: I would like to. Yes, I have read it.

By Mr. Reynolds:

Q. What is the proposed extension to which these remarks referred?

[fol. 1430] A. As I recall it, it was a Pan American extension from Rio or Santos to Buenos Aires on the East Coast.

Q. And you stated that Pan American have an undoubted right to extend their service to Buenos Aires and to operate in the Argentine except between Buenos Aires and Mendoza, if they desire. What was the restriction on their right to operate between Buenos Aires and Mendoza?

A. Well, Buenos Aires and Mendoza—Mendoza is the last point in the Argentine before we take off across the Andes to Santiago, and the point there was that Panagra was already operating in that area, and we didn't expect Pan American to parallel us.

Q. There had been an understanding at that time, had there, that there was to be no paralleling of either route by the other?

A. I think that is a fair statement, yes.

Q. And what was it that occasioned your remarks—

A. (Interposing) I would like to say—understanding about paralleling each other—

Q. (Interposing) I mean duplicating.

A. No. It was always more or less taken for granted and understood that Panagra was operating the route on the West Coast and Pan American the route on the East Coast, and that we weren't going to run up to Rio and they weren't going to run up to Lima, but that didn't extend beyond that rather particular area.

Q. Well, as a general proposition you marked your dividing line as east or west of the Andes, did you not?

A. No, it was not east or west of the Andes when it came to that particular sector. We ran on to Buenos Aires at that point, but north of Santiago, even there it would only be true where it so happened that the countries in which we were operating were mostly west of the Andes. In practice, since we have extended into the interior of Bolivia, for example, we just sort of automatically made a juncture at the Bolivian-Brazilian border with Panair do Brasil, but, of course, in going into the interior of Bolivia, we were [fol. 1431] getting east of the Andes, but that was never any dividing line.

Q. I am referring only to early days at this point, and except for your east-west route over to Buenos Aires, dis-

cussions during the early days did assume the division of spheres as east and west of the Andes, did they not?

A. East and west coast, let's say.

pp. 1156-57:

Q. Referring to the time at which the controversy over operation to the interior of Colombia was settled: you testified that the real issue there—and no one made any attempt to conceal it—was the matter of competition with Scadta, I believe.

A. I did.

Q. Mr. Trippe so told you in London, as I recall?

A. Well, that matter had been discussed long before that. My testimony regarding the meeting in London was that I took up with him again there the question of this overland route and it was on that occasion that he suggested for the first time that one solution of the matter might be for Panagra or Grace to purchase a portion of their investment in Scadta.

• • • • • • •

Q. Just what was it that Mr. Trippe told you with respect to the competitive angle with Scadta, to the best of your recollection?

• • • • • • •

A. At various discussions which I had with Mr. Trippe in connection with the overland operation with Douglass, the point was made that an overland operation serving Cali, calling at Turbo and passing by Medellin, because our route, as we fly it now, passes by Medellin, and at that time we had suggested that we also include Medellin in the route, and he took the position that anything of that kind would be competitive with Scadta, which was serving Medellin and Cali.

[fol. 1432] pp. 1160-62:

A. Well, they certainly took that position with reference to our doing business in Medellin, or even in Turbo, although that is an insignificant spot, because of their investment in Scadta.

Q. And the idea was that that had been agreed upon when they went into Scadta; is that it?

A. No, I wouldn't say that. There had been no agreement between us, between Panagra, Grace, or Pan American, at the time Pan American made their investment in Scadta. We didn't know they had made it for some time, and the extent of the investment was a mystery for a great many years, nor was it ever said, that I recall, that they had made any agreement with Scadta. Whether they had or not, I don't know. That matter was not discussed. It was simply a question that they had this investment in Scadta and that they had acquired it under the circumstances I referred to, and for those reasons we should not go into Scadta's territory. There was also a very long and metaphysical discussion as to whether Medellin or even Cali were East Coast or West Coast.

Q. Then, when it was finally decided that Panagra should be permitted to go into Cali, it was also decided that Panagra should not go into Medellin?

A. Oh, yes.

* * * * * *

A. There was another point that entered into the matter as a factor and that was the UMCA service that has been referred to.

Q. In what manner was that a factor?

A. The UMCA Line ran between the Canal Zone and Medellin providing direct service between those two points. UMCA was owned, I have always understood, in large part by Pan American and, of course, for Panagra to go into Medellin would have been competitive with UMCA.

Q. And was that point specifically raised and mentioned as such in any of these discussions?

[fol. 1433] A. Oh, yes, at or about the time of the '39 agreement, there was active discussion as to whether or not Panagra might not purchase UMCA. We were rather anxious to do it. That matter was left for discussion later on without any commitment on anyone's part, and the possibility of our purchasing it was brought up on a number of occasions afterward. I personally brought it up with Mr. Whitney and Mr. Rihl, but nothing ever came of it.

By Mr. Friendly:

pp. 1375-76:

Q. It is your testimony that there was no agreement between Pan American Airways and W. R. Grace and Company as to where Pan American-Grace was to operate and where Pan American Airways was to operate?

A. I think I have said before that there was no written or enforcible agreement that I recall, but that there was a general understanding that Pan American's operations were on the East Coast of South America, and that Panagra, so far as they related to South America, were on the West Coast.

There is no agreement that they were not to be extended, however, if that is the inference from the question.

By Mr. Cahill:

pp. 3264-65:

Q. Let's turn to another subject. Mr. Trippe has testified in this case that when the question of Pan American's extension to Buenos Aires arose in the spring of 1931, the Grace directors wanted to make it clear that Pan American was not at liberty under the agreement between the two companies to compete with Panagra between Buenos Aires and Santiago via Mendoza. Now, I want to ask you whether or not this agreement to which Mr. Trippe has made reference was in the nature of a general understanding entered into after the formation of Panagra and prior to Pan American's acquisition of Nyrba in 1931?

A. Well, it was certainly after the formation of Panagra. [fol. 1434] The point from which it dates in my recollection is partly in connection with the points you have mentioned about Panair competing with Panagra's line through Mendoza, developed further at the time that Pan American acquired Nyrba, and to the best of my recollection given definite expression for the first time in the cable that Mr. Trippe sent at Mr. Cogswell's request at the time that ALAS had made a flight to Santiago.

Q. Between what two companies was this general understanding?

A. That understanding was between Pan American and Panagra.

By Mr. Friendly:

pp. 3293-97:

Q. Now, would you turn, please, to G-154?

A. I have it.

Q. Particularly page 2 of your memorandum to Mr. Iglehart.

A. Yes.

Q. And still more particularly to the sentence reading "Except for Panagra's undertaking not to operate on the east coast of South America in exchange for Pan American Airways similar undertaking with respect to the west coast." When were those undertakings exchanged?

A. As I explained this morning, it is my understanding that they came into existence commencing with Panagra's operation to Buenos Aires, continuing through Pan American's acquisition of Nyrba, and stated, I believe, the first time that I think of in writing in Mr. Trippe's telegram which is in evidence—cable.

Q. Now, Mr. Roig, let's go back to the first date—Panagra's extension to Buenos Aires. Who requested whom for an undertaking at that time?

A. I do not recall. It might well have been mutual.

Q. Were you a party to any of these discussions?

A. I don't recall when I first became a party to any discussions on this east coast-west coast matter.

Q. When Panagra extended from Santiago to Buenos [fol. 1435] Aires, did you ask Pan American for any undertaking not to operate on the west coast?

A. I don't recall doing so myself, but I think the matter was discussed at that time.

Q. And at that time Pan American Airways was asked to enter into a general undertaking not to operate on the west coast?

A. I don't think it took any such formal shape as that at that time.

. . . . . .

Q. Wasn't it your testimony, Mr. Roig, that at the time of the extension by Pan American-Grace from Santiago to Buenos Aires, Pan American was asked to undertake not to operate on the west coast?

A. I don't recall to testifying—to so testifying.

Q. When was Pan American asked to undertake not to operate on the west coast?

Mr. Cahill: I object.

A. When?

By Mr. Friendly:

Q. When, if at all?

A. That question definitely came up in connection with the trip by ALAS. That was some later.

Q. Operation between Buenos Aires and Mendoza would not be operation on the west coast, would it?

A. No.

Q. Would you explain, please, what Pan American was asked to undertake at that time?

A. They were asked to make it clear that they were not to parallel Panagra's route between those points which was a part of its route to the west coast.

Q. Was Pan American ever asked to undertake not to operate, say, from the Canal Zone to Quito?

A. Was Pan American ever asked?

Q. Yes.

[fol. 1436] A. Through Pan American, Scadta was asked not to operate to Quito from points in Colombia. I don't recall the question of the Canal Zone being involved.

Q. Was that request made on the basis of the undertaking that you refer to here?

A. I think so, yes.

Q. What is your statement as to when that undertaking not to operate down the west coast from Colombia to Ecuador was given?

A. Well, it is difficult for me to be too dogmatic as to the time when that understanding, which later became so well-known started, but to the best of my recollection, for whatever it may be worth, at the time that Panagra

began operations to Buenos Aires, which was late in 1929. Pan American was expecting to operate down the east coast—may, I think, have been operating some portion of the east coast or north coast at that time—and I have a pretty vague recollection, but I state it, such as it is, for what it is worth, subject to correction if I am wrong, that at that time there was some general conversation to the effect that Panagra was not to operate on the east coast with the exception of this route to Buenos Aires, and that Pan American was not to operate on the west coast. Now, as I say, my recollection is not very clear and it was nothing at that point which was more than general conversation. I do think that the matter became the subject of further conversation when Pan American actually got, through their purchase of Nyrba, as far south as Buenos Aires, and when that ALAS flight was made.

By Mr. Reynolds:

pp. 3394-95:

Q. Referring to the discussions as a result of which the Cali stop was permitted, you testified yesterday that the subject of Medellin, Turbo, and Bogota—that the discussions included consideration of those points, the possibility as to Panagra's serving them, and then added that the matter was not disposed of, however, on the basis of territorial delineation, as I recall; is that correct?

[fol. 1437] A. Yes.

Q. What was the basis upon which the disposition was made?

A. The basis was that, in order to secure Pan American's acquiescence in our going ahead with the overland route, and giving us a quorum, although not voting, to pass the necessary authorization, Panagra agreed that regardless of in whose territory these places might be we would not carry on commercial business to these points, and that we would use them only as emergency, or, in the case of Turbo, fuel stops.

That did not include Bogota. There was no serious discussion of going to Bogota. That related to Medellin and Turbo.

By Mr. Friendly:

pp. 3416-17:

Q. Mr. Roig, on this question of Medellin and Turbo, don't you recall that those matters were—Let me put it this way:

Do you recall a series of meetings in March and April 1937 at which various matters in connection with Colombia and Ecuador were discussed?

A. Yes, I do.

Q. Those included the meetings at Mr. Rihl's apartment and breakfast at the University Club, as to which there has been testimony, and some others; isn't that right?

A. Yes.

Q. Wasn't one of the subject that was discussed at those meetings the question of Medellin and Turbo—not as a matter for immediate operation but as a matter of arriving at an understanding on the spheres of operation?

A. Well, the idea I tried to convey was that they may well have been discussed at an earlier date, in sort of an academic way, but they were not vital matters of discussion until we were actually operating overland. I think they were referred to in those discussions, and I didn't intend to give a contrary impression. I am sorry if I did.

Q. No. I think that that was fairly clear. I just wanted to have it entirely clear.

[fol. 143°] A. I was relating myself primarily to the time it became a real issue and questions of specific method of handling it were discussed.

Q. Do you recall, in those discussions in the spring of 1937, the Grace directors expressed concern about the proposed Scadta operation in Ecuador?

A. Yes.

Q. Were you told that the president of Colombia was pressing to have that service established?

A. Yes.

Q. And you expressed concern over even a so-called survey flight being made?

A. Yes.

II

Through Flight

By Mr. Gambrell:

p. 1073:

Q. Mr. Campbell yesterday or the day before testified as to the possibility of an interchange of equipment between Pan American and Panagra at certain times. In your opinion, would an arrangement, under Board Authority, whereby Panagra would operate its equipment on Pan American's route between Canal Zone and Florida, solve the difficulties you have spoken of?

A. It would not solve it.

III

Pan American-Panagra Competition

By Mr. Cahill:

pp. 1343-44:

Q. * * * Now, turning, Mr. Roig, to some questions that were put to you on cross examination as to whether Pan American had opposed increases in Panagra frequency. Do you recall answering such a question in the negative on the express condition that the question related solely to frequency?

[fol. 1439] A. That is correct. I amplified that in part on cross examination by Mr. Reynolds. I would like to mention further the fact that it is also true that, as I felt from my observations and contact with the business, the initiative for these increased frequencies and shortening of schedule time throughout all this period came from Panagra, and it almost always happened that simultaneiously, Pan American would step up the frequency on its East Coast service, and to what extent that may have retarded our progress I don't know.

There was also very little encouragement to Panagra's cutting down its elapsed time, which would continue or

even increase the discrepancy between the East Coast and the West Coast service.

Q. Discrepancy in what respect?

A. In elapsed time.

Q. How about the publicity on that?

A. Well, the publicity on that always suppressed the fact that Panagra was quicker, and in a great many instances was so artfully worded as to convey the impression that the schedules that Panagra was operating were being operated on the East Coast.

IV

Panagra-Grace Line Competition

By Mr. Gambrell:

pp. 1044-46:

Examiner Brown: Mr. Gambrell, your question is then —Why not ask Mr. Roig:

Do you believe, Mr. Roig, that air rates should be made on a competitive basis with steamer rates?

Mr. Gambrell: Well, that what I want to ask him, Mr. Examiner.

Examiner Brown: I am asking that.

The Witness: Certainly.

Examiner Brown: Should they be lower or higher than steamer rates?

The Witness: Well, they should be competitive. There [fol. 1440] are many things to be considered besides whether they are actually lower or higher on the basis of a ticket from point to point.

The domestic air lines make a great point of the fact that they are cheaper than the railroads, even though the actual fare may be higher than the railroad fare because of other considerations.

Examiner Brown: But your rates are fixed on a competitive basis with steamers?

The Witness: Oh, certainly.

. . . . . .

Q. Well, let me ask this question—

A. (interposing) Let me say: Grace Line, not W. R. Grace and Company.

Q. (continuing) In September 1937, when this letter was written, was a consideration in raising the rates the fact that the steamship rate at the time was very close to the airline rate?

A. The letter says so.

V

Grace Control

By Mr. Friendly:

p. 989:

Q. There has been testimony as to the transfer of employees from the payroll of the Grace agencies to that of Pan American-Grace Airways in 1943. It is a fact, is it not, that the individuals so transferred remain under the general direction and supervision of the Grace managers in the respective locations?

A. That is correct in most cases.

pp. 999-1003:

Q. In cases where the offices of Pan American-Grace in Lima desire to initiate a capital expenditure, has it been necessary in the past that they obtain the approval of the local Grace manager?

A. Part of the functions of the Grace offices under our management arrangement consist of financial control and our form of R.C.A., which we referred to the other day provides for the approval of the local agency of capital expenditures, and that is regular practice.

[fol. 1441] Q. That practice extends even to equipment of a technical character, does it not?

A. Yes, but the Grace agent doesn't attempt to pass on the technical character or the technical side of it. There is a financial aspect to even a technical purchase. In addition to the Grace agent, the thing is signed by the local

officials of Panagra, by Mr. Campbell in New York, and by Mr. Vidal in New York, and by me. It carries a long list of signatures of people approaching it from a variety of different angles.

Q. Haven't there been complaints by the management of Pan American-Grace as to this practice of requiring the approval of the local Grace manager on R.C.A.'s?

A. There have been no complaints from the top management. In fact, it was instituted as part of the arrangements and was one of the desirable features of the arrangement. I know there have been objections from people concerned of refusal to sign by me or Mr. Vidal or Mr. Campbell. There may have been by the Grace agent. That is the reason we let people sign. That is the reason we don't let them decide things for themselves. That is what management is. Of course, when management asserts itself, if he doesn't agree with somebody, he complaints.

Q. Colonel Harris was part of the top management, was he not?

A. Yes, but he was not the top management.

. . . . . .

Q. Actually, if the vice president in South America, which Colonel Harris then was, wished to make a capital improvement which affected more than on country, he had to get the R.C.A. cleared with the Grace manager in each country, did he not?

. . . . . .

A. I don't recall the practice in 1936.

Examiner Brown: What is it today?

The Witness: Well, today, if the R.C.A. originates in Lima, which is the head local office of Panagra in South America, I think the local Grace management would check it, but I am sorry to say I can't swear to it.

[fol. 1442]

. . . . . .

Q. Hasn't a recommendation been made during your presidency for the modification of this practice of requiring that R.C.A.'s be cleared with the Grace agency? Isn't that true?

A. I don't recall it, but it may have been.

. . . . . .

Q. Does this new procedure which you have described have some top limit as to the amount that can be expended in this way?

A. Of course, there has always been a small limit, I don't recall whether it was $500 or $1000, which never required an R.C.A. There is no fixed limit on this setup, but it was understood—I think I discussed it myself with Mr. Kirkland on one of his trips here, that, of course, it didn't mean absolutely wide open situation, and that there would be capable consultation at least with New York, and it has extended, however, to sums running, I think into five figures.

Q. Do those smaller expenditures have to be cleared with the agencies or not?

A. You mean $500 or $1000?

Q. Yes.

A. No, I don't think so.

By Mr. Reynolds:

p. 1145:

Q. When you came to the 1939 agreement wherein you were to be elected president, did that mark the determination of the Pan American claims for right to operate?

A. Oh, by that time the matter had been dropped and the agreement, by its very language, shows that the president to be elected was to be in responsible charge of the company's business.

VI

Joint Offices and Publicity

By Mr. Reynolds:

[fol. 1443] p. 1187-90:

Q. Now, referring to the Buenos Aires office, you gave considerable attention to that in connection with the 1939 discussions, as I recall?

A. Yes.

Q. You were of the opinion at that time that the office was not properly organized; is that correct?

A. That is correct; and I was further of the opinion then and at all times since that Panagra should control the office since we pay the major part of the expense.

Q. Well, doesn't Panagra control the office?

A. No, we do not.

Q. Who does?

A. Pan American Airways. They own all of the stock of the subsidiary which owns the office, and although we contribute 60 percent and have been as high as 66 percent of the expense, employees of that office are employees of a subsidiary of Pan American and they respond technically and substantially to Pan American and not to Panagra. They do make certain reports to Panagra, but even that hasn't always worked satisfactorily, and they do not consider that they are under our orders, and they are not. We can indicate what we would like to have done, and generally speaking, they carry it out, but there is quite a difference between being the boss and not being the boss, and we are definitely not.

. . . . . .

Q. And, as a matter of fact, as the office is now organized, it is definitely understood that neither the route of Pan American nor the route of Panagra will have—will be favored over the other, is it not?

A. That is understood and will be, I think, carried out in good faith.

pp. 1193-96:

Q. Now, Mr. Roig, returning to the matter which we have all carefully avoided with you for some time, of publicity, may I ask if you endorse Mr. deGroot's views that Panagra [fol. 1444] should have a separate publicity department in the United States?

A. I certainly do, and I have so requested on a number of occasions, orally and in writing.

Q. Extending over what period?

A. Quite a good many years.

. . . . . .

Occasions have arisen time after time where Panagra's interests have not only been subordinated and obscured but have been, in my opinion, even actively prejudiced by the publicity department whom we were paying to provide us with publicity. I have made complaints on the subject to higher officials in the Pan American organization, including Mr. Trippe on more than one occasion when particular instances have occurred. I have always been assured or I have generally been assured that it was too bad or it was a mistake and it wouldn't happen again, and in no time at all something else just like it would happen. There has never been any evidence that I have been able to see of any disposition on the part of the head officers of Pan American Airways to correct the publicity situation at all.

VII

Price Fixing

By Mr. Reynolds:

pp. 1170-71:

Q. Now, Mr. Roig, I would like to refer to Exhibit P-37 on Page 33, the meeting of the executive committee of Pan American Airways, Inc., dated February 4, 1931, where the meeting is purported to have involved the discussion of two or three different items, including uniform postal service between Buenos Aires and the United States on both the east and west coast, the effectuating of uniform tariffs and schedules by Pan American Airways, Inc., and Panagra, and the coordination of operations by the two companies at Buenos Aires, and so forth.

(Off ..e record.)

[fol. 1445] By Mr. Reynolds:

Q. Referring first to the discussion that uniform tariffs and schedules between Pan American Airways and Panagra be effectuated, was that ever done subsequent to that meeting, if you know?

A. Well, to the best of my recollection we have always had uniform tariffs, east and west coast, by way of Miami.

This date must have been about the time that Pan American were inaugurating their service extension from Rio to Santos to Buenos Aires, and I imagine that contemplated inaugurating their schedules on that basis.

[fol. 1445a]

GOVERNMENT'S EXHIBIT 1121

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA; Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

Before The Honorable Thomas F. Murphy, District Judge

TRIAL BRIEF FOR UNITED STATES

PART II

EXCERPTS FROM TESTIMONY OF H. C. DOBBS, A. E. SINCLAIR, ROBERT H. PATCHIN, ADOLPH GARNI AND W. F. COGSWELL IN C.A.B. DOCKET 779

[fol. 1446]

IN THE UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

TESTIMONY OF MR. DOBBS IN CAB DOCKET 779 WHICH THE GOVERNMENT INTENDS TO OFFER INTO EVIDENCE

I

Grace Control

By Mr. Friendly:

pp. 2334-37:

Q. On your trip in 1941, you observed the passenger handling facilities at each of the airports where the airplanes stopped, did you not?

A. Yes.

Q. And in Buenos Aires, Santiago, Valparaiso, Lima, Guayaquil, Cali, and the Canal Zone, you also observed the downtown offices and talked with the traffic men there; is that correct?

A. That is correct.

Q. Now, did you learn of any resistance that had been offered to the traffic promotion of Pan American-Grace by the Grace agents or by W. R. Grace & Company?

A. Mr. Van Law and Mr. Muhlfeld had both told me in the past that they had met difficulties and opposition in promotions of airline business.

Q. Will you tell us in what way?

Mr. Cahill: Just a minute. Both told you in the past. You mean they told you at this time or at an earlier time?

[fol. 1447] The Witness: At an earlier time by Van Law and on this trip by Muhlfeld.

Mr. Cahill: Beg pardon?

The Witness: And on this trip at this time by Muhlfeld. Prior to that by Van Law when he was there.

Mr. Cahill: I move to strike out Van Law as not being responsive to the question.

The Witness: I will be glad to answer the question. Will you read the question again?

(The question was read by the reporter.)

Examiner Brown: I take it the question is directed to this particular trip, Mr. Dobbs, so please so restrict your answer.

The Witness: All right.

Mr. Cahill: I take it the motion is granted, then: the motion to strike?

Examiner Brown: Yes.

A. As an instance, Mr. Muhlfeld told me in Lima that at the time that Aerovias Peruanas was discontinued or merged with Faucett, they had a very attractive downtown office, which I had been in on my previous trip, and which he had tried to have retained for the exclusive use of Pan American-Grace Airways promotion of traffic business, but his efforts had met with failure, as he told me they were flatly turned down by Grace in New York.

In Valparaiso, when I was there on this trip in 1941, I noticed on the counter used by Pan American-Grace Airways for passenger transactions that there was a poster of Pan American-Grace Airways which was partially covered by another advertisement or poster which I don't remember exactly what the top poster referred to, but since the airline poster was mostly covered, I asked the traffic representative behind the counter about uncovering it, and he said that it had been so covered by instructions of the senior agent. I was accompanied on this trip—

[fol. 1448] Mr. Cahill: Who was this you asked this question of?

The Witness: The traffic representative back of the counter.

Mr. Cahill: Give us his name so we can identify him.

By Mr. Friendly:

Q. Do you know his name?

A. I think with considerable thought I could give you his name. I don't have it offhand in my mind.

Mr. Cahill: Of course, it is hearsay even when you know the man, but I submit when it is hearsay with an unknown, there is some question about it.

The Witness: I know the man, so he can easily be looked up and I think we can get the name all right. He is an English-speaking young Chilean who told me at lunch that he was leaving for the Royal Air Force as soon as he could. It wouldn't be difficult to get his name, and I will see if I can get it for you.

A. (continuing) Mr. Salsilli, who was with me; having come down from Santiago, as he is the senior employee of the agency charged with the duty of Pan American-Grace Airways passenger affairs, told me that that was just one of the things he couldn't do anything about.

p. 2342:

Q. Did any traffic official of Pan American-Grace ever tell you that the Grace agents had followed a practice of selling air transportation only as far as the Canal and thence by boat to the United States?

A. Mr. Van Law made such a statement to me in 1936 when he was traffic manager.

Mr. Knauer: Traffic manager where?

The Witness: In Lima in 1936.

[fol. 1449]

TESTIMONY OF MR. SINCLAIR IN CAB DOCKET 779 WHICH THE GOVERNMENT INTENDS TO OFFER INTO EVIDENCE

I

Grace Line—Panagra Competition

By Mr. Friendly:

pp. 2557-65:

Q. Did Pan American-Grace have any traffic representatives of its own in Ecuador during this period?

A. No. We didn't have any traffic representatives that were on the payroll of Pan American-Grace. For a short while we did have one agency man that devoted his full time to the services of Pan American-Grace.

Q. That is a Grace agency man?

A. Yes, a Grace agency man, a Guayaquil agencies man.

Q. Did the Grace agencies in the other countries in the Northern Division, to wit Colombia and Panama—have any employees at this period who devoted their full time to the affairs of Pan American-Grace?

A. No. At all other points our business was handled by regular agency personnel who devoted their time to the regular business of their particular agency.

Q. Can you tell us why this special arrangement was made in Ecuador?

A. Well, in January, 1936, I went down to Guayaquil on special instructions from Mr. George P. Smith to survey the market for possibilities in connection with air transportation, and specifically to study the possibilities of promoting air express. On my arrival at Guayaquil I contacted the Guayaquil Agencies Co., who were our agents and our representatives in that country. The manager at that time, as I have already stated, was Mr. Manuel Holquin and his two assistants, Mr. Ararte and Mr. McLean. I conferred with these gentlemen and asked them what the business possibilities for air express were in that particular territory. I found them a little vague about what I was talking about, in the first place—

Mr. Cahill: I move to strike out that he found them a [fol. 1450] little vague. Let him continue to tell us what was said.

Mr. Friendly: What is the Examiner's ruling on it?

Examiner Brown: Go ahead.

A. I asked Mr. Holquin what, if anything, had been done to develop air express, and he told me that an employee by the name of Cordovez had investigated the possibility of handling some lobster shipments. That was the extent of the work that had been done in that connection, according to the information given to me by Mr. Holquin. We continued discussion and I asked him if he did not have a man on contact work visiting shippers, studying their shipping problems, and studying the possibility of handling some of their imports or exports over our air express service. He told me that he did not have such a man.

By Mr. Friendly:

Q. Did you suggest anything?

A. Well, I recommended to him the very important desirability of appointing an agency man to devote his time to that type of work, and Mr. Holquin then told me that he did not see why it was necessary that Pan American-Grace should have such a man since the Grace Line did not have a man doing that type of work. I explained to Mr. Holquin that the Grace Line was the established form of transportation in that particular area, and had been so for several years past, that Pan American-Grace was offering a brand new service, and that it was necessary that that service be made known to the public of Ecuador, and the shippers and importers in that area.

Q. What did he say to that?

A. We continued the discussion, it was quite a lengthy discussion, and Mr. Holquin finally ended up agreeing that he would make an effort to locate a man for my purpose, but that he believed that it would be quite difficult to find just the right type of man.

Q. Did you try to help him out with a suggestion?

A. Yes. Before I had departed from Cristobal, Mr. [fol. 1451] George P. Smith had mentioned to me the fact that a young employee of the Guayaquil Agencies Co., by the name of Gustavo Jiminez had been showing a great deal of interest in the business of Pan American-Grace. He had been sending us up small notes with the pilots and making minor recommendations and reporting complaints to us that he had received from passengers, and Mr. Smith consequently recommended that I consider Gustavo Jiminez as a possible candidate for what we had in mind.

Q. Did you pass that on?

A. Yes. I recommended that Mr. Gustavo Jiminez be appointed for that work.

Q. What did Mr. Holquin say?

A. Mr. Holquin told me that Mr. Jiminez could not devote his full time to that work, as he had other duties to perform within the agency. These duties were to a great extent related to Pan American-Grace. He was in charge of receiving and dispatching aircraft, handling the mail, handling different things for us down there, and in addition to that, of course, he apparently did some other duties for the Diagonal Agencies Co., with which I was not familiar.

However, Mr. Holquin did agree that in view of my insisting and recommendations, Mr. Jiminez could and should devote whatever time he had left over from his other duties to this type of work, and he asked me to undertake the instruction of Gustavo Jiminez along the lines of the type of work that I wished to have done down there.

Q. Did you do that?

A. Yes, I did. At the first opportunity that I found when Jiminez has some free time, I had quite a lengthy discussion with him. I explained to him the type of business that I believed could and should be secured in Ecuador. I explained to him the details of the way to go about getting this type of business. I found that he, Mr. Jiminez, himself had some extraordinarily good ideas that we rounded off and developed as the conversation went on.

[fol. 1452] Eventually, some day or so later, when Jiminez had additional free time, I made some actual visits to various prospective shippers and importers in Guayaquil in

order to give him a practical demonstration, as far as I could, of the sales technique that we had been discussing.

Q. Did you have any further discussions with Mr. Holquin at this time?

A. Well, the only discussion that I can recall at this time is again recommending that a man be appointed on a full time basis.

Q. Do you know whether that was ever done during the period with which you are familiar?

A. No. The appointment was never made on a full time basis.

Q. Did you request any assistance from Lima in securing the appointment of this Mr. Jiminez on a full time basis?

A. Yes. I took the matter up with Captain Harris, but nothing resulted.

* * * * * * *

Q. What did you find out about what was being done by the Guayaquil Agencies with respect to Mr. Jiminez' express solicitation?

A. I made several trips to Guayaquil in 1936 and 1937, and on almost all of these trips he, Jiminez, complained to me that both Mr. Holquin and Mr. Ararte had been talking to him regarding his very new activities in the promotion of air express. He told me Mr. Ararte had recommended him—I believe there was some relationship between the two—that if he wished to progress within the agency, he had better pay more attention to the general interests of that agency instead of dedicating his time only to Pan American-Grace affairs.

Q. Did you take that matter up with the manager of the agency? Tell us who he was, please.

A. The manager was Mr. Holquin at one time and Mr. Kolditz at another. I discussed minor—some things with one and some things with the other.

Q. I am referring to the matter to which you just referred.

[fol. 1453] A. Yes, I took that up with Mr. Kolditz.

Q. What happened?

A. And he told me that I must understand—well, in the first place, he called in Mr. Ararte and asked him if the conversation that I had reported to him was accurate, and Mr. Ararte agreed that it was, and that the indications made to Jiminez had been made on Mr. Kolditz' own instructions. Mr. Kolditz then told me that I must understand that he was responsible for the over-all interests of the Grace agency in Guayaquil, and that it was his duty to protect the major interests in that agency. He told me then what Mr. Holquin had said to be more or less in the same words on a previous occasion, that whereas the Grace Line was 100 percent owned, Pan American-Grace was only a 50 percent interest.

He went on to tell me that, with regard to the two interests of Pan American-Grace and Grace Line, even if you consider that matter purely from the standpoint of the local agency rather than from any possible reaction in his headquarters, he has to give preference to the Grace Line, as that turned in a very heavy volume of business for his particular agency.

Q. What did you say?

A. Well, I told Mr. Kolditz that I was going to take the matter up with my superiors. The discussion was quite heated—that particular discussion was quite heated, and Mr. Kolditz replied that he also was going to take the matter up with his superiors, and that he felt that he could have the full support of his head office since all he was doing was looking out for the major interests of W. R. Grace and Company.

Q. Did you report the conversation to your superiors?

A. Yes, I did. Either to Mr. Van Law or Mr. G. P. Smith.

Q. Can you recall which?

A. No, I can't. I had more contact with Mr. George Smith on matters relating to Northern Division, so my recollection would be it would be Mr. Smith.

[fol. 1454] Q. What happened with respect to this air express solicitation after the incident that you have just described?

A. Well, it continued on the same basis it had previously, that is to say, he—that is Jiminez—devoted part of his

time, whatever time he could spare, to air express solicitation.

Q. Under the practice that was prevailing at that time, could you correspond directly with Mr. Jiminez on air express solicitation?

A. No, I could not. All correspondence had to be addressed to the Guayaquil Agencies Co.

Q. Do you know whether or not Mr. Jiminez' employment was subsequently terminated?

A. Yes, it was.

pp. 2569-74:

Q. In January of 1936 were you involved in an incident with respect to the securing of gold shipments from Guayaquil for Pan American-Grace?

A. Yes, I was.

Q. Did you secure that business?

A. I did.

Q. And from whom, please?

A. The Central Bank of Ecuador.

Q. Do you know who had transported that type of cargo previously?

A. The Grace Line.

Q. Tell us, please, how you went about securing the business.

A. In the fall of 1935, George P. Smith and I had become interested in the movement of treasury shipments out of Colombia and Ecuador. Platinum shipments, gold shipments were moving out of Colombia and we had indications that some of these shipments were also moving out of Ecuador. We discussed the matter and decided that due to the manner in which our rate structure was set up, we could not compete with the Grace Line on certain types —the more important types of shipments. The Grace Line freight rates were based on the value of the shipment and went down as the value of the shipment increased.

[fol. 1455]

. . . . . .

Q. Just to clarify this, Mr. Sinclair, is it your understanding that the rates on gold at that time were a certain

percentage of the dollar value of the shipment—or of the value, perhaps not dollar value?

A. Yes, that was the basis.

Q. And the percentage decreased as the value of the shipment increased?

A. That is right.

Q. You didn't mean to imply that gold did not move on a higher rate than nitrates or something of that sort?

A. Oh, no.

Q. Now, will you get back and tell us what you and Mr. Smith discussed?

A. The Pan American-Grace rate was a composite rate made up of a weight charge, a valuation charge, and an insurance charge. The net rates resulting from the two different types of transportation meant that we could compete—that is to say, Pan American-Grace—on shipments of relatively small value for that type of shipment, but we could not compete with the higher valued shipments which were the ones that were being moved by these big organizations. After discussing the matter further, Mr. Smith and I decided that we would have to have a sliding scale ourselves, and we suggested—we decided, rather,—that this should be more or less on the basis of our CDC passenger contract. We made recommendations along those lines to Mr. Van Law who was our general traffic manager, and he passed on those recommendations with a copy to us—he passed on those recommendations in New York with a copy to us in Cristobal.

* * * * * * *

Q. Now, at about this time, did you learn of this gold traffic from the Central Bank of Ecuador?

A. Yes. Mr. George P. Smith had received a letter to the effect that the Central Bank of Ecuador was contemplating the movement of heavy bullion shipments, and he [fol. 1456] instructed me to go down to Guayaquil and see what I could do about it.

Q. What did you find out when you got—did you go to Guayaquil?

A. Yes, I went to Guayaquil.

Q. What did you find out when you got there?

A. When I got to Guayaquil I found that the decision on the matter rested with the director general of the bank whose headquarters was at Quito, not at Guayaquil.

Q. What did you do then?

A. I proceeded immediately to Quito.

Q. Did you receive any communication from Mr. Smith while you were there?

A. Yes. Before I left Cristobal it had not been decided yet whether our recommendations in regard to a sliding scale would be adopted, and while I was up in Quito, I received wires from Mr. George P. Smith telling me that I was authorized to close a contract with the Central Bank of Ecuador providing for certain discounts, depending upon the volume of business that the bank might give us within a year. In addition to that, he informed me that I was also authorized, if I found it necessary, to offer the bank a 30-cent per hundred dollars insurance premium rate instead of the 35-cent rate that was in effect at that time.

Q. Did you close the deal with the bank?

A. Yes. Early in February I closed the deal with the bank, and for the purpose of closing the deal I only used the 5-cent differential in insurance premiums. I made no use of any other sliding scale discount. Shortly thereafter, of course, the first shipment of gold on Pan American-Grace left from Guayaquil to the United States.

Q. Did you have any discussions thereafter with the manager of Guayaquil Agencies?

A. Yes.

Q. Tell us what they were.

[fol. 1457] A. Well, it was almost immediately after I had closed this deal. I went in to see Mr. Holquin to inform him of the deal in question and discuss other things in general, and then he told me that he believed that I should abstain from soliciting this type of business and in fact all types of business that was potential cargo for the Grace Line and that I should restrict my efforts to the soliciting of such types of merchandise as were susceptible of transportation on parcel post service or some other similar service.

Q. Did you, after this episode, execute any other contracts giving shippers either in Ecuador or elsewhere in the Northern Division the benefit of this 30 cent insurance rate?

A. No. Shortly after that deal was closed with the Central Bank our authorization to grant any discounts was cancelled.

• • • • • • •

Q. Do you know whether the Grace Line reduced its rates on treasury shipments after you had secured this gold business from the Central Bank of Ecuador?

A. Yes. I learned of that.

TESTIMONY OF MR. PATCHIN IN CAB DOCKET 779 WHICH THE GOVERNMENT INTENDS TO OFFER INTO EVIDENCE

I

Division of Territory

By Mr. Friendly:

pp. 3118-20:

Q. I would like to have you look at Exhibit PG-2, Page 3.

(Off the record.)

Q. I am referring to the paragraph which starts, "Mr. Roig made a statement".

A. Yes.

Q. You were present at that meeting?

A. I believe so, according to the minutes.

[fol. 1458] Q. And you heard Mr. Roig make a statement substantially as outlined there?

A. I assume I did. It is here recorded. I have no very close recollection of it.

Q. You don't recall expressing any dissent from it, Mr. Patchin?

A. No, I do not.

Q. I would like to address your attention to the portion of the statement reading:

"Pan American Airways, Inc., have an undoubted right to extend their service to Buenos Aires and to operate in the Argentine except between Buenos Aires and Mendoza," the "except" clause being in parenthesis, "if they desire."

What was the reason why Pan American did not have a right to operate between Buenos Aires and Mendoza?

A. Well, I think that arose out of a sort of general understanding developed when Pan American came down the east coast. They were interested in the east coast and we were not.

Q. What about Pan American's operating to Santiago? Why couldn't they do that?

A. Well, their mail contract didn't go to Santiago.

Q. Mr. Roig here was not talking about mail contracts: he was talking about the company's right to extend its services to Buenos Aires and to operate in the Argentine except between Buenos Aires and Mendoza.

You assented to that, and I wonder why Pan American didn't have a right to operate between Buenos Aires and Mendoza.

A. I think it was derived from a gradual acceptance of the idea of the east coast and west coast.

Q. How did that work out?

A. How did it what?

Q. How did it bear on this controversy? Buenos Aires and Mendoza were certainly east coast—

[fol. 1459] A. (interposing). I don't recollect, Mr. Friendly, just what was the reason for that language being in there.

Q. You are sure, however, that it doesn't indicate there was any agreement as to what territory Pan American Grace should operate in and what Pan American should operate in?

A. Well, I think there was a sort of general understanding with regard to this operation in Argentina: that Panagra would go to Buenos Aires and that the Pan American would not operate on the same route.

Q. When was that understanding reached?

A. I don't know of any specific understanding on that, or whether it became a general acceptance.

II

Pan American-Panagra Competition

By Mr. Cahill:

pp. 3086-91:

Q. I want to turn to a different subject, Mr. Patchin.

I want to ask you whether Mr. Trippe assured Panagra that he would not ask the Post Office Department to reduce the number of trips to Buenos Aires made by Panagra.

A. There was correspondence which I think is in the minutes of the Panagra—

Mr. Reynolds: Can we have more definitely the time to which you refer?

Mr. Cahill: Yes, I am going to ask him to fix the time, Mr. Reynolds.

A. I don't recall the date of the meeting, but in 1931, when Pan American, having extended operations on the east coast to Santos, wanted to go to Buenos Aires, there was apparently an insufficiency of funds—

By Mr. Cahill:

Q. (Interposing) In the Post Office Department?

A. In the Post Office Department.

[fol. 1460] (Continuing) —and Mr. Trippe had given us assurance in letters that I believe are in the minutes that Pan American would not seek to have those taken away from the west coast route by reason of suspending a trip or requiring a trip to be run without pay, and we accepted that assurance.

By Mr. Cahill:

Q. Do you know what Mr. Trippe did after giving you that assurance?

Mr. Friendly: I am going to ask the witness to confine himself to matters that he knows of his own personal knowledge on that.

Examiner Brown: I think that would be proper.

Mr. Friendly: No questions were asked of Mr. Trippe on this subject.

By Mr. Cahill:

Q. Did you have conversations with anybody about how Mr. Trippe or what Mr. Trippe did after he gave this assurance?

Mr. Friendly: I am going to object to that.

Mr. Reynolds: Let's find who it was with. Maybe it was with Mr. Trippe.

Mr. Friendly: Oh, yes, of course.

By Mr. Cahill:

Q. Did you have conversations with anybody?

A. Yes.

Q. With whom?

A. Well, after this time—

Mr. Friendly: The question was: with whom? I think that can be answered directly.

A. I had a conversation on the subject with the Second Assistant Postmaster General, Mr. Glover. I called on him one day—

Mr. Friendly: That is an answer, I think.

A. (Continuing) —and we were—

Mr. Friendly: Just a moment.

[fol. 1461] By Mr. Cahill:

Q. Tell us what the conversation was that you had with the Second Assistant Postmaster General, Mr. Glover, on the subject?

Mr. Friendly: I object to that.

Examiner Brown: I will permit the answer.

A. I called on him, the insufficiency of appropriations to go all the way around was a very important problem, and I called on him and asked him what was developing in that situation, and he said Mr. Trippe and Mr. McCracken, who had been, I believe, a lawyer for Nyrba, and was retained by Pan American, had been in to see him and had sug-

gested that one trip—that pay for one trip a week from Santiago to Buenos Aires be discontinued, so that it would help out the Pan American operation south of Santos on the east coast.

By Mr. Cahill:

Q. That is, the pay for one of the Panagra trips?

A. Yes.

Q. Be eliminated?

A. Be applied there—yes, be eliminated on the Santiago-Buenos Aires.

Q. For the purpose that you mentioned?

A. And I asked him what attitude he had taken, and he said he had asked them what the attitude of the Grace directors was on this matter, and he said, well, this was a matter for the Post Office Department to determine.

Q. Who said that?

A. Mr. Glover said—no, Mr. Trippe said, in reply to Mr Glover's question, that this was a matter for the Post Office Department to determine for itself, and Mr. Glover told me that he stated to them that he didn't think he should do this unless the Grace directors should concur in it, and if they did and came down to talk to him about it, he would see what could be done.

[fol. 1462] Q. Did you have conversation with Mr. Trippe about his attitude?

A. Well, subsequently at a directors meeting I mentioned to him this fact and reproached him with it, and he denied it in a mild way.

* * * * * * *

Q. Did Mr. Trippe at any time refer to hundred percent interests in companies versus 50 percent interests in companies?

* * * * * * *

A. Early in 1930 the Post Office Appropriation Bill was taking its usual course through the Appropriations Committees and the House of Congress, and there was great pressure to get additional appropriations so service could be enlarged at different points, including particularly the east coast of South America. I followed the thing with close

interest and found that there was an idea in the minds of some of the people in the Appropriations Committee that, in order to get to Buenos Aires you had to have a service down the east coast, although we were already reaching Buenos Aires via the west coast. It was a natural assumption that Argentina being on the east coast was naturally reached via the east coast, although the air route via the west coast was substantially shorter in mileage, and I made it my business to correct this mistaken idea and to bring to the attention of those dealing with the appropriations the fact that the route coming from Miami through Cuba, the Canal, down the west coast, and then over the mountains to Buenos Aires served a very large number of countries constituting a very large proportion of the total commerce between Latin America and the United States, and this was the route that ought to get an increase of service to at least two trips a week, and at one stage of that effort, I had a conversation with Mr. Trippe in Washington in which I sought more effort to the same extent—to the same end on his part, and in the course of this conversation he remarked, "Well, you don't expect that I would be as much interested where I have only a 50 percent as where I may have a hundred percent interest in the operating company."

[fol. 1463]

TESTIMONY OF MR. GARNÍ IN CAB DOCKET 779 WHICH THE GOVERNMENT INTENDS TO OFFER INTO EVIDENCE

I

Division of Territory

By Mr. Cahill:

pp. 3162-64:

Q. Did you have discussions with Mr. Trippe about the proposed diversion to Cali in which Mr. Trippe stated the basis for his opposition to Panagra operating into Colombia?

A. I did.

Q. Will you fix the date of those conversations, Mr. Garni?

A. I can't give the date, but it unquestionably preceded the inauguration of the trip via Cali.

Q. Will you tell us what the conversation was? What did Mr. Trippe say?

Mr. Friendly: Do I understand these were conversations before the inauguration of any service into Cali?

The Witness: That is my recollection, yes.

By Mr. Cahill:

Q. What did Mr. Trippe say was the basis of his opposition?

A. As I recall it, Mr. Trippe's principal objection was based on the loss of revenue to the subsidiary companies in Colombia in which Panair was interested—Scadta and I believe also UMCA—by taking passengers to Cali, and he was fearful at that time that by-passing Medellin might not please the Colombian Government, and we would eventually be forced to take passengers to Medellin and possibly Turbo.

Q. Now, did you have conversations with Mr. Trippe about operations to Medellin and Turbo?

A. Yes. We told him, "Now, of course, if the Colombian Government should force us to stop in Medellin, discharging and taking on passengers, we couldn't very well go against their wishes, but we would try not to stop in Medellin for the purpose of carrying passengers as long as possible."

[fol. 1464] Q. Was anything said by Mr. Trippe as to what he wanted to do if the Government of Colombia did require stops at Medellin and Turbo by Panagra?

A. Yes. I remember a discussion we had in the presence of Mr. Roig—in fact, in most of these discussions Mr. Roig was present—and I think Mr. Trippe suggested that in the event of our being forced to take passengers to either of those two points, 75 percent of the gross revenue should be turned over to the Colombian subsidiaries who lose that revenue.

Q. And they were?
A. 75 percent.
Q. And those subsidiaries were by name—?
A. Scadta, and I think UMCA was involved in some way.
In those days UMCA I think operated from Panama as far as Medellin.
Q. Did you ever agree that Medellin and Turbo were east coast cities or were in Pan American's territory, so-called?
A. I never did, no.

By Mr. Friendly:

pp. 3196-98:

Q. I would now like you to look at this exchange of cablegrams which is Exhibit PC-37, more particularly to your cablegram of November 17, 1936, to Mr. Roig, and still more particularly to the words commencing with word 61 and continuing through word 75.

Mr. Cahill: Let the witness read the whole thing.
Examiner Brown: Surely, if he wishes.
Mr. Friendly: No objection.
Mr. Cahill: Are you on the same point that you were on, Mr. Friendly?
Mr. Friendly: I am not stating what point I am on.
Mr. Cahill: I am just trying to identify these 10 words that have been picked out of the telegram, that is all.

[fol. 1465] By Mr. Friendly:

Q. Have you read all you wished to, Mr. Garni?
A. I think the words you pointed out were 61 to 75.
Q. Yes, but feel free to read anything else that you want.
A. Yes, I have read it.
Q. Now, what do you mean by the words "Distinctly well within Panagra territory"? That is your words 65 to 69.
A. Just as it says. I never considered that Cali was on the east coast of South America or not in Panagra's territory on the west coast.
Q. What did you consider Panagra's territory was?
A. At that time?
Q. Yes.

A. Part of their territory certainly was from Pan American south.

Q. You say that was part of their territory?

A. Yes.

Mr. Cahill: That was the answer.

By Mr. Friendly:

Q. What was the rest of their territory?

A. Wherever else they might go subsequently, for instance, Panama to Miami.

Q. But not Panama to the east coast?

A. Panama to where?

Q. To the east coast?

A. No. I shouldn't think so.

II

Grace Line-Panagra Competition

By Mr. Friendly:

p. 3189:

Q. Grace Line and Pan American-Grace, in normal times, are both interested in getting passenger business to the west coast, are they not?

A. Yes.

[fol. 1466]

TESTIMONY OF MR. COGSWELL IN CAB DOCKET 779 WHICH THE GOVERNMENT INTENDS TO OFFER INTO EVIDENCE

I

Division of Territory

By Mr. Reynolds:

pp. 3306-07:

Q. Mr. Cogswell, if you will turn to Page 46 of P-34 the letter of August 31, 1928.

A. Yes, I have it.

Q. You will note, as this letter is reproduced in exhibit form, it does not indicate who signed it, other than the title of assistant secretary. This letter was signed by you, was it?

A. That is right.

Q. And were you a party to the discussions which led up to the propositions set forth in this letter, Mr. Cogswell?

A. Not most of them. I was in on some of the discussions but not most of the discussions, no.

Q. How did you happen to be selected to write the letter?

A. Well, just as a lawyer, I guess.

Q. At the request of whom?

A. I don't remember. Someone in our office. Perhaps Mr. Roig, perhaps Mr. Garni.

Q. Mr. Iglehart?

A. I rather doubt it.

Q. At the time when you drafted this letter had you had discussions with anyone in which you learned it was the intention of either Grace or Pan American to restrict the operations of the proposed new venture in such a manner that they would never go elsewhere than between the Panama Canal and Valparaiso, Chile?

A. No.

Q. Were there any discussions, regarding the subject of confining the company's operations, of any nature, Mr. Cogswell?

A. Not to my recollection.

p. 3313:

[fol. 1467] Q. At the time when that charter was drafted were there any discussions as to whether the scope of the operations of Panagra were to be other than those actually set forth in the charter?

A. Not that I can recall, no.

Q. When is the first time that you ever heard of Pan American's theory that the original agreement, a part of which is founded upon the letter of August 31, 1928, restricted the operations of Pan American-Grace in so far as territory is concerned?

A. Mr. Reynolds, I think that was sometime in 1938, but I couldn't place it exactly.

Q. You have no recollection of ever having heard it before?

A. No.

Q. Not in connection with any other extensions, Mr. Cogswell?

A. No.

II

Grace Control

By Mr. Friendly:

pp. 3334-36:

Q. Do you recall being interrogated at the time of the hearing of Mr. Garni for approval—

A. (interposing) Yes, I—

Mr. Friendly (interposing): Just a minute. Let me finish my question.

By Mr. Friendly:

Q. (continuing) —for approval of his application to become a director of Eastern Airlines?

A. Yes. I was interrogated by Mr. Sam Gates.

Q. I want to read you a few questions from that:

"Question: Is it customary for the directors of Panagra who are the representatives of Pan American Airways to take no stand upon any issue which is brought to the attention of that particular group except with the approval of Pan American Airways Corporation? [fol. 1468] "Answer: I wouldn't know, but I should judge on a matter of policy they would want the approval of their board; on other matters maybe not large they probably would not take any action they thought was contrary to the wishes of their board.

"Answer: I do not think the directors of Panagra who represent W. R. Grace and Company would take a position they thought was contrary to the wishes of the board of directors of W. R. Grace and Company. There are many matters, however, which come up

which would not be first taken up with the board of directors."

You remember being asked those questions and giving those answers, do you not?

Mr. Cahill: I submit that is circumventing your ruling as to the questions being highly speculative, Mr. Examiner.

Examiner Brown: Answer the question, please, Mr. Cogswell.

A. Yes, I remember giving that testimony.

[fol. 1471]

GOVERNMENT'S EXHIBIT 1122

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

Before The Honorable Thomas F. Murphy, District Judge

EXCERPTS FROM TESTIMONY OF JUAN TRIPPE IN C.A.B. DOCKET 3589

[fol. 1472]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

TESTIMONY OF MR. TRIPPE IN CAB DOCKET 3589

By Mr. Harlan:

pp. 1270-88:

Q. Now, as a part of your agreement with W. R. Grace & Company, wasn't it agreed that the territory in South America would be divided between Pan American and Panagra?

A. Not that I know of. There was a contract executed with W. R. Grace in which Grace was given an opportunity to purchase not to exceed 50 per cent in the airline that we had under way to extend from the Canal Zone down the West Coast of South America. They did have the opportunity, over a period of time, to increase their interest in that airline up to 50 per cent, and the area which that airline was to operate in was outlined. But there was no other agreement that I know of.

Q. Wasn't it agreed that Panagra would operate on the Coast of South America and that Pan American would not?

A. Not that I know of. There was a specific agreement which could easily be made a part of this record if you wish to have it.

Q. Let me ask you if you didn't, on April 8, 1931, write a letter to Pan American-Grace Airways, Attention Mr. John D. McGregor, Vice President and General Manager, in which you stated the following:

[fol. 1473] "The arrangement between Aviation Corporation of America and W. R. Grace & Company, as a result of which your company was formed, contemplated that the sphere of operation of your company should be confined to the West Coast of South America."

Examiner Wrenn: What exhibit number was that in the Panagra Terminal Case?

Mr. Harlan: P-37, page 35.

Examiner Wrenn: If you want the contract in here, that was agreed to between them, Mr. Harlan, why don't you offer it?

Mr. Harlan: I don't believe, Mr. Examiner, that the contract itself shows that agreement, but in the record in that case it is quite clear that there was such an agreement and Mr. Trippe himself so testified at that time.

Examiner Wrenn: Was that your testimony, Mr. Trippe?

The Witness: Not that I recall. I refer again to the agreement between the two companies, and that is the only agreement that I know of. The letter to which you have just referred is a letter addressed to the executive head of Pan American-Grace Airways, of which we are 50 per cent stockholders.

. . . . . .

Q. Mr. Trippe, I want to ask you if you did not testify in the proceeding under Docket 779 that there was an agreement that Pan American should not operate down the West Coast of South America, and that Panagra should confine its activities to the West Coast of South America?

A. Mr. Harlan, to the best of my recollection, there was no agreement or understanding or anything else, other than the one I have referred to with W. R. Grace & Company.

Q. Mr. Trippe, I call your attention to this testimony of yours which appeared at page 1526 of the transcript in Docket 779, under questioning by Mr. Friendly:

The question by Mr. Friendly was: "In conducting the [fol. 1474] affairs of Pan American, have you proceeded on the basis that the letter of August 31, 1928, has imposed on Pan American an obligation not to operate down the West Coast of South America?"

I might say there that there was considerable objection to that question at that time, but it finally was answered. The first answer was:

"We have felt so, yes."

Then the second answer to the same question, which appears at page 1528, is:

"We have."

Did you so testify in that case?

A. I did if you are reading from the record. I haven't a copy of the record before me. The letter to which you refer is the same letter, I gather, that I have mentioned just a few minutes ago, the letter between Pan American and W. R. Grace & Company.

Q. You don't dispute that that was your testimony in that case, Mr. Trippe?

A. Not at all if you are reading from the record of the hearing.

Q. Now, I would like to ask you if you didn't testify, in the same case, at pages 2228 and following, as follows, under questioning by Public Counsel:

"Question: Mr. Trippe, I believe that the record indicates so far that under the original 1928 agreement and the discussions that led up to it, the contemplation was that territories would be divided in terms of East Coast and West Coast, with the exception of Panagra operation to Buenos Aires. That is generally correct, is it not?"

Your answer was: "I don't believe so."

"Mr. Friendly: I don't believe the question was what the record indicates or what Mr. Trippe thinks.

"Mr. Reynolds: The question is what Mr. Trippe thinks, in any event.

"Answer: My understanding is that the territory reserved for the joint company was the West Coast of South America, including, in so far as Colombia was concerned, [fol. 1475] the West Coast of Colombia, and that the interior and North Coast of Colombia were reserved for Pan American.

"Question by Mr. Reynolds: And south of Colombia, the West Coast of South America was reserved for the joint company of Panagra?

"Answer: That is correct.

"Question: With the exception of the operation across the Andes to Buenos Aires?

"Answer: Which was agreed to at a later date."

Did you so testify in that case?

A. If you are reading from the record, I did. Perhaps, Mr. Harlan, I could clarify the point you have in mind by pointing out that Pan American had operated between the United States and the Canal Zone and was seeking to extend its service down the West Coast. We had limited capital we had no ability to secure the rights in Peru, and, we felt, Chile, that would be required to extend the American flag service down the West Coast and ultimately across the Andes to Buenos Aires. We had organized a company to effect this operation, and we had offered W. R. Grace & Company an option to buy into that particular company, which was set up to operate a specific route, if they felt, and they had an opportunity to look at the air business, that it would perhaps be a good investment for them.

The background to which I believe you are referring has to do with the agreement between Pan American and W. R. Grace & Company, setting up that company and giving them an opportunity to participate in it if they elected to do so. The route which was to be operated by that company was delineated, and, as I recall—it was many years ago—but my recollection would be that it was from the Canal Zone to Valparaiso, Chile, and the agreement to which you refer permitted that company, of which later on Grace became a stockholder, to extend across the Andes to Buenos Aires. But this so called territorial division that you speak of was simply the route to which that company would [fol. 1476] operate, whether Grace & Company became a 50 per cent stockholder or not. Perhaps that background may be of some help to you.

Q. As a part of your division of territory with Panagra, Mr. Trippe, wasn't it true that there was at least one other company that was involved, and that is SCADTA?

Q. In other words, wasn't there an agreement that SCADTA's operations would be limited to Colombia, and that SCADTA would not be extended into Panagra territory.

Examiner Wrenn: An agreement with whom?

Mr. Harlan: Agreement between Pan American and SCADTA, and I will ask Mr. Trippe also if there was not also an agreement to that effect as to which Panagra was a party.

The Witness: Well, you have asked a number of questions, there, Mr. Harlan. I will answer the latter first. I know of no agreement between Panagra and SCADTA.

* * * * * * *

Q. That is the company that is now known as Avianca, is that correct?

A. That is correct.

Q. Over what period of time did Pan American control that company?

A. Over what period of time?

Q. Yes.

A. From the time of this contract that I refer to, which I believe was dated 1929 until some date just prior to the war, we were majority stockholders, but the contract per se left the complete management of the company in the hands of its directors and management. I believe the period the contract stipulated was ten years. Of course, I have not read this contract for some 15 years, and you will have to excuse me if I do not have all the details in mind.

Q. I would like to direct your attention, Mr. Trippe, to further testimony of yours in Docket 779, beginning at the bottom of page 1604 of the transcript.

[fol. 1477] Examiner Wrenn: Is that still on the subject of this agreement?

Mr. Harlan: Yes.

Examiner Wrenn: Well, do you not have that established? Is it necessary to drag it out any further?

Mr. Harlan: I wanted to get a little of clarification on what I thought was a three-way arrangement, between Pan American, Panagra and SCADTA. I understood Mr.

Trippe to say that he did not think there was such a three-way arrangement and I wanted to clarify this, and if he will explain his testimony, I think that will clear it up.

"Question: Now will you go on and state what position Pan American took in these discussion with regard to the possible extension of SCADTA's operations to Quito. Answer:—"

Mr. Friendly: Can we have it clear what the discussions were? The question as read does not mean anything.

Examiner Wrenn: Suppose you clear it up, Mr. Harlan.

Mr. Harlan: This appears to be a proposal of SCADTA to extend to Quito, somewhere—

Mr. Friendly: Why can't the witness be shown the transcript so he will know what it is all about, instead of having an isolated question, the meaning of which cannot possible be understood?

Examiner Wrenn: I think that is a good idea. Put the transcript in front of him, Mr. Harlan, and let him see it.

Mr. Harlan: I will be glad to.

Examiner Wrenn: No go ahead with your question.

By Mr. Harlan:

Q. After looking at that, Mr. Trippe, would you care to state what the understanding was as between Pan American, Grace and SCADTA?

A. Well, I believe, Mr. Harlan, I have already answered that question. I have tried to. The agreement with Grace was this contract relating to the organization of Pan American-Grace, to which I have referred. It outlined the area and route over which that company would operate, whether [fol. 1478] Grace became a stockholder, or a large stockholder, or not.

The agreement with SCADTA, now Avianca, was made a great many years ago. I have attempted already to outline the general provisions of that agreement, and as I say, I know of no agreement between Pan American-Grace and SCADTA, or any agreement between Grace and Pan American other than the one I have referred to.

Q. Wasn't your understanding of the agreement between Pan American and Grace that SCADTA should not be extended into Panagra's territory?

A. No, our agreement with Grace is definitive. We outlined the route on which we were going to extend the Pan American system down the West Coast of South America and we gave them an option, if they saw fit, to participate, for a period of time, not to exceed over fifty percent of that company. That is the agreement with Grace. I have already referred to the agreement with SCADTA which contemplated that the Ex-German Nationals that were pilots of that company would not operate beyond the borders of Colombia. We felt that the management of SCADTA should adhere to the commitments they had made, and which our government approved before they were made.

Q. But you did feel, and you so stated in this testimony which you have just looked at, that an extension of SCADTA, a Pan American controlled company, to Quito, would be a violation of the agreement between Pan American and Pan American-Grace and Company, is that correct?

A. No, it is not correct, because I do not believe during that period SCADTA was a Pan American controlled company. Under the agreement the management of the company was to be left to its overseers, and the agreement contemplated that the service would operate within Colombia. We did say that if that agreement was broken, that we had no other recourse but to sell our stock, which we were prepared to do.

Q. Will you explain this testimony, then? This is from page 1605 of the transcript in Docket 779: "Question: Did [fol. 1479] the Grace representatives take the position that if Pan American, as owner of a majority of the stock of SCADTA, permitted that company to extend its lines into Ecuador, that would constitute a breach of the agreement between Grace and Pan American? Answer: They did, and we agreed with them." Will you explain that?

A. Well, I have tried to do that, Mr. Harlan. As I say, the agreement that was had with SCADTA contemplated that SCADTA would operate within the territorial limits of Colombia for a period, I think, of ten years, and that was the agreement that we felt, and high policy officials of our government felt was in the interests of this country that it be consummated.

If SCADTA was to go to a neighbor and operate internationally, we felt that that was not in line with the agreement that they had made, and yet we had no recourse. They were a Colombian company, they had a Colombian board of directors, they told us at that time, as I recall it, that the Colombian government was insisting that they extend abroad, and obviously we had no other recourse but to dispose of our stock, which we were prepared to do.

• • • • • • •

Q. Mr. Trippe, as I recall, the question I asked was this: You stated that you felt that an extension by SCADTA into Ecuador would be a violation of its agreement with Pan American.

A. The agreement we had with the SCADTA organization to which I have referred, sometime ago, yes, that is correct, Mr. Harlan.

Q. Didn't you also take the position that such an extension would be a violation of the agreement between Pan American and Grace?

A. The only agreement that I know of is the one that relates to the setting up of Pan American-Grace Airways. The route to be operated by that company as an extension of the Pan American services between the United States and the zone was defined, Mr. Harlan, and we felt that after Grace had exercised its option and became a large stock-[fol. 1480] holder in that enterprise that obviously we wouldn't want to run directly into that territory. And that I gather is the point you were referring to.

Q. And that that understanding or wish that Pan American would not run into Panagra's territory would apply also to SCADTA which was controlled by Pan American.

A. Well SCADTA wasn't controlled by Pan American, as I have mentioned. The Columbian Government, we were so advised at the time, wanted that company to extend to Ecuador, and we told Mr. Grace that all we could do about it was to dispose of our stock, which we were prepared to do, but we couldn't control what that company did.

• • • • • • •

Q. Now with respect to Argentina, wasn't there an agreement between Pan American with Grace and Company as to

division of territory for purposes of operation to and from Argentina and through Argentina?

A. No, Mr. Harlan. I think perhaps what you are referring to is the original agreement between Pan American and Grace and Company, and secondly, the agreement whereby Pan American and Grace agreed to extend Pan American-Grace across the Andes to Buenos Aires. The route to be followed by Pan American-Grace was outlined in that arrangement.

Q. Perhaps the best way to get at that would be to show you Exhibit P-157 in Docket 779, which appears to be a cablegram signed by you, addressed to Pan American Airways in Buenos Aires.

Mr. Westwood: What is the date of that cablegram?

Mr. Harlan: September 13, 1930.

The Witness: I have read that, yes, sir.

By Mr. Harlan:

Q. Did you send that cablegram?

A. I don't recall sending it, but if my name is on it, I probably did. The date of it is September 13, 1930. That is some 19 years ago and I frankly don't remember the cablegram at all.

. . . . . .

[fol. 1481] Examiner Wrenn: Read it into the record.

Mr. Harlan: All right. This is headed Cablegram to Buenos Aires, Argentina, and then in parentheses, under that (in confidential code) dated September 13, 1930, addressed to Pan Air, Buenos Aires, Argentina "208: It is reported Alas has made several trips Santiago stop assume flights made in connection cancellation Nyrba Uruguay Argentine mail contracts to Chile stop confirming previous advices agreement between Pan American Airways and Pan American-Grace Airways prohibits Pan American Airways or Alas operating Buenos Aires, Mendoza, Santiago line although permitted operate any other routes east of Andes including Buenos Aires, Montevideo stop agreement likewise restricts Pan American-Grace Airways operations east of Andes to Santiago, Mendoza, Buenos Aires, Monte-

video line, confirm receipt" signed "Trippe" and the note is "This wire sent at telephonic request of Mr. Cogswell and cleared through him before sending." Carbon copies are noted to Messrs. Trippe, Wyman, Rihle, Thach, Young, McGreggor, Woodridge.

By Mr. Harlan:

Q. Just for purposes of clarification, Mr. Trippe, who was Mr. Cogswell?

A. He was an official of W. R. Grace and Company, I believe.

Q. And what is referred to here, in the expression, "Alas"?

A. I haven't any idea. It might be the name of an air line, or some other company. I haven't any idea what that refers to.

Q. Isn't it true that that was Pan American's subsidiary in Argentina?

A. Not that I recall, no. From reading that telegram it might have been some associated company of the New York, Rio and Buenos Aires Airline. I don't know.

• • • • • • •

Q. Mr. Trippe, about 1937, didn't you enter into an agreement with Grace to the effect that Panagra would not serve Medellin?

[fol. 1482] A. Not that I recall. We may have. Medellin is a city in Colombia. Is that Medellin you have reference to?

Q. Yes.

A. Served by an American Flag subsidiary of Pan American, between the Canal Zone and Medellin.

Q. Do you recall a discussion with W. R. Grace and Company as to whether Panagra could serve Medellin or not?

A. I don't recall any now.

pp. 1293-94:

Q. Mr. Trippe, does Pan American have an agreement with W. R. Grace and Panagra to the effect that Pan American has the right to fix Panagra's rates and fares?

A. Not that I know of.

Mr. Harlan: Now, Mr. Examiner, there is a letter, which is Public Counsel's Exhibit 56 in Docket 779, in which Mr. Trippe—

Mr. Friendly: What is the date of that letter?

Mr. Harlan: The date of the letter is March 10, 1930. And there is also a reply letter dated March 14, 1930, from Mr. McGregor to Mr. Trippe. The first letter, if I didn't state it, was signed by Mr. Trippe. The second letter is Public Counsel's Exhibit 57 in Docket 779.

These letters, as I interpret them, constitute an agreement—

Examiner Wrenn: Well, submit them along with the other material you are going to reproduce as exhibits.

Mr. Harlan: Is that agreeable, Mr. Friendly?

Mr. Friendly: May I see them?

Mr. Harlan: Surely.

Mr. Friendly: I have no objection. They do not remotely support the inference that is supposed to made for them, and they are 19 years old. But I have no objection to having them in.

Examiner Wrenn: Submit them along with your other exhibits. Let's go to your next incident.

[fol. 1483] Mr. Harlan: I believe, Mr. Examiner, I had better show these to Mr. Trippe and ask him if he knows if they have ever been cancelled, or whether the agreement reflected in those letters has ever been cancelled.

The Witness: Yes, I have read this letter of March 10, 1930. Now, what is your question, please?

By Mr. Harlan:

Q. Do you know whether the agreement reflected in that letter and in the reply letter of Mr. McGregor has ever been cancelled?

A. Well, the management of Pan American-Grace Airways is vested in the nominee of W. R. Grace & Company under an arrangement approved by the Board, I believe, some years ago. Obviously, that new arrangement would cancel out any previous matters of that type. I don't recall this letter. All I can say is that at the present time the management of Pan American-Grace Airways is in the

hands of Mr. Roig, president of that company, and he initiates and submits to the board of directors all matters having to do with the items that are outlined in that letter.

p. 1296:

Q. Mr. Trippe, isn't it still true that Panagra's rates and fares are filed by a Pan American employee—the Panagra tariffs?

A. They may be. We are general agents in the United States of Pan American-World Airways, but the management of that company has entirely to do with the initiation and planning of their fare structure, just as all other policy questions.

[fol. 1485]

GOVERNMENT'S EXHIBIT 1123

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

STIPULATION WITH RESPECT TO CAPACITY AND SERVICE OF VARIOUS DIRECTORS, OFFICERS AND EMPLOYEES OF DEFENDANTS

The United States of America and the defendants, Pan American World Airways, Inc., W. R. Grace and Company and Pan American-Grace Airways, Inc., by their attorneys, hereby stipulate and agree that the following persons occupied the positions, among others, as listed with each respective defendant:

Pan American World Airways, Inc.

Erwin Balluder

Vice President, Pan American—1946 to date
Director, Panagra—1944- to date

V. E. Chenea

Vice President and General Traffic Manager, Pan American—1940-1947

Howard B. Dean

Assistant Vice President, Pan American—1943
Vice President, Pan American—1943-1950
Director, Panagra—1943-1950
Vice President, Panagra—1944-1950

Henry J. Friendly

Vice President and General Counsel, Pan American—1946 to date
Director, Pan American—1946 to date
Director, Panagra—1944-1945—1947 to date

[fol. 1486] Richard F. Hoyt

Director, Pan American—1927-1935
Chairman of Board of Directors, Pan American—1928-1931
Director, Panagra—1929-1933

Wilbur L. Morrison

Executive Vice President-Latin American Division, Pan American—1944 to date
Director, Panagra—1949 to date

George L. Rihl

Vice President, Pan American—1929-1945
Vice President, Panagra—1935-1944
Director, Panagra—1937-1944

Juan T. Trippe

President, Atlantic, Gulf and Caribbean Airways, Inc.—1927-1928
President, Pan American—1927 to date
Director, Pan American—1927 to date
Vice President, Panagra—1929-1935
Director, Panagra—1929-1943

C. V. Whitney

Board Chairman, Pan American—1931-1942
Director, Pan American—1927-1942

Evan E. Young

Director, Pan American—1944-1946
Vice President, Pan American—1931-1944
Director, Panagra—1933-1944

W. R. Grace and Company

Ernesto Aranibar

Grace Agency, La Paz—1941-1955
Territorial Manager, Bolivia—1944-1955
New York Office, Grace—1955 to date

William F. Cogswell

Assistant Secretary, Grace—1928-1929
Manager, Grace—1929-1942
Secretary, Grace—1946-1956
Vice President, Grace—1942-1958
Secretary, Panagra—1929-1957
Director, Panagra—1929-1946

[fol. 1487] T. G. Elio

Assistant to Manager, Grace Agency, La Paz—1939-1941
In charge Panagra Section of Grace Agency, La Paz—1941 to date

Adolf Garni

Vice President, Grace—1927-1934
First Vice President, Grace—1934-1945
Vice President, Grace—1945-1950
Director, Panagra—1937-1949

J. P. Grace, Jr.

President, Grace—1945 to date

D. S. Iglehart

President, Grace—1929-1945

John D. J. Moore

Apoderado Grace, Lima—1947-1950
Vice President, Grace—1952 to date

Benjamin H. Oehlert, Jr.

Vice President, Grace—1948-1953
Director, Panagra—1949-1953

Robert H. Patchin

Vice President, Grace—1928-1948
Director, Pan American—~~1928-1930~~ 3/26/29-9/18/31 DWP 1929-1931 ERK
Director and Vice President, Panagra—1929-1949

Harold J. Roig

Vice President, Grace—1927-1945
Vice Chairman, Grace—1945-1950
Director, Panagra—1929-1955
President, Panagra—1939-1949

Andrew B. Shea

Sub-Manager, Grace Agency, Lima, Peru—1934-1936
Manager, Grace Agency, Lima, Peru—1936-1939
Vice President, Grace—1939-1950
First Vice President, Grace—1950-1955
Executive Vice President, Grace—1955 to date
President, Panagra—1949 to date
Director, Panagra—1947 to date

Pan American-Grace Airways, Inc.

Edward Bern

Sales Manager, Panagra—1949-1952
Vice President—1952-1956

[fol. 1488] Douglas Campbell

Vice President, Panagra—1939-1948
Vice President and General Manager—1948 to date

Harold H. Harris

Vice President, Peruvian Airways Corporation—1928
Vice President, Panagra—1929-1942

T. J. Kirkland

Vice President, Panagra—1940 to date

J. D. MacGregor

Vice President and General Manager—1929-1939

John Shannon

Vice President, Panagra—1941-1952

James W. Walker

Assistant to Vice President—Operations—1946-1947
Regional Manager of Panagra, Lima, Peru—1947-1952

Dated: New York, New York, May 4, 1959

EDWARD R. KENNEY
Attorney for the United States
of America

DAVID W. PECK
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Airways, Inc.

LAWRENCE J. McKAY
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and Company

WHITE & CASE
Attorney for Pan American-Grace
Airways, Inc.

[fol. 1490]

GOVERNMENT'S EXHIBIT 1124

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

STIPULATION

It is hereby stipulated and agreed by and between the United States of America, plaintiff in the above-entitled cause, and Pan American World Airways, Inc. (Pan American), a defendant in the above-entitled cause, that the following facts relating to acquisitions by Pan American of stock, assets or other interests in Panair do Brasil,

New York, Rio and Buenos Aires Line, Inc. (NYRBA), Tri-Motor Safety Airways, NYRBA do Brasil, Sociedad Colombo-Alemana de Transportes Aeras (SCADTA), Aerovias Nacionales de Colombia, S.A. (AVIANCA) and Uraba, Medellin and Central Airways, Inc. (UMCA) are admitted to be true for the purpose of this action, provided however that nothing contained in this stipulation shall prevent either party from introducing evidence relating to such acquisition.

(1) Panair do Brasil, New York, Rio and Buenos Aires Line, Inc., Tri-Motor Safety Airways and NYRBA do Brasil.

The New York, Rio and Buenos Aires Line, Inc. (NYRBA), incorporated on March 17, 1929, acquired all of the stock of Tri-Motor Safety Airways. On March 1, 1930, NYRBA had a route from Miami through the Caribbean to Port of Spain, down the north and east coasts of [fol. 1491] South America to British Guiana, Dutch Guiana, Brazil, Montevideo, Buenos Aires, and across the Andes to Santiago. Brazil had been unwilling to grant operating rights to foreign companies, even for through operations, and NYRBA therefore operated in Brazil through a wholly-owned local company, NYRBA do Brasil, organized on October 22, 1929.

On September 15, 1930, Pan American acquired all of the assets and business of NYRBA, Tri-Motor Safety Airways and NYRBA do Brasil, except the contracts which those companies held with foreign governments for the transportation of mail.

After Pan American purchased the assets of NYRBA, it took over NYRBA do Brasil and, on October 17, 1930, changed the name to Panair do Brasil, S.A.

A recapitalization of Panair do Brasil, effective December 7, 1943, resulted in 42 percent of that company's stock being acquired by Brazilians and the remaining 58 percent still being held by Pan American. On December 19, 1947 Pan American sold an additional 10 percent of its stock to Brazilian citizens, thus reducing its holdings to 48 percent.

(2) Sociedad Colombo-Alemana de Transportes Aereas (SCADTA), Aerovias Nacionales de Colombia, S.A. (AVIANCA)

SCADTA was organized on December 5, 1919 and began operating in 1920.

By 1927 SCADTA was flying between the Colombian cities of Bogota, Neiva, Girardot, Baranca Bermeida, Magangue, Santa Marta, Barranquilla, Cartagena, Monteria, Turbo, Quibdo and Buenaventura.

In 1929 negotiations began between Pan American and SCADTA. An agreement was signed in 1930 and consummated in 1931. Under the terms of the agreement, Pan American purchased an 84.42 percent interest in SCADTA.

In 1940 SCADTA was merged with a Colombian national company known as Servicio Aereo Colombiana (SACO). [fol. 1492] This merger resulted on June 8, 1940 in a new company called AVIANCA. As a result of its interest in SCADTA, Pan American received 64.224 percent of the shares of AVIANCA. At about the same time that the merger of SCADTA and SACO took place, legislation was enacted in Colombia requiring that the majority interest in domestic air transport companies in that country must be held by nationals of Colombia. On October 31, 1945 Pan American's interest in AVIANCA was reduced to 48.2 percent. By the end of 1954 Pan American owned approximately 38 percent of the shares of AVIANCA.

(3) Uraba, Medellin & Central Airways, Inc. (UMCA)

This company was organized by Pan American under the laws of the State of Delaware on August 24, 1931. A Colombian citizen named Mejia owned 1500 shares of the common stock and Pan American owned the remaining 1500 shares of stock in this company.

In February 1934 Pan American acquired 500 shares of stock which had been previously owned by Mejia. In December 1947 Pan American purchased the remaining shares of common stock owned by Mejia and became the sole

stockholder of UMCA. Pan American still owns 100 percent of the UMCA stock.

Dated: May 1, 1959

SULLIVAN & CROMWELL

By DAVID W. PECK
Attorneys for Defendant
Pan American World Airways, Inc.

EDWARD R. KENNEY
Attorney for the United States
of America.

[fol. 1493]

GOVERNMENT'S EXHIBIT 1128

E-8789

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served: MAR 26 1954

DOCKET NO. 4882 *ET AL.*

REOPENED NEW YORK-BALBOA THROUGH SERVICE PROCEEDING

Decided: March 26, 1954

Decision deferred temporarily on all applications and investigations in issue in the proceeding.

APPEARANCES:

E. Smythe Gambrell, Harold L. Russell, Robert E. Hicks and *Oscar M. Smith* for Eastern Air Lines, Inc.
Henry J. Friendly and *J. Howard Hamstra* for Pan American World Airways, Inc.
John W. Cross and *Richard A. Fitzgerald* for National Airlines, Inc.

John J. Burns and *Albert E. Rice* for Pan American-Grace Airways, Inc.

Paul A. Porter and *William L. McGovern* for Pan American-Grace Airways, Inc. and its directors nominated by Pan American World Airways, Inc.

Hubert A. Schneider and *B. Howell Hill* for Braniff Airways, Inc.

R. S. Maurer and *L. E. Black, Jr.*, for Chicago and Southern Air Lines, Inc.

D. Franklin Kell, George C. Neal and *James Bell* for Delta Air Lines, Inc.

John E. Kirk and *Joel C. Wilcox* for Greater Miami Traffic Association.

Francis A. Mulhern, S. H. Moerman and *W. B. Robinson* for Port of New York Authority.

George C. Neal for Councils 38 and 53 of Air Line Pilots Association.

Leslie G. Donahue and *Francis H. McAdams* for Bureau of Air Operations, Civil Aeronautics Board.

[fol. 1493a] OPINION

BY THE BOARD:

This proceeding involves issues relating to the provision of through services by interchange of equipment between various Latin American points and points on the east coast of the United States. Included herein are Board instituted proceedings relating to provision of one-plane service between New York and Balboa (a) by interchange of equipment at Miami, Fla., or Havana, Cuba, between Eastern Air Lines, Inc. (Eastern), and Braniff Airways, Inc. (Braniff);[1] (b) by interchange of equipment at Miami or Havana between National Airlines, Inc. (National), and Braniff;[2] or (c) by interchange of equipment at Miami be-

[1] This involves the question of extending either Eastern's route No. 6 beyond Miami to Havana, or amending Braniff's certificate to authorize service to Miami as an intermediate point on its South American route.

[2] See footnote 1 with reference to Braniff's certificate.

tween National and Pan American World Airways, Inc. (Pan American), using aircraft delivered to the latter by Pan American-Grace Airways, Inc. (Panagra), at Balboa, C. Z. There is also before us an application for approval of an agreement between Eastern and Pan American which provides for one-plane service between New York and Balboa by interchange of equipment at Miami, as well as for other through services between the northeastern part of the United States and Latin America.[3] Other related issues to be considered include (1) the question of participation by Panagra in the Eastern-Pan American agreement previously referred to; (2) the effectiveness of, and possible approval of an agreement between National and Panagra relating to the provision of through service be- [fol. 1494] tween points on the west coast of South America and New York; and (3) the modification and extension of the Through Flight Agreement between Pan American and Panagra which provides one-plane service by interchange of equipment at Balboa between points in South America served by Panagra and Miami, Fla.

The issues in this proceeding were previously before the Board, and a decision thereon was submitted for Presidential consideration. On May 14, 1953, President Eisenhower returned the Board's decision without approval or disapproval with the request that the record should be brought up to date. Pursuant to the President's request, the Board reopened the record in the proceeding in order to provide the parties with an opportunity to submit evidence, *inter alia*, as to facts and circumstances arising subsequent to the close of the hearing.[4]

After further hearing, Examiner Thomas L. Wrenn, who also heard the original proceeding, issued a Report substantially reaffirming his earlier recommendations.[5] Ex-

[3] The specific interchanges proposed are set forth on page 5 of the Examiner's recommended decision served November 13, 1953. It is to be noted that the agreement provides for participation of Panagra in a through service connecting points served by that carrier in Latin America with Washington and New York.

[4] Order No. E-7391, dated May 18, 1953.

[5] See Examiner Wrenn's Recommended Decision as issued January 23, 1952.

aminer Wrenn recommended, *inter alia*, that the Board approve the interchange agreement between Eastern and Pan American and that the record herein be held open for 60 days after decision to permit National and Braniff to negotiate and file with the Board an agreement for through service by interchange of equipment at Miami between New York and Balboa and points beyond. He also recommended that the Through Flight Agreement be approved and extended to July 1, 1960, that the application for approval of an interchange agreement between National [fol. 1494a] and Panagra, and the portion of the proceeding relating to the various Board proposed interchanges be dismissed. Bureau Counsel and each of the principal carrier parties filed exceptions to the Report and briefs in support thereof. Oral argument was heard by the Board and the case now stands submitted for decision.

At the outset, it should be made clear that basic to our consideration of the questions presented to us in this proceeding is our determination to take such action as will further the national policy directed toward reducing the burden of air mail subsidy payments. The Board is especially determined to take every practicable step, consistent with the mandate of our statute, to eliminate uneconomic aspects of our air route pattern, and to prevent the establishment of any new situations of that character. This does not mean that the Board will abruptly call a halt to the authorization of new services. That would not be in keeping with the developmental aspects of the statute or the dynamic character of air transportation. However, it does mean that special scrutiny will be applied to new route proposals to insure that the risks of additional mail pay support are minimized, and that any new subsidy requirements are heavily counter-balanced by important public benefits. Similarly, we will continue to encourage such developments as are designed to improve the air route pattern and relieve the subsidy burden on the taxpayers. These policies will of course be followed within the framework of our continued adherence to a policy of regulated and economic competition.

Since the oral argument in this case, certain events have occurred which have had a substantial impact on our na-

tional transportation policy in Latin America and on the issues before us. First, there was the institution of a suit [fol. 1495] by the Attorney General in the Federal District Court for the Southern District of New York against Pan American, W. R. Grace and Company, and Panagra, alleging, *inter alia*, that Pan American and Grace have unlawfully combined and conspired to monopolize air transportation between the United States and South America, and asking the court to direct Pan American and Grace to divest themselves of all interest in the control of Panagra. The outcome of this suit, if the Government is successful, will be the emergence of a Panagra which is independent of both Pan American and Grace interests and which constitutes a third competitive carrier for South American traffic.

The second recent development was a notice from the Brazilian government that would have had the effect in the near future of requiring Braniff to cease operations between Lima, Peru, LaPaz, Bolivia and Asuncion, Paraguay, on the one hand, and Rio de Janeiro and/or Sao Paulo on the other.[6] This notice was subsequently withdrawn, but the future plans of the Brazilian government in this regard are not known at this time. However, the uncertainty as to possible future developments in this situation remains as a significant factor in our consideration of the issues in this proceeding. Should the Lima-Rio de Janeiro segment be eliminated from Braniff's route pattern, the carrier will have lost one of its strongest segments in South America.

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[6] Under the terms of the Bilateral Air Transport Agreement between the United States and Brazil, as amended, effective December 30, 1950, Braniff is enabled to operate between the United States on the one hand, and Rio de Janeiro and/or Sao Paulo on the other via Peru and/or Bolivia, only until the route Manaus, Goiania, Rio de Janeiro/Sao Paulo is ready for international operation. The Brazilian government notified the United States that the Manaus route would be operable shortly. Braniff is not the United States designee for the Manaus route. There is currently being heard before a Board Examiner a proceeding, Docket No. 2622, et al., in which such designee will be determined. Braniff is one of the applicants whose cases are being heard.

[fol. 1495a] The third event was the recent action of the Supreme Court overruling the Board's determination not to offset profits on the domestic routes of a carrier also having extensive international operations against its losses on its international routes in determining the amount of need or subsidy to be included in its international mail pay rate.[7] While the ultimate impact of this decision is as yet uncertain, it may affect the position of the domestic operators now providing international services.

These events, of which we take official notice, have had a considerable impact on our views as to the proper disposition of this proceeding. It is not unlikely that they have had a similar effect on the plans and aspirations of the carriers and other parties here involved. We believe that it is in the public interest temporarily to defer final disposition of this proceeding until an appropriate opportunity has been afforded the parties to reconsider their positions both in the light of these events and the views occasioned thereby which we present herein.

It was decided in the *Latin American Case*[8] that the national policy required competitive services in South America, and that such competition for the only United States flag carrier then providing international air service in that area, Pan American,[9] could be best provided by a carrier already operating domestic services. Thus, Braniff was selected to provide services between the United States, [fol. 1496] Balboa and major points in South America. However, for reasons which we need not now review, Braniff has had only limited success as a participant in the South American traffic market. It was the recognition of this fact which in part led to the institution of this pro-

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[7] Delta Air Lines, Inc. (successor to Chicago and Southern) et al. v. Postmaster General et al., Docket Nos. 222 and 223, October Term 1953, decided February 1, 1954.

[8] 6 C.A.B. 857 (1946).

[9] We have generally considered Panagra, which is 50 percent owned by Pan American, as part of the Pan American system. See Northeast Air. et al., North Atlantic Routes, 6 C.A.B. 319, 324 (1945); Cf. Latin American Service Case, supra.

ceeding and to an interim grant of exemption authority to Braniff to serve Miami in order that Braniff be accorded better access to the bulk of South American traffic which moves to and from northeastern United States points.[10]

However, as the evidence in this case indicates, Braniff continues to be a somewhat ineffective competitor in this market. Moreover, there is persuasive evidence that approval of the Eastern-Pan American-Panagra interchange would lead to even further domination by the Pan American system of traffic between the eastern part of the United States and the West Coast of South America,[11] where the Pan American system is already carrying the great bulk of the total traffic, both United States and foreign flag. While we are not insensitive to the need for single plane service between the populous northeast area of the United States and Balboa and South America, there are other means of satisfying this requirement without abandoning an important national objective—the continuation of competitive United States flag services to South America on an economically sound basis.

We also believe that effective competition between United States Flag carriers to South America can be obtained, as will hereinafter be suggested, consistent with the important and correlative national policy—the reduction of the annual obligation of the United States for air mail subsidies. In the *Latin American* decision we said that "it was not our [fol. 1496a] intention to encourage a waste of public money or private investment through the establishment of a multiplicity of air transportation services when the potential traffic and the public interest do not require such services." The views thus expressed are particularly pertinent here. The successful conclusion of the Attorney General's suit against Pan American and W. R. Grace would lead to a wholly independent Panagra and, thus, to three competitive United States flag systems. Yet we are convinced that the available traffic potential in South America will not

[10] Order No. E-5542, adopted July 13, 1951.

[11] This includes Balboa and Argentina, as well as Bolivia, Chile, Ecuador and Peru.

warrant the subsidy support of three such services, and that their existence would lead to "a waste of public money or private investment." On the other hand, the public interest of the United States would be well served by the establishment of a single independent carrier (free from the control of either Pan American or W. R. Grace) operating between Houston and Miami, on the one hand, and the points served on the combined routes of Panagra and Braniff, on the other hand. Such a carrier would offer effective, although to a considerable extent non-duplicative, competition for Pan American, and would at the same time lead to a reduction of subsidy requirements through the consolidation of the operations to South America and the facilities of Panagra and Braniff in that area.

If we were presented with an agreement which envisaged the creation of such an independent carrier, we would also be prepared to consider promptly equipment interchange proposals which would provide access to the northeastern part of the United States for the new carrier, and thus through services to and from Balboa and South America.

This approach to the problem of South American service would not only be most consistent with the national interest objectives previously referred to, but would also benefit [fol. 1497] the private interests of Braniff and Panagra. Braniff's shareholders may obtain the opportunity of disengagement from what has not been a particularly successful undertaking from their standpoint, as well as to remove the present doubt as to their ability to retain the full measure of future profit earned on their domestic system; or they may be participants in a new enterprise which will have a more favorable competitive opportunity.

The possible advantage to Panagra is no less significant. The northern terminus of Panagra's route is presently at Balboa. It is only through the Through Flight Agreement, which is currently before us for approval, that Panagra's passengers are afforded one-plane service to Miami. If Panagra were to be deprived of its present access to Miami, especially if Braniff were to continue to have such access, either under the present terms or by approval of some

interchange agreement, Panagra's economic position would rapidly deteriorate. However reluctant we would be to terminate an arrangement which has provided an improved service for South American passengers, we cannot overlook the fact that the Through Flight Agreement may be significant with respect to the arrangement between Pan American and W. R. Grace which the Attorney General of the United States has charged to be an unlawful conspiracy in violation of the laws and statutes of the United States. Whether or not in the light of this suit we could approve such agreement, we need not now decide. However, it is apparent that a question is raised as to such approval which was not heretofore considered significant. It may also be noted that Pan American and W. R. Grace, the principal shareholders in Panagra, may be enabled to save the expense and hazards of the Attorney General's suit by the disposition of their control of Panagra.

[fol. 1497a] The solution of the problem of South American service in our view also affects decision on the other interchange services which Pan American and Eastern propose. Until we resolve appropriately the basic question as to the future of United States flag competitive services in South America, we cannot dispose of these related proposals. Obviously, unless it appears that the solution we have suggested can be worked out, we would find it most difficult under the circumstances to approve any arrangement which would result in fostering the dominance of any one system in Latin America. We are therefore deferring action on the entire proposal of Eastern and Pan American, as well as on the Through Flight Agreement, the National-Panagra Agreement and the Board instituted investigations.

We believe that a 60 day period will allow sufficient time for the parties to reconsider their positions, and to work out and file any agreements which they may believe will satisfy the basic objectives which we have here spelled out.

An appropriate order will be entered.

Gurney, Chairman, Denny, Vice Chairman, Lee and Adams, Members of the Board, concurred in the above opinion. Ryan, Member, filed the attached concurring opinion.

[fol. 1498] RYAN, Member, Concurring:

I concur in the present action which seeks to accomplish, through the voluntary action of the interested air carriers, a desirable modification of the U. S. air carrier route pattern in South America; and I concur in the 60-day deferment of final decision on the present interchange proposals until the parties have been afforded an apportunity to present to the Board an appropriate plan for remedying the deficiencies of that pattern. My concurrence, however, is based upon somewhat different reasoning than that used by my colleagues.

The deficiencies which characterize our South American air pattern and give rise to our present problem stem from the duplication of routes and services authorized by the Latin American decision of 1946. In that decision, a third U. S. trunkline carrier was authorized to serve Buenos Aires and a South American area in which every major city and many cities of minor importance were then receiving trunkline service by one or both of the U. S. flag aircarriers then serving South America. The average travel density on the routes of Ran American and Panagra in the area at the time of the decision was approximately ten per cent of the domestic route average and was closely comparable to the travel density of the routes of Continental Air Lines and Inland Air Lines, the two domestic carriers then serving the least populated areas of the United States.

This decision entered eight years ago reflected the almost universally prevailing optimism of the postwar period. The decision disregarded the then historic traffic experience, which showed a limited traffic potential in the areas involved and relied upon the assumption that popular aware-
[fol. 1498a] ness of the advantages of air transportation would recruit an infinitely large traffic volume for the support of the additional services authorized.

In an opinion opposing the authorization of a third carrier (in which I was joined by Member Branch) I pointed out that in estimating the traffic potential the Board in the 1946 decision should also have considered that the cabotage rights then enjoyed by our two carriers in South America

and which meant a substantial contribution to their revenues would, in all likelihood, be terminated by the governments that had granted them as soon as their own national airlines were organized; and that there was certain to appear a large volume of foreign carrier competition which could be counted upon to capture a large part of the available traffic; and that by reason of these factors the large traffic potential anticipated would not materialize.

In the light of these facts it was my view that the authorization of a third carrier to serve South America would not be consistent with the guiding principles which the Congress gave us in the Civil Aeronautics Act. Those principles were stated as follows in my opinion in the Latin American Case already referred to:

> "The Civil Aeronautics Act does not contemplate expansion through wasteful and destructive competition; it does not require this Board to authorize competition on every route irrespective of the economic consequences which may flow from such action. On the contrary, Section 2 of the Act expressly calls for 'competition *to the extent necessary* to assure the *sound development* of an air transportation system' properly adapted to the three-fold national needs of commerce, the Postal Service and the national defense; and the same section significantly requires this Board in its decisions to accomplish that development 'in such manner as to • • • foster *sound economic conditions* in such transportation.' (Emphasis supplied.) The com- [fol. 1499] petition intended by the Congress, therefore, was a competition of the kind and quality necessary to assure sound development and sound economic conditions in this industry.
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> "In the exercise of the informed judgment which the law requires of us, *we cannot escape history and take refuge in speculation.* We should be able to catch from the present record at least the shadowy outlines of a sufficient traffic potential before taking action which would threaten the sound economic structure of our existing South American airline network which re-

quired years of effort and millions of dollars in Federal aid from the Treasury of the United States to bring to its present state of development."

The events which have occurred in the eight years since the Latin American decision testify to the validity of the views I expressed in my opinion in that case. The cabotage rights which had contributed to our carriers' revenues have been withdrawn by most of the governments that granted them.[1] The anticipated foreign competition has become a reality and our carriers in South America are today faced with the formidable competition of such foreign air carriers as BOAC, KLM, LAV, AREA of Ecuador, Avianca, Aerolineas Argentinas and Aerovias Brasil. The Examiner in the present proceeding has found that Pan American and Panagra alone are losing more than $3,000,000 in passenger revenue annually as a result of foreign flag carrier operations between the northeastern United States and Latin America. The vast traffic potential, which was the basis of the Latin American decision, has failed to materialize.

[fol. 1499a] The net result of the situation thus created has been a rising tide of subsidy which properly gives us concern today. Thus, Pan American, which eight years ago realized an annual operating profit of over $2,000,000 on its then self-sufficient operation in South America, has recently been found by this Board to require an annual subsidy of over $11,000,000.[2] Panagra, which eight years ago required $963,000 of subsidy from the government, now requires over $2,000,000. And the cost of the Braniff operation has risen from $563,000 in 1948 to a break-even need of over $3,000,000. The total mail pay for Pan American's Latin American Division, Panagra and Braniff for 1953 is estimated at $18,000,000, of which $15,000,000 will constitute subsidy.[3]

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[1] Argentina, Brazil, Peru and Venezuela have cancelled cabotage rights previously granted to U. S. carriers.

[2] Order No. E-7650, adopted August 19, 1953.

[3] Unless otherwise indicated, all figures on mail pay and break-even need are based on applicable mail rate orders and the carriers' reports submitted to the Board.

In an effort to improve the economic and competitive position of Braniff, the Board by exemption extended that carrier to Miami on a temporary basis in order that it might obtain access to the traffic to and from the eastern part of the United States. The result was an increase rather than a decrease in Braniff's subsidy need. Thus, Braniff's break-even need for the year ending August 1951, the last full year prior to its entry into Miami, was approximately $1,670,000. During the first full year after the carrier's access to Miami its break-even need arose to $3,382,000. The uncontroverted evidence in the present case showed an estimated cost to the government of more than one thousand dollars for each of the additional passengers which Braniff gained from its entry into Miami.

[fol. 1500] It is my opinion that the uneconomic consequences that have overtaken the Braniff operation cannot be justly attributed to any shortcomings of management. On the contrary, this air carrier has earnestly and intelligently employed its trained and experienced personnel to meet the statutory standard of honest, economic and efficient management. But management in a public utility enterprise must operate within the framework of public regulatory policies, and if, in any instance, unsound economic conditions result from regulatory policy, the ablest of managements cannot be expected to achieve the economic results which it might otherwise be able to accomplish.

The Board's interim opinion cites the Attorney General's pending suit against Pan American, W. R. Grace & Company and Panagra for unlawful conspiracy to violate the anti-trust laws and designed to require Pan American and Grace to divest themselves of all interests in and control of Panagra. This event is said to have had "a considerable impact on our views as to the proper disposition of this proceeding" and the suggestion is made that Pan American and W. R. Grace might "save the expense and hazards of the Attorney General's suit by the disposition of their control of Panagra."

I cannot agree with the propriety of relying upon the pending anti-trust suit as a basis for the Board's thinking

in the present case. It is one of the most cherished traditions of our American jurisprudence that an accusation does not establish the fact. Furthermore, the suggestion that Pan American and Grace might "save the expense and hazards of the Attorney General's suit by the disposition of their control of Panagra" is likely to be misunderstood as an indirect pressure to force changes in the route pattern which the Board deems desirable, and which has noth-[fol.1500a] ing to do with the merits of the question involved in the Attorney General's suit.

Reliance on the anti-trust suit would seem to be particularly inappropriate in the case of the Through Flight Agreement. At a time when the Board was fully aware of the difficulties arising from the joint ownership of Panagra and was conferring with the Department of Justice regarding this matter, it nevertheless approved the Through Flight Agreement as not being either adverse to or inconsistent with the public interest. In approving this agreement the Board stated that it considered the arrangement to be an "improvement over the past situation * * * and as such beneficial to the public," and that "such transaction does not result in creating a monopoly." [1] To consider that the filing of the pending suit, therefore, has a prejudicial significance for the through flight arrangement seems hardly consistent with the Board's previous statements. I trust it is obvious that my references to the Attorney General's suit are not intended to imply any views as to the merits of that suit.

In the foregoing pages I have sought to present my own views as to the appropriate justification for the unprecedented action which the Board here takes to accomplish a major change in the South American route pattern. The problem confronting us is one of great complexity and is probably not susceptible of satisfactory solution without the voluntary and willing assistance of the carriers involved. While the course here taken is somewhat unique, we have the right to hope that the interested carriers may be able to work out, by voluntary action, a plan compatible

[1] *Pan American-Panagra Agreement*, 8 CAB 50, 57, 63 (1947).

with the Civil Aeronautics Act for correcting the deficiencies in our existing South American route pattern and thereby make possible a substantial reduction in the federal subsidy.

/s/ OSWALD RYAN

[fol. 1501]

Order No. E-8189

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 26th day of March, 1954

Docket No. 4882 *et al.*

In the Matter of the

REOPENED NEW YORK-BALBOA
THROUGH SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding, and the Board, upon consideration of the record, having issued its opinion containing its findings and conclusions, which is attached hereto and made a part hereof;

IT IS ORDERED, That decision herein be and it hereby is deferred temporarily.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN

M. C. Mulligan
Secretary

(SEAL)

[fol. 1502]

GOVERNMENT'S EXHIBIT 1129

E-9109
E-9110

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served:

DOCKET NO. 4882 ET AL.

REOPENED NEW YORK-BALBOA THROUGH SERVICE PROCEEDING

Decided: November 23, 1954

Eastern-Pan American Interchange Agreement disapproved as contrary to the public interest.

Eastern-Braniff interchange between New York-Washington-Miami on Eastern's route No. 6 and Balboa and points south thereof on Braniff's South American route found to be in the public interest; record held open for 60 days to allow parties to enter into an agreement for such an interchange, and decision deferred with respect to ordering a compulsory interchange between Eastern and Braniff.

Braniff's Latin American route amended to authorize service to Miami, Florida, on interchange flights. Braniff's exemption authority to serve Miami, Florida, continued in effect until Board approval of an interchange agreement between Eastern and Braniff or until Board action upon a compulsory interchange between Eastern and Braniff.

Pan American-Panagra Through Flight Agreement approved subject to the condition that flights pursuant thereto shall be operated through to Washington and New York under the terms of an interchange agree-

ment to be filed between National, Pan American and Panagra; record held open for 60 days to allow entry into and filing for Board approval of an agreement between National, Pan American and Panagra for interchange service between New York, Washington, Miami and South America.

All other proceedings, applications, petitions and motions dismissed or denied.

Appearances:

E. Smythe Gambrell, Harold L. Russell, Robert E. Hicks and Oscar M. Smith for Eastern Air Lines, Inc.

Henry J. Friendly and J. Howard Haustra for Pan American World Airways, Inc.

John W. Cross and Richard A. Fitzgerald for National Airlines, Inc.

[fol. 1502a] John J. Burns and Albert E. Rice, for Pan American-Grace Airways, Inc.

Paul A. Porter and William L. McGovern for Pan American-Grace Airways, Inc. and its directors nominated by Pan American World Airways, Inc.

Hubert A. Schneider and B. Howell Hill for Braniff Airways, Inc.,

R. S. Maurer and L. E. Black, Jr., for Chicago and Southern Air Lines, Inc.

D. Franklin Kell, George C. Neal and James Bell for Delta Air Lines, Inc.

John E. Kirk and Joel C. Wilcox for Greater Miami Traffic Association.

Francis A. Mulhern, S. H. Moerman and W. B. Robinson for Port of New York Authority.

George C. Neal for Councils 38 and 83 of Air Line Pilots Association.

Leslie G. Donahue and Francis H. McAdams for Bureau of Air Operations, Civil Aeronautics Board.

OPINION

By the Board:

This proceeding involves issues relating to the provisions of through services by interchange of equipment be-

tween various Latin American points and points on the east coast of the United States. Included herein are the Board instituted proceedings relating to provision of one-plane service between New York and Balboa (a) by interchange of equipment at Miami, Fla., or Havana, Cuba, between Eastern Air Lines, Inc. (Eastern), and Braniff Airways, Inc. (Braniff);[1] (b) by interchange of equipment at Miami or Havana between National Airlines, Inc. (National), and Braniff;[2] or (c) by interchange of equipment at Miami between National and Pan American World Airways, Inc. (Pan American); using aircraft delivered to the latter by Pan American-Grace Airways, Inc. (Panagra), at Balboa, C. Z. There is also before us an application for approval of an agreement between Eastern and Pan American which provides for one-plane service between [fol. 1503] New York and Balboa by interchange of equipment at Miami, as well as for other through services between the Northeastern part of the United States and Latin America.[3] Other related issues to be considered include (1) the question of participation by Panagra in the Eastern-Pan American agreement previously referred to; (2) the effectiveness of, and possible approval of an agreement between National and Panagra relating to the provision of through service between points on the west coast of South America and New York; and (3) the modification and extension of the Through Flight Agreement between Pan American and Panagra which provides one-plane service by interchange of equipment at Balboa between points in South America served by Panagra and Miami, Florida.

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[1] This involves the question of extending either Eastern's route No. 6 beyond Miami to Havana, or amending Braniff's certificate to authorize service to Miami as an intermediate point on its South American route.

[2] See Footnote 1 with reference to Braniff's certificate.

[3] The specific interchanges proposed are set forth in the Examiner's Recommended Decision, issued November 13, 1953. Portions of that recommended decision appear, infra, as Appendix II. See pages 1-2 of Appendix II for a more detailed statement of the issues.

The issues in this proceeding were previously before the Board, and a decision thereon dated June 23, 1952, was submitted for Presidential consideration. On May 14, 1953, President Eisenhower returned the Board decision without approval or disapproval but with the request that the record be brought up to date. Pursuant to the President's request, the Board reopened the record in the proceeding in order to provide the parties with an opportunity to submit evidence, *inter alia*, as to facts and circumstances arising subsequent to the close of the hearing.[4]

After further hearing, Examiner Thomas L. Wrenn, who also heard the original proceeding, issued a recommended decision substantially reaffirming his earlier findings and conclusions.[5] Examiner Wrenn recommended, *inter alia*, that the Board approve the interchange agreement between Eastern and Pan American and that the record herein be [fol. 1503a] held open for 60 days after decision to permit National and Braniff to negotiate and file with the Board an agreement for through service by interchange of equipment at Miami between New York and Balboa and points beyond. He also recommended that the Through Flight Agreement be approved and extended to July 1, 1960, that the application for approval of an interchange agreement between National and Panagra and the portion of the proceeding relating to the various Board proposed interchanges be dismissed. Bureau Counsel and each of the principal carrier parties filed exceptions to the recommended decision and briefs in support thereof. Oral argument was heard by the Board and a decision was issued on March 26, 1954 deferring, temporarily, final action in this case.[6]

As stated in that decision the Board was convinced that "the public interest of the United States would be well served by the establishment of a single independent car-

[4] Order Serial No. E-7391, dated May 18, 1953.

[5] See Examiner Wrenn's earlier Recommended Decision as issued January 23, 1952.

[6] Order Serial No. E-8189.

rier (free from the control of either Pan American or W. R. Grace) operating between Houston and Miami, on the one hand, and the points served on the combined routes of Panagra and Braniff, on the other hand. Such a carrier would offer effective, although to a considerable extent non-duplicative, competition for Pan American, and would at the same time lead to a reduction of subsidiary requirements through the consolidation of the operations to South America and the facilities of Panagra and Braniff in that area." We requested in our March decision that the carriers reconsider their positions as to the solution of the problem of South American service and gave them a 60-day period in which to work out and file any agreements which they might feel would satisfy the basic objectives set forth in that decision. That period of time for carrier action has now passed and no such agreement has been filed with the Board. The case, therefore, now stands submitted for decision.

[fol. 1504] After reviewing the additional evidence adduced pursuant to President Eisenhower's request in further hearing, briefs and oral argument, we now reaffirm our earlier decision of June 23, 1952, and adopt it as a part of this decision. We are therefore resubmitting to the President our earlier findings as originally written, since with minor exceptions the new evidence now before us supports and strengthens our decision of June 23, 1952.[7] That decision as originally submitted comprises the next 20 pages, while the succeeding pages of this decision contain our further findings based upon the new evidence adduced upon rehearing. Appendices I and II consist of those portions of the Examiner's two reports, dated January 23, 1952, and November 13, 1953, which we adopt as part of our opinion herein.

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[7] In several instances, changes in circumstances since 1952 have altered or nullified the need for certain references and other supporting data originally shown in our June 23, 1952 decision. In such cases, the references have either been omitted from this decision or have been supplemented by other references, enclosed in brackets [ ].

In this case, the Board recognizes that it has before it a matter of considerable importance to the development and promotion of air transportation. The Latin American area is today the largest foreign air transportation market to which American flag carriers have access. Moreover, it is a market which has expanded tremendously in the past, and which may be expected to continue to grow in the immediate as well as more distant future. The importance of this market and the rapidity of its growth is illustrated [fol. 1504a] in the table set forth below.[8] These figures indicate that whereas travel between Europe and the United States has increased less than 15 percent in the period between 1931-1951, travel between the United States and Latin America has almost trebled. And of even greater significance is the fact that whereas by 1951, air transportation had only captured approximately 35 percent of the European travel market, it had obtained about 80 percent of the Latin American market.

We are here concerned with proposals for the provision of improved service between Latin America and the northeastern part of the United States, the area providing the largest Latin American traffic potential in the country.[9] In view of the importance of this traffic to the individual destinies of the carriers party to this proceeding, as well as to our social, cultural, and economic relationships with the Latin American countries, we have here focused not only upon the immediate advantages to the traveling pub-

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[8]

	Travel by sea and air[a]		*Travel by air*[a]	
	1931	*1951*	*1931*	*1951*
Latin America	395,278	1,148,816	15,621	928,157
Europe	873,310	981,819	—	318,198

[a] Figures obtained from United States Department of Justice Immigration and Naturalization Service. Figures for 1951 are for the year ended June 30, 1951.

[9] While current Origination and Destination statistics would show a larger number of passengers for the Miami area, it is obvious that the larger part of this is gateway traffic bound to or from other areas.

lic to be obtained through the provision of through one-plane service in place of existing two-plane connecting ser-[fol. 1505] vice[10] but also on the long range effect of the various proposals on our air transportation system.[11]

It is to be noted that in the endeavor to obtain an air transportation system commensurate with the needs of the commerce of the United States and the national defense, the Board, as well as the President, have relied principally on carrier competition to achieve those economies and improvements in service which are necessary for these purposes. This reliance on competition is responsive to the declaration of policy in section 2 of the Act which states in pertinent part that the Board shall consider " • • • as being in the public interest • • • competition to the extent necessary to assure the sound development of an air transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the postal service, and of the national defense • • • ." We have, therefore, carefully examined the proposals before us, particularly in the light of their effect on carrier competition in the areas involved.[12]

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[10] See Order Serial No. E-5282 dated April 12, 1954, p. 5-6, for a description of the improvements over a connecting service offered by an interchange.

[11] This policy is consistent with that followed in the *Latin American Air Service Case*, 6 C.A.B. 857, where we stated: "The basic criterion is the creation of an air transportation system which will be adequate to the present and the future needs of the foreign and domestic commerce of the United States, the postal service and the national defense. This objective is important in the determination of the route pattern selected for service, and in the selection of the particular carrier to provide service over the approved route. The future requirements of the foreign and domestic commerce are as important as those of the immediate present, for we are building an air transportation system for the future. It may sometimes happen that the carrier which can contribute the most in the short run may not be the carrier that can contribute the most in the long run, and where that choice is presented, long-run considerations should rule." 6 CAB 857, 899.

[12] We have no doubt as to the relevance of such an inquiry under the circumstances of this case. *Southern Service to the West Case, Supplemental Opinion*, Order Serial No. E-6105, adopted February 11, 1952, pp. 4-7. [See also supplemental opinion, Order Serial No. E-8466, adopted June 25, 1954, pp. 18-21.]

[fol. 1505a] The interchange schedules which are proposed for operation under the Pan American-Eastern Interchange Agreement as well as the pertinent traffic figures with relation to the schedules are set forth in Appendix I attached hereto. Eastern estimates that these interchanges would offer first one-plane United States flag carrier service to a total of 33,922 passengers yearly of which 10,111 would be between Eastern and Panagra interchange points, 12,415 would be between Eastern and Pan American interchange points[13] and 11,396 would be New York-Bahamas traffic now carried by British Overseas Airways Corporation. The further contention is made that the number given first one-plane service exceeds that of any other interchange proposal approved by the Board.[14]

We do not take issue with these contentions as to the extent of initial direct benefits to be derived from these interchanges. However, after carefully weighing these benefits, we have come to the conclusion that the agreement is not in the public interest, and should not be approved. We have reached this conclusion because we believe that approval of this agreement would preclude the attainment in certain areas of the competitive balance we deem necessary for the long-term promotion and development of air transportation therein, and with respect to other areas would adversely affect such competitive balance as has already been reached.

First, let us consider the probable effect of the proposed Eastern Pan American-Panagra interchange on the division of traffic moving between the northeastern United States, Balboa, and points on the west coast of South [fol. 1506] America.[15] It is clear that the Eastern-Pan

[13] A substantial part of this traffic currently receives one-plane foreign flag service.

[14] See Appendix I, p. 11 for the comparison.

[15] We find substantial agreement on the question of public interest in at least one interchange service between New York and Balboa. There is disagreement, however, as to the economic feasibility of two such interchanges.

References herein to "points on the west coast of South America" include Argentina, as well as Bolivia, Chile, Ecuador, and Peru. See note to Appendix IA attached hereto.

American-Panagra combination would have an overwhelming competitive advantage over other American flag service both in South America and in the United States. This advantage flows from a variety of factors including the vast discrepancies, in the combine's favor, in the size of the competing carriers, their entrenched position in the market, and the much larger sales organization and budgets available for the promotion of their service.

For example, the gross capital assets of Pan American exceeded 144 million dollars as of December 31, 1950, of which 45 million were assigned to the Latin American Division; the gross capital assets of Eastern exceeded 38 million dollars and Panagra 12 million. Thus, the total gross capital assets of this combination exceeded 194 million dollars. The same figures for National and Braniff are 14 million and 12 million, or a total of 26 million. In total route mileage, number of points served, average daily route miles in operation and gross revenues, the disparity in size is equally evident. In traffic and sales expense, the Eastern-Pan American (Latin American Division only)-Panagra combination spent over 15 million dollars in the year ended December 31, 1950, whereas the total for National and Braniff (International Division only) was less than 3 million. Pan American and Panagra and Eastern dominate the sale of tickets sold in the United States for Latin American passage on United States certificated carriers. For example, in the survey month September 1950, Pan American sold 2,705 passenger tickets, Panagra sold 606, and [fol. 1506a] Eastern sold 767. By way of contrast Braniff sold only 325 and National 107 (exclusive of Havana). The significance of these factors cannot be over emphasized when the question of relative competitive strength is being weighed. To these obvious advantages must also be added the intangible but nevertheless important factor of Pan American's favorable and long standing close relationship with the travel agents who sell a considerable portion of the tickets for this travel. In this connection the size and variety of transportation services offered by the Pan American system are important to securing the primary loyalty of such agents.

It is thus not too surprising to note that Pan American's own exhibits show that during the first six months of 1951 that carrier participated in the carriage of almost 92 percent of the total traffic carried by both United States and foreign flag carriers between the northeastern part of the United States and the west coast of South America,[16] and an even higher percentage of the remainder of the east coast traffic to these South American countries.

The proponents of the Eastern-Pan American-Panagra interchange recognize the competitive superiority of the service they propose to offer between the northeast and the west coast of South America over the alternate service of National and Braniff connecting at Havana, and the probable effect of that superiority on the division of South American-northeastern United States traffic between the carriers. While they argue that smaller carriers have furnished effective competition with larger carriers on particular route segments, they have not supported such contention with facts demonstrating that disparities of the magnitude of these here involved have been successfully [fol. 1507] overcome by a vigorous smaller competitor. However, it seems that they place greater emphasis on other arguments. Thus, insofar as the effect of the interchange would be to deny Braniff any substantial participation in traffic from the northeast, it is claimed that this is consistent with the decision in the *Latin American Service Case*, 6 C.A.B. 857, on the ground that Braniff was only certificated to tap the traffic potential between the mid-west area of the United States and South American points. Insofar as the proposed interchange would deliver to Eastern all South American passengers moving over Panagra and Pan American routes beyond Miami to and from the northeast, and thus adversely affect National's traffic between Miami and New York, it is contended that Eastern as the historical carrier of the connecting traffic would only be recovering traffic previously diverted from it by National.

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[16] [This includes Balboa and Argentina, as well as Bolivia, Chile, Ecuador and Peru.]

These contentions rest on unsound premises. One of the reasons for certificating Braniff to serve South America was to provide competition for the Pan American system in that area. It was expected that in addition to tapping the midwest potential Braniff would be enabled to compete effectively for northeastern United States traffic to South America. However, for various reasons the relative importance of which need not be here determined, the Havana connection with National has never become effective, and until our recent decision extending Braniff to Miami,[17] Braniff had not participated substantially in this traffic.[18] We deem it necessary in accordance with the basic policy decision in the *Latin American Case* to provide Braniff with [fol. 1507a] effective access to this market so that its service in South America may compete vigorously with Pan American's services. By the same token we certificated National between New York and Miami in order that this route, one of the most important in our domestic system, could obtain the advantages which flow from competitive services.[19] National has only in the recent past attained effective competitive status on this route. We are convinced that it is not in the public interest to jeopardize the measure of competitive balance already attained on this route by excluding National from any real share of the substantial traffic to and from Balboa and South America controlled by Pan American and Panagra.[20]

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[17] Exemption Order Serial No. E-5542, adopted July 13, 1951.

[18] See Pan American's brief to the Board, p. 24, "With Eastern being required by the established route structure to work with Pan American at Miami, and with National having chosen to do so likewise, it is not surprising that Braniff has obtained only 6% * * * of the business between the northeast and points served competitively through the Miami gateway."

[19] *Colonial Air, et al., Atlantic Seaboard Operation*, 4 C.A.B. 552, 553-560 (1944).

[20] National estimates that the Eastern-Pan American-Panagra interchange would subject to diversion 9,512,540 revenue passenger miles now generated by National or an amount in excess of one-half million dollars in revenue. It is true that these figures are based upon traffic generated during a period when W. R. Grace & Co. was a large stockholder in National, which is not now the

Thus, independent of any comparison with the other interchange possibilities before us, we would reject the proposed Eastern-Pan American-Panagra interchange service to Balboa and the west coast of South America in view of the extremely adverse impact[21] on competitive carriers, and on the long range development and promotion of air transportation, even though there would be an immediate benefit to the public in the form of an improved one-plane [fol. 1508] service between the United States and the west coast of South America.[22] However, our rejection of the proposed interchange does not necessarily preclude the establishment of an improved service. There are other interchange possibilities before us that can provide a one-plane service without distorting the competitive balance we have sought to establish.

Thus, instead of permitting the three strongest carriers to enter into an interchange relationship, it would be more desirable if Braniff, the weaker carrier in South America, were paired with Eastern, the stronger carrier in the United States. Braniff submitted proposed schedules indicating that a daily service would be operated between New York, Washington, and Miami on Eastern's route on the one hand, and Balboa on the other hand. Four of these flights would also serve Lima, Sao Paulo, and Rio de Janeiro. Service to Guayaquil and Lima would be offered by connection at

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case. Regardless of the reasons by which National obtained this traffic, its loss would seriously affect the carrier's competitive position. It is to be noted that we are not here concerned with a proposal for a return to free competition for this traffic, in which National's loss would not be so great, but with a projected interchange which would exclude National from obtaining any real share of this traffic.

[21] For example, if an Eastern-Pan American-Panagra interchange were inaugurated, and Braniff was relegated to a connecting service at Havana with National, Braniff estimates, not unreasonably, that it would lose substantially all its international traffic to the eastern United States. This now amounts to 16.8% of its international passenger revenues and 59.9% of its international cargo revenues.

[22] Compare *Chicago and Southern-Pan American Interchange Agreement Case*, Order Serial No. E-6452, adopted May 23, 1952.

Balboa on two of the other three days of the week. Braniff notes that these schedules were based upon the hypothesis that Braniff equipment exclusively would be used in the interchange, in which case it would require acquisition of an additional DC-6 aircraft. Given cooperation by Eastern and use of some of its equipment, which the latter's own economic interest would dictate if an interchange relationship were established, Braniff notes that more through service beyond Balboa would be offered. Thus, it is clear that an Eastern-Braniff interchange would offer the public substantially the same through one-plane service advantages as under the proposal previously considered as well as new single-plane service to Sao Paulo, Rio de Janeiro, and [fol. 1508a] Buenos Aires[23] which would permit effective competition with Pan American's current single-plane service between these points and New York. On the other hand, Braniff would be receiving the support of the second largest sales organization in the United States for Latin American air travel (Pan American is the largest) and coupled with the improved service it would offer to the more important traffic-generating sources, would thus undoubtedly become a more effective competitor in the South American market. On the other hand, Eastern's competitive position on the Miami-New York route would not be seriously affected,[24] nor would the carrier be subjected to

[23] The Eastern-Pan American-Panagra interchange would also serve Buenos Aires, but the effectiveness of competition between this service and Pan American's own single-plane service to New York is obviously suspect.

[24] Eastern, for example, carried 135,936 passengers between New York and Miami in the first six months of 1951. In the same period, National carried only 79,676 such passengers. Eastern's greater traffic generation extended to other northeastern points served in competition with National. It is to be noted that during this period National carried about 65 percent of the South American connecting traffic originating or terminating on Panagra's routes bound to or from northeastern United States. In this period there were approximately 68 such passengers in both directions per day. Thus, at worst, Eastern would suffer a net loss of about 25 passengers a day in both directions on its east coast route. In comparison with the traffic now carried by Eastern, this is not a serious loss of traffic. However, even this estimate is unduly pessimistic considering the traffic generating potentiality of the Braniff-Eastern interchange.

debilitating loss of revenue, especially in view of its opportunity to work with Braniff in the development and promotion of Balboa and South American traffic.

Financially, it appears that the relatively small increase of slightly more than 12 one-way passengers a month would be enough to meet the additional costs to Braniff of the interchange service proposed.[25] The improved service to be offered would appear to be more than adequate to attract this amount of traffic. To the extent that additional traffic is developed, the cost to the Government in terms of mail [fol. 1509] pay support for Braniff should be decreased. On the other hand, it is true that to the extent that traffic is diverted from Pan American and Panagra, the subsidy paid to those carriers may have to be increased. However, it is our opinion that the stimulus derived from more effective competition should in this instance have a promotional effect on total traffic carried by these carriers so that the overall effect of our action will not be merely to transfer traffic from one carrier to another, but to increase the total traffic of both and thus to decrease total mail pay support for the three carriers.

We prefer a Braniff-Eastern interchange to an interchange aligning either Braniff or Pan American with National because, by establishing Eastern as Braniff's interchange partner, we give Braniff the most effective access to the northeast available in this proceeding. Thus we enable that carrier to compete in South America on more favorable terms than in the past with the much larger and well-entrenched Pan American system. In this way, we effectively implement the decision in the *Latin American Service Case* with respect to establishment of a service competitive with Pan American.[26]

It has been contended that approval of an Eastern-Braniff interchange would cause Braniff to "abandon the middle west", in favor of the northeastern United States

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[25] Braniff's Exhibits, Vol. 1, p. 145.

[26] Cf. *Pan American World Airways, Inc.—Guatemala City/Los Angeles/San Francisco Operations*, Order Serial No. E-5360, decided April 12, 1950, p. 4.

market. This argument is unsound. It was our intention that Braniff would serve the northeast through connection at Havana, just as Pan American serves it through connection at Miami. The fact that Braniff was pushed into exerting practically all its efforts into development of the mid-west market by a denial of real access to the northeast, in which denial Pan American played its part, should not [fol. 1509a] forever preclude that carrier from striving to provide competitive service in both mid-west and northeastern markets. And, since the latter is the largest source of traffic, and is given more frequent service by competitive carriers, we cannot find neglect of the mid-west when Braniff at the outset elects to provide the northeast with more service than the mid-west. As a matter of fact, the schedules proposed by Braniff call for four flights weekly into South America from Houston, which is the same amount of service that Braniff provided prior to obtaining temporary authority to serve Miami to tap the traffic potential of the northeast.[27] Moreover, we are convinced that, if the traffic warrants it, as equipment becomes available, Braniff will substantially increase service to the mid-west.

It is also to be noted that a Braniff-Eastern interchange will bring together carriers which have no conflicting interest in the Latin American area, and which are already interchange partners for traffic moving into the Miami terminal.[28] Having already worked out many operational problems associated with the interchange, they should not only be familiar with each other's operational characteristics, but should be able to negotiate successfully another interchange arrangement.

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[27] Since inauguration of service to Miami, Braniff has been serving the mid-west with a daily schedule. The traffic support for the additional service has been derived from the northeast.

[28] Braniff and Eastern are now providing interchange service between Denver and Miami. Moreover, the Board has just approved an application for approval of a merger between Braniff and Mid-Continent Airlines, Inc., which when finally consummated will make Braniff a partner in a second interchange with Eastern between Kansas City and Miami. Order Serial No. E-6459, adopted May 26, 1952.

By way of contrast, Pan American and Eastern have important conflicting interests in the very Latin American areas in which they propose to run interchange services. Thus, both Pan American and Eastern have competitive routes between San Juan, Puerto Rico, on the one hand, and New York and Miami, on the other. And, Pan Ameri- [fol. 1510] can's own routes to South America through the San Juan cut-off would definitely be competitive with the proposed Eastern-Pan American interchange services through the Miami gateway. The conflict of interest is obvious. For example, one of the interchange proposals calls for service to Maracaibo by Eastern and Pan American through Miami. However, Pan American's own one-carrier service through San Juan would be competitive with this interchange. As a matter of fact, in September 1950, Pan American carried more passengers between New York and Maracaibo over its own route than it did by connection at Miami with other[29] carriers. The conflict of interest in promoting the interchange service at the expense of its own one-carrier service is obvious. It is clearly preferable to have an interchange service where the carriers' loyalty to such service is not in conflict with their independent economic interests.

We recognize, of course, that Braniff and Eastern are not end-on carriers and that to accomplish the interchange either Braniff's routes must be extended from Havana to Miami, or Eastern's from Miami to Havana. The same considerations which compel our favoring a Braniff-Eastern interchange support a finding that the public convenience and necessity require such a route extension. In weighing the relative merits of a Braniff or Eastern extension, we deem the former preferable in view of the greater ease with which operating and customs clearance problems involved in the interchange flights can be handled at Miami rather than Havana. Therefore, we shall dismiss the Board-instituted proceeding insofar as it relates to extension of

[29] Of a total of 56 passengers moving between these points during September 1950, Pan American carried 26 all the way and 21 to or from Miami, 13 of which traveled over Eastern's route and 8 over National's.

Eastern's route to Havana and deny Eastern's application for similar authority.[30]

[fol. 1510a] In accordance with our previous order limiting the issue of route extension between Miami and Havana to flights for interchange purposes solely,[31] we shall so limit Braniff's authority, and shall also provide that Braniff shall not have the right to operate shuttle schedules between Miami and Havana, or to operate schedules or carry traffic between points on its domestic route and Miami. However, we shall permit Braniff to carry fill-up traffic between Miami and Havana if interchange flights are routed through the latter point.[32] This will, of course, subject National and Pan American to diversion of Miami-Havana traffic, and National from traffic between Havana and the cities on its New York-Miami route. However, since the number of schedules which could be operated daily would be limited, at least initially, to slightly more than one a day,[33] and since at least the northbound schedule would lack departure reliability due to the distances involved from probable point of origin (whether Balboa, or a point south thereof) the extent of such diversion should not be so substantial as to outweigh the other benefits resulting from the extension and the interchange it will accommodate.[34]

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[30] Eastern did not prosecute such application, introducing no evidence in support thereof.

[31] Order Serial No. E-5642, dated August 23, 1951.

[32] We are not unaware of the necessity for obtaining appropriate operating rights from the Cuban government in order to permit the inauguration of Braniff-Eastern interchange services between Miami and Havana. However, even though the possibility exists of some delay in the inauguration of such service, this would not be fatal to the interchange, since the flights could nonstop Havana between Miami and Balboa without debilitating loss of traffic or sacrifice of payload for operational reasons.

[33] In comparison, Pan American, for example, in May 1952, according to the Official Traffic Guide, operated 6 round-trips daily between Miami and Havana, while National operated 3 schedules in each direction between such points and two a day between New York and Havana.

[34] The major possible diversion would be from National's New York-Havana traffic. However, the amount of such diversion should be less than one-half that resulting from the proposed Eastern-Pan

[fol. 1511] It has been contended that it is not in the public interest for the Board to seek inauguration of a Braniff-Eastern interchange in preference to an Eastern-Pan American-Panagra interchange because of the delays which may be encountered in initiating the former over the legal objections of the proponents of the latter. As we have already indicated, we would disapprove the Eastern-Pan American agreement even if we had no alternate choice immediately before us. Thus, the matter of delay in initiating the interchange is not pertinent. Moreover, we seriously doubt whether the air carriers here involved will continue to press for an agreement which the Board, after careful consideration, deems adverse to the public interest.

It has been argued that we are without power to order Eastern to interchange equipment with Braniff at Miami as set forth in the order instituting this proceeding.[35] The argument is based, in part, upon the contention that the proposed interchange will primarily benefit foreign air transportation for which, it is conceded, we have no power to compel an interchange. However, it is clear that an interchange at Miami offering one-plane service between Balboa, C.Z., and Washington, D. C., and New York City will convenience the passengers who would be moving only in overseas air transportation.[36] We deem our authority

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American-Havana interchange since the latter would provide two daily schedules tailored for Havana traffic rather than the South American traffic which would have to be served by an Eastern-Braniff interchange. For similar reasons, especially the much greater number of schedules furnished by the competitive carriers, the Braniff-Eastern interchange would not divert substantial amounts of National's or Pan American's Miami-Havana traffic.

[35] Order Serial No. E-5205, dated March 16, 1951.

[36] It has been contended that even the Balboa passengers are in foreign air transportation because the airport through which Balboa is served, Tocumen Airport, is located in the Republic of Panama rather than the Canal Zone. However, Balboa is the place to which service has been authorized. It is the place which is certificated for service rather than the airport at which the aircraft lands which determines the point being served and therefore the category of transportation involved. The Board has acted consistently with this interpretation for many years.

to compel an interchange for such transportation to be clear.[37]

[fol. 1511a] However, as we have stated on a previous occasion[38] and as supported by our recent experience, we prefer to have the cooperation of the carriers in presenting a voluntary interchange agreement for our approval.[39] Accordingly, we shall keep the record open for 60 days from the effective date of our order to give Braniff and Eastern an opportunity to file with the Board an agreement providing for interchange service at Miami.

We turn now to a consideration of the other interchanges contemplated by the Eastern-Pan American Agreement. These include (1) a New York-Washington-Miami, and Balboa operation, the "Balboa interchange", (2) a Boston, New York, Washington, Miami and Havana one, the "Havana interchange", (3) another between New York, Miami and Nassau, the "Nassau interchange", and (4) one between New York, Washington, Miami, Kingston, Barranquilla, and Maracaibo, the "North Coast interchange". It is argued that these services would afford the benefits of a through one-plane service to the daily traffic of more than 135 southbound passengers, of whom approximately one-half do not now have available such service via American flag carriers. While we consider the improved service which would thereby be offered to the traveling public as a factor to be given considerable weight in determining the question of public interest by which the approval of the agreement is to be tested, there are other considerations which command our support and lead us to disapprove the remainder of the agreement.

Most important of these considerations is the ultimate effect of inauguration of the proposed interchanges on the

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[37] See *Southern Service to the West Case*, Order Serial No. E-5090, adopted January 30, 1951, pp. 26-32.

[38] See *Southern Service to the West Case*, Order Serial No. E-5090, p. 32.

[39] See *Southern Service to the West Case*, Order Serial No. E-5090, p. 48.

competitive status of National in relation to Eastern, especially on the vital New York-Miami route. At present [fol. 1512] National has equal competitive opportunity to participate in the transportation of passengers between the northeast and Nassau, Kingston, Barranquilla, Maracaibo and Balboa. Approximately 40 passengers a day are using American flag service through the Miami gateway between these points. If we assume that National, under normal circumstances, would participate in this traffic to the same extent that it participates in the total traffic between Miami and New York, National would obtain approximately 37%[40] of these passengers or a daily total of about 15 passengers. Consummation of the Pan American-Eastern interchange, providing a daily through service between the points involved, would foreclose National from obtaining any material part of these 15 passengers. Thus, National would be shut off from a market having a realizable value to the carrier of better than $300,000 a year.[41]

And the impact of the Havana interchange would be even heavier. National, operating three through flights a day is carrying approximately 42% of the total northeast-Havana through traffic, or approximately 58 passengers a day in

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[40] We recognize that National has not as yet obtained this large a share of the particular traffic here involved. However, the record demonstrates that National is actively promoting its services in this field, and there is no reason to believe that the carrier would not participate in this traffic to the same extent that it participates in the competitive New York-Miami market as a whole. As a matter of fact, Pan American's exhibits show that National's overall share of Pan American traffic to and from Miami in the first six months of 1951 equalled 39%. This compares with a 36% participation in the survey months September-March 1950. While it is true that Grace's stock interest in National may have helped the latter in obtaining Panagra traffic, Pan American's incentive in the later period would be to deliver traffic to Eastern, its newly proposed interchange partner, rather than National, thus tending to balance out the Panagra interest.

[41] If we assume that the average passenger between the northeastern part of the United States and the points involved travels 1,000 miles over National's route (Miami-New York distance is 1,093 miles) and that National's average revenue from such passengers would be 5.5 cents per passenger mile, National would be precluded from a potential market of $301,125.

[fol. 1512a] both directions, Eastern-Pan American propose to operate two daily through services between New York, Miami, and Havana, with one schedule serving Boston, and the other Washington. Inauguration of this interchange would divert approximately 30% of National's present traffic, at a loss to the carrier of better than $400,000 in passenger revenues annually.[42]

Obviously, the diversion of such a large amount of revenues currently being carried by the carrier added to the denial of the normal competitive opportunity to obtain revenues of almost the same size from a comparable market would adversely affect National's competitive relationship with Eastern, particularly in the New York-Miami market. As a matter of fact, the cumulative effect of these interchanges would probably enable Eastern to increase its current schedule superiority over National.[43] This would further weaken National's competitive position and lead to additional diversion of National's revenues.[44]

We do not believe that approving an agreement having such consequences is consistent with our statutory obligation to consider as being in the public interest "competition to the extent necessary to assure the sound development of an air transportation system."

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[42] Assuming that the average passenger between the northeastern part of the United States and Havana travels 1,200 miles over National's routes (New York to Miami is 1,093 miles and Miami to Havana equals 235 miles) and that National's revenue yield is 5.5 cents per passenger mile, National would suffer diversion of $433,620.

[43] Eastern is already operating more than twice as many New York-Miami schedules as National. See Official Traffic Guide, May 1952.

[44] Chicago and Southern also asserts that the diversion of its revenues by a Pan American-Eastern interchange would be substantially greater than an Eastern-Braniff interchange at Miami. Though we do not fully accept the carrier's estimate of diversion, we think that its conclusion is sound, since the Eastern-Braniff interchange would not provide service to these areas where Chicago and Southern is competitive with Pan American.

[fol. 1513] Pan American also argues that unless the Board approves its interchange agreement with Eastern that additional traffic will be lost to foreign flag operators authorized to render single-plane service to New York.[45] While it is true that where foreign flag operators are offering single-plane service, in competition with American flag connecting services, the American services may be at a competitive disadvantage, we do not believe that the desirability of equalizing competitive opportunity for American flag carriers is, in this instance, of sufficient weight to overcome the other disadvantages of this Agreement. There are other avenues available for attaining such competitive equality.

We are also advised by the proponents of the Eastern-Pan American Interchange Agreement that an additional public interest factor to be considered is the relationship between the interchange and the Ferry Flight Agreement under which Eastern operates Pan American equipment between New York and Miami, thus giving Eastern the benefits of increased capacity at low cost, and saving Pan American (and the Government since that carrier is on subsidy) the cost of ferrying aircraft between its New York terminal and its Miami overhaul base.[46] The contention is that if either Eastern or Pan American interchanged with a competitive carrier, this agreement would have to fall, with the loss of the benefits above described. However, [fol. 1513a] National has indicated its willingness to participate with Pan American in this arrangement so that, insofar as the public interest is concerned, no substantial injury need result from a change in the Ferry Flight Agreement. Nor are we persuaded by Pan American's as-

[45] It is also to be noted that certain of the foreign flag operations relied on are those of Pan American affiliates such as Avianca and Cubana.

[46] See Order Serial No. E-4447, adopted July 21, 1950, in which we approved ferry flight agreements between Pan American and both National and Eastern. The present agreement under which Eastern is the exclusive lessee of Pan American equipment, C.A.B. No. 5066, has been submitted for Board approval, but has not as yet received our consideration.

sertion that National is not a responsible contractor and that they cannot rely upon an agreement with National for these purposes. Even were we to accept fully Pan American's position on National's management's disregard for contractual obligations, the mutual benefits of this arrangement are so apparent and desirable that we are convinced that National would participate cooperatively in it.[47]

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Chicago and Southern has again raised the question of whether its application for amendment of its foreign air transportation certificate to include Miami as an intermediate point between New Orleans, La., and Havana, for purpose of providing through service between the Caribbean points served by the carrier and the east coast of the United States by interchange with either National or Eastern at Miami, should be set down for comparative hearing with the Eastern-Pan American Interchange Agreement.[48] Our decision not to consolidate the application in this proceeding was grounded on the fact that since Chicago and Southern had not filed any agreement for such interchange for our approval, we were faced with a prospect of determining difficult issues of fact and policy without the power [fol. 1514] of enforcing our determinations once made.[49] In the circumstances of this case, we do not think it "conducive to the proper dispatch of business and to the ends of justice"[50] to conduct a proceeding involving such substantial

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[47] Having reached the conclusion that the Eastern-Pan American interchange agreement is not consistent with the public interest, we do not find it necessary to consider whether the agreement meets the test of the first proviso of section 408(b) of the Act which enjoins us from approving any lease or operating contract "* * * which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another carrier not a party thereto."

[48] See Orders Serial No. E-5635, adopted August 22, 1951; E-5683, adopted September 7, 1951; and E-5906, adopted December 3, 1951.

[49] The Board has authority under sections 404(a) and 1002 (i) of the Act to order interchange in domestic and overseas air transportation but not in foreign air transportation.

[50] Section 1001 of the Act.

burdens on the parties and the Board's staff where we cannot effectuate our decision if the parties do not choose to submit appropriate agreements. In any case, in view of our disapproval of the Eastern-Pan American Interchange Agreement, Chicago and Southern has not been injured by our denial of a comparative hearing on its applications.

For similar reasons, we denied National's request for consolidation of its application for extension of its route to Balboa to make possible an interchange with Panagra at Balboa. We did not have before us an agreement calling for such an interchange, nor did we have power to compel one. It is also to be noted that National may not be affected by our refusal to consolidate such application, if the differences between that carrier and Pan American can be reconciled, and an appropriate agreement on interchange service submitted for our approval.

As already noted (page 5) the foregoing findings were adopted on June 23, 1952, and transmitted to the President. After rehearing pursuant to the President's request, we attempted to bring about, in our decision of March 26, 1954, the establishment of a new, single U. S. Flag carrier in South America, independent of either Pan American or [fol. 1514a] W. R. Grace & Co. and combining the route systems of Panagra and Braniff. Our attempt to create such a competitively effective carrier, as we stated, was predicated upon the demonstrated ineffectiveness of Braniff as a competitor in South America and the dominance by the Pan American system of United States South American air travel. As we stated, our proposal, if effectuated, would bring about a needed one-plane service between the northeastern United States and Balboa and South America and would do so consistent with an important national objective—"the continuation of competitive United States Flag services to South America on an economically sound basis".[51] Although we elicited the cooperation of the carriers toward this end, the effort was unsuccessful.

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[51] See reopened *New York-Balboa Through Service Proceeding*, Docket No. 4882, et al., Order Serial No. E-8189, page 7.

Failing in that effort, we are still charged with the responsibility of establishing by alternative means a sound competitive United States air transportation system to South America. In evaluating the various alternatives available to us, we wish to reaffirm our conviction that the attainment of such a sound system requires our disapproval of the proposed Pan American-Eastern interchange. We reiterate our finding that that interchange is not in the public interest and should be disapproved. We recognize that approval of the interchange would result in an immediate benefit to the public from improved one-plane service to the substantial volume of air passenger travel between the United States and the West Coast of South America. However, of much greater importance is the need [fol. 1515] for us to encourage an effective competitor for Pan American in the very important and rapidly growing United States-South American travel market. The need for such competitive service was clearly stated in the *Latin American Service Case* decision which originally established routes for United States Flag carriers to South America.[52] Our action here disapproving the Pan American-Eastern interchange agreement is required if an effective competitor is to be developed in South America.

As shown in the new record developed by request of the President, Pan American's domination of air passenger traffic to and from South America has been steadily increasing. Pan American's traffic from the northeastern United States moving through or over Florida gateways to Latin America increased 53.2 percent from 1951 to 1953.[53] This

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[52] *Latin American Service Case*, 6 CAB 857.

[53] See Appendix II, page 4. Carriage of daily southbound air passengers between the northeastern United States and Latin America increased as follows:

Carrier	*Daily Southbound Passengers* 1951	1953	*Percent Increase*
Pan American	48.56	74.40	53.2%
Other U. S. Flag	30.79	44.42	44.3
Foreign Flag	74.08	111.31	50.2
Total	153.43	230.13	50.0

was an increase almost 10 percent greater than that of other United States Flag carriers and about three percent greater than increases for foreign flag carriers.

The continued dominance by Pan American is particularly pertinent when viewed in conjunction with the size of Pan American's South American system. That system—including both Panagra and the Latin American Division of [fol. 1515a] Pan American—generated 33 percent more traffic in 1953 than the next largest U. S. Flag international operation.

Revenue Ton Miles Generated in 1953 by The Four Largest U. S. Flag International Systems

	PAA Pacific	TWA Internat'l	PAA Atlantic	PAA South Amer. System
Rev. Ton Miles (000)	61,274	68,494	93,889	125,023
Percent by which PAA South American System *exceeds* others	104%	82.5%	33.2%	

Linking by interchange a system of this size to Eastern Air Lines—our largest north-south carrier in the eastern United States—would obviously be inimical to the attainment of effective competition between air carriers serving South America.

Within the United States a somewhat similar picture is presented by the facts adduced in the reopened record. Approval of the Eastern-Pan American interchange agreement would inevitably further increase the competitive disparity between National Airlines and Eastern, the two principal air carrier competitors for north-south air traffic in the Eastern United States. As shown by the following comparison, Eastern's domestic system is approximately four times the size of National's:

Comparative Size of Domestic Systems

Twelve Months ended: Revenue Ton Miles (000)	NAL	EAL	Ratio EAL to NAL
March 31, 1951	34,781	157,539	4.53
March 31, 1952	49,428	176,420	3.57
March 31, 1953	58,378	228,165	3.91
March 31, 1954	69,180	266,118	3.85
Total Transportation Revenues (000)			
March 31, 1951	$19,830	$ 83,554	4.21
March 31, 1952	26,038	94,823	3.64
March 31, 1953	28,520	120,340	4.22
March 31, 1954	$33,052	$138,178	4.18

[fol. 1516] While we recognize that National's profit position has improved substantially in the last few years, the foregoing table establishes the fact that National's improvement, earnings-wise, has thus far had no appreciable effect on the disparity between that carrier and its principal competitor, Eastern Air Lines.

Of perhaps even greater significance than this overall size comparison is the fact that in the most lucrative market for both National and Eastern Air Lines—New York-Miami—Eastern's participation in traffic has jumped from 46 percent in March 1952 to 59 percent in the first quarter of 1953.[34] From the standpoint of sound competitive development of our air transportation system both within the United States and to and from South America, therefore, we find nothing in the reopened record to cause us to depart from our earlier conclusion that the proposed Eastern-Pan American interchange agreement is contrary to the public interest and must be disapproved.

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[34] See Appendix II, page 9, for the New York-Miami traffic figures during the first three months of 1953. The figures on which we relied in our earlier decision in this proceeding showed Eastern with a 46 percent participation in this market. For a short time thereafter, National was enabled to attain the larger share of New York-Miami traffic since Eastern, faced with an equipment shortage problem, scheduled considerably less coach service than did National.

The reasons for our disapproval of that interchange agreement do not, of course, preclude us from satisfying the need, demonstrated on both the old and the new record, for through plane service between the northeastern United States, Balboa and the west coast of South America. We again find that an Eastern-Braniff interchange would in large part satisfy this need, would bring a new single plane service to Sao Paulo, Rio de Janeiro and Buenos Aires and would bring about more effective competition with Pan [fol. 1516a] American's service between these points and New York. As we found over two years ago, such an interchange would be of real benefit to Braniff in linking that carrier at Miami with Eastern Air Lines' great traffic generating system in the eastern United States.[55]

Most of the significant arguments advanced on the reopened record opposing a Braniff-Eastern interchange were repetitious of those made on the old record, and have already been dealt with.[56] The principal argument directed against such an interchange is that diversion of traffic and revenues from Pan American's South American system will inevitably result. We recognize this possibility, but we here reaffirm our belief that any adverse effects upon the Pan American system will be minimized by the greater overall volume of traffic which should be generated by a more effective competitive through plane service to South America.

Opponents of a possible Braniff Eastern interchange have made a major point on the new record of the unfavorable aspects of Braniff Airways' operating results on its South American route. They have emphasized the Board's responsibility to limit airline subsidy mail payments, claiming that a proper discharge by the Board of this responsibility requires that we limit rather than expand the competitive opportunity of Braniff Airways. The claim is made that the operating results of that carrier for the past three years, following its extension under exemption authority to Miami, and its resulting increased need for federal subsidy support, establish the wisdom of con-

[55] See pages 13 to 19, *supra*, for more detailed discussion of the benefits of an Eastern-Braniff interchange.

[56] See pages 17 to 20, *supra*.

fining Braniff Airways' international system to its former [fol. 1517] Houston-New Orleans-Havana route to South America (excluding Miami) and of disapproving any interchange agreement, voluntary or otherwise, between Eastern and Braniff. It is claimed that such a course of action, which would leave the bulk of United States-South America air travel to the Pan American system, would lead to further reductions in federal mail pay subsidy support.

We recognize that since Braniff has been attempting to develop United States-South American air travel through its connections with National and Eastern at Miami, the mail pay need of Braniff has substantially increased. The record demonstrates that since Braniff has been operating to and from Miami, the South American air travelers over its system have been developed primarily through its own efforts rather than through the cooperative efforts of either National or Eastern.[57] This is entirely understandable since those carriers have had every reason to utilize Pan American as their connecting carrier at Miami. The Pan American system's extensive coverage of South American markets, the existence of the Pan American-Panagra Through Flight Agreement and the flights operating under that agreement, their use of DC-6 aircraft as compared to Braniff's DC-4 equipment—have all made the connecting services of Pan American and Panagra at Miami more attractive to both National and Eastern than those of Braniff [fol. 1517a] Airways. Aside from these matters, there is the additional fact that at various times during the past several years both Eastern and National have made it plain that they would prefer Pan American rather than Braniff as an interchange partner for South American air travel.

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[57] As the Examiner found in his second Recommended Decision served November 13, 1953, at page 38: "... However, what Braniff did not realize was that National and Eastern would continue to deliver substantially all of their traffic to Pan American and Panagra as reflected by data of record which show that in March 1953, 87 percent of the traffic carried by Eastern between New York and Washington, on the one hand, and points in South America served by Panagra and Braniff was carried on Panagra south of Miami and 13 percent traveled on Braniff; in the same month, 83 percent of the similar traffic carried by National was turned over to Panagra and 17 percent over to Braniff."

We do not cite these factors with a view to relieving Braniff Airways' management from responsibility for the amount of its subsidy need. To do so would prejudge the mail rate proceedings presently under way which involve determination of mail pay for past periods for Braniff. We cite the foregoing matters, however, simply to indicate that Braniff's lack of success in its present connecting service to and from Miami does not necessarily have any long-run significance as to the much greater success it would enjoy if its flights to and from Miami were to be operated under an interchange agreement with Eastern. With each party to that agreement actively soliciting air travel from various points on its own system, through Miami, to points on the other carrier's system, we have no doubt that entirely different operating results than those experienced by Braniff to date would be obtained, with substantially less dependence for that carrier upon subsidy support.

Aside from these factors, there is no merit in Pan American's contention that strengthening Braniff will ultimately result in increasing the overall subsidy for U. S. Flag South [fol. 1518] American carriers.[58] It is our belief that, by strengthening Braniff as an effective competitor, the overall air travel volume will increase. We expressed this belief two years ago in our original decision in this case (*supra* p. 15) and we take this opportunity to reaffirm it. If a substantial increase in air traffic and revenues *does* result, then

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[58] The trend of subsidy support for these carriers has continued to increase, and as we have stressed on numerous occasions that unfortunate trend is of serious concern to us.

Dollars of Subsidy Mail Pay Support (000)

Carrier	*Fiscal Years Ended June 30:*				
	1951	1952	1953	1954	1955
(1) Braniff Airways (Int'l.)	$1,999	$2,173	$2,010	$2,557	$2,179
(2) PAA-LAD	4,910	8,599	11,110	11,344	11,485
(3) Panagra	1,206	1,726	2,177	2,174	2,209
(2) + (3) PAA-South American System	$6,116	$10,325	$13,287	$13,518	$13,694

Source: Report on Service Mail Pay and Subsidy for U.S. Certificated Air Carriers, CAB, Sept. 1954.

it is reasonable to conclude that economical load factors can be maintained by *all* of our carriers serving South America.

However, even if overall traffic volumes do not increase substantially, air service capacity can and should be reduced so that an economic load factor will be obtained. We hereby stress the need for a careful monitoring, by all carriers, of schedules and services to be flown to South America, for we have been forced several times in the past to refuse to underwrite with subsidy support large amounts of excessive capacity operated by the South American system of Pan American.[59] The substantial amounts—more than $4,000,000—of needed mail pay claimed which we have disallowed from the mail rates of both Pan American and Panagra because of overscheduling indicate the seriousness of the capacity problem. Because this is such a serious prob- [fol. 1518a] lem, we take this opportunity to caution the carriers against a repetition in the future of such overscheduling—ostensibly to meet the more effective competitive role which we have herein indicated for Braniff.[60]

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[59] *Pan American World Airways, Inc., Latin American Division*, Statement of Provisional Findings and Conclusions, Docket No. 3308, adopted June 5, 1953, Order Serial No. E-7441; *Pan American World Airways, Inc., Latin American Division, Mail Rates*, Docket No. 3308, Order Serial No. E-4052, April 11, 1950 (Order to Show Cause, page 2), finalized by Order Serial No. E-4110, April 28, 1950; reaffirming policy in Order Serial No. E-2753, April 29, 1949, finalized by Order Serial No. E-2854, May 24, 1949. *Pan American-Grace Airways, Inc.*, Statement of Provisional Findings and Conclusions, Docket No. 2755, adopted June 27, 1952, page 6.

[60] Only recently we have had occasion to reiterate our policy against overscheduling because of its obvious effect in increasing federal subsidy. As we stated just a few months ago:

> "There is a large area in which management may take action which will check the increasing dependency on subsidy. Among the more readily controllable factors reflected in a carrier's operating results is the number of flight schedules. Accordingly, the Board expects management to examine, with the utmost care, the productivity of each and every schedule in order not to place an unreasonable burden on the Government." *Piedmont Aviation, Inc., Mail Rates*, Docket No. 6363, Supplemental Order to Show Case, Order Serial No. E-8587, adopted August 27, 1954, page 3.

In order to accomplish the Braniff-Eastern interchange which we have found required by the public convenience and necessity on both the old and new record, we recognize again (as already pointed out, *supra*, p. 47) that since these two carriers do not have end-on systems, one system must be extended to join the other. We hereby reconfirm, therefore, our earlier finding that the public convenience and necessity require the extension of Braniff from Havana to Miami. In support of this finding we cite, among other facts of record, the Examiner's conclusion, made upon the reopened record, (see Appendix II page 11) that the "difficulties experienced by through passengers demonstrates that, if Braniff is to participate in any interchange to provide through-plane service, the interchange point should be Miami instead of Havana". We also hereby reconfirm our earlier finding (*supra*, page 18) that Braniff's flights between Miami and Havana shall be confined to flights for [fol. 1519] interchange purposes only, thereby reducing their diversionary effect from National and Pan American to a minimum.[61]

As to the other interchanges contemplated by the Eastern-Pan American agreement, we note that the new record contains minor amendments affecting the financial supplement to the agreement, the plan of operation and the proposed schedules under the interchange. After examining these changes, we conclude that they are minor in nature and do not alter our previous conclusions (set forth on pages 22-24 *supra*) that these proposed interchanges are not in the public interest and must therefore be disapproved. However, we recognize that there is a substantial air travel volume which would be benefited by through-plane service between the northeastern United States, on the one hand, and those points sought to be served in the Caribbean area on the other—by the "Nassau", "North Coast" and other

[61] The Examiner found on the reopened record that no new contentions had been advanced as to the Board's power to compel interchanges to Balboa. We have already set forth our conclusions on this issue (*supra*, pages 19, 20) and we again decide that the record will be kept open for 60 days from the date of our order to give Braniff and Eastern an opportunity to file with the Board an agreement providing for interchange services at Miami.

interchanges included in the Eastern-Pan American agreement. It may be that National and Pan American will be interested in providing such a service in view of the other findings which we had made in this decision. Since we are impressed with the volume of traffic to be served, we would look with favor upon proposals, designed to meet this demonstrated need, which National and Pan American may wish to present to us.

There is still before us the Pan American-Panagra Through Flight Agreement and the Panagra-National inter- [fol. 1519a] change agreement. As we stated in our tenative decision of March 26, 1954, the decision on these two agreements is closely related to other important matters affecting the future course of air transportation development between the United States and South America.[62] Consistent with other conclusions already reached in this decision, we find that the predominance of Pan American's South American system would require us to disapprove the Pan American-Panagra Through Flight Agreement unless that agreement were so conditioned as to preserve effective competition among our carriers in the United States-South American market. We therefore find that the Pan American-Panagra Through Flight Agreement should be approved upon the condition that all flights operating between Miami and Balboa pursuant thereto shall be through flights to and from New York operated between Miami and New York over the route of National Airlines. Such a condition, we feel, will provide improved air service for United States-South American air travelers, and will also foster a more balanced air transportation system between New York and Miami. In order to give the carriers time to agree upon such an arrangement, we shall keep the record open for 60 days from the effective date of our order to provide an opportunity for the submission of the necessary revised through flight agreement between Pan American and Pan-

[62] *New York-Balboa Through Service Proceeding*, Docket No. 4882, *et al.* Decided March 26, 1954, Order Serial No. E-8189.

agra including an interchange agreement between these carriers and National Airlines.[73]

With respect to the period for which we would approve the Through Flight Agreement, we would ordinarily be inclined to grant such approval until 1960, as requested by the applicants. However, we cannot overlook the presence of the antitrust proceedings recently instituted by the Attorney General at our request against Pan American, Pan-[fol. 1520] agra and W. R. Grace & Co. The final outcome of this litigation cannot now be determined, but the ultimate result of the litigation may have a bearing upon the advisability of continuing our approval of the Through Flight Agreement. Accordingly, if the Through Flight Agreement is appropriately supplemented for operations to and from New York, we will approve such agreement until 1960, with the proviso that if the antitrust litigation is finally concluded prior to 1960, such approval shall terminate 90 days after the effective date of a final order (other than an order of dismissal) disposing of the antitrust litigation. We will also provide that upon the effective date of such order in the antitrust litigation the proceedings herein shall be automatically reopened for the purpose of determining whether such approval of the Through Flight Agreement shall be extended, modified or terminated.

Upon consideration of the foregoing matters and all the facts of record, we find:

1. That the agreement dated January 27, 1951, between Eastern and Pan American to provide through-plane service between points on Eastern's route No. 6, on the one hand, and points on Pan American's Latin American routes and on Panagra's, on the other, is not consistent with the public interest, and should be disapproved;

2. That the provision of through service by interchange between Eastern from New York via Washington to Miami and Braniff from Miami to Balboa and points on Braniff's route in South America is in the public interest, and that

[73] In the light of this decision, it is not necessary for us to pass at this time on the application for approval of the Panagra-National interchange agreement.

Eastern and Braniff should be given an opportunity to enter into and submit for approval of the Board within sixty days of the effective date of our decision herein, an agreement providing for such through service by interchange;

[fol. 1520a] 3. That decision on the Board-instituted proceeding in Order Serial No. E-5205, adopted March 16, 1951, with respect to a compulsory interchange between Eastern and Braniff should be deferred.

4. That the public convenience and necessity require the amendment of Braniff's South American certificate to authorize service between the terminal point Miami, Florida, the intermediate point Havana, Cuba, and the terminal point Balboa, C. Z., subject to the conditions set forth in paragraph 5 below.

5. That Braniff should render service pursuant to the authorization specified in paragraphs 2 and 4 above, only on through plane flights (a) which are operated by interchange of equipment between Braniff and Eastern, (b) which originate at New York, N.Y./Newark, N. J., and terminate at Balboa, C. Z., or points south thereof or originate at Balboa or a point south thereof and terminate at New York, N.Y./Newark, N. J., and (c) which do not serve points north of Miami, Florida, on Eastern's route No. 6 other than points on the Miami-New York/Newark segment of said route.

6. That decision on the application for approval of the Through Flight Agreement between Panagra and Pan American in Docket No. 3787, and the National-Panagra Interchange Agreement in Docket No. 3785 should be deferred for the reasons hereinabove noted; and that National, Pan American and Panagra should be given an opportunity to enter into and submit for approval of the Board within sixty days of the effective date of our decision herein, an agreement providing for through service between New York on National's route No. 31, and Balboa and points on Panagra's route in South America using Panagra's equipment north of Balboa.

[fol. 1521] 7. That the proceeding herein should be held open insofar as necessary to effectuate the conclusions herein reached.

8. That to the extent that the proceedings instituted in Order Serial Nos. E-5205, adopted March 16, 1951, and E-5389, adopted May 18, 1951, are inconsistent or are in conflict with the actions taken herein, such proceedings should be dismissed.

9. That, except to the extent granted, dismissed or deferred herein, all applications, petitions and motions consolidated in this proceeding should be denied.

Appropriate orders will be entered.[61]

Gurney, Chairman, Lee and Adams, Members of the Board, concurred in the above opinion. Denny, Vice Chairman, and Ryan, Member, filed the attached concurring and dissenting opinions.

[fol. 1522] DENNY, Vice Chairman, Concurring and Dissenting:

I concur with the opinion and decision of the majority herein with respect to the disposition of the application of Pan American and Eastern for approval of a New York-Miami-Balboa interchange, and also with the findings that New York-Balboa interchanges by the combinations (1) Eastern and Braniff, and (2) National and Pan American (Panagra) would be in the public interest. I also agree with the conclusion that the approval of the Eastern-Pan American interchange proposal for New York-Miami-Havana service cannot be found to be required at this time.

With respect to the remaining two interchanges proposed by Eastern and Pan American (1) New York-Miami-Nassau, and (2) New York-Port-au-Prince-Jamaica-Maracaibo-

[61] For the purposes of Order Serial No. E-5542, adopted July 13, 1951, which in effect authorized Braniff to serve Miami, Florida, as the northern terminal of its South American route, the orders attached hereto do not constitute the final order in this proceeding. Accordingly, Braniff's exemption authority to serve Miami, Florida, will continue in effect following issuance of the order accompanying this opinion.

Barranquilla, I agree with the conclusions and reasons set forth in the opinion of Member Ryan which would favor the present approval of such operations.

/s/ HARMAR D. DENNY

[fol. 1523] RYAN, Member, Concurring and Dissenting:

I agree with the majority that the interchange agreement of Pan American and Eastern for the provision of through service between New York and Havana should be disapproved because the facts of this record establish that additional American flag competition for National Airlines in this market would be uneconomic and wasteful. I disagree with the present decision to dispose of the New York-Balboa interchange proposals at this time, and I would favor deferment of any action on these proposals until the uncertainties that now enshroud our South American route pattern can be resolved.

I am also in disagreement with the decision to disapprove the voluntary argeement of Pan American and Eastern to provide single plane through service in the Nassau and North Coast markets,[1] a decision which, in my judgment, abandons the United States traffic in these markets to foreign air carriers. It seems to me that the fundamental mistake made by the majority in its treatment of these two interchanges results from its assumption that all four proposals of Pan American and Eastern must be dealt with as a single package. Each of the four interchange services should be considered on its own merits. Even a cursory examination of the facts reveals that they are not interdependent facets of one structure, but are separate and independent proposals. The only points of similarity are the identity of the parties and the fact that each of the four would utilize aircraft routed over the New York-Miami segment of Eastern's domestic system. There the similarity ends.

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[1] Nassau Interchange: New York-Nassau. North Coast Interchange: New York-Port-au-Prince-Jamaica (Kingston and Montego Bay)-Maracaibo-Barranquilla.

Considering first the New York-Havana interchange proposal of Eastern and Pan American, we find that, although United States flag carriers are carrying better than 80 [fol. 1523a] percent of the New York-Havana traffic through the nonstop operations of National or by connecting service at Miami, the direct traffic between New York and Havana to date has been able to support only one round trip flight daily by National. National's nonstop operations have been conducted with a revenue passenger load factor of only about 48 percent. In addition, National must compete in this market with LAV, the Venezuelan carrier, and Aerolineas Argentinas, and it can be anticipated that Cubana will be added as a third foreign nonstop operator within the near future. In view of the marginal character of National's present services and the competition provided by the foreign carriers, it is very clear that the authorization of an additional single plane service would mean uneconomic and wasteful competition. I concur, therefore, in the decision to protect National's certificated service against diversion by an Eastern-Pan American interchange.

Let us now turn to the proposed interchange service between New York and Balboa and points south. Here the Board is confronted with a most difficult and complex problem, for it is in this area of the west coast of South America that the unnecessary and wasteful duplication of facilities and services of U. S. flag carriers is most acute. To evaluate the majority's present decision, reference must be made to the facts constituting the background for our present problem.

I have previously pointed out[2] that the deficiencies which characterize our South American air pattern stem from the *Latin American* decision of 1946, through which the operations of a third U. S. trunkline carrier were established into the South American market. That duplication has proved to be a costly and uneconomic one, as the Board's recent interim opinion in the present case, issued [fol. 1524] on March 26, 1954, makes clear. The vast traffic

[2] Concurring Opinion, Opinion and Order No. E-8189, dated March 26, 1954.

potential foreseen by the 1946 decision simply has not materialized; cabotage rights, which constituted an important source of traffic for U. S. flag carriers in 1946, have been terminated; and the competition offered by foreign air carriers, which was negligible in 1946, has grown in strength and volume to the point where foreign air carriers now transport approximately 48 percent of all the traffic between the United States and Latin America.

The net result of the situation thus created has been a rising tide of subsidy which gives the Board deep concern today. Thus Pan American, which eight years ago realized an annual operating profit of over $2,000,000 on its then self-sufficient operation in South America, requires an annual subsidy of over $11,000,000 for its Latin American division. Panagra, which eight years ago required $963,000 of subsidy from the government, now requires over $2,000,000. And the cost of the Braniff operation has risen from $563,000 in 1948 to a present subsidy need of over $2,000,000. The total mail pay subsidy requirement for Pan American's Latin American Division, Panagra and Braniff was approximately $15,000,000.

The Board recognized the seriousness of the problem when, by its March 1954 opinion,[3] it deferred decision on the present interchange proposals in order to allow the interested U. S. flag carriers to formulate a voluntary plan compatible with the Civil Aeronautics Act for the accomplishment of desirable route realignments. It is apparent that the Board contemplated the emergence of a new and independent carrier from the present routes and facilities of Braniff and Panagra—a carrier that would be completely divorced from any interests or control by Pan American and W. R. Grace and Company. The Board took note of the paralleling routes of Braniff and Panagra, and in its [fol. 1524a] opinion emphasized the Board's "determination to take such action as will further the national policy directed toward reducing the burden of airmail subsidy payments."[4] *The Board declined to take action on the instant*

[3] Opinion and Order No. E-8189, *supra*.

[4] Opinion and Order No. E-8189, *supra*.

Pan American-Eastern proposals because it felt that it would be inappropriate to do so "until we (the Board) resolve appropriately the basic question as to the future of U. S. flag competitive services in South America."[5]

In its opinion, the Board also alluded to the recent institution by the Attorney General of an anti-trust suit against Pan American, Grace, and Panagra, which is designed to compel by court decree an involuntary divestiture by Pan American and Grace of all of their interests in Panagra and thereby to recreate Panagra as a totally independent competitive force in South America. It was apparent from this opinion that the Board entertained the hope and intended to encourage action by Pan American and W. R. Grace which would constitute Panagra an independent carrier and pave the way for the consolidation of Braniff and Panagra, thus reducing our U. S. carriers serving South America from three to two. It was also clear from the opinion that the Board was resolved to hold up action on the Balboa interchange proposals until the future status of U. S. flag carriers in South America would be determined.

The expectation of the Board was frustrated when the parties failed to accept the Board's suggestion for a reduction in the duplication of U. S. carrier facilities in South America which would make possible a substantial reduction in the federal subsidy. Meanwhile the Attorney General's suit is still pending.

[fol. 1525] Confronted with these facts, what action does the Board now propose? The short and direct answer is that, instead of maintaining the *status quo* until the decision in the Attorney General's suit is given an opportunity to clarify the situation, the Board now embarks on a course of action which undertakes to compound the duplication of services that plague our American flag network in South America.

The west coast of South America, which is the area of concern involved in the proposed interchange services be-

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[5] Opinion and Order No. E-8189, at p. 10. All emphasis appearing herein has been supplied unless otherwise indicated.

tween New York-Balboa and points beyond, is provided with paralleling service by Braniff and Panagra. It is the weakest traffic generating area being considered in this proceeding, for it produces only 40 passengers per day in each direction to and from the Northeastern United States, or 13 percent of the traffic for which the Board could provide single plane service in this case. The majority now proposes to disapprove the only voluntary agreement before it for service to Balboa and beyond, that of Pan American and Eastern, in favor of an invitation to Braniff and Eastern to provide the service. It would also condition approval of the Pan American-Panagra Through-Flight Agreement upon the admission of National into an interchange arrangement with those carriers—an interchange which would serve the same general area as that served by Eastern and Braniff.

If, then, the majority's decision is accepted and is carried out, it will result in the creation of two interchange services to serve that total of 80 passengers daily. This the majority would now do notwithstanding the fact that the Board has recently reaffirmed its determination not to permit more than one interchange service for Miami-West Coast traffic, a market producing 30 percent more traffic than that with which we are here concerned.[6] I find it impossible to reconcile such a decision with the majority's concern for the future of Braniff or with the intention expressed by a [fol. 1525a] unanimous Board in this proceeding just eight months ago "to take every practicable step, consistent with the mandate of our statute, to eliminate uneconomic aspects of our air route pattern and *to prevent the establishment of any new situations of that character.*"[7]

It also seems to me that approval of an Eastern-Braniff interchange is inconsistent with the Board's decision concerning the proposed Pan American-Eastern interchange operation between New York and Havana. Since Havana is a point on Braniff's South American route an Eastern-

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[6] *Reopened Southern Service to the West Case*, Opinion and Order No. E-8466, June 25, 1954, p. 13.

[7] Opinion and Order No. E-8189 *supra*, at p. 4.

Braniff alignment would make possible New York-Miami-Havana interchange service, the same type of operation which the Board is denying to Pan American and Eastern. Although the majority undertakes to limit somewhat the competitive effect of such an operation by requiring any service to be conducted as a part of a through flight to Balboa and beyond, and by limiting Braniff's authority to the carriage of fill-up traffic between Miami and Havana, the Board would, nevertheless, be providing competitive service in an area where the available traffic will not support limited competition.

The treatment given to the Through-Flight Agreement under which Panagra operates over the tracks of Pan American between Balboa and Miami is, in my judgment, particularly inappropriate and unjustified. The majority apparently is not satisfied with merely dictating an Eastern-Braniff interchange and maintaining the existing Panagra-Pan American service between Miami and Balboa. *It goes further and threatens Panagra with expulsion from the United States unless Pan American and Panagra become full-fledged members of National's team.* Thus does the majority summarily dispose of an agreement the Board approved seven years ago and specifically found to be "beneficial to the public."[1]

[fol. 1526] There can be no doubt that the Through-Flight Agreement has been of substantial benefit both to the carriers concerned and to the traveling public. By reason of its existence, Panagra has been able to solve some of its overhaul, maintenance and personnel morale problems and has achieved a substantial increase in traffic. At the same time, Miami and the connecting traffic which it serves have been able to obtain the advantages of through single plane service with substantial time savings. Over the years the air traveller has come to rely on the present arrangement as an accepted feature of South American service through the Miami gateway.

Such conditioning of further approval of the Through-Flight Agreement places the Board, it seems to me, in an

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[1] *Pan American-Panagra Agreement*, 8 CAB 50, 61 (1947).

indefensible position. If Panagra and Pan American elect to acquiesce in the Board's wishes and enter into an interchange agreement with National, the Board will have created two interchanges where one, at most, is justified by the available traffic. If Panagra refuses, it will be expelled from the United States and it will be subjected to an economic strangulation which could only result in a substantial increase in that carrier's dependence upon the federal treasury for financial support. This latter consequence would come as no surprise to the majority, for in the March opinion, the Board said that "if Panagra were to be deprived of its present access to Miami, especially if Braniff were to have such continued access, either under the present terms or by approval of some interchange agreement, Panagra's economic condition would rapidly deteriorate."[9] The alternatives posed by the majority decision, therefore, constitute an uneconomic and wasteful duplication of service, on the one hand, and an unjustifiable threat to the federal treasury on the other.

[fol. 1526a] What has been said so far presupposes, of course, that there will be some disposition on the part of one or both of the interchange teams which the majority contemplates to follow the dictates of the present decision. Being realistic, however, it is more probable that the net result of the majority's decision will be to deny the public the benefits of any new single plane through service to South America, at least insofar as its provision is dependent upon the voluntary cooperation of the parties. This record makes it clear that both Eastern and Pan American have been emphatic in expressing their unwillingness to enter into any voluntary arrangement with Braniff and National, respectively. Should this attitude on the part of the parties prevail, as we have every reason to believe it will, the Board, at the conclusion of the sixty-day period allowed by this decision for voluntary submissions, will be faced with the question of whether it should by order undertake to compel the operation of through service by Eastern and Braniff.

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[9] Opinion and Order No. E-8189, *supra*, at p. 9.

Any such course of compulsion would be fraught with difficulty.[10] The Board would be required to reconcile its decision with the express finding of the examiner that "the record does now show that the need for such service is sufficiently great to warrant ordering performance of through plane service between New York and Balboa by a reluctant party."[11] But if the Board brushed aside this hurdle, and chose to order a compulsory interchange, it would, at best, be providing new single plane service for a maximum of eighty passengers per day while denying such service to over three times that amount of traffic traveling between the northeastern United States and the Caribbean [fol. 1527] and the north coast of South America which today has single plane service only by foreign carriers. A combination of Eastern and Braniff could not possibly accommodate these latter passengers since only Pan American serves these areas. Sealing the control of foreign operators in these markets and surrendering the United States traffic to foreign airlines does not seem to me to be a sound solution of the problem.

Thus, it seems clear that the majority's plan offers no panacea for the ills of our South American route pattern, but rather it holds out the very real probability of aggravating the situation. The difficulties inherent in the plan convince me that the public interest would best be served by deferring further action on the New York-Balboa interchange problems until the South American picture has been clarified. A determination of the proper pattern of service to Balboa and beyond is inextricably entwined with the deficiencies of the present uneconomic route structure, and the Board cannot answer one intelligently without providing the solution for the other. It is unlikely now that the problem is susceptible of satisfactory solution until the pending legal action has run its course. From the standpoint of the existing flag carriers deferment now would have the distinct advantage of maintaining the *status quo*

[10] See *National-Eastern Interchange Agreement*, Opinion and Order No. E-6106, February 11, 1952. *Twin Cities-Los Angeles Case*, Opinion and Order No. E-6831, September 25, 1952.

[11] Examiner's Recommended Decision, November 13, 1953, p. 77.

without further entanglement of their competitive relationships until areas of uncertainty as to their future can be removed.

Turning now to the remaining two interchanges proposed by Pan American and Eastern, namely, the Nassau interchange and the North Coast interchange, we are confronted with a vastly different factual situation on the present record. In the case of both of these interchanges, the Board has no alternative available to it in the present case; [fol. 1527a] it can provide through service in this proceeding only by approving the voluntary interchanges submitted by Pan American and Eastern. No other interchanges for these routes were in issue in this case and the Board would be without statutory power to compel a different interchange for these two routes since foreign and not overseas air transportation is involved. Therefore, if the facts of record establish that new single plane service is needed in either of these markets, the Board cannot now provide them except by approving the existing voluntary interchanges proposed by Pan American and Eastern. The combination of National and Pan American as an alternative to the presently proposed interchanges is not only hypothetical and speculative; it is, for reasons already stated, wishful thinking. And it is not an issue in this case.

In appraising the effect of an approval of the two remaining interchanges, we are not confronted with any question of duplicating U. S. flag carrier services. Nor are we faced with any problem of granting additional protection to Braniff, as we are in the New York-Balboa situation. Despite the clear factual differences here from the circumstances presented by the Havana and Balboa interchange proposals of Pan American and Eastern, and in spite of the sizeable United States traffic in the Nassau and North Coast travel markets now provided with direct service exclusively by foreign carriers, the present decision disapproves the voluntary agreement of Pan American and Eastern to serve these areas. Thus, the majority, although possessing no lawful power to order an interchange between Pan American and National which would provide single plane service between New York and Nassau and

between New York and Port-au-Prince, Jamaica, Maracaibo and Barranquilla, herein effect decrees that neither Eastern nor National shall participate in these markets rather than permit Eastern to join with Pan American in competing [fol. 1528] with foreign air carriers for the traffic.

The decision of disapproval rests in large measure upon the assumption that National Airlines needs additional protection in its competition with Eastern on its New York-Miami route, which route would constitute the northern segment of the two proposed Eastern-Pan American interchange services. The majority's solicitude for National might be justified if the facts established that National was in any danger of being eliminated as an effective competitor of Eastern. Quite the opposite is true, however. The record makes it abundantly clear that National does not need any such protection in its competition with Eastern and that the majority's assumption to the contrary is totally lacking in substance.

The majority seeks to establish that National is under some great disadvantage in its competition with Eastern. But let us examine the facts. Set forth in Appendix A are data which depict the competitive trend in National's position beginning with September 1949, the first survey month following National's recovery from two financially devastating strikes, and concluding with September 1953. These data indicate that even in the fall of 1949, National was an effective competitor. More recently it has battled on even terms with Eastern, and during some periods has actually outcarried Eastern on the New York-Miami route. Certainly the foregoing facts preclude the conclusion that National is in any grave danger of being eliminated as an effective competitor of Eastern.

Not only is National presently providing effective competition for Eastern in this New York-Miami market but the through traffic to all points involved in the two interchanges in question represents but a minute portion of the traffic for which National and Eastern are competing. For example, during March 1953, the total traffic between New

York and the points involved in the Nassau interchange [fol. 1528a] and the North Coast interchange was 1737 passengers. During the same month, National and Eastern carried 71,993 passengers between New York and Miami alone, so that the total traffic involved in the Nassau and North Coast markets was the equivalent of only 2.4 percent of the New York-Miami passengers for which the two carriers compete. It is also significant that there are presently about 117 passengers daily in these foreign markets but only about 32 travel by U. S. flag carriers because foreign carriers are now providing single plane service to these areas. The better than two-thirds monopoly which the foreign carriers already enjoy will soon be almost 100 percent if our American carriers continue to be unable to provide single plane service.

Since the alleged potential represents less than 2.4 percent of the competitive traffic of National and Eastern, it would be far better to have Eastern obtain the revenue than to abandon it to foreign carriers. Surely this small amount of traffic will not affect National's survival in its competition with Eastern. The present disapproval of the Eastern-Pan American through service in this market does not insure this traffic for National; it merely abandons the traffic to a foreign air carrier.

Furthermore, we have a duty to consider the need of the traveling public for such through service, not just the needs of the competing carriers. The existing traffic between New York and Nassau is approximately one and one-half times as large as the traffic to Balboa and points south and clearly needs American-flag single plane service to compete with foreign competition.[12] Pan American is the only

[12] National's entry into Washington, D. C., was granted by the Board to enable National to compete with a foreign carrier providing service from Havana to New York via Washington. The Board's decision stated "we believe that it is of considerable importance that a U. S. air carrier should be in a position to compete on an equal basis with foreign companies for the Washington-Havana traffic, the greater part of which is generated in the U. S." *Middle Atlantic Case*, 9 C.A.B. 131 (1948).

American-flag carrier between Nassau and Miami and, [fol. 1529] therefore, ~~can harm~~ no other American-flag carrier if it is granted the right to offer single plane service in conjunction with Eastern. *It is a strange American doctrine which dictates the disapproval of the only single plane service offered and thereby transfers the American flag traffic of our own international air carrier to a foreign air carrier solely to prevent one domestic air carrier from obtaining a small and insignificant traffic flow advantage over another domestic air carrier.*

Everything that has been said about the New York-Nassau market can equally well be applied to the New York-Port-au-Prince-Jamaica-Maracaibo-Barranquilla markets: The available traffic is more than double that involved in the New York-Balboa interchange and the only existing single plane services are by foreign carriers. Authorization of an American-flag single plane service would provide better service to the public, would increase the American flag participation in the markets, and would have no significant effect on the Eastern-National competitive situation. It would also permit our American carriers to recoup at least a part of the $3,000,000 in revenues being lost to foreign carriers annually in Latin America.

The only other point advanced against approval of these two Pan American-Eastern proposals is the so-called divided allegiance argument.[13] It is said that Eastern will not cooperate fully with Braniff on the New York-Balboa service if it is cooperating with Pan American elsewhere. The Board has never before given this argument weight where the interests were not in the same markets. Thus, for example, Braniff and Continental, who are vigorous

[13] The majority points to the service now operated by Pan American between New York and Maracaibo as substantial conflict. Exhibits PA-1106 and PA-1107 show this traffic to amount to 4.61 southbound passengers per day and show that foreign carriers obtain about 80 percent of the traffic to Jamaica, Colombia, and Venezuela, including Maracaibo. Since the Miami routing would be shorter than Pan American's present service it is unlikely to present any serious problem.

competitors in the southwestern United States, cooperate in [fol. 1529a] providing interchange service between Denver and St. Louis; TWA and Braniff compete between Kansas City and Chicago and yet a majority of the Board has approved an interchange arrangement for service by these carriers between Houston and the west coast;[14] and two of the very carriers involved here, National and Eastern, who are the staunchest of competitors on the New York-Miami route, would be permitted by the Board to provide interchange service between Miami and Houston.[15] In view of the past actions of the Board an adverse decision upon the two Eastern-Pan American interchange proposals presently before us based upon such an assumed conflict can hardly be considered impressive.

SUMMARY

In this case we are required by law to approve each interchange unless, upon substantial evidence of record, we can find that the approval would be "adverse to the public interest."[16] The record clearly shows that the Board's conclusion to disapprove the interchange proposed by Pan American and Eastern in the New York-Havana market is supported by substantial evidence in view of the marginal character of National's present operations and the degree of foreign competition to which it is subjected. In my opinion the evidence is equally convincing that the broader considerations inherent in determining the public interest require deferment of any action on the New York-Balboa proposals at the present time.

[fol. 1530] On the other hand, this record shows that the effect of the approval of the Nassau and North Coast interchanges upon National Airlines in its competition with Eastern on the New York-Miami route would not be

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[14] *Reopened Southern Service to the West Case*, Order No. E-8705, dated October 14, 1954.

[15] *Reopened Southern Service to the West Case*, footnote 5; see also Opinion and Order E-7988, December 22, 1953.

[16] Sec. 412.

substantial and, therefore, cannot be the basis for a conclusion that approval of these two interchanges would be adverse to the public interest. These two interchanges would offer through single plane service to traffic flows significantly larger than those involved in the New York-Balboa interchange and these benefits cannot otherwise be obtained since the Board would be without statutory power to compel other and different interchange combinations to accomplish the same benefits. The inevitable result, therefore, of the Board's denying Pan American the opportunity to participate in single plane service between these points in the Caribbean and the northeastern United States will be to benefit its foreign air competitors at the expense of American-flag carriers.[17]

/s/ OSWALD RYAN

[17] Both domestic and international carriers will bear this expense. Every passenger between New York and Nassau, Port-au-Prince, Jamaica, Maracaibo and Barranquilla that is diverted from Pan American's connecting service via Miami to a foreign carrier single plane service will reduce the revenue not only of Pan American but of either Eastern or National over the domestic portion of the trip.

[fol. 1531] APPENDIX A

Comparison of Competitive Relationship between Eastern and National as indicated by New York-Miami traffic.

New York-Miami Traffic	Total	% of Combined
Sept. 1949 (O&D)		
EAL	7,101	64.0
NAL	4,023	36.0
March 1950 (O&D)		
EAL	25,608	66.1
NAL	13,236	33.9
Sept. 1950 (O&D)		
EAL	10,936	60.5
NAL	7,172	39.5
March 1951[1]		
Ticket Sales by carrier		
EAL	19,044	52.3
NAL	17,366	47.7
Ticket Lift by Carrier[2]		
EAL	31,851	61.0
NAL	20,433	39.0
Sept. 1951		
EAL (Not available)		
NAL (Not available)		

New York-Miami Traffic	Total	% of Combined
March 1952 (O&D)		
EAL	15,043	45.9
NAL	17,695	54.1
September 1952[3]		
EAL	6,502	55.5
NAL	5,204	44.5
March 1953[3]		
EAL	17,838	53.2
NAL	15,682	46.8
September 1953[3]		
EAL	7,191	50.4
NAL	7,087	49.6

[1] Board surveys were not published for 1951. However, the tickets sold by each carrier itself are shown (not including tickets sold by other carriers over these lines).

[2] These are not reported Origin and Destination figures as the previous three survey months but are ticket lift by the carriers. For Eastern at least these include off-line connecting traffic.

[3] September 17-30 and March 1-14, inclusive. Earlier data were for full Months.

[fol. 1532]

Appendix I

Excerpts from the Report of Examiner Thomas L. Wrenn, served January 23, 1952, in the *New York-Balboa Through Service Proceeding*, Docket No. 4882, *et al.*

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However, the record contains data on the increase of community of interest between the United States and South America. These data show that the population of Latin American countries (excluding Mexico) has risen from a pre-war level of 113,500,000 to 134,360,000, or an increase of 18 percent; the Caribbean increased from 13,000,000 to 16,730,000 or more than 28 percent; Central America from 8,137,000 to 8,937,000 or 9.7 percent; and South America from 92,394,000 to 108,692,000 or 17.6 percent.

Among the larger cities which will be affected by any interchange, Buenos Aires has increased from 2,364,263 in 1939 to 4,500,000 in 1949; Caracas from 203,342 in 1936 to 600,000 in 1949; Lima from 284,839 in 1935 to 767,054 in 1948; Rio de Janeiro from 1,896,998 in 1939 to 2,400,000 in 1950; Santiago, Chile, from 696,000 in 1930 to 1,130,000 in 1949; and Sao Paulo from 1,322,000 in 1939 to 2,060,000 in 1950.

The evidence shows that the total travel between the United States and Latin America (excluding Mexico, Puerto Rico, and the Virgin Islands) has expanded by 185 percent since 1938; that in the fiscal year 1950, 838,335 passengers traveled by sea and air between the United States and Latin America compared with a total of 293,251 in 1938. Within the Latin American area, the Caribbean increased from 226,373 to 613,202; Central America from 39,452 to 89,232; and South America from 27,426 to 135,901. Air travel between the United States and Latin America increased from 47,103 in the fiscal year 1938 to 663,000 in the fiscal year 1950, an increase of 1,307 percent. Air travel raised its share of total United States-Latin American travel from 16.1 percent in the fiscal year 1938 to 79.1 percent in the fiscal year 1950.

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The record also shows that during the fiscal year 1950, 1,878,000 pounds of mail moved by air from the United States to Latin American countries (excluding Mexico, Puerto Rico, Virgin Islands, and Bermuda) divided between the three major geographical areas as follows: Caribbean, 535,893 pounds; Central America, 383,695 pounds; and South America, 958,419 pounds. In the calendar year 1950, Pan American transported 711,000 pounds of foreign air mail from Latin America to the United States (excluding Mexico, Puerto Rico, Virgin Islands, and Bermuda) which represented a 34 percent increase over the twelve months ended August 31, 1949.

Other exhibits show the importance of the northeastern part of the United States with respect to trade and travel with Latin America. Exhibits show that the Northeast has 44 percent of the United States' population, 48 percent of the effective buying income and has 54 percent of the [fol. 1532a] manufacturing establishments accounting for 60 percent of the value of manufactured products. These data show that the metropolitan area of New York has a population of over 12,000,000 and produces over $7,500,000,000 in manufactured products. The record shows that in 1947, 65 percent of the total United States exports to Latin American countries served by Braniff moved through the Port of New York. The evidence shows that 58 percent of all the Foreign Freight Forwarders registered with the Maritime Commission's main offices in New York City. It also shows that 29 percent of the major United States concerns doing business in the Latin American countries served by Braniff are located in New York City.

The declared residence in the United States of northbound traffic arriving at Miami on Panagra-Pan American through flights for the period January-June 1951 shows that the residence of 68.3 percent indicated routing to or through New York City or Washington with the former accounting for 48.3 percent of the total. Similar material for the period June-October 1949 shows that 66.4 percent of the traffic arriving at Miami on the Panagra-Pan American through flight had declared residences indicating routing to or through Washington or New York City.

The evidence shows that there are presently 26 steamship companies including five United States flag lines providing service between the East Coast of the United States and South America as compared with nine in 1938. It is pointed out that steamship companies have kept pace with the increased amount of travel but air transportation facilities have not substantially changed during recent years to accommodate the greater volume of traffic, that there are only a limited number of through air routes between the Northeast and South America and that all but one—Pan American—are operated by foreign flag airlines. Moreover, Pan American only provides through service to the East Coast of South America while no United States flag carrier is authorized to provide through service between the northeastern part of the United States and the West Coast of South America including the Canal Zone and Bolivia.

Pan American and Eastern point out that there are 14 competitive air services operated in the areas which would be benefited by the Eastern-Pan American-Panagra interchanges. Of these, all but three, National, Braniff, and Chicago & Southern operating to Havana—are foreign flag carriers. It is also pointed out that the Mid-West area receives service to Latin America by two carriers but that the East Coast area has no one-carrier or one-plane service to the areas of Latin America, most directly served through the Miami gateway.

Traffic Flow via Miami Gateway: Miami is the principal gateway for air travel between United States ports and Latin American countries as shown by the following table of United States-Latin American air travel during the year ended June 30, 1950:

[fol. 1533]

Table 1

Area	Total	Via Miami	Percent
Caribbean	535,063	372,469	69.6
Central America	46,138	17,786	38.5
South America	89,315	44,027	49.3
Total Latin America	670,516	434,282	64.8

NOTE: Excludes Puerto Rico, Virgin Islands, and travel across the land border of Mexico.

Pan American showed the number of passengers it carried to and from Miami for the years 1948, 1949, 1950 and January-June 1951, as follows:

Table 2

Year	Outbound	Inbound
1948	152,434	154,086
1949	148,271	151,904
1950	138,624	141,205
1951 (6 months)	79,579	85,126

A summary, compiled by Pan American from exhibits of record of southbound air passengers moving through or over Florida gateways, January-June 1951, is shown in Appendix 1A. It will be seen from Appendix 1A that a total of 147,074 passengers or 812.58 per day moved through or over Florida gateways to the seven groups of Latin American countries and that New England, New York, New Jersey, Pennsylvania, Maryland, District of Columbia, and Delaware, designated as Area A which would be most directly served under the interchange here involved, furnished 28,192 passengers or 155.78 per day.

A breakdown showing which carriers performed the service for the 28,192 passengers from Area A to the seven groups of Latin American countries is as follows:

Table 3

Carrier	Total Passengers		Percent of Total
	Amount	Per Day	
Pan American	8,968	49.57	31.81
Other U. S. Flag Carriers	5,578	30.81	19.79
Foreign Flag Carriers	13,646	75.40	48.40
Total, Groups 1-7	28,192	155.78	100.00

[fol. 1533a] A summary of air passengers moving through or over Florida gateways to and from selected Latin American countries, March and September 1950, is shown in Appendix 1B.

Another exhibit shows the proportion of total air passengers carried by foreign air carriers between New York-Newark, Baltimore-Washington and Miami and Latin America for the years ended June 30, 1947, 1948, 1949, 1950 and 1951. For the year ended June 30, 1951, these data follow:

Table 4

Area	Total Traffic		
	Total	Foreign Carrier	Percent of Total
Caribbean	436,212	102,618	23.5
Central America	26,486	7,854	29.7
South America	95,306	31,865	33.4
Total Latin America	558,004	142,337	25.5

Cuba accounted for 294,546 of the above total, with foreign carriers getting 58,788 or 20 percent of the passengers.

The record shows that for the period September 1950 through August 1951, Avianca carried a total of 11,602 passengers in and out of New York and Miami; in the seven-month period January-July 1951, L.A.V. carried 2,426 passengers north from Havana to New York and 2,320 from New York to Havana; that in the same seven months, K.L.M. had a total of 2,906 passengers in and out of Miami. Other data show that in the period January-August 1951, British Overseas Air Corporation and Bahamas Airways carried 26,112 passengers between New York, Miami or West Palm Beach, and Bahamas and Trans Canada Airlines carried 1,733. Another exhibit shows passengers carried by foreign flag carriers between the United States and Cuba for the period February-July 1951 as follows:

Table 5

Carrier	Deplaned From	Origin	Enplaned For	Destination
L.A.V.	1,613	New York	1,534	New York
Aerovias "Q" S. A.	15,268	Tampa or Key West	15,622	Tampa
K.L.M.	332	Miami	323	Miami
Cubana	10,164	Miami	13,995	Miami

Pan American submitted data on passengers delivered to or received from Eastern and National by Pan American according to interline billings for the period November 1947-June 1951:

[fol. 1534]

Table 6

Year	Passengers Exchanged Between PAA-EAL			Passengers Exchanged Between PAA-NAL		
	Total	Sale by PAA	Sale by EAL	Total	Sale by PAA	Sale by NAL
1947 (Nov. & Dec.)	7,022	5,828	1,194	1,103	754	349
1948	46,192	38,856	7,336	8,059	4,476	3,583
1949 (Apr. thru Sept.)	26,699	19,304	7,395	11,436	7,945	3,491
1950	46,419	32,652	13,767	17,918[1]	14,883[1]	3,035
1951 (6 mos.)	25,501	14,386	11,115	—	8,957	NA*

* National Airlines not available.

[1] Data for Panagra tickets not available.

The foregoing traffic data includes traffic moving via Miami to Latin America. It should be remembered that South America is one area within the group termed, "Latin America". The New York-Balboa interchange investigation instituted by the Board involves traffic between New York and Balboa and points in South America served by Panagra and Braniff. The following data is on the movement of traffic between the Northeast, primarily New York and Washington, via Miami to Balboa and points south:

Table 7

Panagra's United States-South America Traffic

	1946	1947	1948	1949	1950	1951*
Psgrs. to and from United States	15,448	17,757	17,552	20,085	20,304	12,295
Psgrs. to and from Miami	11,222	13,574	14,287	17,592	18,242	11,004
Percent of psgrs. trvl. via Miami	72.6	76.4	81.4	87.6	89.7	89.5
Passengers between U.S. (Miami) and:						
Argentina	1,610	2,713	4,471	5,659	5,421	2,842
Bolivia	798	924	849	688	890	514
Brazil	77	34	8	46	57	10
Chile	2,419	2,422	2,131	3,118	3,396	2,523
Colombia	428	785	634	434	533	289
Ecuador	2,095	2,678	2,598	2,191	2,648	1,088
Peru	3,795	4,018	3,596	5,456	5,297	3,738

* Six months

[fol. 1534a]
Table 8

RESIDENCE IN U. S. OF PANAGRA'S EL INTER AMERICANO THROUGH FLIGHT PASSENGERS ARRIVING AT MIAMI
(Including Passengers Boarding at Balboa)

JANUARY-JUNE 1951

	Breakdown by State of Destination	Total	Percent of Total
I	New York	2,704	41.5
	New Jersey	184	2.8
	New England States	213	3.3
	Eastern Canada	9	.1
	Europe (via New York)	39	.6
	Total indicating travel to or via New York City	3,149	48.3%
II	Washington, D. C.	459	7.1
	West Virginia	4	.1
	Pennsylvania	722	11.1
	Maryland	97	1.5
	Delaware	14	.2
	Total indicating travel to or via Washington, D. C.	1,296	20.0%
III	Total to other states not indicating travel to or via New York City and Washington, D. C.	2,068	31.7%
	GRAND TOTAL	6,513	100.0%
	Percentage of passengers whose declared residence in U. S. indicates routing to or through New York City or Washington, D. C.		68.3%

A Panagra exhibit shows the origin or destination in the United States of passengers carried on Panagra-Pan American through flights, January-June 1951, as follows:

Table 9

Total Passengers		Washington	New York
16,006		3,201	7,731
Number of passengers per day	88		
Number of passengers per day en route to or from Washington and New York	60		

[fol. 1535] Braniff carried the following traffic between East Coast points of the United States and Latin American points during the first six months of 1951:

	East Coast			
	New York City	Other	Total	No. per day
Six Month Total	793	613	1,406	8

Panagra points out that the foregoing data show that the through traffic between New York and the Northeast and Balboa and points south, which would be given an improved through plane service if interchanges are authorized, was 68 daily passengers or 34 in each direction during the first six months of 1951.

Braniff estimates that the total through traffic between New York, Washington and Miami, on the one hand, and points in South America served by it, is at least 178 per day based upon the September 1950 survey instead of 68 passengers per day estimated by Panagra. Braniff's analysis of the September 1950 survey from which it obtained the 178 figure follows:

Table 10

Points	Passengers
New York-Balboa	270
New York-Guayaquil	110
New York-Lima	210
New York-Sao Paulo	513
New York-Rio de Janeiro	1,571
New York-Buenos Aires	1,028
Washington-Balboa	71
Washington-Guayaquil	15
Washington-Lima	34
Washington-Sao Paulo	2
Washington-Rio de Janeiro	16
Washington-Buenos Aires	46
Miami-Balboa	839
Miami-Guayaquil	146
Miami-Lima	268
Miami-Sao Paulo	12
Miami-Rio de Janeiro	20
Miami-Buenos Aires	161
TOTAL	5,332
PER DAY	178

It will be noted that 1,448 passengers or 48 per day traveled between Miami and Balboa or points south, most of which now have one-plane service. The record shows that during the first six months of 1951, Pan American carried a total of 4,254 passengers directly out of the New York gateway to Rio de Janeiro, Sao Paulo, Montevideo, and Buenos Aires.

[fol. 1535a] National presented an analysis of its southbound connecting traffic, during the six-month period ending June 30, 1951, via Miami and via Havana:

Table 11

City	Number Passengers via Miami	Number Passengers via Havana
New York	3,417	515
Philadelphia	30	—
Washington	583	177
Miami	—	99
Jacksonville	36	2
Tampa	96	—
St. Petersburg	25	78
Sarasota	27	—
West Palm Beach	30	3
New Orleans	1,057	33
Pensacola	35	—
Mobile	19	—
Other points	6	—
TOTAL	5,361	907

Out of a total of 4,345 passengers between the principal Eastern cities and South America in March 1949, New York accounted for 2,284 or 52.6 percent; Miami, 1,634 or 37.6 percent; and Washington, 219 or 5 percent of the total.

A summary of international traffic carried by Braniff between the United States points and points in Latin America during the first six months in 1951 follows:

Table 12

	East Coast	Mid-West and West	Total	Havana Traffic	Grand Total
SIX MONTHS TOTAL	1,406	2,691	4,097	1,357	5,454
Percent of Total, Excluding Havana	34.3%	65.7%	100.0%		
Percent of Total	25.8%	49.3%	75.1%	24.9%	100.0%

Travel on Braniff via the Miami and Havana gateways for the months of July, August and September 1951 follows:

[fol. 1536]

Table 13

	July	August	September
Southbound	143	165	190
Northbound	222	238	396
Total	365	403	586

Carrier Participation

Southbound

Connecting carrier			
National (at Miami)	—	52	75
National (at Havana)	143	57	29
NATIONAL TOTAL	143	109	104
Eastern	—	33	44
Others	—	2	4
Local Boardings	—	21	38
TOTAL SOUTHBOUND	143	165	190

Northbound

National (at Miami)	—	67	161
National (at Havana)	222	78	57
NATIONAL TOTAL	222	145	218
Eastern	—	21	65
Others	—	1	11
Miami Finals	—	71	102
TOTAL NORTHBOUND	222	238	396

The Eastern-Pan American Interchange: On January 27, 1951, Eastern and Pan American executed an interchange agreement, for which approval is requested in Docket No. 4846, under which through-plane service will be operated between points on Eastern's Boston-New York-

Washington-Miami route, on the one hand, and Latin American points south of Miami, on the routes of Pan American and Panagra, on the other hand, by interchange of equipment at Miami. Specifically, this interchange agreement embraces points on Eastern's Boston-New York-Washington-Miami route and the following points served by Pan American out of Miami: Nassau, Havana, Merida, Guatemala City, Tegucigalpa, Managua, San Jose, Camaguey, Montego Bay, Kingston, Barranquilla, Maracaibo, Port-au-Prince, Panama City and beyond Panama City all points served by Panagra.

[fol. 1536a] Schedules proposed for immediate operation are:

1. One round trip daily New York-Maracaibo via Washington, Miami, Kingston, and Barranquilla with Pan American Constellation aircraft.
2. (a) Two round trips weekly New York-Balboa tourist flights via Washington, Miami, Camaguey and Kingston with Pan American DC-4 aircraft.

   (b) Two round trips weekly New York-Balboa tourist flights via Washington and Miami with Pan American DC-4 equipment.
3. (a) One round trip daily Boston-Havana via New York and Miami with Eastern Constellation aircraft.

   (b) One round trip daily New York-Havana via Washington and Miami with Eastern Constellation aircraft.
4. One round trip daily New York-Nassau via Miami with Eastern Constellation aircraft during the summer and Pan American Constellation or Boeing 377 aircraft during the winter season.
5. One round trip daily New York-Buenos Aires via Washington, Miami, Balboa, and Lima and also serving Guayaquil, Antofasgasta or Santiago with Panagra DC-6 aircraft. This service will be an extension

of the present Panagra *El Interamericano* flights to New York.

6. Three round trips weekly New York-Buenos Aires tourist flights via Miami, Balboa, Guayaquil, Talara (flagstop), Lima and Santiago with Panagra DC-4 aircraft.

The proposed initial schedules will be adjusted as needs develop or change. Initially, Eastern aircraft will be leased to Pan American for use on the Havana schedules only. All other interchange flights will be operated with Pan American and Panagra aircraft. Eastern will operate the interchange flights as substitutions for otherwise existing schedules on Eastern's Boston-New York-Miami route. Eastern and Pan American will establish training programs to qualify their flight crews and other personnel. Under the proposed initial interchange schedules, Constellations and DC-4 aircraft will be used exclusively except for the daily *El Interamericano* flights to Buenos Aires which will employ Panagra DC-6 equipment. Eastern and Pan American have agreed that, in general, Eastern flight crews will operate Pan American aircraft while such aircraft are being flown over Eastern's routes and Pan American flight crews will operate Eastern's aircraft flown over Pan American's routes. Eastern and Pan American regard the interchange as a permanent arrangement and are requesting the Board to approve it for an indefinite period.

[fol. 1537] Detailed financial provisions for the determination of costs have been agreed upon and are embodied in a financial supplement to the agreement. Eastern estimated that in leasing aircraft from Pan American and Panagra rather than operating its own aircraft it would incur additional exepense of only $52,606 annually. Eastern will not be required to purchase additional equipment except for a small amount of aircraft radio equipment estimated to cost $60 per Eastern aircraft used in the interchange. The only other expense will be that of qualifying Eastern crews in the operation of DC-6 equipment. Pan American estimates that its costs per seat mile will be less using Eastern aircraft between Miami and Havana pursuant to the inter-

change agreement rather than using its own Convair 240 equipment. Panagra will not incur any additional expense under the proposed schedules. * * *

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Table 14

	Number of Annual Passengers		
	1947	1948	1949
Eastern-Pan American-Panagra Proposed Interchange	30,090	36,606	51,810
Capital-National Interchange	40,848	42,096	43,332
TWA-Delta Interchange	30,978	35,346	38,502
American-Delta Interchange	16,848	12,984	15,912
American-Delta-National Interchange	20,070	18,564	21,708
American-Continental Interchange	16,176	14,040	17,814

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The proposed interchange schedules will also provide improved service for passengers originating and terminating at points not to be directly served by the n[illegible]al interchange schedules; such as, Baltimore, Hartford, Philadelphia, Pittsburgh and Providence. * * *

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Summary of Southbound Air Passengers Moving Through or Over Florida Gateways
January-June 1951

	Total		Area A		Area B	
	Number of Passengers	Per Day	Number of Passengers	Per Day	Number of Passengers	Per Day
Group 1						
Argentina	1,474	8.14	743	4.10	537	2.97
Bolivia	251	1.39	177	.98	48	.27
Chile	1,174	6.49	870	4.81	238	1.32
Ecuador	619	3.42	354	1.96	234	1.29
Peru	1,527	8.44	979	5.41	397	2.19
Total to Group 1	5,045	27.88	3,123	17.25	1,454	8.04
Group 2						
Costa Rica	521	2.88	234	1.29	287	1.59
Panama and Canal Zone	3,367	18.60	1,006	5.56	2,028	11.20
Total to Group 2	3,888	21.48	1,240	6.85	2,315	12.79
Group 3						
Colombia	4,997	27.61	2,695	14.89	1,856	10.26
Jamaica	7,950	43.92	1,907	10.98	4,822	26.64
Venezuela (Maracaibo)	918	5.07	566	3.13	203	1.12
Total to Group 3	13,865	76.60	5,248	29.00	6,881	38.02
Group 4						
Cuba	99,998	530.38	12,458	68.83	81,493	450.24
Group 5						
Haiti	1,227	6.78	383	2.12	744	4.10
Group 6						
British Honduras	2	.01	-	-	2	.01
El Salvador	115	.64	23	.13	85	.47
Guatemala	390	2.16	79	.44	290	1.60
Honduras	246	1.36	51	.28	189	1.05
Mexico (Merida)	187	1.03	21	.12	155	.85
Nicaragua	81	.45	16	.09	60	.33
Total to Group 6	1,021	5.65	190	1.06	781	4.31
Group 7						
Bahamas	26,030	143.81	5,550	30.66	19,439	107.40
Total to Groups 1 - 7	147,074	812.58	28,192	155.78	113,106	624.90

[fol. 1540] APPENDIX II

EXCERPTS FROM THE RECOMMENDED DECISION OF EXAMINER THOMAS L. WRENN, REOPENED NEW YORK-BALBOA THROUGH SERVICE PROCEEDING, DOCKET 4882, ET AL. SERVED NOVEMBER 13, 1953

*** ***

For the convenience of the Board and parties, a description of the investigation and applications which constitute this proceeding is hereafter set forth. Board Order No. E-5205 and Order No. E-5389 which set up this proceeding specifically directed consideration of the following: (1) A Board-instituted proceeding directing Pan American, Panagra, and National to show cause why the Board should not order a compulsory interchange operation between Pan American and National for through service between New York and Balboa to be provided by using such aircraft of Panagra as is used in the Panagra-Pan American through flight operation; (2) A Board-instituted proceeding to determine whether the certificate of Eastern for route No. 6 or the certificate of Braniff authorizing service between Houston and Buenos Aires should be amended to provide for an extension of Eastern's route from Miami to Havana or Braniff's route from Havana to Miami; (3) A Board-instituted proceeding to show cause why, in the event of an amendment of Braniff's or Eastern's certificate to provide a Havana-Miami connection for Eastern's route and Braniff's route, a compulsory interchange between Eastern and Braniff providing through service between New York and Balboa should not be ordered by the Board; (4) A Board-instituted proceeding directing Braniff and National to show cause why the Board should not order a compulsory interchange operation between Braniff and National for through service between New York and Balboa; (5) Docket No. 4846, an application for approval of an agreement between Pan American and Eastern providing for an interchange of equipment at Miami; (6) Whether it is in the public interest for Panagra to participate in the interchange between Pan American and Eastern proposed in Docket

No. 4846; (7) Docket No. 3785, an application for approval of an interchange agreement between National and Panagra; (8) Docket No. 3787, an application for approval of a modification and extension of the through flight agreement between Pan American and Panagra and a companion agreement between Pan American and W. R. Grace & Co.

Board Order No. E-5642, dated August 23, 1951, modified paragraph 7 of Order No. E-5205 relating to the Eastern and Braniff Miami-Havana extension proceeding and consolidated herein Docket No. 5030, the application of Braniff for amendment of its Houston-Buenos Aires certificate to include Miami and Docket No. 5086, the application of Eastern to operate from Miami to Havana. The order further provided that the proceeding not include the issue of whether either Grace or Pan American has acquired additional control of Panagra, which is the subject of a separate proceeding.

[fol. 1540a] *The Eastern-Pan American Interchange*: The interchange agreement between Eastern and Pan American, Docket No. 4846, was described as to provisions and details at pages 27-29 of the January 23, 1952 Examiner's Report. The record herein contains an amendment of the financial supplement of the agreement, plan of operation, and proposed schedules under the interchange. The evidence herein shows that 13 or more Boeing B-377, 38 Douglas DC-6B, 16 Douglas DC-4 aircraft owned by Pan American, 6 Douglas DC-6, 4 DC-6B, and 3 DC-4 aircraft owned by Panagra will be available for use over Eastern's New York-Miami route and 20 Lockheed L-749A, 36 L-1049, and 11 Douglas DC-4 aircraft owned by Eastern will be available for use over Pan American's Miami-Havana and Nassau routes.

Schedules proposed under the interchange are: for Panama and the West Coast of South America, seven first-class and three tourist-class services weekly using DC-6 and DC-6B aircraft; in addition, Panama would also receive four DC-4 tourist services weekly, affording it daily first-class and daily tourist-class service. Jamaica, Haiti, and the North Coast of South America will be served with two daily round trips during the winter season and one during the summer season. The basic year-round schedule, operated with DC-6B aircraft, would serve Kingston, Barranquilla,

and Maracaibo. On four days a week, this would operate as a tourist service and on three days as a first-class service. The second daily schedule would be operated from December 15 through April 15, and on four days of the week would serve Montego Bay and on three days Port-au-Prince. This schedule was not included in the 1951 proposal. Nassau would be served daily with Pan American DC-6B aircraft or Eastern Constellation, depending on the availability of equipment. Tourist service would be offered on two days of each week. Havana would be served by two round trips daily using Eastern Constellation for daily first-class service and Eastern DC-4 equipment for daily tourist service. Eastern has 22 daily flights into Miami which will connect with the several southbound interchange flights operated from Miami and 23 daily flights north out of Miami which provide connections with interchange flights operated into Miami. New features of the revised proposal are service to the new areas Montego Bay and Port-au-Prince, an increase in frequencies from 44 to 49 round trips per week, newer aircraft used, and expansion of tourist service.

*** ***

Miami Gateway Traffic Data: The traffic data previously submitted in this case were summarized at pages 19-27 and Appendixes A and B of the Examiner's Report served January 23, 1952. These data generally related to traffic for the period January-June 1951, the Board's origin and destination surveys, and other studies prior to 1951. The traffic data submitted at the hearing in this reopened case supplement the data previously submitted and are based for the most part upon special studies by all carriers for the period January-March 1953, the most recent origin and destination surveys, and other special studies made by the [fol. 1541] parties. The evidence submitted herein for the most part consists of traffic data, information on the growth and operating results of the carriers, and changes in the competitive situations together with certain changes in equipment and schedules involved in the proposed Eastern-Pan American interchange.

A comparison of the number of *southbound* passengers per day from Areas A and B moving through or over the Florida gateways based on January-June 1951 (shown in

Appendix A of the January 23, 1952 Examiner's Report) and January-March 1953, submitted in the reopened record, follow:

Table No. 1:

	Area A[1]		Area B[2]	
	1951 January-June	1953 January-March	1951 January-June	1953 January-March
Group 1				
Argentina	4.10	6.82	2.97	1.84
Bolivia	.98	1.11	.27	.38
Chile	4.81	3.21	1.32	.87
Ecuador	1.96	3.08	1.29	2.02
Peru	5.41	5.61	2.19	5.30
Total	17.26	19.83	8.04	10.41
Group 2				
Panama and Canal Zone	5.56	10.10	11.20	11.22
Group 3				
Colombia	14.89	23.32	10.26	10.61
Jamaica	10.98	42.70	26.64	33.32
Venezuela (Maracaibo)	3.13	4.61	1.12	1.16
Total	29.00	70.63	38.02	45.09
Group 4				
Cuba	68.83	79.29	450.24	447.99
Group 5				
Haiti	2.12	4.04	4.10	5.99
Group 7				
Bahamas	30.66	46.24	107.40	118.38
GRAND TOTAL	153.43	230.13	619.00	639.08

[1] Includes Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, District of Columbia and Delaware.

[2] Includes Virginia, North and South Carolina, Georgia and Florida. Costa Rica traffic in Group 2 and all traffic in Group 6 shown in Appendix A of the Examiner's Report served January 23, 1952 have not been shown above because the information for 1953 was not available. In 1951 Costa Rica accounted for 2.88 passengers per day and Group 6 (Guatemala, Honduras, Nicaragua, etc.) accounted for a total of 5.65 passengers per day.

Source: Ex. PA-1106.

[fol. 1541a] The foregoing data show southbound passengers from Areas A and B only; for the rest of the United States, the figure was 31.62 passengers in 1951 and 67.81 in 1953. Total southbound passengers per day in 1953 were 937.02 as compared with 812.5 in 1951, an increase of 15 percent. It will be noted that traffic from Area A and those areas of Latin America best served through the Miami Gateway increased from 153 per day to 230 per day, an increase of 50 percent, and that this increase was far greater than the increase from Area B or the total United States southbound traffic. It will also be noted that passengers from Area A to Panama, the Canal Zone and the South American countries in Group 1, which would be affected by a New York-Balboa through service, were 29.93 per day or 13 percent of the total Area A passengers and from Area B, 21.63 passengers or 3.3 percent of the total Area B passengers. It will also be seen that Cuba, with 79.29 passengers per day, accounted for the greatest number of passengers from Area A followed by Group 3 (Colombia, Jamaica, Venezuela) with 70.63 passengers per day.

A breakdown showing which carriers carried the southbound passengers shown in Table No. 1 follows:

Table No. 2:

Carrier	Area A		Area B	
	1951	1953	1951	1953
Pan American	48.56	74.40	306.34	307.46
Other U. S. Flag	30.79	44.42	118.64	85.59
Foreign Flag	74.08	111.31	194.02	246.03
Grand Total	153.43	230.13	619.00	639.08

Source: Ex. PA-1107

Origin and destination traffic data for September 1952 and March 1953 between th ten United States cities and 19 Latin American cities, ich account for 90 percent of the traffic moving betwee Areas A and B of the United States and Latin America, indicate that in March 195 there were about 49,000 air passengers in both directions

of which 19,500 were United States to Latin America and 29,500 in the opposite direction. The September 1952 figures show the same predominance of traffic flow from Latin America to the United States. In March 1953, New York City accounted for 23,700 passengers to and from Latin America while Miami accounted for 18,300 such passengers. These figures indicate that New York is the point of primary importance in Area A and Miami in Area B.

About 85 percent of the New York/Washington market traffic moved to the Caribbean Island area while the North Coast of South America had 3.5 percent, the East Coast of South America 5 percent, and the West Coast of South America had 6 percent of the total. However, about 19,400 of the 23,600 passengers for September 1952 and March [fol. 1542] 1953 moving between the New York/Washington market and the Caribbean Island area moved to and from San Juan which is not affected by any of the interchange proposals in this case.

Traffic for September 1952 and March 1953 between the Miami-Tampa area (Area B) and the Latin American market (Areas 1-4) was distributed as follows: Caribbean Island area, 89 percent; West Coast of South America, 6 percent; North Coast of South America, 3 percent; and the East Coast of South America, 1.5 percent. In terms of passengers moving between Miami-Tampa and the Caribbean Island group, there was a total of 33,800 for the two months of which 31,700 moved between Miami-Tampa and Havana and Miami-Tampa and San Juan. The interchange proposals here in issue do not benefit Miami-Havana or Miami-San Juan traffic.

Panagra's exhibit on origin and destination in the United States of passengers carried on Panagra-Pan American's through flights, January-March 1953, shows 100 passengers per day of which 68 were en route to or from Washington and New York as compared with 60 in 1951, an increase of 13 percent. Braniff's passengers to and from New York and Washington, January-March 1953, were 12.6 per day as compared with eight in 1951. In other words, the total passengers per day en route to or from Washington and

New York in 1953 were 80, or 40 in each direction, as compared with 68, or 34 in each direction, in 1951. This is the through traffic between the Northeast and Balboa and points south thereof served by Panagra and Braniff which would be given through-plane service under New York-Balboa interchange proposals.

A breakdown of the residence in the United States of the 4,435 through flight passengers on Panagra ariving at Miami, including those boarding at Balboa, January-March 1953, shows that 2,142 or 48.3 percent indicated travel to or via New York City and 887 or 20 percent indicated travel to or via Washington. In other words, 68.3 percent of the total indicated routing to or through New York City or Washington. Exclusive of passengers boarding at Balboa, there was a total of 3,120 passengers of which 71.1 percent indicated a routing to or through New York City or Washington.

Other Panagra traffic data show that in 1952 it had a total of 28,208 passengers to and from the United States as compared with 24,357 in 1951 and that passengers traveling to or from Miami were 24,880 as compared to 21,740 in 1951.

Eastern submitted the following summary of passengers between northeastern United States points and Latin American points to be benefited by the Eastern-Pan American-Panagra interchange proposed:

[fol. 1542a] Table No. 3:

Excluding Traffic Destined to or Originating Havana

CAB Survey Month	Total Passengers	Number of Passengers Carried By EAL	NAL	BNF	C&S
March 1953	5,378	2,511	2,048	125	39
Annual 1953[1]	67,232				
September 1952	4,629	2,076	1,654	151	7
March 1952	4,272	1,933	1,272	173	12
Annual 1952[2]	53,406				

Including Traffic Destined to or Originating Havana

March 1953	8,915	3,109	4,920	126	49
Annual 1953[1]	111,976				
September 1952	7,349	2,872	2,906	152	18
March 1952	6,712	2,356	3,234	175	21
Annual 1952[2]	84,366				

[1] Computed on the basis of the increase from March 1952 to March 1953.

[2] March and September multiplied by six.

Source: Ex. EAL-121.

Of the March 1953 traffic shown by the Board's survey between northeastern United States points and Latin American points involved in the Eastern-Pan American-Panagra interchange proposal, 364 were to or from Boston while there were 160 to or from Boston in September 1952; other New England points served by Eastern accounted for 45 passengers in March 1953 and 38 in September 1952.

Eastern also submitted the following summary of passengers exchanged between Eastern/Pan American and National and Pan American at Miami of traffic shown in the previous table:

Table No. 4:

CAB Survey Month	Number of Passengers Exchanged Between EAL—PAA	NAL—PAA
March 1953	2,728	1,817
September 1952	2,348	1,664
March 1952	2,218	1,284

Source: Ex. EAL-122

[fol. 1543] A comparison of Eastern's and National's participation in traffic between New York and Washington, on the one hand, and Latin American points currently served by Braniff, excluding Havana, shows that of the total of 2,482 passengers in March 1952 Eastern carried 400 and National 736, and of the total of 2,556 passengers in September 1952 Eastern carried 694 and National 916.

Pan American's through traffic exchanged at Miami and Braniff's through traffic exchanged at Miami/Havana, January-March 1953, follows:

Table No. 5:

	Pan American[1]		Braniff[2]	
	EAL	NAL	EAL	NAL
Area A	6,821	4,910	360	616
Area B	1,492	247	24	66
Total	8,313	5,157	384	682
Percent	61.7%	38.3%	36.0%	64.0%

[1] Exchanges at Miami, January-March 31, 1953.

[2] Exchanges at Miami/Havana, January-March 31, 1953.

Source: Ex. PA-1301.

In January-June 1951, the percent of participation in through passengers to and from Areas A and B, exchanged at Miami with Pan American, was Eastern 63.6 percent and National 36.4 percent. Interline ticket lifts at Miami for the period June 1952 through May 1953 show a total of 79,614 passengers exchanged between Pan American and Eastern and National; 50,552 or 63.5 percent of the total was between Pan American and Eastern; and 29,062

or 36.5 percent of the total was between Pan American and National. Gross billings for interline traffic for the period January 1952 through May 1953 between Eastern and Pan American were $8,845,020 and those between Pan American and National were $3,654,134.

National submitted the following origin and destination data of traffic carried by National in January-March 1953 between Areas A and B in the United States and Areas 1-4 in Latin America (the Caribbean and all of South America north of Buenos Aires and Santiago):

Table No. 6:

BETWEEN		Revenue Passengers			
Area and	Area	Jan. 1953	Feb. 1953	Mar. 1953	Total
I-IV	A	2,927	3,074	3,185	9,186
	B	291	299	363	953
		3,218	3,373	3,548	10,139

[fol. 1543a] This exhibit does not reflect passengers who originated or terminated at Havana and who traveled exclusively on National. A total of 253 Canadian passengers and 327 trans-Atlantic passengers are included in the foregoing tabulation.

Revenue passengers carried by National, January-March 1953, with Latin American origin and National destination were 4,592; revenue passengers with Latin American origins, National routings, and off-line destinations were 623; revenue passengers with National origin and Latin America destinations were 4,310; and revenue passengers with Latin America destinations, National routing, and off-line origins were 614.

An analysis of National's nonstop New York-Havana operation during the first six months of service (January-June 1953) shows that National operated 180 trips southbound with a total of 10,520 available seats carrying 5,594 passengers and 180 trips northbound with 10,522 seats available carrying 4,583 passengers or a total of 10,177 passengers for both directions.

Travel on Braniff via the East Coast gateway for the period January-March 1951 is shown below:

Table No. 7:

Year	South	North	Total
July-December 1951	1,334	1,842	3,176
1952	4,162	5,371	9,533
January-March 1953	958	1,113	2,071

Carrier Participation—No. Passengers Delivered

Connecting carrier— southbound:	July-Dec. 1951	1952	Jan.-March 1953
National (at Miami)	493	1,431	254
National (at Havana)	282	114	39
National Total	775	1,545	293
Eastern	258	1,258	355
Others	54	321	83
Local Boardings, Miami	247	1,038	227
Total Southbound	1,334	4,162	958
Connecting carrier— northbound:			
National (at Miami)	627	2,093	417
National (at Havana)	412	167	5
National Total	1,039	2,260	422
Eastern	199	1,376	304
Others	59	365	70
Miami Finals	445	1,359	317
Total Northbound	1,742	5,371	1,113

Source: BNF. Ex. pages 3 and 4

[fol. 1544] A Braniff tabulation of March 1952 and September 1950, "Air Traffic Between the United States and Braniff's Latin American Traffic Generating Areas," shows that 75 percent of March and 83 percent of the September traffic was to and from the eastern part of the United States. An analysis of the March 1952 traffic data shows

that, of the principal eastern cities involved, New York accounted for 2,583 or 50.8 percent of the total.

Revenue passengers carried by Eastern on through flights between Miami, on the one hand, and New York, Philadelphia, and Washington, on the other hand, for the period January-March 1953 follows:

Table No. 8:

Month 1953	New York-Miami	Philadelphia-Miami	Washington-Miami	Total
January	37,680	1,547	4,657	43,884
February	38,603	1,624	4,357	44,584
March	41,610	1,685	4,666	47,961
Total 3 Months	117,893	4,856	13,680	136,429

Source: Ex. EAL-119

Revenue passengers carried by National between the same points for the same period were:

January	23,693	1,409	4,402	29,504
February	27,952	1,670	4,938	34,560
March	30,383	1,610	5,472	37,465
Total 3 Months	82,028	4,689	14,812	101,529

Source: Ex. NAL-509

Foreign Air Carrier Traffic: The record contains data on foreign air carrier traffic supplemental to that summarized at pages 21 and 22 of the January 23, 1952 Examiner's Report. The proportion of total air passengers carried by foreign air carriers between the "U. S. Ports" of Miami, Key West, Tampa, West Palm Beach, New York, Baltimore, and Washington and Latin America for the year ended June 30, 1952 and for January-March 1953 follows:

Table No 9:

Area	Year Ended June 30, 1952 Total	Foreign Air Carriers	% of Total	January-March 1953 Total	Foreign Air Carriers	% of Total
Caribbean	566,512	180,679	31.9	179,169	61,564	34.4
Central America	45,386	17,868	39.4	11,531	5,317	46.1
South America	113,949	41,645	36.5	25,145	10,428	41.5
Total Latin Amer.	725,847	240,192	33.1	215,845	77,309	35.8

Source: Ex. PA-1502

[fol. 1544a] For the year ended June 30, 1951, there was a total of 558,004 passengers between the same points with 142,337 or 25.5 percent of the total using foreign air carriers. Cuba accounted for 385,468 of the 1952 total with foreign air carriers having 120,795 passengers or 31.3 percent as compared with 58,788 or 20 percent in 1951.

For the period August 1951-March 1953, Linea Aeropostal Venezolana carried 15,498 passengers between Havana and New York. For the period September 1951-March 1953, British Overseas Airways Corporation carried a total of 42,879 passengers between New York, Miami, and the Bahamas. During September 1951 through March 1953, K.L.M. carried 22,379 passengers in and out of Miami on flights operated via Havana. For the period August 1951-March 1953, Cubana carried 105,533 passengers between Miami and Cuba. For the period August 1951-March 1953, Aerovias "Q" carried 99,291 between Key West, Tampa, and Cuba.

*** ***

Delta-C&S—The Brief filed by this carrier was primarily devoted to arguing the increased necessity for a contemporaneous consideration of the Delta-C&S Havana-Miami applications with this proceeding now that Delta and Chicago & Southern are merged. The question of this carrier's applications is not present in this case, for the Board in Order Nos. E-5642 and E-5683 denied motions for consolidation of the applications of then Delta and Chicago & Southern with this case. The brief incorporates by reference a motion filed by Delta-C&S on October 8, 1953,

for immediate hearing of its Havana-Miami proposals. Under the Board's Rules of Practice, motions for consolidation of applications or for hearing of applications should be addressed to the Board unless made orally at the prehearing conference (which was not done here) in which case the presiding examiner shall present such motions to the Board for decision. Therefore, the question of hearing the Delta-C&S applications, either as a part of this proceeding or as a separate case considered contemporaneously, is not in issue in this case and is not incumbent upon the examiner to consider the argument of the carrier on this point and make findings on it.

*** ***

FINDINGS AND RECOMMENDATIONS

The evidence in the reopened record demonstrates that the volume of traffic between the East Coast of the United States and Latin America has increased since the previous hearing. The number of southbound passengers between these areas moving through the Miami Gateway averaged 869 per day during the first three months of 1953 as compared with 772 for the first six months of 1951. The greatest increase was from Area A (northeastern states) which increased 50 percent, from 153 per day in 1951 to 230 per day in 1953. It is the traffic between Area A and Latin [fol. 1545] America that would be affected by the interchanges in issue since most of Area B traffic moves from Miami and Tampa and has through-plane service to Latin America.

Panagra passengers en route to or from Washington and New York during the first three months of 1953 were 68 per day as compared with 60 per day in the first six months of 1951 and Braniff passengers en route to and from Washington were 12.6 per day in the first three months of 1953 compared with eight per day for 1951. Thus the total passengers carried were 80 per day or 40 in each direction compared to 68 per day or 34 in each direction in 1951. This is the through traffic between the Northeast and Balboa and points south served by Panagra and Braniff

which would be given through-plane service by a New York-Balboa interchange.

* * * * * *

The issue of whether the compulsory interchanges to Balboa involve overseas or foreign air transportation and the Board's power to compel such interchanges under Section 1002(i) was discussed at pages 142-145 of the Examiner's Report served January 23, 1952, and by the carriers on brief and in oral argument. Since there were no new contentions on that point set forth in the reopened hearing, no further attention will be devoted to that question herein.

* * * * * *

The evidence in the reopened hearing discloses that many difficulties experienced by Braniff at Havana in 1951 relating to adequacy of airport and terminal facilities and clearance of passengers and baggage have been or are in the process of being removed. However, the evidence discloses passengers transiting Cuba on the same aircraft are required to get out of the airplane at Havana and comply with certain health and immigration procedures at a cost of $2.50 and that efforts to eliminate this procedure have been unsuccessful. The evidence also shows that Braniff cancelled all northbound DC-6 service into Havana July 1, 1953, and operated them nonstop between Balboa and Miami since on flights operated into Havana Braniff was unable to match the competitive service of Panagra whose passengers are not subjected to these difficulties. This evidence of difficulties experienced by through passengers demonstrates that, if Braniff is to participate in any interchange to provide through-plane service, the interchange point should be Miami instead of Havana. * * *

* * * * * *

[fol. 1546] Order No. E-9109

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 23rd day of November, 1954

Docket No. 4882 *et al.*

In the matter of the

REOPENED NEW YORK-BALBOA THROUGH SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding, and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That the certificate of public convenience and necessity issued to Braniff Airways, Inc., pursuant to Order Serial No. 4793 dated May 17, 1946, be amended and issued in the form attached hereto;

2. That said amended certificate of public convenience and necessity shall be signed on behalf of the Board by its Chairman, shall have affixed thereto the seal of the Board attested by the Secretary, and shall be effective sixty days after the date of its approval by the President of the United States;

3. That the application of Eastern Air Lines, Inc., in Docket No. 5086, for authority to serve Havana, Cuba, be and it hereby is denied;

[fol. 1546a] 4. That except as otherwise granted herein, all applications consolidated herein for authority to engage in overseas or foreign air transportation be and they hereby are denied.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN

M. C. Mulligan
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

/s/ DWIGHT D. EISENHOWER

April 18, 1955

[fol. 1547]

Issued pursuant to
Order No. E-9109

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY
(as amended)

BRANIFF AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property and mail, as follows:

1. Between the terminal point Houston, Texas, the intermediate points Havana, Cuba, Balboa, Canal

Zone, Bogota, Colombia, Quito and Guayaquil, Ecuador, Lima, Peru, La Paz, Bolivia, and Asuncion, Paraguay, and (a) beyond Asuncion, Paraguay, the intermediate point Sao Paulo, Brazil, and the terminal point Rio de Janeiro, Brazil, and (b) beyond Asuncion, Paraguay, the terminal point Buenos Aires, Argentina;

2. Between the terminal point Miami, Fla., the intermediate point Havana, Cuba, and the terminal point Balboa, C. Z.

The service herein authorized is subject to the following terms, conditions, and limitations:

(1) Notwithstanding any other provision of this certificate, as amended, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate, as amended, shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

[fol. 1547a] (3) The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the effective date of this certificate, as amended; and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points prior to the effective date of this certificate, as amended. Upon compliance with such procedure relating thereto

as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein, between which service is authorized hereby.

(4) The exercise of the authority granted herein shall be subject to there being first obtained from the appropriate foreign government such operating rights as may be necessary.

(5) In operations conducted pursuant to the authorization set forth and described in route segment "1" above flights serving the intermediate point Havana, Cuba, shall originate at Houston or a point in the United States and terminate at a point in South America, or originate at a point in South America, and terminate at Houston or a point in the United States.

(6) The holder shall render service pursuant to the authorization set forth and described in route segment "2" above only on through-plane flights (a) which are operated by interchange of equipment between the holder and Eastern Air Lines, Inc., (b) which originate at New York, N. Y./Newark, N. J., and terminate at Balboa or points south thereof or originate at Balboa or a point south thereof and terminate at New York, N. Y./Newark, N. J., and (c) which do not serve points north of Miami, Fla., on Eastern Air Lines' route No. 6 other than points on the Miami-New York/Newark segment of said route.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective sixty days after the date of its approval by the President of the United States: *Provided, however,* That prior to the date on which

the certificate, as amended, would otherwise become effective the Board, either on its own initiative or upon the filing of a petition or petitions seeking reconsideration of the Board's order of November 23, 1954 (Order No. E-9109), insofar as such order authorizes the issuance of this certificate, as amended, may by order or orders extend such effective date from time to time.

[fol. 1548] IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 23rd day of November, 1954.

/s/ CHAN GURNEY

CHAN GURNEY
Chairman

(SEAL)

ATTEST:

/s/ M. C. MULLIGAN
Secretary

THE WHITE HOUSE

APPROVED:

/s/ DWIGHT D. EISENHOWER

April 18, 1955

[fol. 1549] Order No. E-9110

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 23rd day of November, 1954

Docket No. 4882 *et al.*

In the matter of the

REOPENED NEW YORK-BALBOA THROUGH SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding, and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That the application in Docket No. 4846, as amended, for approval of the Interchange Agreement between Eastern Air Lines, Inc. (Eastern) and Pan American World Airways, Inc., be and hereby is denied;

2. That the record in this proceeding be and hereby is held open for 60 days from the effective date of this order to the extent necessary to permit Eastern Air Lines, Inc., and Braniff Airways, Inc., to enter into and file with the Board for approval an interchange agreement providing for through service between New York on Eastern's route No. 6, and Balboa, Canal Zone, and points south thereof on Braniff's South American route;

3. That the record in this proceeding be and hereby is held open for 60 days from the effective date of this order

to the extent necessary to permit National Airlines, Inc. (National), and Pan American-Grace Airways, Inc. (Panagra), to enter into and file with the Board for approval an interchange agreement providing for through service between New York, on National's route No. 31, and Balboa and points on Panagra's route in South America using Panagra equipment north of Balboa;

4. That decision on the application for approval of the Through Flight Agreement in Docket No. 3787, and the National-Panagra Interchange Agreement in Docket No. 3785 be and it hereby is deferred;

[fol. 1549a] 5. That decision on the Board-instituted proceeding in paragraph "8" of Order Serial No. E-5205, adopted March 16, 1951, with respect to a compulsory interchange operation between Eastern and Braniff, be and hereby is deferred.

6. That the proceeding instituted in paragraph "4" of Order Serial No. E-5205, that instituted in paragraph "7" thereof, insofar as it relates to the extension of Eastern's route No. 6, and that instituted in paragraph "1" of Order Serial No. E-5389, dated May 18, 1951, be and they hereby are dismissed;

7. That, except to the extent otherwise granted in this order or in Order No. E-9109, issued contemporaneously herewith, or deferred or dismissed herein, all applications, petitions and proceedings consolidated herein should be denied.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN

M. C. Mulligan
Secretary

(SEAL)

[fol. 1550]

GOVERNMENT'S EXHIBIT 1131

(Emblem)

Cable Address
"PANAGRA"

PAN AMERICAN-GRACE AIRWAYS, INC.

OFFICE OF THE PRESIDENT
7 HANOVER SQUARE
NEW YORK 5, N. Y.

November 26, 1956

Board of Directors
Pan American-Grace Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

Gentlemen:

Attached are the results of a detailed planning study conducted by the Management as part of its responsibility to apprise the Directors of various conditions, both economic and operating, which are influencing the company's growth.

The attached report is an attempt to examine the financial and operating aspects of Panagra objectively and in the light of the changing air transportation picture in the Western Hemisphere.

It is abundantly clear to the Management that if Panagra is to provide for the travelling public a thoroughly satisfactory type of service between the United States and Latin America, in the face of steadily increasing foreign flag competition, it must without further delay petition the Civil Aeronautics Board for extension of its certificated routes to the United States Atlantic and Pacific seaboards which furnish the bulk of international traffic to the West Coast of South America and Buenos Aires.

[fol. 1551] Panagra's situation is a desperate one. It is unique as the only U. S. international carrier without a terminal in the United States and, moreover, the only air-

line that has been forced into an attempt to meet the public demand for its service by leasing its aircraft to not one but two other carriers.

Between 1946 and 1955, U. S. international carriers increased the total route miles operated by 112%; Panagra holds the dubious distinction of having had its route miles *decreased* by 12% in the same period.

Because Panagra's route structure, with its terminal points at Buenos Aires and the Canal Zone, is long and lean, it is hampered both by inflexibility and overhead/operating costs which are disproportionate for the industry. The fixed operating expenses which accrue irrespective of the mileage flown are inordinately high, on the basis of available ton miles, because of the route limitations. Nor would an increase of available ton miles on the present routes furnish a solution to this imbalance.

The only logical solution is the extension of Panagra's routes to markets which will share the fixed overhead expenses and permit profitable load factors.

Concomitant with these fixed expenses is the condition of inflexibility which contributes to them and at the same time fetters the operations when local political/economic reversals adversely influence traffic. Illustrative of this is [fol. 1552] the difficulty in the Argentine—an area which generated as a point of origin or destination 54% of Panagra's passenger revenue miles in 1955 and which in the first quarter of 1956 was off 17.7%. Because Buenos Aires is a crucial terminal for long haul passenger revenue, because there was no other area in Panagra's route structure which could absorb this reduction, and because it was necessary to maintain service to Buenos Aires, Panagra's overall transportation revenues barely offset the operating expenses. At the same time, Pan American's LAD, which also serves Buenos Aires as a terminal on its East Coast route and thereby suffered a traffic loss, was able to spread its fixed costs over a broad base and to absorb these reverses in other sectors of its LAD network which showed a significant increase in revenue passenger miles in the first quarter 1956/1955 of 14%.

Closely allied to the problems of inflexibility and high operating costs is the low utilization of equipment permitted by Panagra's long thin route. The maintenance of schedule regularity demanded of a first-class international carrier serving this long haul traffic requires not only a high level of aircraft, instrument, and engine maintenance but standby equipment as well. Unfortunately, there are no areas on Panagra's route which standby equipment can economically serve. Moreover, valuable flight time prior to scheduled overhaul of aircraft is frequently lost because there are fewer flying hours remaining than are required to complete the round trip to South America from the [fol. 1553] United States. Much of this loss would be eradicated by the extension of Panagra's route not only as recommended in the attached report but also by other route extensions which additional studies may prove desirable and in the public interest.

That through service between New York and Buenos Aires via the West Coast of South America is in the public interest has been manifested not only by the Panagra/Pan American Through Flight Agreement of 1946 but by the award of extensive routes to Braniff in the same year, the Braniff unsolicited Miami exemption, and approval of the Panagra and Braniff interchanges providing service to New York. The report illustrates fully the traffic pattern that has been developed in the past decade between South America and Miami via Balboa. Since 1946, the Balboa-Miami operation has grown from that of the DC-4 (5½ hours) to the DC-7B (4 hours) and is now on the threshhold of the DC-8 (2½ hours). Operations Miami-Lima nonstop will undoubtedly be required as will the traffic demand to fly New York-Lima nonstop. Such long range jet operations are patently impracticable under through flight or interchange agreements.

When Panagra and Pan American entered the Through Flight Agreement in 1946 DC-6's were on order at a purchase price of approximately $700,000 per aircraft. In January 1956, Pan American gave formal notice to Panagra that it wished, pursuant to the Agreement, to renegoti-

ate, among other matters, the investment base upon which [fol. 1554] Panagra's return was predicated. The advent of the DC-7B at a unit cost of $2,100,000 thus allegedly distorted Pan American's position with respect to the Agreement. If one were to assume such distortion to be, in fact, true; it is manifest that DC-8's at a unit cost of $5,000,000 will create even greater concern. Moreover, Pan American suggests that the basis for the calculation of charter hire and return on investment under the Through Flight Agreement should be similar to that negotiated with National by Panagra and Pan American under circumstances which virtually constituted duress. Panagra was forced into the Interchange Agreement by an ultimatum issued by the Civil Aeronautics Board and thus negotiated at an unconscionable disadvantage. Furthermore, the Panagra/National operation is financially detrimental to Panagra because its reimbursement is predicated on the lower expense levels of the domestic carrier and these are entirely unrealistic for an international carrier.

The attached report establishes that it is reasonable to expect Panagra to earn in 1957, without subsidy and before taxes, $1,062,000 operating the Balboa-Miami sector on its own certificate. These earnings are $666,000 *more* than the $396,000 it could expect as a return under the Through Flight—a return which Pan American now alleges to be excessive. With extension of the route to New York, the 1957 earnings for that sector are estimated at $365,000 versus a $358,000 loss under the National interchange. Ex- [fol. 1555] tension of the route from Balboa to California will provide additional operating earnings of $442,000.

Similarly, the interchange operation with National Airlines is inimical to Panagra's interests. The difficulties inherent in attempting to operate an international service under an interchange agreement with a domestic carrier have manifested themselves in numerous ways. They have proved conclusively that such interchanges are most undesirable not only from the international carrier's viewpoint but from that of the public interest as well. In terms of prestige, the United States has suffered and will continue to suffer unless the foreign traveller is provided the same

high quality of service during his entire flight to destination as is offered by numerous foreign flag carriers and by the U. S. flag international carrier to and from the U. S. port of entry.

Panagra's reputation and good will are suffering from the National operation of the interchange. Passenger complaints on the interchange have been numerous with respect to the poor standards of passenger service particularly aloft but at the Miami and Idlewild terminals as well. Delays on the domestic portion have been inexcusably excessive and the disruption of Panagra's schedules to South America are of vital concern. Attempts by Panagra's Management to correct these domestic deficiencies have been met not only with apathy but resistance by National.

Another illustration is the labor difficulties National has experienced with its pilots. Should a strike materialize, [fol. 1556] Panagra would suffer the interruption of through service to New York—even though it is not a party to the dispute.

Mixing international and domestic services is like mixing oil and water. When this loss of good will to Panagra is calculated along with the financial deficit resulting from the interchange operation, it is obviously imperative that the company make every effort to secure its own route and provide adequate service between the northeastern United States and Buenos Aires via the West Coast of South America.

In addition to the strictly economic factors which dictate the necessity of Panagra's application for extension of its own route from Balboa to New York and to California, another consideration must be recognized—the further obligation which a corporation has to the people who work for its success, the employees. Some of Panagra's 1400 employees have devoted twenty-odd years to the company's success and have exerted their best efforts in the belief that the company was providing a valuable service and one that would expand in scope throughout the years.

With regard to subsidy, which has been necessary to augment Panagra's meager revenues from its thin routes,

the history of the airline industry offers numerous examples of the elimination of subsidy need by the extension of routes which permit an increase in passenger and cargo [fol. 1557] revenues. It is the earnest endeavor of the Panagra Management to operate the airline independently and without the need for Federal subsidy. It is quite clear on the other hand that with the rising operating costs, and particularly extensive re-equipment costs, Panagra will need substantially greater subsidy payments to realize a 9% return after taxes than it would if granted route extensions and permitted thereby to reduce expenses per available ton mile and increase overall revenues.

I appreciate, of course, that the Directors will require time for consideration of the report herewith submitted. I most earnestly urge that the matter be approached by the Directors in the spirit in which it is submitted—that is, that the proposed route extensions are urgently required in the interest of the travelling public, which is paramount, and in the interest of the stockholders.

I plan to include this matter on the agenda of the regular Directors Meeting to be held on January 7, 1957. Thus, the Directors will be afforded ample time for deliberation.

At the meeting I shall request the Board's authority to file promptly with the Civil Aeronautics Board the application for the route extension to Miami, Washington, and [fol. 1558] New York and also to Mexico City, Los Angeles and San Francisco.

Please do not hesitate to call on me for any assistance I may be able to render.

Andrew B. Shea
President

Erwin Balluder, Esq.
E. L. Farrell, Jr., Esq.
H. J. Friendly, Esq.
F. E. Larkin, Esq.
Roger Lewis, Esq.
Franklin Moon, Esq.
W. L. Morrison, Esq.

[fol. 1560]

GOVERNMENT'S EXHIBIT 1132

(Emblem)

PAN AMERICAN WORLD AIRWAYS SYSTEM
CHRYSLER BUILDING, 135 EAST 42ND STREET,
NEW YORK 17, N. Y.

EXECUTIVE OFFICES

November 30, 1956

Mr. Andrew B. Shea
Executive Vice President
W. R. Grace and Company
7 Hanover Square
New York 5, New York

Dear Andy:

This will acknowledge, on behalf of Messrs. Balluder, Friendly, Morrison and myself, the nine-page letter which we received from you on November 27, enclosing a so-called "Management" Panagra Route Extension Study, consisting of 132 pages plus 26 annexed tables.

If this had been a true "management study", the Board of Directors would naturally have been informed about it while the large amounts of the time and effort of company employees required for its preparation were being expended. Even a quick reading is enough to show that the "study" is not a balanced and objective presentation of Panagra's situation but simply reflects the views of the Grace ownership.

Despite the foregoing, we shall give careful study to this document and will do our best to be ready to discuss it on January 7, 1957, as you request.

We are, indeed, pleased to find that the Grace ownership now agrees as to the need for through service between the Pacific Coast of the United States and points on Panagra's route. This makes it all the more regrettable that when Pan American proposed this some years ago, the Grace

interests declined to permit Panagra to enter into an interchange agreement that would have provided this needed service. We hope this through service can soon be implemented.

Sincerely yours,

/s/ Roger Lewis
Roger Lewis
Executive Vice President

[Marginal Notations—Rec'd 5:PM—11/30/56—Initials illegible—cc. JPG—Name illegible—WFC—Ed J]

[fol. 1562]

GOVERNMENT'S EXHIBIT 1134

(Emblem)

PAN AMERICAN WORLD AIRWAYS SYSTEM
CHRYSLER BUILDING, 135 EAST 42ND STREET,
NEW YORK 17, N. Y.

EXECUTIVE OFFICES

January 10, 1957

Mr. Andrew B. Shea
Executive Vice-President
W. R. Grace and Company
7 Hanover Square
New York 5, New York

Dear Mr. Shea:

The Directors of Pan American-Grace Airways, Inc. representing the half ownership of Pan American World Airways, Inc. have examined the proposal, made in your letter of November 26, 1956, that Pan American-Grace should now apply to the Government for certificates for 5700 miles of new routes. These routes would be between the Canal and Miami, over which Panagra's aircraft now fly under a 99-year Through Flight Agreement with Pan American approved by the Civil Aeronautics Board in 1947 and again in 1955; between Miami and New York, over which Panagra's aircraft now fly under an interchange agreement with National approved by the Board in 1955; and between

the Canal and California, as to which the Grace management of Panagra refused in 1954 to permit Panagra to enter into an interchange agreement with Pan American.

It is, of course, obvious, despite the effort to disguise this, that you are making this proposal for wholesale repudiation of agreements concluded with Pan American both by Grace and by Panagra with Grace's full assent, not as [fol. 1563] hold-over President of Panagra but as a senior officer of the Grace empire, whose ships parallel Panagra's route down the West Coast of South America. Although nearly 30 years of experience should have taught us how Grace regards contracts between us, we must confess our sense of shock at the utterly casual attitude taken toward agreements concluded under the circumstances of those here involved.

The Through Flight Agreement of 1946 between Pan American and Panagra and the companion agreement between Pan American and Grace were 99-year agreements, intended, as your own then senior officer swore to before the Civil Aeronautics Board, as a complete and final solution, so far as the parties were concerned, of the question of through air service north of the Canal to Miami and beyond. The agreements contain detailed provision for notice to Pan American in the event of any claim that it was failing to perform its obligations, and for arbitration if Pan American then failed to cure any such alleged defaults. We have never been, and are not now, advised of any such alleged failure on Pan American's part. Indeed, Pan American has gone beyond the 1946 agreements and proposed to you some years ago a second through flight agreement to provide the through American-flag service between California and points on Panagra's route, which is so important both to the national interest and to Pan American's interest as half owner of Panagra and as operator of the California-Canal route under a certificate approved by the President. Grace blocked this proposal, as it had previously blocked Pan American's proposals of 1938 and 1941 for through service between the [fol. 1564] West Coast of South America and Miami.

During the nearly ten years since the Through Flight Agreement has been effective, Grace has reaped its benefits,—benefits which, as your then senior officer testified, would not have been realized if Panagra had its own certificate north of the Canal. These benefits included having the through flights operated exclusively with Panagra's equipment and crews, in contrast to the industry practice of reciprocity; favorable financial terms; the maintenance of Panagra's aircraft in Pan American's shops; and the training of Panagra flight personnel by Pan American. Pan American has loyally discharged all its obligations under the Agreement,—even to the extent of making double payment to the Pan American pilots displaced by Panagra pilots on the Canal Zone-Miami route.

When we read the present Grace proposal to treat these agreements of 1946 also as mere scraps of paper, we cannot help but recall both the assurances to the Government by your senior officer ten years ago that this was intended to be a virtually perpetual contract, and your own sworn testimony, given on two separate occasions before the Civil Aeronautics Board and true today as it was then, that performance under the Agreement had been of great benefit to the traveling public and entirely satisfactory to both parties.

The concluding portion of your proposal recognizes the urgent need of improved service between the West Coast of the United States and points on Panagra's route. This is something which we have urged for some years. Grace blocked Panagra from doing this except on a basis whereby [fol. 1565] Panagra, while retaining 100% of all profit, would be guaranteed by Pan American against any loss. When Pan American agreed to accept this unheard of demand in an effort to get this needed public service started, Grace insisted that the interchange serve no point south of Lima. Finally, when a formula to meet this roadblock was developed, Grace took the position that nothing could be done to provide through American-flag service from California until all matters then at issue between the Panagra pilots and the Pan American pilots were settled. Al-

though such a settlement was reached in 1955, on a basis calling for operation of the California interchange flights exactly as Pan American had suggested, we did not receive any indication until your recent letter that you would be willing to acquiesce in through service from California.

Since Grace now recognizes the need of through service between California and points on Panagra's route, we are again submitting an equipment interchange agreement for through plane operation between San Francisco and Los Angeles and Lima and Buenos Aires via the Canal. This agreement is in line with normal industry practice, taking account of the existing agreement with respect to the Miami flights, and conforms fully with the contract made between our respective pilots. We urge the Grace directors of Panagra to join with us in authorizing Panagra to execute such an agreement, so that this long delayed public [fol. 1566] service to California may be speedily commenced.

Very truly yours,

/s/ E. Balluder
Erwin Balluder

/s/ Henry J. Friendly
Henry J. Friendly

/s/ Roger Lewis
Roger Lewis

/s/ W. L. Morrison
Wilbur L. Morrison

Directors of Pan American-Grace Airways, Inc.,
nominated by Pan American World Airways, Inc.

[fol. 1568]

GOVERNMENT'S EXHIBIT 1135

Minutes of Adjourned Regular Meeting of the Board of Directors of Pan American-Grace Airways, Inc held at the office of Pan American World Airways, Inc, 135 East 42nd Street, New York, N Y on the 10th day of January, 1957 at 4:00 o'clock in the afternoon.

PRESENT:

Messrs Erwin Balluder
Edward L Farrell, Jr
Henry J Friendly
Felix E Larkin
Roger Lewis
Franklin Moon
Wilbur L Morrison
Andrew B Shea

being all the members of the Board.

Mr Shea, President, presided. Mr Cogswell, Secretary, acted as such.

Minutes of Regular Meeting of December 3, 1956 were read and approved.

The following financial data were submitted and discussed:

Comparative Statement of Profit and Loss for the month of November, 1956 and eleven months ended November 30, 1956 and 1955.

Comparative Operating Statistics for month of November, 1956 and eleven months ended November 30, 1956 and 1955

Statement of Cash Position as at December 31, 1956 and Comparison with September 30, 1956 and December 31, 1955

Cash Position Forecast for Year Ending December 31, 1955

The President reported:

(1) Estimated Profit and Loss for 1957

(2) Negotiations had been completed for the sale to Faucett of DC-4 airplane, License No. N8816, with engines, [fol. 1569] for $550,000, as authorized by the Board at meeting of October 1, 1956.

(3) The death of William Harley, passenger service representative at Idlewild Airport and the payment to his mother of the equivalent of his salary to March 31, 1957.

The President presented for attachment to the minutes of the meeting letter of November 26, 1956 and Route Extension Study accompanying same, containing recommendations of the management as to route extensions, which had been delivered to each Director on November 27, 1956.

Mr Larkin thereupon offered the following resolutions which were seconded by Mr Farrell:

RESOLVED, that the officers of this Corporation be, and they hereby are, authorized and directed to take all steps including the filing of the necessary application to the Civil Aeronautics Board to the end of obtaining an amendment to the Corporation's certificate of public convenience and necessity authorizing it to engage in air transportation over the route between Balboa and New York and intermediate points described and recommended in the letter of the President to all Directors dated November 26, 1956 and in the Route Extension Study dated November 1956 attached thereto, copies of which were presented to each director on November 27, 1956.

RESOLVED, that the officers of this Corporation be, and they hereby are, authorized and directed to take all steps including the filing of the necesary application to the Civil Aeronautics Board to the end of obtaining an amendment to the Corporation's certificate of public convenience and necessity authorizing it to engage in air transportation over the route between Balboa, Mexico City and Los Angeles and San

Francisco as co-terminals described and recommended in the letter of the President to all Directors dated November 26, 1956 and in the Route Extension Study dated November 1956 attached thereto, copies of which were presented to each director on November 27, 1956.

[fol. 1570] Mr. Friendly presented for attachment to the minutes of the meeting letter to Mr. Shea dated January 10, 1957, signed by Messrs. Balluder, Friendly, Lewis and Morrison.

Mr. Shea stated that he would reply to the foregoing letter with the understanding that his reply letter would be attached to the minutes of the meeting

Mr. Friendly stated that the right was reserved to reply to Mr. Shea's letter and, if such reply were made, to have it attached to the minutes of the meeting.

Vote being had, Mr. Larkin's resolutions failed to pass, Messrs. Farrell, Larkin, Moon and Shea voting in favor, and Messrs. Balluder, Friendly, Lewis and Morrison voting against.

Mr. Lewis referred to the proposals made by Pan American some years ago for the establishment of through plane service from California by Panagra's chartering Pan American aircraft now flying over Pan American's route between California and Panama for operation over Panagra's route beyond, and to the failure of these proposals because of their being blocked by W. R. Grace & Co. He also referred to the present recognition by W. R. Grace & Co. of the importance of through American-flag air service from California to points on Panagra's route. He stated that, in the light of this, Pan American had revised the draft interchange agreement prepared some years ago, presented copies of a draft agreement as so revised, and asked that one of these be filed with the minutes of the meeting.

Mr. Lewis thereupon made the following motion, which [fol. 1571] was seconded by Mr Balluder:

RESOLVED, that Pan American-Grace Airways, Inc. conclude with Pan American World Airways, Inc., a suitable equipment interchange agreement for the institution of through plane service over Pan American's route from San Francisco and Los Angeles to Panama and Panagra's route beyond, such service to be provided with Pan American aircraft and flight crews, in line with the agreement reached between the pilots of the two companies, until a basis of reciprocity between the two companies had been achieved, and apply to the Civil Aeronautics Board for approval of such agreement, to the end that through American-flag air service between California and points in South America served by Panagra may be made available to the public at the earliest possible date; and

RESOLVED, that the President report to the next meeting of the Board of Directors the progress made by him in carrying out the foregoing resolution.

Vote being had, Mr. Lewis's resolution failed to pass, Messrs Balluder, Friendly, Lewis and Morrison voting in favor, and Messrs Farrell, Larkin, Moon and Shea voting against.

There being no further business, the meeting adjourned.

/s/ Andrew B Shea
Chairman

/s/ W F Cogswell
Secretary

[fol. 1573]

GOVERNMENT'S EXHIBIT 1139

PAN AMERICAN-GRACE AIRWAYS, INC.
ROUTE EXTENSION STUDY

November 1956

[fol. 1574]

PANAGRA: PROPOSED ROUTE EXTENSIONS

GENERAL STATEMENT

Panagra's basic route structure has remained static since the passage of the Civil Aeronautics Act of 1938. In fact, since the first postwar year, 1946, Panagra's route mileage has actually shrunk by 11%. This shrinkage has resulted from loss of cabotage rights in certain countries, and from abandonment of operations made obsolete by introduction of modern four-engine equipment. There has been no offsetting expansion to new markets made possible by the new equipment despite:

(1) Remarkable growth in the population, wealth, production and trade of Latin American countries. See Annex A.

(2) A doubling, between 1949 and 1955, in the number of air travelers between the United States and South and Central America, with the prospect of undiminished growth in the future. See Annex B.

(3) A highly successful common carrier operation and quality of service achieved by Panagra on its present routes. See Annex C.

[fol. 1575] (4) A forward thinking equipment program, consistently maintained since the inception of the airline, and which now provides for the early introduction of long-range jet aircraft. See Annex D.

(5) Entry of a competitive United States flag carrier possessing an extensive domestic system (Braniff Airways) into every major market served by Panagra with the exception of Chile, plus several major South American cities not on Panagra's routes. See Annex E.

(6) Route expansion of Pan American World Airways Latin American Division by 10%, and of Pan American's numerous foreign affiliate air carriers throughout Central and South America by 160%, since 1946. See Annex F.

(7) Creation or expansion of at least 25 foreign air carriers, not affiliated with Pan American, in this area of the world. Many of these carriers as well as new ones are contemplating or have actually applied for route extensions. Foreign carriers accounted for 35% of U.S.-South American air traffic in 1954-5. See Annex G.

(8) A constant and impressive route growth by U. S. certificated air carriers, other than Panagra, both [fol. 1576] domestically and throughout the world. See Annex H.

If Panagra is to be permitted to participate fully in the economic growth of the part of the world it now serves so well, it is imperative that Panagra file promptly and prosecute vigorously new route applications before the Civil Aeronautics Board. The new routes proposed in this memorandum represent a natural and logical development of Panagra's existing route structure and service pattern.

The major deficiency of Panagra's present route structure is the lack of direct access to the continental United States. The United States is the richest air travel market in the world and the principal source of Panagra's passengers and cargo. Panagra, which has been engaged in Latin American air operations since 1928, is a logical and deserving carrier to connect South America with the United States on its own certificate. Panagra is the *only* certificated United States air carrier (except for small territorial carriers) which does not have a point of entry into the United States.

The addition of the routes proposed below would create for Panagra a well integrated route structure with both a broader and a higher-density mileage base. An important [fol. 1577] effect of this is to bring Panagra's ground and indirect expense ratios into closer relation with the rest of the airline industry. They have been disproportionately

high because Panagra has not been able to enlarge and integrate its route structure to encompass stronger traffic points. To illustrate the need, Panagra carries only 10.29 revenue ton miles per route mile per day, compared to 23.29 for Pan American's competitive Latin American Division. (See Annex J).

The time for submitting the applications is ripe. Many proceedings are already on the C.A.B. docket at various procedural stages which affect Panagra's growth prospects. (See Annex K). In the past year or so the C.A.B. has made or proposed route awards to every medium-size United States air carrier except Panagra. (See Annex H). In these cases the Board has made a deliberate and far-reaching effort to expand the systems of the middle and small size trunk carriers. The same new policies which have led to the substantial domestic expansion of carriers such as Braniff, Delta, Continental and Capital apply with equal force to Panagra in the international sphere. It would be a major loss of opportunity for Panagra not to capitalize on this new and fundamental policy turn.

[fol. 1578] There is a further reason for pressing the route applications at this time. That is, if Panagra is to be more than temporarily self-sufficient, it must grow! In fact, an airline today must expand to broader markets simply to keep even with the burgeoning airline industry. The real prospect that Government subsidy support for international airlines may be eliminated means that Panagra must increase its efforts to explore and exploit every new source of revenue possible. The only major route applications which Panagra now has on file with the C.A.B. is to add the intermediate point of Bogota on Panagra's present main route and to obtain authority to operate an inland route in South America Balboa-Bogota-Iquitos-La Paz-Buenos Aires. However, these proposals to improve Panagra's service within South America, important as they are, do not meet Panagra's central need—to gain the full revenues from U.S.-South America West Coast air traffic.

The proposed route applications presented here are Balboa-Miami, Miami-Washington/New York, and Balboa-Mexico City-Los Angeles/San Francisco. Other possible route extensions have been and are being studied.

[fol. 1579]

PART ONE
BALBOA-MIAMI

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PART ONE

BALBOA-MIAMI

A. Nature of Application

The application is to extend Panagra's route 1,159 miles north from Balboa to Miami, an increase of 21% in unduplicated route mileage operated. The unrestricted certificate would permit Panagra, on a scheduled basis, to overfly Balboa on flights between Lima and Miami, to carry Balboa-Miami local passengers on those through flights landing at Balboa, and to operate local turnaround service between Balboa and Miami.

It is contemplated that operations initially would be limited to through flights and that Balboa would not be overflown.

Direct entry into Miami, of course, would eliminate the need for the existing through flight arrangement with Pan American over its Balboa-Miami segment.

B. Reasons for Application

As will be developed more fully below, this extension commends itself for the following reasons:

(1) It is the most natural extension traffiewise. Almost one-half of the total number of passengers carried by U. S. air carriers over this segment originate at or are destined to points on Panagra's present routes south of Balboa. One-half of Panagra's long haul traffic goes through Miami. In the first year of operation Panagra would carry in excess of 36,000 through passengers between Miami and points south of Balboa.

(2) It is the most profitable extension possible to Panagra producing an estimated $1,062,000 operating

—7—

[fol. 1581] profit in the first year of operation. The sector requires no additional flight equipment. It

would not require any new capital investment or developmental expense, except for the possible establishment of sales offices in Miami and New York.

(3) Panagra would need no subsidy to operate the route. In fact, commercial revenues from Panagra operation of the Miami-Balboa segment would materially help in offsetting the possible loss of Government subsidy support to the rest of Panagra's system.

(4) Panagra aircraft and Panagra pilots already fly over this segment, while the presently certificated carrier —Pan American—offers only minimal service of its own.

(5) It would provide the most direct and important entry into the continental United States for Panagra, the only major U. S. certificated carrier without a terminal in the United States.

(6) It would cure latent difficulties in continuing to operate under the oppressive but still prevailing Pan American Through Flight Agreement. Independent operation would net Panagra an estimated $666,000 more per year before taxes than Pan American would pay Panagra under the existing Through Flight Agreement.

C. Background of Application

Only one previous application has been made formally to the Civil Aeronautics Board to extend Panagra north from Balboa to a terminal within the United States. That application was not dealt with on the merits.

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[fol. 1582] In December 1941 W. R. Grace & Co. petitioned on behalf of Panagra to have Panagra's certificate amended so as to make the northern terminal of its route a point or points in the eastern United States, specifying Miami, Tampa or New Orleans (Docket 707). No formal action was taken on this application. In September 1942 the Civil Aeronautics Board instituted on its own motion the Panagra Terminal Investigation to determine whether Panagra should be extended into the United States (Docket 779).

Pan American intervened to oppose such extension. After a long hearing, the Board issued an order in May 1944 disclaiming jurisdiction to extend Panagra into the United States on W. R. Grace & Co.'s petition (4 C.A.B. 670). The Board's order was reversed by the Second Circuit Court of Appeals in February 1946. The case was remanded to the Board for determination of whether Panagra should be treated as applying for the extension and if so, for action on the merits of the application (154 F.2d 271). Pan American promptly sought review of the court's decision before the United States Supreme Court.

Shortly thereafter, in May 1946, Braniff Airways was awarded extensive routes in South America competitive with those of Panagra. (In awarding these routes to Braniff the Board indicated its receptiveness to a Miami-Balboa application *by Panagra*. Latin American Air Service Case, 6 C.A.B. 857, 914.) The following month, June 1946, Peruvian International Airways filed an application for a foreign air carrier permit to operate between Lima and New York City. (The permit was granted in July 1947, 8 C.A.B. 229.)

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[fol. 1583] Panagra was thus faced with the immediate threat of extensive U.S. and foreign competition over its routes, and with further protracted and expensive litigation before the C.A.B. and in the courts before its corporate right to apply for entry into the United States could be conclusively determined. Panagra therefore entered into a Through Flight Agreement with Pan American in July 1946. The Agreement provides, inter alia, that at Panagra's request its aircraft originated or destined south of Balboa will be flown by Panagra pilots over Pan American's route between Balboa and Miami. Pan American receives the passenger, freight and mail revenues allocable to this segment and pays Panagra direct expenses of the operation, including pilots' wages, plus depreciation on the aircraft for time over the segment and a return on Panagra's investment in the aircraft. The parties to the Agreement, and later the C.A.B., thus recognized that one-plane through service by Panagra into Miami is a public necessity.

The Through Flight Agreement was approved by the C.A.B. in May 1947 for a three year period (8 C.A.B. 50), and operations were commenced almost immediately. Upon application of the parties, the Supreme Court dismissed as moot Pan American's petition for review of the Second Circuit decision (332 U.S. 827). The C.A.B. has subsequently extended its approval of the Through Flight Agreement. This was done most recently in connection with approval of the National Interchange Agreement (Docket 4882), when approval of the Through Flight Agreement was extended to December 31, 1960 or termination of the

[fol. 1584] Pan American-Grace-Panagra antitrust suit, whichever is the earlier (Order No. E-9481, August 10, 1955).

D. Change of Situation

Although conditionally approved until 1960, the Pan American Through Flight Agreement remains subject to the Civil Aeronautics Board's continuing authority to modify, suspend or terminate its approval of the Agreement. As will be developed below, the different set of facts existing in 1956—ten years after the execution of the Agreement in 1946—warrants a reconsideration of the Agreement's value to the sound development of air transportation.*

This issue was not raised in the recently concluded proceedings concerning the National Interchange Agreement. That proceeding stemmed from a case begun in 1949 and in which hearings were held in 1951. Introduction of the through flight issue in the latter stages of that proceeding, in 1954 and 1955, would only have obscured the primary interchange issue to be decided by the Board—the need for Panagra aircraft to fly through to New York from South America. Now that the need has been recognized and Panagra aircraft are flying through to New York, attention can be given to the separate problem of the Miami-Balboa Through Flight Agreement.

* In this connection, it should be noted that the Attorney General of the United States has charged that the Agreement is unlawful.

The changed situation is due to five major developments which will be discussed separately below:

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(1) Growth of Through Traffic and Service

a. *Balboa-Miami is an Integral Part of Panagra's Traffic Pattern.*

The substantially increased volume of traffic carried between Miami and points south of Balboa since 1946 has made the Balboa terminal point for Panagra's route more of an anachronism than a logical point to split traffic rights. The growth in the annual number of Panagra through passengers carried over the Miami-Balboa segment is shown below:

TABLE I

Growth of Panagra through Traffic Between Balboa and Miami

Year	No. of Thru Passengers	Increase Index (1948 = 100)[1]
1946	10,401	75
1947	13,411	97
1948	13,858[2]	100
1949	17,461	126
1950	17,571[3]	127
1951	20,827[3]	150
1952	24,648	178
1953	25,566	184
1954	27,469	198
1955	29,878	216

SOURCE: Company records.

[1] 1948 was first full year of operation of through-flights.

[2] Because of a temporary change in the procedure for reporting interline traffic, the records of Panagra through passengers are incomplete for 1948. The above represents an estimate based on ticket analysis for a four-month period.

[3] Because the accounting department was moved from Lima to New York during 1950, the records of Panagra through passengers are not complete for 1950 and 1951. The above represents an estimate based on figures for seven months in 1950 and nine months in 1951.

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The relative importance to Panagra's operations of the Balboa-Miami through passengers who are now carried by Pan American can be further shown as follows:

TABLE II

Revenue Passenger Miles on Through Flights as Percent of Panagra System

Year	Balboa-Miami Thru Flights (000)	Panagra System Total (000)	Balboa-Miami as Percent of System
1948	16,061	103,741	15.5%
1949	20,237	105,968	19.1%
1950	20,365	104,220	19.5%
1951	24,138	127,784	18.9%
1952	28,567	133,288	21.4%
1953	29,631	137,395	21.6%
1954	31,837	150,614	21.1%
1955	34,629	164,329	21.1%

The major portion of Panagra's traffic flow centers on Miami; its long haul routes depend upon planes landing at Miami. This is indicated by the fact that in 1954, 50% of Panagra's long haul passengers enplaned or deplaned at Miami. This is to say that of the 42,308 passengers who traveled 1,000 miles or more on Panagra's routes aboard the same plane, 21,175 went through Miami. This clearly indicates the substantial, indeed, crucial traffic relation Miami has with Panagra's authorized operations south of Balboa. It is fair to say that no other U. S. air carrier has been denied access to a market so vitally tied to its existing system.

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b. *Panagra's Through Passengers Constitute the Principal Traffic Between Balboa and Miami.*

Although Panagra does not have a certificate, Panagra through passengers provide a major part of the total traffic volume moving over the segment. As shown below, Pan-

agra through passengers have increased until they now represent almost one-half of all air passengers traveling between Miami and Balboa via United States flag carriers:

TABLE III

Number of Balboa-Miami Revenue Passengers on U.S. Flag Carriers

(Totals for March and September Only for Each Year Indicated)

Year	Panagra Thru	Pan Am Local	Braniff Thru	Braniff Local	Total	Panagra Thru as % of Total
1952	3,666	3,077	1,691	710	9,144	40.1%
1953	4,178	2,715	1,760	736	9,389	44.5%
1954	4,911	2,972	1,625	653	10,161	48.3%

SOURCE: Official C.A.B. Air Line Traffic Surveys.

In 1954, Panagra through passengers comprised an estimated 62% of the passenger movement, including both local and through, carried by Pan American on the through flights and its own local flights:

TABLE IV

Number of Pan American Local and Panagra Through Passengers between Balboa and Miami

1954	P A A Local	Panagra Thru	Total	Thru as % of Total
March	1,483	2,019	3,502	57.7%
Sept.	1,489	2,892	4,381	66.0%
Total	2,972	4,911	7,883	62.3%

SOURCE: Official C.A.B. Air Line Traffic Surveys.

[fol. 1588] —14—

c. *Panagra's Through Flights Have Carried Most of Pan American's Local Passengers.*

Panagra through flight aircraft have handled almost all of the Pan American local passengers. In 1954 an estimated 80% of Pan American local passengers were carried on the Panagra through flights:

TABLE V

Number of Balboa-Miami Revenue Passengers Carried on Panagra Through Flight Aircraft

Month in year 1954	March	Sept.	Total
Total PAA local (CAB Surveys)	1,483	1,489	2,972
Panagra Thru via PAA (CAB Surveys)	2,019	2,892	4,911
Total Local and Thru	3,502	4,381	7,883
Total Local and Thru carried on thru planes (Balboa logs)	3,275	4,051	7,326
PAA local carried on PAA local planes	227	330	557
% of total PAA local	15.3%	22.2%	18.7%
PAA local carried on Panagra thru planes	1,256	1,159	2,415
% of total PAA local	84.7%	77.8%	81.3%

Because Pan American cut its local flight schedules in 1955, the through flights carried an even higher percentage of the Pan American local passengers than in 1954. By 1956, Pan American eliminated all Balboa-Miami nonstop local flights.

The following schedule changes show that since inauguration of the through flights in 1947 Pan American has been able to reduce its own local service to a minimal level and to rely almost entirely upon available space on the through flights for its local passengers:

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TABLE VI

Average Weekly Nonstop Balboa-Miami Round Trip Frequencies

Year	Panagra Through Flights	Pan Amerian Local Flights	Total
1946	0	10	10
1947	4	10	14
1948	7	7	14
1949	8	4	12
1950	9	2	11
1951	10	3	13
1952	10	3	13
1953	10	2	12
1954	11	2	13
1955	13	1	14
1956	14	0	14

SOURCE: Official Airline Guide.

Since the beginning of 1956, Panagra DC-7B first class and DC-6B tourist through flight aircraft have offered a weekly nonstop capacity of 1,736 seats between Miami and Balboa. Pan American aircraft on the other hand have offered no nonstop Miami-Balboa service. Pan American did schedule three DC-4 tourist Miami-Kingston-Balboa-Medellin frequencies per week, or a total potential of 372 seats which could be used by Miami-Balboa passengers. However, these planes are not competitive with the Panagra through flights because they are markedly slower, nonpressurized and use a less direct routing.

The volume of through traffic has made the through flights a necessity. The above tables show that the through flights have been able to handle not only the primary through traffic but also the local passengers between Miami and Balboa without a duplication of effort.

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(2) Reduction or Elimination of Subsidy

The additional earnings to be gained from Panagra certification over the Balboa-Miami segment would partially

offset the effect of a substantial reduction or elimination of Government subsidy. Such a reduction or elimination appears likely in view of the Board's decisions in recent international mail rate cases and the Staff's position in the pending Panagra mail rate proceeding.

It is abundantly clear that the days of substantial airline subsidization are past. It is fair to say that the prevailing attitude of the Congress, the Bureau of the Budget, the Post Office Department and the Civil Aeronautics Board is to insist that airlines pay their own way as soon as possible. The Government has in recent months indicated its readiness to take drastic steps to spur this development.

This new Governmental subsidy policy represents a fundamental change from the situation existing in 1946 and 1947 when the Through Flight Agreement was negotiated and approved. Panagra must and wants to face this new development by seeking to procure every additional source of commercial income that is reasonably related to its operations and capacity. As will be pointed out in Section E, the estimated profits from an independent Balboa-Miami operation by Panagra would aid measurably in assuring its self-sufficient status.

(3) Difficulties under the Through Flight Agreement.

There are latent difficulties in continuing to operate under the Through Flight Agreement.

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A difficulty (which is somewhat beyond the latent stage) concerns one of the basic objectives of the Agreement. This is the provision that Panagra crews operate Panagra aircraft over the Through Flight sector certificated to Pan American in order to enable Panagra pilots and aircraft to be based within the United States.

It was recognized that Panagra is the only major U.S. flag air carrier that does not have a certificated terminus in the continental United States. Such a terminus is virtually imperative for a U.S. carrier, not only for aircraft maintenance reasons but also for personnel reasons. Otherwise, insoluble problems are created both in obtaining and

in retaining qualified American pilots, mechanics and other U.S. citizen personnel. Few such persons are willing to join or stay with an airline when there is no chance of their eventually being based in the United States. They naturally do not wish to preclude themselves or their families entirely from American community life, especially American schools for their children. It was thus a necessity that Panagra arrange for its pilots to operate the through flights into Miami.

However, it must also be recognized that the Pan American-Panagra Through Flight Agreement is the only agreement of an interchange nature in the industry which does not provide for equal flying time by pilots of one interchange partner over the route of the other interchange partner. Since 1946 such a provision has become an ALPA policy in all interchange type arrangements. ALPA has taken a critical attitude towards this aspect of the Through Flight Agreement, as have the Pan American

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[fol. 1592] pilots. Since 1952 Pan American has been required as a result of collective bargaining to pay its pilots trackage overflight pay. However, in a recent C.A.B. mail rate order affecting Pan American's Latin American Division, the C.A.B. disallowed for subsidy purposes in 1955 a PAA expense of $76,000 for trackage pilot pay on Panagra through flights (Order No. E-9869, finalized by Order No. E-9889).

This relatively new union policy, which might have an equitable application in the normal interchange situation, thus conflicts with a major and valid objective of the Through Flight Agreement. A revision of the Agreement cannot cure the problem of overflight pay to Pan American's pilots without destroying a basic objective of the Agreement. As pointed out, it is imperative that Panagra pilots be able to operate the flights over this segment so as to permit Panagra, economically, to base them in Miami. Nor can Panagra afford to reimburse Pan American for its overflight payments. Panagra will be required to utilize every possible cost saving to attain a self-sufficient status and cannot indulge in uneconomic expenditures which are

certain to be disallowed in mail rate proceedings. The overflight pay problem can be eliminated on a sound economic basis only by authorizing Panagra to operate into Miami on its own certificate.

That there are other latent difficulties in the operation of the Through Flight Agreement is indicated by the fact that on January 31, 1956 Pan American requested negotiation under certain major provisions of the Agreement. Pan American has indicated that it wishes to adjust basic aspects of the existing Through Flight arrangement such as

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[fol. 1593] the definition of the investment base on which a return will be paid and the rate of return on investment.

(4) Effect of Operations into New York.

The recent National Interchange Agreement dated August 4, 1955, permits Panagra aircraft to fly directly into New York from Miami, thus firmly establishing a one-plane service pattern over the 5,680 air route miles between New York and Buenos Aires via Miami and Lima. The transportation economics of this long haul service has reduced Pan American's operation of the relatively short Balboa-Miami segment to little more than a burdensome and non-functional legalism.

Rather than an extension into new and heretofore unserved areas, as the C.A.B. in 1944 regarded the application, award of the Miami-Balboa segment to Panagra would be simply filling in an established service pattern. The distance from Miami to Balboa is only 20% of the distance from New York to Buenos Aires.

The C.A.B. in its 1944 order said:

> "However, the principal consideration which influences us is the fact that to extend the Panagra system from the Canal Zone to a point in Florida would constitute a basic transformation of the character of the carrier. Panagra, now a connecting carrier as to through traffic between the United States and South America, would be made a carrier directly serving that traffic—and serving moreover in competition with an affiliated com-

pany. There is a fundamental difference between the position of a carrier whose routes stop so far short of the continental United States as those of Panagra and which depends upon connecting carriers for access to traffic to and from that area, and a carrier which has direct access to the continental United States over its own system."

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[fol. 1594] It can no longer be said, in view of existing one-plane operations between Buenos Aires and New York, that extension from Balboa to Miami would effect a "basic transformation of the character" of Panagra. Moreover, notice should be taken of the fact that Panagra's general offices are located in New York City, and that its operational and maintenance headquarters are located in Miami. For the last ten years Panagra aircraft and crews have been regularly serving the traffic south from Miami. Certification into Miami would be recognition of this fact.

It is significant to note that in 1954 the average trip length per passenger for all international and overseas traffic of U. S. flag air carriers was 1,314 miles.* This is 13.4% longer than the 1,159 miles between Miami and Balboa. In 1946, the year in which the Through Flight Agreement was signed, the average passenger trip length for U. S. international carriers was only 1,057 miles. Thus, the evolution of basic transportation patterns since 1946 has made the Miami-Balboa leg a less than average trip for international air passengers. Could the addition of such a segment effect a "basic transformation" of the United States fourth largest international air carrier? Panagra's own average trip length grew from 857 miles in 1946 to 1,178 miles in 1955.

(5) DC-8 Jet Service

The Pan American Through Flight Agreement was ne

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[fol. 1595] gotiated and signed in a period of DC-4 opera-

*SOURCE: U. S. Civil Traffic Forecasts 1960-1965, C.A.A. August 1955, p. 20.

tions. Its terms were geared to these aircraft and the DC-6s for which orders were then placed.

The DC-6 had a gross takeoff weight of 93,000 pounds and a maximum range, with space limited payload plus fuel reserve, of 2,000 miles. Its cruising speed was approximately 300 miles per hour. The capacity of the DC-6 was 52 passenger seats and approximately 5,000 pounds of cargo and baggage. The purchase price was about $700,000.

Since then, DC-6Bs and DC-7Bs have replaced the DC-6 in the operation of the through flights. By 1960 and 1961, for which preparation must now be made, through flights will be operated with DC-8 jet aircraft. The Panagra Board of Directors has authorized the purchase of four of these new planes powered by the large Pratt and Whitney J-75 turbine engines, with an option on an additional two planes. The first of these will be delivered in early 1960.

Initial estimates by the manufacturer indicate that the DC-8 jet transport will have a gross takeoff weight of 275,000 pounds, triple that of the DC-6. Its range, with payload and fuel reserve, will be 4,000 miles, double that of the DC-6. Cruising speed of the DC-8 will be in excess of 550 miles per hour, 250 miles per hour faster than the DC-6 (and more than twice as fast as the DC-4). Capacity of the DC-8 will be 125 passenger seats and 13,500 pounds for cargo and baggage. This is more than double the capacity of the DC-6. The purchase price of the DC-8 is in excess of $5,200,000 or almost *seven* times the cost of the DC-6.

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[fol. 1596] The coming introduction of DC-8 flights over Panagra's routes will undoubtely create an entirely different type of operation from that which was possible or contemplated in 1946 and 1947. Balboa landings will no longer be operationally necessary, and according to reasonable traffic forecasts upon which the acquisition of the jets was based, it is entirely possible that the landings will not be desirable traffiewise on all flights between New York and Miami on the north and Lima and Buenos Aires on the south.

Balboa-Miami is but a 2½ hour flight for a 550-mile per hour DC-8. The flight took the DC-6 4½ hours.

A Miami-Lima flight will take the DC-8 only 6 hours, and Buenos Aires will be only 3½ hours beyond Lima. This compares to an elapsed DC-6 time from Miami to Lima, via Balboa, of 10½ hours, and beyond Lima to Buenos Aires of 6½ hours.

The nature of jet service will thus require authority to overfly Balboa on some trips.

Prorating the fares, control of aircraft and costs if and when a non-stop flight is operated to the United States from a point south of Balboa is no answer. Such an arbitrary splitting of control and costs in mid-flight is unprecedented and undesirable. If non-stop service between two points is convenient and necessary to the public, as well as technologically feasible, the Act would seem to require that a certificate for the service should be awarded to one carrier, not two, to operate the service—unless a second *competing* service is warranted by a large volume

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[fol. 1597] of traffic and an indicated insufficiency of service. The certificate requirement of the Act is based on the almost axiomatic consideration that a carrier which retains all the revenues and control of a flight will provide better and more efficient service.

Moreover, Panagra should not be made dependent upon Pan American in the operation of its DC-8s, which will provide a highly competitive service to Pan American jet aircraft operating to Buenos Aires via the east coast of South America.

(6) Summary.

To recapitulate, the following developments have occurred since 1946 when the Through Flight Agreement was signed:

1. Growth in through traffic and need for only minimal local service operations Balboa-Miami in addition to through flights.

2. Reduction or elimination of Government subsidy support to Panagra.

3. Union and financial difficulties in continuing to operate under the Agreement.

[fol. 1598] —24—

4. Firm establishment of a Buenos Aires-New York traffic pattern via Miami and Lima.

5. Coming introduction of larger, long-range and highly expensive jet aircraft.

These new developments have rendered the Through Flight Agreement an instrument unconducive to the sound development of air transportation as required by Section 2 of the Civil Aeronautics Act. The new developments have effected a change of situation sufficient to demand a re-examination of the Agreement by the Civil Aeronautics Board. The situation requires recognition of the natural traffic flows which now exist and replacement of the Through Flight Agreement with a Panagra certificate.

[fol. 1599] —25—

E. Estimate of Profit for Future Year

If Panagra itself were to operate Balboa-Miami in 1957 with the same frequencies and equipment as are presently operated under the Through Flight Agreement, it is estimated that the profit and loss statement for that sector would appear as follows:

1957 Profit and Loss Estimate
Panagra Operation of Balboa-Miami Sector
(Dollar amounts expressed in thousands)

Operating Revenues	
Passenger	$ 4,442
Mail Pay—U.S.	296
Mail Pay—Foreign	161
Freight	342
Excess Baggage	215
Total Scheduled Transportation Revenue	$ 5,456
Other Transportation Revenues	—
Total Operating Revenues	$ 5,456

Operating Expenses	
Flying Operations	$ 1,165
Direct Maintenance—Flight Equipment	488
Depreciation—Flight Equipment	522
Total Direct Flying Operations Expense	$ 2,175
Ground Operations	$ 458
Ground and Indirect Maintenance	341
Passenger Service	355
Traffic and Sales	650
Advertising and Publicity	250
General and Administrative	149
Depreciation—Ground Equipment	16
Total Ground Operations Expense	$ 2,219
Total Operating Expenses	$ 4,394
Net Operating Income Without Federal Subsidy and Before Income Taxes	$ 1,062
Less Estimated Return on Investment before Taxes from Through Flight Agreement in 1957	$ 396
Net Annual Financial Gain from Independent Operation	$ 666

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[fol. 1600] As shown, Panagra's estimated 1957 net operating profit, before federal income taxes and without subsidy, for the sector would be $1,062,000. This estimate is after a full determination of expenses on an additional cost basis, giving effect to a DC-7B and DC-6B operation for the entire year. Traffic and revenues were estimated on a conservative basis. An analysis of the estimated traffic, revenues and expenses is provided in Sections F, G and H immediately following.

The profitable results of an independent Balboa-Miami Operation must be compared to the profit that would be

obtained by continuing to operate under the Through Flight Agreement. It is estimated that under the provisions of the Agreement as presently in effect, Panagra would receive from Pan American in 1957 only $396,000 (before federal income taxes). This amount is computed on the current C.A.B. subsidy allowable basis of a 9% return after taxes (14.5% before taxes) on an allocated investment in flight equipment of $2,633,000. See section J below.

Consequently, Panagra stands to earn in 1957 $666,000 more from an independent operation than by continuing to operate under the Through Flight Agreement.

Moreover, the profit estimate for an independent operation assumes an average passenger load factor of only 56.7%. This load factor results from a conservative analysis of actual Miami-Balboa traffic levels and is somewhat below Panagra's system experience. Panagra aircraft had an average load factor of approximately 58% in 1955, including both through and local passengers over the through flight sector.

[fol. 1601] —27—

F. Estimate of Traffic for Future Year

In the year 1957, it is estimated that Panagra would carry 36,256 through passengers, i.e., those passengers traveling through Balboa in Panagra equipment to or from a point south of Balboa on Panagra's routes. This represents a normal traffic increase of 10% compounded annually over the number of through passengers actually carried on the through flight aircraft in 1955.

It is estimated that Panagra would in addition carry 16,113 local passengers, i.e., those passengers traveling over the through flight sector in Panagra equipment who enplane or deplane at Balboa. This represents a decrease of 20% from the number of local passengers carried by the through flight aircraft in 1955. The reason for the decrease, in spite of an anticipated 10% annual increase in the local traffic level, is to account for competitive non-stop flights which Pan American might provide.

The resultant total of 52,369 local and through passengers that Panagra would carry over the Balboa-Miami sector in 1957 would provide daily DC-7B and daily DC-6B through flights in each direction with an average passenger load factor of 56.7%.

The relative number of first class and tourist passengers as estimated for 1957 and the actual number for 1955 are as follows:

	Miami-Balboa						
	Local PAX		Through PAX		Local & Through		
Year	1 Cl.	Tourist	1 Cl.	Tourist	1 Cl.	Tourist	Total
1957 (Est.)	5,446	10,667	18,744	17,512	24,190	28,179	52,369
1955	7,857	12,304	15,905	13,973	23,762	26,177	49,939
% Incr./ (Decr.)	(30.7%)	(12.6%)	17.8%	25.3%	1.8%	7.6%	4.9%

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[fol. 1602] The 1955 figures are based on the recorded number of revenue passengers carried over the through flight sector as recorded in the Panagra station logs at Balboa.

The 1957 traffic estimate is believed conservative for the following reasons:

(1) With respect to the local passengers, it is assumed that Pan American would provide competitive nonstop local flights in the event that Panagra were to have an independent Miami-Balboa operation of its own. It is anticipated that Panagra will be able to retain two-thirds of the local passengers to be carried by the through flights in 1957. This is a cautious estimate because: (a) Panagra is already well established and known in the local market; (b) by reason of through traffic support Panagra will be able to continue to provide twice daily frequencies each way; and (c) by reason of the National interchange Panagra will be able to provide one-plane service to Balboa from New York and Washington while Pan American cannot.

(2) Panagra's system experienced a load factor of 59.6% in 1955, 2.9 percentage points above the load factor allowed for Miami-Balboa in 1957.

(3) Actual Miami-Balboa through flight load factors averaged approximately 58% in the year 1955.

(4) Miami-Balboa through passengers showed a weighted average increase of 10.9% over the past five years.

(5) The full effect of the increased tourist frequencies by Panagra aircraft (increased from 5 to 7 per week in each direction in June 1955) will not be felt until 1956.

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[fol. 1603] The 1957 traffic estimates for the through flight sector have been developed in detail as follows:

The Balboa logs reveal that during 1955, 49,939 full fare and half fare passengers flew between Miami and Balboa on Panagra equipment, broken down as follows:

Passengers on Panagra Through Flights in 1955

Local PAX	Through PAX	Total All PAX
20,061	29,878	49,939
40.2%	59.8%	100.0%

Local PAX		Through PAX		Total All PAX	
1 Cl.	Tourist	1 Cl.	Tourist	1 Cl.	Tourist
7,857	12,204	15,905	13,973	23,762	26,177
39.2%	60.8%	53.2%	46.8%	47.6%	52.4%

Revenue passenger miles for scheduled operations of the Panagra system increased in the past four years as follows:

Year	Revenue Passenger Miles (000)	% Increase over Previous Year
1955	160,681	7.8%
1954	149,099	9.6%
1953	136,038	2.1%
1952	133,186	5.9%
1951	125,784	—
Weighted Average % Increase		6.9%

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[fol. 1604] Revenue passenger miles of through passengers over the through flight sector increased during the past four years as follows:

Year	Revenue Passenger Miles (000)	% Increase over Previous Year
1955	34,629	8.8%
1954	31,837	7.4%
1953	29,631	3.7%
1952	28,567	18.3%
1951	24,138	—
Weighted Average % Increase		10.9%

While revenue passenger miles for the scheduled operations of Panagra increased an average of 6.9% over each of the past four years, revenue passenger miles of through passengers over the through flight sector increased by an average of 10.9% each year. Therefore, a 10% increase during 1956 and 1957 for passengers using the through flight sector on Panagra equipment can be conservatively predicted, especially in view of the now increased frequency of Panagra tourist flights.

Estimated Total Passengers Using the Through Flights in 1957

1955 49,939—Total Through Flight PAX in 1955
4,994—Estimated 10% increase in 1956

1956 54,933—Estimated Total Through Flight PAX in 1956
5,493—Estimated 10% increase in 1957

1957 60,426—Estimated Total Through Flight PAX in 1957

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[fol. 1605] In 1955 60% of the passengers carried on the through flights were through passengers and 40% were local. The same experience in 1957 would produce the following results:

Estimated Passengers Using Through Flights in 1957
Without Increased PAA Competition

Local PAX	Through PAX	Total PAX
24,170	36,256	60,426

Therefore, Panagra aircraft could expect to carry 24,170 local and 36,256 through passengers over the through flight sector in 1957—provided Pan American does not reinstate local nonstop service between Balboa and Miami.

Even if Pan American were to put on competing local flights, it is estimated that Panagra would keep virtually all of the through traffic. It can be expected that PAA competitive flights would take one-third of the indicated local traffic. This indicated local traffic, as shown by the Balboa logs, is actually overstated in that some through flight passengers deplaned at Balboa for a layover and then continued on at a later date. Thus, the estimated PAA diversion allows for somewhat more than one-third of the local traffic.

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[fol. 1606] It is expected that PAA will keep all of its present local traffic carried by its own equipment plus any increases in that traffic. In other words, there would be no diversion of local traffic by the through flights.

Estimated Passengers Using Through Flights in 1957
With Increased PAA Competition

Local PAX	Through PAX	Total PAX
16,113	36,256	52,369

Between June 1, 1955 and December 31, 1955, when the increased tourist frequency was in effect over the Miami-Balboa sector, the Balboa logs show the following breakdown between first class and tourist passengers:

% of Total Local PAX			% of Total Through PAX		
1 Cl.	Tourist	Total	1 Cl.	Tourist	Total
33.8%	66.2%	100.0%	51.7%	48.3%	100.0%

Assuming roughly the same experience in 1957, the results are:

[fol. 1607] —33—

Estimated Passengers Using Through Flights in 1957
With Increased PAA Competition

Local PAX		Through PAX		Total PAX	
1 Cl.	Tourist	1 Cl.	Tourist	1 Cl.	Tourist
5,446	10,667	18,744	17,512	24,190	28,179

Therefore, in 1957 Panagra could conservatively expect to carry 24,190 first class passengers and 28,179 tourist class passengers.

With 58 seats northbound and southbound on the DC-7B first class flights and a daily frequency each way, the first class passenger load factor is estimated at 57.8%.

With 70 seats northbound and southbound on the DC-6B tourist class flights and a daily frequency each way, the tourist class passenger load factor is estimated at 55.8%.

The result is an overall passenger load factor of 56.7%. From past experience this estimate would appear conservative.

[fol. 1608] —34—

G. Estimate of Revenues for Future Year

Based on the above passenger traffic forecasts, it is estimated that Panagra's Balboa-Miami passenger revenues for 1957 will be $4,442,000. Compensatory U. S. mail pay, foreign mail pay, freight, and excess baggage revenues are estimated to add an additional $1,014,000, resulting in total operating revenues of $5,456,000 for the sector. The profit forecast indicates that there will be no subsidy need for operation of the sector.

(1) Passenger Revenues

Balboa-Miami one-way passenger fares are as follows:

First Class	$110.00
Tourist Class	94.00
Excursion Class (Saleable in Panama only)	62.50

Reducing the one-way fares 15% to cover half fares, round trip discounts, and reduced fares results in the following ticket yields:

First Class	$ 93.50
Tourist Class	79.90
Excursion Class	53.13

The number of Balboa-Miami passengers is estimated for 1957 in Section F above as follows:

First Class	24,190
Tourist Class	28,179

Of the 28,179 tourist passengers, 10,667 are local tourist passengers. If 50% of them are northbound, or 5,334,

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[fol. 1609] and half of this number take advantage of the special excursion rate provided by IATA carriers for northbound passengers at Balboa only, it is estimated that 2,667 passengers will fly north at the reduced rate. In all 8,000 tourist class local passengers will pay the regular tourist fare.

Estimated passenger revenues for the Miami-Balboa segment for 1957 are therefore:

24,190	× $93.50	= $2,261,765
25,512	× $79.90	= $2,038,409
2,667	× $53.13	= $ 141,698
Total Passenger Revenue		= $4,441,872

(2) U. S. Mail Pay

Since Pan American L.A.D. operated no DC-6s of its own in 1955, their experience for DC-6 operation as re-

ported to the C.A.B. reflected their operation of Panagra's DC-6s over the through flight sector, Miami-Balboa.

Dividing the ton miles of U. S. mail reported carried by Pan American DC-6s for the first nine months of 1955 by the DC-6 revenue plane miles reported flown results in the average mail tonnage carried per mile over the Miami-Balboa sector. The result was 0.3505 tons of mail carried per mile flown.

The estimated annual scheduled mileage for Panagra DC-6Bs and DC-7Bs over the through flight sector is 1,666,758. Estimated mail ton miles for the Miami-Balboa segment in 1955 were therefore:

1,666,758 × 0.3505 tons per mile = 584,199 MTMi.

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[fol. 1610] U. S. Mail ton miles for the Panagra system are expected to increase at an average annual rate of 4% beginning in 1956, compared with a 3% average annual increase between 1951 and 1955. Increasing the estimated 1955 mail ton miles of the Balboa-Miami sector at the 4% rate results in an estimated 631,038 MTMs for 1957.

Having assumed above that PAA will take one-third of the local passengers owing to increased competition, or roughly 15% of the total through flight traffic, it is therefore reasonable to assume that 15% of all potential traffic, including mail, moving over the through flight sector would be diverted to PAA.

To adjust for this diversion, the 631,038 estimated mail ton miles in 1957 were reduced by 15% to 536,382.

A final mail order received by PAA shows that the U. S. mail rate for the Miami-Balboa segment is 55.10 cents per mail ton mile.

Hence the estimated U.S. mail revenue for the through flight sector during 1957 is:

536,382 MTM × 55.10 cents = $295,546.

(3) Foreign Mail Pay

Using the same approach as above (working from Pan American's experience operating DC-6s for the first nine months of 1955), a weighted average tonnage of foreign mail carried per mile was obtained.

Multiplying this result by the estimated annual scheduled mileage to be flown by 6Bs and 7Bs over the through

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[fol. 1611] flight sector, results in the estimated revenue ton mileage of foreign mail for the sector in 1955.

Foreign mail ton miles for the Panagra system increased at an average annual rate of 13.18% between 1951 and 1955. Assuming this same annual rate of increase between 1955 and 1957 for the Balboa-Miami sector gives an estimated 180,320 ton miles of foreign mail in 1957. This result was then reduced by 15% to account for expected diversion by PAA.

It is estimated that by 1957 the yield per ton mile for foreign mail will have declined 25% from Panagra's yield for the year 1955.

The estimated foreign mail revenues for the Balboa-Miami sector in 1957 are therefore:

153,272 ton miles × $1.05 $160,936

(4) Freight Revenues

1,005,971 ton miles of freight estimated to be carried on the through flight sector in 1957 were derived in the same manner as mail from Pan American's reported DC-6 experience for the first nine months of 1955, using a 10% annual growth factor and 15% PAA diversion factor.

To arrive at the approximate rate PAA receives per ton mile for freight over the through flight sector, a random sampling of freight rates for different weights from Miami to Panama and Panama to Miami was made. The results were averaged both by weight and by northbound and southbound rates, and an average sample rate arrived at. That rate worked out to 35.62¢ per ton mile.

[fol. 1612] The freight rates charged by Panagra for the same weights were then taken and a corresponding average rate per ton mile of freight for key points on the Panagra system was arrived at. That rate was 44.44¢ per ton mile. PAA's average sample rate of 35.62¢ was thus found to be 80.15% of Panagra's average sample rate.

Applying the 80.15% against Panagra's 42¢ per ton mile overall system freight yield, it is estimated that PAA receives 34¢ per ton mile for freight over the through flight sector.

Applying the 34¢ against the estimated 1,005,921 ton miles of freight expected in 1957, freight revenues for the through flight sector in 1957 are estimated at:

$$1{,}005{,}921 \times \$.34 = \$342{,}013.$$

(5) Excess Baggage Revenues

During 1955, Panagra received $14,108,700 in passenger revenues and $683,000 in excess baggage revenues. Excess baggage revenues were therefore 4.84% of passenger revenues.

Based on estimated passenger revenues in 1957 of $4,441,772 for the Miami-Balboa segment, estimated excess baggage revenues for 1957 are therefore:

$$4.84\% \times \$4{,}441{,}772 = \$214{,}982$$

[fol. 1613] —39—

H. Analysis of Expense Estimate for Future Year

Total expenses of an independent Balboa-Miami operation in 1957 are estimated to be $4,394,000.*

(1) Flying Operations

The net recorded costs of DC-6B and DC-7B flying operations for the Panagra system from January through November, 1955 were ascertained. To these were added back all expense credits received from National and Pan American. Fuel and hull insurance costs were then deducted to be treated separately. The rental cost of one plane contained in this account was also deducted.

The itemized flying costs for DC-6Bs and DC-7Bs for the Panagra system developed above were then divided by the applicable hours of flying time to arrive at the present Panagra cost per flying hour.

A separate calculation of the cost for hull insurance was made by taking the number of planes (5 of each class), multiplying that number by the insurable value of each plane, and then multiplying the result by Panagra's present rate for hull insurance. The result was then reduced to a cost per flying hour.

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[fol. 1614] The average consumption of gas per hour was computed for both DC-6Bs and DC-7Bs. The cost per gallon of gas was then estimated by averaging the cost per gallon of gas at Miami and that at Panama. Multiplication then produced the cost of fuel per flying hour.

The total estimated cost per hour for flying operations, as developed above, was then multiplied by the estimated number of flying hours for each type of equipment over the through flight sector in 1957.

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* This expense estimate assumes that sales and maintenance expenses will not exceed the level of rates charged by Pan American.

As a result, it was estimated that Flying Operations for the through flight sector in 1957 will cost:

DC-6B	$161 x 3333 =	$ 536,613
DC-7B	212 x 2962 =	627,944
Total		$1,164,557

(2) Direct Maintenance—Flight Equipment

The net recorded costs of Direct Maintenance of Flight Equipment for the Panagra system in 1955 were ascertained for DC-6Bs and DC-7Bs from accounting records. The share of maintenance charges absorbed by Pan American and National were then added back and the gross costs were divided by the gross hours of flying time, including the through flight and interchange sectors, for the DC-6Bs and DC-7Bs to arrive at a per hour cost for direct maintenance.

In 1955 the Aircraft Overhaul Reserve was adjusted, because of favorable experience, by $2.00 per flying hour for DC-6Bs, $1.20 of which applied to Direct Maintenance and $.80 to Ground and Indirect Maintenance. That portion applicable to prior years was added back to the 1955 unit cost.

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[fol. 1615] The hourly costs were then multiplied by the estimated number of hours of flying time over the through flight sector in 1957 for each type of equipment. The cost of Maintenance of Flight Equipment in 1957 for the through flight sector is estimated as follows:

DC-6B	$ 61 x 3333 =	$ 203,313
DC-7B	96 x 2962 =	284,752
Total		$ 487,665

(3) Depreciation—Flight Equipment

The net charges for depreciation of Panagra's DC-6B and DC-7B flight equipment for the last quarter of 1955 were ascertained from accounting records. This period was

used because the DC-7Bs were in operation only during the last quarter of 1955. To the actual charges covering five 7Bs and four 6Bs was added the estimated quarterly depreciation charge for a fifth 6B.

The depreciation charges absorbed by Pan American and National during the last quarter were added back. The charges made by Pan American during the last quarter for obsolescence of Flight Equipment Spare Parts (FESPA) were deducted as these were handled separately. The resulting estimated charge for depreciation was then projected to an annual basis.

The FESPA charges by PAA during the last quarter of 1955 were divided by the number of revenue plane miles flown by Panagra DC-6Bs and DC-7Bs over the Panagra system and the interchange sector (excluding Miami-Balboa). The charge per revenue plane mile was then multiplied by the estimated annual revenue plane miles to

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[fol. 1616] be flown by Panagra including the through flight and interchange sectors. The estimated FESPA charges for each type of equipment were then added to the 1957 estimated depreciation charges developed above.

The annual estimated charge for depreciation was then allocated to the interchange sector, through flight sector and present system on the basis of the revenue plane miles to be flown over each sector. The resulting Depreciation of Flight Equipment charges allocable to the through flight sector were thus forecast at $522,000 in 1957.

(4) Ground Operations

Six elements were considered in estimating Ground Operating expense for independent operation of the through flight sector in 1957; namely, additional charges at Tocumen, additional charges at Miami, in-transit services presently shared by Pan American, landing fees, communication fees in the Caribbean, and overhead charges presently paid by Pan American but non-recoverable if Panagra were to operate the through flight sector.

To arrive at the additional charges for use of the Tocumen airport, the 1955 pool of expenses was analyzed, broken down by expense classification, and recomputed on the basis that Panagra were operating the through flight sector. This totaled $82,000. Additional landing fees at Tocumen were estimated at another $26,000.

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[fol. 1617] To arrive at the additional cost of ground operations at Miami, the annual cost of renting counter and cargo space was estimated at $10,000. A staff of 18 counter and cargo personnel was provided for at an average annual salary of $4,000. The estimated additional cost for ground operations at Miami is therefore $82,000.

Expense of overnight in-transit services performed by Pan American at Miami are now absorbed by Pan American to the extent of an estimated $91,000 per year with any excess borne by the Panagra system. If Panagra were to operate the through flight sector in 1957, it would have to carry the entire estimated in-transit service charge of $422,000, but the additional cost allocable to Balboa-Miami would be only $91,000.

Landing fees for DC-6Bs and DC-7Bs were ascertained at Miami and multiplied by the number of DC-6B and DC-7B landings expected in 1957. The result was an estimated $25,000.

From information received at Miami, the charges for communications in the Caribbean were estimated at $100 per round trip, or $73,000 per year. The cost of replacing the present communications system of PAA, presently used by Panagra, with a private Panagra teletype system was estimated and one-fifth of the cost allocated to the Balboa-Miami sector. The allocated amount was $28,000.

The 1955 overhead charges of the chief pilot's office at Lima and Miami, the communications superintendent at Lima, etc., which are now partly absorbed by Pan American, were reduced to a per revenue mile cost and multiplied by the estimated annual number of revenue miles to be flown over the through flight sector. The result was $51,000 of overhead charges which would be non-recoverable in 1957 if Panagra operated the through flight sector.

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[fol. 1618] Ground Operations Expense during 1957 for the through flight sector was therefore estimated at:

Use of Tocumen Airport	$ 82,000
Landing Fees at Tocumen	26,000
Cost of Miami facilities	82,000
Overnight In-Transit Service	91,000
Landing Fees at Miami	25,000
Communications in Caribbean	73,000
Allocable cost of private teletype system	28,000
Pan American Non-Recoverable Overhead Charges	51,000
Total	$458,000

(5) Ground and Indirect Maintenance

The charges by Pan American to Panagra for Ground and Indirect Maintenance of DC-6Bs and DC-7Bs during 1955 were divided by the total number of hours flown by each in 1955 to arrive at a per hour cost.

In addition, the charges made in 1955 by Pan American to Panagra representing a return on Pan American's investment in maintenance facilities were added to produce a cost per flying hour which included a return on Pan American's investment in maintenance facilities properly allocable to the through flight sector.

That portion of the adjustment for DC-6Bs in the Aircraft Overhaul Reserve applicable to the Ground and Indirect Maintenance account was treated in a corresponding manner to that described in Section (2) above.

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[fol. 1619] The Ground and Indirect Maintenance costs per hour for DC-6Bs and DC-7Bs were then multiplied by the estimated flying hours for each type of equipment over the through flight sector in 1957 as follows:

DC-6B	$41 x 3333 =	$136,653
DC-7B	$69 x 2962 =	204,378
		$341,031

(6) Passenger Service

The cost of Passenger Service for the Balboa-Miami sector during 1957 was estimated at 8% of passenger revenue for the Balboa-Miami sector, the same percentage relationship experienced by the Panagra system in 1955, or $355,342.

(7) Traffic and Sales

Traffic and Sales expense was 13.39% of non-mail revenues (passenger, freight, and excess baggage) for the Panagra system in 1955.

In 1957 an estimated 13% of total non-mail revenues will be spent for Traffic and Sales or $649,840.*

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[fol. 1620] The estimated traffic and sales expense, together with the advertising and publicity expense analyzed next, constitute 18.00% of non-mail revenues for the sector. This is believed to be a fair and reasonable allocation.

(8) Advertising and Publicity

Advertising and publicity expense was 7.53% of non-mail revenues (passenger, freight, and excess baggage) for the Panagra system in 1955. However, 5% of total non-mail revenue estimated to be produced by the sector in 1957 is deemed appropriate for this new sector because Panagra's name is already well known in this market. On this basis, advertising and publicity expense was estimated at $249,938.

(9) General and Administrative

Three factors were considered in estimating the general and administrative cost for independent operation of the through flight sector: charges now paid by Pan American which would be non-recoverable if Panagra operated the through flights, additional general and administrative charges for use of the Tocumen airport, and increased employee benefit costs and payroll taxes for employees at Miami.

* See footnote page 39.

Charges not recoverable from PAA were broken down into employee insurance, payroll taxes, and New York office

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[fol. 1621] charges. The costs for employee insurance and payroll taxes reflect the latest proposed rates and were increased to reflect the pilot contract put into effect July 1, 1955. The three non-recoverable costs were divided by revenue plane miles flown by Panagra in 1955 to get a cost for each item per revenue plane mile. The results were multiplied by the estimated annual revenue plane miles to be flown over the Miami-Balboa sector and amounted to $125,000.

Panagra's charges for its increased share of general and administrative costs at Tocumen owing to independent operation of the through flight sector were then computed by analyzing the latest monthly pool of expenses shared by all carriers using Tocumen and estimated at $15,000.

Increased employee benefit costs and payroll taxes for additional Miami employees are estimated at 11.91% of $72,000, or $9,000.

The total added General and Administrative cost for operation of the Balboa-Miami sector in 1957 is thus $149,000. It is believed that an independent Balboa-Miami operation would require no additional general and administrative expense, because key personnel of Panagra now spend considerable time in connection with operations under the Through Flight Agreement.

(10) Depreciation—Ground Equipment

Four elements were considered in estimating the charges for depreciation of ground equipment needed for an independent operation of the through flight sector in 1957:

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[fol. 1622] depreciation of maintenance facilities, depreciation of counter facilities at Miami, depreciation of ramp service facilities, and charges now paid by Pan American which would be non-recoverable if Panagra operates the through flight sector.

Depreciation of maintenance facilities at both Miami and Balboa is included in the Pan American charges to Panagra for Ground and Indirect Maintenance. Consequently, the estimate of costs for ground and indirect maintenance (see Section 5 above) adequately covers this item of cost.

If Panagra were to operate the through flight sector independently, a completely furnished counter and cargo space at Miami would be necessary. A capital expenditure of $18,000 for such space, depreciated over three years, results in an estimated depreciation charge of $6,000 per year.

An estimated outlay for ramp service facilities (fork lift truck, starting unit, cargo carts, passenger ladder, etc.) of $18,400 would be required. Depreciating these facilities over three years would result in an annual depreciation charge of $6,100.

Depreciation of Ground Equipment costs charged to Pan American in 1953, but non-recoverable if Panagra operates the through flight sector, were divided by the revenue plane miles flown by Panagra's DC-6Bs and DC-7Bs over the through flight sector in 1955. The result was multiplied by the estimated annual revenue plane miles for the through flight sector.

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In summary, the estimated charge for depreciation of ground equipment in 1957, assuming independent operation by Panagra, is as follows:

Miami Booth Facilities	$ 6,000
Ramp Service Facilities	6,100
PAA Non-Recoverable Charges	4,000
Total	$16,100

J. Estimate of Return on Investment for Future Year under Through Flight Agreement

The return on Panagra's investment in flight equipment and working capital devoted to the through flight sector was estimated for 1957 at $396,000. This was computed as follows:

	DC-6B ('000)	DC-7B ('000)	Total ('000)
Original Cost of Panagra Fleet	$7,713	$12,151	$19,864
Reserve for Depreciation (Estimated)			
December 31, 1956	$3,777	$ 2,072	$ 5,849
December 31, 1957	4,459	3,577	8,036
Net Book Value (Estimated)			
December 31, 1956	$3,936	$10,079	$14,015
December 31, 1957	3,254	8,574	11,828
Less 50% Built-In Overhaul Residual Value	$ 75	$ 75	$ 150
Total Investment Base in Flight Equipment (Estimated)			
December 31, 1956	$3,861	$10,004	$13,865
December 31, 1957	3,179	8,499	11,678
Average for Year 1957	$3,520	$ 9,252	$12,772
Return on Investment in Flight Equipment @ 14.5161% (9% plus 38% Income Taxes)	$ 511	$ 1,343	$ 1,854

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The above represents a return on the entire Panagra investment in DC-6Bs and DC-7Bs at the C.A.B. allowable rate of 9%. Pan American is required under the Through Flight Agreement as presently in effect to pay the 9% rate of return on that part of the investment allocable to Balboa-Miami. To allocate Pan American's share, the total revenue plane miles to be flown by Panagra's DC-6Bs and

DC-7Bs in 1957, including the through flight and interchange portions, were computed. This mileage is broken down in percentages as follows:

	DC-6B	DC-7B
National—Miami/New York	22.59%	18.94%
Pan American—Balboa/Miami	23.96%	19.34%
Panagra—South-of-Balboa	53.45%	61.72%
	100.00%	100.00%

The difference in the percentages between types of equipment is a result of the varied schedules of DC-6Bs and DC-7Bs.

Applying the Balboa-Miami allocation of revenue plane miles to be flown in 1957 against the total return on investment figures results in the following amounts:

(thousands of dollars)

	DC-6B	DC-7B	Total
Return on Flight Equipment	$122	$260	$382

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To this must be added the return payable by Pan American on Panagra's investment in working capital devoted to the Through Flight operation. This is computed on the following basis:

	DC-6B	DC-7B	Total
Revenue plane miles to be flown—Balboa-Miami in 1957	833,379	833,379	
Mileage rate	0.52¢	1.15¢	
Return on working capital (dollar amount in thousands)	$4	$10	$14

The total estimated return payable by Pan American under the Through Flight Agreement in 1957 is thus $382,000 plus $14,000, or $396,000.

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MIAMI-NEW YORK
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PART TWO

MIAMI-WASHINGTON/NEW YORK

A. *Nature of Application*

This application is supplemental to that for Balboa-Miami. It would extend Panagra beyond Miami directly into Washington and New York on a restricted basis. That is, Panagra would not operate domestic turnaround flights but would have local traffic rights at Miami, Washington and New York on its planes serving South America.

The air route distance between Miami and New York is 1100 miles nonstop and 1137 miles via Washington, representing a 17% increase in the unduplicated route mileage of the present Panagra system plus the Balboa-Miami sector.

It is contemplated that initially, on an independent operation, three first class flights per week in each direction would stop at Washington and the other four first class and all tourist flights would operate Miami-New York nonstop. Additional Washington stops would be implemented as soon as the international traffic would warrant. It is believed that authority to serve Washington as well as New York is essential to a flexible, balanced operation for Panagra and to adequate service for United States-South America traffic.

Direct entry into Washington and New York, of course, would eliminate the need for an interchange with a domestic carrier and would supersede the National-Pan American-Panagra Interchange Agreement.

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B. *Reasons for Application*

As will be more fully discussed below, Panagra should be extended beyond Miami into Washington and New York for the following reasons:

1. The National-Pan American-Panagra Interchange Agreement has proved to be deficient. It has not provided

United States-South America passengers and cargo with the sort of service necessary to attract, or even to retain, international traffic. Moreover, it has proven to be a heavy financial drain on Panagra. The domestic operator has subordinated and disregarded international traffic requirements and preferences in favor of its own domestic operation.

2. The extension would be profitable to Panagra. The sector itself would produce an annual operating profit of $365,000, and in addition, the present Panagra system profit and loss statement would no longer reflect certain cost penalties resulting from the interchange operation.

3. The extension would require no subsidy, and, further, would serve to strengthen Panagra's entire system to the point of ultimate self-sufficiency. The profit from this sector would help to offset any future reduction or elimination of subsidy from the government.

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4. Panagra needs to receive the full revenues from the United States-South America passengers it generates. The new route would help to reduce Panagra's unit operating costs and provide a larger traffic base over which to spread its overhead expense.

5. The bulk of United States-South America traffic carried by Panagra originates in or is destined to the northeastern United States. Panagra should be permitted to serve this primary traffic market so inextricably related to its existing South American market.

6. Two or three carrier operation of the same flight will not and cannot serve efficiently the traffic volume that will develop in the near future. The projected growth in long haul United States-South America air traffic, which will be substantial, should not be stultified by a domestic carrier having little interest in its development. Nor should the inevitable growth be a windfall to a carrier having little to do with its generation. Within a foreseeable period of time traffic volume will outgrow the interchange type of service.

7. Extension into New York will cause little diversion of domestic passengers from domestic carriers, and in the international field will simply equalize Panagra's competitive position vis-a-vis other United States flag carriers and foreign airlines.

8. The coming DC-8 operation will permit, and indeed will call for, long haul nonstop flights between New York and South America. Such an operation will have no relation to National's regional domestic operation between

[fol. 1630] New York and Miami. Indeed, Panagra may well want to overfly Miami with jets on certain of its flights. The sharing of profits from jet service would hurt Panagra in this future era of high cost turbine operation. The necessary route adjustment proposed here cannot await delivery of jet equipment to Panagra because of the vast amount of preparatory work and planning which must be done.

C. *Inadequacy of the National Interchange*

By order dated August 10, 1955 (E-9481) in Docket No. 4882, the Civil Aeronautics Board approved the establishment of a National-Pan American-Panagra interchange operation. This interchange permits Panagra planes from and to South America to operate over National's route between Miami and New York. Interchange service began on September 14, 1955, and has now been in operation for more than ten full months.

The interchange flights have been highly disappointing to passengers and shippers in terms of service and scheduling, and to Panagra in terms of cost. Intense efforts have been made by Panagra to solve these difficulties but the efforts have been in large part unsuccessful. No means of curing the situation appear possible under the existing interchange arrangements. The inadequacies of the interchange operation will be documented below under three main categories: passenger and cargo service, plane scheduling and operating costs.

The basic difficulty stems from attempting to mesh the operations of a long haul international airline in competition against foreign airlines, with the high volume and

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[fol. 1631] relatively short haul operations of a regional domestic carrier. It is now evident that the attempt to combine these two different types of operations cannot be successful. The interchange has resulted in costly operational rigidities and conflicts for each partner in its basic transportation objective. National, because of its competitive position in the mass Miami-New York market, subordinates the international flights to its own relatively short haul requirements. This may be quite justifiable from National's own limited viewpoint. However, the Miami-New York sector comprises only one-fifth of the distance of the entire international flight from New York to Buenos Aires, and consequently, from Panagra's and the public's overall viewpoint, the primary emphasis over the Miami-New York sector should be placed upon the convenience and expectations of the international passengers and shippers. This, indeed, seemed to be the original purpose of the Interchange Agreement as approved by the Civil Aeronautics Board.

To provide an international service geared to international traffic needs and to provide the basis for generating additional international traffic, it is apparent that international service and scheduling requirements should be given priority. That this has not been the case under the existing interchange operation is indicated below:

1. *Passenger and Cargo Service.*

National does not provide interchange flights with the standard of flight service to which international passengers are accustomed. For example, National does not serve meals by courses, it does not offer free drinks or wine, and

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[fol. 1632] it does not provide a third cabin attendant. These services have been standard fare on Panagra first class flights and on virtually all other first class international flights throughout the world. The excellence of its meals and the manner in which they are served have been

major items in Panagra's sales appeal and reputation. However, the food service of National is of significantly lesser quality than that of Panagra. Passengers uniformly report, or complain, that the general level of all enroute service is substantially lower over the domestic interchange sector than over the Caribbean and South American portions of the flights.

There is a major difference in the treatment accorded passengers by National and Panagra: Panagra provides a great deal more individual attention to its passengers. This is a natural result of the fact that Panagra's key sales object is the international long haul passenger, whereas National's key sales object is the domestic medium or short haul passenger. Panagra's passengers, who pay fares at international levels and travel between several countries on a trip lasting ten to twenty hours, expect and need more individual attention than a New York-Miami passenger, who pays less per mile and is in the air less than four hours.

By contrast, a New York-Miami local passenger pays $44 to $77 for an 1,100 mile trip; a New York-Buenos Aires traveler pays $456 to $549 to travel 6,000 miles; a Miami-Lima traveler pays $262 to $319 to travel 2,600 miles. These are key passengers whom Panagra must now serve and for whom Panagra must *now* compete.

[fol. 1633] —58—

The difference in passenger treatment is not only a result of what the market requires but also what the market yields, both in the volume of traffic and in the net revenue per passenger. National operates in a mass market; Panagra is in what is by domestic standards a relatively sparse market. Panagra's routes, even with the most optimistic traffic projections, could not produce anything approaching the traffic density of National's operation. As a result, each single passenger is vastly more important to Panagra than to National.

Statistically, the average Panagra system passenger has a trip length on the *portion* of his journey *south of Balboa* of approximately 1,200 miles producing an average revenue yield to Panagra of $108.65. National's average system

passenger trip length complete is only 700 miles, producing an average revenue yield of only $36.76.

With respect to cargo, National has not provided the concentrated effort and expeditious handling necessary for dealing with international cargo traffic. Panagra generates substantial amounts of cargo into and out of New York, but its developmental and promotional efforts in this field are being diffused by National's relative apathy towards cargo movement (even in its own domestic operations) and by the inevitable lack of complete coordination that results from three separate companies handling a single shipment. Indeed, for the better part of a month in the spring of 1956 National arbitrarily stopped all international cargo shipments on the interchange flights. This stoppage together with previous deficiencies in National's movement

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[fol. 1634] of international cargo has caused grave problems for Panagra in its relationship with both shippers and consignees.

2. *Plane Scheduling.*

a. *Washington Stop.*

National has been unwilling to agree to schedules based on international traffic flows. For example, at National's insistence, the DC-7B interchange flights presently stop daily at Washington. However, there has been no international traffic justification for daily stops which add more than sixty minutes in elapsed time between New York and Miami. This unnecessary delay serves to neutralize the competitive advantage of the DC-7B equipment in Panagra's primary New York-Buenos Aires market.

National has refused to consider Panagra's first preference for splitting first class schedules (some nonstop and some Washington-stop flights) even though from an international traffic viewpoint it is often desirable not to provide service to identical points on every day of the week. National has also refused to act on Panagra's second preference to eliminate the Washington stop entirely, unless Panagra would agree to a departure time from New York

that would be undesirable to international passengers and would result in undesirable and competitively disadvantageous arrival and departure times at points in South America.

National's stated reasons for opposing Panagra on the Washington service issue are that Washington provides a large number of domestic Miami passengers on this flight

[fol. 1635] and that Panagra has not produced enough international passengers, relative to National's voluine domestic operation, to warrant National's consideration of an alternate schedule.

b. *On Time Performance.*

National has been unwilling to agree to realistic scheduling of the interchange flights and is jeopardizing Panagra's reputation by failing to operate the Panagra aircraft on time. In the six months, November 1955 to April 1956 inclusive, an average of 77% of Panagra's flights from South America, after traveling more than 4,900 miles, reached Miami on time. However, only 37% of these flights arrived in New York, only 1,100 miles beyond, at the scheduled time of arrival. National's southbound performance has been even worse, with only 16% of the interchange flights arriving in Miami on time. Southbound delays over the interchange sector, of course, throw back Panagra's performance record along the entire line to Buenos Aires. Following is the monthly performance record:

Percentage Daily Interchange Flights on Time
(within 15 minutes of scheduled arrival time)

	Panagra Performance		National Performance			
	N B		N B		S B	
	Ar MIA		Ar IDL		Ar MIA	
	FC	TC	FC	TC	FC	TC
November 1955	73%	82%	70%	82%	11%	17%
December	61	77	32	36	21	18
January 1956	77	90	36	46	25	21
February	69	89	26	54	11	0
March	68	84	7	36	20	10
April (2 weeks)	75	83	8	8	39	8

[fol. 1636] —61—

National attempts to rationalize its unrealistic scheduling on the basis of competitive scheduling with Eastern in the domestic Miami-New York market. This again is simply one more aspect of the primary domestic emphasis which National places upon the interchange flights.

c. *Cancellations and Consolidations.*

National has unilaterally cancelled trips at Miami on those occasions when delays occurred on northbound flights over Panagra's routes, thus eliminating through service on certain flights. When National cancels the interchange flight, it usually operates the interchange equipment then available at Miami as a domestic flight, thus obliging the passengers on the delayed plane from the south to use connecting domestic flights. Panagra has been forced to accede to this practice in order to have a plane in New York to meet the southbound interchange schedule out of New York.

In some cases National has used Panagra planes at New York to fly an earlier domestic southbound schedule, thus requiring international passengers out of New York with interchange reservations to change planes at Miami. There is some evidence that this practice has resulted in a loss of passengers to Panagra over its international sectors.

There have been repeated occasions when National has consolidated domestic flights into the interchange flights, in some cases combining a tourist flight with the interchange first class flight. This latter type of consolidation, especially, results in inconvenience and dissatisfaction to international passengers aboard the aircraft. There have

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[fol. 1637] also been occasions when National has flag-stopped the interchange flight at a domestic point other than Washington between Miami and New York in order to serve its domestic passengers.

Some of these practices, of course, are reasonable actions for a regional domestic carrier to take and should be ex-

pected in the usual interchange operation. However, they serve to defeat the international through service which the C.A.B. intended that the National-Pan American-Panagra Interchange Agreement establish. It is no rebuttal to Panagra's objections listed here for National to state that it does the same thing with interchange flights it operates under agreement with other domestic carriers. The National-Pan American-Panagra Interchange Agreement is the only interchange in existence between a long haul international carrier and a regional domestic carrier (other than the Eastern-Braniff Interchange, which operates only six frequencies per week compared to Panagra's fourteen). These operational practices affect acutely the character and competitive quality of Panagra's international service.

Cataloging them here is not intended to reflect unfavorably upon National's admittedly highly efficient operation, as geared to its particular regional route structure. They are recorded simply to evidence the incompatibility of National's and Panagra's operations which are adapted to entirely different markets as demonstrated by almost a full year's experience.

[fol. 1638] —63—

d. *Scheduling Inflexibility.*

In general effect, the interchange is an inflexible element in Panagra's schedule planning. Panagra's long haul route presents severe problems of equipment utilization resulting from long layover times at route terminals. These long layovers are made necessary in order to provide saleable arrival and departure times along the line and to permit daylight operation (the only possible at the present time) at certain of the airfields in South America. In order to experiment in an attempt to reduce these layover times and increase its average daily aircraft utilization, Panagra needs full scheduling freedom. Since the New York-Buenos Aires routing is the heart of Panagra's service pattern, the fixed interchange requirements limit the ability of Panagra's management to deal with a signal problem.

3. Operating Costs.

a. Extra Overhead Expenses.

The constant negotiation with National over interchange policies and practices has absorbed an inordinate amount of Panagra management's time and concentration. Panagra's top executives have had to travel to Miami several times to confer with National over relatively minor matters.

b. Operating Expense Differentials.

It must be understood that at the time the Interchange Agreement was negotiated between Panagra and National in June of 1955, Panagra was, in a very weak bargaining position. The Braniff-Eastern interchange had been ap-

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[fol. 1639] proved by the C.A.B. and was to go into operation in the near future. The C.A.B. directed Panagra, Pan American and National to reach agreement on their own interchange. Only Panagra could be hurt by a failure to reach an agreement on an interchange operation. As a result, National held all the cards and Panagra was forced to accede to several very burdensome financial provisions.

Panagra suffers an annual loss under the Interchange Agreement of $358,000 based on a full allocation of expenses to the interchange operation. The difference between the actual expenses incurred by Panagra's planes operating over the interchange sector and the lower amounts actually reimbursed by National must be absorbed by the Panagra system.

The principal reasons for the cost penalty are twofold: First, under the terms of the Interchange Agreement Panagra is obliged to accept reimbursement from National on the basis of its own domestic cost levels which are naturally lower than the international cost levels experienced by Panagra. Second, and more costly to Panagra, National reimburses on a cost per available seat mile unit basis using its own larger domestic aircraft seat capacity. Because National provides passenger journeys of no more than four hours at most, compared to passenger journeys

in excess of twenty hours' elapsed time by Panagra, National is able to operate aircraft with reduced seating space available for each passenger and still stay within the bounds of passenger acceptance. Consequently, National's DC-6Bs and DC-7s have more seats (86 and 69 respectively) than the similar equipment owned by Panagra (72 and 63

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[fol. 1640] including lounge seats respectively). This second factor represents a cost penalty of roughly 13% at the present time.

The expense differentials fall into four separate categories:

(1) *Flying Operations*

The flying operations expense not fully reimbursed by National is the cost of fuel. The available seat mile fuel cost difference between National and Panagra is .0724 cents for DC-6Bs and .0562 cents for DC-7Bs. Based on April 10, 1956 seating capacities and present schedules, Panagra's DC-6Bs will provide 56,609,000 available seat miles annually over the interchange sector. Panagra's DC-7Bs will provide 51,419,000 available seat miles. As a result, the estimated annual cost of fuel loss to Panagra, directly attributable to the terms of the Interchange Agreement is as follows:

DC-6B	56,609,000 x .0724¢	=	$41,000
DC-7B	51,419,000 x .0562¢	=	29,000
			$70,000

(2) *Direct and Indirect Maintenance*

Panagra's 1955 maintenance cost per available seat mile, excluding certain system overhead charges that cannot be considered out-of-pocket expenses allocable to the interchange operation, was .5035¢ for DC-6Bs and .8985¢ for DC-7Bs. However, National has reimbursed at its own lower maintenance rate of only .4269¢ for DC-6Bs and .8304¢ for DC-7Bs. Applying the unit cost differential to the estimated available seat miles to be flown over the

interchange sector results in an annual loss to Panagra of $43,000 for its DC-6Bs and $35,000 for its DC-7Bs.

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[fol. 1641] The total maintenance differential attributable to the Interchange Agreement is thus estimated at $78,000 per year.

(3) *Depreciation of Flight Equipment*

Panagra's allocable depreciation, on a revenue plane mile basis, of the five DC-7Bs and five DC-6Bs (assuming the fifth DC-6B is owned and not leased), including spare parts and engines used in the interchange operation amounts to $506,000 per year. Using Panagra's available seat miles to be operated over the interchange sector in the future year, this reduces to .3409¢ per ASM for DC-6Bs and .6087¢ per ASM for DC-7Bs. National, however, reimburses Panagra for flight depreciation at its own rate of only .2170¢ per ASM for DC-6Bs and .4523¢ per ASM for DC-7Bs.

National's depreciation cost per ASM is lower than Panagra's as a result of several factors: First, National's aircraft capital costs are lower than Panagra's, particularly with respect to the DC-7 type aircraft since Panagra's are the later and more expensive DC-7Bs as compared with National's DC-7s. Aircraft operated by long haul international airlines invariably include additional cost over aircraft operated by medium haul domestic carriers. Secondly, National has higher aircraft utilization than Panagra, made possible by National's shorter routes and more frequencies, allowing for faster turnarounds. On an annual basis, this means that National obtains more mileage per plane than Panagra can obtain within the same period of time. Third, for the reasons described previously National's planes have more seats than Panagra's, and therefore operate more seat miles than Panagra on the same plane mileage.

[fol. 1642]

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On an annual basis, the depreciation differential amounts to $70,000 on the DC-6Bs and $80,000 on the DC-7Bs, or an annual loss to Panagra of $150,000.

(4) *Passenger Service*

The passenger service expense not fully reimbursed by National is in the cost of passenger service equipment and supplies furnished by Panagra. The equipment and supplies provided by Panagra and used by National include items such as silverware, dishes, blankets, head rests and seat covers, linen and pantry equipment. (They do not include food and liquor which are supplied over the interchange sector by National's own commissary.) National reimburses Panagra on the basis of the quantity and quality of similar items supplied on its domestic flights, which are of lesser quantity and quality than furnished on the interchange aircraft by Panagra. As a result of this and the greater number of available seat miles over which to spread the allocable costs, differentials amount to an estimated annual $60,000 loss to Panagra.

(5) *Summary*

Based on present schedules, the inequities of the National Interchange Agreement penalize Panagra largely as a result of having to accept reimbursement on a seat mile basis related to National's (a domestic carrier) cost level rather than Panagra's (an international carrier) to the extent of $358,000 broken down as follows:

[fol. 1643] —68—

Flying Operations	$ 70,000
Maintenance—Direct and Indirect	78,000
Depreciation—Flight Equipment	150,000
Passenger Service	60,000
	$358,000

The large annual expense penalty would be eliminated if the Interchange Agreement were terminated and Panagra were to operate into New York on its own certificate since the revenues from the sector would accrue to Panagra.

D. *Estimated Financial Effect of Termination of Interchange Agreement.*

Partially in offset to a saving of the cost items just discussed, there are certain other financial implications of replacing the Interchange Agreement with an independent Panagra operation. These will be treated here.

1. *Capital Gains Tax.*

The Interchange Agreement provides that upon its termination for any reason, title to one DC-6B and one DC-7B will pass immediately to National. National must pay $1,300,000 for the 6B and $2,100,000 for the 7B, less any payments it made for depreciation of flight equipment during the term of the Agreement. Because Panagra had depreciated the DC-6B aircraft for a period prior to the interchange, and because National's depreciation payments on both the 6B and 7B aircraft are less than the depreciation taken by Panagra, the sale price to National will be in excess of the depreciated value to Panagra.

For purposes of illustration, if Panagra were to terminate the Agreement effective December 31, 1956 (six months' notice required), the resultant taxable capital gain to Panagra is estimated as follows:

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[fol. 1644]

	DC-6B	DC-7B
Agreed Upon Value at 9/15/55	$1,300,000	$2,100,000
Estimated Depreciation paid by NAL to 12/31/56	130,000	240,000
Sale Price to NAL at 12/31/56	$1,170,000	$1,860,000
Depreciated Value for Tax Purposes at 12/31/56	787,000	1,700,000
Taxable Capital Gain to PNG	$ 383,000	$ 160,000

The federal income tax at the effective Western Hemisphere rate of 11% (discussed in subsection 5 below) on

the total $543,000 taxable capital gain to Panagra for both aircraft would be $60,000.

2. *Additional Depreciation Charges.*

Panagra, in event of termination of the Agreement, has the option (a) to repurchase these same aircraft from National at the then current market value or (b) to lease for a period not to exceed 18 months, unless otherwise agreed, at a rental to be agreed upon. In the absence of agreement on the repurchase price or rental, the matter is subject to arbitration. There is little doubt that if Panagra were to obtain a New York certificate of its own, the option to repurchase or lease would be exercised in order to acquire immediate use of the planes already in Panagra's fleet configuration. If Panagra elected to repurchase, it would have to pay a premium for the reacquisition of the planes, since their market value in all probability would be in excess of the sale price to National.

[fol. 164a] —70—

Based on today's indicated market value for used DC-6 type aircraft, it is reasonable to assume that a DC-6B might bring something in the neighborhood of $1,800,000 and a DC-7B something in the neighborhood of $2,500,000; the precise amounts are, of course, to a large extent conjectural, particularly in the case of the DC-7B where there have been no known transactions. Moreover, considerations other than the market value might affect the nature of the transaction.

Again for purposes of illustration, assuming $1,800,000 for the DC-6B and $2,500,000 for the DC-7B, the premium would be approximately as follows:

	DC-6B	DC-7B
Estimated Market Value at 12/31/56	$1,800,000	$2,500,000
Sale Price to NAL at 12/31/56	1,170,000	1,860,000
Premium	$ 630,000	$ 640,000

The total premium of $1,270,000 represents the estimated additional cash payment which Panagra would have to make to National in order to reacquire the planes but it is reasonable to anticipate that the transaction might be negotiated on a more favorable basis.

[fol. 1646] —71—

Panagra would presumably have to depreciate the repurchase planes on the basis of a seven year write-off of the full repurchase price less residual value. This would exceed the present annual depreciation being taken on these planes by $111,000:

Annual Depreciation of Repurchased	DC-6B	DC-7B
Aircraft	$214,000	$299,000
Annual Depreciation Presently Taken	152,000	250,000
Differential	$ 62,000	$ 49,000

However, the effect of the increased depreciation charges can be considered as offset in part by the non-recurring net book capital gain realized on the sale of the two aircraft to National. The net book capital gain is computed as follows:

	DC-6B	DC-7B
Sale Price to NAL at 12/31/56	$1,170,000	$1,860,000
Net Depreciated Book Value at 12/31/56	809,650	1,734,500
Book Capital Gain to PNG	$ 360,350	$ 125,500
Capital Gains Tax ($60,000)	42,000	18,000
Net Book Capital Gain	$ 318,350	$ 107,500
Amortization of Net Book Capital Gain over seven years	$ 45,000	$ 15,000

If the amortized net book capital gain were applied against the depreciation differential, the increased annual depreciation charges on the repurchased aircraft become only $51,000:

	DC 6B	DC 7B
Depreciation Differential	$62,000	$49,000
Amortized Capital Gain	45,000	15,000
	$17,000	$34,000

[fol. 1647]

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3. *Additional Interest Charges*

Upon termination of the Interchange Agreement Panagra will incur certain additional interest expenses.

Under the Interchange Agreement, National deposited with Panagra an amount corresponding to Panagra's investment in equipment and working capital devoted to the interchange. Panagra issued to National non-interest-bearing notes as evidence of the deposit. These notes have been discounted by National, without recourse, with the banks that are parties to Panagra's Credit Agreement. Under these arrangements, although Panagra is obligor on the principal of the notes, National is responsible for the interest. Terminating the Interchange Agreement would necessitate retirement of the non-interest-bearing Panagra notes issued to National. In all probability arrangements can be made with the banks for the substitution of new Panagra interest-bearing notes of equivalent amount payable to the banks.

Panagra might also require additional borrowings, depending on Panagra's working capital position at the time, to finance the premium required for repurchase of the two aircraft, title to which will pass to National on termination of the Interchange Agreement.

To continue the same illustration, if Panagra were to terminate the Interchange Agreement effective December 31, 1956, it is estimated that additional interest charges

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[fol. 1648] would not exceed an estimated $145,000, computed as follows:

Amount of new Panagra notes payable to banks to be substituted for Panagra notes issued to NAL, based on estimated NAL deposit as at December 31, 1956	$3,234,000

Additional borrowings that may be required to cover premium cost in event of repurchase of two aircraft	1,270,000
Total	$4,504,000
Annual interest charge at 3½% on average amount to be outstanding during 1957	$ 145,000

(It should be borne in mind that Panagra has a net of three surplus DC-6s available for sale, the proceeds from which could be used to provide additional working capital and thereby reduce or eliminate the amount of additional borrowing contemplated above.)

4. *Summary*

The financial effects on an annual basis of terminating the Interchange Agreement and reacquiring the DC-6B and DC-7B would be as follows:

(a) Expense differential owing to interchange operation absorbed by Miami-New York sector P&L		$358,000
(b) Added costs:		
Additional Depreciation Charges (Net of Capital Gains)	$ 51,000	
Additional Interest Charges	145,000	196,000

If Panagra were to operate into New York directly from Miami, there are two additional factors which must be

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[fol. 1649] considered in connection with termination of the interchange:

1. Increased federal income taxes systemwide as a result of loss of Western Hemisphere Trade Corporation tax status;

2. Estimated sector operating profit.

These will be discussed below in subsection 5 and Section E respectively.

5. *Loss of Western Hemisphere Trade Corporation Tax Status*

If Panagra were to operate into New York on its own certificate, it would derive more than 5% of its gross income from sources within the United States and hence would lose its preferred tax status as a Western Hemisphere Trade Corporation under the federal Internal Revenue Code. This means that Panagra's entire operating income would be taxed at a 52% rate rather than the effective 38% rate which it presently enjoys. Also, Panagra's capital gains would be taxed at a 25% rate rather than the currently effective 11% rate. To date, the Treasury has accepted Panagra's tax status as a Western Hemisphere Trade Corporation in all tax years audited and finally closed up to and including 1947 through the running of the statute of limitations.

[fol. 1650] —75—

6. *Future System Result on Annual Basis*

If Panagra were certificated into New York and lost its Western Hemisphere status, the overall effect on Panagra's profit and loss statement would be roughly as follows:

1. Estimated Net Income before Taxes for 1956 from present system operations exclusive of capital gains, federal subsidy, plane rental income and return on investment from Pan American Through Flight Agreement	$ (272,000)
2. Estimated Sector Net Operating Income for 1957 from certificated Balboa-Miami operation (see Part One above).	1,062,000
3. Estimated Sector Net Operating Income for 1957 from certificated Miami-New York operation (see Section E below).	365,000

4. Estimated annual expense differential owing to current interchange operation absorbed by Miami-New York sector (see Section C above).	358,000
5. Estimated additional annual expenses owing to termination of Interchange Agreement (see Subsection 4 above).	(196,000)
	$1,317,000
6. Federal income tax at 52%	685,000
7. Estimated System Net Profit for future year based on certificated Balboa-Miami-New York operation and without federal subsidy.	$ 632,000
8. Estimated Net Profit for 1956 from present system operations including federal subsidy ($17,000) and return on investment from Pan American but excluding capital gains and plane rental income and after federal income tax at 38%.	$ 125,000
9. Estimated net improvement in system Net Profit as result of being certificated Balboa-Miami-New York	$ 507,000

NOTE: System Net Profit figures in items 1 and 8 are based on 8 months' actual. A 1956 estimate for the present Panagra system has been used because no 1957 forecast is available. The estimated profit and loss statements for the Balboa-Miami and Miami-New York sectors are on an added cost basis.

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[fol. 1651] If after-tax rental income from the lease of aircraft is included in the net profit figures shown on the preceding page, the expanded system would show a net

profit without subsidy of $1,220,000 (item 7). The present system net profit for 1956, including rental income as well as subsidy payment and return under the Through Flight Agreement, would total $971,000 (item 8). This would result in an estimated net improvement as a result of being certificated Balboa-Miami-New York of $249,000 (item 9), or a 25.6% increase over the present system.

E. *Estimated Sector Operating Profit for Future Year.*

If Panagra were to operate Miami-New York independently, it would schedule three first class flights per week with a Washington stop and four first class flights per week nonstop. There is little doubt that three flights per week would be able to handle adequately the three international passengers per daily flight now generated at Washington. Panagra would continue to schedule all tourist class flights nonstop Miami-New York.

Using these schedules, it is estimated that the profit and loss statement for 1957 for the Miami-New York sector, on an added cost basis, would be as follows:

[fol. 1652] —77—

Panagra Operation of Miami-New York Sector
Profit and Loss Estimate for Future Year
(000)

Operating Revenues	
Passenger	$3,459
Mail Pay—U. S.	115
Freight	469
Excess Baggage	125
Total Operating Revenues	$4,168
Operating Expenses	
Flying Operations	$ 999
Direct Maintenance—Flight Equipment	432
Depreciation—Flight Equipment	506
Total Direct Flying Operations Expense	$1,937

Ground Operations	$ 407
Ground and Indirect Maintenance	302
Passenger Service	393
Traffic & Sales	405
Advertising and Publicity	250
General and Administrative	92
Depreciation—Ground Equipment	17
Total Ground and Indirect Expense	$1,866
Total Operating Expenses	$3,803
Net Operating Income without Federal Subsidy and before Income Taxes	$ 365

[fol. 1653] —78—

1. *Operating Revenues.*

a. *Passenger*

Presented below is a table breaking down the actual number of passengers carried by National in Panagra interchange flights for the first full six-month period of the interchange operation, October 1, 1955 to March 31, 1956 (Column 1). The table projects these passengers to an annual basis and then to the future year 1957 on the assumptions explained in the paragraphs following the table. From the resultant number of passengers shown, estimated passenger revenues for 1957 were computed.

Estimated Passenger Traffic and Revenues for Independent Operation of Miami-New York Sector During 1957.

	Number of Passengers			Revenues
	(1) Actual Oct.-Mar.	(2) Annual Estimate	(3) 1957 Estimate	(4) 1957 Estimate
First Class				
Miami-N. Y. (Int'l)	4,684	9,368	12,928	$ 867,598
Miami-Wash. (Int'l)	1,144	2,288	2,288	126,732
Tourist Class				
Miami-N. Y. (Int'l)	5,125	10,250	16,323	646,391
Total International	10,953	21,906	31,539	$1,640,721
First Class				
Miami-N. Y. (Dom)	—	—	7,828	$ 525,337
Miami-Wash. (Dom)	3,832	16,058	6,882	381,194
Wash.-N. Y. (Dom)	4,849	8,816	3,778	47,603
Tourist Class				
Miami-N. Y. (Dom)	11,289	20,525	20,525	864,246
Total Domestic (a)	20,121	36,583	35,235	$1,818,380
Total Int'l & Dom (a)	31,074	58,489	66,774	$3,459,101

Weekly Frequencies & Average Load Factors		Fre.	L.F.	Fre.	L.F.	Fre.	L.F.
Miami-N. Y.	FC	–	—	–	—	4	71.4%
Miami-Wash.	FC	7	70.1%	7	66.3%	3	71.8%
Wash.-N. Y.	FC	7	45.6%	7	43.5%	3	41.7%
Miami-N. Y.	TC	7	63.2%	7	59.3%	7	71.0%

(a) Passenger totals exclude Washington-New York passengers.

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[fol. 1654] *The Annual Estimate* (Column 2) for the number of international passengers carried between Miami and New York was derived by doubling the six months' actual figure. Based on Panagra's experience, the six months period October-March is a reasonably good sampling for the entire year and is not distorted to any great extent by seasonal characteristics.

The Annual Estimate for domestic passengers was obtained by increasing the six months' actual figures by 82% to account for the seasonal fluctuation experienced by National. The total revenue passenger miles flown by National during the twelve months ended June 30, 1955, were 182% of those flown between October 1, 1954 and March 31, 1955.

The 1957 Estimate (Column 3) for international passengers was based upon a 20% annual rate of increase in first class traffic and a 30% annual rate of increase in tourist class traffic. The reasons for estimating these rates of increase are set forth in Section F, subsection 2, below.

Since the Annual Estimate included three months of 1956, the full rate of increase was not used for the intermediate year 1956. The manner in which the Annual Estimate was projected to the year 1957 is as follows:

International Passengers	1956 Estimate	1957 Estimate
First Class Miami-New York	15% increase over Annual Estimate	20% increase over 1956 Estimate
First Class Miami-Washington	No increase	No increase
Tourist Class Miami-New York	22½% increase over Annual Estimate	30% increase over 1956 Estimate

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[fol. 1655] In the case of Miami-Washington international passengers, no increase between the Annual Estimate and the 1957 Estimate is projected, because it is conservatively estimated that the three first class flights per week stopping in Washington will handle only the annual traffic presently

carried by the seven first class flights per week stopping in Washington.

The 1957 Estimate for domestic passengers shows a decrease from the Annual Estimate. It is estimated that Panagra would carry 7,828 New York-Miami first class domestic passengers, producing a 71.4% load factor on the four non-stop flights. It is estimated that the three Washington-stop flights will carry three-sevenths of the number of domestic passengers actually carried by National on the seven Washington-stop interchange flights.

No increase is anticipated in the tourist class domestic traffic, but it is expected that Panagra will be able to carry as many domestic tourist passengers as National is presently carrying on interchange flights.

It should be noted that the traffic figures for 1957 result in a yearly average passenger load factor of approximately 70%, a conservative figure for this high density sector.

Estimated 1957 Passenger Revenues (Column 4) are based on the following passenger revenue yields:

First Class	Yield
Miami-New York	$67.11
Miami-Washington	55.39
Washington-New York	12.60
Tourist Class	
Miami-New York (day coach)	$45.45
Miami-New York (night coach)	39.60

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[fol. 1656] The passenger revenue yields were arrived at by reducing the published first class fares by 12½% to account for half fares and round trip discounts. The published tourist class fares were reduced by 10% to account for half fares only because no round trip discount is given for tourist travel.

In arriving at the passenger revenue estimate for the tourist class international passengers, the present practice was followed of charging the international tourist passen-

ger the night coach rate regardless of which type of tourist flight he uses. As to the tourist class domestic passenger revenues, it was assumed that three-sevenths of the total such passengers would travel on day coach flights and four-sevenths would travel on night coach flights.

b. *Mail, Cargo and Excess Baggage*

U. S. Mail Pay was estimated from limited information, supplied by National, covering southbound flights from New York for the first 3½ months of the interchange operation. This information indicated the average tonnage of mail carried per flight by Panagra planes southbound from New York during November and December, 1955. Assuming the same tonnage northbound and southbound, and increasing the tonnage on the three first class flights scheduled to stop at Washington by 20%, the annual mail ton miles for the sector were estimated at 378,630. Using the same per ton mile rate for U. S. Mail received by National in the year ended September 30, 1955, or $.304, the annual U. S. Mail Pay for the sector was estimated at $115,000. This is believed conservative because it does not provide for any increase in present mail movement by air.

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[fol. 1657] *Cargo Revenues* were computed on the basis of carrying an average of 1,500 kilos of cargo per flight southbound from New York and 400 kilos northbound from Miami. It is believed that there is sufficient cargo volume to fill approximately 60% of available cargo space southbound after allowing for a 71% passenger load factor. (Initially, it is not contemplated that cargo service would be provided at Washington.) On this basis the sector would produce an estimated 1,668,000 ton miles of cargo per year. Using the same yield per ton mile for freight and express received by National for the year ended September 30, 1955, or $.281, the annual cargo revenue for the sector is estimated at $469,000.

Excess Baggage Revenues were based upon historical relationships: Panagra's excess baggage revenues in 1955

were 4.84% of passenger revenues; this same percentage was applied to the $1,641,000 passenger revenues from international passengers estimated for 1957. Excess baggage revenues of National Airlines were 2.52% of passenger revenues for the year ending September 30, 1955; this same percentage was applied against the $4,818,000 domestic passenger revenues estimated for 1957. Excess Baggage Revenues were therefore estimated at $125,000.

2. *Operating Expenses.*

a. *Direct.*

Flying Operations expense was computed by multiplying the estimated annual number of flying hours between Miami and New York by the adjusted per hour cost of flying operations to Panagra for DC-6Bs and DC-7Bs. The $161.00 DC-6B and $212.00 DC-7B per hour flying operation costs

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[fol. 1658] developed in the Balboa-Miami route application were adjusted by $4.50 per hour for DC-6Bs and $6.56 for DC-7Bs for the lower cost of fuel within the United States.

Maintenance of Flight Equipment expense was computed by multiplying the estimated annual number of flying hours over the Miami-New York sector by the costs per flying hour to Panagra for Maintenance of Flight Equipment of its DC-6Bs ($61.00) and DC-7Bs ($96.00) as developed in the Balboa-Miami route application.

Depreciation of Flight Equipment expense was developed by taking the total charge per year for Depreciation of Flight Equipment, including FESPA on a fleet of five DC-7Bs and five DC-6Bs as developed in the Balboa-Miami route application and allocating a portion to the Miami-New York sector on the basis of the estimated annual revenue plane miles to be flown by Panagra's DC-6Bs and DC-7Bs over that sector.

[fol. 1659] —84—

b. *Ground and Indirect*

Ground Operations expense was estimated as follows:

New York (14 landings per week)	
Ramp service fees	$ 88,000
Salaries for 12 counter personnel	54,000
Salaries for 6 cargo personnel	29,000
Landing fees	23,000
Annual rental of counter & cargo space	9,000
Miscellaneous	3,000
	$206,000
Washington (6 landings per week)	
Salaries for 3 counter personnel	$ 12,000
Ramp service fees	9,000
Landing fees	3,000
Annual rental of counter space	1,000
Miscellaneous	1,000
	$ 26,000
Miami (14 landings per week)	
Ramp service fees	$ 41,000
Landing fees	25,000
Salaries for 2 additional counter personnel	8,000
Miscellaneous	3,000
Annual rental of additional counter space	500
	$ 77,500
Other Ground Operations Expenses	
Ground to air communications	$ 47,000
Allocable cost of private teletype system (1/5)	28,000
Salaries for flight dispatch	16,000
Salary for crew scheduling	6,000
	$ 97,000
Total Estimated Ground Operations Expense	$406,500

Ramp service fees at Miami were estimated on the basis of ten man hours per southbound landing at $5.70 per man hour, the present per man hour charge to Panagra by Pan American. At Washington, ramp service fees were estimated at five man hours per northbound and southbound

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[fol. 1660] landing at $5.70 per man hour. The ramp service fees at New York were developed from the published schedule of charges for complete turnaround services performed by Flight Dispatch Services, Inc.

Ground and Indirect Maintenance expense was computed by multiplying the estimated annual flying hours over the Miami-New York sector by the cost per flying hour to Panagra for ground and indirect maintenance including return on investment to PAA, of its DC-6Bs ($41.00) and DC-7Bs ($69.00), as developed in the Balboa-Miami route application.

Passenger Service expense for independent operation of the Miami-New York sector was derived from the average between Panagra's unit cost (.71¢ per revenue passenger mile) and the unit cost for all domestic carriers for the year ended September 30, 1955 (.37¢ per revenue passenger mile), or .54¢. The unit cost was multiplied by the approximately 73,000,000 1957 revenue passenger miles estimated for the sector, resulting in a 1957 expense of $393,000.

Traffic and Sales expense was estimated at 10% of total non-mail revenues rather than the 13% estimated in the Balboa-Miami route application because of the lower commission paid on domestic ticket sales (5% rather than 10% paid on international tickets.)

Advertising and Publicity expense was estimated at $250,000, the same as that estimated for the Balboa-Miami sector. This would result in an advertising budget of $500,000 per year to promote the extension of Panagra's own

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[fol. 1661] service into New York from Balboa. A budget of this proportion appears ample in view of the fact that Panagra's present budget permits extensive advertising in the United States.

Gene and Administrative expenses were estimated as follows

4 additional accounting department employees	$20,000
Increased legal fees	10,000
Employee benefits for additional employees (9.3% of salaries)	49,000
Payroll taxes for additional employees (2.5% of salaries)	13,000
	$92,000

Depreciation of Ground Equipment expense was computed on the basis of the following estimated capital expenditures:

Washington	
Furnishing counter space	$ 6,000
Motor scooter	400
Passenger ladder	3,600
New York	
Furnishing counter & cargo space	$18,000
Truck for cargo section	3,000
Fork lift truck	4,000
Starting unit	5,000
Cargo pallets	1,800
Cargo carts	900
Passenger ladder	3,600
Motor scooter	400
Station wagon	3,000
	$39,700

Depreciating these capital expenditures over a three year period results in an estimated annual charge for Depreciation of Ground Equipment of $16,567.

[fol. 1662] —87—

F. Importance of New York and Washington to Panagra's Operations.

1. Present Traffic Flow to and from West Coast of South America.

New York and Washington are vitally important terminals for Panagra's routes. United States-South America passengers represent more than one-third of Panagra's *present* revenue. Of the 79,790,000 revenue passenger miles flown by Panagra's system in the six months October 1955 through March 1956, 28,095,000, or 35.2%, were flown by revenue passengers originating in or destined to the United States.

New York City is the ultimate destination or originating point for half of these passengers.

In the six months October 1955 through March 1956, the interchange flights carried over the Miami-New York sector, by actual count, approximately 11,000 Latin America passengers. These Panagra passengers produced 24,713,000 revenue passenger miles north of Balboa over the routes of Pan American and National, or 31% of Panagra's total system revenue passenger miles south of Balboa for the same period.

The actual count of passengers carried on Panagra aircraft during the period October 1, 1955-March 31, 1956 is shown below. Also shown is an annual estimate projected on the basis explained above in Section E, subsection 1.

[fol. 1663] —88—

Origination and Destination of Passengers Carried by Panagra Aircraft over Through Flight and Interchange Sectors, October 1, 1955-March 31, 1956.

Balboa-Miami Sector	Actual 6 mos.	Estimated Annual
South America-Washington New York	7,542	15,084
South America-Miami	6,462	12,924
Balboa-Washington New York	3,411	6,822
Total Transiting PAX	17,415	34,830

Balboa-Miami Sector	Actual 6 mos.	Estimated Annual
Balboa-Miami Local	7,284	14,568
Sector Total	24,699	49,398
Transiting as % of Sector Total	70.5%	70.5%
Miami-New York Sector		
South America-Washington/New York	7,542	15,084
Balboa-Washington/New York	3,411	6,822
Total International PAX	10,953	21,906
Miami-Washington/New York Domestic	20,121	36,583
Sector Total	31,074	58,489
International as % of Sector Total	35.2%	37.5%

As shown, international through passengers (i.e., those transiting the local sector) presently constitute 70% of the total traffic carried over the Balboa-Miami sector, and 37% of the total traffic carried over the Miami-New York sector. (With respect to the latter sector, it should be noted that international passengers are estimated to comprise 48% of the total Miami-New York passengers for the year 1957 on the basis of an independent Panagra operation).

Of the 49,398 passengers carried in the estimated year between Balboa and Miami, only 21,906, or 44% traveled

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[fol. 1664] on to Washington and New York. It is believed that these 21,906 passengers do not constitute the total number of the Balboa-Miami sector passengers who began or ended their journeys in Washington and New York. A considerable number of the balance of 27,942 who are estimated to enplane or deplane at Miami are believed to have traveled to or from New York and Washington by some other means.

For example, a study of northbound passenger addresses made for a six months' period in 1954 indicated that 71% of Panagra passengers who arrived at Miami from South America (excluding Balboa) were enroute to Washington and New York. Including all passengers who arrived at

Miami on Panagra aircraft (i.e., including those who boarded at Balboa), 68% indicated travel to or via New York and Washington. (See Docket No. 4882, Exhibit No. PGR 4.) It is apparent from these figures that there is still a sizable number of Washington and New York bound passengers who have not to date used the interchange planes north of Miami.

This is borne out by a survey of northbound passengers conducted at Miami over a three week period in May and June of 1956. The survey indicated that 68% of all passengers who arrived at Miami on Panagra aircraft during this period were finally destined to or via Washington and New York, confirming precisely the results of the 1951 study. However, only 55% stayed aboard for through travel to Washington and New York. The 55% shows a substantial increase over the 44% who traveled on to Washington and New York in the six months' period October 1, 1955 through March 31, 1956, giving some evidence that

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[fol. 1665] as the through service becomes better known and understood, passengers who formerly disembarked at Miami will continue on. Nevertheless, at the moment approximately 13% of Panagra's Washington and New York bound passengers stop over at Miami. This would indicate that there will be a continuing increase in the number of international passengers over the Miami-New York sector irrespective of overall traffic growth.

2. *Future International Traffic Growth.*

If Panagra were certificated from South America into Washington and New York, it is estimated that there would be an annual 20% increase in the number of first class passengers carried by Panagra between South America and these two cities, and an annual 30% increase in the number of tourist class passengers.

It is forecast that the steady economic growth of the United States and the areas in South America which Panagra now serves will of itself produce a general increase of 10% per year in the number of United States-South

America passengers carried by Panagra. This minimum expected increase simply reflects Panagra's historical experience. Each of the past four years has shown a weighted average 11% increase over the preceding year in the number of Panagra through passengers between points south of Balboa and Miami. (See Part One, page 30, above.)

In addition to the 10% general increase in both tourist class and first class passengers based on historical traffic

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[fol. 1666] indications, it is forecast that there will be an additional 10% annual increase in first class passengers and an additional 20% annual increase in tourist class passengers as a result of the special factors discussed below.

It is believed that the number and proportion of international passengers presently carried over the Miami-New York sector by Panagra aircraft will increase, without regard to a general increase in the traffic volume or generation of new traffic. In time, the habit of changing planes at Miami should give way to the advantages of one plane through service and more of the New York and Washington passengers will stay on the same plane. Equally important, if Panagra were to operate the sector itself, an international standard of service would be provided for the entire journey into New York that would induce those passengers, who now see little reason not to change planes at Miami, to use the same plane the entire trip.

With respect to first class traffic, another reason to expect an increase over and above the historical 10% growth is the improved and faster service resulting from the elimination of Washington stops on four first class flights per week.

But there are major reasons outside of Panagra's present interchange service on which to expect a faster rate of traffic increase.

There is now developing a new hemispheric emphasis on inter-American travel that will generate new traffic. This emphasis was dramatically evidenced at the recent Costa

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[fol. 1667] Rica conference. Within the next several years

there will be a vastly expended program for advertising South America and Central America as desirable destinations for American tourists. The Latin American governments are taking steps to encourage tourism to their countries and to compete for the more than 500,000 American tourists who annually visit Europe, many of whom are now looking for new areas to visit. In 1955 fewer than 50,000 American tourists visited South America. The concentrated advertising program will have a profound effect on the volume of traffic to Latin America.

A further increase in passenger volume will result from the recent institution of year-round excursion fares by Panagra. These fares are 30% below regular first-class and tourist rates and should generate a substantial amount of new business which would not otherwise be generated by Panagra's existing service. The lower revenue per passenger yielded by the excursion fares would be applicable entirely to the international sectors where the fare structure is higher than the domestic fare levels between Miami, Washington and New York. Consequently, an increase in traffic as a result of the excursion fares would result in an increased number of passengers at the same fare levels used in the estimated sector operating profit shown in Section E above. Systemwide, it is believed the lower fares will be more than offset by the increased traffic volume.

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[fol. 1668] There is yet another factor for estimating the large increase in United States-South America traffic which Panagra could expect to carry: the impact of Panagra's own independent operation into Washington and New York. The identification of Panagra in the mind of the American traveling public would be emphasized by actual entry of Panagra into these principal markets. Direct contact with the United States market would emphasize the availability of daily air service to South America. Panagra airport counters, and the other activities apparent to air travelers that go with operating on its own certificate, would increase public familiarity with Panagra as an *independent* United States flag airline. Also, domestic passengers on Panagra planes would be treated to an international standard of

service and to special South American advertising that would promote their interest in visiting the areas Panagra presently serves.

The developmental and promotional value to air transportation in certificating Panagra into the northeastern United States cannot be overestimated. Such authorization will produce desirable and healthy competitive and public benefits.

Of course, if Panagra is not permitted to expand its routes and service, there is every doubt whether Panagra could expect even to continue its present annual growth rate, let alone improve upon it. Air transportation is an industry which requires growth in all aspects in order simply to keep even with other airlines and to meet the enlarged demands of the traveling public. If these demands are not met, the airline will lose patronage to car-

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[fol. 1669] riers, either domestic or foreign, who are able to meet them.

3. *Little Diversion from Domestic Carriers and No Subsidy Need from Government.*

Although Panagra's application contemplates the use of local traffic rights, there would be no substantial diversion of domestic passengers from the domestic carriers operating between Miami, Washington and New York. Panagra proposes to operate only two daily frequencies, or 4% of the 50 daily frequencies presently operated by the two certificated carriers. These frequencies would not be increased until warranted by *international traffic.*

In the first year of operating roughly 34% of the seating capacity offered by the two frequencies will be occupied by international passengers to and from Latin America. Preference will in all cases be given to these international passengers. Thus, Panagra estimates that it will need to carry only 35,235 domestic passengers to or from Miami in order to make the Washington/New York extension an economical one at the outset. As the volume of international

through traffic builds up, the number of domestic passengers carried by Panagra on its through flights would be decreased. Domestic traffic rights will be essential for economical operation at first but will become less important in time.

There will be no subsidy needed by Panagra to operate into Washington and New York. On the contrary, operation into these domestic points would provide the Panagra

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[fol. 1670] system with a natural breadth and strength that would serve ultimately to insure a subsidy-free system.

A New York certificate would provide Panagra with $4.2 million additional revenues from the new sector above Miami. Revenues of $5.5 million would be obtained from the proposed Balboa-Miami sector. The expected revenues for Panagra's present system in 1957, based on historical growth, are $19.2 million. Combined, these would total annual revenues of $28.9 million in 1957. This is an increase of 70% over the $17.0 million operating revenues produced by the present Panagra system south of Balboa in 1955.

The expanded system, linking natural traffic flows, allowing for more efficient utilization of equipment and personnel, and producing revenues in the sizable amounts indicated, should produce an international airline capable of standing on its own feet without government support except in the most unfavorable circumstances.

4. *DC-8 Operations.*

Within four years there will be available 125-passenger turbine propelled air transports to operate between New York and Buenos Aires. They will be capable of flying the 5,500 mile Great Circle distance at speeds of 550 miles per hour with only one stop.

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[fol. 1671] When these commercial jet aircraft are placed in service between New York and Buenos Aires, the route will immediately become the most important international route in the Western Hemisphere. By cutting present travel time almost in half, it will bring the largest city in

North America within a half-day's journey of the largest (and about the southernmost) city in South America.

All three United States flag carriers, including Panagra, that now operate between North and South America have such jet equipment on order.

Braniff will receive delivery of Boeing 707s in 1959 and 1960 and could provide service under its present certificate from Houston and Chicago to Rio de Janeiro and Buenos Aires via Bogota. Pan American will receive delivery of DC-8s and 707s in 1959 and 1960 and will be able to operate New York-Buenos Aires via Caracas under its present certificate.

Thus, Panagra's primary competitors will be able to operate directly from the United States to Buenos Aires with one-stop service under their present certificates. In order to be competitive, Panagra must be able to operate the new jet equipment New York-Buenos Aires one-stop via Lima. However, its present certificate will not permit this.

New York-Buenos Aires and New York-Lima are now Panagra's most important markets.

Realizing the significance of the new long range jet equipment to its primary routing between New York and Buenos Aires, Panagra acted promptly by ordering four,

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[fol. 1672] and optioning an additional two, DC-8 aircraft with J-75 turbine engines. Panagra will receive delivery on them in early 1960—in time to protect its competitive position, *if* it is in the meantime given authority to operate the new planes where traffic patterns will demand.

The four DC-8s on order by Panagra involve an estimated expenditure of more than $25 million. In addition, of course, large capital expenditures will be required to improve the ground facilities in South America. Extensive planning must now be done in closest cooperation with the countries which Panagra serves. Financing arrangements for this necessary flight and ground equipment will

depend upon obtaining legal authority to operate the long haul service.

It is apparent that the jet age of air travel will have outmoded the National-Pan American-Panagra Interchange Agreement. The extremely high cost and speed of jet operation will make the splitting of revenues and expenses an uneconomic and burdensome practice for any of the three carriers involved. Moreover, the New York-Buenos Aires and intermediate United States-South America markets will have become so integrated as to warrant the preferable one-carrier service.

Jet operation will require a routing flexibility that would be impossible in any sort of interchange arrangement. The nature of jet transportation will make obsolete the necessity of a Miami or Balboa stop.

These combined technological-traffic developments are not more than four to six years in the future. They require

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[fol. 1673] extensive planning and preparation now. The staggering job cannot be budgeted on any sound financial basis without an international route structure permitting Panagra unrestricted access to Miami, Washington and New York. There can be little doubt that this will be a natural evolution of Panagra's operations.

The proper jet equipment is necessary and ordered. The route authority is necessary and must be applied for. Unless Panagra obtains both equipment *and* routes, it will not be able to provide the service the public will demand and need.

[fol. 1674]

PART THREE

BALBOA-MEXICO CITY-LOS ANGELES/ SAN FRANCISCO

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PART THREE

BALBOA-MEXICO CITY-LOS ANGELES/ SAN FRANCISCO

A. *Nature of Application*

This application is to extend Panagra's route 3,390 miles north from Balboa to Mexico City, Los Angeles and San Francisco. San Francisco and Los Angeles would be requested as co-terminals on the route which would begin at its southern end at Buenos Aires. Los Angeles-Mexico City turnaround authority would be requested, although only flights through Mexico City to and from South America would be operated initially.

B. *Reasons for Application*

1. If Panagra is to become a major United States air carrier and a sound investment in its own right, it must obtain access to relatively heavy traffic areas. Today, it operates into no such areas. Extension into Miami and New York would provide Panagra with one needed area, but this extension would not develop any *new* traffic areas. Mexico City and Los Angeles are volume markets which would buttress and sustain the rest of Panagra's long, lean route structure in South America.

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[fol. 1676] 2. The Mexico-California extension from Balboa together with a Florida-New York extension would produce an airline generating an estimated $33.6 millions in revenues in the first year of operation and an estimated profit, after income taxes at 52% and without federal subsidy, of conservatively $1.1 million. An airline operation of this scope would result in uniformly lower unit costs and would permit Panagra to operate at a cost level which would be substantially in line with other international air carriers. It would also provide a breadth, diversity and balance sufficient to minimize the effect of traffic fluctuations in any one area alone (e.g., the drop in Argentine traffic as a result of the revolution and devaluation of the peso).

3. Exclusive of any subsidy support, the route would provide an operating profit of $442,000. Moreover, it would soon contribute toward making the rest of Panagra's system free from subsidy need.

4. The expanded system would be a major step toward the most desirable route structure for the operation of large jet aircraft between the United States and Latin America.

5. Panagra has been a primary and pioneer United States-South America air carrier. Since 1930, it has had access into Central America at Panama. It is the logical carrier to be extended to Mexico and to connect the West Coasts of the two American continents.

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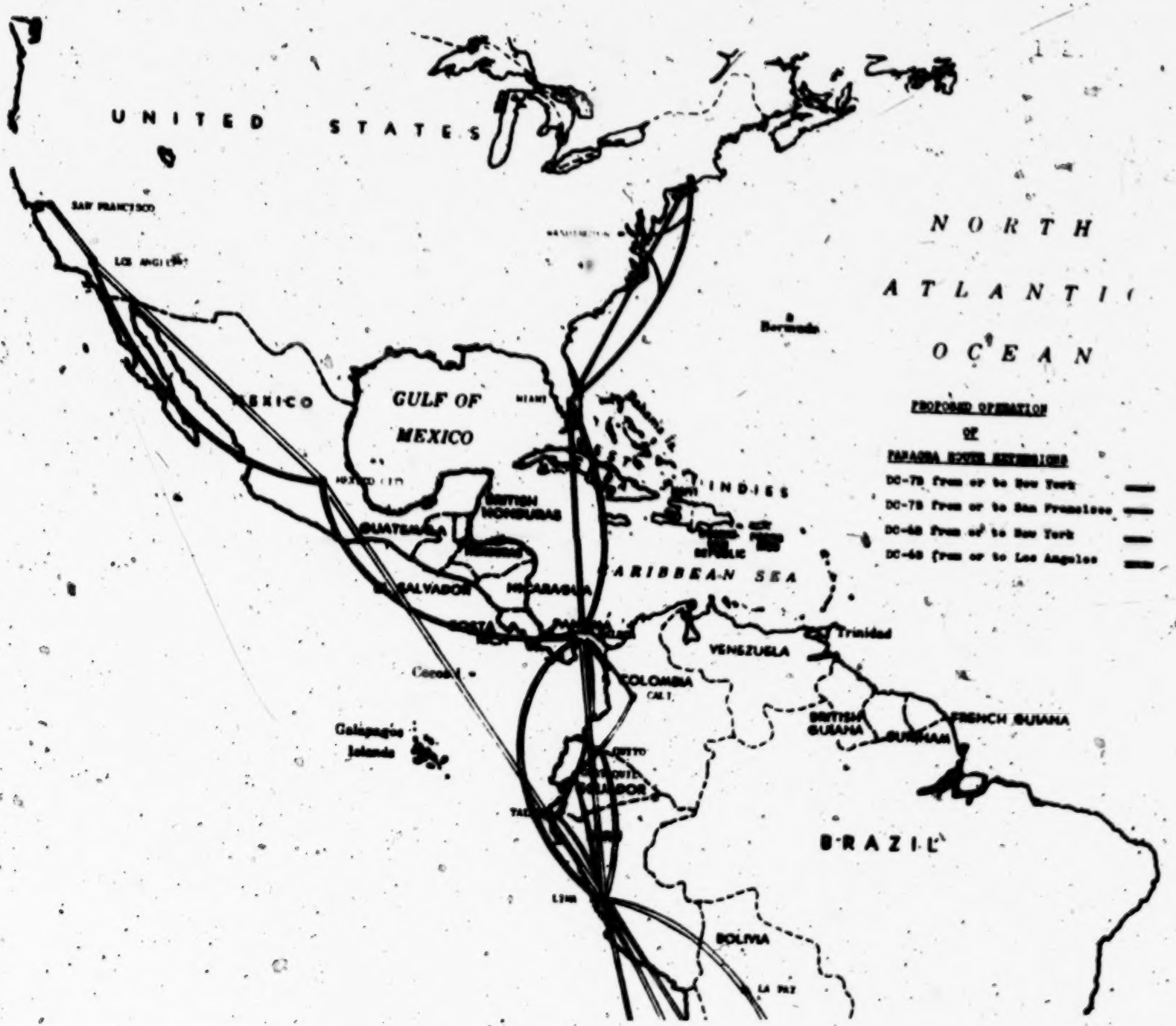
[fol. 1677] 6. Of vital importance is the need to improve air service connecting the West Coast of the United States, Mexico, the West Coast of South America, and Buenos Aires. At present, there is *no* one carrier or one plane service between the West Coasts. There is no U.S. flag service such as proposed by Panagra between California and Mexico or from Mexico to South America. Panagra, as a U.S. flag carrier which already serves the southern portion of this route to connect continents, is uniquely qualified to furnish the needed northern connection.

C. *The Proposed Operation*

It is proposed that Panagra operate three-round trips per week between the West Coast of the United States and the West Coast of South America. One DC-7B frequency would be operated weekly from the two California coterminals to Mexico City, then nonstop to Lima, then south to Buenos Aires, and then return serving the same points. Two DC-6B frequencies would be operated weekly from Los Angeles to Mexico City, Balboa, Lima, and return. At Lima, the 6B flights would connect with 6B flights coming from or going to Bolivia, Chile and Argentina. The expanded Panagra operation is shown on the map on the following page:


UNITED STATES
NORTH ATLANTIC OCEAN
GULF OF MEXICO
MEXICO
CARIBBEAN SEA
INDIES
BRITISH HONDURAS
GUATEMALA
EL SALVADOR
NICARAGUA
COSTA RICA
PANAMA
VENEZUELA
COLOMBIA
Trinidad
BRITISH GUIANA
FRENCH GUIANA
SURINAM
BRAZIL
BOLIVIA
Galapagos Islands
Bermuda
PROPOSED OPERATION
OF
PANAGRA POWER EQUIPMENT
DC-7B from or to New York
DC-7B from or to San Francisco
DC-6B from or to New York
DC-6B from or to Los Angeles

COLOMBIA
CALI
Galapagos Islands
QUITO
ECUADOR
BRITISH GUIANA
SURINAM
FRENCH GUIANA
BRAZIL
LIMA
BOLIVIA
LA PAZ
PARAGUAY
ARGENTINA
CHILE
SOUTH PACIFIC OCEAN
SOUTH ATLANTIC OCEAN
Falkland Islands
South Georgia Islands
C. Horn

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[fol. 1679] The DC-7B flight would be operated in first class configuration identical to the 7B flights serving the East Coast of the United States. The DC-6B flights would be used in tourist class configuration, identical to the 6Bs serving the East Coast of the United States. Consideration might be given to converting the entire Panagra fleet of 7Bs and 6Bs to dual configuration in order to increase the flexibility of the combined operation.

The theoretical block-to-block flying times for the proposed western route are as follows:

Sector	DC-7B	DC-6B
San Francisco-Los Angeles	1:30	—
Los Angeles-Mexico City	5:20	5:40
Mexico City-Balboa	)	5:40
	) 10:20	
Balboa-Lima	)	5:30
Lima-Buenos Aires	6:20	—
	23:30	16:50

D. *Additional Aircraft*

The South America-Mexico-California operation would be possible with the acquisition of only one additional DC-7B and one additional DC-6B. Thus, Panagra's total long-range fleet would comprise six 7Bs and six 6Bs. Because all 7Bs and all 6Bs would be in identical configuration, they would be completely interchangeable as between the East

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[fol. 1680] Coast U.S. and West Coast services. Interchange of the 7Bs could take place at Buenos Aires and the 6Bs at Lima. It should be noted that currently four of the seven 6B frequencies between New York and South America terminate at Lima.

The proposed Mexico-California operation would result in an average daily utilization for the expanded system, including Miami and New York, of 7:31 hours for the six DC-7Bs and 7:43 hours for the six DC-6Bs, well within maintainable standards of aircraft use.

Panagra already has a sixth DC-7B on order for delivery in July of 1957. Substantial payments have been made to the manufacturer on this aircraft and the balance is budgeted to be paid out of Panagra's current cash flow. The sixth DC-6B would, presumably, have to be purchased on the open market at a price approximating $1,800,000. It is anticipated that Panagra would borrow the amount of money necessary to purchase the additional 6B.

Panagra is in the unique position of having the capacity to put the route into almost immediate operation with modern equipment without in any way diminishing its present main stem service between New York and Buenos Aires. Nonetheless, it should be recognized that the proposed schedules are only the minimum necessary to meet the

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[fol. 1681] immediate need for new through service in the western area. The lift capacity would be considerably expanded with the advent of the new jet equipment in 1960. The 7B and 6B service over the proposed route would be superseded in large measure after 1960 by the jet equipment now on order.

E. *Financial Result*

It is estimated that the new route extension would generate revenues of $4.7 million in its first year of operation. This would produce an operating profit of $442,000, without subsidy, and after absorbing the full depreciation on both the additional planes. In its first year of operation it is estimated that the route would produce on an added cost basis a net profit of $153,000 after taxes at 52%. On an allocated cost basis, the result would be even more favorable.

The revenue estimate of $4.7 million for the Mexico-California extension reflects a conservatively estimated 55% average passenger load factor south of Los Angeles. The basis for this traffic estimate is explained in Section H below.

If the assumed average load factor is increased to 60% from 55% on the sectors south of Los Angeles, which would easily be foreseeable, the route's revenues would increase to $5.1 millions and the net profit to $274,000.

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[fol. 1682] The estimated revenues as well as the expenses include the portion of the flights south of Balboa over Panagra's present system. Expenses are constructed on an added cost basis. A detailed explanation of the revenue and expense estimates appears in Section L below.

The estimated profit and loss statement for the first year's operation of the proposed route appears on the next page:

[fol. 1683]

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1957 Profit and Loss Estimate
Buenos Aires—Lima—Mexico City—Los Angeles/
San Francisco Operation

(Dollar amounts expressed in thousands)

Operating Revenues	
Passenger	$4,004
Mail—U.S.	94
Mail—Foreign	132
Freight	330
Excess Baggage	160
	$4,720
Operating Expenses	
Flying Operations	$1,123
Direct Maintenance—Flt. Equip.	446
Depreciation—Flight Equip.	574
Total Direct Flying Operations' Exp.	$2,143
Ground Operations	$ 412
Ground & Indirect Maintenance	311
Passenger Service	320
Traffic & Sales	584

Advertising & Publicity	337
General and Administrative	132
Depreciation—Ground Equipment	39
Total Ground Operations Expense	$2,135
Total Operating Expenses	$4,278
Net Operating Income Without Federal Subsidy and Before Income Taxes	$ 442

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F. *Prior C.A.B. Proceedings and Applications*

With respect to the California-Mexico City segment, Western and American have applications pending. In the same Latin American Service Case which granted Braniff routes into South America, the C.A.B., with President Truman's approval, certificated Western Airlines between Los Angeles and Mexico City. Subsequently, when the U. S. Mexican bilateral air treaty negotiations faltered and no new U. S. carrier was permitted by the Mexican government to serve Mexico, President Truman "withdrew" his approval of the certification of new carriers into Mexico (Western, Braniff and Eastern). The legality of this withdrawal of approval by the President is an issue in the pending "New York-Mexico City Nonstop Service Case". Whatever the legality of its status, Western is generally regarded as having the inside track on the Los Angeles-Mexico City route whenever Mexico opens it, although American now also has an application pending for this same route. Hearings have not been scheduled, nor is the Mexican bilateral situation yet resolved.

With respect to the Mexico City-South America segment, no American carrier has applied for authority to operate a route that would include both Mexico City and points in South America.

G. *Present Service*

Fares. The San Francisco-Buenos Aires first class fare is $667 and the Los Angeles-Lima tourist class fare is $333. Broken down by sector these fares are:

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	First Class	Tourist
San Francisco-Los Angeles	$ 22	$ 14
Los Angeles-Mexico City	98	75
Mexico City-Balboa	143	110
Mexico City-Lima	352	258
Balboa-Lima	209	168
Lima-Buenos Aires	220	180

Los Angeles-Mexico City segment. The only nonstop service being operated today between Los Angeles and Mexico City is that of Compania Mexicana de Aviacion (CMA). CMA, a Pan American affiliate, operates a daily DC-6 first class service; CMA's published flying time is 5:40 hours. CMA operates no tourist class nonstop service—its daily DC-4 tourist planes make five intermediate stops between Los Angeles and Mexico City.

Mexico City-Balboa-Lima segment. The only carrier to operate nonstop between Mexico City and Lima is Canadian Pacific Airlines (CPAL). It offers a twice weekly service from Vancouver through Mexico City nonstop to Lima, using DC-6B dual configuration equipment. CPAL's scheduled flying time between Mexico City and Lima is ten hours northbound and eleven hours southbound. CPAL recently inaugurated service beyond Lima nonstop to Buenos Aires.

Pan American operates local tourist class service between Mexico City and Balboa, using DC-6B equipment. A one-stop flight is operated three times weekly and takes approximately seven hours; a 4- or 5-stop flight is operated daily and takes ten hours. Foreign flag carriers and the type of service offered by them between Mexico and Balboa are:

[fol. 1686] —110—

Carrier	Equipment	Weekly Frequency	No. of Stops	Type of Service
TACA	DC-4	1	5	Tourist
Aerovias Guest	Constellation	2	1	Tourist
IACSA	Convair 340	3	2	Tourist
KLM	Convair/DC-6*	1	4	Tourist

* Change of plane en route.

Pan American's San Francisco/Los Angeles-Guatemala City flights now proceed on with intermediate stops to Balboa and Caracas and return, so that it is possible to fly between Los Angeles and Balboa on PAA DC-6 type equipment in about 14 hours. This compares with approximately 12½ hours LAX-MEX-TUM via Panagra's DC-6Bs.

H. *Traffic Volume*

Presented on the next page is an analysis of the most recent March and September C.A.B. traffic surveys. These surveys record the number of passengers who were carried at some point in their journeys by a U.S. flag carrier. They do *not* reflect the number of passengers whose entire journeys were via foreign carriers. The number of passengers shown on the table following has been projected to an annual basis from the two months' actual count.

The totals include passengers who actually traveled between South America and Mexico City and the U.S. West Coast, and potential passengers, i.e., those who presumably would have traveled between South America and Mexico City and beyond if adequate service were offered. These totaled an estimated 33,972 in 1955, a 78% increase over 1953.

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[fol. 1687] In addition to the C.A.B. figures, the table below also shows the number of Panagra passengers who traveled or might have traveled to, from, or via Mexico City, as derived from Panagra's internal records. In 1955, a total of 7,408 passengers were in this category, a 37% increase over 1953.

Number of Actual and Potential Passengers Between South America and Mexico City

Total South America

Year	S.A.-Mexico City C.A.B.	S.A.-Mexico City PNG	S.A.-Mex-Lax & Pac. C.A.B.	S.A.-Mex-Lax & Pac. PNG
1955	33,972	7,408	17,580	4,467
1954	27,636	6,675	13,320	4,109
1953	19,116	5,402	11,406	3,321

Lima and Points South

Year	S.A.-Mexico City C.A.B.	S.A.-Mexico City PNG	S.A.-Mex-Lax & Pac. C.A.B.	S.A.-Mex-Lax & Pac. PNG
1955	16,548	6,004	8,928	3,645
1954	13,818	5,259	6,306	3,333
1953	7,800	4,317	5,466	2,735

Points North of Lima to and Including Balboa

Year	S.A.-Mexico City C.A.B.	S.A.-Mexico City PNG	S.A.-Mex-Lax & Pac. C.A.B.	S.A.-Mex-Lax & Pac. PNG
1955	17,424	1,404	8,652	822
1954	13,818	1,416	7,014	776
1953	11,316	1,085	5,940	586

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[fol. 1688] The preceding table also shows the number of passengers originating or terminating in South America who did travel or might have traveled *through* Mexico City to and from the western part of the United States and points in the Pacific or the Orient. In 1955, there were an estimated 17,580 passengers in this category.

The total South America-Mexico City passengers have been broken down to show the desirability of a Balboa stop between Mexico City and Lima. Of the estimated 33,972 passengers who traveled or might have traveled between South America and Mexico City in 1955, 16,548 came from

or went to Lima and points south, while 17,424 came from or went to points north of Lima to and including Balboa. Thus, 51% of South American passengers presently traveling from, to or through Mexico City would prefer or require use of the Balboa gateway.

The above table does not show any of the turnaround passengers carried by CMA between Mexico City and Los Angeles. CMA's statistics have been unavailable. Assuming that CMA has operated on a year-round passenger load factor of 65% with its daily nonstop frequency and that its DC-6 carries 52 first class seats (the same number as Panagra's DC-6s carried), CMA transported an estimated 24,674 passengers annually.

The growth potential in this general area is indicated by the increase in the number of passengers carried by Pan American on its nonstop Los Angeles-Guatemala City route. According to the examiner's report in C.A.B. Docket No. 6615, Pan American carried since its first full year of operation:

[fol. 1689] —113—

Year	Passengers	% Increase Over 1952
1954	10,662	55.5%
1953	7,743	12.9%
1952	6,856	—

Canadian Pacific has also shown a steady increase in the number of passengers it carries between Mexico City and Lima, on its twice weekly service. The first full year of CPAL's operation was 1954.

Year	Passengers	% Increase Over 1954
1956	3,228[a]	59.6%
1955	2,222	9.8%
1954	2,023	—

[a] Projected from nine months actual.

Projected Load Factor. Based upon these traffic indications and new traffic that would be generated by the new

Panagra service, an average revenue passenger load factor of 55% has been estimated for the first year of operating the sectors of the new route south of LAX. (Because no local traffic rights would be requested for the LAX/SFO sector, a passenger load factor of only 25% has been estimated for the first year of operating one weekly 7B flight LAX/SFO.) The estimated 55% load factor appears conservative in view of the lack of adequate through air service now existing in the area.

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[fol. 1690] On the LAX-MEX segment, an average load factor of 55% for three weekly frequencies appears low. PAA estimated a revenue passenger load factor in the "Guatemala-Los Angeles Renewal Case" of 64.5% for the year beginning July 1, 1955, on its LAX-GUA route. (PAA estimated 30% on the LAX/SFO segment.) Pan American now operates four DC-6B frequencies per week between SFO/LAX and GUA. SFO/LAX-MEX has every evidence of being a stronger route, even with CMA and possibly other competition, than PAA's Guatemala City route. The table on page 111 indicates that 17,580 passengers traveled between South America and the West Coast of the United States in 1955. If Panagra's new service were to carry only half of these total available through passengers, without carrying any of the heavy local traffic, it would have a passenger load factor of 44.5% on its three weekly frequencies MEX-LAX. New traffic generated by the new service, local traffic, and a general increase in air travel, would account for at least another 10.5% of the ASMs.

On the MEX-TUM-LIM segment, an average load factor of 55% also appears on the low side. With one-plane direct service and three weekly round trips connecting MEX and LIM, Panagra would supply annually 59,408,000 available seat miles. If one-half of the 16,548 LIM-MEX potential passengers in 1955 shown in the table on page

—113B—

[fol. 1691] 111, and one-half of the 33,972 TUM-MEX potential passengers in 1955 traveled via Panagra, they would produce 37,956,000 revenue passenger miles per

year, or a 63.9% load factor between Lima and Mexico City. The one-half of total available annual traffic does not appear excessive when it is realized that 6,904 of the 8,274 LIM-MEX potential passengers and 7,408 of the 16,986 TUM-MEX potential passengers in 1955 actually traveled on Panagra planes for some part of their journey. Assuming these passengers would remain on Panagra planes between LIM and MEX, they would produce annual revenue passenger miles of 20,171,000. These assured passengers alone would thus produce an annual load factor of 34.0% on Panagra's proposed flights connecting LIM and MEX.

[fol. 1692] —114—

I. *South America-Orient Traffic Indications*

Although it has not been possible to date to develop any precise travel statistics between the Orient and South America, there is sound reason to believe that this is a developing market. There are already a substantial number of Orientials in Bolivia, Peru, Ecuador, Argentina and Brazil, and there is the prospect of an even larger immigration movement within the next several years from Japan to South America. With the resurgence of the Japanese economy, traffic between Japan, as well as other Far Eastern points, and South America is bound to increase. This appears already to be the case.

Japan Airline has operated a number of charter flights across the Pacific, through the California gateway, across the United States and the Caribbean to South America. With that airline's gain in stature it can be expected that it will attempt to implement routes to South America which it is now actively surveying.

A sizeable part of CPAL's traffic to Lima has been Oriental. Canadian Pacific, of course, connects its Vancouver-Mexico City-Lima-Buenos Aires service with its Great Circle route across the North Pacific to Japan.

Pan American operates a Los Angeles-Guatemala City-Balboa-Caracas-Rio de Janeiro service which ties in with its central Pacific route to Japan and the Orient. This all-

Pan American routing, of course, is substantially longer in time and mileage than that of Canadian Pacific or the proposed Panagra route.

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[fol. 1693] These developing Orient-to-South America services would indicate an increasing volume of traffic and cause for diversion from Panagra unless Panagra offers a competitive service.

J. *Growing California*

California is one of the heavily industrialized and fastest expanding areas in the United States. The state's dramatic population increase in the post-war years is shown in the following table:

Year	Population (000)	% Increase Over 1940	National Average Increase
1940	6,907	—	—
1950	10,586	53%	15%
1956 (est)	13,433	95%	27%

Source: Current Population Reports, U. S. Bureau of Census.

The Los Angeles metropolitan area had a population of 4.4 million in 1950. The San Francisco metropolitan area had a population of 2.2 million in 1950.

Increases in population and other aspects of Mexico, as well as of the countries of South America, are detailed in the Annexes, and portend an ever increasing demand for the type of service proposed by Panagra.

K. *Comparative System Profit and Loss*

1. *Estimate of First Year's Earnings.*

The estimated 1957 profit and loss statement for the proposed Panagra system is presented on the following page:

Proposed Panagra System
Estimated Profit and Loss Statement
(After Extension to New York and San Francisco on an added cost basis)

Future Year

Projection to 1957	Present Panagra System (000)	Balboa-Miami Sector (000)	Miami-New York Sector (000)	Mexico Calif. Extension (000)	Proposed Panagra System (000)	Cents Per Available Ton Mile
Operating Revenue						
Passenger	$15,317	$ 4,276	$ 3,459	$ 4,004	$27,054	34.87 ¢
Mail - United States	315	296	115	94	820	1.06
Mail - Foreign	562	161	---	132	855	1.10
Freight	1,338	342	469	330	2,479	3.19
Excess Baggage	715	207	125	160	1,207	1.56
Non-Schedule Transport Svce		---	---	---	---	---
Other Transportation		---	---	---	---	---
Total Transportation	$18,247	$ 5,282	$ 4,168	$ 4,720	$32,417	41.78 ¢
Federal Subsidy	$ ---	$ ---	$ ---	$ ---	$ ---	--- ¢
Incidental Revenues	1,155	---	---	---	1,155	1.49
Total Operating Revenues	$19,402	$ 5,282	$ 4,168	$ 4,720	$33,572	43.27 ¢
Operating Expenses						
Flying Operations	$ 4,561	$ 1,165	$ 999	$ 1,123	$ 7,848	10.11 ¢
Direct Maintenance-Flight Equip.	1,541	488	432	446	2,907	3.75
Depreciation-Flt Equip.	1,582	523	557	574	3,235	4.17
Total	$ 7,684	$ 2,176	$ 1,988	$ 2,143	$13,990	18.03 ¢
Ground Operations	$ 2,292	$ 458	$ 407	$ 412	$ 3,569	4.60 ¢
Ground & Indirect Mntnce.	1,641	341	302	311	2,595	3.34
Passenger Service	1,165	342	393	320	2,220	2.86
Traffic & Sales	2,258	627	405	584	3,874	4.99
Advertising & Publicity	1,303	241	250	337	2,131	2.75
General & Administrative	1,860	149	92	132	2,233	2.88
Depreciation-Ground Equip.	181	16	17	39	253	0.33
Total	$10,700	$ 2,174	$ 1,665	$ 2,135	$16,875	21.75 ¢
Total Operating Expenses	$18,384	$ 4,349	$ 3,654	$ 4,278	$30,865	39.78 ¢
Net Operating Income	$ 1,018	$ 933	$ 514	$ 442	$ 2,707	3.49 ¢
Non-Operating Income - (Expense)	(100)	---	(145)	(121)	(369)	(0.48)
Net Income Before Taxes	$ 918	$ 933	$ 169	$ 319	$ 2,338	3.01 ¢
Income Taxes (@ 52%)	477	485	88	166	1,215	1.56 ¢
Net Profit	$ 441	$ 448	$ 81	$ 153	$ 1,123	1.45 ¢
Estimated Revenue Plane Miles (in thousands)						
DC-7B	2,670	833	791	664	4,958	
DC-6B	1,864	833	802	901	4,400	
Total	4,534	1,666	1,593	1,565	9,358	

[fol. 1695] The estimated profit and loss statements on the preceding page are based on an investment in a fleet of six DC-7Bs and six DC-6Bs.

As a result of charging the Miami-New York sector with the increased depreciation for the two aircraft reacquired from National and because of the expected diversion from the Balboa-Miami sector due to operations of the SFO/LAX-MEX-TUM-LIM-BUE route, the estimated net operating income shown on the preceding page for the Balboa-Miami and Miami-New York sectors differs from the estimates for these sectors in Parts One and Two above. It should also be noted that the present Panagra system P & L on the preceding page eliminates return on investment from PAA under the Through Flight Agreement and eliminates $358,000 of expenses allocable to the interchange operation not reimbursed by National but which have been charged to the Miami-New York sector in this study. A detailed explanation of the revenue and expense estimates appears in Section L below.

2. *Estimated Return on Investment.*

Average stockholder equity in the present Panagra system in 1956 and for the proposed system in 1957 is summarized below:

	Net Worth			
	Present Panagra System 1/1/56 (000)	Present Panagra System 12/31/56 (Est.) (000)	Proposed Panagra System 1/1/57 (Est.) (000)	Proposed Panagra System 12/31/57 (Est.) (000)
Capital Stock	$ 7,500	$ 7,500	$ 7,500	$ 7,500
Surplus and Surplus Reserves	5,312	6,259	6,259	7,157
	$12,812	$13,759	$13,759	$14,657

	1956	1957
Average Net Worth	$13,286,000	$14,208,000

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[fol. 1696] Net profit after interest charges and income taxes (at 38%) for the present Panagra system for 1956 is estimated at $971,000 or 7.3% on the average net worth during the period. Net profit after interest charges and income taxes (at 52%) in the first year of operation of the proposed Panagra system is estimated at $1,123,000 or 7.9% on the average net worth during the period.

The estimated average total capital employed by the present Panagra system in 1956 and by the proposed Panagra system in 1957 is computed below:

	Present Panagra System 1/1/56 (000)	Present Panagra System 12/31/56 (Est.) (000)	Proposed Panagra System 1/1/57 (Est.) (000)	Proposed Panagra System 12/31/57 (Est.) (000)
Net Worth	$12,812	$13,759	$13,759	$14,657
Long Term Debt	7,760	6,744	10,774	8,828
	$20,572	$20,503	$24,533	$23,485
		1956		1957
Average Capital Employed		$20,538,000		$24,009,000

Net profit *before* interest charges but after income taxes (at 38%) for the present Panagra system for 1956, is estimated at $1,052,000 or 5.1% of the average *capital employed* during the period. Net profit before interest charges but after income taxes (at 52%) in the first year of operation of the proposed Panagra system, is estimated at $1,300,000 or 5.4% of average capital employed during the period.

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[fol. 1697] The return on investment for the expanded Panagra system in 1957 shows only a slight increase from the expected return on investment from the present system in 1956. This reflects a 37% increase in income taxes as a result of loss of Western Hemisphere Trade Corporation status, and an increase of $3.5 million in the investment base as a result of the initial borrowings required to finance the route expansions. However, as long term debt decreases and net profits increase as the route extensions are de-

veloped, the investment return should improve considerably.

3. *Comparison of Unit Costs.*

If the present Panagra system were to be extended as proposed in this study, the resulting unit expenses on an available ton mile basis would compare favorably with the average unit expenses of U.S. International air carriers for the most recent period available. The unit expenses of the expanded Panagra system would be substantially lower than those of the present system. This is demonstrated by the following table:

[fol. 1698]

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	Present Panagra System Jan/June 1956	Proposed Panagra System 1957 (Est.)	Average All U.S. Int'l Air Carriers Jan/June 1956
	(Cents Per Available Ton Mile)		
Operating Expenses			
Flying Operations	12.17¢	10.11¢	11.31¢
Direct Maint.—Flt. Equip.	3.57	3.75	3.83
Deprec.—Flt. Equipment	4.51	4.17	2.74
Total Direct Operating Expense	20.25¢	18.03¢	17.88¢
Ground Operations	6.06¢	4.60¢	4.63¢
Ground & Indirect Maint.	3.94	3.34	2.46
Passenger Service	2.52	2.86	2.70
Traffic & Sales	5.50	4.99	4.74
Advg. & Publicity	2.90	2.75	1.71
Genl. & Administrative	4.77	2.88	3.11
Deprec.—Ground Equipment	0.39	0.33	0.33
Total Ground & Indirect Expense	26.08¢	21.75¢	19.68¢
Total Operating Expense	46.33¢	39.78¢	37.56¢

Reasons for the reduced unit expenses may be summarized as follows:

1. No Interchange cost penalties.
2. Extensive operations within the United States, resulting in lower average fuel costs.

3. Increased DC-6B and DC-7B operations, and therefore reduced impact of relatively high unit cost of local service operations in Ecuador and Bolivia with DC-3 and DC-4 equipment.

4. Longer nonstop flights, and hence fewer landings per route mile, with a resultant decrease in unit expenses, particularly for ground operations.

5. Fixed overhead costs spread over greatly expanded operations.

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L. *Analysis of Revenues and Expenses*

Following is an explanation of the bases and assumptions used in estimating the revenues and expenses for operation of the proposed expanded system. Unless otherwise indicated below, the same figures were used for computing the Balboa-Miami and Miami-New York sector profit-and-loss estimates as set forth in detail in Parts One and Two above.

To estimate revenues, traffic projections were generally based upon 1955 traffic volumes. In deriving passenger revenues from the passenger traffic projections, either current fares or passenger revenue yields for the most recent period available (the twelve months ended June 30, 1956) were used. Cargo and mail revenue rates and yields were treated separately on a sector-by-sector basis depending upon information available.

No non-scheduled revenue or expense has been included in the estimated profit and loss statement for the proposed Panagra system as it is believed that the net income from such operations would be negligible in amount.

1. *Passenger Revenues*

Panagra System. Estimated 1957 Panagra system passenger revenues are based on a 7% annual increase over 1955 revenue passenger miles, adjusted for a certain amount of diversion to the proposed SFO/LAX-MEX-TUM-LIM-BUE route. Analysis of internal traffic records indicated that 5½% of the revenue passenger miles of the present

Panagra System might be diverted annually to the new California service. After making this adjustment, RPM's for the Panagra System in 1957 were estimated at 173,700,000. Revenues were based on Panagra's passenger yield for the year ended June 30, 1956, 8.82 cents per RPM.

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[fol. 1700] *Balboa-Miami.* Analysis of internal traffic records for 1955 indicated that 5% of the Balboa-Miami through travelers might have been diverted from this sector had Panagra operated into Mexico City and Los Angeles during that year. The 29,878 through passengers over the through flight sector in 1955 were reduced by 5% and then increased by 10% in 1956 and 1957 resulting in an estimated 34,344 through and 16,113 local passengers in 1957. These totals were multiplied by the applicable one-way nonstop fares reduced by 15% to account for round-trip discounts, half-fares, etc.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. The proposed Panagra schedule would operate two round-trip tourist flights per week between Los Angeles and Lima with DC-6B equipment and one round-trip first-class flight per week between San Francisco and Buenos Aires with DC-7B equipment.

First-class passenger revenue on the DC-7B flights between LAX and BUE was estimated by reducing the published LAX-BUE first-class fare by 15% to account for round-trip discounts, half-fares, etc., and multiplying the reduced fare by an average annual 55% load factor on 58 seat aircraft, adjusted to account for the performance factor.

First-class passenger revenue on the DC-7B flights between San Francisco and Los Angeles was estimated by reducing the published SFO-LAX first-class fare by 15% and multiplying the reduced fare by an average annual 25% load factor on 58 seat aircraft, adjusted to account for the performance factor.

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[fol. 1701] Tourist class passenger revenue on the DC-6B flights between Los Angeles and Lima was estimated by

reducing the published LAX-LIM tourist fare by 15% and multiplying the reduced fare by an average annual 55% load factor on 70 seat aircraft, adjusted to account for the performance factor.

[fol. 1702] —123—

2. *U.S. Mail Revenues*

Panagra System. Panagra's 1955 U.S. Mail ton miles were increased by 4% per annum through 1957 to 553,902 and multiplied by Panagra's U. S. Mail per ton mile rate for the twelve months ended June 30, 1956, 56.9¢.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Panagra's tonnage of U.S. Mail per revenue plane mile flown for the twelve months ended June 30, 1956 was multiplied by the revenue plane miles scheduled for 1957 over the SFO/LAX-MEX-TUM-LIM-BUE route, and the resultant 171,072 ton miles multiplied by 55¢ per ton mile, the same yield as estimated for the Balboa-Miami sector.

3. *Foreign Mail Revenues*

Panagra System. The 1955 Panagra system foreign mail ton miles were increased through 1957 at a compounded annual rate of 13.18%, the average annual increase in foreign mail ton miles for Panagra from 1951 through 1955. Panagra's yield per ton mile for the twelve months ended June 30, 1956 was reduced by 25% in anticipation of a possible downward revision of rates.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Panagra's ton miles of foreign mail-per-scheduled revenue plane mile for the twelve months ended June 30, 1956 was multiplied by the revenue plane miles over the SFO/LAX-MEX-TUM-LIM-BUE route. The foreign mail revenue yield per ton mile for the present Panagra system for the twelve months ended June 30, 1956 was reduced by 25% to allow for an anticipated downward revision in rates, and multiplied by the estimated 125,683 foreign mail ton miles in 1957.

[fol. 1703] —124—

4. *Freight Revenues.*

Panagra System. The 1955 Panagra system freight ton miles were increased 10% per annum through 1957. The 3,187,320 estimated 1957 freight ton miles were then multiplied by Panagra's freight yield per ton mile for the twelve months ended June 30, 1956, 41.97¢.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Panagra's ton miles of freight per scheduled revenue plane mile for the twelve months ended June 30, 1956 were multiplied by the estimated 1957 revenue plane miles over the sector. The resulting 971,449 ton miles were multiplied by $.34, the same freight yield estimated for 1957 over the Balboa-Miami sector.

5. *Excess Baggage Revenues.*

Panagra System. Excess baggage revenue was estimated at 4.67% of estimated 1957 passenger revenues, the same relationship experienced by the present Panagra system for the twelve months ended June 30, 1956.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Since PAA-LAD is the only American carrier operating in this area, its 1955 experience of 4% of passenger revenue was used for this sector.

6. *Incidental Revenues.*

Panagra System. Incidental revenues for the present Panagra system in 1957 are estimated to include annual rental of $1,080,000 on four DC-6 aircraft and $475,000 from other sources. The estimated total annual incidental rev-

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[fol. 1704] enue of $1,555,000 does not include either rental income from one DC-4 expected to be sold before the end of 1957 or return on investment under the Through Flight Agreement.

7. Flying Operations Expense

Panagra System. 1957 Panagra system flying operations expense was estimated by taking the highest of the first three quarters of 1956 and adding it to Panagra's actual flying operation expense for the first nine months of 1956. From the annual estimate was deducted $70,000, the annual available seat mile fuel cost difference between National and Panagra which is presently being absorbed by the Panagra System. Since this fuel cost for operating over the interchange sector is now reflected in the Miami-New York sector P & L Statement, the present Panagra system P & L estimate will no longer reflect this cost.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Panagra's 1955 basic cost of Flying Operations per flying hour for DC-7Bs and DC-6Bs, excluding rentals, fuel and hull insurance, was developed as in Part One:

	Basic Flying Operations Cost Per Flying Hour
DC-7B	$72
DC-6B	61

The fuel cost per flying hour for DC-7Bs and DC-6Bs was computed by multiplying the average consumption of fuel per flying hour by the average cost per gallon of fuel over the SFO/LAX-MEX-TUM-LIM-BUE route. The following typical fuel costs per gallon were used:

[fol. 1705] —126—

	DC-7B	DC-6B
San Francisco	19 cents	18 cents
Los Angeles	19 cents	18 cents
Mexico City	24 cents	22 cents
Balboa	23 cents	21 cents
South of Balboa	29 cents	28 cents

The per flying hour cost of fuel for each sector was then added to the basic per hour cost and the total multiplied by the estimated number of flying hours over the sector.

The annual cost of hull insurance for the California route was computed by multiplying Panagra's present rate for

hull insurance times the insurable value of one DC-7B and one DC-6B. The result was then added to the total developed above.

8. *Maintenance—Flight Equipment*

Panagra System. Maintenance of Flight Equipment expense for the Panagra System in 1957 was estimated by adding the highest of the first three quarters of 1956 to Panagra's actual Maintenance of Flight Equipment expense for the first nine months of 1956. From the annual estimate $78,000, the available seat mile cost difference resulting from the terms of the Interchange Agreement, was subtracted, since full maintenance of flight equipment expense for the Miami-New York sector has been included in the Miami-New York sector P & L estimate.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. The per flying hour cost of Maintenance of Flight Equipment based on Panagra's 1955 experience was estimated at $61 for DC-6Bs and $96 for DC-7Bs in Parts One and Two. These basic costs were multiplied by the estimated number of flying hours for each type of equipment over the route to California.

[fol: 1706] —127—

9. *Depreciation—Flight Equipment*

Panagra System. Depreciation of Flight Equipment expense for the Panagra system in 1957 was estimated by adding the highest of the first three quarters of 1956 to Panagra's actual Depreciation of Flight Equipment expense for the first nine months of 1956. From this estimate was deducted the annual allocable depreciation charge of $150,000 for the Miami-New York sector not reimbursed by National, because the Miami-New York sector estimated P&L reflects a full allocation of depreciation charges.

Miami-New York. In Part II above a full allocation of depreciation charges based on Panagra's fleet of DC-6Bs and DC-7Bs was developed for the Miami-New York sector. To this estimated $506,000 was added $51,000, the estimated annual increase in depreciation charges for the one DC-6B and one DC-7B reacquired from National upon

termination of the Interchange Agreement (after amortizing the net book capital gain from sale of the two aircraft to National against the increased depreciation of the two reacquired aircraft).

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. The annual depreciation charges were determined by taking the cost of the DC-7B, $2,100,000, and the cost of the DC-6B, estimated at $1,800,000 less 15% for residual value and $30,000 for built-in overhaul reserve for each plane. To this figure was added $450,000 for spare engines, props, etc. and $175,000 for three maintenance kits at the three cities not now served less 10% for residual value. The net depreciable value of the two aircraft plus spares was then depreciated over a seven year period. To this annual depreciation charge was added a spare parts obsolesence charge by PAA computed by multiplying the revenue plane miles for each plane over the sector by 0.66¢ and 3.4¢ per plane mile for the DC-6B and DC-7B respectively.

[fol. 1707] —128—

10. *Ground Operations*

Panagra System. Ground Operations expense for the Panagra system in 1957 was estimated by adding the highest of the first three quarters of 1956 to the actual Ground Operations expense of the Panagra system during the first nine months of 1956.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Ground Operations expense for the new route was estimated by multiplying the estimated annual number of take-offs at each point by the following amount per take-off.

San Francisco	$600
Los Angeles	377
Mexico City	466
Balboa	285
Lima	403
Buenos Aires	260

Analysis of the CAB Form 41 Schedules B-4 and B-5 of Pan American (LAD) for the year 1955 and the first

six months of 1956 reveal that LAD's Ground Operations cost at San Francisco per take-off averaged $392 in 1955 and $437 for the first six months of 1956. Since Panagra's total annual take-offs at San Francisco will be fewer than LAD's, a cost of $600 per take-off was estimated.

LAD had 190 take-offs at Los Angeles during 1955, the approximate annual number anticipated by Panagra (208). Therefore, LAD's average cost of $377 per take-off during 1955, was used to estimate Panagra's Ground Operations expense at Los Angeles. (For the first six months of 1956, LAD's average take-off charge declined to $359 with 241 take-offs.)

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[fol. 1708] LAD's ground operations expense at Mexico City during 1955 averaged $233 per take-off and $266 per take-off during the first six months of 1956. Since LAD's annual take-offs at Mexico City equal 1000-1200 per year, compared with an expected 300 for Panagra's new route, LAD's 1955 average cost of $233 was doubled.

Ground Operations cost per take-off at Balboa, Lima, and Buenos Aires for the California service was obtained by taking Panagra's average cost per take-off at these three points during the first six months of 1956.

11. *Ground and Indirect Maintenance*

Panagra System. Estimated by adding the highest of the first three quarters of 1956 to Panagra's actual Ground and Indirect Maintenance expense for the first nine months of 1956.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires.

The per flying hour cost for Ground and Indirect Maintenance, estimated at $41 for DC-6Bs and $69 for DC-7Bs, as developed in Parts One and Two above, was multiplied by the estimated number of flying hours for each type of equipment over the route to LAX/SFO.

12. *Passenger Service Expense.*

Panagra System. Estimated at 8% of passenger revenue, based on Panagra's experience in 1954 and 1955. From

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[fol. 1709] this estimated annual amount $60,000, the amount of passenger service expense incurred by Panagra over the interchange sector but not reimbursed by National, was subtracted because the Miami-New York P&L statement reflects a full allocation of passenger service expense for that sector.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Estimated at 8% of passenger revenues, Panagra's experience during 1954 and 1955.

13. *Traffic and Sales Expense.*

Panagra System. Estimated at 13% of total commercial revenues (passenger, freight and excess baggage) based on Panagra's experience in 1954 and 1955.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Estimated on same basis as Panagra system.

14. *Advertising and Publicity Expense.*

Panagra System. Estimated by adding the highest of the first three quarters of 1956 to Panagra's actual Advertising and Publicity expense for the first nine months of 1956.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Estimated at 7.5% of total commercial revenues for the sector, based on Panagra's experience in 1955.

15. *General and Administrative Expense.*

Panagra System. Estimated by adding the highest of the first three quarters in 1956 to Panagra's actual G&A expense for the first nine months of 1956.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Estimated by taking 12% of the estimated annual cost of salaries for this sector representing em-

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[fol. 1710] ployee benefits and payroll taxes. To this was

added $100,000 to cover increased legal fees, franchise taxes, and additional overhead expenses for operation of this route.

16. *Depreciation of Ground Equipment.*

Panagra System. Estimated by adding the highest of the first three quarters in 1956 to Panagra's actual Depreciation of Ground Equipment expense for the first nine months of 1956.

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. It was assumed that ground equipment needed at San Francisco, Los Angeles, and Mexico City would approximate that estimated in detail for New York in Part Two above. The same $13,000 annual depreciation charge for ground equipment was therefore applied at each new station.

17. *Non-Operating Expense.*

Panagra System. Estimated by adding the highest of the first three quarters in 1956 to Panagra's actual Non-Operating expense for the first nine months of 1956.

Miami New York. Estimated at $145,000, representing the estimated interest on the additional debt incurred in replacing the National deposit and in reacquiring the one DC-6B and one DC-7B from National (See Section D-3 in Part II above).

San Francisco/Los Angeles-Mexico City to Lima and Buenos Aires. Consists of interest charges on additional borrowings required to put the new route into operation. No additional borrowing will be required for the DC-7B being delivered in July, 1956; the DC-6B will require an

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[fol. 1711] estimated $1,800,000; 1½ months of cash operating expenses for working capital will require $460,000; and it is estimated that $500,000 of the $625,000 required for spare parts will have to be borrowed. Assuming a 4½% interest rate on total additional borrowings of $2,760,000 results in an estimated annual interest charge of $110,000.

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PANAGRA: PROPOSED ROUTE EXTENSIONS

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ANNEX A

GENERAL ECONOMIC GROWTH INDICATORS FOR LATIN AMERICA

Table I shows the estimated total population of the Central and South American countries for the years 1946, 1950 and 1954. The table shows that the population of Latin America has increased 21% between 1946 and 1954. Compared to this, the population of the United States has increased only 15% and that of Western Europe only 8%. As shown, a United Nations study estimates that by 1980 the 1954 population of Latin America will have increased 80% to a total of roughly 300 million people.

Table II shows the value of United States direct investments in Latin America for the years 1949 through 1954.

This table shows that six and one quarter billion dollars was invested in the Latin American republics in the year 1954, a 36% increase over 1949.

Table III shows the total foreign trade of selected Latin American countries for the years 1938, 1948 and 1954. For the last year reported the total was 16.8 billion dollars, five times higher than the pre-war level.

Table IV shows the foreign trade of selected Latin American countries with the United States for the years 1938, 1948 and 1954. This table shows that in 1938 28% of the total Latin American trade was with the United States. In 1948 44% was with the United States. In 1954 the United States percentage had slipped to 41%, indicating increased competition from Europe for Latin American trade and the need for the United States to meet this renewed competition.

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Table V presents industrial production indices for selected Latin American countries. Using 1948 as the base period. Latin American production had increased 38% by 1954, compared to a 20% increase for the U.S. in the same period.

Table VI shows the gross national product in selected Latin American countries, both total and per capita, for the years 1946, 1950 and 1954. Total gross national product for all of Latin America for 1954 shows an increase of 41% over 1946, compared with a 28% increase for the U.S. in the same period.

Parenthetically, on almost every basis of comparison, Brazil, which Panagra does not serve, has shown the greatest advances.

ANNEX A
TABLE I

ESTIMATED TOTAL POPULATION OF CENTRAL AND SOUTH AMERICAN COUNTRIES

1946, 1950, 1954, 1960, 1970, 1980
(In Thousands)

COUNTRY	1946	1950	1954	% Increase 1954 vs 1946	Projections 1960	1970	1980	% Increase 1980 vs 1954
Cuba	5,010	5,362	5,807(1)	15.9% (3)	NA	NA	NA	NA
Mexico	23,183	25,791	28,849	24.4	33,279	42,992	55,469	92.3%
Central America								
Costa Rica	715	800	915	28.0	1,087	1,433	1,852	102.4
El Salvador	1,764	1,868	2,122	20.3	2,409	3,058	3,821	80.1
Guatemala	2,502	2,802	3,149	25.9	3,542	4,525	5,759	82.9
Honduras	1,287	1,428	1,608	24.9	1,808	2,274	2,840	76.6
Nicaragua	949	1,060	1,202	26.7	1,421	1,862	2,402	99.8
Panama	721	797	886	22.9	1,043	1,339	1,697	91.5
Total Central America	7,938	8,755	9,882	24.5%	11,310	14,491	18,371	85.9%
South America								
Argentina	15,654	17,189	18,742	19.7%	20,036	22,997	26,250	40.1%
Bolivia	2,883	3,019	3,162	9.7	3,876	5,048	6,627	110.0
Brazil	47,313	51,976	57,098	20.7	66,085	83,719	105,527	84.8
Chile	5,430	5,809	6,238	14.9	6,867	8,196	9,879	58.4
Colombia	10,318	11,260	12,381	20.0	15,324	20,578	27,388	121.2
Ecuador	2,824	3,157	3,567	26.3	4,160	5,462	7,174	101.1
Paraguay	1,275	1,397	1,530	20.0	1,874	2,470	3,212	109.9
Peru	7,877	8,521	9,213	17.0	11,190	15,189	20,370	121.1
Uruguay	2,281	2,353(2)	2,525(1)	10.7(3)	2,717	2,975	3,212	27.2
Venezuela	4,391	4,974	5,605	27.6	6,669	8,777	11,476	104.8
Total South America	100,246	109,655	120,061	19.8%	138,798	175,411	221,115	84.2%
Total Latin America(4)	136,377	149,563	164,599	20.7%	183,387	232,894	294,955	79.2%
Total Western Europe	307,695	320,852	331,283	7.7%	NA	NA	NA	NA
United States	141,389	151,683	162,409	14.9%	NA	NA	NA	NA

(1) Year 1953 (2) Year 1949 (3) 1953 vs 1946 (4) Includes Central and South America, Mexico and Cuba. Cuba not available for years 1960, 1970 or 1980.

SOURCES: Monthly Bulletin of Statistics, United Nations, Sept. 1955. The Population of South America 1950-1980, United Nations. The Population of Central America(including Mexico),1950-1980, United Nations.

ANNEX A
TABLE II

VALUE OF U. S. DIRECT INVESTMENTS IN LATIN AMERICA
1949 - 1954

(Millions of Dollars)

Country	1949	1950	1951	1952	1953	1954	Percent Increase 1954 vs 1949
Cuba	$ 619	$ 642	$ 672	$ 686	$ 686	$ 713	15.2%
Mexico	374	414	471	490	514	523	39.8%
Panama	337	348	373	383	407	433	28.5%
South America:							
Argentina	329	356	365	393	406	425	29.2%
Bolivia	10	11	11	11	10	10	----
Brazil	588	644	803	1,013	1,017	1,050	78.6%
Chile	518	540	583	623	657	633	22.2%
Colombia	194	193	207	234	235	263	35.6%
Ecuador	16	14	14	14	17	20	25.0%
Peru	148	145	197	230	268	255	72.3%
Uruguay	51	56	67	71	74	73	43.1%
Venezuela	1,036	993	996	1,184	1,308	1,399	35.0%
Total South America	$2,890	$2,952	$3,243	$3,773	$3,992	$4,128	42.8%
Other Countries	370	379	417	426	435	459	24.1%
Total Latin America (1)	$4,590	$4,735	$5,176	$5,758	$6,034	$6,256	36.3%

(1) Includes Central and South America, Mexico and Caribbean Islands.

SOURCE: Survey of Current Business, August 1955, U.S. Department of Commerce

ANNEX
TABLE

TOTAL FOREIGN TRADE OF SELECTED LATIN AMERICAN COUNTRIES (1)
(In Millions of U. S. Dollars)

Country	1938	1948	1954	Factor of Increase 1954 vs 1938
Cuba	$ 262	$ 1,293	$ 1,068	4.1 times
Mexico	261	1,027	1,362	5.2
Total Central America	146	518	890	6.1
South America				
Argentina	848	2,898	2,173	2.6
Bolivia	63	192	169	2.7
Brazil	584	2,307	3,196	5.5
Chile	234	596	744	3.2
Colombia	170	626	1,329	7.8
Ecuador	22	113	219	10.0
Paraguay	16	55	70	4.4
Peru	126	325	495	3.9
Uruguay	124	378	521	4.2
Venezuela	288	1,854	2,611	9.1
Total South America	$ 2,475	$ 9,344	$11,527	4.7
Total Latin America (2)	$ 3,389	$13,395	$16,803	5.0 times

(1) Includes exports and imports.

(2) Includes Central and South America, Mexico and Caribbean Islands.

SOURCE: International Financial Statistics, International Monetary Fund.

ANNEX A
TABLE IV

FOREIGN TRADE OF SELECTED LATIN AMERICAN COUNTRIES WITH THE U.S. (1)

(In Millions of Dollars)

Country	1938 Amount	1938 Percent of Total Trade	1948 Amount	1948 Percent of Total Trade	1954 Amount	1954 Percent of Total Trade
Cuba	$ 182	69.5%	$ 816	63.1%	$ 830	77.7%
Mexico	111	42.5	767	74.7	958	70.3
South America						
Argentina	127	15.0	560	19.3	225	10.4
Bolivia	6	9.5	85	44.3	78	46.2
Brazil	160	27.4	1,011	43.8	1,137	35.6
Chile	53	22.6	284	47.7	272	36.6
Colombia	90	52.9	433	69.2	849	63.9
Ecuador	6	27.3	50	44.2	109	49.8
Paraguay	2	12.5	10	18.2	12	17.1
Peru	30	23.8	101	31.1	193	39.0
Uruguay	10	8.1	118	31.2	74	14.2
Venezuela	72	25.0	787	42.4	1,035	39.6
Total South America	$ 586	22.5%	$3,439	36.8%	$3,984	34.6%
Total Latin America (2)	$ 949	28.0%	$5,868	43.8%	$6,871	40.9%

(1) Includes imports and exports

(2) Includes Central and South America, Mexico and Caribbean Islands.

SOURCE: Direction of International Trade, Statistical Office of the United Nations, International Monetary Fund, International Bank for Reconstruction and Development.

ANNEX A
TABLE V

INDUSTRIAL PRODUCTION INDICES FOR SELECTED LATIN AMERICAN COUNTRIES
(1948 = 100)

	1946	1950	1954
Mexico	96	118	141
South America			
Argentina	86	100	103
Brazil	93	118	156
Chile	98	104	149
Colombia	87	117	166
Ecuador (1)	NA	100	123 (2)
Peru	91	111	125 (2)
Latin America (3)	87	112	138
United States	87	108	120

(1) 1950 = 100.

(2) 1954 figure estimated by U. N. Statistical Office.

(3) Includes Central and South America, Mexico and Caribbean Islands.

SOURCE: Economic Surveys of Latin America 1953, 1954, United Nations; Monthly Bulletins of Statistics, United Nations, U.N. Statistical Office.

ANNEX A
TABLE VI

GROSS NATIONAL PRODUCT IN SELECTED LATIN AMERICAN COUNTRIES

Country	(In Millions of 1950 Dollars) Total Gross National Product 1946	1950	1954	Per Capita Gross National Product 1946	1950	1954	% Increase/(Decrease 1954 vs 1946 Total	Per Capit
Cuba	$ 1,797	$ 2,010	$ 1,990	$ 359	$ 372	$ 337	10.7%	(6.1)%
Mexico	4,338	5,375	6,206	190	208	215	43.1	13.2
South America								
Argentina	7,889	8,524	8,628	506	496	460	9.4	(9.1)
Brazil	7,760	10,836	13,884	164	208	249	78.9	51.8
Chile	1,475	1,552	1,900	273	268	295	28.8	8.1
Colombia	1,836	2,383	2,967	178	212	240	61.6	34.8
Peru	791	1,016	1,178	100	119	130	48.9	30.0
Venezuela	1,807	2,388	2,561	412	480	457	41.7	10.9
Total South America	$ 21,558	$ 26,699	$ 31,118	$ 236	$ 267	$ 284	44.3%	20.3%
Total Latin America (1)	$ 30,855	$ 37,710	$ 43,570	$ 219	$ 243	$ 255	41.2%	16.4%
United States	$254,800	$285,100	$326,800	$1,802	$1,880	$2,012	28.3%	11.7%

(1) Includes Central and South America, Mexico and Caribbean Islands.

SOURCE: Economic Surveys of Latin America, 1951-1952, 1953, 1954, United Nations.

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ANNEX B

UNITED STATES—LATIN AMERICA AIR TRAVEL

Table I is a summary of passenger travel by air between the United States and Central and South America for the years 1949, 1950 and 1954, 1955. This table shows that United States-Latin American air travelers have increased 91% between 1949 and 1955.

Table II is a summary of passenger travel by *sea and air* for the same years between the United States and Latin America. When read in conjunction with Table I, this Table reveals that the number of travelers by sea between the U. S. and Latin America actually decreased between 1949 and 1955.

Table III shows air travel as a percentage of sea and air travel between the United States and South America, Europe and Asia, for the years 1949, 1950 and 1954, 1955. This table shows that in 1955, 82% of total U.S.-South America passengers traveled by air, whereas only 46% of U.S.-Europe travel was by air and only 47% of U.S.-Asia passengers traveled by air. Air transportation thus plays an overwhelmingly predominant role in the total travel between the United States and South America.

ANNEX B
TABLE I

SUMMARY OF PASSENGER TRAVEL BY AIR BETWEEN THE U. S. AND CENTRAL AND SOUTH AMERICA

Area of Embarkation or Debarkation	Year Ended June 30th 1949	1950	1954	1955	% Increase 1955 vs. 1949
Total Central America	45,501	46,138	77,497	91,476	101.2%
South America					
Argentina	7,700	6,867	10,971	13,627	
Bolivia	12	32	982	1,564	
Brazil	16,157	12,667	23,059	24,820	
Chile	2,754	3,179	3,366	3,922	
Colombia	14,852	16,762	32,679	34,918	
Ecuador	1,620	2,352	6,262	6,731	
Paraguay	NA	NA	265	1,169	
Peru	7,280	7,230	16,513	16,223	
Uruguay	1,054	1,063	1,207	1,677	
Venezuela	36,437	37,178	52,781	63,044	
Other South America	2,314	1,985	1,814	1,568	
Total South America	90,180	89,315	149,899	169,263	87.7%
Total Latin America	135,681	135,453	227,396	260,739	91.3% (1)

(1) 1955 Paraguay passengers subtracted from 1955 total Latin America passengers for purpose of computing percentage increase 1955 over 1949.

SOURCE: Passenger Travel Between the United States and Foreign Countries, U.S. Department of Justice, Immigration and Naturalization Service.

ANNEX B
TABLE II

SUMMARY OF PASSENGER TRAVEL BY SEA AND AIR BETWEEN THE U.S. AND CENTRAL AND SOUTH AMERICA

Area of Embarkation or Debarkation	Year Ended June 30th 1949	1950	1954	1955	% Increase 1955 vs. 1949
Total Central America	89,118	89,232	104,922	118,516	33.0%
South America					
Argentina	16,693	13,657	17,928	20,958	
Bolivia	14	316	982	1,564	
Brazil	27,351	26,175	32,074	34,871	
Chile	5,322	5,876	5,672	6,595	
Colombia	18,071	20,493	35,567	37,961	
Ecuador	2,176	3,091	7,067	7,927	
Paraguay	NA	310	265	1,172	
Peru	11,005	9,353	18,345	17,886	
Uruguay	1,764	1,680	1,745	2,138	
Venezuela	50,588	52,376	62,345	73,348	
Other South America	2,887	2,574	1,932	1,799	
Total South America	135,871	135,901	183,922	206,219	51.8%
Total Latin America	224,989	225,133	288,844	324,735	43.8% (1

(1) 1955 Paraguay passengers have been subtracted from 1955 total Latin America passengers for purpose of computing percentage increase 1955 over 1949.

SOURCE: Passenger Travel Between the United States and Foreign Countries, U.S. Department of Justice, Immigration and Naturalization Service.

ANNEX B
TABLE III

AIR TRAVEL AS A PERCENTAGE OF TOTAL AIR AND SEA TRAVEL BETWEEN THE U. S. AND SOUTH AMERICA, EUROPE AND ASIA

Year Ended June 30th

Between U.S. and	1949			1950			1954			1955		
	Total Travel	Air Travel	Air as % of Total	Total Travel	Air Travel	Air as % of Total	Total Travel	Air Travel	Air as % of Total	Total Travel	Air Travel	Air as % of Total
South America	135,871	90,180	66.4%	135,901	89,315	65.7%	183,922	149,899	81.5%	206,219	169,263	82.1%
Europe	843,446	225,752	30.3%	1,021,004	296,895	29.1%	1,363,315	572,863	42.0%	1,514,041	692,114	45.7%
Asia	88,615	14,257	16.1%	96,279	20,600	21.4%	185,768	74,251	40.0%	221,747	104,834	47.3%
All Countries	1,968,424	1,057,750	53.9%	2,163,276	1,094,628	50.6%	3,024,730	1,852,722	61.3%	3,421,911	2,205,810	64.5%

SOURCE: Passenger Travel Between the United States and Foreign Countries, United States Department of Justice, Immigration and Naturalization Service.

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ANNEX C

PANAGRA'S RECORD AS AN AIRLINE

1. Pioneering History
2. International Reputation
3. Growth of Service
4. Identity of the Company

1. *Pioneering History*

Today Panagra with a fleet of DC-7B and DC-6B four-engine aircraft provides twice daily service between New York City and Buenos Aires. This is a distance, including through flight and interchange sectors, of 6,000 miles. The flight takes under one day. The planes carry approximately sixty passengers each at speeds in excess of 300 miles per hour. For the past thirteen years Panagra has operated its routes without a single fatal accident.

Less than a generation ago, in 1929, Panagra had inaugurated the first regular air service over the length of South America. The north-south route was then largely uncharted and relatively dangerous. Tri-motored Ford planes flew over it on a weekly airmail service 4,370 miles long, linking six countries. The flight took more than a week. No other U.S. airline was operating over such great distances at that time. American aviation had barely begun to stretch its wings as it explored a few short routes between Central America and the Caribbean area, and even in the United States the longest route in operation at that time was between Chicago and San Francisco, a distance of 1,943 miles.

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[fol. 1728] Panagra had achieved this continent-spanning operation within the space of one year. Its operations began on September 13, 1928 with a single-engine Fairchild monoplane. The first flight carried four passengers and some mail for 600 miles, taking off from a racetrack in Lima and landing on a soccer field in Talara, Peru.

From origins such as these the present daily, long-ranging, scheduled four-engine service of Panagra grew. There has been a vast and steady improvement in all aspects of the service. Nevertheless, after that first year of phenomenal growth from 600 to 4,370 route miles, Panagra's basic routes have remained virtually the same to this day.

The development and operation of air services over the years by Panagra constituted pioneering in a very real sense. In developing its route Panagra had to overcome many obstacles. Initial operating rights, airmail contracts and other arrangements with various countries had to be negotiated. In addition, the basic ground facilities required for airline operation had to be installed by Panagra itself. At Panagra's expense and effort, new airports had to be built in regions where none existed. The new airports had to be successively improved to meet the changing requirements of the aircraft to be used. Existing airports were enlarged and modernized. Overhaul and maintenance facilities were established and expanded.

Because no weather bureaus existed on its routes, to supply reports or forecasts, Panagra established its own meteorological services. Forecast offices staffed by professional meteorologists were placed at key locations. This

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[fol. 1729] was the only complete meteorological reporting and forecasting organization on the South American continent.

A complete aeronautical and communications network was built up and navigational aids were installed to permit night operation. New and modern radio transmitting and receiving units were installed for ground-to-aircraft communications and point-to-point contact between airports in the various countries. Radio beacon facilities for aircraft direction finding were supplied when required.

In 1944 the Company controlled, owned and operated some 75 radio stations in the countries that it served. Panagra owned and operated this vast communications network in its entirety until the late 1940s when governmental agencies of Peru, Colombia and Argentina took

over the Panagra facilities in their countries. Panagra still maintains and operates radio services in the other countries on its route south of Panama.

The sector linking Santiago with Buenos Aires is only 705 miles, but it is also one that involves a flight over some of the most rugged terrain in the world, the towering Andes. In 1928, before there was any air service, the trip between Santiago and Buenos Aires took two days by single track railroad over the Andes. Frequent snowstorms and landslides made regular train service impossible. The sea voyage around the Horn or through the Straits of Magellan took 12 to 15 days. Panagra's operations personnel surveyed this trans-Andean route both from the ground and from the air. In early 1929, mail service was started with single-engined Fairchilds. At C-4
[fol. 1730] that time there were no radio and no weather reports. The pilot would go up to 14,000 feet above Santiago, take a look at the pass and if the weather was clear he would go through.

By late 1929, regular passenger service across the Andes was inaugurated with tri-motored Ford planes. Panagra had thus accomplished a pioneering job second to none in less than a year after its inception. It had linked the Americas from the United States to Buenos Aires with a direct, regular, scheduled passenger, mail and cargo air service.

Panagra pioneered in a specialized area of national defense as well as in commercial aviation. Just before Pearl Harbor, when war with the Axis was imminent, Panagra, with the assistance of the respective South American governments and at the request of the U. S. State Department, first paralleled and then replaced the local service of German controlled airlines in Ecuador, Peru and Bolivia.

In 1942 when the was accelerated the movement of heavy freight by air, Panagra used two of its planes as veritable "flying boxcars" and inaugurated an all-cargo service from the Canal Zone to Lima. This was the first operation of all-cargo aircraft by a United States airline on certificated routes.

In 1953, in consultation with the manufacturer, Panagra decided to buy radar equipment for its aircraft. By spring of the following year, Panagra operated in regular service a plane equipped with experimental Bendix X-band radar. This was the first commercial radar set to be used in scheduled air transportation and Panagra subsequently became the first U. S. airline to order commercial radar for installation on a fleet basis.

[fol. 1731] C-5

2. *International Reputation*

The South Americans on Panagra's route regard the line as a beneficial part of their national picture. In times of disaster Panagra has always flown to their aid and it is an agent of goodwill among their countries. When a power plant in Ecuador broke down, for example, leaving the city without electricity, Panagra flew in 3,000 pounds of generator parts and the plant was in operation within two days.

Time and again, Panagra planes have been sent on missions of mercy. Sometimes it flew only a vial of life-saving medicine to a town where a man lay dying; sometimes an iron lung to a polio victim; sometimes a shipment of drugs to arrest the spread of an epidemic. One time a Panagra pilot and plane flew in rifles and ammunition to an oil company camp in the interior of Ecuador that had been attacked and besieged by Indians.

There have been other times of national emergency when Panagra actually placed its entire team at the disposal of a stricken nation. This was the case in 1939, when an earthquake literally shook cities to pieces in Chile. Panagra pilots were decorated by the Chilean government for their service. In these emergencies, Panagra airlifts brought tons of medical supplies and food to the stricken places, and flew out the injured and the sick. Victims in the earthquake-susceptible West Coast area were aided by Panagra again in 1942 (Ecuador), 1947 (Peru) and 1949 (Ecuador).

These humanitarian services have stamped the name of Panagra indelibly on the national consciousness of these countries.

C-6

[fol. 1732] In the countries served by Panagra in South America, the company enjoys a position of public trust and acceptance in a degree not normally achieved by airlines elsewhere. During the 1930s the name "Panagra" became almost synonymous with South American commercial aviation itself. In the Aymara Indian language of the Bolivian and Peruvian highlands, the word "Panagra" become part of the language as a word for "airplane". Theatres referred to their balconies as "Panagras". From Argentina to Panama a whole new generation of South American nationals learned modern skills (aircraft and engine mechanics, weather observers, radio operators, etc.) under Panagra's direction. These people continue to form not only the nucleus of Panagra's operation in South America but with the transfer of certain of Panagra's maintenance activities to Miami and with the gradual change from short-haul to long-range operations, many of the employees and the laborers first trained by Panagra are now in key positions in other airline and related industries throughout the continent.

It is not surprising that in an area where air travel itself became so closely identified with an individual company the public has a more direct relationship and a greater familiarity with that company than is customary elsewhere—not only with the company as such, but with its officials and personnel throughout South America.

As a consequence, Panagra enjoys a prestige in the countries it serves oftentimes exceeding that of the national carriers. This is evidenced by the fact that chiefs of state of many of these countries select Panagra as the

C-7

[fol. 1733] carrier to provide them with transportation on tours outside their own countries. In 1951 the president of Chile was carried via Panagra to and throughout the United States on a goodwill tour. In 1953 a Panagra plane, one of the famous El Interamericanos, carried the president of Peru on an epoch-making flight from Lima to Rio de Janeiro and return. In 1955 Panagra carried the president of Bolivia on a state visit to Peru, Ecuador and Colombia. On many other occasions Panagra's regular scheduled flights have carried the chief executives and

other top governmental officials of the Latin American nations.

In October, 1953, in commemorating its 25th Anniversary, Panagra invited thirty-five teenage "junior ambassadors" from the countries on its route to tour the United States in their own Panagra DC-6. The youths were picked personally by the presidents of their respective countries. They were welcomed here from coast to coast. The U.S. State Department enthusiastically supported Panagra's efforts toward international goodwill and a cementing of Pan American sympathies.

Panagra's reputation is not based solely upon special activities. The Latin Americans and the North Americans who travel on the West Coast have developed confidence in the punctuality, safety and standard of Panagra's regular service. These standards of service were developed from Latin American customs independently of competitive considerations and are looked upon by South Americans as services directed especially at them. It is fair to say C-8
[fol. 1734] that Panagra has gained a greater acceptance and favor among foreign sovereign nations than any other U. S. air carrier operating in international service.

Panagra's record of international good will deserves recognition in the tangible form of route expansion. This reputation, valuable both to Panagra and to the United States, should not be permitted to wither away because Panagra is prevented from meeting the enlarged demands of the area it now serves so well.

3. *Growth of Service*

Panagra's record as an airline can be demonstrated in no more effective way than by indicating the amount of traffic it has generated within its existing route structure. In the year 1955, the airline carried 136,000 fare-paying passengers a total of more than 160 million passenger miles. In 1930, its first full year of operation, Panagra carried but 3,000 passengers less than 1 million passenger miles.

As pointed out in the preceding section, its basic route structure and length of operations have not changed to any substantial degree since that first full year of operation. Thus Panagra's growth is attributable solely to its vigorous development of traffic within its existing route framework. Nevertheless, Panagra's present route is inherently a lean one when compared to L.A.D., or more strikingly, to the North Atlantic or major domestic operations. (See Annex B, Tables I and III, and Annex J, Table II.)

C-9

[fol. 1735] Panagra now needs and deserves to expand beyond its route framework. To a large extent, the new traffic obtained in later years has been passengers whose trips started or ended on another carrier's routes beyond the area of Panagra's present operations. This is evidenced in part by the fact that in 1947 only 24 percent of Panagra's total traffic was inter-line, whereas in 1955, 39 percent was inter-line.

This increase in inter-line traffic and concomitant decrease in intra-line traffic is attributable to three factors: First, the development, and acquisition by Panagra, of modern long-range aircraft capable of efficiently and economically serving long-haul traffic. Second, the loss of cabotage rights in certain countries has forced Panagra to withdraw from local service type operations in favor of national carriers. This occurred in Argentina in 1947 and in Peru in 1949. Third, as a United States certificated carrier Panagra believed its primary obligation to be service to United States-South America passengers rather than to intra-South America passengers and has concentrated on development of this long-haul traffic. This indeed is a requirement under the various bilateral air agreements to which the United States has become a party and under which Panagra operates. In line with this Panagra has abandoned or suspended many of its short routes to remote, less populated areas in South America which could no longer be justified upon strictly traffic and financial considerations.

A further evidence of the change in the type of passenger Panagra is carrying is the increase in the average pas-

C-10

[fol. 1736] senger trip length. In 1938 the average passenger trip length was 600 miles, in 1946 it was 857 miles and in 1955 it was 1,178 miles. 1955 is 38 percent over 1946 and 97 percent over 1938.

Table I at the end of this Annex shows the growth of Panagra's passenger traffic and revenues over the years. 1955 represented an increase in passenger miles operated of 80% over 1946, the first full post-war year. In 1955 the number of passengers carried was 31% over 1946.

Table II shows the historical growth of Panagra's revenue ton miles and available ton miles.

Table III compares Panagra's intra-line and inter-line traffic for the post-war years.

Table IV shows the average trip length of Panagra's passengers since the inception of the airline.

4. *Identity of the Company*

In summary, Panagra has pioneered and established a most difficult route at great expense and effort. It has created an appeal to passengers, and has operated, and with impressive schedule regularity, safely under often difficult circumstances. (It is worthy of note that every day of the year, Panagra's aircraft operating between New York and Buenos Aires fly through a complete change of seasonal weather fronts.) The drive and motivation that spurred this accomplishment on the part of the people actually working in the airline was the prospect of growth. The consolidation of service over Panagra's routes is now, for practical purposes, completed, and the Panagra organization is with legitimate right, looking toward the expansion of the airline into new markets. The gradual evolution of Panagra from short haul to long range operation has already established a strong connection with markets outside its present route structure.

C-11

[fol. 1737] The excellent reputation achieved by Panagra in South America has provided a real basis for an extraordinary degree of pride on the part of Panagra's 1,400 employees, 82% of whom are based in South America.

There is a feeling throughout the organization of responsibility toward the various countries Panagra serves and to the traveling public. Many of these people have been with Panagra since its earliest days and they are determined to maintain the position of leadership Panagra has so long and deservedly enjoyed. A continued ban on the logical expansion of Panagra could only have harmful effects on the morale of pilots and other company employees, particularly when they see other carriers expanding their routes and service in step with the growing industry.

[fol. 1738]

ANNEX C
TABLE I

GROWTH OF PANAGRA'S PASSENGER TRAFFIC AND REVENUES

1929-1955

Year	No. Revenue Passengers Carried (000)	Revenue Passenger Miles (000)	Passenger Revenues (000)
1929[a]	2	338	$ 78
1930	3	985	135
1931	4	1,336	165
1932	7	3,073	287
1933	9	4,052	287
1934	12	5,791	450
1935	13	7,017	581
1936	16	8,505	678
1937	20	10,349	804
1938	14	8,400	697
1939	10	9,281	783
1940	15	14,326	1,203
1941	31	22,796	1,870
1942	51	40,828	3,293
1943	62	53,622	4,275

Year	No. Revenue Passengers Carried (000)	Revenue Passenger Miles (000)	Passenger Revenues (000)
1944	76	63,109	4,965
1945	86	73,339	5,896
1946	104	89,135	7,404
1947	112	106,511	9,642
1948	92	103,663	10,449
1949	93	105,404	10,753
1950	100	103,783	9,574
1951	118	125,747	11,344
1952	122	133,186	12,254
1953	125	136,038	12,331
1954	133	149,099	13,243
1955	136	160,681	14,109[b]
Total	1,566	1,540,394	$137,550

Note: Prior to 1939 statistics were maintained by divisions resulting in some duplication in the number of passengers transiting between divisions. Figures prior to 1947 include non-scheduled operations.

[a] Includes operation of Peruvian Airways Corporation for September through December 1928.

[b] In 1955 cargo revenues amounted to $1,130,000 or 8% of passenger revenues.

SOURCE: Company Records.

[fol.-1739]

ANNEX C
TABLE II

GROWTH OF PANAGRA'S TOTAL TRAFFIC AND CAPACITY

1929-1955

Year	Revenue Ton Miles (000)	Available Ton Miles (000)	Overall Load Factor
1929			
1930			
	NOT AVAILABLE		
1931			
1932			
1933			
1934	744	1,634	45.51%
1935	861	1,825	47.19%
1936	1,052	2,173	48.41%
1937	1,318	2,604	50.61%
1938	1,113	2,432	45.78%
1939	1,228	2,153	57.05%
1940	2,019	3,023	66.79%
1941	2,980	4,721	63.13%
1942	5,386	7,441	72.38%
1943	6,623	8,879	74.59%
1944	7,990	10,031	79.66%
1945	9,740	11,655	83.57%
1946	11,370	16,669	68.21%
1947	13,350	23,905	55.85%
1948	13,634	24,971	54.60%
1949	13,991	27,983	50.00%
1950	13,855	28,803	48.10%
1951	17,103	29,834	57.33%
1952	17,893	31,482	56.83%
1953	18,650	32,911	56.67%
1954	19,649	34,734	56.57%
1955	20,474	36,687	55.81%
Total	201,023	346,550	

Note: Figures prior to 1947 include non-scheduled operations.

SOURCE: Company Records.

[fol. 1740]

ANNEX C
TABLE III

GROWTH OF PANAGRA'S INTERLINE TRAFFIC
Scheduled and Non-Scheduled Operations

1947-1955

Year Ended December 31st	Intraline Passengers	Interline Passengers	Total Passengers	Interline Passengers As % of Total Passengers
1947	84,892	26,715	111,607	23.9%
1948	72,703	19,596	92,299	21.2%
1949	65,052	27,969	93,021	30.1%
1950[1]	33,649	11,735	45,384	25.9%
1951[2]	63,342	24,900	88,242	28.2%
1952	86,472	35,942	122,414	29.4%
1953	86,221	39,538	125,759	31.4%
1954	86,549	47,267	133,816	35.3%
1955	84,548	52,916	137,464	38.5%

[1] Five months' experience.

[2] Nine months' experience.

SOURCE: Company Records.

[fol. 1741]

ANNEX C
TABLE IV

AVERAGE TRIP LENGTH OF PANAGRA PASSENGERS

(Revenue Passenger Miles per revenue passenger, from Annex C, Table I.)

Year	Miles
1929	169
1930	328
1931	334
1932	439
1933	450
1934	483
1935	540
1936	532
1937	517
1938	600
1939	928
1940	955
1941	735
1942	801
1943	865
1944	830
1945	853
1946	857
1947	951
1948	1,127
1949	1,133
1950	1,038
1951	1,066
1952	1,092
1953	1,088
1954	1,121
1955	1,178

NOTE: Figures prior to 1947 include non-scheduled operations.

SOURCE: Company Records.

[fol. 1742] D-1

ANNEX D

PANAGRA'S EQUIPMENT HISTORY

Panagra's equipment program has been consistently abreast, and oftentimes ahead, of the rest of the United States airline industry. Since 1929 Panagra service has evolved through every state of the commercial aircraft art.

Panagra has the unique record of having acquired and operated every commercial plane produced in quantity by the Douglas Aircraft Company. It placed DC-2s in operation in 1934, the first year of their appearance. It acquired DC-3s in 1937, within a year after that airplane was first manufactured. It operated DC-4s during the transitional period immediately following the war and in 1947 placed in operation the 11th, 19th and 23rd DC-6 aircraft to be delivered to the airlines. In 1951 Panagra acquired DC-6Bs and in 1955 DC-7Bs, being the first international carrier to order DC-7 type equipment. Finally, in early 1960 Panagra will begin operating the Douglas Company's newest plane, the DC-8 jet.

Prior to the operation of Douglas aircraft, Panagra experimented with a number of different types of planes. These planes were at the time Panagra placed them in service the newest developments in common carrier transportation. Panagra began its operations with the now historic Fairchild monoplane, carrying four passengers. The plane that actually performed Panagra's first sched-

D-2

[fol. 1743] uled service has been turned over to the Smithsonian Institution.

Panagra's first fleet plane was the larger 420 hp, 110 mph Fairchild which was operated from Talara, Peru, south to Santiago, Chile, during 1929. During the 1930-1935 period Panagra operated the famous Ford trimotor planes. These planes carried twelve passengers and permitted Panagra to offer the first scheduled service over the Andes from Santiago to Buenos Aires. A total of nine of these planes was purchased by Panagra and they became a

familiar sight over the West Coast countries. During this same developmental period of airline operation, Panagra operated Sikorsky amphibian planes on its Northern Division from Peru to the Canal Zone. Panagra acquired twelve of these amphibians in all. Meanwhile, during the early 1930s Panagra experimented with various other types of aircraft, including the Loening amphibian, the Lockhead Vega, the Curtiss Falcon and Travelair, and the Consolidated Commodore.

With the acquisition of the Douglas Aircraft Company's revolutionary DC-2, Panagra was able to schedule regular operation of the "Diagonal" route across Bolivia from Lima to Buenos Aires. It was in this same year that American Airlines began operating the DC-2 in the continental United States, and the world had its first glimpse of modern air transportation as it has become known today. Panagra was in on the ground floor.

—D-3—

[fol. 1744] During the later 1930s and over the war years, the backbone of Panagra's fleet was the DC-3. These planes carried twenty-one passengers at a speed of 180 miles per hour over a range of 1,100 miles. Four DC-3A planes, a modernized higher powered model, are still in operation on Panagra's routes.

In September 1944 Panagra contracted with Douglas for three pressurized DC-6 aircraft to be delivered after the termination of hostilities. In recognition of Panagra's participation in the pre-war DC-4 development contract, Panagra was allotted favored early delivery positions on the 52 passenger DC-6s. In all, six of these aircraft were acquired and put into service from Buenos Aires through Balboa and, under the Through Flight Agreement with Pan American World Airways, to Miami. As the DC-6s were put into first class service, the DC-4s operated by Panagra were switched over to tourist class.

During the first half of 1952 Panagra took delivery of DC-6B aircraft which replaced the DC-4s in long haul tourist service. Panagra now has in operation five 70 passenger

DC-6B aircraft, four of which are owned and one of which is chartered from another airlines. In September 1955, under an interchange agreement with National Airlines, the DC-6Bs started operating into New York.

In 1953 Panagra learned from the Douglas Aircraft Company and the Wright Aeronautical Division of pro-

—D-4—

[fol. 1745] posed engineering changes in the DC-7 plane and the availability of the more powerful Wright Cyclone engine, model DA4. Prior to this time the DC-7 aircraft being operated on domestic transcontinental routes did not meet Panagra's international performance requirements. Panagra therefore entered into negotiations with the Douglas Company and in September 1953 sent a telegram ordering five modified DC-7 aircraft, thus becoming the first international carrier to order this equipment. These aircraft, with the modifications insisted upon by Panagra, later became known as the DC-7B. Five DC-7Bs were delivered to Panagra and placed in first class service between the United States and Buenos Aires during 1955. They replaced the DC-6s, two of which have been sold and the remaining four chartered to another airline. A sixth DC-7B will be delivered to Panagra in July 1957.

In December 1955 Panagra took the long step into the age of jet transportation. Its board of directors authorized the acquisition by Panagra of four Douglas DC-8 jet transports, with an option of two additional DC-8s. These planes will be specially designed for long haul international operation and will be powered by the large J-75 Pratt and Whitney turbine engines. The first of these aircraft will be placed in service in early 1960.

[fol. 1746] —E-1—

ANNEX E

Certification of Braniff International Airways in Latin America

In the Latin American Air Service Case, 6 C.A.B. 857 (1946), Braniff Airways was awarded extensive routes in South America directly competitive with those of Panagra. Braniff began operations on these routes in June of 1948. In the past year, 1955, Braniff operated an average of 6,898 international route miles, compared with 5,447 operated by Panagra.

Braniff's certificated routes connect nine capitals of the Latin American republics. In addition to obtaining rights to serve all but one (Santiago) of the six national capitals now served by Panagra, Braniff was granted rights into Rio de Janeiro, Asuncion, Bogota and Havana.

Table I shows the population of cities served by Braniff International and Panagra. Braniff is shown to serve 37% more population than Panagra.

Table II compares Panagra revenues with Braniff revenues since the first year of Braniff's international operations. Between June 1948 and year-end 1955, Braniff's international operations received 37 million dollars in passenger and cargo revenues, a considerable part of which otherwise would have accrued to Panagra. During 1955 Braniff generated revenues equal to 40% of Panagra's total revenues.

[fol. 1747] —E-2—

Despite this substantial diversion by a competitor introduced into Panagra's historical markets, Panagra has not been placed in a position to compete for additional traffic in new markets. It seems equitable that if a competitor is placed in Panagra's home territory, Panagra in turn be permitted to expand its route mileage into new areas so as to strengthen competition everywhere.

Braniff's extensive domestic system provides a strong base for its international route structure. Panagra, without the support of the rich domestic air traffic market, is

placed at a severe disadvantage both inherently and competitively. This will be especially true in the event that subsidy for international airlines is withdrawn.

Table III is an indication of the relative earning power of Panagra and the Braniff System including its domestic operation. In the year 1955 Braniff's net operating profit before subsidy amounted to 5.8% of its invested capital, in air transportation, even after absorbing substantial losses on its international operation. Panagra, on the other hand, showed a net operating profit of only 3.7%.

Table IV shows the increase in Braniff System's weighted average route miles operated. Including Braniff's international routes acquired in 1948, the routes of Mid-Continent Airlines acquired in 1952, and the new domestic routes acquired in 1955, Braniff route mileage is shown to have expanded an estimated 335% since 1946.

This increase in route mileage has generated new traffic and revenue for Braniff at a pace far exceeding that possible for Panagra within its unchanged route structure.

—E-3—

[fol. 1748] Table V compares the revenue passenger miles operated by Panagra with those operated by the Braniff system in the years 1949 through 1955. Whereas in 1949 Panagra's passenger traffic amounted to 46% of Braniff's system, by 1955 this percentage decreased to 24%

Table VI compares the revenue ton miles carried by Panagra and Braniff System. In 1949 Panagra is shown to have carried traffic amounting to 56% of the Braniff system. By 1955 Panagra's percentage had decreased to 28%.

Table VII compares the operating revenues exclusive of mail pay for Braniff System and Panagra. Panagra's commercia' revenues are shown to have amounted to 90% of Braniff System commercial revenues in 1949 but only 39% in 1955.

ANNEX E
TABLE I

Population of Cities on the routes of Panagra and Braniff International

Cities Served	Population	Number	Served by Panagra	Number	Served by Braniff
Buenos Aires, Argentina	3,000,371	1.	3,000,371*	1.	3,000,371*
Rio de Janeiro, Brazil	2,335,931			2.	2,335,931*
Sao Paulo, Brazil	2,041,716			3.	2,041,716
Santiago, Chile	952,075	2.	952,075*		
Havana, Cuba	659,883			4.	659,883*
Houston, Texas	596,163			5.	596,163
Lima, Peru	520,528	3.	520,528*	6.	520,528*
La Paz, Bolivia	321,073	4.	321,073*	7.	321,073*
Guayaquil, Ecuador	262,624	5.	262,624	8.	262,624
Miami, Florida	249,276			9.	249,276
Panama City, Colon, and Canal Zone	232,900	6.	232,900*	10.	232,900*
Quito, Ecuador	212,873	7.	212,873*		
Asuncion, Paraguay	204,085			11.	204,085*
Cali, Colombia	88,366	8.	88,366		
Cochabamba, Bolivia	80,795	9.	80,795		
Oruro, Bolivia	62,975	10.	62,975		
Arequipa, Peru	60,725	11.	60,725		
Antofagasta, Chile	49,106	12.	49,106		
Cuenca, Ecuador	46,428	13.	46,428		
Santa Cruz, Bolivia	34,837	14.	34,837		
Manta, Ecuador	19,021	15.	19,021		
Arica, Chile	14,064	16.	14,064		
Esmeraldas, Ecuador	14,046	17.	14,046		
Talara, Peru	12,985	18.	12,985		
Robore, Bolivia	3,715	19.	3,715		
San Jose, Bolivia	1,933	20.	1,933		
San Ignacio, Bolivia	1,819	21.	1,819		
Puerto Suarez, Bolivia	1,159	22.	1,159		
Concepcion, Bolivia	1,056	23.	1,056		

La Paz, Bolivia	321,073	4.	321,073*	7.	321,073*
Guayaquil, Ecuador	262,624	5.	262,624	8.	262,624
Miami, Florida	249,276			9.	249,276
Panama City, Colon, and Canal Zone	232,900	6.	232,900*	10.	232,900*
Quito, Ecuador	212,873	7.	212,873*		
Asuncion, Paraguay	204,085			11.	204,085*
Cali, Colombia	88,366	8.	88,366		
Cochabamba, Bolivia	80,795	9.	80,795		
Oruro, Bolivia	62,975	10.	62,975		
Arequipa, Peru	60,725	11.	60,725		
Antofagasta, Chile	49,106	12.	49,106		
Cuenca, Ecuador	46,428	13.	46,428		
Santa Cruz, Bolivia	34,837	14.	34,837		
Manta, Ecuador	19,021	15.	19,021		
Arica, Chile	14,064	16.	14,064		
Esmeraldas, Ecuador	14,046	17.	14,046		
Talara, Peru	12,985	18.	12,985		
Robore, Bolivia	3,715	19.	3,715		
San Jose, Bolivia	1,933	20.	1,933		
San Ignacio, Bolivia	1,819	21.	1,819		
Puerto Suarez, Bolivia	1,159	22.	1,159		
Concepcion, Bolivia	1,056	23.	1,056		
Total Population	12,082,528		5,995,474		10,424,550
% of Total Population Served			49.6%		86.3%
% of Total Population Served by One but Not the Other			13.7%		50.4%

* Indicates National Capital

Note: In addition to the above cities actually served, Panagra and Braniff International are authorized to serve the following national capitals:

Panagra		Braniff International	
Montevideo	708,233	Bogota	325,658
		Quito	212,873

SOURCE: Hammond's Ambassador World Atlas, C.S. Hammond & Co., 1955.

ANNEX E
TABLE II

PASSENGER AND CARGO REVENUES

PANAGRA AND BRANIFF INTERNATIONAL

1948 - 1955

Year Ended December 31st	Panagra			Braniff International			Braniff Total as % of Panagra Total
	Passenger (000)	Cargo (000)	Total (000)	Passenger (000)	Cargo (000)	Total (000)	
1948	$ 10,449	$ 999	$ 11,448	$ 525(1)	$ 15(1)	$ 540(1)	4.7%
1949	10,753	944	11,697	2,233	94	2,327	19.9%
1950	9,574	725	10,299	3,318	254	3,572	34.1%
1951	11,344	1,056	12,400	4,895	368	5,263	42.4%
1952	12,254	1,095	13,349	6,058	364	6,422	48.1%
1953	12,330	1,238	13,568	5,756	383	6,139	45.2%
1954	13,244	1,109	14,353	6,011	442	6,453	45.0%
1955	14,109	1,130	15,239	5,666	400	6,066	39.8%
	$ 94,057	$8,296	$102,353	$34,462	$2,320	$36,782	35.9%

(1) June 4, 1948 to December 31, 1948.

SOURCE: Certificated Air Carrier Financial Data, Civil Aeronautics Board
Office of Carrier Accounts and Statistics
Comparative Statement of Air Carriers Profit and Loss and Earned Surplus,
Air Transport Association of America.

[fol. 1751]

ANNEX E
TABLE III

Comparison of Net Operating Profit as Percent of Transport Investment

Panagra vs. Braniff System

Year Ended December 31, 1955

	Braniff			
	Domestic (000)	International (000)	System (000)	Panagra (000)
Net Operating Profit Including Subsidy	$ 1,876	$ (237)	$ 1,639	$ 608
Invested Capital Assigned to Transport Operations	$20,667	$ 4,505	$25,172	$15,393
Net Operating Profit as % of Transport Investment	9.1%	(5.3%)	6.5%	3.9%
Subsidy Included in Net Operating Profit Above	—	$ 378	$ 378	$ 59
Net Operating Profit Excluding Subsidy	$ 1,876	$ (418)	$ 1,458	$ 571
Net Operating Profit (Exeluding Subsidy) as % of Transport Investment	9.1%	(9.3%)	5.8%	3.7%

Source: *Quarterly Report of Air Carrier Operating Factors*, Civil Aeronautics Board, December 1955.

[fol. 1752]

ANNEX E
TABLE IV

Increase of Braniff System's Weighted Average Route Miles Operated 1955 vs. 1946

	12 Months Ended December 31, 1946	12 Months Ended December 31, 1955	% Increase/ (Decrease) 1955 vs. 1946
Braniff Airways Inc.			
Domestic	3,099	5,558[1]	79.3
International	—	6,898	—
New Domestic Routes	—	1,035[2]	—
System Total	3,099	13,491	335.3%

[1] Includes Mid-Continent Airlines. M.C.A. represented a 68% addition to Braniff's route miles operated in 1946.

[2] Estimated increased route mileage resulting from recent C.A.B. decisions. See Annex H, Table II.

SOURCE: *Certificated Air Carrier Traffic Statistics*, Civil Aeronautics Board Office of Carrier Accounts and Statistics.

[fol. 1753]

ANNEX E
TABLE V

Comparison of Revenue Passenger Miles[1] Panagra vs. Braniff System 1949–1955

Year Ended December 31st	Braniff Domestic (000)	Braniff International (000)	Total Braniff System (000)	Panagra (000)	Panagra as % of Total Braniff System
1949	199,628	29,020	228,648	105,968	46.3%
1950	218,578	43,339	261,917	104,220	39.8%
1951	271,027	64,320	335,347	127,784	38.1%
1952	344,807	80,323	425,130	133,288	31.4%
1953	469,069	76,670	545,739	137,395	25.2%
1954	530,700	80,520	611,220	150,614	24.6%
1955	608,699	75,580	684,279	164,329	24.0%

[1] Includes Scheduled and Non-Scheduled Operations.

SOURCE: *Summary of U.S. Airline Traffic*, American Aviation Publications.

[fol. 1754]

ANNEX E
TABLE VI

Comparison of Revenue Ton Miles[1]

Panagra vs. Braniff System

1949–1955

Year Ended December 31st	Braniff Domestic	Braniff International	Total Braniff System	Panagra	Panagra as % of Total Braniff System
	(000)	(000)	(000)	(000)	
1949	22,233	3,084	25,317	14,124	55.8%
1950	25,262	5,251	30,513	13,985	45.8%
1951	30,483	8,048	38,531	17,330	45.0%
1952	38,027	10,631	48,658	17,911	36.8%
1953	50,662	10,397	61,059	18,820	30.8
1954	56,709	10,729	67,438	19,864	29.5%
1955	64,929	9,906	74,835	20,910	27.9%

[1] Includes Scheduled and Non-Scheduled Operations.

SOURCE: *Summary of U.S. Airline Traffic*, American Aviation Publications.

[fol. 1755]

ANNEX E
TABLE VII

Comparison of Commercial Operating Revenues[1]

Panagra vs. Braniff System

1949–1955

Year Ended December 31st	Braniff Domestic	Braniff International	Total Braniff System	Panagra	Panagra as % of Total Braniff System
	(000)	(000)	(000)	(000)	
1949	$12,206	$2,423	$14,629	$13,135	89.8%
1950	13,509	3,726	17,235	11,568	67.1%
1951	16,443	5,524	21,967	14,036	63.9%
1952	21,925	6,745	28,670	14,808	51.6%
1953	29,098	6,535	35,633	15,196	42.6%
1954	33,251	6,959	40,210	16,215	40.3%
1955	38,628	6,887	45,515	17,587	38.6%

[1] Total operating revenues, less U.S. mail pay including federal subsidy, for scheduled and non-scheduled operations.

SOURCE: *Summary of U.S. Airline Revenues and Expenses*, American Aviation Publications.

[fol. 1756] —F-1—

ANNEX F

ROUTE EXPANSION IN LATIN AMERICA OF PAN AMERICAN WORLD AIRWAYS AND PAN AMERICAN'S FOREIGN AIR CARRIER AFFILIATES

Table I compares the 10% increase in weighted average route miles operated by Pan American's Latin American Division with the 11% decrease for Panagra between 1946 and 1955. (Comparison of the traffic characteristics of Panagra's and LAD's routes is shown in Annex J, Table II.)

Table II shows the 160% average increase in unduplicated route miles for Pan American's various foreign affiliate air carriers in Latin America between the year 1946 and the year 1955. As shown, Pan American has 11 such affiliates. This table indicates that, although Panagra has been prevented from expanding its route mileage, Pan American's foreign affiliate carriers have been able to extend their routes and gain entry into new markets. The table also shows the changes in Pan American's stock ownership during this period of its affiliates' route expansion. Pan American's stock interest in most cases decreased. For example, Avianca, in which Pan American's stock interest decreased from 48% in 1946 to 38% in 1955, added 24,142 unduplicated route miles during that period. Panair do Brasil, in which Pan American's stock interest decreased from 58% to 48%, added 11,617 unduplicated route miles. In contrast, the route mileage operated by Panagra, in which Pan American's stock interest remained constant at 50%, decreased by 644 miles.

—F-2—

[fol. 1757] Table III shows *eight* route sectors on which Pan American's Latin American Division has direct competition with Pan American's foreign affiliate air carriers. Point-to-point competition exists on such major sectors as Buenos Aires—Rio de Janeiro and Caracas—Miami. A total of 7,050 route miles exists on which LAD is in direct competition with foreign affiliates of its parent.

[fol. 1758]

ANNEX F
TABLE I

COMPARISON OF PAN AMERICAN AND PANAGRA

Weighted Average Route Miles Operated—1955 vs. 1946

	12 Months Ended Dec. 31, 1946	12 Months Ended Dec. 31, 1955	Percentage Increase/ (Decrease) 1955 vs. 1946
Pan American System	34,466	63,155[1]	83.2%
Pan American LAD	13,690	15,009	9.6%
Panagra	6,097	5,453	(10.6)%

[1] Includes American Overseas Airlines. AOA represented a 16% addition to the Pan American system route miles operated in 1946.

SOURCE: *Certificated Air Carrier Traffic Statistics*, Civil Aeronautics Board, Office of Carrier Accounts and Statistics.

ANNEX
TABLE

ROUTE EXPANSION OF PAN AMERICAN'S AIRLINE AFFILIATES (EXCLUDING PANAGRA) IN CENTRAL AND SOUTH AMERICA
1946 vs. 1955

PAA Central - South American Airline Affiliates	Unduplicated Route Miles as of end of 1946	Unduplicated Route Miles as of end of 1955	Increase/(Decrease) Unduplicated Route Miles 1955 vs. 1946 Miles	Percent	Percentage of Common Stock Owned by PAA 12/31/46	Percentage of Common Stock Owned by PAA 12/6/55	Increase/(Decrease in Percentage Points of Common Stock Ownership 1955 vs. 1946
Aerovias Nacionales de Colombia (AVIANCA)	6,682	30,824	24,142	361.3%	47.67%	38.13%	(9.54)
Panair do Brasil (PAB)	16,050	27,667	11,617	72.4%	58.00%	48.00%	(10.00)
Compania Cubana de Aviacion (CUBANA)	1,095	9,934	8,839	807.2%	52.00%	(3)	---
Aeronaves de Mexico	2,728	6,429	3,701	135.7%	40.00%	21.13%	(18.87)
Lineas Aereas Costarricenses (LACSA)	369 (1)	3,851	3,482	943.6%	40.00%	33.33%	(6.67)
Servicio Aereo de Honduras (SAHSA)	224	2,644	2,420	1,080.4%	40.00%	40.00%	---
Aerovias Venezolanas (AVENSA)	1,990 (1)	3,872	1,882	94.6%	37.05%	30.00%	(7.05)
Compania Dominicana de Aviacion, C por A (CDA)	383	1,686	1,303	340.2%	40.00%	40.00%	---
Compania Mexicana de Aviacion (CMA)	4,919 (1)	5,636	717	14.6%	41.00%	41.96%	.96
Compania Panamena de Aviacion (COPA)	476 (1)	707	231	48.5%	33.00%	33.00%	---
Lineas Aereas de Nicaragua (LA NICA)	1,140	1,184	44	3.9%	40.00%	20.00%	(20.00)
Uraba, Medellin and Central Airways, Inc. (UMCA)	348	326 (2)	(22) (2)	(6.3%)	66.67%	100.00%	33.33
TOTAL MILES	36,404	94,760	58,356	160.3%			
Average Miles and Ownership per Carrier	3,034	7,897	4,863	160.3%	44.62%	37.12%	(7.5)

(1) End of 1947
(2) - 1955 figure taken from Calculation of Great Circle Distance issued by Traffic Director, International Air Transport Association, International Aviation Building, Montreal, 5th revised page M-8, Correction #1202. UMCA's route has remained essentially unchanged, the decrease of twenty-two miles being accounted for by a move to a new airport in Panama and more direct routing made possible by new equipment.
(3) Remaining 20% interest sold during 1954. See Havana - New York Foreign Air Carrier Permit Case, CAB Orders E-5610 (1951), and E-6971 (1953).

SOURCES: American Aviation World-Wide Directories, American Aviation Publications, Inc., Fall-Winter 1946-7, 1947-8, 1955-6.
Schedule A-7, Form 41, submitted by Pan American World Airways, Inc. to the C.A.B. as of December 31, 1946.
Application of Roger Lewis, Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. to the C.A.B. for approval of interlocking relationships, dated January 6, 1956.

[fol. 1760]

ANNEX F
TABLE III

EIGHT ROUTE SECTORS ON WHICH PAN AMERICAN (LAD) HAS DIRECT COMPETITION WITH AFFILIATE AIR CARRIERS

AFFILIATE	ROUTE	ROUTE MILES
PAB	Buenos Aires—Rio de Janeiro	1,275
AVIANCA	Barranquilla—Miami	1,091
	Balboa—Medellin (UMCA)	326
LACSA	Balboa—San Jose—Mexico City	1,530
	Havana—Miami	235
AVENSA	Caracas—Maracaibo (Barranquilla)—Jamaica—Miami	1,502
CDA	Ciudad Trujillo—Port au Prince—Miami	836
	Ciudad Trujillo—San Juan	255
	TOTAL	7,050

[fol. 1761]

ANNEX G

PANAGRA'S FOREIGN AIR COMPETITION

Table I shows the percentage of air travelers to and from the United States traveling via American flag and foreign carriers. This table shows that in 1953, 35% of United States-South America air travelers were carried by foreign flag airlines. Foreign air carrier operations are thus shown to be a substantial factor in considering the competitive situation in U. S.-South American air traffic.

Map II shows the present and proposed routes of the 28 foreign flag airlines competing with Panagra. (Three of these competitors are affiliates of Pan American World Airways.) The test of competition with Panagra is whether the operated, or proposed, routes divert, or would divert, revenues from Panagra's present services.

As shown on the map, the LAN operation Montevideo-Buenos Aires-Santiago-Lima in conjunction with the TAN operation Lima-Miami offer considerable direct competition to Panagra. Aereolinas Argentinas competes Santiago-Buenos Aires and for the Buenos Aires-New York market by means of its east coast route. Canadian Pacific diverts considerable traffic from Panagra by its Lima-Mexico City-Vancouver-Orient service, and has announced immediate plans for entering Buenos Aires from Lima. KLM offers strong competition from Lima through Guayaquil to Balboa with its service that extends on to Curacao, New York

—G-2—

[fol. 1762] and Europe. Avianca competes with Panagra between Quito and Cali, carrying passengers on to Bogota and New York. LAV has a strong operation between Lima, Balboa and Caracas.

All but one of these seven carriers operate modern four-engine equipment in direct competition with Panagra. The seventh, TAN, is a non-IATA carrier and has a serious competitive impact upon Panagra by reason of its cut rates.

ANNEX G
TABLE I

PERCENTAGE OF AIR TRAVELERS TO AND FROM THE U. S. TRAVELING VIA U.S. AND FOREIGN CARRIERS

Area of Embarkation or Debarkation	Year Ended June 30th							
	1955		1954		1950		1946	
	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign
Total All Countries	68.3%	31.7%	66.4%	33.6%	74.7%	25.3%	86.7%	13.3%
South America	65.0%	35.0%	63.5%	36.5%				
Europe	61.0%	39.0%	56.2%	43.8%	NOT AVAILABLE			
Asia	87.8%	12.2%	84.8%	15.2%				

SOURCE: Passenger Travel Between the U.S. and Foreign Countries, U. S. Department of Justice, Immigration and Naturalization Service.

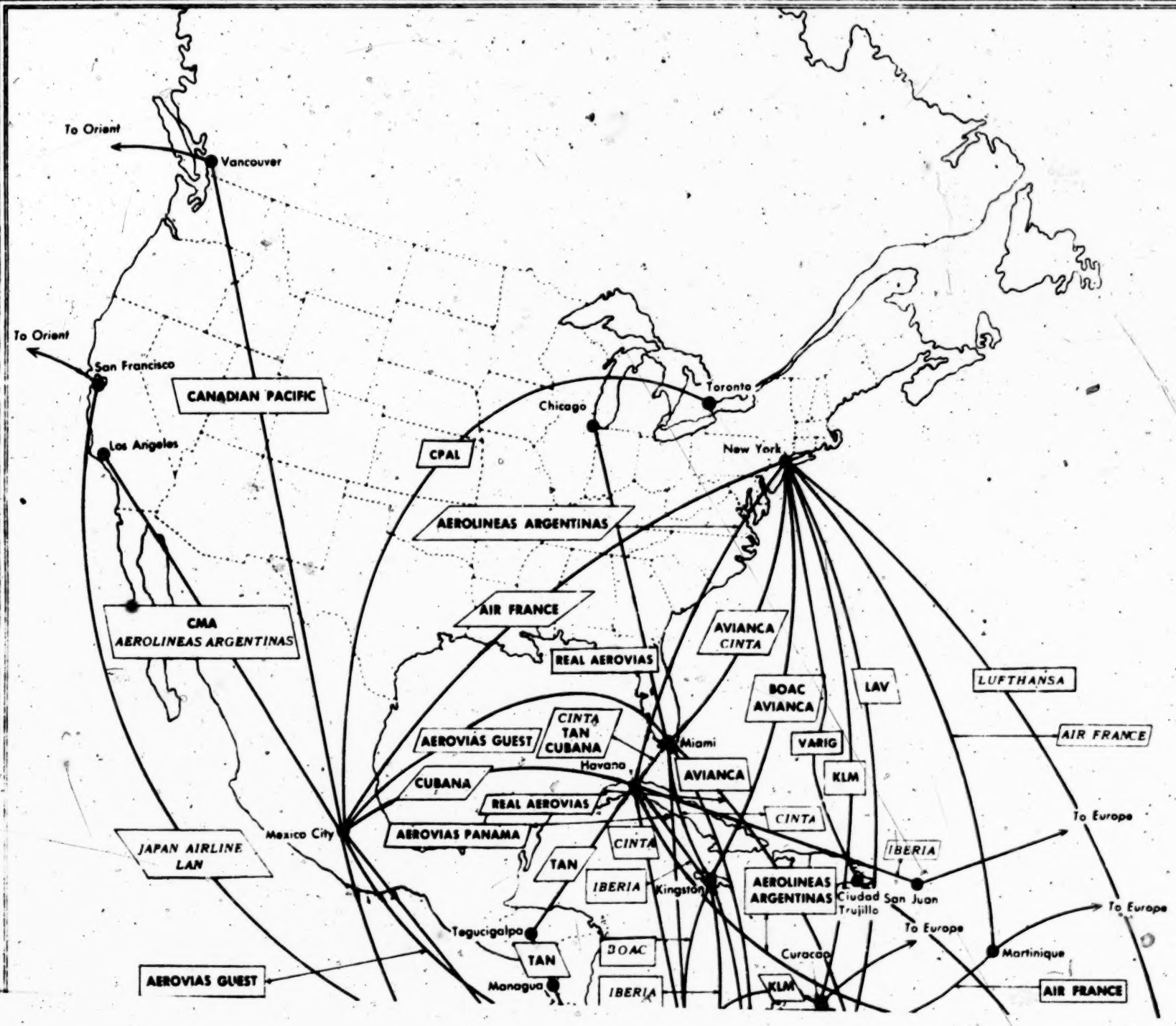
ANNEX G
MAP II

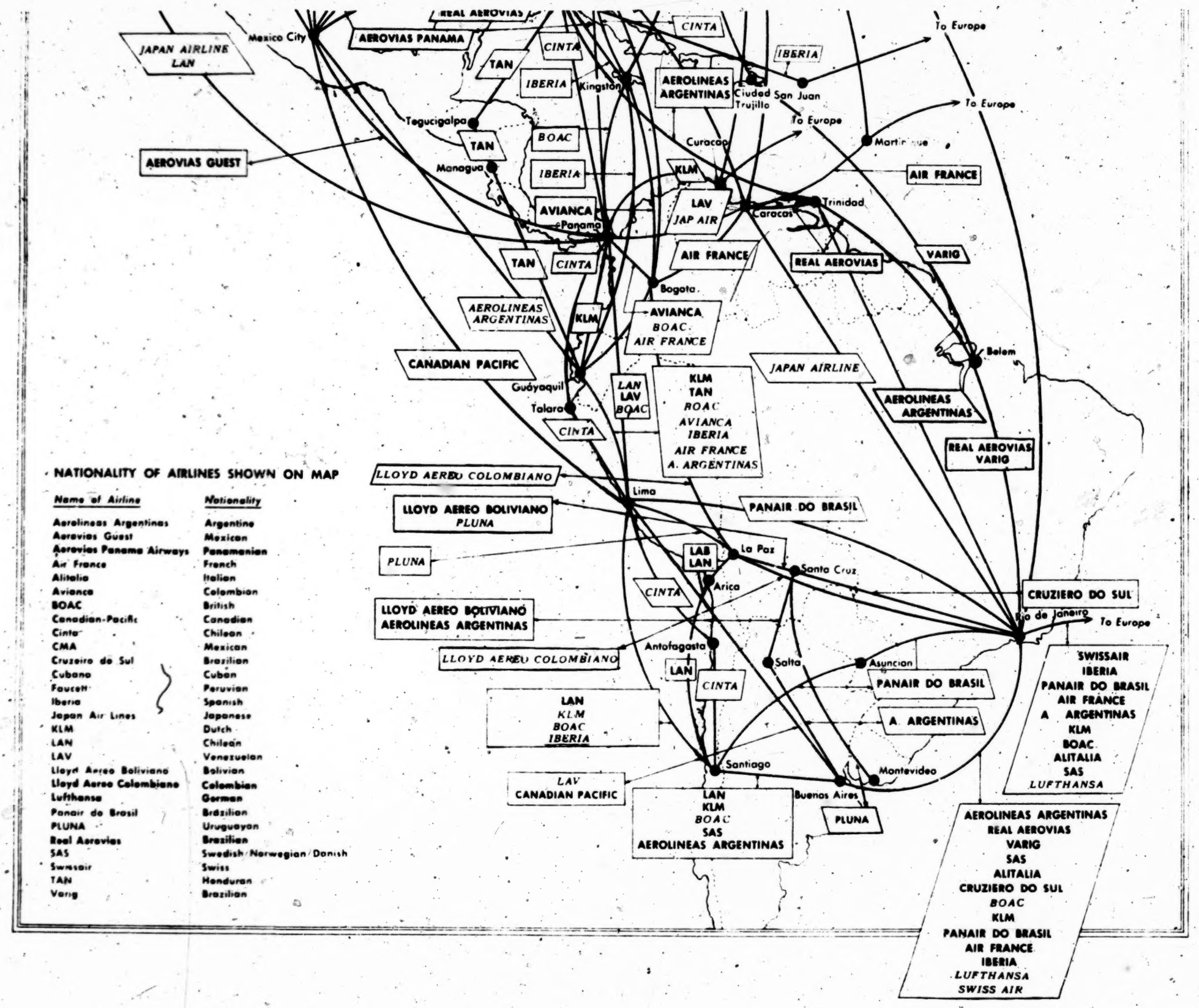
FOREIGN FLAG AIRLINES COMPETING WITH PANAGRA

ROUTES PRESENTLY OPERATED IN BOLD FACE

PROJECTED ROUTES IN ITALICS

July 27 1936





NATIONALITY OF AIRLINES SHOWN ON MAP

Name of Airline	Nationality
Aerolineas Argentinas	Argentine
Aerovias Guest	Mexican
Aerovias Panama Airways	Panamanian
Air France	French
Alitalia	Italian
Avianca	Colombian
BOAC	British
Canadian-Pacific	Canadian
Cinta	Chilean
CMA	Mexican
Cruzeiro do Sul	Brazilian
Cubana	Cuban
Faucett	Peruvian
Iberia	Spanish
Japan Air Lines	Japanese
KLM	Dutch
LAN	Chilean
LAV	Venezuelan
Lloyd Aereo Boliviano	Bolivian
Lloyd Aereo Colombiano	Colombian
Lufthansa	German
Panair do Brasil	Brazilian
PLUNA	Uruguayan
Real Aerovias	Brazilian
SAS	Swedish/Norwegian/Danish
Swissair	Swiss
TAN	Honduran
Varig	Brazilian

[fol. 1765] —II-1—

ANNEX H

ROUTE EXPANSION OF U.S. CERTIFICATED AIR CARRIER INDUSTRY

Table 1 compares the 11% decrease, between 1946 and 1955, in Panagra's weighted average route miles operated with the 112% increase in route mileage of all U.S. international carriers, the 14% increase for all domestic trunk carriers and the 89% increase for the certificated industry total.

It is apparent that Panagra has lagged far behind the industry, and especially behind other U.S. international carriers.

Table II shows the estimated growth in weighted average route miles operated for certain medium sized U.S. domestic carriers as a result of recent route awards by the C.A.B. These increases are not reflected in Table I. The additional increase in route mileage ranges from an estimated 13% for Capital to 92% for Northeast. It should be noted that of these carriers only Continental and Northeast are smaller than Panagra in terms of either traffic or revenues:

	Scheduled Operations for Year Ended December 31, 1955	
	Revenue Passenger Miles	Gross Operating Revenues
Delta (domestic)	952,601,000	$57,647,000
Capital	792,095,000	50,211,000
Braniff (domestic)	604,674,000	39,300,000
Continental	221,223,000	16,022,000
Panagra	160,681,000	17,772,000
Northeast	116,450,000	10,098,000

ESTIMATED EFFECT OF RECENT C.A.B. DECISIONS ON ROUTE MILEAGES OF CERTAIN MEDIUM SIZED U. S. DOMESTIC CARRIERS

ANNEX H
TABLE II

	Estimated Mileage of New Routes	Weighted Average Route Miles Operated December 31, 1955	Estimated % Increase in Route Miles Operated
NORTHEAST			
New York/Philadelphia	101		
Philadelphia/Baltimore	91		
Baltimore/Washington	30		
Washington/Jacksonville	640		
Jacksonville/Tampa	178		
Tampa/St. Petersburg-Clearwater	11		
St. Petersburg-Clearwater/Miami	209		
	1260	1,367	92.2%
CONTINENTAL			
Denver/Los Angeles	849		
Kansas City/Chicago	405		
Total	1,254	3,137	40.0%
DELTA			
Beaumont/New Orleans	226		
Atlanta/Charlotte	227		
Charlotte/Washington	331		
Washington/Baltimore	66		
Baltimore/Philadelphia	91		
Philadelphia/New York	80		
Total	1,021	4,862	21.0%
BRANIFF			
Memphis/Nashville	200		
Nashville/Chattanooga	112		
Chattanooga/Washington	523		
Washington/New York	200		
Total	1,035	5,558	18.6%
CAPITAL			
Buffalo/Detroit	250		
Atlanta/Birmingham	134		
New York/Philadelphia	80		
Philadelphia/Baltimore	91		
Total	555	4,207	13.2%

SOURCE: C.A.B. Order E-9537 (New York-Chicago Service Case)
E-9735 (Denver Service Case)
E-9758) (Southwest-Northeast Service Case)
E-9915)
E-10645 (New York-Florida Case)
Civil Aeronautics Board Offical Airline Route and Mileage Manual,
Air Traffic and Service Corporation.
Certified Air Carrier Traffic Statistics, Civil Aeronautics Board.

[fol. 1767] —J-1—

ANNEX J

PANAGRA'S ROUTE CHARACTERISTICS

Table I compares Panagra's recent ground and indirect expense ratios with those of Braniff International, Pan American L.A.D., and the average for all U.S. flag international air carriers. The table shows that Panagra's ratios in operating its route are higher than those of the rest of the industry.

Table II compares the traffic characteristics of the routes of Panagra, L.A.D. and Braniff. These comparisons indicate that Panagra has a long, relatively lean route with a high number of stations on it.

In Table I, Panagra's ground and indirect unit expenses are shown to be higher than those of Braniff, although Braniff operates a comparable routing. As shown in Table II, this is in part a result of the larger number of passenger stations maintained by Panagra on its route—23 compared to 11 maintained by Braniff. Panagra thus has only 237 route miles per station, compared to 627 route miles per station for Braniff. The same long haul factor is also reflected in Braniff's longer average passenger trip length, 2,163 miles for the year ended September 30, 1955 compared to 1,178 miles for Panagra. Another factor is that Braniff is able to allocate administrative and other overhead expenses between both the international and domestic operations, thus reducing the impact of such costs on its international division.

Compared to Panagra, L.A.D.'s routes have a substan- —J-2—

[fol. 1768] tially higher traffic density. This is shown in terms of revenue ton miles per route mile per day, revenue passengers per route mile, and revenue passenger miles per route mile per day (172 for L.A.D. compared to 81 for Panagra in the year ended 1955).

Even if the Braniff traffic were added to Panagra, the traffic density of the West Coast routing is still markedly below the density of L.A.D.'s East Coast and Caribbean routes (111 revenue passenger miles per route mile per day for the West Coast carriers, compared to the 172 for L.A.D.).

ANNEX J
TABLE I

COMPARISON OF GROUND AND INDIRECT EXPENSE RATIOS
PANAGRA VS. SELECTED INTERNATIONAL CARRIERS

1954 and 1955

Cents per available ton-mile

	Average - All Int'l. Carriers		Braniff International		Pan American LAD		Panagra	
	1954	1955	1954	1955	1954	1955	1954	1955
DIRECT FLYING EXPENSE								
Flying Operations	11.53¢	11.04¢	11.57¢	10.46¢	10.49¢	9.68¢	12.19¢	11.21¢
Direct Maintenance - Flight Equipment	3.58	3.53	3.57	3.88	3.42	3.18	4.29	3.61
Depreciation - Flight Equipment	3.25	2.81	[illegible].66	1.57	2.42	1.97	3.33	2.95
	18.36¢	17.38¢	16.80¢	15.91¢	16.33¢	14.83¢	19.81¢	17.77¢
GROUND AND INDIRECT EXPENSE								
Ground Operations	5.06¢	4.77¢	5.44¢	5.19¢	5.50¢	5.09¢	7.39¢	6.80¢
Ground and Indirect Maintenance	2.60	2.45	2.08	2.03	2.31	2.27	4.17	3.77
Passenger Service	2.61	2.72	2.15	2.23	2.64	2.59	2.92	3.03
Traffic and Sales	4.73	4.66	4.37	4.30	4.78	4.56	5.71	5.74
Advertising & Publicity	1.67	1.64	1.10	1.36	1.61	1.50	3.04	3.22
General & Administrative	3.37	3.18	2.68	2.68	3.52	3.15	5.38	5.17
Depreciation - Ground Equipment	0.40	0.36	0.58	0.49	0.36	0.31	0.45	0.37
	20.44¢	19.78¢	18.40¢	18.28¢	20.72¢	19.47¢	29.06¢	28.10¢
TOTAL OPERATING EXPENSE	38.80¢	37.16¢	35.20¢	34.19¢	37.05¢	34.30¢	48.87¢	45.87¢
RATIO G. & I. TO TOTAL	52.7%	53.2%	52.3%	53.5%	55.9%	56.8%	59.5%	61.3%

SOURCE: Comparative Statement of Air Carriers Profit and Loss and Earned Surplus, Air Transport Association of America

ANNEX J
TABLE II

COMPARISON OF ROUTE CHARACTERISTICS OF PANAGRA PAN AMERICAN L.A.D. AND BRANIFF INTERNATIONAL

1954 and 1955

	Panagra		Pan American - L.A.D.		Braniff International	
SCHEDULED OPERATIONS	1954	1955	1954	1955	1954	1955
Weighted Average Route Miles Operated	5,697	5,453	14,990	15,009	6,898	6,898
Revenue Ton Miles	19,649,000	20,474,000	113,898,000	127,578,000	10,719,000	9,875,000
RTMs per Route Mile	3,449	3,755	7,598	8,500	1,554	1,432
RTMs per Route Mile per day	9.45	10.29	20.82	23.29	4.26	3.92
Revenue Passengers	133,109	136,408	870,816	1,030,013	34,397	34,812
Passengers per Route Mile	23.36	25.02	58.09	68.63	4.99	5.05
Revenue Passenger Miles	149,099,000	160,681,000	821,969,000	944,673,000	80,409,000	75,291,000
RPMs per Route Mile	26,171	29,467	54,834	62,940	11,657	10,915
RPMs per Route Mile per day	71.70	80.73	150.23	172.44	31.94	29.90
Average Trip Length (RPMs per Passenger)	1,120	1,178	944	917	2,338	2,163
Number of Passenger Stations	23	23	44	44	11	11
Route Miles per Station	248	237	341	341	627	627
Revenue Passenger Miles per Station	6,483,000	6,986,000	18,681,000	21,470,000	7,310,000	6,845,000

SOURCE: Comparative Statement of Flight and Traffic Statistics, Air Transport Association of America

[fol. 1771] —K-1—

ANNEX K

APPLICATIONS PENDING BEFORE THE CIVIL AERONAUTICS BOARD FOR ROUTES TO LATIN AMERICA

Docket No.	
2909	(N.Y.—Mexico City Nonstop Service Case)—Eastern, American and Pan American applications for exclusive authority to operate nonstop between New York and Mexico City. The proposed service would be competitive with the existing operation of Air France. Hearings were completed in November of 1954. Examiner's report has not yet been issued.
2622	(Brazilian Cut Off Route Case)—Braniff application for authority to operate Bogota-Manaos-Goiania-Rio de Janeiro/Sao Paulo. Hearing has not yet been called.
4724–4823	Delta application for Caracas-Manaos-Goiania-Asuncion-Buenos Aires and Pan American application for nonstop Caracas-Asuncion (and presumably on to Buenos Aires). Hearing has not yet been called.
5032	National application to operate Miami-Jamaica-Balboa. Hearing has not yet been called.
6746	American application for nonstop authority between Los Angeles and Mexico City. Western had previously been awarded this route, but Mexico refused to grant operating rights and the President of the U.S. subsequently withdrew his approval of the Western certificate. The legality of this withdrawal is open to question and is an indirect issue in Docket 2902. Hearing has not yet been called.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 257

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 583

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits:		
DOCUMENTARY EVIDENCE:	1772	1851
1—Letter to Wilbur L. Morrison from R. C. Shrader dated October 11, 1946	1777	1856

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY, 1962

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
2—Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated July 30, 1946	1779	1859
Annex	1799	1879
3—Letter agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated May 28, 1947	1803	1884
4—Letter agreement between W. R. Grace and Co. and Pan American Airways Corporation dated May 28, 1947	1804	1885
5—Supplement No. 2 to Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated January 9, 1948	1805	1887
6—Supplement No. 3 to Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated January 28, 1949	1828	1908
7—Supplement No. 4 to Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated February 9, 1949	1830	1910
8—Supplement No. 5 to Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated May 11, 1949	1831	1911
9—Amendment No. 1 to application of Pan American World Airways, Inc. for approval of Supplement No. 5 to the Through Flight Agreement dated April 25, 1951	1839	1919
10—Supplement No. 6 to Through Flight Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated October 18, 1949	1844	1923

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
11—Supplement No. 7 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated January 31, 1950	1847	1925
12—Supplement No. 8 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated December 26, 1950	1849	1927
13—Supplement No. 9 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated January 24, 1951	1872	1952
14—Supplement No. 10 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated June 29, 1951	1875	1955
15—Supplement No. 11 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated January 1, 1952	1883	1964
16—Supplement No. 12 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated April 10, 1952	1891	1971
17—Supplement No. 13 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated September 25, 1952	1902	1986
18—Supplement No. 14 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated May 8, 1953	1903	1987

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
19—Supplement No. 15 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated January 20, 1954	1918	2009
20—Supplement No. 16 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated June 29, 1954	1934	2031
21—Supplement No. 17 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated September 7, 1955	1935	2032
22—Supplement No. 18 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated August 4, 1955	1955	2065
23—Supplement No. 19 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated August 7, 1957	1962	2070
24—Supplement No. 20 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated July 11, 1958	1964	2072
25—Supplement No. 21 to Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated December 23, 1958	1966	2074

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
26—Equipment Interchange Agreement between National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. dated August 4, 1955	1978	2088
27—Supplement No. 1 to Equipment Interchange Agreement between National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. dated August 9, 1955	2020	2126
28—Application as amended by Amendment No. 1 of National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. for approval of Equipment Interchange Agreement and amendment to Through Flight Agreement under Section 412 of the Civil Aeronautics Act and, if deemed necessary, for approval under or exemption from Section 408 of the said Act dated August 4, 1955	2033	2138
29—Amendment No. 1 to application of National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. for approval of Equipment Interchange Agreement and amendment to Through Flight Agreement under Section 412 of the Civil Aeronautics Act and, if deemed necessary, for approval under or exemption from Section 408 of the said Act dated August 10, 1955	2079	2177
30—Letter to Civil Aeronautics Board from K. A. Lawder dated August 29, 1955	2084	2181

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
31—Supplement No. 2 to Equipment Interchange Agreement between National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. dated August 22, 1955	2085	2182
32—Letter agreement between Pan American-Grace Airways, Inc. and National Airlines, Inc. dated August 24, 1955	2089	2185
33—Letter agreement between Pan American-Grace Airways, Inc. and National Airlines, Inc. dated November 28, 1955	2091	2186
34—Supplement No. 3 to Equipment Interchange Agreement between National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. dated November 28, 1955	2093	2188
35—Letter agreement between Pan American-Grace Airways, Inc., National Airlines, Incorporated, and Pan American World Airways, Inc. dated April 16, 1957	2102	2196
36—Statement of references and cost determination set forth in financial supplement dated August 9, 1955, to the Equipment Interchange Agreement dated August 4, 1955, between National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc.	2106	2200
Pan American Documentary Evidence—Agreements filed with the CAB	2108	2204
37—Agreements on Interline tickets between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated from January 26, 1932, to October 1, 1945	2113	2209

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
Pan American Documentary Evidence—Agreements filed with the CAB—Continued		
38—Letter agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated June 11, 1937	2126	2220
39—Letter agreement between Pan American-Grace Airways, Inc. and Pan American Airways, Inc. dated May 13, 1942	2128	2222
40—Letter agreement between Pan American-Grace Airways, Inc. and Pan American Airways, Inc. dated October 28, 1942	2129	2223
41—Agreement between Pan American-Grace Airways, Inc. and Pan American Airways, Inc. dated May 25, 1944	2131	2225
42—Contract between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated August 23, 1945	2134	2227
43—Agreement between Pan American, Panagra and Grace dated March 3, 1948	2140	2233
44—Letter agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated July 14, 1948	2163	2250
45—Memorandum agreement regarding services rendered and to be rendered to Panagra by the parent companies and compensation therefor between Pan American-Grace Airways, Inc., Pan American Airways, Inc., and W. R. Grace and Co., dated July 14, 1948	2168	2256
46—General Traffic and Sales Agency Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated September 10, 1948	2180	2263
47—Letter agreement between Pan American-Grace Airways, Inc. and Pan American World Airways, Inc. dated December 10, 1951	2213	2297

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
Pan American Documentary Evidence—Agreements filed with the CAB—Continued		
48—Letter agreement between Pan American-Grace Airways, Inc. and Pan American World Airways, Inc. dated March 6, 1956	2215	2299
49—Letter agreement between Pan American-Grace Airways, Inc. and Pan American World Airways, Inc. accepted April 25, 1956	2217	2301
50—Exchange of correspondence between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. dated respectively June 26, 1957, June 3, 1957 and June 7, 1957	2220	2303
51—General Traffic Agreement between Pan American Airways, Inc. and Sociedad Colombo-Alemana de Transportes Aereos dated March 11, 1952	2227	2309
52—General Traffic and Sales Agency Agreement between Pan American Airways, Inc. and Aerovias Nacionales de Colombia, S.A. dated November 1, 1949	2242	2324
53—General Traffic and Sales Agency Agreement between Pan American World Airways, Inc. and Aerovias Nacionales de Colombia, S.A. dated December 3, 1954	2271	2353
54—Letter agreement between Aerovias Nacionales de Colombia, S.A. and Pan American World Airways, Inc. dated December 3, 1954	2288	2368
55—Letter agreement between Pan American World Airways, Inc. and Aerovias Nacionales de Colombia, S.A. dated December 3, 1954	2291	2371
56—Interline Traffic Agreement signed by Pan American Airways, Inc. dated December 3, 1954	2292	2372

[fol. 1772]

Pan American Documentary Evidence

Agreements Filed with the CAB

Table of Contents

Volume 1

I. AGREEMENTS WITH PANAGRA:

Through Flight Agreement and Supplements:

Date of Agmt.	Parties	Description	Date Filed CAB	CAB No.	Date Apprd.	Order No.
7/30/46	PAA/PANAGRA	Through Flight Agmt. 1/	8/5/46	727	5/5/47	E-570
5/28/47	PAA/PANAGRA	Supp. No. 1	5/28/47			
1/9/48	PAA/PANAGRA	Supp. No. 2	1/14/48	727-A	8/29/50	E-4575
1/28/49	PAA/PANAGRA	Supp. No. 3	2/18/49	727-A/4	8/29/50	E-4575
2/9/49	PAA/PANAGRA	Supp. No. 4	2/18/49	727-A/5	8/29/50	E-4575
5/11/49	PAA/PANAGRA	Supp. No. 5	5/12/49	727-A/6	8/29/50	E-4575
10/18/49	PAA/PANAGRA	Supp. No. 6	10/24/49	727-A/7	8/29/50	E-4575
1/31/50	PAA/PANAGRA	Supp. No. 7	2/28/50	727-A/8	8/29/50	E-4575
12/26/50	PAA/PANAGRA	Supp. No. 8	1/24/51	727-A/9	8/10/55	E-9481
1/24/51	PAA/PANAGRA	Supp. No. 9	2/9/51	727-A/10	8/10/55	E-9481
6/29/51	PAA/PANAGRA	Supp. No. 10	7/27/51	727-A/11	8/10/55	E-9481
1/1/52	PAA/PANAGRA	Supp. No. 11	2/15/52	727-A/12	8/10/55	E-9481
4/10/52	PAA/PANAGRA	Supp. No. 12	4/16/52	727-A/13	8/10/55	E-9481
9/25/52	PAA/PANAGRA	Supp. No. 13	10/13/52	727-A/14	8/10/55	E-9481
5/8/53	PAA/PANAGRA	Supp. No. 14	5/18/53	727-A/15	8/10/55	E-9481
1/20/54	PAA/PANAGRA	Supp. No. 15	4/22/54	727-A/16	8/10/55	E-9481

1/ For Parent Company Agreement considered by CAB as part of Through Flight Agreement, see Agreement with Grace.

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Date of Agmt.	Parties	Description	Date Filed CAB	CAB No.	Date Apprvd.	Order No.
6/29/54	PAA/PANAGRA	Supp. No. 16	8/17/54	727-A/17	8/10/55	E-9481
9/7/55	PAA/PANAGRA	Supp. No. 17	9/23/55	727-A/19	10/13/55	E-9654
8/4/55	PAA/PANAGRA	Supp. No. 18	8/4/55	727-A/18	8/10/55	E-9481
8/7/57	PAA/PANAGRA	Supp. No. 19	8/20/57	727-A/20	Pending	
7/11/58	PAA/PANAGRA	Supp. No. 20	7/23/58	727-A/23	Pending	
12/23/58	PAA/PANAGRA	Supp. No. 21	1/8/59	727-A/25	Pending	
Equipment Interchange Agreement and Supplements						
8/4/55	PAA/NAL/PANAGRA	Equipment Interchge. Agmt.	8/4/55	9205	8/10/55	E-9481
8/22, 24/55	PAA/NAL/PANAGRA	Supp. No. 2 (Valuation aircr. & Lr. Agmt.)	8/29/55	A/1	9/12/55	E-9562
11/28/55	PAA/NAL/PANAGRA	Supp. No. 3	1/4/56	A/2	10/15/56	E-10669
4/16/57	PAA/NAL/PANAGRA	Unif. Syst. Accts. Lr. Agt.	6/26/57	A/3	Pending	
Volume 2						
Other Agreements with Panagra						
1/26/32 to 10/1/54	PAA/PANAGRA	Interline tickets (11 copies correspondence)	9/27/46	810		
6/11/37	PAA/PANAGRA	Lr. Agmt/Grnd. Sv. by PAN-AGRA/Buenos Aires Airpt.	2/20/53	664	2/17/53	E-7165
5/13/42	PAA/PANAGRA	Joint Facilities-Corumba, Brazil	9/27/46	807		
10/28/42	PAA/PANAGRA	Apportionment of Revenue	9/27/46	808		
5/25/44	PAA/PANAGRA	Airmail exchange	9/27/46	809		

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Date of Agmt.	Parties	Description	Date Filed CAB	CAB No.	Date Apprvd.	Order No.
8/23/45	PAA/PANAGRA	Airmail Service-Operations/Panama (Sp. Eng.)		671-A/2	11/7/52	E-6915
3/3/48	PAA/PANAGRA/ W.R.GRACE & CO.	Gen. Sls. Agcy & Commissions	9/24/48	2172	Pending	
7/14/48	PAA/PANAGRA	Purch. & Shipping Agmt.	7/20/48	2270	1/22/52	E-6048
7/14/48	PAA/PANAGRA/ W.R.GRACE & CO.	Agmt. re Gen. Sls. Agcy, Pch. & Shipping & Adm. Sv. to Panagra	7/20/48	2271	Terminated	
9/10/48	PAA/PANAGRA	Gen. Traff/Sls. Agcy. Agt.	9/21/48	2473	11/8/51	E-5842
12/11/51	PAA/PANAGRA	PAA ticket sale on "lift" basis	5/12/52	6133	6/3/52	E-6476
3/6/56	PAA/PANAGRA	Appvl. changes in design	3/27/56	A/1	Pending	
4/24/56	PAA/PANAGRA	Commissions re DC8s	5/17/57	A/1	Pending	
6/26/57	PAA/PANAGRA	Procurement of parts DC6s	7/22/57	A/2	Pending	
6/3, 7 & 26/57	PAA/PANAGRA	Avianca an affil. carrier	7/10/57	A/2	Pending	
2. AGREEMENTS WITH AVIANCA AND SCADTA:						
3/11/32	PAA/SCADTA	General Traffic Agmt.	9/30/38	166	Terminated	
11/1/49	PAA/AVIANCA	Gen. Traffic/ Sls. Agcy. Agt.	11/14/49	3763	11/8/51	E-5842
12/3/54	PAA/AVIANCA	Gen. Traf/Sls. Agcy. Agt.	12/8/54	8528	Pending	
12/3/54	PAA/AVIANCA	Reimbursemt. of expenses	7/10/57	A/2	Pending	

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Date of Agmt.	Parties	Description	Date Filed CAB	CAB No.	Date Apprd.	Order No.
12/3/54	PAA/AVIANCA	PAA lr. designat. affiliates	7/10/57	A/1	Pending	
12/3/54	PAA/AVIANCA	IATA Interl. Traff. Agt.	4/4/55	8842	4/25/55	E-9130
6/18/57	PAA/AVIANCA	Amdmt. No. 1 re territory	7/10/57	A/3	Pending	
1/30/58	PAA/AVIANCA	Rel. to territory/Amdmt. No. 2	3/31/58	A/4	Pending	
3/31/58	PAA/AVIANCA	Amdmt. No. 3 - re territory	4/24/58	A/5	Pending	
10/30/58	PAA/AVIANCA	Amdmt. No. 4 - re territory		A/6	Pending	

3. AGREEMENTS WITH BRANIFF:

4/27/48	PAA/BRANIFF	Grnd. Sv. Agt. Havana & San Blas, Panama	4/27/48	1980	5/27/53	E-7416
9/27/48	PAA/BRANIFF	Amdmt. No. 1 re charges	1/13/49	A/1	3/30/49	E-8651
10/31/49	PAA/BRANIFF	Amdmt. No. 2 re charges	12/14/49	A/2	5/27/53	E-7416
12/7/49	PAA/BRANIFF	Amdmt. No. 3 re charges	1/20/50	A/3	5/27/53	E-7416
7/20/50	PAA/BRANIFF	Amdmt. No. 4 re charges	9/21/50	A/4	5/27/53	E-7416
4/30/52	PAA/BRANIFF	Assignmt. to AUSA of Svcg. Agt.	9/25/52	A/5	5/27/53	E-7416
11/18/54	PAA/BRANIFF	Participn. in PAA Syst. tariffs	11/30/54	8510	12/29/54	E-8862
6/20/57	PAA/BRANIFF	Amdmt. No. 5 re charges	7/22/57	A/6	9/13/57	E-11789
10/21/57	PAA/BRANIFF	Amdmt. No. 6 re charges	11/22/57	A/7	Pending	

[fol. 1776]

Date of Agmt.	Parties	Description	Date Filed CAB	CAB No.	Date Apprd.	Order No.

4. AGREEMENT WITH GRACE:

Agreement between W. R. Grace & Co. and Pan American Airways Corporation, dated July 30, 1946; see Trial Brief for United States, Part II, Excerpts from Documentary Evidence, Volume IV, Thru-Flight - Part II, G-267.

5. AGREEMENTS WITH NATIONAL AIRLINES:

See above under Agreements with Panagra; Equipment Interchange Agreement and Supplements.

6. AGREEMENTS WITH PANAIR DO BRASIL:

11/1/43	PAA/PAB	(General Agency Agmt.) Lr. Agt.	10/14/43	267	11/8/51	E-5842
1/1/44	PAA/PAB	General Agency Agmt.	2/19/44	A	11/8/51	E-5842
6/22/44	PAA/PAB	Lr. Agmt.	11/6/44	A/2	11/8/51	E-5842
12/12/46	PAA/PAB	Agmt.	4/4/47	A/3	11/8/51	E-5842
1/1/47	PAA/PAB	Lr. Agmt. re Syst. Accts.	12/16/47	A/4	11/8/51	E-5842
1/6/47	PAA/PAB	Lr. Agmt. Amdmt. No. 2	9/30/47	A/5	11/8/51	E-5842
2/19/52	PAA/PAB	Lr. Agmt. re commission rates	6/18/52	A/9	7/9/52	E-6587
1/1/55	PAA/PAB	Gen. Traffic/Sls. Agcy. Agt.	12/29/55	9620		
12/13/55	PAA/PAB	Lr. fr. PAA/re. affil. carriers		A/1	Pending	
7/1/57	PAA/PAB	Amdmt. No. 1 re territory	8/5/57	A/2	Pending	
12/11/57	PAA/PAB	Amdmt. No. 2 re territory	2/11/58	A/3	Pending	

[fol. 1777]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 1

BRANIFF
Airways

[Handwritten notation—Return to Friendly]

LOVE FIELD
DALLAS 5, TEXAS

[Stamp—Received—Oct 14 1946—Pan American Airways, Inc.—Vice President—Latin American Div.]

October 11, 1946

Mr. Wilbur L. Morrison
Vice President—Latin American Div.
Pan American Airways System
Miami, Florida

Dear Mr. Morrison:

This Company has just completed a survey flight over its new route from the United States to Panama and South America, including stops at various capitols of countries on the West Coast and then crossing over to Rio de Janeiro and Buenos Aires on the East Coast.

The personnel of Pan American Airways System gave us excellent service on our entire trip. In fact, airplane, crew, and employees could not have received any better attention had we been traveling over our own system. We want to take this opportunity to thank you, and through you all of the employees involved, for their efforts in making this flight a complete success. We experienced no weather or mechanical delays, and our only deviation from the schedule set up prior to leaving Dallas was caused by our own inability to complete our work in one or two of the cities visited. You have a very fine organization of Operations people, and they are all splendid fellows.

In this connection, I believe there has been some misunderstanding regarding our negotiations with the Canal Zone Air Terminal. On our arrival there the 2nd of September, we were informed by the Chief of the Aeronautics

Section of the Canal Zone that when the terminal building and hangar were built for the use of commercial airlines, certain space was reserved for the second United States airline certificated into Panama. As this second certificated airline happens to be our Company, we were informed that certain terminal building and hangar shop space then being used by other companies was actually being used on a 30 day cancellation basis, so it would be available for the second United States airline when required.

We informed the Airport Manager that the date on which we would need any space was indefinite, as it depended upon the completion of sufficient proving runs necessary to secure C.A.A. operations certificate covering the proposed route, which runs cannot be made until negotiations with various South American countries for operating permits have been successfully completed. I therefore suggested to the Airport Manager that we present our application for the space required, and that the present occupants of the quarters which were to be assigned to us be notified that sometime within the next several months our Company would require some of the space for which application was made. I also informed him that we would be very happy to continue the 30 day cancellation notice, so the present

PAA-5860

3185 5/6/55

JPL

[fol. 1778] occupants would have ample time to make other arrangements. This was done because we do not want to cause any more disturbance or reorganization in other companies than is absolutely necessary and still give us the minimum of space which will be needed to conduct our operations. Furthermore, it was necessary for us to apply for considerably more space than will be actually needed for our initial operation, because we do not know what expansion may take place within a few months' time.

On my return through Panama a few days ago, I learned that Canal Zone authorities had issued vacating notices, to be effective as of November 1, to the present occupants of quarters for which we made application. While this may be the only way the matter could be handled legally, it

certainly was not our intention for any eviction notices to be issued. We intended for the present occupants to be notified that the quarters had been leased to this Company, but that they could continue occupancy on the present basis until such time was we would need the space leased to us. We informed both your people and Taca's that occupancy could be continued, as at present, until such time as we would have to have certain space. Furthermore, we stated that we did not intend to take possession of all the space leased to us at the same time, but would defer giving the 30 day notice on each of the several offices just as long as possible.

If it will be of any advantage to you to continue the use of any of this space which you are now occupying for the number of months that will elapse before we have need for the space, you are at perfect liberty to do so. We want you to know that you can have considerable length of time after November 1 in order to complete your reorganization plans, if you so desire. I believe the Airport Manager informed me that he understood from your personnel that January 1 would be a far more desirable date for them, and I feel quite sure we will not need more than one office prior to that date.

Will you please let me know your desires regarding this matter at your convenience.

Sincerely yours,

/s/ R. C. SHRADER
R. C. Shrader
Vice President—Operations

RCS:mdm

[fol. 1779]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 2

AGREEMENT

BETWEEN

PAN AMERICAN AIRWAYS, INC.

AND

PAN AMERICAN-GRACE AIRWAYS, INC.

DATED JULY 30, 1946

[fol. 1779a] AGREEMENT made and entered into this 30th day of July, 1946 by and between PAN AMERICAN AIRWAYS, INC., a New York corporation (hereinafter called PAA), and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation (hereinafter called Panagra):

RECITALS

A. PAA holds various certificates of convenience and necessity for routes between the continental United States and the Canal Zone, and Panagra holds a certificate of convenience and necessity for a route between the Canal Zone and various points in South America.

B. A substantial amount of the passenger, air express, mail and cargo traffic proceeding between the continental United States and the Canal Zone originates at or is destined to points on Panagra's certificated route in South America.

C. PAA and Panagra believe it is in the public interest that such through traffic should be enabled to proceed by fast direct flight without change of plane at the Canal Zone and that the making of arrangements to that end is desirable in order that they may compete effectively with

foreign-flag and other American-flag carriers operating or contemplating operations between the continental United States and the countries of South America which Panagra is certificated to serve.

D. Because of the foregoing and a desire to settle outstanding differences, PAA and Panagra desire to make arrangements, as hereinafter set forth, whereby PAA will charter aircraft of Panagra to be operated with Panagra flight crews over PAA's certificated routes between the Canal Zone and the continental United States.

[fol. 1786] TERMS OF AGREEMENT

Now, therefore, in consideration of the premises and the mutual covenants herein contained, it is agreed as follows:

1. *Charter of Panagra Aircraft by PAA.* PAA will, at the request of Panagra as hereinafter provided, charter any aircraft operated by Panagra into the Canal Zone from Lima, Peru or any point on Panagra's certificated route in South America south of Lima, Peru, for through operation from the Canal Zone over one of PAA's routes to the continental United States, and for return operation to the Canal Zone over the same route. All such chartered aircraft shall be operated with Panagra flight crews. If Panagra shall deem it impracticable for the particular aircraft operated by Panagra into the Canal Zone to continue the flight to the continental United States, Panagra may substitute another aircraft of the same or comparable type.

2. *PAA Routes over which Through Flights are to be Operated.* (a) The initial route over which through flights are to be operated under this agreement shall be PAA's certificated route between the Canal Zone and Miami, Florida. Such flights shall be operated non-stop between the Canal Zone and Miami unless operating or traffic experience demonstrates to the satisfaction of both parties the desirability of making one or more intermediate stops.

(b) Upon the granting to PAA of a certificate for a route between Miami, Florida and Washington, D. C., and/or New York, New York, and/or a certificate for a route from

Miami, Florida, to Chicago, Illinois, through flights under this agreement shall proceed over such route to and from such points. Such flights may utilize the most direct non-stop route available to PAA. In the event PAA is certificated to operate between Miami, Florida and Boston, Massachusetts or any other points on the east coast of the United States, through flights may also be operated under this agreement to and from such points provided operating or traffic experience demonstrates the desirability thereof.

[fol. 1781] (c) If Panagra shall so request, PAA will file with the Civil Aeronautics Board such applications as may be necessary to permit non-stop operation between the Canal Zone and New Orleans, Louisiana, it being understood that nothing herein contained shall limit PAA's rights to apply for such non-stop authority without a request on the part of Panagra. Upon PAA's receiving such non-stop authority, whether as a result of applications filed at Panagra's request or otherwise, through flights may be made by Panagra aircraft pursuant to this agreement between the Canal Zone and New Orleans, Louisiana, to such extent as Panagra shall determine appropriate from time to time in the light of competitive conditions and the relative amount of traffic available for such route. If PAA shall have obtained authority from the Civil Aeronautics Board to operate a route between New Orleans, Louisiana, and Chicago, Illinois, such flights with Panagra aircraft may proceed over such route provided operating or traffic experience demonstrates the desirability thereof.

(d) PAA agrees to use its best efforts to obtain from the Civil Aeronautics Board authority to operate the various routes and non-stop services referred to in this paragraph 2 and Panagra agrees to support PAA to this end.

(e) Panagra aircraft chartered to PAA are not to be operated over any of PAA's routes other than those described above except by mutual consent.

3. *Number and Destination of Flights.* (a) At least thirty (30) days prior to the first scheduled through flight proposed to be made with Panagra aircraft and crews under

charter to PAA pursuant to this agreement, Panagra shall give notice to PAA as to the number and nature of the through flights proposed to be so operated during the ensuing six (6) months period over each of PAA's routes specified in paragraph 2 above. At least sixty (60) days prior to the expiration of said six (6) months period and of each six (6) months period thereafter, Panagra shall give notice to PAA of the number and nature of such through flights proposed to be so operated during the succeeding six (6) [fol. 1782] months period. Except with PAA's consent, the number of through flights to be so operated shall not during any period exceed the number specified in such notice. Subject only to operating or other conditions beyond Panagra's or PAA's control, Panagra shall be obligated to furnish the aircraft and crews for the performance of the flights specified in such notice and PAA shall be obligated to operate the through flights with such aircraft and crews over its routes as specified in such notice.

(b) If experience over any six (6) months period shall demonstrate that the load factors (including both local and through traffic) on the through flights operated north of the Canal Zone with Panagra aircraft and crews under charter to PAA pursuant to this agreement shall be inadequate, the parties shall take appropriate action to increase such load factors through reduction or adjustment of their schedules or otherwise.

4. *Schedules.* (a) PAA and Panagra will consult from time to time with a view to fixing the schedules of the through flights being operated over PAA s routes with Panagra aircraft and crews under charter to PAA pursuant to this agreement in such manner as to provide the most convenient and advantageous schedules for the benefit of through traffic between the continental United States and points on Panagra's certificated route in South America. In the event of disagreement the schedules for the through flights shall be established as follows: Panagra shall fix the hours of arrival of northbound through flights at the Canal Zone and of departure of southbound through flights from the Canal Zone, and PAA will immediately adjust the through schedules north of the Canal Zone to be flown with

Panagra aircraft pursuant to this agreement accordingly so as to provide the most expeditious direct through one-plane service. It is the intention of the parties that, within the limitations which may be necessary by reason of Panagra's operations over its own route, through flight schedules and turnarounds shall be arranged to assure maximum utilization by PAA of Panagra's aircraft chartered by PAA pursuant to this agreement.

[fol. 1783] (b) The parties will instruct their respective personnel to cooperate in arranging and adjusting from time to time as occasion may arise reasonable and sound procedures for meeting traffic and operating problems that may arise in respect of any particular flight by reason of through flights arriving at the Canal Zone northbound or southbound unduly delayed. Due consideration shall be given in this connection to the purpose of this agreement to provide through one plane service for traffic between the continental United States and points on Panagra's certificated route in South America.

5. *Panagra Aircraft and Crews to be Operated under Agreement.* (a) The Panagra aircraft to be operated over PAA's routes under charter to PAA pursuant to this agreement shall be operated with Panagra's flight crews and cabin attendants. All Panagra aircraft so operated shall be properly licensed for operation over such routes and all of said flight crews shall be fully licensed for operation on the aircraft and over the routes required. Panagra will furnish PAA with all data required for the inclusion of such aircraft and flight crews in PAA's air carrier operating certificate, and the parties will cooperate generally in accomplishing this result.

(b) The aircraft which shall be tendered by Panagra for operation under charter by PAA pursuant to this agreement shall be of a modern type capable of carrying on the services herein contemplated a reasonable load, at competitive speeds, and with equivalent accommodations and comfort-level, all measured in the light of the aircraft types currently being operated by other American-flag airlines over routes of similar length and characteristics.

(c) PAA shall have a right to inspect any aircraft tendered by Panagra for operation pursuant to this agreement before accepting same and may refuse to operate any aircraft tendered which is not in satisfactory operating condition in the light of regulations of the Civil Aeronautics Authority and prevailing airline standards.

[fol. 1784] 6. *Responsibility for Operations on PAA Routes.* PAA shall have full responsibility for and control over the operation of Panagra's aircraft over PAA's routes as provided in this agreement. PAA's responsibility for such operation, without limiting the generality of the foregoing, shall include responsibility for operation dispatch, flight plane clearance, radio plane guard and "in flight" instructions and all communications, navigation and weather facilities and services, and also for loading and discharge of airplanes, handling of traffic, and passenger service. PAA undertakes to furnish in connection with such operations adequate and efficient ground facilities and personnel, to conduct such operations in accordance with approved and modern standards which shall in no event be lower than those provided in the case of its own aircraft, and to treat Panagra's aircraft on a basis of complete equality with its own aircraft.

7. *Maintenance and Overhaul.* (a) PAA shall undertake and perform at convenient maintenance bases in the continental United States all major overhaul of flight equipment owned by Panagra of the same or similar type as the flight equipment chartered by PAA under this agreement, and such other maintenance and overhaul of other types of flight equipment as Panagra may request from time to time on reasonable notice. If experience indicates the desirability, from the point of view of cost, efficiency or service to the public, of PAA's arranging for any or all of such maintenance or overhaul to be done by third parties or of Panagra's making other arrangements for the performance of any or all such maintenance and overhaul in the continental United States, PAA and Panagra will join in developing plans whereby this may be accomplished.

(b) PAA will also furnish to Panagra's aircraft operated over PAA's routes pursuant to this agreement, air-

plane and engine inspection and on-line maintenance service.

(c) The maintenance, overhaul and inspection services furnished Panagra by PAA pursuant to this agreement shall not be less in character, quality or extent than the [fol. 1785] service given by PAA or Panagra to their aircraft or as may be required from time to time under the standards of the Civil Aeronautics Authority.

(d) Panagra may station a reasonable number of its employees at maintenance bases of PAA at which maintenance and overhaul of Panagra's flight equipment is being performed pursuant to this paragraph for purposes of expediting and general coordination, and PAA will furnish to such employees reasonable office facilities and access to the work.

8. *Training.* At the request of Panagra, PAA will join with Panagra in developing plans whereby Panagra's pilots or other personnel (whether to be engaged in the charter service or otherwise) may be trained in any training centers in the continental United States operated by PAA, PAA to be compensated for such training on bases to be arranged from time to time.

9. *Preference for Through Traffic.* Since the purpose of the through flights to be made with Panagra aircraft under charter to PAA pursuant to this agreement is primarily to accommodate traffic between the continental United States and points on Panagra's route in South America, PAA and Panagra shall book and route such traffic via such aircraft to the fullest extent practicable. In order to give such traffic precedence over any other traffic to be carried by such aircraft, it is agreed that in the case of all northbound and southbound through flights operated over PAA's routes pursuant to this agreement, Panagra shall, from time to time, request PAA to block off until a reasonable time prior to departure a specific number of seats and a designated amount of mail and cargo capacity which will be designed to accommodate the through traffic reasonably expected, and will itself block off for the through flights on its own route a number of seats and amount of

mail and cargo capacity reasonably related to the seats and amount of capacity which it shall have requested PAA to block off, and the parties shall arrange their reservations control accordingly. If experience over a reasonable time indicates that the seats or capacity so blocked off unduly [fol. 1786] exceed the through traffic actually carried, the parties will take appropriate action to prevent non-utilization of capacity, with due regard, however, for the requirements of through traffic destined to or originating at points on Panagra's certificated route. Subject to the foregoing, it is the intention of this agreement that PAA will route local and way-to-way traffic on the aircraft under charter to PAA pursuant to this agreement in the same manner as it does on its schedule operated with its own aircraft.

10. *General Sales Agency of PAA for Panagra.* (a) PAA shall continue to act as general sales agent for Panagra (with the right to appoint sub-agents) in the United States and in all other parts of the world except the countries of South America served by Panagra and Panama City, Panama. PAA shall use its best efforts to promote and develop traffic for Panagra, both in the United States and elsewhere, without discrimination and on the same basis on which it promotes and develops traffic over it own routes.

(b) If at any time Panagra presents to PAA evidence reasonably indicating that any employee of PAA shall have diverted or attempted to divert any traffic intended for transportation over Panagra's routes or on the through flights operated pursuant to this agreement, or shall have withheld information as to the availability of Panagra's services from any person seeking such transportation, Panagra shall cooperate with PAA as to the establishment by the latter of adequate disciplinary machinery for preventing further conduct of the type indicated.

(c) Panagra shall from time to time indicate to PAA methods and procedures which Panagra desires to have established by PAA or PAA's sub-agents in connection with the selling, handling or servicing of traffic to be carried over Panagra's certificated route. PAA will put such methods

and procedures into effect wherever practicable. If after full consideration such methods or procedures appear to PAA to be undesirable or impracticable, PAA shall use its best efforts to work out with Panagra substitute methods and procedures designed to accomplish the results which Panagra is seeking.

[fol. 1787] (d) PAA will designate W. R. Grace & Co. and its qualified affiliated companies as sub-agents for the sale of Panagra traffic in the area for which PAA shall act as general sales agent.

11. *Panagra Display and Representation at Airports and Ticket Offices.* (a) PAA will cause the name "Pan American-Grace Airways, Inc." and, if Panagra shall so request, the name "Panagra", in such form as Panagra may determine, and the Panagra-insignia in the form as presently in use, to be displayed on traffic counters at all airports in the continental United States to which Panagra's aircraft may be operated under charter to PAA pursuant to this agreement. At any such airport Panagra may, if it determines the same to be necessary or desirable, employ a reasonable number of personnel to assist in the handling of traffic arriving or departing from or to points on Panagras certificated route. Persons so employed shall have reasonable access to PAA's space and facilities at such airports.

(b) PAA will cooperate with Panagra to assure that adequate space and personnel are available to PAA's city ticket offices for the efficient handling of traffic originating at or destined to points on Panagra's certificated route or which proceeds via the through flights provided in this agreement.

At least one responsible employee of PAA working full time in PAA's city ticket offices in New York, Chicago, Washington and in any other place in the continental United States to which Panagra's aircraft shall be operated pursuant to this agreement shall be appointed by PAA and serve subject to the approval of Panagra, which approval shall not be unreasonably withheld. Such employee shall among other duties be particularly charged with the duties

of promoting the sale of Panagra traffic and of facilitating and improving the handling of Panagra traffic and traffic routed via the through flights provided in this agreement. Such employee shall regularly keep Panagra fully advised through procedures approved by PAA of all matters relating to such traffic.

PAA will use its best efforts to encourage and bring about the fullest cooperation between its United States sales offices and Panagra's traffic department.

[fol. 1788] At all of PAA's city ticket offices in the continental United States there shall be available at all times full information as to the routes operated by Panagra and the through flights provided by Panagra aircraft under charter to PAA, and the name "Pan American-Grace Airways, Inc." and, if Panagra shall so request, the name "Panagra", in such form as Panagra may determine, and the Panagra insignia in the form as presently in use, shall be held out to the public by display or otherwise.

(c) Panagra's right to utilize the word "Panagra", in such form as it may determine, as a trade name for all purposes it may deem fit is hereby acknowledged by PAA. Nothing in this agreement shall prevent PAA, in its system advertising or otherwise, from referring to Panagra as "Pan American-Grace Airways, Inc."

12. *Tickets and Documentation; Through Rates.* (a) All tickets or other documents relating to transportation to be performed by Panagra's aircraft being operated under charter to PAA pursuant to this agreement shall show that such transportation is being made via PAA and, to such extent as practicable, passenger tickets shall show that such transportation is being made with Panagra aircraft.

(b) PAA and Panagra will establish through rates for services over their respective certificated routes between all principal points as may be required and revenue therefrom will be divided on a mileage flown basis or such other basis as may be agreed.

(c) PAA, by one or more qualified employees, shall continue to act as tariff and schedule publishing agent for Panagra.

13. *Further Agreements.* (a) Within a reasonable time after the inauguration of through flights pursuant to this agreement, PAA and Panagra will negotiate with the objective of entering into an agreement, subject to the approval of the Civil Aeronautics Board, for sharing, in the light of the services offered by the parties and the mileage operated by each of them, all revenues arising out of transportation by each of them, both northbound and [fol. 1789] southbound, of passengers, air express, cargo and mail (other than United States mail) originating in or routed through the continental United States and destined to Buenos Aires, Argentina, and/or Montevideo, Uruguay, and vice versa.

(b) If either party shall be of the opinion that technical and traffic developments in the field of air transportation would make advantageous the operation of non-stop flights between a point or points in the continental United States on the certificated routes of PAA and any point or points on the certificated route of Panagra in Ecuador, Peru, Chile, or Argentina, the parties will negotiate with the objective of making a further agreement which will permit the operation of such flights (for the account and under the control of PAA north of the latitude of Balboa and for the account and under the control of Panagra south of such latitude), subject to compliance with all applicable laws and regulations and to the approval of the Civil Aeronautics Board.

(c) If, after reasonable efforts, the parties are unable to negotiate either of the agreements contemplated by subparagraphs (a) or (b), the terms of such agreement shall, on the request of either party, be settled by arbitration as provided in Paragraph 25.

14. *Advertising and Publicity.* The name "Pan American-Grace Airways, Inc." and, if Panagra so desires, the name "Panagra", in such form as Panagra may determine, and the Panagra insignia in the form as presently in use,

shall appear on the exterior of all airplanes chartered to PAA under this agreement in addition to an appropriate statement inside the airplane informing the public that the airplane is a Panagra airplane under charter to PAA. PAA will advertise and otherwise publicize that through one plane service is afforded over PAA's and Panagra's routes between the continental United States and points on Panagra's certificated route in South America. Panagra will advertise and otherwise publicize that such service is afforded with Panagra aircraft over Panagra's and PAA's routes. In this connection PAA and Panagra will work out [fol. 1790] from time to time appropriate programs for advertising the through service afforded under this agreement as well as the services afforded by Panagra on its certificated route in South America and will establish the relative contributions to such advertising to be made by Panagra and PAA.

15. *Liability to third parties.* PAA will indemnify Panagra and hold it harmless in respect of any liability (other than to employees of Panagra who are not travelling as passengers on aircraft operated pursuant to this agreement) arising or claimed to arise as a result of the operation of Panagra's aircraft over PAA's certificated routes as provided in this agreement. PAA will carry passenger and public liability and property damage insurance policies covering risks attendant upon the operation of Panagra's aircraft over PAA's certificated routes to the same extent and on the same basis as for operations conducted by its own aircraft and will cause Panagra to be included as a party insured. Panagra will indemnify PAA and hold it harmless from claims of Panagra employees arising or claimed to arise as a result of the operation of Panagra's aircraft over PAA's certificated routes as provided in this agreement (except employees travelling as passengers) and will carry appropriate policies of workmen's compensation insurance with respect to such employees. All indemnities herein shall include related costs and expenses.

16. *Risk of Loss of Aircraft.* Panagra shall be responsible for loss of or damage to its aircraft or other property while under charter to PAA pursuant to this agreement,

except as hereinafter provided. Unless otherwise agreed, Panagra shall carry appropriate insurance providing against loss of or damage to such aircraft or other property while under charter to PAA, with the same coverage as that carried by Panagra for similar property while in Panagra's possession, and will cause PAA to be included as a party insured. Except in the case of risks as to which Panagra is so obligated to insure, PAA shall be liable to Panagra for loss of or damage to Panagra's aircraft or [fol. 1791] other property while under charter to PAA pursuant to this agreement if such loss or damage arises out of gross negligence on the part of PAA or its employees. If there should arise operating conditions peculiar to the routes of PAA over which Panagra's aircraft are operated pursuant to this agreement which the parties agree require Panagra to carry insurance against risk of loss of its property while under charter to PAA by reason of war risk, riots, strikes or civil commotion, such insurance may be carried by Panagra and the cost thereof included as a direct cost chargeable to PAA.

17. *Financial Provisions.* (a) As compensation for the flight equipment and flight crews furnished by Panagra for operation under charter to PAA pursuant to this agreement, PAA shall pay to Panagra an amount representing (1) reimbursement of all direct costs incurred by Panagra in such operation, and a reasonable proportion of such indirect costs of Panagra as are fairly attributable to such operation, and (2) a fair rate of return on the investment of Panagra used in or useful for such operation.

The payments so to be made by PAA to Panagra shall be determined initially in accordance with the detailed provisions of Annex 1 hereto attached.

If either party shall be of the opinion that the detailed provisions for payment by PAA to Panagra in effect at any time do not properly carry out the intent of this subparagraph (a) or are operating unfairly or inequitably, such party may request review of such provisions. The parties will thereupon negotiate in an effort to adjust such provisions and in the event of their inability to agree the

matter will be arbitrated as provided in paragraph 25. Pending any such negotiation or arbitration, payments shall continue on the basis theretofore in effect, subject to such agreement or award as may ultimately be made.

(b) Panagra will pay PAA for maintenance and overhaul of Panagra's flight equipment performed by PAA pursuant to paragraph 7 of this agreement, an amount representing (1) reimbursement of all of PAA's costs for direct labor and materials used in such maintenance or overhaul and a [fol. 1792] reasonable proportion of PAA's indirect or burden expenses applicable thereto (distributed on the basis of direct labor costs) and (2) a fair rate of return on so much of PAA's investment in maintenance and overhaul facilities, flight equipment spare parts and assemblies and working capital as may be properly allocable to such maintenance and overhaul performed by PAA for Panagra. The parties will from time to time agree upon such detailed provisions as may be appropriate to establish the amount of such payments.

The costs to be reimbursed by Panagra to PAA pursuant to this subparagraph (b) shall be the direct and indirect expenses of the type presently set forth in accounts 401-408 and 421-428 inclusive of the Civil Aeronautics Board's Uniform System of Accounts for International Air Carriers. Amounts payable by Panagra to PAA pursuant to this subparagraph (b) shall, to such extent as appropriate, be reflected in the billings by Panagra to PAA for charter flights performed by Panagra pursuant to this agreement as set forth in subparagraph (a) hereof.

If, in pursuance of its obligations under subparagraph (a) of paragraph 7 of this agreement, PAA shall have acquired maintenance equipment or facilities specially designed for the maintenance or overhaul of flight equipment of Panagra of a type different from any of PAA's flight equipment which is or could practicably be maintained at the same maintenance base and if Panagra shall cease to utilize such special maintenance equipment or facilities prior to the date when the same shall have been depreciated to the residual value thereof in accordance with recognized

standards as to depreciation rates, then, unless Panagra shall elect to purchase such maintenance equipment or facilities at their depreciated value, PAA will sell such maintenance equipment or facilities at the best price obtainable and the difference between the price so obtained (less any expenses of sale) and the depreciated value thereof shall be paid by Panagra to PAA in the case of a deficiency or paid to Panagra by PAA in the case of an excess.

(c) Each of the parties will render to the other as soon as possible after the end of each calendar month bills for the payments due under this agreement with respect to such [fol. 1793] month. Such bills shall be paid within fifteen (15) days after receipt. Unless otherwise agreed, billings during any calendar year shall be on a cumulative basis for purposes of periodic payment and shall be subject to adjustment from time to time prior to the close of the accounts at the end of the calendar year.

(d) References in this paragraph and in Annex 1 to payment of a fair rate of return shall mean such rate as is required to yield, after taxes, the rate of return on investment, after taxes, allowed by the Civil Aeronautics Board in fixing mail pay compensation in accordance with the provisions of the Civil Aeronautics Act for the particular carrier whose investment is involved. It is contemplated that while such rate of return will vary from time to time, the rate of return payable under this agreement shall at all times be equal to the rate of return currently in effect under decisions of the Board. If the Board has not determined mail pay compensation by fixing a rate of return on investment or if for any other reason the foregoing provisions shall not result in establishing a rate of return for the purposes of this agreement, then the rate of return payable hereunder shall be fixed by mutual agreement and in the event of failure to agree shall be arbitrated under paragraph 25 hereof.

(e) If it shall develop in the course of operations under this agreement that either party is utilizing major items of property owned by the other which have been fully depreciated on the books of the owner without the user

having contributed its proportionate share of the full depreciation, the parties will negotiate provisions for appropriate payments for the use of such property. In the event of their failure to agree, the matter shall be arbitrated under paragraph 25 hereof.

(f) Either party shall have such access to the books, records and accounts of the other as may be reasonably required to verify billings under this agreement.

18. *PAA to Maintain Certificates in Good Standing.* Except with Panagra's written consent PAA will not transfer or abandon any of its certificates covering routes over [fol. 1794] which Panagra aircraft may be operated under charter to PAA pursuant to this agreement or seek to modify such certificate or certificates in any manner which would prevent or adversely affect the operations contemplated hereunder.

19. *Representation of Panagra in Questions Related to this Agreement.* PAA agrees that any action to make any claim, to take any position, or to enforce any rights of Panagra under this agreement may be taken on behalf of Panagra by its President; provided, however, that the foregoing shall not be deemed to withdraw from the Board of Directors of Panagra its function of determining independently of this agreement such questions of general business policy relating to the conduct of Panagra's affairs (such as the purchase of equipment, the establishment of equipment reserves and the fixing of depreciation rates) as are determined by a board of directors in accordance with law or normal corporate practice.

20. *Proceedings for Approval; Effective Date.* (a) PAA will forthwith file application with the Civil Aeronautics Board for approval of this agreement. The parties will use their best efforts to obtain such approval as expeditiously as possible. If the Board shall impose conditions upon its approval of this agreement or shall suggest modifications in the same but within the general framework hereof, the parties undertake to negotiate in an effort to meet all such conditions and suggestions.

(b) Except for Paragraph (a) of this Paragraph 20 and Paragraph 22, which shall become effective immediately, this agreement shall become effective only upon the entry of an order by the Civil Aeronautics Board approving the same and upon said order becoming final.

21. *Term.* As between the parties, this agreement shall be for a term of 99 years from the date upon which it shall have become effective; except that it may be sooner terminated as hereinafter provided:

(a) If at any time subsequent to December 31, 1948, Panagra shall consider that this agreement is not satisfactory [fol. 1795] because of failure by PAA promptly and adequately to perform any of PAA's obligations under this agreement (including without limitation, such matters as failure to establish the proper schedules for flights under this agreement, failure to handle flights under this agreement in such manner that the schedules shall be duly and punctually performed, failure properly to maintain and overhaul Panagra's aircraft used in the service performed under this agreement, or failure to discharge the provisions of this agreement with respect to the selling and handling of traffic) in such manner as to promote the fullest development of through traffic between the continental United States and points on Panagra's certificated route in South America within the spirit and intendment of this agreement, Panagra may give notice to PAA stating the respect in which it considers PAA's performance to be unsatisfactory. Thereupon Panagra and PAA will negotiate in an endeavor to see whether the views of Panagra can be met. If such negotiations shall not succeed within thirty (30) days, reference shall be had to arbitration as provided in paragraph 25 to determine whether Panagra's dissatisfaction is reasonable and, if so, what measures should be taken to meet Panagra's views. If such arbitration determines that Panagra's dissatisfaction is reasonable, PAA shall be bound to take the action recommended by the arbitrators and thereafter diligently proceed with the same. If PAA shall fail to do so, Panagra may thereupon cancel this agreement upon three (3) month's notice, but such right of cancellation shall not exclude any other remedy.

(b) If at any time subsequent to December 31, 1948, PAA shall be of the opinion that Panagra's services are not consistent with recognized standards of other United States flag air carriers operating outside the continental limits of the United States in any particular which for a substantial period of time unreasonably interferes with the efficient conduct of the through flights over PAA's routes, PAA may give notice to Panagra stating the respects in which it considers such services to be unsatisfactory. Panagra and PAA will thereupon negotiate in an effort to see whether the views of PAA can be met. If such negotiations shall not succeed within thirty (30) days, reference shall [fol. 1796] be had to arbitration as provided in paragraph 25 to determine whether PAA's dissatisfaction is reasonable and, if so, what measures should be taken to meet PAA's views. If such arbitration determines that PAA's dissatisfaction is reasonable, Panagra shall be bound to take the action recommended by the arbitrators and thereafter diligently proceed with the same. If Panagra shall fail to do so, PAA may thereupon cancel this agreement upon one (1) year's notice, but such right of cancellation shall not exclude any other remedy.

22. *Non-prejudice.* If this agreement is not approved by the Civil Aeronautics Board or for any other reason does not become effective or if, having become effective, this agreement should be terminated or canceled, the negotiation and the terms of this agreement and all applications filed and acts done hereunder shall be without prejudice to the rights or future position of any of the parties.

23. *Construction.* (a) It is the intention of the parties that within the general framework and conception of this agreement, the various provisions shall be broadly and liberally construed to accommodate technical, commercial, international and regulatory developments in the field of air transportation to the end that through traffic will be handled at maximum efficiency and in a manner to meet changing competitive conditions.

(b) Nothing in this agreement shall be deemed to require either of the parties to take any action in violation of any applicable law, regulation, or order.

(c) This contract shall be construed in accordance with the laws of the State of New York.

(d) The various headings herein and the grouping of the provisions of this agreement into separate paragraphs shall not be construed to limit or restrict the meaning or application of any provision hereof, and are for the purpose of convenience only.

(e) The parties will formulate procedures for evidencing the delivery of flight equipment by Panagra to PAA for operation under this agreement and the return of such flight [fol. 1797] equipment by PAA to Panagra. All provisions of this agreement with respect to liability, risk or loss, etc. shall date from the delivery or return of flight equipment as shown in such evidence.

24. *Notice.* Notice to PAA wherever provided in the agreement shall be given in writing by registered letter addressed President, Pan American Airways, Inc., Chrysler Building, New York, New York, or in such other manner or to such other address as PAA may designate to Panagra in writing. Notice to Panagra wherever provided in the agreement shall be given in writing by registered letter addressed President, Pan American-Grace Airways, Inc., 7 Hanover Square, New York, New York, or in such other manner or to such other address as Panagra may designate to PAA in writing. Notice shall not be considered given until the date when the same shall have been received as evidenced by the Post Office return receipt or, if the addressee shall have refused to accept the registered notice, the date on which such registered notice shall have been first tendered to the addressee.

25. *Arbitration.* Any and all disputes as to the construction or operation of this agreement shall be submitted to arbitration pursuant to the rules of the American Arbitration Association having general application, in the manner hereinafter provided. The party requesting arbitration shall notify the other party naming its arbitrator in the notice. The other party shall appoint an arbitrator within ten (10) days after the receipt of such notice. Within ten

(10) days after such appointment, the two arbitrators shall appoint a third arbitrator and the decision or the award of any two of such three arbitrators shall be final, binding and conclusive upon the parties. If either party fails to appoint the arbitrator to be appointed by such party, or if the arbitrators appointed by or for the respective parties shall fail to appoint such third arbitrator, then and in either such event such then unappointed arbitrator shall be appointed by the then President of the American Arbitration Association or in the event such President shall be disqualified by reason of his association with either party or otherwise, then by the next highest ranking official of such Association. Any such arbitration shall be conducted in accordance with the law of the State of New York and [fol. 1798] held in New York City, New York, unless the parties shall otherwise agree in writing.

26. *References.* (a) All references in this agreement or in Annex 1 to the Civil Aeronautics Authority and/or the Civil Aeronautics Board shall include any Federal agency having jurisdiction similar to that now exercised by said Authority and said Board.

(b) If changes shall be made from time to time in the Civil Aeronautics Board's Uniform System of Accounts for International Air Carriers, appropriate modifications to give effect to such changes shall be made in this agreement and in Annex 1.

(c) All references to flight equipment in this agreement or in Annex 1 shall include aircraft, engines, propellers and other property as defined in said Uniform System of Accounts as presently in effect.

In Witness whereof each of the parties hereto has caused this agreement to be executed at New York, New York, in its respective corporate name and its respective corporate seal to be hereunto affixed and attested by its respective

officer or officers thereunto duly authorized as of the day and year first above written.

PAN AMERICAN AIRWAYS, INC.

By J. T. TRIPPE
J. T. TRIPPE, President

Attest

H. PRESTON MORRIS
H. PRESTON MORRIS, Secretary

PAN AMERICAN-GRACE AIRWAYS, INC.

By HAROLD J. ROIG
HAROLD J. ROIG, President

Attest

W. F. COGSWELL
W. F. COGSWELL, Secretary

[fol. 1799]

ANNEX 1

Detailed Provisions for Payments by PAA to Panagra

1. *Direct Costs.*

A. PAA shall pay directly the cost of fuel used in the charter service, Accounts 358 and 359, and of clearance of aircraft while in use in the charter service, Account 371. Any amounts properly recorded by Panagra for employees' compulsory compensation, Account 369, and Social Security taxes, Account 370, insofar as the same relate to the charter service, shall be charged directly by Panagra to PAA.

PAA will reimburse Panagra for all flight costs properly recorded by Panagra for the aircraft type used in the charter service in Accounts 351-372 inclusive, 401-408 inclusive, 421-428 inclusive and 4501-4505 inclusive, such costs to be

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* All references to account numbers are to the Civil Aeronautics Board's Uniform System of Accounts for International Air Carriers presently in effect.

allocated to the charter service on the basis of the ratio of the revenue miles flown by such aircraft type in the charter service to the total revenue miles flown by such aircraft type including those flown in the charter service. If it shall appear that major items of cost recorded in such accounts are applicable only to the charter service or to Panagra's common carrier service, provision will be made for removing such costs from allocation and charging such costs directly to the charter service, if applicable thereto.

It is intended that the payments provided to be made directly by PAA and the flight costs to be allocated shall include non-revenue flights by the aircraft type used in the charter service. PAA shall determine the fuel cost, Accounts 358 and 359, incurred by it for such non-revenue flights and charge Panagra for this expense. Panagra shall determine the fuel cost, Accounts 358 and 359, for such flights incurred by it. PAA shall pay to Panagra a portion of the total fuel cost of non-revenue flights by such aircraft type equal to the ratio of the revenue miles flown by such aircraft type in the charter service to the total revenue miles flown by such aircraft type including those flown in the charter service.

[fol. 1800] Flight Equipment Depreciation, Accounts 4501 to 4506, shall be computed in accordance with Panagra's rates, or in the event such rates are not satisfactory to PAA, at rates to be mutually agreed upon by the two companies, or, in the event of their inability to agree, to be fixed by arbitration consistently with rates generally prevailing in the international air transport industry for the type of flight equipment used in the charter service.

The shop burden of Panagra applicable to the maintenance and overhaul of the type of flight equipment used in the charter service, Accounts 421 to 428 inclusive, will be determined in accordance with the CAB Uniform System of Accounts for International Air Carriers and will be distributed on the basis of direct labor costs.

B. Panagra shall be reimbursed for passenger service direct flight costs incurred by Panagra in the charter service and charged to Account 660—Pursers, Stewards and

Stewardesses—(including appropriate provision for vacations earned while in the charter service) and related expenses in Accounts 664—Travel and Incidental Expenses, 673—Employees' Compensation and Other Insurance, and 686—Social Security Taxes, and in addition, to the extent applicable as a direct charge, costs incurred in the following accounts:

677—Injuries, Loss and Damage
685—Compulsory Compensation
687—Passenger Supplies and Expenses
688—Food Expense—Caterers
689—Food Expense—Company Restaurants
692—Interrupted Trips Expenses
699—Miscellaneous

C. Panagra shall be reimbursed for a portion of its costs of training flight crews (including pursers, stewards and stewardesses) not reimbursed pursuant to paragraphs A and B, to be allocated to the charter service on the basis of the ratio of the salaries of flight crews charged to the charter services to the total such salaries.

[fol. 1801] 2. *Indirect Costs.*

A. Panagra will be paid a portion of so much of the operations overhead of Panagra as consists of the office of the operations manager, the office of the chief pilot (after proper deduction for revenue flying done by him or his staff), the office of the superintendent of flying, the office of the communications superintendent, New York expenses applicable to the operations, maintenance and communications departments (including the salaries and related expenses of Panagra's United States maintenance representatives as provided in paragraph 7), and the costs of Panagra's medical department. The amount so payable shall be the amount obtained by multiplying the total of these costs by a fraction of which the numerator will be 50% of the available ton miles flown in the charter service and the denominator the total available ton miles flown in Panagra's common carrier service plus 50% of the available ton miles flown in the charter service.

B. Panagra will be paid a portion of so much of its passenger service overhead as consists of the office of passenger service superintendent and the office of chief purser. The amount so payable shall be the amount obtained by multiplying the total of these costs by a fraction of which the numerator will be 40% of the available ton miles flown in the charter service and the denominator the total available ton miles flown in Panagra's common carrier service plus 40% of the available ton miles flown in the charter service.

C. Panagra will be paid a portion of the costs of its financial and accounting departments (up to and including the level of the offices of assistant treasurer and assistant comptroller directly supervising the accounting under this agreement) and the cost of the personnel department located at New York. The amount so payable shall be the amount obtained by multiplying the total of these costs by a fraction of which the numerator will be 35% of the available ton miles flown in the charter service and the denominator the total available ton miles flown in Panagra's common carrier service plus 35% of the available ton miles flown in the charter service.

[fol. 1802] D. All references to available ton miles flown are to miles flown on revenue flights.

3. *Return on Panagra's Investment.*

Panagra shall be paid an amount representing a fair rate of return on

(i) So much of Panagra's investment (computed at cost less depreciation at rates fixed as provided in 1A above) in the type of flight equipment (Accounts 1501-1506) used in the charter flights as shall be allocable to such service on a revenue miles basis as set forth in paragraph 1A.

(ii) So much of Panagra's funds or securities earmarked and reasonably required for replacement of or additions to the type of flight equipment operated or to be operated in the charter service (not less than the funded depreciation reserve with respect thereto) as

shall be allocable to the charter service on a revenue miles basis as set forth in paragraph 1A. In case disbursement of such funds or use of the equipment purchased shall be other than as indicated by such earmarking, appropriate adjustments of prior billings under this subparagraph will be made.

(iii) So much of Panagra's working capital as shall be allocable to the charter service operated by Panagra pursuant to this agreement, to wit, three times Panagra's expenses for this operation for each month, exclusive of depreciation accruals and of amounts paid in the first instance by PAA.

(iv) So much of Panagra's investment in maintenance and overhaul facilities as shall be allocable to the flight equipment maintenance and overhaul services performed by Panagra for the charter service on the same basis as stated in paragraph 1A with respect to shop burden.

(v) So much of Panagra's investment in planes normally used for training, in link trainers and in other major items of special equipment used for the training of flight crews as shall be allocable to the charter service on the same basis stated in paragraph 1C.

[fol. 1803]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 3

[Emblem]

PANAGRA

[Handwritten notation—CAB 727]

PAN AMERICAN-GRACE AIRWAYS, INC.

OFFICE OF THE PRESIDENT
7 HANOVER SQUARE
NEW YORK 5, N. Y.

May 28, 1947

President,
Pan American Airways, Inc.
135 East 42nd Street,
New York 17, New York

Dear Sir:

Reference is made to Paragraph 20 of the agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. dated July 30, 1946, which was approved, together with the agreement of the same date between W. R. Grace & Co. and Pan American Airways Corporation, by order of the Civil Aeronautics Board dated May 5, 1947, subject to the following four terms, conditions and modifications:

"(1) That paragraph 13 of the through flight agreement is disapproved and shall be deleted from the agreement;

(2) That approval of the agreements shall be for a term of 3 years from the date of the Board's order, at which time the Board without further hearing, if deemed appropriate, may extend the approval for such period as may be desirable at that time;

(3) That any changes in accounting under the agreements even though considered minor by the parties shall be reported to the Board through the Economic Bureau in accordance with section 407 of the Act;

(4) That agreements in relation to compensation in regard to agency fees, training, or other matters not previously agreed upon in the through flight agreement shall be filed with the Board in accordance with section 412 of the act."

This is to advise that Pan American-Grace Airways, Inc. considers the above within the general framework of the agreement between it and Pan American Airways, Inc. and proposes that said agreement, as modified by paragraph (1) above and subject to the terms and conditions stated in paragraphs (2), (3) and (4) above, shall become effective immediately.

Please indicate your acceptance and concurrence by signing and returning the attached duplicate copy of this letter.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ HAROLD J. ROIG
Harold J. Roig

Accepted:

PAN AMERICAN AIRWAYS, INC.

By .....
President

[fol. 1804]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 4

W. R. GRACE & CO.

7 Hanover Square, New York 5, N. Y.

Office of the President

May 28, 1947

Pan American Airways Corporation
Wilmington, Delaware

Gentlemen:

Reference is made to the letter of even date addressed by Pan American-Grace Airways, Inc. to Pan American

Airways, Inc. placing the agreement between these parties, dated July 30, 1946, in effect immediately, subject to the terms, conditions and modifications ordered by the Board. We are writing to note our ratification of that letter.

We wish also to confirm our understanding that the agreement dated July 30, 1946 between W. R. Grace & Co. and Pan American Airways Corporation shall become effective immediately except as to the provisions of Paragraph 6 which shall become effective only upon the order of the Board dated May 5, 1947 becoming final or such earlier date as may be agreed upon.

Will you kindly note your ratification of the letter between Pan American-Grace Airways, Inc. and Pan American Airways, Inc. referred to above and your concurrence in this letter by signing the attached duplicate.

Very truly yours,

W. R. GRACE & CO.

By /s/ J. P. GRACE, JR.
President

Accepted:

PAN AMERICAN AIRWAYS CORPORATION

By /s/ J. T. TRIPPE
President

[fol. 1805]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 5

CONFORMED COPY

Supplement No. 2

TO

THROUGH FLIGHT AGREEMENT

BETWEEN

PAN AMERICAN AIRWAYS, INC.

AND

PAN AMERICAN-GRACE AIRWAYS, INC.

DATED JANUARY 9, 1948

[fol. 1806]

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 2

AGREEMENT made and entered into this 9th day of January, 1948, by and between PAN AMERICAN AIRWAYS, INC., a New York corporation (hereinafter called "PAA"), and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation (hereinafter called "Panagra"):

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946 (hereinafter referred to as the "Through Flight Agreement") and to a letter agreement dated May 28, 1947, with respect thereto; and

WHEREAS, the parties desire to supplement and amend the Through Flight Agreement as herein set forth;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

28. The letter agreement dated May 28, 1947 between PAA and Panagra is hereby designated "Through Flight

Agreement—Supplement No. 1" and is assigned the paragraph number 27. Unless otherwise agreed, all further amendments of the Through Flight Agreement shall be designated "Through Flight Agreement—Supplement No. " and shall be consecutively numbered, and their paragraphs shall likewise be numbered in continuous sequence. The parties will prepare and distribute to their respective staffs, for working purposes, copies of the Through Flight Agreement as from time to time supplemented and revised. Except where otherwise expressly stated, this Supplement No. 2 shall be effective as of 0:01 A. M., E. S. T., May 31, 1947.

29. Charges to Panagra pursuant to paragraph 8 of the Through Flight Agreement for training shall, until further notice, be at the following rates:

Miami Schools

Mechanics	1.1156 (Dollars per hour)
Meteorologists	1.2906
Navigators	.9320
Radio	1.2244
Station Manager	1.7399
Link	6.3142
Pilot	16.3218

[fol. 1807] *Miami Aircraft*

C-47	41.6864
DC-3 Cargo	73.4179
DC-3 Passenger	71.5699
C-54 Trainer	107.9692
C-54 Cargo	146.6863
C-54 Passenger	169.8414

Note: Flight training charges per hour are the sum of the school rate and the aircraft rate for the type aircraft used.

If either PAA or Panagra shall no longer regard the above rates as fair and equitable, such party shall give written notice to the other; provided, however, that the first such notice may not be given prior to January 1, 1948, and that

no notice may be given less than six months after a new rate shall have been established. The parties will thereupon endeavor to agree upon new rates, failing which the matter shall be arbitrated as provided in paragraph 25. Unless otherwise agreed, any new rates established as a result of such notice shall be effective as from the first day of the month following that in which notice was given.

30. Pursuant to paragraph 12(b) of the Through Flight Agreement it is agreed that, until further agreement of the parties, revenues from through rates shall be divided as set forth in Annex 3.

31. Pursuant to paragraph 14 it has been agreed that for the calendar year 1947 PAA and Panagra will share the costs of special advertising of the through flight service within the total budgeted for expenditure by the respective companies, in the proportion of 31½% to PAA and 68½% to Panagra.

32. Paragraph 15 of the Through Flight Agreement is amended to read as follows:

> "15. *Liability to third parties.* (a) PAA will indemnify Panagra and hold it harmless in respect of any liability (other than to Panagra's flight employees including stewards and stewardesses engaged in the operation of Panagra's aircraft) arising or claimed to [fol. 1808] arise as a result of PAA's possession of Panagra's aircraft. PAA shall be deemed to be in possession of Panagra's aircraft (1) in the case of aircraft turned over to PAA for operation on through flights under this agreement, from the time when such aircraft is so turned over to PAA by Panagra until the time when such aircraft is returned to Panagra, and (2) in the case of aircraft turned over to PAA for maintenance, from the time when such aircraft is turned over to PAA at one of the latter's maintenance bases until the time when such aircraft is returned to Panagra; except, in either case, for non-revenue or other special flights during such period made at the instance and request of Panagra. PAA will carry passenger and

public liability and property damage insurance policies covering risks attendant upon the foregoing to the same extent and on the same basis as in the case of its own aircraft and will cause Panagra to be included as a party insured.

"(b) Panagra will indemnify PAA and hold it harmless (1) in respect of any liability arising or claimed to arise as a result of the operation of Panagra's aircraft except when such aircraft shall be in the possession of PAA, and (2) from all claims of Panagra's flight employees including stewards and stewardesses engaged in the operation of Panagra's aircraft. Panagra will carry appropriate policies of public liability and property damage insurance covering the risks against which it agrees to indemnify PAA under clause (1) hereof and will cause PAA to be included as a party insured, and will carry appropriate policies of workmen's compensation insurance with respect to the employees referred to in clause (2) hereof.

"(c) All indemnities herein shall include related costs and expenses.

"(d) No employees of Panagra shall be permitted to travel on Panagra's aircraft operated over PAA's certificated routes as provided in this Agreement except (1) when holding an appropriate PAA ticket or pass; or (2) as members of the flight crew as specified in the Civil Aeronautics Administration's operating specifications, or as stewards or stewardesses. Subject to payload permitting, and to applicable regulations of the Civil Aeronautics Administration, Panagra flight crew personnel may travel without charge as additional members of the flight crew on flights of Panagra's air- [fol. 1809] craft over PAA's certificated routes pursuant to this Agreement when traveling for training to be conducted by PAA pursuant to paragraph 8 of this Agreement, but all such employees shall be deemed for the purposes of this paragraph 15 to be Panagra's employees engaged in the operation of Panagra's aircraft."

33. Paragraph 16 is amended as follows:

(1) By striking from the first sentence the words "while under charter to PAA pursuant to this agreement" and substituting the words "at all times".

(2) By striking from the second and fourth sentences the words "while under charter to PAA" and substituting the words "while in PAA's possession".

(3) By striking out from the third sentence the words "while under charter to PAA pursuant to this agreement" and substituting the words "while in PAA's possession".

34. Paragraph 17 is amended by adding the following at the end thereof:

"(g) For accounting purposes the Through Flight Agreement shall be deemed to have become effective as of 0:01 A. M., E. S. T., May 31, 1947. Billings for the through flights performed on May 31, 1947 will be made on the basis of one-thirtieth of the costs for June, 1947.

"(h) Route mileages to be used in determination of Revenue Miles Flown and Available Ton Miles as referred to in the Agreement, will be those effective as shown in C. A. B. *Mileage Booklet No: 2 (Revised), Airport to Airport Mileages Over International Routes and Overseas Routes of Certificated Air Carriers* and in any revisions thereof.

"(i) Special services not covered by this agreement rendered by PAA to Panagra, on the written request of Panagra's authorized representatives, at PAA's bases in the United States (e. g., physical examinations and other services being rendered by PAA's medical department) shall be billed at rates to be established forthwith by mutual agreement upon the commencement of such services.

[fol. 1810] "(j) To the extent that Panagra shall require passenger service equipment to be maintained at

any of PAA's bases in the continental United States for use in Panagra's aircraft engaged in the charter service or in other Panagra aircraft being maintained or overhauled by PAA, Panagra will cause the necessary stock of such equipment to be made available to PAA at such base at Panagra's expense. PAA will provide suitable space for the storage of such equipment and will accord to such equipment the same treatment as to other equipment held by PAA, but any shortages or overages in such equipment shall be for Panagra's account."

35. Annex 1 of the Agreement is amended to read in the form attached hereto as Annex 1-A.

36. Paragraph 17(b) of the Through Flight Agreement is amended by striking out the first two paragraphs thereof and substituting the following:

"(b) Panagra will pay PAA for maintenance and overhaul of Panagra's flight equipment performed by PAA pursuant to paragraph 7 of this Agreement an amount representing (1) reimbursement of all of PAA's costs for direct labor and materials used in such maintenance or overhaul and a reasonable proportion of PAA's indirect or burden expenses applicable thereto; (2) a fair share of depreciation expense incurred by PAA with respect to flight equipment spare parts and assemblies maintained by PAA at the base or bases where Panagra's flight equipment is maintained or overhauled and used in or useful for such maintenance or overhaul; and (3) a fair rate of return on so much of PAA's investment in maintenance and overhaul facilities, flight equipment spare parts and assemblies, and working capital, as may be properly allocable to maintenance and overhaul performed by PAA for Panagra. The payments so to be made by Panagra to PAA shall be determined initially in accordance with the detailed provisions of Annex 2 hereto attached. If either party shall be of the opinion that the detailed provisions for payment by Panagra to PAA in effect at any time do not properly carry out the intent of this subparagraph

(b) or are operating unfairly or inequitably, such party may request review of such provisions and thereupon [fol. 1811] proceedings will be taken in the same manner as set forth in paragraph 17(a) hereof. Amounts payable by Panagra to PAA pursuant to this subparagraph (b) shall, to such extent as appropriate, be reflected in the billings by Panagra to PAA for charter flights performed by Panagra pursuant to this Agreement as set forth in subparagraph (a) hereof.

"If, in pursuance of its obligations under subparagraph (a) of paragraph 7 of this Agreement, PAA shall require flight equipment spare parts and assemblies specially designed for Panagra's flight equipment of a type different from any of PAA's flight equipment which is maintained at the same maintenance base, Panagra will cause an adequate inventory of such flight equipment spare parts and assemblies to be delivered to PAA at such maintenance base at Panagra's expense, and to replenish such inventory as may be required from time to time. Title to such inventory shall remain in Panagra. PAA agrees to provide suitable space for the storage of such inventory and to accord to it the same treatment as is accorded to other inventory held by PAA, but any shortages or overages in such inventory shall be for Panagra's account. If such inventory relates to a type of flight equipment used in the charter service, the shortages or overages shall, notwithstanding any other provision of this Agreement or of any Annex thereto, be prorated between Panagra and PAA on the basis of the ratio of the revenue miles flown by such flight equipment in the charter service to the total revenue miles flown by such flight equipment."

37. Paragraph 17(d) is amended by adding the following at the end thereof:

"Wherever payments by PAA to Panagra or by Panagra to PAA include the provision of an element of return on investment, such return for the year 1947 shall be calculated as follows:

"(a) For the purposes of billing, it will be tentatively assumed that the rate of return after taxes allowed by the Civil Aeronautics Board in fixing mail pay compensation is 10% per annum; that Panagra, as a Western Hemisphere trading corporation, is subject to Federal income tax at an effective rate of 24%; and that PAA is subject to Federal income tax at an effective rate of 38%;

[fol. 1812] "(b) Accordingly, Panagra billings to PAA will include 13.16% on investment where applicable and PAA billings to Panagra will include 16.13% on investment where applicable—in both cases to net 10%;

"(c) These billings will be altered if it should be determined that in 1947 Panagra will not be taxable as a Western Hemisphere trading corporation."

38. Paragraph 17(e) of the Through Flight Agreement is amended by adding the following at the end thereof:

"If either party, under accounting procedures consistent with applicable regulations of the Civil Aeronautics Board, shall make retroactive changes in depreciation accruals with respect to property in respect of which the other shall have made payments on account of depreciation, proper adjustments shall be made."

39. Paragraph 23(e) of the Through Flight Agreement is amended to read as follows:

"(e) The parties will formulate procedures for the delivery of receipts to evidence the transfer of possession of Panagra's aircraft from Panagra to PAA and the return of such possession from PAA to Panagra."

40. The first sentence of paragraph 24 of the Through Flight Agreement is amended to read as follows: "Notice to PAA wherever provided in the Agreement shall be given in writing by registered letter addressed to Erwin Bal-

luder, Vice President, Pan American Airways, Inc., Chrysler Building, New York, N. Y., or in such other manner or to such other address as PAA may designate to Panagra in writing." Paragraph 24 is further amended by adding at the end thereof: "Notwithstanding the foregoing provisions of this paragraph, notice may likewise be given in writing by letter delivered to the person designated to receive notice as aforesaid, provided a receipted copy is secured."

This amendment shall be effective as of the date hereof.

41. Paragraph 26(b) of the Through Flight Agreement is amended by striking out the word "International".

[fol. 1813] 42. Any amounts payable by PAA to Panagra or by Panagra to PAA in the settlement of their respective accounts, whether arising under the Through Flight Agreement or otherwise, will be paid in United States currency.

IN WITNESS WHEREOF the parties have caused this agreement to be executed by their officers thereunto duly authorized on the day and year first above written.

(Seal)

PAN AMERICAN AIRWAYS, INC.

By E. BALLUDER /s/

Vice-President

(Seal)

PAN AMERICAN-GRACE AIRWAYS, INC.

By H. J. ROIG /s/

President

[fol. 1814]

ANNEX 1-A

*Detailed Provisions for Payments by PAA to Panagra**

1. *Direct Costs.*

A. 1. Charges for gasoline used in the charter service shall be accounted for as follows:

(1) PAA will advise Panagra at the close of each month of the total gallonage delivered by PAA, classified by aircraft types;

(2) Panagra will allocate to the charter service a gallonage equal to the amount obtained by multiplying the respective gallonages loaded during the month into the types of aircraft used in the charter service by a fraction of which the numerator shall be the revenue miles flown by such type in the charter service and the denominator shall be the total revenue miles flown by such type;

(3) PAA will price the amount specified in (2) at the weighted average price of the deliveries specified in (1). This amount will be retained as a cost of PAA.

(4) Any excess of the cost of the deliveries described in (1) over the cost to be retained by PAA as described in (3) will be billed by PAA to Panagra. Any excess of the cost described in (3) over the cost of the deliveries described in (1) will be credited to Panagra by PAA.

2. PAA will pay as a direct charge (1) expenses of clearance of aircraft while in use in the charter service, Account 5167, and (2) any amounts properly recorded by Panagra for employees' compulsory competition of flight crews (other than pursers, stewards, and stewardesses) recorded in Account 5174, and Social Security taxes of said em-

* All references to account numbers are to the Civil Aeronautics Board's Uniform System of Accounts for Air Carriers presently in effect.

ployees charged to Account 6668 in so far as the same relate to the charter service.

[fol. 1815] 3. PAA will reimburse Panagra for all costs properly recorded by Panagra for the aircraft type used in the charter service in Accounts 5123-5180 inclusive (excluding costs of gasoline in Account 5145, gasoline taxes in Account 5169 and accounts included in the preceding paragraph 2), 5225-5227 and 5246-5248 inclusive, 5270, 5274, 5280 (except for credits arising out of charges to PAA), shop burden expenses applicable to the maintenance and stores departments charged in the accounts as set forth in paragraph 5 below, costs recorded in Accounts 5975-5977 inclusive, and 5980 (except for credits arising out of charges to PAA), cost of insurance of all kinds included in Account 6657 applicable to flight crews, and costs recorded in Accounts 6227, 6248 and 6978 applicable to Passenger Service Equipment carried in the aircraft type used in the charter service. All costs dealt with in this paragraph shall be allocated to the charter service on the basis of the ratio of the revenue miles flown by such aircraft type in the charter service to the total revenue miles flown by such aircraft type including those flown in the charter service. If it shall appear that major items of cost recorded in such accounts are applicable only to the charter service or to Panagra's common carrier service, provision will be made for removing such costs from allocation and charging such costs directly to the charter service, if applicable thereto.

4. Flight Equipment Depreciation, Accounts 5975-5977 inclusive and 5980 and Depreciation on Passenger Service Equipment, Account 6978, shall be computed in accordance with Panagra's rates, or in the event such rates are not satisfactory to PAA, at rates to be mutually agreed upon by the two companies, or, in the event of their inability to agree, to be fixed by arbitration consistently with rates generally prevailing in the international air transport industry for the type of flight equipment used in the charter service.

5. The shop burden of Panagra applicable to the maintenance and overhaul of the type of flight equipment used in

the charter service shall include shop burden expenses ap-
[fol. 1816] plicable to the maintenance and stores departments charged in Accounts 6221-6274 and solely applicable to maintenance of flight equipment and ground equipment used in connection with maintenance of flight equipment; salaries and expenses of the purchasing and cost accounting departments included in Accounts 6621-6674; insurance—public liability, property damage and general insurance expenses included in Account 6655 and applicable to the maintenance, purchasing and stores departments; cost of insurance of all kinds included in Account 6657 and applicable to the maintenance, purchasing and stores departments; payroll taxes included in Account 6668 and applicable to the maintenance and stores departments; and depreciation included in Account 6978 and applicable to the hangar, shop and ramp equipment occupied or used by the maintenance, purchasing and stores departments; and will be distributed on the basis of direct labor costs.

B. PAA will reimburse Panagra for passenger service direct flight costs incurred by Panagra in the charter service and charged to Account 6324 (including appropriate provision for vacations earned while in the charter service) and related expenses in Accounts 6328, 6336, 6374, 6380 (except for credits arising out of charges to PAA), 6657 and 6668. Expenses in the foregoing group of Accounts will be allocated to PAA in the same manner as similar accounts in the 5100 group. PAA will reimburse Panagra for passenger service direct flight costs recorded on the books of Panagra and incurred by either PAA or Panagra in the charter service and charged to Accounts 6343 and 6352.

PAA will reimburse Panagra for passenger service direct flight costs incurred by Panagra for the charter service and charged to Accounts 6353 and 6354 after proration to types of aircraft on a revenue mile basis for those costs included in the above Accounts not directly allocable to aircraft types.

All costs incurred under the charter service as described in the first two paragraphs of this paragraph B shall be prorated on the basis of the ratio of the revenue miles

flown by aircraft types in the charter service to the total revenue miles flown by such aircraft types including the revenue miles flown in the charter service.

[fol. 1817] Expenses recorded in Accounts 6351 (except for food withdrawals authorized by and for the other party), 6358 and 6367 on the books of PAA or Panagra should be absorbed by the respective Companies. Expenses in Account 6363 shall be for the account of the respective Companies in their respective areas of operation under the charter service except that expenses incurred at Balboa shall be for the account of the delivering carrier.

C. Panagra shall be reimbursed for training costs incurred in training flight crews (including pursers, stewards, and stewardesses) not reimbursed pursuant to Paragraphs A and B, as follows: Panagra shall segregate the training costs incurred in training flight crews other than pursers, stewards, and stewardesses on all aircraft types employed in the charter service and PAA will share in the costs so segregated for each type on the basis of a fraction the numerator of which shall be the flight crew salaries for such type chargeable to the charter service and the denominator of which shall be the total flight crew salaries for such type. In the case of training costs incurred with respect to pursers, stewards, and stewardesses PAA will share in such costs on the basis of a fraction the numerator of which shall be the salaries of pursers, stewards, and stewardesses chargeable to the charter service and the denominator of which shall be the total such salaries.

2. *Indirect Costs.*

A. Panagra will be paid a portion of so much of the operations overhead of Panagra as consist of the offices of Regional Manager, Operations Manager, Director of Safety, Chief Pilot (after proper deduction for revenue flying done by him or his staff, Operations Superintendent, Communications Superintendent, CAA Liaison and Panagra's Medical Department, together with the costs related to the functions of such offices, provided, however, that the offices of the Regional Manager shall be taken into account only to the

extent of 50%. Panagra will also be paid a portion of its United States expenses applicable to the operations, maintenance and communications departments, including [fol. 1818] amounts paid to PAA for such services, and a portion of the salaries and related expenses of Panagra's United States Maintenance Representatives as provided in Paragraph 7, to the extent that these have not been taken into account in other payments herein provided for. The amount so payable shall be the amount obtained by multiplying the total of the costs herein specified by a fraction of which the numerator will be 50% of the available ton miles flown in the charter service and the denominator the total available ton miles flown in Panagra's common carrier service plus 50% of the available ton miles flown in the charter service.

B. Panagra will be paid a portion of so much of its passenger service overhead as consists of the office of passenger service superintendent and the office of chief purser. The amount so payable shall be the amount obtained by multiplying the total of these costs by a fraction of which the numerator will be 40% of the available ton miles flown in the charter service and the denominator the total available ton miles flown in Panagra's common carrier service plus 40% of the available ton miles flown in the charter service.

C. Panagra will be paid a portion of the costs of its financial and accounting departments (up to and including the level of the offices of assistant treasurer and assistant comptroller directly supervising the accounting under this agreement and including the audit staff attached to Panagra's United States Maintenance Representatives) and the cost of the personnel department located at New York. The amount so payable shall be the amount obtained by multiplying the total of these costs by a fraction of which the numerator will be 35% of the available ton miles flown in the charter service and the denominator the total available ton miles flown in Panagra's common carrier service plus 35% of the available ton miles flown in the charter service.

D. All references to available ton miles flown are to miles flown on revenue flights.

[fol. 1819] 3. *Return on Panagra's Investment.*

Panagra shall be paid an amount representing a fair rate of return on

(i) So much of Panagra's investment (computed at cost less depreciation at rates fixed as provided in 1A4 above) in the type of flight equipment (Accounts 1601-1608) and the passenger service equipment thereon (Account 1611) used in the charter flights as shall be allocable to such service on a revenue miles basis as set forth in paragraph 1A3.

(ii) So much of Panagra's funds or securities earmarked and reasonably required for replacement of or additions to the type of flight equipment operated or to be operated in the charter service (not less than the funded depreciation reserve with respect thereto) as shall be allocable to the charter service on a revenue miles basis as set forth in paragraph 1A3. In case disbursement of such funds or use of the equipment purchased shall be other than as indicated by such earmarking, appropriate adjustments of prior billings under this subparagraph will be made.

(iii) So much of Panagra's working capital as shall be allocable to the charter service operated by Panagra pursuant to this Agreement, to wit, three times Panagra's expenses for this operation for each month, exclusive of depreciation accruals and of amounts paid in the first instance by PAA.

(iv) So much of Panagra's investment (net of depreciation reserves) in maintenance and overhaul facilities as shall be allocable to the flight equipment maintenance and overhaul services performed by Panagra for the charter service on the same basis as stated in paragraph 1A5 with respect to shop burden.

(v) So much of Panagra's investment (net of depreciation reserves) in planes normally used for training, in link trainers and in other major items of special equipment used for the training of flight crews as the amounts in Account 5128 allocated to the charter service shall bear to the total amounts in such account.

[fol. 1820]

ANNEX 2

*Detailed Provisions for Payments by Panagra to PAA Pursuant to Paragraph 17(b)**

A. The costs to be reimbursed by Panagra to PAA under clause (1) shall be the direct and indirect expenses of the types presently set forth in the following accounts:

(1) The direct labor of employees engaged in the maintenance, periodic inspection, repair, overhaul, etc. of Panagra's aircraft, engines and other flight equipment of the type normally recorded in Accounts 5225-5227, inclusive.

(2) The cost, less return parts credit and/or salvage, of spare parts and assemblies, materials and supplies consumed in the maintenance, periodic inspection, repair, overhaul, etc., and the cost of outside repairs of Panagra's aircraft, engines and other flight equipment, of the type normally recorded in Accounts 5246-5248, inclusive.

(3) A share of the following indirect or burden expenses attributable to the base or bases at which Panagra's aircraft are maintained or overhauled (distributed on the basis of direct labor costs):

(a) Shop burden expenses applicable to the maintenance and stores departments charged in Accounts 6221-6274 and solely applicable to maintenance of flight equipment and ground equipment used in connection with maintenance of flight equipment.

(b) Salaries and expenses of the purchasing and cost accounting departments included in Accounts 6621-6674.

(c) Insurance—public liability, property damage and general insurance expenses included in Account

* All references to account numbers are to the Civil Aeronautics Board's Uniform System of Accounts for Air Carriers presently in effect.

6655 and applicable to the maintenance and stores departments.

[fol. 1821] (d) Cost of insurance of all kinds included in Account 6657 and applicable to the maintenance and stores departments.

(e) Payroll taxes included in Account 6668 and taxes other than payroll included in Account 6669 and applicable to the maintenance and stores departments.

(f) Depreciation included in Account 6978 and applicable to the hangar, shop and ramp equipment occupied or used by the maintenance, purchasing and stores departments.

B. The amount payable by Panagra to PAA for depreciation of flight equipment spare parts and assemblies under clause (2) shall be determined by applying to the portion of Account 5977—Flight Equipment Spare Parts and Assemblies for the bases where Panagra's aircraft and/or engines are maintained a ratio of which the numerator shall be the dollar value of such spare parts and assemblies issued out for the account of Panagra and the denominator shall be the total dollar value of all such spare parts and assemblies issued.*

C. The investment of PAA on which a return shall be paid pursuant to clause (3) shall be the sum of the following:

(a) The sum obtained by multiplying PAA's total investment (net of depreciation reserves) in maintenance and overhaul facilities used in or useful for maintenance and overhaul of Panagra's aircraft at the bases where such work is performed by a fraction the numerator of which will be the total direct maintenance labor costs charged to Panagra, and the denominator of which shall be the total direct maintenance labor costs for such bases.

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* See attached letter agreement.

(b) The sum obtained by multiplying PAA's investment (net of depreciation reserves) in Flight Equipment Spare Parts and Assemblies at the bases where Panagra's aircraft are maintained by the same fraction described in paragraph B above; and

[fol. 1822] (c) An allowance for working capital equal to three times PAA's charges under subparagraph 17(b) for the preceding month (after eliminating the portion of such charges representing depreciation accruals, FESPA obsolescence and return on investment).

[fol. 1823]

ANNEX 3

Basis for Division of Revenues from Through Rates

Revenues from transportation between a point on PAA's route and a point on Panagra's route conducted under through rates (whether or not moving over the charter service) shall be divided as follows:

(1) *Passenger Fares*—Normal adult one-way all year joint fares shall be apportioned between PAA and Panagra in proportion to the applicable normal adult one-way all year fare in U. S. dollars for the PAA section of the route to the applicable such fare in U. S. dollars for the Panagra section of the route. All other joint fares, such as round trips, circle, open jaw, excursion, children's, Government, sleeper and extra fares, shall be apportioned in accordance with the respective applicable fares in U. S. dollars for the respective sections of the route.

(2) *Excess Baggage Charges*—to be apportioned on the same principle as passenger fares. Excess baggage valuation charges will be retained by the collecting carrier.

(3) *Express Charges* (transportation, valuation, and shippers' cargo insurance)—to be apportioned in propor-

tion to the respective mileages via the most direct routes between the points of origin and destination on the routes of PAA and Panagra and the junction point of PAA's and Panagra's services (the premium cost of air express carrier's liability insurance and air press shippers' cargo insurance on shipments moving under through rates to be divided in proportion to the shares in the express revenues).

(4) *Transportation Rates for Foreign Mail*—(a) Foreign Mail Destined to the United States, its possessions and territories, (exclusive of charges for domestic handling)—to be apportioned in proportion to the respective mileages via the most direct routes between agreed control point or points in the country of origin and [fol. 1824] the junction point of PAA's and Panagra's services and between such junction point and the PAA United States terminus to which the mail is dispatched.

(b) Foreign Mail Destined to Other Foreign Countries Applicable under New Transportation Rates—In accordance with the transportation rates for foreign mail approved by the U. S. Post Office Department for effectiveness January 1, 1947, as of the first day of the month in which each country accepts such new rates the transportation charges will be apportioned in proportion to the respective mileages via the most direct route between agreed control point or points in the country of origin and the junction point of PAA and Panagra services and between such junction point and the terminus on PAA or Panagra, as the case may be, to which the mail is dispatched.

(c) The route mileages applicable in (a) and (b) above will be determined in accordance with mileages approved by the U. S. Post Office Department.

(d) Foreign Mail Destined to Other Foreign Countries Applicable Prior to Effectiveness of New Transportation Rates—Until such time as the respective countries served by PAA and Panagra accept the transportation rates approved by the U. S. Post

Office Department on January 1, 1947, the initial carrier will retain the mail pay received from the country of origin and will pay the onward carrier an amount obtained by multiplying the weight of the mail transferred to the latter by the existing rate from the country of transfer to the country of final destination. In the case of mail transferred in the Canal Zone, Panama will be considered the country of transfer. In the case of mail transferred at Buenos Aires, Argentina will be considered the country of transfer. For mail transferred at the Canal Zone and Buenos Aires, the rate to be used as a basis of calculation will be the rate in effect as of December 31, 1946. As each country con- [fol. 1825] cerned accepts the new reduced transportation rates, the mail transportation charges will, as of the first day of the month in which such rates are accepted by each such country, be apportioned on the same mileage basis as stated in sub-paragraph (b) above. It is the obligation of each carrier to notify the other of the effective date of the acceptance of new transportation rates by the respective countries served by its lines.

(5) Route mileages applicable to paragraphs (1), (2) and (3) will be determined in accordance with C. A. B. Mileage Booklet No. 2 (Revised) and any revisions thereof.

The foregoing provisions are intended to be consistent with applicable resolutions of International Air Transport Association (IATA) of which PAA and Panagra are members; in the event that such resolutions should be changed in such a manner that any of the foregoing provisions would no longer be consistent therewith, the foregoing provisions shall be automatically amended to conform with the changed IATA resolutions.

[fol. 1826] January 9, 1948.

Pan American-Grace Airways, Inc.
135 East 42nd Street
New York City

Dear Sirs:

This letter will evidence the agreements that have been reached as to the method in which Annex 2, Paragraphs B and C(b), shall be applied.

The amount payable by Panagra to PAA under Paragraph B will be determined in the following manner:

Separate computations will be made for FESPA at each location where Panagra uses FESPA. FESPA will be divided into six separate categories, to wit: airplane parts, engine parts, engine accessories, instruments and parts, propeller parts, and aircraft accessories. Each of these categories will be further subdivided into sub-categories as between DC-3, DC-4, CV-240 and other types of airplanes. Depreciation on each of these sub-categories shall be considered as a separate pool of expense. Panagra will share in such depreciation only in months in which issues at the respective base and out of the respective sub-category are made to Panagra, and, in the case of FESPA relating to CV-240 aircraft, effective only commencing with the month in which PAA begins scheduled operation with such aircraft.

The same procedure shall be followed in computing the amount on which return on investment shall be computed pursuant to Paragraph C(b).

It is understood that the arrangements set forth in this letter represent simply a practical application, under present conditions, of the principles set forth in the specified paragraphs of Annex 2 of the contract, and that either party may at any time give notice that it no longer considers these arrangements to be suitable, such notice, however, to have no effect upon any months preceding that in which such notice is given.

[fol. 1827] If the foregoing represents your understanding, kindly so indicate on the enclosed copy of this letter.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.

By E. BALLUDER /s/
Vice President

Confirmed:

PAN AMERICAN-GRACE AIRWAYS, INC.

By H. J. ROIG /s/
President

[fol. 1828]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 6

CONFORMED COPY

[Stamp—Date Illegible]

THROUGH FLIGHT AGREEMENT
—SUPPLEMENT NO. 3

THIS AGREEMENT, made and entered into this 28 day of January, 1949, by and between PAN AMERICAN AIRWAYS, INC., a New York corporation, hereinafter called "PAA" and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "Panagra".

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by Supplement No. 1 dated May 28, 1947 and by Supplement No. 2 dated January 9, 1948, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire to supplement and amend the Through Flight Agreement as herein set forth;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

43. The following schedule of rates for charges to Panagra pursuant to paragraph 8 of the Through Flight Agreement for training is hereby substituted for the schedule of rates set forth in paragraph 29, effective as of March 1, 1948:

Miami Schools	*Dollars Per Hour*
Mechanics	1.2247
Meteorologists	2.1370
Radio	1.6534
Pilot	18.0160
Link	7.0411
Miami Aircraft	
DC-3 Passenger	77.6875
DC-3 Cargo	83.3226
DC-3 Trainer	54.3134
DC-4 Passenger	165.8967
DC-4 Cargo	131.4446
DC-4 Trainer	115.2668

44. The following schedule of rates for charges to Panagra pursuant to paragraph 8 of the Through Flight Agreement for training is hereby substituted for the schedule of rates set forth in paragraph 43, effective from September 1, 1948 until further notice:

[fol. 1829]

School	*Hourly*
Miami—Ground Training	$ 1.4493
Miami—Link	9.6116
Brownsville—Link	9.1569
Miami—Pilot	25.1983
Brownsville—Pilot	33.0830
Rio—Pilot	10.4547
New York—Pilot	26.8186
Aircraft Type	
DC-3 Aircraft	101.5666
DC-4 Passenger	189.5431
DC-4 Cargo	171.6570

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized, on the day and year first above written.

PAN AMERICAN AIRWAYS, INC.

By /s/ E. BALLUDER

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ G. VIDAL

[fol. 1830]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 7

CONFORMED COPY

THROUGH FLIGHT AGREEMENT
—SUPPLEMENT NO. 4

THIS AGREEMENT, made and entered into this Ninth day of February, 1949, by and between PAN AMERICAN AIRWAYS, INC., a New York corporation, hereinafter called "PAA and PAN AMERICAN GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "Panagra".

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946 which agreement has been supplemented and amended by Supplement No. 1 dated May 28, 1947 and by Supplement No. 2 dated January 9, 1948, and by Supplement No. 3, dated January 28, 1949 said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire to supplement and amend the Through Flight Agreement as herein set forth;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

45. With respect to the year 1948 only, and notwithstanding the provisions of paragraph 17 (c) of the Through Flight Agreement, return on investment and depreciation

payable by PAA to Panagra with respect to Panagra-owned DC-4 equipment shall be accumulated separately for each of the two periods; January 1, 1948 through April 30, 1948; and May 1, 1948 through December 31, 1948. All other items of expense shall be payable for the year 1948 on the accumulative basis for the entire year as is provided in paragraph 17 (c) of the Through Flight Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized, on the day and year first above written.

PAN AMERICAN AIRWAYS, INC.

By /s/ E. BALLUDER

PAN AMERICAN GRACE AIRWAYS, INC.

By /s/ G. VIDAL

[fol. 1831]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 8

[Handwritten notation—140511 Only Copy—Do Not Remove]

SUPPLEMENT NO. 5

TO

THROUGH FLIGHT AGREEMENT

BETWEEN

PAN AMERICAN AIRWAYS, INC.,

AND

PAN AMERICAN-GRACE AIRWAYS, INC.

DATED MAY 11, 1949

[fol. 1832]

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 5

AGREEMENT made and entered into as of the 11th day of May, 1949, by and between PAN AMERICAN AIRWAYS, INC., a New York corporation, (hereinafter called "PAA"), and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation (hereinafter called "Panagra"):

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946, and supplements thereto dated respectively May 28, 1947, January 9, 1948, January 28, 1949, and February 9, 1949, relating to the charter of Panagra's aircraft to PAA for through operation on certain of PAA's routes north of the Canal Zone and other matters, which agreements are hereinafter referred to as "the Through Flight Agreement"; and

WHEREAS, Panagra desires to enter into an agreement with National Airlines, Incorporated, a Florida corporation (hereinafter called "National"), for the further charter to National of Panagra's aircraft which have been operated by PAA between the Canal Zone and Miami for operation by National over National's Miami-New York route; and

WHEREAS, the parties desire to supplement and amend the Through Flight Agreement so as to provide for such further charter and in certain other respects as herein set forth.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

46. PAA agrees that Panagra's aircraft chartered to PAA pursuant to the Through Flight Agreement for through operation between the Canal Zone and Miami, Florida may be further chartered by Panagra to National for through operation by National over National's Miami-New York route upon the specific terms and conditions set forth in an agreement between Panagra and National being [fol. 1833] executed simultaneously herewith (hereinafter referred to as "the Panagra-National Agreement"). Panagra does not admit that such agreement by PAA is re-

quired to enable Panagra to enter into the Panagra-National Agreement.

47. Panagra hereby constitutes and appoints PAA as Panagra's agent, for the term of the Panagra-National Agreement, to deliver Panagra's aircraft to National at Miami, for the purpose of flights over National's route pursuant to the said agreement and to receive delivery of Panagra's aircraft from National at Miami. PAA is authorized as such agent, on Panagra's behalf, to receive and execute such receipts, to perform such inspections, to make such checks and measurements, and to perform all such other acts as may be necessary or appropriate in connection with the delivery or return of the said aircraft. In acting as such agent with respect to the delivery of Panagra's aircraft to National and the return of Panagra's aircraft by National at Miami, PAA shall be bound to exercise the same and only the same degree of care as PAA exercises with respect to the delivery and return of its own aircraft under an agreement between PAA and National being executed simultaneously herewith (hereinafter referred to as "the PAA-National Agreement").

48. PAA and Panagra shall from time to time agree as to the personnel to be assigned to National's airports pursuant to Paragraph 6 (b) of the PAA-National Agreement and the Panagra-National Agreement to the end of avoiding duplication of such personnel.

49. The second sentence of paragraph 3 of the Through Flight Agreement is amended by substituting the words and figures "forty-five (45)" for "sixty (60)".

50. Paragraph 10 of the Through Flight Agreement is amended by adding at the end thereof:

"(c) PAA will furnish Panagra with monthly reports showing for all sales from New York, Washington and [fol. 1834] Miami to Buenos Aires how many were routed via the East Coast of South America and how many were routed via the West Coast of South America."

51. The last sentence of paragraph 14 of the Through Flight Agreement is amended to read as follows:

> "PAA and Panagra will agree with each other (and with National if the Panagra-National Agreement shall become and be effective) in advance on appropriate advertising programs (including newspaper and magazine space, advertising and display pieces and collateral material) and budgets therefor, for promoting the through flights made pursuant to this Agreement and the approved expense of all such advertising shall be apportioned among them as from time to time agreed, provided, however, that no charge shall be made for transporting advertising material to the most effective point of use."

52. The second sentence of paragraph 15(a) of the Through Flight Agreement as amended is further amended to read as follows: "PAA shall be deemed to be in possession of Panagra's aircraft (1) in the case of aircraft turned over to PAA for operation on through flights under this agreement, from the time when such aircraft is so turned over to PAA by Panagra until the time when such aircraft is either (i) returned by PAA to Panagra or (ii) turned over by PAA to National for operation by National pursuant to the Panagra-National Agreement or (iii) turned over by PAA to National with Panagra's consent for operation pursuant to the PAA-National agreement, in either of which latter events the aircraft shall again be deemed to be in PAA's possession when returned to it by National, and (2) in the case of aircraft turned over to PAA for maintenance, from the time when such aircraft is turned over to PAA at one of the latter's maintenance bases until the time when such aircraft is returned to Panagra; except, in either case, for non-revenue or other special flights (excluding test flights made under [fol. 1835] PAA custody following maintenance and according to CAA requirements) during such period made at the instance and request of Panagra".

53. Paragraph 15 of the Through Flight Agreement is further amended to include the following: "(e) In the

event of loss or damage to or delay in the delivery of baggage or personal effects of a passenger, or cargo, express or mail on an aircraft making a through flight hereunder, the party having possession of the aircraft at the time the loss, damage or delay occurs shall as between the parties hereto be responsible therefor. In case it is not possible to establish which party had possession of the aircraft at the time of such loss, damage or delay, any liability or expense arising therefrom shall be shared between the parties in proportion to the revenue received from the transportation of the passenger whose baggage or personal effects shall have been lost, damaged or delayed or from the transportation of the cargo, express or mail which shall have been lost, damaged or delayed, provided, however, that if any such flight has been operated under the Panagra-National Agreement (including a flight operated with PAA aircraft at Panagra's request) any such liability or expense shall be shared in said proportions among Panagra, PAA, and National or if it shall be possible to establish that one of such parties did not have possession of the aircraft at the time of such loss, damage or delay, by the other two parties in said proportion".

54. Paragraph 16 of the Through Flight Agreement as amended is amended to read as follows:

"16. *Risk of Loss of Aircraft.*

Unless otherwise agreed Panagra shall carry appropriate insurance providing against loss of or damage to its aircraft or other property under charter to PAA pursuant to this Agreement and Panagra will cause PAA to be included as a party insured. Such insurance [fol. 1836] shall have the same coverage as is provided by Panagra for similar aircraft or other property while in Panagra's possession. Panagra will advise PAA from time to time of the provisions of its insurance policies on such aircraft or other property and PAA will not knowingly operate or use the aircraft or other property chartered to it in such a manner that Panagra shall be deprived of the benefits of its insurance coverage. PAA shall not be liable to

Panagra for loss or damage to Panagra's aircraft or other property while under charter to PAA pursuant to this Agreement, except for violation by PAA of the obligations assumed by PAA in the preceding sentence and except for any loss or damage occasioned by PAA's use of such aircraft or other property as to which Panagra is unable to collect from its insurer by reason of any franchise or deductible provisions in its insurance policies if such loss or damage was occasioned by the gross negligence of PAA or its employees acting within the course of their employment."

55. Paragraph 17(h) of the Through Flight Agreement (added by paragraph 34 of Supplement No. 2) is amended by adding the following at the end thereof: "and in the case of mileage flown over the route of National pursuant to the Panagra-National agreement will be those effective as shown in CAB Mileage Booklet No. 1, Airport-to-Airport Mileages over Interstate Routes of Certificated Air Carriers, and in any revisions thereof".

56. Paragraph 23(e) of the Through Flight Agreement is amended by adding at the end thereof the words: "and the delivery of possession of Panagra's aircraft to National and the return of such possession from National pursuant to the Panagra-National Agreement".

57. (a) All references in Annex 1A to the Through Flight Agreement to "the charter service" shall refer only to the charter service operated by PAA pursuant to said agree-
[fol. 1837] ment. All references in said Annex 1A to the total revenue miles flown by Panagra's aircraft or to a revenue mile basis shall include revenue miles flown by such aircraft pursuant to the Panagra-National Agreement.

(b) Paragraph 1A1(1) of said Annex 1A is amended by adding at the end thereof the following: "and Panagra will cause National to advise Panagra at the close of each month of the total gallonage delivered by National to Panagra's aircraft, classified by aircraft types, under the Panagra-National Agreement".

(c) The last sentence of paragraph 1A3 of said Annex 1A is amended by adding after the words "or to Panagra's common carrier service" the words "or to the charter service operated pursuant to the Panagra-National Agreement" and by eliminating the last seven words of the sentence and substituting therefor the words "to the service to which they relate".

(d) The parenthetical phrases in paragraphs 1A3 and 1B of said Annex 1A now reading: ("except for credits arising out of charges to PAA") are amended to read: ("except for credits arising out of charges to PAA and charges to National").

(e) Paragraph 1A4 of Annex 1A of the Through Flight Agreement is amended by adding thereto the following paragraph:

> "If Panagra shall base its computations of depreciation of Flight Equipment used in the charter service on a residual value of such equipment which is increased by the amount of one major overhaul and shall make such computations effective as from May 31, 1947, PAA will not participate in the credits resulting from reversal of the amount by which major overhaul reserves shall have been so increased when such equipment is sold or otherwise disposed of."

(f) The last sentence of paragraph 2A, the last sentence of paragraph 2B, and the last sentence of paragraph 2C of [fol. 1838] said Annex 1A are amended by adding at the end of each sentence the words "and in the charter service operated pursuant to the Panagra-National Agreement".

(g) The first parenthetical clause in paragraph 3(i) of said Annex 1A is amended by adding at the end thereof the words "and less overhaul reserves against such flight equipment computed in the manner recognized by the Civil Aeronautics Board".

58. PAA agrees that at Panagra's written request it will exercise its right of termination under paragraph 19, sub-section (2), clauses (ii) and (vi) of the PAA-National

Agreement. Panagra agrees that at PAA's written request it will exercise its right of termination under paragraph 19, sub-section (2), clauses (ii), (iii), (iv), (v), and (vi) of the Panagra-National Agreement.

59. This Supplement No. 5 shall become effective only in the event that the agreement dated May 11, 1949 between Panagra and National shall become effective, except that paragraphs 49, 50, 51 and 53 (except for the proviso to the last sentence of the amendment made therein) shall become effective immediately and that the amendments made in paragraphs 57 (e) and (g) shall be effective as from May 31, 1947.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the officers thereunto duly authorized on the day and year first above written.

PAN AMERICAN AIRWAYS, INC.

By J. T. TRIPPE /s/
President

PAN AMERICAN-GRACE AIRWAYS, INC.

By DOUGLAS CAMPBELL /s/
Vice President and
General Manager

[fol. 1839]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 9

[Handwritten notation—Contained herein amendment to supplement #5]

Before the

CIVIL AERONAUTICS BOARD

Docket No. 3787

In the Matter of the Application of

PAN AMERICAN WORLD AIRWAYS, INC.

for a modification of the Board's Order Serial No. E-570 approving an agreement between the Applicant and Pan American-Grace Airways, Inc. and a companion agreement between Pan American Airways Corporation and W. R. Grace & Co.

AMENDMENT NO. 1 TO APPLICATION

Communications with respect to this amendment to application should be sent to:

HENRY J. FRIENDLY
Vice President & General Counsel
Pan American World Airways, Inc.
135 East 42nd Street.
New York 17, N. Y.

Steptoe & Johnson
Of Counsel for Applicant
1139 Shoreham Building
Washington 5, D. C.

Dated: April 25, 1951
New York, N. Y.

[fol. 1840]

Before the

CIVIL AERONAUTICS BOARD

Docket No. 3787

In the Matter of the Application of

PAN AMERICAN WORLD AIRWAYS, INC.

for a modification of the Board's Order Serial No. E-570 approving an agreement between the Applicant and Pan American-Grace Airways, Inc. and a companion agreement between Pan American Airways Corporation and W. R. Grace & Co.

AMENDMENT NO. 1 TO APPLICATION

PAN AMERICAN WORLD AIRWAYS, INC. (herein called "PAA") hereby presents this Amendment No. 1 to its application herein:

1. In the application herein verified May 11, 1949, PAA prayed that the Board make and enter an order modifying order Serial No. E-570 so as to extend to July 1, 1960, or to such later date as the Board might determine, the Board's approval of the Through Flight Agreement dated July 30, 1946, between PAA and Pan American-Grace Airways, Inc., a Delaware corporation, of Supplements Nos. 1 to 5, inclusive, thereto, and of an agreement dated July 30, 1946 between Pan American Airways Corporation (a Delaware corporation, to the rights and liabilities of which PAA has since succeeded) and W. R. Grace & Co., a Connecticut corporation.

2. By Order Serial No. E 4130, the Board extended its approval of the two agreements dated July 30, 1946, until such time as the Board entered an order approving or disapproving the application of PAA herein.

[fol. 1841] 3. By Order Serial No. E-4575, the Board approved certain amendments to the Through Flight Agree-

ment until such time as the Board entered an order approving or disapproving the application of PAA herein. The amendments so approved did not include Supplement No. 5 (CAB File No. 727 A-6).

4. It appears from the atfached copy of a letter dated April 25, 1951, from PAA to Pan American-Grace Airways, Inc., that because of the repudiation by National Airlines, Inc., of an agreement between said National Airlines, Inc. and PAA dated May 11, 1949 (approval of which agreement had been sought in Docket No. 3786) and the dismissal by the Board of the said Docket No. 3786 and of an application for approval of an interchange agreement between National Airlines, Inc. and PAA, (Docket No. 3785), Supplement No. 5 to the Through Flight Agreement will not become effective, except in respect of paragraphs 49, 50, 51, 53 (except for the proviso to the last sentence of the amendment made therein), and 57 (e) and (g). PAA, therefore, withdraws its application herein for approval of said Supplement No. 5 to the Through Flight Agreement except for those portions thereof indicated in the preceding sentence.

5. Since the Board's Order Serial No. E-4575, PAA has entered into Supplements Nos. 8 and 9 to the Through Flight Agreement which have been filed as Agreements CAB Nos. 727 A-9 and 727 A-10.

WHEREFORE, PAA amends the prayer of its application herein so that the same shall request the Board to make and enter an order modifying order Serial No. E-570 so as to extend to July 1, 1960, or to such later date as the Board may determine, the Board's approval of the Through Flight Agreement dated July 30, 1946, of CAB Agreements Nos. 727, 727 A, 727 A-2, 727 A-3, 727 A-4, 727 A-5 so much of 727 A-6 as is contained in paragraphs 49, 50, 51, [fol. 1842] 53 (except for the proviso to the last sentence of the amendment made therein) and 57 (e) and (g), 727 A-7, 727 A-8, 727 A-9 and 727 A-10, and of the agreement dated

July 30, 1946, between Pan American Airways Corporation and W. R. Grace & Co.

Respectfully submitted,

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. T. TRIPPE
J. T. Trippe,
President.

Dated, April 25, 1951.

[fol. 1843]

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

J. T. TRIPPE, being duly sworn, deposes and says that he is President of Pan American World Airways, Inc., a New York corporation; that he is duly authorized to sign the foregoing application and has read and is familiar with the contents thereof: that he intends and desires that in granting or denying the prayer of said application, the Board shall place full and complete reliance upon the accuracy of each and all statements made therein; that he is familiar with the facts set forth in said application, and to the best of his information and belief every statement made therein is true, and no statement is misleading.

/s/ J. T. TRIPPE
J. T. Trippe

Subscribed and sworn to before me
this 25th day of April, 1951.

/s/ EMMA F. RAHN
Emma F. Rahn

Notary Public, State of New York
No. 41-8483200
Qualified in New York County
Certificates filed with:
Queens, New York County Clerks
Queens, New York County Register's Office
Term expires March 30, 1952.

NOTARIAL SEAL

[fol. 1844]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 10

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 6

THIS AGREEMENT, made this 18 day of October, 1949, by and between PAN AMERICAN AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "Panagra",

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by Supplement No. 1 dated May 28, 1947, by Supplement No. 2 dated January 9, 1948, by Supplement No. 3 dated January 28, 1949, by Supplement No. 4 dated February 9, 1949, and by Supplement No. 5 dated May 11, 1949, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth, with a view to saving executive, accounting and clerical expense in connection with calculation and auditing of certain payments provided for in the Through Flight Agreement;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

60. The amounts payable by Panagra to PAA which are referred to in the provisions of Annex 2 of Supplement No. 2 to the Through Flight Agreement mentioned below shall be determined as follows:

(a) The payment referred to in subsection (a) of section 3 of paragraph A. of said Annex 2 in respect of work done at Miami during the calendar year 1949 shall be an amount equal to 210% of the direct labor charges to Panagra for maintenance and overhaul of Panagra's flight equipment at Miami pursuant to para-

graph 7 of the Through Flight Agreement during the year 1949.

(b) The payment referred to in paragraph B. and section (b) of paragraph C. of said Annex 2 shall [fol. 1845] (i) for the year 1948 be an amount equal to 35% of the amounts billed by PAA to Panagra for Flight Equipment Spare Parts and Assemblies (FESPA) utilized during 1948, and (ii) for the year 1949 be an amount equal to 30% of the amounts billed by PAA to Panagra for FESPA utilized during 1949. The FESPA referred to in this subparagraph (b) to which said percentages will be applied shall include only FESPA used by PAA in connection with maintenance, conversion and modification of Panagra's aircraft, engines, and other flight equipment, it being specifically understood that it shall not include FESPA issues to Panagra line stations or FESPA classified as component parts which are handled on a free exchange basis, but shall include FESPA used in repair, overhaul or maintenance of such component parts or in replacing non-repairable components. Any return of FESPA to inventory, as well as any adjustment in cost, will be reflected in an adjustment in the amount payable hereunder, such adjustment to be applicable to the period when such return to inventory or adjustment in cost takes place.

(c) The payments referred to in sections (a) and (c) of paragraph C. of said Annex 2 for the year 1949 in respect of work done at Miami shall be an amount equal to 17½% of the direct labor charges to Panagra for maintenance and overhaul of Panagra's flight equipment at Miami pursuant to paragraph 7 of the Through Flight Agreement during the year 1949.

(d) The parties will consult as soon as practicable in 1950, and each year thereafter while the Through Flight Agreement continues in effect, with a view to fixing the basis for determining the amounts of the payments referred to in the provisions of said Annex

2 mentioned above. In the event that the parties shall not have agreed on or before the first day of April of any year as to the basis for such determination for the current year with respect to any of said provisions and said date shall not have been extended by mutual agree-
[fol. 1846] ment, the payments under the provision or provisions as to which agreement is not reached shall be determined for such year in accordance with the provisions of Annex 2, without regard to the foregoing provisions of this Supplement No. 6.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized, on the day and year first above written.

PAN AMERICAN AIRWAYS, INC.

By /s/ E. BALLUDER
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

[fol. 1847]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 11

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 7

THIS AGREEMENT, made and entered into this 31st day of January, 1950, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation (the corporate name of which was formerly "Pan American Airways, Inc."), hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "Panagra".

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by Supplement No. 1 dated May 28, 1947, by Supplement No. 2 dated January 9, 1948,

by Supplement No. 3 dated January 28, 1949, by Supplement No. 4 dated February 9, 1949, by Supplement No. 5 dated May 11, 1949, and by Supplement No. 6 dated October 18, 1949, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire to supplement and amend the Through Flight Agreement as herein set forth:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

61. The following schedule of rates for charges to Panagra pursuant to paragraph 8 of the Through Flight Agreement for training is hereby substituted for the schedule of rates set forth in paragraph 44, effective as of January 1, 1950:

School	*Asociated and Affiliated Companies*
Miami—Ground Training	$ 1.7317
Miami—Link	10.6945
Miami—Pilot	29.0495
Aircraft Type	*Hourly*
DC-3 Aircraft	96.4380
DC-4 Passenger	186.5386
DC-4 Cargo	172.3714

[fol. 1848] IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized, on the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ E. BALLLUDER

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ G. VIDAL

[fol. 1849]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 12

[Handwritten notation—1405.1]

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THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 8

THIS AGREEMENT, made this 26th day of December, 1950, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "Panagra",

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by Supplement No. 1 dated May 28, 1947, by Supplement No. 2 dated January 9, 1948, by Supplement No. 3 dated January 28, 1949, by Supplement No. 4 dated February 9, 1949, by Supplement No. 5 dated May 11, 1949, by Supplement No. 6 dated October 18, 1949, and by Supplement No. 7 dated January 31, 1950, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth, with a view to saving executive, accounting and clerical expense in connection with calculation and auditing of certain payments provided for in the Through Flight Agreement:

NOW, THEREFORE, This Agreement Witnesseth:

62. The following paragraph is hereby substituted for paragraph 17(c) of the Through Flight Agreement, effective for the period commencing on the date of this Supplement No. 8 and terminating on the date this paragraph 62 ceases to be effective as hereinafter provided:

"(c) Each of the parties will render to the other as soon as practicable after the end of each calendar month bills for the payments due pursuant to the Through Flight Agreement with respect to such month. All such bills will be paid on or before the fifteenth day after the close of the month to which such bills relate or on or before the fifth day after receipt of such bills, whichever is later. In the event payment of any such bill is delayed beyond the time specified in the preceding sentence, the amount due thereon shall be increased for each day of such delay by an amount which bears the same ratio to one-thirtieth of the total amount of the return on working capital hereunder for such month to the party to which payment is due (com-
[fol. 1850] puted in accordance with the rates shown in paragraph 67 hereof or in Annex 1-B, whichever is applicable) as the amount due on such bill bears to the total amount due on all bills rendered by said party under the Through Flight Agreement for such month."

63. Annex 1-B attached hereto and made a part hereof is hereby substituted for Annex 1-A to the Through Flight Agreement, effective for the period commencing on January 1, 1950 and terminating on the date this paragraph 63 ceases to be effective as hereinafter provided.

64. In the event that there shall be an adjustment in Panagra's hull insurance expense for any period after September 30, 1948, to reflect Panagra's actual experience for such period, there shall be a proportionate adjustment in the amount charged to Pan American pursuant to the Through Flight Agreement in respect of hull insurance for such period.

65. Section A of Annex 2 to Supplement No. 2 to the Through Flight Agreement is amended by adding the following at the end of said Section A, effective for the period commencing on January 1, 1950 and terminating on the date this paragraph 65 ceases to be effective as hereinafter provided:

"(4) The costs payable by Panagra to PAA referred to in subsections (1), (2) and (3) of this Section A in

respect of work performed at Miami shall be determined on the basis of applicable prices in the currently effective quarterly official price lists for such work issued by Pan American World Airways, Inc., Latin American Division. The official price lists referred to in this subsection (4) relating to the first, second, third and fourth calendar quarters of the calendar year 1950 are attached hereto, marked Exhibit A, January-March, 1950, Exhibit B, April-June, 1950, Exhibit C, July-September, 1950, and Exhibit D, October-December, 1950, respectively, and made a part hereof, and are hereby accepted by Panagra. The prices set forth in the official price lists referred to in this subsection (4) shall be adjusted retroactively to reflect any change in pay scales provided in any collective bargaining agreement with employees which affects the cost of work to which such prices relate. The prices set forth in such price list for overhauls include labor and overhead appropriate to the overhaul work or services specified in such price lists, and any work or services in addition to, or different in nature or extent from, the work and [fol. 1851] services so specified, which shall be requested by Panagra in writing, whether normally considered as involving direct labor or as being included only in overhead, will be charged for separately either in accordance with such price lists or, in case no price therefor is set forth therein, at prices to be negotiated at the time such work is requested. Such prices will include overhead where appropriate. Such additional work or services are in the nature of, but not limited to, the following types of services:

(1) Aircraft and radio engineering services over and above the requirements of the Miami Overhaul Base maintenance, overhaul and repair functions.

(2) Laboratory fuel and oil sampling and other testing or research services.

(3) Flight and crew scheduling services applicable to Panagra's certificated routes.

(4) First aid, medical service and physical examinations furnished to Panagra employees or applicants.

(5) Civil Aeronautics Authority specifications handling services.

(6) Packaging, clearance and shipping services to fulfill the requirements of Panagra, such clearance and shipping services to be charged for in accordance with purchasing and shipping agreement dated July 14, 1948."

66. The provisions of subparagraphs (b) and (c) of paragraph 60 of the Through Flight Agreement applicable to the year 1949 shall continue in effect for the period commencing on January 1, 1950 and ending on March 31, 1950.

67. Effective as of April 1, 1950, the amounts payable by Panagra to PAA which are referred to in paragraphs B and C of Annex 2 of Supplement No. 2 to the Through Flight Agreement shall be determined at the following rates per revenue mile for each revenue mile flown by Panagra in its own service and in the service of others, except revenue miles flown pursuant to the Through Flight Agreement over the routes of PAA:

[fol. 1852]

	Cents per revenue mile flown with DC-4 aircraft	Cents per revenue mile flown with DC-6 aircraft
Return on Investment Working Capital	0.43 ¢	0.52 ¢
Miami Overhaul Base facilities (including return on investment in prepaid rent and deferred shop burden)	1.03	1.54
Flight Equipment Spare Parts and Assemblies	1.97	1.89
Depreciation on Flight Equipment Spare Parts and Assemblies	4.62	1.85

68. The prices and charges provided for in paragraphs 65 and 67 and in Annex 1-B hereof shall be subject to review and change as follows:

(a) PAA shall furnish to Panagra the official price list referred to in paragraph 65 for each calendar quarter before the beginning of such quarter, and if Panagra shall not have given PAA written notice of objection thereto within a period of three (3) weeks commencing on the first day of such calendar quarter or within such longer period as may be mutually agreed upon, said price list shall be effective for the purposes of paragraph 65 hereof as of the first day of such calendar quarter. In the event Panagra shall give written notice of objection to said price list within the period specified in the preceding sentence, billings and payments shall be tentatively made in accordance with the prices in the price list last agreed upon, until such time as all prices in the price list shall have been settled for the period in question, at which time the tentative billings and payments shall be adjusted in accordance with the prices so settled.

(b) The charges provided for in Annex 1-B and paragraph 67 hereof shall be subject to review at six months' intervals, on a prospective basis, such reviews to be for the six months' periods commencing with April 1 and October 1 of each year, starting with October 1, 1950. The parties will consult as early as practicable prior to the end of each such period with a view to fixing such charges for the ensuing six months' period, and the charges when agreed upon between the parties shall be effective as of the beginning of such [fol. 1853] six months' period. In the event that the parties are unable to agree before the first day of any such six months' period, or any such later date as may be mutually agreed upon, as to the charges for such period under Annex 1-B and paragraph 67, billings and payments shall be tentatively made in accordance with the prices last agreed upon, until such time as all prices shall have been settled for the period in question, at

which time the tentative billings and payments shall be adjusted in accordance with the prices so settled. Any change agreed upon in the charges provided for in Annex 1-B or paragraph 67 will be reflected in an appropriate amendment to the Through Flight Agreement.

(c) In the event the parties are unable to agree on the price list or charges within the respective times specified in subparagraphs (a) and (b) of this paragraph 68, paragraphs 63, 65 and 67 of this Supplement No. 8 shall cease to be effective as of the last date on which agreed price lists and charges were both in effect, and payments for the period thereafter shall be determined in accordance with the provisions of the Through Flight Agreement without regard to said provisions. In such event, billings shall be cumulative from the date said provisions cease to be effective to the end of the then current year, and thereafter in accordance with Paragraph 17(c) of the Through Flight Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized, on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ E. BALLUDER
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ K. A. LAWDER
Vice President

[fol. 1854]

ANNEX 1-B

DETAILED PROVISIONS FOR PAYMENTS BY PAA TO PANAGRA*

1. Charges for gasoline used in the charter service shall be accounted for as follows:

(1) PAA will advise Panagra at the close of each month of the total gallonage delivered by PAA, classified by aircraft types;

(2) Panagra will allocate to the charter service a gallonage equal to the amount obtained by multiplying the respective gallonages loaded during the month into the types of aircraft used in the charter service by a fraction of which the numerator shall be the revenue miles flown by such type in the charter service and the denominator shall be the total revenue miles flown by such type;

(3) PAA will price the amount specified in (2) at the weighted average price of the deliveries specified in (1). This amount will be retained as a cost of PAA;

(4) Any excess of the cost of the deliveries described in (1) over the cost to be retained by PAA as described in (3) will be billed by PAA to Panagra. Any excess of the cost described in (3) over the cost of deliveries described in (1) will be credited to Panagra by PAA.

2. PAA will reimburse Panagra for all costs properly recorded by Panagra for the aircraft type used in the charter service in Accounts 5123, 5124, 5225-5227, and 5246-5248, inclusive, 5270, 5271 and 5280 (except for credits arising out of charges to PAA), excluding that portion of such costs which relate to return on investment and depreciation on flight equipment spare parts and assemblies

* All references to account numbers are to the Civil Aeronautics Board's Uniform System of Accounts for Air Carriers presently in effect.

and which originates with PAA, but including shop burden of Panagra determined as set forth below. All costs dealt with in this paragraph shall be allocated to the charter service on the basis of the ratio of the revenue miles flown by such aircraft in the charter service to the total revenue miles flown by such aircraft type including those flown in the charter service. If it shall appear that major items of cost recorded in such accounts are applicable only to the charter service or to Panagra's common carrier service, provision will be made for removing such costs from allocation [fol. 1855] and charging such costs directly to the charter service, if applicable thereto. The shop burden of Panagra applicable to the maintenance and overhaul of the type of flight equipment used in the charter service shall include shop burden expenses applicable to the maintenance and stores departments charged in Accounts 6221-6274 and solely applicable to maintenance of flight equipment and ground equipment used in connection with maintenance of flight equipment; salaries and expenses of the purchasing and cost accounting departments included in Accounts 6621-6674; insurance—public liability, property damage and general insurance expenses included in Account 6655 and applicable to the maintenance, purchasing and stores departments; cost of insurance of all kinds included in Account 6657 and applicable to the maintenance, purchasing and stores departments; payroll taxes included in Account 6668 and applicable to the maintenance and stores departments; and depreciation included in Account 6978 and applicable to the hangar, shop and ramp equipment occupied or used by the maintenance, purchasing and stores departments; and will be distributed on the basis of direct labor costs.

3. For all costs payable by PAA to Panagra, other than those provided for in paragraphs 1 and 2 above, PAA shall pay Panagra at the following rates per revenue mile flown by Panagra aircraft pursuant to the Through Flight Agreement over the routes of PAA:

	Cents per Revenue Mile Flown with DC-4 Aircraft	Cents per Revenue Mile Flown with DC-6 Aircraft
Account 5100—Flying Operations other than hull insurance	7.67¢	5.65¢
—Hull Insurance	3.64	7.64
Account 5900—Depreciation	38.42	22.56
Accounts 6200 and 6300—Passenger Service	5.41	5.76
Indirect Costs	8.00	8.66
Return on Investment Working Capital	.74	.76
Other	4.41	16.41
Amortization DC-6 Development Costs	—	2.46

[fol. 1856]

EXHIBIT A

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—JANUARY 1-MARCH 31, 1950

AIRCRAFT SERVICES & OVERHAULS

I *Aircraft Type*	*Service Type*	*Fixed Price*
DC-4—AE and B Models	1	$ 250.00
	2	500.00
	3	1,730.00
	4	2,445.00
	5	10,000.00
	6	12,000.00
	7	11,000.00
	8	25,500.00
DC-6	1	900.00
	2	1,050.00
	3	2,625.00
	4	3,500.00
	5	11,000.00
	6	12,500.00

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of maintenance policy in effect January 1, 1950, except that certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, are non-predictable and are to be billed as extras on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above-numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a Mark-up to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

[fol. 1857]

II ENGINE AND NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare engine overhaul	$ 1,170.00
Nacelle teardown	121.50
Nacelle overhaul	463.50
Nacelle buildup	135.00
	$ 1,890.00

Engine Type	*Fixed Price*
R-2800-15	
Bare engine overhaul	$ 2,025.00
Nacelle teardown	202.50
Nacelle overhaul	472.50
Nacelle buildup	225.00
	$ 2,925.00

Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

III COMPONENT OVERHAUL AND OTHER

Component Overhaul

[fol. 1858] All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be over-

hauled at a flat price per individual component, including all elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from line stations, in accordance with the "Component Overhaul Price List" dated May 26, 1950, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times by mutual agreement.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth.

V RATES

The applicable labor rates referred to in this Exhibit A shall be as follows:

	Cost per Man/Hour		
	Straight Time	Time and One Half[1]	Double Time[1]
Aircraft Service Work Center	$5.00	$6.00	$7.00
Component Overhaul Work Center	4.50	5.50	6.50

VI The applicable material rates referred to in this Exhibit A shall be as follows:

Freight Inventory Dissipation—1½% of material billings.

Inventory Price Variance Dissipation—1½% of material billings.

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis resulting in overtime hours in excess of 100 hours per project shall be billed at overtime rates for all hours in excess of 100 hours.

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft and radio engineering	$4.00 per hour
Laboratory research service	4.00 per hour

[fol. 1859]

Laboratory fuel sample testing	12.50 per test
Flight and crew scheduling	450.00 per month
CAA specification handling	150.00 per month
Services of Supply Dept. Services	Rates as established in letter purchasing agreement dated July 14, 1948 (as amended).
Other Services	Rates to be negotiated at time of request for service.

[fol. 1860]

EXHIBIT B

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—APRIL 1-June 30, 1950

AIRCRAFT SERVICES & OVERHAULS

I *Aircraft Type*	*Service Type*	*Fixed Price*
DC-4 AE & B Models	1	$ 200.00
	2	450.00
	3 & 4 equalized	1,600.00
	4	1,675.00
	5	2,050.00
	6	9,150.00
	7	10,900.00
	8	9,350.00
		23,500.00

Aircraft Type	*Service Type*	*Fixed Price*
DC-6	1	$ 800.00
	2	1,050.00
	3	2,625.00
	4	3,500.00
	5	11,000.00
	6	12,500.00
	7	14,000.00

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of maintenance policy in effect, April 1, 1950, except that certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950 are non-predictable and are to be billed as extras on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter [fol. 1861] set forth.

ENGINE & NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare engine overhaul	$1,305.00
Nacelle teardown	72.00
Nacelle overhaul	409.50
Nacelle buildup	103.50
	$1,890.00
R-2800-15	
Bare engine overhaul	$2,025.00
Nacelle teardown	139.50
Nacelle overhaul	310.50
Nacelle buildup	270.00
	$2,745.00

Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion, and/or customer request items which requires time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

III COMPONENT OVERHAUL & OTHER

Component Overhaul

All flight equipment accessories classified as components listed in the Latin American Division component manual, as [fol. 1862] revised from time to time, shall be overhauled at a flat price per individual component, including all elements of cost, to be determined as of the time of removal from flight equipment at Miami or at the time of receipt in Miami from line stations, in accordance with the "Component Overhaul Price List" dated May 26, 1950, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times by mutual agreement.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance mark-ups at the applicable rates, as hereinafter set forth.

V RATES

The applicable labor rates referred to in this Exhibit B shall be as follows:

	Cost per Man/Hour		
	Straight Time	Time and One Half[1]	Double Time[1]
Aircraft Service Work Center	$5.00	$6.00	$7.00
Component Overhaul Work Center	4.50	5.50	6.50

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis resulting in overtime hours in excess of 100 hours per project shall be billed at overtime rates for all hours in excess of 100 hours.

VI The applicable material rates referred to in this Exhibit B shall be as follows:

Freight Inventory Dissipation—1½% of material billings
Inventory Price Variance Dissipation—1½% of material billings

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft and radio engineering	
Labratory research service	450.00 per month
Labratory fuel sample testing	$ 4.00 per test
[fol. 1863]	4.00 per hour
Flight and crew scheduling	12.50 per test
CAA specification handling	150.00 per month
Services of Supply Dept. Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other services	Rates to be negotiated at the time of request for service.

[fol. 1864]

EXHIBIT C

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—JULY 1-SEPTEMBER 30, 1950

AIRCRAFT SERVICE & OVERHAULS

I *Aircraft Type*	*Service Type*	*Fixed Price*
DC-4	1	$ 164.50
	2	376.00
	3	1,386.50
	3 & 4 equalized	1,480.50
	4	1,809.50
	5	8,836.00
	6	10,716.00
	7	8,836.00
	8	22,090.00
DC-6	1	634.50
	2	775.50
	3	2,326.50
	4	3,055.00
	1-4 equalized	893.00
	5	10,340.00
	6	11,750.00
	7	11,515.00

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of maintenance policy in effect July 1, 1950, except that certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, are non-predictable and are to be billed as extras on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that

required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variances arising from average inventory pricing procedure, both [fol. 1865] computed at the applicable material rates, as hereinafter set forth.

II ENGINE AND NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare engine overhaul	$1,210.00
Nacelle overhaul	440.00
Nacelle buildup	110.00
	$1,760.00
R-2800-15	
Bare engine overhaul	$1,980.00
Nacelle overhaul	440.00
Nacelle buildup	264.00
	$2,684.00

Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/

or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above, will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

III COMPONENT OVERHAUL AND OTHERS

Component Overhaul

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, [fol. 1866] as revised from time to time, shall be overhauled at a flat price per individual component, including all elements of cost, to be determined as of the time of removal from flight equipment at Miami or at the time of receipt in Miami from line stations, in accordance with the "Component Overhaul Price List" dated May 26, 1950 as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times by mutual agreement.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for

each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance mark-ups at the applicable rates, as hereinafter set forth.

V RATES

The applicable labor rates referred to in this Exhibit C shall be as follows:

	Cost per man/hour		
	Straight Time	Time and One Half[1]	Double Time[1]
Aircraft Service Work Center	$4.70	$5.70	$6.70
Component Overhaul Work Center	4.40	5.40	6.40

VI The applicable material rates referred to in this Exhibit C shall be as follows:

Freight inventory, Dissipation—1½% of material billings
Inventory Price Variance, Dissipation—½% of material billings

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft and radio engineering	$ 4.00 per hour
Laboratory research service	4.00 per hour
Laboratory fuel sample testing	12.50 per test
[fol. 1867] Flight and crew scheduling	450.00 per month
CAA specification handling	150.00 per month

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis resulting in overtime hours in excess of 100 hours per project shall be billed at overtime rates for all hours in excess of 100 hours.

Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other services	Rates to be negotiated at time of request for service.

[fol. 1868]

EXHIBIT D

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—OCTOBER 1-DECEMBER 31, 1950

AIRCRAFT SERVICES & OVERHAULS

I. *Aircraft Type*	*Service Type*	*Fixed Price*
DC-4	1	$ 174.80
	2	368.00
	3	1,380.00
	3 and 4 equalized	1,449.00
	4	1,771.00
	5	8,648.00
	6	10,488.00
	7	8,648.00
	8	21,620.00
DC-6	1-4 equalized	874.00
	5	11,270.00
	7	11,270.00

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of maintenance policy in effect October 1, 1950, except that certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, are non-predicable and are to be billed as extras on the basis

of actual man/hours of direct labor expended multiplied by the applicable rate per man/hour as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price, to be negotiated at the time such work is requested or if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

[fol. 1869]

II. ENGINE AND NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare engine overhaul	$1,058.25
Nacelle overhaul	415.00
Nacelle buildup	124.50
	$1,597.75
R-2800-15	
Bare engine overhaul	$1,763.75
Nacelle overhaul	560.25
Nacelle buildup	186.75
	$2,510.75

Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective

parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or if no price is negotiated, at the applicable labor rates, as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

III. COMPONENT OVERHAUL AND OTHERS

Component Overhaul

All flight equipment accessories classified as components listed in the Latin American Division component manual, as revised from time to time, shall be overhauled at a flat price per individual component, including all elements of [fol. 1870] cost, to be determined as of the time of removal from flight equipment at Miami or at the time of receipt in Miami from line stations, in accordance with the "Component Overhaul Price List" dated May 26, 1950, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times by mutual agreement.

IV. *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth.

V. RATES

The applicable labor rates referred to in this Exhibit D, shall be as follows:

	Cost per Man/Hour		
	Straight Time	Time and One Half[1]	Double Time[1]
Aircraft Service Work Center	$4.60	$5.60	$6.60
Component Overhaul Work Center	4.15	5.15	6.15

VI. The applicable material rates referred to in this Exhibit D, shall be as follows:

Freight Inventory Dissipation—1½% of material billings.
Inventory Price Variance Dissipation—½% of material billings.

VII. The rates applicable to the other special services referred to in Paragraph 65 shall be as follows:

Aircraft and radio engineering	$ 4.00 per hour
Laboratory research service	4.00 per hour
Laboratory fuel sample testing	12.50 per test
Flight and crew scheduling	450.00 per month

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis resulting in overtime hours in excess of 100 hours per project shall be billed at overtime rates for all hours in excess of 100 hours.

C.A.A. specification handling	$150.00 per month
Services of Supply Dept. Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended),
Other Services	Rates to be negotiated at time of request for service.

[fol. 1871] The rates herein established do not provide for retroactive salary adjustments developing from employee contract negotiations. Therefore should additional cost develop through future negotiation on a retroactive basis, such cost will be distributed on a percentage write-up of labor as billed on the above rates retroactive to the agreed upon effective date of such change.

[fol. 1872]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 13

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 9

THIS AGREEMENT, made this 24th day of January, 1951, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "Panagra",

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by eight agreements designated Supplement No. 1 through Supplement No. 8, respectively, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

69. Effective as of October 1, 1950, the following table of rates is hereby substituted for the table of rates appearing in paragraph 67 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-4 aircraft	Cents per revenue mile flown with DC-6 aircraft
Return on Investment Working Capital	.37¢	.47¢
Miami Overhaul Base Facilities	.78¢	1.33
Flight Equipment Spare Parts and Assemblies	1.95	1.89
Depreciation on Flight Equipment Spare Parts and Assemblies	5.02	1.93

70. Effective as of October 1, 1950, the following table of rates is hereby substituted for the table of rates appearing in paragraph 3 of Annex 1-B to the Through Flight Agreement:

[fol. 1873]

	Cents per revenue mile flown with DC-4 aircraft	Cents per revenue mile flown with DC-6 aircraft
Account 5100—Flying Operations other than Hull Insurance	7.31¢	5.91¢
—Hull Insurance	4.13	7.32
Account 5900—Depreciation	13.47	22.41
Accounts 6200 and 6300—Passenger Service	5.64	5.82
Indirect Costs	7.44	8.17
Return on Investment Working Capital	.48	.49
Other	3.98	16.82
Amortization DC-6 Development Costs	—	2.36

71. The last sentence of paragraph 1 A 4 of Annex 1-A of the Through Flight Agreement is hereby amended to read as follows:

"If Panagra shall base its computations of depreciation of flight equipment used in the charter service on a residual value of such equipment which is increased by the cost of one major overhaul and shall make such computations effective as of May 31, 1947, or an earlier date, PAA will not participate in the related credits resulting from reversal of major overhaul reserves upon sale or other disposition of such equipment corresponding to the amount by which residual values thereof shall have been so increased; provided, however, that if one or more elements of cost of overhaul, i.e., direct labor, materials or burden, are omitted from the amount by which the residual value of such equipment has been so increased, PAA will participate in the credits resulting from reversal upon sale or other disposition of such equipment of that portion of major overhaul reserves which relates to the cost elements omitted from the overhaul cost so included in residual value."

[fol. 1874] IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized, on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ E. BALLUDER
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ K. A. LAWDER
Vice President

[fol. 1875]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 14

THROUGH FLIGHT AGREEMENT— SUPPLEMENT No. 10

THIS AGREEMENT, made this 29 day of June, 1951, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "PANAGRA",

WHEREAS, PAA and PANAGRA are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by nine agreements designated Supplement No. 1 through Supplement No. 9, respectively, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

72. Effective as of April 1, 1951, the following table of rates is hereby substituted for the table of rates appearing in paragraph 69 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-4 aircraft	Cents per revenue mile flown with DC-6 aircraft
Return on Investment Working Capital	.38¢	.51¢
Miami Overhaul Base Facilities	.98¢	1.57
Flight Equipment Spare Parts and Assemblies	1.70	1.75
Depreciation on Flight Equipment Spare Parts and Assemblies	4.75	1.89

73. Effective as of April 1, 1951, the following table of rates is hereby substituted for the table of rates appearing in paragraph 70 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-4 aircraft	Cents per revenue mile flown with DC-6 aircraft
Account 5100—Flying Operations other than Hull Insurance	6.99¢	5.49¢
—Hull Insurance	2.55	6.93
[fol. 1876]		
Account 5900—Depreciation	12.18	20.74
Accounts 6200 and 6300—Passenger Service	6.01	6.24
Indirect Costs	7.58	7.33
Return on Investment		
Working Capital	.47	.49
Other	3.13	17.19
Amortization DC-6 Development Costs	—	2.35

74. The official price lists referred to in paragraph 65 of the Through Flight Agreement relating to the first and second calendar quarters of the calendar year 1951 are attached hereto, marked Exhibit E, January-March 1951, and Exhibit F, April-June 1951, respectively, and made a part hereof, and are hereby accepted by PANAGRA,

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized, on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.,

By /s/ E. BALLUDER
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.,

By /s/ K. A. LAWDER
Vice President

[fol. 1877]

EXHIBIT E

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST— JANUARY 1-MARCH 31, 1951

AIRCRAFT SERVICES & OVERHAULS

I. *Aircraft Type*	*Service Type*	*Fixed Price*
DC-4—AE & B Models	1	$ 197.80
	2	391.00
	3, 4 equalized	1,449.00
	5	8,740.00
	6	10,488.00
	7	8,740.00
	8	20,700.00
DC-6	1-4 equalized	$ 828.00

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of maintenance policy in effect January 1, 1951, except that certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, and deicer boots and control surfaces currently on "on condition" replacement basis, are nonpredictable and are to be billed as extras on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

[fol. 1878]

II ENGINE AND NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare engine overhaul	$ 1,037.50
Nacelle teardown & overhaul	415.00
Nacelle buildup	124.50
	$ 1,577.00
R-2800-15	
Bare engine overhaul	$ 1,763.75
Nacelle teardown & overhaul	560.25
Nacelle buildup	186.75
	$ 2,510.75

Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling engine and nacelle ac-

cessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

III COMPONENT OVERHAUL AND OTHER

Component Overhaul

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a flat price per individual component, including all elements of [fol. 1879] cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from line stations, in accordance with the "Component Overhaul Price List" dated May 26, 1950, as the same may be revised from time to time.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

V RATES

The applicable labor rates referred to in this Exhibit E shall be as follows:

	Cost Per Man/Hour		
	Straight Time	Time and One half[1]	Double Time[1]
Aircraft Service Work Center	$4.60	$5.60	$6.60
Component Overhaul Work Center	4.15	5.15	6.15

VI Applicable material rates referred to in this Exhibit E shall be as follows:

Freight Inventory Dissipation—1% Dr. of material billings.

Inventory Price Variance Dissipation—¼ of 1% Cr. of material billings.

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

[fol. 1880]

Aircraft and radio engineering	$ 4.00 per hour
Laboratory research service	4.00 per hour
Laboratory fuel sample testing	12.50 per test
Flight and crew scheduling and CAA specification handling	600.00 per month
Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other Services	Rates to be negotiated at time of request for service.

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis resulting in overtime hours in excess of 100 hours per project shall be billed at overtime rates for all hours in excess of 100 hours.

[fol. 1881]

EXHIBIT F

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—
APRIL 1-JUNE 30, 1951

AIRCRAFT SERVICES & OVERHAULS

I *Aircraft Type*	*Service Type*		*Fixed Price*
DC-4—AE & B Models	1		323.00.
	2		475.00.
	3	Equalized	1,543.75.
	5		10,925.00.
	6		11,875.00.
	7		11,162.50.
	8		21,375.00.
DC-6	1	Transit	451.25.
	2	Equalized	950.00.

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of maintenance policy in effect April 1, 1951, except that certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, are non-predictable and are to be billed as extras on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory

prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

ENGINE AND NACELLE OVERHAUL

II *Engine Type*	*Fixed Price*
R-2000	
Bare engine overhaul	$1,062.50.
Nacelle teardown and overhaul	425.00.
Nacelle buildup	127.50.
	$1,615.00.
R-2800-15	
Bare engine overhaul	$1,806.25.
Nacelle teardown and overhaul	573.75.
Nacelle buildup	191.25.
	$2,571.25.

Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

[fol. 1882] Material consumed in the work referred to above will be billed at the Latin American Division average

inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a mark-up to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

III COMPONENT OVERHAUL AND OTHER

Component Overhaul

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a flat price per individual component, including all elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from line stations, in accordance with the "Component Overhaul Price List" dated April 1, 1951, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth.

V LABOR RATES

The applicable labor rates referred to in this Exhibit F shall be as follows:

	Cost Per Man/Hour		
	Straight Time	Time and One half[1]	Double Time[1]
Aircraft Service Work Center	$4.75	$5.75	$6.75
Component Overhaul Work Center	$4.25	$5.25	$6.25

VI The applicable material rates referred to in this Exhibit F shall be as follows:

Freight Inventory Dissipation—1% Dr. of material billings Inventory Price

Variance Dissipation—¼ of 1% Cr. of material billings.

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft and radio engineering	$ 4.00 per hour
Laboratory research service	4.00 per hour
Laboratory fuel sample testing	12.50 per test
Flight and crew scheduling	450.00 per month
CAA specification handling	150.00 per month
Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14 1948 (as amended)
Other Services	Rates to be negotiated at time of request for service.

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951.

[fol. 1883]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 15

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 11

THIS AGREEMENT, made as of the 1st day of January, 1952, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "Panagra",

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by ten agreements designated Supplement No. 1 through Supplement No. 10, respectively, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, Panagra owns certain Douglas Model DC-6 aircraft, and both PAA and Panagra have on order Douglas Model DC-6B aircraft; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement with regard to flight equipment spare parts and assemblies for maintenance of DC-6 type aircraft as herein set forth;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

75. Paragraph 17(b) of the Through Flight Agreement is amended by adding the following at the end thereof:

"Notwithstanding the foregoing provisions of this Paragraph 17(b), it is agreed as follows with respect to certain of the flight equipment spare parts and assemblies for Douglas Model DC-6 or DC-6B aircraft (such aircraft being herein referred to collectively as "DC-6 type aircraft"):

(i) PAA and Panagra shall establish a joint inventory pool of flight equipment spare parts and assemblies for DC-6 type aircraft consisting of all such spare parts and assemblies owned by PAA

[fol. 1884] from time to time which shall be located at Miami or New York, other than engine parts, line station kits, seats, and such engine nacelles as are not interchangeable for use on aircraft of both parties. Said joint inventory pool will be maintained so long as both PAA and Panagra are operating in revenue service DC-6 type aircraft which are assigned for regular maintenance by PAA at Miami or New York, such aircraft so operated and assigned being hereinafter called "Assigned DC-6 Aircraft". PAA from time to time will acquire such additional flight equipment spare parts and assemblies as it deems appropriate for such inventory pool and will dispose of such items therein as it considers to be no longer required. For the purposes of said inventory pool, items will be classified by type of flight equipment on the basis of major usage in accordance with PAA's existing accounting practice. Transfers either into or out of the inventory pool will be made at PAA's net book value, i.e., recorded inventory cost, delivered at Miami or New York, as the case may be, less the related accumulated reserve for depreciation.

(ii) Panagra hereby sells and transfers to PAA as of January 1, 1952 its inventory of flight equipment spare parts and assemblies for DC-6 type aircraft, other than line station kits, aircraft seats and engine nacelles which are not interchangeable for use on aircraft of both parties. The purchase price thereof shall be net book value, i.e., the recorded inventory cost, delivered at Miami, less the accumulated reserve for depreciation at said date. The pur- [fol. 1885] chase price will be paid by crediting Panagra with the amount thereof against the deposit required as provided in subparagraph (iii) below.

(iii) Panagra shall deposit with PAA an amount to be determined in the manner hereinafter provided, which shall represent Panagra's share of the capital cost of said inventory pool. At the outset said deposit shall be an amount equal to the purchase price of the inventory sold by Panagra to PAA in accordance with subparagraph (ii) above. As of each of

the dates on which Panagra's two DC-6B aircraft now on order are, respectively, placed in revenue operation, said deposit will be increased by $175,000. As of April 1, 1953, or such other date as may be mutually agreed upon, as of the close of each calendar quarter thereafter, and as of each date on which the number of Assigned DC-6 Aircraft shall thereafter change, the amount of said deposit will be adjusted through the application of the following provisions and an appropriate cash payment will be made to reflect such adjustment. Each adjustment provided for above in the amount of said deposit shall be an adjustment to one of the following amounts, whichever shall be the lesser:

(a) An amount which bears the same ratio to the net book value of said inventory pool as the number of Panagra's Assigned DC-6 Aircraft at the time as of which such adjustment is made bears to the total number of Assigned DC-6 Aircraft at such time; or

(b) $175,000 (or such other amount as may be fixed as hereinafter provided) less the related [fol. 1886] amount of reserve for depreciation, multiplied by the number of Panagra's Assigned DC-6 Aircraft at such time. The related amount of reserve for depreciation to be deducted in accordance with this clause (b) shall be an amount which bears the same ratio to the total reserve for depreciation on all items in such joint inventory pool at such time as $175,000 (or such other amount as may be so fixed) bears to the total original inventory cost of the aggregate of all the items in said joint inventory pool at such time;

provided, however, that there shall be no adjustment in the amount of such deposit in connection with the decrease in the number of Assigned DC-6 Aircraft of either party unless such party shall withdraw a proportionate share of such joint inventory pool in connection with such decrease as provided in subparagraph (v) below. The parties agree to review

and adjust the $175,000 figure set forth in the preceding sentence, on a prospective basis, upon the request of either party; and, in the event the parties are unable to agree upon such figure on any such review, such figure shall be fixed prospectively as of the date such review is requested, by arbitration in accordance with Paragraph 25 hereof, it being understood that such figure is intended to represent an amount equal to approximately 15% of the selling price quoted at the time by the manufacturer for an aircraft similar to the DC-6B, fully equipped for flight.

(iv) Pending the placing of Panagra's first DC-6B aircraft in revenue operation, a monthly depreciation [fol. 1887] charge calculated on an inventory cost equal to the original cost to Panagra of the inventory of flight equipment spare parts and assemblies sold by Panagra to PAA in accordance with subparagraph (ii) above shall be assigned to Panagra, and the remainder of the monthly depreciation charge on the items in said joint inventory pool, after deducting the amount so assigned to Panagra, shall be assigned to PAA. During each month commencing with the first month following the placing in revenue operation of the first Panagra DC-6B aircraft and ending with March, 1953, or such other month as may be mutually agreed upon, the depreciation charge to Panagra shall be computed on the basis of an inventory of original cost of $175,000, multiplied by the number of Panagra's Assigned DC-6 Aircraft at the beginning of the month for which the depreciation is calculated. Commencing as of the termination of the period referred to in the preceding sentence, depreciation expense on said joint inventory pool will be charged in accordance with the provisions of Paragraph B. of Annex 2 of the Through Flight Agreement; provided, however, that the depreciation charge to Panagra for any month shall not exceed the depreciation calculated on an original investment in such flight equipment spare parts and assemblies in the amount of $175,000, or such other figure as

may be fixed in accordance with the last sentence of subparagraph (iii) above, multiplied by the number of Panagra's Assigned DC-6 Aircraft at the beginning of such month. For the purposes of the two preceding sentences, the number of Panagra's Assigned DC-6 Aircraft shall not be deemed to have been decreased at any time unless Panagra shall, in [fol. 1888] connection with such decrease, withdraw a proportionate share of said joint inventory pool as provided in subparagraph (v) below. For the purposes of Paragraph B. of Annex 2, the rate of issue out for the account of Panagra of items in said joint inventory pool shall be deemed not to have decreased as a result of any decrease in the number of Panagra's Assigned DC-6 Aircraft unless such rate shall actually decrease and Panagra shall, in connection with such decrease in number of Panagra's Assigned DC-6 Aircraft, so withdraw a proportionate share of said joint inventory pool.

(v) In the event that the number of the Assigned DC-6 Aircraft of either party is reduced, either through loss, transfer, sale, or otherwise, the party with respect to which such number is reduced shall have the option, to be exercised by notice in writing given to the other within thirty days after such reduction, of withdrawing a proportionate share of the items in said joint inventory pool, which share shall (a) comprise that number of each type of items in said joint inventory pool which bears approximately the same ratio to the total number of items of such type therein as the number by which the number of Assigned DC-6 Aircraft of such party is so reduced by such event bears to the total number of Assigned DC-6 Aircraft immediately prior to such reduction, and (b) have an aggregate net book value which bears the same ratio to the total net book value of all items in said joint inventory pool at the time of such reduction as is provided in the preceding clause (a). In the event the Through Flight Agreement [fol. 1889] shall terminate while said joint inventory pool is required to be maintained in accordance with

subparagraph (i) above, Panagra shall have the option, to be exercised by notice in writing given to PAA within thirty days after such termination, of withdrawing its proportionate share of the items in said joint inventory pool at the date of such termination, which share shall be determined as provided in the next preceding sentence. Any items of inventory withdrawn by Panagra pursuant to this subparagraph (v) shall be sold to Panagra at a price equal to net book value.

(vi) In the event the Through Flight Agreement terminates while said joint inventory pool is required to be maintained in accordance with subparagraph (i), or in the event said joint inventory pool is no longer required to be maintained in accordance with subparagraph (i) above, the deposit provided for in subparagraph (iii) above remaining at such time, if any, after any exercise of the options provided in subparagraph (v) above and after adjustment as provided in subparagraph (iii) shall either (a) be returned to Panagra if such event occurs after PAA has ceased accruing depreciation on the items in said joint inventory pool, or (b) be retained by PAA if such event occurs before PAA has ceased accruing depreciation on said items, and thereupon all options of Panagra to acquire any share of said inventory shall terminate.

[fol. 1890] (vii) In consideration of the deposit referred to in subparagraph (iii) above, no charge shall be made by PAA to Panagra for return on investment in the flight equipment spare parts and assemblies in such inventory pool. For the purpose of calculating the return on investment payable by PAA to Panagra provided for in accordance with the provision of Paragraph 17(a), the deposit established in accordance with subparagraph (iii) above shall be considered as investment of Panagra in flight equipment spare parts and assemblies for DC-6 type aircraft.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their officers thereunto duly authorized, on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ E. BALLUDER
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President &
General Manager

[fol. 1891]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 16

[Handwritten notation—1405:1 See Memo of 2 14 52 From JAM to VP Balluder]

THROUGH FLIGHT AGREEMENT—
SUPPLEMENT NO. 12

THIS AGREEMENT, made this 10th day of ~~February~~ April, 1952, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "PANAGRA",

WHEREAS, PAA and PANAGRA are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by eleven agreements designated Supplement No. 1 through Supplement No. 11, respectively, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

76. Effective as of October 1, 1951, the following table of rates is hereby substituted for the table of rates appearing in paragraph 72 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-4 aircraft	Cents per revenue mile flown with DC-6 aircraft
Return on Investment		
Working Capital	.44¢	.53¢
Miami Overhaul Base Facilities	.85¢	1.07
Flight Equipment Spare Parts and Assemblies	1.42	1.53

	Cents per revenue mile flown with DC-4 aircraft	Cents per revenue mile flown with DC-6 aircraft
Depreciation on Flight Equipment Spare Parts and Assemblies	4.73	1.66

77. Effective as of October 1, 1951, the following table of rates is hereby substituted for the table of rates appearing in paragraph 73 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-4 aircraft	Cents per revenue mile flown with DC-6 aircraft
Account 5100—Flying Operations other than Hull Insurance	6.34	5.41
—Hull Insurance	3.92	7.94
[fol. 1892]		
Account 5900—Depreciation	9.60	21.73
Accounts 6200 and 6300—Passenger Service	4.94	5.26
Indirect Costs	6.29	6.78
Return on Investment		
Working Capital	.50¢	.55¢
Other	2.48	16.50
Amortization DC-6 Development Costs	—	2.35

78. The official price lists referred to in paragraph 65 of the Through Flight Agreement relating to the third and fourth calendar quarters of the calendar year 1951 and the first calendar quarter of the calendar year 1952 are attached hereto, marked Exhibit G, July-September 1951; Exhibit H, October-December 1951 and Exhibit I January-March 1952, respectively, and made a part hereof, and are hereby accepted by PANAGRA.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized, on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.,

By .....
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.,

By .....
Vice President

[fol. 1893]

EXHIBIT G

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—JULY 1-SEPT. 30, 1951

AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*		*Fixed Price*
DC-4—AE & B Models	1		341.25
	2		455.00
	3	Equalized	1,592.50
	5		10,806.25
	6		11,557.00
	7		11,011.00
	8		18,200.00
DC-6	1	Transit	432.25
	2	Equalized	978.25
	6		12,285.00

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of maintenance policy in effect July 1, 1951, except that certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, as amended, are non-predictable and are to be billed as extras on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

ENGINE AND NACELLE OVERHAUL

II : *Engine Type*	*Fixed Price*
R-2000	
Bare engine overhaul	$1,050.00
Nacelle teardown and overhaul	420.00
Nacelle buildup	126.00
	$1,596.00

[fol. 1894]

R-2800-15	
Bare engine overhaul	$1,785.00
Nacelle Teardown and overhaul	567.00
Nacelle buildup	189.00
	$2,541.00

ENGINE AND NACELLE OVERHAUL

II

Power plant overhaul prices include the labor necessary to disassemble clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

COMPONENT OVERHAUL AND OTHER

III *Component Overhaul*

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a flat price per individual component, including all elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from line stations, in accordance with the "Component Overhaul Price List" dated July 1, 1951, as the same may be revised

from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

[fol. 1895] RATES

V The applicable labor rates referred to in this Exhibit G shall be as follows:

	Cost Per Man/Hour		
	Straight Time	Time and One half[1]	Double Time[1]
Aircraft Service Work Center	$4.55	$5.55	$6.55
Component Overhaul Work Center	4.20	5.20	6.20

VI The applicable material rates referred to in this Exhibit G shall be as follows:

Freight Inventory Dissipation—1¼% Dr. of material billings

Inventory Price Variance Dissipation—¼ of 1% Cr. of material billings.

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[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft and radio engineering	$ 4.00 per hour
Laboratory research service	4.00 per hour
Laboratory fuel sample testing	12.50 per test
Flight and crew scheduling	450.00 per month
CAA specification handling	150.00 per month
Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended)
Other Services	Rates to be negotiated at time of request for service.

[fol. 1896]

EXHIBIT H

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—OCT. 1—DEC. 31, 1951

AIRCRAFT SERVICES & OVERHAULS

I *Aircraft Type*	*Service Type*	*Fixed Price*
DC-4—AE & B Models	1	$ 361.
	2	468.
	3 (Equalized 3-4)	1,488.
	5	11,475.
	6	12,325.
	7	11,730.
	8	19,444.
DC-6	1 (Transit)	318.
	2 (Equalized 1-4)	978.
	6	11,475.

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of maintenance policy in effect October 1, 1951, except that certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, as amended, are non-predictable and are to be billed as extras on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory and a markup to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

ENGINE AND NACELLE OVERHAUL

II *Engine Type*	*Fixed Price*
R-2000	
Bare engine overhaul	$1,134.
Nacelle teardown and overhaul	420.
Nacelle buildup	126.
	$1,680.
R-2800-15	
Bare engine overhaul	$1,785.
Nacelle teardown and overhaul	567.
Nacelle buildup	189.
	$2,541.

[fol. 1897] ENGINE AND NACELLE OVERHAUL

II Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variances arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

COMPONENT OVERHAUL AND OTHER

III *Component Overhaul*

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a flat price per individual component, including all elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from line stations, in accordance with the "Component Overhaul Price List" dated October 1, 1951, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

V RATES

The applicable labor rates referred to in this Exhibit H shall be as follows:

	Cost per Man Hour		
	Straight Time	Time and One Half[1]	Double Time[1]
Aircraft Service Work Center	$4.25	$5.25	$6.25
Component Overhaul Work Center	4.20	5.20	6.20

[fol. 1898] VI The applicable material rates referred to in this Exhibit H shall be as follows:

Freight Inventory Dissipation—1¼% Dr. of material billings.

Inventory Price Variance Dissipation—¼ of 1% Dr. of material billings.

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft engineering	$ 4.50 per hour
Radio Engineering	4.00 per hour
Laboratory research service	4.50 per hour
Laboratory fuel sample testing	15.75 per test
Flight and crew scheduling	450.00 per month
CAA specification handling	150.00 per month

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other Services	Rates to be negotiated at time of request for service.

[fol. 1899]

EXHIBIT 1

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—JAN. 1-MAR. 31, 1952

AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-4—AE & B Models	1	$ 391.
	2	506.
	3 (Equalized 3-4)	1,610.
	5	12,420.
	6	13,340.
	7	12,696.
	8	21,045.
DC-6	1 (Transit)	345.
	2 (Equalized 1-4)	1,196.

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of maintenance policy in effect January 1, 1952, except that certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, as amended, are non-predictable and are to be billed as extras on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that

required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

ENGINE AND NACELLE OVERHAUL

II *Engine Type*	*Fixed Price*
R-2000	
Bare engine overhaul	$1,188.
Nacelle teardown and overhaul	440.
Nacelle buildup	132.
	$1,760.
R-2000-15	
Bare engine overhaul	$1,870.
Nacelle teardown and overhaul	594.
Nacelle buildup	198.
	$2,662.

[fol. 1900] ENGINE AND NACELLE OVERHAUL

II Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/

or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

COMPONENT OVERHAUL AND OTHER

III *Component Overhaul*

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a flat price per individual component, including all elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from line stations, in accordance with the "Component Overhaul Price List", dated January 1, 1952, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$ 176.
DC-6	198.

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rate as hereinafter set forth for each man/hour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed [fol: 1901] at actual man/hours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

V RATES

The applicable labor rates referred to in this Exhibit I shall be as follows:

	Cost per Man/Hour		
	Straight Time	Time and One Half[1]	Double Time[1]
Aircraft Service Work Center	$4.60	$5.60	$6.60
Component Overhaul Work Center	4.40	5.40	6.40

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

VI The applicable material mates referred to in this Exhibit I shall be as follows:

Freight Inventory Dissipation—1¼ Dr. of material billings.

Inventory Price Variance Dissipation—¼ of 1% Dr. of material billings.

VII. The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 4.50 per hour
Radio Engineering	4.00 per hour
Laboratory research service	4.50 per hour
Laboratory fuel sample testing	15.75 per test
Flight and crew scheduling	450.00 ~~700.00~~ per month
CAA specification handling	150.00 per month
Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other Services	Rates to be negotiated at time of request for service.

[fol. 1902]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 17

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THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 13

THIS AGREEMENT, made this 25th day of September, 1952, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA," and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "PANAGRA",

WHEREAS, PAA and PANAGRA are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by twelve agreements designated Supplement No. 1 through Supplement No. 12, respectively, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

79. The following schedule of rates for charges to Panagra pursuant to paragraph 8 of the Through Flight Agreement for training is hereby substituted for the schedule of rates set forth in paragraph 61, effective as of April 1, 1952:

School	*Associated and Affiliated Companies*	
Miami—Ground Training	$1.7989	(Dollars per hour)
Miami—Link	10.5502	
Miami—Pilot	23.5611	

Aircraft Type	*Hourly*
DC-3	66.5383
DC-4	156.0552
CV-240	243.7815
C-46	123.7071

The flight training charges per hour hereunder shall be the sum of the school rate and the aircraft rate for the type aircraft used.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized, on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ K. A. LAWDER
Vice President

[fol. 1903]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 18

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 14

THIS AGREEMENT, made this 8th day of May, 1953, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "PANAGRA",

WHEREAS, PAA and PANAGRA are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by thirteen agreements designated Supplement No. 1 through Supplement No. 13, respectively, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

80. Effective as of April 1, 1952, the following table of rates is hereby substituted for the table of rates appearing in paragraph 76 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-4 aircraft	Cents per revenue mile flown with DC-6 or DC-6B aircraft
Return on Investment Working Capital	.44¢	.74¢
Miami Overhaul Base Facilities	.85¢	1.13
Flight Equipment Spare Parts and Assemblies (R-2800 only)	1.42	1.21
Depreciation on Flight Equipment Spare Parts and Assemblies	4.73	1.11

The above rates with respect to DC-4 aircraft are applicable only to and including April 30, 1952 at which date scheduled operations with DC-4 equipment under the Through Flight Agreement were terminated.

81. Effective as of October 1, 1952, the following table of rates is hereby substituted for the table of rates appearing in paragraph 80 of the Through Flight Agreement:

[fol. 1904]

	Cents per revenue mile flown with DC-6 Aircraft	Cents per revenue mile flown with DC-6B Aircraft
Return on Investment Working Capital	.75¢	.75¢
Miami Overhaul Base Facilities	.89¢	.89¢
Flight Equipment Spare Parts and Assemblies	.81¢	.81¢
Depreciation on Flight Equipment Spare Parts and Assemblies	.82¢	.82¢

82. Effective as of April 1, 1952, the following table of rates is hereby substituted for the table of rates appearing in paragraph 77 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-4 aircraft	Cents per revenue mile flown with DC-6 aircraft	Cents per revenue mile flown with DC-6B aircraft
Account 5100—Flying Operations other than Hull	8.93	7.00	7.07
Insurance —Hull Insurance	4.00	8.00	7.56
Account 5900—Depreciation	5.65	23.76	28.09
Accounts 6200 and 6300—Passenger Service Indirect Costs	6.32	6.91	7.15
	8.39	8.68	10.74
Return on Investment Working Capital	.57¢	.62¢	.66¢
Other	3.13	15.36	33.99
Amortization DC-6 Development Costs	—	2.12	—

The above rates with respect to DC-4 aircraft are applicable only to and including, April 30, 1952, at which date scheduled operations with DC-4 equipment under the Through Flight Agreement were terminated.

83. Effective as of October 1, 1952, the following table of rates is hereby substituted for the table of rates appearing in paragraph 82 of the Through Flight Agreement:

[fol. 1905]

	Cents per revenue mile flown with DC-6 aircraft	Cents per revenue mile flown with DC-6B aircraft
Account 5100—Flying Operations other than Hull Insurance	7.00	7.07
—Hull Insurance	7.50	7.08
Account 5900—Depreciation	24.47	29.48
Accounts 6200 and 6300—Passenger Service	6.91	7.15
Indirect Costs	7.83	9.69
Return on Investment—Working Capital	.61¢	.64¢
Other	13.93	36.88
Amortization DC-6 Development Costs	.91¢	—

84. The official price lists referred to in paragraph 65 of the Through Flight Agreement relating to the second, third and fourth calendar quarters of the calendar year 1952 and the first calendar quarter of the calendar year 1953 are attached hereto, marked Exhibit J, April-June 1952, Exhibit K, July-September 1952, Exhibit L, October-December 1952 and Exhibit M, January-March 1953, respectively, and made a part hereof, and are hereby accepted by PANAGRA.

85. Effective May 1, 1952, the prices set forth in Exhibits J, K, L and M for maintenance and overhaul of Panagra's DC-4 aircraft will be subject to a surcharge of 10.55% of the total price as otherwise determined in ac-

cordance with the provisions of the applicable Exhibits to cover the amounts payable under paragraphs B and C of Annex 2 to the Through Flight Agreement in respect of maintenance of DC-4 aircraft.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized, on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ ALVIN P. ADAMS
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ K. A. LAWDER
Vice President

[fol. 1906]

EXHIBIT J

PAN AMERICAN WORLD AIRWAYS, INC.
OFFICIAL PRICE LIST—APRIL 1-JUNE 30, 1952
AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-4—AE & B Models	1	$ 412.
	2	728.
	3 (Equalized 3-5	1,698.
	5	16,733.
	6	17,703.
	7	16,878.
	8	25,220.
DC-6	1 (Transit) Excluding engine or	412.
	2 (Equalized 1-4)) supercharger change	1,334.
	Engine change	146.
	Supercharger change	78.

The above prices for aircraft services include the labor necessary to perform all routine and inspection items con-

tained in aircraft service work forms and declarations of maintenance policy in effect April 1, 1952, except that certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, as amended, are non-predictable and are to be billed as extras on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

ENGINE AND NACELLE OVERHAUL

II *Engine Type*	*Fixed Price*
R-2000	
Bare engine overhaul when part of power package overhaul	$1,202.
Bare engine overhaul when not part of power package overhaul	1,291.
Nacelle teardown and overhaul—Routine	445.
Nacelle buildup	134.
R-2800-15	
Bare engine overhaul when part of power package overhaul	$1,891.
Bare engine overhaul when not part of power package overhaul	1,891.
Nacelle teardown and overhaul—Routine	601.
Nacelle buildup	245.

[fol. 1907] ENGINE AND NACELLE OVERHAUL

II Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

COMPONENT OVERHAUL AND OTHER

III *Component Overhaul*

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a flat price per individual component, including all elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from line stations, in accordance with the "Component Overhaul Price List" dated April 1, 1952, as the same may be revised for time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$ 178
DC-6	$ 200

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rate as hereinafter set forth for each man/hour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual man/hours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

[fol. 1908]

V RATES

The applicable labor rates referred to in this Exhibit J shall be as follows:

	Cost per Man Hour		
	Straight Time	Time and one Half	Double Time
Aircraft Service Work Center	$4.85	$5.85	$6.85
Component Overhaul Work Center	4.45	5.45	6.45

VI The applicable material rates referred to in this Exhibit J shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 4.50 per hour
Radio Engineering	4.00 per hour
Laboratory research service	4.50 per hour
Laboratory fuel sample testing	15.75 per test
Flight and crew scheduling	450.00 per month
CAA specification handling	150.00 per month
Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other Services	Rates to be negotiated at time of request for service.

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

[fol. 1909]

EXHIBIT K

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST JULY 1-SEPT. 30, 1952

AIRCRAFT SERVICES & OVERHAULS

I	*Aircraft Type*	*Service Type*	*Fixed Price*
	DC-4—AE & B Models	All Services	Flat rate per actual Man Hours expended
	DC-6	All Services	Flat rate per actual Man Hours expended

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations and of maintenance policy in effect July 1, 1952, xxxxxxx certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, as amended, xxxxxxx and are to be billed xxxxxxx the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami a[illegible] a markup to cover price variance arising from avera[illegible] inventory pricing procedure, both computed at the applicable material rates, as hereinaf[illegible]r set forth.

[Changes in first paragraph initialed by KAL and BALL.]

ENGINE AND NACELLE OVERHAUL

II *Engine Type*	*Fixed Price*
R-2000	
Bare engine overhaul when part of power package overhaul	$1,202
Bare engine overhaul when not part of power package overhaul	1,291
Nacelle teardown and overhaul—Routine	445
Nacelle buildup	134
R-2800-15	
Bare engine overhaul when part of power package overhaul	$1,891
Bare engine overhaul when not part of power package overhaul	1,891
Nacelle teardown and overhaul—Routine	601
Nacelle buildup	245

[fol. 1910] Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each mna/hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

COMPONENT OVERHAUL AND OTHER

FII *Component Overhaul*

All flight equipment accessories classified as components in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a flat price per individual component, including all elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line stations, in accordance with the "Component Overhaul Price List" dated April 1, 1952, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$178
DC-6	$200

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rate as hereinafter set forth for each man/hour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual man/hours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price vari-

ance markups at the applicable material rates, as hereinafter set forth.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

[fol. 1911]

V RATES

The applicable labor rates referred to in this Exhibit K shall be as follows:

	Cost per Man Hour		
	Straight Time	Time and one Half[1]	Double Time[1]
Aircraft Service Work Center	$4.95	$5.95	$6.95
Component Overhaul Work Center	4.45	5.45	6.45

VI The applicable material rates referred to in this Exhibit K shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

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[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 date March 1, 1951, as amended from time to time.

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 4.50 per hour
Radio Engineering	4.00 per hour
Laboratory research service	4.50 per hour
Laboratory fuel sample testing	15.75 per test
Flight and crew scheduling	450.00 per month
CAA specification handling	150.00 per month
Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other Services	Rates to be negotiated at time of request for service.

[fol. 1912]

EXHIBIT L

PAN AMERICAN WORLD AIRWAYS, INC.
OFFICIAL PRICE LIST Oct. 1-DEC. 31, 1952
AIRCRAFT SERVICES & OVERHAULS

I *Aircraft Type*	*Service Type*	*Fixed Price*
DC-4—AE & B Models	All Services	Flat rate per actual Man Hours expended
DC-6	All Services	Flat rate per actual Man Hours expended

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of and maintenance policy in effect October 1, 1952, xxxxxx certain specific types of aircraft work as stated in "Stand-

[Changes in first paragraph initialed by KAL and BALL.]

ard Control Procedure" #13611 dated January 1, 1950, as amended, xxxxxxxxxxxxxxxxxx and are to be billed xxxx xxxx on the basis of actual man hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

ENGINE AND NACELLE OVERHAUL

11 *Engine Type*	*Fixed Price*
R-2000	
Bare engine overhaul when part of power package overhaul	$ 1,313
Bare engine overhaul when not part of power package overhaul	1,402
Nacelle teardown and overhaul—Routine	445
Nacelle buildup	134
R-2800-15	
Bare engine overhaul when part of power package overhaul	$ 1,891
Bare engine overhaul when not part of power package overhaul	1,891
Nacelle teardown and overhaul—Routine	601
Nacelle buildup	245

[fol. 1913] ENGINE AND NACELLE OVERHAUL

II Power plant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each/man hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

COMPONENT OVERHAUL AND OTHER

III *Component Overhaul*

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a flat price per individual component, including all elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line Stations, in accordance with the "Component Overhaul Price List" dated July 1, 1952, as supplemented by revision lists dated October 1, 1952 and, as the same may be revised

from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul *Propeller Type*	*Fixed Price*
DC-4	$ 178
DC-6	$ 227

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rate as hereinafter set forth for each man/hour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual man/hours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

[fol. 1914]

V RATES

The applicable labor rates referred to in this Exhibit L shall be as follows:

	Cost per Man Hour		
	Straight Time	Time and one half[1]	Double Time[1]
Aircraft Service			
Work Center	$ 5.00	$ 6.00	$ 7.00
Component Overhaul			
Work Center	4.45	5.45	6.45

VI The applicable material rates referred to in this Exhibit L shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 4.50 per hour
Radio Engineering	4.00 per hour
Laboratory research service	4.50 per hour
Laboratory fuel sample testing	18.20 per test
Flight and crew scheduling	450.00 per month
CAA specification handling	150.00 per month
Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other Services	Rates to be negotiated at time of request for service.

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

[fol. 1915]

EXHIBIT M

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST JAN. 1-MAR. 31, 1953

AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-4—AE & B Models	All Services	Flat rate per actual Man Hours expended
DC-6	All Services	Flat rate per actual Man Hours expended

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of and maintenance policy in effect January 1, 1953, xxxxxxxx certain specific types of aircraft work as stated in "Standard Control Procedure" =136-11 dated January 1, 1950, as amended, xxxxxxxxxxxxxx and are to be billed xxxxxxx on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory

[Changes in first paragraph initialed by KAL and BALL.]

prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

ENGINE AND NACELLE OVERHAUL

II *Engine Type*	*Fixed Price*
R-2000	
Bare engine overhaul when part of power package overhaul	$1,524
Bare engine overhaul when not part of power package overhaul	1,593
Nacelle teardown and overhaul—Routine	455
Nacelle buildup	137
R-2800-16	
Bare Engine overhaul when part of power package overhaul	$1,934
Bare engine overhaul when not part of power package overhaul	1,934
Nacelle teardown and overhaul—Routine	614
Nacelle buildup	250

[fol. 1916] ENGINE AND NACELLE OVERHAUL

II Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

COMPONENT OVERHAUL AND OTHER

III *Component Overhaul*

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component, including the elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line Stations in accordance with the "Component Overhaul Price List", dated January 1, 1953, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$182
DC-6	232

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated,

at the applicable labor rate as hereinafter set forth for each man/hour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual man/hours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

[fol. 1917]

V RATES

The applicable labor rates referred to in this Exhibit M shall be as follows:

	Cost per Man Hour		
	Straight Time	Time and one half[1]	Double Time[1]
Aircraft Service Work Center	$5.15	$6.15	$7.15
Component Overhaul Work Center	4.55	5.55	6.55

VI The applicable material rates referred to in this Exhibit M shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

---

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 4.50 per hour
Radio Engineering	4.00 per hour
Laboratory research service	4.50 per hour
Laboratory fuel sample testing	18.20 per test
Flight and crew scheduling	450.00 per month
CAA specification handling	150.00 per month
Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other Services	Rates to be negotiated at time of request for service.

[fol. 1918]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 19

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 15

THIS AGREEMENT, made this 20th day of January, 1954, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "PANAGRA",

WHEREAS, PAA and PANAGRA are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by fourteen agreements designated Supplement No. 1 through Supplement No. 14, respectively, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

86. Effective as of April 1, 1953, the following table of rates is hereby substituted for the table of rates appearing in paragraph 81 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-6 type aircraft
Return on Investment Working Capital	.71¢
Miami Overhaul Base Facilities	1.16
Flight Equipment Spare Parts and Assemblies (R-2800 engine parts only)	.70¢
Depreciation on Flight Equipment Spare Parts and Assemblies (R-2800 engine parts only)	.66¢

87. Effective as of October 1, 1953, the following table of rates is hereby substituted for the table of rates appearing in paragraph 86 of the Through Flight Agreement:
[fol. 1919]

	Cents per revenue mile flown with DC-6 type aircraft
Return on Investment Working Capital	.72¢
Miami Overhaul Base Facilities	1.07
Flight Equipment Spare Parts and Assemblies (R-2800 engine parts only)	.58¢
Depreciation on Flight Equipment Spare Parts and Assemblies (R-2800 engine parts only)	.60¢

88. Effective as of April 1, 1953, the following table of rates is hereby substituted for the table of rates appearing in paragraph 83 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-6 aircraft	Cents per revenue mile flown with DC-6B aircraft
Account 5100—Flying Operations other than Hull Insurance	7.60	7.83
—Hull Insurance	7.12	6.41
Account 5900—Depreciation	23.84	26.61
Accounts 6200 and 6300—Passenger Service	6.47	6.94
Indirect Costs	8.30	10.30
Return on Investment Working Capital	.61¢	.67¢
Other	13.10	36.01

89. Effective as of October 1, 1953, the following table of rates is hereby substituted for the table of rates appearing in paragraph 88 of the Through Flight Agreement:

[fol. 1920]

	Cents per revenue mile flown with DC-6 aircraft	Cents per revenue mile flown with DC-6B aircraft
Account 5100—Flying Operations other than Hull Insurance	7.61	8.02
—Hull Insurance	7.12	6.41
Account 5900—Depreciation	24.57	27.61
Accounts 6200 and 6300—Passenger Service	6.63	7.12
Indirect Costs	8.30	10.30
Return on Investment—Working Capital	.62¢	.66¢
Other	10.42	31.87

90. The official price lists referred to in paragraph 65 of the Through Flight Agreement relating to the second, third and fourth calendar quarters of the calendar year 1953 and the first calendar quarter of the calendar year 1954 are attached hereto, marked Exhibit N, April-June 1953, Exhibit O, July-September 1953, Exhibit P, October-December 1953 and Exhibit Q, January-March 1954, respectively, and made a part hereof, and are hereby accepted by PANAGRA.

91. As provided in Exhibits N, O, P and Q, the prices set forth therein for maintenance and overhaul of Panagra's DC-4 aircraft will be subject to a surcharge of 10.55% of the total price as otherwise determined in accordance with the provisions of the applicable Exhibits to cover the amounts payable under paragraphs B and C of Annex 2 to the Through Flight Agreement in respect of maintenance of DC-4 aircraft.

92. Effective as of April 1, 1953 the following table of rates shall be established as the monthly depreciation charge on the joint DC-6 FESPA inventory pool for the period April 1, 1953 through March 31, 1954 as contemplated under sub-paragraph (iv) of paragraph 75:

April through June 1953	$6,940 per month
July through September 1953	$8,675 per month
October through December 1953	$7,868 per month
January through March 1954	$7,868 per month

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly [fol. 1921] authorized, on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ E. BALLUDER
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ K. A. LAWDER
Vice-President

[fol. 1922]

EXHIBIT N

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST APRIL 1-JUNE 30, 1953

AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-4—AE & B Models	All Services	Flat rate per actual Man Hours expended
DC-6	All Services	Flat rate per actual Man Hours expended

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of maintenance policy in effect April 1, 1953,/ xxxxxxxxxx certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, as amended, xxxxxxxxxx and are to be billed xxxxxxxxxx on the basis of actual man/hours of direct labor expended multiplied by the applicable labor rate per man/hour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man/hour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory

[Changes in first paragraph initialed by KAL and BALL.]

at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

ENGINE AND NACELLE OVERHAUL

II *Engine Type*	*Fixed Price*
R-2000	
Bare engine overhaul when part of power package overhaul	$1,558
Bare engine overhaul when not part of power package overhaul	1,628
Nacelle teardown and overhaul— Routine	465
Nacelle buildup	140
R-2800-16	
Bare engine overhaul when part of power package overhaul	$1,976
Bare engine overhaul when not part of power package overhaul	1,976
Nacelle teardown and overhaul— Routine	628
Nacelle buildup	256

[fol. 1923] II ENGINE AND NACELLE OVERHAUL

Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory

prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

COMPONENT OVERHAUL AND OTHER

III *Component Overhaul*

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component, including the elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line Stations, in accordance with the "Component Overhaul Price List" dated April 1, 1953, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$209
DC-6	237

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rate as hereinafter set forth for each man/hour of direct labor utilized. Propeller repair

work when not forming part of a normal overhaul will be billed at actual man/hours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per man/hour for each man/hour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

[fol. 1924]

V RATES

The applicable labor rates referred to in this Exhibit N shall be as follows:

	Cost per Man Hour		
	Straight Time	Time and one half[1]	Double Time[1]
Aircraft Service Work Center	$5.25	$6.25	$7.25
Component Overhaul Work Center	4.65	5.65	6.65

VI The applicable material rates referred to in this Exhibit N shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

Aircraft Engineering	$ 5.00 per hour
Radio Engineering	4.50 " "
Laboratory research service	5.35 " "
Laboratory fuel sample testing	21.40 per test
Flight and crew scheduling	450.00 per month
CAA specification handling	150.00 " "
Services of Supply Dept. services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended)
Other Services	Rates to be negotiated at time of request for service

All DC-4 maintenance billings will be increased by 10.55% in accordance with the agreed upon revision to the Panagra Through Flight Agreement as detailed in letter of March 18, 1953 from the Treasurer to Executive Vice President Morrison.

[fol. 1925]

EXHIBIT O

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST JULY-SEPT. 30, 1953

AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-4—AE & B Models	All Services	Flat rate per actual Man Hours expended
DC-6 & DC-6B	All Services	Flat rate per actual Man Hours expended

The above prices for aircraft services include the labor necessary to perform all routine and inspection items contained in aircraft service work forms and declarations of and maintenance policy in effect July 1, 1953,/ xxxxxxx certain specific types of aircraft work as stated in "Standard Control Procedure" #136-11 dated January 1, 1950, as amended, xxxxxxxxxx and are to be billed xxxxxx on the basis of actual manhours of direct labor expended multiplied by the applicable labor rate per manhour, as hereinafter set forth. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine service or overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each manhour of direct labor utilized. The cost of overhauling aircraft or engine accessories removed during the above numbered services are not included in the above prices.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

ENGINE AND NACELLE OVERHAUL

II *Engine Type*	*Fixed Price*
R-2000	
Bare engine overhaul when part of power package overhaul	$1,558
Bare engine overhaul when not part of power package overhaul	1,628
Nacelle teardown and overhaul— Routine	465
Nacelle buildup	140

[Changes in first paragraph initialed by KAL and BALL.]

Engine Type	*Fixed Price*
R-2800-17	
Bare engine overhaul when part of power package overhaul	$1,976
Bare engine overhaul when not part of power package overhaul	1,976
Nacelle teardown and overhaul— Routine	628
Nacelle buildup	256

[fol. 1926] II ENGINE AND NACELLE OVERHAUL

Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth, for each man hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each man/hour of direct labor utilized.

COMPONENT OVERHAUL AND OTHER

III *Component Overhaul*

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price

per individual component, including the elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line Stations, in accordance with the "Component Overhaul Price List" dated July 1, 1953, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$209
DC-6 & DC-6B	237

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rate as hereinafter set forth for each manhour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual manhours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

[fol. 1927]

V RATES

The applicable labor rates referred to in this Exhibit O shall be as follows:

	Straight Time	Time and one half	Double Time
Aircraft Service Work Center	$5.45	$6.45	$7.45[1]
Component Overhaul Work Center	4.65	5.65	6.65

VI The applicable material rates referred to in this Exhibit O shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—¼ of 1% Dr. of material billings.

VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 5.00 per hour
Radio Engineering	4.50 " "
Laboratory Research Service	5.35 " "
Laboratory Fuel Sample Testing	21.40 per test
Flight and Crew Scheduling	450.00 per month
CAA Specification Handling	150.00 " "
Services of Supply Dept. Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended)
Other Services	Rates to be negotiated at time of request for service.

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

All DC-4 maintenance billings will be increased by 10.55% in accordance with the agreed upon revision to the Panagra Through Flight Agreement as detailed in letter of March 18, 1953 from the Treasurer to Executive Vice President Morrison.

[fol. 1928]

EXHIBIT P

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST OCT. 1-DEC. 31, 1953

AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-4—AE & B Models	All Services	applicable labor Flat/rate per actual Man Hours expended
DC-6 & DC-6B	All Services	applicable labor Flat/rate per actual Man Hours expended

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth. [The cost of overhauling aircraft or engine accessories removed during the above-numbered services are not included in the above prices.]

[Changes in "Fixed Price" column and bracketed matter initialled by KAL and BALL.]

ENGINE AND NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare Engine overhaul when part of power package overhaul	$1,568
Bare Engine overhaul when not part of power package overhaul	1,662
Nacelle teardown and overhaul—routine	475
Nacelle overhaul—4000 hour time limit	475
Nacelle buildup	166
R-2800-17	
Bare Engine overhaul when part of power package overhaul	$2,090
Bare Engine overhaul when not part of power package overhaul	2,090
Nacelle teardown and overhaul—routine	546
Nacelle overhaul—4000 hour time limit	689
Nacelle buildup	261

Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each man hour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory

prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each manhour of direct labor utilized.

[fol. 1929]

COMPONENT OVERHAUL AND OTHER

III *Component Overhaul*

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component, including the elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line Stations, in accordance with the "Component Overhaul Price List" dated October 1, 1953, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$238
DC-6 & DC-6B	261

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rate as hereinafter set forth for each man-

hour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual manhours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

V RATES

The applicable labor rates referred to in this Exhibit P shall be as follows:

	Straight Time	Time and one half[1]	Double Time[1]
Aircraft Service Work Center	$5.55	$6.55	$7.55
Component Overhaul Work Center	4.75	5.75	6.75

VI The applicable material rates referred to in this Exhibit P shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.
Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

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[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

[fol. 1930] VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 5.00 per hour
Radio Engineering	4.50 " "
Laboratory Research Service	5.35 " "
Laboratory Fuel Sample Testing	21.40 per test
Flight and Crew Scheduling	450.00 per month
CAA Specification Handling	150.00 " "
Services of Supply Dept. Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended)
Other Services	Rates to be negotiated at time of request for service.

All DC-4 maintenance billings will be increased by 10.55% in accordance with the agreed upon revision to the Panagra Through Flight Agreement as detailed in letter of March 18, 1953 from the Treasurer to Executive Vice President Morrison.

[fol. 1931]

EXHIBIT Q

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST JAN. 1-MAR. 31, 1954

AIRCRAFT SERVICES & OVERHAULS

I *Aircraft Type*	*Service Type*	*Fixed Price*
DC-4—AE & B Models	All Services	applicable labor Flat/rate per actual Man Hours expended
DC-6 & DC-6B	All Services	applicable labor Flat/rate per actual Man Hours expended

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth. [The cost of overhauling aircraft or engine accessories removed during the above-numbered services are not included in the above prices.]

ENGINE AND NACELLE OVERHAUL

II *Engine Type*	*Fixed Price*
R-2000	
Bare Engine overhaul when part of power package overhaul	$1,625
Bare Engine overhaul when not part of power package overhaul	1,700
Nacelle teardown and overhaul—Routine	450
Nacelle overhaul—Major	500
Nacelle buildup	175

[Changes in "Fixed Price" column and bracketed matter initialled by KAL and BALL.]

Engine Type	*Fixed Price*
R 2800-17	
Bare Engine overhaul when part of power package overhaul	$2,200
Bare Engine overhaul when not part of power package overhaul	2,200
Nacelle teardown and overhaul—Routine	550
Nacelle overhaul—Major	725
Nacelle buildup	275

Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machinery and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each manhour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a markup to cover freight delivery cost of inventory at Miami and a markup to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair work, as distinguished from overhaul, will be billed at the applicable labor rates for each manhour of direct labor utilized.

Major changes in procedure and or tolerances occurring within the quarter are considered cause for adjusting the fixed manhours.

[fol. 1932]

COMPONENT OVERHAUL AND OTHER

III *Component Overhaul*

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component, including the elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line Stations, in accordance with the "Component Overhaul Price List" dated January 1, 1954, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$250
DC-6 & DC-6B	300

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rate as hereinafter set forth for each manhour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual manhours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

Major changes in procedures and/or tolerances occurring within the quarter are considered cause for adjusting the fixed manhours.

IV *Other*

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance markups at the applicable material rates, as hereinafter set forth.

V RATES

The applicable labor rates referred to in this Exhibit Q shall be as follows:

	Straight Time	Time and one half[1]	Double Time[1]
Aircraft Service			
Work Center	$5.65	$6.65	$7.65
Component Overhaul			
Work Center	5.00	6.00	7.00

VI The applicable material rates referred to in this Exhibit Q shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

[fol. 1933] VII The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 5.00	per hour
Radio Engineering	4.75	" "
Laboratory Research Service	5.35	" "
Laboratory Fuel & Oil		
Sample Testing	21.40	per test
Flight and Crew Scheduling	450.00	per month
CAA Specification Handling	150.00	per month

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

Services of Supply Dept. Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended)
Other Services	Rates to be negotiated at time of request for service

All DC-4 maintenance billings will be increased by 10.55% in accordance with the agreed upon revision to the Panagra Through Flight Agreement as detailed in letter of March 18, 1953 from the Treasurer to Executive Vice President Morrison.

[fol. 1934]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 20

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 16

THIS AGREEMENT, made this 29th day of June, 1954, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "PANAGRA",

WHEREAS, PAA and PANAGRA are parties to a certain agreement dated July 30, 1946, which agreement has been supplemented and amended by fifteen agreements designated Supplement No. 1 through Supplement No. 15, respectively, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

93. The monthly depreciation charge on the joint DC-6 FESPA inventory pool for the period April 1, 1954 through

June 30, 1954 as contemplated under sub-paragraph (iv) of paragraph 75, shall be Seven Thousand Seven Hundred and Fifty Two ($7,752) Dollars per month.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ (Illegible)
Treasurer

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ K. A. LAWDER
Vice President

[fol. 1935]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 21

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 17

THIS AGREEMENT, made this 7th day of September 1955, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "PANAGRA",

WHEREAS, PAA and PANAGRA are parties to a certain agreement dated July 30, 1946, as supplemented and amended, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

94. Effective as of April 1, 1954, the following table of rates is hereby substituted for the table of rates appearing in paragraph 87 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-6 type aircraft
Return on Investment Working Capital	.76¢
Miami Overhaul Base Facilities	1.26
Flight Equipment Spare Parts and Assemblies (R-2800 engine parts only)	.90¢
Depreciation on Flight Equipment Spare Parts and Assemblies (R-2800 engine parts only)	.75¢

95. Effective as of October 1, 1954, the following table of rates is hereby substituted for the table of rates appearing in paragraph 94 of the Through Flight Agreement:

[fol. 1936]

	Cents per revenue mile flown with DC-6 type aircraft
Return on Investment Working Capital	.66¢
Miami Overhaul Base Facilities	1.08
Flight Equipment Spare Parts and Assemblies (R-2800 engine parts only)	.66¢
Depreciation on Flight Equipment Spare Parts and Assemblies (R-2800 engine parts only)	.64¢

96. Effective as of April 1, 1954, the following table of rates is hereby substituted for the table of rates appearing in paragraph 89 of the Through Flight Agreement:

	Cents per revenue mile flown with DC-6 type aircraft
Account 5100— Flying Operations other than flight crew salaries and Hull Insurance	7.50
—Hull Insurance	5.85
Account 5900— Depreciation	19.85
Accounts 6200 and 6300— Passenger Service	6.96
Indirect Costs	8.77
Return on Investment	
Working Capital	.63¢
Other	24.69

97. Effective as of October 1, 1954, the following table of rates is hereby substituted for the table of rates appearing in paragraph 96 of the Through Flight Agreement:

[fol. 1937]

	Cents per revenue mile flown with DC-6 type aircraft
Account 5100— Flying Operations other than flight crew salaries and Hull Insurance	8.80
—Hull Insurance	5.09
Account 5900— Depreciation	16.95
Accounts 6200 and 6300— Passenger Service	7.44
Indirect Costs	8.36
Return on Investment	
Working Capital	.62¢
Other	22.79

98. The official price lists referred to in paragraph 65 of the Through Flight Agreement relating to the second, third and fourth calendar quarters of the calendar year 1954 and the first and second calendar quarters of the calendar year 1955 are attached hereto, marked Exhibit R, April-June, 1954, Exhibit S, July-September, 1954, Exhibit T, October-December, 1954, Exhibit U, January-March, 1955, and Exhibit V, April-June, 1955, respectively, and made a part hereof, and are hereby accepted by PAN-AGRA.

99. The prices set forth in the Exhibits for maintenance and overhaul of Panagra's DC-4 aircraft, and engines, propellers and components therefore, will, effective as of April 1, 1954 and thereafter until the parties shall otherwise agree in writing, be subject to a surcharge of 6% of the total price as otherwise determined in accordance with the provisions of the applicable Exhibits to cover the amounts payable under paragraphs B and C of Annex 2 to the Through Flight Agreement in respect of maintenance of DC-4 aircraft.

100. Effective as of July 1, 1954 the following table of rates shall be established as the monthly depreciation charge on the joint DC-6 FESPA inventory pool for the period July 1, 1954 through March 31, 1955 as contemplated under sub-paragraph (iv) of paragraph 75:

[fol. 1938]

July through September 1954	$5,560 per month
October through December 1954	$5,706 per month
January through March 1955	$5,706 per month

101. (a) The following schedule of rates for charges to Panagra pursuant to paragraph 8 of the Through Flight Agreement for training is hereby substituted for the schedule of rates set forth in paragraph 79, effective as of January 1, 1954:

School	*Dollars Per Hour*
Miami—Ground Training	$ 3.00
Miami—Link	20.00
Miami—Pilot	42.00

Aircraft Type	*Hourly*
DC-3	$ 68.00
DC-4	135.00
DC-6B	371.00
CV-240	222.00
L-49	336.00

The flight training charges per hour hereunder shall be the sum of the school rate and the aircraft rate for the type aircraft used.

(b) The following schedule of rates for charges to Panagra pursuant to paragraph 8 of the Through Flight Agreement for training is hereby substituted for the schedule of rates set forth in subparagraph (a) of this paragraph 101, effective as of July 1, 1954:

School	*Dollars Per Hour*
Miami—Ground Training	$ 6.00
Miami—Link	20.00
Miami—Pilot	42.00

Aircraft Type	*Hourly*
DC-3	$ 68.00
DC-4	135.00
DC-6B	371.00
CV-240	222.00
L-49	336.00

The flight training charges per hour hereunder shall be the sum of the school rate and the aircraft rate for the type aircraft used.

(c) The following schedule of rates for charges to Panagra pursuant to paragraph 8 of the Through Flight Agreement for training is hereby substituted for the schedule of rates set forth in subparagraph (b) of this paragraph 101, effective as of January 1, 1955:

[fol. 1939]

School	*Dollars Per Hour*
Miami—Ground Training	$ 8.00
Miami—Link	14.00
Miami—Pilot	48.00

Aircraft Type	*Hourly*
DC-3	$ 79.00
DC-4	144.00
DC-6A	360.00
DC-6B	376.00
CV-340	211.00
L-49	341.00

The flight training charges per hour hereunder shall be the sum of the school rate and the aircraft rate for the type aircraft used.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ E. BALLUDER
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ K. A. LAWDER
Vice President

[fol. 1940]

EXHIBIT R

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST APRIL 1-JUNE 30, 1954

I—AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-6 & DC-6B	Overnight Transit	$ 696
	#1	1,073
	#3 (Equalized)	4,147
	Engine Change*	174
	Supercharger Change*	145
DC-4—AE & B Models	All Services	Flat rate per actual Man-hours expended fixed prices

Except as noted in the following paragraphs, the xxxxxxx quoted provide for labor to perform routine, time limit, and inspection (discrepancy) items according to service work forms and policies in effect April 1, 1954.

fixed prices

a) The quoted xxxxxxxxxxx apply to services performed on aircraft regularly maintained at MOB. We reserve the right to quote special xxxxxxxx prices or to bill on the basis of actual hours for services to aircraft brought to MOB at infrequent or irregular intervals, and for minor services in combination with major modification projects. Aircraft entering the MOB service pattern for the first time are subject to billing at actual hours until the MOB Chief Inspector and the customer representative agree that the aircraft is up to MOB standard. The work described in Standard Control Procedure #136-11 of December 1, 1952, is non predictable and will be billed at actual hours.

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* Applicable only on Services where this work has not been prorated into the fixed price (Overnight Transit and #1).

[Changes in first and second paragraphs initialed by KAL and BALL.]

b) Major structural inspection sampling may occur during this quarter on DC-6B aircraft, but since the method of accomplishment is indefinite, no attempt has been made to include this work in the flat price.

c) Engine changes for top overhaul, and top overhaul of installed engines are not included in the manhours quoted for aircraft services.

d) Overhaul of engines, propellers and components removed during services is not included in the quoted service figures. Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

II—ENGINE AND NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare Engine overhaul when part of power package overhaul	$1,723
Bare Engine overhaul when not part of power package overhaul	1,802
Nacelle Overhaul—Routine	477
Nacelle Overhaul—Major	530
Nacelle Buildup	186
R-2800-17	
Bare Engine overhaul when part of power package overhaul	$2,332
Bare Engine overhaul when not part of power package overhaul	2,332
Nacelle Overhaul—Routine	583
Nacelle Overhaul—Major	769
Nacelle Buildup	292

[fol. 1941] Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and

functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each manhour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair and exploratory or diagnostic disassembly, as distinguished from routine engine and nacelle overhaul is not included in the above prices and will be billed on the basis of actual hours expended times the applicable labor rate.

Major changes in procedure and/or tolerances occurring within the quarter are considered cause for adjusting the fixed manhours.

III—COMPONENT OVERHAUL AND OTHER

Component Overhaul

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component, including the elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line Stations, in accordance with the "Component Overhaul Price List" dated April 1, 1954, as the same may be revised from time to time by mutual agreement. Such prices

shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$265
DC-6 & DC-6B	318

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rate as hereinafter set forth for each manhour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual manhours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth. Major changes in procedure and/or tolerance occurring within the quarter are considered cause for adjusting the fixed manhours.

[fol. 1942] IV—OTHER

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth.

V—RATES.

The applicable labor rates referred to in this Exhibit R shall be as follows:

	Straight Time	Time and one-half[1]	Double Time[1]
Aircraft Service Work Center	$5.80	$6.80	$7.80
Component Overhaul Work Center	5.30	6.30	7.30

VI The applicable material rates referred to in this Exhibit R shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

VII—MISCELLANEOUS

The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 5.00 per hour
Radio Engineering	4.75 " "
Laboratory Research Service	5.35 " "
Laboratory Fuel & Oil Sample Testing	21.40 per test
Flight and Crew Scheduling	450.00 per month
CAA Specification Handling	150.00 per month
Services of Supply Dept. Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended)

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

Other Services	Rates to be negotiated at time of request for service.

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Labor rate changes not anticipated herein developing through negotiations affecting this period will be distributed retroactively on the basis of the distribution of labor, so affected.

[fol. 1943]

EXHIBIT S

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST JULY 1-SEPTEMBER 30, 1954

I—AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-6 & DC-6B	Overnight Transit	$ 556*
	#1	878*
	#3 (Equalized)	3,920*
	Engine Change	176**
	Supercharger Change	146**
DC-4—AE & B Models	All Services	Flat rate per actual man-hours expended.

[Paragraph stricken through initialed by BALL and KAL.]

* The fixed prices on the Overnight Transit, #1 and #3 (Equalized) Service, do not apply to the two new PAG DC-6B Aircraft, N6255C and N6256C whose low time-low work content status has caused them to be exempted. Aircraft service work on these two aircraft will be billed on the basis of actual manhours expended at the applicable labor rate.

** Applicable only on Services where this work has not been prorated into the fixed price (Overnight Transit and #1).

Except as noted in the following paragraphs, the fixed prices quoted provide for labor to perform routine, time limit, and inspection (discrepancy) items according to service work forms and policies in effect July 1, 1954.

a) The quoted fixed prices apply to services performed on aircraft regularly maintained at MOB. We reserve the right to quote special prices or to bill on the basis of actual hours for services to aircraft brought to MOB at infrequent or irregular intervals, and for minor services in combination with major modification projects. Aircraft entering the MOB service pattern for the first time are subject to billing at actual hours until the MOB Chief Inspector and the customer representative agree that the aircraft is up to MOB standard. The work described in Standard Control Procedure #136-11 of December 1, 1952 is non-predictable and will be billed at actual hours.

b) Major structural inspection sampling may occur during this quarter on DC-6B aircraft, but since the method of accomplishment is indefinite, no attempt has been made to include this work in the flat price.

c) Engine changes for top overhaul, and top overhaul of installed engines are not included in the fixed price quoted for aircraft services.

d) Overhaul of engines, propellers and components removed during services is not included in the quoted service figures.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

II—ENGINE AND NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare Engine overhaul when part of power package overhaul	$1,706
Bare Engine overhaul when not part of power package overhaul	1,785
Nacelle Overhaul—Routine	473
Nacelle Overhaul—Major	525
Nacelle Buildup	184
R-2800-17	
Bare Engine overhaul when part of power package overhaul	$2,310
Bare Engine overhaul when not part of power package overhaul	2,310
Nacelle Overhaul—Routine	578
Nacelle Overhaul—Major	761
Nacelle Buildup	289

[fol. 1944] Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each manhour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair and exploratory or diagnostic disassembly, as distinguished from routine engine and nacelle overhaul is not included in the above prices and will be billed on the basis of actual hours expended times the applicable labor rate.

Major changes in procedures and/or tolerances occurring within the quarter are considered cause for adjusting the fixed manhours.

III—COMPONENT OVERHAUL AND OTHER

Component Overhaul

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component, including the elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line Stations, in accordance with the "Component Overhaul Price List" dated July 1, 1954, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$236
DC-6 & DC-6B	315

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the

applicable labor rate as hereinafter set forth for each manhour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual manhours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth.

Major changes in procedures and/or tolerances occurring within the quarter are considered cause for adjusting the fixed manhours.

[fol. 1945] IV—OTHER

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth.

V—RATES

The applicable labor rates referred to in this Exhibit S shall be as follows:

	Straight Time	Time and one half[1]	Double Time[1]
Aircraft Service Work Center	$5.85	$6.85	$7.85
Component Overhaul Work Center	5.25	6.25	7.25

VI The applicable material rates referred to in this Exhibit S shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

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[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

VII—MISCELLANEOUS

The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 5.00 per hour
Radio Engineering	4.75 " "
Laboratory Research Service	5.35 " "
Laboratory Fuel & Oil Sample Testing	21.40 per test
Flight and Crew Scheduling	450.00 per month
CAA Specification Handling	150.00 per month
Services of Supply Dept. Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended)
Other Services	Rates to be negotiated at time of request for service.

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Labor rate changes not anticipated herein developing through negotiations affecting this period will be distributed retroactively on the basis of the distribution of labor, so affected.

[Paragraph stricken through initialed by BALL and KAL.]

[fol. 1946]

EXHIBIT T

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST OCTOBER 1

DECEMBER 31, 1954

I—AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-4—AE & B*	Overnight Transit	$ 473
	=1	656
	=3 Equalized	3386
	Engine Change	158*
	Supercharger Change	131*
DC-4 AE & B Models	All Services	Flat rate per actual man-hours expended

Except as noted in the following paragraphs, the fixed prices quoted provide for labor to perform routine, time limit, and inspection (discrepancy) items according to service work forms and policies in effect October 1, 1954.

a) The quoted fixed prices apply to services performed on aircraft regularly maintained at MOB. We reserve the right to quote special prices or to bill on the basis of actual hours for services to aircraft brought to MOB at infrequent or irregular intervals, and for minor services in combination with major modification projects. Aircraft entering the MOB service pattern for the first time are subject to billing at actual hours until the MOB Chief Inspector and the customer representative agree that the aircraft is up to MOB standard. The work described in Standard Control Procedure =136-11 of December 1, 1952 is non-predictable and will be billed at actual hours.

b) Major structural inspection sampling may occur during this quarter on DC-4B aircraft, but since the method

* Applicable only on Services where this work has not been prorated into the fixed price Overnight Transit and =1

of accomplishment is indefinite, no attempt has been made

c) Engine changes for top overhaul, and top overhaul of installed engines are not included in the fixed price quoted for aircraft services.

d) Overhaul of engines, propellers and components removed during services is not included in the quoted service figures.

e) Due to continued low work content status of the two new PAG DC-6B aircraft, 6255C and 6256C, they are excluded from all 4th quarter flat prices.

f) Per the request of Panagra, the overhaul services on PAG DC-6/6B aircraft will be billed at actual hours times the applicable labor rate.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

II—ENGINE AND NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare Engine Overhaul when part of power package overhaul	$1,607
Bare Engine Overhaul when not part of power package overhaul	1,683
Nacelle Overhaul—Routine	459
Nacelle Overhaul—Major	510
Nacelle Buildup	179
R-2800-17	
Bare Engine Overhaul when part of power package overhaul	2,244
Bare Engine Overhaul when not part of power package overhaul	2321
Nacelle Overhaul—Routine	561
Nacelle Overhaul—Major	740
Nacelle Buildup	281

[fol. 1947] Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each manhour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a mark up to cover freight delivery cost of inventory at Miami and a mark up to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle, repair and exploratory or diagnostic disassembly, as distinguished from routine, engine and nacelle overhaul is not included in the above prices and will be billed on the basis of actual hours expended times the applicable labor rate.

Major changes in procedures and or tolerances occurring within the quarter are considered cause for adjusting the fixed manhours.

III—COMPONENT OVERHAUL AND OTHER

Component Overhaul

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component, including the elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line

Stations, in accordance with the "Component Overhaul Price List" dated October 1, 1954, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$230
DC-6 & DC-6B	306

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiable at the applicable labor rate as hereinafter set forth for each manhour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual manhours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth. Major changes in procedures and/or tolerance occurring within the quarter are considered cause for adjusting the fixed manhours.

[fol. 1948]

IV—OTHER

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth.

V—RATES

The applicable labor rates referred to in this Exhibit T shall be as follows:

	Straight Time	Time and one half[1]	Double Time[1]
Aircraft Service Work Center	$5.25	$6.25	$7.25
Component Overhaul Work Center	5.10	6.10	7.10

VI The applicable material rates referred to in this Exhibit T shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

VII—MISCELLANEOUS

The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 5.00 per hour
Radio Engineering	5.25 " "
Laboratory Research Service	5.35 " "
Laboratory Fuel & Oil Sample Testing	21.40 per test
Flight and Crew Scheduling	450.00 per month
CAA Specification Handling	150.00 per month
Services of Supply Dept. Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended)

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" bulletin #136-17 dated March 1, 1951, as amended from time to time.

Other Services	Rates to be negotiated at time of request for service.

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Labor rate changes not anticipated herein developing through negotiations affecting this period will be distributed retroactively on the basis of the distribution of labor, so affected.

[fol. 1949]

EXHIBIT U

PAN AMERICAN WORLD AIRWAYS, INC.
OFFICIAL PRICE LIST JANUARY 1-MARCH 31, 1955
I—AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-6 & DC-6B	Overnight Transit	$ 491
	#1	572
	#3 Equalized	3,352
	Engine Change	164*
	Supercharger Change	136*
DC-4—AE & B Models	All Services	Flat rate per actual man-hours expended.

Except as noted in the following paragraphs, the fixed prices quoted provide for labor to perform routine, time limit, and inspection (discrepancy) items according to service work forms and policies in effect January 1, 1955.

a) The quoted fixed prices apply to services performed on aircraft regularly maintained at MOB. We reserve the right to quote special prices or to bill on the basis of actual

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* Applicable only on Services where this work has not been prorated into the fixed price (Transit, Overnight Transit, #1, #2 and Special Services).

[Paragraph stricken through initialed by BALL and KAL.]

hours for services to aircraft brought to MOB at infrequent or irregular intervals, and for minor services in combination with major modification projects. Aircraft entering the MOB service pattern for the first time are subject to billing at actual hours until the MOB Chief Inspector and the customer representative agree that the aircraft is up to MOB standard. The work described in Standard Control Procedure #136-11 of December 1, 1952 is non-predictable and will be billed at actual hours.

b) Major structural inspection sampling may occur during this quarter on DC-6B aircraft, but since the method of accomplishment is indefinite, no attempt has been made to include this work in the flat price.

c) Engine changes for top overhaul, and top overhaul of installed engines are not included in the fixed price quoted for aircraft services.

d) Overhaul of engines, propellers, and components removed during services is not included in the quoted service figures.

e) Per the request of Panagra, the overhaul services on PAG DC-6/6B aircraft will be billed at actual hours times the applicable labor rate.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

II—ENGINE AND NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare Engine Overhaul when part of power package overhaul	$1,622
Bare Engine Overhaul when not part of power package overhaul	1,700
Nacelle Overhaul—Routine	464
Nacelle Overhaul—Major	515
Nacelle Buildup	180

R-2800-17

Bare Engine Overhaul when part of power package overhaul	$2,215
Bare Engine Overhaul when not part of power package overhaul	2,343
Nacelle Overhaul—Routine	567
Nacelle Overhaul—Major	747
Nacelle Buildup	283

[fol. 1950] Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each manhour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair and exploratory or diagnostic disassembly, as distinguished from routine engine and nacelle overhaul is not included in the above prices and will be billed on the basis of actual hours expended times the applicable labor rate.

Major changes in procedure and/or tolerances occurring within the quarter are considered cause for adjusting the fixed manhours.

III—COMPONENT OVERHAUL AND OTHER

Component Overhaul

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component, including the elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line Stations, in accordance with the "Component Overhaul Price List" dated January 1, 1955, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$232
DC-6 & DC-6B	309

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated at the applicable labor rate as hereinafter set forth for each manhour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual manhours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth.

Major changes in procedures and/or tolerances occurring within the quarter are considered cause for adjusting the fixed manhours.

[fol. 1951]

IV—OTHER

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth.

V—RATES

The applicable labor rates referred to in this Exhibit U shall be as follows:

	Straight Time	Time and one half[1]	Double Time[1]
Aircraft Service Work Center	$5.45	$6.45	$7.45
Component Overhaul Work Center	5.15	6.15	7.15

VI The applicable material rates referred to in this Exhibit U shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

VII—MISCELLANEOUS

The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 5.00	per hour
Radio Engineering	5.25	" "
Laboratory Research Service	5.35	" "
Laboratory Fuel & Oil Sample Testing	21.40	per test

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" Bulletin 136-17 dated March 1, 1951, as amended from time to time.

Flight and Crew Scheduling	450.00 per month
CAA Specification Handling	150.00 per month
Services of Supply Dept. Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended)
Other Services	Rates to be negotiated at time of request for service.

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Labor rate change not anticipated herein developing through negotiations affecting this period will be distributed retroactively on the basis of the distribution of labor, so affected.

[Paragraph stricken through initialed by BALL and KAL.]

[fol. 1952] EXHIBIT V

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST APRIL 1 JUNE 30, 1955

I—AIRCRAFT SERVICES & OVERHAULS

Aircraft Type	*Service Type*	*Fixed Price*
DC-6 & DC-6B	Overnight Transit	$ 456
	#1	570
	#3 Equalized	3,477
	#5 (DC-6B).	28,500
	Engine Change	171*
	Supercharger Change	143*
DC-4—AE & B Models	All Services	Flat rate per actual man-hours expended.

---

* Applicable only on Services where this work has not been prorated into the fixed price (DC-6B Overnight Transit and #1 Services).

Except as noted in the following paragraphs, the fixed prices quoted provide for labor to perform routine, time limit and inspection (discrepancy) items according to service work forms and policies in effect April 1, 1955.

(a) The quoted manhour dollars apply to services performed on aircraft regularly maintained at MOB. We reserve the right to quote special manhour prices or to bill on the basis of actual hours for services to aircraft brought to MOB at infrequent or irregular intervals, and for minor services in combination with major modification projects. Aircraft entering the MOB service pattern for the first time are subject to billing at actual hours until the MOB Chief Inspector and the customer representative agree that the aircraft is up to MOB standard. The work described in MOB Administrative Manual Publication 19.02.02-2 of July 15, 1954 is non-predictable and will be billed at actual hours.

(b) Major structural inspection sampling may occur during this quarter on DC-6B aircraft, but since the method of accomplishment is indefinite, no attempt has been made to include this work in the flat price.

(c) Engine changes for top overhaul, and top overhaul of installed engines are not included in the dollars quoted for aircraft services.

(d) Overhaul of engines, propellers and components removed during services is not included in the quoted service figures.

Material consumed in the services referred to will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

II—ENGINE AND NACELLE OVERHAUL

Engine Type	*Fixed Price*
R-2000	
Bare Engine Overhaul when part of power package overhaul	$1,597
Bare Engine Overhaul when not part of power package overhaul	1,674
Nacelle Overhaul—Routine	464
Nacelle Overhaul—Major	515
Nacelle Buildup	180
R-2800	
Bare Engine Overhaul when part of power package overhaul	$2,215
Bare Engine Overhaul when not part of power package overhaul	2,343
Nacelle Overhaul—Routine	567
Nacelle Overhaul—Major	747
Nacelle Buildup	283

[fol. 1953] Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each manhour of direct labor utilized. The cost of overhauling engine and nacelle accessories removed during overhauls are not included in the above prices.

Material consumed in the work referred to above will be billed at the Latin American Division average inventory prices, plus a mark-up to cover freight delivery cost of inventory at Miami and a mark-up to cover price variance arising from average inventory pricing procedure, both computed at the applicable material rates, as hereinafter set forth.

Engine and nacelle repair and exploratory or diagnostic disassembly, as distinguished from routine engine and nacelle overhaul is not included in the above prices and will be billed on the basis of actual hours expended times the applicable labor rate.

Major changes in procedures and or tolerances occurring within the quarter are considered cause for adjusting the fixed manhours.

III—COMPONENT OVERHAUL AND OTHER

Component Overhaul

All flight equipment accessories classified as components listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component, including the elements of cost, to be determined as of the time of removal from flight equipment at Miami or the time of receipt in Miami from Line Stations, in accordance with the "Component Overhaul Price List" dated April 1, 1955, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times at mutual agreement.

Propeller Overhaul

Propeller Type	*Fixed Price*
DC-4	$232
DC-6 & DC-6B	309

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated at the applicable labor rate as hereinafter set forth for each manhour of direct labor utilized. Propeller repair

work which not forming part of a normal overhaul will be billed at actual manhours utilized. Material consumed in the above will be billed at Latin American Division average inventory price plus freight and price variance mark ups at the applicable material rates, as hereinafter set forth.

Major changes in procedures and or tolerances occurring within the quarter are considered cause for adjusting the fixed dollars.

[fol. 1954] IV—OTHER

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized. Material consumed in such maintenance will be billed at Latin American Division average inventory prices plus freight and price variance mark-ups at the applicable material rates, as hereinafter set forth.

V—RATES

The applicable labor rates referred to in this Exhibit V shall be as follows:

	Straight Time	Time and one half	Double Time[1]
Aircraft Service Work Center	$5.70	$6.70	$7.70
Component Overhaul Work Center	5.15	6.15	7.15

VI The applicable material rates referred to in this Exhibit V shall be as follows:

Freight Inventory Dissipation—1½% Dr. of material billings.

Inventory Price Variance Dissipation—½ of 1% Dr. of material billings.

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in "Standard Control Procedure" Bulletin #136-17 dated March 1, 1951, as amended from time to time.

VII—MISCELLANEOUS

The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Aircraft Engineering	$ 5.00 per hour
Radio Engineering	5.25 " "
Laboratory Research Service	5.35 " "
Laboratory Fuel & Oil Sample Testing	21.40 per test
Flight and Crew Scheduling	450.00 per month
CAA Specification Handling	150.00 " "
Services of Supply Dept. Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended)
Other Services	Rates to be negotiated at time of request for service.

XXXXX

XXXXXXX XXXXXX XXXXX XXXXX XXXX XXXXXXXXXXXXXX XXXXXX XXXXXXXX XXXX XXXXX XXX XXXXXX XXXXXXX XXXX XXXX XXX XXXXXXXX XXXX XXXXX XXX XXXXXX XXXXXXX XXXX XXXX

Labor rate changes not anticipated herein, developing through negotiations affecting this period will be distributed retroactively on the basis of the distribution of labor so affected.

[Paragraph stricken through initialed by BALL and KAL]

[fol. 1955]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 22

SUPPLEMENT NO. 18

TO

THROUGH FLIGHT AGREEMENT

BETWEEN

PAN AMERICAN WORLD AIRWAYS, INC.,

AND

PAN AMERICAN-GRACE AIRWAYS, INC.

DATED AUGUST 4, 1955

[fol. 1956]

Through Flight Agreement

Supplement No. 18

Relating to Interchange Agreement with National Airlines, Incorporated

AGREEMENT made this 4th day of August, 1955, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York Corporation (hereinafter called "PAA"), and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware Corporation (hereinafter called "Panagra");

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946, and supplements thereto numbered one through seventeen inclusive relating to the charter of Panagra's aircraft to PAA for through operation on certain of PAA's routes north of the Canal Zone and other matters, which agreements are hereinafter referred to as "the Through Flight Agreement"; and

WHEREAS, PAA and Panagra have entered into an agreement with National Airlines, Incorporated, a Florida corporation (hereinafter called "National"), dated as of the date hereof (hereinafter referred to as "the Interchange Agreement"); and

WHEREAS, the parties desire to supplement and amend the Through Flight Agreement as herein set forth.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

102. All recitals and paragraphs of Supplement No. 5 to the Through Flight Agreement are hereby deleted except [fol. 1957] paragraphs 49, 50, 51 (except for the first parenthetical insertion), 53 (except for the proviso to the last sentence of the amendment made therein), 54 (notwithstanding any provisions of paragraph 59 to the contrary), 57(a) (as modified by paragraph 71), and 57(g).

103. The last sentence of paragraph 14 of the Through Flight Agreement as amended by paragraphs 51 and 102 above is amended to read as follows:

> "PAA and Panagra will agree with each other (and with National if the Interchange Agreement shall be-

come and be effective) in advance on appropriate advertising programs (including newspaper and magazine space, advertising and display pieces and collateral material) and budgets therefor, for promoting the through flights made pursuant to this Agreement, and the approved expense of all such advertising shall be apportioned among them as from time to time agreed, provided, however, that no charge shall be made for transporting advertising material to the most effective point of use."

104. For the term of the Interchange Agreement, Panagra's aircraft chartered to PAA pursuant to the Through Flight Agreement for through operation between the Canal Zone and Miami, Florida, shall, except as the Civil Aeronautics Board may otherwise permit, be further chartered to National for through operation by National upon the specific terms and conditions set forth in the Interchange Agreement.

105. Panagra hereby constitutes and appoints PAA as Panagra's agent, for the term during which the Through Flight Agreement and the Interchange Agreement shall be simultaneously in effect, to deliver Panagra's aircraft to National at Miami, for the purpose of flights over National's route pursuant to the said agreement and to receive [fol. 1958] delivery of Panagra's aircraft from National at Miami. PAA is authorized as such agent, on Panagra's behalf, to receive and execute such receipts, to perform such inspections, to make such checks and measurements, and to perform all such other acts as may be necessary or appropriate in connection with the delivery or return of the said aircraft. In acting as such agent with respect to the delivery of Panagra's aircraft to National and the return of Panagra's aircraft by National at Miami, PAA shall be bound to exercise the same and only the same degree of care as PAA exercises with respect to the delivery and return of its own aircraft under similar circumstances.

106. The second sentence of paragraph 15(a) of the Through Flight Agreement as amended is further amended to read as follows:

"PAA shall be deemed to be in possession of Panagra's aircraft (1) in the case of aircraft turned over to PAA for operation on through flights under this agreement, from the time when such aircraft is so turned over to PAA by Panagra until the time when such aircraft is either (i) returned by PAA to Panagra or (ii) turned over by PAA to National for operation by National pursuant to the Interchange Agreement, in which event the aircraft shall again be deemed to be in PAA's possession when returned to it by National, and (2) in the case of aircraft turned over to PAA for maintenance, from the time when such aircraft is turned over to PAA at one of the latter's maintenance bases until the time when such aircraft is returned to Panagra, or until it is turned over by PAA to National as provided above; except, in either case, for non-revenue or other special flights (excluding test flights made under PAA custody following maintenance and according to CAA requirements) during such pe-
[fol. 1959] riod made at the instance and request of Panagra."

107. Paragraph 17(h) of the Through Flight Agreement (added by paragraph 34 of Supplement No. 2) is amended by adding the following at the end thereof: "and in the case of mileage flown over the route of National pursuant to the Interchange Agreement will be those effective as shown in the 'Civil Aeronautics Board Official Airline Route and Mileage Manual' and in any revisions thereof."

108. Paragraph 23(e) of the Through Flight Agreement is amended by adding at the end thereof the words: "and the delivery of possession of Panagra's aircraft to National and the return of such possession from National pursuant to the Interchange Agreement."

109. (a) All references in Annex 1A to the Through Flight Agreement to "the charter service" shall refer only to the charter service operated by PAA pursuant to said Agreement. All references in said Annex 1A to the total revenue miles flown by Panagra's aircraft or to a revenue mile basis shall include revenue miles flown by such aircraft pursuant to the Interchange Agreement, except that

(i) in those instances where the expenses to be prorated under paragraph 1 of Annex 1A are not related to the miles flown by Panagra aircraft under the Interchange Agreement, the mileage under the Interchange Agreement shall be omitted, and (ii) in those instances where the expenses to be prorated under paragraph 1 of Annex 1A are only partially related to the miles flown by Panagra aircraft under the Interchange Agreement, the mileage under the Interchange Agreement shall be included on an appropriately weighted basis.

[fol. 1960] (b) Paragraph 1A1(1) of said Annex 1A is amended by adding at the end thereof the following: "and Panagra will cause National to advise Panagra at the close of each month of the total gallonage delivered by National to Panagra's aircraft, classified by aircraft types, under the Interchange Agreement."

(c) The last sentence of paragraph 1A3 of said Annex 1A is amended to read as follows:

> "If it shall appear that major items of cost recorded in such accounts are applicable only to the charter service or to Panagra's common carrier service or to the charter service operated pursuant to the Interchange Agreement, provision will be made for removing such costs from allocation and charging such costs directly to the service to which they relate."

(d) The parenthetical phrases in paragraphs 1A8 and 1B of said Annex 1A now reading: ("except for credits arising out of charges to PAA") are amended to read ("except for credits arising out of charges to PAA and of charges to National").

(e) The last sentence of paragraphs 2B and 2C of said Annex 1A are amended by adding at the end the words:

> "plus 20% of the available ton miles flown in the charter service operated pursuant to the Interchange Agreement."

110. Paragraph 102 of this Supplement No. 18 shall be effective immediately. The remainder of this Supplement

No. 18 shall become effective only in the event that the Interchange Agreement shall become effective and upon the making of an order by the Civil Aeronautics Board [fol. 1961] approving the Through Flight Agreement as herein modified, and shall remain in effect so long as the Interchange Agreement and the Through Flight Agreement shall remain simultaneously in effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their officers thereunto duly authorized on the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

[fol. 1962]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 23

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 19

THIS AGREEMENT, made this 7th day of August, 1957, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "PANAGRA",

WHEREAS, PAA and PANAGRA are parties to a certain agreement dated July 30, 1946, as supplemented and amended, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

111. The following schedule of rates for charges to Panagra pursuant to paragraph 8 of the Through Flight Agreement for training is hereby substituted for the schedule of rates set forth in subparagraph (c) of paragraph 101, effective as of July 1, 1957:

School	*Dollars per Hour*
Miami—Ground Training	$ 8.19
Miami—Dehmel	16.55
Miami—Pilot	55.50
Aircraft Type	*Hourly Rate*
DC-3	$ 79.00
DC-4	130.00
DC-6 type	315.00
DC-7B	541.00
CV-240	211.00

The flight training charges per hour hereunder shall be the sum of the school rate and the aircraft rate for the type aircraft used.

IN WITNESS WHEREOF, the parties have caused this [fol. 1963] agreement to be executed by their officers thereunto duly authorized on the day and year above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ F. H. CLIFTON
Vice President

[fol. 1964]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 24

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 20

THIS AGREEMENT, made this 11th day of July, 1958, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "PANAGRA",

WHEREAS, PAA and PANAGRA are parties to a certain agreement dated July 30, 1946, as supplemented and amended, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

112. The tables of rates set forth in Attachment A hereto are hereby substituted for the table of rates appearing in paragraph 95 of the Through Flight Agreement.

113. The tables of rates set forth in Attachment B hereto are hereby substituted for the table of rates appearing in paragraph 97 of the Through Flight Agreement.

114. The official price lists referred to in paragraph 65 of the Through Flight Agreement relating to the third and fourth calendar quarters of the calendar year 1955, the four quarters of the calendar years 1956 and 1957 and the first calendar quarter of the calendar year 1958 respectively are attached hereto, marked Exhibit W, July-September, 1955, Exhibit X, October-December, 1955, Exhibit Y, January-March, 1956, Exhibit Z, April-June, 1956, Exhibit A1, July-September, 1956, Exhibit A2, October-December, 1956, Exhibit B1, January-March, 1957, Exhibit B2, April-June, 1957, Exhibit B3, July-September, 1957, Exhibit B4—Revision 1, October-December, 1957, and Exhibit C1, January-March, 1958, respectively, and made a part hereof, and are hereby accepted by PANAGRA.

115. The prices set forth in the Exhibits referred to in paragraph 114 for maintenance and overhaul of PAN-AGRA's DC-4 aircraft, and engines, propellers and com- [fol. 1965] ponents therefor, will, with respect to the period up to and including June 30, 1957, be subject to a surcharge of .... of the total price as otherwise determined in accordance with the provisions of the applicable Exhibits to cover the amounts payable under paragraphs B and C of Annex 2 to the Through Flight Agreement in respect of maintenance of DC-4 aircraft.

116. Effective as of April 1, 1955 the following table of rates shall be established as the monthly depreciation charge on the joint DC-6 FESPA inventory pool for the period April 1, 1955 through December 31, 1957 as contemplated under subparagraph (iv) of paragraph 75:

April through September, 1955	$6,236 per month
October, 1955 through March, 1956	$4,425 per month
April through September, 1956	$5,020 per month
October through December, 1956	$5,515 per month
January through June, 1957	$5,890 per month
July through December, 1957	$6,043 per month

117. Effective as of April 1, 1955, the following is hereby inserted at the end of clause (ii) of Section 3, *Return On Panagra's Investment*, of Annex 1-A:

"The amount of the return payable to Panagra by Pan American in respect of such funds or securities for any period shall be reduced by such portion of the amount of any interest payable thereon to Panagra by third parties for such period as is allocable to the charter service on a revenue mile basis as referred to above.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized on the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ E. RICCIARDI
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ F. H. CLIFTON
Vice President

[fol. 1966]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 25

THROUGH FLIGHT AGREEMENT— SUPPLEMENT NO. 21

THIS AGREEMENT, made this 23rd day of December, 1958, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York corporation, hereinafter called "PAA", and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware corporation, hereinafter called "PANAGRA",

WHEREAS, PAA and PANAGRA are parties to a certain agreement dated July 30, 1946, as supplemented and amended, said agreement as so supplemented and amended being hereinafter referred to as the "Through Flight Agreement"; and

WHEREAS, the parties desire further to supplement and amend the Through Flight Agreement as herein set forth;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

118. The table of rates set forth in Attachment A1 hereto is hereby substituted for the table of rates appearing in Attachment A to Supplement No. 20 to, and referred to in paragraph 112 of, the Through Flight Agreement.

119. The table of rates set forth in Attachment B1 hereto is hereby substituted for the table of rates appearing in Attachment B to Supplement No. 20 to, and referred to in paragraph 113 of, the Through Flight Agreement.

120. The official price lists referred to in paragraph 65 of the Through Flight Agreement relating to the second, third and fourth calendar quarters of the calendar year 1958 are attached hereto, marked Exhibit C2, April-June, 1958, Exhibit C3, July-September, 1958, and Exhibit C4, October-December, 1958, respectively, and made a part hereof, and are hereby accepted by PANAGRA.

121. Effective as of January 1, 1958 the following table of rates shall be established as the monthly depreciation

charge on the joint DC-6 FESPA inventory pool for the [fol. 1967] period January 1, 1958 through December 31, 1958 as contemplated under subparagraph (iv) of paragraph 7a:

January through June, 1958	$6,415 per month
July through September, 1958	$6,110 per month
October through December, 1958	$7,782 per month

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their officers thereunto duly authorized on the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ E. RICCIARDI
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

[fol. 1968]

ATTACHMENT A1

THROUGH FLIGHT AGREEMENT

THROUGH FLIGHT FIXED RATES PAYABLE BY PANAGRA TO PAA

January 1, 1958-June 30, 1958

CENTS PER REVENUE MILE FLOWN

	Return On Investment					
Type of Aircraft	Working Capital	Miami Overhaul Base Facilities	Flight Equipment Spare Parts and Assemblies	Total	Depreciation on Flight Equipment Spare Parts and Assemblies	Total
DC-4	.42¢	.27¢	.33¢	1.02¢	—	1.02¢
DC-6B	.43	.47	.42	1.32	.81¢	2.13
DC-7B	.73	.61	3.41	4.75	3.03	7.78

[fol. 1969]

ATTACHMENT B1

THROUGH FLIGHT AGREEMENT

THROUGH FLIGHT FIXED RATES PAYABLE BY PAA TO PANAGRA

January 1, 1958-June 30, 1958

CENTS PER REVENUE MILE FLOWN

	Type of Aircraft			
	DC-4		DC-6B	DC-7B
	Passenger	Cargo		
Flying Operations (other than flight crew salaries and hull insurance)	8.13¢	8.13¢	16.07¢	8.29¢
Hull Insurance	2.68	2.68	4.81	5.92
Depreciation—Flight Equipment	0.23	0.23	23.90	35.04
Passenger Service	5.92	—	7.68	10.52
Indirect Expenses	7.86	7.59	8.42	8.11
Amortization of Development Costs	—	—	—	0.80
Sub-Total	24.82	18.63	60.88	68.68
Return on Investment	4.00	3.94	16.98	33.69
Less: Interest on DC-8 Equipment Deposits	—	—	1.07	0.57
Total	28.82	22.57	76.79	101.80

[fol. 1970]

EXHIBIT C-2

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—APRIL 1-JUNE 30, 1958

PANAGRA

I—AIRCRAFT SERVICES AND OVERHAULS—LABOR

Aircraft Type	*Service Type*	*Fixed Price*
DC-6B	#1 Service—Routine Only	$ 480
	#3 Equalized	3,990
	Engine Change	180*
	Supercharger Change	150*
DC-7B	#1 Service—Routine Only	630
	#3 Equalized	4,200
	Engine Change	240*
	Supercharger Change	180*
DC-4—AE & B Models	All Services	Flat Rate per Actual Man-hours Expended

Except as noted in the following paragraphs, the fixed prices quoted provide for labor to perform routine, time limit and inspection (discrepancy) items according to service work forms and policies in effect April 1, 1958.

a) The quoted labor dollars apply to services performed on aircraft regularly maintained at MOB. We reserve the right to quote special manhour prices or to bill on the basis of actual hours for services to aircraft brought to MOB at infrequent or irregular intervals, and for minor services in combination with major modification projects. Aircraft entering the MOB service pattern for the first time are subject to billing at actual hours until the MOB Chief Inspector and

* Applicable only on services where this work has not been prorated into the fixed price (Transit Services).

the customer representative agree that the aircraft is up to MOB standard. The work described in MOB Administrative Manual Publication #19.02.02 2 is non-predictable and will be billed at actual hours.

b) Overhaul of engines, propellers and components removed during services is not included in the quoted service figures.

c) The quoted manhour figures for all #1 Services apply only to the routine portion of the services. All inspection item category of work on #1 Services will be billed on the basis of actual manhours expended.

d) No fixed prices are quoted for any Overhaul Services that may be performed on any PAG aircraft during the Second Quarter 1958.

[fol. 1971]

II—ENGINE AND NACELLE OVERHAUL—LABOR.

	Fixed Price		
	R ~~2800~~	R 2800	R 3350 DA
Bare Engine Overhaul when part of power package overhaul	$1,782	$2,727	$3,321
Bare Engine Overhaul when not part of power package overhaul	1,863	2,862	3,483
Nacelle Overhaul—Routine	567	621	783
Nacelle Overhaul—Major	594	837	972
Nacelle Build-Up	189	297	459

Powerplant overhaul prices include the labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs, and to reassemble and functionally test the unit. Small machining and plating operations normally considered to be a part of routine overhaul are also included. Labor for modification, conversion and or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated, at the applicable labor rates as hereinafter set forth for each manhour of direct labor utilized. The cost of overhauling engine and nacelle ac-

cessories removed during overhauls is not included in the above prices.

Engine and Nacelle repair and exploratory or diagnostic disassembly, as distinguished from routine overhaul is not included in the above prices and will be billed on the basis of actual hours expended times the applicable labor rate. Major changes in procedures and or tolerances occurring within the quarter are considered cause for adjusting the fixed price.

III—COMPONENT OVERHAUL—LABOR AND MATERIAL

Component Overhaul

Flight equipment accessories classified as "Components" listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component including all elements of costs except material mark-up in effect as of the time of removal from flight equipment at Miami or the time of receipt in Miami from line stations, in accordance with the Component Overhaul Price List dated April 1, 1958, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times by mutual agreement. Components now listed in the above referred to Price List will be overhauled at actual man-hours at the applicable rate per hour and actual material consumed at Latin American Division average price plus the applicable mark-ups hereinafter set forth.

[fol. 1972] *Propeller Overhaul*

Propeller Type	*Fixed Price*
DC-4	$297
DC-6B	432
DC-7B	513

Propeller overhaul prices include labor necessary to disassemble, clean, inspect, replace worn or defective parts, make minor repairs and to reassemble and functionally test

the unit when such unit has been removed from the aircraft due to expiration of operating time limit. Labor for modification, conversion and/or customer request items which require time in excess of that required for a routine overhaul will be billed at a flat price to be negotiated at the time such work is requested, or, if no price is negotiated at the applicable labor rate hereinafter set forth for each manhour of direct labor utilized. Propeller repair work when not forming part of a normal overhaul will be billed at actual manhours utilized.

Major changes in procedures and/or tolerances occurring within the quarter are considered cause for adjusting the fixed price.

IV—OTHER—LABOR

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized.

V—MATERIAL

All material consumed in any of the services, overhauls, modifications or miscellaneous repairs will be billed at Latin American Division average prices, or fixed material prices if applicable, plus freight and price variance mark-ups at the applicable material rates as hereinafter set forth.

VI—RATES

The applicable labor rates referred to in this Exhibit C-2 shall be as follows:

	Cost Per Manhour
Aircraft Service Work Center	$6.00
Component Overhaul Work Center	5.40
Surcharges—Overtime Premiums—[1]	
Time and one half	1.30
Double Time	2.60

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in MOB Administrative Manual Publication =19.02.02 4.

The applicable material rates referred to in this Exhibit C-2 shall be as follows:

Freight Inventory Dissipation	—1½% Dr. of material billings.
Inventory Price Variance Dissipation	— ½ of 1% Dr. of material billings.

[fol. 1973] VII—MISCELLANEOUS

The rates applicable to the other special services referred to in paragraph 65, shall be as follows:

Engineering and Laboratory Service	$ 5.00 per hour
Laboratory Fuel & Oil Sample Testing	20.00 per test
Flight and Crew Scheduling	2,250.00 per month
CAA Specification Handling	150.00 per month
Services of Supply Department Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other Services	Rates to be negotiated at time of request for service.

Labor rate changes not anticipated herein developing through negotiations affecting this period will be distributed retroactively on the basis of the distribution of labor, so affected.

[fol. 1974]

EXHIBIT C-3

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—
JULY 1-SEPTEMBER 30, 1958

PANAGRA

I AIRCRAFT SERVICES AND OVERHAULS—LABOR

All aircraft services and overhauls shall be performed on actual manhours expended at the applicable labor rate hereinafter set forth.

II ENGINE AND NACELLE OVERHAUL—LABOR

All engine and nacelle overhauls shall be performed on actual manhours expended at the applicable labor rate hereinafter set forth.

III COMPONENT OVERHAUL—LABOR AND MATERIAL

Component Overhaul

Flight equipment accessories classified as "Components" listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component including all elements of costs except material mark-up in effect as of the time of removal from flight equipment at Miami or the time of receipt in Miami from line stations, in accordance with the Component Overhaul Price List dated July 1, 1958, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times by mutual agreement. Components not listed in the above referred to Price List will be overhauled at actual manhours at the applicable rate per hour and actual material consumed at

Latin American Division average price plus the applicable mark-ups hereinafter set forth.

Propeller Overhaul

All propeller overhauls and services will be billed on the basis of manhours of direct labor utilized at the applicable labor rate hereinafter set forth.

IV OTHER—LABOR

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized.

[fol. 1975] V MATERIAL

All material consumed in any of the services, overhauls, modifications or miscellaneous repairs will be billed at Latin American Division average prices, or fixed material prices if applicable, plus freight and price variance mark-ups at the applicable material rates as hereinafter set forth.

VI RATES

The applicable labor rates referred to in this Exhibit C-3 shall be as follows:

	Cost Per Manhour
Aireraft Service Work Center	$6.00
Component Overhaul Work Center	5.45
Surcharges—Overtime Premiums—[1]	
Time and one half	1.30
Double Time	2.60

The applicable material rates referred to in this Exhibit C-3 shall be as follows:

Freight Inventory Dissipation	1½% Dr. of material billings.
Inventory Price Variance Dissipation	½ of 1% Dr. of material billings.

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in LAD Administrative Manual Publication #19.02.02/4.

VII MISCELLANEOUS

The rates applicable to the other special services referred to in paragraph 65, shall be as follows:

Engineering and Laboratory Service	$ 5.50 per hour
Laboratory Fuel & Oil Sample Testing	22.00 per test
Flight and Crew Scheduling	2,250.00 per month
CAA Specification Handling	150.00 per month
Services of Supply Department Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other services	Rates to be negotiated at time of request for service.

Labor rate changes not anticipated herein developing through negotiations affecting this period will be distributed retroactively on the basis of the distribution of labor, so affected.

[fol. 1976]

EXHIBIT C-4

PAN AMERICAN WORLD AIRWAYS, INC.

OFFICIAL PRICE LIST—
OCTOBER 1-DECEMBER 31, 1958

PANAGRA

I AIRCRAFT SERVICES AND OVERHAULS—LABOR

All aircraft services and overhauls shall be performed on actual manhours expended at the applicable labor rate hereinafter set forth.

II ENGINE AND NACELLE OVERHAUL—LABOR

All engine and nacelle overhauls shall be performed on actual manhours expended at the applicable labor rate hereinafter set forth.

III COMPONENT OVERHAUL—LABOR AND MATERIAL

Component Overhaul

Flight equipment accessories classified as "Components" listed in the Latin American Division Component Manual, as revised from time to time, shall be overhauled at a price per individual component including all elements of costs except material mark-up in effect as of the time of removal from flight equipment at Miami or the time of receipt in Miami from line stations, in accordance with the Component Overhaul Price List dated October 1, 1958, as the same may be revised from time to time by mutual agreement. Such prices shall be subject to review at the time this price list is subject to review and may be changed at other times by mutual agreement. Components not listed in the above referred to Price List will be overhauled at actual manhours at the applicable rate per hour and actual material consumed at Latin American Division average price plus the applicable mark-ups hereinafter set forth.

Propeller Overhaul

All propeller overhauls and services will be billed on the basis of manhours of direct labor utilized at the applicable labor rate hereinafter set forth.

IV OTHER—LABOR

All other miscellaneous maintenance work shall be billed on the basis of the applicable labor rates per manhour for each manhour of direct labor utilized.

[fol. 1977] V MATERIAL

All material consumed in any of the services, overhauls, modifications or miscellaneous repairs will be billed at Latin American Division average prices, or fixed material prices if applicable, plus freight and price variance mark-ups at the applicable material rates as hereinafter set forth.

VI RATES

The applicable labor rates referred to in this Exhibit C-4 shall be as follows:

	Cost Per Manhour
Aireraft Service Work Center	$6.75
Component Overhaul Work Center	5.85
Surcharges—Overtime Premiums—[1]	
Time and one half	1.30
Double Time	2.60

The applicable material rates referred to in this Exhibit C-4 shall be as follows:

Freight Inventory Dissipation	1½% Dr. of material billings.
Inventory Price Variance Dissipation	½ of 1% Dr. of material billings.

[1] Maintenance work requests resulting in a requirement to perform work on an overtime basis shall be handled as provided for in LAD Administrative Manual Publication #19.02.02/4.

VII MISCELLANEOUS

The rates applicable to the other special services referred to in paragraph 65 shall be as follows:

Engineering and Laboratory Service	$ 5.50 per hour
Laboratory Fuel & Oil Sample Testing	22.00 per test
Flight and Crew Scheduling	2,250.00 per month
CAA Specification Handling	150.00 per month
Services of Supply Department Services	Rates as established in Letter Purchasing Agreement dated July 14, 1948 (as amended).
Other services	Rates to be negotiated at time of request for service.

Labor rate changes not anticipated herein developing through negotiations affecting this period will be distributed retroactively on the basis of the distribution of labor, so affected.

[fol. 1978]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 26

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 4882 et al.

In the matter of the

REOPENED NEW YORK-BALBOA THROUGH SERVICE PROCEEDING

Docket No. .....

In the matter of the

Application of National Airlines, Incorporated; Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. for approval of Equipment Interchange Agreement and Amendment to Through Flight Agreement under Section 412 of the Civil Aeronautics Act and, if deemed necessary, for approval under or exemption from Section 408 of the said Act.

APPLICATION OF NATIONAL AIRLINES, INCORPORATED, PAN AMERICAN WORLD AIRWAYS, INC., AND PAN AMERICAN-GRACE AIRWAYS, INC. FOR APPROVAL OF EQUIPMENT INTERCHANGE AGREEMENT AND AMENDMENT TO THROUGH FLIGHT AGREEMENT UNDER SECTION 412 OF THE CIVIL AERONAUTICS ACT AND, IF DEEMED NECESSARY, FOR APPROVAL UNDER OR EXEMPTION FROM SECTION 408 OF THE SAID ACT.

Communications with respect to the above Application should be addressed to:

Alexander G. Hardy,
Senior Vice President,

National Airlines, Incorporated,
Wyatt Building,
Washington, D. C.

Henry J. Friendly,
Vice President and General Counsel,

Pan American World Airways, Inc.,
135 East 42nd Street,
New York 17, N. Y.

Douglas Campbell,
Vice President and General Manager,

Pan American-Grace Airways, Inc.,
135 East 42nd Street,
New York 17, N. Y.

Dated: AUG 4 1955

[fol. 1979]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 4882 et al.

In the matter of the

REOPENED NEW YORK-BALBOA THROUGH SERVICE PROCEEDING

Docket No. .....

In the matter of the

Application of National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. for approval of Equipment Interchange Agreement and Amendment to Through Flight Agreement under Section 412 of the Civil Aeronautics Act and, if deemed necessary, for approval under or exemption from Section 408 of the said Act.

APPLICATION OF NATIONAL AIRLINES, INCORPORATED, PAN AMERICAN WORLD AIRWAYS, INC., AND PAN AMERICAN-GRACE AIRWAYS, INC. FOR APPROVAL OF EQUIPMENT INTERCHANGE AGREEMENT AND AMENDMENT TO THROUGH FLIGHT AGREEMENT UNDER SECTION 412 OF THE CIVIL AERONAUTICS ACT AND, IF DEEMED NECESSARY, FOR APPROVAL UNDER OR EXEMPTION FROM SECTION 408 OF THE SAID ACT.

The application of National Airlines, Incorporated (hereinafter referred to as "National"), Pan American World Airways, Inc. (hereinafter referred to as "Pan American") and Pan American-Grace Airways, Inc. (hereinafter re-

ferred to as "Panagra") respectfully shows to the Board as follows:

1. National, a Florida corporation, is the holder of a certificate of public convenience and necessity authorizing the transportation of persons, property and mail by air on Route No. 31 between New York, N. Y. and Miami, Florida, by various intermediate points.

2. Pan American, a New York corporation, is the holder of a certificate of public convenience and necessity authoriz- [fol. 1980] ing the transportation of persons, property and mail by air between Miami, Florida, and Balboa, Canal Zone, by various intermediate points.

3. Panagra, a Delaware corporation, is the holder of a certificate of public convenience and necessity authorizing the transportation of persons, property and mail by air between the Canal Zone and points in South America.

4. National, Pan American and Panagra have entered into an Equipment Interchange Agreement for the provision of through-plane service between New York and Miami on National's route No. 31, Miami and Balboa on Pan American's Latin American route, and Balboa and points on Panagra's route, a copy of which is attached as Exhibit A.

5. Pan American and Panagra have entered into a supplement to the Through Flight Agreement between them dated July 30, 1946, as previously amended, heretofore approved by the Board, a copy of which Supplement is attached as Exhibit B.

6. The parties respectfully request: (1) that the Board approve, under Section 412 of the Civil Aeronautics Act, the Equipment Interchange Agreement, a copy of which is attached as Exhibit A, and the Through Flight Agreement as the same will be amended by the Supplement, a copy of which is attached as Exhibit B; and (2) that if the Board should deem that approval of either of said agreements under Section 408 of the said Act is required, that the Board grant such approval or, if the Board considers that a further hearing would be necessary to that end, that

the Board exempt the parties from the requirements of Section 408 of the Civil Aeronautics Act insofar as required [fol. 1981] to permit the said agreements to become effective.

Respectfully submitted,

NATIONAL AIRLINES, INCORPORATED

By /s/ ALEXANDER G. HARDY
Senior Vice President

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

Dated: AUG 4 1955

[fol. 1982] EXHIBIT A

EQUIPMENT INTERCHANGE AGREEMENT

THIS EQUIPMENT INTERCHANGE AGREEMENT, made this day of August, 1955, between NATIONAL AIRLINES, INCORPORATED, a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "National"), PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter referred to as "Pan American"), and PAN AMERICAN-GRACE AIRWAYS, INC., a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "Panagra"):

WITNESSETH:

I. WHEREAS, National is the holder of a certificate of public convenience and necessity authorizing the transportation of persons, property and mail between New York,

N. Y. and Miami, Florida (such route being sometimes hereinafter referred to as "the New York-Miami route" or "the Miami-New York route") by various intermediate points;

II. WHEREAS, Pan American is the holder of a certificate of public convenience and necessity authorizing the transportation of persons, property and mail between Miami, Florida and Balboa, C. Z. (Ancon, C. Z. or Panama City, Panama) by various intermediate points; and

III. WHEREAS, Panagra is the holder of a certificate of public convenience and necessity authorizing the transportation of persons, property and mail between the Canal Zone and points in South America; and

IV. WHEREAS, Pan American is a party to an agreement dated July 30, 1946 with Panagra which has been supplemented by various further agreements (the said agreement as so supplemented being hereinafter called "the Through Flight Agreement"), whereby Pan American agrees to charter, as set forth in said agreement, certain [fol. 1983] aircraft of Panagra for through operation from and to Panagra's northern terminus at Balboa over certain routes or proposed routes of Pan American specified in such agreement, including Pan American's route between Balboa and Miami referred to in recital II; and

V. WHEREAS, concurrently herewith, Pan American and Panagra are executing a modification of the Through Flight Agreement providing that, for the term of this Agreement, unless the Board may otherwise permit, all flights operated under the Through Flight Agreement shall be through flights to and from New York operated between Miami and New York over the route of National, and making further provision whereby the aircraft of Panagra chartered to Pan American pursuant to the Through Flight Agreement for through operation by Pan American between the Canal Zone and Miami may be leased to National in accordance with this Agreement; and

VI. WHEREAS, in view of the substantial number of persons and the substantial quantity of property and mail

carried by connecting service between points on National's Route No. 31, on Pan American's Miami-Balboa route and on Panagra's route, National, Pan American and Panagra consider it in the public interest to furnish through-plane service to accommodate this traffic as hereinafter provided.

NOW, THEREFORE, in consideration of the premises, it is agreed as follows:

1. *Lease of Aircraft*

(a) National will lease Panagra aircraft (including cargo only aircraft) operated by Pan American from Balboa into Miami under the Through Flight Agreement, for through operation from Miami to New York and intermediate points on National's Route 31 and for return operation to Miami and thence to Balboa and beyond. Also, as provided in paragraph 2(b) of this Agreement, Pan American and Panagra, respectively, will lease National [fol. 1984] aircraft including cargo only aircraft, operated by National from New York to Miami for through operation over Pan American's route to Balboa and Panagra's route beyond and for return operation to Miami and thence to New York. The terms of the lease of National aircraft shall be agreed at an appropriate time and set forth in a supplement to this Agreement.

(b) The lease of Panagra aircraft shall become effective upon the delivery of the aircraft to National at National's loading ramps at Miami by Pan American as agent for Panagra, and the delivery by National of a receipt for such aircraft in a form to be agreed upon, and shall terminate upon delivery by National of the aircraft to Pan American as agent for Panagra at Pan American's loading ramps at Miami and the delivery to National of a similar receipt. The parties shall designate certain persons or certain classifications of employees who shall have authority to make and accept delivery of aircraft and to execute, deliver and accept receipts therefor on behalf of the parties, respectively. All line service work while Panagra aircraft are under lease will be performed by the lessee, it being understood that National at Miami will only be responsible therefor on northbound through flights. In the event that

for any reason an aircraft engaged in operations under this Agreement is required to bypass or overfly Miami, the lease shall become effective or shall terminate as the case may be, when such aircraft reaches 25 degrees, 49 minutes, North, or at such other time as may be agreed upon.

(c) Panagra aircraft may be withdrawn from lease at any time because of mechanical defects or when such withdrawal will not unreasonably interfere with the operation of a through flight. In the case of any such withdrawal, the lessor shall substitute another aircraft of the same or comparable type with substantially comparable seating capacity, if such aircraft is available, in time to enable the operation of any flight which otherwise would have been [fol. 1985] performed with the withdrawn aircraft. Receipts conforming to those to be given at the time of the regular lease and the return of aircraft under subsection (b) shall be executed by authorized personnel at the time of any such withdrawal or substitution.

(d) The route in the continental United States over which through flights are to be operated under this Agreement shall be National's Route No. 31 between Miami and New York, except that stops shall be made at Washington if agreed between Panagra and National, or if agreed between Pan American and National, provided, however, that such stops shall not be on such a number of schedules as would prejudice the purpose of this Agreement to provide through service between New York, Miami, the Canal Zone and points on Panagra's route in South America, and stops shall be made at other intermediate points on National's Route No. 31 as mutually agreed upon between the parties. If National's Miami-New York route shall be extended to any points beyond New York, any or all such flights may be operated thereto by mutual agreement.

2. *Number and Nature of Through Flights and Schedules*

(a) The parties agree that upon this Agreement becoming effective, National will immediately operate between Miami and New York with Panagra aircraft operated between the Canal Zone and Miami under charter to Pan American pursuant to the Through Flight Agreement, at

a frequency of two round trips per day, one of which will be the "El InterAmericano" first-class flight, and the other will be the "El Pacifico" tourist-class flight.

(b) National will operate additional flights between Miami and New York with Panagra aircraft operated between the Canal Zone and Miami under charter to Pan American pursuant to the Through Flight Agreement, provided that National agrees that such additional flights are reasonably required for the convenient handling of [fol. 1986] through traffic and provided further that if the number of through flights operated under this Agreement shall exceed twenty-one (21) per week, National shall have the option to furnish the necessary additional equipment for such flights in excess of twenty-one (21) in the ratio of the mileage flown over National's Route No. 31 on said additional flights to the total through flight mileage over which said additional flights in excess of twenty-one (21) flights weekly are operated.

(c) In addition to and apart from the above, whenever the parties determine that scheduled cargo-only flights are required for the convenient handling of through cargo traffic, the necessary schedules and equipment to be used on such cargo service will be mutually agreed upon.

(d) The parties will consult from time to time with a view to fixing the schedules of the through flights being operated pursuant to this Agreement in such manner as to provide the most convenient and advantageous schedules for the benefit of such through traffic, with due consideration to the need for adequate loads of both domestic and international traffic to provide load factors which will permit the continued operation of such schedules and will provide economical and efficient utilization of the aircraft. Nothing in this paragraph shall in any wise affect the obligations of Pan American to Panagra under paragraph 4(a) of the Through Flight Agreement.

(e) If experience shall demonstrate that the load factors (including both domestic and international through traffic) on the through flights operated pursuant to this Agreement shall be inadequate, the parties shall take appropriate ac-

tion to increase such load factors through reduction or adjustment of their schedules or otherwise. It is the intention of the parties that within the limitations which may be necessary by reason of the operations under the Through Flight Agreement and this Agreement, through flight schedules and turn-arounds shall be arranged to as- [fol. 1987] sure maximum utilization of aircraft leased pursuant to this Agreement, and each party shall exercise due diligence in delivering or redelivering such aircraft.

(f) In routing and selling local and way-to-way traffic, none of the parties shall discriminate in favor of flights not operated pursuant to this Agreement and the parties shall be under a continuing obligation to use their best efforts to develop economic load factors on all flights operated pursuant to this Agreement.

(g) The parties will instruct their respective personnel to cooperate in arranging and adjusting from time to time as occasion may arise reasonable and sound procedures for meeting traffic and operating problems that may arise in respect of any particular flight by reason of through flights arriving at Miami northbound or southbound unduly delayed. Due consideration shall be given in this connection to the purpose of this Agreement to provide through plane service for traffic between points on National's Route No. 31 and on Pan American's Miami-Balboa route and points on Panagra's route. Pan American shall give National immediate notice whenever aircraft scheduled to arrive in Miami northbound are to be unduly delayed, and thereafter, in order to accommodate National's Miami-New York traffic, at National's request, another aircraft will be substituted if such aircraft is available at Miami for operation of the scheduled flight to New York and return. It is the intention of the parties that in case of such substitution, or of operation by National of its own aircraft in lieu of the delayed aircraft, the delayed aircraft shall be operated through to New York when agreed to by the operations personnel of Panagra or Pan American and National. The parties agree to adjust their schedules or to make other appropriate arrangements if after a reasonable trial period National's Miami-New York traffic is un-

duly inconvenienced by reason of delays in the arrival of interchange aircraft. It is intended that the parties will [fol. 1988] exercise the same degree of diligence and effort in maintaining schedules to be operated pursuant to this Agreement as each party customarily exercises in operations over its own routes.

3. *Aircraft and Crews to be Operated under Agreement*

(a) Panagra aircraft operated pursuant to this Agreement over National's Route No. 31 shall, subject to agreement with the authorized representative of National's cabin attendants, be operated with Panagra cabin attendants except that there shall be one National cabin attendant, provided, however, that when such cabin attendants are to be in excess of National's normal complement of cabin attendants, for the same class of service, the additional cost shall be defrayed by Panagra. Panagra aircraft shall be operated with the pilots and flight engineers of National on National's Route No. 31 except that with respect to flights which, for operating or other reasons, do not land at Miami, the flight crew then operating the aircraft shall proceed to an appropriate alternate airport. All aircraft operated under this Agreement shall be properly licensed for operation over the routes, and all flight personnel on such aircraft shall be fully licensed and/or qualified for such operation. The parties will furnish each other with all data which may be required for the inclusion of their aircraft and flight personnel as specified in the others' Air Carrier Operating Certificates.

(b) The aircraft which shall be tendered pursuant to this Agreement shall be of a modern type capable of carrying on the services herein contemplated a reasonable load at competitive speeds, and with accommodations and comfort-level measured in the light of the aircraft types currently being operated over the Miami-New York route.

(c) The lessee shall have a right to inspect any aircraft tendered for operation pursuant to this Agreement before accepting same and may refuse to operate any aircraft [fol. 1989] tendered which is not in satisfactory operating

condition, subject only to customary line service, in the light of regulations of the Civil Aeronautics Administration and prevailing airline standards.

4. *Responsibility for Operations*

The lessee shall have full responsibility for and control over the operation of leased aircraft over its route while under lease to it as provided in this Agreement. The lessee's responsibility for such operation, without limiting the generality of the foregoing, shall include responsibility for and performance of operations dispatch, flight-plan clearance, radio, plane guard and in-flight instructions, all communications, navigation and weather facilities and services, all loading and discharge of airplanes, all handling of traffic and passenger service, all necessary airplane and engine inspection and on-line and turn-about maintenance service, and all emergency maintenance to the extent necessary or appropriate for the safety or preservation of the aircraft or to the extent requested by the lessor, provided that the lessee shall not be obligated to perform emergency maintenance at the lessor's request unless it has personnel and facilities capable of performing such emergency maintenance at the point where the aircraft is located. The lessee undertakes to furnish in connection with such operations adequate and efficient ground facilities and personnel to conduct such operations in accordance with approved and modern standards which shall in no event be lower than those provided in the case of its own aircraft, and to treat the lessor's aircraft on a basis of complete equality with its own aircraft.

5. *Traffic*

(a) The parties shall book and route through traffic between points on National's Route No. 31 and the Canal Zone and Panama on Pan American's route and points beyond on Panagra's route in South America via Panagra aircraft to the fullest extent practicable, provided that nothing herein contained shall be deemed to restrict the [fol. 1990] parties from operating through or connecting flights with each other or with any other carrier and rout-

ing traffic via such flights where a substantial improvement of service to the passenger or shipper would result.

(b) In order to assure that through traffic will be handled at maximum efficiency it is agreed that in the case of all northbound and southbound through flights operated over National's route, Panagra, and, subject to Panagra's reasonable requirements, Pan American, shall, from time to time, request National to block off until a reasonable time prior to departure a specific number of seats and a designated amount of mail and cargo capacity which will be designed to accommodate the through traffic reasonably expected, and shall themselves block off for the through flights on their own route a number of seats and an amount of mail and cargo capacity reasonably related to the seats and amount of capacity which they shall have requested National to block off, and the parties shall arrange their reservations control accordingly. If experience over a reasonable time indicates that the seats or capacity so blocked off unduly exceed the through traffic actually carried, the parties shall take appropriate action to prevent nonutilization of capacity, with due regard, however, for the requirements of the through traffic. Subject to the foregoing, it is the intention of this Agreement that the parties will route local and way-to-way traffic on the interchange aircraft in the same manner as on schedules operated with their own aircraft.

6. *Sales, Advertising and Publicity*

(a) The parties shall cooperate and shall use their best efforts to promote and develop traffic to be carried on through flights operated under this Agreement. The parties will advertise and otherwise publicize that through plane service is afforded over National's, Pan American's, and [fol. 1991] Panagra's routes between points on National's Route No. 31 in the northeastern United States and the Canal Zone and Panama and points on Panagra's route in South America. The parties hereto will agree in advance with each other on appropriate advertising programs (including newspaper and magazine space, advertising and

display pieces and collateral material) and budgets therefor, for promoting the through flights made pursuant to this Agreement and the approved expense of all such advertising shall be apportioned among them as from time to time agreed, provided, however, that no charge shall be made for transporting advertising material to the most effective point of use.

(b) National will cause the names of Pan American World Airways, Inc. and Pan American-Grace Airways, Inc., and, if Panagra shall so request, the name "Panagra", in such size and form as the parties may agree and the Pan American and Panagra insignia to be displayed on traffic counters at all airports and sales offices, including city ticket offices, at points in the continental United States (other than Miami) at which Panagra aircraft are operated under lease to National pursuant to this Agreement. At any airport in the continental United States at which Panagra aircraft may be operated under this Agreement Pan American and or Panagra may, at their expense, if they determine the same to be necessary or desirable, station a reasonable number of personnel who, without interferring with National's procedures, may assist in accommodating through traffic arriving from or departing to points on their respective certificated routes, it being understood that Pan American and Panagra will arrange between themselves to avoid duplication of such personnel. Persons so employed shall have access to National's space and facilities at such airports at National's absolute discretion.

(c) Pan American and Panagra will cause the name National Airlines, Inc. in such size and form as the parties [fol. 1992] may agree and the National insignia to be displayed on traffic counters at all airports and sales offices, including city ticket offices, at points outside the continental United States to which Panagra aircraft are operated.

(d) Panagra, acting through Pan American as Panagra's General Traffic and Sales Agent in the United States, and Pan American may from time to time indicate to National reasonable methods and procedures which they desire to

have established by National in connection with the selling, handling or servicing of traffic originating on or to be carried over their routes and National will put such methods and procedures into effect if agreed by it. The parties agree to furnish each other with periodic reports concerning the traffic sold to and from points on their respective routes in such reasonable detail and such form as shall be requested and mutually agreed.

(e) The name of the lessor, in such form as the lessor may determine, and its insignia shall appear on the exterior of all airplanes leased under this Agreement in addition to an appropriate statement inside the airplane informing the public that the airplane is the lessor's airplane under lease to the lessee.

7. *Liability to Third Parties and Insurance*

(a) The lessee will indemnify the lessor and hold it harmless in respect of any liability (other than to the lessor's flight crews and cabin attendants, if any, engaged in the operation of the lessor's aircraft) arising or claimed to arise as a result of lessee's operation, possession or use of the lessor's aircraft during the period of any lease. The lessee will carry passenger and cargo and public liability (including liability of lessor to employees of lessee) and property damage insurance policies covering risks attendant upon the foregoing in companies and with coverage which shall meet the lessor's reasonable satisfaction, such [fol. 1993] coverage to be in any event at least as extensive as in the case of its own aircraft; and will cause the lessor to be included in its policies as a party insured.

(b) The lessor will indemnify the lessee and hold it harmless (1) in respect of any liability arising or claimed to arise as a result of the operation of lessor's aircraft except when such aircraft shall be leased to the lessee, and (2) from all claims of lessor's flight crews and cabin attendants, if any, engaged in the operation of lessor's aircraft. The lessor will carry passenger and cargo and public liability and property damage insurance policies covering the risks attendant on the foregoing in companies and with

coverage which shall meet the lessee's reasonable satisfaction, such coverage to be in any event at least as extensive as in the case of its own operations, and will cause the lessee to be included in its policies as a party insured. The lessor will also carry appropriate policies of workmen's compensation insurance with respect to the employees referred to in clause (2) hereof.

(c) All indemnities herein shall include related costs and expenses.

(d) In the event of loss of or damage to or delay in the delivery of baggage or personal effects of a passenger, or cargo, express or mail on an aircraft making a through flight hereunder, the party having possession of the aircraft at the time the loss, damage or delay occurs shall, as between the parties hereto, be responsible therefor but in no event in excess of its liability under its stated conditions of carriage. In case it is not possible to establish which party has possession of the aircraft at the time of such loss, damage or delay, any liability or expense arising therefrom shall be shared among the parties in propor- [fol. 1994] tion to the revenue received from the transportation of the passenger whose baggage or personal effects shall have been lost, damaged or delayed or from the transportation of the cargo, express or mail which shall have been lost, damaged or delayed.

8. *Damage to Aircraft and Hull Insurance*

The lessee shall be liable for all loss or damage to aircraft or other property under lease to it pursuant to this Agreement within limits (which shall properly reflect the value of such aircraft or other property) to be agreed upon from time to time between the lessor and the lessee, irrespective of any question as to the proper maintenance of the aircraft or other property by lessor. Such value is hereinafter referred to as the "agreed value". If the loss or damage is of such extent that the aircraft is deemed to be a constructive total loss, the lessee shall pay to the lessor the agreed value of the damaged aircraft and the associated equipment installed therein, as of the date of

damage. Upon making such payment the lessee shall become the owner of such aircraft and the associated equipment installed therein and all salvage thereof. The lessee shall not be liable to the lessor for loss of use of the aircraft or other property as a result of loss or damage thereto.

The lessee shall, unless it desires to operate in whole or in part as a self-insurer, procure and maintain in full force and effect during the term of this Agreement at its own expense policies of hull insurance insuring against any loss of damage for which the lessee may be liable in an amount equal to the agreed value of each aircraft to be leased hereunder, in companies and under terms of insur- [fol. 1995] ance which shall meet the lessor's reasonable satisfaction. Said policies of insurance shall name the lessor as a co-insured and the lessee shall provide to the lessor a certificate of insurance evidencing such coverage. Such certificate of insurance shall have in it a "breach of warranty" clause providing that a breach of the insuring conditions by the lessee will not invalidate the insurance as to the lessor. The lessee agrees to require its insurers to waive any and all rights of subrogation such insurers may or could have against the lessor by virtue of such insurance contracts. The certificate of insurance shall also contain a provision that the lessor shall be given thirty (30) days' prior written notice by the insurers in the event either the insurers or the lessee desire to cancel or make a material change in the insuring conditions of such policies of insurance.

If the lessee desires to operate in whole or in part as a self-insurer, the lessor may require the lessee, prior to the commencement of operations or use of aircraft hereunder, or at any time thereafter, to deliver a bond with a surety and under terms and conditions reasonably satisfactory to the lessor which shall indemnify the lessor against any loss occasioned by such lessee's election not to procure hull insurance coverage in accordance with the provisions of this paragraph provided that a condition of any such bond shall be that it shall not be cancellable except upon thirty (30) days' prior written notice thereof from the surety to the lessor; and provided further that no such bond shall be

required if the amount of the hull insurance coverage carried by such self-insuring lessee is at least ninety percent (90%) of the agreed value of the aircraft.

[fol. 1996] 9. *Liens on Chartered Aircraft*

The lessee shall not permit any aircraft leased to it hereunder to remain subject to any mechanics or other lien whatsoever, and shall promptly satisfy or procure the discharge of any lien or garnishment of any nature whatsoever attaching to such aircraft.

10. *Compensation and Financial Provisions*

(a) *Rental*

National shall pay a rental for aircraft of Panagra leased hereunder at a rate per available seat mile based on National costs to be determined in accordance with the financial supplement attached and made a part hereof.

(b) *Expenses*

All expenses for the services contemplated to be performed by the lessee while the aircraft is under lease pursuant to this Agreement (except emergency maintenance as provided in paragraph 10(c)), and passenger and cargo liability, public liability and property damage and hull insurance as provided in paragraphs 7(a) and 8 shall be paid by the lessee.

(c) *Maintenance*

The lessor shall overhaul and maintain (except for turnaround maintenance while the aircraft is in the possession of the lessee) in accordance with its operations specifications, the aircraft leased hereunder. No aircraft shall be leased hereunder unless it is probable that it can be returned to the lessor before the time set for its next periodic inspection under the lessor's operations specifications unless, subject to agreement of the parties, the efficient utilization and routing of such aircraft makes such necessary or desirable. The lessee shall perform at the lessor's expense any emergency repairs or maintenance (not properly a

part of on-line or turnaround maintenance service) while the aircraft is in its possession to the extent requested by the lessor, but only to the extent to which it is capable with the personnel and facilities available at the point where [fol. 1997] the aircraft is located. The charge for such emergency repairs and maintenance shall be a fixed charge per man hour of direct labor, to be determined by agreement of the parties, plus the lessee's actual cost of materials used.

(d) Route mileages to be used in any determination under this Agreement will be those effective as shown in CAB Mileage Booklet No. 1, Airport-to-Airport Mileages over Interstate Routes of Certificated Air Carriers, and in any revisions thereof.

11. *Radio and Communications*

The lessor agrees to the installation in its aircraft of all radio or other communications and navigation equipment which may be necessary for the flight of such aircraft in scheduled operations over the lessee's route. Responsibility for the cost of such installation shall be fixed in a supplementary financial agreement to be entered into between the parties.

12. *Passenger Service*

It is the objective of the parties that on all through flights operated pursuant to this Agreement the quality of service, catering and attention afforded passengers on such flights shall be maintained at a level at least equal to the highest quality of service, catering and attention afforded passengers on any competitive international carrier serving Latin America. The parties will consult each other on a program for achieving this objective subject to the cost of maintaining this competitive standard of service being mutually agreed upon between the parties concerned.

13. *Training*

A training program shall be established designed to qualify flight personnel and other personnel for all operations called for by this Agreement, and the expenses of such

programs shall be allocated among the parties concerned [fol. 1998] in accordance with a supplementary financial agreement to be negotiated and entered into between such parties.

14. *Access to Books and Records*

The lessor and lessee of aircraft leased hereunder shall each have access to the books, records and accounts of the other as may be reasonably required to verify costs, expenditures and other data pertinent to this Agreement. Each party shall also furnish such information with respect to the operation of the leased aircraft as may be reasonably required by the other parties.

15. *Agreements with Other Carriers*

During the term of this Agreement National will not hereafter enter into any interchange agreement with any other carrier providing for the operation of that carrier's aircraft over National's route between Miami and New York which contains financial terms more favorable to such carrier than the financial terms of this Agreement without making such terms available to Panagra at its option.

16. *Construction and Definitions*

(a) It is the intention of the parties that within the general framework and conception of this Agreement the various provisions shall be broadly and liberally construed to accommodate technical, commercial, international and regulatory developments in the field of air transportation to the end that through traffic will be handled at maximum efficiency and in a manner to meet changing competitive conditions.

(b) Nothing in this Agreement shall be deemed to require any of the parties to take any action in violation of any applicable law, regulation, or order.

(c) This contract shall be construed in accordance with the laws of the State of New York.

[fol. 1999] (d) The various headings herein and the grouping of the provisions of this Agreement into separate paragraphs shall not be construed to limit or restrict the meaning or application of any provision hereof, and are for the purpose of convenience only.

(e) Reference to the Civil Aeronautics Board and to the Administrator of Civil Aeronautics shall mean any successor Federal agency having jurisdiction similar to that now exercised by the Board and the Administrator.

(f) Reference to specific aircraft includes engines, propellers, and accessories and other equipment of every nature which are physically attached to or in operation on such aircraft.

(g) References to Balboa or to the Canal Zone shall be deemed to include Panama, it being recognized that traffic to and from the Canal Zone presently is handled through the Tocumen Airport in Panama.

17. *Notice*

Notice to National wherever provided in the Agreement shall be given in writing by registered letter addressed to: President, National Airlines, Inc., 3240 Northwest 27th Avenue, Miami, Florida, or to such other address as National may designate in writing. Notice to Pan American wherever provided in the Agreement shall be given in writing by registered letter addressed to: Vice President-Administration, Pan American World Airways, Inc., 135 East 42nd Street, New York, N. Y., or to such other address as Pan American may designate in writing. Notice to Panagra wherever provided in the Agreement shall be given in writing by registered letter addressed to: President, Pan American-Grace Airways, Inc., 7 Hanover Square, New York, New York; or to such other address as Panagra may designate in writing. Notice shall not be considered given until the date when the same shall have been received as evidenced by the Post Office return receipt or, if the [fol. 2000] addressee shall have refused to accept the registered notice, the date on which such registered notice shall have been first tendered to the addressee. Notwith-

standing the foregoing provisions of this paragraph, notice may likewise be given in writing by letter delivered to the person designated to receive notice as aforesaid, provided a receipted copy is secured.

18. *Arbitration*

From and after the effective date of this Agreement any and all disputes as to the construction or operation of this Agreement shall be submitted to arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association as amended and in effect January 1, 1952 (hereinafter referred to as the "Rules"), in the manner hereinafter provided; provided, however, that the foregoing shall not render subject to arbitration any matter which under this Agreement is subject to agreement between the parties. The party requesting arbitration shall notify the other parties as to the matter to be arbitrated. Within five (5) days after receipt of such notice, the other parties shall notify the party giving the notice whether they claim an interest in the arbitration. If both of the other parties shall give such notice, the arbitration shall be before three disinterested and unbiased arbitrators appointed by the Administrator (as defined in the Rules). If only one of the other parties shall give timely notice of claim of an interest in the arbitration, such party and the party giving the initial notice shall each appoint an arbitrator within fifteen (15) days after the giving of the initial notice and, within ten (10) days after such appointment, the two arbitrators so appointed shall appoint a third arbitrator. If either party fails to appoint the arbitrator whom such party is entitled to appoint, or if the arbitrators appointed by or for the respective parties shall fail to appoint the third arbitrator, such then unappointed arbitrator shall be [fol. 2001] appointed by the Administrator. The award of any two of the three arbitrators shall be final, binding and conclusive upon the parties, and judgment upon the award may be entered in any court having jurisdiction. Any arbitration hereunder shall be conducted in accordance with the laws of the State of New York, and shall be conducted in New York, N. Y. unless the parties shall otherwise agree in writing.

19. *Effective Date*

This Agreement shall become effective upon the date when the orders of the Civil Aeronautics Board taking the actions hereinafter specified shall have become effective; provided, however, that if, prior to the date of the initiation of operations hereunder, any of such orders shall have been stayed either by the Civil Aeronautics Board or by any court of competent jurisdiction, the effective date of this Agreement shall be postponed until the dissolution of such stay:

(1) Approval of this Agreement;

(2) Continued approval of the Through Flight Agreement.

20. *Term*

This Agreement shall terminate, or may be terminated:

(1) If the Civil Aeronautics Board should at any time withdraw its approval hereof; or

(2) If the Civil Aeronautics Board should at any time withdraw its approval of the Through Flight Agreement; provided, however, that anything to the contrary herein notwithstanding such withdrawal of approval shall not prevent National and Panagra from conducting through flights pursuant to this Agreement if Panagra should obtain legal authorization to engage in air transportation between the Canal Zone and Miami or National should obtain legal authorization to engage in air transportation between Miami and the Canal Zone; or

[fol. 2002] (3) At the option of any of the parties on six (6) months' written notice and subject to the approval of the Civil Aeronautics Board.

21. *Through Flight Agreement—Reservation of Rights*

Nothing herein contained shall in any respect be in derogation of the rights and obligations of Pan American or Panagra under the Through Flight Agreement as to one another.

22. *Non-Prejudice*

If this Agreement is not approved by the Civil Aeronautics Board or for any other reason does not become effective or if, having become effective, this Agreement should be disapproved, terminated or cancelled the negotiation and the terms of this Agreement and all applications filed and acts done hereunder shall be without prejudice to the rights and future position of any party.

IN WITNESS WHEREOF and in consideration of the mutual covenants contained herein, the parties hereto have executed these premises as of the day and year first above written.

NATIONAL AIRLINES, INCORPORATED

By /s/ ALEXANDER G. HARDY
Senior Vice President

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

[fol. 2003]

FINANCIAL SUPPLEMENT TO THE INTERCHANGE AGREEMENT BETWEEN NATIONAL AIRLINES INCORPORATED, PAN AMERICAN WORLD AIRWAYS, INC. AND PAN AMERICAN-GRACE AIRWAYS, INC.

1. Formula for Determination of Costs.*

Costs of flight equipment and related services supplied to lessee by lessor pursuant to the Interchange Agreement will be determined separately by type of flight equipment and services relating thereto and shall be based upon National's costs per available seat mile for operating the same type of flight equipment in the same type of service (for this purpose the Douglas DC-7 and DC-7B shall be considered as the same type of equipment). The available seat miles shall be computed by multiplying the revenue miles flown by the seats installed in the various types of aircraft by type of service after excluding seats reserved for crew use. Should National's accounting practices, company procedures or the introduction of new types of equipment seriously distort its costs, any cost so affected shall be adjusted to reflect a normal cost level. Any abnormal costs of introducing new types of aircraft or other abnormal costs which benefit subsequent periods, which are removed from current costs, shall be amortized over a reasonable period for purposes of this contract. This general formula for cost ascertainment shall be subject to the following agreed limitations and determinations:

1.1 Direct Flight Costs

1.11 Flying Operations—Flying operations expense shall be determined as stated above except as follows:

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* All references to account numbers are to the Civil Aeronautics Board's Uniform System of Accounts for Air Carriers presently in effect. If any revision is made in such Uniform System of Accounts, this Financial Supplement will be revised accordingly, it being understood, however, that the same elements of cost shall be included in the determinations hereunder.

(1) Flight Crew Salaries and Expenses—Should the flight crews of either the lessor or the lessee be used on the routes of the other party pursuant to paragraph 1(a) of the Interchange [fol. 2004] Agreement, a separate charge will be made based on the available seat mile cost of National for salaries, traveling, training and supervision expenses and general administrative expenses applicable to flight crew salaries.

(2) Gasoline and Gasoline Taxes—The cost of these items shall be based on average consumption per revenue flight hour, including gas consumed in taxiing and run-up time, at average gasoline prices for each month, for the type of fuel used at the various points at which gasoline is delivered to aircraft leased, said prices to include any outside costs incurred in connection with fueling, converted to an available seat mile cost for each type of flight equipment operated in the Interchange Services. The average consumption per hour for each type of flight equipment shall be determined by actual measurement of fuel used on the first fifteen round trip flights on each schedule. The hourly consumption shall be increased by lessee's experience percentage of non-revenue to revenue hours to include non-revenue flying. The figure thus arrived at shall continue to apply except that either the lessor or the lessee may request a revision at any time whereupon a new measurement shall be made on the next fifteen flights on each schedule and a new average consumption per hour converted to an available seat mile shall be determined on the basis of such measurement.

[fol. 2005] (3) Oil, ADI fluid and Related Taxes—The average actual cost of these items per available seat mile flown in the Interchange Services by type of flight equipment shall be used.

(4) Gasoline, oil, ADI fluid and related taxes supplied by the lessee shall be for the account of the lessor.

1.12 Direct Maintenance — Flight Equipment — The available seat mile cost of National for the same type of flight equipment in the same type service shall be used. In the event that it can be determined that overhaul reserves provided by National are either excessive or insufficient, the reserve provision shall be adjusted to reflect the cost level which may reasonably be anticipated.

1.13 Flight Equipment Depreciation—Depreciation expense shall be based upon National's cost per available seat mile for the same type of flight equipment in the same type of service except that if reported costs of aircraft and engines are based upon a life different than 7 years and 10% residual values the reported costs shall be adjusted to a 7-year basis and 10% residual values in making this determination. In the event that National's reported depreciation expense is distorted by the use of fully-depreciated flight equipment, appropriate adjustment will be made in this expense to reflect the normal level of costs.

1.21 Ground and Indirect Maintenance—This element of expense shall be determined by applying to National's direct labor cost per available seat mile by type of equipment in the same type of service National's overhead rate in relation to direct labor used in the maintenance of all types of flight equipment. The lessor and lessee have estimated that 25% of the direct labor and direct materials used [fol. 2006] in connection with ground maintenance included in Accounts 6227 and 6248 relate to maintenance of ground equipment not used in connection with the shop facilities. It is mutually agreed between the lessor and the lessee that such percentage will be subject to revision from time to time as studies of National's accounts may indicate as be-

ing appropriate. Therefore, 25% of the total of these two accounts shall be excluded and the formula for determining the overhead rate for this portion of the shop burden shall be as follows:

$$\frac{\text{Total 6200 expense} - 25\% \text{ of Accounts 6227 and 6248}}{\text{Accounts 5225} + 5226 + 5227 + 25\% \text{ of 6227}} = \text{Burden rate}$$

In computing the burden rate under the formula above, the expenditure of National in the accounts referred to in the numerator and denominator shall be gross before 80 account credits or direct credit transfers of expenses.

1.22 Depreciation—The lessor and the lessee estimate that 18% of all ground equipment depreciation relates to the shop facilities used in the maintenance of flight equipment. It is mutually agreed that such percentage will be subject to revision from time to time as studies of National's accounts may indicate as being appropriate. Therefore, this portion of the ground equipment depreciation of National shall be computed as an overhead item against direct labor used in flight equipment maintenance as follows:

$$\frac{18\% \text{ of Ground Equipment Depreciation}}{\text{Acounts } 5225 + 5226 + 5227 + 25\% \text{ of } 6227} = \text{Burden rate}$$

The cost to be used in the accounts in the numerator and denominator of the above formula shall be gross before 80 account credits or direct credit transfers of expenses.

[fol. 2007] 1.23 General and Administrative Expense—Various items of expense in this category related to flight equipment maintenance have been provided for in the overall distribution of general and administrative expense hereinafter set forth.

1.3 Line Service Expense

The general intention is that services of this nature shall be handled by lessee for its own account and that lessee shall reimburse lessor for the reasonable expenses of any such work as may be agreed the lessor shall perform either directly or by a third party acting in its behalf. Line service shall be deemed to mean only routine line service, such as refueling, turn-around inspection, fire guard, aircraft cleaning, etc., and not emergency repairs or periodic checks or maintenance, such as are normally performed in the shops of the owner of the aircraft.

1.4 Passenger Service Expense

On through flights where lessor furnishes part of lessee's normal complement of cabin attendants, the lessor and lessee agree that the rental shall include a charge for each cabin attendant so furnished by the lessor. This charge shall represent the average available seat mile cost of National for salaries, travel expenses, training and supervision applicable to cabin attendants.

[fol. 2008] The cost of other passenger services to be furnished by lessor shall be based on the cost per available seat mile reported by National in Accounts 6343, "Other Services", 6352, "Passenger Supplies—Other", and 6353, "Other Supplies".

1.5 General and Administrative Expense

General and Administrative Expenses shall be determined by allocating the general and administrative expense of National on the basis of the labor cost reported in each account group.

Certain general and administrative expenses not related to the services performed are to be excluded as follows:

The amounts reported in accounts 6641, 6642, 6665, 6666, 6667 and 6672 shall be excluded in total.

The remaining general and administrative expenses shall be allocated on the basis of labor costs appearing in account groups 5100, 5200, 6100, 6200, 6300, 6400 and 6500. This proration shall be by type of equipment with respect to account groups 5100 and 5200. The total amount of general and administrative expense allocated to the 6200 group shall be re-allocated to the 5200 group of accounts by type of equipment in accordance with the formula set fourth in paragraph 1.21 of this Financial Supplement.

1.6 Investments

In lieu of a return on the lessor's investment devoted to the interchange, the lessee shall maintain a cash deposit with lessor equivalent to the amount of the lessor's investment in flight equipment, including spares and working capital devoted to the interchange services up to twenty-one (21) flights per week over lessee's routes (see paragraph 2 of the Interchange Agreement). The investment in complete aircraft units shall be determined on the basis of the lessor's cost of such aircraft units, except that in the case of DC-6B aircraft such investment shall be determined on the basis of present market value to be agreed upon between the lessor and the lessee, or, in the absence of agreement, by arbitration between them pursuant to the Interchange Agreement. The investment in spare engines, spare [fol. 2009] propellers and flight equipment spare parts and assemblies shall be an amount equal to 30% of the investment determined for the complete aircraft units. The amount of the lessor's investment in flight equipment, including spares, devoted to the interchange services shall be determined by multiplying the average investment per aircraft unit (computed separately for each type), including spares, by the number of units devoted to the interchange operation, less the depreciation paid by lessee pursuant to paragraph 1.13.

For the purpose of computing the investment devoted to the interchange, the number of aircraft units of each type upon which such investment shall be based for each quarter shall be determined by dividing the estimated average revenue hours to be flown per day with lessor's aircraft of such

type over lessee's routes under the Interchange Agreement during such quarter by National's average daily revenue hour utilization during the preceding twelve (12) months with its own equipment of the same type.

The lessee will provide an amount of working capital estimated at one month's cash expenses for the services performed over National's Route No. 31 under the Interchange Agreement, provided that, if the deposit is made by the lessee in cash, the lessor will deliver to the lessee a bond with a surety in such amount of working capital and under terms and conditions reasonably satisfactory to the lessee.

The cash deposit will be adjusted each quarter.

As evidence of the cash deposit by the lessee, the lessor will issue to the lessee its non-interest bearing note for the amount of the deposit computed as of the effective date of the Interchange Agreement, which the lessee may discount without recourse. The lessor will cooperate with the lessee to effect such discount. Such note shall be for a term of seven (7) years or the termination of the Interchange Agreement, whichever shall first occur, with twenty-eight (28) equal quarterly payments which will approximate the [fol. 2010] anticipated reduction of the deposit due to depreciation accruals.

In lieu of a cash deposit the lessee, at its option, may issue its note to lessor for all or any part of the amount of the deposit required pursuant to this paragraph 1.6. Such note shall be for a term of seven (7) years or the termination of the Interchange Agreement, whichever shall first occur, with twenty-eight (28) equal quarterly payments which will approximate the anticipated reduction of the deposit due to depreciation charges, with interest at such rate as will permit the lessor to discount, without recourse, such note at time of issuance at par.

Upon the quarterly redetermination of the deposit as provided in this paragraph 1.6 the lessor will (a) pay to the lessee the amount of any reduction in such deposit over the balance previously required if the lessee shall have on deposit with lessor cash to cover such deposit, or (b) in the

event lessor shall have issued its note or notes as evidence of such deposit, lessor shall apply such reduction first in payment of current amortization on such note or notes and any excess of such reduction over current amortization shall be applied as prepaid amortization of such note or notes in inverse order of maturities, or (c) if the lessee shall have issued its note or notes to the lessor in lieu of such deposit, then lessor shall pay any such reduction of the deposit to the lessee to be used for reduction of such note or notes. In the event of an increase in the required deposit, the lessee will either cover the additional amount required by a cash deposit with the lessor in which event lessor shall issue its note or notes, if lessee so elects, as evidence of such additional deposit with terms and conditions as above provided unless otherwise agreed, or, if lessee so elects, it may issue a note or notes in lieu of such additional deposit with terms and conditions as above provided unless otherwise agreed.

It is the intention of this paragraph 1.6 to give the lessee the election as to whether the deposit shall be made in cash or by its note so that the rate of interest to be paid by the lessee on any notes issued or discounted pursuant to this paragraph 1.6 shall not exceed the rate of interest at which [fol. 2011] the lessee can borrow money on the same terms and conditions.

1.7 Sale of Aircraft

It is contemplated that initially five (5) DC-7Bs and five (5) DC-6Bs shall be devoted to the interchange service. In the event of (a) termination of the Interchange Agreement or (b) withdrawal of any type of aircraft operated in the interchange service, title to one aircraft out of each five aircraft to be operated in the interchange service shall pass to the lessee upon the following terms and conditions:

Payment by the lessee of the difference between the agreed value and the aggregate depreciation paid by the lessee to the lessor on the aircraft (excluding spares) of the type being sold. The agreed value shall be the lessor's cost of such aircraft except that in the case of the DC-6B type of aircraft presently being operated by the lessor, the agreed value shall be estab-

lished on the basis of the market value of such aircraft as of the effective date of the Interchange Agreement, established in accordance with the second sentence of paragraph 1.6 above. The lessor shall have the option forthwith (a) to repurchase at the then current market value or (b) to lease at a rental to be agreed upon, any aircraft sold to the lessee, except that in the case of such aircraft withdrawn from interchange service the lessor shall not have such options with respect to such aircraft sold to the lessee on which the lessee has paid in depreciation an amount equal to 90% of the agreed value of such aircraft as of the date title passes to lessee. In the absence of agreement on the above then current market value or rental, the same shall be determined by arbitration pursuant to the Interchange Agreement.

Title to such aircraft shall not pass to the lessee but shall remain in the lessor until termination of the Interchange Agreement or the withdrawal of the aircraft from [fol. 2012] the interchange service.

This paragraph 1.7 shall be subject to review and modification by mutual agreement, or, in the absence of such agreement, by arbitration pursuant to the Interchange Agreement, in the event any new type or additional aircraft are to be operated in the interchange service (except aircraft which may be required to replace any lost or damaged aircraft), with the understanding that upon such review a similar basis will be followed as was used above with respect to the five (5) DC-6Bs and the five (5) DC-7Bs referred to in this paragraph 1.7.

2. Billings and Base Periods

The payments provided for in this Financial Supplement shall be made within ten (10) days after invoice therefor shall be submitted to the party from which payment is due, which invoice shall be submitted monthly. Determination and billing of the rental of flight equipment and related equipment supplied to lessee by lessor pursuant to the Interchange Agreement for each year's period beginning

January 1 shall be based on National's cost for the year ended June 30 following. Pending determination of such costs based on National's final financial and operating reports to the Civil Aeronautics Board, interim billings may be made on an estimated basis at the rates in effect during the preceding period.

3. Review of Formula

The formula for determination of prices for services rendered under the Interchange Agreement may be reviewed at the request of either the lessor or the lessee made in writing at least fifteen (15) days before the expiration of any annual period. In the event of the making of any such request, the parties will promptly confer with a view to agreeing on such a readjustment, or, in the absence of agreement, by arbitration between them pursuant to the Interchange Agreement.

[fol. 2013] 4. It is hereby understood that this Financial Supplement is subject to paragraphs 1.3, 1.6 and 1.7 being reviewed and approved by National's General Counsel and that such Counsel shall state his views on or before August 10, 1955.

[fol. 2014]

EXHIBIT B

THROUGH FLIGHT AGREEMENT

SUPPLEMENT NO. 48

RELATING TO INTERCHANGE AGREEMENT WITH NATIONAL AIRLINES, INCORPORATED

AGREEMENT made this 4th day of August, 1955, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York Corporation (hereinafter called "PAA"), and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware Corporation (hereinafter called "Panagra"):

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946, and supplements thereto

numbered one through seventeen inclusive relating to the charter of Panagra's aircraft to PAA for through operation on certain of PAA's routes north of the Canal Zone and other matters, which agreements are hereinafter referred to as "the Through Flight Agreement"; and

WHEREAS, PAA and Panagra have entered into an agreement with National Airlines, Incorporated, a Florida corporation (hereinafter called "National"), dated as of the date hereof (hereinafter referred to as "the Interchange Agreement"); and

WHEREAS, the parties desire to supplement and amend the Through Flight Agreement as herein set forth.

NOW, THEREFORE, THE AGREEMENT WITNESSETH:

102. All recitals and paragraphs of Supplement No. 5 to the Through Flight Agreement are hereby deleted except paragraphs 49, 50, 51 (except for the first parenthetical insertion), 53 (except for the proviso to the last sentence of the amendment made therein), 54 (notwithstanding any provisions of paragraph 59 to the contrary), 57(e) (as modified by paragraph 71), and 57 (g).

103. The last sentence of paragraph 14 of the Through Flight Agreement as amended by paragraphs 51 and 102 [fol. 2015] above is amended to read as follows:

> "PAA and Panagra will agree with each other (and with National if the Interchange Agreement shall become and be effective) in advance on appropriate advertising programs (including newspaper and magazine space, advertising and display pieces and collatoral material) and budgets therefor, for promoting the through flights made pursuant to this Agreement, and the approved expense of all such advertising shall be apportioned among them as from time to time agreed, provided, however, that no charge shall be made for transporting advertising material to the most effective point of use."

104. For the term of the Interchange Agreement, Panagra's aircraft chartered to PAA pursuant to the Through Flight Agreement for through operation between the Canal Zone and Miami, Florida, shall, except as the Civil Aeronautics Board may otherwise permit, be further chartered to National for through operation by National upon the specific terms and conditions set forth in the Interchange Agreement.

105. Panagra hereby constitutes and appoints PAA as Panagra's agent, for the term during which the Through Flight Agreement and the Interchange Agreement shall be simultaneously in effect, to deliver Panagra's aircraft to National at Miami, for the purpose of flights over National's route pursuant to the said agreement and to receive delivery of Panagra's aircraft from National at Miami. PAA is authorized as such agent, on Panagra's behalf, to receive and execute such receipts, to perform such inspections, to make such checks and measurements, and to perform all such other acts as may be necessary or appropriate in connection with the delivery or return of the said aircraft. In acting as such agent with respect to the delivery of Panagra's aircraft to National and the return of Panagra's aircraft by National at Miami, PAA shall be bound to exercise the same and only the same degree of care as PAA exercises with respect to the delivery and return of its own aircraft under similar circumstances.

[fol. 2016] 106. The second sentence of paragraph 15(a) of the Through Flight Agreement as amended is further amended to read as follows:

> "PAA shall be deemed to be in possession of Panagra's aircraft (1) in the case of aircraft turned over to PAA for operation on through flights under this agreement, from the time when such aircraft is so turned over to PAA by Panagra until the time when such aircraft is either (i) returned by PAA to Panagra or (ii) turned over by PAA to National for operation by National pursuant to the Interchange Agreement, in which event the aircraft shall again be deemed

to be in PAA's possession when returned to it by National, and (2) in the case of aircraft turned over to PAA for maintenance, from the time when such aircraft is turned over to PAA at one of the latter's maintenance bases until the time when such aircraft is returned to Panagra, or until it is turned over by PAA to National as provided above; except, in either case, for non-revenue or other special flights (excluding test flights made under PAA custody following maintenance and according to CAA requirements) during such period made at the instance and request of Panagra."

107. Paragraph 17(h) of the Through Flight Agreement (added by paragraph 34 of Supplement No. 2) is amended by adding the following at the end thereof: "and in the case of mileage flown over the route of National pursuant to the Interchange Agreement will be those effective as shown in the "Civil Aeronautics Board Official Airline Route and Mileage Manual" and in any revisions thereof.

108. Paragraph 23(e) of the Through Flight Agreement is amended by adding at the end thereof the words: "and the delivery of possession of Panagra's aircraft to National and the return of such possession from National pursuant to the Interchange Agreement."

109. (a) All reference in Annex 1A to the Through Flight Agreement to "the charter service" shall refer only to the charter service operated by PAA pursuant to said Agreement. All references in said Annex 1A to the total [fol. 2017] revenue miles flown by Panagra's aircraft or to a revenue mile basis shall include revenue miles flown by such aircraft pursuant to the Interchange Agreement, except that (i) in those instances where the expenses to be prorated under paragraph 1 of Annex 1A are not related to the miles flown by Panagra aircraft under the Interchange Agreement shall be omitted, and (ii) in those instances where the expenses to be prorated under paragraph 1 of Annex 1A are only partially related to the miles flown by Panagra aircraft under the Interchange Agreement, the

mileage under the Interchange Agreement shall be included on an appropriately weighted basis.

(b) Paragraph 1A1(1) of said Annex 1A is amended by adding at the end thereof the following: "and Panagra will cause National to advise Panagra at the close of each month of the total gallonage delivered by National to Panagra's aircraft, classified by aircraft types, under the Interchange Agreement."

(c) The last sentence of paragraph 1A3 of said Annex 1A is amended to read as follows:

> "If it shall appear that major items of cost recorded in such accounts are applicable only to the charter service or to Panagra's common carrier service or to the charter service operated pursuant to the Interchange Agreement, provision will be made for removing such costs from allocation and charging such costs directly to the service to which they relate."

(d) The parenthetical phrases in paragraphs 1A3 and 1B of said Annex 1A now reading: ("except for credits arising out of charges to PAA") are amended to read ("except for credits arising out of charges to PAA and of charges to National").

(e) The last sentence of paragraphs 2B and 2C of said Annex 1A are amended by adding at the end the words:

> [fol. 2018] "plus 20% of the available ton miles flown in the charter service operated pursuant to the Interchange Agreement."

110. Paragraph 102 of this Supplement No. 18 shall be effective immediately. The remainder of this Supplement No. 18 shall become effective only in the event that the Interchange Agreement shall become effective and upon the making of an order by the Civil Aeronautics Board approving the Through Flight Agreement as herein modified, and shall remain in effect so long as the Interchange Agreement and the Through Flight Agreement shall remain simultaneously in effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their officers thereunto duly authorized on the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

[fol. 2019]

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing application has this day been served upon all counsel who have appeared in the Reopened New York-Balboa Through Service Proceeding, Docket No. 4882, by mailing to each of them a copy thereof properly addressed, postage prepaid, dated at Washington, D. C. this 4th day of August, 1955.

/s/ JOHN C. PIRIE
John C. Pirie

[fol. 2020]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 27

Exhibit 1

SUPPLEMENT NO. 1 TO EQUIPMENT INTERCHANGE AGREEMENT

This Supplemental Agreement made this 9th day of August, 1955 between NATIONAL AIRLINES, INCORPORATED, a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "National"), PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter referred to as "Pan

American"), and PAN AMERICAN-GRACE AIRWAYS, INC., a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "Panagra");

WITNESSETH:

WHEREAS, National, Pan American and Panagra entered into an Equipment Interchange Agreement, dated August 4, 1953, hereinafter referred to as the "Equipment Interchange Agreement"; and

WHEREAS, the parties desire to amend the Financial Supplement to the Equipment Interchange Agreement as hereinafter provided:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto do hereby agree that the financial supplement attached to and made a part of the Equipment Interchange Agreement is hereby amended in accordance with the financial supplement attached hereto, marked "Revision No. 1, dated August 9, 1955," and made a part hereof.

IN WITNESS WHEREOF the parties hereto have exe- [fol. 2021] cuted these premises as of the day and year first above written.

NATIONAL AIRLINES, INCORPORATED

By /s/ ALEXANDER G. HARDY
Senior Vice President

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

[fol. 2022]

Revision No. 1
Dated August 9, 1955

FINANCIAL SUPPLEMENT TO THE INTERCHANGE AGREEMENT BETWEEN NATIONAL AIRLINES INCORPORATED, PAN AMERICAN WORLD AIRWAYS, INC. AND PAN AMERICAN-GRACE AIRWAYS, INC.

1. Formula for Determination of Costs.*

Costs of flight equipment and related services supplied to lessee by lessor pursuant to the Interchange Agreement will be determined separately by type of flight equipment and services relating thereto and shall be based upon National's costs per available seat mile for operating the same type of flight equipment in the same type of service (for this purpose the Douglas DC-7 and DC-7 shall be considered as the same type of equipment). The available seat miles shall be computed by multiplying the revenue miles flown by the seats installed in the various types of aircraft by type of service after excluding seats reserved for crew use. Should National's accounting practices, company procedures or the introduction of new types of equipment seriously distort its costs, any cost so affected shall be adjusted to reflect a normal cost level. Any abnormal costs of introducing new types of aircraft or other abnormal costs which benefit subsequent periods, which are removed from current costs, shall be amortized over a reasonable period for purposes of this contract. This general formula for cost ascertainment shall be subject to the following agreed limitations and determinations:

1.1 Direct Flight Costs:

1.11 Flying Operations—Flying operations expense shall be determined as stated above except a follows:

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* All references to account numbers are to the Civil Aeronautics Board's Uniform System of Accounts for Air Carriers presently in effect. If any revision is made in such Uniform System of Accounts, this Financial Supplement will be revised accordingly, it being understood, however, that the same elements of cost shall be included in the determinations hereunder.

(1) Flight Crew Salaries and Expenses—Should the flight crews of either the lessor or the lessee be used on the routes of the other party pursuant to paragraph 1(a) of the Interchange Agree-
[fol. 2023] ment, a separate charge will be made based on the available seat mile cost of National for salaries, traveling, training and supervision expenses and general administrative expenses applicable to flight crew salaries.

(2) Gasoline and Gasoline Taxes—The cost of these items shall be based on average consumption per revenue flight hour, including gas consumed in taxiing and run-up time, at average gasoline prices for each month, for the type of fuel used at the various points at which gasoline is delivered to aircraft leased, said prices to include any outside costs incurred in connection with fueling, converted to an available seat mile cost for each type of flight equipment operated in the Interchange Services. The average consumption per hour for each type of flight equipment shall be determined by actual measurement of fuel used on the first fifteen round trip flights on each schedule. The hourly consumption shall be increased by lessee's experience percentage of non-revenue to revenue hours to include non-revenue flying. The figure thus arrived at shall continue to apply except that either the lessor or the lessee may request a revision at any time whereupon a new measurement shall be made on the next fifteen flights on each schedule and a new average consumption per hour converted to an available seat mile shall be determined on the basis of such measurement.

[fol. 2024] (3) Oil, ADI fluid and Related Taxes—The average actual cost of these items per available seat mile flown in the Interchange Services by type of flight equipment shall be used.

(4) Gasoline, oil, ADI fluid and related taxes supplied by the lessee shall be for the account of the lessor.

1.12 Direct Maintenance—Flight Equipment—The available seat mile cost of National for the same type of flight equipment in the same type service shall be used. In the event that it can be determined that overhaul reserves provided by National are either excessive or insufficient, the reserve provision shall be adjusted to reflect the cost level which may reasonably be anticipated.

1.13 Flight Equipment Depreciation—Depreciation expense shall be based upon National's cost per available seat mile for the same type of flight equipment in the same type of service except that if reported costs of aircraft and engines are based upon a life different than 7 years and 10% residual values the reported costs shall be adjusted to a 7-year basis and 10% residual values in making this determination. In the event that National's reported depreciation expense is distorted by the use of fully-depreciated flight equipment, appropriate adjustment will be made in this expense to reflect the normal level of costs.

1.21 Ground and Indirect Maintenance—This element of expense shall be determined by applying to National's direct labor cost per available seat mile by type of equipment in the same type of service National's overhead rate in relation to direct labor used in the maintenance of all types of flight equipment. The lessor and lessee have estimated that 25% of the [fol. 2025] direct labor and direct materials used in connection with ground maintenance included in Accounts 6227 and 6248 relate to maintenance of ground equipment not used in connection with the shop facilities. It is mutually agreed between the lessor and the lessee that such percentage will be subject to revision from time to time as studies of National's accounts may indicate as being appropriate. Therefore, 25% of the total of these two accounts shall be excluded and the formula for determining the overhead rate for this portion of the shop burden shall be as follows:

$$\frac{\text{Total 6200 expense—25\% of Accounts 6227 and 6248}}{\text{Accounts 5225 + 5226 − 5227 + 25\% of 6227}} = \text{Burden rate}$$

In computing the burden rate under the formula above, the expenditure of National in the accounts referred to in the numerator and denominator shall be gross before 80 account credits or direct credit transfers of expenses.

1.22 Depreciation—The lessor and the lessee estimate that 18% of all ground equipment depreciation relates to the shop facilities used in the maintenance of flight equipment. It is mutually agreed that such percentage will be subject to revision from time to time as studies of National's accounts may indicate as being appropriate. Therefore, this portion of the ground equipment depreciation of National shall be computed as an overhead item against direct labor used in flight equipment maintenance as follows:

$$\frac{\text{18\% of Ground Equipment Depreciation}}{\text{Accounts 5225 + 5226 + 5227 + 25\% of 6227}} = \text{Burden rate}$$

The cost to be used in the accounts in the numerator and denominator of the above formula shall be gross before 80 account credits or direct credit transfers of expenses.

[fol. 2026] 1.23 General and Administrative Expense—Various items of expense in this category related to flight equipment maintenance have been provided for in the overall distribution of general and administrative expense hereinafter set forth.

1.3 Line Service Expense

The general intention is that services of this nature shall be handled by lessee for its own account and that lessee shall reimburse lesser for the reasonable expenses of any such work as may be agreed the

lessor shall perform either directly or by a third party acting in its behalf. Line service shall be deemed to mean only routine line service, such as refueling, turn-around inspection, fire guard, aircraft cleaning, etc., and not emergency repairs or periodic checks or maintenance, such as are normally performed in the shops of the owner of the aircraft.

1.4 Passenger Service Expense

On through flights where lessor furnishes part of lessee's normal complement of cabin attendants, the lessor and lessee agree that the rental shall include a charge for each cabin attendant so furnished by the lessor. This charge shall represent the average available seat mile cost of National for salaries, travel expenses, training and supervision applicable to cabin attendants.

[fol. 2027] The cost of other passenger services to be furnished by lessor shall be based on the cost per available seat mile reported by National in Accounts 6343, "Other Services", 6352, "Passenger Supplies—Other", and 6353, "Other Supplies".

1.5 General and Administrative Expense

General and Administrative Expenses shall be determined by allocating the general and administrative expense of National on the basis of the labor cost reported in each account group.

Certain general and administrative expenses not related to the services performed are to be excluded as follows:

The amounts reported in accounts 6641, 6642, 6665, 6666, 6667 and 6672 shall be excluded in total.

The remaining general and administrative expenses shall be allocated on the basis of labor costs appearing in account groups 5100, 5200, 6100, 6200, 6300, 6400 and 6500. This proration shall be by type of equipment with respect to account groups 5100 and 5200. The total amount of general and administrative expense allocated to the 6200 group

shall be re-allocated to the 5200 group of accounts by type of equipment in accordance with the formula set forth in paragraph 1.21 of this Financial Supplement.

1.6 Investment

In lieu of a return on the lessor's investment devoted to the interchange, the lessee shall maintain a cash deposit with lessor equivalent to the amount of the lessor's investment in flight equipment, including spares and working capital devoted to the interchange services up to twenty-one (21) flights per week over lessee's route (see paragraph 2 of the Interchange Agreement). The investment in complete aircraft units shall be determined on the basis of the lessor's cost of such aircraft units except that in the case of DC-6B aircraft such investment shall be determined on the basis of present market value to be agreed upon between the lessor and the lessee, or, in the absence of agreement, by arbitration between them pursuant to the Interchange Agreement. The investment in spare engines, spare [fol. 2028] propellers and flight equipment spare parts and assemblies shall be an amount equal to 30% of the investment determined for the complete aircraft units. The amount of the lessor's investment in flight equipment, including spares, devoted to the interchange services shall be determined by multiplying the average investment per aircraft unit (computed separately for each type), including spares, by the number of units devoted to the interchange operation, less the depreciation paid by lessee pursuant to paragraph 1.13.

For the purpose of computing the investment devoted to the interchange, the number of aircraft units of each type upon which such investment shall be based for each quarter shall be determined by dividing the estimated average revenue hours to be flown per day with lessor's aircraft of such type over lessee's routes under the Interchange Agreement during such quarter by National's average daily revenue hour utilization during the preceding twelve (12) months with its own equipment of the same type.

The lessee will provide an amount of working capital estimated at one month's cash expenses for the services per-

formed over National's Route No. 31 under the Interchange Agreement, provided that, if the deposit is made by the lessee in cash, the lessor will deliver to the lessee a bond with a surety in such amount of working capital and under terms and conditions reasonably satisfactory to the lessee.

The cash deposit will be adjusted each quarter.

As evidence of the cash deposit by the lessee, the lessor will issue to the lessee its non-interest bearing note for the amount of the deposit computed as of the effective date of the Interchange Agreement, with such reasonable terms and conditions as will enable the lessee to discount such note without recourse. The lessor will cooperate with the lessee to effect such discount. Such note shall be for a term of seven (7) years or the termination of the Interchange Agreement, whichever shall first occur, with twenty-eight (28) equal quarterly payments which will approximate the [fol. 2029] anticipated reduction of the deposit due to depreciation accrual.

In lieu of a cash deposit the lessee, at its option, may issue its note to lessor for all or any part of the amount of the deposit required pursuant to this paragraph 1.6. Such note shall be for a term of seven (7) years or the termination of the Interchange Agreement, whichever shall first occur, with twenty-eight (28) equal quarterly payments which will approximate the anticipated reduction of the deposit due to depreciation charges, with interest at such rate as will permit the lessor to discount, without recourse such note at time of issuance at par.

Upon the quarterly redetermination of the deposit as provided in this paragraph 1.6 the lessor will (a) pay to the lessee the amount of any reduction in such deposit over the balance previously required if the lessee shall have on deposit with lessor cash to cover such deposit, or (b) in the event lessor shall have issued its note or notes as evidence of such deposit, lessor shall apply such reduction first in payment of current amortization on such note or notes and any excess of such reduction over current amortization shall be applied as prepaid amortization of such note or notes in inverse order of maturities, or (c) if the lessee shall

have issued its note or notes to the lessor in lieu of such deposit, then lessor shall pay any such reduction of the deposit to the lessee to be used for reduction of such note or notes. In the event of an increase in the required deposit, the lessee will either cover the additional amount required by a cash deposit with the lessor in which event lessor shall issue its note or notes, if lessee so elects, as evidence of such additional deposit with terms and conditions as above provided unless otherwise agreed, or, if lessee so elects, it may issue a note or notes in lieu of such additional deposit with terms and conditions as above provided unless otherwise agreed.

It is the intention of this paragraph 1.6 to give the less the election as to whether the deposit shall be made in cash or by its note so that the rate of interest to be paid by the lessee on any notes issued or discounted pursuant to this paragraph 1.6 shall not exceed the rate of interest at which the lessee can borrow money on the same terms and [fol. 2030] conditions.

1.7 Sale of Aircraft

It is contemplated that initially five (5) DC-7Bs and five (5) DC-6Bs shall be devoted to the interchange service. In the event of (a) termination of the Interchange Agreement pursuant to paragraph 20 of the Interchange Agreement or (b) withdrawal of any type of aircraft operated in the interchange service, title to one aircraft to be designated by mutual agreement as of the effective date of the Interchange Agreement out of each five aircraft to be operated in the interchange service shall pass to the lessee upon the following terms and conditions:

The lessee shall pay the lessor the difference between the agreed value of the designated aircraft and the aggregate depreciation paid by the lessee to lessor on the aircraft (excluding spares) of the type involved. The agreed value shall be the lessor's cost of such designated aircraft except that in the case of the DC-6B type of aircraft presently being operated by the lessor, the agreed value shall be established on the basis of the market value of such designated aircraft as of the

effective date of the Interchange Agreement, established in accordance with the second sentence of paragraph 1.6 above. The lessor shall have the option forthwith (a) to purchase at the then current market value or (b) to lease for a period not to exceed eighteen (18) months, unless otherwise agreed, at a rental to be agreed upon, any such designated aircraft sold to the lessee, except that in the case of such designated aircraft withdrawn from the interchange service the lessor shall not have such options with respect to such designated aircraft sold to the lessee on which the lessee has paid in depreciation an amount equal to 90% of the agreed value of such designated aircraft as of the date title passes to the lessee. In the absence of agreement on the above then current market value or rental the same shall be determined by arbitration pursuant to the Interchange Agreement.

[fol. 2031] It is understood that the lessor shall have the right to substitute an aircraft of the same type and of substantially the same condition as the designated aircraft if the lessor is unable to deliver such designated aircraft because of loss, damage or other causes beyond the lessor's control. In such event the substituted aircraft shall become the designated aircraft for the purposes of this paragraph 1.7.

Title to the designated aircraft shall not pass to the lessee but shall remain in the lessor until termination of the Interchange Agreement or the withdrawal of the aircraft from the interchange service and payment of the full purchase price as prescribed above. Further, it is understood that wherever in the Interchange Agreement and this Financial Supplement the word "aircraft" is used, it shall include the designated aircraft.

This paragraph 1.7 shall be subject to review and modification by mutual agreement, or in the absence of such agreement, by arbitration pursuant to the Interchange Agreement, in the event any new type or additional aircraft are to be operated in the interchange service (except aircraft which may be required to replace any lost or damaged

aircraft), with the understanding that upon such review a similar basis will be followed as was used above with respect to the five (5) DC-6Bs and the five (5) DC-7Bs referred to in this paragraph 1.7.

[fol. 2032] 2. Billings and Base Periods

The payments provided for in this Financial Supplement shall be made within ten (10) days after invoice therefor shall be submitted to the party from which payment is due, which invoice shall be submitted monthly. Determination and billing of the rental of flight equipment and related equipment supplied to lessee by lessor pursuant to the Interchange Agreement for each year's period beginning January 1 shall be based on National's cost for the year ended June 30 following. Pending determination of such costs based on National's final financial and operating reports to the Civil Aeronautics Board, interim billings may be made on an estimated basis at the rates in effect during the preceding period.

3. Review of Formula

The formula for determination of prices for services rendered under the Interchange Agreement may be reviewed at the request of either the lessor or the lessee made in writing at least fifteen (15) days before the expiration of any annual period. In the event of the making of any such request, the parties will promptly confer with a view to agreeing on such a readjustment, or, in the absence of agreement, by arbitration between them pursuant to the Interchange Agreement.

[fol. 2033]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 28

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 4882 *et al.*

In the matter of the

REOPENED NEW YORK-BALBOA THROUGH SERVICE PROCEEDING

Docket No. 7341

In the matter of the

Application of National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. for approval of Equipment Interchange Agreement and Amendment to Through Flight Agreement under Section 412 of the Civil Aeronautics Act and, if deemed necessary, for approval under or exemption from Section 408 of the said Act.

APPLICATION, AS AMENDED BY AMENDMENT NO. 1, OF NATIONAL AIRLINES, INCORPORATED, PAN AMERICAN WORLD AIRWAYS, INC., AND PAN AMERICAN-GRACE AIRWAYS, INC. FOR APPROVAL OF EQUIPMENT INTERCHANGE AGREEMENT AND AMENDMENT TO THROUGH FLIGHT AGREEMENT UNDER SECTION 412 OF THE CIVIL AERONAUTICS ACT AND, IF DEEMED NECESSARY, FOR APPROVAL UNDER OR EXEMPTION FROM SECTION 408 OF THE SAID ACT

Communications with respect to the above Application should be addressed to:

ALEXANDER G. HARDY,
Senior Vice President,
NATIONAL AIRLINES, INCORPORATED,
Wyatt Building,
Washington, D. C.

HENRY J. FRIENDLY,
Vice President and General Counsel,
PAN AMERICAN WORLD AIRWAYS, INC.,
135 East 42nd Street,
New York 17, N. Y.

DOUGLAS CAMPBELL,
Vice President and General Manager,
PAN AMERICAN-GRACE AIRWAYS, INC.,
135 East 42nd Street,
New York 17, N. Y.

Dated: (August 4, 1955.
(August 10, 1955 (Amendment No. 1)

[fol. 2034]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 4882 *et al.*

In the matter of the

REOPENED NEW YORK-BALBOA THROUGH SERVICE PROCEEDING

Docket No. 7341

In the matter of the

Application of National Airlines, Incorporated, Pan American World Airways, Inc., and Pan American-Grace Airways, Inc. for approval of Equipment Interchange Agreement and Amendment to Through Flight Agreement under Section 412 of the Civil Aeronautics Act and, if deemed necessary, for approval under or exemption from Section 408 of the said Act.

APPLICATION OF NATIONAL AIRLINES, INCORPORATED, PAN AMERICAN WORLD AIRWAYS, INC., AND PAN AMERICAN-GRACE AIRWAYS, INC. FOR APPROVAL OF EQUIPMENT INTERCHANGE AGREEMENT AND AMENDMENT TO THROUGH FLIGHT AGREEMENT UNDER SECTION 412 OF THE CIVIL AERONAUTICS ACT AND, IF DEEMED NECESSARY, FOR APPROVAL UNDER OR EXEMPTION FROM SECTION 408 OF THE SAID ACT

The application of National Airlines, Incorporated (hereinafter referred to as "National"), Pan American World Airways, Inc. (hereinafter referred to as "Pan American") and Pan American-Grace Airways, Inc. (hereinafter referred to as "Panagra") respectfully shows to the Board as follows:

1. National, a Florida corporation, is the holder of a certificate of public convenience and necessity authorizing [fol. 2035] the transportation of persons, property and mail by air on Route No. 31 between New York, N. Y. and Miami, Florida, by various intermediate points.

2. Pan American, a New York corporation, is the holder of a certificate of public convenience and necessity authorizing the transportation of persons, property and mail by air between Miami, Florida, and Balboa, Canal Zone, by various intermediate points.

3. Panagra, a Delaware corporation, is the holder of a certificate of public convenience and necessity authorizing the transportation of persons, property and mail by air between the Canal Zone and points in South America.

4. National, Pan American and Panagra have entered into an Equipment Interchange Agreement for the provision of through-plane service between New York and Miami on National's route No. 31, Miami and Balboa on Pan American's Latin American route, and Balboa and points on Panagra's route, a copy of which is attached as Exhibit A.

5. Pan American and Panagra have entered into a supplement to the Through Flight Agreement between them dated July 30, 1946, as previously amended, heretofore approved by the Board, a copy of which Supplement is attached as Exhibit B.

6. The parties respectfully request: (1) that the Board approve, under Section 412 of the Civil Aeronautics Act, the Equipment Interchange Agreement, a copy of which is attached as Exhibit A, and the Through Flight Agreement as the same will be amended by the Supplement, a copy of which is attached as Exhibit B; and (2) that if the Board should deem that approval of either of said agreements under Section 408 of the said Act is required, [fol. 2036] that the Board grant such approval or, if the Board considers that a further hearing would be necessary to that end, that the Board exempt the parties from the requirements of Section 408 of the Civil Aeronautics Act

insofar as required to permit the said agreements to become effective.

Respectfully submitted,

NATIONAL AIRLINES, INCORPORATED

By /s/ ALEXANDER G. HARDY
Senior Vice President

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

Dated: August 4, 1955

[fol. 2037]

EXHIBIT A

Equipment Interchange Agreement

As Amended By Supplement No. 1

THIS EQUIPMENT INTERCHANGE AGREEMENT, made this 4th day of August, 1955, between NATIONAL AIRLINES, INCORPORATED, a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "National"), PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter referred to as "Pan American"), and PAN AMERICAN-GRACE AIRWAYS, INC., a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "Panagra"):

WITNESSETH:

I. WHEREAS, National is the holder of a certificate of public convenience and necessity authorizing the transportation of persons, property and mail between New York, N. Y. and Miami, Florida (such route being sometimes

hereinafter referred to as "the New York-Miami route" or "the Miami-New York route") by various intermediate points;

II. WHEREAS, Pan American is the holder of a certificate of public convenience and necessity authorizing the transportation of persons, property and mail between Miami, Florida and Balboa, C. Z. (Ancon, C. Z. or Panama City, Panama) by various intermediate points; and

III. WHEREAS, Panagra is the holder of a certificate of public convenience and necessity authorizing the transportation of persons, property and mail between the Canal Zone and points in South America; and

[fol. 2038] IV. WHEREAS, Pan American is a party to an agreement dated July 30, 1946 with Panagra which has been supplemented by various further agreements (the said agreement as so supplemented being hereinafter called "the Through Flight Agreement"), whereby Pan American agrees to charter, as set forth in said agreement, certain aircraft of Panagra for through operation for and to Panagra's northern terminus at Balboa over certain routes or proposed routes of Pan American specified in such agreement, including Pan American's route between Balboa and Miami referred to in recital II; and

V. WHEREAS, concurrently herewith, Pan American and Panagra are executing a modification of the Through Flight Agreement providing that, for the term of this Agreement, unless the Board may otherwise permit, all flights operated under the Through Flight Agreement shall be through flights to and from New York operated between Miami and New York over the route of National, and making further provision whereby the aircraft of Panagra chartered to Pan American pursuant to the Through Flight Agreement for through operation by Pan American between the Canal Zone and Miami may be leased to National in accordance with this Agreement; and

VI. WHEREAS, in view of the substantial number of persons and the substantial quantity of property and mail

carried by connecting service between points on National's Route No. 31, on Pan American's Miami-Balboa route and on Panagra's route, National, Pan American and Panagra consider it in the public interest to furnish through-plane service to accommodate this traffic as hereinafter provided.

NOW, THEREFORE, in consideration of the premises, it is agreed as follows:

[fol. 2039]

1. *Lease of Aircraft*

(a) National will lease Panagra aircraft (including cargo only aircraft) operated by Pan American from Balboa into Miami under the Through Flight Agreement, for through operation from Miami to New York and intermediate points on National's Route 31 and for return operation to Miami and thence to Balboa and beyond. Also, as provided in paragraph 2(b) of this agreement, Pan American and Panagra, respectively, will lease National aircraft including cargo only aircraft, operated by National from New York to Miami for through operation over Pan American's route to Balboa and Panagra's route beyond and for return operation to Miami and thence to New York. The terms of the lease of National aircraft shall be agreed at an appropriate time and set forth in a supplement to this Agreement.

(b) The lease of Panagra aircraft shall become effective upon the delivery of the aircraft to National at National's loading ramps at Miami by Pan American as agent for Panagra, and the delivery by National of a receipt for such aircraft in a form to be agreed upon, and shall terminate upon delivery by National of the aircraft to Pan American as agent for Panagra at Pan American's loading ramps at Miami and the delivery to National of a similar receipt. The parties shall designate certain persons or certain classifications of employees who shall have authority to make and accept delivery of aircraft and to execute, deliver and accept receipts therefor on behalf of the parties, respectively. All line service work while Panagra aircraft are under lease will be performed by the lessee, it being understood that National at Miami will only be re-

sponsible therefor on northbound through flights. In the event that for any reason an aircraft engaged in operations [fol. 2040] under this Agreement is required to bypass or overfly Miami, the lease shall become effective or shall terminate as the case may be, when such aircraft reaches 25 degrees, 49 minutes, North, or at such other time as may be agreed upon.

(c) Panagra aircraft may be withdrawn from lease at any time because of mechanical defects or when such withdrawal will not unreasonably interfere with the operation of a through flight. In the case of any such withdrawal, the lessor shal substitute another aircraft of the same or comparable type with substantially comparable seating capacity, if such aircraft is available, in time to enable the operation of any flight which otherwise would have been performed with the withdrawn aircraft. Receipts conforming to those to be given at the time of the regular lease and the return of aircraft under subsection (b) shall be executed by authorized personnel at the time of any such withdrawal or substitution.

(d) The route in the continental United States over which through flights are to be operated under this Agreement shall be National's Route No. 31 between Miami and New York, except that stops shall be made at Washington if agreed between Panagra and National, or if agreed between Pan American and National, provided, however, that such stops shall not be on such a number of schedules as would prejudice the purpose of this Agreement to provide through service between New York, Miami, the Canal Zone and points on Panagra's route in South America, and stops shall be made at other intermediate points on National's Route No. 31 as mutually agreed upon between the parties. If National's Miami-New York route shall be extended to any points beyond New York, any or all such flights may be operated thereto by mutual agreement.

[fol. 2041]

2. *Number and Nature of Through Flights and Schedules*

(a) The parties agree that upon this Agreement becoming effective, National will immediately operate between

Miami and New York with Panagra aircraft operated between the Canal Zone and Miami under charter to Pan American pursuant to the Through Flight Agreement, at a frequency of two round trips per day, one of which will be the "El InterAmericano" first-class flight, and the other will be the "El Pacifico" tourist-class flight.

(b) National will operate additional flights between Miami and New York with Panagra aircraft operated between the Canal Zone and Miami under charter to Pan American pursuant to the Through Flight Agreement, provided that National agrees that such additional flights are reasonably required for the convenient handling of through traffic and provided further that if the number of through flights operated under this Agreement shall exceed twenty-one (21) per week, National shall have the option to furnish the necessary additional equipment for such flights in excess of twenty-one (21) in the ratio of the mileage flown over National's Route No. 31 on said additional flights to the total through flight mileage over which said additional flights in excess of twenty-one (21) flights weekly are operated.

(c) In addition to and apart from the above, whenever the parties determine that scheduled cargo-only flights are required for the convenient handling of through cargo traffic, the necessary schedules and equipment to be used on such cargo service will be mutually agreed upon.

(d) The parties will consult from time to time with a view to fixing the schedules of the through flights being operated pursuant to this Agreement in such manner as [fol. 2042] to provide the most convenient and advantageous schedules for the benefit of such through traffic, with due consideration to the need for adequate loads of both domestic and international traffic to provide load factors which will permit the continued operation of such schedules and will provide economical and efficient utilization of the aircraft. Nothing in this paragraph shall in any wise affect the obligations of Pan American to Panagra under paragraph 4(a) of the Through Flight Agreement.

(e) If experience shall demonstrate that the load factors (including both domestic and international through traffic) on the through flights operated pursuant to this Agreement shall be inadequate, the parties shall take appropriate action to increase such load factors through reduction or adjustment of their schedules or otherwise. It is the intention of the parties that within the limitations which may be necessary by reason of the operations under the Through Flight Agreement and this Agreement, through flight schedules and turn-arounds shall be arranged to assure maximum utilization of aircraft leased pursuant to this Agreement, and each party shall exercise due diligence in delivering or redelivering such aircraft.

(f) In routing and selling local and way-to-way traffic, none of the parties shall discriminate in favor of flights not operated pursuant to this Agreement and the parties shall be under a continuing obligation to use their best efforts to develop economic load factors on all flights operated pursuant to this Agreement.

(g) The parties will instruct their respective personnel to cooperate in arranging and adjusting from time to time as occasion may arise reasonable and sound procedures [fol. 2043] for meeting traffic and operating problems that may arise in respect of any particular flight by reason of through flights arriving at Miami northbound or southbound unduly delayed. Due consideration shall be given in this connection to the purpose of this Agreement to provide through plane service for traffic between points on National's Route No. 31 and on Pan American's Miami-Balboa route and points on Panagra's route. Pan American shall give National immediate notice whenever aircraft scheduled to arrive in Miami northbound are to be unduly delayed, and thereafter, in order to accommodate National's Miami-New York traffic, at National's request, another aircraft will be substituted if such aircraft is available at Miami for operation of the scheduled flight to New York and return. It is the intention of the parties that in case of such substitution, or of operation by National of its own aircraft in lieu of the delayed aircraft, the delayed aircraft shall be operated through to New York when agreed to by the oper-

ations personnel of Panagra or Pan American and National. The parties agree to adjust their schedules or to make other appropriate arrangements if after a reasonable trial period National's Miami-New York traffic is unduly inconvenienced by reason of delays in the arrival of interchange aircraft. It is intended that the parties will exercise the same degree of diligence and effort in maintaining schedules to be operated pursuant to this Agreement as each party customarily exercises in operations over its own routes.

3. *Aircraft and Crews to be Operated under Agreement*

(a) Panagra's aircraft operated pursuant to this Agreement over National's Route No. 31 shall, subject to agreement with the authorized representative of National's [fol. 2044] cabin attendants, be operated with Panagra cabin attendants except that there shall be one National cabin attendant, provided, however, that when such cabin attendants are to be in excess of National's normal complement of cabin attendants, for the same class of service, the additional cost shall be defrayed by Panagra. Panagra aircraft shall be operated with the pilots and flight engineers of National on National's Route No. 31 except that with respect to flights which, for operating or other reasons, do not land at Miami, the flight crew then operating the aircraft shall proceed to an appropriate alternate airport. All aircraft operated under this Agreement shall be properly licensed for operation over the routes, and all flight personnel on such aircraft shall be fully licensed and/or qualified for such operation. The parties will furnish each other with all data which may be required for the inclusion of their aircraft and flight personnel as specified in the others' Air Carrier Operating Certificates.

(b) The aircraft which shall be tendered pursuant to this Agreement shall be of a modern type capable of carrying on the services herein contemplated a reasonable load at competitive speeds, and with accommodations and comfort-level measured in the light of the aircraft types currently being operated over the Miami-New York route.

(c) The lessee shall have a right to inspect any aircraft tendered for operation pursuant to this Agreement before

accepting same and may refuse to operate any aircraft tendered which is not in satisfactory operating condition, subject only to customary line service, in the light of regulations of the Civil Aeronautics Administration and prevailing airline standards.

[fol. 2045]

4. *Responsibility for Operations*

The lessee shall have full responsibility for and control over the operation of leased aircraft over its route while under lease to it as provided in this Agreement. The lessee's responsibility for such operation, without limiting the generality of the foregoing, shall include responsibility for and performance of operations dispatch, flight-plan clearance, radio plane guard and in-flight instructions, all communications, navigation and weather facilities and services, all loading and discharge of airplanes, all handling of traffic and passenger service, all necessary airplane and engine inspection and on-line and turn-about maintenance service, and all emergency maintenance to the extent necessary or appropriate for the safety or preservation of the aircraft or to the extent requested by the lessor, provided that the lessee shall not be obligated to perform emergency maintenance at the lessor's request unless it has personnel and facilities capable of performing such emergency maintenance at the point where the aircraft is located. The lessee undertakes to furnish in connection with such operations adequate and efficient ground facilities and personnel to conduct such operations in accordance with approved and modern standards which shall in no event be lower than those provided in the case of its own aircraft, and to treat the lessor's aircraft on a basis of complete equality with its own aircraft.

5. *Traffic*

(a) The parties shall book and route through traffic between points on National's Route No. 31 and the Canal Zone and Panama on Pan American's route and points beyond on Panagra's route in South America via Panagra aircraft to the fullest extent practicable, provided that

[fol. 2046] nothing herein contained shall be deemed to restrict the parties from operating through or connecting flights with each other or with any other carrier and routing traffic via such flights where a substantial improvement of service to the passenger or shipper would result.

(b) In order to assure that through traffic will be handled at maximum efficiency it is agreed that in the case of all northbound and southbound through flights operated over National's route, Panagra, and, subject to Panagra's reasonable requirements, Pan American, shall, from time to time, request National to block off until a reasonable time prior to departure a specific number of seats and a designated amount of mail and cargo capacity which will be designed to accommodate the through traffic reasonably expected, and shall themselves block off for the through flights on their own route a number of seats and an amount of mail and cargo capacity reasonably related to the seats and amount of capacity which they shall have requested National to block off, and the parties shall arrange their reservations control accordingly. If experience over a reasonable time indicates that the seats or capacity so blocked off unduly exceed the through traffic actually carried, the parties shall take appropriate action to prevent nonutilization of capacity, with due regard, however, for the requirements of the through traffic. Subject to the foregoing, it is the intention of this Agreement that the parties will route local and way-to-way traffic on the interchange aircraft in the same manner as on schedules operated with their own aircraft.

6. *Sales, Advertising and Publicity*

(a) The parties shall cooperate and shall use their best efforts to promote and develop traffic to be carried on [fol. 2047] through flights operated under this Agreement. The parties will advertise and otherwise publicize that through plane service is afforded over National's, Pan American's, and Panagra's routes between points on National's Route No. 31 in the northeastern United States and the Canal Zone and Panama and points on Panagra's route in South America. The parties hereto will agree in advance

with each other on appropriate advertising programs (including newspaper and magazine space, advertising and display pieces and collateral material) and budgets therefor, for promoting the through flights made pursuant to this Agreement and the approved expense of all such advertising shall be apportioned among them as from time to time agreed, provided, however, that no charge shall be made for transporting advertising material to the most effective point in use.

(b) National will cause the names of Pan American World Airways, Inc. and Pan American-Grace Airways, Inc., and, if Panagra shall so request, the name "Panagra", in such size and form as the parties may agree and the Pan American and Panagra insignia to be displayed on traffic counters at all airports and sales offices, including city ticket offices, at points in the continental United States (other than Miami) at which Panagra aircraft are operated under lease to National pursuant to this Agreement. At any airport in the continental United States at which Panagra aircraft may be operated under this Agreement Pan American and/or Panagra may, at their expense, if they determine the same to be necessary or desirable, station a reasonable number of personnel who, without interfering with National's procedures, may assist in accommodating through traffic arriving from or departing to points on their respective certificated routes, it being understood that Pan American and Panagra will arrange between [fol. 2048] themselves to avoid duplication of such personnel. Persons so employed shall have access to National's space and facilities at such airports at National's absolute discretion.

(c) Pan American and Panagra will cause the name National Airlines, Inc. in such size and form as the parties may agree and the National insignia to be displayed on traffic counters at all airports and sales offices, including city ticket offices, at points outside the continental United States to which Panagra aircraft are operated.

(d) Panagra, acting through Pan American as Panagra's General Traffic and Sales Agent in the United States, and

Pan American may from time to time indicate to National reasonable methods and procedures which they desire to have established by National in connection with the selling, handling or servicing of traffic originating on or to be carried over their routes and National will put such methods and procedures into effect if agreed by it. The parties agree to furnish each other with periodic reports concerning the traffic sold to and from points on their respective routes in such reasonable detail and such form as shall be requested and mutually agreed.

(c) The name of the lessor, in such form as the lessor may determine, and its insignia shall appear on the exterior of all airplanes leased under this Agreement in addition to an appropriate statement inside the airplane informing the public that the airplane is the lessor's airplane under lease to the lessee.

7. *Liability to Third Parties and Insurance*

(a) The lessee will indemnify the lessor and hold it harmless in respect of any liability (other than to the lessor's flight crews and cabin attendants, if any, engaged [fol. 2049] in the operation of the lessor's aircraft) arising or claimed to arise as a result of lessee's operation, possession or use of the lessor's aircraft during the period of any lease. The lessee will carry passenger and cargo and public liability (including liability of lessor to employees of lessee) and property damage insurance policies covering risks attendant upon the foregoing in companies and with coverage which shall meet the lessor's reasonable satisfaction, such coverage to be in any event at least as extensive as in the case of its own aircraft, and will cause the lessor to be included in its policies as a party insured.

(b) The lessor will indemnify the lessee and hold it harmless (1) in respect of any liability arising or claimed to arise as a result of the operation of lessor's aircraft except when such aircraft shall be leased to the lessee, and (2) from all claims of lessor's flight crews and cabin attendants, if any, engaged in the operation of lessor's aircraft. The lessor will carry passenger and cargo and pub-

lic liability and property damage insurance policies covering the risks attendant on the foregoing in companies and with coverage which shall meet the lessee's reasonable satisfaction, such coverage to be in any event at least as extensive as in the case of its own operations, and will cause the lessee to be included in its policies as a party insured. The lessor will also carry appropriate policies of workmen's compensation insurance with respect to the employees referred to in clause (2) hereof.

(c) All indemnities herein shall include related costs and expenses.

(d) In the event of loss of or damage to or delay in the delivery of baggage or personal effects of a passenger, or cargo, express or mail on an aircraft making a through flight hereunder, the party having possession of the air- [fol. 2050] craft at the time the loss, damage or delay occurs shall, as between the parties hereto, be responsible therefor but in no event in excess of its liability under its stated conditions of carriage. In case it is not possible to establish which party has possession of the aircraft at the time of such loss, damage or delay, any liability or expense arising therefrom shall be shared among the parties in proportion to the revenue received from the transportation of the passenger whose baggage or personal effects shall have been lost, damaged or delayed or from the transportation of the cargo, express or mail which shall have been lost, damaged or delayed.

8. *Damage to Aircraft and Hull Insurance*

The lessee shall be liable for all loss or damage to aircraft or other property under lease to it pursuant to this Agreement within limits (which shall properly reflect the value of such aircraft or other property) to be agreed upon from time to time between the lessor and the lessee, irrespective of any question as to the proper maintenance of the aircraft or other property by lessor. Such value is hereinafter referred to as the "agreed value". If the loss or damage is of such extent that the aircraft is deemed to be a constructive total loss, the lessee shall

pay to the lessor the agreed value of the damaged aircraft and the associated equipment installed therein, as of the date of damage. Upon making such payment the lessee shall become the owner of such aircraft and the associated equipment installed therein and all salvage thereof. The lessee shall not be liable to the lessor for loss of use of the aircraft or other property as a result of loss or damage thereto.

The lessee shall, unless it desires to operate in whole or in part as a self-insurer, procure and maintain in full force [fol. 2051] and effect during the term of this Agreement at its own expense policies of hull insurance insuring against any loss of damage for which the lessee may be liable in an amount equal to the agreed value of each aircraft to be leased hereunder, in companies and under terms of insurance which shall meet the lessor's reasonable satisfaction. Said policies of insurance shall name the lessor as a co-insured and the lessee shall provide to the lessor a certificate of insurance evidencing such coverage. Such certificate of insurance shall have in it a "breach of warranty" clause providing that a breach of the insuring conditions by the lessee will not invalidate the insurance as to the lessor. The lessee agrees to require its insurers to waive any and all rights of subrogation such insurers may or could have against the lessor by virtue of such insurance contracts. The certificate of insurance shall also contain a provision that the lessor shall be given thirty (30) days' prior written notice by the insurers in the event either the insurers or the lessee desire to cancel or make a material change in the insuring conditions of such policies of insurance.

If the lessee desires to operate in whole or in part as a self-insurer, the lessor may require the lessee, prior to the commencement of operations or use of aircraft hereunder, or at any time thereafter, to deliver a bond with a surety and under terms and conditions reasonably satisfactory to the lessor which shall indemnify the lessor against any loss occasioned by such lessee's election not to procure hull insurance coverage in accordance with the provisions of this paragraph provided that a condition of

any such bond shall be that it shall not be cancellable except upon thirty (30) days' prior written notice thereof from the surety to the lessor; and provided further that no such bond shall be required if the amount of the hull [fol. 2052] insurance coverage carried by such self-insuring lessee is at least ninety percent (90%) of the agreed value of the aircraft.

9. *Liens on Chartered Aircraft*

The lessee shall not permit any aircraft leased to it hereunder to remain subject to any mechanics or other lien whatsoever, and shall promptly satisfy or procure the discharge of any lien or garnishment of any nature whatsoever attaching to such aircraft.

10. *Compensation and Financial Provisions*

(a) Rental

National shall pay a rental for aircraft of Panagra leased hereunder at a rate per available seat mile based on National costs to be determined in accordance with the financial supplement attached and made a part hereof.

(b) Expenses

All expenses for the services contemplated to be performed by the lessee while the aircraft is under lease pursuant to this Agreement (except emergency maintenance as provided in paragraph 10(c)), and passenger and cargo liability, public liability and property damage and hull insurance as provided in paragraphs 7(a) and 8 shall be paid by the lessee.

(c) Maintenance

The lessor shall overhaul and maintain (except for turnaround maintenance while the aircraft is in the possession of the lessee) in accordance with its operations specifications, the aircraft leased hereunder. No aircraft shall be leased hereunder unless it is probable that it can be returned to the lessor before the time set for its next pe-

[fol. 2053] riodic inspection under the lessor's operations specifications unless, subject to agreement of the parties, the efficient utilization and routing of such aircraft makes such necessary or desirable. The lessee shall perform at the lessor's expense any emergency repairs or maintenance (not properly a part of on-line or turn-around maintenance service) while the aircraft is in its possession to the extent requested by the lessor, but only to the extent to which it is capable with the personnel and facilities available at the point where the aircraft is located. The charge for such emergency repairs and maintenance shall be a fixed charge per man hour of direct labor, to be determined by agreement of the parties, plus the lessee's actual cost of materials used.

(d) Route mileages to be used in any determination under this Agreement will be those effective as shown in CAB Mileage Booklet No. 1, Airport-to-Airport Mileages over Interstate Routes of Certificated Air Carriers, and in any revisions thereof.

11. *Radio and Communications*

The lessor agrees to the installation in its aircraft of all radio or other communications and navigation equipment which may be necessary for the flight of such aircraft in scheduled operations over the lessee's route. Responsibility for the cost of such installation shall be fixed in a supplementary financial agreement to be entered into between the parties.

12. *Passenger Service*

It is the objective of the parties that on all through flights operated pursuant to this Agreement the quality of service, catering and attention afforded passengers on such flights shall be maintained at a level at least equal [fol. 2054] to the highest quality of service, catering and attention afforded passengers on any competitive international carrier serving Latin America. The parties will consult each other on a program for achieving this objective subject to the cost of maintaining this competitive standard

of service being mutually agreed upon between the parties concerned.

13. *Training*

A training program shall be established designed to qualify flight personnel and other personnel for all operations called for by this Agreement, and the expenses of such programs shall be allocated among the parties concerned in accordance with a supplementary financial agreement to be negotiated and entered into between such parties.

14. *Access to Books and Records*

The lessor and lessee of aircraft leased hereunder shall each have access to the books, records and accounts of the other as may be reasonably required to verify costs, expenditures and other data pertinent to this Agreement. Each party shall also furnish such information with respect to the operation of the leased aircraft as may be reasonably required by the other parties.

15. *Agreements with Other Carriers*

During the term of this Agreement National will not hereafter enter into any interchange agreement with any other carrier providing for the operation of that carrier's aircraft over National's route between Miami and New York which contains financial terms more favorable to such carrier than the financial terms of this Agreement without making such terms available to Panagra at its option.

[fol. 2055]

16. *Construction and Definitions*

(a) It is the intention of the parties that within the general framework and conception of this Agreement the various provisions shall be broadly and liberally construed to accommodate technical, commercial, international and regulatory developments in the field of air transportation to the end that through traffic will be handled at

maximum efficiency and in a manner to meet changing competitive conditions.

(b) Nothing in this Agreement shall be deemed to require any of the parties to take any action in violation of any applicable law, regulation, or order.

(c) This contract shall be construed in accordance with the laws of the State of New York.

(d) The various headings herein and the grouping of the provisions of this Agreement into separate paragraphs shall not be construed to limit or restrict the meaning or application of any provision hereof, and are for the purpose of convenience only.

(e) Reference to the Civil Aeronautics Board and to the Administrator of Civil Aeronautics shall mean any successor Federal agency having jurisdiction similar to that now exercised by the Board and the Administrator.

(f) Reference to specific aircraft includes engines, propellers, and accessories and other equipment of every nature which are physically attached to or in operation on such aircraft.

(g) References to Balboa or to the Canal Zone shall be deemed to include Panama, it being recognized that traffic to and from the Canal Zone presently is handled through the Tocumen Airport in Panama.

[fol. 2056]

17. *Notice*

Notice to National wherever provided in the Agreement shall be given in writing by registered letter addressed to: President, National Airlines, Inc., 3240 Northwest 27th Avenue, Miami, Florida, or to such other address as National may designate in writing. Notice to Pan American wherever provided in the Agreement shall be given in writing by registered letter addressed to: Vice President—Administration, Pan American World Airways, Inc., 135 East 42nd Street, New York, N. Y., or to such other address as Pan American may designate in writing. Notice to Panagra wherever provided in the Agreement shall be

given in writing by registered letter addressed to: President, Pan American-Grace Airways, Inc., 7 Hanover Square, New York, New York, or to such other address as Panagra may designate in writing. Notice shall not be considered given until the date when the same shall have been received as evidenced by the Post Office return receipt or, if the addressee shall have refused to accept the registered notice, the date on which such registered notice shall have been first tendered to the addressee. Notwithstanding the foregoing provisions of this paragraph, notice may likewise be given in writing by letter delivered to the person designated to receive notice as aforesaid, provided a receipted copy is secured.

18. *Arbitration*

From and after the effective date of this Agreement any and all disputes as to the construction or operation of this Agreement shall be submitted to arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association as amended and in effect January 1, 1952, (hereinafter referred to as the "Rules") in the manner hereinafter provided; provided, however, [fol. 2057] that the foregoing shall not render subject to arbitration any matter which under this Agreement is subject to agreement between the parties. The party requesting arbitration shall notify the other parties as to the matter to be arbitrated. Within five (5) days after receipt of such notice, the other parties shall notify the party giving the notice whether they claim an interest in the arbitration. If both of the other parties give such notice, the arbitration shall be before three disinterested and unbiased arbitrators appointed by the Administrator (as defined in the Rules). If only one of the other parties shall give timely notice of claim of an interest in the arbitration, such party and the party giving the initial notice shall each appoint an arbitrator within fifteen (15) days after the giving of the initial notice and, within ten (10) days after such appointment, the two arbitrators so appointed shall appoint a third arbitrator. If either party fails to appoint the arbitrator whom such party is entitled

to appoint, or if the arbitrators appointed by or for the respective parties shall fail to appoint the third arbitrator, such then unappointed arbitrator shall be appointed by the Administrator. The award of any two of the three arbitrators shall be final, binding and conclusive upon the parties, and judgment upon the award may be entered in any court having jurisdiction. Any arbitration hereunder shall be conducted in accordance with the laws of the State of New York, and shall be conducted in New York, N. Y. unless the parties shall otherwise agree in writing.

19. *Effective Date*

This agreement shall become effective upon the date when the orders of the Civil Aeronautics Board taking the actions hereinafter specified shall have become effective; provided, however, that if, prior to the date of the initia- [fol. 2058] tion of operations hereunder, any of such orders shall have been stayed either by the Civil Aeronautics Board or by any court of competent jurisdiction, the effective date of this Agreement shall be postponed until the dissolution of such stay:

(1) Approval of this Agreement;

(2) Continued approval of the Through Flight Agreement.

20. *Term*

This Agreement shall terminate, or may be terminated:

(1) If the Civil Aeronautics Board should at any time withdraw its approval hereof; or

(2) If the Civil Aeronautics Board should at any time withdraw its approval of the Through Flight Agreement; provided, however, that anything to the contrary herein notwithstanding such withdrawal of approval shall not prevent National and Panagra from conducting through flights pursuant to this Agreement if Panagra should obtain legal authorization to engage in air transportation between the Canal Zone and Miami or National should obtain legal

authorization to engage in air transportation between Miami and the Canal Zone; or

(3) At the option of any of the parties on six (6) months' written notice and subject to the approval of the Civil Aeronautics Board.

21. *Through Flight Agreement—Reservation of Rights*

Nothing herein contained shall in any respect be in derogation of the rights and obligations of Pan American or Panagra under the Through Flight Agreement as to one another.

[fol. 2059]

22. *Non-Prejudice*

If this Agreement is not approved by the Civil Aeronautics Board or for any other reason does not become effective or if, having become effective, this Agreement should be disapproved, terminated or cancelled the negotiation and the terms of this Agreement and all applications filed and acts done hereunder shall be without prejudice to the rights and future position of any party.

In Witness Whereof and in consideration of the mutual covenants contained herein, the parties hereto have executed these premises as of the day and year first above written.

National Airlines, Incorporated

By /s/ Alexander G. Hardy
Senior Vice President

Pan American World Airways, Inc.

By /s/ J. C. Leslie
Vice President

Pan American-Grace Airways, Inc.

By /s/ Douglas Campbell
Vice President

[fol. 2060]

Revision No. 1

Dated August 9, 1955

FINANCIAL SUPPLEMENT TO THE INTERCHANGE AGREEMENT BETWEEN NATIONAL AIRLINES INCORPORATED, PAN AMERICAN WORLD AIRWAYS, INC. AND PAN AMERICAN-GRACE AIRWAYS, INC.

1. Formula for Determination of Costs.*

Costs of flight equipment and related services supplied to lessee by lessor pursuant to the Interchange Agreement will be determined separately by type of flight equipment and services relating thereto and shall be based upon National's costs per available seat mile for operating the same type of flight equipment in the same type of service (for this purpose the Douglas DC-7 and DC-7B shall be considered as the same type of equipment). The available seat miles shall be computed by multiplying the revenue miles flown by the seats installed in the various types of aircraft by type of service after excluding seats reserved for crew use. Should National's accounting practices, company procedures or the introduction of new types of equipment seriously distort its costs, any cost so affected shall be adjusted to reflect a normal cost level. Any abnormal costs of introducing new types of aircraft or other abnormal costs which benefit subsequent periods, which are removed from current costs, shall be amortized over a reasonable period for purposes of this contract. This general formula for cost ascertainment shall be subject to the following agreed limitations and determinations:

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* All references to account numbers are to the Civil Aeronautics Board's Uniform System of Accounts for Air Carriers presently in effect. If any revision is made in such Uniform System of Accounts, this Financial Supplement will be revised accordingly, it being understood, however, that the same elements of cost shall be included in the determinations hereunder.

1.1 Direct Flight Costs

[fol. 2061] 1.11 Flying Operations—Flying operations expense shall be determined as stated above except as follows:

(1) Flight Crew Salaries and Expenses—Should the flight crews of either the lessor or the lessee be used on the routes of the other party pursuant to paragraph 1(a) of the Interchange Agreement, a separate charge will be made based on the available seat mile cost of National for salaries, traveling, training and supervision expenses and general administrative expenses applicable to flight crew salaries.

(2) Gasoline and Gasoline Taxes—The cost of these items shall be based on average consumption per revenue flight hour, including gas consumed in taxiing and run-up time, at average gasoline prices for each month, for the type of fuel used at the various points at which gasoline is delivered to aircraft leased, said prices to include any outside costs incurred in connection with fueling, converted to an available seat mile cost for each type of flight equipment operated in the Interchange Services. The average consumption per hour for each type of flight equipment shall be determined by actual measurement of fuel used on the first fifteen round trip flights on each schedule. The hourly consumption shall be increased by lessee's experience percentage of non-revenue to revenue hours to include non-revenue flying. The figure thus arrived at shall continue to apply except that either the lessor or the lessee may request a [fol. 2062] revision at any time whereupon a new measurement shall be made on the next fifteen flights on each schedule and a new average consumption per hour converted to an

available seat mile shall be determined on the basis of such measurement.

(3) Oil, ADI fluid and Related Taxes—The average actual cost of these items per available seat mile flown in the Interchange Services by type of flight equipment shall be used.

(4) Gasoline, oil, ADI fluid and related taxes supplied by the lessee shall be for the account of the lessor.

1.12 Direct Maintenance — Flight Equipment — The available seat mile cost of National for the same type of flight equipment in the same type service shall be used. In the event that it can be determined that overhaul reserves provided by National are either excessive or insufficient, the reserve provision shall be adjusted to reflect the cost level which may reasonably be anticipated.

1.13 Flight Equipment Depreciation—Depreciation expense shall be based upon National's cost per available seat mile for the same type of flight equipment in the same type of service except that if reported costs of aircraft and engines are based upon a life different than 7 years and 10% residual values the reported costs shall be adjusted to a 7-year basis and 10% residual values in making this determination. In the event that National's reported depreciation expense is distorted by the use of fully-depreciated flight equipment, [fol. 2063] appropriate adjustment will be made in this expense to reflect the normal level of costs.

1.21 Ground and Indirect Maintenance—This element of expense shall be determined by applying to National's direct labor cost per available seat mile by type of equipment in the same type of service National's overhead rate in relation to direct labor used in the maintenance of all types of flight equipment. The lessor and lessee have estimated that 25% of the direct labor and direct materials used

in connection with ground maintenance included in Accounts 6227 and 6248 relate to maintenance of ground equipment not used in connection with the shop facilities. It is mutually agreed between the lessor and the lessee that such percentage will be subject to revision from time to time as studies of National's accounts may indicate as being appropriate. Therefore, 25% of the total of these two accounts shall be excluded and the formula for determining overhead rate for this portion of the shop burden shall be as follows:

$$\frac{\text{Total 6200 expense—25\% of Accounts 6227 and 6248}}{\text{Accounts 5225 + 5226 + 5227 + 25\% of 6227}} = \text{Burden rate}$$

In computing the burden rate under the formula above, the expenditure of National in the accounts referred to in the numerator and denominator shall be gross before 80 account credits or direct credit transfers of expenses.

1.22 Depreciation—The lessor and the lessee estimate that 18% of all ground equipment depreciation [fol. 2064] relates to the shop facilities used in the maintenance of flight equipment. It is mutually agreed that such percentage will be subject to revision from time to time as studies of National's accounts may indicate as being appropriate. Therefore, this portion of the ground equipment depreciation of National shall be computed as an overhead item against direct labor used in flight equipment maintenance as follows:

$$\frac{\text{18\% of Ground Equipment Depreciation}}{\text{Accounts 5225 + 5226 + 5227 + 25\% of 6227}} = \text{Burden rate}$$

The cost to be used in the accounts in the numerator and denominator of the above formula shall be gross before 80 account credits or direct credit transfers of expenses.

1.23 General and Administrative Expense—Various items of expense in this category related to flight equipment maintenance have been provided for in the overall distribution of general and administrative expense hereinafter set forth.

1.3 Line Service Expense

The general intention is that services of this nature shall be handled by lessee for its own account and that lessee shall reimburse lessor for the reasonable expenses of any such work as may be agreed the lessor shall perform either directly or by a third party acting in its behalf. Line service shall be deemed to mean only routine line service, such as refueling, turn-around inspection, fire guard, aircraft cleaning, etc., and not emergency repairs or periodic checks or maintenance, such as [fol. 2065] are normally performed in the shops of the owner of the aircraft.

1.4 Passenger Service Expense

On through flights where lessor furnishes part of lessee's normal complement of cabin attendants, the lessor and lessee agree that the rental shall include a charge for each cabin attendant so furnished by the lessor. This charge shall represent the average available seat mile cost of National for salaries, travel expenses, training and supervision applicable to cabin attendants.

The cost of other passenger services to be furnished by lessor shall be based on the cost per available seat mile reported by National in Accounts 6343, "Other Services", 6352, "Passenger Supplies—Other", and 6353, "Other Supplies".

1.5 General and Administrative Expense

General and Administrative Expenses shall be determined by allocating the general and administrative expense of National on the basis of the labor cost reported in each account group.

Certain general and administrative expenses not related to the services performed are to be excluded as follows:

The amounts reported in accounts 6641, 6642, 6665, 6666, 6667 and 6672 shall be excluded in total.

The remaining general and administrative expenses shall be allocated on the basis of labor costs appearing in account groups 5100, 5200, 6100, 6200, 6300, 6400 and 6500. This proration shall be by type of equipment with respect to account groups 5100 and 5200. The total amount of gen- [fol. 2066] eral and administrative expense allocated to the 6200 group shall be re-allocated to the 5200 group of accounts by type of equipment in accordance with the formula set forth in paragraph 1.21 of this Financial Supplement.

1.6 Investment

In lieu of a return on the lessor's investment devoted to the interchange, the lessee shall maintain a cash deposit with lessor equivalent to the amount of the lessor's investment in flight equipment, including spares and working capital devoted to the interchange services up to twenty-one (21) flights per week over lessee's route (see paragraph 2 of the Interchange Agreement). The investment in complete aircraft units shall be determined on the basis of the lessor's cost of such aircraft units except that in the case of DC-6B aircraft such investment shall be determined on the basis of present market value to be agreed upon between the lessor and the lessee, or, in the absence of agreement, by arbitration between them pursuant to the Interchange Agreement. The investment in spare engines, spare propellers and flight equipment spare parts and assemblies shall be an amount equal to 30% of the investment determined for the complete aircraft units. The amount of the lessor's investment in flight equipment, including spares, devoted to the interchange services shall be determined by multiplying the average investment per aircraft

unit (computed separately for each type), including spares, by the number of units devoted to the interchange operation, less the depreciation paid by lessee pursuant to paragraph 1.13.

[fol. 2067] For the purpose of computing the investment devoted to the interchange, the number of aircraft units of each type upon which such investment shall be based for each quarter shall be determined by dividing the estimated average revenue hours to be flown per day with lessor's aircraft of such type over lessee's routes under the Interchange Agreement during such quarter by National's average daily revenue hour utilization during the preceding twelve (12) months with its own equipment of the same type.

The lessee will provide an amount of working capital estimated at one month's cash expenses for the services performed over National's Route No. 31 under the Interchange Agreement, provided that, if the deposit is made by the lessee in cash, the lessor will deliver to the lessee a bond with a surety in such amount of working capital and under terms and conditions reasonably satisfactory to the lessee.

The cash deposit will be adjusted each quarter.

As evidence of the cash deposit by the lessee, the lessor will issue to the lessee its non-interest bearing note for the amount of the deposit computed as of the effective date of the Interchange Agreement, with such reasonable terms and conditions as will enable the lessee to discount such note without recourse. The lessor will cooperate with the lessee to effect such discount. Such note shall be for a term of seven (7) years or the termination of the Interchange Agreement, whichever shall first occur, with twenty-eight (28) equal quarterly payments which will approximate the anticipated reduction of the deposit due to depreciation accruals.

In lieu of a cash deposit the lessee, at its option, may issue its note to lessor for all or any part of the amount of the deposit required pursuant to this paragraph 1.6.

[fol. 2068] Such note shall be for a term of seven (7) years or the termination of the Interchange Agreement, whichever shall first occur, with twenty-eight (28) equal quarterly payments which will approximate the anticipated reduction of the deposit due to depreciation charges, with interest at such rate as will permit the lessor to discount, without recourse, such note at time of issuance at par.

Upon the quarterly redetermination of the deposit as provided in this paragraph 1.6 the lessor will (a) pay to the lessee the amount of any reduction in such deposit over the balance previously required if the lessee shall have on deposit with lessor cash to cover such deposit, or (b) in the event lessor shall have issued its note or notes as evidence of such deposit, lessor shall apply such reduction first in payment of current amortization on such note or notes and any excess of such reduction over current amortization shall be applied as prepaid amortization of such note or notes in inverse order of maturities, or (c) if the lessee shall have issued its note or notes to the lessor in lieu of such deposit, then lessor shall pay any such reduction of the deposit to the lessee to be used for reduction of such note or notes. In the event of an increase in the required deposit, the lessee will either cover the additional amount required by a cash deposit with the lessor in which event lessor shall issue in its note or notes, if lessee so elects, as evidence of such additional deposit with terms and conditions as above provided unless otherwise agreed, or, if lessee so elects, it may issue a note or notes in lieu of such additional deposit with terms and conditions as above provided unless otherwise agreed.

It is the intention of this paragraph 1.6 to give the lessee the election as to whether the deposit shall be made in cash or by its note so that the rate of interest to be paid by the [fol. 2069] lessee on any notes issued or discounted pursuant to this paragraph 1.6 shall not exceed the rate of interest at which the lessee can borrow money on the same terms and conditions.

1.7 Sale of Aircraft

It is contemplated that initially five (5) DC-7Bs and five (5) DC-6Bs shall be devoted to the interchange

service. In the event of (a) termination of the Interchange Agreement pursuant to paragraph 20 of the Interchange Agreement or (b) withdrawal of any type of aircraft operated in the interchange service, title to one aircraft to be designated by mutual agreement as of the effective date of the Interchange Agreement out of each five aircraft to be operated in the interchange service shall pass to the lessee upon the following terms and conditions:

The lessee shall pay the lessor the difference between the agreed value of the designated aircraft and the aggregate depreciation paid by the lessee to lessor on the aircraft (excluding spares) of the type involved. The agreed value shall be the lessor's cost of such designated aircraft except that in the case of the DC-6B type of aircraft presently being operated by the lessor, the agreed value shall be established on the basis of the market value of such designated aircraft as of the effective date of the Interchange Agreement established in accordance with the second sentence of paragraph 1.6 above. The lessor shall have the option forthwith (a) to purchase at the then current market value or (b) to lease for a period not to exceed eighteen [fol. 2070] (18) months, unless otherwise agreed, at a rental to be agreed upon, any such designated aircraft sold to the lessee, except that in the case of such designated aircraft withdrawn from the interchange service the lessor shall not have such options with respect to such designated aircraft sold to the lessee on which the lessee has paid in depreciation an amount equal to 90% of the agreed value of such designated aircraft as of the date title passes to the lessee. In the absence of agreement on the above then current market value or rental the same shall be determined by arbitration pursuant to the Interchange Agreement.

It is understood that the lessor shall have the right to substitute an aircraft of the same type and of substantially

the same condition as the designated aircraft if the lessor is unable to deliver such designated aircraft because of loss, damage or other causes beyond the lessor's control. In such event the substituted aircraft shall become the designated aircraft for the purposes of this paragraph 1.7.

Title to the designated aircraft shall not pass to the lessee but shall remain in the lessor until termination of the Interchange Agreement or the withdrawal of the aircraft from the interchange service and payment of the full purchase price as prescribed above. Further, it is understood that wherever in the Interchange Agreement and this Financial Supplement the word "aircraft" is used, it shall include the designated aircraft.

This paragraph 1.7 shall be subject to review and modification by mutual agreement, or in the absence of such agreement, by arbitration pursuant to the Interchange Agreement, in the event any new type or additional aircraft are to be operated in the interchange service (except aircraft which may be required to replace any lost or [fol. 2071] damaged aircraft), with the understanding that upon such rev a similar basis will be followed as was used above with respect to the five (5) DC-6Bs and the five (5) DC-7Bs referred to in this paragraph 1.7.

2. Billings and Base Periods

The payments provided for in this Financial Supplement shall be made within ten (10) days after invoice therefor shall be submitted to the party from which payment is due, which invoice shall be submitted monthly. Determination and billing of the rental of flight equipment and related equipment supplied to lessee by lessor pursuant to the Interchange Agreement for each year's period beginning January 1 shall be based on National's cost for the year ended June 30 following. Pending determination of such costs based on National's final financial and operating reports to the Civil Aeronautics Board, interim billings may be made on an estimated basis at the rates in effect during the preceding period.

3. REVIEW OF FORMULA

The formula for determination of prices for services rendered under the Interchange Agreement may be reviewed at the request of either the lessor or the lessee made in writing at least fifteen (15) days before the expiration of any annual period. In the event of the making of any such request, the parties will promptly confer with a view to agreeing on such a readjustment, or, in the absence of agreement, by arbitration between them pursuant to the Interchange Agreement.

[fol. 2072]

EXHIBIT B

Through Flight Agreement

Supplement No. 18

Relating to Interchange Agreement with National Airlines, Incorporated

AGREEMENT made this 4th day of August, 1955, by and between PAN AMERICAN WORLD AIRWAYS, INC., a New York Corporation (hereinafter called "PAA"), and PAN AMERICAN-GRACE AIRWAYS, INC., a Delaware Corporation (hereinafter called "Panagra"):

WHEREAS, PAA and Panagra are parties to a certain agreement dated July 30, 1946, and supplements thereto numbered one through seventeen inclusive relating to the charter of Panagra's aircraft to PAA for through operation on certain of PAA's routes north of the Canal Zone and other matters, which agreements are hereinafter referred to as "the Through Flight Agreement"; and

WHEREAS, PAA and Panagra have entered into an agreement with National Airlines, Incorporated, a Florida corporation (hereinafter called "National"), dated as of the date hereof (hereinafter referred to as "the Interchange Agreement"); and

WHEREAS, the parties desire to supplement and amend the Through Flight Agreement as herein set forth.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

102. All recitals and paragraphs of Supplement No. 5 to the Through Flight Agreement are hereby deleted ex-
[fol. 2073] cept paragraphs 49, 50, 51 (except for the first parenthetical insertion), 53 (except for the proviso to the last sentence of the amendment made therein), 54 (notwithstanding any provisions of paragraph 59 to the contrary), 57(e) (as modified by paragraph 71), and 57(g).

103. The last sentence of paragraph 14 of the Through Flight Agreement as amended by paragraphs 51 and 102 above is amended to read as follows:

> "PAA and Panagra will agree with each other (and with National if the Interchange Agreement shall become and be effective) in advance on appropriate advertising programs (including newspaper and magazine space, advertising and display pieces and collateral material) and budgets therefor, for promoting the through flights made pursuant to this Agreement, and the approved expense of all such advertising shall be apportioned among them as from time to time agreed, provided, however, that no charge shall be made for transporting advertising material to the most effective point of use."

104. For the term of the Interchange Agreement, Panagra's aircraft chartered to PAA pursuant to the Through Flight Agreement for through operation between the Canal Zone and Miami, Florida, shall, except as the Civil Aeronautics Board may otherwise permit, be further chartered to National for through operation by National upon the specific terms and conditions set forth in the Interchange Agreement.

105. Panagra hereby constitutes and appoints PAA as Panagra's agent, for the term during which the Through Flight Agreement and the Interchange Agreement shall be simultaneously in effect, to deliver Panagra's aircraft to National at Miami, for the purpose of flights over National's route pursuant to the said agreement and to re-
[fol. 2074] ceive delivery of Panagra's aircraft from Na-

tional at Miami. PAA is authorized as such agent, on Panagra's behalf, to receive and execute such receipts, to perform such inspections, to make such checks and measurements, and to perform all such other acts as may be necessary or appropriate in connection with the delivery or return of the said aircraft. In acting as such agent with respect to the delivery of Panagra's aircraft to National and the return of Panagra's aircraft by National at Miami, PAA shall be bound to exercise the same and only the same degree of care as PAA exercises with respect to the delivery and return of its own aircraft under similar circumstances.

106. The second sentence of paragraph 15(a) of the Through Flight Agreement as amended is further amended to read as follows:

> "PAA shall be deemed to be in possession of Panagra's aircraft (1) in the case of aircraft turned over to PAA for operation on through flights under this agreement, from the time when such aircraft is so turned over to PAA by Panagra until the time when such aircraft is either (i) returned by PAA to Panagra or (ii) turned over by PAA to National for operation by National pursuant to the Interchange Agreement, in which event the aircraft shall again be deemed to be in PAA's possession when returned to it by National, and (2) in the case of aircraft turned over to PAA for maintenance, from the time when such aircraft is turned over to PAA at one of the latter's maintenance bases until the time when such aircraft is returned to Panagra, or until it is turned over by PAA to National as provided above; except, in either case, for non-revenue or other special flights (excluding test flights made under PAA custody following maintenance and according to CAA requirements) during such period [fol. 2075] made at the instance and request of Panagra."

107. Paragraph 17(h) of the Through Flight Agreement (added by paragraph 34 of Supplement No. 2) is amended by adding the following at the end thereof: "and in the case

of mileage flown over the route of National pursuant to the Interchange Agreement will be those effective as shown in the 'Civil Aeronautics Board Official Airline Route and Mileage Manual' and in any revisions thereof."

108. Paragraph 23(c) of the Through Flight Agreement is amended by adding at the end thereof the words: "and the delivery of possession of Panagra's aircraft to National and the return of such possession from National pursuant to the Interchange Agreement."

109. (a) All references in Annex 1A to the Through Flight Agreement to "the charter service" shall refer only to the charter service operated by PAA pursuant to said Agreement. All references in said Annex 1A to the total revenue miles flown by Panagra's aircraft or to a revenue mile basis shall include revenue miles flown by such aircraft pursuant to the Interchange Agreement, except that (i) in those instances where the expenses to be prorated under paragraph 1 of Annex 1A are not related to the miles flown by Panagra aircraft under the Interchange Agreement, the mileage under the Interchange Agreement shall be omitted; and (ii) in those instances where the expenses to be prorated under paragraph 1 of Annex 1A are only partially related to the miles flown by Panagra aircraft under the Interchange Agreement, the mileage under the Interchange Agreement shall be included on an appropriately weighted basis.

[fol. 2076] (b) Paragraph 1A1(1) of said Annex 1A is amended by adding at the end thereof the following: "and Panagra will cause National to advise Panagra at the close of each month of the total gallonage delivered by National to Panagra's aircraft, classified by aircraft types, under the Interchange Agreement."

(c) The last sentence of paragraph 1A3 of said Annex 1A is amended to read as follows:

> "If it shall appear that major items of cost recorded in such accounts are applicable only to the charter service or to Panagra's common carrier service or to the charter service operated pursuant to the Inter-

change Agreement, provision will be made for removing such costs from allocation and charging such costs directly to the service to which they relate."

(d) The parenthetical phrases in paragraphs 1A3 and 1B of said Annex 1A now reading: ("except for credits arising out of charges to PAA") are amended to read ("except for credits arising out of charges to PAA and of charges to National").

(e) The last sentence of paragraphs 2B and 2C of said Annex 1A are amended by adding at the end the words:

"plus 20% of the available ton miles flown in the charter service operated pursuant to the Interchange Agreement."

110. Paragraph 102 of this Supplement No. 18 shall be effective immediately. The remainder of this Supplement No. 18 shall become effective only in the event that the Interchange Agreement shall become effective and upon the making of an order by the Civil Aeronautics Board [fol. 2077] approving the Through Flight Agreement as herein modified, and shall remain in effect so long as the Interchange Agreement and the Through Flight Agreement shall remain simultaneously in effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their officers thereunto duly authorized on the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

[fol. 2078]

Certificate of Service

IT IS HEREBY CERTIFIED that a copy of the foregoing application has this day been served upon all counsel who have appeared in the Reopened New York-Balboa Through Service Proceeding, Docket No. 4882, by mailing to each of them a copy thereof properly addressed, postage prepaid, dated at Washington, D. C. this 4th day of August, 1955.

/s/ JOHN C. PIRIE
John C. Pirie

[fol. 2079]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 29

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 4882 et al.

In the matter of the

REOPENED NEW YORK-BALBOA THROUGH SERVICE PROCEEDING

Docket No. 7341

In the matter of the

Application of National Airlines, Incorporated, Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. for approval of Equipment Interchange Agreement and Amendment to Through Flight Agreement under Section 412 of the Civil Aeronautics Act and, if deemed necessary, for approval under or exemption from Section 408 of the said Act.

AMENDMENT NO. 1 TO APPLICATION OF NATIONAL AIRLINES, INCORPORATED, PAN AMERICAN WORLD AIRWAYS, INC., AND PAN AMERICAN-GRACE AIRWAYS, INC. FOR APPROVAL OF EQUIPMENT INTERCHANGE AGREEMENT AND AMENDMENT TO THROUGH FLIGHT AGREEMENT UNDER SECTION 412 OF THE CIVIL AERONAUTICS ACT AND, IF DEEMED NECESSARY, FOR APPROVAL UNDER OR EXEMPTION FROM SECTION 408 OF THE SAID ACT.

1. The applicants herein have entered into Supplement No. 1 to the Equipment Interchange Agreement referred to in the original Application, such Supplement No. 1 being attached hereto as Exhibit I.

[fol. 2080] 2. The applicants respectfully request that the Application herein be deemed to refer to the Equipment Interchange Agreement as amended by said Supplement No. 1.

Respectfully submitted,

NATIONAL AIRLINES, INCORPORATED

By /s/ ALEXANDER G. HARDY
Senior Vice President

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

Dated: August 10, 1955.

[fol. 2081]

EXHIBIT 1

Supplement No. 1 to Equipment Interchange Agreement

This Supplemental Agreement made this 9th day of August, 1955 between NATIONAL AIRLINES, INCORPORATED, a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "National"), PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter referred to as "Pan American"), and PAN AMERICAN-GRACE AIRWAYS, INC., a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "Panagra");

WITNESSETH:

WHEREAS, National, Pan American and Panagra entered into an Equipment Interchange Agreement, dated August 4, 1955, hereinafter referred to as the "Equipment Interchange Agreement"; and

WHEREAS, the parties desire to amend the Financial Supplement to the Equipment Interchange Agreement as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto do hereby agree that the financial supplement attached to and made a part of the Equipment Interchange Agreement is hereby amended in accordance with the financial supplement attached hereto, marked "Revision No. 1, dated August 9, 1955," and made a part hereof.

[fol. 2082] In witness whereof the parties hereto have executed these premises as of the day and year first above written.

National Airlines, Incorporated

By /s/ Alexander G. Hardy
Senior Vice President

Pan American World Airways, Inc.

By /s/ J. C. Leslie
Vice President

Pan American-Grace Airways, Inc.

By /s/ Douglas Campbell
Vice President

[fol. 2083]

Certificate of Service

It Is Hereby Certified that a copy of the foregoing amendment has this day been served upon all counsel who have appeared in the Reopened New York-Balboa Through Service Proceeding, Docket No. 4882, by mailing to each of them a copy thereof properly addressed, postage prepaid, dated at Washington, D. C. this 11th day of August, 1955.

/s/ Alexander G. Hardy

Alexander G. Hardy

[fol. 2084]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 30

TELEPHONE
MURRAY HILL 6-7100

CABLE ADDRESS
"PANAGRA"

(Emblem)

PAN AMERICAN-GRACE AIRWAYS, INC.

EXECUTIVE OFFICES
CHRYSLER BUILDING — NEW YORK 17, N. Y.

August 29, 1955.

Civil Aeronautics Board
Washington 25, D. C.

Attention: Chief, Carrier Relationships Division
Bureau of Air Operations

Dear Sirs:

Pursuant to Section 412 of the Civil Aeronautics Act of 1938, as amended and Part 261 of the Economic Regulations, and in accordance with the Board's Order No. [illegible] dated August 10, 1955, we transmit herewith for filing two copies of the following documents:

Supplement No. 2 dated August 22, 1955 to the Equipment Interchange Agreement between Pan American-Grace Airways, Inc., Pan American World Airways, Inc. and National Airlines, Incorporated.

Letter Agreement dated August 24, 1955 between Pan American-Grace Airways, Inc. and National Airlines Incorporated covering valuation of Panagra DC-7B and DC-6B aircraft.

Very truly yours,

/s/ K. A. LAWDER

K. A. Lawder
Vice President & Comptroller

cc: National Airlines, Incorporated
Pan American World Airways, Inc.

[fol. 2085]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT #1

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

I, K. A. Lawder, being duly sworn, do depose and say that I am a Vice President and Comptroller of Pan American-Grace Airways, Inc.; that I have read and am familiar with the contents of the foregoing document, and that said document is a true and complete copy of Supplement No. 2 dated August 22, 1955 to the Equipment Interchange Agreement between Pan American-Grace Airways, Inc.; Pan American World Airways, Inc. and National Airlines, Incorporated (CAB No. 9205).

/s/ K. A. LAWDER

Sworn and subscribed to
before me this 29th day
of August , 1955.

/s/ MARY M. QUINN
Notary Public

[fol. 2086]

SUPPLEMENT NO. 2 TO EQUIPMENT INTERCHANGE AGREEMENT

This Supplemental Agreement made this 22nd day of August, 1955, between NATIONAL AIRLINES, INCORPORATED, a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "National"), PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter referred to as "Pan American"), and PAN AMERICAN-GRACE AIRWAYS, INC., a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "Panagra");

WITNESSETH:

WHEREAS, National, Pan American and Panagra entered into an Equipment Interchange Agreement dated

August 4, 1955, which was amended by Supplement No. 1 dated August 9, 1955, which Agreement, as so amended, is hereinafter referred to as the "Equipment Interchange Agreement"; and

WHEREAS, the parties desire to supplement the Equipment Interchange Agreement as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. Interline settlement of revenues derived from, and commissions payable on, the transportation service rendered pursuant to the Equipment Interchange Agreement shall be made in the same manner as though said service were a connecting plane service at Miami operated over the same routes.

2. Until otherwise agreed by the parties, the charge per man hour of direct labor for emergency repairs and maintenance performed by the lessee pursuant to paragraph 10(c) of the Equipment Interchange Agreement shall be as follows:

Straight time	— $5.00 per man hour
Time and a half	— $6.20 per man hour
Double time	— $7.40 per man hour

[fol. 2087] 3. It is hereby agreed in accordance with paragraph 11 of the Equipment Interchange Agreement that radio communications and navigation equipment installed on the aircraft to be initially devoted to services performed pursuant to the Equipment Interchange Agreement will be supplemented and modified in the following respects, that National will bear the following costs relating thereto and that any additional costs will be borne by Panagra:

a. National will pay the cost (including cost of materials) of providing for the additional radio frequencies required for operation over its Miami-New York route up to a maximum of $750.

b. National will pay the cost (including cost of materials) of instrument modification to provide altimeter barometer readings in inches for purposes of operation over its Miami-New York route up to a maximum of $1,000.

In the event any further installation or modification of radio or other communications and navigation equipment on such aircraft or other aircraft shall be required pursuant to said paragraph 11, the responsibility for the cost thereof shall be fixed by further supplementary agreement between the parties.

4. It is hereby agreed in accordance with paragraph 13 of the Equipment Interchange Agreement that until otherwise agreed by the parties each party will, at its own expense, perform, or arrange for, any training of its flight [fol. 2088] personnel or other personnel required for the operations called for under the Equipment Interchange Agreement.

IN WITNESS WHEREOF the parties hereto have executed these premises as of the day and year first above written.

NATIONAL AIRLINES, INCORPORATED

By /s/ ALEXANDER G. HARDY
Senior Vice President

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ JOHN C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ KENNETH A. LAWDER
Vice President &
Comptroller

[fol. 2089]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 32

State of New York)
) ss
County of New York)

K. K. A. Lawder, being duly sworn, do depose and say that I am a Vice President and Comptroller of Pan American-Grace Airways, Inc.; that I have read and am familiar with the contents of the foregoing document, and that said document is a true and complete copy of Letter Agreement dated August 24, 1955 between Pan American-Grace Airways, Inc. and National Airlines, Incorporated.

/s/ K. A. LAWDER

Sworn and subscribed to before me this 29th day of August, 1955.

/s/ MARY M. QUINN
Notary Public

[fol. 2090]

TELEPHONE
MURRAY HILL 6-7100

CABLE ADDRESS
"PANAGRA"

(Emblem)

PAN AMERICAN-GRACE AIRWAYS, INC.
EXECUTIVE OFFICES
CHRYSLER BUILDING — NEW YORK 17, N.Y.

August 24, 1955

National Airlines, Inc.
Aviation Building
3240 N. W. 27th Avenue
Miami 42, Florida

Dear Sirs:

Referring to the Equipment Interchange Agreement dated August 4, 1955, as amended, between your Company,

Pan American World Airways, Inc. and the undersigned Company, this letter when accepted by you will confirm our agreement as follows:

1. For the purpose of paragraph 8 of the Equipment Interchange Agreement, the agreed value of each DC-6B aircraft shall be $1,300,000 and the agreed value of each DC-7B aircraft shall be $2,100,000 unless and until otherwise agreed.

2. For the purposes of paragraph 1.6 and the second sentence of paragraph 1.7 of the Financial Supplement to the Equipment Interchange Agreement, it is agreed that the present market value of each of Panagra's DC-6B aircraft is $1,300,000.

If the foregoing correctly states our agreement, will you kindly sign and return to us one copy of this letter.

Yours very truly,

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ K. A. LAWDER
Vice President & Comptroller

ACCEPTED:

NATIONAL AIRLINES, INC.

By /s/ ALEXANDER G. HARDY
Senior Vice President

[fol. 2091]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 33

November 28, 1955

Mr. Alexander G. Hardy
Senior Vice President
National Airlines, Inc.
Wyatt Building
Washington, D. C.

Dear Mr. Hardy:

With respect to the Financial Supplement to the Interchange Agreement dated August 4, 1955, as amended, this

will confirm our mutual understanding of the intent and agreement with respect to the following:

1. *Section 1.13*—With respect to the second sentence of this Section, it is understood that in the event National's reported depreciation expense is distorted by the use of fully-depreciated flight equipment and it is necessary to adjust National's cost to reflect a normal level of cost, such adjusted depreciation will be determined on an available seat mile basis as contemplated in Section 1.13.

2. *Section 1.6*—Where reference is made in the first and second paragraphs of this Section 1.6 to units devoted to the interchange operation, it means "units or fractions thereof".

   In computing average daily revenue hour utilization as provided in the second paragraph of this Section, it is understood that if at any time such average daily revenue hour utilization is distorted by the phasing out of National's service of the type of aircraft involved, appropriate adjustment will be made to reflect a normal level of utilization.

3. *Section 2*—This Section provides that determination of billing of the rental of flight equipment and related equipment supplied to lessee by lessor pursuant to the Interchange Agreement for each 12 month period beginning January 1 shall be based on National's cost for the year ended June 30 following, and that pending determination of such costs based on National's final financial operating reports to the Civil Aeronautics Board, interim billings will be made on an estimated basis at the rates in effect during the preceding period. Since [fol. 2092] National's fiscal year ends as of June 30 of each year and in order to avoid long periods of interim billings between January 1 of each year and the issuance of National's final financial and operating reports to the Civil Aeronautics Board for the fiscal period ended June 30, it is agreed that the annual period for the determination of billings of the rental of flight equipment and related equipment supplied to the lessee by the lessor shall begin as of July 1 of each year and be based

upon National's cost for the year ended June 30 immediately preceding.

In the event it is deemed necessary to deal with this matter by supplement to the Interchange Agreement, we will accomplish this promptly. Meanwhile, will you please sign a copy of this letter indicating your agreement with the foregoing.

Yours very truly,

PAN AMERICAN-GRACE AIRWAYS, INC.

/s/ K. A. LAWDER

K. A. Lawder
Vice President & Comptroller

NATIONAL AIRLINES, INC.

/s/ ALEXANDER G. HARDY
Alexander G. Hardy
Senior Vice President

KAL:V

cc: J. C. Brawner
J. C. Pirie

[fol. 2093]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 34

SUPPLEMENT NO. 3 TO EQUIPMENT INTERCHANGE AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, made this 28th day of November 1955, between NATIONAL AIRLINES, INCORPORATED, a corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "National", PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and PAN AMERICAN-GRACE AIRWAYS, INC., a corporation organized and

existing under the laws of the State of Delaware, hereinafter referred to as "Panagra".

WITNESSETH THAT:

WHEREAS, National, Pan American and Panagra entered into an equipment interchange agreement dated August 4, 1955, which was amended by Supplement No. 1 dated August 9, 1955 and Supplement No. 2 dated August 22, 1955, which agreement as so amended is hereinafter referred to as "the Equipment Interchange Agreement"; and

WHEREAS, National, Panagra, Chemical Corn Exchange Bank, Bankers Trust Company, The Chase Manhattan Bank, The Hanover Bank, The First National City Bank of New York and The New York Trust Company are parties to an agreement dated as of November 28, 1955, relating to the discount of certain notes executed and delivered to National by Panagra pursuant to paragraph 1.6 of the Financial Supplement to the Equipment Interchange Agreement, a copy of which agreement is attached hereto, marked "Annex A" and made a part hereof, which agreement, as the same may be amended from time to time, is hereinafter referred to as "the Note Discount Agreement";

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree that, in the event Panagra shall, by reason of the failure of National to make any payment as interest as provided in the Note Discount Agreement, pay the then unpaid [fol. 2094] principal amount due on the promissory notes discounted together with an amount equal to interest thereon pursuant to the Note Discount Agreement or issue its own notes in exchange for said promissory notes, then, in addition to any other right or remedy available to Panagra, Panagra shall be subrogated to all rights of the banks, insofar as National is concerned, under the Note Discount Agreement; and, upon notice from Panagra, National shall be deemed to be in default under paragraph 1.6 of the Financial Supplement to the Equipment Interchange Agreement and such default shall be deemed to be a material breach of the Equipment Interchange Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above mentioned.

NATIONAL AIRLINES, INCORPORATED

By /s/ ALEXANDER G. HARDY
Senior Vice President

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ K. A. LAWDER
Vice President

[fol. 2095] Annex A

THIS AGREEMENT, dated as of November 28, 1955, between PAN AMERICAN-GRACE AIRWAYS, INC. (herein called "Panagra"), NATIONAL AIRLINES, INCORPORATED (herein called "National") and CHEMICAL CORN EXCHANGE BANK, BANKERS TRUST COMPANY, THE CHASE MANHATTAN BANK, THE HANOVER BANK, THE FIRST NATIONAL CITY BANK OF NEW YORK and THE NEW YORK TRUST COMPANY (herein called the "Banks"),

WITNESSETH THAT:

WHEREAS, the Banks entered into a Credit Agreement, dated June 10, 1954 (herein called the "Panagra Agreement"), with Panagra providing for the extension of credit to Panagra from time to time by the Banks, respectively, in an aggregate principal amount of $8,000,000; and

WHEREAS, Chemical Corn Exchange Bank, The First National City Bank of New York and The First National Bank of Miami entered into an Agreement, dated October 17, 1952 (herein called the "National Agreement"), with National providing for the making of loans by said banks

to National and the National Agreement contains certain covenants and agreements on the part of National; and

WHEREAS, National, Pan American World Airways, Inc. (herein called "Pan American") and Panagra entered into an Equipment Interchange Agreement, dated August 4, 1955, as amended, and, pursuant to the provisions thereof Panagra has executed and delivered to National six non-interest bearing promissory notes, five thereof being each in the principal amount of $633,333.33 and one thereof being in the amount of $633,333.35, and National proposes to [fol. 2096] sell and endorse, without recourse, one of said promissory notes to each of the Banks;

NOW, THEREFORE, the parties hereto respectively agree as follows:

FIRST: In order to induce each of the Banks to purchase, at the principal amount thereof, one of said promissory notes, National will from time to time pay to each of the Banks, with respect to the promissory note held by said Bank, an amount equal to interest, at the rate of 3¾% per annum, payable quarterly beginning January 1, 1956 and on the first day of each calendar quarter thereafter, on the principal amount thereof outstanding during the period or portion thereof for which interest is then being paid, less an amount, if any, equal to interest, calculated at the same rate, on any amortization payments, including any accelerated payments, pursuant to the provisions of the promissory notes, of this agreement or of paragraph 1.6 of the Financial Supplement of the Equipment Interchange Agreement, as amended, remaining unpaid beyond the due date thereof, which amount shall be an obligation of Panagra and which Panagra hereby agrees to pay on demand. If the maturity of all of the principal of said promissory notes outstanding shall be accelerated as provided therein, such payment as interest by National shall be made upon demand only to the date of such accelerated maturity.

SECOND: Further in order to induce the Banks to purchase from National the promissory notes as above provided, Panagra hereby agrees with each Bank that, upon any failure of the due and punctual payment of the amount

above agreed to be paid by National as interest on said [fol. 2097] promissory note purchased by said Bank when and as each such payment shall become due and payable as above provided, within ten days after notice in writing of any such failure, Panagra at its option will either (a) pay to said Bank the unpaid principal amount of the promissory note held by it, together with an amount equal to interest thereon, at the rate above specified, accrued to the date of such payment from the first date with respect to which such payment as interest has not been made by National, or (b) issue to said Bank, upon the surrender to Panagra by said Bank of the said promissory note and the Note or Notes, if any, shall then be held by said Bank, outstanding under the Panagra Agreement, its new Note of the tenor and in the form provided by the Panagra Agreement, in an amount equal to the sum of the unpaid principal amounts of said promissory note and Panagra Note or Notes so surrendered, which new Note shall be issued as of and bear interest from the date of the default by National in the payment of interest, payable in equal consecutive quarterly instalments beginning with the first day of January, April, July or September, as the case may be, next succeeding the date of such exchange and ending October 1, 1962. Panagra will, at the time of the surrender, pay to each Bank an amount equal to the interest in default on the promissory note surrendered by it. Said new Notes shall be deemed to have been issued under the Panagra Agreement and each of the Banks agrees to accept said new Note and to surrender said promissory note and Panagra Note or Notes, if any, notwithstanding the fact that the time for the making of loans under the Panagra Agreement may have expired, provided, however, that any issue [fol. 2098] of such new Notes at a time when there shall exist any default under the terms of the Panagra Agreement shall not be deemed a waiver of such default or the effects thereof with respect to the Notes, including the new Notes, outstanding under the Panagra Agreement subsequent to any such exchange.

Panagra further agrees that, unless and until the exchange provided for in the foregoing paragraph of this

section shall take place, it will, in each calendar year beginning with the year 1956 so long as any Notes shall be outstanding under the Panagra Agreement, make a prepayment or prepayments thereon, without penalty, of or aggregating not less than $180,000 or such lesser amount as shall equal the then unpaid balance of such Notes, each such prepayment to be applied in the manner provided in the Panagra Agreement with respect to voluntary prepayments thereunder.

Panagra further agrees that neither the rights of any Bank as the holder of the promissory note purchased by it or of any successor to said Bank shall be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach by National of any of its obligations arising under or out of the Equipment Interchange Agreement or out of any indebtedness or liability, however arising, at any time owing by National to Panagra. Panagra further agrees that in the case of each payment or prepayment made by it, with respect to the promissory note which may be held by any Bank it will make a payment or prepayment, as the case may be, in a similar amount with respect to the promissory note held by each other Bank.

Panagra further agrees with each of the Banks that so long as any of said promissory notes purchased by said [fol. 2099] Bank shall remain outstanding Panagra will perform and observe the conditions, covenants and agreements contained in the Panagra Agreement and any breach or failure by Panagra to perform or observe any of such conditions, covenants and agreement shall be a default under this agreement notwithstanding the fact that the Notes issued under the Panagra Agreement may have been paid prior to the payment of the final instalment of principal of said promissory notes; and without limiting the generality of the foregoing, further agrees that in any computation of the unpaid principal amount of Notes required by the Panagra Agreement to be made from time to time the unpaid principal amount of Notes shall include the unpaid principal amount of said promissory notes at the time outstanding.

Panagra further agrees that if, at any time, it shall fail to pay any instalment of principal of said promissory notes when the same shall become due or shall fail to make any prepayment as required by the terms thereof or shall fail to observe any of its agreements contained in this agreement, then any and all Notes issued under the Panagra Agreement at the time outstanding shall thereupon become due and payable without presentation, protest or notice of any kind, all of which are hereby waived.

THIRD: The Banks and Panagra agree that the commitment under the pursuant to the Panagra Agreement of each Bank which shall purchase from National a promissory note of Panagra, as above provided, shall be reduced in an amount equal to the principal amount of the promissory note so purchased by said Bank.

[fol. 2100] FOURTH: Chemical Corn Exchange Bank and The First National City Bank of New York, as parties to the National Agreement, hereby consent and agree that the agreement herein contained by National to pay to the Banks respectively amounts equivalent to interest on the promissory notes shall not be considered to constitute a violation of any covenant or agreement on the part of National contained in the National Agreement.

FIFTH: All payments as interest hereunder and all payments of instalments of principal and prepayments under the terms of the promissory notes shall be made to Chemical Corn Exchange Bank on behalf of all of the Banks, all of such payments to be applied pro rata on the amount due to all of the Banks.

This agreement and the promissory notes shall be deemed to be contracts made in the State of New York and entered into under and pursuant to the laws of said State and shall be governed, construed and enforced in accordance with the laws of said State.

This agreement may be executed in two or more counterparts each of which shall constitute an original but which, taken together, shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ K. A. LAWDER
Vice President

NATIONAL AIRLINES, INCORPORATED

By /s/ J. C. BRAWNER
Vice President

[fol. 2101]

CHEMICAL CORN EXCHANGE BANK

By /s/ G. V. AZOY
Vice President

BANKERS TRUST COMPANY

By /s/ H. C. STRAIT
Vice President

THE CHASE MANHATTAN BANK

By /s/ J. P. MITCHELL
Vice President

THE HANOVER BANK

By /s/ J. EDW. JOHNSON

THE FIRST NATIONAL CITY BANK OF NEW YORK

By /s/ RILEY P. STEVENSON
Vice President

THE NEW YORK TRUST COMPANY

By /s/ WILLIAM R. CROSS JR
Vice President

The undersigned hereby joins in the consent and agreement given by Chemical Corn Exchange Bank and The First National City Bank of New York in paragraph FOURTH of the above agreement.

THE FIRST NATIONAL BANK OF MIAMI

By /s/ R. M. McDANALD
Vice President

[fol. 2102]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 35

(Letterhead of Pan American-Grace Airways, Inc., New York, N. Y.)

[Stamp—Received—May 27, 1597]

May 27, 1957

Pan American World Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

ATTENTION: Mr. Erwin Balluder, Vice President

Gentlemen:

Enclosed herewith for your consideration and acceptance is a letter dated April 16, 1957 which we have addressed to National Airlines and which National has accepted, relating to the application of the new Uniform System of Accounts to the Financial Supplement to the Equipment Interchange Agreement dated as of August 4, 1955 between National, Pan American and Panagra.

Item number 4 in said letter provides for payment by National directly to you of maintenance charges related to the operation of the aircraft over National's route pursuant to said Equipment Interchange Agreement. It is understood that the arrangement provided for in said Item 4 is not intended to modify the contractual arrangements between us with respect to maintenance of aircraft and the amounts to be received by Pan American therefor

as set forth in the Through Flight Agreement dated July 30, 1946, as amended, including Paragraph 62 thereof, except that National will pay to you directly the amount referred to in said Item 4 of the letter dated April 16, 1957.

In consideration of your acceptance of said letter dated April 16, 1957, it is agreed that Panagra will be responsible to you for any failure or delay in such payment by National so that Pan American will receive in total all amounts due it under the aforesaid Through Flight Agreement dated July 30, 1946, as amended.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Douglas Campbell
Vice President & General Manager

[fol. 2103]

PAN AMERICAN-GRACE AIRWAYS, Inc.
135 East 42nd Street, New York 17, N. Y.

April 16, 1957

National Airlines, Incorporated
3240 N. W. 27th Avenue
Miami 42, Florida

Attention: Mr. J. C. Brawner
Senior Vice President & Treasurer

Dear Sirs:

As you are aware, the Civil Aeronautics Board prescribed a Uniform System of Accounts effective January 1, 1957 which generally revised the accounting procedures for air carriers and included the establishment of a new chart of accounts. For purposes of clarification and in order to conform with the revision to the Uniform System of Accounts, it is necessary that we make a corresponding revision in certain account number designations and pro-

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cedures stipulated in the Financial Supplement to the Equipment Interchange Agreement dated as of August 1, 1955, between National, Pan American and Panagra.

Questions have also arisen on the interpretation of certain provisions in said Financial Supplement. In order to resolve these questions of interpretation and record our understanding on the revisions necessary in the Financial Supplement to conform with the changes in the Uniform System of Accounts, we confirm our agreement on the following:

1. Effective January 1, 1957 the account number references and methods of cost determination stipulated in the Financial Supplement to the Equipment Interchange Agreement shall be modified to conform with the Uniform System of Accounts as revised by the CAB effective that date as set forth in the attachment to this letter.

2. For purposes of determining the amount of deposit to be maintained by the lessee with the lessor under Para- [fol. 2104] graph 1.6 of the Financial Supplement and with specific reference to the second paragraph thereof, it is agreed:

   (a) that in the determination for each quarter year of the "estimated average revenue hours to be flown per day with lessor's aircraft of such type over lessee's routes under the Interchange Agreement", the scheduled hours shall be multiplied by the percentage of actual revenue hours flown by National to schedul d hours over National's route in the Interchange operation during the previous twelve months for the respective type of equipment flown.

   (b) that in the determination of both "the estimated average revenue hours to be flown per day" and "National's daily average revenue hour utilization during the preceding twelve months" an adjustment will be made in the computation to exclude the effect of extended abnormal operations resulting from any extended work stoppages and other abnormal factors not recurring in regular day-to-day operations of the respective aircraft.

3. With reference to Paragraph 1.7 of the Financial Supplement dealing with the sale of aircraft, it is agreed that for the determination of the amount payable by the lessee to the lessor under the first indented sentence of the first paragraph, 10-13ths of the aggregate related depreciation paid by the lessee to the lessor on the aircraft of the type involved shall be deducted from the agreed value, as defined, of the designated aircraft. This allocation of depreciation is based upon the relative investment in aircraft to the total investment in flight equipment including spare engines, spare propellers, parts and assemblies used in the determination of the cash deposit required pursuant to Paragraph 1.6 of the Financial Supplement.

4. As the Interchange Agreement provides for through service between New York, Miami and other points on National's Route 31 on the one hand and the Canal Zone and points on Panagra's route in South America on the other hand, it contemplates in substance that each of the three carriers involved will bear its share of maintenance [fol. 2105] expense incident to operation in its respective sector in accordance with the Financial Supplement to the Interchange Agreement, as amended. In practice, all major maintenance work is performed by Pan American World Airways, Inc.

In order to provide for direct payment by National of maintenance costs attributable to its operation of Panagra aircraft over its sector, it is agreed that effective as of January 1, 1957 National will pay to Pan American amounts corresponding to maintenance costs, both direct and indirect (including related burden, depreciation of ground equipment and related costs of general and administrative expenses) as determined pursuant to Paragraphs 1.12, 1.21, 1.22 and 1.5 of the Financial Supplement to the Interchange Agreement, as amended. It is further agreed that amounts payable by National to Panagra, pursuant to Section 10 of the Interchange Agreement and the Financial Supplement, as amended, will not include any amounts pay-

able by National to Pan American under the provisions of this paragraph.

Will you kindly indicate your agreement to the above by signing the attached copy of this letter.

Yours very truly,

PAN AMERICAN-GRACE AIRWAYS, INC.

/s/ L. H. CLIFTON
L. H. Clifton
Vice President & Comptroller

Enc.

ACCEPTED:

NATIONAL AIRLINES, INCORPORATED

By /s/ J. C. BRAWNER

Date 5/24/57

ACCEPTED:

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ E. BALLUDER

Date 6/4/57

[fol. 2106]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 36

Restatement of account number references and methods of cost determination set forth in the Financial Supplement dated August 9, 1955 to the Equipment Interchange Agreement dated as of August 4, 1955 between National Airlines, Incorporated, Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. to conform with the Uniform System of Accounts as revised by the Civil Aeronautics Board effective January 1, 1957

Paragraph 1.12—Direct Maintenance—Flight Equipment

Add —To direct maintenance costs, as recorded, will be added the value of rotable parts and assemblies which are retired and charged against the reserve for depreciation.

Paragraph 1.13—Flight Equipment Depreciation

Delete —Entire original paragraph.

Substitute —Depreciation expense shall be based upon National's cost per available seat mile for the same type of flight equipment in the same type of service except that if reported costs of aircraft, engines and rotable parts and assemblies are based upon a life different than 7 years and 10% residual values the reported costs shall be adjusted to a 7-year basis and 10% residual values in making this determination. In the event that National's reported depreciation expense is distorted by the use of fully-depreciated flight equipment, appropriate adjustment will be made in this expense to reflect the normal level of costs.

In order to continue provision for the element of cost represented by loss in service value or obsolescence of Flight Equipment Expendable Parts—Account 1310 representing items which were formerly classified as Flight Equipment Spare Parts and Assemblies—Account 1608, a proper adjustment will be made in National's cost per available seat mile of Flight Equipment Depreciation to give effect to such cost.

Paragraph 1.21—Ground and Indirect Maintenance

Delete —Entire original paragraph.

Substitute —The Applied Maintenance Burden—flight equipment available seat mile cost of National for the same type of flight equipment in the same type service shall be used.

[fol. 2107]

Paragraph 1.22—Depreciation

Delete —Entire original paragraph.

Substitute —The portion of National's available seat mile cost represented by Applied Maintenance Burden shall include depreciation of shop facilities used in the maintenance of flight equipment.

Paragraph 1.4—Passenger Service Expense

Delete —Original last paragraph.

Substitute —The cost of other passenger services to be furnished by lessor shall be based on the cost per available seat mile reported by National in Accounts 5542.9 and 5543.9 —General Services Purchased and 5553 —Other Supplies.

Paragraph 1.5—General and Administrative Expense

Delete "The amounts reported in Accounts 6641, 6642, 6665, 6666, 6667 and 6672 shall be excluded in total."

Substitute "The amounts reported in Accounts 6840, 6841, 6865 and 6866 shall be excluded in total."

Delete —Original last paragraph.

Substitute —"The remaining general and administrative expenses shall be allocated on the basis of labor costs appearing in Account

groups 5100, 5200, 5300, 5500, 6100, 6200, 6300, 6500 and 6600. This proration shall be by type of equipment with respect to Account groups 5100 and 5200. The total amount of general and administrative expense allocated to the 5300 group shall be re-allocated to the 5200 group of accounts by type of equipment in accordance with the formula set forth in Paragraph 1.21 of this Financial Supplement, as amended."

[fol. 2108]

Pan American Documentary Evidence

Agreements Filed with the CAB

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Volume 1

A AGREEMENTS WITH PANAGRA:

Through Flight Agreement and Supplements:

Date of Agmt.	Parties	Description	Date Filed CAB	CAB No.	Date Apprvd.	Order No.
7/30/46	PAA/PANAGRA	Through Flight Agmt. 1/	8/5/46	727	5/5/47	E-570
5/28/47	PAA/PANAGRA	Supp. No. 1	5/28/47			
1/9/48	PAA/PANAGRA	Supp. No. 2	1/14/48	727-A	8/29/50	E-4575
1/28/49	PAA/PANAGRA	Supp. No. 3	2/18/49	727-A/4	8/29/50	E-4575
2/9/49	PAA/PANAGRA	Supp. No. 4	2/18/49	727-A/5	8/29/50	E-4575
5/11/49	PAA/PANAGRA	Supp. No. 5	5/12/49	727-A/6	8/29/50	E-4575
10/18/49	PAA/PANAGRA	Supp. No. 6	10/24/49	727-A/7	8/29/50	E-4575
1/31/50	PAA/PANAGRA	Supp. No. 7	2/28/50	727-A/8	8/29/50	E-4575
12/26/50	PAA/PANAGRA	Supp. No. 8	1/24/51	727-A/9	8/10/55	E-9481
1/24/51	PAA/PANAGRA	Supp. No. 9	2/9/51	727-A/10	8/10/55	E-9481
6/29/51	PAA/PANAGRA	Supp. No. 10	7/27/51	727-A/11	8/10/55	E-9481
1/1/52	PAA/PANAGRA	Supp. No. 11	2/15/52	727-A/12	8/10/55	E-9481
4/10/52	PAA/PANAGRA	Supp. No. 12	4/16/52	727-A/13	8/10/55	E-9481
9/25/52	PAA/PANAGRA	Supp. No. 13	10/13/52	727-A/14	8/10/55	E-9481
5/8/53	PAA/PANAGRA	Supp. No. 14	5/18/53	727-A/15	8/10/55	E-9481
1/20/54	PAA/PANAGRA	Supp. No. 15	4/22/54	727-A/16	8/10/55	E-9481

1/ For Parent Company Agreement considered by CAB as part of Through Flight Agreement, see Agreement with Grace.

[fol. 2109]

Date of Agmt.	Parties	Description	Date Filed CAB	CAB No.	Date Appvd.	Order No.
6/29/54	PAA/PANAGRA	Supp. No. 16	8/17/54	727-A/17	8/10/55	E-9481
9/7/55	PAA/PANAGRA	Supp. No. 17	9/23/55	727-A/19	10/13/55	E-9654
8/4/55	PAA/PANAGRA	Supp. No. 18	8/4/55	727-A/18	8/10/55	E-9481
8/7/57	PAA/PANAGRA	Supp. No. 19	8/20/57	727-A/20	Pending	
7/11/57	PAA/PANAGRA	Supp. No. 20	7/23/57	727-A/21	Pending	
12/23/58	PAA/PANAGRA	Supp. No. 21	1/5/59	727-A/25	Pending	

Equipment Interchange Agreement and Supplements

8/4/55	PAA/NAL/PANAGRA	Equipment Interchge. Agmt.	8/4/55	[illegible]	8/10/55	E-9481
8/22, 23/55	PAA/NAL/PANAGRA	Supp. No. 2 (Valuation sites Agmt.)	9/29/55	A/2	10/13/55	E-9654
11/29/55	PAA/NAL/PANAGRA	Supp. No. [illegible]	12/6/55	A/3	12/15/55	E-9769
7/16/57	PAA/NAL/PANAGRA	Unif. Svc. Agmts. Int. Agmt.	8/26/57	A/3	Pending	

Volume 2

Other Agreements with Panagra

1/26/32 to 10/1/54	PAA/PANAGRA	Interline tickets all copies correspondence	9/27/54	R10		
6/11/37	PAA/PANAGRA	Int. Agmt/Grnd. Sv. by PANAGRA/Buenos Aires Airpt.	2/20/57	66	3/17/57	E-7176
5/13/42	PAA/PANAGRA	Joint Facilities-Corumba, Brazil	9/27/54	R07		
10/28/42	PAA/PANAGRA	Apportionment of Revenue	9/27/54	[illegible]		
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[fol. 2110]

Date of Agmt.	Parties	Description	Date Filed CAB	CAB No.	Date Appvd.	Order No.
8/23/45	PAA/PANAGRA	Air-mail Service-Operations/Panama (Sp. Eng.)		670-A/2	11/7/52	E-6945
3/3/48	PAA/PANAGRA/ W.R.GRACE & CO.	Gen. Sls. Agcy & Commissions	9/24/48	2172	Pending	
7/14/48	PAA/PANAGRA	Purch. & Shipping Agmt.	7/20/48	2272	1/22/52	E-6048
7/14/48	PAA/PANAGRA/ W.R.GRACE & CO.	Agmt. re Gen. Sls. Agcy. Pch. & Shipping & Adm. Sv. to Panagra	7/20/48	2273	Terminated	
9/10/48	PAA/PANAGRA	Gen. Traff/Sls. Agcy. Agt.	9/21/48	2473	11/8/51	E-5842
12/11/51	PAA/PANAGRA	PAA ticket sale on "lift" basis	5/12/52	6133	6/1/52	E-6176
3/6/56	PAA/PANAGRA	Appvl. changes in design	3/27/56	A/1	Pending	
4/24/56	PAA/PANAGRA	Commissions re DC8s	5/17/56	A/1	Pending	
6/26/57	PAA/PANAGRA	Procurement of parts DC6s	7/22/57	A/2	Pending	
6/3, 7 & 26/57	PAA/PANAGRA	Aviance an affil. carrier	7/10/57	A/2	Pending	

2. AGREEMENTS WITH AVIANCA AND SCADTA:

3/11/32	PAA/SCADTA	General Traffic Agmt.	6/30/38	166	Terminated	
11/1/48	PAA/AVIANCA	Gen. Traffic/ Sls. Agcy. Agt.	11/22/48	3761	11/8/51	E-5842
12/3/52	PAA/AVIANCA	Gen. Traf/Sls. Agcy. Agt.	12/8/52	8528	Pending	
12/3/52	PAA/AVIANCA	Reimbursemt. of expenses	7/10/57	A/2	Pending	

[fol. 2111]

Date of Agmt.	Parties	Description	Date Filed CAB	CAB No.	Date Appvd.	
12/3/54	PAA/AVIANCA	PAA 1st designat. affiliates	7/10/57	A/1	Pending	
12/3/54	PAA/AVIANCA	IATA Interl Traff. Agt.	4/4/55	8842	4/25/55	E-9147
6/28/57	PAA/AVIANCA	Amdmt. No. 2 re territory	7/10/57	A/3	Pending	
3/30/58	PAA/AVIANCA	Rel. to territory/Amdmt. No. 2	3/31/58	A/4	Pending	
4/21/58	PAA/AVIANCA	Amdmt. No. 3 - re territory	4/24/58	A/5	Pending	
10/30/58	PAA/AVIANCA	Amdmt. No. 4 - re territory		A/6	Pending	

3. AGREEMENTS WITH BRANIFF:

4/27/48	PAA/BRANIFF	Grnd. Sv. Agt. Havana & San Blas, Panama	4/27/48	1980	5/27/53	E-7416
9/27/49	PAA/BRANIFF	Amdmt. No. 1 re charges	1/13/49	A/1	3/30/49	E-2651
10/31/49	PAA/BRANIFF	Amdmt. No. 2 re charges	12/14/49	A/2	5/27/53	E-7416
12/7/49	PAA/BRANIFF	Amdmt. No. 3 re charges	1/20/50	A/3	5/27/53	E-7416
7/20/50	PAA/BRANIFF	Amdmt. No. 4 re charges	9/21/50	A/4	5/27/53	E-7416
5/30/52	PAA/BRANIFF	Assignmt. to AUSA of Svcs. Agt.	5/25/52	A/5	5/27/53	E-7416
11/15/54	PAA/BRANIFF	Particip. in PAA Syst. tariffs	11/30/54	8510	12/29/54	E-8862
6/20/57	PAA/BRANIFF	Amdmt. No. 5 re charges	9/22/57	A/6	9/13/57	E-11789
10/21/57	PAA/BRANIFF	Amdmt. No. 6 re charges	11/22/57	A/7	Pending	

[fol. 2112]

Date of Agmt.	Parties	Description	Date Filed CAB	CAB No.	Date Apprvd.	Order No.
4. AGREEMENT WITH GRACE:						
Agreement between W. R. Grace & Co. and Pan American Airways Corporation, dated July 30, 1946; see Trial Brief for United States, Part II, Excerpts from Documentary Evidence, Volume IV, Thru-Flight - Part II, G-267.						
5. AGREEMENTS WITH NATIONAL AIRLINES:						
See above under Agreements with Panagra; Equipment Interchange Agreement and Supplements.						
6. AGREEMENTS WITH PANAIR DO BRASIL:						
11/1/43	PAA/PAB	(General Agency Agmt.) Lr. Agt.	10/14/43	267	11/8/51	E-5842
1/1/44	PAA/PAB	General Agency Agmt.	2/19/44	A	11/8/51	E-5842
6/22/44	PAA/PAB	Lr. Agmt.	11/6/44	A/2	11/8/51	E-5842
12/12/46	PAA/PAB	Agmt.	4/4/47	A/3	11/8/51	E-5842
1/1/47	PAA/PAB	Lr. Agmt. re Syst. Accts.	12/16/47	A/4	11/8/51	E-5842
1/1/47	PAA/PAB	Lr. Agmt. Amdmt. No. 2	9/30/47	A/5	11/8/51	E-5842
2/19/52	PAA/PAB	Lr. Agmt. re commission rates	6/18/52	A/6	7/9/52	E-6587
1/1/55	PAA/PAB	Gen. Traffic/Sls. Agcy. Agt.	12/29/55	9620		
12/13/55	PAA/PAB	Lr. fr. PAA/re affil. carriers.		A/1	Pending	
7/1/57	PAA/PAB	Amdmt. No. 1 re territory	8/5/57	A/2	Pending	
12/11/57	PAA/PAB	Amdmt. No. 2 re territory	2/11/58	A/3	Pending	

[fol. 2113]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 37

I, GEORGE FOX, hereby certify that I am Assistant Secretary of Pan American Airways, Inc.; that the attached documents are true and complete copies of the documents evidencing an interline traffic agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. as evidenced by:

1. Letter of January 26, 1932 from Vice President and General Manager, Pan American-Grace Airways, Inc. to President, Pan American Airways, Inc.
2. Letter agreement dated April 14, 1932;
3. Memorandum signed by Passenger Traffic Manager, Pan American Airways, Inc. and dated May 12, 1937;
4. Memorandum signed by Passenger Traffic Manager, Pan American Airways, Inc. and dated August 19, 1938;
5. Memorandum dated June 13, 1939 signed by Vice President of Pan American-Grace Airways, Inc.
6. Memorandum from Passenger Traffic Manager, Pan American Airways, Inc. dated June 22, 1939;
7. Letter from Vice President and General Traffic Manager, Pan American-Grace Airways, Inc. dated November 26, 1943;
8. Memorandum signed by Passenger Traffic Manager, Pan American Airways, Inc. dated August 23, 1945;
9. Memorandum signed by Assistant Comptroller, Pan American Airways, Inc. dated August 31, 1945;
10. Memorandum signed by Passenger Traffic Manager, Pan American Airways, Inc. dated September 4, 1945;
11. Memorandum signed by Assistant Comptroller, Pan American Airways, Inc. dated October 1, 1945.

/s/ GEORGE FOX
Assistant Secretary

Dated: September 27, 1946

[fol. 2114]

COPY

October 1, 1945

Passenger Traffic Manager
Traffic
New York, New York

Asst. Comptroller
Executive
Miami, Florida

PAN AMERICAN AIRWAYS—PANAGRA COMMISSION ARRANGEMENT—BALBOA

FILE T. C. 4

We are sorry that we did not make ourselves clear in our memorandum to you of August 31st with respect to the commission exchanged between Panagra and Pan American Airways.

In addition to the arrangement whereby our Panama City office sells Panagra series of tickets and the Panama Agencies sells PAA tickets, on which commission in exchanged at the rate of 7½%, all tickets sold by the Balboa airport are of our own series, but we credit Panagra for the transportation over its lines less 7½% commission. Those tickets which their Balboa office in turn issues for transportation over our lines are credited to us by them less the same 7½% commission. The same is true for tickets issued by any of our on-line stations for transportation over Panagra. That portion of the travel over Panagra is credited to them less 7½% commission.

If we can be of any further assistance to you please let us know.

/s/ illegible

For J. O. Merckling
Asst. Comptroller

cc: VP&GTM—New York
Comptroller—New York
Gen.Traf.Mgr.—Panagra—New York

[fol. 2115]

COPY

September 4, 1945

Assistant Comptroller

Passenger Traffic Manager

Executive

Traffic

Miami

New York

PAA—PANAGRA COMMISSION ARRANGEMENT—BALBOA

FILE T. C. 4

Regarding your memorandum of August 31st, what about Balboa?

Is it correct that there is no exchange of commission on tickets sold at Balboa Airport?

R. C. Lounsbury

RCL/mw

cc: VP & GTM—New York
Comptroller—New York
Gen.Traf.Mgr.—Panagra—New York

[fol. 2116]

COPY

August 31st, 1945

Passenger Traffic Manager

Asst. Comptroller

Traffic

Executive

New York

Miami, Florida

PAA—PANAGRA COMMISSION ARRANGEMENT—BALBOA

FILE T. C. 3

We acknowledge your letter of August 23rd wherein we were requested to advise you of the present arrangement in connection with interchange of commission, if any, between PAA and PANAGRA at Balboa.

In this connection we wish to advise that the Panama Agencies in Cristobal use our ticket form and report their

sales to us regularly. We allow them 7½% commission on all sales made by them.

Our Panama City office sells PANAGRA's tickets and reports the sales directly to PANAGRA less 7½% commission. The Panama City remittances are made to us and we, in turn, issue PANAGRA credit less 7½% commission for the sales.

/s/ F. S. CULHAM

For J. O. Merckling
Asst. Comptroller

cc:VP & GTM:NY
General Traffic Manager—PANAGRA—New York

[fol. 2117]

(AIRCO) August 23, 1945

Asst. Comptroller (ATTN: F. L. Culham) — Passenger Traffic Manager

Executive — Traffic

Miami — New York

PAA—PANAGRA COMMISSION ARRANGEMENT—BALBOA

Can you advise me exactly what the present arrangement is in connection with the interchange of commission, if any, between PAA and PANAGRA at Balboa?

As I understand it, either company will pay the other for commission where tickets are sold by one company for the other at the Airport Office. However, at the City Office in Panama, and perhaps at Cristobal, it may be that commission is being paid in these cases. If commission is being exchanged in the latter instances, will you please advise what the rate is, and also advise particularly whether PAA pays PANAGRA for any commission on tickets issued by PANAGRA's general agency in the Canal Zone.

R. C. Lounsbury

RCL:mce

cc VP & GTM—New York
General Traffic Manager—Panagra—New York

[fol. 2118]

COPY

Pan American-Grace Airways, Inc.
135 East 42nd Street New York, N. Y.

Cable Address
"Panagra"

November 26, 1943

Dear Dick—

When I was in Balboa arrangements had just been completed whereby Panair and Panagra would not pay each other commission on ticket sales effected at the Airport Office.

However, for sales effected at the City Ticket Office commission continued to be paid.

It was my impression that the Eastern Division, Western Division and Panagra, had agreed on this because a new method of accounting was inaugurated, by which commissions were deducted by each division at the time the tickets were reported. This method was being installed while I was there.

Under the circumstances I assume that Mr. Becerra Soto's plan has been dropped for the time-being. Am I correct in this assumption?

C. de Groot

/s/ CHRIS

CdeG/cd

[fol. 2119]

COPY

June 22, 1939

General Accounting Office
Accounting
New York

Passenger Traffic Manager
Traffic
New York

PANAIR—PANAGRA COMMISSION

This will confirm our recent conversation and Mr. Vidal's memo to SAGO Accounts, Lima, dated June 13, (copy of which you have) to the effect that PANAIR and PANAGRA

will pay each other 7½% commission instead of 5% on inter-company sales under the same conditions as previously existed with respect to 5%. This is effective July 1, 1939.

R. C. Lounsbury

RCL/f

cc: General Traffic Manager—NY
Comptroller, Panagra—NY

[fol. 2120]

4621

COPY

7½% COMMISSION

NEW YORK
June 13, 1939

SAGO—Accounts
LIMA

This will confirm the arrangements recently completed under which

(a) Panagra will pay the Grace Line, Furness Prince Line, American Republics Line and Delta Line a 10% Commission on Round South America sea/air tour tickets.

(b) Panagra, Panair and the steamship companies listed above will pay each other a 7½% commission on transportation sold over each other's lines.

(c) Panagra, Panair and the domestic airlines in the United States will pay each other a 7½% commission as outlined in your letter 1982 of May 29.

G. Vidal

GV:G

cc SAGO—Traffic
VEChenea
Panair General Accounting Office—NY

[fol. 2121]

COPY

August 19, 1938

General Accounting Office
Comptroller's
New York

Passenger Traffic Manager
Traffic
New York

COMMISSIONS—PAN AMERICAN AIRWAYS, INC.—PANAGRA

In accordance with your request the following will review and bring you up to date on the commission arrangements existing between the above two Companies:

In January 1932 an agreement was signed for the reciprocal payment of 5% commission.

In March 1935 this agreement was amplified as follows:

Pan American Airways, Inc. will pay to Pan American-Grace Airways, Inc. 5% commission on tickets sold by Pan American-Grace Airways, Inc. and/or its agents for transportation over the lines of Pan American Airways, Inc. and/or its affiliated companies; provided, however, that in any cases where Pan American-Grace Airways, Inc. has arrangements for the payment to its agents of 7½% or 10% commission, Pan American Airways, Inc. will pay to Pan American-Grace Airways, Inc. an additional 2½% or 5% commission to compensate for the aggregate 7½% or 10% which Pan American-Grace Airways, Inc. must pass along to its agents when tickets are sold by sub-agents for passage over the lines of Pan American Airways, Inc. and/or its affiliated companies.

In the reverse cases, 5% commission will be paid by Pan American-Grace Airways Inc. to Pan American Airways, Inc. on tickets sold by Pan American Airways, Inc. and/or its affiliated companies for transportation over the lines of Pan American-Grace Airways, Inc.; provided, however, that in any cases where Pan American Airways, Inc. and/or its affiliated companies have arrangements for the payment to its or their agents of 7½% or 10% commission, Pan American-Grace Airways, Inc. will pay Pan American

Airways, Inc. an additional 2½% or 5% commission to compensate for the aggregate 7½% or 10% commission which Pan American Airways, Inc. and/or its or their affiliated companies must pass along to its or their agents when tickets are sold by such agents for passage over the lines of Pan American-Grace Airways, Inc.

Subsequent to the above agreements, in May 1937 an understanding was reached between the two companies concerning the offices of both companies at Cristobal and Panama City, as follows:

The offices of both companies at both points will sell passenger and express traffic over the lines of the respective companies and their affiliates regardless of which offices of either company at Cristobal and Panama City is presented with passenger or express business. The above outlined commissions will apply in accordance with which company or its agents make the sales.

[fol. 2122] However, in the case of express traffic, although each company may handle express shipments offered to it for transportation over the lines of the other exactly the same as above, there will be no exchange of commission on such express shipments.

We trust the above will bring you up to date on this situation. Will you kindly be governed accordingly.

.....

R. C. Lounsbury

RCL/n

cc: Comptroller—Panagra—NY

[fol. 2123]
COPY

PAA

PAN AMERICAN AIRWAYS, INC.

General Offices—Chrysler Building—New York City

May 12, 1937

To Traffic Managers
Traffic Department
Mexico, D.F.—Lima

From General Traffic Manager
Traffic Department
New York, N.Y.

SALES—CANAL ZONE

Effective immediately, the Pan American Airways, Inc. and Pan American Grace Airways, Inc. offices in Cristobal and Panama City will each sell passenger and express business over the lines of the respective companies, as well as other companies, regardless of which offices of either company at Panama City and Cristobal is presented with passenger or express business.

As regards passenger sales, the company whose office sells the ticket over the other's lines will receive the usual 5% commission.

In the case of express sales it is desired that these be handled by the office to which the shipper presents business, either Pan American Airways, Inc. or Pan American-Grace Airways, Inc., exactly the same as in the case of passenger sales, but there will be no exchange of commission on express shipments. Will you kindly instruct the local offices in Cristobal and Panama City in accordance with the above?

(Sgd) V. E. CHENEA
General Traffic Manager

[fol. 2124]

COPY

PAN AMERICAN AIRWAYS, INC.

General Offices—122 East Forty-Second Street
New York City

April
14
1932

Mr. J. D. MacGregor,
Vice President & General Manager,
Pan American-Grace Airways, Inc.,
122 East 42nd Street,
New York City.

Dear Mr. MacGregor:

This will confirm our verbal agreement regarding return round trip passengers between Buenos Aires and Montevideo; also through passengers who wish stopovers at either Montevideo or Buenos Aires and then continue their passage via Panair do Brasil, S.A. or Pan American-Grace Airways, Inc.

When ticket is issued by Pan American-Grace Airways and passenger returns over Panair do Brasil, S. A., between Buenos Aires and Montevideo, Panair do Brasil, S. A. will bill Pan American-Grace Airways, Inc. for the published one way tariff between these two points less ten per cent (10%). Also, when through passenger wishes stopover at Buenos Aires and then continues passage over Panair do Brasil, S.A., Pan American-Grace Airways will be billed at the regular published tariff between Buenos Aires and Montevideo.

When ticket is issued by Panair do Brasil, S. A. and passenger returns over Pan American-Grace Airways, Inc., between Buenos Aires and Montevideo, Pan American-Grace Airways, Inc., will bill Panair do Brasil, S.A. for

the published one way tariff between these two points less ten per cent (10%). When through passenger wishes stopover at Montevideo, and then continues passage over Pan American-Grace Airways, Inc., Panair do Brasil, S. A. will be billed at the regular published tariff between Montevideo and Buenos Aires.

If this is in accordance with your understanding please sign and return the attached copy to indicate your approval.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.

By /s/ V. E. CHENEA
V. E. Chenea, General Traffic Mgr.

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ J. D. MACGREGOR
J. D. MacGregor, Vice President
& General Manager.

VEC FP

[fol. 2125]

PAN AMERICAN-GRACE AIRWAYS, INC.

New York, N.Y.
January 26, 1932

Mr. J. T. Trippe, President
Pan American Airways, Inc.
New York, N.Y.

My dear Mr. Trippe:

This will confirm our verbal agreement by which Pan American Airways, Inc. will pay to Pan American-Grace Airways, Inc. in South America 5% commission on tickets sold by them or their agents for transportation over Pan American Airways, Inc. lines.

A similar 5% commission will be paid by Pan American-Grace Airways, Inc. to Pan American Airways, Inc. for tickets sold by them or their agents for transportation over Pan American-Grace Airways, Inc. lines.

The same commission will be paid for the transportation of air express over the respective lines, excluding, of course, valuation and handling charges.

This agreement will be in effect for the period of one year from February 1, 1932 and may be cancelled by either party by giving thirty days written notice.

The details as to the method for carrying out this agreement will be arranged with Mr. Vidal so that this arrangement can be given prompt effect.

It is, of course, understood that the above commission refers to tickets sold by your sectional offices and outside agents and this arrangement is without prejudice to any portion of the cost of your New York Traffic Department which we may arrange to pay.

I am sending this to you in duplicate, and will you please return me one copy with your conformity.

Very truly yours

PAN AMERICAN-GRACE AIRWAYS, INC.

(Sgd) J. D. MACGREGOR
Vice President & General Manager

[fol. 2126]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 38

[Handwritten notation—NY file PAA (illegible)]

COPY COPY

PAN AMERICAN AIRWAYS, INC.
General Offices—Chrysler Building—New York City

June 11, 1937

Pan American Grace Airways, Inc.,
135 East 42nd Street.
New York, N. Y.

Gentlemen:

We plan to operate a land plane service between Rio de Janeiro, Brazil, Asuncion, Paraguay and Buenos Aires,

Argentina and desire to make the first trip southbound into Buenos Aires July 5th, or July 6th, 1937, the first trip northbound out of Buenos Aires July 7th, 1937. We expect to operate initially with a lockheed electra plane shifting later to operation with a Douglas D. C. 3. For the present this service will be confined to one round trip per week due to arrive in Buenos Aires on Mondays, or Tuesdays, and to depart from Buenos Aires on Wednesdays.

As we have no land plane facilities or landing field at Buenos Aires we desire to make use of your facilities at that point including landing field, radio facilities, and shelter and servicing for the plane during its lay over in Buenos Aires.

If you are willing to provide these facilities and services for our operation, it is suggested that we compensate you therefor on the following basis:

(a) For the utilization of all said facilities, and the services of your personnel required for their maintenance and operation including ordinary line service to the plane, we hereby propose to pay to you a proportion of the total cost of operating the said airports, including pay of personnel, expenses of operation, maintenance and communications, such proportion being calculated as follows:

> The number of landings of airplanes of this Company at your airport at Buenos Aires multiplied by the licensed useful load of the said airplanes shall constitute the numerator of the fraction representing this company's share of the said total cost at such airport; the number of landings of airplanes of both this company and your Company at the said airport multiplied by the licensed useful load of the said airplanes shall be the denominator of the said fraction.

[fol. 2127] (b) For any maintenance or repair work which we may request you to do upon our plane or planes, over and above routine line servicing; we hereby propose to pay you the actual cost of labor, plus

150% of such cost for overhead, and the actual cost of materials, plus 20% of such cost for overhead.

If the above arrangement is satisfactory to you will you kindly sign the duplicate original of this letter and return it to us?

Very truly yours,

PAN AMERICAN AIRWAYS, INC.

By /s/ (illegible)
Vice President

ACCEPTED

PAN AMERICAN GRACE AIRWAYS, INC.,

By /s/ J. D. MACGREGOR

[fol. 2128]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 39

(Letterhead of Pan American-Grace Airways, Inc., New York, N. Y.)

May 13, 1942

Pan American Airways, Inc.
135 East 42nd Street
New York, New York

Dear Sirs:

In order to compensate you or your subsidiary, Panair do Brasil, for the facilities used by Panagra at Corumba, Brazil, we are agreeable to do so on the basis of a joint facilities arrangement on the following basis.

The cost of the facilities of Operations and Communications used by Panagra to be proportioned between the companies on the basis of Ton-Landings.

For any maintenance or repair work on our planes over and above routine line servicing, we would pay the actual cost of labor, plus 150% of such cost for overhead, and the actual cost of materials, plus 20% of such cost for overhead.

Fuel furnished to Panagra planes would be at cost as the work involved in storage and fueling of planes would be compensated for under the joint facilities arrangement. Passenger supplies, as well as any other supplies excepting spare parts, would be charged at cost.

The cost of operating the staff house in Corumba should not be included in the Joint Facilities calculations until further notice. Panagra will continue to reimburse Panair for the use of the staff house on a fixed rate basis per man.

It is understood and agreed that the Joint Facilities billings to Panagra would be supported by complete details.

If the above arrangement is satisfactory to you will you kindly sign the duplicate original of this letter and return it to us.

Yours very truly,

PAN AMERICAN-GRACE AIRWAYS, INC.

/s/ (Illegible)
Vice President

ACCEPTED

PAN AMERICAN AIRWAYS, INC.

By /s/ (Illegible)
Vice President

[fol. 2129]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 40

(copy)

October 28, 1942

The Postmaster General
Post Office Department,
Washington, D. C.

Dear Sir:

In connection with the final rate decisions issued by the Civil Aeronautics Board in Dockets No. 716 and No. 298, you are advised that Pan American-Grace Airways, Inc.,

and Pan American Airways, Inc. have agreed, effective September 1, 1942, to the following apportionment of northbound mail revenue received for mail accepted by Pan American-Grace Airways, Inc. from the various Post Offices in its route and destined to the United States or beyond. Such apportionment is to be made after provision for payment to the United States Post Office Department for services within the United States, it being understood that your department collects directly from the foreign Governments for transportation beyond the United States.

Country of Origin	Percentage of revenue to be apportioned Pan American-Grace Airways, Inc.	Percentage of revenue to be apportioned Pan American Airways, Inc.
Argentina*	77.8%	22.2%
Chile	74.4%	25.6%
Bolivia	67.6%	32.4%
Peru	59.5%	40.5%
Ecuador	44.8%	55.2%
Colombia	30.5%	69.5%

It is understood that Pan American Airways, Inc. shall not be responsible for the collection of the revenue in question or for payment to the United States Post Office Department for services within the United States, all of which will be settled between Pan American-Grace Airways, Inc. and that Department, and that amounts payable to Pan American Airways, Inc. will become payable from Pan American-Grace Airways, Inc. immediately upon completion of the carriage by Pan American Airways, Inc. of the mail to which the payments relate. During the period from July 1, 1942 through August 31, 1942, the percentage of revenue to be apportioned Pan American-Grace Airways, Inc. shall be determined in the manner set forth above and the entire balance shall be payable to the United States [Vol. 2130] Post Office Department, it being understood that no other payment to, or deduction by, the United States

* This includes mail originating in Uruguay and Paraguay so long as it is cleared through the Buenos Aires, Argentine, Post Office.

Post Office Department will be made in respect of such mail from Pan American Grace Airways, Inc. or Pan American Airways, Inc.

This agreement is subject to cancellation by either party upon thirty days' written notice to the other party and to the Postmaster General.

Respectfully yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

G. VIDAL
Vice President and Comptroller

PAN AMERICAN AIRWAYS, INC.

J. C. ROOP
Vice President and Treasurer

[fol. 2131]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 41

[Handwritten notation—Jan. 1, 1947]

PAN AMERICAN-GRACE AIRWAYS, INC.

"Panagra"

GUSTAVO VIDAL, being duly sworn, deposes and says that he is a Vice President of Pan American-Grace Airways, Inc. and that the two attached memoranda, dated May 25, 1944, are true and complete evidence of agreements between Pan American-Grace Airways, Inc. and Pan American Airways, Inc., which agreements concern airmail exchanges between the two companies at Balboa and Buenos Aires and concerning northbound United States mail originating in Buenos Aires; and that he is familiar with all the terms and conditions of such agreements.

(Sgd.) G. VIDAL

Sworn to before me this
27th day of September, 1946.

[fol. 2132] COPY

MEMORANDUM CONCERNING AIRMAIL EXCHANGES BETWEEN PANAGRA AND PANAIR AT BALBOA AND BUENOS AIRES

Airmail (other than United States mail) originating in countries served by Panagra and delivered to Panair either at Balboa or Buenos Aires for onward carriage, as well as airmail (other than United States mail) originating in countries served by Panair, delivered to Panagra at Balboa or Buenos Aires for onward carriage, are the subject of financial liquidations as follows based upon weights of mails recorded at points of exchange.

BALBOA

Panagra pays Panair and Panair pays Panagra the established U. S. currency Panamian rates per pound from point of exchange to country of destination.

BUENOS AIRES

Same remarks, except that liquidations are based upon the established postal gold franc rates instead of U. S. currency rates.

5/25/44

[fol. 2133] COPY

MEMORANDUM CONCERNING NORTHBOUND UNITED STATES MAIL ORIGINATING IN BUENOS AIRES

By Gentlemen's Agreement entered into between Panagra and Panair, the Buenos Aires Agency representing both

companies is attempting to equalize (through the Argentine Post Office Department) the weights of northbound U. S. mail originating in Buenos Aires, despatched via the west and east coasts of South America. The purpose of this attempted equalization of weights is that the revenue of Panagra and Panair may be approximately the same over a period of time.

5/25/44

[fol. 2134]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 42

Translation

CONTRACT ENTERED INTO BETWEEN PAN AMERICAN AIRWAYS, INC. AND PAN AMERICAN-GRACE AIRWAYS, INC. covering operations in the Republic of PANAMA.

In the city of New York, State of New York, United States of America, on August 23, 1945, between the undersigned, namely—Mr. Howard B. Dean, Vice President, in the name and representation of PAN AMERICAN AIRWAYS, INC., hereinafter called PANAIR, and Mr. Harold J. Roig, President, in the name and representation of PAN AMERICAN-GRACE AIRWAYS, INC., hereinafter called PANAGRA, the contract containing the following clauses has been entered into:

FIRST: PANAIR executed a contract with the Government of the Republic of Panama for the establishment of an air transport service on March 8, 1929, which was amplified by a supplementary contract signed by the same parties on May 29, of the same year; said agreements were approved by the Executive Power of the Republic of Panama pursuant to Law 48 of 1932, with several additions and amendments.

SECOND: On December 6, 1929, after approval by the Executive Power, PANAIR transferred to PANAGRA, in relation to the South American countries served by the latter, some of the rights pertaining (or—belonging) to it by

virtue of the contracts mentioned in the preceding clause, and upon the enactment of Law 48 of 1932, the rights acquired by PANAGRA were made subject to the additions and amendments contained in that same law.

THIRD: On April 28, 1930, the Government of Panama and PANAGRA executed a contract designated No. 14, [fol. 2135] pursuant to which the tariffs relating to the transportation of mail to the Republics of South America were amended. (or—revised)

FOURTH: In accordance with the provisions of Law 48 of 1932, and Contract No. 43 of December 28, 1942, entered into between the Government of Panama and PANAIR, the operating permit granted to the latter expired on December 28, 1943; said permit was renewed for a period of one year counting from said date

FIFTH: By contract No. 45 of December 27, 1944, and, further, as specified in Resolution No. 1808 of June 14, 1945, issued by the First Section of the Ministry of Government and Justice of the Republic of Panama, said contract of PANAIR was renewed until December 29, 1945.

SIXTH: By Resolution No. 1479 of July 21, 1944, issued by the Ministry of Government and Justice of the Republic of Panama, PANAIR was authorized to transfer to PANAGRA the corresponding rights emanating from the aforesaid renewed contract, which terminated on December 28, 1944; however, because of unforeseen and inevitable delays, it has not been possible until now to verify said transfer, which, hereinafter and by virtue of this instrument, is verified.

SEVENTH: That pursuant to the above-mentioned Resolution No. 1808 of June 14, 1945, the Government of Panama granted to PANAIR the corresponding authorization to transfer to PANAGRA such rights as might appertain to the latter, derived from the renewed contract of PANAIR, which will expire on December 29, 1945.

EIGHTH: With the object, first, of insuring that the registers (or—records) in Panama will be full and complete with respect to the rights of PANAGRA, and, second,

[fol. 2136] that PANAGRA will continue enjoying all rights with respect to the renewed contract between the Government of Panama and PANAIR, which will expire on December 29, 1945, PANAIR hereby conveys and transfers to PANAGRA the operating rights granted to PANAIR by the aforesaid renewed contract which will expire on December 28, 1945, it being understood that the rights transferred are those concerning air transportation verified between Panama;* (?) it is understood, further, that PANAGRA, as transferee, acquires with respect to the National Government of Panama, each and all of the obligations which the transferer, PANAIR, has at present, and that the transferee will be directly responsible for default in its undertakings in relation to the Government of Panama.

NINTH: In accordance with clause 22 of Contract No. 8 bis of March 8, 1929. entered into between PANAIR and the Government of Panama, this contract of transfer has been previously authorized by means of the above-mentioned Resolutions, namely, No. 1479 of July 21, 1944, and No. 1808 of June 14, 1945, both issued by the Ministry of Government and Justice and of the Republic of Panama.

IN WITNESS whereof this document is signed in triplicate in the city of New York, State of New York, State of New York, United States of America, on August 23, 1945.

PAN AMERICAN AIRWAYS, INC.

By (sgd.) HOWARD B. DEAN
Vice President

PAN AMERICAN-GRACE AIRWAYS, INC.

By (sgd.) HAROLD J. ROIG
President

* Apparently several words have been omitted from the Spanish text.

RLG

[fol. 2137]

CONTRATO CELEBRADO ENTRE PAN AMERICAN AIRWAYS, INC. Y PAN AMERICAN-GRACE AIRWAYS, INC. SOBRE OPERACIONS EN LA REPUBLICA DE PANAMA

En la ciudad de Nueva York, estado de Nueva York, Estados Unidos de América, el día veintitres de agosto de mil novecientos cuarenta y cinco, entre los suscritos, a saber: El señor Howard B. Dean, Vice-Presidente, en nombre y representación de PAN AMERICAN AIRWAYS, INC., que en adelante se llamará PANAIR, y el señor Harold J. Roig, Presidente, en nombre y representación de PAN AMERICAN AIRWAYS, INC., que en adelante se llamará PANAGRA, se han celebrado el contrato que se expresa en las siguientes cláusulas:

PRIMERA: PANAIR celebró un contrato con el Gobierno de la República de Panamá para el establecimiento de un servicio de transportes aéreos el día ocho de marzo de mil novecientos veintinueve, el cual fué adicionado por un contrato complementario suscrito por lo mismos el día veintinueve de mayo del mismo año, convenios que fueron aprobados por el Poder Ejecutivo de la República de Panamá por media de la Ley cuarenta y ocho de mil novecientos treinta y dos con algunas adiciones y reformas.

SEGUNDA: El día seis de diciembre de mil novecientos veintinueve, previa aprobación del Poder Ejecutivo, PANAIR cedió a PANAGRA, con relación a los paises suramericanos servidos por está última, algunos de los derechos que la correspondián en virtud de los contratos mencionados en la cláusula anterior, y al dictarse la Ley cuarenta y ocho de mil novecientos treinta y dos los derechos adquiridos por PANAGRA quedaron sujetos a las adiciones y reformas contenidas en esa misma ley.

TERCERA: El día veintiocho de mil novecientos treinta el Gobierno de Panamá y PANAGRA celebraron un contrato marcado con el número catorce por medio del cual se reformaron las tarifas referentes al transporte de correo aéreo a las repúblicas de la América del Sur.

CUARTA: De acuerdo con los términos de la Ley cuarenta y ocho de mil novecientos treinta y dos y el contrato número cuarenta y tres del veintiocho de diciembre de mil [fol. 2138] novecientos cuarenta y dos celebrado entre el Gobierno de Panamá y PANAIR, el permiso para operaciones otorgado a esta última expiró el día veintiocho de diciembre de mil novecientos cuarenta y tres, dicho permiso fué renovado por el término de un año a partir de esa fecha.

QUINTA: Por contrato número cuarenta y cinco de fecha veintisiete de diciembre de mil novecientos cuarenta y cuatro, y nuevamente, según consta de la solución número 1808 de fecha catorce de junio de mil novecientos cuarenta y cinco, expedida por la Sección Primera del Ministerio de Gobierno y Justicia de la República de Panamá, el citado contrato de PANAIR fué prorrogado hasta el veintinueve de diciembre de mil novecientos cuarenta y cinco.

SEXTA: Por resolución número 1479 de fecha veintiuno de julio de mil novecientos cuarenta y cuatro expedida por el Ministerio de Gobierno y Justicia de la República de Panamá, PANAIR fué autorizada para traspasar a PANAGRA los derechos correspondiente emanadas del contrato prorrogado y citado, que terminado en veintiocho de diciembre de mil novecientos cuarenta y cuatro; pero por demoras imprevistas o inevitables no fúe posible hasta ahora verificar dicho traspaso, el que, más adelante y por este instrumento, se verifica.

SEPTIMA: Que por la ya citada resolución número 1808 de fecha catorce de junio de mil novecientos cuarenta y cinco el Gobierno de Panamá concedió a PANAIR la correspondiente autorización para traspasar a PANAGRA los derechos que a ésta le correspondiera, derivados del contrato prorrogado de la PANAIR. que expirará el veintinueve de diciembre de mil novecientos cuarenta y cinco.

OCTAVA: Con el objeto, a primero, de que los registros en Panamá sean cabales y completos respecto de los derechos de PANAGRA, y segundo, de que PANAGRA siga gosando de todos derechos respecto del contrato prorrogado entre

el Gobierno de Panamá y PANAIR que expirará el día veintinueve de diciembre de mil novecientos cuarenta y cinco, PANAIR, cede y traspase por el presente instrumento, a PANAGRA los derechos de operación concedidos [fol. 2139] a PANAIR por el ya citado contrato prorrogado que expirará el veintiocho de diciembre de mil novecientos cuarenta y cinco, entendido que los derechos traspasados son los concernientes a trasportes aéreos verificado entre Pánamá; es entendido además que PANAGRA, como cesionaría, adquiere respecto del Gobierno Nacional de Panamá, todas y cada de las obligaciones que ahora tiene la cedente PANAIR y que la cesionaria será responsable directamente de la falta de cumplimiento de sus compromisos en lo que toca al Gobierno de Panamá.

NOVENA; De acuerdo con la cláusula veintidós del contrato número 8 bis de fecha ocho de marzo de mil novecientos veintinueve, celebrado entre PANAIR y el Gobierno de Panamá, el presente contrato de cesión ha sido autorizado previamente por medio de las Resoluciones ya citadas, a saber, la número 1479 de fecha veintiuno de julio de mil novecientos cuarenta y cuatro y la número 1808 de fecha catorce de junio de mil novecientos cuarenta y cinco, ambas expedidas por el Ministerio de Gobierno y Justicia y de la República de Panamá.

En fé de lo cual se firma el presente documento por triplicado en la ciudad de Nueva York, estado de Nueva York, estado de Nueva York, Estados Unidos de América, a los veintitres días del mes de agosto de mil novecientos cuarenta y cinco.

PAN AMERICAN AIRWAYS, INC.

por /s/ HOWARD B. DEAN
Vice-Presidente

PAN AMERICAN-GRACE AIRWAYS, INC.

por /s/ HAROLD J. ROIG
Presidente

[fol. 2140]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 43

PAN AMERICAN-GRACE AIRWAYS, INC.

PAYMENTS TO PARENT COMPANIES FOR SERVICES

In the course of the negotiations resulting in the Panagra-Pan American Through Flight Agreement (dated July 30, 1946), it was determined that in view of changed conditions it was necessary to reexamine the basis upon which Panagra pays the parent companies for services rendered. No substantial change had been made in such fees since 1941. With the greatly increased volume and complexity of Panagra's business and the corresponding increase in the demands on the parent companies' services, these fees have become wholly inadequate to cover cost of services performed. Consideration and study by the three parties concerned have been in progress for some time and were in progress when schedules supporting Panagra's rate case were first submitted to the Board's staff. The negotiations have now been completed, and the estimated amounts payable for commissions and reimbursable expenses under various categories as hereafter more fully explained will be found summarized in a table at the end of this memorandum.

Since its organization and in accordance with the plan of organization and operation of Panagra which had been contemplated from the outset, Panagra has availed itself of [fol. 2141] the established facilities, organization and connections of its two parent companies for services rendered. A comprehensive account of the services and fees paid from the organization of the company through 1941 appears in the printed *Statement of Evidence* submitted by Panagra at the time of the first rate case (Dockets Nos. 623 and 716), at pages 36 to 111, inclusive.

Following the exhaustive review which was then made by the Board into the services rendered, a fee on the basis of 12.32¢ per revenue mile was found reasonable, effective

July 1, 1942. The fees were paid on this basis from that date until July 1, 1943. As of this letter date a rate of 11.45¢ per revenue mile was established in the second Panagra rate proceeding. From July 1, 1943, through 1945 the fee was computed at a rate of 11.45¢ for the base revenue miles. In the years 1944-45, as additional revenue mileage was added, the fee was increased by 5.37¢ for such revenue miles, or one-half the rate then applicable to the base mileage, in recognition of the additional services being performed as a result of the increased mileage. In the year 1946 the fees were paid by adopting the same total figure paid in 1945.

While the parent companies have continued to render services under the same categories as before and in general have made the same type of facilities available, the sub- [fol. 2142] stantial changes in Panagra's operations* since the date of the first rate case have long required a re-examination of the basis for payment and the amount thereof. This reexamination was deferred due to war conditions and preoccupation with operational problems. The basis which has now been determined upon becomes effective January 1, 1947. Not only does the new arrangement place the basis of payment on a sounder business basis, but it reflects the increased services being performed for Panagra by the parent companies as a result of the expansion of Panagra's operations in all departments.

The payments by Panagra to both Pan American and Grace may be conveniently discussed under two general

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* In this connection attention is directed to Exhibit 1 of Supplement 1, submitted by Panagra on September 30, 1947, in support of its current rate petition. These figures show that since the approximate date of the first rate case, when the amount of the payment for management fees which has since been in effect was determined, Panagra's total miles flown have increased 130% and its total commercial revenues 303%. The increased volume of passenger activity is reflected in the 319% increase for seat miles available, the 272% increase for passenger miles flown, the 180% increase for revenue passengers carried and the very substantial increase of 353% in passenger revenues. Comparable increases in the freight and express category are also reflected. Available ton miles increased 344% and the tons of freight and express carried increased 561%, while freight and express revenues increased 284%.

headings: (a) commissions on sales, and (b) payment for services other than sales.

[fol. 2143] COMMISSIONS ON SALES

The commission basis established follows the schedule of commissions agreed upon at the IATA Convention in Rio de Janeiro, now before the Board for approval.

In accordance with the IATA scale, Panagra will pay a 10% commission on passenger sales and 7½% commission on air express and cargo sales to both Pan American and Grace for their services as General Sales Agents. Where sales are made by sub-agents they will receive 7½% and 5% respectively and the General Agents will receive 2½%.

Panagra has always used Pan American as its General Sales Agent in the United States and elsewhere except where Panagra operates. In South America the arrangements between Panagra and Grace have varied from time to time. Grace has always been the General Sales Agent in all countries where Panagra operates in South America except Argentina. It has supervised the sales activities in all such countries and, at most points, has operated the actual sales offices. Lima and Santiago sales offices, however, have been currently operated by Panagra under Grace supervision.

The present arrangement contemplates that Panagra will not operate any sales offices for its own account. Pan [fol. 2144] American will continue to handle Panagra sales in all parts of the world except where Panagra operates, and Grace will act as Panagra's General Sales Agent in all countries where Panagra operates except the Argentine, where the sales of both Pan American and Panagra are conducted by Compania de Aviacion Pan American Argentina, S.A. As such agents, Pan American and Grace will be responsible to Panagra for the proper and efficient performance of their functions, in accordance with the usual General Sales Agency arrangements.

In the past Panagra has compensated the parent companies for their sales services only partially and through

the lump sum payment, computed on a mileage basis as described above, made to each of them at the end of the year. This payment has included compensation not only for sales, but for all other services as well. While the lump sum has not substantially increased, all services, and particularly the sales services, have increased. The result is that the method of payment has proved increasingly inadequate and unsatisfactory.

Panagra believes that the urgent necessity of promoting and developing new business will best be served by adopting the accepted and proven commercial practice of compensating the company's Sales Agents in relation to their sales, that is, by the payments of sales commissions. Thus [fol. 2145] the sales organizations of the parent companies will have an adequate incentive to develop business, at no cost to Panagra other than the normal going rate of sale commission.

Both Pan American and Grace have the necessary facilities and personnel to fulfill their obligations as General Agents. This is best shown by past experience. The sales offices and their facilities made available by Pan American were described at some length in the hearings on the Through Flight Agreement, and Pan American's obligations are established by explicit provisions of the Agreement. Grace has facilities for generating and servicing traffic in Panama, Colombia, Ecuador, Peru, Bolivia and Chile. It has actually been handling Panagra traffic sales at various points in these countries since Panagra began business. Under this new arrangement Grace handles sales directly. Sales will be handled at the main and branch offices of Grace in each country along the West Coast and Grace will, where necessary, organize and supervise activities of special sales offices.

As a natural corollary of the new basis of compensation to Grace for its traffic services, Grace is required to assume full liability for the regular sales promotion and traffic expenses incurred in the South American countries where it will act as Sales Agent. Under the arrangements heretofore in effect, Panagra incurred and reimbursed Grace

[fol. 2146] for heavy sales expenses at specific points, notably Santiago and Lima. All expenses applicable to the traffic organization must now be borne by Grace, and a preliminary analysis of the accounts indicates that they total $394,000 in round figures on an annual basis. Panagra will be relieved of this expense. The net adjustment will be somewhat less than this figure as in taking over responsibility for the Lima and Santiago traffic offices commissions earned at these points as a result of traffic sold over other lines will accrue to Grace. These commissions for the year 1947 amount to approximately $116,000 making Panagra's net adjustment about $278,000.

The annual amount payable on sales commissions to Pan American and Grace will, of course, vary with the amount of business done in every year. For 1947 the estimated commissions are Pan American $214,000 and Grace $509,000.

PAYMENTS FOR OTHER SERVICES

Pan American

The other services performed for Panagra by Pan American are rendered principally through the System general and administrative organization and the purchasing and shipping organization. The nature of these services has been fully described in material previously submitted to [fol. 2147] the Board (*Statement of Evidence*, Dockets Nos. 623 and 716), so that no detailed discussion is necessary here. While there have been organizational changes to meet changing conditions, and while the extent of the services rendered by some departments of the Pan American organization vary from year to year, as Panagra's needs requir the general character of the services rendered remains the same.

Panagra has available to it the experience of the entire System organization of Pan American and can call upon any part of this organization for services at any time. The services rendered include a great variety which can be classified generally as traffic (other than sales, which have been dealt with above); purchasing and shipping; engi-

neering and communications; financial, including accounting, tax and insurance phases; public relations; legal; personnel and industrial relations; and liaison with Government and other official bodies.

In view of Pan American's history and the extent of its operations in the field of international aviation, the experience of its organization is unique. The value to Panagra of having such an organization fully available to it is extremely great. This not only saves Panagra the expense of developing and maintaining such an organization for itself, but it also offers to Panagra a much larger and more experienced organization than it could possibly afford otherwise. Panagra is thus enable to keep abreast of developments in all branches of the industry and to [fol. 2148] obtain at all times the benefits of the services and experience of a large and well-equipped organization.

The availability of all branches of the Pan American organization, even though some may not be required by Panagra at all times, is one of the great advantages to Panagra of the arrangement. At the same time, the actual use made of the organization during any period is one criterion of value. It was recognized that, in determining the amount of compensation for the services, different considerations would apply to different types of services. In general, they fall into two classes. One includes the purchasing and shipping services which are directly related to the volume of purchases and shipments and can therefore be compensated on a commission basis as is done in the case of sales. This is not possible in the case of the other services which have to be considered on a different basis.

Pan American has been making purchases of all types of equipment, materials and supplies for Panagra for many years. These purchasing services have been rendered primarily in the United States where the great volume of the items used by Panagra is acquired. The Pan American purchasing department renders these services not only for Pan American but for the various companies associated with Pan American, and accordingly has a wide experience and knowledge of sources of supply. Panagra also obtains

[fol. 2149] the benefit of quantity discounts which are available to Pan American. In more recent years Pan American has also rendered forwarding services. Because of the difficulties of obtaining shipping space and the many governmental and other restrictions which arose during the war, Pan American established an organization to handle all arrangements with steamship companies, as well as to handle related governmental licenses and permits. This department is equipped to perform all services usually performed by shipping brokers.

In the past, these purchasing and forwarding services were compensated through the lump sum fee paid by Panagra. Because of the substantial volume of purchases made in the United States for Panagra, this method of payment had little relationship to the services rendered. Such services are normally performed on a percentage or commission basis and it has now been agreed that such a basis will be followed. Panagra will pay Pan American a commission equal to 2½% of the price of aircraft and engines, and 5% of the price of other equipment, materials and supplies purchased for its account by Pan American. Panagra will also pay a 2½% commission on the United States base price of gasoline and oil furnished to Panagra under contracts negotiated by Pan American for Panagra in the United States. The forwarding commission will be equal to 2½% of the price of the materials shipped in respect of [fol. 2150] which Pan American acts as a shipping broker. These commission rates are the same as those established in arrangements with other companies covering similar services. It is estimated that, upon the basis of the purchases and shipments made during the first nine months of 1947, these commissions for the year 1947 will amount to $122,000.

The determination of the payment for the remainder of the services rendered by Pan American presents a somewhat more difficult problem. No time cards are kept by the personnel who render the services, nor would they be practicable. Moreover, the value of the services could not be measured solely in terms of time devoted to rendering

them since this would not properly compensate for experience brought to the problem. Also, many of the activities of Pan American's organization result in benefits to Panagra even though these activities may not be directed primarily or exclusively toward that end. For example, engineering studies and traffic, legal and accounting studies and forms prepared by Pan American benefit Panagra even though they are not designed primarily for Panagra. This may be true even though the particular study or form may not be used in its entirety by Panagra but is used only for information or as a model by them. It is therefore impossible to determine the value of Pan American's services on a piecework or job order basis, even if this [fol. 2151] were otherwise practicable. Accordingly, it has been agreed that Panagra and Pan American will review the situation periodically for the purpose of allocating to Panagra an appropriate share of the cost of the services made available by Pan American. Such allocation is to be based upon the experience and judgment as to the services made available and the benefits obtained from them. In this manner it has been agreed that the payment for the years 1947 and 1948 is to be $115,000 per year.

In arriving at this figure the Pan American expenses for 1946, the latest full year for which figures were available, were carefully analyzed and weighed in light of the benefits received by Panagra from the various departments. It was realized that some departments or offices either rendered no service to Panagra or rendered service of such limited extent or of such nature that it would not be feasible to consider them for this purpose. The expenses of such departments and offices were excluded for the purpose of the allocation. Likewise, the sales, purchasing and shipping expenses were excluded since they are compensated for by the sales, purchasing and shipping commissions. The remaining expenses were allocated to Panagra in varying amounts depending upon the value to Panagra of the services which they represent. The greatest weight was given to the expenses of those departments which render substantially the same service to Panagra as they do to Pan [fol. 2152] American. For example, the expenses of the

Traffic Department, other than those which are considered allocable to sales functions, were placed in this category. This department prepares and files tariffs and schedules for Panagra just as for Pan American. The expenses of the Pan American Washington office were similarly treated, since this office handles routine contact with Government departments for Panagra as well as for Pan American, billing and collection of mail accounts being among the most important services performed. At the other extreme were the expenses of those departments whose services to Panagra were considered to be nominal. Between these two categories were found departments which render services in varying degrees to Panagra. For example, the Public Relations Department performs services for Panagra but because of the intangible benefit of direct contact in this type of work Panagra was considered to receive a somewhat lesser benefit from the Department's activities than is received by Pan American. This was given due consideration in the allocation. Still other departments render important service to Panagra but devote their activities primarily to Pan American's own operations. For example, many activities of the Legal Department relate solely to Pan American's business. Nevertheless, it is avail-
[fol. 2153] able to serve Panagra. Not only is advice given on specific Panagra problems but many of the forms, particularly traffic forms, prepared by the department are available to and are used by Panagra. Appropriate weight was given to this in the allocation. Finally, the general office expenses which are not assigned to particular departments were allocated to Panagra on the same basis as the expenses of the departments. In this way the parties arrived at a figure which represented a share of the expenses considered to be commensurate with the benefits received by Panagra.

The same type of review will be made periodically to determine the proper amount of compensation. The basis will remain the same but the groups of expenses may be reclassified for the purposes of the allocation in order to give due weight to any change in the value of the services to Panagra.

Grace

The payment which Panagra will make to Grace for other services will cover all non-traffic services rendered by Grace in South America and in New York.

The nature of the Grace non-traffic services in South America has been fully described in earlier material submitted to the Board (*Statement of Evidence*, Dockets Nos. [fol. 2154] 623 and 716) and it is not felt that any detailed discussion is necessary here. Grace has a well integrated and thoroughly trained business organization in each of the five South American countries and in the Canal Zone where it serves Panagra. In addition to offices in each of the capitals it has branches in other important cities of the countries concerned. In Peru these branch offices number 15 and in Chile 10. In each country its organization is headed by a national of that country thoroughly acquainted with both governmental and commercial conditions who is available to Panagra for advice and assistance. Labor relations assistance by Grace has been particularly extensive in Peru, Bolivia and Chile in recent years. The Grace organization also includes legal, financial and commercial staffs, whose specialized experience is on call to Panagra.

The work performed for Panagra varies from year to year and country by country, depending on the special governmental or business problems confronting Panagra at the time. Because of the nature of the services it is impossible to define the precise scope of Grace's activities on behalf of Panagra in advance or to fix in advance the amount of the fee which will be required to compensate for such services. The value of the relationship lies in the availability to Panagra at a moment's notice of an extensive and experienced organization with contacts and know- [fol. 2155] how any part of which can be and is constantly availed of to solve the immediate problem in hand. The Grace organization has made a substantial contribution to the development and maintenance of Panagra's services, and it continues to be of immeasurable assistance in aiding Panagra to meet changing legal, political and competitive conditions, aggravated as they are by increasingly difficult exchange and labor problems.

With these considerations in mind Grace and Panagra have sought to work out a basis of payment which will facilitate the accounting between them and keep payments at the minimum consonant with the services rendered. After discussions between the parties it has been determined that the amount to be paid to Grace for non-traffic services shall be determined periodically in the light of the services actually performed, and that Grace will receive no profit for such services but merely be reimbursed for expenses actually incurred on Panagra's behalf.

In estimating the amount to be paid Grace for non-traffic service in South America, certain calculations must be made. Grace maintains separate books of account for its houses in each country. Since the services performed for Panagra by Grace vary from country to country, it is necessary to prepare the computations on a country to country basis. This involves examination of the Grace records for the [fol. 2156] houses in Panama, Colombia, Ecuador, Peru, Bolivia and Chile. In the case of each country, the expenses incurred on behalf of Panagra fall under two separate categories—direct and indirect. Direct expenses are out-of-pocket payments made by Grace in the conduct of Panagra business other than traffic promotion and sales. The indirect expenses represent Panagra's allocable portion of the general expense of the Grace organization in each country.

Direct expenses include items such as cables, telephone expense, stationery, postage, travelling expenses, salaries of executive, accounting and other clerical personnel working full time on Panagra matters. These are all expenses which would not have been incurred by Grace if Grace had not undertaken to perform the non-traffic services in question for Panagra, and inasmuch as they are direct out-of-pocket expenses, reimbursement is naturally in order. The estimated direct out-of-pocket expenses for non-traffic services by the various Grace houses in South America for the year 1947, based on actual experience for the first eight months of 1947, are set forth on an attached Schedule.

Indirect expenses include such matters as a proportion of the salaries of managerial personnel devoting a portion

of their time to Panagra, and a proportion of rent, build-
[fol. 2157] ing maintenance charges, salaries of clerical personnel working only part time on Panagra matters, and legal expenses, etc. They include also a proportion of departmental expenses of departments handling Panagra's business, including their cashier's, credit and collection departments. The non-traffic activities of the Grace organization in each country served by Panagra have been separately examined in detail and a proration made of these indirect expenses for activities common to Panagra and other Grace activities. The basis of allocation varies in each country, depending upon the extent of Panagra activities in that country and the relationship of those activities to other Grace interests. The various allocations are made on different bases, depending upon the nature of the account involved. Items such as rent and building are mathematically allocable on a square foot or comparable basis. Salaries of persons working part time on Panagra matters are allocable on the basis of individual time estimates. Legal and other special expenses can be determined on the basis of actual billings and time prorations. Whatever basis is used, this will be subject to Panagra's check each year, and its representatives are in a position to know in detail the nature of the services performed and the work [fol. 2158] involved. The estimated indirect expenses for each Grace house in each country served by Panagra for the year 1947 are set forth in an attached schedule.

From the above description of the non-traffic services rendered by Grace in the countries named, and from the very nature of the expenses listed, it is clear that Panagra's only alternative to the arrangement now in effect would be to establish its own integrated organization in each country. This would mean that Panagra would have to find and compensate top management of high caliber, experts on conditions in each country, and organize and maintain credit, collection, cashier's, accounting, cable and other departments, and find or build its own office space. It is not overstating the case to emphasize, in the first place, that the caliber of managerial talent in each of the countries concerned now available to Panagra in the Grace

organization, made possible by the extensive scope of the Grace business as a whole, could not be secured by Panagra working alone because Panagra alone could not afford to pay the compensation necessary to secure managerial talent of this type; and in the second place, that the expense of setting up and maintaining its own independent organization, even of the inferior type it could afford, would result in a far greater cost than that now proposed as compensation to Grace.

[fol. 2159] A variety of non-traffic services is performed by Grace for Panagra in New York.

Foremost are the services of Mr. Harold J. Roig, who has been Panagra's president since 1939, and who receives no compensation from Panagra. While Mr. Roig has other important duties which he performs as an officer of W. R. Grace & Co., he devotes a very substantial part of his time to Panagra matters and is in executive charge of the company's affairs. For substantial periods of time, particularly on his frequent visits to South America, he is concerned full time with Panagra problems.

Through its publication the "Grace Log" and other means, the Grace New York office provides publicity for the Panagra services. Through its Legal Department it provides legal and tax services. Through its experienced officers and staff it advises and assists on many problems arising from time to time requiring South American and other specialized knowledge and experience.

Grace (New York) handles all Panagra cables to and from South America, making available for Panagra's use its private codes, and including coding, decoding, transmittal and delivery of all Panagra cables. A pro rata share of the expense of the cable department is included in the amount charged for New York services on a cost basis.

[fol. 2160] Grace also assists Panagra in arranging transportation for Panagra personnel and their families, both in the United States and to and from South America. This department assists in securing passports and visas, makes reservations on connecting carriers, secures hotel accom-

modations and performs other necessary related services. It also performs various special services for certain Panagra passengers, who by reason of their official position, or other considerations such as health, are given personalized attention as a means of promoting good will for the company. A pro rata proportion of the expense of Grace's transportation department is included on a cost basis.

A proportion of the Grace Medical Department expense is also allocated to Panagra on a similar basis. The Grace Medical Department provides free medical check-up and care for Panagra personnel based in the New York area and their immediate relatives where requested, including the care of a dentist and an oculist.

March 3, 1948.

[fol. 2161] *Summary*

The following statement shows the estimated amounts payable for 1947 for services based on commissions and reimbursement of expenses under the several headings above referred to:

PAA		
Commissions on Traffic Sales Commissions on Purchases)	$214,000	
Commissions on Forwarding)	122,000	
Reimbursement Expenses	115,000.	
TOTAL		$ 415,000
GRACE		
Commissions on Traffic Sales	509,000	
Reimbursement Expenses:		
South America		
Direct (See Schedule)	81,630	
Indirect (See Schedule)	99,968	
New York	66,000	
TOTAL		756,598
TOTAL		$1,207,598
Less net saving (page 7)		278,000
		929,598
In the estimates originally filed the total payable to both companies was estimated at		720,000
Leaving an amount required in excess of the original estimate in order to carry out the revised basis above described.		$ 209,598

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SCHEDULE

PANAGRA DIRECT AND INDIRECT EXPENSES BY TERRITORIES

DIRECT	PERU	CHILE	ECUADOR	COLUMBIA	BOLIVIA	CANAL ZONE	TOTAL ALL TERRITORIES
Salaries, social laws, etc.	$23,370	$	$13,228	$18,492	$10,700	$1,331	$67,121
Travelling expense auto hire, entertainment	100	1,680	504	1,468	214	-	3,966
Stationery, office supplies	1,450	645	261	252	1,480	-	4,088
Cables, telephones	120	225	140	1,124	343	-	1,952
Sundry other expenses	900	160	697	292	2,454	-	4,503
Total Direct	$25,940	$2,710	$14,830	$21,628	$15,191	$1,331	$81,630
INDIRECT (Excluding portion chargeable to traffic and sales promotion)							
Salaries, Cashiers, Collections, A/C.	$6,663	$3,853	$22,383	$ 1,292	$ 1,980	$ 165	$36,336
Legal and Tax	-	1,950	1,702	1,250	510	56	5,468
Management	12,000	11,095	2,122	-	7,250	294	32,761
Stationery, Postage Cables, Entertaining	2,855	-	5,415	-	-	273	8,543
Sundry Other Expenses	-	7,031	2,674	3,534	3,465	156	16,860
Total Indirect	$21,518	$23,929	$34,296	$ 6,076	$13,205	$ 944	$99,968
COMBINED DIRECT AND INDIRECT	$47,458	$26,639	$49,126	$27,705	$28,396	$2,275	$181,598

[fol. 2163]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 44

CONFORMED COPY

(Letterhead of Pan American World Airways System, New York, N. Y.)

July 14, 1948

Pan American-Grace Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

Dear Sirs:

This letter, when accepted by you, will constitute the agreement between us with reference to the following matters:

1. Upon request in writing from you, we will use our best efforts to purchase, lease or otherwise acquire, and to ship or cause to be shipped to the point designated by you, such flight or other equipment, machinery, tools, materials, supplies, gasoline, oil and other goods as you shall designate. Such requests need not be in any particular form but may be in the form of requisition or purchase requests, or may be contained in letters, memoranda, radiograms, cables or other communications. In the event that you furnish us with a list of persons authorized to issue such request, we will honor requests signed or issued, or purporting to have been signed or issued, by those, and only those, persons named therein. In the event that no such list is furnished to us, we shall be authorized to honor requests by any officer of your company. It is understood that the requests herein contemplated shall include such arrangements as may have existed from time to time between us for the purchase of flight equipment spare parts and assemblies for your flight equipment of a type different from any of our flight equipment, but that subsequent to the date hereof the requests herein contemplated with respect to such equipment shall include only those having written approval by

[Handwritten marginal notation – 11-1506 – Agreement.]

an officer of Panagra or by an employee designated in writing for the purpose by an officer of Panagra.

2. All of the purchasing and shipping facilities of our Services of Supply will be available for your use. We will furnish you, upon request, with such advice and assistance with reference to purchasing and shipping as are available through that service, which shall include, but not be limited to, advice as to sources of supplies and shipping facilities, assistance in clearance and meeting other governmental requirements, and other similar advice and assistance. It is understood that in making the foregoing services available to you we shall use our best efforts to make all action conform with action in similar cases for our own account, but that we shall not be responsible for any loss that you may incur by reason of your reliance upon advice from us or otherwise in connection with such services, unless caused by our gross negligence or wilful misconduct.

[fol. 2164] 3. All action taken by us pursuant to this agreement shall be in accordance with your instructions, and in the absence of specific instructions we shall be authorized to use our discretion as to vendors, terms of purchase or lease, shippers, routes, terms of shipping contract, insurance and all other matters relating to the carrying out of your requests hereunder.

4. The services under this agreement will, for the most part, be rendered in the United States where our principal purchasing and shipping facilities are located, but any such facilities which we may have available in any other part of the world are also covered by this agreement, and may be utilized by you hereunder.

5. For the foregoing services, you will pay as amounts calculated in the following manner:

(a) 2½% of the vendor's invoice price of aircraft and aircraft engines purchased by us at your request and for your account;

(b) 2½% of the United States base price of gasoline and oil furnished to you under contracts negotiated by us for you at your request in the United States or pur-

chased for you by us at your request in the United States;

(c) 5% of the vendor's invoice price of other equipment, machinery, tools, supplies and other goods, including spare parts for aircraft and engines, purchased by us at your request and for your account;

(d) 2½% of the vendor's invoice price of property included in any shipment in respect of which we act as forwarding agent for you at your request;

(e) For the purposes of this agreement, the vendor's invoice price shall be deemed to be the net total amount shown on the vendor's invoice, less any trade discounts, including any transportation or other charges prepaid by the vendor and included in the invoice in respect of the property to which they relate;

(f) In the case of equipment leased by us for your account, the foregoing payments shall be calculated on the basis of the rentals payable, instead of the invoice price;

(g) None of the amounts provided for in subparagraphs (a), (b) and (c) of this paragraph 5 shall be payable with respect to the DC-6 aircraft or DC-6 spare engines ordered for you prior to January 1, 1947.

[fol. 2165] 6. The foregoing payments will cover all routine services of the type referred to which are performed under this agreement. Any out-of-pocket expenses incurred by us in connection with any special services requested by you in writing, beyond the purchasing and shipping services normally rendered by us, such as special inspection trips, shall be for your account. All costs and expenses of transportation, delivery, insurance, royalties, taxes, duties or other similar charges, as well as the purchase price or rent, relating to property acquired or shipped for you pursuant to this agreement shall be for your account.

7. The payments to be made by you under this agreement will be made in the following manner. A separate open account will be established between us in which all amounts

payable by you hereunder will be recorded as soon as practicable after the acquisition of the property to which they relate or, in the case of leases, after the rent on which the payment is calculated is due. Such amounts will be recorded and payable in the currency in which the obligation with respect to such property or lease was incurred by us. Promptly after the execution of this agreement, you will deposit with us $50,000.00, or a larger sum if you so desire, which will be recorded in said open account and will constitute a revolving fund to be used in settling accounts with vendors, lessors or shippers relating to property acquired for you. You will reimburse us promptly upon submission of invoices for any payments made by us, or any other amounts due to us, hereunder. We shall not be required to keep any deposits or payments made by you segregated from our own funds. Unless you instruct us to the contrary, we will settle the accounts with vendors, lessors or shippers. Any cash discount with respect to property ordered for you will be credited to you in case the net balance in such open account at the time the payment for such property is due shall be in your favor in an amount sufficient to make such payment, regardless of whether or not we shall receive such discount, except in those cases where we do not receive such discount because of dispute with the vendor regarding the invoice, or other similar reason.

8. It is understood that, in taking any action pursuant to the foregoing provisions of this agreement, we shall be acting only as agent for you and you will reimburse us for any payments made by us, indemnify us for all losses which we may incur, and hold us harmless from and against all claims of every nature, including costs and expenses, incurred in connection therewith, which shall be asserted against us, by reason of any action taken by us pursuant to this agreement.

9. In addition to the foregoing, we agree to sell you at your request any parts, equipment, materials or supplies which we shall have on hand in warehouses or other storage points where, in our opinion, there are sufficient stocks available to permit such sales. Except as hereinafter pro-

vided in this paragraph 9, the price payable by you for any such parts, equipment, materials or supplies purchased by you shall be the current net replacement cost at the vendor's point of shipment. In case such parts, equip- [fol. 2166] ment, materials or supplies shall be furnished at your request from stocks at points other than those in respect of which you share regularly in our shop burden expense through charges for maintenance, repair or overhaul of aircraft or engines, the price payable by you shall be the current net replacement cost at the vendor's point of shipment, plus 20% of such costs to cover handling, storage and transportation charges incurred by us. All charges incurred prior to the sale to you in connection with the property referred to in this paragraph 9 shall be absorbed by us, and all charges, including the cost of transportation and insurance and, if forwarding services are requested by you, our 2½% shipping commission, incurred subsequent to the sale shall be for your account. The foregoing prices and charges shall not apply to any item listed as surplus on any list of surplus inventory which we may distribute, but the price, terms and conditions of sale thereof shall be as indicated on such list in effect on the date your order is placed. Payment for any property sold to you pursuant to this paragraph 9 will be made in the manner set forth in paragraph 7, such payment to be recorded in the open account referred to in paragraph 7 as soon as practicable after the property is sold to you.

10. You shall have the risk of loss of any property acquired for you at your request pursuant to this agreement. In the case of property sold to you from our own stocks, you shall have the risk of loss commencing at the time of sale which, unless otherwise agreed, shall be the time the property is selected and set aside for shipment or delivery to you.

11. It is understood that we make no representations or warranties with respect to any property acquired for or sold to you pursuant to this agreement, and that we shall not be responsible for defects of character whatsoever in any such property; provided, however, that the services to be performed hereunder shall include routine action

under manufacturer's warranties normally performed by our purchasing and shipping organization.

12. All action taken pursuant to this agreement shall be subject to any applicable laws and regulations of any government or governmental body having jurisdiction and neither party shall be required to take any action which shall be contrary to any such laws or regulations.

13. Any notice, request or instruction which you are required to give or which you may give hereunder must be given in writing and signed by an officer of your company or by an employee designated in writing by an officer of your company.

14. This agreement shall be effective as of January 1, 1948 and, except as otherwise expressly provided herein, shall cover all requisitions and other requests issued by you on or after that date. This agreement shall continue in [fol. 2167] effect until May 5, 1950, and thereafter until cancelled by either party upon six months' written notice to the other.

If the foregoing correctly states our understanding, will you kindly sign and return to us the enclosed copy of this letter.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.

By /s/ F. GLEDHILL
Vice-President

ACCEPTED: July 14, 1948

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ G. VIDAL
Vice-President

[fol. 2168]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 45.

THIS ORIGINAL IS NOT TO BE REMOVED FROM PAN AMERICAN AIRWAYS SYSTEM CONTRACT FILE

MEMORANDUM AGREEMENT REGARDING SERVICES RENDERED AND TO BE RENDERED TO PANAGRA BY THE PARENT COMPANIES AND COMPENSATION THEREFOR

This memorandum sets forth the understanding between Pan American-Grace Airways, Inc. (herein called "Panagra"), Pan American Airways, Inc., (herein called "Pan American"), and W. R. Grace & Co., (herein called "Grace"), regarding certain services to be performed, the method of determining compensation for such services and the amount to be paid for certain of such services for 1947-1948.

1. Pan American shall continue to act as General Sales Agent for Panagra throughout the world except in Argentina, Bolivia, Canal Zone, Chile, Colombia, Ecuador, Peru and Panama City. Pan American may, as to any territory for which it acts as such General Sales Agent except the United States, designate one of its affiliated carriers* or any other concern to act as General Sales Agent for Panagra. Pan American shall continue to be responsible to Panagra for acts of any affiliated carrier or concern so designated. Whenever Pan American shall make such [fol. 2169] designation of an affiliated carrier for any portion of the Western Hemisphere, it shall first obtain the advance written approval of the President of Panagra and shall terminate such designation whenever the President of Panagra shall so request on ninety days' written notice.

* This term, to be specifically defined in the General Traffic and Sales Agency Agreement between Pan American and Panagra, is limited to those companies engaged in the transportation of passengers, mail, express or cargo by air in which Pan American, or any company owning a majority of the capital stock of Pan American, owns a stock interest.

If the President of Panagra fails to approve such a designation or requests the termination thereof, Panagra will at the written request of Pan American release Pan American from its obligations to act as General Sales Agent for that part of the Western Hemisphere covered by such designation and will execute appropriate amendments to the Through-Flight Agreement reflecting such release.

2. Panagra shall act as General Sales Agent in Ecuador, Peru, Bolivia and Chile for Pan American and for each of Pan American's affiliated carriers in those of said countries for which said affiliated carrier shall have at the time appointed Pan American and its affiliated carriers general sales agent, except that it shall not so act for Avianca in Ecuador. Panagra may at any time on ninety days' written notice ~~decline~~ decline to act for any affiliated carrier in one or more of the countries for which it is General Sales Agent. In the event the president of Panagra fails [fol. 2170] to approve or requests termination of the designation of an affiliated carrier of Pan American under paragraph 1 above, then that affiliated carrier may on ninety days' written notice discontinue Panagra as its general sales agent in any of said countries. Panagra shall delegate to Grace its full responsibility for the performance of this general sales agency, and Grace shall hold Panagra harmless for the performance of Panagra's obligations to Pan American and its affiliated carriers. Panagra shall continue to be responsible to Pan American and its affiliated carriers for acts of Grace pursuant to such delegation and such delegation shall not constitute Grace a sub-agent.

3. Grace shall continue to act as General Sales Agent for Panagra in Panama City, Canal Zone, Colombia, Ecuador, Peru, Bolivia and Chile and shall be responsible to Panagra for carrying out of all Panagra's obligations arising from the appointment of Panagra as General Sales Agent by Pan American and its affiliated carriers as specified in paragraph 2 above.

4. (a) For services rendered as General Sales Agents, in accordance with the foregoing paragraphs 1, 2, and 3,

[fol. 2171] commissions shall be paid at the following rates, namely, a 10% commission on all passenger traffic, including excess baggage, and 7½% commission on all cargo and express traffic sold; and in addition Panagra may at its discretion pay to Grace for handling or other service a 5% commission on its revenues from incoming cargo and express on shipments on which Panagra determines such payment to be justified. Where sales are made by a sub-agent, the General Sales Agent shall be entitled to retain an overriding commission of 2½%. These commissions shall be payable commencing January 1, 1948. No other compensation shall be paid for the services rendered by Panagra, Grace or Pan American as such General Sales Agents except to the extent specifically provided herein or in any General Sales Agency Agreement.

(b) Panagra shall turn over to Grace the full amount of all General Sales Agent commissions paid to it by Pan American and its affiliated carriers and the full amount of any other sales commissions paid to Panagra under interline agreements or otherwise resulting from traffic sold by Grace as General Sales Agent for Panagra.

(c) In connection with the assumption by Grace of responsibilities as General Sales Agent at various points, particularly Lima and Santiago, Panagra will discontinue [fol. 2172] its existing general selling activities at these points. Certain expenses incurred by Panagra at the above and other points in 1947, as set forth in more detail in Annex A attached, shall be assumed by Grace. Grace shall assume the similar expenses incurred by Panagra in 1948.

5. General Sales agency agreements covering the understandings recorded in paragraphs 1 to 4 inclusive of this memorandum and otherwise describing and clarifying the obligations of the parties will be prepared promptly. Nothing in such agreements shall relieve Pan American of any obligation to Panagra already assumed under the Through Flight Agreement; provided, however, that the said agreement shall be modified in the event of the contingency specified in paragraph 1 hereof.

6. Pan American will continue to render purchasing and shipping services to Panagra. Panagra will enter into

a formal purchasing and shipping agreement with Pan American as of January 1, 1948, under which Panagra will pay to Pan American the following commissions on equipment, materials and supplies specifically ordered by Panagra and purchased for Panagra by Pan American:

(a) 2½% of the vendor's invoice price of aircraft and aircraft engines;

[fol. 2173] (b) 2½% of the United States base price of gasoline and oil furnished under contracts negotiated by Pan American in the United States or purchased for Panagra by Pan American in the United States;

(c) 5% of the vendor's invoice price of other equipment, machinery, tools, supplies and other goods, including spare parts for aircraft and engines, purchased;

(d) 2½% of the vendor's invoice price of property included in any shipment in respect of which Pan American acts as forwarding agent at Panagra's request.

None of the amounts provided for in subparagraphs (a), (b) and (c) of this paragraph 6 shall be payable with respect to the DC-6 aircraft or DC-6 spare engines ordered for Panagra prior to January 1, 1947.

7. In addition to the foregoing purchasing services, Pan American agrees to sell to Panagra at Panagra's request any parts, equipment, materials or supplies which Pan American shall have on hand in warehouses or other storage points where, in Pan American's opinion, there are sufficient stocks available to permit such sales. Except as hereinafter provided, the price payable by Panagra for [fol. 2174] any such parts, equipment, materials or supplies purchased by Panagra shall be the current net replacement cost at the vendor's point of shipment. In case such parts, equipment, materials or supplies shall be furnished at Panagra's request from stocks at points other than those in respect of which Panagra shares regularly in Pan American's shop burden expense through charges for maintenance, repair or overhaul of aircraft or engines, the price payable by Panagra shall be the current net replacement cost at the vendor's point of shipment, plus 20% of such

cost to cover handling, storage and transportation charges incurred by Pan American. All charges incurred prior to the sale to Panagra in connection with the property referred to in this paragraph 7 shall be absorbed by Pan American, and all charges, including the cost of transportation and insurance and, if forwarding services are requested by Panagra, Pan American's 2½% shipping commission, incurred subsequent to the sale shall be for Panagra's account. The foregoing prices and charges shall not apply to any item listed as surplus on any list of surplus inventory which Pan American may distribute, but the price, terms and conditions of sale thereof shall be as indicated on such list in effect on the date Panagra's order [fol. 2175] is placed.

8. In addition to the sales, purchasing and shipping services provided for above, Pan American will continue to make available to Panagra the services and facilities of its general and administrative organization in New York. Grace will continue to make available to Panagra the services and facilities of its entire organization both in the United States and in South America. The nature of the services which the companies will render Panagra is more fully described in the attached memorandum entitled "Payment to Parent Companies for Services", dated March 3, 1948. In order that Panagra may obtain the fullest advantage of the availability of these services and facilities, it is agreed that Panagra may from time to time indicate in writing to Pan American and Grace the precise type of available services, facilities, information and consultation desired, and Pan American and Grace agree that they will use their best efforts to provide service to Panagra of the type and character specified and in the manner so indicated.

Panagra agrees to credit Pan American and Grace as full compensation for services rendered by such companies to Panagra during 1947 with $522,075.- and $853,415.-, of which $148,043.- represents sales commissions paid or payable by Pan American and its affiliated carriers through Panagra, respectively, less amounts heretofore paid on [fol. 2176] account of such services to Pan American and

Grace respectively in respect of 1947 and, in the case of Grace less expenses assumed by Grace hereunder amounting to $393,947.-. These amounts were computed in accordance with the said memorandum entitled "Payments to Parent Companies for Services", and cover the services referred to therein. The foregoing amounts do not include sales commissions paid or payable by Panagra to foreign affiliates of Pan American; nor do they include sales commissions paid to sub-agents.

For services referred to above to be furnished during the year 1948, excluding services as General Sales Agent and services of Pan American covered by paragraph 6 of this memorandum, which are to be compensated on the commission basis herein described, Panagra agrees to pay Pan American $115,000.- and to pay Grace $251,976.-

The amount payable to Grace and Pan American for years subsequent to 1948 for services other than sales, purchasing and forwarding for which specific commissions are provided, will be determined in the manner described in the memorandum entitled "Payments to Parent Companies for Services", dated March 3, 1948, and an effort will be made to agree upon the amounts payable for each year as promptly as possible after the beginning of such [fol. 2177] year. It is understood that while Pan American and Panagra each maintains separate general offices in New York for its own account, certain office functions such as telephone switchboard and mail handling are now pooled and will continue to be pooled for convenience, and the payment herein provided for covers Panagra's full share of such pooled services. In accordance with past practice, Pan American shall continue to charge Panagra with out-of-pocket expenses, such as postage, specifically incurred at the request of Panagra and resulting from such pooled services. Long distance telephone calls made by Panagra through Pan American's switchboard, except calls made over existing tie lines with Washington or other tie lines not charged by Pan American directly to its divisions shall be charged to Panagra.

In accordance with past practice, Grace shall continue to charge Panagra with out-of-pocket expenses incurred at

the request of Panagra by the Grace offices in New York and Washington, such as postage, the cost of cables, long distance telephone calls, travel expenses and the medical examination of Panagra employees assigned for service abroad.

9. Pan American shall continue to print and file Panagra's schedules and tariffs and to print and distribute [fol. 2178] timetables, tickets and similar traffic documents as Panagra shall request in writing from time to time, and shall receive no compensation for such services but shall be reimbursed by Panagra for Panagra's appropriate share of all out-of-pocket expenses incurred in connection therewith in accordance with past practice.

10. Pan American will cause its subsidiary Compania Pan American Argentina, S. A. to continue to render sales and other services jointly to Panagra and Pan American in Argentina, and the same method for determining joint basis of reimbursement of Compania Pan American Argentina, S.A. as is now in effect will continue and will be applied in light of conditions existing from time to time. Pan American shall regularly consult with Panagra regarding the joint activities of Compania de Aviacion Pan American Argentina, S.A. and with particular reference to sales policies, personnel, the annual budget, advertising programs and expenditures, subject to joint reimbursement.

11. To facilitate operation of all phases of this agreement, both immediate and long term, Grace and Pan American will each designate one of its officers stationed in the [fol. 2179] United States and authorize him to act for Grace or Pan American, as the case may be, in the resolution of any problems referred to him by Panagra's executive management which may arise under this arrangement and which have not promptly been solved to Panagra's satisfaction by the administrative sales or operating personnel immediately concerned.

12. This agreement shall in no respect alter or repeal any provision of the Through Flight Agreement; provided

however, that the said agreement shall be modified in the event of the contingency specified in paragraph 1 hereof.

13. This agreement shall remain in effect until May 5, 1950, and thereafter until terminated by any party hereto by six months' written notice to the other two parties. In the event of such termination, Pan American and Grace shall continue to make available to Panagra the services and facilities being provided at the date of the execution of this agreement, and Panagra shall continue to avail itself of such services and facilities and compensate therefore at amounts then to be determined.

Dated: July 14, 1948

PAN AMERICAN-GRACE AIRWAYS, INC.

BY H. R.
President

PAN AMERICAN AIRWAYS, INC.

BY E. BALLUDER
Vice-President

W. R. GRACE & CO.

BY ANDREW M. (Illegible)
Vice President

[fol. 2180]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 46

GENERAL TRAFFIC AND SALES AGENCY AGREEMENT

THIS AGREEMENT, made this tenth day of ~~August~~ September, 1948, between PAN AMERICAN AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and PAN AMERICAN-GRACE AIRWAYS, INC., a corpo-

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[Change in first paragraph initialed but illegible.]

ration organized and existing under the laws of the State of Delaware, hereinafter referred to as "Panagra":

WITNESSETH THAT, for and in consideration of the mutual covenants and agreements herein contained, Pan American and Panagra hereby agree as follows:

1. Pan American hereby appoints Panagra, and Panagra agrees to act as, General Traffic and Sales Agent in Bolivia, Chile, Ecuador and Peru for Pan American and its other affiliated carriers, except that Ecuador shall not be part of the territory in which Panagra shall act as such General Traffic and Sales Agent for AVIANCA nor shall any, or any part of any, of said countries specifically excluded in the designation of any of said affiliated carriers pursuant to paragraph 22 hereof, be a part of the territory in which Panagra acts as such General Traffic and Sales Agent for said affiliated carrier, the territory in which Panagra is hereby appointed to act as General Traffic and Sales Agent being hereinafter sometimes referred to as "Panagra General Agency Territory". As such General Traffic and Sales Agent, Panagra agrees that it will perform such services as may be appropriate to promote passenger, mail, express, and cargo traffic over the lines of Pan American and its affiliated carriers and to arrange for transportation of passengers, baggage, mail, express and cargo over such lines, including the furnishing of necessary personnel, office space, equipment and supplies and doing all other things appropriate to carry out the following activities:

(a) Solicitation and sale within the Panagra General Agency Territory of passenger, mail, express and cargo transportation for Pan American and its affili- [fol. 2181] ated carriers, including furnishing instructions to, and supervision of such solicitation and sale by, Panagra's General Sales Agents and sub-agents appointed in accordance with this Agreement;

(b) Performance of such acts and preparation and checking of such documents in the Panagra General Agency Territory as may be required for the transportation of passengers, baggage, mail, express and

[Change in paragraph 1 initialed but illegible.]

cargo and movement of aircraft over the lines of Pan American and its affiliated carriers, including the making of arrangements for the presence of such government officials as may be required in connection therewith.

(c) Checking such baggage of outgoing passengers at points in the Panagra General Agency Territory as is to be through checked from points served by Panagra to points served by Pan American or its affiliated carriers, it being understood that baggage of passengers traveling over the lines of Panagra and thence over the lines of Pan American or its affiliated carriers will be through checked by Panagra only if, and to the extent that, the parties shall expressly so agree; collecting for the account of Pan American and its affiliated carriers any excess baggage charges payable with respect to any baggage checked by Panagra for transportation over the lines of Pan American and its affiliated carriers; receiving and forwarding by carriers with which Pan American or Panagra has forwarding arrangements any trunks or other heavy baggage delivered to Panagra for that purpose by passengers traveling, or proposing to travel, over the lines of Pan American or its affiliated carriers, and collecting any charges payable therefor;

(d) Making arrangements in the Panagra General Agency Territory on behalf of such passengers for transportation to and from airport terminals and for hotel accommodations at points of call of Panagra, Pan American and its affiliated carriers and at other cities;

[fol. 2182] (e) Making reservations for and facilitating transportation over the lines of Pan American and its affiliated carriers and connecting carriers;

(f) Furnishing such advice and information as Pan American may from time to time request with respect to transportation formalities required by governments in the Panagra General Agency Territory pertaining to passengers, baggage, express and cargo moving over the lines of Panagra, Pan American, or its affiliated carriers;

(g) Distribution of such timetables, advertising materials and other information covering the services of Pan American and its affiliated carriers as Pan American may from time to time reasonably request;

(h) Maintaining and operating at points served by Panagra in the Panagra General Agency Territory centrally located sales offices for the sale of passenger, express and cargo transportation over the lines of Pan American and its affiliated carriers, which offices shall be staffed with competent traffic and sales personnel for the promotion and sale of passenger, mail, express and cargo transportation over the lines of Pan American and its affiliated carriers and for the handling of all matters pertaining thereto pursuant to this Agreement, it being contemplated that the entire sales organization of Panagra will be available to perform services pursuant to this Agreement, but nothing contained in this Agreement shall obligate Panagra to establish any new office or organization at any point not served by Panagra in order to render any service to Pan American.

(i) Publicizing, in the Panagra General Agency Territory, in such appropriate manner as Pan American shall request, that Panagra is the General Traffic and Sales Agent for Pan American and its affiliated carriers, which shall include, but not be limited to, appropriate statements to that effect in Panagra's [fol. 2183] advertising in the Panagra General Agency Territory relating to travel to the points served by Pan American and its affiliated carriers;

(j) Providing, when Pan American shall so request at any of Panagra's principal sales offices (which shall be deemed to be for purposes of this agreement, Panagra's principal sales office in Santiago, Chile, Lima, Peru, La Paz, Bolivia, Quito and Guayaquil, Ecuador, and such other points as shall be mutually agreed upon from time to time), at least one responsible sales representative who shall be assigned the specific and primary duty of developing and selling transportation

over the lines of Pan American and its affiliated carriers;

(k) Furnishing Pan American with appropriate reports, monthly and at such other times as may be requested by Pan American, as to the extent and character of sales made by each Panagra sales office or agency for Pan American and its affiliated carriers;

(l) Making personal visits through sales representatives to sub-agencies and to persons and firms which have been or which are potential customers for transportation via Pan American and its affiliated carriers, it being understood that, if Pan American so requests, a representative of Pan American may accompany Panagra's sales representatives on any such visits;

(m) Holding regular meetings, if requested by Pan American, between the appropriate representatives of Panagra and Pan American in the Panagra General Agency Territory, at such intervals as shall be mutually agreed upon, to review ways and means of developing traffic, including the determination of sales policies and advertising programs for development of traffic over the lines of Pan American and its affiliated carriers;

(n) Keeping Pan American's principal officers as currently informed as Panagra's principal officers with regard to developments coming to Panagra's attention affecting traffic over the lines of Pan American [fol. 2184] and its affiliated carriers, including proposed schedules and tariff change activities of competitors, air mail and parcel post matters, and all other pertinent information pertaining to the sale and movement of traffic over the lines of Pan American and its affiliated carriers, and consulting with Pan American as to Panagra's public educational activities, giving Pan American full opportunity to suggest how such activities may be conducted in a manner which will provide maximum benefit to Pan American and its affiliated carriers;

(o) Requiring any general-sales agent appointed by Panagra in the Panagra General Agency Territory to

function on behalf of Panagra in lieu of a sales office operated directly by Panagra to provide adequate sales office facilities, it being understood that all such offices, as well as offices operated directly by Panagra, shall be decorated and furnished in accordance with reasonable specifications and design in keeping with recognized airline practice and shall satisfy the functional requirements of such offices, that all such offices at points served by Panagra shall accentuate their identity as sales offices for Panagra and Pan American, and that all such sales offices and general sales agencies shall be furnished with modern office equipment and telephone installations adequate to provide the highest type of service to the public;

(p) Providing traffic and sales personnel, including those of Panagra's general sales agents, responsible for the handling and development of traffic over the lines of Pan American and its affiliated carriers who shall be adequately trained in airline practice and suitably indoctrinated in required procedures, methods and information to enable them to furnish satisfactory performance hereunder, it being agreed that a reasonable number of sales representatives who come in contact with the public in Panagra's principal sales offices in the Panagra general agency territory shall be bilingual, [fol. 2185] i.e. English and Spanish speaking, and that the sales staff in the Panagra General Agency Territory shall not only include sales personnel sufficient to staff adequately Panagra offices and general sales agencies, but also shall include as many outside solicitors as may be reasonably required to produce the best sales effort for Pan American and its affiliated carriers;

(q) For the purpose of instructions covering procedures for the sale and handling of passenger, cargo and mail traffic over the lines of Panagra and Pan American or its affiliated carriers, making available to all of Panagra's offices the several traffic and sales manuals issued by Pan American including all reissues and revisions thereof and supplements thereto and requiring that the provisions of such manuals be followed.

All action taken by Panagra as such General Traffic and Sales Agent, whether specifically referred to herein or otherwise, shall be in accordance with instructions, rules, regulations, rates and tariffs of Pan American and its affiliated carriers. Pan American's representatives may from time to time visit Panagra's sales offices and general agencies for the purpose of discussing with Panagra's sales representatives any and all aspects of their selling activities for Pan American and its affiliated carriers; provided, however, that Pan American shall consult with Panagra a reasonable time prior to making such visits regarding the purpose of such visits, and a representative of Panagra may, if Panagra desires, accompany such representatives of Pan American on such visits.

2. Panagra agrees to designate as its agents for the purposes of this Agreement all of its authorized sales agents in the Panagra General Agency Territory, to appoint such additional agents as Pan American may from time to time request, all in accordance with, and upon such terms and conditions as shall be set forth in, the instructions (including published agency rules, regulations, policies and practices) given by Pan American, and to cancel the appoint- [fol. 2186] ment of any agent, for the purposes of this Agreement, upon request by Pan American.

3. Pan American hereby authorizes Panagra to issue (a) tickets, or exchange orders exchangeable for tickets, for transportation of passengers (but not to check baggage unless the parties hereto shall so agree) and (b) airwaybills or other appropriate forms of contract for transportation of express and cargo over the lines of Pan American and of its affiliated carriers and to execute and issue all other documents necessary or appropriate for such transportation, all in the form, and subject to and in accordance with the tariffs, rates, rules and regulations and the terms, provisions and conditions of the tickets, airwaybills and other transportation contracts, prescribed and approved from time to time by Pan American or its affiliated carrier, as the case may be, it being understood that no such ticket, exchange order, airwaybill or contract will be issued unless

an advance reservation shall have been made for the transportation, if required by such tariffs, rules and regulations, and Panagra shall have received payment of the total charges payable therefor at the point of issuance in accordance with such tariffs, rules and regulations, or shall have made arrangements satisfactory to Pan American for the collection of such charges, and that Panagra will not, directly or indirectly, or through any agent or broker, or otherwise, rebate, or remit any portion of the charges specified in said tariffs. Pan American agrees to accept and to carry out the obligation of, or to cause the appropriate affiliated carriers to accept and to carry out the obligation of, each ticket, exchange order, airwaybill, or contract so issued by Panagra. Such airwaybill or contracts may provide for turning over to other transportation agencies for onward carriage by them of express or cargo destined to points beyond points served by Pan American and its affiliated carriers, and in such event it is agreed that Pan American and its affiliated carriers will act in accordance with the terms of such provision. In issuing tickets, exchange orders airwaybills and contracts for transportation over the lines of Pan American or any of its affiliated car- [fol. 2187] riers, Panagra shall be deemed to act only as an agent of Pan American or its affiliated carrier, as the case may be. Panagra, including its officers, employees, agents, or servants, shall not be liable, and Pan American agrees to indemnify Panagra, including its officers, employees, agents, or servants, and hold it harmless from and against all claims, for any loss, damage, injury or delay of any nature whatsoever, including costs and expenses, which shall occur in connection with the transportation services of Pan American or in connection with the carrying out or failure to carry out any obligation to third parties arising by reason of action taken by Panagra as General Traffic and Sales Agent for Pan American, pursuant to this Agreement unless such loss, damage, injury or delay shall be caused by the negligence or wilful misconduct of Panagra, its officers, employees, agents or servants. Pan American agrees to cause its affiliated carriers to enter into appropriate agreements similar to and on the same terms as the agreement in the foregoing sentence under which they will agree to indemnify and hold harmless Panagra from any such

loss, damage, injury, delay, costs and expenses, in connection with their respective transportation services or the carrying out of obligations to third parties arising out of action by Panagra as General Traffic and Sales Agent for such affiliated carriers, respectively. Pan American shall furnish to Panagra from time to time the aforementioned tariffs, rates, rules and regulations and information regarding the transportation services currently being offered by Pan American and its affiliated carriers. Any act which Panagra is authorized or permitted by this paragraph to take may be taken through an agent of Panagra authorized in accordance herewith.

4. (a) In case Panagra shall receive notice of any claims relating to transportation over the routes of Pan American or its affiliated carriers, Panagra will immediately notify Pan American of such notice, giving all pertinent information available.

(b) In case any tariff, rate, form of ticket, exchange order, airwaybill or other transportation contract, or any rule or regulation of Pan American or its affiliated carriers relating to transportation over their lines, shall be [fol. 2188] modified or amended at any time, or in case any service of Pan American or its affiliated carriers shall be suspended, modified or cancelled, Pan American will notify Panagra as far in advance as practicable of the effective date of any such modification, amendment, suspension or cancellation, it being understood that Pan American will indemnify and hold harmless Panagra from and against all losses, including costs and expenses, by reason of claims insofar as they arise out of such modification, amendment, suspension or cancellation and the sale by Panagra of transportation prior to receipt by Panagra of notice thereof.

(c) Panagra shall make no refund of any fare, charge, or other sum relating to transportation over the lines of Pan American or its affiliated carriers, unless such refund shall be in accordance with the tariffs, rules, regulations and instructions of Pan American.

(d) In case any claim shall be asserted against Panagra in respect to transportation over the lines of Pan American or any of its affiliated carriers, or in case any action at

law; suit or proceeding shall be instituted against Panagra relating thereto, Panagra shall promptly notify Pan American and promptly transmit to Pan American from time to time all communications, legal processes and other documents and information coming into the possession of Panagra and relating to such claim, action at law, suit or proceeding. Panagra shall permit Pan American to settle and to conduct the defense against any such claim, action at law, suit or proceeding and Panagra will cooperate with and assist Pan American, to the extent requested by Pan American, in settling or conducting the defense against any such claim, action at law, suit or proceeding.

5. Pan American hereby agrees to pay or reimburse Panagra the following amounts:

(a) In the case of sales made in the Panagra General Agency Territory by Panagra or any agent of Panagra:

(i) *For Passenger Transportation* over the lines of Pan American and its affiliated carriers, a [fol. 2189] commission equal to either (1) in case such transportation shall have been sold directly by Panagra or a general sales agent of Panagra, 10% of the total amount of the fares for such transportation (including excess baggage weight charges but excluding valuation and insurance charges on baggage) collected by Panagra or its general agent in the Panagra General Agency Territory including fares for such passenger and excess baggage transportation sold in the Panagra General Agency Territory by Panagra or its general sales agent and furnished under Universal Air Travel Cards acceptable to Pan American or its affiliated carriers or under government transportation requests or warrants presented by passengers for transportation over the lines of Pan American or any of its affiliated carriers, but excluding any fares payable to other carriers, under tickets and exchange orders issued by Panagra or its general agent in accordance with the provisions of this agreement; or (2) in case such transportation shall have been sold by or through

an agent of Panagra (other than a general sales agent of Panagra) or by another carrier authorized so to do, 2½% of the total amount of the fares for such transportation, excluding charges for excess baggage weight, and 10% of the excess baggage weight charges collected by Panagra or its general agent, either directly or through its agents, in the Panagra General Agency Territory, including fares for such passenger and excess baggage transportation sold in the Panagra General Agency Territory by such agents of Panagra or such carriers and furnished under Universal Air Travel Cards acceptable to Pan American or its affiliated carriers or under government transportation requests or warrants presented by passengers for transportation over the lines of Pan American or any of its affiliated carriers, but excluding any fares payable to other carriers, under tickets and exchange orders issued by Panagra in accordance with the provisions of this Agreement, plus the commission, if any, payable to such agents in [fol. 2190] accordance with the rules and regulations of Pan American then in effect, and of which Panagra has been advised, it being understood that in such case the commission, if any, payable to the agent, shall be paid to the agent and Panagra will retain the balance equal to 2½% of the fare and 10% of the excess baggage weight charges, and

(ii) *For Express or Cargo Transportation* over the lines of Pan American and its affiliated carriers a commission equal to either (1) in case such transportation shall have been sold directly by Panagra or a general sales agent of Panagra, 7½% of the total amount of the charges (not including valuation, insurance, C.O.D. or collect charges) for such transportation, collected by Panagra or its general agent in the Panagra General Agency Territory, or, in the case of collect shipments collected otherwise on behalf of Pan American or any of its affiliated carriers, including transportation sold in the Panagra General Agency Territory by Panagra or its general sales

agent and furnished under government bills of lading or similar warrants presented by shippers, but excluding any charges payable to other carriers, under airwaybills or other cargo transportation contracts issued by Panagra in accordance with the provisions of this Agreement; or (2) in case such transportation shall have been sold by or through an agent of Panagra (other than a general sales agent of Panagra) or by another carrier authorized so to do, 2½% of the total amount of such charges (not including valuation, insurance, C.O.D. or collect charges), collected by Panagra or its general agent either directly or through such agents in the Panagra General Agency Territory, or, in the case of collect shipments, collected otherwise on behalf of Pan American or any of its affiliated carriers, including transportation sold in the Panagra General Agency Territory by such agents or such carriers and furnished under government bills of lading or similar warrants furnished by shippers, but exclud- [fol. 2191] ing any charges payable to other carriers under airway bills or other cargo transportation contracts issued by Panagra in accordance with the provisions of this Agreement, plus the commission, if any, payable to such agents in accordance with the rules and regulations of Pan American, it being understood that in such cases the commission, if any, payable to the agent shall be paid to the agent and Panagra will retain the balance equal to 2½% of the charges.

(b) In the case of sales made by Panagra outside the Panagra General Agency Territory:

(i) *For Passenger Transportation* over the lines of Pan American and its affiliated carriers, a commission equal to 2½% of the total amount of the fares for such transportation, excluding charges for excess baggage and valuation and insurance charges on baggage, collected by Panagra on behalf of Pan American or any of its affiliated carriers, including

fares for such transportation sold by Panagra and furnished under Universal Air Travel Cards acceptable to Pan American or its affiliated carriers or under Government transportation requests or warrants presented by passengers for transportation over the lines of Pan American or any of its affiliated carriers, but excluding any fares payable to other carriers under tickets and exchange orders issued by Panagra in accordance with the provisions of this Agreement; and

(ii) *For Express or Cargo Transportation* over the lines of Pan American and its affiliated carriers, a commission equal to 5% of the total amount of the charges (not including valuation, insurance, C.O.D. or collect charges) for such transportation, collected by Panagra, or, in the case of collect shipments collected otherwise on behalf of Pan American or any of its affiliated carriers, including transportation sold by Panagra and furnished under government bills of lading or similar warrants presented by shippers, but excluding any charges payable to other carriers [fol. 2192] under airway bills or other cargo transportation contracts issued by Panagra in accordance with the provisions of this Agreement.

(c) Any out-of-pocket expenses specifically requested and approved by Pan American which are incurred by Panagra in carrying out special services (including advertising or publicity) requested by Pan American under this Agreement, it being understood that routine expenses of distribution of information, timetables and advertising material to sub-agents and prospective travelers and shippers and similar activities which are classed as a general agent's normal sales promotional activities shall not be reimbursable hereunder.

Except with respect to transportation issued under Universal Air Travel Cards, government transportation requests or warrants, or government bills of lading or warrants or collect shipments, as provided above, the commissions shall be payable hereunder only in

respect of the aforementioned fares and charges actually collected by Panagra or the said sales agents and paid over to Pan American and no commission shall be payable with respect to any fare or charge which shall be refunded, except as otherwise specifically authorized by Pan American. Sales of express and cargo transportation with transportation charges collect shall be deemed to have been made by the party who issued the airwaybill and not by the party who collects the charges.

6. In case Pan American or any of its affiliated carriers receives a commission from any other air, rail, water or bus carrier for the sale of such carrier's passenger tickets, exchange orders or cargo transportation documents issued directly by Panagra or by an agent of Panagra in the Panagra General Agency Territory or elsewhere in connection with interline transportation over the lines of Pan American and its affiliated carriers and such other carrier, Pan American shall pay Panagra or such agents the amount of such commission.

7. Panagra hereby appoints Pan American, and Pan American agrees to act as, General Traffic and Sales Agent for Panagra in the United States of America and throughout the world except in Argentina, Bolivia, Colombia, Chile, Ecuador, Peru, Panama City, R.P., and the Panama Canal [fol. 2193] Zone, the territory in which Pan American is hereby appointed to act as General Traffic and Sales Agent being hereinafter sometimes referred to as the "Pan American General Agency Territory". As such General Traffic and Sales Agent, Pan American agrees that it will perform such services as may be appropriate to promote passenger, mail, express and cargo traffic over the lines of Panagra and to arrange for transportation of passengers, baggage, mail, express and cargo over such lines, including the furnishing of necessary personnel, office space, equipment and supplies and doing all other things appropriate to carry out the following activities:

(a) Solicitation and sale within the Pan American General Agency Territory of passenger, mail, express

and cargo transportation for Panagra, including furnishing instructions to, and supervision of such solicitation and sale by, any general sales agents of Pan American and sub-agents, appointed in accordance with this Agreement;

(b) Performance of such acts and preparation and checking of such documents in the Pan American General Agency Territory as may be required for the transportation of passengers, baggage, mail, express and cargo and movement of aircraft over the lines of Panagra, including the making of arrangements for the presence of such government officials as may be required in connection therewith;

(c) Checking such baggage of outgoing passengers at points in the Pan American General Agency Territory as is to be through checked from points served by Pan American or its affiliated carriers to points served by Panagra, it being understood that baggage of passengers traveling over the lines of Pan American or its affiliated carriers and then over the lines of Panagra will be through checked by Pan American or its affiliated carriers only if, and to the extent that, the parties shall expressly so agree, collecting for the account of Panagra any excess baggage charges payable with respect to any baggage checked by Pan American or its affiliated carriers for transportation over the lines of Panagra, receiving and forwarding by carriers with which Panagra or Pan American has for- [fol. 2194] warding arrangements any trunks or other heavy baggage delivered to Pan American or its affiliated carriers for the purpose of passengers traveling, or proposing to travel, over the lines of Panagra, and collecting any charges payable therefor;

(d) Making arrangements in the Pan American General Agency Territory on behalf of such passengers for transportation to and from airport terminals and for hotel accommodations at points of call of Panagra and Pan American and at other cities;

(e) Making reservations for and facilitating transportation over the lines of Panagra and connecting carriers;

(f) Furnishing such advice and information as Panagra may from time to time request with respect to transportation formalities required by governments in the Pan American General Agency Territory pertaining to passengers, baggage, express and cargo moving over the lines of Pan American or its affiliated carriers and Panagra;

(g) Distribution of timetables, advertising materials and other information to agents and the public covering the services of Panagra as Panagra may from time to time reasonably request;

(h) Maintaining and operating, at points served by Pan American or its affiliated carriers in the Pan American General Agency Territory and at such other points in the continental United States which Pan American shall from time to time determine, which points shall include New York, Chicago and Washington, centrally located sales offices for the sale of passenger, express and cargo transportation over the lines of Panagra, which offices shall be staffed with competent traffic and sales personnel for the promotion and sale of passenger, mail, express and cargo transportation over the lines of Panagra and for the handling of all matters pertaining thereto pursuant to this Agreement, it being contemplated that the entire sales organization of Pan American and its affiliated carriers will be available to perform services pursuant to this Agreement, but nothing contained in this Agreement [fol. 2195] shall obligate Pan American or its affiliated carriers to establish any new office or organization to render any service to Panagra at any point not served by Pan American or its affiliated carriers except as otherwise specifically provided herein with respect to the continental United States;

(i) Publicizing in the Pan American General Agency Territory, in such appropriate manner as Panagra

shall request, that Pan American is the General Traffic and Sales Agent for Panagra, which shall include, but not be limited to, appropriate statements to that effect in Pan American's advertising in the Pan American General Agency Territory relating to service to Latin America;

(j) Providing, when Panagra shall so request, at any of Pan American's principal sales offices, which for purposes of this Agreement are those referred to in subparagraph (b) of paragraph 11 of the Agreement dated July 30, 1946 between Pan American and Panagra (which Agreement as the same may be amended from time to time is hereinafter referred to as "The Through Flight Agreement"), as well as Miami, Florida, Los Angeles, California, San Francisco, California, New Orleans, Louisiana, and such others as shall be mutually agreed upon from time to time, at least one responsible sales representative who shall be assigned the specific and primary duty of developing and selling transportation over the lines of Panagra; and providing in other sales offices in the continental United States, in which Panagra may reasonably request it, similar responsible sales representatives who shall be assigned to such duties;

(k) Furnishing Panagra with appropriate reports, monthly and at such other times as may be requested by Panagra, as to the extent and character of sales made by each Pan American office or agency or its affiliated carriers for Panagra;

(l) Making personal visits in the United States through sales representatives to sub-agencies, and to persons and firms which have been or which are potential customers for transportation via Panagra, it being understood that, if Panagra so requests, a representa- [fol. 2196] tive of Panagra may accompany Pan American's sales representatives on any such visits.

(m) Holding regular meetings, if requested by Panagra, between the appropriate representatives of Pan American and Panagra in the Pan American General

Agency Territory, at such intervals as shall be mutually agreed upon, to review ways and means of developing traffic, including the determination of sales policies and advertising progress for development of traffic over Panagra;

(n) Keeping Panagra's principal officers as currently informed as Pan American's principal officers with regard to developments coming to Pan American's attention affecting traffic over the lines of Panagra, including proposed schedules and tariff changes, activities of competitors, air mail and parcel post matters, and all other pertinent information pertaining to the sale and movement of interline traffic over the lines of Pan American or its affiliated carriers and Panagra, and consulting with Panagra as to Pan American's public educational activities, giving Panagra full opportunity to suggest how such activities may be conducted in a manner which will provide maximum benefit to Panagra;

(o) Requiring any general sales agent, appointed by Pan American to function on behalf of Pan American in lieu of a sales office operated directly by Pan American, to provide adequate sales office facilities, it being understood that all such offices, as well as offices operated by Pan American, shall be decorated and furnished in accordance with reasonable specifications and design in keeping with recognized airline practice and shall satisfy the functional requirements of such offices, that all such offices in the United States shall accentuate their identity as sales offices for Pan American and Panagra, and shall be furnished with modern office equipment and telephone installations adequate to provide the highest type of service to the public;

(p) Pan American's traffic and sales personnel, including that of its general sales agents, responsible for the handling and development of traffic over the lines of Panagra, shall be adequately trained in air- [fol. 2197] line practice and suitably indoctrinated in required procedures, methods and information to en-

able them to furnish satisfactory performance hereunder. A reasonable number of sales representatives in the United States of America who come in contact with the public in Pan American's principal sales offices shall be bilingual, i.e., English and Spanish speaking. The sales staff in the Pan American General Agency Territory shall not only include sales personnel sufficient to staff adequately Pan American offices and general sales agencies, but also shall include as many outside solicitors as may be reasonably required to produce the best sales effort for Panagra.

All action taken by Pan American as General Traffic and Sales Agent whether specifically referred to herein or otherwise, shall be in accordance with instructions, rules, regulations, rates and tariffs of Panagra. Panagra's representatives may from time to time visit Pan American's sales offices and general agencies for the purpose of discussing with Pan American's sales representatives any and all aspects of their selling activities for Panagra; provided, however, that Panagra shall consult with Pan American a reasonable time prior to making such visits regarding the purpose of such visits and a representative of Pan American may, if Pan American desires, accompany such representatives of Panagra on such visits.

8. Pan American agrees to designate as its agents for the purposes of this Agreement all of its authorized sales agents in the Pan American General Agency Territory, to appoint such additional agents as Panagra may from time to time request, all in accordance with, and upon such terms and conditions as shall be set forth in, the instructions (including published agency rules, regulations, policies and practices) given by Panagra and to cancel the appointment of any agent, for the purposes of this Agreement, upon request by Panagra.

9. Panagra hereby authorizes Pan American and its affiliated carriers to issue (a) tickets, or exchange orders exchangeable for tickets, for transportation of passengers, and (b) airwaybills or other appropriate forms of contract

[fol. 2198] for transportation of express and cargo over the lines of Panagra and to execute and issue all other documents necessary or appropriate for such transportation, all in the form, and subject to and in accordance with the tariffs, rates, rules, and regulations, and the terms, provisions and conditions of the tickets, airwaybills and other transportation contracts, prescribed and approved from time to time by Panagra, it being understood that no such ticket, exchange order, airwaybill or contract will be issued, unless an advance reservation shall have been made for the transportation, if required by such tariffs, rules and regulations and Pan American or one of its affiliated carriers shall have received payment of the total charges payable therefor at the point of issuance in accordance with such tariffs, rules and regulations, or shall have made arrangements satisfactory to Panagra for the collection of such charges, and Pan American will not, directly or indirectly, or through any agent or broker, or otherwise, rebate or remit any portion of the charges specified in said tariffs. Panagra agrees to accept such ticket, exchange order, airwaybill or contract so issued by Pan American or one of its affiliated carriers. Such airwaybills or contracts may provide for turning over to other transportation agencies for onward carriage by them of express or cargo destined to points beyond points served by Panagra, and in such event it is agreed that Panagra will act in accordance with the terms of such provision. In issuing tickets, exchange orders, airwaybills and contracts for transportation over the lines of Panagra, Pan American and its affiliated carriers shall be deemed to act only as agents for Panagra. Neither Pan American nor any of its affiliated carriers, including their officers, employees, agents, or servants, shall be liable, and Panagra agrees to indemnify and hold harmless Pan American and its affiliated carriers, including their officers, employees, agents or servants, from and against all claims, for any loss, damage, injury or delay of any nature whatsoever, including costs and expenses, which shall occur in connection with the air transport services of Panagra or in connection with the carrying out or failure to carry out of any obligation to third parties, arising by reason of action taken by Pan American or any of its

affiliated carriers as General Sales Agent for Panagra pursuant to this Agreement, unless such loss, damage, injury [fol. 2199] or delay shall be caused by the negligence or wilful misconduct of Pan American or one of its affiliated carriers, including their officers, employees, agents or servants.

Panagra shall furnish to Pan American and its affiliated carriers from time to time the aforementioned tariffs, rates, rules, regulations and information regarding the transportation services currently being offered by Panagra. Any act which Pan American or its affiliated carriers is authorized or permitted by this paragraph to take may be taken through an agent of Pan American or its affiliated carriers authorized in accordance herewith.

10. (a) In case Pan American or its affiliated carriers shall receive notice of any claim relating to transportation over the routes of Panagra, Pan American or its affiliated carriers will immediately notify Panagra of such notice, giving all pertinent information available.

(b) In case any tariff, rate, form of ticket or exchange order, airwaybill or other transportation contract, or any rule or regulation of Panagra relating to transportation over its lines, shall be modified or amended at any time, or in case any service of Panagra shall be suspended, modified or cancelled, Panagra will notify Pan American as far in advance as practicable of the effective date of any such modification, amendment, suspension or cancellation, it being understood that Panagra wil indemnify and hold harmless Pan American and its affiliated carriers from and against all losses, including costs and expenses, by reason of claims insofar as they arise out of such modification, amendment, suspension or cancellation and the sale by Pan American or an affiliated carrier of transportation prior to receipt by Pan American of notice thereof, or in case of a sale by an affiliated carrier, prior to receipt of notice thereof by such carrier if transmitted promptly by Pan American.

(c) Pan American or its affiliated carriers shall make no refund of any fare or other sum relating to transportation over the lines of Panagra, unless such refund shall be in accordance with the tariffs, rules, regu- [fol. 2200] lations and instructions of Panagra.

(d) In case any claim shall be asserted against Pan American or any of its affiliated carriers in respect of transportation over the lines of Panagra, or in case any action at law, suit or proceeding shall be instituted against Pan American or any of its affiliated carriers relating thereto, Pan American shall promptly notify Panagra and promptly transmit to Panagra from time to time all communications, legal processes and other documents and information coming into the possession of Pan American and relating to such claim, action at law, suit or proceeding. Pan American shall permit Panagra to settle and to conduct the defense against any such action at law, suit or proceeding, and Pan American will cooperate with and assist Panagra, to the extent requested by Panagra, in settling or conducting the defense against any such claim, action at law, suit or proceeding.

11. Panagra hereby agrees to pay or reimburse to Pan American the following amounts:

(a) In the case of sales made in the Pan American General Agency Territory by Pan American or its affiliated carriers or any agent thereof:

(i) *For Passenger Transportation* over the lines of Panagra, a commission equal to either (1) in case such transportation shall have been sold directly by Pan American or its affiliated carriers or a general sales agent of Pan American, 10% of the total amount of the fares for such transportation (including excess baggage weight charges but excluding valuation and insurance charges on baggage) collected by Pan American or its general sales agent in the Pan American General Agency Territory including fares for such passenger and excess baggage trans-

portation sold in the Pan American General Agency Territory by Pan American or its general sales agent and furnished under Universal Air Travel Cards [fol. 2201] acceptable to Panagra or under government transportation requests or warrants presented by passengers for transportation over the lines of Panagra, but excluding any fares payable to other carriers under tickets and exchange orders issued by Pan American or its affiliated carriers or its general sales agent in accordance with the provisions of this Agreement; or (2) in case such transportation shall have been sold by or through an agent of Pan American or its affiliated carriers (other than a general sales agent of Pan American) or by another carrier authorized so to do, 2½% of the total amount of the fares for such transportation excluding charges for excess baggage weight, and 10% of the excess baggage weight charges, collected by Pan American or its general sales agent, either directly or through its agents in the Pan American General Agency Territory, including fares for such passenger and excess baggage transportation sold in the Pan American General Agency Territory by such agents of Pan American or such carriers and furnished under Universal Air Travel Cards acceptable to Panagra or under government transportation requests or warrants presented by passengers for transportation over the lines of Panagra, but excluding any fares payable to other carriers, under tickets and exchange orders issued by Pan American in accordance with the provisions of this Agreement, plus the commission, if any, payable to such agents in accordance with the rules and regulations of Panagra, then in effect, and of which Pan American has been advised, it being understood that in such case the commission, if any, payable to the agent, shall be paid to the agent and Pan American will retain the balance equal to 2½% of the fare and 10% of the excess baggage weight charges, and

(ii) *For Express or Cargo Transportation* over the lines of Panagra, a commission equal to either (1) in

case such transportation shall have been sold directly [fol. 2202] by Pan American or a general sales agent of Pan American, 7½% of the total amount of the charges (not including valuation, insurance, C.O.D. or collect charges) for such transportation collected by Pan American or its general sales agent in the Pan American General Agency Territory or, in the case of collect shipments, collected otherwise on behalf of Panagra, including transportation sold in the Pan American General Agency Territory by Pan American or its general sales agent and furnished under government bills of lading or similar warrants presented by shippers, but excluding any charges payable to other carriers, under airwaybills or other cargo transportation contracts issued by Pan American or any of its affiliated carriers in accordance with the provisions of this Agreement; or (2) in case such transportation shall have been made by or through an agent of Pan American (other than a general sales agent of Pan American) or by another carrier authorized so to do, 2½% of the total amount of such charges (not including valuation, insurance, C.O.D. or collect charges) collected by Pan American or its general agent either directly or through such agents in the Pan American General Agency Territory or, in the case of collect shipments, collected otherwise on behalf of Panagra, including transportation sold in the Pan American General Agency Territory by such agents or such carriers and furnished under government bills of lading or similar warrants furnished by shippers, but excluding any charges payable to other carriers under airwaybills or other cargo transportation contracts issued by Pan American or any of its affiliated carriers in accordance with the provisions of this Agreement plus the commission, if any, payable to such agents in accordance with the rules and regulations of Panagra, it being understood that in such cases the commission, if any, payable to the agent shall be paid to the agent and Pan American will retain the balance equal to 2½% of the charges.

[fol. 2203] (b) In the case of sales made by Pan American or any of its affiliates except Compania de Argentina

Aviacion Pan American S.A. outside the Pan American General Agency Territory:

(i) *For Passenger Transportation* over the lines of Panagra a commission equal to 7½% of the total amount of the fares for such transportation, excluding charges for excess baggage and valuation and insurance charges on baggage, collected by Pan American or any of its affiliated carriers on behalf of Panagra including fares for such transportation sold by Pan American or any of its affiliated carriers and furnished under Universal Air Travel Cards acceptable to Panagra, or under government transportation requests or warrants presented by passengers for transportation over the lines of Panagra, but excluding any fares payable to other carriers under tickets and exchange orders issued by Pan American or any of its affiliated carriers in accordance with the provisions of this Agreement; and

(ii) *For Express or Cargo Transportation* over the lines of Panagra, a commission equal to 5% of the total amount of the charges (not including valuation, insurance, C.O.D. or collect charges) for such transportation, collected by Pan American or any of its affiliated carriers, or, in the case of collect shipments, collected otherwise on behalf of Panagra, including transportation sold by Pan American or any of its affiliated carriers and furnished under government bills of lading or similar warrants presented by shippers, but excluding any charges payable to other carriers under airwaybills or other cargo transportation contracts issued by Pan American or any of its affiliated carriers in accordance with the provisions of this Agreement.

(c) Any out-of-pocket expenses specifically requested and approved by Panagra which are incurred by Pan American or its affiliated carriers in carrying out

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Change indicated in paragraph (b) initialed but illegible.

special services (including advertising or publicity) [fol. 2204] requested by Panagra under this Agreement, it being understood that routine expenses of distribution of information, timetables and advertising material to sub-agents and prospective travelers and shippers and similar activities which are classed as a general agent's normal sales promotion activities shall not be reimbursable hereunder.

Except with respect to transportation issued under Universal Air Travel Cards, government transportation requests or warrants, government bills of lading or warrants, or collect shipments, as provided above, commissions shall be payable hereunder only in respect of the aforementioned fares and charges actually collected by Pan American or its affiliated carriers or the said sales agents and paid over to Panagra, and no commission will be payable with respect to any fare or charge which shall be refunded, except as otherwise specifically authorized by Panagra. Sales of express and cargo transportation with transportation charges collect shall be deemed to have been made by the party who issues the airwaybill and not by the party who collects the charges.

12. In case Panagra receives a commission from any other air, rail, water or bus carriers for the sale of such carriers' passenger tickets, exchange orders or cargo transportation documents issued directly by Pan American or its affiliated carriers or by an agent thereof in the Pan American General Agency Territory or elsewhere in connection with interline transportation over the lines of Panagra and such other carrier, Panagra shall pay Pan American, its affiliated carriers or such agents, the amount of such commission.

13. All amounts payable hereunder, including all amounts collected on behalf of either party for transportation sold, shall be paid by crediting Panagra or Pan American, as the case may be, in open account in U. S. currency. The amounts payable in respect of each month to be so credited as soon after the end of such month as is practicable. Settlement of balances in said open account or accounts

shall be made in U. S. currency in accordance with arrangements agreed upon from time to time between the parties.

14. Nothing herein contained shall be deemed to require Panagra or Pan American or any of its affiliated carriers [fol. 2205] to initiate or maintain service between any particular points.

15. All expense for telegrams, cables, radiograms or other communications sent in connection with or pursuant to this Agreement, including communications relating to reservations and cancellations of reservations, shall be borne by the sender.

16. (a) In transferring shipments of interline baggage, accompanied or unaccompanied, and cargo, from Pan American or any of its affiliated carriers to Panagra, or vice versa, pursuant to this Agreement, it shall be the responsibility of the party from whose lines the shipment is transferred, but without incurring any liability for loss of revenue in cases of missed connections, to deliver such baggage or cargo to the other party at such location and hours as shall be agreed upon in writing by the parties.

(b) Whenever baggage or cargo is to be transferred for onward transportation hereunder and completion of such transportation necessitates compliance with the laws and regulations pertaining to importation and transit or exportation and transit of the country of the point of transfer, it shall be the responsibility of the transferring party to comply with such laws and regulations and to deliver, where necessary, to the onward carrying party prior to or simultaneously with the transfer, proper evidence of compliance with that country's laws and regulations pertaining to such importation and transit, or exportation and transit; provided, however, that in any case where compliance with such laws and regulations can be made only by the onward-carrying party, it shall be the onward-carrying party's responsibility to comply therewith.

17. In the event that Pan American shall have made arrangements with any other carrier (hereinafter referred to as an "Interline Agreement"), pursuant to which Pan American and its affiliated carriers are authorized to sell transportation over the lines of such other carrier and such other carrier is authorized to sell transportation over the lines of Pan American and its affiliated carriers, it is understood that Panagra is an affiliated carrier of Pan [fol. 2206] American for the purposes of the Interline Agreement and Panagra is hereby authorized to sell transportation, and agrees to honor transportation sold, pursuant to the Interline Agreement, subject to all the terms and conditions thereof. The basis of compensation and the other principal features of all Interline Agreements in effect at the time will be set forth in the appropriate instructions, tariffs, rules and regulations currently furnished to Panagra by Pan American and copies of such agreements will be furnished to Panagra upon request.

In the event that Panagra shall have made arrangements with any other carrier (hereinafter referred to as "Panagra Interline Agreement"), pursuant to which Panagra is authorized to sell transportation over the lines of such other carrier and such other carrier is authorized to sell transportation over the lines of Panagra, it is understood that Panagra may and is hereby authorized to make provision in the said Panagra Interline Agreement whereby Pan American and its affiliated carrier is authorized to sell transportation over the lines of such other carrier and such other carrier is authorized to sell transportation over the lines of Pan American and its affiliated carrier. Copies of all such agreements will be furnished to Pan American promptly after execution.

It is further understood that, with respect to any transportation sold in accordance with an Interline Agreement or a Panagra Interline Agreement:

(a) Settlement will be effected between Pan American and Panagra in the same manner as settlement is effected with respect to transportation sold pursuant to this Agreement, or in such other manner as may be mutually agreed upon;

(b) Panagra shall have all of the rights and obligations, and only the rights and obligations, provided under such Interline Agreement with respect to affiliated carriers of Pan American;

(c) Pan American and its affiliated carriers shall have all of the rights and obligations, and only the rights and obligations, provided under such Panagra Interline Agreement with respect to Pan American and its affiliated carriers;

(d) Except as otherwise provided for in Paragraph [fol. 2207] 5(i), 5(ii), 11(i) and 11(ii) hereof, no commission or other compensation or payment (including reimbursement of commissions or payment to sub-agents or others) will be paid by or to Panagra except to such extent as may be provided in the Interline Agreement or the Panagra Interline Agreement as the case may be;

(e) In the case of the Interline Agreement, Panagra agrees to indemnify and hold harmless Pan American from and against all claims, including costs and expenses, and to reimburse Pan American for all amounts paid by Pan American pursuant to the Interline Agreement or otherwise by reason of any action taken by Panagra pursuant to this paragraph 17. In the case of the Panagra Interline Agreement, Pan American agrees to indemnify and hold harmless Panagra from and against all claims, including costs and expenses, and to reimburse Panagra for all amounts paid by Panagra pursuant to the Panagra Interline Agreement or otherwise by reason of any action taken by Pan American pursuant to this paragraph 17.

18. (a) In case Pan American shall take action of any kind in connection with the sale by Panagra of transportation over the lines of a carrier with which Pan American has an interline agreement, or the sale by any such carrier of transportation over the lines of Panagra, Pan American shall be deemed to be acting only as agent for the carrier over whose lines such transportation is to be carried out and shall be

under no liability to Panagra in connection therewith, including, but without limitation, liability for payment of commissions or other payment unless collected by Pan American on behalf of Panagra, except that Pan American shall be liable for any loss or damage resulting from its own negligence or wilful misconduct.

(b) In any case Panagra shall take action of any kind in connection with the sale by Pan American or any of its affiliated carriers of transportation over the lines of a carrier with which Panagra has an interline agreement, or the sale by any such carrier of transportation over the lines of Pan American or any of its affiliated carriers, Panagra shall be deemed to be [fol. 2208] acting only as agent for the carrier over whose lines such transportation is to be carried out and shall be under no liability to Pan American or any of its affiliated carriers in connection therewith, including, but without limitation, liability for the payment of commissions or any other payments unless collected by Panagra on behalf of Pan American or any of its affiliated carriers, except that Panagra shall be liable for any loss or damage resulting from its own negligence or wilful misconduct.

19. Each party shall be liable for, and shall reimburse, defend and hold harmless the other, from and against all loss, including costs and expenses relating thereto, arising out of any action taken by such party contrary to or omitted to be taken by such party in accordance with this Agreement. Without limiting the generality of the foregoing, it shall cover loss resulting from fines, penalties or detention expenses imposed by any government or governmental agency (or which any government or governmental agency attempts to impose) provided, however, that when such loss is incurred in any case involving the following circumstances, it shall be charged as follows:

(a) When the fines, penalty or detention expense involves a passenger who is ticketed for a stopover at the point of transfer from lines of one party to the lines of the other, the loss involved shall be for the account of the onward carrying party.

(b) When the fine, penalty or detention expense results from facts not apparent upon reasonable examination at the time the passenger was processed for travel at the original point of departure or stopover point referred to in subparagraph (a) above, as the case may be, his qualifications for entry into the country imposing such fine, penalty or detention expense having appeared to be proper and complete (including, but not limited to, cases involving errors on the part of consular officials and changes of law or regulations while the passenger was en route), such loss shall be prorated between Panagra, Pan American and its affiliated carriers in proportion to the revenue which each shall receive from the carriage of the passenger.

[fol. 2209] The party against which any fine, penalty or detention expense is imposed (even though the loss resulting therefrom is, by the terms of this Agreement, subject to reimbursement in whole or in part by another party) shall be responsible for the defense thereof, it being understood that all reasonable efforts shall be taken by such party to obtain the remission of such fine, penalty or detention expense. Each interested party will cooperate and assist the defending party to the extent reasonably requested of it, furnishing all data and information related to such fine, penalty or detention expense in its possession or available to it.

20. Amounts paid by Pan American or its affiliated carriers or Panagra in settlement of claims for concealed loss or damage (i.e., loss or damage not observed or detected and recorded prior to delivery to the passenger or consignee) to express, cargo or baggage transported over the lines of Panagra and of Pan American or its affiliated carriers, as the case may be, shall, after crediting any amounts received from other carriers, not affiliated carriers of Pan American, in respect of such loss or damage, be prorated between Pan American and Panagra on the basis of the ratio of the miles of carriage performed by

Panagra, on the one hand, and Pan American and its affiliated carriers on the other, with respect of such express, cargo or baggage.

21. Any claim or controversy arising out of or relating to this Agreement or to the manner of performance of breach thereof shall be referred to, and settled by, arbitration in the manner provided in paragraph 25 of the Through Flight Agreement.

22. The term "affiliated carriers" whenever used in this Agreement shall, for the purpose hereof, be deemed to mean such companies, other than Panagra, engaged in the transportation of passengers, mail, express or cargo by air, in which Pan American or any company owning a majority of the capital stock of Pan American, owns a stock interest and which Pan American may from time to time designate in writing to Panagra; provided, however, that whenever Pan American shall make such designation of an affiliated carrier for any portion of the Western hemisphere, it shall first obtain the advance written ap- [fol. 2210] proval of the President of Panagra and shall terminate such designation whenever the President of Panagra shall so request on ninety days' written notice. If the President of Panagra fails to approve such designation or requests the termination thereof, Panagra will, at the written request of Pan American, release Pan American from its obligations to act as General Traffic and Sales Agent for that part of the Western hemisphere covered by such designation and will execute appropriate amendments to the Through Flight Agreement.

23. This Agreement cancels and supersedes all existing arrangements between the parties relating to the same subject matter, except that it shall not cancel, supersede, or in any way modify any provision of, or obligation specified in, the Through Flight Agreement, provided, however, that the Through Flight Agreement shall be modified in the event of the contingency specified in paragraph 22 hereof, nor shall this Agreement modify any provision of an agreement dated July 30, 1946 between W. R. Grace & Co. and Pan American Airways Corporation or an agree-

ment dated July 14, 1948 between Pan American, Panagra and W. R. Grace & Co. relating to parent company services and compensation therefor.

24. Neither party may assign this Agreement or any obligation imposed on such party hereunder; provided, however, that nothing herein contained shall prevent either party from carrying out its obligations hereunder in all or any portion of its General Agency Territory through a general sales agent, subject to the following conditions:

(a) The appointment of any such general sales agent shall not release such party from its obligations hereunder;

(b) The entire commission payable hereunder with respect to any action in the territory for which such general sales agent is appointed shall be paid to such general sales agent; and

(c) The party appointing any such general sales agent shall notify the other in writing of such appointment and the territory to which it relates and of any change in such appointment or territory; and

(d) Such general sales agent acting for the purposes of this Agreement shall be, and remain throughout the duration of the appointment for such purposes, a general sales agent acting for the appointing party in the territory to which the appointment relates.

[fol. 2211] 25. The provisions of this Agreement shall be subject to any applicable rule or resolution, including but not limited to rules or resolutions relating to commissions, of the International Air Transport Association or the Air Traffic Conference of America or any similar body or organization, or any branch, committee or conference thereof which is binding upon either party to this Agreement, or to any applicable agreement made by either party to this Agreement and approved by the International Air Transport Association, the Air Traffic Conference of America, or any such similar organization which is binding upon

either party to this Agreement, and said provisions shall be deemed to be amended by any such rule, resolution or agreement. Information applicable to this Agreement regarding such rules, resolutions and agreements which are not directly available to either party hereto as a member of the organization which adopted or approved the same, will be furnished to the other party within a reasonable time after the effective date thereof.

26. Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by mail or delivered by hand, in the case of notice to Pan American, to the Vice President—Traffic and Sales, Pan American Airways, Inc., 135 East 42nd Street, New York 17, New York, United States of America, or to such other person or such other address as Pan American may from time to time designate for that purpose, and in the case of notice to Panagra, to the General Traffic Manager, Pan American-Grace Airways, Inc., 135 East 42nd Street, New York 17, New York, United States of America, or such other person or such other address as Panagra may from time to time designate for that purpose.

27. This Agreement shall become effective on *September 10, 1948*, and shall continue in effect until May 5, 1950; provided, however, that either party may after that date terminate this Agreement by giving six (6) months' written notice of termination to the other party. Termination of this Agreement shall not relieve either party from any obligation or liability on its part arising from or connected with tickets, exchange orders, airwaybills or other contracts for transportation issued or effective prior to such [fol. 2212] termination nor shall it relieve either party from any liability on its part based upon any state of facts existing prior to such termination.

IN WITNESS WHEREOF, Pan American and Panagra have caused this Agreement to be executed in their cor-

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Italicized material added and initialed but initials illegible.

porate names by their respective officers thereunto duly authorized.

PAN AMERICAN AIRWAYS, INC.

By /s/ WILLIS G. LIPSCOMB
Vice President-Traffic & Sales

WITNESSES:

(Two signatures illegible)

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL
Vice President

WITNESSES:

(Two signatures illegible)

[fol. 2213]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 47

I, Joseph J. Cantwell, hereby certify that I am Assistant Secretary of Pan American World Airways, Inc.; that the attached document is a true and complete copy of the document evidencing the following agreement:

Letter Agreement, dated December 10, 1951, between Pan American World Airways, Inc., and Pan American-Grace Airways, Inc., providing for the handling of Pan American passenger sales for the account of Panagra on a lift basis in lieu of the previous sales reporting procedure.

/s/ JOSEPH J. CANTWELL
Assistant Secretary

Dated: May 12, 1952

[fol. 2214]

(Letterhead of Pan American-Grace Airways, Inc.,
New York 17, N. Y.)

Subject: LIFT VS. SALES

December 10, 1951

Mr. J. S. Woodbridge, Comptroller
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

Dear Mr. Woodbridge:

Sometime ago you asked that Panagra give consideration to handling PAA passenger sales for account of Panagra on a lift basis in lieu of the present sales reporting procedure which has been the practice up to now. On the basis of discussions with you, I am pleased to confirm our agreement to change over to a lift basis as from November 1, 1951 with the understanding that you are agreeable to accepting a surcharge equivalent to 2% of the net charge between our two companies each month corresponding to passenger tickets lifted, it being understood that the 2% surcharge is to compensate Panagra for the breakage on unflown tickets and is based upon Panagra's ratio of unflown tickets written off to Revenue during the past two calendar years. In adopting the foregoing change in procedure, it is understood that either company may at six-months intervals request a prospective review of the arrangement, should any inequities develop.

In our discussions you mentioned that PAA was agreeable to considering placing a deposit with Panagra equivalent to any estimated lag in the receipt of cash liquidations on a lift basis. Panagra is not at this time suggesting such a deposit, but I wish to reserve the right to bring the matter up for consideration at a future date if experience indicates any appreciable inequity to Panagra.

If the foregoing correctly states our understanding, will you please so indicate in the space provided below.

Yours very truly,

/s/ K. A. LAWDER
K. A. Lawder
Vice President & Comptroller

ACCEPTED:

/s/ J. S. WOODBRIDGE
J. S. Woodbridge, Comptroller

cc: ABShea DCampbell
EBalluder JTShannon

[fol. 2215]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 48

(Letterhead of Pan American-Grace Airways, Inc., New York 5, N. Y.)

March 6, 1956

Pan American World Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

Gentlemen:

Reference is made to your letter of January 5, 1956. In that letter you refer to your letter to us dated December 1, 1948, designating certain carriers as affiliated carriers of Pan American pursuant to paragraph 22 of the General Traffic and Sales Agency Agreement between our respective companies, dated September 10, 1948, and you propose the following changes in the designation of such carriers:

1) Effective as of January 1, 1955, Panair do Brasil, S.A., acts as General Traffic and Sales Agent for Pan American in Brazil and Paraguay, except that they will not act as General Traffic and Sales Agent with respect to the sale of passenger transportation in the Federal Dis-

trict and State of Rio and in the State of Sao Paulo, and Panair do Brasil, S.A., will act as General Traffic and Sales Agent for Panagra in such countries except as indicated above.

2) Pan American hereby designates Aeronaves de Mexico, S.A., pursuant to the provisions of paragraph 22 of the General Traffic and Sales Agency Agreement between our respective companies, dated September 10, 1948, as an affiliated carrier of Pan American solely with respect to matters relating to interline sales and Panagra acting as General Traffic and Sales Agent under said Agreement.

This letter will constitute the written approval to the foregoing changes as required by paragraph 22 of the said [fol. 2216] General Traffic and Sales Agency Agreement to be given by the President of Panagra, except that insofar as concerns payment of commissions, it will be necessary for us to use an effective date of January 1, 1956 for the changes in the territory in which Panair do Brasil acts as Panagra's General Agent. I understand that this point has been discussed and agreed between our respective accounting departments.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

/s/ ANDREW B. SHEA
Andrew B. Shea
President

[fol. 2217]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 49

(Letterhead of Pan American-Grace Airways, Inc., New York 5, N. Y.)

[Stamp—Received—Apr 24 1956—John C. Leslie]

April 24, 1956

Pan American World Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

Dear Sirs:

This will confirm our understanding with respect to your purchasing services in connection with the purchase by Panagra of four DC-8 aircraft, spare engines, components and parts (hereinafter collectively called "spares") therefor, as authorized by the Panagra Board of Directors at its meeting on December 20, 1955, and in connection with the purchase of two additional DC-8 aircraft and spares therefor in case the option which you have granted to Panagra with respect to such two additional aircraft is exercised.

Pan American will perform purchasing services as agent for Panagra in accordance with the purchasing and shipping agreement dated July 14, 1948, in connection with the purchases of said aircraft and spares, subject to the exceptions below.

The commissions to be payable by Panagra to Pan American for such services in respect of said six DC-8 aircraft and the initial provisioning of spares therefor will be at the following rates:

[fol. 2218] 2½% on the first $5,000,000 of purchase price
1½% on the next $5,000,000 of purchase price
1% on the balance of the purchase price

Provided, however, that the purchase price of the original four DC-8 aircraft and spares shall be taken into account

to determine the rates of commission applicable to the two aircraft and spares on option only if the scheduled delivery dates therefor are not later than one year after the scheduled delivery date for the last of said four aircraft.

As used herein, the term "initial provisioning of spares" shall mean all spares for DC-8 aircraft in respect of which Panagra has authorized or placed firm orders prior to the scheduled date for delivery to Panagra of the first DC-8 aircraft.

The commissions payable to Pan American as provided herein will be paid by Panagra as follows:

25% one year after the date of this letter
25% two years after the date of this letter
25% three years after the date of this letter,
The balance upon delivery of the aircraft or equipment to which such commissions relate

The first three payments will be based upon the estimated aggregate purchase price, and the final payment will be adjusted to reflect the final purchase price.

Your commissions for all purchasing services rendered to Panagra other than those provided for herein will be [fol. 2219] at the rates specified in the purchasing and shipping agreement dated July 14, 1948.

If the foregoing correctly sets forth our understanding, will you kindly sign and return to us the enclosed copy of this letter.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ ANDREW B. SHEA
President

ACCEPTED: April 25, 1956

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ J. C. LESLIE
V.P.

[fol. 2220]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 50

(Letterhead of Pan American World Airways System, New York 17, N. Y.)

[Stamp—Received in the Office of Vice Pres. & Gen'l Counsel—Jul-5 1957]

June 26, 1957

Pan American-Grace Airways, Inc.
135 East 42nd Street
New York 17, New York

Attention: Mr. Douglas Campbell,
Vice President & General Manager

Dear Sirs:

Reference is made to the Lease Agreement dated September 9, 1955 between our respective companies, relating to the lease by Panagra to Pan American of four (4) Douglas Model DC-6 aircraft and to the lease by Pan American to Panagra of one (1) Douglas Model DC-6B aircraft.

Your letter to us dated September 9, 1955, relating to such modifications to the leased aircraft as are described in Douglas Service Bulletins Nos. 558 and 569 and which may be required by a mandatory Civil Aeronautics Administration (CAA) airworthiness directive, states that the cost of any such modifications will be for the account of the lessor. We have heretofore requested that Panagra incorporate into the four (4) Douglas Model DC-6 aircraft leased to Pan American the modifications described in Douglas Service Bulletin No. 569, even though the accomplishment of such modifications has not been made mandatory by a CAA airworthiness directive. This letter, when accepted by you, will confirm our agreement with respect to the following matters relating to the accomplishment of such modifications:

1. Pan American has heretofore issued its purchase order to cover the procurement, as agent for Panagra, of four

(4) kits of parts required for the accomplishment of the modifications described in Douglas Service Bulletin No. 569, at the price of $21,500 for each kit. Such purchase order was issued to the Douglas Aircraft Company, Inc., in accordance with the provisions of the Purchasing and Shipping Agreement between our respective companies [fol. 2221] dated July 14, 1948.

2. Pan American will, as agent for Panagra, issue its purchase order to the Douglas Aircraft Company, Inc. to cover accomplishment of the modifications described in Douglas Service Bulletin No. 569, in the four (4) Model DC-6 aircraft leased to Pan American under the above-mentioned Lease Agreement, including installation of the parts referred to in paragraph 1 above. Such modification work will be performed by the Douglas Aircraft Company at its plant at Tucson, Arizona, and the estimated cost of such work is $93,487 per aircraft.

3. All costs payable to Douglas Aircraft Company, Inc. pursuant to paragraphs 1 and 2 above, and all other costs payable pursuant to the terms of the aforementioned purchase orders, shall be borne by Panagra.

4. In consideration of your agreement to have such modifications incorporated at your expense in the aircraft leased to Pan American even though the accomplishment of such modifications has not been made mandatory by a CAA airworthiness directive, no commission provided for in paragraph 5 of the above mentioned Purchasing and Shipping Agreement will be payable by Panagra to Pan American in connection with the purchase orders issued in accordance with the provisions of paragraphs 1 and 2 above. Likewise Pan American, at its cost and with its personnel, will ferry the aircraft from Miami, Florida to the Douglas plant at Tucson, Arizona and return. All other terms and conditions set forth in the Purchasing and Shipping Agreement dated July 14, 1948 between our respective companies shall be deemed to be applicable to the transactions referred to in paragraphs 1 and 2 above.

If the foregoing correctly sets forth our understanding in regard to these matters, will you please indicate your

acceptance on the enclosed copy of this letter and return the same to us. This letter supersedes our letter to you dated June 4, 1957, relating to the same subject matter.

Very truly yours,

PAN AMERICAN WORLD AIRWAYS, INC.

/s/ JOHN C. LESLIE
John C. Leslie
Admin. Vice President

ACCEPTED: July 1, 1957

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ DOUGLAS CAMPBELL

[fol. 2222]

I, Josiah Macy, Jr., hereby certify that I am Assistant Secretary of Pan American World Airways, Inc.; that the attached documents are true and complete copies of the documents evidencing the following agreement:

Exchange of correspondence dated respectively June 3, June 7 and June 26, 1957, between Pan American World Airways, Inc. (Pan American) and Pan American-Grace Airways, Inc. (PANAGRA), whereby the designation of Aerovias Nacionales de Colombia, S.A. (AVIANCA), as an affiliated carrier of Pan American under the General Traffic and Sales Agency Agreement dated September 10, 1948, between Pan American and PANAGRA, shall be terminated effective June 18, 1957, with respect to the Republic of Perú, so that Perú shall cease to be a part of the territory in which PANAGRA will act as General Traffic and Sales Agent for AVIANCA pursuant to the said General Traffic and Sales Agency Agreement. (CAB No. 2473).

/s/ JOSIAH MACY, JR.
Assistant Secretary

DATED: July 10, 1957

[fol. 2223]
[Stamp—Conformed Copy]

[Stamp—Received—Jun 5 1957]

[Handwritten signatures—Mr. Balluder—Mr. Pirie]

June 3, 1957

Pan American World Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

Attention: Vice President Traffic & Sales

Dear Sirs:

By letter dated December 1, 1948, Pan American designated certain airlines as "affiliated carriers" pursuant to paragraph 22 of the General Traffic and Sales Agency Agreement dated September 10, 1948, between Pan American and Panagra. Among the carriers so designated was Aerovías Nacionales de Colombia (AVIANCA).

By letter dated February 9, 1949, the President of Panagra gave his approval of such designation as required by paragraph 22 of the said General Traffic and Sales Agency Agreement. These designations have since been modified by letters dated January 5, 1956, from Pan American to Panagra, and March 6, 1956, from Panagra to PAA.

This letter constitutes a request pursuant to the said paragraph 22 that the designation of AVIANCA as an affiliated carrier of Pan American be terminated with respect to the Republic of Perú, so that Perú shall cease [fol. 2224] to be a part of the territory in which Panagra will act as General Traffic and Sales Agent for AVIANCA pursuant to the said General Traffic and Sales Agency Agreement. Although the provisions of paragraph 22 specify that the request for termination be given on ninety days' notice, we request that the ninety-day notice provision be waived in this instance, and that such termination be made effective on the date on which AVIANCA inaugurates its proposed service to Perú.

Very truly yours,

Andrew B. Shea
President

[fol. 2225]
[Stamp—Conformed Copy]

June 7, 1957

Pan American-Grace Airways, Inc.
7 Hanover Square
New York, New York

Attention: Mr. Andrew B. Shea,
President

Dear Sirs:

We wish to acknowledge receipt of your letter dated June 3, 1957; requesting that the designation of Aerovias Nacionales de Colombia, S.A. (Avianca) as an affiliated carrier of Pan American under the General Traffic and Sales Agency Agreement dated September 10, 1948 between our respective companies be terminated with respect to the Republic of Peru.

You letter states that, although the provisions of paragraph 22 of the General Traffic and Sales Agency Agreement specify that the request for termination be given on ninety (90) days notice, Panagra requests that the ninety (90) days provision be waived in this instance and that such termination be made effective on the date on which Avianca inaugurales its proposed service to Peru. We are taking this matter up with Avianca, and will advise you as soon as we have been able to make appropriate arrangements with them.

Very truly yours,

PAN AMERICAN WORLD AIRWAYS, INC.

Original signed by
WILLIS G. LIPSCOMB

Willis G. Lipscomb
Vice President, Traffic & Sales

bcc: Vice Pres. Balluder
Exec. Vice Pres. Morrison—MIA
Comptroller
Treasurer
Mr. J. A. Mannion

JAM:VS

[fol. 2226]
[Stamp—Conformed Copy]

[Stamp—Received in the Office of Vice Pres. & Gen'l Counsel—Jun 27, 1957]

June 26, 1957.

Pan American-Grace Airways, Inc.
7 Hanover Square
New York, New York

Attention: Mr. Andrew B. Shea, President

Dear Sirs:

With further reference to your letter of June 3 and my reply of June 7, you will please be advised that the General Traffic & Sales Agency Agreement between Pan American World Airways, Inc. and Aerovias Nacionales de Colombia, S.A. (Avianca) has been amended, effective June 16, 1957, so as to exclude Peru from the territory in which Pan American and its affiliated carriers act as General Traffic & Sales Agents for Avianca.

Cordially,

Original signed by
WILLIS G. LIPSCOMB

Willis G. Lipscomb

bcc: Vice President Balluder
Executive Vice President Morrison
Comptroller
Treasurer
Mr. Mannion √
Director—Traffic w/a

[fol. 2227]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 51

FINAL

GENERAL TRAFFIC AGREEMENT

THIS AGREEMENT, made and entered into this 11th day of March, 1932, by and between PAN AMERICAN AIRWAYS, INC., a New York corporation, having its principal office in New York, N. Y., (hereinafter called "Pan American"), party of the first part, and SOCIEDAD COLOMBO-ALEMANA DE TRANSPORTIS AFRIOS, a Colombian corporation, having its principal office at Barranquilla, in the Republic of Colombia, (hereinafter called "Scadta"), party of the second part,

WITNESSETH:

WHEREAS, Pan American and its affiliated companies specified in the definition of the term "Operating Affiliate" in Paragraph "SECOND" below are engaged in the general business of the transportation of passengers and property by air in the Continental United States, the Bahamas, West Indies, Virgin Islands, the Windward and Leeward Islands, Trinidad, the Guianas, Mexico, Canal Zone, and Central and South America, and in the interior of certain of said countries; and

WHEREAS, Scadta is engaged in the general business of the transportation of passengers and property by air in Colombia, and has contracts for air transportation service in Venezuela, Ecuador and Panama; and

WHEREAS, the parties desire to cooperate for their mutual advantage, in the manner herein contemplated,

NOW, THEREFORE, for and in consideration of the sum of One Dollar ($1.00) cash in hand paid by each of the parties hereto to the other, the receipt whereof is hereby acknowledged, and of other good and valuable considerations, the parties hereto mutually agree as follows:

FIRST: That this agreement shall not in any way affect, or relate to, and that the performance of same shall not

in any way interfere with, the transportation, handling, dispatch or distribution of mails carried by Scadta or Pan American or any company affiliated with Pan American [fol. 2228] in the Pan American Airways System.

SECOND: That for the purposes of this agreement the following definitions of the terms used herein are adopted and shall apply:

The term "Operating Affiliate" shall refer to the following named companies, and such other companies as Pan American Airways, Inc. may from time to time, after notice to Scadta, designate to be included within such term for the purposes of this agreement:

Panair do Brasil, S. A., and Cia. Mexicana de Aviacion, S. A.

The term "common points" shall mean points where both Scadta and Pan American, or both Scadta and any Operating Affiliate, are engaged in receiving and/or dispatching persons and/or property by air.

THIRD: Pan American agrees (a) to direct, or cause its Operating Affiliate or Affiliates to direct, to the offices of Scadta, at common points, persons carried by Pan American or its Operating Affiliate or Affiliates to, or coming to its or their offices at, common points, who signify an intention or desire to travel by air to points then served by the lines of Scadta, or to such points and thence by any means to other points, and (b) to tender, or cause its Operating Affiliate or Affiliates to tender, to Scadta, at common points, all shipments of property carried by Pan American or its Operating Affiliate or Affiliates to, or coming to its or their offices at, common points, and consigned, or to be consigned, for carriage therefrom by air, or by air and/or a transportation service of the nature and character of the transportation service operated by Scadta, to points to which the transportation service operated by Scadta extends, or to such points and thence by any means to other points; provided that such person or the consignor of such property does not require that the transportation shall be by some other route or by some other service or does not prescribe requirements inconsistent with Scadta's rates, tariffs, rules, regulations and

form of contract of carriage, and provided that neither Pan American nor any of its Operating Affiliates shall be required to deprive itself or themselves of the longest pos-
[fol. 2229] sible carriage of persons or property over its or their own lines, or in the transportation service operated by it and/or them, and provided that the authorization granted by Scadta in Paragraph "FOURTH" hereof shall not be deemed to be limited by reason of any of the matters referred to in "(a)" and "(b)" above.

Scadta agrees to receive, at common points, such persons desiring so to travel, for onward or initial transportation therefrom to points then served by the lines of Scadta, and such property so consigned, for onward or initial transportation therefrom to points to which the transportation service operated by Scadta extends, all subject to and in accordance with the tariffs and rates, and subject to the rules and regulations, of Scadta, and subject to the terms, provisions and conditions of the current forms of tickets or bills of lading which shall then have been approved by Scadta for use in connection with such trans, ortation of passengers and property.

Scadta agrees to furnish to Pan American and its Operating Affiliates from time to time the aforementioned tariffs, rules and regulations and the aforementioned forms of tickets and bills of lading, and full information regarding the transportation service at the time offered by Scadta.

Advertising matter issued by Pan American or any of its Operating Affiliates which refers to the service of Scadta shall be submitted to, and approved by, Scadta before it is used.

FOURTH: Scadta hereby authorizes Pan American, and each of its Operating Affiliates, and such agents and representatives of Pan American or of one or more of its Operating Affiliates as Pan American or such Operating Affiliate or Affiliates may appoint for the purpose, and as may be approved by Scadta, to issue to each person who may desire to obtain a ticket for passage over any of the lines operated by Scadta for the transportation of passengers, an order exchangeable for a ticket, or a ticket, in a form

approved by Scadta, and to check the baggage of such person over said lines, subject to, and in accordance with, the form or forms of baggage check or contract approved by Scadta, and to issue to each person desiring to consign [fol. 2230] property for carriage in the service operated by Scadta for the transportation of property, a bill of lading in a form approved by Scadta, (which ticket, check, contract or bill of lading may, if mutually agreed in writing by the parties hereto, relate to through transportation over the lines of Pan American or its Operating Affiliate or Affiliates and Scadta), and to execute or issue all other documents necessary or appropriate to the transportation of such persons or property, all subject to and in accordance with such tariffs, rates, rules and regulations relating to the transportation of passengers, baggage and/or property as shall at the time be prescribed or approved by Scadta and as shall have been furnished to Pan American and its Operating Affiliates, and subject to and in accordance with such laws as shall be applicable to such transportation. It is understood that no ticket exchange order, ticket, baggage check, or other form of contract purporting to entitle the holder to transportation on the lines of Scadta, and no bill of lading or express receipt covering any shipment of property for carriage in the transportation service operated by Scadta, will be issued in any form other than the current form on which Pan American and its Operating Affiliates have received the approval of Scadta, and that no such ticket exchange order, ticket, baggage check, contract, bill of lading or express receipt will be issued unless reservation for the accommodations required has been made, or otherwise than subject to and in accordance with the tariffs, rules and regulations of Scadta which have been furnished to Pan American and its Operating Affiliates, and unless Pan American, or one of its Operating Affiliates, or Scadta shall have received payment of the total charges, at the rates in force at the time as furnished to Pan American and its Operating Affiliates, or arrangements satisfactory to Scadta and Pan American shall previously have been made respecting the payment of such charges.

Scadta agrees to accept each such ticket and baggage check, and to issue its ticket in exchange for each such [fol. 2231] ticket-exchange order so issued, and to receive each such passenger and his baggage for whom and which such ticket exchange order, or ticket, and baggage check, have been so issued, for transportation over the lines of Scadta, and each shipment of property for which such bill of lading has been so issued, for carriage in the transportation service operated by Scadta, all subject to and in accordance with the terms, conditions and provisions of such ticket exchange order, or ticket, and baggage check, or such bill of lading or express receipt, respectively, and subject to all such rules and regulations.

It is further understood and agreed that in the event that Pan American or any of its Operating Affiliates shall receive notice of the cancellation of any ticket exchange order or ticket for passage over any of the lines of Scadta, or notice of any claim respecting baggage or other property delivered to Scadta, Pan American will notify, or will cause one of its Operating Affiliates to notify, Scadta immediately upon the receipt of such notice.

It is understood that Pan American and each of its Operating Affiliates, and each of the aforementioned agents and representatives, in issuing a ticket exchange order, ticket, baggage check or other contract for passenger and/or baggage transportation over the lines of Scadta, or in issuing a bill of lading or express receipt for the carriage of property in the transportation service operated by Scadta, shall be deemed to be acting only as the agent of Scadta, and for such transportation service, and shall not be liable or responsible for any injury to, or the death of, any person, or for any loss to any person, or for any injury to, loss of, or delay in transporting or delivering any baggage, express or other property, occurring on any of the lines of Scadta or in the aforementioned transportation service, or caused by, or arising from, any act of Scadta, or any of its officers, agents, employees or servants, and Scadta hereby agrees to indemnify and hold harmless Pan American, and each of its Operating Affiliates, and each such agent and representative, from and against all [fol. 2232] claims and damage for any such injury, death, loss or delay.

In the event that any tariff or rate, or any form of ticket exchange order, ticket, baggage check, bill of lading, express receipt or transportation contract, or any rule or regulation of Scadta, for or relating to the transportation of passengers or property over the lines of Scadta or in the transportation service operated by Scadta, shall be changed at any time, or any service operated by Scadta for the transportation of persons or property shall be changed, suspended, or cancelled, Scadta shall notify Pan American and each of its Operating Affiliates thereof at least fifteen days prior to the effective date of such change, suspension or cancellation, and in the event of a suspension such notice shall state the period of suspension as nearly as may be, and it is agreed that neither Pan American nor any of its Operating Affiliates shall be under any liability with respect to any ticket exchange order, ticket, baggage check, contract, bill of lading or express receipt for transportation over any of the lines of Scadta or in the transportation service operated by Scadta which may have been issued by Pan American or any of its Operating Affiliates or any of the aforementioned agents or representatives (in accordance with the tariffs, rates, rules and regulations, and in the forms, furnished to Pan American or its Operating Affiliates) prior to the receipt by Pan American and its Operating Affiliates of notice of such changes, or of such suspension or cancellation of service, or prior to the expiration of said fifteen day period.

FIFTH: Scadta agrees (a) to direct to the offices of Pan American, or of its Operating Affiliate or Affiliates, at common points, persons carried by Scadta to, or coming to the offices of Scadta at, common points, who signify an intention or desire to travel by air to points then served by the lines of Pan American, and/or its Operating Affiliate or Affiliates, or to such points and thence by any means to other points, and (b) to tender to Pan American, or its Operating Affiliate or Affiliates, at common points, all shipments of property carried by Scadta to, or coming to the offices of Scadta at, common points, and consigned, or to be consigned, for carriage therefrom by air, or by [fol. 2233] air and/or a transportation service of the nature

and character of the transportation service operated by Pan American, and/or its Operating Affiliate or Affiliates, to points then served by the lines of Pan American, and/or its Operating Affiliate or Affiliates, or to which the transportation service operated by Pan American, and/or its Operating Affiliate or Affiliates extends, or to such points and thence by any means to other points; provided that such person or the consignor of such property does not require that the transportation shall be by some other route or by some other service or does not prescribe requirements inconsistent with the rates, tariffs, rules, regulations and form of contract of carriage of Pan American and/or its Operating Affiliate or Affiliates, and provided that Seadta shall not be required to deprive itself of the longest possible carriage of persons or property over its own lines, or in the transportation service operated by Seadta, and provided that the authorization granted by Pan American in Paragraph "SIXTH" hereof shall not be deemed to be limited by reason of any of the matters referred to in "(a)" and "(b)" above.

Pan American agrees to receive, or to cause its Operating Affiliate or Affiliates to receive, at common points, such persons desiring so to travel, for onward or initial transportation therefrom to points then served by the lines of Pan American and/or its Operating Affiliate or Affiliates, and such property so consigned, for onward or initial transportation therefrom to points to which the transportation service operated by Pan American and/or its Operating Affiliate or Affiliates extends, all subject to and in accordance with the tariffs and rates, and subject to the rules and regulations, of Pan American and its Operating Affiliate or Affiliates, and subject to the terms, provisions and conditions of the current forms of tickets or bills of lading which shall then have been approved by Pan American and its Operating Affiliate or Affiliates for use in connection [fol. 2234] with such transportation of passengers and property.

Pan American agrees to furnish to Seadta from time to time the aforementioned tariffs, rules and regulations and the aforementioned forms of tickets and bills of lading.

and full information regarding the transportation service at the time offered by Pan American and its Operating Affiliates.

Advertising matter issued by Scadta which refers to the service of Pan American or of any of its Operating Affiliates shall be submitted to, and approved by Pan American before it is used.

SIXTH: Pan American hereby, on behalf of itself, and each of its Operating Affiliates, authorizes Scadta, and such agents and representatives of Scadta as Scadta may appoint for the purpose, and as may be approved by Pan American, to issue to each person who may desire to obtain a ticket for passage over any of the lines operated by Pan American, or any of its Operating Affiliates, for the transportation of passengers, an order exchangeable for a ticket, or a ticket, in a form approved by Pan American, and to check the baggage of such person over said lines, subject to, and in accordance with, the form or forms of baggage check or contract approved by Pan American, and to issue to each person desiring to consign property for carriage in the service operated by Pan American, and/or its Operating Affiliates, for the transportation of property, a bill of lading in a form approved by Pan American, (which ticket, check, contract or bill of lading may, if mutually agreed in writing by the parties hereto, relate to through transportation over the lines of Scadta and Pan American or its Operating Affiliate or Affiliates), and to execute or issue all other documents necessary or appropriate to the transportation of persons or property, all subject to and in accordance with such tariffs, rates, rules and regulations relating to the transportation of passengers, baggage and/or property as shall at the time be prescribed or approved by Pan American, and as shall have been furnished to Scadta, and subject to and in accordance with such laws [fol. 2235] as shall be applicable to such transportation. It is understood that no ticket exchange order, ticket, baggage check, or other form of contract purporting to entitle the holder to transportation over the lines of Pan American and/or its Operating Affiliate or Affiliates, and no bill of lading or express receipt covering any shipment

of property for carriage in the transportation service operated by Pan American and/or its Operating Affiliate or Affiliates, will be issued in any form other than the current form on which Scadta shall have received the approval of Pan American, and that no such ticket exchange order, ticket, baggage check, contract, bill of lading or express receipt will be issued unless reservation for the accommodations required has been made, or otherwise than subject to and in accordance with the tariffs, rules and regulations of Pan American and/or its Operating Affiliate or Affiliates which have been furnished to Scadta, and unless Scadta, or Pan American, or one of its Operating Affiliates, shall have received payment of the total charges, at the rates in force at the time as furnished to Scadta, or arrangements satisfactory to Pan American and Scadta shall previously have been made respecting the payment of such charges.

Pan American agrees to accept, and to cause its Operating Affiliate or Affiliates to accept, each such ticket and baggage check, and to issue its or their ticket in exchange for each such ticket exchange order so issued, and to receive each such passenger and his baggage for whom and which such ticket exchange order, or ticket, and baggage check, have been so issued, for transportation over the lines of Pan American and/or its Operating Affiliate or Affiliates, and each shipment of property for which such bill of lading has been so issued, for carriage in the transportation service operated by Pan American, and/or of its Operating Affiliate or Affiliates, all subject to and in accordance with the terms, conditions and provisions of such ticket exchange [fol. 2236] order, or ticket, and baggage check, or such bill of lading or express receipt, respectively, and subject to all such rules and regulations.

It is further understood and agreed that in the event that Scadta shall receive notice of the cancellation of any ticket exchange order or ticket for passage over any of the lines of Pan American, or of any of its Operating Affiliates, or notice of any claim respecting baggage or other property delivered to Pan American or any of its Operating Affiliates, Scadta will notify Pan American immediately upon the receipt of such notice.

It is understood that Scadta, and each of the aforementioned agents and representatives, in issuing a ticket exchange order, ticket, baggage check or other contract for passenger and/or baggage transportation over the lines of Pan American and or its Operating Affiliate or Affiliates, or in issuing a bill of lading or express receipt for the carriage of property in the transportation service operated by Pan American, and/or of any of its Operating Affiliates, shall be deemed to be acting only as the agent of Pan American, and/or its Operating Affiliate or Affiliates, and for such transportation service, and shall not be liable or responsible for any injury to, or the death of, any person, or for any loss to any person, or for any injury to, loss of, or delay in transporting or delivering any baggage, express or other property, occurring on any of the lines of Pan American, or of any of its Operating Affiliates, or in the aforementioned transportation service, or caused by, or arising from, any act of Pan American, or of any of its Operating Affiliates, or any of its or their officers, agents, employees or servants, and Pan American hereby agrees to indemnify and hold harmless Scadta and each such agent and representative, from and against all claims and damage for any such injury, death, loss or delay.

In the event that any tariff or rate, or any form of ticket exchange order, ticket, baggage check, bill of lading, express receipt or transportation contract, or any rule or regu- [fol. 2237] lation of Pan American and/or its Operating Affiliate or Affiliates, for or relating to the transportation of passengers or property over the lines of Pan American and/or its Operating Affiliate or Affiliates or in the transportation service operated by Pan American and/or its Operating Affiliate or Affiliates, shall be changed at any time, or any service operated by Pan American and/or its Operating Affiliate or Affiliates for the transportation of persons or property shall be changed, suspended, or cancelled, Pan American shall notify Scadta thereof at least fifteen days prior to the effective date of such change, suspension or cancellation, and in the event of a suspension such notice shall state the period of suspension as nearly as may be, and it is agreed that Scadta shall not

be under any liability with respect to any ticket exchange order, ticket, baggage check, contract, bill of lading or express receipt for transportation over any of the lines of Pan American and/or its Operating Affiliate or Affiliates or in the transportation service operated by Pan American and/or its Operating Affiliate or Affiliates which may have been issued by Scadta or any of the aforementioned agents or representatives (in accordance with the tariffs, rates, rules and regulations, and with the forms, furnished to Scadta) prior to the receipt by Scadta of notice of such changes, or of such suspension or cancellation of service, or prior to the expiration of said fifteen day period.

SEVENTH: It is understood that nothing in this agreement shall be construed as requiring Pan American or any of its Operating Affiliates or Scadta to initiate or maintain service between any particular points.

EIGHTH: Each of the parties hereto will at all times furnish to the other all information which the other may require with reference to the tariffs subject to this agreement, and will give to the other the assistance of its technical staff and data in so far as it may be practicable to do so.

NIXTH: This agreement shall continue in force for a period of five (5) years from the date hereof, and thereafter until notice

[fol. 2238]

New York, N. Y.
March 11, 1932.

Sociedad Colombo-Almana
de Transportes Aereos, S. A.,
Barranquilla, Colombia.

Dear Sirs:

Referring to the General Traffic Agreement entered into between you and ourselves under the above date, we wish to confirm our mutual agreement supplementing such Agreement as follows:

1. Said Agreement provides that advertising matter issued by you or by us or by any of our Operating Affiliates,

(the term "Operating Affiliates" as herein used to have the same meaning as expressed in such General Traffic Agreement) which refers to the service of the other party shall receive the prior approval of such other party before it is used. It is understood, however, that you or ourselves, or any of our Operating Affiliates, may, without receiving the prior approval of the other, and each of us agrees to, include in its published passenger and express tariffs and schedules relating to transportation to and from points common to your lines and to those of the Pan American Airways System (a) references that connections via the lines of the other party from such points to points on such other party's lines, respectively, are available, and (b) upon request of the other party, such of its passenger and express tariffs and schedules as it may furnish, all such tariffs to be stated only in United States of America currency. It is understood that neither you nor ourselves, nor any of our Operating Affiliates shall be responsible for any inaccuracy in any of the tariffs or schedules of the other, except to see that the same as published are in conformity with the copies furnished by the other. It is further understood that each of you, ourselves and our Operating Affiliates shall be privileged to change any of its tariffs or schedules at any time, without the consent of the other, and that no responsibility shall attach to the other with respect to any such change, except as to the issuance of ticket exchange orders, tickets, baggage checks or bills of lading as provided in said General Traffic Agreement.

2. (a) We will pay to you with respect to each ticket and bill of lading issued to you, and accepted by us, covering transportation over any of the lines of the Pan American Airways System, the following percentages, same to be computed on fares, charges and tariffs at the rates in force at the time as furnished by us to you, and in United States of America currency at the current rate of exchange:

[fol. 2239] (i) 5% of the fare collected by you, or any of your agents or representatives, relating to transportation over the lines of the Pan American Airways System, under each such

ticket, (or if the total fare under such ticket covers transportation over the lines of the Pan American Airways System and also the Scadta Airways System, 5% of the portion thereof collected by you or such agents or representatives which relates to transportation over the lines of the Pan American Airways System).

(ii) 5% of the weight or volume charge collected by you or such agents or representatives relating to transportation over the lines of the Pan American Airways System under each such bill of lading; (or if the total weight or volume charge under any such bill of lading includes charges for transportation over the lines of the Pan American Airways System, and also of the Scadta Airways System, 5% of that portion of such charge which relates to transportation over the lines of the Pan American Airways System).

(iii) 50% of the handling charge collected under each such bill of lading.

(iv) You are hereby authorized to collect for our account the fares and charges under each such ticket, baggage check and bill of lading or such portions as relate to transportation over the lines of the Pan American Airways System.

(b) You will pay to us with respect to each ticket and bill of lading issued by us, and accepted by you, covering transportation over any of your lines, the following percentages, same to be computed on fares, charges and tariffs at the rate in force at the time as furnished by you to us, and in United States of America currency at the current rate of exchange:

(i) 5% of the fare collected by us, or any of our Operating Affiliates, or agents or representatives thereof, relating to transportation

over the lines of the Scadta Airways System, under each such ticket, (or if the total fare under such ticket covers transportation over the lines of the Pan American Airways System and also of the Scadta Airways System, 5% of the portion thereof collected by us, or any of our Operating Affiliates, or agents or representatives thereof, which relates to trans- [fol. 2240] portation over the lines of the Scadta Airways System).

(ii) 5% of the weight or volume charge collected by us, or any of our Operating Affiliates, or agents or representatives thereof, relating to transportation over the lines of the Scadta Airways System under each such bill of lading, (or if the total weight or volume charge under any such bill of lading includes charges for transportation over the lines of the Pan American Airways System and also of the Scadta Airways System, 5% of that portion of such charge which relates to transportation over the lines of the Scadta Airways System).

(iii) 50% of the handling charge collected under each such bill of lading.

(iv) We are hereby authorized to collect for your account the fares and charges under each such ticket, baggage check and bill of lading or such portions as relate to transportation over the lines of the Scadta Airways System.

(c) It is understood that no commissions will be payable with respect to any portion of the transportation charge under any such bill of lading which is based upon value of shipment or goods, or with respect to charges for handling or transporting baggage carried as such.

(d) The accounts between you and ourselves or our Operating Affiliates shall be made up in United States currency and balances struck at the end

of each month. Balances shall be payable within thirty days thereafter on such reasonable terms and conditions as the party entitled to receive the payment may fix.

3. It is understood that, until otherwise mutually agreed upon between you and ourselves, notwithstanding the provisions of Paragraph "SIXTH" of said General Traffic Agreement, at those points outside of Colombia at which you and either ourselves or any of our Operating Affiliates each maintains an agent or representative for the issuance of tickets, baggage checks or bills of lading, (as for instance at Maracaibo at present) your agent shall not be authorized to issue a ticket, baggage check or bill of lading covering transportation between any two points on our lines and/or those of any of our Operating Affiliates, or from the point at which such agents or representatives are located to any point on our lines or any of the lines [fol. 2241] of any of our Operating Affiliates, whether or not the initial or any intermediate transportation under such ticket, baggage check or bill of lading be over your lines, it being understood that you will refer all such passengers and shippers to our agent or representative at such place.

4. In making reservations for passengers or shipments, (a) the expense of all messages between points on the lines of the Pan American Airways System, will be borne by us, and (b) the expense of all messages between points on the lines of the Scadta Airways System will be borne by you.

If the foregoing correctly expresses your understanding of such supplemental agreement we would appreciate your indicating your approval and acceptance on the attached copy of this letter and returning same to us.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.

By s/ .....

ACCEPTED:

Barranquilla, Colombia.

, 1932.

SOCIEDAD COLOMBO-ALEMANA
DE TRANSPORTES AEREOS, S. A.

By s/

[fol. 2242]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 52

[Handwritten notations—extra—2105.1—Avianca.]

I, Joseph J. Cantwell, hereby certify that I am Assistant Secretary of Pan American Airways, Inc.; that the attached document is a true and complete copy of the document evidencing the following agreement:

General Traffic & Sales Agency Agreement, dated November 1, 1949, between Pan American Airways, Inc. and Aerovias Nacionales De Colombia, S. A.

/s/ JOSEPH J. CANTWELL
Assistant Secretary

Dated: November 14, 1949

[fol. 2243]

GENERAL TRAFFIC AND SALES AGENCY AGREEMENT

THIS AGREEMENT, made this 1st day of November, 1949, between PAN AMERICAN AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and AEROVIAS NACIONALES DE COLOMBIA, S.A., a corporation organized and existing under the laws of the Republic of Colombia, hereinafter referred to as "AVIANCA":

WITNESSETH THAT, for and in consideration of the mutual covenants and agreements herein contained, Pan American and Avianca hereby agree as follows:

1. Pan American hereby appoints Avianca, and Avianca agrees to act as, General Traffic and Sales Agent in Colombia for Pan American and its affiliated carriers (as defined in Paragraph 21 hereof), the territory in which Avianca is hereby appointed to act as General Traffic and Sales Agent being hereinafter sometimes referred to as "Avianca General Agency Territory". As such General Traffic and Sales Agent, Avianca agrees that it will perform such services as may be appropriate to promote passenger, mail and

cargo traffic over the lines of Pan American and its affiliated carriers and to arrange for transportation of passengers, baggage, mail and cargo over such lines, including the furnishing of necessary personnel, office space, equipment and supplies and doing all other things appropriate to carry out the following activities:

(a) Solicitation and sale within the Avianca General Agency Territory of passenger, mail and cargo transportation for Pan American and its affiliated carriers, including furnishing instructions to, and supervision of such solicitation and sale by, Avianca's Passenger and Cargo Sales Agents appointed in accordance with this Agreement.

(b) Servicing all Passenger and Cargo Sales Agents of Pan American and its affiliated carriers located within the Avianca General Agency Territory; and if and as required by Pan American, obtaining remittances of funds from and paying to such agents commissions for sales of transportation made over the lines of Pan American and its affiliated carriers, all in accordance with the policies, practices, rules, regulations [fol. 2244] and instructions of Pan American pertaining thereto.

(c) Performance of such acts and preparation and checking of such documents in the Avianca General Agency Territory as may be required for the transportation of passengers, baggage, mail and cargo and movement of aircraft over the lines of Pan American and its affiliated carriers, including the making of arrangements for the presence of such government officials as may be required in connection therewith.

(d) Checking such baggage of outgoing passengers at points in the Avianca General Agency Territory as is to be through checked from points served by Avianca to points served by Pan American or its affiliated carriers, it being understood that baggage of passengers traveling over the lines of Avianca and then over the lines of Pan American or its affiliated carriers will be through checked by Avianca only if, and to the extent that, the parties shall expressly so agree; col-

lecting for the account of Pan American and its affiliated carriers any excess baggage charges payable with respect to any baggage checked by Avianca for transportation over the lines of Pan American and its affiliated carriers; receiving and forwarding by carriers with which Pan American or Avianca has forwarding arrangements any trunks or other heavy baggage delivered to Avianca for that purpose by passengers traveling, or proposing to travel, over the lines of Pan American or its affiliated carriers, and collecting any charges payable therefor;

(e) Making arrangements in the Avianca General Agency Territory for adequate ground transportation from and to the airport for passengers, baggage and cargo transported or to be transported over the lines of Pan American or any of its affiliated carriers;

(f) Making arrangements on behalf of such passengers for adequate hotel accommodations in the Avianca General Agency Territory and at points of call of Avianca, Pan American and its affiliated carriers, and [fol. 2245] at other cities.

(g) Making reservations for and facilitating transportation over the lines of Pan American and its affiliated carriers, and connecting carriers;

(h) Furnishing such advice and information as Pan American may from time to time request with respect to transportation formalities required by governments in the Avianca General Agency Territory pertaining to passengers, baggage and cargo moving over the lines of Avianca, Pan American, or its affiliated carriers;

(i) Distribution of such timetables, advertising materials and other information covering the services of Pan American and its affiliated carriers as Pan American may from time to time reasonably request;

(j) Maintaining and operating at points served by Avianca in the Avianca General Agency Territory centrally located sales offices for the sale of passenger

and cargo transportation over the lines of Pan American and its affiliated carriers, which offices shall be staffed with competent traffic and sales personnel for the promotion and sale of passenger, mail and cargo transportation over the lines of Pan American and its affiliated carriers and for the handling of all matters pertaining thereto pursuant to this Agreement, it being agreed that a reasonable number of sales representatives who come in contact with the public in Avianca's principal sales offices in the Avianca General Agency Territory shall be bilingual, i.e. English and Spanish speaking, and it being contemplated that the entire sales organization of Avianca will be available to perform services pursuant to this Agreement but nothing contained in this Agreement shall obligate Avianca to establish any new office or organization at any point not served by Avianca in order to render any service to Pan American or its affiliated carriers.

(k) Publicizing, in the Avianca General Agency Ter- [fol. 2246] ritory, in such appropriate manner as Pan American shall reasonably request, that Avianca is the General Traffic and Sales Agent for Pan American and its affiliated carriers;

(l) Furnishing Pan American with appropriate reports, monthly and at such other times as may be requested by Pan American, as to the extent and character of sales made by each Avianca sales office or agency for Pan American and its affiliated carriers;

(m) Making personal visits through sales representatives to sales agencies and to persons and firms which have been or which are potential customers for transportation via Pan American and its affiliated carriers, it being understood that, if Pan American so requests, a representative of Pan American may accompany Avianca's sales representatives on any such visits;

(n) Providing traffic personnel responsible for the handling of traffic over the lines of Pan American and its affiliated carriers who shall be adequately trained in

airline practice and suitably indoctrinated in required procedures, methods and information to enable them to furnish satisfactory performance hereunder;

(o) For the purpose of instructions covering procedures for the sale and handling of passenger, cargo and mail traffic over the lines of Pan American or its affiliated carriers, making available to all of Avianca's offices the several traffic and sales manuals issued by Pan American including all reissues and revisions thereof and supplements thereto and requiring that the provisions of such manuals be followed.

All action taken by Avianca as such General Traffic and Sales Agent, whether specifically referred to herein or otherwise, shall be in accordance with instructions, rules, regulations, rates and tariffs of Pan American and its affiliated carriers. Pan American's representatives may from time to time visit Avianca's sales offices and general agencies for the purpose of discussing with Avianca's sales representatives any and all aspects of their selling activities for Pan American [fol. 2247] and its affiliated carriers; provided, however, that Pan American shall consult with Avianca a reasonable time prior to making such visits regarding the purpose of such visits, and a representative of Avianca may, if Avianca desires, accompany such representatives of Pan American on such visits.

2. Avianca agrees to designate as its agents for the purpose of this Agreement all of its authorized sales agents in the Avianca General Agency Territory, to appoint such additional agents as Pan American may from time to time request, all in accordance with, and upon such terms and conditions as shall be set forth in the instructions (including published agency rules, regulations, policies and practices) given by Pan American, and to cancel the appointment of any agent, for the purposes of this Agreement, upon request by Pan American.

3. Pan American hereby authorizes Avianca to issue (a) tickets, or exchange orders exchangeable for tickets, for transportation of passengers (but not to check baggage

unless the parties hereto shall so agree) and (b) airwaybills or other appropriate forms of contract for transportation of cargo over the lines of Pan American and of its affiliated carriers and to execute and issue all other documents necessary or appropriate for such transportation, all in the form, and subject to and in accordance with the tariffs, rates, rules and regulations and the terms, provisions and conditions of the tickets, airwaybills and other transportation contracts, prescribed and approved from time to time by Pan American or its affiliated carriers, as the case may be, it being understood that no such ticket, exchange order, airwaybill or contract will be issued unless an advance reservation shall have been made for the transportation, if required by such tariffs, rules and regulations, and Avianca shall have received payment of the total charges payable therefor at the point of issuance in accordance with such tariffs, rules and regulations, or shall have made arrangements satisfactory to Pan American for the collection of such charges, and that Avianca will not, directly or indirectly, or through any agent or broker, or otherwise, rebate, or remit any portion of the charges specified in said tariffs. [fol. 2248] Pan American agrees to accept and to carry out the obligation of, or to cause the appropriate affiliated carriers to accept and to carry out the obligation of, each ticket, exchange order, airwaybill, or contract so issued by Avianca. Such airwaybills or contracts may provide for turning over to other transportation agencies for onward carriage by them of cargo destined to points beyond points served by Pan American and its affiliated carriers, and in such event it is agreed that Pan American and its affiliated carriers will act in accordance with the terms of such provision. In issuing tickets, exchange orders, airwaybills and contracts for transportation over the lines of Pan American or any of its affiliated carriers, Avianca shall be deemed to act only as an agent of Pan American or its affiliated carriers, as the case may be. Avianca, including its officers, employees, agents, or servants, shall not be liable, and Pan American agrees to indemnify Avianca, including its officers, employees, agents, or servants, and hold it harmless from and against all claims for any loss, damage, injury or delay of any nature whatsoever, includ-

ing costs and expenses, which shall occur in connection with the transportation services of Pan American or in connection with the carrying out or failure to carry out any obligation to third parties arising by reason of action taken by Avianca pursuant to this paragraph; unless such loss, damage, injury or delay shall be caused by the negligence or wilful misconduct of Avianca, its officers, employees, agents or servants. Pan American shall furnish to Avianca from time to time the aforementioned tariffs, rates, rules and regulations and information regarding the transportation services currently being offered by Pan American and its affiliated carriers. Any act which Avianca is authorized or permitted by this paragraph to take may be taken through an agent of Avianca authorized in accordance herewith.

4. (a) In case Avianca shall receive notice of any claims relating to transportation over the routes of Pan American or its affiliated carriers, Avianca will immediately notify Pan American of such notice, giving all pertinent information available.

(b) In case any tariff, rate, form of ticket, exchange order, airwaybill or other transportation contract, or any rule or regulation of Pan American or its affiliated car- [fol. 2249] riers relating to transportation over their lines, shall be modified or amended at any time, or in case any service of Pan American or its affiliated carriers shall be suspended, modified or cancelled, Pan American will notify Avianca as far in advance as practicable of the effective date of any such modification, amendment, suspension or cancellation, it being understood that Pan American will indemnify and hold harmless Avianca from and against all losses, including costs and expenses, by reason of claims insofar as they arise out of such modification, amendment, suspension or cancellation and the sale by Avianca of transportation prior to receipt by Avianca of notice thereof.

(c) Avianca shall make no refund of any fare, charge, or other sum relating to transportation over the lines of Pan American or its affiliated carriers, unless such refund shall be in accordance with the tariffs, rules, regulations and instructions of Pan American.

(d) In case any claim shall be asserted against Avianca in respect to transportation over the lines of Pan American or any of its affiliated carriers, or in case any action at law, suit or proceeding shall be instituted against Avianca relating thereto, Avianca shall promptly notify Pan American and promptly transmit to Pan American from time to time all communications, legal processes and other documents and information coming into the possession of Avianca and relating to such claim, action at law, suit or proceeding. Avianca shall permit Pan American to settle and to conduct the defense against any such claim, action at law, suit or proceeding and Avianca will cooperate with and assist Pan American, to the extent requested by Pan American, in settling or conducting the defense against any such claim, action at law, suit or proceeding.

5. Pan American hereby agrees to pay or reimburse Avianca the following amounts:

(a) In the case of sales made in the Avianca General Agency Territory by Avianca or any agent of Avianca or of Pan American or any of its affiliated carriers:

(i) *For Passenger Transportation* over the lines of Pan American and its affiliated carriers, a com- [fol. 2250] mission equal to either (1) in case such transportation shall have been sold directly by Avianca, ten percent (10%) of the total amount of the fares for such transportation (including excess baggage weight charges but excluding valuation and insurance charges on baggage) collected by Avianca in the Avianca General Agency Territory including fares for such passenger and excess baggage transportation sold in the Avianca General Agency Territory by Avianca and furnished under Universal Air Travel Cards acceptable to Pan American or its affiliated carriers or under government transportation requests or warrants presented by passengers for transportation over the lines of Pan American or any of its affiliated carriers, but excluding any fares payable to other carriers, under tickets and exchange orders issued by Avianca in accordance

with the provisions of this agreement; or (2) in case such transportation shall have been sold by or through an agent of Avianca or of Pan American or any of its affiliated carriers or by another carrier authorized so to do, two and one-half percent (2½%) of the total amount of the fares for such transportation, excluding charges for excess baggage weight, and ten percent (10%) of the excess baggage weight charges collected by Avianca, either directly or through its agents, in the Avianca General Agency Territory, including fares for such passenger and excess baggage transportation sold in the Avianca General Agency Territory by such agents of Avianca or such carriers and furnished under Universal Air Travel Cards acceptable to Pan American or its affiliated carriers or under government transportation requests or warrants presented by passengers for transportation over the lines of Pan American or any of its affiliated carriers, but excluding any fares payable to other carriers, under tickets and exchange orders issued by Avianca in accordance with the provisions of this Agreement, plus the commission, if any, payable to such agents in accordance with the rules and regulations of Pan American then in effect, and of which Avianca has been advised, it being understood that in such case the commission, [fol. 2251] if any, payable to the agent, shall be paid to the agent and Avianca will retain the balance equal to two and one-half percent (2½%) of the fare and ten percent (10%) of the excess baggage weight charges, and

(ii) *For Cargo Transportation* over the lines of Pan American and its affiliated carriers, a commission equal to either (1) in case such transportation shall have been sold directly by Avianca, seven and one-half percent (7½%) of the total amount of the charges (not including valuation, insurance, C.O.D. or collect charges) for such transportation collected by Avianca in the Avianca General Agency Territory, or, in the case of collect shipments, col-

lected otherwise on behalf of Pan American or any of its affiliated carriers, including transportation sold in the Avianca General Agency Territory by Avianca and furnished under government bills of lading or similar warrants presented by shippers, but excluding any charges payable to other carriers, under airwaybills or other cargo transportation contracts issued by Avianca in accordance with the provisions of this Agreement; or (2) in case such transportation shall have been sold by or through an agent of Avianca or of Pan American or any of its affiliated carriers or by another carrier authorized so to do, two and one-half percent (2½%) of the total amount of such charges (not including valuation, insurance, C.O.D. or collect charges), collected by Avianca either directly or through such agents in the Avianca General Agency Territory or, in the case of collect shipments, collected otherwise on behalf of Pan American or any of its affiliated carriers, including transportation sold in the Avianca General Agency Territory by such agents or such carriers and furnished under government bills of lading or similar warrants furnished by shippers, but excluding any charges payable to other carriers under airwaybills or other cargo transportation contracts issued by Avianca in accordance with the provisions of this Agreement, plus the commission, if any, payable to [fol. 2252] such agents in accordance with the rules and regulations of Pan American, it being understood that in such cases the commission, if any, payable to the agent shall be paid to the agent and Avianca will retain the balance equal to two and one-half percent (2½%) of the charges.

(b) In case of sales of transportation over the lines of Pan American and its affiliated carriers made by Avianca outside the Avianca General Agency Territory and in case of sales of transportation over the lines of Pan American-Grace Airways made by Avianca within the Avianca General Agency Territory:

(i) *For Passenger Transportation*, a commission equal to seven and one-half percent (7½%) of the

total amount of the fares for such transportation, excluding charges for excess baggage and valuation and insurance charges on baggage, collected by Avianca on behalf of Pan American or any of its affiliated carriers, including fares for such transportation sold by Avianca and furnished under Universal Air Travel Cars acceptable to Pan American or its affiliated carriers or under Government transportation requests or warrants presented by passengers for transportation over the lines of Pan American or any of its affiliated carriers, but excluding any fares payable to other carriers under tickets and exchange orders issued by Avianca in accordance with the provisions of this Agreement; and

(ii) *For Cargo Transportation*, a commission equal to five percent (5%) of the total amount of the charges (not including valuation, insurance, C.O.D. or collect charges) for such transportation, collected by Avianca or, in the case of collect shipments collected otherwise on behalf of Pan American or any of its affiliated carriers, including transportation sold by Avianca and furnished under government bills of lading or similar warrants presented by shippers, but excluding any charges payable to other carriers under airwaybills or other cargo transportation contracts issued by Avianca in accordance with the provisions of this Agreement.

[fol. 2253] (c) Any out-of-pocket expenses specifically requested and approved by Pan American which are incurred by Avianca in carrying out special services (including advertising or publicity) requested by Pan American under this Agreement, it being understood that routine expenses of distribution of information, timetables and advertising material to agents, prospective travelers and shippers and similar activities which are classed as a general agent's normal sales promotional activities shall not be reimburseable hereunder.

Except with respect to transportation issued under Universal Air Travel Cards, government transportation requests or warrants, or government bills of lading or warrants or collect shipments, as provided above, the commissions shall be payable hereunder only in respect of the aforementioned fares and charges actually collected by Avianca or the said agents and paid over to Pan American and no commission shall be payable with respect to any fare or charge which shall be refunded, except as otherwise specifically authorized by Pan American. Sales of cargo transportation with transportation charges collect shall be deemed to have been made by the party who issued the airwaybill and not by the party who collects the charges.

6. In case Pan American or any of its affiliated carriers receives a commission from any other air, rail, water or bus carrier for the sale of such carrier's passenger tickets, exchange orders or cargo transportation documents issued directly by Avianca or by an agent of Avianca in the Avianca General Agency Territory or elsewhere in connection with interline transportation over the lines of Pan American and its affiliated carriers and such other carrier, Pan American shall pay Avianca or such agents the amount of such commission.

7. Avianca hereby appoints Pan American, and Pan American agrees to act as, General Traffic and Sales Agent for Avianca in the United States of America and throughout the world, except in Colombia and Ecuador, the territory in which Pan American is hereby appointed to act as General Traffic and Sales Agent being hereinafter sometimes referred to as the "Pan American General Agency Territory". As such General Traffic and Sales Agent, Pan American agrees that it will perform such services as may be appropriate to promote passenger, mail, and cargo traffic [fol. 2254] over the lines of Avianca and to arrange for transportation of passengers, baggage, mail and cargo over such lines, including the furnishing of necessary personnel, office space, equipment and supplies and doing all other things appropriate to carry out the following activities:

(a) Solicitation and sale within the Pan American General Agency Territory of passenger, mail and

cargo transportation for Avianca, including furnishing instructions to, and supervision of, such solicitation and sale by Pan American's General Sales Agents and Passenger and Cargo Sales Agents appointed in accordance with this Agreement;

(b) Servicing all passengers and cargo sales agents of Avianca located within the Pan American General Agency Territory; and if and as required by Avianca, obtaining remittances of funds from and paying to such agents commissions for sales of transportation made over the lines of Avianca, all in accordance with the policies, practices, rules, regulations and instructions of Avianca pertaining thereto.

(c) Performance of such acts and preparation and checking of such documents in the Pan American General Agency Territory as may be required for the transportation of passengers, baggage, mail and cargo and movement of aircraft over the lines of Avianca, including the making of arrangements for the presence of such government officials as may be required in connection therewith;

(d) Checking such baggage of outgoing passengers at points in the Pan American General Agency Territory as is to be through checked from points served by Pan American or its affiliated carriers to points served by Avianca, it being understood that baggage of passengers traveling over the lines of Pan American or its affiliated carriers and then over the lines of Avianca will be through checked by Pan American or its affiliated carriers only if, and to the extent that, the parties shall expressly so agree, collecting for the account of Avianca any excess baggage payable with respect to any baggage checked by Pan American or [fol. 2255] its affiliated carriers for transportation over the lines of Avianca, receiving and forwarding by carriers with which Avianca or Pan American has forwarding arrangements, any trunks or other heavy baggage delivered to Pan American or its affiliated carriers for the purpose of passengers traveling, or

proposing to travel, over the lines of Avianca, and collecting any charges payable therefor;

(e) Making arrangements in the Pan American General Agency Territory for adequate ground transportation from and to the airport for passengers, baggage and cargo transported or to be transported over the lines of Avianca;

(f) Making arrangements on behalf of such passengers for adequate hotel accomodations in the Pan American General Agency Territory and at points of call of Avianca, Pan American and its affiliated carriers, and at other cities.

(g) Making reservations for and facilitating transportation over the lines of Avianca and connecting carriers;

(h) Furnishing such advice and information as Avianca may from time to time request with respect to transportation formalities required by governments in the Pan American General Agency Territory pertaining to passengers, baggage and cargo moving over the lines of Pan American or its affiliated carriers and Avianca;

(i) Distribution of timetables, advertising materials and other information to agents and the public covering the services of Avianca as Avianca may from time to time reasonably request;

(j) Maintaining and operating, at points served by Pan American or its affiliated carriers in the Pan American General Agency Territory, centrally located sales offices for the sale of passenger, express and cargo transportation over the lines of Avianca, which offices shall be staffed with competent traffic and sales personnel for the promotion and sale of passenger, mail and cargo transportation over the lines of Avianca and for the handling of all matters pertaining thereto [fol. 2256] pursuant to this Agreement, it being contemplated that the entire sales organization of Pan American and it affiliated carriers will be available

to perform services pursuant to this Agreement, but nothing contained in this Agreement shall obligate Pan American or its affiliated carriers to establish any new office or organization to render any service to Avianca at any point not served by Pan American or its affiliated carriers, except as otherwise specifically provided herein with respect to the continental United States;

(k) Publicizing in the Pan American General Agency Territory, in such appropriate manner as Avianca shall request, that Pan American is the General Traffic and Sales Agent for Avianca.

(l) Furnishing Avianca with appropriate reports, monthly and at such other times as may be requested reasonably by Avianca, as to the extent and character of sales made by each Pan American office or agency or its affiliated carriers for Avianca;

(m) Making personal visits in the United States through sales representatives to sales agencies and to persons and firms which have been or which are potential customers for transportation via Avianca, it being understood that, if Avianca so requests, a representative of Avianca may accompany Pan American's sales representatives on any such visits.

(n) Requiring any general sales agent, appointed by Pan American to function on behalf of Pan American in lieu of a sales office operated directly by Pan American, to provide adequate sales office facilities.

(o) Pan American's traffic personnel, including that of its general sales agents, responsible for the handling of traffic over the lines of Avianca, shall be adequately trained in airline practice and suitably indoctrinated in required procedures, methods and information to enable them to furnish satisfactory performance hereunder.

All action taken by Pan American as General Traffic and Sales Agent, whether specifically referred to herein or otherwise, shall be in accordance with in-

structions, rules, regulations, rates and tariffs of [fol. 2257] Avianca. Avianca's representatives may from time to time visit Pan American's sales offices and general agencies for the purpose of discussing with Pan American's sales representatives any and all aspects of their selling activities for Avianca; provided, however, that Avianca shall consult with Pan American a reasonable time prior to making such visits regarding the purpose of such visits and a representative of Pan American may, if Pan American desires, accompany such representatives of Avianca on such visits.

8. Pan American agrees to designate as its agents for the purposes of this Agreement all of its authorized sales agents in the Pan American General Agency Territory, to appoint such additional agents as Avianca may from time to time request, all in accordance with, and upon such terms and conditions as shall be set forth in, the instructions (including published agency rules, regulations, policies and practices) given by Avianca and to cancel the appointment of any agent, for the purposes of this Agreement, upon request by Avianca.

9. Avianca hereby authorizes Pan American and its affiliated carriers to issue (a) tickets, or exchange orders exchangeable for tickets, for transportation of passengers, and (b) airwaybills or other appropriate forms of contract for transportation of cargo over the lines of Avianca and to execute and issue all other documents necessary or appropriate for such transportation, all in the form, and subject to and in accordance with the tariffs, rates, rules and regulations and the terms, provisions and conditions of the tickets, airwaybills and other transportation contracts, prescribed and approved from time to time by Avianca, it being understood that no such ticket, exchange order, airwaybill or contract will be issued unless an advance reservation shall have been made for the transportation, if required by such tariffs, rules and regulations, and Pan American or one of its affiliated carriers shall have received payment of the total charges payable therefor at the point of issuance in accordance with such tariffs, rules

and regulations, or shall have made arrangements satisfactory to Avianca for the collection of such charges, and Pan American will not, directly or indirectly, or through any agent or broker, or otherwise, rebate or remit any [fol. 2258] portion of the charges specified in said tariffs. Avianca agrees to accept and to carry our the obligations of each ticket, exchange order, airwaybill or contract so issued by Pan American or any of its affiliated carriers. Such airwaybills or contracts may provide for turning over to other transportation agencies for onward carriage by them of cargo destined to points beyond points served by Avianca, and in such event it is agreed that Avianca will act in accordance with the terms of such provision. In issuing tickets, exchange orders, airwaybills and contracts for transportation over the lines of Avianca, Pan American and its affiliated carriers shall be deemed to act only as agents for Avianca. Neither Pan American nor any of its affiliated carriers, including their officers, employees, agents, or servants, shall be liable, and Avianca agrees to indemnify and hold harmless Pan American and its affiliated carriers, including their officers, employees, agents or servants, from and against all claims, for any loss, damage, injury or delay of any nature whatsoever, including costs and expenses, which shall occur in connection with the transportation services of Avianca or in connection with the carrying out or failure to carry out of any obligation to third parties, arising by reason of action taken by Pan American or any of its affiliated carriers pursuant to this paragraph, unless such loss, damage, injury or delay shall be caused by the negligence or wilful misconduct of Pan American or one of its affiliated carriers, including their officers, employees, agents or servants.

Avianca shall furnish to Pan American and its affiliated carriers from time to time the aforementioned tariffs, rates, rules, regulations and information regarding the transportation services currently being offered by Avianca.

Any act which Pan American or its affiliated carriers is authorized or permitted by this paragraph to take may be taken through an agent of Pan American or its affiliated carriers authorized in accordance herewith.

10. (a) In case Pan American or its affiliated carriers shall receive notice of any claim relating to transportation over the routes of Avianca, Pan American or its affiliated carriers will immediately notify Avianca of such notice, giving all pertinent information available.

(b) In case any tariff, rate, form of ticket, exchange order, airwaybill or other transportation contract, or any rule or regulation of Avianca relating to transportation over its lines, shall be modified or amended at any time, or in case any service of Avianca shall be suspended, modi- [fol. 2259] fied, or cancelled, Avianca will notify Pan American as far in advance as practicable of the effective date of any such modification, amendment, suspension or cancellation, it being understood that Avianca will indemnify and hold harmless Pan American and its affiliated carriers from and against all losses, including costs and expenses, by reason of claims insofar as they arise out of such modification, amendment, suspension or cancellation and the sale by Pan American or an affiliated carrier of transportation prior to receipt by Pan American of notice thereof, or in case of a sale by an affiliated carrier, prior to receipt of notice thereof by such carrier if transmitted promptly by Pan American.

(c) Pan American or its affiliated carriers shall make no refund of any fare or other sum relating to transportation over the lines of Avianca, unless such refund shall be in accordance with the tariffs, rules, regulations and instructions of Avianca.

(d) In case any claim shall be asserted against Pan American or any of its affiliated carriers in respect of transportation over the lines of Avianca, or in case any action at law, suit or proceeding shall be instituted against Pan American or any of its affiliated carriers relating thereto, Pan American shall promptly notify Avianca and promptly transmit to Avianca from time to time all communications, legal processes and other documents and information coming into the possession of Pan American and relating to such claim, action at law, suit or proceeding. Pan American shall permit Avianca to settle and to conduct the defense against any such action at law, suit

or proceeding and Pan American will cooperate with and assist Avianca, to the extent requested by Avianca, in settling or conducting the defense against any such claim, action at law, suit or proceeding.

11. Avianca hereby agrees to pay or reimburse to Pan American the following amounts:

(a) In the case of sales made in the Pan American General Agency Territory by Pan American or its affiliated carriers or any agent thereof or of Avianca:

(i) *For Passenger Transportation* over the lines of Avianca, a commission equal to either (1) in case such [fol. 2260] transportation shall have been sold directly by Pan American or its affiliated carriers or a general sales agent of Pan American, ten percent (10%) of the total amount of the fares for such transportation (including excess baggage weight charges but excluding valuation and insurance charges on baggage) collected by Pan American or its general sales agent in the Pan American General Agency Territory including fares for such passenger and excess baggage transportation sold in the Pan American General Agency Territory by Pan American or its general sales agent and furnished under Universal Air Travel Cards acceptable to Avianca or under government transportation requests or warrants presented by passengers for transportation over the lines of Avianca, but excluding any fares payable to other carriers under tickets and exchange orders issued by Pan American or its affiliated carriers or its general sales agent in accordance with the provisions of this Agreement, or (2) in case such transportation shall have been sold by or through an agent of Pan American, (other than a general sales agent of Pan American) its affiliated carriers or Avianca or by another carrier authorized so to do, two and one-half percent (2½%) of the total amount of the fares for such transportation excluding charges for excess baggage weight, and ten percent (10%) of the excess baggage weight charges, collected by Pan American or its general sales agent, either directly or through such agents in the Pan

American General Agency Territory, including fares for such passenger and excess baggage transportation sold in the Pan American General Agency Territory by such agents or such carriers and furnished under Universal Air Travel Cards acceptable to Avianca or under government transportation requests or warrants presented by passengers for transportation over the lines of Avianca, but excluding any fares payable to other carriers, under tickets and exchange orders issued by Pan American in accordance with the provisions of this Agreement, plus the commission, if [fol. 2261] any, payable to such agents in accordance with the rules and regulations of Avianca then in effect, and of which Pan American has been advised, it being understood that in such case the commission, if any, payable to the agent shall be paid to the agent and Pan American will retain the balance equal to two and one-half percent (2½%) of the fare and ten percent (10%) of the excess baggage weight charges, and

(ii) *For Cargo Transportation* over the lines of Avianca, a commission equal to either (1) in case such transportation shall have been sold directly by Pan American or a general sales agent of Pan American, seven and one-half percent (7½%) of the total amount of the charges (not including valuation, insurance, C.O.D. or collect charges) for such transportation collected by Pan American or its general sales agent in the Pan American General Agency Territory or, in the case of collect shipments, collected otherwise on behalf of Avianca, including transportation sold in the Pan American General Agency Territory by Pan American or its general sales agent and furnished under government bills of lading or similar warrants presented by shippers, but excluding any charges payable to other carriers, under airwaybills or other cargo transportation contracts issued by Pan American or any of its affiliated carriers in accordance with the provisions of this Agreement; or (2) in case such transportation shall have been sold by or through an agent of Pan American (other than a general sales agent of

Pan American), its affiliated carriers or Avianca or by [fol. 2262] another carrier authorized so to do, two and one-half percent (2½%) of the total amount of such charges (not including valuation, insurance, C.O.D. or collect charges) collected by Pan American or its general agent either directly or through such agents in the Pan American General Agency Territory or, in the case of collect shipments, collected otherwise on behalf of Avianca, including transportation sold in the Pan American General Agency Territory by such agents or such carriers and furnished under government bills of lading or similar warrants furnished by shippers, but excluding any charges payable to other carriers under airwaybills or other cargo transportation contracts issued by Pan American or any of its affiliated carriers in accordance with the provisions of this Agreement, plus the commission, if any, payable to such agents in accordance with the rules and regulations of Avianca, it being understood that in such cases the commission, if any, payable to the agent shall be paid to the agent and Pan American will retain the balance equal to two and one-half percent (2½%) of the charges.

(b) In the case of sales made by Pan American or any of its affiliated carriers outside the Pan American General Agency Territory:

(i) *For Passenger Transportation* over the lines of Avianca a commission equal to seven and one-half percent (7½%) of the total amount of the fares for such transportation, excluding charges for excess baggage and valuation and insurance charges on baggage, collected by Pan American or any of its affiliated carriers on behalf of Avianca including fares for such [fol. 2263] transportation sold by Pan American or any of its affiliated carriers and furnished under Universal Air Travel Cards acceptable to Avianca, or under government transportation requests or warrants presented by passengers for transportation over the lines of Avianca, but excluding any fares payable to other

carriers under tickets and exchange orders issued by Pan American or any of its affiliated carriers in accordance with the provisions of this Agreement; and

(ii) *For Cargo Transportation* over the lines of Avianca, a commission equal to five percent (5%) of the total amount of the charges (not including valuation, insurance, C.O.D. or collect charges) for such transportation, collected by Pan American or any of its affiliated carriers or, in the case of collect shipments, collected otherwise on behalf of Avianca, including transportation sold by Pan American or any of its affiliated carriers and furnished under government bills of lading or similar warrants presented by shippers, but excluding any charges payable to other carriers under airwaybills or other cargo transportation contracts issued by Pan American or any of its affiliated carriers in accordance with the provisions of this Agreement.

(c) Any out-of-pocket expenses specifically requested and approved by Avianca which are incurred by Pan American or its affiliated carriers in carrying out special services (including advertising or publicity) requested by Avianca under this Agreement, it being understood that routine expenses of distribution of information, timetables and advertising material to agents and prospective travelers and shippers and similar activities which are classed as a general agent's normal sales promotion activities shall not be reimbursable hereunder.

Except with respect to transportation issued under Universal Air Travel Cards, government transportation requests or warrants, government bills of lading or warrants, [fol. 2264] or collect shipments, as provided above, commissions shall be payable hereunder only in respect of the aforementioned fares and charges actually collected by Pan American or its affiliated carriers or the said sales agents and paid over to Avianca, and no commission will be payable with respect to any fare or charge which shall be refunded, except as otherwise specifically authorized by Avianca. Sales of cargo transportation with transportation

charges collect shall be deemed to have been made by the party who issues the airwaybill and not by the party who collects the charges.

12. In case Avianca receives a commission from any other air, rail, water or bus carriers for the sale of such carrier's passenger tickets, exchange orders or cargo transportation documents issued directly by Pan American or its affiliated carriers or by an agent thereof in the Pan American General Agency Territory or elsewhere in connection with interline transportation over the lines of Avianca and such other carrier, Avianca shall pay Pan American, its affiliated carriers or such agents, the amount of such commission.

13. Settlement of all amounts collected or payable pursuant to this agreement shall be made monthly or at such shorter intervals as may be mutually agreed upon by Pan American and Avianca. Statements of account covering all such amounts shall be exchanged as soon as practicable after the end of each month and balances will be settled promptly after such statements are exchanged by a cash payment in United States currency or in such other currency as may be mutually agreed upon in writing from time to time by Pan American and Avianca.

14. Nothing herein contained shall be deemed to require Avianca or Pan American or any of its affiliated carriers to initiate or maintain service between any particular points.

15. All expenses for telegrams, cables, radiograms or other communications sent in connection with or pursuant to this Agreement, including communications relating to reservations and cancellations of reservations, shall be borne by the sender.

16. (a) In transferring shipments of interline baggage, accompanied or unaccompanied, and cargo, from Pan American or any of its affiliated carriers to Avianca, or [fol. 2265] vice versa, pursuant to this Agreement, it shall be the responsibility of the party from whose lines the shipment is transferred, but without incurring any liability for loss of revenue in cases of missed connections, to deliver

such baggage or cargo to the other party at such location and hours as shall be agreed upon in writing by the parties.

(b) Whenever baggage or cargo is to be transferred for onward transportation hereunder and completion of such transportation necessitates compliance with the laws and regulations pertaining to importation and transit or exportation and transit of the country of the point of transfer, it shall be the responsibility of the transferring party to comply with such laws and regulations and to deliver, where necessary, to the onward-carrying party prior to or simultaneously with the transfer, proper evidence of compliance with that country's laws and regulations pertaining to such importation and transit, or exportation and transit; provided, however, that in any case where compliance with such laws and regulations can be made only by the onward-carrying party, it shall be the onward-carrying party's responsibility to comply therewith.

17. In the event that Pan American shall have made or shall make arrangements with any other carrier (hereinafter referred to as "Interline Agreement"), pursuant to which Pan American and its affiliated carriers are or will be authorized to sell transportation over the lines of such other carrier and such other carrior is or will be authorized to sell transportation over the lines of Pan American and its affiliated carriers, it is understood that Avianca, unless provision to the contrary is made therein, is an affiliated carrier of Pan American for the purposes of any such Interline Agreement and Avianca is hereby authorized to sell transportation, and agrees to honor transportation sold, pursuant to any such Interline Agreement, subject to all the terms and conditions thereof. The basis of compensation and the other principal features of all Interline Agreements in effect at the time will be set forth in the appropriate instructions, tariffs, rules and regulations currently furnished to Avianca by Pan American and copies of such agreements will be furnished to Avianca upon request.

[fol. 2266] It is further understood that, with respect to any transportation sold in accordance with an Interline Agreement:

(a) Settlement will be effected between Pan American and Avianca in the same manner as settlement is effected with respect to transportation sold pursuant to this Agreement, or in such other manner as may be mutually agreed upon;

(b) Avianca shall have all of the rights and obligations, and only the rights and obligations, provided under such Interline Agreement with respect to affiliated carriers of Pan American;

(c) Except as otherwise provided for in Paragraphs 5(a)(i), 5(a)(ii), 11(a)(i) and 11(a)(ii) hereof, no commission or other compensation or payment (including reimbursement of commissions or payment to sales agents or others) will be paid to or by Avianca except to such extent as may be provided in the Interline Agreement;

(d) Avianca agrees to indemnify and hold harmless Pan American from and against all claims, including costs and expenses, and to reimburse Pan American for all amounts paid by Pan American pursuant to the Interline Agreement or otherwise by reason of any act or omission of Avianca in violation of the Interline Agreement or by reason of any loss, damage, injury or delay which shall have been caused by Avianca;

(e) In case Pan American shall take action of any kind in connection with the sale by Avianca of transportation over the lines of a carrier with which Pan American has an interline agreement, or the sale by any such carrier of transportation over the lines of Avianca, Pan American shall be deemed to be acting only as agent for the carrier over whose lines such transportation is to be carried out and shall be under no liability to Avianca in connection therewith, including, but without limitation, liability for payment of commissions or other payment unless collected by Pan American on behalf of Avianca, except that Pan American shall be liable for any loss or damage resulting from its own negligence or wilful misconduct.

[fol. 2267] 18. Each party shall be liable for, and shall reimburse, defend and hold harmless the other, from and against all loss, including costs and expenses relating thereto, arising out of any action taken by such party contrary to or omitted to be taken by such party in accordance with this Agreement. Without limiting the generality of the foregoing, it shall cover loss resulting from fines, penalties or detention expenses imposed by any government or governmental agency (or which any government or governmental agency attempts to impose) provided, however, that when such loss is incurred in any case involving the following circumstances, it shall be charged as follows:

(a) When the fines, penalty or detention expense involves a passenger who is ticketed for a stopover at the point of transfer from lines of one party to the other, the loss involved shall be for the account of the onward carrying party.

(b) When the fine, penalty or detention expense results from facts not apparent upon reasonable examination at the time the passenger was processed for travel at the original point of departure or stopover point referred to in subparagraph (a) above, as the case may be, his qualifications for entry into the country imposing such fine, penalty or detention expense having appeared to be proper and complete (including, but not limited to, cases involving errors on the part of consular officials and changes of law or regulations while the passenger was en route), such loss shall be prorated between Avianca, Pan American and its affiliated carriers in proportion to the revenue which each shall receive from the carriage of the passenger.

The party against which any fine, penalty or detention expenses is imposed (even though the loss resulting therefrom is, by the terms of this Agreement, subject to reimbursement in whole or in part by another party) shall be responsible for the defense thereof, it being understood that all reasonable efforts shall be taken by such party to obtain the remission of such fine, penalty or detention expense. Each interested party will cooperate and assist the defending party to

[fol. 2268] the extent reasonably requested of it, furnishing all data and information related to such fine, penalty or detention expense in its possession or available to it.

19. Amounts paid by Pan American or its affiliated carriers or Avianca in settlement of claims for concealed loss or damage (i.e., loss or damage not observed or detected and recorded prior to delivery to the passenger or consignee) to cargo or baggage transported over the lines of Avianca and of Pan American or its affiliated carriers, as the case may be, shall, after crediting any amounts received from other carriers, not affiliated carriers of Pan American, in respect of such loss or damage, be prorated between Pan American and Avianca on the basis of the ratio of the miles of carriage performed by Avianca, on the one hand, and Pan American and its affiliated carriers on the other, with respect of such cargo or baggage.

20. Any claim or controversy arising out of or relating to this Agreement or to the manner of performance of breach thereof shall be referred to, and settled by, arbitration in the manner hereinafter provided.

The party requesting arbitration shall notify the other party naming its arbitrator in the notice. The other party shall appoint an arbitrator within ten (10) days after the receipt of such notice. Within ten (10) days after such appointment, the two arbitrators shall appoint a third arbitrator and the decision or the award of any two of such three arbitrators shall be final, binding and conclusive upon the parties. If either party fails to appoint the arbitrator to be appointed by such party, or if the arbitrators appointed by or for the respective parties shall fail to appoint such third arbitrator, then and in either such event such then unappointed arbitrator shall be appointed by the Inter American Commercial Arbitrator Commission. Any such arbitration shall be conducted in accordance with the law of the State of New York and held in New York City, New York, unless the parties shall otherwise agree in writing.

[fol. 2269] 21. The term "affiliated carriers" whenever used in this Agreement shall, for the purpose hereof, be

deemed to mean such companies, other than Avianca, engaged in the transportation of passengers, mail, express or cargo by air, in which Pan American or any company owning a majority of the capital stock of Pan American, owns a stock interest and which Pan American may from time to time designate in writing to Avianca; provided however, that Pan American-Grace Airways, Inc. shall be excluded from the term "affiliated carriers" as used in Paragraphs 1, 2, 5(a)(i) and 5(a)(ii) hereof.

22. This Agreement cancels and supersedes all existing arrangements between the parties relating to the same subject matter.

23. Neither party may assign this Agreement or any obligation imposed on such party hereunder; provided, however, that nothing herein contained shall prevent Pan American from carrying out its obligations hereunder in all or any portion of its General Agency Territory through a general sales agent.

24. The provisions of this Agreement shall be subject to any applicable rule or resolution, including but not limited to rules or resolutions relating to commissions, of the International Air Transport Association or the Air Traffic Conference of America or any similar body or organization, or any branch, committee or conference thereof which is binding upon either party to this Agreement, or to any applicable agreement made by either party to this Agreement and approved by the International Air Transport Association, the Air Traffic Conference of America, or any such similar organization which is binding upon either party to this Agreement, and said provisions shall be deemed to be amended by any such rule, resolution or agreement. Information applicable to this Agreement regarding such rules, resolutions and agreements which are not directly available to either party hereto as a member of the organization which adopted or approved the same, will be furnished to the other party within a reasonable time after the effective date thereof.

25. Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by mail

or delivered by hand, in the case of notice to Pan American, to the Vice President-Traffic and Sales, Pan American [fol. 2270] Airways, Inc., 135 East 42nd Street, New York 17, New York, United States of America, or to such other person or such other address as Pan American may from time to time designate for that purpose, and in the case of notice to Avianca, to the Traffic Manager, Aerovias Nacionales de Colombia, S.A. Carrera 9, Calle 12, Bogota, Colombia, or such other person or such other address as Avianca may from time to time designate for that purpose.

26. This Agreement shall become effective on November 1, 1949, and shall continue in effect until December 31, 1950, and shall continue in effect from year to year thereafter provided, however, that either party may, after that date, terminate this Agreement by giving six (6) months' written notice of termination to the other party. Termination of this Agreement shall not relieve either party from any obligation or liability on its part arising from or connected with tickets, exchange orders, airwaybills or other contracts for transportation issued or effected prior to such termination nor shall it relieve either party from any liability on its part based upon any state of facts existing prior to such termination.

IN WITNESS WHEREOF, Pan American and Avianca have caused this Agreement to be executed in their corporate names by their respective officers thereunto duly authorized.

PAN AMERICAN AIRWAYS, INC.

By /s/ WILLIS G. LIPSCOMB
Vice President-Traffic & Sales

WITNESSES:

[Two signatures illegible]

AEROVIAS NACIONALES DE COLOMBIA, S.A.

By /s/ (Illegible)
President

WITNESSES:

[Two signatures illegible]
Vice-President Executive
Traffic-Manager

[fol. 2271]

PAN AMERICAN WORLD AIRWAYS EXHIBIT 53

I, Joseph J. Cantwell, hereby certify that I am Assistant Secretary of Pan American World Airways, Inc.; that the attached document(s) (are) true and complete copy (s) of the document(s) evidencing the following Agreement:

General Traffic and Sales Agency Agreement, dated December 3, 1954, between Pan American World Airways, Inc. and Aerovias Nacionales De Colombia, S.A., and a supplementary letter agreement with respect thereto of the same date.

JOSEPH J. CANTWELL
Assistant Secretary

Dated: December 8, 1954

[fol. 2272]

GENERAL TRAFFIC AND SALES AGENCY AGREEMENT

THIS AGREEMENT, made as of December 3, 1954, between PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and AEROVIAS NACIONALES DE COLOMBIA, S.A., a corporation organized and existing under the laws of Colombia, hereinafter referred to as the "Company",

WITNESSETH THAT:

WHEREAS, Pan American operates an extensive system of international air transportation services between the United States and various countries and colonies in Latin America, which services extend through Colombia; and

WHEREAS, the company operates air transportation services in Colombia, and between Colombia and the United States and Europe, and

WHEREAS, Pan American and the Company are parties to an Agreement dated as of November 1, 1949, under which

the Company acts as General Traffic and Sales Agent in Colombia for Pan American and its affiliated carriers, and Pan American and its affiliated carriers act as General Traffic and Sales Agent outside Colombia and Ecuador for the Company; and

WHEREAS, the parties desire to terminate said Agreement, and to enter into a new agreement upon the terms and conditions set forth herein:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereby agree as follows:

1. Pan American and the Company agree to accept as general basis for their reciprocal relations for the sale and/or handling of passengers, express and cargo transportation over their respective lines, the conditions and stipulations contained in the INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA) INTERLINE TRAFFIC, BAGGAGE AND CARGO HANDLING AGREEMENTS (hereinafter sometimes referred to as the [fol. 2273] "IATA Agreements"), except as otherwise specifically and mutually agreed upon herein. Pan American and the Company have heretofore become parties to the IATA Agreements by making written application to, and depositing executed counterparts of said IATA Agreements with, the Secretary of the Traffic Committee of IATA, but neither party has concurred in the participation with the other as a party to said IATA Agreements. Prior to December 15, 1954, the Company shall submit to the Secretary of the Traffic Committee of IATA, in writing, its concurrence in the participation with Pan American and its affiliated carriers as a party to the IATA Agreements, and shall promptly thereafter notify Pan American and its affiliated carriers in writing of the submission of such concurrence. Promptly after the receipt by Pan American of the notice referred to in the preceding sentence, Pan American shall submit, and arrange for its affiliated carriers to submit, to the Secretary of the Traffic Committee of IATA, in writing, their concurrence in the participation with the Company as a party to the IATA Agreements. Notwithstanding the

provisions of the IATA Agreements relating to the time at which said IATA Agreements shall become binding between any of the parties thereto, said IATA Agreements shall be deemed effective as between the parties hereto, including affiliated carriers of Pan American, as of the effective date of this Agreement.

2. Pan American and its affiliated carriers, on the one hand, and the Company, on the other, agree, in accordance with the general and basic conditions established hereunder, to render for each other such additional services as are listed in the ANNEXES to this Agreement, which services are not covered by the IATA Agreements.

3. Pan American hereby appoints the Company, and the Company agrees to act as, General Traffic and Sales Agent in Colombia (except in the territories, regions, and cities specifically excluded by Annex No. 1), for Pan American and its affiliated carriers. As such General Traffic and [fol. 2274] Sales Agent, the Company agrees that it will perform such services as may be appropriate to promote passenger, mail, express and cargo traffic over the lines of Pan American and its affiliated carriers and, in cooperation with Pan American, to arrange for transportation of passengers, baggage, mail, express, and cargo over such lines. In the event Pan American shall desire to establish its own sales offices in cities or regions in Colombia (other than those established prior to the effective date of this Agreement), Pan American shall be permitted to do so upon giving the Company not less than sixty (60) days' notice in writing of the establishment of such sales office.

4. The Company hereby appoints Pan American and its affiliated carriers, and Pan American agrees to act and make arrangements with its affiliated carriers under which they will act, as General Traffic and Sales Agent for the Company outside Colombia and Ecuador, except in those countries, regions and cities specifically excluded by Annex No. 1. As such General Traffic and Sales Agent, Pan American and its affiliated carriers agree that they will perform such services as may be appropriate to promote passenger, mail, express and cargo traffic over the lines of the Com-

pany and, in cooperation with the Company, to arrange for transportation of passengers, baggage, mail, express and cargo over such lines. In the event the Company shall desire to establish its own sales offices in cities or regions in the territory in which Pan American acts as General Traffic and Sales Agent hereunder (other than those established prior to the effective date of this Agreement), the Company shall be permitted to do so upon giving Pan American not less than sixty (60) days' notice in writing of the establishment of such sales office.

5. In view of the mutual appointments contained in paragraphs 3 and 4 above, each party acting as General Traffic and Sales Agent for the other accepts the following as the functions to be normally performed by each party for the other in the territory in which such party acts as General Traffic and Sales Agent for the other hereunder:

[fol. 2275] (a) Solicitation and sale of passenger, mail, express and cargo transportation;

(b) Making arrangements on behalf of such passengers for transportation to and from airport terminals at points of call of such other party and for hotel accommodations at such points and at other cities;

(c) Furnishing such advice and information as either party may from time to time request with respect to clearance, customs and immigration procedures at points where such party acts as General Traffic and Sales Agent;

(d) Making local arrangements for advertising and publicity, including the distribution of timetables, advertising materials and other information, as either party may from time to time request to the other party;

(e) Maintaining and operating centrally located sales offices for the sale of transportation for passengers, express and cargo at points served by said party, which offices will be staffed with competent traffic and sales personnel for the sale, and the sales promotion, of passenger, mail, express and cargo transportation over the lines of the other party and for the handling of all matters pertaining thereto pursuant to this Agreement;

(f) Performance of such acts and checking of such documents as may be required by applicable governmental laws or regulations for passengers, baggage, mail, express and cargo to be transported over the lines of the other party, including the making of arrangements for the presence of such government officials as may be required in connection therewith;

(g) Checking baggage of outgoing passengers and delivering baggage to incoming passengers if the other party so requests, collecting for the account of the other party any excess baggage charges payable with respect to any baggage checked by one party for transportation over the lines of the other party, receiving and forwarding by car- [fol. 2276] riers with which either party has forwarding arrangements, any trunks or other heavy baggage delivered to either party for the purpose by the other party or by passengers traveling or proposing to travel, over said lines, and collecting any charges payable therefor;

(h) Receiving from shippers outgoing express and cargo to be carried over the lines of the other party and delivering to consignees incoming express and cargo carried over said lines if either party so requests, collecting and forwarding by other transportation agencies any express or cargo delivered to either party for the purpose by the other party, and collecting any charges, including C.O.D. and Collect Charges, payable therefor in respect to any such express or cargo;

(i) Furnishing such catering service and other passenger service as either party may specifically request in connection with such party's operations;

(j) Making reservations for and facilitating transportation by the other party, its affiliated carriers and connecting carriers;

(k) Service all passenger and/or cargo sales agents of the other party; and, if and when required by the other party, obtain remittances of funds and pay them commissions for sales of transportation made by them over the lines of such other party, all in accordance with the policies,

practices, rules, regulations and instructions of such other party pertaining thereto.

(l) Subject to the conditions set forth in the Annexes, assisting in negotiations with Government agencies in countries in which one party acts as General Traffic and Sales Agent for the other, as such other party may specifically request.

6. All action taken by each party as General Traffic and Sales Agent, whether specifically referred to herein or otherwise, shall be in accordance with the instructions, rules, regulations, fares, rates and tariffs of the party or its affiliated carriers for whom such action is taken hereunder.

[fol. 2277] 7. Each party agrees to effect the appointment for the purposes of this Agreement, in the name and on behalf of the other party, of such agents in the territory in which said party acts as General Traffic and Sales Agent hereunder, as the other party may from time to time request, all in accordance with, and upon such terms and conditions as shall be set forth in, the instructions (including official published agency rules, regulations, policies and practices) and forms of agreement which said other party shall furnish to said party as its General Traffic and Sales Agent hereunder, and to cancel the appointment of any agent for the purpose of this Agreement, upon said other party's request.

8. (a) Subject to the provisions of paragraph 19 hereof, in consideration for the Company acting as General Traffic and Sales Agent for Pan American and its affiliated carriers hereunder, Pan American hereby agrees to pay to the Company for sales made in the territory in which the Company acts as General Traffic and Sales Agent for Pan American and its affiliated carriers, in addition to any commissions payable under the IATA Agreements:

(i) A commission equal to three (3%) percent of the total amount of the applicable fares for passenger transportation over the lines of Pan American and its affiliated

carriers, excluding excess baggage weight charges and valuation and insurance charges on baggage, collected by the Company either directly or by agents (including other carriers), or by Pan American, including passenger transportation sold by the Company and furnished under any Time Payment Plan tariff of Pan American, Universal Air Travel Cards acceptable to Pan American, and Government transportation requests or warrants presented by passengers of Pan American or its affiliated carriers.

(ii) A commission equal to two and one-half ($2\frac{1}{2}\%$) percent of the total amount of the applicable charges (not including insurance and C.O.D. charges) for air express and cargo transportation over the lines of Pan American or its affiliated carriers, collected by the Company either directly or by agents (including other carriers), or by [fol. 2278] Pan American, or provided for on collect charge shipments for which the Company issues the air waybill (excluding charges collected for shipments for which the Company does not issue the air waybill).

(b) Subject to the provisions of paragraph 19 hereof, in consideration for Pan American and its affiliated carriers acting as General Traffic and Sales Agent for the Company hereunder, the Company hereby agrees to pay to Pan American for sales made in the territory in which Pan American and its affiliated carriers act as General Traffic and Sales Agent for the Company, in addition to any commissions payable under the IATA Agreements:

(i) A commission equal to three (3%) percent of the total amount of the applicable fares for passenger transportation over the lines of the Company, excluding excess baggage weight charges and valuation and insurance charges on baggage, collected by Pan American or its affiliated carriers either directly or by agents (including other carriers), or by the Company, including passenger transportation sold by Pan American or its affiliated carriers and furnished under any Time Payment Plan, Universal Air Travel Cards acceptable to the Company and Government transportation requests or warrants presented by passengers of the Company.

(ii) A commission equal to two and one-half (2½%) percent of the total amount of the applicable charges (not including insurance and C.O.D. charges) for air express and cargo transportation over the lines of the Company, collected by Pan American or its affiliated carriers either directly or by agents (including other carriers), or by the Company, or provided for on collect charges shipments for which Pan American or any affiliated carrier of Pan American issues the air waybill (excluding charges collected for shipments for which Pan American or any affiliated carrier of Pan American does not issue the air waybill).

(c) No commission will be payable with respect to any [fol. 2279] fares or charges which shall be refunded, except as otherwise provided by the party over whose lines the transportation is or is to be carried out.

(d) Each party hereby agrees to pay or reimburse to the other party any out-of-pocket expenses specifically requested and approved by such party and incurred by the other, not chargeable to passengers or shippers (other than the cost of routine notices, distribution of time tables and sales promotion material, solicitation and salaries of personnel, office rental, telephone service and other expenses incurred in performing such services as are customarily performed by a General Traffic and Sales Agent) in carrying out special services (including such expenses for advertising and publicity and catering) requested under this Agreement.

9. (a) Each party agrees to indemnify the other and hold it harmless from and against all claims, for any loss, damage, injury or delay of any nature whatsoever, including costs and expenses, which shall occur in connection with the transportation services of said party or in connection with the carrying out or failure to carry out any obligation to third parties arising by reason of action taken on behalf of said party by said other party as General Traffic and Sales Agent pursuant to this Agreement unless such loss, damage, injury or delay shall be caused by the negligence or wilful misconduct of said other party. Pan American agrees to obtain a similar commitment from

each of its affiliated carriers with respect to its transportation services and obligations to third parties arising by reason of action taken on its behalf.

(b) Each party hereby releases the other from all liability to it for loss, damage, injury or delay, arising by reason of any action taken or omitted to be taken on behalf of said party by said other party as General Traffic and Sales Agent pursuant to this Agreement unless such loss, damage, injury or delay shall be caused by the negligence or wilful misconduct of said other party.

[fol. 2280] (c) It is expressly understood, without limiting the generality of the foregoing provisions of this paragraph 9, that expenses to either party arising from any fines, penalties or detention expenses imposed by any government or governmental agency (or which any government or governmental agency attempts to impose), as the result of negligence on the part of the other in performing the functions provided for in paragraph 5(f) of this Agreement, shall be for the account of said other party.

(d) The provisions of this paragraph 9 shall relate to matters dealt with in this Agreement other than matters dealt with in the IATA Agreements, and shall not be deemed to modify any of the provisions of said agreements. The provisions of this paragraph 9 shall be applicable to any functions provided to be performed by either party for the other by the terms of this Agreement, which functions may also be provided for by the terms of any ground handling agreement, ground servicing agreement or other agreement between the parties, notwithstanding any provision to the contrary, or inconsistent therewith, in said ground handling agreement, ground servicing agreement or other agreement.

10. Each party agrees to cooperate with the other in the operation of passenger, mail, express and cargo air services of the other and that it will, so long as this Agreement shall remain in force and effect, assist the other in the establishment and operation of such services.

11. All expenses for telegrams, cables, radiograms or other communications sent in connection with or pursuant

to this Agreement, including communications relating to reservations and cancellations of reservations, shall be borne by the sender.

12. Except as otherwise agreed upon between the parties in writing, settlement of all amounts payable hereunder, including all amounts collected on behalf of either party for transportation sold under the provisions of the IATA [fol. 2281] Agreements, shall be made in accordance with the applicable rules and regulations of the IATA Clearing House.

13. In the event that Pan American shall have arrangements (hereinafter referred to as an "Interline Agreement"), with any other carrier other than pursuant to an IATA Interline Traffic Agreement, pursuant to which Pan American and its affiliated carriers are authorized to sell transportation over the lines of such other carrier and such other carrier is authorized to sell transportation over the lines of Pan American and its affiliated carriers; it is understood that the Company is an affiliated carrier of Pan American for the purpose of the Interline Agreement and the Company is hereby authorized to sell transportation, and agrees to honor transportation sold, pursuant to the Interline Agreement, subject to all the terms and conditions thereof. The basis of compensation and the other principal features of all Interline Agreements in effect at the time will be set forth in the traffic rules and regulations currently furnished to the Company by Pan American and copies of such agreements will be furnished to the Company upon request. It is further understood that, with respect to any transportation sold in accordance with the Interline Agreement:

(a) Settlement will be effected between Pan American and the Company in the same manner as settlement is effected pursuant to this Agreement, or in such manner as shall be mutually agreed upon;

(b) The Company shall have all of the rights and obligations, and only the rights and obligations, provided under the Interline Agreement with respect to affiliated companies of Pan American;

(c) No commission or other compensation or payment (including reimbursement of commissions or payment to sub-agents or others) will be paid by or to the Company, except to such extent as may be provided in the Interline [fol. 2282] Agreement; and

(d) The Company agrees to indemnify and hold harmless Pan American from and against all claims, including costs and expenses, and to reimburse Pan American for all amounts paid by Pan American pursuant to the Interline Agreement or otherwise by reason of any action taken by the Company pursuant to this paragraph 13.

14. In case Pan American shall take action of any kind in connection with the sale by the Company of transportation over the lines of an affiliated carrier of Pan American, or the sale by an affiliated carrier of Pan American of transportation over the lines of the Company, or in connection with the sale by the Company of transportation over the lines of a carrier with which Pan American has an Interline Agreement, or the sale by any such carrier of transportation over the lines of the Company, Pan American shall be deemed to be acting only as Agent for the carrier over whose lines such transportation is to be carried out and shall be under no liability to the Company in connection therewith, including, but without limitation, liability for payment of commissions or other payments unless collected by Pan American on behalf of the Company, except for its own negligence or wilful misconduct.

15. It is agreed that the name "Pan American", "Pan American Airways System", and "Pan American World Airways", "Pan American World Airways System", and "Clipper" and the Pan American insignia and any other special or distinctive phrase, mark, name or slogan relating to Pan American and used on advertising material or otherwise by the Company, including all accompanying goodwill, are and are to remain the property of Pan American, and that the names "Aerovias Nacionales de Colombia", and "Avianca", and the Company's insignia and any other special or distinctive phrase, mark, or slogan relating [fol. 2283] to the Company and used on advertising mate-

rial or otherwise by Pan American, including all accompanying goodwill, are and are to remain the property of the Company, and Pan American and the Company agree to cooperate fully with each other in the protection of such names, insignia, phrases and marks.

16. Any controversy or claim arising out of or in any manner relating to this Agreement shall be referred to and finally settled by arbitration in accordance with the procedures set forth below, and if necessary, judgment on the award rendered may be entered in any court having jurisdiction thereof.

(i) If the parties agree to the appointment of a single arbitrator, the arbitral tribunal shall consist of him alone.

(ii) If they do not so agree the arbitral tribunal shall consist of three arbitrators. Each party shall appoint one of the three arbitrators, and the arbitrators so appointed shall appoint the third, who shall act as chairman. Should the arbitrators appointed by the parties fail to agree on the appointment of the third, or should either fail to appoint his arbitrator, any supplementary appointment required shall be made by the Director General of the International Air Transport Association (IATA).

(iii) The Director General may, at the request of either party, fix any time limit he finds appropriate within which the other party, or the two arbitrators appointed by the parties, shall constitute the arbitral tribunal. Upon the expiration of this time limit the [fol. 2284] Director General shall take the action prescribed in the preceding paragraph to constitute the tribunal.

(iv) When the arbitral tribunal consists of three arbitrators, its decision shall be given by majority vote.

(v) The arbitral tribunal shall settle its own procedures and if necessary shall decide the law to be applied. The award shall include a direction con-

cerning allocations of costs and expenses of and incidental to the arbitration (including arbitrator fees).

(vi) The award shall be final and conclusively binding upon the parties.

17. As used in this Agreement, the term "affiliated carriers" shall include all companies other than the Company engaged in the transportation of passengers, mail, express or cargo, by air, for hire, capital stock of which shall be owned by Pan American, which Pan American may designate by notice in writing to the Company.

18. (a) Unless otherwise provided for in the Annexes to this Agreement, this Agreement shall become effective as of December 3, 1954, and shall continue in effect until December 31, 1955 and thereafter until terminated by either party at any time after December 31, 1955 upon notice in writing given to the other not less than ninety (90) days in advance of the date of such termination. Termination of this Agreement shall not relieve either party from any obligation or liability on its part arising from or connected with tickets, exchange orders, airway-[fol. 2285] bills or other contracts for transportation issued or executed prior to such termination nor shall it relieve either party from any liability on its part based upon any state of facts existing prior to such termination.

(b) The general traffic and sales agency agreement between Pan American and the Company dated November 1, 1949, as amended, is hereby terminated as of the effective date of this Agreement.

19. The provisions of this Agreement shall be subject to all applicable rules and resolutions, including but not limited to those relating to commissions, of the International Air Transport Association (IATA), or any branch, committee, or conference thereof, which is binding upon either party to this Agreement or to any applicable agreement made by either party to this Agreement and approved by the IATA, and said provisions shall be deemed to be amended by any such rule, resolution or agreement to the extent that said provisions are in conflict with such rule, resolution or agreement.

20. Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by mail addressed, in the case of notice to Pan American, to Vice President-Traffic and Sales, Pan American World Airways, Inc., 135 East 42nd Street, New York 17, N. Y., U. S. A., or to such other address as Pan American may from time to time designate for the purpose, and in the case of notice to the Company, to the President, Aerovias Nacionales de Colombia, S. A., Edif. San Tander, Carrera 7a #16-14, Bogota, Colombia, or to such other address as the Company may from time to time designate for the purpose.

21. This Agreement consists of paragraphs 1 through 21, together with Annex No. 1 and the same may hereafter [fol. 2286] be amended by mutual agreement in writing between the parties.

IN WITNESS WHEREOF, Pan American and the Company have caused this Agreement to be executed in the corporate names by their respective officers thereunto duly authorized.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ WILLIS G. LIPSCOMB
Vice President
Traffic and Sales

WITNESSES:

[Two signatures illegible]

AEROVIAS NACIONALES DE COLOMBIA, S. A.

By /s/ H. MAX HEALEY
Commercial Vice President

WITNESSES:

[Two signatures illegible]

[fol. 2287]

GENERAL TRAFFIC AND SALES AGENCY AGREEMENT

ANNEX NO. 1

1. In accordance with the provisions of paragraph 2 of the GENERAL TRAFFIC AND SALES AGENCY AGREEMENT to which Pan American and the Company are parties;

   (a) Pan American, on one side, agrees to act as General Traffic and Sales Agent on behalf of the Company outside the countries of Colombia and Ecuador; and

   (b) The Company, on the other side, agrees, to act as General Traffic and Sales Agent on behalf of Pan American in the country of Colombia.

Pan American agrees to assist the Company in negotiations with government agencies in the countries in which Pan American acts as General Traffic and Sales Agent for the Company, to such an extent as shall be requested by the Company, and any out-of-pocket expenses incurred in furnishing such assistance will be reimbursed by the Company. The Company agrees to assist Pan American in negotiations with the government agencies in Colombia to such an extent as shall be requested by Pan American, and any out-of-pocket expenses incurred in furnishing such assistance will be reimbursed by Pan American.

[fol. 2288]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 54

December 3, 1954

Mr. Willis G. Lipscomb
Vice President—Traffic & Sales
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

Dear Mr. Lipscomb:

Reference is made to the General Traffic and Sales Agency Agreement between our respective companies executed on this date, and to Paragraph 8 (d) thereof which provides that each party thereto pay or reimburse the other any out-of-pocket expenses specifically requested and approved by such party and incurred by the other.

This letter, when accepted by you, will evidence our further agreement with respect to the following matters in regard to the provisions of Paragraph 8(d) of said Agreement, in order to continue the existing arrangements between us with respect thereto:

1. We hereby request that, until further notice, the following materials and services be furnished by Pan American World Airways, Inc., on behalf of Aerovias Nacionales de Colombia, S.A., (AVIANCA) the expenses for which will be reimbursed to Pan American by AVIANCA in accordance with the terms hereinafter provided:

A. Production of System timetables and distribution to offices of Pan American, AVIANCA and of other System carriers, expenses for which include:

(a) Printer's charges, including but not limited to composition, correction, printing and paper;

(b) Charges for photographs, art work and design; and

(c) Expense of distribution to offices of Pan American, AVIANCA and other System carriers which share in such expense.

B. Production, filing and distribution of tariffs and schedules, including those filed with the United States Civil Aeronautics Board (CAB) and with agencies of other governments, expenses for which include:

(a) Printer's charges, including but not limited to composition, correction, printing, paper;

(b) Cost of binders; and

[fol. 2289] (c) Expense of transmitting to CAB and other governmental agencies and of distribution to offices of Pan American, AVIANCA and other System carriers which share in such expense.

C. Production and distribution of Traffic Manuals, expenses for which include:

(a) Printer's charges, including but not limited to composition, correction, printing and paper;

(b) Cost of binders; and

(c) Expense of distribution to offices of Pan American, AVIANCA and of other System carriers which share in such expenses.

D. Production and distribution of Universal Air Travel Plan and Pay Later Plan instructions, forms, cards and related documents, expenses for which include:

(a) Printer's charges, including but not limited to composition, correction, printing and paper; and

(b) Expense of distribution to offices of Pan American, AVIANCA and of other System carriers which share in such expense.

E. Publication of schedules, rates and related matter in the sections of the OFFICIAL GUIDES relating to Pan American World Airways System, at cost as billed by said publications.

2. AVIANCA agrees to pay to Pan American as its share of the expenses for the respective services above described an amount that bears the same ratio to the total expenses incurred for said services as AVIANCA's pas-

senger and cargo gross revenues, whichever shall be applicable as set forth below, for the calendar preceding the year in which said expenses are incurred bear to the total of such revenues for such preceding calendar year for all of the carriers in the Pan American World Airways System which share in such costs of such service; provided, that in no case shall AVIANCA's share of expenses relating to cargo traffic only exceed 10% of the total System cargo revenue. For the purpose of the preceding sentence, cargo and express revenues are to be used for determining the share of expenses with respect to services relating exclusively to cargo or express, and passenger revenues are to be used for determining the share of expenses with respect to all other services referred to herein. With respect to publication of schedules, rates and related matter in the separate AVIANCA section of the OFFICIAL GUIDES, AVIANCA will reimburse Pan American for costs as billed by said publications.

[fol. 2290] 3. The cost of distribution of the various documents referred to herein shall include only the cost of distribution to the offices of the various carriers in the Pan American World Airways System and shall not include cost of distribution of any of such documents or other advertising material by Pan American or any of such carriers to sub-agents or to prospective travelers or shippers, all of which when done by Pan American shall be considered a normal sales promotion activity as a general agent.

4. All of the documents referred to above and other traffic documents, such as tickets, ticket envelopes, exchange orders, airwaybills, sales agency agreements, baggage checks and similar documents, will be procured by AVIANCA in accordance with the terms of the letter agreement dated June 25, 1952 relating to purchasing and shipping services to be rendered to AVIANCA by Pan American.

If the foregoing correctly sets forth our agreement in regard to these matters, will you please indicate your

acceptance on the enclosed copy of this letter and return the same to us.

Very truly yours,

AEROVIAS NACIONALES DE COLOMBIA, S. A.

/s/ H. MAX HEALEY
H. Max Healey
Commercial Vice President

ACCEPTED: December 3, 1954

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ WILLIS G. LIPSCOMB
Vice President—Traffic and Sales

[fol. 2291]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 55

December 3, 1954

Aerovias Nacionales de Colombia, S. A.,
Bogota, Colombia.

Attention: Mr. H. Max Healey, Commercial Vice President

Dear Sirs:

Enclosed herewith is a form of General Traffic and Sales Agency Agreement which we propose to supersede the existing agency agreement between us dated November 1, 1949. If the enclosed form of General Traffic and Sales Agency Agreement is satisfactory to you, will you kindly execute and return to us two copies thereof. We will then execute the same and return one executed copy for your files.

We hereby designate Compania Mexicana de Aviacion, S. A., Lineas Aereas Costarricenses, S. A., and Panair do Brasil, S. A., pursuant to paragraph 17 of the Agreement, as affiliated carriers of Pan American for the purposes thereof. We also designate Aeronaves de Mexico, S. A., pursuant to paragraph 17 of the Agreement, as an affili-

ated carrier of Pan American solely with respect to matters relating to participation in the IATA Interline Traffic, Baggage and Cargo Handling Agreements and Avianca acting as General Traffic and Sales Agent under the Agreement. Pan American-Grace Airways, Inc., is also designated, pursuant to paragraph 17 of the Agreement, as an affiliated carrier of Pan American solely with respect to matters relating to participation in the IATA Interline Traffic, Baggage and Cargo Handling Agreements and Pan American and its affiliated carriers acting as General Traffic and Sales Agent under the Agreement.

Very truly yours,

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ WILLIS G. LIPSCOMB
Vice President—Traffic & Sales

Enc.

[fol. 2292]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 56

THIS ORIGINAL IS NOT TO BE REMOVED FROM
PAN AMERICAN AIRWAYS SYSTEM
CONTRACT FILE

TR.391
G-9F6A

[Handwritten notation—original copy—Type 1-A-1]

INTERLINE TRAFFIC AGREEMENT

(I.A.T.A. Form)

WHEREAS the parties hereto operate air transportation services and desire to enter into arrangements under which each may sell transportation over the routes of the others,

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

I. *Definitions*

1. "Ticket" means the form issued to passenger(s) by a party hereto for transportation for hire of the passenger(s) and his (their) baggage over the routes of one or more such parties.

2. "Exchange Order" (which is equivalent to the term Exchange Voucher) means the form issued by a party hereto which provides for the issuance of ticket(s) in exchange for such exchange order.

3. "Consignment Note" (which is equivalent to the term Air Waybill) means the form completed by a party hereto which evidences the contract between a consignor and a carrying airline(s) for the transportation of cargo over the routes of one or more such parties.

4. "Issuing Airline" means a party hereto which issues a ticket or exchange order or completes a consignment note for transportation over the routes of another party(ies) to this agreement.

5. "Carrying Airline" means a party hereto over whose routes a passenger, baggage or cargo is transported or is to be transported pursuant to a ticket actually issued or to be issued in exchange for an exchange order or pursuant to a consignment note.

6. "Transferring Airline" means a Carrying Airline over whose routes a passenger, baggage or cargo is to be transported from the point of origin, or a stop-over or transfer point, to the point of transfer to the next carrying airline.

7. "Cargo" means any property transported for hire, other than mail, baggage, or property retained in the custody of a passenger.

[fol. 2293] 8. "Baggage" means the property of a passenger carried in connection with the trip for which the passenger has purchased a ticket and checked in accordance with applicable tariffs.

9. "Tariffs" means the fares, rates, charges, rules, regulations, conditions of carriage and instructions pertaining to transportation duly published by any of the parties hereto.

10. "Sale" means the issuance of a ticket or exchange order or the completion of a consignment note or other transportation document as authorized herein.

11. "IATA" means International Air Transport Association.

II. *Issuance of Tickets and Exchange Orders and Completion of Consignment Notes*

1. Each party hereto is hereby authorized to issue or complete:

(a) tickets, or exchange orders exchangeable for tickets, for transportation of passengers, provided that, unless otherwise agreed as between any of the parties, baggage shall be checked by each carrying airline only for its respective portion of the transportation.

(b) consignment notes for transportation of goods over the routes of each other party hereto, and

(c) all other documents necessary or appropriate for such transportation;

all in the form approved by, and in accordance with the tariffs and the terms, provisions, and conditions of the tickets, consignment notes, and other documents of the party over whose routes the passenger, baggage, or cargo is to be carried. No ticket, exchange order or consignment note will be issued or completed providing for space on a particular flight unless an advance reservation (booking) shall have been made for the transportation, and the issuing airline shall have received payment of the total charges payable therefor in accordance with such tariffs or shall have made arrangements

satisfactory to the carrying airline for the collection of such charges. The issuing airline will not, directly or indirectly, or through any agent or broker, or otherwise, rebate or remit any portion of the charges specified in said tariffs.

2. Each party agrees to accept each such ticket, consignment note, or other transportation document [fol. 2294] and to honour each exchange order issued by any other party hereto and to transport passengers, baggage or cargo as specified therein subject to its applicable tariffs. Such consignment note may provide for turning over to other transportation agencies for onward carriage by them of goods destined beyond points served by the carrying airlines, and in such event it is agreed that the carrying airline will act in accordance with the terms of such provision.

3. Each party shall furnish to each other party the tariffs and other information necessary to the sale, as contemplated hereunder, of the transportation services currently being offered by it. In case any schedule, tariff, form of ticket or exchange order or consignment note of any party hereto relating to transportation over its lines, shall be modified or amended at any time, or in case any service of any such party shall be suspended, modified or cancelled, such party will notify each other party as far in advance as practicable, of the effective date of any such modification, amendment, suspension or cancellation.

III. *Claims and Indemnities*

1. The carrying airline, as principal, indemnified the issuing airline, including its officers, employees, agents and servants, as agent, against all claims, demands, costs, expenses, and liability arising from the issue, completion or acceptance of any ticket, exchange voucher or consignment note or from the carriage effected in pursuance thereof; provided

that such indemnification shall not cover claims caused solely by the negligence or wilful misconduct of the issuing airline; and provided further, that, in respect to claims resulting from tickets, exchange orders or consignment notes improperly issued, completed or delivered by an issuing airline, such issuing airline indemnified the carrying airline, including its officers, employees, agents and servants.

2. Upon the transfer of baggage and/or cargo hereunder, the transferring or onward-carrying airline indemnifies the onward-carrying or transferring airline, including its officers, employees, agents and servants, respectively, against all claims, demands, and liability arising from such transferring or onward-carrying airline(s) failure to discharge its obligation or responsibility as provided hereinafter in Article V, Paragraph 7.

3. In the event that any claim is made or suit is commenced against a party hereto, indemnified as above, such party shall give prompt written notice to the appropriate other party hereto and shall furnish as requested all available communications, [fol. 2295] legal processes, data, papers, records and other information, material to the resistance or defence of such claim or suit.

4. Each party agrees to hold harmless and indemnify all other parties hereto from all claims, demands, costs, expenses and liability arising from or in connection with the death or injury to passengers, or loss, damage or delay of baggage or cargo incurred while such passengers, baggage or cargo are, pursuant to this agreement, under the control or in the custody of, or being transported by, such party.

5. Amounts paid in settlement for loss or damage to baggage or cargo not detected and recorded at the time of transfer between the carriers shall be prorated between all carrying airlines concerned

on the basis of transportation fares and charges received by each from such transportation.

IV. *Commissions*

1. No commission shall be paid by one party to the other for any sale made pursuant to this agreement except such commissions as may be currently authorized by applicable resolution of IATA, or, if no applicable resolution of IATA is in effect, only such commissions as the parties hereto may otherwise agree to.

2. If the carrying airline, the passenger or consignor (or purchaser of a ticket, or exchange order) for any reason cancels any booking or does not use all or any portion of the transportation specified, neither the issuing airline nor its agent shall claim or withhold any commission for the sale of transportation so cancelled or unused.

3. No commission or other compensation shall be payable to the issuing airline in respect of sums not actually collected and paid over by it to the carrying airline, as evidenced by exchange orders, tickets, consignment notes or other authorized transportation documents issued by the issuing airline, or with respect to sums which shall be refunded, except as otherwise specifically authorized by the carrying airline.

V. *General*

1. In issuing or completing tickets, exchange orders and consignment notes for transportation over the routes of other parties hereto, the issuing airline shall be deemed to act only as an agent of the carrying airline(s).

[fol. 2296] 2. Any act which a party is authorized or permitted by this agreement to take may be taken through an agent of that party; provided, however, that whenever transportation is sold by

any party through an agent, such party, if so required by the carrying airline, will notify the carrying airline(s) concerned of the name and location of the agent and will pay commissions to the agent only in accordance with applicable resolutions of IATA, or if there are no such resolutions, in accordance with directions of the carrying airline(s).

3. Each party hereto agrees not to make any representations with regard to the tickets, exchange orders, consignment notes, or other transportation documents of any other party hereto, or of the flight or journey for which the same shall be sold or issued, except those representations specifically authorized by such other party.

4. Nothing herein contained shall be deemed to require any party hereto to initiate or maintain service between any particular points.

5. Whenever a sale by an issuing airline is made in the territory of a General Agent or General Sales Agent of a carrying airline, the reservation and sale shall be handled in accordance with arrangements made between the parties hereto. Each party will advise each other party from time to time of the names and addresses of all General Agents or General Sales Agents of such party located in the area where such other party has an office(s) for the sale of transportation and of the territory for which each General Agent or General Sales Agent holds the General Agency/General Sales Agency.

6. In transferring interline baggage, accompanied or unaccompanied, and cargo, it shall be the responsibility of the transferring airline, but without incurring any liability for loss of revenue in cases of missed connections, to deliver such baggage or cargo to the next carrying airline, at such location and hours to be agreed upon in writing by the parties concerned.

7. Whenever baggage or cargo is to be transferred for onward transportation hereunder and completion of such transportation necessitates compliance with the laws and regulations pertaining to importation and transit or exportation and transit of the country of point of transfer, it shall be the responsibility of the transferring airline to comply with such laws and regulations and to deliver, where necessary, to the onward-carrying airline, prior to or simultaneously with the transfer, proper evidence of compliance with that country's laws [fol. 2297] and regulations pertaining to such importation and transit or exportation and transit; provided, however, that in any case where compliance with such laws and regulations can be made only by the onward-carrying airline, it shall be the onward-carrying airline's responsibility to comply therewith, and provided further that any two or more parties hereto may, by separate written agreement, alter such responsibilities as between themselves.

VI. *Interline Settlement*

1. Each issuing airline agrees to pay to each carrying airline the transportation charges applicable to the transportation performed by such carrying airline and any additional transportation or non-transportation charges collected by the issuing airline for the payment of which the carrying airline is responsible.

2. a) Settlements of amounts payable pursuant to this agreement between parties that are members of the IATA Clearing House shall be in accordance with applicable rules and regulations of the IATA Clearing House.

   b) Settlements of amounts payable pursuant to this agreement involving one or more parties that are not members of the IATA Clearing House shall be made monthly or at such shorter

intervals and in such manner and by such means as may be mutually agreed upon by the respective parties hereto. Statements of account covering all such amounts will be exchanged as promptly as practicable after the end of each month and balances will be settled promptly after such statements are exchanged by a cash payment in the currency designated from time to time by the carrying airline to which such payment is due.

VII. *Arbitration*

1. Any dispute concerning the scope, meaning, construction or effect of this agreement or arising therefrom shall be referred to and finally settled by arbitration.

2. If the parties concerned agree to the appointment of a single arbitrator the arbitral tribunal shall consist of him alone.

3. If they do not so agree, the arbitral tribunal shall consist of one arbitrator for each party and one or two other arbitrators, as may be required to provide an odd number. Each party concerned shall appoint one of the arbitrators, and the arbitrators so appointed shall appoint the other(s), [fol. 2298] one of whom shall be designated as chairman. Should the arbitrators appointed by the parties fail to agree on appointment of the other(s) or designation of a chairman, or should any party fail to appoint his arbitrator, any such appointment required shall be made by the Director General of IATA.

4. The Director General may, at the request of any party concerned, fix any time limit he finds appropriate within which the parties, or the arbitrators appointed by the parties, shall constitute the arbitral tribunal. Upon expiration of this time limit the Director General shall take the action pre-

scribed in the preceding paragraph to constitute the tribunal.

5. When the arbitral tribunal consists of more than one arbitrator, its decision shall be given by majority vote.

6. The arbitral tribunal shall settle its own procedure, and if necessary shall decide the law to be applied. The award shall include a direction concerning allocation of costs and expenses of and incidental to the arbitration (including arbitrator fees).

7. The award shall be final and conclusively binding upon the parties.

VIII. *Termination of Prior Agreements*

This agreement supersedes all previous interline traffic agreements pertaining to international transportation of passengers, baggage and or cargo between and among the parties hereto which are in conflict herewith.

IX. *Application to become a Party*

Any airline desiring to become a party to this agreement shall make written application to the Secretary of the Traffic Committee of IATA. Upon receiving such application, the Secretary shall mail to each of the parties hereto a notice of such application. Each party shall then in writing to the Secretary either concur in or dissent from such application. Upon execution of a counterpart hereof by the applicant, the Secretary shall, sixty days after notice of such application, mail to each of the parties and to the applicant, a second notice stating which parties have concurred in such application. Thirty days after the date of mailing of such latter notice, this agreement shall become binding between the applicant and all of the parties who have concurred in such application.

[fol. 2299] X. *Withdrawal from Agreement*

A party hereto may withdraw from this agreement, either with respect to all the parties or with respect to a designated party, by giving thirty days written notice of such withdrawal to the Secretary of the Traffic Committee of IATA and to all the parties hereto; in the latter alternative the agreement shall continue in force between the party giving such notice and all parties hereto except such designated party. Such withdrawal does not relieve any of the parties from obligations or liabilities incurred hereunder before the date of effectiveness of such withdrawal.

XI. *Execution Hereof*

This agreement may be executed in any number of counterparts, all of which shall be taken to constitute one original instrument. Such counterparts shall be deposited with the Secretary of the Traffic Committee of IATA.

PAN AMERICAN AIRWAYS, INC.
(Name of airline)

By /s/ WILLIS G. LIPSCOMB
Willis G. Lipscomb

Vice President-Traffic & Sales
(Title)

/s/ R. C. LOUNSBURY
R. C. Lounsbury
General Traffic Manager

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
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APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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61—Agreement for ground services and use of ground facilities by scheduled operators between Pan American Airways, Inc. and Braniff Airways, Inc. dated April 27, 1948	2308	2391
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79—Amendment No. 1 to General Traffic and Sales Agency Agreement between Pan American World Airways, Inc. and Panair Do Brasil, S.A. dated July 1, 1957	2380	2460
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95—Advertisement for foreign airmail service by Post Office Department dated May 31, 1928	2436	2514
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97—Memorandum to J. T. Trippe from P. E. D. Nagle dated June 26, 1928	2443	2524
98—Airmail route proposal, bond and oath by Pan American Airways, Inc. dated July 2, 1928	2445	2525
99—Memorandum to Iglehart from Patchin dated July 11, 1928	2449	2531
100—FAM contract No. 5 between United States of America and Pan American Airways, Inc. dated July 13, 1928	2450	2532
101—Acceptance of Pan American Airways, Inc. proposal to carry mails between Key West, Florida, and Cristobal Canal Zone by W. Irving Glover, Second Assistant Postmaster General, dated July 13, 1928	2457	2538

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114—Letter from R. H. Patchin to Richard F. Hoyt dated November 23, 1928	2484	2568
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125—Pan American Airways, Inc. memorandum to J. T. Trippe from Walter Phelps Jacobs, dated January 25, 1929	2523	2608
126—Letter to Pan American Airways, Inc. from SCADTA dated January 28, 1929	2524	2609
127—Advertisements for foreign airmail service Post Office Department from Cristobal Canal Zone to Santiago, Chile dated January 31, 1929	2525	2610
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130—Airmail proposal, bond and oaths by Pan American-Grace Airways, Inc. dated February 26, 1929	2532	2618
131—Letter to the Postmaster General from Pan American-Grace Airways, Inc. dated March 1, 1929	2536	2622
132—Post Office Department press release re award to Pan American-Grace Airways of mail contract between Cristobal Canal Zone and Santiago, Chile, dated March 2, 1929	2537	2623
133—Acceptance of proposal of Pan American-Grace Airways, Inc. to carry mails between Cristobal, Canal Zone and Santiago, Chile, by Harry S. New, Postmaster General, dated March 2, 1929	2540	2625
134—FAM Contract No. 9 between United States of America and Pan American-Grace Airways, Inc. dated March 2, 1929	2541	2625
135—Memorandum on behalf of Pan American-Grace Airways, Inc. in the matter of the protest against this award of foreign airmail contract No. 9 dated March 26, 1929	2548	2633
136—Telegram to Pan American-Grace Airways from Irving Glover, Second Assistant Postmaster General, dated May 3, 1929	2600	2680

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
137—Post Office Department press release re award of mail contract to Pan American-Grace Airways, Inc. dated May 3, 1929	2601	2680
138—Letter to R. F. Hoyt from J. D. MacGregor dated May 9, 1929	2602	2681
139—Memorandum to the directors of Pan American-Grace Airways, Inc. from J. D. MacGregor attached to letter to Hoyt from MacGregor dated May 9, 1929	2603	2682
140—Order signed by W. Irving Glover, Second Assistant Postmaster General, dated August 20, 1929	2614	2692
141—Letter to Walter F. Brown, Postmaster General, from Pan American Airways, inc. dated October 24, 1929	2615	2692
142—Letter to Pan American Airways, Inc. from W. Irving Glover, Second Assistant Postmaster General, dated October 28, 1929	2619	2695
143—Traffic agreement between Pan American Airways, Inc., Pan American-Grace Airways, Inc. and SCADTA dated February 28, 1930	2620	2696
144—Letter to J. T. Trippe from E. E. W. dated May 2, 1930	2628	2701
145—Cable to MacCracken, O'Neill from Bunge Bilbao dated May 14, 1930	2632	2705
146—Letter to Pan American Airways, Inc. from James D. Summers dated June 4, 1930	2636	2707
147—Memo to J. T. Trippe from Pan American-Grace Airways, Inc. dated June 12, 1930	2639	2710

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
148—Letter to Walter F. Brown from Pan American-Grace Airways, Inc. dated June 18, 1930	2641	2712
149—Memorandum by MacCracken, Jr. and J. T. Trippe dated July 22, 1930	2645	2716
150—Memorandum in regard to the proposed acquisition by Aviation Corporation of the Americas of the assets of New York, Rio & Buenos Aires Line, Inc. prepared by Root, Clark, Buckner & Ballantine, counsel for Pan American, dated July 28, 1930	2646	2718
151—Letter to Root, Clark, Buckner & Ballantine from John Lord O'Brian, Assistant Attorney General, dated August 1, 1930	2687	2749
152—Post Office advertisement for foreign airmail service between Paramaribo and Santos dated August 20, 1930	2688	2750
153—Contract for foreign airmail service route No. 10 between United States of America and Pan American Airways, Inc. dated September 24, 1930	2696	2760
154—Extension of service and agreements, foreign airmail route No. 10, agreement between the United States of America and Pan American Airways, Inc. dated October 15, 1931	2709	2774
155—Memorandum to directors, Pan American-Grace Airways, Inc. from J. D. MacGregor dated September 26, 1930	2715	2782
156—Letter to Pan American Airways, Inc. from E. R. White, Director, Post Office Department, dated December 13, 1930	2721	2787

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
157—Law No. 8 of 1931 of Colombia dated January 9, 1931	2722	2788
157A—Memorandum to Trippe from Evan E. Young dated March 6, 1931	2733	2797
158—Letter to the Postmaster General from J. T. Trippe dated April 7, 1931	2735	2799
159—Letter to the Postmaster General from J. T. Trippe dated April 7, 1931	2737	2800
160—Letter to the Postmaster General from J. T. Trippe dated April 7, 1931	2739	2803
161—Letter to J. T. Trippe from Francis White dated April 9, 1931	2740	2804
162—Letter to President of Pan American from Washington Representative (Nagle) dated June 17, 1931	2741	2805
163—Letter to Walter F. Brown from Thomas B. Doe dated July 2, 1931	2744	2808
164—Letter to Thomas B. Doe from Walter F. Brown dated July 7, 1931	2746	2810
165—Cable to J. T. Trippe from Tietjen dated July 10, 1931	2748	2811
166—Telegram to Tietjen from Trippe dated July 11, 1931	2749	2812
167—Letter to President from J. T. Trippe dated September 4 1931	2759	2813
168—Agreement between Uraba, Medellin & Central Airways, Inc. and Gonzalo Mejia dated September 10, 1931	2753	2815
169—Clipping from the New York Times dated December 12, 1931	2759	2819
170—Translation of deed of assignment of the Mejia Concession to Uraba, Medellin & Central Airways, Inc. dated January 11, 1932	2760	2821
171—Letter to Harold R. Harris from Geo. L. Rihl dated December 24, 1933	2770	2830

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
172—Letter to Geo. L. Rihl from H. R. Harris dated December 30, 1933	2772	2833
173—Memorandum of conference with Francis White by H. J. F. dated February 23, 1934	2774	2836
174—Letter to A. Garni from Harold Roig dated March 18, 1935	2780	2840
175—Letter to Chief of Engineering at New York from Pan American Operations Manager, Caribbean, Miami, dated June 19, 1935	2785	2844
176—Letter to J. D. MacGregor from H. R. Harris dated November 28, 1936	2787	2848
177—Confidential memorandum re airmail service U.S.A. to Buenos Aires via west coast of South America by Garni attached to letter from Harris to MacGregor dated November 28, 1936	2792	2855
178—Memorandum re extension of FAM 9 through Bolivia to the Argentine attached to letter from Harris to MacGregor dated November 28, 1936	2796	2861
179—Letter to J. D. MacGregor from H. R. Harris dated December 7, 1936	2803	2867

[fol. 2300]

PAN AMERICAN-WORLD AIRWAYS, INC. EXHIBIT 57

AMENDMENT NO. 1

THIS AMENDATORY AGREEMENT, made as of June 18th, 1957, between PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and AEROVIAS NACIONALES DE COLOMBIA, S.A., a corporation organized and existing under the laws of Colombia, hereinafter referred to as the "Company",

WITNESSETH THAT:

WHEREAS, Pan American and the Company have entered into a General Traffic and Sales Agency Agreement dated December 3, 1954, whereby the Company acts as general traffic and sales agent for Pan American and its affiliated carriers in the country of Colombia, and whereby Pan American and its affiliated carriers act as general traffic and sales agent outside the countries of Colombia and Ecuador; and

WHEREAS, Pan American and the Company desire to amend the General Traffic and Sales Agency Agreement to exclude the country of Peru from the territory in which Pan American and its affiliated carriers act as general traffic and sales agent for the Company;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the parties hereby agree as follows:

The General Traffic and Sales Agency Agreement is hereby amended as follows, effective as of June 18th, 1957:

1. The first sentence in paragraph 4 is hereby revised to read as follows:

[fol. 2301] "The Company hereby appoints Pan American and its affiliated carriers, and Pan American agrees to act and make arrangements with its affiliated carriers under which they will act, as General

Traffic and Sales Agent for the Company outside Colombia, Ecuador and Peru, except in those countries, regions and cities specifically excluded by Annex No. 1."

2. Paragraph 1 (a) of Annex No. 1 is hereby revised to read as follows:

"(a) Pan American, on one side, agrees to act as General Traffic and Sales Agent on behalf of the Company outside the countries of Colombia, Ecuador and Peru; and".

II. Except as herein specifically amended, all of the terms and conditions of the General Traffic and Sales Agency Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Pan American and the Company have caused this Amendatory Agreement to be executed in their corporate names by their respective officers thereunto duly authorized as of the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

/s/ WILLIS G. LIPSCOMB

WITNESS:

/s/ (Illegible)

AEROVIAS NACIONALES DE COLOMBIA, S.A.

/s/ JUAN GUILLERRO ROSTROPO J.

WITNESS:

/s/ (Illegible)

[fol. 2302]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 58

AMENDMENT NO. 2

THIS AMENDATORY AGREEMENT, made as of January 30, 1958 between PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and AEROVIAS NACIONALES DE COLOMBIA, S. A., a corporation organized and existing under the laws of Colombia, hereinafter referred to as the "Company".

WITNESSETH THAT:

WHEREAS, Pan American and the Company have entered into a General Traffic and Sales Agency dated December 3, 1954, as amended by Amendment No. 1 dated June 18, 1957, whereby the Company acts as general traffic and sales agent for Pan American and its affiliated carriers in the country of Colombia, and whereby Pan American and its affiliated carriers act as general traffic and sales agents outside the countries of Colombia, Ecuador and Peru; and

WHEREAS, Pan American and the Company desire to further amend the General Traffic and Sales Agency Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the parties hereby agree as follows:

1. The General Traffic and Sales Agency Agreement is hereby amended as follows, effective as of August 1, 1958:

1. The first sentence in paragraph 4 is hereby revised to read as follows:

"The Company hereby appoints Pan American and its affiliated carriers, and Pan American agrees to act and make arrangements with its affiliated carriers under which they will act, as General Traffic and Sales Agent

for the Company, outside Canada, Colombia, Ecuador, Peru, Chile and the continental United States, except in those countries, regions and cities specifically excluded by Annex No. 1".

[fol. 2303] 2. Subparagraphs (c) and (d) of paragraph 8 are hereby redesignated as subparagraphs (d) and (e), and the following is hereby inserted as a new subparagraph (c) of said paragraph 8:

"(c) Each party hereto shall submit to the other a written report, promptly after the end of each month of all sales of passenger, express and cargo transportation over its lines made during such month by other carriers in the territory in which such other party acts as General Traffic and Sales Agent hereunder, which report shall set forth the total amount of the applicable fares and charges as referred to above with respect to each such sale".

3. Paragraph 1 of Annex No. 1 is hereby revised to read as follows:

"(a) Pan American, on one side, agrees to act as General Traffic and Sales Agent on behalf of the Company outside the countries of Canada, Colombia, Ecuador, Peru, Chile and the continental United States, and".

4. Paragraph 1 (b) of Annex No. 1 is hereby revised to read as follows:

"(b) The Company, on the other side, agrees to act as General Traffic and Sales Agent on behalf of Pan American in the country of Colombia except in the cities of Bogota and Barranquilla".

II. Except as herein specifically amended, all of the terms and conditions of the General Traffic and Sales Agency Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Pan American and the Company have caused this Amendatory Agreement to be executed in their corporate names by their respective officers

thereunto duly authorized as of the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

S/ WILLIS G. LIPSCOMB
Willis G. Lipscomb
Vice President Traffic & Sales

WITNESS:

S/ (Illegible)

AEROVIAS NACIONALES DE COLOMBIA, S.A.

S/ JUAN GUILLERRO ROSTROPO J.
Juan Guillerro Rostropo J.
President

WITNESS:

.....

[fol. 2304]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 59

AMENDMENT NO. 3

THIS AMENDATORY AGREEMENT, made as of March 31, 1958, between PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and AEROVIAS NACIONALES DE COLOMBIA, S. A., a corporation organized and existing under the laws of Colombia, hereinafter referred to as the "Company",

WITNESSETH THAT:

WHEREAS, Pan American and the Company have entered into a General Traffic and Sales Agency Agreement dated December 3, 1954, as amended by Amendment No. 1 dated June 18, 1957 and Amendment No. 2 dated January 30, 1958, whereby the Company acts as general traffic and sales agent for Pan American and its affiliated carriers in

the country of Colombia, except in the cities of Bogota and Barranquilla, and whereby Pan American and its affiliated carriers act as general traffic and sales agents outside the countries of Canada, Chile, Colombia, Ecuador, Peru and the continental United States; and

WHEREAS, Pan American and the Company desire to further amend the General Traffic and Sales Agency Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the parties hereby agree as follows:

I. The General Traffic and Sales Agency Agreement is hereby amended as follows, effective as of August 1, 1958:

1. The first sentence in paragraph 4 is hereby revised to read as follows:

> "The Company hereby appoints Pan American and its [fol. 2305] affiliated carriers, and Pan American agrees to act and make arrangements with its affiliated carriers under which they will act, as General Traffic and Sales Agent for the Company, outside Bolivia, Canada, Chile, Colombia, Ecuador, Peru, and the continental United States, except in those countries, regions and cities specifically excluded by Annex No. 1".

2. Paragraph 1 of Annex No. 1 is hereby revised to read as follows:

> "(a) Pan American, on one side, agrees to act as General Traffic and Sales Agent on behalf of the Company outside the countries of Bolivia, Canada, Chile, Colombia, Ecuador, Peru, and the continental United States, and".

II. Except as herein specifically amended, all of the terms and conditions of the General Traffic and Sales Agency Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Pan American and the Company have caused this Amendatory Agreement to be ex-

ecuted in their corporate names by their respective officers thereunto duly authorized as of the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

/s/ WILLIS G. LIPSCOMB
Willis G. Lipscomb
Vice President-Traffic & Sales

WITNESS:

(Signature Illegible)

AEROVIAS NACIONALES DE COLOMBIA, S.A.

/s/ JUAN GUILLERRO ROSTROPO J.

WITNESS:

(Signature Illegible)

[fol. 2306]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 60

AMENDMENT NO. 4

THIS AMENDATORY AGREEMENT, made as of October 30, 1958, between Pan AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and AEROVIAS NACIONALES DE COLOMBIA, S. A., a corporation organized and existing under the laws of Colombia, hereinafter referred to as the "Company",

WITNESSETH THAT:

WHEREAS, Pan American and the Company have entered into a General Traffic and Sales Agency Agreement dated December 3, 1954, as amended by Amendment No. 1 dated June 18, 1957, Amendment No. 2 dated January 30, 1958, and Amendment No. 3 dated March 31, 1958, whereby

the Company acts as general traffic and sales agent for Pan American and its affiliated carriers in the country of Colombia, except in the cities of Bogota and Barranquilla, and whereby Pan American and its affiliated carriers act as general traffic and sales agents outside the countries of Bolivia, Canada, Chile, Colombia, Ecuador, Peru, and the continental United States; and

WHEREAS, Pan American and the Company desire to further amend the General Traffic and Sales Agency Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the parties hereby agree as follows:

I. The General Traffic and Sales Agency Agreement is hereby amended as follows, effective as of December 1, 1958:

1. The first sentence in paragraph 4 is hereby revised to read as follows:

[fol. 2307] "The Company hereby appoints Pan American and its affiliated carriers, and Pan American agrees to act and make arrangements with its affiliated carriers under which they will act, as General Traffic and Sales Agent for the Company, outside Bolivia, Canada, Chile, Colombia, Ecuador, Panama (including the Republic of Panama and the Canal Zone), Peru, and the continental United States, except in those countries, regions and cities specifically excluded by Annex No. 1".

2. Paragraph 1 of Annex No. 1 is hereby revised to read as follows:

"(a) Pan American, on one side, agrees to act as General Traffic and Sales Agent on behalf of the Company outside the countries of Bolivia, Canada, Chile, Colombia, Ecuador, Panama (including the Republic of Panama and the Canal Zone), Peru, and the continental United States, and".

II. Except as herein specifically amended, all of the terms and conditions of the General Traffic and Sales Agency Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Pan American and the Company have caused this Amendatory Agreement to be executed in their corporate names by their respective officers thereunto duly authorized as of the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

Willis G. Lipscomb
Vice President-Traffic & Sales

WITNESS:

(Signature Illegible)

AEROVIAS NACIONALES DE COLOMBIA, S.A.

(Signature Illegible)
(Title Illegible)

WITNESS:

(Signature Illegible)

[fol. 2308]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 61

STANDARD FORM OF AGREEMENT FOR GROUND SERVICES AND USE OF GROUND FACILITIES BY SCHEDULED OPERATORS

THIS AGREEMENT, made this 27th day of April, 1948, between PAN AMERICAN AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (Hereinafter called "Pan American"), and BRANIFF AIRWAYS, INC., a corporation organized and existing under the laws of the State of Oklahoma (hereinafter called "Braniff").

WITNESSETH THAT:

WHEREAS, Pan American operates an extensive system of international air transportation services and in

connection therewith maintains a ground organization and ground facilities at various locations, including certain such organization and facilities at each of the locations at which services are to be rendered pursuant to this Agreement; and

WHEREAS, Braniff proposes to operate air transportation services between Houston-Havana-Panama, and in connection therewith requires ground services and facilities at certain locations as hereinafter more fully set forth; and

WHEREAS, Braniff desires to have Pan American furnish certain of such ground facilities and services to it, and Pan American is willing to furnish such facilities and services, upon the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereby agree as follows:

1. Attached hereto and made a part hereof, is a schedule relating to each location at which services are to be performed or facilities made available pursuant to this Agreement, setting forth the services so to be performed and the facilities so to be made available at such location said schedule being designated SCHEDULE I, (Havana). Pan American hereby agree, to the extent that Pan American has such facilities and services available, having regard to the requirements of its own operations, to permit Braniff to utilize those ground facilities and to furnish to Braniff those services at the location shown in the SCHEDULE which are listed in said schedule relating to such location.

2. Pan American agrees to use its best efforts to follow reasonable instructions from Braniff regarding the standards, practices and procedures to be followed in furnishing services pursuant to the Agreement. In the absence of such instructions, services will be furnished in accordance with the standards, practices and procedures followed [fol. 2309] by Pan American in connection with its own operations. Braniff agrees to be bound by such reasonable rules and regulations as Pan American shall establish in connection with use of such facilities and receipt of such

services. The facilities and services listed in Part A of the SCHEDULE will be made available without further request for all scheduled flights made by Braniff between the points referred to in the Second Recital to this Agreement, in accordance with schedules furnished by Pan American. Such services and facilities will also be made available upon request for other flights of Braniff between said points, provided the request is received by Pan American a reasonable time prior to the intended use of the facilities and services. The facilities and services listed in Part B of the SCHEDULE will be made available only upon request by the pilot commanding the flight or by other authorized representative of Braniff, who will sign an appropriate receipt therefor. It is understood and agreed that any officer of Braniff, or any employee, agent or representative of Braniff acting in a supervisory capacity at, or in respect of, the location concerned, or any person otherwise authorized by Braniff, shall be authorized to give instructions on behalf of Braniff regarding the services to be rendered and to request services on behalf of Braniff hereunder.

3. Braniff will pay Pan American for the services and facilities listed in Part A of the SCHEDULE at the rate of $124.00 per landing for each scheduled landing and for each extra section or non-scheduled landing made by Braniff at Rancho Boyeros Airport. This rate was determined on the basis of a minimum of two DC-6 round trips schedules and one DC-4 round trip schedule weekly transiting Havana. The charges become effective on the date of the first survey flight and monthly charges thereafter to Braniff will not be less than the minimum schedules used in determining the rate as indicated above. Braniff will pay Pan American for the services and facilities listed in Part B of the SCHEDULE at the rates shown with respect thereto in the SCHEDULE. The foregoing charges have been arrived at on the basis of current costs and the utilization of Pan American facilities and services at the locations covered by this Agreement now being made or comitted for. The parties will review these charges at six months' intervals from the date of this Agreement and at such other times as either party shall request. In the event that it is found on such review that there has been a change in costs or in utilization of the facilities and services, an appropriate adjustment will be made in the charges. Such

adjustment will become effective as of the first of the month following the date when the review is requested, pursuant hereto, or, in the case of a periodic review pro- [fol. 2310] vided for herein, as of the first of the month following the date provided for such review.

4. Payments will be made by Braniff in United States currency in the United States to Pan American promptly after the end of each month upon submission of statements for the amount due.

5. Except as otherwise provided herein, all arrangements for use of third party facilities by Braniff or for services from third parties to Braniff will be made by Braniff, and all payments therefor will be made directly by Braniff and not through Pan American.

6. (a) Braniff agrees to maintain in effect the following described insurance covering its operations through and its activities in and about the location referred to in the SCHEDULE, in the respective amounts stated below and with insurers satisfactory to Pan American; to furnish Pan American prior to the effective date of this Agreement with certificates of insurance certifying that such insurance is in full force and effect and that all rights of subrogation against Pan American have been waived by the insurers; and to modify Pan American in the event any such insurance is cancelled or changed:

Description	*Limits of Liability (U. S. Currency)*
Aircraft Public Liability	$ 100,000 any one person 1,000,000 any one accident
Aircraft Property Damage	200,000 any one accident
Airport or Premises Property Damage	50,000 any one accident
Airport or Premises Public Liability	100,000 any one person 300,000 any one accident
Employers Liability	50,000 any one person 300,000 any one accident

(b) Braniff further agrees to indemnify and hold harmless Pan American from and against all liabilities, damages, losses and judgments, including costs and expenses incident thereto, which may (i) be suffered by, accrue against, be charged to, or recoverable from Pan American by reason of loss of or damage to property, or by reason of injury to or death of any person, other than officers, agents and employees of Pan American, arising out of or in any way connected with the use of facilities or the furnishing of services pursuant to this Agreement, unless caused by the sole negligence of Pan American or by the joint negligence of Pan American and any person, firm or corporation [fol. 2311] other than Braniff, its officers, agents, or employees, or (ii) be suffered by, accrue against, be charged to or recoverable from Pan American by reason of injury to or death of any officer, agent or employee of Pan American caused by negligence on the part of Braniff, its officers, agents or employees, in connection with any matter dealt with in this Agreement.

(c) It is understood and agreed that this Agreement and the rights granted to Braniff to use the facilities of, and to receive services from Pan American as herein provided do not impose upon Pan American any liability to Braniff for loss, injury, damage or delay of any nature whatsoever, and Braniff hereby releases Pan American from all liability to it for loss, injury, damage, or delay, regardless of how caused, arising out of or in any way connected with any matter dealt with in this Agreement or any action taken or omitted to be taken pursuant hereto, except any such liability which may exist by reason of Pan American's negligence in the operation of its own aircraft.

(d) Braniff hereby agrees to reimburse Pan American for any losses suffered by Pan American by reason of damage to or destruction of property owned or leased by Pan American, caused by negligence on the part of Braniff, its officers, agents or employees in connection with any matter dealt with in this Agreement, and, at the request of Pan American, to use its best efforts to repair or replace at Braniff's expense, any property so damaged or destroyed.

7. Nothing herein contained shall require Pan American to take any action contrary to law or to any order or regulation of any government or governmental body or officer having jurisdiction, or contrary to any permit or authorization granted to Pan American by any government or governmental body, or contrary to any arrangement pursuant to which Pan American operates or utilizes any of the facilities referred to herein. Pan American shall not be liable for failure to perform this Agreement if such failure is caused by act of God, fire, flood, strike, labor dispute, riot, insurrection, war, or any cause beyond the control of Pan American whether or not similar to the causes herein specifically mentioned.

8. This Agreement shall become effective immediately, shall supersede any existing arrangements between the parties covering the same subject matter, and shall continue in effect until cancelled by one party upon sixty days' written notice to the other. This Agreement may be cancelled immediately by either party if disapproved by the aeronautical authorities having supervisory jurisdiction over that party.

[fol. 2312] 9. Any notice required or permitted to be given pursuant to this agreement shall be duly given if sent by mail and addressed, in the case of notice to Pan American, to W. L. Morrison, Vice President, Pan American Airways, Inc., 1820 Delaware Parkway, Miami, Florida, and in the case of notice to Braniff, to the President, Braniff Airways, Love Field, Dallas (9), Texas.

10. This Agreement, regardless of where executed, shall be construed in accordance with, and performance shall be determined by the laws of the State of New York.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their names and on their behalf by their respective officers thereunto duly authorized.

PAN AMERICAN AIRWAYS, INC.

By /s/ W. L. MORRISON

ATTEST:

/s/ (Signature Illegible)

BRANIFF AIRWAYS, INC.

By /s/ R. C. SHRADER

ATTEST:

/s/ (Signature Illegible)
Asst. Secretary

[fol. 2313]

SCHEDULE I

LOCATION *HAVANA*

PART A

1. *Operations Services and Facilities*

1. *Use of Airport*
   (a) Non-exclusive use to land and take-off runways; taxi strips
   (b) Airport lighting system

2. *Ramp Services*
   (a) Use of passenger and cargo loading ladders and steps
   (b) Loading and unloading of aircraft
   (c) Towing to and from ramp
   (d) Placing and removing aircraft safety locks
   (e) Use of battery cart, CO_2 cart and emergency fire equipment in connection with starting engines
   (f) Physical dispatch from ramp including personnel necessary to issue appropriate instructions for starting engines and taxi away from ramp
   (g) Personnel for refueling
   (h) Routine aircraft inspection of carburators, propellers, landing gear, wheels and tires, and control surfaces
   (i) Check de-icer fluid
   (j) Check fluid in hydraulic tanks
   (k) Clean cockpit windows
   (l) Clean cabin windows and aircraft exterior as time permits

(m) Clean cabin interior as time permits
(n) Clean lavatories
(o) Check water in cabin

3. *Use of Terminal*
(a) Non-exclusive use of lobby and rest rooms
(b) Non-exclusive use of customs, health and immigration areas
(c) Porter and janitor services

4. *Aircraft Operations Dispatch*
(a) Preparation of flight plan
(b) Weight and balance manifests
(c) Preparation of flight time analysis
(d) Briefing crew
(e) Computation of lead
(f) Contact with air traffic control
(g) Terminal weather report

PART B

I. *Direct Charges*

1. Aircraft Fuel

*2. Aircraft Maintenance and repair

Skilled Labor	$3.50 per man hour regular time
	$5.25 per man hour overtime

Materials—current price

3. Preparation and transmission of weather reports from stations not covered in agreement $1.00 each.

4. Exclusive Terminal Space

Per square foot floor space	$1.50 per annum

* This charge to be made for major repair over and above services listed under Section 2, Part A.

[fol. 2314]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 62

September 27, 1948

Mr. R. C. Shrader
Vice President
Braniff Airways, Inc.
Love Field
Dallas 9, Texas

Dear Mr. Shrader:

Attached is an Amendatory Agreement to revise the rate for Braniff's use of Rancho Boyeros as stated in the original contract of April 27, 1948, from $124.00 to $139.00. This is due to the inclusion of the expense of the international express unit at the airport, which up to this time has been borne 100% by Pan American as well as the general rise in costs since the first of the year. As you will recall this matter was discussed at a meeting held in Havana last June with representatives of all airlines at which time it was recommended that this service be included as part of the cost of the proposed Air Terminal Company then seemingly in the process of formation. Now that it appears improbable that these plans will ever materialize, there is no alternative other than to include this expense and distribute the cost of all users of the airport.

You will recall that reductions in the rate have been made whenever it was possible in spite of the fact that Pan American has invested an additional $150,000 in airport facilities as a result of increased usage by the competitive airlines and forced wage increases by the labor union. In this connection the Cubana labor contract is again up for renewal and although every effort will be made to keep any upward adjustment to a minimum, the substantial increases ranging from 40% to 60% recently granted by the government to the omnibus and other public service workers has considerably weakened our bargaining position. In view of the foregoing, this will notify you that it may be necessary to again amend the rate when the results of the current negotiations are known.

Please be assured that Pan American will continue to keep the operation of this airport under surveillance for economic operation and if a reduction is possible at any time, it will be passed on to all scheduled carriers as in the past. After execution all copies of the amendment should be returned to the undersigned and appropriate copies will be forwarded to you for your files.

Very truly yours,

Original Signed by
W. L. MORRISON/R

W. L. Morrison, Vice President
Latin American Division

bcc: Vice President Dean
Vice President Balluder
Asst. General Counsel
General Manager—Cubana

Enclosures 5

[fol. 2315]

AMENDMENT NO. 1

This Amendatory Agreement, made this 27th day of September 1948, between PAN AMERICAN AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter called "Pan American") and BRANIFF AIRWAYS, INCORPORATED, a corporation organized and existing under the laws of the State of Oklahoma (hereinafter called "Braniff"),

WITNESSETH THAT:

WHEREAS, Pan American and Braniff are parties to an agreement dated the 27th day of April, 1948, (hereinafter called the "Principal Agreement"), providing for certain ground facilities and services to be furnished to Braniff by Pan American; and

WHEREAS, the parties desire to amend the Principal Agreement so as to include the costs of handling international air express at Rancho Boyeros Airport, Havana, Cuba;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree that the Principal Agreement is hereby amended, effective as of October 1, 1948, as follows:

1. By changing the first sentence of Paragraph 3 to read as follows: Braniff will pay Pan American for the services and facilities listed in Part A of the SCHEDULE at the rate of $139.00 per landing for each scheduled landing and for each extra section or non-scheduled landing made by Braniff at Rancho Boyeros Airport.

2. By adding Paragraph 11 to read as follows: Any taxes payable by either party, other than U.S. income taxes payable by Pan American by reason of this agreement or the use of the services and facilities by Braniff pursuant hereto shall be borne by Braniff.

3. By amending SCHEDULE 1 in the form attached hereto and made a part hereof.

Except as herein modified, all terms and conditions of the Principal Agreement shall continue in full force and effect.

[fol. 2316] IN WITNESS WHEREOF, the parties have caused this Amendatory Agreement to be executed in their names and on their behalf by their respective officers thereunto duly authorized.

PAN AMERICAN AIRWAYS, INC.

By S/ .....

ATTEST:

S/ SARAH T. LANSFORD

BRANIFF AIRWAYS, INCORPORATED

By S/ .....
Vice President

ATTEST:

S/ .....
Secretary

[fol. 2317]

SCHEDULE I

LOCATION HAVANA

PART A

1. *Operations Services and Facilities*

   1. *Use of Airport*
      (a) Non-exclusive use to land and take-off runways; taxi strips
      (b) Airport lighting system

   2. *Ramp Services*
      (a) Use of passenger and cargo loading ladders and steps
      (b) Loading and unloading of aircraft
      (c) Towing to and from ramp
      (d) Placing and removing aircraft safety locks
      (e) Use of battery cart, CO_2 cart and emergency fire equipment in connection with starting engines
      (f) Physical dispatch from ramp including personnel necessary to issue appropriate instructions for starting engines and taxi away from ramp
      (g) Personnel for refueling
      (h) Routine aircraft inspection of carburetors, propellers, landing gear, wheels and tires, and control surfaces
      (i) Check de-icer fluid
      (j) Check fluid in hydraulic tanks
      (k) Clean cockpit windows
      (l) Clean cabin windows and aircraft exterior as time permits
      (m) Clean cabin interior as time permits
      (n) Clean lavatories
      (o) Check water in cabin

   3. *Use of Terminal*
      (a) Non-exclusive use of lobby and rest rooms

(b) Non-exclusive use of customs, health and immigration areas

(c) Porter and janitor services

4. *Aircraft Operations Dispatch*

(a) Preparation of flight plan

(b) Weight and balance manifests

(c) Preparation of flight time analysis

(d) Briefing crew

(e) Computation of load

(f) Contact with air traffic control

(g) Terminal weather report

5. *International Airport Express*

(a) Unwrapping and rewrapping packages for customs inspection

(b) Assistance in clearance through customs

(c) Storage in international air express warehouse

(d) Non-exclusive use of international air express warehouse

PART B

I. *Direct Charges*

1. Aircraft Fuel

Price per gallon—current rate

2. Aircraft Maintenance and repair

Skilled Labor $3.50 per man hour regular time
$5.25 per man hour overtime

Materials—current price

3. Preparation and transmission of weather reports from stations not covered in agreement $1.00 each.

4. Exclusive Terminal Space

Per square foot floor space $1.50 per annum

* This charge to be made for major repair over and above services listed under Section 2, Part a.

[fol. 2318]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 63

AMENDMENT NO. II

This Amendatory Agreement, made this 31st day of October, 1949, between PAN AMERICAN AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter called "Pan American"), and BRANIFF AIRWAYS, INCORPORATED, a corporation organized and existing under the laws of the State of Oklahoma (hereinafter called "Braniff"),

WITNESSETH THAT:

WHEREAS, Pan American and Braniff are parties to an agreement dated the 27th day of April, 1948, as amended the 27th day of September, 1948, (hereinafter called the "Principal Agreement"), providing for certain ground facilities and services to be furnished to Braniff by Pan American; and

WHEREAS, the parties desire to amend the Principal Agreement so as to reflect the effect of increased frequencies operated by Braniff and transiting Rancho Boyeros Airport, Havana Cuba and to revise Paragraphs 6 (b), 6 (c) and 6 (d) to read as indicated below;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree that the Principal Agreement is hereby amended, effective as of October 1, 1949, as follows:

1. By changing the first and second sentences of Paragraph 3 to read as follows:

Braniff will pay Pan American for the services and facilities listed in Part A of the SCHEDULE at the rate of $131.00 per landing for each scheduled landing and for each extra section or non-scheduled landing made by Braniff at Rancho Boyeros Airport. This rate was determined on the basis of a minimum of two DC-6 round trip schedules and two DC-4 round trip schedules weekly transiting Havana.

2. By changing Paragraph 6 (b) to read as follows:

Braniff agrees to indemnify and hold harmless Pan American, its officers, agents and employees, and any other person, firm or corporation, and the officers, agents and employees of such person, firm or corporation, which may, pursuant to agreement with Pan American or otherwise, maintain or operate any of the facilities or provide any of the services to be made available to Braniff under this Agreement, (any such other person, firm or corpora- [fol. 2319] tion being hereinafter called "the Operator"), from and against all liabilities, damages, losses, and judgments, including costs and expenses incident thereto, which may (i) be suffered by, accrue against, be charged to, or recoverable from Pan American, its officers, agents or employees, or the Operator, its officers, agents or employees, by reason of or on account of loss of or damage to property, or by reason of or on account of injury to or death of any person other than the officers, agents and employees of Pan American and the Operator, arising out of or in any way connected with the use by Braniff of the facilities and services herein provided for, unless caused by the sole negligence of Pan American or the Operator or by the joint negligence of Pan American and the Operator or of Pan American or the Operator and any person, firm or corporation other than Braniff, its officers, agents or employees, or (ii) be suffered by, accrue against, be charged to, or recoverable from Pan American or the Operator by reason of injury to or death of any officer, agent or employee of Pan American or the Operator caused by negligence on the part of Braniff, its officers, agents or employees in connection with any matter dealt with in this Agreement.

3. By changing Paragraph 6 (c) to read as follows:

It is understood and agreed that the permission hereby granted Braniff to use the facilities and to receive services as herein provided does not impose upon Pan American or the Operator any liability for loss, injury, damage or delay of any nature whatsoever, and Braniff hereby releases Pan American and the Operator from all liability to it for

loss, injury, damage or delay, regardless of how caused, arising out of or connected with such use or any matter dealt with in this Agreement or any action taken or omitted to be taken pursuant hereto, except that Pan American or the Operator, as the case may be, is not hereby released from any such liability which may exist by reason of negligence in the operation of its own aircraft.

4. By changing Paragraph 6 (d) to read as follows:

Braniff hereby agrees to reimburse Pan American and the Operator for any losses suffered by Pan American or the Operator by reason of damage to or destruction of property owned or leased by Pan American or the Operator, caused by negligence on the part of Braniff, its officers, agents or employees in connection with any matter dealt with in this Agreement, and, at the request of Pan American, to use its best efforts to repair or replace, at Braniff's expense, any property so damaged or destroyed.

[fol. 2320] Except as herein modified, all terms and conditions of the Principal Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendatory Agreement to be executed in their names on their behalf by their respective officers thereunto duly authorized.

PAN AMERICAN AIRWAYS, INC.

By .....

ATTEST:
/s/ SARAH T. LANSFORD
.....

BRANIFF AIRWAYS, INCORPORATED

By /s/ R. C. SHRADER

ATTEST:
/s/ Illegible
Sec'y
.....

[fol. 2321]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 64

AMENDMENT NO. III

This Amendatory Agreement, made this 7th day of December, 1949, between PAN AMERICAN AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter called "Pan American"), and BRANIFF AIRWAYS, INCORPORATED, a corporation organized and existing under the laws of the State of Oklahoma (hereinafter called "Braniff");

WITNESSETH THAT:

WHEREAS, Pan American and Braniff are parties to an Agreement dated the 27th day of April, 1948, as amended the 27th day of September, 1948, and the 31st day of October, 1949, (hereinafter called the "Principal Agreement"), providing for certain ground facilities and services to be furnished to Braniff by Pan American; and

WHEREAS, the parties desire to amend the Principal Agreement so as to eliminate the costs of handling international air express at Rancho Boyeros Airport, Havana, Cuba;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree that the Principal Agreement is hereby amended, effective as of December 1, 1949, as follows:

1. By changing the first sentence of Paragraph 3 to read as follows:

Braniff will pay Pan American for the services and facilities listed in Part A of the SCHEDULE at the rate of $115.00 per landing for each landing and for each extra section or non-scheduled landing made by Braniff at Rancho Boyeros Airport.

2. By amending SCHEDULE I in the form attached hereto and made a part hereof.

Except as herein modified, all terms and conditions of the Principal Agreement shall continue in full force and effect.

[fol. 2322] IN WITNESS WHEREOF, the parties have caused this Amendatory Agreement to be executed in their names on their behalf by their respective officers thereunto duly authorized.

PAN AMERICAN AIRWAYS, INC.

By /s/ (Signature Illegible)

ATTEST:

/s/ J. B. WILLIAMS.

/s/ (Signature Illegible)

BRANIFF AIRWAYS, INCORPORATED.

By /s/ R. C. SHRADER
Vice President

ATTEST:

/s/ (Signature Illegible)

/s/ (Signature Illegible)

[fol. 2323] SCHEDULE 1

LOCATION HAVANA, CUBA

PART A

I. *Operations Services and Facilities*

1. *Use of Airport*
   (a) Non-exclusive use to land and take-off runways; taxi strips
   (b) Airport lighting

2. *Ramp Services*
   (a) Use of passenger and cargo loading ladders and steps
   (b) Loading and unloading of aircraft
   (c) Towing to and from ramp
   (d) Placing and removing aircraft safety locks

(e) Use of battery cart, CO$_2$ cart and emergency fire equipment in connection with starting engines

(f) Physical dispatch from ramp including personnel necessary to issue appropriate instructions for starting engines and taxi away from ramp

(g) Personnel for refueling

(h) Routine aircraft inspection of carburetors, propellers, landing gear, wheels and tires, and control surfaces

(i) Check de-icer fluid

(j) Check fluid in hydraulic tank

(k) Clean cockpit windows

(l) Clean cabin windows and aircraft exterior as time permits

(m) Clean cabin interior as time permits

(n) Clean lavatories

(o) Check water in cabin

3. *Use of Terminal*

(a) Non-exclusive use of lobby and rest rooms

(b) Non-exclusive use of customs, health, and immigration areas

(c) Porter and janitor service

4. *Aircraft Operations Dispatch*

(a) Preparation of flight plan

(b) Weight and balance manifests

(c) Preparation of flight time analysis

(d) Briefing crew

(e) Computation of load

(f) Contact with air traffic control

(g) Terminal Weather Report

PART B

1. *Direct Charges*

1. Aircraft Fuel

Price per gallon—current rate

*2. Aircraft Maintenance and repair
Skilled Labor
$3.50 per man hour regular time
$5.25 per man hour overtime
Materials—current price

3. Preparation and transmission of weather reports from stations not covered in agreement $1.00 each.

4. Exclusive Terminal Space
Per square foot floor space
$1.50 per annum

[fol. 2324]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 65

AMENDMENT NO. IV

This Amendatory Agreement, made this 20th day of July, 1950, between PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter called "Pan American"), and BRANIFF AIRWAYS, INCORPORATED, a corporation organized and existing under the laws of the State of Oklahoma (hereinafter called "Braniff").

WITNESSETH THAT:

WHEREAS, Pan American and Braniff are parties to an Agreement dated the 27th day of April, 1948, as amended the 27th day of September, 1948, the 31st day of October, 1949, and the 1st day of December, 1949, (hereinafter called the "Principal Agreement"), providing for certain ground facilities and services to be furnished to Braniff by Pan American; and

WHEREAS, the parties desire to amend the Principal Agreement so as to include navigational and aerophare services at San Blas, Republic of Panama;

---

* This charge to be made for major repair over and above services listed under Section 2, Part A.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree that the Principal Agreement is hereby amended, effective as of July 1, 1950, as follows:

1. By changing the first sentence of Paragraph 1 to read as follows:

Attached hereto and made a part hereof, is a schedule relating to each location at which services are to be performed or facilities made available pursuant to this Agreement, setting forth the services so to be performed and the facilities so to be made available at such location, said schedules being designated SCHEDULE I (Havana) and SCHEDULE II (San Blas) respectively, and being hereinafter sometimes referred to collectively as "the SCHEDULES".

2. By changing the first sentence of Paragraph 3 to read as follows:

Braniff will pay Pan American for the services and facilities listed in Part A of the SCHEDULE I at the rate of [fol. 2325] $115,00 per landing for each landing and for each extra section or non-scheduled landing made by Braniff at Rancho Boyeros Airport, in addition to a charge of $4.00 per flight for the use of the San Blas aerophare under Part A of SCHEDULE II.

Except as herein modified, all terms and conditions of the Principal Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendatory Agreement to be executed in their names on their behalf by their respective officers thereunto duly authorized.

Approved
as to form

/s/ (Signature Illegible)

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ (Signature Illegible)

ATTEST:

/s/ SARAH T. LANSFORD

BRANIFF AIRWAYS, INCORPORATED

By /s/ R. C. SHRADER
Vice President

ATTEST:

/s/ (Signature Illegible)

.....

[fol. 2326] SCHEDULE II

LOCATION ..... SAN BLAS

PART A

I. Navigational Aid (Aerophare)

[fol. 2327]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 66

ASSIGNMENT

Assignment made this 30th day of April, 1952, and to be effective on and after the 16th day of May, 1952 by Pan American World Airways, Inc. (the corporate name of which was formerly Pan American Airways, Inc.,) hereinafter called the Assignor, to Aeropuertos Unidos, S. A., hereinafter called the Assignee.

For valuable consideration, receipt of which is hereby acknowledged, the Assignor hereby assigns to the Assignee so much of the contract and any amendments thereto for ground services and use of ground facilities as relates to Rancho Boyeros Airport, Havana, Cuba, and as more particularly specified in the Agreement between the Assignor and Braniff Airways, Inc., dated the 27th day of April, 1948, subject to all the covenants and conditions therein mentioned, together with all the right, title and interest of the Assignor in and to the aforesaid agreement as the same relates to Rancho Boyeros Airport.

The Assignee hereby agrees to assume so much of the said contract as relates to ground services and use of ground facilities at Rancho Boyeros Airport for the duration thereof and to faithfully perform all the covenants, stipulations and agreements contained therein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 30th day of April, 1952.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ W. L. MORRISON

AEROPUERTOS UNIDOS, S. A.

By /s/ CARLOS N. PARRAGA

/s/ F. P. POWERS
/s/ J. A. SMITH
/s/ TERESITA SIERRA
/s/ MAGALY R. USATORRES

[fol. 2328]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 67

November 18, 1954

Mr. L. A. Person
Traffic Manager
Braniff Airways, Inc.
Love Field
Dallas 9, Texas

Dear Lou:

In connection with our conversations regarding the full party participation of Braniff Airways, Inc., in certain Pan American System tariffs, published by R. C. Lounsbury, Agent, I wish to confirm the proposition we have discussed. We understand that you are interested in participating in the Passenger Rules Tariff, PR-3, and the North and South America Passenger Fares Tariff, P- -3, as well as receiving sets of these and others of our international tariffs for use in your offices. For this full party participation and for these tariffs for the year October 1, 1954 through September 30, 1955, this is to confirm our concurrence in the following fees:

(1) For entry or withdrawal, the full cost of $45.00 per page to revise pages, not otherwise changed for full parties existent in the tariff, to include or delete Braniff

Airways, Inc., as the case may be; should other full parties entering or withdrawing from the tariff require changes on such pages, the $45.00 per page cost will be divided equally between such full parties simultaneously entering or withdrawing.

(2) A fee of $400 for up to 150 sets of these tariffs, and revisions thereto, to be delivered to Braniff Airways, Inc. in Dallas, Texas. For each additional 20 sets of these tariffs, an additional annual fee of $50 will be charged.

(3) A fee of $4,000 for the participation, publication of revisions and other attendant tariff printing costs involved in maintaining Braniff's participation in these tariffs.

(4) In the event Braniff Airways, Inc. wishes to withdraw its participation either in full or in part from any tariffs covered by this agreement prior to October 1, 1955, Braniff will give Agent R. C. Lounsbury at least 120 days written notice (or any lesser number of days written notice mutually agreeable to both parties) of its intention.

[fol. 2329]

(5) The amount in Items (1) and (2) above shall be payable within 30 days after the billing date which shall be as soon as practicable after the publication of the October 1, 1954 issues of these tariffs, and the fee mentioned in (3) above shall be divided in quarters and payable within 30 days after the billing date which shall be quarterly beginning on or about October 1, 1954, except that in the event of withdrawal pursuant to Paragraph (4) above the applicable fee shall be prorated according to the tariffs and the period of participation involved.

The above fees contemplate that Braniff will not require radical changes in these tariffs during the year period indicated and that Braniff will endeavor to permit revisions to be made once per month in conformance with the established publication deadlines of these tariffs. Should

it become necessary for Braniff to make emergency changes at any time, these changes will of course be made in Braniff's behalf at Braniff's direction. However, it is understood that either party to this agreement may request reopening of the agreement for reassessment of fees should such changes appear to be extensive.

As I have mentioned to you in our conversations, we here in the tariff's office and management of Pan American will be very pleased to have Braniff Airways, Inc. participating as a full party in our tariffs.

If you are in agreement with the understanding outlined above, please sign and return the attached copy of this letter to me.

PAN AMERICAN WORLD AIRWAYS, INC.

.....

System Supt. of Tariffs & Schedules

FOR BRANIFF AIRWAYS, INC.

.....

[fol. 2330]

Supplement to Tariff Publication Agreement of November 18, 1954

The Tariff Publication Agreement of November 18, 1954, between Braniff International Airways, Inc., and Pan American World Airways, Inc., is hereby extended for an indefinite period, subject to the right of either party to cancel upon written notice given to the other party at least 120 days (or any lesser number of days agreeable to both parties) prior to the effective date of such cancellation. The fees payable by Braniff to Pan American shall be at the same rate as set forth in said agreement.

PAN AMERICAN WORLD AIRWAYS, INC.

.....

System Supt. of Tariffs and Schedules

Date: .....

BRANIFF INTERNATIONAL AIRWAYS, INC.

.....

Traffic Manager

Date .....

[fol. 2331]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 68

AMENDMENT NO. V.

This Amendatory Agreement, made this 20th day of June, 1957, between PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter called "Pan American"), and BRANIFF AIRWAYS, INCORPORATED, a corporation organized and existing under the laws of the State of Oklahoma (hereinafter called "Braniff"),

WITNESSETH THAT:

WHEREAS, Pan American and Braniff are parties to an Agreement dated the 27th day of April, 1948, as amended the 27th day of September, 1948, the 31st day of October, 7th 1949, the 1st day of December, 1949, and the 20th day of July, 1950, (hereinafter called the "Principal Agreement"), providing for certain ground facilities and services to be furnished to Braniff by Pan American; and

WHEREAS, the parties desire to amend the Principal Agreement so as to provide for an increase in the aerophare service rate at San Blas, Republic of Panama;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree that the Principal Agreement is hereby amended, effective as of July 1, 1957, as follows:

1. By changing the last phrase of Paragraph 2 of Amendment No. IV from "in addition to a charge of $4.00 per flight for the use of the San Blas aerophare under Part A of SCHEDULE II", to "in addition to a charge of $5.00 per flight for the use of the San Blas aerophare under Part A of SCHEDULE II".

Except as herein modified, all terms and conditions of the Principal Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendatory Agreement to be executed in their names on their behalf by their respective officers thereunto duly authorized.

Approved
as to form

/s/ (Signature Illegible)

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ W. L. MORRISON
Executive Vice President
Latin American Division

ATTEST:

/s/ JOHN W. QUENTIN

/s/ (Signature Illegible)

BRANIFF AIRWAYS, INCORPORATED

By /s/ (Signature Illegible)
Executive Vice President

ATTEST:

/s/ (Signature Illegible)
Assistant Secretary

[fol. 2332]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 69

AMENDMENT NO. VI

This Amendatory Agreement, made this 21st day of October, 1957, between PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York (hereinafter called "Pan American"), and BRANIFF AIRWAYS, INCORPORATED, a corporation organized and existing under the laws of the State of Oklahoma (hereinafter called "Braniff").

WITNESSETH THAT:

WHEREAS, Pan American and Braniff are parties to an Agreement dated the 27th day of April, 1948, as amended the 27th day of September, 1948, the 31st day of October, 1949, the 7th day of December, 1949, the 20th day of July, 1950, and the 20th day of June, 1957, (hereinafter called the "Principal Agreement"), providing for certain ground facilities and services to be furnished to Braniff by Pan American; and

WHEREAS, the parties desire to amend the Principal Agreement so as to provide for an increase in the aerophare service rate at San Blas, Republic of Panama;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree that the Principal Agreement is hereby amended, effective as of October 1st, 1957, as follows:

1. By changing the last phrase of Paragraph 2 of Amendment No. V from "in addition to a charge of $5.00 per flight for the use of the San Blas aerophare under Part A of SCHEDULE II", to "in addition to a charge of $526.00 per month for the use of the San Blas Aerophare under Part A of SCHEDULE II".

Except as herein modified, all terms and conditions of the Principal Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendatory Agreement to be executed in their names on their behalf by their respective officers thereunto duly authorized.

Approved
as to form

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ W. L. MORRISON
Executive Vice President
Latin American Division

ATTEST:

.....

.....

BRANIFF AIRWAYS, INCORPORATED

By .....
Executive Vice President

ATTEST:

.....
Assistant Secretary

.....

[fol. 2333] I, AMOS HIATT, hereby certify that I am Assistant Comptroller of Pan American Airways, Inc.; that the original executed copy of the Agreement, related letter agreement and amendment referred to below are in my custody; that the attached documents are full, true and correct copies of the originals:

> Joint Facilities Agreement, dated January 1, 1944, between Pan American Airways, Inc. and Panair do Brasil; related letter Agreement dated November 1, 1943 and accepted November 16, 1943, which supersedes the existing agreements between the two companies covering joint facilities. Those replace the agreement dated September 1, 1943 and accepted by Panair do Brasil on September 27, 1943. Also, amendment dated January 17, 1944, amending Joint Facilities Agreement.

/s/ AMOS HIATT
Assistant Comptroller

[fol. 2334]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 70

PAN AMERICAN AIRWAYS, INC.
Chrysler Building, New York City

RIO DE JANEIRO
November 1, 1943.

Panair do Brasil, S.A.
Rio de Janeiro
Brasil.

Dear Sirs:

Enclosed herewith are two execution copies of a proposed contract covering use of joint facilities and certain other matters. This contract has been executed by us and is intended to supersede the existing arrangements between us which cover the same general subject matter. If you find the contract in order, will you please execute it and return one executed copy for our files.

The enclosed contract is to become effective as of January 1, 1944 and the existing arrangements will continue in effect until that date, but it is understood that payments in respect of return on investment under said arrangements will, for the year 1943, be calculated on the average net book value of the properties in question rather than on the original cost and also that, commencing when the enclosed contract becomes effective, you will be charged with our depreciation and insurance expense on the buildings and installations owned by us at Santos Dumont airport. Our share of such expense will be determined pursuant to the enclosed contract except that the payments provided for in the last clause of the second paragraph of the letter agreement accompanying the Agency Agreement between us to become effective on January 1, 1944 will cover rental for the space in said buildings used exclusively by us.

It is further understood that you will continue to own and to carry for us such inventories consisting of spare parts, materials and supplies, including gasoline and oil, as may be turned over to you by us or acquired by you at our request for the purpose. In order to enable you to

carry such inventories without additional financial burden on you, it is understood that you will have a credit of $300,000 in the open account existing between us, on which no interest will be charged. The amount of such credit will be reviewed at such times as either of us may request, in order to insure that it approximates the cost to you of the inventories carried by you for us. It is further understood that, commencing as of January 1, 1944, any remaining balance in the open account between us, either in our [fol. 2335] favor or in your favor, after taking into consideration said interest free credit in your favor, shall bear interest at the rate of 4% per annum, such interest to be calculated on the balances shown on your books at the end of each calendar month. For this purpose any advances made to you pursuant to Paragraph 6 of Article II of the enclosed contract shall not be considered as being in the open account.

In order to enable you to carry out the enclosed contract and to carry on your other business, we agree to use our best efforts to engage for you such qualified American technical personnel as you may request. While we will use our best efforts to provide personnel who are properly trained and qualified, it is understood that we shall have no responsibility for their training or qualifications or for any action that they may take or fail to take while in your service. If you so request, such personnel, shall be carried on our payrolls, and in such event they shall continue to be our employees for all purposes, except that (i) they shall be under your control, (ii) you will be charged with their salary expense and all related items of expense including cost of transfer to Brasil and return and (iii) you shall be solely responsible to third parties for any action taken by them. You will also release us from all claims by you and indemnify us and hold us harmless from all claims by third parties arising out of any action taken by such personnel during the period they are in your service.

It is further understood that you will use your best efforts to provide, maintain and operate any special facilities not covered by the enclosed contract, such as the Natal Staff House, which we may request for our use from time

to time. Unless otherwise mutually agreed, the cost of providing, maintaining and operating any such facilities (including any remaining rentals payable under leases contracted in connection therewith and any winding up expense) will be for our account and we will indemnify you and hold you harmless from all claims in connection with the providing, maintaining and operating of such facilities.

During recent years we have reimbursed you for the cost of constructing and providing certain airports, seaplane bases and facilities in Brasil which have been constructed or provided at our request. Without in any way modifying the terms of the enclosed contract, it is expected that we will continue to reimburse you for certain capital expenses of this character until the present program of airport development is completed. It is further understood that in the event any airport, seaplane base or facility for the cost of which we shall have reimbursed you, shall be taken over by the Brasilian Government and as a result thereof you shall receive any payment pursuant to Article 4 of Decree-Law No. 3462, dated July 25, 1941, or otherwise, you [fol. 2336] will forthwith pay us an amount equal to such payment, after deducting any expenses incurred or damages suffered by you, in connection with the taking of such airport, seaplane base or facility.

It is further understood that all arrangements between us for operation of air transport services, made in connection with the sale to you of five Lockheed Lodestar aircraft during the latter part of 1941, and all rights and liabilities in connection therewith, are terminated except that the aircraft, spare engines and parts sold to you will be retained by you and the purchase price will continue to be carried in the open account between us. As we have previously advised you, we no longer request the operation of any of the services operated pursuant to those arrangements except to the extent that they are covered by the enclosed contract.

The arrangements herein set forth may be terminated at any time by either of us on sixty days' written notice to the other, except that your obligation to make payments to us pursuant to the sixth paragraph of this letter cannot

be terminated without our consent and provided that any termination shall not affect any rights or obligations theretofore accrued hereunder.

If the foregoing correctly states our understanding concerning the matters mentioned above, will you kindly sign and return to us the enclosed copy of this letter, which will thereupon constitute the agreement between us with reference thereto.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.

By /s GEO. L. RIHL
Vice-President

ACCEPTED:

November 16, 1943.

PANAIR DO BRASIL, S.A.

By /s PAULO SAMPAIO
President

[fol. 2337]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 71

February 18, 1944

I, AMOS HIATT, hereby certify that I am Assistant Comptroller of Pan American Airways, Inc.; that the original executed copy of the Agreement referred to below is in my custody; that the attached document is a full, true and correct copy of the original of such Agreement:

Agency Agreement, dated January 1, 1944, between Pan American Airways, Inc. and Panair do Brasil. This agreement supersedes the agreement between the two companies dated October 30, 1935; also letter agreement, dated November 1, 1943, and accepted by Panair do Brasil on November 16, 1943.

.....
Assistant Comptroller

[fol. 2338] THIS AGREEMENT, made as of January 1, 1944, between PAN AMERICAN AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and PANAIR DO BRASIL, S.A., a corporation organized and existing under the laws of Brasil, hereinafter referred to as "PANAIR",

WITNESSETH, that

WHEREAS, Pan American and Panair have for a number of years had arrangements, under which PANAIR is acting as General Traffic Agent in Brasil for Pan American and its affiliated companies, and Pan American and its affiliated companies are acting as General Traffic Agent outside of Brasil for Panair; and

WHEREAS, Pan American and Panair desire that such relationship continue but that the existing arrangements be replaced by a formal agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Pan American and Panair hereby agree as follows:

1. Pan American hereby appoints Panair, and Panair agrees to act, as General Traffic Agent in Brasil, for Pan American and its affiliated carriers. As such General Traffic Agent, Panair agrees that it will perform such services as may be appropriate to promote passenger, mail and express traffic over the lines of Pan American and its affiliated carriers and to assist in making arrangements for travelling or shipping over such lines, including

(a) Solicitation of passenger mail and air express business with Brasil for Pan American and its affiliated carriers;

[fol. 2339] (b) Checking baggage of outgoing passengers, delivering baggage to incoming passengers, collecting any excess baggage charges payable in respect of such baggage, in accordance with the tariffs, rates, rules and regulations of Pan American, collecting and forwarding by carriers with which Pan Ameri-

can or PANAIR has forwarding arrangements, any trunks or other heavy baggage delivered to PANAIR for the purpose by Pan American or by passengers travelling, or proposing to travel, over such lines, and collecting any charges payable therefor, in accordance with the tariffs, rates, rules and regulations of Pan American;

(c) Collecting outgoing and delivering incoming express carried or to be carried over such lines, collecting and forwarding by carriers with which Pan American or PANAIR has forwarding arrangements, any express delivered to PANAIR for the purpose by Pan American, and collecting any charges payable therefor, in accordance with the tariffs, rates, rules and regulations of Pan American;

(d) Making arrangements on behalf of such passengers for transportation to and from airport terminals and for hotel accomodations at points of call of Pan American and at other cities, in accordance with the tariffs, rates, rules and regulations of Pan American;

(e) Furnishing such catering services and other passenger service as Pan American may request in accordance with its air transport services in Brasil;

(f) Making reservations for transportation by Pan American its affiliated carriers and connecting carriers;

(g) Furnishing such advice and information as Pan American may from time to time request with respect to clearance, customs and immigration procedure at points in Brasil;

(h) Making arrangements for such advertising and publicity as Pan American may from time to time request;

(i) Maintaining a centrally located traffic and sales office in Rio de Janeiro in addition to such other offices as PANAIR may from time to time maintain, which

traffic and sales office in Rio de Janeiro shall be, unless Pan American shall otherwise agree, at least as large and of the same general appearance as the office now being maintained by PANAIR at Graca Aranha and Almirante Barroso Avenues in Rio de Janeiro.

PANAIR agrees to designate as its agents for the purpose of this agreement all of its authorized traffic agents in [fol. 2340] Brasil and to appoint such additional agents as Pan American may from time to time request, all in accordance with, and upon such terms and conditions as shall be set forth in, the instructions (including published agency rules, regulations, policies and practices) given by Pan American.

2. Pan American and its affiliated carriers hereby authorize PANAIR to issue (a) tickets, or exchange orders exchangeable for tickets, for transportation of passengers and (b) airwaybills or other appropriate forms of contract for transportation of express, over the lines of Pan American and of its affiliated carriers and to execute and issue all other documents necessary or appropriate for such transportation, all in the form, and subject to and in accordance with the tariffs, rates, rules and regulations, prescribed from time to time by Pan American or its affiliated carriers, as the case may be, and furnished to PANAIR, it being understood that no such ticket, exchange order, airwaybill or contract will be issued unless PANAIR shall have received payment of the total charges therefor specified in such tariffs, rates, rules and regulations, or shall have made arrangements satisfactory to Pan American for the collection of such charges, and that PANAIR will not grant, or permit any agent or broker to grant, any rebate or discount on any such charges except in accordance with such tariffs, rates, rules and regulations. Pan American agrees to accept or to cause the appropriate affiliated carriers to accept each ticket, exchange order, airwaybill, or contract so issued by PANAIR. In issuing tickets, exchange orders, airwaybills and contracts for transportation over the lines of Pan American or its affiliated carriers, PANAIR shall be deemed to act only as agent of Pan

American, or its affiliated carrier, as the case may be. [fol. 2341] PANAIR shall not be liable, and Pan American agrees to indemnify PANAIR and hold it harmless from and against all claims, for any loss, damage, injury or delay of any nature whatsoever which shall occur in connection with the carrying out or failure to carry out any obligation to third parties arising by reason of action taken by PANAIR pursuant to this Agreement unless such loss, damage, injury or delay shall be caused by the negligence or wilful misconduct of PANAIR.

3. Pan American hereby agrees to pay or reimburse to PANAIR the following amounts:

(a) A commission equal to 10 per cent of the total amount of the fares for passenger transportation over the lines of Pan American and of its affiliated carriers, including charges for excess baggage, collected by PANAIR either directly or through agents, on behalf of Pan American or any of its affiliated carriers;

(b) A commission equal to 10 per cent of the total amount of the charges (not including valuation charges) for air express transportation over the lines of Pan American and of its affiliated carriers, collected by PANAIR, either directly or through agents, on behalf of Pan American or any of its affiliated carriers;

(c) An amount for each month which shall bear the same ratio to PANAIR'S expenses for such month at each airport where catering service or other passenger service is rendered to Pan American during such month, recorded in Account 663, as the number of scheduled landings during such month at such airport by passenger aircraft of Pan American multiplied by the standards gross weight thereof bears to the number of scheduled landings during such month at such airport by all aircraft receiving such services from PANAIR multiplied by the standard gross weight thereof; plus an amount which shall bear the same ratio to PANAIR'S expenses for such month recorded in Accounts 651, 661, 664, 665, 666, 667, 668, 670, 671, 672, 673, 685 and 686 as the portion of PANAIR'S

expenses for such month recorded in Account 663 payable by Pan American hereunder bears to PANAIR'S expenses for such month recorded in Accounts 651, 660, 661, and 663; plus an amount equal to all of PANAIR'S expenses recorded in accounts 682, 687, 688, 690, 691 and 692 which are incurred solely and directly in connection with services or supplies furnished to Pan American;

[fol. 2342] (d) An amount equal to 25% of PANAIR'S expenses recorded in Accounts 751 and 752 plus an amount equal to 25% of PANAIR'S expenses recorded in Accounts 773, 785 and 786 which are related to PANAIR'S expenses recorded in Accounts 751 and 752;

(e) One half of the cost, exclusive of salaries, but including rental, maintenance and all general running expenses, of maintaining the traffic and sales offices maintained by PANAIR in Rio de Janeiro in accordance with paragraph 1 (i) hereof;

(f) Any out-of-pocket expenses specifically requested and approved by Pan American and incurred by PANAIR in carrying out special services (including making arrangements for advertising or publicity) requested by Pan American under this agreement.

4. PANAIR agrees to cooperate with Pan American in the operation of Pan American's international mail, passenger and express air service and that, so long as this agreement shall remain in force and effect, it will use its best efforts generally to aid and assist Pan American in the establishment and operation of such international service through Brasil, and will not, without Pan American's consent, itself or through any affiliated company or through agents retained or employed on other than the customary flat commission basis, act as agent for, or solicit or sell transportation services of, any transport company or organization operating an air transport line in competition with the lines from time to time operated by Pan American. PANAIR further agrees that it will use its best efforts to cause all persons coming to its line or lines and desiring

transportation by air to a point reached by Pan American's international services to be routed over the route or routes operated by Pan American.

5. PANAIR hereby appoints Pan American, and Pan American agrees to act, as General Traffic Agent outside Brasil for PANAIR. PANAIR hereby authorizes Pan American and its subsidiaries and affiliated carriers to issue (a) tickets, or exchange order exchangeable for tickets, for transportation of passengers, and (b) airwaybills or other appropriate forms of contract for transportation of [fol. 2343] express, over the lines of PANAIR and to execute and issue all other documents necessary or appropriate for such transportation, all in the form, and subject to and in accordance with the tariffs, rates, rules and regulations, prescribed from time to time by PANAIR, it being understood that no such ticket, exchange order, airwaybill, or contract will be issued unless Pan American or one of its subsidiaries or affiliated carriers and shall have received payment of the total charges therefor or shall have made arrangements satisfactory to PANAIR for the collection of such charges. PANAIR agrees to accept each ticket, exchange order, airwaybill or contract so issued by Pan American or one of its subsidiaries or affiliated carriers in issuing tickets, exchange orders, airwaybills or contracts for transportation over the lines of PANAIR. Pan American and its subsidiaries and affiliated carriers shall be deemed to act only as agent for PANAIR. Neither Pan American nor any of its subsidiaries or affiliated carriers shall be liable, and PANAIR agrees to indemnify and hold harmless Pan American, its subsidiaries and affiliated carriers from and against all claims, for any loss, damage, injury or delay of any nature whatsoever which shall occur in connection with the carrying out or failure to carry out any obligation to third parties, arising by reason of action taken by Pan American or any of its subsidiaries or affiliated carriers pursuant to this agreement, unless such loss, damage, injury or delay shall be caused by the negligence or wilful misconduct of Pan American or one of its subsidiaries or affiliated carriers.

6. PANAIR hereby agrees to pay Pan American the following amounts:

(a) A commission equal to 10 percent of the total amount of the fares for passenger transportation over the lines of PANAIR, including charges for excess baggage, collected, either directly or through agents, by Pan American or one of its subsidiaries or affiliated carriers on behalf of PANAIR.

(b) A commission equal to 10 per cent of the total amount of the charges (not including valuation charges) for air express transportation over the lines of PANAIR, collected, either directly or through agents, by Pan American or one of its subsidiaries or affiliated carriers on behalf of Panair.

7. Nothing herein contained shall be deemed to require PANAIR, Pan American or any of its affiliated carriers to initiate or maintain service between any particular points.

8. All amounts payable hereunder, including all amount [fol. 2344] collected on behalf of either party for transportation sold, shall be paid by crediting PANAIR or Pan American, as the case may be, in open account, the amounts payable in respect of each month to be so credited as soon after the end of such month as is practicable.

9. As used in this agreement, the term "affiliated carriers" shall include (a) all companies engaged in the transportation of passengers, mail or cargo, by air, for hire, the majority of the outstanding capital stock of which shall be owned by Pan American or by any company which owns the majority of the outstanding capital stock of Pan American or of which Pan American owns a majority of the outstanding capital stock, and (b) any other company engaged in such transportation which Pan American may designate by notice in writing to PANAIR.

10. This agreement shall become effective on January 1, 1944. It shall continue in effect until December 31, 1948, and thereafter until terminated by either party at any time after December 31, 1948 upon notice in writing given by either party to the other not less than 60 days in advance of the date of such termination. In the event that there shall be any change in the ownership of capital stock of PANAIR

as such ownership exists at the date hereof, Pan American may at any time thereafter, at its election, terminate this agreement by notice in writing given to Panair at least 30 days in advance of the date of such termination.

IN WITNESS WHEREOF, Pan American and PANAIR have caused this agreement to be executed in their corporate [fol. 2345] names by their respective officers thereunto duly authorized.

PAN AMERICAN AIRWAYS, INC.

By /s/ GEO. L. RIHL
Vice President

WITNESSES

/s/ JOHN C. PIRIE

/s/ CONRAD M. KENNEDY

PANAIR DO BRASIL, S.A.

By /s/ PAULO SAMPAIO
President

WITNESSES

/s/ (signature illegible)

/s/ MARTHE DO PONTO

[fol. 2346]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 72

BEFORE THE

CIVIL AERONAUTICS BOARD

LETTER AGREEMENT, DATED JUNE 22, 1944, BETWEEN PAN AMERICAN AIRWAYS, INC. AND PANAIR DO BRASIL PROVIDING FOR CERTAIN ADDITIONAL SERVICES TO BE RENDERED BY PAN AMERICAN TO PANAIR DO BRASIL IN PARAGUAY. THIS AGREEMENT SUPPLEMENTS THE AGENCY

AGREEMENT OF JANUARY 1, 1944 BETWEEN PAN AMERICAN AIRWAYS, INC. AND PANAIR DO BRASIL. FILED HEREWITH UNDER SECTION 412 OF THE CIVIL AERONAUTICS ACT OF 1938, AS AMENDED.

Communications with respect to this subject should be sent to:

JOHN C. COOPER,
Vice-President and Assistant to the President,
Pan American Airways, Inc.
135 East 42nd Street,
New York 17, N. Y.

[fol. 2347] I, AMOS HIATT, hereby certify that I am Assistant Comptroller of Pan American Airways, Inc; that the original executed copy of the letter agreement referred to below is in my custody; that the attached document is a full, true and correct copy of the original.

Letter Agreement, dated June 22, 1944, between Pan American Airways, Inc. and Panair do Brasil, S.A. providing for certain additional services to be rendered by Pan American to Panair do Brasil in Paraguay. Accepted by Panair do Brasil, June 28, 1944.

/s/ AMOS HIATT
Assistant Comptroller

November 6, 1944

[fol. 2348] June 22nd, 1944

Panair do Brasil, S.A.
Edificio City Bank, 11.
Avenida Rio Branco, 85
Rio de Janeiro

Dear Sirs:

The Agency Agreement between Pan American Airways, Inc., and Panair Do Brasil, S.A. dated January 1, 1944, together with our letter understanding of November 8, 1943, provides that Panair do Brasil shall be the General Traffic Agent for Pan American in Brasil and also that Panair shall clear our aircraft and represent Pan American in negotiations with the Government of Brasil, as and when requested. The Agency Agreement also appoints Pan American Airways to be the General Traffic Agent of Panair Do Brasil, outside of Brasil, and provides as compensation therefor commissions on passenger fares, excess baggage, and express charges collected by Pan American for transportation over the lines of Panair. These understandings did not reduce to writing the understanding which has been in effect for the past several years between the two Companies, in respect of additional services which Pan American Airways, Inc. has been rendering to Panair do Brasil, in connection with Panair's services to and from Asuncion, Paraguay. It is the purpose of this letter to confirm the existing understanding, which we consider to be as follows:

I In addition to acting as General Traffic Agent for Panair do Brasil, in Paraguay under the terms of the Agency Agreement dated January 1, 1944, Pan American Airways, Inc. will continue to render the following services, (now being performed) for Panair, at Asuncion, Paraguay:

A. As and when requested by Panair, Pan American will cause its Paraguayan agent or agents to represent Panair in negotiations and transactions with the Government of Paraguay.

B. Pan American will perform such acts and execute such documents as may be required for the clearance

at Asuncion, Paraguay of aircraft of Panair, and the passengers, crews, and cargo carried thereon, such clearance to include the providing of the personnel required to effect such clearance and the making of arrangements for the presence of such government officials as may be required in connection therewith.

C. The radio and weather facilities and personnel of Pan American at Asuncion shall be available to serve Panair do Brasil's needs as it may require in connection with its operations in Paraguay.

D. To the extent of the availability of its facilities, supplies, and personnel, Pan American shall perform such maintenance, mechanical, refueling, inspecting and other services as may be requested by Panair do Brasil, for the aircraft at Asuncion.

E. Pan American shall receive, and provide transportation for, passengers, baggage, express, mail, and other [fol. 2349] cargo of Panair to and from the airport, and Pan American's airport facilities shall be fully available to Panair passengers and crews.

II Panair shall compensate Pan American for performing the above items of service as follows:

A. Panair shall pay Pan American each month an amount which shall bear the same ratio to Pan American's total expense in operating and maintaining Asuncion airport and the equipment, structures, and facilities there, or used in connection therewith, as the number of scheduled landings by aircraft of Panair during such month multiplied by the standard gross weight thereof, shall bear to the total number of scheduled landings of aircraft of Pan American and Panair at the airport multiplied by the standard gross weight thereof.

1—It is recognized that due to the activities of the Airport Development Program of Pan American at the Asuncion Airport there are and will be extraordinary airport maintenance expense on the runways,

grounds and other facilities. Accordingly Panair shall share only the ordinary or normal maintenance expense borne by Pan American, a formula for the establishment of which will be reached by mutual agreement between Panair and Pan American, when experience and development of pleas for the maintenance enable such determination.

B. Panair shall pay to Pan American the full cost of all labor, material, and supplies expended by Pan American in maintaining and servicing aircraft of Panair at Asuncion plus the applicable burden expense.

C. Panair shall pay Pan American its out of pocket expenses incurred on behalf of Panair do Brasil in the clearance of Panair aircraft and the passengers, crews and cargo thereon, in the transportation of crews, passengers and cargo from the airport, in representing Panair in any negotiations with the Government, in the defense or settlement of any claims of litigation affecting Panair, and in performing any other special service for Panair in connection with its operations and business in Paraguay.

D. Panair shall pay Pan American a commission of 5% on all air mail revenue received by Panair (or by Pan American for Panair's account) from the Paraguayan Post Office. (This extraordinary commission is that which is and has been paid to Pan American's Agent in Asuncion, on Paraguayan air mail revenue of both Pan American and Panair, respectively.)

III It is understood and agreed that Pan American's duty to perform any of the foregoing obligations is subject to Pan American's ability to do so under all laws, rules and regulations, of any governmental authority. In performing any such obligations, Pan American harmless from any and all loss, claims or liability, arising out of the performance or non-performance of its duties to Panair hereunder except as the same may arise due to the failure of an official of Pan American to exercise due care in the selection of the employees or agents whose acts or omissions gave rise to such loss, claim or liability.

IV This understanding may be terminated by either party by giving to the other party 60 days written notice.

[fol. 2350] If the foregoing correctly states our understanding please evidence your approval by signing the enclosed copy of this letter and returning it to us.

Yours faithfully

PAN AMERICAN AIRWAYS, INC.

/s/ GEO. L. RIHL
Original signed Geo. L. Rihl.
Geo L. Rihl
Vice President

Accepted this 28 day of June, 1944
PANAIR DO BRASIL, S.A.

by /s/ PAULO SAMPAIO.
Paulo Sampaio
President

(Initials illegible)

[fol. 2351]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 73

(Emblem)

PAN AMERICAN WORLD AIRWAYS SYSTEM

CHRYSLER BUILDING, 135 EAST 42ND STREET, NEW YORK 17, N. Y.
EXECUTIVE OFFICES

December 12, 1946

Panair do Brasil, S.A.
Rio de Janeiro, Brasil

Dear Sirs:

Referring to the recent correspondence and discussions between representatives of our two companies concerning revision of the amount paid to you by us for providing personnel and office accommodations for us in Brasil, pursuant to the letter agreement which accompanied the General Agency Agreement between us dated as of January 1, 1944, this letter, when accepted by you, will constitute the agreement between us that the figure "$800.00" appearing

in clause (c) of the second full paragraph of said letter agreement is changed to "Cr$60,000", effective as of August 1, 1946.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.

By /s/ HOWARD B. DEAN
Vice President

ACCEPTED: December 30, 1946.

PANAIR DO BRASIL, S.A.

By /s/ PAULO SAMPAIO
President

[Stamp: Panair do Brasil, S.A. Recebido 1º Dez 1946 Presidente Rio de Janeiro]

[fol. 2352]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 74

CONFORMED COPY

January 1, 1947

Panair do Brasil, S.A.
Rio de Janeiro, Brasil

Dear Sirs:

This letter, when accepted by you, will constitute the agreement between us amending the General Agency Agreement between us dated as of January 1, 1944, so as to give effect to the new System of Accounts installed by you as of January 1, 1947.

It is understood and agreed that subparagraphs (c) and (d) of paragraph 3 of said General Agency Agreement are amended as of January 1, 1947 to read as follows:

"(c) An amount for each month which shall bear the same ratio to Panair's expenses for such month at each airport where catering service or other passenger service is rendered to Pan American during such month, recorded in Account 6335, as the number of scheduled landings during such month at such airport

by passenger aircraft of Pan American multiplied by the standard gross weight thereof bears to the number of scheduled landings during such month at such airport by all aircraft receiving such services from Panair, multiplied by the standard gross weight thereof; plus an amount which shall bear the same ratio to Panair's expenses for such month recorded in Accounts 6321, 6322, 6329, 6335 (other than expenses in said Account referred to in the preceding clause), 6336, 6337, 6338, 6343 (freight, express and parcel post, only), 6344, 6350, 6353 (supplies for motorized vehicles, only) and 6367, as the portion of Panair's expenses for such month recorded in Account 6335 payable by Pan American pursuant to the first clause of this subparagraph (c) bears to Panair's expenses for such month recorded in Accounts 6321, 6322, 6324, 6328, 6329 and 6335; plus an amount equal to all of Panair's expenses recorded in Accounts 6343 (motor vehicle expense, only), 6351, 6352, 6363 and 6367 which are incurred solely and directly in connection with services and supplies furnished to Pan American;

[fol. 2353] "(d) An amount equal to 25% of Panair's expenses recorded in Accounts 6521 and 6522."

If the foregoing correctly stated our understanding, will you kindly sign and return to us the enclosed copy of this letter.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.

By /s/ E. BALLUDER

ACCEPTED: October 21, 1947

PANAIR DO BRASIL, S.A.

By /s/ PAULO SAMPAIO
President

bcc: Comptroller
Vice President-LAD, Miami
Ass't. General Counsel
Div. Accountant-LAD, Miami
Treasurer-Panair do Brasil, Rio

[fol. 2354]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 75

(Emblem)

PANAIR DO BRASIL, S. A.
EDIFICIO CITY—W. RIO BRANCO 85—RIO DE JANEIRO

CABINITE DE
PRESIDENTE

January 6, 1947

AMENDMENT No. 2

Pan American Airways, Inc.
NEW YORK—U. S. A.

Dear Sirs:

Referring to the recent correspondence and discussions between representatives of our two companies concerning revision of the amount paid to us by you for providing personnel and office accommodations for you in Brasil, pursuant to the letter agreement which accompanied the General Agency Agreement between us dated as of January 1, 1944, this letter, when accepted by you, will constitute the agreement between us that the figure Cr$60,000.00, appearing in clause (c), of second full paragraph of said letter agreement, as amended by letter agreement dated December 12, 1946, is changed to Cr$63,500.00, effective as of December 1, 1946.

Very truly yours,

PANAIR DO BRASIL, S. A.

By /s PAULO SAMPAIO
President

Accepted: Jan 13 1947

PAN AMERICAN AIRWAYS, INC.

By /s HOWARD B. DEAN
Vice President

[fol. 2355]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 76

I, Joseph J. Cantwell, hereby certify that I am Assistant Secretary of Pan American World Airways, Inc.; that the attached document (s) is (are) a true and complete copy (s) of the document (s) evidencing the following agreement:

Letter Agreement, dated February 19, 1952 and accepted on May 14, 1952, between Pan American World Airways, Inc. and Panair do Brasil, S. A., amending the General Agency Agreement between the parties dated May 1, 1947 so as to provide for a change in the commission rates (CAB No. (illegible)).

/s/ JOSEPH J. CANTWELL
Assistant Secretary

Dated: June 18, 1952

[fol. 2356]

CONFORMED COPY

(Letterhead of)

PAN AMERICAN WORLD AIRWAYS SYSTEM

C
O
P
Y

February 19, 1952

Panair do Brasil, S. A.
Avenida Rio Branco, 85-10
Rio de Janeiro, Brazil

Gentlemen:

This letter, when accepted by you, will constitute our agreement to amend the General Agency Agreement, dated as of May 1, 1947, between us, so as to change the words and figure "10 per cent", appearing in clause (i) of Paragraph 4(b) and in clause (i) of Paragraph 8(b) thereof, to "7½ per cent", as of xxxxxxxxxxxxx. June 1st, 1962.

If the foregoing correctly states our understanding, will you kindly sign and return to us the enclosed copy of this letter.

Very truly yours,

PAN AMERICAN WORLD AIRWAYS, INC.

/s/ WILLIS G. LIPSCOMB

Willis G. Lipscomb

ACCEPTED: May 14th, 1952

PANAIR DO BRASIL, S. A.

By: /s/ PAULO SAMPAIO
President

[fol. 2357]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 77.

GENERAL TRAFFIC AND SALES AGENCY AGREEMENT

This AGREEMENT, made as of January 1, 1955, Between PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and PANAIR DO BRASIL, S.A., a corporation organized and existing under the laws of Brazil, hereinafter referred to as the "Company".

WITNESSETH THAT:

WHEREAS, Pan American operates an extensive system of international air transportation services, which services extend to and through Brazil and Latin America, to and through Europe, Africa and the Middle East, and to and from the United States of America; and

WHEREAS, the Company operates air transportation services in Brazil, and between Brazil and Argentina, Peru, Chile, Europe, Africa and the Middle East; and

WHEREAS, Pan American and the Company are parties to an agreement dated as of May 1, 1947 under which the

Company acts as General Traffic and Sales Agent in Brazil for Pan American and its affiliated carriers, and Pan American and its affiliated carriers act as General Traffic and Sales Agent outside Brazil for the Company; and

WHEREAS, the parties desire to terminate said Agreement, and to enter into a new agreement upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereby agree as follows:

1. Pan American and the Company agree to accept as general basis for their reciprocal relations for the sale and/or handling of passenger, express and cargo transportation over their respective lines, the conditions and stipulations contained in the INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA) INTERLINE TRAFFIC, BAGGAGE AND CARGO HANDLING [fol. 2358] AGREEMENT (hereinafter sometimes referred to as the "IATA Agreements"), except as otherwise specifically and mutually agreed upon herein. Pan American *and the Company have* heretofore become parties to the IATA Agreements by making written application to, and depositing executed counterparts of said IATA Agreements with, the Secretary of the Traffic Committee of IATA, but neither party has concurred in the participation with the other as a party to said IATA Agreements. Prior to April 15, 1955, the Company shall submit to the Traffic Director of IATA in writing, its concurrence in the participation with Pan American and its affiliated carriers as a party to the IATA Agreements, and shall promptly thereafter notify Pan American and its affiliated carriers in writing of the submission of such concurrence. Promptly after the receipt by Pan American of the notice referred to in the preceding sentence, Pan American shall submit, and arrange for its affiliated carriers to submit, to the Traffic Director of IATA, in writing, their concurrence in the participation with the Company as a party to the IATA Agreements. Notwithstanding the provisions of the IATA Agreements relating to the time at which said IATA Agree-

ments shall become binding between any of the parties thereto, said IATA Agreements shall be deemed effective as between the parties hereto, including affiliated carriers of Pan American, as of the effective date of this Agreement.

2. Pan American and its affiliated carriers, on the one hand, and the Company, on the other, agree, in accordance with the general and basic conditions established hereunder, to render for each other such additional services as may be listed in the ANNEXES to this Agreement, as the same may be amended from time to time, which services are not covered by the IATA Agreement.

[fol. 2359] 3. Pan American hereby appoints the Company, and the Company agrees to act as General Traffic and Sales Agent in Brazil (except in the states, territories, regions and cities specifically excluded by Annex no. 1) and in Paraguay, for Pan American and its affiliated carriers. As such General Traffic and Sales Agent, the Company agrees that it will perform such services as may be appropriate to promote passenger, mail, express and cargo traffic over the lines of Pan American and its affiliated carriers and, in cooperation with Pan American, to arrange for transportation of passengers, baggage, mail, express, and cargo over such lines. In the event Pan American shall desire to establish its own sales offices in cities or regions in Brazil (other than those established prior to the effective date of this Agreement), Pan American shall be permitted to do so upon giving the Company not less than sixty (60) days notice in writing of the establishment of such sales office.

4. The Company hereby appoints Pan American and its affiliated carriers, and Pan American agrees to act and make arrangements with its affiliated carriers under which they will act as General Traffic and Sales Agent for the Company outside Brazil and Paraguay, except in those countries, regions and cities specifically excluded by Annex no. 1. As such General Traffic and Sales Agent, Pan American and its affiliated carriers agree that they will perform such services as may be appropriate to promote passenger, mail, express and cargo traffic over the lines of the Company and, in cooperation with the Company, to arrange

for transportation of passengers, baggage, mail, express and cargo over such lines. In the event the Company shall desire to establish its own sales offices in cities or regions [fol. 2360] in the territory in which Pan American acts as General Traffic and Sales Agent hereunder (other than those established prior to the effective date of this Agreement), the Company shall be permitted to do so upon giving Pan American not less than sixty (60) days notice in writing of the establishment of such sales office.

5. In view of the mutual appointments contained in paragraphs 3 and 4 above, each party acting as General Traffic and Sales Agent for the other accepts the following as the functions to be normally performed by each party for the other in the territory in which such party acts as General Traffic and Sales Agent for the other hereunder:

(a) Solicitation and sale of passenger, mail, express and cargo transportation;

(b) Making arrangements on behalf of such passengers for transportation to and from airport terminals at points of call of such other party, and for hotel accommodation at such points and at other cities;

(c) Furnishing such advice and information as either party may from time to time request with respect to clearance, customs, and immigration procedures at points where such party acts as General Traffic and Sales Agent;

(d) Making local arrangements for advertising and publicity, including the distribution of time tables, advertising materials and other information, as either party may from time to time request to the other party;

(e) Maintaining and operating centrally located sales office for the sale of transportation for passengers, express and cargo at points served by said party, which offices will be staffed with competent traffic and sales personnel for the sale, and the sales promotion, of passenger, mail, express and cargo transportation over the lines of the [fol. 2361] other party and for the handling of all matters pertaining thereto pursuant to this Agreement;

(f) Performance of such acts and checking of such documents as may be required by applicable governmental laws

or regulations for passengers, baggage, mail, express and cargo to be transported over the lines of the other party, including the making of arrangements for the presence of such government officials as may be required in connection therewith;

(g) Checking baggage of outgoing passengers and delivering baggage to incoming passengers if either party so requests, collecting for the account of the other party any excess baggage charges payable with respect to any baggage checked by one party for transportation over the lines of the other party, receiving and forwarding by carriers with which either party has forwarding arrangements, any trunks or other heavy baggage delivered to either party for the purpose by the other party or by passengers traveling or proposing to travel, over said lines and collecting any charges payable therefor;

(h) Receiving from shippers outgoing express and cargo to be carried over the lines of the other party and delivering to consignees incoming express and cargo carried over said lines if either party so requests, collecting and forwarding by other transportation agencies any express or cargo delivered to either party for the purpose by the other party, and collecting any charges, including C.O.D. and Collect Charges, payable therefor in respect to any such express or cargo;

(i) Furnishing such catering service and other passenger service as either party may specifically request in connection with such party's operations.

[fol. 2362] (j) Making reservations for and facilitating transportation by the other party, its affiliated carriers and connecting carriers.

(k) Service all passenger and or cargo sales agents of the other party; and if and as required by the other party, obtain remittances of funds and pay them commissions for sales of transportation made by them over the lines of such other party, all in accordance with the policies, practices, rules, regulations and instructions of such other party pertaining thereto.

(l) Subject to the conditions set forth in the Annexes, assisting in negotiations with Government Agencies in countries in which one party acts as General Traffic and Sales Agent for the other, as such other party may specifically request.

6. All action taken by each party as General Traffic and Sales Agent, whether specifically referred to herein or otherwise, shall be in accordance with the instructions, rules, regulations, fares, rates and tariffs of the party or its affiliated carrier for whom such action is taken hereunder.

7. Each party agrees to effect the appointment for the purposes of this Agreement, in the name and on behalf of the other party, of such agents in the territory in which said party acts as General Traffic and Sales Agent hereunder, as the other party may from time to time request, all in accordance with, and upon such terms and conditions as shall be set forth in, the instructions (including official published agency rules, regulations, policies and practices) and forms of agreement which said other party shall furnish to said party as its General Traffic and Sales Agent hereunder, and to cancel the appointment of any agent for the purpose of this Agreement, upon said other party's request.

[fol. 2363] 8. (a) Subject to the provisions of paragraph 19 hereof, in consideration for the Company acting as General Traffic and Sales Agent for Pan American and its affiliated carriers hereunder, Pan American hereby agrees to pay to the Company for sales made in the territory in which the Company acts as General Traffic and Sales Agent for Pan American and its affiliated carriers, in addition to any commissions payable under the IATA Agreements:

(i) A commission equal to three (3%) percent of the total amount of the applicable fares for passenger transportation over the lines of Pan American and its affiliated carriers, excluding excess baggage weight charges and valuation and insurance charges on baggage, sold in such territory, including transportation sold by other carriers.

(ii) A commission equal to two and one-half (2½%) percent of the total amount of the applicable charges (not including insurance and C.O.D. charges) for air express and cargo transportation over the lines of Pan American or its affiliated carriers, sold in such territory, including transportation sold by other carriers, but excluding charges collected for shipments for which the air waybill is not issued in such territory.

(b) Subject to the provisions of paragraph 19 hereof, in consideration for Pan American and its affiliated carriers acting as General Traffic and Sales Agent for the Company hereunder, the Company hereby agrees to pay to Pan American for sales made in the territory in which Pan American and its affiliated carriers act as General Traffic and Sales Agent for the Company, in addition to any commissions payable under the IATA Agreements:

(i) A commission equal to three (3%) percent of the total amount of the applicable fares for passenger transportation over the lines of the Company, excluding excess baggage weight charges and valuation and insurance charges on baggage, sold in such territory, including transportation sold by other carriers.

[fol. 2364] (ii) A commission equal to two and one-half (2½%) percent of the total amount of the applicable charges (not including insurance and C.O.D. charges) for air express and cargo transportation over the lines of the Company, sold in such territory, including transportation sold by other carriers but excluding charges collected for shipments for which the air waybill is not issued in such territory.

(c) In addition to any other remedies which either party may have, no commission shall be payable with respect to any sales which are not made in accordance with the instructions, rules, regulations, rates and tariffs of said party as provided in paragraph 6 hereof.

(d) No commission will be payable with respect to any fares or charges which shall be refunded, except as otherwise provided by the party over whose lines the transportation is or is to be carried out.

(e) Each party hereby agrees to pay or reimburse to the other party any out-of-pocket expenses specifically requested and approved by such party and incurred by the other, not chargeable to passengers or shippers (other than the cost of routine notices, distribution of time tables and sales promotion material, solicitation and salaries of personnel, office rental, telephone service and other expenses incurred in performing such services as are customarily performed by a General Traffic and Sales Agent) in carrying out special services (including such expenses for advertising and publicity and catering) requested under this Agreement.

[fol. 2365] 9. (a) Each party agrees to indemnify the other and hold it harmless from and against all claims, for any loss, damage, injury or delay of any nature whatsoever, including costs and expenses, which shall occur in connection with the transportation services of said party or in connection with the carrying out or failure to carry out any obligation to third parties arising by reason of action taken on behalf of said party by said other party as General Traffic and Sales Agent pursuant to this Agreement unless such loss, damage, injury or delay shall be caused by the negligence or wilful misconduct of said other party. Pan American agrees to obtain a similar commitment from each of its affiliated carriers with respect to its transportation services and obligations to third parties arising by reason of action taken on its behalf.

(b) Each party hereby releases the other from all liability to it for loss, damage, injury or delay, arising by reason of any action taken or omitted to be taken on behalf of said party by said other party as General Traffic and Sales Agent pursuant to this Agreement unless such loss, damage, injury or delay shall be caused by the negligence or wilful misconduct of said other party.

(c) It is expressly understood, without limiting the generality of the foregoing provisions of this paragraph 9, that expenses to either party arising from any fines, penalties or detention expenses imposed by any government or governmental agency (or which any government or govern-

mental agency attempts to impose), as the result of negligence on the part of the other in performing the functions provided for in paragraph 5 (f) of this Agreement, shall be for the account of said other party.

[fol. 2366] (d) The provisions of this paragraph 9 shall relate to matters dealt with in this Agreement other than matters dealt with in the IATA Agreements, and shall not be deemed to modify any of the provisions of said agreements. The provisions of this paragraph 9 shall be applicable to any functions provided to be performed by either party for the other by the terms of this Agreement, in the territory in which such party acts as General Traffic and Sales Agent for the other, which functions may also be provided for by the terms of any ground handling agreement, ground servicing agreement or other agreement between the parties, notwithstanding any provision to the contrary, or inconsistent therewith, in said ground handling agreement, ground servicing agreement or other agreement.

10. Each party agrees to cooperate with the other in the operation of passenger, mail, express and cargo air services of the other and that, so long as this Agreement shall remain in force and effect, each party will use its best efforts generally to aid and assist the other in the establishment and operation of such services.

11. All expenses for telegrams, cables, radiograms or other communications sent in connection with or pursuant to this Agreement, including communications relating to reservations and cancellations of reservations, shall be borne by the sender.

12. Except as otherwise agreed upon between the parties in writing, settlement of all amounts payable hereunder, including all amounts collected on behalf of either party for transportation sold under the provisions of the IATA Agreements, shall be made in accordance with the applicable rules and regulations of the IATA Clearing House.

[fol. 2367] 13. In the event that Pan American shall have arrangements (hereinafter referred to as an "Interline Agreement") with any other carrier other than pursuant

to an IATA Interline Traffic Agreement, pursuant to which Pan American and its affiliated carriers are authorized to sell transportation over the lines of such other carrier and such other carrier is authorized to sell transportation over the lines of Pan American and its affiliated carriers, it is understood that the Company is an affiliated carrier of Pan American for the purposes of the Interline Agreement and the Company is hereby authorized to sell transportation, and agrees to honor transportation sold, pursuant to the Interline Agreement, subject to all the terms and conditions thereof. The basis of compensation and the other principal features of all Interline Agreements in effect at the time will be set forth in the traffic rules and regulations currently furnished to the Company by Pan American and copies of such agreements will be furnished to the Company upon request. It is further understood that, with respect to any transportation sold in accordance with the Interline Agreement:

(a) Settlement will be effected between Pan American and the Company in the same manner as settlement is effected pursuant to this Agreement, or in such manner as shall be mutually agreed upon;

(b) The Company shall have all of the rights and obligations, and only the rights and obligations, provided under the Interline Agreement with respect to affiliated carriers of Pan American;

(c) No commission or other compensation or payment (including reimbursement of commissions or payment to sub-agents or others) will be paid by or to the Company except to such extent as may be provided in the Interline Agreement; and

[fol. 2368] (d) The Company agrees to indemnify and hold harmless Pan American from and against all claims, including costs and expenses, and to reimburse Pan American for all amounts paid by Pan American pursuant to the Interline Agreement or otherwise by reason of any action taken by the Company pursuant to this paragraph 13.

14. In case Pan American shall take action of any kind in connection with the sale by the Company of transpor-

tation over the lines of an affiliated carrier of Pan American, or the sale by an affiliated carrier of Pan American of transportation over the lines of the Company, or in connection with the sale by the Company of transportation over the lines of a carrier with which Pan American has an Interline Agreement, or the sale by any such carrier of transportation over the lines of the Company, Pan American shall be deemed to be acting only as agent for the carrier over whose lines such transportation is to be carried out and shall be under no liability to the Company in connection therewith, including, but without limitation, liability for payment of commissions or other payments unless collected by Pan American on behalf of the Company, except for its own negligence or wilful misconduct.

15. It is agreed that the name "Pan American", "Panair", "Pan American Airways System", "Pan American World Airways", "Pan American World Airways System", and "Clipper" and the Pan American insignia and any other special or distinctive phrase, mark, name or slogan relating to Pan American and used on advertising material or otherwise by the Company, including all accompanying goodwill, are and are to remain the property of Pan American, and that the name "Panair do Brasil" and the Company's insignia and any other special or distinctive phrase, [fol. 2369] mark, name or slogan relating to the Company and used on advertising material or otherwise by Pan American, including all accompanying goodwill, are and are to remain the property of the Company, and Pan American and the Company agree to cooperate fully with each other in the protection of such names, insignia, phrases, slogans and marks. It is however agreed that the Company will be permitted to register in Brazil only the name "Panair" as their cable address for Brazil.

16. Any controversy or claim arising out of or in any manner relating to this Agreement shall be referred to and finally settled by arbitration in accordance with the procedures set forth below, and if necessary, judgment on the award rendered may be entered in any court having jurisdiction thereof.

(i) If the parties agree to the appointment of a single arbitrator, the arbitral tribunal shall consist of him alone.

(ii) If they do not so agree the arbitral tribunal shall consist of three arbitrators. Each party shall appoint one of the three arbitrators, and the arbitrators so appointed shall appoint the third, who shall act as chairman. Should the arbitrators appointed by the parties fail to agree on the appointment of the third, or should either fail to appoint his arbitrator, any supplementary appointment required shall be made by the Director General of the International Air Transport Association (IATA).

(iii) The Director General may, at the request of either party, fix any time limit he finds appropriate within which the other party, or the two arbitrators ap- [fol. 2370] pointed by the parties, shall constitute the arbitral tribunal. Upon the expiration of this time limit the Director General shall take the action prescribed in the preceding paragraph to constitute the tribunal.

(iv) When the arbitral tribunal consists of three arbitrators, its decision shall be given by majority vote.

(v) The arbitral tribunal shall settle its own procedures and if necessary shall decide the law to be applied. The award shall include a direction concerning allocations of costs and expenses of and incidental to the arbitration (including arbitrator fees).

(vi) The award shall be final and conclusively binding upon the parties.

17. As used in this Agreement, the term "affiliated carriers" shall include all companies other than the Company engaged in the transportation of passengers, mail, express or cargo, by air, for hire, capital stock of which shall be owned by Pan American, which Pan American may designate by notice in writing to the Company.

18. (a) Unless otherwise provided for in the Annexes to this Agreement, this Agreement shall become effective on January 1, 1955, and shall continue in effect until December 31, 1955 and thereafter until terminated by either party at any time after December 31, 1955 upon notice in writing given to the other not less than ninety (90) days in advance of the date of such termination. Termination of this Agreement shall not relieve either party from any obligation or liability on its part arising from or connected with [fol. 2371] tickets, exchange orders, airwaybill or other contracts for transportation issued or executed prior to such termination nor shall it relieve either party from any liability on its part based upon any state of facts existing prior to such termination.

(b) The general traffic and sales agency agreement between Pan American and the Company dated May 1, 1947 is hereby terminated as of the effective date of this Agreement.

19. The provisions of this Agreement shall be subject to all applicable rules and resolutions, including but not limited to those relating to commissions, of the International Air Transport Association (IATA), or any branch, committee, or conference thereof, which is binding upon either party to this Agreement or to any applicable agreement made by either party to this Agreement and approved by the IATA, and said provisions shall be deemed to be amended by any such rule, resolution or agreement to the extent that said provisions are in conflict with such rule, resolution or agreement. Notwithstanding the provisions of paragraph 9 hereof, expenses to either party arising from any fines or penalties imposed pursuant to any such rule or resolution of the IATA, as the result of any action taken or omitted to be taken by the other as General Traffic and Sales Agent hereunder, shall be for the account of said other party, provided that said other party shall not be required to take any action hereunder in violation of any such rules or resolutions.

20. Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by mail

addressed, in the case of notice to Pan American, to Vice President—Traffic and Sales, Pan American World Airways, Inc., 135 East 42nd Street, New York, 17, N.Y., U.S.A., or to such other address as Pan American may from time [fol. 2372]to time designate for the purpose, and in the case of notice to the Company, to the president, Panair do Brasil, S.A., Rio de Janeiro, Brazil, or to such other address as the Company may from time to time designate for the purpose.

21. This Agreement consists of paragraphs 1 through 21, together wth Annexes Nos. 1, 2 and 3 as the same may hereafter be amended by mutual agreement in writing between the parties.

IN WITNESS WHEREOF, Pan American and the Company have caused this agreement to be executed in the corporate names by their respective officers thereunto duly authorized.

PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ (Signature Illegible)
Vice President-Traffic & Sales

WITNESS:

/s/ (Signature Illegible)

PANAIR DO BRASIL, S.A.

By /s/ (Signature Illegible)

WITNESS:

/s/ (Signature Illegible)

/s/ (Signature Illegible)

[fol. 2373]

GENERAL TRAFFIC AND SALES AGENCY AGREEMENT

ANNEX No. 1

1. In accordance wth the provisions of paragraph 2 of the GENERAL TRAFFIC AND SALES AGENCY AGREEMENT to which Pan American and the Company are parties:

   (a) Pan American on one side, agrees to act as General Traffic and Sales Agent on behalf of the Company outside the countries of Brazil and Paraguay except in Argentina, Austria, the Azores, Bahrein, Belgium, Cyprus, Denmark, Egypt, England, France, French Morocco, French West Africa, Finland, Germany, Greece, Holland, Iceland, Iran, Iraq, Ireland, Israel, Italy, Jordan, Jugoslavia, Kuwait, Lebanon, Luxembourg, Norway, Portugal, Saudi Arabia, Scotland, Spain, Sweden, Switzerland, Syria and Turkey; and

   (b) The Company, on the other side, agrees to act as General Traffic and Sales Agent on behalf of Pan American in the country of Brazil (except in the territory of the Federal District and the State of Rio, and the State of São Paulo, or any other cities or regions in Brazil which may be excepted later as provided for in paragraph 3) and in the country of Paraguay.

Pan American agrees to assist the Company in negotiations with government agencies in the countries in which Pan American acts as General Traffic and Sales Agent for the Company, except Chile and Peru, to such an extent as shall be requested by the Company, and any out-of-pocket expenses incurred in furnishing such assistance will be reimbursed by the Company. The Company agrees to assist Pan American in negotiations with the government agencies in Brazil, to such an extent as shall be requested by Pan American, and any out-of-pocket expenses incurred in fur-

[fol. 2374] nishing such assistance will be reimbursed by Pan American.

2. The conditions established in this Annex No. 1 shall become effective as of January 1, 1955.

3. Pan American shall have the right to terminate the provisions of paragraph 1 (b) above with respect to the exception of the territory of the Federal District and the State of Rio and the State of São Paulo, upon notice in writing given to the Company not less than sixty (60) days in advance of the date of such termination, in which event there shall be appropriate modification of the provisions of Annex No. 2 (Federal District and State of Rio—Brazil) and/or Annex No. 3 (State of São Paulo).

[fol. 2375]

GENERAL TRAFFIC AND SALES AGENCY AGREEMENT

ANNEX No. 2

(Federal District and State of Rio—Brazil)

1. In accordance with the provisions of paragraph 2 of the GENERAL TRAFFIC AND SALES AGENCY AGREEMENT to which Pan American and the Company are parties, Pan American and the Company have mutually accepted the additional provisions, hereinafter described, and solely applicable to the territory of the Federal District and to the State of Rio in the country of Brazil, and which provisions are not contained in the IATA Agreements:

1.1 The Company agrees to act, on behalf of Pan American, as General Traffic and Sales Agent exclusively for the air express, air cargo, and mail business and perform this function, in accordance with the conditions set forth in the General Traffic and Sales Agency Agreement referred to above, and to the extent that such conditions are applicable to the air express, air cargo, and mail business.

1.2 In consideration of the international air express, air cargo, and mail traffic volume of Pan American in Rio, Pan American agrees to participate in the expenses to cover the operation and maintenance of the Company's air cargo offices to the extent of the monthly fixed amount of Cr$50,000. In computing this participation, among others, the following factors have been taken into account:

a) Average volume of the international air express and cargo discharged by Pan American in Rio as compared to the same volume of international air express and air cargo discharged by the Company; and

[fol. 2376] b) Average volume of "collect shipments" of Pan American and the related functions of the manipulations of shipping and clearance documents, the physical collections of the charges, and the preparation of the corresponding reports for accounting purposes.

1.3 The Company agrees to make available to Pan American one of the show windows of the Company's main Sales Office (Castelo), for the exhibition of Pan American's advertising and display material; provided, however, that the materials and labor required for the installation and/or decoration of these show windows will be for the account of Pan American.

2. It is understood that either party may at any time request a total or a partial revision of the computation of the amounts established in the foregoing provisions.

3. The conditions established in this Annex No. 2 shall become effective as of January 1, 1955.

[fol. 2377]

GENERAL TRAFFIC AND SALES AGENCY AGREEMENT

ANNEX No. 3

(State of São Paulo)

1. In accordance with the provisions of paragraph 2 of the GENERAL TRAFFIC AND SALES AGENCY AGREEMENT, to which Pan American and the Company are parties, Pan American and the Company have mutually accepted the additional provisions, hereinafter described, and solely applicable to the territory of the State of São Paulo in the country of Brazil, and which provisions are not contained in the IATA Agreements:

   1.1 The Company agrees to act, on behalf of Pan American, as General Traffic and Sales Agent exclusively for the air express, air cargo, and mail business and perform this function, in accordance with the conditions set forth in the General Traffic and Sales Agency Agreement referred to above, and to the extent that such conditions are applicable to the air express, air cargo, and mail business.

   1.2. In consideration of the international air express, air cargo, and mail traffic volume of Pan American in São Paulo, Pan American agrees to participate in the expenses to cover the operation and maintenance of the Company's air cargo offices to the extent of the monthly fixed amount of Cr$80,000. In computing this participation, among others, the following factors have been taken into account:

      a) Average volume of the international air express and cargo discharged by Pan American in São Paulo as compared to the same volume of international air express and air cargo discharged by the Company; and

      b) Average volume of "collect shipments" of Pan American and the related functions of the

manipulations of shipping and clearance docu-
[fol. 2378] ments, the physical collections of the charges, and the preparation of the corresponding reports for accounting purposes.

2. It is understood that either party may at any time request a total or a partial revision of the computation of the amounts established in the foregoing provisions.

3. The conditions established in this Annex no. 3 shall become effective as of January 1, 1955.

[fol. 2379]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 78

PAN-AMERICAN WORLD AIRWAYS SYSTEM
General Offices, Chrysler Building,
135 East 42nd Street, New York 17, N. Y.

December 13, 1955

Panair do Brasil, S.A.
Rio de Janeiro, Brasil

Gentlemen:

Reference is made to the General Traffic and Sales Agency Agreement between our respective companies dated January 1, 1955. In accordance with the provisions of Paragraph 17 of said Agreement, Pan American hereby designates the following carriers as affiliated carriers of Pan American for the purposes thereof:

Aerovias Nacionales de Colombia, S.A.
Compania Mexicana de Aviones, S.A.
Lineas Aereas Costdesicenses, S.A.
Pan American Grace Airways, Inc.

Pan American also hereby designates Aeronaves de Mexico, S.A. pursuant to Paragraph IV of said Agreement, as an affiliated carrier of Pan American, solely with respect to matters relating to participation in the IATA Interline Traffic, Baggage and Cargo Handling Aggregate, and Pan-

air do Brasil, S.A., acting as General Traffic and Sales Agent under the Agreement.

Will you please indicate your acknowledgment of the receipt of this letter on the enclosed copy, and return the same to us.

Very truly yours,

PAN AMERICAN WORLD AIRWAYS, INC.

/s/ WILLIS G. LIPSCOMB
Willis G. Lipscomb
Vice President, Traffic & Sales

ACKNOWLEDGMENT:

PANAIR DO BRASIL, S.A.

By /s/ illegible

[fol. 2380]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 79

AMENDMENT NO. 1

THIS AMENDATORY AGREEMENT, made as of July 1, 1957, between PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and PANAIR DO BRASIL, S.A., a corporation organized and existing under the laws of Brazil, hereinafter referred to as the "Company",

WITNESSETH THAT:

WHEREAS, Pan American and the Company have entered into a General Traffic and Sales Agency Agreement dated January 1, 1955, whereby the Company acts as general traffic and sales agent for Pan American and its affiliated carriers in the country of Brazil (except in the territory of the Federal District and the State of Rio and the State of Sao Paulo) and in the country of Paraguay, and whereby Pan American and its affiliated carriers act as general traffic and sales agent outside the countries of Brazil and Paraguay (except in certain countries, regions

and cities designated in paragraph 1 (a) of Annex No. 1 thereto); and

WHEREAS, Pan American and the Company desire to amend the General Traffic and Sales Agency Agreement to exclude the country of Uruguay from the territory in which Pan American and its affiliated carriers act as general traffic and sales agent for the Company;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the parties hereby agree as follows:

1. Paragraph 1 (a) of Annex No. 1 to the General Traffic and Sales Agency Agreement is hereby amended, effective [fol. 2381] as of July 20, 1957, by the insertion of the name, "Uruguay" after the name "Turkey" appearing therein.

2. Except as herein specifically amended, all of the terms and conditions of the General Traffic and Sales Agency Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Pan American and the Company have caused this Amendatory Agreement to be executed in their corporate names by their respective officers thereunto duly authorized as of the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

/s/ WILLIS G. LIPSCOMB
Willis G. Lipscomb
Vice President-Traffic & Sales

WITNESS:

/s/ (Illegible)

PANAIR DO BRASIL, S.A.

/s/ CESAR PIRES DE MELLO
Cesar Pires de Mello
Director Superintendent

WITNESS:

/s/ PRESTON
Commercial Manager

[fol. 2382]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 80

AMENDMENT NO. 2

THIS AMENDATORY AGREEMENT, made as of Dec. 11, 1957, between PAN AMERICAN WORLD AIRWAYS, INC., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as "Pan American", and PANAIR DO BRASIL, S.A., a corporation organized and existing under the laws of Brazil, hereinafter referred to as the "Company",

WITNESSETH THAT:

WHEREAS, Pan American and the Company have entered into a General Traffic and Sales Agency Agreement dated January 1, 1955, as amended by Amendment No. 1 thereto dated July 1, 1957, whereby the Company acts as general traffic and sales agent for Pan American and its affiliated carriers in the country of Brazil (except in the territory of the Federal District and the State of Rio and the State of Sao Paulo) and in the country of Paraguay, and whereby Pan American and its affiliated carriers act as general traffic and sales agent outside the countries of Brazil and Paraguay (except in certain countries, regions and cities designated in paragraph 1 (a) of Annex No. 1 thereto); and

WHEREAS, Pan American and the Company desire to amend the General Traffic and Sales Agency Agreement to delete the provisions set forth in Annex No. 2 thereto relating to the Federal District and State of Rio—Brazil;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the parties hereby agree as follows:

1. The provisions set forth in Annex No. 2 to the General Traffic and Sales Agency Agreement are hereby deleted in [fol. 2383] their entirety, effective as of Dec. 11, 1957.

2. Except as herein specifically amended, all of the terms and conditions of the General Traffic and Sales Agency

Agreement, as heretofore amended, shall remain in full force and effect.

IN WITNESS WHEREOF, Pan American and the Company have caused this Amendatory Agreement to be executed in their corporate names by their respective officers thereunto duly authorized as of the day and year first above written.

PAN AMERICAN WORLD AIRWAYS, INC.

/s/ WILLIS G. LIPSCOMB
Willis G. Lipscomb
Vice President-Traffic & Sales

WITNESS:
/s/ (Illegible)

PANAIR DO BRASIL, S.A.

/s/ CESAR PIRES DE MELLO
Cesar Pires de Mello
Director Superintendent

WITNESS:

/s/ PRESTON
H. P. Preston
Commercial Manager

[fol. 2384]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 81

New York, August 30th, 1927.

C. J. Bilwiller Esq.,
Nitrate Agencies Ltd.,
Iquique, Chile.

Dear Billwiller:—

Thank you very much indeed for your informal and interesting letter of August 5th.

Our expert has reported on a project for passenger service all the way down the Coast, also on a service from

Panama up to Callao and return and also on a service for mail only all the way down the Coast.

The Post Office Department has no appropriation available for carriage of the mail at a greater rate than 80¢ a pound which is too low to make even a mail service profitable.

The general idea is winning some converts here and when it has taken a little more definite form, I will write you more fully.

Very truly yours,

RHP.C

[fol. 2385]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 82

MEMORANDUM

Date August 31st, 1927.

To Mr. CARTER Dept.

From Mr. PATCHIN. Dept.

SUBJECT: *AVIATION*

Herewith estimate of capital and operating cost for weekly air mail service from Colon to Valparaiso which I hope you will find time to look over.

No estimate of revenue is included as it will all depend on what arrangements we can make with the Post Office Department. Some revenue can be derived from passengers as the plane specified would have accommodations for three or four passengers as well as two pilots. It is not advisable on air navigation over waters such as the West Coast to use a smaller plane.

My personal opinion is that we ought to use flying boats instead of amphibians, but no flying boats have yet been built in this country.

R. H. PATCHIN

[fol. 2386]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 83

December 23, 1927

Mr. Harold R. Harris
Huff, Daland Dusters, Inc.
Ouachita National Bank Building
Monrow, La.

Dear Harris:

In accordance with my night letter, under date of December 21st, I am forwarding you attached herewith suggested draft of proposed concession to be secured by Huff, Daland Dusters, Inc., or a new Peruvian National Company, to be created for that purpose, if local conditions make such a step desirable.

You will note that the accompanying draft of concession is designed to provide the Company with the necessary legal authority to conduct its business, in all its branches, both operating on schedule and auxiliary service of every kind, of a strictly commercial nature.

It will be noted that one paragraph reserves the right to enter into additional special contracts with the Government for future mail and other service. This provision is inserted so that in the event of a lump sum grant, by the Government, for development purposes is not acceptable to the Government, or is not sufficient in amount to provide the Company the necessary guarantee of earning power, additional supplementary contracts may be made.

You will note that the amounts of these proposed payments and periodic dates same are to be deposited to the credit of the Company, have been left blank, to be filled in by yourself and Mr. Wollman at a later date.

In general, I believe it would be unwise to contract for scheduled service operating less than two hours a day in air load factor, for the company's aircraft, including all the ships in the fleet, at a rate under $1.50 per ship mile—single engine ships of 700 to 900 pounds payload, in addition to pilot and fuel for five hours.

From our experience to date in Latin-America, I cannot too strongly stress the desirability of securing the services of a high-grade Peruvian Attorney. The man selected should be thoroughly grounded in his profession and, in addition, should have good standing with the Government Departments, and all those who may be concerned. I have heard very good reports concerning Dr. Ronero, Attorney for All American Gagles, whose name I suggest for your consideration. It would be wise, too, I believe, to arrange with the Attorney you finally select, for a flat fee, contingent upon securing an acceptable concession and in addition, pay only out-of-pocket expenses incurred.

You will further note that the concession has been drafted so that all dealings and contracts are made with the Departments "Fomento" or Public Works, rather than with the Post Office Department. Transportation in general in Peru comes under the Department of "Fomento". In view of the strong foreign influence now surrounding the Post Office Department (The British Marconi Company) it is believed that arrangements made with the Department of "Fomento" can be negotiated on a basis more favorable to the Company.

[fol. 2387] You will further note that no details as to frequency of service, intermediate stops, operating schedule, or weight of mails are provided for in the paragraph covering the service between Mollendo and Paita. These details are subject to the financial arrangements made between the Government and, in fact, on the final terms of the concession itself as approved by the Peruvian Legislature.

I would suggest that you have forwarded for comment, after local negotiations have commenced, at the earliest opportunity, proposed frequency, load guarantee, number of cities to be served, etc., etc.

Some specified in the concession are to be given the Company by the Government for development, research and Pioneer work, in general. The Company assumes no direct obligation of any kind because of the payment of such sums. The concession does not constitute an iron-clad monopoly

and the sums advanced do not constitute a subsidy, and therefore, the Government should be sold on the fact that it is not entitled to any ownership in the Company's property, or share in future revenue. The only obligation to be assumed by the Company are those distinctly stated in the concession.

The concession will not be valid and no money can be paid by the Government under this agreement, until it has been ratified by the Peruvian Congress. I would suggest it might be helpful to verify this fact locally and forward, at the earliest opportunity, the date when the session of Congress, at which the concession will come up for approval, will convene, in order that we may secure the maximum assistance from our State Department.

If the Peruvian Attorney thinks it unnecessary to include a special cause in the concession in order to make it transferable, paragraph 23 should be stricken out.

The local bank specified for a depository, you will note, is the National City Bank at Lima, Peru. Any responsible local American institution, however, would suffice, should this bank, for one reason or another, prove undesirable.

Much difficulty usually obtains in Latin-American countries in collecting sums due from local Governments. For this reason, particular care has been taken to provide that lump payments shall be made in advance through a depository as trustee.

The proposed concession would also permit the Company to sell its own stamps direct. This procedure need not necessarily be followed, and should the Government finances become absolutely stabilized, the Company would have the right to carry mail bearing Government mail stamps, the Company receiving payment for carrying same from the Government. On general principles, however, the method is unsatisfactory. The most desirable arrangements would be the ratification by the Peruvian Congress of the proposed concession, carrying with it lump payments in advance over one or two years, to cover the greater part of the capital investment required.

A supplementary contract, whereby the Government would guarantee a minimum load of airmail bearing the Company's stamps on mail at 50¢ per ounce, or fraction thereof, sufficient to guarantee a mail revenue of $1.50 per schedule mile, would be most desirable.

[fol. 2388] I trust this data may be of service to you and would appreciate your comments thereon, at an early date, so that we may have a chance to redraft certain points, if you deem it advisable, before you sail.

With best regards, I remain,

Yours sincerely,

J. T. Trippe

[fol. 2389]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 84

December 30, 1927.

Mr. Harold R. Harris,
Huff Daland Dusters, Inc.,
Monroe, La.

Dear Harold:

Thank you for your letter of December 20th, which I have delayed acknowledging, partly due to the large amount of work to be done before the Pan American Conference on the fifteenth. I was hoping it might be possible for you to attend, but appreciate the fact that the situation developing in Peru may probably make this impossible.

I also want to take this opportunity to thank you for passing along the information you picked up in Washington with reference to Nagle. Nagle is now doing some work for us, but chiefly in connection with accumulating statistics, having to do with the movement of passengers, mail and merchandise, clerks and collection items, through Central and South America, for the preparation of a detailed survey we expect to make on the Colon run, within the next two months.

Let me have your reaction to the drafts of the proposed concession which I forwarded you Christmas Day. I appreciate it is by no means in good shape yet, but feel that it may be of considerable value to you as a draft to commence negotiations on.

From information I have secured in Washington and elsewhere, I believe you are going to run into considerable difficulties and, in particular, opposition by local British and German interests. The two cable companies also will certainly offer no assistance. In fact, I feel confident that messages having to do with securing this concession may probably come before certain of their executives.

I am, therefore, forwarding you, under separate cover, copy of a small dictionary which you can use as a guide later on in the negotiations, if you particularly wish to get something through confidentially. It is quite possible you will never require it, but it may be well to have it along. I have a similar edition in my desk. The procedure is relatively simple. The figures 199 to 315 refer to pages. The figures one to 100, the definite word located on the page previously referred to. For instance, 216-75 would refer to the word "can"; 243-6 would refer to the word "fifty", etc., etc.

As stated above, I see no reason now why we should have need for this code, but we cannot foresee what will develop, and it may come to pass, for instance, that you would have us bring pressure along certain channels, through our State Department, and certainly you would not wish to put such a message over the cables in ordinary language.

Wishing you a Happy New Year and awaiting word from you with interest, I remain,

Yours very truly,

J. T. Trippe,
President.

JTT/B

[fol. 2390]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 85

[Letterhead of Huff Daland Dusters, Inc.,
Monroe, La.]

[Stamp—Received—Jan 6 1928]

January 3, 1928.

Mr. Juan Trippe, President,
Pan American Airways,
100 East 42nd Street,
New York City.

Dear Juan:

Your proposed Peruvian concession with its covering letter, and also your nice letter of the 30th both arrived today. The concession letter was very surprising to me as I thought that it was thoroughly understood between us that you were to send us a generalized Latin-American concession form and not worry about the Peruvian angle in particular. The only reason I cabled Woolman to delay activities was to get this form you were to make up, which we discussed in Washington. I feel that we are not justified in further delay in this matter and we are cabling Woolman to proceed with the negotiations along the lines with which he is already familiar; however, we will forward him a copy of your letter and draft for his information and such use as he may be able to make of them.

You well know that we have intimate knowledge of the situation in Peru and we feel that we have the very best of connections there. As you realize, negotiations will, no doubt, be very delicate and we cannot point out too strongly the advisability of having all inquiries, information and suggestions clear through one channel. If confidential inquiry is conducted, say through the National City Bank, it might prove embarrassing to us, not only in our work in Peru, but in the other countries south of the Canal, and we look to you to refrain from making any moves regarding these countries without first advising with us.

With further reference to a standard form of Latin-American concession draft we would appreciate very much your giving us the salient points in the concessions which you may now possess. The importance of being able to refer to a particular clause or clauses as being acceptable to some other Latin-American government might be the deciding fact in securing the acceptance of this clause in another country. We shall attempt to secure a monopoly [fol. 2391] concession in Peru, Ecuador and Chili and the best possible type of concession in Columbia. I seriously question whether a partial monopoly such as outlined in your draft is desirable, except as a last resort. A brief study of your proposed Peruvian concession has brought out a number of other points which seem undesirable or unnecessary. One, for instance, is the fact that no provision is made in this draft for operating between Peruvian ports and foreign ports. We see nothing desirable or necessary in the description of the type of equipment to be used. We see no reason for operating the entire route within six months of the approval of the government, but would rather guarantee to commence operations on a partial route within that time.

Your point that the income should be at least a dollar and a half per mile seems to be very important and I feel sure is based upon your previous experience. This is nearly three times as much as we had theoretically figured, and we would appreciate very much your data on this.

It was very thoughtful of you to send the dictionary, and the notation regarding the code may prove very important and beneficial. I feel with you that we may get some keen competition in this matter, which may have extensive ramifications.

Regarding use of the dictionary in private code in cables, I will appreciate very much your giving me your cable address in New York. Our address in Lima is Hudadus, which is also our address in Monroe. Possibly in sending numbers by cable we might use the A.B.C. Sixth Edition Code Book and simply take the code number, which is the left hand column on each page, and transmit the half code word corresponding to that number. An otherwise unintelligible

cable in the A.B.C. Sixth Edition would immediately become a dictionary code cable. This would be convenient for us since we use this code in our ordinary code cables.

Please drop me a line on the matters mentioned above, particularly the cost data, as soon as possible, since the date of the Pan American Conference is very close and I suppose you will be in Cuba at that time. Unfortunately I have not been able to set my sailing date, so do not know for sure if I will be able to meet you in Cuba.

Very truly yours,

HUFF DALAND DUSTERS, INC.,

/s/ HAROLD R. HARRIS
Vice President.

HRH:NRG.

[fol. 2392]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 86

[Handwritten notation—1928—file]

January 3, 1928

Memorandum of conversation with Dr. von Bauer

Dr. von Bauer began with the Scadta Company as Manager but in 1921 when they were in financial difficulties, he invested heavily in the Company and became its head. He is now the principal stockholder. Scadta is a Colombian Company. They have recently organized two other companies in connection with their new services.

The Company has a liberal concession in Colombia which while it does not give them any monopoly, does give them certain advantages in the way of exemption from export duty on planes, spare parts, supplies, etc. and the right to conduct what virtually amounts to a private mail service, the Company selling their own stamps and delivering their own letters at destination.

The Company, even on the small service which it is now running, has eleven planes, maintains an airport at Bar-

ranquilla which represents an investment of $200,000, and smaller airports at Girardot, Cartagena and Buenaventura. Dr. von Bauer explained that the land plant is quite as important as the flying machinery pointing out the difficulty of maintaining adequate repair shops, and the necessity of maintaining supplies of repair parts, etc. in order to make necessary repairs at a point so far distant from the factory. He stated that an engine costs $7,000. and the larger Dornier whale planes up to as much as $100,000. Scadta's practice is to write off the entire investment in a plane in twelve to eighteen months although ordinarily the plane is in use much longer than that, 1,000 running hours [fol. 2393] being estimated as the commercial life.

The Colombian service maintains reserve planes which are stationed at strategic points and proceed in search of any plane which does not pass within a certain period after schedule time. Insurance is carried on the planes although the rate is 20% to 25% though in Scadta I imagine the Company carries part of their own insurance as Dr. Von Bauer said they had an insurance reserve of $100,000. Insurance for the pilots is optional with them and paid for by deduction from their salaries. Dr. von Bauer stated that few of the pilots carry insurance as they prefer the cash.

Asked for his ideas regarding a West Coast of South America service, Dr. von Bauer stated that the matter would require very careful study in detail and that it was impossible to reach any conclusion without this study. The question of the best type of plane for the service would itself require very careful investigation. For example, for a part of the service hydroplanes would probably be desirable and for other sections, land planes. On account of the rains between the Canal and Guayaquil, all metal planes would probably be required here. Among the difficulties to be overcome which he mentioned, were the prevalent rains between the Canal and Guayaquil, the fogs from there to Lima and the possible heavy seas below that point, and all along the course, the difficulty of finding suitable landing places. As indicative of the probable cost of such a service, [fol. 2394] it may be noted that on a Florida Guatemala

Cuba triangular service, which Dr. von Bauer figured on some years ago, he estimated that an investment of $2,000,000 would be required.

[fol. 2395]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 87

January 13, 1928.

Mr. Harold R. Harris, Vice President,
Huff Daland Dusters, Inc.,
Ouachita National Bank Building,
Monroe, La.

Dear Harold:—

I acknowledge receipt of your letter, under date of January 3rd, relative to the proposed Peruvian concession.

I note therein that you have cabled Woolman to proceed with negotiations along the lines of the original plan, copy of which Ed Gott forwarded me, and that you also forwarded Woolman a copy of the proposed Peruvian concession prepared by Pan American Airways, Inc.

I am sorry it was impossible to delay matters in Peru until Woolman could have received from you the draft we sent you, for I believe that a concession along those lines is infinitely more desirable than a general contract, depending upon payments made by the Government, from time to time, for services rendered. In fact, I do not believe that an operation depending upon such revenue would fit in with the proposed operations of Pan American Airways, Inc., but, knowing the local situation as you do, you are probably in a better position to judge what type of concession would best fit the picture.

In your letter you raise the question as to whether a partial monopoly, such as outlined in our draft, is desirable, except as a last resort. In this connection, I would state that the concession developed by us is the strongest possible one that would be supported by our State Department.

In view of the pressure brought to bear by foreign Governments to secure concessions in Ecuador, Peru and Chile at the present time, I believe you will be lost unless you have the greatest possible backing in Washington.

You also refer to our draft as having no provision covering the operation between Peruvian ports and foreign ports. This is one of the most important points in question that [fol. 2396] will come up for discussion at the forthcoming Pan American Conference. Our delegates are of the opinion that it will be adopted that all member-countries will agree to regulations permitting International Transport Companies to land at certain Airports of Entry in their territory. Should this fail of enactment, it would be well to include the right to operate between Peruvian ports and foreign ports. I had in mind, however, that it was practically necessary to set up a National Company to hold this concession, and that in that case, of course, no such provision would be necessary.

With reference to operating costs, I would state that we have found that it costs at least 25% more to operate outside the United States on scheduled lines than it does in the States, and that it is unwise to figure on less than one dollar per ship mile for the type of equipment referred to in my letter of December 23rd, attached to the concession. The figure of one dollar will, of course, include proper reserves for full insurance, depreciation and amortization of investment, over a period of four years, which is a reasonable charge to include at this stage of Air Transport developments.

I am leaving in a few minutes for Cuba, and so am forwarding your letter of the 3rd instant, together with other correspondence having to do with this matter, to Mr. Robert W. Atkins, of Hayden, Stone & Co., this City, whom you met when last in New York. Mr. Atkins has said that he would take care of the matter until my return to New York, which I expect will be about January 23rd.

I sincerely hope it will be possible for you to attend the Conference. If so, you can reach me at the Pan American Airways, Inc., office, Sevilla-Biltmore Arcade, Havana, Cuba.

Wishing you the best of luck in Peru, and awaiting further news from you with a great deal of interest, I remain,

Yours very truly,

J. T. Trippe

JTT/s
(Dictated but not read)
cc-RWA

[fol. 2397]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 88

February 21, 1928.

Mr. Edgar N. Gott, President,
Keystone Aircraft Corporation,
Bristol, Pa.

Dear Ed:—

Following the receipt by him of your wire of February 5th, Harold Harris cabled me at Havana on the 8th, advising that he and Mrs. Harris were coming over from New Orleans by boat to go over the Peruvian situation.

I spent sometime with him in Havana, describing our expansion plans. In particular, I stressed the hazard of depending, in Latin-American countries, upon Government contracts for revenue. Harris immediately got off a cable to Woolman in Peru, stressing the importance of incorporating in the concession a clause giving his Company the option to deal directly with the public in the sale of Air Mail stamps.

I asked our organization to cooperate with Harris while he was in Havana and requested that they answer any questions he might ask in connection with the operation of Pan American Airways, Inc. I also arranged to give him a pass on the line, in order that he might visit Key West and acquaint himself, at firsthand, with the formalities required to clear aircraft plying between any two countries.

When leaving Havana Harris asked me to forward him a copy of the Cuban contract, as well as other proposed contracts and concessions we have drafted for use in Central America. I have already forwarded him a copy of the Cuban contract, and will forward copies of the others as soon as they are available.

I hope that Harris's trip to Havana was worth while, and I am sure it will have been if he intends to go to Peru before the proposed contract there is concluded, for his visit to Havana and Key West will have clearly indicated the additional difficulties and incidental expenses incurred in operating an International Air Service.

Yours sincerely,

J. T. Trippe,
President.

JTT/s

cc-R. F. Hoyt
cc R. W. Atkins
cc George Mixter
cc Harold Harris

[fol. 2398]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 89

PAN AMERICAN AIRWAYS, INC.

General Offices

100 East 42nd Street, New York City

February 23, 1928.

Mr. Richard F. Hoyt,
25 Broad Street,
New York City.

Dear Dick:—

I attach herewith, for your files, copy of a letter addressed to Ed Gott, reporting on Harris's recent conference with me at Havana.

I believe I sold him on the falicy of depending upon contracts with South American Governments for mail revenue. We have as yet been unable to collect the money due us from the Cuban Government, but expect to have this in within the next few weeks, having made arrangements on my last trip to Havana to have certain other Post Office funds ear-marked in the future for this purpose.

This delay, however, sold Harris more effectively than any other argument that could have been brought up. He accordingly cabled Woolman, who is now in Peru, to attach a rider to the concession he is now attempting to secure, which would permit Huff Daland Dusters, Inc., to sell its service direct to the public.

From reports I received through the State department, Woolman is evidently handling a very delicate situation in Peru to good advantage. Personally, I do not think the first concession he may be able to obtain will be very valuable, but it will be an entering wedge, and, what is more important, will prevent foreign interests from obtaining a foothold in Peru.

Sincerely,

(Sgd.) JUAN TRIPPE

JTT/s
cc RWA
cc GM
Enclosure

[fol. 2399]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 90

(Letterhead of Atlantic, Gulf & Caribbean Airways, Inc., New York City)

[Handwritten notation—File Copy]

April 10, 1928.

Mr. Edgar N. Gott, President,
Huff, Daland, Dusters, Inc.,
c/o Keystone Aircraft Corporation,
Bristol, Pa.

Dear Ed:

I am outlining herewith conversation between Harold Harris, Vice President of your Company and myself, under date of April 9, 1928, as follows:

I advised Mr. Harris of my conversation with Mr. R. F. Hoyt, the day prior to his recent departure for Colon, during which I developed the fact that the stock interest of Huff Daland Dusters, Inc., and Atlantic, Gulf & Caribbean Airways, Inc., were not identical. I told Mr. Hoyt that I did not see how Atlantic Gulf could properly assist Huff Daland Dusters, Inc., without recompense, in developing an air transport service along the west coast of South America. However, in view of the large stock interest he and his associates had in both Huff Daland Dusters, Inc. and Atlantic Gulf, and also in view of the fact of his expressed desire to include Huff Daland Dusters in the Holding Company—Atlantic Gulf—and especially because of the recent progress made by the Inter-Department Committee designated by the President to develop American Air Transport in the Southern field, I believe, from Atlantic Gulf's point of view, we can now assist Huff Daland Dusters, Inc., in developing the West Coast of South America, recompense for such assistance to be set [fol. 2400] by a representative of Atlantic, Gulf, duly nominated by the Board, and Mr. Hoyt representing the Dusters.

I believe such a plan would be most agreeable to Huff Daland Dusters and, therefore, pending confirmation of same by you, I have outlined to Mr. Harris, in detail, recent developments in Washington.

I told him that I believed the Inter-Department Committee would designate three, and possibly four, foreign transport routes. Furthermore, that the Post Office Department would advertise for air mail service over these routes, provided funds in the amount of approximately $2,000,000. were apportioned under the recently enacted Kelly-Moses Foreign Air Mail Bill. One of the routes being considered was that along the West Coast of South America from Colon South. The advertisement for bids on these routes might be expected any time within the next several weeks.

I told Mr. Harris that I believed at least one outside American interest was working on the West Coast route, and that if the advertisement for bids on this route were released along with the others, which I hoped would not be the case, that his Company should prepare to place itself immediately in the strongest possible position. I recommended for his consideration the following steps be taken at once:

1. That the advertisement on the West Coast route be delayed, if possible, until after the local concessions in Peru and Possibly Ecuador had been definitely secured.

2. That the name of his Company be changed to West Coast Airways, Inc., instead of Air Operations, Inc.

3. That a survey of the airway between Colon and Valparaiso be prepared. The information now available to [fol. 2401] Harris, as a result of his dusting operations in Peru, would provide most of the information required.

4. That a technical survey be made of this route, including the securing of meteorological information and other pertinent data.

5. That a traffic survey be undertaken to provide full information on the movement of mail, passengers and merchandise over this route.

6. That an economic survey be developed. Such a survey would provide fairly accurate estimated on the operat-

ing costs and revenues of a service installed on this route and of the expected financial returns to be obtained over a period of years.

7. The Peruvian concessions now being negotiated should, if possible, be brought to a conclusion before May 15th. Negotiations should be attempted in Ecuador. A summary of previous operating experience on the West Coast of South America and of concessions secured, should be forwarded immediately, following the results of advertisement for bids.

Much of the technical traffic and economic data required to develop the seven points itemized above, is already available in the Atlantic Gulf office. Mr. Harris can also provide much of the information required in the airway survey from his experience in conducting dusting operations in this territory.

Mr. Woolman will no doubt have his Peruvian concessions definitely tied up before the middle of May. Possibly he may have been able to do something in Ecuador.

If the arrangement outlined herein is agreeable to you, will you please so advise me, in order that Atlantic Gulf may continue to assist in the development of this west coast situation.

[fol. 2402] In the meantime, we will bend every effort to attempt to have the advertisement for this route deferred. From present indications, this would appear to be very difficult. I believe, therefore, that every effort should be made to develop the principle that the present Huff Daland Dusters, Inc., are entitled to this contract, not only because of their experience in this territory, but also because of the work done by them in preparing for actual service over this route.

I await your reply with interest.

With best regards, I remain,

Sincerely,

ATLANTIC, GULF & CARIBBEAN AIRWAYS, INC.,

J. T. Trippe,
President.

JTT:B

[fol. 2403]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 91

April 27, 1928.

INFORMAL MEMORANDUM REPORT.

On October 3, 1927, when Pan American Airways, Inc., and your Holding Company—Atlantic, Gulf & Caribbean Airways, Inc.,—was organized, your Companies had before them two major undertakings—first, carrying out the provisions of the mail contract between Key West and Havana, previously acquired, and secondly, extending service South to Central and South America.

The Key West—Havana contract required that the first flight over the route with the mails be made on October 19th—sixteen days later. An Airport had to be constructed out of a quagmire at Key West; hangars and passenger stations had to be planned, constructed for and erected; personnel had to be selected and assembled. The Company's Key West Airdrome had to be designated as an Airport of Entry, the first in the United States. Many clearance regulations had to be changed before any regular operation at all on a schedule was possible and, lastly, to build up the reputation of Pan American Airways, Inc., the line had to be operated with safety and regularity and, if possible, at a profit.

This has all been accomplished, and we might say that the first step in the development of your Company is behind us.

No permanent organization for this short route has been attempted. The line has been used to acquire experience in a new field, in operating an International Air Transport Service. Some of the positions in the local operation have been temporarily filled by men unqualified to perform the duties assigned, were it planned to maintain the present organization as such, on a permanent basis. Others have been temporarily assigned to local positions in the Accounting and Traffic Departments, and to acquire the experience necessary for the Company to expand its operations in the International field.

In fact, the entire local operation has been conducted as a laboratory, with the end in view of exploiting the Central and South American Air Transport field.

As soon as scheduled operations on the Key West—Havana Division had been established on a firm basis, my activities were directed to the Company's expansion program. This work was divided into five parts, as follows:

[fol. 2404] I Creating interest in an American Air Service to South America.

II Promoting the required subsidy legislation.

III Assisting the proper officials to designate the routes selected by this Company.

IV Securing the necessary appropriations.

V Negotiating remunerative contracts.

I will cover the work done to date, under these headings:

1. Creating interest on the part of our Federal Officials in having an American Company extend its service through Central and South America. —This question was discussed informally with the President's Secretary, members of the Cabinet, and other persons, resulting in the matter coming before the Cabinet last Fall at three successive meetings. The President appointed a Committee to consist of the proper representatives of the various interested Departments, to push this matter and cooperate with any American Company interested in this field.

2. "Promoting the required subsidiary legislation." Any Company contemplating extending service into the Central and South American Field would face competition from subsidized European interests. European Transport Companies can operate at a considerably lower cost than could any American Company employing American personnel and using American equipment produced under our high labor scale. Therefore, there was required legislation that would provide an American Company not only with subsidy in the form of mail contracts, but also a subsidy considerably higher than that enjoyed by the European Transport monopolies—The Latecoere System and Luft Hansa. More-

over, it seemed essential that contracts be made for a longer term than the maximum four-year period permitted under existing postal laws. Many of the foreign contracts extended for a period of ten years. Ten years seemed to be the minimum period possible over which an investment could be reasonably amortized. These facts were discussed with the proper officials.

A Bill was introduced during December by Congressman Clyde Kelly in the House, and Senator George Moses in the Senate. The Bill was not all that could be desired. [fol. 2405] It enabled the Postmaster General, however, to contract with an American Company, on attractive terms, without recourse to competitive bidding and interference, in the award by the Controller General.

Marine mail transportation precedent required that the contractor be paid by the mile or by the pound with a mileage limit. The fact that it was desired to eliminate the competitive bidding feature from the contract, was a difficult matter to contend with. Nevertheless, the Bill embodying this feature was introduced in both Houses, passed and approved by the President on March 8th last.

3. "With the legistration described, introduced, and apparently to be adopted, the question of what routes would be selected by the Government came up." Pan American Airways, Inc., had been advocating and working on the direct extension of this route to Colon via Yucatan. Interests affiliated with the Ford Motor Company, and supported by some of the transport interests in the United States, advocated an all-land route to Colon, via Mexico City and Guatemala. This Company successfully had approved, by the Inter-Departmental Committee, the routes advocated by it.

The Postmaster General has requested an appropriation of $2,000,000., which has been approved by the Bureau of the Budget. The route to Colon advocated by this Company has been definitely selected as the first route to be established.

The second route under consideration was a route to Mexico City. Our Government requested permission of the

Mexican Government to operate a service to Mexico City, via Tampico. The route proposed by this Company, together with the Mexican Aviation Company, an American owned Mexican Corporation, with whom we have been jointly developing the situation in Mexico, was selected by the United States Government as the logical route to Mexico City from the United States. The Airway would extend from Brownsville, Texas, and or Matamoras, Mexico, via Tampico, to Mexico City. The Mexican Company referred to has been successfully operating, at a profit, in this territory, without any mail contracts at all, for a period of years.

Pan American Airways, Inc., has also surveyed the West Coast of South America, from Colon South, to Valparaiso, and the North Coast route, from Colon to Trinidad, via Colombia and Venezuela. The Departments had in mind first developing the West Coast route. After studying the surveys developed by this Company, however, they are [fol. 2406] agreeable to first developing the North Coast route. This plan would best fit in with the Huff Daland Dusters, Inc., in which Mr. Hoyt is interested. Huff Daland Dusters, Inc., are attempting to acquire concessions in Peru and Ecuador. These have not as yet been secured and, therefore, Huff Daland Dusters, Inc. have requested us to assist them in having the United States Government delay action on this route.

Provided the schedules recommended by this Company are adopted, appropriations for the first year, of approximately a million and a half, will be required to pay a contractor, at a maximum rate of $2.00, for service over the three routes described above. The question of appropriation has been discussed with members of the Appropriations Committee, with officials of the Bureau of the Budget and with others. The result of these conferences would indicate that appropriations of at least one and three quarter million dollars will be authorized before May 15th of this year, and available July 1st, 1928.

4. The Post Office Department has recently advised that they do not believe it will be necessary to go through all the mechanics of advertising for bids on the foreign routes

over which service is desired: The Second Assistant Postmaster General, Mr. Glover, has also advised that he will be prepared to negotiate immediately for contracts with such Companies as he believes are best qualified to render efficient service over the routes designated. Informal conferences during the past three weeks have indicated to the Department that a payment of $2.00 per airplane mile would be considered reasonable, and that the amount of mail required to be carried at this rate would not exceed 1,000 pounds. The Department wishes to cooperate in every way possible.

The itinerary, the schedule, the starting date, and other similar factors, would be developed, by agreement, with the contractor. Moreover, the service could gradually extend over any given route, and payment on a mileage basis can be made for that part of the route actually flown. Furthermore, when peak loads occur, the Department has stated that it would reduce the load, if desired, by arbitrarily forwarding mail to whole countries by boat, or hold them over, or forward them by a second plane, which ever course would be most satisfactory. In short, the Government is most anxious to have the service commence at the earliest possible opportunity, and will cooperate to the utmost to this end with the contractor now best qualified to render the service.

[fol. 2407] Thus, four of the five steps set forth have been successfully carried out, viz.,

1—Creating interest in having air service to Central and South America.

2—Assisting in the development of the required Legislation.

3—Selecting the most attractive routes.

4—Insuring of an adequate appropriation.

The fifth—actual negotiation of a remunerative contract is yet to be carried out.

As indicated, the Company has developed four separate and distinct routes over which it is now practically possible,

I believe, to secure mail contracts, on a long term basis, at a rate which should insure a profit commensurate with the risks involved.

Repeating these four routes, they are, in order:

1—Key West and/or Miami to Havana.

2—Key West and/or Miami to Colon, via Yucatan.

3—Brownsville, via Tampico, to Mexico City.

4—The North Coast route from Colon, via Colombia and Venezuela, to Trinidad and the Guianas.

I will take up each separately and outline, informally, the separate Resolutions I will require to develop further this program—for consideration and action by this Board.

1. I would request authority to submit a bid for carrying United States mail on the Key West to Havana line, covering a period of five years. The contract, as advertised, provides that the first-class mail, up to a maximum of 1,500 pounds, must be carried. A provision also is included whereby the Northern Terminal may be moved, by mutual consent of the Government and the contractor, to Miami. The maximum rate that can be bid is $2.00 per airplane mile. I would propose to bid $2.00 per mile, but do not believe that I or any other officer authorized to bid, should be tied down to this limit, owing to unforeseen contingencies which might arise. The proposed Resolution, therefore, is not so restricted.

[fol. 2408] Daily Southbound mail revenue available on this route, while operated out of Key West, would be approximately $228.00, the actual mileage, from Airport to Airport over the route flown being approximately 114 land miles. Under our present contract, we would receive a similar sum for carrying approximately 600 pounds. We have been carrying in excess of 800 pounds, so there will be a loss involved under the new arrangement. Messrs. Glover and Gove, of the Post Office Department, have agreed, however, to throw out, after June 30th of this year, when the new contract goes into effect, all the package matter which we are now carrying as first class mail,

owing to the failure of the Parcel Post treaty with Cuba. The average load will then approximate 400 to 500 pounds, which will be all letter mail and we will have left over 1,000 pounds or more of pay load capacity for passengers and express matter.

Furthermore, under the contract as re-advertised, we will not be subject to competitive bidding on rates. We will have a five-year contract and we will have an opportunity of extending the service to Miami at the same mileage rate of $2.00 per mile. The risk of losing the contract through outside interests submitting a low bid, is negligible, and I believe that we are particularly fortunate in having the contract over this strategic route re-advertised under the new law, particularly so, inasmuch as the new appropriations have not yet been made available.

2. I would request authority to negotiate or to submit a bid for a contract in the name of Pan American Airways, Inc., to carry United States mail between Miami and/or Key West, Florida and Colon, which the Post Office Department wishes to have operated immediately, subject to appropriations being made available. I will outline the situation, with respect to this route. The preliminary work has been divided as follows:

A. Airway—An estimate to cover airway installation costs, including airports, hangars, passenger stations and radio communication facilities has been completed. This work has been done under the direction of Captain Whitbeck. The final estimates submitted by him aggregate $178,00. The time required is four and one-half months, following definite word to proceed.

B. The Concessions and contracts which would be most remunerative to the Company over a period of years, have been drafted, after careful study of concessions previously secured by other Central and South American Air Transport Companies—as well as the concessions developed to cover cable and radio communication systems. The secur- [fol. 2409] ing of these concessions in Latin America is being handled by Messrs. MacGregor and Bisgood, who have already made considerable progress in this direction.

C. The simplification of clearance procedure. Before any International Air Service could be operated through the seven or eight different countries which a route between the United States and Colon would have to operate over, adequate regulations to cover the clearance of aircraft, passengers and merchandise, must be provided in the United States, in Cuba and Mexico, and also in the various Republics of Central America. This work was started with the full cooperation of the Inter-Departmental Committee and the governing board of the Pan-American Union. The new regulations to cover International Air Clearance should be promulgated by the United States before the first of June. Temporary arrangements with the other Central American powers, it is believed, can be made during the summer months.

Mr. Nagle has been representing this Company, cooperating with the sub-Committee of the Commerce and Treasury Departments, designated by Messrs. MacCracken and Schoeneman. A report by Mr. Nagle can be examined after the meeting—together with the present forms required and the new and simple forms to be adopted.

D. Operating Costs and Revenues—Estimates of capital investment, operating costs and revenues, have been carefully made. I have had charge of this work, with the assistance of Messrs. Priester and Nagle. The detailed estimates are here, and are now available for inspection by the Board.

The work on this expansion has advanced to a point where it is believed the Company should be prepared to shortly commence actual negotiations with the Post Office Department on a contract. The Government is permitted to pay $2.00 per mile for transporting mail Southbound, to the Canal Zone. They are also permitted and are now prepared to pay for carrying American mails Northbound out of Colon over the same route, although, of course, the limited load to be carried would require that the rate paid would be considerably less than $2.00 maximum. This is the most important item, from the Company's point of view—for back-log mail revenue will be available in both directions.

In this connection, the Board should have in mind that the contract can be negotiated, and only an arrangement that should return a profit commensurate with the risk in- [fol. 2410] volved should be considered by Pan American Airways, Inc. If a contract on such a basis cannot be negotiated, then I would recommend that the Company restrict its operations to the present route, which we know will earn a profit, under the present investment.

The Resolution submitted for your consideration would permit of my commencing negotiations with the Government. Of course, no final steps would be taken without going over the matter in detail with the Board.

3. *The route between Texas and Mexico City.* For some months past, we have been investigating this route, with the cooperation of Mr. George Rihl, President of the Mexican Aviation Company. This Company has been operating successfully in Mexico for a number of years, Mr. Rihl having been able to show profits to date without mail contracts. Our Government formally requested permission of the Mexican Government to extend a service under the provisions of the recently enacted Foreign Mail Bill, from Brownsville, via Tampico, to Mexico City. Mr. Rihl took this matter up locally in Mexico City, and about two weeks ago the Mexican Government replied, granting formal permission to the United States to extend such a route.

Last Friday, Mr. Rihl met Mr. Glover in Brownsville, and took him up to Mexico City, where a conference was had with President Calles, Mr. Morrow, and other officials. Mr. Glover is expected to return to Washington tomorrow, when he will formulate the plans of the Department with respect to this route.

With the assistance of Mr. Rihl, we have developed estimates covering capital investments, operating costs and revenues over this route, based on a mileage rate of $2.00 by the United States Government. From these estimates, it would appear that the route would return a considerable profit on the investment.

The detailed estimates and maps are available for your inspection. The Resolution which I would request of the

Board, would permit me to commence negotiations with the Government. The plan developed for your consideration is: Pan American Airways, Inc., would acquire the outstanding stock of the Mexican Aviation Company, at its Actual present value; charter equipment to this Company, and enter into a contract on some plan, whereby the Mexican Company would operate the service on a guarantee of 6% profit by Pan American, Pan American securing in return the gross profits or losses, if any, from the operation. In this way, the equipment would be held in the name of [fol. 2411] Pan American Airways, Inc., an American company; the operation would be conducted by the Mexican Aviation Company, and the taxes to the Mexican Government reduced to a minimum. The Mexican Aviation Company could carry on, under Mexican law, cabitoge passenger, mail and express traffic between Mexico City and Tampico, and Tampico and Matamoros.

The Tampico section of the proposed route is now being operated by Mr. Rihl's Mexican Company, mail, under contract with the Mexican Government being carried in both directions. In addition, a considerable volume of passenger traffic has been developed.

I would recommend to the Board this this Company be in a position to negotiate for a contract over this route, with the United States Government if, upon Mr. Glover's return, the Department decides to extend service on this line. The Resolution submitted for your consideration would permit negotiations to be commenced.

4. *North Coast Route*. The Government is particularly anxious to have American Service extend into South America, and particularly so, in view of the impending competition by British, German, Dutch and French interests. This Company has surveyed both the West Coast routes and the route from Colon to Trinidad, along the North Coast.

The results of this work have been submitted to the various interested Departments. The Post Office Department has advised that they will most probably be willing to have

service extended along the North Coast to Trinidad and the Guiana, as far as Paramaribo, on a bi-weekly schedule.

A $2.00 a mile contract, with the limited U. S. mail load to be carried—from surveys made—would appear to be most attractive. Any such service, of course, would have to be contingent on securing adequate contracts with the Scadta Company, now operating in Colombia, the Colombian Government and the Venezuelan Government.

From previous conferences, it would appear that attractive arrangements could be made with the Scadta Company and the necessary concessions secured with the Two Governments concerned. Negotiations for such arrangements would, of course, require a long period of time, and any contract with the United States Government would have to be contingent on satisfactory arrangements being concluded with these parties.

I would request, therefore, for your consideration, au- [fol. 2412] thority to negotiate with the Government to develop this situation, particularly so, inasmuch as a $2.00 a mile contract on this route would be most attractive and probably could not be had in later years, when a service shall have been extended to Colon.

Were the Board to consider it advisable to negotiate a possible contract at this time, I would recommend that it be held in the name of another Subsidiary Company of your Holding Company—Atlantic Gulf & Caribbean Airways, Inc.

I have outlined herewith the three routes which I would recommend to this Board, the Company look into. I believe Pan American Airways, Inc., is now in a strategical position to tie up the entire Caribbean Sea, in a network of air lines. Many air transport executives have stated they believe such an operation would be attractive, including Mr. C. M. Keyes, Chairman of the Executive Committee of National Air Transport, Inc., Mr. Hanshue, President of the W. A. E., and others.

The financing required to install and operate the Colon route, the Mexico City Route, the projected Santiago Route

extension from Havana, and to develop the North Coast situation, can be made available through the sale of 320,000 shares of Atlantic, Gulf & Caribbean Airway, Inc. stock, at $6.00 per share. The total additional capital that would then be available for expansion will amount to $1,920,000.00 over and above our present capital.

Organizing a system of Air Lines around the Caribbean, with three distinct and separate operating divisions, would provide a most efficient operation. A substantial reduction in operating costs will be realized as soon as operations are conducted on such a large scale. The major maintenance base would be provided at one central point—probably Miami—where the major overhauls, at periodic intervals of 700 hours of flying, could be done. A substantial reduction in the spare airplanes and engines required by any one dividion would also be effected. Large transport airplanes cannot usually be obtained within a period of six months, except through payments of premiums. Airplanes purchased on short notice are not usually fitted up to suit the individual requirements of the airline operator. The time element required to obtain equipment, requires that operating companies provide themselves with additional equipment to meet emergencies over and above the requirements of daily operations.

[fol. 2413] When and if service to Colon is inaugurated, the Cuban Division could be maintained without spare airplanes; the reserve ships held for the longer route would be available on a few hours' notice at Key West or Havana.

In a large operation of the type now under consideration, or, in fact in the permanent operation of the Key West to Havana route, if carried on alone, will require proper organization. A lack of local executive supervision, unassigned responsibility, overlapping of authority and similar sources of trouble, are bound to develop in any airline, unless the permanent organization has been carefully planned to fit the requirements of the operation.

During the past month, I have devoted considerable time to studying the organization, not only of Air Transport Companies in Europe, where large scale operations are

under way, but also to model organizations in the United States, including Mitten Management, Inc., and General Motors Corp. From these studies, I have developed an organization chart, that would best meet the requirements of Pan American Airways, Inc. I will be very glad to go into this matter in detail with any of the Directors, particularly interested.

[fol. 2414]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 92

COPY

May 7th, 1928.

MEMORANDUM

Aviation Corporation of America, a Delaware Corporation, was incorporated in May, 1927.

FINANCIAL STRUCTURE

The authorized capital stock of the Company consists of twenty thousand (20,000) shares of non-voting Convertible 7% Preferred Stock of the par value of $100. per share, fully paid and non-assessable, convertible to Common Stock on or before December 31st, 1929, on the basis of two shares of Common Stock for each share of Preferred.

Sixty Thousand (60,000) shares of Common Stock, without nominal or par value. (40,000 shares reserved for the sole purpose of conversion into Preferred Stock).

One Thousand (1,000) shares of Management Stock.

The Management Stock is entitled to share equally, as a class, with the Common on any dividends applicable to the Common.

The Management Stock is also entitled to twenty (20) votes.

The Management Stock has been distributed amongst the eleven original incorporators, in lieu of salary or other

compensation; even legal expenses incidental to the organization and developing the Company having been paid in Management Stock.

PURPOSES OF THE CORPORATION.

1. To supply a proportion (or in some instances, all) of the capital required to finance or refinance any lines or operations the Corporation considers it advisable to develop.

2. To supply the management for the line or operation, taking in return a property equity in the Common Stock of each Company so set up or taken over, and, in addition, a percentage of the gross revenue as compensation for management supplied.

[fol. 2415] 3. To conduct surveys or studies into the Commercial Aviation Field, and submit reports thereon, for its own account and/or on contract for outside interests.

HISTORY TO DATE

While essentially a Holding and Investment Company, Aviation Corporation of America has already organized and set up two operations, for which a fee has been charged, as follows:

1. Chesapeake Aircraft Company—operating a fixed base service in Baltimore.

2. Atlantic, Gulf & Caribbean Airways, Inc.

In organizing the latter Company, a cash fee of $7,400.00 was earned, in addition to a bonus of 1,750 shares of stock of the total 80,000 shares outstanding.

The first and only investment of Aviation Corporation of America, was the purchase, at $5.70 per share, of 39,000 shares of the Capital Stock of this Company (Atlantic, Gulf & Caribbean Airways, Inc.), bringing its total holdings up to 40,750 shares.

Atlantic, Gulf & Caribbean Airways, Inc., owns the total authorized and outstanding stock of Pan American Airways, Inc. (2,000 shares).

Pan American Airways, Inc. has been operating, under contract with the United States and Cuban Governments, an Air Service between Key West, Florida and Havana, Cuba: A brief summary of operating results, by months, of the Key West—Havana Division, is as follows:

MAIL CARRIED

November	20,373 lbs.	
December	28,005 "	
January	25,076 "	
February	24,512 "	
March	30,982 "	
April	31,695 "	160,543 lbs.

[fol. 2416] PASSENGERS CARRIED

January	71*	
February	220	
March	148	
April	77	516**

Net income before interest, but after depreciation on Hangars, Passenger Stations, Automobiles, Trucks, Flying Equipment, Furniture and Fixture, and Shop Tools and Equipment, and after amortization of Airport, over a five-year period, and after full insurance reserves, by months, is as follows:

November	loss	$1,448.35
December	profit	472.92
January	"	797.05
February	"	4,056.75
March	"	6,027.40
April (figures not yet available)		

During April, the revenue from the transportation of mail and passengers has continued to increase, indicating

* Service was not inaugurated until January 16th.

** Does not include employees and passengers carried free.

a net profit for the month, after all proper charges, as set forth above, of approximately $7,100.00.

Working in close cooperation with the United States Government, this Company expects to materially extend the present section now in operation, the Northern Terminal also being moved from Key West to Miami, where a connection will be made with the United States Internal Air Mail Service.

Aviation Corporation of America is offering additional stock, up to $1,800,000. with which to finance these proposed extensions.

Already there has been paid in, or firmly subscribed, contingent to the securing of subscriptions in the amount of $1,000,000., the sum of $750,000.; $50,000. has been requested by Pittsburgh interests, who have been assisting the Company in its development program, leaving an unsubscribed amount of $1,000,000.

[fol. 2417] It is proposed to form a Syndicate of four or five individuals or banking houses, to subscribe or underwrite this remaining One Million Dollars, on a basis of one share of Preferred for cash, at par each subscriber to receive a bonus of one share of Common with each share of Preferred.—the basis on which the $750,000. described above has been subscribed.

As an inducement to the underwriters of this Million Dollars, it is proposed that the Company extend to them an option, for a period of eighteen months from date, to supply, on a similar basis, an additional million Dollars—if required.

Should this, or some similar plan, be carried out, the Company would, of course, increase its authorized capital to provide the additional stock required.

[fol. 2418]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 93

No. 71

Ministry of Government & Police

Lima, May 29, 1928

The Huff Daland Dusters, Inc.

On May 28 the following Supreme Resolution was issued.

In view of the petition presented by the Huff Daland Dusters Inc. which Company was incorporated in the State of Louisiana, United States of America, to establish an air service between Peru and the United States under the conditions it outlined; and in view of the reports issued and considering the proposal convenient, it is hereby resolved to grant permission for the establishment of said air service under the following conditions:

1. This service to include the air transportation of mail, cargo and passengers.
2. The service shall commence at the earliest possible date which shall not be later than one year from the date of this resolution.
3. The Company will have full freedom in the selection of its employees and pilots who will be subject to all of the obligations imposed by law for the residents of the Republic, and that the Company shall agree to use the largest possible number of employees of Peruvian nationality, bearing in mind the class of service which it is required to render in accordance with this Resolution.
4. The Company waives all rights to diplomatic intervention and all differences which may arise under this agreement shall be dealt with by the courts of the Republic.
5. Authorization is granted for the landing of the Company's aircraft at any airport of the State.

[fol. 2419]

6. The Company agrees to cover by insurance all risks in connection with the aircraft, mail, passengers and cargo.

7. The postal service shall be established by the Company in mutual agreement with the Post Office Department of Peru.

8. It is understood tariffs and other necessary conditions in connection with this service shall be approved by the Government, and that the official correspondence shall be carried free of charge, which mail will receive preferential treatment for transportation.

9. In the event of serious internal disturbances, epidemics, or any other public calamity, the aircraft supplies and personnel of the Company will be placed at the disposition of the Government free of charge.

10. In the event of internal war aircraft and supplies of the Company will become the property of the State.

11. The Company shall at an early date submit its articles of incorporation.

12. The Company is required to deposit with the "Caja de Depositos y Consignaciones" within ten days from this date, the sum of One Thousand Peruvian Pounds (1,000 Peruvian pounds) as a guarantee for the fulfullment of its obligations.

13. The Company in view of the nature of the services it is required to perform, will receive preference in clearances over land transportation companies, in the customs houses, post offices and immigration departments of the Republic.

14. Any conditions which may not be covered by this Resolution will be contemplated separately.

To be registered, communicated, and filed.
Seal of the President of the Republic.

[fol. 2420]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 94

(Seal reading Ministerio de R.R. E.E. del Peru—Traducción Oficial)

(AUTHORIZED TRANSLATION)

AERIAL MAIL TRANSPORT
THE GENERAL ADMINISTRATION OF
POSTS AND TELEGRAPHS OF PERU

—and—

THE HUFF DALAND DUSTERS, INC.

In Lima, on the twenty-seventh day of the month of June, in the year nineteen hundred and twenty-eight, in the presence of myself, the Notary Public, and in the presence of the witnesses, Messrs. Francisco A. Esquerre V. and Pedro José Gonzales Cueva, the following parties did appear before me, to wit: of the one part, Mister Walter Frederick Ford, a national of Great Britain, and a resident at this Capital, who acts and proceeds in his official and legal capacity of General Administrator of Posts and Telegraphs of Peru and properly authorized therefor as vouched by the testimonials hereinto inserted; and of the other part, Mister Collet E. Woolman, a citizen of the United States of North America, married, and a resident in the State of Louisiana, United States of North America, and at the present a transient resident of this city, acting and proceeding in the name and on behalf of the Huff Daland Dusters, Inc.—a Stock Company incorporated in the territory and under the Laws of the State of Louisiana, United States of North America—acting in his legal capacity and official character as Vice-President of the aforesaid Company, in accordance with, and as shown in, the Power of Attorney and voucher of legal authority, both of which are also inserted hereinto; the two aforementioned parties appearing hereunder are of age, with the proper legal capacity to covenant, intelligent and conversant with the

Spanish language in testimony whereof I hereby give faith; and I moreover do vouch for the fact that both the aforementioned parties hereto have complied with and fulfilled the clauses set forth in Articles thirty-eight to forty-one, [fol. 2421] inclusive, of the Law appertaining to Public Notaryship, and, moreover, that they did hand me the first draft minute of the following with a view to having the contents thereof extended in the legal form of a Public Deed, the same which is hereunder set forth and contained and which is recorded in its respective file under No. 680 and of which I have had the aforesaid contracting parties take cognizance of, also making the same known to the legal and executive witnesses hereof.

MINUTE: Mister Notary: Please extend in your register of Public Deeds, one for the transportation of aerial mail within, and outside the territorial boundaries of the Republic, entered into by, and covenanted between the General Administration of Posts and Telegraphs of Peru, represented by their General Administrator, Mister Walter Frederick Ford and the Huff Daland Dusters, Inc., a Stock Company of the State of Louisiana, United States of North America, and hereinafter to be referred as "Huff Daland", same being represented in this Deed by its Vice President, Mister C. E. Woolman—in the following terms:

FIRST:—The purpose and object of this Contract is the aerial transportation of mail and other postal matter, the same which shall be effected by the "Huff Daland" in their airplanes along the coastwise line of Peru and outside the boundaries of the national territory, under the terms and conditions hereinafter set forth.

SECOND:—The term of existence of this Contract shall be five years, said term to start from the date whereon the first mail flight shall be made along the aerial route operated and served by the aforesaid Company, it being well understood that the "Huff Daland" undertake to commence the regular service at the quickest possible date; the period of time to elapse previous to its initiation not to exceed one year, commencing from the twenty-eighth day of May, of the year nineteen hundred and twenty-eight. Always pro-

[fol. 2422] vided that the "Huff-Daland" shall have complied with the proper fulfillment of these obligations hereunder assumed, the General Administration of Posts and Telegraphs of Peru will acknowledge and recognize in favor of the aforesaid "Huff-Daland" the legal right to renew this Contract for a fresh term of equal duration (or, in other words, for an additional five years), it being sufficient for the accomplishment of said purpose, that the "Huff Daland", within the period of the seven months immediately preceding the date of expiration of the first period aforesaid, give due notice in writing to the General Administration of Posts and Telegraphs of its decision, in a notarial letter legally witnessed and registered.

THIRD:—The first aerial route to be operated and served by the "Huff Daland" is the Lima-Paita or Lima-Talara Line, including stop-overs along the route in the territories of the Departments of La Libertad and Lambayeque, by way of round trips affected weekly in such a manner and form as to enable the airplanes to catch up with the regular passenger steamers at the Ports of Paita and Talara, plying their traffic between the terminal ports of Callao and New York, and which vessels after sailing from Callao are proceeding en route bound for their port of destination. This said service is to be inaugurated and established within the term of the first year.

In the course of the second year the coastwise service—along the Peruvian maritime territory or seaboard shall be inaugurated and established between the ports of Callao and Mollendo, in such a way as to enable the airplanes to catch up with and reach the steamers of the regular lines at the port of Mollendo, Southern Peru, which said vessels, after having sailed from the port of Callao bound for ports located to the southward of Mollendo, will touch at en route, as per schedule properly arranged. The frequency of these aforesaid services and which is to be based on a minimum fixed and covenanted hereunder, will be left to the discretion [fol. 2423] and judgment of the "Huff Daland", but it is understood that as soon as the said schedule shall have been established in a permanent form, the aforesaid Huff Daland will constitute under the terms of this Contract,

ordinary services, subject to the conditions and terms hereunder to be determined.

FOURTH:—The services rendered by the "Huff-Daland" in accordance with the terms and conditions hereunder and hereinafter set-forth, shall be remunerated in the following manner, to wit: The aforesaid "Huff Daland" to receive as premium for the aerial mail and postal transportation the charge or rate-payment, same which has been proposed by the General Administration of Posts and Telegraphs of Peru, and which said rate or charge has been accepted and is hereunder accepted by the "Huff-Daland", to wit: Fifty cents of one Sol for every twenty grams (avoirdupois) of net weight of mail or postal matter. This toll shall rule, while the terms of the present Contract remain in force, but it is understood that, if in the course of any determined year the receipt of the aforesaid toll or rate should fail to cover the cost of the aforementioned aerial transportation (the said cost to comprise, not only the direct expenses incurred, but, moreover, the administration expenditures involved, as also the general expenses, miscellaneous and other indirect outlay), the General Administration of Posts and Telegraphs, shall undertake the revision of the aforesaid rate or tariff, prior to the examination and audit of the financial statements and balance sheet, accountancy vouchers and other proper testimonials which shall be submitted for the purpose thereof, to the General Administration of Posts and Telegraphs of Peru, in such a manner as be deemed proper and suitable, as to permit the new and revised tariff or toll to yield to the "Huff Daland" an annual amount sufficient to cover and reimburse the aforesaid costs, and, moreover, to enable a liquidation with a net gain or profit of not less than (10%) ten per cent on the [fol. 2424] capital in cash, which it has invested in the aerial mail and postal service of Peru. But it must be understood always, that the amount paid by the General Administration of Posts and Telegraphs of Peru to the "Huff Daland", for the aerial transportation of every twenty grams, of net weight of mail must be equal to the price charged to the public for the forwarding by aerial mail of a letter weighing twenty grams, net. If, on any of the occasions or at any

time whatever, whereon the tariff revision hereinabove stipulated should take place, and notwithstanding the readjustment effected, the "Huff Daland" should continue to lose money during six consecutive months—either on a determined route or service, or on all the aerial services or routes—the aforesaid Company will be entitled to rescind this Contract, be it either with regard to the route which causes the aforementioned loss, or in total, in case that the aforesaid losses should extend to all the aerial services or routes, the aforesaid "Huff Daland" to give notice of the said rescission six months in anticipation to the General Administration of Posts and Telegraphs of Peru, in writing and by addressing a notarial letter to the latter. In this latter case, on the expiration of the aforesaid notice, the aforesaid "Huff Daland" will be free of all liability or obligation derived herefrom and will furthermore be at liberty to remove all elements of work, installations and so forth of its property and ownership.

FIFTH:—The "Huff Daland" will be entitled to intervene in the verification of the weight of all mail or other postal matter to be transported by air and subject to its previous conformity the respective liquidation and payments will be effected, the same to take place monthly.

SIXTH:—It is understood that when the "Huff Daland", during the period wherein the terms of this Contract will be in force, shall implant and establish the aerial trans- [fol. 2425] portation services, with fixed schedules from and to the Republic with countries abroad, the General Administration of Posts and Telegraphs, shall use the said services, surrendering to the "Huff Daland" all the mail and postal matter to be transported by air and which same shall be available, and which it shall be practicable and feasible to forward over the aforesaid aerial routes.

The said service shall be subjected to the tariffs and tolls, which same shall have been fixed by common agreement between the General Administration of Posts and Telegraphs of Peru and the "Huff Daland".

SEVENTH:—The transportation of mail and other postal matter shall be effected in accordance with the dispositions,

rules and conventions actually in force, the "Huff Daland" to assume the full responsibility of the mail and other postal matter delivered to them for transportation and delivery. The "Huff Daland" undertakes to pay the indemnities which may arise or be derived, in accordance or compliance with the terms of the Universal Postal Convention.

EIGHTH: The General Administration of Posts and Telegraphs shall be entitled to forward by the airplanes of the "Huff Daland" the official mail, up to a maximum weight of two Kilos for each aerial trip, without constituting thereby any liability or obligation whatsoever on the part of, or on behalf of the State.

NINTH: The "Huff Daland" shall not transport, neither shall it be entitled to transport any mail or postal matter whatsoever, which shall not have been despatched or cleared by the General Post Office, with the exception of the "Huff Daland's" own official mail, which refers to matters of the service proper.

TENTH: Each and every shipment of Peruvian Mail to be effected by the "Huff Daland" per aerial mail transportation shall be accompanied by a way-bill or "bill of lading", stating the total weight of the mail delivered to the afore- [fol. 2426] said Company and also the amount payable to the aforesaid "Huff Daland", calculated in conformity with the terms set forth and stipulated in Article Four hereof. The amounts consigned in these way-bills shall be added monthly and the total sum thereof shall be paid immediately and at once to the "Huff Daland", in accordance with the terms set forth in Article Five hereinabove.

ELEVENTH: The "Huff Daland" pledges to undertake and effect each aerial trip between Lima and Paita, or between Lima and Talara with a duration of time not to exceed twelve hours, except in the cases provided in the following clause, hereinafter set forth.

TWELFTH:—The "Huff Daland" shall comply with and fulfill all the terms, periods of time, schedules and obligations whereof are defined hereunder, except in the case of unavoidable and fortuitous delays, properly and duly justi-

fied and explained; likewise cases and circumstances of "force majeure", strikes, lock-outs, acts of war, blockades, accident, etc., and each and every other cause whatsoever, outside the province of its control.

THIRTEENTH:—In order to ensure the compliance with, and for the purpose of obtaining all and the entire effects of the present Contract, the contracting parties indicate as their place of residence this Capital, it being understood that the "Huff Daland" pledge themselves to fulfill the stipulations set forth in Article Twenty-one, paragraph eleven of the Code of Commerce.

FOURTEENTH:—Any question which may arise between both contracting parties shall necessarily be submitted to the decision or rulings of judges, arbitrators, to be designated, one by each of the contracting parties, and the same to be duly authorized to designate a third arbitrator in case of non-agreement or controversy between them. The said designation shall be made by them after having taken the oath of office and previous to their assuming their functions, which said stipulation, together with the resignation of each and every judicial or extrajudicial proceeding or [fol. 2427] document or legal action against the agreed and approved Award of both the arbitrators or of the judge, shall be duly consigned in the Deed of Compromise which shall be extended, when occasion arises.

FIFTEENTH:—The Supreme Resolutions issued in the administrative proceedings taken by the "Huff Daland" in order to obtain the Government's authority for the establishment of this aerial mail service, form a part as a whole of the present Contract.

Mister Notary, you will please add the required clauses of law; and likewise insert the Suprem Resolutions whereto Clause Fifteen of the present Contract refers and you will kindly forward the respective testimonials and other legal documents to the Mercantile Register of this city.

Lima, on the fourteenth day of June, in the year nineteen hundred and twenty-eight.—W. F. Ford.—C. E. Woolman.

Note extracted from the Minute. No impost or tax will be

charged. Lima, twenty-seventh of June, nineteen hundred and twenty-eight.

For the Company charged with the Administration of Revenue, Stock Company.—T. Zapata B., Chief of the Department.—A seal is affixed.

Inserted—Supreme Resolution.—In Lima, on the twenty-eighth of May, in the year nineteen hundred and twenty-eight.

"Whereas, the application submitted by the Stock Company of the State of Louisiana, in the territory of the United States of North America, "The Huff Daland Dusters, Inc." requests authority for the establishment and operation of an aerial mail service between Peru and the United States of America under the terms and conditions therein set forth and specified; Taking into consideration the reports issued and judging the proposition suitable:

It is Resolved: To grant authorization for the establishment of the said aerial mail service, under the following conditions:

FIRST:—The said service shall comprise the aerial transportation of mail freight and passengers.

[fol. 2428] SECOND.—The aforesaid service shall commence at the shortest possible date, the period to elapse previous to its initiation not to exceed one year, starting from the date of this Resolution.

THIRD:—The Company shall be at liberty to select its employees and airmen, the latter to be subjected to all the obligations imposed by the Laws to the inhabitants of the Republic, the Company, however, undertaking to utilize the services of the great majority of its personnel composed of nationals of Peru, taking into consideration the kind of services which it pledges itself to render, in accordance with the terms of this Resolution.

FOURTH:—The Company resigns and foregoes the privilege or right to appeal to all and to any kind of diplomatic intervention or interference, and the controversies or dif-

ferences which might later arise to be settled in the Tribunals of the Republic.

FIFTH:—The Company is hereby authorized to have its airplanes land in any airfield whatsoever of the State.

SIXTH:—The Company pledges itself to undertake the service of Life Insurance and Insurance against accidents, by taking out policies of Insurance covering every and all risks to which are subject the airplanes, the mail, passengers and freight.

SEVENTH:—The aerial mail and postal service shall be established by the Company, the latter to proceed in common agreement with the General Administration of Posts and Telegraphs and Radio of Peru.

EIGHTH:—It is hereby understood that the tariffs or rates and other conditions necessary for the carrying out of the aforesaid service will require the Government's approval, it being furthermore understood hereunder, that all official mail and postal matter will be transported and delivered, free of all charge, and moreover that the Company at all times, and under all and any circumstance or circumstances whatever, undertakes to grant to the latter [fol. 2429] full priority and preference with regard to the transportation and delivery thereof.

NINTH:—In the case of serious public and domestic disturbances or disorders, or in the case of any other national calamity whatever, the airplanes, elements, accessories of the Company's property, likewise the Company's personnel or employees, shall be placed entirely at the Government's disposal, free of charge.

TENTH:—In the case of international war, the airplanes and all other material of the Company's property, shall be taken over by the State, and considered as the latter's property.

ELEVENTH:—The Company does hereby pledge itself to present or submit from time to time as required, or whenever required, the Deed of its legal constitution or of its mercantile incorporation as a Company.

TWELFTH:- The Company hereby agrees and does pledge itself to deposit in the Caja de Depósitos y Consignaciones, within the term of ten days, commencing from this present date, a sum of Lp.1,000.—(One Thousand Peruvian pounds) in cash, as a pledge or guarantee for the fulfillment of all its obligations or liabilities assumed hereunder.

THIRTEENTH:—The Company, by merit of its character and by reason of the nature of those services whereof it undertakes to render to the State and public, will enjoy full priority and preference over every and all other Companies of land transportation, with regard to clearance by the Custom House, Postal and Public Health Departments of the Republic.

FOURTEENTH:- The conditions which are not comprised within the terms of the present Resolution, shall be contemplated separately. Let the above be registered and duly make known and recorded in the official archives.—Initialed by the President of the Republic. Signed: Rubio. Further.—*Supreme Resolution.* Lima, on the fourth of June; in the year nineteen hundred and twenty-eight:

[fol. 2430] Following the reading and consideration of the Contract covenanted between the General Administration of Posts and Telegraphs of the Republic and the Huff Daland Dusters, Inc., for the aerial transportation of mail and other postal matter, by merit or the authority granted in provisos seven and eight contained in the Supreme Resolution issued on the twenty-eighth day of last May, whereby the service of aerial transportation of mail passengers and freight established between Peru and the United States of North America, and having been duly set forth and contemplated in the aforesaid Contract the precise needs required for the safe and secure transportation of the mails and other postal matter.—It is resolved:

To approve the Contract covenanted between the General Administration of Posts and Telegraphs of Peru and the Huff Daland Dusters, Inc., for the aerial transportation of the mails and postal matter, consisting of fifteen clauses, the text whereof shall be added to the present Resolution.

as soon as the Contract referred to shall have been extended and recorded in the form of a Public Deed.—Let the above be registered. Initialed by the President of the Republic.—Signed: Rubio.

Power of Attorney.—Authorized translation.—Let it be known unto all by these presents, that the undersigned, the Huff Daland Dusters, Inc., which is a Corporation organized and carrying on business in accordance with, and under the Laws of the State of Delaware, United States of North America, and having their principal place of business or head office located in Monroe, State of Louisiana, United States of North America, does make, constitute and appoint Collet E. Woolman really and entirely their legal representative, in order that the aforesaid representative may, on their behalf and in their name, and likewise for their account and in their own representation covenant a [fol. 2431] contract with the Republic of Peru, or with the citizens thereof, or with any person or persons, firm or firms, association or corporation, residing, located or duly qualified in the aforesaid Republic of Peru, for the sale of, and in connection with the sale of airplanes, spare parts, accessories and aerial equipment, concessions for aerial mail transportation (both with regard to the transport of passengers and express or freight, and also dusting by airplanes, subject to the approval by the Head Office of the Huff Daland Dusters, Inc.

In Testimony Whereof, the undersigned did execute and seal this testimonial of Power of Attorney on this, the thirteenth day of February, of the year nineteen hundred and twenty-eight.

Huff Daland Dusters, Inc., per p.Edgard N. Gott, President; witnessed by L. W. Townend, Treasurer.—Signatures. The corporate seal of the Company.

State of Pennsylvania, Bucks County.

On the thirteenth day of February, in the year nineteen hundred and twenty-eight of our Lord, in my presence, the undersigned Notary Public, properly commissioned by the State of Pennsylvania, residing in Bristol in Bucks County,

Pennsylvania, did appear Edgard N. Gott, President of the Huff Daland Dusters, Inc., and having been duly sworn, he did state and declare that the seal fixed on the attached document is the official seal or the corporate seal of the aforesaid Corporation and that the said seal was properly affixed thereto, and also stated that the aforesaid document was handed in by Edgard N. Gott, the President of the aforementioned Corporation, in the character of, and actually being an act of the said Corporation, and also that the names of Edgard N. Gott, President, and of L. W. Townsend, the Treasurer, both of whom signed the said document, in testimony of its proper execution and consequent delivery, are really and truly of their respective hand and writing. Edgard N. Gott, President.—Signature.

[fol. 2432] Sworn and signed by me on the day and in the year aforementioned. M. Adelia Wright. Notary Public, his signature and notarial seal. State of Pennsylvania.—Bucks County.—Signature and seal.

I, the undersigned, William R. Yardley, Proto Notary of the County of Bucks, and also Secretary of the Court for the aforesaid County, the said Court being a Court of Registry, the decrees and laws of which are attested to by a seal,—hereby declare and certify that M. Adelia Wright, in whose presence the foregoing testimony was taken and heard, and who signs his name in the certificate of proof or testimonial, in acknowledgment of the attached instrument's legality, is really and truly a Notary Public duly authorized to act in the, and on behalf of, the aforementioned County, and who resides therein; I do, moreover, state and certify that the aforesaid Notary has been duly and properly commissioned and sworn by the Laws of the said State of Pennsylvania, in order to enable him to take, receive and certify the legality of affidavits and also the acknowledgment and legal recognition of testimonies, proofs and deeds appertaining to Contracts or Covenants, transfers or legacies, legal bequests and other legal instruments which have to be registered and filed in the aforesaid State, and I furthermore say and declare that I am properly convinced that the handwriting therein contained is really and truly that of the aforementioned Notary Public and

that I really believe that the signature affixed at the foot of the referred certificate of proof and testimony or acknowledgment, is genuine.

In testimony whereof, I herein sign with my own handwriting and do stamp same with the official seal in Doylestown, Bucks County, State of Pennsylvania, on this twentieth day of February, in the year of our Lord, Nineteen hundred and twenty-eight.

William R. Yardley, Secretary of the County Court.

Signature of the undersigned and County seal.

Consulate of Peru in Philadelphia.—The undersigned Con-[fol. 2433] sul of Peru hereby certifies: That Mister William E. Yardley, who authorizes the attached document, did legally exercise on the date therein set forth, the functions and duties of Proto-Notary of Doylestown, Bucks County, State of Pennsylvania, and did in the aforesaid capacity authorize the said Power issued by Messrs. Huff Daland Dusters, Incorporated, of Bristol, in favour of Mr. Collet E. Woolman, of Monroe, in order that the latter may represent them in Peru, and I moreover certify that the signature and the seal which appear in the aforesaid document as their own, are really and truly those that they accustom to use in their official acts and deeds.

In testimony whereof, the undersigned Consul of Peru extends the present certification, under the Consular Seal of the Peruvian Republic, in the City of Philadelphia, on this first day of March, in the year of our Lord, nineteen hundred and twenty-eight. Signed: Enrique Marniott.—Consul General to Peru. The Consular Seal.

Order Number, one hundred and eighty; Tariff Number, forty-nine; taxes and fees charged, two dollars, U. S. cy. A Peruvian stamp of the Consular service, of the value of two sols, duly cancelled with the Seal of the Consulate General.

The foregoing is a true and faithful translation of its original text. Lima, March twenty-third of the year nineteen hundred and twenty-eight.—Signed: Carlos Solari.—Interpreter of the State.—Authorized translation.

On a printed form-blank of those used by the "West Coast Cables Company of America". Office of Origin being Bristol, Penn.—Number of words: forty-one.—Date: Twenty-third.—Weekly cable letter. Forwarded and addressed to Hudadus.—Lima.—We hereby confirm that we authorize you to sign in our name and behalf in conformity with the Power of representation extended on the thirteenth day of February, the Contract for aerial mail with Marconi and rights for dusting to be covenanted with the Govern- [fol. 2434] ment of Peru.—Huff Daland Duster.—Gott, President.—Auerbach, Secretary.—The foregoing is a faithful translation. Lima, twenty-fifth of June, in the year nineteen hundred and twenty-eight.—Carlos Solari.—Interpreter of the State.

An official seal of Translations.

CONCLUSION.—Following the legalization of the foregoing instrument, I instructed the makers of the deed of its object and purpose by reading to them and in their presence the whole of the text therein set forth, and with the full attendance of all the aforesaid witnesses, following upon which they, one and all, did ratify the contents thereof, of which I give faith, and the aforesaid witnesses and makers of the deed, did sign, as follows:—W. F. Ford.—C. E. Woolman.—F. A. Esquerre V.—Agustin Rivero, Notary.

Marginal Observation.

A first testimony was extended and issued on the twenty-eighth of June of nineteen hundred and twenty-eight, upon request of the interested parties.

ANOTHER MARGINAL OBSERVATION.

A second testimony was extended and issued on the thirtieth of June of nineteen hundred and twenty-eight, by request of interested parties.

A FURTHER MARGINAL OBSERVATION.

A third testimony was extended and issued on the second day of July of nineteen hundred and twenty-eight, by request of an interested party.

This fourth testimony is in full accord and agreement with the original Deed to which it bears reference and which is contained on folio four thousand three hundred and eleven overleaf, of my current Register of Public Deeds, corresponding to the present two-year period of nineteen hundred and twenty-seven and nineteen hundred and twenty-eight. And upon request of an interested party, I extend and issue [fol. 2435] same, the text whereof is set forth on seventeen useful leaves, the same which, previously and properly confronted and corrected in conformity with the decrees of Law, I initial, sign, mark and seal in Lima, on the twenty-ninth day of the month of September, in the year of our Lord nineteen hundred and twenty-eight. Taxes: One Sol the first sheet and forty cents of a Sol for each of the following sheets.

Between lines: Postal-signed.

Agustin Rivero.
(Notarial Seal here)

Es traducción fiel.

Lima, 8 de Octubre, 1928

(f'do.) Carlos Solari,
Intéprete del Estado

(Seal reading:—
Ministerio de RR.EE. del Peru
Traducción Oficial)

[fol. 2436]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 95

ADVERTISEMENT FOR FOREIGN AIR MAIL SERVICE

POST OFFICE DEPARTMENT

Washington, D.C., May 31, 1928.

Sealed proposals will be received at the Office of the Second Assistant Postmaster General until 12:00 o'clock noon July 2, 1928, for carrying United States mail by air for a term of ten years to begin not later than six months after

award of contract on the following described route by a schedule satisfactory to the Postmaster General of not less than eighty miles per hour in safe and suitable aircraft:

> From Key West, Florida, (or such other point in the United States as may be designated by the Post Office Department) by Havana, Cuba, Merida, Mexico, Belizo, British Honduras, Tegucigalpa, Republic of Honduras, Managua, Nicaragua, San Jose, Costa Rica, (or such other points in these countries as may be acceptable to their Governments) to Cristobal, Canal Zone, and from Cristobal, Canal Zone, to Key West, Florida, (or such other point as may be designated) 7 times a week. On the return trip from the Canal Zone payment will be based on the direct distance from Cristobal to Key West or such other point in the United States as may be designated. The Postmaster General reserves the right to include Guatemala and Salvador in this route if it should be desired at a later date, stops to be made at such cities in these countries as may be acceptable to their Governments.

The Post Office Department may require three-motored planes or such other requirement as may be necessary on this route. The maximum mail load required shall not exceed 800 pounds per trip.

The Department also reserves the right to increase or decrease the number of intermediate stops, or the number of trips per week, and to change the termini of the route, to despatch mail on any plane of the contractor flown over the route, and to modify or change the schedule as the needs of the service require. Approximate mileage subject to correction, 1,640 miles. Bond required with bid $25,000.00.

Service on this route may be extended at the option of the Post Office Department from Cristobal, Canal Zone, by Cartagena, Colombia, Maracaibo, Venezuela, Curacao, D. W. I., La Guaira (Puerto Caracas), Venezuela, Port of Spain, Trinidad, Georgetown, British Guiana, to Paramaribo, Dutch Guiana (Surinam), 3 times a week, one way.

INSTRUCTIONS AND INFORMATION FOR BIDDERS.

Proposals submitted in response to this advertisement will be subject to the Postal Laws and Regulations and to the conditions and requirements set forth in the instructions to bidders, copies of which, together with blank forms of proposal and accompanying bond, can be obtained from the Second Assistant Postmaster General, Division of Foreign [fol. 2437] Mails, Washington, D. C., or from the Postmaster at the office where this circular is posted.

The Act of March 8, 1928, under which authority this advertisement is issued, states the rate to be paid for this service shall not exceed two dollars ($2.00) per mile. No bid, therefore, will be accepted at a sum greater than this maximum rate established by law.

Decision as to award of contract will be made as soon as practicable after July 2, 1928, and the accepted bidder will be required to execute the formal contract prescribed by the Department covering service advertised with good and sufficient sureties acceptable to the Postmaster General, and file such contract within thirty days from date of acceptance of the proposal. The Postmaster General reserves the right to reject any and all bids.

The contractor will be required to receive and deliver mails at each post office on the route.

The contract may be terminated by Congress, or by the Postmaster General whenever, in his judgment, the interests of the Postal Service shall so require, in which latter event the contractor shall be allowed as full indemnity one month's extra pay, provided such termination is not due to delinquency on part of contractor or his agents.

Bidders should state the number of planes it is proposed to provide for carrying the mails on the route (including the number in reserve for each plane in the air); description of planes, showing speed, cruising radius, number of motors and horse-power thereof.

Bidders and their sureties are urged to acquaint themselves fully with the laws of Congress relating to contracts for carrying the mails (the more important provisions of

which are cited herein) and to familiarize themselves with requirements set forth in this advertisement and with the service to be performed, before they assume any liability as bidders or sureties, so as to prevent misapprehension or cause of complaint thereafter.

Bidders on this route should be familiar with the flying over such a course and be prepared, if award of contract is made, to handle such type of service.

The contractor must make his own arrangements for landing fields, lighthouses, radio stations and such other aids to navigation as may be necessary for the proper performance of the service.

The number of trips per day or week may be increased or decreased, if the needs of the service demand.

All proposals must be in the form prescribed by the Department and accompanied by a bond, in the sum above stated, with two or more individual sureties approved by a postmaster of the first, second or third class, which bond must be acceptable to the Postmaster General, such sureties to be shown to be owners of real estate valued above all encumbrances at an amount double the amount of the bond required; or a surety company which has complied with the provisions of the acts approved August 13, 1894, and March 23, 1910. A list of such surety companies may be found on Page 55 of the Official Postal Guide for July, 1927, a copy of which is furnished each postmaster.

[fol. 2438] If the accepted bidder fails to file a properly executed formal contract for the service in the Department within thirty days from the date of acceptance of the bid, or having executed the contract fails to provide the service required, he may be declared a failing bidder or contractor and proceedings taken according to law.

Mail compartments in all planes to be made fireproof to the satisfaction of the Post Office Department.

The contract for the service shall contain the following covenant:

The contractor expressly warrants that he has employed no third person to solicit or obtain this contract in his behalf, or to cause or to procure the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement; and that he has not paid, or promised or agreed to pay to any third person, on consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission or percentage; and that all money payable to him hereunder is free from obligation to any other person for services rendered, or supposed to have been rendered, in the procurement of this contract. He further agrees that any breach of this warranty shall constitute adequate cause for the annulment of this contract by the United States, and that the United States may retain to its own use from any sums due or to become due thereunder an amount equal to any brokerage, commission or percentage so paid, or agreed to be paid.

No compensation will be allowed for trips not performed. However, pro rata pay will be allowed for the airline distance between stated points on the route traversed in a partially completed trip, if no delay in the mails over train or boat service has resulted.

Deductions from pay will be made for suffering the mails to become wet, injured or destroyed; or when a grade of service is rendered inferior to that stipulated in the contract; and for the loss of or depredation upon the mails in the custody of the contractor or his agent, provided the loss is occasioned by their fault.

The Postmaster General may annul the contract or impose forfeitures, in his discretion, for repeated failures or for failure to perform service according to contract; for violating the Postal Laws and Regulations; for disobeying instructions of the Post Office Department; for subletting service without the consent of the Postmaster General, or assigning or transferring the contract; for combining to prevent others from bidding for the performance of postal service, and such annulment shall not impair the right of the Department to claim damages from the contractor and his sureties.

Assignments of contracts or of interests in contracts are forbidden by law, and consequently cannot be allowed. Neither can bids nor interest in bids be transferred or assigned to other parties. Bidders will therefore take notice that they will be expected to provide the service awarded to them through the whole contract term.

Contractors under this advertisement may be permitted to sublet service to acceptable persons, by permission of the Postmaster General, at not less than the contract rate of pay.

When a bid is signed by an incorporated company, it should be accompanied by evidence of the authority of the person signing the bid so to sign on behalf of the company. Such evidence may be a certified copy of the proceedings pursuant to which the person was elected or appointed an officer or agent of the company and that part of the by-laws showing his authority as such officer or agent to sign the [fol. 2439] bid; or a certified copy of a resolution of the board of directors or stockholders conferring such authority upon him.

Bids should be for service as stated in the advertisement.

A proposal altered in any of its essential terms cannot be considered in competition with bids submitted in proper form.

Bids should be forwarded in time to reach the officer of the Second Assistant Postmaster General not later than 12 o'clock noon, July 2, 1928. Bids received after that time will not be considered in competition with bids received within the prescribed time.

Bids should be sent in *sealed envelopes, superscribed "Inplane Proposal"* and addressed to the "Second Assistant Postmaster General, Post Office Department, Washington, D. C."

HARRY S. NEW,
Postmaster General.

[fol. 2440]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 96

(COPY)

Lima, Peru,
June 7th, 1928.

Dear H. & L.:—

Well as I wrote you last week we got the permit signed and tried to get Ford of Marconi to sign a provisional contract previously to the signature being affixed but were not successful in this so drew up a contract which we presented as soon as the permit was signed. This was accepted by him as we had already worked out the details of it. He submitted it to their attorneys and then drew it up as a supreme resolution which went to the Minister to be presented for the signature of the President. We had limited the free gov. mail to one Kilo but the Min. held out for two Klos. We then had to redraw it but had it back in the Minister's hands Friday and asked that it be sent at once to the Pres. You see the Ger. and Fawcetts permits were to be signed Monday so speed was necessary.

The Pres. had several functions Sat. so it could not be sent but last night we went to see the Min. and had his promise that it (the contract) would be signed at the acquerdo Monday night and that he would call me and tell me when it was done. Well I sat by the phone and about 10 P.M. I got the call and they had not had the Acquerdo with the Pres. but that it should be signed today. Well maybe it will be.

If we succeed in getting the contract signed at this meeting we will be closed with Marconi on the same day that the Ger. and Fawcett get their permission to contract if they can. But as the contract is drawn there is little left to contract and we have the right to take over any line they present at the same figure they offer or under the same conditions. This refers to lines other than the coast wise lines mentioned in our contract. Unless the Pres. balks at this we will have virtually the exclusive air mail of Peru.

I wrote you that the Germans were in Equador, and also sent you a wire to this effect. I hope you have taken the proper steps to have our State Dept. to request them to hold up until we can make them a proposition. This was the intent of the wire. If the contract is signed today we will have to put up at once 1000 LP as guarantee on the contract. However, will wire you.

Except for the fact that I've been promised so many things, I'd think the contract is closed. As it is, I'll believe it when the ink dries on the last signature.

If signed ahead of the others we should open up the guns on Colombia AT ONCE and should hit Equador without delay.

.....

8:30 P.M.

The Minister was not able to hold the aquerdo this A.M. but is expecting to meet the Pres. tonight and will inform me by phone as soon as the meeting is over, what has transpired.

[fol. 2441] PHONE JUST RANG AND THE MINISTER STATES THAT THE CONTRACT WITH MARCONI HAS BEEN SIGNED, SEALED AND DELIVERED. WILL FORWARD A COPY WITH THIS LETTER AND AM STARTING TO TOWN NOW TO SEND THE ENCLOSED CABLE.

The permit simply gave us the right to fly and to contract for the carrying of mail but this gives us what is exclusive mail rights in Peru.

At 11 P.M. I went to a reception for the new Ambassador Moore and of course told Acting Amb. Hanna and the other officials about the closing of the contract. A shout went up and we all repaired to the punch bowl. It's been a tight fight and they have all been mighty interested in the outcome.

By the way, after the permit was granted, news of same evidently got to Washington, for a couple of days later the papers carried a two-column headline that the 2nd Post

master at Washington stated that Hüff Daland had no contract for carrying mail to the U.S. This was great stuff for the opposition and believe me they used it. Mr. Fulger of the United Press cabled N.Y. to interview Hoyt and get a statement that PanAm had such a contract and that we were related companies. Well, the story came back that Pres. Gott of Keyplanes had been interviewed and that they were interested in a way, but that it was for some distant date in the future. WELL, this wasn't much help so we killed the story, and got the information regarding our connections to the Minister and Pres. and let the public think what they pleased. The Marconi Co. were also informed, but the story came out, just when we were trying to close with Marconi, and one of the chief arguments with them that we used was that only we and not the Germans could get into the Canal Zone and that *we* were going on into the States. I think the Postmaster ought to be burned up on such a bonehcaded statement, as it might have raised hell with us, and the State Dept. was certainly informed of the connection. To date no statement clarifying the situation has appeared.

Must get this off, and a wire for the Lp. 1000, which we must post as a guarantee for the Permit. This must be posted within 10 days of the granting of the permit, which was granted on the 28th of May. I did not want to post this amt. until I saw the contract with the Marconi closed.

Must stop for now.

Sincerely,

C.E.

[fol. 2442]

[Emblem]

KEYSTONE AIRCRAFT CORPORATION
BRISTOL, PA.

IN REPLY REFER TO A-2933

June 19, 1928

Mr. Robert Atkins,
c/o Hayden, Stone & Co.,
25 Broad Street,
New York, N. Y.

Dear Bobby:

We enclose herewith copy of letter received on even date from Mr. Woolman, at Lima, dated June 5th, for your information.

You will note, from reading this over, that it is Woolman's judgment that the operations of the line be started as soon as possible.

Yours very truly,

/s/ Edgar N. Gott
Edgar N. Gott,
President.

ENG/D
Encl.

[fol. 2443]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 97

[Handwritten notation—File—Huff Daland—P.A.A.]

June 26th, 1928.

MEMORANDUM

To: Mr. J. T. Trippe From: P.E.D. Nagle

Subject

General Concession and Special Air Mail Contract—Peru.

We have never received a complete copy of the concession secured from the Peruvian Government by Woolman. Reports through the State Department and the press indicate that he got a long time concession with freedom from duties and taxes, and the right to condemn land for fields, and in general, carry on a passenger, express, and other air service business.

So far as the right to sell stamps or carry mails was concerned, he was given no authority in the concession, except that he might make such arrangements with the Post Office as could be agreed upon.

Woolman made a contract with the Marconi Company, which operates the Posts and Telegraphs and Radio of Peru, and got this signed hurriedly in order to shot off the German Company from getting any mail contract. The present contract gives him the exclusive right to carry International mails and a preferential right to carry any and all other mails. He is to be informed of any proposal made to the Post Office by any competitor, and then has six months in which to decide whether he will render the service on the same terms. I think this blocks completely any competition if the Huff Daland wishes to do so.

From a financial standpoint, I feel that the present contract, as written, offers very little to the Huff Daland. In the first year he would get only one load and that is between Lima and Paita, although, since he is to call at two intermediate

points, the business might be worked up to provide a return load and some local business.

[fol. 2444] The second year he is to operate from Lima to Mollendo, covering in this way the entire Coast of Peru.

The restrictive feature that he accepted, and that I think he did through not understanding the concession form we sent him, was to agree not to carry any mail except what the Post Office gave him, and to permit the Post Office to charge the Public the same rate they paid him.

The W. R. Grace and Company have very large interests in Peru, not only in the way of steamship transportation, but as general merchandising agents and as operators of sugar and cotton plantations and factories. In view of the interest they have already shown in aviation in South America, it might be possible to bring them into the picture in some way in Peru.

/s/ P. E. D. Nagle
P. E. D. Nagle.

PEDN/J

[fol. 2445]

Pan American World Airways, Inc. Exhibit 98

AIR MAIL ROUTE PROPOSAL, BOND AND OATH

[Handwritten notation—7/2/28]

I, the undersigned Pan American Airways, Inc., of New York City, State of New York, propose to carry all mail offered, as covered in the advertisement, by airplane (or seaplane) subject to the Postal Laws and Regulations and the Instructions to bidders, for a term of ten years to begin not later than six months after the award of contract, on the route from Key West, Florida, (or such other point in the United States as may be designated by the Post Office Department) by Havana, Cuba, Merida, Mexico, Belize, British Honduras, Tegucigalpa, Republic of Honduras, Managua, Nicaragua, San Jose, Costa Rica, (or such other points in these countries as may be acceptable to their

Governments) to Cristobal, Canal Zone, and from Cristobal, Canal Zone, to Key West, Florida, (or such other point as may be designated) 7 times a week, as described in the advertisement of the Postmaster General dated May 31, 1928, on a schedule satisfactory to the Postmaster General.

For the term of the proposed contract, at Two dollars per mile.

I propose to furnish the equipment specified below: Number of planes at least 10, of which number six will be in use on the trips contemplated by the contract to be executed pursuant to this proposal and at least four held in reserve. Type of plane Cabin Transport built in U.S.; Construction (American or foreign) American. Horsepower 1650, 1240 or 800; speed 130 or more miles per hour; cruising radius at least 600 miles; number of motors three.

PAN AMERICAN AIRWAYS, INC.

By:
(Sgd) J. T. TRIPPE
President

(SEAL)

E. S. Swaggerty
Notary Public

Attest:

(Sgd) H. PRESTON-MORRIS
Secy.

(Sgd) J. T. TRIPPE, Pres.
(PAA Corp)

SEAL

This proposal is made in my own interest, and not by me as the representative of another person or company, and with full knowledge of the distance over the route, the weight of the mail to be carried, and all other particulars in reference to the route and service, and, also, after careful examination of the forms and instructions attached to said advertisement, and if accepted; I will enter into contract,

with sureties to be approved by the Postmaster General, within thirty days after date of acceptance, and will give my personal supervision to the performance of the service.

[fol. 2446] And I do swear that I have the ability pecuniarily, to fulfill my obligation as such bidder; that this bid is made in good faith and with the intention to enter into contract; and perform the service in case said bid shall be accepted.

And we Pan American Airways, Inc., as bidder and principal, are held and firmly bound unto the United States of America in the just and full sum of twenty-five thousand dollars ($25,000) lawful money of the United States, to be paid to the United States of America or its duly appointed or authorized officer or officers; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, by an act of Congress approved June 23, 1874, entitled "An Act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1875, and for other purposes," it is provided: "That every proposal for carrying the mail shall be accompanied by the bond of the bidder, with sureties approved by a postmaster," in pursuance whereof and in compliance with the provisions of said law, this bond is made and executed, subject to all the terms, conditions and remedies thereon, in the said act provided and prescribed, to accompany the foregoing proposal of the said bidder.

Air Mail Proposal, Bond and Oath Page 2.

Now, the Condition of the Said Obligation Is Such, that if the said bidder, as aforesaid, shall within thirty days of the date of acceptance of said bid, enter into a contract with the United States of America, with good and sufficient sureties to be approved by the Postmaster General, to perform the service proposed in his said bid, and further shall perform said service according to his contract, then this obligation shall be void; otherwise to be in full force and obligation in law.

In lieu of surety bond we hand you attached herewith twenty-five thousand ($25,000.00) United States 4th Liberty Loan of the following serial numbers with October 15th and subsequent coupons attached:

No. K 00091960	$10,000.00
D 00002934	$10,000.00
K 00029920	$ 5,000.00

Very truly yours,

PAN AMERICAN AIRWAYS, INC.
By:
(Sgd) J. T. TRIPPE
President

PAA Corp.
(SEAL)
Attest: ROBERT G. THACH
Ass't Secretary

[fol. 2447] IN WITNESS WHEREOF, we have hereunto set our hand and seal this 2nd day of July 1928.

PAN AMERICAN AIRWAYS, INC.
By:
J. T. TRIPPE, Pres

Bidder and principal: ..... (SEAL)

Attest: J. T. Trippe, Pres. (SEAL)
Robert G. Thach, Asst. Secretary (SEAL)
PAA Corp
(SEAL)

Witness:
P. E. D. Nagle
John A. Hambleton

DISTRICT OF COLUMBIA)
) ss.
)

On this 2nd day of July, 1928, personally appeared before me J. T. Trippe, President of Pan American Airways, Inc. bidder in the foregoing proposal and principal in the foregoing bond, me known to be the persons so named in said proposal and bond, and who have executed the same as such, who, being by me duly sworn, deposes and says, and he has signed and sealed the within proposal and bond and each and every of the foregoing statements is true to the best of his knowledge and belief. (Sgd) J. T. TRIPPE

Subscribed and sworn to before me this 2nd day of July, 1928.

Edith M. Stevens
Notary Public, D. C.

(SEAL)

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 2nd day of July, in the year 1928, before me personally came J. T. Trippe, to me known, who being by me duly sworn did depose and say that he resides in New York City; that he is President of Pan American Airways, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed be order of the Board of Directors of said corporation and that he signed his name thereto by like order

E. S. SWAGGERTY
Notary Public (SEAL)
New York County

[fol. 2448] Note—Postmaster will observe that the improper approval of bond, or the certificate of the sufficiency of sureties therein, exposes them not only to dismissal but also to fine or imprisonment, the certificate must not be

signed until proposal is completed and bond signed. The postmaster signing the above certificate must have personal knowledge of the reliability and good character of the bidder, and must not divulge the amount of any proposal certified by him, under penalty of removal. The approval of the sureties must be by a postmaster, or duly appointed acting postmaster and not by an assistant postmaster, or other substitute, either in his own name, or in the name of the postmaster; and if the bond is in excess of five thousand dollars, such approval must be by a postmaster of the first, second or third class.

CERTIFICATE OF POSTMASTER AS TO BIDDER.
(To be executed if the sole surety on the bond is a surety company)

I, the undersigned, postmaster at Washington, District of Columbia, after the exercise of due diligence to inform myself concerning PAN AMERICAN AIRWAYS, INC., bidder and principal in the foregoing bond, do hereby certify that, in my belief, he is a reliable and trustworthy person of good character and has the pecuniary ability to perform the service contemplated by his proposal; and he signed said proposal and bond, and that the amount of compensation was entered in the proposal before the signing of this certificate; that he is over twenty-one years of age, and not a postmaster, assistant postmaster, clerk in a post office, rural delivery carrier or other postal employee, or member of the immediate family of a postmaster or an assistant postmaster, and that the proposal is made in his own interest, and not by him as an agent or representative of another person or company.

(Sgd) W. M. MOONEY
(Postmaster)

Dated July 2, 1928.

{fol. 2449}

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 99

MEMORANDUM

DATE July 11, 1928.

TO MR. Iglehart DEPT.

FROM MR. Patchin DEPT.

Subject: AIR MAIL CONTRACTS

The Pan-American Airways has received a contract from the United States Government to carry air mail from Key West, Florida via Mexico, Havana and Central America to Colon.

The West India Air Express ^ ~~has received a contract~~ has bid on another contract ^ as well as Pan-American Airways to carry the air mail from Havana eastward to Santo Domingo and other West Indian points. The route has not yet been awarded.

Mr. Hoyt has told me that the West India Co. will ^ probably combine with the Pan American, and, therefore, the Pan-American will control all the airmail service in the Caribbean and receive $2.00 per mile for a period of ten years. The revenue will exceed $1,000,000 per annum. The capital of the Pan-American Airways will be somewhat, but not largely increased.

Mr. Hoyt told me about a week ago that within two weeks he would probably be approaching us to discuss operations south of Colon. He ~~evidently~~ proposes to move promptly in the matter.

[fol. 2450]

PAN AMERICAN-WORLD AIRWAYS, INC. EXHIBIT 100

CONTRACT FOR FOREIGN AIR MAIL SERVICE

Route No. F. A. M. 5

This contract, made this 13th day of July, 1928, by and between the United States of America (by the Postmaster General) and the Pan American Airways, Inc., a corporation organized and existing under the laws of the State of New York:

WITNESSETH, That whereas the said Pan American Airways, Inc., has been accepted as contractor on Route No. F. A. M. 5 in conformity with the advertisement inviting proposals for the service specified herein, issued by the Postmaster General under date of May 31, 1928.

NOW THEREFORE, The said contractor undertakes, covenants and agrees with the United States of America:

1. To carry all United States mails (including foreign closed mails in transit through the United States) offered, not to exceed eight hundred (800) pounds a single trip, in safe and suitable aircraft, seven (7) times a week, on a schedule satisfactory to the Postmaster General from Landing Point (n.o.) at Key West, Florida (or such other point in the United States as may be designated by the Post Office Department) by Havana, Cuba, Merida, Mexico, Belize, British Honduras, Tegucigalpa, Republic of Honduras, Managua, Nicaragua, San Jose, Costa Rica, (or such other points in these countries as may be acceptable to their Governments and designated by the Post Office Department) to Cristobal, Canal Zone, and from Cristobal, Canal Zone to Key West, Florida (or such other point as may be designated) and to perform the services and undertakings in connection therewith specified in this contract for and during the term of ten (10) years commencing with the date of inauguration of service which shall not be more than six-
[fol. 2451] months from the date of the acceptance of the proposal (July 13, 1928).

2. To take the mail and every part of it from all United States Post Offices and deliver it and every part of it into all post offices on the route covered by this contract, unless other provision is made. The contractor also undertakes, covenants, and agrees with the United States and binds itself to be answerable in damages to the United States for the proper care and transportation of the mails, and to be accountable for any loss or damage resulting to any such mail or to any part thereof by reason of the failure to exercise due care on the part of any of the contractor's officers, agents or employees in the custody, handling or transportation thereof.

For the service herein specified, when performed in accordance with the provision of this contract and evidence thereof shall have been filed with the Postmaster General, the United States agrees to pay to the said Pan American Airways, Inc., compensation at the rate of two dollars ($2.00) per statute mile flown based on the shortest practicable airway distance between points on the route as determined by the Postmaster General, compensation for the return trip from the Canal Zone to be based on the direct distance, by the most practicable route, from Cristobal to Key West or such other point in the United States as may be designated. Payments to be made monthly as soon after the close of each month as accounts can be adjusted and settled; said pay to be subject, however, to be reduced or discontinued by the Postmaster General as hereinafter stipulated, or to be suspended in case of delinquency.

It is further stipulated and agreed by the contractor:

[fol. 2452] 1. That in case of failure from any cause to perform any service required by this contract a pro-rata deduction shall be made from the compensation of the contractor on account of such omitted service, except that pro-rata pay will be allowed for the airway distance flown between stated points on the route traversed on a partially completed trip if no delay in the mails over the ordinary means of transportation has resulted.

2. That deductions from the pay may be made for allowing the mails to become wet, damaged or destroyed; or

when a grade of service is rendered inferior to that stipulated in the contract; and for the loss of or depredation upon the mails in the custody of the contractor or his agents, when such loss is due to the negligence or fault of the contractor or his agents.

It is further stipulated and agreed that the Postmaster General may annul this contract or impose fines or penalties, in his discretion, for repeated failures; for subletting the service without his permission or assigning or transferring the contract; for combining to prevent others from bidding for the performance of postal service; for failure to provide and operate safe and suitable aircraft in accordance with the requirements of the advertisement and this contract; for violating the postal laws and regulations applicable to service under this contract or for failure to perform service according to this contract. Such annulment shall not impair the right of the United States to claim damages from the contractor.

That no member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or agreement or to any benefit to arise therefrom.

[fol. 2453] The contractor expressly warrants that it has employed no third person to solicit or obtain this contract in its behalf; or to cause or procure the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement, and that it has not paid, or promised or agreed to pay, to any third person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by it hereunder; and that it has not, in estimating the contract price demanded by it, included any sum by reason of any such brokerage, commission, or percentage; and that all money payable to it hereunder is free from obligation to any person or persons for services rendered, or supposed to have been rendered, in the procurement of this contract. It further agrees that any breach of this warranty shall constitute adequate cause for the annulment

of this contract by the United States, and that the United States may retain to its own use from any sums due or to become due thereunder, an amount equal to any brokerage, commission, or percentage so paid or agreed to be paid.

It is further stipulated and agreed that this contract may be terminated by Congress, or by the Postmaster General whenever, in his judgment, the interest of the postal service shall so require, in which latter event the contractor shall be allowed as full indemnity one month's extra pay (based on the average monthly pay), provided such termination is not due to delinquency on the part of the contractor or his agents.

It is further stipulated and agreed:

1. That during the continuance of this contract, if the Postal interests shall so require, by mutual agreement between the contractor and the Postmaster General, the [fol. 2454] contract rate of pay hereunder may be changed, but shall never exceed the rate herein provided.

2. That the Postmaster General may, as the needs of the service require, increase or decrease the number of intermediate stops, the number of trips per week, change the termini of the route, dispatch mail on any plane of the contractor flown over the route and change or modify the schedule.

3. That the Postmaster General may, with the consent of the contractor, include Guatemala and Salvador in this route and extend this route from Cristobal, Canal Zone by Cartagena, Colombia, Maracaibo, Venezuela, Port of Spain, Trinidad, Curacao, Dutch West Indies, La Guaira (Puerto Caracas), Venezuela, Georgetown, British Guiana, to Paramaribo, Dutch Guiana.

4. That this contract is also subject to all the provisions of the advertisement (though not all specifically stated herein) and to the provisions of the Postal Laws and Regulations applicable to this service.

IN WITNESS WHEREOF, The parties hereto have executed this contract.

Signed *Aug. 22*, 1928

in the presence of
ALICE MUMMERLOFF

THE UNITED STATES OF AMERICA

By HARRY S. NEW
Postmaster General D

Signed *August 11*, 1928

Witnesses:

ROBERT G. THACH
E. S. SWAGGERTY

PAN AMERICAN AIRWAYS, INC.

by J. T. Trippe, President
Contractor

The United States bonds/notes described in the annexed schedule are hereby pledged as security for the performance and fulfillment of the foregoing undertaking [fol. 2455] in accordance with Section 1126 of the Revenue Act of 1926, approved February 26, 1926 and Treasury Department Circular No. 154, dated April 30, 1926.

PAN AMERICAN AIRWAYS, INC.

By J. T. TRIPPE, President
Contractor

Approved as to form:
HORACE J. DONNELLY
Solicitor
SEB

Approved as to fact:
CHASE C. GOVE
Acting—Second Assistant
Postmaster General ERW

[fol. 2456] I, Robert G. Thach, certify that I am the Asst. Secretary of the corporation named as contractor herein; that J. T. Trippe who signed this contract on behalf of the contractor, was then President of the said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

ROBERT G. THACH (Corporate Seal)

CERTIFICATE OF OATH OF CONTRACTOR

I, the undersigned, being employed in the care, custody and conveyance of the mail as contractor on the route named in the foregoing contract, do solemnly swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post offices and post roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear that I will support the Constitution of the United States: So help me God.

J. T. TRIPPE, President

PAN AMERICAN AIRWAYS, INC.
Contractor

Sworn to and subscribed before me a Notary Public this 11th day of August, 1928.

L. S. SWAGGERTY
Notary Public

[fol. 2457]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 101

July 13, 1928

The proposal of the Pan American Airways, Inc., of New York, N. Y. under the advertisement of May 31, 1928, for carrying the mails in safe and suitable aircraft from Landing Point (n.o.i.) in Key West, Florida (or such other point in the United States as may be designated by the Post Office Department) by Havana, Cuba, Merida, Mexico, Belize, British Honduras, Tegucigalpa, Republic of Honduras, Managua, Nicaragua, San Jose, Costa Rica, (or such other points in these countries as may be acceptable to their Governments) to Cristobal, Canal Zone, and from Cristobal, Canal Zone, to Key West, Florida, (or such other point as may be designated) seven (7) times a week, for the transportation of mails not to exceed eight hundred (800) pounds a single trip, on a schedule satisfactory to the Postmaster General, for a period of ten (10) years at the rate of two dollars ($2.00) per mile, is accepted, contract to be executed accordingly. Effective date of contract and mileage to be stated in a subsequent Order.

W. Irving Glover
Second Assistant
Postmaster General

[fol. 2458]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 102

August 1st, 1928

MEMORANDUM

To Mr. J. T. Trippe From Robert G. Thach

SUBJECT: Regarding Proposed Peruvian Corporation.

PAN AMERICAN AIRWAYS CO. OF PERU

Authorized capitalization: 25,000 Peruvian pounds divided into 2500 shares of 10 Peruvian pounds each.

Issued: 250 shares of 10 Peruvian pounds each (approximately $10,000).

Note: The organization tax for the above capitalization will be one-half of one per cent of such stock as is now issued or issued in the future.

Directors: 7 directors, 4 in New York, Mr. Harris in Lima and two others in Lima from the office of our attorney there.

Directors meetings may be held either in New York or Lima, upon the call of the President for three directors, and three will constitute a quorum.

Stockholders may remove directors at any time.

Stockholders: 247 shares of the original issue will be in the name of A.C.A. or in the name of some individual endorsed in blank and delivered to A.C.A., as will likewise be the three incorporated shares.

Stockholders meetings will be held in either Lima or New York, if law permits.

Officers:

President—J. T. Trippe

Vice President and General Manager—H. J. Harris, Lima

Vice President—J. A. Hambleton

Secretary—R. G. Thach

Treasurer—J. R. Dillon

Assistant Secretary and Assistant Treasurer in Lima.

The Vice President in Peru shall have the full powers of the President and is to represent the Corporation in Peru unless the President is there.

Corporate Records: On account of the probability of numerous directors meetings both in Lima and New York,

it will be provided that duplicate original minutes of every meeting held in either place will be forwarded and kept in the corporate records at the other place, and a duplicate seal will be kept in both places.

Proposed Initial Transactions: A.C.A. is to advance up to $15,000 to Huff Daland as a loan for purchasing a Fairchild airplane and transporting it to Peru under the agreement that upon Huff Daland turning over the ship to the Peruvian Corporation, A.C.A. will cancel the loan.

[fol. 2459] Upon payment by A.C.A. into the Peruvian Corporation of $10,000 the Peruvian Corporation will repay A.C.A. $4,000 in consideration of acquisition of option from Huff Daland formerly held by Caribbean.

A.C.A. will make $25,000 on demand six per cent loan to Peruvian Corporation.

Peruvian Corporation will acquire of Huff Daland concessions and contracts having to do with commercial operations of aircraft (excluding dusting), with necessary governmental consents to the transfers of such concessions, including specifically (but without limitation):

1. Basic concession in Peru
2. Peruvian mail contract
3. Mail contract with British Marconi
4. All other concessions to be negotiated in Peru and Ecuador

In consideration of such concessions the Peruvian Corporation will agree to pay Huff Daland the proper and fair amounts actually disbursed acquiring concessions in Peru and Ecuador, not to exceed $15,000 for expenses disbursed prior to July 1st, 1928. The exact amount is to be fixed by Messrs. Hoyt, Trippe and Gott as arbitrators on or before November 1st, 1928, together with allowance for a reasonable profit if, in the opinion of such arbitrators, it is justifiable and proper.

The Peruvian Corporation will make an agreement with Huff Daland covering the charter by the Peruvian Corpora-

tion of one dusting airplane to be used as spare equipment, the cost of such charter not to exceed $750. per month, including depreciation, insurance and reasonable wear and tear. This charter would be by the month, with a minimum of three months, with the right of the Peruvian Corporation to extend for six months longer, at its option, on a month to month basis. The Peruvian Corporation is to supply pilots and fuel.

.....

Robert G. Thach.

RGT/eqn

[fol. 2460]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 103

August 3, 1928.

Dear Patchin,

I am passing on to Mr. Carter your memorandum of August 2nd about Panama American Airways Inc.

As you said to me, this is a very sketchy prospectus. I notice in the last paragraph of Harris' letter to Trippe that he says that in addition to being a Vice-President of the Pan American Airways Inc. of Peru, he should be a Vice-President of the Pan American Airways Inc. in order to negotiate any changes in the Peruvian or other South American concessions. This would seem to indicate that the Peruvian and Ecuadorian concessions are owned by this company.

As I think over this whole matter, I lean very much to the idea of concentrating on mail and express packages and leaving aside the matter of passengers for the present, and I think I would be rather inclined to insist a bit on this point.

[fol. 2461]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 104

(COPY)

MR. TRIPPE
HRH

Quito, Ecuador, August 6, 1928.

Dear H. & R. :—

I've had my first conference with the Minister of War and learned that the Cabinet would not grant the contract or concession as I had presented it. That they have ceased granting exclusive concessions, and are not favorably inclined to granting exclusion or exemption from taxation. I have another round with the Min. of War and the Min. of Education & mails this afternoon and will see what can be done.

There is quite a feeling of resentment here toward the U.S. and the Germans are not helping the matter any, stating that the U.S. is trying to get control of the air, trying to dominate S.A., etc., etc. I am inclined to think that if they ask too much and are willing to grant too little that we had better simply ask for permits to land along the coast and then when we are carrying the U.S. mail to Panama and the Panam is taking it on thru then we can have them come to us and we can dictate our own terms. If they get too independent I will state that while we would rather not that we can fly right on thru. Of course this would not be economic but since these long flights have been made they think that a thousand or fifteen hundred miles is nothing for a plane.

Would certainly like to know what is going on up in N.Y. Harry I got your wire stating that Panam didn't feel satisfied with the Peruvian contract. We have every advantage over the Germans with an exclusive contract for all foreign mails over our lines and unless we get busy Fawcett could connect up with the Germans either at Talara or Guayaquil and we would be left out. By the way, the Ger.s are stating that they have or will soon have permission to land just out of the canal Z. and that they will soon

be carrying mail to Colon. This should be headed off as we have stated that it is impossible for them to get in and have built our fight around the fact that without this connection that their lines are valueless to these countries.

The thing that will help the situation more than anything else is to get started in Peru and show them that we mean business. Incidentally someone should be in Peru pretty soon and there is no telling when I can get away from here, tho I am pushing them all possible. This is going to be a case, speaking of the whole line, where the early bird gets the advantage and all we need to do to hold this whole West coast is to start action.

There is no telling when this letter will reach you as it takes two full days to get to Guayaquil and then waits for a boat. In Peru Congress is now in session and I have wired Fernandez to keep after the Minister to have our exemptions from entry charges and taxation passed. Have told them that we are holding off until this is done. Must stop as I am sending this by a friend leaving for Guayaquil in a few minutes. Hope to get orders to go ahead.

Sincerely,

C. E.

[fol. 2462]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 105

PAN AMERICAN AIRWAYS, INC.

General Offices

100 East 42nd Street, New York City

August 14, 1928.

Mr. Richard F. Hoyt,
Hayden, Stone & Company,
25 Broad Street,
New York City.

Dear Dick:

I am attaching herewith copy of the draft memorandum handed to Mr. W. [illegible] Cogswell, of the Grace Company, yesterday.

I talked to Harris this afternoon just before he boarded the train for Monroe. He is planning to return to New York next Tuesday, August 21st. At that time he will be prepared to spend three days, calling on the larger American companies operating in Peru, to contract with them, individually, to carry part of their mail between Paita and Lima, following the inauguration of his service in October.

Mr. Cogswell is going into the matter further with some of his Directors today, and wants to see me tomorrow. As soon as we have a definite plan worked up, we will bring it in to you to check over.

Sincerely,

(Sgd.) JUAN TRIPPE.

JFT/s
Enclosure

[fol. 2463]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 106

CERTIFICATE OF INCORPORATION

—of—

PERUVIAN AIRWAYS CORPORATION

FIRST: The name of the corporation is

PERUVIAN AIRWAYS CORPORATION

SECOND: The principal office of the corporation in the State of Delaware is located at No. 19 21 Dover Green, in the City of Dover, Kent County. The name and address of its resident agent is the United States Corporation Company, No. 19/21 Dover Green, Dover, Delaware.

THIRD: The nature of the business, or objects or purposes proposed to be transacted, promoted, or carried on, are:

(a) To carry, convey, transmit, or transport, as, when and where lawful, goods, freight, express, articles of merchandise of every nature and description, se-

curities, passengers, mails and intelligence by means of air craft.

(b) To design, manufacture, assemble, build, repair, maintain, operate, own, lease, let, purchase, sell and deal in air craft of every kind and description, by whatever power actuated and by whatever agency or method sustained or stabilized including (without limitation) balloons, dirigibles, aeroplanes, hydroplanes, hydro-aeroplanes and all kinds and types of vehicles, mechanisms and devices now known or which may hereafter be discovered or invented for navigating the air, for purposes of pleasure, commerce, warfare or otherwise.

(c) To build, acquire, maintain, own, operate, lease, sell and otherwise dispose of air navigation facilities of every nature and description, including (without limitation) terminal landing fields, emergency landing fields, aviation fields, hangars, land lighthouses, storage space, systems of radio, communications, air craft repair stations, mooring masts, landing buoys, air ports, either land or water, plants, works, stations, depots, and all equipment incidental to the proper maintenance thereof, and all other conveniences and appurtenances appropriate to any of its business.

(d) To design, manufacture, purchase, sell and trade in, and to install upon air craft, weapons and armor or other protective coverings, apparatus for measuring height and distance, determining location and direction, and for signalling or communicating in any way, and all apparatus, equipment and devices designed for use in connection with the navigation of the air.

[fol. 2464] (e) To conduct experiments on its own account and for others, to apply for, obtain, purchase, or otherwise acquire, patents, licenses, trade marks, trade names, processes, improvements, inventions, formulae, and the like, and to sell, mortgage, pledge, let, or otherwise dispose of, or deal in, and to use, exercise and develop, grant licenses and other rights and privileges in respect to, and to experiment upon, test or

develop any process, improvement, invention, patent, or patent right, or the like.

(f) To purchase, lease, hire, or otherwise acquire, hold, own, develop, operate, improve, sell, assign, transfer, exchange, mortgage, pledge or otherwise dispose of, or turn to account and convey, and to aid and subscribe toward the acquisition, development or improvement of, real and personal property and rights and privileges therein of every nature whatsoever, whether tangible or intangible, in the State of Delaware, and in all other states, territories, districts, colonies, and dependencies of the United States of America and in all foreign countries, including the good will of any corporations, copartnerships and/or individuals, suitable or convenient for any business of the corporation; and to acquire, take, hold, own, construct, erect, improve, manage, and operate, and to aid and subscribe toward the acquisition, construction or improvement of, buildings, mills, storehouses, warehouses, factories, machinery, apparatus, equipment, locomotives, cars, and other rolling stock, roads, bridges, docks, piers, wharves, ships, vessels, boats, dry and floating docks, marine railways, trucks, wagons, cars, and other vehicles, engines, motors, conveyances, rolling stock and other works, property or appliances which may appertain to, or be useful in, the conduct of any business of the corporation but only to the extent authorized by the laws of the State of Delaware.

(g) To acquire by purchase, subscription, or otherwise, and to hold, sell, assign, transfer, exchange, lease, mortgage, pledge, or otherwise dispose of, any shares of the capital stock of, or voting trust certificates for any shares of the capital stock of, or any bonds or other securities or evidences of indebtedness issued or created by, this corporation or any other corporation or association, organized under the laws of the State of Delaware or of any other state, territory, district, colony or dependency of the United States of America, or under the laws of any foreign country; to pay therefor in cash or property or to issue in exchange

therefor shares of the capital stock, bonds or other obligations of this corporation; and, while the owner or holder of any such shares of capital stock, voting trust certificates, bonds, or other obligations, to possess and exercise in respect thereof any and all rights, powers and privileges of individual holders, including the right to vote on any shares of stock so held or owned (provided, however, that this corporation shall not use its funds or property for the purchase of shares of its own capital stock when such use would cause any impairment of its capital, and provided further that shares of its own capital stock belonging to this corporation shall not be voted upon directly or indirectly;) [fol. 2465] and upon a distribution of the assets or a division of the profits of this corporation, to distribute any such shares of capital stock, voting trust certificates, bonds, or other obligations, or the proceeds thereof, among the stockholders of this corporation.

(h) To organize subsidiary corporations and to convey and assign all or any part of its assets to any such subsidiary corporation or corporations in exchange for shares of the capital stock or other securities of such subsidiary corporation or corporations.

(i) To acquire from time to time, in exchange for shares of the capital stock of this corporation as herein fixed or as may hereafter be increased, such property or shares of the capital stock of any other corporation or corporations, as the Board of Directors shall deem of advantage to this corporation, at such valuation of the property or shares so acquired as in the judgment of said Board of Directors shall be fair and just.

(j) To purchase, lease or otherwise acquire, in whole or in part, the business, good will, rights, franchises, and property of every kind, and to undertake the whole or any part of the assets or liabilities of any person, firm or association or corporation, engaged in or authorized to conduct any business authorized to be conducted by this corporation, or owning property necessary or suitable for its purposes, and to pay there-

for in cash or in stock or bonds, or any other evidences of indebtedness of this Corporation or otherwise; to hold or in any manner dispose of the whole or any part of the business, good will, rights, franchises, or property so acquired and to exercise all the powers necessary or incidental to the conduct of such business.

(k) To borrow or raise moneys for any of the purposes of this Corporation, issue bonds, debentures, notes or other obligations of any nature, or in any manner, for moneys so borrowed, and to secure the payment thereof and of the interest thereon, by mortgage upon, or pledge or conveyance or assignment in trust of, the whole or any part of the property of this Corporation, real or personal, including contract rights, whether at the time owned or thereafter acquired, and to sell or pledge such bonds or notes or other obligations of this Corporation for its corporate purposes.

(l) To aid, in any manner, any corporation or association any of whose shares of stock, bonds, or other evidences of indebtedness are held by or for this Corporation, or in which, or in the welfare of which, this Corporation shall have any interest, and to do any acts or things designed to protect, preserve, improve or enhance the value of, any such shares of stock, bonds or evidences of indebtedness, or the property of this Corporation.

(m) To guarantee the payment of dividends upon any shares of the capital stock of, or the performance of any contract by, any other corporation or association in which, or in the welfare of which, this Corporation has an interest, and to endorse or otherwise [fol. 2466] guarantee the payment of the principal and interest, or either, of any bonds, debentures, notes, securities, or other evidences of indebtedness created or issued by any such other corporation or association.

(n) To carry out all or any part of the foregoing objects as principal, factor, agent, contractor, or otherwise, either alone or in conjunction with any person, firm, association or other corporation, and in any part

of the world; and in carrying on its business, and for the purpose of attaining or furthering any of its objects, to make and perform such contracts of any kind and description, to do such acts and things, and to exercise any and all such powers, as a natural person could lawfully make, perform, do or exercise.

(o) To remunerate, in cash, shares of stock, bonds, or other securities or evidences of indebtedness or otherwise, any person, firm, syndicate, association, or corporation, for services rendered, directly or indirectly, in selling, placing or guaranteeing the selling or placing of any shares of the capital stock, bonds, debentures, or other securities or evidences of indebtedness, issued, owned, or controlled by this Corporation or by any other corporation in which this Corporation is interested, or in connection with the formation, promotion, or operation of this Corporation, or of any other corporation in which this Corporation is interested, or in connection with the conduct of the business or affairs or the protection of the property and interests of this corporation.

(p) To conduct its business in all its branches at one or more offices in the State of Delaware and in any or all other states, territories, districts, colonies, and dependencies of the United States of America and in any or all foreign countries.

It is the intention that the objects and purposes specified in the foregoing clauses of this Article THIRD, shall, except where otherwise expressed in this Article, be in no wise limited or restricted by reference to, or, inference from, the terms of any other clause of this or any other article in this certificate, but that the objects and purposes specified in each of the clauses of this Article shall be regarded as independent objects and purposes.

It is also the intention that said clauses be construed as powers as well as objects and purposes; and, generally, that the Corporation shall be authorized to exercise and enjoy all other powers, rights, and privileges granted by the General Corporation Law, being Chapter 65 of the

[fol. 2467] Revised Statutes, of the State of Delaware, to corporations of this character, as well as all the powers conferred or which may be conferred upon such corporations by the then existing laws of the State of Delaware, so far as not in conflict therewith, or by all laws and acts heretofore or hereafter amendatory of, or supplementary to, said General Corporation Law, or of any or all of said laws or supplements thereto, but the enumeration of certain powers as herein specified is not intended as exclusive of, or as a waiver of, any of the powers, rights, or privileges granted or conferred by said General Corporation Law or the laws of said State now or hereafter in force; provided, however, that this Corporation shall not have the power to carry on the business of constructing, maintaining or operating railroads or railways within the State of Delaware; nor shall it possess the right of taking and condemning lands in the State of Delaware. This Corporation shall not carry on any business, or exercise any powers, in any state, territory, or country which a similar corporation organized under the laws of such state, territory or country could not carry on or exercise, except to the extent permitted or authorized by the laws of such State, territory or country.

FOURTH: The total authorized capital stock of this Corporation is Fifty Thousand Dollars ($50,000), divided into five hundred (500) shares of the par value of One Hundred Dollars ($100.) each.

FIFTH: The amount of capital stock with which this Corporation will commence business is ONE THOUSAND DOLLARS ($1,000.).

SIXTH: The names and places of residence of the original subscribers to the capital stock and the number of shares subscribed for by each, are as follows:

[fol. 2468]

NAME	RESIDENCE	NO. OF SHARES
E. V. Hall	Dover, Delaware	4
J. M. Townsend	Dover, Delaware	3
M. S. Cook	Dover, Delaware	3

SEVENTH: The existence of this Corporation is to be perpetual.

EIGHTH: The private property of the stockholders of this Corporation shall not be subject to payment of corporate debts to any extent whatever. No transaction entered into by the Corporation shall be affected by the fact that the Directors of the Corporation, or any of them, were personally interested in it; and every Director of the Corporation is hereby relieved from any disability that might otherwise prevent his contracting with the Corporation for the benefit of himself, or of any firm, association, or corporation in which he may be in any wise interested.

NINTH: In furtherance, and not in limitation of the powers conferred by statute, and without prejudice to the right hereby conferred on the corporation to vest additional powers in the Board of Directors and its By-laws, the Board of Directors of the corporation are expressly authorized, except as otherwise expressly provided by law:

1. To exercise all corporate powers, including the sale, mortgage, hypothecation and pledge of the whole or any part of the corporate property, except as otherwise expressly provided by law.

2. To make, alter, amend and repeal By-Laws of the Corporation, and to increase and reduce (but not to less than three (3)) the number of the members of the Board of Directors, and from time to time to make and change rules and regulations, not inconsistent with the By-Laws for the management of the Corporation's business and affairs.

3. To purchase or otherwise acquire for the corporation, any property, rights, or privileges which the Corporation is authorized to acquire, at such price or consideration, and generally on such terms and conditions as they may see fit, and at their discretion, to pay for any property or rights acquired by the corporation, either wholly or partly in money, stock, bonds, debentures or other securities of the corporation.

[fol. 2469] 4. To create, make and issue mortgages, bonds, notes, debentures, deeds of trust, trust agreements and negotiable or transferable instruments and securities of all kinds secured by mortgages or otherwise, and to do every other act and thing necessary to effectuate the same.

5. To sell or dispose of any real or personal estate, property, rights, franchises or privileges belonging to the Company, whenever in their opinion its interests would be thereby promoted, on such terms as they may see fit, and to sell, assign, transfer or otherwise dispose of the whole property of the Company; to appoint any person or corporation to accept and hold in trust for the corporation, any property belonging to the corporation, or in which it is interested, or for any other purposes, and to execute and do all such acts and things as may be requisite in relation to any such trust.

6. To delegate, during the intervals between meetings of the Board, all or any of the powers of the Board to an Executive Committee, of not less than two of its members, or to any officer or agent, and to delegate the duties of any officer or agent to any other officer or agent; to appoint subordinate officers, agents, employees and delegates to have such powers (including the power to choose, remove or suspend subordinate officers, agents, employees or servants, and to sub-delegate) upon such terms as they may see fit; and at their discretion to remove the same with or without cause, and to so remove any executive officer, except the President.

7. To provide for and to pay to Directors rendering unusual or exceptional services to the Corporation, such special compensation appropriate to the value of such services as they may in their discretion see fit.

8. To declare dividends out of the profits of the Company at such times and in such amounts as they may from time to time determine and before payment of any dividend or dividends, to set aside out

of the net profits of the Company, such amount or amounts as they may in their absolute discretion think proper as reserve to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any such other purposes as the Directors may deem beneficial to the interests of the Corporation, to apply the surplus earnings or accumulated profits of the Corporation, otherwise by law to be reserved, to the purchase or acquisition of property to such an extent and in such manner and upon such terms as the Board may determine.

9. To determine, subject to the laws of the State of Delaware, and if allowed, when and under what conditions and regulations the records and books of the Corporation, or any of them, shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are and shall be restricted and limited accordingly.

[fol. 2470] TENTH: Both stockholders and directors shall have power, if the By-laws so provide, to hold their meetings either within or without the State of Delaware, and to have one or more offices within or without the State of Delaware, in addition to the principal office in Delaware, and to keep the books and records of the Corporation (subject to the provisions of the statute) outside the State of Delaware, at such places as may be from time to time designated by the directors or officers.

ELEVENTH: The corporation reserves the right to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on officers, directors and stockholders herein are granted, subject to this reservation.

WE, THE UNDERSIGNED, being each of the original subscribers to the capital stock hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of the General Corporation Law of the State of Delaware,

being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof and supplemental thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals this 4th day of September, A. D. 1928.

E. V. HALL (L.S.)

J. M. TOWNSEND (L.S.)

M. S. COOK (L.S.)

C. H. JARVIS
as to all

[fol. 2471]

STATE OF DELAWARE)
) ss;
COUNTY OF KENT)

BE IT REMEMBERED, that on this 4th day of September, A.D. 1928, personally came before me C. H. JARVIS, a Notary Public for the State of Delaware, E. V. HALL, J. M. TOWNSEND and M. S. COOK, parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively, and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

C. H. JARVIS
Notary Public

[fol. 2472]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 107

Minutes of the First Meeting the Board of Directors of Peruvian Airways Corporation, held at No. 25 Broad Street, New York, on the 6th day of September, 1928 at 10:30 o'clock in the forenoon.

Present:

Messrs. J. T. Trippe
Richard F. Hoyt
R. H. Patchin
William F. Cogswell

Absent:

None.

* * * *

The Chairman stated that W. R. Grace & Co. and the Aviation Corporation of the Americas had each offered to purchase at par one-half of the authorized capital stock of Peruvian Airways Corporation, if, as and when issued, and that each of the said corporations had deposited with him its check for Twenty Five Thousand Dollars ($25,000).

On motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED, that the offers of W. R. Grace & Co. and the Aviation Corporation of the Americas to purchase one-half each of the capital stock of this Corporation at par of One Hundred Dollars ($100) per share be, and they hereby are, accepted, and that the Chairman of this meeting be, and he hereby is, directed to deliver the checks for Fifty Thousand Dollars ($50,000) now held by him in payment for said shares to the Treasurer of the Corporation for deposit with the funds of the Corporation.

RESOLVED, that the officers of this Corporation be, and they hereby are, authorized and directed to issue Two Hundred and Fifty (250) shares of the capital

stock of this Corporation to W. R. Grace & Co. and Two Hundred and Fifty (250) shares of the capital stock of this Corporation to the Aviation Corporation of the Americas, and to deliver to the same duly executed certificates for the said shares.

On motion duly made and seconded, the following preamble and resolution were unanimously adopted:

[fol. 2473] WHEREAS, Aviation Corporation of the Americas, a Delaware corporation, heretofore loaned to Huff-Daland Dusters, Inc. the sum of $11,800 for the purpose of enabling said Huff-Daland Dusters, Inc. to purchase one F-C-2 Type of Fairchild Cabin Monoplane upon the understanding that said Huff-Daland Dusters, Inc. would, if requested by said Aviation Corporation of the Americas, transfer said plane to a corporation proposed to be organized to undertake certain aviation operations in Peru, whereupon such loan from Aviation Corporation of the Americas to Huff-Daland Dusters, Inc. would be cancelled and deemed repaid; and

WHEREAS, Peruvian Airways Corporation has been organized for the purpose of conducting such aviation activities in Peru and has made an agreement with Aviation Corporation of the Americas whereby Aviation Corporation of the Americas will request said Huff-Daland Dusters, Inc. to transfer said plane to this corporation, upon the agreement by this corporation with Aviation Corporation of the Americas to pay Aviation Corporation of the Americas the said sum of Eleven Thousand Eight Hundred Dollars ($11,800);

RESOLVED, that the proper officers of this corporation be, and they hereby are, authorized and directed to pay to Aviation Corporation of the Americas the sum of Eleven Thousand Eight Hundred Dollars ($11,800) upon delivery of the possession of said airplane to this corporation and the execution and delivery by said Huff-Daland Dusters, Inc. of a bill of sale to this Corporation covering said airplane.

On motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED, that the President and the Secretary of this Corporation be, and they hereby are, authorized to issue a special power of attorney in favor of HAROLD R. HARRIS, as manager of the Corporation in the Republic of Peru, conferring upon him all the powers and authority necessary or proper for the effective performance of his duties in that capacity.

RESOLVED, that such power of attorney shall contain an authorization to sign in the name of the Corporation checks and drafts on the funds of the Corporation deposited in any bank in the Republic of Peru, and to sign agreements in the name of the Corporation in the Republic of Peru, without the signature of an additional officer of the Corporation, provided that no agreement or contract under the terms of which there would become payable by the Corporation more than the sum of Five Thousand Dollars ($5,000) shall be signed, executed or delivered without the prior cabled approval of the Board of Directors of this Corporation.

[fol. 2474]

* * * * *

Nominations for officers of the Company for the ensuing year were then called for, and nominations having been made, and ballot having been duly had, the following persons were unanimously elected to the offices set before their respective names:

President	J. T. Trippe
Vice-President	Harold R. Harris
Vice-President	R. H. Patchin
Treasurer	C. G. Bush
Secretary	William F. Cogswell

There being no further business, the meeting adjourned.

[fol. 2475]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 108

September 10, 1928.

MEMORANDUM

To Mr. John D. MacGregor From J. T. Trippe

Confirming our conversation of this morning, and until further notice, all Company negotiations with local Governments in the countries of Central America and in Colombia, Venezuela and Ecuador, S. A., will be handled by yourself. Included in this assignment will be negotiations for concessions and the execution of same.

General Agents, representing the Company in these countries, will report to you, with respect to all matters involving contractual relations between the Company and the respective Governments concerned.

General Powers of Attorney in your favor, have already been issued to you in Guatemala, Salvador, Nicaragua and Honduras. Additional Powers will be issued to you covering Panama, Colombia, Venezuela and Ecuador.

In Costa Rica, because of the time element involved, a general Power has been issued to Mr. Frank Whiting, in order to permit him immediately to negotiate for concessions in this country. When practical, this Power will be recalled, and a general Power issued in your favor.

The General Agents to be designated in these various countries should be delegated Powers by you. This also applies to Powers that will be required by Captain J. E. Whitbeck, in connection with the airway construction work in the various Central American countries. This general plan contemplates having but one general Power in each country and all other Powers issued are to be released under same.

The Company's expansion program contemplates extension of service to Colon on or about June 1st of next year. You will have the responsibility, therefore, of securing and

having ratified, before that date, general Form B Concessions in Honduras, Nicaragua, Costa Rica, Panama and, if possible, Guatemala and Salvador. Where the Form B Concession is unobtainable, Form C Concession, along the lines we discussed this morning, should be negotiated. This does not apply to either Guatemala or Salvador.

Draft of the Form C Concession you would propose, should be prepared by you this week, for us to go over.

In Colombia, further conferences with Colonel Bane and Mr. Wilcox, also with Mr. Kuehl of the SCADTA, should be carried on by you, with the end in view of securing a Colombian operating right and general concession, as cheaply as possible. In this connection, you will be interested to know that the SCADTA apparently believes that their monopoly internal business will permit them to operate coastal air services in their area, cheaper than could Pan American Airways, Inc., operating only coastal service under present mail contracts.

It would, therefore, seem vital that Pan American take over either the SCADTA or some other national Company, having internal operating rights.

Further confirming our conversation of this morning, you should arrange for a secretary to handle your correspon- [fol. 2476] dence in the New York office. Your Secretary would, therefore, be in a position to expedite your work when you will be in the field. Such times as she is not engaged in your particular work, she should be available for general office work.

In our conversation of this morning, we did not refer to extension of service in the West Indies, and South from the Canal Zone. All operations in Mexico will be carried on by a separate Company.

In the West Indies, Mr. Nagle is handling negotiations in Haiti and Santo Domingo. Some assistance may be required from you in the latter country during the month of October and before your departure for Honduras, which I understand will be around the first of November. Word

from Mr. Nagle will be received before the 20th of September, should your presence be required in Santo Domingo during October.

Extensions from the Zone South can be instituted independently of the service from Miami to the Canal Zone. For your information, I would summarize the Company's position in this territory.

Aviation Corporation of the Americas has jointly organized with W. R. Grace & Company, the Peruvian Airways Corporation, a Delaware company, with a paid in capitalization of $50,000. The officers of the Company are:

President	— J. T. Trippe, 100 East 42nd Street
Vice Pres. & Gen. Manager	— Harold R. Harris, Peruvian Airways Corporation, Lima, Peru.
Vice President	— Robert H. Patchen, The Grace Line, 10 Hanover Square
Secretary	— William R. Cogswell, The Grace Line, 10 Hanover Square
Treasurer	— Charles C. Bush, The Grace Line, 10 Hanover Square

This Company is taking over the General Air Mail Concession negotiated by Huff-Daland Dusters, Inc.; also the specific Air Mail Contract between the British Marconi Company and Huff-Daland Dusters, Inc.

Mr. Harris left Saturday, September 8th, 1928, for Lima, Peru, to install mail service between Lima (Callao) and Talara, on the Northern Boundary.

The Company owns one Fairchild cabin monoplane, and will lease other equipment locally. As soon as service has been installed, Mr. Harris will institute a technical and traffic survey with the end in view of the later installation of a through service between Cristobal and Valparaiso.

The plan, however, is contingent, of course, on securing the United States Mail Contract, advertisement for which will not be requested until a further study has been made.

Flying boats and/or amphibians would be used in that section between the Zone and Lima, Peru.

[fol. 2477] We propose to delegate to Mr. Harris, the supervision of flight operations over this route.

Contingent on the securing of a United States mail contract during October or November of this year and the amending of the present Kelly Foreign Mail Act, we should be ready to install service to Lima and to Curacao within a period of fourteen to sixteen months. You should map out your program, securing concessions in these countries with this date in mind.

Pan American Airways, Inc., because of our Government contracts, has been identified in Central America, I fear, as a semi-national Company and, as such, unless we prepare carefully, and long in advance, our concessions are apt to be difficult and costly to secure.

This rough draft should serve as an outline of our present position. Will you study it over and prepare, for me, and for my signature, a detailed memorandum to be addressed to you, covering the various matters touched upon, with the addition of any other points which you believe should be included, in particular, the procedure to be followed with respect to correspondence between myself and yourself when in the field, and the method of handling matters assigned to you in your absence, should be covered.

For your information, I am attaching herewith copy of instructions issued to Mr. Harris, covering West Coast activities.

J. T. Trippe,
President.

JTT:B

[fol. 2478]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 109

[Handwritten notation—Copy—JAH—File]

September 10, 1928.

Mr. John D. MacGregor, Vice President,
Pan American Airways, Inc.,
100 East 42nd Street,
New York City.

Dear Mr. MacGregor:

This morning Dipl. Ing. Hermann Kuehl, representing the SCADTA, called at this office, in company with Dr. Von Bauer's secretary, who I understand is in charge of their interests in New York City.

In the course of the conversation, Mr. Kuehl stated that SCADTA were no longer interested, at this time, in negotiating with Pan American Airways, Inc., and would not be, until Panama was open to commercial aircraft. He limited this statement, however, by advising me that the SCADTA would be willing to negotiate an agreement with Pan American Airways, Inc., whereby the sphere of operations of each line were limited, so as not to directly compete with each other.

Pan American Airways, Inc., would, under such a plan, recognize as SCADTA territory, the seacoast from the Canal Zone to Curacao on the North Coast, and from the Zone to Guayaquil, on the West Coast.

I advised him we could not entertain such a proposal, and that my only interest would be in continuing negotiations along the lines proposed last year by Dr. Von Bauer, namely, the outright purchase, by our Holding Company, of SCADTA stock. Mr. Kuehl again reiterated they were not interested in any further discussions along these lines.

He frankly stated that their position was daily becoming more secure in Colombia, Ecuador and Venezuela, and that we could not estimate or value their position at this time.

In part, he advised that the SCADTA was ready, on twenty-four hours notice, to commence service to the Canal Zone and to Curacao, but that he knew the United States Government would not permit them to land in Panama or the Zone until we were ready to extend service. I told [fol. 2479] him I did not know anything about this, but that, in all probability, we would not be ready to operate to the Zone much before the middle of next summer.

He left with me his card and room number at the Pennsylvania (Room No. 216), suggesting we talk again before he leaves for Germany about the 20th of September.

Inasmuch as he stated that the SCADTA or Dr. Von Bauer personally would not entertain further negotiations at this time, we are free and clear of any obligations, moral, or otherwise, to negotiate further with Dr. Von Bauer. In fact, Mr. Kuehl was quite independent in his attitude, stressing the fact that his call was purely one of courtesy and that in no event did he wish to discuss intercorporate relations, except as set forth above.

I questioned him about possible competition from Wilcox's Company. He treated this whole matter as a joke, and stated that SCADTA feared no competition in the territory it claimed for itself.

I would suggest we arrange another meeting with Mr. Kuehl, when you can be present.

Yours very truly,

J. T. Trippe,
President.

JTT:B

[fol. 2480]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 110

September 11, 1928.

Mr. Richard F. Hoyt,
25 Broad Street,
New York City.

Dear Dick:

Yesterday, Dipl. Ing. Hermann Kuehl, representing SCADTA and Dr. Von Bauer, together with Dr. Von Bauer's personal secretary called, to suggest an arrangement whereby Pan American Airways, Inc., would agree not to operate between the Canal Zone and Curacao, and the Canal Zone and Guayaquil, Ecuador, respectively.

I advised him that any such proposition could not be considered, owing to our United States Mail Contract situation.

Mr. Kuehl was unwilling to consider any other methods of cooperating in South America at this time. I told him of our desire to reach a mutually attractive agreement with SCADTA, if in any way possible. He appreciated our motives, but stated nothing could be done at this time, or within the next six to twelve months.

We discussed technical operating problems for several hours.

I plan to see him again before he leaves for Berlin next week.

I consider this conference relieves us of any moral obligation to attempt further to cooperate with Dr. Von Bauer, in preference to making any other arrangements for concessions in his territory, and have so advised Mr. Grosvenor, as per the attached copy of my letter to him of yesterday, which I am sending for your files.

Sincerely,

JTT:B
Enclosure.

[fol. 2481]

PAN AMERICAN WORLD AIRWAYS, INC., EXHIBIT 111

September 11, 1928.

Mr. R. B. Bevier,
54 Franklin Street,
New York City.

Dear Dick:

I am attaching, herewith, for your information, copy of a letter of instructions handed to Mr. Harold Harris, before he left for Lima last Saturday.

We attempted to hold a Board Meeting last Thursday afternoon, to formally consider and act upon a proposition to jointly develop with the Grace interests, Air Service on the West Coast. Inasmuch as you were in Cleveland, we were unable to secure a quorum, and the matter will have to be considered and confirmed at our next meeting.

Mr. Priester hired Walter White as Field Manager for Havana or Camaguey, last week. Before he left, he came into my office and told me of some difficulties he was having, which I would like very much to talk over with you. Needless to say, I could offer him no encouragement in any of his personal troubles.

I tried to reach you on the telephone this morning, and am awaiting with much interest to hear news of your Cleveland trip.

With kind personal regards, I remain,

Sincerely,

JTT:B
Enclosures

fok 2482

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 112

AVIATION CORPORATION OF THE AMERICAS

100 East 42nd Street—New York

September 20, 1928.

Mr. William P. Cogswell,
W. R. Grace & Company,
10 Hanover Square,
New York City.

Dear Mr. Cogswell:

Following our telephone conversation this afternoon, I would suggest that a cable be dispatched to Harris, via your Lima Office, as follows:

"DISPATCHES INDICATE HUFF DALAND INAUGURATED SERVICE. CONFIRM PREVIOUS INSTRUCTIONS ANY SUCH OPERATIONS HUFF DALAND ACCOUNT. UNDERTAKE NO OPERATIONS PERUVIAN AIRWAY ACCOUNT UNTIL CONCESSIONS TRANSFERRED. DELIVERY FAIRCHILD BEING HELD PENDING AVIATION CORPORATION INSTRUCTIONS PERUVIAN AIRWAYS. TRIPPE."

For your information, I am also attaching copy of my letter to Mr. Patchen, under even date.

We have not yet received the information from the Radio Corporation relative to transmitting stations on the West Coast. I have followed this matter up and expect to receive same tomorrow.

As stated over the telephone yesterday, copy of Major Dargue's report to W. R. Grace & Company, relative to the proposed West Coast Service, would be of interest, in completing the estimates now under way.

Very truly yours,

(sgd) J. T. TRIPPE
J. T. Trippe

JTT:B
Enclosure

Del 2483

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 113

POST OFFICE DEPARTMENT

Second Assistant Postmaster General

Personal & Confidential — Minneapolis, Minn.

October 4, 1928.

Dear Mr. Trippe:

The enclosed article cut from the New York Tribune, has been sent to me, from Washington. The issue was Oct. 3. The Post Office Department is getting dam sick and tired of the endless publicity, that is being thrown out, telling of all the wonderful things being done for Air Mail contracts and operators, by other government departments, with no mention of the Post Office Dept: and this last one is a joke. If it was not for the above department there would be no Aviation Corporation of America, or Pan American Airways either: This is not only true of the aviators end, as far as Mail contracts are concerned, but it is true of mail contracts on American ships sailing the seven seas. If any one has stood for progress of these two forms of contracts it has been my chief, the Postmaster General.

Now to have an article come out such as this, plainly evident carefully prepared, it gets under our skin. Please do not think I object to its omission of my name. I can get all the publicity necessary for me, but the lower marked paragraph is a *joke*.

When I see you, will give you some more. No wonder the Big chief gets sore. Who in hell has the money for these contracts. You know as well as I do.

Yours very truly,

(Signed) W. IRVING GLOVER

2568.

(fol. 2484

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 114

November 23, 1928.

Richard F. Hoyt Esq.,
c/o Hayden, Stone & Co.,
25 Broad Street,
New York City.

Dear Mr. Hoyt:—

I had a very pleasant talk with Mr. Struthmann who is willing to do everything he can in the matter of seeking the concession from the Argentine Government. He seems to think it is a matter for an effective lawyer and had one of your own people in mind.

Since talking to him I learned from one of our South American officials that Mr. Vincente Lopez, who recently retired from the position of Procurador General of Argentine and who is a very eminent lawyer whom we have employed in the past, is available (by reason of his retirement from the Government) to undertake such a task. He has served under and is personally friendly with the last three Presidents of Argentine, including the new president, Senor Irogoyen.

I know Mr. Lopez personally and he is certainly a live wire and has great influence not only on his own account but also because his grandfather was one of the great Argentine patriots. I think he, with the assistance and co-operation of your people would probably be very effective and Mr. Struthmann thinks we ought to try to get the support of Carlos Thornquist, who is, of course, splendidly situated to help if he desires.

Very truly yours,

R. H. PATCHIN

[fol. 2485]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 115

November 24, 1928

Effective from the date of inauguration of service on Air Mail Route No. F.A.M. 5, from Key West, Florida to Cristobal, Canal Zone, the route is changed to begin at Miami instead of Key West, Florida; pay at the contract rate to be based on the Mileage from Miami accordingly.

Mileage for the entire route to be stated in a subsequent Order.

W. Irving Glover
Second Assistant
Postmaster General

[fol. 2486]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 116

November 27, 1928.

VIA AIR MAIL

Mr. C. V. Whitney,
Hotel St. Regis,
Mexico City, Mexico.

Dear Sonny:

I was sorry not to have been able to return to your office last Friday in time to reach you before you left for New Orleans.

No doubt Francis gave you a summary of developments and advised that I was mailing a preliminary report of developments to you at Mexico City, via Air Mail.

We are having some difficulty with Grace in persuading them to push the West Coast extension operations and request an immediate advertisement, which I feel should be our procedure, in view of competition both in the Argentine and, perhaps, in the States. We expect to meet again today for the final decision.

You no doubt have seen the releases covering the christening ceremonies in Washington last week. We ran into some hard luck, but, on the whole, I believe the results were satisfactory.

As you know, the F-10 to be christened was damaged on the manufacturer's test flight, and it was not until about fourteen hours before the ceremony was actually to take place that we knew the ship would not be available.

We took up with the Pan-American Union and Officials of the Government, the question of whether or not it would be best to cancel everything or go ahead with a substitute ship. They were all unanimous in the opinion that we should go ahead.

We had an all-night session getting the substitute ship, pilot and crew, down in time, but succeeded and the exercises at the Field went off very smoothly indeed.

I am enclosing herewith additional data which I have been able to secure covering Air Mail developments in Mexico, as follows:

1. Confidential reports from the Agent of the Ward Line, dated October 19th and November 6th, respectively.
2. Memorandum covering the general situation in regard to Air Transportation Concessions and Air Mail in Mexico.

Be sure to advise us fully relative to your negotiations with Rihl and a general summary of conditions, in order that we may have same as soon as he reaches New York, which should be December 6th.

With best regards,

Sincerely,

JTT/s
Enclosures

[fol. 2487]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 117

W. R. GRACE & CO.
NEW YORK

November 27, 1928.

Memorandum for Mr. Hout:

I have been working on the Pan American Airways estimate of capital investment and operating expenses of Colon-Valparaiso air transport service. The Pan-American Airways estimate is based on three round trips a week, total capital investment $1,689,000., annual operating costs $1,971,000., operating cost per mile $1.69 and estimated mail revenue from three trips weekly $1,060,000., leaving approximately $900,000. annually to be made up from passengers and mail pay from South American countries. In our opinion this or anything like it is impossible of accomplishment on the West Coast of South America.

We have approached the question from seeing how inexpensive a service of one trip per week could be established as a beginning.

Mr. W. L. Jacob who is a pilot and was a squadron commander in the late war and who spent five years on the West Coast as a mining engineer and mine operator and is familiar with cost of skilled and unskilled labor, building construction, etc., there, has prepared the attached estimate based on flight equipment with ample spare planes and spare engines and a minimum of ground organization.

The idea underlying this estimate is that the route should be divided into three divisions, each of which should be in charge of a manager responsible for that division and that the considerable resources of W. R. Grace & Co. and the mining, industrial, engineering and shipping companies should be drawn upon for mechanics except for two chief mechanics to be sent from here.

[fol. 2488] This contemplates part time employment of resident mechanics who would otherwise have to be transported from the United States with no certainty of their

efficiency or permanency after arrival. The Peruvian and Chilean armies and navies and the flying force at the Canal have considerable mechanical force. As you know, the industrial operations of American companies in Peru and Chile are highly developed and internal combustion engines are an old story to them. For instance International Petroleum Co. has extensive shops at Talara and have offered to give us repair facilities. W. R. Grace & Co. have considerable engineering and mechanical staffs all along the Coast. Clerical assistance, business management, book keeping, etc., can be arranged with Grace on a part time basis thus giving the service of staff already in the country and sure to remain there. This saves transportation expense and salary account.

The net result of this estimate is that we see a possibility of providing a weekly service for a capital investment of $200,000. (in addition to the capital already invested in the Peruvian Airways Corp) total annual operating costs including depreciation, obsolescence, and interest, of $202,000., or roughly 80¢ a mile. We are working up an estimate based on multi-motored planes.

Annual revenue from U. S. postal contract on one trip a week is estimated at $7,000. per outward voyage or $364,000. a year so that even with an increase of operating costs over the figures given here, such service could be made to pay on the mail contract alone, leaving fair profit out of passenger and local mails. Two months operations Peruvian Airways shows costs of 58¢ a mile, revenue 43¢.

I send this estimate for your information and comment as a preliminary to further discussion.

RHP.C
(Sgd) R. H. Patchen

[fol. 2489]

Weekly Service Panama—Valpo.
Distance 3,500'
Flown Annually 364,000 miles
— 3,822 hours

CAPITAL INVESTMENT

FLIGHT EQUIPMENT

2 Loening Amphibians	at	20,000	40,000	This equipment in addition to Fairchild now in Peru. This fleet substantially exceeds requirements for one flight weekly.
3 Cyclone engines	at	5,280	15,840	
5 Monoplanes 4 pass.	at	12,980	64,900	
7 P&A. Wasp engines	at	5,000	35,000	
7 Misc. equip.	at	500	3,500	
Spares			5,000	
			154,240	
Less discount for quantity estimated			13,000	
Total Cost Equipment			141,240	

Bases: Colon, Lima, Valpo.

Temporary Hangars	at	3,000	9,000	No rain from Talara to Chanaral. Lightest form of hangars etc will suffice, very inexpensive. Arrangements can be made to use Army Navy repair facilities at Canal. It is not the policy of gov't to permit private shops for shipping repairs and we understand same rule will apply to aircraft.
Gas Pumps & Tanks	at	1,500	4,500	
Tools, fire extinguishers, etc	at	500	1,500	
			15,000	

Intermediate Stops (7)				
Gas Pumps & Tanks	at	500	3,500	
Capital Expense				
Field Improvements (6)	at	1,000	6,000	
Transp. of personnel	at	500	3,000	3 pilots and 2 mechanics
Tel. & Tel.			500	other mechanics to be
Freight on Equipment				employed locally, or re-
5% value			7,000	cruited from Army
				Navy base at Canal.
			16,500	176,240
Contingencies			8,760	
Working Capital			15,000	
				200,000

[fol. 2490]

OPERATING COSTS ANNUAL

New York Overhead, with Legal		15,000	15,000
Section Organization (3)			
Managers (3)	at	10,000	30,000
Regular Clerk	at	2,400	7,200
Legal		500	1,500
Stenographer (part time)		600	1,800
Printing & incidentals		500	1,500
			42,000
Intermediate Ports (11)			
Clerks (part time)		600	6,600
Expenses (per week)		520	5,720
			11,320
Flight Organization			
5 Pilots	at	6,000	30,000
5 Flight Mechanics	at	3,600	18,000
5 Mechanic helpers	at	2,400	12,000
			60,000

Supplies & Repairs		
Airplane spares at $2 hr.	7,644	
Engine spares at $3 hr.	11,466	
Fuel at $15 l. hr.	57,330	
	76,440	204,760
Insurance (Flight)	30,000	
Depreciation & Obsolescence:		
Planes (2,000 hrs).	25,900	
Engines (1,000 hrs).	19,450	
	45,350	280,110
Interest on Investment 6%	1,200	292,110
Cost mile		.80
Indicated Profit on U. S. Mail		71,890

[fol. 2491]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 118

copy

Letter #31

Lima,

December 5th, 1928.

Peruvian Airways Corporation.
NEW YORK.

Dear Sirs:—

Mr. Hoover spent a half hour with me here together with Ambassador Moore and Capt. Crow on the question of U.S. air mail operation from the Canal Zone south. His idea is that airways should be operated by the various Governments concerned and in his speech last night he recommended that a conference of the various countries along the route should be arranged in order to assure the installation of the proper air ports and air way facilities at the expense of the various Governments concerned.

He believes that the operation of the line, however, should be in the hands of private individuals such as ourselves. Considerable discussion brought out the fact that he favours night flying along such portions of the route as are safe for that type of operation because of the necessity for additional speed in their transportation of mails and passengers.

He was very pleased with the operating schedule which I showed, which is schedule C of my report to Trippe dated August 5th entitled "Details of airline on West Coast of South America."

Various local conditions on the route from the Canal to Guayaquil were discussed with him and although he seemed to favour land machines for this operation at first, upon being informed on the physical situation and operating conditions as well as the fact that the Pacific Ocean is never rough enough to endanger amphibians or sea planes [fol. 2492] he seems to agree that some type of water machine would be more desirable.

He requested information as to the possibility of local traffic and the likelihood of the line being self supporting. He was assured that local traffic would not pay but he assured me that the U. S. Government would liberally subsidize our air mail operation.

His ideas were that we should secure nonexclusive concessions for the operation in foreign countries concerned with U.S. Government assistance and by means of allocation to us of U.S. air mail contract securing sufficient income to assure us of actual exclusive operation since the larger part of the cost would be born by the U.S. air mail contract.

He asked what I believed to be the ways in which the U.S. Government could help us at the present time and I gave him the following:

1. Keep all foreign countries out of the Panama Canal.

2. Assist us in the foreign countries concerned, with the securing of our concessions.

3. Advertise a Canal to Valparaiso air mail contract in the near future.

4. After the contract is advertised and let, then let the Senate confirm the Havana Aviation Committee.

5. By diplomatic arrangements see that time and expense of clearing border stations on international boundaries be minimized.

Mr. Hoover is anxious that the line go from the Canal to Buenos Aires and seemed to be satisfied that the W. Coast was the only logical route.

He spent some time questioning me on the feasibility of the Santiago, Buenos Aires operation which I assured him [fol. 2493] was perfectly feasible and that I believed that the Latacoere had some sort of contract with the Chilean Government with regard to this line.

Mr. Hoover closed with the congratulatory statement that he had no idea that the line had been so thoroughly worked out and believed had laid the fundamentary ground work which was a great step in advance towards the completion of the air mail line.

As soon as possible I plan to go to Ecuador and attempt the initiation of a concession but believe no time should be lost in purchasing at least one and better two additional planes with a higher cruising speed than the Fairchild that we now possess and a greater cabin capacity and in addition it would be necessary to secure floats for our present Fairchild if it is to be used for the Guayaquil shuttle service.

At the present time we are skating on extremely thin ice in attempting an operation of the character we are now carrying out with only one airplane since the entire operation is likely to suffer a severe set back if the airplane for any reason is damaged.

Yours very truly,

PERUVIAN AIRWAYS CORPORATION

H. R. HARRIS (Signed)
Vice President and General Manager

[fol. 2494]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 119

December 22nd, 1928.

OPERATING HISTORY OF PAN AMERICAN AIRWAYS, INC.

Pan American Airways, Inc., was incorporated under the Laws of the State of New York on March 14th, 1927.

On July 19th, 1927, the Company entered into a contract with the U. S. Post Office Department to transport, by Airplane, all first-class mail between Key West, Florida, and Havana, Cuba. This was the first, and for the next year the only air mail contract to a foreign country.

On September 8th, 1927, a contract was secured from the Government of Cuba, to transport Cuban mail to the United States.

A first-class Airport was constructed at Key West, which was designated as the first Airport of Entry in the United States.

On October 28th, 1927, daily service was inaugurated between Key West, Florida, and Havana, Cuba.

Tri-motor Fokker, cabin monoplanes, equipped with Wright "Whirlwind" motors were used as regular equipment.

Until September 15th, 1928, when the service was extended from Key West to Miami, all the United States mail to Cuba was handled with 100% regularity. On the Northbound service, two flights were not completed; in one case the ship returning to Havana because of weather conditions, and in the second case, although equipped with radio, the ship missed Key West and was forced to land in the water fifty miles off Tampa—with the loss of one passenger. This accident was entirely due to lack of radio facilities at Key West, the installation of which, under the Department of Commerce, had been somewhat delayed—for reasons beyond their control.

In July, 1928, Pan American Airways, Inc., was awarded additional U. S. Mail Contracts to Porto Rico, with options to extend to Trinidad; and to the Canal Zone, and with further options to extend along the coast of South America, via Colombia, Venezuela and Trinidad, to Brazil.

[fol. 2495] In October, 1928, the Company was awarded mail contracts to Nassau, Bahamas.

The United States terminus for these contract routes was made Miami, Florida, at which point the Company has constructed a large, modern airport, with complete facilities. It is believed that this Airport, now practically completed, is the most modern in existence at this time.

The Service to Nassau will be inaugurated on January 2nd, 1929; to Porto Rico, January 9th, and to the Canal Zone on January 11th.

For your information, I am attaching herewith photographs and views of the Company's Passenger Terminal, hangars, and other structures.

In January, 1929, the Company's fleet of aircraft will include:

6 Tri-Motor Fokker F-10-As, with 400 h.p. Wasp Motors.

1 Ford large wing Tri-motor, with 400 h.p. Wasp motors.

2 Tri-motor Fokker F-8s, with 200 h.p. "Whirlwind" motors.

2 Twin-engined Sikorsky Amphibians, equipped with Wasp motors

3 Loening Amphibians, equipped with 500 h.p. Cyclone motors.

1 Keystone tri-motor, equipped with 200 h.p. "Whirlwind" motors.

During the past year, the work preparatory to placing these routes in operation, has been sub-divided under the following headings:

(a) Securing the necessary operating rights and legal standing in the several countries over which service will be maintained. In the absence of any general Aviation Convention, contracts between the Company itself and the various governments have had to be negotiated, executed, and ratified.

It was essential that such contracts be as broad as possible, permitting absolute freedom of action, on the one [fol. 2496] hand, in fixing rates and tariffs, and providing freedom from taxation, import duties, and similar restrictions, on the other hand.

License to erect and maintain necessary radio apparatus for ground communications and air navigation, without interference from existing concessions or laws, was also essential.

The Form "B" concession, attached herewith, was drafted after long and careful study, to cover these requirements.

A proposal has not yet been submitted to Panama, at the request of the State Department, owing to the extremely delicate local situation.

In British Honduras the Form B cannot be had, owing to conflict with certain British Imperial Treaties and laws. The situation is described hereafter.

For your information, I am attaching copy of the general form of concession used.

(b) Simplification of Clearance Procedure.

The Inter-Departmental Committee, under the Chairmanship of Assistant Secretary of State, Francis White, has been closely cooperating with the Company in extending service to Central and South America for the past year.

A sub-Committee of the Inter-Departmental Committee has been working for the past seven months with representatives of the Company in formulating adequate regulations to cover the clearance of aircraft in international service.

A year ago, thirteen different forms were required to be executed before an aircraft could clear for a foreign port. Actual direct fees varied from $34.00 on a week-day to approximately $71.00 on a holiday.

The new regulations, which are being released this week by the four Departments concerned at Washington, will reduce the thirteen forms to but three, and entirely doing away with fees. The new American regulations are being used as a model by the other Republics in Central and South America.

We expect very shortly that suitable regulations will be enforced in all the countries North of the Zone, and in addition, in Venezuela, Perú and Chile. The few remain- [fol. 2497] ing countries have also indicated that they will follow along very shortly.

International Air Commerce between more than two or three countries would have been impossible until this important change, removing aircraft from marine clearance regulations had been completed, following a year's patient missionary work by Pan American Airways, Inc.

(c) Installation of International Airway:

In the United States the Department of Commerce, under the provisions of the Air Navigation Act, constructs and maintains the Airway, as well as all aids to Air Navigation. In the foreign field, Pan American has had to construct its own airway. This important work has been proceeding over a year, under the direction of Mr. J. E. Whitbeck, the Company's Airways Engineer. I attempted to cover the difficult problems connected with the establishment of an International Airway in a paper which I was asked to read before the International Civil Aviation Conference in Washington last week. I am attaching a copy of this paper, for your information.

(d) Radio communications are essential to the proper control and guidance of aircraft, especially so when flying over sparsely settled routes in Central and South America.

Pan American, many months ago, entered into a joint agreement with the Radio Corporation of America to de-

velop adequate ground and aircraft apparatus. It is believed that the apparatus which has been developed during the past nine months is equal, if not superior, to any in service on the large European lines. This equipment, completely developed, is now available to the whole United States Air Transport industry.

The Pan American organization has been laid out to permit of the adding of additional Operating Divisions as the system expands.

Division Headquarters for routes radiating from Miami to Nassau, to Havana, to Panama and to Porto Rico, are maintained at Miami.

For some months past, the Company has been making arrangements for service in Mexico, through the medium of the Mexican Aviation Company, which Company now operates a regular service between Tampico and Mexico City, and between Tampico and Merida, Yucatan—a stop on the Canal Zone.

[fol. 2498] The Bill now pending before Congress, which would amend the March 8th Act, under which all existing Pan American contracts have been let, would permit of American mail being handled in Mexico over this route.

In his annual message to the President, Postmaster General New has favorably mentioned the Bill, and from present indications, it will be given every consideration at the current short session of Congress.

Pan American, early last summer, undertook jointly with W. R. Grace & Company, to extend its service on the West Coast of South America to Valparaiso and Buenos Aires. This arrangement was made to insure receiving for the Transport Company the full benefit of the local Grace Houses scattered along the West Coast.

Other routes in South America, along the North and East Coast, together with possible extensions to the interior of Brazil, Venezuela and Colombia, are being handled by Pan American alone.

For nearly a year, a thorough technical and economic air survey of South America has been carried on. Contracts covering the transportation of Northbound mail, as well as full operating privileges, are pending at many points.

Actual service in Peru, between Lima and Talara—a distance of 680 miles—has been under way since September 15th. It is expected that the service will be extended to Guayaquil, Ecuador, and Valparaiso, Chile, within the next six weeks.

To date, no operating rights for Colombia have been available, owing to the existing difficulties between that Government and the United States, resulting from the Canal Zone authorities having refused, for three years, the request of the German Colombian Company to operate through Panama and land at the Zone.

As soon as a solution to the Colombian impasse has been reached, either by the ratification of the Pan American Aviation Convention by that country, or an exchange of privileges between Pan American and the SCADTA, it will be possible to link up the present service on the West Coast to the Pan American system at the Zone, thereby insuring through service between Miami and Mollendo, Peru, or Valparaiso, Chile.

To properly connect the Pan American system with the domestic transportation system in the United States, the Eastern Atlantic Coast Line and the Florida East Coast Railroads have changed train schedules. Both of these roads are substantial stockholders in Aviation Corporation of the Americas, the Holding Company for Pan American Airways, Inc.

Through International air rail tickets to Nassau, Cuba and the West Indies will be on sale January 2nd, 1929, at all points on these lines and on their six affiliated rail roads, which include the huge Pennsylvania System.

Pitcairn Aviation, Inc., the domestic connector for the routes between New York and Miami, will inaugurate first

section—that between Atlanta, Georgia and Miami, Florida, in operation January 1st, 1929, thereby linking the Pan American System with the domestic Air Mail System in the United States.

[fol. 2500]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 120

COPY

December 24th, 1928.

Col. Henry Breckinridge,
455 East 57th Street,
New York City.

Dear Colonel Breckinridge:

Supplementing my memorandum to you of yesterday afternoon, I would submit the following information which, I believe, was not adequately covered in that memorandum:

Pan American Airways, Inc., holds the following mail contracts with the United States Government:

Contract No. 4, which expires July 1st, 1933, to carry United States Mail from Miami, Florida, to Havana, Cuba.

Contract No. 5, to carry United States Mail from Miami, Florida, via Cuba, Yucatan, and Central America, to the Canal Zone, *in both directions*, with options to extend from the Zone along the North Coast of South America as far as Brazil.

Contract No. 6, from Miami, Florida, via Cuba, Haiti, Santo Domingo, to San Juan, Porto Rico, *in both directions*, with option to extend along the Windward Islands to meet the other extension of Contract No. 5 at Trinidad.

Contract No. 7, from Miami, Florida, to Nassau, Bahamas.

The three major contracts—Nos. 5, 6 and 7, run for a period of ten years. Payment is at the rate of $2.00 per

airplane mile over the practical airway route selected by the contractor.

The mail load to be carried is limited to 800 pounds, thereby providing substantial payload capacity for passengers, express, and other cargo.

Last week the Department accepted the Company's proposal to carry Air Mail at a high surtax, rather than first [fol. 250] class mail over these routes. The surtax on mail to the Zone will be 25c per ½ ounce, which will net approximately $5,000,000 when the load reaches 500 pounds, or $2.00 per airplane mile for the 2,500 mile airway flight to the Zone. In this way, we expect the Government would get back, after a reasonable period of educating the public, the full $2.00 per mile it pays Pan American.

The system would not then be dependent on what practically amounts to a Government subsidy, but rather it will pay its own way.

Additional appropriations to cover the large number of feeder lines the Company plans to establish and operate in South America, should then be easily available.

The payments which will be received from the United States Government alone, under all the existing contracts with the Company, should aggregate Six Million Dollars per year. This amount will serve as a substantial "Backlog" to cover operating costs.

The Company will receive the following additional mail revenue:

(a) From all International Air Mail Traffic between the various countries served by our routes.

(b) All revenue from mail consigned to the United States, including transit mail to Canada and Europe.

With respect to item "b" above, the Post Office Department has agreed not to negotiate with South American countries for carrying their mail between the Canal Zone and the United States. This might be done, for Pan American is under contract to carry up to 800 pounds of

mail from the Canal Zone North, on a daily schedule, and our Government might well negotiate with the South American Governments to carry their mail from the Zone to Florida up to the 800 pound limit.

The Company can and has taken the position of submitting proposals to large South American countries to carry mail all the way to the United States. Our Company's counsel, Mr. Elihu Root, Jr., feels that there is some doubt under the existing act of May 8th, as to the authority of the Department in contracting for return mail from the Canal Zone and Porto Rico.

[fol. 2502] On the other hand, the Post Office Department officials feel that the chances of the Comptroller not passing our vouchers for this service, in his estimation are very slight indeed. Nevertheless, it is a hazard and I feel you should be fully informed of this situation.

To remedy the loose language of the existing Act, a new Bill, which was drafted by the Post Office Department after conferences with the Company, has been introduced as an administrative measure. We have been informed that it has every chance of passage at the current short session. I am attaching copy of the existing Act and the proposed Bill.

The most serious difficulties confronting the Company in extending its service throughout South America is the possibility of losing the Northbound contracts from Chile, Argentine and Uruguay.

Beyond the Canal Zone, United States Mail Contracts can be had only on a one-way haul basis. Were the Luft Hansa or the Aero Postale to secure the Northbound contract on a long term basis, as they have already secured the Eastbound mail to Europe, the situation would indeed be grave.

The Company, assisted by the State Department, is making every effort to get these contracts which are the economic key to the South American situation.

We expect favorable action to our proposed concession now pending in Chile within thirty days.

The arrangements we are proposing, for your consideration, would also be of inestimable value in speedily securing operating rights in Colombia, and the Northbound Argentine and Uruguayan Mail Contracts.

As soon as these two single matters are cleared up, I feel the Company, in cooperation with Grace, can immediately extend the type of American Air Transport Service to all South America, which our plans contemplated.

The service that would then become immediately available is exactly what the Administration desired a year ago, when the Pan American program was adopted.

In closing, I would advise you that much time has been spent in attempting to clear up the highly competitive and delicate situation which has existed in Colombia for some time past.

[illegible] personally went to Berlin in October to see the Directors of the SCADTA and there attempted to purchase the control of this Company, offering substantially more than what the Company was worth as a going business. For political reasons, however, nothing came of these negotiations, and we must plan through Colombia in the face of competition from this well entrenched German Colombia.

The terms of the Versailles Air Convention of 1919, to which Great Britain is a party, precludes an American plane from flying through and over British Honduras—a Crown Colony. Here, also, after many negotiations in London and Washington, not only formally through the State Department, but informally with the Colonial Office, the Air Ministry, and Post Office, we have been able to arrive at a solution of the difficulty by persuading the British Government to construe the clause "... temporary permission ..." to mean not a single flight, as heretofore was the case, but "permission to operate for a period up to five years, with renewal for similar periods subject to the consent of the British Government."

I am sorry I did not include the additional data in my memorandum sent you yesterday afternoon. However, I am

sending this to your office, for your confidential information by messenger, and hope it will reach you in time to be of service.

Sincerely,

JTT/s

[fol. 2504]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 121

Havana, Cuba
Sevilla Biltmore Arcade
Telephone A-2222

Key West, Fla.
La Concha Hotel Bldg.
Telephone 377

PAN AMERICAN AIRWAYS, INC.
General Offices
100 East 42nd Street—New York City

January 5, 1929.

Mr. H. Case Willcox,
25 Broadway,
New York City.

Dear Sir:

This will confirm our verbal conversation concerning the retention of your services in our interest as follows:

You are to proceed to the Republic of Colombia and to use your best efforts in our interests to secure and to put into execution the program of air service which we have discussed to be introduced in the Republic of Colombia. You are to especially use your best efforts along the following lines:

(1) To conclude all preliminary transfers, contracts, options, etc. in New York City and also such as are required in the Republic of Colombia, to place the Aviation Corporation of the Americas, Inc. in a position to own or control 100% of the capital stock of the Colombian Aviation Corporation at Bogota and on such portion of stock as is optioned to arrange that we may,

if desired, exercise these options completely at any time up to January 1st, 1930.

(2) Upon the conclusion of the foregoing, you will at once endeavor in Colombia to place the Colombian American Aviation Corporation in the field as an active aviation company. Additional funds over and above the $10,000.00 originally contemplated to be expended, which shall be required from time to time by the Colombian American Aviation Corporation, may be advanced by A. C. A. through loans against interest bearing demand notes. You will at all times keep in mind that to all outward appearances the Colombian American Aviation Corporation is to function as a separate Colombian Aviation Company supported by strong American aviation interests.

In other words, neither the A. C. A. nor the Pan American Airways, Inc. are to be thrust forward or injected into the foreground until you are instructed to do so by myself or another executive officer of the Pan American Airways, Inc.

(3)(a) You will arrange to secure such legal permits and formalities that are required for the Colombian American Aviation Company to operate between some point to be designated on either the Panamanian-Colombian frontier or on the north coast of Colombia, and proceeding southerly to the Colombian Equadorian frontier. It is desired that you clearly understand that this service may be supplemented on both ends by foreign air service furnished by other of our subsidiary companies.

~~[fol. 2505] (b) As soon as you inform our New York office by cable that the necessary franchises or permits have been secured for the Pacific Coast Service, I will cable to the point where we will arrange to have a seaplane, pilot, and mechanic in waiting to be sent to the Colonel an entry point in accordance with the plan between us, which will be formulated in a separate letter.~~

J.T.T.

(c) We will make arrangements with the heads of the Colombian Steamship Service and also with Captain W. J. Flannagan, President of the Andian National Corporation of Toronto, with a view that they may offer you such facilities to assist you in the projection of our program.

(d) Formal notification will be made through the State Department to the American Minister, resident in Bogota, that you are a properly accredited representative of an affiliated or subsidiary aviation company of the Pan American Airways, Inc.

(e) You will endeavor to secure an air mail contract from the Colombian Government at $2.00 per flying mile (or the relative value in flying kilometers) over the route known as the Magdalena River Service.

(f) Unless instructed to the contrary by us you will endeavor to secure an air mail contract for a service with right to carry passengers, etc. over a route which we have previously mentioned as the Interior City Circular Land Plane Route, provided no commitment be contained in said contract as to the date of commencement of regular scheduled service other than that of an obligation on the company's part to push the preliminary technical surveys of this route.

(g) To secure an air mail and passenger service along the North Coast of Colombia between the Panamanian and Venezuelian frontiers when authorized to proceed upon this negotiation by us.

4. In brief, you will endeavor to place the Colombian American Aviation Corporation in such a position in Colombia that it will be practically the major mail contractor to the Colombian Government.

******

All letter communications to you will be contained in sealed envelope addressed to you and contained in a larger

sealed plain envelope which is addressed to Mr. Samuel Haskell, General Manager of the Texas Corporation, Apartado Aereo 3622, Bogota, Colombia. All important mail to you will be addressed in this manner and will be stamped with Scadta air mail stamps which we understand we can purchase at the Interamerican Aerotravel and Supplies, Inc., 11 Broadway, New York City. Mail or letters of minor importance and on which it is not necessary that there be such great speed, we will enclose and send to the same party but with the following change in address: Samuel Haskell, General Manager, Texas Corporation, Apartado Postal 877, Bogota, Colombia. On this latter mail we will place the ordinary U.S. postage stamps which are required for mail to Colombia.

[fol. 2506] In communicating with us by cable you will address us as PANAIR, NEW YORK. In communicating with you by cable we will address you HECAWOX—BOGOTA. All cables to you from us will be signed by the relative secret code five letter combination of the sender. Until further notice Bentley's Complete Phrase Code will be used with a private supplementary code which will be handed to you as enclosure in this letter.

All air mail sent to you will be duplicated by copies sent by ordinary mail once per week and you will follow the same procedure in communicating with us.

You will address all of your mail communications in a sealed envelope addressed to us but contained in a plain white envelope addressed to Mr. R. G. Thatch, Room 2440, Graybar Building, New York City. All letters of yours which require speed will be covered by the existing air mail postage of Colombia.

Four hundred dollars ($400.00) of your monthly retaining fee will be deposited to your account in the Chase National Bank, 25 Broadway, New York City, on the first of each month, and the first payment will be made on February 1st, 1929.

You will be supplied with the sum of Thirty Five Hundred Dollars ($3500.00) prior to your sailing on January

ork for Colombia. From this amount you will deduct the additional Six Hundred Dollars ($600.00) per month of your retaining fee, and also disburse such necessary traveling and living expenses and such other incidental expenses as you may incur in the carrying out of our plans. The Pan American Airways, Inc. standard form for rendering fourteen day expense accounts will be supplied to you prior to your departure. You will regularly compile and mail by ordinary mail such fourteen day expense account statements promptly. We will arrange to cable you through the National City Bank of New York such additional sums of money as you notify us you will require to replenish and afford a revolving credit to you of at least $5,000.00, after you have accounted for the expended amounts to date upon the standard expense forms furnished by us. We have arranged that you be supplied with the Collect Card of the All America Cables Inc. which will entitle you to send collect cablegrams from any of the offices of this company abroad. Nevertheless you will submit an accurate account every fourteen days of your cables sent so that this office may check all statements of the All America Cables Inc. before payment. When necessary you will of course have to use the cable or radio services of other cable companies and payment will have to be made by you and charged on your expense account.

Before making any disbursements greater than $500.00 you will notify us and receive our consent unless such disbursement is in your judgment absolutely necessary in the safeguarding of some of our interests or in the projection of our program.

You will in all cases before taking any step or move of major importance communicate with us and receive our approval unless you find that it is absolutely necessary to act at once to safeguard our interests.

For the purpose of brevity in correspondence it will be mutually understood that the following abbreviations may be used in correspondence.

PANAIR : Pan American Airways, Inc.

SCADTA : Sociedad Colombo Alemana Transportes de Aereos.

[fol. 2507] A. C. A. : Aviation Corporation of the Americas, Inc.

Colombian American : Colombian American Aviation Corporation

We remain,

Very truly yours,

PAN AMERICAN AIRWAYS INC.

By (sgd) J. T. TRIPPE
J. T. Trippe
President

[fol. 2508]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 422

MEMORANDUM

Date January 12, 1929.

To Mr. VALVERDE Dept.

From Mr. PATCHIN Dept.

SUBJECT:

Mr. Harris, General Manager of the Peruvian Airways Corporation cables us that he is in a position to go to Ecuador but he does not state *when* and for this reason have not yet replied to Guayaquil's cable.

I hope you will not think it necessary to instruct Von Linde not to go to Quito under any condition; such is the effect of the cable you propose as attached. If you should instruct Von Linde not to go to Quito under any condition, it seems to me that he will not be in a position to exert the Grace influence at all and that the whole burden would be thrown upon Harris who would probable find it very difficult to be absent from the operations of the Peruvian Airways for an indefinite period.

In other words, I should think the matter ought to be left somewhat to Von Lunde's judgment as we know he wont leave Guayaquil for any length of time.

As I wont be here on Monday I have asked Mr. Cogswell to discuss the matter with you.

R. H. P.

[fol. 2509]

PAN AMERICAN WORLD AIRWAYS, INC., EXHIBIT 123

TRANSLATION

POST OFFICE DEPARTMENT
AND RADIO TELEGRAPH SYSTEM
OF PERU

LIMA, JANUARY 19, 1929

To the Representative of Huff Daland Dusters, Inc.

On December 17, 1928 the following Supreme Resolution was issued:

"In view of the report of the Postal and Telegraph Administration and in accordance with the Provisions of the Supreme Resolution of November 26, 1928, IT IS HEREBY RESOLVED:

"Authorization is given for the transfer of the contract entered into by the said General Administration with the Huff Daland Dusters, Inc. for airmail transportation, to the Peruvian Airways Corporation, Inc. including inland post service."

The foregoing is for your information and guidance.

Postal and Telegraph Administration

(Sgd) A. S. SALAZAR
Secretary General

fol. 2580

Handwritten notation: Is this complete?

Pan American World Airways, Inc. Exhibit 124

TENTATIVE ESTIMATE

OF

PROPOSED AIRWAY SERVICE

BETWEEN

COLON, C.Z. and SANTIAGO, CHILE

January 23, 1929.

fol. 2581

Service Weekly, Two Weekly, and Three Weekly

Divisions

I.	Colon-Guayaquil	(984 miles)
II.	Guayaquil-Callao	(870 ")
III.	Callao-Iquique	(785 ")
IV.	Iquique-Santiago	(975 ")
	Total Mileage	(3614 ")

Flight Equipment

(a) Div. I-II Sikorsky Amphibians
III-IV Tri-Motored Fokkers

(b) Div. I-II Sikorsky Amphibians
III-IV Single-Motored Land planes

Operating Costs (a)

do (b)

fol. 25 25

[fol. 2512]

ESTIMATED CAPITAL COST AND OPERATING FIGURES
for South American courier between Colon and Valparaiso

(a)

Total fleet divided into Section I - Colon to Lima - 11 Sections, II - 5 Arica to La Serena, Section III La Serena to Iquique, Section IV - Iquique to Valparaiso

Flight Equipment	No.	Cost	No.	Cost	No.	Cost
Div. I & II						
Sikorsky	2	$112,000.	3	$168,000.	4	$224,000.
Spare Engines	2	13,400.	3	20,100.	4	26,800.
Misc. Plane Equipment		1,000.		1,500.		2,000.
Spares		1,000.		1,500.		2,000.
		$127,400.		$191,100.		$254,800.
Airports	3	45,000	3	60,000.	3	60,000.
Refueling	2	10,000.	2	10,000.	2	10,000.
Radio	4	40,000.	4	30,000.	4	30,000.
		$ 85,000.		$100,000.		$100,000.
Crating and Freight		13,000.		20,000.		16,000.
Div. III & IV						
Tri-motored Fokkers	2	120,000.	3	180,000.	4	240,000.
Spare Engines	2	13,400.	3	20,100.	4	26,800.
Misc. Plane Equipment		1,000.		1,500.		2,000.
Spares		1,000.		1,500.		2,000.
		$135,400.		$203,100.		$270,800.
Airports	2½	35,000.	2½	45,000.	2½	45,000.
Refueling	3	15,000.	3	15,000.	3	15,000.
Radio	2	15,000.	2	15,000.	2	15,000.
		$ 65,000.		$ 75,000.		$ 75,000.
Crating and Freight		15,000.		21,000.		28,000.
Total of Div. I & II		$225,000.		$311,100		$354,800.
Total of Div. III & IV		$214,400.		$299,100.		$373,800.
		$439,400.		$610,200.		$754,600.

(3)

2597

(a) cont'd.

CAPITAL EXPENDITURES - DIVISIONS	II - III - IV
Total of Div: I, II, III, IV	$754,600.
Organization and Develop:	30,000.
Transportation personnel	10,400.
Contingencies	15,000.
Working Capital	200,000.
	$1,000,000.

(4)

(b)

ESTIMATED CAPITAL REQUIREMENTS FOR DIV. I & II USING DOUBLE-STOPPED PLANES OF DIV. III & IV.

		1 Trip per Week		2 Trips per Week		3 Trips per Week
Flight Equipment						
Div. I & II		$225,000.		$111,100.		$384,800.
Div. III & IV						
Fairchild - Jamp		65,520	6	98,280.	6	98,280.
Lail Wing - Wright					4	50,000.
Miscellaneous Plane Equip.		2,000.		3,000.		4,000.
Spare Jamp Engines	2	13,400.	3	20,100.	3	20,100.
" Wright					2	7,800.
Plane Spares		1,500.		2,000.		3,000.
Contingencies		1,000.		1,300.		2,000.
Airports	24	35,000.		35,000.		35,000.
Refueling	4	20,000.		20,000.		20,000.
Radio (Reserve)	4	30,000.		30,000.		30,000.
Crating & Freight		8,500.		12,400.		18,000.
SUB TOTAL		$176,920.		$222,280.		$288,180.
Totals I - II - III - IV		$401,920.		$333,380.		$662,980.
Organization & Development		20,000.		20,000.		20,000.
Transportation personnel		5,000.		6,500.		7,500.
Contingencies		10,000.		10,000.		10,000.
Working Capital		113,080.		130,120.		149,520.
Total Capital required		$550,000.		$550,000.		$850,000.

(5)

OPERATING COST
Annual

1/23/29

(a)

		Trips per Week		Trips per Week		Trips per Week
Non Work overhead		$20,000.		$20,000.		$20,000.
Section or subdivision						
Manager	1	10,000.		30,000.		30,000.
Regular clerks	4	9,600.		9,600.		9,600.
Legal		1,500.		1,500.		1,500.
Stenographers	3/2	1,500.		3,000.		3,000.
Printing & Incid.		1,500.		3,000.		3,000.
Office rental		2,400.		2,400.		2,400.
Accountant		6,000.		6,000.		6,000.
" Clerks	2	4,800		4,800.		4,800.
Tel. & Tel.		1,500.		2,000.		2,500.
Intermediate Ports						
Clerks	10/2	6,000.		12,000.		12,000.
Expenses $5/trip		7,200.		10,400.		15,400.
Flight Organization						
Pilots	5	30,000.	7	42,000.	9	54,000.
Flight Mechanics	5	16,000.	7	22,200.	9	32,400.
Mechanic Helpers	2	9,600.	6	14,400.	8	19,200.
Radio operations	4	9,000.	6	18,000.	8	24,000.
" Engineer		4,800.		4,800.		4,800.
Ground Organization						
Mechanics	4	9,600.	5	12,000.	6	14,400.
Radio Operators	4	12,000.	6	16,000.	6	18,000.
Master Mechanics	2	6,600.	2	6,600.	2	9,600.
Native	2	7,200.	8	10,800.	8	14,400.

(6)

(a) cont'd.

(OPERATING COST - ACTUAL) - Cont'd.

	1 Trip per Week	2 Trips per Week	3 Trips per Week
Supplies & Repairs			
Airplane Spares at $2./hr	7,696.	15,392.	23,088.
Marine Spares at $3./hr.	11,544.	23,088.	34,632.
Fuel at 25¢./hr.	96,200.	192,400.	288,600.
Insurance	52,560.	78,840.	105,120.
Dep. Airplanes	78,100.	161,100.	241,500.
" Engines	66,400.	124,700.	186,200.
" Ground Equip.	11,000.	11,000.	11,000.
Interest at 6%	35,000.	50,000.	50,000.
TOTAL	$561,600.	$912,680.	$1,253,740.
Miles flown	384,900.	769,800	1,154,400.
Cost per mile	$1.46	$1.19	$1.09
Add. Traffic	.20	.18	.16
Cost per Mile	1.66	1.37	1.25
Contingencies	.04	.03	.02
General (see page 8)			.08 ($91,352.00)
Final cost per mile			$1.35

(5)

OPERATING COST
(Continued)
[illegible] SERVICE - [illegible] DAYS

		1 Trip per Week		2 Trips per Week		3 Trips per Week
New York Overhead		$30,000.		$25,000.		$30,000.
Sailing Organization						
Managers	3	30,000.	3	30,000.	3	30,000.
Superintendents			1	7,500.	2	15,000.
Regular clerks	3	7,200.	5	12,000.	5	12,000.
Stenographers	3/2	1,800.	3	3,600.	3	3,600.
Accountants	1	6,000.	1	6,000.	1	6,000.
" clerk	2	4,200.	2	4,800.		4,800.
Tel. & Tel.		1,500.		2,000.		2,500.
Printing & Incidentals		1,500.		2,000.		2,500.
Light & Heat		2,400.		2,400.		2,400.
Publicity		5,000.		10,000.		15,000.
Office Rentals		2,400.		12,400.		2,400.
		(62,600)		(107,700.)		(126,200.)
Intermediate Ports						
Clerks	10/2	6,000.		9,000.	10	12,000.
Expenses $6/trip		5,200.		10,400.		15,600.
		(93,800.)		(127,100.)		(153,800.)
General						
Maintenance		10,000.		10,000.		10,000.
Travelling		3,800.		7,700.		11,500.
Taxes		3,800.		7,700.		11,500.
Agency fees		3,800.		7,700.		11,500.
Custom fees		4,000.		8,000.		12,000.
Consul fees		1,000.		1,000.		4,000.
		(131,200.)		(171,200.)		(214,300.)

(6)

(t) cont'd.

(ANNUAL COSTS cont'd.)

	1 Trip Per Week	Trip Per Week	6 Per Week
Flight Organization			
Pilots	30,000.	[illegible]	0,000.
Flight Mechanics 2	7,200.	10,[illegible]	14,400.
Mechanic Helpers 2	4,[illegible]	4,800.	4,800.
Radio Operators 2	6,000.	[illegible]	14,000.
	(169,200.)	[illegible]	(1[illegible],500.)
Ground Organization			
Master Mechanics 1	4,800.	[illegible]	[illegible],800.
Mechanics 4	[illegible],600.	14,[illegible]	1[illegible],600.
Helpers 4	7,[illegible]	10,[illegible]	14,[illegible]
Radio Engineer 1	4,[illegible]	[illegible]	[illegible]
Radio Operators 4	12,000.	12,[illegible]	1[illegible],000.
Contingencies	1[illegible],000.	15,[illegible]	[illegible],000.
	(217,600.)	[illegible]	(4[illegible],700.)
Supplies & Repairs			
Airplane Spares at $2/hr.	7,696.	16,[illegible]	[illegible],696.
Engine Spares at $3/hr.	11,544.	[illegible]	[illegible],632.
Fuel at $15/hr	57,720.	115,140.	1[illegible],160.
	(294,560.)	[illegible]	(5[illegible],480.)
Insurance	45,000.	[illegible]	[illegible]
Dep. Airplanes	52,000.	[illegible]	1[illegible],600.
Dep. Engines	42,[illegible]	[illegible]	[illegible]
Dep. Ground Equip.	13,000.	[illegible]	[illegible]
Interest at 6%	[illegible]	[illegible]	[illegible]
TOTAL	[illegible]	[illegible]	[illegible]
Miles flown	[illegible]	[illegible],600.	[illegible]
Cost per mile	$1.26	[illegible]	[illegible]
Traffic (allowance)	.20	.18	.1[illegible]
Contingencies	.04	.03	[illegible]
Final Cost/Mile	1.50	[illegible]	[illegible]

[fol. 2519]

[fol. 2520]

PROPOSED AIR LINE - WEST COAST OF SOUTH AMERICA

Distances - Miles

Ports of call		Between Ports	Total
Colon/Cristobal,	Canal Zone	-	-
Las Pinas,	Panama	172	172
Turbo,	Colombia	51	223
Buenaventura,	"	218	441
Tumaco,	"	160	601
Esmeraldas,	Ecuador	118	719
Guayaquil,	"	179	898
Talara,	Peru	90	988
Paita,	"	123	1111
Pimentel,	"	44	1155
Pacasmayo,	"	141	1296
Trujillo/Salaverry	"	49	1345
Lima/Callao	"	6	1351
Pisco,	"	140	1491
Ica,	"	104	1595
Mollendo,	"	80	1675
Arica,	"	54	1729
Iquiqui,	Chile	150	1879
Antofagasta,	"	120	1999
Chanaral,	"	220	2219
Coquimbo,	"	109	2328
Valparaiso/Santiago,	"	252	2580
		232	2812

[illegible] ACT OF 1926 (For 1926 to Oct. 30th) - PAN AMERICAN AIRWAYS

Under heading "Traffic"

Item	Amount	Cost per Mile	Amount	Cost per Mile
Supervision	$ 4[illegible]	$ .023	$ 4,[illegible].80	.151
Solicitation	203.35	.015	566.65	.021
Agency Commission	32.00	-	337.00	.009
Clerical & Other Salaries	656.67	.045	4,040.19	.050
Traveling expenses	337.30	.070	2,380.87	.039
Publicity (Advertising)	-	-	3,245.15	.030
Auto Service	211.65	.011	2,605.20	.011
Tel. & Tels	97.00	.001	330.77	.003
Other expenses	1,870.90	.057	5,408.70	.034
	$3,303.00	.178	25,040.32	.000

The following figures comprise an estimate of traffic expenses for west coast of South America service. This estimate was made in collaboration with Mr. Shine, Accountant for Pan American Airways.

Miles flown annually ____ 1,150,000.

ACTUAL

Item	Amount	Cost per Mile
Traffic Manager	$ 7,500.	$ .0 6
Asst. " " (2)	12,000.	.010
10 Division Agents	40,000.	.03 3
10 Intermediate Agents (½ time)	9,000.	.00 8
Total Management	$68,500.	.060

[fol. 2522]

ANNUAL

Item	Amount	Cost per Mile
(Brought Forward) . . .	$ 68,500.	.000
Outside Agencies	2,500.	.-
Clerical Salaries	5,000.	.04
Traveling expenses	10,000.	.0[illegible]
Publicity	15,000.	.01
Automotive Service	5,000.	.0[illegible]
Tel. & Tel.	3,000.	.000
Office Rent	10,000.	.009
Other Expenses	50,000.	.04[illegible]
	100,500.	.037
Grand Total	169,000.	.147

The Grace organization as Agents would probably receive $106,000. per year, the following accounts being directly chargeable to operations:

Outside Agencies	$ 2,500.
Traveling Expenses	10,000.
Publicity	15,000.
Automotive Service	5,000.
Tel. & Tel.	3,000.
1/2 Other Expenses	25,000.
	$ 60,500.

[fol. 2523]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 125

PAN AMERICAN AIRWAYS INC.
MEMORANDUM

Date January 25, 1929.

To. J. T. Trippe From Walter Phelps Jacob

Subject Estimates attached.

The attached estimate considers the proposed airway service on the west coast of South America from two angles:

First: Based on multi-motored equipment utilizing Sikorsky Amphibians between Colon, C.Z. and Callao, Peru, and tri-motor Fokkers between Callao, Peru and Santiago/Valparaiso, Chile, as set forth in pages 3 and 4, with corresponding operating costs on pages 6 and 7.

Second: Utilizing the same equipment, or Sikorsky Amphibians between Colon, C. Z. and Callao/Lima, Peru, substituting on the run between Callao/Lima, Peru and Santiago/Valparaiso, Chile single-motored land planes for the tri-motored Fokkers. On this latter service it is proposed to use Fairchild 7 place cabin monoplanes with Wasp motors on the schedule of either one or two trips per week. In the case of three trips per week, the third trip will be equipped with Mil-wing planes with Wright motors which will be restricted solely to the transportation of mail, carrying absolutely no passengers. The capital estimated for this service is shown on page 5 and the corresponding operating costs are set forth on pages 8 and 9.

Under capital expenditures the allowances for airports is detailed as follows:

Hangars	$10,000/$5,000.
Trucks, etc.	2,000.
Gas-pumps & tanks	2,000.
Tools, fire extinguishers, etc.	2,000.
Freight	1,000.
Contingencies	3,000.
Total	$20,000.

[fol. 2524]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 126

New York City, N. Y.,

January 28th, 1929.

Pan American Airways, Inc.,
122 East 42nd Street,
New York City.

Dear Sirs:

Subject to your Company acquiring the necessary operating rights in Colombia, and our Company acquiring such privileges, on a reciprocal basis, in the Canal Zone, we hereby agree, in consideration of the sum of One Dollar ($1.00), receipt of which is hereby acknowledged, during the next eight months, to give you exclusive landing privileges at our Airports at:

Buenaventura and
Tumaco, Colombia.
Esmeralda and
Caraquez,
Guayaquil, Ecuador.

Compensation for the use of such facilities will be the usual fee commensurate for services rendered under similar conditions elsewhere.

We would request you, during this period, not to appoint our Agents to represent you in this territory.

In addition, of course, in the event of emergency, we will extend to you the courtesy of all our facilities, which we understand you in turn will extend to us.

Yours very truly,

Seadta.

Dr. P. P. Von Bauer

PPV/s

[fol. 2525]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 127

COPY

ADVERTISEMENTS FOR FOREIGN AIR MAIL SERVICE

POST OFFICE DEPARTMENT

Washington, D.C., January 31, 1929

Sealed proposals will be received at the Office of the Second Assistant Postmaster General until 12 o'clock noon February 28, 1929, for carrying mails by air for a term of ten years from April 1, 1929, or such subsequent date as may be ordered by the Postmaster General, on the following described route, by a schedule satisfactory to the Postmaster General in safe and suitable aircraft.

From Cristobal, Canal Zone, by Buenaventura and Tumaco, Colombia, Esmeraldas and Guayaquil, Ecuador, Talara, Trajillo, Lima, Lomas and Mollendo, Peru, Arica, Iquique, Antofagasta, Caldera and Coquimbo, to Santiago, Chile, and return, three times a week.

(The contractor may be permitted to omit service south of Mollendo, Peru, for a reasonable time at the discretion of the Postmaster General, pending completion of operating arrangements.)

Service on this route may be extended at the option of the Post Office Department, from Santiago, Chile, by such intermediate points as the Postmaster General may determine, to Buenos Aires, Argentina, and Montevideo, Uruguay, and back, at not exceeding pro rata allowance of additional pay.

All bidders must submit with their bids evidence satisfactory to the Postmaster General that they are in a position to begin service within the time required and properly maintain it.

The specified load required at the mileage rate will not exceed 800 pounds a trip each way. Any excess mails shall be carried at rates per pound.

Bids must state rate per mile for the specified load of not exceeding 800 pounds, and a rate per pound per thousand miles for excess mails, such rate for excess mails to bear the ratio of 50 per cent of the rate per mile for the specified load; that is, if a bid is $2.00 a mile for the specified load the rate for excess mails must be $1.00 per pound per thousand miles or pro rata thereof for greater or less mileage, or if a bid is $1.50 a mile for the specified load the rate for excess mails must be $0.75 per pound per thousand miles or pro rata thereof for greater or less mileage, etc. No other bids will be considered.

Approximate mileage, subject to correction, 3,400 miles.
Bond required with bid, $25,000.

FURTHER PROVISIONS OF THE ADVERTISEMENT AND INSTRUCTIONS TO BIDDERS.

The Department reserves the right to increase or decrease the number of intermediate stops, or the number of trips per [fol. 2526] week, and to change the termini of the route, to dispatch mail on any plane of the contractor flown over the route, and to modify or change the schedule as the needs of the service require; also to extend or curtail the route, with pro rata allowance or deduction of pay.

The contractor will be required to receive and deliver mails at each post office on the route, unless other provision is made by the Department.

The contractor must make his own arrangements for landing fields, lighthouses, radio stations and such other aids to navigation as may be necessary for the proper performance of the service.

No compensation will be allowed for trips not performed. However, pro rata pay will be allowed for the airline distance between stated points on the route traversed in a partially completed trip, within the discretion of the Postmaster General.

Deductions from pay may be made for suffering the mails to become wet, injured or destroyed or when a grade of service is rendered inferior to that stipulated in the contract; and for the loss of or depredation upon the mails

in the custody of the contractor or his agent, provided the loss is occasioned by their fault, or for other delinquencies in the discretion of the Postmaster General.

The Postmaster General may annul the contract or impose forfeitures, in his discretion, for repeated failures or for failure to perform service according to contract; for violating the Postal Laws and Regulations; for disobeying instructions of the Post Office Department; for subletting service without the consent of the Postmaster General, or assigning or transferring the contract; for combining to prevent others from bidding for the performance of postal service, and such annulment shall not impair the right of the Department to claim damages from the contractor and his sureties.

If in the opinion of the Postmaster General, the development of aircraft should be such as to render the equipment used on the route obsolete, so that it no longer meets the needs of the Department, the Postmaster General may call upon the contractor to provide suitable equipment and in the event of his failure to do so within such reasonable time as shall be given him, may terminate the contract.

Assignments of contracts or of interest in contracts are forbidden by law, and consequently cannot be allowed. Neither can bids nor interest in bids be transferred or assigned to other parties. Bidders will therefore take notice that they will be expected to provide the service awarded to them through the whole contract term.

Contractors under this advertisement may be permitted to sublet service to acceptable persons, by permission of the Postmaster General, at not less than the contract rate of pay.

[fol. 2527] The contract for the service shall contain, among others, the following covenant:

The contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct

from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

PROPOSALS

Proposals submitted in response to this advertisement will be subject to the Postal Laws and Regulations and to the conditions and requirements set forth in the instructions to bidders, copies of which, together with blank forms of proposal and accompanying bond, can be obtained from the Second Assistant Postmaster General, Division of International Postal Service, Washington, D.C., or from the Postmaster at the office where this circular is posted.

All proposals must be in the form prescribed by the Department and accompanied by a bond in the sum above stated with two or more individual sureties approved by a postmaster of the first, second or third class, which bond must be acceptable to the Postmaster General, such sureties to be shown to be owners of real estate valued above all incumbrances at an amount double the amount of the bond required, or a surety company which has complied with the provisions of the acts approved August 13, 1894, and March 23, 1910. A list of such surety companies may be found on Page 60 of the Official Postal Guide for July, 1928, a copy of which is furnished each postmaster. In lieu of surety bonds, bidders may deposit U. S. bonds amounting to $25,000, in accordance with Department requirements.

Bidders and their sureties are urged to acquaint themselves fully with the laws of Congress relating to contracts for carrying the mails (the more important provisions relating to Air Mail Service of which are cited herein) and to familiarize themselves with requirements set forth in this advertisement and with the service to be performed before they assume any liability as bidders or sureties, so as to prevent misapprehension or cause of complaint thereafter.

Bids should be for service as stated in the advertisement.

Bidders should state the number of planes it is proposed to provide for carrying the mails on the route (including the number in reserve for each plane in the air); description of planes, showing number of motors, horsepower, speed, cruising radius. All planes operated on the route must be satisfactory to the Postmaster General.

[fol. 2528] Bids in response to this advertisement should not exceed $2.00 per mile for a maximum load of 800 pounds.

When a bid is signed by an incorporated company it should be accompanied by evidence of the authority of the person signing the bid so to sign on behalf of the company. Such evidence may be a certified copy of the proceedings pursuant to which the person was elected or appointed an officer or agent of the company and that part of the by-laws showing his authority as such officer or agent to sign the bid; or a certified copy of a resolution of the board of directors or stockholders conferring such authority upon him.

Decision as to award of contract will be made as soon as practicable after the date of expiration of the advertisement, and the accepted bidder will be required to execute the formal contract prescribed by the Department covering service advertised with good and sufficient sureties acceptable to the Postmaster General, and file such contract within thirty days from date of acceptance of the proposal. The Postmaster General reserves the right to reject any and all bids.

If the accepted bidder fails to file a properly executed formal contract for the service in the Department within thirty days from the date of acceptance of the bid, or having executed the contract fails to provide the service required, he may be declared a failing bidder or contractor and proceedings taken according to law.

A proposal altered, or incomplete, in any of its essential terms can not be considered in competition with bids submitted in proper form.

Bids should be forwarded in time to reach the Office of the Second Assistant Postmaster General not later than

the time stated in the advertisement. Bids received after that time will not be considered in competition with bids received within the prescribed time.

Bids should be sent in *sealed envelope, superscribed "Airplane Proposal"* and addressed to the "Second Assistant Postmaster General, Division of International Postal Service, Post Office Department, Washington, D.C."

HARRY S. NEW
Postmaster General.

[fol. 2529]

PAN AMERICAN WORLD AIRWAYS INC. EXHIBIT 128

PAN AMERICAN AIRWAYS INC.
MEMORANDUM

Date February 19, 1929.

To Mr. R. H. Patchin, Vice President.

W. R. Grace & Company From Walter P. Jacobs.

In reference to the tentative estimate of proposed airway between Cojon, C.Z., and Santiago, Chile, I have just had a conversation with Mr. Trippe regarding the attached estimate, and he has expressed the following opinion:

The estimate itself sets forth what he believes to be a minimum working proposition. He feels that the line could be established within these figures, but that from the experience of the Pan American Airways, Inc., the actual requirements will probably run into a much larger figure.

He reports a conversation which Colonel Lindbergh had with Mr. Hoover last week, in which Mr. Hoover stated very emphatically that he felt the Miami to Panama Airline, and any airlines developed south of Panama throughout South America should be developed not alone with a view to carrying mails, but also to establishing a safe and thoroughly equipped passenger service. In order to accomplish this, he said that not only should the flying equipment be

of the best possible, but also the ground equipment should be made of the highest type. He emphasized the probable necessity of properly equipped machine shops, and establishment of radio stations.

In referring to the foregoing, Mr. Trippe states that an allowance of $750.00 an airway mile should be considered as a possible necessity for carrying out these ideas. This, in the case of the Panama-Santiago, Chile, run, would make a total requirement of approximately $2,700,000.

Although in making a bid for the United States air mail contract between Panama and Santiago, Chile, multi-motored flying equipment, or its equivalent, will have to be stipulated, yet it is highly probable that such will not be required at the outset. It is conceivable that all multi-motored planes will not be required on a three-trip-a-week schedule at any time, unless the operating air company determines to do so through their own policy, but that for one or two of these trips single motored planes could be substituted.

These questions are highly problematical, and of course there is very little precedent to go on, but the experience of Pan American Airways, Inc., indicates that the Post Office Department will cooperate to the fullest extent and make every effort possible to assist the contractors in carrying out their obligations on the most economical basis possible.

sgd. WALTER P. JACOBS

WPJ:B

[fol. 2530]

PAN AMERICAN WORLD AIRWAYS, INC., EXHIBIT 129

DEPARTMENT OF STATE

FOR THE PRESS February 23, 1929

AIRCRAFT FACILITIES IN UNITED STATES, PANAMA CANAL ZONE, AND COLOMBIA

The Secretary of State, Mr. Frank B. Kellogg, and the Minister of Colombia, Dr. Enrique Olaya, today signed an

exchange of notes identic in effect. Following is the text of the note signed by the Secretary of State:

"February 23, 1929

"Dr. Enrique Olaya,
Minister of Colombia,
Washington, D. C.

Sir:

"With reference to the conversations which you have had recently with the Department of State regarding the facilities which aircraft of United States registry will enjoy in Colombia for commercial aviation service and, reciprocally, in the United States including the Panama Canal Zone aircraft of Colombian registry, I take pleasure in confirming, by means of the present note, the understanding at which we have arrived, to wit:

"Commercial aircraft of United States registry will have permission to fly along the Atlantic and Pacific Coasts of Colombia and over the territory immediately adjacent thereto, to land on land or water, fuel, make repairs, and ship and discharge passengers, mail and cargo, in the Atlantic and Pacific ports of Colombia where there are authorities charged with carrying out the pertinent regulations, subject to regulations and provisions equivalent to those established for commercial aircraft of Colombian registry in the enclosures to this note.

"Reciprocally, commercial aircraft of Colombian registry will have permission to land on land or water in the Atlantic and Pacific ports of the United States including those of the Panama Canal Zone, and to fly between the ports of the Canal Zone following the route designated by the Governor of the Panama Canal, fuel, make repairs and ship and discharge passengers, mail and cargo, subject to the regulations and provisions which are enclosed with the present note, as follows:

"For the continental United States, the Air Commerce Act of 1926 and the Regulations promulgated pursuant thereto; for the Panama Canal Zone, Executive Orders Nos.

4971 and 5047 of September 28, 1928, and February 18, 1929, respectively, and the Provisional Regulations of the Governor of the Panama Canal issued pursuant thereto.

"All aircraft must carry out the respective Governmental regulations of both countries.

"If either of the two Governments decides to terminate the permission to which this agreement refers or to modify the regulations or provisions, it will give ninety days' previous notice thereof to the other Government.

"It is understood that the two Governments agree and will endeavor to give the greatest possible facilities to aircraft in international commercial communication service in order that they may land on land or water, fuel, and carry out the other services above mentioned with all desirable [fol. 2531] speed and efficacy.

"Accept, Sir, the renewed assurance of my highest consideration.

(Signed) FRANK B. KELLOGG,
Secretary of State.

[Text of above letter also appears in Spanish in *Diario Oficial*, Colombian Government, No. 21065, April 12, 1929.]

[fol. 2532]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 130

[Handwritten notation 2-26-29]

AIR MAIL PROPOSAL, BOND AND OATHS

The undersigned, Pan American Grace Airways, Inc. whose post office address is 122 East 42nd Street, New York, N.Y. hereby proposes to carry the mails in safe and suitable aircraft on the route from Cristobal, Canal Zone, by Buenaventura and Tumaco, Colombia, Esmeraldas and Guayaquil, Ecuador, Talara, Trujillo, Lima, Lomas, and Mollendo, Peru, Arica Iquique, Antofagasta, Caldera and Coquimbo to Santiago, Chile and back, 3 times a week, on a schedule satisfactory to the Postmaster General; for a term

of two years beginning April 1st 1929, or such subsequent date as the Postmaster General may order, in accordance with the advertisement of the Postmaster General dated January 31, 1929, for compensation at the rate of $1.80 per mile each way for the shortest mail of not exceeding 800 pounds each way, plus a rate per pound equal to 50 per cent of said mail rate ($1.80 per pound per thousand miles, or pro rata for less or greater mileage, for any excess required to be carried on the same aircraft.

I propose to furnish the equipment specified below, or equal Number of planes 12 of which number 6 will be in use on the lines over which the contract to be executed pursuant to this proposal and to hold in reserve. Type of plane Cabin monoplanes of American manufacture Horse-power 420, 480, 1200. Speed at least 120 miles per hour cruising radius at least 500 miles. Number of motors multi engined except that 4 planes hold in reserve will be single engined and that such planes may be used where technically applicable in connection with the said routes.

This proposal is made in my own interest and not by any, as the representative of another, undisclosed principal, and with full knowledge of the distances over the route, the weight of the mail to be carried and all other pertinent facts, and in response to the notice and terms and also after careful examination of the forms and instructions attached and advertisement, and if accepted, I will enter into contract, with sureties to be approved by the Post Master General within thirty days after due notification that I have been selected to perform the service, and will not employ any agent or solicitor upon commission in any way contingent upon such procurement.

[illegible] Robert

By J. T. Trippe
Agent

Attest:

W. E. Critchwell
Secretary

Dated February 26, 1929.

BIDDER'S OATH

I, the undersigned bidder for carrying the mail on route from Cristobal, Canal Zone to Santiago, Chile, and return do swear that I have the ability, pecuniarily, to fulfill my obligation as such bidder; that the bid is made in good faith and with the intention to enter into contract and perform the service in case said bid shall be accepted.

(Bidder sign here) PAN AMERICAN GRACE AIRWAYS, INC.

By J. T. TRIPPE
agent

Subscribed and sworn to before me this 26th day of February, 1929.

E. S. Swaggerty
Notary Public

(SEAL)

[fol. 2524]

BOND

KNOW ALL MEN BY THESE PRESENTS, That Pan American Grace Airways, Inc. of New York City, in the State of New York, principal, , as sureties, are held and firmly bound unto the United States of America in the just and full sum of Twenty five Thousand ($25,000) dollars, lawful money of the United States, to be paid to the said United States of America or its duly appointed or authorized officer or officers; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, by an act of Congress approved June 23, 1874, entitled "An act making appropriations for the service of the Post Office Department for the Fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," it is provided: "that every proposal for carrying the mail shall be accompanied by the bond of the bidder, with sureties approved by a postmaster," in pursuance whereof and in compliance with the provisions of said law, this bond is made and executed, subject to all the terms, con-

ditions, and remedies thereon, in the said act provided and prescribed, to accompany the aforegoing and annexed proposal of the said Pan American Grace Airways, Inc., bidder.

Now, the Condition of the Said Obligation Is Such, That if the said bidder, as aforesaid, shall, within thirty days from the date of acceptance of the bid, enter into a contract with the United States of America, with good and sufficient sureties to be approved by the Postmaster General, to perform the services proposed in his said bid, and further shall perform said service according to his contract, then this obligation shall be void; otherwise to be in full force and obligation in law.

In Witness Whereof, We have hereunto set our hands and seals this 26th day of February, 1929.

(Bidder sign here) Pan American Grace Airways, Inc.

[Seal]

By: J. T. Trippe,
Agent

Attest:

W. F. Cogswell, Sec'y
(Sureties sign here)

Witness:

Walter P. Jacob
H. Preston Morris

fol. 2535

Certificate of Postmaster as to Bidder

(To be executed if the sole surety on the bond is a surety company)

I, the undersigned, postmaster at Washington, D.C. after the exercise of due diligence to inform myself concerning Pan American Grace Airways, Inc. bidder and principal in the aforegoing bond, do hereby certify that, in my belief, he is a responsible and trustworthy And has the pecuniary ability to perform the service contemplated by this proposal; that the amount of compensation was entered in the

proposal before the signing of this certificate; that he is over twenty-one years of age, and not a postmaster, assistant postmaster, clerk in a post office, or a member of the immediate family of a postmaster or an assistant postmaster.

W. M. Mooney
Postmaster

Dated, Feb. 28, 1929.

Note.—The last above certificate must not be signed until the proposal is completed (except the signing of the bond on behalf of the surety company).

A postmaster must not divulge the amount of any proposal certified by him.

Any alteration by erasure or interlineation, of a material part of the foregoing proposal or bond, may cause it to be rejected, unless it appears by a note or memorandum of all parties to the bond that the alteration was made before the bond was signed and sealed.

If individual sureties are given, there must be at least two.

[fol. 2536]

Pan American World Airways, Inc. Exhibit 131

March 1, 1929

The Honorable, The Postmaster General
Post Office Department
Washington, D. C.

Dear Sir:

With reference to our bid to provide air mail service from Panama to Santiago, Chile, we beg to call your attention to the fact that we are not presenting a project to create an entirely new air transport service in South America. We are already a going concern with service over 1400 miles in Ecuador and Peru. We are owned by Pan American Airways, Inc., the only American company with experience

in air transport to foreign countries, and by W. R. Grace & Company, the only American concern having transportation, commercial and industrial organizations throughout the west coast of South America.

Our existing operations have been tested by experience. We have concessions and permits authorizing prompt operation in all countries, and we have already testified our faith by substantial investments in our existing going lines, operated despite loss in order to hold open the door for American commercial aviation in South America.

Respectfully,

Pan American Grace Airways, Inc.

By

Vice President

[fol. 2537]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 132

IMMEDIATE RELEASE INFORMATION SERVICE
MARCH 2, 1929 POST OFFICE DEPARTMENT

[Handwritten notation "2565 re Contract No. 9—Initial illegible]

Postmaster General New today awarded to the Pan American Grace Airways, of New York City, the contract for carrying the air mail between Cristobal, Canal Zone, and Santiago, Chile, which route, when put into operation, will be the longest one in the world.

In awarding the contract, Postmaster General New made the following statement:

"It is directed that the proposal of the Pan American Grace Airways, Inc., of New York, N. Y., submitted in response to the advertisement of January 31, 1929, for air mail service on the route between Cristobal, Canal Zone, and Santiago, Chile, for service as stated in the advertisement be accepted at the rate of $1.80 per mile and $.90 per pound, as stated in their proposal.

"In making this award the matter of the financial ability of the leading bidders or the integrity of the competing companies is not considered. That may be conceded. The award of contracts is based on other but very material considerations.

"This is the most important air mail contract that has yet been awarded. Its importance goes not alone to the financial ability of the bidders but more directly and to a far greater degree to their proven and recognized capacity for performing the service contemplated.

"The Pan American Company has filed evidence of extensive preparation for the operation of an air mail route through the countries with which arrangements are necessary. It has had this particular service in view for the last two years and has for that length of time been conducting negotiations and perfecting arrangements for the carrying on of the service if in the fulness of time it should be [fol. 2538] awarded the contract for it. It has the required franchises under which to operate in the countries to be served and over which the line passes. It is indeed operating through subsidiary companies already in existence over a considerable portion of the route under consideration. In addition to this it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly established service by sea along the whole line of the proposed air mail route.

"The low bidder does not have these facilities. It has not the advantage of a functioning organization and of an operating personnel already in the field. According to the statement of its president, which is a part of the file in this case, the company has no flying equipment. A number of gentlemen of undoubted financial ability have subscribed to this company's stock but it is admitted by its president that these subscriptions are dependent upon the award of contract to the company. It is thus plainly apparent that it has not the important advantage of possessing a fixed and functioning organization equipped to enter upon the work. I am convinced that under the most favorable circumstances the low bidder could not possibly place itself

in position to perform this service without the lapse of much time.

"In awarding the contract to the Pan American Company I am also greatly influenced by information obtained direct from the United States Ambassador to Cuba, Honorable Noble B. Judah. The Ambassador has informed me that the president of the company appearing as low bidder has figured in one or more projected aeronautical enterprises in Cuba, where his experiences have been unfortunate, resulting in complete failure. On the other hand, the Ambassador states that the Pan American Company is now operating lines to and through Cuba in a conspicuously successful manner.

[fol. 2539] "I would repeat that the contract in question is for a route most difficult to serve but at the same time of very great and far-reaching importance not only to the public but to the whole future of transportation by air. Failure would be a serious blow to the prestige of American aeronautical enterprise.

"Because of the facts herein enumerated, I am firm in the opinion that the best interests of the service, the Government, and the public to be served require that the award be made to the company best equipped to perform the service and I therefore make the award to the Pan American Grace Airways, Inc., of New York."

[fol. 2540]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 133

March 2, 1929

ORDER NO. 8620

Route No. F.A.M. 9

The proposal of the Pan American Grace Airways, Inc., of 122 East 42nd Street, New York, N.Y., under the advertisement of January 21, 1929, for carrying the mails in safe and suitable aircraft from Cristobal, Canal Zone, by Buenaventura and Tumaco, Colombia, Esmeraldas and Guayaquil, Ecuador, Talara, Trujillo, Lima, Lomas and

Mollendo, Peru, Arica, Iquique, Antofagasta, Caldera and Coquimbo, to Santiago, Chile, and return, three times a week, by a schedule satisfactory to the Postmaster General for a period of ten years from April 1, 1929, at the rate of $1.80 per mile each way for the specified load of not exceeding 800 pounds each way, plus the rate of 90 cents a pound per thousand miles or pro rata thereof for greater or less mileage for any excess mails required to be carried in the same aircraft, is accepted; contract to be executed accordingly.

(signed) HARRY S. NEW
Postmaster General

[fol. 2541]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 134

CONTRACT FOR FOREIGN AIR MAIL SERVICE

Route No. F. A. M. 9.

This Contract, made this 2d day of March, 1929, by and between the United States of America (by the Postmaster General) and the Pan American-Grace Airways, Inc., a corporation organized and existing under the laws of the State of Delaware, Contractor:

WITNESSETH, that whereas the said Pan American-Grace Airways, Inc., has been accepted as contractor on route No. F. A. M. 9 in conformity with the advertisement inviting proposals for the service specified herein, issued by the Postmaster General under date of January 31, 1929:

NOW THEREFORE, The said contractor undertakes, covenants and agrees with the United States of America:—

1. To carry mails for the United States of the specified load of not exceeding 800 pounds a trip each way and any excess mails required to be carried in safe and suitable aircraft from Cristobal, Canal Zone, by Buenaventura and Tumaco, Colombia, Esmeraldas and Guayaquil, Ecuador,

Talara, Truxillo, Lima, Lamas and Mollendo, Peru, Arica, Iquiqui, Antofagasta, Caldera and Coquimbo to Santiago, Chile, and return, three times a week, by a schedule satisfactory to the Postmaster General, and to perform the services and undertakings in connection therewith as specified in this contract, for and during the term of ten (10) years beginning April 1, 1929. (The contractor may be permitted to omit service south of Mollendo, Peru, for a reasonable time at the discretion of the Postmaster General, pending completion of operating arrangements.)

2. To receive and deliver the mails at each post office on the route, unless other provision is made by the Department. The contractor also undertakes, covenants and agrees with the United States and binds itself, to be answerable [fol. 2542] in damages to the United States for the proper care and transportation of the mails, and to be accountable for any loss or damage resulting to any such mail or any part thereof by reason of the failure to exercise due care on the part of any of contractor's officers, agents or employees in the custody, handling or transportation thereof.

For the services herein specified when performed in accordance with the provisions of this contract and evidence thereof shall have been filed with the Postmaster General, the said contractor is to be paid by the United States at the rate of $1.80 per mile each way for the specified loan of not exceeding 800 pounds each way, plus the rate of 90 cents per pound per thousand miles or pro rata thereof for greater or less mileage for any excess mails required to be carried in the same aircraft, based on statute miles by the shortest practicable airway distance between points on the route as determined by the Postmaster General; payments to be made monthly and as soon after the close of each month as accounts can be adjusted and settled; said pay to be subject, however, to be reduced or discontinued by the Postmaster General as hereinafter stipulated, or to be suspended in case of delinquency.

It is further stipulated and agreed by the contractor:—

1. That in case of failure from any cause to perform any service required by this contract a pro rata deduction shall

be made from the compensation of the contractor on account of such omitted service, except that pro rata pay will be allowed for the airway distance flown between stated points on the route traversed on a partially completed trip if no delay in the mails over the ordinary means of transportation has resulted.

2. That deduction from pay may be made for suffering the mails to become wet, damaged or destroyed, or when a grade of service is rendered inferior to that stipulated in [fol. 2543] the contract, or for the loss of or depredation upon the mails in the custody of the contractor or its agent, provided the loss is occasioned by their fault, or for other delinquencies, in the discretion of the Postmaster General.

3. That the Postmaster General may annul the contract or impose forfeitures, in his discretion, for repeated failures or for failure to perform service according to contract; for violating the Postal Laws and Regulations; for disobeying instructions of the Post Office Department; for subletting service without the consent of the Postmaster General, or assigning or transferring the contract; for combining to prevent others from bidding for the performance of postal service, and such annulment shall not impair the right of the Department to claim damages from the contractor and its surety.

It is further stipulated and agreed

1. That if in the opinion of the Postmaster General the development of aircraft should be such as to render the equipment used on the route obsolete, so that it no longer meets the needs of the Department, the Postmaster General may call upon the contractor to provide suitable equipment and in the event of its failure to do so within such reasonable time as shall be given it, may terminate the contract.

2. That mail apartments in all planes shall be made fireproof to the satisfaction of the Post Office Department.

3. That the Department may increase or decrease the number of intermediate stops, or the number of trips per week, and change the termini of the route, dispatch mail

on any plane of the contractor flown over the route, and modify or change the schedule as the needs of the service require; and the Department may also extend or curtail the route, with pro rata allowance or reduction of pay.

4. That service on this route may be extended at the option of the Post Office Department from Santiago, Chile, [fol. 2544] by such intermediate points as the Postmaster General may determine, to Buenos Aires, Argentine, and Montevideo, Uruguay, at not exceeding pro rata allowance of additional pay.

5. That the contractor must make its own arrangements for landing fields, lighthouses, radio stations and such other aids to navigation as may be necessary for the proper performance of the service.

6. That this contract covers all mails to and from the United States or its possessions, including parcel post; provided that the contractor shall have the right to make arrangements with intermediate countries for the exchange of local mails between such countries.

7. That during the continuance of this contract, if the postal interests shall require, by mutual agreement between the contractor and the Postmaster General, the contract rate of pay herein may be changed, but shall never exceed the rate herein provided.

8. That the contractor may be permitted to sublet the service to acceptable persons, by permission of the Postmaster General, at not less than the contract rate of pay.

9. That no member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or agreement or to any benefit to arise thereupon.

10. That the contractor shall use flying equipment on the route of United States manufacture, shall use other equipment if practicable of United States manufacture, and shall employ necessary pilots and flying crews of United States citizenship where practicable to do so.

The contractor warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right [fol. 2545] to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

This contract is also subject to all the provisions of the advertisement (though not all specifically stated herein) and to the provisions of the Postal Laws and Regulations applicable to this service.

IN WITNESS WHEREOF, The parties hereto have executed this contract.

THE UNITED STATES OF AMERICA

By (Signed) HARRY S. NEW
Postmaster General

Signed March 4, 1929,
in the presence of

(Signed) L. R. WHITE

PAN AMERICAN-GRACE AIRWAYS, INC.

By (Signed) J. T. TRIPPE, Agent
Contractor

Signed March 4, 1929.

Witnesses:

(Signed) WM. P. PALMER
W. F. COGSWELL

The United States bonds notes described in the annexed schedule are hereby pledged as security for the performance and fulfillment of the foregoing undertaking in accordance with section 1126 of the Revenue Act of 1926, approved February 26, 1926, and Treasury Department Circular No. 154, dated April 30, 1926.

PAN AMERICAN-GRACE AIRWAYS, INC.,
By (Signed) J. T. TRIPPE, Agent
Contractor.

Approved as to form:
(Signed) HORACE J. DONNELLY
Solicitor

Approved as to fact:
(Signed) W. IRVING GROVER (cog)
Second Assistant
Postmaster General

[fol. 2546] I, W. F. COGSWELL, certify that I am the Secretary of the corporation named as contractor herein; that J. T. TRIPPE who signed this contract on behalf of the contractor, was then Agent of the said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Signed) W. F. COGSWELL
(Corporate Seal)

CERTIFICATE OF OATH OF CONTRACTOR

I, the undersigned, being employed in the care, custody and conveyance of the mail as contractor on the route named in the foregoing contract, do solemnly swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post offices and post roads within the

United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear that I will support the Constitution of the United States: So help me God.

(Signed) J. T. Trippe, Agent

Pan American Grace Airways, Inc.
Contractor.

Sworn to and subscribed before me a Notary Public this 4 day of March, 1929.

(Signed) Charles E. Warren
Notary Public
My commission expires
Nov. 4, 1930

(Seal)

[fol. 2547] Schedule of United States bonds deposited as collateral security for performance of service on Route F. A. M. 9, as described in the foregoing contract.

United States of America, 3 3/4% Treasury Bond of 1940-1943	June 15, 1929, and subsequent coupons attached	$10,000	$10,000 No. 6476 F

fol. 2548-A

Pan American-Grace Airways, Inc. Exhibit 135

OFFICE COPY

Handwritten notation: 3/29/28 2566 Re Awarded Contract No. 9

Before the Honorable the Postmaster General

IN THE MATTER OF THE PROTEST AGAINST THE AWARD OF FOREIGN AIR MAIL CONTRACT NO. 9

MEMORANDUM ON BEHALF OF PAN AMERICAN-GRACE AIRWAYS, INC.

Elihu Root, Jr.
R. Walton Moore
Counsel for

[fol. 2549]

March 26, 1929.

THE HONORABLE THE POSTMASTER GENERAL,
Post Office Department,
Washington, D. C.

Sir:

This memorandum is submitted in behalf of Pan American Grace Airways, Inc. It relates to the controversy regarding the award of Foreign Air Mail Contract for Route No. 9.

On January 31, 1929, Postmaster General New advertised for bids for the carriage of foreign air mails on Route No. 9, bids to be filed prior to noon on February 28, 1929. The following bids were received:

Name of Bidder	Rate Per Mile for each lb. Load	Rate Per lb. for Each Mile
1. Fred D. Arnold, Washington, D. C.	$1.98	$1.00
2. Consolidated Aircraft Corporation, Buffalo, N. Y.	1.98	.99
3. Trimotor Safety Airways, Inc., New York, N. Y.	1.95	.975
4. Pan American Grace Airways, Inc., New York, N. Y.	1.80	.90
5. American International Airways, Inc., New York, N. Y.	1.44	.72

On March 2, 1929, an award was made to Pan American Grace Airways, Inc., and on March 4, 1929 a contract for the carriage of air mails on Route No. 9 was formally entered into between the United States and that Company. The Company at once embarked on the acquisition of additional equipment for use on the proposed route and the enlargement of its personnel.

[fol. 2550] On March 6th, 1929, American International Airways, Inc., protested against the award and the execution of this contract.

The grounds of the protest have been expressed in a letter of protest, in a first brief used at the hearing before the Postmaster General on March 13th, and in a second and more elaborate brief. We will restrict our comment to the grounds of protest finally expressed in this second brief:

I.

First Ground of Protest.

"* * * it was the duty of the Postmaster General to award the contract to the lowest bidder financially able to meet the terms of the proposal and who posted the required bond to guarantee such performance." (Protestant's Brief, p. 6).

and

that the Postmaster General abused his discretion "because he based his action upon matters outside the scope of the advertisement for bids" (Protestant's Brief, p. 28).

ANSWER TO FIRST GROUND OF PROTEST.

We deal with this ground of protest first because it involves a fundamental misconception which keeps appearing over and over again in the protestant's brief. The Act of March 2, 1929, under which the contract was awarded, does not provide that the award shall be made to "the lowest bidder financially able to meet the terms of the proposal and who posts the required bond to guarantee such performance". The Act sets up quite a different standard.

fol. 2551 The protestant seems to feel that if it complied with the requirements of the advertisement it was entitled to receive the award, and that if the Postmaster General "based his action on matters outside the scope of the advertisement" he was doing an illegal act. Of course, that position is absurd. Compliance with the terms of the advertisement entitles a bidder to have his bid considered. It does not give him a right to receive the award. This protestant could have its bid rejected if the Postmaster General had rejected the protesting Company's bid and excluded

it from consideration on the ground of non-compliance with the terms of the "proposal" or advertisement, there might have been something to argue about under this ground of protest. No such thing occurred. The Postmaster General, without regard to any deficiency in compliance with the requirements of the advertisement, chose to consider the protestant's bid, and after considering it, exercised the discretion vested in him by the Act of March 2, 1929.

[NOTE: We shall show later under Point VI of this brief that the protestant did not comply with the requirements of the advertisement in that it did not file the required bond until after the closing of bids and the award of the contract, and that if the award had been made to the protestant we would ourselves have had a valid ground of protest.]

II.

Second Ground of Protest.

"* * * there was an abuse of discretion in that a sound and reasonable discretion was not exercised by Postmaster General New because his action was not founded on facts * * *" (Protestant's Brief, p. 28).

[fol. 2552] —4—

ANSWER TO SECOND GROUND OF PROTEST.

A. *The Postmaster General exercised his discretion properly and wisely.*

The record before the Postmaster General revealed the following facts in regard to the two companies:

PAN AMERICAN-GRACE AIRWAYS, INC.	AMERICAN INTERNATIONAL AIRWAYS, INC.
ORGANIZATION	
Formed in January, 1929, by W. R Grace & Co., owner of the greatest, most successful and most efficiently operated transportation system between the United States	Formed about one week prior to date of opening bids.

and South America; and Aviation Corporation of the Americas, owner of Pan American Airways, Inc., and of Compania Mexicana de Aviacione, S. A.; Pan American Grace Airways, Inc., being itself owner of Peruvian Airways Corporation and Chilean Airways Corporation.	

CAPITALIZATION

One million dollars, fully paid.	Subscribed capital of one million dollars, none of which had been paid.

[fol. 2553]

CASH RESOURCES

One million dollars.	None.

EQUIPMENT ACTUALLY OWNED

Four Fairchild cabin monoplanes actually on west coast of South America; one Fairchild cabin monoplane and one Loening amphibian in transit south.	None.

EQUIPMENT UNDER OPTION

Pan American Airways, Inc., had under option three multi-motor Sikorsky amphibians (since contracted for), for use on this line.	None. Had letter from manufacturer stating manufacturer had "available for prompt delivery, five Fairchild airplanes . . ."

CONCESSIONS

Through Pan American Airways, Inc., had operating	None. Operating rights in Colombia could be obt

rights in Canal Zone, Panama and Ecuador; through Peruvian Airways Corporation had operating rights in Ecuador and Peru. Under diplomatic exchange of notes and by having made $25,000 deposit, through Pan American Airways, Inc., had operating rights in Colombia. Through Chilean Airways Corporation had assurance of flying rights in Chile.

[For detailed evidence supporting this analysis see Record of Hearing, March 13, 1929, pp. 67-76, Department Exhibits Nos. 7, 8, 8-B, 9, 9-A, 9-B, 10, and 12.]

tained under diplomatic exchange of notes by making deposit of $25,000 or otherwise complying with governmental regulations.)

[fol. 2554] —6—

LANDING FACILITIES

Pan American Airways, Inc., actually operating in Panama. Through Peruvian Airways Corporation actually operating in Ecuador and Peru. Pan American Airways, Inc., had eight months' exclusive contract for use of facilities of Scadta Company on coast of Colombia and in Ecuador. Through Chilean Airways Corporation had assurance of landing fields in Chile.

[For detailed evidence supporting this analysis see the references cited on page

"Working arrangement" with Scadta Company in Colombia and Ecuador, subject to prior exclusive eight months' contract of Pan American-Grace Airways, Inc., for use of Scadta airports.

5, and, in regard to the contract with Scadta, R., pp. 69-79, Dept. Ex. No. 8-A, reprinted as Exhibit A to this Memorandum, p. 32.]

Offices	
American owned offices of W. R. Grace & Co., and of the Grace Line of steamships, at all points on the route and all other important cities on the west coast.	Use of offices of foreign owned Ultramares Corporation in seven cities.
Air Mail Contracts With South American Countries	
Peruvian Airways Corporation had exclusive international air mail contract with Peru. Harold R. Harris, Vice President and General Manager of Peruvian Airways Corporation, had non-exclusive contract, transferable to Pan American-Grace Airways, Inc., or Ecuadorian Airways Corporation, [fol. 2555] with Government of Ecuador for transportation of mail, parcel post, passengers and cargo between points in Ecuador and between Ecuador and other countries of South America. See copy of cablegram from American Minister of Quito to Secretary of State, dated February 23, 1929, filed with	None.

Post Office Department with letter of Pan American-Grace Airways, Inc., dated February 28, 1929, reprinted as Exhibit B to this memorandum, p. 33.]

EXPERIENCE IN CARRYING AIR MAIL

Pan American Airways, Inc., had operated a highly efficient air mail service:

None.

(1) From Miami to Havana since October 19, 1927.

(2) From Miami to Nassau since January 7, 1929.

(3) From Miami to Havana, Camaguey and Santiago, Cuba; Port au Prince, Haiti; Santo Domingo, Dominican Republic; and San Juan, Porto Rico, since January 9, 1929.

(4) From Miami to Cristobal, Canal Zone, on a limited schedule of two sailings a month since February 4, 1929.

[For proof of performance and outstanding efficiency of Pan American Airways, Inc., reference is made to the Post Office Department's record of completed trips.]

[fol. 2556]

Compania Mexicana de Aviacione, also owned by

—8—

Aviation Corporation of the Americas, had carried air mail for over a year for the Mexican Government (and, through sublease from Pan American Airways, Inc., *now* carries the United States air mail on the route Brownsville-Mexico City).

Peruvian Airways Corporation, owned by Pan American-Grace Airways, Inc., had been engaged in the actual carriage of Peruvian air mails from Lima, Peru, through Casma, Trujillo and intermediate points in Peru to Talara, Peru, since September 13, 1928; on January 25, 1929, extended the service northward to Guayaquil, Ecuador; and on February 24, 1929, extended the service southward to Mollendo, Peru, so that it was actually operating 62% of the entire distance from Cristobal to Mollendo.

EXECUTIVES

Benefit of executives of largest and most successful American transportation company serving west coast of South America, and of Pan American Airways, Inc., with 18 months of experience in transporting air mail to Latin America.

No executives with record of success in transportation of any kind. The president had been engaged in a prior independent venture in Cuba which had resulted in failure. [Statement of Ambassador Judah; compare also page 21 and Exhibit F, containing evidence as to the failure.]

[fol. 2557] —9—

OPERATING AND TECHNICAL PERSONNEL

Benefit of functioning organization headed by Colonel Charles A. Lindbergh.

No showing of anything more than paper organization.

The proposed route was the longest foreign air mail route ever let. It was a most important and difficult service. It involved the skirting of dangerous coast lines, long stretches of which are unsettled and without landing places, and ultimately the passage of the Andes. Speed in the establishment of the service was important to prevent the preemption of the territory by foreign subsidized companies. The safety of the mails was to be entrusted to the new venture, the lives of pilots and passengers, and, in a peculiar degree, the prestige and repute of our country. If one of us had to commit his life, or his good repute, to one of these two groups of bidders, would he hesitate for an instant between Lindbergh, the Grace Company and Pan American on the one hand, and this other group, barely formed, without a dollar of capital paid in, without an organization, without a plane actually owned: without experience, untested, untried, except for a record of trouble and failure on the part of its chief executive? and if we would not hesitate, can we say that the Postmaster General was wrong when he made his choice?

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[fol. 2558] B. *The action of the Postmaster General under the Act of March 3, 1929, in awarding the contract for Foreign Air Mail Route No. 9 to Pan American-Grace Airways, Inc., was conclusive and irrevocable.*

(1) The law vests in the Postmaster General wide discretion to determine facts and make awards of air mail contracts.

The Courts have always accorded to the Postmaster General a wide discretion in regard to the award of contracts.

In *The Mail Service Cases*, 251 U. S. 326 (1920), Mr. Justice Holmes said:

> "The texts to be discussed begin with an Act of 1873, but it should be observed as furnishing a background for that and the following statutes that from the beginning of the Government the Postmaster General, as the head of a great business enterprise, always has been entrusted, as he must be, with a wide discretion concerning what contracts he should make, with whom and upon what terms."

But in the case now under consideration we do not have to rely on the general rule of law.

The Act of March 2, 1907, provided, in regard to foreign ship mail contracts, that

> "the Postmaster General is hereby authorized to award such contracts to the bidder *that he shall find* to be the lowest responsible bidder that can satisfactorily perform the service required to the best advantage of the Government." (Italics ours.)

The Act also provided:

> "That in the award and interpretation of the contracts herein authorized the decision of the Post [illegible] Postmaster General shall be final and not subject to review by any officer or tribunal of the United States except by the President and the Federal Courts."

Here we have a clear and specific grant of discretion and final discretion to determine which bidder was satisfactorily performing the services required to the best advantage of the Government, and to make awards accordingly. In exercising that discretion the Postmaster General is entitled to act, as the head of any great business would act, on all the material available to him. He is entitled to give weight to anything which he deems helpful to him. [illegible] submitted by the bidders, no matter objected to by many trade bidders, no matter presented by his

agents from other sources, and to his own experience of the world and knowledge of business probabilities.

(2) The Postmaster General's determination of the facts in connection with the exercise of discretion in awarding contracts is conclusive.

The Postmaster General exercised the discretion vested in him under the statute, and, by order No. 8260, dated March 2, 1929, formally awarded the contract for Foreign Air Mail Route No. 9 to Pan American-Grace Airways, Inc. He supplemented the formal award by a statement of his reasons, dated March 2, 1929. It is implicit in the award, and clear from the express terms of the statement, that the Postmaster General considered the available evidence and determined that Pan American-Grace Airways, Inc. was the lowest responsible bidder *that could satisfactorily perform the service required to the best advantage of the Government.* That determination of fact is, not only under the specific provision of the Act of March 2,

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[fol. 2560] 1929, but under the general rule of the common law, conclusive in the absence of bad faith, and no claim of bad faith is made by the protestant. The protestant has formally, in open hearing, rejected the idea of any such claim [R., p. 164].

In *Martin* v. *Mott*, 12 Wheat. 19, 31 (1827), Mr. Justice Story said:

> "Whenever a statute gives a discretionary power to any person, to be exercised by him, upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts."

In *Bates & Guild Co.* v. *Payne*, 194 U. S. 106 (1904), the United States Supreme Court, speaking of an administrative act of the Postmaster General, said:

> "The rule upon this subject may be summarized as follows: That where the decision of questions of fact is committed by Congress to the judgment and discre-

tion of the head of a department, *his decision thereon is conclusive*." (Italics ours.)

To the same effect:

Diaz[illegible] v. Walker, 12 How. 389 (1851);
Foley v. Harrison, 15 How. 433, 447 448 (1853);
United States v. Wright, 11 Wall. 648 (1870);
French v. Fyan, 93 U. S. 169, 172 (1876);
Quinby v. Conlan, 104 U. S. 420, 425 (1881);
Steel v. Smelting Co., 106 U. S. 447, 456 (1882);
Nishimura Ekiu v. United States, 142 U. S. 651 (1892);

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[fol. 2561] *Hadden v. Merritt*, 115 U. S. 25 (1885);
United States v. California Land Co., 148 U. S. 31, 43-44 (1893);
Johnson v. Drew, 171 U. S. 93, 99 (1898);
National Life Insurance Company v. National Life Insurance Co., 209 U. S. 317 (1908);
Central Trust Co. v. Central Trust Co., 216 U. S. 251 (1910);
United States v. Wilbeat, 244 U. S. 111 (1917);
United States v. Atchison, T. & S. F. Ry. Co., 249 U. S. 451 (1919);
Houston v. St. Louis Packing Co., 249 U. S. 479, 484 485 (1919);
Brougham v. Blanton Manufacturing Co., 249 U. S. 495, 500-501 (1919);
Dakota Central Telephone Co. v. South Dakota, 250 U. S. 163, 184 (1919);
Silberschein v. United States, 266 U. S. 221 (1924);
Ma-King Co. v. Blair, 271 U. S. 479 (1926);
Williamsport Wire Rope Co. v. United States, 277 U. S. 551 (1928).

There are, of course, some exceptions to the rule, as in the case of taxation where the determination of value by the taxing officers is reviewable, and as in the case of the Interstate Commerce Commission whose determination of facts has the same weight as the verdict of a jury and

is reviewable, but only in case there is no evidence whatever in the record to support it. The general rule, however, applies with full force to determinations of fact by the heads of executive departments in the letting of contracts. See, in addition to the decisions of the Supreme

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[fol. 2562] Court of the United States abstracted under the next point, the following:

Thompson v. *United States*, 9 Ct. Cls. 185 (1873);
United States Wood Preserving Co. v. *Sundmaker*, 186 Fed. 678 (C. C. A. 6th, 1911);
Opinion of Attorney-General Cushing, 6 Ops. Atty. Gen. 226 (1853);
Opinion of Acting Attorney-General Whitney, 21 Ops. Atty. Gen. 56 (1894);
Theit v. *Burbie*, 34 Cal. App. 226, 167 Pac. 166 (1917);
City of Denver v. *Dumars*, 33 Colo. 94, 80 Pac. 114 (1904);
People ex rel. Assyrian Asphalt Co. v. *Kent*, 160 Ill. 655, 43 N. E. 760 (1896);
Johnson v. *Sanitary District of Chicago*, 163 Ill. 285, 45 N. E. 213 (1896);
Stubbs v. *City of Aurora*, 160 Ill. App. 351 (1911);
Williams v. *City of Topeka*, 85 Kans. 857, 118 Pac. 864 (1911);
Kelling v. *Edwards*, 116 Minn. 484, 134 N. W. 221 (1912).

The general rule of law is a sound one. No business could be run effectively if its executives had to be subject to a judicial review on the soundness of their judgment and the correctness of their data whenever they let a contract. Any such rule would produce paralysis and inaction. It might be satisfactory to litigious bidders but it would be ruinous to the virility and effectiveness of the postal service.

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[fol. 2563] 3) Not only is the determination of the Postmaster General conclusive but it is irrevocable by him or by his successors.

In *United States v. Speed*, 8 Wall. 77 (1868), one Simonds, acting under authority from the Commissary General, had entered into a contract without advertisement, on the ground that an exigency existed sufficient to justify dispensing with the statutory requirement in regard to advertising. Later the Government refused to perform the contract, alleging that no such exigency had actually existed. The Supreme Court held the contract irrevocable, saying:

> "It is too well settled to admit of dispute at this day that where there is a discretion of this kind conferred on an officer or board of officers, and a contract is made in which they have exercised that discretion, the validity of the contract cannot be made to depend on the degree of wisdom or skill which may have accompanied its exercise."

In *United States v. Purcell Envelope Co.*, 249 U. S. 313, (1919), Postmaster General Gary had awarded a contract for stamped envelopes and newspaper wrappers. Before the execution of the contract he was succeeded by Postmaster General Smith who refused to go forward and execute a contract on the ground that investigation threw doubt on the financial standing of the company to which the award had been made. The Court of Claims held that Postmaster General Smith had no right to refuse to go forward with the contract, saying (51 Ct. Cls. 211, 219):

> "Such contention by defendants we decide could only be considered prior to the awarding of the contract, and if found to be justifiable would be proper grounds for refusing to award the contract; but if an

> error was made in awarding the contract, neither Postmaster General Gary, who made it, nor his successor, Postmaster General Smith, who rescinded it, possessed the power under the law to arbitrarily annul it."

The decision of the Court of Claims was sustained by the United States Supreme Court, which said:

"Postmaster General Gary went out of office, and his successor, either by inducement or upon his own resolution, revoked the contract and entered into a contract with other companies.

"The record furnishes no justification of such action. There is no charge of default against the Envelope Company, no charge of inability to perform its contract, except in a particular which we shall hereafter mention. There is, it is true, a finding that Postmaster General Smith caused an investigation to be made of the financial standing of the Envelope Company and that the report thereunder was unfavorable to it. This is made a great deal of, and the fact that the contract was not signed nor the bond of the Envelope Company approved.

"It makes no difference that the contract was not formally signed or the bond formally approved, as counsel for the Government contends they should have been, both by the terms of the contract and by a statute of the United States (28 Stat. 279). Their formal execution, as we have seen, was not essential to the consummation of the contract. That was accomplished, as was decided in the *Garfielde Case*, by the acceptance of the bid of the Envelope Company and the entry of the order awarding the contract to it. * * * And we pass to the question of damages."

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[fol. 2565] III.

Third Ground of Protest.

"The contract should be rescinded because its execution was induced by misrepresentations on the part of Pan American-Grace Airways, Inc., with respect to material facts" (Protestant's Brief, p. 21).

ANSWER TO THIRD GROUND OF PROTEST.

This ground is based on a lengthy and disingenuous web of partial quotation and misinterpretation contained in the protestant's brief. If it is to be dealt with at all it has to

be dealt with in detail by correcting all the omissions and disentangling all the misinterpretations. We are loath to break the orderly movement of the real arguments in the brief by such material. Therefore, we deal with this point out of text in the following prolonged footnote:

[NOTE: All the claims of misleading the Postmaster General by misrepresentation relate to the letter of February 28, 1929, filed by Pan American-Grace Airways, Inc. in support of its bid.

The *first* alleged misrepresentation is as follows:

"We have arranged for service between Cristobal, Canal Zone, and Guayaquil, Ecuador, through subcontract to Pan-American Airways, Inc." (Protestant's Brief, p. 8).

The statement is true. Such arrangements had been made [R., p. 58]. No one has shown or offered any evidence to show that they had not been made. If you will read the text of the protestant's brief under this charge you will see that in order to produce their effect, they first change the word "arranged" to "equipped" and then to show that equipment was not available, leave out of account the equipment on the west coast in the hands of Peruvian Airways, the equipment already owned and in transit south, and the splendid fleet of Sikorskys actually contracted for soon after the award of the contract. As a matter of fact, at the date of this writing Pan American has just made its initial reconnaissance flight over this link.

[fol. 2566] The *second* alleged misrepresentation is as follows:

"In Panama, Pan-American Airways, Inc., holds adequate operating rights. The Company already operates into David and Panama City, important points in the Republic. A long term exclusive mail contract is now pending and about to be executed" (Protestant's Brief, p. 8).

The statement is true. The fact that the permit had been recently acquired did not impair its adequacy, nor did the fact that the permit was temporary. All flying rights are subject to governmental termination, and a temporary permit is the normal initial step toward the working out of a standing arrangement. The statement regarding the pendency of the long-term mail contract is true. The protestant quotes it, apparently as a misrepresentation, but does not attack it in the text.

The *third* alleged misrepresentation is as follows:

"Also on the same page of said letter is the statement that efforts were directed by the Company to secure adequate operating rights and legal standing and where possible international mail contracts in all the South American countries

involved and that in carrying out this plan "we believe we have been entirely successful". Notwithstanding said statement we allege that said Company showed evidence of an international mail contract only in Peru and there is no evidence of an international mail contract held by the Pan American-Grace Airways, Inc., or any of its subsidiaries in any other country. No evidence of any operating rights in Ecuador was submitted nor was evidence submitted of operating rights in Chile" (Protestant's Brief, p. 9).

The protestant is trying to give the impression that we asserted that we had international mail contracts in countries other than Peru. If you will look at the text of our letter you will see that there is no representation that we had international mail contracts in any country outside of Peru. The allegation which the protestant refers to is followed by two pages of detailed explanation showing exactly what is meant by the general claim that we had been successful in our efforts, and showing with the utmost clearness that we did not claim to have a mail contract outside of Peru. As a matter of fact, Harold R. Harris, Vice-President and General Manager of Peruvian Airways Corporation, did have a non-exclusive contract with the Government of Ecuador for the transportation of mail, parcel post, passengers and cargo between points in Ecuador and between Ecuador and other countries of South America, transferable to Pan American-Grace Airways, Inc. or Ecuadorian Airways Corporation. [See copy of cablegram from American Minister at Quito to Secretary of State dated February 23, 1929, filed with Post Office Department, a copy of which is annexed hereto as Exhibit B, p. 33]. As to the possession of operating rights in Ecuador, Peruvian Airways Corporation, a wholly owned subsidiary of Pan American-Grace Airways, Inc., *was actually operating in Ecuador at the time of the award and the record showed this fact.* As to the claim of having been entirely successful in the attempt to procure operating rights and legal standing in Chile, it should be noted that our letter [R., p. 66] told exactly what was meant by this claim. The claim of success was fairly supported by a cablegram from the American Ambassador, stating that he had been advised by the Chilean Government that permission to use the Chilean airports would be formally granted to Chilean Airways Corporation in that week.

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[fol. 2567] The *fourth* alleged misrepresentation is as follows:

"that Scadta is *German* controlled" (Protestant's Brief, p. 9).

The protestant claims [R., p. 128] that two-thirds of the stock of the Scadta Company is owned by Dr. P. P. Von Bauer and that Dr. Von Bauer is not a German but an Austrian. We have had long negotiations with the Scadta Company. Mr. Trippe, of the Pan American, has had occasion to go to Berlin for negotia-

tions with the Scadta Company. Business of that Company is conducted at Schoneberger Ufer 35, Berlin W. 35. Dr. Von Bauer, when in Europe, resides in Germany, not Austria. His clerks and office force are German speaking and appear to be Germans. We know that the pilots of the Company in Colombia are mostly German speaking and that the Company's equipment is of German manufacture. The name Scadta is a popular abbreviation of "Sociedad Colombo Alemana De Transportes Aereos", the word "Alemana" being Spanish for "German". We have not consulted Dr. Von Bauer's birth certificate. If he is in fact a German-Austrian instead of a German, then the statement in our letter is to that extent accurate. We think you will agree that the degree of inaccuracy is not one of importance. We assure you that it was unintentional.

The *fifth* alleged misrepresentation is as follows:

> "that Pan American Airways had an agreement with Scadta under which they enjoyed the exclusive use of Scadta's technical facilities on the coast of Colombia" (Protestant's Brief, p. 10).

That statement is true. Pan American Airways, Inc., held a written contract with the Scadta Company for eight months' exclusive use of its airports [the exact phrase is "exclusive landing privileges at our airports"] at Buenaventura and Tumaco, in Colombia, and also at Esmeralda, Caraquez and Guayaquil, in Ecuador. The contract was subject to the acquisition by Scadta and Pan American Airways, Inc., reciprocally of operating rights in the Canal Zone and in Colombia, but those rights had been acquired and the condition fulfilled by the diplomatic agreement in regard to the exchange of landing rights between the United States and Colombia, and Pan American-Grace Airways, Inc., had been notified of the taking effect of the exchange by the Department of State. [A photostatic copy of the original of the Pan American-Scadta contract is on file with the Post Office Department; a copy is annexed to this brief as Exhibit A, p. 32.]

Is there a claim that the Postmaster General was misled because the grant of "exclusive landing privileges at *our* airports" was paraphrased in our letter "exclusive use of Scadta technical facilities"? Certainly not, for the next sentence in our letter shows that the phrase refers to Scadta's physical facilities, in other words, precisely to the "*airports*".

The *sixth* alleged misrepresentation is as follows:

> "We have since demonstrated that the agreement with Scadta by Pan American Airways was for landing privileges only for a trial flight" (Protestant's Brief, p. 12).

That is an absolute, reckless falsehood. Reference to the contract shows that the exclusive grant for the use of airports was for the period of eight months.

[fol. 2568] The *seventh* alleged misrepresentation is as follows:

> "The same paragraph of their letter states that regular transport and airmail service is now maintained between Guayaquil, Ecuador, and Mollendo, Peru, a distance of 1,490 miles and over 62% of the entire distance between Cristobal and Mollendo. Careful inquiry has disclosed that service for the entire route between Guayaquil and Mollendo was not inaugurated until February 25th (three days before the opening of bids) and cabled information received March 18, 1929, from Lima, Peru, showed service was being conducted on a schedule of one trip each way weekly" (Protestant's Brief, pp. 12-13).

The protestant seeks to create the impression that service on the entire route between Guayaquil and Mollendo was not inaugurated until February 25, 1929. The facts are that the route from Lima to Talara, Peru, had been operated since September 13, 1928, and that the route from Talara to Guayaquil had been operated since January 25, 1929. It was only on the portion of the route between Lima and Mollendo that service was not begun until "three days before the opening of bids." The contention that the service was not "regular" because a part of it had been instituted only a short time before the writing of the letter, is unsound.

The *eighth* alleged misrepresentation is as follows:

> "The third paragraph of the summary states that Pan American-Grace Airways, Inc. and subsidiary operating companies is now operating at a heavy loss. We deny that Pan American-Grace Airways, Inc. is operating at all." (Protestant's Brief, p. 13.)

Pan American-Grace Airways, Inc., was, through its subsidiary company, Peruvian Airways Corporation, operating and operating at a heavy loss. The statement objected to is exactly true. We should be glad to submit the operating figures in detail if the Department desires them, but as the protestant's claim is entirely unsupported by any evidence we hardly think it is worth while to burden the record with detailed operating statements.

The *last* alleged misrepresentation occurs on page 14 of protestant's brief. It is as follows:

> "The statement is again made in said paragraph '3' of the summary that the Pan American-Grace Airways, Inc. is in actual operation, which we deny as totally untrue and not justified by the facts. The only operation being conducted is over the route followed by the Peruvian Airways Corporation on the scheduled stated above."

The first sentence challenges the truth and the second sentence admits the truth of the statement. Our letter dated February 28,

1929, sets forth on its first page that Peruvian Airways is a wholly owned subsidiary of Pan American-Grace Airways, Inc.

It is so clear that no misstatements were made that we refrain here from going into any further consideration of the numerous questions which would become important if there had been a misstatement, as, for instance, whether the misstatement was intentional, whether the Post Office Department was misled by the misstatement or was able to correct it from other or later material, whether the matter involved in the misstatement was controlling

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[fol. 2569] in determining the action of the Postmaster General, and whether the procedure now being followed by the protesting Company is a proper and normal procedure for the rescission of contracts.]

Before leaving the matter of misrepresentations, we wish to call attention to the fact that the protesting Company has itself been guilty of an attempt to mislead the Postmaster General.

At the hearing of March 6th the protesting Company filed an affidavit by its president, Mr. Montgomery, a copy of which affidavit is annexed hereto as Exhibit C, page 33. The affidavit contains four erroneous statements:

(1) That Mr. Montgomery resigned from the Pan American Company because he considered its management unsatisfactory; the fact being that he was asked to resign because he had become *persona non grata* to the Cuban government and therefore useless to the Company as representative in Cuba. (Affidavit of J. T. Trippe filed herewith as Exhibit D, page 35, original submitted herewith.)

(2) That Mr. Montgomery negotiated the contract with the Cuban government for carrying air mail from Havana to Key West; the fact being that the contract was negotiated by Dr. Julio de la Torre with General C. M. de Rojas, Secretary of War and Marine. (Translation of letter from General de Rojas, Exhibit E, page 36; photostat of the Spanish original submitted herewith.)

(3) That the reason why Aviation Corporation of Cuba did not begin operations was that the Cuban government decided that the interests of aviation in Cuba at that time would best be served by limiting it to planes engaged only in transport of government mail and government service; the fact being that the Cuban government never undertook to limit in any way the kinds of service which might be offered by private aviation companies. (Letter of General de Rojas above cited.

(4) That Mr. Montgomery's company, Aviation Corporation of Cuba, resulted in neither gain nor loss to the stockholders. It is admitted that it did not result in gain to the stockholders, but we have had brought to our attention a case where it clearly did result in loss. Compare Exhibit F, page 37, containing letter from Mr. George T. Walker regarding his experience as a stockholder, letter

from Mr. Montgomery to Mr. Walker's representative requesting payment of subscription and representing company as ready to begin operations; check in payment of Mr. Walker's subscription; note from Mr. Rodgers, Mr. Walker's representative, to Mr. Walker, saying that he was instructed to pay subscription only when Montgomery stated that he was ready to commence operations; unanswered letters of inquiry from Mr. Walker to Mr. Montgomery.) It is also a fact that the company has not paid its debts (Affidavit of P. H. Caine, Exhibit H, page 44, original submitted herewith).

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IV.

Fourth Ground of Protest.

"Contract is void because not advertised in accordance with law" (Protestant's Brief, p. 23).

ANSWER TO FOURTH GROUND OF PROTEST.

A. The protestant relies on Revised Statutes, §3941 which, as amended, provides:

> "The Postmaster General shall cause advertisements of all general mail lettings of each State and Territory to be conspicuously posted in each post office named in said advertisements for at least sixty days before the time of such general lettings, and no other advertisement of such lettings shall be required; *but this provision shall not apply to any other than general mail lettings.*" (Italics ours.)

The requirement of sixty days advertisement applies only to "general mail lettings of each State and Territory." *Air mail* contracts are not "general mail lettings." *Foreign* mail contracts are not "general mail lettings of each State and Territory." The provisions in regard to foreign mail contracts have always been kept entirely distinct and separate from §3944 of the Revised Statutes. A-fortiori *foreign air mail* contracts are not "general mail lettings." If §3941 of the Revised Statutes applied to such contracts, every one of the foreign air mail contracts now in effect would be void.

A contract for the transportation of mail from the *Canal Zone* to foreign countries cannot under any construction

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[fol. 2571] of language be a "general mail letting *of a State or Territory.*" The Act of August 24, 1912, c. 390, 12, 37 Stat. 569, provides:

> "All laws relating to the rendition of fugitives from justice as between the several States and Territories of the United States, shall extend to and be considered in force in the Canal Zone, *and for such purposes and and such purposes only the Canal Zone shall be considered and treated as an organized Territory of the United States.*" (Italics ours.)

B. Although the protestant claims that the advertisement was invalid for the purpose of awarding a contract to us, it does not claim that the advertisement was invalid for the purpose of awarding a contract to it. It does not ask that all bids be thrown out and that there be a re-advertisement. On the contrary, it terminates its first brief with a specific prayer that "the award and contract based thereon should be set aside and a contract should be executed with American International Airways, Inc." (First brief of protestant, p. 10.) Moreover, it is to be noted that, in spite of the protesting Company's complaints, it did put in a bid within the time limit, and it asserted on the formal oath of its president, John K. Montgomery, that it was able to begin the service within the time set for performance. [Affidavit dated February 28, 1929, filed with bid, R., p. 13.] The bid submitted was defective in respect of the bond and power of attorney, but no one will seriously contend that a month was not an adequate period for a reasonably intelligent bidder to comply with the requirements in that respect.

C. There was in South America a situation calling for prompt action. The great European powers have foresight

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[fol. 2572] enough to recognize the value to them of having in the hands of their nationals, as far as possible, the flying routes in other countries. They evidence belief in

the importance of that matter by the granting of substantial subsidies. The French subsidized company, Aeropostale, is already in operation in Brazil, Uruguay and the Argentine, has lines in organization in Chile and Paraguay, and contemplates extensions to the Guianas and the Peruvian border. [Prospectus and map of Compagnie Generale Aeropostale submitted herewith.] There are, in addition, we believe, plans for extension by Scadta, and there is always the possibility of attempts at local monopoly such as the attempt of Raffael Dillon in Ecuador recently noted in the press.

Mail service is generally contracted for with a single company in any given territory and mail contracts cover, as a rule, very substantial periods of time, so that the country whose nationals arrive first in a given territory are very apt to exclude permanently the participation of other enterprises. Our own Government recognized, therefore, the importance of pressing forward with its air mail developments in South America while there was still an opportunity for its nationals to participate in the return carriage of air mails and in general transportation. Every one active in aviation knew in advance of the advertisement that the mail service was to be extended to South America. The President and the President-elect had called attention to this in public speeches, and the Postmaster General had announced his plan in an official report. [See Exhibit H annexed, p. 45.] Any one interested in the proposed extension might have known that he should not leave the beginning of his preparation until the day of making his bid.

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[fol. 2573] The extension of United States air mail service south of the Canal Zone was for a long time held up by the inability of the United States to procure for its nationals rights of landing and transit in Colombia. That obstacle was removed by the recent exchange of diplomatic notes between the two countries in question. As soon as it became clear that this obstacle would be removed, it was incumbent upon the Post Office to act, and it did act, with celerity.

Post Office contracts for the carriage of mail by water under the Merchant Marine Act are awarded on a period

of advertisement of three weeks with the express sanction of Congress. Act of May 22, 1928, c. 675, 49 U. S. Code, Title 46, § 891 j. Contracts for the carriage of domestic air mails have often been awarded on a period of advertisement of thirty one days, or less. Of the six previous foreign air mail contracts now in force, only one was advertised for a period in excess of 32 days and the average period of advertisement for the others was 26.6 days. [See Exhibit 1 annexed, pages 47-51, showing periods of advertisement of contracts under the Merchant Marine Act and for domestic and foreign air mail.] To assert that under the circumstances of urgency outlined above, it was not within the wide discretion of the Postmaster General to award this foreign air mail contract on a like period of advertisement is absurd.

V.

Fifth Ground of Protest.

"The contract is void because unauthorized by law at the time of advertisement and the opening of bids" (Protestant's Brief, p. 24.)

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[fol. 2574] ANSWER TO FIFTH GROUND OF PROTEST.

The protestant relies on cases decided under § 3732 of the Revised Statutes, which prohibits contracts or purchases on behalf of the United States, unless the same are authorized by law or are under an appropriation adequate to their fulfillment. Obviously these cases are irrelevant. Ample statutory authority for the present contract had been furnished before the award was made. There is nothing in § 3732, or in the cases cited by the protestant, which indicates in any way that the bidding as well as the award must be deferred until after the enabling statute has been passed.

Of course, as a matter of reason, the Postmaster General should be permitted to advertise in anticipation of a statute about to be enacted. Where there is a ground for haste and new legislation is needed, there is no consideration of good sense against allowing an advertisement to be made, bids to be received, and all preliminary matters to be cleared

out of the way so that there can be prompt action the minute the statute is passed. It is the universal custom of well-run business corporations, where a situation is urgent and action by stockholders is necessary, to go through all the preliminaries of negotiation, advertisement and contract prior and subject to stockholder consent so that the vote at the stockholders' meeting is the end and not the beginning of the process.

There is not much by way of authority on this matter, but what little there is clearly indicates that the advertisement can precede the passage of the act.

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[fol. 2575] In 2 Dec. Compt. Gen. 739 (1923), the City Commissioners of Pawhuska, Oklahoma, had received bids for paving certain streets adjoining Indian lands. With the advertisement, notice was given that the city had authority to contract for paving only half the streets but that bids would be received for paving the whole of the streets. Representatives of the United States were present at the awarding of the contract. Later Congress made an appropriation for paving the half of the streets adjoining the Indian lands. The question was whether the Government could join in the contracts already made, or whether there would have to be readvertisement as to the parts of the streets to be paved by the United States. The Comptroller General held that if the advertisements satisfied the requirements of Rev. Stat., §3709, there need be no readvertisement.

In *Swenson* v. *Village of Bird Island*, 93 Minn. 336, 101 N. W. 495 (1904), defendant village entered into a contract with plaintiff for the construction of a public well. The contract was let after public bidding in accordance with the statute. It appeared, however, that the village was without authority to make the contract except after a special election and that only nine days' public notice of the election instead of ten, as required by the statute, had been given. After the completion of the well a suit was brought to restrain payment on the ground that the election was void. This suit was successful. Thereupon another election was duly called *but the contract was not readvertised*. The

Court held that the second election ratified the contract and that plaintiff was entitled to payment.

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[fol. 2576]

VI.

American International Airways, Inc., did not comply with the requirements of the advertisement.

The advertisement on page 1 recited "Bond required with bid, $25,000." On page 3 the advertisement recited that "In lieu of surety bonds bidders may deposit U. S. Bonds amounting to $25,000, *in accordance with Department requirements*". (Italics ours.) In addition to this, the first paragraph on page 3 of the advertisement specially called the attention of bidders to the manner in which the exact terms of the requirements could be procured.

American International Airways, Inc., filed no bond with its bid. It did file with its bid $25,000 in United States Liberty Bonds, but did not file them "in accordance with Department requirements." It filed the bonds without any document of any sort indicating the terms on which they were to be held by the Department, or giving the Department power to deal with them under any of the contingencies which might arise, although the regular practice and the "Department requirements" demanded that the Liberty Bonds should be accompanied by a Power of Attorney and Penal Bond in the form prescribed by Treasury Department Circular No. 154 of 1926, pages 9 and 10, copies of which Circular were regularly furnished to bidders making inquiry in regard to the Department requirements referred to in the first and third paragraphs on page 3 of the advertisement. Any one with a grain of business sense would have realized that the mere handing of Liberty Bonds to a Departmental officer with no specification of the rights of the

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[fol. 2577] Department in regard to them was a futile and incomplete performance.

Noting this deficiency in the bid of the protesting company, the officers of the Post Office Department, instead of rejecting the bid entirely from consideration as they had a right to do, voluntarily went out of their way to call to the

attention of the protesting Company the defect in its bid. Nevertheless, the defect was not cured prior to the making of the award, nor even prior to the execution of the contract with the successful bidder. The bond required was finally furnished by the protesting Company on the 5th day of March. The protesting Company undertakes to excuse its failure by asserting an oral statement by one of the officers of the Department to the effect that it should get its bond in by March 4th (the day of the execution of the contract). The protestant did not even comply with the terms of this alleged dispensation. It filed the bond, not on March 4th, but on March 5th, after the contract had been executed, and attempts to excuse its failure by asserting that March 4th was a local holiday in the District of Columbia, and therefore presumably a day on which official actions were impossible, an absurd proposition in view of the fact that Congress was in session and the whole inaugural and departmental machinery in operation.

Not only was the Postmaster General entitled to reject the bid of the protestant on this ground, but he was under an obligation to reject it.

The advertisement provided on page 4 as follows:

> "A proposal altered, or incomplete, in any of its essential terms cannot be considered in competition with bids submitted in proper form."

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[fol. 2578] It is apparently the law that such a provision should be strictly enforced.

In 1871 the Attorney General rendered an opinion to the Secretary of War in which he said:

> "The authority to invite proposals implies an authority to prescribe reasonable terms and conditions. To announce under this authority that no bid will be considered which does not comply with certain directions, and afterward to consider and accept a bid not complying with such directions, is unjust to the complying bidders" (13 Ops. Atty. Gen. 510).

In 1926 the Comptroller General had under consideration the question of the validity of certain payments made by

an officer in the Finance Department of the army covering purchases made from the Bogart Paper Company in Brooklyn. It appeared that the instructions to bidders had required that duplicate samples properly labeled, must be submitted on all items bid on, and that such samples must be forwarded to the Purchasing Office in time for receipt prior to the hour of opening the bids. Another company submitted a bid which was fifty per cent. lower than that of the Bogart Paper Company, but failed to submit samples as required. The Comptroller General held that the bid of that company could, therefore, not have been considered, and that the Bogart Paper Company was the lowest bidder which had complied with the terms of the advertisement (5 Dec. Compt. Gen. 659).

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[fol. 2579] *Conclusion.*

As the Supreme Court said in *The Mail Divisor Cases*, above quoted, "the Postmaster General, as the head of a great business enterprise, has always been entrusted, as he must be, with a wide discretion concerning what contracts he should make, with whom and on what terms." That power and discretion has just been confirmed to the Postmaster General by statute in the most sweeping and emphatic terms.

The Postmaster General, with all the facts before him, has exercised his discretion wisely and well and as any sensible man would have exercised it under the circumstances. His action is conclusive. It has resulted in the execution of a contract, the beginning of performance, and the creation of vested rights which neither can be nor should be divested.

Respectfully submitted,

PAN AMERICAN-GRACE AIRWAYS, INC.

ELIHU ROOT, JR.,
R. WORTH VAUGHAN,
HENRY J. FRIENDLY,
Of Counsel.

[fol. 2580] *Exhibit A.*

New York City, N. Y.,
January 28th, 1929.

Pan American Airways, Inc.,
122 East 42nd Street,
New York City.

Dear Sirs:

Subject to your Company acquiring the necessary operating rights in Colombia, and our Company acquiring such privileges, on a reciprocal basis, in the Canal Zone, we hereby agree, in consideration of the sum of One Dollar ($1.00), receipt of which is hereby acknowledged, during the next eight months, to give you exclusive landing privileges at our Airports at:

Buenaventura and
Tumaco, Colombia.
Esmeralda and
Caraquez,
Guayaquil, Ecuador.

Compensation for the use of such facilities will be the usual fee commensurate for services rendered under similar conditions elsewhere.

We would request you, during this period, not to appoint our Agents to represent you in this territory.

In addition, of course, in the event of emergency, we will extend to you the courtesy of all our facilities, which we understand you in turn will extend to us.

Yours very truly,

SCADTA.

Dr. P. P. VON BAUER.

PPV/s

[fol. 2581]

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Exhibit B.

QUITO
Dated February 23, 1929.
Recd. 3.15 P.M.

SECRETARY OF STATE
WASHINGTON
1. February 23, 1 a.m.

HARRIS, VICE PRESIDENT OF PERUVIAN AIRWAYS, SECURED PERSONAL BUT TRANSFERABLE CONTRACT FOR PAN-AMERICAN AIRWAYS SERVICE. COPY OF CONTRACT BY MAIL.

BADING.

Exhibit C.

DISTRICT OF COLUMBIA, ss.:

John K. Montgomery, being first duly sworn, on oath deposes and says:

That he is President of American International Airways, Inc., a corporation organized under the laws of the State of Delaware, which Company is the low bidder for the air mail contract between Cristobal, Canal Zone, and Santiago, Chile.

With reference to statement dated March 2, 1929, Postmaster General, deponent says that the only aeronautical enterprises in Cuba with which he has been connected are the following:

(a) Pan American Airways, Inc., of which he was one of the organizers and the Vice President, from which company he resigned in February, 1928, because of disagreement with the President of the Company

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[fol. 2582] over questions of policy and what deponent considered unsatisfactory management. During his connection with said company, he negotiated the contract with the Cuban Government for carrying of air mail from Havana to Key West, and subsequently negotiated contract with the United States Govern

ment for carrying air mail from Key West to Havana which service he inaugurated.

(b) The Aviation Corporation of Cuba which was organized primarily for aerial mapping. Before said corporation began operations, the Cuban government decided that the interests of aviation in Cuba at tha time would best be served by limiting it to planes engaged only in transport of Government mail and Government service. For this reason the Company has never functioned and, therefore, resulted in neither gain nor loss to the stockholders.

(Signed) JOHN K. MONTGOMERY.

Subscribed and sworn to before me this 13th day of March, A. D. 1929.

SUZANNE L. GLYNN.

[SEAL.]

[fol. 2583] —35—

Exhibit D.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

J. T. TRIPPE, being duly sworn, deposes and says:

I am the President of Pan American Airways, Inc.

Mr. John K. Montgomery resigned as Vice President and director of Pan American Airways, Inc., in October, 1927, just before flying operations were inaugurated. He was retained by the company as its representative in Cuba in charge of public relations. He was finally asked to resign from the service of the company because he had become *persona non grata* to the Cuban government and was therefore, in my estimation, useless to the company as its representative in Cuba.

J. T. TRIPPE.

Sworn to before me this 25th day of March, 1929.

HIRAM S. GANS
Notary Public, New York County

[fol. 2584]

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Exhibit E.

REPUBLIC OF CUBA
Secretary of War and Marine
Box 883
Private.

Havana, March 19, 1929.

Dr. Julio de la Torre,
Counsel for Pan American Airways, Inc.,
City.

Dear Friend:

In connection with the sworn declaration signed by Mr. John K. Montgomery, subscribed and sworn to March 13, 1929, before Suzanne L. Glynn, Notary Public of the District of Columbia, referring to his activities in Cuba, first as Vice-President of the Pan American Airways, Inc., and then as President of "The Aviation Corporation of Cuba", I wish to state the following:

That as appears from the Pan American Airways, Inc., files, which we have in the department under my charge, all the negotiations for obtaining from the Cuban Government the authorization for putting into effect the service of transportation of passengers and mail, were conducted directly by you, the activities of Mr. Montgomery being limited to signing the contract in his character of Vice-President of the Company, and that the Government of Cuba, having in mind the significance of commercial aviation in relation to the progress and development of these ways of communication, has had and now has the aim of encouraging the same without limiting in any way the kinds of services which may be offered.

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[fol. 2585] Also, it is a pleasure for me to state to you that the department under my charge is satisfied as to the character and efficiency of the service which is regularly being furnished by Pan American Airways, Inc.

Very truly yours,

C. M. DE ROJAS.

Exhibit F.

(1).

MATANZAS SUGAR COMPANY, S. A.
Central Espana

Cable Address:
"Matsuco"

Asunto

Central Espana
Matanzas Prov.
Cuba

March 15, 1929.

Mr. Richard F. Hoyt,
Chairman of the Board,
Aviation Corporation of the Americas,
25 Broad Street, New York City.

Dear Mr. Hoyt:

You have asked me with regard to my business relations with Captain John K. Montgomery; here are the facts:

Captain Montgomery in the early part of 1928 asked me to join him in an enterprise for the formation of a small Aviation Company here in Cuba to do aerial mapping and photography. Being particularly interested in making it possible to have aerial mapping done on various sugar

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[fol. 2586] plantations, I agreed to take stock in his company, and, in order to get the thing going, asked others to come in also, some of whom did.

Montgomery organized the Aviation Corporation of Cuba, but up to the time I went North last year, had not been able to obtain permission to use the landing field at Camp Columbia, and I specifically stated I would not subscribe to any stock until he had obtained a bona-fide agreement with the Cuban Government which would permit him to use the landing field, or had obtained a suitable landing field elsewhere.

I left instructions with our Mr. Rodgers to pay Montgomery $1,000.00 for my stock subscription when Mont-

gomery advised him that such arrangements had been made, and accordingly on July 28th, 1928, Rodgers sent the Aviation Corporation of Cuba a check of the Matanzas Sugar Company in payment of my stock subscription.

I enclose for your information Montgomery's letter of July 19th to Mr. Rodgers, check for $1,000.00 sent to the Aviation Corporation of Cuba, as well as my letter of September 13th, and my letter of January 3rd, 1929, to Montgomery, in care of Sherman Fairchild, where I had been told he could be reached in New York City. I also enclose memorandum from our Mr. Rodgers to me, dated March 14th, 1929, regarding this same subject.

When I met Montgomery in the United States last summer he told me he had obtained some $20,000.00 of stock subscriptions, and I was very much surprised to find on my return to Cuba in September, that nothing had been done so far in the way of getting the company going, nor had it been possible to obtain permission to use the Camp Columbia landing field, nor had he obtained the use of any other field.

—39—

[fol. 2587] Having this in mind, I wrote him on September 13th, as per copy enclosed, and finally again on January 3rd, the last mentioned letter having been written subsequent to my visit to the Chase National Bank in Havana requesting information as to the amount of money on deposit in the name of the Aviation Corporation, and having been told that this amount was in the neighborhood of $3,000.00 only. To neither of these letters have I received any reply.

I believe that I was named some sort of an officer or Director of the Aviation Corporation when formed, but I have never received any notice of any meeting, nor have I received any financial statement from the Company, nor have I received a certificate of the stock for which I subscribed.

Very truly yours,

GEO. T. WALKER.

(2).

Corporación de Aviación de Cuba
(Aviation Corporation of Cuba)
Havana, Cuba
Sevilla Biltmore Arcade

July 19, 1928.

Mr. James Rogers, Supt.,
Central Espana,
Matanzas Province.

Dear Mr. Rogers:

Pursuant to the understanding with Mr. George T. Walker that I was to request the payment of his stock subscription of $1,000.00 to the Corporatión de Aviación de Cuba, we are now ready to commence operations and

—40—

[fol. 2588] so would appreciate your sending check made out to the Corporación de Aviación de Cuba at your earliest convenience.

Very truly yours,

John K. Montgomery

JKM/OK

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(3).

Matanzas Sugar Company, S. A.

Central Espana No. 5368

$1,000.00

Central Espana, 20 de Julio de 1928

Paguese a la orden de Corporacion de Aviacion de Cuba .....Un Mil.....XX/100 pesos
Oro official o moneda Americana en pago de la cuenta detallada al dorso

A Matanzas Sugar Company S. A.

The National City Bank of New York,
Cardenás, Cuba

James Rodgers, Jr.
For Central Espana.

T. B. Smith
Visto Bueno

Space for enforsements
Espacio para endorso
Corporacion de Aviacion
John K. Montgomery
President

—41—

(fol. 2589) (Back of Check)

MATANZAS SUGAR COMPANY, S. A.
Central Espana
Matanzas Prov., Cuba.

Comprobante a favor de Corporation de Aviacion de Cuba

Sevilla Biltoinora Arcade, Habana, Cuba

Fecha		Importe
1928		
Julio 20	In payment of Mr. George T. Walker's stock subscription to the Corporacion de Aviacion de Cuba as per your letter of July 19th to Mr. James Rodgers	1,000.00

(4).

Memorandum to Mr. Walker

March 14, 1929

I have little to add about the thousand dollars paid for your account to Montgomery.

You will recall that you instructed me verbally that this payment was to be made when Montgomery stated that he was ready to commence operations.

He spoke to me in July in Havana, saying that he was all set and I requested that he write a letter asking for the payment. He also said that he had just seen you in the North. Immediately upon receipt of his letter of July 19th, I forwarded the check for $1,000.00.

I saw both Montgomery and Mr. O'Keefe before you returned in August, and stated that we had not yet received the stock certificate but was assured by both that it would be forwarded immediately.

—42—

[fol. 2590] You will also recall that the day you arrived in Havana, I told you that this certificate had not been received, and that, that same afternoon you had a long talk with Montgomery as to the difficulties which he was having.

JAS. R.

---

(5).

September 13, 1928

Corporación de Aviación de Cuba,
Sevilla Biltmore Arcade,
Habana.

Attention Mr. Montgomery

Dear Sir:

I notice that on July 20th, Mr. Rodgers sent you check for $1,000.00 for my account as my stock subscription for the Aviation Company.

I cannot find any acknowledgment of receipt of this subscription nor have I been able to locate the stock certificate. Will you please look into this and see that I get something for my money.

Very truly yours,

G. T. Walker

[fol. 2591] (6).

January 3, 1929.

Captain John Montgomery,
c/o Sherman Fairchild,
Fairchild Aviation Company,
270 West 38th Street,
New York City.

Dear Montgomery:

In July, while I was away, Rodgers sent you a check for one thousand dollars as my subscription in the Cuban Aviation Company, on your assurance that everything was all right and that you had definitely obtained permission to use the landing field at Camp Columbia.

In view of the fact that everything has blown up, and I know that you have returned money to other stockholders, I would appreciate it very much if you would ask the Chase National Bank to give me a thousand dollars out of the funds which the Company now has on deposit there.

I would be glad to hear from you and know what your plans are for the future.

Very truly yours,

G. T. Walker

[fol. 2592] *Exhibit 6.*

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

P. H. CAINE being duly sworn deposes and says:

I am the Assistant Treasurer of Pan American Airways, Inc.

On March 1, 1928, Pan American Airways, Inc., entered into an agreement with J. K. Montgomery for the account of a Cuban company to be formed by him providing for

the purchase by such Cuban company within thirty days from Pan American Airways, Inc. of one Fairchild airplane for a price which, by supplemental agreement dated April 20, 1928, was fixed at $12,634.52, less depreciation.

Pan American Airways, Inc. has fully performed its part of said agreements but only $5,000.00 of said purchase price has been paid although numerous efforts have been made to collect the balance thereof amounting to approximately $6,000.

P. H. CAISE

Subscribed and sworn to before me
this 25th day of March, 1929.

EDWARD J. CARRINGTON
Notary Public, Kings County.
Certificate filed in New York County.

—45—

[fol. 2593] *Exhibit H.*

In a statement dated January 2, 1929, Postmaster General New said (The United States Daily, Jan. 3, 1929, pp. 1, 5):

"As the year 1928 was conspicuous, so far as the Post Office Department is concerned, in the widespread development of the air mail service in the United States, so will 1929 stand out, in my opinion, as a year marked by great strides in connecting our own efficient air service with foreign countries, principally in South and Central America.

"Already we have in daily operation a line connecting New York with our northern neighbor, Canada, at Montreal and the prospects are favorable for a material extension during the coming 12 months of the Canadian service to a number of important cities in that country.

"Within the first two weeks of the new year we will begin operation of three foreign routes, already under contract, two of which mark the beginning of what will ultimately become a web of the air, tying up in a close skein of communication the two continents of the Western Hemisphere.

"Emanating from Miami, Fla., where direct connection is made with the domestic air mail system, the three routes go, one to Nassau, in the Bahamas, one to Porto Rico, and the third to the Panama Canal Zone.

"The Porto Rican service begins as a tri weekly operation, to be increased to daily when conditions warrant. Stops are to be made at Havana, Cuba; and Santo Domingo, Dominican Republic, and later at Santa Clara, Camaguey and Santiago, Cuba; and Port au Prince, Haiti. The contractor is required, under the terms of the contract, to extend the service to Trinidad via the Leeward and Windward Islands at the option of the Postmaster General.

46.

fol. 2594 "The Canal Zone route will begin as a semi-monthly operation which stops at Merida, Mexico; Belize, British Honduras; Tegucigalpa, Republic of Honduras; Managua, Nicaragua, and San Jose, Costa Rica, and at other points to be designated. This route may also be extended via Cartagena, Colombia; Maracaibo, Venezuela; Curacao, Dutch West Indies; La Guaira, Venezuela; Port of Spain, Trinidad, Georgetown, British Guiana, to Paramaribo, Dutch Guiana. *Preliminary arrangements are under way for extension at the same time farther down the west coast of South America to Santiago, Chile and over the Andes to Buenos Aires, Argentina.*" (Italics ours.)

Exhibit I.

CONTRACTS AWARDED UNDER THE AUTHORITY OF THE MERCHANT MARINE ACT, 1928.

Route	*Date of Advertisement*	*Date proposals were received*	*Date contract awarded*	*Contractor*
No. 4 N. Y. to Buenos Aires	6/ 9/28	7/ 9/28	7/13/28	Munson Steamship Line
No. 5 N. Y. to Mediterranean & Black Sea Ports	6/ 9/28	7/ 9/28	7/13/28	The Export S. S. Corp.
No. 6 N. Y. to Bairo, Portuguese East Africa	8/17/28	9/17/28	10/ 1/28	American South African Line
No. 8 N. Y. to Valparaiso	6/ 9/28	7/ 9/28	7/13/28	Grace S. S. Co.
No. 10 San Juan to Santo Domingo D. R.	6/ 9/28	7/ 9/28	7/13/28	N. Y. & P. R. S. S. Co.
No. 15 Boston to Yarmouth	7/11/28	8/10/28	8/11/28	Eastern S. S. Lines Inc.
No. 16 N. Y. to Copenhagen & Helsingfors	7/11/28	8/10/28	8/30/28	American Scantic Line

Route	Date of Advertisement	Date proposals were received	Date contract awarded	Contractor
No. 17 N. Y. to West African Ports	7/11/28	8/10/28	8/30/28	American West African Line
No. 18 N. Y. to Maracaibo, Venezuela	7/11/28	8/10/28	8/30/28	Atlantic & Caribbean Steam Nav. Co.
No. 20 N. Y. to Havana	7/11/28	8/10/28	9/5/28	N. Y. & Cuba Mail S. S. Co.
No. 21 N. Y. to Vera Cruz [fol. 2596]	7/11/28	8/10/28	8/30/28	N. Y. & Cuba Mail S. S. Co. —48—
No. 23 Galveston or Port Arthur to Santo Domingo	7/11/28	8/10/28	8/28/28	Lykes Bros. S. S. Co.
No. 24 San Francisco to Sydney	7/26/28	9/4/28	9/6/28	The Oceanic S. S. Co.
No. 25 San Francisco to Manila	7/11/28	8/20/28	9/28/28	Dollar Steamship Line
No. 26 Seattle to Manila	7/11/28	8/20/28	9/28/28	Admiral Oriental Line
No. 27 San Francisco to Colombo, Ceylon	7/11/28	8/20/28	8/30/28	Dollar Steamship Line

Route	Date of Advertisement	Date proposals were received	Date contract awarded	Contractor
No. 28 Portland, Ore. to Manila	7/11/28	8/20/28	8/30/28	States Steamship Co.
No. 29 Portland, Ore. to Takubar, China	7/11/28	8/10/28	8/30/28	States Steamship Co.
No. 30 Los Angeles to Auckland	7/16/28	8/20/28	8/30/28	Oceanic and Oriental Nav. Co.
No. 31 Los Angeles to Melbourne	7/16/28	8/20/28	8/30/28	Oceanic and Oriental Nav. Co.
No. 32 New York to Balboa, C. Z.	9/27/28	10/26/28	12/19/28	American Line S. S. Co. (Panama Pacific Line)
No. 33 Savannah to Liverpool-Bremen	10/24/28	11/23/28	11/24/28	South Atlantic S.S. Co. of Delaware
No. 34 San Francisco to Buenos Aires	10/27/28	11/30/28	12/ 3/28	Pacific Argentine Brazil Line
No. 22 New Orleans to Progresso, Mex.	2/ 8/29	3/12/29	No award made	.....

[fol. 2597]

DOMESTIC AIR MAIL SERVICE

Route	Date Advertised	Date Bids Opened	Date Contract Awarded
Boston-New York Colonial Air Transport	7/15/25	9/15/25	10/ 7/25
Chicago-St. Louis Robertson Aircraft Corp.	7/15/25	9/15/25	10/ 7/25
Chicago-Dallas National Air Transport	7/15/25	9/15/25	10/ 7/25
Salt Lake City-Los Angeles Western Air Express	7/15/25	9/15/25	10/ 7/25
Elko-Paso Walter T. Varney	7/15/25	9/15/25	10/ 7/25
Detroit-Cleveland Ford Motor Co.	9/21/25	11/21/25	11/25/25
Detroit-Cleveland Ford Motor Co.	9/21/25	11/21/25	11/25/25
Seattle-Los Angeles Vern Gorst	7/15/25	9/15/25	12/31/25
Chicago-Minneapolis			
1. Chas. Dickinson	10/29/25	12/29/25	1/11/26
2. Northwest	8/16/26	9/ 4/26	9/ 7/26
Atlanta-Miami Florida Airways, Inc.	11/18/25	1/18/26	2/11/26
Cleveland-Pittsburgh Clifford Ball	1/22/26	3/24/26	3/27/26
Cheyenne-Pueblo			
1. Colo. Airways	12/31/25	3/ 1/26	3/29/26
2. Western Air Expr.	9/ 3/27	10/ 4/27	10/ 4/27
Detroit-Grand Rapids Stout Air Service, Inc.	6/10/26	7/26/26	7/31/26
Phila.-Washington Phila. Rapid Air Transport	6/16/26	7/ 1/26	7/ 2/26

Route	Date Advertised	Date Bids Opened	Date Contract Awarded
Phila.-Norfolk Phila. Rapid Air Transport	9/ 9/26	9/25/26	9/25/26
Cleveland-Louisville Continental Air Lines	6/15/27	7/16/27	10/10/27
New York-Chicago National Air Transport	3/ 8/27	3/24/27	4/ 2/27
[fol. 2598]			—50—
Chicago-San Francisco Boeing Airplane Co. and Edward Hubbard	11/15/26	1/15/27	1/29/27
New York-Atlanta Pitcairn Aviation	12/23/26	2/23/27	2/28/27
Albany-Cleveland Colonial Western Airways	6/15/27	7/16/27	7/27/27
Dallas-Galveston Seth Barwise	6/15/27	7/16/27	8/17/27
Dallas-Laredo Seth Barwise	6/15/27	7/16/27	8/17/27
Atlanta-New Orleans St. Tammany Gulf Coast Airways	7/18/27	8/18/27	8/19/27
Chicago-Cincinnati Embry-Riddle	7/21/27	8/18/27	11/27/27
Atlanta-Miami Pitcairn Aviation	10/18/27	11/19/27	11/23/27
Great Falls-Salt Lake City Alfred Frank	10/27/27	12/28/27	12/30/27
Bay City-Chicago Thompson Aeronautical Corp.	2/29/28	4/30/28	5/ 5/28

Route	Date Advertised	Date Bids Opened	Date Contract Awarded
St. Louis-Omaha Robertson Aircraft Corp.	3/21/28	4/30/28	5/ 9/28
New Orleans-Laredo St. Tammany Gulf Coast Airways	3/20/28	5/21/28	7/13/28
Chicago-Atlanta	6/ 1/28	6/30/28	8/ 9/28

[fol. 2599] —51—

INTERNATIONAL AIR MAIL SERVICE

Route	Date of Advertisement	Date Proposals were received	Contract awarded	Name of Contractor
No. 6 Miami to San Juan	5/31/28	32 days 7/ 2/28	11 days 7/13/28	Pan American Airways, Inc.
No. 4 Miami to Havana	3/30/28	52 days 5/21/28	8 days 5/29/28	Pan American Airways, Inc.
No. 5 Miami to Cristobal	5/31/28	32 days 7/ 2/28	11 days 7/13/28	Pan American Airways, Inc.
No. 1 Miami to Montreal	6/ 5/28	20 days 6/25/28	14 days 7/ 9/28	Canadian Colonial Airways, Inc.
No. 7 Miami to Nassau	9/17/28	28 days 10/15/28	9 days 10/24/28	Pan American Airways, Inc.
No. 8 Brownsville to Mexico City	1/ 5/29	21 days 2/26/29	24 days 2/16/29	Pan American Airways, Inc.
No. 9 Cristobal to Santiago	1/31/29	28 days 2/28/29	2 days 3/ 2/29	Pan American-Grace Airways, Inc.

[fol. 2600]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 136

COPY

POST OFFICE DEPARTMENT

WASHINGTON

May 3, 1929.

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

Pan American-Grace Airways,
122 East 42nd Street,
New York City.

The Postmaster General has been advised by the Attorney General that he has found no infirmities in the contract entered into by this department with your company and has ordered me to advise you to fulfill the terms of the contract Stop When will you be ready to start service to Mollendo as provided in said contract.

W. Irving Glover
Second Assistant Postmaster General.

[fol. 2601]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 137

COPY

IMMEDIATE RELEASE
May 3, 1929.

POST OFFICE DEPARTMENT
INFORMATION SERVICE.

Postmaster General Brown was today advised by the Attorney General that he has found no infirmity in the contract awarded by Former Postmaster General New to the Pan American-Grace Airways, Inc., of New York for air mail service from Cristobal, Canal Zone, and Santiago, Chile, with an extension over the Andes Mountains to Buenos Aires, Argentina.

This contract was awarded by Mr. New on March 2, 1929, but protest was lodged against the action of the former Postmaster General by the American International Airways, Inc., of New York City which concern was the lowest bidder for the route.

After a hearing on the protest, Postmaster General Brown referred the legal questions involved to the Department of Justice.

The Postmaster General today notified the Pan American Airways to proceed immediately to carry out the terms of the contract, and it is expected that this route will be in operation within a few days.

[fol. 2602]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 138

PAN AMERICAN AIRWAYS, INC.
122 East 42nd Street—New York City

May 9th, 1929

Mr. R. F. Hoyt,
c/o Messrs. Hayden, Stone & Co.,
25 Broad Street,
New York, N. Y.

My dear Mr. Hoyt:—

I beg to hand you herewith copy of a report which I have prepared for the Directors of Pan American-Grace Airways, Inc., covering the proposed remuneration to be made to Pan American Airways, Inc. for operating supervision of the airway to be operated by Pan American-Grace Airways, together with two estimates, one entitled "Estimate of Additional Equipment required for Cristobal-Mollendo Service", and the other, "Cristobal-Mollendo Service".

Very truly yours,

J. D. MACGREGOR
J. D. MacGregor

JDM:S
enclosures

[fol. 2603]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 139

To the Directors of Pan American-Grace Airways, Inc.:

Gentlemen:

I have purposely delayed making a definite proposal as to remuneration which should be recognized to Pan American Airways, Inc. for operating supervision of the 3,500 mile airway now to be operated by Pan American-Grace Airways, Inc. until I had the opportunity of giving the matter exhaustive study and intensive thought.

It is evident that if the United States Post Office Department awarded the mail contract for ten years to Pan American-Grace Airways, Inc., due weight was given to the operating performance of Pan American Airways, Inc. in fulfillment of mail contracts awarded to them in 1928. This successful performance was only possible by the expenditure of large sums of money in building up and perfecting an adequate and expert operating organization. The United States Post Office Department will expect from Pan American-Grace Airways a similar performance and unless Pan American-Grace Airways is prepared to spend from the strictly limited funds at its disposal an amount sufficient to insure a like result, it will not be very long before the United States Post Office commences to draw the matter forcibly to our attention.

Sight must not be lost of the fact that in South America strenuous and possibly unprincipled competition has shown its head, and unless our performance is excellent and our facilities adequate, our opponents will lost no time in pointing out our delinquencies and in suggesting that the contract be given to a group willing to give a service equal to that actually demonstrated by foreign companies and promised by American competitors.

[fol. 2604] The successful operation of any airway is only made possible through the assistance of men who are experts in several lines of industries, some of them recently developed. Unless Pan American-Grace Airways takes full advantage of an organization already existing, it must be prepared to build up that organization for its own account.

My estimate of the additional employees necessary for the successful operation of a 3,500 mile airway, each of whom would have to have in all probability some assistants, would be as follows:—

Comptroller (difference in salary)	$ 5,000.
Purchasing Agent	5,000.
Traffic Manager	10,000.
Public Relations	5,000.
Chief Engineer	10,000.
Factory Inspection	5,000.
Communications Engineer	6,000.
Construction Engineer	7,500.
Advertising and Publicity Manager	7,500.
Meteorologist	5,000.
Grief	5,000.
	$71,000.

The item which I have listed as "Grief", $5,000., is based on my previous experience in securing the services of employees and thereafter finding them unsuitable, either in ability or compatibility, to the work for which they have been employed.

It will be understood that these men may find it necessary to secure one or more assistants, in order to enable them to successfully handle their departments.

[fol. 2605] Pan American-Grace Airways, therefore, in my opinion, unless it avails itself of the organization already founded and developed by Pan American Airways, will face the task of securing additional personnel as detailed above, at an estimated cost of $71,000., which I consider extremely conservative.

A statement has been prepared by Pan American Airways, Inc., demonstrating its overhead expense, without including the services of its Chief Executive and the Executive office. By means of this statement, Pan American Airways offers the use of its operating organization at a cost to us of 6¢ per mile, operating once per week from the

Canal Zone to Santiago, Chile, and of 5¢ per mile upon a three times a week schedule. The total amount for supervision, based on Pan American Airways figures, would be approximately $22,000. and $56,000. respectively.

I believe that Pan American Airways' figures could be shaded slightly as far as supervision of the construction of airports is concerned, and by eliminating sundry expenses, such as telephone, telegraph, stationery, etc., which facilities would be paid by Pan American-Grace Airways as used. But the offer made by Pan American Airways is so moderate as compared with the cost of building our own organization, that it is my recommendation we accept the proposal, thus gaining not only the supervision of the chief departmental heads, but also the assistance of the subordinate personnel, and that a definite agreement be drawn up and signed immediately. It is my opinion that such an agreement should be for a period of at least five years, because it would be manifestly unfair to Pan American Airways to secure supervision at a moderate rate only as long as it took us to acquire our own organization. If the contract is made for only a year, even were Pan American Airways willing to accept that period, we would, at the expiration of the time, be again faced with the necessity of ac- [fol. 2606] quiring an organization, and I consider that for five years to come the securing of adequate and expert operating personnel will grow increasingly difficult because airplane operations are becoming so extensive that the supply is practically exhausted at this moment, and until additional men are educated, the personnel situation will be acute.

The arrangement with Pan American Airways has the additional advantage that at the time we are operating on the reduced schedule of once a week, the supervisory charges based on a per mile unit are the more moderate figure. The establishment of our own organization would entail the large initial expense against the lesser income.

Yours respectfully,

J. D. MacGregor
J. D. MacGregor

CRISTOBAL/MOLLENDO SERVICE

	Once a week	Thrice a week
Estimated Annual Revenue, as per Exhibit "A"	$ 599,700.	$ 1,[illegible],400
Estimated Annual Expenses - Cristobal/Talara (Sikorskies) as per Exhibit "B"	$ 259,900.	$ 575,200.
Talara/Mollendo (Fairchilds) as per Exhibit "C"	186,700.	383,400.
	$ 446,600.	$ 958,600.
Estimated Net Revenue on basis of Sikorskies and Fairchilds	$ 153,100.	$ 568,800.
Estimated Annual Expenses Cristobal/Talara (Sikorskies) as per Exhibit "B"	$ 259,900.	$ 575,200.
Talara/Mollendo (Fords) as per Exhibit "D"	264,600.	631,300.
	$ 524,500.	$ 1,206,500.
Estimated Net Revenue on basis of Sikorskies and Fords	$ 75,200.	$ 326,900.

Estimated expenses shown above do not include compensation for extraordinary services rendered by Pan American Airways, Inc., and W. R. Grace & Co.

[fol. 2608]

EXHIBIT "A"

ESTIMATED ANNUAL REVENUE

	Once a week	Thrice a week
U.S. Mail Contract $1.80 per mile 2300 miles each way	$ 430,000	$ 1,290,000.
Passenger Revenue		
Cristobal-Talara (1100 miles) 2 pass. per trip $200. each ($0.20 a mile)	41,600.	124,800.
Talara/Mollendo (1100 miles) 2 pass. per trip $140. each ($0.13 a mile)	29,100.	87,300.
Local Peruvian Passengers - $1,800. per year	96,000.	96,000.
Local Mail & Express Cargo	3,000.	6,000.
	$ 599,700.	$ 1,803,100.

[fol. 2609]

EXHIBIT "B"

ESTIMATED EXPENSES

Cristobal/Talara (Sikorsky Planes)
1115 Miles

	Once a week		Thrice a week	
H.R. Harris (In charge of operations)		$ 12,000.		$ 12,000.
Pilots	(2)	15,000.	(3)	22,500.
Co-pilots	(2)	11,000.	(3)	16,500.
Radio operators (on plane and ground)	(2)	6,000.	(4)	12,000.
1 Chief Mechanic $2400. 5 Mechanics average	(6)	14,400.	(18)	43,200.
Gasoline 40 gal. per hour at 40 cts.		22,900.		68,700.
Oil 2½ gal. per hour at 90 cts.		3,200.		9,600.
Spares ($5. an hour)		6,500.		19,500.
Depreciation - Planes $26.50 per hour Engines $13.50 per hour		52,000.		156,000.
Insurance (fire and liability) 10%		13,000.		52,500.
Reserve against crash 25%		32,500.		81,300.
Depreciation ground equip. 20%		10,000.		14,000.
Rent		2,400.		2,400.
Agency fees		3,600.		3,600.
Bookkeeper (Cristobal)		2,400.		2,400.
Share New York Overhead (50%)		25,000.		
Interest on Investment (6%)		13,000.		24,000.
Contingencies		15,000.		
		$ 259,900.		$ 575,[illegible]
Miles flown		116,000.		348,000.
Cost per mile		$2.23		$1.65

[fol. 2610]

EXHIBIT "C"

ESTIMATED EXPENSES

Talara/Mollendo (Fairchild Planes)
1,100 Miles

		Once a week		Thrice a week
Travis (In charge of Operations)		$ 7,500.		$ 7,500.
Pilots	(2)	15,000.	(3)	22,500.
Co-pilots	(2)	11,000.	(3)	16,500.
Radio operators on plane and ground	(2)	6,000	(4)	12,000.
1 Chief Mechanic $2400. 5 Mechanics average	(6)	14,400.	(18)	43,200.
Gasoline 22 gal. per hour at .40 cts.		15,000.		45,000.
Oil 1½ gal. per hour at .90 cts.		1,900.		5,700.
Spares ($5. an hour)		7,800.		23,400.
Depreciation - Plane $8 an hour Engines $7.50 an hour		24,200.		72,600.
Insurance (fire and liability) 10%		5,400.		12,300.
Reserve against crash 25%		13,100.		39,300.
Depreciation ground equipment (20%)		10,000.		14,000.
Rent		2,400.		2,400.
Agency fees		3,600.		3,600.
Bookkeeper (Lima)		2,400.		2,400.
Interest on investment		7,000.		12,000.
Share New York Overhead (50%)		25,000.		25,000.
Contingencies		15,000.		30,000.
		$186,700.		$389,400.
Miles flown		114,000.		342,000.
Cost per mile		$1.64		$1.14

[fol. 2611]

EXHIBIT "D"

ESTIMATED EXPENSES

Talara/Mollendo (Fords)
110 miles

		Once a week		Thrice a week
Travis (In charge of operations)		$ 7,500		$ 7,500
Pilots	(2)	15,000.	(3)	22,500.
Co-pilots	(2)	11,000.	(3)	16,500.
Radio operators (on plane and ground)	(2)	6,000.	(4)	12,000.
1 Chief Mechanic) $2400.				
5 Mechanics) average	(6)	14,400.	(18)	43,200.
Gasoline 70 gals. per hour at .40 cts.		40,000.		120,000.
Oil 5 gals. per hour at .90 cts.		7,000.		21,000.
Spares ($5. an hour)		7,800		23,400
Depreciation (Planes at $26.50 per hour) (Engines at $20.00 per hour)		65,000.		195,000.
Insurance (fire and liability) 10%		7,200.		21,600.
Reserve against crash 25%		18,000.		54,000.
Depreciation ground equipment 20%		10,000.		30,000.
Rent		2,400.		7,200.
Agency fees		3,600.		3,600.
Bookkeeper (Lima)		2,400.		2,400.
Interest on Investment		7,300.		17,300.
Share New York Overhead (50%)		25,000.		25,000.
Contingencies		15,000.		30,000.
		$264,600.		$631,300.
Miles flown		116,000.		348,000.
Cost per mile		$2.28		$1.81

ESTIMATE OF ADDITIONAL EQUIPMENT REQUIRED FOR CRISTOBAL-MOLLENDO SERVICE

[fol. 2612]

The enclosed estimate shows that if service is to be maintained from Cristobal to Mollendo using the Fairchilds now in Peru plus additional equipment for the run from the Canal Zone to Talara, the additional investment would be as follows:

	Once a week	Thrice a week
Sikorskies, plus spare engine and miscellaneous equipment	(1) $ 65,000.	(3) $ 195,000.
Sikorskies Reserve (with spares)	(1) 65,000.	(2) 130,000.
Loening, plus spare engine and miscellaneous equipment (for run Guayaquil Talara)	34,000.	-
Ramps, improvement of landing fields, refuelling stations and radio stations	100,000.	140,000.
	$ 264,000.	$ 465,000.

Should the Fairchilds be replaced by tri-motored Fords, the following additional inveatment would be required:

	Once a week	Thrice a week
Investment as above	$ 264,000.	$ 465,000.
Tri-motored Fords	(1) 60,000.	(3) 180,000.
Spare engines	(1) 7,000.	(3) 21,000.
Spares and miscellaneous equipment, incl. radio sets	5,000.	15,000.
	$ 336,000.	$ 681,000.

If the five Fairchilds now in Peru should be replaced by Fords, other fields of operation would have to be found for them, unless it is decided to replace them gradually as they become fully depreciated or are destroyed in accidents.

The Loening Amphibian at present running from Guayaquil to Talara might not be required if the Sikorskies fly down to Talara and back from the Canal Zone.

G V
N.Y. May 7/29

Above estimate of contemplated additional investments does not include cost of hangars at following points:

Cristobal
Guayaquil
Talara
Lima
Mollendo (or Arica)

[fol. 2613]

EQUIPMENT REQUIRED

		Once a week	Twice a week
Cristobal/Guayaquil (930 miles)			
Sikorskies	(1)	$ 53,000.	(3) $ 159,000.
Spare engines	(1)	7,000.	(3) 21,000.
Spares and miscellaneous equipment (including radio sets $2500)		5,000.	15,000.
Two reserve Sikorskies (with spares)	(1)	65,000.	(2) 130,000.
Guayaquil/Talara (180 miles)			
Loening Amphibian (approximate)	(1)	$ 25,000.	3 Sikorskies could reach down as far as Talara
Spare engine	(1)	7,000.	
Spares and miscellaneous equipment		2,000.	
		$ 164,000.	$ 325,000.
Talara/Mollendo (1100 miles)			
Fairchilds	(2)	$ 37,000.	(5) $ 93,000.
Spare engines	(2)	13,000.	(5) 33,000.
Spares and miscellaneous equipment		4,000.	10,000.
		$ 218,000.	$ 445,000.
Ramps and improving landing fields		60,000.	100,000.
Refuelling Stations		10,000.	10,000.
Radio Stations		30,000.	30,000.
		$ 318,000.	$ 585,000.

[fol. 2614]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 140

August 20, 1929

ORDER

From October 12, 1929, extend service from Santiago, Chile, by Buenos Aires, Argentina, to Montevideo, Uruguay, and return, once a week, including such intermediate points as may be acceptable to the Governments of these countries and designated by the U. S. Post Office Department, the contractor to be allowed $1.80 per statute mile flown each way based on the shortest practicable airway distance between points on the route as determined by the Postmaster General for the specified load of not exceeding 800 pounds each way, plus 90 cents per pound per thousand miles or pro rata thereof for greater or less mileage for any excess mails required to be carried in the same aircraft.

W. Irving Glover

Second Assistant
Postmaster General

[fol. 2615]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 141

COPY

October 24, 1929.

Hon. Walter F. Brown,
Postmaster General
Post Office Department,
Washington, D. C.

RE: Route No. F. A. M. 5.

Dear Sir:

As you know this Company has been operating since February 4th, 1929, Foreign Air Mail Route No. 5. In accordance with your Department's instructions, we are now flying three trips per week, both ways, over the main section

of this route, i.e., from Miami, Florida, to Cristobal, Canal Zone. Although our contract contemplates daily service on this portion of Route No. 5, we have been informed by the Department that under the condition of the appropriation it is not practical to permit the performance of full service at the present time. We understand, however, that the Department hopes to increase the number of trips per week on this portion of Route No. 5 as soon as sufficient funds become available.

For some months past we have been giving much thought to the possibility of increasing the speed of our service on this portion of Route No. 5. In connection with this study, we have considered the possibility of flying between Miami and Cristobal, the termini on the main section of this route, by a more direct line than that now designated (i.e., via Havana, Cuba, Cozumel Island, Mexico (no office) Belize, [fol. 2616] British Honduras, Tela, Honduras, Managua, Nicaragua, and , Panama). Two such possibilities have been indicated by our Technical Staff. One line is via the Isle of Pines, Swan Island and Cape Gracias a Dios, Honduras; the other is via points in Cuba, and Kingston, Jamaica. It is estimated that, by use of either of these lines, the three day period now consumed in flying from Miami to Cristobal could be reduced to two days, and the time could ultimately be cut to even less.

Since the Miami-Cristobal section of Route No. 5 constitutes a link in the through service now in operation to Colombia, Ecuador, Peru, Chile and Argentine and also connects with the line serving the North Coast of South America, any reduction in the length of time taken to reach Cristobal from Miami would be reflected in the air mail schedules to South America. Furthermore, the cost to the Department of the additional flights per week contemplated in Contract No. 5 via either of the more direct flights suggested would be considerably less than via the intermediate points now designated along the West Coast of Central America.

While our Technical Staff has advised us that passenger and mail service to the Canal Zone, via Jamaica, or via Isle

of Pines—Swan Island—Cape Gracias a Dios, is entirely practicable, regular service would require the construction of large multi-engined flying boats or amphibians of a type which are not now available in the American market. How- [fol. 2617] ever, detailed engineering planes and specifications, including "Model Basin Runs," on four engined equipment suitable for this service, have been developed by two outstanding American Airplane Manufacturers during the past several months—in conjunction with Pan American Engineers.

The results obtained indicate that this type of equipment would render satisfactory service over either of the lines suggested. We will be unable to secure such equipment for approximately eighteen months; and even this could be done only by placing definite orders now with manufacturers.

In view of the very real advantages that might be obtained by the Department through our operating over one of the shorter lines mentioned, we have thought it proper to inquire whether, in the event that further appropriations for foreign air mail service are obtained (and the number of trips on the main section of Foreign Air Mail Route No. 5 increased), the Department would be willing to direct that certain of the additional trips on this Route be flown via one of the suggested lines. We understand, of course, that three flights per week as now required by the Department on Route No. 5, would have to be maintained via the Capitals and chief cities of the countries of Central America now designated.

If the Department would indicate its willingness, contingent upon additional appropriations being made available, to order certain of the additional flights per week con- [fol. 2618] templated in the contract for Route No. 5 to be operated within eighteen months via one of the more direct lines described above, we are prepared to let contracts for the required equipment. Not only would the through mail service to South America be expedited, but also a considerable saving will result to the Government in reduced costs of transporting the through mail to Cristobal.

Should the Department favorably consider this change in the intermediate stops on certain of the additional trips contemplated on Route No. 5, we are prepared to have our Technical Advisor make immediate survey flights over both lines mentioned and to report the results of these survey flights to the Department.

Yours very truly,

PAN AMERICAN AIRWAYS, INC.

By

J. T. Trippe, President

JTT:s

[fol. 2649]

PAN AMERICAN WORLD AIRWAYS, INC., EXHIBIT 142

POST OFFICE DEPARTMENT
SECOND ASSISTANT POSTMASTER GENERAL
WASHINGTON

October 28, 1929.

Pan American Airways, Inc.,
122 East 42nd Street,
New York, N. Y.

Gentlemen:

The Postmaster General has handed me your letter of October 24, 1929, in which you propose that as soon as appropriations are available for the increased frequency of service contemplated by the contract on F.A.M. Route 5, such additional trips be authorized from Miami to the Canal Zone, either by way of the Isle of Pines, Swan Island, and Cape Gracias a Dios, Honduras, or by points in Cuba and Kingston, Jamaica.

This Office appreciates the desirability of a more direct service between Miami and Cristobal in order to shorten the time to and from South America, and therefore agrees to your proposal, which would accomplish this purpose as

well as result in a material saving in the cost of the service due to the decreased distance involved.

Instructions have accordingly been issued to the Division of International Postal Service to authorize such increased frequency of trips as may be determined upon over one or the other of the proposed direct routes, when appropriations are available for the service.

Very truly yours,

(Sgd) W. Irving Glover

W. Irving Glover,
Second Assistant
Postmaster General.

[fol. 2620]

Pan American World Airways, Inc. Exhibit 143

PAA CONTRACT

TRAFFIC AGREEMENT

between

PAN AMERICAN AIRWAYS, INC.
PAN AMERICAN-GRACE AIRWAYS, INC.
SCADTA

February 28, 1930

[fol. 2621] AN AGREEMENT made this 28th day of February 1930, between PAN AMERICAN AIRWAYS, INC., (a New York corporation, hereinafter referred to as Pan American), PAN AMERICAN-GRACE AIRWAYS, INC., (a Delaware corporation, hereinafter referred to as Panagra), and SOCIEDAD COLOMBO-ALEMANA DE TRANSPORTES AEREOS (a Colombian corporation, hereinafter referred to as Scadta).

Pan American and Panagra are engaged in the general business of the transportation of passengers, property and

mail by air between the continental United States, Nassau, Cuba, Haiti, Santo Domingo, Porto Rico, the Virgin Islands, certain of the Windward and Leeward Islands, Trinidad, British and Dutch Guiana, Mexico, the countries of Central America, Colombia, Curacao, Ecuador, Peru, Chile, Argentina and Uruguay, the Canal Zone, and in the interior of certain of said countries. Scadta is engaged in the general business of the transportation of passengers, property and mail by air between Colombia, Ecuador, Panama and the Canal Zone, and in the interior of Colombia. The parties desire to cooperate for their mutual advantage, and to this end agree as follows:

[fol. 2622] FIRST: The parties agree to furnish each other with full and complete information in regard to their respective services.

SECOND: Scadta will use its best efforts to cause passengers or property (other than mail) coming over one of its lines and destined for transportation by air to points outside Colombia served by the lines of Pan American and or Panagra, and not served by its own lines, to be transported over the lines of Pan American and or Panagra, and to this end will furnish such passengers and the consignors of such property with such information as it shall have available in respect to the services of Pan American and or Panagra, and will direct them to an office of Pan American and or Panagra where they may make arrangements for transportation over the lines of such company.

THIRD: Pan American will use its best efforts to cause passengers or property (other than mail) coming over one of its lines and destined for transportation by air to points served by the lines of Scadta and not served by its own lines or by the lines of Panagra, to be transported over the lines of Scadta, and to this end will furnish such passengers and the consignors of such property with such information as it shall have available in respect to the ser- [fol. 2623] vices of Scadta, and will direct them to an office of Scadta where they may make arrangements for transportation over its lines.

FOURTH: Panagra will use its best efforts to cause passengers or property (other than mail) coming over one of its lines and destined for transportation by air to points served by the lines of Scadta and not served by its own lines or by the lines of Pan American, to be transported over the lines of Scadta, and to this end will furnish such passengers and the consignors of such property with such information as it shall have available in respect to the services of Scadta, and will direct them to an office of Scadta where they may make arrangements for transportation over its lines.

FIFTH: Nothing in the foregoing paragraphs, Second, Third and Fourth, contained shall be construed as requiring the parties to this agreement, or any of them, to deprive themselves or itself of the longest possible carriage of passengers or property over its own lines.

SIXTH: Pan American and Panagra agree to display at their executive and chief traffic offices signs of Scadta, and Scadta agrees to display at its executive and chief traffic offices signs of Pan American and Panagra. Such [fol. 2624] signs may state the relations between the parties. They shall be furnished at the cost of the party desiring the display of the same. In general, advertising matter issued by Pan American or Panagra which refers to the service of Scadta shall be submitted to and approved by Scadta before it is used, and advertising matter issued by Scadta which refers to the service of Pan American and/or Panagra shall be submitted to and approved by Pan American and/or Panagra before it is used.

SEVENTH: Pan American agrees to cooperate with Scadta in respect of radio communication, and to give to Scadta the benefit of its experience in the use of radio apparatus both on airplanes and at ground stations, so that Scadta may be able efficiently to direct and control the operation of its aircraft. Pan American will furnish Scadta with information relative to the securing of wave lengths for international service, and will assist Scadta in the drafting of the necessary papers in connection therewith. Pan American and Panagra will supply to Scadta,

and Scadta will supply to Pan American and Panagra, their respective traffic and meteorological codes and such further information as to wave lengths, operating hours, and types of radio equipment used, as may be necessary to enable Scadta to receive ordinary radio despatches of planes [fol. 2625] and ground stations of Pan American and Panagra, and to enable Pan American and Panagra to receive ordinary radio despatches of planes and ground stations of Scadta. Pan American will lease radio apparatus to Scadta, to the extent that it may be permitted to do so by agreements with the companies owning the basic radio patents, on such terms and conditions as may be agreed upon, such terms to be not less favorable than those accorded by Pan American to any other company (except to companies in which Aviation Corporation of the Americas, the parent company of Pan American, owns fifty per cent or more of the stock).

EIGHTH: Pan American and Panagra agree to cooperate with Scadta in the salvaging of planes of Scadta which may be damaged, destroyed or lost at or near the lines of Pan American and or Panagra, and Scadta agrees to cooperate with Pan American and or Panagra in the salvaging of planes of Pan American and or Panagra which may be damaged, destroyed or lost at or near the lines of Scadta.

NINTH: Planes of Pan American and Panagra shall be privileged to use the landing fields and airports located on the international lines of Scadta, and planes of Scadta shall be privileged to use the landing fields and airports located on the international lines of Pan American and Panagra, except in cases where such use will be inconsistent [fol. 2626] with the provisions or leases of other instruments regulating the tenancy of such landing fields and airports. A company availing itself of this privilege shall be chargeable with reasonable fees therefor. For six months from the date hereof, the fee payable for the use of an airport or landing field overnight, with servicing of plane and shelter, if available, but without the lodging of crew or passengers shall be $15 (U. S. currency).

TENTH: The accounts between Pan American and or Panagra and Scadta shall be made up in United States currency and balances struck not later than the fifteenth day of each month. Balances shall be payable ten days thereafter.

ELEVENTH: Any dispute arising under, out of, in connection with, or in relation to this contract shall be submitted to arbitration. Each of the parties to the dispute will appoint an arbitrator, and the two arbitrators so named will select a third arbitrator. This arbitration shall be effected in the City of Panama and in conformity with the laws of the Republic of the same name. The parties hereby bind themselves to abide by the decision of the arbitrators or of a majority thereof, and renounce all right to take legal measures, except to enforce the award.

[fol. 2627] TWELFTH: This agreement shall continue in force for a period of two years from the date hereof, provided that Pan American and Scadta, or Panagra and Scadta, by mutual consent, may terminate their respective rights and obligations at an earlier date. None of the parties shall have the right to assign the whole or any part of its interest in this agreement without the consent of the other parties given in writing.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in their corporate names and on their behalf in New York, N. Y., this 28th day of February 1930.

PAN AMERICAN AIRWAYS, INC.,

By /s/ J. T. TRIPPE
President.

PAN AMERICAN-GRACE AIRWAYS, INC.

By /s/ J. T. TRIPPE
Vice-President.

SOCIEDAD COLOMBO ALEMANA DE TRANSPORTES AEREOS

By /s/ DR. D. BAUER
Vice-President.

[fol. 2028]

PAN AMERICAN WORLD AIRWAYS, INC., EXHIBIT 144

(Letterhead of Pan American Airways, Inc.
New York City)

May 2nd, 1930

Mr. J. T. Trippe,
c/o The National City Bank,
36 Bishopsgate,
London England.

Dear Juan:

You have been missed since your departure, but business, I am glad to say, has been moving along smoothly, and everything to date is well under control. There is nothing concerning us here, and I feel quite certain that you will find everything in order on your return.

I will try to give you a resume of the high spots as briefly as possible, just to keep you informed.

Confirmation has come through that the Argentine Post Office has cancelled the Tri Motor Sikorsky Airways contract between Argentine and Chile, due to lack of performance. Yesterday, in order to be on the picture of fast service between Buenos Aires and New York, New York, Rio and Buenos Aires Lines announced a six and one-half day passenger and mail service to Miami. How they will get the mail to New York is a question. They certainly cannot handle it through the Post Office, although they might turn it over to Eastern at Miami, sending it north as express. Certainly this would cost them at least $1.00 a pound, in which case they would cut their total mileage in half for the run. There are many angles to this situation, as you can readily appreciate, and just how Washington will view such competition is questionable. I have checked up and found that as yet no arrangements have been made with Eastern.

I am enclosing Exhibit 1, covering the withdrawal of the advertisements for domestic air mail contracts which were

issued under date of April 11th, and which have been withdrawn.

The Watres Bill has been signed by the President.

I am enclosing Exhibit 2 copy of a letter from Mr. Evan E. Young to Mr. Rihl, regarding the negotiations between Great Britain and the United States respecting reciprocal operating rights, which is interesting.

[fol. 2629] Exhibit 3. For your information, no doubt you will want to take up these matters with Mr. Woods Humphery while in England.

Exhibit 4. A clipping stating that Mr. A. C. Dickinson has been elected Chairman of the Board of Sikorsky, E. E. Wilson being made President.

Mr. Merkel called yesterday to advise us that cable communications from Friedrichsafen stated definitely that there would be no stop at Havana on the trip, and that the matter of delivering mail to the Zeppelin, therefore, was off. Consequently, we have discontinued interest in the matter.

I believe Mr. Rihl wired you regarding the indication that Washington is desirous of having us handle Northbound mail from Cuba on routes F. A. M. 5 and 6, rather than on number 4. However, Mr. Rihl went to Washington day, before yesterday on the matter, and I think Captain Nagle had perhaps overstressed the urgency of the situation, and while there is some thought in Washington that it may be necessary to make some rearrangement on the handling of mail on those routes, using F. A. M. 4 only one day a week for the Cuban mail, I do not believe that anything will be precipitated before you get back. Therefore, I would not be very much concerned except to turn the matter over in your mind.

Grayson advised Rihl that they were considering the matter, as Monfalvo had brought up the discussion, but while Grayson was in Cuba, he very carefully avoided it, as he wanted to talk the situation over with us first, which was very thoughtful.

Mr. Merkel has been in close touch with us, and I have supplied him with the "Lighter Than Air" Bills, which he has read with interest. His comment on them was that they seem practically the same as the Heavier Than Air Legislation, except regarding monetary considerations, contract bases and matters pertaining to insurance, and he said he would like to discuss these phases with you on your return.

General Festing has not yet arrived.

Atlantic City matters are progressing. Mr. Whitney and Mr. Thach report that it looks quite likely that a good arrangement will be made with the "New York Sun" for the handling of papers. I cannot give you definite information on this, as I only received this information late last evening. Facilities and publicity arrangements are being whipped into line, Bibl being, I am sure, of considerable help in eliminating difficulties.

[fol. 2630] We completed the impending transaction on May 1st with Abrasion. The amount, with which you are familiar, was transferred in the manner of the last transaction, Mr. Friendly checking with both Mr. Whitney and myself before completing the matter, and everything is in order. Certain data is due daily, as cable information establishes the date of mailing to us from the southern point.

As to the inauguration of the seven day service, it has been carried out with remarkable results. There have been no slip ups as far as actual operation is concerned. The mail is on time at every point. One remarkable incident for which Pan American Grace deserves a lot of credit is that the Northbound mail was blocked at Mendoza, due to a heavy blizzard in the Andes, and arrived in Santiago forty-one hours late. That gave us some concern. However, Pan-Grace took off their coats and went to work. They made up the forty-one hours, and the mail arrived at Cristobal ten minutes ahead of schedule. Not so bad. But it did require flying from Lima to Talara at night. Not so good as a general thing, but the spirit back of it is admirable.

Publicity regarding the flight has been excellent, I feel certain. I have been watching clippings from all points of the country, and we have had fine distribution. Many congratulatory messages have been received. I am attaching data pertaining to the Southbound flight, and one covering the Northbound up to the present time, which will be of interest. The log carried in the newspapers, and I hope reached the ship.

We are also planning a special release covering Venezuelan service, which opens next week. I will not go into details further, inasmuch as the satisfactory completion of that flight is all that you are concerned with.

A very unfortunate incident occurred in connection with it which gave us some concern, and that was that while Colonel Lindbergh was laying over at the Canal Zone, a report came up from a source not yet traced, that he had crashed at the Canal Zone while making a special flight to see the Governor. The anxiety was tense for some hours, but I cannot say that I was concerned because I felt we would be immediately notified should any such catastrophe occur, and this was later borne out by our Communications Department, who immediately checked up and advised that there was no truth to the statement. We were glad to be able to release the first authentic denial over the ticker and that Colonel Lindbergh had made a short flight across the Isthmus and had landed with perfect safety.

[fol. 2631] Have just received a message from Captain Nagle that the Appropriation Bill passed the joint Committee without any strings tied to it, which is good news. I want to talk with Mr. Patchin in confirmation of this, but have not as yet been able to reach him.

Mr. and Mrs. William F. Cogswell are celebrating the birth of a daughter. The event has involved a certain amount of expense, as far as we are concerned, for because of this event I have not been able to get Mr. Cogswell into the office to discuss payments on account of Pan American-Grace Airways, Inc.!

The Dinner Key matter is progressing as you desired, but it may be necessary for either George or myself to go to Miami, in company with either Mr. MacCracken or Mr.

O'Neill, to close the transaction with the City officials there as they have requested. I still believe that there will be no question if this transpired, that we will be able to hold out and have the proceedings go ahead, whereby we (the Florida Co.) finance the condemnation, and trade the 20% of the property to the City in lieu of taxes. This is what we want and should get.

It may be necessary to elect the two directors, in order to carry this out, as the City is pushing us now so that the Trustees cannot take any action which would delay proceedings. Should this be necessary, Mr. Rihl and Mr. Thach think it would be best to elect George and myself as Directors to carry out this work. These Directors can be changed upon your return if not satisfactory.

I think this covers things of importance. Many routine matters are being cleared through promptly. The organization is running smoothly. All are present and accounted for.

I hope matters are going satisfactorily with you and that you and Mrs. Trippe are having a most enjoyable relief, in spite of the work at hand. I shall look forward to seeing you on your return somewhat rested and refreshed.

With kindest regards to you both.

Sincerely,

/s/ E. E. W.

EEW:B

(fol. 2632)

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 145

(Cablegram of All America Cables)

HWHI BS ZLT 35 BAIRES 153 EITH 334PM
DEL 630 MAY 14 '30

ZLT NYRBALINE NEW YORK

MACRACKEN ONEILL STOP ARGENTINE POST OFFICE RECEIVED FOLLOWING CABLE FROM USA

POSTOFFICE QUOTE PLEASE CABLE WHETHER YOU DESIRE CONTINUANCE TRANSPORTATION BY OUR DOMESTIC AIR SERVICE MIAMI TO NEW YORK OF YOUR MAILS ARRIVING BY NYRBA LINE FOR CHARGE AGAINST YOUR ADMINISTRATION AT REGULAR $2.50 RATE SIGNED POSTGEN UNQUOTE

[fol. 2633] WAS ANSWERED BY ARGENTINE POSTOFFICE THUS QUOTE OUR SERVICE IS NOT INTERESTED IN PAYING SUPPLEMENTARY OVERCHARGE MIAMI NEW YORK AS NYRBA CONTRACT OBLIGES COMPANY SERVE DIRECTLY OR CONTRACT ON HER ACCOUNT PLANE TO NEW YORK MATTER WHICH COMPANY PROMISED TO URGENTLY REGULARIZE SIGNED POSTGEN UNQUOTE AUTHORITIES MAINTAIN THAT UNDER CLAUSE 18 OUR

[fol. 2634] CONTRACT NYRBA MUST REACH NEW YORK BY AIR STOP TO GIVE YOU TIME HAVE VERBALLY ARGUED NEW YORK OPTIONAL STOPPING PLACE BUT ARGUMENT UNSUBSTANTIAL WOULD BE UNSUSTAINABLE ONCE SIX MONTHS CLAUSE 4 ELAPSED STOP ADVISE US WHETHER SHALL HAVE THE EXTENSION MIAMI NEW YORK OPERATING STOP COMPETITORS AGRESIVITY OBLIGE GOVERNMENT EXACT STRICT COMPLIANCE

[fol 2635] CONTRACT

BUNGE BILBAO

[fol. 2636]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 146

Buenos Aires, June 4th 1930.

Panair Letter No. 26

PAN AMERICAN AIRWAYS INC.
Suite 4200 — 122 East 42nd St.
NEW YORK NY

Attention: Mr. George L. Rihl,
Vice President.

Dear Mr. Rihl:

This will acknowledge receipt of the memorandum of May 23rd on the subject of 'Nyrba Propaganda' together with the two copies of one of their booklets.

These people certainly are engaging in false propaganda. Taking that part of their booklet which deals with contracts and concessions which they hold, I will try to give you a resumé of the actual situation as regards these people and their claims.

Argentina.

Nyrba are right when they state that it takes the signature of the President to modify a decree which he has signed. However their situation does not come under this heading. Their decree has not been modified but has been clarified or interpreted by the Minister of Interior. This is perfectly legal and is the practice of this country as well as it is in the United States. Here the President signs a decree but the general law permits the Minister under whose department the decree is to be enforced, make the interpretation for administration purposes. In this regard I hope within a few days to have competent, legal, official written opinion to substantiate this fact. This opinion will naturally eliminate from the minds of any person the fact that Nyrba have any preferential rights for airmail other than 25% of the airmail which their decree specifies. This leaves us 75%.

As you know the Argentine government has suspended airmail services Via Nyrba from the Argentine to Santiago.

Chile. This suspension is still in force and according to conversations with the government authorities there is no immediate prospect for the suspension being lifted. I have already sent you this governments ruling with reference to monopolies of privileges for international airlines, which is distinctly against them.

Chile.

It is true Nyrba have a presidential decree authorizing the Chilean Postmaster to make a contract with Nyrba. Up until May 24th, the Chilean Postmaster had not made such contract, therefore Nyrba have nothing in Chile except the permission to enter and leave with passengers from Santiago to Mendoza.

[fol. 2637] URUGUAY.

The Uruguayan authorities have made the same interpretation of the Nyrba contract in that country as has the Argentine. Proof of that fact is that they have awarded PAN AMERICAN GRACE AIRWAYS INC. airmail services Via Pacifico without any mention of Nyrba preferential rights and have awarded PAN AMERICAN AIRWAYS INC. services to all countries in the Western hemisphere (in combination with PAN AMERICAN GRACE AIRWAYS INC.) Via Atlantico without any mention of preferential rights of either the Nyrba or the French.

With regard to the subsidy which Nyrba claims they have from Uruguay, of $150.00 U.S. daily, this is a plain misstatement. The situation in this regard is briefly as follows: In 19[illegible] an Italian by the name of Colombo obtained from the Uruguayan government a concession to operate an airline between Montevideo and Buenos Aires. The Uruguayan government granted him $150.00 U.S. per day for each round trip completed but not to exceed a total subsidy of $25,000.— U.S. He operated until the early part of 1929 at which time due to two disasters he went bankrupt. Nyrba then obtained permission from the Uruguayan authorities to continue in his stead. Under this arrangement they started services in August and received the subvention of

$150,000 U.S. per day from August until the end of December 1929, at which time the original appropriation $25,000,000 U.S. was exhausted. Since that time Nyrba have been operating the Buenos Aires–Montevideo service without any subvention from the Uruguayan government. In my conversations with officials of this republic they emphatically state that they will not grant any additional subsidy to international airmail companies, as they now have all the international airmail service which they require and without it costing them anything in the way of subsidy.

BRAZIL.

You are familiar with the situation in Brazil and are better able than I to point out the defects of their propaganda with respect to this country and you were there since I have been.

In connection with the affiliated lines which show the Chilean national lines and the Lloyd Boliviano services, I wish to call your attention to the fact that Nyrba are not at the present time connecting with the Bolivian airservices. Their recent petition to the Argentine government for an airmail contract to Bolivia in combination with the Bolivian airservices was refused with the statement by the government to Nyrba, that this government would not award Nyrba any further postal contracts until they comply satisfactorily with all the terms of the contract which they now hold. You have a copy of this bulletin.

I am now endeavoring to place before the American Embassy in Buenos Aires the true status of Nyrba contract in this country to the end that our Embassy here may forward this information to the State department in Washington. I shall endeavor to do the same thing in Uruguay.

fol. 2635 By the end of this week I hope to have the above mentioned official, legal written opinion covering the validity of the interpretation made by the Minister of interior in the presidential decree which Trimotor Safety Airways Inc. hold.

This letter is only meant to give you a brief synopsis of the situation with respect to Nyrba propaganda. I shall

amplify it with such written proof and government action as I can obtain within the next two weeks.

Kindest personal regards.

Sincerely

/s James D. Summers
James D. Summers

Copy to Mr. E.E.Wyman
" " Mr. Robert G. Thach
" " Mr. Evan E. Young
" " Mr. Schuster.

[fol. 2639]

Pan American World Airways, Inc., Exhibit 147

PAN AMERICAN GRACE AIRWAYS, Inc.
122 East 42nd Street
New York

Cable Address
"Panagra"

June 12, 1930.

Memo. to Mr. J. T. Trippe, President:
Pan American Airways, Inc.,
New York City.

For your confidential information I hand you a copy of a letter received from our Chile Agents, under date of the 30th of May, 1930, referring to a recent visit of Mr. Bunge of the Nyrba to Santiago.

Pan American-Grace Airways, Inc.

/s J. D. MacGregor
J. D. MacGregor.

JDM' Q
Enc.

(fol. 2640) Private Letter No. 78

SANTIAGO, Chile, 30th of May, 1939

Pan American Grace Airways Inc.
NEW YORK

Dear Sir:

By request of our General Manager, Mr. F. E. Metzner, we have pleasure in advising you of the following in connection with the operations of the "Nyrba" in Chile.

We have been confidentially informed that Mr. Bunge, who arrived from Buenos Aires last Saturday, arranged to be received by the President of the Republic in audience early this week, and the object of his visit was to convince H. E. that there was no reason whatever why the "Nyrba" should pay the Aviation Department of Chile the $500,000 C/cy which they themselves offered and agreed to pay.

The President of the Republic, in a very diplomatic way, answered him that he would be very glad to consider his wishes, but that he would transcribe this to the corresponding party, which in this case was the Sub Secretaria of Aviation. It appears that the President spoke to Merino, hereby Mr. Bunge went on Tuesday to request the former to receive him, but the Sub Secretary's answer was that he could not receive him until today at 5 o'clock. He was also advised to have everything prepared, as the Sub Secretary could not dispose of more than five minutes to attend to him.

We know that Merino is very annoyed about this, and is going to put the cards on the table, that is to say they will either pay the amount contemplated in the contract or have to abandon coming into Chile.

Yours very truly,
pp. Grace y Cia. (Chile) S.A.

SIGNED: R. Dacosta

RD/FL

[fol. 2641]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 148

COPY

June 18, 1930.

Honorable Walter F. Brown,
The Postmaster General,
Washington, D. C.

Dear Sir:

We refer to our several conversations in regard to the increase of service on route F.A.M. #9 to two trips per week.

The advertisement for contract F.A.M. No. 9 was issued on January 31, 1929. It provided that service should be on a basis of three times a week. We made our bid of $1.80 per mile on the basis of three trips per week. We were aware, of course, that under the advertisement the Department reserved the right to increase or decrease the number of trips per week. But it was the general understanding on both sides that the number of trips specified in the advertisement was the number which the Department expected to place in operation within some reasonable period after the commencement of service upon the route, and never until very recently has there been any suggestion to the contrary. We believe that the Department has also had this understanding. In a statement issued by the President shortly after the award of this contract, it was stated: "In its initial stages services will be three times a week." Again the Department wrote us under date of October 1, 1929, in response to our request that service upon the route be increased to the full number of trips specified in the contract, that:

> "'It is not practical at this time to permit the performance of *full service on this route* on account of the conditions of the appropriations."

thus indicating the Department's concurrence in the view that the contract was ultimately to be operated upon the

basis of three trips per week and explaining its inability so to operate the full service at the time *simply upon the ground that sufficient funds were not available.*

Therefore, it was our confident expectation that on July 1, 1930, when further funds were so made available the number of trips on route F.A.M. No. 9 would immediately be increased to two trips per week at the contract rate. Since our bid had been made in the expectation that we would operate three round trips per week at the contract rate, it appeared to us that such an increase would simply be giving us part of what our contract contemplated.

[fol. 2642] The question, however, is not merely one of contractual rights, but of financial necessities. The operation of route F.A.M. No. 9 on the basis of one trip per week has resulted in a very large deficit to date. As a result of a year's experience in operating on the west coast of South America, we say in all sincerity that under present conditions, even with the assistance of revenue from passengers and other sources, that mail income of $1.80 per mile and operation of at least two trips per week are essential to the operation of route F.A.M. No. 9.

Proof of this position is furnished by information which has been given us in confidence by the powerful French and German government subsidized companies with which we compete in South America. The Compagnie Generale Aeropostale operates down the east coast from Natal, Brazil to Buenos Aires, Argentina, and then over the Andes to Santiago, Chile. It is shortly to inaugurate service along the north and west coasts of South America and has recently negotiated a contract to carry Chile mails directly to the United States. It receives long term subsidies from the French Government of from $.30 to $.35 more per mile than Pan American Grace Airways receives under the United States postal contract. In addition it retains all revenues derived from the transportation of mails in both directions between Europe and South America and from countries in South America, whereas Pan American Grace Airways is obliged to carry all mails to or from the United States. Notwithstanding this great assistance the Aeropostale showed a loss from operations for the year 1929.

An official of the Aeropostale has stated that the cost of operating an international air transport service in South America with French equipment and under the supervision of French personnel could not be less than $2.50 per mile. Furthermore, an officer of the German Luft Hansa recently stated that the actual cost of the operations being conducted by its subsidiary Kondor do Brasil, on the east coast of South America using German equipment, cheaper also than equipment produced in the United States, was over $2.30 per ship mile. We have obtained confidentially data authenticating the above figures which we shall be glad to show the Department if desired.

Not only is the government subvention being received by the German and French companies in South America very much greater than that received by Pan American-Grace Airways, Inc., but also we wish to point out that the total cost to the United States of conducting equivalent service in the *Domestic* Field is higher than that rendered by ourselves at the rate of $1.80 per mile. In the Domestic Air Mail service the contractors are furnished their airways by the Government itself. Our contract requires us to provide our own arrangements covering airports, intermediate [fol. 2643] fields, lighthouses, radio stations and other aids to navigation.

Under the formula adopted by the Post Office Department under the terms of the Watres Act the direct cost to the Department would be as follows:

Base Rate	$.75
Terrain	.02
Fog	.02½
Two-way radio	.06
Passenger capacity—	
average 8 passengers	.03
Multi-motor operation	.13
	$1.01½

To this should be added the amounts contributed by other Departments of the Government and which are ear-marked

as direct appropriation covering the maintenance of airways and air navigation facilities supplied to the contractors carrying mails over domestic lines.

The appropriation for the fiscal year beginning July 1, 1930, to be expended by the Department of Commerce only on airways, amounts to $7,944,000. Of this amount $4,400,000 is to be used to maintain existing lighting, radio, and other aids to aerial navigation. At the present time approximately 30,000 miles of airways are being maintained. 5,500 miles are receiving teletype service; 10,500 miles receive radio service, and 13,500 miles are lighted.

Disregarding entirely the interest on invested capital, the annual costs of supplying each of these kinds of service per mile of airway is:

For Teletype service	$70.00 per mile
For lighting and other direct airway maintenance	125.00 " "
For maintenance of radio facilities	210.00 " "
Total	$405.00 per mile

Applying the above costs to an average mile of airway in the foreign field, and discounting entirely the additional costs of maintaining such facilities in the foreign field, the cost of all such facilities on a route operated only two round trips per week would exceed $1.94 per ship mile. Thus, if in the foreign field airways were to be supplied by the United States Government instead of by the contractor, as is required in Contract F.A.M. No. 9, at [illegible] using the rates [illegible] Fol. 2644 and formulae under the recently enacted Watres Act, the cost to the Government for tri-motor service would total $2.96½ per mile.

A factor must then be applied to cover other additional expenses incurred through operating in the foreign field. Among such expenses are: the cost incidental to obtaining concessions and operating rights; the costs of clearing aircraft and flying crews; foreign salary allowances; the higher costs of fuel and, finally, the absence of virtually free municipal airports which are usually available in the

United States, and the costs of transporting equipment and personnel to foreign countries.

All operating experience to date in the foreign field indicates that the additional cost incidental to such operation as stated above amounts to at least 40c per ship mile. Adding this to the previous figure, we arrive at a total cost per mile, using domestic operation as an index, of $3.36½. Even this figure fails to take into account that Route No. F.A.M. 9 is, for the present, to be operated only twice a week, whereas the domestic air mail routes, to which the Department's formula applies, are operated daily.

Even at $1.80 per mile it is obviously impossible to arrange for all aids to navigation which the Government deems necessary in the Domestic Service. Such facilities could only be provided over a long period of years with the gradual increase of outside revenue.

We therefore submit, both because of what was in the contemplation of the Department and ourselves at the time contract No. F.A.M. 9 was advertised, and because the route cannot be operated for less than $1.80 per mile or for fewer than two trips per week, the service should be increased to at least two trips per week without our being asked to accept any reduction in our pay.

Respectfully,

PAN AMERICAN-GRACE AIRWAYS, INC.,

By: _____

[fol. 2645]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 149

COPY

On July 22, 1930, Mr. Trippe and I called upon the Postmaster General about 9:40 A.M.

Mr. Trippe explained to him that the negotiations between the Aviation Corporation of the Americas and the New York Rio and Buenos Aires Lines, Inc. were progress-

ing satisfactorily, but that the attorneys for the Aviation Corporation of the Americas were very much concerned as to whether or not a sale by the New York Rio and Buenos Aires Lines, Inc. of all its assets to the Aviation Corporation of the Americas and its subsidiaries, would constitute a violation of either the Sherman Act or the Clayton Act. He also stated that counsel for the Aviation Corporation of the Americas, as well as counsel for the New York Rio and Buenos Aires Lines, had raised the question as to whether the transaction would also violate the postal laws prohibiting combinations or agreements in restraint of bidding on postal contracts.

Postmaster General Brown stated that, in his opinion, the proposed transaction would not be a violation of either the Sherman Act or the Clayton Act, and that as far as the postal statutes were concerned, he had stated to Mr. MacCracken prior to the time that Mr. Trippe and I had personally agreed upon the basis for a deal, that unless the deal was made he would not advertise the route from Paramaribo to Santos, or any East Coast route, because of the difficulties growing out of the difference between the rates charged by the Government contractor on northbound mail, and the rates charged by the New York Rio and Buenos Aires Lines. He said he had not told Mr. Trippe this before, because he did not want to put the New York Rio and Buenos Aires Line at any disadvantage in the negotiations, but now that he and I had agreed upon the terms of the trade, he saw no objection to restating the position of the Post Office Department in this regard to both of us.

He also stated that as far as the Sherman and Clayton Acts were concerned, we could not hope to continue competition unless both of us had a subsidy, and it was definitely the policy of the Post Office Department not to subsidize two companies in the South American field. He said he would discuss the matter with the Attorney General, telling him that he, the Postmaster General, had been very active in attempting to bring about an agreement between the two companies because he felt the best interests of the Government could be served thereby, and that he would suggest

to him that the Attorney General might write a letter to the Postmaster General stating whether or not by his activity in bringing about the contemplated agreement, he was putting the companies into a position which might later be grounds for attack by the Department of Justice or other Governmental officials, and he would let us know the outcome of this discussion. He stated that to his mind it was perfectly clear that it was to the best advantage of the Government, as well as the companies, that the transaction be carried out.

(Signed) J. P. MacCracken, Jr.

I have read the foregoing statement this twenty-second day of July, nineteen thirty, and it correctly states my recollection of what transpired at the interview that Mr. MacCracken and I had with the Postmaster General on this date.

(Signed) J. T. Trippe.

[fol. 2646]

Pan American World Airways, Inc. Exhibit 150

MEMORANDUM IN REGARD TO THE PROPOSED ACQUISITION BY AVIATION CORPORATION OF THE AMERICAS OF THE ASSETS OF NEW YORK, RIO & BUENOS AIRES LINE, INC.

Dated, July 28, 1930.

[fol. 2647]

MEMORANDUM IN REGARD TO THE PROPOSED ACQUISITION BY AVIATION CORPORATION OF THE AMERICAS OF THE ASSETS OF NEW YORK, RIO & BUENOS AIRES LINE, INC.

1. *Corporate Structure of the Companies and Outline of Proposed Acquisition.*

Aviation Corporation of the Americas is a Delaware corporation. It was organized on June 26, 1928. Its Authorized capital stock consists of 1,000,000 shares of a single class and without par value, of which, on June 30, 1930,

388,190 shares were issued and outstanding. A balance sheet of Aviation Corporation of the Americas as of June 30, 1930, and an income account for the six months ending June 30, 1930, are annexed hereto, marked Exhibit A.

Aviation Corporation of the Americas is exclusively a holding company and conducts no operations itself. It owns all the stock of Pan American Airways, Inc., a New York corporation, and Compania Mexicana de Aviacion, S. A., a Mexican corporation, and fifty per cent. of the stock of Pan American Grace Airways, Inc., a Delaware corporation, which are operating companies. In this memorandum, Aviation Corporation of the Americas is sometimes referred to as Aviation and the three operating companies [fol. 2548] above-mentioned are sometimes referred to as the Pan American Airways system.

New York, Rio and Buenos Aires Line, Inc. (hereinafter referred to as Nyrba), is a Delaware corporation. It was organized on April 17, 1929. Its authorized capital stock consists of 750,000 shares of a single class and without par value, of which, on May 31, 1930, 386,609 shares were issued and outstanding. A balance sheet of Nyrba as of May 31, 1930, and an income account for the five months ending May 31, 1930, are annexed hereto, marked Exhibit B.

Nyrba conducts certain of its operations itself and conducts other operations through its wholly owned subsidiaries, Trimotor Safety Airways, Inc., a Delaware corporation, which operates only in Argentina and Uruguay, and Nyrba do Brasil, S. A., a Brazilian corporation, which operates only in Brazil.

It is proposed that Aviation should purchase substantially all the assets of Nyrba, paying for such assets either wholly in stock of Aviation or partly in such stock and partly in cash. It has not been determined whether the stock of the subsidiaries of Nyrba or the assets thereof, or both, should be transferred. Any assets acquired, other than stock of the subsidiaries of Nyrba, would be trans- [fol. 2549] ferred to Pan American Airways, Inc., an existing wholly owned subsidiary of Aviation. If the stock of

any of the subsidiaries of Nyrba should be acquired, such stock would probably be held by Aviation Corporation of the Americas itself.

II. *Development of the United States Foreign Air Mail System and of the Air Mail Routes of the Pan American Airways System.*

Pan American Airways, Inc. shortly after its organization, entered into a contract with the United States for the transportation of United States mail from Florida to Cuba upon a poundage basis, and also entered into a contract with Cuba for the transportation of Cuban air mail to Florida. Operations between Key West and Havana were inaugurated on October 19, 1927.

On March 8, 1928, Congress enacted a statute authorizing the Postmaster General to contract for the transportation of United States mail by air to foreign countries and to pay the contractor upon a mileage basis. Shortly thereafter Aviation Corporation of the Americas was organized and acquired all the stock of Pan American Airways, Inc., and the stock of Aviation was widely distributed. In the course of the next year Pan American Airways, Inc. entered into the following contracts with the United States for the transportation of its air mail to Latin America:

[fol. 2650] (1) Contract No. 4, May 29, 1928, for five years, from Key West, Florida, (later changed to Miami, Florida) to Havana, Cuba. This contract superseded the contract above referred to).

(2) Contract No. 5, July 13, 1928, for ten years, from Miami, Florida via Havana, Cuba, Belize, British Honduras and points in Honduras, San Salvador, Nicaragua and Costa Rica to the Canal Zone, with an option to extend the service along the north coast of South America via Port of Spain, Trinidad, as far east as Paramaribo, Dutch Guiana.

(3) Contract No. 6, July 13, 1928, for ten years, from Miami, Florida, via Havana, Cuba, Port au Prince, Haiti and Santo Domingo, Dominican Republic, to San

Juan, Porto Rico, with an option to extend the service via the Windward and Leeward Islands to Port of Spain, Trinidad.

(4) Contract No. 7, October 24, 1928, for ten years, from Miami, Florida to Nassau, Bahamas Islands.

(5) Contract No. 8, February 16, 1929, for ten years, from Brownsville, Texas to Mexico City, Mexico or Vera Cruz, Mexico, with an option to extend the service southward into Central America.

The routes covered by these contracts are indicated on the map filed herewith. Operations are being conducted on all these routes.

While the Act of March 8, 1928 had authorized the making of contracts for the transportation of United States mails to foreign countries upon a mileage basis of not to exceed $2 per mile, it did not permit the Post Office Department to pay the contractor for transporting mails from foreign countries to the United States. In this respect the Act followed the general precedent in international mail service [fol. 2651] whereby each country makes arrangements for its own outgoing mails and has no concern with the arrangements for return mails from foreign countries. However, it soon developed that if American air transport lines were paid by the United States Government not in excess of $2 per mile for transportation of the mails outward bound and were forced to rely entirely on receipts from foreign countries for the return flights, their revenues would not be sufficient to permit the continuance of service. (See 70th Cong. 2d Sess., Senate Report No. 1599 and House Report No. 2330). If the air mail service was to be continued, the Government was therefore obliged either to raise the maximum mileage rate of $2 per mile set in the Act of March 8, 1928, or to authorize payment of the contractor for the return flight as well as for the outward flight. The latter alternative was chosen and, on March 2, 1929, Congress passed the so-called Kelly Act which amended the Act of March 8, 1928, so as to provide for round trip payment. The Foreign Air Mail Act, as it now stands, will be found in the United States Code, Title 39, Section 465-a.

Prior to the passage of the Act of March 2, 1929, the Post Office Department had issued an advertisement for bids for a contract to be awarded under the provisions of the amended statute, for service for a ten year period from the Canal Zone down the west coast of South America to Santiago, Chile, and return, with an option to extend the [fol. 2652] route over the Andes to Buenos Aires, Argentina, and Montevideo, Uruguay. To facilitate the operation of such a route, Aviation Corporation of the Americas joined with W. R. Grace & Co. in organizing Pan American-Grace Airways, Inc., each of the parent corporations owning 50% of the stock. On March 4, 1929, Contract No. 9, covering the route described in the advertisement, was awarded to Pan American-Grace Airways, Inc.

The Act of March 2, 1929 had been framed upon the theory that the Post Office Department would make arrangements with foreign countries whereby such countries would pay the Department for the transportation of their mails to the United States by the United States contractor. It developed, however, that by far the greater number of foreign countries were unwilling to make any such arrangements with the Post Office Department, preferring to make their arrangements directly with the contractor as in the case of other international mails. Since it was obviously advantageous that mails of foreign countries should be carried on these return flights, and since, equally obviously, the contractor, who was already being paid by the United States, could not be permitted to retain the revenue received [fol. 2653] from foreign countries for the transportation of their mails to the United States, the contractor and the Post Office Department agreed that the Department should make a deduction from the pay of the contractor on account of each pound of mail carried to the United States or its possessions or territories from foreign countries making payments directly to the contractor. This deduction was not to be on the basis of the amount actually received by the contractor from the foreign country, but on the basis of the rate fixed by the Post Office Department per pound for transportation of mails outward bound. Since the contractor cannot afford to charge a rate to foreign countries lower

than this Post Office rate, and since the agreements of the contractor with the Post Office Department provide that the contractor will not procure the fixing of a rate more than 25% in excess of the rate charged by the Post Office Department outward bound, the Post Office Department has practically complete control of the rates on return mail.

The Act of March 2, 1929 contained provisions empowering the Postmaster General to amend contracts let under the Act of March 8, 1928, so as to bring them under the broader powers conferred by the new statute. In pursuance of this authority and in compliance with the terms of the [fol. 2654] contracts, Contracts Nos. 5, 6 and 8 were extended and amended. As a result of these changes, Contract No. 5 extends to Paramaribo, Dutch Guiana (the Post Office Department, however, having ordered a suspension of service between Puerto Cabello, Venezuela and Port of Spain, Trinidad); Contract No. 6 extends to Port of Spain, Trinidad, where it connects with Contract No. 5; and Contract No. 8 extends to San Salvador, where it connects with Contract No. 5. Under all three contracts, the contractor is paid for transportation in both directions on the route but, in all cases where the contractor receives payment from foreign countries for the transportation of their mails to the United States, it is subject to a deduction from its pay at a rate per pound of such mail equal to the rate fixed by the Post Office Department for transportation outward bound. In order to speed up the service to the Canal Zone connecting with the service on Route No. 9, the Post Office Department has split Route No. 5 so that two trips per week connecting with the South American mail are performed by a direct flight from Havana to Puerto Cabezas, Nicaragua, and thence along the east coast of Central America to the Canal Zone, the remaining trips being performed over the route originally flown.

[fol. 2655] At the same time that the companies in the Pan American Airways System were entering into these United States air mail contracts, they were also making arrangements with foreign countries for the transportation of their mails. Appended hereto, marked Exhibit C, is a list of all such contracts, showing the names of the com-

panies holding the respective contracts, the respective dates on which they were secured, their respective dates of expiration, and the respective rates fixed for the transportation of air mail from such countries to the United States. All these contracts give the contractor right to carry international mails of the country concerned. In the case of countries which are marked with an asterisk, the contracts also permit the carrying of mail within such countries.

In addition to the routes of the Pan American Airways System operated under contract with the United States Government, Compania Mexicana de Aviacion operates a route from Vera Cruz, Mexico to Merida, Mexico, and since June 26, 1930, Pan American Airways has carried Brazilian mail from Rio de Janeiro, Brazil, to Paramaribo, Dutch Guiana, and intermediate points.

Mails of foreign countries destined to the United States are carried on all parts of the Pan American Airways System. Outgoing mails of the United States are carried on all parts of the system except the route between Vera Cruz and Merida, and south of Paramaribo. Passengers [fol. 2656] are carried on all parts of the system except on the direct service between Miami and the Canal Zone, and south of Mollendo, Peru, and Paramaribo, Dutch Guiana. No freight or express other than the baggage of passengers is carried on any of the lines of the Pan American Airways System.

III. *Development of the Lines of Nyrba.*

The pioneer work in the development of the Nyrba system was done by Trimotor Safety Airways, Inc., now a wholly owned subsidiary of Nyrba. This company on February 27, 1929, entered into a contract with the Government of Argentina for the transportation of its international air mail, for a term of ten years, and on May 16, 1929, entered into a contract with the Republic of Uruguay for the transportation of its international air mail for five years. Operations were begun between Montevideo, Uruguay, Buenos Aires, Argentina, and Santiago, Chile, in August, 1929. Service between Buenos Aires, Argentina, and Yacuiba, Bolivia, was begun in December, 1929. The line was gradually

pushed north along the east coast of South America through Rio de Janeiro, Brazil, up to Paramaribo, Dutch Guiana, and thence via the West Indies, Porto Rico and Cuba to Miami, Florida. Service to the United States was initiated in February, 1930. A list of all the contracts held by Nyrba and its subsidiaries with foreign governments for the transportation of their international mails, showing the names of [fol. 2657] the companies holding the respective contracts, the respective dates on which such contracts were secured, their respective dates of expiration, and the respective rates for the transportation of air mail from such country to the United States, is attached hereto, marked Exhibit D.

Nyrba does not carry any United States mail. It carries return mails to the United States only on its main line from Buenos Aires to Miami, which is shown on the map filed herewith. It carries passengers on all its lines. It also carries a negligible amount of express and freight.

IV. *Projected East Coast Mail Contract.*

For some time past business men have desired the establishment of an air mail service from the present terminus of the United States mail route at Paramaribo, Dutch Guiana, down the east coast of South America to Rio de Janeiro and Santos (or Rio Grande do Sul), Brazil. The establishment of such a line would round out this country's foreign air mail service in Latin America. Funds sufficient to permit contracting for such a service were approved at [fol. 2658] the last session of Congress. Immediately upon such appropriation being made, the Post Office Department undertook a study of the situation in regard to such a contract.

The rate charged by the Post Office Department for the transportation of air mail from the United States to Argentina and Uruguay via the west coast of South America is $22.50 per pound. The rates to other countries are in line with this scale, the rate to Chile being $20.00 per pound and the rate to Peru being $16.00 per pound. It was contemplated that this same scale of rates should be applied to return mails from the South American countries to the

United States. The Post Office Department arrived at this scale after a study of the operating costs and rates of the French and German air transport companies operating air mail service in South America. Officials of the Post Office Department have stated that they aimed to establish the rates on such a basis that, with the expected growth in the volume of air mail from South America to the United States, the amounts received from foreign countries would soon reach a figure sufficient to reimburse the Post Office Department for its mileage payments to the United States postal contractor on the return flight.

[fol. 2659] Nyrba, however, had entered into contracts with the Governments of Argentina and Uruguay to transport their airmails to the United States at the rate of approximately $10.00 per pound, and had also entered into a contract with the Government of Brazil to transport its air mail to the United States at the rate of approximately $8.80 per pound. If Nyrba should be awarded the proposed east coast contract, it would be difficult for the Post Office Department to make an explanation satisfactory to the Argentine Government why the west coast contractor (Pan American-Grace Airways) was required to charge at the rate of $22.50 per pound for transporting air mail to the United States, whereas the east coast contractor (Nyrba) charged only $10.00 per pound. It would likewise be difficult for the Post Office Department to make an explanation satisfactory to the Government of Peru why it was being charged at the rate of $16.00 per pound, whereas Brazil, situated at an approximately equal distance from the United States, was paying only approximately $8.80 [fol. 2660] per pound. If, on the other hand, the east coast contract should be awarded to Pan American Airways, the contractor would be subject to competition on the part of Nyrba, carrying northbound mail at lower rates. The Post Office Department would thus be deprived of part of the revenue which it would otherwise secure from air mail originating in countries along and beyond the proposed east coast route.

The Post Office Department was therefore faced with the problem of taking steps to protect its own interest in the

carriage of mails of South American countries to the United States. In order to protect this interest, the Postmaster General made known to representatives of Nyrba that he would not advertise for bids for the east coast contract unless arrangements were made for the union of the businesses of Nyrba and the Pan American Airways System, and he suggested to representatives of both Nyrba and Aviation that they should consolidate their lines. It was in accordance with this suggestion of the Postmaster General that representatives of Nyrba and Aviation reached an agreement as to the purchase by Aviation of the assets of Nyrba.

[fol. 2661] V. *Competition between the Pan American Airways System and Nyrba.*

Both Pan American Airways and Nyrba operate from Miami, Florida, via Havana, Cuba, San Juan, Porto Rico, and the West Indies to Paramaribo, Dutch Guiana. However, all of the outgoing mails along this line are and necessarily will be carried by Pan American Airways, Inc., by virtue of its contracts with the United States. The bulk of the return mail (including all the Cuban mail) is carried by Pan American Airways, only 112 pounds having been carried by Nyrba to the United States up to July 12, 1930. Pan American Airways carries no express or freight. Competition is thus practically confined to the carriage of passengers.

Except for the service between Miami and Havana, the passenger traffic between the United States and countries along the route from Miami to Paramaribo is not of moment. During the six months ending June 30, 1930, the number of passengers carried to and from the United States along this route and the revenue received by Pan American Airways from such transportation, were as follows:

[fol. 2662]

PAN AMERICAN AIRWAYS

Between	Number of Passengers carried	Amount Received (including receipts from excess baggage)
Miami and Havana	3,131	$141,565.37
Miami and all other points	129	20,066.32
Total	3,260	$161,631.69

The revenues from the Miami-Havana passenger traffic constituted 19% of the total passenger receipts and 4.5% of the gross revenues of the Pan American Airways System. The revenues from passenger traffic between Miami and other points on the route constituted 3% of the passenger revenues and 0.7% of the total revenues of the Pan American Airways System.

The number of passengers carried by Nyrba from the beginning of its service through July 12, 1930, between the United States and foreign countries on the route Miami-Paramaribo are as follows:

NYRBA

Between	Number of Passengers Carried
Miami and Havana	904
Miami and all other points	18
Total	922

Figures showing the proportion of this passenger traffic to the total passenger traffic and figures showing the passenger receipts from this traffic and the proportion which this bears to the total revenues of Nyrba are not available.

[fol. 2663] In this entire area, and particularly between Miami and Havana, Pan American Airways and Nyrba are subject to intense competition on the part of steamship lines. Attached hereto, marked Exhibit E, are figures

showing the number of sailings and the number of passengers carried between the United States and countries on the route Miami-Paramaribo in the calendar year 1929, compiled from Department of Commerce figures and data furnished by steamship lines, together with a list of the steamship lines reaching the various ports. It appears from this exhibit that the number of passengers traveling by air constitute only 4% of the total between the United States and Havana, and 0.5% of the total between the United States and other points in this area.*

The distance between Florida and Havana is so small that the service of the steamship lines is directly competitive with that of Pan American Airways and Nyrba. Since the fast trains from the north arrive at Miami in the early morning hours, no time is gained by departing from that point rather than Key West. The passenger traveling by air arrives at Havana at 11 A.M. and the passenger coming [fol. 2664] by boat at 4 P.M. On the return trip the boat traveler leaves in the morning and the airplane traveler in the afternoon, but both proceed north by the same train. The Peninsular & Occidental S.S. Co., operating between Key West and Havana, carries some 90,000 passengers per year, as compared to approximately 4035 in the first six months of 1930 (when the bulk of the traffic occurs) for Pan American Airways and Nyrba combined.

Nyrba serves the east coast of South America between Paramaribo, Dutch Guiana, and Rio de Janeiro, Brazil, carrying passengers, freight and local and northbound mail. On June 26, 1930, Pan American Airways secured a contract from the Brazilian Government for the carrying of local and international mail. Pan American Airways began the carrying of Brazilian mail north on June 26, 1930 and has made three trips since that time. The purpose of ob-

* This computation is made on the assumption that the number of passengers carried by the steamship lines in the first six months of 1930 was half the total for 1929. It is well known, however, that, especially in the case of Havana, much more than half of the traffic is in the first six months of the year.

taining this Brazilian mail contract was to enable Pan American to qualify for a United States mail contract to Brazil, and no passengers or freight are carried. This line is now being operated by Pan American Airways at a loss which it is estimated will exceed $40,000 per month. Nyrba's losses for its operations between Paramaribo and Rio de Janeiro exceed $30,000 per month. It is obvious, therefore, that unless a United States mail contract is secured, the lines between Paramaribo and Rio can be operated only at severe financial losses.

[fol. 2665] The Pan American Airways System conducts no operations between Rio de Janeiro, Brazil and Montevideo, Uruguay. In this area Nyrba carries passengers, freight, and northbound and local mails.

Both the Pan American Airways System (partly by means of Pan American-Grace Airways, Inc., fifty per cent. of the stock of which is owned by W. R. Grace & Co. and fifty per cent. by Aviation Corporation of the Americas) and Nyrba are engaged in transportation between Argentina and Uruguay and the United States, Nyrba operating up the east coast of South America and the Pan American Airways System operating over the Andes and thence up the west coast of South America. However, there is no competition as to passenger business since Pan American-Grace Airways does not carry passengers south of Mollendo, Peru. All of the outgoing United States mail is necessarily handled by the Pan American Airways System under its United States Government contracts. The only possible competition on this route, therefore, is as regards mail from Argentina and Uruguay to the United States. However, under its arrangements with the Post Office Department, Pan American-Grace Airways is obliged to credit the Post Office Department on account of all such mail carried by it to the United States. Thus Pan American-Grace Airways is in substance acting for the United States Government in carrying such mail, and the competition is really [fol. 2666] not between Nyrba and the Pan American Airways System, but between Nyrba and the United States Government. Since there is no competition for passenger

business between Argentina and Uruguay and the United States, and since the competition as to return mails is in substance between Nyrba and the United States Government, it is believed that the decision in *United States* v. *Southern Pacific Co.*, 259 U.S. 214, does not apply.

Pan American-Grace Airways and Nyrba operate between Buenos Aires, Argentina, and Santiago, Chile. However, since Nyrba's mail contract with Chile does not permit the carriage of Chilean air mail beyond Argentina, Nyrba does not compete with Pan American-Grace Airways for the transportation of Chilean mail to the United States. There is likewise no competition as to passenger business, since Pan American-Grace Airways does not carry passengers south of Mollendo, Peru.

The following table shows the sources of revenue of the Pan American Airways System for the six months ending June 30, 1930:

[fol. 2667]

	Pan American Airways	Compañia Mexicana de Aviación	Pan American-Grace Airways	Total or Average
United States Mail Revenue*	$1,479,170.00	$263,440.00	$416,921.40	$2,159,531.40
Amount retained from mail payments of foreign governments	35,351.37	74,270.47	18,088.67	127,710.51
Total mail revenue	$1,514,521.37	$337,710.47	$435,010.07	$2,287,241.91
Passenger revenue	450,216.42	209,443.13	58,170.59	717,830.14
All other revenue	63,427.01	34,823.00	22,922.86	121,172.87
Total revenue	$2,028,164.80	$581,976.60	$516,103.52	$3,126,244.92
Mail revenue per airplane mile**	$1.40	$.62	$1.20	$1.15
Total revenue per airplane mile	$1.87	$1.09	$1.43	$1.58
Per cent. mail to total revenue per airplane mile	75%	58%	84%	73%

* This figure is not the amount actually paid by the United States but the amount payable before deductions from the pay of the contractor on account of mails of foreign governments carried by it to the United States under arrangements whereby it receives payment from such governments.

** Airplane mile includes not only miles flown on revenue mail flights but also ferry flights, flights necessary for repairs, etc. The total airplane miles exceed the total miles flown on revenue mail flights by approximately 10%.

[fol. 2668] On Division I of the Pan American Airways System, of which the route Miami-Paramaribo forms a major part, operating costs amounted to $2.17 per airplane mile (as compared to approximately $2.50 per mile for the lines of the French Aeropostale and $2.30 per mile for the lines of the German Lufthansa in South America). In spite of mail revenue of $1.47 per airplane mile, operations were conducted at a loss of 21.2 cents per airplane mile. On the same route Nyrba's operating revenue was only $0.37 per airplane mile and its costs $2.34 per airplane mile, leaving a loss of $1.97 per airplane mile.

The income account of the Pan American Airways System shows an operating loss of nearly $600,000 in the first six months of 1930, in spite of receipts of $2,159,531.40 from United States Government contracts. It is expected that the loss for the second six months of 1930 will not be as large. Nyrba, which does not have any United States Government contract, is suffering an operating loss in excess of $100,000 per month. Even if the United States air mail contract between Paramaribo and Rio de Janeiro should be awarded to Nyrba, it would still be faced with the certainty of losses on much of its line. In the first place, the economic value of the contract to Nyrba would be greatly [fol. 2669] lessened by the fact that, in line with the policy pursued in the case of other foreign mail contracts, the Post Office Department would make a deduction on account of Argentine and Uruguay mail at its own rate of $22.50 per pound, although Nyrba received only $10 per pound from the foreign governments, and would make deductions on a similar scale in the case of Brazilian mail. Even if the situation created by the low rates fixed in Nyrba's contracts with Argentina and other South American countries could be corrected, Nyrba, as the United States postal contractor, would be required to turn over the South American mail at Paramaribo to the United States postal contractor from Miami to that point and would be subject to a deduction on account of mails carried from the West Indies to the United States in competition with the United States Post Office. Thus Nyrba would be attempting to operate the entire line from Miami to Buenos Aires although receiving

postal revenues only for the portion of its line between Paramaribo and Santos, which is less than half the total mileage. As already stated, Pan American Airways, although receiving mail revenue of approximately $1.47 per airplane mile on the portion of its route between Miami and Paramaribo, is suffering a loss of 21.2 cents per airplane mile. The continued operation of this route by Nyrba, re- [fol. 2670] lying exclusively on passenger revenues, would appear to be impossible.

Only 23.7% of the capital of the Pan American Airways System and only 34.5% of the capital of Nyrba is invested in the route between Miami and Paramaribo. The bulk of the capital of the Pan American Airways System is invested on the routes leading to Mexico, Central America and the Canal Zone. Sixty-five and a half per cent of the capital of Nyrba is invested in Brazil, Uruguay, Argentina, and Chile, where the investments of the Pan American Airways System are small.

It is believed that the union of Nyrba and the Pan American Airways System presents advantages not only to the Post Office Department but to other branches of the Government. England, France and Germany have each adopted the policy of giving all their support, diplomatic, financial and military, to a single aviation company operating in the international field. The French Aeropostale and the German Lufthansa (operating through a Brazilian company known as Kondor do Brasil) are already engaged in operations in South America in competition with the Pan American Airways System and with Nyrba. The State Department naturally desires to have its representatives give all possible aid to an American company against its foreign rivals. It would be able to assist more effectively if there were only a single American company in the field. The Department of Commerce is concerned lest American pres- [fol. 2671] tige in South America should be lowered by the failure of one of the two lines. The War Department and the Navy Department are greatly interested in the building up of a powerful American international air transport system with well trained crews and modern equipment.

It is believed that officials of the four departments above named, if asked by the Department of Justice, would state that, in their opinion, the proposed union of Nyrba and the Pan American Airways System would be in the public interest.

VI. *Summary.*

The situation here discussed is in many respects unique. The industry concerned is not an old established one but a new one which is still in an experimental stage. The Pan American Airways System and Nyrba are in competition only in regard to a comparatively insignificant amount of passenger traffic in an area which is abundantly served by steamship lines, and in regard to the transportation of certain foreign mails to the United States. Under the ordinary practice in international mail service, these mails would be carried wholly under contracts between the respective foreign governments and the private contractor, and the United States would have no concern with them. It is submitted that the anti-trust laws have no application to [fol. 2672] the business of transporting mails from a foreign nation into the United States, the foreign government being the only party really concerned. Moreover, the effect of the Act of March 2, 1929, was to place the United States itself in the business of transporting mails of foreign countries to the United States. Under the system which has been developed, whereby the United States Post Office Department benefits directly from foreign mails brought to the United States by its contractors, competition with such a contractor for the carriage of return mails is in substance competition with the United States itself.

Furthermore, it appears that, whether or not the proposed acquisition occurs, there is almost no possibility of continued competition between these two lines. The Pan American Airways System, even with revenue of $2,159,531.40 from United States Government mail contracts in the first six months of 1930, has not yet been able to earn an operating profit. Nyrba, which has established an excellent plant along the east coast of South America, is apparently faced with the prospect of exhausting its present

capital within a few months. Thus it appears that what little competition may now exist between the lines may shortly disappear, and that any potential competition which might otherwise be thought to exist is not likely to ma- [fol. 2673] terialize. It is submitted, that under these circumstances, there is nothing in the anti-trust laws which requires that the stockholders of Nyrba be forced to await the complete exhaustion of its capital before disposing of its assets to the only other party which is able to make effective utilization of them. As pointed out above, such immediate utilization will facilitate the objects of the Government in the development of the foreign air mail service.

July 28, 1930.

[Vol. 2674]

AVIATION CORPORATION OF THE AMERICAS

Profit and Loss*

January 1 to June 30, 1930.

Income from Operations January 1 to June 30, 1930	$2,616,841.47
Less - Operating Expenses, including Salaries, Maintenance, Depreciation and Taxes	3,089,439.34
Loss from Operations	472,198.87
Extension and Development	162,875.19
Surplus Adjustments	9,794.69
Deficit, January 1 to June 30, 1930	$ 645,368.95
Deficit January 1, 1930	513,041.56
Deficit June 30, 1930	$1,158,408.51

*Includes Pan American Airways, Inc. and Compania Mexicana de Aviacion, S.A., but does not include Pan American-Grace Airways, Inc. That company showed a deficit on January 1, 1930, of $125,800. Since January 1, 1930, it has incurred operating losses of $11,100. In addition to liabilities to W. R. Grace & Co. for use of the Grace agencies on the west coast of South America, and to Pan American Airways, Inc. for its share in Pan American's overhead. Payment of the latter liability would decrease the deficit shown above for Aviation Corporation of the Americas.

[fol. 2675]

EXHIBIT A.

AVIATION CORPORATION OF THE AMERICAS

CONSOLIDATED BALANCE SHEET — JUNE 30, 1930.

ASSETS		LIABILITIES	
CURRENT ASSETS		CURRENT LIABILITIES	
Cash	$185,788.80	Miscellaneous Creditors	$463,771.80
		Accrued Expenses	17,079.89
			480,851.69
Accounts Receivable			
Mail Contracts	648,586.28		
Pan Amer.-Grace Airways	65,246.07		
Airport Management, Inc.	10,882.17		
Miscellaneous	87,267.79		
	811,982.31		
Materials & Supplies	409,819.04		
Prepaid Expenses			
Insurance	80,780.89		
Advances to Employes	87,880.70		
Operating Funds	65,287.86		
Deposits, etc.	19,782.09		
	253,681.54		
Performance Bonds	99,618.88		
TOTAL CURRENT ASSETS	1,878,130.09		
INVESTMENTS		NET WORTH	
Pan Amer.-Grace Airways	800,000.00	Capital Stock	
Colombian Am.avia. Co.,	2.00	Authorized 1,000,000	
Miscellaneous	279,000.00	Reserved-Warrants 191,640	
	1,079,002.00	Issued 804,190	
			8,738,600.00
FIXED ASSETS & DEVELOPMENT	843,287.93		
Flying Assets			
Airplanes	1,477,069.87		
Engines	1,188,048.77	Deficit	1,188,438.81
Deposits for Airplanes	34,080.00		8,578,199.87
Hangars, Stations, Airports	1,788,804.88		
Other Equipment	808,188.08		
	5,870,287.81		
	$7,988,481.83		$7,988,481.83

This balance sheet includes Pan American-Airways, Inc. and Compania Mexicana de Aviacion, S.A., but not Pan American-Grace Airways, Inc. which is carried as an investment. The balance sheet should be adjusted to show indebtedness of $60,000 from Pan American-Grace Airways for its share of overhead. This adjustment would decrease the deficit appearing on this balance sheet.

[fol. 2676]

Exhibit B

New York and [illegible]

Consolidated Balance Sheet

May 1st, 1930

Assets

Liabilities

Current Assets

Cash on hand and in banks $12,857.88
Accounts receivable 10,444.13
Accounts receivable-Officers 63,989.48

Investments - Miami Marine Airport Inc. 4 shares Class A Stock

Airplanes, Parts, Equipment, &c.
$5,898,911.00
Less Depreciation 805,139.01

Prepaid

Purchase Contracts 60,968.17
Mail Contracts 11,666.66
Litigation "Pan Co." 78,808.00
Miscellaneous 78,487.00

Air Mail Contract:

Patents in [illegible]

Organization & Development Expense

Incorporation Fees 18,180.21
Expenses acquiring Air Mail Contracts 146,286.86
Administration Expense 1929 97,944.70
Exploration and Development Expenses 348,700.77
Preliminary Maintenance and Expense 845,734.[illegible]

Capital [illegible]
(300000 shares
No par value 6,833,6[illegible]

Surplus [illegible]

Does not include Buenos Aires accounts for the most of any.

NEW YORK, RIO & BUENOS AIRES LINE, INC.

CONSOLIDATED PROFIT & LOSS FOR YEAR 1935 to MAY 31, 1936.

REVENUE		
Interest Received	$	3,703.84
Discount Received		1,626.00
Airplane Revenue		109,446.18
	$	114,776.02
EXPENSES		
Division		126,883.08
Administration		84,627.49
Airplane Operating		96,623.35
Maintenance - Prts Jobs		9,901.68
Salaries		106,344.26
Depreciation		137,118.98
Regional		10,277.35
Insurance		113,746.08
Traveling		18,188.91
Advertising		48,188.60
Legal		88,612.97
Director		8,857.80
Traffic Expense		3,290.99
Miscellaneous		17,618.18
	$	[illegible]
DEFICIT	$	680,697.84

[fol. 2678]

EXHIBIT C.

SUMMARY OF INTERNATIONAL MAIL CONTRACTS OF THE PAN AMERICAN AIRWAYS SYSTEM WITH FOREIGN COUNTRIES.

Argentina

In name of: Pan American-Grace Airways, Inc., but contract provides that International mail may be transported by Pan American Airways, Inc., on establishing connection with Pan American-Grace Airways, Inc.

Contract Signed: October 12th, 1929.

Term: 10 years. May be renewed for 5 years more.

Rate to U. S.—$32.50 per Lb. net. (New rate quoted of $22.00 per Lb. gross not yet in effect.)

Brazil

In name of: Pan American Airways, Inc.

Contract Signed: June 26th, 1930 (Date of Official Gazette).

Term: One year. Application pending for long term contract which is expected to be granted shortly.

Rate to U. S.—$19.20 per Lb. net. (1.700 for each 5 gram unit, converted into U. S. Cy. at 8.500 to the dollar, on basis of 480 grams to Lb.)

Chile

In name of: Pan American-Grace Airways, Inc.

Contract Signed: August 24th, 1929, modified April 5th, 1930.

Term: 2 years, with right to renew for further period of 2 years.

Rate to U. S.—$20.00 per Lb. gross, paid directly to U. S. Post Office Department.

[fol. 2679]

Costa Rica

In name of: Pan American Airways, Inc.

Contract Signed: January 23rd, 1929.

Term: 10 years.

Rate to U. S.—$8.00 per Lb. gross.

Dominican Republic

In name of: Pan American Airways, Inc.

Contract Signed: June 18th, 1930.

Term: 15 years from April 16th, 1929, which is date of signature of general mail and operating contract.

Rate to U. S.—$4.00 per Lb. gross.

**Dutch Guiana*

In name of: Pan American Airways, Inc.

Contract Signed: March 1st, 1930.

Term: One year. May be renewed for one year more.

Rate to U. S.—$12.00 per Lb. gross.

**Ecuador*

In name of: Pan American-Grace Airways, Inc.

Contract Signed: August 24th, 1929, supplementary to contract dated February 22nd, 1929.

Term: 20 years, with right to renew for further periods of 10 years.

Rate to U. S.—Contract provides $17.50 per Lb. net, but actual receipts are approximately $12.00 per Lb. gross, which is to be rate under contract in process of negotiation.

[fol. 2680]

Guatemala

In name of: Pan American Airways, Inc.

Contract Signed: January 15th, 1930.

Term: One year from inauguration of service. (First flight was on December 25th, 1929, first mail carried was on January 1st, 1930.) May be renewed for one year.

Rate to U. S.—0.0265 quetzales per 2 gram unit, equivalent to $6.00 per Lb. gross.

Haiti

In name of: Pan American Airways, Inc.

Contract Signed: February 24th, 1930.

Term: 20 years. No renewal clause, but Art. 16 states that this contract "shall have the same duration as the contract of February 22nd, 1929" which is renewable.

Rate to U. S.—$4.00 per Lb. gross. ($8.80 per Kilo.)

Honduras

In name of: Pan American Airways, Inc.

Contract Signed: February 1st, 1930.

Term: 3 years.

Rate to U. S. $6.00 per Lb. gross.

Mexico

In name of: Compania Mexicana de Aviacion, S. A.

Contract Signed: A letter of July 1st, 1930, from Dr. G. Espinosa Mirales, attorney, of Mexico City, states that the contract has been put in operation since June 1st, 1930 and will be in effect until January 31st, 1932.

Term: 2 years (stated in contract). May be renewed for 2 years more.

Rate to U. S.—$2.00 per Lb. gross.

[fol. 2681]

Nicaragua

In name of: Pan American Airways, Inc.

Contract Signed: May 8th, 1929.

Term: 10 years. (From March 19th, 1929.) No renewal clause.

Rate to U. S.—$6.00 per Lb. gross.

Panama

In name of: Pan American Airways, Inc.

(Contract, as regards West Coast operation, transferred from Pan American Airways, Inc. to Pan American-Grace Airways, Inc., on December 6th, 1929, said transfer being approved by President of Panama on November 14th, 1929.)

Contract Signed: March 8th, 1929.

Contract (West Coast) Signed: May 29th, 1929.

Term: 25 years. (From date of first contract, the second being concurrent.) May be renewed for 25 years more.

Rate to U. S.—$8.00 per Lb. gross.

Peru

In name of: Pan American-Grace Airways, Inc.

Contract Signed: June 24th, 1928.

Term: 5 years, with right to renew for further period of 5 years.

Rate to U. S.—$16.00 per Lb. gross, paid directly to U. S. Post Office Department.

Salvador

In name of: Pan American Airways, Inc.

Contract Signed: November 6th, 1929.

[fol. 2682] Term: 2 years from inauguration of service. (First flight was on December 25th, 1929, first mail carried was on January 1st, 1930.) No renewal clause.

Rate to U. S.—$6.00 per Lb. gross. ($13.25 per Kilo.)

Uruguay

(1) In name of: Pan American-Grace Airways, Inc. (West Coast.)

Contract Signed: November 22nd, 1929.

Term: 4 years. May be renewed for like periods.

Rate to U. S.—$24.00 per Lb. gross.

(2) In name of: Pan American Airways, Inc. (East Coast.)

Contract Signed: May 20th, 1930.

Term: 4 years. May be renewed for "like periods".

Rate to U. S.—about $24.05 per Lb. gross (52.91 American gold per gross kilogram).

Venezuela

In name of: Pan American Airways, Inc.

Contract Signed: April 11th, 1930. (Approved May 8th, 1930.)

Term: 5 years from May 4th, 1930. May be renewed for 5 years more if certain construction work done, and also for an additional 5 year period.

Rate to U. S.—$12.00 per Lb. gross. (127 Bolivares per Kilo, the bolivar being equivalent to $0.193 U.S. Cy.)

[fol. 2683]

EXHIBIT D.

SUMMARY OF INTERNATIONAL MAIL CONTRACTS OF NYRBA WITH FOREIGN COUNTRIES.

Argentina

In name of: Trimotor Safety Airways, Inc.

Contract Signed: February 27th, 1929.

Term: 10 years.

Rate to U. S.—$10.00 per Lb.

Brazil

In name of: New York, Rio & Buenos Aires Line, Inc.

Contract Signed: February 7th, 1930.

Term: Indefinite.

Rate to U. S.—$8.80 per Lb.

Chile

In name of: Trimotor Safety Airways, Inc.

Contract Signed: September 1st, 1929.

Term: 10 years.

Rate to U. S.—Does not apply to U. S.

[fol. 2684]

Uruguay

In name of: Trimotor Safety Airways, Inc.

Contract Signed: May 16th, 1929, with supplemental contract signed August 1929.

Term: 5 years.

Rate to U. S.—$10.00 per Lb.

Venezuela

In name of: New York, Rio & Buenos Aires Line, Inc.

Contract Signed: October 1929.

Term: 5 years.

Rate to U. S.—$8.52 per Lb.

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* Contract for the carriage of local mails in Brazil, signed February 7th, 1930, in name of Nyrba do Brasil.

EXHIBIT E.

[fol. 2685]

EXHIBIT E.

Sailings and number of passengers carried by steamship lines between the United States and points on the route Miami - Paramaribo in the calendar year 1929.

	Outbound Sailings Per Year From U.S.	Passengers Outbound From U.S.	Inbound Sailings Per Year to U.S.	Passengers Inbound to U. S.	Total Sailings Per Year	Total Passengers Carried Per Year
HAVANA	754	103,840	748	102,840	1,478	206,680
SANTIAGO	24	2,000	24	2,000	48	4,000
PORT au PRINCE	48	1,200	48	1,200	96	2,400
STO. DOMINGO	52	1,040	52	1,040	104	2,080
SAN JUAN	156	10,200	156	10,200	312	20,400
LEEWARD AND WINDWARD ISLANDS	72	2,160	72	2,160	144	4,320
PORT OF SPAIN	101	5,810	101	5,810	202	11,620
GEORGETOWN	26	780	26	780	52	1,560
PARAMARIBO	17	810	17	810	34	1,620
TOTALS INCLUDING HAVANA	1,250	130,040	1,245	129,840	2,495	260,880

[fol. 2686]

List of Steamship Lines Serving Ports on Route Miami-Paramaribo.

Point	*Steamship Line*
HAVANA	American & Cuban S. S. Co.
	Dollar Steamship Line
	Munson Steamship Line
	New York & Cuba Mail
	Panama Steam Navigation Co.
	Panama Pacific Line
	Peninsular & Occidental Steamship
	Royal Mail Steamship Packet
	United Fruit
CIENFUEGOS	Ward Line
	Atlantic Navigation
	New York & Cuba Mail
	United Fruit
SANTIAGO	United Fruit
	Atlantic Navigation Co.
	Munson Line
	Royal Mail Steamship Packet
	Cunard Line
PORT AU PRINCE	Panama R. R. Steamship
	Cunard Line
	Royal Mail Steamship
	Colombian Steamship
SAN PEDRO DE MACORIS	Bull Line
	Porto Rico Line
SAN JUAN	Bull Line
	New York & Porto Rico Steamship
	Red Star Line
ST. THOMAS	Western Ocean Steamship
	Ocean Dominion Steamship
	Furness-West Indies Line
ST. JOHNS	Western Ocean Steamship

Point	*Steamship Line*
ST. LUCIA	Furness-West Indies Line Western Ocean Steamship
PORT OF SPAIN	Western Ocean Steamship Furness Trinidad Line Ocean Dominion Steamship Lamport & Holt
GEORGETOWN	Western Ocean Steamship
PARAMARIBO	Ocean Dominion Steamship Western Ocean Steamship Royal Netherlands Steamship

[fol. 2687]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 151

DEPARTMENT OF JUSTICE
Office of the Assistant to the Attorney General
WASHINGTON

August 1, 1930

Root, Clark, Buckner & Ballantine,
31 Nassau St.,
New York, N.Y.

Dear Sirs:

The Department has given careful consideration to the facts stated in your memorandum submitted with your letter of July 28, 1930, to the Attorney General with regard to the proposed acquisition by Aviation Corporation of the Americas of all the assets of New York, Rio & Buenos Aires Line, Inc., as well as to the oral statements made by officers of these companies at a conference with representatives of this Department on July 23, 1930.

Upon the basis of the information thus furnished the Department does not at the present time deem that any action by it would be warranted if the proposed acquisition should be effected. This, however, cannot under the law limit the full freedom of the Department to take such

later action as future developments, further information or a subsequent consideration of the questions involved may in its judgment warrant.

Yours very truly,

JOHN LORD O'BRIAN,
The Assistant to the Attorney General.

/s/ CHARLES H. WESTON
By CHARLES H. WESTON,
Special Assistant to the Attorney General,
Acting in Charge.

[fol. 2688]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 152

[Handwritten notations—F.A.M. 10—8/20/30]

ADVERTISEMENT FOR FOREIGN
AIR MAIL SERVICE

BETWEEN

PARAMARIBO AND SANTOS

[fol. 2689]

ADVERTISEMENT FOR FOREIGN
AIR MAIL SERVICE

POST OFFICE DEPARTMENT

Washington, D. C.,
August 20, 1930.

Proposals will be received at the Office of the Second Assistant Postmaster General until twelve o'clock noon September 11, 1930, for carrying the mails herein specified by aircraft during the term beginning at a date optional with the contractor, but not later than forty-five (45) days from the award of contract, and ending January 8, 1939, in accordance with the provisions of this advertisement, on the following described route:

Route No. 10.

From Paramaribo, Dutch Guiana, by Cayenne, French Guiana, (at option of the Postmaster General), Para (State of Para), Maranhao (State of Maranhao), Fortaleza (State of Ceara), Natal (State of Rio Grande do Norte), Pernambuco (State of Pernambuco), Bahia (State of Bahia), Victoria (State of Espirito Santo) and Rio de Janeiro (Federal District) to Santos (State of Sao Paulo), Brazil, and return by the same points.

(Approximate one way mileage; subject to correction, 3,275 miles.)

Provisions of the Advertisement

1. (a) The frequency of service each way shall be once a week, but the Postmaster General reserves the right to increase the frequency to twice a week or a greater number of flights; also the Postmaster General may extend the service to other points in South America or the West Indies, curtail the route to omit points, omit or embrace intermediate points, and reduce the number of flights. The route may be discontinued upon mutual agreement of the Postmaster General and the contractor.

(b) If the frequency of service is increased or the service extended, increased pay will be allowed at not exceeding the contract rates, and if the service is curtailed or otherwise reduced, reduction in pay will be made at the contract rates.

2. The service shall be performed by a schedule satisfactory to the Postmaster General. The flights shall leave Paramaribo and arrive at that place in close connection with flights on the existing U. S. air mail route between Miami and Paramaribo. The Postmaster General may change the schedule as the needs of the mail service may require.

[fol. 2690] 3. (a) The contractor shall carry for the U. S. Post Office Department on all authorized flights each way over the route (1) all mails offered of the United States and its possessions and territories, (2) all foreign mails in transit offered that may be forwarded from a post office

of the United States or its possessions or territory, (3) all mails offered of foreign countries destined to the United States or a possession or territory thereof, and (4) all mails offered of foreign countries for onward dispatch by any means from the United States proper or for onward dispatch by boat from the U. S. Virgin Islands, Porto Rico, or other U. S. possession or territory;

(b) The mails under provisions (3) and (4) of the next preceding paragraph shall include all of the mails enumerated therein of countries off or beyond the route as well as countries traversed by the route, regardless of the means by which they may be carried to a connecting point on this route;

(c) If the contractor operates aircraft between Paramaribo and Miami, or between any other points, including operation from Argentina and Uruguay, and carries any mail in competition with any U. S. air mail service, the contractor will be charged for such transportation at the rates fixed by the U. S. Post Office Department for the carriage of any such mail on its routes, and the amounts so charged may be deducted from the contractor's pay for service on the route herein advertised;

(d) The specified load of mails to be carried for the U. S. Post Office Department per flight each way over the route, to be paid for at the mileage rate, shall be eight hundred (800) pounds. Any of said mails in excess of eight hundred (800) pounds shall be carried at rates per pound. However, the contractor will be required to carry excess mails on any flight only in such amount as in the opinion of the pilot can be safely carried, with preference in loading to be given the mails to be carried for the U. S. Post Office Department over all other traffic (including passengers).

(e) If the contractor carries any mails specified in paragraph (a) of this section on any voluntary flights it may make in addition to the required flights, any of said mails so carried shall be credited to the required flights of the month in which any such voluntary flight started, and if the amount of said mail so credited involves an excess for

the month over the specified load on all required flights in the same direction, the contractor will be entitled to pay for the amount in excess of the specified loads at the pound rate for excess mails:

(f) If in any case the contractor for service under this advertisement is obligated under agreements which may have been or may be made with any country traversed by this route or country off or beyond the route to carry the mails of such country specified in paragraph (a) of this [fol. 2691] Section as mails to be carried for the U. S. Post Office Department, said Department will charge the said contractor for the transportation of such mails by this route and by all other U. S. air mail routes over which said mails may be carried. The charge will be based upon the rates per pound or per kilogram that may be fixed by the U. S. Post Office Department for carrying by its services of the mails for any such country to destination. Any amount so charged may be deducted from the pay of said contractor.

(g) If in any case under agreement between the contractor and a foreign country the contractor has authority to fix or consent to postage rates or air mail fees for mails to be carried, the contractor shall not fix or demand or attempt to procure the fixing of postage rates, including air mail fees, for any mails specified in paragraph (a) of this Section to be carried for the U. S. Post Office Department, more than 25 per cent in excess of the postage charged by the United States for mails to be carried in the reverse direction to any such country.

4. The contractor will be required to receive the mails for the southbound flights at Paramaribo from the contracting company (at the landing place of such company) that performs service on the U. S. air mail route between Miami and Paramaribo, and on the northbound flights to deliver all mails specified in paragraph (a) Section 3 hereof to be carried for the U. S. Post Office Department, to such contracting company at its landing place. If found necessary the contractor may also be required to carry mails between the landing point on this route and the post office

at Paramaribo. The contractor shall deliver and receive the mails at the post offices at all other points on the route. However, if the route be extended at any time to connect with any other U. S. air mail route, the contractor may be required to receive mails from and deliver them to the contractor on said other route at the connecting point.

5. (a) The contractor will be required at all times during the term of the contract to perform the service with safe and suitable aircraft of the most modern design and type and of suitable capacity and speed, with fireproof mail compartments, all to the satisfaction of the Postmaster General. Two-way radio operation and passenger accommodations will be required on all aircraft, in the discretion of the Postmaster General.

(b) If at any time the development of aircraft should be such that the equipment used on the route does not comply with these specifications, or if the class of equipment specified herein is not provided for any other reason, the Postmaster General may terminate the contract.

(c) Unless otherwise agreed to by the Postmaster General, all flying equipment used on the route shall be of United States manufacture, all other equipment and supplies necessary for performance of the service shall be of United States manufacture or United States products if practicable, and pilots, flying crews, and all other employees, shall be citizens of the United States as far as may be practicable.

(d) Aircraft before being operated in this service must have been inspected by the appropriate authorities of the United States or of a country traversed by the route and have received certificate of air-worthiness. The pilots must have received certificates of fitness from the appropriate department of the United States or be qualified under the requirements of a country traversed.

[fol. 2692] (e) The contractor must make its own arrangements at its own expense in securing concessions to operate in the countries traversed, for landing fields or rights to land the mails from the water, lighthouses, radio

stations, and such other aids to navigation and such other arrangements as may be necessary for the proper performance of the service.

6. (a) Payments for faithful performance of service will be made monthly and as soon after the close of each month as satisfactory evidence of performance shall be received and as the accounts can be adjusted and settled;

(b) The contractor shall furnish such evidence of the performance of service and in such form as may be prescribed by the Postmaster General;

(c) Payments will be based upon the shortest practicable airway distance between the points on the route as determined by the Postmaster General.

(d) No compensation will be allowed for flights not made. However, pro rata pay may be allowed for the distance between points on the route flown in a partially completed flight, in the discretion of the Postmaster General;

(e) Deductions from pay may be made for suffering the mails to become wet, damaged, lost or destroyed, or for other delinquencies in service, in the discretion of the Postmaster General; also the contractor shall be answerable in damages to the United States for the proper care, protection and transportation of the mails and be accountable for any loss or damage resulting to any of such mail or any part thereof by reason of failure on its part, or its officers, agents or employees, to exercise due care in the custody, handling or transportation thereof;

(f) The Postmaster General in his discretion may annul the contract and or impose a fine or fines or other penalties upon the contractor, for repeated failures in the performance of service; or for subletting the service or any part thereof without permission of the Postmaster General; or assigning or transferring the contract; or for combining to prevent others from bidding for the performance of postal service; or for failure to perform the service in the manner and by the means specified by the contract; or for violation by the contractor, its officers, agents, or employees, of the Postal Laws and Regulations applicable to

this service, or for any other failure or other default of the contractor to perform the service according to the contract; and any such annulment shall not impair the right of the United States to claim damages from the contractor and its sureties.

7. (a) Contracts or interests therein for mail service cannot be transferred or assigned. Service pursuant to this advertisement may be sublet only upon permission of the Postmaster General. Such permission will not be given except for reasons satisfactory to the Postmaster General and then only for subletting to a subcontractor that can qualify as to ability to perform the service and is otherwise satisfactory to the Postmaster General, and at rates not less than the contract rates of pay;

[fol. 2693] (b) The Department will not countenance the undue promotion of the sale of stock of a bidding or contracting corporation upon the representation or basis of securing or having this mail contract. If any such promotion or attempted promotion of sale of stock be unwarranted in the opinion of the Postmaster General, he may rescind the acceptance of a proposal or annul the contract;

(c) Bidders and contractors must be citizens of the United States. A corporation in order to be eligible as bidder or contractor must be organized under the laws of the United States, or a State, Territory, District or possession thereof; its president and managing directors must be citizens of the United States; title to at least 75 per cent of its stock must be vested in citizens of the United States free from any trust or fiduciary obligation in favor of any person or persons not citizens of the United States, and must be free from control by any means whatsoever by any person or persons not citizens of the United States or by other corporation controlled by a person or persons not citizens of the United States;

(d) The contract for the service shall contain the following covenant:

The Contractor warrants that it has not employed any person to solicit this contract upon any agreement for a

commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fee. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business;

(e) The accepted bidder under this advertisement will be required to execute a formal contract in the form prescribed by the Postmaster General. Such formal contract with a bond of one thousand ($1,000) dollars in connection therewith shall be executed and filed in the Post Office Department within thirty days from the date of the acceptance of the proposal. If the accepted bidder fails to file a properly executed formal contract within the thirty days, it may be declared a failing bidder and proceedings taken accordingly.

(f) The contractor will be required to provide, without additional charge, transportation for representatives of the Post Office Department traveling on official business, upon special credentials issued by the Postmaster General.

8. (a) Proposals in response to this advertisement must be for service as advertised. Proposal forms may be obtained upon application to the Second Assistant Postmaster General, Washington, D. C.

(b) The proposals and the contract will also be subject to the provisions of the Postal Laws and Regulations applicable to this class of service.

(c) All proposals must be in the form prescribed by the Department and accompanied by a bond in the sum of twenty-five thousand ($25,000) dollars with two or more [fol. 2694] individual sureties approved by a postmaster of the first, second or third class, which bond must be acceptable to the Postmaster General, such sureties to be shown to be the owners of real estate valued above all encumbrances at an amount double that of the bond, or a surety

company that has been approved by the Secretary of the Treasury. A list of such surety companies may be found on page 61 of the Official Postal Guide for July, 1929, a copy of which may be seen upon application to any postmaster. In lieu of surety bonds, bidders may deposit and pledge U. S. bonds to the par value of twenty-five thousand dollars, in accordance with Department requirements;

(d) Bidders and their sureties are urged to acquaint themselves fully with the requirements set forth in this advertisement and with the service to be performed before they assume any liability as bidders or sureties;

(e) A proposal altered or incomplete in any of its essential terms can not be considered in connection with bids submitted in proper form, unless in case of alteration it be verified by initials or other memoranda of the parties;

(f) When a bid is signed by a corporation it should be accompanied by evidence of the authority of the person signing so to execute the bid on behalf of the company. Such evidence may be a certified copy of the proceedings pursuant to which the person was elected or appointed an officer or agent of the company and that part of the by-laws showing his authority as such officer or agent to sign the bid; or a certified copy of a resolution of the board of directors or stockholders conferring such authority upon him.

(g) The maximum rates authorized by law for this class of service is $2 dollars per mile for the specified load and $1 per pound per thousand miles or pro rata thereof for greater or less mileage for mails in excess of the specified load. Bids at a higher rate will not be considered.

(h) Bids must state rate per mile for the specified load of not exceeding eight hundred (800) pounds, and a rate per pound per thousand miles for excess mails, such rate for excess mails to bear the ratio of 50 per cent of the rate per mile for the specified load; that is, if a bid is $2 a mile for the specified load, the rate for excess mails must be $1 per pound per thousand miles or pro rata thereof for greater or less mileage, or if a bid is $1.50 a mile for the specified load the rate for excess mails must be $0.75 per

pound per thousand miles or pro rata thereof for greater or less mileage, etc.

(i) Bidders must file with their proposals evidence as follows:

(1) Of citizenship of the bidder. (See Section 7, par. (c))

(2) That the bidder is prepared or can be prepared to begin service within forty-five (45) days from the award of contract, including copies of concessions to operate in the countries traversed by the route, a sworn statement of the possession of the necessary flying equipment or the availability of such equipment and the means of procuring it, and similar evidence of the necessary operating organization.

[fol. 2695]

(3) Of the ability of the bidder to perform the service. This will include the last balance sheet and such other evidence of the bidder's financial ability as can be filed, as well as a full statement of the past experience of the bidder in aviation.

(j) No withdrawal of a proposal will be allowed unless notice of withdrawal is received at least twenty-four (24) hours previous to the expiration of the time fixed herein for receiving bids.

(k) Bids should be forwarded in time to reach the Office of the Second Assistant Postmaster General not later than the time stated in this advertisement for receiving bids. Bids received after that time will not be considered in competition with bids received within the prescribed time.

(l) Bids should be sent in sealed envelopes, superscribed "Air Mail Proposal, Paramaribo-Santos Route" and addressed to the Second Assistant Postmaster General, Post Office Department, Washington, D. C.

/s/ WALTER F. BROWN,
Walter F. Brown,
Postmaster General.

[fol. 2696]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 153

CONTRACT FOR FOREIGN AIR MAIL SERVICE

Route No. 10

THIS CONTRACT, Made the 24th day of September, A. D. 1930, by the United States of America, represented by the Postmaster General, party of the first part, and the Pan American Airways, Inc., a corporation duly organized and existing under the laws of the State of New York, hereinafter referred to as the contractor, party of the second part;

WITNESSETH, That whereas under date of September 24, 1930, the Pan American Airways, Inc. was accepted as contractor for foreign air mail service on Route No. 10, in conformity with the advertisement inviting proposals for the service specified therein, issued by the Postmaster General under date of August 20, 1930, the said contractor, for the consideration hereinafter stated, undertakes, covenants and agrees with the United States of America, pursuant to said advertisement, as follows:

1. (a) To carry for the United States the mails specified in paragraph (c) hereof, in a safe and secure manner, free from wet or other injury, from Paramaribo, Dutch Guiana, by Cayenne, French Guiana, (at option of the Postmaster General), Para (State of Para), Maranhae (State of Maranhae), Fortaleza (State of Ceara), Natal (State of Rio Grande do Norte), Pernambuco (State of Pernambuco), Bahia (State of Bahia), Victoria (State of Espirito Santo) and Rio de Janeiro (Federal District) to Santos (State of Sao Paulo), Brazil, and return by the same points, once a week;

(b) To perform the service by a schedule satisfactory to the Postmaster General on flights to leave Paramaribo and arrive at that place in close connection with flights on the U. S. air mail route between Miami and Paramaribo, or

such other schedule as the Postmaster General may order to meet the needs of the mail service;

[fol. 2697] (c) To carry for the U. S. Post Office Department on all authorized flights each way over the route (1) all mails offered of the United States and its possessions and territories, (2) all foreign mails in transit offered that may be forwarded from a post office of the United States or its possessions or territories, (3) all mails offered of foreign countries destined to the United States or a possession or territory thereof, and (4) all mails offered of foreign countries for onward dispatch by any means from the United States proper or for onward dispatch by boat from the U.S. Virgin Islands, Porto Rico, or other U. S. possession or territory, the mails under provisions (3) and (4) hereof to include all of the mails enumerated therein of countries off or beyond the route as well as countries traversed by the route, regardless of the means by which they may be carried to a connecting point on this route;

(d) To carry as the specified load, mails enumerated in paragraph (c) hereof, per flight each way, eight hundred (800) pounds (or all of such mails offered of less amount), and as excess mails any of such mails that may be offered in excess of eight hundred (800) pounds; provided that excess mails on any flight shall be carried only of such amount as in the opinion of the pilot can be safely carried, with preference in loading given the mails to be carried for the U. S. Post Office Department over all other traffic (including passengers);

(e) To receive the mails for the southbound flights at Paramaribo from the contracting company (at the landing place of such company) that performs service on the U. S. air mail route between Miami and Paramaribo, and on the northbound flights to deliver all mails specified in paragraph (c) hereof to be carried for the U. S. Post Office Department, to such contracting company at its landing place, and if found necessary and required by the Postmaster General, to carry mails between the landing point on this route and the post office at Paramaribo; unless other provision is made, to deliver and receive the mails at the

post offices at all other points on the route, and if the route be extended at any time to connect with any other U. S. air mail route, to receive mails from and deliver them [fol. 2698] to the contractor on said other route at the connecting point if so required by the Postmaster General;

(f) To provide and operate in the performance of the service hereunder at all times during the term of this contract, safe and suitable aircraft of the most modern design and type according to reasonable standards for aircraft obsolescence as determined by the Postmaster General, and of suitable capacity and speed, with fireproof mail compartments as far as possible, all to the satisfaction of the Postmaster General; and, in the discretion of the Postmaster General, to provide (if not prohibited by local authorities) two-way radio operation and passenger accommodations on all aircraft used;

(g) To provide, without additional charge, transportation for representatives of the Post Office Department traveling on official business, upon special credentials issued by the Postmaster General;

(2) IN CONSIDERATION of the faithful performance of the services herein specified and upon receipt of satisfactory evidence thereof by the Postmaster General, the United States agrees to pay to the said contractor monthly, and as soon after the close of each month as accounts can be adjusted and settled, compensation based upon the shortest practicable airway distance between the points on the route as determined by the Postmaster General, at the rate of Two ($2.00) Dollars per mile each way for the specified load of not exceeding eight hundred (800) pounds each way, plus a rate of One ($1.00) Dollar per pound per thousand miles or pro rata thereof for greater or less mileage for any excess mails required to be carried in the same aircraft;

3. It is further understood and agreed

(a) That the Postmaster General may increase the frequency of service on this route to twice a week or a greater number of flights, and may extend the service to other points in South America or the West Indies, curtail the route to

omit points, omit or embrace intermediate points, and reduce the number of flights, but not in conflict with the provisions of paragraph (b), section 6 hereof;

[fol. 2699] (b) That where the service is increased or extended as provided in the preceding paragraph, the compensation of the contractor shall be increased at not exceeding the contract rate, and where the service is curtailed or reduced, the compensation shall be decreased at the said rate;

(c) That if the contractor operates aircraft between Paramaribo and Miami, or between any other points, including operation from Argentina and Uruguay, and carries any mail in competition with any U. S. air mail service, the contractor will be charged for such transportation at the rates fixed by the U. S. Post Office Department for the carriage of any such mail on its routes, and the amounts so charged may be deducted from the contractor's pay for service herein specified;

(d) That if the contractor carries any mails specified in paragraph (c), section 1, hereof, on any voluntary flights it may make on this route in addition to the required flights, any of said mails so carried shall be credited to the required flights of the month in which any such voluntary flight started, and if the amount of said mail so credited involved an excess for the month over the specified load on all required flights in the same direction, the contractor will be entitled to pay for the amount in excess of the specified loads at the pound rate for excess mails;

(e) That if in any case the contractor is obligated under agreements which may have been or may be made with any country traversed by this route or country off or beyond the route to carry the mails of such country specified in paragraph (c , section 1, hereof, as mails to be carried for the U. S. Post Office Department, said Department will charge the said contractor for the transportation of such mails by this route and by all other U. S. air mail routes over which said mails may be carried. The charge will be based upon the rates per pound or per kilogram that may be

fixed by the U. S. Post Office Department for carrying by its services of the mails for any such country to destination. Any amount so charged may be deducted from the pay of said contractor;

[fol. 2700] (f) That if in any case under agreement between the contractor and a foreign country the contractor has authority to fix or consent to postage rates or air mail fees for mails to be carried, the contractor shall not fix or demand or attempt to procure the fixing of postage rates, including air mail fees, for any mails specified in paragraph (c), section 1, hereof; to be carried for the U. S. Post Office Department, more than 25 per cent in excess of the postage charged by the United States for mails to be carried in the reverse direction to any such country;

(g) That if at any time the development of aircraft should be such that the equipment used on the route does not comply with the provisions of this contract, or if the class of equipment specified herein is not provided for any other reason, the Postmaster-General may terminate this contract;

(h) That unless otherwise agreed to by the Postmaster General, all flying equipment used on this route shall be of United States manufacture, all other equipment and supplies necessary for performance of the service shall be of United States manufacture or United States products if practicable; and pilots, flying crews, and all other employees, shall be citizens of the United States as far as may be practicable;

(i) That aircraft before being operated in service on this route must have been inspected by the appropriate authorities of the United States or of a country traversed by the route and have received certificate of airworthiness. The pilots must have received certificates of fitness from the appropriate department of the United States or be qualified under the requirements of a country traversed;

(j) That the contractor shall make its own arrangements at its own expense in securing concessions to operate in the countries traversed, for landing fields or rights to land

the mails from the water, lighthouses, radio stations, and such other aids to navigation and such other arrangements as may be necessary for the proper performance of the service hereunder;

[fol. 2701] 4. It is further understood and agreed

(a) That no compensation will be allowed for flights not made; provided that pro rata pay may be allowed for the distance between points on the route flown in a partially completed flight, in the discretion of the Postmaster General;

(b) That deductions from pay may be made for suffering the mails to become wet, damaged, lost or destroyed, or for other delinquencies in service, in the discretion of the Postmaster General; also that the contractor shall be answerable in damages to the United States for the proper care, protection and transportation of the mails and be accountable to the United States for any loss or damage resulting to any of such mail or any part thereof by reason of failure on its part, or its officers, agents or employees, to exercise due care in the custody, handling or transportation thereof;

(c) That for repeated failures in the performance of service for which provision is made herein; or for subletting the service or any part thereof without permission of the Postmaster General; or assigning or transferring the contract; or for combining to prevent others from bidding for the performance of postal service; or for failure to perform the service in the manner and by the means specified by the contract; or for violation by the contractor, its officers, agents, or employees, of the Postal Laws and Regulations applicable to the service specified herein, or for any other failure or other default of the contractor to perform the service specified herein, the Postmaster General, in his discretion, may annul this contract and/or impose a fine or fines or other penalties upon the contractor, and the annulment thereof shall not impair the right of the United States to claim damages from the contractor for the said failures or defaults;

5. It is further understood and agreed

(a) That no Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part [fol. 2702] of this contract or to any benefit that may arise thereupon, but this provision shall not be construed to apply to any case wherein the contract is for the general benefit of the contracting corporation;

(b) That the contractor warrants that it has not employed any person to solicit this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fee. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business;

(c) That this contract is subject to all the provisions of the advertisement of the Postmaster General hereinbefore mentioned and to the provisions of the Postal Laws and Regulations applicable to this service; and the same are hereby made a part of this contract;

6. It is further understood and agreed

(a) That the term of this contract shall be from October 20, 1936, to January 8, 1939;

(b) That upon agreement of the Postmaster General and the contractor this route may be discontinued;

(c) That before this contract shall be annulled or terminated for any default in performance, notice specifying the nature of the default shall be given to the contractor by the Postmaster General and a reasonable time, in the discretion of the Postmaster General, allowed for the correction of such default; and that this contract shall not be annulled nor the contractor held liable for any failure in performance due to wars, insurrections, riots, strikes or acts of God.

IN WITNESS WHEREOF, The parties hereto have executed this contract as of the day and year opposite their names appearing.

THE UNITED STATES OF AMERICA

By (Signed) WALTER F. BROWN
Postmaster General

Signed Oct. 21, 1930
in the presence of:

(Signed) ALICE MUMMERHOFF

PAN AMERICAN AIRWAYS, INC.

Attest:
(Signed) (Illegible)

[fol. 2703]

BOND

KNOW ALL MEN BY THESE PRESENTS, That the Pan American Airways, Inc., of 122 East 42nd Street, New York, N.Y., principal, and Indemnity Insurance Company of North America as surety, are held and firmly bound unto the United States of America in the just and full sum of one thousand ($1,000) dollars lawful money of the United States to be paid to the United States of America or its duly appointed or authorized officer or officers; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The aforesaid Pan American Airways, Inc., has entered into the foregoing contract with the United States for foreign air mail service on the route designated as No. 10, between Paramaribo, Dutch Guiana, and Santos, Brazil, by way of certain intermediate points;

NOW, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Pan American Airways, Inc., shall perform the service according to its said contract, then this obligation shall be void; otherwise to be in full force and obligation in law.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 15th day of October, 1930.

PAN AMERICAN AIRWAYS, INC.,

By (Signed) J. T. TRIPPE, President
(SEAL)

Attest:

(Signed) H. PRESTON MORRIS, Secretary

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA

By (Signed) C. J. KOCH
Resident Vice President

Witness:

(Signed) LESLIE CIZEK

Attest:

(Signed) E. M. McCARTHY
Resident Assistant Secretary

I, H. PRESTON MORRIS, certify that I am Secretary of the Corporation named as contractor herein; that J. T. TRIPPE who signed this contract and bond in behalf of the contractor, was then President of the said corporation; that said contract and bond were duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Signed) H. PRESTON MORRIS Corporate Seal.

[fol. 2704]

CERTIFICATE OF OATH OF CONTRACTOR

I, the undersigned, being employed in the care, custody and conveyance of this mail as contractor on the route named in the foregoing contract, do solemnly swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post office and post roads within the United States; and that I will honestly and truly ac-

count for and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear that I will support the Constitution of the United States; So help me God.

PAN AMERICAN AIRWAYS, INC.,

By (Signed) J. T. TRIPPE, President
Contractor

Sworn to and subscribed before me a Notary Public, this 15th day of October, 1930.

E. S. Swaggerty
Notary Public

Contract and bond approved as to fact:

(Signed) W. IRVING GLOVER
Second Assistant

Contract, bond and execution approved as to form and legal sufficiency:

[Signature Illegible
Special Assistant to the
Attorney General

[fol. 2705]

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA

Philadelphia.

AFFIDAVIT, ACKNOWLEDGMENT AND JUSTIFICATION BY GUARANTY OR SURETY COMPANY

State of New York)
) ss:
County of New York)

On this 15th day of October, one thousand nine hundred and 30 before me personally came C. J. Koch, known to me to be the Resident Vice-President of the INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, the corporation described in and which executed the within and foregoing Bond of Pan American Airways, Inc., as a surety

thereon, and who, being by me duly sworn, did depose and say that he resides in the City of Brooklyn, State of New York; that he is the Resident Vice President of said Company, and knows the corporate seal thereof; that the said INDEMNITY INSURANCE COMPANY OF NORTH AMERICA is duly and legally incorporated under the laws of the State of Pennsylvania; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of Pan American Airways, Inc., is the corporate seal of said INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, and was thereto affixed by the order and authority of the Board of Directors of said Company; that he signed his name thereto by like order and authority as Resident Vice-President of said Company; that he is acquainted with E. M. McCarthy and knows him to be the resident Assistant Secretary of said Company; that the signature of said E. M. McCarthy subscribed to said Bond is in the genuine handwriting of said E. M. McCarthy, and was thereto subscribed by order and authority of said Board of Directors; and in the presence of said deponent; that the assets of said Company, unencumbered and liable to execution, exceed its debts and liabilities of every nature whatsoever, by more than the sum of One Million Five Hundred Thousand ($1,500,000) Dollars.

That W. J. Witschen is the agent to acknowledge service for said Company in the Judicial District wherein this bond is given.

(Signed) C. J. Koch
(Deponent's Signature)

Sworn to, acknowledged before me and subscribed in my presence this 15th day of October, 1930.

(Signed) Anna Kocak

[fol. 2706] KNOW ALL MEN BY THESE PRESENTS, That the Pan American Airways, Inc., of 122 East 42nd Street, New York, N. Y., principal, and Indemnity Insurance Company of North America as surety, are held and

firmly bound unto the United States of America in the just and full sum of one thousand ($1,000) dollars lawful money of the United States to be paid to the United States of America or its duly appointed or authorized officer or officers; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The aforesaid Pan American Airways, Inc., has entered into the foregoing contract with the United States for foreign air mail service on the route designated as No. 10, between Paramaribo, Dutch Guiana, and Santos, Brazil, by way of certain intermediate points:

NOW, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Pan American Airways, Inc., shall perform the service according to its said contract, then this obligation shall be void; otherwise to be in full force and obligation in law.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 15th day of October, 1930.

PAN AMERICAN AIRWAYS, INC.,

By (Signed) J. T. TRIPPE, President

(SEAL)

Attest:

(Signed) H. PRESTON MORRIS, Secretary

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA

By (Signed) C. J. KOCH
Resident Vice President.

Witness:

(Signed) LESLIE CIZEK.

Attest:

(Signed) E. M. MCCARTHY
Resident Assistant Secretary

I, H. PRESTON MORRIS, certify that I am Secretary of the Corporation named as contractor herein; that J. T. TRIPPE who signed this contract and bond in behalf of the contractor, was then President of the said corporation; that said contract and bond were duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Signed) H. PRESTON MORRIS. Corporate Seal.

[fol. 2707]

CERTIFICATE OF OATH OF CONTRACTOR.

I, the undersigned, being employed in the care, custody and conveyance of the mail as contractor on the route named in the foregoing contract, do solemnly swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post offices and post roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear that I will support the Constitution of the United States; So help me God.

PAN AMERICAN AIRWAYS, INC.,

By (Signed) J. T. TRIPPE, President
Contractor

Sworn to and subscribed before me a Notary Public, this 15th day of October, 1930.

E. S. Swaggerty,
Notary Public.

Contract and bond approved as to fact:

(Signed) W. IRVING GLOVER,
Second Assisfant.

Contract, bond and execution approved as to form and legal sufficiency:

/s/ [Signature Illegible]
Special Assistant to the
Attorney General.

[fol. 2708]

IDEMNITY INSURANCE COMPANY
OF NORTH AMERICA.

Philadelphia.

INDEMNITY INSURANCE COMPANY
AFFIDAVIT, ACKNOWLEDGMENT AND
JUSTIFICATION BY GUARANTEE OR
SURETY COMPANY

State of New York)
) ss:
County of New York)

On this 15th day of October, one thousand nine hundred and 30 before me personally came C. J. Koch, known to me to be the Resident Vice-President of the INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, the corporation described in and which executed the within and foregoing Bond of Pan American Airways, Inc., as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the City of Brooklyn, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said INDEMNITY INSURANCE COMPANY OF NORTH AMERICA is duly and legally incorporated under the laws of the State of Pennsylvania; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of Pan American Airways, Inc., is the corporate seal of said INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, and was thereto affixed by the order and authority of the Board of Directors of said Company; that he signed his name thereto by like order and authority as Resident Vice-President of said Company; that he is acquainted with E. M. McCarthy and knows him to be the resident Assistant Secretary o. said Company; that the signature of said E. M. McCarthy subscribed to said Bond is in the genuine handwriting of said E. M. McCarthy, and was thereto subscribed by order and authority of said Board of Directors; and in the presence of said deponent; that the assets of said Company, unencumbered and liable

to execution, exceed its debts and liabilities of every nature whatsoever, by more than the sum of One Million Five Hundred Thousand ($1,500,000) Dollars.

That W. J. Witschen is the agent to acknowledge service for said Company in the Judicial District wherein this bond is given.

(Signed) C. J. Koch.
(Deponent's Signature)

Sworn to, acknowledged before me, and subscribed in my presence this 15th day of October, 1930.

(Signed) Anna Kocak.

[fol. 2709]

Pan American World Airways, Inc. Exhibit 154

EXTENSION OF SERVICE AND AGREEMENTS

FOREIGN AIR MAIL ROUTE NO. 10

This agreement made between the United States of America, represented by the Postmaster General, and the Pan American Airways, Inc., a corporation duly organized and existing under the laws of the State of New York, hereinafter referred to as the contractor;

Whereas, the contract made the 24th day of September, 1930, between the United States of America and the Pan American Airways, Inc., for foreign air mail service during the term from October 20, 1930 to January 8, 1939 on Route No. 10, Paramaribo, Dutch Guiana, by way of certain intermediate points to Santos, Brazil, contains the following provision:

> "That the Postmaster General may increase the frequency of service on this route to twice a week or a greater number of flights, and may extend the service to other points in South America or the West Indies, curtail the route to omit points, omit or embrace intermediate points, and reduce the number of flights, but not in conflict with the provisions of paragraph (b), section 6, hereof."

1. Now, therefore, the Postmaster General hereby authorizes extension of service on said Route No. 10 from Santos by way of Florianopolis, Porto Alegre, Rio Grande do Sul (Brazil) and Montevideo (Uruguay) to Buenos Aires (Argentina), and return, once a week, on a schedule satisfactory to the Postmaster General, to be effective with flights southbound from Santos on and after November 1, 1931, and with flights northbound from Buenos Aires on and after November 8, 1931;

2. In consideration of said extension the contractor hereby agrees that the compensation to be paid by the United States of America for service on the entire route from Paramaribo to Buenos Aires shall be $1.80 per mile each way for the specified load of not exceeding 800 pounds, plus a rate of 90¢ per pound per 1000 miles, or pro rate thereof for greater or less mileage for any excess mails required to be carried in the same aircraft, effective with southbound flights leaving Paramaribo and Santos on and after November 1, 1931, and with northbound flights leaving [fol. 2710] Buenos Aires and Santos on and after November 1, 1931.

IN WITNESS WHEREOF, The parties hereto have executed this instrument.

THE UNITED STATES OF AMERICA

By WALTER F. BROWN (signed)
Postmaster General

Signed 15 October, 1931
in the presence of

KENNETH MACPHERSON (signed)
(SEAL)

PAN AMERICAN AIRWAYS, INC.

By J. T. TRIPPE, Pres. (signed)

Attest: H. PRESTON MORRIS (signed)
Secretary

Signed October 7, 1931
(CORPORATE SEAL)

The Indemnity Insurance Company of North America, surety on the proposal bond and the contract bond for service on said Route No. 10, hereby assents to the agreements contained herein.

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA

(SEAL)

By C. J. KOCH (signed)
Surety
Resident Vice President

Attest: ANNA KOCAK (signed)
Resident Assistant Secretary

Approved as to fact:

CHASE C. GOVE (signed)

Approved as to form
and legal sufficiency:

(Signature illegible) (signed)
Special Assistant to the
Attorney General

[fol. 2711] I, H. PRESTON MORRIS, Secretary of PAN AMERICAN AIRWAYS, INC., a New York corporation, hereby certify that the following is a full, true and correct copy of certain resolutions duly adopted at a regular meeting of the Executive Committee of the Board of Directors of said Corporation duly held on the 30th day of September, 1931, a quorum of three being present, and the Board of Directors of said Corporation not then being in session:

"RESOLVED, that Mr. J. T. Trippe, the President of this Corporation, be and he hereby is authorized and empowered to effect an amendment or amendments to the contract now existing between this Corporation and the United States Government for the transportation of mail by aircraft on Route F.A.M. No. 10, and to effect such changes in, and in the conditions affecting, the service referred to in such contract, and such extensions of the route therein mentioned, as may be

mutually agreed upon by and between said President and the United States Post Office Department, and in the name and on behalf of this Corporation, and under its corporate seal, or otherwise, to execute and deliver a contract embodying such changes and amendments, and that H. Preston Morris, the Secretary of this Corporation, or C. M. Blaske, the Assistant Secretary of this Corporation, be and each of them is hereby authorized and empowered to affix the seal of this Corporation to such contract and to attest the same; and

RESOLVED, FURTHER, that the proper officer or officers of this Corporation be and they hereby are severally authorized and empowered to procure the consent, in such form as the United States Post Office Department may require, of the Indemnity Insurance Company of North America (the surety company which executed as surety the bonds now on deposit with the United States Post Office Department to secure the performance of the aforementioned existing contract between this Corporation and the United States Government) to such changes and amendments; and

RESOLVED, FURTHER, that the bonds heretofore executed by this Corporation to secure the performance of the aforementioned existing contract between this Corporation and the United States Government shall be deemed to apply to, and to secure the performance of, said contract as so amended, with the same efficacy as though originally executed and deposited with respect to such amended contract."

IN WITNESS WHEREOF, I have hereunto set my signature and affixed the seal of said Corporation, this 30th day of September, 1931.

H. PRESTON MORRIS (signed)
Secretary

(CORPORATE SEAL)

[fol. 2712] I, H. PRESTON MORRIS, Secretary of PAN AMERICAN AIRWAYS, INC., a New York corporation, hereby certify that the following is a true and correct copy of an extract from the BY-laws of said Corporation:

"The Board of Directors may appoint from their own number an Executive Committee consisting of two or more members who shall meet when they see fit. They shall have authority to exercise all the powers of the Board of Directors at any time when the Board of Directors is not in session. . . . . ."

I further certify that the following is a full, true and correct copy of a certain resolution heretofore duly adopted at a regular meeting of the Board of Directors of said Corporation, duly held on July 18, 1929, and that said resolution has not been repealed:

"RESOLVED, that there be and hereby is delegated to the Executive Committee of the Board of Directors of this Corporation all the powers of said Board of Directors, the same to be exercisable at all times except when said Board of Directors is in session."

IN WITNESS WHEREOF, I have hereunto set my signature and affixed the seal of said Corporation, this 30th day of September, 1931.

H. PRESTON MORRIS (signed)
Secretary

(CORPORATE SEAL)

[fol. 2713]
STATE OF NEW YORK :
COUNTY OF NEW YORK : SS.

On this 6th day of October, 1931, before me personally appeared Anna Kocak, to me known, who, being by me duly sworn, did depose and say that she resides in New York, N.Y., that she is Resident Assistant Secretary of the IN-

DEMNITY INSURANCE COMPANY OF NORTH AMERICA, the corporation described in and which executed, the foregoing instrument, that she knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by due authority and that she signed her name thereto as Resident Assistant Secretary likewise by due authority; and that the deponent saith further that she is acquainted with C. J. Koch and knows him to be the Resident Vice-President of said corporation, that the signature of the said Resident Vice-President subscribed to said instrument is in the genuine handwriting of said Resident Vice-President and was thereto subscribed by due authority and in the presence of the deponent; and the deponent saith further that the Superintendent of Insurance of the State of New York has, (pursuant to Chapter 33 of the Laws of the State of New York has,) pursuant to Chapter 33 of the Laws of the State of New York for the year 1909, constituting Chapter 28 of the Consolidated Laws of the State of New York as amended by Chapter 182 of the Laws of the State of New York for the year 1913, issued to the INDEMNITY INSURANCE COMPANY OF NORTH AMERICA his certificate, that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings and other obligations or guarantees, as provided in the Insurance Laws of the State of New York and all laws amendatory thereof and supplementary thereto; and that such certificate has not been revoked, and that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of One Million ($1,000,000.) Dollars.

Witness my hand and seal the day and year aforesaid.

(SEAL)

MORRIS G. KELLEY (signed)
Notary Public

It is hereby certified that C. J. Koch and Anna Kocak have been appointed Resident Vice-President and Resident Assistant Secretary, respectively, of the INDEMNITY INSURANCE COMPANY OF NORTH AMERICA at New

York, N.Y., that both of said appointments are in full force and effect as of the date hereof, and said appointments were made under and by authority of the following By-Laws adopted by the Board of Directors of the INDEMNITY INSURANCE COMPANY OF NORTH AMERICA at a meeting duly called and held on the 12th day of July, 1920, which said By-Laws have been compared by me with the originals thereof as recorded in the minute book of said corporation and are a true and correct transcript therefrom of the whole of Section 1, 2 and 3 of Article XII thereof and are in full force and effect:

ARTICLE XII

"SECTION 1. The President, or any Vice-President shall have power and authority to appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-fact, and to authorize them to execute on the behalf of the Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

SECTION 2. Resident Vice-Presidents shall have power and authority to sign and execute on behalf of the Company any and all bonds and undertakings, recognizances, contracts of indemnity and other writings, obligatory in the nature thereof, and to bind the Company thereby as fully and to the same extent as the President could bind it.

[fol. 2714] SECTION 3. Resident Assistant Secretaries shall have power and authority to affix the seal of the Company to, and attest on the behalf of the Company, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and to bind the Company thereby as fully and to the same extent as the Secretary or other attesting officer could bind it."

It is hereby certified further that the following is a true and correct statement of the financial condition of said

corporation as of December 31, 1930, and that the financial condition of said corporation is as favorable now as it was when said statement was made:

FINANCIAL STATEMENT—DECEMBER 31, 1930

ASSETS

Cash in Office and Banks	$1,010,658.68	
Government Bonds (Market Value)	1,902,300.00	
Railroad Bonds (Market Value)	3,054,895.00	
Miscellaneous Bonds and Stocks	9,232,691.00	
Accrued Interest	110,409.07	
Premiums in Course of Collection	3,482,938.01	
All other Assets	134,940.67	
		$18,928,832.43

LIABILITIES

Reserve for Losses	7,392,185.01	
Reserve for Unearned Premiums	6,400,348.61	
Reserve for Unpaid Commissions (Not Due)	719,811.71	
Reserve for Taxes and Expenses (Not Due)	365,000.00	
Capital Stock	1,000,000.00	
Surplus	3,051,687.10	
		$18,928,832.43

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation this 6th day of October, 1931.

(Signature illegible) (signed)
Assistant Secretary

[fol. 2715]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 155

NEW YORK
SEPTEMBER 26, 1930

DIRECTORS, PAN AMERICAN-GRACE AIRWAYS, INC.

Gentlemen:

I take the opportunity afforded by the second anniversary of the commencement of operations by our Company on the West Coast of South America to give the Directors a brief resume of the operations, to date, and to remark on past and present performance.

The Directors may recall that on September 13, 1928 our operations were inaugurated by a flight of a plane piloted by Mr. Harris from Lima to Talara. Operations between the Canal Zone and Kollendo were commenced on May 17, 1929. Extensions of the route to Santiago, Chile, were made on July 16, 1929. The line was further extended to Buenos Aires on October 18, 1929, and to Montevideo on November 30, 1929.

The Post Office ordered twice-weekly service on July 1, 1930, at the same time cutting the running time two full days between the Canal Zone and Montevideo.

I refresh the Directors' minds with these dates so that they may appreciate the fact that within the space of practically one year Panagra has increased its mileage from 1200 miles per week to 18,000 miles per week. It has also increased its miles flown per day from 170 to 2579.

It was inevitable that such a rapid increase in route and mileage, coupled with the distance from the source of supplies, would entail added responsibilities and increased [fol. 2716] effort on an already hard-working organization. The necessary additions to that organization could not be made at a moment's notice. [Men] capable of doing their best work and also of handling themselves diplomatically in Latin America have to be very carefully chosen.

They could not be chosen and sent down beforehand, because of the policy that only a minimum expenditure must be incurred until we were placed on a twice-weekly basis.

It is, therefore, a source of gratification to your management, and I am sure it will be to the Directors, to be able to state that since operations commenced, in spite of high-pressure work throughout the organization, there has been no case of loss of life or limb to passengers and flying personnel, and not even a forced landing from motor failure whilst maintaining almost an unbroken schedule. It would be extremely unjust to attribute this record solely to undeserved good fortune. The men on the ground and in the air who have contributed to this record by unfailing diligence under difficult working conditions, and sometimes inclement weather conditions in foreign countries, should receive due credit.

It has been called to your management's attention that certain unfavorable reports have been received concerning the appearance of our planes, and an apparent lack of organization throughout our operations.

I have not been favored with a copy of these criticisms, but as far as I am able to determine, only one such was received from an individual who had any previous experience to qualify him as a judge. It is, therefore, impossible to make detailed reply. I know of no operations in any industry that could not be criticized if a person were so [fol. 2717] disposed. I would, therefore, beg the Directors to examine the following illuminating data:

Miles flown Sept. 1928 to May 17, 1929	46,000
" " May 17, 1929 to Dec. 31, 1929	282,100
" " Dec. 31, 1929 to Aug. 31, 1930	440,364
Miles flown weekly since July 1, 1930	18,000
Planes in operation May 17, 1929	5
" " " Dec. 31, 1929	11
" " " Aug. 31, 1930	15
Hours flown per plane per day	1.7
Pilots on Pay-roll Aug. 31, 1930	3

Flying hours per pilot per day	1.97
Motors in operation	25
Motors—Spares	15
Mechanics on Pay-roll—Dec. 31, 1929	29
" " " Aug. 31, 1930	52
Value of spare parts—Dec. 31, 1929	$ 26,300
" " " June 30, 1930	53,400
" " " July 31, 1930	59,800
Operating Costs per mile flown—1929	$ 2.20
" " " " " —to August 31, 1930	$ 1.72
Operating Costs per mile flown—July and August, 1930	$ 1.7
Passenger Revenue 1928	$ 5,700.
" " 1929	$ 72,500.
" " 1930 (to Aug. 31st)	$ 84,400.

Commenting upon the above data I would respectfully draw the Directors' attention to:–

First: The notable and rapid increase in mileage flown.

Second: Planes have been placed in operation to care for the increase, so that each plane is in the air less than two hours per day.

[fol. 2718]

. . . . . .

Sixth: Our passenger service seems to be giving satisfaction, as in the face of strenuous competition from the competing American company in Peru, the passengers [illegible] shows notable increase.

It will be recalled that your management was instructed to exercise the strictest economy in expenditures for operations, and that no large sums for permanent facilities were to be appropriated until the Post Office ordered at least twice-weekly service. This carried with it the obligation to delay the building of hangars and shops until it

was definitely known where these could be strategically located. It was, therefore, not until after July 1st, 1930 that the determination of what looked to be a permanent schedule permitted the expenditure for permanent facilities.

A re-allocation of appropriations was immediately asked for. The construction of a hangar at Lima was commenced. This is now ready for occupancy. Other facilities are either completed or in process of completion.

The services of a maintenance engineer were secured—[fol. 2719] Mr. C. C. Cole, late of the Western Air Express. Mr. Cole arrived in Lima the first part of August, 1930, with instructions to report immediately as to what should be done to place our maintenance on a level with that of any successful airline. Mr. Cole's reputation is so high that the Department of Commerce has appointed him to inspect planes for re-license from Talara to Montevideo, and will accept his statements as to fitness of Panagra's planes. Mr. Cole's recommendations will be carefully studied and placed before you for approval.

It is the intention of the management to have the use of the facilities of four overhaul stations along the route—Panair at Cristobal, Panagra at Lima, Curtiss Co. at Santiago and either Panair or Panagra at Buenos Aires. This latter depending upon the plans for the extension of "Alas" activities. Where necessary Flight Mechanics will accompany the planes, and Ground Mechanics will be located at intermediate points.

It is believed that it will not be necessary to purchase airports in Peru, Chile or the Argentine, but that by arrangements with the Governments and private Companies, the necessary facilities can be more cheaply obtained. I again call the Directors' attention to the anti-monopolistic policies of the large South American countries, and to their evidenced desire to control commercial aviation within their territorial limits by the erection of Government airports at which all commercial aircraft will be ordered to clear. An incident such as the recent invasion of Chile by a revolutionary plane, piloted by American aviators, will strengthen the determination of the Governments to enforce such policies.

[fol. 2720] It will undoubtedly be of interest to the Directors to read the latest impressions of travellers over our lines. I, therefore, attach to this report extracts from letters from Mr. C. C. Cole, from Commercial Attache Walter J. Donnelly, and from two other important passengers.

I most respectfully request that the Directors hasten the settlement of the unpaid bills for Panair and Grace services during 1929, and the first eight months of 1930. Our estimated Cash Position at October 1st will be:

Cash in Banks Sept. 25th		$222,100.
P. O. accruals including September estimated revenue		280,000.
		$502,100.
Unpaid bills including supplies purchased	$24,000.	
Appropriated for Chile	87,500.	
Unexpended appropriations	30,000.	141,500.
Available Cash		$360,600.

These figures would seem to show that the Company is entirely solvent. No proper statement of Profit or Loss can be made, however, until it is definitely decided what we must pay for supervision by Panair and for W. R. Grace agency fees. If a responsible figure is established for these services, it will be possible to provide, from current revenues, the additional equipment and facilities necessary to insure the continuance of successful operation.

Respectfully,

(signed) J. D. MacGregor

[fol. 2721]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 156

Division of
International Postal Service

9212—
No. 125.97.1-G-w

(Letterhead of)

POST OFFICE DEPARTMENT

Second Assistant Postmaster General

Washington

December 13, 1950.

Pan American Airways, Inc.,
122 East 42nd Street,
New York, N. Y.

Gentlemen:

This is to confirm the understanding with your Washington representative, with reference to the reformation of the contract on Route 4, Miami to Havana, to the effect that since your company has an arrangement with Cuba (understood to be temporary, with negotiations for a permanent arrangement) for the transportation of Cuban air mails to this country, this Department would charge your company at the rate of $3.20 a pound for the mails brought to Miami, regardless of whether any of such mail bears U. S. air mail stamps and give such Cuban air mails onward dispatch by our domestic air mail routes. It is understood also that your company will be charged for mails from Cuba destined for onward dispatch by F.A.M. Routes 5, 6 and 7, out of Miami.

Very truly yours,

For the Second Assistant Postmaster General.

(Sgd.) E. R. WHITE
E. R. White,
Director.

[fol. 2722]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 157

"EXHIBIT A"

(Translation)

From "Diario Oficial" of Colombia, No. 21,596, of January 21, 1931.

LEGISLATIVE POWER

LAW NO. 8 of 1931
(January 14)

"approving a contract (the one entered into with Gonzalo Mejia covering the establishment of an air transportation service between Medellin and the Gulf of Uraba), and granting certain authorisations to the Government."

The Congress of Colombia

DECREES:

Article 1st.—Approval is given to the Contract entered into between the National Government and Mr. Gonzalo Mejia, covering the establishment of an aerial transportation service between Medellin and the Gulf of Uraba, which literally states as follows:

"The undersigned, namely: Tulio Enrique Pascon, male, of age, and resident of Bogotá, Minister of Mails and Telegraphs, duly authorized by His Excellency the President of the Republic, on behalf of the National Government, of the one part, hereinafter called the GOVERNMENT, and Gonzalo Mejia, Colombian citizen, male, of age, and a resident of Bogotá, acting on his own behalf, hereinafter called the CONCESSIONARY, of the other part, have entered into a contract containing the following articles:

[fol. 2723] "Article 1st.—The Concessionary undertakes, for his own account and risk, to undertake all the necessary negotiations in order to establish an aerial service for the transportation of passengers and cargo, between

the Gulf of Uraba and the city of Medellin. For this purpose, the Concessionary shall make connections with one or more companies in the United States of America, which are engaged in these matters, and which, as an essential condition, shall belong to the highest category, with respect to their capital, reliability and ability, to the satisfaction of the Government.

Additional Clause. The Concessionary, in making this connection, shall advise the Government as to the name of the Company or Companies with which it is made, and the present concession shall not be in effect if the Government does not approve them.

Article 2nd.—If the Government approves the connection made by the Concessionary with the companies, said Concessionary shall secure experts provided with airplanes for survey and scientific apparati for study, in order to examine the aerial currents and all the other atmospheric and topographic conditions, as well as to determine by these means if the service which it is intended to establish is fundamentally possible and practical. The studies referred to in this Article must be completed within the period of twelve months, counting from the day when this contract is definitively approved.

Article 3rd.—If it is found, from the preliminary studies referred to in the foregoing Article, that it is possible to establish the service in question, the Concessionary under- [fol. 2724] takes to "inaugurate and establish it within the following six months, that is, within the period of eighteen months, counting from the date when this contract is definitively approved.

Additional Clause. The service shall be understood to have been inaugurated and established when a regular service is in effect of at least two round trips weekly for passengers and cargo, between the Gulf of Uraba and Medellin, with planes having a carrying capacity of not less than one ton.

Article 4th.—The Government grants an exclusive right to the Concessionary for the establishment of the passenger and cargo service referred to in the present contract,

to be carried out by means of airplanes, between the Gulf of Uraba and the city of Medellin, and all the intermediate points between these places, which are included in the territorial zone hereinafter indicated.

Additional Clause. This privilege shall not in any way affect the establishment, in the zone covered by the right, of railroads, highroads, overhead wires, or any other kind of terrestrial roads, nor the establishment of river navigation services. Neither shall it affect the aerial transportation lines established or may hereafter be established along the Atrato River.

Article 5th.—The zone covered by this privilege comprises a stretch of land one thousand miles in width, covering the entire distance from the Gulf of Uraba to Medellin, and will be bounded as follows: An imaginary straight line [fol. 2725] is drawn from the mouth of the Leon River, in the Gulf of Uraba, as far as the city of Medellin. On each side of this line the concession comprises an area of fifty miles for the entire extension thereof.

Article 6th.—The concession, or privilege, shall be in force for the period of fifteen years, commencing from the day when the service is inaugurated, said period being designated for the life of the present contract.

Article 7th.—The concession, or privilege, may not in any way, or for any reason, hinder the flight across the territory covered by the concession, of any kind of tourist planes, or planes of any other kind, provided they are not rendering services for remuneration, creating competition with the Concessionary.

Article 8th.—The zone covered by the concession may be crossed by other aerial transportation services, provided they do not have the purpose of uniting the furthest points or intermediate stations in the zone covered by the privilege, for the object of competing with the Concessionary's service.

Article 9th.—The military, customs and police aircraft, as well as other aircraft used exclusively in the service of the State, shall have the right to fly freely across the zone

covered by this concession. The Concessionary undertakes to facilitate the landing of such aircraft in his own fields, and to provide the facilities of the hangars and other accessories gratuitously.

[fol. 2726] Article 10th.—The Concessionary undertakes to establish, for its own account and risk, landing fields at all the places necessary for efficient operation and the safety of the passengers and cargo.—

Article 11th.—After the concessionary has obtained the consent of the Government, issued in writing in each case, the Concessionary may install beacons or signals to show the places for landing, hangars, and other accessories for facilitating the landing and sheltering of the airplanes, and establishment of these signals being subject to the formalities and conditions which the Government may consider it advisable to fix.

Article 12th.—The Government shall not incur expenses of any kind, and only undertakes to furnish the land gratuitously for the landing fields when the same are located in uncultivated territory belonging to the Nation.

Article 13th.—When the places for the landing fields are located in territory belonging to private parties, the service referred to in the present contract shall be considered as a public utility for the purposes of the expropriation to be made; provided that it has not been possible for the Concessionary to make an agreement with the owners covering the respective conditions for the acquisition of the territory. The cost of the latter and the expenses required for the expropriation suit, shall be for account of the Concessionary.

Article 14th.—The aircraft shall be modern and provided with all scientific improvements.

[fol. 2727] Article 15th.—The Concessionary is subject to the provisions of the laws, decrees and conventions covering aviation, and to all the dispositions which the Legislative and Executive Powers may dictate in future for the regulation of said service.

Article 16th.—The tariffs, as well as the itineraries for the service, shall be submitted to the Government for approval. Such tariffs may not be higher than those established in the country by other aerial transportation services.

Article 17th.—The Government shall have the right to fifty official passages per annum on the aircraft of the Concessionary, and to reduction of ten percent, in the tariffs for the transportation of cargo.

Article 18th.—In the event that, at any time during the life of the contract, the number of airplanes should be insufficient for the requirements of the service, the Concessionary must increase the number to the extent necessary.

It shall be understood that the aircraft used in the service are insufficient in number when there are not enough to transport the cargo destined to be transported by aerial route and for such reason congestion of cargo is caused at the stations, lasting for at least three continuous months, except in case such congestion is caused by fortuitous case or force majeure. The Government shall duly notify the Concessionary that he must increase the transportation capacity of the service to the extent necessary, and the latter shall have a period of six months, counting from the date of notification, to remedy the deficiency and increase the number of airplanes.

[fol. 2728] In case of difference between the Government and the Concessionary regarding the capacity of the service, the matter shall be decided by experts designated by the parties.

Article 19th.—The Concessionary may not connect the service referred to in the present contract with other established services or those which may hereafter be established, without permission from the Government.

Article 20th.—The Government shall permit the establishment of radio-telegraphic apparati on board the aircraft, and also at the terminal points of the line, and on the two peaks or summits of the central and western chains of mountains which the aerial line will have to cross, the

Concessionary to abide by the dispositions governing wireless installations and to comply in advance with the formalities imposed by such dispositions for the establishment of the installations, including the requesting of special permits. The installations may only be utilized for the purpose of transmitting and receiving reports concerning atmospheric changes, and dangerous conditions on account of storms, fogs and seasonal rainy weather, and for communicating important notifications regarding losses, fires, or other information of this nature.

Article 21st.—The Concessionary obligates himself to establish close and gratuitous cooperation between the technical and scientific divisions of his company with the Government for the purpose of preparing maps, making inspections and the execution of work, duly and gratuitously providing the services of its experts in matters relating to aviation. The inspections shall not obligate the Conces- [fol. 2729] sionary to incur expenses on account of flights or trips by land of employees of the Concessionary.

Article 22nd. In case the Government should wish to utilize the service referred to in the present contract for the transportation of mail, or to permit the radio stations installed in accordance with Clause or Article 20th, to be given to the public service, it will be necessary to enter into special arrangements with the Concessionary.

Article 23rd. The service mentioned in the present contract shall be subject to Governmental inspection, which shall be effected by the Government's employees and agents. Throughout the entire period of the contract, the Government shall maintain with the company, a Supervisor, to be freely appointed and dismissed by it, whose salary, not to exceed four hundred pesos monthly, shall be paid by the Concessionary.

Article 24th. Any irregularities observed in the service shall be penalized by the Government with successive fines default. up to $1,000., according to the seriousness of the ~~failing~~. These fines shall also be applicable in cases of non-com- or pliance with the itineraries ~~of~~ alteration of the tariffs.

Article 25th. In case of war or disturbance of the public order, the Government may order the suspension of the service referred to in the present contract, until normal conditions are re-established, without indemnization for damages.

Article 26th.—The present contract may not be transferred, in whole or in part, to any person or company, without permission from the Government, which may reserve to itself the reasons which it may have for not granting the authorization. In no case may transfer be made to a foreign Government.

[fol. 2730] Article 27th.—The Government may administratively declare the present contract to have lapsed in the following cases, in addition to the cases specified under Article 41 of the Fiscal Code:

a) If the service has not been established within the period stipulated in Article 3rd.

b) If there is general interruption in the service for more than three consecutive months, except in case of force majeure.

c) If the guarantee or bond mentioned in Article 28th of the present contract is not duly established.

Article 28th.—During the two months following the definitive approval of the present contract, the Concessionary must establish, to the satisfaction of the Government, a guarantee or bond for the amount of Five thousand pesos ($5,000).

Article 29th.—In the event there should be occasion to declare the lapse or nullification of the contract for failings attributable to the Concessionary, the latter shall be subject to the payment of a fine of Five thousand pesos ($5,000) in favor of the State.

Article 30th.—The Concessionary must at all times maintain a legally authorized representative at Bogota.

Article 31st.—The present contract requires for its validity the approval of the Executive, after favorable opinion has been issued by the Cabinet, and shall be forthwith

passed to Congress for its consideration for the purposes of the corresponding legislative approval.

The foregoing shall be duly published in the Diario Oficial.

Bogota, September 29, 1930.

[fol. 2731] Signed, TULIO ENRIQUE TASCON
GONZALO MEJIA

Witnesses: Signed, Luis Jorge Garzon
" Manuel J. Acevedo

Stamped on the same date.

Seal reading: "Republic of Colombia, Executive Power.—Bogota, Oct. 8, 1930.

Approved,
Signed, ENRIQUE OLAYA HERRERA.

The Minister of Posts and Telegraphs,
Signed, TULIO ENRIQUE TASCON

Another seal reading: 'Republic of Colombia—Cabinet of Ministers, Bogota, October 7, 1930.'

At a meeting held today the Cabinet issued a favorable decision regarding the preceding contract.

The Secretary,
Signed, G. NANNETTI C."

Article 2nd.—The Government is given authorization in order that it may, when it so deems advisable, qualify a port at an appropriate place on the Gulf of Uraba: for purposes of importation and exportation, and establishing there a customshouse with the necessary personnel.

Single Section.—The amount required for the operation of the customshouse indicated, shall be considered as included in the Budget of expenses for the fiscal year, in which the Government makes use of the authorization conferred upon it under the present Law.

[fol. 2732]

Article 3rd.—The Executive Power is authorized to extend the duration of the privilege dealt with in Article 6th of the present contract to twenty years, if it so deems advisable, and if in exchange for said extension it succeeds in obtaining valuable advantages for the official service.

Issued at Bogota, January 9, 1931.

The President of the Senate,

ABEL CASABLANCA.

The President of the House of Representatives,

RUDOLFO DANIES.

The Secretary of the Senate,

ANTONIO ORDUZ ESPINOSA.

The Secretary of the House of Representatives,

FERNANDO RISTREPO BRICENO.

Executive Power—Bogota, January 14, 1931.

Let it be published and executed.

ENRIQUE OLAYA HERRERA.

The Minister of Posts and Telegraphs,

TULIO ENRIQUE TASCON.

[fol. 2733]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 157A

CC: Vice President & Gen. Atty

PAN AMERICAN AIRWAYS, INC.
MEMORANDUM

DATE March 6, 1931.

TO	President	FROM	Chief
DEPT.	Executive	DEPT.	Foreign
LOCATION	New York City	LOCATION	New York City

SUBJECT COLOMBIA, THE MEJIA CONCESSION.

Dear Mr. Trippe:

Attached herewith is a translation of the Mejia concession. As it is a somewhat lengthy document I am summarizing below, for your convenience, the more important points:

1. Mejia is obligated to negotiate with American companies for the operation of the concession; the Government reserving the right to approve or disapprove the American assignee.
2. The necessary technical studies must be completed within a period of 12 months.
3. If, as a result of the technical studies, the operation of the concession is found to be practicable, the operation thereof shall commence within a period of 18 months from the date of the approval of Mejia's original concession.
4. The concession carries an exclusive right for the aerial transportation of passengers and cargo, but not mail. If the Government desires to have mail carried on the line, the matter has to be arranged through a special and separate contract.
5. The concession is for a period of 15 years from the date of the inauguration of operations.

6. The concessionaire must provide the necessary landing fields at his own expense. The Government, however, furnishes land free when the fields are to be located on uncultivated territory and on land belonging to the Government.

7. Tariffs and itineraries are to be approved by the Government; the tariffs may not be higher than those charged by other air transportation services in Colombia.

[fol. 2734]

8. The Government has a right to 50 passes per annum, and to a reduction of 10% on the transportation of cargo.

9. The service contemplated by the concession may not be connected with other air services without the special permission of the Government.

10. The Government will appoint a supervisor of the operations contemplated under the concession, whose salary, not exceeding 400 pesos monthly, is to be paid by the concessionaire.

11. The life of the contract (15 years) may be extended by the Government to 20 years if it deems it advisable, and "if in exchange for the extension it obtains valuable advantages for the official service".

Respectfully submitted,

/s/ Evan E. Young
Evan E. Young

EEY FP

[fol. 2735]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 158

April 7, 1931

The Honorable
The Postmaster General
Post Office Department
Washington, D.C.

Sir:

There are enclosed herewith four letters pertaining to service to be rendered by this Corporation under certain of its foreign air mail contracts. These include both curtailments and extensions during the balance of the current fiscal year, as well as during 1932. They suggest the following:

1. That Barranquilla be included on the direct Jamaica-Canal Zone Trans-Caribbean Service, supplementing the present North Coast Shuttle service between the Canal Zone and Barranquilla.

2. That service under F.A.M. Route No. 7 from Miami to Nassau be continued during the coming fiscal year under a waiver similar to the one now in effect.

3. That service between Maracaibo and Curacao, on F.A.M. Route No. 5 be temporarily suspended, effective July 1st, 1931.

4. That service on F.A.M. Route No. 10 be extended between Santos and Buenos Aires on a schedule of one round trip per week, effective May 19, 1931, so as to include Florianopolis, Porto Alegre, Rio Grande do Sul, Montevideo and Buenos Aires.

These four proposals are being submitted by us after very careful study, and we believe them to be in the best interests of the Government and postal users, as well as of advantage to this Company.

Foreign air mail service to Curacao, we are informed, has been of great benefit to United States oil interests having extensive operations at that point. In our opinion, how-

ever, this is not nearly as important as the extension of the East Coast service to Buenos Aires.

We have, therefore, recommended that the Department temporarily discontinue the Curacao service, notwithstanding the fact that this Company has a substantial investment in this route. This recommendation was made with the idea that the saving in cost to the Government thereby effected would help to defray a portion of the expense of the East Coast extension.

[fol. 2736] The retouring of the Kingston-Cristobal route, via Barranquilla, involves a very small additional aggregate mileage, and will provide speedier and more frequent service to the North Coast of South America, without impairing the usefulness of the service to the Canal Zone and the West Coast of South America.

We trust that the Department will give favorable consideration to this program, and will approve these recommendations.

Respectfully submitted,

J. T. Trippe, President

[fol. 2737]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 159

April 7, 1931

The Honorable
The Postmaster General
Post Office Department
Washington, D. C.

Sir:

It is respectfully requested that service on F.A.M. No. 10 be extended from Santos, Brazil to Buenos Aires, Argentine, via Florianopolis, Porto Alegre, Rio Grande do Sul, Montevideo and Buenos Aires on a once a week schedule beginning May 24, 1931.

In considering this request, you will recall that at the time the assets of the NYRBA Line were purchased by this

Corporation, there were in existence contracts with the Argentine and Uruguayan Governments for carrying their air mail up the East Coast to the United States. That the NYRBA Line had been performing service under these contracts for approximately seven months. The existence of the contracts was embarrassing to your Department, by reason of the fact that the compensation paid the contractor was less than half that charged by the United States Post Office Department for similar service to the United States via the West Coast. As part of this transaction, in order to avoid this embarrassment, the NYRBA contracts were cancelled and new ones were negotiated with the Argentine and Uruguayan Governments for East Coast service by this Company, at rates corresponding with those charged on the West Coast service.

The time is rapidly approaching when it will be necessary for this Company to commence operations from Buenos Aires and Montevideo to the United States via the East Coast. Our investment, including assets acquired from NYRBA in Argentine, Uruguay and points South of Santos, Brazil, is approximately $1,000,000 to date. This is greatly in excess of the investment of any of the air mail lines serving this territory, including both American and European.

We believe that the granting of this request is not only justified by reason of the pioneering work done by ourselves and NYRBA in this territory, but that it is to the distinct advantage of the United States Government and the postal users, for the following reasons:

1. Prestige of the United States in encircling the South American continent by its air mail service will be greatly enhanced. This will benefit the United States trade throughout all of South America which is now our greatest potential outlet market.

[fol. 2738] 2. The new territory served by this extension has a population in excess of 500,000, including the important commercial communities of Florianapolis, Porto Alegre and Rio Grande do Sul. In addition, the extension would be of substantial benefit to the im-

portant cities of Buenos Aires and Montevideo, which have a population of 2,200,000.

3. The establishment of two trunk lines to the Argentine and Uruguay, via the East and West Coasts, reduces the risk of complete curtailment of service, in the event of political disturbances in countries along one of the routes, as well as eliminating the seasonal interruption of service that is almost certain to occur during the six winter months on the Trans-Andean service.

4. Although the East Coast route to Buenos Aires is longer than the West Coast route, it serves the great Eastern Trade Route to South America, and is the only water level route to Buenos Aires from the United States. This not only assures all year round dependable operation, with regularity of service, but is the only route available to passengers who may object to flying at high altitudes.

5. United States interests in Brazil will be greatly benefited in meeting European competition by having direct air communication for mail and passengers with other branch offices in the Argentine and Uruguay. U.S. interests in Argentine, Uruguay and Brazil will be greatly benefitted by having this extension available for inter-communication in meeting European competition.

6. European subsidized lines are already entrenched and daily becoming stronger in this particular territory, and it is important that the United States enter this field at the earliest possible moment.

7. American business men and tourists have already evidenced considerable interest in having available a United States air service for the circumnavigation of South America.

Realizing the importance of this service, and the limited appropriation now available, if this extension is granted

as requested, we are willing to waive the pay in full on the northbound service from Buenos Aires to Santos during all, or such portion of the fiscal year 1932 as may be necessary.

Respectfully submitted,

J. T. Trippe
President

[fol. 2739]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 160

April 7, 1931

The Honorable
The Postmaster General
Post Office Department
Washington, D. C.

Sir:

In order to assist the Department in providing funds for the extension of service under F. A. M. No. 10 from Santos, Brazil to Buenos Aires, Argentine, via Florianopolis, Porto Alegre, Rio Grande do Sul and Montevideo, we suggest that the service under F. A. M. Route No. 5, now rendered by this Company from Maracibo to Curacao, be eliminated during the fiscal year 1932.

While this service is important to a limited group of American interests transacting business in Curacao, we believe that it is much more important to the United States postal users at large to provide for the extension on F. A. M. Route No. 10.

The boat service from Maracibo to Curacao is reasonably frequent, and a substantial saving in time will still be available by affording air mail service as far as Maracibo. The rerouting of service from Miami to the Canal Zone by way of Barranquilla will provide very nearly as good service to Curacao as has been provided under the existing schedules during the fiscal year 1931.

This suggested change would make available to the Department the sum of $43,254.00 for use in defraying part of the cost of the proposed extension on F. A. M. Route No. 10.

Respectfully submitted,

J. T. Trippe
President

[fol. 2740]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 161

DEPARTMENT OF STATE
WASHINGTON

In reply refer to
811.79611 Pan American Airways /984

April 9, 1931

Mr. J. T. Trippe,
President, Pan American Airways, Inc., and
Vice President, Pan American Grace Airways, Inc.,
122 East 42nd Street,
New York City.

Sir:

The Department refers to its letter dated February 12, 1931, concerning your request in accordance with the provisions of Executive Order No. 4971 of September 28, 1928 and the regulations issued by the Secretary of State on February 26, 1929 for permission for the Pan American Airways, Inc., to operate its aircraft into and from the Panama Canal Zone, and for permission for the Pan American Grace Airways, Inc., to operate its aircraft between the Panama Canal Zone and Colombia, Ecuador, Peru, Chile, Argentina, and Uruguay.

By virtue of the authority vested in me by Executive Order No. 4791 dated September 28, 1928, permission is hereby given for the Pan American Airways, Inc. to operate its aircraft to and from the Panama Canal Zone along the following routes, but subject to such regulations as have been or shall hereafter be issued with respect to the operation of aircraft in the Panama Canal Zone:

For The Pan American Airways, Incorporated.

1. Canal Zone—Jamaica—Cuba—Florida.
2. Canal Zone—Panama—Costa Rica—Nicaragua—Honduras—El Salvador—Guatamala—Mexico.

On the same basis permission is hereby given to the Pan American Grace Airways, Inc., to operate its aircraft between the Panama Canal Zone and the following foreign countries.

Colombia — Ecuador — Peru — Chile — Argentina — Uruguay.

Very truly yours,

For the Secretary of State:

(signed) FRANCIS WHITE,
Assistant Secretary.

[fol. 2741]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 162

COPY

June 17, 1931.

President	Washington Representative
Executive	Executive
New York, N. Y.	Washington, D. C.

Curtailment of FAM Services

In connection with the East coast extension, Mr. White instructed Mr. Grayson to recheck the appropriation available for 1932 and advise him of the situation.

Mr. Grayson reported that due to the restoration of the full mileage, Cristobal-Barranquilla, and the increase on the second trip of Panagra, there would be a deficit of a small amount which could be taken care of later.

This small deficit, however, was based on the elimination of Nassau, May 1 to January 1; the elimination of the Barran-

quilla-Curacao service; and an allowance of $23,000 for failures in service on all FAM routes.

I was requested to confer with them on this matter, and Mr. White instructed Mr. Grayson to notify the Company at once of the proposed discontinuance of these two services; also to secure waivers from the Company for the one month's pay provided in the contract in the case of discontinuance of service. Mr. Grayson found that you had already waived this one month's pay in the case of Nassau in a letter dated about a month ago. He is therefore writing you in regard to the waiver for Barranquilla-Curacao.

Yesterday Mr. Grayson called me again and asked me to confer with him and with Mr. White on the schedules you submitted last week. Mr. Grayson had prepared a schedule of his own which he thought was an improvement, but his schedule took no cognizance of our proposed service from Santos to Buenos Aires.

In the course of the discussion, Mr. While told Mr. Grayson that Panagra would receive only $1.60 per mile for the second trip during the year beginning July 1, and that notice to that effect was to be written to Pan American-Grace. He added that if they refused to accept this order the service on FAM No 9 would be curtailed to one trip per week, and intimated that he had his instructions to take this action. Mr. Grayson is therefore preparing a letter to Panagra along these lines, and asking that they renew their waiver of the additional pay on the second trip per week for the coming fiscal year.

[fol. 2742] Mr. Grayson's attitude is that if Panagra refused to accept this change there is nothing the Department can do except to curtail the service, but he doubts whether they would wish to do this. Mr. White's attitude is in favor of forcing the continuance of the present rate, but it is my personal opinion that Mr. Grayson will urge on him the necessity for continuing two trips a week down the west coast, in view of the commitments of the Department for this service to the public and to foreign postal administrations.

I thought it wise to make no comment and offer no suggestions on this phase of the matter.

In this connection, the matter of the cost of the east coast extension was discussed, and Mr. Grayson placed it at $253,000 for the full fiscal year. As I mentioned to you in my report of June 16 (Cases Pending in Washington) Mr. White is inclined to reduce the rate on the whole FAM No 10 contract to $1.80 a mile and to request a waiver for the return trip. However, this attitude is modified after a study of the schedules you submitted. Mr. White then stated that there was no commitment in regard to the east coast and that he had no definite instructions regarding it.

Mr. Grayson's schedule provided for a very excellent service between Cristobal and Trinidad on one round trip per week, making close connections at all points. In order to do this he had to change the schedule on FAM No 6-No 10.

His schedule, however, had certain noticeable defects as regards service between New York and Porto Rico. He brought up again the question of changing the schedule on FAM No 5 to avoid leaving Miami Tuesday morning, as that has been the source of very strong protest from business houses in New York. The result of that departure is, of course, that the FAM No 5 plane gets no mail from New York later than noon the preceding Saturday. Grayson has always objected strongly to this arrangement, and the schedule as now in effect was approved by Mr. White on my urgent request and over strong protest from Mr. Grayson.

The change in schedule FAM No 6-No 10 as submitted by you did not create a favorable reaction, since on mails to Buenos Aires the mail was expedited only one day as compared with FAM No 9, and the return mail from Buenos Aires reached Miami an hour and a half after FAM No 9 mail which had left Buenos Aires twenty-four hours before the FAM No 10 plane. Grayson and White both felt that the advantage gained was not sufficient to warrant the change in the schedule.

Mr. White's final instructions were to hold the whole question up of all changes in schedule for a few weeks in the hope that the completion of the airway to Miami would permit a change in the EAT schedule, and that a general [fol. 2743] revision of schedules could then be made which

would be more or less permanent and would effect some definite improvement.

I am in receipt this morning of your letter of June 16 enclosing a copy of your letter of that date to Mr. White, but I do not believe that that letter will produce any change in Messrs. White's and Grayson's attitudes. Generally speaking, they are reluctant to make any change in any schedule without assurance that such a change will be permanent, and they are definitely opposed to making a change where there is a prospect that it will have to be changed again in the course of a few months because of domestic connections.

In regard to the waiver on the second trip on the north coast, there was no discussion on this point; Mr. Grayson simply said that the Department could not accept a conditional waiver.

Mr. Grayson just told me over the telephone that he had received your letter and had studied the schedule. He thinks that the existing schedule is satisfactory for the present, but if you wish to change the schedule between the Canal Zone and Trinidad he has no objection. He and Mr. White, however, do not want to change the schedule on FAM No 6-No 10 at present. He is writing you a note to this effect.

N:H

[fol. 2744]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 163

July 2, 1931

Thomas B. Doe, President

Hon. Walter F. Brown,
Postmaster General, Washington, D. C.

Dear Sir:

The situation in Cuba is rapidly coming to the point where, in order to protect our interests and carry out our agreement with the Cuban Government, it will be necessary

for us either to enter into a working agreement with Pan American or an open fight. Up to the present they have, through control of the business from Miami to Havana, made it difficult for us to develop as we should. Twice I have taken steps to prevent lines being opened between Miami and Havana, in hopes that Mr. Trippe would eventually see the wisdom of concentrating on the through business and leaving the local business to our Cuban company.

At present we are operating mail and passenger lines from Havana to Santiago and from Santiago to Antilla and Baracoa, under government guarantee that enables us to about break even. Cubans resent the moves made by Pan American to encroach on the strictly Cuban business, and I am convinced that the money and efforts spent by Pan American in trying to force us out of Cuba is building up ill-will, whereas a proper working agreement, which would enable us to proceed with our plans to develop the Cuban business would build up good-will for both of us and effect important economies.

[fol. 2745] I believe that a continuation of the present attitude would result in another service from Miami to Havana, with a working agreement between the Seaboard Air Line Railway and our Cuban company. I also believe that the Cuban Government would welcome such a move, as it would produce more traffic and therefore more revenue for Cuba. They, of course, know that Pan American has a $2-a-mile contract, and many of them feel it is unfair for this to be used as a club to prevent their developing their own aviation.

I am making every effort to arrange a proper agreement, rather than have an open fight, and I am taking the liberty of enclosing letter from Mr. E.W. Smith, receiver for the Seaboard Air Lines, and also letters from Mr. W.D. Pawley, president of our Cuban company, which, of course, were meant to be confidential and which I would appreciate your returning to me.

I would not presume to bother you with this matter if it were not for the fact that we wish to, in every way, cooperate with your plans for development of aviation, and do not wish to make any move which is contrary to your desires.

I appreciate that you are loath to step into these matters, but would certainly like to have such indication of your wishes in this matter as you might feel at liberty to give me.

Very truly yours,

Thomas B. Doe

[fol. 2746]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 164

July 7, 1931

Capt. Thomas B. Doe,
Eastern Air Transport, Inc., Sperry Building,
Brooklyn, N.Y.

My Dear Captain Doe:

Your letter of July 2 has received careful attention. While I, of course, appreciate the desirability of cordial relations existing between the various interests that are carrying the mails by air, I am of the opinion that the Department ought not to be drawn into controversies that are wholly outside our jurisdiction.

I have stated frankly to the air mail operators that in the present state of the industry it did not seem the part of wisdom to invade each other's territory with competitive services and that I did not believe that money paid for postal service should be used to set up services to injure competitors. In pursuance of this policy I suggested the abandonment by the Pan American Co. of the domestic field in the United States, and as a result of that suggestion you are now negotiating with the Pan American Co. for the taking over of their Atlantic City service. Their field is the international service to Mexico, Central and South America, and the West Indies. Consistently with the policy outlined, it would seem improper for any of our domestic air mail operators to use mail pay to invade the peculiar field of the Pan American Co.

[fol. 2747] For your information, I have another letter from Mr. Vidal, of the Ludington Lines, protesting against

the extension of your service to Atlantic City, and again offering to carry the air mail from New York to Richmond at a saving of a thousand dollars a day over the compensation paid the Eastern Air Transport Co.

Sincerely yours,

/s/ WALTER F. BROWN

[fol. 2748]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 165

[Western Union Telegraph Form]

NAZ281 40 DL=MIAMI FLO 10 540P

J T TRIPPE=

(Stamp—Time in Transit—1931 Jul 10—PM 6 19 .....Minutes)

DELIVER PANAMERICAN AIRWAYS WUX= FROM BARRANQUILLA TWENTY COLOMBIAN PRESS ADVISES THAT DAILY MIRROR NEW YORK PUBLISHING AS A FACT SCADTA SOLD OUT TO PANAIR STOP CONSIDER CONVENIENT OFFICIAL DENIAL ON BEHALF OF PANAIR STOP SUGGEST YOU HAVE DOCTOR HOLGUIN BOGOTA MAKE COLUMBIAN PRESS PUBLISH DENIAL=

TIETJEN.

[Handwritten notation—31. 1931—NYT]

[fol. 2749]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 166

1844

Sec.

TELEGRAM TO MR. TIETJEN,
BARRANQUILLA, COL.

(VIA W.U. DAYLETTER TO MIAMI THENCE BY
PAA RADIO TO BARRANQUILLA)

DATED: JULY 11, 1931.

COMMUNICATIONS DEPT.,
PAN AMERICAN AIRWAYS,
PA—MIAMI, FLORIDA.

TIETJEN BARRANQUILLA THIRTYTWO: SUGGEST YOU RELAY TO URIBE HOLGUIN FOLLOWING MESSAGE TO HIM FROM YOUNG COMMENCEMENT OF MESSAGE WITH RESPECT TO QUESTION OF RELATIONS BETWEEN PANAMERICAN AIRWAYS AND SCADTA SUGGEST YOU MAKE FOLLOWING STATEMENT TO COLUMBIAN PRESS QUOTE WHEN APPROACHED TODAY REGARDING RELATIONS PANAMERICAN AIRWAYS AND SCADTA JUAN URIBE HOLGUIN ATTORNEY FOR PAN AMERICAN AIRWAYS MADE THE FOLLOWING STATEMENT INNER QUOTE PANAMERICAN AIRWAYS FOR WHICH I AM THE ATTORNEY IN COLOMBIA SOMETIME AGO ACQUIRED A BLOCK OF SCADTA STOCK WITH A VIEW TO ITS BEING REPRESENTED BY ONE DIRECTOR ON THE SCADTA BOARD STOP THIS HAS BEEN DONE AND CLOSE WORKING ARRANGEMENTS BETWEEN PANAMERICAN AIRWAYS AND SCADTA ARE BEING DEVELOPED WITH A VIEW TO PROVIDING IMPROVED SERVICE TO THE PUBLIC THROUGH COORDINATION OF SCHEDULES COMMA FASTER SERVICE COMMA THROUGH MAIL AND PASSENGER FACILITIES WITH REDUCED RATES IN BOTH CASES

COMMA EXCHANGE OF TECHNICAL DATA COMMA ETCETERA UNQUOTE YOUNG ENDMESSAGE

TRIPPE

CC.MESSRS: TRIPPE, WYMAN, THACH, YOUNG-HANDLING, FILE

[fol. 2750]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 167

September 4, 1931

My dear Mr. President:

In confirmation of my telegram of September 1, 1931, it is with great pleasure that I have the honor to advise Your Excellency that on August 24, 1931, there was incorporated under the laws of the State of Delaware, United States of America, an aerial transportation company known as Uraba, Medellin and Central Airways, Inc. This company has been organized with a view to operating the air transport service contemplated by the Concession granted by the Colombian Government to Sr. Gonzalo Mejia (Law No. 8, January 14, 1931).

Uraba, Medellin and Central Airways, Inc. is closely affiliated financially with Pan American Airways, Inc. which for several years past has been engaged in extensive air transport operations in Central and South America, Mexico, and the West Indies. The necessary flying and other technical equipment for the operations of the Concession will be furnished to Uraba, Medellin and Central Airways, Inc. by Pan American Airways, Inc. The technical personnel will be selected from among the technical experts now in the service of Pan American Airways, Inc., thus assuring that the service will be operating on a proper basis as regards efficiency, safety, and reliability.

Sr. Gonzalo Mejia, in company with Mr. Alan F. Winslow, President of Uraba, Medellin and Central Airways, Inc., will proceed shortly to Bogota to acquaint Your Ex- [fol. 2751] cellency's Government with all pertinent details

affecting the operation of this contemplated service and to comply with all requirements specified by Law and by the Concession above mentioned.

The Directors of Uraba, Medellin and Central Airways, Inc. are:

Messrs. Alan F. Winslow (Representative, Foreign Department, Pan American Airways, Inc.)
Evan K. Young (Vice President In charge of Foreign Department, Pan American Airways, Inc.)
Robert C. Thach (Vice President and General Attorney, Pan American Airways, Inc.)
H. Preston Morris (Assistant General Attorney, Pan American Airways, Inc.)
Gonzalo Mejia
..... (Colombian Director to be elected)
..... (Colombian Director to be elected)

The Officers of Uraba, Medellin and Central Airways, Inc. are:

Messrs. Alan F. Winslow, President
Gonzalo Mejia, Vice President in charge of Commercial Operations in Colombia
H. Preston Morris, Secretary
J. S. Woodbridge, Treasurer

The following statistical data as of July 1, 1931, with respect to the operating record of the Pan American Airways System, may be of interest in this connection:

18,500 miles of airways in operation.
85,793 passengers carried.
1,561,583 passenger miles flown.
1,788,754 pounds of mail, express and baggage carried.
101 air liners.
99.71% regularity of schedule maintained.

[fol. 2752] I trust that the full information which will be placed at the disposal of Your Excellency's Government by Sr. Mejia and Mr. Winslow, together with the general knowledge, possessed by the Government with respect to Pan American Airways Corporation, its organization, its operations, resources, etc. and its close financial and technical affiliation with Uraba, Medellin and Central Airways, Inc. will be sufficient to warrant Your Excellency's Government in formally approving the assignment by Sr. Gonzalo Mejia to Uraba, Medellin and Central Airways, Inc. of his above mentioned Concession, as provided for in Artiele 36 of the Concession.

I am, my dear Mr. President, with warmest personal regards,

Very sincerely yours,

J. T. TRIPPE
President, Pan American Airways, Inc.

His Excellency, Dr. Enrique Olaya Herrera
President of Colombia
Bogota, Colombia

CC: Vice Pres. and Gen. Attorney
Vice Pres. in Charge Foreign Dept.
General Traffic Manager
Chief Engineer
Asst. Gen. Attorney
Mr. Winslow, Foreign Dept.

[fol. 2753]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 168

THIS AGREEMENT, made and entered into this 10th day of September, 1931, by and between URABA, MEDELLIN & CENTRAL AIRWAYS, INC., a Delaware corporation (hereinafter called the "Company"), party of the first part, and GONZALO MEJIA, residing at Medellin, Colombia, (hereinafter called "Mejia"), party of the second part,

WITNESSETH:

WHEREAS, Mejia represents that he is the sole owner of an exclusive concession granted to him by the Government of the Republic of Colombia for the operation of an aerial service for the transportation of passengers and cargo between the Gulf of Uraba and the City of Medellin, and between either of said points and intermediate points, and between such intermediate points, within the territorial zone therein described, evidenced by a written contract embodied in a Decree of the Congress of the Republic of Colombia, designated as Law No. 8 of 1931 (January 14), which approves said contract, and further represents that the attached copy of said contract and decree, marked "Exhibit A", is a true and correct English translation of the original thereof; and

WHEREAS, Mejia has heretofore by separate instrument agreed forthwith to convey, transfer, assign and set over to the Company the aforementioned contract and con- [fol. 2754] cession, and all of the rights and privileges of Mejia thereunder, and to cause the Company to be vested with such rights and privileges and with sole and complete right and authority, and to become duly qualified, to establish and operate the aerial transportation services contemplated under the said contract and concession; and

WHEREAS, Mejia further represents that he is experienced in matters relating to aerial transportation of passengers and cargo and desires, subject to, and in accordance with the terms, provisions and conditions hereinafter set forth, to enter the employ of the Company, and the Company desires so to employ Mejia;

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00), cash in hand paid by each of the parties hereto to the other party, the receipt whereof is hereby acknowledged, and of other good and valuable considerations, the parties hereto mutually agree as follows:

FIRST: That in the event the aforementioned contract between the Government of Colombia and Mejia relating to the operation of an aerial transportation service in

Colombia, and the aforementioned concession, and all of the rights and privileges of Mejia thereunder, are conveyed, transferred, assigned and set over to the Company by Mejia, and the Company becomes vested with all of such rights and privileges, and with sole, full and complete right and authority to establish and operate, and becomes duly qualified to establish and operate, the aerial service [fol. 2755] contemplated in said contract, the Company shall, upon the fulfillment of the foregoing conditions precedent, employ Mejia, and Mejia shall thereupon enter the employ of the Company for the term, and upon the conditions, herein stated, as commercial manager, subject to the control and instructions of the Board of Directors and/or the President of the Company to supervise and manage, within the Republic of Colombia, the commercial activities which may be carried on by the Company in said country in connection with the operation by it of an aerial service for the transportation of passengers and cargo by air in Colombia, and to render such other services, and do and perform such other duties, whether in or outside of Colombia, as shall be from time to time requested by the Board of Directors or the President of the Company.

Mejia shall devote his entire time, energies and attention exclusively, faithfully, diligently and efficiently to the performance of the duties hereinbefore referred to, and to the business of the Company, and shall use his best endeavors and skill to promote the business and interests of the Company.

SECOND: It is further agreed that in the event the conditions mentioned in Paragraph "FIRST" are fulfilled, and Mejia enters the employ of the Company, Mejia shall be entitled to receive and the Company agrees to pay to Mejia, as full payment for all services to be rendered by Mejia to the Company, compensation at the following rates in United States of America currency:

[fol. 2756] (a) $500. per each calendar month in the first year of Mejia's employment hereunder, and ratably for each fractional part of each such calendar month.

(b) $600. per each calendar month in the second year of Mejia's employment hereunder, and ratably for each fractional part of each such calendar month.

(c) $700. per each calendar month in the third year of Mejia's employment hereunder, and ratably for each fractional part of each such calendar month.

It is further agreed that in the event of and upon the commencement of Mejia's employment hereunder, as hereinbefore provided, the Company will pay to Mejia as further compensation for the aforementioned services an additional lump sum computed at the rate of $500. for each calendar month, and ratably for each fractional part of a calendar month, intervening between the first day of September, 1931, and the date on which the aforementioned conditions shall be fulfilled and Mejia shall enter the employ of the Company, such additional lump sum to be paid to Mejia upon the commencement of his employment hereunder.

The aforementioned compensation shall be payable by mailing a check therefor, to the order of Mejia, addressed to him at Medellin, Colombia, or otherwise as may be mutually agreed by the parties hereto.

It is further understood and agreed that the compensation hereinbefore in this Paragraph "SECOND" specified shall cover all expenses of Mejia while residing or travelling [fol. 2757] in Colombia, but that in the event the duties of Mejia to the Company shall at any time after the commencement of Mejia's employment hereunder require Mejia to travel outside of Colombia, Mejia shall be entitled to be reimbursed, and the Company agrees to reimburse Mejia, for such reasonable travelling expenses as shall be properly incurred by Mejia in connection with the performance of such duties outside of Colombia and as shall be approved by the President of the Company. A detailed itemization of all such travelling expenses so incurred by Mejia shall be furnished to the Company, on forms approved by the Company, as soon as practicable after the end of each calendar month, or upon the request of the Company.

THIRD: The term of Mejia's employment hereunder shall be three (3) years from the date on which the conditions mentioned in Paragraph "FIRST" upon which Mejia is to enter the employ of the Company shall be fulfilled. It is agreed, however, that the Company shall have the right to terminate Mejia's employment, and the agreement of employment, on the first day of any January or July subsequent to the commencement of such term, by mailing to Mejia, not less than thirty (30) days prior to such date of termination, a written notice thereof addressed to Mejia at Medellin, Colombia.

IN WITNESS WHEREOF, the party of the first part has caused this instrument to be signed by its President thereunto duly authorized, and its corporate seal to be hereunto affixed and duly attested, and the party of the [fol. 2758] second part has hereunto affixed his signature and seal all as of the day and year first above written.

URABA, MEDELLIN & CENTRAL AIRWAYS, INC.

By ALAN F. WINSLOW
President.

(Corporate Seal)

ATTEST:

H. Preston Morris
Secretary.

Gonzalo Mejia (L.S.)

[fol. 2759]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 169

The New York Times, December 12, 1931

AIRLINES TO SHARE TRAFFIC IN COLOMBIA

Pan American Buys Interest in Scadta, Agreeing to Division of Central American Trade.

Pan American Airways, operating lines, with Miami as a base through the West Indies and Central and South

America has signed a preferential agreement with Scadta lines operating in Colombia, it was revealed here yesterday by Juan T. Trippe, President of the American system. Dr. Peter Paul von Bauer, managing director of Scadta, has been in New York for some time conferring with officials of Pan American.

The new agreement does away with competing and parallel lines in and near the Canal Zone. At the same time Mr. Trippe announced that Pan American had purchased a substantial financial interest in the Scadta company which operates under the laws of Colombia, through which Pan American will be represented on the Board of Directors of Scadta. The majority on the Board, however, will continue to be Colombian citizens.

On Dec. 1 Scadta signed an agreement with the Colombian Government by which the air line becomes the air-mail administrator for the country. Under the new arrangement with Pan American, Scadta discontinues its lines along the north and west coasts of South America and into the Canal Zone, a region which is served by Pan American Airways. Scadta in turn plans to expand its lines in the interior. Recently the United States Post Office Department made an agreement with Colombia covering the exchange of American airmail at the seaboard terminals for distribution in Bogota, the Colombian capital and other interior cities over the Scadta lines as well as for Colombian mail destined for the United States.

The new agreement Mr. Trippe said brings about coordinated schedules making it possible to move the mail between New York and Bogota in forty-four hours and passengers in fifty-six hours, a saving of eighteen days over the fastest steamer service. The lines also are to carry international express.

[fol. 2760]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 170

(Translation)

DEED OF ASSIGNMENT OF THE MEJIA CONCESSION TO URABA, MEDELLIN & CENTRAL AIRWAYS, INC. JANUARY 11, 1932

Instrument No. 36

In the City of Bogota, Department of Cundinamarca, Republic of Colombia, on January 11, 1932, before me Gregorio Ospina E., First Notary Public of this Circuit, and the witnesses hereto, Messrs. Luis M. Guerrero M. and David Becerra D., males, of legal age, residents of this city, of good character and without any impediment to act as witnesses, appeared Messrs. Doctor Alberto Pumarejo, Minister of Mails and Telegraphs, as to whose official character I certify, in the representation of the National Government; Gonzalo Mejia in his own name; and Juan Uribe-Holguin, representing the corporation Uraba, Medellin & Central Airways, Inc., with its principal office in Wilmington, County of New Castle, State of Delaware, United States of America, organized under the laws of the said state, of which corporation he is the attorney in fact pursuant to public instrument No. 2015 of October 26, 1931 executed in the First Notarial Office of Bogota, all of the appearing parties being males, of legal age, the first and last mentioned being residents of Bogota and Mr. Mejia being a resident of the City of Medellin, which parties I know personally, and they deposed:

That they raise to a public instrument the following contract of December 22, 1931, approved by the Executive on the 8th instant, pursuant to a favorable opinion given by the Council of Ministers, which contract embodies the assignment made by the appearing party Gonzalo Mejia to the Uraba, Medellin & Central Airways, Inc. of the concession for a service of aerial navigation between Medellin and the Gulf of Uraba which was granted by the National

Government pursuant to a contract of September 29, 1930, [fol. 2761] duly approved by the Executive, pursuant to a favorable opinion issued by the Council of Ministers on October 8, of the same year, and then approved by law No. 8 of 1931, said contract being elevated to public instrument in the Fourth Notarial Office of Bogota in public instrument by deed No. 281 of February 12, 1931:

"The following contract has been entered into between the National Government represented by Alberto Pumarejo, Minister of Mails and Telegraphs, acting under authority of his Excellency the President of the Republic, of the first part; Gonzalo Mejia, a resident of Medellin, of the second part; and the corporation Uraba, Medellin & Central Airways, Inc., with its principal office at Wilmington, County of New Castle, State of Delaware, United States of America, and duly organized under the laws of the said state, represented herein by Juan Uribo-Holguin, its attorney in fact pursuant to public instrument No. 2015 of October 26, 1931 executed in the First Notarial Office of Bogota, of the third part:

"FIRST—Mejia, with the permission to assign stipulated in Article 26 of the contract hereinafter mentioned, which permission was granted by the National Government by virtue of the Resolution of the Ministry of Mails and Telegraph No. 193 dated the 14th instant, approved by his Excellency the President of the Republic, assigns to the corporation Uraba, Medellin & Central Airways, Inc. the concession for a service of aerial navigation between Medellin and the Gulf of Uraba which was granted to him by the National Government pursuant to a contract of September 29, 1930, approved by the Executive after favorable opinion by the Council of Ministers dated October 8, 1931, and then by law No. 8 of 1931, or in other words, the privilege thereby granted, together with all of the rights corresponding to him under the said contract, without any exception whatever. The corporation named is to hold all the rights given by the contract to the concessionaire to [fol. 2762] the same extent as it had been as if it had made the contract itself and, conversely, the corporation is to be bound to perform all of the obligations stipulated in the

contract excepting those already performed. The obligations referred to in Article First and Second of the contract, namely, to make a proper connection and to perform the preliminary studies, have been complied with, the National Government having so declared in Resolution of the Ministry of Mails and Telegraph No. 181 of November 9, 1931, approved by His Excellency the President of the Republic on the eleventh of the same month.

"SECOND—In compensation of the said assignment the Uraba, Medellin & Central Airways, Inc. allocates to Mejia fifteen hundred (1,500) shares of the common stock of the corporation, without par value, being the same in all respect as the remainder of the common stock, the certificate or certificates for which it will deliver to him. Mejia will execute the corresponding receipt to the corporation.

"It is stipulated that Mejia shall have no action for cancellation of the present contract of assignment by reason of a failure to deliver to him the said certificate or certificates for said fifteen hundred (1,500) shares, nor for any other reason, but shall only have an action against the assignee corporation for the delivery of the said certificates. In no event may the present contract be annulled or rescinded.

"THIRD—Uraba, Medellin & Central Airways, Inc. expressly declares that with reference to everything concerning the contract herein assigned to it, it will be subject to the Colombian law and to the jurisdiction of the National courts, and that it waives recourse to diplomatic channels with respect to any claim based upon the rights and duties deriving from the contract, excepting in case of a denial of justice, it being understood that there is no such denial [fol. 2763] if the corporation has exhausted all of the remedies and actions which, pursuant to Colombian laws, may be utilized before the judicial authorities, all pursuant to Article 42 of the Fiscal Code.

"FOURTH—As set forth in public instrument No. 281 of February 12, 1931, executed in the Fourth Notary Official of Bogota, by which the concession contract was elevated to public instrument and pursuant to Article 28, Dr. Juan Antonio Toro constituted himself surety for Mejia

in the sum of five thousand dollars ($5,000). The National Government, in consideration of the fact that the assignee corporation will furnish the guarantee hereafter mentioned, hereby releases the said Dr. Toro from all liability and declares his surety cancelled.

"FIFTH—Pursuant to the said Article 28 of the concession contract the Uraba, Medellin & Central Airways, Inc. has already deposited in the Banco de la Republica, to the order of the Ministry of Mails and Telegraphs, in the form of Colombian Internal Debt Ten Per-cent (10%) Bonds, the sum of five thousand dollars ($5,000), for the purpose of guaranteeing the performance of the said contract. The certificate of deposit bears the number 854 and is dated the eighteenth of the present month. The said Company shall have the right to receive the interest upon the deposited Bonds as stated in the aforesaid certificate.

"SIXTH—The National Government agrees to the assignment covered by the present contract and approves the same. In the future it will consider the Uraba, Medellin & Central Airways, Inc. as the concessionaire. The Government also agrees to accept the guarantee referred to in the foregoing paragraph, and which supersedes and replaces the first security posted.

"SEVENTH—The present contract requires for its validity the approval of His Excellency, the President of the [fol. 2764] Republic, to be given upon favorable opinion by the Council of Ministers. It shall then be elevated to public instrument and, in due course, published in the Diario Oficial.

"There were added to the present Notary's Protocol a certified copy of each one of the two Resolutions herein before cited.

"In testimony whereof the present contract is signed at Bogota on December 22, 1931, before two witnesses.

"Signed, ALBERTO PUMAREJO
GONZALO MEJIA
JUAN URIBE-HOLGUIN

"Witnesses: signed, LUIS JORGE CARZON
MANUEL J. ACEBEDO

(Contract bears two documentary stamps duly cancelled, for the value of $1.04).

"Republic of Colombia—Council of Ministers—Bogota, January 8, 1932.

"At today's meeting the Hon. Council issued a favorable opinion with respect to the preceding contract.

"The Secretary,
Signed, NANNETTI C.

"Republic of Colombia—Executive Power—Bogota, January 8, 1932.

"Approved,
Signed, ENRIQUE OLAYA HERRERA

"The Minister of Mails and Telegraphs,
Signed, ALBERTO PUMAREJO"

There is annexed to the protocol the original of the contract above transcribed and a copy of the Resolutions No. 181 and 193 of 1931 to which the latter part of Article 7 of the said contract refers and which are as follows:

"RESOLUTION NO. 181 OF 1931

"Ministry of Mails and Telegraphs, Bogota, November 9, 1931.

[fol. 2765] "Article 1 of the contract entered into with Mr. Gonzalo Mejia for the establishment of a service of aerial navigation between Medellin and the Gulf of Uraba approved by Law 8 of 1931, provides that the concessionaire, to the end of establishing the service in question, 'shall make connection with one or more companies of the United States of America, devoted to such matters, and which shall be, as an essential condition, of the highest category by reason of their capital, reliability and technical knowledge, to the satisfaction of the Government', and that 'upon the concessionaire making this connection he will furnish to the

Government the name of the Company or Companies with which he has made the connection, and the present concession shall have no effect if the Government does not accept the said Company.'

"Article 2 provides that 'once the Government has accepted the connection made by the concessionaire with the said Companies, the concessionaire shall bring experts provided with airplanes for exploration and the proper scientific apparatus, to study the air currents and all other atmospheric and topographical conditions to the end of determining if the proposed service is fundamentally possible and practical. The studies to which this Article refers must be finished, as the clause states, in the term of twelve months, beginning on the date when this contract is definitely approved.'

"The concessionaire in an official communication dated October 26th, last, states that, as he had previously advised by cablegram from the United States, he has made a connection, as required by the contract, with Pan American Airways, Inc. and its subsidiary Uraba, Medellin and Central Airways, Inc. The concessionaire further advises that the preliminary studies prescribed by Article 2 of the concession contract were made by experts of the said companies, and that as a result thereof the service covered by [fol. 2766] the said contract is fundamentally possible and practical. With respect to the connection with Pan American Airways, Inc. and its subsidiary Uraba, Medellin and Central Airways, Inc., the Government has no observation to make, for the reason that the former is an organization known throughout the world, which has established under excellent conditions a wide air service which comprises a great part of the American continent, and the other Company, as a subsidiary of Pan American, offers no obstacles whatever to fulfill the purposes of the connection in question.

"With regard to the preliminary studies, the concessionaire has presented a report by Mr. Andre A. Priester, Chief Engineer of Pan American Airways, Inc., by which it appears that a study was duly made of the air currents

and other atmospheric and topographical conditions obtaining in the territorial zone covered by the concession granted to Mr. Mejia, and that the conclusion reached by the company is that by utilizing amphibian multi-motored planes, equipped with radio, supported by similar radio apparatus installed at Medellin and the Gulf of Uraba, and coupled with landing facilities which can be established, it is fundamentally possible and practicable to operate an air transport service for passengers and freight in the aforesaid zone. As a basis of his conclusion, the Chief Engineer of Pan American Airways, Inc. refers to the physical survey made personally by an authorized representative of the Company and by Mr. Fred Clarke, Chief Pilot of Pan American Airways, between May 22nd and May 31st, of the present year, and to the flights effected by the said pilot in a Sikorsky amphibian plane, over the territory between the Gulf of Uraba and the neighborhood of Medellin on the 30th and 31st days of the said month. Therefore the studies prescribed by Article 2 of the contract were performed in the manner stipulated, with affirmative results and within the term established therefor.

[fol. 2767] "In consequence of the foregoing, the Ministry RESOLVES:

"FIRST—To accept the connection reported by Mr. Gonzalo Mejia with the Pan American Airways, Inc. and Uraba, Medellin and Central Airways, Inc., made by him pursuant to the provisions of Article 1 of the contract entered into with him for the establishment of a service of aerial navigation between Medellin and the Gulf of Uraba, approved by Law 8 of 1931.

"SECOND—The obligation on the part of the concessionaire to make the preliminary studies prescribed in Article 2 of the contract is hereby declared performed, and as a result of the said studies the service in question is found to be fundamentally possible and practical.

"Let due notice hereof be given and publication be made.

"The Minister,

Signed, ALBERTO PUMAREJO

"Republic of Colombia—Executive Office—Bogota, November 11, 1931.

"Approved.

Signed, ENRIQUE OLAYA HERRERA

"The Minister of Mails and Telegraphs,

Signed, ALBERTO PUMAREJO

"The foregoing is a true copy. Bogota, January 9, 1932.

"The Secretary of the Ministry,

Signed, NICHOLAS VARGAS LEIVA"

(Seal)

"RESOLUTION No. 193 OF 1931
(December 14)

"whereby permission is granted to Mr. Gonzalo Mejia to transfer to Uraba, Medellin and Central Airways, Inc. the concession for the establishment of a service of aerial navigation between Medellin and the Gulf of Uraba.

"Ministry of Mails and Telegraphs—Bogota—December 14, 1931.

[fol. 2768] "Mr. Gonzalo Mejia has requested permission to transfer to the Company entitled Uraba, Medellin and Central Airways, Inc., with its principal office in Wilmington, State of Delaware, United States of America, the concession granted to him by the Government for the establishment of a service of aerial navigation between Medellin and the Gulf of Uraba as per contract of September 29, 1930, approved by Law 8 of 1931. Petitioner presents a duly certified copy of the Diario Oficial No. 21853 of November 28, last, in which appears:

"'(a) A certificate by the First Notary of Bogota, dated the 6th of the same month, recorded in the Chamber of Commerce of this city on the 7th instant, whereby it appears that by public instrument No. 2091 of November 5, 1931, Dr. Juan Uribe-Hoiguin protocolized the following documents: the certificate of incorporation of the aforesaid corporation; copy, certified by Notary Public Edward

Schuster of New York under date of September 28th last, of the Bylaws of the said corporation and the general Power of Attorney conferred by the Company on Mr. Alan Francis Winslow, a resident of New York.

"'(b) A Certificate of the same Notary, dated November 7th last, by which it appears that Mr. Alan Francis Winslow, in public instrument No. 2015, executed on October 26th last, substituted to Dr. Juan Uribe-Holguin the Power of Attorney conferred upon him by Uraba, Medellin and Central Airways, Inc. Petitioner also presents copy of official communication No. 340 of the Ministry of Industries, Department of Commerce, Second Section, dated the 9th instant, by which it appears that the Executive, in Resolution No. 14 of the 2nd instant, declared performed on the part of Uraba, Medellin and Central Airways, Inc., all of the legal requisites prescribed by Legislative Decrees No. 2 and 37 of 1906 with reference to the permanent establishment of the said corporation in this country and the constitution of a general attorney in fact to represent it in Colombia.'

[fol. 2769] "Since Article 26 of the said contract provides that the contract may not be assigned without permission of the Government, and there being no objection to the assignment described in the petition by the concessionaire, Mr. Mejia, it is hereby RESOLVED:

"To grant permission to Mr. Gonzalo Mejia, to assign the concession for the establishment of a service of aerial navigation between Medellin and the Gulf of Uraba, pursuant to contract approved by Law 8 of 1931, to the Uraba, Medellin and Central Airways, Inc.

"The Government shall not accept the assignment referred to if the assignee corporation does not expressly declare that it submits to the provisions of Article 42 of the Fiscal Code and if the other proper formalities shall not be fulfilled.

"Let notice hereof be given.

"The Minister,

Signed, ALBERTO PUMAREJO

"Republic of Colombia—Executive Office—Bogota, December 15, 1931.

"Approved.

Signed, ENRIQUE OLAYA HERRERA

"The Minister of Mails and Telegraphs,

Signed, ALBERTO PUMAREJO

"The foregoing is a true copy. Bogota, January 9, 1932.

"The Secretary of the Ministry,

Signed, NICHOLAS VARGAS LEIVA"

(Seal)

[fol. 2770]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 171

COPY

Buenos Aires, December 24, 1933

Mr. Harold R. Harris, Vice-Pres.,
Pan American Grace Airways, Inc.,
Lima, PERU.

CONFIDENTIAL

Dear Harold:

While we were in Montevideo together I was so worried about what was going to happen to our mutual interests, that I did not observe the advertising that Bonino was putting out for you people. It was only during the last couple of days that I started to look around and observe just what was going on, otherwise I would have brought the matter up while we were together.

I noted in Bonino's office that there were two large maps of the System on which only the names "Panagra" and "Pan American Grace Airways, Inc." were shown.

As you know we opened up an office in the Palace and the material sent over from Buenos Aires advertising your routes, was all of the nature I have described. As a matter of fact no one observing the advertising done in the booth would have thought that Pan American Grace was a part of Pan American Airways System and when I looked

closely at Bonino's office I could find very little that would not make the public believe that Pan American Grace was not the backbone of Pan American Airways.

I do not think I am one-sided in considering both companies and certainly I have always given instructions to this office and also to Bonino that no attempt whatever should be made to influence the public to travel via the East Coast as against the West, but I certainly must object to the advertising being done here and in Montevideo. We have joint offices and wherever they exist it is impossible to put out advertising that brings before the public one company in preference to the other. It may be that you are not thoroughly aware of the copy that has been sent here—personally I was shocked although I suppose I should have known about it as our people should have advised me.

If you want to advertise on the West Coast Pan American Grace, and not mention the System, that is your business, but certainly I have a right to a voice in what is done where both companies operate. The New York office never puts out anything that in any way could make the public believe that the West Coast was less important than the East, at least I have never seen it if they have.

I have personally sold tickets over your line and went out of my way to keep Miss Breckenbridge from changing her proposed trip to the United States although she called [fol. 2771] me at midnight last Thursday complaining about not being able to get a reservation as promised. You realize that if we were in any way competing with you, it would be a very easy matter to convince many people that the high altitudes flown on your route would probably not be as agreeable as flying up the East Coast. I am only mentioning this point to let you know that we would not for a minute think of selling our own Company before one that we only have a 50% interest in and yet it would not be a difficult matter to talk the East Coast if we had no financial interest.

I do not blame you at all for being proud of your Company and wanting to get as much publicity for it as pos-

sible, but everything considered I do not believe it should be your policy to play Pan American Grace as being distinct from the Pan American Airways System. The operation should be considered as a whole and I think our New York office does so. The line on the West Coast is only a small part of the total mileage operated under United States postal contracts; we never think of your being foreign to the System and everything we do is open to you. If you will look at your advertising you will readily see that it originates from that of the System and wi would hardly seem equitable for your Company to copy what the System does not unduly emphasize the West Coast Operation.

You and I have always gotten along and I hope you will agree with me that I am not unreasonable in asking you not to send to Buenos Aires or Montevideo material that could be considered as prejudicial to our interest, as we certainly do not intend to do anything to hurt yours.

I did not ask Bonino to have this office boy discontinue the use of the uniform you gave him, but I hope you will do so. Just why I did not notice the word "Panagra" on his cap while you were there, is beyond me, but I certainly did before I left. If a uniform is necessary for the boy, we shall be glad to join with you in designing one that cannot be considered either "Panagra" or "Panair". The only insignia that could go on the boy's cap would be that of the System and I suppose we would have trouble in agreeing on the colour to be used, so it might be well to just let the boy wear civilian clothes. Of course we have no objection to his wearing his present uniform when he goes to meet your planes, but he certainly cannot do it any other time, unless we get another boy to wear Panair clothes all the time. Just what we would do with two office boys is beyond me.

With kindest regards

Yours faithfully,

.....

Geo. L. Rihl

GLR:PG

c. by mw.

[fol. 2772]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 172

MONTEVIDEO & B.AIRES PUBLICITY

JDM
JTS
JMVL

LIMA, December 30, 1933.

Mr. Geo. L. Rihl,
Panair do Brasil S.A.,
Rio de Janeiro.

Dear George,

Thank you very much for your December 24 confidential letter on the subject of the Montevideo Panagra publicity.

Taking up this letter paragraph by paragraph, I agree with you that we were so busy worrying that we did not have much chance to think about the details such as the local Montevideo publicity. However, now that I think of it I believe that the Bonino office maps which you refer to are some lithographed posters which were gotten out by our Santiago office some two or three years ago and which it was my impression had completely disappeared from all of our offices. At any rate I have told Van Law and Salsilli, who is the Santiago Traffic head and happens to be here in Lima now, that all of these posters as far as B.Aires and Montevideo are concerned are to be destroyed, and that the only Panagra maps and posters which are to be shown in that district are the standard Pan American Airways System black-and-white map as published everywhere, which is standard for both Panair and ourselves, but as put out by Panagra has the special Pan American-Grace wing on the lower left corner and has the words "Pan American-Grace Airways, Inc." at the bottom, although at the top of the map the wording is "La Red Pan American Airways". I have told Salsilli to straighten out Bonino on his advertising and posters at once, in order that unfortunate instances of this sort can never recur.

With regard to the material sent over from B.Aires to the office opened up in the Palace, I don't recall what this

could be, but presume it was material which Moore must have had on hand there at B.Aires. By no means do we want to make any comparisons between the West Coast and the East Coast routes in any such way as has apparently taken place in connection with this material sent over from B.Aires, to Monte by Mooré. If you are still in B.Aires when you receive this letter, I think it would be a good idea to have Moore destroy any publicity which Panagra may have sent him which tends to make the public believe that Pan American-Grace is the backbone of the Pan American Airways System. It is certainly very much to my sorrow that I learn of such a thing occuring in this very important phase of our advertising. In this connection, why not suggest to Moore that if he ever has any doubt in his mind as to publicity sent him by Panagra that he take it up both with Van Law and Rice, since controversial matters of this sort are likely to build up into giant questions, although they were never intended to be of a disparaging nature. In my mind Pan American-Grace Airways has always been and always will be proud to be a minor part of the great Pan American Airways [fol. 2773] System, and the System as a whole is the thing that I have continually in mind as a background for the more direct problems which have to do with my own work with Pan American-Grace Airways. I believe that you and I worked together in most satisfactory fashion in our very fundamental problems as worked up for the Montevideo Conference report, and that absolutely no major emphasis was made on Pan American Airways or Pan American-Grace Airways by either one of us, but that we both played our cards to give the maximum advantage to the Pan American Airways System, rather than make any attempt to sell either the East Coast or the West Coast to the official notice of the Conference delegates. This, you may be sure, will be always the attitude of myself and my associates, and I regret exceedingly anything that may have happened in connection with publicity at either Montevideo or B.Aires which might tend to indicate any other attitude on our part. I assure you that if such a thing occured it was not intentional.

With regard to the Bonino office-boy, I observed, as you did, the weird uniform which he was wearing at various times, but assumed that it was worn by him when I chanced to see him, in connection with some receipt or dispatch of Panagra planes. Quite frankly, the uniform made very little impression on me, except that it was so badly gotten up. I am in complete agreement that the uniform this boy wears should have the Panagra name taken off it, if it appears on the clothing anywhere, and if it is necessary to have any words that the words should be "Pan American Airways System". If you don't have any objection, I can't see why he cannot have two caps, wearing one cap marked "Pan American Airways" for receipt and dispatch of Panair planes, and another cap marked "Panagra" for receipt and dispatch of Panagra planes, these caps to be used only in connection with receipt and dispatch of the respective airplanes, although at other times I don't see any objection to his wearing a Pan American Airways System or Pan American Airways cap, (if it isn't worthwhile having the word "System" on the Panair cap,) at all times when he is not actually receiving or dispatching Panagra planes.

It is my understanding from Salsilli that Moore is directly in charge of all the publicity and propaganda for both organizations in both B.Aires and Montevideo, and I suggest that he might overhaul all of the controversial possibilities and eliminate them immediately. I have given the necessary instructions to our own traffic people to see that such possibilities do not occur in the future.

Warm personal regards,

Sincerely,

(Signed) HRH
H. R. Harris

[fol. 2774]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 173

February 23, 1934.

H.F.

Memorandum of Conference with Mr. Francis White

I had a conference with Mr. Francis White on February 23, 1934, in regard to the attitude of the State Department to the development of American aviation in Latin America.

Mr. White stated that as early as 1922 or 1923 he had been impressed by the activities of the Scadta Company in Colombia and had concluded that the United States had better get started if it did not wish to find Central and South America entirely preempted by foreign controlled companies. At that time he asked the War Department to conduct a survey flight between the United States and the Canal Zone and the War Department reported enthusiastically as to the possibilities of developing air transport routes in this area. He also asked the Post Office Department to look into the matter. The Post Office Department sent an inspector to the Canal Zone. The inspector made no real investigation of the possibility and reported that from a mail standpoint the subject was fantastic.

Mr. White was abroad for about nine months in 1926. On his return he found that the Scadta Company had greatly [fol. 2775] increased its activities. It had obtained monopoly concessions in a number of Central American countries and was planning to extend its activities northward. Dr. von Bauer made numerous trips to Washington and requested permission to enter the Canal Zone and the United States. Mr. White stated to Dr. von Bauer that the question of permitting foreign aircraft to fly into the Canal Zone was one which had grave military complications and would have to be carefully studied. Dr. von Bauer also visited Postmaster General New and requested air mail contracts. Postmaster General New told him that no such contracts would be forthcoming except to an American company which used American plans and American pilots.

Mr. White deliberately withheld action on Dr. von Bauer's request for permission to enter the United States and the Canal Zone until there should be developed American companies able to fly into Central and South America.

About 1927, Mr. White became aware of the plans of Pan American Airways to develop air transport routes between the United States and South America. By this time the monopoly concessions obtained by Dr. von Bauer in Central America were expiring because of his failure to initiate service within the time prescribed. Mr. White's recollection is that Pan American Airways obtained its own concessions in most of the countries of Central America without State Department aid.

[fol. 2776] By the end of 1928 Dr. Von Bauer had apparently made up his mind that he would not be able to operate into Central America and was more interested in maintaining a monopoly position in Colombia so as to prevent the extension of American air lines south or east of the Canal Zone. The State Department thereupon undertook negotiations with the Colombian Government for American aircraft to have the right to fly into Colombia in exchange for permitting Colombian aircraft to fly into the Canal Zone.

Mr. White recalls that at some time, probably in 1929, he became seriously concerned over the problem as to the attitude which the State Department should take to various American companies which were operating or attempting to operate air transport routes in Central or South America. He had noted the fact that England, France and Germany had each adopted the policy of backing one strong air transport line. He was afraid that if numerous American companies should endeavor to establish air transport lines in Central and South America the foreign companies would play off one American company against the other and that all the American companies would eventually be destroyed. On the other hand, he was well aware of the established policy of the State Department not to assist one American company against another.

After studying the situation he came to the conclusion that the air mail situation was considerably different from

[fol. 2777] that of other businesses. The business of transporting the mails was a government function. All American companies had enjoyed the privilege of competing for the air mail contracts. When, as a result of competitive bidding, these contracts had been awarded to a company that company had become in effect the instrumentality of the Government for carrying the mails. He, therefore, believed that in the case of countries located along an air mail route or a contemplated extension of such route, the State Department might properly permit its representatives to accord assistance to the American air mail contractor even if this should mean intervening in a struggle between the air mail contractor and some other American company. He discussed this matter with Secretary Stimson who concurred in the views which he had expressed.

I recalled to Mr. White's attention that in addition to the general concessions which he had mentioned, the Government had a direct financial interest in the operation of the air mail contractor since the Government received the revenue on the return mail from foreign countries and that if the air mail contractor did not succeed in getting contracts with these foreign countries the revenues of the Government were correspondingly decreased. Mr. White said that he remembered this phase of the matter.

I called Mr. White's attention to the correspondence be-[fol. 2778] tween Mr. Stimson and Mr. Brown which had been placed in evidence on February 20, 1934 in regard to the Guatemalan situation. He said that he had no specific recollection as to Guatemala although he did recall complaints on the part of Pan American to the effect that the American Minister in Guatemala was obstructing their efforts.

I showed Mr. White the question asked by Mr. Black as to a document containing a statement that the State Department would be justified in informing its representatives that giving assistance to the Tri-Motor Company would benefit foreign interests. He said that he had no specific recollection about this matter although he remembered having heard that Nyrba had made various arrangements with

the French in Brazil and that he may have thought that Tri-Motors was working with the French.

I also called Mr. White's attention to Mr. Black's question as to instructions given to the American Embassy in Paris to assist Pan American. Mr. White said that while he had no specific recollection about the precise instructions referred to, he did recall that Pan American had been obliged to apply to the French Government for authority to operate in French Guiana and in the French West Indian Islands and that he may very well have instructed the American Embassy to lend all proper assistance to Pan American in obtaining these operating rights.

[fol. 2779] I asked Mr. White whether he had ever heard of a report by an employe of the State Department made in 1931 containing a statement that the State Department had been used to favor Pan American. He said that he had never seen such a report. He said, however, that the State Department had an employe by the name of Edward Stinson who was in one of the Bureaus of the Latin American Division. Mr. White did not think well of Mr. Stinson. However, Mr. Stokely Morgan who was Mr. Stinson's immediate superior, thought that Mr. Stinson had some abilities and accordingly retained him as an assistant. Mr. Morgan's successor, Mr. Monro, did not think well of Mr. Stinson. At about this time, someone brought Mr. Stinson to the attention of Mr. Joseph Cotton, the Undersecretary of State, and Mr. Stinson was given the job of writing certain reports for the use of Mr. Cotton and Mr. Stimson. Mr. Stimson also had no confidence in Mr. Stinson and shelved his reports. However, Mr. Stinson continued making reports on a great variety of subjects and submitting them to the Secretary. Mr. White thought that this might well have been one of these reports prepared by Mr. Stinson. Mr. White also suspected Mr. Stinson of being in close communication with Mr. Drew Pearson.

[fol. 2780]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 174

W. P. GRACE & CO.
NEW YORK

Letter No 2
(MJK Trip series)

ORIGINAL AIR MAIL LETTER
COPY FOLLOWS BY STEAMER

On board "Santa Clara",
March 18, 1935.

[Handwritten notation—Ansd 3/27/35]

A. Garni, Esquire,
New York.

Dear Garni,

SIZE OF EQUIPMENT

NORTHERN DIVISION

I think before this equipment question is definitely closed it would be worth your while to give some further study to the question whether we should have S-43's or S-42's.

1) While the S-43's are undoubtedly large enough at present, it will be a year before they are built and, if we figure on using them five years, that means we are considering a 6-year program. In my opinion the S-43's will be too small before the six years have expired. This however does not necessarily mean we should buy an S-42 now because under the proposed plan where we have to buy only one S-43 we could still buy an S-42 later and probably save during the next two or three years, by having a smaller ship, enough to at least equalize the additional cost of not having bought an S-42 originally.

2) A very important point to be considered is that if we can put all our traffic on one plane which carries mail pay, a large part of our passenger revenue then becomes net profit. If we carry the same traffic running two sections of a smaller plane, one of which is without mail pay, the passenger revenue on the latter plane goes toward making

up operating expenses and leaves nothing in the way of profit. At the present time, for instance, we are running double sections of the Sikorskies and must do so to serve the traffic. The second section has no chance of making any money because even if every seat is filled the total revenue is barely enough to pay operating expenses.

[fol. 2781] 3) I would also suggest that you study further the figures we were looking at the other day which show that an S-42 only about half full will pay expenses leaving the additional space for potential profit, whereas the margin for potential profit on the present S-38's is practically zero and on the S-43's is very much less than on the S-42's. The point I have in mind here is that without mail pay no matter how much traffic were offering we could not make money operating S-38's, for even if they were packed to capacity we could barely pay operating expenses. With the S-43's under like conditions we could make some money, but not very much. With the S-42's, assuming the traffic were available, we could make a very comfortable return on our investment.

The equipment we buy now will probably be in use when the present mail contract expires and we have no way of knowing whether we will be receiving any mail pay then or even if we will receive our present mail contract pay up to the end of the contract. It is very important, therefore, to consider the problem of having equipment large enough to give us a chance of breaking even and earning a profit without mail pay. If we cannot assume that there is enough traffic for a ship large enough to earn revenue sufficient for its operating expenses and a profit, then we must take it for granted that when mail pay ceases we will have to fold up the line. It seems to me that the constructive course must be to assume that with proper promotion work sufficient traffic can be developed. Here again it may nevertheless be the part of conservatism to have the S-43 at the start having in mind prompt replacement with an S-42 as traffic conditions warrant; but, there is no doubt that provided a certain minimum traffic can be secured the S-42 is by far the more economical and more profitable unit.

[fol. 2782] 4) Another point to be considered in connection with the S-42 is that we can undoubtedly have one available quite a long time sooner than an S-43 and we will also be getting a more thoroughly tested ship. The S-43 is a new design and Trippe is quite right when he says that there will be a great many delays in ironing out numerous difficulties which will arise on the tests of this ship. The S-42 has been going through this process for months and is not yet finished. We would escape this delay by taking an S-42.

5) If S-42's were used it would be impractical to provide maintenance for them at Cristobal. Maintenance work would have to be done at Miami. This would mean that Panair's plane from Miami would go through to Guayaquil and that our plane from Guayaquil would likewise go through to Miami. Trippe might object to this but if he did not do so I do not see that there would be any objection on our part. I do not know just how he would fit his schedule together under such an arrangement. It is possible he would have to have three planes going through to Miami and that in that case he would want to run two of his to Guayaquil against our one to Miami. This I would not consider satisfactory although on ratio of mileage it would not be so unreasonable as flying from Cristobal to Miami via Barranquilla we would be flying say 2,200 miles over his line as against something over 1,000 miles between Cristobal and Guayaquil, which on a ratio of mileage would entitle him to fly our line twice to our flying his once.

6) The express movement over our line is growing and the Northern Division is the bottle neck for this as well as for international traffic. The growth of this business will cut down our passenger capacity. Trippe estimates that [fol. 2783] of the fourteen seats that are provided by the S-43 only twelve will be available because of the express requirements. I think that he is right and a point may easily be reached where there will have to be further sacrifice of passenger capacity or revenue of express business. Even twelve seats, however, means something more than doubling our present capacity, and, on the basis of our steamship experience, it is hard to see how this should be

inadequate. I am not sure, however, that the parallel is a correct one. If you will take our present traffic over the line which now goes in two sections and combine it in one section, even after making allowances for extra traffic which the two sections may develop, I think you will reach the conclusion that the S-43 with twelve seats does not really represent doubling our capacity. Moreover we are providing a new method of transportation which has already shown a capacity to develop at a rate in ecess of anything we are accustomed to in connection with steamers and I believe that that growth has only begun. Not only the cumulative effect of our continuance in business but the improvement which will come from return of better financial conditions and development of tourist business, will, I believe, give us some really startling results. Even with our present inadequate equipment we are rejecting traffic and I have no doubt that we are additionally losing traffic which we never hear about because of the known discomfort of these planes. The number of international passengers which we carry will I am sure be greatly increased once we get better equipment in this Division and all of these international passengers north and south will have to go through this bottle neck. Local traffic will also I believe improve with better facilities.

[fol. 2784] In view of all the above it is my feeling that in buying an S-43 we cannot count on its being adequate for more than two or three years and I am not sure but that a close study of the figures would show that it is only very slightly more than adequate even now. If we buy this ship, therefore, I feel that we should do so fully recognizing that it is not likely to be adequate during its useful life and that we will have to replace it in a few years with a larger ship and that we are spending the extra amount which this represents in the interest of conservatism. It is over a year ago now since I went over these figures and reached the conclusion that the S-43 was adequate. We have rather taken this for granted in the discussion ever since seeking to get S-43's but I am not sure that conditions have not sufficiently changed even within the year to warrant a different conclusion at this time. I think before deciding, therefore,

Campbell and Vidal should make a careful canvass of the whole situation in the light of conditions as they are today and that you should then decide the matter in the light of your analysis of their conclusions.

Very truly yours,

/s/ HAROLD ROIG

P.S. Perhaps Trippe would be willing to agree that we might switch from S-43's to S-42's at the end of say three months after the Commodore operation is begun, if we felt that the experience of the Commodores indicated the S-43's to be inadequate. I should think that he could do this without prejudice to his situation and it would certainly be extremely helpful to have this Commodore experience before deciding. Needless to say, the decision to which I refer would be that of W. R. Grace & Co.

I will go into this whole question of size of equipment on the ground with Harris and MacGregor and advise our combined views later.

[fol. 2785]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 175

CC: President (via ordinary mail)
Division Manager

VIA AIR MAIL (Original only)

June 19, 1935

Chief
Engineering
New York

Operations Manager
Caribbean
Miami

Pan Grace Charter Agreement "Confidential"

After reading the charter arrangement between Pan American Airways, Inc., and Pan American Grace Airways, Inc., we were very disturbed to find that we are obligated to operate a crew and plane of this division between Cristobal

and Guayaquil, Ecuador, alternate weeks during the term of the aircraft lease. We realize that in making this arrangement the consummation would not appear to be difficult to the New York executives because the Commodore and crew would be in Cristobal at the time the service was to be rendered. It is immediately apparent, however, that this will add approximately 23 to 24 hours to the time of the flight group of this division.

Again, considered as a problem to be solved, this is not difficult, the only trouble being that it is another problem on top of those already facing us. We are at a loss to understand how we will be able to conform with the PAA or Department of Commerce regulations in checking out pilots over this run. As far as we can ascertain at present, only Pilots Clark and LaPorte have flown the Guayaquil route and it would not be feasible to confine their schedules to the Miami-Cristobal-Guayaquil route. Possibly some arrangement can be made with Pan Grace to have one of their men familiar with this route travel as copilot on the Panair planes until our pilots are qualified, but we understand this service is not a matter of the future, being planned to commence immediately the chartered Commodore arrives at Cristobal.

Another point which concerns us is the well known fact that Pan Grace organization does not conform with the Department of Commerce or PAA standards in the matter of weight control. We might mention, for instance, that Department of Commerce Inspector Keeley made a notation the day he departed from Cristobal in the S-38 that by even a rough calculation the plane was overloaded a matter of some 100 pounds. We can foresee friction between Pan Grace Traffic Department and the pilots of this division who will insist correctly in limiting the payloads so that the authorized useful load will not be exceeded.

Minor difficulties, which will undoubtedly be solved, have already arisen between the Pan Grace representative, Major Martin, and the Division Engineer concerning the selection of the Commodore. This is caused in part by the necessity of our providing a Commodore for the Brazilian Division on the Manaos run. The only plane which ap-

peared to be available was the NC659M which was one of the listed planes for selection by Pan Grace. This leaves only two planes, the NC668M and the NC664M, from which [fol. 2786] which the Pan Grace representative is to make a choice. The NC668M is now on the Para service. The NC664M is undergoing partial overhaul, ostensibly for transfer to the Pan Grace System, and with the transfer of the NC659M it will not be practicable for us to maintain our schedules if the Pan Grace representative were to select the NC668M and expect it to be immediately ferried to Cristobal, which means that this transfer must await the completion of repairs to the NC664M, regardless of which plane is selected. Major Martin pointed out that the agreement states that "the aircraft lease will become effective forthwith upon such selection and acceptance and that as soon as practicable thereafter Panair will deliver the aircraft so selected to Pan Grace at Coco Solo airport in Cristobal".

Undoubtedly, Major Martin will advise Pan Grace New York office concerning the delay and we are therefore advising you of the circumstances so that no undue pressure may be placed upon us to make delivery of the aircraft before sufficient equipment is available to protect the schedules of this division.

It is obvious that the resources of the Caribbean Division are being strained to their limit, as we have a ferry to Brazil with a Commodore, no equipment being returned; a ferry to Cristobal with a Commodore, no equipment being returned; and a ferry to UMCA with an S-38, no equipment being returned. These ferry flights naturally affect the immediate efficiency of our flight group and will increase the expense of the Maintenance Department because of the necessity, on account of shortage of equipment, of doing maintenance work at night to insure the necessary reserve for schedules.

They also penalize the income of the Caribbean Division, in that the return of the respective crews to Miami preempts pay passenger reservations, and this is more serious than it appears because we cannot afford to have the men away longer than absolutely necessary, therefore have to make NSPL passes for the return trip. Space

is at a premium over practically the entire division and immediately a passenger is turned down, a barrage of requests is received, emanating from all points, including New York, to make an effort to provide space, which is something that cannot be accomplished without delaying the return of one or more members of our flight group. To this in most cases we have to say 'no', and the refusal does not in any way increase our popularity with the members of the Traffic Department who may not be fully aware of the efforts made to meet the requirements of other parts of the System. We, in turn, realize that it is one of the responsibilities which go with the position of Operations Manager to take the blame for the necessary decision of replacing pay passengers, but naturally even this part of the problem has to be coordinated. Therefore, as far as possible, definite obligations for ferry flights at a fixed date should be avoided so that we can utilize ferry flights to the best advantage of all concerned as we are able to do in the case of the NC659M, realizing that if this plane had to get to Brazil by July 1, it would be to our advantage to send it as soon as possible so that we could be assured of return space for the ferry crew and utilize it to avoid taking the NC822M into the ports of the Leeward and Windward Islands.

We realize that certain obligations have now been made and will have to be met in some manner, but we believed it worth while to outline to you some of the thoughts which arise in our minds concerning these transfers.

EPC:DS

OPERATIONS MANAGER

[fol. 2787]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 176

PAN AMERICAN-GRACE AIRWAYS, INC.
135 East 42nd Street New York, N. Y.

CABLE ADDRESS "PANAGRA"

LETTER NO. JDM 2123

SUBJECT: Post Office

Hotel Tivoli
Ancon, Canal Zone
November 28, 1936

Mr. J. D. Mac Gregor,
BUENOS AIRES.

As suggested by you on the phone I proceeded to Balboa on the plane leaving Lima November 23rd. On arrival here I contacted Senator Reynolds of North Carolina, who was leaving the following day by our plane, and also Mr. Chaplin of the Hearst newspapers, who was also leaving the following day on the same trip. I had a very constructive talk with these gentlemen individually, the contact with Mr. Chaplin continuing far into the night (Kelly's Ritz). The following morning I took the early train to Cristobal, arriving in time to meet the Lucia carrying Mr. Harlee Branch, Second Assistant Postmaster General, Mr. Garni, and Mr. Campbell. After greeting these gentlemen I went out to France Field in order to talk with Mr. Sibley, President of the United States Chamber of Commerce, who was a through passenger from Miami, transferring to our plane departing at 9:30. The meeting with Mr. Sibley although short was very pleasant.

Since Mr. Garni had suggested I accompany him on the Lucia to Balboa, I sent Mr. Beatty over on the scheduled plane to introduce Senator Reynolds and Mr. Chaplin to Mr. Sibley since they would be companions on the trip. I then contacted General Brett, Colonel Ballard, Colonel Coleman, Major Kelly, and Major Tailor of France Field. The first two were sailing at noon for the United States, so several rounds of farewells were necessary. I then

picked up Mr. Campbell and we located Mr. Branch and his Secretary, Miss Jean Clark, and took them to lunch at the Strangers' Club after driving them around in Mr. Beatty's car to the various points of interest on the Atlantic side. After lunch I arranged for them to be shown the operation of the locks through the courtesy of Captain Calloway. On the way back from the locks we had a flat tire and were fortunately rescued by the Governor of the Province of Colon, Lignadier, thus making it possible for me to give Mr. Branch an opportunity to discuss local conditions with a high Panamenan official who has been very friendly to us for a long time.

A conference was then held between Campbell, Beatty, Nelowet and myself in connection with the accounting and business problems of the Northern Division office, at which time it was agreed that plan No. 1 of Mr. Vidal's recent personal letter to Nelowet providing for the turning over of a good deal of the accounting work to the Panama Agencies would be carried out as quickly as possible even though it might be later decided that plan No. 2 would be the proper final solution.

That night through the courtesy of Mr. and Mrs. Lyle Prather (Manager of the receiving and forwarding agency of the Panama Railroad), Mr. Campbell, Miss Clark, and I attended a dance at the Strangers' Club, finally returning to the Lucia after having spent a fairly full and profitable day.

On the trip through the Canal on the Lucia the morning of the 26th I was able to discuss several background matters with Mr. Campbell and also again contact Mr. Branch as well as Mrs. Dearing. Mrs. Dearing had not met either Mr. Branch or Mr. Garni so I was able to effect the introductions.

[fol. 2788] Upon arrival at the Tivoli, Mr. Garni went over with me the matters mentioned in your personal letter to me of November 20th and showed me your letter to him of November 18th. He handed me a copy of a memorandum which he had given Mr. Branch on the steamer. I am attaching a copy of this memorandum herewith (Exhibit

A). Unfortunately no map attachments are available, but the memorandum is perfectly understandable without the maps.

Mr. Garni told me that prior to his departure from New York he had cabled Mr. Roig in London the gist of what he was going to discuss with Mr. Branch and had advised Mr. Roig to make his, Mr. Garni's, plan known to Mr. Trippe who was in contact with Mr. Roig in London. He also had Mr. Thach for luncheon on Friday, the day that he sailed from New York; and had told Thach of his plan.

Yesterday afternoon Mr. Garni and I called on the Governor, Mr. Calhoune, and the Governor's Aide for aviation, Lieutenant Smith. Last night Mr. Garni, Campbell, and I went over the final draft of Exhibit B attached herewith and laid plans for a conference which Mr. Branch had decided would be held at 11 o'clock this morning instead of the original date of 3 o'clock yesterday afternoon, the postponement being necessary because of the absence of Mr. Lamiel in Cristobal yesterday. Mr. Garni, Mr. Campbell, and I discussed certain of our Panagra problems, particularly the problem of eliminating all division accounting and centralizing this work in Lima. Mr. Garni's first reaction was that this might not be desirable from the standpoint of possible double taxation on the company through the local taxes in the country where the income originates plus an additional tax in Peru when the income is picked up in the books kept in Peru. I believe that he rather likes the idea unless this or some other major consideration which has not yet come to mind shows the idea not worth while. I also outlined some of our minor irritations in Bolivia and particularly stressed the lack of help which Guzman Tellez is suffering from. I also mentioned the fact that apparently all of the Grace people in Bolivia were not receiving sufficient compensation to prevent them from actively looking for better paid jobs in other organizations.

Mr. Garni advised me that next month he would join the Panagra board. I judged from his conversation that a fourth man will be put on the board in representation of Pan American Airways.

When the meeting with the Post Officials finally did take place, Mr. Garni very thoroughly expressed the necessity of making Cristobal in one day from Miami. Mr. Lamiel pointed out that the Post Office Department now has a contract with the Pan American Airways which definitely provides for airmail carriage to Cristobal by way of Barranquilla and that if that were to be changed to provide for a direct route Miami Cristobal not only would the contract have to be re-drawn but the net cost to the U.S. Post Office would be increased by $73,000 a year because of the additional mileage which would have to be paid from Cristobal to Port of Spain via Barranquilla on account of the Port of Spain Cristobal operation, which is also under contract to Panair. In other words, the distance from Kingston to Cristobal direct is 127 miles further than the distance from Kingston to Barranquilla, and the U. S. Government secures an effective operation under the present set-up from Cristobal to Port of Spain via Barranquilla by [fol. 2780] paying only the additional mileage Barranquilla Port of Spain, since that service connects in both directions with the main U. S. mail line Miami Kingston Barranquilla Cristobal.

Mr. Lamiel offered as an alternate plan that Panair would be required to operate in one day Miami Cristobal via Barranquilla, the section Barranquilla Cristobal to be operated at night with a night landing in Cristobal south bound and night take-off in Cristobal north bound but early morning landings in Barranquilla north bound. Mr. Garni objected to this on two grounds, first, that Panair have shown on the thirty-nine trips since the schedule was speeded up on July 15th they have been so late into the Canal thirteen times that we had to postpone our departure to the following day and that if they could not make it Miami Barranquilla in one day it seemed reasonable that they could much less do Miami Barranquilla Cristobal in one day. And secondly he pointed out that passengers would have to get up very early in the morning north bound at Cristobal in order to reach Miami the same day.

A long discussion then ensued upon Mr. Garni's advocating a third complete service to Buenos Aires via the West Coast but from Arequipa to Buenos Aires via La

Paz and Cordova. Mr. Branch stated that the budget hearings had already been completed and that the only way this matter could be re-opened would be on an emergency basis and that he would not feel justified in advocating a third service down the West Coast at this time.

Mr. Garni then launched into an exposition of his alternate suggestion that the beginning of a third service be instituted by means of a service from Cordova to Arequipa via La Paz. Mr. Branch suggested that this be operated in a different way—that is, by only running one trip per week through from Arequipa to Santiago and the other from Arequipa to Buenos Aires via La Paz. Mr. Garni stated that this was out of the question in view of the importance of the American concerns and investments in Chile. In the general dicussion that followed between the five of us in the conference—that is, Mr. Branch, Mr. Lamiel, Mr. Webber of the Post Office, Mr. Garni, and me—the following interesting and important facts were brought out:

1. The Post Office officials agreed that if we did not ask for more mileage between Cristobal and Guayaquil we could run that line by the way of Cali, Popayan, or Buenaventura, Tumaco, or any other way, with their blessing.

2. Mr. Lamiel had been given to understand that the Scadta was not permitted to operate into the Canal Zone, hence it was necessary for us to deliver airmail for Bogota to Scadta at Barranquilla. I exploded this theory by pointing out that Scadta operated into the Canal Zone for many months. I also mentioned that Umca could give direct connection to the Canal Zone from Bogota and Medellin.

3. On the East Coast Panair promised to cut the operation from Miami to Port of Spain to a total elapsed time of eighteen hours.

4. Panair now receive mail pay on their second trip from Miami to Para. Mr. Branch has agreed that after July 1, 1937 he will pay them all the way to Rio on this second trip [fol. 2790] provided that within six months Panair will have instituted the cut of operation between Para and Rio, but if they do not institute this service and do not put in

the eighteen hour schedule between Miami and Port of Spain and one day schedule between Port of Spain and Para he will withdraw the mail pay on the second trip (presumably from Para south). He states that if he withdraws this mail pay he will then have funds with which to pay us for the Arequipa/La Paz/Cordova operation.

5. The budget as submitted provides a portion of the money required for the full Atlantic operation, also money for the Alaskan operation and also money for two round trips Miami/Buenos Aires on the East coast plus the operation from the west coast to La Paz. Nineteen thousand dollars is mentioned for this last item.

6. Mr. Garni stated if the Arequipa/La Paz/Cordova service were authorized and subsidized we would be willing to give up the subsidy on the Buenos Aires Montevideo service.

The net result of the discussion was that Mr. Garni did not leave the "Exhibit B" memorandum with Mr. Branch as planned at first since Mr. Branch stated that in order to bring this matter to a head in view of the important points that we made—that is, that we were with our present operation through Chile likely to be held up by the Chilean Government each time when our operating permit expired and that if we did not act immediately we would lose the opportunity to be first in operation on the La Paz/Cordova run in favor of either the French or the Germans—he would, on receipt of a memorandum from Mr. Garni outlining the reasons for what would otherwise be considered an international extension in which the U.S. Government had no interest, see whether he could justify an emergency appeal to the budget Director for the inclusion of a minimum possible sum which we would accept for the implantation of this start toward a third complete service.

Mr. Garni told Mr. Branch that he would prepare such a memorandum promptly upon his arrival in New York and hoped to get it to Mr. Branch by airmail late next week. Meanwhile Mr. Branch is cabling his office to pave the way for a possible emergency request in the near future in view of the seriousness of the Bolivian situation.

Mr. Nelowet had a seat on the plane for Miami today but he gave it up for Mr. Garni, who left Balboa for Cristobal on our regular scheduled flight about 1:35, after instructing Mr. Campbell and me to draw up a preliminary basic study upon which an official memorandum could be prepared to be submitted to Mr. Branch. Mr. Campbell is now engaged in working this matter out, and I hope to have some further information for you on this same mail.

After Mr. Garni left, Mr. Branch called in Mr. Balluder, who arrived today from Mexico, and Mr. Silliman, who arrived two days ago, and we went over in detail with the Post Office officials a number of points which the various Governments had submitted to the consideration of the forthcoming Postal Conference in order to secure the operating companies' reaction to the questionable points. It would appear from the points raised that none of them are likely to be incorporated in the final convention agreement, since most of them are likely to be opposed by one or more countries in addition to the United States.

[fol. 2791] The only matter which seems to be fairly universally desired by other Postal Administrations and which may cause trouble, as far as our discussions went, is the question of one kilo of mail free on each schedule for each country. Both Balluder and Silliman objected most strenuously to this in the name of Panair, and the U. S. Postal authorities feel that it is impossible for them to accede to this idea either.

One point which Balluder brought up independently was discussed at considerable length. This was the question of parcel post at air express rates. Mr. Branch stated that he did not care to discuss this and a number of other points at this time in much detail since the Department itself had not yet established a definite policy, but they were giving study to the matter. As far as the U. S. is concerned the question boils down to the matter of whether they will exercise their right to 800 pounds in each one of our planes and fill this additional space with parcel post. The lines along which they are thinking just now would be to provide a parcel post service for packages weighing perhaps between six ounces and a pound. Mr. Branch is thoroughly

familiar with the additional income which we now are securing through our air express service and is of an open mind as to whether or not we should be permitted to continue to indefinitely postpone the parcel post plane service in order to allow us to secure this additional pay load for our own account. My impression from Mr. Branch's statement was that the parcel post inclusion in our 800 pounds of mail from the U.S. is still a long time off.

(Sgd) H. R. HARRIS

[fol. 2792]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 177

Confidential Memorandum re:

AIRMAIL SERVICE U.S.A. TO BUENOS AIRES VIA WEST COAST OF SOUTH AMERICA

PAN AMERICAN-GRACE AIRWAYS:

Increase in Traffic and Airmail Revenue:

The chairman of the Imperial Airways, when commenting on the increase in traffic and airmail revenue, at a meeting of shareholders held November 10, 1936, said:

> "The majority of that increase was due to the rapid growth in Empire airmail which had risen 78% in the year, due in part to the doubling of the frequency of service and in part to the substantial reduction in airmail rates by the General Post Office."

I quote this interesting statement, coming from a high authority in aviation development, because it has a direct bearing on the problems with which the U.S. airmail line to Buenos Aires via the West Coast is confronted.

The operating frequency over this service is no longer sufficient nor are the airmail rates low enough to attract the amount of air mail which would result from a more moderate rate.

There are at present only two airmail services per week to Buenos Aires via the West Coast, one on Monday and the

other on Friday from the U.S.A. The interval between these two services is sufficiently great, as to make it still necessary to resort to a great deal of cabling on matters that could in many instances be treated by airmail, were there another connection between Monday and Friday, or say Wednesday, and if the schedule recently improved from 7 days to 4½ days (U.S.A. to B.A.) could be further improved to 3½ days, which would be possible soon after a permanent 1-day schedule from the U.S.A. to Panama is established, such improvement in time, coupled with increased frequency and a reasonable downward revision in airmail rates would, we feel satisfied, have a very salutary effect on the quantity of airmail carried, as is evidenced by the experience of the Imperial Airways.

Geographically, Buenos Aires is over 1,200 miles nearer to the U.S.A. via the West Coast than via the East—or 1,866 miles nearer from Miami, via the islands and via Bolivia. This feature, which cannot be changed, together with better than average flying conditions prevailing almost throughout the year, lends itself admirable for the establishment of an airmail service from the U.S.A. to B.A. via the West Coast that will in time not only be equal to the 72 hour service from Europe to B.A. but will actually be shorter, as with cooperation and a certain capital expenditure to provide facilities for night flying between Panama and Lima there is no reason why the U.S. airmail connection to B.A. should be more than 2 days and 5½ hours.

The West Coast airmail service has now been in existence for some 7½ years and while considerable progress has been made, we believe that the time has arrived to duplicate this progress.

The service via the West Coast, however, is confronted with other problems, which must be met promptly if the future of this service is not to be exposed to a serious menace resulting from territorial invasion by foreign coin- [fol. 2793] panies. The heavily subsidized European lines, particularly the Germans, who already have extended their airmail and passenger services, to Santiago (Chile) and are already running a line from Sao Paulo to Cochabamba (Bolivia), have their eye on Bolivia and up the West Coast of South America.

Simultaneously the Chilean National Line (LAN), the Bolivian National Line (LAB) and the Peruvian Line (Faucett) have already consummated an agreement under which they plan to preempt Bolivia, joining their respective facilities to establish what for the present might be called a "local international airmail service."

The menace resulting from this combination must have a prompt answer if the American airmail line is to be developed as it should be so as to keep its premier position equalled by none as regards frequency, time and efficiency.

The seriousness of this situation is accentuated by the fact that the Bolivian Government, which is very jealous of its neighboring republics on the West Coast, all of whom enjoy a twice-weekly U.S. airmail service, is determined to have a similar *international* service. We have received a number of communications during the last few weeks, all of which read about like this:

"The situation in Bolivia is extremely delicate."

"The Germans are pushing vigorously their plans for penetration in South America."

"The President of Bolivia is extremely anxious to have an international airmail service run through his country to Buenos Aires."

"If we do not fall in with his views, we may find him offering the German Company attractive terms (operating rights) to run the European service from B. A. through Bolivia to Peru and Ecuador."

These remarks represent excerpts from a letter received in September from the General Manager of Panagra, who is at present in South America, but a more recent letter dated November 9, from W. R. Grace & Company's General Manager in Bolivia, indicates that the Bolivian Government is determined to get an international airmail service, and in fact the Bolivian Government has appointed a special commission to study the whole question and to report to the President.

COLOMBIA:

The President of Colombia has, on November 16th, sent us a message inquiring as to the feasibility of changing the present route of F.A.M. 9 in western Colombia so that it would touch at Cali and some other point or points in western Colombia instead of merely skirting the coast and touching Buenaventura and Tumaco as at present. From the point of view of Pan American Grace Airways and also the United States Post Office, this is a very interesting possibility, since Buenaventura and Tumaco are merely transit points for more important interior centers and have no connection with the interior by air, whereas a stop at Cali would directly tap an important source of mail and passenger movement.

Subject to more complete surveys, it would appear that the logical route to follow in order to touch at Cali would be an almost direct route from Cristobal to Cali with a [fol. 2794] probable refueling stop at Bahía Sólano. From Cali the route would proceed south along the Cauca and Patia river valleys, swerving slightly to the west in order to avoid the very high country in southern Colombia and northern Ecuador, and then proceed south over relatively low country in Ecuador between the coast and the high mountains. Stops would probably be made at Popayán or some point in the province of Xarica, or both. The proposed route between Cristobal and Guayaquil is shown on the attached map.

To do what President López apparently desires, would, according to a preliminary calculation, add only some 85 to 90 miles to the water route now followed, but once the overland route can be followed all the way to Guayaquil instead of skirting the Coast from Tumaco south, the mileage would again be about the same as now.

Therefore, to meet all these problems, viz.:

1. Increased frequency
2. Reduced time
3. Preemption of Bolivia

4. Serving of very populated district in western Colombia.

5. To definitely and effectively establish a 1-day service from the U.S.A. to Panama.

thereby protecting generally the position of airmail routes FAM 5 and FAM 9 of Pan American Airways and Pan American Grace Airways, we suggest that the United States Post Office give serious consideration to the desirability of increasing the through airmail service by FAM routes 5 and 9 to a frequency of 3 times per week.

It is suggested that this third service between Miami and Cristobal be operated by a shorter and more direct route than at present this route to pass through Havana, Grand Cayman Island and Old Providence Island. Preliminary studies indicate that these islands are suitably spaced and offer favorable conditions for use as refueling stops. The total distance between Miami and Cristobal by this route is 1,178 miles and it would be easily possible for this distance to be covered in one day.

For reasons above indicated, it is further suggested that this third service run from Panama to Cali via Bahía Solano and then to Popayan, Tumaco, Guayaquil, etc.

In order to meet the Bolivian situation it is proposed to run this third trip from Arequipa direct to La Paz, then tap the very important tin mining centers (Patino and others) by continuing the route to Oruro and Uyuni, then towards the important Argentine cities—Salta, Tucuman, Córdoba, through to Buenos Aires.

We further submit for your consideration the deviation of the existing two services from their present route between Mendoza and Buenos Aires to take in the important Argentine city of Córdoba. This deviation which we consider so essential would add only about 80 miles per trip to the existing service.

A schedule and maps are attached hereto, showing the proposed operation of these services on the basis of 3½ days elapsed time between the United States and Buenos Aires.

[fol. 2795]

PROPOSED F.A.M. 9 SCHEDULE SHOWING ONE DAY SERVICE TO CRISTOBAL, DEVIATION VIA CALI (COLOMBIA) AND CORDOBA (ARGENTINE), AND THIRD SERVICE VIA BOLIVIA

2 Services weekly	Third Service		Third Service	2 Services weekly
FIRST DAY			**FOURTH DAY**	
7:00 AM	7:00 AM	Lv. Miami,	Ar. 4:27 PM	4:27 PM
9:13 AM	9:13 AM	Lv. Havana	Lv. 2:34 PM	2:34 PM
11:48 AM	11:48 AM	Lv. Grand Dayman	Lv. 12:03 PM	12:03 PM
3:17 PM	3:17 PM	Lv. Old Providence	Lv. 8:37 AM	8:37 AM
5:34 PM	5:34 PM	Ar. Cristobal	Lv. 6:00 AM	6:00 AM
SECOND DAY			**THIRD DAY**	
5:00 AM	5:00 AM	Lv. Cristobal	Ar. 8:20 PM	8:20 PM
7:10 AM	7:10 AM	Lv. Bahia Solano	Lv. 5:50 PM	5:50 PM
8:50 AM	8:50 AM	Lv. Cali	Lv. 4:50 PM	4:50 PM
10:45 AM	10:45 AM	Lv. Tumaco	Lv. 2:58 PM	2:58 PM
1:00 PM	1:00 PM	Lv. Guayaquil	Lv. 12:35 PM	12:35 PM
2:30 PM	2:30 PM	Lv. Talara	Lv. 10:53 AM	10:53 AM
3:58 PM	3:58 PM	Lv. Chiclayo	Lv. 9:10 AM	9:10 AM
4:53 PM	4:53 PM	Lv. Trujillo	Lv. 8:10 AM	8:10 AM
6:58 PM	6:58 PM	Ar. Lima	Lv. 6:00 AM	6:00 AM
THIRD DAY			**SECOND DAY**	
6:00 AM	5:00 AM	Lv. Lima	Ar. 4:21 PM	5:59 PM
9:13 AM	8:13 AM	Lv. Arequipa	Lv. 1:18 PM	2:45 PM
10:48		Lv. Arica	Lv.	1:15 PM
1:23 PM		Lv. Antofagasta	Lv.	10:30 AM
3:23 PM		Ar. Santiago	Lv.	6:00 AM
	11:09 AM	Lv. La Paz	Lv. 10:40 AM	
	12:10 PM	Lv. Oruro	Lv. 9:30 AM	
	1:35 PM	Lv. Uyuni	Lv. 8:20 AM	
	3:50 PM	Ar. Salta	Lv. 6:00 AM	
FOURTH DAY			**FIRST DAY**	
	6:00 AM	Lv. Salta	Ar. 3:17 PM	
	7:17 AM	Lv. Tucuman	Lv. 2:10 PM	
7:30 AM		Lv. Santiago	Ar.	2:40 PM
9:10 AM		Lv. Mendoza	Lv.	1:25 PM
11:05 AM	10:26 AM	Lv. Cordoba	Lv. 11:20 AM	11:10 AM
1:35 PM	12:56 PM	Ar. Buenos Aires	Lv. 8:15 AM	8:15 AM

[fol. 2796]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 178

EXTENSION OF F.A.M. 9 THROUGH BOLIVIA TO THE ARGENTINE

The activities of the European subsidized airlines, particularly the German line, which has been extending its airmail and passenger services into Chile from Argentine and into Bolivia from Brazil with the obvious intention of pushing them further up the West Coast, make it essential that immediate steps be taken not only to protect the competitive position of Panagra but also to increase the efficiency of the United States airmail service as an aid to American trade and interests in these countries and in the Argentine.

Obviously the most practical step would be to increase to three times a week the frequency of the United States airmail service from the United States to Buenos Aires via Cristobal and the West Coast of South America (F.A.M. routes 5 and 9) and to operate the Miami/Cristobal section of these services by a more direct route which could be covered in one day, as a result of which it would be possible to shorten the F.A.M. schedule by one day and carry mail and passengers from the United States to Buenos Aires in $3\frac{1}{2}$ days with increased frequency, thus maintaining the supremacy in speed and frequency which the U. S. airmail services have hitherto held.

If authority to increase the frequency on this route cannot be obtained immediately, for budgetary or other reasons, the following is proposed as an alternative intermediate step which is essential to protect Panagra's position on the West Coast and to increase its influence and efficiency as a carrier of United States mail in Bolivia and Argentine:

I. Establish immediately a 1-day service from the United States to Cristobal, which would thus make possible a $3\frac{1}{2}$ day service from the United States to Buenos Aires.

II. Operate the existing twice-weekly service as at present but deviating the route between Mendoza and Buenos Aires to include the important Argentine city of Cordoba.

III. Operate an additional United States mail service from Arequipa, Peru, to Cordoba via La Paz, the capital of Bolivia; Oruro and Uyuni, important Bolivian tin mining centers; and the Argentine cities of Salta and Tucuman. This service would connect with the existing service at Arequipa and Cordova.

The attached schedule the shows proposed operation of these services after all of the above improvements to the existing services shall have been placed in effect. Pending the establishment of one-day service from the United States to Cristobal, a provisional schedule between Arequipa and Cordoba, tying in with the existing F.A.M. 9 schedules, would be operated.

[fol. 2797]

PROPOSED ADDITIONAL U.S. MAIL SERVICE ON F. A. M. 9 TO BOLIVIA AND ARGENTINA

BASIS: PROPOSED 2½ DAY SCHEDULE CRISTOBAL/BUENOS AIRES

SUN.	WED.	SAT.	TUES.
5:00	5:00 lv. Cristobal	ar. 8:08	8:08
8:49	8:49 lv. Buenaventura	lv. 4:47	4:47
10:34	10:34 lv. Tumaco	lv. 2:58	2:58
1:00	1:00 lv. Guayaquil	lv. 12:35	12:35
2:30	2:30 lv. Talara	lv. 10:53	10:53
3:58	3:58 lv. Chiclayo	lv. 9:10	9:10
4:53	4:53 lv. Trujillo	lv. 8:10	8:10
6:58	6:58 ar. Lima	lv. 6:00	6:00

MON.	MON.	THURS.		FRI.	FRI.	MON.
5:00		6:00	lv. Lima	ar. 5:59		5:59
8:03		9:03	ar. Arequipa	lv. 2:45		2:45
8:13	8:18	9:13	lv. Arequipa	ar. 2:30	1:08	2:30
9:48		10:48	lv. Arica	lv. 1:15		1:15
	11:09		lv. La Paz	lv.	10:23	
	12:10		lv. Oruro	lv.	9:30	
10:23		11:23	lv. Antofagasta	lv. 10:30		10:30
	1:35		lv. Uyuni	lv.	8:20	
	3:50		ar. Salta	lv.	6:00	
4:23		5:23	ar. Santiago	lv. 6:00		6:00

TUES.		FRI.		THURS.	THURS.	SUN.
	6:00		lv. Salta	ar.	3:17	
7:30		7:30	lv. Santiago	ar. 2:40		2:40
	7:17		lv. Tucuman	lv.	2:10	
9:10		9:10	lv. Mendoza	lv. 1:25		1:25

TUES.	MON.	FRI.		THURS.	THURS.	SUN.
	10:16		ar. Cordoba	lv.	11:20	
11:05		11:05	lv. Cordoba	ar. 11:00		11:00
1:35		1:35	ar. Buenos Aires	lv. 8:15		8:15

[fol. 2798]

PRESENT SERVICE UNITED STATES (MIAMI) TO BUENOS AIRES, IN 6 DAYS VIA EAST COAST OF SOUTH AMERICA (F.A.M. 10)

Miles	7,412
Miles per year	739,679
COST TO U.S. POST OFFICE AT $1.80 PWR MILE	$1,331,422
COST TO U.S. POST OFFICE AT $2.00 PER MILE	$1,479,358

[fol. 2739]

PROPOSED EXTENSION OF F. A. M. 9 THROUGH CALI (COLOMBIA) AND BOLIVIA TO THE ARGENTINE

PROPOSED SERVICES:

Route	Miles	Miles Per Year	Cost	Total
One Trip Cristobal/Montevideo via present route but deviating through Cali (Colombia) and Cordoba (Argentina)	4,536.1	471,754	$1.50	$ 707,632
One Trip Cristobal Buenos Aires via present route but with above deviations	4,403.6	457,974	1.50	686,956
*One Trip Arequipa to Cordoba via La Paz Oruro, Uyuni, Salta, and Tucuman	1,385.0	144,040	1.50	216,060
TOTAL COST TO U. S. POST OFFICE				$1,610,648

PRESENT SERVICES:

Route				
One Trip Cristobal/Montevideo via Santiago and Buenos Aires	4,461.6	464,006	$1.50	$ 696,009
One Trip Cristobal/Buenos Aires via Santiago	4,329.0	450,216	1.50	675,324
TOTAL COST TO U. S. POST OFFICE				$1,371,333.
ADDITIONAL COST OF PROPOSED ADDITIONAL SERVICE				$ 239,315

* This service would continue through to Buenos Aires by making exact connection at Cordoba with one of the two Cristobal Buenos Aires schedules.

[fol. 2800]

UNITED STATES TO BUENOS AIRES

Annual cost of suggested third service *in 3½ days* U. S. A. (Miami) to Buenos Aires via island route*, Cristobal, West Coast of South America, and Bolivia	$ 855,134.0
Annual cost of present *6-day* service U. S. A. (Miami) to Buenos Aires via East Coast of South America	$1,331,422.
Annual saving to U. S. Government, based on East Coast cost of $1.80 per mile (one round trip per week)	$ 476,288.
Annual saving to U. S. Government, based on East Coast cost of $2.00 per mile (one round trip per week)	$ 624,224.

* Or by direct flights Miami-Kingston and Kingston Cristobal, which would increase the distance only 30 miles and the annual cost only $5,710.

[fol. 2801]

SUGGESTED THIRD SERVICE UNITED STATES (MIAMI) TO BUENOS AIRES IN 3½ DAYS VIA CRISTOBAL AND WEST COAST OF SOUTH AMERICA (F.A.M. 9)

	Miles	Miles Per year	Per Mile	Cost
Miami/Cristobal via Havana, Grand Cayman Island and Old Providence Island	1,178	122,512	$1.80*	$220,526
Cristobal/Buenos Aires via Cali, Popayan, Guayaquil, Lima, Arequipa, La Paz, Oruro, Uyuni, Salta, Tucuman and Cordoba	4,068	423,072	1.50	634,608
COST TO U. S. POST OFFICE		545,584 Miles		$855,134

* This mileage rate to apply until twin-engine aircraft are replaced by four-engine aircraft.

[fol. 2802]

PRESENT SERVICE UNITED STATES (MIAMI) TO BUENOS AIRES IN 6 DAYS VIA EAST COAST OF SOUTH AMERICA (F.A.M. 10)

Miles	7,112
Miles per year	739,679
COST TO U. S. POST OFFICE AT $1.80 PER MILE	$1,331,422
COST TO U. S. POST OFFICE AT $2.00 PER MILE	$1,479,358

[fol. 2803]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 179

Copy for Mr. A. Garni

Hotel Tivoli
Ancon, C. Z.
December 7, 1936

Mr. J. D. Mac Gregor,
BUENOS AIRES.

Mr. Branch expressed a desire on December 4th to observe the physical transfer of airmail from Panagra to Panair at Cristobal. Consequently he and Mr. Michaelson, Balluder and I took our plane from Balboa on regular schedule December 5th to Cristobal. At Cristobal we were joined by Mr. Campbell and Mr. Taylor, the Cristobal Postmaster. Mr. Branch apparently had no criticism of the physical exchange but asked a number of questions about the safety of the mail for Central America which is stored overnight in the vault in the Panair passenger station at France field.

We remained in Cristobal overnight in order to take advantage of a trip which I had arranged with Major Taylor, acting Commanding Officer of France Field, to take Mr. Branch and Mr. Michaelson on a fishing trip December 6th. This fishing trip carried, in addition to Major Taylor, Captain N. B. Harding, Mr. Branch, Mr. Michaelson, Mr. Flexer, American Chargé d'affairs in Panama, Mr. Balluder, Campbell, and me, and proved to be most satisfactory to all on the trip even though *no fish were caught*. The United States Army Air Corps crash boat was used. The trip was made from France Field through the breakwater to the mouth of the Chagres river, where we disembarked and visited Fort San Lorenzo on foot. This is a most interesting ruin of the Spanish time, captured and sacked by Morgan's men in 1671.

The fishing trip was resumed up the Chagres as far as the launch could go, when we disembarked and walked to the Gatun locks, from where we returned to France Field by automobile and from France Field to Albrook Field in a special Panair Ford through the courtesy of Mr. Balluder.

During the launch trip Mr. Branch took the opportunity to speak to Mr. Balluder, Mr. Campbell, and me about the negotiations he had been having with Pan American Airways in regard to the additional services on the East coast of South America. He stated that a final agreement had been reached in writing whereby Pan American Airways would receive payment for a second service from Miami to Pará until such time as Mr. Branch could secure additional funds with which to pay for a second trip on the East coast all the way down. This payment for the second trip was also predicated on the establishment by Pan American Airways of a *one day service from* Miami to the Canal Zone, and Mr. Branch made this the key note of his conversation with us, also that Panair would operate a second trip through Brazil on a cut-off, thus eliminating what Mr. Branch called "the Brazilian elbow." Mr. Branch led us to believe in his conversation that if these two promises by Panair—that is, Miami/Canal in one day and operation of the Brazilian cut-off—were not forthcoming in six months after the payment on the East coast second [fol. 2804] trip South of Pará was commenced he would consider that Pan American Airways had violated their agreement, with presumably the consequent cancelation of the mail pay on the second trip. Mr. Branch intimated that he felt that so far Pan American Airways had not shown entire good faith in connection with their operation between Miami and the Canal. As far as he could see they were not taking any steps toward the implantation of a direct service Miami to the Canal in one day. Mr. Branch stated he had told Mr. Trippe that improvement on the East coast—by which I presume he meant airmail payment for a second trip—was only justified if the West coast service to Buenos Aires was speeded up by means of a one day connection between Miami and the Canal, and that this matter was in his mind of vital importance.

You will note that this above conversation confirms what Mr. Branch told Mr. Garni and me in our postal conference as reported in my letter to you of November 28th (JDM 2123).

/s/ H. R. H.

HRH:KW

H. R. HARRIS

cc—NY
Mr. Garni

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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291—Consolidated exhibit No. 19 in CAB docket No. 3500, statement listing dates and subject matter of negotiations pertaining to the agreements between National, Pan American, Panagra and Grace from the summer of 1948 to May 11, 1949	3079	3161
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299—Aviation Corporation of the Americas, excerpts of minutes of meetings of the executive committee and of the board of directors from February 27, 1930, to May 6, 1931	3107	3192
300—Pan American Exhibit No. P-37 in CAB docket No. 779, excerpts of minutes from Pan American Executive Committee and Pan American Board of Directors from March 16, 1937, to August 31, 1937	3112	3200

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307—CAB order No. E-13631 dated March 19, 1959	3150	3235
308—Letter to J. T. Trippe from D. W. Rentzel, Chairman, Civil Aeronautics Board, dated May 4, 1951	3154	3240
309—Letter to J. T. Trippe from Donald W. Nyrop, Chairman, Civil Aeronautics Board, dated November 9, 1951	3158	3246
310—Letter to J. T. Trippe from Oswald Ryan, Acting Chairman, Civil Aeronautics Board, dated April 30, 1952	3163	3251
311—Letter to J. T. Trippe from Donald Nyrop, Chairman, Civil Aeronautics Board, undated	3171	3257
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325—CAB order serial No. E-6587 dated July 9, 1952	3257	3337
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330—CAB order serial No. E-9130 dated April 25, 1955	3268	3349

[fol. 2805]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 180

[Handwritten notation—Argentina Airports Moron]

PAN AMERICAN AIRWAYS SYSTEM

MEMORANDUM

DATE June 3rd, 1937.

TO Vice-President Young

DEPT. Executive

LOCATION New York

FROM Regional Director

DEPT. Pan American Airways Inc.

LOCATION Rio de Janeiro

SUBJECT BUENOS AIRES—RADIO CONTROL FOR NEW INTERNATIONAL OVERLAND OPERATION.

In connection with the handling and protection of our contemplated overland operation on the new international route Rio-Asunción-Buenos Aires, it will undoubtedly be advisable for us to make some arrangement with Pan American-Grace Airways for the use of their facilities at Morón airport at Buenos Aires, at least pending the final resolution of the Buenos Aires municipal airport situation. Inasmuch as such an arrangement would undoubtedly be covered by an agreement between the respective managements of Pan American-Grace Airways and our own, in New York, I shall defer any action in this direction pending receipt of your instructions.

Insofar as the use of Morón airport is concerned, we have little or no choice for the time being, unless we were to consider extensive construction and airport improvement work at another site which could at best only be temporary. I certainly cannot recommend that we make any airport installation whatever at Buenos Aires, beyond the absolute

minimum necessities, until such time as the local airport situation may show signs of being definitely resolved and a specific program under way. In view of the foregoing and considering the desirability of providing maximum flight control, radio directional, communications and ground, as well as efficient passenger, mail and cargo dispatch facilities, on a temporary basis and with the minimum of outlay, an arrangement for the use of Pan Grace's facilities is indicated.

/s/ M. J. Rice
M. J. Rice.

MJR:OF.
cc. President—N. York.
Ch. Engineer—N. Y.
Ch.Comms.Eng.—N. Y.
Gen.Traffic Mgr. NY.
Manager—East. Mia:
Operations Mgr.-Rio.
Traffic Manager-Rio.
Comms.Superint.-Rio.

[fol. 2806]

Pan American World Airways, Inc. Exhibit 181

(Letterhead of Pan American Airways, Inc.,
New York City, N. Y.)

ESCRIPTORIO CENTRAL NO BRASIL
RIO DE JANEIRO

June 16th, 1937.

Mr. Evan E. Young, Vice-President,
Pan American Airways Inc.,
Chrysler Building,
NEW YORK CITY.

CONFIDENTIAL.

Dear Mr. Young,

For your information I am quoting herewith an excerpt from a copy of letter signed by Mr. J. E. Muhlfeld, General Traffic Manager of Pan America-Grace Airways, ad-

dressed to Grace & Co., Santiago, which was recently received by our Buenos Aires office:

"*Re. Traffic Correspondence, Buenos Aires.*

After discussing the subject of traffic correspondence in the Argentine with Mr. Vidal and Mr. Harris, it has been decided that in the future Santiago Office will refrain from corresponding directly with Mendoza, Cordoba, Salta and Tucuman and will write to Buenos Aires directly on all traffic matters pertaining to the Argentine.

Buenos Aires Office will in turn supervise the traffic work throughout the Argentine, reporting directly to you".

This specific confirmation of the fact that the representation activities of our Argentine Company, in Panagra's behalf, are not solely confined to Buenos Aires and immediate vicinity but that they do, in fact, extend to all of Argentina, may be of some assistance to you in connection with the current discussions which I understand are taking place with Grace & Co. in New York. Irrespective of the fact that Panagra assumes two thirds of the operating costs of the Argentine Company there is hardly any question but that they are getting "value received" and that it would cost them greatly in excess of their present outlay were they to set up their own organization to handle their business exclusively.

With kind regards.

Sincerely,

s. M. J. Rice
M. J. Rice,
Regional Director.

MJR:OF.
cc. President N.York.
Gen.Trf.Mgr. N.Y.

[fol. 2807]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 182

(Letterhead of Pan American Airways, Inc.,
New York City, N. Y.)

ESCRIPTORIO CENTRAL NO BRASIL
RIO DE JANEIRO

June 17th, 1937.

Mr. Evan E. Young, Vice-President,
Pan American Airways Inc.,
Chrysler Building,
NEW YORK CITY.

CONFIDENTIAL.

Dear Mr. Young,

Supplementing my confidential letter to you of May 22nd, I now wish to take this opportunity to go into more ample detail as regards the detrimental effect which, in my opinion, the formation of a new Argentine Company by Pan-Grace would have, particularly in consideration of the general civil aviation situation in Argentina, as well as the competitive and commercial aspects.

As I mentioned briefly in my previous letter, from the political viewpoint the vital interests of both Pan-Grace and our own company are greatly benefited due to our ability to present a strong, integrally unified and coordinated front on all major issues through the intermediary of a single local company which derives greater power and commands infintely more respect from Argentinian officialdom due to the fact that this single representative Company is the spokesman for a powerful combination of far flung interest which take in *all* of the countries of South America rather than being confined to any one sector. While without careful analysis this premise may seem dogmatic, I can assure you that to either Mr. Harris or myself or to any of our local people who are handling the day today contacts in Argentina, it is a point of major importance. The various government departments in Argentina, for-

most among them of course in our instance being the Department of Civil Aeronautics, are constantly beleaguering us with the usual variety of "oficios", requests for detailed reports on certain phases of our operations, questionnaires, etc. The present ability of our Argentine Company to handle all such matters in a very general manner and to avoid delving into a wealth of what might often be embarrassing detail is frequently dependant upon sole joint representation. The moment that we have separate companies both Pan-Grace and ourselves must inevitably find ourselves confronted with a wide open situation whereby we are both vulnerable to being played one against the other, regardless of whatever cooperative efforts we may attempt, by the Government.

A very good case in point is the situation with which Pan-Grace and ourselves found ourselves confronted two years ago, when the income tax authorities charged both companies with grave irregularities in connection with our avowed failure to properly report our financial picture in Argentina since the initial period of our operations i.e. since the beginning of Pan-Grace's operation to Argentina [fol. 2808] as well as in our cases from the initial period of our East Coast operation, and *not* since the formation of the local company and its appointment as joint representative for both the parent corporations. I need not go into this involved situation because it is a matter of record and well known to both Messrs. Vidal and Johnston upon whom the principal headaches devolved at the time. The fact remains however, that by virtue of the fact that our two companies were able to arrange a series of conferences between our local company and a single official of the income tax department and thus bring about a harmonious settlement which satisfactorily solved the *specific* difficulties of each of the two companies, made it possible for Pan-Grace and ourselves to clean up what might have been a nasty situation accompanied by sizeable fines and serious embarrassment. It will be recalled that, at the time, the income tax authorities endeavored to split their treatment of Pan-Grace's situation from ours and that we were both equally anxious to procure joint and simultaneous treat

ment of the situation as a whole, through the Argentine Company in the capacity of general representative, due to the quite obvious advantage to be derived on our parts.

Another typical instance is the recent question of the new Air Transport regulations which the Department of Civil Aeronautics attempted to put through as a forerunner of their proposed bid competition for the contemplated Argentine interior lines set-up. These regulations were so patently restrictive and overwhelmingly indicative of practically complete Government control, that, had the Department of Civil Aeronautics been successful in "railroading" them through, it would have been practically ruinous for either Pan-Grace or ourselves to attempt to continue our operations in the Argentine. Naturally it was of utmost importance to our collateral interests to do everything possible to procure amendment or withdrawal of the said regulations but, on the other hand, it is self evident that neither Pan-Grace or ourselves could have risked jeopardizing our local interests had we each been represented by a separate local company. As it actually worked out, we were able, practically single handed (for the opposition manifested by Condor and Air France was indeed weak, due to the very fact that each of them feared to say very much due to the risk of incurring extreme displeasure and consequent material prejudice on the part of local authorities) to bring about the withdrawal of these regulations—at least for the time being. In such situations our Argentine Company derives major backing from the fact that it represents every conceivable type of aeronautical operation—land plane as well as large flying-boat—operating in every country in South and Central America with a strong background of experience with the legislation and regulations of the various countries. You will notice that I specifically mention South America rather than to extend this scope to the more distant countries which the System serves. This is for the reason that the Argentine political situation accords major importance to their own "sphere of interest" referring more particularly to the adjacent countries of Brazil, Chile, Paraguay and Uruguay.

The recent case of the La Cumbre radio station wherein Pan-Grace refused to accept the services of the official Government radio station and instead constructed their station on the Chilean side of the Andes, is still another outstanding example. The Government and especially the Depart- [fol. 2809] ment of Civil Aeronautics has been extremely piqued by this action and there is little doubt but that had they been able to lay their hands on a single independent local company that represented Pan-Grace, their retaliation would have been severe. As it is, the fact remains that the Department of Civil Aeronautics is attempting to retaliate in some measure by withholding our operating rights for the Asunción international extension and we are thus suffering to some degree as a direct result of the La Cumbre incident. The fact remains that, in such cases in general, Pan-Grace and ourselves are both able to bear the lesser imprint of such limited retaliative measures than would be the case if either of us had to bear the full brunt through individual local companies.

The duplication of representation efforts in the case of two separate and independant local companies would be tremendous. As you know, Argentina is long on involved routine and it is indeed a boon to the operating organizations of Pan-Grace and ourselves to be able to handle this routine through a joint local company with the standard preface "The Cia. de Aviación Pan American Argentina acting in behalf of Pan American Grace Airways Inc. and Pan American Airways Inc. . . . . " rather than through the medium of separate treatment on the part of each company. In this connection, also to be considered is the fact that the rather extensive expense items incidental to stamp taxes, dispatch fees, etc., will be exactly doubled if separate handling is necessary as would be the case with separate local companies.

I hardly need go into the financial side of this picture for either Comptroller Johnston or Comptroller Vidal can readily provide some actual figures to show that it would cost Pan-Grace at least double the present amount. I must admit that in our own case, if we did not have the Pan Grace representation to consider in Argentina, we could

cut down the expenses of our Buenos Aires Office very considerably for, quite visibly, the major portion of our expense there is necessitated by the high frequency of Pan-Grace services and the extensive amount of attention which same require incidental to solicitation and physical handling facilities. The financial advantage which we might derive however from separate handling of our interests by independent local companies is greatly overwhelmed by and secondary to the more important political and competitive situations.

I need not mention that with separate companies neither company can keep up as elaborate and effective an organization to cope with the labyrinth of red tape and formality surrounding clearance, licensing of pilots, mechanics, etc., inspection of planes upon arrival and departure by Civil Aeronautics Department representatives, etc.

Considering the fact that both Pan-Grace and ourselves are today confronted with a rapidly augmenting pressure of foreign competition, we would simply be playing into the hands of Condor and Air France were we to weaken ourselves in Argentina by setting up separate representation. Naturally in both theory and practice the separate representative companies would cooperate very closely but it would be indeed naive not to appreciate that, even with the closest possible coordination, there is bound to be a certain loss of efficiency insofar as joint action is concerned. Our individual organizations naturally have different ideas with [fol. 2810] respect to many phases of our interests and whereas with a single representative these differences are to a great extent absorbed, it would be only natural that a noticeable loss of traction would exist while two separate representatives on the spot, tried to agree among themselves on what to do—while at the same time our competitors would be gaining ground. I am not being supercilious when I suggest that due consideration be given to the fact that the Germans and the French are rarely able to agree upon anything except joint action when faced with a common enemy. Unfortunately our competition in Argentina is principally German and French.

At the present time we require the full strength and unity of a joint Argentine company as we never have before in the past. It is the fond dream, of long standing, of the present Director of Civil Aeronautics, to see a 100% Argentine air transport concern operate all of the interior services within Argentina and, in addition, extend to all of the adjacent countries. In accordance with his theory the rights of all foreign operators would then be cancelled and they would be forced to transfer their passengers, mail and cargo to the Argentine national transport system at the nearest point to the Argentine border. This is of course, at least for the present, a Utopian conception but one which can create many obstacles in the path of our collective interests if not properly handled. It is my impression that any change in our present organization in Argentina could only serve to diffuse the strength of our efforts.

Kind personal regards,

Sincerely,

s/ M. J. Rice
M. J. Rice,
Regional Director.

MJR:OF
cc. President - NY

[fol. 2811]

Pan American World Airways, Inc. Exhibit 183 —

Panama Agencies Co.
Cristobal, C. Z.

ORIGINAL AIR MAIL LETTER

Copy Follows by Steamer

CRISTOBAL
August 7, 1937

Mr. J. D. MacGregor,
NEW YORK

Following survey of our position with regard to the promises made to the U. S. Post Office Department about getting

up our schedules, and taking into consideration the fact that we now have only one S-43, the only way we can meet our U. S. Post Office commitments to operate in 2½ days between Buenos Aires and the Canal Zone, in both directions, will be to change the operating days. One very simple method of accomplishing this would be to follow out my original recommendation that we operate Sunday and Wednesday southbound out of the Canal and arrive in the Canal on Monday and Thursday northbound. understand that Panair didn't like this, probably on account of their own equipment problem; however, under their present method of operating they are required to have two S-42's on the Cristobal/Miami operation, and this plan of mine would not require more than that number. Please take this up with Panair officially in order that we can be in a position to resume the 2½ day operation, in both directions, over our line in the near future, in order to avoid difficulties with the U. S. Post Office. In my opinion, Panair have to accept this plan anyway, because, under our present arrangement with only one S-43, they will be unable to operate any further north of the Canal than Barranquilla on Mondays and Thursdays, and, presumably, they will not do this, but will actually operate Cristobal/Miami on Tuesdays and Fridays.

We must, of course, not lose sight of the basic situation with which we are now faced; that is, our whole F.A.M. operation is completely dependent upon the ability of our one S-43 to carry on the whole load of our operation between Cristobal and Guayaquil. As you know, Panair have not had any S-43's in the Canal Zone since July 14th, and do not plan to have this type of plane in the Canal in the future. Certain possibilities exist if our S-43 breaks down, and I will enumerate them here:

[fol. 2812] In the first place, presumably we can charter Panair's S-42 to operate from Cristobal to Guayaquil. This immediately means we have to give up the Cali operation, reverting to Buenaventura and water landings in Guayaquil. Presumably the Bahía Solano flag stop would have to be retained, although that is not particularly important.

Another possibility would be to charter or purchase an S-43 from Panair. Presumably this is impractical on account of their shortage of equipment. You undoubtedly have heard that yesterday Panair's S-43 cracked up in La Guayra. Information here is very sketchy, but it would appear that it was rather badly damaged, with some injury to at least the flight crew. The cause of this accident is unknown here. If you get any information on it I would appreciate hearing from you.

A third possibility would be the purchase by Panagra from the factory of an additional S-43.

After talking with Campbell about the possibility of securing prompt action on the implantation of new landing fields in Colombia, particularly at Tumaco, I am rather pessimistic about any prompt action by the Colombian Government in making landing fields available, or in permitting us to operate land planes through Colombia to the Canal. As I have previously advised, I feel that the idea of working toward land plane operation through Colombia to the Canal is the final goal toward which we should work, but I must confess that the only real and immediate solution of our present problem is for Panagra to purchase an additional S-43 as soon as possible. Mr. Campbell, with whom I have discussed this matter in great detail, concurs in this idea.

/s/ H. R. Harris
H. R. Harris

HRH:AW
cc JK

P.S. It is barely possible that some of the S-43's which are now privately owned, such as Mr. W. K. Vanderbilt's plane, might be available for purchase at a reasonable price and prompt delivery.

[fol. 2813]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 184

THIS AGREEMENT entered into this first day of September 1937 between PAN AMERICAN GRACE AIRWAYS, INC., a corporation of the State of New York, United States of America, hereinafter referred to as "PANAGRA", and COMPANIA DE AVIACION PAN AMERICAN ARGENTINA, S. A., a corporation of the Argentine Republic, hereinafter referred to as "THE AGENT", WITNESSETH AS FOLLOWS:

WHEREAS, PANAGRA, operates an International Air Service for the transportation by air of passengers, mail and express, into, through and out of the Argentine Republic, and

WHEREAS, THE AGENT, has a suitable organization and facilities to represent PANAGRA in the Argentine Republic;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

1. THE AGENT shall have exclusive commercial representation of PANAGRA in Buenos Aires, and at such other points in the territory of the Argentine Republic as PANAGRA may, from time to time, designate, and for this purpose the said agency or commercial representation shall comprise the following purposes:

(a) Such administrative steps and negotiations as it may be necessary or advisable to undertake national, provincial or municipal authorities of the Argentine Republic in order to keep in force ( ) concessions or contracts which Panagra [ ] may have, as well as the obtention of new franchises, privileges or new agreements which [ ] Panagra may execute with such authorities. The principal [ ] THE AGENT shall be to take charge of all necessary negotiations and steps to be undertaken with the Argentine postal authorities, including the collection and of sums owing to PAN-

AGRA by the Argentine Postal [illegible] receipt for postage on correspondence to be transported by air route, or for other reasons.

(b) THE AGENT shall likewise have charge of the obtention of the necessary documents relating to the clearance and reception of the air lines of PANAGRA in Buenos Aires and at such other points in Argentine territory as PANAGRA may designate, in the regular service for air transportation of passengers, merchandise and mail.

[fol. 2814] (c) The contracting by THE AGENT in the Argentine Republic for passengers and freight, for the transportation of passengers or merchandise and freight over the airlines of PANAGRA, issuing for this purpose the respective tickets or transportation vouchers (cartas), including checking of baggage and collecting excess charges, attention to all other details connected with such contracting for transportation as may be arranged for.

THE AGENT shall also be encharged in the Argentine Republic with the attention to and performance of details concerning the execution of contracts for transportation entered into by PANAGRA outside of the Argentine Republic and which result in the receiving and forwarding of passengers and baggage, or merchandise transported by the aircraft of PANAGRA.

THE AGENT shall also pay, for the account of, and bill to, PANAGRA, any commissions to sub-agents in Buenos Aires, and any other designated points in Argentine territory, for transportation over the line or lines of PANAGRA and its affiliated companies sold by such sub-agents in accordance with the terms of contracts which PANAGRA may have with such sub-agents.

(d) THE AGENT shall have the duty to contract for the special chartering of planes of PANAGRA, subject, in each case, to prior authorization being obtained from PANAGRA, and to attend to and enforce the execution

of such special chartering in accordance with regulations.

(e) THE AGENT shall likewise keep watch at the airport of PANAGRA in Buenos Aires, but THE AGENT shall in no way be responsible for, or have charge over, the regular operation of the lines of PANAGRA within the Argentine Republic, nor for the conservation of its fixed or flight material, in which two respects PANAGRA shall retain for itself all of the respective obligations.

II. PANAGRA shall pay THE AGENT for the above indicated services two-thirds of all the necessary normal, or basic, expenses for the maintenance and operation of the offices and personnel of THE AGENT in the Argentine Republic. These normal expenses shall not include any special, or extraordinary, expenses which THE AGENT may incur at the request of, and solely for the benefit of, PANAGRA, or any other company which THE AGENT may similarly represent.

[fol. 2815] Such special expenses shall be billed by THE AGENT directly to the company at whose request, and for whose account, they were incurred.

PANAGRA, in addition to paying, as above stated, two-thirds of the normal expenses incurred by THE AGENT in the maintenance of its organization and company, likewise obligates itself to pay to THE AGENT a sum equal to one percent. (1%) calculated on all cash income received by PANAGRA in the Argentine Republic as a result of: (a) sale of passenger tickets; (b) excess baggage; (c) freight (express) weight or volume charges; and (d) special charters of planes.

III. The settlement of accounts between PANAGRA and THE AGENT shall be made monthly, pursuant to the terms of this contract, and for this purpose THE AGENT will send to PANAGRA at regular intervals the debit notes, supported by appropriate vouchers, covering the repective amounts.

IV. THE AGENT shall have the obligation to promote the development of air traffic over the Lines of PANAGRA and shall carry out the necessary propaganda and publicity with respect to the services rendered by the company which it represents, and provide the utmost facilities for the utilization of the said means of transportation.

V. This agreement shall be retroactive to the first day of January 1936, and shall remain in force until such time as either party may give formal written notification of its intention to terminate this contract. This written notification must be given at least 60 days prior to the date on which the contract is to terminate.

[fol. 2816] VI. For all purposes of this contract, the parties hereto subunit themselves to the jurisdiction of the ordinary courts and tribunals of the City of Buenos Aires and to the laws of the Republic of Argentina.

New York City, N. Y.

PAN AMERICAN GRACE AIRWAYS, INC.

By .....
Vice President

Witnesses for PAN AMERICAN GRACE AIRWAYS, INC:

/s/ O. G. B

/s/ N. G. BLISS

Buenos Aires, Argentina

COMPANIA DE AVIACION PAN AMERICAN ARGENTINA, S. A.

By /s/ E. B

COMPANIA DE AVIACION PAN AMERICAN ARGENTINA S. A.

/s/ .....

[fol. 2817]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 185

roig 5 5pm to ROIG (LAPAZ) October 14th 1937

1, 6: your cable 6

ROIG SAYS: your cable 4 29th to 40th word
i.e. panair have taken definite commitment to make panama southbound one day immediately after rainy season or say early November—

ROIG SAYS: cannot understand in view of your cable 64 3rd to 22nd words
i.e. panair not in a position fly miami cristobal one day via barranquilla as sufficiently early departure from miami not practicable at present and after dark arrival cristobal considered undesirable—

ROIG SAYS: but if final decision think lima should be instructed by pan american grace airways establish at once schedule our cable 24 79th to 100th word
i.e. in order to insure satisfactory arrival hours at over night stops have to overnight southbound cali or buenaventura lima and santiago—

ROIG SAYS: as present irregular schedule disorganizing whole service sentence ends we greatly regret take this definite backward step and consider unreasonable post office continue

us in this position after november if panair do not carry out commitment a referred to

2 only
3 after
4 dispatching
5 our cable 4
6 could I
7 contact
8 juan
9 who
10 denies
11 emphatically
12 correctness
13 28th to 40th words
14 our cable 4

NEW YORK SAYS: they say panair have taken definite commitment to make panama southbound one day immediately after rainy season or say early november

[fol. 2818]

15 sentence ends juan
16 definitely
17 opposed
18 continuance
19 operation
20 via
21 cali
22 with any
23 type
24 plane
25 for the present
26 in which
27 we agree
28 sentence ends vidal
29 will discuss it
30 by cable
31 with
32 panagra

33 west coast
34 management
35 you and
36 macgregor sentence ends
37 regarding
38 land
39 survey
40 juan
41 entirely
42 favors
43 pushing
44 this
45 all possible
46 emphasizing
47 however
48 that
49 inauguration
50 land
51 operation
52 so far
53 distant
54 that he
55 again
56 recommends
57 immediate
58 purchase
59 843
60 it is my
61 understanding
62 that this
63 would
64 enable us to
65 carry out
66 July 19th
67 schedule
68 [. .]

[fol. 2819]

69 whereas
70 at present
71 this is
72 subject to

73 24 hours
74 delay
75 of which
76 juan
77 complaining
78 sentence ends I
79 suggested
80 somebody
81 better
82 explain to
83 postoffice department
84 misunderstanding
85 with reference to
86 one day
87 operation
88 to
89 panama
90 but he
91 thinks
92 that this
93 should be done
94 when we
95 can submit
96 definite
97 schedule
98 both
99 north and
100 southbound
101 and
102 on which
103 vidal
104 is concentrating
105 in collaboration
106 with harris.
107 macgregor sentence ends
108 before submitting
109 itinerary
110 to
111 postoffice department
112 we should
113 decide

114 whether or not
115 we are going to
116 purchase
117 additional
118 S-43
119 as it is
120 my understanding
121 that this
122 necessary
[Vol. 2820]
123 if we are to
124 operate
125 northbound
126 Buenos Aires
127 Cristobal in
128 3 days
129 sentence ends if in
130 4 days
131 we might
132 use
133 commodore
134 as spare
135 which is
136 not altogether
137 satisfactory
138 sentence ends while
139 I appreciate
140 desirability
141 doing
142 something
143 about
144 avoiding
145 sorting
146 delay
147 at the canal
148 fear
149 cannot advance
150 matter
151 further
152 this week

153 but
154 as soon as a
155 definite
156 itinerary
157 agreed to
158 by all
159 either
160 on basis of
161 one or
162 25-43s
163 I will
164 'approach
165 postoffice department.
166 with
167 juan
168 to reach
169 definite understanding
170 meanwhile
171 see no
172 solution
173 but
174 continuing
175 operation
176 on a safe
[fol. 2821]
177 basis over-
178 nighting
179 cali or
180 buenaventura
181 whenever
182 necessary
183 to prevent
184 arrival
185 guayaquil
186 after
187 dark
188 foregoing from garni
189 who in
190 washington

Mr. Garni:

[fol. 2822]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 186

Minutes of Adjourned Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc., held at the office of Pan American Airways, Inc., Chrysler Building, New York, N. Y. on the 27th day of January, 1938, at 12.45 P.M.

PRESENT:

Messrs W F Cogswell
A Garni
H P Morris
R H Patchin
H J Roig
J T Trippe
E E Young

being a quorum of the Board.

Mr J D MacGregor, Vice President and General Manager of the corporation, was also present.

Mr Trippe called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr Cogswell, Secretary of the corporation, recorded the minutes.

Mr Roig called for the vote on his resolutions regarding overland operation in Colombia as set forth in the minutes of the meeting of December 23, 1937. A vote upon such resolutions having been had, the same were declared adopted, Messrs Cogswell, Garni, Patchin and Roig voting in favor of same and Messrs Morris, Trippe and Young not voting.

Messrs. Morris, Trippe and Young desired to have their views appear in the record as follows:

In view of the recommendations of the Vice President in [fol. 2823] Charge of Operations, as submitted to the Board by the Vice President and General Manager, that the ser-

vice now operated on that sector of the present West Coast route between Cristobal, C. Z. and Guayaquil, Ecuador be transferred to operate via Cali, Colombia, and Quito, Ecuador; and in view of the support of this recommendation by Messrs Cogswell, Garni, Patchin and Roig, Messrs. Morris, Trippe and Young did not wish to delay a move which the management has recommended. They, therefore, refrained from voting against the resolutions offered.

They stated that, in their opinion, the continuance of operations via a coastal route, contemplated in the Kellogg-Olaya Treaty between the United States and Colombia, would be to the best interests of Pan American-Grace Airways, Inc.

They pointed out to the meeting that, while they felt the route via Cali and Quito could be established, they are of the opinion that the more direct route between Cristobal and Guayaquil, following the great circle course (or with an intermediate stop at Buenaventura if desired), would:

(a) In the aggregate, prove to be faster, as well as shorter;

(b) Be preferable from a technical operating standpoint;

(c) Permit greater schedule regularity and fewer interruptions on through service between Cristobal and Ecuador, Perú, Chile, Bolivia and the Argentine; and

(d) Over a period of time be more profitable to the company commercially, on account of the greater volume of total traffic that would accrue to it, with especial [fol. 2824] reference to through passenger traffic between the United States and Ecuador, Perú, Chile, Bolivia and the Argentine.

They further pointed out that if the traffic which might be developed between the West Coast city of Cali and Cristobal was an objective in the plan for the interior route, they felt that such traffic might best be developed by means of a separate shuttle service between Cristobal and Cali, thus providing full capacity of equipment as compared with

the limited capacity that would be available by including Cali as a point of call on the more circuitous through service.

Messrs Morris, Trippe and Young also pointed out that although their fellow Directors present have in the past indicated as a matter of policy that they did not view with favor a program contemplating large four-engined equipment operating through to Guayaquil on a charter or other mutually cooperative basis with Pan American Airways on one or more weekly round trips on account of the possibility of prejudicing Pan American-Grace's position as an independent company, they were still of the opinion that such a program was feasible and would be to the best interests of Pan American-Grace Airways as well as to the general public, in view of the greater capacity and efficiency of flight equipment thereby possible.

Messrs Cogswell, Garni, Patchin and Roig made the following statement on the record with respect to their vote [fol. 2825] in favor of the resolution:

While regretting the necessity of acting without the full concurrence of their associates, Messrs Cogswell, Garni, Patchin and Roig feel that the welfare of the service calls for action without further delay and that the recommendations of the management, being sustained by the reports referred to below, should be adopted by the Board.

The land operation over Colombia has been the subject of careful study over several months. The conclusions reached by the management are based on detailed studies and reports. The Company has the planes with which to institute the service. We are unable to concur in the conclusions of our associate directors based on what they believe to be the commercial advantages of the plan they propose.

There being no further business, the meeting adjourned.

/s/ J. T. Trippe
Chairman of the Meeting

/s/ W. F. Cogswell
Secretary

[fol. 2826]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 187

EXHIBIT B

MEMORANDUM
January 27, 1938

At Mr. Trippe's suggestion Messrs. Garni and Roig called at the Pan American office at 9:45 this morning for a final conference on the subject of W. R. Grace & Company's representative's request to transfer the route between Cristobal and Guayaquil to a route between Cali and Quito. They examined the operating cost estimates prepared indicating the expected cost of operation using an S-42-B and S-43 on the coastal routes, as against DC-3s on the interior route.

Copies of these estimates are attached with this record.

Colonel Roop and Mr. Vidal joined the discussion and pointed out to the meeting the basis on which the cost estimates had been prepared. The reasonableness of both sets of figures were agreed to by all present.

Before finally requesting that a Board meeting of Pan American-Grace Airways be convened to consider action under the resolution submitted by Mr. Roig to transfer the route, Mr. Trippe offered to arrange for a demonstration service of from three to six months with the Pan American Airways S-42-B in addition to Pan American-Grace's S-43. He offered to absorb on the part of Pan American Airways the additional indicated differential in the cost of operating [fol. 2827] the coastal route as opposed to the interior route ($2,000 per annum) pointing out that Pan American was confident that the result of such a trial service would amply demonstrate that the additional capacity could be well utilized to secure additional traffic as compared to the interior route under the plan proposed by Mr. Roig. He stated that both the ton miles and seating capacity of the coastal service would be doubled between Guayaquil and Cristobal as compared to the interior route on the assumption of ten seats maximum capacity, which was submitted by Messrs. MacGregor and Vidal on behalf of the Management as being

the maximum capacity that would be available on that route with DC-3s. Mr. Trippe also further pointed out that informal discussions with the underwriters had indicated that the passenger liability rate on the coastal route as against the interior mountainous route would be less, indicating the relative safety of the two routes in the opinion of an outside underwriter. Mr. Garni, however, pointed out that underwriters often did not properly discount local conditions in arriving at their rate schedules.

Mr. Trippe also stated that Pan American was willing to offer to make this demonstration without indicated profit because of its interest in building up traffic on trans-Caribbean services running between Miami, Kingston and Cristobal, which was now suffering by virtue of the fact that there was such limited capacity south of the Canal Zone on Pan [fol. 2828] American-Grace Airways and that the alternate plan to fly via Cali and Quito did not materially improve this condition. He also pointed out that the express in addition to passenger traffic was continually increasing and Mr. Vidal confirmed that certain shipments to the Argentine had been rerouted via the East Coast because of lack of capacity on the west coast operation. Mr. Garni finally asked Mr. Trippe whether Pan American would agree to turn over the through service between Cristobal and Miami to be run by Pan American-Grace Airways itself, if Grace & Company would not push its program of operating between Cristobal and Guayaquil via the interior route.

Messrs. Garni and Roig finally took the position that notwithstanding the reduced capacity and other factors advanced by Pan American in favor of the coastal service, that they still felt that their resolution should be immediately considered and action taken thereon.

Mr. Trippe thereupon suggested immediately convening a Board meeting so that formal action could be had and Messrs. Patchin and Coggswell were asked to come up-town to join Messrs. Young and Morris so that a quorum would be available.

At the conclusion of the informal meeting Mr. Trippe pointed out to Messrs. Garni and Roig that officials con

cerned in Pan American were without exception in agreement that the move suggested by the Grace directors would [fol. 2829] not be to the best interests of Pan American Grace Airways and they felt that time would confirm their opinion. Mr. Trippe pointed out that he would offer to have the difference of opinion between them submitted to arbitration or to Colonel J. Monroe Johnson, Assistant Secretary of Commerce and Mr. Harllee Branch, Assistant Postmaster General, two government officials most concerned with the general question at issue, but to this suggestion Messrs. Garni and Roig took the position that the problem was an operating one and they did not feel that either an arbitrator or the two officials above referred to were qualified to reach even an informal suggestion, even though the matter were presented to them informally and in the friendliest way by Messrs. Garni and Trippe as above suggested. The informal meeting adjourned to a formal meeting at approximately 12:30.

[fol. 2830]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 188

April 29, 1938

Memorandum for Mr. A. Garni,
Vice President
W. R. Grace & Co.,
New York.

Please be advised that today, at five minutes to one, I received a telephone call from Mr. Evan Young requesting me to have lunch with him. Upon my arrival at his office I found Doctor Von Bauer and Mr. Ribl, and we all went to lunch together. I had no previous intimation that I was to lunch with Doctor Von Bauer.

During lunch I took the opportunity of thanking Mr. Von Bauer for the actions of the Scadta Company in not opposing: first, our request to the Colombian Government to operate through Cali, and second, that they did not oppose our request to change our route from the sea route to the over land route.

I went on to say that I had recommended to my Directors that Panagra enter into a traffic and airmail agreement with Scadta and Adelca along the lines and for the period of the contracts those companies had with Pan American Airways. I mentioned that the only reservation I had was that I should like to have some assurance that Scadta would not operate into Quito and in that way enter into competition with our West Coast international service. Doctor Von Bauer vigorously confirmed what we had been told by Mr. Trippe. He said that Scadta had no desire to operate to Quito.

He stated that President Lopez had told him that he wished to leave some personal monument to his administration, that he had not the money to build roads as his predecessor had attempted to do, and that in his opinion the easiest way to do something of a striking nature was to develop air services in Colombia and connect that with the neighboring roads of Venezuela and Ecuador.

Doctor Von Bauer stated that he had suggested to the President that he could best develop Colombian aviation by putting in decent airports, but that that did not appeal to the President because it represented a large investment of funds which were not available; and the President, therefore, requested that Scadta make surveys to both Quito and Caracas, the President undertaking to get the necessary permits. In that way the President figured on leaving some important executive act without cost to him by which his administration would be patriotically remembered.

Doctor Von Bauer said that, speaking for Scadta, he still did not wish to operate internationally but that, although at the present moment, with the imminent change of administration in Colombia, the matter of the Quito connection had been dropped, he could not guarantee that a succeeding administration would not revive the question. What he would state was that the question would not be revived by him or by Scadta and that, if the question arose through the instigation of a succeeding Government, the problem would have to be restudied and some method devised to solve it.

[fol. 2831] Doctor Von Bauer said that he wished that Pan American-Grace would give some consideration to Scadta problems. He said that, upon my assurance that we had no present intention of engaging in cabotaje in Colombia, he asked why then did we ask for landing rights at Turbo and Medellin. He intimated that asking for these landing rights was not necessary if we did not intend to engage in cabotaje, that the mere fact that a route via Turbo/Medellin/Cartago to Cali was granted would give by Colombian law automatically the right to land there for emergency purposes, whether for refueling or for refuge from weather.

Doctor Von Bauer stated that, just as the Colombian Government might, on account of public or political pressure, try to force him to go to Quito, we might be faced with an attempt to make us serve the cities of Antioquia and Medellin, near which we pass on the new route. Doctor Von Bauer stated that Scadta naturally would deprecate the running of a lot of international airlines across Colombia, because sooner or later it would bring a demand that the international planes deliver mail and engage in international traffic in the interior, which would greatly prejudice the Scadta position. He said very frankly that Buenaventura was the hub of his activities and that his entire organization was built to function from that outlet, and the loss of revenue to international operators would mean the death of Scadta.

I said I could see his position very well but that the prime object of Panagra's existence was to carry airmail to Buenos Aires via the West Coast of South America in as speedy a fashion as possible, and, in order to accomplish this, we could not make a number of stops at Colombian cities, and that we would in every way fight for only a limited number of stops throughout the line, in order that a fast schedule might be maintained.

Doctor Von Bauer said that he had spoken to Mr. Kuhl about the agreement with Panagra and that Kuhl had told him that two years ago a draft was prepared but that nothing had come of it, but that he would again write to Mr. Kuhl, and he suggested that we send Mr. Kuhl our ideas of the contract in writing in order that it might be studied.

Doctor Von Bauer intimated that in all probability Scadta would have to establish, at quite some expense, a redespatch point at Cali and the Scadta schedules would have to be studied, so that if possible a rearrangement could be made which would provide for the rapid transfer and transmission of airmail and express in Colombia in connection with Panagra's departures and arrivals.

In conclusion, Mr. Von Bauer was extremely regretful that he was unable to arrange for luncheon with Messrs. Iglehart and Garni. In his own words, he said: "You know I am just like any other employee, at the end of a string waiting for the latch-door to open". He said that it was imperative that he leave for Europe tomorrow and he wished me to personally convey his remarks to you. If he finds that, in spite of his urgency to leave (because of serious business complications in Austria), he is not able to settle certain business matters pending in New York, he will at once advise us and accept with great pleasure an invitation to any function you might care to extend.

[fol. 2832] He stated that on one of his first visits to the States, I believe in 1925, he endeavored to interest Mr. Joseph P. Grace in the Scadta Line but that there was some hitch and that Pan American jumped right into the picture. He wished me to convey to you that he still remembers with a great deal of pleasure the kind and courteous way he was received by Mr. Grace at the time he visited him in Hanover Square.

Apart from the above, Mr. Von Bauer said that he thought some study should be given by Pan American-Grace to the portion of the route lying between Turbo and Antioquia. He said that, as I was aware, Buenaventura was the wettest place in Colombia and that the weather extended inland very often as far as Antioquia. The Doctor thinks that we should arrange for meteorological information from that section by the establishment of proper facilities. He also said that, while he could give radio service from Turbo and from Medellin, neither of these stations could give meteorological information from a part of the sector we would fly, and which he considers the most difficult part of

the new route. I shall discuss this further with Pan American Airways on account of their flying experience on the UMCA route.

J. D. MacGregor

c.c. HJRoig

JDM:MD

[fol. 2833]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 189

(COPY)

June 30, 1938

Mr. A. Garni
W. R. Grace & Co.
7 Hanover Square
New York City

My dear Mr. Garni:

I regret that I was engaged in a hearing when you called this morning. When I became available this afternoon your office reported that you had gone for the day.

I talked with Mr. Lamiell this morning concerning the proposed second direct air mail schedule between Miami and the Canal Zone. Frankly, this situation does not appear very encouraging.

In order to improve the service on the West Coast south of the Canal Zone we authorized the so-called La Paz "cut-off" several months ago, which entails an annual cost of about $261,000. In addition, we established a direct schedule from Miami to the Canal Zone, at a cost of about $228,000 per annum.

Notwithstanding these additional and expensive services there has been very little improvement in the schedules and practically no mail benefit. To authorize another direct service from Miami would cost approximately $162,000 a year additional; which would be offset to the amount of about $72,000 if the service now being maintained between

the Canal Zone and Barranquilla is abandoned. Even with this offset of $72,000 a year the Department would be put to an additional expense of around $90,000 a year.

This, added to the $261,000 for the La Paz "cut-off" and the $228,000 for the one direct schedule from Miami to the Canal Zone, would make a total cost of $579,000 per year.

Unless some substantial benefits are to be obtained through a second direct schedule between Miami and the Canal Zone I doubt whether such an additional service, with the attendant cost, would be justified.

I am leaving tomorrow for a short vacation and I suggest you confer further with Mr. Lamiell concerning possible improvement in the service.

Sincerely yours,

Harllee Branch
Second Assistant
Postmaster General

[fol. 2834]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 190

November 11th, 1938.

Mr. Evan E. Young, Vice President,
Pan American Airways Inc.,
Chrysler Building,
NEW YORK CITY.

CONFIDENTIAL.

Dear Mr. Young,

I recently had occasion to call Mr. Bradley to Rio for the purpose of discussing several pending matters and, in the course of our various conversations, we touched upon several matters of importance, the gist of which I am passing on to you as of possible interest at the moment.

1. EXCHANGE SITUATION IN ARGENTINA:

We reviewed in detail the matter of procurement of official exchange for remittance of our accumulated

peso surplus to New York. As you are of course aware, the two most recent remittances were accomplished at the free market rate as a result of our inability to obtain official coverage.

While it is definitely a statement of fact that the procurement of dollar coverage at the official or "pegged" exchange rate today, in Argentina, is rare if not impossible of accomplishment. I mention an incident which took place in the month of March this year and which apparently has not enhanced nor in any way strengthened our position with the Government Exchange Board. It appears that at that time Pan Grace had been employing most, or practically all, of their peso income on capital expenditures incidental to airport construction and improvement work etc., within Argentina, and was in further need of additional pesos, to cover current operating costs. A transaction in the open market was then consummated in which $50,000.00 U.S. was converted at the then current rate of exchange of 3.84 to the dollar (current rate: 4.20 to one). This transaction, under ordinary circumstances, would have caused no comment. However, inasmuch as Pan Grace simultaneously had pending before the Exchange Control Board a request for official exchange to cover remittance, the former transaction was looked upon with natural askance. At best, the wisdom of converting U.S. dollars at the open market rate, while simultaneously requesting remittance coverage at the official rate, is indeed open to question; such a procedure would enable one to import U.S. dollars in Argentina, purchase pesos on the open market, then with those pesos buy back a greater amount of dollars than was originally employed in the transaction. As to whether our inability to procure official coverage is directly attributable, either in whole or part, to this transaction, I would not care to hazard a guess. The fact remains however that neither organization has enjoyed this privilege since the month of August 1937, when Pan Grace accomplished their last remittance at an official exchange rate.

[fol. 2835]

2. REDUCED AIRMAIL RATES:

The foregoing also ties in quite closely with the adoption of the lower airmail rate schedule offered by us some time ago in conformity with the exchange of correspondence on this subject between your office and mine. The delay in arriving at a final decision appears to be solely attributable to the question of exchange coverage. As you will readily recall, our offer specifically stated that liquidation of such accounts as may accrue from income on mail dispatched from Argentina to the United States is to be made in U.S. dollars at the official rate of exchange. Alternatively if official coverage could not be guaranteed the new rates were to be increased in the same proportionate ratio as the official exchange rate has to the free market rate. In other words we are interested in getting a fixed amount of dollar revenue per weight unit and it is immaterial to us as to whether Argentina chooses to handle it by granting official coverage or by making the rate high enough to protect us at the open market exchange rate. Naturally, it is to the interest of both Argentina and ourselves to have the former arrangement placed in effect inasmuch as if official exchange coverage is granted the peso rate quoted to the public will be proportionately lower than in the latter case. Mr. Bradley advised me that this matter was still in the process of active discussion with the postal authorities but that he was hopeful that immediately following his return to Buenos Aires it would be possible to expedite a prompt decision. I expect very shortly to receive a report of his findings, which I shall of course pass on to you as soon as received.

3. BUENOS AIRES FEDERAL AIRPORT PROJECT:

The possibility of obtaining early action on the Government airport project at Buenos Aires was discussed at some length but, after all is said and done, my reaction is that little optimism is justified. The chances for any material action or progress in that direction appear to be as remote today as at any time since the

initiation of conversations and discussions on that subject years ago. Mr. Bradley feels that it may well be two or three years before any concrete action is forthcoming.

4. GENERAL RELATIONSHIPS WITH PAN GRACE IN ARGENTINA:

In the course of our conversations I accorded marked emphasis to the question of the repeated complaints received from Pan Grace and their very patent dissatisfaction with the general handling of their business and representation in Argentina by both Messrs. Bradley and Moore. While Mr. Bradley was definitely cognizant of this dissatisfaction in general, he professed to be genuinely astounded to learn of the extent of their [fol. 2836] criticism and complaints. He based his reaction on the allegation that no official of the Pan Grace organization ever, either verbally or in writing, has made any other than routine criticism of his handling of their affairs. In his own defense he pointed out that his position, insofar as Pan Grace is concerned, often tends to be peculiar and at times embarrassing in that his orders from them are received from multiple sources and are, more often than not, conflicting in sense. According to his statement he received direct orders from no less than seven officials of the Pan Grace organization, in addition to the supervision of this office in connection with matters which concern either Pan American Airways Inc. or our local subsidiary. In Bradley's defense, and even after discounting considerably for possible exaggeration, there is no question but that this long standing situation has not as yet been corrected entirely and, in its present status, leaves much to be desired from an organization standpoint. This of course is a matter quite beyond my sphere of jurisdiction and I mention it here solely with the idea in mind that perhaps it might be of some assistance to you in weighing the complaints directed against our Buenos Aires organization which are frequently brought to your attention.

The mention of Pan Grace's dissatisfaction quite naturally lead our conversation around toward a discussion of the possibility that they might wish to install their own office at Buenos Aires, at some future date. Out of a clear sky Mr. Bradley came out with the statement, accompanied by enjoinments as to its "off-the-record" nature, that Mr. Vidal had already discussed the subject with him in detail and had actually gone so far as to suggest the possibility that Bradley might serve as President of their local organization as, if and when the formation of such an additional corporate entity might take place. If true this little tid-bit is not only paradoxical, but would certainly appear to be whimsical on the part of Pan Grace. I pass it on to you for what it may be worth.

In general my opinion of the Buenos Aires situation, on the whole, has undergone little change from that expressed in my previous and copious reports on this subject. I still feel that Pan Grace is getting their money's worth in ample and generous measure, that their representation—both commercial and institutional—is handled in a strictly impartial manner, that, while Mr. Bradley is no "world-beater" his services are as satisfactory as can be expected under the circumstances, that our general representation of Pan Grace in Argentina compares favorably with their representation in other countries which they serve both as regards cost and accomplishment. The replacement of Messrs. Bradley and Moore, either or both, is and will undoubtedly continue to be an intermittently recurrent subject for discussion. It is my well considered opinion that it would be unwise, impolitic and certainly not convenient to give any thought, at the present time, to the possible supplanting of Bradley by another local [fol. 2837] man in a similar category. It is extremely unlikely, even admitting all of Bradley's faults, that another man could be procured at less than twice the figure that we pay Bradley whose all-round worth would prove more satisfactory under existing circumstances. As regards the possible replacement of Moore, which

Mr. Vidal strongly advocated. I am not wedded to any "stand pat" attitude and if such an organization change is demanded and might serve to assuage Pan Grace for the time being, I have no objection as long as Moore's successor is well chosen. If such action is finally decided upon however I would like to see its execution deferred until I have the opportunity of discussing personally with you all angles of the subject.

I trust that the foregoing will serve to provide you with up-to-date background to supplement my previous reports on Argentina.

With kind personal regards,

Sincerely yours,

/s/ M. J. Rice
M. J. Rice,
Regional Director.

MJR:OF.
cc. President—NY.
Manager—Miami.

[fol. 2838]

Pan American World Airways, Inc. Exhibit 191.

My Dear Trippe:

They say, you never read a letter; please read this one carefully, it will save you time. Please don't lose it, but destroy it after you have read it. I will explain to you in a nutshell the object of my present visit:

1. The situation in Germany is getting increasingly difficult, things have moved from bad to worse. I don't need to prove that, you can read it in the newspapers.

2. In Colombia the nationalization law came into effect. At the same time the new President shows certain leanings towards the Nazis and has paid them already a substancial subsidy. If nationalization of SCADTA is delayed too much, prospective Colombian buyers of Scadta shares might

lose interest. Colombian Government also fears and objects to German interference in domestic Colombian aviation.

3.—Under those conditions my position is getting more doubtful than ever. It is more and more impossible for me, to manage SCADTA on a fiction; which; if revealed, would have most dangerous consequences both in Germany and Colombia. SCADTA in itself is a sound business, its political aspect can be efficiently managed, but I must have solid ground under my feet.

Here is my suggestion:

a) P.A.A. sells to me definitely the majority-stock of SCADTA, leaving me in full and free possession of said block of stock. I acquire the majority not in view of selling it to a Colombian Syndicate, but to keep the stock for my own benefit.

b) In order to comply with the Colombian nationalizacion-law I am willing to sacrify my German nationality and adquire Colombian citizenship. I have all hopes to believe, that si[illegible] have worked in Colombia from 1911 on, since undoubtedly the co[illegible] owns me gratitud and since the new President is a personal friend of mine, the Colombian Government will facilitate this matter and will accept me as Colombian owner of the majority-stock, as prescribed in the new nationalizacion-law.

c) This move would make me entirely independent from Germany? It would increase considerably my desirability as a partner with your Board of Directors. It would give me a solid standing with SCADTA's colombian and german employees, in sum, it would clarify and simplify the situation so as to give a picture acceptable to everybody concerned.

d) As bonafide owner of Scadta's controlling stock, the relations between PAA and SCADTA would stay entirely what they are now. I believe, our partnership would be even closer, because I would not only carry the responsability for SCADTA's management, but in addition also the responsability for my own investment. You would'nt need

to work with a bunch of unknown and highly unreliable colombian stockholders, but with an individual, whom you had known for 10 years and who has been all the time a loyal partner. In addition, SCADTA would be free from disturbances to be expected if SCADTA controlling stock would be turned over to a bonafide colombian syndicate.

[fol. 2839] c) You will be at liberty to keep your minority stock, as I wish you would do. On the other hand, if you want to liquidate some of it, it would increase good will in Colombia, if we could add to the number of bonafide colombian shareholders. However small or large your investment in SCADTA might be, you can rest assured, the SCADTA will allways be to PAA a valuable, friendly and loyal associate.

I believe this to be an ideal solution. I know of none other, which could meet your and my interest and at the same time overcomes the existing political difficulties.— Please think it over and see, if it fits in your CAA-picture without a big splash of publicity. Primaturely revealed, it would spoil everything. Probably the best explanation to CAA would be to say, that we have decided to liquidate the Scadta-Stock-Syndicate. You may believe me, that it was pretty hard for me, to reach the decision of changing my nationality, but since there is no other way, I am willing to do it, but please, make it otherwise not too expensive for me. — It is most desirable that for the next shareholders meeting in February I could prove ownership of controlling stock by an ownership-certificate issued by the National City Bank and not by a notarial certificate open to suspicions.

I am really sorry, that each of my visits to New York means additional headaches for you, but a lasting solution is unavoidable and very urgent.

Yours very cordially,

[illegible] by [illegible]

[fol. 2840]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 192

Memorandum of Conference relating to Proposed Agreement between Pan American Airways Corporation and W. R. Grace & Company

On February 14, 1939, about 12:30 p.m., a conference was had on the above subject at which the following were present: Mr. Pogue and Mr. Gates of the Civil Aeronautics Authority; Mr. Cogswell of W. R. Grace & Company; Messrs. Trippe and Cooper of Pan American Airways, and Mr. Friendly, Counsel for Pan American Airways.

Mr. Gates opened the meeting by saying that last week Mr. Trippe and Mr. Roig had made known to certain members of the Authority the agreement which Pan American Airways Corporation and W. R. Grace & Company proposed to enter into; that some question had been raised by him to the effect that the agreement seemed to be of the sort which was required to be filed with and approved by the Authority under Section 412 of the Civil Aeronautics Act, but that he had not wished to express any definite opinion upon this subject without hearing from the Counsels for the Companies, who were not present at the meeting in question; and that it was for this reason that the present meeting had been called. He suggested that one of the representatives of the companies outline the nature of the problem.

Mr. Friendly agreed that the general terms of the proposed agreement were as follows: In the first place it was an agreement between the two owners of the stock of Pan American-Grace Airways, acting in their capacity as such and neither of these companies being air carriers. The agreement involved in the first place the election of Mr. Roig as President, of Pan American-Grace Airways, the company, not heretofore having had a president. It involved, secondly, a committment on the part of Pan American Airways Corporation to cause its subsidiary, Pan American Airways, Inc., to inaugurate promptly a second direct trip between Miami and Cristobal, and thereafter to

maintain an adequate direct service connecting with Pan American-Grace Airways departures from Cristobal. As a penalty for non-compliance with this agreement (in the event that it was decided by Arbitration that there had been such non-compliance, and no compliance was had within such time as the arbitrators might permit), Pan American Airways Corporation agrees that it would cause its representatives on the Board of Pan American-Grace Airways to take such action as would permit Pan American-Grace Airways, assuming that the representatives of Grace & Company on its Board were so advised, to apply to the Civil Aeronautics Authority for a Certificate of Convenience and Necessity to operate directly into the United States provided, however, that Pan American Airways should be entirely free to oppose this application.

Mr. Friendly stated that he was of the opinion that this agreement was not within the provisions of Section 412 of the Civil Aeronautics Act. Certainly the agreement between the two stockholders to elect Mr. Roig as President did not come within the terms of that Section, although, of course, Mr. Roig would have to get permission of the Authority to continue as President of Pan American-Grace just as he now had to get permission to continue as Director of Pan American-Grace. The other part of the agreement did not come within Section 412 in his opinion because it was not an agreement between air carriers and, furthermore, did not [fol. 2841] involve any agreement as to the respective services of more than one air carrier but simply related to the service to be offered by a single air carrier.

Mr. Cogswell expressed his agreement with these views.

Mr. Gates said that the only doubt which he had upon the subject arose from his belief that Pan American Airways Corporation really was an air carrier.

Mr. Friendly stated that he entirely disagreed with any such view; that he thought the record was perfectly clear to the effect that Pan American Airways Corporation was nothing more than a holding company and was not in any way an operating company; but even if Mr. Gates were correct in this assumption, Mr. Friendly's views as to the

question directly at issue would not be changed since, in any event, it was perfectly clear that W. R. Grace & Company was not a carrier.

Mr. Pogue and Mr. Gates then conferred between themselves. After this conference, Mr. Pogue said that he did not quite see how they could be expected to make any pronouncement at this time.

Mr. Friendly said that we were not asking either for an approval for the agreement or for any declaratory ruling that the agreement did not need to be filed; that he and Mr. Cogswell as Counsels to the respective companies were perfectly willing to take the responsibility of advising their clients that the agreement did not need to be filed, but that we were loath to proceed in the face of a positive indication that Counsel for the Authority entertained a different view. Mr. Gates said that after the full discussion of the matter which had been had, he did not wish us to think that he had any positive view that the agreement should be filed; and Mr. Pogue said that although he could not give us any official expression, his opinion was that on the facts stated we were right in thinking that the agreement did not need to be filed.

Dictated by Mr. Henry J. Friendly

February 15, 1939.

[fol. 2842]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 193

Translation Copy

Confidential

MEMORANDUM

The statement which the Minister of War made to us (to Dr. von Bauer and myself) during the afternoon of the 5th of this month, was, in summary, as follows:

a) Not only the special geographical situation of Colombia, but recent developments in Europe and their repercussions on the foreign policy of the United States and the

American continent as a whole, impose upon the Government the necessity of effectively ensuring its control over the air transport companies, both for reasons of national sovereignty and because of its obligation to guarantee the peaceful and constantly increasing development of civil aviation companies.

b) SCADTA is the principal subject of these considerations, not only by reason of its outstanding position and the important services of various kinds which the Company has been rendering to the country, but likewise because the preponderance of German personnel in its organization has aroused serious apprehensions in the people of the United States. And although the naturalization of Dr. von Bauer legally meets the requirements of the law with regard to the nationalization of the Company, and even though the Government has never believed that SCADTA is carrying on, or may in future carry on, activities which might constitute a menace to the so-called "good-neighbour" policy, the Government considers it not only desirable but essential to hasten and bring pressure to bear upon this process of nationalization, in such a manner as to eradicate any suspicions that may be entertained in connection with this situation.

c) On the other hand, SACO presents special features which must be taken into consideration in order that the solution which the Government is seeking in this situation may be achieved as rapidly as possible. The group at the head of this Company, which is very pertinacious, is endeavoring to have the Government support it more effectively both financially and with other advantages and special rights, basing its aspirations on the fact that the Government is one of its stockholders and that the Company is a wholly national one. These aims may be brought before the next Congress in the form of proposed bills, which would create a situation that would [fol. 283] take the matter out of the control of the Government, and provoke debates of a violently nationalistic nature, which, in any event, would be most undesirable.

d) Under these conditions, the Government believes that it must look for a concrete solution to this problem, and that this solution lies in the merger of the two Companies, under equitable conditions, permitting of the participation of new Colombian stockholders, the Government itself taking a larger share in the stock. The details of operation will be the subject of a careful study made under the direction of the Government. As long a period of time may be taken for the settlement of these details as may be required in an undertaking of this nature, which demands delicate and skillful handling; however, it is necessary that an agreement, in principle, be concluded before July 20th next.

The impression which I, personally, gathered from the interview with the Minister was that the idea was to exert pressure of a sympathetic nature on SCADTA in order to induce the latter to accept the plan of the Government,—pressure motivated on the one hand by the misgivings of the United States with respect to the apparent nationality of the Company, and on the other hand, by the danger that SACO may stir up controversial discussions in Congress, which would impose upon the Government the necessity of making substantial and unfruitful investments, at the same time reviving hectic arguments of a partisan nature, which would be most prejudicial. The pressure would be sympathetic and characterized by goodwill, since the Minister did not hide the fact that the Government has a sympathetic attitude toward SCADTA and that it is the desire of the Government not to allow the negotiations to result in a situation that would be unjustly burdensome for SCADTA. On the contrary, it was evident that it was his intention to ensure for this important national company a stable and prosperous condition, through the authorization to the Company, over a considerable number of years, of the concessions and rights which are enjoyed by SCADTA at the present time.

From the statement made by the Minister, and as a result of my deliberations on the general problem with regard to SCADTA, I have reached the conclusion that the Com-

pany should not hesitate to accept the merger plan, not in a spirit of resignation to an unavoidable evil, but as being probably the best way of consolidating its position and ensuring its future progress.

Bogotá, June 13th, 1939

A. Villegas Restrepo

AVR/Ade G.

[fol. 2844]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 194

[Handwritten notations—J.T.T.—E. E. Young—Brazil Operations Rio Corumba]

TELEPHONE CONVERSATION BETWEEN MR. LATCHFORD AND MR. YOUNG— 12:30 P.M., JULY 15.

Mr. Latchford of the State Department just 'phoned me and said that the Department had just received a cable from the American Embassy at Rio to the effect that in view of Condor's application to the Brazilian Government for authorization to operate a second weekly trip on the Rio-Corumba route, Mr. Rice was filing an application with the Government on behalf of Panair do Brasil for authorization to operate a weekly service on that route, and was doing this without awaiting the outcome of the Embassy's negotiations in connection with the Brazilian domestic aviation picture.

Mr. Latchford added that the State Department at once cabled to the Embassy (Ambassador Caffrey) stating that it felt that the action of Panairs do Brasil in the matter was precisely the correct one, and to delay the filing of the application might well be fatal, since after if Condor's application for the second weekly frequency was approved, Condor could then xxxxxx energetically oppose Panair do Brasil's application on the ground that with a twice-a-week frequency, a fully adequate service was provided, etc. Mr. Latchford added that the Department's cabled reply to the Embassy also contained a statement to the effect that the New York office of PAA would be verbally advised of the

substance of the Embassy's cable to the Department, and of the Department's reply thereto.

Mr. Latchford concluded by stating that most careful and very sympathetic consideration was being accorded to the matter of "Washington" affording adequate compensation for the proposed Panair do Brasil Rio-Corumba weekly service.

/s/ E. E. Y.

[fol. 2845]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 195

August 7, 1939.

Mr. P. P. von Bauer,
President,
SCADTA,
Barranquilla, Colombia.

Dear Dr. von Bauer:

Personal and Confidential

Just a hasty line today by which to let you know, for your strictly private and confidential information, that we have recently stated to the Department of State, Washington, that from now on no more German employees will be taken on by SCADTA. The Department still seems to be maintaining a rather keen interest in SCADTA and its activities. I know that you will be good enough to govern yourself in accordance with our statement to the Department.

With regard to the purchase of the Soledad property by SCADTA, I have submitted the entire question to Mr. Trippe, with all pertinent information and comment, and expect to have a conference with him in regard to it within the next few days.

With kindest personal regards,

Sincerely yours,

Evan E. Young,
Vice President.

EEY:O'N

[fol. 2846]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 196

[Handwritten notation—Colombia]

September 6, 1939.

President,
Executive,
New York.

Vice President,
Executive,
New York.

SCADTA.

CONFIDENTIAL

Referring to our conversation some time ago regarding Scadta and especially to the request you made at that time that the necessary action be taken by the Scadta Management to assure that in the event of the outbreak of hostilities in Europe, no untoward incident would occur on the part of any of the German employees of that Company, I submit the following report:

At the instance of Scadta, a Presidential Decree, applicable to all Colombian civil aviation operations, was issued, effective September 4. The Decree provides:

1. All public and private airports are placed under the control of the Minister of War. A military detail, consisting of an officer and ten men, has been placed at each airport and operating base where they are to remain on continuous duty.

2. A military officer or civilian employee of the Government is assigned to each airport and operating base as the "Airport Captain" or "Co-Airport Manager." They will be held responsible for the efficient control of all activities at the airports and operating bases, and no aircraft may take off without a "clearance" from them.

3. Colombian military pilots will, in the capacity of co-pilots, be in every plane and make every flight within

Colombian territory, with the exception of flights made by Colombian native-born licensed pilots.

In addition to the control measures embodied in the Decree, and at our instance, the following supplemental action has been taken or is under way:

1. A twenty-four hour watch, to guard against the remote possibility of sabotage of our planes, has been established at the important Soledad and Barranquilla operating bases.

2. An experienced and thoroughly reliable "operating" employee of our Company will be immediately transferred to Colombia with the principal duty of seeing to it that all of the "control" measures are efficiently and effectively carried out.

[fol. 2847] Frank Powers, one of our senior representatives at Rio de Janeiro, has been given this assignment and is now en route to Colombia.

3. The services of the German personnel in the Scadta organization, including pilots, will be dispensed with through retirement, grounding, and leaves of absence as rapidly as may be practicable without disrupting the organization.

4. Scadta will advise the Colombian Government that it is willing to sell to the Government Scadta's airport at Cartagena—the construction of which has been practically completed; this in order that the Colombian Government may, if it so desires, place the airport at the disposal of the United States military authorities in the event of an emergency.

5. The discontinuance by Scadta of its Barranquilla-Turbo service (the nearest operation to the Panama Canal) provided the operation would be taken over by Umca or conducted by a 100 per cent. Colombian entity.

The various measures mentioned above, including those provided for under the Presidential Decree, would appear to be fully adequate for the purpose in question. Moreover, we have the positive and formal assurances of the Scadta

Management, and we may place full credence in them, that no untoward incident on the part of any of the German personnel of that organization will be countenanced or permitted to occur.

Evan E. Young

EEY:O'N

[fol. 2848]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 197

Barranquilla, Colombia
September 28, 1939.

Mr. Evan E. Young, Vice President
Pan American Airways, Inc.,
New York City

Dear Mr. Young:

"Private and Confidential"

I had fully intended, while enroute to Colombia, to get a line off to you shortly after my arrival here, but a rather active program during the past week did not permit.

Arrived on schedule Wednesday, the twentieth, and remained at Barranquilla until Monday morning the twenty-fifth, at which time I proceeded to Bogota, returning here yesterday afternoon. My impressions gathered during the first week here, listed in order of importance as I see them, are as follows:

SCADTA ORGANIZATION

Mr. von Bauer: It is perhaps unnecessary for me to say that my immediate reaction was most favourable and coincides in all respects with your appraisal of him. He is a capable executive and a gentleman, respected and liked both within the organization and by the community as a whole. He received me most cordially and gave me the better part of his time during my first few days here. Altho it may be a bit premature for me to attempt, at this time, to analyze his reaction as a whole

to my presence here, I am inclined toward the opinion that he feels that it is wholly unnecessary insofar as concerns the operation of the SCADTA organization, and has acquiesced somewhat in deference to the wishes of Pan American Airways and those of the U. S. embassy at Bogota. While he has outwardly exhibited a most cordial attitude in his relations with me; I cannot help but feel that he looks upon me quite as an "outsider" whose presence here is to be countenanced only because of current conditions. I shall have ample opportunity to arrive at a more definite conclusion in this respect in the near future at which time I shall of course inform you in the premises. Altho we have discussed, in a general way, the contemplated consolidation, I have pointed out to him that my mission here is concerned only with the safety of operations insofar as pertains to the carrying out of the precautionary measures with which he is wholly familiar.

Colonel Boy: Appears to be a very serious minded man, quite capable, and "with both feet on the ground". He is genuinely liked and respected by all of the SCADTA personnel and enjoys very friendly relations in business and government circles. My talks with him to date have been extremely formal and, altho his attitude too is one of friendliness, there appear to be indications that his reaction to my mission here is quite similar to that of Mr. von Bauer.

In addition to the above named gentlemen, I have of course also met all "key" personnel, with whom however, I have had no occasion for extended conversation. I might mention here that Doctor von Bauer, at the outset, requested me to confine my inquiries regarding operations, statistical data, etc., to him in the interests of accuracy and in order that I may be assured that such information and figures as may be furnished me are correct. I have accordingly held strictly to his wishes in this respect.

[fol. 2849] OPERATIONS DEPARTMENT: While SCADTA's operations for the past several years might

well be interpreted to indicate a smooth running and efficient organization, their safety measures, when compared with those of Pan American Airways, suffer considerably. In this respect I refer particularly to the lack of emergency fields and adequate direction finding equipment, contact scheduled flying, and marginal single engine performance (Boeings) over mountainous terrain, etc. I am unable to inform you in detail as to any or all of these several points at this time, but should be in a position to do so in the very near future.

FLIGHT PERSONNEL: As you are of course aware, the major portion of the flight group, pilots and co-pilots particularly, is composed of native born Germans who, from a strictly operations viewpoint, have done and are doing an admirable job. They execute their duties in orderly fashion and appear, on the whole, to be a very serious minded group of young men. Most of them are married and raising families here, some of whom have been with the organization for a considerable number of years and own, or are purchasing, their own homes here in Barranquilla. I mention this latter point here, for I feel that it has a definite bearing in considering the status of the individual employee in this category. Unfortunately, from an organization viewpoint, most of these men are at the present time considerably worried as to their status with the Company as a result of the recent despatches that have appeared in the local press respecting the purported wholesale dismissal of their group. I have discussed this matter at length with Mr. von Bauer and we are in accord that it behooves us to tactfully exert every effort to dispel the idea for, quite obviously, it is an unhealthy condition at best. I am hopeful that, together, we may be enabled to shortly accomplish something toward that end.

U.S. EMBASSY—BOGOTA: Immediately upon arrival at Bogota on Monday, I arranged for an appointment with Ambassador Braden, which was set for three-thirty that afternoon. To say that the reception accorded me was friendly, would be somewhat of an understatement. Mr. Braden somehow seemed to feel that the presence of a Pan American Airways representative here just about settled

all of the worries that have been attendant upon him and his staff in handling the SCADTA personnel problem. Also present at this conference, which lasted approximately two hours, were Mr. Keith and Captain Munn. In the evening I was invited to the Ambassador's home for cocktails where I had the opportunity to meet Colonel Lang and Colonel Buenaventura, the recently appointed Director of Aeronautics, both civil and military, for Colombia, following which I had dinner with Captain and Mrs. Munn.

My general impression of the Ambassador and his staff is that they are, without any trace of doubt, wholly sincere in their handling of the SCADTA "problem." That they have accorded it a disproportionate amount of time and effort is quite evident, but understandable in the light of recent events here with respect to the outward anti-German feeling that exists on all sides in Colombia. I can well appreciate the Ambassador's feeling of responsibility before the American and British business representatives, as well as the British diplomatic group here as a result of their openly expressed views on SCADTA. It is a very much discussed topic as I learned from conversations with several of the American colony at Bogota, two of whom were old personal acquaintances of mine from Puerto Rico.

Insofar as concerns the actual operation of the airline, the Ambassador, as I mentioned previously, feels [fol. 2850] that my presence here relieves him of the flight personnel problem. He is however, very much interested in the contemplated merger of SCADTA and Saco and the new set-up as a whole, and appeared somewhat disappointed to learn that I was not sufficiently familiar with the various phases of negotiations to intelligently discuss the subject in detail. I mentioned that on the occasion of the forth-coming visit of Mr. Grant and either yourself or Mr. Riffl, he would no doubt be fully informed as to our plans.

Returning now to the matter of German personnel in SCADTA flight group, I somehow view with less apprehension the potential risk that exists with respect to the Canal

problem, now that I have had occasion to view the local picture. At the outset, the type of flight equipment employed renders the accomplishment of the purported objective quite impossible under adequate surveillance. True, there may possibly be one or more men in the group who might, under certain circumstances, be tempted to undertake the assignment, but the possibilities for success are indeed remote. Entirely apart from that phase of the elimination of the German flight personnel, I would point out that it is quite within the realm of possibility that the question may be brought up in connection with the organizing of the new Company, in which event it would appear advisable to endeavor to work out a plan for their gradual replacement. It is of course unnecessary to point out that, should the United States become involved in the present conflict, a radical change in this respect would immediately become mandatory. Under the circumstances therefore, I suggest the following for your consideration:

> It being only reasonable to assume that no sizeable group replacements could possibly be effected on relatively short notice because
>
> (a) the cost involved would render such procedure commercially inexpedient when viewed strictly from a dollars and cents viewpoint
>
> (b) the possible lack of qualified American (or Colombian) senior pilots
>
> (c) The time element involved, which would necessitate detailed familiarization with the routes flown and terrain.
>
> would it not appear more feasible to take on a group of Americans who hold transport pilot rating as co-pilots, for training with the present German senior pilots? Their presence as a member of the crew would accomplish the dual purpose of permitting strict surveillance during flight and at the same time afford the opportunity for familiarization with all routes. Should the removal of certain personnel become necessary, our position would thereby be greatly enhanced in that we

would have American personnel ready for check-out as the occasion arises. This recommendation is of course based on the assumption that the matter of expense is of primary importance, as well as the belief that it would be exceedingly difficult to find experienced American pilots, in what we know as the "Senior" group, might be willing to undertake a foreign assignment at this time even at an attractive financial inducement. On the other hand, it is wholly conceivable that the opportunity for comparatively rapid advancement to Senior Pilot status may be attractive to transport pilots now employed in the category of Junior- or Co-Pilots with American transport companies.

[fol. 2851] I have made no mention of this phase of the subject to Mr. von Bauer, and shall of course refrain from doing so until such time as I may receive your comment and instructions. It may well be, in the event that you concur in this respect, that the matter may be accorded a more cooperative or sympathetic reception by Mr. von Bauer were he to receive a recommendation of this nature direct from you.

There are a number of matters that I have not touched upon here that must necessarily be deferred until such time as I have had occasion to more thoroughly digest the local picture. I do hope however to forward you a full and detailed report in the very near future.

With kindest personal regards,

Most sincerely,

F. Powers (signed).

[fol. 2852]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 198

November
13
1939

Mr. Thomas Burke
Chief, Division of International Communications
Department of State
Washington, D. C.

Dear Mr. Burke:

For your information I am enclosing herewith a photostat copy of the personnel of Scadta.

With kindest regards, I am

Yours faithfully,

George L. Rihl
Vice President

GLR:FP
Encl.

[fol. 2853]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 199

(Letterhead of Department of State, Washington)

In reply refer to
IX

November 18, 1939

My dear Mr. Rihl:

I wish to thank you for your letter of November 13, 1939, enclosing a photostatic copy of the personnel of Scadta.

This information will be added to the files of the Department of State for future reference.

Sincerely yours,

/s/ THOMAS BURKE
Thomas Burke
Chief, Division of International Communications

Mr. George L. Rihl,
Vice President,
Pan American Airways, Inc.,
Chrysler Building,
New York, New York.

[fol. 2854]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 200

December 16, 1939

Mr. Ellis O. Briggs, Asst. Chief
Division of the American Republics
Department of State
Washington, D. C.

Dear Mr. Briggs:

Enclosed you will find a rough summary of the activities of Pan American since September 1st to date on the Scadta situation.

I am sorry it has taken me so long to gather this information but some of it had to come from out of town and then I could not devote one hundred per cent of my time to it. I am sure that you can realize that many hours can be spent discussing personnel matters. We have a very peculiar problem in that the men who go to Colombia for the most part will not remain there a great length of time due to the nationalization necessary under Colombia laws and doubly so with the government's participation in the reorganized Scadta.

For your information I am in receipt of a wire today from Mr. Corral in answer to one I sent him yesterday that no good would be accomplished towards the reorganization before the first week in January. I am informed that they celebrate in Colombia the Christmas holidays by closing down practically all business. I expect to be in Colombia on January 3rd.

We are proceeding actively in our endeavor to fill the position with Americans from our own organization, who will be able to function under the reorganization.

Very truly yours,

George L. Rihl
Vice President

[fol. 2855] December 15, 1939

Memorandum concerning action taken and being taken in Colombia on the Scadta situation

September 1st: Mr. Grant, a well-known legal authority on Latin America, went to Colombia to make a preliminary survey of the situation.

September 5th: Mr. Grant reported to Ambassador Braden.

September 8th: An interview was arranged between President Santos and Mr. Grant, the substance of which was reported in a memorandum to Ambassador Braden.

September 9th: A conference was called by the President, to which were invited the Minister of War, Mr. Grant, Colonel Boy, and Mr. Roca Castellanos, Colonel Boy's Assistant in Bogota. The last two mentioned gentlemen are in the services of Scadta. At this meeting the President outlined the general features of his nationalization program. The Minister of War took up the details of the stock participation

of native-born and naturalized Colombians and the Government. The results of this interview were likewise covered in a memorandum by Mr. Grant to Ambassador Braden.

September 10th: Mr. Grant went to Medellin for preliminary negotiations with the Saco company, looking toward the consolidation of that entity with Scadta.

September 11th: Mr. Grant began conferences with representatives of Saco and Scadta on the basis of indications made to Mr. Grant by the President and the Minister of War.

September 13th: Mr. Grant went to Barranquilla.

September 14th: Discussions were held with Messrs. von Bauer and Tietjen regarding legal changes that would be necessary in the original nationalization plan to accommodate the Minister's ideas regarding shares to be held by Colombian interests.

September 15th: Mr. Grant left Barranquilla for New York.

September 17th: Conferences were begun in New York on the results of Mr. Grant's trip to Colombia.

September 20th: Mr. Powers, one of Pan American's most experienced field men, stationed at Rio but summoned to New York for instructions before being transferred temporarily to Colombia, left for Barranquilla, where he is at the present time. Mr. Powers' transfer was made as a result of assurances given to Ambassador Braden by Mr. Grant. Mr. Powers reported to Ambassador Braden in Bogota shortly after his arrival in Colombia.

[fol. 2856]

Week of September 25th: Mr. Powers' preliminary report on his observations was received in New York and discussions begun in the New York office of the Company. Due to the legal, financial and political angles involved, the matter was given extensive study.

Week of October 7th: Messrs. Trippe and Rihl attended a meeting in Mr. Burke's office in Washington, and the Scadta situation was fully discussed.

October 11th: Mr. Grant returned to Barranquilla.

October 12th: Mr. Rihl went to Barranquilla.

October 16th: Messrs. Grant and Rihl arrived in Bogota and reported to the Ambassador.

October 18th: Mr. Martin Corral was summoned from Medellin for a conference regarding his accepting the presidency of Scadta. A tentative arrangement was made with him, subject to the approval of the President of Colombia.

October 23rd: An interview was arranged between the President and Mr. Rihl. At this conference the President outlined his desires in connection with the reorganization of Scadta and the proposed merger of Saco. A full report of this conversation was immediately made to the Ambassador.

October 25th: Messrs. Rihl and Grant proceeded to Medellin, together with Messrs. Corral and von Bauer and representatives of the Government and Saco, to complete a merger agreement with that company.

October 28th: Mr. Rihl departed for the Canal Zone to interview General Stone, leaving Mr. Grant in Colombia to work out legal details concerned with the reorganization of Scadta. General Stone was fully advised of the situation and the conversations between the Ambassador and Mr. Rihl.

October 31st: Mr. Rihl arrived in New York and began making arrangements to get technicians to Colombia.

November 5th: Mr. Leuteritz, Chief Communications Engineer, left for Colombia to begin a survey of the Communications system of Scadta and make a report on changes needed and the cost to complete same.

November 7th: A meeting of the Executive Committee of the Company was held, at which the Scadta situation was thoroughly analyzed. In view of the report made by Mr. Rihl on what had been requested by the Ambassador and required by the President of Colombia, it was decided that it would be impossible for Scadta to carry out such a program without additional financing, and this would not be possible until:

[fol. 2857]

a. A new operating concession and postal contract had been made by the Government which would give the company exemption from taxes, duties, etc., over a long period of time;

b. Execution of a management contract between Scadta and Pan American that would make it possible to comply with the desires of the President and the Ambassador.

e. Re-form the existing by-laws of Scadta to permit of the control of the company in order to conform with the new laws and desires of the President.

November 8th: Mr. Trippe went to Washington to see the State Department and Civil Aeronautics Authority on the Scadta matter.

November 9th: Mr. Rihl went to see the State Department on the Scadta matter.

November 10th: Mr. Whitney saw the State Department and the Civil Aeronautics Authority on the Scadta situation.

November 14th: An Executive Committee meeting of Pan American was held, and Mr. Rihl was given instructions to proceed to Colombia to work out the details of the necessary agreements to be made with the Government and Scadta.

November 14th: Mr. Rihl left New York for Colombia.

November 17th to November 20th: Messrs. Rihl, Grant and Mr. Corral, who was summoned from Medellin, agreed on the revisions necessary for the draft of the by-laws that had been prepared in Bogota.

November 21st: Mr. Steele, Assistant to the Chief Engineer, left Miami for Colombia accompanied by Mr. Bond, an operations manager on leave from China, and Mr. Zalduondo, Assistant Traffic Manager of the Eastern Division.

November 21st: Messrs. Rihl, Grant and Corral proceeded to Medellin for further conferences with the Saco interests.

November 26th: Messrs. Rihl, Grant and Corral left for Bogota to confer with necessary government officials and to report to Ambassador Braden.

November 28th: The Minister of War received Messrs. Rihl, Grant, Corral and Cruz Santos, a lawyer representing the Saco interests. At this meeting, the Minister who was representing the President, was handed drafts of the necessary contracts and a general discussion of the important points was held. It was at this meeting the minister stated that by December 15th or 16th the law then pending in Congress would pass and the President would have authority to make contracts that would give the reorganized company sufficient guaranties to permit of its operating on a commercial basis. A full report was made to the Ambassador.

[fol. 2858]

November 29th: Mr. Grant left for New York.

December 2nd: Mr. Rihl went to Barranquilla.

December 7th: Mr. Rihl left for Washington and New York.

December 8th: Messrs. Trippe and Rihl were received at the State Department where a verbal report was made.

Week of December 11th: Mr. Rihl began assembling data for preparation of the information contained in the present memorandum. Discussions were held and inquiries made regarding personnel that would be willing to go to Colombia.

December 15th: Word was received from Colombia that the law giving the President authority had been passed.

[fol. 2859]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 201,

[Handwritten notation—Scadta merger]

Copy

Bogotá Colombia,
January 18, 1940

Mr. Martin del Corral,
Hotel Granada,
Bogotá, Colombia

Dear Mr. del Corral:

This letter will express in general terms my understanding of the commitments under certain conditions that Pan American Airways, Inc. is willing to take in connection with the operation of Avianca.

We will assume the responsibility for the technical direction of the company, it to be understood that, while such responsibility is ours, Avianca will only employ personnel approved by us that are in any way connected with the operation of the flight equipment of the company. However, the employment or discharge of such personnel will be subject to due advice and consultation with the Management.

In connection with the technical direction of Avianca, Pan American is willing to assume the obligation of directing the training of Colombian personnel that will be capable of taking over the technical operation of the company. It is understood, however, that the Management of Avianca will cooperate with us in such form as we may from time to time request in order that this training may be facilitated and advanced as rapidly as possible within the financial resources of the company. We cannot be held at fault for the delay in training of Colombian personnel if Avianca does not always find it commercially possible to permit of the introduction into the company of such procedure and Colombian personnel as we may indicate.

As I have advised you on various occasions, we do not feel it will be necessary presently to discharge a substan-

tial number of the personnel of the company as now operating in order to comply with the aforementioned commitments. However, it should be understood that the training of Colombian personnel will unavoidably mean substitution over a period of time of a considerable number of the present employees, who may not be considered Colombians by the Government for the air transport industry in Colombia. It must also be remembered that any training program calls for cooperation on the part of the organization as a whole. It is not sufficient to merely have a few instructors, whose principal duty is to teach. If we find among the [fol. 2860] present personnel any resistance to the training program, such elements will, therefore, have to be eliminated.

We will expect, before formally assuming the obligations mentioned herein, to execute a contract with Avianca that will set forth the conditions as to length of our services, the flight and communication equipment that we feel Avianca will have to acquire during the next few years in order that Pan American may feel safe in assuming the responsibility for the nationalization of a company not owned by it, and the remuneration to be received by us for our services. We also feel that before signing the contract we should complete our undertaking to sell to the Government certain of our holdings in Avianca so that it will be, as a major stockholder, a party to the contract.

In order not to delay making the changes which will be necessary to accomplish the program outlined herein, we will assume all necessary responsibility meanwhile the negotiations are under way for the sale of our stock and formal signing of a contract covering the obligations we are undertaking.

Trusting you will find I have correctly stated the substance of our many conversations on these matters, I am

Yours faithfully,

George L. Rihl
Vice President

[fol. 2861]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 202

Translation

Letterhead of the Ministry of War
of the Republic of Colombia

Bogotá
January 23, 1940

Mr. George L. Rihl,
Vice President of Pan American Airways,
City

Esteemed Sir:

The Government has been carefully studying the proposed amended bylaws of Sociedad Colombo-Alemana de Transportes Aéreos (Scadta), which in future will be called Aerovias Nacionales de Colombia (Avianca), and inasmuch as among the provisions of said bylaws there are some which establish the definitive organization of the Board of Directors of the Company when the Government shall have exercised its option to acquire shares to complete 60%, I should be pleased if the stockholders' meeting, to be held today in Barranquilla, should refrain from setting up new situations which might constitute an obstacle for future but immediate negotiations looking towards an agreement on the regulations to govern the future life of the Company, once the Government shall have purchased up to 60% of the shares, and with respect to the course which the Government should adopt, insofar as concerns the procedure for nationalizing the Company. The shareholders' meeting today might confine itself to ratifying the incorporation of Saco into Scadta, to changing the name of the Company, to election of a new President and to the calling of a later meeting to be devoted to deciding upon the other measures which have been contemplated up to the present time. In the meanwhile, the Government would have opportunity clearly to agree with the interested parties upon its course of conduct in respect of the questions above mentioned, and this would undoubtedly be of

great convenience to the shareholders of the Company and naturally to the Government itself.

With sentiments of distinguished consideration, I remain,

Very truly yours,

(sgd.) José Joaquín Castro M.
Minister of War

[fol. 2862]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 203

Barranquilla, Col.,
January 25, 1940

Mr. Juan T. Trippe, President,
Pan American Airways, Inc.,
Chrysler Building,
New York, N. Y.

Dear Mr. Trippe:

I wish to herewith confirm my statement to you over the 'phone today that I have kept the Ambassador fully informed as to my actions since my arrival in Colombia. As far as I know, the Ambassador is in agreement with my course of action, though, naturally, he is disappointed that I have not been able to move more rapidly. I feel that he would have told me had he thought that I had been dilatory in any way.

At your request, I will try to give you a summary of what has occurred since my arrival and what is being planned. You will please understand that in none of my dealings with either the Government or the Scadta officials have I in any way referred to the Embassy. Even in my talks with Mr. Corral I have taken the attitude that what we had to be done was dictated by our interpretation of what the Government desired in the way of nationalization and our becoming responsible for the operation of the Company.

January 3rd. I arrived in Barranquilla and saw von Bauer, who told me as a matter of interest that Colonel Boy had been advised by the President not to make any further move regarding sep-

arating from Scadta. According to v.B., the President stated that he would give Boy his orders as his superior officer (Boy is a Colonel in the Colombian Army) as to what part he wanted him to play in Avianca. I advised Corral that I had to go to Bogotá the following day, which was in accordance with my instructions. Corral was advised that if he got the opportunity he should impress on the President that Avianca would need the full backing of the Government in making the German element in Scadta fulfil their obligations as employees. The President and the Minister of War were in Barranquilla when I arrived. [fol. 2863]

January 4th. Went to Bogotá and reported to the Ambassador. I told him what v.B. had said about Boy. The Ambassador felt that we should accept Boy's resignation, and I agreed to it. The Ambassador drew up a memorandum of what was to be done, copy of which you have.

January 5th. Returned to Barranquilla and found Johnston, Morrison and Titus there. Went over with Grant, Corral and Morrison manner of handling stock in Avianca deal.

January 6th. Spent entire morning in Scadta office discussing holding of stockholders' meeting and status of Saco liquidation. No decision made on meeting, as we had not sufficient information from Medellín regarding Saco deal. Had long discussion with v.B., in which he was advised that he could not hold a position in the Company or on the Board. Received word from New York to send Morrison back to Mexico immediately, but was advised that Rice would come down the following week. Sent estimates to New York on expenses of men to be sent down, the Scadta personnel to be let out and new equipment needed.

January 8th. Worked with Corral and Grant all day on Agenda for stockholders' meeting. Made up certain transitory clauses for the bylaws. Long talk with v.B. Found him bitter and ready to fight adoption of bylaws that kept naturalized Colombians from receiving equal

treatment with native-born citizens. Advised Morris did not know when would sign up with Government.

January 9th. Reported to New York by 'phone on the situation. Went over financial matters at the Scadta office with Tjetjen and Johnston.

January 10th. Talked with Trippe over the 'phone in Washington, who had not received my estimates, which were taken by Morrison to be mailed. Saw V.B. and Tietjen in the afternoon, the former stating he would not resign until arrangements had been made with him. He again mentioned matter of not being represented on the Board, and the fact that he would own 10% of the Company.

[fol. 2864]

January 11th. Tried to contact Ambassador in Medellín but without success. Told V.B. that we were not interested in whether Board of Directors approved our actions or not, and that stockholders' meeting would be held the following Wednesday. Also told him that I thought he was making a mistake in not being willing to resign. Had long talk with Rice on situation, and decided he should go back to Rio the following week so that he could return to Colombia as soon as possible.

Contacted Ambassador by 'phone in the evening and advised him what had been done. He stated over 'phone that he thought Boy could be kept if he was taken out of all operating control and given the job of convincing the Colombian public that native Colombians would make good pilots if given proper training.

January 12th. Talked with Tietjen in morning and Corral after lunch, who reported to me his conversation with the President and the Minister of War. Apparently the President very much disturbed over learning changes we were expecting to make.

Talked with Fendell, who had come down from Bogotá to see me about starting Public Relations Department. Fendell highly recommended by the Ambassador as standing in very well with all newspapers.

Saw the President in the evening for a few minutes and made engagement to see him Saturday evening late; to go into Scadta matters.

January 13th. Went through Scadta plant with President, Scadta representatives and other officials. Kuehl was guide. In the evening went into the Public Relations question very extensively with Rice and Fendell.

President sent for Rice at 7.30 and talked with him for an hour and a half about aviation in Colombia and Brazil. Corral was present and told me that Rice made a good impression. I saw the President from 9.30 until 11.15. The President obviously very much worried about our taking over management of Scadta, as he was greatly impressed by German influence noted on his trip through the plant. He asked me to go to Bogotá with Corral and have dinner with him the following week, before making final decision as to the changes that had to be made in Scadta.

[fol. 2865]

January 14th. Saw Corral and advised him that had agreed to go to Bogotá to see the President before taking final steps and taking over. I could not reach the Ambassador, but the Consul did later in the day. Corral worried over the President's attitude.

January 15th. Started checking and analyzing Scadta pay roll to ascertain ratio of number of Germans as compared to natives, and amounts paid respective classifications. Had talk with v.B. and Kuehl. Told Kuehl he would have to go. Wanted him to understand this fully, as he had been called to Bogotá to see the President for the following day. Kuehl refuses to resign as he feels confident President will insist that he be kept. Made no definite arrangement with Fendell, as do not feel he would be a good man in the long run for the Company. He is not a prepossessing type.

January 16th. Talked with Mr. Trippe, but difficult to explain situation, particularly as connection was not good. Discussed with v.B., Tietjen and Grant

Directors' and stockholders' meetings for following week. Received word from Corral that President had postponed meeting until Thursday night.

January 17th. Talked with Mr. Trippe just before leaving for Bogotá regarding price I was to ask for stock that we were to sell the Government. I was told that I was to only ask a price that would get us out without loss, which would be $53, U.S. currency per share. On arriving in Bogotá called at Embassy and talked with Keith and Wright. Saw Corral before he went to see the President. He wanted to be assured that PAA would co-operate in every way with Avianca.

January 18th. Discussed what Corral was to say to President at lunch that day; also discussed with him and Gabriel Valle a Mr. Echeverría, at present with American Foreign Power in Barranquilla, as a possible candidate for manager of Avianca. Saw Corral after his talk with President and reported same to Messrs. Keith and Wright.

Talked from Embassy with Mr. Trippe on 'phone, and reported situation. Dictated letters to Corral and the Ambassador, copies of which are attached. Did not send letter to the Ambassador, as talked to him afterward on the 'phone in Medellín. The Ambassador stated that he would not object if the President insisted on Selbstaadt being kept, and agreed to his being given some position on the ground or some work where he did not handle [fol. 2866] operations. Had dinner with the President, the Minister of War and Corral, but no decision was reached as to the handling of the Scadta situation. The President very insistent that only minor changes be made in the present organization, which I could not agree to, as we felt that it was absolutely necessary that all heads of departments and key operating men be either Colombians or Americans. The President stated he would see us the following day.

January 19th. Member of the President's family died and so he called Corral to advise that he could not see us both, but would see him some

time during the day. Reported to Embassy the status of the situation as it existed at that time, going into detail as to what had been discussed at dinner the night before. Helped prepare wire to State Department.

Talked with Mr. Trippe and Grant in Barranquilla about contract for sale of our stock. Went to Embassy in the afternoon and arranged to see Ambassador Sunday morning or, if possible, Sunday afternoon.

Corral saw the President and later explained to Odoño, Calle and me what had been said. Mr. Odoño is a member of the Board of Directors of Saco and a great personal friend of Corral's, as is Mr. Calle, who is also a Director of Scadta. Corral asked their opinion on what the President had said. They both agreed that either PAA take control of operations or they don't, as it would be utterly impossible to follow the President's suggestion that the management be continued as at present in Scadta, with the addition of one or two Americans.

January 20th. Talked with Corral over memo that President had given him the day before, copy of which is attached. Talked with Grant in Barranquilla about changes in bylaws and arranged for Mr. Echeverria to go to Bogota Sunday, which he did not do because he could get no space on the plane.

Reported to the Embassy in the afternoon, where I had copies made of the President's memorandum. Discussed with our lawyer, Uribe Holguin, legal matters regarding Saco and Cesantia Law. Had dinner with President, Minister of Hacienda and Corral. Arrived at no decision as the President was still insisting on no contract being made with PAA for management. He was most insistent that very few Germans be let out. He stated that most of them had been in the country many years and could be of great assistance in the operation of the Company. He made it very plain, however, that he wanted the cooperation of PAA and American interests in general. It was very clear that the President was trying to follow a middle of the road course, his policy being dictated by local politics.

[fol. 2867]

January 21st. Went to see the Ambassador at 4 p.m., who had returned that day from Medellín. Expected to be called by the President to continue the conversation of the night before, but the call did not materialize. Explained what had occurred the night before. Corral, Odoño and Calle came out to the Ambassador's house to make a courtesy call, and Corral advised that the President had just told him he wanted to see the three of them and Dr. Cruz Santos on Monday morning. I was not invited, but it meant I had to stay in Bogotá. Corral stated that night that he would have a showdown with the President in the morning.

January 22nd. After seeing the President in the morning, Corral advised me that nothing had been accomplished, but they were to see the President again at 5.30. I reported to the Ambassador in the afternoon and he prepared a wire for Washington. I saw Corral, Odoño, Calle and Cruz Santos about 9 p.m. They gave me a letter from the Minister of War, asking that we do certain things at the stockholders' meeting on Tuesday. Copy of this letter is attached. I advised that we would not confirm Saco deal as basis of that deal was that Government would give new contract to Avianca.

Advised the Ambassador at 11 p.m. new turn deal had taken, and I believe he countermanded sending the wire that he had prepared earlier. President had evidently mentioned the possibility of Government buying our entire interest, which Corral did not like, stating that if that happened, he would have nothing to do with the Company.

January 23rd. Went to see the Ambassador before leaving for Barranquilla to advise him more in detail what had happened the night before. Arrived at Barranquilla and went immediately to see Kuehl to ask him if he would not resign, which he refused to do unless he were given guarantee that resignation would not prejudice his cesantía (legal accrued compensation on discharge) and unless he got orders from the President. I did not feel as if I should fire him at the meeting as I was not sure that the President would consent

to his being discharged. It must be realized that while Scadta is a commercial company, it is entirely dependent on the President's willingness to give it a concession that will permit the Company to continue to operate on a favorable basis.

At the stockholders' meeting v.B.'s resignation was accepted, the name of the Company was changed and the ratification of the Saco deal was postponed for another stockholders' meeting. No President was elected, as Corral [fol. 2868] had advised me in the morning that he would not accept until it was clearly defined as to whether PAA was to be responsible for the technical management of the Company and the extent to which the Government expected to take part in the management of the Company.

January 24th. Discussed with Kuehl letter that he was to write the President, offering to resign. Could come to no agreement with him because of the cesantia he wanted. Apparently this matter will have to be left up to the Labor Board to decide, as there seems to be considerable difference of opinion as to the interpretation of the law.

Talked with Echeverria, who seemed to be a very intelligent man, with a background that should make him valuable to the Company. He is interested in the position, though no salary was talked; but he stated that he would not accept a connection if the Government had any active part in the management of the Company.

Talked to Schnurbusch about accepting an advisory position with the Company, which has the approval of the Ambassador. He promised to take the matter under consideration.

January 25th. Talked with Mr. Trippe, explaining how matters stood. He was assured that the Ambassador had been advised of the latest developments, and as far as I knew felt that everything was being done that could be done under the circumstances. It was explained that the ten days' delay seemed unavoidable, again taking into consideration that without a con-

tract, it would simply be impossible to justify any extraordinary expenses that may be required in order to try to nationalize the Company and thereby conform to the law.

Talked to Corral, who expected to see the President later. Saw Schnurbusch, who agreed to accept a position as adviser, but on the condition that his cesantía be liquidated at the present time. As we precisely want to avoid paying the cesantía at the present moment, do not feel that much progress was made with him.

Received call from Corral, in which he advised that he had had a very satisfactory interview with the President, who had made up his mind that it was not feasible to have German and American influence in the management, and that therefore he had decided that the Company could make a contract with PAA. Advised the American Consul at Barranquilla immediately, for transmission by secret code to the Ambassador. Corral asked that when I went to Bogotá I be prepared to quote a final figure as a fee for PAA's services. I called Mr. Trippe and reported the latest developments. He felt that 2% of gross was the [fol. 2869] minimum and that we could charge that amount only because of the fact that the Government was willing to grant an unusually favorable concession, and we wanted to show our cooperation. A 2% fee is certainly not unreasonable, though I expect to find a great deal of resistance, as the Government feels that the mere fact that we will have control over the operations should mean a lot to PAA.

I will leave for Bogotá on Sunday morning with an operating contract and concession already prepared. I hope to come to an agreement on all points next week, but it will be unusual to be able to conclude two such important documents as an operating concession and a contract for the sale of stock to the Government in that length of time.

With kindest regards, I am

Yours faithfully,

George L. Rihl

GLR:rls
enclosures

[fol. 2870]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 204

January 29, 1940

In order to confirm my recollection of the discussion with officials concerned in Washington some ten years ago when the arrangement with von Bauer was negotiated, I arranged a luncheon appointment today with Mr. Francis White, formerly Assistant Secretary of State. Mr. White not only confirmed the fact that he was familiar with our purchase of the majority of Scadta shares through Dr. von Bauer, but also stated he had been officially told at the time by the Minister from Colombia that no agreement was possible either with Pan American or the United States Government to fly through Colombia until an arrangement satisfactory to Scadta and Dr. von Bauer had been concluded.

He pointed out that Olaya had advised him that Scadta stood very well in Colombia. It had done a grand transportation job for the country. Notwithstanding Austrian stock interest it was considered a Colombian enterprise, and Dr. von Bauer was considered as speaking for Colombia, he in fact having been nominated as one of the two official delegates representing Colombia at the Havana Air Convention in 1928, where our Government was represented by Charles Hughes, Henry Fletcher, Francis White and others. Mr. White stated that the Colombian Minister, Dr. Olaya, had invited him to luncheon at his house to meet von Bauer in order to attempt to arrange landing rights for Scadta in the Canal Zone. Mr. White told me the technical regulations for flying into the Zone had been somewhat slowly prepared by the War Department following the Havana Convention, and also lay on his desk for a long time before promulgation by the Government of the Canal Zone. Mr. White further stated that this delay extended beyond the effective date of the Kellogg-Olaya Treaty. Also he recalled a date on which one of Scadta's key concessions would lapse due to the company's inability to fly through the Canal Zone. Mr. White reaffirmed from

recollection that a violent anti American campaign had been instituted by Scadta prior to the arrangement between von Bauer and Pan American and this was causing our Government much concern. He agreed also that a realistic approach to the problem of extending American air lines down the west coast of South America required an arrangement with von Bauer, and that at the time the concern of the War Department had had to do with the possibility of German pilots actually flying over the Canal Zone and not over Colombia as he had understood.

(The Kellogg-Olaya Treaty granted and still grants Scadta permission to fly in the Canal Zone proper and to the United States although Scadta had tried for years to obtain permission to fly to the Zone for commercial traffic connections. Following the transfer of stock from the von Bauer group to Pan American, Scadta shortly withdrew its service from the Canal Zone and no further effort was made to extend through there or to the United States.)

[fol. 2871] Another senior official with whom this Scadta problem was discussed in its initial stages, due to its extension of air mail service down the west coast, was Postmaster General New. No doubt Post Office Department files relating to this period will disclose most of the position.

In its proposal to the Postmaster General to transport mail on the west coast route (F.A.M. 9) Pan American-Grace Airways included an agreement between Pan American and Scadta whereby Pan American had exclusive rights to use the Scadta bases along the west coast of South America. This proposal was submitted only a short time after the arrangement with von Bauer and the enactment of the Kellogg-Olaya Treaty.

J. T. Trippe

[fol. 2872]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 205

PAN AMERICAN AIRWAYS, INC.

MINUTES OF REGULAR MEETING OF EXECUTIVE COMMITTEE — MAY 14, 1940

The President reported briefly on progress of the program which was currently being carried out in Colombia at the request of the American Ambassador and high officials of the State and War Departments concerned. He stated that 22 Americans designated by Pan American were already in Colombia, including officials serving as General Manager, Assistant to General Manager, Operations Manager, Maintenance Engineer, Chief Pilot, and Communications Superintendent; also that this group included five American pilots, and that three additional American pilots were scheduled to arrive in Colombia within the next thirty days. He said that One Pan American long range Adcock direction finder had already been calibrated and was in operation at Baranquilla, and that substantial progress had been made in erecting two other direction finders. Mr. Trippe pointed out that with the arrival of the remaining American pilots above referred to and the placing in operation of the remaining two ground direction finders, the program requested of Pan American by United States officials as being in the public interest and required in connection with the defense of the Canal and which had been agreed to by Pan American will have been completed. The actual cost to Pan American Airways, Inc., he further stated, will have closely approximated the sum of $50,000, excluding equipment transferred not required for the com-
[fol. 2873] mercial operation of the service, for which Scadta will be billed only a nominal amount.

Mr. Trippe also reported on a conference which had been held with Ambassador Braden that morning at the request of the Department of State. There were present in addition to Ambassador Braden and Mr. Trippe, Mr. Thomas Burke, Chief of the Division of Inter-American Communications of the Department of State, Mr. Thomas Morgan, Chairman

of the Executive Committee, and Vice-President George L. Rihl. Mr. Trippe stated that he had submitted at the conference the outline of a program which he referred to as Plan B. This plan would provide for the simultaneous separation from the Scadta service of the following technical employees:

14 pilots
12 flight mechanic radio operators
42 mechanics
10 airport managers
7 radio men

He pointed out that the date of separation would be approximately thirty days following the date on which Plan B would be placed into effect. He stated that he had pointed out to Ambassador Braden and Mr. Burke at the conference that Pan American had drawn up Plan B on the assumption that current developments in Europe might require, in the opinion of the United States Government officials concerned, a more far-reaching program than that covered by Plan A, currently being carried out.

Mr. Trippe reported that Ambassador Braden and Mr. Burke had stated at the conference that the Department of State and other Government agencies concerned felt that [fol. 2874] a program looking towards the early separation from the active service of Scadta of all European technical personnel was required and would be in the public interest and necessary in connection with further plans having to do with the defense of the Canal. The Ambassador indicated, however, that some difficulty might be expected where all technical personnel who had been in Scadta service more than five years separated or discharged without the approval in advance of the President of Colombia. The Ambassador referred to conversations that had been had in Colombia with the President and the Minister of War both by himself and by Mr. Rihl. He inquired whether it might be possible to amend the plan outlined by Mr. Trippe so as to place, if required, these older employees in a retired status but continuing them in Scadta's employ.

Mr. Morgan stated at the conference that he was in general in full accord with the program and that he would favor the change suggested by the Ambassador in the event the necessary permission from the President of Colombia was not forthcoming. The Ambassador stated that he would take the matter up with the President of Colombia through the Embassy and would shortly be prepared to advise Messrs. Trippe and Rihl whether or not the President of Colombia would interpose objection to the simultaneous separation of all European personnel, including personnel of European origin now in Scadta service, but expressed the hope that there would be no delay in Pan American's undertaking to proceed with this program.

[fol. 2875] Mr. Trippe then explained that although Pan American controlled Scadta there was an appreciable Colombian minority interest that would undoubtedly object to the management assuming the costs mandatory under Colombian law in discharging employees, when such action was not commercially justifiable and which would seriously affect the company's financial position. It was therefore evident that the minority interest would have a perfectly valid claim against Pan American unless these costs could be absorbed in some way by Pan American. Mr. Burke stated that the Department would be glad to submit a confidential letter to the Civil Aeronautics Authority setting forth that the expenses to be incurred by Pan American, which Mr. Trippe had estimated to be an additional $250,000, would be in the public interest and required in the interest of the national defense of the United States, and that appropriate consideration should be given such an expenditure in connection with future rate cases.

Mr. Trippe reported that the conference with the Ambassador and Mr. Burke had adjourned after his agreement that he would recommend to his Board that Pan American Airways be authorized to proceed with the program on request by the Government officials concerned.

Thereupon, Mr. Morgan presented his views, outlining the desirability of immediate action being taken by the

Executive Committee. After general discussion, it was proposed, seconded and unanimously carried that an appropriation of $250,000 be authorized to cover the expenses to [fol. 2876] be incurred by Pan American in connection with Plan B, in addition to the $50,000 previously authorized for Plan A.

[fol. 2877]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 206

PAN AMERICAN AIRWAYS, INC.

MINUTES OF REGULAR MEETING OF EXECUTIVE COMMITTEE — MAY 24, 1940

Mr. Trippe reported to the meeting on the status of the program for the nationalization of the Colombian service. He stated that the President of Colombia had given permission for the separation from the active service of Scadta of all European technical personnel, and that the discussion which was held at the last meeting of the Executive Committee had been approved by the United States Department of State.

[fol. 2878]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 207

PAN AMERICAN AIRWAYS, INC.

MINUTES OF REGULAR MEETING OF EXECUTIVE COMMITTEE — MAY 28, 1940

The meeting considered a report by Mr. Trippe on the progress of reorganization Plan B relating to the realization of the Colombian service. He stated that at a meeting held in Washington last week, which was attended by representatives of the Navy Department and the Department of State, such program had been completely endorsed and that data relating to the expenditures made by the Company in connection with carrying out such program would be available for consideration in connection with future rate cases.

[fol. 2879]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 208

Barranquilla, Colombia
June 8, 1940

Mr. J. T. Trippe, President
Pan American Airways Corporation
Chrysler Building
New York, N. Y.

Dear Mr. Trippe:

In accordance with various resolutions promulgated by the Stockholders' meeting of the SCADTA on Saturday, June 8th, this company will henceforth be known as AEROVIAS NACIONALES DE COLOMBIA, S. A. (AVIANCA). The cable address of the new company will be "AVIANCA" at all points in Colombia.

While you will of course receive official copies of the minutes and resolutions of the meeting referred to above, through the conventional channels, it is the purpose of this letter merely to inform you promptly of the change of name of the company, in order that notification of all offices of Pan American Airways may be facilitated.

Very truly yours,

/s/ M. J. RICE
M. J. Rice
Vice President and General Manager

MJR/cn

cc Vice Pres Rihl, PAA-Bogotá

[fol. 2880]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 209

Memorandum of Conference with the Civil Aeronautics Authority Reference Scadta

On Thursday, June 13, 1940, Mr. Trippe, accompanied by Mr. Cooper, appeared before the Civil Aeronautics Authority.

There were present Vice Chairman Branch and Mr. Ryan of the Civil Aeronautics Authority, also Mr. Pogue, General Counsel, and Mr. Gates, Chief of the International Division.

Mr. Trippe stated: that he wished to advise the Members of the Authority of the Scadta situation and the developments leading up to the present position—that he had not previously done so because of the request of the State Department and recent developments and plans be kept absolutely confidential and not discussed with other agencies until arrangements for installing complete American management and personnel in place of former German management and personnel had been put into effect, that this secrecy was deemed necessary as any preliminary publicity might have given rise to sabotage.

Mr. Trippe described briefly the circumstances leading up to the purchase by Pan American Airways of a majority interest in Scadta—the arrangements under which former management and personnel had been allowed to continue—the opportunity which Pan American Airways had been offered by Dr. Von Bauer in 1938 to resell to him (or to persons whom he represented) the entire Pan American Airways interest without loss—that Pan American Airways had refused to make this sale because of its feeling that the sale would be inconsistent with the best interests of the American position in South America—that this offer and the apparent ability of Dr. Von Bauer to finance the resale was the first occasion on which Mr. Trippe and other Pan American officials who had dealt with the Scadta situ- [fol. 2881] ation had become suspicious of Dr. Von Bauer's motives.

Chairman Hinckley of the Civil Aeronautics Authority joined the meeting and thesdiscussion continued in executive session after the withdrawal of Mr. Pogue and Mr. Gates.

Mr. Trippe then described representations made to Pan American Airways in 1939 by the State Department, Ambassador Braden, and the War Department, insisting that the defense of the Canal Zone required elimination of German management and personnel from the Scadta organization, and the request that Pan American Airways arrange promptly for such elimination as a matter of national defense—that "Plan A" was adopted, as a result of these representations. Under this Plan, Pan American Airways, in the latter part of 1939, installed complete Pan American management for Scadta, installed direction finders to keep check on the movements of Scadta planes, and proceeded with a gradual plan of substitution of German flight and ground personnel, explaining that the Colombian Government up to that time had been unwilling to allow the discharge of Scadta personnel who had been in service for over five years.

Mr. Trippe then described the later conferences in the early part of 1940 with officials of the State and War Departments who insisted that the complete exchange of personnel must be made without delay in aid of the national defense—that as a result Plan B was agreed upon—that under this Plan secret arrangements were made to fly into Colombia sufficient American personnel to take the place of all German flight and ground personnel still employed by Scadta—that due to the situation in Europe the Colombian Government had finally and very recently indicated that it would make no objection—that on the day prior to the conference the Plan had been put into effect, all services for Scadta had been suspended for two days, and that on [fol. 2882] the day following, services would be resumed using new American personnel only.

He further explained that Colombian labor laws required that large payments be made to discharged Scadta personnel that it would be necessary for Pan American

Airways to bear this expense in addition to its own direct expenses in sending its personnel to Colombia to take over the Scadta management—that the total of these direct non-recurring capital outlays by Pan American Airways would aggregate over $400,000—that, in addition, the higher salaries to be paid American personnel would add to the operating costs of Scadta about $150,000, making a total outlay which Pan American Airways would incur, of between $500,000 and $600,000 by the middle of 1941, all of which had and would be spent as a national defense requirement and not as a result of commercial requirements.

The Authority then discussed with Mr. Trippe the manner in which Pan American Airways could be reimbursed for these national defense outlays, stating that no method existed under which the Authority could repay the non-recurring capital disbursements—that the additional operating costs of Scadta after 1941 might possibly be taken into consideration in fixing Pan American Airways rates in the Latin American services under an inter-company agreement between Pan American Airways and Scadta—that, however, all expenses incurred by Pan American Airways in aid of the national defense ought to be repaid to Pan American Airways by agencies or departments other than the Authority.

It is hoped and expected that Scadta as thus reorganized under American management will be designated as the Colombian National Company.

Thereupon the meeting adjourned.

[fol. 2883]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 210

PAN AMERICAN AIRWAYS, INC.

MINUTES OF ADJOURNED REGULAR MEETING OF EXECUTIVE COMMITTEE NOVEMBER 12, 1940

* * * * *

Mr. Trippe reported that acting under instructions from the Committee he had phoned Mr. Evan E. Young at Barranquilla on November 7th and November 8th. Mr. Young had requested Dr. Corral to furnish him with assurance that all twenty eight of the remaining German or Colombian naturalized German employees of Avianca would be released during the ensuing six weeks' period. Dr. Corral had advised him that he did not consider such action could be carried out without considerable risk to Avianca and furthermore that such action in such short time would be considered as a second "blitzkrieg" in Colombia and would bring about further political complications embarrassing to the company and the President of Colombia. Dr. Corral stated to Mr. Young he would immediately call on the President of Colombia at Bogota and confer with him as to whether he would approve the six weeks separation period. Dr. Corral advised Mr. Young that on his return from Bogota after seeing the President he would be prepared to state to Mr. Young whether he would carry on as Avianca's chief executive or resign. It requested to furnish the above mentioned assurance.

Mr. Trippe stated he expected to receive word from Mr. Young as to the matter during the week of November 11th. Mr. Trippe also reported to the Committee that he had outlined the position to Under Secretary Welles during an interview at the State Department on the afternoon of November 8th and that Mr. Welles had stated that he would send instructions to Ambassador Braden to intercede with the President of Colombia in an effort to secure his acquiescence in obtaining the approval of the program to be presented to him by Dr. Corral.

[fol. 2884]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 211

PAN AMERICAN AIRWAYS, INC.

MINUTES OF REGULAR MEETING OF EXECUTIVE COMMITTEE NOVEMBER 19, 1940.

* * * *

Mr. Trippe thereupon reported to the meeting upon the inspection trip to Colombia made by Mr. Evan E. Young, a Senior Vice-President of the Company, and also upon a supplemental conference which had been held with Acting Secretary Welles.

Mr. Trippe said that he had stated to Acting Secretary Welles that the Company would eliminate all of the remaining twenty-eight German and Colombian naturalized German employees of Avianca if Secretary Welles thought such action necessary. It was the sense of the meeting that the Company was prepared to continue to do everything possible requested by the State Department in carrying out the program for the release of all of such employees of Avianca, regardless of whether Dr. Cisneros would be willing to continue as Avianca's Chief Executive.

[fol. 2885]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 212

July 10 1941.

[Handwritten notation—Brazil operations—Corumba]

Memorandum of telephone conversation between Messrs. Rihl and Harding today, July 10th

I called Mr. Harding to advise him that Mr. Young had just talked with Mr. Rice in Rio, who told him that the Condor was applying for a second schedule to Curumba. Mr. Rice stated that while the starting of a second service

by Condor might not eliminate Panair do Brasil from that run, yet it would make it difficult, particularly in view of the necessity of coordinating the schedules with Panagra. The Government could also take the position that the route was sufficiently served by a twice a week service.

Mr. Rice stated that Mr. Burden was very much concerned over the situation, and so Mr. Rice recommended to Mr. Young that he be given permission to take the necessary steps to have Panair do Brasil open the service immediately. I told Mr. Harding that Mr. Young had given the necessary authority and that the service would be opened at once, unless for some unforseen reason Mr. Tripp, who was absent, objected. Mr. Harding wanted to know if we had enough Lodestars to carry on the service and I told him we did, certainly for the time being. I also told Mr. Harding that as urgent action seemed to be necessary we were foregoing a commitment on the part of Washington regarding the expenses, but that we would expect Washington to take care of the cost in some way. Mr. Harding stated that they would use their best efforts to see that we were compensated, and seemed extremely appreciative of our action.

Mr. Harding, in a joking manner, stated he had heard there was a lot of traffic on that run.

G.L.R.

[fol. 2886]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 213

PAA MEMORANDUM FORM

		DATE	July 15, 1941
TO	President	FROM	Vice President
DEPT. OR DIV.	Executive	DEPT. OR DIV.	Executive
LOCATION	New York	LOCATION	New York

SUBJECT:

Suggested Panair do Brasil Rio-Corumba Service.

REFERENCE:

As you of course know, Pan American-Grace Airways recently inaugurated a service from the Pacific Coast, via LaPaz, to Puerto Suarez, near the Brazilian border, and is currently planning to extend this service to Corumba, on the Brazilian side of the border.

CONDOR, the wholly owned German national company, now operates a subsidized service on a once-a-week frequency between Rio and Corumba. It recently applied to the Brazilian Government for permission to increase the frequency to twice-a-week.

As the situation now stands, CONDOR would be the only connecting carrier (Corumba) with Pan American-Grace Airways, and this end-on connection would of course strengthen CONDOR's position not only as regards this particular line, but also its position in general in Brazil.

In view of the foregoing, I recently telegraphically exchanged comment with our senior representatives at Rio de Janeiro with regard to the practicability of Panair do Brasil, our Brazilian national company, operating a service between Rio and Corumba, on a once-a-week frequency.

There is attached a copy of my most recent telegraphic report from our Rio office. You will note the comment therein respecting the importance of the suggested operation in connection with the "de-Germanizing" of Brazilian domestic aviation. Also, the comment to the effect that if the service is to be operated, Pan American Airways should be prepared to guarantee a suitable return on the capital investments and operating costs involved.

I fully concur in Panair do Brasil's statement that if it is to undertake this service we should be prepared to guarantee a suitable return, for instance 10%, and I advance the suggestion for your consideration that if the U.S. Post Office Department would accord mileage pay to Pan American Airways for the presently unpaid-for fourth trip (Rio-Porto Alegre-Buenos Aires sector) at the rate of $1.80 southbound and $1.00 northbound, our company would then [fol. 2887] be in a position to accord the guarantee to Panair do Brasil, as set forth in their telegram. This non-paid-for fourth trip between Rio and Buenos Aires via Porto Alegre, was inaugurated December 17th last, and has been operated continuously since then. The matter is both an important and an urgent one. The Brazilian operating rights for Pan American-Grace Airways to extend to Corumba are expected daily, and unless we are to see CONDOR reap a substantial benefit from the Pan-Grace situation, and incidentally strengthening CONDOR's basic position in Brazil, prompt action would appear to be required. It is earnestly recommended that Panair do Brasil receive the fullest support from our company in connection with a Rio-Corumba service, if Washington can make it possible for us to accord such assistance.

There is attached hereto brief factual data regarding the route under discussion, together with a rough sketch map.

/s/ Evan E. Young
Evan E. Young

[fol. 2888]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 214

C
O
P
Y

JULY 15, 1941

PANAIR
YOUNG
NEW YORK

NO. 380. REPLYING YOUR 295 THE ESTABLISHMENT OF PROPOSED SERVICE WE REGARD AS IMPORTANT ESPECIALLY IN CONNECTION WITH THE DESIRED DE-GERMANIZING QUESTION BECAUSE THE SERVICE ON THE PROPOSED ROUTE WOULD PARALLEL CONDOR'S SUBSIDIZED SERVICE AND AS HAS BEEN REPORTED CONDOR HAS NOW APPLIED FOR SECOND WEEKLY FREQUENCY STOP WE FEEL THAT PAN AMERICAN AIRWAYS SHOULD BE PREPARED TO GUARANTEE A TEN PERCENT RETURN UPON TOTAL COST OF ORGANIZING AND ESTABLISHING THE SERVICE AS WELL AS CAPITAL EXPENDITURES, INCLUDING FLIGHT EQUIPMENT STOP ALL REVENUES FROM THIS SERVICE WOULD OF COURSE BE CREDITED AGAINST OPERATING COSTS BEFORE COMPUTING AMOUNT REQUIRED UNDER GUARANTEE TO PRODUCE TEN PERCENT RETURN STOP OPERATING COST FOR ONE YEAR TO INCLUDE COMPLETE AMORTIZATION OF UNSALVAGEABLE CAPITAL INVESTMENT AND DEVELOPMENT COSTS STOP MAXIMUM AMOUNT WOULD NOT EXCEED 3,000 CONTOS STOP THIS OPERATION WOULD OF COURSE REQUIRE ONE POSSIBLY TWO ADDITIONAL FLIGHT UNITS.

CAUBY

2:30 PM

C
O
P
Y

[fol. 2889]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 215

COPY

W. R. GRACE & CO.
7 Hanover Square
New York

Office of the President — July 18th, 1941

C. V. Whitney, Esquire,
Chairman of the Board
Pan-American Airways Corporation
Chrysler Building
New York City.

Dear Sonny,

In accordance with Roig's conversation with you, I have pleasure in enclosing copy of the letter I propose sending to the CAB on Monday, and also a copy of the Minutes of Special Meetings of the Board of Directors and Stockholders of the Pan American Grace Airways. The letter is for you and any associates that you choose to show it to, but obviously it is confidential until it is delivered to the CAB.

I am going to Montauk and will be at Gurney's Inn from today at Noon until Sunday morning. On Sunday I will be in Westbury and Monday morning in my office. If you want to speak to me at any time I will be available.

Yours sincerely,

(Dictated by)

D. STEWART IGLEHART

[fol. 2890]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 216.

July 21, 1941.

Civil Aeronautics Board,
Washington, D. C.

Attention: Hon. Harllee Branch, Chairman

Dear Sirs:

New Orleans/Panama Service
Docket No.

Pursuant to our Notice of Intention to file application for the above route, Gulf & Caribbean Airways, Inc., a wholly owned subsidiary organized by us, filed corresponding application July 21 as per copy enclosed. We feel that we should point out certain circumstances in reference to the filing of this application which do not appear from a reading of the application itself.

As you know, jointly with Pan American Airways Corporation we formed Pan American-Grace Airways, Inc. (Panagra) about twelve years ago. This company is operating a direct trunk line air service (over 7,000 route miles) serving the Panama Canal Zone and seven South American countries: Panama, Colombia, Ecuador, Peru, Bolivia, Chile and the Argentine. It is now instituting service to Corumba, Brazil, where it will connect with a Pan American line running to Rio. It enjoys great prestige and is one of the most potent American influences in the southern continent.

The proposed New Orleans/Panama route is a logical extension of the existing service of Pan American-Grace Airways, Inc. Such an extension providing a direct and independent connection with the United States for Panagra's great trunk line would add greatly to the efficiency of the Panagra operation and measurably facilitate and improve the service between the United States and the important South American countries on the Panagra route. For these reasons and because it would provide a second complete and independent direct line between the United States and South America, such an extension would clearly be in the national interest. As a 50% stockholder of Pan American-Grace

Airways, Inc. we have, therefore, felt that this New Orleans Panama route should be applied for and operated by that company as an extension of its existing route.

Application has not been filed by Pan American-Grace Airways because Pan American Airways Corporation, the other 50% stockholder in Pan American-Grace Airways, Inc. has been unwilling to agree to the filing of such application or to consider the modification of certain agreements or alleged agreements which they consider preclude Pan American-Grace Airways from filing such application without their consent. As the directors representing Pan American Airways on the Board of Pan American-Grace Airways, Inc. have refused even to attend meetings of the Board of that company for the purpose of discussing the question, all action by Pan American-Grace Airways in the matter has been rendered impossible.

For the reasons indicated, we believe that Panagra should apply for and operate this New Orleans Panama route. The action of Pan American Airways Corporation above referred to makes this impossible. Our only recourse, therefore, is to file this application by Gulf & Caribbean Airways, Inc. with the understanding that if it is granted the connecting service will be operated in a manner designed to accomplish so far as possible the objective that would be attained by its operation as an extension of the Panagra Route and with the further understanding that if prior to final decision on the application of Gulf & Caribbean Airways, Inc., Panagra should be in position to file and should file application herein, Gulf & Caribbean Airways, Inc. would be willing to arrange for the withdrawal of its application.

[fol. 289] We respectfully request that pursuant to Sections 205(a), 415 and 1002(b) of the Civil Aeronautics Act 1938, the Civil Aeronautics Board institute an appropriate proceeding to determine whether, under Sections 408, 409, 411 and other relevant provisions of the Act, Pan American Airways Corporation and the directors of Panagra who are also director and/or officers of Pan American Airways

Corporation are justified in preventing the filing of an application by Panagra in its own name for the New Orleans-Panama Route, and take such other action in the premises as the Board may deem appropriate.

Respectfully yours,

W. R. Grace & Co.
President

[fol. 2892]

Pan American World Airways, Inc. Exhibit 217

August 2, 1941.

Memorandum of Points to be Considered in Connection with Charter of Equipment.

The general basis of the proposed arrangement is understood to be that each of the companies shall receive the revenues and be chargeable with the expenses on the sector for which it holds a certificate but that aircraft of one company would be physically operated over the route of the other. This is to be much along the lines of the agreement dated March 17, 1939, as amended under date of August 15, 1940, between Western Air Express and United Air Lines, approved by the C.A.B. in Docket No. 215. This memorandum is prepared to outline certain questions which must be determined before it would be feasible to attempt to set the detailed terms of the arrangement down in writing.

(1) *Route.* It is understood that the discussion commenced in connection with PAA's New Orleans application. Any arrangement in respect of the New Orleans route would necessarily have to be contingent on the granting of so much of PAA's application as provides for service between New Orleans and the Canal Zone, and this would be on a "when, as and if" basis.

At my conference of Friday with Mr. Poig and Mr. Cogswell
~~Campbell~~, we discussed the possibility of making the ar-

rangement applicable to the Canal Zone-Miami route, although I stated that I had no knowledge whether Pan American would be disposed to agree to such an arrangement. This point should be explored.

If the arrangement is made applicable to the Miami route, there will be then a question as to whether it should also be made applicable to the New Orleans route on a "when, as and if" basis or whether it should be confined to the Miami route. If the arrangement were to be made applicable to the New Orleans route, would this be on a firm basis or would it be optional with Panagra?

While there was some discussion as to making Gulf and Caribbean Airways a party to the arrangement, it appears that any such plan would necessarily involve the transfer to PAA of any certificate issued to Gulf and Caribbean, and the C.A.B. would hardly be disposed to issue a certificate to Gulf and Caribbean on any such basis. In other words, if satisfactory charter arrangements are made and approved by the C.A.B., it would seem to follow that the Gulf and Caribbean application would not be pressed.

(2) *Character of Charter.* Is it intended that the charter should be reciprocal, that is, involving not only the use of Panagra equipment on PAA routes but also the use of PAA equipment on Panagra routes?

(3) *Effective Date.* At present the only available equipment which would be satisfactory for the proposed charter are the three Boeing S-307 four-engine aircraft owned by PAA. If the arrangement contemplates the use of PAA equipment on Panagra routes, would it be made effective immediately or would it await the delivery of DC-4s to Panagra?

[fol. 2863] (4) *Number of Schedules to which Charter Arrangements are to Apply.* There would have to be some agreement on the number of schedules per week to which the charter arrangements would apply. This might be either a fixed number, or a minimum and maximum with provisions for notice by one company to another in the event of changes within the agreed range.

(5) *Schedules and Stops.* The agreement would have to provide that the hours of departure and arrival of the connecting schedules should be either as specified or as fixed by mutual agreement. A somewhat allied question is that of intermediate stops. Paragraph 13 of the agreement between Western Air Express and United Air Lines provides that the party over whose route the plane is being operated shall have the exclusive right to fix the scheduled stops. This would seem inherent in an arrangement whereby the party over whose route the plane is operating receives the revenues and is chargeable for the expenses of the operation. The agreement might, however, contain a provision to the effect that the purpose of the parties is to provide satisfactory through service and that the determination of intermediate stops is to be made with this underlying purpose in mind.

(6) *Cost of Charter.* In the Western Air-United agreement, the charter was at cost, including depreciation, but with no return on investment. This question should be explored as regards the proposed arrangement.

(7) *Crews.* Paragraph 3 of Western Air-United agreement provides: "The crew of each airplane used in conducting connecting schedule service under this agreement * * * shall be employed and serve as heretofore only on the routes of their respective employers." Such an arrangement is advantageous from the standpoint of route familiarity, coordination with ground personnel, and in connection with the problem of risk of loss. As against this, there may be a question of type familiarity if the chartered equipment is of a type used by one company and not the other. Definite decision must be reached on this point, as it affects the charter hire, risk of loss, etc.

(8) *Risk of Loss.* The Western Air-United agreement provides (par. 24) that the risk of loss is on the company over which route the aircraft is being operated. This would seem obviously the right solution of the problem where that company's flight crews are operating the plane. If the owner's flight crews continued to operate, this problem would occasion considerable difficulty. The agreement requires the using party to insure unless the owner is

satisfied with the user's self insurance. This would appear to be a fair provision.

(9) *Publicity, Time Tables, etc.* An understanding would be required as to the method in which the service of DST chartered airplanes would be made known to the public. The Western Air-United agreement is fairly vague upon this subject. Paragraph 10 provides that each party shall display in the cabin a sign disclosing the name of the owner and the name of the operator. Paragraph 12 provides that tickets shall distinctly show that the trip east of Salt Lake City is being made via United and the trip west of Salt Lake City via Western. Paragraph 32 provides that United shall permit Western to display on its DST airplanes the word "Mainliner".

Henry J. Friendly

[fol. 2894]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 218

October
29th
1941

Mr. Harold J. Roig, President
Pan American-Grace Airways, Inc.
New York, N. Y.

Dear Harold:

Recent government action indicates that no four-engine equipment, either Constellations or DC-4s, will be released for purchase by the airlines until late spring or summer of 1943. In view of this situation Pan American Airways has placed conditional orders for forty-three DC-3s for use on Latin American services and Alaska.

The indications are that deliveries on DC-3s to the airlines will be authorized commencing in June, 1942, approximately a year before any four-engine equipment could be anticipated. While Pan American-Grace has as yet placed no orders for DC-3s, Pan American in its priority applica

tion has reserved six of the forty-three above referred to for Pan American-Grace Airways.

Should Pan American-Grace not avail itself of all or part of these six ships, to the extent allocated, Pan American would, of course, be glad to purchase them or any part thereof. The 1942-43 allotment by the government of DC-3s for commercial use as between Pan American and domestic airlines is already under way.

I will appreciate your advising me before November 5th, the date of the next Pan American Board meeting, as to Pan American-Grace's decision with respect to these six ships. Unless Pan American-Grace takes advantage of this option I see no opportunity for our joint company to provide additional capacity so urgently required south of the Canal Zone until adequate four-motor equipment is available for express services.

Sincerely,

J T T

President

[fol. 2895]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 219

November 4, 1941

W. R. Grace & Company,
7 Hanover Square,
New York, New York

Dear Sirs:

We have your letter of October 27 in reply to our letter of October 22. Our letter of October 22 was not, as you characterize it, "a categorical refusal to provide connecting service for Panagra's fourth trip as at present operated." Our letter merely pointed out that this fourth trip is not properly spaced to provide adequate through mail or passenger service, and suggested that Mr. Roig or Mr.

Harris confer with our System officials with a view to arranging suitable schedules for four adequately spaced trips per week. As a matter of fact, we have been at all times, and still are, anxious to institute a fourth schedule between Miami and the Canal Zone and it was with a view of presenting the matter in the most favorable light to the Post Office Department that we suggested in our letter of October 22 that Mr. Roig or Mr. Harris work out a revised schedule with our System officials.

The proper officials of the Post Office Department have been asked to approve a fourth direct schedule on a basis which would afford connections with the fourth schedule which has been inaugurated on our joint service. The Department will not approve at this time a fourth direct mail trip between Miami and the Canal Zone to connect with the new schedule inaugurated on the West Coast.

In view of this fact there is no occasion to reply to the other statements contained in your letter, although it should be said that with regard to most of such statements we are in complete disagreement.

We again ask that Mr. Roig or Mr. Harris cooperate in the preparation of an adequate schedule for a through fourth trip. In our opinion an adequate fourth through [fol. 2996] schedule would move more United States mail than would a trip connecting with the present fourth trip of Pan American Grace, and would enhance the likelihood of the Post Office Department being willing to designate a fourth direct trip between Miami and the Canal Zone as a regular mail schedule for Pan American Airways. Obviously, the interests of Pan American Airways are prejudiced until this can be accomplished.

There is clearly not the slightest occasion for holding the special meeting of the Board of Directors of Pan American Grace which has been called for November 5 to consider a proposal that Pan American Grace extend its route from the Canal Zone to Miami or other terminal or terminals in the United States, and in this connection apply to the Civil Aeronautics Board for the necessary certificate of convenience and necessity.

Substantially the same proposal has been repeatedly advanced by the Grace interests in direct conflict with the agreement under which Pan American-Grace was organized.

Such a proposal was first advanced by the Grace interests in the winter of 1938-1939, when, after extended negotiations the parties came to an agreement on February 14, 1939, effective until February 1, 1944. Notwithstanding the fact that such agreement disposed of the matter, a like proposal was again advanced by the Grace interests in January, 1941, when a special meeting of the Board of Directors of Pan American-Grace was called for the purpose of considering a proposal that the joint company extend its route to New Orleans. However, Pan American again considered the matter and came to the conclusion that such an extension would not only constitute an unwarranted departure from the prior agreements of the two stockholders, but would not be in the interests of Pan American-Grace itself, and we so advised Mr. Roig.

Six months later, however, another special meeting of [fol. 2897] the Board of Directors of Pan American-Grace was called, this time for June 18, 1941, to consider the proposal that the joint company extend its route to New Orleans. The matter was again presented to the directors of our Company with the result that they were again unanimously of the opinion that it would be neither in the interests of our Company or of our jointly owned company, or in the public interest, for our representatives on the Board of Directors of Pan American-Grace to approve such proposal. We wrote you under date of July 22, 1941, confirming this, but also advising you that in line with our agreement with you of February 14, 1939, we were glad to submit the matter to arbitration and requested that such arbitration be held at once. As you know, we have never had a reply to our letter of July 22, 1941 (a copy of which is attached hereto).

Nothing has transpired since which could in any way alter the position which we have heretofore taken. The adequate competing service provided for in the agreement

of February 14, 1939 has been maintained and, as stated above, we are not only willing, but anxious to inaugurate a fourth schedule between the Canal Zone and the United States as soon as approval by the postal authorities can be obtained. Such approval is, of course, essential not only from a business point of view but is also required by our agreement with you of February 14, 1939 which provides that, with the exception of a second trip between Miami and the Canal Zone, Pan American Airways "shall not be obligated to operate any schedules and services not designated by the Post Office Department as mail schedules."

Under these circumstances no useful purpose can be served by further discussion of the proposed extension by our respective representatives on the Board of Directors of Pan American-Grace, particularly these days when our officials are so much occupied with matters having to do with [fol. 2898] the National Defense. Accordingly our representatives on the Board do not expect to attend the special meeting which has been called for November 5.

We remain willing, however, as we stated in our letter of July 22, 1941, to arbitrate the matters involved in accordance with the provisions of our agreement with you of February 14, 1939, and we repeat the request therein made for such arbitration. We will appreciate it if you will advise us of your position in this respect.

Very truly yours,

PAN AMERICAN AIRWAYS CORPORATION

Evan E. Young
Vice President

Enclosure

[fol. 2899]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 220

COPY

W. R. GRACE & CO.
7 Hanover Square
New York

A. GARNI
First Vice President

November 12, 1941

Pan American Airways Corporation
15 Exchange Place
Jersey City, New Jersey

Dear Sirs:

We refer to your letters of November 4th and July 22nd.

It seems hardly necessary to reply to yours of November 4th in detail. The facts speak for themselves. There was no "agreement under which Pan American Grace was organized" in conflict with the idea of their coming through to a terminal in the United States. There is nothing in the agreement of February 14, 1939 which prohibits the question being raised in the manner in which it has been. The meeting called for November 3, 1941 was in pursuance of that agreement and your refusal to permit your representatives on the Panagra Board to attend that meeting was in direct violation of its explicit terms.

As you will recall, immediately following our receipt of your letter of July 22nd, discussions were begun between Mr. Trippe and Mr. Roig looking to a settlement of our problems and reply to that letter was accordingly deferred pending the outcome of these discussions.

Both of your letters under reply suggest arbitration under the agreement of February 14, 1939. In our opinion the questions at issue do not come within the arbitration clause of that agreement at all except the question of the adequacy of your connecting service between Miami and the Canal Zone. As to that, and the other questions at issue,

we would call your attention to the fact that the agreement specifically provides that the questions to be arbitrated are those which cannot be settled by the Board of Panagra. The [fol. 2900] action of your representatives who are directors of Panagra in refusing to attend meetings of Panagra called for the purpose of discussing the questions at issue has made impossible even an attempt by the Board of Panagra to dispose of these questions as directors of Panagra acting under their full legal responsibility as such and has thereby eliminated these questions from the arbitration clause of the agreement.

In our opinion, it is in the manifest interest of Panagra and in the public interest that Panagra should apply for a route between the Canal Zone and a terminal in the United States. Your letters under reply deny this and repeat what you have so often and so frankly said before that your Board of Directors and your Executive Committee have considered the matter and decided that this is not in the interest of your company. In our opinion this matter is not one to be decided by your Board of Directors or by your Executive Committee, nor one to be decided with reference to the interests of your company. In our opinion the directors of Panagra are under not only a general legal responsibility as directors but also under a very special duty by virtue of various provisions of the Civil Aeronautics Act and the order of the Civil Aeronautics Board permitting them to hold the interlocking positions which they occupy, to administer the affairs of Panagra as an independent air carrier entirely and exclusively in the interest of Panagra and in the public interest. The position which has been so repeatedly and so outspokenly taken by your company and by the representatives of your company who are directors of Panagra, namely, that while acting as directors of Panagra their actions in matters where they consider there is a conflict of interest should be dictated by your Board of Directors and by your Executive Committee and should be governed primarily by what is in the interest of Pan American Airways rather than by what is in Panagra's and the [fol. 2901] public interest, is at the base not only of the present difficulty but of others which have arisen from time to time.

We feel that the orderly administration of Panagra's affairs, provision for its normal growth and development and its ability to be of maximum service to the United States Government requires prompt clarification of the existing situation. The body best qualified to determine the paramount public interest in the situation is the Civil Aeronautics Board. We see no alternative but to submit the entire matter to the Board for its determination of the following propositions:

1. Whether or not directors of Panagra should pass upon Panagra business brought before them as directors of Panagra and entirely from the standpoint of what is in the best interest of Panagra and in the public interest and without regard to the interest of any other company with which interlocking relationships exist.

2. Whether or not Panagra should have the full standing of an independent air carrier in every respect and be in position to take prompt and uncontrolled action in any and all matters without deadlocks, refusal to attend meetings or other negative action by some of its directors having the effect of putting one air carrier (Pan American) in control of another (Panagra).

3. Whether or not Panagra should in the public interest as well as in its own interest forthwith take steps to bring its service through from the Canal Zone to Miami and/or New Orleans thus providing an independent through trunk line over the Panagra Route from Buenos Aires to the United States.

Very truly yours,

W. R. GRACE & CO.

/s/ A. GARNI
First Vice President

[fol. 2902]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 221

COPY

PAN AMERICAN-GRACE AIRWAYS, INC.
Executive Offices
Chrysler Building
New York City

December 16, 1941.

Pan American Airways,
Chrysler Building,
New York City.

Dear Sirs:

We refer further to yours of November 4th.

Recent discussions in connection with the proposed Camaguey stop in which we have pointed out some of the difficulties with the existing Miami/Cristobal service and the effect of the Camaguey stop thereon make it unnecessary to discuss here the portions of your letter relating to these subjects.

The draft agreement attached to yours under reply appears to be merely one providing for mutual options, thus committing no one to anything until the mutual exercise of these options. Otherwise it follows pretty literally the United/Western Air form rather than attempting to develop from that as a starting point, a setup which might, as the writer originally suggested and hoped, meet our particular problem. Every point to that end which the writer discussed with Mr. Trippe is in this proposed agreement resolved in accordance with Mr. Trippe's views and contrary to those the writer expressed:—hardly an indication of a desire to settle the matter in this form. As drawn, the agreement seems to accentuate and perpetuate rather than to ameliorate Panagra's present position. Whatever its usefulness may be in other directions, we do not see that the proposed agreement meets our basic problem.

While we might readily answer your other statements, we do not believe that any useful purpose would be served

by further correspondence at this time regarding these quite irrelevant matters.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.

.....

President

[fol. 2903]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 222

January 27, 1942

The Honorable
The Postmaster General
Washington, D. C.

Dear Sir:

Pursuant to schedules on file with your department, Pan American Airways, Inc. since September 1940 has been operating with Boeing S-307 four-engined strato-clippers three high speed trips per week between Miami, Florida and the Canal Zone, these trips departing from Miami on Tuesday, Thursday and Saturday of each week and from the Canal Zone on Sunday, Tuesday and Thursday of each week. At the time when these trips were inaugurated, the appropriation was inadequate to permit payment for all of them and payment has been received for only one of these three weekly round trips, the other trips being operated as voluntary flights. It was proposed at the time that new rates would shortly be fixed by the Civil Aeronautics Board and that all these schedules would then be designated as mail trips.

The increased volume of traffic to the Canal Zone as a result of national defense activities and the inauguration of additional schedules south of the Canal Zone by Pan American-Grace Airways, Inc. make an increase in the service to that point desirable. It is now possible for us to inaugurate a fourth weekly trip with Boeing S-307 four-

engine equipment, with southbound trips departing from Miami on Tuesday, Thursday, Saturday and Sunday and northbound trips returning from the Canal Zone on the same days, all on the same schedule now applicable to our Tuesday and Thursday trips. Within the next month we expect to be able to add a fifth and sixth weekly trip.

We are quite willing to stand by the arrangement made in August, 1940, with respect to the voluntary character of the second and third trips although it was not, of course, supposed that the arrangement would remain in effect for any such length of time. However, it would appear to us that any additional trips operated on this vital trunk route should be operated as mail pay schedules in the same way as the four round trips per week now designated between Miami and Rio (and three round trips per week between Rio and Buenos Aires) via the east coast route and the four round trips per week now designated between the Canal Zone and Buenos Aires via the west coast route. If your department concurs in our view as to the desirability of this proposed additional service to the Canal Zone, we respectfully request that your department designate the fourth proposed schedule for mail pay and indicate whether it is prepared similarly to designate the proposed fifth and sixth weekly schedules.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.
By:

Evan E. Young
Vice President

[fol. 2904]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 223

POST OFFICE DEPARTMENT

Second Assistant Postmaster General

Washington

January
28
1942

Mr. Evan E. Young
Vice President
Pan American Airways, Inc.
Chrysler Building
New York, N. Y.

My dear Mr. Young:

Reference is made to your letter addressed to the Postmaster General January 27, concerning the desirability of providing a fourth weekly flight on FAM 5 between Miami and the Canal Zone, in which you refer to the fact that specific payment is made for only one of the three present weekly flights between those points, the other two flights being operated as voluntary flights, and state that it appears any additional flights operated on this vital trunk route should be operated as mail pay schedules, with request that if the Department concurs in this view it indicate whether it is prepared similarly to designate also fifth and sixth weekly schedules.

The rates of pay for service by your company on FAM routes 5, 6 and 8, are based upon bids submitted more than 13 years ago (and bids for FAM 10 were submitted more than 11 years ago), with certain negotiated changes also made some time ago. It must be assumed that the rates heretofore fixed that may have been necessary to meet the conditions of traffic and the character of equipment available at that time, may not be the reasonable rates under present conditions and that perhaps the pay already received for the service as a whole may be sufficient to cover service including the proposed flight.

It appears necessary in the proper administration of the service to await the issuance of the rate order, before authorizing pay for the proposed additional flight, or, if your company sees fit to make the flight without the mail pay authorization, to have the mails carried on the voluntary flight without specific pay until such time as the rate order becomes effective.

Sincerely yours,

SMITH W. PURDUM
Second Assistant Postmaster General

COPY

[fol. 2905]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 224

COPY COPY

March 12, 1942

The Honorable Smith W. Purdum
Second Assistant Postmaster General
Washington, D. C.

My dear Mr. Purdum:

At the conclusion of the conference this afternoon in your office you asked that we submit a letter to the Department, setting forth the financial arrangement under which Pan American Airways, Inc. would be able to undertake additional services on certain trunk lines to Latin America.

For the period ending June 30, 1942 or until such earlier date as the appropriate rates for such services are set by the Civil Aeronautics Board, Pan American Airways, Inc. would agree to operate, if designated by the Post Office Department:

(a) Four additional round trips per week between Miami and Canal Zone, via Camaguey, at the rate of $1.00

per mile southbound and $.60 per mile northbound—an average of $.80 per mile for the contract rate of 800 pounds. Any additional mail tendered would be carried at a pro rata reduction of the contract rate, namely $.50 per pound per 1,000 miles southbound and $.30 per pound per 1,000 miles northbound;

(b) Four additional round trips per week between San Juan, Puerto Rico and Buenos Aires, via Port of Spain, Belem, and Rio de Janeiro, at the rate of $.80 per mile southbound and $.40 per mile northbound—an average of $.60 per mile for the contract load of 800 pounds. Any additional mail tendered would be carried at a pro rata reduction of the contract rate, namely, $.40 per pound per thousand miles southbound and $.20 per pound per thousand miles northbound.

The Company is prepared to provide daily service between Miami and the Canal Zone via Cienfuegos,** effective next Monday, March 16th. The fourth and fifth weekly service between Puerto Rico and Buenos Aires, via the San Juan-Port of Spain cut-off, and the "Belem-Rio de Janeiro cut-off" could be instituted within approximately a week after designation of such additional service by the Department. The sixth and seventh weekly trip between San Juan and Buenos Aires would take a somewhat longer period to institute pending the availability of additional flight equipment which we expect shortly to have allocated in view of the current urgent need of additional service brought about by the suspension of surface shipping between the United States, Brazil and the Argentine.

Respectfully,

John C. Cooper
Vice President

** Should have read "Camaguey".

[fol. 2906]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 225

POST OFFICE DEPARTMENT
Washington

IH G-w
95-9561
In replying mention number, initials and date

June 11, 1942

Mr. John C. Cooper
Vice President
Pan American Airways, Inc.
135 East 42nd Street
New York, N. Y.

My dear Mr. Cooper:

Reference is made to previous correspondence including your letter of March 12, with respect to the authorization of service on additional flights between Miami and Balboa and between San Juan and Buenos Aires via the East Coast. Reference is also made to the new schedules issued by your company, effective June 1, which include the additional flights.

This matter has been given very careful consideration with the view of taking action that would be fair and proper, in connection with which the office of the Civil Aeronautics Board has been consulted as to the sufficiency of payments being made by the Department under the mail pay authorizations already issued.

For the present authorizations have been issued under which the company will receive the same pay as heretofore and the additional flights that are of material value for mail service will be used as voluntary flights without spe-

cific pay, under the provisions of the contracts and amendments thereto. Copies of the orders are enclosed.

Sincerely yours,

Smith W. Purdum
Second Assistant Postmaster General

Enclosures.

[fol. 2907]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 226

9/24/42

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 779

In the Matter of the alteration, amendment and modification of the certificate of public convenience and necessity of

PAN AMERICAN-GRACE AIRWAYS, INC.

under section 401 (h) of the Civil Aeronautics Act of 1938, as amended, to provide for a route terminal in the United States.

PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

THURMAN ARNOLD
Assistant Attorney General

ARNE C. WIPRUD
WILLIAM R. KUEFFNER
Special Assistants to the Attorney General

CLARENCE J. NICKMAN
Special Attorney

[fol. 2908]

BEFORE THE
CIVIL AERONAUTICS BOARD
Docket No. 779

In the Matter of the alteration, amendment and modification of the certificate of public convenience and necessity of

PAN AMERICAN-GRACE AIRWAYS, INC.

under section 401 (h) of the Civil Aeronautics Act of 1938, as amended, to provide for a route terminal in the United States.

PETITION OF THE ANTITRUST DIVISION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

TO THE HONORABLE
THE CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Comes now your petitioner, the Department of Justice, and respectfully represents that it has a substantial interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I

That the Department of Justice is the governmental agency upon which rests the duty and responsibility for the enforcement of the antitrust laws.

II

That the federal antitrust laws are applicable to carriers for hire engaged in interstate or foreign commerce; that your petitioner is concerned with any agreement or arrangement between such carriers which restrains compe-

tition or constitutes an attempt to monopolize; that there [fol. 2909] is sought in this proceeding a determination by this Board whether the route of the Pan American-Grace Airways, Inc. (hereinafter called Panagra) should be extended from the Canal Zone to the United States and to allow expansion of its terminal facilities; that the attempted limitation of such expansion by other interests as hereinafter set forth, involves the question of suppression of competition and the public issues of restraint and monoply.

That your petitioner is informed that Pan American Airways, Inc. (hereinafter referred to as Pan American), its officers and directors, and others, have sought through divers ways to impede, obstruct and stifle the efforts of Panagra to expand as proposed in this proceeding and thereby compete effectively with Pan American.

That your petitioner is further informed that Pan American, which owns 50% of the stock of Panagra, has through a continuous course of conduct sought to render ineffective the ability of Panagra to successfully compete with Pan American in air commerce in and between the South American nations and the United States, and more specifically Pan American has sought and will seek as a party to this proceeding to oppose before this Board the extension of Panagra's services and expansion of its terminal facilities in the United States; and that the effect of such opposition, if successful, will be to continue the exclusive air transport rights between the United States and the South American countries in Pan American.

III

That because of their property interests private parties to the proceeding are not primarily concerned with the substantial public issues involved; that the Department of Justice, through its Antitrust Division, is the only governmental agency charged with the duty of investigating complaints with respect to restraints and monopolies and [fol. 2910] to present evidence thereon; and that participation by the Department of Justice in this proceeding is in furtherance of the anti-monopoly policy of Congress as

expressed in the Civil Aeronautics Act of 1938, as amended, which the Board administers, and the federal antitrust laws which the Department of Justice must enforce.

WHEREFORE, your petitioner prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and to be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Respectfully submitted,

ARNE C. WIPRUD

WILLIAM R. KUEFFNER
Special Assistants to the Attorney General

CLARENCE J. NICKMAN
Special Attorney

By direction of

THURMAN ARNOLD
Assistant Attorney General

Dated at Washington, D. C.

September 22, 1942

[fol. 2911] ARNE C. WIPRUD, being duly sworn deposes and says:

That he is Special Assistant to the Attorney General and is authorized to execute and file the foregoing motion; that he has read and is familiar with the contents thereof; that he intends and desires that in granting or denying the petition herein, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief every statement contained in the instrument is true and no such statement is misleading.

ARNE C. WIPRUD

Subscribed and sworn to before me this 24th day of September, 1942.

.....
Notary Public, D. C.

(SEAL)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing petition for leave to intervene has been served on each party to the above entitled proceeding.

ARNE C. WIPRUD

Dated at Washington, D. C.

September 24, 1942.

[fol. 2912]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 227

[Handwritten notation—12/21/42]

CONFIDENTIAL

Summary of Agreement and Action Taken Regarding Reimbursement for Costs of De-Germanization Services in Brazil

As a result of discussions initiated by Defense Supplies Corporation early in 1941, Pan American Airways Inc. agreed to cause its subsidiary, Panair do Brasil, to operate certain so-called "De-Germanization services to replace Condor in Brazil. These services were provided for in a contract dated October 31, 1941 between Defense Supplies Corporation and Pan American. Throughout the preliminary discussion between representatives of Defense Supplies Corporation and Pan American, which lead to the contract, it was understood that Panair do Brasil would be reimbursed for operating the services in question which, under normal circumstances, would not be justified commercially.

After considering various methods of reimbursement proposed by Pan American, Defense Supplies Corporation

finally prevailed on Pan American Airways to agree that an effort would be made to obtain the reimbursement through the mail rate fixed for the Latin American operations of Pan American with the understanding that Defense Supplies Corporation would use its best efforts to get the Civil Aeronautic Board to agree to this.

Accordingly it was provided in the contract of October 31, 1941 that if, within the time specified, Pan American submitted to the Civil Aeronautics Board a contract with Panair do Brasil covering the services in question and if such contract was not approved by the Civil Aeronautics Board, then Pan American could withdraw from the contract with Defense Supplies Corporation. The purpose of this provision was to enable Pan American to get from the Civil Aeronautics Board a commitment to pay for the services on a fixed basis set up in its contract to be made with Panair do Brasil before Pan American was obligated to carry out the program called for in its contract with Defense Supplies Corporation.

[fol. 2913] After considerable negotiation between Defense Supplies Corporation and the Civil Aeronautics Board and between the Defense Supplies Corporation and Pan American following the submission of the contract with Panair do Brasil, Pan American was advised that the Civil Aeronautics Board would approve the contract if certain modifications were made. They were made but the Civil Aeronautics Board then declined to approve that contract. In its letter dated December 20, 1941 declining such approval the Civil Aeronautics Board did state:

> "that any losses incurred by Panair in performing the services specified in the contract between the Defense Supplies Corporation and Pan American (or such of them as may be designated by the Defense Supplies Corporation), provided the standard of honest, efficient, and economical management are met, will be treated as a legitimate cost by Pan American in rendering its international services and; furthermore that a reasonable profit to Panair will also be treated as a legitimate cost of Pan American in rendering said services and will be considered by the Board in deter

mining the need of the carrier under section 406 (b) in fixing the rate of compensation to be paid Pan American."

This was not satisfactory to Pan American since it left the matter completely unsettled and involved the whole situation with the difficulties and complications of an ordinary rate case. However, Pan American had in the meantime commenced to carry out the contract with Defense Supplies Corporation and the de-Germanization services were in operation to a large extent. Therefore relying upon the assurances from the Civil Aeronautics Board and the hope that a fair settlement would be made, Pan American and Panair do Brasil proceeded to carry out the de-Germanization program.

In its decision in the rate case dated August, 1942, the Civil Aeronautics Board concluded that the services provided for in the contract between Pan American and Panair do Brasil would produce an adequate profit without outside assistance so that no allowance was required pursuant to the letter referred to above. The profit estimated by the Board was approximately 5% as compared with a return of [fol. 2914] 10% allowed on Pan American's Latin American services. Moreover, the Board's conclusion was obviously erroneous. This was exactly the situation Pan American had imagined because of the difficulty of submitting proof in a late case to satisfy the Civil Aeronautics Board.

In a petition for rehearing, reargument and reconsideration of the rate case decision, Pan American pointed out that there were certain errors in the estimates upon which the Board relied in reaching its conclusion, regarding the de-Germanization services. For example, the Board had assumed that the mail compensation, including subsidies, would be the same on the de-Germanization routes as on the routes previously operated by Panair do Brasil. This conclusion was obviously erroneous because no subsidy has been received for any of the de-Germanization services. Furthermore, the operating record of Panair do Brasil since commencing the de-Germanization services shows a very marked decrease in earnings. In fact that Company showed a loss of $26,112.59 for the first 9 months of 1942.

as compared with a net profit of $192,030.59 for the 9 months of 1941.

By its order dated November 25, 1942 the Civil Aeronautics Board granted in part the petition for rehearing and permitted Pan American to introduce additional evidence on the point in question. A study is now being made in order to prepare such evidence and to determine what part of the loss of earnings in recent months was due to the de-Germanization services. It is apparent that considerable work will be required to make a complete segregation of the revenues and expenses of the de-Germanization services and there is no assurance that any payment will ever be obtained for the services even though Pan American feels that something is due if the basic understanding with Defense Supplies Corporation is to be carried out. Furthermore Pan American and the Board would like to get the rate case cleared as soon as possible.

The contract of October 31, 1941 provides that it expires on December 31, 1942, with an option to Defense Supplies Corporation, exercisable any time prior to December 10, 1942, to continue the contract to the end of December 1946. This option was not exercised, Defense Supplies Corpora- [fol. 2915] tion having notified Pan American that it had no intention of continuing the contract.

In informal discussions earlier this year with representatives of Defense Supplies Corporation it was indicated that the contract would not be continued beyond the end of this year and at that time it was suggested that Pan American should present a lump sum bill for the cost of operating the de-Germanization services. Now that it is definite that Brasil's obligation to operate the de-Germanization services will terminate at the end of 1942, it would appear to be simpler to follow this suggestion of Defense Supplies Corporation, namely, to reimburse Panair do Brasil by a lump sum payment to be determined by an appropriate study of the records after the operation under the contract has been completed, rather than to attempt to keep the rate case open and to have an adjustment of the rate made for the period prior to December 31, 1942.

The various considerations set forth in this memorandum all indicate that a lump sum payment would be the best and fairest way of terminating the matter. As a suggestion, such a payment might take the form of a reduction of the purchase price of the Lodestar aircraft now due from Pan American to Defense Supplies Corporation. It is therefore suggested that this be taken up with the appropriate representatives of Defense Supplies Corporation. If it could be agreed that a lump sum payment will be made, the rate case could be terminated promptly without further consideration of the de-Germanization services and the amount of the payment could be determined by a study satisfactory to Defense Supplies Corporation. Pan American would be willing to undertake the study alone or to cooperate with any representative of Defense Supplies Corporation in making it.

December 21, 1942

[fol. 2916]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 228

bcc: President
Vice President Young
Vice Pres. & Treas.
Vice Pres. & Gen. Traf. Mgr.
Mr. H. J. Friendly

February 4, 1944

Mr. Harold J. Roig, President
Pan American-Grace Airways, Inc.
7 Hanover Square
New York, New York

Dear Harold:

Upon my return from Miami yesterday I found that Pan American is working on the preparation of exhibits for the Latin American certificate case and in this connection is developing and planning postwar traffic schedules to be operated with L-49's (Lockheed Constellations) or other similar new equipment. The question has arisen as to whether it would be desirable for us to consider the inter-

change of this new equipment between Pan American Airways and Pan American-Grace Airways so as to enable a single ship to be flown all the way from Miami to Buenos Aires and return.

I further learned that Pan American-Grace Airways is working on similar exhibits and has been in touch with Pan American's Traffic Department in this connection. I am therefore writing to ask if you would care to discuss the question of interchange of equipment between the two companies for presentation in this case.

Very truly yours,

/s/ HOWARD B. DEAN
Howard B. Dean

[fol. 2917]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 229

Memorandum of Conference

During the morning of Tuesday, May 16, 1944, I called Mr. Harrison Tweed, counsel for Pan American-Grace Airways, and said to him that there was an important matter in connection with the Latin American certificate case which we would like to discuss with him and Mr. Roig. Mr. Tweed fixed the appointment for Mr. Roig's office at 2:30 P.M.

Mr. Balluder and I called at Mr. Roig's office at that time and met Mr. Roig and Mr. Tweed.

I stated that a problem had arisen in connection with the Latin American certificate case which we wished to discuss with them. I said that this problem had been creating difficulty at the conference which we had had with the Panagra representatives on the previous afternoon, and had been rendered acute by a final decision which had been made at a meeting with Mr. Trippe which had followed.

I said that in the course of discussions with Mr. Trippe over the past several weeks, there had developed a new idea having an important bearing upon the presentation

to be made in the Latin American certificate case, and that a final decision to proceed upon this basis had been made at a meeting in Mr. Trippe's office the previous afternoon. I said that this idea was one which we regarded as of considerable importance and that we would like to make it available for consideration by Pan American-Grace but that it was equally important to us that it should not be the property of other applicants until the exhibits were exchanged on June 1. I said that our natural impulse would have been to go to Mr. Roig and place the thought before him in confidence but that the question had arisen in our minds whether he would feel that he was in a position to receive it in confidence. I mentioned the fact that he was a director of Grace Line, Inc., which was an applicant, and that Mr. Garni was a director not only of Grace Line, Inc. but of Eastern Air Lines. I said that we felt in view of this we should first ascertain whether Mr. Roig felt that he could discuss the matter with us without feeling that he was under obligations to reveal it to these other applicants.

Mr. Roig said that so far as the Eastern Air Lines problem was concerned he felt this could be dismissed; that in this case he considered Eastern Air Lines just as much the enemy of Pan American-Grace as we considered it to [fol. 2918] be the enemy of Pan American; and that from a Pan American-Grace viewpoint he would insist that nothing be given to Eastern Air Lines which would be of value to them. He said, however, that the Grace Line matter presented quite a different problem. While he had nothing to do with the preparation of Grace Line's case he naturally did see the Grace Line people and there was a question in his mind whether he and his colleagues could withhold from Grace Line information that might be of value to them.

Mr. Tweed asked whether the idea in question was of such a nature that not knowing it would hurt Panagra. I said that the question whether the idea was a good one or not, of course, was debatable; that we thought it was good and that consequently it was our view that for Panagra not to know it would be a disadvantage to that company. I said also that if Mr. Roig felt that he could not receive this material in confidence I believed that it would be necessary

to terminate the discussions which had been going on between the traffic and operating officials of Pan American and Pan American-Grace in connection with the preparation of the certificate case exhibits. I said that the idea in question affected various matters which would come up in these conferences and that our people could not properly continue the discussions unless they were in a position to make this material available to the Pan American-Grace staff.

I said that whether or not this would be a detriment to Panagra was also a question on which there might be different opinions.

Mr. Tweed asked whether the idea was one which Mr. Roig would not have unless we placed it before him. I said that all I could say on this was that I had seen no evidence that he had it, although perhaps this was the kind of mystery which was actually well known to everyone. I apologized for having to make such a secret out of the matter but said that obviously when we were discussing whether a disclosure could be made I could not very well make the disclosure.

Mr. Roig said that the matter was very difficult; that if he felt that the suggestion was of no importance he would be inclined to take the position that he had better not know of it but that, on the other hand, if it was of importance he did not like letting his Grace Line connections interfere with the welfare of Panagra. He said that the very fact that we thought that the idea would be good and of sufficient importance to take up with him in this way, made him feel that in all probability the idea fell in the latter category.

[fol. 2919] There was some discussion of the possibility of my disclosing the idea to Mr. Tweed with the thought that if he considered it to be entirely without merit there would be no need of Mr. Roig's pursuing the matter further. I said that I was perfectly willing to do this but it seemed to be agreed that Mr. Tweed would hardly wish to take the responsibility of saying that the idea was not even worth consideration.

Mr. Roig said that he would like to consider the matter further; that it appeared to him that the only way in which

it could be handled would be for him to obtain authority from his Grace colleagues to handle the matter on his own on behalf of the Grace interests, and that he would do this as soon as Mr. Garni returned from Washington. I emphasized the need of a speedy solution for the reason that I thought the conferences between the staffs would have to be suspended until a decision was reached.

Mr. Tweed produced a memorandum from Mr. deGroot stating that he was disturbed over the fact that Pan American was now estimating that it would deliver 20,000 people a year to Pan American-Grace at Balboa, and that this would produce an 83% load factor in contrast to the 40% which Mr. deGroot had previously estimated. This increased load factor would throw Pan American-Grace into a profit rather than a subsidy category. I said that I did not know the source of the 20,000 figure or how it had been arrived at, although I had no doubt that the increase over previous estimates was the result of the proposed lowering of fares. I said also that this discrepancy might be a result of the new ideas on which we were proceeding and afforded an illustration of the fact that continued collaboration would hardly be possible unless we could discuss the matter freely with Mr. Roig.

Mr. Balluder and I then returned to the Pan American office. We advised Gen. Roop, Mr. Ferguson and Mr. Chenea of the talk which we had had with Mr. Roig and they agreed to instruct their staffs to advise the Pan American-Grace officials who were seeking conferences that these would have to be deferred pending a decision which Mr. Roig was making on a matter that we had placed before him.

On Wednesday, May 16, Mr. Tweed telephoned me. He said that Mr. Roig had told him that he had cleared the [fol. 2920] matter with his Grace colleagues on the basis that Mr. Roig alone would handle the matter for the Grace interests, and would like to discuss the matter further on Thursday. An appointment was made to meet at Mr. Roig's office on Thursday, May 17, at 10 A.M.

H.J.F.

[fol. 2921]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 230

Memorandum of Conference

Pursuant to appointment, Mr. Ballinger and I called at Mr. Roig's office at 10 A.M. on Thursday, May 18, 1944. Mr. Harrison Tweed attended the conference. This conference was held pursuant to the understanding that Pan American had certain plans with regard to its presentation in the Latin American certificate case which it desired to reveal in confidence to Mr. Roig and Mr. Tweed, and which they were prepared to receive in confidence.

I stated that over the past few weeks we had had a number of discussions with Mr. Trippe in regard to the presentation to be made in the Latin American certificate case; that Mr. Trippe had the feeling that our proposed presentation was of too commonplace a character, and that unless Pan American and Pan American-Grace came out with something new and different the effect upon the position of both companies would be unfavorable. I said that Mr. Trippe also had the feeling that there was great interest in Government circles in Washington in mass transportation to Latin America and this not so much to tourist resorts, such as the West Indies, but to the countries of Latin America with which our future commerce and trade might be of great importance—such as Brazil, Peru, Chile and the Argentine. Mr. Trippe felt that this mass movement could be accomplished only through greatly reduced rates. On the other hand, the figures showed that with the use of the L-49 such rates could be offered only at a very large subsidy cost.

About this time Mr. Trippe had made a visit to the Pacific coast and had been greatly impressed with the Douglas DC-7, as to the performance of which he had been given certain figures which we believed were not generally available. The use of this ship would produce very startling economies. Crew cost per passenger mile would be almost cut in half; depreciation and maintenance costs per passenger mile would be lower, and generally the plane,

having a carrying capacity of more than twice that of the L-49, would not have anything like twice as great an operating cost. We had come to the conclusion that it would be to Pan American's advantage to reflect the utilization of this plane in its exhibits, and we believed that it would likewise be to the advantage of Pan American-Grace to show the use of this aircraft.

At this point we gave to Mr. Roig and Mr. Tweed certain confidential figures in regard to the characteristics of the DC-7.

[fol. 2922] Mr. Balluder outlined Pan American's plans as to the use of the DC-7 and the services to be operated to the Canal Zone. He said that our plans contemplated one daily flight with a DC-7 from New York to Rio via San Juan and Belem; another from New York to Buenos Aires via San Juan, LaGuaira and Manaos; another from Los Angeles to Balboa; and another from Miami to Balboa, the latter connecting with Pan American-Grace's express service. In addition, we would operate an L-49 from Miami to Balboa connecting with Pan American-Grace's local service, and an L-49 from New Orleans to Balboa which would proceed thence to Rio. Mr. Balluder gave figures as to the number of passengers whom Pan American would deliver at Balboa by these various means, the number whom Pan American would expect to take out of Balboa on the L-49 service to Rio, and the traffic which would be turned over to Pan American-Grace on the assumption that about half the remainder would represent traffic for the west coast as distinguished from traffic for the north coast, central Colombia and local Canal Zone traffic. This amounted to about 18,000 passengers per annum.

Mr. Roig at first displayed a very sympathetic attitude toward the proposal. He said that he recognized there were economies in the use of a larger plane, particularly in the light of the experience which the Grace Line had had with the use of a new type of freighter which carried twice the cargo that could be carried by a former type at very little greater expense. He felt that this should also prove true in the air transport field.

Mr. Roig asked, however, why we continued to run a DC-7 out of Miami and why we ought not to show the DC-7 as running directly out of New York to Balboa, possibly with a stop somewhere in Cuba. I said that we felt it was not desirable to show a service which directly paralleled that of the domestic airlines between New York and Miami, and that we believed that a stop in Miami as distinguished from one in Cuba had great traffic advantages since Miami was a natural funnel for routes from the central and middle western part of the United States.

At this point Mr. Roig became considerably exercised over Pan American's plan to run a service to Buenos Aires directly out of New York. He said that he felt this would make Panagra a jerkwater line, and that he would then have to go back to Docket 779 and ask that Panagra's terminal in the United States be made not Miami but New York.

I said that I could not see why our suggestion for showing a larger type of equipment created any change in this situation. I recalled that Pan American's original applica- [fol. 2923] tion made in November, 1943 included a direct route from New York to Buenos Aires and that the only change which we were now making was to propose the operation of this service with what we considered a superior type of equipment which we also wished to have placed on the west coast route.

Mr. Roig said that a passenger desiring to go to Buenos Aires via Panagra would have to plan his arrival at Miami so as to arrive ten or twelve hours before the departing plane, and would probably have a layover of the same duration in Balboa, and that in the time when this passenger was laying over a passenger out of New York could actually be getting to Buenos Aires; that this meant that Panagra not only would lose the Buenos Aires traffic but probably traffic to Santiago and Lima as well.

I said that there was no reason why any such delays as those which Mr. Roig had intimated should occur. I said that so far as Balboa was concerned we advocated very strongly that the DC-7s should be operated directly from

Miami down the west coast through an appropriate interchange or charter arrangement; that this would completely eliminate the Balboa problem since the plane would go right through no matter how late it was and there would be no danger whatever of missed connections. As to Miami, I said that the problem was more difficult but that I could see no reason why our exhibits could not state that we would look with favor on an arrangement which would permit the through operation of planes from Miami to New York, under charter or interchange agreement with the domestic airlines, and that I was confident that the matter would ultimately be worked out in that way.

I also pointed out that Panagra had certain advantages for Buenos Aires traffic which Mr. Roig had not mentioned. In the first place, there was the question of the passenger who desired to stop over en route to whom the Panagra route offered a good deal more in the way of attractions than the San Juan-LaGuaira-Manaos operation. I also said that I thought Mr. Roig erred in considering the New York area to be the only source of traffic within the United States. I said that we felt the Pacific coast was an extremely important source of future traffic to Buenos Aires, and that as to this Panagra was obviously in a position far superior to anything that Pan American ever could be. I said that as to the middle west also it seemed to me that Panagra would have the edge even allowing for the fact that some people from this area might like to proceed to South America with a stop at New York.

[fol. 2924] Mr. Roig said that as far as he could see we were trying to consign Panagra to the position of being a jerkwater line, and that he would never accept this even if it meant the loss of all of Grace's investment in Panagra.

I said to Mr. Roig that I could not see the justice of this position at all. I again stated that it seemed to me he was confusing two issues; one was his dislike of Pan American's operating a service out of New York. That issue had been in the case since November and our present proposal did not change it in any way. So far as Panagra's operations south of the Canal Zone were concerned, our desire was to

make these just as effective as possible and our proposals were designed to that end. The trouble was that Mr. Roig kept insisting that Panagra could never amount to anything on account of delays at Miami and Balboa and at the same time refused to do anything about it short of insisting on prolongation of Panagra's own route. I repeated that the Balboa problem was entirely under control and could be easily remedied by an interchange arrangement which we very much desired, and that I felt the Miami situation would yield to treatment and that in any event there were advantages to Panagra in drawing on traffic available through the Miami gateway, which Mr. Roig wholly ignored.

Mr. Balluder brought out that with an interchange arrangement two additional DC-7s would be sufficient to handle Panagra's requirements, whereas if Panagra insisted on a separate operation three planes would be needed. This meant a very substantial saving through an interchange agreement.

I again suggested that Mr. Roig endeavor to consider the DC-7 proposal on its merits and apart from the New York situation which did not seem to me to be changed in any way by the introduction of this new thought. Mr. Roig said that his initial reaction had been favorable but that he was commencing to wonder whether with our operation out of New York Panagra would have sufficient traffic to justify a DC-7, or for that matter, an L-49. I suggested that Mr. Roig endeavor to approach the matter in a somewhat less pessimistic frame of mind and advise us when he was ready to discuss it again.

H. J. F.

[fol. 2925]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 231

Memorandum of Luncheon Conference

Mr. Tweed lunched with me on Friday, May 19, at my invitation to discuss the position in the Latin American certificate case in the light of our conference of May 18 with Mr. Roig.

I began by stating that we were utterly taken aback by the turn which the conference had taken. I said that I had tried to make clear yesterday that the question of service by Pan American out of New York had been in the case since November and was not affected except in terms of volume by the introduction of the DC-7. I said there was one other point which I had not emphasized yesterday and that was that the idea of service out of New York had not been introduced into the case by Pan American. I explained that Eastern had applied for a route from Washington direct to Ciudad Trujillo, and that all of Mr. Roig's steamship friends, including the Grace Line itself, had applied for routes out of New York. I said that to expect Pan American under these circumstances to close its eyes to the facts of geography was simply impossible, and that it would not benefit Pan American-Grace if we had, since this would simply mean that the route out of New York would be awarded to someone else.

I said that my second impression of the conference was that, conceding that direct service from New York to Buenos Aires presented some problems for Pan American-Grace, Mr. Roig refused to do anything to enable Pan American-Grace better to meet these problems and refused because of the fact that by meeting these problems he would hurt his chances of getting Panagra's route extended to Miami. Mr. Tweed asked me what I meant by "doing something." I said that I referred to an arrangement for the through operation of equipment from Miami and possibly from New York through the Canal Zone to points on the west coast.

I said that I thought it might assist Mr. Tweed to have the background on the history of the interchange proposals

because I felt that Mr. Roig's reactions to this idea were somewhat conditioned by the long history of this subject. I thereupon reviewed the various charter and interchange proposals at some length.

Mr. Tweed said that the situation was very difficult indeed; that when he had come into the case he had felt that it was important that the two companies should show [fol. 2926] a high degree of cooperation and also that a picture should be presented that there was some competition between the two companies. He felt that the present situation threatened the attainment of both these objectives.

Mr. Tweed said that this matter had actually started to boil up about a week or so ago. He said that Mr. Vidal had told him that he had discovered that Pan American was showing service out of New York to Miami. Mr. Tweed had then had a telephone talk with me in which we had discussed various things and he had asked me whether Pan American was showing such service. I had said to him that we certainly were not planning service between New York and Miami, although I had seen some preliminary schedules in which the Pan American traffic people showed a departure out of New York simply to give some idea as to when a passenger proceeding on a connecting plane of one of the domestic airlines would have to leave to make the connection. I said that, of course, I had not construed Mr. Tweed's question as relating to service from New York via San Juan which had been in the case from the beginning. Mr. Tweed said that he had relayed the results of our telephone talk but that Mr. Vidal still was not satisfied and shortly before our conference of Monday, May 15, had brought the matter up again with Mr. Tweed. At this time Mr. Vidal for the first time made it clear to Mr. Tweed that his inquiry related to service between New York and San Juan. Mr. Tweed told Mr. Vidal that this was something different from what Mr. Tweed had asked me, and said that if Mr. Vidal had any question about the matter he should bring it up at the conference. Mr. Vidal had in fact asked at the conference on Monday whether we intended to operate direct service from New York via San Juan to Buenos Aires and I had immediately responded that, of course, we did so intend.

Mr. Tweed said that he believed that Mr. Roig honestly had not appreciated the New York angle of the problem until our talk, although he could not find any good reason for this and conceded that there had been nothing in the way of concealment on our part.

I asked Mr. Tweed what he thought of my crystallizing the interchange issue by writing a letter to Mr. Roig. I said that I had no hope that Mr. Roig would react favorably to the interchange idea, but that if he had any interest in it I would prefer to take the matter up with him orally rather than confronting him with a letter. On the other hand, if he were going to remain adamant about the problem, I would prefer to have Pan American write such a letter and also bring the matter up in the Panagra Board. Mr. Tweed [fol. 2927] said that he would explore the situation but had no hope that Mr. Roig would look with favor on the idea of an interchange.

We had a good deal of discussion as to whether Mr. Roig was justified in opposing an interchange because of the fact that this might hurt Panagra's chances of getting through to Miami. We also discussed the question whether, if Mr. Roig decided that Panagra should oppose Pan American's New York-San Juan application, this fell within the permissible scope of Mr. Tweed's retainer or whether this was a matter that would have to be taken up with the Panagra Board. No definite positions were taken as to this latter question.

Mr. Tweed agreed that until some further conclusions were reached no useful purpose would be served by further meetings between the staffs of the two companies, and that in particular the meeting called for this afternoon (May 19) should not be held.

Mr. Tweed also inquired in exactly what respects what we had told him and Mr. Roig yesterday was confidential. I said that what was confidential was our plan to use as large a plane as the DC-7 and also the performance characteristics of that plane. I said that the fact that Pan American was intending to operate an express service from New York to Buenos Aires was not confidential.

H.J.F.

[fol. 2928]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 232

July 12, 1944.

MEMORANDUM OF CONFERENCE.

Pursuant to Mr. Roig's request, Mr. Dean and I met with him at the apartment of Mr. Harrison Tweed at 3 P.M. on the afternoon of July 11, 1944.

The first subject discussed was the advisability of Pan American-Grace Airways reflecting in its estimates in the Latin American certificate case the use of DC-7 equipment on its express service.

Mr. Roig stated that he had not been able to persuade himself that the use of such large equipment was warranted. He said that the estimates which had been made, involving the use of L-49 equipment, meant doubling the present passenger traffic and still showed a deficit; that Pan American-Grace did not serve as populous a territory in South America as did Pan American Airways; that, with Pan American operating direct service from New York to Buenos Aires, he felt Pan American-Grace would not get even half of the Buenos Aires traffic; and that for these reasons, even if Pan American were justified in showing DC-7 equipment on certain of its express routes, he doubted whether the same was true of Pan American-Grace.

Mr. Dean and Mr. Friendly felt that an estimate of double the existing traffic was not at all optimistic and would probably be regarded as unduly conservative. They stated that Pan American felt that there were two advantages in showing the use of DC-7 equipment. One of these was an economic reason. Pan American felt that it was very important to reduce passenger fares, and the available figures indicated that the cost per passenger mile of operating the DC-7, assuming reasonable load factors, was very much less than that of operating the L-49. The second was from the standpoint of presentation. Pan American felt that it was far better to be in the position of presenting something that could be criticized only as being too ad-

vanced and of answering any such criticisms by saying that if the Board did not feel the time was ripe for operation of this type of equipment Pan American could operate DC-4s or L-49s just as well as anybody else, than presenting a picture based upon L-49s or DC-4s, finding other airlines presenting more advanced types of equipment, and then having to run after them and say, "We can do that, too."

Mr. Roig recognized the force of these considerations but said that he just could not see himself supporting traffic estimates of the size that would be needed to justify the [fol. 2929] DC-7. He suggested as a possible alternative that Pan American-Grace might base its estimates upon the use of the L-49, with supplemental estimates showing the result of using the DC-7. He said he had not thought this through and did not wish to be committed to it. Mr. Friendly and Mr. Dean said that they likewise would like to think this over.

The discussion then turned to the question of interchange. Mr. Roig asked what kind of interchange was meant and said that when the subject was discussed, his thoughts always turned to a certain agreement which had been presented to him. Mr. Friendly suggested that Mr. Roig rid himself of this thought and that the discussion be on the merits, uncomplicated by any agreements or discussions in the past. Mr. Dean explained that the type of interchange which we favored was one under which a four-engined aircraft could fly from New York to Buenos Aires, operating from New York to Miami over the certificate of a domestic carrier, from Miami to Balboa over Pan American's certificate, and from Balboa to Buenos Aires over Pan American-Grace's certificate. The aircraft might be owned by any one of the carriers participating in the interchange. Each carrier's flight crews would operate the plane over its own route. Each carrier would be responsible for the safety of operations on its own sector. Each carrier would receive the revenues earned through operation over its portion of the route and would pay such expenses as flight crew salaries and expense, gasoline and oil, etc. Charges for such items as aircraft and engine depreciation and overhaul

would be offset, with balances to be settled at an agreed rate. Although the airplanes would bear some insignia identifying the owning company, they would also be placarded so as to show the identity of the company operating them over the particular portion of the route.

Mr. Dean stated that he had in mind the possibility of some kind of exchange of pilots as well as an interchange of equipment so that certain Pan American-Grace pilots could be brought to the United States for a tour of duty at Miami while certain Pan American pilots could obtain experience in operating over the mountainous country in South America served by Pan American-Grace. Mr. Friendly said that while he saw no objection to this if it could be worked out, he felt that the present discussions ought not to be complicated by consideration of these questions which involve difficult problems in regard to labor agreements, seniority, etc. He felt that Mr. Roig should understand that the only commitment that we were making as to matters of this sort which were collateral to the equipment interchange itself was that at any time we would [fol. 2930] be glad to sit down and discuss these in a cooperative spirit.

Mr. Roig stated that an interchange arrangement would definitely have great advantages from the standpoint of the passenger; that it would avoid the necessity of change of plane and would likewise avoid any problem of having to take an earlier plane in order to avoid the risk of missed connections. He also recognized that such a plan would probably result in better equipment utilization for Pan American-Grace, since its four-engined equipment would be part of a larger pool with smaller reserve requirements. He raised certain technical questions in regard to the workings of an interchange but did not appear to regard any of these as constituting any real obstacle.

The question was raised as to whether the possibility of such an interchange should be taken up at this time with Eastern or National. Mr. Friendly stated that he did not believe that anything would be gained by this since neither of these airlines would be receptive to such an arrangement

so long as they thought they could get into Latin American on their own. Mr. Roig said that he fully understood this since he had been in the same position himself. Mr. Friendly said that Pan American had been under no illusions as to the reasons for Mr. Roig's attitude toward interchange so long as he thought that Pan American-Grace's route might be extended north of Miami.

Mr. Friendly stated that whether or not an arrangement could be made with the domestic airlines for interchange north of Miami, he thought that an arrangement between Pan American and Pan American-Grace for interchange south of Miami should be made and was in the interests of Pan American-Grace.

Mr. Roig reflected for some time on the matter and then said that he supposed there were a good many people in Berlin who were thinking just now as to the merits of unconditional surrender. Mr. Dean stated that our attitude was not one of demanding any surrender but that we felt that an interchange was in the best interests of Pan American-Grace and ought to be recognized as such.

There was then some discussion as to the requirement of secrecy which Pan American had imposed with respect to the DC-7s. Mr. Roig said that he could see no reason for this, particularly since Pan American's annual report for 1943 had disclosed Pan American's intention of utilizing planes carrying more than 100 passengers.

[fol. 2931] Mr. Dean stated there were two reasons for the original imposition of the secrecy requirement. One of these was that Pan American at the time was dealing with the manufacturer and did not wish to have its negotiations jeopardized by other airlines. This reason was no longer a factor since Pan American had obtained a position with respect to this aircraft, out of which it was willing to take care of Pan American-Grace if Pan American-Grace so desired. The other reason was that Pan American did not wish its plan for the utilization of this aircraft in Latin American services to be known by other airlines since Pan American felt that this was a somewhat novel plan and that the inclusion of this aircraft in its presentation would give

Pan American an advantage, of which it did not wish to be deprived. This latter factor still existed. Mr. Dean said that if Mr. Roig felt that he could recommend the use of the DC-7 by Pan American-Grace, we would not object to his discussing the matter with his associates under the same conditions of confidentiality which Pan American had imposed upon him, but that, on the other hand, if Mr. Roig felt there was no merit in the proposal it might be better not to go further with it. Mr. Roig said that unfortunately the situation was not quite as clear as this; that while he personally was not satisfied that the use of such large aircraft would be justified, he did not regard the matter as beyond the realm of discussion and would like to be able to talk it over with his associates. It was left that Mr. Roig would give further consideration to the questions of the use of DC-7 equipment and of interchange, and would talk further to Mr. Dean about them at or after the Pan American-Grace Board meeting on July 13.

Mr. Tweed inquired whether it would be possible to resume the exchange of information as to estimates of revenues and expense between the staffs of the two companies which had been going on prior to the inauguration of the DC-7 discussions, with a view at least to reducing the area of disagreement. Mr. Friendly stated that at the moment the Pan American people were so busy revising their estimates in the *Latin American* case and working on the other cases which the C.A.B. had initiated that he did not believe that anything was in shape for discussion. Accordingly, he suggested that this matter also be deferred for further discussion.

Henry J. Friendly

[fol. 2932]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 233

[Handwritten notation—For Mr. Friendly]

July 19, 1944

I lunched with Mr. Roig at his request. He stated that he had given a great deal of consideration to the discussions which I, Mr. Friendly, Mr. Tweed and himself had had last week at Mr. Tweed's apartment regarding the interchange of equipment between Pan American-Grace Airways, Pan American Airways, and one of the domestic carriers operating between Miami and New York. He stated that he was frankly impressed with the commercial and business advantages of this type of interchange, but that speaking for W. R. Grace and Company's interest, he was not prepared to agree to such an interchange at this time, because he felt that it would definitely prejudice the position of Panagra in its becoming anything more than a connecting carrier. I advised Mr. Roig that he might expect that Pan American Airways would pursue and follow the position already taken that this interchange agreement should be entered into and that we would continue to make a record of our endeavors along these lines.

had ed

Mr. Roig then stated that he ~~would~~ discuss ^ with Mr. Garni the question of the size of the equipment which Panagra would use in the development of the Latin American certificate case, and that they had come to the conclusion that for the sake of "elbow room" they would mention three types, namely, DC-6, DC-7, and the Constellation, but not commit themselves definitely to any particular one. I told Mr. Roig that I felt this policy was weasling, and that he was trying to have his cake and eat it too, which from our interest in Pan American-Grace was far from satisfactory. Mr. Roig said that he was trying to get these ideas down on paper with the aid of Mr. Tweed, and at such time as he had been successful in doing this, Mr. Tweed would then go over the subject with Mr. Friendly.

I referred to the clipping from the *Aviation Monthly* regarding Gessel's appearance before Examiner Brown in the hearing of Adolph Garni with respect to his directorships in Eastern Airlines and Pan American-Grace. Mr. Roig assured me that Mr. Gessell was not appearing in any way for Pan American-Grace and that the published reports were in error. After luncheon Mr. Cogswell telephoned me and read me a letter of July thirteenth which Mr. Gessell had written to Examiner Brown, calling his attention to the fact that he was representing Mr. Garni only, and not Pan American-Grace. I asked Mr. Cogswell to send a copy of this letter to Mr. Friendly.

/s/ HBD.

[fol. 2933]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 234

bcc: Mr. Trippe
Mr. Friendly

February 21, 1946

Mr. Harold J. Roig, President
Pan American-Grace Airways, Inc.
135 East 42nd Street
New York, New York

Dear Harold:

We have discussed the matter of your proposed operation of the two Pan American-Grace Constellations with Mr. Shannon and Mr. Vidal on the basis of Mr. Shannon's memorandum to me of February 16th. This matter was referred to our Executive Committee meeting on February 19th. The Committee felt that the operation as outlined would result in excessive cost to Pan American-Grace as well as providing uneconomical utilization of this equipment.

I have been requested by the Committee to submit to you a plan whereby Pan American Airways, Inc. would be willing to contribute two Constellation aircraft to a pool

to be formed with Pan American-Grace's two Constellation aircraft making a total of four aircraft of this type. With this fleet, an efficient operation could be conducted from the Miami base serving both the East and West coasts of South America by providing a daily service from Miami to Lima and a three times weekly service from Miami to Rio. This would result in a utilization of a little over nine hours per day per unit which could be still further improved, as for example, through a second daily service between Miami and Balboa, if warranted, or a daily Miami-Barranquilla trip. In support of our plan, I attach a memorandum outlining in detail the economic disadvantages of the proposal submitted in Mr. Shannon's memorandum and justifying in every respect our suggestion that a pool of equipment be formed to increase the utilization of the equipment to a satisfactory point, where the cost per mile will be comparable to that which we expect to obtain in our Constellation operations elsewhere.

I need hardly elaborate on the point that a through service from Miami to Lima, such as would be provided by the proposed equipment interchange, would be highly desirable from the standpoint of the traveling and shipping public.

We are confident that our proposal is entirely practical and in the interest of Pan American-Grace Airways, as well as the public interest. If you will kindly advise me that you concur in principle, I shall immediately take the necessary steps to coordinate this program, and put it into effect at the earliest possible moment.

Very truly yours,

Original Signed By
HOWARD B. DEAN
Howard B. Dean
Vice President

Attachment

[Handwritten notation—Received—HJF—2/25/46]

[fol. 2934]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 235

Aside from the low utilization (six hours per day) which would result from Panagra's proposed operation of their Constellations between Lima and Balboa, having the aircraft serviced at the latter point by Pan American, there are other objections based on economy and efficiency which make such proposed plan of operation undesirable.

It is estimated that at least thirty men would have to be available in the Canal Zone to carry on routine maintenance of the aircraft and periodic long service, since the Constellation aircraft do not conform to any type presently contemplated for the Latin American Division which will standardize on C-54's. This would require the stocking and servicing of an abnormally large inventory of spares, parts, accessories, etc. to maintain only two aircraft. Pan American could not periodically withdraw from its present complement of maintenance personnel in the Canal Zone the estimated thirty men required for the Constellation service without completely disrupting its own scheduled operations. Therefore, it must be assumed that these thirty men would be additions to the present staff. Between brief periods of concentrated and accellerated activity these men would have relatively little to do. At least half of the men would have to be American skilled mechanical personnel brought from the United States, involving payment of $75.00 monthly foreign allowance at a total monthly cost of $1,125.00. Assuming two years as the average length of assignment and incidental transfer and settlement expenses as $1200.00 per man, there is an additional monthly cost of $750.00.

We note that an engine change would be required every six weeks and that in such cases the aircraft might be ferried to New York, which would involve 19½ hours non-revenue flying time at a direct flight cost of approximately $5,250.00. During this time the aircraft would have to be withdrawn from Scheduled operations for an absolute minimum of three days, that is, two days transit time and one day in the shops. Considering maintenance scheduling com-

plications, necessity for test flights after engine installation, etc., five or six days is much more likely. This would leave only one aircraft with which to carry on the scheduled operations, which is considered entirely unfeasible from a practical point of view. The alternative would be to have the engine change performed in Balboa and the motors shipped to New York for overhaul. But here again extraordinary costs are involved, since the total transportation cost per engine New York—Balboa, including crating, insurance, ocean freight and cartage, would be $636.15, or $5,089.20 per engine change.

Higher maintenance labor costs due to inefficiency and higher hourly depreciation as a result of low utilization would further increase the direct flying expense. The direct hourly labor cost, including burden, for routine main- [fol. 2935] tenance of Constellations has been calculated at $21.60. This includes only such service as would normally be performed in the Canal Zone and does not extend to main-base work such as engine overhaul. Assuming only 50% efficiency due to stand-by time of the thirty men, this figure becomes $43.20. The same is true of the $18.58 hourly depreciation figure on the airframe calculated on the basis of 4800 hours per year, since Panagra's estimated 2400 hour annual utilization figure will result in hourly depreciation of $37.16.

It might be contended that the allowance for inefficiency is too great; however, we still believe that other factors which enter the maintenance picture, such as shipping and handling a large volume of spares by air or boat, higher cost of local supplies, etc. will make this figure a conservative one for estimate purposes and that experience may reveal an even greater departure from the hourly labor cost originally estimated by our engineering department on the basis of "mass-maintenance."

The effect of the above expenses would be to increase the direct flight cost per hour from $269.25 as estimated for PAA Operation of Constellations in Transcontinental Flights to $322.86, or per passenger-mile from $.036 to $.0431. The total annual increased direct flight expense under Panagra's plan would be approximately $258,564.

The foregoing observations weigh heavily in favor of some alternate plan of operation which might be worked out based on an interchange of equipment between Pan American and Panagra. As a concrete example of what might be done along these lines designed to give at least 50% better utilization of equipment, the following is offered:

Route			
Miami-Balboa-Lima		2645 miles	10:35 hrs.
x 7 (Weekly Round Trips)			148:10 hrs.
Miami-Rio de Janeiro			
Mia—Jua	1040		
Jua—Spa	631		
Spa—Bel	1212		
Bel—Rio	1535		
Total		4418 miles	17:45 hrs.
x 3 (Weekly Round Trips)			106:30 hrs.
Grand Total Weekly			254:40 hrs.

The above schedule, if made effective, could result in daily round trip service Miami—Lima and three times weekly Miami—Rio, using four aircraft with an average daily utilization of 9:06 hours.

Since the complement of maintenance personnel in Miami regularly ranges from two to three thousand men, no [fol. 2936] difficulty would be encountered in assigning from this large number sufficient personnel with which to service and maintain the Constellations including engine changes. Also the shop burden in Miami would be correspondingly lower than in the case of Balboa.

Several modifications of the foregoing alternate plan could be worked out to increase the utilization. For instance, the establishment of a second daily round trip Miami—Balboa, if warranted by traffic, would bring the fleet unit utilization figure to 11:28 hours per day, with a consequent decrease in mileage cost. It is suggested as indicative of what can be devised to improve on the present Panagra proposed method of operating the Constellations.

[fol. 2937]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 236

March 13, 1946

Messrs. ~~Dean~~ HBD
~~Balluder~~
Morris—HPM
Friendly

If the attached accords with your recollection, please initial the original of each memo, pass on to the next man on the list for similar action, and retain a copy for your file—returning the originals for Legal Department files.

HJF

[fol. 2938]

March 13, 1946

MEMORANDUM

RE: DISCUSSION OF CONSTELLATION INTERCHANGE AT PAN AMERICAN-GRACE BOARD MEETING MARCH 12, 1946

After the formal business of the meeting had been concluded, Mr. Garni asked whether there were any other matters to be considered. Mr. Dean stated that he had been having discussions and correspondence with Mr. Vidal and Mr. Shannon and, through cable, with Mr. Roig, concerning the operation of the two Constellations on order by Pan American-Grace and the proposal that these two airplanes, together with two Pan American-owned Constellations, be based at Miami and operated as a single fleet from Miami to Lima on the one hand and down the East coast on the other. Mr. Dean said that the matter was very pressing because if Pan American was to do this it would be necessary to make immediate arrangements for the placing of trained personnel and spare parts at Miami.

Mr. Garni said that there were three pending questions in regard to this matter:

1—While it appeared that the method of operation of the Constellations proposed by Pan American would involve substantial economies, it was desired that Mr. Vidal

check the matter from a cost standpoint. Mr. Dean stated that of course we had no objection to this and would give Mr. Vidal every facility for making this check but emphasized the need of expedition.

2—Mr. Garni stated that it would have to be understood that if, by the time of the delivery of the DC-6s Pan American-Grace were extended to the United States, it would not be obligated to continue in the equipment pool agreement. Mr. Friendly said that there was no desire on Pan American's part to force Pan American-Grace to remain in the equipment pool agreement any longer than Pan American-Grace's own best interests dictated; that on the other hand it was quite obvious that since Pan American had not intended to operate the Constellations out of Miami, Pan American would be incurring certain costs in setting up the equipment pool arrangement which otherwise would not have been incurred; that it would be reasonable to incur these costs if there were a certain period for working them out; but that if the period were to be unduly short, Pan American-Grace ought to compensate Pan American for the additional costs that had been incurred and had not been recouped. Mr. Garni said that he could entirely see the point of this. Mr. Dean said that whatever difficulties he might have had with the Grace directors on certain policy questions, he had always found that in financial discussions they were entirely fair and that he had every confidence that this problem could be settled on a basis that was fair to both companies. Mr. Garni expressed himself as in agreement with the general proposal that there be a penalty for cancellation by Pan American-Grace of the equipment pool arrangement in advance of what [fol. 2939] might be considered a reasonable period. The questions of what the term of the equipment pool arrangement was to be and what penalty there should be on advance termination, were left for handling between the two managements.

3—Mr. Garni said that he would want to have it understood that the equipment pool arrangement was without prejudice to the rights of W. R. Grace or Pan American-Grace in Dockets 779 and 525. Mr. Friendly said he was

puzzled to know just what Mr. Garni meant. On the one hand he entirely agreed that the equipment pool arrangement was not intended to be any waiver or release of any rights or claims of W. R. Grace or Pan American-Grace with respect to the extension to the United States. On the other hand if the equipment pool arrangement became a fact it would be a fact and there was no way in which Pan American could agree to disguise the fact. Mr. Cogswell said that Grace did not want to have the equipment pool arrangement used as an argument in any further proceedings because if it were to be so used it might be cheaper for Pan American-Grace in the long run not to have the arrangement, if the arrangement was going to prejudice its case for an extension in any way.

Mr. Friendly said that he could not follow this line of argument. He said that Pan American had urged for years that an equipment inter-change was perfectly practicable and would accomplish many of the objectives urged by Grace in favor of the extension to the United States. It would be wholly unreasonable for Grace to ask Pan American to agree that when such an arrangement had finally been made, Pan American would not make any reference to its existence. Actually such an agreement would accomplish nothing from Grace's standpoint anyway. The agreement would have had to be submitted to the CAB, everyone could see the planes flying and Public Counsel certainly would not be bound by any agreement between the parties not to refer to the existence of the arrangement. Moreover, from Pan American's standpoint a refusal on the part of Grace to enter into such an arrangement because of the fear that it might work too well would be perhaps an even more helpful argument than the working out of such an arrangement. Mr. Friendly repeated that while there was no desire on Pan American's part to have this agreement operate as any waiver or release by Grace or Pan American-Grace, he would certainly recommend that Pan American not place itself in a position where any reference by it to the workings of the agreement could be charged by Grace to be an act of bad faith.

Mr. Garni agreed that the situation was a difficult one.

Mr. Friendly stated that he felt that there was no great difficulty and that he would not have any particular trouble in working out suitable language with Mr. Gesell or whomever else Pan American-Grace might have acting for it in this matter.

The question was left on this basis, it being agreed that Mr. Cogswell would let Mr. Friendly know whether or not Mr. Gesell would act as attorney for Pan American-Grace. Mr. Friendly emphasized the need of expedition from the legal standpoint, pointing out that the matter was one which would have to be submitted for approval to the C.A.B.

/s/ H.J.F.
H.J.F.

[Handwritten Initials—HBD—Balluder—HPM]

[fol. 2940]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 237

April 8, 1946

Mr. Harold J. Roig, President
Pan American-Grace Airways, Inc.
135 East 42nd Street
New York, New York

Dear Mr. Roig:

Mr. Vidal requested me this morning to advise you immediately whether Pan American Airways would have any objection to the sale by Pan American-Grace Airways, Inc. of the two Constellations for which Pan American-Grace has contracted with the Lockheed Company.

It is our judgment that the maximum benefit to Pan American-Grace as a company, and the best service to the public, would be accomplished by Pan American-Grace going through with its commitment to purchase these aircraft and operating them in a pool along with two Constellations owned by Pan American, so as to afford through daily service from Miami to Lima, as outlined in my letter of February 21, 1946 and the accompanying memorandum.

You stated at the meeting last Thursday that the Grace directors were unwilling to consider either this plan or a similar plan involving C-54 equipment, notwithstanding the obvious financial advantages to Pan American-Grace Airways, Inc. In order to give you further time to reconsider this matter, Pan American Airways is willing to confirm to you that if by April 12th, you still insist on selling the two Constellations, we will purchase these, thereby relieving you of your commitment to Lockheed.

Sincerely yours,

s/ HBD
Howard B. Dean
Vice President

bcc: Mr. Trippe-NYK
Mr. Friendly-NYK
Mr. Balluder-NYK

[fol. 2941]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 238

bcc—Vice President & General Counsel
Vice President Gledhill
Vice President & Treasurer
Comptroller
Vice President & Chief Engineer

April 15, 1946

Mr. Harold J. Roig, President,
Pan American-Grace Airways, Inc.,
7 Hanover Square,
New York 5, N.Y.

Dear Harold:

Before leaving for South America Howard Dean asked me to reply to your letter of April 11, 1946.

In view of your unwillingness to consider the operation of either Constellation or C-54 equipment under an inter-

change agreement at the present time, and reserving all our rights in the matter, and to avoid further prejudice to the interests of our joint enterprise, Pan American Airways Corporation is willing to approve of the management of Pan American-Grace purchasing up to three (3) war surplus C-54s at $75,000 to $90,000 each and arranging to convert them at the Douglas factory at a cost of about $175,000 each,—on the understanding, however, that these planes will be equipped in a manner generally similar to the C-54s which Pan American Airways is having converted, so as not to preclude the possibility of their being pooled with the Pan American planes under an interchange arrangement if one can be worked out at a later date.

With respect to engine overhaul for these aircraft and major overhaul for the aircraft themselves, the situation is as follows: Pan American plans to concentrate overhaul of R-2000-9 engines at Brownsville and of R-2000-11 engines at Miami. We will be glad to undertake the overhaul of those engines for Pan American-Grace at one or the other of those bases, depending upon the type engine to be installed in your planes. We also expect to be able to handle the major overhaul of these aircraft for you at Brownsville, although, of course, we cannot make a commitment of indefinite duration on this subject.

With respect to the Constellations, we will be glad to discuss with your representatives the mechanics of taking over your commitment to Lockheed.

Sincerely yours,

E. Ballucder

[fol. 2942]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 239

May 31, 1946

Mr. Marshall Skadden	David E. Grant
Legal	Legal
New York	New York

CONTROL BY PAN AMERICAN OF AEROVIAS NACIONALES DE COLOMBIA (AVIANCA)

HISTORICAL ANTECEDENTS

Pan American acquired its original interest in AVIANCA (then called Sociedad Colombo-Alemana de Transportes Aéreos (SCADTA)) on April 10, 1931, in pursuance of a contract made between Pan American and Dr. Peter P. von Bauer for the purchase by Pan American from him of a 60% stock interest in SCADTA and his commitment to acquire for Pan American up to 5,000 additional shares of the company to be purchased in the open market. The total outstanding shares of SCADTA at that time were 20,000. Pan American acquired from von Bauer 12,000 of his own shares and 4,884 shares purchased through von Bauer in the open market. By the end of April, 1931, Pan American therefore owned 16,884 shares out of the total of 20,000 shares of SCADTA, or a stock interest of 84.42%.

The General Stockholders' Meeting of February 22, 1935 authorized the issue of 10,000 additional shares. By agreement with the other stock interests, Pan American waived, in part, its pre-emptive rights for the purchase of the new stock and in place of exercising such rights for a total of 8,442 shares, it limited its purchase of new shares to 7,200 in order to make a greater number of these new shares available for purchase by the Colombian public. The new shares were disposed of as follows:

	Shares
Purchased by Pan American Airway Corporation	7,200
Purchased by Colombian public	1,605
Unsold in the Treasury	1,195
TOTAL	10,000

As a result of the foregoing purchase, Pan American then held a total of 24,084 shares out of a total outstanding of 28,805 shares, or 83.61% of the outstanding stock.

Pursuant to the reorganization of SCADTA in conformity with the desires of the Colombian Government, which included, among other objectives, the change of name of the company to Aerovías Nacionales de Colombia (AVIANCA), and the purchase by SCADTA of all of the assets of a competing company by the name of Servicio Aéreo Colombiano (SACO), a Special Stockholders' Meeting held on June 8, 1940 changed the capital structure of the company by providing for a total of 400,000 shares of authorized capital of the par value of 10 Colombian pesos each, to be distributed as follows:

[fol. 2943]

	Shares
For exchange for old shares at the rate of 5 to 1, plus 3 to 1 additional, resulting from capitalization of reserves	240,000
Shares to be issued for payment to SACO for the agreed value of its total assets	60,000
Shares to be subsequently issued by action of the Board of Directors	100,000
TOTAL	400,000

As a result of the foregoing change in capital structure, Pan American received 192,672 shares out of a total of 300,000 shares then outstanding, its stock interest therefore declining to 64.224%.

During the Fall of 1945 arrangements were made, with the approval of Pan American, to sell to the public the

100,000 shares of additional authorized stock in AVIANCA, or as much thereof as the public would purchase. As a result of this sale, Pan American, since approximately the end of 1945, has held and now holds a stock interest of only 48.16%.

In the above historical sketch intermediate changes of par value, and of bearer stock to registered, provision for possible classes of stock and other details of corporate set-up have been omitted, because they are not relevant to the question of control.

SITUATION PRIOR TO STOCKHOLDERS MEETING OF FEBRUARY 23, 1940.

Legal Situation:

During this period Pan American Airways's stock interest, as above noted, ran 84.42% until 1935, and then dropped to 83.61%. The stock at the time was bearer stock. As between the stockholder and the corporation, under Colombian law, the holder of bearer certificates, or the holder of proof of possession of bearer certificates, is the owner and has the right to vote. During all of the interval from 1931 to the stockholders annual meeting of 1940, the great bulk of the Pan American stock was in fact voted by Dr. von Bauer under a legal device which proved constructive physical possession by him of the respective stock certificates. But the actual owner of the majority stock interest was Pan American, and, from the purely theoretical standpoint, Pan American during this period had theoretical control. However, as will be hereafter noted in the analysis of the Factual Situation, Pan American did not control SCADTA during the period mentioned, either through its actual ownership of the stock or otherwise.

The passage of two important Colombian laws during the period prior to March 1940, must, chronologically, be here noted, although the effects of these laws will be discussed hereafter.

(a) 1944 *Law* [illegible] 1944. The first of these laws was Law [illegible] of 1931 creating the office of Superintendent of Corporations and establishing certain rules for the corpo-

rate administration and government regulation of commercial stock corporations. Among a number of archaic and highly onerous provisions established by this legislation in an attempt to protect minority interests, is the limitation established by Article 28, namely, that no stockholder, regardless of how many shares he may own or represent, may exercise, either directly or by any interposed person, more than 25% of the total votes of the shares represented at a stockholders' meeting.

So great was the protest by local business interests against this law following its enactment that by a subsequent law of the same year, namely Law 134 of 1931 (Art. 88), it was indefinitely suspended. It remained in suspense for about five years, when, by virtue of Article 15 of Law 128 of 1936, it was revived, to become effective September 1st, 1937. Even with the revival, the law remained dormant because the President refrained from exercising his authority to name a Superintendent of Corporations and his assistants. Finally, on Decree No. 1984 of October 10, 1939, the President decreed the existence of the Office of Superintendent of Corporations and proceeded to appoint the key personnel as provided in the original law of 1931.

With respect particularly to the AVIANCA situation, by October 10, 1939, negotiations were already pretty well along towards the nationalization of the then SCADTA company, in line with the desires of the Colombian Government. The writer of this memorandum had already been in Colombia several weeks in representation of Pan American and had discussed the main points of the Government's reorganization program with the President of the Republic, the Minister of War who had jurisdiction of aviation at the time, and the negotiators appointed for the SACO company, whose assets were to be acquired by SCADTA. Anticipating the difficulty which the limitation on the right to vote would have in connection with the nationalization program, Mr. Grant, assisted by Pan American's attorney at Bogotá, and by Dr. von Baer, persuaded the President of the Republic and the Minister of War to sponsor in the Congress a law making an exception, with respect to the restriction on voting rights, in the case of domestic aviation

companies in which the Government had a stock interest. The law was adopted as Law No. 68 of 1939 and in its Article 2 stated succinctly that the limitation on voting rights established by Article 28 of Law 58 of 1931 should not apply with respect to aviation companies in which the Government had a stock interest. This exception would have applied to SCADTA because by reason of the purchase of the assets of the SACO company for stock of SCADTA (to be reorganized as AVIANCA), and the distribution of this stock to the stockholders of SACO, the Colombian Government would acquire a stock interest in SCADTA of approximately 6%.

Law 89 of 1938—The second of the laws which were enacted prior to February 23, 1940 was the nationalization law for Colombian civil aviation. In effect, the provisions of this law restricted the majority stock ownership of [fol. 2945] domestic commercial aviation companies in Colombia to Colombian nationals. After December 31, 1942, the term originally set by the law for compliance with its provisions, no aviation company could register a commercial plane in Colombia and consequently no such company could operate a domestic service in the country, unless its common stock were owned in a proportion of at least 51% by Colombian nationals, or by Colombian corporations whose stock in turn was owned at least 51% by such nationals. It should be remarked in passing that the term for compliance with the nationalization law was calculated to coincide with the expiration of the operating contract held by SCADTA. This contract actually expired on December 16, 1942.

Factual Situation

As above indicated, the facts surrounding Pan American's ownership of a majority stock interest in SCADTA negative any conclusion that Pan American controlled the company, even before Law 58 of 1931 came into force by virtue of Decree No. 1984 of October 10, 1939. Pan American's contract with von Bauer for the purchase of his majority interest in SCADTA and the arrangements and conditions on which that contract was predicated, called for the following policies:

(a) that the actual interest of Pan American in SCADTA should not be publicly disclosed, because to have disclosed this interest would have reacted immediately to the great prejudice of SCADTA.

At the time of the purchase, the SCADTA company and its management enjoyed great prestige in Colombia. Not only had it given Colombia the first successful commercial airline in the Western Hemisphere, operating without subsidy of any kind, but it had provided a factor of incalculable benefit to the country's economic situation, hampered as this had been for centuries by lack of rapid, adequate and dependable media of communication. Negotiations were pending, which were successfully consummated in a contract in the year 1932, turning over to SCADTA the whole of the administration and operation of the airmail system of the country. Even as early as 1932 there was arising in Colombia a deep sentiment of nationalism with respect to aviation. SCADTA had always been considered by the public and the Government as a Colombian enterprise, founded as it had been by Colombians and a few German residents of Barranquilla in 1919. The Colombian people took great pride in the success of SCADTA and the example of its operations among the American Republics. Colombia was acknowledged as the pioneer of commercial aviation in the Western world. SCADTA had been the recipient of an excellent operating contract and of a great number of other favors at the hands of the Government. To have disclosed its large majority ownership by foreign interests at the time, especially by United States interests when relations between Colombia and the United States were none too cordial, would have been perhaps a fatal blow to the Company's continued progress. This was recognized by Pan American and by Dr. von Bauer; hence, secrecy was deemed the only logical policy in connection with the purchase of von Bauer's holdings.

[fol. 2946] (b) That von Bauer and all of his management were to continue in administrative and technical control of the enterprise. Von Bauer was to consult Pan American in such connections as he thought appropriate, but was not to be controlled necessarily by its advice or preferences. In

Pan American's files are a great number of letters exchanged between von Bauer and Mr. Evan E. Young, on a wide variety of subjects, wherein the advisory spirit of Pan American's intervention is clearly reflected. Instructions and orders were never given; at most, suggestions were conveyed and probably were disregarded as often as followed.

The Board of Directors of SCADTA at that time was composed, in great majority, of the same personnel who had been directors for years under Dr. von Bauer. Of the twelve members on the Board, Pan American at no time had more than three, and these were members of its New York staff, none of them ever resident in Colombia. Liaison, if such existed, was made through the writer of this memorandum, who visited Colombia occasionally and when there attended meetings of the Board. This might have happened once or twice a year. By the fall of 1938, when the Civil Aeronautics Act of the United States went into effect, all Pan American personnel who had been directors of SCADTA resigned, with the exception of the writer who continued until the Annual Meeting in February 1941. The resigning personnel were replaced by Colombians or by officers or employees of SCADTA, or associates of von Bauer, resident in Colombia.

(c) That the policies of SCADTA, its operating personnel and its plans should not be changed or re-adjusted in any way. As a matter of fact, no change or re-adjustment was made in any of these respects until the latter part of the year 1939 when pressure was exerted by the United States Embassy in Bogotá for de-germanizing the SCADTA company. But from 1931 until about the middle of 1939, the General Manager, the operations manager, the chief engineer, the chief pilot, the communications staff, the maintenance staff and, in fact, all of the operation personnel of the company remained as it had been for years past.

Over and above the foregoing policies which were agreed upon between Pan American and von Bauer, the following factors militated against any attempt by Pan American to control SCADTA:

(1) The increasing interest and intervention of the Government in the company and its operations. This was due, in considerable measure, to the Government becoming "air-force minded" and desiring to build up strategic airports over its territory, and to have means of training military pilots. As a matter of fact, a contract with a subsidy had been authorized for SCADTA by the Government as early as 1924, contemplating the establishment of an aviation school for the training of pilots.

Another reason for the Government's increasing interest in SCADTA was the rising sentiment of nationalism in regard to domestic aviation, to which reference has already [fol. 2947] been made. Between 1934 and 1938 several attempts were made to formulate a domestic aviation law, which culminated in Law 89 of May 26, 1938, in force today, nationalizing domestic airline enterprises. As an element of this growing nationalism, there were powerful advocates in Colombian political and legislative circles, as early as 1936, of the Government's taking over SCADTA. Articles and editorials on SCADTA appeared profusely on the front pages of the leading newspapers of the country. Reporters were incessantly investigating the company and its business, as well as interviewing its officials. In such circumstances and under such scrutiny, it would have been extremely difficult to have hidden Pan American's control, should Pan American have attempted to exercise it even by a relatively unimportant change in the company's officers, directors, policies or plans.

A striking example of the absence of control by Pan American in the affairs of SCADTA during the period under review was the secret contract entered into between the Colombian Government and SCADTA in the year 19 , when war with Peru over the Leticia dispute was imminent. The contract virtually made SCADTA, its airports, facilities, equipment and pilots, the official air force of the Colombian army. Although Dr. von Bauer confidentially communicated the fact of the negotiations to Pan American and the consumation of the contract, Pan American exercised no control in authorizing or vetoing it. Pan American's preference in the matter would obviously have been

against jeopardizing the whole of its investment in a military enterprise. Yet the contract was not only entered into but performed, up to the point of readiness for military action by SCADTA in the event of war with Peru. The controversy was settled and hence further action by SCADTA was rendered unnecessary.

(2) Another factor which negatives the idea of control by Pan American during the period under review is the character of Dr. von Bauer and his co-workers. These gentlemen had virtually founded the enterprise; had pioneered its development in the face of enormous physical obstacles; knew intimately Colombia's topography, climate, economy and population. They were men of strong will and fixed ideas. They would never have taken kindly to any attempt by Pan American to supersede their own experience or knowledge of Colombian aeronautic conditions and requirements. Indeed the writer, from his acquaintance with these men, might venture the suggestion that they would have treated any such attempt by Pan American with ill-concealed contempt. Pan American's executive and technical staff were cognizant of the specialized knowledge of SCADTA's officers, and did not interfere in their operating or administrative technique, beyond suggestions and assistance, on the request of SCADTA, towards modernization of methods, facilities and equipment.

(3) A further factor which is indicative of Pan American's absence of control is that at no time prior to March 1940 did SCADTA utilize the services of Pan American's legal counsel in Colombia. As a matter of fact, the officers of SCADTA were barely acquainted with him and he knew the directors only by reputation. SCADTA maintained its own legal department, while both in Barranquilla and in Bogotá it had outside counsel, under retainer who were [fol. 2948] neither selected nor approved by Pan American. These attorneys owed no obligation whatever to Pan American, and on a number of occasions they manifested a distinct national bias in favor of SCADTA as against Pan American.

SITUATION FROM FEBRUARY 23, 1940 TO MARCH 1946.

The division of periods before and after February 23, 1940 is made by the writer because the Stockholders Meeting of 1940 marked a radical change in the corporate set-up, the management and the policies of SCADTA as well as in the relations between Pan American and that company. The so-called Medellín agreement of October 26, 1939 had been signed, embodying the desires of the Government for the eventual nationalization of the company, its change of name, its acquisition of the assets of SACO and preparation for the acquisition by the Government and/or by Colombian nationals of a majority stock interest. The fact of Pan American's ownership of a 64.224% stock interest in the company was now public.

The pressure by the United States Embassy for complete de-germanization of the enterprise had reached its maximum and the Government of Colombia was ready to cooperate in the program, although not yet ready to go to the extremes advocated by the American Embassy.

Legal Situation:

As noted above, Law 58 of 1931 was now fully applicable to corporations. The only exception was that embodied, in favor of aviation companies in which the Government had an interest, in Art. 2nd of Law 68 of 1939. At the SCADTA Stockholders Meeting of February 23, 1940 it was resolved to approve the negotiation whereby SCADTA had acquired the assets of SACO; but when it came to authorization of an increase of the capital stock of SCADTA for the payment in shares of the SACO assets, counsel called the attention of the meeting to the fact that the necessary ⅔ vote for the increase of the capital could not be given, because under Law 58 of 1931 Pan American could vote only 25% of the total votes represented (although it actually held a stock interest of 64.224%), and because the exception provided by Art. 2nd of Law 68 of 1939 could not be invoked because the Government had not yet acquired a stock interest in SCADTA.

Pan American, represented at the meeting by its Vice President, Mr. Rihl, was therefore unable to obtain passage of its resolution to authorize the increase of capital stock, since it could not muster the necessary ⅔ vote under the by-laws, notwithstanding its holding 64.224% of the stock and having on its side a very considerable percentage of additional votes.

Directors of the company were not elected at the Stockholders Meeting of February 23, 1940 because the directors had been elected for a two year term, pursuant to the by-laws, at the Stockholders Meeting of 1939.

The real test of Pan American's control of AVIANCA came at the Annual Meeting of the stockholders in March [fol. 2949] 1941. At that meeting two issues were to be determined; first, the amendment of the by-laws to effect a change of the corporate domicile of AVIANCA from Barranquilla to Bogotá, as determined by Pan American to be necessary for the development of the company. This transfer would involve the transfer also of the office of the President and of the heads of department. The second issue was the matter of electing a Board of Directors from among prominent business men of Bogotá instead of Barranquilla so that meetings of the Board might henceforth be held in Bogotá.

For the purposes of this memorandum, it is not necessary to recount the amazing details of the violent popular uprising in Barranquilla when the notice of the Annual Meeting was published, carrying the intention to transfer the company's domicile and headquarters to Bogotá. Suffice it to say that popular agitation on the question paralyzed for nearly a week the business activities of a city of 200,000; that it required the services of the police and the army to protect the AVIANCA premises and the persons of the Pan American officials who were present to vote at the meeting; and lastly, that the United States Ambassador made a special trip to Barranquilla to investigate the situtation.

At the Stockholders Meeting itself, Pan American's right to vote this change was directly challenged, on the

basis of Art. 28 of Law 58 of 1931. Pan American's representatives then attempted to apply the exception provided by Art. 2nd of Law 68 of 1939, because by that time the Colombian Government had acquired a small interest in AVIANCA through its receipt of AVIANCA stock in the SACO assets purchase transaction. The question was referred to the Superintendent of Corporations at Bogotá, the Stockholders Meeting being adjourned until he could reply. The Superintendent sent a representative to the meeting. This representative, to the astonishment of Pan American's representatives, expounded to the meeting the interpretation by the Superintendent of Art. 2nd of Law 68 of 1939, to the effect that the exception established by that Law was meant to run *in favor of the Government*, as a stockholder, and *not in favor* of private parties. Despite hours of argument and contention between Pan American's representatives and the representative of the Superintendent of Corporations, he maintained his position and refused to recognize Pan American's right to vote beyond 25% of the stock represented. The only recourse would have been to challenge the interpretation by court action, meaning appeal to the competent courts at Bogotá and eventually to the Supreme Court.

In the face of this situation, Pan American was unable to change the corporate domicile of the company to Bogotá. Furthermore, it was unable to elect its own Board of Directors but had to effect a compromise whereby the minority element retained a majority of the Board in Barranquilla. By means of this compromise, the Board was elected by unanimous vote; hence the question of 25% did not arise.

Since that date to the actual date in 1945 when Pan American's stock interest dropped to its present 48.16%, Pan American was unable to elect a Board of Directors of [fol. 2950] its own choosing nor otherwise to control the company. The interpretation made by the Superintendent of Corporations of Art. 2nd of Law 68 of 1939 was never judicially challenged, and governed the Stockholders Meetings through March 1946.

Factual Situation:

Since the Stockholders Meeting of March 1941, the Board of Directors (seven in number) have always been Colombians, both principal directors and their alternates. They are all prominent and independent business men of Bogotá or Barranquilla, with whom Pan American had no ties either of business or of friendship. The only member of the Board connected with Pan American has been its Bogotá attorney.

AVIANCA has had at all times a separate Legal Department, whose personnel are known personally only to ex-Vice President Rihl and the writer of this memorandum. Its outside Counsel have also been independent, without any ties to Pan American, and have been known personally only to the writer, although Mr. Rihl did know personally one of AVIANCA's outside Counsel in Bogotá until the latter's death in 1945.

The President of AVIANCA, who was elected at the Annual Meeting of March 1941, is a Colombian native of notoriously independent mind. He has consistently followed a policy of his own in the management of the company and Pan American's intervention has been solely in an advisory capacity.

The Government's intervention in the affairs of AVIANCA is now a matter of course. Reports are frequently requested by the Superintendent of Corporations as well as by the Director of Civil Aeronautics. At every stockholders meeting, the Superintendent has a representative present who does not hesitate to enter into the deliberations. The Government, since March 1941, has had two Directors out of seven on the Board neither of whom has ever been connected or even acquainted with the officers of Pan American.

PRESENT SITUATION

Since the fall of 1945 Pan American stock interest has dropped to 48.16%. Under Colombian law and under the by-laws of AVIANCA, it takes a majority vote to pass resolutions. Pan American obviously cannot muster alone

this majority vote. Moreover, the interpretation against its ability to vote more than 25% of the shares represented at a stockholders meeting, still stands, so that its position is that of a relatively small minority.

The Board of Directors continues to be composed of prominent and independent Colombian business men, residents of Bogotá, who do not hesitate to apply their own policies and ideas in the management of the company.

[fol. 2951] The President of AVIANCA continues to be Dr. Martin del Corral who works with his Board closely and, more than ever, exercises vigilance for the interests of AVIANCA and not necessarily those of Pan American.

The prospects and plans of AVIANCA, in the face of present strong local competition, have lost all semblance of consideration for the prospects and plans of Pan American. AVIANCA is in every respect an autonomous Colombian enterprise, taking care of its own interests first, in the competitive struggle now going on in inter-American air transport.

CONCLUSIONS

From the foregoing statement of the legal and factual considerations bearing upon the question treated in this memorandum the following are the only reasonable conclusions:

(1) That from Pan American's original acquisition of a stock interest in SCADTA in 1931, through the Stockholders Meeting of 1940, the circumstances were such as to preclude control by Pan American and that Pan American in fact never exercised such control;

(2) That the situation, both legal and factual, from the Stockholders Meeting of 1940 until Pan American's stock interest dropped under 30%, in the fall of 1945, was such that Pan American could not have exercised control, not even a "negative" control, because in effect it had a relatively small minority interest, and faced unsympathetic elements within and without the company;

(3) That under the present situation, no such control is possible either legally or in fact because Pan American has

no majority stock interest by reason of its ownership of only 48.16% of the stock, nor can it exercise any form of negative control because it actually has only a maximum of 25% of the voting rights at any stockholders meeting, this proportion being insufficient to block any action whatever on the part of the majority stockholders.

David E. Grant

DEG:BD

CCs: Vice President Friendly
Vice President Balluder

[fol. 2952]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 240

[Handwritten notation—Original]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. .....

IN THE MATTER OF

AN AGREEMENT BETWEEN

PAN AMERICAN AIRWAYS, INC.

and

PAN AMERICAN-GRACE AIRWAYS, INC.

Dated July 30, 1946

PETITION OF PAN AMERICAN AIRWAYS, INC.

Communications with respect to this petition should be sent to:

HENRY J. FRIENDLY
Vice President and General Counsel
Pan American Airways, Inc.
135 East 42nd Street
NEW YORK, NEW YORK

Dated: August 1, 1946

[fol. 2953]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No.

IN THE MATTER OF

AN AGREEMENT BETWEEN

PAN AMERICAN AIRWAYS, INC.

and

PAN AMERICAN-GRACE AIRWAYS, INC.

Dated July 30, 1946

The petition of PAN AMERICAN AIRWAYS, INC. thereinafter referred to as PAA respectfully shows to the Board as follows:

1. PAA is a corporation organized and existing under the laws of the State of New York. PAA holds various certificates of convenience and necessity for routes between the continental United States and the Canal Zone.

2. Pan American-Grace Airways, Inc. thereinafter referred to as Panagra is a corporation organized and existing under the laws of the State of Delaware. Panagra holds a certificate of convenience and necessity for a route between the Canal Zone and various points in South America.

3. A substantial amount of the passenger, air express, mail and cargo traffic proceeding between the continental United States and the Canal Zone originates at or is destined to points on Panagra's certificated route in South America.

4. Various foreign-flag and other American-flag carriers are about to begin operations between the continental United States and countries of South America which Panagra is certificated to serve. The service contemplated by

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such carriers will be through one-plane service without a requirement of change of plane at the Canal Zone.

5. A controversy has existed between the parties and between Pan American Airways Corporation and W. R. Grace & Co., the owners of the stock of Panagra, with respect to the filing by Panagra of an application for an extension of its own route from the Canal Zone to the continental United States. This controversy is reflected in the Board's Dockets 525, 707, 744 and 779, the last-mentioned of which is now pending on writ of certiorari in the Supreme Court of the United States.

6. In order to provide, on a long-term basis, through one-plane service between points on Panagra's certificated [fol. 2954] route in South America and points on PAA's certificated routes in the United States for the greater convenience of the traffic and shipping public, to enable themselves to compete more effectively with the foreign-flag and other American-flag carriers which are about to commence operations between the continental United States and points on Panagra's certificated route in South America, and to settle the controversy between them, PAA and Panagra have entered into an agreement dated July 30, 1946, a copy of which is attached hereto marked "Exhibit A" and made a part hereof, and W. R. Grace & Co. and Pan American Airways Corporation have entered into an agreement also dated July 30, 1946, a copy of which is attached hereto marked "Exhibit B" and made a part hereof.

7. The agreement between PAA and Panagra, a copy of which is attached as Exhibit A, constitutes a cooperative working arrangement within the meaning of Section 412 of the Civil Aeronautics Act. The agreement between W. R. Grace & Co. and Pan American Airways Corporation, a copy of which is attached as Exhibit B, is not deemed to be within the purview of any provision of the Act but is submitted for the information of the Board since it relates to the subject-matter of the agreement between PAA and Panagra and its effectiveness is dependent upon the approval of said agreement.

WHEREFORE, petitioner respectfully prays that the Board make and enter an order approving the aforesaid agreement between PAA and Panagra dated July 30, 1946, under Section 412 of the Civil Aeronautics Act and such other sections of the Act, if any, as may be applicable thereto, and that the Board shall grant such other, further and different relief as to it may seem just and proper.

PAN AMERICAN AIRWAYS, INC.

By /s/ HOWARD B. DEAN
Howard B. Dean
Vice President

[fol. 2955]

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

HOWARD B. DEAN, being first duly sworn, deposes and says that he is Vice President of Pan American Airways, Inc., a New York corporation; that he is duly authorized to sign the foregoing application and has read and is familiar with the contents thereof; that he intends and desires that in granting or denying the prayer of said application, the Board shall place full and complete reliance upon the accuracy of each and all statements made therein; that he is familiar with the facts set forth in said application, and to the best of his information and belief every statement made therein is true, and no statement is misleading.

/s/ HOWARD B. DEAN
Howard B. Dean

Sworn to and subscribed before me, a Notary Public in and for the County and State of New York, this 1st day of August, 1946.

/s/ PHYLLIS E. DISTLER

PHYLLIS E. DISTLER, Notary Public
Queens County, N. Y.
Queens County Clerk's No. 3194
New York County Clerk's No. 377
Register's Office, N. Y. Co. No. 346-D-7
Commission Expires March 30, 1947

[fol. 2956]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 241

(Letterhead of Pan American World Airways System, New York 17, N. Y.)

[Handwritten notation—Correspondence File 2114.41]

August 19, 1946.

Hon. James M. Landis, Chairman,
Civil Aeronautics Board,
Washington 25, D. C.

Dear Sir:

Since the decision of the Circuit Court of Appeals for the Second Circuit remanding the Panagra Terminal Investigation, Docket 779, for further proceedings before the Civil Aeronautics Board and the order of the United States Supreme Court of June 10, 1946 granting a writ of certiorari to review that decision, agreements have been reached between W. R. Grace & Co. and Pan American Airways Corporation and between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. (Panagra) which, upon becoming effective, will dispose of the controversy between Pan American and W. R. Grace & Co. which gave rise to CAB Docket 779 as well as to CAB Dockets 707 and 744.

On August 5, 1946, Pan American Airways, Inc. filed an application under Section 412 of the Civil Aeronautics Act for approval of the Pan American-Panagra agreement. The agreement between Grace and Pan American Airways Corporation was also annexed to the application for the information of the Board since it relates to the subject matter of the agreement between Pan American and Panagra and its effectiveness is dependent on the approval of such agreement. Paragraph 6 of the Grace-Pan American agreement provides:

> "6. *Pending Litigations* The parties will forthwith make suitable application to the Supreme Court of the United States and to the Civil Aeronautics Board requesting that the proceedings now pending in the said Court and before the said Board relating to the con-

troversies between them shall be kept in *statu quo* until the Civil Aeronautics Board shall have made a final order in the proceeding relating to the Panagra-PAA contract contemplated by paragraph 20 thereof and, if a timely proceeding to review any such order shall be instituted, until such proceeding for review shall have been finally determined. Upon an order of the Civil Aeronautics Board approving said contract having been made and become final, the parties will make appropriate applications for the dismissal of all such proceedings."

Under the terms of these agreements, the subject matter of the controversies presented in CAB Dockets 779, 707 and 744 will be disposed of and application for dismissal [fol. 2957] made both by Pan American and by Grace upon the Panagra-Pan American agreement being approved by order of the Civil Aeronautics Board and such order becoming final. It is respectfully requested, therefore, that CAB Dockets 779, 707 and 744 be kept in *statu quo* until the Board shall have made a final order in the proceeding relating to the Panagra-Pan American agreement and any timely review of such order finally determined.

Very truly yours,

/s/ HENRY J. FRIENDLY
Counsel for Pan American Airways Corporation and Pan American Airways, Inc.

CAHILL, GORDON, ZACHRY & REINDEL
Counsel for W. R. Grace & Co.

Pan American-Grace Airways, Inc. joins in the foregoing request.

/s/ GERHARD A. GESELL
Counsel for Pan American-Grace Airways, Inc.

Copies to all parties.

[fol. 2958]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 242

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 2423

IN THE MATTER

of

AN AGREEMENT

between

PAN AMERICAN AIRWAYS, INC.

and

PAN AMERICAN-GRACE AIRWAYS, INC.

REPLY BRIEF FOR PAN AMERICAN-GRACE AIRWAYS, INC.

GERHARD A. GESELL,
CHARLES M. DAVISON, JR.,

Covington, Burling, Rublee Acheson & Shorb,
701 Union Trust Bldg.
Washington 5, D. C.

Counsel for Pan American-Grace Airways, Inc.

November 25, 1946

[fol. 2959] II.

Docket 779 does not establish any facts which support the contention that the Through Flight Agreement is contrary to the Public Interest.

The most outstanding fact disclosed uniformly by the briefs submitted by intervening airlines is the complete inability of these intervenors to find any substantial basis for attacking the merits of the Through Flight Agreement as such.* Intervening airlines do not dispute the evidence summarized in Panagra's main brief establishing the advantages to the public which will be provided by the single plane through service between the east coast of the United States and the west coast of South America made possible under the agreement. Nor do these intervenors seriously assert that the economy and efficiency of Panagra's services will not be substantially improved. Moreover, they seem to recognize, by the very tenor of their argument, that the agreement places Panagra in a position to compete with them and others on more even terms.

Intervening airlines in seeking a basis for opposing the agreement attempt to avoid consideration of its terms and public benefits by attacking the parties to the agreement, their motives and their past relations. By making a wholly improper use of isolated bits gleaned from the evidence in Docket 779 these intervenors have sought to create a false picture of Panagra's operations and Panagra's relations with its parent companies. It is asserted Docket 779 establishes that Grace and Pan American Corporation can never reconcile their differences, that their relationship is "inherently bad", that the agreement will not work, that Panagra's interests will be subordinated to the monopoly designs of Grace on the one hand and Pan American on the [fol. 2960] other, and that accordingly Panagra in its own interest should not be allowed to proceed with the Through Flight Agreement.

* Public Counsel does raise certain points concerning various provisions of the agreement, but under the stipulation these cannot be dealt with here, and accordingly Panagra's position will be presented at oral argument.

While there is no factual support for these arguments, the Board will, of course, recognize that intervening airlines are not actually concerned with Panagra's welfare. Certainly Braniff is anxious to see Panagra wither and die on the vine so that its new South American routes may be developed without the annoyance of strong American flag competition. Certainly Eastern is anxious to have its routes extended first to the Canal and presumably, when times are propitious, further south, to skim the cream of the Latin American traffic passing between the east coast of the United States and principal points on the west coast of South America. While the position of National, Chicago and Southern, and Colonial is none too clear, they also enter this proceeding not for the purpose of determining what is best for Panagra's welfare or in the public interest but of preventing any action by Panagra which will impinge upon the successful carrying out of their own commercial plans. These carriers in various ways, and notably Eastern have at all times sought to block Panagra and to prevent it from having an opportunity for normal growth and healthy development. And it is small comfort indeed that Public Counsel now feels Panagra should rely on Docket 779 when attorneys for the Board and for Eastern so vigorously opposed any court order which would even support the Board's jurisdiction to direct an extension.

The arguments based on Docket 779 require little discussion to demonstrate that they are completely unsupported by the facts:

(A) The controversy which led to Docket 779 has been settled and the aggravating cause of earlier deadlocks has been permanently eliminated.

Intervenors briefs reflect a keen disappointment that Panagra's parents and Panagra and PAA have reconciled the past difference of opinion which has existed concerning [fol. 2961] Panagra's operations north of the Canal and that the controversy is now at an end. Drawing on Docket 779 they seek to magnify the nature of that controversy beyond all proportion to the established facts and then despair because a controversy which they have concocted

out of whole cloth is not in all its aspects disposed of to their satisfaction. It is even suggested that there is something unhealthy and immoral in the fact that the controversy has been settled. Intervenors apparently hope to keep the controversy alive because its existence seems to give them more assurance that they will obtain their particular route ambitions.

While the advantages of the Through Flight Agreement, from the point of view of the public interest, do not in our opinion hinge upon whether or not the controversy is settled, the fact is that the controversy is at an end. The parties themselves, who certainly must have some familiarity with the subject matter, assert this to be the case (Tr. 249-251, 537-8), and the record establishes beyond doubt the validity of this contention.

The "inherently bad" situation to which the Board referred in its opinion arose out of the fact that deadlocks in the Board of Directors occurred because of the controversy concerning the extension of Panagra north of the Canal. This controversy has not only been terminated by eliminating the cause for deadlocks but excellent machinery has been provided under the contracts for disposing of questions which on previous occasions led to misunderstanding (Tr. 68, 111, 112). The "inherently bad" situation can no longer fairly be said to exist. Not only has Panagra, except for this one issue, grown and developed with harmony among its directors and with great singleness of purpose but there is no reason to believe that the situation will change in the future. Even in the heat of Docket 779 both Mr. Roig and Mr. Trippe repeatedly testified to the fact that serious disputes in Panagra's Board of Directors have for many years been almost entirely confined to the single extension issue and related problems (Docket 779, Tr. 759-760, 1194, 2467-2169). They made clear that on other ques-[fol. 2962] tions the Directors have proceeded in complete agreement and that the operations of the company benefitted from the contribution to its development made by each parent (Docket 779, Tr. 754, 1558-59). This fact was again emphatically affirmed in this proceeding (Tr. 362-5, 509-10, 441, 442).

Mr. Roig testified in Docket 779:

"Q. Mr. Roig, is it your opinion that Panagra's history has been one of development and progress from the beginning?

"A. Well, I think the record shows it and if you like I would run over some of the steps that have been taken since.

"Q. I am going to take up that in a moment, but I am going to ask you two more questions along that line. There have been differences in the Board of Directors, have there not, on the various steps in this program of development and progress that you mention?

"A. There have on some of the steps but it would be a great mistake if anyone got the impression that there has been a difference of opinion on everything that happened.

"Q. As a matter of fact, Mr. Roig, on all the questions up to the instant one, the extension to the United States, the differences have been resolved, have they not?

"A. With the exception of the terminal in the United States and the publicity question, we have reached a conclusion among ourselves, yes, on all these questions.

"Q. Leaving aside the publicity question for the moment, and also, of course, the instant question, which is for the Board to consider, these differences have not been permitted to block the steady progress and development of which you speak, in your opinion, have they, Mr. Roig?

"A. Well, except to the extent that the present controversy has blocked for some years our coming to the United States, and that publicity may have had some bearing, I don't think very direct. The very fact that those other matters have been settled and that they have been in number relatively few, shows that they have gone on, and that isn't a matter of [fol. 2963] opinion, the record shows it." (Docket 779, Tr. 759-760)

So extreme are the contrary contentions of certain intervening carriers as to the nature of the disputes which they claim exist in Panagra's management that one is forced to believe that these carriers, each dominated by a single individual, mistake healthy discussion for bitter conflict. There is nothing which Panagra has to apologize for the fact that it has a real and functioning Board of Directors. Its directors have not always unanimously agreed, or for the fact that for short periods of time various directors have held staunchly to a particular viewpoint on a question as to what was best for the future of the company. That Panagra's directors and personnel have in the past not always agreed as to what was the best equipment to buy, where a route should go, or how a particular policy should be implemented is a good thing, not a bad thing. These questions have been discussed, ironed out and settled, Panagra benefiting by the discussions. Indeed, Mr. Roig, Panagra's President, points with pride to the fact that healthy discussion of important matters before the company is encouraged.

Nor is there anything unusual in the fact that Panagra is a fifty-fifty company. This form of corporate organization is well-known throughout American business, particularly in the transportation field (Tr. 573-4). Corporations having two shareholders who each hold an equal amount of stock have prospered in the past and will prosper in the future. There is nothing mysterious or improper about such a company, and we feel certain that the Board at no time intended to say that a fifty-fifty ownership of an airline was undesirable or "inherently bad".

(B) Docket 779 does not support the claim that the Through Flight Agreement is unworkable.

For some reason which we are unable to fathom, intervening airlines contend that Panagra and PAA have entered into the Through Flight Agreement in a state of hopeless [fol. 296'] despair, with no intention of carrying it out and in full agreement in advance that it is unworkable. The contention is made (again with great force but with no

factual support) that the parties have previously taken the position in their discussions that an agreement of the type here proposed is unworkable. This is absurd, as is reflected by other arguments of Intervenors themselves, who in other sections of their brief point with horror to the serious competition which the successful functioning of the agreement will create in the future.

What are the facts with respect to past interchange discussions as clearly shown by Docket 779? Simply and succinctly they are these: Mr. Roig in the past repeatedly refused even to give serious consideration to a Pan American proposal of mere equipment interchange arrangement under which PAA's planes would also fly over Panagra's routes, a proposal which was indefinite as to starting date or the nature and extent of services to be rendered, which was purely optional and placed no obligations upon either party, and which provided no basis for Panagra sending its crews to the United States or establishing training and maintenance facilities there (Docket 779, Exhibit G58, Tr. 934-937 and Docket 2423, Tr. 266-269). Such an agreement was never entered into in the past and would not be entered into today (Tr. 269). It would be unsuitable under many headings, it would not dispose of the basic extension question and would be wholly unworkable, but such an agreement is not the agreement before the Board. In fact a straight interchange arrangement was not even suggested during the negotiations leading to the Through Flight Contract (Tr. 590-91).

Mr. Roig clearly explained the substantial differences between earlier proposals and that embodied in the Through Flight Agreement (Tr. 266-269).* The agreement before the

* * * * * * *

* The testimony of Mr. Roig in Docket 779 quoted at page 37 of Eastern's Brief is incomplete and as a result wholly distorted as Mr. Roig himself demonstrated (Tr. 263). This is a revealing example of Eastern's unprincipled use of the Docket 779 record.

[fol. 2965]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 243

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 2423

IN THE MATTER

of

AN AGREEMENT

between

PAN AMERICAN AIRWAYS, INC.

and

PAN AMERICAN-GRACE AIRWAYS, INC.

REPLY BRIEF FOR PAN AMERICAN AIRWAYS, INC.

HENRY J. FRIENDLY,
FOWLER HAMILTON,
CLEARY, GOTTLIEB, FRIENDLY & COX,
52 Wall Street,
New York 5, New York
Counsel for Pan American Airways, Inc.

November 25, 1946

[fol. 2966] POINT III

Old Controversies Between Pan American and Grace Referred to in the Record in Docket No. 779 Do Not Make the Contract Contrary to the Public Interest.

Eastern argues that previous difficulties between Panagra's parents render the contract adverse to the public interest (Eastern's Br., pp. 35-39). This argument is not sound either as a matter of fact or of logic.

By culling bits and pieces from the record in Docket No. 779, Eastern seeks to convey the impression that there have always been numerous serious controversies between Panagra's parents as to the conduct of its affairs. Such an impression is wholly contrary to the fact. Docket No. 779 was a keenly contested proceeding, but it is apparent even from the record there that the one basic controversy between Panagra's parents related to the question of extending Panagra to the United States. Thus, Mr. Trippe testified in that proceeding that during Mr. Roig's tenure as President of Panagra, the only issues upon which the parents had differed to any considerable extent were:

(1) The extension of Panagra to the United States including the related interchange question, and

(2) Whether Panagra should have five or three DC-4's (Docket No. 779, pp. 2167-2169).*

In the present proceeding, both Mr. Roig and Mr. Friendly have testified that, except as to the extension issue, the parents have successfully and effectively worked together on innumerable Panagra problems. In fact, it is this that has made possible the growth and development of Panagra into [fol. 2967] a vigorous and successful airline operation over one of the most difficult routes in the world. The testimony of these two witnesses leaves no doubt that the contract settles the only basic difference between Panagra's parents,

* In Docket No. 779 witnesses both for Pan American (Trippe, pp. 1558-1559) and for Grace (Roig, p. 754) testified that the other parent had made invaluable contributions to Panagra.

and thus gives assurance of harmonious relations between them in the future (Roig, pp. 441-442; Friendly, pp. 537-538).

Quite apart from the uncontradicted evidence in this case that the contract settles this controversy between the parents and that no others exist, the whole of Eastern's argument that the contracts are against the public interest because controversies may conceivably arise between Grace and Pan American in the future is beside the point.

Eastern's contention on this score comes in the end to the proposition that no contract settling the Panagra problem can be in the public interest because of a possibility of disputes between Panagra's parents in the future. This implies that no compromise can be effective merely because it is a compromise. The fallacy is apparent.

Moreover, even if there were present, as there is not, some basis from which it could be contended that disputes affecting Panagra may arise in the future between Pan American and Grace, this would not be any reason for disapproving these contracts now when admittedly no such controversies exist. Assuming for the sake of argument that, as Eastern contends (Eastern's Br., pp. 35-39), past disputes between Panagra's parents have been adverse to the public interest, it would necessarily be in the public interest that such disputes should be settled. Whatever its conclusion might be, continuance of the litigation in Docket No. 779 affords far less prospect of a healthy and workable arrangement than a compromise which the parties have voluntarily made. Finally, if it should appear at any time that differences have arisen between Pan American and Grace that jeopardize the public interest either in the through flight service provided by the agreement or in any other way, the Board can withdraw its approval of the contract.

[fol. 2968]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 244

[Handwritten notation—To GO at BA—3/14/47]

MEMORANDUM

TO Vice President Balluder

DEPT. OR DIV. Executive

LOCATION New York

FROM Vice President

DEPT. OR DIV. Latin American

LOCATION Miami

DATE: February 27, 1947

SUBJECT: DISTRIBUTION OF ARGENTINE COMPANY EXPENSE BETWEEN PAA AND PANAGRA

REFERENCE:

The attached analysis is a breakdown of the January 1947 expenses of the Argentine company, showing the allocation of the expense between Panagra and PAA following more or less the formula proposed by Mr. Smith, but with additional refinements, in view of the substantial sum involved.

The payroll was broken down into the various sectional functions which exist in the organization so that the work performed for each of the PAA and Panagra physical locations could be distributed on the basis of the payroll. The expense of each payroll section was distributed to the four physical locations, i.e., work performed by the Argentine company for PAA and Panagra outside of Buenos Aires, which is charged directly to each company, work performed for the Moron Airport charged to Panagra for sharing under the Joint Facilities arrangement, and the balance of the work performed exclusively for the Argentine company, which is actually the revenue producing expense.

The following is the basis which was used for the distribution of each sectional expense:

1. The Administrative and Legal sections were both distributed on Mr. Smith's determination of the equitable percentage attributed to the four physical locations.

2. The Personnel and Payroll sections were distributed on the basis of the number of employees assigned to each of the physical locations. The work of these sections is directly in proportion to the volume of personnel on the payroll.

3. Accounting and General employees were distributed on the basis of the total expense, which was developed for each expense center as their work is directly dependent upon the dollar volume handled.

4. The Moron Airport and Passenger Service sections were directly assigned to Moron expense for further proration under the Joint Facilities arrangement.

5. The Asuncion section was likewise directly charged to PAA, and the four Panagra Argentine agencies were directly charged to that company.

[fol. 2969] 6. The Invoice Control, Customs Brokerage, and Purchasing sections were distributed on Mr. Smith's evaluation of the services performed, which was 90% to Moron and 10% to the revenue producing section.

7. Revenue Accounting, Traffic and Sales, Express, and Publicity and Advertising were assigned 100% to the revenue producing expense section together with the direct expense which could be determined entirely for this section.

Under this formula the percentage of the net Argentine company expense (after deducting Panair do Brasil's commission) for PAA will be approximately ~~43.70%~~ 43.70 as compared to 55.21% and 59.28% under the respective proposals of Messrs. Smith and Brock.

The reduction in the PAA percentage is attributable to the allocation of the direct expense to the account of PAA and Panagra, and the transfer of the Ticket Office cashiers from the Accounting Department to the revenue producing expense as these employees work exclusively in the Ticket Office and the allocation of the expense to the Moron Airport to cover work performed by the Argentine company for that location which is shared by PAA under the Joint Facilities arrangement. The allocation to the Moron Airport should be divided between PAA and Panagra on the ton landings without any overhead being allocated by either company.

/s/ W. L. Morrison
W. L. Morrison

[Handwritten notation—NOT comparable?]

[fol. 2970]

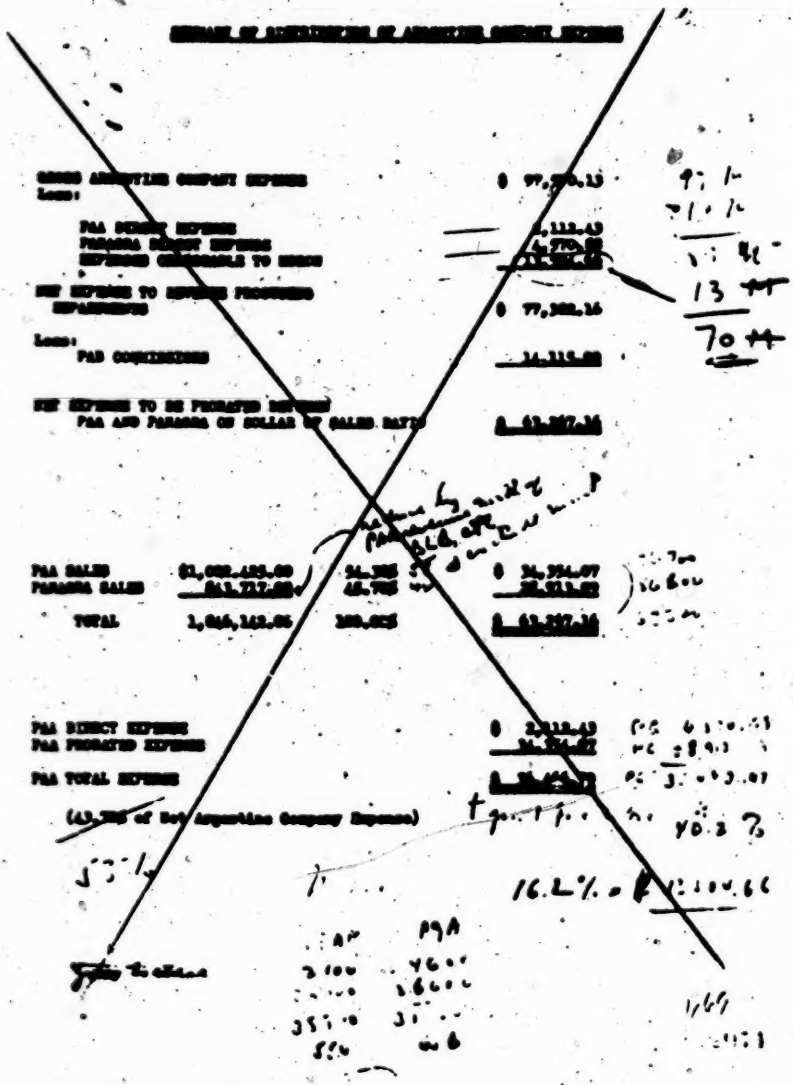
Pan American World Airways, Inc. Exhibit 245

SUMMARY OF DISTRIBUTION OF ARGENTINE COMPANY EXPENSE

GROSS ARGENTINE COMPANY EXPENSE			$ 97,570.13
Less:			
Expenses Chargeable to NEMOS			13,504.46
P & B Commissions			14,115.00
Sub-Total			$ 69,950.67
Less:			
P A A Direct Expense			2,112.43
Panagra Direct Expense			4,570.23
Net Expense to be prorated between PAA and Panagra on Dollar of Sales Ratio			$ 63,267.16
PAA Sales	$ 1,002,425.00	54.30%	$ 34,334.07
Panagra Sales	843,717.00	45.70%	28,933.09
TOTAL	$ 1,846,142.00	100.00%	$ 63,267.16
PAA Direct Expense			$ 2,112.43
PAA Prorated Expense			34,334.07
PAA TOTAL EXPENSE			$ 36,446.50

(52.13% of Net Argentine Company Expense)

[fol. 2971]



[fol. 2972]

[illegible]

(General Sundry Expenses Prorated on Salary Basis of Each Section of Total Salaries).

	Monthly Salary Expense	Percentage of Sundry Expense Applicable	Monthly Sundry Expense	Total Monthly Expense
GENERAL AND ADMINISTRATIVE				
Administrative Section				
General Manager	$ 2,911.23			
Secretary	700.00			
Secretary	264.41			
File Clerk	200.00			
7 Operators	1,187.50			
18 Office Boys	1,344.00			
Total	6,509.39	9.37	$ 1,478.03	$ 7,988.18
Personnel Section				
Personnel Manager	900.00			
Secretary	300.00			
9 Clerks	1,230.00			
Total	2,430.00	3.50	555.54	2,985.54
Legal Section				
General Secretary	1,600.00			
2 Secretaries	860.00			
1 Assistant	900.00			
Total	3,960.00	4.37	677.76	4,637.76
ACCOUNTING SECTION				
Administrative				
Chief Accountant	1,400.00			
Secretary	400.00			
Sub-Accountant	1,000.00			
Secretary	211.87			
Total	3,211.87	4.69	741.25	3,953.12
General Bookkeeping				
1 Bookkeeper	625.00			
7 Clerks	2,912.50			
3 Typists	595.46			
3 Cashiers	1,300.00			
1 Office Boy	78.00			
Total	5,452.96	7.98	1,257.11	6,710.07
Payroll				
5 Clerks	1,535.00			
1 Typist	228.00			
Total	1,763.00	2.54	403.36	2,163.36

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P-245

Home Office				
1 Bookkeeper	$ 600.00			
2 Clerks	[illegible]			
Total	[illegible]	1.66	$ 863.60	$ 1,413.60
Accounting Department				
1 Clerk	450.00	0.69	103.37	553.37
Reception Advantage (Association)				
1 Clerk	350.00	0.39	79.35	429.35
Service Terminal				
1 Clerks	575.00	0.83	131.74	706.74
Customs Department				
1 Broker	775.00			
3 Clerks	[illegible]			
Total	[illegible]	2.22	338.63	1,713.63
Broadcasting				
1 Clerk	350.00			
1 Office Boy	[illegible]			
Total	[illegible]	0.62	93.11	393.11
Reference Accounting				
1 Senior Clerk	425.00			
13 Clerks	3,707.50			
7 Typists	[illegible]			
Total	[illegible]	8.43	1,311.24	7,213.74
TRAFFIC AND SALES				
Traffic Management & Personnel	21,000.71			
Traffic Couriers	[illegible]			
Total Salaries	[illegible]	28.60	5,151.10	
Direct Department Expense			9,237.60	
Total Traffic & Sales Expense				36,972.69
Passenger Service				
20 Representatives	2,400.00	3.88	606.33	
Direct Department Expense			2.00	
Total Passenger Service Expense				3,256.33
Customs Department				
Superintendent & Personnel	7,000.00	11.33	1,798.37	9,498.37
Publicity & Advertising				
Public Relations Representative and Personnel	3,779.07	5.43	844.06	
Direct Department Expense			1,477.34	
Total Publicity & Adv. Exp				6,097.43
Total Salary	$ 69,388.43			
Total Allocated Gener-			213,972.63	
Total Direct Gendry			10,976.96	
Total Monthly Expense				99,938.99
Depreciation & Maintenance of Furniture and Fixtures				1,434.14
GRAND TOTAL MONTHLY EXPENSE				$ 99,938.13

[fol. 2974]

[illegible] OF ARBUCKLE COMPANY

[illegible] BY DIVISIONAL LOCATIONS

(Total Expenses taken From Divisional Breakdown)

	Total	Direct Mill Expenses	Direct Freight Expenses	Expenses Chargeable to Sales	Expenses to Income Producing Departments
GENERAL & ADMINISTRATIVE Administrative					
Percent	100.00	1.00	15.00	15.00	69.00
Amount	$ 7,988.18	$ 399.41	$ 1,198.22	$ 1,198.22	$ 5,392.33
PURCHASE SECTION					
Percent	100.00		18.00	33.00	39.00
Amount	$ 2,995.54		$ 539.68	$ 1,988.34	$ 856.88
LEGAL SECTION					
Percent	100.00	5.00	20.00	15.00	60.00
Amount	$ 3,679.96	$ 183.99	$ 787.99	$ 563.44	$2,183.44
ACCOUNTING SECTION Administrative					
Percent	100.00	1.50	4.40	15.00	79.09
Amount	$ 3,972.12	$ 59.63	$ 174.91	$ 630.06	$ 3,110.50
GENERAL REFINING					
Percent	100.00	1.50	4.40	15.00	79.09
Amount	$ 4,750.07	$ 181.26	$ 297.00	$ 1,800.00	$ 3,201.93
PAYROLL					
Percent	100.00		18.00	33.00	39.00
Amount	$ 2,163.16		$ 389.37	$ 1,166.47	$ 607.30
MINOR AIRLINE					
Percent	100.00			100.00	
Amount	$ 1,413.49			$ 1,413.49	
ARBUCKLE-MINTHORN					
Percent	100.00	100.00			
Amount	$ 953.17	$ 953.17			
PANAMA AGENCIES (ARGENTINA)					
Percent	100.00		100.00		
Amount	$ 439.36		$ 439.36		
INVOICE CONTROL					
Percent	100.00			90.00	10.00
Amount	$ 706.74			$ 636.07	$ 70.67
CUSTOMS BROKERAGE					
Percent	100.00			90.00	10.00
Amount	$1,708.63			$ 1,548.77	$ 172.86

[fol. 2975]

[illegible]

(Total Expenses taken from functional breakdown)

	Total	Direct Fed Expenses	Direct Passgr Expenses	Expenses Chargeable to Opers.	Expenses Do Revenue Producing Functions
[illegible]					
Percent Amount	100.00 $ 538.43			88.00 $ 473.77	12.00 $ 64.64
[illegible]					
Percent Amount	100.00 $7,213.74				100.00 $ 7,213.74
[illegible]					
Percent Amount	100.00 $36,979.49				100.00 $36,979.49
[illegible]					
Percent Amount	100.00 $3,958.33			100.00 $3,958.33	
[illegible]					
Percent Amount	100.00 $ 9,658.39				100.00 $ 9,658.39
[illegible]					
Percent Amount	100.00 $6,881.43				100.00 $6,881.43
TOTAL	$95,935.99	$ 1,395.26	$ 3,753.01	$13,504.66	$77,282.16
[illegible]	1,436.14	417.89	417.89		
GRAND TOTAL	$97,370.13	$ 1,112.43	$ 4,170.01	$13,504.66	$77,282.16

[fol. 2976]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 246

Vice President Morrison	H. Brock
Latin American	Executive
Miami	New York

March 25, 1947

DISTRIBUTION OF ARGENTINE COMPANY EXPENSES

Your memo of February 27th to V. P. Balluder
Your letter of March 18th to V. P. Balluder

Panagra has agreed to your proposal for prorating expenses with the following understanding, to which Mr. Balluder agrees:

That part of the expenses which is prorated according to sales will be prorated each month according to the actual transportation provided by each company that month, exclusive of mail. In other words, PAA sales will include transportation from Balboa north on PAA. Mail pay should be left out of the sales figures.

The percentages used for direct PAA, direct Panagra and Moron expenses may be revised, should there be any major change in the business done by the Argentine company. However, it is expected that these percentages will be satisfactory for some time to come.

H. Brock

cc: Vice Pres. Dean
Vice Pres. Balluder
Vice Pres. Campbell, Panagra

[fol. 2977]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 247

[Stamp—Vice President—Rec'd—New York—Aug 29 P.M.—Traffic & Sales]

MEMORANDUM FORM

TO Vice President Lipscomb,—
Traffic and Sales.

DEPT. OR DIV. Executive,

LOCATION New York, N.Y.

FROM Division Traffic Manager,

DEPT. OR DIV. Latin American,

LOCATION Miami, Florida.

DATE: August 26, 1947.

SUBJECT: ADVERTISING AND SALES POLICY FOR ARGENTINA.

REFERENCE:

With reference to the above subject I am enclosing herewith an outline of the advertising and sales policy for Argentina which was tentatively agreed upon at our recent meeting in Havana. If this agreement appears satisfactory to you, I suggest that you have it formalized by addressing an official communication to the General Traffic Manager of Panagra in New York and to this office.

While on this subject, as you know, Panagra is sending a special Traffic Representative to Buenos Aires who will direct their advertising and sales activities. Unquestionably this representative will do a good deal of direct selling and thereby gain an advantage over Pan American unless we follow the same tactics by assigning a Pan American Traffic Representative to Buenos Aires.

If you have any further thoughts on this subject, please let me have them at your earliest convenience.

/s/ J. E. Muhlfeld
J. E. Muhlfeld.

JEM:b
enc.
cc: Dv.Mgr—LAD,MIA
V.P. LAD,MIA

[fol. 2978]

Pan American World Airways, Inc. Exhibit 248

COPY

ADVERTISING AND SALES POLICY
FOR ARGENTINA.

1. That both companies will continue with the joint DC-6 advertising campaign as outlined by the New York agreement.

2. That each company will advertise independently according to the needs of the moment and without restriction of any kind on the part of the other, including DC-6 through-flight service and United States destinations.

3. That each company will be allowed to advertise any or all its services without restriction of any kind on the part of the other, including DC-6 through-flight service and United States destinations.

4. That all sales or solicitation personnel of the Argentine Company will impartially sell the services of both companies.

5. That it is agreed that no unduly competitive or sharp practices will be used either in the sales or advertising effort to the detriment of either company.

Note: The above policy was tentatively agreed upon at a meeting held in Havana, Cuba, on August 21st, which was attended by the following:

Mr. Willis Lipscomb—Vice President—
Traffic and Sales

Mr. John E. Muhlfeld—Traffic Manager—LAD
Mr. Christopher de Groot—General Traffic Mgr—Panagra
Mr. Granville Bourne—Traffic Repr. Panagra—BUE
Mr. Mario J. Martinez—Regional Traffic Mgr—RIO
Mr. George Smith—General Manager—BUE
Mr. Ernest Foss—Advertising Manager—LAD
Mr. James Ussher—Advertising Repr.—BUE
Mr. Kenneth Gunter—Advertising Manager—NYC.

[fol. 2979]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 249

September 26th, 1947

DISTRICT SALES MANAGERS	General Sales Manager
Sales	Sales
United States	New York

INTRODUCING "THE INTERAMERICAN"

On October 11th Pan American World Airways and Pan American-Grace Airways will introduce to the public the new DC-6 Express Flight Service between Miami, Balboa, Lima, Santiago and Buenos Aires which will be named "THE INTERAMERICAN" (El Interamericano). The purpose is to establish in the public's mind the leadership of the Pan American companies on the western route between the United States and Argentina, and to demonstrate the unanimity of purpose and practical working partnership of Pan American World Airways and Pan American-Grace Airways.

Plans have been completed by both companies for public christening ceremonies to be held in Miami and Buenos Aires, the terminal points, with complimentary ceremonies in Santiago, Lima and Balboa for launching the first flight of THE INTERAMERICAN. As the initial northbound flight will be on October 12th, Columbus Day, it provides the opportunity for making THE INTERAMERICAN an

important feature of many official and cultural programs scheduled for that day in all the Pan American Republics.

All offices are fully acquainted with the DC-6 operation flights #301 and #302. This is an extra fare service operated with DC-6 equipment and offers sleeping accommodations. It is a service which is superior to anything which competition can offer today on the West Coast route between Miami and Buenos Aires and we are confident that you will be able to do a bang-up job for both companies provided you capitalize fully on the publicity which will be forthcoming on October 11th and 12th.

By copy of this memorandum to the Public Relations Department in New York, I am requesting Mr. Player to see that you are supplied with full details concerning inauguration of THE INTERAMERICAN. It is my suggestion that you play up this inaugural to all travel agents and commercial firms in your territory and also to any other groups which may be directly interested in this high-speed service.

/s/ John E. Muhlfeld
John E. Muhlfeld

JEM:ARW

cc: N. Craig, Sales Manager—Panagra—New York
General Traffic Manager—New York
Division Traffic Manager, LAD, Miami
Division Sales Manager, LAD, Miami
Division Sales Manager—Atlantic—North Beach
Advertising Manager—New York
Public Relations Dept.—New York
Cargo Sales Manager—New York
Supt. of Passenger Agencies—New York
Division Sales Manager, PAD, San Francisco
Regional Sales Managers: Eastern, Central, Western
Messrs. Balluder and Dean—New York

[fol. 2980]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 250

Regional Sales Managers	General Sales Manager
United States	Sales
Central, Eastern, Western	New York,

October 9th, 1947

AGREEMENT BETWEEN PAA, INC. AND PAN AMERICAN-GRACE AIRWAYS, INC.—
JULY 30th, 1946

It is extremely important that you and the District Sales Managers under your jurisdiction become thoroughly acquainted with the agreement which was signed on July 30th, 1946 by Pan American Airways, Inc., and Pan American-Grace Airways, Inc., and which pertains to the operation of Panagra aircraft by PAA between the Canal Zone and the United States. As you know, at the present time, Panagra aircraft are operating on charter to PAA between Balboa and Miami and both companies have worked up a special advertising and publicity program to introduce this service in the United States and South America as "The Interamerican".

Concerning the United States, PAA will continue to act as general sales agent for Panagra with a right to appoint sub agents and in addition, appoint at least one responsible employee who will work full time in the District Sales Offices of New York, Chicago and Washington for the purpose of promoting the sale of Panagra traffic and for facilitating and improving the handling of such traffic. Also, PAA shall use its best efforts to promote and develop traffic for Panagra in the United States without discrimination and on the same basis which it promotes its own traffic.

I have already written you concerning the Panagra display for ticket offices and under separate cover, I am advising you today of Mr. Nicholas Craig's forthcoming trip to all District Sales Offices in the United States. During his visit,

he will no doubt discuss the various aspects concerning promotion of sales over Panagra as related to this agreement. Therefore, it is important that you carefully read the attached agreement and make certain that you and your District Sales Managers fully understand it, particularly the portion affecting the DSO's.

If there are any questions, please advise me.

John E. Muhlfeld

JEM:ARW

[fol. 2981]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 251

C O P Y CONFORMED COPY

November 7, 1947

Mr. Gonzalo Mejia
Medellin
Colombia

Dear Mr. Mejia:

We have arranged to deposit to your order US$500.00 (five hundred dollars, U.S.) in full payment of 1,000 shares of common stock of Uraba, Medellin & Central Airways, Inc., which are presently held in our custody for you and you do hereby agree on receipt of the above sum to endorse in blank and return to us four certificates numbered 4, 5, 6 and 7 for 250 shares each, aggregating 1,000 shares of common stock of Uraba, Medellin and Central Airways, Inc.

Very truly yours,

PAN AMERICAN AIRWAYS, INC.

By /s/ E. BALLUDER
Vice President

Accepted, November 7, 1947

/s/ GONZALO MEJIA
Gonzalo Mejia

[fol. 2982]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 252

November 8, 1947

Uraba, Medellin & Central Airways, Inc.
c/o Pan American Airways, Inc.
135 East 42nd Street
New York, New York

Gentlemen:

I am enclosing herewith confirmation of my resignation as Vice President in Charge of Commercial Operations in Colombia and as Director of your Corporation, effective July 31, 1947.

You have stated that you are disposed to pay me $15,000 dollars, which sum not only satisfies in full my claim under Colombian law to severance pay (cesantia), but also compensatory vacation pay at the rate of fifteen working days for each year of service and payment for work on Sundays and holidays and for overtime. This same amount also includes a special and additional separation allowance, which said total sum would be in full satisfaction of all claims and demands of any character which I may have against your corporation, its officers, directors and stockholders. Your offer being satisfactory to me, I hereby accept the same, and I agree, upon receipt of $15,000 from you to execute and deliver to you a general release of all claims in such form as your corporation may consider appropriate.

If this is in accordance with our understanding, please note your approval in the place indicated below.

Very truly yours,

/s/ GONZALO MEJIA
Gonzalo Mejia

Approved November , 1947

Uraba, Medellin & Central Airways, Inc.

By /s/ H. MAX HEALEY
President

[fol. 2983]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 253

CONFORMED COPY

C
O
P
Y

November 8, 1947

Board of Directors
Uraba, Medellin & Central Airways, Inc.
c/o Pan American Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

Gentlemen:

The Board of Directors having not as yet acted upon my resignation as Vice President in Charge of Commercial Operations in Colombia and as a Director, communicated orally on July 31, 1947, I hereby confirm that resignation in writing, the same to be effective as of July 31, 1947, the date when first communicated to you.

Very truly yours,

/s/ GONZALO MEJIA
Gonzalo Mejia

[fol. 2984]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 254

CONFORMED COPY

General Release

C
O
P
Y

KNOW ALL MEN, that I, Gonzalo Mejia, residing at La Plaza 46-27 Medellin, Colombia, in consideration of the

sum of fifteen thousand ($15,000) dollars, lawful money of the United States of America, to me in hand by Uraba, Medellin & Central Airways, Inc., a Delaware Corporation doing business in Medellin, Colombia (the receipt whereof is hereby acknowledged), do, for myself, my heirs, executors, administrators and assigns, hereby remise, release and forever discharge the said Uraba, Medellin & Central Airways, Inc. Pan American Airways Corporation, Pan American Airways, Inc., their past and present officers, Directors and their heirs, executors, administrators, successors and assigns, of all, and from all, and all manner of, action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands, whatsoever, in law or in equity, that against the said corporations and persons, or any of them, I, the said Gonzalo Mejía, ever had, now have, or that my heirs, executors, administrators, or assigns, hereafter can, shall or may, have, for, upon, or by reason of, any matter, cause, or thing, whatsoever, from the beginning of the world up to, and including the day of the date of this release.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, in the City of Medellin, Republic of Colombia, on this 10th day of November, 1947.

/s/ Gonzalo Mejia
Gonzalo Mejia (Seal)

Sealed and delivered,
in the presence of

/s/ John I. Fishburne)?)
c/o American Consulate
Medellin, Colombia

REPUBLIC OF COLOMBIA)
CONSULATE OF THE UNITED STATES OF AMERICA)
MEDELLIN)

Service Nol 1465
Item No. 28 (STAMP)
Fee: $2.00 equals
3.60 pesos

On this 10th day of November in the year 1947, before me personally came GONZALO MEJIA, to me known, and known to me to be the person described in and who executed the foregoing instrument, and he acknowledged to me that he had executed the same.

IN WITNESS WHEREOF I have hereunto subscribed by name and affixed my official seal on the date hereinabove first written.

/s/ JOSEPH P. RAGLAND
Joseph P. Ragland
Consul of the United States
of America

(SEAL)

[fol. 2985]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 255

AEROVIAS NACIONALES DE COLOMBIA
AVIANCA

Bogotá, November 15, 1947

Mr. E. Balluder
Vice President
Pan American Airways
135 East 42nd Street
New York 17, N. Y.

Dear Mr. Balluder:

Dr. Uribe Holguin is holding the general release signed by Mejía and attested by the Consul in Medellin. I have in my own possession the other three documents signed by Mejía in identical form as prepared in New York. Mejía

wired me yesterday that he has not yet received confirmation from the bank.

In this connection I thought you might be interested in the following extract from a confidential report submitted by our representative in Medellin:

"From sources which have our complete confidence, we have been able to ascertain that Gonzalo Mejia is an important stockholder of SAM, although he does not appear directly as holder of the shares nor as acting member of the Board."

SAM, or Servicio Aero de Medellin, is one of the principal freight carriers in Colombia. Its head is Arthur Taylor, a long-time American resident of Colombia.

Very truly yours

/s/ Max
H. Max Healey
Assistant to the President

HMH:AOR

[fol. 2986]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 256

COPY

DZMIA 142045 (1/1948)

PANYC
BALLUDER. I DEFINITELY CONFIRM THAT PANAGRA HAS UPSTAIRS OF ICE IN BUE ON CALLE FLORIDA AND HAVE MINIMUM OF THREE MEN HANDLING PASSENGER SALES COMMA CARGO SALES AND PANAGRA ADVERTISING WORKING OUT OF THIS OFFICE. THESE PEOPLE DO NOT HAVE CONTACT WITH OR REPORT THROUGH PAN AMERICAN ARGENTINA. IF THIS CONDITION CONTINUES WILL BE NECESSARY LAD OPEN OWN OFFICE IN BUE AND IT IS MY SUGGESTION VIGOROUS PROTEST BE FILED PANAGRA IN ORDER THEY KEEP ALL SOLICITATION THROUGH JOINT CHANNELS

MORRISON

WLM:amp

[fol. 2987]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 257

January 29, 1948

Dr. Paulo Sampaio, President
Panair do Brasil
83 Av. Rio Bronco 85
Rio de Janeiro, Brasil

Dear Dr. Sampaio:

I have received your very nice telegram of December 19, in connection with the passing of control of Panair do Brasil to Brasilian nationals. The year end activities and my absence from New York have delayed my answer, but I want you to know that I share your sentiments of satisfaction in seeing this important move accomplished.

I realize that the shift in ownership will increase very considerably your responsibilities in order to produce for Panair do Brasil, as a national Brasilian enterprise, continued successful and prosperous results. However, you may rest assured of the full-hearted support of all of your friends in Pan American Airways. The efforts of our organization will be to continue to assist your company in every possible way and to reaffirm this example of successful cooperation between our two countries.

With best wishes for your continued success and a happy and prosperous New Year.

Sincerely,

Signatory J. T. TRIPPE

JTT:rpm

[fol. 2988]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 258

(Letterhead of Pan American-Grace Airways, Inc.,
New York 17, N. Y.)

February 3, 1948

MEMORANDUM OUTLINING PANAGRA ARRANGEMENT WITH PAA CONCERNING THE SERVICES WHICH PAA WILL RENDER IN CONNECTION WITH TRAFFIC, PUBLICITY, AND ADVERTISING IN 1948

1. PAA will act as General Sales Agent for Panagra in the United States, Europe, Asia, Africa, and Australia, for which services it will receive General Sales Agent's commission prescribed by IATA.

2. In accordance with paragraph 10-C of the Through Flight Agreement dated July 30, 1946 and in order effectively to carry out the functions of General Sales Agent, PAA will set up the following methods and procedures which Panagra desires to have established by PAA:

   (a) PAA will supply Panagra each week with sales figures (not necessarily accounting figures) showing the volume of sales made the previous week by Pan American's District Sales Offices in the United States and by sub-agents in the territory of each of these offices.

   (b) The General Traffic Manager of Panagra or the Traffic employee of Panagra designated by him shall, with the full cooperation of the PAA Sales organization, make periodic visits to the various Sales offices in the United States, and to travel and cargo agents, and to prospective passengers and shippers for the purpose of acquainting the Sales office staffs, agents, and others with information and special features pertaining to Panagra and to countries served by Panagra, as well as to study and report to the Vice President & General Traffic Manager of PAA and to the Vice President and

General Manager of Panagra the effectiveness of the sales efforts at any given office or area, together with his suggestions for steps to be taken to improve or intensify such efforts.

(c) It will be the obligation of PAA and of its offices in the United States and abroad to make known promptly to the appropriate Traffic officials of Panagra any special movement of passenger, cargo, or other traffic involving points on Panagra's routes, or which may be moved expeditiously via Panagra's routes, in order that the Panagra Management may promptly consider special arrangements to handle or solicit same.

(d) PAA will make an immediate and intensive study in collaboration with Panagra's General Traffic Manager, or his designee, of ways and means to [fol. 2089] expedite the carriage of cargo from points of origin in the United States to points on Panagra's routes and vice versa, including study of simplification of documentation and transfer between U. S. domestic airline aircraft, PAA aircraft, and or Panagra aircraft, in order to avoid existing documentation and handling dela which adversely affect Panagra's competitive position on cargo vis-a-vis foreign airlines operating through aircraft between Panagra points and points in the United States.

(e) PAA will publicize appropriately the fact that they are General Sales Agents for Panagra and, in accordance with paragraph 11-B of the Through Flight Agreement dated July 30, 1946, PAA shall promptly place on display and hold out to the public in all of its city ticket offices in the United States the name "Panagra" in such form and reasonable quantity as may be requested from time to time by Panagra's General Traffic Manager.

3. PAA, by one or more qualified employees, shall continue to act as tariff and schedule publishing agent for Panagra. It is understood that at such times as PAA

may be studying proposed regular or special tariff or schedule changes affecting Panagra, PAA will advise the General Traffic Manager of Panagra at the outset of such studies in order that Panagra may have an ample opportunity to study the matter from its own angle and make known its views and desires in the early stages of discussion of the matter.

4. PAA will advise Panagra periodically—at periods not exceeding one month—trend of traffic conditions and steps being taken to effect sales.

5. While the TFA calls for a so-called Panagra expert only in the PAA offices in New York, Washington, and Chicago, PAA will appoint such a man in all DSO offices in the United States. As a part of their indoctrination, these men will be sent on a familiarization trip over Panagra.

6. (a) PAA agrees to advertise Panagra destinations in its System advertising without charge to Panagra in view of the offsetting expense incurred by Panagra for advertising primarily in South America for its own account which benefits the System as a whole. It is understood that the System advertising aforementioned as far as the Western Hemisphere is concerned will include Panagra destinations in proportion to the number of points involved.

(b) In accordance with Paragraph 14 of the Through Flight Agreement, PAA and Panagra will work out for 1948 a program for advertising the Through [fol. 2990] Flight Service similar to that worked out for 1947, the cost of which PAA and Panagra will share in proportion to the estimated revenues accruing to each from such service.

(c) In the Through Flight Agreement it was apparently considered that advertising for such Through Flight Service would be carried out principally on the Eastern Seaboard or that area of the United States which Miami serves as a gateway. It is now realized that a considerable amount of the traffic which uses the Interamericano comes from

the middle and western parts of the United States from whence passengers journey to Balboa, the connecting point with the Interamericano, via other gateways than Miami. It is therefore felt desirable that some method be worked out for extending so-called Through Flight advertising to the middle and western parts of the United States on a basis similar to that for advertising for the Miami gateway, i.e., using the revenue division corresponding to the middle and western gateway routes to proportion the costs to be paid for such advertising by PAA and Panagra.

[fol. 2991]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 259

COPY OF TELEGRAM

3-9-48

CHARLES E. BEARD, EXECUTIVE VICE PRESIDENT
BRANIFF AIRWAYS, INC. LOVE FIELD, DAL

AS WE HAVE PREVIOUSLY ADVISED YOU WE ARE ANXIOUS TO LIQUIDATE OUR INVESTMENT IN RANCHOS BOYEROS AND BELIEVE THAT A JOINT TERMINAL COMPANY IS THE ONLY WAY OF ACCOMPLISHING THIS WHICH WOULD BE FAIR TO ALL CONCERNED YOU HAVE INDICATED THAT YOU AGREE WITH THIS AND ACCORDINGLY IF YOU WILL NOW GIVE US YOUR ASSURANCE THAT YOU WILL JOIN SUCH A TERMINAL COMPANY ON TERMS SATISFACTORY TO A MAJORITY OF THE OTHER USERS WE HAVE NO OBJECTION TO FURNISHING YOU SERVICE FOR AN INTERIM PERIOD OF SIX MONTHS ON THE SAME BASIS AS WE SERVE OTHERS. IF YOU CONCUR PLEASE LET ME KNOW AND I WILL IMMEDIATELY ADVISE MORRISON WITH WHOM YOU CAN MAKE THE DETAILED ARRANGEMENTS.

PAN AMERICAN AIRWAYS
HOWARD B. DEAN, VICE PRESIDENT

[fol. 2992]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 260

COPY

March 19, 1948

Memorandum to Mr. Erwin Balluder

Further to Mr. Vidal's memorandum of February 16 on the subject of Panagra Through Flight advertising, we wish to confirm the arrangements so far agreed upon for this item.

1947 (termination) U.S. Total $25,000 (Panagra $17,125 & PAA $7,875)
1948 United States Total $146,000 (Panagra $100,000 & PAA $46,000)
1948 Argentine Total $36,000 (Panagra $24,660 & PAA $11,340)

This leaves pending only the Through Flight advertising at line points other than Buenos Aires, which last year was set up at $12,000. If that figure is agreeable to you, we will set up the same for 1948 and the share pertaining to PAA of such amount would be $3,780.

The summary of the above figures gives a total appropriation for Through Flight advertising under the 1948 heading of $194,000 (Panagra $132,380 and PAA $61,120) with a carry over from 1947 of $25,000 (Panagra $17,125 and PAA $7,875).

Will you kindly signify your conformance with the above.

Douglas Campbell

cc: GVidal
J.TShannon
JSWoodbridge

[fol. 2993]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 261

COPY

March 31, 1948

Memorandum to Mr. Douglas Campbell

This will confirm the arrangements for Panagra Pan American Through Flight advertising for 1948 as outlined in your memorandum of March 19th representing an appropriation of $194,000 for 1948 plus a carry-over from 1947 of $25,000 to be distributed between Pan American and Panagra in the established manner.

E. Balluder

cc: Vice President Dean
Vice President Morrison
Vice President—Traffic & Sales
Comptroller
Asst. General Counsel

[fol. 2994]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 262

June 7, 1948

District Sales Managers—U.S. General Sales Manager
Regional Sales Managers—U.S.

Sales
Various

Sales
New York

SALE OF PANAGRA PASSENGER AND CARGO TRAFFIC

Last July Vice President Lipscomb visited each office and outlined the policy which was to be followed in the promotion and sale of passenger and cargo traffic for Panagra.

This subject was again covered at great length during the General Sales Meeting in New York and since then I have visited all offices and once again reaffirmed this policy.

Not withstanding all of the above, we continue from time to time to receive information which indicates quite clearly that some of our sales people are not adhering strictly to Company policy of voluntarily quoting Panagra's services, both passenger and cargo, when prospective passengers and shippers contact District Sales Offices by 'phone, by correspondence or in person.

I request that you hold a staff meeting immediately with all of your personnel and point out to them once again that, as General Agents for Panagra in the United States, we are responsible for the promotion and sale of Panagra traffic and must voluntarily offer and quote Panagra's services to the travelling and shipping public, and in particular to those interested in transportation to Buenos Aires. In other words, DSO personnel are expected to offer both East Coast and West Coast services in an impartial manner and without exception.

It is essential, also, that you make certain that all new employees are properly indoctrinated on this policy, from now on, for we are determined that it shall be carried out. I am confident that, if you follow this procedure, there will be no further cause for question of the manner in which we promote and sell Panagra.

I am sending a copy of this letter to the Division Traffic (Sales) Managers with the request that they make certain that this policy is adhered to strictly by all Division Offices and General Agencies. After receipt of this letter please confirm to me in writing your understanding of this policy, and that all personnel have received complete instructions.

[fol. 2995] Within the very near future you will receive quick reference information concerning Panagra's services which we have asked their New York Office to prepare for us and which will be incorporated into the Quick Reference Information now being compiled as a part of

the new program to indoctrinate sales personnel in selling passenger and cargo traffic in the U.S.A.

/s/ JOHN E. MUHLFELD
John E. Muhlfeld

jem:hs
cc: VP—Trf. and Sales NYC
Div. T/S Mgrs, LGA—SFO—MIA
Cargo Sales Mgr—NYC
Supt. Pass. Agencies—NYC
Supt. Cargo Agencies—NYC
Res. Supt. LIC

[fol. 2996]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 263

MEMORANDUM FORM

TO	General Sales Manager	FROM	District Manager
DEPT. OR DIV.	Sales	DEPT. OR DIV.	Sales
LOCATION	New York	LOCATION	Philadelphia
DATE:	June 14, 1948		
SUBJECT:	SALE OF PANAGRA PASSENGER AND CARGO TRAFFIC		
REFERENCE:	Your memo of June 7, 1948		

[Stamp—Office of General Sales Manager—File Copy—Not to Be Removed From File]

In compliance with your request we confirm to you that each of us in the Philadelphia office understand the importance of solicitation of Panagra passenger and cargo traffic.

Recently we had the benefit of a very nice visit from Nick Craig, and he—together with the writer—visited the principal agents in the Philadelphia territory. We also held

a staff meeting, and all the features of Panagra, both passenger and cargo, were discussed at great length.

You may be assured that the Philadelphia office is keenly aware of the responsibilities to Panagra, and all our activities are directed to this end.

/s/ Joseph P. Riley
Joseph P. Riley
District Sales Manager

JPR:ah
cc: H. F. Milley, ERSM

[fol. 2997]

Pan American World Airways, Inc. Exhibit 264

MEMORANDUM FORM

TO	General Sales Manager	FROM	Sales Representative
DEPT. OR DIV.	Sales	DEPT. OR DIV.	Sales
LOCATION	New York	LOCATION	Laredo
DATE:	June 15, 1948		
SUBJECT:	SALE OF PANAGRA PASSENGER AND CARGO TRAFFIC		
REFERENCE:	Your memo of June 7, 1948		

[Stamp—Office of General Sales Manager—File Copy—Not to Be Removed From File]

In accordance with the second last paragraph of your memo, we wish to confirm our understanding of current policy regarding Panagra promotion. All personnel in this office have been instructed accordingly.

/s/ Kenney J. Fromm
Kenney J. Fromm

KJF:mag

[fol. 2998]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 265

MEMORANDUM FORM

TO	General Sales Manager	FROM	District Sales Manager
DEPT. OR DIV.	Sales	DEPT. OR DIV.	Sales
LOCATION	New York	LOCATION	St. Louis
DATE:	June 15, 1948		
SUBJECT:	SALE OF PANAGRA PASSENGER AND CARGO TRAFFIC		
REFERENCE:	Your memo June 7, 1948		

[Stamp—Office of General Sales Manager—File Copy—Not to Be Removed From File]

We wish to confirm our understanding of your memo of June 7, 1948. All personnel of this office have sold and are selling Panagra-Pan American Services on an impartial basis with no exceptions.

May 7, 1948, our memo to agents and airlines featured Panagra's DC-6 service to Buenos Aires. Copy is attached.

/s/ A. L. MIKKELSEN
A. L. Mikkelsen

ALM/gk

[fol. 2999]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 266

MEMORANDUM FORM

TO	General Sales Manager	FROM	District Manager
DEPT. OR DIV.	Sales	DEPT. OR DIV.	Sales
LOCATION	New York	LOCATION	Washington, D. C.
DATE:	June 15, 1948		
SUBJECT:	SALE OF PANAGRA PASSENGER AND CARGO TRAFFIC		
REFERENCE:	Your memo dated June 7, 1948		

[Stamp—Office of General Sales Manager—File Copy—Not to Be Removed From File]

In compliance with your request, we are pleased to advise that a Staff Meeting has been held for the sole purpose of indoctrinating all employees on the subject policy, and hasten to assure you that our employees are adhering strictly to the Company policy of voluntarily quoting Panagra's services at all times.

/s/ LEE
L. W. Lee, Manager

LWGS:kak

[fol. 3000]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 267

MEMORANDUM FORM

TO:	General Sales Manager	FROM	District Sales Manager
DEPT. OR DIV.	Sales	DEPT. OR DIV.	Sales
LOCATION	New York	LOCATION	Houston
DATE:	June 21, 1948		
SUBJECT:	SALE OF PANAGRA PASSENGER AND CARGO TRAFFIC		
REFERENCE:	Your bulletin June 7, 1948		

[Stamp—Office of General Sales Manager File Copy Not to Be Removed From File]

This is to acknowledge receipt of the above referenced bulletin and to advise that the policy referred to therein is completely understood by me and all my personnel. Everyone in this office has always understood our responsibility for promotion and sale of Panagra traffic.

/s/ D. R. TAYLOR
D. R. Taylor

aw

[fol. 3001]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 268

MEMORANDUM FORM

TO	General Sales Manager	FROM	DSM
DEPT. OR DIV.	Sales	DEPT. OR DIV.	
LOCATION	LIC	LOCATION	MPS
DATE:	June 21, 1948		
SUBJECT:	SALE OF PANAGRA PASSENGER AND CARGO TRAFFIC		

[Stamp—Office of General Sales Manager—File Copy—Not to Be Removed From File]

In reply to your memo of June 7th, this is to advise that this office is well aware of its responsibility regarding the promotion and sale of Panagra traffic and as agents for Panagra we are giving them equal representation in the Upper Midwest Territory.

/s/ RICHARD A. CATONI
Richard A. Catoni

RAC:m

[fol. 3002]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 269

MEMORANDUM FORM

TO	General Sales Manager	FROM	District Representative
DEPT. OR DIV.	Sales	DEPT. OR DIV.	Sales
LOCATION	New York	LOCATION	Baltimore
DATE:	June 22, 1948		
SUBJECT:	SALE OF PANAGRA PASSENGER AND CARGO TRAFFIC		
REFERENCE:	Your memo of June 7, 1948		

[Stamp—Office of General Sales Manager—File Copy—Not to Be Removed From File]

With reference to your memo of June 7, 1948, regarding the sale of passenger and cargo traffic over Panagra, we are herewith confirming receipt of this letter, and that all personnel have received instructions and that all understand this policy.

/s/ STUART WOOSTER
Stuart Wooster

[fol. 3003]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 270

MEMORANDUM FORM

TO	General Sales Manager	FROM	District Sales Manager
DEPT. OR DIV.	Sales	DEPT. OR DIV.	Sales
LOCATION	New York	LOCATION	Seattle
DATE:	June 23, 1948		
SUBJECT:	SALE OF PANAGRA PASSENGER AND CARGO TRAFFIC		

[Stamp—Office of General Sales Manager—File Copy—Not to Be Removed From File]

This will acknowledge your memorandum of June 7 on the above subject. All personnel have again been informed of the company policy. We have been endeavoring in all instances to offer prospective passengers and shippers both the East Coast and West Coast services on an impartial basis.

/s/ W. H. ZEISER
W. H. Zeiser

WHZ/MNS
cc: WPSM—SFO

[fol. 3004]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 271

COPY

July 16, 1948

Mr. Erwin Balluder
Pan American Airways, Inc.
Chrysler Building
New York, New York

Dear Mr. Balluder

The three-cornered management service agreement between Pan American Airways, W. R. Grace & Co. and Panagra

provides that Panagra will continue to receive sales and other services jointly with Pan American Airways from Cia. de Aviacion Pan American Argentina and the same method for determining joint reimbursement as is now in effect will continue and will be applied in the light of conditions existing from time to time. It is understood that the following arrangements will constitute part of such reimbursement and will continue for the same term as the three-cornered agreement. Sales commissions of one-half of one percent have been paid by both Pan American and Panagra to the Argentine company. The commissions paid by Panagra have later been credited in full by Pan American to Panagra as reduction of the management fee and this practice will continue. However, effective January 1, 1947, Panagra shall participate through direct payments to Pan American in the charges against the Argentine company, not otherwise allocated to Panagra, representing taxes and other similar expenditures as well as a return of ten percent on Pan American's investment in the Argentine company. Panagra will share in the foregoing charges in the same ratio as it shares with Pan American in the other expenses of the Argentine company after crediting receipts from others.

For the foregoing purpose, it is agreed that Pan American's investment in the Argentine Company is $62,380 and that this figure will continue to be used for this purpose until changed by mutual agreement in light of investment requirements of the Argentine company.

Please sign a copy of this memorandum confirming the foregoing understanding.

Very truly yours,

G. Vidal
Vice President

ACCEPTED BY: /s/ E. BALLADER

7/16/48

[fol. 3095]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 272

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket No. 3272

PAN AMERICAN AIRWAYS, INC.

AND

URABA, MEDELLIN AND CENTRAL AIRWAYS, INC.

In the matter of the petition of Pan American Airways, Inc., and Uraba, Medellin and Central Airways, Inc., for approval under section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition by Pan American Airways, Inc., of all the property of Uraba, Medellin and Central Airways, Inc., and of the transfer to Pan American Airways, Inc., under section 401(i) of the Act, of the certificate of public convenience and necessity of Uraba, Medellin and Central Airways, Inc.

REPORT OF EXAMINER RICHARD A. WALSH

Served: Aug 2 1948

Upon:

J. Howard Hamstra, 135 E. 42nd Street, New York 17, New York, for Pan American Airways, Inc., Pan American Airways Corporation and Uraba, Medellin and Central Airways, Inc.

Thomas J. McDermott, Public Counsel.

Exceptions, if any, must be filed with the Secretary, Civil Aeronautics Board, Washington, D. C., and served upon all other parties within five days from the date of service shown above. Briefs may be filed and served upon all other parties within ten days of the date for filing exceptions.

[fol. 3006]

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket No. 3272.

PAN AMERICAN AIRWAYS, INC.,
AND
URABA, MEDELLIN AND CENTRAL AIRWAYS, INC.

Recommended that the application of Pan American Airways, Inc., and Uraba, Medellin and Central Airways, Inc., for acquisition by Pan American Airways, Inc., of all of the property of Uraba, Medellin and Central Airways, Inc., and for the transfer to Pan American Airways, inc., of the certificate of public convenience and necessity of Uraba, Medellin and Central Airways, Inc., be approved.

Appearances:

J. Howard Hamstra, for Pan American Airways, Inc.; Pan American Airways Corporation, and Uraba, Medellin and Central Airways, Inc.

Thomas J. McDermott, Public Counsel.

REPORT OF EXAMINER RICHARD A. WALSH

This proceeding involves the joint application of Pan American Airways, Inc., and Uraba, Medellin and Central Airways, Inc., hereinafter referred to as Pan American and UMCA, respectively, under sections 401 and 408 of the Civil Aeronautics Act of 1938, as amended, for the acquisition by the former of all of the property of the latter and for the transfer to Pan American of the certificate of public convenience and necessity of UMCA authorizing the transportation by air of persons, property and

mail between the terminal point Cristobal, Canal Zone, the intermediate points Balboa, Canal Zone and Turbo, Colombia, and except with respect to mail, the terminal point Medellin, Colombia.

[fol. 3007] Pursuant to section 801 of the Act a copy of the application was transmitted to the President of the United States and after due notice to the public and to all interested parties a public hearing was held in Washington, D. C., on April 26, 1948. Subsequent to the hearing each of the parties filed with the Examiner statements of proposed findings and conclusions together with supporting reasons.

The issues in this proceeding arise under section 401(i), 408(a) and 408(b) of the Act. Section 401(i) provides that no certificate shall be transferred unless approved by the Board as being consistent with the public interest. Section 408(a)(2) makes it lawful unless approved by the Board for any air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to purchase, lease or contract to operate the properties, or any substantial part thereof, of an air carrier. Section 408(b) requires the Board by appropriate order to approve such purchase, lease, or operating contract unless it finds that such transaction will not be consistent with the public interest or that the conditions of this section will not be fulfilled; with the provision that the Board shall not approve such purchase, lease, or operating contract if it would result in creating a monopoly, or monopolies and thereby restrain competition or jeopardize another air carrier not a party thereto.

Pan American, a wholly owned subsidiary of Pan American Airways Corporation, is a certificated air carrier authorized to engage in international air transportation of persons, property and mail between the United States and [fol. 3008] nearly every part of the world. UMCA is a Delaware corporation organized by Pan American Airways Corporation for the purpose of operating the route here in question and in order to provide representation for the minority interest of Mr. Gonzalo Mejia who held the con-

cession for that part of the route extending into the Republic of Colombia.

Mr. Mejia, a Colombian citizen, obtained the concession for the Turbo-Medellin portion of the route from the Colombian Government in January, 1931. The concession was granted for a term of 15 years effective from the date of inauguration of service thereunder. Negotiations were thereafter entered into between Mr. Mejia and Pan American with a view to placing the route in operation but since satisfactory arrangements could not be worked out for the operation of the route by Pan American directly the parties decided to organize a separate corporation. Accordingly, UMCA was organized on August 24, 1931 and the concession for the route was transferred to it on September 10, 1931. This assignment was approved by the Colombian Government on January 11, 1932. Pan American's interest in this route arose from a desire on it part to carry traffic into Colombia and to have the route serve as the first link in a shortcut route across South America to Buenos Aires and Rio de Janeiro. Inasmuch as Colombia was too large a country to fly over with the short-range aircraft then available it allegedly presented a serious obstacle to the further expansion of Pan American's service in South America. Operations under the concession commenced on July 12, 1932 and were continued until the expiration of the concession on July 12, 1947. The concession has since not been renewed.

[fol. 3009] UMCA's articles of incorporation authorized the issuance of two classes of capital stock, preferred having a par value of $100 per share and no par common stock. There were issued 1500 shares of preferred stock and 3,000 shares of common. Pan American acquired all of the preferred and 1500 shares of the common. Mr. Mejia received the remaining shares of common stock as consideration for the transfer of the route concession to UMCA. Inasmuch as both classes of stock have equal voting rights Pan American has had two-thirds of the voting power in UMCA since its incorporation. Mr. Mejia subsequently transferred 500 shares of his stock to another Colombian citizen which were later acquired by Pan American in exchange for 100

shares of the latter's stock. On November 7, 1947 Pan American purchased the remaining 1000 shares from Mr. Mejia and since that date has been the sole owner of UMCA.

Although UMCA's affairs have always been dominated by Pan American it is noted that from 1938 to November 7, 1947, all of the members of its board of directors with the exception of Mr. Mejia were either officers or employees of Pan American and since the latter date all of its officers and directors have been either officers or employees of Pan American.

During the early years of operation UMCA owned and operated its own aircraft and provided its own ground facilities at Medellin and Turbo for sales, aircraft dispatch and the handling of passengers. The operation was inaugurated with combination land-amphibious type S-38 aircraft transferred to UMCA by Pan American which landed on the water at Turbo and on land at Medellin. Pan American provided all of the necessary ground facilities in the Canal Zone and Panama and because UMCA lacked the [fol. 3010] necessary facilities for the overhaul and maintenance of aircraft this service was provided by Pan American at its bases in the Canal Zone, Brownsville or Miami. However, since July 1941, Pan American has been operating the route for UMCA on a charter basis with its own aircraft and flight crews. The aircraft and crews used in the operation were obtained from Pan American's pool of aircraft and crews used for its Latin American services. When flying the route Pan American's identification markings on the aircraft remained intact so that as far as the general public was concerned it appeared that the operation was actually that of Pan American, instead of the operation of UMCA. In the succeeding years Pan American assumed all of the remaining functions incident to the operation of the route until at the time of hearing UMCA was an air carrier in name only and with only one person in its employ.

On November 29, 1937 Pan American was granted a contract by the Postmaster General to transport mail over

foreign airmail route No. 5 between Cristobal and Turbo. Pursuant to section 401(e) of the Act, Pan American was granted a "grandfather" certificate authorizing it to engage in air transportation with respect to persons, property and mail between the above named points.[1] In a subsequent proceeding decided November 4, 1940 UMCA was granted a certificate under section 401(d) of the Act authorizing [fol. 3011] it to engage in the air transportation of persons, property and mail to and from Balboa and of persons and property only between Turbo and Medellin. In the same proceeding the Board approved the transfer to UMCA of Pan American's grandfather certificate under section 401(i) of the Act authorizing the transportation of persons, property and mail between Cristobal and Turbo. This route segment together with that granted to UMCA forms this carrier's present route.

Although UMCA is authorized to carry United States mail over the Cristobal-Turbo segment of the route it has never been designated by the United States Government for the carriage of mail. The mail dispatched from the United States to Colombia has been carried by Pan American to Barranquilla and transferred at that point to a Colombian carrier for transportation into the interior of Colombia. However, UMCA has been acting as agent for Pan American in the carriage of intercountry dispatches betwen Colombia and Central America and Mexico which it exchanges with Pan American at the Canal Zone for transportation to and from Turbo. UMCA has also been carrying mail for the Colombian Government between Turbo and Medellin for which it is paid at the rate of $4.00 per kilo. The evidence shows that UMCA is no longer operating between Cristobal and Balboa and its authorization to serve Turbo has not been renewed by the Colombian Government. By order of the Board dated September 15, 1947 (Orders Serial No. E-798) UMCA was authorized to sus-

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[1] *Pan American Airways, Inc. grandfather certificate*, 2 C.A.B. 111 (1940).

[2] *Uraba, Medellin, Central Airways, Canal Zone-Colombia Op.*, 2 C.A.B. 334 (1940).

pend service at Turbo and to operate nonstop between Panama or the Canal Zone and Medellin. Pan American asserts that from a traffic standpoint service to Turbo is [fol. 3012] not particularly desirable but irrespective of this it believes that Colombia will never again grant permission to a foreign carrier to serve that point. Accordingly, all that remains of the route as far as operability is concerned is the portion thereof between Balboa and Medellin. For these reasons Pan American believes that there is little likelihood of the route being designated for the carriage of mail.

As has been previously stated herein the concession granted to Mr. Mejia by the Republic of Colombia expired on July 12, 1947, and it is the opinion of Pan American that it will not be renewed. Pan American has had no negotiations with the Republic of Colombia for the transfer of the concession and in view of the negotiations now pending between Colombia and the United States concerning reciprocal air transportation rights between the two countries it considers that any action on its part toward renewal of the concession would, at this time, be inappropriate. Since the expiration of the concession UMCA has been temporarily authorized by Colombia to operate between Balboa and Medellin until the end of the year 1948. In the event the proposed transfer of the certificate is approved by the Board Pan American will seek a renewal of the temporary permit from the Colombian Government to continue operations between these points.

According to the record UMCA carried 3,361 passengers between Balboa and Medellin during the year 1947, and during the first seven months of the same year it carried 1,113 passengers between Turbo and Medellin and 710 passengers between Balboa and Turbo. Service between these points has been conducted on a frequency of five round trips per week with DC-3 aircraft having a daily utilization of approximately five hours while in service of UMCA. The average load factors between these points were shown as [fol. 3013] 33.5 percent between Balboa-Medellin, 54.5 between Turbo-Medellin, and 31 percent between Balboa and

Turbo. These load factors ranged from a low of 13 per cent in July 1947 from Turbo to Balboa to a high of 86 per cent in April 1947 from Turbo to Medellin.

The record also shows that during the year ended June 30, 1947 approximately 2,803 beyond terminal passengers were carried over UMCA's route. The majority of these passengers were exchanged with Pan American at the Canal Zone and either originated at or were destined to points in Central America, Mexico and the United States. Medellin was the principal point of origin or destination of these latter passengers. During the years 1942 through 1947 UMCA also exchanged approximately 10,713 pounds of air mail with Pan American at the Canal Zone. This mail consisted of inter-country dispatches between the Republic of Colombia and points in Central America and Mexico.

UMCA's balance sheet for the year ended December 31, 1947, discloses assets of $32,703.79 and liabilities, exclusive of long term indebtedness to affiliates, of $40,049.66. The carrier had a net operating loss in 1947 of $55,731 and a net cumulative loss of $259,406 during the entire period of operation. The company's balance sheet shows a figure of $89,693 representing the balance due Pan American on inter-company accounts since the beginning of the operation. The value of UMCA's capital stock, of which Pan American is the sole owner was reflected on the latters books as of December 31, 1947 at $158,500.

Upon dissolution of UMCA as a corporate entity Pan American will take over all of that company's assets and assume all of its liabilities of record on the effective date of dissolution. The long term indebtedness will be written off by Pan American as a bad debt and charged to the lat-
[fol. 3014] ter's surplus account. The item of $7,348.87 representing the excess of liabilities over assets will also be charged to surplus and the item of $158,500 representing the book value of the capital stock will be treated as an operating loss. A witness for Pan American disclaimed any intention of placing a purchase value on UMCA's certificate or of capitalizing any of the company's losses for rate making purposes. Pan American, however, re-

serves the right to request mail pay for any operations performed over the route after the transfer of the certificate.

Pan American represents that for the reasons hereinbefore set forth the elimination of UMCA as a corporate entity would require practically no changes in operation. It asserts that the route would be operated with the same Pan American aircraft and flight crews; and the ground facilities, traffic and sales will be supplied either by Pan American or its affiliate AVIANCA.[3] The latter company has for several years been providing all of these services for UMCA at Medellin and is now in the process of acquiring all of that company's facilities and personnel at Turbo. UMCA's only employee who is stationed at Turbo will be transferred to the payroll of AVIANCA. Pan American points out that UMCA has for many years used standard Pan American tickets and other traffic forms and that Pan American is named as a party in all traffic agreements between UMCA and other agencies. Thus, Pan American [fol. 3015] concludes that UMCA's operation has been so integrated into Pan American's system that the elimination of this carrier as a corporate entity is a mere formality which has as its purpose the simplification of Pan American's corporate structure.

Pan American cites many advantages that will result from the approval of the acquisition. Important among them are the elimination of separate legal representation in behalf of UMCA before the Colombian Government; the elimination of separate directors and stockholders meetings; the elimination of the allocation of expenses and charges of Pan American aireraft to UMCA; the elimination of separate income tax reporting to the Colombian

[3] AVIANCA, a Colombian carrier, is the holder of a foreign air carrier permit from the Board, authorizing the air transportation of persons, property and mail between Bogota, Colombia and Balboa, Canal Zone with or without intermediate stops in Colombia and between Barranquilla, Colombia and Miami, Fla., without intermediate stops. The permit was granted in the proceeding entitled *Colombian Airlines, Air Carrier Permit*, 7 C.A.B. 149 (1946). Pan American is the owner of 48 percent of AVIANCA's outstanding capital stock.

Government; the elimination of periodic reporting to the Securities and Exchange Commission by Pan American as owner of UMCA's capital stock; and the elimination of the requirement with respect to Board approval of interlocking directorates and inter-company contracts. In addition to the savings that allegedly will result from the elimination of the foregoing functions Pan American asserts that the approval of the acquisition and transfer of the certificate will also preserve for it the revenue derived from the beyond terminal passengers interchanged with UMCA at the Canal Zone for transportation to and from points in Central America, Mexico and the United States.

In spite of the losses sustained by UMCA in its operations Pan American believes that the public interest requires the continuance of the operation because of the close business relationship that exists between the United States and Medellin area and because of the outlet which the service will provide to Medellin to other parts of the world through the Canal Zone. With respect to UMCA's losses Pan American believes that they are relatively small es- [fol. 3016] pecially when it is considered that throughout its entire period of operation the service has been conducted without the benefit of mail pay by the United States Government. On the other hand Pan American contends that losses attributable to UMCA have been offset in certain respects by benefits to Pan American. Thus, Pan American charges UMCA a ten percent commission on sales and with a portion of its overhead expenses for maintenance of the latter's aircraft even though no additional personnel or facilities are required on the part of Pan American to perform the service. The record shows that the approval of the transaction proposed herein will have no effect whatever on the competitive situation between Pan American and other carriers operating in that area.

CONCLUSIONS

While section 401(i) requires an affirmative finding that the proposed transfer will be consistent with the public interest and section 408 requires a negative finding that it will not be inconsistent with the public interest, the dis-

tinction between affirmative and negative findings is unimportant since the public interest is the primary consideration in either of them. Public Counsel contends that the statement in the *Mayflower case*,[4] "In considering the transfer of a certificate the Board must consider along with the advantages of improved service lower costs and other factors affecting service, safety, and economy, the question of whether the proposed transfer will assist in effectuating the overall transportation policy of the Act and thereby be consistent with the public interest.", is the test which governs the instant proposal. Public Counsel contends [fol. 3017] that the evidence does not show that this transaction meets the above tests. It is asserted that the transaction will not provide improved service to the travelling public since Pan American has been operating the service for years, that it will not result in any change of personnel responsible for operation of the existing service, and that as a result the transfer of the route cannot be based upon better service to the public.

On the other hand, Pan American asserts that the case cited by Public Counsel is not pertinent to the instant proceeding as it is a case where the Board was asked to pass upon the proposal to effectuate changes in the air transportation pattern by approving the transfer of certificates from one entirely independent carrier to another. Pan American argues that the Pan American Airways, Inc., et al., merger case[5] and the Pan American Airways acquisition of China National[6] are the only cases ever decided by the Board which are directly in point with the instant proposal. In the first case, Pan American sought approval for simplification of its corporate structure by transferring certificates from various subsidiaries, this to be followed by dissolution of the subsidiaries whose certificates were to be transferred. The transaction was ap-

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[4] *Acquisition of Mayflower Air.* By *Northeast Air.*, 4 C.A.B. 680 (1944).

[5] *Pan Am. Airways, Inc., et al., Merger*, 2 C.A.B. 503 (1940).

[6] *Pan Am. Airways, Acquisition of China National*, 6 C.A.B. 143 (1944).

proved upon a finding that it would simplify intercorporate relationship, effect savings by eliminating additional taxes which result from carrying on operations through separate corporate entities, simplify the keeping of accounts and records and the making of reports to governmental bodies, [fol. 3018] coordinating supervision of operations and simplify certain details of operations. The second case involved the acquisition by Pan American of the stock of China National Aviation Corporation, theretofore owned by Pan American's wholly owned subsidiary China Airways Federal, and the further transfer of China National's stock to be so acquired by Pan American Airways to Pan American Airways Corp. The evidence shows that the proposed transaction would simplify intercorporate relationships, would eliminate the necessity of holding separate directors' and stockholders' meetings, keeping of various accounts and records, would effect tax savings since the maintenance of CMCA as a separate corporate entity requires payment of state franchise taxes, would eliminate the keeping of accounts and records and making out reports to the Board, the Bureau of Internal Revenue, Securities and Exchange Commission, and other governmental bodies, would simplify the work of administering the operation by permitting Pan American's management to take direct action without having to go through the formalities of securing authorization from the CMCA Board of Directors, and would simplify certain details of operations such as time tables, tickets, traffic documents and inter-line traffic agreements.

The argument between Public Counsel and Pan American as to which of the above cases is in point with the instant proceeding becomes largely academic with the statement by Public Counsel that if the issue of financial support was not present he would favor approval for while there is no substantial evidence to affirmatively support the transaction, there is no substantial evidence against it. Public Counsel views the real crux of the transaction to be the question of financial support for a Canal Zone-Colombian operation by the Federal Government through mail pay compensation. The net loss of CMCA for the year

ending December 31, 1947, was approximately $55,000. [fol. 3019] Public Counsel asserts that it is clear from the record that Pan American intends to seek financial support for the continued operation of the Balboa-Medellin service through the inclusion of the operation in the consideration of future mail rates for its Latin American division. Public Counsel contends that although this route has never been certificated for mail service, the Board would be legally bound under its decision in the Chicago and Southern rate case[7] to consider these operations in determining the mail rate for Pan American. The Board has refused to compensate Pan American for schedules on its Alaskan-Fairbanks-Bethel route[8] which was not certificated for mail. However, it is pointed out that the non-mail operation there involved was a grandfather operation, while the Canal Zone-Medellin certificate here involved was granted after hearing and a finding that the route was required by the public convenience and necessity.

Pan American agrees that under the Chicago and Southern case it could ask the Board to consider whether the results of operation between the Canal Zone and Medellin could be taken in account in determining its mail pay needs, that the Board has held that the objectives of the Act require it to consider such questions but they do not dictate the results of such consideration. It points out that the assumption of Public Counsel that if the route is transferred to Pan American it would result in imposing upon the government the burden of a route which last year lost [fol. 3020] $55,000 is not necessarily correct. It contends that on an added cost basis the route did not sustain the loss, that with the introduction of more efficient twin-engine equipment the entire cost picture will be changed.

It may be assumed that some saving will be effected by Pan American through the elimination of the duplicating functions performed in behalf of UMCA and the simplifica-

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[7] *Chicago and Sou. A.L., Mail Rates—Routes Nos. 8 and 53*, 3 C.A.B. 161 (1941).

[8] *Pan Am. Airways, Inc., Alaska Mail Rates*, 6 C.A.B. 61 (1944).

tion of its corporate structure. During its 16 years of operation, UMCA operated without the benefit of mail pay at an average net loss of about $16,000 per year. Potential economies which Pan American points out would result if UMCA should be absorbed into the Pan American system, may substantially reduce or entirely eliminate these losses. It would appear therefore that at the most there is only a remote possibility that the continuance of this service by Pan American may result in higher mail pay to that carrier. Moreover, the transfer of the route does not impose anything on the government except an obligation to consider the question of whether the Balboa-Medellin operation performed such functions that mail pay ought to be accorded in the public interest: Whether the Board should compensate Pan American for operations over this segment under the doctrine of the Chicago and Southern case or should disregard them as it did Pan American's Fairbanks-Bethel segment is a question which properly belongs to a mail rate proceeding. It may be that the circumstances surrounding operation of the route by Pan American, especially the fact that the operation which the Board found required by the public convenience and necessity was Balboa-Turbo—not Balboa-Medellin and that there is no mail authorization for the Turbo-Medellin segment, present a situation so different from that in the Chicago and Southern case that the principles enumerated therein would be inapplicable in this instance.

[fol. 3021] It is suggested by Public Counsel that there may not be any Colombian permit by the end of the year and that perhaps the application herein should be denied without prejudice to a renewal after the conclusion of bilateral negotiations between the United States and Colombia. However, it should be pointed out that the Board has held in a number of cases that the issuance of a certificate is not dependent upon a showing either that foreign operating rights have been obtained or can be obtained and the Board has issued a number of certificates for which operating rights were yet to be obtained.* Under this above theory,

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* *Northeast Air, et al., North Atlantic Routes*, 6 C.A.B. 319 (1945). *Latin-American Air Service*, 6 C.A.B. 857 (1946).

the Board would scarcely ever be in position to approve the transfer of a certificate to engage in international transportation as operating rights in most such cases are subject to termination by the action of a foreign government.

The transaction involves no specific purchase price; the consideration is only the assumption of UMCA liabilities which include $89,693 owed to Pan American in return for operation of the route for UMCA by Pan American, and $7,348 of excess liabilities over assets exclusive of the debts to Pan American. In addition, Pan American will lose its investment in UMCA now carried in its books at $158,500. Thus, in effect Pan American will be paying approximately $250,000 for the certificate of UMCA. However, the situation in the present transaction involves nothing more than a bookkeeping transaction. The $90,000 investment will be lost to Pan American whether it continues to operate UMCA, transfer the certificate to itself, or dissolve the corporation and abandon the route. A more seri- [fol. 3022] ous question presented is whether or not these losses will be transferred to the government and the travelling public which could result if Pan American were able to either charge the losses off as operating expenses or to capitalize them and put them into its investment base for mail rate purposes. Pan American's officials testified that the investment and UMCA's past operating losses will be treated for accounting and tax purposes as operating losses, that both will be charged to surplus, and that the Board will not be requested to consider them in any rate proceeding. While accepting Pan American's statements in this respect, nevertheless, for the benefit of the public which may not be familiar with Pan American's balance sheet, it is recommended that the Board follow the same procedure as used in the Western-United Route 68 transfer case[10] and attach a condition that Pan American charge the $255,000 amount involved to surplus.

There is nothing of record which would warrant a finding that the transfer of UMCA's property and certificate to

[10] United-Western, Acquisition Air Carrier Property, 8 C.A.B. 298 (1947).

Pan American will result in a monopoly within the meaning of section 408, which would thereby restrain competition or jeopardize another air carrier not a party to the transaction.

On the basis of all of the foregoing considerations and all of the facts of record, it is recommended that the Board find that the proposed acquisition by Pan American of all the property of UMCA and transfer to Pan American of the certificate of public convenience and necessity of UMCA is consistent with the public interest within the meaning of sections 401(i), 408(a) and 408(b) of the Act, and that both transactions be approved.

[fol. 3023]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 273

J. P. G. JR.
TRIP SERIES No. 47

Lima, December 5th., 1948.

Mr. H. J. Roig,
W. R. Grace & Co.
New York.

PANAGRA

Dear Mr. Roig:

I wanted to wait until the last day of our trip to write you concerning my impressions, ideas, suggestions, etc., concerning Panagra garnered while flying up and down the West Coast for the last six or seven weeks.

In the first place, I would like to say without any reservations that I have never tasted such good food as I have on the various trips I have made on Panagra this trip. In my opinion (and it is shared by all of the passengers with whom I have talked) Panagra does the best job of any commercial airline either in or outside of the U.S. on the food that it serves its passengers.

In the second place, Panagra service both on and off the airplanes appeared to me to be tops. Stewards and stew-

ardesses who have travelled with us have been extremely solicitous of the passengers' wants in every respect and that did not just include our party—as far as I could notice, we happily, received no favoritism.

There are two subject however, concerning which I would like to give you my views and suggestions for whatever they are worth. These are:

1) The subject of delays

2) The question of more and more evidence south of Balboa that we are an appendage of Pan American World Airways.

With respect to (1), the following shows a rough tabula-[fol. 3024]tion of my own travels on Panagra/P.A.A. and Avianca:

First trip: Miami/Lima DC 6—Panagra	—Left and arrived two hours late— Reason given passengers—maintenance
Second trip: Lima/Santiago DC 6—Panagra	—Left and arrived (one motor coughing part of the way) over three hours late. Reason given—maintenance
Third trip: Santiago/Balboa DC 6—Panagra	—Left an hour late and arrived about two hours late Reason given—headwinds
Fourth trip: Balboa/Quito DC 3—Panagra	—Left and arrived on time
Fifth trip: Quito/Cali DC 3—Panagra	—Left and arrived on time
Sixth trip: Pereira/Bogota DC 3—Avianca	—Left and arrived on time

Seventh trip: Bogota/Barranquilla DC 3—Avianca	—Left and arrived on time
Eighth trip: Barranquilla/Balboa Convair 240—P.A.A.	—Left and arrived 15 minutes late No reason given
Ninth trip: Balboa/Lima	—Left and arrived 2½ hours late, arrived with one motor stopped because of suspected fire. Reason given for original delay—maintenance
Tenth trip: Lima/Miami DC 6—Panagra	—Have not started yet but scheduled to leave 20 hours late, which means that will arrive Miami at 2 or 3 o'clock in the morning with no connection to N.Y. until 8:30 a.m. and with another DC 6 coming in, if on time, total passengers on the two DC 6's, over 80, many of whom will be trying to connect and quite a few will not be able to. Reason given: Cylinder change—9 hrs. until bad weather set in over Tucuman and until it was dark in the Mendoza pass and southern pass [fol. 3025] will not be authorized for night flying for another three or four days.

In addition to my experiences on the DC 6 chronicled above, Flatow arrived in Santiago 15 hours late on a Panagra DC 6.

Every DC 6 that I have been on, or had anything to do with, on this trip (with the exception of Andrew's northbound trip Santiago/Lima which left Santiago on time) has been anywhere from 2 to 20 hours late.

I know that you are thoroughly cognizant of the problems we are having with the DC 6's, but it really seems a lot more serious when you get down on the Coast and go through experiences such as ours. The inconvenience caused the travelling public is of course making a lot of enemies for the company since most of the passengers are not being given information as detailed as we are receiving and are thus standing around airports and waiting in hotel rooms getting worked up.

We, of course, have heard a lot of complaints and use the standard argument that it is better to take off late with good maintenance than on time in an unsafe airplane. But, of course, the sore passenger is left with the feeling that he doesn't experience delays in anything like the percentage he experiences on Panagra when he travels on U.S. certified airlines in the U.S. and he presumably is just as safe.

It might be said here that of course the competition is taking full advantage of the Panagra delay situation by spreading stories (exaggerated in many instances of course, but with foundation in many others) of delays in EL INTERAMERICANO. We are informed that this propaganda takes the form of referring to EL INTERAMERICANO as "El Interrumpido").

[fol. 3026] The reasons for all this are, of course, obvious and in our view are two fold:

1) Due to the relatively small size of Panagra in number of planes, i.e., only five DC 6's and due to the relatively large number of route miles covered and the tremendous distance between the two terminals, if anything goes wrong with the plane at one of the terminals, say B.A., nothing can be done about it except to wait. In the case of the large U.S. lines (we notice both T.W.A. and American are running excursion tours around Los Angeles every evening with dinner served aloft) they have sufficient alternate planes to call upon by just substituting a plane scheduled to take off later for the plane requiring maintenance. Panagra can't do this and if the maintenance is 20 hours, everybody waits 20 hours with consequent increase in expenses, upsetting of plans,

frayed tempers, etc. Unfortunately, the public does not know enough about the air transport business to appreciate the problems peculiar to Panagra.

2) We have seen no figures on Panagra maintenance delays on DC 6's vs. other U.S. certificated airlines maintenance delays on their DC 6's, but we have the very definite opinion that Panagra is experiencing many more delays percentwise than the other airlines. Maybe this is due to the Panair maintenance at Miami, but whatever it is due to, in our opinion, now that the rate case is pretty well along the line, *this problem represents the most serious problem that Panagra is faced with today*, possibly other than getting through to New York since the extra speed of the DC 6's vs. PIA's DC 4's and Braniff's cut-rate DC 4's is largely being off-set by these consistent and serious delays.

There is obviously only one solution to the problem raised in No. 2 above and that is to concentrate the best brains in the company right in Miami until this situation can be remedied. Every maintenance delay should be catalogued with the details of the time consumed, reason for the delay, work done, etc. Detailed information should be obtained on the experience of other U.S. certificated airlines with DC 6's as up to the minute as possible so that Pan American can be put on notice of the deficiency in their maintenance and so that Pratt and Whitney can bring us up to the other airlines' standards.

If it turns out that we are going to have to live with the DC 6's with anything like their present record, we strongly recommend that we explain to the CAB and get them to in- [fol. 3027] clude in our mail pay sufficiently more money to amortize, maintain, etc. buy two more DC 6's, to be kept at either end of the line so that we can put another plane in when these two, five, ten, twenty-hour delays come along. Other airlines can substitute a plane for one delayed by maintenance—even National, with its five DC 6's shuttling between New York and Miami is in a much more flexible position than Panagra and the CAB should recognize this.

Unless we take some definite constructive steps to remedy this situation in a really important manner, Panagra will not stand up well in the public's mind when compared to other airlines. Delays down here now are so numerous that an on-time departure is the exception rather than the rule and one hears comments such as, "the Miami plane northbound left on time tonight" mentioned in surprised tones by even the Panagra staff.

The second basic subject that we wanted to take up with you as mentioned on Page 1 is the increasing evidence of Pan American World Airways' intervention in Panagra's activities on every Panagra plane one travels on.

This is really serious but it can be remedied overnight if everybody will pitch in and do a job to preserve the identity of Panagra as such. We know that there is no one connected with Panagra or Grace who wants to keep Panagra as an independent entity both actually and in the public's mind more than you. You have fought this battle for years and against great odds. With this in mind, we feel that you would be shocked by what we have come across on this trip and we propose to catalogue what we have seen below:

[fol. 3028] 1) We arrived in Miami six weeks ago tomorrow and were greeted at the Eastern Airlines gate by both Burke and Greenfield and personally escorted to the Pan American counter to be checked in for the EL INTERAMERICANO flight scheduled to depart about an hour and a quarter later. When we arrived at the Pan American counter every counter had a sign on it indicating that *only* those passengers travelling to Havana on the Panamerican flight departing one-half hour before the EL INTERAMERICANO could check in.

Burke went up and whispered something to a counter clerk and we were taken care of at one of these counters immediately—obviously as a special favor. We have absolutely no complaint on the way in which we were treated. Burke made sure that everyone knew who we were. But what concerned us were those passengers

who didn't know Burke or Greenfield and had to wait until the Havana plane took off before they could be checked in, i.e. they had to wait about half an hour.

No Panagra identification was seen the entire evening on any of the Pan American counters although later a sign went up "EL INTERAMERICANO" which in the public's mind therefore was a Pan American flight (which it is) but it was our definite recollection that P.A.A. agreed in the contract with W. R. Grace & Co. to place at all of their counters serving Panagra or Pan American passengers suitable identification either Panagra or Pan American Grace Airways. When we spoke to Shannon about this he said that Burke told him that they just didn't happen to have them up that night. It's obvious, of course, that they didn't pick the one night I was coming through not to put the signs up and it follows that when the signs are up, if ever, it is the exception rather than the rule.

The above indicates to us that our Miami personnel is either unaware of or doesn't care about enforcing the agreement reached between W. R. Grace & Co. and Pan American Airways which states that Panagra must be always identified at the counters where passengers going out on Panagra planes are handled. We feel that this is an important condition and must be lived up to.

2) As soon as we got on the plane and started off we pulled out the Pan American folder at the seat which listed the following items as being available simply for the asking:

[fol. 3029]

Gin Rummy Board
Non-skid checkerboard
Writing Portfolio
Playing cards
Magazines
Newspapers
Post Cards
Aviation Guide
(schedules and tariffs on all Airlines)
Hotel Red Book

Book Matches
Chewing Gum
Kleenex
Medical Kit
Benzedrine Inhalers
Trinesium (for indigestion)
Ammonia
Air-sick tablets
Aspirin
Mouthwash
Electric Razor

I rang the bell and asked the stewardess for the non-skid checkerboard. She said she was sorry that it was not on the plane—I asked, why not? She said that the Panagra planes didn't carry non-skid checkerboards (or any kind of checkerboards for that matter) and that the list that I had in my hand was a Pan American list and that it did not tie in with the inventory of articles carried on Panagra planes. She said that in addition to not having the non-skid checkerboard, she didn't have the Gin Rummy Board, *the playing cards, the post cards, the Hotel Red Book, Trinesium** and last (and probably least) the mouthwash. (She also informed me that although Panagra planes do carry electric razors, through an oversight they did not have on board the electric razor which was being repaired and which had not been replaced by an alternate.)

We are sure that you would not want any such sloppy handling as outlined above to exist and someone should be detailed to eradicating this situation immediately.

Also in the Pan American envelope is a copy of the Pan American World Airways System Timetable. As you know, Panagra's main services are all thrown in together on part of a page, which also includes Cubana services, Aviança services and, of course, Pan American Services—the Miami Kingston Barranquilla service. Although Aviança connects with Panagra, to our knowledge neither Cubana nor the PAA Miami Kingston Barranquilla service connect with any Panagra service. We

*Above material in italics, handwritten addition.

feel that Panagra should have a page all to itself for the above reasons and because the putting of these extraneous services on the same page with Panagra necessitates showing Panagra's domestic service in Ecuador eight pages further along on Page 15.

[fol. 3030] (3) At one's seat on Panagra planes *south of Balboa* one finds a booklet entitled "South America a World for Play, Just a Day Away". In this booklet mention is made of a larger pamphlet available if the Panagra passenger will "ask his travel agent or get in touch with his nearest Pan American World Airways office". For the sake of Panagra prestige and in order that Panagra does not look like the merest appendage to PAA, wouldn't it be well to also say "or get in touch with his nearest Panagra office in South America" just so that everyone knows that Panagra does have an office?.

(4) As soon as we left Balboa on the Panagra plane—this time a Panagra flight—we were served orange juice in cups marked with the blue PAA markings, in other words, with Pan American equipment. The next morning with our very good breakfast we were served cheese sandwiches (as stated above the breakfast was swell but I think that cheese sandwiches are an unnecessary addition to a breakfast) and these cheese sandwiches were wrapped in PAA envelopes with the familiar blue markings—we were then almost in Lima.

South of Lima, lunch was served with Pan American napkins, butter containers, salt and pepper containers and with Pan American silver, all with the prominent and familiar PAA markings.

South of Balboa, no one had bothered to take off the Pan American Clipper folders and there they were just as you find them on the Clippers containing all the Pan American propaganda and, of course, still with the phoney list of items available to passengers, which weren't available. We had thought these folders were to be removed at Balboa.

Worse than any of the above in our opinion from a technical viewpoint was the prominent display on the three airplanes we travelled on all *south of Balboa* of the following sign:

> "This aircraft is owned by Pan American Grace Airways, Inc., (Panagra) and is being operated by Pan American World Airways, Inc., pursuant to an agreement between Panagra and Pan American World Airways, Inc., approved by the Civil Aeronautics Board."

Being Grace men and Panagra men, this was about the pay-off and we went right after the people in Lima about this. We found that the stewards and stewardesses are not allowed to either remove or turn this sign to the wall but that it has to be done by the *operating people* in Balboa. The result is that the operating people forget, but they only forget south of [fol. 3031] Balboa, never north, and with the added result that the passengers are informed on DC-6's at every point of Panagra's line that the flight is a Pan American flight. This, of course, must be stopped and someone should look into the ridiculous rule that only the operating people can touch the sign.

(5) The pay-off of our finding evidence of Pan American intervention in our business south of Balboa came on Thanksgiving Day when the purser on the Panagra DC-3 came to me between Cali and Quito and showed me a Pan American World Airways menu signed by Capt. W. R. Sripps (a Panagra pilot) wishing us all a happy Thanksgiving Day and listing 21 items of the unusual lunch we were to be served. The purser said that he didn't have all of the items listed on the menu and he asked me if I thought he should distribute the menu. I asked him how many of the 21 items he did not have and we counted 11 items not on the plane. I attach the menu hereto for your ready reference and the items listed on the menu and not on the plane are as follows:

Martinis
Queen Olives
Hearts of Celery
Fresh Cranberry and Orange relish
Essence of Tomato
Salted Wheatsworth Wafers
Grapefruit and Red Apple Salad
Linga French Dressing
Frozen Rum Custard
Brown Sugar Cookies
Mints

Naturally, with more than 50% of the items listed on the menu not on board the plane, Jim Magner and I advised the purser not to distribute the menu and disappoint the passengers.

You will note that Pan American Airways sticks out all over the menu.

(6) On the same Panagra DC-3 flight Balboa Quito), the coffee cup, the envelope for the sandwiches and all of the packages of granulated sugar were marked "Pan American World Airways"—no mention of Panagra. This situation should be remedied immediately as the net of our contract is to put Pan American on every Panagra plane anywhere north or south of Balboa whether the airplane be a DC-3 or a DC-6, or so it seems from what we have observed.

(7) When the Thanksgiving Lunch (missing the 11 items shown above) was finally served, we were greeted with Pan American salt and pepper containers, more Pan American sugars envelopes, a Parker House roll wrapped in an envelope marked Pan American World Airways, Inc., a cup for our wine marked Pan American World Airways, Inc., a fruit cup dish enclosed in a Pan American World Airways cup, and all of these [fol. 3032] items prominently displayed the distinctive blue and red coloring of Pan American and none of the green of Panagra.

(8) With our Thanksgiving lunch we received a bottle of wine, marked "Private Stock PAA" and further stating

"Bottled and Sealed at our Winery in California for Pan American World Airways (signed Cañuco Vineyards Company, Fresno, California.") The wine was not as good as Chilean wine which we could easily have bottled for the "Panagra private stock". The label on the wine bottle was in the familiar blue and red of Panair with the familiar Pan American emblem on the label.

(9) I attach hereto a copy of letter received by Colina, the head of our Insurance Department here in Lima, from Porter Norris, Manager of Traffic, Pan American World Airways System, Miami, Florida, which, as you will note, apologizes in Spanish for the delay in the recent "Clipper Flight to Lima". Obviously Colina did not fly by Pan American Clipper to Lima. Inasmuch as these were Panagra passengers (i.e., the business really was originated by Panagra) and since Colina is a Peruvian with whom Panagra must keep on good relations, it seems to us that it would be far better for these letters to go out from the Panagra organization here and not from Pan American in Miami. Evidently, Mason does write such letters also but in this case Colina didn't hear from Mason and only heard from Pan American. It seems this ought to be stopped.

I don't know whether or not you will agree with the statement in the Pan American letter which says that Pan American ". . . . nos ha hecho lograr una seguridad en nuestros vuelos que no ha sido igualada en la historia de la aviacion internacional." The statement seems a little broad to us particularly since Pan American has cracked people up recently, witness Shannon, Lisbon, etc.

As Jim Magner said while we have been on this trip there is far more evidence today of Pan American all over Panagra's route than there was in 1943 when he was last down here. It was very noticeable to him everywhere. When we signed the now famous contract with Pan American we all realized we were losing our identity north of Balboa (i.e., losing any identity we might have had had

we could [illegible] could even tooted but no one ever thought that we would gradually and in an ever increasing manner lose our identity south of Balboa, i.e., on the routes that we [fol. 3033] have operated for 20 years.

While in Quito we visited our Quito office and the most prominent Panagra sign was a huge picture of New York with Pan American Constellations flying over the Brooklyn Bridge. Bourne told us in Cali that this was a Pan American advertisement we purchased and over-printed with Panagra's name, but couldn't eliminate the Pan American planes, with the familiar three-pronged Constellation tail. Unless the purchase of this was made at a tremendous saving percentagewise, we question the advisability of it.

To get back to the question of the tremendous delays and interruptions on the DC-6 flights with one general comment before closing, we feel that some disinterested executive with an entirely fresh viewpoint (not pro Pan American and not anti-Pan American) should investigate the Pan American maintenance situation in Miami. Undoubtedly since Kirkland's transfer some improvement has been made, but not enough. The situation is still serious. In July of this year Jimmy Walker stated outright, according to Moore, that PAA was giving undue preference to maintenance of PAA equipment to the prejudice of Panagra work. Moore questioned Shannon about it when they were together in Miami on July 24 and Shannon categorically denied it. Nevertheless, it really seems that some disinterested executive should make a comprehensive report on this serious matter in view of the extent to which Panagra is being hurt, and severely hurt, with these delays.

I have undoubtedly taken up a lot of your time by going into such tremendous detail of everything that I saw and of everything that occurred to me during my trip. I have [fol. 3034] done so because I wanted you to see things as I saw them and because I wanted to give you visually the panorama as it unfolded before us during our travels.

I know your attitude and your personal pride in Panagra and I am sure that you will take immediate and effective steps to improve the situation outlined above.

Very truly yours,

JDG

[fol. 3035]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 274

COPY

NATIONAL AIRLINES
INCORPORATED

3240 N. W. 27th Ave.
Miami 37, Florida
December 15, 1948

Mr. Harold J. Roig
President, Pan American Grace Airways, Inc.
7 Hanover Square
New York, N. Y.

Dear Mr. Roig:

Passengers could travel by air without change of planes between the major cities served by our respective companies in North and South America if our companies entered into an equipment interchange agreement. Therefore, I am proposing to you that we interchange equipment at Miami so that thru-service can be operated without change of planes between New York, N. Y. and Buenos Aires, Argentina, via certain intermediate certificated cities. If you are interested, I shall be pleased to designate some one in our organization to sit down with your representatives to negotiate an agreement for submission to the Civil Aeronautics Board for approval.

For his information, I am sending a copy of this letter to Mr. Juan Trippe, President of Pan American Airways.

Awaiting your early reply, I am, with kind regards and greetings of the season,

Sincerely yours,

NATIONAL AIRLINES, INC.

G. T. Baker
President

[fol. 3036]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 275

(Letterhead of Loftin, Anderson, Scott, McCarthy & Preston, Ingraham Building, Box 1069, Miami 6, Florida)

January 24, 1949

Mr. Juan T. Trippe, President
Pan American World Airways System
Chrysler Building
135 East 42nd Street
New York 17, N. Y.

Dear Mr. Trippe:

The attached memorandum is an outline of an arrangement which I would be willing to recommend to the Board of National. With kindest personal regards, I am

Very sincerely,

/s/ Paul R. Scott

PRS/mc
Enclosure

COPY

[fol. 3037] PAA will purchase 174,000 shares of NAL's unissued stock for cash at $5.50 per share, or at a price per share equivalent to 90 percent of the average of the daily closing price of NAL on the New York Stock Exchange from January 1, 1948 to the day preceding the date of delivery and payment, whichever is the greater. Delivery and payment therefor is to be made as soon as a contract can be prepared and signed by PAA and NAL formalizing the following agreement:

(a) NAL to increase its authorized shares to 1,500,000. Subject to the approval of the CAB, PAA agrees to purchase additional shares of NAL, so that, including the 174,000 shares, it will own 45% of the total outstanding stock of NAL after such additional purchase. NAL now has pending an application for increased mail pay retroactive to July 14, 1947. On the

last day of the month in which the CAB shall finally determine said application and NAL shall accept such determination, the adjusted book value of NAL's stock shall be determined. In such determination, flight equipment, including spares, and real estate shall be valued at then current market values. If the parties cannot agree on market values, the same shall be fixed by arbitration. Said adjusted book value shall be arrived at within sixty days from the last day of the month in which NAL's pending mail pay application shall be finally determined and accepted. Within ten days after NAL's adjusted book value shall have been so determined, PAA shall make payment for said additional shares at a price per share equal to said adjusted book value either in cash or at the option of PAA [fol. 3038] by delivery to NAL of PAA shares at a price per share equal to 90 percent of the average daily closing price on the New York Stock Exchange for sixty days prior to the date of delivery.

(b) Subject to the approval of the CAB, interchange agreements between PAA and NAL, where the same shall be mutually advantageous; it is understood that such equipment interchange shall include Panagra.

(c) Subject to the approval of the CAB, agreements for the leasing of flight equipment, where the same shall be mutually advantageous.

(d) Joint use of facilities, where the same shall be mutually advantageous.

(e) On approval of the CAB, NAL agrees that five of its eleven Directors shall be nominees of PAA.

[fol. 3039]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 276

BRANIFF

Buenos Aires,
January 26, 1949

Mr. Douglas Campbell, Vice President
c/o Panagra
SANTIAGO

Dear Mr. Campbell:

This will serve to advise you that at a luncheon the undersigned had today with one of the American Embassy officials, the following points were mentioned:

Firstly: that Braniff is understood to be planning on extending its lines from Lima to Rio de Janeiro within the next 90 days.

Secondly: that Braniff is contemplating the inauguration of a shuttle service between Lima and La Paz.

Thirdly: that the Embassy has advised Mr. Bennett, in no uncertain terms, that he should be very cautious in his dealings with the Argentine Government officials. It would appear that the State Department has taken a similar action in Washington with Mr. Braniff.

Fourthly: the U.S. Embassy has been advised by the Argentine Foreign Office that their reply on the route pattern will be forwarded to them before the end of this month.

It will certainly not escape your attention that the above information should be regarded as confidential.

Very truly yours,

[ ] PAN AMERICAN ARGENTINA, S. A.

P. Magnimarian

VP Ballinder—NY

CC: Panagra—NY (2). VP Morrison—NYC

[ ] [ ]

[fol. 3040]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 277

COPY. Sent to Drescher on TS 2-23-49 "Note Hom's statement in 3rd paragraph. Is that 'true'? PN"

~~Janum~~ February 17, 1949

Div Advertising Mgr
LAD
Mia

Traffic Manager
Pan American Argentina, SA
Buenos Aires

WINDOW DISPLAYS

Confidential

In reply to your memorandum of February 9, same subject, I would like to call your attention to your third paragraph in particular. For an answer to Mr. Toomey's impression concerning "El Panamericano" advertising, I refer you to our memorandum to you of today's date. Regarding Mr. Toomey's impression relative to the *Pan American Airways System* (Not PAB's) Four Continent Excursion Rate, we would like to bring to your attention the following information:

1. The Pan American Airways System Four Continent Excursion Rate went into effect on December 4, 1948 with sale of this special excursion permitted up to and including February 28 *only*.

2. At the time of its announcement, this special excursion fare offered the best possibilities for drawing some revenue away from Panagra's El Interamericano and putting some passengers on PAA's trip 201 for the entire haul from New York to Buenos Aires.

3. At the time that this special excursion rate became effective, our peso collections for both Panagra and PAA were being blocked (as they still are) and the possibility of converting these into dollars was quite remote. We were the only ones to perceive that be selling these Four Continent Excursion Rate tickets here on PAB ticket forms we were able to remit cruzeiros to PAB for the entire circle trip involved and PAB, in turn, would be required to remit

much-needed dollars to Pan American Airways for their portion of the trip (55%).

4. By organizing the sale advertising-promotional efforts of this office and by generating a PAA-PAB special newspaper and direct mail advertising campaign during the month of January, we were able to sell more than 150 of these special excursion trips, many of which I can assure you were purely "created" sales involving a total *dollar* remitted revenue for PAA in the amount of approximately U$S 90,000.

Despite the above, please do not get the impression that the Four Continent Excursion Rate was all we had on our mind. As far back as January 10 I had talked to Mr. Campbell of Panagra about a joint PAA-Panagra direct mail folder to be printed and distributed here in Argentina with the theme "Sleep your way to the United States" and, as far back as January 14 I had requested your office to send me a mock-up of the sleeperette seat which could be used as a display in our City Sales Office. In addition, we received full coverage in all Argentine newspapers for our publicity releases and pictures on the new sleeperette service. I am still waiting for the mock up of the sleeperette seat but I am ready to proceed on the direct mail folder for which I have Panagra's full approval on text and diagram. The diagram will show a map of South America and the United States with Panagra's Interamericano route and PAA's El Panamericano route in heavy lines and other System lines in lighter print. On the Pacific side there will be sketch of the berth accomodations with full reference to guest houses availability. A copy of the text is attached and it is requested, if you find this acceptable, you wire your approval so that as soon as the printer's strike is over we can proceed with this item. The estimated cost for thirteen thousand copies (three thousand English and ten thousand Spanish) is m$n 1,800.00 to each company. I feel certain that you will be more than satisfied with this item and would like to proceed at once.

In closing I would like to point out that this office has a more or less equal responsibility to advertise, promote and

sell the service of the three carriers serving this area namely, Pan American, Panagra and Panair do Brasil. It will quite often happen that the representative of one of these companies will appear in Buenos Aires for a few days and depart with the feeling that someone else seems to be getting a better break on the advertising and promotion than his company. Unfortunately, Mr. Toomey did not discuss the matter with me at all and, in fact, when I explained to him what our plans were he seemed to feel that we were fully protecting PAA's interests here as well as doing a good job for the other two carriers. Mr. Toomey was especially impressed by the PAB poster contest which was an outstanding success in every way and about which I will write you later. Please rest assured that we are attempting, at all times, to use the men, materials and [fol. 3041] advertising budgets available to this station to the best advantage of the three companies we represent and constantly striving to put the name of Pan American World Airways System and its associated carriers in the eyes of the Argentine travelling public in every possible way and will continue to do so. I can assure you that at least once a month someone from one of the three companies we represent criticizes us for doing too much for one of the other carriers. Over the period of a year I am certain all of our promotional efforts balance out and at least we can console ourselves with the fact that the complaints received boil down to "too much for somebody else" rather than "nothing for anybody".

/s/ JUAN HOMS, JR.

JH/eck

cc:Div Mgr—Mia
Div Trfc Mgr—Mia
Reg Trf Mgr—Rio
Gen Mgr—Bue

[fol.3042]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 278

July 26, 1949.

Actg.PubRel. & Adv.Mgr.
PAArgentina, S.A.
Buenos Aires

Div. Sales & Adv. Mgr.
LAD
Miami

WINDOW DISPLAYS

The window display photograph attached to your memo of July 11 is all very fine but I would think that the subject involved "Los Campeones Viajan" would have lent itself admirably to dual signature display advertising "El Panamericano" as well as "El Interamericano".

Some time ago we made an agreement that the window displays appearing in the window with the permanent Pan American lettering would be PAA displays, those in the Panagra window would be Panagra displays, etc. I notice that this Panagra display is in the Pan American window and think it would be better to have put it in the Panagra window.

To make a long story short, I seem to have been seeing more window displays on Panagra and PAB than on PAA and the "El Panamericano"—also tourist service. How about pepping up the effort on PAA window displays?

Original signed by ERNEST L. FOSS
Ernest L. Foss

ELF/jw
cc: Div Traf.Mgr.—MIA
Gen.Mgr.—BUE
Traf.Mgr.—BUE
Reg.Traf.Mgr.—RIO
Actg.Asst.Adv.Mgr.—MIA

[fol. 3043]

PAN AMERICAN-WORLD AIRWAYS, INC. EXHIBIT 279

COPY COPY

COMPANIA DE AVIACION PAN AMERICAN ARGENTINA, S.A.

October 12th, 1949

Mr. H. W. Toomey,
Division Manager,
Latin American,
Miami.

Dear Mr. Toomey:

Yours of September 9th, to which was attached a copy of a memo addressed to you by Mr. Norris, on the subject of the Panagra Sales Office located at Buenos Aires.

Although there is no doubt a measure of truth in what Mr. Norris has to say regarding the advantages which the location of the Panagra Sales and Advertising Headquarters at Buenos Aires affords Panagra, vis-a-vis Pan American, it is my personal opinion that he has somewhat overstated the case.

Before the above office was moved from Lima to Buenos Aires, it was necessary for CAPAASA to supervise a great portion of the Panagra advertising in South America, this for the reason that no where else along the Panagra line was there a competent advertising agency. Not only did this supervision entail a great deal of work, including such tedious jobs as proof-reading time-tables, etc., but the arrangement gave rise to many exchanges, some none too pleasant when the work accomplished here did not correspond exactly to what some Panagra official in Lima had in mind. So far as most of us are concerned, I think I can say in all truthfulness that the removal of the Panagra office to this point, resulting in our being able to disassociate ourselves from a great part of the Panagra advertising chore, was acclaimed.

From the outset, it was fully understood that the Panagra staff here would undertake no direct solicitation work at this point, that job being reserved for the local company. In the main, I think that the agreement has not been flagrantly violated but it must inevitably be true that the Panagra people, living here, must have come to know a great many local people and I suppose they would hardly be quite human if, on occasion, they did not plug their line. By the same token, I am sure that they never miss an opportunity to plug the system, too. However, the fact is that the leading personalities involved, with the exception of the advertising manager, Earsman, spend a very great part of their time on the road, which is, of course, what they were hired to do in the accomplishment of their duties.

I think it true that Mr. Norris may be a bit overly concerned about possible direct solicitation undertaken here by these people. He certainly would not be able to offer any valid objection to personal calls on local agents and customers by these Panagra employees had they their homes in another city and paid us occasional visits, such as are sometimes, but rather infrequently, paid us by PAA sales representatives stationed at Rio, Miami, etc. The fly in the ointment would appear to be the fact that the Panagra people happen to live here and thus undoubtedly have more of a chance, directly or indirectly, at the local market than do their counter-parts in PAA. However, they must live somewhere, one supposes, and as far as I can see, the choice of Buenos Aires, by Panagra, was a very logical one for many obvious reasons. That the choice was not so happy from the PAA point of view is quite as easily understood for the reasons mentioned by Mr. Norris. However, when all is said and done, it seems to me that only two things can be done by PAA to remedy the situation, the first being to convince the Panagra powers that be to move the office, which is something which must be accomplished at the very highest levels, and secondly, to have some east coast sales people stationed here.

If the results of the operations of the two companies are compared, bearing in mind the peculiar characteristics of

the situation, such as differences in equipment, etc., I frankly do not see that there is much cause for alarm.

If there is anything you think I might do about this matter, please let me know.

Yours sincerely,

/s/ GEORGE P. SMITH,

cc: Mr. W. Morrison, VP, Mia.

[fol. 3045]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 280

PERSONAL

September 13, 1949

Mr. George P. Smith
General Manager
Cia. de Aviacion Pan American Argentina
Av. Roque Saenz Peña 788
Buenos Aires, Argentina

Dear Mr. Smith:

Your trip to Europe at this time caused some comment by Panagra in the nature of a complaint to Mr. Dean that the matter had not been previously cleared with the Panagra management.

Up here we had been under the impression that the matter had been cleared on the Toomey-Kirkland-Walker level and no further attention was paid to the subject. However, Mr. Campbell insists that the New York office of Panagra, or he personally if he is here, be consulted in advance with regard to absences of the General Manager of CA-PAASA from Buenos Aires. He says that there are too many matters of basic importance to Panagra in the Argentine to permit any other procedure and he has asked that I bring to your attention clause 10 of the so-called three-cornered agreement. I am now afraid that you never received information regarding this agreement, which was

signed in July, 1948 and makes provision for services to be rendered to Panagra by the parent company and compensation therefore. Since these matters are of no particular interest to the officers in the field, no distribution of the contract has been made, but it happens that this contract does include a paragraph dealing with CAPAASA, which I now quote for your information:

> "10. Pan American will cause its subsidiary Compania Pan American Argentina, S.A. to continue to render sales and other services jointly to Panagra and Pan American in Argentina, and the same method for determining joint basis of reimbursement of Compania Pan American Argentina, S.A. as is now in effect will continue and will be applied in light of conditions existing from time to time. Pan American shall regularly consult with Panagra regarding the joint activities of Compania de Aviacion Pan American Argentina, S.A. and with particular reference to sales policies, personnel, the annual budget, advertising programs and expenditures, subject to joint reimbursement."

[fol. 3046] In the light of the above you will understand Mr. Campbell's concern at not having been consulted regarding your proposed absences. Such incidents can be avoided easily in the future through proper coordination between yourself and this office and I will see to it that Panagra is kept duly informed.

Sincerely yours,

Erwin Ballnder

bc: VP Morrison—MIA

[fol. 3047]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 281

[Stamp—Received Jun 1 1950 Pan American Airways, Inc.—Traffic Manager—Latin American Division]

(Letterhead of Compania de Aviacion Pan American Argentina, S. A., Buenos Aires, Argentina)

Buenos Aires, May 29th, 1950.

Mr. Porter Norris
Division Traffic Manager
Latin American Division
MIAMI.

Private & Confidential

Dear Porter:

Before going into the details of the counter-Braniff advertising campaign as discussed by Mr. Foss in his memorandum of May 24, 1950, I would like to refer to the second paragraph on the second page of his memorandum, particularly his statement "every verbal conversation and every written communication that we have had with members of the Argentine office for quite some time has reflected a lack of hard-hitting sales policy for Pan American World Airways and something must be done immediately to reverse this trend".

These are extremely hard words and we consider Mr. Foss' statement *unwarranted, unfair* and one which we feel is very *difficult to substantiate* for the following reasons:

1. Our statistics show that in the year 1949 CAPAASA sold 1,085 tickets from Buenos Aires to New York via Pan American and 1490 tickets to New York originating via Panagra. The fact that Pan American continues to obtain 45% of the traffic to New York has been a cause of much concern to Panagra and their various vice-presidents have had all of us "on the carpet" frequently for explanation as they feel that they should be getting at least 75% of the business to New York with their superior equipment, faster service, etc. Only last month Willis Lipscomb had Juan Homs in his office to explain what the CAPAASA Panagra-Pan American competitive sales

policy was as John Shannon had accused Hoins of being partial to Pan American in his administration of CAPAASA's sales activities.

2. We can't deny that the Panagra Pan American statistics relative to sales made by this office to the rest of the United States look unfavorable to Pan American at first glance. The chief reason for this is that almost all the other destinations in the U.S. are best reached by north and west-bound connections out of [fol. 3048] Miami and Pan American has found it very difficult to compete with Panagra for this traffic. Your office has been receiving each month a map summary of comparative Pan American and Panagra sales made from Argentina to the USA and we attach the figures for 1949 showing total sales by destinations. During 1949 a total of 3,615 tickets were sold from Buenos Aires to the USA. As noted in No. 1 above, 2,575 of these tickets were for travel to the New York area, leaving only 1,040 tickets sold from Buenos Aires to "other" U.S. destinations. Panagra's percentage of these 1,040 tickets amounted to 81% chiefly because their service to Miami and the north and west-bound connections available permitted passengers, in almost all cases to arrive at their destination *almost a full day or night faster* than by connecting with Pan American's flight to either Miami or New York. As you well know our sales policy here has forced us to quote both Panagra and Pan American's connections to these U.S. destinations and permit the passenger take his choice of the services available without selling one service "against" the other. If Panagra sold 223 tickets to Miami in 1949 against 29 for Pan American it is almost entirely due to the fact that Panagra's passengers were able to leave Buenos Aires from one to four hours later than Pan American's passengers on the same morning and be taking a shower in the Columbus Hotel the following morning while Pan American's passengers are just landing at Port of Spain. This disparity of service applies in equal or greater measure to destinations such as Los

Angeles, Chicago, Houston, Detroit, etc. Even if the Panagra and Pan American sales offices were separated here it is doubtful if we would get many of these passengers away from Panagra until Pan American's service to these destinations is improved. It is not a question of Guest Houses, sleeperette seats, low level flying or anything else except "how many hours will it take me". Our passengers down here are almost all experienced business travelers and Americans returning to the USA for vacation or reassignment. They are not flying to the States for the thrill of being in the air, they want to get from here to there in the shortest possible time. This is elementary — you know it, I know it and Mr. Foss should know it. We are not making excuses for anything because I am convinced that under the existing circumstances we are doing the best possible job in Argentina for Pan American Airways.

[fol. 3049] 3. Referring again to Mr. Foss' very severe statement, I would like to point out that there is no one from Mr. Foss' office, including himself, who really understands the true position of this Company insofar as the Panagra-Pan American competitive position is concerned. He shows this by his reference to "selling against Panagra". There is no one in CAPAASA, including myself, who can sell "against" Panagra. Our policy is to sell "with" Panagra and you yourself know that it has had to be this way. If you think this a stalemate position just remember that if Pan American has not been able to sell against Panagra neither has Panagra been able to sell against Pan American, which situation, in my opinion, has been all in Pan American's favor during the past several years.

4. Although Mr. Foss has not been able to visit us here in Argentina during the past several years we have had various members of his staff here, namely Mr. Stoddard, Mr. Merrill and Mr. Cooper. Also we have been visited by Mr. Morrison, Mr. Toomey and yourself. We do not recall receiving anything but favor-

able reports on our sales and traffic effort and activities from any of these gentlemen and if Mr. Foss' "every verbal conversation and every written communication . . . . . for quite some time" have been so unfavorable, even overlooking his lack of understanding of the Panagra Pan American situation in Argentina, we feel that he should have let us know about this earlier.

In regard to the "counter Braniff" advertising campaign mix up, we would like to make the following comments:

1. The entire idea of a "counter Braniff" advertising campaign originated in this office. Our first letter to Miami on this matter was sent on March 31st. On April 14 Mr. Silvetti sent Mr. Foss the layouts on this campaign which were the result of the coordinated thinking of everyone concerned with Pan American's sales and advertising activities in Buenos Aires. The first insertions of these ads were scheduled for May 25th and it was not until May 16th that we received any further instructions from Miami on this special advertising campaign. On this date we received some "layouts" from Miami for the counter Braniff campaign. Mr. Silvetti brought them to my office and we immediately called a meeting with Mr. Scaramuzza, Mr. Doubell, Mr. Silvetti, Mr. Heras and myself in attendance. I am quite sure you have never seen these lay- [fol 3050] outs and I attach them for your information. Frankly, all of us were astounded, even the agency directors, at the extremely poor quality of the layouts and the *serious* errors and omissions in the copy. To begin with we have told Mr. Foss several times that "PAA" does not mean anything to the Argentine Spanish speaking public. The expression which comes closest to competing with the easy-to-say "Panagra" is "Pan American" and to substitute this for "PAA" in the Miami layouts would, as you can see, necessitate some serious changes in the construction of the ads. It is quite obvious that the copy prepared by Miami was done hastily. No mention

whatsoever is made of the tourist service and the statement "only PAA offers one-carrier service to the U.S.A." is *seriously incorrect on three points*. First—FAMA has a weekly DC-6 service to New York; Second—Panagra flies seven DC-6 flights and two DC-4 flights weekly—to the USA"; (As you know, in the eyes of the Argentine Aeronautical authorities Panagra is considered as having its northern terminal in Miami and if we had permitted this ad to be run as forwarded from Miami we would have been in serious difficulties with the DAC) Third—how can we say "only PAA offers . . . . travel via the fascinating coastline route" as written by Grant in Miami and forwarded to us through Mr. Foss' office. If we are talking of coastlines in general I am certain Panagra covers more coastline than anybody and if we mean Atlantic coastline FAMA more or less duplicates our route.

2. Also on May 16th we received definite word from Miami about inauguration of "El Presidente" services an event which gladdened the hearts of all of us for a number of reasons.

3. In view of the situation in Nos. 1 and 2 above I asked Mr. Homs to call Miami and suggest, (1) that Pan American's counter-Braniff campaign be reduced to $4,000.00 to permit us to spend more money making a big splash with the "El Presidente" promotion and that (2) certain changes in layout and copy be made in our advertising to give us a really finished product.

4. Following the phone conversation between Mr. Homs and Mr. Foss it was agreed by all here that Pan American's interests would best be served by adapt- [fol. 3051] ing the layouts prepared by Grant's—Buenos Aires rather than starting all over with the layouts sent from Miami. The first insertions in the counter-Braniff campaign were scheduled for May 25th, Argentina's day of Proclamation of Independence and we felt that the flag motif preserved our selling ideas and at the same time was much more

appropriate and artistic than the map of the USA. I think you will agree that the phrase, "20 years of regular flights between Argentina and the USA" is much more significant and no less salesmanlike for counter Braniff purposes "than fly PAA to the USA". In addition, we have corrected the direct sales copy sent from Miami and added mention of the *very important* LAD tourist services and Pan American World Airways System's world-wide routes and connections. We attach a copy of the ad as it appeared in the English papers and we only ask that you compare it with the layouts sent from Miami.

5. The radiogram 23205 sent from Miami over your signature arrived on May 24th after the material for the attached ad was delivered to the newspapers for printing and it was my decision to let it run instead of cancelling it as I was certain it was in Pan American's interest to do so.

6. The above matters were discussed with Mr. Martinez and we are awaiting your answer to his cable of May 26th. We feel certain you will agree that the combined efforts of the Pan American and Grant personnel in Argentina will result in an advertising program well suited to conform with the peculiarities of the Argentine market and the Argentine press restrictions. I do not believe that the attached ad that was run in the Argentine press on May 25th can be classed as either "institutional tripe" nor as "straddle the fence" ad. I believe that it *sells* Pan American in the best possible way and presents those points which will best permit us to sell the pants off of Braniff or any other competitor.

7. As General Manager of Pan American Argentina I feel that it is both my duty and authority to make whatever changes are considered necessary in advertising layouts and copies sent us from Miami to adapt this material to the Argentine market, especially when the material is as poorly conceived and executed as [fol. 3052] the Miami counter-Braniff campaign which

is attached. If I do not have this authority I suggest that in the future all layouts and copy be sent directly to Grant-Buenos Aires for direct submission to the local newspapers.

As a matter of fact, Porter, we feel that the procedure to be followed in the future on this special advertising will be for your office to lay down the fundamental requirements of each program to be adapted and incorporated by Grant and ourselves here into layouts and copy for the full program subject to final approval from Miami. We believe that this System will result in the greatest benefit and least friction for all concerned. We feel that we are best qualified to prepare advertising material for special campaigns such as that for "El Presidente" and others in Argentina. We feel that when you have read this letter you will agree.

Sincerely,

/s/ G. P. Smith
G. P. Smith

encls.

EXHIBIT 281 (MAP)

Number on left dividing line indicates [illegible]
Number on right dividing line indicates [illegible]

[fol. 3054]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 282

August 21, 1950

Note to Mr. Toomey—

I realize an equitable solution to the Pan American-Panagra situation in Buenos Aires is a difficult one but it seems to me the results of the conference, as outlined in the attached, merely further increases the one-sidedness of the situation in favor of Panagra.

Under the arrangement outlined, Panagra will have access to all PAA passengers leaving Buenos Aires in advance including information covering those who have regularly travelled to the East Coast. Assuming that CAAPSA will continue its neutral policy of not favoring one line or the other, Panagra will have a distinct advantage under the arrangement proposed.

Possibly our inter-company relationship requires this substantial concession however I believe it should definitely be pointed out that the results of the deal will be entirely one-sided unless Mr. Smith has been instructed to sell Pan American to offset the sales effort which will now result from the Panagra action. In my opinion most of this arrangement merely formalizes a situation which already existed with the additional factor that there will be another sales representative in addition to the so-called "Advertising Staff" to solicit business for Panagra. In case the situation cannot be rectified, I would recommend that Pan American also put out on the street a salesman who will solicit business for Pan American only.

W. F. Reyes

Enc.

[fol. 3055]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 283

PAA (Emblem) MEMORANDUM

FOR USE BY ADDRESSEE

[Stamp—Received—Date Illegible—PAA—Sales Advertising, LAD, Miami]

SEND ORIGINAL BY COMAIL

TO	Division Sales Advt. Manager	FROM	Regional Traffic Manager
DEPT. OR DIV.	Latin American	DEPT. OR DIV.	Latin American
LOCATION	Miami	LOCATION	Rio de Janeiro

DATE June 11, 1950

SUBJECT: BUENOS AIRES ADVERTISING.

REFERENCE:

Dear Ernie:

Sorry that things are happening so fast around here that I haven't had times to write you and Porter concerning the subject squabble.

Referring particularly to your memo to me under date of June first which reached me yesterday, I must frankly say that the best means of *not* getting the hard-hitting support of the Buenos Aires Sales and Advertising representatives —and George Smith thrown in for good measure—is to continue expressing and implying that they are not pro-PAA or that they are pro-PANAGRA.

I say this after arriving in Buenos Aires a week ago and finding the sickest bunch of fellows you ever imagined after receiving Porter's radio 232025 to be followed by the knock-out punch contained in your memorandum of the 24th to Homs. By now you will have received the impact through

the letter that Smith was writing at the time I left. Therefore, I will omit reviewing it here.

From the sideline I view the jobs of everyone in Buenos Aires as perhaps the most thankless ones in the System for when they are not getting hell from us they are getting it from the other side of the family. Now that Texas Tom is in Argentina and that we will be operating EL PRESIDENTE services they will get a little rest from PAA but God help them at the hands of Panagra.

As explained in my cable of the 26th the master institutional ad had already been run so that for continuity the indication was to follow through with the shirt-tail series they had worked out. Otherwise, in view of the impending Boeing program, it might perhaps be better to discard the remainder of the program entirely AND START ALL OVER AGAIN. I do not know what you fellows decided on this.

[fol. 3056] The whole mess, in part, seems attributable to the time element as will be found if the matter were analysed in retrospect. That is why I urged that Buenos Aires be allowed to send in their ideas for your consideration and possible inclusion in the Boeing program. Frankly Ernie I feel that the boys down there, right on the spot, must know what their requirements are and therefore should have the opportunity of voicing their opinion and I sincerely hope that you will review the matter in this light.

/s/ MARIO J. MARTINEZ
Mario J. Martinez

MJM/nm

cc: Division Traffic Manager, LAD, Miami

[fol. 3057]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 284

Buenos Aires
August 19, 1953

[Stamp—Received—Aug 24 1953—Pan American Airways, Inc.—Vice President]

Mr. Douglas Campbell, Vice President
Pan American-Grace Airways, Inc.
NEW YORK

Dear Doug:

There seems to be a tendency among some of the Panagra people along the line and in New York to deal directly with the Panagra Sales Representative, Roger Rowe, when treating with routine traffic matters, completely by-passing CAPAASA and the dedicated individuals in CAPAASA. A case in point which we might cite concerns an enquiry made by our cargo department to Lima concerning the possibility of handling a considerable quantity of fresh meat from Buenos Aires to La Paz. A copy of the enquiry was sent to Mr. Mason in New York. The answer, in the form of a cable was directed to Rowe, who, it so happens, had no previous knowledge of the matter as it was merely a business possibility which had been unearthed by our cargo solicitors and was being developed by that department in a strictly routine manner. There was no question of keeping Roger out of the picture, but at the then stage of the game, there was, likewise, no particular reason to bring him in any more than he would be brought in on any odd bit of routine business which comes to light in the normal course of events. In like manner, I think you will agree that any reply to our enquiry should have been directed to CAPAASA. Copy Rowe, by all means, if desired or considered necessary, but please give us, your agents, a chance to develop your business in a normal, proper, and, we hope, an unfettered way.

Similarly, the cargo people along the line are addressing radios, and possibly correspondence, about the handling of cargo shipments to Adolfo Cosentino rather than to our cargo department. The chances are very great that the very information Cosentino is receiving is information the Cargo people urgently require in their dealings with the consignees. There is no point whatsoever in bringing in Cosentino or any of the others at the airport as they are not and will not be in touch with the clients and would only confuse matters if they got in touch with them. Besides, of course, delays in handling must invariably occur if important information is routed all around the mulberry bush before finally reaching the party who needs it.

[fol. 3058] I would highly appreciate your finding some means to remind your people to follow a routine course in dealing with the Argentine traffic matters which it is the responsibility of CAPAASA, and as far as I know, CAPAASA only, to manage.

Sincerely yours,

George P. Smith
General Manager

GPS a

cc: Mr. J. T. Scholtz, Reg. Mgr.; PAG, LIMA
Lima file, 1

BC: Mr. E. E. Balluder, VP, PAA, NY
Mr. W. L. Morrison, Exec. VP, PAA, LAD, MIA

[fol. 3059]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 25

Buenos Aires
September 21, 1953

Mr. James T. Scholtz, Regional Manager
Pan American-Grace Airways
LIMA

Dear Jim:

Mr. Campbell quoted to me your recent letter to him which came as a result of my complaining—not too bitterly, I hope—of several cases when Panagra people along the line had communicated directly with airport personnel, by-passing CAPAASA on matters which were really the concern of the agency. I quite appreciate that these instances come under the heading of errors, and the only reason for my letter was simply to try to put an end to them before some serious damage occurred.

In connection with direct communications with Mr. Cosentino on split shipments, it may be true that Mr. Cosentino was one of the people treating with the authorities on this and similar "Facilitation" problems. However, his activities in this respect are those pertaining to his position as representative of all of the IATA carriers here, not as a Panagra man. I went to the greatest lengths to have him appointed to this job by JURCA, which as you know is our local IATA panel as I definitely did not want the job turned over to some Aerolineas man who would, I was sure, do nothing. Quite a fight developed at the corresponding JURCA meeting, but we finally prevailed. It should be remembered that Cosentino in this work, is dealing with an entity known as the "Inter-ministerial Committee", which is composed of designated officials from all of the interested Ministries, such as Customs, Public Health, Immigration, Police, and so forth, not with the Jefe of Customs at the airport, although, of course, Cosentino knows him well. The point is that the Cargo Department of CAPAASA,

which is in touch with the committee—not Mr. Cosentino—must most definitely be let in. In fact, all communications of this nature should be sent to Cargo. Then if they need any special help from Mr. Cosentino, they can get in tough with him.

[fol. 3060] I repeat that Mr. Cosentino's special activities to which you refer are in representation of all IATA carriers on general problems and have nothing in particular to do with any individual shipment. I thought maybe you might like to know this. I gather from your letter to Mr. Campbell that you perhaps didn't have the whole story.

In any case, all we are after is that the work proceeds smoothly and that nobody who should be receiving routine information is left out of the picture.

Sincerely yours,

George P. Smith
General Manager

GPS/a

cc: Mr. Douglas Campbell, VP, PGR, NY
Lima File

[fol. 3061]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 286

Pan-Panagra Exh. [illegible]
CAB Docket No. 7423

PAA-PANAGRA AGREEMENT PROVISIONS

Panagra Passenger Traffic Per 1941 and Forecast
Basis of 1946 Operations To or Originating in the Continental United States

Type of Passenger	No. of U.S. and U.S.-Panagra Passengers for 1941	No. of U.S. and U.S.-Panagra Passengers for Forecast Year of 1946	U.S. and U.S.-Panagra Passengers for Forecast Year	% of Total Passengers	Estimated % of Total Passengers Standard Conversions
All Passengers domestic and foreign	[illegible]	[illegible]	[illegible]	100%	100%
Passengers between U.S. and points on Pan-Am-Panagra routes south of Balboa	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Between U.S. and [illegible] Ecuador and Peru	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Between U.S. and GUATEMALA, Salvador, Nicaragua, Costa Rica, Panama and Colombia	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Between U.S. and Mexico, Dominican Republic, Haiti, Puerto Rico, Virgin Islands, Santa Cruz, Trinidad, Barbados, St. Lucia, St. Vincent, Grenada, Curacao, Aruba, Bonaire, Puerto Cabello, Maracaibo, Coro, La Guaira, Caracas, Valencia, Barquisimeto, San Jose de Guanipa, Guiria, Carupano, Cumana and Barcelona	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Between U.S. and BRITISH Honduras and Cordoba	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Between U.S. and BRAZIL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Basis of Passenger Revenues Used in Estimating Panagra Revenues

Passengers on the U.S.-Panagra Routes	No. of Pax Miles
Balboa	[illegible]
Guayaquil	[illegible]
Lima	[illegible]
Santiago	[illegible]
Buenos Aires	[illegible]

* United States as used here refers only to passengers traveling to or from the United States. U.S. and points to or from PANAMA or Balboa include [illegible] Panagra at Balboa, New Orleans and Brownsville, [illegible]

[fol. 3062]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 287

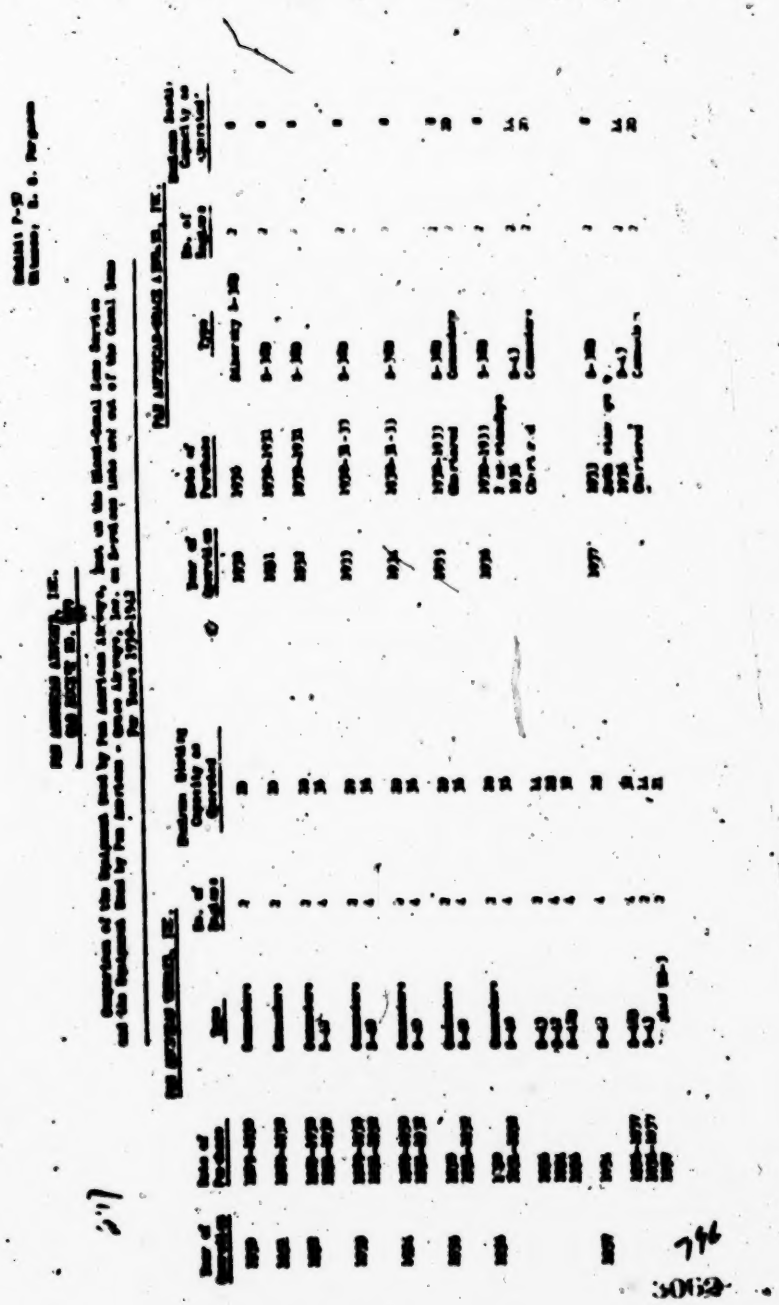


Exhibit P-30
Page 1

PAN AMERICAN AIRWAYS, INC.
CAB DOCKET NO. 779

Comparison of the Equipment Used by Pan American Airways, Inc. on the Miami-Canal Zone Service and the Equipment Used by Pan American - Grace Airways, Inc. on Services into and out of the Canal Zone For Years 1935-1943

PAN AMERICAN AIRWAYS, INC.					PAN AMERICAN-GRACE AIRWAYS, INC.				
Year of Operation	Date of Purchase	Type	No. of Engines	Maximum Seating Capacity as Operated	Year of Operation	Date of Purchase	Type	No. of Engines	Maximum Seating Capacity as Operated
1938	1934	S-42	4	28	1938	1933			
						Standing	S-38B	2	8
	1935-1937-1938	S-42B	4	28		1936	S-43	2	14
	1937	DC-3	2	21		Chartered	Columbia	2	14
						1937	Douglas DC-3	2	21
1939	1934	S-42	4	28	1939	1937-1939	DC-3	2	21
	1935-1937-1938	S-42B	4	28					
	1937	DC-3	2	21					
1940	1934	S-42	4	28	1940	1937-1939	DC-3	2	21
	1935-1937-1938	S-42B	4	28		1940	DC-3A	2	21
	1940	DC-3A	2	21					
	1940	Re leg S-307	4	33					
1943	1940	S-307	4	33	1943	1940-1943			
						3 Chartered	DC-3A	2	21
1943	1940	S-307	4	33	1943	1940-1941	DC-3A	2	21
						1937	DC-3A	2	14

Used for Air Express and Cargo - Balboa/Lima

Exhibit No. P-6 and 7
Witness: R. C. Ferguson

THE AMERICAN AIRWAYS, INC.
[illegible]

Public Counsel's Request Appendix 1, Tables 12 and 13 as per Prehearing Conference
Modified Docket Order #3, April Testimony - Carried from Docket Sheet to points
Calendar Year - 1941

DISTRIBUTED FROM TO ORIGIN & DEST.	TOTAL	MIAMI	HAVANA	KINGSTON	PORT-AU-PRINCE	CRISTOBAL	PANAMA	SAN SALVADOR	SAN JOSE	BALBOA	MANTA	MEXICO CITY	GUAYAQUIL
[illegible]	[illegible]	[illegible]	2										
[illegible]	[illegible]	[illegible]											
[illegible]	[illegible]	[illegible]											
[illegible]	[illegible]	[illegible]											
[illegible]	[illegible]	[illegible]											
[illegible]	[illegible]	[illegible]	14	1			13			1	2	28	
[illegible]	[illegible]	[illegible]	-	1	4		5	1	1	15	6	18	25
Totals	1457	1384	16	2	4	13	5	1	1	16	8	28	25
DISTRIBUTED FROM ORIGIN & DEST. TO													
[illegible]	[illegible]	[illegible]											
[illegible]	[illegible]	[illegible]											
[illegible]	[illegible]	[illegible]											
[illegible]	[illegible]	[illegible]											
[illegible]	[illegible]	[illegible]											
[illegible]	[illegible]	[illegible]	12				5				10	11	
[illegible]	[illegible]	[illegible]	8					1		9	4	9	7
Totals	1879	1779	20				5	1		9	14	20	12

Note: Statistics for years prior to 1939 are available since operations through Brazil conducted by Panair do Brazil. Prior to July 1, 1941 (except for two months 1940) passenger traffic statistics reflected in this exhibit were compiled on the basis of flight coupons used to stop-over points or division junctions. Since July 1, 1941, passenger traffic statistics reflected in this exhibit have been compiled to show origin and destination on Pan American Airways, Inc. regardless of stop-overs.

[fol. 3065]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 289

Exhibit No. P-37

EXECUTIVE COMMITTEE

December 19, 1939.

"The meeting thereupon considered the question of whether a general reserve for contingencies should be set up. The officers were requested to discuss this question with the Company's counsel and accountants and with officers of Pan American-Grace Airways, Inc. and to report back to the Executive Committee at its next meeting."

EXECUTIVE COMMITTEE

February 6, 1940.

"The meeting, after consideration, adopted a recommendation to the Board of Directors that a year-end bonus of not in excess of $50,000 be distributed among employees selected by the management, excluding the President, participants under the Management Stock Purchase Plan, and employees of China National Aviation Corporation, SCADTA and Pan American-Grace Airways, Inc."

EXECUTIVE COMMITTEE

December 30, 1940.

"Mr. C. V. Whitney referred to a proposal which had been offered by Mr. Harold J. Roig, of W. R. Grace & Co., relating to the filing of an application for a certificate of convenience and necessity betw a New Orleans and the Canal Zone. Upon the invitation of the Committee, Mr. Roig entered the meeting, and outlined a proposal that this Company acquiesce in the filing by Pan American-Grace Airways with the Civil Aeronautics Board of an application for a certificate of convenience and necessity on the aforementioned route, or the filing of such an application by a new company to be organized, two-thirds of the capital stock of which would be owned by Pan American-Grace

Airways, Inc. and one-third by Eastern Airlines, Inc. Mr. Roig was informed that his proposal would be given consideration, and that he would be advised of the Company's action with respect thereto at a later date. Thereupon, Mr. Roig withdrew from the meeting."

EXECUTIVE COMMITTEE

January 6, 1941.

"A discussion thereupon ensued regarding the proposal made by Mr. Harold J. Roig, of W. R. Grace & Co., relating to the filing by Pan American-Grace Airways, Inc. of an application to the Civil Aeronautics Board for a certificate [fol. 3066] of convenience and necessity between New Orleans and the Canal Zone, or possibly the filing of such an application by a new company to be organized which would be jointly owned, one-third by Eastern Airlines and two-thirds by Pan American-Grace Airways, Inc. The Committee was of the opinion that this Corporation should not approve the organization of such new company, and that in no event should the pending application of Pan American Airways, Inc. for a certificate of convenience and necessity on this route be withdrawn. No final action was taken on the question of whether this Corporation should acquiesce in the filing of such an application by Pan American-Grace Airways, Inc., inasmuch as the Committee desired to consult counsel for the Company and to give the matter further consideration."

BOARD OF DIRECTORS

January 7, 1941.

"A discussion thereupon ensued regarding a proposal to have Pan American-Grace Airways, Inc., or another company in which it would be interested, apply for authority to operate between New Orleans and the Canal Zone. It was the sense of the meeting that such proposed action should be opposed."

EXECUTIVE COMMITTEE

January 14, 1941.

"The meeting proceeded to consideration of a proposal made by Mr. Harold J. Roig, of W. R. Grace & Company, that the Corporation should acquiesce in the filing by Pan American-Grace Airways, Inc. of an application for a certificate of convenience and necessity between the Canal Zone and New Orleans, Louisiana, and of a notice of a meeting of the Board of Directors of Pan American-Grace Airways, Inc. which had been called for the afternoon of January 14, 1941, to consider the same matter. Mr. Henry J. Friendly, of Root, Clark, Buckner & Ballantine, counsel for the Corporation, was invited to enter the meeting at this point. Mr. Friendly presented a legal opinion rendered by his firm and participated in the discussion. After full consideration, it was, upon motion duly made and seconded, unanimously

> RESOLVED, that the Corporation, as owner of half of the stock of Pan American-Grace Airways, Inc., should decline to acquiesce in the filing by Pan American-Grace Airways, Inc. of an application for a certificate of convenience and necessity between the Canal Zone and New Orleans, Louisiana, and that the representatives of the Corporation upon the Board of Directors of Pan American-Grace Airways, Inc. should [fol. 3067] not attend the meeting of such Board of Directors called for the afternoon of January 14, 1941, to act upon such proposal, or any adjournment thereof, and, except upon further instructions from the Executive Committee or the Board of Directors, should not attend any other meeting of the Board of Directors of Pan American-Grace Airways, Inc. at which action is to be taken upon the subject matter above described.

It was further determined that the proper officers of the Corporation should promptly communicate with Mr. Roig, and discuss the matter with him so that the position of the Corporation might be fully understood. A form of letter to be addressed to Mr. Roig, in the event that, after

such conversations, he was neverthless determined to proceed with the meeting of the Board of Directors of Pan American-Grace Airways, Inc., was approved."

EXECUTIVE COMMITTEE

January 28, 1941.

"Mr. Trippe reported to the meeting on a conference which had been held with Messrs. Garni and Roig relative to the filing of an application by Pan American-Grace Airways, Inc. for a certificate of convenience and necessity on a route between the Canal Zone and New Orleans, via Guatemala."

EXECUTIVE COMMITTEE

June 24, 1941.

"Mr. Trippe read to the meeting a copy of a letter dated June 19, 1941 written by Mr. Geo. L. Rihl, a Vice-President of the Corporation, to Mr. Harold J. Roig, relating to a special meeting of the Board of Directors of Pan American-Grace Airways, Inc. which had been called for June 18, 1941, and which had been adjourned to June 20, 1941, for the purpose of considering a proposal that Pan American-Grace Airways, Inc. extend its route from Cristobal and/or Balboa to New Orleans and an application to the Civil Aeronautics Board for the necessary certificate of convenience and necessity. Such letter was approved, as being in line with the previous position of the Company, and ordered filed with the Secretary's records."

BOARD OF DIRECTORS

July 1, 1941.

"Mr. Trippe reported to the meeting on developments to date in connection with a proposal submitted by W. R. Grace & Co. relating to an extension of the operations of Pan American-Grace Airways, Inc. from the Canal Zone [fol. 3068] to New Orleans, and the filing of an application with the Civil Aeronautics Board for a certificate of convenience and necessity on such route. He referred to the

special meeting of the Board of Directors of Pan American-Grace Airways, Inc. which had been called for June 18, 1941 to act upon such proposal, and the subsequent adjournments of such meeting. Mr. Trippe pointed out that in January, 1941 a meeting of the Board of Directors of Pan American-Grace Airways, Inc. had been called to act upon the same proposal, and recalled that the Board of Directors of Pan American Airways Corporation, as also its Executive Committee, had determined that the Company should decline to acquiesce in such proposal, and that the Executive Committee had issued instructions to the representatives of Pan American Airways Corporation on the Board of Directors of Pan American-Grace Airways, Inc. not to attend any meetings of the Board of Directors of Pan American-Grace Airways, Inc. at which such proposal was to be acted upon. He also stated that, at the request of Pan American Airways Corporation, a special meeting of the stockholders of Pan American-Grace Airways, Inc. had been called to be held on July 2, 1941, at which it was intended that a statement would be submitted on behalf of Pan American Airways Corporation setting forth its position with respect to such proposal, and that it was expected that the representatives of W. R. Grace & Co. at such stockholders' meeting would submit a statement on behalf of that Company respecting such proposal.

At the conclusion of the discussion which ensued, the Board reaffirmed the position which had been previously taken by the Board and the Executive Committee that it would not be in the interest of Pan American Airways Corporation or of Pan American-Grace Airways, Inc., or in the public interest for Pan American Airways Corporation to acquiesce in the proposal.

Upon motion, duly made and seconded, the following resolution was adopted:

> RESOLVED, that the President, or any Vice-President, of this Corporation be, and each of them hereby is, authorized and empowered, in the name and on behalf of this Corporation and under its corporate seal or otherwise, to execute and deliver a proxy in

favor of Geo. L. Rihl, John C. Cooper or J. Clawson Roop, Vice-Presidents of this Corporation, whereby the said Geo. L. Rihl, John C. Cooper or J. Clawson Roop will be authorized to attend a special meeting of the stockholders of Pan American-Grace Airways, Inc. to be held on July 2, 1941, or at any meeting of such stockholders adjourned therefrom, and to vote the shares of stock held by this Corporation in said Pan American-Grace Airways, Inc. at such special meeting to be held on July 2, 1941, and at any meeting adjourned therefrom, and that the Secretary, or any Assistant Secretary, of this Corporation be and each of them hereby is authorized and empowered to affix the seal of this Corporation to such proxy so executed and to attest such seal so affixed."

[fol. 3069]

EXECUTIVE COMMITTEE

July 21, 1941.

"Mr. Trippe submitted to the meeting a copy of a letter dated July 18, 1941 to Mr. C. V. Whitney, from Mr. D. Stewart Iglehart, of W. R. Grace & Co., together with the copy of a proposed letter from W. R. Grace & Co. to the Civil Aeronautics Board, enclosed with the above-mentioned letter from Mr. Iglehart, relating to the proposed filing with the Civil Aeronautics Board of an application by Gulf & Caribbean Airways, Inc., a wholly owned subsidiary of W. R. Grace & Co., for a certificate of convenience and necessity on a route between New Orleans and the Canal Zone. Also attached to the letter from Mr. Iglehart of July 18, 1941 was a copy of certain minutes of the Board of Directors and stockholders of Pan American Grace Airways, Inc. At the conclusion of the discussion which ensued, Mr. Whitney was requested to telephone Mr. Iglehart and propose that before the above-mentioned letter is filed with the Civil Aeronautics Board, Mr. Iglehart, or he and his partners and associates, meet with the Executive Committee for the purpose of discussing the matter, or in the event Mr. Iglehart were not agreeable to such proposal, for Mr. Iglehart to meet with Mr. Whitney as provided in paragraph 4 of the letter agreement of February 14, 1939

between W. R. Grace & Co. and Pan American Airways Corporation relating to arbitration under such agreement. Mr. Whitney telephoned Mr. Iglehart while the meeting was in session, and submitted the above-mentioned two proposals to him. He reported back to the meeting that Mr. Iglehart had stated that he did not wish personally to attend a meeting of the Executive Committee, and suggested that Mr. Roig and Mr. Garni come up and meet with the Executive Committee, should they agree to do so after discussing the matter with Mr. Iglehart. The Committee did not feel that anything would be accomplished by a meeting with Messrs. Roig and Garni, and that under paragraph 4 of the above-mentioned agreement it was necessary that Mr. Iglehart be present. Mr. Whitney thereupon telephoned Mr. Iglehart again informing him of the decision of the Committee, and at the conclusion of the conversation stated to the Committee that Mr. Iglehart repeated that he could not personally attend any such meeting. During the last telephone conversation Mr. Whitney reiterated that Mr. Iglehart and anyone else he selected meet with us, and offered to meet with Mr. Iglehart in connection with arbitration as provided for in paragraph 4 of the above-mentioned letter agreement of February 14, 1939. At the conclusion of the telephone conversation, Mr. Whitney [fol. 3070] stated that Mr. Iglehart had promised to call him back during the day with respect to such meeting."

EXECUTIVE COMMITTEE

July 22, 1941.

"Mr. Trippe reported to the meeting on the conference which had been held today between Messrs. Roig and Garni; representing W. R. Grace & Co., and Mr. Evan E. Young and himself, relating to the proposal that Pan American Grace Airways, Inc. apply to the Civil Aeronautics Board for a certificate on a route between New Orleans and the Canal Zone, or that, in the alternative, an application be filed with the Board by W. R. Grace & Co., through Gulf & Caribbean Airways, Inc., a wholly owned subsidiary of W. R. Grace & Co., for such certificate. At the conclusion of the discussion which ensued, the officers

were authorized to forward to W. R. Grace & Co. immediately a written communication confirming the telephone request which Mr. Whitney made to Mr. Iglehart yesterday that an arbitration be held under the conditions of paragraph 4 of the letter agreement of February 14, 1939 between W. R. Grace & Co. and the Corporation with respect to the matters involved under such agreement."

EXECUTIVE COMMITTEE

July 29, 1941.

"Mr. Trippe submitted to the meeting a copy of a letter which had been written under date of July 22, 1941 by the Company, signed by its Secretary, addressed to W. R. Grace & Company, referring to the proposal of the latter Company to extend operations to the Canal Zone, and confirming the request which Mr. C. V. Whitney had made on July 21, 1941 to Mr. Iglehart that, in line with the agreement of February 14, 1939, between W. R. Grace & Company and this Corporation, arbitration be held at once with respect to the matters involved. Upon motion, duly made, seconded and carried, such letter was ratified.

Mr. Trippe reported to the meeting that on July 24, 1941 Mr. Iglehart had met with Mr. C. V. Whitney at 230 Park Avenue, New York City, and that it had been decided to defer the filing with the Civil Aeronautics Board of the application of Gulf & Caribbean Airways, Inc. for a certificate of convenience and necessity on the proposed route between New Orleans and the Canal Zone, and the proposed letter to the Board from W. R. Grace & Company accompanying such application. Mr. Trippe also stated that a meeting had been held later between Mr. Roig and Mr. Whitney at 230 Park Avenue, New York City.

[fol. 3071] Mr. Trippe read to the meeting a memorandum addressed to him by Mr. Whitney, dated July 25th, setting forth a further proposal on the part of W. R. Grace & Company relating to operations on this route, and reported upon the conference which he had had with Mr.

Roig on July 28, 1941 regarding such proposal. A lengthy discussion thereupon ensued, at the conclusion of which the meeting expressed the opinion that such proposal should not be accepted.

"Mr. Trippe then outlined to the meeting a proposed arrangement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. suggested by representatives of W. R. Grace & Co. relating to the interchange of equipment. After consideration, the officers were authorized to discuss the arrangement further with such representatives."

EXECUTIVE COMMITTEE

October 14, 1941.

"Mr. Trippe reported upon a suggestion made by the management of Pan American-Grace Airways, Inc. that the capital of that Corporation be increased by a transfer thereto of a portion of its earned surplus. The meeting requested that a detailed proposal be submitted to the Executive Committee at a latter meeting."

EXECUTIVE COMMITTEE

October 28, 1941.

"The meeting considered, and discussed, a recent exchange of correspondence with W. R. Grace & Co."

BOARD OF DIRECTORS

April 28, 1942.

"The meeting took under consideration, and discussed, the proposed filing by W. R. Grace & Co. of a petition with the Civil Aeronautics Board requesting that Pan American Airways Corporation be required to divest itself of the ownership of certain shares of the capital stock of Pan American-Grace Airways, Inc. Mr. S. Sloan Colt reported to the meeting on a telephone conversation which he had had with Mr. Harold J. Roig, of W. R. Grace & Co., in connection with this matter."

[fol. 3072] BOARD OF DIRECTORS

May 5, 1942.

"The Chairman reported to the meeting on the status of the petition which had been filed by W. R. Grace & Co. with the Civil Aeronautics Board requesting that Pan American Airways Corporation be required to divest itself of its ownership of certain shares of the capital stock of Pan American-Grace Airways, Inc."

EXECUTIVE COMMITTEE

May 14, 1942.

"The meeting took under consideration the petition which had been filed by W. R. Grace & Co. with the Civil Aeronautics Board requesting that this Corporation be required to divest itself of ownership of certain shares of stock of Pan American-Grace Airways, Inc. The representatives of this Corporation on the Board of Directors of Pan American-Grace Airways, Inc. were authorized to approve the full co-operation by that Company, in carrying out such undertakings in furtherance of the war effort as may be requested by the War Department."

EXECUTIVE COMMITTEE

May 26, 1942.

"The meeting took under consideration a revised draft (draft of May 25, 1942) of a proposed reply, to be filed with the Civil Aeronautics Board, to the petition heretofore filed with the Board by W. R. Grace & Co. requesting that Pan American Airways Corporation be required to divest itself of the ownership of certain shares of capital stock of Pan American-Grace Airways, Inc. The meeting approved such proposed reply with certain suggested changes, and authorized the officers to discuss with Government officials concerned the question whether the reply should be filed, the officer to abide by the decision of such officials."

EXECUTIVE COMMITTEE

June 2, 1942.

"The meeting discussed the desirability of submitting to the Civil Aeronautics Board the Corporation's reply to the petition filed with the Board by W. R. Grace & Co. requesting that the Corporation be required to divest itself of the ownership of certain shares of the capital stock of Pan American-Grace Airways, Inc.

[fol. 3073] The meeting considered a letter from Mr. Ingleheart of W. R. Grace & Co. referring to the annual report of the Corporation and its subsidiaries for the year 1941."

BOARD OF DIRECTORS

June 2, 1942.

"The meeting discussed the desirability of submitting to the Civil Aeronautics Board a reply by the Corporation to the petition heretofore filed with the Board by W. R. Grace & Company."

EXECUTIVE COMMITTEE

June 16, 1942.

"Mr. Trippe reported to the meeting on the status of the petition filed by W. R. Grace & Co. with the Civil Aeronautics Board that the Company be required to divest itself of the ownership of certain shares of stock of Pan American-Grace Airways, Inc. The meeting further discussed a form of reply to such petition."

EXECUTIVE COMMITTEE

June 29, 1942.

"The meeting took under consideration a communication from the Civil Aeronautics Board relating to the petition filed by W. R. Grace & Co. with the Civil Aeronautics Board that this Corporation be required to divest itself of the ownership of certain shares of the capital stock of Pan

American-Grace Airways, Inc. Action with respect to such communication was deferred."

EXECUTIVE COMMITTEE

July 7, 1942.

"Mr. Trippe reported to the meeting on the status of the petition filed by W. R. Grace & Co. with the Civil Aeronautics Board requesting that the Corporation be required to divest itself of ownership of shares of stock of Pan American-Grace Airways, Inc."

[fol. 3074] EXECUTIVE COMMITTEE

July 15, 1942.

"The meeting considered the show cause order issued by the Civil Aeronautics Board to Pan American-Grace Airways, Inc. in connection with proceeding for the fixing of rates for the transportation of mail by that Company."

EXECUTIVE COMMITTEE

August 11, 1942.

"Mr. Trippe reported to the meeting on the decision of the Civil Aeronautics Board relating to the Pan American-Grace Airways, Inc. rate case."

EXECUTIVE COMMITTEE

September 22, 1942.

"Mr. Trippe reported on meetings held on August 25, 1942 and September 21, 1942 of the Board of Directors of Pan American-Grace Airways, Inc. He stated that at the latter mentioned meeting the question had come up relating to the designation of counsel to represent Pan American-Grace Airways, Inc., which had been made a party in proceedings before the Civil Aeronautics Board under Docket No. 779, and also the question of the filing of an application by Pan American-Grace Airways, Inc. in proceedings before the Civil Aeronautics Board under Docket No. 778 relating to temporary Caribbean service. It was

the sense of the meeting that with respect to the proceedings under Docket No. 779 there was no reason for Pan American Airways Corporation to vary from the position previously taken, and as to the proceedings under Docket No. 778 Pan American-Grace Airways, Inc. was in no position to undertake temporary service by reason of the necessity for preparing to meet its commitments under the arrangement with the Air Transport Command of the Army Air Forces covered by exchange of letters between that Company and the Air Transport Command dated July 21, 1942 and July 22, 1942, and by reason of necessity for increasing service on Panagrace's own route."

[fol. 3075]. EXECUTIVE COMMITTEE

September 29, 1942.

"Mr. Trippe reported to the meeting on the action taken at recent meetings of the Board of Directors of Pan American-Grace Airways, Inc. in connection with proceedings before the Civil Aeronautics Board under Docket Nos. 778 and 779."

EXECUTIVE COMMITTEE

October 13, 1942.

"The meeting took under consideration the position to be taken by the Company in connection with the petition filed by W. R. Grace & Co. with the Civil Aeronautics Board requesting that the Company be required to divest itself of the ownership of certain shares of stock of Pan American-Grace Airways, Inc. At the conclusion of the discussion which ensued, the Committee expressed the opinion that Pan American Airways Corporation should take the initiative in these proceedings and file a petition with the Civil Aeronautics Board requesting that W. R. Grace & Co. be required to divest itself of the ownership of stock of Pan American-Grace Airways, Inc., rather than limit the Company's action to the filing of a reply to the petition of W. R. Grace & Co."

BOARD OF DIRECTORS

December 1, 1942.

"Mr. Trippe reported to the meeting on the letter written under date of November 11, 1942 to the representatives of W. R. Grace & Co. on the Board of Directors of Pan American-Grace Airways, Inc."

EXECUTIVE COMMITTEE

December 8, 1942.

"The meeting discussed the financial position of Pan American-Grace Airways, Inc., including the declaration of a dividend by that Corporation which was to be considered by its Board of Directors."

[fol. 3076]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 290

Exhibit No. P-37

EXECUTIVE COMMITTEE

April 21, 1937.

"The meeting ratified an agreement between W. R. Grace & Co., Pan American-Grace Airways, Inc. and this Corporation relating to intercompany transfer of position on Buenos Aires-Salta route."

EXECUTIVE COMMITTEE

November 16, 1937.

"The meeting thereupon considered and authorized, new operating schedules of the Eastern and Western Divisions of this Corporation and of Pan American-Grace Airways, Inc. to become effective December 1, 1937."

BOARD OF DIRECTORS

June 28, 1938.

"Mr. Trippe reported to the meeting on the following:

. . . . . .

(c) Loss of Douglas transport by Pan American-Grace Airways, June 20, 1938."

EXECUTIVE COMMITTEE

July 7, 1938.

"Mr. Trippe reported to the meeting on the following:

* * * * * * * *

(b) Negotiations with United States Post Office Department relating to authorization of second weekly direct service between Miami and Cristobal to further improve connecting service between the United States and Cristobal destined to points served by Pan American-Grace Airways, Inc."

EXECUTIVE COMMITTEE

August 23, 1938.

"The meeting thereupon considered a proposal submitted by the President of W. R. Grace & Company."

[fol. 3077] EXECUTIVE COMMITTEE

September 8, 1938.

"The meeting thereupon considered a conference which had been held with officials of W. R. Grace & Co."

EXECUTIVE COMMITTEE

September 20, 1938.

"The meeting considered the following:

* * * * * * * *

(c) Series of conferences with W. R. Grace & Co., including their proposal relating to extension of Pan American-Grace Airways, Inc. beyond its territory to New Orleans, the request that the management of Pan American-Grace Airways, Inc. be transferred to W. R. Grace & Co. and the offer of that Company to supply additional capital for the suggested extension thereby assuming voting control of the Company."

EXECUTIVE COMMITTEE

October 4, 1938.

"Mr. Trippe reported to the meeting on the following:

* * * * * * * * *

(e) Further conferences with officials of W. R. Grace & Co."

BOARD OF DIRECTORS

December 28, 1938.

"Mr. Trippe reported to the meeting on the status of negotiations with W. R. Grace & Co. It was the sense of the meeting that it would not be in the interest of our stockholders for our directors to authorize an application by Pan American-Grace Airways, Inc. to extend north of Cristobal in competition with Pan American Airways, Inc."

EXECUTIVE COMMITTEE

January 17, 1939.

"The meeting thereupon considered a memorandum prepared by Messrs. Iglehart and Whitney. A discussion [fol. 3078] ensued of the differences of opinion between the parties as to whether the proposed arbitration clause covers paragraph II. The meeting disapproved the proposed arrangement and granted authority to negotiate a standard of connecting service required of this Company under paragraph II., with definite provisions for arbitration."

EXECUTIVE COMMITTEE

January 23, 1939.

"The meeting considered a supplemental memorandum drawn by Messrs. Iglehart and Whitney. No action was taken thereon, and the matter was referred by the meeting to the Board of Directors for consideration."

EXECUTIVE COMMITTEE

February 7, 1939.

"The meeting authorized the President to execute a proposed arrangement with W. R. Grace & Co. in the form submitted to the meeting."

EXECUTIVE COMMITTEE

September 12, 1939.

"Mr. Trippe stated that two DC-3 airplanes had been ordered for Pan American-Grace Airways, Inc."

EXECUTIVE COMMITTEE

October 31, 1939.

"Mr. Trippe thereupon outlined to the meeting the terms of the Company's option from Pan American-Grace Airways, Inc. to purchase an S-43 airplane. After consideration thereof, authority was granted to the officers to exercise such option upon receipt from Pan American-Grace Airways, Inc. of the notice required under the provisions of such option to be given to Pan American Airways, Inc., at the then option price."

[fol. 3079]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 291

Exhibit No. Con. 19
CAB Docket No. 3500

STATEMENT LISTING DATES AND SUBJECT MATTER OF NEGOTIATIONS PERTAINING TO THE AGREEMENTS BETWEEN NATIONAL, PAN AMERICAN, PANAGRA, AND GRACE

(The following is based on the best recollection of the parties concerned and upon such records as are available).

In the summer of 1948 the purchase by Pan American of a substantial amount of National's stock and a possible interchange between National and Pan American were dis-

cussed briefly by Mr. Baker and Mr. Trippe in New York. There were no further meetings resulting directly from this conversation.

December 15, 1948	Letter from Baker to Roig proposing interchange. Similar letter sent to all carriers with which National connects.
January 6, 1949	Letter from Roig to Baker indicating willingness to discuss matter, without prejudice. Letter presented to meeting of Panagra Board of Directors.
January 14, 1949	Letter from Baker to Roig suggesting further discussions.
January 17, 18, 1949	Baker and Scott met in New York with Trippe, Dean and Friendly to discuss prospect of Pan American interchange. Mr. Thomas (NAL director) and Mr. Fell of Lehman Brothers were also present.
January 21, 1949	Luncheon of Roig and Baker in Washington, at which Baker advised he had been talking with Trippe concerning interchange and sale of National stock.
January 21, 1949	Luncheon of Trippe and J. P. Grace, Jr. in New York, at which Trippe advised he had been discussing with National the acquisition of a stock interest in National and interchange.
January 24, 1949	Letter from Scott to Trippe enclosing memorandum outlining proposed arrangement for sale of stock, interchange, etc.

January 26, 1949	Meeting of Dean, Friendly, Roig and Shea, at which Dean said Panagra's interests in connection with the operation of a through service would be protected in any arrangement made by Pan American with National.
January 27, 1949	Meeting of Baker, Scott, Roig, Grace and Shea at which Baker indicated he felt Panagra should have some stock interest in National.
January 27, 1949	Meeting of Baker, Scott, Trippe, Dean and Friendly at which division between Pan American and Panagra of stock interest in National was discussed.

[fol. 3080]

January 27, 1949	Meeting of Trippe, Dean, Friendly, Grace and Roig. Pan American took position that Panagra stock interest in National should be over and above that which had been offered by National to Pan American.
January 27, 1949	Further short meeting between Trippe, Dean, Scott and Baker at Baker's hotel.
January 28, 1949	Meeting of Trippe, Dean, Friendly, Baker and Scott—breakoff of negotiations.
January 28, 1949	Meeting of Grace, Shea, Baker and Scott.
Week of February 14	Several meetings of Baker, Scott, Roig, Grace, and Shea in New York—Discussion of matters, leading up to letter of February 28.

February 26, 27, and 28	Meeting in Miami of Baker, Scott, Roig, Grace and Shea—Negotiations culminating in offer of February 28.
March 2	Meeting of Grace and Trippe, advising him of purchase of National stock by Grace.
Week of March 21	Meeting of Dean, Friendly, Roig and Shea—Discussion of February 28 proposal, Dean indicating Pan American's interest in securing additional stock interest.
Week of March 21	Telephone conversation Grace and Baker, passing on information re talk with Pan American.
March 25	Meetings of Grace, Shea, Baker and Scott in Miami to discuss three-party agreement. Telephone conversations Roig and Dean and Friendly concerning Miami discussions.
March 29	Meeting of Grace and Trippe prior to scheduled meeting of Directors of Panagra in New York. Decision not to hold Directors' meeting and to carry on negotiations in Washington with National.
March 29, 30, 1949	Negotiations in Washington culminating in March 30th Memorandum of Understanding—Attended by: Trippe, Friendly, Dean, Grace, Shea, Roig, Gesell, Baker, and Cross.

Throughout April and up through May 11, 1949, there were frequent meetings between various representatives of Na-

tional, Pan American, Panagra, and Grace, for the purpose of working out details of the various agreements which culminated in the signing of the formal agreements on May 11, 1949.

[fol. 5081]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 292

Exhibit No. *P-21*
Witness: R. G. Ferguson

PAN AMERICAN AIRWAYS, INC.

CAB DOCKET #779

Pan American Exhibit as per Appendix 3, Item 3 of Prehearing Conference Report Served December 31, 1942

Route Miles
Latin American Operations

December 31, 1928

Routes	*Route Miles*
Miami-Havana	251

December 31, 1930

Miami-Havana	251.0
Miami-Nassau	193.5
Miami-San Juan	1,253.0
San Juan-Paramaribo	1,378.0
Paramaribo-Santos	3,619.5
Miami-Cristobal (direct via Cienfuegos)	1,385.0
Miami-Cristobal (via Central America)	1,890.5
Cristobal-La Guaira	1,100.0
Brownsville-Mexico	501.0
Tampico-Guatemala	858.0
Guatemala-San Lorenzo	147.0
Havana-Camaguey	320.0
Total Route Miles	12,896.5

Revised 5/27/43

December 31, 1932

Routes	*Route Miles*
Miami-Havana	229.0
Miami-Nassau	188.0
Miami-San Juan	1,180.5
San Juan-Port of Spain	752.0
Port of Spain-Paramaribo	626.0
Paramaribo-Para	820.5
Para-Santos	2,799.0
Santos-Montevideo	1,089.0
Havana-Cristobal (via Central America)	1,788.0
Miami-Cristobal (via Barranquilla)	1,667.5
Kingston-Port au Prince	455.0
Barranquilla-Port of Spain	1,021.0
Brownsville-Mexico	472.0
Mexico-Salvador	951.0
Total Route Miles	14,038.5

December 31, 1935

Miami-Havana	229.0
Miami-Nassau	188.0
Miami-San Juan	1,121.5
San Juan-Para	2,109.5
Para-Buenos Aires	3,881.3
Miami-Barranquilla-Cristobal	1,640.2
Havana-Merida-Belize	772.5
Kingston-San Pedro de Macoris	659.0
Barranquilla-Port of Spain	987.4
Brownsville-Salvador	1,277.5
Salvador-Cristobal	918.5
Total Route Miles	13,784.4

[fol. 30821]

December 31, 1938

Miami-Havana	225.5
Miami-Nassau	188.0
Miami-San Juan	1,136.6

Routes	*Route Miles*
San Juan-Port of Spain	749.5
Port of Spain-Paramaribo	563.9
Paramaribo-Buenos Aires	4,501.3
Miami-Cristobal (via Barranquilla)	1,537.3
Kingston-Cristobal (direct)	631.0
Brownsville-Mexico City	463.4
Mexico City-Salvador	795.3
Salvador-Cristobal	883.7
Barranquilla-Port of Spain	946.4
Rio-Buenos Aires (via Asuncion)	1,572.0
Port au Prince-Maracaibo	540.0
Havana-Merida	491.0
Kingston-Port au Prince	455.0
Total Route Miles	15,679.9

December 31, 1941

Miami-Havana	225.5
Miami-Nassau	188.
Miami-Balboa (via Camaguey direct)	1,207.5
Miami-Balboa (via Barranquilla)	1,547.0
Miami-San Juan (via Antilla, Port au Prince and San Pedro)	1,136.6
San Juan-Port of Spain (via Islands)	749.5
Port of Spain-Paramaribo	582.6
Paramaribo-Rio	3,225.4
Belem-Rio (via Cut-off)	1,533.5
Rio-Buenos Aires (via Porto Alegre)	1,275.9
Rio-Buenos Aires (via Asuncion)	1,572.
Brownsville-Mexico City	463.4
Mexico City-San Salvador	795.3
San Salvador-Balboa	848.7
Barranquilla-Port of Spain	958.8
Port au Prince-Maracaibo	540.0
Havana-Merida	491.0
Kingston-Port au Prince (via Santiago)	455.0
Total Route Miles	17,795.7

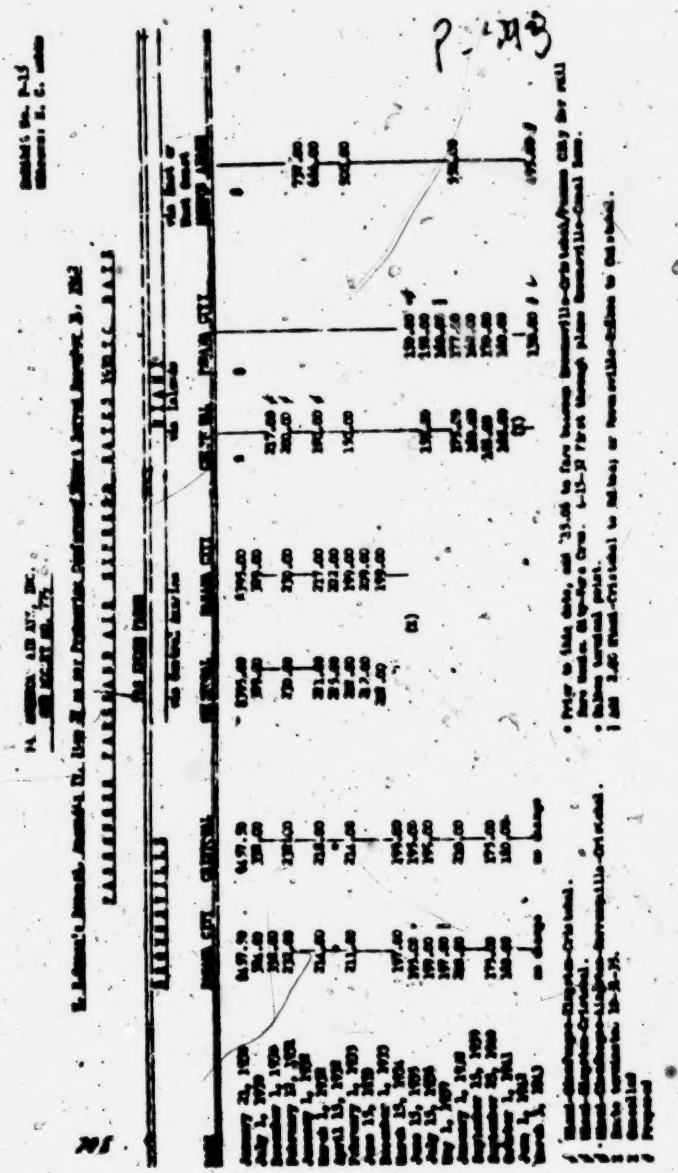
[fol. 3083] [fol. 3084]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 293

(See opposite) ☞

[fol. 3083]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 293



[illegible] AIRLINES, INC.
[illegible]

Bulletin No. P-15
Page 2

[illegible]

PASSENGER FARES AND AIR EXPRESS RATES TO DATE

AIR EXPRESS RATES

Date of Change	[illegible] CENTRALIA per lb.	[illegible] PEORIA AREA per lb.	[illegible] CHICAGO per lb.
March 30, 1938	$2.00 y	$ -	$2.50
June 15, 1938	1.00 x	1.00 x	1.00
September 1, 1938	-	1.00 x	-
December 1, 1938	-	1.25	-
August 1, 1939	0.90	1.20	0.90
March 15, 1941	0.75	1.15	0.85

y The Central section
x Either route

z The Peak Direct
v Either [illegible] or Peak Direct.

Note: The first official tariff of air express rates to Centralia from Peoria was published effective March 30, 1938.

[illegible]

[illegible]

[fol. 3085]

PAN AMERICAN WORLD AIRWAYS, INC., EXHIBIT 294

74TH CONGRESS } SENATE } DOCUMENT
1st SESSION } } No. 15

FEDERAL AVIATION COMMISSION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

Pursuant to Law, a Report of the Federal Aviation Commission Containing Its Recommendations of a Broad Policy Covering All Phases of Aviation and the Relation of the United States Thereto

JANUARY 30 (calendar day, JANUARY 31), 1935.—Read; referred to the Committee on Interstate Commerce and ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1935

[fol. 3086]

Copies of this publication may be procured from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C., at 20 cents per copy

[fol. 3087]

MESSAGE OF TRANSMITTAL

To the Congress of the United States:

I am submitting herewith the report of the Federal Aviation Commission appointed by me last summer by direction

of the Seventy-third Congress. The Commission has made a diligent study of the broad subject of aviation conditions here and elsewhere and emphasizes the excellent American progress in this new form of transportation. The Commission has also studied problems of national defense, of procurement, policies, and of the extension of air transport services. I invite your attention to these comprehensive surveys.

As I have suggested on many occasions, it becomes more and more apparent that the Government of the United States should bring about a consolidation of its methods of supervision over all forms of transportation. When the Interstate Commerce Commission was created in 1887 the railroad was practically the principal method of rapid interstate transportation. Since that time this monopoly of transportation enjoyed by the railroad, to a very important degree, has been limited by the development of the automobile and good interstate roads. Recently water transportation by lake, by river, by canal, and by ocean has, largely through the construction of the Panama Canal and our inland waterways, definitely brought ships and shipping into the general interstate field. More recently still air transportation has become an element. All of these developments have changed the general problem of transportation and the concern of the Government with them. A number of valuable reports have been prepared on these related questions. The report of the Federal Coordinator of Transportation has already been submitted to the Congress by the Interstate Commerce Commission. The report deals with the many problems relating to busses, trucks, water carriers, and railroads. Other reports of departmental committees on ocean mail subsidies have been completed. This present report on aviation is a similar source of information and advice concerning transportation by air. I earnestly suggest that the Congress consider these various reports together in the light of the necessity for the development of interrelated planning of our national transportation. At a later date I shall ask the Congress for general legislation centralizing the supervision of air and water and highway transportation with adjustments of

our present methods of organization in order to meet new and additional responsibilities.

There are detailed questions, however, that require early action. Our extended mail contracts with air lines expire on or about March 1, and existing legislation dealing with primary and secondary routes should be revised before that time. The Commission suggests that the Interstate Commerce Commission be given temporarily the power to lower or increase air-mail rates as warranted in their judgment after full investigation. The purpose of this is to pre-
[fol. 3088] vent the destruction of any efficiently operated part of the present system pending suitable consideration by the Congress of what permanent measures should be taken and what amendment, if any, the present general transportation policy of the Government should undergo. I concur in this recommendation of the Federal Aviation Commission provided always that the grant of this duty to the Interstate Commerce Commission be subject to provisions against unreasonable profits by any private carrier. On account of the fact that an essential objective during this temporary period is to provide for the continuation of efficiently operated companies and to guard against their destruction, it is only fair to suggest that during this period any profits at all by such companies should be a secondary consideration. Government aid in this case is legitimate in order to save companies from disastrous loss but not in order to provide profits.

The Commission further recommends the creation of a temporary Air Commerce Commission. In this recommendation I am unable to concur. I believe that we should avoid the multiplication of separate regulatory agencies in the field of transportation. Therefore in the interim before a permanent consolidated agency is created or designated over transportation as a whole, a division of the Interstate Commerce Commission can well serve the needs of air transportation. In the granting of powers and duties by the Congress orderly government calls for the administration of executive functions by those administrative departments or agencies which have functioned satisfactorily in the past and, on the other hand, calls for the vesting of

judicial functions in agencies already accustomed to such powers. It is this principle that should be followed in all of the various aspects of transportation legislation.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *January 31, 1935.*

[fol. 3089]

Prepared and submitted in accordance with the Act of Congress of June 12, 1934

CLARK HOWELL, *Chairman.*
EDWARD P. WARNER, *Vice Chairman.*
ALBERT J. BERRES.
JEROME C. HUNSAKER.
FRANKLIN K. LANE, JR.

J. CARROLL CONE, *Executive Secretary.*

[fol. 3090]

(24) No changes should henceforth be made in the existing foreign air-mail contracts except with the approval of the commission hereinafter proposed.

There is at the present time a legal and financial structure of foreign air-transport which includes a number of air-mail contracts that have some five years yet to run. Though we are proposing a change in the form of administration of new foreign routes, and in the financial relationship of their operators with the government for the future, we accept the present contracts not only as legally binding but as a legal foundation for a highly important and continuously functioning service. We should consider it most unfortunate if they were to undergo any sudden disturbance.

We therefore propose that they be left undisturbed, and that existing services continue under the direction of the Post Office Department and be compensated by the Post Office appropriation unless and until a new commission

shall have been established and new arrangements without definite term of expiration arrived at by joint agreement between present operators and the commission.

[Vol. 3091]

(25) The governmental administration of foreign air transport should as far as possible be kept similar to that of the domestic air line system, but with such modifications as may be clearly necessitated by a fundamentally different political, legal, and operating status. The status of American air transport in foreign fields competing with foreign owned air lines should in general not be one of competition between American lines, but of carefully-controlled regional monopoly. The general powers of the commission hereinafter proposed in connection with foreign air transport should be essentially similar to those which it enjoys in the domestic field, and the commission should have the additional power of stipulating for fixed periods certain minimum and maximum conditions of service and of governmental aid in the interest of stability of the undertaking and of encouragement of large investment in ground facilities.

We have already explained the general mechanism that we have in mind for the supervision of air lines by a commission. The system suggested is, we believe, capable of adapting itself from domestic to foreign routes without fundamental change, but there are some points of difference that must be taken into account. Foremost among them are that an air line operating internationally has to be a self-contained enterprise and provide its own facilities to a much greater extent than any domestic line is required to do, and that it has to meet foreign competition. If American air lines are to compete with lines under foreign direction it would be an obvious absurdity to divide the American strength by competition among a multiplicity of American-flag enterprises. The aid that is appropriated for foreign air transport in any particular part of the globe

ought not to be squandered by dividing it among two or more competitors who will use government-provided funds to duplicate each other's facilities. The spur to progress that only competition can supply should be adequately furnished by the foreign competitor, coupled with the constant watchfulness of American governmental authorities over the standard of service rendered and with their periodic specification of standards as high as the commercial importance of the line may justify.

The fact that the foreign lines are necessarily self-contained has also to be reckoned with. No government can engage in great engineering undertakings outside its own borders. It is impossible for the Department of Commerce to set up lights and radio stations in Central America or the Orient, and in many cases the countries concerned have found no adequate reason to provide facilities themselves. [fol. 3092] It has been necessary for the air lines to build their own landing fields, provide their own meteorological service, maintain their own communications systems, and install their own lights if night flying were to be attempted. All that has been supplementary to the development of operating and traffic organizations, and the maintenance of offices in many lands and working in many languages, and the establishment of good standing with the governments and peoples through whose territory the lines must pass. It is impossible that all that should be done, involving as it does a very heavy capital outlay, without some definite assurance of a continuance of governmental aid over a considerable period.

That has been fully recognized, and the present device is the award of a ten-year contract, fixing the rates of compensation over that period. European governments have generally followed a corresponding course except that in some cases their contracts have been for much more than 10 years. The fixed-term contract works well during the first few years of its existence. After that, it seems to be the case that it will generally work progressively worse until as the expiration date approaches affairs become calamitous and emergency measures have to be taken. No one in the world has ever been wise enough to estimate at

any time what air transport will be doing, or what kind of equipment it will be using, or how much assistance it will be needing, ten years from that date. Any rigorously fixed arrangement runs the risk either of appearing as manifestly excessively generous or of becoming so inadequate as seriously to handicap the development of the service long before its term is run. Even with that difficulty surmounted, it would still be necessary to anticipate a violent disturbance near the end of the contractual period. Either the management of an air line will succeed in digging themselves in so firmly during the period of their first contract that they can rely on getting a renewal virtually on their own terms, which is plainly unfair to the government, or they will feel that they have no assurance of renewal and in that case will be under a strong temptation to avoid new capital expenditures and let everything deteriorate in the last years in order to get their investment out by attrition by the time the contract expires. We have found no evidence on America's foreign lines of any disturbing effect of the prospective expiration of the contracts yet having been manifest, but we suggest that the possibility should be foreseen and a better and more flexible arrangement be introduced before the present one winds itself up in accordance with its present terms.

There must be some assurance of reasonable stability in the relations between the government and the foreign airlines. On the other hand, the fixed-term contract has the dangers and involves the disturbances that we have discussed. We then recommend only that the commission [fol. 3093] regulating the financial affairs of air transport in its relations to the government should have the power to make certain definite commitments.

It might be desirable, for example, that if at a given time it appeared necessary to make grants of direct aid in the amount of $1.05 per mile over a route where two schedules were maintained every week the commission might give assurance, subject to the availability of appropriations, that the number of schedules would not be reduced without two or three years' notice and that the amount of aid given and the rate of mail payment would not be de-

creased by more than one-third or some other suitable fraction within a two- or three-year period. Rather than set a fixed term, which comes ultimately to an expiration, we suggest that it would be better to give the foreign lines a permanent assurance of reasonable notice of any change in their relations to the government which might fundamentally affect their ability to continue operation. They might then feel assured of having the substantial period provided by the notice to dispose of their equipment or otherwise to get their capital out if continued operation appeared impossible, and they would be justified in making an investment that they could not reasonably venture without some such guarantee.

The figure just mentioned in an illustrative example may seem startlingly high. It is of course necessary to make much larger direct payments on foreign lines than on domestic ones because of their necessity, already mentioned, of providing their own ground and navigational facilities. The present maximum of payment under the Foreign Air Mail Act is $2 per mile, of which some thirty or forty cents on the average may be considered as commercial payment for handling of the United States mails, while another like amount is returned to the Treasury by the line from its receipts for the carriage of foreign mail back to the United States. If the carriage of mail were put on a purely commercial basis, we would not anticipate that the additional sums given in direct aid ought ever to have to exceed $1.25 per mile flown with equipment now current. The introduction of aircraft of much larger capacity and consequently higher total operating costs might make further increases in that figure necessary on certain routes.

The total net outlay of this government on foreign air transport at present, above the fair commercial charge for carrying the mails, is approximately $5,000,000 per year. Though these services, like the domestic ones, are making a gradual progress towards a reduction of dependence upon governmental help, and though the present system could be maintained at a gradually diminishing net expense, we believe that the present total will need to be increased if American-operated routes are to be extended as we are convinced that they should be.

[fol. 3094]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 295

EXHIBIT 295

Total Number of Passengers Departing from the United States for South America, Central America [1] and the West Indies, 1929-June 1[illegible]

Nationality	1929			1930			1931			1932			1933			1934			1935		
	United States citizens	Aliens	Total	United States citizens	Aliens	Total	United States citizens	Aliens	Total	United States citizens	Aliens	Total	United States citizens	Aliens	Total	United States citizens	Aliens	Total	United States citizens	Aliens	Total
South America:																					
Regular sailings	[illegible]	[illegible]	[illegible]	6,987	[illegible]	[illegible]	5,751	[illegible]	[illegible]	4,399	[illegible]	[illegible]	4,447	[illegible]	[illegible]	5,933	[illegible]	[illegible]	6,475	4,602	11,077
Cruises	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	135	[illegible]	[illegible]	50	[illegible]	[illegible]	73	[illegible]	[illegible]	1,471	136	1,607
Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Central America: [1]																					
Regular sailings	[illegible]	[illegible]	[illegible]	15,661	[illegible]	[illegible]	12,570	[illegible]	[illegible]	10,500	[illegible]	[illegible]	12,210	[illegible]	[illegible]	15,167	[illegible]	[illegible]	15,188	3,177	18,367
Cruises	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	1,490	[illegible]	[illegible]	2,038	[illegible]	[illegible]	120	[illegible]	[illegible]	2,213	[illegible]	[illegible]
Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
West Indies (and Bermuda):																					
Regular sailings																					
Bermuda	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	39,192	[illegible]	[illegible]	32,872	[illegible]	[illegible]	39,195	[illegible]	[illegible]	41,205	[illegible]	[illegible]
Cuba	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	50,564	[illegible]	[illegible]	52,904	[illegible]	[illegible]	39,431	[illegible]	[illegible]	41,941	[illegible]	[illegible]	38,138	[illegible]	[illegible]
Other West Indies	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	57,002	[illegible]	[illegible]	11,621	[illegible]	[illegible]	9,477	[illegible]	[illegible]	15,894	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total	[illegible]	[illegible]	[illegible]	121,054	[illegible]	[illegible]	107,566	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	81,780	[illegible]	[illegible]	97,030	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Cruises																					
Bermuda	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	11,671	[illegible]	[illegible]	7,187	[illegible]	[illegible]	10,035	677	10,913	14,549	352	14,901
Cuba	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	7,778	[illegible]	[illegible]	8,538	[illegible]	[illegible]	7,994	116	7,810	8,130	125	8,255
Other West Indies	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	57,948	[illegible]	[illegible]	31,539	[illegible]	[illegible]	37,032	1,944	38,976	[illegible]	[illegible]	[illegible]
Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	77,397	[illegible]	[illegible]	47,264	[illegible]	[illegible]	55,061	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total - Bermuda	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	50,863	[illegible]	[illegible]	40,059	[illegible]	[illegible]	49,230	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total - Cuba	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	60,682	[illegible]	[illegible]	47,969	[illegible]	[illegible]	49,935	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total - Other West Indies	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	69,569	[illegible]	[illegible]	41,016	[illegible]	[illegible]	52,926	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total, West Indies and Bermuda	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	180,814	[illegible]	[illegible]	129,044	[illegible]	[illegible]	152,091	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
In transit [2]	4,000	—	4,000	5,131	622	5,753	5,853	994	6,847	5,910	1,171	7,081	7,950	1,824	9,774	9,648	3,489	13,047	9,535	3,067	12,602
Grand total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	362,779	[illegible]	[illegible]	327,430	[illegible]	[illegible]	366,170	[illegible]	[illegible]	[illegible]	22,[illegible]	[illegible]

Nationality	1936			1937			1938			1939			1940			1941			January - June 1942		
	United States citizens	Aliens	Total	United States citizens	Aliens	Total	United States citizens	Aliens	Total	United States citizens	Aliens	Total	United States citizens	Aliens	Total	United States citizens	Aliens	Total	United States citizens	Aliens	Total
South America:																					
Regular sailings	7,468	5,877	13,345	8,254	6,179	14,433	7,714	5,999	13,713	9,785	9,294	19,079	[illegible]	6,629	15,[illegible]	9,574	9,679	19,253	975	1,041	1,916
Cruises	54	54	111	1,816	108	1,924	2,177	120	2,297	4,001	136	4,137	1,277	41	1,318	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total	8,192	5,931	13,956	10,070	6,287	16,357	10,091	6,119	16,210	13,786	9,430	23,216	10,797	6,670	17,467	11,215	9,711	20,926	[illegible]	[illegible]	[illegible]
Central America: [1]																					
Regular sailings	16,709	3,203	19,912	15,371	3,792	19,163	15,216	3,215	18,431	16,060	3,857	19,917	17,561	3,131	20,692	22,[illegible]	2,[illegible]	25,[illegible]	1,[illegible]	[illegible]	[illegible]
Cruises	2,[illegible]	66	2,[illegible]	1,[illegible]	77	1,[illegible]	2,[illegible]	52	2,[illegible]	4,[illegible]	98	4,[illegible]	7,[illegible]	94	7,[illegible]	[illegible]	46	[illegible]	14	[illegible]	14
Total	19,[illegible]	3,[illegible]	22,[illegible]	17,[illegible]	3,[illegible]	21,[illegible]	17,[illegible]	3,[illegible]	21,[illegible]	20,[illegible]	3,[illegible]	24,[illegible]	25,[illegible]	3,[illegible]	28,[illegible]	[illegible]	2,[illegible]	[illegible]	1,[illegible]	[illegible]	[illegible]
West Indies (and Bermuda):																					
Regular sailings																					
Bermuda	47,[illegible]	4,[illegible]	51,[illegible]	51,[illegible]	5,[illegible]	57,[illegible]	46,[illegible]	5,[illegible]	52,[illegible]	46,[illegible]	4,[illegible]	46,[illegible]	6,[illegible]	3,[illegible]	9,[illegible]	9,[illegible]	1,[illegible]	10,[illegible]	2,[illegible]	[illegible]	2,[illegible]
Cuba	39,[illegible]	46,[illegible]	85,[illegible]	45,[illegible]	35,[illegible]	81,[illegible]	45,[illegible]	47,[illegible]	93,[illegible]	33,[illegible]	13,[illegible]	46,[illegible]	40,[illegible]	13,[illegible]	53,[illegible]	[illegible]	10,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Other West Indies	10,[illegible]	7,[illegible]	17,[illegible]	7,[illegible]	10,[illegible]	17,[illegible]	7,[illegible]	10,[illegible]	17,[illegible]	8,[illegible]	3,[illegible]	11,[illegible]	11,[illegible]	8,[illegible]	19,[illegible]	20,[illegible]	5,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Cruises																					
Bermuda	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Cuba	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Other West Indies	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total - Bermuda	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total - Cuba	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total - Other West Indies	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total, West Indies and Bermuda	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
In transit [2]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Grand total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

* Excluding Mexico.
** Not available.
[1] The part of the West only. That there is little aviation travel except via this port, however, is evidenced by the following comparison of civilian aviation travel to all areas except Canada and Mexico via the port of New York and via all ports, respectively: 1932, 68,173 and 68,973; 1933, 55.5% and 59.7%.
[2] Not shown separately. Included in Other West Indies.
[3] Excluding travel known solely destined to Mexico, part of which may be en route to other Latin American destinations.
[4] Approximate figure.
[5] In addition, there were recorded 15 persons designated as returning from overseas by air.

Source: Data furnished by the International Reporting and Statistics Staff [illegible] Bureau of Foreign and Domestic Commerce, based upon records of the United States Immigration and Naturalization Service, Department of Justice.

Research and Analysis Division
Economic Bureau
Civil Aeronautics Board

DEFENDANT'S EXHIBIT
U.S. Dist. Ct.
S. D. of [illegible]
MAY 18 1950

[fol. 3095]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 296

PAN AMERICAN AIRWAYS, INC.
CAB
Docket No. 779

Exhibit No. P-2
R. G. Ferguson Witness
Page 1

Public Counsel's Request Appendix I, Item 2 As Per Prehearing Conference Report Served December 31, 1942

Total Volume of Passenger Traffic Out of Miami
1929 - 1942

Outbound from Miami to:	1929	1930	1931	11932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
C Havana	1,803	2,112	3,764	3,981	6,222	7,538	9,438	9,746	13,877	15,139	20,298	25,226	27,187	16,703
C Camaguey	2	57	47											230
C Santiago	10					2	2						3	93
C Port au Prince	11	21	20	29	54	84	83	101	174	139	184	219	197	366
C San Domingo	6	44	37	7			2							
C San Juan	13	53	83	117	198	339	403	465	563	531	753	1,011	1,974	4,607
C Nassau	230	517	975	839	1,382	2,101	2,435	2,838	3,655	3,535	4,199	5,623	6,382	4,048
C Cristobal (1942- Balboa)	1	15	55	54	104	152	168	175	320	401	464	1,241	2,273	6,053
C Managua	2	11	23											6
C Belize		5	21	2			3	8	12	1				
C Tela		3	2											
S Paramaribo		4	1	2	1		3	12	5	7	22	21	57	104
S Port of Spain		1	8	20	17	27	50	76	191	181	345	524	882	1,563
C San Salvador		4	7	15									1	4
C Puntarenas		3												
C St. Thomas		1	2	5	2	14	9	17	14	10	26	35	46	99
C Bimini		2												
S Maracaibo		1	9	16	68	117	86	88	219	245	366	361	288	839
C Panama		1												
C Cienfuegos	23	16	7	6	8	13	14	18	41	47	17	17		
C Kingston	82	87	121	203	230	337	443	514	501	492	878	798		
C Port Castries	3	1	1		3									
S Georgetown	2	1	3	10	9	20	16	17	40	28	105	169		
C St. Johns, Antigua	1		1	5	2	3	3	5	2	10	50	80		
S Para (Belem)	22	24	37	100	84	38	65	23	26	44	129	322		
S Barranquilla	15	54	65	107	106	134	242	685	1,072	839	762	1,423		
S La Guaira	3	9	9	24	20	49	78	89			274	1,064		
S Maturin	2	1		6	1									
C San Lorenzo	2													
C Nuevitas	5	35	33	44	29	28								

(continued)

[fol. 3096]

Exhibit No. P-2
Page 2

PAN AMERICAN AIRWAYS, INC.
C.A.B. Docket No. 779
Total Volume of Passenger Traffic Out of Miami 1929 - 1942
(Continued)

Outbound from Miami to:	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
C San Jose			2										12	121
C Guatemala			2										2	11
C San Pedro de Macoris			7	69	83	81	106	92	167	118	182	183	259	321
S Cayenne				1	1	4	1		4	14	2	6	6	16
C Puerto Barrios				5										
S Coro				1	1				3	2				3
S Caripito				4	16	87	64	51	129	55			70	124
C Merida				38	72	124	120	50	31	25	45	50	447	354
C Cat Cay					50	65	68	231	529	431	496	472	327	82
C Ponce					1									
S Curarebo					5	19	3	1						
C Tampa						20								
C Guadeloupe							3							
C Cozumel							1	1						
S Buenos Aires							18	57	68	69	76	99	512	405
S Santos							3	2	6					
S Rio de Janeiro							11	137	128	124	164	329	426	1,276
C Key West								1,868	1,108	413				
C Pointe a Pitre								4	3	5	8	9	4	40
C Fort de France								7	5	6	23	20	18	12
S Sao Luis								6	3	2		2	3	12
S Fortaleza								1						9
S Recife								13	19	17	18	17	19	125
S Victoria														1
S Montevideo								1	1					
S Sao Salvador (Bahia)								4	2	7	11	14	28	61
// Porto Alegre									2		1	5	4	17
C Antilla									36	39	44	30	18	43
S Natal										1			14	69
S Sao Paulo										1	18	11	49	91
S Asuncion										4	2	9	17	56
S Guanta										26				
S Iguasus Falls											1	1	1	

(continued)

[fol. 3097]

Exhibit No. P - 2
Page 3

PAN AMERICAN AIRWAYS, INC.
CAB Docket No. 779
Total Volume of Passenger Traffic Out of Miami 1929 - 1942
(Continued)

Outbound from Miami to:	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
S Camocim											5	3	1	2
S Areia Branca											3			
S Parnahyba												1	1	
S Maceio												1	9	11
S Caravellas												4		
S Curityba													2	2
C Mexico City													11	29
C Tegucigalpa													1	5
S Barcelona													34	124
C Managua													7	
C Brownsville													41	37
C St. Lucia														3
C Tapachula														1
Sub-Totals:														
South American Stations (S)		6	62	133	223	501	459	680	1,181	1,569	2,170	2,319	3,693	7,888
Caribbean & Other Stations (C)	2,078	2,849	5,163	5,300	8,331	10,779	13,113	15,983	20,954	21,350	27,266	34,708	40,155	34,123
Total	2,078	2,855	5,225	5,433	8,554	11,280	13,572	16,663	22,135	22,919	29,436	37,027	43,848	42,011

(Prior to July 1, 1941 (except for two months 1940) passenger traffic statistics reflected in this exhibit were compiled on the basis of flight coupons used to stop-over points or division junctions. The same trip of the same passenger may therefore be shown several times. Since July 1, 1941, passenger traffic statistics reflected in this exhibit have been compiled to show origin and destination on Pan American Airways, Inc. regardless of stop-overs.)

CAB DOCKET 4779

No. P-2
Page 1

Public Counsel's Request Appendix I, Item 2 as Per Prehearing Conference Report Served December 31, 1942

Total Volume of Passenger Traffic Into Miami

1929 - 1942

INBOUND TO MIAMI FROM	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
C Havana	2294	2,477	4,399	4,484	6,827	7,946	10,182	9,986	14,766	15,939	20,980	26,010	28,312	17,897
C. Camaguey	4	77	74										13	802
C Port Au Prince	20	39	64	68	79	108	100	166	182	169	194	206	209	393
C San Juan	32	89	139	187	275	471	553	672	844	775	896	1,214	2,205	5,530
C Cristobal (1942-Balboa)	3	18	64	81	138	173	218	267	362	517	554	1,368	2,315	7,062
C Nassau	341	640	1,295	1,055	1,408	2,264	2,784	3,082	4,033	3,821	4,372	5,647	6,464	3,605
C Santiago	8	3		1	2	4							5	44
C San Domingo	28	62	80	3	4		1							
S Georgetown				2	5	13	12	27	14	16	32	19	64	171
C Kingston		2	131	141	149	282	297	352	546	653	603	542	881	1,951
S Port of Spain		5	23	15	22	35	54	91	277	265	492	510	514	1,211
C Belize		15	12	3			3	3	9	2				
C. Tela		6	4											
C San Salvador		3	15	11										
C San Jose		4	3											
C Managua		16	21											
C Puntarenas		3												
CPanama		6	5											
S Maracaibo		4	38	50	109	137	135	145	224	389	708	688	445	954
S Pt. Cabello		4												
C Cienfuegos			22	51	9	16	11	13	18	28	50	37	25	30
C Nuevitas			3	54	54	52	45	46						
C San Pedro De Macoris			8	100	120	134	134	129	167	146	199	210	292	432
C St. Thomas			2	7	4	11	13	18	12	31	22	22	42	97
C St. Johns, Antigua			2	1		5	3		1	4	6	7	55	618
C Fort Castries			2	1		1	3							
S Para (Belem)			25	38	73	110	93	41	74	31	47	70	91	260
S Barranquilla			39	81	110	170	212	265	472	649	1,474	1,314	1,002	1,327
S La Guaira			3	13	15	23	16	42	95	149				257
S Maturin			5				2							
C Puerto Barrios			1	1										
C Merida			3	48	102	146	147	51	39	4	41	52	453	417
C San Lorenzo			3											

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c/s

...N AIR WAYS, INC.
CAB DOCKET 779
Total Volume of Passenger Traffic Into Miami 1929 - 1942
(continued)

Exhibit No. P-2
Page 5

...ND TO MIAMI FR ... (cont)	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
Guatemala			2											
Paramaribo				2	1	1	1	2	11	8	13	29	38	117
Cayenne				1	2	3	1	1				3	1	10
Rayo Obispo				1										
Caripito				8	10	27	36	32	52	1				
Cat Cay					63	70	70	185	559	461	559	479	357	92
Ponce					1									
Coro					2				2	12				
Cumarebo					1	1	9	1						
Tampa						3								
Cozumel						1	1		1					
Bimini						1	2							
Port De France							6	6	7	10	7	22	39	5
Buenos Aires							16	81	81	50	72	70	607	621
Santos							3		5					
Recife							6	18	14	20	17	24	17	79
Rio de Janeiro							10	115	178	163	196	438	575	1,350
Key West								1,990	1,285	445				
Pointe A Pitre								5	1	5	5	2		38
Sao Luis								7	1	1		1	1	2
Portalesa								1						4
Areia Branca								2	2					
Montevideo								1	10					
Antilla									26	40	41	43	41	33
Sao Salvador (Bahia)								3	7	8	4	8	7	38
Juanta										7				
Natal										3			1	9
Sao Paulo										5	21	18	47	68
Asuncion										3	3	6	15	46
Luis Correa											1			
Maceio											1		5	2
Remocim												1	1	2

[fol. 8100]

PAN AMERICAN AIRWAYS, INC.
CAB DOCKET 877Z
Total Volume of Passenger Traffic Into Miami 1929 - 1942

Exhibit No. P-2
Page 6

INBOUND TO MIAMI FROM (cont)	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
S Victoria												1	1	
S Curityba													2	
S Porto Alegre													1	9
C St. Lucia														114
Sub Totals														
So th American Stations (S)		13	133	210	350	520	606	875	1,519	1,800	3,061	3,200	3,435	6,537
Caribbean & Other Stations (C)	2,730	3,460	6,354	6,298	9,437	11,708	14,573	16,971	22,903	23,086	28,529	35,861	41,708	39,130
Grand Total	2,730	3,473	6,487	6,508	9,787	12,228	15,179	17,846	24,422	24,886	31,610	39,061	45,143	45,667

(Note on Page 3 this exhibit applicable above statistics.)

Exhibit No. P- 2
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PAN AMERICAN AIRWAYS, INC.
CAB DOCKET #779

Public Counsel's Request, Appendix I, Item 2 as per Prehearing Conference Report Served December 31, 1942
Total Volume of Passenger Traffic Out of Brownsville
1929 - 1942

	SOUTHBOUND FROM BROWNSVILLE TO -	July 1 - Dec. 31 1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
C	Cristobal				19	20	20	35	15	32	71	56	77	572	
C	David				1								2	3	9
C	Managua				5	5	8	15	13	10	16	21	56	92	98
C	Panama				3	6	3	3	1	2	10	17	54		
S	San Jose				1	1	4	6	6	7	10	3	26	119	239
C	San Lorenzo				1	2									
C	San Salvador		2		6	5	5	9	6	4	8	23	26	57	76
C	Merida		1		2	2	13	16	2					4	
S	Guiquito									67	36	68	169	400	245
C	Guatemala		3	14	9	6	9	13	30						
C	Mexico, D. F.	126	279	173	337	385	589	1,118	1,361	1,259	1,398	1,921	3,155	4,238	2,221
C	Tampico	117	266	175	174	346	420	465	535	484	406	173	130	174	126
C	Minatitlan			2	3	3	4	4							
C	Tejeria (Vera Cruz)	1	3	3	3	3	2	2	2						
C	Tegucigalpa							3	3	9	16	18	13	38	77
C	Tuxpan		1	2	8			3	5						
C	Tapachula				1				1	5	2	1	2	2	5
C	Puerto Barrios					1									
C	Villa Hermosa					2									
C	Balboa													1,206	5,875
S	Georgetown													1	1
S	Paramaribo													1	1
S	Belem													4	10
S	Rio de Janeiro													7	13
S	Buenos Aires													20	19
S	Barranquilla													33	82
S	Maracaibo													7	53
S	La Guaira													2	142

	NORTHBOUND TO B
C	Cristobal ...
C	David .....
C	Guatemala ...
C	Managua ....
C	Panama .....
C	San Jose ....
C	San Lorenzo .
C	San Salvador
C	Merida .....
C	Mexico, D. F.
C	Belize .....
C	Puerto Barrio
C	Tampico .....
C	Tegucigalpa .
C	Minatitlan ..
C	Tapachula ....
C	Tuxpan .....
C	Balboa .....
S	Barranquilla
S	Maracaibo ...
S	La Guaira ...
S	Barcelona ...
S	Caripito ....

[fol. 3102]

PAN AMERICAN AIRWAYS, IN.
CAB DOCKET 779

Total Volume of Passenger Traffic Out of Brownsville
1929 - 1942
(continued)

SOUTHBOUND FROM BROWNSVILLE TO -	July 1 - Dec. 31 1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
S Port of Spain													12	65
C Miami													83	30
C San Juan													2	1
S Cayenne														1
S Asuncion														1
C Port au Prince														1
S Coro														1
S Barcelona														1
S Maturin														21
C Havana														46
C Carupan		2												4
S Curacao		2												
C Posa Rica						1								
C Guts. Zamora						1	2							
Sub-Totals														
South American Stations (s)		2						2				15	115	456
Caribbean & other stations (c)		557	369	573	787	1,079	1,694	1,979	1,979	2,973	3,383	8,710	6,988	9,007
TOTAL	244	559	369	573	787	1,079	1,694	1,981	1,979	1,973	2,301	3,725	7,1001	9,463

(Note on Page) of this exhibit applicable to above statistics.)

Exhibit No. P- 2
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PAN AMERICAN AIRWAYS, INC.
CAB DOCKET 779

Public Counsel's Request, Appendix I, Item 2 as per Prehearing Conference Report Served December 31, 1942
Total Volume of Passenger Traffic into Brownsville
1929 - 1942

NORTHBOUND TO BROWNSVILLE FROM -	July 1 - Dec. 31 1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
C Cristobal				15	20	40	63	27	55	39	108	95	243	
C David				2				1				2	3	14
C Guatemala	1	18	26	33	16	29	42	46	88	62	111	161	439	319
C Managua				15	9	12	14	14	11	17	14	33	88	136
C Panama				2	1	3	9	12	14	16	28	56		
C San Jose				3	7	3	8	22	16	17	21	47	129	201
C San Lorenzo				1	1									
C San Salvador			10	17	4	4	25	35	26	19	55	36	97	106
C Merida		1		7	7	10	27							
C Mexico, D. F.	96	232	274	508	518	691	1,392	1,713	1,643	1,621	2,144	3,575	4,669	3,011
C Belize					2									
C Puerto Barrios	236				1									
C Tampico	236	290	175	244	453	513	602	611	600	479	234	210	222	156
C Tegucigalpa						1	13	19	10	24	18	26	40	94
C Minatitlan				2	7	8	6							
C Tapachula				2	3		2	5	6	1	4	2	12	9
C Tuxpan		5	1	10	1		2							
C Balboa													495	4,214
S Barranquilla												9	31	96
S Maracaibo												3	17	71
S La Guaira												1	47	125
S Barcelona													16	45
S Caripito													10	

PAN AMERICAN AIRWAYS, INC.
CAB DOCKET 779

Exhibit No. 71
Page 10

3104

Total Volume of Passenger Traffic into Brownsville
1929 - 1942

NORTHBOUND TO BROWNSVILLE FROM -	July 1 - Dec. 31 1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
(continued)														
S. Port of Spain												2	10	39
S Maturin														16
C Tejeria (Vera Cruz)	2	6	3	2	4	2	1							
C Carupan		1												
C Villahermosa				3	2	1	4							
C Cuta Zamora					2	1	2							
C Costa Rica						1								
C Miami													41	37
C Port au Prince														1
C San Juan													1	1
C Pointe a Pitre														1
S Belem													2	3
S Rio de Janeiro													6	10
S Sao Paulo														1
S Asuncion														1
S Buenos Aires													8	7
C Havana													1	3
C Kingston														2
S Recife													1	
Sub Totals South American Stations (S)												2	19	45
Caribbean and Other Stations (C)	335	553	489	866	1,058	1,319	2,212	2,505	2,469	2,295	2,737	4,243	6,480	8,305
TOTAL	335	553	489	866	1,058	1,319	2,212	2,505	2,469	2,295	2,737	4,245	6,499	8,350

(Note on Page 3 of this exhibit applicable to above statistics.)

[fol. 3105]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 297

Exhibit No. P 198

PAN AMERICAN AIRWAYS, INC.
DOCKET NO. 779

Pan American Airways, Inc.
Latin American Operations
Route Mileage as of December 31, 1929

Miami—Nassau	193.5
Miami—Havana	251.
Havana—San Juan	1179.
San Juan—Port of Spain	752.
Port of Spain—Paramaribo	626.
Havana—Cristobal	1813.
Brownsville—Mexico City	472.
Tampico—Guatemala City	858.
Cristobal—Curacao	1023.
Total	7167.5

Pan American-Grace Airways, Inc.
Route Mileage as of December 31, 1929

Cristobal—Mollendo	2445.
Mollendo—Santiago	1265.
Santiago—Buenos Aires	732.
Buenos Aires—Montevideo	132.
Total	4574.

[fol. 3106]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 298

Exhibit No. P-199

PAN AMERICAN AIRWAYS, INC.
DOCKET NO. 779

Study Showing Relative Size of Pan American-Grace's Passenger Revenue to Pan American Airways System Passenger Revenue

By Years 1929 - 1942

Year	*P.A.A. System	*Panagra*	*% of System Total Representing Panagra*
1929	$ 733,063.24	$ 52,176.05	07.1%
1930	1,177,219.74	134,500.00	11.4%
1931	1,690,555.87	160,900.00	09.5%
1932	1,878,570.51	286,738.11	15.3%
1933	2,231,132.99	286,635.74	12.8%
1934	3,288,580.15	449,773.87	13.7%
1935	4,267,251.33	580,708.35	13.6%
1936	5,026,871.00	678,170.80	13.5%
1937	7,021,098.63	803,549.50	11.4%
1938	7,380,413.13	697,261.00	09.4%
1939	8,609,468.44	859,885.45	10.0%
1940	11,277,140.64	1,349,429.39	12.0%
1941	16,798,341.41	1,870,165.67	11.1%
1942	25,971,293.39	3,726,283.17	14.3%

* P.A.A. System totals do not include C.N.A.C.

[fol. 3107]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 299

AVIATION CORPORATION OF THE AMERICAS

Minutes of Special Meeting of Executive Committee
February 27, 1930

"Mr. J. T. Trippe thereupon submitted to the meeting an outline of the terms and conditions of a certain contract relating to the acquisition by this Company of shares of the capital stock of the Corporation therein referred to, and at the consideration therein stated. After full discussion by the Committee, said contract was, upon motion, duly made, seconded and carried, approved."

Minutes of Regular Meeting of the Board of Directors
April 17, 1930.

"Mr. Trippe thereupon read a letter reciting the terms and conditions of the contract which had been unanimously approved by the Executive Committee at a special meeting held on February 27, 1930. Upon motion, duly made, seconded and carried such action of the Executive Committee was ratified, approved and adopted."

Minutes of Regular Meeting of Board of Directors
March 31, 1931

"Mr. J. T. Trippe, Vice-President of the Corporation, reminded the Board that, commencing in January, 1930, the officers of the Corporation had been engaged in negotiations with Dr. Peter P. von Bauer for the acquisition of in excess of 80% of the capital stock of the Sociedad Colombo-Alemana de Transportes Aereos, a Colombian corporation, commonly known and hereinafter referred to as Scadta; that on February 15, 1930, Mr. Trippe had executed on behalf of the Corporation a contract for this purpose with Dr. von Bauer; and that the execution of this contract had been unanimously approved by the Executive Committee at a meeting held on February 27, 1930, and had been approved and ratified at a meeting of the Board of Directors held on April 17, 1930.

"Mr. Trippe reported that on the occasion of Dr. von Bauer's visit to New York in January, 1931, he had executed on behalf of the Corporation two agreements with Dr. von Bauer dated respectively January 19, 1931 and January 30, 1931, both modifying the agreement dated February 15, 1930, in a sense favorable to the Corporation, and that, since Dr. von Bauer's return to Colombia, it had become necessary to execute another agreement postponing certain of the dates in connection with the closing fixed in the foregoing agreements; and that April 8, 1931 had been set as the date for such closing.

"Mr. Trippe then presented to the meeting copies of all the agreements referred to above, which he had executed on behalf of the Corporation, such agreements being dated, respectively, February 15, 1930, January 19, 1931, January 30, 1931, and March 20, 1931.

"Mr. Trippe explained that, according to cable advices from Colombia, the net effect of the foregoing agreements would be that, out of the total of 20,000 shares of the stock of Scadta outstanding, the Corporation would acquire a total of 16,884 shares, as follows:

[fol. 3108]

No. of Scadta Shares		Cash	No. A Shares
12,000	Von Bauer	$233,900	21,570
2,500	Scadta Employees	99,900	1,430
2,384	Public	111,489.37	
Totals 16,884		$445,289.37	23,000

"Mr. Trippe reminded the Board that, for some time prior to the negotiation of the above mentioned agreements, the operating companies of the Pan American Airways System had enjoyed the cooperation of Scadta, and that this cooperation had been of the utmost value in securing operating rights for Pan American Airways, Inc. on the north coast and for Pan American-Grace Airways, Inc. on the west coast of Colombia; that Scadta was the oldest

successful commercial air transportation company in the world, having been established in 1921; that throughout its operation it had made a remarkable record as to earnings; that it enjoyed to a marked degree the confidence and the cooperation of the Colombian Government and people; and that it operated its own air mail service in Colombia and between Colombia and certain adjacent countries, held long term air mail contract with the Colombian Government under which it enjoyed the right to sell its own stamps, as well as mail contracts with the governments of Panama, Ecuador and Venezuela, and had recently been recognized as the official Colombian air mail administrator. Mr. Trippe further stated that the initiation of operations in the interior of Colombia would consolidate the operations of the Pan American System in the northern part of South America, and that it was eminently desirable that such extension of operation should take place through the acquisition of an established company rather than through an attempt to inaugurate competition with a successful company already established. Mr. Trippe also stated that Mr. J. H. Johnston, the Comptroller of Pan American Airways Inc., who had recently examined the property and income accounts of Scadta, and Mr. A. A. Priester, the Chief Engineer of Pan American Airways, Inc., who had recently examined the equipment and property of Scadta had concluded that the net worth of Scadta as of December 31, 1929, was at least $1,400,000, and that operations during the year 1930 had resulted in a small profit after payment of dividends aggregating $48,000. Mr. Trippe further stated that the officers of the Corporation felt that, in connection with the proposed Colombian operations, it was important to have the benefit of the services of Dr. von Bauer, and that the report which he had heretofore made as to the long experience of Dr. von Bauer in Colombia and his good standing in Governmental circles had been confirmed by Messrs. Johnston and Priester, and by other persons familiar with conditions in Colombia.

"Mr. Trippe further stated that Mr. David E. Grant, of the law firm of Schuster & Feuille, had proceeded to Colombia to examine the validity of the organization of Scadta,

of its Governmental concessions and mail contracts and of the titles to its property, and had reported to the Corporation that, in his opinion, Scadta was a corporation duly organized and existing and in good standing under the laws of Colombia, that its Colombian concessions and air mail contracts were valid and contained no onerous conditions, and that, with certain possible exceptions, Scadta had good title to the various pieces of property reflected in the financial statements which Dr. von Bauer had delivered to the Corporation. Mr. Trippe also said that Mr. Grant had advised the Corporation that there was nothing in the organization papers of Scadta or in the laws of Colombia which would interfere with the complete control of Scadta by a person owning a majority of the capital stock.

[fol. 3109] "Mr. Trippe further stated that Messrs. Johnston and Priester had proceeded to Colombia to examine the books of account and the physical equipment of Scadta, and thus to determine the accuracy of the financial figures which Dr. von Bauer in the agreement of February 15, 1930, had warranted to be correct; that, in general, their report had been favorable, but that certain allowances for depreciation appeared to be inadequate and that liabilities amounting to some $70,000 had apparently been omitted from Dr. von Bauer's figures, although, on the other hand, independent appraisers had valued the land and buildings at Barranquilla at figures higher than those submitted by Dr. von Bauer. Mr. Trippe said that in view of these possible discrepancies and the difficulties in regard to certain titles of Scadta which Mr. Grant had pointed out, the officers of the Corporation might think it wise to demand that Dr. von Bauer consent to a reduction in the consideration to be received by him under the agreements or that part of such consideration be withheld until the difficulties in regard to titles had been removed.

"A general discussion of the agreements submitted then followed. Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

"RESOLVED, that the action of Mr. J. T. Trippe, Vice-President of this Corporation, in executing and deliv-

ering in the name and on behalf of this Corporation agreements between Aviation Corporation of the Americas and Dr. Peter P. von Bauer, dated respectively February 15, 1930, January 19, 1931, January 30, 1931 and March 20, 1931, copies of which have been submitted to the meeting, be and the same hereby is approved, ratified and confirmed as the act and deed of this Corporation; and

"RESOLVED, that the President and or the Vice-President of this Corporation be and they hereby are authorized and empowered in the name and on behalf of this Corporation, to take all such action as may be deemed appropriate in order that such agreements, with such modifications, if any, as such officers and or officer may, by their execution of the same, approve, may be performed by this Corporation.

"The Chairman suggested that formal resolutions be adopted with respect to the issuance of shares of the capital stock of the Corporation pursuant to the above agreements and such modifications thereof, if any, as might be agreed upon.

"Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

"RESOLVED, that upon delivery to this Corporation of shares of the capital stock of Sociedad Colombo Alemana de Transportes Aereos, a Colombian corporation, in accordance with the agreements dated February 15, 1930, January 19, 1931, January 30, 1931 and March 20, 1931, previously ratified at this meeting, and such agreement or agreements, if any, modifying the same as the President and or Vice-President may execute, the proper officers of this Corporation be and they hereby are authorized and directed to issue and deliver in exchange for such shares of capital stock the number of full paid and non-assessable shares of the capital stock of this Corporation without par value not in excess of 23,000, called for by such agreements; and

"RESOLVED, that the fair value of the shares of the capital stock of said Sociedad Colombo-Alemana de Transportes Aereos to be received by this Corporation [fol. 3110] as provided in said agreements is at least equal to the amount of cash to be paid by the Corporation and the value of the stock of this Corporation authorized by the foregoing resolution to be issued in exchange therefor; and

"RESOLVED, that The Chase National Bank of the City of New York, as Transfer Agent for the capital stock of this Corporation, be and it hereby is authorized and directed to record, countersign and deliver for registration to The New York Trust Company, as Registrar for the capital stock of this Corporation, and upon the redelivery thereof to it, to deliver to or upon the instruction of a proper officer of this Corporation certificates for a number of shares of the capital stock of this Corporation to be specified by said officer but not to exceed 23,000; and

"RESOLVED, that The New York Trust Company, as Registrar for the capital stock of this Corporation, be and it hereby is authorized and directed, upon receipt of such certificates from said The Chase National Bank of the City of New York, as Transfer Agent, to register and countersign such certificates and redeliver them to said Transfer Agent.

"The Chairman suggested that application be made for the listing on the New York Curb Exchange of the additional shares of the capital stock of this Corporation to be issued in connection with the agreements heretofore ratified by the meeting and or such modifications thereof, if any, as might be agreed upon.

"Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

"RESOLVED, that this Corporation make application to list on the New York Curb Exchange not in excess of 23,000 additional shares of the capital stock of this Corporation; and

"RESOLVED, that the proper officers of this Corporation be and they hereby are authorized and directed, for and in behalf of this Corporation, to appear before the Committee on Listing and Securities of the New York Curb Exchange, to submit such papers to such Committee, and to take any and all such action as such officers may deem necessary or appropriate in connection with such application.

"Mr. Trippe suggested that the officers of the Corporation be empowered to take all steps necessary to vote the shares of stock of Scadta acquired or to be acquired by the Corporation. He explained that the stock of Scadta was bearer stock; that stockholders desiring to vote their stock at a stockholders' meeting must prove their ownership at least two business days prior to such meeting; that such ownership might be proved by presentation of the shares themselves, by a certificate of deposit of such shares in a bank established in Colombia, or by a notarial instrument; that a stockholder, desiring to vote his stock by proxy might do so, but that the proxy, together with the stock certificates or proof of ownership thereof, must be exhibited to the company at least two days before the stockholders' meeting.

"Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

[fol. 3111] "RESOLVED, that the President or any Vice-President of this Corporation be and he hereby is authorized and empowered, in the name and on behalf of this Corporation, to take all such action as he may deem necessary or appropriate in order to exercise or cause to be exercised the voting power of this Corporation with respect to shares of the capital stock of Sociedad Colombo Alemana de Transportes Aereos, a Colombian corporation, acquired or to be acquired by this Corporation; and

"RESOLVED, that, without limiting the generality of the foregoing resolution, the President or any Vice-President of this Corporation be and he hereby is au-

thorized and empowered to cause certificates for any shares of the stock of said Sociedad Colombo Alemana de Transportes Aereos acquired or to be acquired by this Corporation, to be deposited in a bank established in Colombia, and or to execute any declarations before notaries public, consuls or other officers, and to sign any letters, proxies or other documents which he may deem necessary or appropriate in order to exercise the voting power of this Corporation with respect to such shares.

"Upon motion, duly made and seconded, the following resolution was adopted:

"RESOLVED, that the proper officer or officers be and they hereby are authorized to cause to be prepared a form of stock certificate of this Corporation, with a design of vignette, and with a distinctive engraved border, and with engraved type, and upon the completion of such form to submit the same to this Board of Directors for consideration.

"There being no further business, upon motion, duly made, seconded and carried, the meeting thereupon ADJOURNED

(S.d) H. Preston Moore
Secretary."

Minutes of Regular Meeting of Board of Directors
April 28, 1931

"Mr. Trippe thereupon reported to the meeting on the closing under the agreement between the Corporation and Dr. Peter von Bauer for the acquisition by this Corporation of certain Shares of the capital stock of Sociedad Colombia Alemana de Transportes Aereos (Scadta).

"Mr. Trippe also reported to the meeting on the proposed agreement between The Colombian Postal Administration for Air Mails and the United States Government relating to the exchange of international air mails."

Minutes of Special Meeting of Executive Committee
May 6, 1931

"Mr. Trippe reported on the following matters:

"(b) Progress made in negotiations for airmail contract between The Colombian Air Mail Administration and the United States Government."

[fol. 3112]

PAN AMERICAN-WORLD AIRWAYS, INC., EXHIBIT 300

Exhibit No. P-37

EXECUTIVE COMMITTEE
MARCH 16, 1937.

"The meeting thereupon took under consideration the matter of authorizing Pan American-Grace Airways to operate on Buenos Aires-Salta-Yacuiba route, including the report on negotiations between Pan American Airways and Pan American-Grace Airways."

EXECUTIVE COMMITTEE
APRIL 21, 1937.

"Mr. Trippe reported to the meeting on the position of Pan American Airways and W. R. Grace & Co. in Colombia, and the complications likely to arise in connection with SCADTA and Pan American-Grace operations, and on the current negotiations with representatives of W. R. Grace & Co. and discussions to date with such representatives. Mr. Trippe stated that he pointed out in such discussions that he felt there might be a material conflict in the future between SCADTA and Pan American Grace Airways if the officials of the Colombian Government should insist that SCADTA operate a commercial service to Quito, Ecuador, and that it is in the interest of American aviation and the United States Government, that American interests should hold an important position in SCADTA, and that this was particularly important because of the proximity of SCADTA operations in the Canal Zone; that Pan American Airways as a stockholder in SCADTA, was opposing this proposed extension to Quito, but that SCADTA might be

forced by pressure from the Colombian Government to make such extension of service, and that he felt the situation might be harmonized if Pan American Grace Airways became an equal owner with Pan American Airways of the stock of SCADTA; that Pan American had advised Pan American Grace Airways that if SCADTA should be required, against our desires as a stockholder, to operate a commercial service to Quito that we would agree to support SCADTA designating W. R. Grace & Co. as agent in Ecuador.

Mr. Trippe reported that representatives of W. R. Grace & Co. (Messrs. Roig and Gainer) at a meeting last week stated that they did not look with favor upon Pan American Grace Airways acquiring a 50% interest in SCADTA or (regardless of whether Pan American Grace Airways purchases such stock) serving as agent for SCADTA in Ecuador in the event Pan American Grace Airways operated a commercial service to Quito.

Upon motion, duly made, seconded and carried, the officers were authorized and directed to offer to Pan American Grace Airways up to 50% of this Company's holding of stock in SCADTA at cost to this Company or, at the option [fol. 3113] of W. R. Grace & Co. (as one-half owner of Pan American Grace Airways) at a price to be arbitrated, and to advise W. R. Grace & Co. in this event that we would be agreeable to have as arbitrators an arbitration panel of the New York Bar Association or the American Arbitration Society."

EXECUTIVE COMMITTEE
APRIL 27, 1937.

"The President thereupon reported to the meeting that a proposal had been submitted to the representatives of W. R. Grace & Co. on the Board of Directors of Pan American Grace Airways, for the sale to Pan American Grace Airways of one half of the holdings of Pan American Airways in SCADTA at cost or a price to be arbitrated, but that such proposal had been refused by such representatives.

The meeting considered the proposal of W. R. Grace & Co.'s representatives on the Board of Directors of Pan American Grace Airways that fees be paid the nominated Directors representing W. R. Grace & Co. and Pan American Airways on the Board of Directors of Pan American Grace Airways, and that more frequent scheduled meetings of the Board of Directors of Pan American Grace Airways be provided for. The Committee felt that it would be unwise to provide for fees and more frequent meetings, and that this point of view be made known to the representatives of W. R. Grace & Co., with the suggestion that if they did not agree thereto with the matter be referred back to this Committee at a future meeting.

BOARD OF DIRECTORS
MAY 7, 1927

"Mr. Trippe thereupon reported to the meeting on Congressional action relative to a second East Coast trip to Rio and additional services between Rio, Sao Paulo, Asuncion and Buenos Aires, and on the West Coast between Arequipa, La Paz, Salta, Cordova and Buenos Aires, and between Juneau and Whitehorse in Alaska.

The meeting granted authority to proceed with the organization of the Rio-Sao Paulo-Asuncion-Buenos Aires route by Pan American Airways, Inca and of the Belo Horizonte and Sao Paulo route by Panair do Brasil, S. A.".

[fol. 3114]

EXECUTIVE COMMITTEE
AUGUST 3, 1927.

"Mr. Trippe reported to the meeting on the following matters:

(a) Accident to Pan American Grace Airways' plane near the Canal Zone on August 2, 1927.".

"The President stated to the meeting that certain problems had arisen in connection with the ownership by the Corporation of a majority of the stock of Sociedad Colombo-Alemana de Transportes Aereos, a Colombian corporation,

commonly known as "Scadta". The Colombian government was anxious that Scadta should extend its services to points in Ecuador. Such an extension would result in competition between the services of Scadta and of Pan American Grace Airways, Inc. By continuing its control of Scadta the Corporation was thus being placed in a position where any action that it might cause Scadta to take or refrain from taking might be prejudicial either to the minority stockholders of Scadta or to the associate of the Corporation in the ownership of Pan American Grace Airways. The President stated that there were other circumstances that made it seem desirable that control of Scadta be placed ultimately in a group of native Colombians."

BOARD OF DIRECTORS
AUGUST 31, 1937.

"The President stated to the meeting that certain problems had arisen in connection with the ownership by the Corporation of a majority of the stock of Sociedad Colombo Alemana de Transportes Aereos, a Colombian corporation, commonly known as Scadta. The Colombian government was anxious that Scadta should extend its services to points in Ecuador. Such an extension would result in competition between the services of Scadta and of Pan American Grace Airways, Inc. By continuing its control of Scadta the Corporation was thus being placed in a position where any action that it might cause Scadta to take or refrain from taking might be prejudicial either to the minority stockholders of Scadta or to the associate of the Corporation in the ownership of Pan American Grace Airways. The President stated that there were other circumstances that made it seem desirable that control of Scadta be placed ultimately in a group of native Colombians."

[fol. 3115]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 301

Exhibit No. PA-1
CAB No. 3272

[Handwritten notation: 2-13-48 S]

PAN AMERICAN AIRWAYS, INC.
ACQUISITION OF PROPERTY AND CERTIFICATE OF URABA, MEDELLIN AND CENTRAL AIRWAYS, INC.

BRIEF HISTORY OF THE OWNERSHIP AND CONTROL OF UMCA BY PAN AMERICAN

UMCA (the abbreviation for Uraba, Medellin & Central Airways, Inc.) is a Delaware corporation which was organized by Pan American Airways Corporation and which has always been controlled by that corporation or by Pan American Airways, Inc., its subsidiary. UMCA was established as a separate corporate entity for the purpose of giving representation to a minority interest which arose out of the obtaining from the Colombian Government of the concession for the route which it has operated. That concession and the minority interest have now lapsed and accordingly there is no reason for UMCA's continued existence.

The following summary demonstrates that UMCA has always been primarily an instrumentality of Pan American.

A. *Reasons which Pan American organized UMCA.*

When Pan American commenced operations in Latin America, it had to obtain for itself the operating concessions needed for operation through each country. It experienced particular difficulties in securing concessions from the Republic of Colombia where the local airline, [fol. 3116] SCADTA, had a virtual monopoly. This was a serious obstacle to Pan American's further expansion since Colombia was too large to overfly with aircraft then available. One of the routes which Pan American was interested in was a route from the Canal Zone to Medellin and Bogota, both because of its immediate importance in the carriage of traffic into Colombia and because of its long range im-

portance as the first sector of a short cut route across the heart of South America to Rio and Buenos Aires.

A prominent Colombian citizen, Mr. Gonzalo Mejia, was also trying to obtain a concession from the Colombian government. His efforts began late in 1929 and were centered upon obtaining a Turbo-Medellin exclusive concession. A concession for the route was signed by the Minister of War and Telegraphs in September 1930 after Mr. Mejia had made assurances that the backing of American aviation interests would be secured in establishing and operating the route and this was expressly provided for in the concession. The concession was formally and finally approved by the Colombian Legislature after several weeks of debate in January 1931 (see Ex. 4 of Docket 28-401(B)-1).

Mr. Mejia commenced almost immediately thereafter discussions with Pan American looking toward implementation of the concession. After survey in May 1931 of the commercial and technical feasibility of establishing the route, Pan American decided that in view of the difficulty of securing other concessions from the Colombian Govern- [fol. 3117] ment the most practical approach was to assist Mr. Mejia to implement his concession.

Satisfactory arrangements could not be worked out with Mr. Mejia whereby Pan American could operate the route directly and it was decided to organize a separate corporation to be the assignee of the concession and to have the nominal responsibility for operating the route. Pan American organized CMCA, the name of which was suggested by Pan American's President Trippe, on August 24, 1931. The stock of CMCA was issued to Pan American and to Mr. Mejia, as more fully described in part B below. The Mejia concession was assigned to CMCA on September 10, 1931 and this assignment was approved by the Colombian Government under date of January 11, 1932 (see Ex. 4 in Docket 28-401(B)-1). It may be noted that in the instrument of approval issued by the Colombian Government, CMCA was described as a subsidiary of Pan American and Pan American's successful operating experience was relied upon as satisfying the requirements of the concession. It also recites that Pan American made the route surveys and

studies required to demonstrate the route's feasibility for commercial airline operation.

Operations under this concession were commenced by UMCA on July 12, 1932. Operations pursuant thereto were conducted for a period of 15 years thereafter and the concession expired on July 12, 1947 and was not renewed. Shortly thereafter, as more fully described below, Mr. Mejia disposed of all of his interests in UMCA to Pan American. Accordingly none of the reasons which prompted establish- [fol. 3118] ment of UMCA have any further significance.

B. *Ownership of UMCA stock.*

UMCA's Certificate of Incorporation provided for issuance of two classes of stock, Preferred Stock with a par value per share of $100, and Common Stock with no par value. There were issued 1,500 shares of Preferred Stock and 3,000 shares of Common Stock, with Pan American Airways Corporation acquiring all of the Preferred Stock and 1,500 shares of the Common Stock and the remaining 1,500 shares of Common Stock were issued to Mr. Mejia as consideration for assignment of the Colombian permit to UMCA. Since under the law of Delaware both the Preferred and Common Stock have equal voting rights, Pan American had from the outset two-thirds of the voting power and this was never relinquished.

Mr. Mejia subsequently transferred 500 shares of his Common Stock to a Colombian firm named Toro Hermanos which had assisted him in obtaining the concession. In 1934, Pan American acquired these 500 shares of stock from Toro Hermanos in exchange for 100 shares of Pan American stock. From 1934 until 1947 Pan American at all times owned all of the outstanding shares of Preferred Stock and 2,000 shares of the Common Stock of UMCA or 78% of the total voting power. The remaining 1,000 shares of Common Stock were at all times beneficially owned by Mr. Mejia but from Feb. 3, 1934 to Dec. 31, 1938 were under option to purchase by Pan American and were deposited in New York with an officer of Pan American, and even after expiration of the option the stock remained deposited with this officer.

[fol. 3119] On February 28, 1941 the shares of UMCA stock held by Pan American Airways Corporation were canceled and reissued in the name of Pan American Airways, Inc, after the necessary approval of the Civil Aeronautics Board had been secured for such transfer (*Pan American Airways, Inc., et al. Merger*, 2 CAB 502 (1940)).

On November 7, 1947 Pan American Airways, Inc. purchased the remaining 1,000 shares of Common Stock of UMCA owned by Mr. Mejia and since that date Pan American Airways, Inc. has been the sole and exclusive stockholder of UMCA.

C. *Directors of UMCA.*

As shown by the UMCA Certificate of Incorporation (Ex. 1 in Docket 28401 (E) 1), the original incorporators of UMCA were Evan E. Young, Alan F. Winslow and E. E. Wyman. All these gentlemen were officers or employees of Pan American.

The original Board of Directors consisted of J. H. Johnston, H. Preston-Morris, Alan F. Winslow, E. E. Wyman, Evan E. Young, and Mr. Mejia. All of these gentlemen were officers or employees of Pan American with the exception of Mr. Mejia. At all times the majority of the directors of UMCA have been officers or employees of Pan American and while between 1931 and 1939 there were Colombian nationals other than Mr. Mejia on the Board of Directors, they seldom, if ever, attended any of the directors' meetings and took no active part in the affairs of the corporation. Since 1939 all of the directors of UMCA, with the exception of Mr. Mejia, have been officers or employees of Pan American and with the resignation of Mr. Mejia from the UMCA Board of Directors, effective July 31, 1947, [fol. 3120] all seats have been held by Pan American.

D. *Officers of UMCA.*

The original officers of UMCA were Alan F. Winslow, President, H. Preston Morris, Secretary, J. S. Woodbridge, Treasurer, and Mr. Mejia, Vice President in Charge of Commercial Operations in Colombia. The President of

UMCA has always been an officer or employee of Pan American and all other officers of UMCA, with the exception of Mr. Mejia, have been officers or employees of Pan American. Furthermore, the scope of Mr. Mejia's powers and responsibilities was at all times restricted by the resolution adopted at the first directors' meeting which provided that Mr. Mejia was to concern himself only with the commercial operations of the company within the Republic of Colombia, it being understood that all other aspects of the company's business would at all times be handled by other officers representing Pan American's interest in UMCA.

E. *Flight equipment and crews of UMCA.*

Only initially did UMCA own and directly operate aircraft. It soon was found expedient for UMCA to obtain all flying equipment by charter from the pool of aircraft maintained for the Latin American services of Pan American Airways, Inc. Charters were on an hourly basis and none of the Pan American markings were removed or obliterated when in the service of UMCA. UMCA never had any facilities for the maintenance and overhaul of aircraft and planes were either maintained at Pan American's Canal Zone maintenance base or were rotated between the route of UMCA and the routes of Pan American so that they could be serviced at Pan American's Brownsville or Miami bases. [fol. 3121] Similarly, the flight crews who have operated the UMCA schedules have always been regular Pan American crews who initially worked the UMCA route on a loan basis and later on a rotational basis.

F. *Ground facilities.*

Pan American has always provided all ground facilities needed for the operation of UMCA in the Canal Zone and in Panama. During the early years UMCA operated its own facilities for aircraft dispatch, passenger handling, and sales at Medellin and Turbo. Pan American later arranged for a sharing of traffic, servicing, and communication facilities between UMCA and its affiliate Avianca at Medellin, while the Turbo station continued to be operated as an UMCA station with the limited amount of personnel

necessary carried on UMCA's payroll. Since June 3, 1941 Avianca has been responsible at Medellin for sale of all transportation over the lines of UMCA, receipt and dispatch of aircraft, cargo and passengers and related administrative matters.

G. *Employees of UMCA.*

The number of persons employed by UMCA has always been nominal since most functions of the company have been handled by Pan American or by its affiliated companies. This includes such matters as accounting, preparation, filing and publication of schedules and tariffs, engineering, communications and legal representation. Pan American has also assumed much of the administrative work and most matters relating to flight operations. All employees directly on the payroll of UMCA are regarded as employees of the Pan American Airways System and have [fol. 3122] the same privileges and benefits as other system employees.

H. *Pan American seeks transfer of a certificate which was in a large part initially its own.*

In the *Latin American Grandfather Certificate* case (2 CAB 111 (1940)), Pan American was issued a certificate of convenience and necessity to engage in air transportation between Cristobal and Turbo. Since this represented a duplication of the certificate which UMCA sought in its certificate proceeding (2 CAB 334), Pan American agreed to transfer its certificate to UMCA if the Board issued a Cristobal-Balboa-Turbo-Medellin certificate to UMCA, and this was done. If this corporate transfer to a subsidiary had not been made, Pan American would now hold directly about 60% of the route mileage which it seeks to recover in this proceeding.

[fol. 3123]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 302

Exhibit No. COX-24
CAB Docket No. 3500

STATEMENT OF NEGOTIATIONS RELATING TO AGREEMENTS BETWEEN NATIONAL, PAA, PANAGRA, AND W. R. GRACE & CO.

I. *Summer of 1948.*

During the summer of 1948 (probably in August) Mr. Baker of National had one or two talks with Mr. Trippe as to the acquisition by PAA of a substantial amount of the stock of National. It is Mr. Baker's recollection that he took the initiative in seeking out Mr. Trippe. Most of the discussion related to Pan American's acquiring sufficient National stock so that Pan American would own something like eighty percent (80%) of the stock of National. Along with this would come agreements for the operation of PAA and Panagra equipment over National's routes. There was a good deal of discussion as to whether payment for the National stock should be made in cash or in Pan American stock, and, if the latter, whether the Pan American stock should be taken at its book value, at its market value or at some intermediate figure. There was also question as to how the National stock should be valued. In general, Mr. Baker's position was that the National stock should be taken at its book value plus an allowance for certain assets which he believes to be undervalued on National's balance sheet, whereas the Pan American stock should be taken at or below its market value. Mr. Trippe, on the other hand, favored a book value basis for both sides. No conclusions were reached as a result of these discussions.

II. *December 1948 and January, 1949*

On December 15, 1948, Mr. Baker addressed a letter to Mr. Roig proposing an interchange of equipment between Panagra and National at Miami. (Exhibit NA-37, p. 1). A

[fol. 3124] copy of this letter was sent to Mr. Trippe. Similar letters were sent by Mr. Baker to several other airlines.

Mr. Roig discussed with the Pan American representatives on the Board of Panagra the response he proposed to make to Mr. Baker's letter to him. Mr. Roig's letter, dated January 6, is reproduced in Exhibit COX-20, p. 3. On January 5, Pan American made a response on its own account, referring Mr. Baker to the recommendation of the CAB Examiner that PAA be authorized to connect Miami with points in the Northeastern United States and emphasizing the Latin American points served by PAA itself through the Miami gateway for which through service was required.

Shortly after sending its letter of January 5, Pan American received Mr. Baker's telegram of that day reading:

"'Morrison tells me that you are willing to discuss possibility of interchange agreement.' When and where can we get together. Regards."

Mr. Trippe answered Mr. Baker's telegram as follows:

"Received your telegram after sending my letter January 5. Cannot believe that in view of our different routes radiating from Miami and other regions mere interchange agreement would in any way meet our problems. However, I am always glad to see you in New York for discussion any matters of mutual interest. Regards."

Mr. Baker's response to this telegram was a letter dated January 14, 1949, set forth in Exhibit COX-20, p. 6.

On January 17, 1949, Mr. Baker and Mr. Scott came to New York and met with Mr. Trippe at his home. This meeting was followed by two long conferences on the following day, January 18, one in the afternoon and another in the evening. Those conferences were attended by Messrs. Trippe, Dean, Friendly, Baker, Scott, Thomas and Fell. Mr. Thomas is a Director of National and both he and Mr. Fell [fol. 3125] are partners in Lehman Bros. which acted as underwriters in the public offering of National's stock. The

discussions included the operation of through and shuttle flights over National's route by Panagra and PAA equipment, and the purchase of a [illegible] stock interest in National by PAA.

PAA's general position was as follows:

1. The need for through service between the Northeastern United States and Latin America by way of the Miami gateway was not limited to the points on Panagra's route although it was clearly stated by PAA that any agreement must include an extension of the Panagra Through Flight Agreement, and that no agreement would be made by PAA without Panagra's consent), but included other areas in Latin America served by PAA. Such through service was required for the convenience of travelers and shippers, the development of traffic, and the meeting of foreign competition.

2. In addition to these through flights with Panagra and PAA equipment, PAA required, as a means of improving the economy of its operations, a facility for getting the planes based in New York to the Miami overhaul base without ferrying. This could not be done simply on international flights both because the number of such flights would not be sufficient (at least if Havana were excluded as a destination and particularly if the AOA acquisition was approved) and because the Boeing equipment was too large both trafficwise and airportwise for operation on certain of the Latin American routes through Miami.

3. The Miami New York operation [illegible] such a vital part of Pan American's business from both a traffic and an operation standpoint that it could not rely on a mere contractual arrangement with National. Pan American [illegible] fol. 3126] can felt it should have a sufficient interest in National so that its views with respect to management problems, while not controlling, would be given very great weight.

4. PAA insisted also that it was entitled to have weight given to its position in its Domestic Route Cases. Examiner Madden, the only disinterested person to review the question, had upheld PAA's position and had recommended that

PAA be certificated for operation over the New York-Miami route with a restriction confining such operation to flights "primarily providing international service." PAA took the position that in the long run it was not going to be blocked off at Miami from access to the true origin and destination of the bulk of the travel to Latin America and that if PAA was to make an agreement that would relieve National of PAA's competition between Miami and New York, it was fair that PAA should become a substantial owner in National. It emphasized also as a further reason for such stock participation that the Latin American traffic which would be handled by National under an interchange agreement would largely traffic which had been developed by PAA through its advertising and sales efforts, both in Latin America and in the United States and that PAA was entitled to profit therefrom.

National's position on these subjects was substantially as follows:

1. Mr. Baker questioned the volume of through traffic between the Northeast and Latin America moving through Miami, other than to points on Panagra's route. If there was enough such traffic, he would be willing to have through flights to handle it, but he was unwilling to make any commitment on the subject.

[fol. 3213] 2. Mr. Baker welcomed the idea of shuttle flights between New York and Miami with PAA equipment, notably the Boeings, during the high traffic season, but was unwilling to make any commitment with respect to the off-season.

3. Mr. Baker did not specifically oppose the acquisition by PAA of stock in National up to say 45% of the total stock. However, he insisted that the National stock should be appraised at book value plus an allowance for items which he believed would increase the book value, while, if payment was made in Pan American stock, this should be taken at market value with a discount in the approximate amount of the underwriting commissions which Pan American would have to pay on the sale of so large a block.

The meeting broke up in a friendly spirit, Mr. Trippe and Mr. Baker both proceeding to Washington to attend the Presidential inauguration ceremonies, but without any agreement having been reached. In the light of this, it was felt necessary to reply to Mr. Baker's letter of January 14, 1949, since it was believed that all these letters would go into the record in Docket 3500. This was done in a letter dated January 25, 1949, pointing out the volume of traffic between the Northeastern United States and points in Latin America other than those on Panagra's route.

On January 21, 1949, Mr. Trippe had lunch with Mr. Peter Grace and advised Mr. Grace of the negotiations which had been had with Mr. Baker. This talk and a simultaneous meeting which Mr. Roig had with Mr. Baker in Washington, in which Mr. Baker informed Mr. Roig of the National PAA Negotiations, led to a meeting on Wed-
[fol. 3128] nesday, January 26, 1949, between Messrs. Dean and Friendly on behalf of PAA and Messrs. Roig and Shea on behalf of W. R. Grace & Co. Mr. Roig began the meeting by stating that he felt that the delay in Pan American's Domestic Route Case arising from Docket 3500 called for the consideration of alternative methods of getting Panagra's through flight into New York. Dean and Friendly said that while they continued to believe that the acquisition of Miami-New York rights by PAA would be by far the most satisfactory method of solving PAA's and Panagra's problems, PAA likewise had recognized the desirability of exploring alternatives and, as Mr. Grace had been informed, had had talks with Baker which, if any progress had been made, would have been brought to Panagra for its consent. Mr. Roig approved the idea of negotiations with Baker but said he thought Panagra should have a seat at the table. Dean and Friendly said they could not see the merit of this position. Under the Through Flight Agreement, it was PAA's responsibility to do what it could to get the right to fly to New York. Once PAA had gotten such a route, Panagra would have had the right to have its airplanes flown over this route, but the entire financial interest in the rout was to be that of PAA and not of Panagra. If developments had made it desirable to explore alternative

arrangements for getting the right to operate between Miami and New York, which Mr. Roig agreed was the case. PAA's obligation was to see that Panagra was protected to the same extent as Panagra would have been had PAA gotten the route in its own name, but there was no obligation to allow Panagra or Grace any ownership interest in respect of the route. Dean and Friendly assured Roig and Shea that in any future negotiations between PAA and Baker, they would continue to insist on the operation of Panagra's aircraft between Miami and New York being provided for, [fol. 3129] and also that PAA would not enter into any such arrangement with National except after fully advising Panagra and making sure that Panagra was satisfied, but they were unwilling to go beyond this.

On January 24 Mr. Trippe was in telephone contact with Mr. Baker and, with Mr. Baker's permission, with Mr. Scott. These telephone conversations led to Mr. Scott's letter of January 24, 1949 stating that he would recommend to the Board of Directors of National an arrangement under which Pan American would acquire 174,000 shares of National stock for cash at $5.50 a share or a price equivalent to 90% of the average daily closing price of National stock from January 1, 1948 to the day preceding the date of delivery and payment, whichever was greater. National would also agree to sell additional stock to PAA sufficient so that PAA would own 45% of the total outstanding stock. In the case of this latter sale, the National stock was to be taken at book value plus upward adjustments and payment was to be made in cash or in PAA stock at 90% of its market value for 60 days prior to the date of delivery. This memorandum also called for interchange agreements "where the same shall be mutually advantageous," these to include Panagra, the leasing of flight equipment "where the same shall be mutually advantageous," and joint use of facilities "where the same shall be mutually advantageous." Mr. Trippe phoned Mr. Scott that this memorandum seemed to be a considerable advance toward an agreement and this, in turn appears to have led to Mr. Baker's wire of January 26:

"Talked with Scott. Suggest you forward memorandum of your proposal for discussion with our Directors Monday."

Shortly after this Mr. Baker and Mr. Scott arrived in New York. During the morning of January 27 they met (fol. 3130) with Messrs. Grace, Roig and Shea. Baker outlined the course of the negotiations with PAA and stated he believed it would be advisable for Panagra or Grace to have a stock interest in National. He felt that a financial interest on the part of all companies to the proposed interchange was essential to make the interchange work effectively. Grace, Roig and Shea agreed that such financial participation was desirable and various proposals were discussed.

Mr. Baker and Mr. Scott met with Messrs. Trippe, Dean and Friendly on the afternoon of the same day. They stated that they had come from a meeting with W. R. Grace and Co. and indicated that they were no longer willing to go forward on the basis outlined in Mr. Scott's memorandum of January 24. Their proposal was that some 48% of National stock should be acquired but that this should be divided approximately half to Pan American and half to Panagra, or in the alternative, somewhat more than half to PAA and somewhat less than half to W. R. Grace & Co. The PAA representatives said that this represented a complete change in the proposal, that they had no objection to W. R. Grace & Co. acquiring stock in National if such was desired, but that this should be over and above the 45% which it had been agreed PAA should have.

Late in the afternoon of January 27, Mr. Grace and Mr. Roig met with Messrs. Trippe, Dean and Friendly, who expressed the same view to them. The PAA representatives suggested that W. R. Grace & Co. acquire some 10% of National's stock, this to be outside the PAA 45%, but no understanding was reached. Trippe and Dean paid a brief visit to Baker and Scott at their hotel after this meeting.

Messrs. Trippe, Dean and Friendly met again with Messrs. Baker and Scott for lunch on the following day.

[fol. 3131] January 28. Baker declined to negotiate on the basis of PAA's acquiring a 45% stock interest and reverted to the formula of 48% with half going to Panagra or a small portion going to Grace. There was also more discussion about market price, book value, etc. The meeting broke up without any solution having been reached.

This was followed by more letters, namely, Mr. Baker's of February 10, Mr. Dean's of February 15, Mr. Baker's of February 24 and Mr. Dean's of February 28, as set forth in Exhibit No. COX-20, pages 9 through 12.

W. R. Grace & Co. were advised by both Mr. Baker and Mr. Friendly that the negotiations between PAA and National had broken off. In view of the importance which W. R. Grace & Co. attached to the development of an interchange for Panagra, the idea was developed that Grace might obtain an offer from National which would cover not only a stock interest for Grace and PAA, but also interchange agreements.

As a result of this decision by W. R. Grace & Co., a conference was arranged with Messrs. Baker and Scott who were in New York during the week of February 14. Several meeting were held, attended by Messrs. Baker, Scott, Roig and Shea. Considerable progress was made during these discussions which were aimed at reaching an understanding which could be presented to Pan American. No agreement was reached, however, and Messrs. Roig, Grace and Shea went to Miami on February 26 for a continuation of the talks. Following three days of negotiations, the National proposal of February 28 (Exhibit NAL-98) was developed.

This proposal was considered by the Directors of W. R. Grace & Co. and the decision reached to accept the stock purchase.

[fol. 3132] III. *March, 1949*

On March 2 the offer of stock of National was accepted by W. R. Grace & Co. (Exhibit No. COX-20, p. 22).

On the same day, Mr. Peter Grace called on Mr. Trippe and advised him of the execution of the agreement of Febru-

ary 28, 1949 between W. R. Grace & Co. and National, and of Grace's exercise of its option to purchase 174,000 shares of National's stock at $5.50 per share. The other terms of the agreement of February 28 were discussed briefly, and Mr. Trippe then stated to Mr. Grace that PAA would have to consider the situation thus created in the light of its own interests and the obligations of PAA and Grace under the Through Flight Agreement.

PAA decided that, before coming to any conclusion whether to endeavor to secure a modification of the February 28 agreement that would make this more acceptable from PAA's standpoint, the possibilities of an arrangement with Eastern should be fully explored and negotiations to that end were instituted.

Meanwhile, the month of March was passing. When PAA allowed the March 10 deadline to pass without taking any action, the Grace representatives indicated they would insist on the matter being considered by the Panagra Board prior to the Panagra deadline of March 30. A meeting was held about March 23 between Messrs. Dean, Friendly, Roig and Shea to discuss the matter. Dean and Friendly inquired, without committment, whether there would be any interest on the part of National and Grace in [illegible] 28 agreement in the following particulars:

1. The ratio of PAA's stock to Grace's stock should be 30-18, instead of 24-24;

2. PAA would have the right to acquire not merely the [fol. 3153] higher priced stock as provided in the February 28 agreement, but 30-48ths of the 174,000 shares which Grace had bought at $5.50.

3. The PAA-National interchange agreement should include, in addition to a through flight proceeding over one of PAA's international routes, twice daily shuttle flights between New York and Miami.

4. The term of the interchange agreements should be reduced from the 99 years provided in the Grace-National Agreement to July 1, 1953, subject to extension for seven

years, in the case of the PAA agreement if PAA exercised its option to purchase National stock, and in the case of the Panagra agreement if both PAA and Grace exercised their options. These options were to continue to July 1, 1953.

5. PAA was to have the right to pay for its optioned National stock in PAA stock at market value.

Mr. Roig characterized this as a constructive proposal and said they would talk about it with their associates and with National. Shortly after this, Messrs. Shea and Grace departed for Miami to negotiate with National. Commencing with the latter part of the week, there was a good deal of proposing and counter proposing as to various points.

A Directors' meeting of Panagra had been called for Tuesday, March 29. The parties were still apart on certain matters, such as who should have the right to determine whether Panagra would extend its interchange agreement, the length of the options, and National's demand that Pan American stock taken in payment for National stock should be valued 10% below market. However, after discussions on March 29 there appeared to be sufficient hope of reaching an agreement so that instead of holding the Directors' meeting, Trippe, Dean, Grace, Roig and Shea proceeded [fol. 3134] to Washington to meet with Baker, Cross, Friendly and Gesell. As a result of further negotiations, an agreement was signed early in the morning of March 30.

Subsequent to the execution of the March 30 agreement, counsel for the various parties set about the preparation of the detailed agreements to carry this out. A number of points of difficulty arose, such as the hours when schedules should be operated, the extent to which PAA and Panagra had the right to "put" schedules to National, the mechanics for making PAA stock available as payment of the purchase price in the event of the exercise of its option in a manner consistent with the provisions of the Securities Act, etc. After various meetings in New York, it was decided that the best way in which to bring matters to a conclusion was to have a general meeting in Miami. Accordingly, Messrs. Grace, Shea, Hayes, MacElwain, Dean and Friendly went to Miami early in May to meet with Messrs. Baker, Scott,

Cross and others representing National. As a result of three days work between May 5 and 7, substantially final drafts were prepared. These were taken to New York for printing and were executed on May 11.

[fol. 3135]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 303

[Stamp—Received by J. C. C.—Jun 19 1945—Illegible]

[Stamp—Research Department—Pan American Airways —Chrysler Building]

[Stamp—Research Library—File Copy]

Orders
Serial Number 3728

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

At a session of the Civil Aeronautics Board
held at its office in Washington, D. C.
on the 5th day of June, 1945

Agreement C.A.B. No. 389

In the Matter of an agreement filed under section 412(a) of the Act by and between

A. B. AEROTRANSPORT and certain other foreign air carriers named therein

and

AMERICAN AIRLINES, INC., AMERICAN EXPORT AIRLINES, INC., BRANIFF AIRWAYS, INC., COLONIAL AIRLINES, INC., NORTHEAST AIRLINES, INC., NORTHWEST AIRLINES, INC., PAN AMERICAN AIRWAYS, INC., PAN AMERICAN-GRACE AIRWAYS, INC., TRANSCONTINENTAL & WESTERN AIR LINES, INC., UNITED AIR LINES, INC., WESTERN AIR LINES, INC., as active members

and

AEROVIAS PARAGUAYAS, S. A., and certain other foreign carriers named therein

and

ALL AMERICAN AVIATION, INC., DELTA AIR CORPORATION, EASTERN AIR LINES, INC., NATIONAL AIRLINES, INC., PENNSYLVANIA-CENTRAL AIRLINES CORPORATION as associate members,

relating to the Articles of Association of The International Air Transport Association (IATA) adopted at Havana, Cuba, April 19, 1945.

ORDER APPROVING AGREEMENT

Upon consideration of Agreement C.A.B. No. 38[illegible] between the above named carriers, filed pursuant to section 412(a) of the Act; and

The Board finding that said agreement is not adverse to the public interest or in violation of the Act:

[fol. 3136] IT IS ORDERED That said agreement be and the same is approved: *PROVIDED, That* the approval of the Board herein of the Articles of Association of the International Air Transport Association shall not be construed to constitute Board approval or disapproval of any subsequent contract entered into, or any specific action taken pursuant to said Articles of Association: *PROVIDED FURTHER, That* this approval shall not be effective as to any United States air carrier party thereto, and named therein, until such air carrier has accepted the Articles of Association and filed concurrence therein with the Board as required by Section 251.4 of the Economic Regulations.

By the Civil Aeronautics Board:

/s/ FRED A. TOOMBS
Fred A. Toombs
Secretary

(SEAL)

[fol. 3137]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 304

Orders
Serial Number 4525

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

At a session of the Civil Aeronautics Board held at its office in Washington, D. C. on the 19th day of February, 1946.

Agreement C.A.B. No. 493

In the Matter of an Agreement Filed Under Section 412(a) of the Act by and among

AMERICAN OVERSEAS AIRLINES, INC., TRANSCONTINENTAL & WESTERN AIR, INC. and certain other air carriers and foreign air carriers named therein,

relating to the establishment and conduct of regional traffic conferences of the International Air Transport Association.

ORDER APPROVING AGREEMENT

There having been filed with the Board pursuant to section 412 of the Civil Aeronautics Act of 1938, as amended, by American Overseas Airlines, Inc., and Transcontinental & Western Air, Inc., a resolution of the International Air Transport Association entitled "Provisions for the Regulation and Conduct of Traffic Conferences of the International Air Transport Association," adopted by unanimous vote of the members of the International Air Transport Association present at a meeting on October 18, 1945, and the filing of such resolution having been concurred in by American Airlines, Inc.; Braniff Airways, Inc.; Colonial Airlines, Inc.; Northeast Airlines, Inc.; Northwest Airlines, Inc.; Pan American Airways, Inc.; Pan American-Grace Air-

[fol. 3138] ways, Inc.; United Airlines, Inc.; and Western Air Lines, Inc.; and

The Board having, after consideration of the said Agreement and after hearing oral argument with respect thereto, issued its opinion containing its findings, conclusion and decision which is attached hereto and made a part hereof;

IT IS ORDERED That Agreement C.A.B. No. 493 be and it hereby is approved from the date hereof to and including February 28, 1947; *Provided*, however, that such approval is upon the following express conditions: (1) That it shall not constitute approval or disapproval of any action taken or agreement reached hereafter by any of the traffic conferences created and acting pursuant to said Agreement; (2) That it shall not constitute approval of participation by any United States air carrier in any traffic conference which reaches an agreement fixing rate or rates which are put into effect by such air carrier prior to submission to and approval by the Civil Aeronautics Board of such agreement; (3) That no agreement fixing a rate or rates for periods extending beyond the period of approval of Agreement C.A.B. No. 493 will be approved by the Board.

By the Civil Aeronautics Board:

/s/ Fred A. Toombs
Fred A. Toombs
Secretary

(SEAL)

[Stamp—Pan American Airways, Inc. Legal Department Files—Folder 2105.2]

[fol. 3139]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 305

Orders
Serial Number E 1227

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

[Handwritten notation—2165.2—F.J.C.]

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 20th day of February, 1948

[Stamp—Received in the Office of Vice Pres. & Gen'l. Counsel—Mar 8 1948—Referred to: H.J.F.—J.C.P.—J.O.C.—F.J.C.—J.O.B.—J.H.H.—J.H.S.—J.A.M.—Files]

Agreement C.A.B. No. 493
as revised by
Agreement C.A.B. No. 1175

[Handwritten notation—See 1947 Folder for Extra Copy. E706—Order Approving Agmt.]

In the Matter of an Agreement filed pursuant to section 412(a) of the Civil Aeronautics Act by and among

AMERICAN OVERSEAS AIRLINES, INC.

and

CERTAIN OTHER AIR CARRIERS AND
FOREIGN AIR CARRIERS

relating to the establishment and conduct of Regional Traffic Conferences of the International Air Transport Association (IATA)

ORDER AMENDING ORDERS APPROVING AGREEMENT

The Board, by Order Serial No. 4525, dated February 19, 1946, having approved for a temporary period to and including February 28, 1947, subject to certain conditions set forth therein, an agreement by and among American Overseas Airlines, Inc. and certain other air carriers and foreign air carriers, as evidenced by Agreement C.A.B. No. 493, providing for the establishment and conduct of Regional Traffic Conferences of the International Air Transport Association (IATA); and

The Board, by Order Serial No. E-269, dated January 31, 1947, having extended its approval of Agreement C.A.B. No. 493 for a period of one year from and after February 1947, to and including February 28, 1948, subject to certain conditions as set forth therein; and

[fol. 3140] There having been filed with the Board a resolution of the Eighth Meeting of the Executive Committee of IATA, adopting revised rules for the regulation and conduct of the Traffic Conferences of IATA, evidenced by Agreement C.A.B. No. 1175, and the Board by Order Serial No. E-706, dated July 21, 1947, having approved Agreement C.A.B. No. 1175 from such date to and including February 28, 1948, subject to the conditions set forth therein, except that portion of Part IV of said agreement which contemplated that Traffic Conferences of IATA should make recommendations as to rates for the carriage of mail by foreign air carriers; and

The Board, upon reconsideration of Agreement C.A.B. No. 493, as revised by Agreement C.A.B. No. 1175, having issued its opinion containing its findings, conclusions and decision on such reconsideration which is attached hereto and made a part hereof; and

The Board, not finding that extension of its approval of Agreement C.A.B. No. 493, as revised by Agreement C.A.B. No. 1175, except such portion of Part IV thereof enumerated above, for a period not extending beyond February 28, 1950 would be adverse to the public interest or in violation of the Act;

IT IS ORDERED THAT:

1. Agreement C.A.B. No. 493, as revised by Agreement C.A.B. No. 1175, except that portion of Part IV thereof, enumerated above, be and it hereby is approved for a period not to extend beyond February 28, 1950;

2. The approval granted herein is on the following conditions:

(a) Such approval shall not constitute approval or disapproval of any action or agreement reached hereafter by any of the Traffic Conferences created and acting pursuant to said agreement;

[fol. 3141] (b) No agreement fixing a rate or rates for periods extending for more than one year or beyond the period of approval of Agreement C.A.B. No. 1175 will be approved by the Board;

(c) Such approval shall not constitute approval of the participation of any United States air carrier in any agreement establishing any rate or rates which shall be quoted or charged any nation for the transportation of mail.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

(SEAL)

[fol. 3142]

OPINION

BY THE BOARD:

On February 19, 1946, the Board approved, for a temporary period ended February 28, 1947, an agreement among certain air carriers and foreign air carriers relating to the establishment and conduct of regional traffic conferences of the International Air Transport Association

(IATA).[1] On January 31, 1947, the approval of this agreement was extended for an additional period ending February 28, 1948. Subsequently, a new agreement (C.A.B. No. 1175) was filed with the Board which effected certain changes in the organization of the traffic conferences and this agreement was also approved for a temporary period to and including February 28, 1948. We are now called upon to consider, under Section 412 of the Act, the extension of approval of Agreement C.A.B. No. 1175 beyond the latter date.[2]

During the past two years, the various traffic conferences of IATA have held twenty-three meetings and adopted several hundred resolutions which cover a wide range of matters, including rates, terms and conditions of carriage, reservations and booking procedures, relations between carriers and agents, and other cooperative working arrangements for the handling of traffic. In the non-rate field, [fol. 3143] the great majority of the resolutions so far considered by us reflect favorably upon IATA which has, in a relatively short time, succeeded in establishing procedures which will not only reduce operating problems of the individual carriers but which will directly benefit the public by facilitating the international movement of passengers and cargo. There appears to be no more effective way by which these desirable objectives could be accomplished than through the machinery of an organization such as IATA.

The principal issue in our consideration of the extension of the traffic conference machinery concerns, however, the

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[1] *Agreement C.A.B. 1[illegible], IATA Traffic Conferences Resolution 6*, C.A.B. 639. These conferences provide the machinery for consultation and agreement between United States air carriers and those of other nations with respect to rate and traffic matters in international air transportation.

[2] Order Serial No. E-269.

[3] Order Serial No. E-706.

[4] Under Section 412, the Board is required to disapprove any agreement filed thereunder which is found to be adverse to the public interest or in violation of the Act. To the extent that the Board approves an agreement, Section 414 of the Act relieves the parties from liability under the anti-trust laws of the United States.

conferees' rate-making processes, particularly the character of economic data relied upon to support the individual rate resolutions concluded by them. In its initial approval of the conference method of rate-making, the Board set forth its understanding of the manner in which the individual Conferences would operate. Among other things it was pointed out that the Board's approval assumed "that after conference procedures have been complied with an open rate may, and indeed should, exist if the rate proposals advanced at any conference are unreasonable or economically unsound and are not properly related to the reasonably attainable costs of the air carriers."

The Board later disapproved rate resolutions of the first North Atlantic Traffic Conference, because of its failure to relate the rates specified therein to costs of operation, and stated its intention to require evidence that the Conference had acted in accordance with the basic tenets previously laid down. On this occasion we suggested that "it will be of great value if the Conference, in reaching rate agreements hereafter, will make a record of the data con- [fol. 3144] sidered by it and of the considerations which resulted in its conclusion that the rates fixed by it meet the required standards of economic soundness, and will make that record available to the Board, and to the appropriate aeronautical agencies of other nations which may undertake to review the Conference action on rates."

Two years have elapsed since the initial Board approval of participation by United States carriers in rate-making by the Conference agreement method. On a number of occasions during these two years, Conference rate resolutions have been submitted to the Board for its approval. The Board, however, is without advice that IATA has yet established measures for obtaining and transmitting to the Board, either directly or through the United States members of IATA, data in support of the rate resolutions which can be regarded as satisfactory evidence of their economic

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Agreements C.A.B. Nos. 541, 556, and 585 to 602, inclusive. Resolutions of North Atlantic Traffic Conference Relating to Rates and General Conditions of Carriage, 6 C.A.B. 845.

soundness, or that such data have been given adequate consideration by IATA in its rate determinations.

The Board is not insensitive to the organizational difficulties associated with the assembly of such data by IATA and by those IATA members whose international operations are in an early developmental stage. The Board has not yet, however, received information on the operating revenues, expenses, or traffic experienced by any except the United States parties to the IATA resolutions submitted to it for approval.

The minimum character of information the Board deems necessary to discharge its statutory obligations in connection with IATA rate resolutions is that which IATA members are already committed to furnish to the International Civil Aviation Organization, as provided for by the Air Transport Statistical Reporting Forms of that organiza [fol. 3145] tion, specifically, Table T2 (Traffic Summary) and Table P2 (Operating Statement). The Board will regard as reasonable cause for prompt disapproval of rate resolutions the failure to support such resolutions with this minimum of information covering the operations of the principal carrier participants in the rates included in the resolutions, for not less than the most current half year preceding the adoption of the resolutions. It is our opinion that neither the members of IATA nor the reviewing agencies of their respective governments can adequately appraise the economic soundness of rate resolutions except upon consideration of such minimum data.

While the development of cost data has so far not been satisfactory, we recognize, as above indicated, the difficulties which have attended the efforts of IATA and its members to obtain more adequate data during the past experimental period. We understand, too, that IATA is making serious efforts to effect improvements in this respect. For these reasons, and in view of the significant accomplishments of the traffic conferences in respect to non-rate matters, we will approve the continuance of the conference machinery for an additional trial period not to exceed two years, which period should afford ample opportunity for a more definite

evaluation of the conference method of rate making than is possible on the basis of present experience. As pointed out in our initial approval of the IATA Traffic Conference machinery, however, we shall not approve any rate agreement hereafter submitted to us which does not include provision for termination within a reasonable time. Accordingly, we shall not approve an agreement fixing a rate or rates for periods extending for more than one year or beyond the period of approval of Agreement CAB No. 1175.

[fol. 3146] We do not find that an extension of our prior approval of Agreement CAB 1175 will be adverse to the public interest or in violation of the Act, and the agreement will, therefore, be approved for a period not to exceed two years from and after February 28, 1948. This approval will be subject to the conditions that it shall not constitute approval or disapproval of any action taken, or agreement reached, by any of the traffic conferences created and acting pursuant to said agreement, that no agreement fixing a rate or rates for periods extending for more than one year or beyond the period of approval of Agreement CAB No. 1175 will be approved by the Board, and that such approval shall not constitute approval of the participation of any United States air carrier in any agreement fixing a rate or rates which shall be quoted or charged any nation for the transportation of mail.

An appropriate order will be entered.

Ryan, Acting Chairman, Branch and Lee, Members of the Board, concurred in the above opinion.

[fol. 3147]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 306

Order No. E 9305

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 15th day of June, 1955

Agreement CAB No. 1175, as amended

In the matter of an extension of approval of an agreement filed pursuant to section 412(a) of the Civil Aeronautics Act of 1938, as amended, between

PAN AMERICAN WORLD AIRWAYS, INC.

and

CERTAIN OTHER AIR CARRIERS
FOREIGN AIR CARRIERS AND OTHER CARRIERS

relating to the Regulation and Conduct of the Regional Traffic Conferences of the International Air Transport Association (IATA)

ORDER

The Board, by Order No. 4525, dated February 19, 1946 approved until February 28, 1947, subject to certain conditions, an agreement (CAB No. 493) between various air carriers and foreign air carriers providing for the establishment, regulation and conduct of Regional Traffic Conferences of IATA. This agreement was later revised (CAB No. 1175) and subsequently approved by the Board in 1947, 1948 and 1952 for varying periods ending June 30, 1955.

The Board, upon reconsideration of the resolution, finds:

1. That extension of its approval beyond June 30, 1955 would not be adverse to the public interest or in violation of the Civil Aeronautics Act;

2. That a continuation of the conditions to approval of the IATA machinery as set forth in Order No. E-6390 of May 1, 1952, as amended by Orders Nos. E-7407 of May 25, 1953 and E-8023 of January 7, 1954 is necessary to the exercise of the Board's responsibilities; and

3. That the review of future filings of IATA resolutions will be facilitated by the inclusion in this order of certain general conditions normally inserted in each individual order issued on conference resolutions;

Accordingly, IT IS ORDERED THAT Agreement CAB No. 1175, as amended, be and it hereby is approved beginning July 1, 1955, subject to the following conditions:

[fol. 3148] 1. That the air carriers members cause all documentary materials distributed by IATA or any subgroup thereof, to the members of IATA or any such subgroup, to be transmitted to the Board at the time such material is distributed to said members; provided that the Board may waive this requirement as to any such documentary material for such period as it deems proper;

2. That such approval shall not constitute approval of any agreement, action, or recommended practice of any of the traffic conferences created by and acting pursuant to the agreement;

3. That the air carrier members submit to the Board for appropriate action all recommended practices, agreements, and resolutions adopted by IATA and each of its conferences;

4. That such approval shall not constitute approval of participation of any United States air carrier in any traffic conference which reaches an agreement fixing rates, fares, or charges that are put into effect by such air carrier prior to submission to and approval by the Civil Aeronautics Board of each agreement;

5. That no agreement fixing rates, fares, or charges for periods longer than one year will be approved by the Board;

6. That such approval shall not constitute approval of the participation of any United States air carrier in any agreement establishing rates or charges which shall be quoted or charged any nation for the transportation of mail;

7. That with respect to the provisions of Section XII of the agreement entitled "Breaches of Conference Action":

(a) the United States carrier members of IATA shall notify the Board of any fine or penalty assessed against them, with a brief statement of the reasons therefor.

(b) each United States carrier member of IATA shall authorize and instruct the Director General to furnish to the Board, upon request, a record of the fines or penalties assessed against it under IATA enforcement procedures.

(c) the United States carrier members of IATA shall furnish the Board with a copy of the summary of cases heard, as mentioned in Paragraph 13 of the above-mentioned Section.

8. That approval of any agreement embodied in a resolution adopted by IATA or any of its Traffic Conferences pursuant to the conference machinery approved hereby shall be subject to the following general conditions:

[fol. 3149] (a) Approval of any resolution shall not be deemed approval of the application to such resolution of any other resolution except to the extent permitted by any approval of such other resolution;

(b) Approval of any effectiveness resolution is limited to the extent that it provides effective dates for other approved resolutions;

(c) Approval of any resolution shall be subject to the condition that air carrier members of IATA file with the Board, 5 days from the date the notices are received or sent, copies of all notices rescinding or amending any of the provisions or modifying the period of effectiveness of any resolution under the provisions of any resolution or

portion thereof which permits such rescission, amendment, or modification;

(d) Approval of any amending or revalidating resolution shall not affect the applicability of any condition previously appended to the approval of the resolution being amended or revalidated;

(e) Nothing in an order approving a resolution shall be construed as waiving any provision of the Board's Economic Regulations relating to the construction, publication and filing of tariffs, unless expressly so provided;

(f) Approval of any fare by an order approving a resolution is given on the understanding that the fare so approved is a minimum and does not include the assumption of so-called passenger expenses at connecting points, except insofar as it is permitted under the terms of a valid resolution providing for such assumption of said passenger expenses.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

[fol. 3150]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 307

[Stamp—Library—Apr. 9 1959—Pan American World Airways]

Order No. E-13631

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 19th day of March, 1959

Docket No. 10002
Agreement C.A.B. No. 12883,
R-1, R-3 through R-40

In the matter of an agreement adopted by the Traffic Conferences of the International Air Transport Association relating to fares

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ORDER

There has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, an agreement between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA), adopted at the reconvened meetings held in Paris, France, during February 1959. The agreement has been assigned the above-designated C.A.B. Agreement number.

The agreement relates to basic fares and a limited number of special fares to be applicable for the year beginning April 1, 1959, in all areas other than transpacific routes and within the Far East where agreement had previously been reached at the Cannes meetings held during September-October 1958. Insofar as transportation to and from the

United States is concerned, increases in North Atlantic fares amounting to $5, one-way, in the base New York-London fares for economy, tourist, and first-class services and $15 in fares for deluxe class service are proposed, with corresponding increases on the Mid Atlantic route. First-class and tourist-class fares between the United States and points in the Caribbean and South America are maintained as currently effective.

The agreement further provides that jet services on the North and Mid-Atlantic routes, and between certain specified points within the Western Hemisphere will be assessed a surcharge. On the transatlantic routes the proposed charge is $15, one-way, on economy and tourist-class services, $20 on first and deluxe-class services. Within the Western Hemisphere the surcharge is limited to the New York-Port of Spain-Caracas-Rio de Janeiro-Buenos Aires route, where it is expected that jet aircraft will be introduced during the period in question, and amounts to $10, one way, except between New York, on the one hand, and Rio de Janeiro and Buenos Aires, on the other hand, where the charge is $20. In both cases, the resolutions in question provide that, upon notice given by any carrier involved between September 1, 1959, and February 1, 1960, the surcharge will be inapplicable after February 29, 1960, one month prior to the intended expiration date of the basic fares.

In view of the fact that the agreement is to be effective for a limited period, a year in which the major transition to jet operations should be accomplished, the present un-
[fol.3151] certainty as to the impact which jet services will have upon the industry, and the amounts of the proposed surcharges in relation to the basic fares to which they apply, the Board concludes that approval of the agreement would be consistent with the public interest. As we have previously pointed out, the Board presently has under study the entire question of pricing jet services. Accordingly, our action herein does not represent a final determination with respect to jet fares.

The Board would like to state once again its conviction that the future development of international air transporta-

tion will depend, in the last analysis, upon adequate availability of service priced at the lowest level economically feasible. This is particularly true with respect to the North Atlantic with its large tourist travel potential. To the extent that jet services prove themselves to be more efficient than operations with piston aircraft, as they show every likelihood of doing, we shall expect that the cost advantage accruing to the carriers be passed along to the passenger through reductions in fares, to the ultimate and mutual benefit of both the traveling public and the carriers.

The Board, acting pursuant to sections 102, 204(a), 412, and 414 of the Act, and subject to the general conditions set forth in Order No. E-9305, dated June 15, 1955, as amended by Orders Nos. E-10992 and E-12304, dated January 31, 1957, and March 31, 1958, respectively, makes the following findings:

1. The Board finds that the following resolutions do not affect air transportation within the meaning of the Act:

CAB No.	IATA No.	Title	Application
R-3	002b	Special TC2 Revalidation Resolution	2
R-4	003	Special TC2 Rescission Resolution	2
R-25	084b	Creative Fares	2
R-26	084f	Creative Fares, Persian Gulf India and Ceylon	2/3
R-27	084g	Creative Fares Board Europe (expedited)	2
R-28	084g	Creative Fares Board Europe	2
R-33	203a	Reduced Fares for Cargo Agents	2
R-34	203b	Group Education Trips for Passenger Agents	2

2. The Board does not find the following resolutions to be adverse to the public interest or in violation of the Act:

CAB No.	IATA No.	Title	Application
R-1	001b	Special Effectiveness Resolution	1/2
R-5	023a	Rounding-Off Passenger Fares	1, 1/2

CAB No.	IATA No.	Title	Application
R-6	051	Conference 1 First Class Fares	1
[fol. 3152]			
R-7	051a	Special Local Currency Fares and Rates	1
R-8	052	Conference 2 First Class Fares	2
R-11	054c	South Atlantic Normal First Class Fares	1 2
R-12	055	Joint Conference 2 3 First Class Fares	2 3
R-13	057	Joint Conference 123 First Class Fares	1-2 3
R-14	058	First Class Polar Fares	2 3, 1/2 3
R-15	061	Conference 1 Tourist Class Fares	1
R-16	062	Conference 2 Tourist Class Fares	2
R-17	064a	North Atlantic Tourist Class Fares	1/2
R-18	064b	Mid Atlantic Tourist Class Fares	1/2
R-19	064c	South Atlantic Tourist Class Fares	1/2
R-20	065	Joint Conference 2 3 Tourist Class Fares	2 3
R-21	067	Joint Conference 123 Tourist Class Fares	1/2/3
R-22	068	Tourist Class Polar Fares	2 3, 1/2/3
R-23	080	Excursion Fares	1
R-24	080f	Excursion Fares	1
R-29	090	Special Iraq-Persian Gulf-Europe Return Fares	2
R-30	100a	North Atlantic Tourist Type Service Economy Class	1/2
R-31	200	Free and Reduced Fare or Rate Transportation	1/2, 1/2/3
R-32	203	Reduced Fares for Passenger Agents	1/2, 1/2/3
R-35	204	Free or Reduced Fares for Tour Conductors.	1/2, 1/2/3
[fol. 3153]			
R-36	205	Free or Reduced Fare Transportation for IATA General Sales Agents	1/2, 1/2/3

3. The Board does not find the following resolutions to be adverse to the public interest or in violation of the Act, provided that approval thereof be subject to the condition that copies of all notices received and sent pursuant to each of said resolutions be submitted to the Board at the time of their circulation to the Members:

CAB No.	IATA No.	Title	Application
R 9	054a	North Atlantic First Class Fares	1 2
R 10	054b	Mid Atlantic First Class Fares	1 2
R 37	251	Seating Surcharge Mid Atlantic	1 2
R 38	251a	Deluxe Class Surcharge (Deluxe Class Fares) North Atlantic	1 2
R 39	252	Jet Surcharge North and Mid Atlantic	1 2
R 40	254	Jet Surcharge Traffic Conference 1	1

Accordingly, IT IS ORDERED THAT:

1. The Board hereby disclaims jurisdiction with respect to that portion of Agreement C.A.B. No. 12883 listed in finding paragraph 1 above, provided that the Board may, at any time, reassert jurisdiction with respect thereto.

2. That portion of Agreement C.A.B. No. 12883 listed in finding paragraphs 2 and 3 above be, and it hereby is, approved, subject to the general conditions set forth in Order No. E-9305, dated June 15, 1955, as amended by Orders Nos. E-10992 and E-12304, dated January 31, 1957, and March 31, 1958, respectively, and to the specific condition set forth in finding paragraph 3 above.

3. Any air carrier party to the agreement, or any interested person, may, within 15 days from the date hereof, submit statements in writing containing reasons deemed appropriate together with supporting data, in support of or in opposition to the Board's approval herein. Such statements should conform to the general requirements of the Board's Rules of Practice in Economic Proceedings. The Board may, upon consideration of any such comments

received, modify or rescind its approval by subsequent order.

By the Civil Aeronautics Board:

/s/ Mabel McCart
Mabel McCart
Acting Secretary

(SEAL)

[fol. 3154]

Pan American World Airways, Inc. Exhibit 308

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CIVIL AERONAUTICS BOARD
Washington 25

May 4, 1951

Mr. J. T. Trippe, President
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, New York

Dear Mr. Trippe:

On April 4, 1951, a meeting was held between the Board staff and the United States Members of IATA, in order to ascertain the positions of the carriers with respect to agreements to be reached at IATA Traffic Conference Meetings beginning May 8, in Bermuda.

The Board has carefully considered the position of the carriers, the data bearing upon those positions, and their relationship both to the sound economic development of international air transportation and the level of mail pay requirements. Keeping in mind the objective of building a rate structure which will contribute most substantially to a prosperous industry through the broadening of the Air traffic base and the maximizing of carrier revenues, the

Board offers the following as its suggestions for the guidance of the U. S. flag carriers in the forthcoming IATA discussions. However, the Board recognizes that differences of opinion exist among the various international carriers, particularly with reference to tourist and special fares, and that therefore U. S. flag carriers must have some freedom of action in negotiating the various issues.

With respect to the North Atlantic structure, the Board believes that recognition should now be given to the ever-increasing demand for low cost transportation. In order to satisfy this demand and at the same time protect and improve the economic position of the trans-Atlantic carriers, the Board recommends the adoption, on an experimental basis, of a two-class fare structure consisting of the following:

A. An all-year standard fare of $395 one way and $711 round trip; representing a $20 increase over the present base level to London, with comparable increases to all other European gateways;

B. An all-year tourist service having the following conditions:

(1) A minimum tourist fare of $325 one way and $405 round trip to London with comparable fares to other European gateways, related to use of aircraft having effective seat densities (i.e., seats actually available for sale over the critical segment), as follows:

[fol. 3155]

(a) DC 4	60 seats
(b) Constellation and DC 6	65 seats
(c) Boeing 377	100 seats

If agreement can be reached only upon the basis of decreasing the seat densities given above, proportionate increases in the suggested fare should be made.

(2) Tourist service to be limited to one fifth the number of seats available in scheduled service during corresponding months of 1950, as reported to IATA, the AOA allocation to be split equally

between the two American carriers, with a minimum allocation of one round trip per week to each participating IATA carrier.

(3) No extra sections.

(4) No meal service except at compensatory charges and minimum passenger service.

The Board favors, as additional features of this structure, a sleeper surcharge of $50 single and $75 double and a sleeperette surcharge of $14 or more. It is believed that while these levels do not compensate fully for the sacrifice of revenue capacity, they do more in this direction than is presently true, and lessen the competitive pressure to install uneconomic configurations.

The adoption of this rate structure would contemplate the elimination of fare and one-third, fare and one-tenth, and combination on off season round trip fares. It should be noted in this connection that the Board cannot find convincing evidence that the experience with these fare levels has been of economic benefit to the industry. The Board also regards the proposals for a 30-day round trip fare and one-half, for the period November through March, and the TWA student fare proposal as superfluous if the above two-class fare structure on a year round basis is adopted.

Finally, the Board would favor an "escape" clause.

The Board has reconsidered its previous position with respect to tourist service for the on season of 1951 and now recommends the adoption of such a service for the 1951 on-season. If the carriers can agree on tourist service for this season, they are requested to expedite submission of the agreement to the Board so that it could be made effective at the earliest feasible date.

In connection with the position of Northwest that the introduction of Atlantic tourist fares would undercut westabout levels, the Board would favor a modification of IATA agreements so as to prevent the equalization of first class fares to the Orient westabout with eastabout fare constructions [fol. 3156] involving Atlantic tourist levels, but which will

permit westabout equalization with such fares for westabout travel, using domestic coach to the Pacific Gateway.

If the tourist service is not adopted, the Board would favor the following structure:

A. An all-year standard fare of $365 one way and $711 round-trip to London, with comparable fares to other European gateways;

B. A 30 day off season round trip fare at a level of one and one half that of the normal one way fare as the only reduced fare;

C. A shortening of the off season to the period November through March;

D. Sleeper and sleeper seat surcharges as indicated above; and

E. An "escape" clause.

With respect to North Atlantic cargo rates the Board favors an increase of 10 percent as consistent with increasing cost levels and as instrumental in easing westabout competition. It would not favor the PAA proposal for additional weight breakpoint, since the Board believes that this would unnecessarily depress the rate structure. However, the Board would be willing to approve a 34 cent per ton-mile rate for general commodity shipments of 1,000 pounds and over which would equate the competitive position of the IATA carriers with the irregulars for bulk carriage.

With respect to the Middle Atlantic levels, the Board favors raising those levels to a point which will eliminate absorption requirements on competitive routings via the North Atlantic.

With respect to Conference rates, the Board would favor closing all rates provided the following conditions are met:

A. Establishment of equitable selling and remittance rates in a rights drawn currency agreement;

B. Adoption, in general, of present first class and tourist levels;

C. Raising of BWIA rates to IATA levels or admission of that carrier as a member;

D. Elimination of the 5 percent differential being maintained by BOAC on first class service on combinations of Miami with Panama Lima Santiago;

E. Adoption of a 30-day "escape" clause.

[fol. 3157] With respect to the Trans-Pacific area, the Board believes that the static condition of overall Trans-Pacific traffic, the emergency existing the area, the relatively ineffective sea carrier competition, and the higher costs reported by the carriers warrant an increase of fares on Australasian routes up to pre Mexico City levels. However, the Board would favor maintaining present levels to Asiatic points where sea carrier competition is more effective.

With respect to Trans-Pacific cargo rates, the Board favors raising the rates to and from New York by 30 cents and the elimination of present common-rating except with respect to West Coast terminals. If this course cannot be effected because of lack of adequate increase in the east-about, it is recommended that the carriers common-rate only New York in addition to East Coast terminals and add rates from interior United States points over the lowest-rated gateway.

With respect to the sterling areas, the Board agrees with the carrier positions with respect to a 10 percent increase in fare and rate levels on the short haul and 15 percent on the long haul. The Board believes such increases consistent with reported increases in cost.

With respect to cargo rates on the London-Hong Kong combination, the Board recommends an increase of 30 cents a pound, if the 10 percent North Atlantic increase is not adopted; a 20-cent increase if it is.

The Board also suggests that authority be secured for westabout equalization of London, Auckland general commodity levels.

With respect to charter service, the Board believes, as it has previously indicated, that is essential to the orderly development of that service that the carriers sponsor the adoption of IATA resolutions fixing minimum rates for trans-Atlantic charter service for the transportation of passengers. The Board also favors small increases in present rates. In this connection, the minimum levels probably should not be less than the following rates per mile for the types of aircraft indicated.

	Full Load of Passengers	Ferry Flight
DC-4	$1.75	$1.50
DC-6 or Constellation	2.40	2.00
Boeing Stratocruiser	3.50	3.00

Finally, the Board believes that the U. S. flag carriers should sponsor the adoption of IATA resolutions to establish limitations on charter service comparable with those contained in Part 207 of the Board's Economic Regulations. The Board further believes that the IATA carriers should take primary responsibility to enforce compliance therewith.

Sincerely yours,

D. W. Rentzel
Chairman

[fol. 3158]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 309

CIVIL AERONAUTICS BOARD

Washington 25

COPY

November 9, 1951

Mr. J. T. Trippe
President
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, New York

Dear Mr. Trippe:

On November 9, the Board sent you a statement of its position regarding the issues expected to arise at the Nice meetings of the IATA rate conferences.

In view of the great importance of the specific North Atlantic issues and the extended controversy that these have engendered in the past, The Board deems it of the highest importance that the two United States carriers primarily involved in this area work closely together to obtain conference agreement on these issues.

Only through the closest cooperation between the United States carriers will it be possible to successfully achieve the necessary support for the United States position, as stated in the Board's letter of November 9.

Sincerely yours,

/s/ DONALD W. NYROP
Chairman

[fol. 3159]

CIVIL AERONAUTICS BOARD

Washington 25

C
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November 9, 1951

Mr. J. T. Trippe
President
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, New York

Dear Mr. Trippe:

On November 6, 1951, a meeting was held between the Board's staff and United States members of IATA in order to ascertain the position of the carriers with respect to agreements to be reached at the IATA Traffic Conference meetings beginning November 27, in Nice, France.

The Board's firm position with respect to the various items which will be considered by the Conference is as follows:

North Atlantic tourist service:

1. The North Atlantic tourist service should be inaugurated prior to the 1952 summer season.

2. A New York-London one-way tourist fare of $265, with a 10 percent "on" season discount and a 25 percent "off" season discount for round trips, with Shannon as the gateway, is a sound fare structure. This fare structure will meet the break-even need and provide a reasonable element of profit for coach operations, on the basis of the representative costs of the IATA carriers (190 kilos per passenger) and an estimated year-round load factor of approximately 68 percent. The higher "off" season discount will, in the Board's opinion, tend to off set normal seasonal unbalance and facilitate attainment of the average load factor.

The proposed fare structure is therefore economically feasible, but at the same time low enough to provide for an adequate test of the untapped low-fare air traffic potential across the North Atlantic.

3. Tourist operations across the North Atlantic should be based upon the highest practical seating density from an operational standpoint.

[fol. 3160] 4. Meal service should be provided only on a compensatory basis, with minimum galley facilities which will not require significant displacement of seats or lift.

Fare and one-tenth for the winter season of 1952:

The Board believes that the economic soundness of the 17-day one and one-tenth round trip excursion fare is open to question. However, the Board recognizes that such a fare may serve some purpose as an interim measure pending inauguration of tourist service in the spring of 1952. Accordingly, the Board will not oppose a one and one-tenth 17-day excursion fare for the 1952 winter season, provided that the tourist service is inaugurated in the spring of 1952.

North Atlantic rates and fares—standard fares and freight rates:

The Board is in agreement with the general North Atlantic fare and rate levels adopted at Bermuda with these exceptions:

1. *Off-season and excursion rates:* With the adoption of a year-round low fare tourist service (North Atlantic tourist services, *supra*) the Board can find no justification for and will not approve the continuance of "off" season and short limit excursion fares on the standard service.

2. *Sleeper charge:* The Board reaffirms its previous position that the minimum sleeper charge for a single berth should be $50, and for a double berth $75.

The Board recognizes that the configuration of the Boeing 377 permits the addition of sleeper accommodations without the displacement of passengers, while the addition of sleeper service on other types of aircraft results in a loss of approximately 50 percent of the seating capacity. The advantages of the Boeing configuration, however, are more than offset by its high seat-mile operating cost. Therefore, the Board believes that it is not justifiable to establish a sleeper charge based upon cabin configuration without due consideration being given to these higher operating costs.

3. *Sleeperette charges*: The Board reaffirms its position that a sleeperette charge of at least $14 should be made.

The use of sleeperettes on aircraft flying the North Atlantic reduces the seating capacity of the aircraft approximately 25 percent or more and necessarily results in higher costs. Although a charge fully reflecting this increase would be so high as to be impracticable, [fol. 3161] some reasonable charge should be made to recover some of the costs and reduce the competitive pressure to extend this uneconomic type of service. A charge of $14 appears to be a minimum charge for this purpose.

Rates and Fares in areas other than North Atlantic:

The Board generally favors retention of the present rate structure in all other areas, except as indicated below. The Board is especially concerned that no change be made at this time in the rate structure in the Pacific and South and Middle Atlantic areas because of the anticipated possible effect of inauguration of a North Atlantic tourist service. It is recognized that this service may ultimately require some adjustment of the fare structure in the areas mentioned, but it is believed that a considerable period will elapse before this is true. Accordingly, it is believed that action at the Nice meeting should be confined to providing means for modification of the rate structure in these areas if and when it becomes evident that the North Atlantic tourist service is, in fact, substantially affecting services in these areas.

Sleeper charges: The Board believes, as in the case of the North Atlantic, that present sleeper charges in all other areas are lower than can reasonably be justified in view of the loss of seating capacity involved and should be substantially increased.

National, resident and regional carrier fares:

In view of the tendency to expand the application of special fares for nationals or residents of particular countries evidenced at the Bermuda meeting, the Board desires to reaffirm its previously stated position that such fares are unjustly discriminatory and inimical to a sound rate structure and that it will not be able to approve any new fares of this type.

The Board is even more concerned about the beginnings of a trend toward special fares for carriers of a particular country or region (regional carriers) first evidenced in the Conference 3 resolutions at and just prior to Bermuda. This is a type of discriminatory rate-making which the Board can, under no circumstances, approve.

Special problems:

At the meeting with the carriers, clarification of the Board's position with respect to two points was requested.

[fol. 3162] 1. *With respect to freight rates from the Orient over the Pacific to North American points*: The Board is of the opinion that the conditions imposed by Order Serial No. E-5754 on its approval of resolution JT31 (8) 056, Normal Pacific Fares and Rates, with respect to freight rates, to and from the Orient are proper even though they may, in some cases, require a departure from the so called "intermediate rule". Such departures may be justified on the basis of competitive considerations. The Board further believes that any new agreement in this area should follow the principles embodied in the above-mentioned conditions.

2. *With respect to "off" season fares, India, Pakistan, Ceylon, and Europe*: By Order Serial No. E-5754,

The Board disapproved paragraphs (c) and (d) of the Bermuda Resolution JT23 (S) 164(c) dealing with the above-indicated subject. Paragraphs (c) and (d) contained provisions limiting the fares to permanent residents of or persons engaged in business in particular countries. It was our intention to disapprove these paragraphs only insofar as they provided for this type of discriminatory fare. We see nothing objectionable in the other limitation in paragraph (c) as to the countries in which tickets may be sold.

Sincerely yours,

/s/ Donald W. Nyrop
Chairman

[fol. 3163]

Pan American World Airways, Inc. Exhibit 310

CIVIL AERONAUTICS BOARD
WASHINGTON 25

April 30, 1952

Mr. J. T. Trippe
President
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, New York

Dear Mr. Trippe:

On April 11, 1952, a meeting was held between the Board's staff and the United States members of IATA, in order to ascertain the carriers' respective positions on agreements to be sought at IATA Traffic Conference meetings, beginning May 13, in Buenos Aires.

The Board's views on the principal issues to be considered at the Buenos Aires meetings are set forth in the attached statement.

Sincerely yours,

/s/ Oswald Ryan
Oswald Ryan
Acting Chairman

Attachment

[fol. 3164]

Board views on issues to be considered at Buenos Aires meeting of IATA Traffic Conferences

Sleeper and Sleeperette Surcharges

The dependence of the American Flag carriers on government subsidy makes it imperative that they exert every effort through the adoption of economic rate patterns to reduce the cost of their operations to the Treasury. The current level of sleeper surcharges in all areas and the general failure to assess any surcharge for sleeperette service despite the resulting decrease in capacity are outstanding examples of uneconomic rate policy which it is the duty of every American Flag carrier to exert its utmost efforts to correct. Except for operators of the basically high cost B-377 or a few operators on extremely thin routes, the provision of sleeper service results in the loss of revenue capacity which is not at all compensated for by the nominal charges now in effect. The substantial spread between tourist and standard fares increases demand for berths at a nominal $25 charge with resulting further loss of capacity and revenue. Until it is technologically possible to supply sleeper and sleeperette service without loss of capacity, rates for these services should be set high enough to discourage a high demand therefor and insure that the surcharge revenue more nearly meets the real costs of the service. At a minimum, sleeper charges should be increased to at least $50 for single and $75 for double occupancy and a charge of at least $14 should be made for sleeperettes.

[fol. 3165] *National and Resident Fares*

The Board reaffirms its previous position that discriminatory fares for nationals or residents of certain countries are undesirable and should be eliminated as rapidly as possible. The Board has approved some fares of this type because of the hardships which might have resulted if it insisted on maintaining an inflexible position on this question. However, the carrier members of IATA must adopt a more equitable solution to the problems raised by

currency devaluations and depressed economic conditions. Furthermore, the possibility of an early introduction of coach service in Europe should obviate the necessity for most of these inequitable fare arrangements.

Class-B and Regional Fares

The Board is concerned with the rapid extension of the so-called Class-B fares and fares favoring regional carriers. While recognizing that in certain situations there may be a basis for a fare differential related to differences in equipment, it would appear that to an increasing extent the Class-B fares are being used to give an improper advantage to the local carrier as compared to the long haul trunk carriers. When so used the Class B fares are open to the same objections as the special regional fares for local operators which the Board has previously rejected.

Permitting fare differentials over the same route on the basis of the carrier supplying the transportation is [fol. 3166] contrary to sound transportation practices, and the Board believes the American carriers should oppose extension or continuation of this type of discriminatory fare except insofar as clearly justified by equipment differences.

Free and Reduced Transportation

The sound economic development of an international air transport system requires that the giving of free and reduced rate transportation to particular persons or groups should be held to a minimum. It is the Board's opinion that it would not be desirable to broaden the scope of free and reduced rate transportation now authorized by IATA agreements. Specifically, the Board opposes the extension of gratuitous transportation for public relations purposes or free transportation based on the so-called "principal's privilege".

The present resolution with respect to free and reduced rates for IATA sales agents does not limit the total number of carriers from which a given agent may receive such transportation. Since there are nine carriers operating

across the Atlantic for example, an agent could conceivably receive as many as 18 free transatlantic trips a year. It would appear highly desirable through the medium of the IATA Secretariat, or otherwise, to arrange for allocating this type of transportation so as to effectively limit the total amount of free and reduced rate transportation available to sales agents for educational purposes to a reasonable total in any given period. It would not appear objectionable to allow general agents the same free and reduced transportation privileges as are allowed IATA sales agents.

[fol. 3167] The tour conductor resolution also appears to be too loosely drawn to permit effective policing to insure that the privileges thereunder are restricted to *bona fide* tour conductors. Unless effective steps are taken to counteract the abuses which appear to be developing under both the sales agent and tour conductor resolutions, the Board may find it necessary to reconsider its approval of these resolutions.

Charter Operations

The present IATA charter resolution does not provide effective control over the charter operations of the IATA carriers. The Board believes it would be highly desirable to modify this resolution along the lines of the Board's charter regulations, Part 207 of the Economic Regulations, adopted March 26, 1951. Since these regulations were submitted to most interested governments before their promulgation and were favorably received by them, an IATA resolution along the same lines would appear to be feasible. In addition, every effort should be made to agree on minimum charter rates, at least to and from the United States. However, in case of such a limited rate agreement adequate provisions against evasion by the use of separate charters beyond the European gateways should be incorporated in the resolution.

Frills and "Give-Aways"

It appears that the competition with respect to "give-aways" and reduction of seats on de luxe flights is rapidly

[fol.3168] reaching a stage where it may have serious economic consequences. The Board would favor a resolution restricting the value of "give-aways" on de luxe flights to the surcharge paid by the passenger, and strongly urges serious consideration of means of restricting the competitive reduction of seating densities.

Fare and Rate Levels

With respect to fares and rates in general the Board, with the exceptions indicated hereinafter, has no special comments to make, except to state that any changes in the general fare structure contemplated by the carriers should be adequately supported by pertinent financial and traffic data.

North Atlantic

The Board favors a substantial reduction in the number of specific commodity rates across the North Atlantic, a major part of which, according to available information, seem to be of little or no use. Furthermore, due to the fact that the specific commodity rates have more weight breaks than the general commodity rates, and since it is understood that a large portion of the North Atlantic cargo traffic moves at such rates, there seems to be no need at the present for further weightbreaks in the general commodity rate structure.

Conference 1

With respect to the fares in Conference 1, the Board wishes to express its concern over the extremely low yield for the carriers operating in South America. In that connection the Board would favor the elimination of a [fol.3169] substantial number of the so-called creative or excursion fares. There is no economic justification for the existence of year-round excursion fares which ultimately result in the destruction of the existing standard fare structure to the detriment of the carriers' already low revenues. Furthermore, it would seem imperative that the carriers agree on the adoption of some kind of circuity limitation within Conference 1. If this cannot be accom-

plished at this Conference, a working group to formulate recommendations on this point should be set up at this time. Similarly, steps should be taken to provide an adequate definition of tourist service in Conference 1.

Mid-Atlantic

With respect to the fare level in the Mid-Atlantic it is hoped that the IATA carriers will agree to raising the fares in that area to a more economically sound level for the benefit of both the Mid-Atlantic operators and the North Atlantic carriers competing with such services.

Pacific

While the probability of the establishment of a tourist class service across the Pacific is slight at the forthcoming Conference, the Board wishes to emphasize that present data do not seem to support the creation of such a service. Therefore, the inauguration of transpacific tourist class operations will not be approved except upon a convincing showing by its proponents that such a service is operationally and economically feasible.

[fol. 3170] *Procedural Matters*

Uniform Effectiveness Dates of Resolutions

The Board has noted that the carriers often submit to the Board resolutions with varying effectiveness dates, resulting in a reduction of the time provided for government action. This only adds to the Board's burden in trying to pass upon these resolutions with the least delay possible. When such variances are necessary, it would seem that the carriers should reduce the time allowed IATA for the promulgation of such agreements rather than to shorten the customary 45-day period provided to the governments.

Summary and Analysis of Resolutions

Paragraph 367 on page 71 of the Minutes of the Nice meeting of the IATA Conferences in December 1951, provides that the IATA Secretariat shall prepare after each

meeting a Post-Conference Resolution Analysis which is to include a brief general summary of the work accomplished at the meeting, an analysis of the new resolutions and the changes to any existing resolution. Should this summary be available at the time of the filing of the Conference Resolutions with the Board, it is requested that the United States carrier members of IATA arrange for the Board to receive copies of this summary at that time. However, in the event that this document should not be available at that time, the Board requests the United States carriers to prepare such an analysis for its use and to submit it to the Board together with the resolutions adopted at Buenos Aires.

[fol. 3171]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 311

COPY

CIVIL AERONAUTICS BOARD
Washington 25

Mr. J. T. Trippe
President
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, New York

Dear Mr. Trippe:

On September 29, 1952, a meeting was held between the Board's staff and the United States members of IATA, in order to ascertain the carriers' respective positions on agreements to be sought at IATA Traffic Conference meetings, beginning October 21, in Cannes, France.

The Board's views on the principal issues to be considered at the Cannes meeting follow:

1. *Sleeper and Sleeperette Charges:* For the reasons it has previously set forth at length, the Board believes that every effort should be made to secure agreement on sleeper charges of at least $50 for

single occupancy, $75 for double and a minimum sleeperette charge of $14. The Board does not consider the increase in sleeper charges to $35 voted at the Buenos Aires meeting to be an adequate solution to the problem of uneconomic sleeper charges.

II. *Free and Reduced Fare Transportation*: The Board believes that the extension of free and reduced fare transportation is inimical to the sound development of air transportation, and specifically that such special privileges should not be provided for public relations purposes or on the basis of principal's privilege. As previously noted, the tour conductor resolution is so loosely drawn as to defeat adequate policing, and unless steps are taken to counteract the abuses developing thereunder, the Board's approval thereof may be withdrawn.

III. *Overnight and Connecting Expenses*: Resolutions 102 and 102a permitting the carriers to assume certain overnight and connecting expenses are so loosely drawn as to invite uneconomic competition between carriers. These resolutions should be tightened up with special attention given to sharply restricting or eliminating the payment of cash to passengers for such expenses, a provision which encourages illegal rebating.

[fol. 3172] IV. *National and Resident Fares*: The Board is unequivocally opposed to this type of fare and believes the American Flag carriers should exert every effort to insure that this discriminatory type of fare is not embodied in IATA resolutions.

V. *Regional Fares*: Permitting fare differentials over the same route on the basis of the carrier supplying the transportation is contrary to sound transportation practices and, if permitted, will eventually destroy the entire IATA fare structure. The Board cannot approve fare resolutions permitting this type of regional fare differential and believes that the American Flag carriers not only should oppose any attempt to introduce this type of discrimination into

IATA resolutions, but also should use their best efforts to have IATA take a firm position against the imposition of such fares by unilateral action of governments.

VI. *Passenger Fare Construction Resolution*: In the Board's opinion, the recent extension of the exemption from the 15% circuity limitation to fares in Joint Conferences 1-2, and 1-2-3 was a backward step in the development of a sound fare structure. Not only should the exemption for Joint Conferences 1-2 and 1-2-3 be reconsidered, but a serious attempt should be made to develop reasonable circuity limitations in Conference 1.

VII. *Agency*: The Board wishes to point out that its approval of the resolution providing for a 6% commission for travel agents for the sale of tourist class transportation was only on a temporary basis, and that it will not approve any extension of this resolution or the adoption of any new resolution providing different commission rates for the sale of tourist service and first class service, in the absence of a convincing showing that there is a cost basis for the difference in commission rates and the lower rate is fairly compensatory for the service rendered.

VIII. *Fare and Rate Levels*:

A. *North Atlantic*:

1. *Passenger Fares*: Since the North Atlantic tourist service program is in its experimental state, the Board favors the retention of the *status quo* in the passenger fare structure, especially as adhered to, it finds no objection to the sale of liquor and bar sundries on tourist flights.

[fol. 3173] 2. *Cargo Rates*: The Board favors the retention of the existing cargo rates and discount for shipments weighing over 45 kilograms, as well as a substantial reduction in the number of specific commodity rates, a

large number of which appear to be unnecessary. Furthermore, since specific commodities have more weight-breaks than the general commodity rates, and the bulk of North Atlantic cargo moves at specific commodity rates, there seems to be no need at present for further weight-breaks in the general commodity rate structure.

B. *Conference 1*: The Board is concerned with the need of the carriers operating in South America for greater commercial revenues and favors such changes in fares and rates as may reasonably be expected to increase overall revenues. The Board believes that the elimination of most of the so-called creative or excursion fares and adoption of some kind of circuity limitation within Conference 1 would tend to accomplish this result. Consideration might also be given to selected increases in below-average fares on the east coast of South America.

C. *Transpacific*: On the basis of the data available to it, the Board sees no economic or operational basis for the establishment of a transpacific tourist service at this time. It will not be able to approve an agreement for such service, except upon a full showing of its economic and operational feasibility.

Sincerely yours,

/s/ DONALD NYROP
Chairman

[fol. 3174]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 312

CIVIL AERONAUTICS BOARD
Washington 25

Oct. 26, 1953

COPY

Mr. Willis G. Lipscomb
Vice President—Traffic & Sales
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, New York

Dear Mr. Lipscomb:

On September 25, 1953, a meeting was held between the Board's staff and United States members of IATA, in order to ascertain the carriers' respective positions on agreements to be discussed at the IATA traffic conference meetings, beginning November 1, in Honolulu.

The Board's views on the main issues to be considered at the Honolulu meetings are set forth in the enclosed statement.

Sincerely yours,

/s/ OSWALD RYAN
OSWALD RYAN
Chairman

Enclosure

[fol. 3175]

I. ADMINISTRATIVE RESOLUTIONS—USE OF INTERLOCKING DEVICE:

The Board views with concern the trend to increase the use of type-A resolutions, of type-B resolutions with type-A paragraphs and of interlocking resolutions, which restrict the responsible government agencies to a choice between a

resolution which may be in part unacceptable or undesirable and an open-rate situation. The Board feels that, while certain rates are undoubtedly commercially interdependent under certain circumstances, the practice of adopting in an increasing number of resolutions restrictive features with respect to government action is contrary to the spirit in which the Board approved the IATA machinery. Furthermore, it would seem that, by thus restricting action by government agencies, the carriers incur the risk of seeing an ever-increasing number of resolutions disapproved by the interested governments. The unjustified interlocking of resolutions may well be a factor in determining whether certain agreements should be approved.

II. FRINGE ITEMS AND OTHER NON-TRANSPORTATION PROBLEMS:

For the past several years the Board has expressed concern over the increasing amount of fringe items included with the transportation of passengers, these incidentals becoming a more and more important factor in the overall cost of transportation. It would seem that in order to maintain an economically sound rate structure the carriers should check the trend of recent years to increase the number of give-aways, especially should this trend be carefully watched in tourist-class services where minimal differences in cost may spell the difference between success or failure of the mass transportation experiment.

[fol. 3176] The Board wishes to call the carriers' attention to the following points on which agreement among the carriers would seem imperative:

(1) *Connection expenses*: The absence of a resolution permitting the carriers to assume certain over-night and connecting expenses creates a confusing situation in which the carriers differ on whether they may or may not grant such expenses, and which leads to competitive practices which are not in the interest of the industry. The Board has refrained from a determination on this subject, in its consideration of the Cannes resolutions, in the hope that the carriers will be able to agree on a tightly worded con-

meeting expense resolution. However, in the absence of such an acceptable agreement, the Board may, in accordance with its statement contained in Order No. E-7210, of March 6, 1953, condition its approval of all fare agreements on the understanding that fare resolutions fix minimum fares, as provided by the I.A.T.A. rate making machinery, and therefore do not permit the assumption of over night and connecting expenses by the carriers.

In concluding, the Board would like to state that it hopes that resolutions on connecting expenses will be of a temporary nature, and that eventually the carriers will find it possible to do away with this sort of fringe item which is often misused by carriers to convert an uncompetitive position into a competitive advantage.

(2) *Charges for meals and liquors*: Related to the problem of so-called give-aways is the extent to which carriers will furnish meals and liquors, at nominal prices, especially on tourist services. The Board is of the opinion that the existing tourist service resolutions are too loosely drawn [fol. 3177] with respect to the furnishing of free "simple" meals and the sale of liquors. The carriers are strongly urged to agree on a definition of such "simple" meals and on a uniform minimum charge for liquors served aboard tourist flights which is reasonably compensatory. The absence of such an agreement will eventually result in reducing the difference in standards between first-class and tourist-class services, and results in the uneconomic assumption of such expenses without regard to the cost of furnishing these services.

(3) *Sleeper and Sleeperette charges*: Similarly connected with the problem of fringe benefits is the providing of sleeper and sleeperette service at uneconomically low charges. The Board's opinion is that the increase in sleeper charges to $35 per berth adopted at the Buenos Aires Conference, and maintained at Cannes, is not an adequate solution to the problem of the existing uneconomic sleeper charges. The Board reaffirms its belief that every effort should be made to increase the charges for luxury accommodations such as sleeper and sleeperette services to com-

pensate for the reduced capacity of the aircraft which their provision entails.

III. FARES AND RATES:

With respect to fares and rates agreements, the Board has only a few specific recommendations to make, but would urge caution in making any drastic changes in the IATA fare structure, and while costs are an important factor in fixing fares and rates, the carriers should resist major increases or reductions in fares unless clearly justified by the economics of air transportation.

(1) *Passenger fare construction resolution*: The Board has stated in its previous recommendations to the carriers [fol. 3178] that the extension of the exemption from the 15 per cent circuity limitation in Conference 1 to fares in Joint Conferences 1-2 and 1-2-3, which was adopted at Buenos Aires, does not promote a sound fare structure. The Board notes that this exception to the ordinary rules of fare construction as contained in resolution 014a has been maintained at Cannes. It would seem that not only should the carriers attempt to agree on limiting the effects of this exception, but should endeavor to eliminate it from the resolution, and attempt to develop a reasonable circuity limitation in Conference 1.

(2) *Cargo rate construction resolution*: It is noted that the provisions of paragraph 7 of the Cargo rate construction resolution (014b) of Conference 1 which permit combinations of specific commodity rates with other specific commodity or general commodity rates are of no effect in view of the Board's prohibition of such combinations in resolution 190-552b (Commodity Rates Board), as conditioned by finding paragraph 6 of Order No. E-7210, dated March 6, 1953. It would seem therefore logical to remove these provisions from the above-mentioned paragraph 7.

(3) *Combination aircraft*: Related to the fares problems is the trend among certain carriers to use combination aircraft carrying first class as well as tourist class passengers. When the Board approved the use of such type aircraft in connection with the North Atlantic Tourist Class

experiment, it understood this provision to be of a temporary nature, which would help the small carriers with one or two weekly frequencies to overcome their initial adjustment problems. The Board notes with concern that this [fol. 3179] exception, which it believed to be temporary and for the benefit of the above mentioned small carriers, has become a permanent fixture in all tourist-class resolutions, as a type A paragraph, disapproval of which would constitute disapproval of the whole resolution, and is being taken advantage of by some large carriers. The Board believes that the United States carriers, however, should oppose the use of this type of aircraft wherever possible.

The innumerable sales difficulties and possible adverse public reaction coupled with dubious economic results and extremely serious enforcement problems arising from use of combination aircraft would seem ample to deter the carriers from tolerating the use of combination aircraft, except where dictated by necessity. Thus, while certain local traffic characteristics may justify the use of combination aircraft, despite the objectionable features of this type of aircraft, it is the Board's opinion that this type of aircraft should not be permitted on key trunk routes.

(4) *North Atlantic Fares and Rates*: The Board has no particular problem with respect to the North Atlantic Rate structure as it exists at present. The carriers might find it advantageous to experiment with short-term excursion fares during the off-season, but it would seem advisable that drastic changes in existing structure not be effectuated before an additional period of experimentation has elapsed to give the carriers a full opportunity to determine the necessity of such changes.

(5) *Transpacific Fares*: There appear to be no major problems in connection with Transpacific first-class fares, although some upward adjustment in the South Pacific fares, to and from Australasia may be desirable.

[fol. 3180] With respect to the proposed tourist program, the Board has very little data before it on the proper basis for a reasonable tourist fare across the Pacific. However, it would seem advisable in the absence of experience, to avoid any cuts in the fares so drastic they may not be

overcome by the additional traffic generated. Therefore, the Board recommends that the carriers not go below the one-way tourist fare of $450 between Tokyo and the West Coast, and $308 between Hong Kong and the West Coast.

(6) *Conference 1:* With respect to Conference 1, the Board is seriously concerned over the absence of a tourist resolution adequately determining the conditions of furnishing tourist class service in that area. The lack of agreement on such a resolution has resulted in an increasing lack of differentiation between tourist-class service and first-class service. Such a situation cannot benefit the industry and should be remedied by adopting a tourist resolution patterned as much as possible after similar resolutions effective in the rest of the world.

IV. CURRENCY PROBLEMS:

The Board is aware of the difficulties facing the industry with respect to currency problems. As in the past, the Board will continue to lend all its support to the carriers' efforts to solve these problems. The Board strongly urges the carriers to agree, among other things, to a tightening up of the currency resolution (021 series), so as to insure that the carriers receive the true equivalent in local currency of the fares and rates adopted in basic currencies, especially by providing for some reasonable floor which shall be effective in case of failure to agree locally on the conversion rate of so-called "asterisked" currencies.

[fol. 3181] V. AGENCY:

When the Board approved, by Order No. E-7212 of March 6, 1953, the amendments to resolution 810 on Passenger Sales Agents, it was on the understanding that the carriers would exercise due diligence in improving the existing provisions for the cancellation of such agents, to provide adequate standards of procedure and of productivity for the retention of agents. The Board is disturbed by the carriers' apparent failure to take any steps in that direction. Continued failure to make appropriate improvement in the existing resolution may require the Board to reconsider its approval thereof.

VI. DISCRIMINATORY FARES AND OTHER RELATED PROBLEMS:

The Board notes with satisfaction that the IATA carriers have apparently checked the trend of adopting discriminatory fares, and that the number of such fares has been diminishing constantly in the past two years. However, certain problems have not yet been satisfactorily solved, and will be discussed below.

The Board is of the opinion that discriminatory fare arrangements will eventually disappear if the United States carriers present a solid front on this subject. Those fares are repugnant to the Act, and have been consistently condemned by the Board, and the Board expects that no American flag carrier will propose or support discriminatory fares within IATA.

(1) *Regional fares*: The Board reiterates its position that permitting fare differentials over the same route on the basis of the carrier furnishing the transportation is contrary to sound transportation practices and will eventually destroy the IATA fare structure. The Board cannot approve fare resolutions permitting such differentials and [fol. 3182] believes that the American flag carriers not only should oppose any attempt to introduce this type of discrimination in IATA resolutions, but should also use their best efforts to have IATA take a firm position against the imposition of such fares by unilateral action of governments.

(2) *Student fares*: The Board has noted that the number of IATA resolutions on student fares has been steadily reduced. Such action is in line with the Board's opinion that student fares are discriminatory and in violation of the Act. In line, however, with its policy not to interfere in fare arrangements completely outside air transportation, and recognizing the wide acceptance abroad of student discounts, the Board has, in the past, approved student fare resolutions. In two minor instances these fares are applicable in air transportation: one over the Mid Atlantic to and from Miami, and the over the Pacific to and from the West Coast. The Board is of the opinion

that these student fare resolutions should be limited at the coming Conference so as not to apply in air transportation. In the absence of such restrictive language in the resolutions, the Board will consider what appropriate action should be taken with respect to these agreements. In that connection, the Board also urges the carriers to restrict student fare resolutions outside air transportation so as to prevent, as effectively as possible, any combinations resulting in the application of these discriminatory fares from or to the United States.

[fol. 3183]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 313

COPY

CIVIL AERONAUTICS BOARD
Washington 25

September 23, 1954

Mr. Willis G. Lipscomb
Vice President - Traffic and Sales
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, New York

Dear Mr. Lipscomb:

A meeting was held between the Board's staff and the United States carrier members of IATA on September 10, 1954 in order to ascertain the carriers' position on various agreements to be discussed at the forthcoming IATA Traffic Conference Meetings in Venice.

The Board's views on the main issues to be considered at the Venice meetings are set forth in the enclosed statement.

Sincerely yours,

/s/ CHAN GURNEY
Chan Gurney
Chairman

Enclosure

[fol. 3184] L. *Passenger Fares and Cargo Rates*

There are few recommendations that the Board has to make with respect to fare and rate agreements since it is understood that most carriers favor the status quo. The Board is aware of no basis for major changes in the existing levels of fares and rates. It desires to again emphasize that any major changes, especially increases, which are proposed should be clearly justified on the basis of cost and traffic data.

The Board believes that it would be economically unsound and destructive of a stabilized rate structure to attempt to establish any special class of fares based on the use of fully depreciated aircraft. The depreciation policies of carriers and the periods in which planes become fully depreciated vary so widely as to provide no sound basis for a special low fare structure based on the use of fully depreciated planes.

(3) *Passenger Fare Construction Resolution*

The Board urges that this resolution be tightened up to effectively control circuity beyond the 15 percent now permitted without fare adjustment and to remove the exemption from circuity limitations in Joint Conferences 1-2 and 1-2-3.

At the present time, due in large part to the fact that most first class fares are built on a distance curve whereby the rate per mile decreases with the length of the journey, there are a number of cases where a person traveling on a combination tourist first class service, for which the fare [fol. 3185] under the construction resolution is basically the sum of the sector fares, may have to pay as much for the combination service as he would for all first class service under agreed through fares. Those cases where a combination routing is the same as that permitted under a first class fare at or near the same level not only raise serious public relations problems, but also substantial questions of discrimination or undue preference or prejudice.

While we understand that consideration is being given to making provision for some adjustment in passenger fares

in those cases where through first-class passengers are involuntarily re-routed for part of the journey on tourist service, it does not appear to us that this is adequate to meet the problem. We believe appropriate steps should be taken to insure that on combination tourist first-class trips the fare reflects a reduction from the lowest first-class fare available between the same points over the same routing which is equitably related to the proportion of the journey which is performed on tourist service. On the other hand, in formulating a solution for the problem, care should be taken to avoid excessive reductions for the use of tourist service such as would apparently be possible in a number of cases under the proposal to reduce the first-class fares by the aggregate of the tourist-class first-class differentials on tourist service sectors.

(2) *Mixed Class Aircraft*

The Board notes with concern the desire of some carriers to relax the limitations applying to mixed-class aircraft [fol. 3186] craft. Many of the problems foreseen as arising from the use of such aircraft appear to have materialized. It is urged that a further attempt be made to limit the use of this type of aircraft to those routes of low traffic density where dual class service is practically feasible only on such planes. In any case, it would appear that further tightening, rather than relaxing, of the rules regulating mixed-class aircraft is necessary if the dual first-class tourist-class fare structure is to be maintained.

(5) *North Atlantic Fares and Rates*

A review of the North Atlantic traffic figures for the two years prior and two years after the institution of the North Atlantic tourist service appears to indicate that since the introduction of tourist service the extreme seasonality of the first-class traffic pattern has been substantially reduced both for the IATA carriers as a whole and for the American carriers individually. On the other hand, the figures appear to indicate that for the tourist service the seasonal traffic variations are even greater than was true for first-class service before the inauguration of tourist-class service.

Bearing in mind that to a large extent the price-conscious traffic which used to fly on first class service has already been diverted to tourist service, there appears to be a serious question whether or not the continuation of the presently sharply reduced off season fares or, for that matter, any off season fares on the first class service, is justified.

(fol. 3187) Although last year the relative reduction in the off season fares for tourist service was greater than on the first class service, it apparently was not great enough to significantly level off seasonal peaks and valleys in the traffic, whether by diverting seasonal travel to the off season or by generating substantial amounts of new traffic in the off season. It appears to us that in view of the foregoing, serious consideration should be given to providing tourist fares during the off season which are substantially lower than those which have been previously in effect. Sufficiently sharply reduced fares might not only succeed in diverting a greater part of peak season travel to the off season, but might well succeed in attracting to the scheduled service a good part of the traffic moving on charter services, as well as generating a substantial amount of short term vacation travel by lower and medium income groups. In order to minimize the diversion of tourist travel which would move at the regular tourist fare, it would appear desirable that the sharply reduced fares be offered in the form of short term excursions during the off season.

While sharp reductions in off season tourist fares appear economically feasible because of the large amount of unused tourist capacity in the off season, there appears to be no economic basis for reduced fare excursions in the on season where any additional traffic would require operation of additional equipment.

H. Carrier Problems

(fol. 3188) It is believed important that the carriers, in re-appraising Resolution 028a, maintain the principle of providing for some reasonable floor to be effective in case of failure to agree locally on the conversion rates of "asterisked currencies."

III. *Sleeper Surcharge*

The Board notes with satisfaction the present level of sleeper surcharge adopted by the carriers on a worldwide basis, which is much closer to what the Board considers a minimum economic charge for such service. It would appear from the consensus expressed by the carriers present at the recent staff meeting that the increase in sleeper surcharge has contributed to the increase of revenues of the carriers and there appears to be no valid basis for any reduction in the present minimum for sleeper surcharges.

It also appears desirable that the carriers agree on a minimum surcharge for sleeperette accommodations to compensate for the loss of revenue due to the lower density required by this type of seating arrangement.

IV. *Meals, Give-aways and Seating Densities on First-Class Services*

The Board is concerned with efforts of some carriers to relax the restrictions presently governing the serving of meals on tourist-class service. It appears imperative that these restrictions be maintained if a substantial distinction between first-class and tourist class services is to be preserved in the long run.

Another question of serious concern to the Board is the trend towards increasing the number of give aways on first-class, as well as on so-called de luxe services, while reduc- [fol. 3189] ing the seating density on these services. This type of uneconomic competition seriously threatens carrier revenues and ultimately results in higher fares or greater subsidy needs. It would appear highly desirable that the carriers take steps to effectively control this type of competition. It also appears important to agree on some effective regulation to reasonably relate the added services on de luxe services to the charge therefor.

V. *Charters*

In certain areas the present charter resolution, 045, in effect permits split charter practices contrary to the usual accepted commercial practices in this field. It is suggested

that clearer language be adopted in the resolution applicable in those areas where present provisions appear to permit groups chartering aircraft to further reduce the charge by permitting the carrier to sell the remaining seats at the full IATA fare.

VI. *Resolution 810—Cargo Consolidators*

There appear to be a number of cases in the cargo consolidator field where IATA cargo agents who consolidate under another firm name, or are participants in a consolidating group under a separate name with other IATA agents, receive commissions on the shipments made by such consolidators. This would appear to be in violation of Section 403 of the Act and it is believed that Section Q(6) of Resolution 810 should be revised to make it clear that commissions shall not be paid to an IATA cargo sales agent, not only on consignments consolidated by such agent, but also on consignments consolidated by any entity wholly or partially controlled by, controlling, or under common control with such agent or in which the agent has a beneficial interest.

[fol. 3190]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 314

CIVIL AERONAUTICS BOARD
WASHINGTON 25

[Stamp—May 16, 1956 Vice President—Rec'd New York
May 16, 1959—Traffic & Sales]

Mr. Willis G. Lipscomb
Vice-President—Traffic & Sales
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, New York

Dear Mr. Lipscomb:

A meeting was held between the Board and the United States carrier members of IATA on April 17, 1956, at which the carriers presented their respective positions concerning various issues which are to be considered at the forthcoming IATA Traffic Conference Meetings in Cannes.

After careful consideration of the material presented by the carriers, as well as other relevant material available to it, the Board has adopted its position with respect to the major fare and rate problems which must be resolved at the conference meetings. This position is set forth in the enclosed statement, which should be considered in conjunction with the views previously expressed by the Board in Orders Nos. E-9969 and E-10017, adopted February 2 and February 20, 1956, respectively.

The Board understands that the United States carriers will support its position in their negotiations within IATA.

Sincerely yours,

/s/ JAMES R. DURFEE
Chairman

Enclosure

[fol. 3191]

STATEMENT OF BOARD POSITION WITH RESPECT TO THE MAJOR ISSUES TO BE CONSIDERED AT THE IATA TRAFFIC CONFERENCE MEETINGS, CANNES, MAY 29, 1956

I. *Tourist Services*

The paramount issue which will face the IATA Conference is undoubtedly the establishment of the proper level of fares and standards of service to be applicable on the North Atlantic route. The Board is convinced that a large potential exists for travel on the North Atlantic which cannot be reached by the tourist fares which are presently available. The development of this new market is important, not only to the air transportation industry and the ultimate interests of the carriers, but also to the various countries concerned, for whom the revenue from tourist travel is a major source of dollar income.

The Board is convinced that the introduction of a truly high-density low-cost service, substantially along the lines proposed by Pan American, merits emphatic support as the most satisfactory answer to the intent expressed by the Board in Order No. E-10017, dated February 20, 1956.

After careful study of all information available to it, the Board has concluded that operations in high-density configuration on the North Atlantic are both technically and economically feasible and, in conjunction with rigid standards of service, will permit a fare reduction to the $391.50 level proposed by Pan American between New York and London. The economic soundness and stability of such a service, however, is dependent upon strict adherence to the conditions suggested by Pan American, i.e. 20 kilos free baggage allowance, 34 inch maximum seat pitch, mandatory five-abreast seating, maximum of two cabin attendants, no liquor service, and modest meal service at the passenger's expense.

It is the Board's firm conclusion that adequate exploitation of the traffic-generating potentiality of this type of service is contingent upon the establishment of a basic New York-London round trip fare which is available year around at levels not in excess of $400. This represents an approximate 25 percent reduction from present tourist fares, a reduction which is clearly attainable without sacrifice to the present level of earnings, under the rigid specifications upon which the service is premised.

While the Board believes it desirable that low cost air service be made available to the public as early as possible, it would consider an inauguration date not later than April 1, 1957 as reasonable in view of the technical and promotional problems involved.

It is the Board's opinion that, with the operation of this new low-cost service, development of an adequate overall pattern of services requires that present tourist-class services continue as currently operated.

[fol. 3192] TWA has proposed to establish a special excursion fare for round-trip travel completed within an approximate 15-day period. In view of the fact that the present volume of such travel is extremely limited, such a proposal must be considered primarily promotional in nature, and not as an adequate solution to the basic problem. The Board would, however, endorse experimentation with such a pro-

gram provided it is additional to and not in place of a proper solution of the basic problem.

While the Board has indicated that its concern with the seating densities presently operated in tourist services extends equally to other areas, specifically the Latin American and the transpacific routes, it recognizes that certain operational factors peculiar to these areas may make it difficult to achieve a significant increase in the seating densities presently being operated. Moreover, because of the relatively thin traffic density in these areas, there is some reasonable doubt whether, even should an increase in seating capacity be possible, any significant increase in traffic would result, at this time, to justify the change. The Board, therefore, does not consider it urgent that this IATA Conference act to increase the minimum seating densities presently applicable in these areas. However, it is believed that the carriers involved should give careful consideration to the problem so that, within a reasonable period of time, standards for tourist service in these areas can be formulated which will provide a sound basis for appropriate future reductions in cost and fare levels.

II. *First-Class Services*

The Board can find no justification for the increases in the level of first-class fares which became effective April 1, 1956 on transatlantic and transpacific routes, and believes that a sound fare structure requires that these increases be rescinded, effective October 1, 1956. The present level of fares is not considered adequate to compensate for the displacement in available capacity occasioned by sleeper-seat service, nor, on the other hand, does it appear warranted for operations conducted in standard configuration. While there is no doubt that the provision of sleeper-seat accommodations entails higher costs, there appears to be no basis for charging any part of those costs to first-class travelers who do not utilize such luxury services.

The Board believes that a charge of $75 should be assessed for sleeper-seat service, in view of the additional space which is required, to be superimposed upon the first-

class fare level effective prior to April 1, 1956. Those who wish to sell or buy luxury accommodations will, as a result, be placed on a fair competitive basis with those who elect to sell or buy standard service, and the carrier which believes it economically sound to offer standard first class service will not be forced by competitive pressure to offer sleeper-seat service at a relative loss.

[fol. 3193] In the event agreement on a surcharge for sleeper-seats proves impossible, the Board believes that the establishment of specified maximum seat spacing, which will insure economic operations at the basic level of first class fares, is required.

III. *Berth Surcharge*

The Board recognizes that, in those areas where no sleeper-seat service is provided, the present berth charge of $55 may be compensatory in the case of upper berths, which do not displace saleable seats, and, in addition, for lower berths sold on a ship-side basis. However, it considers the higher value of service on these routes where a sleeper-seat surcharge is imposed requires a charge for upper berths of $100. A similar charge appears proper for lower berths if agreement is reached limiting sales to ship-side confirmation. In the event such an agreement is not concluded, however, the charge for lower berth accommodations should be at least $150.

IV. *Polar Route Fares*

The Board is fully aware of the basic problems inherent in the development of polar routings between Europe and the Far East which result in substantially reduced mileages as compared with the conventional routing via North America. However, it is of the strong conviction that, in view of the presently limited extent of operations over such routings, every effort should be made to proceed cautiously and to avoid unnecessary disruption of the existing world-wide fare structure.

It is believed that the impending operation of SAS between Europe and Asia, which will involve no traffic rights

in North America, but which will be somewhat shorter in mileage than the routing via India, justifies equalization of fares with those applicable on the via India routing.

There appears, however, to be no economic basis for a similar equalization of fares to be applicable on the CPAL routing via Vancouver, which is substantially longer than either the SAS route or that via India. In view of the fact that this routing involves some mileage reduction over the conventional routing via North America, there may be some basis for a limited differential from the fares applicable on the conventional North American routing. However, any such differential should be accompanied by a prohibition against the offering of stop-over privileges in North America. A restriction of this nature would limit the savings to Europe-Asia traffic, for which it is basically intended, and would minimize cumulative damage to the existing world-wide fare structure. The Board considers it extremely important that the level of fares presently applicable on the conventional routing via the North Atlantic and trans-pacific be maintained.

[fol. 3194] V. *Round and Circle-Trip Discounts*

There appear to be various proposals pending which contemplate the reduction or elimination of the 10 percent discount presently applicable to round and circle-trip travel, with respect both to tourist class and first class service. The Board takes no position as to the level of discounts which should apply to such transportation. However, inasmuch as the great majority of international travel is of a round or circle-trip nature, a reduction in the present 10 percent discount would amount to a substantially similar increase in the general fare level. The Board can see no justification for an increase in the general level of fares at this time and accordingly, believes that any reductions in the presently effective discount should be compensated for by a corresponding downward adjustment in the basic level of fares.

VI. *Specific Commodity Rate Structure*

The Board is seriously concerned with the specific commodity definitions currently effective with respect to North Atlantic traffic. It appears clear that the generic descriptions now applicable not only result in unnecessary dilution of revenue through the inclusion of high-value commodities in broad classifications which are rated on the basis of the lowest-valued commodity included therein, but facilitate further dilution in the adequate enforcement of proper application of rates is extremely difficult. Clearly, a system of loosely defined descriptions, subject to a wide latitude of interpretation, may, by its very nature, result in breakdown of the rate structure.

A number of instances have been brought to the Board's attention where high-valued commodities are being carried at rates substantially below those which could be charged by the carriers. The Board is convinced that the establishment of a sound rate structure requires delineation of commodity descriptions with sufficient clarity and detail to preclude the development of such situations. As the Board has stated on numerous occasions, and as the cargo development group of IATA has recognized, the unnecessary dilution of revenues which results from the grouping of many varied commodities, capable of moving at widely different rates, within one classification, inhibits the proper development of cargo transportation by destroying the economic basis upon which truly low rates can be offered to attract those commodities which are not presently moving by air. Although the present North Atlantic specific commodity rates generally do not expire until December 31, 1956, prompt steps should be taken to make all revisions necessary to correct such situations by September 30, 1956.

VII. *Resolution 102, Passenger Expenses en Route*

The Board has previously expressed its belief that some tightening of the provisions of this resolution is required to prevent unwarranted absorption of passenger expenses at over-night stops and connecting points, a practice which [fol. 3195] has apparently created the anomalous situa-

tion whereby through services, in certain areas at least, are becoming less attractive to the traveling public than connecting services.

Since it appears unlikely that any significant revision of the current resolution will result from the forthcoming conference, the Board believes it highly desirable that a working group be established to undertake a comprehensive study of the problem and to formulate a proposal which will restrict such practices as far as possible.

VIII. *Resolution 045—Charters*

In Order No. E-9969, the Board proposed restating the conditions on its approval of the charter resolution to clarify that under no circumstances shall the nature of the group be a valid criterion to evaluate eligibility for charter. Order No. E-10017 withheld making the change to provide an opportunity for a working group of IATA to explore the problem, and also affirmed the condition with respect to unused space on charter aircraft. We have received no material from IATA or any carrier which would indicate that the condition proposed in Order No. E-9969 with respect to the nature of the group, or that made final in Order No. E-10017 with respect to unused space on charter aircraft is not required in the public interest, and the carriers are urged to have such conditions embodied in the resolution.

IX. *Documentation*

The Board in disposing of certain IATA agreements adopted at the Miami conference, stated that, in the future, it would not consider as a valid argument for approval of an agreement which it finds to be adverse to the public interest the allegation that insufficient time would be available to the carriers in which to effect the necessary corrective action.

Although the submission of the resolutions themselves has been very prompt, there has been a lag of several months before the Board's staff has had available to it the full post-conference documentation, particularly the conference minutes. While recognizing the mechanical difficulties en-

countered by the IATA secretariat in processing and finalizing the minutes, the minutes are considered essential to an adequate appraisal and understanding of the action taken by IATA. Unless it proves possible to expedite substantially the submission of the minutes to the Board, it would appear that the IATA carriers should review the conference schedule so as to extend the length of time between the conclusion of the conference and the date upon which the agreements are intended to become effective. This interval of time must be sufficient not only to permit a careful appraisal by the Board of the substantive agreements, but also to afford adequate time to the carriers in which to take remedial action should any government disapprove a resolution.

[fol. 3196] The forthcoming IATA conference presents a particular problem due to the relatively short period between the conference meeting and the date upon which certain important fare resolutions must be acted upon. Should it prove impossible to accomplish the processing of the minutes in substantially less time than heretofore, it is believed the Situation Reports should be made available to the Board. This request should not be construed to represent a precedent for future conference meetings, but rather as an exceptional step necessitated by the unusual circumstances existing this year.

May 14, 1956

[fol. 3197]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 315

Orders
Serial Number E 570

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 5th day of May, 1947

Docket No. 2423

In the matter of an agreement filed under section 412(a) of the Act, and any other applicable provisions thereof between

PAN AMERICAN AIRWAYS, INC.,

and

PAN AMERICAN-GRACE AIRWAYS, INC.

relating to through service at Balboa

ORDER

A full public hearing having been held in the above-entitled proceeding, and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions and decisions, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That the motion of Eastern Air Lines, Inc., filed with the Board on November 6, 1946, to dismiss the petition of Pan American Airways, Inc., filed on August 5, 1946, be and it hereby is denied;

2. That the through flight agreement between Pan American Airways, Inc., and Pan American-Grace Airways, Inc.,

dated July 30, 1946, and the companion agreement between Pan American Airways Corporation and W. R. Grace & Co., dated July 30, 1946, be and they hereby are approved [fol. 3198] subject to the following terms, conditions, and modifications:

(1) That paragraph 13 of the through flight agreement is disapproved and shall be deleted from the agreement;

(2) That approval of the agreements shall be for a term of 3 years from the date of the Board's order, at which time the Board without further hearing, if deemed appropriate, may extend the approval for such period as may be desirable at that time;

(3) That any changes in accounting under the agreements even though considered minor by the parties shall be reported to the Board through the Economic Bureau in accordance with section 407 of the Act;

(4) That agreements in relation to compensation in regard to agency fees, training, or other matters not previously agreed upon in the through flight agreement shall be filed with the Board in accordance with section 412 of the Act.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

(SEAL)

[fol. 3199]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 316

E-570

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served:

DOCKET NO. 2423

PAN AMERICAN-PANAGRA AGREEMENT

Decided: May 5, 1947

Agreements dated July 30, 1946, between Pan American Airways, Inc., and Pan American Grace Airways, Inc., and between Pan American Airways Corporation and W. R. Grace & Company, approved for a period of three years subject to certain terms and conditions.

Appearances:

Henry J. Friendly and *Fowler Hamilton* for Pan American Airways, Inc.

Gerhard A. Gesell and *Chas. M. Davison* for Pan American-Grace Airways, Inc.

Hubert A. Schneider for Braniff Airways, Inc.

E. Smythe Gambrell and *W. Glen Harlan* for Eastern Air Lines, Inc.

Alexander C. Dick for Colonial Airlines, Inc.

John W. Cross and *Richard A. Fitzgerald* for National Airlines, Inc.

R. S. Maurer and *J. M. Verner* for Chicago and Southern Air Lines, Inc.

Edward J. Hickey and *Joseph McDowell* for Department of Justice.

Edw. D. Rapier for New Orleans Airport Commission.

James L. Highsaw, Jr., and *Ellison D. Smith, Jr.*, Public Counsel.

Wilbur LaRue, Jr., for Port of New York Authority, *amicus curiae*.

OPINION

BY THE BOARD:

This is a proceeding initiated by a petition of Pan American Airways, Inc., (Pan American) for approval under section 412 and such other sections of the Civil Aeronautics Act as may be deemed applicable of an agreement dated July 30, 1946, between it and Pan American Grace Airways, Inc. (Panagra), hereinafter referred to as "contract A" or the "through flight agreement". Panagra, by letter dated August 5, 1946, concurred in the filing of the agree- [fol. 3200] ment under section 412. An agreement between W. R. Grace & Co. (Grace) and Pan American Airways Corporation (Pan American Corp.), also dated July 30, 1946, hereinafter referred to as "contract B", or "parent company agreement", was not formally filed but was annexed to Pan American's petition because of its relationship to the through flight agreement.

Braniff Airways, Inc., Eastern Air Lines, Inc., Colonial Airlines, Inc., National Airlines, Inc., Chicago and Southern Air Lines, Inc., the Department of Justice and the New Orleans Airport Commission were permitted to intervene. After notice to all interested parties, a public hearing was held before Examiners Thomas L. Wrenn and Warren E. Baker. Pursuant to order dated October 11, 1946, (Serial No. E-36), the examiners certified the record of the proceeding to the Board for decision. Briefs were filed by Pan American, Panagra, Eastern, National, and Public Counsel, while Braniff filed a memorandum of position and the Department of Justice a letter withdrawing from further participation in the case. Oral argument was heard at which, in addition to the parties, the Port of New York Authority was permitted to appear *amicus curiae*.

Pan American, a wholly owned subsidiary of Pan American Corp., and Panagra, owned 50 per cent by Pan Ameri-

can and 50 percent by W. R. Grace & Co., operate an extensive system of air transportation in Latin America. The former operates between Miami, Fla., and the Canal Zone, and from New Orleans, La., and Houston and [fol. 3201] Brownsville, Tex., to the Canal Zone, making connections at that point with Panagra. It also operates between Miami and Buenos Aires, Argentina, by way of points in the Caribbean and on the east coast of South America. Pan American also has a route from New York, N. Y., to San Juan, Puerto Rico, connecting there with the Miami-South American route. Panagra operates between the Canal Zone and Buenos Aires via various points on the west coast of South America. It also operates local services in several South American countries, having a system of approximately 8,800 route miles. Since its incorporation in 1929, its commercial operations at all times have been confined to transportation between the Canal Zone and points in South America.

Traffic between the United States and points on the west coast of South America and Buenos Aires, which constitutes a substantial part of Panagra's total business, has been carried between the United States and the Canal Zone by other carriers, largely by Pan American, and at that point delivered to, or received from, Panagra for onward transportation. Most of the business interchanged by Pan American and Panagra at the Canal Zone is carried over Pan American's Miami-Canal Zone route, and originates on or is destined to the eastern seaboard of the United States.[1]

During the course of Panagra's history, differences have developed between the owners of Panagra, the Grace representatives on the board of directors of Panagra having urged that Panagra should apply for an extension to the United States, which proposal was not acceptable to the Pan American representatives. Since Pan American and Grace held equal stock-ownership and representation on

[1] For data on the volume of traffic see *Latin American Air Service*, 6 CAB 857 (1946). Supplemental Opinion Service issued concurrently herewith.

the Panagra board, the proposal of the Grace representa-
[fol. 3202] tives has always failed for lack of a majority. Such an extension of Panagra was the subject of an investigation by the Board which terminated in a dismissal on the ground that the Board was without power to accomplish the compulsory extension of Panagra to the United States.[1] The case was remanded to the Board by the Circuit Court of Appeals for the Second Circuit for further consideration.[2] The Supreme Court granted petitions for review of the Circuit Court of Appeals decision but upon request of the parties the case has not been docketed for argument, pending disposition of the instant proceeding. In the *Latin American* case, decided May 17, 1946, the Board again referred to the differences existing between the owners of Panagra.[3] Following the decision in that case, a meeting of the Panagra directors was held in order that the implications arising out of that decision might be considered. The agreement before us is the outgrowth of that meeting.

Before considering the agreement and the contentions of the parties in connection therewith, it is appropriate to set forth a summary of the principal terms of the agreement. The through flight agreement in substance represents an arrangement between Pan American and Panagra for providing through one plane service between the principal points on Panagra's routes and the United States. Briefly the component parts are:

1. A through flight agreement whereby Pan American will charter any aircraft operated by Panagra into the Canal Zone from Lima or points farther south for through operation in Pan American's scheduled services from the
[fol. 3203] Canal Zone to continental United States. The operation of Panagra aircraft and crews over Pan American routes north of the Canal Zone is under Pan American's responsibility and control and for its account, while the

[1] *Panagra Terminal Investigation*, 4 CAB 670 (1944).

[2] *W. R. Grace & Co. v. Civil Aeronautics Board*, 154 F. (2d) 271 (1946). Rehearing denied February 21, 1946.

[3] *Latin American Air Service*, *supra*.

operations south of Balboa are under the control of Panagra. The initial route over which through flights are to be operated is that of Pan American between the Canal Zone and Miami. However, under certain conditions, the agreement may be extended to include schedules over Pan American's route between Balboa and New Orleans, particularly if nonstop authorization is granted, and under certain contingencies to New York and to Chicago, Ill., provided Pan American is authorized to fly from Miami and New Orleans to those points.

2. An overhaul agreement whereby Pan American will overhaul at its Miami base Panagra's flight equipment, whether of the type chartered by Pan American under the through flight agreement or otherwise.

3. An agreement by Pan American to train Panagra pilots or other personnel, whether engaged in through flight service or otherwise, in any training centers operated by Pan American in the continental United States.

4. A modification of the agreement currently in effect whereby Pan American acts as general sales agent for Panagra in the United States.

5. Agreements, under certain conditions, to: (a) negotiate with the objective of entering into an agreement, subject to approval of the Board, for the sharing of revenues from the transportation of traffic between the United States and Buenos Aires and/or Montevideo; (b) negotiate for the operation of nonstop service between points on Panagra's routes and points on Pan American's routes, subject to Board approval; and (c) an agreement to arbitrate unsettled disputes between the parties which arise out of [fol. 3204] the terms of the contract, pursuant to the rules of the American Arbitration Association, such arbitration to be conducted in accordance with the laws of the State of New York.

6. The agreement contains miscellaneous provisions relating to contingencies which may arise such as provision for termination, and the designation of Panagra's president as the person to assert Panagra's rights under

the through flight agreement. The life of the agreement is 99 years subject to termination because of default, or through withdrawal of the Board's approval. The agreement also provides that if the Board imposes conditions upon its approval of the agreement, within the general framework of the agreement, the parties will undertake to negotiate in an effort to meet such conditions.

The parent company agreement is an agreement between Pan American Corp. and W. R. Grace & Co. which ratifies the through flight agreement between Pan American and Panagra. It continues under more explicit terms the existing arrangements under which one of the directors of Panagra nominated by W. R. Grace acts as president of Panagra, provides for the appointment of a vice president operations of Panagra, to be selected with the approval of Pan American, and provides for the disposition of pending litigation between the parties. Both agreements contain provisions vesting the president of Panagra with full authority to assert Panagra's rights under the through flight agreement. All questions as to any action taken by the president of Panagra are to be settled by arbitration if the parties are unable to reach an accord.

Section 412 of the Act, under which approval of the through flight agreement is requested, provides that any agreement between air carriers or other carriers affecting [fol. 3265] air transportation and providing for the pooling of services or equipment or for other cooperative working arrangements shall be filed with the Board. Paragraph (b) of that section provides that the Board shall disapprove any such agreement, whether or not previously approved, that it finds to be adverse to the public interest and shall approve any such agreement that it does not find to be adverse to the public interest.

The contention has been made that section 401 is also involved in this proceeding. Section 401 of the Act relates to certificates of public convenience and necessity and the specific references here involved provides that no air carrier shall engage in transportation unless there is in force a certificate issued by the Board after notice and hearing. It

is argued by some of the intervenors that under the through flight agreement Panagra would be engaging in air transportation between the United States and Balboa so that Panagra would be required to obtain either an amendment to its certificate under section 401 or a specific exemption to the extent necessary to perform the operations contemplated.

Paragraph 6 of the through flight agreement states that: "Pan American shall have full responsibility for and control over the operation of Panagra's aircraft over Pan American's routes as provided in this agreement. Pan American's responsibility for such operation without limiting the generality of the foregoing shall include responsibility for operation, dispatch, flight plane clearance, radio plane guard, and 'in-flight' instructions, and all communications, navigation, and weather facilities and services, and also for loading and discharge of airplanes, handling of traffic and passenger service". It appears from the testimony that Pan American will establish schedules north of the Canal; that it will inspect Panagra aircraft submitted for operation over its routes and can reject such aircraft if [fol. 3206] unsatisfactory; that the revenues received from the operation will be for Pan American's account, that Panagra crews will be qualified and included under the operations specifications of Pan American's Latin American Division and will utilize Pan American's route manual, operations manual, and aircraft manual; that Pan American will have authority to cancel a flight, turn it back, delay or reroute it for operational reasons; and that Pan American will perform all of the operations of the aircraft as a commercial unit from the landing of the aircraft northbound in Balboa to the completion of the flight southbound in Balboa. The evidence also shows that Panagra and Pan American will continue to use the same form of ticket which has been used in the past for passengers traveling between the United States and the west coast of South America via the routes of Pan American and Panagra. This ticket form, which is in evidence, shows a demarkation between the operations of Pan American and operations by Panagra. The agreement requires that an appropriate notice be

placed in the aircraft informing the public that the airplane is a Panagra airplane under charter to Pan American. In short, the evidence dispels any belief that the control and responsibility will be in Panagra under the agreement or that there will be a holding out to the public of Panagra as the carrier certificated to operate north of the Canal. Therefore, on the basis of the facts of record, we conclude that no amendment of Panagra's certificate under section 401 of the Act is required.

Applicants request approval of the through flight agreement but not of the parent company agreement, although it was annexed to the petition because of the relationship to the through flight agreement. The intervenors contend that the two contracts are part of one transaction and, as such, must be treated as one contract. While the applicants have stated that they do not believe that the statute requires filing of the parent company agreement, they have not [fol. 3207] challenged the Board's jurisdiction over the agreement at any subsequent time during the proceeding. On the contrary, they stipulated that the Board may consider the parent company agreement in determining any and all issues of this proceeding and that if the Board shall be of the opinion that the agreement requires formal approval, then it shall be deemed filed for such approval by Pan American Corp. and by W. R. Grace. Clearly, the parent company agreement relates to and implements the provisions of the through flight agreement between the operating companies. Moreover, the contracts have been submitted as settlements of controversies which existed primarily between the two parent companies. We have previously observed that if closely interrelated contracts were not regarded as one transaction where the facts of record so warrant, we would be sanctioning a device whereby provisions affecting air transportation which were adverse to the public interest could be shielded from appropriate regulation in evasion of the clear intent of the Act.[5] Under the circumstances, in view of the close relation be-

[5] United A. L., Operation of Catalina Air Transport, 6 C.A.B. 1041 (1946).

tween the contracts, we will consider them as parts of a single transaction.

The intervenors further contend that the provisions of both the through flight agreement and the parent company agreement involve section 408 of the Act inasmuch as there is an agreement on the part of one air carrier to lease and operate a substantial part of the properties of another air carrier. The only question raised is whether or not the amount of property involved is a substantial part of the properties of Panagra, within the meaning of section 408 [fol. 3208] (a) (2). At the beginning of the operations, the four-engine equipment which will be used will amount to approximately 3 percent of the present properties of Panagra. However, the provisions of the contract and the evidence introduced by the parties indicate that in the future additional equipment will be utilized which will increase this amount to about 7 percent of the properties of Panagra. Various contingencies under the contract contemplate possible expansion of the operation (if Pan American should be extended from Miami to New York and to Chicago), which would probably involve more substantial portions of Panagra's equipment. The word "substantial" is a relative term, the meaning of which is to be determined by all the circumstances concerning the transaction in which reference to the expression is used, and it has been held that proportions as low as 7 and even 2 percent are substantial.* Under the circumstances of the present case we conclude that the contract which contemplates the lease of Panagra's property in the amount of between 3 percent and 10 percent must be considered as involving a substantial proportion of the properties of that carrier, and we are therefore of the opinion that this provision of section 408 is applicable to the transaction.

It has been suggested that either Grace or Pan American Corp. has under the provisions of these agreements acquired control of the air carriers in a manner requiring

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*United A. L.—Western A. E., Interchange of Equipment, 1 C.A.A. 723 (1940), and cases cited therein. Lockheed aircraft-acquisition of United Airports Co., 6 C.A.B. 328 (1940).

approval under section 408. This contention is unimportant for the purpose of bringing the transaction under the jurisdiction of the Board since we have determined that the provision relating to the leasing of equipment confers jurisdiction under section 408. However, it is contended that every party desiring approval of this lease or acquisition [fol. 3209] of control must apply for such approval and that Grace and Pan American Corp. are necessary parties to this transaction. Therefore, while the question of whether each one of the four parties here involved acquires control or leases property is unimportant from the jurisdictional standpoint, it is important from the technical standpoint since Grace and Pan American Corp. have not formally filed an application for approval of the parent company agreement.

The provisions of section 408(b) require that any party desiring approval of such matters as are set forth in section 408(a) shall file an application for approval which the Board after notice and hearing shall approve if found to be consistent with the public interest and disapprove if found to be inconsistent with the public interest. The section further provides that the Board shall not approve such transactions as would result in creating a monopoly, and thereby restrain competition or jeopardize another air carrier not a party to such transactions. It is further provided that if the applicant is a carrier other than an air carrier, the Board shall not approve such transaction unless it will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition. In comparing the tests set out above with those set out in section 412, it is apparent that the latter makes approval of an agreement filed thereunder dependent upon that agreement being consistent with the public interest. In substance, therefore, this test under section 408 and 412 is the same. However, matters under section 408 may not be approved which result in creating a monopoly and certain tests are also applicable when the party seeking approval is a carrier other than an air carrier.

[fol. 3210] Pan American and Panagra are both air carriers and under the agreement Pan American leases Panagra equipment. It is clear, therefore, that Pan American must obtain our approval under section 408. Grace and Pan American Corp. participate in this transaction only by virtue of the parent company agreement which is neither a lease, purchase, or contract to operate equipment. The only question in relation to these parties is whether they acquire control of an air carrier. Grace and Pan American Corp. acquired their respective 50-percent holdings in Panagra 9 years before the enactment of the Civil Aeronautics Act. By virtue of the fact that the ownership of Panagra is evenly divided, each held a certain amount of negative control.[7] We have heretofore stated that section 408 does not apply to the continuance or maintenance of a control relationship created prior to the effective date of the Civil Aeronautics Act and existing unchanged from that date forward, but that section 408 does apply in a case where the extent or effectiveness of control has increased.[8] We are unable to find that either Grace or Pan American Corp. acquires any additional control over Panagra under the provisions of the parent company agreement. On the contrary, to the extent that the negative control of either company is now subject to arbitration under the parent company agreement, there may be a decrease in the control previously held since it cannot now be exercised arbitrarily but only in accordance with the provisions, the intent, and purposes of the parent company agreement. Therefore, we conclude that neither of these companies is required to seek approval of its relationship to the agreement.

Eastern has contended that the proceeding lacks essential parties. This is based on an argument that the transaction involves acquisition of control of Panagra by Pan American, Pan American Corp., and Grace, subject to section 408 of the Act, and that none of these corporations [fol. 3211] has filed a formal application for Board approval pursuant to that section. We have already found

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[7] *Panagra Terminal Investigation*, supra.

[8] *Railroad Control of Northeast Airlines*, 4 C.A.B. 379 (1943).

that the only element in the transaction that brings it within the scope of section 408 is the lease by Pan American of a substantial part of the properties of Panagra. This would eliminate any necessity for an application under section 408 by any corporation other than Pan American. The petition filed by Pan American in this proceeding, dated August 1, 1946, would appear to constitute a sufficient application for that purpose. All parties and interveners, including Eastern, were clearly on notice that the proceeding involved a determination of whether the transaction should be approved under section 412 of the Act and that the evidence in the hearing might show that approval was also required for Pan American's lease of Panagra aircraft under section 408. Consequently, no question can be raised as to sufficiency of notice and hearing.

A question has also arisen with respect to admission in this proceeding of certain portions of the record from the *Panagra Terminal Investigation*, Docket No. 779. At the hearing Eastern during cross examination submitted some of this material, which was admitted by the examiner over the objections of counsel for Pan American and Panagra. Thereafter, counsel for all parties, interveners, and public counsel agreed to a stipulation by which all of the material of record in Docket No. 779 was stipulated into this proceeding subject to right of renewal of objection by Pan American and Panagra. On briefs and argument before the Board various counsel relied upon portions of the record in Docket No. 779 to show the background of the transaction now before us, and its effect upon the public interest. Pan American and Panagra have renewed their objection to the admission of such evidence. We believe that our decision in this proceeding requires review of all issues with respect to the public interest raised by any of the interveners. Consequently, although some of the matter [fol. 3212] from Docket No. 779 introduced into this record has only slight materiality, we believe that it should be available for consideration of the arguments made by the applicants and the interveners.

Under the terms of sections 408(b) and 412(b), two issues are presented for decision: (1) whether or not the

agreements are adverse to or inconsistent with the public interest, or will violate any of the conditions of section 408, and (2) whether or not the agreements will result in creating a monopoly and thereby restrain competition or jeopardize another air carrier. The routes of Panagra south of the Canal Zone and those of Pan American north of the Canal Zone are essentially complementary. While each provides a great amount of local service, much of their total revenue is obtained from through traffic interchanged at the Canal Zone. Panagra and Pan American compete for traffic at only two South American points, namely, Buenos Aires and Montevideo. Clearly the agreement would not, in any way reduce the quantum of competition. On the contrary, the improvement of service which may result under the through flight agreement enhances Panagra's ability to compete effectively for traffic between the United States and Buenos Aires via the west coast of South America, as against Pan American's service down the east coast of South America. Braniff Airways has been authorized to provide a direct service from Houston to South America via Havana and the Canal Zone, and by connections with National at Havana Braniff provides a two-carrier service from Miami to the Canal Zone and west coast points. Admittedly, a through flight agreement of this nature will enable these two carriers cooperatively to compete more effectively with other carriers performing similar service. We have previously indicated in the *United Western Interchange Agreement, supra*, that the restriction in section 408(b) against creating a monop-
[fol. 3213] oly is inapplicable to mere improvements in existing service whereby connecting service is better able to compete against one-carrier or other connecting services. It is clear in this instance that the competitive situation is not changed in such a way as to result in the creation of a monopoly.

The remaining issue insofar as section 408 is concerned is whether the transaction is consistent with the public interest. Insofar as the public interest is concerned, the expressions "adverse to", as used in section 412, and "not

consistent with", as used in section 408, have essentially the same meaning.

Major reasons advanced by the applicants why the agreement is in the public interest and should be approved are: (1) it will eliminate the inconvenience to passengers, mail, and cargo arising from the necessity of changing planes at Balboa; (2) it makes available to Panagra Pan American's maintenance, training, and sales facilities in the United States; and (3) it will enable the Panagra-Pan American service to develop traffic between the United States and South America and to compete more effectively with other carriers—American and foreign flag—operating over this route.

With respect to the first point, the evidence shows that during the first half of 1946, about 1,250 passengers a month travelled between the United States and points on Panagra's route south of Balboa. These passengers now change planes at Balboa. The through flight agreement would eliminate this transfer for passengers through the Miami gateway, who comprise about 60 percent of the total. The applicants point out that the present schedules must be set up to provide time for connections at the transfer point, Balboa, and that 1 hour 30 minutes on southbound and 1 hour 45 minutes on northbound flights are now allowed as compared to maximum layovers of 20 to [fol. 3214] 30 minutes that would be scheduled under the through flight agreement. Under present arrangements, passengers, mail, and cargo must be transferred from the plane of one carrier to that of the other, and the delay and expense are greatly increased when connections are missed. The evidence shows that the distances covered by the connecting services north and south of Balboa and the conditions of climate and terrain make these flights much more subject to delay than is the case on connecting services within the United States and that about 25 percent of the connections are missed. It is asserted that the relatively thin traffic potential over the routes both north and south of the Canal Zone does not permit the operation of

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United A.L.—Western A. E. Interchange of Equipment, supra.

a large number of schedules, and therefore the penalty for a missed connection is much greater than in the United States and generally involves at least an overnight delay at the Canal Zone. In the past when connections have been missed passengers have usually had to remain for several days awaiting an empty seat to permit onward passage. The evidence shows that during the period of 1½ years preceding the hearing, a great amount of time has been lost by passengers, and that a passenger's out-of-pocket living expense in the Canal Zone approximates $20.00 per day.[10] On the basis of traffic for the first half of 1946, an average of 23 passengers a day were subjected to the possibility of a missed connection. It appears from the record that missed connections are also costly to the carriers, since the aircraft that proceeds without being able to wait until the delayed ship arrives usually has many empty seats due to the fact that the space cannot be resold on short notice at Balboa where little traffic is generated.

[fol. 3215] The applicants point out that the difficulties of connecting service at Balboa will become more acute as schedules are speeded up by use of larger and faster equipment, and that this situation will become particularly aggravated when DC-6 sleeper planes are put into operation in 1947. It is asserted that the result in passenger inconvenience of a change of planes at Balboa would make sleeper service useless. However, these difficulties will be eliminated by the through flight service which will also avoid crowded conditions at Balboa, and eliminate the necessity for passengers passing through medical, immigration, and customs inspections, and the documentation required for clearing aircraft.

Only 4.5 percent of Panagra's passenger revenue is attributable to passengers between the United States and Buenos Aires who might possibly be attracted to Pan American's east coast service. With this exception Pan

[10] The expense estimate does not take into account the expense to the travelling public from business time lost and from the disruption of arrangements based upon the scheduled arrival time at destination.

American has every motive to promote Panagra's service not only because of Pan American's position as a connecting carrier but also because of its substantial stock interest in Panagra. The evidence shows that Panagra's traffic procedures have been in part handled by Pan American; that the two companies use the same ticket, the same airway bill, and the same tariff provisions; and that Panagra uses the same operations form of flight forecast, flight plan, and log as does Pan American.

The applicants estimate that the maintenance agreement whereby Pan American will do Panagra's maintenance work, will effect savings of about $380,000 annually to Panagra and at the same time permit a further spread of overhead costs by Pan American. Panagra officials testified that its higher cost of maintenance at Lima has been the result of a number of factors, including its distance from sources of supply, requiring maintenance of abnormally large inventories. The cost of those inventories is substantially [fol. 3216] increased by the necessity of transporting materials from the United States. While the labor rate is less expensive than in the United States, Panagra's experience has shown that the per hour productivity is not comparable to that of United States' labor.

The record indicates that the situation as to training personnel is comparable to that in the field of maintenance, and Panagra estimates that this feature of the agreement will save it about $150,000 a year. Panagra must now recruit many of its personnel in the United States, which problem has been made more difficult by the necessity of having all indoctrination and training in South America. It has been Panagra's experience that some men for one reason or another do not qualify for productive employment after their training period and it costs Panagra approximately $3,500 per man to transport and train a new employee to South America and return him to his home when he proves unsatisfactory during the training period. By sharing training with Pan American at its base in Miami, Panagra will be assured that its personnel will be acceptable and ready immediately to commence employment when sent to South America. In addition, Panagra will be able to

bring its flight personnel into more direct contact both by initial training and by refresher courses with CAA radio range and standard domestic airline procedures. Panagra is of the opinion that a training program at Miami making possible more frequent visits to the United States will aid in the retention of its personnel and in the improvement of morale.

From its inception, Panagra has utilized the services of Pan American as sales agent in the United States. The agreement provides for the continuance of this arrangement and contemplates that Pan American and Panagra will undertake joint programs for the advertising of their respective routes and services. Panagra will receive adequate display of its name and routes and also have a voice in the [fol. 3217] formulation of the program. Provisions are made for designating specific individuals in the branch offices of Pan American to handle traffic on Panagra's routes and affirmative steps must be taken by Pan American to correct any complaints by Panagra. It is asserted that this feature of the agreement is in the interest of Panagra because, with the limited scope of its business, Panagra could not afford a sales coverage of anything like the same extent as that which Pan American can provide and at the same time that the arrangement is advantageous for Pan American since it provides a further volume of business over which the cost of maintaining facilities can be spread.

Concerning the competitive considerations, reference was made to the Crozier report[1] which shows that total traffic between all parts of the United States and the Canal Zone is about 46 passengers per day in each direction over the sector north of the Canal Zone. The applicants point out that they are now confronted with competition by Braniff and with a Braniff-National connecting service, and in addition that they are faced with competition by at least six foreign-flag carriers, namely, British Overseas Airways, FAMA, Peruvian International Airways, a

[1] "Overseas Air Traffic Pattern, Transcaribbean and Offshore-Island Areas" prepared by F. H. Crozier, Chief, Research and and Analysis Division, Civil Aeronautics Board, August 1944.

Chilean airline, Taca de Colombia, and Avianca. Panagra points out that the through traffic represents at this time 51 percent of its passenger revenue, that there is every reason to believe that this through traffic will increase, and that the relative importance of the through traffic to it will be further enhanced by developments in Latin America, [fol. 3218] which over a long term period seem destined to divert local South American traffic from it to local, national and European competitors. In this connection, attention is also directed to recent developments restricting Panagra's right of cabotage in South American countries. Panagra points to the fact that the total population of all the cities it serves is about 6,500,000, of which about 3,500,000 are in Buenos Aires, that it must maintain its position over an 8,800-mile route thinly populated in competition with Braniff and South American and European carriers, and that virtually every important city served by it is also served by local or foreign competitors.

The evidence of record is convincing that passengers between the United States and points on Panagra's routes are greatly inconvenienced both in time and expense by the necessity of changing planes at Balboa. The proposed through-flight service would eliminate immediately that inconvenience for all traffic using the Miami gateway—about 60 percent of the travel during the first half of 1946 between the United States and points on Panagra's route. The convenience to passengers will increase in the future with the use of larger and faster equipment and especially sleeper equipment. In addition, the participating carriers would derive substantial benefit and economies from the arrangement. Panagra, from the use of Pan American's maintenance bases and training facilities, and more extensive use of Pan American's sales organization and advertising coverage; Pan American will profit by the mainte- [fol. 3219] nance of Panagra aircraft permitting a further spread of overhead costs, while both will benefit from the improved service enabling them to develop more traffic and to compete more effectively with other carriers operating in the area.

The applicants represent that the agreement settles outstanding difficulties between the parties, which created an unhealthy condition in the internal affairs of Panagra, and which have been of concern to us.[12] Some of the interveners contend that the agreement is not the best solution, and that it is not possible to resolve these difficulties under the agreement. The question presented to us in this proceeding is whether this agreement is adverse to the public interest; not whether it or some possible future proposal is the preferable method of resolving a controversy. The applicants express themselves as satisfied that the controversy has been resolved and urge approval of the agreement as a settlement of their difficulties.

The contrast between conflicting views and actions of these parties in the *Panagra Terminal Investigation*, the record of which is admitted into this proceeding, and their espousal of this agreement as a satisfactory solution of their difficulties, is impressive as to their intent to resolve the controversy. We cannot, as the interveners urge, disregard such a manifestation and conclude that the agreement is not a settlement and will not work because an internal conflict has heretofore existed. Any action eliminating conflict and looking toward harmony is an improvement over the past situation and as such is beneficial to the public.

[fol. 3220] Upon the basis of the foregoing considerations and the benefits and economies which will result from the agreement, weighed against the consideration advanced by the interveners, we conclude that the general purpose and intent of the agreement is consistent with the public interest. However, there are certain specific provisions ancillary to the general agreement and which do not affect its general substance that require the imposition of terms and conditions or some statement of our views with respect thereto, in order that there be no misunderstanding of our action in approving the agreement.

Paragraph 13 of the through flight agreement contains provisions to negotiate agreements, the first of which re-

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[12] *Panagra Terminal Investigation*, *supra*, and *Latin American Air Service*, *supra*.

lates to pooling of revenues from traffic between Buenos Aires and Montevideo and the United States. Such an agreement by its terms would be subject to the Board's approval. Pooling agreements like other agreements which tend to eliminate competition generally are contrary to the public interest, except in unusual circumstances. No unusual circumstances have been alleged in this instance and we do not deem it appropriate to take any action at this time which would indicate approval, even in principle, of pooling agreements before there is a specific factual situation presented to us. The provisions of the same paragraph relative to agreements for nonstop services between points on two different routes of the two carriers present a similar situation. In this proceeding no evidence of a need for nonstop services between routes of these carriers has been presented to the Board so as to warrant approval of this phase of the agreement even if only in principle.

[fol. 3221] Rather than indicate a tacit approval and perhaps lead to confusion in the minds of the parties here as well as of other members of the air transportation industry, we deem it desirable to disapprove paragraph 13 of the through flight agreement. The parties have made it clear that approval of the agreement is not contingent upon the approval of the principle of pooling and that this particular provision can be disapproved without affecting other phases of the agreement. During oral argument, counsel stated that there is no certainty that any agreement of this nature will ever be made but that it was inserted as a matter of full disclosure with the thought that if such agreement were later to be made and submitted, the parties would not want the Board to feel that there has been any lack of candor as to their intentions. In view of these circumstances, our approval of the through flight agreement is subject to the condition that paragraph 13 of that agreement shall be inoperative and deleted from the agreement.

During the hearing it was developed that there may be occasions when it will be necessary because of equipment damage or illness of crews for a Pan American plane to be flown by a Panagra crew or a Panagra plane to be flown

by a Pan American crew. Some concern was expressed regarding the safety aspects in such case, but witnesses for the applicants testified that the 4-engine equipment of each company which will be used is identical, having identical cockpit arrangement and instrument panels, with the exception of more oxygen outlets and a greater number of frequencies on radio equipment in the Panagra planes used in the southern portion of its South American route. The applicants' technical witnesses stated that it is desirable that the arrangement of the instrument panels and controls [fol. 3222] should be identical in all equipment used under this arrangement. In view of their expression and the fact that the occasions upon which this substitution of equipment or crews will be limited, we do not deem it necessary to require a condition that identical equipment be used. However, we will assume and expect that the parties will continue to require such uniformity of equipment in conformity with their testimony.

The through flight agreement contains a provision giving through traffic precedence over other traffic to be carried by the aircraft through the means of blocking off a specific number of seats and designated amount of mail and cargo capacity which will be designed to accommodate the through traffic. We recognize that this is an attempt to place in effect on a two-carrier operation a reservation system somewhat similar to that used by most carriers within their own route structure. It is possible that through the blocking off of an excessive number of seats on through schedules operated under the agreement and a reduction of the number of local schedules operated by Pan American between the Canal Zone and the United States, adequate service might be denied local passengers. Pan American under its certificate authorizing service between the United States and the Canal Zone is obligated to provide adequate service to passengers between those points, and its witnesses stated that it had no intention of neglecting or curtailing service for these passengers. If Pan American maintains sufficient schedules for local passengers, there may be no necessity for many local passengers to travel on the through schedules operated pursuant to this agree-

ment. However, the parties have indicated that it will be necessary to carry local passengers on some through schedules. Whether such a system will result in unfair discrimination against local traffic and inadequate service for [fol. 3223] such traffic can only be determined in the future. Therefore, our approval of this agreement is not to be construed as a specific approval of the preference provisions for the through traffic contained in the through flight agreement. Should discrimination against local traffic occur, the Board can upon complaint or upon its own motion investigate and remedy such practices.

The agreement is for a term of 99 years from the effective date, subject to termination under certain conditions. Counsel stated that the term was selected because it is typical of an agreement intended to be permanent. Air transportation in South America is undergoing changes through inauguration of additional services both by nationals and outside countries and the service pattern is not yet complete. It may well be that within a few years conditions will be entirely different from those present under which the agreement is being approved. In order to afford the greatest latitude in adjustment, if necessary, we will approve the agreement for a period of 3 years from the date of our order herein, at which time the Board with or without further hearing, if deemed appropriate, may extend the approval for such period as may be desirable in view of the circumstances at that time.

Paragraph 17 of the agreement contains provisions for payment for services performed by each party under the agreement. While rather detailed provisions have been set forth covering Panagra's compensation for flight equipment and crews furnished for operations under the agreement, the provision for payment by Panagra to Pan American for training and other services performed are not so definite. The agreement states that the parties will from time to time establish the amount of such payment as may be appropriate. Moreover, some of the accounting provi- [fol. 3224] sions designate terms and classifications without clear definition giving an elasticity which permits different interpretation. In view of these facts, it appears that the

public interest will be served by the parties reporting any changes in accounting under the agreement to the Board in accordance with the provisions of section 407 of the Act. Accordingly, the submission of such changes will be made a condition of approval of the agreement.

Upon the basis of the foregoing considerations and all the evidence of record, we find that the transaction consisting of a through flight agreement between Pan American Airways, Inc., and Pan American-Grace Airways, Inc., and the parent company agreement between W. R. Grace & Company and Pan American Airways Corporation, dated July 30, 1946, is not adverse to or inconsistent with the public interest, that such transaction does not result in creating a monopoly and thereby restrain competition or jeopardize another air carrier not a party thereto, and we therefore approve the agreements under provisions of sections 412 and 408 of the Civil Aeronautics Act subject to the following conditions:

1. That paragraph 13 of the through flight agreement is disapproved and shall be deleted from the agreement;

2. That approval of the agreements shall be for a term of 3 years from the date of the Board's order, at which time the Board without further hearing, if deemed appropriate, may extend the approval for such period as may be desirable at that time;

3. That any changes in accounting under the agreements even though considered minor by the parties shall be reported to the Board and directed to the Economic Bureau in accordance with section 407 of the Act;

[fol. 3225] 4. That agreements concerning agency fees, training, or other matters not previously agreed upon in the through flight agreement shall be filed with the Board in accordance with section 412 of the Act.

An appropriate order will be entered approving the agreements subject to the above conditions, and denying

the motion of Eastern Air Lines, Inc., that this proceeding, Docket No. 2423, be dismissed.

Landis, Chairman, Ryan, Branch and Lee, Members of the Board, concurred in the above opinion. Youngs, Member, did not take part in the decision.

[fol. 3226]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 317

Orders
Serial Number E-265

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 30th day of March, 1949

Agreement C.A.B. No. 2450

In the matter of an agreement filed pursuant to section 412 (a) of the Civil Aeronautics Act between

PAN AMERICAN AIRWAYS, INC.

and

BRANIFF AIRWAYS, INC.

relating to the use of fork-lift at Brownsville, Texas

ORDER APPROVING AGREEMENT

The Board, upon consideration of Agreement C.A.B. No. 2450 between the above-named carriers, not finding the said agreement to be adverse to the public interest or in violation of the Civil Aeronautics Act;

IT IS ORDERED THAT:

Agreement C.A.B. No. 2450 be and it hereby is approved.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

[fol. 3227]

Pan American World Airways, Inc. Exhibit 318,

Orders
Serial Number E-4130

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 4th day of May, 1950

Docket No. 3787

In the Matter of the Application filed by

Pan American Airways, Inc.

for a modification of the Board's Order Serial No. E-570 approving an agreement between Pan American Airways, Inc., and Pan American-Grace Airways, Inc., and a companion agreement between Pan American Airways Corporation and W. R. Grace & Co.

Docket No. 4329

In the matter of the petition of

Councils 10, 17, 26, 30, 36, 37, 53, 56, and 61, Air Line Pilots Association International (AFL)

ORDER EXTENDING APPROVAL OF AGREEMENT

The Board by Order Serial No. E 570, dated May 5, 1947, having approved for a term of three years from the date of such order an agreement between Pan American Airways, Inc. (Pan American), and Pan American-Grace Airways, Inc. (Panagra), known as the "Through Flight Agreement," relating to through one-plane service between the United States and certain points in South America, together with a companion agreement between Pan American Airways Corporation and W. R. Grace & Co.;

[fol. 3228] Pan American having filed an application seeking extension of Board approval of said agreements, as amended, for a period to July 1, 1960; and the Board having consolidated said application into the proceeding, known as the *National Route Investigation Case*, Docket No. 3500, for hearing and determination;

Petitions having been filed in Docket No. 4329 on behalf of Councils 10, 17, 26, 30, 36, 37, 55, 56, and 61 of the Air Line Pilots Association International (ALPA), requesting expeditious action and withdrawal of approval of the said Through Flight Agreement and denying further approval for any period subsequent to May 5, 1950, and in the alternative if the Board does not so act, pending the ultimate decision in Docket No. 3500 that the Board require that Pan American adequately compensate the Pan American pilots adversely affected by the operation of the Through Flight Agreement, and a petition and answer having been filed on behalf of Councils 38 and 83 of ALPA, requesting extension of the said Through Flight Agreement; and these petitioners having been granted leave to intervene in the *National Route Investigation Case*, Docket No. 3500, by Order Serial No. E 4088, dated April 20, 1950;

Panagra, on April 17, 1950, having filed in Docket No. 3787 an application for extension of the Pan American-Panagra Through Flight Agreement, pending the decision of the issues relating to that agreement in Docket No. 3500;

The Board, upon consideration of said application by Panagra, the various petitions and answers of the pilot

groups, and the Pan American-Panagra Through Flight Agreement, finding that:

[fol. 3229] (1) The issues raised by the petitions of the ALPA pilot groups in Docket No. 4329 will be fully heard and determined in the proceeding in the *National Route Investigation Case*, Docket No. 3500;

(2) The public interest requires that operations pursuant to the said Through Flight Agreement should not be suspended prior to such time as the Board has had an opportunity to consider and adjudicate the issues raised in the pending proceeding and any such suspension would result in hardship to the parties thereto, their employees, and the public;

(3) The consideration and adjudication in said issues will not be completed prior to May 5, 1950;

(4) The petitions do not set forth sufficient grounds to warrant the Board granting the requested relief of imposing conditions upon Pan American for the protection of Pan American pilots during operations under the Through Flight Agreement pending disposition of the issues raised by that agreement in Docket No. 3500.

IT IS ORDERED THAT:

1. The petition of Councils 19, 17, 26, 30, 36, 37, 55, 56, and 61 of ALPA in Docket No. 4329, be and it hereby is denied;

2. The approval granted to the agreement between Pan American and Panagra by Board Order Serial No. E-570, dated May 5, 1947, known as the Through Flight Agreement, together with a companion agreement between Pan American Airways Corporation and W. R. Grace & Co. be and it hereby is extended from and after May 5, 1950, until such time as the Board enters an order approving or disapproving the application of Pan American for the extension of said agreements, as amended, to July 1, 1960;

[fol. 3230] 3. The temporary approval granted herein relates only to the two agreements as approved by Order Serial No. E-570, dated May 5, 1947, and not to any sub-

sequent amendments thereto on which the Board has not yet acted and is subject to all the terms and conditions of said prior order.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

[fol. 3231]

Pan American World Airways, Inc. Exhibit 319

Orders
Serial Number E-4575

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 29th day of August, 1950.

Agreements C.A.B. Nos. 727 A, 727 A-2, 727 A-3, 727 A-4, 727 A-5, 727 A-7, and 727 A-8

Docket No. 3787

In the matter of Agreements filed pursuant to section 412(a) of the Civil Aeronautics Act involving

Pan American Airways, Inc.

and

Pan American Grace Airways, Inc.

relating to through service at Balboa

ORDER APPROVING AGREEMENTS

The Board by Order Serial No. E-570, dated May 5, 1947, having approved for a term of three years from the date of such order an agreement between Pan American Airways, Inc. (Pan American), and Pan American-Grace Airways, Inc. (Panagra), known as the "Through Flight Agreement" relating to through one-plane service between the United States and certain points in South America, together with a companion agreement between Pan American Airways Corporation and W. R. Grace & Co.;

Pan American having filed an application for modification of the Board's Order Serial No. E-570 and seeking therewith an extension of Board approval of said agreements, as amended, for a period to July 1, 1960; and the Board having consolidated said application into the proceeding known as the *National Route Investigation Case*, Docket No. 3500, for hearing and determination;

Panagra having filed an application for extension of the Pan American-Panagra Through Flight Agreement, pending the decision of the issues relating t[o] that agreement in Docket No. 3500; and the Board by Order Serial No. E-4130, dated May 4, 1950, having extended the approval granted by Order Serial No. E-570 from and after May 5, 1950, until such time as the Board enters an order approving or dis- [fol. 3232] approving the application of Pan American for modification of Board Order Serial No. E-570 and extension of said agreements, as amended, to July 1, 1960; and

There having been filed with the Board pursuant to section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain additional amendments to the Pan American-Panagra Through Flight Agreement identified as Agreements C.A.B. Nos. 727 A, 727 A-2, 727 A-3, 727 A-4, 727 A-5, 727 A-7, and 727 A-8;

The Board, upon consideration of said amendments to the Pan American-Panagra Through Flight Agreement, not finding them to be adverse to the public interest or in violation of the Civil Aeronautics Act

IT IS ORDERED THAT:

Agreements C.A.B. Nos. 727 A, 727 A-2, 727 A-3, 727 A-4, 727 A-5, 727 A-7, and 727 A-8 be and they hereby are approved until such time as the Board enters an order approving or disapproving the application of Pan American for the modification of Board Order Serial No. E-570 and extension of the Pan American-Panagra Through Flight Agreement, as amended, to July 1, 1960; provided that the rates, charges, and allocations prescribed therein are subject to review by the Board for rate making purposes.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

[fol. 3233]

Pan American World Airways, Inc. Exhibit 320

Orders
Serial Number E-5282

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 12th day of April, 1951

Docket No. 3785

In the Matter of an Application of

National Airlines, Inc.

for approval of an interchange agreement with

Pan American-Grace Airways, Inc.

Docket No. 3787

In the Matter of an Application of
PAN AMERICAN WORLD AIRWAYS, INC.
for a modification of the Board's Order Serial Number E-570 approving an agreement between
PAN AMERICAN WORLD AIRWAYS, INC.
and
PAN AMERICAN-GRACE AIRWAYS, INC.
and a companion agreement between
PAN AMERICAN WORLD AIRWAYS, INC.
and
W. R. GRACE & CO.

ORDER APPROVING AGREEMENTS

A public hearing having been held on the applications for approval of the subject agreements, and the Board, upon consideration of the record, having issued its tentative opinion containing its findings, conclusions and decisions which is attached hereto and made a part hereof;

[fol. 3234] IT IS ORDERED THAT:

1. The Agreement in Docket No. 3785 between National Airlines, Inc. (National) and Pan American-Grace Airways, Inc. (Panagra) for the interchange of equipment be and it hereby is temporarily approved pending disposition of the proceeding in Docket No. 4882;

2. The Agreement in Docket No. 3787 between Pan American World Airways, Inc. and Panagra, known as the Through Flight Agreement, and a companion agreement between Pan American and W. R. Grace & Co. be and they hereby are temporarily approved pending disposition of the proceeding in Docket No. 4882;

3. The approvals granted herein are subject to the following terms and conditions:

(1) The through service provided pursuant to the agreements shall be one plane service, except in cases of emergency, on both northbound and southbound flights;

(2) Paragraph 14 of the National-Panagra agreement is disapproved and the approval of the financial provisions of said agreement is predicated on a rental charge to National for the lease of Panagra equipment based upon National's available seat mile costs for the type of equipment involved;

(3) The approval extends to the operation of the through flight known as the El Inter Americano between New York City, Washington, D. C., Miami, Florida and the cities on Panagra's routes listed in the proposed schedules submitted for the record; additional through service schedules shall be filed with the Board and served on each carrier serving a point on such proposed schedules 15 days in advance of the effective date of such schedules and operations under such schedules be not permitted until after they have been approved by the Board, such approval to be granted with or without hearing, as the Board may determine;

(4) The carriers shall comply with the "Requirements for Air Carrier Equipment Interchange" contained in Civil Air Regulations Draft Release No. 50-8, dated October 2, 1950, section 40.168, and any amendments thereto;

(5) The parties thereto should render adequate through service to each city to which service is rendered pursuant to said agreements;

(6) No operations under the agreements shall be discontinued without prior application to the Board and decision thereon, with or without hearing at the Board's discretion; provided that this condition does not apply to mere revisions of schedules which do not eliminate through service to any point for which it has been approved;

(7) The approval of the agreements granted herein shall terminate if at any time the Board finds that the continued

operation of the parties under said agreements or under any of their provisions would be adverse to the public interest, or in violation of the Civil Aeronautics Act of 1938, as amended, or of any rule, regulation, or order of the Board, now or hereinafter in effect;

[fol. 3235] (8) No through-plane operations other than those approved by the Board shall be conducted under the agreements and that, for this purpose, a flight with the same plane between any two points shall be deemed to be a through-plane operation between those points unless there is a layover at an intermediate point between said two points, such layover to be 1½ hours after scheduled arrival time or 1 hour after such actual arrival time, whichever is later;

(9) Board approval herein shall not be deemed a determination for rate-making purposes of the reasonableness of any of the costs or charges claimed by any carrier under the terms of the interchange agreement;

(10) All agreements modifying or supplementing the basic agreements approved herein shall be filed for Board approval at least 20 days prior to the proposed effective date of such modifying or supplementing agreements;

(11) The Board retains jurisdiction of this proceeding for the purpose of imposing from time to time such further terms and conditions as it may find to be just and reasonable and for the further purpose of requiring the submission of such special reports on the financial and operating aspects of the operations as the Board may from time to time order;

4. All parties and interveners may file exceptions and supporting briefs to the tentative opinion and order issued herein not later than 30 days after the date of service of this order;

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

[fol. 3236]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 321

E-5282

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served:

NATIONAL AIRLINES, INC.
PAN AMERICAN-GRACE AIRWAYS, INC.
INTERCHANGE AGREEMENT

Docket No. 3785

PAN AMERICAN WORLD AIRWAYS, INC.
PAN AMERICAN-GRACE AIRWAYS, INC.
THROUGH FLIGHT AGREEMENT

Docket No. 3787

Decided: April 12, 1951

Equipment interchange agreement between National Airlines, Inc. and Pan American-Grace Airways, Inc. (Docket No. 3785) found to be in the public interest and not to create a monopoly or be in violation of the Civil Aeronautics Act. Agreement tentatively approved.

Through Flight Agreement between Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. (Docket No. 3787) found to be in the public interest and not to create a monopoly or be in violation of the Civil Aeronautics Act. Agreement tentatively approved.

Parties and interveners in Dockets Nos. 3785 and 3787 given 30 days from date of service of order in which to file exceptions and briefs to tentative decision to be herein.

Appearances:

John W. Cross and *Richard A. Fitzgerald*, for National Airlines, Inc.

Charles H. Murchison, *Robert E. Hankins*, and *Macon M. Arthur*, for Capital Airlines, Inc.

R. S. Maurer and *L. E. Black, Jr.*, for Chicago and Southern Airlines, Inc.

Stanley Gewirtz, for Colonial Airlines, Inc.

Robert L. Griffith, *D. F. Kell*, *E. V. Moore*, and *Todd G. Cole*, for Delta Air Lines, Inc.

E. Smythe Gambrell, *W. Glen Harlan*, *and H. L. Russell*, for Eastern Air Lines, Inc.

Theodore I. Seamon, for Florida Airways, Inc.

Gerhard A. Gesell, *Charles F. Barber*, and *John J. Burns*, for Pan American-Grace Airways, Inc.

Henry J. Friendly and *J. Howard Hamstra*, for Pan American World Airways, Inc.

[fol. 3237] *Hubert A. Schneider*, for Braniff Airways, Inc.

Alex Hart and *Wilbur LaRoe, Jr.*, for the Port of New York Authority.

H. E. Boyd, for City of Wilmington, North Carolina.

H. R. Webb and *W. A. Harding*, for City of Norfolk, Virginia.

W. W. Balcom, for City of Tampa, Hillsborough County Aviation Authority, and Greater Tampa Chamber of Commerce.

James E. Mooney, for the Bureau of Aeronautics, Pinellas County and the Cities of St. Petersburg and Clearwater, Florida.

W. S. Johnson, for the Chamber of Commerce, Jacksonville, Florida.

Henry F. Church, and *B. A. Moore*, for the City of Charleston, South Carolina.

W. Scott Christopher, for the Miami Chamber of Commerce, Miami Beach, Florida.

Dan W. Quinn, for the Association of Commerce, New Orleans, Louisiana.

Frank I. McDonough, for the City of Richmond, Virginia, and the Richmond Chamber of Commerce.

Edward J. Hickey, Jr., for the International Association of Machinists and the Brotherhood of Railway and Steamship Clerks.

John B. Lampe and *Clarence Sayen*, for the Air Line Pilots Association, International and the Airline Pilots in the Service of Pan American World Airways, Inc.

Lambert S. O'Malley and *Carolyn Just* for the Department of Justice.

Alexander G. Hardy, and *Frederick W. Bechtold*, Public Counsel.

OPINION

BY THE BOARD:

This opinion involves our consideration of two agreements which would provide through service between New York and South American points over routes of National Airlines, Inc. (National), Pan American World Airways, Inc. (Pan American), and Pan American-Grace Airways, Inc. (Panagra) utilizing aircraft of Panagra. Herein we will set forth our tentative findings and decision with respect to the approval of these agreements on the basis of the records certified to us pursuant to the opinion in Docket No. 3500 and accompanying Order Serial No. E-5205, dated March 18, 1951.[1] Before issuance of a final de- [fol. 3238] cision on this issue we shall give all the parties who were formal interveners in the consolidated proceeding in Docket No. 3500 the opportunity to except to these tentative findings and to file briefs in support of such ex-

[1] The opinion and accompanying Order Serial No. E-5205 set forth in detail the interveners and the various procedural steps in the consideration of these agreements.

ceptions. Such exceptions and briefs are to be filed within 30 days of the date of service of this tentative opinion and order.

The first agreement (Docket No. 3785) is an arrangement between National and Panagra providing for the lease of Panagra planes to National for operation over the routes of the latter between Miami and New York. The second (Docket No. 3787) is the agreement between Pan American and Panagra for the amendment of the contract (known as the *Through Flight Agreement*) under which through one-plane service is provided with Panagra aircraft over the routes of the two carriers between Miami and South American points. The latter, in order to provide through service between New York and South America, also provides for the operation of Panagra aircraft over the routes of National pursuant to the agreement in Docket No. 3785. Both agreements as hereinafter determined require our approval under section 408 and section 412 of the Act.

Application of Sections 408 and 412 to the Agreements:

Section 412 of the Act is clearly applicable to both agreements. They meet the jurisdictional tests of that section as to parties, subject matter, and effect on air transportation. In addition, the parties have sought approval under this section. Such section requires us to approve the agreements unless we find them to be adverse to the public interest or in violation of the Act.

[fol. 3239] Section 408(a)(2) of the Act provides that it shall be unlawful unless approved by the Board:

> "For any air carrier . . . to purchase, lease or contract to operate the properties, or any substantial part thereof, of any air carrier."

An agreement between air carriers providing for interchange of air craft for through-plane operations over each other's routes constitutes a lease of properties within the meaning of this paragraph. *TWA-Delta—Interchange of Equipment*, 8 CAB 857 (1947). The term "substantial part"

is relative and its content must be governed by the circumstances of each particular case. *United-Western-Interchange of Equipment*, 1 CAA 723, 726-727 (1940). In *Capital-National—Interchange of Equipment Case* (Docket No. 3291), the Board held that the leasing, at the outset, of 3 per cent and 6 per cent of the total assets of Capital and National, respectively, constituted a substantial portion of the properties of both carriers within the meaning of section 408. Likewise, in the *Delta-American-Interchange* case (Docket No. 3369), the Board held that a lease of 5 and 1 per cent of total assets constituted a substantial portion of the properties of the respective carriers involved. It appears in this case that a substantial part of the properties of Panagra will be leased and that approval of the agreements under section 408 is required. More than 3 per cent of Panagra's total assets will be involved and aircraft valued at 17 per cent of its total aircraft.

Under section 408(b) of the Act, the Board shall approve the agreements unless it finds that the transactions will not be consistent with the public interest or that they would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another carrier not a [fol. 3240] party thereto.

It is clear from Board precedent that the test of the public interest to be applied under both sections 408 and 412 of the Act is the same. In each case, the standard has reference primarily to the policy objectives of the Act laid down in section 2. It thus makes no difference with respect to the test of the public interest that the Board has jurisdiction of the agreements under two sections of the Act.

At the outset, we can dispose of two of the statutory issues raised by sections 408 and 412 of the Act. The first of these is the issue of monopoly. This has reference to a degree of control of air transportation within a given area. Undoubtedly, approval of the agreements before us would give Panagra an advantage in control of traffic moving between New York and South American points. However, we do not believe that this advantage would go so far as to create a monopoly within the meaning of section 408

which would restrain competition or jeopardize another air carrier. This is particularly true in the light of the fact that we are considering approval of the agreements only for a temporary period and have instituted an inquiry to work out a more long-range program of through service in the area.

The second such issue is the requirement of section 412 that the agreements not violate the Civil Aeronautics Act. We find nothing in the agreements in violation of the Act.

Benefits to the Traveling Public:

The merits of through-plane service have been recognized and approved by the Board in a number of previous deci- [fol. 3241] sions.[1] This is the first time, however, that through plane service by means of interchange of equipment via an international gateway has been before us for consideration.

The problems of government clearance encountered at international gateways obviously affect to some extent the advantages of through service by interchange which have been previously found to exist in domestic travel. Clearly, the mere fact that through service is available does not reduce the time required at the gateway for the passengers to disembark and go through health, immigration, and customs checks. This is true even if a customs arrangement for sealing through baggage is obtainable, since a customs check of personal baggage must be made in any event. However, these factors merely tend to diminish to some extent the advantages which such service provides in domestic situations. They do not eliminate the advantages. There is still a definite benefit to the traveling public in removing the possibilities of missed connections flowing out of connecting service and assuring passage to an ultimate destination. The parties here also believe that they will be able to cut down on the layover time at Miami which exists with the present connecting service. In addition, there can be no

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[1] Pan American-Panagra Agreement, *supra*, TWA Delta Equipment Interchange, *supra*.

question that there is a strong public desire for through service at the Miami gateway. This fact was reflected in the spot traffic surveys included in the record of the proceeding. Thus, a through-plane operation such as here involved not only furnishes the public with a type of service it desires, but also provides the carriers with a good advertising medium which will tend to stimulate through traffic between Latin America and the east coast of the United States.

[fol. 3242] The record indicates that there is a substantial volume of traffic to benefit from such a through-plane service. During the period June through October 1949, an average of 70 passengers per day moved between Miami and Balboa on the Pan American Panagra through flight. Of that number 49 passengers per day were destined to or moved from New York and Washington, D. C. In the light of the fact that the Panagra Pan American through flight arrangement between Latin America and Miami has shown a 20 per cent increase in traffic over the prior connecting service, it is reasonable to forecast that the Panagra-National interchange would carry in excess of 58 passengers daily in the near future.

Although the applications on file with the Board state that the parties seek to provide through one-plane service, the proposed schedules and equipment utilization charts submitted during the hearing reflect no through one-plane service northbound. In support of these proposed schedules, however, the parties seek to emphasize that through service with two aircraft is as equally effective as a through one-plane service. We are unable to agree with this contention. In our opinion the advantages of through plane service at an international gateway are considerably lessened if that service is to be provided with two aircraft rather than by a single aircraft. Therefore, we conclude that it would be in the public interest for the parties to provide through one-plane service in each direction, under the agreements.

Effect on Other Carriers:

In certificating Braniff to provide service between the United States and South America, the Board stated that Braniff would also connect with National at Havana and thus provide an excellent connecting service for traffic from the eastern part of the United States which would compete [fol. 3243] directly with the service of Eastern and Pan American connecting at Miami. The Havana connection is important to Braniff from a traffic standpoint. The record shows that for the six months period April through September 1949, Braniff received, as its share of the traffic connecting at Havana, revenues in the amount of approximately $196,000. This constituted 16.7 per cent of Braniff's total Latin American revenue during that period. Hence, the approval of the interchange operation contemplated by the agreements before us upon a long term basis would imperil this important source of Braniff's revenue, thus seriously affecting Braniff's ability to compete with Panagra for traffic between Latin American and the northeastern areas of the United States.

In view of the foregoing, it may not be in the public interest to approve the proposed agreements upon a long term basis without providing Braniff with adequate access to the traffic involved. For that reason, in Order Serial No. E-5205, we instituted a proceeding to consider the possible extension of Eastern or Braniff between Miami and Havana and an interchange operation involving those carriers which would provide through service over their routes between New York and Latin America. We further consolidated into the proceeding the applications for approval of the present agreements except for the issue of temporary approval now before us. This proceeding will go forward immediately and will be expedited toward a decision. In the meantime, we believe that the advantages flowing from temporary approval of the present interchanges would more than offset any temporary injury to Braniff that may result.

[fol. 3244] Eastern also claimed a substantial diversion in its passenger revenues resulting from approval of these

agreements. The estimate which it gave in the record amounted to more than $5,000,000 annually. However, this estimate was predicated upon an approval of not only the present agreements but also the proposed through service agreement between Pan American and National and the local service agreement providing for flights between Miami and New York with Pan American aircraft. These other possibilities are now moot, so that the potential diversion from Eastern would be substantially less than that forecasted.

Moreover, in the proceeding commenced by Order Serial No. E-5205 cited above, we will consider the Braniff Eastern interchange operation which would operate competitively with the National Panagra Pan American interchange and which would give each group of carriers an equal opportunity for the New York Latin American traffic. Eastern has also filed for approval of an agreement between it and Pan American which would provide a through service between the same areas. That application will be heard simultaneously with the other interchange issues. In the meantime, we do not believe that the record will support a showing of substantial injury to Eastern arising out of a temporary approval of the present agreements.

Safety of the Proposed Operation:

The record indicates that the through service operation under the two agreements meets the requirements of section 2 with respect to safety in air transportation. The Pan American Through Flight Agreement has been in operation for a substantial period of time, and experience thereunder confirms the safety of such an operation.

[fol. 3245] To further insure the highest degree of safety in air transportation we shall provide as a condition of approval of the agreements that the carriers conform to the requirements of the proposed section 40.168 of the Civil Air Regulations relating to air carrier equipment interchanges, and any amendments thereof.

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[1] Civil Air Regulations Draft Release No. 50-5, October 2, 1950.

Financial Provisions:

The charges to be paid Panagra by National for the lease of the latter's aircraft are based upon Panagra's cost for operating such aircraft. In addition, National will pay Panagra a rental based upon a fair and reasonable return on its investment for such equipment. National's treasurer emphasized that the cost of operating DC-6's and DC-4's under the interchange would be about 15c to 20c a plane mile higher than the cost National would incur in operating its own equipment of the same type over the same routes. It is National's opinion that the charge to National for flying Panagra's aircraft over National's routes should be based on National's costs. It was on this basis that National approached the negotiations. The latter expressed the willingness to agree to a charge based on the domestic average cost of the type of equipment involved. However, Panagra would not agree to this. The only argument that National now makes for seeking approval for these high costs is that they have made a deal with which they intend to abide.

We do not believe that it would be in the public interest in the circumstances of this case to approve an operation [fol. 3246] over National's routes based upon a charge to National other than its own costs to operate the same type of equipment. National is a low-cost operator. To now permit it to fly Panagra's equipment at greatly increased cost might have a serious effect upon its financial future. Moreover, approval of this type of agreement might establish a precedent whereby a high cost operator would always tend to impose its costs upon a low-cost carrier in any interchange agreement. Such a result would not lead to the fostering of sound economic conditions in the air transport industry in accordance with the mandates of section 2 of the Act.

We will approve the agreement on the basis of charges reflecting National's costs. These should be available seat-mile costs because of the differences in the available seats on each carrier's equipment. Panagra's DC-6's have 52 seats and its DC-4's have 46 seats as compared to National's 58 seats in each type of aircraft.

Under their original agreement National and Panagra agreed to submit to the Board any unresolved questions between them as to the terms of the agreement for binding determination in such manner as the Board should direct. This provision had reference primarily to the rate of return to be paid by National to Panagra for lease of the latter's aircraft. There was subsequently submitted an agreement signed by the presidents of the two companies providing for a rate of return equaling 10 per cent of the gross passenger revenue accruing to National with certain ceilings thereon. There is also a provision that if in a mail rate proceeding the Board should disallow National all or any part of the payments to Panagra for a return on investment, the amount so disallowed shall be refunded. The practical effect of this agreement would be to leave to appropriate mail rate proceedings the final adjustment of [fol. 3247] the amounts paid under this category. Such an approach to the problem is within the requirements of the public interest. Pending such a final determination we cannot find that the rate provided in the supplementary agreement is unreasonable.

Other Provisions:

Paragraph 14 of the National-Panagra Agreement restricts the right of each carrier to enter into interchange arrangements with any other carrier without the written consent of Panagra or National. We have consistently found restrictive provisions in contracts between carriers to be contrary to the public interest and so find with respect to this provision.

The proposed schedules contemplate one daily DC-6 flight (El Inter Americano) in each direction between Buenos Aires and New York. Panagra is also entitled under the agreement to *require* National to charter its aircraft for such additional number of through flights as may be "reasonably needed" for the convenient handling of through traffic (Panagra interchange agreement, paragraph 2(a), p. 4). Panagra can require National to continue to operate the additional through flight schedules with Panagra equip-

ment at load factors which National would consider uneconomic (Panagra interchange agreement, p. 6) by merely reimbursing National for the excess direct flying cost (including rental) and out-of-pocket in-flight cost on any such schedule over the revenues received by National from such schedule (Id., p. 6). In the alternative, Panagra may withdraw such schedule. So long as its own schedules shall be operating, National shall be obligated to operate the initial through flights specified by Panagra (Id., paragraph 2(a), p. 5). Under this language, the record shows that National could be forced to cut down schedules on its New [fol. 3248] York-Miami route, operated with its own equipment, and substitute therefor Panagra equipment (Trippe, Tr. p. 3638).

These provisions could make National a mere conduit for Panagra equipment to be flown by Panagra crews from Miami to New York. They could cause the immobilization of a number of National aircraft now operating on Route 31 if such aircraft could not be absorbed on other segments of National's route pattern. The cost crediting arrangement does not remove the vice of these provisions. It simply determines the price National will get for surrendering its right to schedule its own equipment over its own route. Such consequences could be adverse to the public interest and could have a drastic effect on National's mail pay need.

Therefore, we believe that we should retain sufficient control of the situation to prevent the development of the possible results cited above. To this end we find that Panagra and National should submit to us for prior approval proposed through service schedules in addition to the El Inter Americano flight. This would not apply, of course, to extra sections or additional schedules of an emergency nature that were intended to operate only a few times.

We further find that the conditions which are normally applied to our approval of interchange operations should also be applied to the proposed operation here.

The Air Line Pilots Association (ALPA) has appeared to oppose approval of the two agreements on the ground that they do violence to the employment contracts between

the pilots and the carriers and cause injury to some pilot [fol. 3249] groups. A study of the record would indicate that this position is based primarily on the Panagra crews flying the Panagra equipment over the routes of Pan American and National. On the record before us we are not prepared to find that such procedure is in violation of any collective bargaining agreements outstanding. Nor does it appear to produce any inequities which offset the advantages of such procedure from an operating standpoint. Finally, the ALPA witness testified that there were no difficulties present which could not be settled by direct negotiation with the carriers. Under these circumstances we find that there is nothing in the ALPA position which warrants our disapproval of the agreements.

On the basis of the foregoing and all the facts of record, we find that approval of the National Panagra interchange agreement and the amended Pan American-Panagra Through Flight Agreement, pending disposition of the proceeding in Docket No. 4882, is in the public interest, is not in violation of the Civil Aeronautics Act, and will not create a monopoly or monopolies and thereby jeopardize another air carrier not a party thereto. Accordingly, the agreements are temporarily approved, subject to the modifications and conditions set forth herein. The same findings are applicable to the agreement between W. R. Grace & Co. and Pan American, which is a part of the Through Flight arrangement.

An appropriate order will be entered.

Rentzel, Chairman, Ryan, Lee, Adams, and Gurney, Members of the Board, concurred in the above opinion.

[fol. 3250]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 322

Orders
Serial Number E-5842

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 8th day of November, 1951

Agreements CAB Nos. 220 A-2, 267, 267 A, 267 A-2 through A-7, 2473, 3763, 4499, 4768, 5092, 5367.

In the Matter of Agreements filed under Section 412(a) of the Act by and between

PAN AMERICAN WORLD AIRWAYS, INC.
FOREIGN AIR CARRIERS, AND OTHER CARRIERS

relating to general agency matters

ORDER APPROVING AGREEMENTS

Upon consideration of the Agreements CAB Nos. 220 A-2, 267, 267 A, 267 A-2 through A-7, 2473, 3763, 4499, 4768, 5092, 5367, between Pan American World Airways, Inc., various foreign air carriers, and another air carrier, filed pursuant to Section 412 of the Civil Aeronautics Act of 1938, and

The Board finding that said Agreements are not adverse to the public interest nor in violation of the said Act;

IT IS ORDERED, That said Agreements be and hereby are approved.

By the Civil Aeronautics Board.

/s/ M. C. MULLIGAN

M. C. Mulligan
Secretary

(SEAL)

[fol. 3251]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 323

Orders
Serial Number E-6048

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 22nd day of January, 1952

Agreement CAB No. 2272 et al.

In the matter of Agreements filed pursuant to section 412(a)
of the Civil Aeronautics Act involving

PAN AMERICAN-GRACE AIRWAYS, INC.,

and

PAN AMERICAN WORLD AIRWAYS, INC.
VARIOUS OTHER AIR CARRIERS AND OTHER CARRIERS,

relating to intercompany arrangements.

ORDER APPROVING AGREEMENT

There having been filed with the Board pursuant to section 412 (a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain agreements between various carriers as indicated below:

CAB No.	*Parties*	*Subject*
2272	Pan American-Grace Airways, Inc. Pan American World Airways, Inc.	Purchasing and shipping facilities
3447	Delta Air Lines, Inc. K.L.M. Royal Dutch Airlines	Employee reduced rate vacation travel

CAB No.	Parties	Subject
4773	Pan American World Airways, Inc. Imperial Oil, Ltd. Esso Export Corporation British Overseas Airways Corporation	Fuel tankage facilities, Gander, Newfoundland
4965	Acme Fast Freight, Inc. Acme Air Cargo, Inc.	Joint facilities at various domestic point
5527	Pan American World Airways, Inc. Panair do Brasil, S.A.	Liability for lost engines
5563	Chicago and Southern Air Lines, Inc. Pan American World Airways, Inc.	Cooperative advertising program
[fol. 3252]		
5665	United Air Lines, Inc. Eastern Air Lines, Inc.	Temporary personnel transfer
5689	The Flying Tiger Line, Inc. Riteway Express Co., Inc.	Air Freight Agency
5564	Chicago and Southern Air Lines, Inc. Southern Airways, Inc.	Cooperative advertising

The Board, upon consideration of said agreements, not finding them to be adverse to the public interest or in violation of the Civil Aeronautics Act;

IT IS ORDERED THAT:

The agreements listed above be and they hereby are approved.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

fol. 3253]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 324

Orders
Serial Number E-6476

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 3rd day of June, 1952.

Agreement CAB No. 5210-A3 et al.

In the matter of Agreements filed pursuant to section 412(a)
of the Civil Aeronautics Act involving

TRANS WORLD AIRLINES, INC.

and

BRITISH OVERSEAS AIRWAYS CORPORATION

VARIOUS OTHER AIR CARRIERS AND OTHER CARRIERS

relating to intercompany arrangements.

ORDER APPROVING AGREEMENTS

There having been filed with the Board pursuant to section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain agreements between various carriers as indicated below:

CAB No.	*Parties*	*Subject*
5210-A3	Trans World Airlines, Inc. British Overseas Airways Corporation	Ground transportation of passengers, London, England
6147	Trans World Airlines, Inc. Aerolineas Argentinas FAMA	Joint ticket office, Madrid, Spain

CAB No.	*Parties*	*Subject*
4733-A1	Pan American World Airways, Inc. United Air Lines, Inc.	Ground services, Philadelphia, Pa.
2813-A5	Pan American World Airways, Inc. United Air Lines, Inc.	Engine overhaul, San Francisco, Calif.
6148	The Flying Tiger Line, Inc. Goldstein Refrigerator Line	Airfreight agency, Denver, Colo.
6149	The Flying Tiger Line, Inc. City Transfer and Storage Co.	Airfreight agency, Seattle, Wash
6151	The Flying Tiger Line, Inc. Brazilian International Airlines	Interline cargo
[fol. 3254]		
6152	Braniff Airways, Inc. Slick Airways, Inc.	Emergency maintenance, Dallas, Texas
3555-A1	United Air Lines, Inc. West Coast Airlines, Inc.	Joint facilities, Bellingham, Wash.
5879-A1	United Air Lines, Inc. American Airlines, Inc.	Stewardess lounge, Newark, N. J.
6154	United Air Lines, Inc. The Belt Railway Company of Chicago	Lease of land parcels, Cook County, Ill.
6155	U. S. Airlines, Inc. Transportes Aereos Nacionales, S. A.	Interline freight
6156	National Airlines, Inc. Aerovias Nacionales de Colombia, S. A. (AVIANCA)	Interline traffic
6157	National Airlines, Inc. Delta Air Lines, Inc.	Interline traffic and baggage
6158	Braniff Airways, Inc. Pioneer Air Lines, Inc.	Power unit, Waco, Texas
6159	Air Cargo, Inc. Airline Car Rental, Inc. and three air carriers	Pickup and delivery, Shreveport, La.

CAB No.	Parties	Subject
1453-A4	Air Cargo, Inc. Daniel Hamm Drayage Co. and five air carriers	Pickup and delivery. St. Louis, Mo.
5873-A1	Air Cargo, Inc. The Fleet Transfer Co. and eight air carriers	Pickup and delivery. Baltimore, Md.
6160	American Airlines, Inc. Provincetown Boston Airline	Interline traffic
6161	Delta Air Lines, Inc. Southern Airways, Inc.	Disposal unit. Atlanta, Ga.
6162	Central Airlines, Inc. Delta Air Lines, Inc.	Interline baggage
[fol. 3255]		
6163	Central Airlines, Inc. Lake Central Airlines, Inc.	Interline traffic
6164	United Air Lines, Inc. E. W. Wiggins Airways, Inc.	Lease of space. Boston, Mass.
6165	Frontier Airlines, Inc. Trans-Texas Airways	Joint station operation. El Paso, Texas
6166	Mid Continent Airlines, Inc. Wisconsin Central Airlines, Inc.	Lounge space. Minneapolis, Minn.
6167	United Air Lines, Inc. Reeve Aleutian Airways, Inc.	Interline traffic
6168	American Airlines, Inc. Swiss Air Transport Co., Ltd.	In-bond transfers. New York, N. Y.
6169	United Air Lines, Inc. Mid Continent Airlines, Inc.	Use of air conditioning unit. Des Moines, Iowa
6170	Northwest Airlines, Inc. All American Airways, Inc.	Emergency maintenance. International airport. New York, N. Y.

CAB No.	*Parties*	*Subject*
6171	Air Cargo, Inc. Taylor Taxi, Inc. and two air carriers	Pickup and delivery, Helena, Mont.
6172	Air Cargo, Inc. Howard Fairchild, an individual, United Air Lines, Inc.	Pickup and delivery, Cedar Rapids, Iowa
6173	Air Cargo, Inc. Herbert Barry, an individual, Northwest Airlines, Inc.	Pickup and delivery, La Crosse, Wis.
4511-A4	Air Cargo, Inc. Shields Motor Lines and five air carriers	Pickup and delivery, Pittsburgh, Pa.
6031-A1	Pan American World Airways, Inc. National Greek Airlines, TAE	General Agency
6032	Pan American World Airways, Inc. Lineas Aereas Costarricenses, S. A.	General Agency

[fol. 3256]

2193-A	Braniff Airways, Inc. KLM, Royal Dutch Airlines	Settlement of accounts in Brazilian currency
6057	Pan American World Airways, Inc. Northwest Airlines, Inc. Philippine Air Lines, Inc. Canadian Pacific Air Lines, Ltd.	Fares, rates and charges collected in Hong Kong
1331	Colonial Airlines, Inc. Railway Express Agency, Incorporated	International air freight traffic
6133	Pan American World Airways, Inc. Pan American-Grace Airways, Inc.	Handling of passenger sales on a lift basis
5553	Aerovias Sud Americana, Inc. Servicios Aereos, S. A.	Ground services
5088-A2 5088-A3 5088-A4	Pan American World Airways, Inc. Capital Airlines, Inc.	Lease of aircraft

CAB No.	Parties	Subject
6115	Pan American World Airways, Inc. Air Tahiti	General Agency

The Board, upon consideration of said agreements, not finding them to be adverse to the public interest or in violation of the Civil Aeronautics Act:

IT IS ORDERED THAT:

The agreements listed above be and they hereby are approved.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

[fol. 3257]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 325

Orders
Serial Number E 6587

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 9th day of July, 1952.

Agreement CAB No. 6256, et al.

In the matter of Agreements filed pursuant to section 412(a)
of the Civil Aeronautics Act involving

PAN AMERICAN WORLD AIRWAYS, INC.

and

CIE. DE TRANSPORTES AERIENS INTERCONTINENTAUX
VARIOUS OTHER AIR CARRIERS AND OTHER CARRIERS

relating to intercompany arrangements.

ORDER APPROVING AGREEMENTS

There having been filed with the Board pursuant to section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain agreements between various carriers as indicated below:

CAB No.	*Parties*	*Subject*
6256	Pan American World Airways, Inc. Cie de Transportes Aeriens Intercontinentaux	Interline traffic
6257	Slick Airways, Inc. and Edward Gromand, an individual	Pickup and delivery, Dayton and Columbus, Ohio
2134-A3	Capital Airlines, Inc. United Air Lines, Inc.	Maintenance, Milwaukee, Wisconsin
5840-A1	Northwest Airlines, Inc. Thomas Anderson Transportation Company	Pickup and delivery, Anchorage, Alaska
267-A9	Pan American World Airways, Inc. Panair do Brasil, S. A.	General Agency amendment

[fol. 3258]

5788-A1	Air Cargo, Inc. Ellis Package Delivery and 2 air carriers	Pickup and delivery, Sacramento, California
6221-A1	United Air Lines, Inc. Lake Central Airlines, Inc.	Interline traffic
6258	Western Air Lines, Inc. Seaboard & Western Airlines, Inc.	Aircraft overhaul
6259	Slick Airways, Inc. Flete Internacional Corp.	Airfreight agency
2767-A4	Chicago and Southern Air Lines, Inc. American Airlines, Inc. Central Airlines, Inc. with the following:	Termination, gasoline storage, Memphis, Tennessee

CAB No.	Parties	Subject
6230	A. B. Aero Transport	Interline traffic
6231	Braniff Airways, Inc.	Interline traffic & baggage
6232	British Commonwealth Pacific Airlines Limited	Interline traffic
6233	British European Airways	Interline traffic & baggage
6234	Canadian Pacific Air Lines, Limited	Interline traffic & baggage
6235	Chicago and Southern Air Lines, Inc.	Interline traffic & baggage
6236	Det Danske Luftfartselskab A S	Interline traffic
6237	Det Norske Luftfartselskap A S	Interline traffic
6238	East African Airways Corp.	Interline traffic & baggage
6239	Eastern Air Lines, Inc.	Interline traffic & baggage
6240	Iraqi Airways	Interline traffic & baggage
[fol. 3259]		
6241	KLM Royal Dutch Airlines	Interline traffic & baggage
6242	New Zealand National Airways	Interline traffic
6243	Northwest Airlines, Inc.	Interline traffic & baggage
6244	Pan American-Grace Airways	Interline traffic & baggage
6245	Tasman Empire Airways	Interline traffic
5896-A2	Pan American World Airways, Inc.	Interline baggage
6246	Trans Canada Air Lines	Interline traffic & baggage

CAB No.	*Parties*	*Subject*
6066-A1	Trans World Airlines, Inc.	Interline baggage
6247	Compagnie Nationale Air France	Interline traffic & baggage
6183-A1	United Air Lines, Inc.	Interline traffic & baggage
6248	SABENA	Interline traffic
6249	Aerovias Nacionales de Colombia, S. A.	Interline traffic
6250	Aviacion y Commercio, S. A.	Interline traffic
6163-A1	Lake Central Airlines, Inc.	Interline baggage
6251	Japan Air Lines Company, Ltd.	Interline traffic
6252	Servicos Aereos Cruzeiro do Sul, Ltda.	Interline traffic
6253	El-Al Israel National Airlines Company, Ltd.	Interline baggage
6162-A1	Delta Air Lines, Inc.	Interline traffic
6254	Scandinavian Airlines System	Interline traffic
6255	South African Airways	Interline traffic & baggage

[fol. 3260] The Board, upon consideration of said agreements, not finding them to be adverse to the public interest or in violation of the Civil Aeronautics Act;

IT IS ORDERED THAT:

The agreements listed above be, and they hereby are approved.

By the Civil Aeronautics Board:

M. C. MULLIGAN
M. C. Mulligan
Secretary

(SEAL)

[fol. 3261]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 326

Orders
Serial Number E 6945

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 7th day of November, 1952

Agreement C.A.B. No. 676

PAN AMERICAN-GRACE AIRWAYS, INC., AEROVIAS NACIONALES DE COLOMBIA, AEROPUERTO DE CALI, LIMITADA.

Agreements C.A.B. Nos. 1665, 1665-A

PAN AMERICAN-GRACE AIRWAYS, INC.,
AEROVIAS NACIONALES DE COLOMBIA.

ORDER

There having been filed with the Board, under section 412(a) of the Civil Aeronautics Act of 1938, as amended, an agreement between Pan American-Grace Airways, Inc., Aerovias Nacionales de Colombia and Aeropuerto de Cali, Limitada concerning the construction and rental of Cali Airport, Bogota, Colombia (C.A.B. No. 676) and an agreement between Pan American-Grace Airways, Inc., and Aerovias Nacionales de Colombia for the joint use of airport facilities at certain locations in Colombia and Ecuador (C.A.B. Nos. 1665, 1665-A);

The Board not finding these agreements to be adverse to the public interest or in violation of the Civil Aeronautics Act;

IT IS ORDERED THAT, Agreements C.A.B. Nos. 676, 1665 and 1665-A be and they hereby are approved, subject to the condition that such approval shall not in any manner or for any purpose, including mail rate making, be a determination of the reasonableness of any of the costs or charges included in the agreements.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)

[fol. 3262]

Pan American World Airways, Inc. Exhibit 327

Order No. E-7165

[Handwritten notation—2105.1 Panagra]

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 17th day of February, 1953

Agreement C.A.B. No. 664 et al.

In the matter of Agreements filed pursuant to section 412(a) of the Civil Aeronautics Act involving—

Pan American-Grace Airways, Inc.

and

Pan American World Airways, Inc.
Various Other Air Carriers and Other Carriers

relating to intercompany arrangements.

ORDER APPROVING AGREEMENTS

There having been filed with the Board pursuant to section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain agreements between various carriers as indicated below:

CAB No.	*Parties*	*Subject*
664	Pan American-Grace Airways, Inc. Pan American World Airways, Inc.	Joint ground services and facilities, Buenos Aires, Argentina
6404	The Flying Tiger Line, Inc. Western Transportation Co.	Pickup and delivery, Los Angeles, California
6405	The Flying Tiger Line, Inc. Western Transportation Co.	Pickup and delivery, San Francisco area
6406	The Flying Tiger Line, Inc. Western Transportation Co.	Pickup and delivery, Seattle-Tacoma, Washington
6407	The Flying Tiger Line, Inc. Western Transportation Co.	Pickup and delivery, Portland, Oregon
6408	The Flying Tiger Line, Inc. Western Transportation Co.	Pickup and delivery, New York and Newark
6409	*The Flying Tiger Line, Inc.* Timothy J. Shanahan, III d b a Shanahan Trucking Co.	*Pickup and delivery, Philadelphia, Pennsylvania*
[fol. 3263]		
6417	The Flying Tiger Line, Inc. Bouma Cartage Company	Pickup and delivery, Grand Rapids, Michigan
6470	Slick Airways, Inc. David Poracaro, d/b/a Dave's Motor Transportation	Pickup and delivery, Boston, Massachusetts
6661	The Flying Tiger Line, Inc. Joseph Levine Trucking, Inc.	Pickup and delivery, Hartford, Connecticut
6694	The Flying Tiger Line, Inc. Fairfield Airfreight	Airfreight agency
6737	Seaboard & Western Airlines, Inc. Trans-Carribbean Airways, Inc.	Sale and lease of aircraft

CAB No.	*Parties*	*Subject*
6739	American Airlines, Inc. Mohawk Airlines, Inc.	Joint city ticket offices, Albany, New York, Schenectady, New York
6760	American Airlines, Inc. Central Airlines, Inc.	City ticket office service, Dallas, Texas, Oklahoma City and Tulsa, Oklahoma
6762	The Flying Tiger Line, Inc., Jenkins-Simmons Trans Co., Inc.	Airfreight agency
6763	The Flying Tiger Line, Inc. Pacific Transfer Co.	Airfreight agency
6765	Northwest Airlines, Inc. North Central Airlines, Inc.	Sublease of hangar space, Minneapolis, Minnesota

The Board, upon consideration of said agreements, not finding them to be adverse to the public interest or in violation of the Civil Aeronautics Act;

IT IS ORDERED THAT:

The agreements listed above be and they hereby are approved.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)

[fol. 3264]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 32S

Order No. E-7416

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 27th day of May, 1953

In the matter of agreements filed under section 412(a) of the Civil Aeronautics Act between Pan American World Airways, Inc. (Pan American) and its affiliate, Aeropuertos Unidos, S.A. (AUSA), with the following carriers:

	Agreements C.A.B. Nos.
NATIONAL AIRLINES, INC.	1031, 1031 A1
BRANIFF AIRWAYS, INC.	1980, 1980 A, A2, A3, A4, A5
CHICAGO AND SOUTHERN AIR LINES, INC.	2466, 2466 A, A2, A3, A4, A5 A6, A7, A8
KONINKLIJKE LUCHTVAART MAATSCHAPPIJ, N.V. (KLM)	3923, 3923 A, A2, A3, A4, A5 A6, A7, A8; A9
LINEA AEROPOSTAL VENEZOLANO	4132, 4132 A1
BRITISH OVERSEAS AIRWAYS CORP.	4906 A4
IBERIA LINEAS AEREAS ESPANOLAS	4963, 4963 A1
LINEAS AEREOS COSTARRICENSES, S.A.	5312, 5312 A, A2
RESORT AIRLINES, INC.	6551

relating to the furnishing of ground services and facilities at Rancho Boyeros Airport, Havana, Cuba, and certain other points.

ORDER

There having been filed with the Board, under section 412(a) of the Civil Aeronautics Act of 1938, as amended, certain agreements whereby Pan American furnishes ground services and facilities to various United States and foreign air carriers at Rancho Boyeros Airport, Havana, Cuba, through its wholly owned affiliate, AUSA, and at other locations;

[fol. 3265]

The Board finding that the agreements are not adverse to the public interest or in violation of the Act;

IT IS ORDERED THAT:

1. The agreements listed above be and they hereby are approved.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN,

M. C. Mulligan
Secretary

(SEAL)

[fol. 3266]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 329

Order No. E-8862

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 29th day of December, 1954

Agreement CAB No. 8540, *et al.*

In the matter of agreements filed pursuant to section 412(a)
of the Civil Aeronautics Act between

TRANS WORLD AIRLINES, INC.
DELTA AIR LINES, INC.

and

VARIOUS OTHER AIR CARRIERS AND OTHER CARRIERS

relating to intercompany arrangements.

ORDER APPROVING AGREEMENTS

There having been filed with the Board pursuant to section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain agreements between various carriers as indicated below:

CAB No.	*Parties*	*Subject*
8540	Trans World Airlines, Inc. Delta Air Lines, Inc.	Radio transmitter site, St. Louis, Missouri
8541	Continental Air Lines, Inc. Union Pacific Railroad Co.	Tank storage facilities, Sandown, Colorado
8542	Eastern Air Lines, Inc. Olley Air Service Ltd.	Interline settlements

CAB No.	*Parties*	*Subject*
8543	Eastern Air Lines, Inc. Morton Air Services Ltd.	Interline settlements
2274-A2	United Air Lines, Inc. Eastern Air Lines, Inc. Hilton Hotels Corporation	Lease of ticket office, Washington, D. C.
8544	Slick Airways, Inc. Public Freight System	Airfreight agency
[fol. 3267]		
8545	Slick Airways, Inc. James J. Morrissey, Inc.	Airfreight agency, New York, New York
8546	Capital Airlines, Inc. Seaboard Air Line Railroad Co.	Passenger transportation
8547	Mohawk Airlines, Inc. Compagnie Nationale Air France	Interline traffic
8548	New York Airways, Inc. Iberia Air Lines of Spain	Interline traffic
8510	Pan American World Airways, Inc. Braniff Airways, Inc.	Participation in certain Pan American System tariffs
8514	The Flying Tiger Line, Inc. Air Cargo Terminals, Inc.	Pickup and delivery, Los Angeles and Burbank, California
8513	Slick Airways, Inc. Arthur Dixon Transfer Company	Pickup and delivery, Chicago, Illinois
8515	Ozark Airlines, Inc. Lake Central Airlines, Inc.	Station operations Danville, Illinois
8492	Pan American World Airways, Inc. National Airlines, Inc.	Reciprocal lease of aircraft.
8488	Pan American World Airways, Inc. Eastern Air Lines, Inc.	Reciprocal lease of aircraft
842-A1	Members of the Air Traffic Conference of America	Policy standards of ground transportation service

The Board, upon consideration of said agreements, not finding them to be adverse to the public interest or in violation of the Civil Aeronautics Act;

IT IS ORDERED THAT the agreements listed above be and they hereby are approved.

By the Civil Aeronautics Board:

s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)

[fol. 3268]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 230

Order No. E-9130

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 25th day of April, 1955

Agreement CAB No. 8841, *et al*

In the matter of Agreements filed pursuant to section 412(a)
of the Civil Aeronautics Act involving

United Air Lines, Inc.

and

Western Air Lines, Inc.
Various Other Air Carriers and Other Carriers

relating to intercompany arrangements

ORDER APPROVING AGREEMENTS

There having been filed with the Board pursuant to section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic

Regulations certain agreements between various carriers as indicated below:

CAB No.	*Parties*	*Subject*
8841	United Air Lines, Inc. Western Air Lines, Inc.	Use of power rectifier, Cheyenne, Wyoming
8842	Pan American World Airways, Inc. Aerovias Nacionales de Colombia, S. A.	Interline traffic
8732-A1	American Airlines, Inc. Trans World Airlines, Inc.	Remote transmitter site, Phoenix, Arizona
8843	American Airlines, Inc. United Air Lines, Inc.	Sanitary facilities Cleveland, Ohio
5601-A1	United Air Lines, Inc. Trans World Airlines, Inc.	Sublease of hangar space Washington National Airport
8844	National Airlines, Inc. Aerovias Panama, S. A.	Interline traffic

[fol. 3269]

4617-A2	Capital Airlines, Inc. American Airlines, Inc.	Emergency maintenance, Charleston, West Virginia
7616-A2	Capital Airlines, Inc. Allegheny Airlines, Inc.	DC-3 maintenance, Buffalo, New York
8845	Pan American World Airways, Inc. Southwest Airways Company	Employee vacation fare discounts
6268-A4	Trans World Airlines, Inc. El Al Israel Airlines, Inc.	Ground transportation between Tel Aviv and Lydda Airport
8846	Northwest Airlines, Inc. United Air Lines, Inc.	Public address system, Spokane, Washington
3148-A4	Northwest Airlines, Inc. United Air Lines, Inc.	catering service, Spokane, Washington

CAB No.	Parties	Subject
3387-A3	Pan American World Airways, Inc. American President Lines, Inc.	Interline passenger traffic (air sea).
8847	Delta Air Lines, Inc. United Air Lines, Inc.	Acceptance of Burroughs Ticketeer tickets
8848	United Air Lines, Inc. Pan American World Airways, Inc.	Employee vacation fare discounts
2006-A2	Delta Air Lines, Inc. Capital Airlines, Inc.	Ramp services, Atlanta, Georgia
8849	Delta Air Lines, Inc. North Central Airlines, Inc.	Use of baggage conveyor, Detroit, Michigan
	Air Cargo, Inc. with the following:	
5780-A2	S. O. Gourley, Individual and two air carriers	Pickup and delivery, Austin, Texas
3834-A1	Burch Transfer Co. Continental Air Lines, Inc.	Salina, Kansas
4508-A1	Union Truck & Storage Company American Airlines, Inc.	Jackson, Michigan
6741-A2	Emmerson Truck & Storage Co., Inc. American Airlines, Inc.	Battle Creek, Michigan
8850	R. E. Nichols, Individual Eastern Air Lines, Inc.	Lake Charles, Louisiana
[fol. 3270]		
	Slick Airways, Inc. with the following:	Airfreight agency
8851	El Camino Travel Service	San Clemente, California

CAB No.	*Parties*	*Subject*
8852	R. M. McGrath	Philadelphia, Pennsylvania
8853	Eastern Trucking Co.	East Hartford, Connecticut
8854	Commercial Motor Freight, Inc.	Cleveland, Ohio
8855	Niels C. Hansen	San Francisco, California
8856	Yale Transport Corp.	New York, New York
8857	Berens Express	Waukegan, Illinois

The Board, upon consideration of said agreements, not finding them to be adverse to the public interest or in violation of the Civil Aeronautics Act:

IT IS ORDERED THAT the Agreements listed above be and they hereby are approved.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY, 1962

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336—Letter to J. D. MacGregor from Harold J. Roig dated June 21, 1929	3298	3385
337—Letter to D. S. Iglehart from H. J. R. dated December 5, 1930	3304	3390
338—Cable to Roig from Trippe dated December 12, 1930	3306	3392
339—Minutes of special meeting of Board of Directors of Pan American-Grace Airways, Inc. held January 28, 1931	3310	3397
340—Memorandum to the Directors of Pan American-Grace Airways, Inc. from J. D. MacGregor dated March 4, 1931	3314	3399
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342—Letter to J. T. Trippe from C. A. Lindbergh dated March 11, 1931	3328	3410
343—Minutes of special meeting of Board of Directors of Pan American-Grace Airways, Inc. held March 18, 1931	3329	3411
344—Memorandum to the Directors of Pan American-Grace Airways, Inc. from J. D. MacGregor dated April 11, 1931	3334	3415

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352—Letter to J. D. MacGregor from Harold R. Harris dated February 17, 1933	3361	3441
353—Letter to H. R. Harris from J. D. MacGregor dated October 19, 1933	3362	3443
354—Memorandum to J. D. MacGregor from G. Vidal dated December 20, 1933	3367	3446
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356—Letter to H. J. Roig from D. S. Iglehart dated May 5, 1936	3376	3454
357—Letter to Pan American Grace Airways, Inc. from H. R. Harris dated August 29, 1936	3377	3455
358—Letter to A. Garni from Harllee Branch dated June 30, 1938	3378	3457
359—Letter to C. V. Whitney from D. S. Iglehart dated January 19, 1939	3379	3458
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361—Memorandum to H. R. Harris from G. P. Smith dated March 8, 1939	3384	3462

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264—Letter to Pan American-Grace Airways, Inc. from J. E. Muhlfeld dated May 7, 1941	3401	3486
365—Letter to Douglas Campbell from H. J. R. dated June 4, 1941	3403	3489
366—Letter to H. J. Roig from Douglas Campbell dated June 9, 1941	3404	3490
367—Memorandum to Director, Public Relations, New York, from Francis Walton dated August 1, 1941	3405	3491
368—Memorandum re work performed for Pan American-Grace Airways, Inc. by Pan American Airway System public relations department (New York) dated about July 1, 1941	3411	3499
369—Letter to Pan American Airways, Inc. from J. E. Muhlfeld dated September 26, 1941	3423	3510
370—Letter to Panagra, New York, from J. E. Muhlfeld dated December 19, 1941	3424	3511
371—Letter to Pan American-Grace Airways, Inc. from H. R. Harris dated January 29, 1942	3425	3512
372—Letter to South American General Office, Lima, Peru, from Grace & Cia., (Chile) S.A. dated September 24, 1942	3426	3514
373—Letter to Grace & Cia., (Chile), agents for Panagra, from J. E. Muhlfeld, dated December 15, 1942	3428	3517
374—Memorandum to O. G. Balz from G. Vidal dated January 27, 1943	3429	3518

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377—Letter to Andrew B. Shea from J. T. T. dated July 8, 1954	3435	3525
378—Memorandum to files re Los Angeles West Coast through flight by John C. Leslie dated July 21, 1954	3436	3526
379—Letter to Andrew B. Shea from Henry J. Friendly dated July 23, 1954	3438	3528
380—Memorandum to Douglas Campbell from A. B. S. dated August 20, 1954	3439	3528
381—Memorandum to J. C. Leslie from Douglas Campbell dated August 20, 1954	3440	3529
382—Letter to A. B. Shea from Douglas Campbell dated August 18, 1954	3441	3530
383—Memorandum to Vice President and General Manager Campbell from John C. Leslie dated August 26, 1954	3445	3534
384—Memorandum to A. B. Shea from John C. Leslie dated September 9, 1954	3447	3537
385—Memorandum to John C. Leslie from Andrew B. Shea dated September 15, 1954	3448	3538
386—Memorandum to A. B. Shea from John C. Leslie dated September 16, 1954	3449	3538
387—Memorandum to A. B. Shea from John C. Leslie dated September 27, 1954	3450	3539
388—Memorandum to John C. Leslie from Andrew B. Shea dated October 4, 1954	3451	3540
389—Memorandum to Andrew Shea from John C. Leslie dated October 21, 1954	3453	3542
390—Minutes of regular meeting of Board of Directors of Pan American-Grace Airways, Inc. held November 2, 1955	3456	3545

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
391—Minutes of adjourned regular meeting of Board of Directors of Pan American-Grace Airways, Inc. held December 20, 1955	3461	3549
392—Memorandum re Panagra jet program, meeting held November 17, 1955, by Henry J. Friendly	3466	3553
393—Minutes of regular meeting of Board of Directors of Pan American-Grace Airways, Inc. held April 6, 1959	3472	3559
394—Application of Uraba, Medellin & Central Airways, Inc. before the Civil Aeronautics Board, docket No. 10324, dated March 18, 1959	3475	3562
395—Excerpt from hearings before Sub-committee of House Committee on Appropriations on Post Office Appropriation Bill, 1931, dated 1930	3478	3565
396—Public counsel exhibit in CAB docket No. 779, weight of airmail dispatched to Antigua and other points in Latin America	3480	3567
397—Public counsel exhibit in CAB dockets No. 779, weight of airmail received from Antigua and other points in Latin America	3492	3579
398—CAB, March and September, 1957, re current reports and international O & D surveys, Panagra participation in passenger traffic between Buenos Aires on the one hand and northeast U. S., Canada and Europe on the other hand as a percentage of Panagra System scheduled operations—March and September, 1957	3503	3590

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
399—Pan American annual report for the war year 1942, 15 Years of Pioneering, pp. 22, 23	3503	3591
400—Treaties and other international acts, Series 1900, Air Transport Services, agreement between the United States of America and Brazil signed September 6, 1946, effective October 6, 1946	3506	3593
401—Treaties and other international acts, Series 2190, Air Transport Services, agreement between the United States of America and Brazil amending the agreement of September 6, 1946, signed December 30, 1950, effective December 30, 1950	3547	3612
402—Treaties and other international acts, Series 4143, Air Transport Services, agreement between the United States of America and Brazil amending agreement of September 6, 1946, as amended, signed December 1, 1958	3553	3616
403—Agreement between Western Air Express Corporation and United Airlines Transport Corporation dated March 17, 1939	3561	3621
404—Draft Equipment Interchange Agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc. submitted by Pan American to H. J. Roig in 1941 (introduced as Grace Exhibit 58 in CAB docket No. 779)	3575	3635
405—Excerpts from the testimony of H. J. Roig in CAB docket No. 779	3585	3649
406—Map: Latin American foreign airmail contracts awarded 1927-1930	3586	3651

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
407—Map: Routes awarded in docket No. 525 et al., order No. 4793, dated May 17, 1946, and the NAL-PAA-PGR and EAL-BNF interchanges approved in 1955	3587	3653
408—Map: Foreign flag airlines operating to South America and Panama, April, 1959	3588	3655
409—Map: Principal Latin American airline service (Appendix B to pretrial brief of Pan American)	3589	3657
410—Excerpts from the testimony of Juan T. Trippe in CAB dockets 779 and 3500	3590	3658
411—Excerpt from the testimony of R. C. Lounsbury in CAB docket 779	3656	3714
412—Excerpts from the testimony of Harold J. Roig in CAB dockets 779, 525 and 3500	3657	3715
413—Excerpts from the testimony of Robert H. Patchin in CAB docket 779	3679	3734
414—Excerpts from the testimony of William F. Cogswell in CAB docket 779	3683	3738
415—Excerpts from the testimony of Douglas Campbell in CAB docket 3500	3685	3740
416—Excerpt from the testimony of Thomas J. Kirkland in CAB docket 3500	3686	3741
417—Excerpts from the testimony of W. Irving Glover before Congressional Committees, 1928-30	3687	3742
418—Excerpts from the testimony of Walter F. Brown before Senate Special Committee, 1934	3696	3749
419—Excerpts from oral argument of counsel before the Civil Aeronautics Board in CAB docket 2423	3710	3763

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Pan American World Airways, Inc. Exhibits—Continued		
419—Excerpts from oral argument of counsel before the Civil Aeronautics Board in CAB docket 2423—Continued		
Argument of Henry J. Friendly, Pan American Airways, Inc.	3711	3764
Argument of Gerhard A. Gesell, Panagra	3727	3776
Argument of Wilbur Laroe, Port of N. Y. Authority	3766	3806
Argument of Hubert A. Schneider, Braniff Airways	3767	3806
Argument of E. Smythe Gambrell, Eastern Air Lines	3813	3840

[fol. 3271]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 331

Order No. E-9481

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 10th day of August, 1955.

Docket No. 4882 *et al.*

In the matter of the

REOPENED NEW YORK-BALBOA
THROUGH SERVICE PROCEEDING

ORDER APPROVING INTERCHANGE AGREEMENT

On August 4, 1955, there was filed with the Board a joint application by National Airlines, Pan American-Grace Airways, and Pan American World Airways for approval of (a) an agreement for the provision of through-plane service between New York and Miami on National's route No. 31, Miami and Balboa on Pan American's Latin American route, and Balboa and points on Panagra's route, and (b) an amendment dated July 30, 1955, to the Through Flight Agreement between Pan American and Panagra. The carriers request approval of the agreements under section 412 of the Act and, if required, under section 408, except that, if the latter is required, it is requested that the Board exempt the parties from the hearing requirements of section 408 in order to permit the agreement to become effective immediately.

There was also filed with the Board on August 4, 1955, a superseding amendment to an earlier filed agreement be-

tween National and Pan American.[1] The amended agreement would provide for through service between New York and Miami on National's route No. 31, and Miami and Balboa on Pan American's route. The agreement also indicates that one or more intermediate points may be served, and that other routes of Pan American beyond Miami may also be added by mutual consent. The parties seek immediate approval of this agreement without formal hearings thereon.

[fol. 3272] Insofar as the proposed three way interchange between National, Panagra and Pan American is concerned, we find that the service which it would establish is responsive to our decision in the *Reopened New York-Balboa Through Service Proceeding*, Orders Nos. E-9109 and E-9110, dated November 23, 1954, in which we invited the carriers concerned to submit a voluntary proposal for a three way interchange between South America and New York, and made the entering into such an agreement a condition precedent to approval of the Pan American-Panagra Through Flight Agreement.[2]

We have reviewed the agreement and find that it does not contain any provision which is contrary to the public interest or violates the Civil Aeronautics Act.[3] Therefore,

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[1] The original agreement was filed on June 30, 1955. On July 5, 1955, Eastern Air Lines filed a letter with the Board stating its objection to approval of such agreement without further hearing thereon. On July 18, 1955, National filed a request for an exemption from the hearing requirements of section 408 to permit immediate consideration and approval of the agreement. On July 28, 1955, Eastern filed an answer opposing National's exemption request.

[2] We also there indicated the other conditions which we would impose upon approval of the Through Flight Agreement. See pages 36-37 of the mimeographed opinion.

[3] However, it is to be noted that for various reasons the financial terms are of greater significance, insofar as the public interest is concerned, than in the usual interchange agreement. These reasons include the fact (a) that the agreement involves a self-sufficient carrier, National, and two other carriers whose costs are substantially higher than National's and whose operations still require subsidy assistance, and (b) that, at least initially, only

approval of the agreement, subject to the usual terms and conditions placed upon interchange service would not be adverse to the public interest or in violation of the Act and should be approved under Section 412.

Although a hearing may be technically required for this type of situation on the ground that the agreement is subject to Section 408, it is our judgment that the circumstances of this case call for an exemption therefrom pursuant to our powers under section 416. It is clear that no useful purpose can be served by a hearing on the agreement. The principal matters which would be in issue under section 408 have already been tried in the *New York-Balboa Case*, *supra*, upon which the Board and the parties have already spent several years. Therefore, a hearing would be of little, if any substantial benefit, would impose an undue burden on the parties, and would unduly delay a service found to be in the public interest.

[fol. 3273] We have also considered the provisions of the Through Flight Agreement, as amended by Supplement Numbers 8 through 16, and Number 18, which we have numbered Amendments A9 through A18, and find that it does not contain any provision which is contrary to the public interest or violates the Civil Aeronautics Act. Therefore, approval of the Through Flight Agreement, subject to the usual terms and conditions imposed upon interchange service, as well as the conditions described in Order No. E-9109 dated November 23, 1954, pp. 36-37, would not be

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Panagra's equipment will be used in the interchange service. Accordingly, we expect the parties to review from time to time the effect of these terms on their financial position and to take appropriate steps, as provided under the agreement, to revise such financial terms, if they appear to impose unfairly upon any of the parties. It should also be made clear that the Board in approving the interchange agreement, is not in any manner making a determination for rate making purposes of the reasonableness of any of the costs or charges claimed by any carrier under the terms of the agreement.

[4] E.G., Order No. E-8759, dated Nov. 10, 1954, Order No. E-5337, dated May 1, 1951.

[5] The carriers have not filed with the Board any Supplement No. 17.

adverse to the public interest or in violation of the Act, and should be approved under section 412.6.[*]

We turn now to the National-Pan American agreement. The applicants point out that in the opinion in the *New York-Balboa Proceeding*, *supra*, we indicated that "we would look with favor upon proposals submitted by National and Pan American" designed to meet the demonstrated need for through plane service between the northeastern United States and "those points sought to be served in the Caribbean area * * * by the 'Nassau', 'North Coast' and other interchanges included in the Eastern-Pan American agreement." The applicants argue that, although technically the *Balboa Case* did not include any issue with respect to a National-Pan American interchange, there was evidence and argument in the proceeding directed to that possibility, and that the record contains ample data upon which the Board could make the necessary findings for approval of the agreement without further hearing. Eastern, on the other hand, strongly opposes approval of the agreement without further hearing. Not only does the carrier rely on the fact that there has been no hearing on issues relating to a National-Pan American interchange service, but it is also pointed out that the applicants have made no specific proposals with respect to the service which would be provided, and thus are, in effect, asking for a blank check.

We have considered the matters set forth on behalf of the applicants, as well as other matters, and have concluded that it would not be in the public interest to ap- [fol. 3274] prove the National-Pan American agreement

[*] In reaching our decision, we have given due consideration to the request of the Airline Pilots Association that we take no action herein which would adversely affect the Association's efforts to resolve satisfactorily certain employee problems which have been a source of friction under the Through Flight Agreement. We have not been specifically advised of the means proposed by the Association to resolve these difficulties, or what action on our part is, or is not necessary with respect to the Association's plans. Nor do we see where the action which we are here taking, which is consistent with that which we have followed in other cases, without objection by the Association, would prejudice the effort of the Association to solve the problems involved.

without affording an opportunity for further hearings thereon.

On the basis of the foregoing, we find that:

1. The National-Pan American-Panagra interchange agreement, and the Pan American Panagra Through Flight Agreement, as amended by Amendments Nos. A9 through 18, are not adverse to, and are consistent with the public interest, subject to the conditions hereinafter proposed, and are not in violation of the Civil Aeronautics Act.

2. Enforcement of section 408 of the Act with respect to the National-Pan American-Panagra agreement would be an undue burden on such carriers by reason of unusual circumstances affecting the operations of these carriers and is not in the public interest.

3. The National-Pan American interchange agreement should not be approved without further hearing thereon.

IT IS ORDERED THAT:

1. The record in Docket No. 4882, et al., be and it is hereby reopened, to the extent necessary to receive the National-Pan American-Panagra agreement dated August 4, 1955, and supplement No. 18 to the Through Flight Agreement, dated August 4, 1955.

2. The agreement between National, Pan American, and Panagra dated August 4, 1955, for through service between New York and Miami on National's route No. 31, Miami and Balboa on Pan American's route, and Balboa and points in South America on Panagra's route be, and it hereby is approved subject to the conditions set forth in paragraphs 5 through 15 below.

3. The Through Flight Agreement between Panagra and Pan American, as amended by Amendment Nos. A9 through A18, be and it hereby is approved subject to the conditions set forth in paragraphs 4 through 15 below.

4. Approval of the Through Flight Agreement shall be for a period terminating December 31, 1960; *Provided*, That if the antitrust proceeding which is currently pending against Pan American, Panagra and W. R. Grace & Co.,

is finally concluded prior to 1960, such approval shall terminate 90 days after the effective date of a final order (other than an order of dismissal) disposing of the antitrust litigation, and *Provided further*, That upon the effective date of such final order (other than an order of dismissal) the proceedings in Docket No. 4882 et al., shall thereupon be reopened without further order for the purpose of determining whether approval of the Through Flight Agreement should be extended, modified or terminated.

5. The initial interchange schedules and all subsequent changes therein shall be filed fifteen days in advance of the [fol. 3275] proposed effective dates thereof, and operations shall not be permitted thereunder until after they have been approved by the Board, such approval to be granted with or without hearing, as the Board may determine: *Provided*, That the approval of the Board under this provision shall not be required for revisions which merely change the time of service to a point or points in schedules previously approved by the Board.

6. Fifteen days prior to the date of commencement of operations, the parties shall file with the Board a complete supplementary contract covering any matters left to subsequent agreement under the interchange agreement, including a specific provision with respect to the division of revenues from the interchange service.

7. The parties to the agreement shall comply with the requirements of section 6 of the Railway Labor Act and existing collective bargaining agreements to resolve any conflict arising out of operation of the agreements.

8. The carriers shall comply with the requirements for air carrier equipment interchange contained in section 40.365 of the Civil Air Regulations or any amendment thereto.

9. No operations under the agreements shall be discontinued without prior application to the Board and decision thereon, with or without hearing at the Board's discretion.

10. The approval of the agreements granted herein shall terminate if at any time the Board finds that the continued

operation of the parties under said agreements or under any of their provisions would be adverse to the public interest, or in violation of the Civil Aeronautics Act of 1938, as amended, or of any rule, regulation, or order of the Board, now or hereafter in effect.

11. No through plane operations other than those approved by the Board shall be conducted under the agreements, and for this purpose a flight with the same plane between any two points shall be deemed to be a through-plane operation between any two points unless there is a layover at any intermediate point between said two points, such layover to be one and one half hours after scheduled arrival time or one hour after such actual arrival time, whichever is later.

12. The approval granted herein shall not be deemed a determination for rate-making purposes of the reasonableness of any of the costs or charges claimed by any carrier under the terms of the interchange agreements.

13. All agreements modifying or supplementing the basic interchange agreement herein shall be filed for Board approval at least twenty days prior to the proposed effective date of such modifying or supplementing agreements.

[fol. 3276] 14. The Board retains jurisdiction of this proceeding for the purpose of imposing from time to time such further terms and conditions as it may find to be just and reasonable and for the further purpose of requiring the submission of such special reports on the financial and operating aspects of the operations as the Board may from time to time order.

15. The parties to the agreement shall render adequate through service to each city to which service is rendered pursuant thereto.

16. National, Pan American and Panagra be, and they hereby are exempted from the requirements of section 408 of the Civil Aeronautics Act insofar as such section may be applicable to the agreements approved herein.

17. The National-Pan American application for approval of an agreement for interchange service filed June 30, 1955, as amended by the agreement dated August 4, 1955, be and it hereby is denied insofar as it requests approval of such agreement without further hearing thereon.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)

[fol. 3277]

Pan American World Airways, Inc. Exhibit 332

Order No. E-9562

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 12th day of September, 1955.

Agreement CAB No. 9205-A1

In the matter of a supplemental agreement filed pursuant to section 412(a) of the Civil Aeronautics Act of 1938, as amended, between

National Airlines, Inc.
Pan American World Airways, Inc.

and

Pan American-Grace Airways, Inc.

relating to interchange service between New York, New York and Balboa, Canal Zone and points in South America via intermediate points.

ORDER

On August 10, 1955 by Order No. E-9481, the Board approved an interchange agreement between National Airlines, Inc., Pan American World Airways, Inc. and Pan American-Grace Airways, Inc. (Panagra) providing for through one-plane service between New York, New York and Balboa, Canal Zone and points in South America on the routes of Panagra, which agreement was responsive to the Board's decision of November 23, 1954 (Orders Nos. E-9109 and E-9110) in the *Reopened New York-Balboa Through Service Proceeding*, Docket No. 4882, *et al.* As a condition to approval, the Board directed the parties to file, fifteen days prior to commencement of service, a supplementary contract covering any matters left to subsequent agreement, including a specific provision covering the division of revenues from the interchange service.

The parties having complied with the Board's order and the Board finding that the supplemental agreement of August 22, 1955 between the parties is not adverse to the public interest nor in violation of the Civil Aeronautics Act;

It is ORDERED THAT the supplemental agreement of August 22, 1955 between the parties be and it hereby is approved, subject to the terms and conditions of the Board's order of August 10, 1955, Order No. E-9481.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)

[fol. 3278]

PAN AMERICAN-WORLD AIRWAYS, INC. EXHIBIT 333

Order No. E-9654

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 13th day of October, 1955

Agreement CAB No. 9363, *et al.*

In the matter of agreements filed pursuant to section 412(a) of the Civil Aeronautics Act involving

UNITED AIR LINES, INC.

and

COLONIAL AIRLINES, INC.
VARIOUS OTHER AIR CARRIERS AND OTHER CARRIERS

relating to intercompany arrangements.

ORDER APPROVING AGREEMENTS

There having been filed with the Board pursuant to section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain agreements between various carriers as indicated below:

CAB No.	*Parties*	*Subject*
9363	United Air Lines, Inc. Colonial Airlines, Inc.	Lease of hangar space, Washington National Airport
9364	United Air Lines, Inc. Real-Aerovias Brasil	Employee vacation fare discounts
9107-A1	Northeast Airlines, Inc. British Overseas Airways Corp.	Employee vacation fare discounts

CAB No.	Parties	Subject
9365	United Air Lines, Inc. The New York, Chicago and St. Louis Railroad Company	Exchange orders
9366	Transocean Air Lines United States Overseas Airlines	Maintenance services, Seattle, Washington
9367	Delta Air Lines, Inc. Eastern Air Lines, Inc.	Radio site, St. Louis, Missouri
9368	Capital Airlines, Inc. Mohawk Airlines, Inc.	Public address system, Chemung County Airport, Horseheads, New York
[fol. 3279]		
9369	Northwest Airlines, Inc. Anchorage Porter Service Co. Alaska Airlines, Inc. Cordova Airlines, Inc. Northern Consolidated Airlines, Inc. Pacific Northern Airlines, Inc.	Porter service, Anchorage, Alaska
5431 A4	United Air Lines, Inc. Braniff Airways, Inc.	Airport services, Lincoln, Nebraska
9370	Northwest Airlines, Inc. Iberia Air Lines of Spain	"In bond" transfers at New York
9371	Riddle Airlines, Inc. Aerovias Panama, S. A.	Interline cargo traffic
9372	New York Airways, Inc. Aerovias Panama, S. A.	Interline passenger and cargo traffic
9373	The Flying Tiger Line Inc. Woolenmann & Goolknecht, Inc.	Sales agency, New York, New York
9374	Delta Air Lines, Inc. Midway Airlines, Inc.	Interline traffic
9375	The Flying Tiger Line Inc. Qantas Empire Airways Ltd.	Interline traffic

CAB No.	*Parties*	*Subject*
9376	The Flying Tiger Line Inc. Aerovias Panama, S. A.	Interline traffic
9377	United Air Lines, Inc. Seaboard & Western Airlines, Inc.	Interline traffic
9378	Aerovias Sud Americana, Inc. Airwork Limited, Inc.	Interline traffic
9379	Air Cargo, Inc. Ray D. Jackson, d/b/a A and A Delivery Service Central Airlines, Inc.	Pickup and delivery, Duncan, Oklahoma
727-A19	Pan American World Airways, Inc. Pan American-Grace Airways, Inc.	Through flight agreement

[fol. 3280]

6638-A6	Continental Air Lines, Inc. United Air Lines, Inc.	Equipment interchange
7541-A26	Members of the Air Traffic Conference of America	Military representation resolution

The Board, upon consideration of said agreements and not finding them to be adverse to the public interest or in violation of the Civil Aeronautics Act,

IT IS ORDERED THAT:

The agreements listed above be and they hereby are approved.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)

[fol. 3281]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 334

Order No. E-10669

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 15th day of October, 1956.

Agreement CAB No. 10329, *et al.*

In the matter of agreements filed pursuant to section 412(a) of the Civil Aeronautics Act involving

ALLEGHENY AIRLINES, INC.
and
BRANIFF AIRWAYS, INC.
VARIOUS OTHER AIR CARRIERS AND OTHER CARRIERS

relating to intercarrier arrangements

ORDER APPROVING AGREEMENTS

There having been filed with the Board pursuant to section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain agreements between various carriers as indicated below:

CAB No.	*Parties*	*Subject*
10329	Allegheny Airlines, Inc. Braniff Airways, Inc.	Sublease of space to Braniff, Washington, D. C.
	Air Cargo, Inc., various air carriers, and the following:	Pickup and delivery:
2738-A3	Marvin Bros. Express Co.	Bridgeport, Conn.
10303-A1	Moore's Moving & Storage Company	San Antonio, Tex.

CAB No.	*Parties*	*Subject*
3455-A5	Larson Transfer Company	Minneapolis, area
1583-A4	Sterling Cartage Company	Minneapolis, area
10207-A1	W. H. Zuehl, d/b/a Bill's Air Freight	Santa Ana, Calif.
7768-A9	Atlantic Air Freight, Inc.	Westchester County, N. Y.
6728-A5	Wells Fargo Armored Service Corporation	New York, N. Y.
8835-A5	Commodity Haulage Corp.	New York, N. Y.
10330	Bernard P. Harrington and Rich Bowman, d/b/a City Taxi Company	Butte, Mont.
10331	Harry J. Scari, d/b/a Scari's Delivery Service	Wilmington, Del.
10332	Airlines Limousine Service, Inc.	Endicott/Johnson City/ Binghamton
[fol. 3282]		
	Pan American World Airways, Inc. and the following:	Interline cargo and passenger traffic:
2684-A1	West Coast Airlines, Inc.	
7303-A1	Mackey Airlines, Inc.	
3569-A1	Malayan Airways, Ltd.	
5615-A1	Jugoslovenski Aerotransport	
4657-A1	Hong Kong Airways, Ltd.	
4161-A1	Gulf and South American Steamship Co., Inc.	Interline passenger traffic: (air and sea)
6453-A1	Holland-Afrika Lijn	
8444-A1	Nippon Yusen Kaisha	
9637-A3	Royal Interocean Lines	
8579-A1	Indian Airlines Corporation	Interline traffic
9791-A1	"Italia" Societa per Azioni de Navigazione (Italian Line)	Interline passenger traffic
6334-A1	Anchor Line	Interline passenger traffic
10333	Turk Hava Yollari Anonim Ortakligi	Interline traffic
8972-A1	Transocean Air Lines Deutsche Lufthansa	Assignment of flight navigators

CAB No.	*Parties*	*Subject*
10314	United Air Lines, Inc. Braniff Airways, Inc.	Employee reduced fare
7824-A5	United Air Lines, Inc. Japan Air Lines Co., Ltd.	Ground services, Honolulu and San Francisco
9846	American Shippers, Inc. Air Frange	IATA sales agency, New York
9852	American Shippers, Inc. El Al Israel Airlines, Ltd.	IATA sales agency, New York
9853	American Shippers, Inc. Japan Air Lines Co., Ltd.	IATA sales agency, New York and Chicago
9856	American Shippers, Inc. Linee Aeree Italiane S.p.A.	IATA sales agency, New York, Chicago and Los Angeles
9862	American Shippers, Inc. Swiss Air Lines	IATA sales agency, Chicago
9205-A2	Pan America-Grace Airways, Inc. Pan American World Airways, Inc. National Airlines, Inc.	Equipment Interchange
7882-A2	Pan American World Airways, Inc. KLM Royal Dutch Airlines	Ground facilities and services, Okinawa
7548-A17 A18	Members of the Air Traffic Conference of America	Standard Interline Reservations Procedures

[fol. 3283]

10321	Riddle Airlines, Inc. Michigan Air Freight Service, Inc.	Drayage services, Detroit, Mich.

The Board, upon consideration of said agreements, not finding them to be adverse to the public interest or in violation of the Civil Aeronautics Act;

IT IS ORDERED THAT: The agreements listed above be and they hereby are approved.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)

[fol. 3284]

Pan American World Airways, Inc. Exhibit 335

Order No. E-11789

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 13th day of September, 1957

Agreement CAB No. 1980-A6, *et al.*

In the matter of agreements filed pursuant to section 412(a) of the Civil Aeronautics Act involving

Pan American World Airways, Inc.
and
Braniff Airways, Inc.
Various Other Air Carriers and Other Carriers

relating to intercarrier arrangements

ORDER APPROVING AGREEMENTS

There having been filed with the Board pursuant to section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain agreements between various carriers as indicated below:

CAB No.	Parties	Subject
1980-A6	Pan American World Airways, Inc. Braniff Airways, Inc.	Ground services and facilities, San Blas, Panama
11154	Riddle Airlines, Inc. Lineas Aereas de Nicaragua, S. A. (LANICA)	Interline cargo traffic
	Air Cargo, Inc., various air carriers, and the following:	Pickup and delivery:
11155	Charles Feltenberger, d/b/a Charlie's Taxi Service	Reading, Pa., area
8789-A4	Skyline Motors	Pittsburgh, Pa.
10573-A1 A2	Rileys Air Cargo	Pittsburgh, Pa. area
11156	The Flying Tiger Line Inc. Andrew Obes' & Son	Sales agency Metropolitan New York area
[fol. 3285]		
11157	The Flying Tiger Line Inc. Hopia Trucking Co.	Sales agency, Eastern Central New Jersey
11158	American Airlines, Inc. United States Lines	Transportation of aliens through the United States without U. S. Visas
11159	Northwest Airlines, Inc. Transportes Aereos Nacionales, S. A.	Interline passenger, baggage and cargo traffic
11160	Delta Air Lines, Inc. Pan American World Airways, Inc.	Ground services, Baton Rouge, La.
11161	Bonanza Air Lines, Inc. Airwork Limited	IATA multilateral traffic, baggage and cargo handling
11162	Bonanza Air Lines, Inc. Civil Air Transport	IATA multilateral interline traffic,

CAB No.	*Parties*	*Subject*
11298	Lake Central Airlines, Inc. Eagle Airways of Britain	IATA interline baggage
11299	Air Cargo, Inc., various air carriers and Albert M. Clark, d/b/a Airport Transportation Co.	Pickup and delivery, Danville, Va.
11300	Seaboard & Western Airlines, Inc. Ozark Air Lines, Inc.	Interline cargo traffic
11301	Riddle Airlines, Inc. Central Moving & Storage Inc.	Household effects sales agency, sales agency, Orlando, Fla.
11302	Allegheny Airlines, Inc. Northeast Airlines, Inc.	Ticketing services, Bellevue-Stratford Hotel Philadelphia, Pa.
11303	Pan American World Airways, Inc. East-West Airlines	IATA interline traffic
10609-A1 [fol. 3286]	United Air Lines, Inc. El Al Israel Airlines, Ltd.	Employees vacation reduced fares
5207-A2	United Air Lines, Inc. The Library Plaza Corporation Continental Air Lines, Inc. American Airlines, Inc. Braniff Airways, Inc. Capital Airlines, Inc. Delta Air Lines, Inc. Eastern Air Lines, Inc. Northwest Airlines, Inc. Trans World Airlines, Inc.	Lease of office space for a joint ticket office, Evanston, Ill.
11304	United Air Lines, Inc. Denver and Rio Grande Railroad.	Acceptance of Burrough's Ticketees Tickets, Denver—Salt Lake City

CAB No.	*Parties*	*Subject*
2780-A14	United Air Lines, Inc. Northwest Airlines, Inc.	Ground services and facilities, Honolulu, T. H.
8901-A1	Piedmont Aviation, Inc. Sabena (Belgian Airlines)	Employees reduced fare interline agreement
9827 9827-A1	United Air Lines, Inc. American Airlines, Inc. Braniff Airways, Inc. Capital Airlines, Inc. Delta Air Lines, Inc. Trans World Airlines, Inc.	Joint use of Air Cargo Building, O'Hara Field, Chicago, Illinois
5388-A28 -A29 -A30	Continental Air Lines, Inc. American Airlines, Inc.	Equipment Interchange
5401-A23 -A24	National Airlines, Inc. Delta Air Lines, Inc. American Airlines, Inc.	Equipment Interchange
6639-A4	Braniff Airways, Inc. United Air Lines, Inc.	Equipment Interchange

The Board, upon consideration of said agreements, not finding them to be adverse to the public interest or in violation of the Civil Aeronautics Act;

IT IS ORDERED THAT The agreements listed above be and they hereby are approved.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)

[fol. 3287]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 335A

Oct. 1, 1928.

CONFIDENTIAL

TO

William F. Cogswell, W. R. Grace & Co.

PRELIMINARY ESTIMATE

of

Proposed Airline Services,

Between

Cristobal, P.C.Z., and Valparaiso, Chile

Exhibit I — Estimated Capital Investment.

Exhibit II — Est. Annual Operating Costs.

Exhibit III — Est. Annual Revenue.

West Coast Division

of

Pan American Airways, Inc.

System.

[fol. 3288]

Southbound Schedule.

Reversed for Northbound Services.

1st Section

Cristobal	*Mileage*	*Flying Time*	*Stopover*	*Elapsed Time*
Jurado	210	2:06	0:30	2:36
Buenaventura	215	2:09	0:15	2:24
Tumaco	190	1:54	0:15	2:09
Bahiade Caraques	200	2:00	0:15	2:15
Guayaquil	115	1:09	Overnight	1:09
1st Day	930	9:18	1:15	10:33

2nd Section

Guayaquil				
Talara	180	1:48	0:30	2:18
Trujillo	290	2:54	0:15	3:09
Lima	315	3:09	Overnight	3:09
2nd Day	785	7:51	0:45	8:36

3rd Section

Lima				
Ica	170	1:42	0:15	1:57
Mollendo	320	3:12	0:15	3:27
Arica	200	2:00	0:30	2:30
Iquique	120	1:12	Overnight	1:12
3rd Day	810	1:12	1:00	9:06

4th Section

Iquique				
Antofagasta	230	2:18	0:15	2:33
Caldares	235	2:21	0:15	2:36
La Serena	190	1:54	0:15	2:09
Valparaiso	320	2:12	—	2:12
4th Day	875	8:45	0:45	9:30

RECAPITULATION

1st Section

	Mileage	*Flying Time*	*Stoppages*	*Elapsed Time*
1st Day	930	9:18	1:15	10:33
2nd Section				
2nd Day	785	7:51	0:45	8:36
3rd Section				
3rd Day	810	8:06	1:00	9:06
4th Section				
4th Day	875	8:45	0:45	9:30
	3400	34:00	3:45	37:45

[fol. 3289]

Notes:

1. Service three times weekly each way.
2. *Service Mileage*

(a) Airway distance plus 10% for detours, ferrying and test flights, taxiing and engine tests (one way)	3,740
(b) Per year (3 round trips per week)	1,166,880

3. *Flying Hours*

(a) Service cruising speed—100 ground M.P.H.	
(b) Total flying time per year	11,668

4. *Flight Equipment*

(a) Twin motored Amphibian Planes between Cristobal and Talara.

(b) Tri-motored land planes between Talara and Valparaiso

[fol. 3290]

EXHIBIT I

ESTIMATED CAPITAL INVESTMENT

Flight Equipment		
Airplanes		
7 Fokker F-10 Planes at	$57,500.	$402,500.
3 Sikorsky Amphibians at	48,500.	145,500.
10 Wasp Engines (Shielded) at	6,700.	67,000.
Miscellaneous Equipment		
Additional navigation instruments, airafts, life preservers, landing flares and Very pistols at per ship	1,200.	12,000.
		$627,000.
Airports		
Class A. Airports at Divisional Headquarters		
Structures		
4 ship hangar	35,000.	
Pass. Station (Incl. Furn. & Fix.)	25,000.	
Maintenance Shop (Incl. Eqpt.)	35,000.	
Water, Telephone & Electric	4,750.	
Field Equipment		
Chevrolet Truck	1,100.	
Ford Tractor	750.	
Tail Dollies (2)	300.	
Fire Exting. (2)	25.	
Field Tools (2 sets)	960.	
Hand Starters (2)	100.	
Busses & Trucks		
Passenger Bus	10,000.	
Mail Truck	1,250.	
Official Car	1,000.	
Gas Pumps & Tanks	1,500.	
Radio Equipment	7,500.	
Weather Instruments	2,650.	
Furniture	2,500.	
Contingencies	5,000.	
Total	$133,385.	

Class B Airports at Section Terminals

Structures	
2 ship hangar	$25,000.
Passenger Station	15,000.
Water, Telephone & Electric	2,000.
Field Equipment	
Chevrolet Truck	1,100.
Ford Tractor	750.
Tail Dollies	150.
Fire Exting. (2)	25.
Field Tools (1 set)	480.
Hand Starter	25.
Busses & Trucks	
Passenger Bus	5,000.
Mail Truck	1,250.
Official Car	1,000.
Gas Pumps & Tanks	1,500.
Radio Equipment	7,500.
Weather Instruments	2,650.
Furniture	1,500.
Contingencies	2,500.
Total	$67,430.

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Class C Airports at Intermediate Stops

Structures	
Field Office	5,000.
Field Equipment	
Chevrolet Truck	1,100.
Tail Dollie	150.
Fire Exting. (2)	25.
Field Tools (1 set)	480.
Hand Starter	25.

	Autos & Trucks		
	Mail Truck (Chevrolet)	$ 600.	
	Passenger Car	3,000.	
	Gas Pumps & Tanks	1,500.	
	Radio Equipment	7,000.	
	Weather Instruments	2,000.	
	Furniture	500.	
	Contingencies	1,000.	
		$15,600.	
2	Class A. Airports at Cristobal and Lima	$206,750.	
	Less allowance for Pan American Airways facilities contemplated at Cristobal	67,450.	$139,300.
3	Class B. Airports at Guayaquil, Iquique and Valparaiso		206,250.
12	Class C. Airports at Aruba, Buenaventura, Tumaco, Bahia de Caraquez, Talara, Trujillo, Ica, Mollendo, Arica, Antofagasta, Caldera, and La Serena		275,400.
1	4 Ship Hangar at Talara Extra facilities for housing Customs Officials at Aruba, Bahia de Caraquez, Talara, Arica, Mollendo and Tumaco		25,000.
			$471,650.

[fol. 2292]

Note:

The Largest hangar required at Talara is this point is the junction of the sea route from the North and that road route from the South and requires accommodation for both Amphibians and large planes overnight.

CAPITAL EXPENSES

Grading and Leveling of Fields: Construction of Ramps	
Airport at Cristobal (Addl. to P.A.A. facilities)	$10,000.
" " Jurado (Ramps)	2,500.
" " Buenaventura (Ramps)	2,500.
" " Tumaco	2,500.
" " Bahia de Caraques (Ramps)	2,500.
" " Guayaquil	2,500.
" " Talara (Grading & Leveling)	5,000.
" " Trujillo " "	5,000.
" " Lima " "	000.
" " Ica " "	5,000.
" " Mollendo " "	10,000.
" " Arica " "	5,000.
" " Iquique " "	5,000.
" " Antofagasta " "	5,000.
" " Caldara " "	5,000.
" " La Serena " "	5,000.
" " Valpariso " "	5,000.
Contingencies	20,000.
	$97,500.
Organization and Development	
Training personnel 60 days prior beginning service	
Operations personnel	48,000.
Traffic Department personnel	24,500.
Transportation of personnel to destination	
Operations personnel	18,000.
Traffic Department personnel	14,000.
Telephone, Telegraph and Cable	1,200.
Negotiating "Operating Rights"	
In Ecuador, Chile and possibly Columbia.	
Panama and Peru already obtained.	10,000.
Delivered Equipment	
Crateage, shipment, handling and freight charges.	
Customs brokerage, etc. at 5% of equipment costs.	48,000.
Development Costs	50,000.
Contingencies	15,000.

[fol. 3293]

RECAPITULATION
OF
EXHIBIT 1 — ESTIMATED CAPITAL INVESTMENT

INVESTED CAPITAL

Flight Equipment	$627,000.	
Airports	736,790.	$1,363,790.

CAPITAL EXPENSES

Grading and Leveling Fields; Const. Ramps	$97,500.	
Organization and Developments	228,700.	326,200.
TOTAL CAPITAL INVESTMENT		$1,689,990.

Exhibit H.

Estimated Annual Operating Costs.

Executive and General Expense

(New York Office)

President	)	
1st Vice President	)	
Vice President—Foreign Negotiations	)	
Comptroller	)	
Assistant Treasurer	)	
Chief Operations Engineer	)	
Asst. Operations Engineer	)	
Airways Engineer	)	
Commercial Engineer	)	
Communications Engineer	)	
Clerical and Stenographic Force	)	Amount chargeable
Executive Office Rental	)	to West Coast
Telephone, Telegraph and Cable	)	Division is based
Stationery and Printing	)	on proportion of
Travelling Expenses	)	total expenses to
Advertising	)	total flying mile-
Public Relations	)	age of Pan American
Legal Consul	)	Airways System
Directors Fees	)	or at $.046 per
Insurance	)	flying mile.
Depreciation on Furniture and Fixtures	)	
Contingencies	)	
		$53,680.00

Accounting (In the field)

Accountant	3,000.00
Section Bookkeepers (3) at $2,400	7,200.00
Clerk	2,340.00
Office Rentals—Guayaquil, Lima, Antofagasta and Valparaiso at $1,500	3,000.00
Telephone, Telegraph & Cable	500.00

Stationery and Printing	$ 1,200.00
Traveling Expenses	4,000.00
Depreciation, Furniture & Fixtures	1,000.00
Contingencies	3,000.00
Total Executive and General	$79,020.00

Traffic

Traffic Manager	10,000.00
Assistant Traffic Manager	6,000.00
Section Traffic Managers (3) at $4,200	12,600.00
Clerks (City Agents) (3) at $2,340	7,020.00
Porters (4) at $1,200.	4,800.00
City Office Rentals (4) at $1,500	3,000.00
½ Exp.	5,500.00
Telephone, Telegraph & Cable	1,400.00
Stationery and Printing	20,000.00
Advertising	8,000.00
Traveling Expenses	1,000.00
Depreciation, Furniture & Fixtures	7,000.00
Contingencies	$86,320.00

[fol. 3295] *Operations*

Flight Supervision

Manager of Operations (West Coast Div.)	$12,500.00
Section Flight Superintendents (3) at 7,200.	21,600.00
Field Managers (17) at $4,500.	75,500.00
Field Clerks (6) at $2,200.	13,200.00
	122,800.00

Flight Service

Pilots (14) at $7,500.	$104,000.00
Flight Mechanics (14) at $4,200.	58,800.00
Flight Radio Operators (14) at $3,300.	46,200.00
	$209,000.00

Daily Maintenance & Line Service

Chief Mechanics (2) at $3,900	$ 7,800.00
Mechanics 1st Class (17) at $3,600	61,200.00
Mechanics 2nd Class (6) at $2,400	14,400.00

Mechanics Helpers (6) at $1,500.	$ 9,000.00
Travel and Maintenance	10,800.00
Stationery and Printing	2,500.00
Telephone, Telegraph & Cable	5,000.00
Contingencies	10,000.00
	$120,700.00

General Repairs and Overhauls

Maintenance Manager	$ 7,500.00
Shop Superintendents (2) at $6,000	12,000.00
Airplane Mechanics (2) at $3,600	7,200.00
Engine Mechanics (2) at $3,600	7,200.00
Instrument Mechanics (2) at $2,400.	4,800.00
Welders (2) at $2,400.	4,800.00
Woodworkers (2) at $2,400.	4,800.00
Duraluminum experts (2) at $2,400.	4,800.00
Helpers (4) at $1,800.	7,200.00
Stockroom clerks (2) at $2,400.	4,800.00
Stockroom helpers (2) at $1,800.	3,600.00
	$68,700.00

Spare Parts, Supplies and Accessories

Airplane Spares at $2. per hour	$23,336.00
Engine spares at $3.00 per hour	35,004.00
	$58,340.00

Fuel & Lubricants

623,880 gals. Gasoline at $.35	$218,358.
62,388 gals. Benzol at .42	24,202.
40,957 gals. Oil at $1.00	40,957.
Grease and Wastage	9,353.
	$292,870.

Communications

Ground Station Operators (17) at $2,400	$ 40,800.
Airplane Sets (Routed R.C.A.) (10) at $100 per month	12,000.
	$ 52,800.

3383.

Clearance and Consular Fees $ 37,440.

[fol. 3296] *Insurance*

Flight Equipment, incl. Pass. liability at 20%	$125,400.
Ground Equipment at 4%	10,596.
Workmen's Compensation	
(a) Flying crew at $200. each	8,400.
(b) Ground personnel at .01% (of payroll)	500.
	$144,896.

Depreciation and Obsolescence

Airplane—2,000 hours	$212,947.
Engines—1,000 hours	77,845.
Miscellaneous Equipment—4 years	3,000.
Ground Equipment—4 years	66,215.
	$360,007.

Airways

Division Airway Superintendent	$ 4,200.
Upkeep & Maintenance at 5% value of structures	19,675.
Depreciation Airport Structures—10 yrs.	39,350.
Insurance Airport Structures at 1%	3,935.
	$67,160.

Bus Transportation and Trucking

Chauffeurs (17) at $2,600	$44,200.
31,024 gals. gasoline at $.25	7,756.
1,551 gals. oil at $.45	698.
Repair parts and accessories at .05 per mi.	7,756.
Depreciation—4 years	19,712.
Insurance	2,154.
	$84,276.

Interest on Capital Expenses at 6%	$19,372
Amortization on Capital Investment—10 years	$168,300.

RECAPITULATION OF EXHIBIT II—ESTIMATED ANNUAL OPERATING COSTS

Executive and General (incl. Accounting)	$79,020.
Traffic	86,320.
Operations	1,467,553.
Airways	67,160.
Bus Transportation and Trucking	83,276.
Interest	19,572.
Amortization	168,999.
TOTAL OPERATING COST PER YEAR	$1,971,900.
OPERATING COST PER ONE WAY TRIP	$6,320.
OPERATING COST PER SHIP-MILE	$1.69

[fol. 3297]

EXHIBIT III

ESTIMATED ANNUAL REVENUE

Airway Mileage	3400
156 Southbound trips per year	530400 miles
U. S. Foreign Mail Contract—Rate per mile	$2.00
Estimated Revenue this Source	$1,060,800.

Note:

No allowance made for other Revenue which might accrue from Passenger and Express Traffic on Northbound run; or from intermediate Air Mail, Money Order business, Special Flights, Photographic Work and similar sources.

A conservative estimate of this revenue after allowance of 5% commissions to Agents, including W. R. Grace & Co., on an estimated 30% of the total business would be $1.00 per flying mile.

[fol. 3298]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 336

PAN AMERICAN-GRACE AIRWAYS, INC.

No. 2.

Cristobal, Canal Zone,
June 21st, 1929.

Mr. J. D. MacGregor,
Vice President & General Manager,
Pan American-Grace Airways, Inc.,
c/o W. R. Grace & Company,
Lima, Peru.

Dear Mr. MacGregor:

This will serve as a memorandum of matters discussed with you and Mr. Harris in connection with the preparation of an operating budget for our Company.

PERSONNEL:

Mr. Harris will be in charge of operations of the entire Line with headquarters at Cristobal. The Line will be divided into three divisions:

No. 1—from the Canal Zone to Guayaquil in charge of Mr. Gillespie as Flight Superintendent.

No. 2—covering the Line in Peru in charge of Mr. Travis as Flight Superintendent.

No. 3—covering the Line in Chile and an extension to Argentine in charge of Mr. Williams as Flight Superintendent.

It is estimated that we will require three Pilots in Chile including the Flight Superintendent, three in Peru including the Flight Superintendent, and two in the Canal Zone including the Flight Superintendent. We will require six mechanics to travel with the planes, that is, one with each Ford and one with the Sikorsky. It is, of course, understood that not all of these will be required until all of the Fords are in operation. There will also be required two or three wasp mechanics for shop overhaul work and about

[fol. 3299] fifteen assistant mechanics and miscellaneous laborers.

OVERHAUL SHOPS:

These are suggested at Lima, Santiago and at the Canal Zone, although at the latter point we may be able to make some arrangements to share at least some of the facilities of the Pan American Airways. It was suggested that shop buildings would cost about $5,000, and the equipment about $15,000, at each point. The shop building item, however, is to be omitted at least for the present and we will use space in the rear of the hangars. The item of $15,000, for equipment is believed to be unnecessarily high and the actual cost of this item should work out substantially less. You indicated that the shop equipment required would consist of Universal metal work machinery, lathe, shaper, drill press and wasp repair equipment.

W. R. Grace & Company, as you know, controls the International Machinery Company, which has offices in Lima and Santiago, and which will be in a position to quote prices on shop equipment, and I think prices should be obtained from them as well as the Pan American Airways, and purchase made where they can be made the cheapest.

HANGARS:

These were suggested for Lima and Santiago and perhaps at one other point to be decided upon.

At the Canal Zone it is [illegible] that we will be able to arrange for space in the Pan [illegible]jean hangar.

Size of the hangar proposed [illegible]' by 100' by 18'. On the basis of a price which you [illegible]ured from Rieter and Pineus of £575—CIF Callao, for a hangar 55' by 75' by 18' [fol. 3300] and price of $24,000, at which the Peruvian Government was negotiating for two hangars 100' by 200', it would seem as if we should be able to arrange for these at a cost of not over $12,000, erected. It was suggested that some saving in the original cost and maintenance might be effected by using adobe side walls. Before contracting

hangars I think we should obtain competitive prices in the United States, England and Germany. W. R. Grace & Company, as you know, has the agency for Milliken Brothers, and I believe we could secure foreign prices thru our subsidiaries, The British Foreign Machinery Company, London, and Kiefer Helmke & Company, Hamburg. In case the U. S. price is practically the same as foreign prices, it should, of course, have the preference; if, however, there is a substantial difference, we should endeavor to use the less expensive equipment provided we can do so without violation of our Mail Contract.

FLYING FIELDS:

Guayaquil—It is understood that we can use the Government field by incurring a few minor expenses.

Peru—It is understood that we can use the Government fields and arrange to have them under our control by small expenditures on the fields not exceeding an average of $500. per field. A field of 140 acres at Lima can be purchased for about $20,000., but we are to endeavor to avoid this capital investment as long as possible.

Chile—We are to use the Government fields as long as possible, in the meantime, Mr. Hoyt, Mr. Trippe and I decided before I left New York that we would ask Mr. Metzner to quietly investigate available locations in such a way that it would not appear that either Pan American [fol. 3390] Airways or Grace were interested parties in order to get in hand, when needed, some suitable field near Santiago at a reasonable price. I would suggest that you discuss this with Mr. Metzner, and the same procedure incidentally might be followed with Mr. Redshaw in Lima.

PASSENGER AND SHORT STOP ACCOMMODATIONS:

At fields where short stops are made it was suggested that a Milliken portable sheet metal house, obtainable from local offices of W. R. Grace & Co., or a small thatch building, each costing about $500, be arranged. It was indicated that 10 or 15 of these would be required. They would be

as small as practicable to provide minimum passenger accommodations and storage for gasoline, oil and supplies. A watchman at a salary of $20. per month may be required at each of these places and it was suggested that he might live in the building. In that case, it may be necessary to provide outside under-ground gasoline storage and I think it will also be necessary that we find watchmen with little or no family.

At Lima and Santiago better passenger accommodations will probably be required, but here again we are to adhere to strictest economy. While it will, of course, be a short-sighted policy to have our accommodations too small, I believe it will be equally bad policy to be too far-sighted in this matter. Our passenger movement is not going to assume enormous proportions over night and we cannot afford to provide accommodations too far ahead of the trade. If we proceed on a moderate basis, I believe by the time larger passenger accommodations are required, our original facilities will be written off and we will; in the meantime, have saved interest and maintenance charges on idle [fol. 3302] capital for a period of years, and when larger passenger movement comes, we will have the income to provide better accommodations. You considered that at Guayaquil in addition to some passenger accommodations you would probably require a ramp to bring planes ashore which might cost as much as $5,000.

MOTOR CARS:

It was stated that you would require a Ford station wagon costing about $1200. at Guayaquil and Talara and perhaps a car at Lima. My feeling is that we should only purchase cars where absolutely essential and then only when we have actual figures showing the comparative cost of owning cars and paying hire. As long as we have only a weekly service we are not going to have much active service for a car in most places. We will never-the-less have the constant expense of paying some one to run the car while interest and depreciation at a heavy rate will be adding materially to our operating cost.

It is my experience that when actual comparisons are made between the cost of owning a car and hiring one, it is surprising to find how often the figures strongly favor the latter course.

GENERAL:

It is understood that upon completion of this survey you and Mr. Harris will submit to the Directors a complete detailed budget showing total capital investment required for the service and an operating budget. It is likely that Mr. Vidal will be in Lima upon your return from Chile, and if so, you will, I take it, find it convenient to avail of his assistance in preparing your actual budgets. These figures should be prepared on the ground so as to avoid any mis- [fol. 3303] understanding between you and Harris, and in order that points of doubt, which always arise at the last moment, may be immediately straightened out. No commitments are to be made until we have this complete picture, because if we go about it piece-meal, we are not only likely to get a non-standardized miscellaneous lay-out, but we are very likely to spend in the aggregate much more than originally contemplated. Moreover, it will be necessary to go over the whole lay-out with Mr. Trippe before going ahead, as it was impossible to do so before you left.

We should not, therefore, start in on any program covering the matters mentioned in this letter until the Directors have the whole program before them in its entirety so that they can decide how much is to be appropriated for the entire operation.

Yours very truly,

/s/ Harold J. Roe

HJR CAM

[fol. 3304]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 337

SANTIAGO, 5th December, 1930.

D. S. Iglehart Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Mr. Iglehart,

I have yours of November 11th. The concession matter is going rather badly, and the battle is not made any easier by the fact that such indifferent support can be counted on from our associates in the rear. The withdrawal of my No. 69 was to prevent what looked like an impasse on the Board and to endeavour to force our associates to contribute something constructive to this negotiation, and, in so doing, appreciate my position. So far, except for Ribl whose assistance and cooperation were splendid, our associates have not contributed a single idea, and I cannot understand why they should continue a purely negative or at best indifferent attitude in the face of the very serious situation confronting the Company. Their idea of letting matters drift until June, if there is the slightest chance of reaching any reasonable practical settlement now, cannot be justified on any sound consideration based on the interest of Panagra. I think that somehow back of their attitude is the idea, which I know that Trippe and MacGregor have, that Grace is getting some collateral benefit from the payment to the Government. Nothing, of course, could be further from the facts, and no more disinterested service than is being given by the Grace managers here can be even imagined. You might talk this point over with Patchin, however, and it may be necessary for you to clear it with Boyt.

The Postmaster's announcement that all necessary South American airmail routes are now operating, except the line to La Paz, and that his recommendation of a second trip on the East Coast has been rejected, must leave our friends in an extremely tight position, as I assume that in view of the Government deficit it is hardly likely that even Bruce Bar-

tion will be able to persuade Congress to reverse this position. One trip a week on the East Coast is going to mean an out and out loss of from 30¢ to 5¢ per mile for every mile flown. Failure to extend the line to Buenos Aires means that their investment at that point becomes a loss, or worse if they try to salvage it by local operations. But even more important, the investment made to bring about the NYRBA merger, which was only justified at all if it insured their getting a satisfactory East Coast contract to Buenos Aires, now turns out to be a most doubtful investment. It seems to me quite in the cards that this combination of circumstances may precipitate a serious crisis on 42nd Street, especially if anyone ever takes the trouble to really look into the way that business is run. Unless the company has done more new financing since I left, I believe they would be in a really precarious position already were it not for the fact that [illegible] the heavy depreciation and obsolescence reserves provide cash for working capital for a long time.

A corps of lawyers is still working here on the Cosgrave law suit, and Mr. Chandler, the City Bank financial observer, is still here. He was announced about the other day that the financing had been accomplished. I doubt if anyone expects seriously that the original plan will be carried out, but it is still generally felt that a plan on a reduced scale will somehow be carried out.

Mr. Culbertson mentioned to me yesterday that you had sometime ago proposed him for membership in India House, but that he had never heard anything further about it. He said he understood that he was proposed for membership in some class where prompt action was to be expected. I told him I would mention it to you. I do not think he is at all anxious to have the matter pressed at this time, and I would suggest that nothing be done to press it without consulting him first. It might be well, however, to see just how the matter stands and keep him in line.

Very sincerely yours,

H.H. FL.

[fol. 3396]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 338

roig
cable 33 to ROIG (santiago) 12.12.30
9 o'clock at night.

1 33 strictly
2 private and confidential following
3 which does not represent
4 (our) views is.
Grace (correction sent in cable #37)
5 from Trippe
6 several panair
7 director s believe
8 inadvisable accept
9 pending decree
10 or modification
11 promised on
12 principle now
13 under discussion
14 if any more
15 onefous to
16 company than
17 draft agreed to (on)
18 by Rihl
19 Daguine with
20 two government
21 representative s our friends
22 appointed with
23 minor changes
24 exact wording
25 which panagra
26 director s have
27 since authorized
28 sentence ends for your information
29 panair directors
30 appreciate fact
31 chilian government maintaining
32 panagra committed to
33 payment 500,000

34 pesos on account of
35 having operated
36 under decree
37 2 000 1 sentence ends
38 principle that the
39 ——— consideration to be
40 received from the government
41 for spending
42 500,000 pesos
43 is right fly
44 four or

continued.

[fol. 3307]

[PAGE 21]

45 eight years is untenable
46 and contrary all
47 precedent all countries
48 world sentence ends
49 board appreciates
50 fully all
51 sovereign nations
52 have right
53 refuse permit
54 foreign lines
55 fly oneil
56 both country
57 concerned and
58 nation of company
59 have ratified
60 some convention
61 granting reciprocal
62 privileges for instance
63 Iata comma
64 Iberian
65 or pan american aviation
66 convention sentence ends last
67 convention
68 which both
69 chile and united states
70 executed but
71 not yet ratified
72 recognizes principle

73 QUOTEin time
74 peace countries
75 extend right of (to)
76 innocent passage to
77 aircraft of
78 other-s subject
79 only requirement-s
80 aircraft of
81 other-s conform to
82 technical standards
83 required by the
84 government of its
85 own commercial
86 aircraft from time to time
87 QUOTATION ENDS in view of your
88 opinion that
89 government apparently
90 unwilling consider
91 modify pending

continued.

[fol. 3308]

[PAGE 3]

92 decree please
93 cable your opinion (re) following
94 plan based
95 entirely different
96 principle which
97 if diplomatically
98 presented by
99 daguine these
100 director-s believe
101 should be acceptable
102 government sentence ends first
103 panagra offer-s to pay 500,000
104 pesos full
105 settlement any
106 past obligation-s
107 government or
108 our friend-s consider
109 company assumed

110 by having
111 operated under
112 decree 2000
113 1 second
114 government to issue
115 decree permitting
116 company operate
117 international services
118 peru santiago
119 argentine route
120 carrying international
121 passengers mail
122 freight subject
123 published clearance
124 requirements both
125 borders and
126 landing fees and
127 technical safety
128 requirements as
129 provided in governments
130 commercial aviation regulations
131 applying to aircraft
132 of chilian
133 registry sentence ends
134 permit also subject
135 right of government
136 to terminate on
137 reasonable notice
138 make period

continued.

[fol. 3309]

139 long as
140 possible for your confidential information
141 and to transmit
142 ambassador if you consider it advisable
143 Quote in time
144 peace countries
145 extend right of
146 innocent passage
147 aircraft of

148 other-s subject
149 only requirement-s
150 aircraft of
151 other-s conform to
152 technical standard-s
153 required by the
154 government of its
155 own commercial
156 aircraft UNQUOTE
157 is cardinal
158 policy we understand
159 of united statesson
160 international aviation
161 and essential if
162 long trade
163 route-s now
164 subsidized be
165 developed properly
166 to avoid risk
167 long route-s
168 degenerat-s
169 ing into
170 section-s operated
171 by individual
172 countries sentence ends this
173 also poljcy
174 England France
175 Germany on
176 international aviation

TRIPPE

[fol. 3310]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 339

Minutes of a special meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways, Inc., 122 East 42nd Street, New York, N. Y. on the 28th day of January, 1931 at 4 o'clock in the afternoon.

PRESENT:

Messrs. W. F. Cogswell
R. F. Hoyt
R. H. Patchin
H. J. Roig
J. T. Trippe

being a quorum of the Board.

Mr. J. D. MacGregor, Vice President and General Manager of the corporation, was also present.

Mr. Hoyt called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr. Cogswell, Secretary of the corporation, acted as Secretary of the meeting.

Mr. MacGregor reported that the matter of the Chilean concession had now been arranged in accordance with the authorization of the Board at the last meeting and that pursuant to the understanding reached we should accordingly make payment of 500,000 Chilean pesos in settlement of the controversy under the old decree. On motion duly adopted, the officers were directed to make payment accordingly and to express to the American Ambassador in Chile the Company's appreciation of his services in bringing about this settlement.

[fol. 3311] It was the sense of the meeting that the bills of Pan American Airways, Inc. and W. R. Grace & Co. for services up to and including December 31, 1930, should be settled as soon as possible. Messrs. Trippe and Patchin were requested to endeavour to settle all of such bills on or before February 15th and, if there should be any items on which they should not be able to agree by that date, to

report the same to the Board of Directors, which thereupon would appoint an independent auditor as arbitrator. In respect to the expenses of Mr. Summers at Buenos Aires, it was decided that his account should be audited by a representative of the Pan American Airways, Inc. and Mr. Vidal, representing this corporation.

Mr. MacGregor was instructed to confer as soon as possible with W. R. Grace & Co. and Pan American Airways, Inc. and prepare form of agreements with such companies for services commencing January 1, 1931.

On motion duly adopted, Mr. MacGregor was authorized to retain Price, Waterhouse & Co. to audit the accounts of the corporation and its subsidiaries at New York, Cristobal, Lima and Santiago for the year 1930 at a charge of $2,000.

Mr. MacGregor reported to the meeting that the present space occupied by the corporation in the Chanin Building was inadequate and, on motion duly adopted, was authorized to lease, in the name and on behalf of the corporation, additional space in the Chanin Building provided the [fol. 3312] total rental, including that payable under the present lease, should not exceed $5,000 and provided further that the lease of the additional space should expire at the same time as the present lease.

Mr. MacGregor reported to the meeting that the Scadta Company had discontinued its service between Buenaventura and Guayaquil and that we were at present accepting mail from Scadta at Buenaventura for delivery at Guayaquil under a temporary arrangement, whereby we receive 10¢ U.S.G. per 20 grammes. It was decided that the Scadta Company should be advised that the charge for such mail would be $6.00 per lb. so that it would be in line with our other airmail charges; also that an endeavour should be made to make an arrangement with Scadta whereby they should agree not to turn over their Ecuadorian concession to the Latecoere.

The question was then considered as to what action should be taken by the corporation in reference to application by Latecoere for the right to carry Peruvian air mail to Bolivia, Paraguay and Brazil on the ground that this corporation

was not at present supplying an airmail service to those countries. On motion duly adopted, it was resolved that the proper officers of the corporation should advise the Latecoere that we would be willing for the present to turn over to it Peruvian airmail for Bolivia at Arica and for Paraguay and Brazil at Buenos Aires.

It was reported to the meeting that Mr. Harris proposed, [fol. 3313] applying for radio rights in behalf of this corporation in Peru. On motion duly adopted, it was resolved to instruct Mr. Harris to take no steps in this direction pending the adoption of a radio program.

There being no further business, the meeting adjourned.

/s/ Richard F. Hoyt
Chairman of the Meeting

/s/ W. F. Cogswell
Secretary

[fol. 3314]

Pan American World Airways, Inc. Exhibit 340

TO THE DIRECTORS OF PAN AMERICAN GRACE AIRWAYS, INC.:

New York, N.Y.
March 4, 1931.

Gentlemen:

The attached statements show that our estimated loss for the period 1929-1930 will be approximately $112,000. These figures were arrived at after capitalizing $98,000 during 1929, and $62,000 during 1930, as per details shown on the attached statement.

It also includes all 1929 bills at face value, and $125,000 maximum amount to cover Pan American Airways overhead and Grace Agency fees in Peru and Chile during 1930. It does not include the payment of $60,000 made to the Chilean Government, because that payment was made in 1931.

Referring to the statement, you will notice we have taken as a charge to surplus $457,000 to cover two year obsolescence on aircraft and two year obsolescence on all motors, including spares. Inclusion of the above figures, you will

note produces an estimated deficit for tax purposes for the entire Panagra operations to date of $112,000. On this basis, by June of 1931 all aircraft with the exception of the Falcon, and practically all our motors will be wiped off the books. It is evident, therefore, that subsequent to June 1931 the current obsolescence charges will practically vanish, and we will be faced with the accumulation of a large surplus in the last six months of 1931, unless we purchase corresponding new equipment. The above deficit includes every conceivable class of airplane insurance on [fol. 3315] multi-motor equipment. We are rebuilding and overhauling planes as they require it, and when the planes are written off on the books, they will still be in excellent operating condition. It is evident also for tax purposes, we cannot continue obsolescence and include the amounts in our tax returns.

Under these circumstances, the management recommends that an adjustment of our depreciation and obsolescence reserves be made, retroactive to the beginning of operations.

Heretofore, we have followed the Panair rules for depreciation and obsolescence of aircraft, and in addition, our Directors decided to establish two-year obsolescence on all motors. Panair recently changed their bases to three years on Fords, Sikorskies and lesser aircraft, and 2000 hours on motors. The difference between our present basis and the new Panair basis you will note amounts to $193,000. Were we to use the Panair new basis, therefore, we would have a surplus of $81,000 at the end of 1930, instead of the present deficit of $112,000.

If the Directors consider that it would be unwise to show such a profit for the two year period, there is the alternative of going back to the old Panagra basis of two years obsolescence and 1500 hours life. This, you will note, would make a difference in our surplus account of $95,000, and would produce a deficit for the two year period of $17,000.

Respectfully,

/s/ J. D. MacGregor,
J. D. MacGregor,
Vice President & General Manager.

[fol. 3816]

PAN AMERICAN GRACE AIRWAYS, INC.

1929 1930 RESULTS

Estimated book deficit 1929 1930	$[illegible]
less Reserve for Major Overhauls not deductible for tax purposes	[illegible]
Estimated deficit for tax purposes	$[illegible]

Items capitalized during 1929

Cost of U. S. Mail contract	$[illegible]
Survey (balance cost of Curtiss)	[illegible]
Cost of Ecuador Panagra contracts	[illegible]
Cables	[illegible]
Wasp Motor to Chilean Government	[illegible]
W. P. Jacobs Salary and expenses	[illegible]
J. D. Simmons " " " " to Aug. 31-29	[illegible]
Fee paid to Viscaya Export	[illegible]
Cost of Peruvian Contract	[illegible]
	$[illegible]

Items in progress to capitalize in 1930

H. C. Wallace Colombian	$[illegible]
J. D. Simmons balance 1929 (part)	[illegible]
Lost Fokker	[illegible]
Grace bill for Bolivia 1929	[illegible]
Grace bill for Chile 1929 (part)	[illegible]
Grace bill for Ecuador 1929 (part)	[illegible]
Panair bill for 1929 (part)	[illegible]
	$[illegible]

New York, February 1931.

[fol. 3317]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 341

PAN AMERICAN-GRACE AIRWAYS, INC.
122 EAST 42ND STREET NEW YORK, N. Y.

CABLE ADDRESS
"PANAGRA"

[Handwritten notation—File for Tues. Am—Panagra Meeting—March 10th]

TO THE DIRECTORS OF PAN AMERICAN-GRACE AIRWAYS, INC.

NEW YORK,
March 6, 1931.

Gentlemen:

The Pan American Airways proposal for operating and maintaining a complete communications system for our operations, from Cristobal to Montevideo, consisting of two-way communication between ground and airplane and inter-airport communication for traffic and airplane control, was submitted to your Manager on March 3rd.

The proposal as submitted amounts to an undertaking on the part of Pan American Airways to operate and be responsible for an adequate and efficient communication system; including a guarantee that the equipment to be furnished would insure a reception and transmission exchange of 98%.

Pan American Airways undertakes not only to furnish the equipment, but to handle negotiations for us in Colombia, Ecuador, Peru and Chile, with a view to securing for us and in our name the necessary rights and permits to install and operate ground stations and plane sets. We are also permitted to avail ourselves of the rights already acquired by Pan American Airways in the Canal Zone, Panama, Argentine and Uruguay.

Pan American Airways also undertakes to handle for us all matters by which our radio service might be affected [fol. 3318] by reason of international regulations promulgated by the International Bureau of the Telegraph Union at Berne, Switzerland.

The project further provides for the furnishing of all plane and ground expert personnel and the assignment of a special radio expert in charge of communications along our route.

Provision is also made for Panagra to share, to the extent of 75%, in any income that might be forthcoming from the sale of the services of the communication system to outside parties, until the income thus derived equals the current bills passed to us by Panair for said services.

It is now a year since your Management first recommended the use of Pan American Airways' radio equipment for our entire operations in South America. That recommendation was based on a personal survey of the route and after thoroughly discussing the matter with Mr. Harris and with our pilots. During the year Mr. Harris has consistently urged that radio be installed wherever we carry passengers.

There are four vital reasons why we should not hesitate longer in taking immediate steps to give effect to the recommendations of our operating officials and flying personnel.

First. The safety of passengers and crew is greatly enhanced by the advantages of first class radio communication. It is true that since the beginning of operations we have carried passengers in Peru without radio, and without accident, and that radio communication would not necessarily prevent an accident, but if this Company is unfortunate enough to experience anything in the nature of injury to life and limb, in its operations, the primary criticism would be that the plane did not carry radio.

[fol. 3319] Immediate contact with ground stations is a moral support not only to passengers but to the pilot, the value of which should not be underestimated. Our pilots and a great number of our passengers know that Pan American Airways have an efficient system of radio communication, and are unable to understand why we do not avail ourselves of the equipment. The necessity for prompt receipt of meteorological information is vital all along our route for the safeguarding of the mails and passengers. The pilot is not left so much "on his own" when he can base his judgment upon known atmospheric conditions, and the passengers feel they have a link with mother earth.

Second. The operating efficiency of the line will be greatly increased. An immense amount of unavailing flying will be obviated.

On the 3rd of June I sent to the Directors a copy of a letter received from Mr. Harris, dated May 26, 1930, in which he stated that on account of lack of radio a total flying distance of 1200 miles was necessary. The anxiety felt by everyone as to the whereabouts of two planes in bad weather could have been obviated had we been able to communicate with the planes. This is only one of many instances in which better operating efficiency could be obtained by the use of radio.

Third. By means of radio service it is evident that an appreciable reduction in cash disbursements in cable and telegraph tolls would be made. These expenses for 1930 have averaged approximately $1500 a month, or $18,000 annually. Not only would this expenditure be greatly minimized, but a great many other messages could be exchanged [fol. 3320] at no additional cost, which are not now exchanged because of costly telegraph and cable tolls.

For example, the cable rate to the Canal Zone is 30c per word, straight message, and 15c per word, deferred; to Peru the rate is 52c and 26c; and to Chile the rate is 42c and 21c. By means of radio communication our messages would arrive at the Canal Zone free of charge and would be transferred over Panair radio to New York at a cost, it is estimated, of not to exceed 2c per word. (There is, of course, at present, a toll of 6c per word at the Naval station at Balboa, but it is hoped that later arrangements will be made to obviate this charge.).

Fourth. We can expect competition from American and foreign companies during the period of our contract. The lack of radio communication, as well as other facilities, would enable these companies to compete with us at a minimum investment. The higher the rate of efficiency we demonstrate to the Governments and to the public, the less easy we make it for our prospective competitors, and the less likely we are to see those competitors gain equal rights. If these competitors do arrive, I consider they would rather pay us handsomely for the right to avail themselves of our

system of communication than to undertake the additional investment necessary to install and organize their own system.

Since your Management first recommended the use of Pan American Airways radio equipment for our entire operations in South America, various attempts have been made to secure from Radio Corporation, from All American Cables, and from International Telephone and Telegraph Company a proposition which would entirely meet our [fol. 3321] needs and carry with it an absolute guaranty of performance, but we have been unable to secure a similar proposition to that made us by Pan American Airways.

Your Management, therefore, again recommends that advantage be taken of this offer and that your Management be instructed to negotiate and execute a formal agreement for radio services along the lines set forth in the project and at the price therein mentioned.

In support of this recommendation your Management desires to point out that the inauguration of radio service will permit the carrying of international passengers in Chile and over the Andes from Santiago to Mendoza. It will also insure more efficient operations in Peru and the Argentine, and your Management is confident that in the next two or three years the additional passenger traffic thus obtained, plus the lower cost due to greater operating efficiency in performance and schedules, will at least equal the additional cost.

At the price quoted for a twice weekly operation, we would pay for the service in the neighborhood of $120,000 annually. It is interesting to note that the addition of one single through passenger per trip, at a tariff of 12c per mile, would amount to $112,000.

For the purpose of comparison the following quotations have been received from All America Cables, the Radio Marine Corporation, and the International Standard Electric Corporation.

In order to set forth the various quotations they will be treated as separate subjects, and on this basis a quotation received from the All America Cables, dated July 23, 1930,

offered facilities for twelve ground stations only, between [fol. 3322] Cristobal and Montevideo via Santiago. For these facilities they quote a charge of $89,692. per annum, without a performance guarantee, and a contract for a five-year period.

The Radio Marine Corporation quotation, dated November 5, 1930, covering sixteen airplane and seven ground stations, along the route from Cristobal to Arica, would amount to $58,100. for equipment only without the supervisory service of the installation engineers. There is no guarantee regarding performance of equipment and it would necessitate our Company paying the annual cost of operation, organizing the staff, and employing sufficient personnel to handle all operations.

The International Standard Electric Corporation in their letter dated November 13, 1930, offer to supply two ground stations and one airplane set operating exclusively on telephone, for $13,050. f.o.b. factory (Chicago), without guarantee of performance. This proposal was brought about through various discussions with the International Company, particularly referring to that section of the route between Santiago and Mendoza.

It must be remembered that most of the quotations were on the basis of delivery at New York or some point in the United States and do not cover the necessary freight and duties which would have to be paid in various countries of South America.

In connection with the general two-way communication in the United States, it is common knowledge that immense sums have been spent by operators in an endeavor to develop a satisfactory radio telegraph system of communications and that, so far, no striking success has been attained.

On the other hand, the Panair proposal not only relieves us of all expense and anxiety with regard to the availability [fol. 3323] and efficiency of the equipment, the acquisition of expert personnel, the patent situation, and the acquisition of rights in the countries mentioned, but also carries a guarantee of 98% efficiency with a penalty for services rendered below that efficiency point.

As a further justification of my recommendation I have had our Comptroller prepare an estimate of our operations, at present obsolescence, for a one-year period, on three bases, each of which bases carries an amount of $120,000. for radio operations.

Plan #1 contemplates the purchase of two multi motored ships for service in Chile. We have chosen the Curtiss Kingbird as being the only fairly low priced multi motored ship of sufficient range and speed with the operations of which we are familiar.

Plan #2 contemplates Sikorsky and Ford operations from Cristobal to Santiago, a Ford for the Andes, and single-motored flying equipment from Mendoza to Montevideo.

Plan #3 contemplates Sikorsky operations from Cristobal to Pimented and Ford tri-motor operations from Pimented to Montevideo, entailing the purchase of two additional Fords, now newly overhauled and available at Buenos Aires, for an estimated cost of $30,000. each.

Plan #1 shows an actual book profit, after providing for obsolescence at our present rate and for radio communication at the figure quoted. Plans #2 and #3 show small book losses on the same bases. I would respectfully draw the Directors' attention, however, to our estimated cash position. Even under Plan #3, the most costly, it would appear that our cash position would have improved by some $428,000. This amount added to the actual avail-
[fol. 3324] able cash on hand of $500,000. would make it appear that at the end of another year's operations, after the payment of all bills including radio, there should be approximately $1,000,000. in the bank.

I would respectfully request the Directors to consider this cash position in the light of my recommendation for the immediate acceptance in principle of Pan American Airways' offer for radio services.

Yours respectfully,

/s/ J. D. MacGregor
J. D. MacGregor.

JDM Q

[fol. 3325]

SUMMARY—PLAN 1

1)	Cristobal/Talara	—3 Sikorsky
2)	Talara/Arica	—3 Fords—2 Fairchilds
3)	Arica/Santiago	—2 Kingbirds—2 Lockheeds
4)	Santiago/Montevideo	—1 Ford—1 Falcon—3 Fairchilds 1 Loening

ESTIMATED

	Revenue	*Expenses*	*Profit*	*Reserves included under Expenses*
Cristobal/Talara	$ 495,500.	$ 444,600.	$ 50,900.	$100,000.
Talara/Arica	594,600.	555,600.	39,000.	200,000.
Arica/Santiago	407,500.	230,500.	177,000.	60,000.
Santiago/Montevideo	368,100.	338,800.	29,300.	150,000.
Radio Estimate	—	126,000.	120,000.	—
P.A.A. and Grace bills	—	100,000.	100,000.	—
	$1,865,700.	$1,789,500.	$ 76,200.	$510,000.

CASH POSITION

Estimated Revenue		$1,865,700.
Estimated Expenses	$1,789,500.	
less—Reserves	510,000.	1,279,500.
		$ 586,200.
Purchase 2 Kingbirds and Spares		70,000.
Cash increase		$ 516,200.

[fol. 3326]

SUMMARY—PLAN 2

1)	Cristobal/Pimentel	—3 Sikorskys
2)	Pimentel/Santiago	—3 Fords—2 Lockheeds—2 Fairchilds
3)	Santiago/Montevideo	—1 Ford—1 Falcon—3 Fairchilds— 1 Loening

ESTIMATED

	Revenue	*Expenses*	*Profit*
Cristobal/Pimentel	$ 563,700.	$ 508,300.	$ 55,400.
Pimentel/Santiago	936,700.	823,500.	113,200.
Santiago/Montevideo	368,100.	338,800.	29,300.
Radio Estimate	—	120,000.	120,000.
P.A.A. and Grace bills	—	100,000.	100,000.
	$1,868,500.	$1,890,600.	$ 22,100.

CASH POSITION

Estimated Revenue		$1,868,500.
Estimated Expenses	$1,890,600.	
Less—Reserves	480,000.	1,410,600.
Cash Increase		$ 457,900.

New York, February 1931.
[fol. 3327]

SUMMARY—PLAN 3

1) Cristobal/Pimentel—3 Sikorskys
2) Pimentel/Santiago—3 Fords—2 Lockheeds 2 Fairchilds
3) Santiago/Montevideo—3 Fords 1 Falcon 1 Fairchild 1 Loening

ESTIMATED

	Revenue	*Expenses*	*Profit*	*Reserves*
Cristobal/Pimentel	$ 563,700.	$ 508,300.	$ 55,400.	
Pimentel/Santiago	936,700.	823,500.	113,200.	
Santiago/Montevideo	413,500.	413,300.	400.	
Radio Estimate	—	120,000.	120,000.	
P.A.A. and Grace bills	—	100,000.	100,000.	
	$1,913,900.	$1,965,700.	$ 51,800.	

CASH POSITION

Estimated Revenue		$1,913,900.
Estimated Expenses	$1,965,700.	
Less—Reserves	540,000.	1,425,700.
		$ 488,200.
Purchase 2 Fords		60,000.
Cash Increase		$ 428,200.

New York, February 1931.

[fol. 3328]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 342

CHARLES A. LINDBERGH
25 Broadway
New York City

March 11, 1931

Mr. J. T. Trippe, President,
Pan-American Airways Inc.,
122 East 42nd Street,
New York City.

Dear Mr. Trippe:

In regard to the Pan-American Grace air lines along the West Coast of South America and across the Andes, it has frequently come to my attention that these lines are not being operated in a manner which conforms to the standards of Pan-American Airways. It is my opinion that passengers cannot be carried over these lines with the maximum degree of safety without the use of multi-motored aircraft capable of maintaining flight with at least one engine stopped, and aircraft fully equipped for maintaining radio communication with ground stations at all times.

There is no doubt in my mind that the present operation of the Pan-American Grace system is not only detrimental to the reputation of Pan-American Airways, but that any accident on the Pan-American Grace lines will be con-

sidered by the public as an accident on Pan American lines, and consequently as detrimental to Pan American as tho it had occurred on one of the lines owned and operated by the Company. I believe it to be essential to the best interests of Pan-American Airways that all lines which in any way bear the name of the Company be operated according to the high standard which is maintained on routes completely controlled by the Company.

Sincerely,

s/ C. A. Lindbergh

CAL:ES

[fol. 3329]

Pan American World Airways, Inc. Exhibit 343

Minutes of a special meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways, Inc., 122 East 42nd Street, New York City, N. Y. on the 18th day of March, 1931 at 3:45 o'clock in the afternoon.

PRESENT:

Messrs. W. F. Cogswell
R. F. Hoyt
R. H. Patchin
H. J. Roig
J. T. Trippe
C. V. Whitney

being all of the Board.

Mr. J. D. MacGregor, Vice President and General Manager of the corporation, was also present.

Mr. Hoyt called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr. Cogswell, Secretary of the corporation, acted as Secretary of the meeting.

The minutes of a special meeting of the Board of Directors held March 8th, 1931 were read and approved.

Mr. MacGregor reported to the meeting that contrary to expectations difficulty was being encountered in obtaining permission to carry cabotaje passengers in the Argentine in planes of American registry, but that Dr. Lopez was hopeful of being able to obtain such permission. On motion duly adopted, matriculation of planes of the corporation in the Argentine was authorized, provided it should be definitely established that it would not be possible to carry cabotaje passengers without doing so.

[fol. 3330] Mr. Hoyt presented to the meeting a letter signed by himself and Messrs. Trippe and Whitney, of which the following is a copy:

"March 17, 1931.

Board of Directors,
Pan American-Grace Airways, Inc.,
122 East 42nd Street,
New York, N. Y.

Gentlemen:

Referring to past discussions on the subject of providing adequate operating facilities for the route between the Canal Zone, Santiago, Chile, Buenos Aires, Montevideo, we wish to advise you of our position on this important matter.

1. We favor Pan American-Grace Airways, Inc., without further delay, supplying itself with an adequate radio communication system—a system that will permit its aircraft, while in flight, at all times to maintain regular two-way communication with one or more ground stations—a system that will provide Field Managers and flight personnel concerned with adequate meteorological information—a system that will permit of the prompt dispatch of aircraft arrival and departure messages so that operating officials concerned may receive prompt departure as well as "safe arrival" messages before leaving their post.

2. We favor Pan American-Grace Airways, Inc. providing, or otherwise arranging for, suitable passenger stations at all ports of call such passenger stations, at land airports, to include radio quarters, waiting rooms and comfort facilities for passengers, and accommodations for the Field Manager. The passenger station or utility building of the general type erected at other points of the Pan American System might serve as a model.

3. We favor Pan American-Grace Airways, Inc. inaugurating through passenger service to Santiago, Chile; and as soon as a formal survey can be made to justify it, extending passenger service across the Andes, at least during the period of good weather, to Buenos Aires and Montevideo. We favor operating only multi-engined equipment throughout the entire route, including that section between Montevideo and Mendoza (our approval was given some time ago to a [fol. 3331] temporary program involving carrying passengers across Argentine in single engined ships; in view of the fact that the single engined ships have now been practically written off our books, we favor the immediate installation of multi-engined equipment on this, as on all other portions of the route).

We feel that the cash position of the Company is now sufficiently strong to justify the immediate adoption of the above program. If the Board of Directors feel, however, that such is not the case, we would favor the Company securing any necessary additional cash to provide same; either in the form of a loan by its two stockholders, or by increasing its authorized capital stock and disposing of same to its two stockholders.

To summarize, we feel that the facilities outlined should be made available without further delay, not only in the interests of safety, but also to secure for Pan American-Grace Airways, Inc., as the American operating Company on the West Coast, that definite "prestige" and "standing"

which its U. S. mail contract warrants, and which we feel the Post Office Department naturally expects.

Sincerely,

(sd) R. F. Hoyt
(sd) J. T. Trippe
(sd) C. V. Whitney"

Mr. Roig summarized the views of the other directors on the points raised in this letter and stated that written reply would be made by the representatives of W. R. Grace & Co. on the Board.

On the question of radio Mr. Roig suggested that the proposal of Pan American Airways, Inc. be reduced to the form of a draft agreement which would clear up certain points not clear from the preliminary form of proposal and the matter then be considered in this form; that we be furnished with details of the 12½¢ charge in order to form our own opinion of its reasonableness as compared to the [fol. 3332] cost of providing the service ourselves or procuring it from outsiders, and that radio operation be limited at the outset to the runs between Cristobal and Guayaquil and between Arica and Mendoza with provision for extension to the rest of the line as circumstances might warrant. On motion duly adopted, Messrs. MacGregor, Cogswell and a representative of Pan American Airways, Inc. were authorized to prepare a tentative form of contract as a basis for further discussion.

On motion duly adopted, Mr. MacGregor was requested to prepare a program based on the operation of multi-motored equipment between Cristobal and Montevideo and also a report on the present facilities along the line and what additional facilities he would recommend.

(Statement from Mr. Hoyt to be inserted)

Mr. Roig made a statement substantially as follows: It is naturally the desire of this corporation to cooperate with Pan American Airways, Inc. at Buenos Aires, the best example of this being our appointment of Pan American Airways, Inc. as our agents there. While he considers it

better business for the Post Office and for Pan American Airways, Inc. to serve Buenos Aires by the present West Coast route, which is the shortest and cheapest, and does not consider the proposed extension necessary or desirable, these are questions beyond the control of this company. Pan American Airways, Inc. have an undoubted right to extend their service to Buenos Aires and to operate in the Argentine (except between Buenos Aires and Mendoza) [fol. 3333] if they desire. On the other hand, the funds for the extension should not be obtained from the Post Office Department at the expense of Pan American Grace Airways, Inc., for example, by retaining the reduced compensation of $1.60 a mile for the second trip after July 1, 1931 or by stopping operations of one trip at Santiago. No director of Pan American-Grace Airways, Inc. is at liberty to be a party to such procedure in any form directly or indirectly or to take advantage of his position or information obtained as a director of this company to endeavour to bring about the foregoing result. If there is at any time any disposition to provide the East Coast extension at the expense of our service, we shall of course take whatever steps are necessary to resist it and to protect the interests of this corporation.

There being no further business, the meeting adjourned.

/s/ Richard F. Hoyt
Chairman of the Meeting

/s/ W. F. Cogswell
Secretary

[fol. 3334]

Pan American World Airways, Inc. Exhibit 344

NEW YORK
April 11, 1931

Memorandum to the Directors,
Pan American-Grace Airways, Inc.,
New York City.

In accordance with your instructions, I hand you herewith statements prepared by our Comptroller covering estimated

yearly revenue and cost of operation between Cristobal and Montevideo on a twice a week basis, under five different plans.

Each plan includes as an item of expense the estimated annual cost of radio ($120,000.) and also a $100,000 reserve for Panair and Grace supervision, agency fees, etc. This reserve is set up in addition to bills paid currently, which are included in the expenses of the respective Divisions.

Yearly depreciation on possible future investments along the line is not yet available and has not been included in these figures.

The estimated revenue from passenger income between Cristobal and Arica (Divisions 1 and 2), as well as the revenue from all other mail and baggage income in all Divisions, is based upon the results for 1930.

Passenger revenue between Arica and Montevideo has been estimated on basis of one passenger per trip over the entire distance. Between Santiago and Montevideo one passenger per trip has been included under Plans 1 and 2, and two passengers per trip, under Plans 3, 4 and 5 (tri-motored operation).

Plan No. 1. This plan contemplates the use of three Sikorsky Amphibions between Cristobal and Talara, each flying approximately 900 hours per year. From Talara to Arica three Fords would be used, flying slightly under 1,000 hours each per year. Two Fairchilds would be held as spares in this section of the line.

Between Arica and Santiago two Kingbirds would fly slightly over 1,000 hours each, per year. There would be two Lockheeds held as spares. A Ford and a Falcon would be assigned to the Transandean run between Santiago and [fol. 3335] Mendoza. Three Fairchilds and one Loening would cover the distance between Mendoza and Montevideo.

The estimated profit under this plan is $196,500. per year. Additional aircraft required:

1 Ford (to replace the San Cristobal)
2 Kingbirds

Plan No. 2. This plan contemplates the extension of the Sikorsky run to Pimentel, with three Amphibions flying slightly over 1,000 hours each, per year.

The Pimentel Santiago section of the line would be covered by three Fords, two spare Lockheeds and two spare Fairchilds. Inasmuch as the total flying per year would be 5,000 hours, the three Fords could not do all the flying under this plan and we would have to rely upon the spare single motored ships doing part of the flying, in addition to emergency flights.

The Santiago Montevideo section of the line under this plan would be taken care of in the same fashion as under Plan No. 1.

The estimated profit per year would be $136,600. Additional aircraft required:

1 Ford (to replace the San Cristobal).

Plan No. 3. This plan is similar to Plan No. 2 except two tri-motored Fords would be added to the Santiago Montevideo Division, and the line placed on a multi-motored basis the entire distance between Cristobal and Montevideo.

The estimated yearly profit under this plan would be $111,000. Additional aircraft required:

1 Ford (to replace the San Cristobal)
2 Extra Fords.

Plan No. 4. Three Sikorsky amphibions would also be run to Pimentel under this plan. Between Pimentel and Arica three Fords would be used, each Ford flying about 800 hours per year. (Three Fairchilds would be in reserve).

[fol. 3336] Between Arica and Santiago two new Fords would be used with two Lockheeds and one spare Fairchild in reserve. Between Santiago and Montevideo three Fords, with one Falcon, one Fairchild and one Loening in reserve, would be available for the service, again making a complete multimotored operation between Cristobal and Montevideo.

The estimated loss under this plan would be $10,100. Additional aircraft required:

1 Ford (to replace the San Cristobal)
4 Extra Fords.

Plan No. 5. This plan provides for Sikorsky operation between Cristobal and Pimentel, Ford operation between Pimentel and Arica, Kingbird operation between Arica and Santiago, Ford operation between Santiago and Montevideo. Single motored equipment at present owned by the Company being used as spares.

The estimated net profit for the year under this plan would amount to $145,600. Additional aircraft required:

2 Kingbirds
3 Fords

* * * * * * * * * *

In connection with the additional aircraft required under the various plans, it has been assumed that we could avail ourselves, by purchase, of two newly rebuilt Panair Fords now located at Buenos Aires, at a very attractive price. The alternative would be to purchase the new Ford with high speed equipment at $50,000 f.o.b. Detroit, which could be placed in Chile for an additional $5,000.

I wish also to advise the Directors that, so far, I have been unable to secure the approval of Panair engineering department for the use of the Kingbird through Chile. The latest characteristic sheets for the Kingbird were supplied to me by the Curtiss Company last week and were sent immediately to Mr. Harris. I have not yet had time to receive his criticism and comments.

(s) J. D. MacGregor
J. D. MacGregor

[fol. 3337]

SUMMARY—PLAN 1

1) Cristobal/Talara	—3 Sikorskys
2) Talara/Arica	—3 Fords—2 Fairchilds
3) Arica/Santiago	—2 Kingbirds—2 Lockheeds
4) Santiago/Montevideo	—1 Ford—1 Falcon 3 Fairchilds—1 Loening.

ESTIMATED

	Revenue	*Expenses*	*Profit*
Cristobal/Talara	$ 495,500	$ 414,900	$ 80,600
Talara/Arica	594,600	507,300	87,300
Arica/Santiago	407,500	218,700	188,800
Santiago/Montevideo	368,100	308,300	59,800
Radio Estimate		120,000	120,000
P.A.A. and Grace bills		100,000	100,000
	$1,865,700	$1,669,200	$196,500

New York, April 8th, 1931.

[fol. 3338]

SUMMARY—PLAN 2

1) Cristobal/Pimentel	—3 Sikorskys
2) Pimentel/Santiago	—3 Fords—2 Lockheeds 2 Fairchilds
3) Santiago/Montevideo	—1 Ford 1 Falcon 3 Fairchilds—1 Loening

ESTIMATED

	Revenue	*Expenses*	*Profit*
Cristobal/Pimentel	$ 563,700	$ 478,600	$ 85,100
Pimentel/Santiago	936,700	725,000	211,700
Santiago/Montevideo	368,100	308,300	59,800
Radio Estimate	—	120,000	120,000
P.A.A. and Grace bills	—	100,000	100,000
	$1,868,500	$1,731,900	$136,600

New York, April 8th, 1931.

[fol. 3339]

SUMMARY—PLAN 3

1) Cristobal/Pimentel —3 Sikorskys
2) Pimentel/Santiago —3 Fords—2 Lockheeds
3 Fairchilds
3) Santiago/Montevideo —3 Fords—1 Falcon
2 Fairchilds—1 Loening

ESTIMATED

	Revenue	*Expenses*	*Profit*
Cristobal/Pimentel	$ 563,700	$ 478,600	$ 85,100
Pimentel/Santiago	936,700	725,000	211,700
Santiago/Montevideo	413,500	379,300	34,200
Radio Estimate	—	120,000	120,000
P.A.A. and Grace bills	—	100,000	100,000
	$1,913,900	$1,802,900	$111,000

New York, April 8th, 1931.

[fol. 3340] SUMMARY—PLAN 4

1) Cristobal/Pimentel —3 Sikorskys
2) Pimentel/Arica —3 Fords—3 Fairchilds
3) Arica/Santiago —2 Fords—2 Lockheeds
1 Fairchild
4) Santiago/Montevideo —3 Fords—1 Falcon
1 Fairchild—1 Loening

ESTIMATED

	Revenue	*Expenses*	*Profit*
Cristobal Pimentel	$ 563,700	$ 478,600	$ 85,100
Pimentel Arica	529,200	463,800	65,400
Arica Santiago	407,500	382,300	25,200
Santiago Montevideo	413,500	379,300	34,200
Radio Estimate	—	120,000	120,000
P.A.A. and Grace bills	—	100,000	100,000
	$1,913,900	$1,924,000	$ 10,100

New York, April 9th, 1931.

[fol. 3341]

SUMMARY—PLAN 5

1) Cristobal Pimentel	—3 Sikorskys
2) Pimentel Arica	—3 Fords—3 Fairchilds
3) Arica Santiago	—2 Kingbirds—2 Lockheeds 1 Fairchild
4) Santiago Montevideo	—3 Fords—1 Falcon 1 Fairchild—1 Loening

ESTIMATED

	Revenue	*Expenses*	*Profit*
Cristobal Pimentel	$ 563,700	$ 478,600	$ 85,100
Pimentel Arica	529,200	463,800	65,400
Arica Santiago	407,500	226,600	180,900
Santiago Montevideo	413,500	379,300	43,200
Radio Estimate	—	120,000	120,000
P.A.A. and Grace Bills	—	100,000	100,000
	$1,913,900	$1,768,300	$145,600

New York, April 9th, 1931

[fol. 32'2]

P. A. American World Airways, Inc. Exhibit 345

[Handwritten notation—*WFC*—think we should (illegible) toward (illegible)—plus using supercharged Ford for Santiago Arica run as well.—(sgd) *RHP.*]

May 6th, 1931.

The most pressing question to be decided by the Board of Directors of Pan American-Grace Airways, Inc. is that of inauguration of passenger service between Arica and Buenos Aires. The Board has already authorized a service in the Argentine with single motor planes and a service over the Andes in a Ford provided it is equipped with radio. There has been no authorization as to the type of plane to be used in Chile.

Another question to be decided is the installation of radio over all or part of the line.

The representatives of W. R. Grace & Co. on the Board would like to see the following program:

1—Purchase of two Kingbirds (if assured that they meet the technical requirements for efficient operation) and the use of these planes between Arica and Santiago. If the Kingbirds are not technically satisfactory, the use of good single motor planes such as the Bellanca or Fairchild for this service.

2—The use of a Ford equipped with radio over the Andes.

3—The use of Fairchilds between Mendoza and Buenos Aires.

4—The purchase of three R.C.A. ground stations, one for Buenaventura, one for Guayaquil and one for Mendoza.

5—The purchase of sufficient R.C.A. plane sets for use on the planes in the Northern Division, planes in Chile and the Ford over the Andes.

The representatives of Pan American Airways on the Board favor revocation of the authority for operating single

motor planes between Mendoza and Buenos Aires and the operation of Fords between Arica and Buenos Aires, and the installation of radio throughout the entire system under [fol. 3343] a contract whereby it would be owned and operated by Pan American Airways.

Mr. Trippe's main argument is that we are buying for a three year operation and that if, we got, as we should, 5% of the business out of Buenos Aires to the United State we would require Fords to carry the load.

The answer to this is that we have no reason to believe that international business through Chile will be larger than can normally be carried in a Kingbird. It is more economical to run a smaller plane and occasionally turn away passengers than to run a larger plane for the sake of carrying an occasional capacity load. So far as the Argentine is concerned, it would seem to be clear that conditions are perfectly safe for a single motor operation. If it should turn out, say after a year's experience, that the Kingbirds are insufficient for the passenger business in Chile, then they might be used as spares where we are now using Fairchilds, and Fords purchased for this run.

Inasmuch as the views of the two sets of Directors seem irreconcilable on these questions, the following is submitted as a compromise:

1—Purchase the two Panair Fords now at Buenos Aires and use them together with two Fords we now own between Pimentel and Santiago.

2—Operate Fairchilds in Argentina.

3—Purchase R.C.A. radio equipment for installation on the northern and southern divisions of the line as outlined above.

It is assumed that the price that would have to be paid to Panair for the Fords, plus the cost of putting them into condition, would be very little in excess of the cost of the [fol. 3344] Kingbird landed in Chile. The above plan, however, has the disadvantage that the operating expenses of the Ford would probably be in the neighbourhood of 40c

a mile more than the Kingbird. It would have the advantage of relieving Panair of some of their excess equipment, which they were obliged to take over when they took over the Nyrba, and would enable us to ascertain definitely whether we could procure satisfactory passenger business with this type of plane. It has been suggested that once we start in Chile with Fords it would be difficult to stop and that therefore it would be inadvisable to start this service even if we could get second hand planes at a cheaper price. This would not seem necessarily the case, however, as a lack of business would seem ample reason for replacing the Fords when worn out with a smaller plane. In this connection, it should be noted that on our present schedule, and unless the number of stops are increased, the Kingbird can carry two or at the most three passengers after allowing for the weight of the Chilean pilot and his baggage and radio equipment.

If this compromise is made, it is essential that both the radio and the type of equipment be settled at the same time. The use of the Fords in Chile for passenger carrying would require the installation of the radio in the planes while the use of the Kingbird would not.

W.F.C.

[fol. 3345]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 346

PERSONAL No. 73

NEW YORK,

May 13, 1931.

Mr. H. R. Harris,
Lima, Peru.

My dear H. R.:

Referring to your personal letter No. 315, I have not yet been able to get the details of the Panair investment per mile of airway, which you think is "incredible". I have, however, received a verbal explanation of what seems to me also a very high cost.

Panair, as you know, has extended very quickly, and, for one reason or another, has been forced to change its route and its flying schedules. This has meant that investments in airports, buildings and other facilities, which had to be made in order to carry out preliminary plans, were rendered almost entirely useless by a change of route or by a change of schedule. This is readily understandable and is something that we have avoided so far, but for which we have been criticized.

It must be remembered also that Panair's route, in a great number of places, is over territory almost totally destitute of population or economic value. I studied some of their problems before coming with Panagra and I could see where an attempt to put in adequate facilities would be at great cost. I have in mind Cozumel, Yucatan, Honduras, Costa Rica, in all of which places airports had to be literally hewn out of the jungle, and the cost of furnishing materials for the installation of facilities is, and will always be, prohibitive.

I am sorry to say that another Directors' Meeting has come and gone without a definite decision either as to radio or additional flying equipment and ground facilities. I have recommended again the acceptance of the Panair proposal for a guaranteed two-way radio communication. I have prepared figures showing that we could pay $120,000. a year for radio, pay all the Panair bills for co-operative supervision and Grace agency bills, and still make a large return on our investment, but, so far, have been unable to secure joint action by the Board.

Panair are willing to give me a free hand to work out our problems to the best advantage, but it is not so with the other interested parties. I spent an hour yesterday knocking over straw men with regard to the comparative values of operating Fords against Kingbirds, and with the Chairman of the Curtiss Company as one of the Panair Directors. I have prepared statements showing that the Panair proposal for radio is cheaper than purchasing equipment from R.C.A., or from anybody else, and operating it ourselves. My figures contained no provision for grief. As a matter of fact, I have provided so many figures

that I forget what has been provided, but of one thing I am sure, unless I am permitted to put in facilities that I know are necessary and indispensable, equip our planes with radio, and go after building up a transport system, steps will be taken before long in Washington to curtail our operations and possibly decrease our frequency.

Great pressure is being brought to bear on the Post Office to join up Santos with Buenos Aires on the East coast. The return to the Post Office from mail on the West coast is only about 16%. Some of Panair's routes return between 60% and 70% to the Post Office. Rightly or wrongly, Panair is spending a great deal of money in fa- [fol. 3346] cilities. That makes a hit with the Post Office, and when they see the West coast without hangars, without airport development, without radio, without passengers stations, they consider we are milking the contract on a ten-year basis. Frankly, I am getting a little disheartened because the longer this fight goes on, the longer it will delay my trip south.

This letter you will please destroy after reading.

With regard to Iquique, I was glad to get the information given in the last paragraph of your letter. I only wish I had had this information before. I can only get such information from you at long range by your constant writing. I write you very fully what I am doing and I should appreciate your giving me currently any information which can assist me.

Do you know that after operating two years I have not on file a single description of the airports at which we land. I do not know the dimensions of the fields, the length of the runways, the nature of the soil, whether approaches are clear or obstructed, or our outlay in development of airports, joint or otherwise. I wrote recently asking for photographs of the fields at which we land. I should never have had to write that letter. I cannot sell our ideas to the present Board of Directors without having a most intimate knowledge of every conceivable feature of our operations. The Grace section of the Directorate reads omnivorously and they expect me to be able to answer the innumerable

questions suggested by their reading. Not only, it seems, must I be prepared to answer questions about our own operations, but also about other items pertaining to the operations of our competitors, past, present and future. They seem to want to know what makes the wheels go 'round; why the S-41 crashed; what the sea was like; what structural failure caused the sinking of the plane. There is a certain amount of reason for their attitude. Did it ever occur to Robinson at Santiago that Panair had two of these planes on order and that Priester would be interested in receiving unbiased information as to the stability of the plane in the air or on the sea? Why did Robinson discontinue the weekly report that I asked for?

I have received no word from Santiago as to the developments at Cerrillos. I get from Webster whatever he cared to tell me. No photographs of the actual developments at Cerrillos have been sent. I have some photographs of our hangar with a Lockheed in front of it, but none of the other facilities. I understand a casino has recently been erected there. I have never seen it mentioned in letters. Such scraps of information as I get from Santiago come from Dagnino. Will you please take steps to see that this situation is remedied all along the line.

I have wandered along in this letter, and it may be rather disjointed, but as I said above I am a little disheartened, and the only thing that can raise my spirits is to feel that I am getting from my men in the field the whole story all the time. Help me out on this like a good fellow and I will do my part to see that your excellent operating record is recognized by additional facilities.

I was very much disturbed to hear about the state of Mrs. Harris' health. Please keep me currently advised, and if you should decide to send her back to the States this summer, please remember that I am here and shall feel extremely hurt if you do not give me the opportunity to do anything I can for Mrs. Harris and your family.

Very truly yours,

J. D. MacGregor.

JDM:Q

[fol. 3347]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 347

W. R. GRACE & CO.
NEW YORK

May 21st, 1931.

Harold J. Roig, Esq.,
c/o Grace Brothers & Co. Ltd.,
London, England.

Dear Roig:—

Confirming our cable #65 as follows:

"65: your 76 14th to 17th word as ford is in buenos aires our idea is to recondition at Lima price to be paid panair plus estimated cost reconditioning not to exceed 30,000 dollars united states gold"

I enclose herewith Vidal's estimate for the operation of the four Fords. This presents a very different picture. It is based on the present passenger and local mail revenue in Peru and one passenger per plane in Chile.

The only development in the radio situation is that Panair sweetened their proposition to R.C.A. by agreeing to buy about $50,000 worth of material and R.C.A. has, accordingly, agreed to issue a license for Panair and any company in which it has not less than a 50% interest. I was not entirely surprised at this. It deprives us of a prop but I am hopeful that we will be able to discourage Panair's insistence upon operating our radio and win them over to a plan for installation of radio on only the northern and Chilean sections.

Cogswell and I think that Panagra should have a radio engineer and that his initial work should be the training of flight mechanics and pilots in radio telegraphy and telephone so that we will not have to carry an extra radio operator.

[fol. 3348] Thomas S. McCaleb, who installed Panair's radio system in Mexico and who was let out in the last economy upset, has been to see us. The R.C.A. people think very highly of him and Boschke writes me from Mexico City that his late chief there speaks very highly of him. To test his quality I have asked him to make for Grace a report on the various radio telegraph, telephone, beam and beacon systems now actually in use. I thought we could afford to spend a little money to get more specific information in hand on this important and expensive subject.

Merino arrived here on Monday and MacGregor organized in his honor a dinner at the Hangar followed by a party at the Hollywood. Valverde attended and altogether it was a great success. Merino apparently had a good time and was most cordial. He is leaving for England about June 3rd. I hope and suppose you will cross him on the ocean.

At Washington there is no further development since my telephone conversation with you. Glover told me over the telephone today there had been no new development since Trippe was told that the extension to Buenos Aires would require a cut in his existing East Coast $2.00 rate. He is, characteristically, still at work, but my advices are that the Post Office will not make us cancel one trip south of Santiago. I fear, however, that the $1.60 rate on the second trip will stick, although the Postmaster General still seems [fol. 3349] somewhat openminded on the subject. White told me privately that it was his understanding that the Postmaster General had made up his mind. I enclose a clipping from this morning's paper which shows that the tide is strongly against us in this respect.

Faithfully yours,

/s R. H. Patchin

encl.

[fol. 3350]

COPY

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 348

W. R. Grace & Co.,
New York

Robert H. Patchin

May 27th, 1931.

J. T. Trippe, Esq., President,
Pan American Airways, Inc.,
122 East 42nd Street,
New York City.

Dear Mr. Trippe:

It is our understanding that one of the Fords has now been equipped with superchargers and we accordingly consider that we should start passenger service south of Arica as soon as possible. We are advised that the operation of a supercharged Ford is not necessarily limited to the Mendoza Santiago portion of the route and we therefore suggest that Pan American-Grace Airways purchase one Pan American Airways Ford, now at Buenos Aires, provided it can be obtained at a reasonable price, and carry on the operation between Pimentel and Mendoza with four Fords.

As Pan American-Grace Airways is not permitted, however, to carry passengers in Chile in these planes unless they are radio-equipped, it is essential that arrangements first be made for the purchase of four plane sets for use thereon. It is evident from a careful study of the proposal of Pan American Airways to install and operate a system of radio communication over the lines of Pan American-Grace Airways that the practical working out of such an arrangement would be most unsatisfactory and difficult and, accordingly, we feel that Pan American-Grace Airways should operate its own radio system. Moreover, it is apparent that wherever possible it would be of advantage, from every consideration of economy and efficiency, to use combined telegraph and telephone sets. The operating conditions

between Mendoza and Santiago appear particularly to require radio telephone as an auxiliary to telegraph. We suggest, therefore, that Pan American Grace Airways purchase and ship immediately four combined telegraph telephone plane sets in order that we may start a passenger service in Chile without delay.

As we are strongly of the opinion that the radio system should be gradually developed by starting in places where it is most needed and later extending to the rest of the line as and when found necessary, and with equipment found by experience to be most effective, we suggest that, in addition to purchase of these four sets, Pan American-Grace Airways proceed as follows:

1. Engage the services of a competent radio superintendent to install, organize and take charge of the service. One of the duties of such superintendent should be to arrange instruction of the pilots and flight mechanics in the operation of radio telegraph and telephone so that the Company can ultimately dispense with a separate radio plane operator, thus saving both salary expense and pay load space.

[fol. 3351]

2. Obtain the necessary permit from the Argentine Government and purchase and install a telegraph-telephone ground set at Mendoza.

3. Obtain amplification of Pan American Grace Airways radio rights in Ecuador, if this should be considered necessary.

4. Purchase a new telegraph ground set capable of being economically amplified for telephone and install the same at Santa Elena or Guayaquil.

5. Purchase three radio plane sets for use on the northern division.

6. After the installation of the ground set in Ecuador, if the needs of the service appear to require it, purchase a similar ground station for installation at Buenaventura.

Mr. Cogswell and I should be pleased to discuss the foregoing with you at your convenience.

Very truly yours,

(Signed) R. H. Patchin.

cc Mr. MacGregor

[fol. 3352]

Pan American World Airways, Inc. Exhibit 349

May 29 1931

Mr. Robert H. Patchin,
W. R. Grace & Co.,
7 Hanover Square,
New York, N. Y.

Dear Mr. Patchin:

Receipt is acknowledged of your letter under date of May 27th regarding the proposed inauguration of passenger service by Pan American-Grace Airways in Chile, and referring to the matter of installing a communication system on the Pan Grace Lines.

I note that you have forwarded copy of your letter to Mr. MacGregor, although the original was addressed to me as President of Pan American Airways, and presumably as an individual Director of Pan American-Grace Airways.

My personal opinion, as well as that of Messrs. Hoyt and Whitney, on the advisability of the installation by Pan American-Grace, without further delay, of an adequate communication system over its entire line, and its inauguration of passenger service throughout its entire route in multi-engined planes as soon as possible, was outlined in detail in letter dated March 17th, 1931, addressed to the Board of Directors of Pan American-Grace Airways.

In order to fully cooperate in the early and efficient carrying out of this plan, Pan American Airways has sub-

mitted, on several occasions, proposals in the form of draft contracts, to Pan American Grace Airways, for the installation and operation by Pan American Airways of the requisite communication system. It was my understanding that the General Manager of Pan American Grace Airways stated to the Board of Directors that in his opinion the acceptance of the proposal of Pan American Airways would be not only the most efficient, but the cheapest method of providing Pan American-Grace Airways with an adequate communication system, but up to the present time the Directors have not approved or otherwise acted on the several proposals submitted, including that of Pan American Airways.

It would seem that the points raised in your letter as to a detailed method of procedure, are ones upon which the Board of Directors of Pan American Grace Airways should receive views and recommendations of the General Manager of that Company, who I understand has already made a careful study and analysis of the questions of efficiency [fol. 3353] and economy involved.

There is a Pan American-Grace board meeting scheduled for next Monday, and while the matter will unquestionably come before the meeting, I will be glad, if you and Mr. Cogswell so desire, to discuss the matter with you both informally, at your convenience, prior to the meeting.

Yours very truly,

J. T. Trippe.

JTT:B

cc: J. D. MacGregor

[fol. 3354]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 350

October 8, 1931

Honorable Chase C. Gove
Deputy Second Assistant Postmaster General
Post Office Department
Washington, D. C.

My dear Mr. Gove:

At our conference several days ago, you asked us to submit a letter outlining the several recently proposed changes on foreign air mail service.

The extensions and changes, four in number, are as follow:

1. An extension of route FAM #10 from Santos, Brazil, to Buenos Aires, Argentina, effective with the southbound trip leaving Paramaribo November 5, and with the northbound trip leaving Buenos Aires November 2. Effective November 1, 1931, the sum of 20c per mile would be waived on the contract rate of FAM Contract #10.

A formal waiver to this effect, duly executed by us, has been forwarded you today under separate cover.

2. Effective December 1, Tela to be omitted as a port of call on FAM #5, and Merida, Yucatan, and Puerto Barrios, Guatemala, to be included on this route. Service between Miami and Havana, and also between Merida and San Salvador, on this route to be reduced from two round trips per week to one round trip per week.

It is believed that the elimination of Tela and the inclusion of Puerto Barrios and Merida on this route, together with a reduction in service on certain sectors thereof, as outlined above, will not only result in the estimated annual saving of $129,584, but will, at the same time, considerably enhance the trade and postal value of the route in question.

[fol. 3355] The reduction on the through service to San Salvador to one trip a week should not impair the present

postal service to Central America, inasmuch as the schedules hereafter proposed, also to become effective on December 1, will permit of one through trip per week to Central America via Kingston. Scheduled mail arrivals to points between the Canal Zone and Salvador under this schedule would be Sundays and Tuesdays; outgoing mail schedules would be Saturdays and Wednesdays. All flights in both directions would be uniform in that from two and a half to three days would be required between Florida and points in Central America, whether scheduled via Kingston or via Merida.

The reduction in service between Merida and Salvador to one trip per week should not impair the value of the foreign air mail service over route #5, inasmuch as British Honduras would be the only country reduced under the proposed program from a twice a week to a once a week schedule. The mail actually carried to and from Belize now averages but 3.2 pounds per trip. Trade between British Honduras and the United States is relatively small compared to other countries served by the United States foreign air mail lines.

The reduction in service between Salvador and Puerto Barrios from twice to once a week should result in improved service on the Brownsville-Canal Zone route, inasmuch as operating conditions across the Central American mountains are often bad and frequent delays are apt to occur, necessitating holding the through ships between Brownsville and the Canal Zone for the connection at Salvador.

The schedules proposed hereafter will also eliminate Cozumel Island as a port of call, considerably improving the trade value of this route, inasmuch as passengers have sometimes been embarrassed through having to remain overnight at that point, where no suitable accommodations are available. The possibilities of delays in the through service on account of connections at Salvador will be greatly reduced by the shortening of the day's flight that crosses the mountain section. This has been reduced from the Havana-Salvador distance to Merida-Salvador, which makes it possible to cross the mountains earlier in the

afternoon than is now the case. Safety of operation on this section of the route, considered one of the most dangerous on our lines, would also be improved.

The proposed second scheduled trip per week between [Fol. 3356] Havana and Merida would connect at Havana with FAM =4, thereby providing twice a week service between Florida and Yucatan, an important trade route, inasmuch as a substantial business is carried on between points in Florida and Yucatan and Mexico. Both of these scheduled trips would make direct connections at Merida with services operated by our Mexican affiliate, Compania Mexicana de Aviacion, which serves the most important cities in Yucatan and eastern Mexico. Two day service between Florida and Mexico City and intermediate points would thus be available.

The parallel service on FAM =5 between Miami and Havana has been reduced under the proposed schedule from twice to once a week. The one a week service would be required in order to provide proper maintenance at our Miami base for aircraft serving this route. If we were to overhaul this equipment at Havana, considerable additional expense would be incurred, and work would be performed in a foreign country which under the proposed plan would be done in the continental United States.

If at least one trip per week between Salvador and Florida did not originate and end in Florida, the section between Miami and Havana would develop into a "bottleneck". This is particularly the case since the second trip per week between Havana and Merida, under the proposed schedule, connects with FAM =4 at Havana. It was planned on this trip to route any passengers desiring transportation between Cuba and Mexico only, including American travellers wishing to stop over in Havana. This plan leaves the entire capacity of the second trip to Yucatan and Central America available for passengers en route to and from the United States.

3. It is proposed, as of December 1, to increase service between Barranquilla and Maracaibo from one round trip per week to two round trips per week. This increase in

service is desirable not only on account of the extra heavy air mail service to Venezuela, the revenue from which to the United States Government is now estimated as $6,280 per month, but also because of a very substantial air passenger service which has developed between the United States and Venezuela, and between the Canal Zone and Venezuela. We are planning to put our new four engined flying boats into service between Florida and Barranquilla about December 1. The additional capacity thus made available between that point and Florida will provide adequately for the additional passengers coming from [fol. 3357] Venezuela as a result of the two services per week between Barranquilla and Maracaibo.

4. We are submitting herewith the new schedule which we propose become effective December 1. This schedule is a great improvement over the present schedules of the system. All points served by the through east coast service, including Rio, Montevideo and Buenos Aires, and all intermediate points, would receive at least one day faster mail service from the United States and two days faster service as soon as proper connection is made by the Domestic Air Mail Service at Miami.

The "bottle-neck" between Porto Rico and Miami, now existing on the East Coast Service as a result of the limited capacity of the land type Fokker tri-motors now in service, would be eliminated, inasmuch as the new schedule contemplates flying boat operations on the through trips to Brazil between Florida and Porto Rico. The flying boats will have a capacity on this route at least double that of the present Fokker tri-motor land types, and adequate to take care of the very considerable through traffic already developed to points south of Porto Rico.

You will note that the schedule as herein enclosed also gives effect to the various improvements suggested by yourself and Mr. Grayson during our recent conference. The southbound Brownsville scheduled departures have been changed to Mondays and Fridays; the northbound arrivals to Sundays and Wednesdays. The scheduled arrivals and departures in Central America are much bet-

spaced than the schedule submitted at the conference above referred to. Four separate receipts and dispatches between the Canal Zone and the United States are provided.

The new schedule herein proposed affords direct connections, both north and southbound, at Trinidad. Direct connections are also made twice a week on the Barranquilla-Maracaibo service with the Barranquilla-Miami trans Caribbean line. Continuous service across the north coast between Cristobal and Maracaibo is also available, and two day service is afforded between the Canal Zone and Trinidad, direct connections being made at Maracaibo with the once a week mail service scheduled between Maracaibo and Trinidad.

Southbound service at Miami is scheduled for 7:30 am, [fol. 3358] the latest possible departure time permitting second day arrivals at Trinidad, necessary if the extra day is to be eliminated on the entire east coast service. The southbound departure on the Miami-Kingston-Barranquilla route has been set at 9:30 am, the latest practicable time to leave Miami, taking into consideration the scheduled stop at Cienfuegos and the overnight stop at Kingston. The scheduled arrival at Barranquilla at noon on the second day will permit of arrival on schedule the second night, not only at Maracaibo, Venezuela, but also at Cristobal, Canal Zone, and all important points in the interior of Colombia.

As soon as the schedule of the connecting domestic air service between New York and Miami is modified so as to afford a reasonably close connection at the latter point, New York dispatches for Buenos Aires would be made on Saturdays and Tuesdays, arriving at Buenos Aires on Saturdays and Tuesdays. The east coast mails would leave New York Thursday evening, arriving at Rio de Janeiro Wednesday night and at Buenos Aires Friday afternoon.

The northbound departures from Buenos Aires would be Saturdays, Wednesdays and Thursdays, arriving at New York early in the morning on Saturdays, Wednes-

days and Fridays. The northbound scheduled departu from Rio de Janeiro would be Saturday morning, affor ing the best possible service to that city with the fr quency limited to once per week.

Awaiting your action in this connection, we remain,

Respectfully,

PAN AMERICAN AIRWAYS, IN

J. T. Trippe,
President.

JTT:EH

[fol. 3359]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 351

PERSONAL 680

ERNST EILERS

NEW YORK,

November 3, 1932.

Mr. H. R. Harris,
LIMA.

My dear H. R.:

I note Mr. Kirkland's letter to you #735 SAGO of Octo ber 24th with reference to Ernst Eilers.

I do not know what Mr. Kirkland has in mind when he says "should plans for Guayaquil mature, we would un doubtedly have a small staff of our own at that point", and by inference, one member of the staff would be a business man, a position which he thinks Eilers could fill. This is not at all in line with my own ideas and would certainly be opposed by the Grace Directors.

With the exception of Divisional Headquarters, the busi ness end of our operations is run by our agents, and I wish

you would warn Kirkland that letters of this kind will undoubtedly raise the question in the minds of the Grace people as to whether, in Guayaquil also, we intend to break away from our basic agreements and maintain our own business personnel in addition to the work performed for us by Grace Agents.

I do not know whether you have ever seen a copy of the original letter outlining the set-up for Pan American Airways, Inc. and Grace & Co. For your very confidential information, and to be kept in your private files, I hand you a copy of Mr. Cogswell's letter to the Aviation Corporation of the Americas, dated August 31, 1928. I draw [fol. 3360] your attention to the first paragraph of the second page, and especially to the statement that on the West Coast of South America Grace & Co. will be the agents of the Company, on a reasonable compensation basis, for a period to continue as long as the life of the transportation contracts are in effect. This is the broad basis of the understanding and there is nothing in the letter which would permit us to shop around for agents or appoint other agents where Grace & Co. has an agency, even although other Companies or individuals might offer us better terms than Grace would. The whole argument here has been over the words "reasonable compensation basis".

It is, therefore, not in order to take steps that might be construed as modifying the original agreement, unless Grace & Co. signify their entire conformity with such a plan.

J. D. MacGregor.

JDM/Q
Enc.

[fol. 3361]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 352

Cable Address "PANAGRA"

Pan American-Grace Airways, Inc.
122 East 42nd Street New York N. Y.

Letter No. PERSONAL 1251

ORIGINAL AIR MAIL LETTER
Copy follows by second airmail

Re your letter No.

Subject: GRACE LINE MEETING

LIMA, February 17, 1933.

Mr. J. D. MacGregor, New York.

Dear Mac,

Yesterday I gave a luncheon for the Grace Line people now here, that is, Adams from the New York office, Robstock from Cristobal, Marshall from Buenaventura, Holguin from Guayaquil, Bush from Lima, Heavey from Valparaiso and Redshaw from Lima. I had the SAGO organization, consisting of Penrod and Litchfield from Traffic, Angus from Radio, Farris and French from Operations, Jardine from P.A.C. Operations, Matallana from P.A.C. Traffic, Thommen from P.A.C. and myself. The luncheon seemed to be satisfactory, and the only unfortunate part was the fact that Robstock was too ill to attend, his place being taken by Mr. Adams' secretary, Mr. Livingston. Incidentally, Mr. Adams gave me to understand that Robstock is being retired from the Grace Co. in the near future on account of health.

Adams told me that they were having a number of discussions in their meetings here about the position which a Grace agency should take with regard to Panagra. They have now come to the conclusion that they will charge a minimum of $10 for every unaccompanied baggage ship-

ment, in place of their previous charge of 1¢ gold per lb. weight, inasmuch as they view this unaccompanied baggage as being handled for Panagra passengers at a very low income to the Grace people, who are, of course, responsible for the baggage while it is in their possession. I can't say that I blame the Grace Line people for taking this stand, since they have a certain amount of justification in the lack of income to them in regard to a matter which is of great importance to passengers via Panagra.

Adams also told me that he felt our rates were now at too low a figure compared to the steamer rates; in other words that we were not on a reasonably competitive basis in that our operating costs should be much higher than steamer operating costs, and that consequently our tariffs ought to be much higher. I did not discuss this point with him, knowing that when the time came we could make as much or little of the economies as we cared to, depending upon the point to be gained.

I have arranged with Adams to allow me to talk to his group next Tuesday morning, and have also arranged to show them the airport at Las Palmas Tuesday afternoon; inasmuch as Marshall is leaving for Buenaventura by airplane Tuesday morning I took him out there yesterday afternoon together with Heavey. Las Palmas is not very large, but it is able to impress a visitor, properly shown around, with our ability to accomplish really important results in a small amount of space and with a minimum of expensive equipment. I believe that these people will be really impressed with what Panagra is and what it means, as a result of our Tuesday meeting.

(signed) H. R. Harris
Harold R. Harris

HRH/FL

[fol. 3362]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 353

PERSONAL 1393

NEW EQUIPMENT

New York,
October 19, 1933.

Mr. H. R. Harris,
LIMA.

My dear H. R.:

I had a long discussion with Mr. Trippe on the question of new equipment, and received the benefit of his views in light of the various quotations submitted by the Consolidated, Sikorsky and Douglas for the construction of specially fabricated amphibions. I think I told you in a previous letter that the quotations received were subject to an upward revision if the manufacturers incurred additional costs through the operation of the NRA.

Quotations received from Sikorsky were, in the main, lower than those received from the other competing Companies, but the entire engineering expense would have to be distributed over the five or six amphibions we could possibly use in the System, which would mean that each unit of a sixteen-passenger amphibion would cost, in the neighborhood of $120,000. Further, although the Sikorsky proposition is for a sixteen passenger plane, Mr. Trippe feels, and I think I agree with him, that the increase in mail and express service, together with the fact that undoubtedly before long we may have to increase the free baggage allowance to passengers, will have the effect of making this plane only a fourteen passenger plane, and to pay $8,000 a seat would seem altogether prohibitive.

[fol. 3363] On the other hand, Panair has, as you know, a firm contract with Sikorsky for the construction of several Clippers. The Clipper is a 32 passenger plane, and if, on the same theory of an increase in express, mail, baggage allowances, etc., we consider it a 26 passenger plane, the

price per passenger seat would be very appreciably less than the amphibion.

Mr. Trippe, therefore, thinks that it would be economically better for Panagra to charter a Clipper for the service between Cristobal and Guayaquil than to invest a minimum of $250,000 in building two planes. You, of course, realize there is no market for amphibions in the States, at least, of the size and performance we require for our operations. Mr. Trippe's suggestion, therefore, is that it would be more economical to start a Clipper from Miami and, if necessary, changing crews at Cristobal, fly it all the way to Guayaquil.

Naturally, this would entail an investment at Guayaquil, but you and I have already agreed that such an investment must be made. There would, of course, be no trouble in landing a boat of the Clipper size in the river, and I think it possible that we may be able to arrange a schedule which would permit the boat to be in the water only overnight, which would avoid the necessity of the tremendously large ramp with the additional handling expense involved in taking her out of the water.

I talked over this scheme with Kirkland who did not seem at all amazed at the size of the boat we might consider [fol. 3364] running in the Northern Division. He feels that we will be pleasantly surprised at the number of passengers we will have, especially if we can get "cabotaje" rights at Tumaco. Another thing to be taken into account is the fact that Cristobal Guayaquil is a bottle-neck not only for our passengers, but also for our personnel, of which the latter there seems to be a constant flow. If we are unable to afford our employees' accommodations on the plane, we would necessarily have to pay their fare by steamer, and if the steamer fare and other expenses were credited to the operation of the Clipper, the size of the plane would not seem so abnormally in excess of our present needs.

It may be that, in connection with the Ecuadorean Government, we shall have to arrange for some sort of slip to insure us a place to taxi to the bank of the river. There are other features which will undoubtedly occur to you,

but, in general, I am not horrified at Mr. Trippe's suggestion, nor do I think you will be. The Directors, I believe, will be willing to place a reasonably large investment at Guayaquil as it is inevitable that we must have the best facilities if we are to secure the passenger traffic, upon the revenue of which we shall have so largely to depend if our subsidy is curtailed or taken away.

In further connection with this matter, Mr. Trippe explains that it will be almost impossible for Panair to contemplate, at present, a less than two-day flying time between Miami and Cristobal, even with the Clipper cruising 150 miles air speed, which would be more likely 135 [fol. 3365] miles ground speed. He explains that E.A.T., during especially the winter season, arrives at Miami several hours late, over 75% of the time, and that train connections are not possible for passengers before 7:30 in the morning, and that, therefore, unless the planes are to leave Miami practically empty as far as close airmail and passenger connections are concerned, the planes cannot leave Miami until 9:30 in the morning. In addition, the Post Office is now insisting upon a stop at Havana so as to economize on the shuttle airmail service. This will make it impossible for Panair planes to get further than Kingston the first night out, and to Cristobal the second night. Even though it were possible to reach Cristobal in the early afternoon, it would not benefit Panagra service because the nearest place we could take our passengers to would be Buenaventura, and our Guayaquil passengers would again have to take two days to get to their destination.

In the light of the above, it would appear that, after all, Panagra would have to bear the brunt of any stepping up of the schedule, but, as this matter would seem now to be crystalizing, I think it would be advisable for you to prepare for me, and airmail to me as soon as possible, a Panagra schedule between Cristobal and Montevideo, taking the Clipper speed to Guayaquil, making that the first overnight stop; then taking a land plane of a cruising speed of say 175 miles an hour, between Guayaquil and Santiago; then the Fords over the Hump and into Buenos Aires and Montevideo. It may be that in making this schedule you might

find it possible to run from Guayaquil to Arica the second [fol. 3366] day, and from Arica to Mendoza the third day, which, in order to make a three-day schedule between Cristobal and Buenos Aires would entail night flying with mail and passengers between Mendoza and Montevideo. I think you would consider the night flying in the Argentine a fairly safe operation, if the necessary airport lighting were arranged and night flying instruments available.

The whole matter is very interesting and I should appreciate your advising me your ideas at the earliest opportunity.

Incidentally, I am still shooting for November 11th to start my trip south.

J. D. MacGregor.

JDM/Q

[fol. 3367]

Pan American World Airways, Inc. Exhibit 354

December 20, 1933

Memorandum to Mr. J. D. MacGregor
Vice President & General Manager

SIKORSKY S-38 vs S-42

The attached statement shows the estimated direct operating costs of our present S-38 Sikorskys and of the proposed S-42 Sikorsky Clippers.

It will be seen that the extra cost of operation of the S-42 appears to be in the neighborhood of $120,000. per annum. The available pay-load of this ship is practically 7,000 pounds as against the 1,200-pound maximum available pay-load of our present S-38 Sikorsky.

As between Cristobal and Guayaquil we receive an average of approximately 9¢ per passenger mile it is evident that every extra passenger we carry all the way between those two points throughout the year would yield in the neighborhood of $20,000. In other words, six passengers carried throughout the Division on each trip over and above

the number of passengers carried at present would just about cover the larger cost of operations of the S-42 Sikorsky Clipper.

[fol. 3368] As a matter of fact, this new plane having a capacity of 26 passengers as against a maximum of five in our present Sikorskys, it is certain that we would secure additional through passengers to and from Lima, Santiago, and Buenos Aires. This extra revenue could likewise be applied against the extra cost of operating the larger plane, particularly in view of the fact that they fly at the "bottleneck" of our line.

G. VIDAL

GV:G

P-354

ESTIMATED DIRECT OPERATING COSTS OF AEROMARINE S-38 (at present in-[illegible]) AND S-42 (1939)

Scheduled Mileage Cristobal/[illegible] - 1,038 miles per trip & 217,124 miles per annum (Twice-A-Week Operation)

S-38 - 108 m.p.h. or 2,871 hours per annum - S-42 141 m.p.h. or 1[illegible] hours per annum

	S-38		S-42	
Pilots (4)	Average $6,000 a year	$24,000.	3 pilots at average $6,000 a year	$ 18,000.
Co-Pilots/flight mechanics	-	-	1 at average 4,800 a year	4,800.
Radio operators	3 at average $2,250 a yr. ea.	6,750.	1 at average 2,250 a year	2,250.
Stewards	-	-	1 at average 900 a year	1,800.
Insurance flying crews	at $3.80 per $100 of payroll	1,700.	at $3.80 per $100. of payroll	1,100.
Gasoline	2,871 hours x 80 gal. x 21 cts.	2,300.	1611 hrs. x 148 gal. x 14¢ (ex. quality)	34,100.
Oil	2,871 hours x 2 gal. x 8½ cts.	[illegible],300.	1611 hrs. x 8 gal. x 51¢	6,600.
Maintenance	as at present	30,000.	50% higher than present costs	45,000.
Major overhauls	3 x $10,000 each	30,000.	2 x $10,000 each	40,000.
Obsolescence - Aircraft (3-year life)	3 x $0,000 each	40,000.	4-year life - 2 x $116,000 each	58,000.
- Engines (3-year life)	9 x 5,000 each	15,000.	2-year life - 12 x 6,000 each	24,000.
- Radio sets 1-[illegible] life	3 x 1,800 each	[illegible],[illegible]80.	2-year life - 2 x 1,500 each	1,500.
Self-insurance against loss of plane	80% cost 1 plane with engines	55,000.	Double S-38	80,000.
P.L. and P.D. insurance	.0018 a mile	300.	No change	300.
Passenger liability insurance (.00185 per pass/mile)	on basis 3 passengers per trip	1,100.	On basis 18 passengers per trip	6,000.
Interest on investment	4% on $75,000	3,000.	4% on $150,000	6,000.
		$304,700.		$305,400.
	Operating Cost		Operating Cost	
	per flying/mile	.20	per flying/mile	$ 1.45
	per flying/hour	90.10	per flying/hour	101.00
	per ton/mile of available payload	1.65	per ton/mile of available payload	.45
	per seat/mile available	.18	per seat/mile available	.05½
Estimated Available Payload			Estimated Available Payload	
	3 passengers & baggage x 800 lbs.	[illegible],100 lbs.	24 passengers x 170 lbs. each	4,[illegible]0 lbs.
	Mail and Express	700	Baggage x 80 lbs. each	1,920
			Mail and Express	1,[illegible]13
		1,[illegible]00 lbs.		6,943 lbs.
Estimated Cost of Equipment			Estimated Cost of Equipment	
	Aircraft - each	[illegible],000.	Aircraft - each	$116,000.
	Engines - 2 x $5000. each	10,000.	Engines - 4 x $6,000. each	24,000.
		$50,000.		$140,000.
	2 planes required	$[illegible]00,000.	2 planes required	$280,000.
	3 spare engines x $5,000. each	15,000.	4 spare engines x $6,000. each	24,000.
		$[illegible]5,000.		$304,000.

[illegible] 2002, December 1938

3369

[fol. 3370]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 355

(Letterhead of Pan American-Grace Airways, Inc.,
New York, N. Y.)

LETTER No. 342

SUBJECT VARIOUS

NEW YORK

~~FEBRUARY~~ 5, 1935
April

Mr. J. D. MacGregor
CRISTOBAL

BUREAU OF AIR COMMERCE

Further to my letter #338, George Rihl tells me that Mr. Trippe is endeavoring to have the conference scheduled to take place April 8 postponed for a few weeks in view of pressure of other business. It is proposed to have Andre Priester attend this conference, if necessary representing Panair and Panagra as an operating man.

We wrote to Director Vidal advising that you were at present in South America and that a copy of his communication has been forwarded to you.

EXTENSION TO BOLIVIA

Grace has approved the recommendations contained in your letter of March 25 with regard to the Tacna/La Paz service. Their only comments were of a relatively minor nature and pertain to the following two points:

1—They suggest that during the first few trips we arrange to have a portable radio set at the La Paz airport (similar to that installed at Cuzco or at the Cotabambas mine during the freight work) with a view to making doubly certain that the planes flying between

[fol. 3371] Tacna and La Paz will be able to establish radio communication with La Paz. While the service being rendered by Cia. Boliviana de Radio may be very dependable, it is felt that this extra precaution should be taken until tests have taken place in actual operation.

2—On Page 2 of your report dated March 25, the recommendation is made that the fare between Tacna and La Paz be established at $30. U. S. Currency or its equivalent in national currency *at the official rate of exchange*, the latter being accepted only from bonafide residents in Bolivia. It is assumed that when you refer to "official rate of exchange" you are speaking of the export rate which stands at about 17 Bolivianos per dollar. This assumption seems to be confirmed by other remarks subsequently made in the report. It is, of course, obvious that we could not afford to collect dollar rates in Bolivianos at the rate of 4 to 1, which appears to be the official rate established by the Banco Central in La Paz.

George Rihl is having Andre Priester study the operating angles of the report submitted. From a business standpoint, George Rihl has expressed the following views:

1—That if Cia. Boliviana de Radio accepts messages from the general public for transmission by radio, it would probably be a mistake for Panagra to make a deal with this station because that would establish a precedent which both Panagra and Panair have been trying to avoid during the last few years. All commercial radio companies established throughout the System would naturally want to handle our radio work, but the policy so far has been not to utilize their services but rather to install our own radio stations.

I discussed this point with Mr. Cogswell and after making inquiries he advises that the Cia. Boliviana de Radio seems to be owned about as follows:

Grace	25%
Government	10%
Banco Central	10%
Others	55%
Total	100%

[fol. 3372] Mr. Cogswell also advises that practically all of the income of the Company during 1934 was derived from broadcasts and from the sale of radio materials and that only a negligible part of the income originated in messages transmitted for the public. I have not as yet had an opportunity again to discuss this point with George Rihl and I do not know whether he still feels that we ought to establish our own station at La Paz regardless of the extra cost, in order not to create a bad precedent.

2—George Rihl thinks that the weight allowance should not be increased from 15 to 20 kilos as such action would also establish an undesirable precedent. It seems that only 15 kilos are allowed on the flights between Girardot and Bogota and between Tampico and Mexico City.

3—The depreciation on the automobile to be stationed at Tacna appears to have been charged entirely to the operation of the Tacna/La Paz service despite the fact that unquestionably the automobile will also be used in connection with other flights in and out of Tacna. This, however, is a minor point.

I expect to be able to cable you definitely with regard to the starting date of this service before this letter reaches you.

From your copy of our letter to SAGO 6296, you have learned that the Direction Finder supposedly shipped from Miami to Callao via New York around the middle of February was not forwarded and that it is not expected to be ready before the end of April and also that the additional

Direction Finder apparently will not be available much before June 1. I am assuming that if the Tacna/La Paz service is inaugurated on or about May 1, it will be possible to loan a Direction Finder to the Tacna radio station pending receipt of the ones now on order.

[fol. 3373] PARTY OF FRENCHMEN

I am attaching herewith copy of my letter to SAGO 6306 sago (originally numbered 6280). I cabled ~~Panagra~~ yesterday inquiring as to whether an S-40 could in their opinion make a round trip between Cristobal and Guayaquil, taking into account available operating facilities, and also as to whether Panagra could handle the French party in its own aircraft between Guayaquil and Buenos Aires.

A reply from Pansago received today indicates that the S-40 could make the trip from an operating viewpoint. George Rihl has intimated that Panair is planning to carry this party between Barranquilla and Cristobal in an S-40 and that, if we want the S-40 to continue to Guayaquil, he could make a charter rate of 1.80 per mile which would include crew's salaries and expenses and fuel, we to pay landing charges and other incidental expenses. It is understood that the plane would be manned by a regular Panair crew and that in the event of mishap the damage to the aircraft and the liability in connection with the crew would be for Panair's account. The passengers would be covered by our own liability policy.

As this proposed charter figure was given to me only this morning I have not as yet had time to study it. I want to point out that; as the passenger fare between Cristobal and [fol. 3374] Guayaquil is $110., the twenty Frenchmen would pay $2200. between these two points. We would in addition carry whatever other passengers might be available for the southbound and northbound trips. Another feature which should be taken into account is the possibility that unless we carry this party by air between Cristobal and Guayaquil they may not want to travel by air between Guayaquil and Buenos Aires.

In reply to our second inquiry, Pansago referred us to your letter to Cristobal dated March 20 in which you advised that it seemed ill advised to attempt transportation of 25 persons in one party along our route. I do not know whether, in view of the additional information now available, you are willing to consider this proposition at all.

EQUIPMENT FOR THE NORTHERN DIVISION

Mr. Roig has informed you with regard to the proposed arrangement under which Panagra would own one S-43 and Panair another for the purpose of operating the service between Guayaquil and Cristobal and a point beyond not yet determined on the Panair lines. The Panagra plane would fly right through into Panair territory and the Panair plane would fly into the Panagra territory at a charter rate and under terms and conditions to be agreed upon. It is believed that certain economies would be available to both companies under this plan.

[fol. 3375] In addition to the foregoing, Panagra would immediately charter one or two Commodores from Panair to operate one or both services between Cristobal and Guayaquil commencing at the earliest possible date at a charter rate and under terms and conditions to be agreed upon.

An agreement is now under study covering the Commodores as well as the S-43 charter. No additional details are available at this time.

STRIKE AND RIOT INSURANCE

In compliance with instructions contained in your letter #174, I am forwarding to Lima short-term Strike and Riots insurance rates to be kept in their files for possible use in emergencies.

/s/ G. VIDAL
G. VIDAL

GV:G

cc HRHarris

[fol. 3376]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 356

(Handwritten material)—(Top)

I have so much that I would like to write about but must leave it until I get on the ship for Chile.

(Handwritten material in margin)

Since dictating this I have your letter about schedule and I am discussing it with Shea. It looks pretty good to me. I thoroughly agree about the purchase of the second S43.

Letter No. 15

(Trip series)

On board "Santa Lucia",
May 5, 1936.

H. J. Roig, Esquire,
New York.

Dear Roig,

PANAGRA—COLOMBIA

Referring to my cable on this subject and your reply, I want to make it quite clear to you that in suggesting that the S-43 should fly overland I do not mean to suggest that any unwise risks should be run but rather that we should make a very cautious approach to the solution of the problem.

I do feel that it is of the most serious importance for us to get Trippe to agree to our going into Cali and that some method should be discovered for putting pressure on him in order to obtain his consent. I rather think that the discussion of putting our ships into Miami north and southbound or to get a hookup of our own to Panama might conceivably be used as a lever to bring him into line on some of these matters. I am not at all sure that it is a practical thing to stop in Miami and I am not sure, even if we con-

template doing so, whether it suits you to talk about it much until we have a definite plan worked out. On the other hand, I feel that even if you find that it is not practical to do this, the idea might be played up in a way that would frighten him into giving us a better schedule to Panama or allowing us to go into Cali, or both.

I am very glad to learn from your cable that you are getting Allen and Campbell to work on the Colombian idea and I am sure you will also find the means of bringing Trippe into line in one way or another. I will await developments of all this with great interest.

Very truly yours,

/s/ D. S. Iglehart

[fol. 3377]

Pan American World Airways, Inc. Exhibit 357

Pan American-Grace Airways, Inc.
135 East 42nd Street, New York, N.Y.

PRIVATE Letter No Sago 7420

Subject: REQUEST FOR CAPITAL APPROPRIATION.

LIMA
August 29, 1936

Panagra,
NEW YORK.

Your attention is invited to your letter No. 4445-P of August 10, 1936, to W. R. Grace & Company, Lima, on the subject of "Request for Capital Appropriation." This letter is not sufficiently complete in that it does not cover special cases, or rather, it covers special cases but in a way which is not satisfactory.

A particular instance has just arisen where it has been decided to purchase Kollsman altimeters as standard equip-

ment for our various radio stations throughout the Panagra line. Under the pending instructions the local Grace office is supposed to approve an R.C.A. form to be made out for purchase of these altimeters. Mr. Shea, the Grace local manager, has failed to approve this R.C.A. form as yet due to lack of knowledge of the reason for which these altimeters are required. Very obviously Mr. Shea has no knowledge of the requirement of these special instruments, particularly for use outside of Peru, and in future cases of Sago requisitions of this nature no time will be spent in trying to explain these matters to the local Grace people, but requisitions and R.C.A. forms will be forwarded direct to you containing the Sago section head's signature and the signature of the undersigned.

It is not often that such global purchases are required, and usually, as you know, the present method of handling R.C.A. forms has proven to be reasonably satisfactory.

(sgd.) H. R. Harris
H. R. Harris

HRH:KW

cc—Sago comms.
" Traffic
" Ops.
" Maintenance
NYX
2nd airmail

[fol. 3378]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 358

(COPY)

June 30, 1938

Mr. A. Garni
W. R. Grace & Co.
7 Hanover Square
New York City

My dear Mr. Garni:

I regret that I was engaged in a hearing when you called this morning. When I became available this afternoon your office reported that you had gone for the day.

I talked with Mr. Lamiell this morning concerning the proposed second direct air mail schedule between Miami and the Canal Zone. Frankly, this situation does not appear very encouraging.

In order to improve the service on the West Coast south of the Canal Zone we authorized the so-called La Paz "cut-off" several months ago, which entails an annual cost of about $261,000. In addition, we established a direct schedule from Miami to the Canal Zone, at a cost of about $228,000 per annum.

Notwithstanding these additional and expensive services there has been very little improvement in the schedules and practically no mail benefit. To authorize another direct service from Miami would cost approximately $162,000 a year additional; which would be offset to the amount of about $72,000 if the service now being maintained between the Canal Zone and Barranquilla is abandoned. Even with this offset of $72,000 a year the Department would be put to an additional expense of around $90,000 a year.

This, added to the $261,000 for the La Paz "cut-off" and the $228,000 for the one direct schedule from Miami to the Canal Zone, would make a total cost of $579,000 per year.

Unless some substantial benefits are to be obtained through a second direct schedule between Miami and the Canal Zone I doubt whether such an additional service, with the attendant cost, would be justified.

I am leaving tomorrow for a short vacation and I suggest you confer further with Mr. Lamiell concerning possible improvement in the service.

Sincerely yours,

Harllee Branch
Second Assistant
Postmaster General.

[fol. 3379]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 359

January 19, 1939

C. V. Whitney, Esq.,
Hobe Sound,
Florida

Dear Sonny,

I have just received your letter of yesterday.

I have been over the minor changes which Mr. Roig and Mr. Trippe suggested to the memorandum that you and I agreed upon. They seem to be in order and Mr. Roig is taking to Mr. Trippe a clause "5" which I have endeavored to revise, as per attached, in the sense of our telephone discussion. As you indicate, Mr. Roig will take this to Mr. Trippe as my final word in the matter, and I hope that now we may proceed to carry out the arrangement.

As I indicated to you on the telephone, we will consider the memorandum regarding adequate service, which Mr. Roig and Mr. Rihl had tentatively agreed upon, as merely an indication of a general viewpoint and neither will consider that it is to be followed to the letter.

The thing that pleases me in this whole matter is that your mind and my mind have met; that we understand

exactly what we are driving at; and, I feel entirely confident that we will see that all friction is eliminated and that everyone [illegible]nds his effort to constructive accomplishment, the results of which are bound to be successful.

Yours sincerely,

(sgd) D. S. IGLEHART

[fol. 3380] 5. Any disputes arising under this general plan and every phase thereof, including interpretation of "adequate direct connecting service" referred to in paragraph "2" above, which cannot be settled by the Board of Panagra, shall be determined by Messrs. D. S. Iglehart and C. V. Whitney. If they are unable to agree regarding interpretation of "adequate direct connecting service", Panagra may apply for the certificate referred to in paragraph "2" on the conditions therein stated.

(*Pencil note*: Arbitration clause submitted pursuant to Mr. Whitney's letter of January 17, 1938.)

[fol. 3381]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 360

PAN-GRACE

Edited by Mr. Rihl.
noon, Jan. 31, 1939. ma

1. One of the Grace directors of Panagra (who shall also be a director of Grace) will be elected President of Panagra and placed in responsible charge of the management of the company. If at any time the Company's affairs are not being conducted to Pan American's reasonable satisfaction, then the President will resign.

2. Pan American will inaugurate on or before April 1, 1939, a second direct trip between Miami and Cristobal, and will maintain an adequate connecting service between Miami, or some other U. S. port agreed upon, and Cristobal connecting with Panagra's through sched-

ules. If at any time Pan American's connecting service between Miami, or some other U. S. port agreed upon, and Cristobal, is not operated to Grace's reasonable satisfaction, then Pan American will cause its directors on the Board of Panagra to take such action as will permit Panagra's applying to the C.A.A. for a certificate to operate this connecting service, provided that Pan American shall not be in any way precluded from maintaining before the C.A.A. that its service is satisfactory and that Panagra's application should be denied.

3. The foregoing is to be brought informally to the attention of the C.A.A. for any suggestions which it may desire to make.

4. It is agreeable to Grace that Pan American continue to receive the share of service fees it is now receiving provided Pan American gives satisfactory service.

4a. Grace and Pan American agree that Pan American-Grace shall continue to pay in the same proportion service fees as now being paid, provided that the services rendered by the respective parties are satisfactory to Pan American-Grace.

(Note) Mr. Roig feels that #4a would be acceptable if #4 as originally written is not considered as expressing the intention of both partners, i.e. both partners are expected to give all service and cooperation possible commensurate with their respective organizations.

5. Any disputes arising under this general plan and every phase thereof, including interpretations of "adequate direct connecting service" referred to in Paragraph 2 above, which cannot be settled by the Board of Panagra, shall be determined by Messrs. D. S. Iglehart, President, W. R. Grace Co., and C. V. Whitney, Chairman, Pan American Airways Corp. If they are unable to agree regarding interpretations of "adequate direct connecting service" they shall appoint an arbitrator who [fol. 3382] shall decide whether Panagra may apply for

the certificate referred to in Paragraph 2 on the conditions therein stated. In case it should be impossible for Messrs. Iglehart and Whitney to act as arbitrators, as contemplated herein, the dispute or disputes in question shall be submitted to the American Arbitration Association for arbitration.

(Note) The underlined part of #5 will be difficult to have accepted by W. R. Grace, but believe otherwise it would be acceptable and not contrary to the conversations Roig and I have had. However, Roig feels that it would be better for both sides to avoid setting up a method of procedure to be followed in case of the unavailability of either Messrs. Iglehart or Whitney.

(Note) Mr. Roig feels that it is most inadvisable to put a time limit on the agreement, and Mr. Friendly states that it is not at all necessary from a legal standpoint. Roig points out that the document at best is a very general plan to set up machinery that can be used in case of disputes.

(Note) Mr. Friendly feels that the wording in #5 as above expressed would cover the case of resignation of either Messrs. Iglehart or Whitney.

[fol 3383] "Any disputes arising under this general plan and every phase thereof, including interpretations of 'adequate direct connecting service' referred to in Paragraph 2 above, which cannot be settled by the Board of Panagra, shall be determined by Messrs. D. S. Iglehart and C. V. Whitney. If they are unable to agree regarding interpretations of 'adequate direct connecting service', Panagra may apply for the certificate referred to in Paragraph 2 on the conditions therein stated."

. . . . . .

The above paragraph was read to me on the telephone on Wednesday, January 18, 1939, by Mr. Harold J.

Roig, and was stated by him to be the substitute text for the arbitration clause in the memorandum agreed between Mr. Iglehart and Mr. Whitney. Mr. Roig further stated that Mr. Iglehart had not intended that paragraph 5 of the memorandum should apply to the provisions of paragraph 2, but that when Mr. Whitney stated to Mr. Iglehart that he, Mr. Whitney, had supposed that paragraph 5 did apply, Mr. Iglehart had worked out with Mr. Whitney the foregoing provision so as to bring about arbitration under paragraph 2 of the memorandum under discussion. Mr. Roig offered to have his secretary dictate this provision and asked for a decision in the morning.

Mr. Roig's secretary dictated the above paragraph to me on the telephone on January 18, 1939 and I immediately furnished copies to Messrs. Trippe, Rihl and Friendly, who were in conference in Mr. Trippe's office.

[fol. 3384]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 361

PRIVATE

March 8, 1939

Memorandum To: Mr H. R. Harris

Following your instructions, the following observations on last year's results are submitted. In addition I would like to make several general observations in which you may be interested.

According to data furnished me by SAGO Traffic, the total Panagra income from revenue sources in which SAGO Traffic is concerned, shows a slight improvement in 1938 over that obtained in 1937 and, therefore, all previous years. Herewith a comparison of the 1938 results with those of 1937.

	1937	1938	Difference
Passenger Traffic	$682,989	$ 653,477	$29,512
Baggage Traffic	33,788	29,608	4,180
Foreign Mail	158,047	180,757	22,710
Air Express	55,624	71,347	15,723
Charters & Freight	34,681	78,332	43,651
	$965,119	$1,013,521	$48,402

Although a small increase in total revenue was secured over the previous year, the picture as a whole is not particularly pleasing, since the increase can be accounted for largely by two factors which cannot be counted upon to save the situation year in and year out, viz., foreign mail and freight flying. The mainstay of our revenue aside from U. S. mail receipts is, of course, and probably always will be, passenger traffic, and in this department in the face of the figures above, we do not appear to have done very well in 1938. Excess Baggage revenue, of course, closely follows passenger revenue, and since a decrease was noted in passenger revenue, it is only to be expected that the same holds true with excess baggage traffic. Air express shows an improvement and it is believed that this traffic will continue to progress more or less satisfactorily despite a good many factors which are and will continue to hold it back to some extent. Foreign mail revenue also shows an improvement, but the results in this department must be qualified as below. Charter and freight flying naturally show a big increase over the previous year owing to the Aramayo job and a number of charters sold in Bolivia. However, as noted above, this traffic is not a dependable source of revenue.

[fol. 3385]

PASSENGER TRAFFIC

An analysis of passenger traffic results offer some encouragement inasmuch as only one section of the line seems not to be showing a certain amount of improvement, the Eastern Division being only one of the four subdivisions which did not show an improvement over the previous year.

However, losses recorded in the Eastern Division were so large as to offset by a considerable amount the improvements noted in the balance of our mileage. While everything considered, the Northern sections of the line did fairly well in 1938, the immediate problem would appear to be in the Eastern Division and until we can obtain some sort of revival there, our principal efforts should be concentrated in that sector.

Several major factors and numerous minor ones contributed to the poor showing obtained. During the year, two of five transandean services were discontinued, which certainly removed some of the sales opportunities previously enjoyed, though it is doubtful that this factor will account for a very large part of the loss in volume. Undoubtedly the principal cause of our trouble lies in the fact that both Chile and Argentina have for some time been experiencing an economic depression which has removed the necessity, in some cases, and in many others the actual ability of the local people to travel internationally not only over our lines, but by any other means of transportation. This is particularly true in Chile where a study of passenger traffic data of all kinds reveals the fact that very few Chileans are traveling beyond the borders of their own country. It should be noted here, too, that a considerable part of the transandean traffic enjoyed in former years consisted of travel by Round South America tourists. The volume of this traffic shows a marked slump during 1938 and of course, this has a very real bearing on the final returns. As you know, we have several plans afoot which we hope will return some of this traffic to us.

It seems probable that no marked improvement in the Chilean situation can be expected for some time, and since we really have little hope of improved Chilean patronage until this takes place, it seems to me we should spend real efforts where there is presently a fair possibility of obtaining satisfactory results, in other words, Argentina.

There is no reason to believe that Argentina will not soon show some signs of pulling out of their present difficulties, and when this occurs, we will naturally recover

some of the volume we have lost. Meanwhile, there are a number of things we can do to help ourselves. Most of the things I have in mind have been rather thoroughly discussed in correspondence with this office, and there does not seem to be any necessity to go into much detail here. However, [fol. 3386] there are two general aspects of the situation which require some very real consideration here in New York inasmuch as there is little SAGO Traffic can do about them further than what has been done already. The first of these is the tariff differential which exists in our rates in the Argentine Chile sector as compared with those of the German and French combination. Even without the rate reduction which they placed into effect in December 1938, the competitors have, in the course of that year, succeeded in booking just about 50% of the purely local business between the Argentine and Chile and vice versa. How much of this traffic was fully paid for we have no way of determining, but it seems entirely logical that they did succeed in some way in increasing their traffic during the year. With the present greatly reduced rates and with the same frequency of service offered by ourselves, that is, three times a week in both directions over this mileage, it is hard to see how they will not eventually cut very heavily into our patronage. So far we have no data which definitely proves that their rates are causing us any trouble, but they have, so far as our information goes, been in effect only one month. It cannot but seem entirely probable that we will not be able to hold our own in the face of competition of this sort, and a rate reduction down to their level, or at least approaching it, seems almost inevitable. Despite the fact that we do have better planes and probably a better all around service between Buenos Aires and Santiago, we might just as well come to the correct conclusion that this is not a governing factor to the extent that low rates are, at least where comparatively short-haul travel by Latin Americans is concerned.

Actually, both the Germans and the French operate quite fair services between these two points. I do not believe that we have actually any right to expect the lion's share of this traffic merely on the basis that we believe we operate a far superior service or that we are more efficient operators

than the Europeans. This idea is definitely not shared by the traveling public to the extent that they will favor our services,

Everything considered, it seems that we will, if we expect to retain our present position or to improve it, inevitably have to make some adjustments in our transandean tariffs. Frankly, most of us concerned with selling this travel are of the opinion that the present rate of $100.00 is too high and could stand a considerable reduction. There is considerable data on this subject available in this office and it is suggested that at this time our course of action regarding possible future tariffs should be determined, in order that when and if we are convinced, as I am sure we will be shortly, a change must be made, the same can be done promptly and without having to go through the whole thing all over again. The other factor, which I am convinced is directly reflected in the income results in the [fol. 3387] Eastern Division is the poor service we offer on the Argentine portion of the Diagonal between Salta and Cordoba. There is a great deal of potential Panagra revenue in this sector but we will never realize on it until we do something about improving the service. My own observation is that all we need do at the present time is to put on one more service between Salta and Cordoba to connect at the latter point with one of the transandean services. However, it may be that some adjustment will be required in the tariffs in this section, particularly the round trip tariffs. The addition of another service over this mileage should certainly result in a tripling of present traffic, but it is quite possible and even probable, that the outcome will be even better. Here again we are merely fooling ourselves when we stress our superior service. For many years the Argentines in this section of the country have used their trains and although they are uncomfortable, they know of nothing better and are perfectly content to continue using them. I do not believe that they will remain content with this state of affairs if they actually experienced what we have to offer, but this will hardly happen until we offer them something they can use at a price they feel they can pay.

In view of the tremendous possibility in this market for us, everything within reason should be done to popularize the service, even if for a year to two it costs us money to do so. I think we can profitably, over a period of time, increase the number of services and reduce the round trip rates until we have built up a comfortable patronage. Once we get these people to flying, it is unlikely that a gradual increase in the tariffs to present levels would send them back to the trains. This may not be, of course, the best solution of our problem, but it at least should go a long way toward getting a reasonable number of these people into the air, and that is certainly the first consideration at this time.

This matter has been discussed at length on many occasions but it might not be amiss to point out again that under present circumstances on the Argentine section of the Diagonal our chief stock in trade—speed—simply does not exist since, except for a very few hours during the week, travel between any of the points on the Diagonal may be accomplished much faster by trains or busses. It boils down to the fact that all we have to offer in this market is a theoretical superiority in service—in other words, comfort, in which the people are not particularly interested since to date they know nothing about it.

The many minor problems existing in the Argentine are all receiving the attention of SAGO Traffic and the local agents, and some small improvement in local traffic can normally be expected therefrom.

[fol. 3388] As for passenger traffic on other parts of the line, last year saw some slight improvement over traffic in previous years as pointed out above. However, we know that the Germans have cut into our local Peruvian volume and the prospects are that they will continue to do so as long as the present rate differential between competitive points exists. In addition to what they are doing to our traffic where we now compete, that is, principally between Lima and Arequipa, it is probable that the same sort of situation will soon exist in the North where we understand the Germans intend to extend their services as far North as Guayaquil, connecting there with SEDTA and finally

with SCADTÀ in Colombia. Thus they may not only give us trouble with local Peruvian traffic but also with international traffic to the North.

Merely as an indication of what this competition may amount to in the future, herewith some figures on their traffic between Lima and Arequipa as compared with our own during the first six months of Lufthansa operation over that mileage.

	May	June	July	August	September	October
Panagra	49	52	70	66	54	56
L'hansa	29	43	57	64	63	88
			Accumulated Percentages			
Panagra	63	58	57	55	53	50
L'hansa	37	42	43	45	47	50

While the above figures do not indicate a marked drop in our own traffic, they do indicate that Lufthansa is definitely increasing their percentage over their total traffic, which is really a serious angle of the proposition. Naturally, they are getting some of Faucett's business as well as ours, but we are definitely not holding our own in this trade.

It is interesting to note that these people were able in six months time to draw up even with us, despite the fact that our schedules and equipment are far superior to theirs. Lufthansa departs from Lima and arrives at Lima at very inconvenient hours compared to Panagra arrivals and departures. This factor plus definitely inferior equipment has not overcome the advantages they secured through the use of more convenient tariffs, and proves again that short-haul traffic is interested in price to a greater extent than they are to comfort.

Since it appears that Lufthansa really intends to extend their line to the North, now appears to be the time [fol. 3389] when we should decide what our course of action should be in meeting their competition when it comes. It seems very unwise to await the actual start of operations

of their line before deciding what we will do at that time, and I believe that we have sufficient data in our hands now to predict what the results will be in the event that we decide to do nothing at all.

For some reason traffic between the Canal and Colombia and vice versa, has not lived up to expectations. The reason for this is unknown to me and results are very surprising in view of the popularity which this service enjoyed when we first opened up the Cali territory and indeed right up to the time service was suspended in August 1937. The Cali Agents have pointed out that there is a rate differential existing between our service and that of other combinations, and this may, of course, account for our lack of volume here. I understand that Mr. Muhlfeld has recently paid a visit to this sector and will probably be able to report on what should be done to improve matters.

AIR EXPRESS

While air express traffic continues to show its accustomed yearly 40% increase, much remains to be done about it in several places, notably Chile, where exchange control conditions practically eliminate any real chance for improvement. It seems quite within the realms of possibility that some means might be found to overcome this particular sort of handicap, and in Chile, as elsewhere, the potential revenue is rather large, someone with a thorough knowledge of the local situation might profitably spend some time on it. I believe Mr. Simon, given the time, might be able to turn the trick.

Mr. Muhlfeld reports, on January 11 in a memorandum to you, that between November 29 and the date of his memorandum we hauled more than two tons of air express in to Cali from the North, principally I take it, sea air traffic from Cristobal. This has been accomplished almost entirely without selling activities on our part since we are not permitted to advertise this type of service. As you know, SAGO Traffic has never agreed to this policy attitude, in view of the actions of other carriers in this field and because we have convinced ourselves that this particu-

lar type of traffic travels only because of the sea/air facility and in no way detracts from the through all air services offered by the system.

Unless the considerations which have promoted our present policy regarding sea/air express are very strong indeed, I am sure we are passing up a very good opportunity [fol. 3390] to bolster up our express revenue by not pushing the sale of this traffic.

A possible and very likely explanation of the comparatively good showing made by express traffic lies in the fact that throughout the year we employed over a large section of our line, a modified air express tariff, which opened up several new fields for exploitation, which fields were completely shut off from us when the former tariff was in effect. The bulk of this improvement is accounted for by the movement of express out of the Argentine to Chile and Peru. Argentina, compared with most Panagra countries, is a seller's market whereas most of the others are importers of the type of goods which normally travels by air. The new tariff is favorable to shippers and consignees of heavier than average merchandise and the situation is in the process of being exploited by our express people in the Argentine and nearby countries. We have a similar situation existing in the North where exports from the Canal could be considerably increased, possibly if a more convenient tariff were in effect, and as you may or may not know, the new tariff referred to here is in effect North to Ecuador. Since we now have a certain amount of available space on our Southbound planes at Cristobal, I believe it would be worthwhile to apply the new tariff in that sector at this time.

For some time now we have not had anywhere along the line, a solicitor who devotes his entire time to the exploitation of our express traffic, nor have we had in SAGO Traffic any individual who is principally concerned with this phase of our business. I believe that the results we are now obtaining in express traffic are derived from the concentrated efforts we made to push the service beginning in June 1936 and extending for a period of about a year and a half. We at least succeeded in arousing a little in-

terest in this traffic amongst our agents and I believe that the work can be profitably continued.

Inasmuch as intra-Panagra express statistics have not been generally available up to now and have never been included in the system statistics, which are published every month, you might be interested in examining the following data on purely Panagra shipments during the month of January 1939.

Country of Origin	*No. of Shipments*	*Weight (Kilos)*	*Weight Charges*	*Valuation Charges*
Panama	19	189.5	$197.03	$ 7.48
Colombia	11	30.0	43.39	1.10
Ecuador	40	107.0	97.27	14.60
Peru	42	62.5	80.01	4.20
Bolivia	3	1.5	3.00	0.30
Chile	22	148.5	227.17	6.12
Argentina	69	409.5	347.44	11.01
	206	948.5	$905.31	$44.81

[fol. 3391] It should be remembered that January is normally and naturally not a particularly good month for air express anywhere on the line, and therefore, that these figures though interesting, are likely to be somewhat on the conservative side if used to project this year's probable results.

FOREIGN MAIL

Although the Green Books, the only financial data normally used by SAGO Traffic, show a $22,000 improvement in revenue from this traffic in 1938 as compared with 1937, it now appears that all of this improvement, plus a considerable additional sum is a result of certain bookkeeping adjustments, and that far from actually obtaining a $22,000 increase, we record in the White Books a $25,000 decrease. Up to this time SAGO Traffic has never been supplied with any such statistics, which can tell us where and why an increase or decrease in mail revenue takes place. I believe

we are now getting certain data which will give us this information. Meanwhile a considerable part of the decrease is accounted for in short returns from the Argentine, where we received some 58,000 Argentine Pesos less in 1938 than we did in 1937. This is no doubt due in part to the decrease in our transandean frequency as well as to the additional service to the States up the East Coast which was inaugurated by Panair in December 1937, and thus was in operation throughout 1938. Another explanation of this decrease can be found in the loss of European mail from Peru to the new Lufthansa service which started operations in May. I am unable to say just what this amounted to, but presumably it comes to a respectable sum.

Frankly, SAGO Traffic has never been particularly concerned with foreign mail traffic, as it has somehow been regarded as outside of our sphere. As Mr. Vidal points out, however, revenue from this source is a matter of great importance to the Company and no doubt, SAGO Traffic should have a Mail Department under the direction of someone who is not only thoroughly familiar with the subject, but able to increase the traffic.

CHARTER AND FREIGHT FLYING

As no freight flying is contemplated for 1939, we cannot count on any revenue from this source during this year. There will always be a certain amount of charter flying, however, and presumably we will obtain about as much revenue this year from this source as in former years. However, the use of charters by the public seems to depend almost entirely on emergencies which arise from time to time, and over which the sales force would appear to have but little control.

SAGO TRAFFIC

Panagra's sales direction center, SAGO Traffic, is undoubtedly understaffed at the present time, particularly [fol. 3392] since such a large amount of time must be spent in connection with the direction of the department's budget. While it is true that the experience gained in this work

during 1938 has been of inestimable value to all who are concerned therewith, the time seems to have arrived now to delegate this work to other than those who should primarily be concerned with increasing the Company's business.

In view of the amount of revenue obtained from foreign mail payments, someone, as Mr. Vidal has pointed out, should be assigned definitely to the promotion of this sort of traffic, and to familiarize himself with all of the conditions on which is promotion depend. We have never had anybody in SAGO Traffic who has had the time or the facility to really do anything in this connection. We actually received a considerably smaller sum from this revenue source in 1938 than in 1937, so now would appear to be the time to seriously think about putting somebody on this job.

At this time we have no employee who can devote very much time to the promotion and direction of our air express traffic. This traffic was definitely unsatisfactory from the time the service was inaugurated until 1936, when it started showing some improvement and has steadily gone forward ever since. While air express is undoubtedly a "natural", I think it fair to assume that some part of the improvement in this traffic can be attributed to the assignment of someone to work on it exclusively, which transpired in 1936. It might also be reasonable to expect that it will not continue to progress unless we again place somebody in charge of this department to make sure that express solicitation, which is a highly specialized job, is revived.

Budget direction in 1938 must have taken up at least one-third of the General Traffic Manager's time, not to mention that of others of his staff. This is true to the extent that on practically every project originated during the year a delay occurred in carrying it through to conclusion, due entirely to the fact that, at certain times of the month, all other work had to be suspended in order to get our monthly budget work out of the way.

One or two general observations regarding the Panagra picture as a whole may be in order here.

It is my frank opinion that after ten years of operation, Panagra finds itself, so far as the Sales Department is concerned, miserably represented throughout the majority of its territory. This may not be at all true and probably is not where operations and executive affairs are concerned, [fol.3393] but in matters of this type the local agency manager or a competent assistant handle them. Not so with sales. This branch of work, which is certainly not unimportant, is left as a general thing, to a local employee of a not-too-high type. Where this condition obtains, and it does rather generally throughout the line, results have been very poor indeed, though probably no poorer than might have been anticipated long ago. SAGO Traffic has spent much time and effort in trying to convince various agency managers to assign better personnel to its work, but so far with comparatively little success. My own experience has been that the local managers do not believe that the amount of extra business a better staff might obtain would, in agency commissions, justify an increased salary expense. This, almost invariably, has been the excuse given when we have found it necessary to demand better attention from the smaller agencies. On several occasions it has been definitely pointed out to SAGO Traffic that despite what might be heard to the contrary, our West Coast agents are very well paid indeed for handling our work. If this is the case, it occurs to me that the method of compensating them might be improved upon from the Sales Department's point of view. If the agents regard their Panagra representation and the direct compensation therefrom as being relatively unimportant as compared with some of their other activities, but are nevertheless properly compensated, would it not be a good idea to find some way to rectify their ideas in this regard? One way of doing this might be to pay them as, if and when they accomplish something for us and only then. This is the way we are presently operating along the Diagonal in Argentina and except for the stations where we obviously have the wrong man acting for us, it works very well.

SAGO Traffic regards for example, the Salta and Tucuman representatives far superior to most of those on the West Coast in similar posts. There is plenty of reason for this feeling. These two agents are always on their toes, know all there is to know about our rules, regulations, what we have to sell and how to sell it, because their only hope of making anything out of their Panagra representation lies in their ability to obtain business for us. If these agents have not so far set the world on fire with sales, it is certainly not because they have not tried, but almost entirely because we have given them, up to this time, so very little to sell.

Another indication that we may not be following the right plan as regards dealings with our agents, can be drawn by making a comparison of the results obtained in Peru by Faucett's agents as compared with those obtained by our own. Certainly few of Faucett's representatives have anything like the standing in their respective communities that our own agents do. They get better results and there can be no question but what they do and have done for years, simply because they know that they [f. l. 3394] must pay attention to their representation, or, in other words, sell, if they mean to stay in business. This is not so vitally important to our own agents, and the results are only what we might have expected, which is to say that Faucett out-sells us by a wide margin.

With but very few exceptions our Agency managers and sub-managers are unable, as pointed out above, to take a long view of the situation and remember that in the long run their Panagra representation really is a rather good thing. On the other hand, they do keep a very close watch on current receipts and there is some justification for this reason in believing that our sales work is for them a relatively unimportant matter. Where this is not the case, for example, in Cali, Colombia, we are, in my opinion, quite ably represented, although in the case of this particular station the staff is comparatively small. The personnel that they have assigned to our work, however, is distinctly high class. To some extent the same might now be said of the Guayaquil Agency, where a competent foreign

employee is directly in charge of all phases of Panagra work and does not forget that sales are a very important part thereof.

Other considerations may of course, make it impossible to follow the course suggested above, which is paying for actual accomplishments when they are effected and not at any other time. If it is impossible to follow a plan of this kind, then some other means should be found to make it very clear to our agents that we expect the kind of attention to our sales work as they give, for example, to Grace Line sales. In a great many of the Coast agencies the Grace Line has succeeded in obtaining services of the very best employees of the individual agencies, in some cases having supplied Grace Line trained men to the agencies, whose salaries, we belive, are nevertheless for the account of the local agency.

Merely in passing it might be worthwhile mentioning here that no later than yesterday, while lunching with a former passenger, whose company gives us a considerable amount of business first and last, I was frankly told that the attention this man received on the West Coast—and apparently the attention shown several of his acquaintances who have made the same sort of trip he had—was markedly inferior to that received on other sections of the system. I personally have heard the same story so many times during the past two years, that there must be some truth in it unpleasant as it is to believe it. However, in the last analysis it is only reasonable to believe that if our routine affairs are not handled to our satisfaction, as they certainly are not, there is no reason to believe that this particular phase of the work is handled any better. Indeed there seems to be quite a sufficient amount of evidence to support the theory that we are not up to scratch in handling passenger traffic, and I believe that the failure [fol. 3395] occurs largely on the ground and not in the air.

Another matter which may be in order to touch upon is our almost complete failure in obtaining the cooperation of non-traffic department people in the Company in

effecting sales, with reference particularly to the piloting force. With a few outstanding exceptions, our pilots neither know nor do they apparently care anything about the Sales Department's problems, to say nothing of their general inability to answer the simplest questions about such fundamental things as tariffs. Pilots certainly get around socially with a great many more potential customers than do any other class of employees, and they could, if they would, furnish the Sales Department with many a good lead, if not with many an actual sale, and the same holds true of many other non-piloting employees. The truth is, unfortunately, that for many years this apathy towards sales has extended even to a general feeling of contempt for the Sales Department itself, and while some improvement in this respect has been noted latterly, it is still true that much might be done to secure further improvement and actual interest in many of the phases of the Sales Department's work, and this, we believe, would result in increased sales. The Sales Department cannot deny that it is itself largely responsible for the attitude described above. Recognizing this fact it is trying to interest non-Sales Department employees in its work, but the cooperation of the heads of all departments is certainly a requisite to any real success in this endeavor.

The whole matter may boil down to the fact that we definitely lack an efficient personnel department. It has been my observation in talking with employees throughout the line that a large percentage of them are not altogether sold on the Company. A certain amount of "grousing" can, of course, be expected, but I believe we have far too much of this sort of thing in Panagra.

Probably few have any real complaint and could generally be made to see the light without too much difficulty, but regardless of the validity or invalidity of an employee's "gripe" it seems obvious that the thing must be cleared up before the Company can expect to receive the loyal and efficient service it has a right to expect from all employees. A really competent personnel supervisor could do a great deal for Panagra and I am sure that every employee would appreciate having a "friend at

court" to whom he would feel free to go with many of the problems which mean so much to the individual and are liable to have such a marked effect on his work.

G. P. Smith

GPS:BR

[fol. 3396]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 362

4314-P

NEW YORK COPY

SPEED-UP SCHEDULE STUDY.

LIMA, August 7, 1940

Pan American-Grace Airways, Inc.
NEW YORK

In connection with your letter No. 7437-Private, this will confirm our Palmetto cable No. 5 sent to you on August 6th.

As regards the idea of an operation making Miami Cali and Cali Lima in one day runs in both directions as compared to the other combinations of Miami Cristobal and Cristobal Lima in one day runs, the former, of course, from an operating standpoint gives us more leeway than the latter through comparative looseness of schedules. However, as pointed out in our cable, we feel we should undertake this schedule only on the basis of our going ahead as promptly as possible and installing the facilities which will permit a Cristobal Lima and Lima Cristobal operation in one day runs on delayed schedules. Our reasoning in this connection is that under such Miami Cali schedule the frequent delays that will occur northbound due to winter weather in the south can only be absorbed by the operation of Lima Cristobal in one day. Likewise, we should recognize the fact that during the rainy season in the north that afternoon departures from Cristobal for Cali will introduce delays as has been experienced in the past in entering Cauca Valley, and on such occasions a delayed schedule operation of Cristobal Lima following day will place the

trip back on schedule. Also, it is felt that with the early departure that this schedule will call for out of Miami that we can expect delays due to late arrival of connections at Miami, etc. with resulting arrival in Cristobal too late for making the Cristobal Cali deadline departure.

The second point made in our cable No. 5 regarding elimination of Trujillo was made in view of the Cristobal Lima delayed schedule operation plus the generally unsatisfactory field conditions there and we recommend that you give us approval to arrange elimination of this stop prior to placing this speeded-up schedule into effect.

The third point in our cable concerned the important question of handling mail transfer in the Canal Zone. Based on present practice and experience we are somewhat doubtful about the ability to make this Miami Cristobal flight in time to permit working of the mail and still allow sufficient time for us to depart south from there by 1:30 P.M. EST. It now requires the post office two and a half hours to work this mail and even if a post office was established at the airport to save the time of round trip transportation between the airport and town it would still require a two hour period to handle it the way it is now being done. You understand, of course, that this situation is not necessarily the case on northbound flights through the Canal Zone because on such occasions and on basis of all the northbound mail being taken through to Miami so as to permit complete working and consolidation at that point, then the Canal Zone post office only requires this mail for purpose of recording the weights which takes only twenty to thirty minutes exclusive of present transportation time between field and post office. This question of working of mail by Cristobal post office does not seem to be one of inadequate personnel to handle it. As you know, the Canal Zone post office has gone into this phase of it rather thoroughly in the past and have worked numerous systems on the number of men and method of handling to reduce this time to a very minimum. Briefly, from our observation the matter seems
[fol. 3397] to be one that requires just so much time to record each registered letter and consolidate the packets and

sacks for the individual points and that little or no reduction in time for doing this in the Canal Zone can be anticipated so long as the above requirements for handling this mail in this fashion are in effect.

The above remarks, of course, recalls the system used a few years ago when we were making Barranquilla Guayaquil in one day runs in both directions. You will recall, under this schedule, that the U. S. post office completed arrangements to station five men in Barranquilla to handle this mail during the overnight stops there as the schedule did not permit sufficient time during the transfer in Cristobal to work the mail. This idea may immediately bring to mind the thought of the U. S. post office making some such similar arrangement to handle the mail during the overnight stop in Cali under the schedule proposed in your letter under reply.

While this above problem is a matter which will fall largely onto your office to handle and work out the details, suffice it to say here from our view point, there seems to be only two solutions to this mail question which will facilitate our operating the Miami/Cali and Cali/Miami schedule in one day runs. First would be the elimination of *any* requirement for the Canal Zone post office to work the mail and that all this time and work involved be absorbed at the Miami end by the U. S. post office at that point. Second, the arrangement in Cali for handling the mail as afore mentioned.

Irrespective of the above two ideas, the question of having a U. S. post office branch on the airport at Canal Zone is still strongly emphasized because even though the function of such post office would only be to record the weights of the intransit mail the time saved in transportation to and from the airport to down town post office is most important.

After a review of the combinations of days of departures from Cristobal southbound and Buenos Aires northbound, as given in your letter, we advised in words 1 to 8 of our cable 5 that we favored acceding to the proposal made by Panair and covered in the third paragraph of your letter.

Certain opinions on these days of operation will be expressed here for your perusal as they concern our operating problems.

The days of departure from both Cristobal southbound and Buenos Aires northbound are considered excellent from standpoint of traffic movement. As you point out, of course, the inability to make a turn around in the Canal Zone on one trip per week under this proposal will require our stationing an extra plane and crew in the Canal Zone at all times. This, of course, has its bad features, but as pointed out in our study, attached to our letter No. 4100 P that unless we could have a full day layover in Canal Zone between turn around, that an extra plane and crew would be required. In other words, even though the days proposed by you in first paragraph of your letter were used, we feel that at least during the winter season, May to October, that we would have to keep an extra plane and crew in the Canal Zone to avoid southbound delays being introduced into our operations as result of northbound delays which may be expected to be frequent during winter season. Also, the extra plane and crew would eliminate the question which may arise as to excessive flying time for flight crews on the [fol. 3398] turn around at Cristobal without layover on this schedule. This round trip flying time without layover would, as you know, amount to 25 hours in a 60-hour period and might give rise to excessive flying without layover period. Therefore, we do not feel that the disadvantage of the requirement of an extra plane and crew is as great as it may appear on the surface, although the expense item of keeping an aircraft and crew at Cristobal will be appreciable. Naturally, the best combination would be a schedule which would give a full day layover between arrival of northbound trip and departure of southbound. We are assuming, of course, that all these possibilities were thoroughly exhausted by yourselves and Panair and that the proposal they made was the best that could be performed taking the problem of their other services and equipment into consideration. However, looking at a possible combination we wondered if this one was considered:—

Leave Miami southbound Tuesdays, Thursdays and Saturdays same as that shown in your letter which is the most desirable from our standpoint.

Leave Buenos Aires northbound Sundays, Tuesdays, Fridays, arriving Miami Mondays, Wednesdays, Fridays.

These departures are not the best days from Buenos Aires standpoint of traffic for us, unless there is no Saturday departure via east coast, but it does correct some of the operating defects mentioned in the Panair proposal in your letter in that it:—

(a) Permits them to operate the Cristobal Miami run without round trip in one day in 307 even though this would keep their 307 in Cristolal more than in Miami.

(b) Would give us full twenty four hour layover in Canal Zone between our northbound arrival and southbound departure with its advantages already mentioned.

The fourth and fifth points mentioned in our cable No. 5 are sufficiently clear to require no further explanation here.

We await further word from you on this matter with interest.

(Sgd.) T. J. K.
T. J. Kirkland

TJK:mh

cc: NY(2)
Sago

[fol. 3399]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 363

NEW YORK COPY No. 5269 Private

TRAFFIC PAYLOAD AND SCHEDULES

Lima, March 1st, 1941

PANAGRA
NEW YORK

Attention: Mr. H.J. Roig

Please refer to your P-8452, P-8480 and our 5218.

In reply to your question, "we are entitled to all the payload which we require to insure an adequate and satisfactory connection with our service" and with direct reference to Dobbs' memorandum of January 22nd and in particular that part where he says, "in summary . . . . . most of the west coast business is booked from a distance in advance and has resulted in giving Panagra a fair break of the total passenger load", I have several comments to make.

Payload: You are in receipt of our monthly CRC reports from which you have observed that the load factor over the Balboa Cali sector is now averaging 75% with traffic increasing from 3.6% each month over the preceding month. This indicates we are running at full capacity in this sector. In fact, when we are operating at 55%, we frequently are turning down business. Our figures prove this as you will note from the following study which I just completed:

1.—During January, we had approximately 25,000 kilos of available payload out of Balboa Cali sector on our trunk line services of which 35% or 8,750 kilos were allotted to mail and express. Translated into seats, we had during January about 156 seats. Our reservation control, however, shows we carried 158 passengers. As a matter of fact, we carried 168 passengers but 10 disembarked at Cali.

2. During this same period, we refused 25 passengers out of Balboa and Cali of which we rebooked 9. In other

words, our planes were fully booked. The load factor did not reach 100% because we must provide certain allowances for mail and express about 10% above average loads in order to handle increased loads and varying loads which point is mentioned by Dobbs in his memorandum.

3.—A further study of traffic shows that we received a total of 390 passengers at Balboa and Cali during the period December 1-February 15 of whom only 173 or 45% came from Eastern Division and 217 or 55% from Western Division and Avianca and other System points. In other words, it appears that about 50% of our passenger traffic southbound flows into Panagra via Eastern Division.

4.—The above data explains why we have at times asked Miami to release some of the allottments which are held over Panagra. We must accept long haul business as space requests are received from System points. If we did not follow this policy, we would be holding space open for the Eastern Division and gambling on every trip. In other words, we would be out of money.

5.—We ended the year 1940 with revenue from passengers baggage, express and mail 50% above 1939 and so far this year it looks as if traffic is increasing 3-6% but as we [fol. 3400] have already reached the saturation point up north and over other sectors, I doubt whether with present schedules, we can expect an increase for 1941 of more than 25% above 1940.

6.—A further analysis of our traffic indicates that probably about 10% is composed of long haul passengers who make few, if any, stop-overs; 60-65% who are long haul and make stop-overs and the balance short haul passengers. This again explains the reservation problem, for the broken long hauler must be given preference over the short hauler. From a payload or reservation handling standpoint both of the latter present nearly the same problems.

I think all of the above data shows quite clearly the following:

1.—We can not accept much more traffic than the amount which Panair is now giving us.

2.—Because we cannot accept more traffic, we must necessarily agree with Dobbs that we are getting a "fair break" from Eastern Division.

3.—We can not go to Panair and ask for more space until we also have more space.

4.—To obtain more space with minimum amount of flying we must revise present schedules.

5.—Almost our entire line might be called a bottleneck due to heavy traffic moving between principal cities.

Schedules: Relative to schedules, I believe we should do the following as soon as possible:

1.—Cancel the Cristobal Guayaquil DC-2 service serving Ecuador and replace it with a fourth international DC-3'A service as far as Arequipa, operating on the same schedule as the other three services.

2.—Arrange to serve Ecuador with two DC-2's based in Ecuador connecting with the international services at Guayaquil.

3.—Consider making a connection from Ecuador with Avianca at Ipiales.

4.—Operate international services out of Balboa eliminating Cristobal, Quito and Uyuni and adding Cuzco, Sucre and Rosario with DC-3'A's on Diagonal.

5.—Operate a third service between Arica and Santiago with DC-3'A's.

6.—Extend the fourth service under item 1 south via Chile and/or Bolivia at a later date.

We would then have a west coast service making the following stops: Balboa, Cali, Guayaquil, Talara, Chiclayo, Lima, Arequipa, Cuzco, La Paz, Oruro, Sucre, Salta, Tucuman, Cordoba, Rosario and Buenos Aires. Also Arica, Antofagasta, Santiago, Mendoza, Cordoba, (Rosario) and Buenos Aires. In Ecuador our services would stop at Guayaquil, Cuenca, Loja, Salinas, Manta, Esmeraldas and

Quito with a possible extension to Ipiales to connect with Avianca.

These schedules, besides giving better service to all countries on The Panagra Route, provide for greater frequency and hence actually faster schedules to the long haul stop-over passengers mentioned above, would give us more payload and place us in a position where we could go to Panair and obtain a fourth direct connection out of Miami. Mr. Kirkland is studying various problems concerning equipment and schedules and further detailed information will be forwarded in the near future. In the meanwhile, I trust the above answers your P-8452 and P-8480. If not, kindly advise me.

J. E. Muhlfeld, GSM.

JEM/DVC
cc: SAGO RS
NY (2)

[fol. 3401]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 364

Cable Address "PANAGRA"

Pan American-Grace Airways, Inc.
135 East 42nd Street New York, N.Y.

Letter No.
5634

Subject: TICKET OFFICES

Lima, May 7, 1941.

PANAGRA NEW YORK

Att: Mr. C. de Groot

LIMA OFFICE:

Further to our letter No. 5572, the other day I arranged a meeting with Messrs. Shea, Stebbins and Woll during which I pointed out the need for providing Panagra with a

first class modern air line ticket office, located either in the Hotel Bolivar or near vicinity, with neon sign, modern show windows and all the other trimmings which go to make up a modern airline office. Three years ago I had a similar meeting in which the idea was turned down but after pointing out to Mr. Shea that Panagra was now selling more passenger business than Grace Line he took the attitude that whatever was best for Panagra's interest should be carried out.

As a result of our conversation we decided that Mr. Woll would submit to me a budget with full details regarding the proposed new office and that in the meanwhile both Mr. Shea and myself would write to New York to inform Messrs. Iglehart and Roig. Mr. Shea pointed out that Mr. Iglehart had definite ideas regarding Grace offices on the west coast, and it is my understanding that his ideas are that Panagra should be located in the Grace buildings. In any event, it appears that Mr. Iglehart will have to approve the plan of separating the ticket office from Grace & Co., therefore, it is my suggestion that you speak to Mr. Roig and explain to him the need for making the change and also point out that the change in no way affects the Grace Co. organization insofar as Panagra's representation is concerned.

Regarding this last point I would like to state that when Mr. Shea asked me whether this would bring about a change in the Management, I advised him that it would not for the reason that it would merely mean that the ticket office would be moved out of the Grace building to a new location with no change whatsoever in personnel or management. In other words, insofar as Panagra is concerned, we will continue to address our letters to Grace & Co., agents for Panagra, and as far as running the ticket office is concerned, Mr. Woll, Sales Manager, will continue to work directly under Mr. Stebbins and the Grace Management in Lima.

I believe the above should be carefully explained to Messrs. Roig and Iglehart at the time you bring this matter to their attention, otherwise I am afraid it will be a difficult job to sell Grace on the proposed plan.

[fol. 3402] Cable Address "PANAGRA"

Pan American-Grace Airways, Inc.
135 East 42nd Street New York, N.Y.

Letter No.
5634-NYK

Subject:

—2—

BUENOS AIRES OFFICE:

Regarding the new Buenos Aires office, I am attaching herewith floor plan which Mr. Roll was kind enough to bring up with him from Buenos Aires and after discussing the matter with him (he is now in Lima) he pointed out that the Shell Mex people had agreed to install the counter and panelling along the walls for their own account and that this would cost them between 50,000 and 60,000 pesos in all including the show windows and other trimmings. It appears that the office will be styled along the lines of the other ground offices in the same building, which from our point of view is satisfactory, for at a later date if we find it necessary to take more floor space it will be a simple matter as the other offices on the same floor are all equipped with counters and furnishings suitable for our use and styled along the same lines.

As regards the show windows, the latest scheme is to have the base or whatever you call it on small rollers so that the display stands can be rolled away from the windows and turned around for dressing. This seems to be a very practical idea and was recommended by Mr. Smith, who also has some other ideas on the matter of furnishing the office. As regards the counter and interior decoration, as stated above, it is our plan at the start for Shell Mex to provide us with passenger and express counters, as you will notice from the attached plan, and panel part of the walls. The remaining part will remain untouched until the new plaster and paint has had a chance to thoroughly dry out. The floor space between the passenger and express counters and windows will be furnished with writing tables and chairs and lounges for passengers, more or less like in the Santiago office. Aside from this, however, no fur-

ther plans have been developed other than that an interior decorator will probably be called in to do the job.

In the meanwhile, however, Mr. Roll and I both would like to have you furnish us with any ideas which you may have and also any sketches or drawings taking into account the fact that we wish, insofar as possible to decorate all offices in such a manner that they will have some family resemblance to each other. As the Argentine company is owned by Pan American Airways about all we can do is suggest that they adopt our ideas but in this regard, we can, of course, count on the full cooperation of the local management.

J. E. Muhlfeld

J. E. Muhlfeld, GSM

JEM EP
cc:(2)NY SAGO T S
HJRoig-NYK

[fol. 3403]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 365

64

HJR Series

Ticket Office

New York, June 4, 1941

Mr. Douglas Campbell,
Lima, Peru

Dear Douglas:

When I first read Lima's No. 5634 regarding Lima Sales Office, I did not take it very seriously. In speaking with Woll the other day, however, it appears that he regards this change not only seriously but imminent. I am therefore calling the matter to your attention in order to prevent time being unnecessarily wasted in this connection.

It is my understanding that the facilities provided by the proposed extension to the Grace Building will give ample

opportunity for a Panagra Ticket Office in whatever form seems most suitable. I see no reason for considering any change in the meantime. I have no objection to trying on an experimental basis; the idea of having a representative on an inexpensive basis at the Hotel Bolivar but I see no reason for considering a complete removal of the traffic office.

Very truly yours,

[fol. 3404]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 366

PAN AMERICAN-GRACE AIRWAYS, INC.
435 East 42nd Street New York, N. Y.

Letter No.
DC-87

Lima, June 9, 1941.

Mr. H. J. Roig,
NEW YORK.

Dear Mr. Roig,

With reference to your letter No. 64, you have no cause for concern with regard to my own point of view on this matter as I have repeatedly told Muhlfeld that any consideration of moving the entire traffic office to another location would simply be a waste of time.

This whole matter is to a certain extent the outgrowth of DeGroot's recommendation that our ticket offices at all points be "streamlined" in order to make them similar to modern travel ticket offices in the States, and also his suggestion that some of them could be better located in the respective cities in order that the traveling public would be more likely to see them. However, DeGroot was looking at this from the point of view of the American tourist who is still only a small part of our business and I think that he overlooked the fact that in a town such as Lima any one who is likely to travel by plane is fully aware of the location of the office.

I am in favor, however, of having a representative with a desk in the Hotel Bolivar or vicinity with proper telephone connections to the ticket office, airport and Reservations Control, as I feel that our tourist clients as well as overnighting in transit passengers are entitled to the additional convenient service that such a setup would make possible.

As Muhlfeld is leaving for New York tomorrow on account of the unfortunate critical illness of his father, you may have an opportunity to point out to him your ideas and general policy with respect to the above.

Sincerely,

(Sgd) Douglas Campbell
Douglas Campbell

[fol. 3405]

Pan American World Airways, Inc. Exhibit 367

August 1, 1941

Director	Assistant Director
Public Relations	Public Relations
New York	New York

PANAGRA PUBLICITY

In accordance with your verbal request of recent date, with Mr. Righi's assistance, I have made a careful study of the public relations record of Pan Grace and the publicity effort made on their behalf by our department, extending back practically to the time of the announcement in February, 1929 of the formation of Pan American Grace Airways by W. R. Grace & Company and Pan American Airways.

In addition, a special detailed study has been made in terms of releases and stories handled, pictures and radio work in an arbitrarily defined period extending from January, 1939 to the present time. A separate report on this period in terms of releases covering Panagra activities is attached. This period was made the subject of special

study because it is roughly within this time that, acting upon specific requests of Panagra management and under a plan of our own devising and approved by that management, we undertook, with certain admitted failures, an intensive specialized effort for Pan Grace of a type and kind never attempted for any other separate operating unit of the System. This catalog of releases covers generally the time in which separately Messrs. Riley, Russell, Curtis and Righi, discussed hereinafter, were exclusively engaged on Panagra work.

This study shows, as does the special report which you recently prepared for the Comptroller's office on work performed for Pan American-Grace Airways by the Public Relations Department, that our efforts have been extensive, consistent and continuous to the end which we had in mind, working with such material and aids as we had at hand. In certain respects it has not been a perfect record but considering all of those many circumstances over which we had little or no control, it has not been as totally bad as is sometimes implied.

At any point in which a study is begun of the plan for the System Public Relations Department to handle and direct publicity for Panagra, we find full agreement of all concerned on two points: (1) that Panagra's interests would best be served publicity and public relations wise by such an arrangement and (2) that the active operating management of Panagra has always admitted that it was without specialized knowledge of publicity and public relations technique. Yet the principal source of criticism is the same as that which admits this lack. The record as a whole does not fully bear out this criticism. In this con- [fol. 3406] nection, it occurs that perhaps we have consistently failed in not bringing directly to the attention of those most interested in a fair and proper presentation of Panagra services and activities the results which we have obtained. This, it is conceivable could lead to misunderstanding and unwarranted criticism. A recent sampling of clippings from all sources, supplied by our clipping bureau, bears this out and shows that in addition to those general System stories which make reference to

services of both east and west coasts of South America, there is a high proportion which makes reference exclusively to Panagra.

First and briefly for the sake of the record, going back to February 21, 1929, the date of the announcement of the organization of Pan American Grace Airways, up to the time Panair began through service operations on the east coast, all of the Public Relations Department's effort, as regards through South American travel, was, of course, done to the end of featuring west coast air travel. The fact was always stressed that the fastest through service from the United States to the most distant capital of South America was obtainable on the west coast. At the time, less than a year ago, of the establishment of through high speed land service on the Brazilian cut off, this always to the lay [illegible] a startling fact, had been well established with the general public.

General releases put out by the System Public Relations office on Latin American services are of three kinds: those which deal with new schedules or special developments on a certain clearly defined route; those dealing with South American air services as a whole and those gotten out exclusively in the name of Panagra. The first is in a minority. Those of the second category have invariably stated that there is in operation American flag service on both coasts of South America and that the operator of west coast service is Pan American Grace Airways.

In the period of special study of this survey extending from January, 1939 to the present time, forty two releases of the last two categories were issued. This is more than eighty per cent of all formal press releases prepared by our department and of this group thirty two or about ninety per cent were gotten out exclusively in the name of Pan American Grace Airways.

The foregoing, it should be borne in mind, is concerned exclusively with news announcements. In addition throughout this period, many special travel and other feature stories, both for newspaper travel sections and magazines, were prepared in the interest of Panagra. A great many

of these were on special assignment. It is understandable that a measure of disappointment in this special category of our Pan Grace efforts has been felt by Panagra for a number of reasons. In terms of travel and established [fol. 3407] tourism with which steamship organizations are far more familiar than airlines, it was natural to look for free publicity in newspaper travel feature pages and travel magazines. If in the period here under study the record is weak, it must be admitted that it is weak for the System as a whole. During the period still continuing of its great expansion, the story of the services of Pan American Airways was continuously carried to the general public in many important news stories in a manner and extent which could never be achieved exclusively through travel pages and in this regard, Pan American-Grace Airways as an established going organization could not hope to participate except as a unit of Pan American Airways System as a whole. Because of a serious lack of man power in the New York office of Public Relations, such specialized effort could not always be made in the exclusive interest of Panagra. Panagra here perhaps has suffered more than the regular Divisions of Pan American because it has always been deemed a function of the Division Public Relations Representative in the field to develop and prepare straight travel stories covering points of interest in the territory served by the lines of his Division. The Public Relations Representative at Lima does not appear on the record to have maintained the same high point in this field of endeavor as has been done by Public Relations Representatives for the Eastern and Pacific Divisions or by the Public Relations office of Cia Mexicana.

Despite all of the foregoing, however, Panagra's interests of a considerably extensive period in this matter have been consistently kept in mind by the New York office. It is fair to state on the record that more effort has been made to develop pleasure travel to colorful parts of the west coast of South American than any other single sector of the Pan American spheres of operation. In the international campaign launched by the Scripps Howard newspapers in 1939 and continued through 1940 to stimulate inter-American

pleasure travel, material contributed by our department consistently featured the west coast of South America. During these periods when there has been available in the New York office a Public Relations Representative, exclusively concerned with Panagra work, the volume of such travel stories has risen impressively.

The shortcomings which are freely admitted as represented in the foregoing situation were among the things which inspired steps toward the hiring of a special representative to be attached to our New York office and to be solely concerned with the affairs and interests of Pan American Grace Airways. This resulted in the placing on our payroll on November 24, 1939 of Mr. Nelson Riley, subsequently assigned to exclusive Panagra work, under your general supervision and the close cooperation of Panagra.

On November 25, in a detailed memorandum over your signature there was outlined to Mr. Roig the method of procedure to be followed under this new setup:

[fol. 3408] On November 30, Mr. Roig acknowledged your memorandum of the arrangement stating:

"Pan American Airways' Publicity Department will act as publicity representative of Panagra in the United States in the same manner as any publicity firm might do. All the facilities of the Pan American publicity organization to be available to this end as may be required.

"Mr. Riley of the Pan American Public Relations Department will be in particular charge of Panagra work in the same manner as one person in any publicity agency might be in direct charge of a particular account. He will devote his time exclusively to Panagra work and will be free to call upon other members of the Pan American publicity department for their cooperation in connection with his work."

This memorandum from Mr. Roig makes reference further to the fact that Mr. Riley was to have full cooperation of the officers of Panagra and Panagra's traffic staff and of the Sego publicity department in Lima. Having been away from the New York office during the greater portion of Mr. Riley's employment, I do not know in this

case to what extent this promised cooperation was lived up to, but I can state for the record that personnel of our department who subsequeatly succeeded Mr. Riley have repeatedly failed to obtain this promised cooperation. On January 5, 1940, while Mr. Riley was still in our employ, Mr. Roig submitted to us certain additions and modifications of the memorandum of agreement referred to above, the points being primarily of a minor nature and involved with details of organization and calling for a clarification of the budgetary responsibilities severally of Pan American and Pan American Grace Airways.

Mr. Riley continued on our payroll until June 30, 1940. He was succeeded on an interim arrangement basis, until a full-time successor could be appointed to Mr. Riley, by Mr. Arthur E. Curtis, Eastern Division Publicity Representative. Certain definite worth while projects to the exclusive benefit of Pan American Grace Airways were carried out during the period when Mr. Curtis was actively engaged as a member of the New York office on Panagra publicity projects. This was particularly true in regard to the development of travel feature stories referred to above, radio work, especially with the "Wings Over America" program of the National Broadcasting Company, and in laying the groundwork for home town passenger press service.

Thru circumstances over which we had no control, Mr. Curtis, who was on temporary assignment in the New York office through special arrangements made by Vice President Evan Young, had to return to his Miami station before we could find a permanent successor to Mr. Riley. [fol. 3409] We were eventually successful in obtaining the services of Daniel Russell who was our own original candidate for the post, but had been passed over by Panagra in preference to Mr. Riley. Mr. Russell submitted his resignation after a period of six months with us, stating as his primary reason his inability to obtain satisfactory cooperation from Panagra personnel in order to carry out various assignments which we had given him.

One of the first assignments which Mr. Riley undertook was to coordinate activities with the Panagra Public Relations representative in the field and stationed at Lima. On

papers it appeared that a satisfactory working arrangement had been set up. In practice, however, the desired objectives failed to materialize. It is difficult to explain this except on the basis of the character of personnel employed, since the method and procedure followed in no radical way differed from the coordination procedure followed in relating the activities of Pan American Grace System and the New York office and its various division public relations representatives. While it might be conceded that the West Coast of South America has peculiar and unusual publication conditions, little of the extremely small amount of material sent from Panagra public relations representative at Lima has either been serviceable or usable in the United States.

The record here under study shows an unsatisfactory supply of pictorial material forwarded from the Panagra Lima office, almost all of it unusable by the United States press. Analysis of material received from Mr. Mandujey, Lima, Peru, during the month of July, follows:

(1) On July 9th a package of glossy prints of Mr. Douglas Fairbanks' visit to Lima was received in this office. The cover memorandum was dated June 28th. The poor quality of the pictures, as well as the generally poor composition of the same, would have made the use of most of the prints impossible but the fact is that the office had already received pictures in large numbers from the East Coast covering this trip and the arrival in Miami of Mr. Fairbanks himself about a week before Lima's photos came to hand had already rendered this material obsolete. There seems to be no justification for 12 days in transit for any spot publicity material.

(2) As of July 18th, we received a copy of a memorandum by Mr. Mandujey to Grace & Co., Santiago, Chile. This memo gave Grace & Co. instructions regarding the publicity for a group of 15 members of the American Youth Hostels, Inc., on the part of their trip by air between Santiago and Buenos Aires.

(3) Dated July 22nd, arriving here July 29th, was a copy of Mr. Mandujey's memorandum to Pan American Airways,

Los Angeles, regarding the arrival at Lima of the members of the "Western States Latin-American Clipper Cruise." As Mr. Manduley states in this letter, Mr. Ramirez Cardenas, from Mexico City, had already informed all necessary elements of the System of the publicity value of the cruise. As a result, New York received pictures from Mexico City, dated July 14th, from which suitable cuts had been made for NEW HORIZONS. The pictures which [fol. 3410] Mr. Manduley mentions in his memo of July 22nd reached New York August 4th and were thus unusable. Further note may be made of the fact that the photographic material was technically imperfect and could not stand reproduction.

The failure of Panagra's field representative in this respect, as much as any other single factor, accounts for the poor showing in Panagra's favor on the record in recent months. Despite repeated queries in this regard, this representative has entirely ignored requests for material, particularly editorial matter which could be used in the company publication, NEW HORIZONS. It is doubtful if the existing, if temporary, setup which exists with Mr. Righi currently handling Panagra work exclusively or your proposal in regard to a permanent arrangement involving Mr. Harner can be expected to work exclusively over any long period unless this field situation is thoroughly overhauled and corrected in the light of what that examination doubtless will reveal.

Francis Walton

AJ
FW:GN

[fol. 3411]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 368

WORK PERFORMED FOR PAN AMERICAN-GRACE AIRWAYS, INC.

PUBLIC RELATIONS DEPARTMENT

(New York)

PAN AMERICAN AIRWAYS SYSTEM

[fol. 3412] The Public Relations Department of the Pan American Airways System is constantly concerned with the inclusion and identification of Pan American-Grace Airways with any news or promotional material which can be useful in identifying the progress being made by American aviation in Latin America.

Effort is constantly made to identify this operation with the general functioning and advancement of American aviation in this field. Identification of Pan American-Grace Airways with this subject is a result of cumulative effort, through more than ten years of effort directed to stimulate interest in the Pan American-Grace Airways' operations. As a result, considerably more attention has developed, and a wider acceptance of the services performed by that company has been secured than would have been practical through an independent and unrelated publicity promotion of the company's normal activities.

This involves, as routine practice, the attention of all members of the Public Relations Department. The Department is also available, at all times, to Pan American-Grace Airways for the handling of particular news or institutional matters properly within the range of public relations.

Insofar as Public Relations is concerned, all general releases issued by the New York Public Relations Office, in the name of the System as a whole, and dealing with air transportation generally in South America, identify Pan American-Grace Airways. Such releases are quite numerous. In addition, there is a special type of release frequently gotten out which makes direct reference to "ser-

vices on both coasts of South America." In the latter case Pan American-Grace Airways is always named as the operator of the West Coast-to-Buenos Aires service.

Regular routine of this Department includes considerable telephone work with publications, press associations, radio and other channels of public information through which material with respect to Pan American-Grace Airways' operations and services, details of equipment, and plans of progress are constantly being disseminated. A similar detailed watch is maintained to prevent, or, when this is not possible, to correct publication of misinformation which frequently is transmitted through press channels from the countries served by Pan American-Grace Airways.
[fol.3413] This Department maintains active contact with several hundred agencies for the distribution of public information. The normal routine involves an average of some 70 telephone calls a day for the Department. A proper proportion of these is devoted to subjects concerning Pan American Grace Airways or general subjects in which they have an interest or are identified.

Efforts have been made to employ and maintain a qualified Public Relations Representative whose entire time and attention is devoted to public relations work for Pan American Grace Airways. In those intervals when such an individual is not available, other members of the Department are assigned the specific handling of Pan American Grace Airways work.

The Pan American Airways Photographic Service is constantly fulfilling requests for pictures of scenes in areas covered by Pan American-Grace Airways services as well as actual operation and institutional pictures of Panagra subjects.

In addition to the work of a general and routine nature conducted by this Department, the individual members have conducted such specific work for Pan American-Grace Airways as the attached:

[fol. 3414]

WORK PERFORMED FOR PAN AMERICAN-GRACE AIRWAYS

1. DEPARTMENT: Public Relations
2. NAME of EMPLOYEE: William Van Dusen
3. POSITION: Director of Public Relations
4. WHERE EMPLOYED: New York
5. John Miller, George Jervas, Daniel Sayre.
6. Conferred with Pan American-Grace representatives with respect to the formulation and execution of plans re:

   a. Securing necessary information on personnel of Pan American-Grace Airways as a means of developing feature institutional articles for the hometown press of those individuals to stress the organization, work and importance of the airline.

   b. Assembly of necessary information with respect to the new Pan American-Grace Airways radio system.

   c. For a report on the meteorological work and research conducted by Pan American-Grace Airways for institutional use both on the airline and through the technical and general press of the United States.

   d. Development of a practical system for obtaining names and details of passengers for publication purposes.

   e. Securing the necessary detailed information from South America for the preparation of feature articles pointing out the benefits and attractions of "foreign service" as related to employment with Pan American-Grace Airways.

   f. Securing of feature story material concerning personnel useful for human interest story development with respect to services, particularly in Argentina, Chile, and Peru.

g. Information on details of express traffic for feature stories.

h. Requested details for any new flight equipment plans.

i. Concerning passage and cooperation for authors and writers interested or influenced in traveling the Pan American-Grace Airways routes, reporting on aspects of the service.

[fol. 3415]

j. Relative to the necessary and continuous routine reporting to this office of activities and developments along the airways by the press office in Lima.

k. Development of a system for securing more and improved news and pictures of Pan American-Grace Airways passengers and service activities and illustration material useful to the company travel, traffic and institutional stories.

l. Concerning the use of and settlement for photographs taken by Duncan for "Look" magazine.

m. Respecting news leaks in Ecuador and Bolivia.

n. Concerning applications filed with the C. A. B.

o. In re-editing of the motion picture "Land of the Incas."

Conferred with representatives of Pan American-Grace and Traffic Representatives of the Pan American Airways on behalf of establishing a system through which this Department could be advised of passengers booked to travel over the Pan-American-Grace routes in order that this particular service could be made available to the wire services, to the international radio broadcasting services, and to the general press.

In behalf of Pan American-Grace Airways, conferred with:

a. Authors and writers interested or to be interested in the featuring of material concerning Pan Amer-

ican-Grace Airways in magazine and book publications.

b. Photographers relative to a wider distribution of fishing pictures and promotional credit for Pan American-Grace Airways. In connection therewith, the motion picture producers were conferred with relative to re-editing, addition of material to and new narration for, the Pan American-Grace Airways travel promotion film.

c. Officials of the National Safety Council and the Inter-American Safety Council to secure their agreement to present a separate award to Pan American-Grace Airways for the past year's operations. This successfully secured, the assignment then involved the following:

1. Outline of the certificate draft and direction of the artist.

2. Arrangement for a place at the speakers' table for Mr. Roig to whom the presentation was to be made.

[fol. 3416]

3. Contacting the wire services regarding the cabling of the Safety Award report to South America.

4. Conferring with the Safety Council for the preparation and distribution of a special story on the award.

5. The notification of the general press with respect to the award to Pan American-Grace Airways.

6. Arrangement for the taking of photographs showing Mr. Roig receiving the award and the distribution of these photographs by air-mail to the general press and to Pan American-Grace press office in Lima.

d. Conferred with wire services to prevent publication in the United States of erroneous report re-

ceived from Peru confusing Fawcett and Pan American-Grace Airways.

e. Arranged meetings, entertainment and trips for visiting Chilean journalists.

f. Wrote and prepared special distribution from Washington, D. C., of a news story to feature new Pan American-Grace Airways services as feature of Pan-American Day.

h. Conferred with Farrar & Rinehart, Publishers, in behalf of securing proper credit and representation for Pan American-Grace Airways in connection with their Pan America "good-will" prize novel plan.

i. Initiated with officials of the wire services, consideration of establishment of additional South American news bureaus or improvement in personnel of bureaus already established, looking toward transmission of news material of interest to the company to have published in the United States.

j. Conferred with motion picture producers relative to the re-editing and reforming of the Pan-American-Grace promotional film and the editing of the script required by these changes.

k. Conferred with various authors projecting trips to South America on behalf of their specialization on West Coast of South America and for their inclusion of material of value and benefit to Pan American-Grace Airways.

l. Prepared general story on Panagra plans and activities for general distribution through the Senor Letters to the press and publishers.

[fol. 3417]

m. Made outline for, wrote final draft, and directed distribution of:

1. Travel story on West Coast hotel facilities.

2. "Trade" report on current traffic trends.

3. Progress report in terms of new routes, etc.

n. Interviewed Pan American-Grace Representative from Lima for press material on traffic, competition, special details of service.

o. Enlisted support of press protecting Pan American-Grace Airways' interest on calls for giving up airline equipment for Britain.

p. Conferred frequently with reporters, wire service editors and special writers on directing or controling news reports concerning developments in (a) Ecuador (b) Bolivia.

(c) Peru, at time of grounding Lufthansa.

q. Several conferences with publishers toward publication and distribution for air travel guide book for Pan American-Grace Airways territory.

r. Several conferences outlining detailed assignment for author to secure material for guide books and assemble, write and distribute releases of press stories on trip over the Pan American-Grace Airways lines.

s. Interviews with candidates for position of press officer for Pan American-Grace Airways in New York. Also conferred with Pan American officials, in New York and Miami, relative to the transfer of a Pan American employee to this office to act for Pan American-Grace Airways.

Designed three separate programs to secure necessary detailed information for Pan American-Grace Airways and for its passengers distribution, in publishable form, to the U. S. press and other informational channels. These programs have covered definite courses of action for the individual assigned to Pan American-Grace Airways work and have outlined, in terms of specific assignments, material required and how it is to be prepared and distributed. A supplementary program was analyzed for the distribution of applicable information through airline informational outlets served by the Pan American Airways offices in the field.

[fol. 3418] In addition to those and other specific items of work, the writer has conferred almost daily with Mr. Righi, temporarily assigned to the task of securing specific information from Pan American-Grace Airways upon which the public relations and publicity work is absolutely dependent.

This involves my detailed outline of specific information required, the draft of specific stories to be developed, the specific distribution to be made. In those cases where such information is received, the writer has personally made the final drafts of the articles for publication and has personally supervised the distribution of these releases.

This process involves not only the original assignment but analysis of Mr. Righi's report and re-assignment of his effort to other Pan American-Grace activities.

. . . . .

[fol. 3419]

WORK PERFORMED FOR PAN AMERICAN-GRACE AIRWAYS

1. DEPARTMENT: Public Relations
2. NAME OF EMPLOYEE: Arrigo Righi
3. POSITION: Public Relations Representative
4. WHERE EMPLOYED: New York
5.
6. Memorandum of work done under Panagra assignment —May 12 to July 1, 1941, for which period a detailed report was required:

May 12	—Meeting with Mr. De Groot to obtain material for a West Coast hotel story.
May 13	—Preliminary draft submitted. Preliminary contacts for distribution.
May 14	—Redrafting of story on basis of Mr. De Groot's corrections.

May 15 —Obtained pictures and story of arrival Peruvian Ambassador in London. Doctor Benavides. Air mailed this material to Panagra, Lima.

May 16-20—As instructed, made direct presentation of West Coast hotel story through personal call and telephone to the following:

"Travel"
"Hotel Bulletin"
"Travel Agent"
"World Telegram"
"Chicago Daily News"

May 20 —First drafted special travel story for N. Y. Herald-Tribune. Mr. Dunlap, Travel Editor for this newspaper, wanted to make it into a general Latin American story. Following up your conversation with him, he agreed to confine the story to Panagra. This story was prepared and appeared on Sunday, June 1st.

May 23 —Interviewed Mr. De Groot to secure material for "New Horizons."

May 26 —Requested biographical story on President Roig of Panagra.

[fol. 3420]

May 27-29—Obtained a clearance for this story and called on Grace & Co. to obtain details.

June 2 —Contacted Captain Harris, on Panagra's Bolivian development. Prepared tentative text for possible release.

June 3 —Contacted Panagra for further details re: Roig sketch.

June 4 —Continued efforts to obtain detailed material Bolivian story. Held conversations with U. P. and other press agencies, holding them off pending clearance.

June 5 —Interviewed George Smith from B. A. to obtain "personal" material for Panagra sports story. Also for "New Horizons." Tentatively drafted skiing story in this connection. Wrote piece "Motoring on West Coast" for "New York Motorists."

June 6 —Prepared special story for "New Horizons" to appear in June number with illustrations.

June 10-14—Prepared various short items "New Horizons" Mannix picture, etc.

June 17 —Held long conversation Captain Harris and collected statistical material, partly from Mr. De Groot, for Washington news services.

June 18 —Obtained Panagra list for distribution President Trippe's lecture.

June 19 —Assembled statistical material for general "Development" story based on Panagra's first quarter operations.

June 23-25—Drafted preliminary biographical story for "Atlanta Journal" on James W. Spratlin, Panagra Communications Superintendent.

June 26 —Discussed with Captain Harris details American Aviation Daily report on Bolivian developments. With Mr. De Groot planned story on new Quito hotel facilities.

June 27 —Obtained statistics for American Auto Association, Washington, D. C. Having collected data from Mr. De Groot, began drafting release on third quarter Panagra operations.

June 30 —Personally followed through on distribution of the two resulting press releases —Progress and Trade Trends.

[fol. 3421]

WORK PERFORMED FOR PAN AMERICAN GRACE AIRWAYS

1. DEPARTMENT: Public Relations
2. NAME OF EMPLOYEE: Francis Walton
3. POSITION: Assistant Director of Public Relations
4. WHERE EMPLOYED: New York
5.
6. (a) Help given on publication of release on Ecuadorean service. Wrote draft of final release issued by Mr. Roig.

   (b) Tracked down source of erroneous report that CAB had denied Bolivian application. This story was originally carried by wire services out of Washington and required considerable checking. Conferred with wire services on matter of issuing correction.

   (c) Conferred with Captain Harris relative to gathering and preparing annual report of Pan American-Grace activities for 1940. Considerable time consumed in research on this subject before it was decided that desired objectives would not be achieved by publication of such a report.

   (d) Carried forward plans for regular and continuous distribution of news of Pan-Grace personnel in the foreign field for the press of their home towns.

   (e) Once-a-month gathering, writing and editing of Pan American-Grace activities for the System news magazine.

   (f) Directed the national distribution of pictures when forwarded directly to this office from the Lima office of Pan American-Grace Airways.

[fol. 3422]

WORK PERFORMED FOR PAN AMERICAN-GRACE AIRWAYS

1. DEPARTMENT: Public Relations
2. NAME OF EMPLOYEE: John Miller
3. POSITION: Pan American Photographic Service.
4. WHERE EMPLOYED: New York
5.
6. In 1941 to date, either at the direct request of Pan American-Grace Airways or from outside agencies—but to the obvious benefit of that line—the Public Relations Department has produced and supplied copies of the following pictures:

[fol. 3423]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 369

CABLE ADDRESS "PANAGRA"

PAN AMERICAN-GRACE AIRWAYS, INC.
13 EAST 42ND STREET, NEW YORK, N. Y.

Letter No. 1104

SUBJECT INTERLINE AGREEMENT

Lima, September 26th 1941

Pan American Airways, Inc.
NEW YORK

Attention: Mr. R. C. Lounsbury

For your information Grace Line offices on the west coast for some reason are not permitted to endorse the unused value of tickets to Panagra as outlined in Bulletin #720, page two last paragraph. It appears that the reason for this is that Grace Line offices are not allowed to make refunds without first consulting the issuing office.

Will you please take this matter up with Grace Line and endeavour to have this matter clarified as we feel that both carriers should authorize their offices to endorse the value of tickets over to each other.

I might add, that both Grace Line and Panagra have been given a black eye more than once by passengers when after deciding to change their reservations they have found out that Grace Line will not endorse their tickets to Panagra.

J. E. Mühlfeld
General Sales Manager

DEM:lma.

cc: SAGO S R

[fol. 3424]

PAN AMERICAN WORLD AIRWAYS, INC., EXHIBIT 370

No. 6927 Pvt.

NEW YORK COPY

TRAFFIC

Lima, December 19, 1941

PANAGRA
NEW YORK.

Attention: Mr. H. J. Ruiz

Your P 485.

We have been working on the report requested in your letter No. 241 and will endeavor to forward same to you by next Wednesday's plane, but please appreciate the fact, in order to give you the information which you desire, we must carefully study thousands of reservation messages.

I fully realize the importance of promptly sending you accurate information, but to do so means putting both Ribeyro and Jones full time on this job. This was not possible until recently as both men were out on the line including myself. We are, however, now working hard on this job.

I am of the opinion we can furnish you with some very valuable information based upon events dating from December 7th of this year. In fact, it is quite possible we will be able to prove our point by preparing a supplementary report for the period December 7th to date, but I feel it may be a hard job to do that based on the six month's report.

I make this statement without having yet completed the report you asked for, therefore, I may be wrong in my above calculation. If, however, you will read over my letter P-5269 of March 1st., 1941 on this same subject you will see that even early in the year our line was saturated and we could neither receive from or give to Panair much more business.

Before closing, I note your report on southbound traffic was based wholly upon passengers carried and refused. I might mention, mail and express loads are responsible to a very large extent for reduced number of seats available over our bottle neck and so I think this should be born in mind when studying any question concerning the use of payload and amount of payload available for passengers.

JM
J. E. Muhlfeld, GSM.

JEM DVC
cc: SAGO R-S
NY(2)

[fol. 3425]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 371

FIFTH TRIP

NEW YORK,
January 29, 1942.

Pan American-Grace Airways, Inc.,
South American General Offices,
LIMA.

Attention: Mr. T. J. Kirkland

With further reference to my 795 P of January 22nd, on the subject of the Fifth Trip, attached herewith please

find copy of the letter I have written Mr. Grayson which is self-explanatory.

You will note that the attached schedule does not show all of the Panagra operations. Mr. Grayson has a form similar to the one shown herein which he utilizes for simplicity in his own office in order to avoid the additional complication of showing all the voluntary operations. Consequently this schedule was drawn up in the form desired by him rather than in the form we require for our own operating information.

Panair are still struggling with the Post Office to secure authorization for their fourth trip with the 307 between Miami and Balboa. They now anticipate that this change will occur in any event not later than February 14th, and probably February 7th. Mr. Grayson has told me that he believes that he will be able to give us clearance on our proposed fifth trip operation, even if Panair do not institute their additional Boeing operations, since he realizes the advantages to the public probably outweigh the disadvantages to the Post Office in the one day delay of mail delivery from the United States to La Paz and the other Diagonal points as far as Cordoba, if no additional direct service to and from the United States is furnished by Pan American. Consequently it is in order for you to proceed with your plans to make the schedule changes we have discussed and we will cable you as soon as we, ourselves, have definite clearance from Washington, in order that you may institute suitable publicity in all countries with regard to the additional services and the schedule changes.

/s/ H. R. Harris
H. R. Harris.

HRH Q
Enc.

[fol. 3426]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 372

SANTIAGO, 24th September, 1942.

[Handwritten notation—RS 5148. P.]

[Stamp—Received by Air Mail—Oct 6 1942—American-Grace Airways, Inc.]

Messrs
South American General Office,
LIMA—PERU

Attention Mr. J. H. Nelowet
South American Comptroller.

Dear Sirs,

PANAGRA FINANCIAL CONTROL.

We are in receipt of your letter Private 14 of 5th September, on the above named subject in which you refer to a conversation you had with Mr Vidal, and from which you mention that during Mr Simon's recent visit to New York, he had discussed with Mr Vidal the advisability of having Mr Jorge Raby assigned as Financial Controller over all commitments and expenditures of the Panagra in Chile, and the best means by which Mr Raby would be in a position to exercise this control in due form.

There is no doubt that Mr Raby would be a very adequate and competent person to take charge of these functions, but on this matter there must have been a slight misunderstanding on the conversation which Mr. Vidal had with Mr. Simon.

Mr Simon informs us that he discussed only in general with Mr Vidal on the advisability of having some responsible party connected with our agency in Santiago, assigned to control Panagra expenditures throughout all Chile, and that he agreed with this general idea. On these lines we also received a letter from Mr Vidal, dated 10th July, which we enclose in copy for your information.

In answer to Mr Vidal's letter and in accordance with Mr Simon's conversation above referred to, we gave Mr

Guillermo Smith, Accountant of Panagra in our Santiago Agency, whose general competence you know as he has worked in Lima some time, special authority to control all expenses, and to report on same directly to the General Management to whom in the future he would be directly responsible. Mr Smith's salary was raised on taking over these new functions, and an assistant has been named, to help in his ordinary duties as accountant.

We enclose a copy of the memorandum dated 27th August, addressed to Mr Guillermo Smith informing him of his new appointment, and of the manner in which we understand this should be carried out.

Any doubt which might be encountered by Mr Smith in the carrying out of his duties, would be consulted with Mr Raby in his capacity as Assistant Controller of the Company, but it is absolutely impossible for Mr Raby to take over this post.

The efficient control of Panagra in the manner outlined in your letter No 14, is a full time job and Mr Raby's time is dedicated to the financial control of all Grace & Cia. (Chile) S.A., activities in Chile, as well as to the study [fol. 3427] of new tax laws, preparation of tax returns, dividend estimates, bi-yearly audit reports of all factories and agencies, general exchange and currency position, etc. This enumeration by itself forecloses any possibility of adding more work to Mr Raby. Apart from the above mentioned duties, he has to travel all over the country in connection with his work.

The volume of detailed accountancy work done by the Santiago office for Panagra Lima, is enormous and very specialized, as it has to follow certain pre-determined formulae and plans laid out by the Lima office. We feel, therefore, that to be able to understand and control such an accountancy, it must be handled by a man thoroughly conversant with Panagra work, besides which various Panagra Departments usually receive instructions directly from their respective department heads in Lima, and frequently act on same without consulting the Agency.

Similarly the maintenance, communication and publicity departments issue instructions directly to their corresponding department heads in Santiago, Antofagasta, Arica, regarding purchases, personnel and other routine matters. It is because of this that we feel that Panagra should have their Controller, duly assisted who would act as a coordinator between the various Panagra Departments in Lima and the local Agency.

We feel that Smith is a first class employee and is thoroughly familiar with Panagra accounts and other routine matters. He may not as yet have the status that Lima and New York seem to desire for this job, but as far as our present personnel disponibilities in Santiago allow us, we feel that it is the best approach to the solution desired by New York and yourselves.

We would very much appreciate your comments on this subject.

Yours very truly,

p.p. Grace & Cia. (Chile) S. A.
Consignees

Pan American Grace Airways Inc.
C. Manuel Pereira

CMP/VF.
2 Encl.

[fol. 3428]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 373

[Stamp—Received by Air Mail—Dec 28 1942 Pan American-Grace Airways, Inc.—Dist. No. .....]

193.

PRIVATE

NEW YORK COPY

PAN AMERICAN-GRACE AIRWAYS INC.
SOUTH AMERICAN GENERAL OFFICE
LIMA, PERÚ

OFFICE SPACE ANTOFAGASTA

LIMA, December 15th, 1942.

Grace & Cia., (Chile)
Agents for Panagra,
SANTIAGO.

Att: C. M. Pereira.

As you know the present office site in Antofagasta is not quite satisfactory for the reason that the Panagra section is located practically on the docks and actually in a warehouse. When I was in Antofagasta the other day, I spoke to your Manager about the possibility of moving the Panagra section to the International Machinery Company and it developed that Mr. Berger and I spoke with the Manager of IMACO and all concerned endorsed the idea.

It was pointed out by Mr. Berger that he was pressed for space in his present office and for that reason and also because of the better location provided by International, he was in favour of transfering Panagra section into the above new quarters. The Manager of the International also favoured the idea because they now have space which is not being occupied and from a business angle it would also be advantageous because Panagra customers who are also customers of IMACO would be directed to the same building where their name is prominently on display. In other words, it would be a good advertisement for them

Mr. Berger will be writing you on the above subject and Mr. Salsilli upon his return to Santiago will take this matter up with you in further detail. We have already drawn floor plans as per copy attached, and I would greatly appreciate if you would give this matter your consideration.

One advantage of the plan of course is that the Panagra section would not be located outside of the Grace organization which conforms strictly to the Grace policy laid down by New York and of course the advantages of having an attractive sales office are fairly obvious.

/s/ J. E. MUHLFELD
J. E. Muhlfeld,
General Sales Manager.

JEM EVB

cc SAGO R—S
NEW YORK (2).

[fol. 3429]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 374

(Original misplaced)

January 27, 1943

MEMORANDUM TO Mr. O. G. Balz

TRIP TO SOUTH AMERICA

You are proceeding to South America, leaving here on or about February 1, for the express purpose of assisting the Lima organization in connection with the following problems:

1. New system of accounts becoming effective as of January 1, 1943.

2. 1943 budget and its effect upon our net earnings for the year 1943.

3. Placing on Panagra payroll of such agency personnel as are handling exclusively Panagra work, retroactive to January 1, 1943.

4. Audit of agency expenses at Lima (including Sago expenses) and points south, the territory north of Lima having been covered in your last trip.

5. Prompt settlement of insurance claims in connection with last week's accident in Peru.

6. Miscellaneous.

Herewith is a brief summary of my views:

New system of accounts

Every attempt should be made to have the 1942 audit by Price Waterhouse and the final closing of the Lima books completed at the earliest possible moment bearing in mind that, for tax purposes here, we must have by March 15 a fairly accurate idea of what our net earnings for the year 1942 have been.

So far as the 1943 monthly accounts are concerned, under the new system established by the CAB every at- [fol. 3430] tempt should be made to dispatch January not later than March 15, and subsequent months at 20-day intervals until the accounts are on schedule. In this connection it is important that complete accruals be made at the end of each month starting with January, as otherwise the Lima figures are likely to prove misleading.

1943 budget

We expect to hear shortly from Mr. Kirkland by cable as to the monthly total of the proposed 1943 budget, including depreciation and obsolescence reserves. Due to pressure of other urgent matters the budget itself has not come forward, and it is expected that it will be mailed from Lima during the early part of February. You should discuss thoroughly with Mr. Kirkland the relationship between the local budget and the company's earnings as shown by the New York books, and render all possible assistance in connection with this important problem.

Airways personnel

For your information, the instructions going forward from Grace headquarters in New York to the various agencies along the West Coast are as follows:

"1943 It is the intention to transfer to the Panagra payroll the salaries of the Grace employees devoting 100% of their time to Panagra work whether in connection with plane calls or otherwise, although the individuals in question remain under the general direction and supervision of Grace. This is subject, of course, to Panagra's confirmation that the full time employment of such personnel is necessary. A Panagra representative, probably Mr. Batz, will leave shortly on a trip over the line during which he will take up with the Grace agents direct the details of this transfer which will give all concerned an opportunity to work out any special problems presented by the plan to complete mutual satisfaction."

It will be necessary for you to stop long enough at each [fol. 3431] agency to determine what employees devote 100% of their time to Panagra work and to form an opinion as to whether all such employees appear necessary. When there is any doubt as to whether an employee devotes 100% of his time to Panagra work, such employee is not eligible to be transferred to the Panagra payroll. You should be in constant touch with Mr. Kirkland and the Sago organization in connection with the foregoing and complete arrangements at the earliest possible moment to place the personnel involved on the Panagra payroll retroactive to January 1, 1943.

The following questions may be expected to arise:

(a) liability under social laws

(b) earned vacations

(c) traveling expenses

(d) life insurance

It has been agreed here that Panagra will not take over any liability of any consequence. In other words, Grace's liability to employees in connection with years of service is to be paid over to Panagra, except in countries where payments are currently made into Government banks. Grace will grant or otherwise liquidate earned vacations.

Any travel expenses due foreign employees will be the subject of a special study by you. Premiums on life insurance policies issued under the law will be paid by Panagra as they fall due after January 1, 1943.

Group insurance should be offered without delay to all employees taken over by Panagra.

Audit of agency expenses

Unless the agency expenses south of Lima have been audited on the spot by someone connected with the Sago organization before you are ready to start on such a trip, it appears desirable that you take over this work in order to relieve the congestion at Sago headquarters. The audit [fol. 3432] of the Lima expenses, including Sago, should be conducted by you in any event. As customary, a written report addressed to Mr. Kirkland with copies to all concerned will be required from each point and it should be written before leaving the agency involved.

Insurance settlements

We are particularly anxious that Group Insurance payments and other liquidations in connection with the company employees who lost their lives last week be handled as expeditiously as possible. The New York underwriters are prepared to effect payment as soon as all required information is received from Lima both as to Group Insurance and Voluntary compensation coverage. We have cabled Lima today in this connection.

With respect to claims resulting from the death of passengers, these cannot be settled as rapidly, but an attempt should be made to avoid unnecessary delays.

G. Vidal

GV:CFL.
CC: DCampbell
TJKirkland
JHNeblett
JSWoodbridge

[fol. 3433]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 375

bcc: Mr. Trippe
Mr. Friendly

February 21, 1946

Mr. Harold J. Roig, President
Pan American Grace Airways, Inc.
135 East 42nd Street
New York, New York

Dear Harold:

We have discussed the matter of your proposed operation of the two Pan American Grace Constellations with Mr. Shannon and Mr Vidal on the basis of Mr. Shannon's memorandum to me of February 16th. This matter was referred to our Executive Committee meeting on February 19th. The Committee felt that the operation as outlined would result in excessive cost to Pan American Grace as well as providing uneconomical utilization of this equipment.

I have been requested by the Committee to submit to you a plan whereby Pan American Airways, Inc. would be willing to contribute two Constellation aircraft to a pool to be formed with Pan American Grace's two Constellation aircraft making a total of four aircraft of this type. With this fleet, an efficient operation could be conducted from the Miami base serving both the East and West coasts of South America by providing a daily service from Miami to Lima and a three times weekly service from Miami to Rio. This would result in a utilization of a little over nine hours per day per unit which could be still further improved, as for example, through a second daily service between Miami and Balboa, if warranted, or a daily Miami-Barranquilla trip. In support of our plan, I attach a memorandum outlining in detail the economic disadvantages of the proposal submitted in Mr. Shannon's memorandum and justifying in every respect our suggestion that a pool of equipment be formed to increase the utilization of the equipment to a satisfactory point, where the cost per mile will

be comparable to that which we expect to obtain in our Constellation operations elsewhere.

I need hardly elaborate on the point that a through service from Miami to Lima, such as would be provided by the proposed equipment interchange, would be highly desirable from the standpoint of the traveling and shipping public.

We are confident that our proposal is entirely practical and in the interest of Pan American Grace Airways, as well as the public interest. If you will kindly advise me that you concur in principle, I shall immediately take the necessary steps to coordinate this program, and put it into effect at the earliest possible moment.

Very truly yours,

Original signed by
Howard B. Dean
Howard B. Dean
Vice President

Attachment

PAA-2898
12/21/54 mfr

[fol. 3434]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 376

September 2, 1946

Braniff Airways, Inc.
Mr. Chas. E. Beard, Vice President
Love Field
Dallas 9, Texas

Dear Mr. Beard:

This will acknowledge receipt of your letter of August 30th requesting certain airport and route facilities operated by Pan American Airways and its affiliated companies for a survey flight which is scheduled to depart Brownsville September 1st enroute to Rio de Janeiro, via Balboa, Bogota, Quito, and Lima. This is to advise that Pan Amer

ican Airways will agree to furnish the necessary airport facilities over your certificated route at those station operated by Pan American. With respect to the affiliated companies, I will endeavor to immediately communicate with them with respect to making the airport facilities under their jurisdiction available for this first survey flight, and will advise you of their decision.

The services to be rendered at the airports operated by Pan American Airways or its affiliates, Avianca and Panair do Brasil, subject to approval in the case of the latter two companies, will include ramp facilities, refueling (where available by PAA or its affiliates), communications (including flight guard, position reports, arrival and departure messages, and the use of navigational aids along the route) and meteorology facilities, including terminal weather and route forecasts.

The only airports in the above itinerary where the facilities are actually available by PAA are Brownsville and Balboa, as the balance are under the jurisdiction of the affiliated companies. With respect to the airports operated by Panagra, it is suggested that you address a letter directly to that company, in care of their New York Office, which I will agree to transmit directly to them for their decision, in order to expedite the matter.

It is understood that, upon your return from this first survey flight you will initiate negotiations with this office as to the specific ground services which are to be rendered Braniff Airways at the airports operated by Pan American, and the rates to be charged, beginning with Braniff's first familiarization and training flight. The rates for this first survey flight will be determined in accordance with PAA's scheduled charges established for itinerant aircraft at those points which are controlled by Pan American.

Very truly yours

PAN AMERICAN AIRWAYS, INC.

Original signed by W. L. Morrison
W. L. Morrison, Vice President
Latin American Division

bcc: Vice President & General Counsel - NYC
Vice President Dean - NYC
Division Manager - MIA
Division Operations Manager - MIA
Division Traffic Manager - MIA
Division Accountant - MIA

[fol. 3433]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 377

July 8, 1954

Mr. Andrew B. Shea, President
Pan American-Grace Airways, Inc.
7 Hanover Square
New York, New York

Dear Andy:

Those handling our current contract forward negotiations with the pilots have given me a copy of the National pilots' agreement which covers the reciprocal arrangement between them and Capital. I know you will be interested in looking this over.

As I mentioned, we are planning to put in the through flight between L.A. and Brazil about September 1. Traffic estimates relating to a similar through flight to the West Coast look equally attractive, and I am hoping we could start the through California West Coast service at the same time.

Our people feel that the pilot problem which we discussed can be met only through some sort of equitable reciprocal service. Also, only by a through California West Coast service can we hope to compete effectively with Canadian Pacific and the other through foreign flag services which are already planned and which will tap not only U. S. and Canadian West Coast traffic, but through Orient traffic as well.

The problem you raised of having a chartered Pan American aircraft on the West Coast I am sure you will agree is a minor one. In recent years, nearly all American flag airlines have concluded charter arrangements permitting them

flight service. The public is educated to seeing aircraft of one carrier flying over routes of another carrier. The CAB also seems sympathetic to such arrangements which provide improved service to the public.

Sincerely,

JTT:ke

[Handwritten notation: "Please make copies for J.C.E., H.J.F., S.F.P., Wm. C., L.A.D., all marked "Confidential."]

[fol. 3436]

PAN AMERICAN WORLD AIRWAYS, INC., EXHIBIT 378

July 21, 1954

MEMO TO FILES

SUBJECT: LOS ANGELES WEST COAST THROUGH FLIGHT

Mr. Trippe is telephoning Mr. Shea today, accepting Mr. Shea's compromise offer in connection with the through flight from Los Angeles to points on Panagra's routes.

This compromise was to the effect that PAG would join in the operation of the flight providing PAA would reimburse PAG for any losses incurred after a 90-day introductory period. This arrangement would continue for a period of one year from the date on which the service is inaugurated.

Our initial offer contemplated our underwriting any losses on southbound flights only, where we would be primarily responsible for traffic development. Mr. Shea was concerned whether the Orient traffic which would use the through flight was not largely southbound immigrant traffic, and whether this would leave the northbound Panagra through flight traffic levels below the southbound. To eliminate this contingency we are underwriting the through flight in both directions for Panagra, as stipulated by Mr. Shea.

As a result of our recent meetings with Mr. Lawder, the initially agreed cost of this through flight over PAG's route would be $2.27 per mile. Under Mr. Shea's compromise offer, revenues above this figure, if any, would accrue to PAA

in consideration of our underwriting any revenue deficiencies below the same figure.

This arrangement will provide the through flight service from Los Angeles to points on Panagra's routes, which have been advocated by Exec. Vice Pres. Morrison, Vice Pres. Lipscomb and Exec. Vice Pres. Young as necessary for competitive reasons, with particular reference to existing and potential foreign-flag operators.

This through flight from Los Angeles to points on Panagra's routes will be conducted with PAA aircraft and PAA operating crews. Also, the future use of Panagra crews between the Canal Zone and the Continental United States will not exceed the present schedules and, furthermore, Panagra's requirements for 4-engine flight crew time in excess of that required by present Panagra schedules with 4-engine aircraft will be operated by PAA flight crews operating between Miami and Lima, until reasonable reciprocity is achieved.

[fol. 3437] The detailed time table for this through flight is being worked out by LAD Miami and will be supplied to the Head Office and PAD in the usual manner. Likewise, the opinions and recommendations of PAG officials will be obtained in Miami and New York.

This through flight is to be inaugurated during September 1954, the exact date to be fixed in consultation with PAG management.

All necessary preparations for the service, including advertising and promotional programs and material, will now be initiated.

Original signed by
John C. Leslie
John C. Leslie

cc: Vice Pres. Friendly, Legal, NY
Vice Pres. Ballinder, Exec., NY
Vice Pres. Lipscomb, Traffic & Sales, NY

[fol. 3438]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 379

July 23, 1954

Mr. Andrew B. Shea, President,
Pan American-Grace Airways, Inc.
7 Hanover Square,
New York, N. Y.

Dear Andy:

In accordance with your talk with Juan, I am enclosing drafts of the papers.

I have also sent to Ken Lawder a copy of the draft of the interchange agreement but not of the two other papers. I would be glad, of course, to send him the others if you so desire.

Sincerely,

Henry J. Friendly,
Vice President and General Counsel.

[fol. 3439]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 380

COPY
August 20, 1954

MEMORANDUM TO
MR. DOUGLAS CAMPBELL

Referring to your letter of August 18th I have the following comments:

(1) Before we get into the detailed proposal it must of course be understood that the Los Angeles Interchange will not be signed unless and until the pilot thru-flight controversy is settled as the Interchange was initially proposed as one means of arriving at such settlement.

(2) Refefring to the last paragraph quoted on page 1 I do not agree and we must insist on our draft as quoted on page 1, otherwise we would be involved in interminable arguments before adding additional flights

and our associates should be willing to rely on our judgment.

(3) I agree to Clause 15 as quoted on page 2 including the additional paragraph as inserted by you.

(4) I do not agree on proposal 1 on page 3 as there is no relation between the Los Angeles agreement and the Miami-Balboa agreement and there is no reason why any provisions that we consider desirable in the Los Angeles agreement should require corresponding modification in the Miami agreement. The only changes in the Miami agreement which we are prepared to accept are those contemplated in Supplement 17 as drafted by us.

(5) I do not agree to Proposal 2 on page 3 because the measure of the quality of service rendered by other carriers would be the standard of other U. S. Flag carriers and the measure should be our own standards or those of PAA as provided in your draft clause on page 2. I consider our standard, and I am sure that PAA considers theirs, as higher than those of "other U. S. Flag carriers operating outside the continental limits of the United States."

Referring to Erwin's suggestion, we do not wish to consider any further sale of DC-6 equipment now but we will be glad to provide aircraft for the Los Angeles Interchange if Pan American is unable to do so.

A. B. S.

[fol. 5440]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 381

PAN AMERICAN-PANAGRA
THE OVERNIGHT EXPRESS TO ARGENTINA VIA
PANAMA ECUADOR PERU CHILE

August 20, 1954

Memorandum to Mr. J. C. Leslie:

Reference the matter of the proposed Los Angeles interchange draft agreement, I enclose copy of memorandum

received today from Mr. Shea, together with copy of my note to him dated August 18th, to which his memorandum makes references.

I am, of course, available at your convenience for any further discussion of this matter which you may consider desirable.

Douglas Campbell

Douglas Campbell

[fol. 3441]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 382

(Copy of letter to Mr. A. B. Shea)

EXHIBIT 382

August 18, 1954

Dear Andy:

Leslie asked Lawder and myself to meet with him this noon to iron out the differences of view on two paragraphs in the proposed Los Angeles interchange agreement, and after considerable discussion of them I told him I would have to clear any changes with you.

1. Extension to Buenos Aires. Our draft reads:

> "The through flight will terminate initially at Lima, Peru, but shall be extended to Buenos Aires, Argentina, as soon as and for such period as Panagra determines such extension to be commercially and otherwise justified."

In previous discussions during the last week or so they have taken the position that an additional phrase be added reading:

> "it being understood that the through flight shall be extended to Buenos Aires before Panagra adds any other flights to Buenos Aires."

I have objected to that on the ground that, as a matter of principle, we should not make a commitment which would

bind us to take certain action at some unspecified future date, possibly under conditions which we cannot now foresee. Today they proposed some further additional words so that the entire sentence would read as follows:

"The through flight will terminate initially at Lima, Peru, but shall be extended to Buenos Aires, Argentina as soon as and for such period as Panagra determines such extension to be commercially and otherwise justified, it being understood that the through flight shall be extended to Buenos Aires before Panagra adds any other flight to Buenos Aires unless economic considerations dictate otherwise."

[fol. 3442]

2. Clause 15 covering the term of the agreement is proposed by PAA as follows:

"15. *Term*—(a) This agreement shall become effective as of the date of execution hereof, and shall continue in effect for a period of one (1) year thereafter and until terminated by either party upon three months' written notice given not earlier than nine months after the date of execution hereof; provided, however, that such notice may be given only in case experience over the immediately preceding six-months' period shall have demonstrated that the revenue produced on the through flight for the party giving the notice shall have been inadequate in relation to the added cost to such party of operating such flight. The respective presidents of the parties and their successors in office are hereby irrevocably authorized to give such notice in accordance with this agreement.

(b) This agreement shall be cancelled if the Civil Aeronautics Board should enter an order disapproving the same and such order should become final."

We tentatively agreed to these two paragraphs last week, but in our draft inserted an additional paragraph reading as follows:

"(b) If at any time subsequent to December 31, 1954 either party shall consider that this agreement is not

satisfactory because of failure by the other party promptly and adequately to perform any of its obligations under this agreement in such manner as to promote the fullest development of through traffic between points on the respective parties' certificated routes within the spirit and intent of this agreement; or, because either party shall be of the opinion that the services performed for it by the other are not consistent with its established standards in any particular which for a substantial period of time unreasonably interfers with the efficient conduct of or the quality of service on the through flights over its routes, the complaining party may give notice to the other, stating the respect in which it considers the other party's performance to be unsatisfactory. Thereupon, the parties will negotiate in an endeavor to see whether the views of the complaining part can be met. If such negotiations shall not succeed within thirty days reference shall be had to arbitration as provided in paragraph 16(g) to determine whether the complaining party's dissatisfaction is reasonable and if so what measures should be taken to meet its views. If such arbitration determines that the complaining party's dissatisfaction is reasonable, the other party shall be bound to take the action recommended by the arbitrators and thereafter diligently proceed with same. If the other party shall fail to do so, the complaining party may thereupon cancel this agreement upon three months' notice given by its president but such right of cancellation shall not exclude any other remedy."

[fol. 3443] Their proposal this morning under this heading was that either (1) they would accept this paragraph, but simultaneously modify the existing Through Flight Agreement to have the same wording; (2) they would be willing to incorporate in the Los Angeles through flight agreement the *two* corresponding paragraphs in the existing Through Flight Agreement, and that the choice of (1) or (2) is left to our preference. Under (2) the paragraphs would read as follows (after making appropriate modification with respect to maintenance):

"(b) If at any time subsequent to December 31, 1954, PAA shall consider that this agreement is not satisfactory because of failure by Panagra promptly and adequately to perform any of Panagra's obligations under this agreement (including without limitation, such matters as failure to establish the proper schedules for flights under this agreement, failure to handle flights under this agreement in such manner that the schedules shall be duly and punctually performed, failure properly to maintain and overhaul PAA's aircraft used in the service performed under this agreement, or failure to discharge the provisions of this agreement with respect to the selling and handling of traffic) in such manner as to promote the fullest development of through traffic between the continental United States and points on PAA's certificated route in South America within the spirit and intendment of this agreement, PAA may give notice to Panagra stating the respect in which it considers Panagra's performance to be unsatisfactory. Thereupon PAA and Panagra will negotiate in an endeavor to see whether the views of PAA can be met. If such negotiations shall not succeed within thirty (30) days, reference shall be had to arbitration as provided in Paragraph 25 to determine whether PAA's dissatisfaction is reasonable and, if so, what measures should be taken to meet PAA's views. If such arbitration determines that PAA's dissatisfaction is reasonable, Panagra shall be bound to take the action recommended by the arbitrators and thereafter diligently proceed with the same. If Panagra shall fail to do so, PAA may thereupon cancel this agreement upon three (3) months' notice, but such right of cancellation shall not exclude any other remedy.

"(c) If at any time subsequent to December 31, 1954, Panagra shall be of the opinion that PAA's services are not consistent with recognized standards of other United States flag air carriers operating outside the continental limits of the United States in any particular which for a substantial period of time unreasonably in-

terferes with the efficient conduct of the through flights over Panagra's routes, Panagra may give notice to PAA stating the respects in which it considers such services to be unsatisfactory. PAA and Panagra will thereupon negotiate in an effort to see whether the views of Panagra can be met. If such negotiations shall not succeed within thirty (30) days, reference shall be had to arbitration as provided in paragraph 25 to determine whether Panagra's dissatisfaction is reasonable and, if so, what measures should be taken to meet Panagra's views. If such arbitration determines that Panagra's dissatisfaction is reasonable, PAA shall be bound [fol. 3444] to take the action recommended by the arbitrators and thereafter diligently proceed with the same. If PAA shall fail to do so, Panagra may thereupon cancel this agreement upon one (1) year's notice, but such right of cancellation shall not exclude any other remedy."

I would appreciate your telegraphing me your concurrence or non-concurrence at your earliest convenience.

Sincerely yours,

Douglas Campbell

DC:Q
cc: KALawder

[fol. 3445]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 383

V. P. & Gen. Mgr. Campbell
Panagra
NY

Vice Pres. Leslie
Executive
NY

August 26, 1954

Thank you for your note of August 20th, transmitting Mr. Shea's memo of the same date.

I need hardly say that I was taken aback by Mr. Shea's arbitrary viewpoint, and find it a cause for real regret.

What he seeks in the proposed agreement is, of course, contrary to the comparable provisions which Pan American accepted in the original Through Flight Agreement.

In view of my understanding that Mr. Shea is on vacation, with the consequent difficulty in reconciling our viewpoints directly, and in view of the competitive disadvantage to which Panagra and Pan American are exposed by any avoidable delay in concluding the Through Flight Agreement, I am willing to recommend the following solution for Mr. Trippe's approval:

1. Mr. Shea's viewpoints as to Clauses 2 and 15 will be included in the Agreement as presented for signature, subject however to the procedure outlined immediately below.

2. Within 30 days after the signing of the Agreement, Panagra and Pan American will select a mutually satisfactory arbitrator; in the event of Pan American and Panagra being unable to agree on such a person within 30 days, the President of the American Arbitration Association will be asked forthwith to appoint such an arbitrator within an additional 30 days.

3. The arbitrator so appointed will hear the views of Pan American and Panagra respectively as to Clauses 2 and 15 and decide the following questions in the light of the most equitable possible reconciliation of the parties' respective desires and the proper conduct of the operations contemplated by the Agreement:

   (a) Should the phrase "it being understood that the through flight shall be extended to the area N.W.S. before Panagra adds any other flight to Buenos Aires unless over-riding considerations dictate otherwise" or some modification thereof be included at the end of the second sentence in Clause 2?

   (b) Which of the following alternatives will be adopted?

(i) The two paragraphs of Clause 15 hereunder discussion shall be included in the new Agreement in a form analogous to the Through Flight Agreement, or

(ii) The Panagra draft of the same material shall be incorporated in the new Agreement and simultaneously amended in like manner in the Through Flight Agreement, or

(iii) The Panagra draft shall be included in the new Agreement without any corresponding change in the Through Flight Agreement.

4. Within 7 days after receipt of arbitrator's opinion, his decision will be agreed to by Pan American and Panagra as amendments of the Agreement initially signed.

It seems to me that the above course would serve the requirements of both Pan American and Panagra and would be more than equitable to Panagra.

As to Mr. Shea's comments in the first numbered paragraph of his memorandum, it is also our view that the proposed Agreement will be helpful in connection with the pilot Through Flight controversy, but viewed independently it would still be of obvious advantage to the competitive positions of Pan American and Panagra; and it must be considered in both respects.

Original Signed By

JOHN C. LESLIE
John C. Leslie

bc: Pres. Trippe, Exec., NY
Vice Pres. Gledhill, Exec., NY
Mr. John C. Pirie, Legal, NY
Vice Pres. Balluder, Exec., NY

[fol. 3447]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 384

September 9, 1954

Memorandum to: Mr. A. B. Shea
7 Hanover Square
New York, New York

Dear Ansly:

I am sure you have received a copy of my memorandum of August 26th to Doug Campbell, but attach one for your convenience.

As I am sure you know, Pan American has been making plans for a through flight from Los Angeles to Rio and Sao Paulo via Panama and Caracas. It is presently contemplated that this service will be inaugurated November 1, 1954. I believe it would be much to Panagra's interest if the through flight from Los Angeles to Lima were to be inaugurated concurrently. During July we seemed to be making excellent progress on the Pan American Panagra agreement relating to this service, but in recent weeks we seem, unfortunately, to have bogged down. My memo was intended to cure the delay and I hope it has had your favorable consideration. If we are to meet the closing of the November 1st timetables, we cannot afford to lose time in finalizing this agreement, and we should proceed to do this even though the problem relating to the flying by Panagra pilots over our Miami-Panama route may not have been completely resolved.

John C. Leslie

cc: Vice Pres. & Gen. Mgr. Douglas Campbell, Panagra, NY

bc: Vice Pres. Ballinger, Exec., NY
Vice Pres. Friendly, Legal, NY
Exec. Vice Pres. Morrison, LAD, Miami

[fol. 3448]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 385

September 15, 1954

Memorandum to: Mr. John C. Leslie
155 East 42 Street
New York 17, N. Y.

Dear John:

I received your memorandum of September 9th referring to your previous memorandum of August 26th to Douglas Campbell. I regret that you were taken aback by my "arbitrary viewpoint". I do not, of course, consider my viewpoint to be arbitrary.

I feel that it would be unwise and probably unproductive to adopt the arbitration provisions which you suggest and I see no necessity for the adoption of this procedure.

While I recognize, as you do, the benefit to Pan American and Panagra, from a competitive viewpoint, of the initiation of the L. A. Lima Through Flight we certainly cannot undertake the operation in the manner contemplated unless and until the pilot through flight controversy is settled. This situation has now been complicated, as you undoubtedly are aware, by the position taken by the Panagra pilots.

Andrew B. Shea

cc: Messrs. Trippe, Gledhill, Pirie, Ballinger, Campbell

[fol. 3449]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 386

September 16, 1954

Memorandum to: Mr. A. B. Shea
7 Hanover Square
New York, New York

Dear Andy:

This will acknowledge your memorandum of September 15th concerning the Los Angeles Through Flight.

So far as concerns the agreement relating to this flight, if you are unwilling to have these few points in dispute settled by arbitration, I would think we should make an effort to reconcile our points of view in conference. However, further efforts in this direction would be fruitless under present circumstances in view of your opinion that the operation cannot be undertaken unless said until the pilot controversy concerning the Miami through flights is completely resolved.

I do not share your opinion on the latter point. The small amount of flying which Pan American flight crews would perform once weekly over Panagra's route from Panama to Lima under the Los Angeles Through Flight agreement could only be helpful in resolving the pilot controversy over the large amount of flying by Panagra personnel on PAA's Panama-Miami route. Panagra should not be deprived in the meanwhile of the traffic advantages of the Los Angeles Through Flight.

John C. Leslie

cc: Messrs. Campbell
Trippe
Gledhill
Friendly
Ballador

[fol. 3450]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 387

September 27, 1954

Memorandum to: Mr. A. B. Sloan
7 Hanover Square
New York, New York

Dear Andy:

With further reference to my memoranda to you of September 20th and September 16th, they will confirm that Pan American's November 1st timetables, which have now gone to press, will show a once weekly through flight from Los Angeles to Rio and Sao Paulo via Panama and Caracas.

We very much regret that, due to your unwillingness to finalize the Los Angeles Through Flight Agreement until there is a settlement of the controversy between the Pan American and Panagra pilots over the Miami route, it has not been possible to show a Los Angeles-Lima Through Flight via Panama. We certainly hope this can be done in the December 1st timetables.

Original Signed By
JOHN C. LESLIE
John C. Leslie

cc: Messrs. Campbell
Trippe
Gledhill
Friendly
Balluder

[fol. 3451]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 388

October 4, 1954

Memorandum to: Mr. John C. Leslie
135 East 42 Street
New York 17, N. Y.

Dear John,

Reference is made to your memoranda to me dated September 16th and September 27th. As pointed out in my memorandum to you of September 15th that while I recognize, as you do, the benefits to both PAA and Panagra from a competitive viewpoint, of a Los Angeles-Lima Through Flight, I am still of the opinion that the initiation of such an operation prior to a settlement of the pilot Through Flight controversy would only complicate that issue.

Frankly, in view of the importance which you give to traffic between the West Co[illegible] of the United States and the West Coast of South A[illegible]rica, a viewpoint in which we fully concur, I was very surprised to learn that in your

September 26th schedule you have completely eliminated the connections at Panama between Panagra's tourist flights and PAA's Panama Los Angeles flights and this without any previous advice to or consultation with Panagra, contrary to the understanding reached some months ago on schedule coordination.

I would further like to point out that while the traffic figures prepared by Mr. Lipscomb indicated that roughly an estimated additional thirty-five passengers per week in both directions would be generated by a Los Angeles-Lima Through Flight I again express the observation that in my [fol. 3452] opinion this is a most optimistic estimate particularly because, as I have previously mentioned to Mr. Trippe, a Through Flight between the West Coast of South America and the West Coast of the United States to be of real benefit to Panagra should include a Mexico City stop to enable Panagra to meet effectively the Lima-Mexico City competition from CPAL. CPAL during the last month has averaged approximately fourteen passengers per flight in both directions between Lima and Mexico City.

Under the circumstances it is most difficult for me to see the justification for Panagra to assume the financial burden of an annual expense of approximately $370,000 of which $120,000 is for charter hire of PAA aircraft under the PAA proposal for a Los Angeles Lima Through Flight. However, as a fair and equitable compromise, I would be willing to have Panagra consider a Lima Los Angeles Through Flight, if, in order to reduce the added cost to Panagra of this additional flying, PAA would be willing to consider a one-weekly Through Flight between Lima and Los Angeles using Panagra aircraft and with Panagra crews flying the sectors Lima Panama and PAA crews the Panama Los Angeles sectors. This assures we can reconcile the different points of view on items still at issue in the August 18th draft of the proposed Through Flight Agreement.

Andrew B Shea

[fol. 3453]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 389

October 21, 1954

Memorandum to: Mr Andrew Shea
7 Hanover Square
New York, N. Y.

Dear Andy:

Thank you for your memorandum of October 4, concerning which I comment as follows:

1. I fear that you have not been fully informed concerning the matter of schedule coordination mentioned in your second paragraph. The schedule patterns to be effective September 26 were discussed in detail by the Pan American and Panagra officials in Miami, and there was agreement concerning the timetable to be used for the Los Angeles Lima Through Flight, if inaugurated. Pan American hoped until the last minute that Panagra would agree to this flight and, therefore, went to press with its September 26 schedules constructed in such fashion as to permit its inauguration without delay or confusion. Specifically, one of the Pan American 515 flights arrives Balboa on Wednesdays at 1600 and is designed to leave for Lima just one hour later, as tentatively agreed with the Panagra officials in Miami.

   A further re-arrangement and improvement of Pan American's trunkline schedules in the Latin-American Division will become effective on December 1, 1954. At this time, a similar provision will be made for a Los Angeles Lima Through Flight transiting Balboa on Mondays; alternatively, southbound PA 515 will have a 6-hour 15-minute connection with PG 333 on Mondays; northbound, in the absence of a through flight, PG 332 will have a 2-hour 15-minute connection with PA 515 on Tuesdays and Thursdays.

Copies of these Pan American December schedules were forwarded to Mr. Kirkland some time ago, and we understand that he has been in Lima endeavoring to work out Panagra schedule changes which would further improve connections between the two carriers.

In this connection, the officials of Pan American's Latin American Division have for some time felt that [fol. 3454] there could and should be more give and take on Panagra's part in the matter of schedule adjustments. I know that Panagra has its problems, but Pan American has theirs also. The need for cooperation becomes even more acute if coordination with Pan American's trans-pacific service is to be provided—the latter being obviously to the advantage of Panagra whether on through flights or connecting flights.

2. While there is no doubt that both Panagra and Pan American would benefit if Pan American were certificated to call at Mexico City between Los Angeles and Panama, I am sure you understand the facts. First, Pan American does not hold such a certificate. Second, Western Air Lines was awarded such a certificate, the present status of which is uncertain. Third, the United States Government has made repeated efforts to negotiate an air transport agreement with Mexico, but so far without success; the question of any U. S. flag carrier operating the Los Angeles–Mexico City sector has been one of the major problems in all of these negotiations.

It remains to be seen whether or when a Pan American application for this service would seem likely to prosper. At best this is a long time off, and the possibility of accomplishing this in the future should not prevent our doing something in the interests of both companies in the present.

3. While I appreciate your suggestion that you would be willing to have Panagra consider a Lima–Los Angeles Through Flight, the conditions which you

now attach would not be acceptable to Pan American and, in my opinion, rest on false premises.

Your first condition is that Panagra aircraft be used in order to reduce Panagra's expenses for charter hire. As you know, Pan American believes that Panagra's fleet is somewhat in excess of current requirements. While supplying aircraft for the Panama/Los Angeles route would improve Panagra's current utilization, this is by no means the only or necessarily the best solution for Panagra. The use of Pan American aircraft over the Los Angeles/Lima route would represent a very small measure of reciprocity for the return which Panagra has been realizing through the use of Panagra's aircraft over Pan American's Canal Zone/Miami route. Second, the so-[fol. 3455] called pilot controversy, concerning which the Pan American pilots feel very strongly, can best be resolved by taking some tangible steps in the direction of flight time reciprocity between the two pilot groups, as you have yourself recognized. This requires that any Los Angeles/Lima Through Flight employ Pan American flight crews all the way to Lima. For Pan American to enter into a new interchange with Panagra which did nothing to solve the problem would, in my opinion, have serious adverse consequences to both companies.

John C. Leslie

bcc: V.P. Balluder
V.P. Friendly
V.P. Morrison, MIA
Treasurer Ferguson

[fol. 3456]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 390

Minutes of Regular Meeting of the Board of Directors of Pan American Grace Airways, Inc. held at the office of Pan American World Airways, Inc., 135 East 42nd Street, New York, N. Y. on the 2nd day of November, 1955 at 4:00 o'clock in the afternoon.

PRESENT:

Messrs.

Erwin Balluder	W. L. Morrison
Henry J. Friendly	H. J. Roig.
Felix E. Larkin	Andrew B. Shea
John C. Leslie	

being a quorum of the Board.

Mr. Shea, President, presided. Mr. Cogswell, Secretary, acted as such.

Minutes of the Regular Meeting of October 5, 1955 were read and approved.

The following financial data was submitted and discussed:

Comparison of Actual Results with Budget for nine months ended September 30, 1955

Comparative Statement of Profit and Loss for September 1955-1954 and nine months ended September 30, 1955-1954

Comparative Statement of Profit and Loss for Quarter ended September 30, 1955-1954 and nine months ended September 30, 1955-1954

Statement of Cash Position as at September 30, 1955 compared to Previous Periods

Cash Position forecast for year ending September 30, 1956

The following capital appropriation was reported:

122(M)	Installation of sequence gate and throttle reverse lock on 4 DC-6B aircraft	$5,643

The following capital appropriations were authorized:

123(M)	Initial Modification to DC-6B N-65260	$35,813
124(M)	Modification of DC-3A Aircraft N-28335	$76,791

[fol. 3457] The President reported on movement of passengers under the National Interchange Agreement for the months of September and October.

The President stated that after full investigation of the relative merits of B-707 and DC-8 projects, he was prepared to recommend the purchase of five DC-8 aircraft at an estimated cost, including cost of spare engines and parts, of approximately $32,000,000. Mr. Leslie inquired as to the consideration which had been given to the B-707, stressing particularly the earlier inauguration of jet service which this airplane would make possible, and expressing his tentative opinion that the 707 was better adapted to Panagra's route structure. It was voted that the President and Mr. Ballinder or Mr. Leslie pursue the matter with all possible despatch and that the President submit final recommendation to the Board for action as promptly as possible.

There was presented to the meeting the form of six non-interest bearing promissory notes, to be dated November 28, 1955, of this Corporation to National Airlines, Incorporated, pursuant to the provisions of Section 4.6 of the Financial Supplement to the Interchange Agreement between this Corporation, National Airlines, Incorporated and Pan American World Airways, Inc., five of said notes being each in the principal amount of $633,333.33 and one thereof being in the principal amount of $633,333.35, and payable as therein provided, and a counterpart of the Agreement, also to be dated November 28, 1955, between this Corpora-

tion, National Airlines, Incorporated and Chemical Corn Exchange Bank, Bankers Trust Company, The Chase Manhattan Bank, The Hanover Bank, The First National City [fol. 3458] Bank of New York, and The New York Trust Company, whereby, among other things, in order to induce each of said banks to purchase from National Airlines, Incorporated one of said notes, this Corporation makes certain agreements and incurs certain obligations.

On motion duly made and seconded, it was unanimously

RESOLVED that the President or any Vice President be and he hereby is authorized to execute and deliver to National Airlines, Incorporated six non-interest bearing promissory notes in the form presented to this meeting, five of said notes being each in the principal amount of $[illegible] and one thereof being in the principal amount of $[illegible], payable in the manner and upon the terms provided therein, pursuant to the provisions of Section 1.6 of the Financial Supplement to the Interchange Agreement between this Corporation, National Airlines, Incorporated and Pan American World Airways, Inc., and to execute and deliver in the name and on behalf of this Corporation a certain Agreement as presented to this meeting, to be dated November 28, 1955, with National Airlines, Incorporated and Chemical Corn Exchange Bank, Bankers Trust Company, The Chase Manhattan Bank, The Hanover Bank, The First National City Bank of New York, and The New York Trust Company whereby, among other things, this Corporation undertakes certain obligations with respect to the prepayment of the principal amount of said promissory notes, together with interest thereon as agreed to be paid by National Airlines, Incorporated, or the issue and exchange, in the manner set forth in said Agreement, for said promissory notes and the notes then outstanding under the Credit Agreement dated June 16, 1954 between this Corporation and certain banks, of a principal amount of Notes, to be issued under and pursuant to the provisions of the Credit Agreement, equal to the sum of said promissory notes and said then outstanding Notes,

agrees to a reduction in the commitments of said banks under said Credit Agreement in an amount equal to the aggregate principal amount of said promissory notes, and undertakes to make certain prepayments from time to time on the Notes presently outstanding under said Credit Agreement.

RESOLVED FURTHER that the proper officers of this Corporation be and each of them hereby is authorized and directed to do and perform all such other acts [fol. 3459] and things and to execute and deliver all such instruments and documents as may be required to carry out the purposes of the foregoing resolution and the terms and provisions of said promissory notes and said Agreement.

There was presented to the meeting Aircraft Lease dated September 9, 1955 between this Corporation and Pan American World Airways, Inc., covering the lease of four DC-6's by this Corporation to Pan American World Airways, Inc. for a period of three years at a rental of $22,500 per month, and the lease by Pan American World Airways, Inc. to this Corporation of one DC-6B for a period of three years at a rental of $22,500 per month, such lease being executed in the name and on behalf of this Corporation by K A Lawder, Vice President and Comptroller.

On motion duly adopted, it was

RESOLVED that the action of K A Lawder, Vice President and Comptroller of this Corporation, in executing in the name and on behalf of this Corporation Aircraft Lease dated September 9, 1955 between this Corporation and Pan American World Airways, Inc., in the form presented to this meeting, be and the same hereby is approved, ratified and confirmed.

On motion duly adopted, it was

RESOLVED that hereafter the regular meetings of the Board of Directors shall be held on the Monday preceding the first Tuesday of each month at 4:30 o'clock in the afternoon at the office of Pan American World Airways, Inc.

Mr. John C Leslie presented his resignation as a Director of the Corporation, such resignation being subject to, and to take effect upon, the election of his successor to such directorship becoming effective.

Mr. Leslie's resignation, effective as stated therein, was accepted with regret.

[fol. 3460] The meeting thereupon proceeded to the election of a Director to succeed Mr. Leslie. Mr. Roger Lewis was duly nominated and unanimously elected a Director of the Corporation, Mr. Lewis' election being subject to, and to become effective upon, approval thereof by the Civil Aeronautics Board, he thereupon to succeed the said John C Leslie or such successor of said John C Leslie as may have been sooner elected and qualified.

There being no further business, the meeting adjourned.

.....
Chairman

.....
Secretary

[fol. 3461]

PAN AMERICAN-WORLD AIRWAYS, INC. EXHIBIT 391

Minutes of Adjourned Regular Meeting of the Board of Directors of Pan American-Grace Airways, Inc held at the office of Pan American World Airways, Inc. 135 East 42nd Street, New York, NY on the 20th day of December, 1955 at 4:00 o'clock in the afternoon.

PRESENT:

Messrs Edwin Balluder
Edward L Farrell, Jr
Henry J Friendly
Felix E Larkin
John C Leslie
Franklin Moon
Wilbur L Morrison

being a quorum of the Board.

Mr Balluder, Vice President, presided. Mr Cogswell, Secretary, acted as Secretary of the meeting.

Minutes of Regular Meeting of November 2, 1955 were read and approved.

The resignations of Mr H J Roig and Mr J H Stebbins as Directors, which had been accepted at the special stockholders' meeting of December 5, 1955, were noted with regret. The Secretary was directed to advise Mr Roig and Mr Stebbins to this effect and to specially advise Mr Roig of their appreciation of his twenty-six years of service and hard work for the company.

Mr Balluder reported on Mr Lawder's discussion with the Civil Aeronautics Board in reference to our rate case. He also reported estimated profits for 1955.

The following capital appropriations were reported:

459(LIM)	Three Wollard Passenger Loading Stairs for Cali, Antofagasta and Limatambo	$14,580
126 (M)	Auto approach equipment for four DC-6B aircraft	6,381

[fol. 3462] The following capital appropriation was authorized:

125 (M)	VHF Equipment for five DC-6B aircraft	$54,406

The acquisition of jet aircraft was recommended by the management. Mr Leslie thereupon made the following statement:

"The necessity for Panagra's investing many millions of dollars in jet aircraft, a program which Pan American as a stockholder fully supports, has focused attention on what Pan American has regarded for some time as serious unfairness in the provisions of the Through Flight Agreement of 1946 between Panagra and Pan American with respect to investment, rate of return and related matters. Comparison of the provisions of the 1946 Through Flight Agreement

with that which Panagra recently entered into with National and Pan American abundantly illustrates this. Pan American therefore suggested to the Grace Directors that it would be appropriate to review these provisions of the agreement at this time, when such a large additional investment by Panagra is proposed. The Grace Directors have felt that Panagra's jet order should not be postponed pending such a review. Pan American is willing to go along with the management's recommendations that Panagra should acquire four DC-8 aircraft powered with J-75 engines, subject, however, to the following:

1. Pan American desires to make clear that it intends to call for review of the provisions of the Through Flight Agreement with respect to investment, return and related [fol. 3463] matters, such as, but not limited to, the inclusion of equipment purchase funds, and the sharing of gains on the sale of flight equipment, and, failing the agreement which it hopes to be able to secure, to seek arbitration. It assumes that Panagra will be willing to join in expediting these procedures. Pan American's assent as a stockholder to the proposed Panagra jet order shall not be claimed in any way to prejudice it as a party to the Through Flight Agreement in such review or arbitration.

2. Without limiting the generality of the foregoing, Pan American's acquiescence as a stockholder in the Panagra management's recommendation shall not be claimed in any such review or arbitration to be an admission of the propriety of the decision as to the type, power plant, or number of aircraft, or of the principle that it is appropriate to consider the advantages of DC-8 aircraft powered with J-75 engines for flights that involve the overflying of junctions between National's, Pan American's and Panagra's routes in the absence of an agreement to this end on the part of these other airlines or any assurance that necessary Governmental authorization could be secured.

One of the considerations that has been urged by Pan American in favor of selection of the Boeing 707 aircraft for Panagra was Pan American's fear that selection of the DC-8 by Panagra would lead to a situation in which jet operations

to South America would be instituted by Panagra's competitors before Panagra was in a position to do this. This fear has since been confirmed by Braniff's order for Boeing 707 [fol. 3464] aircraft. In order to improve the delivery situation produced by the management's recommendation of the DC-8, insofar as this lies within Pan American's power, Pan American will make available to Panagra out of its own order for Douglas DC-8 aircraft deliveries earlier than those which Panagra has been able to negotiate with Douglas. Specifically, Pan American will make available one of the two aircraft which Douglas has contracted to deliver to Pan American in February, April, May and August, 1960—the first three of these being one month earlier than Douglas' offer to Panagra. Pan American is also willing to protect Panagra with an option, at least as advantageous as that offered by Douglas, for two additional aircraft for delivery in 1961, it being understood, of course, that exercise of such option must be approved by Panagra's Board of Directors.

Mr. Leslie stated that in the light of the management's recommendations and subject to the foregoing the proper course would appear to be for Panagra to authorize Pan American, as Panagra's agent, to arrange for the sale to Panagra of four of the Douglas DC-8 aircraft which Pan American already has under contract, as outlined above. Whether this can best be done by partial assignment of Pan American's contract or by an amendment of Pan American's contract with Douglas and the making of a new contract by Pan American as agent for Panagra could be subsequently determined."

Upon agreement by the Directors that the aforesaid conditions were acceptable to the company, the management was authorized to purchase four DC-8s with J-75 en- [fol. 3465] gines for delivery in 1960 at an estimated cost of $25,000,000, and to take an option to purchase two more for delivery in 1961.

On motion duly made and seconded, it was unanimously

RESOLVED that a dividend of One Dollar and Fifty Cents ($1.50) per share be and hereby is declared on the capital stock of this corporation payable December 27, 1955 to stockholders of record at the close of business December 21, 1955.

There being no further business, the meeting was adjourned to December 22, 1955 at 4:30 o'clock in the afternoon at the same place.

.....
Chairman of the Meeting

.....
Secretary

[fol. 3466]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 392

Panagra Jet Program

Meeting held November 17, 1955

PRESENT: Messrs. Leslie
Balluder
Friendly
Shea
Larkin

JCL Working more on problem—feel more that Boeing best designed for route.

Competitive situation—

1) PAA plans

2) EAL-Braniff plans

Believe Lockheed Electra schedules will give EAL 15 by March, 1959.

PAA plans to put Boeings with J-57 engine on East Coast by spring of 1959.

Has been in PAA's mind that Panagra should inaugurate jet service simultaneously with PAA and would make Boeings available to Panagra to that end.

Don't see how Panagra c[illegible] for a long period against [illegible]tariff and PAA competition with superior aircraft.

SHEA "As far as PAA competition is concerned, are talking only about B.A."

Rather wait one year to get "right" airplane —in long run not going to "hedge-hop."

HJF Better look at things as they are, and then speculate if one wishes.

SHEA His people think DC-8 better—problem of operating J-57 at full power.

[fol. 3467] JCL This thinking comes from piston engine —no problem of operating turbines at 85% power.

SHEA Don't your men consider DC-8 with J-75 a better airplane than 707 with J-57.

JCL Only for transocean routes.

SHEA Wants airplane capable of doing long range stuff if we need it. Better to pay extra money.

JCL Does he know how much?

SHEA No.

JCL We have analyzed it. Analysis requested by Panagra based on ranges not available to Panagra and in seat mile costs.

On plane mile basis annual differential is $307,840 and return is $451,000—for 3 airplanes.

For 4 airplanes $1,011,788 a year.

LARKIN — Panagra technician feel J 57 gives rise to certain technical problems on Panagra route in view of temperature problem.

Runway requirements of DC-8 are less.

JCL — Not satisfied this is so.

While DC-8 is better for take-off, worse for landing.

Runways must be extended for either airplane. If you design a runway fit for landing requirements of DC-8, you will have designed a runway suitable for take-off of Boeing.

SHEA — All we are interested in is in getting best airplane.

Influence by good performance of Douglas. Boeing's performance not so good.

JCL — Boeing flying boat and 377 as airframes excellent. Problems are in engines and in relation to airframe.

[fol. 3468] SHEA — What kind of cooperation.

JCL — Boeing hard to do business with, but gets it done.

BALLUDER — Offset in Boeing experience with big jets.

Douglas may have lots of problems.

SHEA — You're putting a big bet on Douglas.

HJF — We have insurance—bought Boeings because we thought Douglas might be as much as six or eight months behind.

BALLUDER — Douglas 18 months behind for Panagra even if schedule lived up to.

Also don't believe Panagra justified in discounting C-5 engine. We believe real possibility.

SHEA — Would you mind getting Campbell and Kirkland up.

HJF — Would like their written reports.

JCL — Campbell told our people what he wanted and our people gave it to them.

Wouldn't want to foreclose discussions with them, but premature to reach conclusions until our technicians have had their reports and have completed their segment analysis.

HJF — Mustn't disregard domestic orders of J-57.

Lewis, Campbell and Kirkland came in.

SHEA — JCL had made comment as to Boeing with J-57 vs DC-8 with J-75. Would like them to hear.

JCL — Seems to us that each airplane ideal for respective purposes. Thinks Boeing better for Panagra routes.

1) Available *at least* 18 months sooner.

If Panagra has to compete for this period or longer against EAL-Braniff Electras, would be disastrous.

[fol. 3469] JCL 2) 4 Boeings could operate $1,000,000 cheaper and involve $4,000,000 less investment.

Thinks engineering report prepared at Campbell's specifications should be enlarged to include all route segments. Also PAA technical people should have benefits of Campbell and Kirkland reports.

We've been thinking of inaugurating PAA Boeing service on East Coast in spring of 1959—that Panagra should do same—and we would make suitable delivery dates available for Panagra.

CAMPBELL Thinks J-75 has important advantages:

1) J-57 up to its limit and has to employ several thousand pounds of water for this.

J-75 has margins particularly useful in hot weather.

From safety angle, pilot has extra power available if something goes wrong on take-off.

2) Take-off runways—

For existing routes, J-75 wouldn't require as long runways and would be far better if longer nonstops became possible.

KIRKLAND Their feeling is that they should have J-75 regardless of airframe.

No assurance they will have increased runway by 1960 at Lima and Santiago.

Believes higher efficiency of J-75 largely offsets operating economies of J-57.

[fol. 3470] JCL Runway length problem greater for Douglas on landing.

Runway satisfactory for Douglas on landing would be o.k. for Boeing on take-off.

KIRKLAND On Lima runway Douglas now has edge.

JCL Isn't it true that for full volumetric payload need longer runway for DC-8?

KIRKLAND Douglas figures show this at least equal.

JCL What is the airport program?

CAMPBELL Have to take it for granted we will get extension. Bought DC-6 at time when runways suitable only for DC-3.

SHEA "They will extend them."

CAMPBELL But might not extend as far as we want. DC-8 would have advantage.

JCL Hasn't CAA studied Lima airport.

KIRKLAND Various projects are under study.

SHEA Have to assume that runway problem will be solved. Always has been.

JCL Boeing believes J-57 power plant most reliable they have ever had. Premise that reciprocating engines should only operate at 60% power doesn't hold on turbine engine.

LEWIS Reciprocating engine experience leads to greater worry on turbine engine than is warranted. Shouldn't be too concerned about water. GE very successful in water in J-47 engine.

KIRKLAND What about problems in NAL interchange.

HJF What problems does he have in mind? Is Panagra going to let interchange partners furnish aircraft?

[fol. 3471] KIRKLAND Just thought NAL might bring up something.

HJF Is NAL contemplating J-75.

KIRKLAND No—but providing for conversion.

SHEA Asked for ranges.

KIRKLAND DC-8 would have 6000 pounds more payload NY-Lima.

JCL Basic specs show only 2000 pounds difference even on this possibility.

SHEA Would need not less than 4 airplanes—want at least daily service.

JCL 3 would do this at 8 hours per day. Our people expect to do better. But would go to 4 airplanes.

LARKIN — Any other technical problems about J-57 beyond those mentioned?

KIRKLAND — No, they have been covered.

J-75 has more growth possibilities.

BALLUDER — Figures already take into consideration high temperature suggested by Panagra.

JCL — Hate to face Electra competition for 18-24 months.

SHEA — Can't get away from fact that we're buying airplanes for 10 years should get maximum flexibility.

LEWIS — Shouldn't forget enormous experience of Boeings in large jet aircraft. Douglas jet experience not brillant. No one could minimize Douglas transport experience but going into new field. Boeing should have advantage of couple of years.

SHEA — Directed Kirkland and Campbell to deliver technical reports to our people.

We'll study more and talk more.

"Will talk to you next week, John."

[fol. 3472]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 393

Minutes of Regular Meeting of Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American World Airways, Inc. 135 East 42nd Street, New York, N. Y. on the 6th day of April, 1959 at 4:00 o'clock in the afternoon.

PRESENT:

Messrs. Erwin Balluder
Edward L. Farrell, Jr.
Henry J. Friendly
Felix E. Larkin
Kenneth A. Lawler
Andrew B. Shea

being a quorum of the Board.

Mr. Shea, President, presided. Mr. Oxley, Secretary, acted as such.

Minutes of regular meeting of March 2, 1959 were read and approved.

The following financial data were submitted and discussed.

Comparative statement of Profit and Loss for the month of February 1959 and 1958 and for the two months ended February 28, 1959 and 1958.

Comparative Analysis Flight Traffic Statistics for the month of February 1959 and 1958 and two months ended February 1959 and 1958.

Comparison of Final audited Results for year ended December 31, 1958 with Estimate.

Comparative Statement of Profit and Loss for month of December 1958 and year ended December 31, 1958 (Final Closing) and December 31, 1957.

Comparative Statement of Profit and Loss for Quarter Year and year ending December 31, 1958 and December 31, 1957.

Statement of Cash Position as at March 31, 1959 and comparison with December 31, 1958 and March 31, 1958.

Cash Position Forecast for year ending March 31, 1960.

[fol. 3473] The following capital appropriation was reported:

RCA LIM 504—Replacement of
Panel Truck for Ezeiza $3,343

The current status of the rate case was discussed. The Board considered the possibility of applying for a temporary rate. It was decided not to press for a temporary rate at the present time, although the matter may be reconsidered in the future if the Civil Aeronautics Board continues to delay consideration of the company's application for a permanent rate.

The President reported that the Link simulator will be delivered four months late. He suggested that in view of the late delivery, consideration should be given to the cancellation of the purchase contract. The possibility of training Panagra pilots on the Pan American simulator at Idlewild will be explored.

The President also reported that conversations are proceeding concerning the possibility of Pan American doing maintenance work on Panagra's DC-8's when an appropriate maintenance base has been established.

On motion duly adopted, it was

RESOLVED that the President is authorized to negotiate with Pan American World Airways the necessary Through Flight Agreement modifications, for subsequent submission to the Civil Aeronautics Board for approval, which will permit Panagra DC-8 aircraft to overfly Balboa, C. Z. and, contingent upon the negotiations with National Airlines referred to in the following resolution, to overfly Miami in the service between New York and Buenos Aires via the West Coast of South America.

[fol. 3474] RESOLVED FURTHER that the President is authorized to negotiate with Pan American World Airways and with National Airlines in order to make the necessary Interchange Agreement modifications, for subsequent submission to the Civil Aeronautics Board for approval, which will permit Panagra aircraft to overfly Miami in the service between New York and Buenos Aires via the West Coast of South America.

There being no further business, the meeting adjourned.

.....
Chairman

.....
Secretary

[fol. 3475]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 394

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.
Docket No. 10,324

In the Matter of the Application
of

URABA, MEDELLIN and CENTRAL AIRWAYS, INC. under Section 401(j) of the Federal Aviation Act of 1958 for leave to abandon its route and certificate.

APPLICATION OF URABA, MEDELLIN and CENTRAL AIRWAYS, INC.

Communications with respect to this Application should be sent to:

ELIHU SCHOTT
Attorney for Uraba, Medellin and Central Airways, Inc.
135 East 42nd Street
New York, N.Y.

Dated: New York, N.Y.
March 18, 1959.

[fol. 3476]

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket No. .....

In the Matter of the Application
of
URABA, MEDELLIN and CENTRAL AIRWAYS, INC. under Section 401(j) of the Federal Aviation Act of 1958 for leave to abandon its route and certificate.

APPLICATION OF URABA, MEDELLIN and CENTRAL AIRWAYS, INC.

The application of Uraba, Medellin and Central Airways, Inc. (UMCA) respectfully shows to the Board as follows:

1. UMCA is the holder of a certificate of public convenience and necessity issued pursuant to Order Serial No. 749, approved by the President of the United States on November 26, 1940, which authorizes it to engage in air transportation with respect to persons, property and, except as indicated, mail between "the terminal point Cristobal, Canal Zone, the intermediate points, Balboa, Canal Zone, and Turbo, Colombia, and (except with respect to mail) the terminal point Medellin, Colombia."

2. Pursuant to such authority, UMCA is currently operating three round trip flights a week between Balboa and Medellin.

3. UMCA owns no flight equipment and only a very minor amount of ground equipment. It has no employees. In con-
[fol. 3477] ducting its operations described above, it leases aircraft with crews from Pan American World Airways, Inc. by which it is wholly owned.

4. UMCA's operations are and have for many years been unprofitable. In 1958 its operating loss amounted to $59,000. As of December 31, 1958, UMCA had an accumulated net loss of $615,000, which entirely wiped out its invested capital, and left it with a debt to Pan American of $450,000.

5. There is scheduled air service between Balboa and Medellin provided by other air carriers.

6. In the light of the foregoing, abandonment of the route and certificate of UMCA would appear to be in the public interest.

WHEREFORE, UMCA hereby applies under Section 401(j) of the Act, for leave to abandon said route and certificate, and for such other and further relief as to the Board may appear just and proper.

Respectfully submitted,

/s/ ELIHU SCHOTT
Elihu Schott
Attorney for Uraba, Medellin and Central Airways, Inc.

Dated: March 18, 1959.

[fol. 3478]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 395

POST OFFICE APPROPRIATION BILL, 1931

HEARINGS

BEFORE

SUBCOMMITTEE OF HOUSE COMMITTEE ON APPROPRIATIONS

CONSISTING OF

MESSRS WILLIAM R. WOOD (CHAIRMAN)
MAURICE H. THATCHER, GUY U. HARDY, ROBERT L. BACON
JOSEPH W. BYRNS, AND ——— ———

IN CHARGE OF

POST OFFICE APPROPRIATION BILL FOR 1931

SEVENTY-FIRST CONGRESS

SECOND SESSION

UNITED STATES
GOVERNMENT PRINTING OFFICE
82458 WASHINGTON: 1930

Mr. BYRNS. Suppose you put in the record a statement showing the bids received and the bids that were accepted, and also showing from whom they were received.

Mr. GLOVER. I will do so.

(The statement referred to is as follows:)

Bids for foreign air mail service

Route No.	Bids received		Contract awarded to—
	Rate per mile	Name of bidder	
F. A. M. 1—New York-Montreal	$0.55	Canadian Colonial Airways (Inc.)	Canadian Colonial Airways (Inc.).
	1.00	Albany Air Service (Inc.)	
F. A. M. 3—Seattle-Victoria	.70	Barnes & Gurst Airlines (Inc.)	Barnes & Gurst Airlines (Inc.).
	.0000	Boeing Air Transport (Inc.)	
	.02	Northwest Air Service (Inc.)	
	1.05	Allied Aviation Industries (Inc.)	
F. A. M. 5—New Orleans-Pilottown	[1] 100.00	Arthur E. Cambas	Arthur E. Cambas.
	[1] 100.00	Gulf Air Lines (Inc.)	
	[1] 125.00	Fleet Aircraft (Inc.)	
	[1] 200.00	H. S. Adams	
F. A. M. 6—Miami-Habana	2.00	Pan American Airways (Inc.)	Pan American Airways (Inc.)
F. A. M. 8—Miami-Cristobal, Canal Zone	2.00	....do	Do.
F. A. M. 9—Miami-San Juan	2.00	....do	Do.
	2.00	West Indies Aerial Express (Inc.)	
F. A. M. 7	1.50	Universal Air Lines System	
Miami-Nassau	2.02	Pan American Airways (Inc.)	Do.
F. A. M. 8	.0079	Air Transportation (Inc.)	
Brownsville-Mexico City	1.10	J. Ray Rhoto, jr	
	1.25	Montreal Aircraft Corporation	
	1.50	H. S. Adams	
	1.54	Walter T. Varney (Inc.)	
	1.75	Consolidated Aircraft Corporation	
	2.00	Pan American Airways (Inc.)	Do.
F. A. M. 9—Cristobal-Buenos Aires	1.44	American International Airways (Inc.).	
	1.60	Pan American-Grace Airways (Inc.)	Do.
	1.65	Trimotor Safety Airways (Inc.)	
	1.90	Consolidated Aircraft Corporation	
	1.95	Fred B. Arnold	

[1] Round trip.

MIAMI TO HABANA ROUTE

Mr. BYRNS. You have a route from Miami to Habana, then a route from Miami through Habana to San Juan, and then another route from Miami through Habana probably to the Port of Spain. You have three routes running through Habana and I take it that these routes are practically under the same company.

Mr. GLOVER. Yes, sir.

Mr. BYRNS. Would it not have been possible to have had what you might call a relay point at Habana? You are paying mileage, as I understand it, from Miami on three routes right through Habana.

Mr. GLOVER. There are just two of them.

Mr. BYRNS. I thought there were three. You are paying poundage to practically the same company on two routes through Habana. In other words, you have two routes from Miami to Habana.

Mr. GLOVER. Yes, sir.

Mr. BYRNS. Does not that create a greater expense?

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 396

Weight of air mail dispatched to Antigua

Wt. of Mail only

Wt. of Mail only Except a Few Closed in Transit Mail

Wt. of Mail only

5

Weight of air mail dispatched to Antigua

Fiscal Year	United States Origin Lbs.	Ozs.	Foreign Origin Lbs.	Ozs.	Canal Zone Origin Lbs.	Ozs.
1934	268	13	87	7		
1935	413	9	117	11		
1936	448	4	195	3		
1937	610	1	319	14		
1938	359	2	106	0	5	12
1939	484	6	126	12	1	9
1940	571	11	243	8	5	8
1941 (July-Dec.)	448	11	382	0	2	1
Totals	3,604	9	1,578	7	14	14
Weight of air mail dispatched to Jamaica						
1934	2,990	6	125	2		
1935	3,810	14	320	8		
1936	4,326	0	399	7		
1937	6,731	5	531	9		
1938	7,026	2	800	13	26	5
1939	7,951	6	614	7	28	1
1940	12,345	15	2,525	8	34	13
1941 (July-Dec.)	8,372	9	4,086	0	22	8
Totals	53,554	9	9,403	6	111	11
Weight of air mail dispatched to Jamaica						
1934	1,021	7	155	12		
1935	722	2	98	9		
1936	1,702	2	70	6		
1937	620	7	232	2		
1938	2,515	2	386	8		
1939	3,136	14	594	7		
1940	3,202	3	656	1		
1941 (July-Dec.)	1,396	5	660	6		
Totals	14,395	10	2,854	3		

Weight of air mail dispatched to Barbados

Fiscal Year	United States Origin		Foreign Origin		Canal Zone Origin	
	Lbs.	Ozs.	Lbs.	Ozs.	Lbs.	Ozs.
1938	105	13	45	4		
1939	682	14	250	6	2	15
1940	911	2	515	0	40	11
1941 (July-Dec.)	468	9	478	2	37	4
Totals	2,168	6	1,288	12	80	14

Weight of air mails dispatched to Bolivia

1934	279	15	49	13		
1935	296	7	70	11		
1936	401	0	99	7		
1937	611	7	108	6		
1938	813	12	168	11	9	11
1939	905	5	175	15	13	4
1940	1,432	12	504	7	16	11
1941 (July-Dec.)	1,013	13	294	3	10	12
Totals	5,754	7	1,471	9	50	6

Weight of air mail dispatched to Brazil

1934	3,949	1	111	13		
1935	5,228	5	299	1		
1936	5,485	13	359	10		
1937	8,328	2	653	12		
1938	7,394	6	648	10	11	9
1939	8,441	6	702	4	16	3
1940	13,934	8	1,968	5	17	13
1941 (July-Dec.)	9,331	6	2,297	7	15	12
Totals	62,092	15	7,000	14	61	5

[fol. 3482]

Weight of air mail dispatched to British Guiana

Fiscal Year	United States Origin		Foreign Origin		Canal Zone Origin	
	Lbs.	Ozs.	Lbs.	Ozs.	Lbs.	Ozs.
1934	418	1	125	0		
1935	487	5	138	12		
1936	485	13	248	8		
1937	621	14	440	0		
1938	433	9	373	7	9	11
1939	459	2	406	11	10	2
1940	548	15	593	6	10	9
1941 (July-Dec.)	383	8	617	5	5	0
Totals	3,638	3	2,943	3	35	6

Weight of air mail dispatched to British Honduras

1934	253	2	83	12		
1935	305	6	88	11		
1936	346	8	92	10		
1937	363	8	110	7		
1938	418	4	137	3		
1939	354	1	173	12	15	10
1940	381	6	207	6	29	2
1941 (July-Dec.)	239	3	332	14	16	2
Totals	2,661	6	1,226	11	60	14

Weight of air mail dispatched to Canal Zone

1934	4,338	9	257	9
1935	5,268	1	313	6
1936	6,818	4	512	7
1937	7,723	0	573	6
1938	9,039	8	294	3
1939	20,652	9	848	1
1940	27,136	14	1,072	8
1941 (July-Dec.)	20,980	2	662	14
Total	101,956	15	4,534	6

[fol. 3483]

Weight of air mail dispatched to Chile

Fiscal Year	United States Origin Lbs.	Ozs.	Foreign Origin Lbs.	Ozs.	Canal Zone Origin Lbs.	Ozs.
1934	1,392	11	172	7		
1935	2,039	14	239	3		
1936	2,494	15	249	12		
1937	3,249	5	295	6		
1938	3,544	10	388	12	170	10
1939	3,560	10	507	10	181	14
1940	5,814	11	1,337	8	218	4
1941 (July-Dec.)	3,895	0	1,076	12	125	6
Totals	25,961	12	4,267	6	696	2

Weight of air mail dispatched to Colombia

1934	4,393	8	1,581	3		
1935	5,698	0	2,028	8		
1936	6,114	12	2,543	0		
1937	7,571	5	3,368	13		
1938	9,243	9	4,074	5	545	6
1939	11,987	6	4,969	6	613	12
1940	13,874	9	3,184	3	500	15
1941 (July-Dec.)	8,471	6	1,035	2	321	9
Totals	67,354	7	22,784	8	2,061	10

Weight of air mail dispatched to Costa Rica

1934	1,032	0	213	7		
1935	1,239	3	277	10		
1936	1,352	0	354	2		
1937	1,703	15	660	12		
1938	2,010	8	648	6	302	1
1939	2,626	1	883	8	351	11
1940	3,585	3	682	3	487	5
1941 (July-Dec.)	2,324	7	277	9	295	7
Totals	15,873	5	3,997	9	1,436	8

[fol. 3484]

Weight of air mail dispatched to Cuba

Fiscal Year	United States Origin Lbs.	Ozs.	Foreign Origin Lbs.	Ozs.	Canal Zone Origin Lbs.	Ozs.
1934	11,905	14	786	2		
1935	16,652	2	900	12		
1936	21,469	15	941	13		
1937	26,103	7	1,744	15		
1938	29,645	12	2,496	13	149	12
1939	33,695	9	3,687	12	164	13
1940	41,109	10	3,206	13	252	0
1941 (July-Dec)	21,016	15	1,620	10	133	9
Totals	201,199	4	15,405	10	700	2

Weight of air mail dispatched to Curacao

1934	235	8	46	12		
1935	352	1	62	7		
1936	457	1	101	1		
1937	868	9	262	3		
1938	1,690	13	293	7	43	6
1939	2,612	13	300	15	61	6
1940	3,180	0	828	10	81	1
1941 (July-Dec)	1,827	7	269	1	42	3
Totals	11,224	4	2,154	8	227	10

Weight of air mail dispatched to Dominican Republic

1934	2,053	1	229	9		
1935	2,517	14	256	13		
1936	2,763	8	357	15		
1937	3,316	1	555	9		
1938	3,782	3	492	9		
1939	4,006	7	676	12		
1940	4,596	7	647	13		
1941 (July-Dec)	2,326	12	365	13		
Totals	25,422	5	3,584	13		

[fol. 3485]

Weight of air mail dispatched to Ecuador

Fiscal Year	United States Origin		Foreign Origin		Canal Zone Origin	
	Lbs.	Ozs.	Lbs.	Ozs.	Lbs.	Ozs.
1934	859	13	336	9		
1935	1,086	5	525	10		
1936	1,246	12	523	8		
1937	1,993	11	619	15		
1938	1,721	3	657	7	204	0
1939	1,712	5	691	9	192	12
1940	3,142	14	919	6	228	7
1941 (July-Dec)	1,681	4	298	4	134	2
Totals	13,044	3	4,572	4	799	5

Weight of air mail dispatched to El Salvador

1934	1,201	6	334	10		
1935	1,657	11	419	3		
1936	1,762	4	445	8		
1937	1,926	3	601	6		
1938	2,044	9	581	5	152	4
1939	2,332	8	684	9	153	12
1940	3,092	8	512	6	161	15
1941 (July-Dec)	1,688	12	166	3	62	5
Totals	15,705	13	3,745	2	530	4

Weight of air mail dispatched to French Guiana

1934	61	0	32	5		
1935	64	15	58	6		
1936	63	4	103	14		
1937	61	7	144	13		
1938	36	2	54	5	3	13
1939	34	6	41	5		
1940	39	8	37	3		
1941 (July-Dec)	29	11	13	13		
Totals	390	5	488	0	3	13

[fol. 348€]

Weight of air mail dispatched to French West Indies

Fiscal Year	United States Origin		Foreign Origin		Canal Zone Origin	
	Lbs.	Ozs.	Lbs.	Ozs.	Lbs.	Ozs.
1938	393	10	97	6	9	11
1939	555	2	122	5	11	9
1940	942	5	244	5	13	6
1941 (July-Dec)	361	5	109	0	6	4
Totals	2,252	6	573	0	40	14

Weight of air mail dispatched to Guatemala

1934	1,402	4	385	0		
1935	1,728	12	464	15		
1936	1,968	11	640	7		
1937	2,277	12	876	10		
1938	2,697	6	868	7	128	11
1939	3,344	3	1,175	4	157	9
1940	4,154	14	822	2	164	5
1941 (July-Dec)	2,107	14	360	4	64	4
Totals	19,681	12	5,613	1	514	13

Weight of air mail dispatched to Haiti

Fiscal Year	United States Origin Lbs.	Ozs.	Foreign Origin Lbs.	Ozs.	Canal Zone Origin Lbs.	Ozs.
1934	2,016	7	215	12		
1935	1,539	11	248	7		
1936	1,597	2	274	12		
1937	1,681	8	342	6		
1938	1,792	0	326	2		
1939	2,165	4	440	11		
1940	2,475	13	428	14		
1941(July-Dec.)	1,364	11	158	3		
Totals	14,637	8	2,435	3		

Weight of air mail dispatched to Republic of Honduras

1934	716	14	119	2		
1935	976	2	178	1		
1936	1,116	6	172	8		
1937	1,475	4	284	2		
1938	1,587	15	258	11	97	12
1939	2,005	4	310	12	90	5
1940	2,341	12	316	9	110	2
1941(July-Dec.)	1,373	11	134	9	56	10
Totals	11,593	4	1,774	6	354	13

Weight of air mails dispatched to Jamaica

1934	2,701	8	756	12		
1935	3,663	3	775	3		
1936	90	5	1,106	5		
1937	4,635	14	1,489	14		
1938	4,976	15	2,078	9	446	9
1939	6,277	0	2,719	12	280	1
1940	5,744	15	2,588	1	384	1
1941(July-Dec.)	2,453	9	2,244	6	419	8
Totals	34,743	5	13,758	14	1,330	3

[fol. 3488]

Weight of air mail dispatched to Mexico

Fiscal Year	United States Origin Lbs.	Ozs.	Foreign Origin Lbs.	Ozs.	Canal Zone Origin Lbs.	Ozs.
1934	10,264	1	1,156	6		
1935	11,117	8	1,386	8		
1936	16,180	5	2,147	8		
1937	20,017	13	3,118	0		
1938	19,521	0	3,402	13	106	12
1939	19,896	2	3,931	8	105	0
1940	27,936	3	3,559	11	113	5
1941(July-Dec.)	15,235	6	1,799	7	46	10
Totals	140,168	6	20,501	13	371	11

Weight of air mails dispatched to Nicaragua

1934	1,077	8	192	5		
1935	1,228	10	261	10		
1936	1,275	8	402	14		
1937	1,730	14	560	13		
1938	1,741	9	419	3	124	6
1939	2,407	9	636	8	124	13
1940	3,507	8	437	0	180	0
1941(July-Dec.)	2,210	3	123	8	89	12
Totals	15,179	5	3,033	13	518	15

Weight of air mail dispatched to Panama

1934	1,265	8	184	6		
1935	1,430	1	197	14		
1936	1,621	9	316	7		
1937	2,126	6	466	8		
1938	1,623	0	324	4	50	12
1939	1,665	5	266	15	41	7
1940	2,327	15	323	11	52	1
1941(July-Dec.)	1,114	12	130	2	36	1
Totals	13,174	8	2,210	3	180	5

[fol. 3489]

Weight of air mail dispatched to Paraguay

Fiscal Year	United States Origin Lbs.	Ozs.	Foreign Origin Lbs.	Ozs.	Canal Zone Origin Lbs.	Ozs.
1934	30	0	1	14		
1935	42	12	4	14		
1936	61	11	14	0		
1937	31	8	17	1		
1938	101	7	20	3		
1939	144	14	17	11		
1940	251	5	64	10		
1941 (July-Dec.)	166	5	30	3		
Totals	829	14	190	8		

Weight of air mail dispatched to Peru

1934	1,275	8	565	2		
1935	1,890	4	801	10		
1936	2,291	8	782	13		
1937	3,126	12	909	5		
1938	3,536	4	977	14	255	4
1939	4,097	3	1,290	8	247	14
1940	5,903	15	1,483	14	246	11
1941 (July-Dec.)	3,406	6	752	7	134	7
Totals	25,087	12	7,563	9	884	4

Weight of air mails dispatched to Puerto Rico

1934	8,816	8	235	9
1935	11,685	15	258	15
1936	15,916	0	318	0
1937	16,708	12	534	14
1938	21,144	9	309	14
1939	36,538	5	330	0
1940	48,276	3	375	11
1941(July-Dec.)	24,440	5	217	8
Totals	180,935	9	2,580	7

[fol. 3490]

Weight of air mail dispatched to St. Lucia

Fiscal Year	United States Origin Lbs.	Ozs.	Foreign Origin Lbs.	Ozs.	Canal Zone Origin Lbs.	Ozs.
1934	307	6	88	9		
1935	91	0	16	3		
1936	5	11	0	12		
Totals	404	1	105	8		

Weight of air mail dispatched to Surinam

1934	175	4	34	15		
1935	215	11	53	9		
1936	235	3	90	2		
1937	293	4	173	5		
1938	303	11	105	14	5	4
1939	233	4	75	15		12
1940	406	4	159	12	4	14
1941(July-Dec.)	231	8	49	4	1	4
Totals	2,054	1	742	12	12	2

Weight of air mail dispatched to Trinidad

1934	935	7	275	7		
1935	1,543	10	337	5		
1936	1,957	12	507	9		
1937	3,753	5	1,307	10		
1938	3,651	7	1,310	11	117	14
1939	3,657	7	1,572	15	109	2
1940	3,362	15	2,230	6	73	7
1941(July-Dec.)	2,039	14	1,725	1	43	0
Totals	21,911	13	9,267	0	341	7

Weight of air mail dispatched to Uruguay

Fiscal Year	United States Origin Lbs.	Ozs.	Foreign Origin Lbs.	Ozs.	Canal Zone Origin Lbs.	Ozs.
1934	322	9	20	9		
1935	309	4	29	2		
1936	428	12	45	0		
1937	904	13	79	5		
1938	768	4	120	7	1	10
1939	904	12	57	3		
1940	1,277	1	390	11	4	4
1941(July-Dec.)	1,191	10	716	13	2	5
Totals	6,107	1	1,459	2	8	3

Weight of air mail dispatched to Venezuela

1934	2,672	0	350	0		
1935	3,846	4	493	11		
1936	4,186	8	692	6		
1937	7,632	14	1,876	5		
1938	9,609	10	1,926	2	222	1
1939	13,146	11	2,479	3	219	2
1940	17,762	9	2,491	10	219	1
1941(July-Dec.)	9,880	11	939	2	116	12
Totals	68,737	3	11,248	7	777	0

Weight of air mail dispatched to Virgin Islands

1934	502	9	19	0		
1935	584	2	22	4		
1936	744	11	28	13		
1937	786	9	45	9		
1938	1,093	10	43	5	7	3
1939	1,063	2	44	1	5	5
1940	1,185	3	55	10	11	5
1941(July-Dec.)	681	13	31	13	5	0
Totals	6,641	11	292	9	29	2

[fol. 3492]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 397

Weight of air mail received from Antigua

Fiscal Year	Lbs.	Ozs.
1934	177	10
1935	199	0
1936	223	13
1937	201	9
1938	251	10
1939	325	10
1940	330	4
1941 (July-Dec.)	204	15
Total	1,914	7

Weight of air mail received from Argentina

1934	2,744	2
1935	3,404	1
1936	3,629	0
1937	4,607	10
1938	4,865	15
1939	4,938	13
1940	8,200	11
1941 (July-Dec.)	7,611	3
Total	40,281	7

Weight of air mail received from Bolivia

1934	62	8
1935	143	7
1936	377	9
1937	341	3
1938	491	8
1939	636	14
1940	1,143	12
1941 (July-Dec.)	693	13
Total	4,288	9

See Ex RC-14 p. 6 for weights of U.S. Diplomatic Mail carried in 1940. Above weights do not include such mail

Weight of air mail received from Brazil

Fiscal Year	Lbs.	Ozs.
1934	2,529	11
1935	2,745	7
1936	3,469	6
1937	4,467	13
1938	5,037	3
1939	5,997	9
1940	8,212	5
1941 (July-Dec.)	7,531	9
Total	,990	15

Weight of air mail received from British Guiana

1934	345	8
1935	411	14
1936	460	13
1937	630	1
1938	643	9
1939	635	7
1940	975	15
1941 (July-Dec.)	679	10
Total	4,832	13

Weight of air mail received from Virgin Islands

1934	266	1
1935	452	8
1936	551	3
1937	328	5
1938	435	7
1939*		
1940*		
1941 (July-Dec.)		
Total	2,035	8

* Included with mails from Puerto Rico

[fol. 3494]

Weight of air mail received from British Honduras

Fiscal Year	Lbs.	Ozs.
1934	561	13
1935	591	0
1936	618	2
1937	612	4
1938	680	10
1939	509	6
1940	458	8
1941 (July-Dec.)	293	1
Total	4,324	12

Weight of air mail received from Canal Zone

1934	6,381	1
1935	7,147	3
1936	8,869	2
1937	8,344	7
1938	10,258	4
1939	16,540	15
1940	21,162	9
1941 (July-Dec.)	16,894	0
Total	95,597	9

Weight of air mail received from Chile

1934	1,563	11
1935	1,738	1
1936	1,910	15
1937	2,189	12
1938	2,405	7
1939	2,506	1
1940	3,931	14
1941 (July-Dec.)	2,672	2
Total	18,917	15

Weight of air mail received from Colombia

Fiscal Year	Lbs.	Ozs.
1934	9,091	13
1935	10,801	3
1936	12,590	11
1937	15,019	14
1938	17,294	5
1939	21.438	8
1940	20,485	7
1941 (July-Dec.)	9,269	5
Total	115,991	2

Weight of air mail received from Costa Rica

1934	1,263	8
1935	1,415	9
1936	1,501	12
1937	1,820	7
1938	2,247	2
1939	2,861	11
1940	3,530	9
1941 (July-Dec.)	3,295	0
Total	17,935	10

Weight of air mail received from Cuba

1934	18,953	9
1935	24,264	7
1936	28,036	15
1937	33,611	2
1938	37,182	3
1939	47,595	12
1940	43,284	10
1941 (July-Dec.)	22,970	0
Total	255,898	10

[fol. 3496]

Weight of air mail received from Curacao

Fiscal Year	Lbs.	Ozs.
1934	114	1
1935	141	9
1936	175	6
1937	695	7
1938	1,701	8
1939	3,102	10
1940	3,945	3
1941 (July-Dec.)	1,860	14
Total	11,736	10

Weight of air mail received from Dominican Republic

1934	3,070	3
1935	3,370	0
1936	3,476	9
1937	4,112	15
1938	4,444	0
1939	4,667	8
1940	5,444	10
1941 (July-Dec.)	2,636	4
Total	31,222	1

Weight of air mail received from Ecuador

1934	1,961	15
1935	2,124	5
1936	1,879	4
1937	2,066	0
1938	2,169	0
1939	2,682	4
1940	2,983	14
1941 (July-Dec.)	1,274	7
Total	16,941	1

[fol. 3497]

Weight of air mail received from El Salvador

Fiscal Year	Lbs.	Ozs.
1934	1,974	2
1935	2,357	12
1936	2,406	7
1937	2,603	6
1938	2,699	6
1939	2,852	10
1940	2,830	7
1941 (July-Dec.)	1,306	3
Total	19,030	5

Weight of air mail received from French Guiana

1934	90	2
1935	112	6
1936	135	8
1937	168	6
1938	120	11
1939	84	6
1940	99	3
1941 (July-Dec.)	48	12
Total	819	6

Weight of air mail received from French West Indies

1938	286	8
1939	412	14
1940	788	12
1941 (July-Dec.)	1,007	10
Total	2,495	13

[fol. 3498]

Weight of air mail received from Guatemala

Fiscal Year	Lbs.	Ozs.
1934	2,384	7
1935	2,493	14
1936	2,987	9
1937	3,269	15
1938	3,659	9
1939	3,890	11
1940	3,984	7
1941 (July-Dec.)	2,049	0
Total	24,719	8

Weight of air mail received from Haiti

1934	1,951	8
1935	2,129	2
1936	2,192	7
1937	2,297	9
1938	2,216	0
1939	3,002	8
1940	2,648	3
1941 (July-Dec.)	1,323	10
Total	17,762	3

Weight of air mail received from Republic of Honduras

1934	836	3
1935	789	2
1936	896	12
1937	1,119	6
1938	1,348	6
1939	1,503	12
1940	1,656	10
1941 (July-Dec.)	913	5
Total	9,063	8

Weight of air mail received from Jamaica

Fiscal Year	Lbs.	Ozs.
1934	3,[illegible]	7
1935	3,979	5
1936	4,872	11
1937	6,074	8
1938	6,864	11
1939	8,664	5
1940	7,419	3
1941 (July-Dec.)	3,429	9
Total	44,662	11

Weight of air mail received from Mexico

1934	17,743	0
1935	18,906	7
1936	22,461	14
1937	26,447	22
1938	24,374	4
1939	24,754	7
1940	29,300	9
1941 (July-Dec.)	15,958	11
Total	180,029	0

Weight of air mail received from Nicaragua

1934	1,893	5
1935	1,943	12
1936	2,114	9
1937	2,728	2
1938	3,083	4
1939	3,129	12
1940	2,917	11
1941 (July-Dec.)	1,408	2
Total	19,309	9

[fol. 3500]

Weight of air mail received from Panama

Fiscal Year	Lbs.	Ozs.
1934	1,172	8
1935	1,362	14
1936	1,830	8
1937	2,466	6
1938	2,908	12
1939	3,443	4
1940	3,726	11
1941 (July-Dec.)	2,164	3
Total	19,072	2

Weight of air mail received from Paraguay

1934	14	14
1935	19	14
1936	26	13
1937	37	11
1938	74	13
1939	73	9
1940	182	5
1941 (July-Dec.)	121	6
Total	551	5

Weight of air mail received from Peru

1934	3,155	13
1935	3,674	11
1936	3,251	14
1937	2,897	4
1938	2,825	10
1939	3,638	7
1940	3,033	2
1941 (July-Dec.)	2,811	0
Total	27,287	13

Weight of air mail received from Puerto Rico

Fiscal Year	Lbs.	Ozs.
1934	11,897	12
1935	14,781	1
1936	18,453	4
1937	20,921	7
1938	28,177	2
1939*	31,067	4
1940*	34,938	14
1941 (July-Dec.)*	20,394	14
Total	180,631	10

* Includes mails from Virgin Islands

Weight of air mail received from St. Lucia

1934	88	15
1935	102	13
1936	20	5
1937	-	-
1938	-	-
1939	-	-
1940	-	-
1941 (July-Dec.)	-	-
Total	212	1

Weight of air mail received from Surinam

1934	171	4
1935	190	0
1936	211	8
1937	329	8
1938	374	15
1939	362	8
1940	545	13
1941 (July-Dec.)	337	5
Total	2,522	13

[fol. 3502]

Weight of air mail received from Trinidad

Fiscal Year	Lbs.	Ozs.
1934	872	13
1935	1,034	3
1936	1,387	11
1937	2,239	7
1938	2,963	3
1939	3,989	7
1940	5,369	7
1941 (July-Dec.)	3,119	1
Total	20,975	4

Weight of air mail received from Uruguay

1934	243	14
1935	239	7
1936	317	15
1937	439	5
1938	485	2
1939	492	4
1940	814	13
1941 (July-Dec.)	930	13
Total	3,963	9

Weight of air mail received from Venezuela

1934	4,114	5
1935	4,722	8
1936	5,062	13
1937	7,246	9
1938	13,042	15
1939	13,865	0
1940	17,657	9
1941 (July-Dec.)	8,548	4
Total	72 [illegible]	15

[fol. 3503]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 398

Panagra Participation in Passenger Traffic between Buenos Aires on the One Hand and Northeast U.S., Canada and Europe on the Other Hand as a Percentage of Panagra System Scheduled Operations - March and September 1957.

	March and Sept. 1957 Passenger Miles (000)
Between Buenos Aires and:	
New York, New England and Philadelphia	2200
U.S. East Coast south of Philadelphia to and including Washington D.C.	522
Canada (via New York)	93
Europe (via New York)	416
Total	3231
Panagra System Operations	30[illegible]1

	Buenos Aires Participation as % of Panagra System Operations
Between Buenos Aires and:	
New York, New England and Philadelphia	7.22%
U.S. East Coast south of Philadelphia to and including Washington, D.C.	1.71
Canada (via New York)	0.31
Europe (via New York)	1.36
Total	10.60%

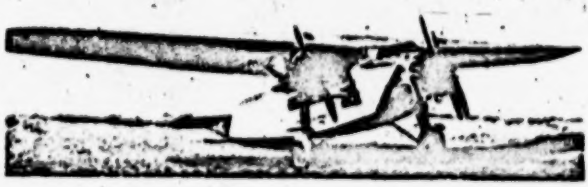
Source: CAB March and September 1957 Recurrent Reports and International O & D Surveys.

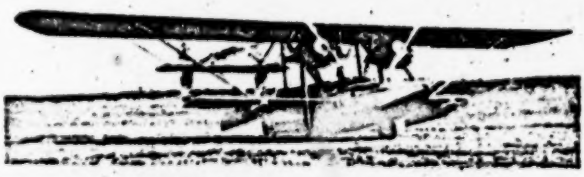
[fol. 3504]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 399

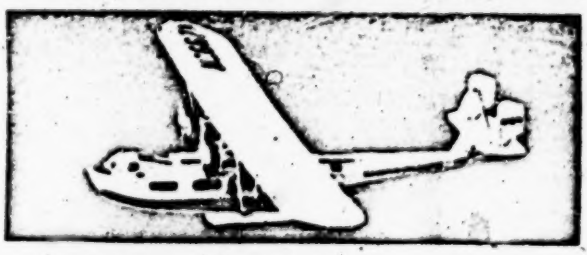
FIFTEEN YEARS OF PIONEERING...

First American "Overseas" Transport (1927) . . . A Fokker F.7. Equipped with special flotation apparatus, this aircraft was used for the first service of the Pan American Airways System between Key West, Florida, and Havana, Cuba.





The First American-Developed Amphibian Air Transport (1928) . . . The Sikorsky S-38 Amphibian Developed for the extension of the Pan American routes beyond Puerto Rico to South America and from Miami via Yucatan and Central America to Panama.

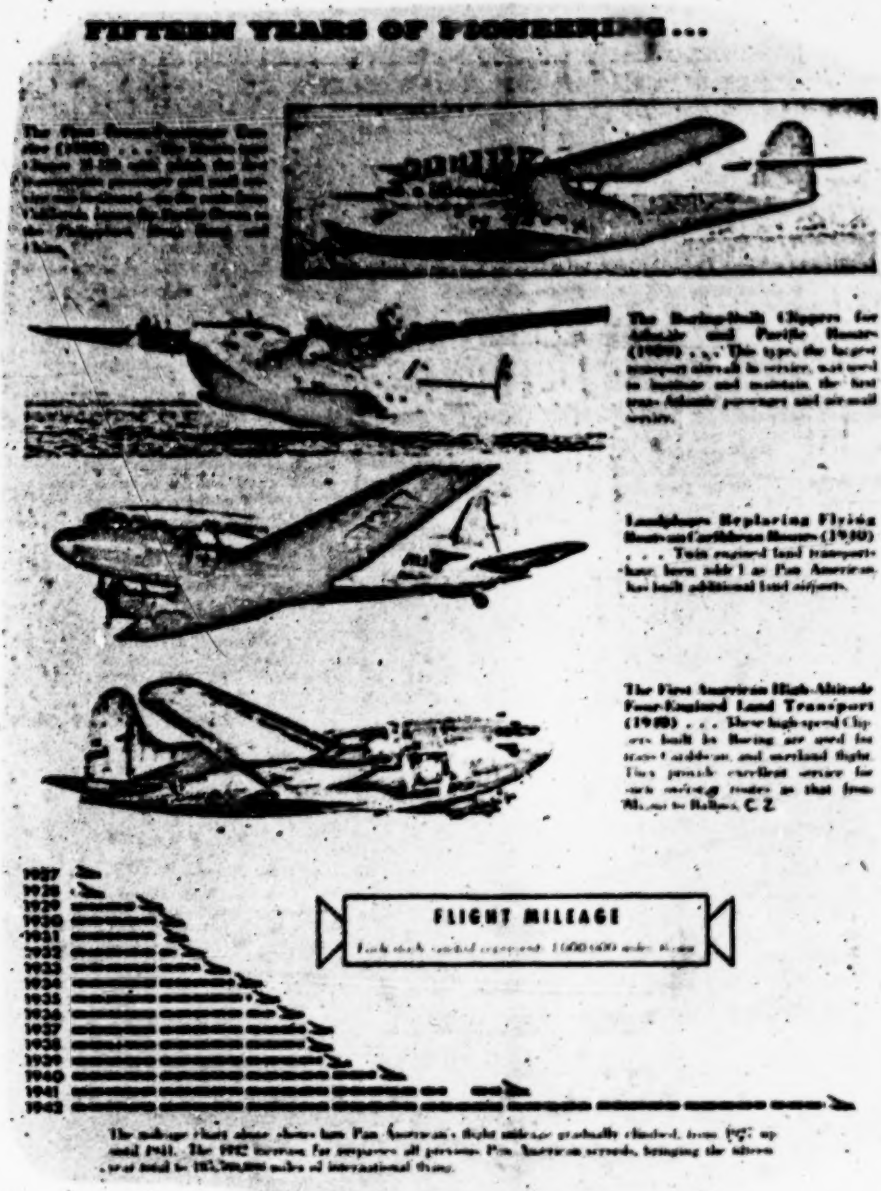


The "Commodore" Flying Boat . . . Built by the Consolidated Aircraft Corp. (1929) used on trans-Caribbean and East Coast South America services of the Pan American Airways System.

The First American 4-Engined Transport (1932) . . . Developed for Pan American-Panama-Caribbean services by the Sikorsky Airplane Company.

The First American Ocean Transport (1934) . . . A Sikorsky Clipper type S-42 which was used to operate the Pacific and Atlantic routes

[fol. 3505]


FIFTEEN YEARS OF PIONEERING...
The Boeing-Built Clippers for Atlantic and Pacific Routes (1939) . . . This type, the largest transport aircraft in service, was used to institute and maintain the first trans-Atlantic passenger and air-mail service.
Lockheed Replacing Flying Boats on Caribbean Routes (1940) . . . Twin engined land transports have been added by Pan American has built additional land airports.
The First American High-Altitude Four-Engined Land Transport (1940) . . . These high-speed Clippers built by Boeing are used for trans-Caribbean and overland flights. They provide excellent service for even carrying routes as that from Miami to Belem, C Z.
FLIGHT MILEAGE
1927
1928
1929
1930
1931
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1940
1941
1942

[fol. 3506]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 400

[Handwritten notation—Please return to Legal]

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 1900

AIR TRANSPORT SERVICES

Agreement between the
UNITED STATES OF AMERICA
and BRAZIL

• Signed at Rio de Janeiro
September 6, 1946

• Entered into force October 6, 1946.

(Emblem of Department of State, U. S. of America)

[fol. 3507]

AIR TRANSPORT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED STATES OF BRAZIL[1]

---

[1] The following is a photographic reproduction of the signed original.

[fol. 3507a]

CONTENTS

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[fol. 3508]

—2—

AIR TRANSPORT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED STATES OF BRAZIL.

The Government of the United States of America and the Government of the United States of Brazil, considering:

—that the ever-growing possibilities of commercial aviation are of increasing importance;

—that this means of transportation because of its essential characteristics, permitting rapid connections, provides the best means for bringing nations together;

—that it is desirable to organize in a safe and orderly form regular international air services, without prejudice to national and regional interests, having in mind the development of international cooperation in the field of air transport;

—that it is necessary to conclude an agreement to secure regular air communications between the two countries

have appointed for this purpose their Plenipotentiaries as follows:

The President of the United States of America, His Excellency William Douglas Pawley, Ambassador Extraordinary and Plenipotentiary in Brazil, and His Excellency James McCauley Landis, Chairman of the Civil Aeronautics Board;

The President of the United States of Brazil, His Excellency Samuel de Sousa-Leao Gracie, Acting Minister for Foreign Affairs and His Excellency Major-Brigadier Armando Figueira Trompowsky de Almeida, Minister of State for Aeronautics;

[fol. 3509]

—3—

[Portuguese text omitted]

[fol. 3510]

who, after having exchanged their fullpowers, found to be in good and due form, agreed upon the following articles:

ARTICLE I

The Contracting Parties grant each other the right specified in the Annex hereto, in order that there may be established the regular air services described therein (hereinafter referred to as "agreed services").

ARTICLE II

1—Each of the agreed services may be inaugurated immediately or at a later date, at the option of the Contracting Party to whom the rights have been granted, but not before:

(a) the Contracting Party to whom the rights have been granted shall have designated an airline or airlines for the route or routes specified;

(b) the Contracting Party granting the rights shall have given the necessary operating permission to the airline or airlines concerned (which it shall do without delay, in accordance with the provisions of paragraph 2 of this article and of Article VI).

2—The airlines so designated may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights, that they are in a position to fulfill the requirements prescribed by the laws and regulations normally applied by these authorities to the operation of commercial airlines.

[fol. 3511]

[Portuguese text omitted]

[fol. 3512]

ARTICLE III

1—The charges which either of the Contracting Parties impose or permits to be imposed on the airline or airlines

designated by the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

2—Fuel, lubricating oils, and spare parts introduced into the territory of one Contracting Party or placed on board airplanes in its territory by the other Contracting Party, either for its own account or for the airlines designated by it, solely for use by the aircraft of the other Contracting Party, shall enjoy, with respect to customs duties, inspection fees and other charges imposed by the first Contracting Party, treatment not less favorable than that granted to the national airlines engaged in international air transport services or to the airlines of the most favored nation.

3—Aircraft of one of the Contracting Parties used in the operation of the agreed services and the supplies of fuel, lubricating oils, spare parts, normal equipment and aircraft stores retained on board such aircraft shall enjoy exemption from customs duties, inspection fees, and similar duties or charges in the territory of the other Contracting Party, even though these supplies be used by such aircraft on flights within that territory.

ARTICLE IV

Certificates of airworthines, certificates of competency [fol. 3513]

—7—

[Portuguese text omitted]

—8—

[fol. 3514] and licenses issued or validated by one of the Contracting Parties and still in force, shall be recognized as valid by the other Contracting Party for the purpose of the operation of the agreed services. Each Contracting Party reserves the right however to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to their own nationals by another State.

ARTICLE V

1—The laws and regulations of one Contracting Party, relative to the entry into its own territory, or departure therefrom of aircraft employed in international air navigation or to the operation of such aircraft within its own territory, shall be applied to aircraft of the airline or airlines of the other Contracting Party.

2—The laws and regulations of one Contracting Party as to the admission into its own territory or the departure therefrom of passengers, crew or cargo of aircraft (i.e., regulations relative to entry, clearance, immigration, passports, customs and quarantine) shall be applied to passengers, crew and cargo of aircraft of the airline or airlines designated by the other Contracting Party, within the territory of the first Contracting Party.

ARTICLE VI

Each of the Contracting Parties reserves the right to withold or revoke the exercise of rights specified in the Annex of the present Agreement by an airline designated by the other Contracting Party when it is not satisfied that substantial ownership and effective control of the airline under reference is in the hands of nationals of the other Contracting Party, or in case of failure by that airline to [fol. 3515]

—9—

[Portuguese text omitted]

—10—

[fol. 3516] comply with the laws or regulations referred to in Article V above, or to fulfill the conditions under which the rights are granted in accordance with this Agreement and its Annex, or when planes put in operation are not manned by nationals of the other Contracting Party, except in cases where air crews are being trained.

ARTICLE VII

The present Agreement shall be registered with the Provisional International Civil Aviation Organization established by the Interim Agreement on International Civil

Aviation signed in Chicago on December 7, 1944, or its successor.

ARTICLE VIII

If either of the Contracting Parties considers it desirable to modify the terms of the Annex to this Agreement, as well as to exercise the rights specified in Article VI, it may request consultation between the aeronautical authorities of the two Contracting Parties, such consultation to be initiated within a period of 60 days from the date of the request. When these authorities agree that the Annex should be modified, or choose to exercise the rights set forth in Article VI, such decisions shall enter into force after having been confirmed by an exchange of notes through diplomatic channels.

ARTICLE IX

Except as otherwise provided in this Agreement, or its Annex, any dispute between the Contracting Parties relative to the interpretation or application of this Agreement, or its Annex, which cannot be settled through consultation shall be submitted for an advisory report to the Interim Council of the Provisional International Civil Aviation

[fol. 3517]

—11—

[Portuguese text omitted]

—12—

[fol. 3518] Organization (in accordance with the provisions of Article III, Section 6 (8) of the Provisional Agreement on International Civil Aviation signed at Chicago on December 7, 1944) [1] or to its successor, unless the Contracting Parties agree to submit the dispute to an Arbitration Tribunal designated by agreement between the same Contracting Parties, or to some other person or body. The Contracting Parties will use their best efforts, under the powers available to them to put into effect the opinion expressed in any such report.

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[1] Executive Agreement Series 469; 59 Stat. 1519.

ARTICLE X

If a general multilateral aviation convention, accepted by both Contracting Parties, enters into effect, this Agreement shall be modified in such a way so that its provisions will conform to those of the convention under reference.

ARTICLE XI

For the purposes of the present Agreement, and its Annex, except where the text provides otherwise:

(a) the term "aeronautical authorities" shall mean in the case of the United States of America the Civil Aeronautics Board and any person or agency authorized to perform the functions exercised at the present time by the Civil Aeronautics Board and, in the case of the United States of Brasil, the Air Minister and any person or agency authorized to perform the function exercised at present by the said Minister.

(b) the term "designated airlines" shall mean those airlines that the aeronautical authorities of one of the Contracting Parties have communicated in writing to the aeronautical authorities of the other Contracting Party that they are the airlines that it has designated in conformity with Article II of the present Agreement for the routes specified in such designation.

[fol. 3519]

—13—

[Portuguese text omitted]

—14—

[fol. 3520] (c) the term "territory" shall have the meaning given to it by Articles 2 of the Convention on International Civil Aviation, signed at Chicago on December 7, 1944.[1]

(d) the definitions contained in paragraph *a*, *b* and *d* of Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944, shall be applied to the present Agreement.

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[1] Treaties and Other International Acts Series 1591.

ARTICLE XII

Either of the Contracting Parties may at any time notify the other of its intention to terminate the present Agreement. Such a notice shall be sent simultaneously to the Provisional International Civil Aviation Organization or its successor. In the event such communication is made, this Agreement shall terminate six (6) months after the date of receipt of the notice to terminate, unless by Agreement between the Contracting Parties the communication under reference is withdrawn before the expiration of that time. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed as having been received 14 days after its receipt by the Provisional International Civil Aviation Organization or its successor.

ARTICLE XIII

The present Agreement supersedes any acts, permissions, privileges or concessions already in existence at the time of the signing, granted for any reason by any of the Contracting Parties in favour of airlines of the nationality of the other Contracting Party.

[fol. 3521]

—15—

[Portuguese text omitted]

[fol. 3522]

—16—

ARTICLE XIV

The present Agreement will come into form thirty (30) days after the date of its signature.

In witness whereof the undersigned Plenipotentiaries have signed the present Agreement and affixed thereto their respective seals.

Done in the city of Rio de Janeiro on the sixth day of September, 1946; in two copies, in the Portuguese and English languages, both texts being equally authentic.

[SEAL] WILLIAM D. PAWLEY.
JAMES M. LANDIS

[SEAL] ARMANDO TROMPOWSKY
S. DE SOUSA-LEAO GRACIE.

[fol. 3523]

—17—

[Portuguese text omitted]

[fol. 3524]

—18—

ANNEX

SECTION I.

The Government of the United States of Brazil grants to the Government of the United States of America the right to conduct air transport services by one or more air carriers of American nationality designated by the latter country on the routes, specified in Schedule I attached, which transit or serve commercially the territory of the United States of Brazil.

SECTION II.

The Government of the United States of America grants to the Government of the United States of Brazil the right to conduct air transport services by one or more air carriers of Brazilian nationality designated by the latter country on the routes, specified in Schedule II attached which transit or serve commercially the territory of the United States of America.

SECTION III.

One or more air carriers designated by each of the Contracting Parties under the conditions provided in this Agreement will enjoy, in the territory of the other Contracting Party, rights of transit, of stops for non-traffic purposes and of commercial entry and departure for international traffic in passengers, cargo and mail at the points enumerated and on each of the routes specified in the schedules attached at all airports open to international traffic.

SECTION IV.

The appropriate aeronautical authorities of each of the Contracting Parties will consult from time to time, or at

[illegible] the request of one of the Parties, to determine the extent to which the principles set forth in Section V below are being followed by the airlines designated by the [illegible] acting Parties, so as to prevent an unfair proportion of traffic being diverted from any designated airline through violation of these principle or principles enunciated elsewhere in this Agreement, the Annex, or the Protocol of Signature.

SECTION V.

It is agreed between the Contracting Parties:

a) that the air transport capacity offered by the carriers of both countries should bear a close relationship to traffic requirements;

b) that in the operation of common sections of trunk routes the air carriers of the Contracting Parties should take into account their reciprocal interests so as not to affect unduly their respective Services;

c) that the services provided by a designated air carrier under this Agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such air carrier is a national and the country of ultimate destination of the traffic;

d) that the right to embark and to disembark at points in the territory of the other country international traffic destined for or coming from third countries at a point or points specified in the Schedules attached, shall be applied in accordance with the general principles of orderly development to which both governments subscribe and shall be subject to the general principle that capacity shall be related:

1 to traffic requirements between the country of origin and the countries of destination;

[illegible] 2 to the requirements of through air [illegible] operation, and

3— to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

SECTION VI.

It is agreed between the Contracting Parties that, where the onward carriage of traffic by an aircraft of different size from that employed on the earlier stage of the same route (hereinafter referred to as "change of gauge") is justified by reason of economy of operation, and where such change of gauge is to be made at a point in the territory of the United States of America or the United States of Brazil, the smaller aircraft will operate only in connection with the larger aircraft arriving at the point of change, so as to provide a connection services which will thus normally wait on the arrival of the larger aircraft, for the primary purpose of carrying onward those passengers who have travelled to the United States of America or the United States of Brazil in the larger aircraft to their ultimate destination in the smaller aircraft. It is likewise understood that the capacity of the smaller aircraft shall be determined with primary reference to the traffic travelling in the larger aircraft normally requiring to be carried onward. Where there are vacancies in the smaller aircraft such vacancies may be filled with passengers from the United States of America or the United States of Brazil respectively without prejudice to the local traffic, exclusive of cabotage.

SECTION VII.

a) The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other carriers, as well as the characteristics of each service.

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[fol. 3527] b) The rates to be charged by the air carriers of either Contracting Party between points in the territory of the United States and points in Brazilian territory referred to in the attached Schedules shall, con-

sistent with the provisions of the present Agreement and its Annex, be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under the present Annex, within the limits of their legal powers.

c) Any rate proposed by the air carrier or carriers of either Contracting Party shall be filed with the aeronautical authorities of both Contracting Parties at least thirty days before the proposed date of introduction; provided that this period of thirty days may be reduced in particular cases if so agreed by the aeronautical authorities of both Contracting Parties.

d) The Civil Aeronautics Board of the United States having approved the traffic conference machinery of the International Air Transport Association (hereinafter called IATA), for a period of one year beginning in February 1946, any rate agreements concluded through this machinery during this period and involving United States air carriers will be subject to approval of the Board. Rate agreements concluded through this machinery may also be required to be subject to the approval of the aeronautical authorities of the United States of Brazil pursuant to the principles enunciated in paragraph (b) above.

e) The Contracting Parties agree that the procedure described in paragraphs (f), (g) and (h) of this Section shall apply

1—If during the period of the Civil Aeronautics Board's approval of the IATA traffic conference machinery, either any specific rate agreement is not approved, within a reasonable time by either Contracting Party or a conference of IATA is unable to agree on a rate, or

2—at any time no IATA machinery is applicable, or

3—if either Contracting Party at any time withdraws or

[fol. 3528] fails to renew its approval of that of the IATA traffic conference machinery relevant to this Section.

f) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the Contracting Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers of services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party from becoming effective, if in the judgment of the aeronautical authorities of the Contracting Party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic.

If one of the Contracting Parties on receipt of the notification referred to in paragraph (e) above is dissatisfied with the rate proposed by the air carrier or carriers of the other Contracting Party, it shall so notify the other Contracting Party prior to the expiry of the first fifteen of the thirty days referred to, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate.

In the event that such agreement is reached, each Contracting Party will exercise its best efforts to put such rate into effect as regards its air carrier or air carriers.

If agreement has not been reached at the end of the thirty day period referred to in paragraph (e) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its application, go into effect provisionally pending the

[fol. 3529] settlement of any dispute in accordance with the procedure outlined in paragraph (h) below.

g) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the Contracting Parties is dissatisfied with any rate proposed by the air carrier or carriers of either Contracting Party for services from the territory of one

Contracting Party to a point or points in the territory of the other Contracting Party, it shall so notify the other prior to the expiry of the first fifteen of the thirty day period referred to in paragraph (e) above, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate.

In the event that such agreement is reached each Contracting Party will use its best efforts to cause such agreed rate to be put into effect by its air carrier or carriers.

It is recognized that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

(h) When in any case under paragraph (f) and (g) above the aeronautical authorities of the two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation instituted by the complaint of one Contracting Party concerning the proposed rate or an existing rate of the air carrier or carriers of the other Contracting Party, upon the request of either, both Contracting Parties shall submit the question to the Provisional International Civil Aviation Organization or its successor for an advisory report, and each Party will use its best efforts under the powers available to it to put into effect the opinion expressed in such report.

[fol. 3530]

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SECTION VIII.

Changes made by either Contracting Party in the routes described in the Schedules attached except those which change the points served by those airlines in the territory of the other Contracting Party shall not be considered as modifications of the Annex. The aeronautical authorities of either Contracting Party may therefore proceed unilaterally to make such changes, provided, however, that notice of any change is given without delay to the aeronautical authorities of the other Contracting Party.

If such other aeronautical authorities find that, having regard to the principles set forth in Section V of the present Annex, interests of their air carrier or carriers are prejudiced by the carriage by the air carrier or carriers of the First Contracting Party of traffic between the territory of the second Contracting Party and the new point in the territory of a third country, the authorities of the two Contracting Parties shall consult with a view to arriving at a satisfactory agreement.

SECTION IX.

After the present Agreement comes into force, the aeronautical authorities of both Contracting Parties will exchange information as promptly as possible concerning the authorizations extended to their respective air carriers designated to render service on the route mentioned in the annexed schedules or any part thereof. This will specially include copies of authorizations granted together with such modifications as may occur and any annexes.

[fols. 3531-37]

—25-31—

[Portuguese text omitted]

[fol. 3538]

—32—

PROTOCOL OF SIGNATURE

It appeared in the course of negotiations leading up to the conclusion of the Agreement on air services between the United States of America and the United States of Brazil signed at Rio de Janeiro today that the representatives of the two Contracting Parties were in agreement on the following points:

1—The air carriers of the two Contracting Parties operating on the routes described in the Annex of said Agreement shall enjoy fair and equal opportunity for the operation of the said route.

2—When it is verified to be temporarily impossible for the carrier or carriers of one of the Contracting Parties, on a route, to rake equal advantage of the opportunities referred to in 1, above, the situation thus arising will be mutually examined by both Governments for the purpose

of assisting the said carrier or carriers to increasingly participate in the services contemplated on a fair and equitable basis.

3—It is recognized that the determination of tariffs to be applied by an air carrier of one Contracting Party between the territory of the other Contracting Party and a third country is a complex question, the overall solution of which cannot be sought through consultation between only two countries. It is noted, furthermore, that the method of determining such tariffs is now being studied by the Provisional International Civil Aviation Organization. It is understood under these circumstances:

a)—That, pending the acceptance by both parties of any recommendations which the Provisional International Civil Aviation Organization may make after its study of this matter, such tariffs shall be subject to consideration under the provisions of Section V (b) of the Annex to the Agree-

—33—

[fol. 3539] ment.

b)—That in case the Provisional International Civil Aviation Organization fails to establish a means of determining such rates satisfactory to both Contracting Parties, the consultation provided for in Article VIII of the Agreement shall be in order.

[fols. 3540-41]

—34-35—

[Portuguese text omitted]

[fol. 3542]

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SCHEDULE 1

AMERICAN ROUTES TO BRAZIL AND ACROSS BRAZILIAN TERRITORY

Part 1. TO BRAZIL:

a) From the United States of America, via intermediate points in the Caribbean, South America, to Manaus Goiania and Rio de Janeiro or Sao Paulo; in both directions.

Remark:—While the route Manaus-Goiania-Rio de Janeiro is not ready for in-

ternational operation, it will be replaced by the following route: "From the United States of America, via intermediate points in the West Coast of South America, to Campo Grande, Sao Paulo and Rio de Janeiro; in both directions."

Part 2. ACROSS BRAZIL:

a) From the United States of America, via intermediate points in the Caribbean and South America, to Belém, Natel and beyond to Africa; in both directions. (In the event meteorological conditions in the North Atlantic so require, this route may be used also to Europe).

b) From the United States of America via intermediate points in the Caribbean and South America, to Belém-Barreiras-Rio de Janeiro-Sao Paulo, Pôrto Alegre and beyond; in both directions.

c) From the United States of America via intermediate points in the Caribbean, South America to Manaus, Goiania, Guerrá and beyond, in both directions.

Remark:—This route shall be put into operation only when the Manaus-Goiania-Rio de Janeiro route is ready.

[fol. 3543]

—37—

[Portuguese text omitted]

[fol. 3544] —38—

SCHEDULE II

BRAZILIAN ROUTES TO THE UNITED STATES OF AMERICA AND ACROSS AMERICAN TERRITORY

1st. Part — TO THE UNITED STATES OF AMERICA:

1. From the United States of Brazil, via intermediate points in South America and in the Caribbean, inclusive of Puerto Rico, to New York or Washington, (alternative), in both directions.

2. From the United States of Brazil, via intermediate points in South America and in the Caribbean, inclusive of Puerto Rico, to Miami and Chicago, in both directions.

3. From the United States of Brazil, via intermediate points in South America and in the Caribbean, inclusive of Puerto Rico, to Miami and New Orleans, in both directions.

2nd. Part — ACROSS THE UNITED STATES OF AMERICA:

1. From the terminal points named in the routes mentioned above by any reasonably direct route to points in third countries, in both directions.

[fols. 3545-46]

—39—

[Portuguese text omitted]

[61 Stat. 3547]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 401

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 2190

AIR TRANSPORT SERVICES

Agreement between the
UNITED STATES OF AMERICA
and BRAZIL

Amending Agreement of
September 6, 1946

- Effected by Exchange of Notes
Signed at Rio de Janeiro December 30, 1950
- Entered into force December 30, 1950

(Emblem)

[61 Stat. 3548]

DEPARTMENT OF STATE
PUBLICATION 4132
[Literal print]

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1951

For sale by the Superintendent of Documents,
U.S. Government Printing Office
Washington 25, D.C. : Price 5 cents

[fol. 3459]

The American Ambassador to the Brazilian Minister for Foreign Affairs

EMBASSY OF THE
UNITED STATES OF AMERICA
Rio de Janeiro, December 30, 1950

No. 242

EXCELLENCY:

I have the honor to refer to the Air Transport Agreement between the United States of Brazil and the United States of America, dated September 6, 1946,[1] and to the agreement reached on October 6, 1950, during consultation between the aeronautical authorities of Brazil and of the United States, which reads as follows:

"It was agreed that the route schedules of the bilateral agreement will be amended by an exchange of diplomatic notes in order to accomplish the following modifications:

"(a) Schedule I, Part 1, will be amended to read in its entirety as follows:

From the United States of America, via intermediate points in the Caribbean, South America, to Manaus, Goiania and Rio de Janeiro and or Sao Paulo; in both directions.

"Remark: While the route Manaus Goiania Rio de Janeiro is not ready for international operation, it will be replaced by the following route: 'From the United States of America,' via intermediate points in the West Coast of South America to Peru and or Bolivia and thence to Sao Paulo and or Rio de Janeiro; in both directions".

"(b) Schedule II, 1st Part, 1, will be amended to read in its entirety as follows:

From the United States of Brazil, via intermediate points in South America and in the Caribbean.

[1] Treaties and Other International Acts Series [1000]; 61 Stat. Pt. 4, p. 4121.

inclusive of Puerto Rico, to New York and/or Washington; in both directions."

The above agreement is acceptable to my Government, and upon receipt of a note confirming it on behalf of the Government of the United States of Brazil, the Government of the United States of America will consider Schedule I and Schedule II of the Annex to the Air Transport Agreement modified accordingly.

[fol. 3550]

Please accept, Excellency, the renewed assurances of my highest and most distinguished consideration.

HERSCHEL V. JOHNSON

His Excellency
RAUL FERNANDES
Minister for Foreign Affairs of Brazil

[fol. 3551]

Translation.

MINISTRY OF FOREIGN AFFAIRS,
RIO DE JANEIRO,
December 30, 1950.

DE/DAI/676/588.(22)

Air Transport Agreement between Brazil and the United States of America. Modification of route schedules.

MR. AMBASSADOR,

I have the honor to acknowledge receipt of note No. 242 of this date, through which Your Excellency informs the Ministry of Foreign Affairs that the Government of your country, in view of what was established in the third consultation, ending on October 6 of this year, between the aeronautical authorities of Brazil and the United States of America, agrees that route Schedules I and II, annexed to the Air Transport Agreement signed by the two countries on September 6, 1946, shall be modified as follows:

"a) Schedule I, Part 1, will be amended to read as follows:

"From the United States of America, via intermediate points in in the Caribbean, South America, to Manaus, Goiânia and Rio de Janeiro and or Sao Paulo, in both directions. Remark: While the route Manaus-Goiânia-Rio de Janeiro is not ready for operation, it will be replaced by the following route:

"From the United States of America, via intermediate points in the West Coast of South America, to Peru and or Bolivia and thence to Sao Paulo and or Rio de Janeiro, in both directions".

b) Schedule II, 1st Part, 4, will be amended to read as follows:

"From the United States of Brazil, via intermediate points in South America and in the Caribbean, inclusive of Puerto Rico, to New York and or Washington, in both directions".

2. In reply, I take pleasure in confirming to Your Excellency the acceptance by the Brazilian Government of the conclusions reached on the matter by the aeronautical au- [fol. 3552] thorities of both countries, considering, likewise, that route Schedules I and II, annexed to the Brazil United States of America Air Transport Agreement, are modified as above stated.

I avail myself of the opportunity to renew to Your Excellency the assurances of my highest consideration.

RAUL FERNANDES

His Excellency HERSCHEL V. JOHNSON,
Ambassador of the United States of America.

[fol. 3553]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 402

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 4143

AIR TRANSPORT SERVICES

Agreement Between the
UNITED STATES OF AMERICA
and BRAZIL

Amending Agreement of
September 6, 1946,
as Amended

Effected by Exchange of Notes
Signed at Washington December 1, 1958

(Emblem)

[fol. 3554]

DEPARTMENT OF STATE

[Literal print]

For sale by the Superintendent of Documents,
U.S. Government Printing Office
Washington 25, D.C. : Price 5 cents

[fol. 3555]

BRAZIL

Air Transport Services

Agreement amending the agreement of September 6, 1946, as amended.
Effected by exchange of notes
Signed at Washington December 1, 1958;
Entered into force December 1, 1958.

The Secretary of State to the Brazilian Ambassador

DEPARTMENT OF STATE
WASHINGTON
Dec 1 1958

EXCELLENCY:

I have the honor to refer to the civil aviation consultation which has taken place in Washington between September 19 1957 and November 5, 1958, pursuant to Article VIII of the Air Transport Agreement of 1946 as amended, between the United States of America and Brazil. This consultation concluded with the delegations of the United States and Brazil having recommended to their respective Governments the deletion of Schedule I and Schedule II of the Annex to the Air Transport Agreement and the insertion of a new Route Schedule, as follows:

TIAS 1900, 2190. 61 Stat., pt. 4, p. 4130; 2 UST 460.

ROUTE SCHEDULE

A. An airline or airlines designated by the Government of the United States of America shall be entitled to operate air services on each of the air routes specified via intermediate points in both directions and to make scheduled landings in Brazil at the points specified in this paragraph:

1. From the United States of America, via intermediate points in the Caribbean, Central America, and countries on the West Coast of South America to Sao Paulo and Rio de Janeiro.

2. From the United States of America, via intermediate points in the Caribbean and South America to Belém, Natal and beyond to Africa.

3. From the United States of America, via intermediate points in the Caribbean, Panama, and coun- [fol. 3556] tries on the North and East Coasts of South America to Belém or Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Porto Alegre and beyond Brazil to Uruguay and Argentina and beyond to Antarctica and beyond.

4. From the United States of America, via intermediate points in Middle America and countries on the North and East Coasts of South America to Belém or Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Porto Alegre and beyond Brazil to Uruguay and Argentina.

B. An airline or airlines designated by the Government of the United States of Brazil shall be entitled to operate air services on each of the air routes specified via intermediate points in both directions and to make scheduled landings in the United States of America at the points specified in this paragraph:

1. From the United States of Brazil, via intermediate points in South America and Middle America to Los Angeles and Honolulu and beyond to Japan and beyond.

2. From the United States of Brazil, via intermediate points in South America and the Caribbean, including Puerto Rico, to Miami and Chicago and beyond to Canada.

3. From the United States of Brazil, via intermediate points in South America and the Caribbean, including Puerto Rico, to Washington and New York and beyond to Canada.

C. Any point or points on any route or routes contained in this Route Schedule may be omitted in either or both directions at the option of the airline designated to operate such route or routes.

D. The airlines designated by one contracting party in accordance with the provisions of the Agreement will be permitted to operate other services across the territory of the other contracting party without obligation of landing by the most direct route between the points to be served as long as the safety of operation is not affected. In any case, the use of uneconomic and circuitous routings shall be avoided.

E. Flights of a designated airline which do not serve all the points granted in the routes contained in the Route Schedule may be operated by the most direct route between the points to be served so long as the safety of operation is not affected. In any case, the use of uneconomic and circuitous routings shall be avoided.

[fol. 3557] F. The airlines designated in accordance with the provisions of the Agreement by one contracting party will be permitted to land for non-traffic purposes in the territory of the other contracting party. Every airport in the territory of one of the contracting parties which is open to public use by its national aircraft shall be open under uniform conditions to the aircraft of the other contracting party for such non-traffic purposes.

G. For the purposes of this Annex to the Agreement, the term "Middle America" is interpreted as including only those countries situated on the mainland between South America and the continental United States of America.

The above amendment of the Air Transport Agreement is acceptable to my Government, and upon receipt of a note indicating acceptance on behalf of the Government of the United States of Brazil, the Government of the United States of America will consider the Route Schedule of the Annex to the Air Transport Agreement modified accordingly, such modification to be effective from the date of Your Excellency's reply.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

WILLIAM P. SNOW

William P. Snow

His Excellency
ERNANI DO AMARAL PEIXOTO,
Brazilian Ambassador.

* * * * * * *

[fols. 3558-59] [Portuguese text omitted]
[fol. 3560]

Translation

EMBASSY OF THE UNITED STATES OF BRAZIL
Washington, December 4, 1958.

348/588.(22).

MR. SECRETARY OF STATE:

I have the honor to acknowledge the receipt of YOUR EXCELLENCY'S note of December 1, 1958, the text of which, in translation, is as follows:

[For the English language text of the note, see *ante*, p. 3617.]

2. In reply, I inform Your Excellency that the Brazilian Government accepts the terms of the above-mentioned note, which, together with this one, shall constitute an agreement, in force from today's date, for amending the Annex to the Air Transport Agreement between the United States of Brazil and the United States of America.

I avail myself of the opportunity to renew to Your Excellency the assurances of my highest consideration.

For the Ambassador of Brazil:

M G VALENTE
Maury Gurgel Valente
Counselor

His Excellency
JOHN FOSTER DULLES,
Secretary of State of the
United States of America.

[fol. 3561]

PAN AMERICAN WORLD AIRWAYS, INC., EXHIBIT 403

AGREEMENT

AGREEMENT made this 17th day of March, 1939, between WESTERN AIR EXPRESS CORPORATION (hereinafter called "Western") and UNITED AIR LINES TRANSPORT CORPORATION (hereinafter called "United"), both Delaware corporations.

WITNESSETH:

RECITALS

A. Western operates Route AM-13 between San Diego, California and Salt Lake City, Utah, and United operates Route AM-1 between Newark, New Jersey, and San Francisco, California, and both parties transport mail, passengers and express over their respective routes, which intersect at Salt Lake City, Utah.

B. For about twelve years the parties hereto and their predecessors have operated such routes and have maintained connecting air transportation schedules via Salt Lake City, between Los Angeles, California and points east of Salt Lake City on United's Route AM-1; and incident to such connecting air schedules through passenger and express transportation has long been and is being sold by each line over the connecting route of the other, in conformity with the universal practice of all air carriers maintaining connecting schedules.

C. United owns nine Douglas DST sleeper airplanes and Western owns two Douglas DST sleeper airplanes substantially identical with United's aforementioned airplanes, which sleeper equipment the parties hereto operate over their respective routes.

D. It is in the public interest that the parties hereto lease to each other at Salt Lake City, from time to time, at the approximate cost of such leasing, certain of their DST sleeper planes, to the end that sleeper airplane passengers traveling on connecting schedules over the respective routes

of United and Western to and from Los Angeles and points east of Salt Lake City may not be required to deplane from a sleeper plane at Salt Lake City and presently enplane on identical sleeper equipment at that point to continue their air journey on a connecting schedule over the con- [fol. 3562] necting line.

E. Such leasing of planes by each party to the other will improve the efficiency of operations of each party and will improve the character of service offered to the public.

F. Such deplaning occurs at inconvenient hours of the night and the early morning, often under adverse weather conditions, is detrimental to the comfort and convenience of the air passengers, and tends to increase operating and maintenance costs of the parties hereto.

G. The aforementioned detrimental deplaning by air sleeper passengers at Salt Lake City cannot be avoided except by the daily interchange and leasing of such sleeper airplanes to and by United and Western at Salt Lake City.

H. It is in the public interest that such leasing of sleeper airplanes be made operative upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, IT IS AGREED:

1. *Leasing of Planes*: The parties hereto shall lease to each other at Salt Lake City the DST sleeper airplanes owned by them respectively from time to time in order to avoid the above described deplaning at Salt Lake City by air sleeper passengers traveling between Los Angeles and points east of Salt Lake City on connecting schedules of United and Western over their separate respective routes.

2. *No Off-Line Operation*: United shall conduct no operation hereunder excepting over its own route or routes and Western shall conduct no operation hereunder excepting over its own route or routes.

3. *Crews*: The crew of each airplane used in conducting connecting schedule service under this agreement shall consist of one pilot, one co-pilot and one stewardess, who

shall be employed and serve as heretofore only on the routes of their respective employers and shall be subject to direction and control only by their respective employers.

4. *Place of Operation of Leased DST Airplanes*: Western shall not operate any DST airplane owned by United and leased to Western hereunder except on Route AM-13 between Salt Lake City and San Diego, except in an emergency with the consent of United. [fol. 3563]

United shall not operate any DST airplane owned by Western and leased to United hereunder except on Route AM-1 between San Francisco and Newark, except in an emergency with the consent of Western.

5. *Connecting Sleeper Schedules*: The connecting sleeper schedules of the parties hereto at Salt Lake City, for which sleeper airplanes are to be leased hereunder, shall be determined by mutual agreement and shall not exceed two each way daily excepting by mutual consent of the parties hereto.

6. *Number of Sleeper Airplanes*:

(a) To accomplish the aforementioned sleeper airplane leasing each of the parties shall deliver to the other at Salt Lake City, for such sleeper schedules connecting at that point as shall be mutually agreed upon, the sleeper airplane which has been operated to Salt Lake City by the originating line.

(b) United's operations hereunder shall be so conducted by it that subject to prevention by unflyable weather conditions, Acts of God, or conditions beyond its reasonable control, United shall at all times make available to Western such DST sleeper airplanes as may reasonably be required by Western to maintain that number of sleeper schedules which Western could, in the absence hereof, maintain with the DST sleeper airplanes now owned by it.

7. *Delivery of DST Airplanes*: Delivery of DST airplanes used for connecting schedule sleeper service under this agreement shall be made by one party to the other at Salt Lake City on each trip, but delivery may be made at

Burbank when agreed upon by both parties. Each party, upon accepting delivery of a DST airplane from the other, shall execute and deliver to the other a receipt therefor in the following form:

RECEIVED from ..... one DST airplane U. S. License No. ....., complete and in good operating condition, at ....., this ..... day of ....., 1939, at .....M.

(the delivering line)

.....
(name of receiving line)

By .....

[fol. 3564] S. *Authority to Sign Receipts and Accept Deliveries*: Prior to the effective date of this agreement, each party shall give to the other a letter signed by its president or a vice president, setting forth the names and titles of the persons in its employ who are authorized to sign receipts for DST airplanes, and also setting forth the names and titles of persons authorized to accept delivery of DST airplanes and of receipts executed by the other party. Such letters may be amended from time to time by the president or a vice president of the party making the amendment, and such amendments shall become effective upon delivery thereof to the station managers of the other party located at Salt Lake City and Burbank.

9. *Changes in Cabin Arrangements*: The cabin arrangements of the DST airplanes owned by the parties hereto are substantially identical and no material change shall be made in such cabin arrangements unless mutually agreed upon by the parties hereto.

10. *Designation of Owner and Operator of Airplane*: While operating a leased airplane hereunder, each party shall display on the forward cabin wall of such airplane, visible to passengers, a sign of a style and size mutually agreed upon, disclosing the name of the owner and the name of the operator of the airplane.

11. *Change in Airplane Equipment and Accessories*: No material change shall be made in the engines, propellers,

instruments, accessories and operating equipment of the DST airplanes owned by the parties hereto, subsequent to the effective date of this agreement, unless mutually agreed upon by the parties hereto. If any such changes are agreed upon, each party shall complete such agreed changes with respect to its DST airplanes within a reasonable time; provided that Western may, with respect to its DST airplanes, require United to make such changes for it, in which event Western shall pay to United the reasonable cost of making such changes which cost shall be deemed to be the cost to United for the required materials and for requisite direct labor plus a charge for overhead not to exceed one hundred per cent of such direct labor cost.

12. *Tickets*: Tickets sold by either party hereto for connecting schedule transportation via Salt Lake City shall dis- [fol. 3565] tinctly show that the trip east of Salt Lake City is being made via United and the trip west of Salt Lake City is being made via Western, all in accordance with the standard forms of interline tickets now in use by the parties hereto covering the present connecting schedule transportation via Salt Like City.

13. *No Control over Other Party*: The scheduled times of arrival and departure of connecting sleeper airplane schedules at Salt Lake City shall be determined in the public interest by the parties hereto from time to time to provide convenient and advantageous hours for the departure and arrival of passengers, mail and express, and as may be required from time to time by the Postmaster General of the United States pursuant to the provisions of Section 405(e) of the Civil Aeronautics Act of 1938, or amendment thereof. Each party shall have the exclusive right, subject to the orders of the Civil Aeronautics Authority or other governmental authority having jurisdiction thereof, to fix the scheduled stops to be made on its route or routes, and nothing contained in this agreement shall be construed to grant to either party any right whatever (a) to determine whether any trip of the other party shall be operated or cancelled either in whole or in part, or (b) to exercise any control over any operation or business or affairs of or interest in the other party.

14. *Rental for Airplanes*: There will be no rental paid by either party to the other as reimbursement for depreciation expense of the lessor with respect to DST airplanes (exclusive of engines and propellers) leased hereunder.

On or before the fifth day of each month, each lessee shall certify to the lessor the total number of hours the lessee operated, during the preceding month, DST airplanes owned by the lessor.

15. *Rental for Engines*: The lessee of twin row engines leased hereunder shall pay to the lessor thereof the reasonable rental of such leased engines at the rate of $2.88 for each hour of operation of each leased S3-C3G engine by the lessee thereof; $2.65 for each hour of operation of each leased S1-C-G engine by the lessee thereof; and $2.45 for each hour of operation of each leased SB-3-G engine by the lessee thereof, which rates are based on a depreciation [fol. 3566] rate of 4,000 hours of use, less a salvage value of $500.00 on each engine.

On or before the fifth day of each month, each lessee shall certify to the lessor the total number of hours the lessee operated, during the preceding month, twin-row engines owned by the lessor.

On or before the twentieth day of each month, the parties hereto shall settle and pay to each other their engine rental accounts for the preceding month as hereinabove determined.

16. *Rental for Propellers*: In addition to the engine rental provided for above, the lessee of airplane and engines leased hereunder, shall pay to the lessor thereof, the reasonable rental for propellers, (the useful life of which is substantially different than the depreciable life of the airplanes and engines of which they are a part) at a rate of $.54 for each hour of operation of each of such propellers by the lessee thereof.

On or before the fifth day of each month, each lessee shall certify to the lessor, the total number of hours the lessee operated during the preceding month, propellers owned by the lessor.

On or before the twentieth day of each month, the parties hereto shall settle and pay to each other, their propeller rental accounts for the preceding month as hereinabove determined.

17. *Routine Overhauls of Airplanes and Equipment*: Each party shall overhaul or cause to be overhauled the DST airplanes, including propellers, instruments, accessories and equipment which it may own, in accordance with its standard overhaul procedure. In no event shall the character or extent of such overhaul procedure be less than the minimum standards required by the Civil Aeronautics Authority. However, United, at the request of Western, will overhaul such DST airplanes owned by Western in the same manner employed by United with respect to similar equipment owned by it. United will perform such overhauls for Western at a reasonable cost, which shall be deemed to be the cost to United for the direct labor involved, plus a charge for overhead not to exceed one hundred per cent thereof and the cost to United for materials required, plus a charge for overhead not to exceed twenty-five per cent thereof.

In addition to the engine and propeller rental provided [fol. 3567] for above, the lessee of DST airplanes leased hereunder shall pay to the lessor thereof the reasonable overhaul charge applicable to such leased airplanes at the rate of $6.67, for each hour of operation of each of such leased airplanes by the lessee thereof.

On or before the twentieth day of each month, the parties hereto shall settle and pay to each other their airplane overhaul accounts for the preceding month as hereinabove determined.

18. *Overhauls of Engines*: Each party shall overhaul or cause to be overhauled the twin row engines and engine accessories, including carburetors, spark plugs, magnetos, etc., owned by it in accordance with its standard overhaul procedure. In no event shall the character or extent of such overhaul procedure be less than the minimum standards required by the Civil Aeronautics Authority. However, United, at the request of Western, will overhaul Western'

twin-row engines and engine accessories in the same manner employed by United with reference to the twin-row engines owned by United. United will perform such overhauls for Western at a reasonable cost which shall be deemed to be the cost to United for the direct labor involved, plus a charge for overhead not to exceed one hundred per cent thereof and the cost to United for the materials required, plus a charge for overhead not to exceed twenty-five per cent thereof.

In addition to the engine rental, propeller rental, and airplane overhaul charge provided for above, the lessee of twin-row engines leased hereunder shall pay to the lessor thereof the reasonable engine overhaul charge applicable to such leased engines at the rate of $2.46 for each hour of operation of each of such leased engines by the lessee thereof.

On or before the twentieth day of each month, the parties hereto shall settle and pay to each other their engine overhaul accounts for the preceding month as hereinabove determined.

19. *Replacement of Parts*: The entire cost of necessary replacements of major parts of airplanes, such as wings, control surfaces, propellers, instruments, airplane accessories, engine accessories, landing gear and tires (so far as such replacements may be due to wear and tear arising out of the routine operation of the airplanes) shall be borne by the owner of the airplanes on which such replacements [fol. 3568] are made. In the event any such replacement shall be made to a leased airplane by the lessee thereof, the owner shall pay the lessee the reasonable cost thereof which shall be deemed to be the cost to the lessee of the replacement part, and the cost to the lessee for the direct labor involved in making such replacement, plus a charge for overhead not to exceed one hundred per cent of such direct labor cost.

On or before the twentieth day of each month the parties hereto shall settle and pay to each other their parts replacements accounts for the preceding month as hereinabove determined.

20. *Inspection and Maintenance Service*: The airplane and engine inspection and maintenance service performed by each party hereto with respect to all DST airplanes, propellers, instruments, accessories and equipment owned by either United or Western shall be uniform and shall be not less in character or extent than the minimum standards required by the Civil Aeronautics Authority. United shall make such inspection and render such service at all points, except Burbank. For this purpose Western shall maintain five employees at Burbank per round-trip sleeper airplane schedule operated by Western and at least three of such employees shall be competent mechanics.

No charge shall be made by either party against the other for inspection or maintenance service, unless at any time the work of this character required to be done by Western at Burbank shall be of such magnitude that such work cannot reasonably be performed by the aforementioned employees of Western, and in that event United shall promptly reimburse Western for any expenditure made by it for the required additional labor plus a charge for overhead not to exceed one hundred per cent of such direct labor cost.

21. *Ferry Trips*: On ferry trips required to provide airplanes where needed, the hours flown thereon shall be included in the monthly total of the company operating such ferry trips, and shall be taken into consideration in the same manner as pay trips in determining rentals and charges as hereinabove provided.

22. *Gasoline and Oil*: Immediately prior to delivery of [fol. 3569] each airplane operated on connecting schedule service hereunder, the delivering air line, at its own cost, shall fill the gasoline tanks to the extent of 420 gallons and the oil tanks to the extent of 42 gallons. Upon the termination of this agreement, each airplane in the possession of a party hereto as lessee shall be returned to the other party at Salt Lake City with 420 gallons of gasoline in the airplane tanks and 42 gallons of oil in the oil tanks.

23. *Oil Costs*: The lessee of twin-row engines leased hereunder shall also pay to the lessor therefor the cost of oil

placed in such engines at 120 hours intervals after drainage, at the rate of $.068 per hour of operation of each of such engines by the lessee thereof.

The lessor of twin-row engines hereunder shall reimburse the lessee the lessee's cost of oil placed in the lessor's engines by the lessee, after drainage.

On or before the twentieth day of each month the parties hereto shall settle and pay to each other their oil accounts for the preceding month as hereinabove determined.

24. *Damage to Airplanes*: Each party hereto shall have the right to inspect each airplane before accepting delivery from the other party, and the acceptance of such airplane shall constitute an admission by the receiving party that the airplane, including engines, propellers, accessories and equipment, is in good operating condition. Each party shall be responsible for all damage to airplanes in its possession caused by, or arising out of crash, fire, wind storm, land damage, or other casualty, and if such airplane belongs to the other party, the cost of repairing the same shall be paid, or caused to be paid or borne by the party having possession of the airplane when the damage occurred, and if such damage constitutes the destruction of a leased airplane, the party having possession thereof at the time of destruction shall pay or cause to be paid to the owner an amount equaling:—

(a) (1) The value of the airplane and equipment, excluding engines and propellers, as set forth in [fol. 3570] Exhibit "A", attached hereto, less a deduction at pro rata of one per cent per month from February 1, 1939 to the date of destruction; or in an appropriate case.

(2) The value of the airplane and equipment, excluding engines and propellers, as set forth in an amendment to Exhibit "A" which may be filed by either party with the other with respect to any airplane subsequently placed under this agreement, less a deduction at pro rata of one

per cent per month from the effective date of such amendment to the date of destruction; plus

(b) The original cost price of the engine less a deduction of $2.88 for each hour of operation of a S3-C6 engine; $2.65 for each hour of operation of a S14-C6 engine, and $2.45 for each hour of operation of a S13-3C6 engine, from the date of initial operation to the date of destruction, which rates are based on a depreciation rate of 4,000 hours of use less a salvage value of $500.00 on each engine.

(c) The original cost price of the propellers less a deduction of $.54 per operated hour per propeller from the date of initial operation to the date of such destruction.

And the party paying or causing to be paid such amount shall thereupon become the owner of such airplane and equipment, including engines and propellers and all salvage thereof.

25. *Change of Radio Equipment*: Inasmuch as the parties do not operate on the same radio frequency, each party accepting delivery of an airplane hereunder shall make the necessary change of radio equipment and shall then deliver the removed radio equipment to the other party.

26. *Liability and Property Damage Insurance*: During the term of this agreement, each of the parties hereto shall keep in full force and effect at its expense, insurance policies, written by responsible insurance companies, insuring and covering each of the parties as their interests may appear against liability for loss, injury, damage or claims arising out of or in connection with injuries to or deaths of passengers, injuries to or deaths of third persons and damage to or destruction of property caused by or arising out of the operation of or possession of any airplane under this agreement, and such insurance shall be so maintained by each party in the following amounts and with the following limits:

[fol. 3571] Passenger liability insurance not less than $75,000 for each passenger, with a limit of not less than $1,000,000, for any one accident;

Public liability insurance—not less than $50,000.00 for each person, with a limit of $1,000,000.00 for any one accident.

Property damage insurance—not less than $100,000.00 for any one accident.

27. *Aircraft Insurance*: During the term of this agreement each of the parties hereto shall keep in full force and effect at its expense, insurance policies; written by responsible insurance companies, insuring each of the parties as their interests may appear and covering each DST airplane owned by either party hereto in an amount not less than the value thereof as determined by paragraph 24 hereof (including engines, propellers, instruments, accessories and all equipment attached to or contained in the airplane) against damage or destruction caused by or arising out of crash, fire, wind storm, land damage or other casualty which occurs while the airplane involved is in its possession.

Notwithstanding the foregoing, either party may self-insure against said damage and destruction so long as the other party is satisfied that such self insurance procedure adequately protects it against such loss. Upon notification by either party that the self-insurance procedure adopted by the other party is not satisfactory, the party so notified will immediately obtain and maintain at its expense the aircraft insurance above provided for.

28. *Indemnities*: Each party hereto agrees to indemnify, protect and save harmless the other against any and all loss or damage the other may sustain by reason of damage to property, or injuries to or deaths of persons caused by the operation of or possession of airplanes under this agreement while in the possession of such indemnifying party, unless negligence of the other party, jointly or severally, proximately caused such damage, injuries or deaths. Each party shall be responsible for the loss of or damage to any removable airplane equipment installed in any airplane in its possession.

[fol. 3572] 29. *Baggage*: In the event of loss of or damage to baggage or personal effects of a passenger on a

connecting schedule trip, the party whose act or omission caused the loss or damage shall be solely responsible to the passenger, and in case of inability to prove who or under what circumstances the loss or damage occurred, any liability therefor shall be shared equally by the parties hereto.

30. *Definitions*: The term "month", as used in this agreement, shall mean a complete calendar month, except when applied to the first months hereunder which shall be the period from the effective date hereof to and including the last day of such month.

31. *Compliance with Regulations*: All airplanes operated hereunder shall at all times be so equipped, operated, and maintained as to comply in all respects with the rules and regulations of the Civil Aeronautics Authority. Each pilot or co pilot operating any airplane hereunder shall be a pilot or co pilot qualified to act in such capacity in accordance with the rules and regulations of the Civil Aeronautics Authority or any other governmental authority having jurisdiction thereof.

32. *Mainliner*: United shall permit Western to display on its DST airplanes the word "Mainliner", which United was the first to adopt and use, in the same manner as United displays this word on its own airplanes.

33. *Taxes*: In the event either United or Western shall be obligated to pay any sales or use taxes on commodities or materials purchased to operate, maintain or repair airplanes or equipment or accessories relating thereto, such taxes shall be considered a part of the cost of the commodity, material or repair work involved and shall be charged and prorated as above set forth.

34. *Access to Books and Records*: Each party hereto, or a representative designated by it, shall have the right of access, during the term of this agreement and within a reasonable time after the expiration thereof, to the books and records of the other party for the purpose of verifying fly- [fol. 3573] ing hours, costs and expenditures pertinent to this agreement.

35. *Effective Date*: Leasing of sleeper airplanes under this agreement shall commence at such time as is mutually

agreed upon by the parties hereto after the approval hereof by the Civil Aeronautics Authority.

36. *Orders:* This agreement shall be subject to any applicable, valid, and final rules, regulations, or orders that may now exist or that may be adopted hereafter by the Civil Aeronautics Authority or by any other lawfully constituted and empowered governmental authority having jurisdiction.

37. *Term:* This agreement shall continue in force until terminated by either party thereto upon thirty days' advance written notice thereof to the other.

Upon termination of this agreement, airplanes, engines, propellers, instruments, accessories and equipment owned by each party, but in the possession of the other party at the date of termination, shall be returned to the owner at Salt Lake City.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be lawfully executed this 17th day of March, 1939.

WESTERN AIR EXPRESS CORPORATION

By [sgd.] ALVIN P. ADAMS
President

ATTEST:

[sgd.] L. H. DWERLKOTTE
Secretary

UNITED AIR LINES TRANSPORT CORPORATION

By [sgd.] W. A. PATTERSON
President

ATTEST:

[sgd.] P. W. WILLCOX
Secretary

[fol. 3574]

EXHIBIT "A"

Airplane Type & Department of Commerce Number	Values as of January 1, 1939 excluding engines & Propellers
Douglas DST—NC-18101	$71,900.00
Douglas DST—NC-18102	71,900.00
Douglas DST—NC-18103	71,900.00
Douglas DST—NC-18104	71,900.00
Douglas DST—NC-18105	71,900.00
Douglas DST—NC-18106	71,900.00
Douglas DST—NC-18107	71,900.00
Douglas DST—NC-18109	71,900.00
Douglas DST—NC-18110	71,900.00
Douglas DST—NC-18145	88,100.00
Douglas DST—NC-18146	90,100.00

[fol. 3575]

PAN AMERICAN WORLD AIRWAYS, INC.-EXHIBIT 404

THIS AGREEMENT between Pan American Airways, Inc., a corporation organized and existing under the laws of the State of New York (hereinafter called "PAA") and Pan American-Grace Airways, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter called "Panagra")

RECITALS.

WHEREAS, PAA was organized in 1927 for the purpose of operating international air transport services; and

WHEREAS, pursuant to Contract No. F.A.M. 5, dated July 13, 1928, and to the provisions of its certificate of public convenience and necessity issued July 22, 1940, as

amended, PAA has operated and now operates air transport services between the Continental United States and the Canal Zone by various routes; and

WHEREAS, Panagra was formed pursuant to an agreement made in the fall of 1928 between Pan American Airways Corporation, a corporation organized and existing under the laws of State of Delaware (then known as Aviation Corporation of the Americas), which then and continuously thereafter owned all of the capital stock of PAA, and W. R. Grace & Company, a corporation organized and existing under the laws of the State of Connecticut, whereby the two companies agreed to associate themselves in the organization of a company half of the capital stock of which was to be owned by each of them, for the purpose of conducting air transport service south of the Canal Zone on the West Coast of South America; and

WHEREAS, pursuant to contract No. F.A.M. 9, dated March 4, 1929, and to the provisions of its certificate of public convenience and necessity issued July 22, 1940, as amended, Panagra has operated international air transport services south of the Canal Zone, such services now including points in western Colombia, Ecuador, Peru, Chile, Bolivia and Argentina; and

WHEREAS, the bulk of the traffic carried by Panagra from and to the Canal Zone originates in or is destined to the continental United States; and

WHEREAS, PAA now owns three Boeing S-307 four-engined land aircraft which are utilized, in part, in maintaining service between the Canal Zone and the continental United States, connecting with the services of Panagra and now has on order, among other types, 22 Lockheed L-49 four-engined land aircraft (such S-307 and L-49 aircraft being hereinafter referred to together with any other four-engined land aircraft acquired by PAA and assigned to the PAA routes described in paragraph 4 hereof as the "PAA planes") and Panagra now has on order three Douglas DC-4 four-engined land aircraft expected to be delivered in 1943 (hereinafter referred to together with any

other four engined land aircraft acquired by Panagra as the "Panagra planes"); and

[fol. 3576] WHEREAS the parties desire to enter into arrangements permitting the exchange of four engined land aircraft on certain of their operations as in this agreement set forth;

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, it is agreed as follows:

1. *Leasing of Planes*: Panagra shall have the right to tender Panagra planes, together with the engines and propellers therefor, to PAA at the Canal Zone for lease to and operation by PAA on schedules connecting with Panagra on PAA's routes described in paragraph 4 hereof, and PAA shall have the right to tender PAA planes, together with engines and propellers therefor, to Panagra at the Canal Zone for lease to and operation by Panagra on schedules connecting with PAA on Panagra's routes described in paragraph 4 hereof, but neither PAA in the case of Panagra planes nor Panagra in the case of PAA planes, shall be obliged to accept such tender or to lease or operate such planes. Such tender may relate to one or more planes and to one or more scheduled trips and shall be in writing mailed or delivered by the tendering party to the principal office of the other in New York, N. Y., not less than days before the scheduled day of arrival in the Canal Zone of the plane so tendered or, if relating to more than one plane or trip, then not less than days before the scheduled arrival day in the Canal Zone of the first such plane or trip; the acceptance or rejection of such tender shall be in writing mailed or delivered to the principal office of the tendering party in New York, N. Y. not less than days before such scheduled day of arrival. Whenever any such tender shall be accepted the resulting lease and the operations thereunder shall be governed by the terms and provisions of this agreement hereinafter set forth. Any tender accepted may be cancelled as to any scheduled trip or trips by either party hereto by written notice mailed or delivered to the principal office of the other party in New York, N. Y., not less than days before

the scheduled trip. The point of exchange in the Canal Zone shall be Albrook field, Balboa, or such other point as may be determined upon by the parties and approved by the governmental authorities having jurisdiction in the premises.

2. *No Off-Line Operation*: PAA shall conduct no operation with Panagra planes leased hereunder except over its own route or routes, and Panagra shall conduct no operation with PAA planes leased hereunder except over its own route or routes. Since PAA now holds no certificate of public convenience and necessity for operations south of the Canal Zone to the west coast of South America it will not in any manner hold itself out as conducting operations from the Canal Zone to the west coast of South America; and since Panagra holds no certificate of public convenience and necessity for operations north of the Canal Zone it will not hold itself out as conducting any operations north of the Canal Zone. Except in case of emergency, no operation with leased planes shall be conducted on any routes other than those specified in paragraph 4 of this agreement.

[fol. 3577] 3. *Crews*: The crew of each plane used in conducting scheduled service under this agreement shall be employed by and serve only on the routes of its employer and shall be subject to the sole direction and control of its employer.

4. *Place of Operation of Leased Planes*:

(a) The place of operation by PAA of the Panagra planes shall be:

(i) PAA's route or routes between the Canal Zone and Miami, Florida, either non-stop or with such intermediate stops not more than in number and not involving a deviation of more than miles from the direct airline distance as PAA may determine; or

(ii) In the event that, pursuant to its application to the Civil Aeronautics Board, Docket No. 373, PAA shall receive authority to operate between the Canal Zone and New Orleans, Louisiana either non-stop or via Guatemala and Merida or via Havana, then such route or routes so authorized.

(b) The place of operation of the PAA planes shall be the route of Panagra between the Canal Zone and

5. *Connecting Schedules*: If the parties agree regularly to accept each other's tenders of planes so as to permit an interchange of equipment on connecting schedules at the Canal Zone, it is the intent of this agreement that the number of revenue miles to be flown by the PAA planes on the routes of Panagra in each month shall approximately equal the number of revenues miles flown by the Panagra planes on the routes of PAA during each month; and the number of connecting schedules to be operated by leased planes and the portion of the route of Panagra over which the PAA planes shall operate shall be fixed to accomplish this result as nearly as sound and efficient operation, the rendering of convenient service to the traveling public, and the expedition of mail and express permit.

6. *Delivery of Leased Planes*: Delivery of leased planes under this agreement shall be made by one party to the other at the Canal Zone unless some other point is mutually agreed upon. Each party upon accepting delivery of a leased plane from the other shall execute and deliver to the other a receipt therefor in the following form:

[fol. 3578] "Received from

.....

(The delivering line)

Under the Contract, dated , between Pan American Airways, Inc. and Pan American-Grace Airways, Inc., one 4-engined airplane, United States License, No. , complete and in good operating condition at , this day of , 194 , at M.

.....

(The receiving line)

By .....

Lessees receiving planes hereunder shall cause such planes to complete their round trips and return to the Canal Zone as soon as practicable.

[fol. 3587]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 407

(See opposite)

7. *Authority to Sign Receipts and Accept Deliveries*: Prior to the effective date of this agreement each party shall give to the other a letter signed by its President or a Vice-President setting forth the names and titles of the persons in its employ who are authorized to sign receipts for planes leased under this agreement and also setting forth the names and titles of persons authorized to accept delivery of such planes and of receipts executed by the other party. Such letters may be amended from time to time by the President or a Vice-President of the party making the amendment, and such amendments shall become effective upon delivery thereof to the President or a Vice-President of the other party.

8. *Designation of Owner and Operator of Plane*: While operating a leased plane hereunder each party shall display on the forward cabin wall of such plane, visible to passengers, a sign of the style and size mutually agreed upon, disclosing the name of the owner and the name of the operator of the plane.

9. *Tickets*: Tickets and other documents sold by either party hereto for connecting schedule transportation shall distinctly show that the trip north of the Canal Zone is being made via PAA and the trip south of the Canal Zone is being made via Panagra, all in accordance with the standard forms of interline tickets now in use by the parties hereto. All revenues from the transportation of passengers, express and mail on schedules operated north of the Canal Zone by PAA with leased Panagra planes shall be for the account of PAA to the same extent as on schedules operated by PAA planes. All revenues from the transportation of passengers, express and mail on schedules operated by Panagra south of the Canal Zone with leased PAA planes shall be for the account of Panagra to the same extent as on schedules operated by Panagra planes.

[fol. 3579] 10. *No Control over Other Party*: The scheduled times of arrival and departure of connecting schedules at the Canal Zone shall be from time to time determined by the parties hereto in the public interest to provide convenient and advantageous hours for the departure and

arrival of passengers, mail and express and as may be required from time to time by the Postmaster General of the United States pursuant to the provisions of Section 405(c) of the Civil Aeronautics Act of 1938 or amendment thereof. Each party shall have the exclusive right, subject to the orders of the Civil Aeronautics Board or other governmental authority having jurisdiction thereof, and to the provisions of paragraph 4 of this agreement; to fix the scheduled stops to be made on its route or routes. Nothing contained in this agreement shall be construed (a) to grant to either party any right whatever to determine whether any trip of the other party shall be operated or cancelled either in whole or in part, or (b) to exercise any control over any operation or business or affairs of or interest in the other party.

11. *Rental for Planes*: The respective lessees shall pay as rental for the planes leased hereunder sums determined as follows:

(a) There shall be determined the total cost to PAA of the planes owned by it of the type or types leased to Panagra, and the total cost to Panagra of the planes owned by it of the type or types leased to PAA. Such cost shall be the cost of the aircraft fully equipped, including instruments, aircraft communication equipment and miscellaneous flying equipment, but excluding engines and propellers, delivered and ready for use on the routes of the lessor including engineering and development expense and the cost of ferry flights.

(b) Panagra will pay to PAA as monthly rental for the PAA planes, a sum determined by dividing the cost of the PAA planes, determined as provided in subparagraph (a), by, and multiplying the quotient by, a fraction of which the denominator is the total hours flown by such PAA planes during such month and the numerator is the hours flown by the PAA planes during such month on the routes of Panagra.

(c) PAA will pay to Panagra as monthly rental for the Panagra planes, a sum determined by dividing the cost of the Panagra planes, determined as provided in subparagraph (a) by and multiplying the quotient by a fraction of which the denominator is the total hours flown by such Panagra planes during such month and the numerator is the hours flown by the Panagra planes during such month on the routes of PAA.

(d) On or before the 25th day of each month, each party shall certify to the other the information required to make the computations provided for in subparagraphs (a), (b) and (c) for the preceding month, [fol. 3580] and settlements for the rental charge due for each month shall be made on or before the last day of the following month.

12. *Rental for Engines*: The lessee of engines leased hereunder shall pay to the lessor thereof as rental for such leased engines, an amount determined by dividing the cost of each engine so leased by 5000 and multiplying the quotient by the number of hours flown by such engine on the routes of the lessee.

On or before the twenty-fifth day of each month, each lessee shall certify to the lessor the total number of hours during the preceding month the lessee operated engines owned by the lessor.

On or before the last day of each month, the parties hereto shall settle and pay to each other their engine rental accounts for the preceding month as hereinabove determined.

13. *Rental for Propellers*: Each lessee shall pay to the lessor as rental for propellers at a rate of $ for each hour of operation of each of such propellers by the lessee thereof.

On or before the twenty-fifth day of each month, each lessee shall certify to the lessor, the total number of hours during the preceding month the lessee operated propellers owned by the lessor.

On or before the last day of each month, the parties hereto shall settle and pay to each other, their propeller rental accounts for the preceding month as hereinabove determined.

14. *Routine Overhauls of Planes and Equipment*: Each party shall overhaul or cause to be overhauled its planes, including propellers, instruments, accessories and equipment, to be leased hereunder, in accordance with its standard overhaul procedure. In no event shall the character or extent of such overhaul procedure be less than the minimum standards required by the Civil Aeronautics Administration.

Each lessee of planes hereunder shall pay to the lessor thereof a reasonable hourly charge for such overhaul.

On or before the last day of each month, the parties hereto shall settle and pay to each other their plane overhaul accounts for the preceding month as hereinabove determined.

15. *Overhauls of Engines*: Each party shall overhaul or cause to be overhauled its engines and engine accessories, including carburetors, spark plugs, magnetos, etc., to be leased hereunder, in accordance with its standard overhaul procedure. In no event shall the character or extent of such overhaul procedure be less than the minimum standards required by the Civil Aeronautics Administration.

[fol. 3581] Each lessee of engines hereunder shall pay to the lessor thereof a reasonable hourly charge for such engine overhaul.

On or before the last day of each month, the parties hereto shall settle and pay to each other their engine overhaul accounts for the preceding month as hereinabove determined.

16. *Replacement of Parts*: The entire cost of necessary replacements of major parts of planes, such as wings, control surfaces, propellers, instruments, plane accessories, engine accessories, landing gear and tires (so far as such replacements may be due to wear and tear arising out of the routine operation of the planes) shall be borne by the

owner of the plane on which such replacements are made. In the event any such replacement shall be made to a leased plane by the lessee thereof, the owner shall pay the lessee the reasonable cost thereof which shall be deemed to be the cost to the lessee of the replacement part, and the cost to the lessee for the direct labor involved in making such replacement, plus a charge for overhead not to exceed per cent. of such direct labor cost.

On or before the last day of each month the parties hereto shall settle and pay to each other their parts replacements accounts for the preceding month as hereinabove determined.

17. *Inspection and Maintenance Service*: Each of the parties shall give to the leased planes, engines and propellers of the other party plane, engine and propeller inspection and maintenance service of the same extent and general character as is performed by such party with respect to the planes, propellers, instruments, accessories and equipment owned by it; provided, however, that inspection and maintenance at the Canal Zone shall continue to be performed by PAA under existing arrangements whereby Panagra reimburses PAA for Panagra's ton-landing proration of expenses, and arrivals of leased planes at and departure of leased planes from the Canal Zone on the routes of the lessees shall be considered for purposes of such a proration as arrivals and departures of planes owned by the lessees. Such plane, engine and propeller inspection and maintenance service shall be not less in character or extent than the minimum standards required by the Civil Aeronautics Administration. No charge shall be made by either party against the other for inspection or maintenance service except in respect of the services rendered by PAA at the Canal Zone as aforesaid.

18. *Ferry Trips*: On all ferry trips required to provide planes where needed, the hours flown thereon shall be included in the monthly total of the company operating such ferry trips, and shall be taken into consideration in the same manner as pay trips in determining rentals and charges as hereinabove provided. Flight tests and other

non-revenue flights shall likewise be included, but time spent in loading and unloading, warm up, and engine tests shall not be included.

[fol. 3582] 19. *Gasoline and Oil*: Immediately prior to delivery of each leased plane hereunder, the delivering party, at its own cost, shall fill the gasoline tanks to the extent of gallons and the oil tanks to the extent of gallons. Upon the termination of this agreement, each plane in the possession of a party hereto as lessee shall be returned to the other party at the Canal Zone with gallons of gasoline in the gasoline tanks and gallons of oil in the oil tanks.

20. *Oil Costs*: The lessee of engines leased hereunder shall pay to the lessor thereof the cost of oil placed in such engines at hour intervals after drainage, at the rate of $. p. hour of operation of each of such engines by the lessee thereof.

The lessor of engines hereunder shall reimburse the lessee the lessee's cost of oil placed in the lessor's engines by the lessee, after drainage.

On or before the last day of each month the parties hereto shall settle and pay to each other their oil accounts for the preceding month as hereinabove determined.

21. *Damage to Planes*: Each party hereto shall have the right to inspect each plane before accepting delivery from the other party, and the acceptance of such plane shall constitute an admission by the receiving party that the plane, including engines, propellers, accessories and equipment, is in good operating condition. Each party shall be responsible for all damage to planes in its possession caused by, or arising out of crash, fire, windstorm, land damage, or other casualty, and if such plane belongs to the other party, the cost of repairing the same shall be paid, or caused to be paid or borne by the party having possession of the plane when the damage occurred. If such damage constitutes the destruction of a leased plane, engine, or propeller, the party having possession thereof at the time

of destruction shall pay or cause to be paid to the owner an amount equaling:

(a) The cost of the plane and equipment, excluding engines and propellers, determined as set forth in sub-paragraph (a) of paragraph 11 less a deduction at pro rata of per cent. per month from the date of acquisition to the date of destruction;

(b) The original cost of each engine less a deduction of one-five thousandth of such cost for each hour of operation thereof;

(c) The original cost of each propeller less a deduction of $. for each hour of operation thereof;

and the party paying or causing to be paid such amount shall thereupon become the owner of such plane and equipment, engine or propeller, and all salvage thereof.

[fol. 3583] 22. *Liability and Property Damage Insurance*: During the term of this agreement, each of the parties hereto shall keep in full force and effect at its expense, insurance policies, written by responsible insurance companies, insuring and covering each of the parties as their interests may appear against liability for loss, injury, damage or claims arising out of or in connection with injuries to or deaths of passengers, injuries to or deaths of third persons, and damage to or destruction of property caused by or arising out of the operation of or possession of any plane under this agreement, and such insurance shall be so maintained by each party in the following amounts and with the following limits:

Passenger liability insurance not less than for each passenger, with a limit of not less than for any one accident.

Public liability insurance not less than for each person, with a limit of for any one accident.

Property damage insurance not less than for any one accident.

23. *Indemnity.* The lessee shall in each case indemnify, protect and save harmless the lessor against any and all loss or damage which the lessor may sustain by reason of damage to property and injuries to, or deaths of, persons caused by the operation of, or the possession of, planes under this agreement while in the possession of the lessee, unless the negligence of the lessor, jointly or severally, proximately caused such damage, injuries or death. Each party shall be responsible for the loss of or damage to any removable plane equipment installed in any plane in its possession.

24. *Baggage.* In the event of loss of or damage to baggage or personal effects of a passenger on a connecting schedule trip, the party whose act or omission caused the loss or damage shall be solely responsible to the passenger, and in case of inability to prove where or under what circumstances the loss or damage occurred, any liability therefor shall be shared equally by the parties hereto.

25. *Definitions.* The term "month," as used in this agreement, shall mean a complete calendar month, except when applied to the first month hereunder which shall be the period from the effective date hereof to and including the last day of such month.

26. *Compliance with law, etc.* All planes operated hereunder shall at all times be so equipped, operated, and maintained as to comply in all respects with the rules and regulations of the Civil Aeronautics Administration or any other governmental authority having jurisdiction thereof. Each pilot or co-pilot operating any plane hereunder shall be a pilot or co-pilot qualified to act in such capacity in accordance with the rules and regulations of the Civil Aeronautics Administration or any other governmental authority having jurisdiction thereof.

[fol. 3584] 27. *Taxes.* In the event that either PAA or Panagra shall be obligated to pay any sales or use taxes on commodities or materials purchased to operate, maintain or repair leased planes or equipment or accessories relating thereto, such taxes shall be considered a part of the cost

of the commodity, material or repair work involved and shall be charged and prorated as above set forth.

28. *Access to Books and Records*: Each party hereto, or a representative designated by it, shall have the right of access, during the term of this agreement and within a reasonable time after the expiration thereof, to the books and records of the other party for the purpose of verifying flying hours, costs and expenditures pertinent to this agreement.

29. *Effective Date*: Leasing of planes hereunder, if any, shall commence and the effective date of this agreement shall be days from the execution hereof.

30. *Government Approval*: This agreement shall not become effective unless approved by the Civil Aeronautics Board pursuant to Section 412 of the Civil Aeronautics Act of 1938, as amended. If this agreement is not so approved, the negotiation and terms hereof and any application filed or acts done hereunder shall be without prejudice to the future position of the parties. Nothing in this agreement contained shall be deemed to constitute a modification or waiver of any prior agreements or understandings between the parties or between Pan American Airways Corporation and W. R. Grace & Company.

31. *Orders*: This agreement shall be subject to any applicable, valid, and final rules, regulations, or orders that may now exist or that may be adopted hereafter by the Civil Aeronautics Board or by any other lawfully constituted and empowered governmental authority having jurisdiction.

32. *Term*: This agreement shall continue in force until terminated by either party thereto upon years' advance written notice thereof mailed or delivered to the other at its principal office in New York City, N. Y.

Upon termination of this agreement, planes, engines, propellers, instruments, accessories and equipment owned by each party, but in the possession of the other party at the date of termination, shall be returned to the owner at the Canal Zone.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed this day of 194 .

PAN AMERICAN AIRWAYS, INC.,

By .....

Attest:

.....

PAN AMERICAN-GRACE AIRWAYS, INC.,

By .....

Attest:

.....

[fol. 3585]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 405

TESTIMONY OF MR. H. J. ROIG
CAB DOCKET NO. 779
September 30, 1943

p. 1146:

BY MR. REYNOLDS:

Q. Now, Mr. Roig, if you will turn, please, to PG-2 on page 5, which is minutes of Pan American-Grace Airways meetings. The pages are not numbered, but it is the last page for the minutes of the meeting of March 18, 1931.

(Discussion had off the record.)

Q. Referring to the statement which you made, which begins the long paragraph on that page, if you want to read it while we wait—

The Witness: I would like to. Yes, I have read it.

Q. What is the proposed extension to which these remarks referred?

A. As I recall it, it was a Pan American extension from Rio or Santos to Buenos Aires on the East Coast.

pp. 1148-1149:

Q. What happened after this statement on the minutes was made?

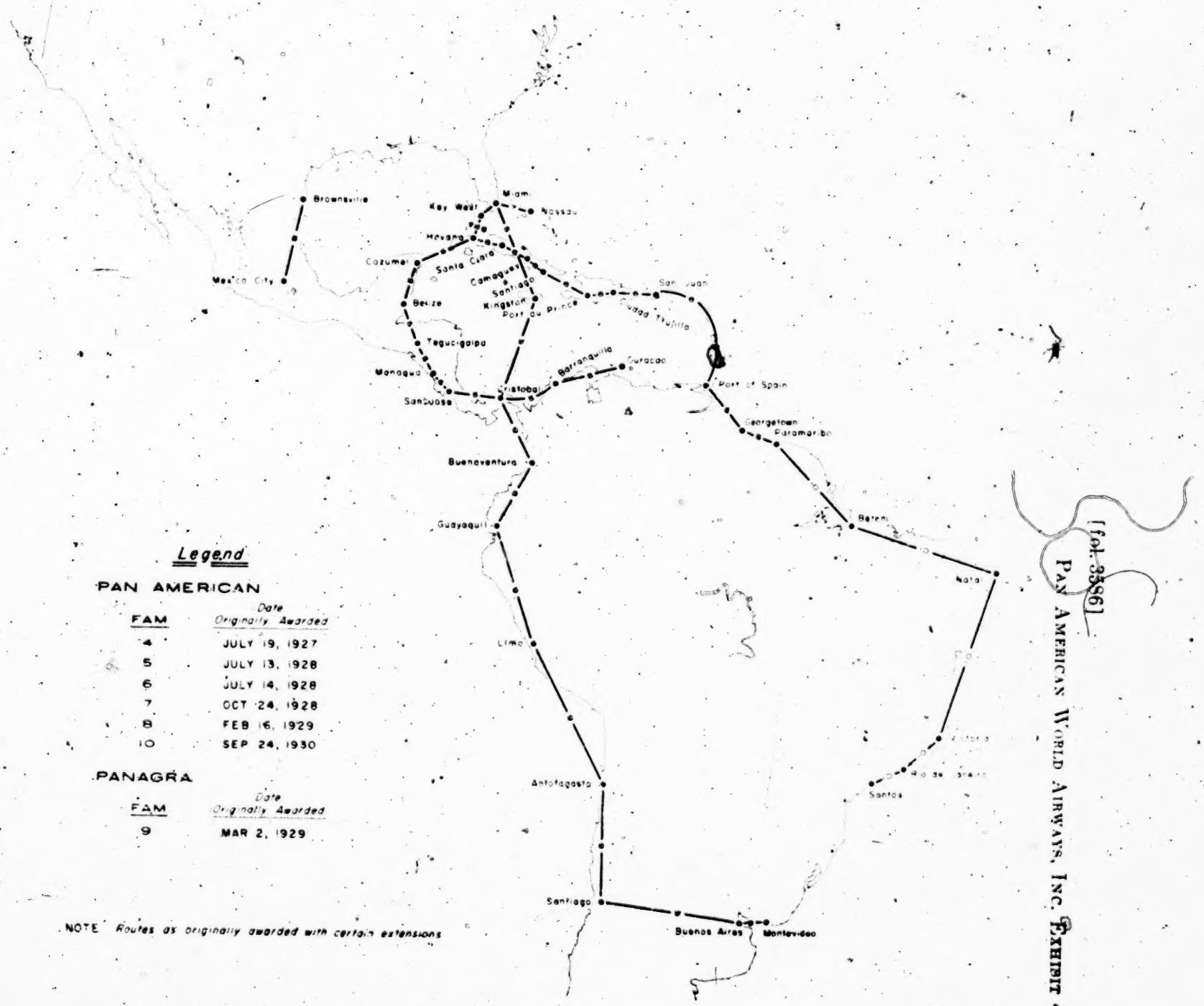
A. I am not in a position to state beyond the fact that I was told that the suggestion was continued. Ultimately the East Coast route was extended to Buenos Aires without any reduction of the Panagra services.

Q. Or Panagra compensation for mail?

A. That is correct.

LATIN AMERICAN FOREIGN AIR MAIL CONTRACTS

AWARDED 1927 - 1930



Legend

PAN AMERICAN

FAM	Date Originally Awarded
4	JULY 19, 1927
5	JULY 13, 1928
6	JULY 14, 1928
7	OCT 24, 1928
8	FEB 16, 1929
10	SEP 24, 1930

PANAGRA

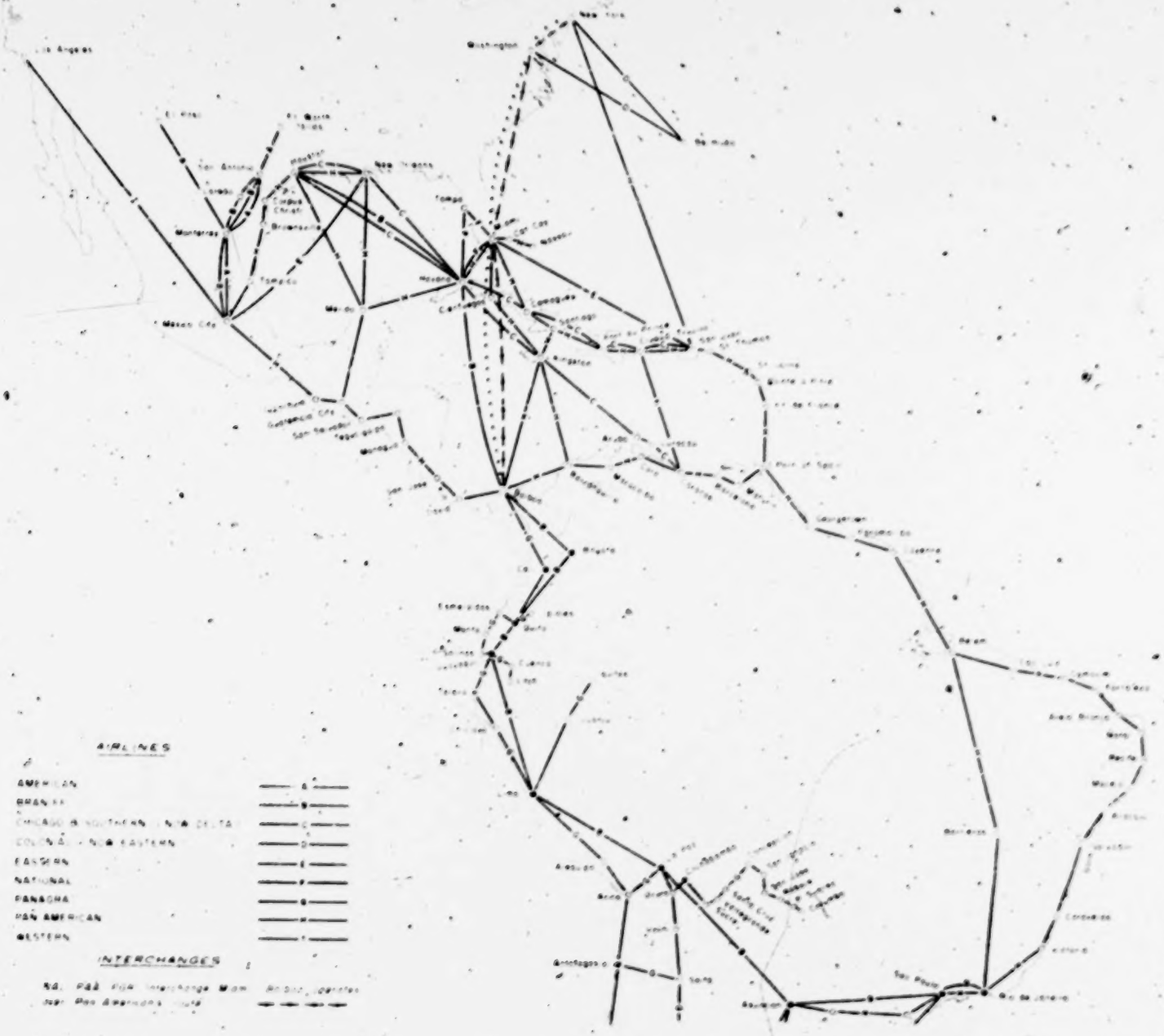
FAM	Date Originally Awarded
9	MAR 2, 1929

NOTE Routes as originally awarded with certain extensions

[fol. 3386]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 406

ROUTES AWARDED IN DOCKET NO 525 ET AL
ORDER NO 4793 DATED MAY 17, 1946
AND THE NAL - PAA - PGR AND EAL - BNF INTERCHANGES APPROVED IN 1955



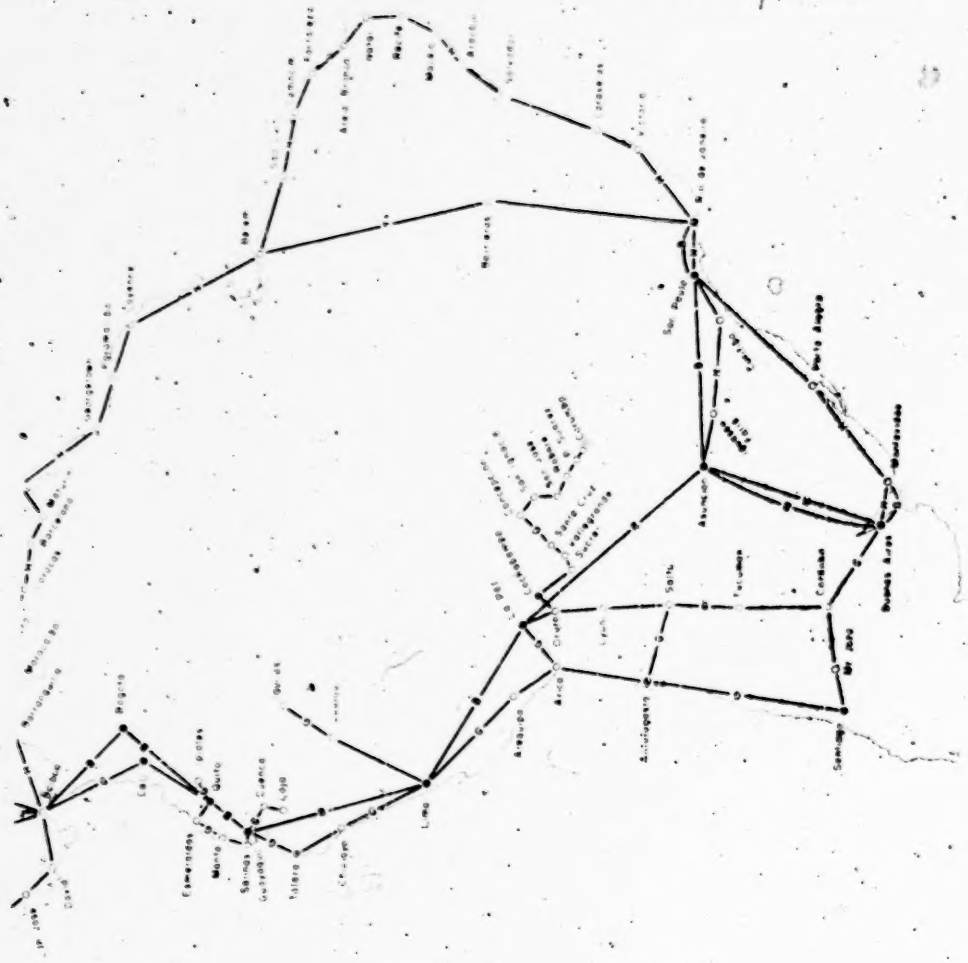
[fol. 3587]

PAN AMERICAN WORLD AIRWAYS, IN

[fol. 3587]

PAN AMERICAN WORLD AIRWAYS, INC. / EXHIBIT 407

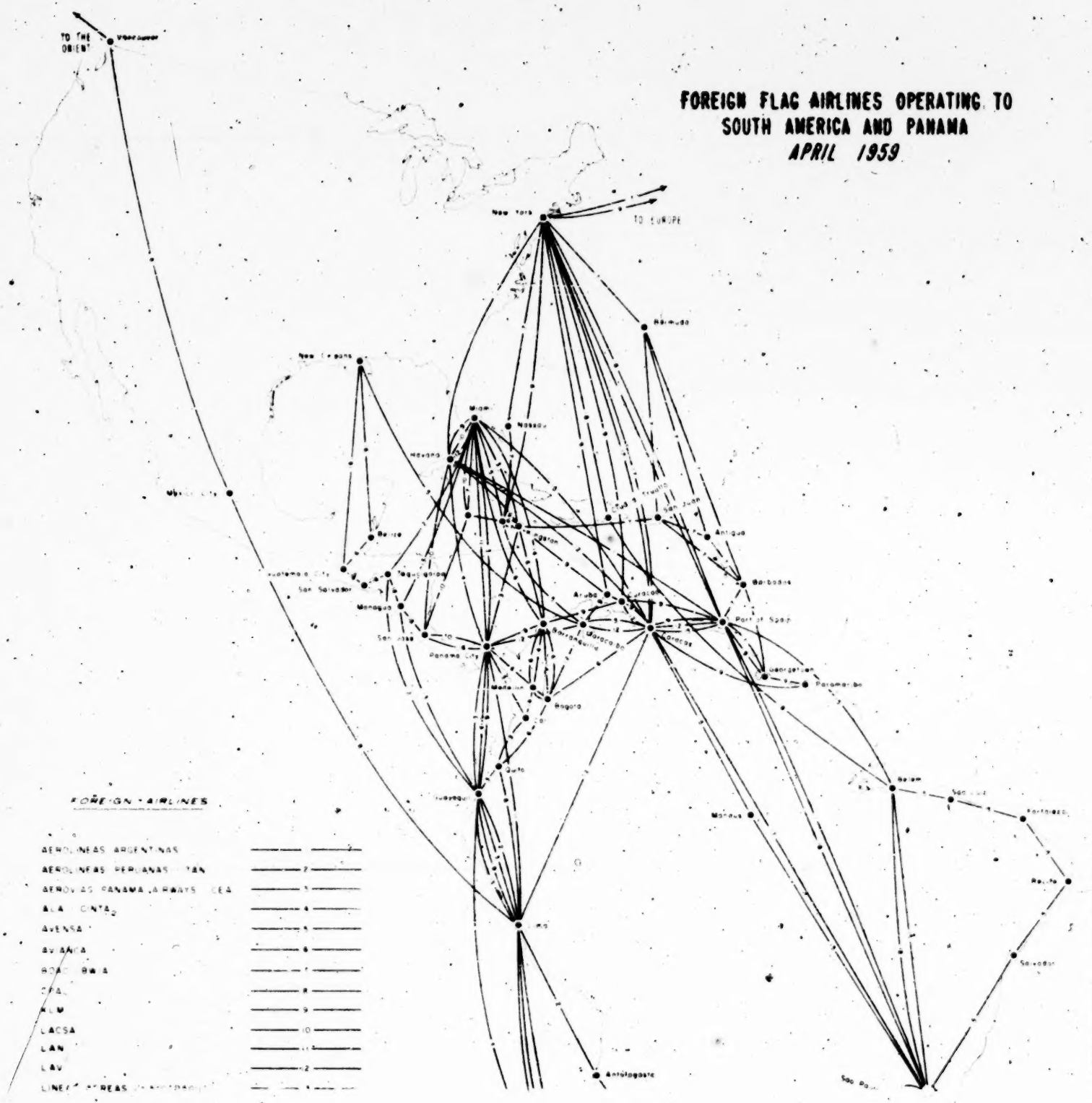
407



[fol. 3588]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 408

(See opposite) 3687

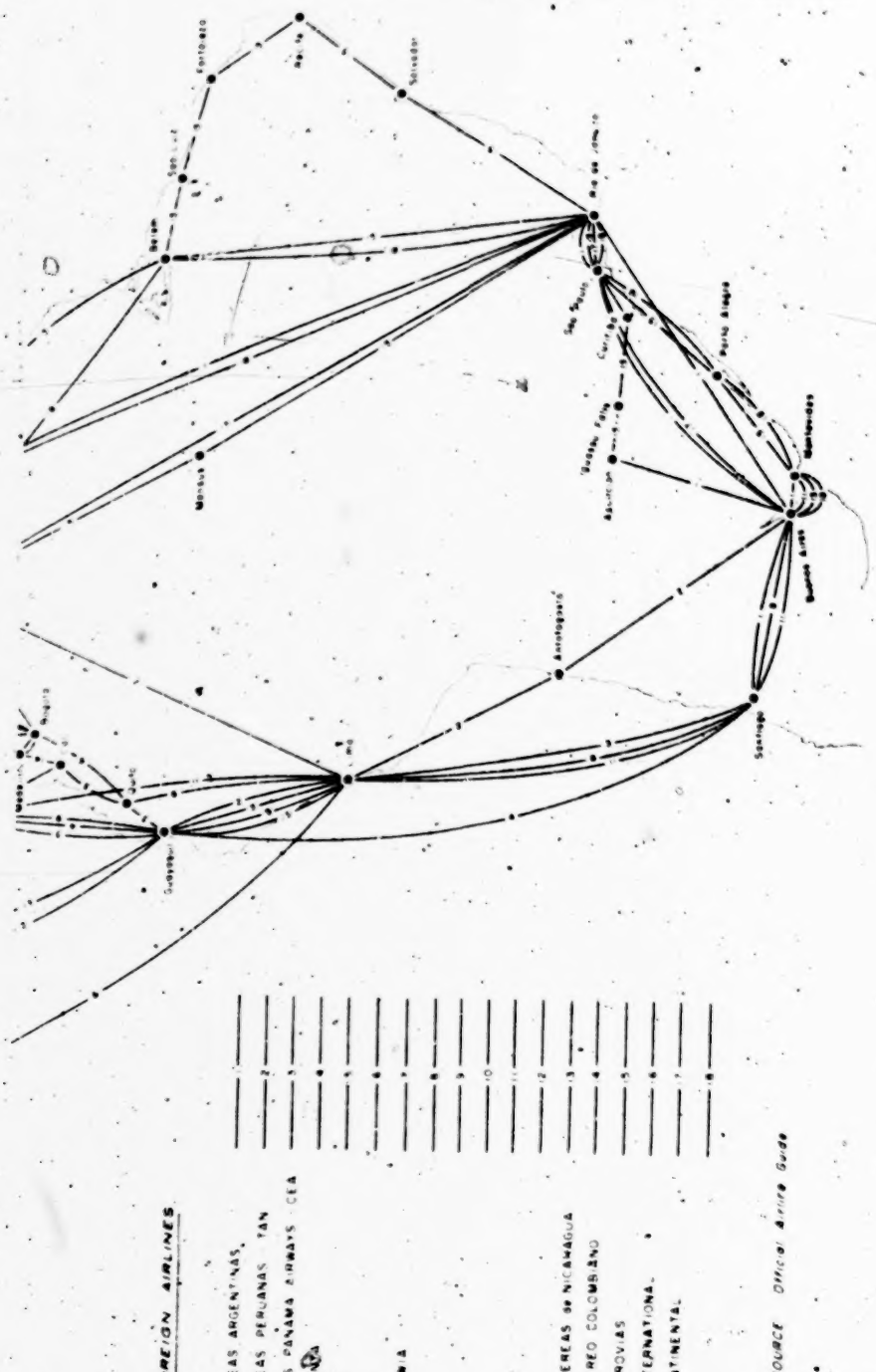


[fol. 3588]

PAN AMERICAN WORLD AIRWAYS

[fol. 3588]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 408



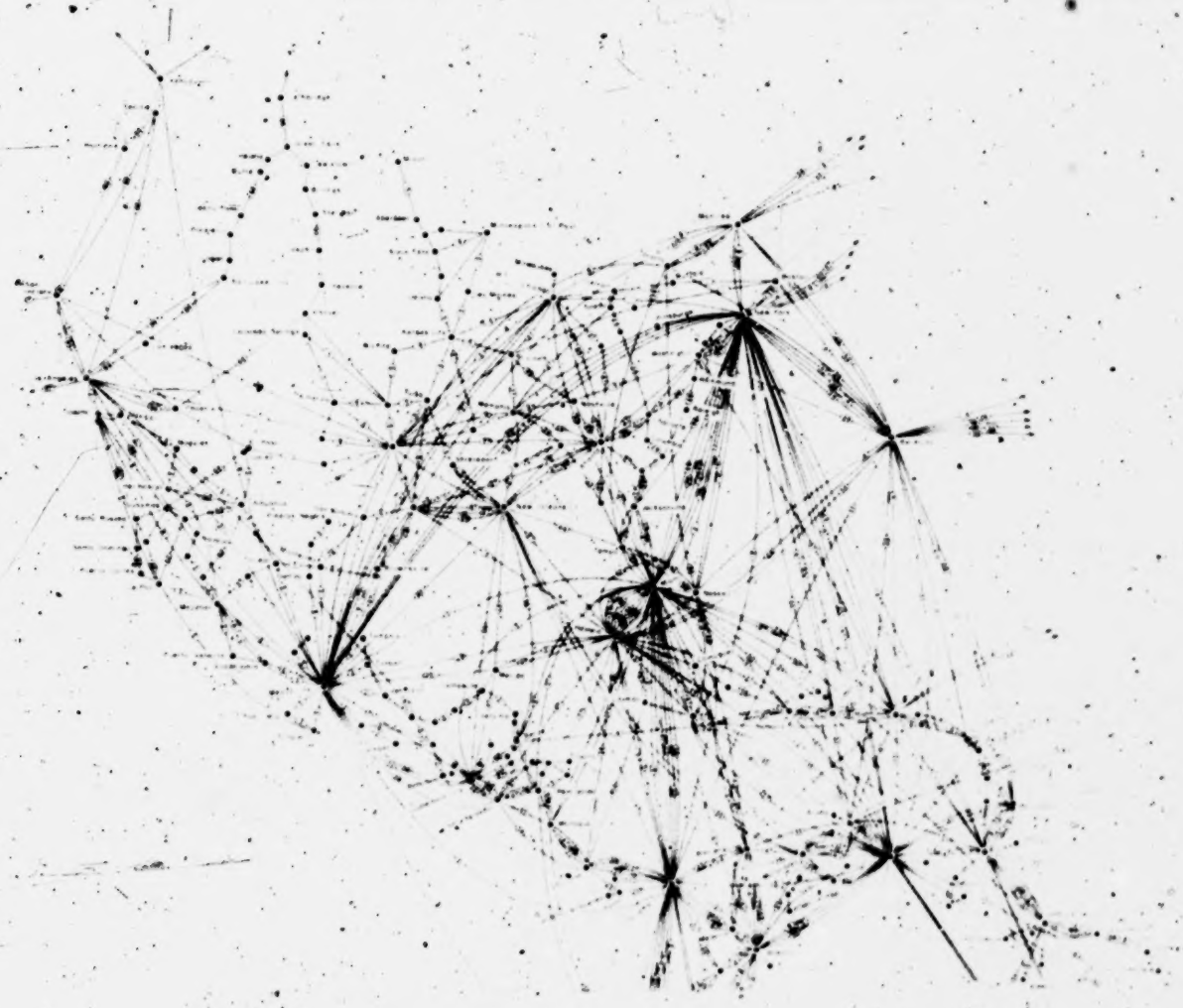
[fol. 3589]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 409

(See opposite) ☞

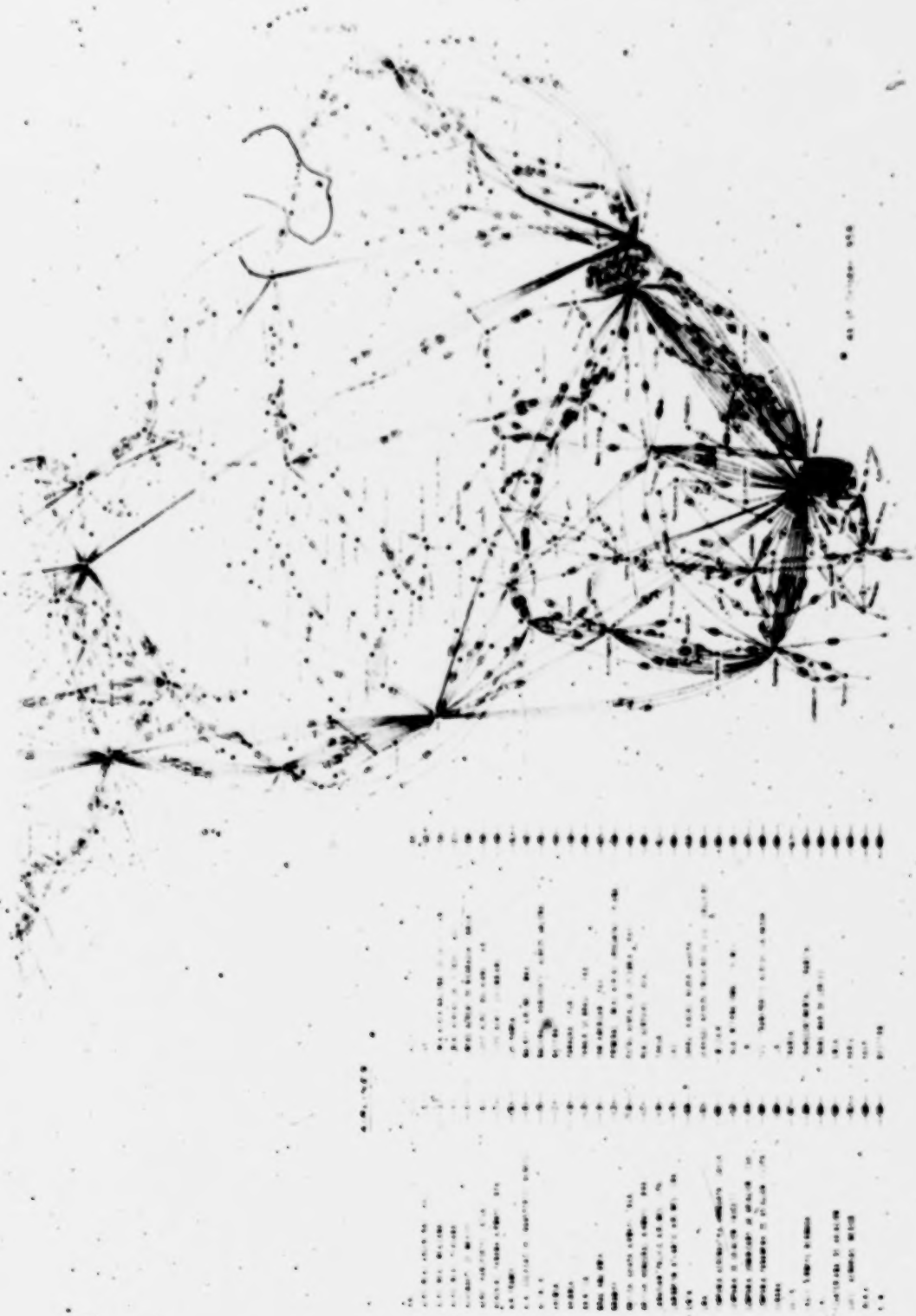
PRINCIPAL LATIN AMERICAN AIRLINE SERVICES

APPENDIX B



[fol. 3589]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 409



[fol. 3590]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 410

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

I. TESTIMONY OF JUAN T. TRIPPE IN CAB DOCKET 779 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE

pp. 1499-1506:

By Mr. Friendly:

Q. Now, will you go back to the early days and tell us what were the plans of Pan American for the development of its route in the year 1927?

A. Pan American's plans in 1927 were to create an American flag system of air transportation in Latin America in competition with the French and German lines which had already established themselves there.

Q. In connection with your testimony as to these early days, have you examined certain documents to refresh your recollection as to precise dates and the like?

A. Yes, I have examined the historical documents which are in one of the exhibits here, and also certain other documents which will be presented in the course of my testimony.

Q. Did Pan American's plans in 1927 include an airline down the West Coast?

* * * * * * *

A. They did from the onset.

Q. Will you tell us, please, who were the owners of Pan American Airways in 1927?

* * * * * * * * *

[fol. 3591] A. The ownership in 1927 was divided between a group composed of former pilots who had served in the first world war, including myself, and another group headed by R. F. Hoyt of Hayden Stone & Company, who represented several large stockholders and who was chairman of our Board.

Q. What were the first steps which you took toward carrying out the plans that you mentioned for an airline down the West Coast of South America?

A. We investigated the operating feasibility of a route down the West Coast and examined the statistics on passenger travel and mail travel to the countries to be served.

Then we set about to acquire the necessary operating rights.

Mr. Cahill: May I have the "we" defined, please?

The Witness: The Pan American Airways, Inc.

* * * * * * * *

Q. What did Pan American do to secure these operating rights?

A. Pan American found that the situation in Colombia was extremely complicated, and I shall come back to this problem and cover it in detail.

We determined that the country where it was most practical to get ourselves established was Peru. We were very fortunate in that there was already operating in Peru a company controlled by Mr. Hoyt and his associates known as Huff Daland Dusters, Inc. This company had initiated the dusting of cotton by airplane in the southern United States and was engaged in dusting operations in Peru.

Q. Can you tell us who were the officers of Huff Daland at that time?

A. Mr. Edgar Gott then president of Keystone Aircraft Corporation was president of Huff Daland, and Mr. C. E. Woolman and Captain now Colonel, Harold Harris were vice presidents.

[fol. 3592] Q. Mr. Woolman is the gentleman who is now vice president of Delta?

A. That is correct.

Q. Did Pan American determine to work through Huff Daland to acquire operating rights in Peru?

A. Yes. Mr. Hoyt took the position, with which I thoroughly agreed, that since Huff Daland was already on the ground in Peru and since Mr. Woolman and Colonel Harris were understood to enjoy the respect of the Peruvian Government, it would be much better to proceed through Huff Daland and then, after these operating rights had been secured, merge the Huff Daland organization and equipment into Pan American.

Q. Were the arrangements as to the acquisition of rights by Huff Daland embodied in writing?

A. Yes, they were.

* * * * * * * * *

Q. Did you meet Colonel Harris at about this time?

A. Yes, I did. Colonel Harris had pioneered the dusting of cotton both in Louisiana and in Peru, and both he and Mr. Woolman had acquired considerable experience in operating aircraft in that country. I had Colonel Harris meet Mr. Priester, our chief engineer, to discuss the technical problems involved.

From that time on we worked very closely with Colonel Harris in regard to the negotiations for the Peruvian operating rights, and with plans for our West Coast air transport operation generally.

* * * * * * * * *

Q. Where were these first conferences between Colonel Harris, yourself, and Mr. Priester?

A. They were in New York.

[fol. 3593] Q. When did they occur?

A. Toward the end of 1927.

Q. When did you see Colonel Harris again?

A. He returned to Louisiana and afterward I met him at Havana early in 1928 where we had further discussions.

Q. Meanwhile did Mr. Woolman institute negotiations

for the concession in Peru pursuant to the letter which is page 1 of Exhibit P-34?

A. Yes, he did.

Q. And were those negotiations successfully concluded?

A. Yes, under date of May 29, 1928, Huff Daland was awarded an operating concession and under date of June 27 an airmail contract.

Q. And are those the documents that appear on pages 2 to 19, inclusive, of Exhibit P-34?

A. Yes, those are.

Q. Now, at about the time when these operating rights were secured, was there a change in the arrangements between Pan American and Huff Daland, and, if so, tell us what that change was?

A. Yes. As a result of discussions between the officers of the two companies, during the spring of 1928, it was agreed that Huff Daland should continue in its dusting operations and that Pan American should take over the concession for the air transport operations. Accordingly a new arrangement was made between Mr. Gott and myself whereby Pan American would take over only the Peruvian operating concession and airmail contract.

Q. Was the arrangement between you and Mr. Gott embodied in a letter dated June 20, 1928, a copy of which appears on page 42 of Exhibit P-34?

A. It was.

[fol. 3594] Q. Up to this time had any arrangements been made for any participation by W. R. Grace & Company in the airline which Pan American was setting up down the West Coast?

A. No, not to my knowledge.

Q. Was Pan American taking other steps in May, June, and July of 1928 to carry out its program for air transport service in Latin America?

A. Yes. During June, 1928, we revised our corporate structure and raised some two and a half million dollars of new capital. On July 13, 1928, we were awarded two important foreign airmail contracts, one a contract known as foreign airmail route No. 5 from Florida to the Canal Zone with a provision for an extension along the north coast of South America, and the other known as Foreign Airmail Route No. 6, Foreign Airmail Contract No. 6, and

the other known as Foreign Airmail Contract No. 6, from Florida to Puerto Rico, with a provision for an extension to Trinidad.

Q. What steps did Pan American take to avail itself of the Peruvian concession?

A. We had considerable discussion as to setting up the corporation which was to take over the Peruvian concession and airmail contract. It was our thought at the time that it might—

pp. 1508-1519:

Q. Would you continue, Mr. Trippe?

A. It was our thought—and I would say again that I refer to the officials of Pan American Airways at the time—that it would be best to have the Peruvian corporation organized for this purpose.

Our idea was that this Peruvian corporation would initially operate the portion of the route in Peru under subcontract from Pan American Airways along the same lines [fol. 3595] as subsequently was done in Mexico and Brazil, and that after the service had been established for a time, the American flag company, Pan American Airways, would take over, as was done later in Mexico and Brazil.

Our Board of Directors authorized this at a meeting on July 18, 1928.

Q. Does a copy of that resolution appear on page 43 of Exhibit P-34?

A. It does.

Q. What else was done with a view to taking advantage of the Peruvian concession?

. . . . . .

A. Our vice president and counsel was asked to prepare a detailed plan for the organization of this company.

Mr. Cahill: Who is he, if I may ask.

Mr. Friendly: That was Mr. Thach.

The Witness: Mr. Thach at the time.

A. (Continuing) He did this under date of August 1, 1926.

Q. Does a copy of that plan appear on pages 44 and 45 of Exhibit P-34?

A. It does.

Q. What else was done by Pan American at this time with respect to operations in Peru?

A. Pan American also gave consideration to the personnel of the company. We felt it extremely desirable that the company should have the advantage of the services of Colonel Harris who was already personally familiar with air operations on the West Coast of South America. It was arranged that he was to become the vice president and operations manager of a wholly-owned Peruvian company with headquarters in Lima.

[fol. 3596] It was to serve as president of this Peruvian company and other officers of Pan American were to hold the other corporate offices except for an assistant secretary and an assistant treasurer to be located in Lima.

Q. Did Pan American do anything about procuring equipment at this time?

A. Yes. We ordered the fleet of S-38's including equipment for the initial operation of the sector between the Canal Zone and Guayaquil. Pan American used two of these planes to initiate this operation for account of Pan American-Grace in 1929.

Q. Had Pan American done anything to secure operating rights in other countries along the West Coast route?

A. In the summer of 1928 Mr. Woolman, for Pan American's account, and acting on its behalf, had instituted negotiations for operating rights in Ecuador. Pan American Airways had instituted negotiations in its own name to secure operating rights in Pan American, rights not only for operations in Central America and the North Coast of South America, but also down the West Coast of South America.

Q. What was being done about Colombia at this time?

A. We were negotiating with Dr. von Bauer, but at this time, namely the spring and early summer of 1928, we had not succeeded either in arranging for the purchase of control of his Colombian company, the Scadta, or in getting his consent to any other arrangement whereby we could operate through Colombia.

Q. Will you tell us, please, who Dr. von Bauer was?

A. Dr. von Bauer was an Austrian. He was the manager and part owner of the air transport company which had been established in Colombia early in 1920, known as Scadta, and, which took over a previous effort by French interests in Colombia which had failed.

[fol. 3597] The principal stockholders of Scadta were Dr. von Bauer and his brother, both Austrians.

Dr. von Bauer, along with Dr. Olaya Herrera, Colombian Minister to Washington, had represented Colombia at the Havana International Aviation Conference, and he was the principal spokesman for Colombian aviation there.

Dr. Olaya Herrera later became president of Colombia. He was a close personal friend of Dr. von Bauer.

Q. How did you meet Mr. von Bauer?

A. I met him through Mr. Hoit, our Board Chairman.

Dr. von Bauer or his brother, in some way, had been associated with Mr. Hoit's firm in the cotton business.

Q. Why did you go to Dr. von Bauer in connection with obtaining the right for Pan American to operate through Colombia?

A. Dr. von Bauer had been working for some years on plans to expand Sacada to the South through Ecuador and into Peru; to the north through the Canal Zone and Central America to the United States, and to the East as well.

Q. By east, you mean into Venezuela?

A. Into Venezuela and Curacao. He also had been working on a direct Caribbean service from Barranquilla via Kingston to points in Cuba and thence to the United States. In fact, he was attempting to expand his company in all directions and at the same time retard the expansion of the United States service south of Panama.

Dr. von Bauer had not succeeded by the summer of 1928 in getting rights to operate to the Canal Zone or into the United States.

Q. Had Pan American developed any other plan? By "other" I mean other than an arrangement with Dr. von Bauer, to acquire a position in Colombia and secure operating rights for its services along the north and west coast of that country.

[fol. 3598] A. Yes. There had been organized in 1927 a Colombian company known as Sacada for the purpose of operating in Colombia in competition with Scadta including both transportation and aerial mapping work in that country. A substantial interest in this company was owned by Mr. Sherman Fairchild and Mr. Graham Grosvenor who became directors of our company in the summer of 1928.

We worked out a program with Mr. Fairchild and Mr. Grosvenor whereby we could acquire 70 percent of this company, the balance to continue to be owned by Colombian business people.

Pan American expected, through Sacada to set up a competitive transport service in Colombia, both on the Magdalena River and on the so-called circular land plane route.

* * * * * * * * *

A. (Continuing) Pan American expected, through Sacada to set up a competitive transport service in Colombia, both on the Magdalena River and on the so-called circular land plane route connecting a number of the important cities in Colombia such as Bogota and Medellin with Barranquilla on the north coast and Cali on the west coast.

Q. Who was to work out these arrangements in Colombia?

A. Mr. H. Case Wilcox, now a colonel in the United States Army.

Q. Did you personally have discussions with Mr. Wilcox in the summer of 1928?

A. Yes, I did.

Q. Did Mr. Wilcox proceed immediately to Colombia at that time?

A. No, he did not.

Q. Can you tell us why?

[fol. 3599] A. He was unable to proceed at the time but he did go to Colombia for us about four months later.

Q. Now, let us see if we can summarize the situation as it existed at this time: Pan American had an operating concession in Peru?

A. That is correct.

Q. And it had instituted negotiations for the necessary rights in Panama and Ecuador?

A. That is correct.

Q. And it had these arrangements to which you have testified with regard to Colombia?

A. That is correct.

Q. And it had ordered equipment to enable it to begin operations over the northern part of the west coast route?

A. It had.

Q. And it had arranged for the services of Colonel Harris on the west coast of South America?

A. Yes, and it had the United States mail contract for the route from Miami to the Canal Zone.

Q. When did you first hear of a proposal—and by "you" I mean you personally—that W. R. Grace & Company might take an interest in the company that was to operate under the Peruvian concession?

A. I did not hear of it until around August, 1928.

Q. How did you hear of it?

A. Mr. Hoit told the officers of Pan American that he had conversations with Mr. Iglehart, and I think Mr. Patchin of the Grace Company, whereby the Grace Company might acquire up to a 50 percent interest in our route from the Canal Zone down the west coast of South America.

Mr. Reynolds: Mr. Friendly, if you don't mind, when you summarized, you did not give a time. Is it your point in [fol. 3666] Mr. Trippe's testimony that all of these arrangements summarized had been completed before any connection with Grace arose?

The Witness: That is correct.

Mr. Friendly: I was referring to the end of July or the early part of August, 1928.

Q. Did you see Colonel Harris again at about this time?

A. Yes. Colonel Harris had come to New York for discussions with us as to the steps to be taken in setting up the operations in Peru. At about this time Colonel Harris informed me that at Mr. Hoit's suggestion he had met with certain officers of the Grace Company.

Q. Did Colonel Harris give you this information in writing or orally?

A. In writing and also orally.

Q. Did Mr. Hoit ask you in 1928 to prepare a memorandum of the plan and transmit it to the Grace Company?

A. He did.

Mr. Friendly: I would like to have marked for identification a document entitled dated, August 15, 1928, and headed draft memorandum, west coast operations.

Q. Is the document marked Exhibit P-148 the document which you prepared?

A. It is.

Q. Did you transmit this document to the Grace Company?

A. I did.

Q. To whom?

A. To Mr. Cogswell.

Q. Did you send a copy of it to Mr. Hoit?

A. I did.

[fol. 3661] Q. Did you receive any communication from him about it?

A. I did.

Mr. Friendly: I would like to have marked for identification as the exhibit next in number P-149, a copy of a letter dated August 17, 1928, from Mr. Hoit to Mr. Trippe.

pp. 1525-1526:

Q. Did Pan American, under the letter of August 31, 1928, act and join with Grace in organizing Peruvian Airways Corporation?

A. Yes.

Q. When was the organization meeting of Peruvian Airways Corporation held?

A. On September 6, 1928.

Q. And at that time did Pan American and Grace each subscribe to half of the capital stock of Peruvian?

A. They did.

pp. 1529-1531:

Q. Mr. Trippe, you have before you the letter of August 31, 1928, which appears on Page 46 of Exhibit P-34. I ask

you whether any suggestion was made before the sending of that letter that the company which is described in the fourth paragraph of that letter, in which Grace was given an option to participate, might operate north of the Canal.

A. There was not.

Q. After the receipt of the letter of August 31, 1928, what was done to carry out the plan which is set forth in it?

A. Peruvian Airways Corporation was organized. Mr. Harris was elected vice president, and I as Pan American's nominee was elected president and in charge of the company's operations as provided under our arrangement with the Grace Company.

The other three officers—Mr. Patchin, Mr. Bush, and Mr. Cogswell—were Grace officials.

[fol. 3602] Q. Now, would you turn, please, to Pages 48 through 50 inclusive of Exhibit P-34, and I ask you whether the extracts from the minutes of the meeting of Peruvian Airways Corporation set forth on those pages correctly describe the action taken at the meeting of September 6, 1928.

A. They do.

Q. What was done next to initiate operations in Peru or on the West Coast?

A. We arranged to have operations actually initiated by Mr. Woolman in the name of Huff Daland for the account of Peruvian Airways Corporation between Lima and Talara on September 13, 1928, utilizing one of the single-engine Fairchilds which Huff Daland had already in Peru. At the end of the month—

Q. (interposing) That is, the month of September, Mr. Trippe?

A. That is right. At the end of the month of September Mr. Harris arrived in South America and undertook a survey of the complete route from the Canal Zone to Valparaiso.

On November 28, 1928, Huff Daland concession was transferred into the name of the Peruvian company.

Q. Did the negotiations which Pan American had had instituted in Ecuador and Panama, to which you have testified, bear fruit?

A. Yes. The negotiations instituted by Mr. Woolman in

Ecuador during the summer of 1928 resulted in a contract obtained by Colonel Harris on February 22, 1929.

Early in 1928 Pan American obtained operating rights in Panama. The portion of these relating to the West Coast was subsequently assigned to Pan American Grace.

Q. In the fall of 1928 did you have any discussion of the Colombian situation with representatives of W. R. Grace and Company?

[fol. 3668] A. Yes. We had several meetings during the fall of 1928 in Mr. Hoit's office.

Mr. Hoit, Mr. Patchin, the Grace vice president representing Grace, and Mr. Cogswell was also there most of the time.

Q. Mr. Hoit and you represented Pan American; is that correct?

A. That is correct.

Q. Would you tell us what took place at those meetings?

A. We went over the entire program with respect to Colombia.

I recall that we discussed it at great length, working from a map which hung on Mr. Hoit's wall.

Mr. Patchin confirmed that the rights along the West Coast would be obtained through our Colombian company for the joint company if Grace decided to come in, that similar rights would be obtained through our Colombian company for Pan American along the north coast, and that operations in Colombia would be conducted by our Colombian company itself.

Q. When you refer to the Colombian company you mean the company which you have previously described, known as Sacada?

A. That is correct.

Q. Did Mr. Patchin approve that program?

A. Yes; it is my recollection that he did.

Q. What did you do then with respect to Colombia?

A. We went actively ahead with the plan for solving the Colombian problem through our Colombian company Sacada.

Early in January Mr. Wilcox was able to leave for Colombia.

pp. 1532-1537:

Q. Is the document which has been marked for identification as Exhibit P-150 the letter of instructions which you gave to Mr. Wilcox prior to his departure for Colombia? [fol. 3604] A. Yes, it is.

Q. And does Paragraph 3 of the document, which has been marked P-150, embody the program which had been worked out at these meetings in Mr. Hoit's office with respect to Colombia?

A. Yes, it does exactly as cleared.

* * * * * * * *

Q. How did you intend the program, which is outlined in Exhibit P-150, to tie in with the arrangements set forth in the letter of August 31, 1928, from W. R. Grace and Company, in the event that Grace decided to exercise its option to take up to a 50 percent interest in the company to be formed?

A. The West Coast franchise from the Panamanian border to the Ecuadorian border was to permit the Colombian company Sacada to operate as subcontractor to the International American Flag operator which would be the joint enterprise in the event Grace exercised their option, or Pan American if they did not.

Q. Would you please explain to us what you mean by subcontracting?

A. Yes. There were several cases where our American flag company, operating the international service, for one reason or another, was unable to operate on its own account and had to subcontract sections to a national company—an associated national company.

For example, early in 1929 we had to subcontract operations to Mexico City to our Mexican subsidiary, and this continued for some years.

A similar arrangement was also carried out in Brazil with respect to operations along the East Coast.

Q. That is, before Pan American Airways, Inc. had a right to go through Brazil in its own name?

[fol. 3605] A. That is correct.

Q. Were those subcontracting arrangements which you described known to the Post Office Department?

A. Yes, and approved by them.

Q. What happened in connection with the Colombian situation after your letter of January 5, 1929, to Mr. Wilcox?

A. Dr. von Bauer stopped at New York, returning from Berlin to Colombia, early in January 1929.

Q. Did you have any discussions with him?

A. I told him we were disappointed at the fixed position he had taken during the past year, and that Pan American was proceeding to organize its own operations in Colombia, having given up hope of working in Colombia through Scadta.

Q. Did Dr. von Bauer's point of view, as to making some arrangement with you, change after you had told him this?

A. It did, completely, and he was willing to deal with us.

Q. Did you come to an understanding with him?

A. We reached a general understanding, but he was unwilling to enter into a formal contract at that time.

Q. Was your understanding oral or in writing?

A. It was oral.

Q. Can you tell us the general terms of the understanding?

A. The general basis, as I recall it, was as follows: Pan American agreed to buy von Bauer's stock, his brother's stock, and any other European-owned stock that he could acquire and tender to us, provided that the total amount tendered was sufficient to give us complete stock control of the company.

He was to withdraw at once all opposition to the granting of permission by Colombia to our operating along both coasts of Colombia.

[fol. 3606] The management of Scadta was to remain in his hands. Representing the Colombian postal administration he was to conclude a postal agreement with the United States Post Office Department covering the onward dispatch of Colombian airmail.

He would give us the exclusive use of Scadta's facilities on the north and west coast in order to permit us to organize through services quickly.

Also it was agreed that at such time as we acquired a stock control of Scadta he would interpose no objections to Scadta operating only in the interior of Colombia, and

would give the Pan American Airways system preferential end-on connections at Colombia border ports.

Q. Did Dr. von Bauer lay down any conditions in regard to this understanding?

A. He did. Dr. von Bauer insisted, as a condition of the deal, that the entire arrangement be kept entirely confidential.

He took the same position when the formal contract was executed a year later, permitting us only to tell our general counsel Mr. Elihu Root and Mr. Friendly, who prepared the contract, and our board.

Q. What reasons if any did Dr. von Bauer give for this position?

A. He stated that it would be impossible for him to go back to Colombia if it were known that he was preparing to sell the controlling stock in the Colombian airline to American interests, particularly in view of the prevailing strong anti-American sentiment that prevailed in Colombia at that time.

He also pointed out, in view of the political situation, that we would not be permitted to hold the Scadta investment if the fact of our ownership became known in Colombia.

[fol. 3607] Finally, he pointed out that it would make it impossible for him to continue as the head of the Scadta organization, especially after the violent anti-American attacks that he had personally brought about in the public press and elsewhere during previous years.

Q. Did Dr. von Bauer carry through under the understanding that you have just described?

A. Yes, he did.

Q. What did he do?

A. He went at once to Washington to see the Colombian minister.

Q. Who was the Colombian minister at that time?

A. It was Dr. Olaya Herrera to whom I have already referred.

Q. What other steps did Dr. von Bauer take in pursuance of the understanding which he had with you?

A. By a letter dated January 28, 1929, he confirmed that part of the arrangement relating to the use of Scadta's facilities on the west coast of South America.

pp. 1537-1538:

Q. Can you fix the date of your understanding with Dr. von Bauer to which you have testified?

A. I cannot remember the exact date. However, I do remember that the arrangement was made at my apartment and on a Saturday or Sunday approximately a week or ten days before this letter of January 28, 1929, which you have shown me.

Q. Did you advise the State Department of the arrangements which you had made with Dr. von Bauer?

A. Yes. I advised the Secretary on a personal and confidential basis.

Q. Did you communicate to any officer of W. R. Grace and Company at the time the results of your conference with Dr. von Bauer?

[fol. 3608] A. I did tell them, about this time, about the agreement for the use of the facilities, but did not feel able, under the circumstances, to tell them the rest.

p. 1540:

Q. Taking the question as revised, Mr. Trippe, will you tell us how you planned, under your understanding with Dr. von Bauer, to work out the operation down the west coast?

pp. 1541-1542:

A. Under our arrangement with Dr. von Bauer we expected that it would be possible for the American flag services to operate along the coasts of Colombia in their own name.

Under the previous program relating to Sacasa, of course, we would have had to operate along the coast by subcontract to this company.

Q. Did you consider that this change would be an advantage or disadvantage to the proposed joint company in the event that that was formed?

A. This would be, in my opinion, a very great advantage to the proposed joint company if it were formed, and to Pan American Airways if it were not.

Insofar as the service in Colombia was concerned the change would merely substitute Scadta, a going organization, authorized to operate in Colombia, for a company which hoped to secure such rights.

In this connection, I think it would be of interest to the record to point out that Scadta is the oldest airline in the Western Hemisphere, and generally understood to be the oldest airline in the world along with KLM; the national airline of the Netherlands.

Q. Was one of the purposes for making the arrangement with Dr. von Bauer the opening of the way for the west coast airline?

[fol. 3669] A. Definitely. That was the most pressing reason for making the arrangement.

Q. Was an agreement subsequently made between the United States Government and the Colombian Government with respect to operating rights for air transport companies?

A. Yes. There was an agreement entered into between the two governments.

p. 1546:

Q. Now, coming back to the fall of 1928, will you tell us what other steps you took with a view to inaugurating air transport service down the west coast?

A. Pan American prepared very detailed and elaborate estimates as to the capital required for the proposed service.

Q. Did you submit those to W. R. Grace and Company?

A. Yes, we did.

Q. For what purpose?

A. For the purpose of enabling them to determine whether they wished to take up their option to the stock of the through airline, and of agreeing upon the capitalization of the airline in the event that they decided to come in.

pp. 1548-1550:

Q. How was the matter of the capitalization of the proposed joint company finally settled?

A. We finally compromised by setting up the company months later, with a capitalization of only one million dollars in lieu of the two million which Pan American had believed to be proper.

Q. Up to the end of January 1929 had Grace exercised its option to subscribe for any part of the stock of the company which was to be formed to operate from the Canal down the West Coast?

A. Not to the best of my recollection.

* * * * * * *

[fol. 3610] Q. Can you tell us when Grace did exercise its option to subscribe for half of the stock of the company to be formed to operate from the Canal Zone down the West Coast?

A. My recollection is that we were informed of Grace's final decision only a day or two before they actually subscribed on February 21, 1929.

Q. Did you submit the bid for Contract F.A.M. 9?

A. Yes. I was authorized by Pan American-Grace to submit a bid on this contract.

Q. And the bid so submitted appears on Pages 67 to 70 of Exhibit—well, without going into the pages, the bid you have before you—P-34—did you submit the bid which appears on Pages 61 to 64 of Exhibit P-34?

A. I did.

Q. And on March 2, 1929, Pan American-Grace was awarded the contract as appears by the order on Page 65?

A. That is correct.

Q. And the contract itself appears on the pages immediately following.

You executed that contract on behalf of Pan American-Grace Airways?

A. I did.

pp. 1556-1557:

Mr. Friendly: I would like to have marked for identification a document headed "Immediate Release, March 2, 1929, Information Service, Post Office Department."

Examiner Brown: The document referred to may be marked Exhibit P-156.

(The document referred to was marked Exhibit No. P 156 for identification.)

Q. Have you ever seen the document which has been marked P-156 before?

[fol. 3611] A. I have.

Q. Is it the press release which was issued by the Post Office Department at the time of the award of the contract for Foreign Airmail Route No. 9?

A. It was.

pp. 1599-1601:

Q. Reference has been made in prior testimony, Mr. Trippe, to a company operating between the Canal and Medellin, Colombia, known as UMCA. Does Pan American own a majority of the stock of this company?

A. Yes, we do.

Q. Who owns the rest of the stock?

A. A Colombian citizen, a Dr. Mejia.

Q. Can you tell us the circumstances under which Pan American came to acquire its ownership in this company?

A. Yes. Dr. Mejia had been interested in the development of cargo service by air from points in Colombia to the Canal and other areas. He had secured from the Colombian Government an exclusive franchise to operate air services from Medellin to the Colombian border at the Gulf of Uraba, the concession covering a zone 50 miles on either side of the line from Medellin to the Gulf. The concession also provided 12 months within which to make a survey and bring in outside interests to assist him in the development of the operation.

All this had occurred without any participation on our part. After acquiring the concession, Dr. Mejia came to New York to seek to interest capital. In the spring of 1931 he made an arrangement with us whereby we would undertake the survey and if this proved successful would join with him in the organization of a company to operate under the concession.

Q. Was the survey made?

A. Yes, it was made by Mr. Allan Winslow and by Captain Fred Clark, one of our senior pilots.

[fol. 3612] Q. Who was Mr. Allan Winslow?

A. Mr. Winslow was an American ace in the last war and the first American flier to bring down a German plane. He represented Pan American in Colombia at the time.

Q. Was the making of this survey by Pan American publicized in the Colombian press?

A. Yes, very extensively.

Q. Did Pan American thereafter proceed to organize, with Dr. Mejia, a company which is known as UMCA?

A. Yes, it did. UMCA is an abbreviation, the full corporate title being Uraba, Medellin, and Central Airways, Inc. UMCA is a Delaware Corporation.

Q. Was the concession with respect to operations between the Canal and Medellin, which had been originally granted to Dr. Mejia, subsequently transferred to UMCA?

A. Yes. In 1932, by formal action of the Colombian Government.

pp. 1606-1610:

Q. There has been testimony that in the fall of 1937 there occurred another discussion or controversy about the Cali operation. Would you tell us what gave rise to that, please?

A. The controversy followed the unfortunate loss of one of Pan American-Grace's two S-43's in attempting a night landing near the Canal. Since the operations could not be sustained with the one remaining S-43 and since the S-43's had proved to have insufficient capacity for this route as we had anticipated, there was another opportunity for considering the question of the equipment on the bottleneck between the Canal Zone and Guayaquil.

Q. What position did the Grace directors take at this time?

[fol. 3613] A. They wished to substitute twin-engine land planes and out through Cali on an interior route over which the type of plane proposed would have very considerably restricted carrying capacity.

Q. By the way, I think in that question I used the general term "the Grace directors"; actually, your conversations at this time were carried on almost entirely with Mr. Roig and Mr. Garni, were they not?

A. That is correct.

Q. And Mr. Patchin and Mr. Cogswell simply appeared at the directors' meeting and acted in accordance with the same views which Mr. Garni and Mr. Roig had expressed?

A. That is the case.

Q. And on your side the discussions were carried on primarily by yourself and Mr. Rihl with some participation by Mr. Young?

A. That is correct.

Q. Mr. Morris didn't get into these operating questions very deeply, either, I take it?

A. That is also correct.

(Discussion had off the record.)

Q. What position did Pan American take in these discussions?

A. We felt that this proposal was distinctly against the interests of Pan American-Grace, and we again advanced the proposal of a nonstop direct operation between the Canal Zone and Guayaquil which we had been urging since 1933.

Q. Why did Pan American take that position?

A. The proposal of routing the international services on an interior route through Cali meant that all of our international passengers would have to be hauled on a roundabout course involving two crossings of the Andes [fol. 3614] and more than 180 miles longer than the direct route, although the direct route could then be operated by four-engine flying boats, and, of course, could be operated with even greater speed and capacity by the four-engine land aircraft which were expected to be soon available.

Q. Were detailed estimates of the relative speed and cost of operation with an S-42-B nonstop between Cristobal and Guayaquil and of operation with a DC-3 on the route through Cali prepared at this time?

A. Yes. The matter was gone into very thoroughly. Detailed estimates of the S-42-B operation were prepared by our staff and estimates of the DC-3 operation were made by Mr. Vidal, and each of them checked the other estimates.

Q. Did Pan American's proposal at this time contemplate that Pan American-Grace must purchase flying boat equipment from Pan American?

A. Not at all. We offered either to sell this four-engine equipment or to charter it or to work out any other equitable arrangement that would enable this direct service to be instituted.

Further, because of the fears expressed by the Grace Directors as to the cost of operating the larger equipment, we offered a demonstration service of from three to six months under which Pan American itself would absorb any differential in the cost of operating the direct route with the four-engine equipment as compared to the estimates submitted by Mr. Vidal for operating the twin-engine land types.

Q. Just so the record may be clear, Mr. Trippe, there has been testimony as to an offer of a somewhat similar character made by Pan American in earlier years with respect to the S-43. I want it to be clear that this was an offer with respect to the S-42-B as against the DC-3; is that correct?

[fol. 3615] A. That is correct.

Q. You do recall a somewhat similar offer having been made in the earlier discussions of the S-43 as against the S-42-B?

A. That is also correct.

Q. Why was Pan American willing to make this offer?

A. For two reasons: first because of our interest in overcoming the Pan American-Grace bottleneck and offering greater capacity for through business to South America, and second because of our own interest in getting more business for our four-engine equipment between the United States and the Canal.

Q. Did Pan American's proposal contemplate that Pan American-Grace should entirely omit Cali by flying the direct route?

A. No, and I would like to stress this point. Our proposal contemplated that Pan American-Grace could carry the through traffic on the short low altitude direct route and would continue to serve Cali via a spur or shuttle route. We believed that this would provide maximum capacity and service for the whole west coast operation, and at the same time better serve Cali on the west coast of Colombia as well.

Q. In these discussions as to the land plane service into Cali at the end of 1937 as distinguished from the discussions in late 1936 and early 1937, to which you have testified with regard to the operation of the S-43 into Cali, did any question arise as to possible conflict between the proposed operation into Cali and Pan American's position in Scadta?

A. No. You understand that operation in Cali had actually been instituted before this time.

Q. That is, operation by Pan American-Grace?

(fol 36161) A. That is correct. We took the matter of the new land plane route up with Dr. von Bauer and he again agreed to support on the part of Scadta Pan American-Grace's application with the Colombian Government for an interior west coast route.

Q. Do you know whether Scadta did in fact cooperate in the establishment of this overland route by Pan American-Grace?

A. I know only that Mr. MacGregor expressed appreciation over the attitude and cooperation which Dr. von Bauer had extended.

pp. 1611-1612:

Q. Did the Pan American-Grace management in the discussions in late 1937 and early 1938, recommend the operation of twin-engine land plane interior services to Cali?

A. Yes, they did.

Q. Did that recommendation have any effect upon Pan American's action?

A. Yes, it did. It was only because of their recommendation that is, the recommendation of the management that Pan American agreed to this operation.

Q. Does Pan American now feel that the decision made in 1938 to operate all of the through west coast flights via the interior land plane route through Cali was wise?

A. We do not, and have not at any time since. We believe that through traffic to Ecuador and points south should be by direct four engine service and that Cali should be served by a scout or shuttle service as we have urged since 1938.

Q. What are the reasons for that, briefly?

A. We think that this twin engine service on a round

about route through the mountains of Colombia is decidedly [illegible] to the direct service to Ecuador, Peru, Bolivia, Chile, and the Argentine, that could have been offered by Pan American Grace in connection with, first with the four engine S 42's, and later with the four engine Boeing 307's, and that Cali should be served by local trips or shuttle service in addition to the through international schedules. Much as on the east coast we run certain express services and other local services.

pp. 1613-1617:

Q. Did Medellin come into the discussions that took place in 1937?

A. Yes, in a certain way.

Q. Would you please state how?

A. The Grace directors were interested in being able to utilize Medellin as a refueling stop.

Q. Was there any discussion of Pan American Grace stopping at Medellin as a regular port of call for taking on and discharging traffic?

A. I think it was mentioned by the Grace directors, but we took the position that Medellin was not within Pan American Grace's territory and I understood that they agreed.

Q. Was there any further discussion on this subject?

A. Yes, there was some discussion as to what would happen if Pan American Grace should stop at Medellin for refueling, and there should then be pressure, either real or synthetic, for Pan American Grace to accept traffic at that point. We took the position that if Grace was in agreement with us as I understood they were, that Medellin was not in Pan American Grace's territory, that they should be willing in that event either to shift the route or to transfer the revenue from such traffic to Pan American in whose territory Medellin was situated.

[illegible] Q. After the discussions in 1937, was there any further suggestion of Pan American Grace's operating into Medellin by the Grace directors?

A. I don't recall any except when they suggested that Pan American Grace purchase our interest in LAMCA and

thereby acquire by agreement the right to operate in this territory.

Q. Did Pan American at any time in these discussions in the fall of 1937 and early 1938, or for that matter, at any other time, suggest that it would withdraw its proposal of a nonstop service between Cristobal and Guayaquil if Grace would agree that Pan American-Grace was never to operate north of the Canal?

A. No. We never have made any such proposal.

Q. Why is that?

A. We felt that this question was covered in our original agreement and to our mind it had nothing whatever to do with the method of providing better service between the Canal Zone and the west coast countries.

Q. Was this matter of operation by Pan American Grace between the Canal and Miami injected into the discussions in regard to Cali?

A. Yes, it was.

Q. When and by whom?

A. It was brought up by Mr. Garni at a meeting in my office immediately before the directors' meeting on January 27, 1938, at which we provided a quorum to enable the Grace directors to vote through their proposal for the interior land plane route.

Mr. Garni asked whether if Grace would not push its program for this interior route Pan American would agree to turn over to Pan American Grace the service between the Canal Zone and Miami.

Q. Who else was present at that meeting?

[fol. 3619] A. Mr. Rihl and Mr. Roig, and Mr. Rihl made a record of the discussion immediately thereafter, and I have checked my own recollections against this.

Q. By the way, Mr. Trippe, where is Mr. Rihl now?

A. Mr. Rihl is now in Brazil.

Q. Could you tell us generally how long he has been there and what he is doing?

A. He has been there nearly a year, and he is engaged in active work with the Brazilian Government having to do with negotiations between our Brazilian subsidiary, Panair do Brasil, and the Brazilian Government with which the War and Navy Departments are also concerned.

Examiner Brown: We will take about a two minute recess.

(Whereupon a short recess was had)

Examiner Brown: Will you proceed, Mr. Friendly?

Q. Mr. Trippe, after this incident of January, 1938, to which you have just testified, when did W. R. Grace & Company next bring up the question of Pan American Grace's coming through to the United States?

A. Shortly after the Civil Aeronautics Act was passed in the summer of 1938.

Q. What position did Grace take at that time?

A. Grace demanded that they be allowed to take over control of Pan American Grace Airways through the purchase of additional stock, and that the Pan American Grace route be extended to some point in the United States such as New Orleans under their management.

Q. And what position did Pan American take?

A. Pan American stated that it was not interested in considering any such demand.

Q. Did Pan American give any reasons for this?

[fol. 3620] A. We considered, as we have always considered, that the operation conducted by Pan American Grace Airways is a part of the Pan American System and that it was our air connection down the west coast connecting with our trans-Caribbean and Central American services.

Q. What did Pan American suggest in an effort to meet the situation?

A. We suggested again that this conflict of interests be settled through a buy or sell arrangement.

Q. How was it that Pan American was willing to make this buy or sell offer in 1938?

A. Because we were convinced that this part of our system could be made more valuable to us than to W. R. Grace & Company.

Q. Did this buy or sell idea interest Grace & Company?

A. Yes, it seemed to at first. They went into the whole matter, examined the figures, and made us an offer.

Q. What was the offer?

A. Mr. Garni said that the top figure that he would recommend was $1,250,000 for our half interest.

Q. And what position did Pan American take in regard to this?

A. Pan American's position was that it would pay substantially more than that for Grace's half interest.

Q. Did you inform Grace & Company of Pan American's position?

A. I did, and by letter.

p. 1617:

Q. What happened after you wrote this letter?

A. Nothing happened for some time. Then there was an exchange of letters between Mr. Iglehart and Mr. Whitney, then chairman of our Board.

[fol. 3621] pp. 1619-1623:

Q. After this meeting of the Pan American Board of Directors which was held on December 28, 1938, were there further talks between Mr. Iglehart and Mr. Whitney?

A. Yes, there were.

Q. Did those talks lead to any proposal being submitted?

A. Yes, they did lead to a proposal.

* * * * * * *

Q. Is the document which has been marked for identification Exhibit P-166 the proposal by W. R. Grace & Company in January, 1939?

A. It is.

Q. Is that the proposal which was discussed at the meeting of Pan American's executive committee on January 17, 1939, which appears on pages 42 and 43 of the Exhibit P-37?

A. It is.

Q. The minutes state that the meeting disapproved the proposed arrangement for granting authority to negotiate a standard of connecting service required of this company, under paragraph 2 with definite provisions for arbitration. Can you tell us why the Pan American directors disapproved the proposal which is Exhibit P-166?

A. The principal objection was that the only standard applicable to the connecting service was Grace's "reasonable satisfaction."

Q. Did you subsequently discuss this matter with Mr. Roig?

A. Yes, I did.

Q. Referring to Paragraphs 2 and 5 of the document which has been marked P-166, did Mr. Roig state whether Mr. Iglehart intended the arbitration provisions of Paragraph 5 to apply to the connecting service matter that is referred to in Paragraph 2?

[fol. 3622] A. Yes. He said that Mr. Iglehart had not so intended.

Q. Did Mr. Roig then make a substitute proposal?

A. Yes, he did.

Mr. Friendly: I would like to have marked for identification as Exhibit P-167 a paper consisting of one paragraph.

Examiner Brown: The document will be marked Exhibit No. P-167.

(The document referred to was marked Exhibit No. P-167 for identification.)

Q. Is the paper which has been marked P-167 a copy of the substitute proposal with reference to arbitration which was made by Mr. Roig?

A. Yes, it is.

Q. Did Pan American refuse to accept this also?

A. Yes, it did.

Q. Why?

A. Because although the language was different, the effect was just the same as the proposal which we had already turned down, namely, that if Mr. Iglehart disagreed with Mr. Whitney, the case was decided against us.

Q. And after this the arbitration clause in the agreement of February 14, 1939, which appears on page 16 of Exhibit P-35 was finally worked out and agreed upon?

A. That is correct.

Q. What reasons led Pan American to enter into the agreement of February 14, 1939?

A. We had tried every other compromise without success. We knew that because of Mr. MacGregor's desire to retire a new issue would shortly arise in an attempt to secure an independent president. It seemed best in the

interests of avoiding a stalemate that we accept the Grace suggestion on management in return for their agreement that the issue of the extension was not to be raised again [fol. 3623] except on the finding of an arbitrator that our connecting service was inadequate. We were, of course, also mindful of the ill effects of a public quarrel between the two principal American flag transportation systems in Latin America, ours in the air and Grace on the water.

Q. At the time of the 1939 agreement, did Pan American consider whether the agreement required approval by the Civil Aeronautics Authority, as it then was, under the section of the Act relating to acquisitions of control?

A. No. We did consult counsel on the question whether the agreement was one requiring approval under Section 412 of the Act, and were advised that it was not.

Q. Do you know the extent to which the matter was submitted to the Civil Aeronautics Authority?

A. Yes. I was present at a meeting where this problem was discussed with members of the staff of the Authority. There were present at this meeting Mr. Pogue, who was then general counsel; Mr., now Lieutenant Colonel, Gates; Mr. Cogswell; Mr. Cooper; Mr. Friendly; and myself, Mr. Cogswell representing Grace, and Mr. Cooper, Mr. Friendly, and myself, Pan American.

Q. Can you tell us what took place?

A. There was a good deal of discussion as to whether the agreement was one between air carriers. To the best of my knowledge, the question whether the agreement was subject to Section 408 of the Act was not discussed at all.

Q. Was Mr. Roig at that meeting?

A. He was not.

Q. Did the members of the Civil Aeronautics Authority staff who were present express any opinion on its behalf?

A. No, the discussion was entirely informal and both Mr. Pogue and Mr. Gates made it clear that they could not and would not attempt to commit the Authority as to whether the agreement should be filed.

[fol. 3624] Q. And was the agreement ever filed?

A. Not to the best of my knowledge.

pp. 1623-1627:

Q. When did Grace next bring up the proposal that Pan American Grace extend to the United States?

A. In the fall of 1940.

Q. What reason did they give for bringing up the matter at that time?

A. The reason given was the application which had been filed by American Export Airlines for a certificate between New Orleans and the Canal Zone. They said they were afraid that American Export would get this route as against Pan American, and would then find that the New Orleans-Canal Zone route did not offer sufficient traffic in and of itself, and would probably seek to extend its lines down the west coast in competition with Pan American Grace.

Q. In connection with this request by Grace, was any complaint made concerning the connecting service of Pan American between Miami and the Canal?

A. Not to my knowledge.

Q. Was any claim made by that time of breach by Pan American of the February, 1939 agreement?

A. No.

Q. What happened when the proposal was made?

A. We told the Grace people that we could see no reason for departing from our agreement of 1939 and that we were not impressed by the reasons which they had advanced.

Q. Was the proposal dropped?

A. We heard nothing further about it for some months.

Q. When did Grace again bring up this matter of extending Pan American Grace north from the Canal?

A. They brought it up again in the spring of 1941.

[fol. 3625] Q. What reason did they give for bringing it up again at that time?

A. It was again the New Orleans issue, which was now about to be heard.

Q. Were there further discussions of the matter during the spring of 1941?

A. Yes, there were, largely with Mr. Rihl.

Q. Was there any change in Pan American's position?

A. No. Not at all.

Q. Some reference has been made to the failure of the Pan American directors to attend meetings of the Board of Directors of Pan American-Grace at this time, which were called to consider the proposal that we have been discussing. Can you state what the reasons were for this?

A. The reasons were stated in a letter which Mr. Rihl wrote to Mr. Roig while I was absent from the country.

Q. I call your attention to page 28 of Exhibit P-33, which contains a letter dated June 19, 1941, from Mr. Rihl to Mr. Roig. Is that the letter to which you refer?

A. Yes, it is.

Q. This same exhibit contains on pages 30 to 32, inclusive, certain correspondence as to a request made by Pan American for a stockholders' meeting. Why did Pan American ask to have that meeting called?

A. We thought it would be well to have such a meeting at which the company's position would be confirmed by formal vote so that there would be no reason for Grace to keep bringing this matter up again in the future.

Q. Did Pan American attend the stockholders' meeting?

A. No they did not.

Q. Why not?

[fol. 3626] A. The night before the meeting our counsel, Mr. Friendly, and I were summoned to Washington on what we considered a very important War Department matter. We asked for an adjournment for several days over the fourth of July week end, but Grace declined to accord this.

Q. Were you advised by Grace during July that unless Pan American would consent—this is July, 1941—that unless Pan American would consent to the filing of an application by Pan American-Grace for an extension north of the Canal, Grace would file an application for the New Orleans-Canal Zone route on behalf of its 100 percent owned subsidiary, Gulf and Caribbean?

A. Yes, we were so advised.

Q. Did Pan American make any request that Grace should not file that application?

A. None at all.

Q. Were you also advised by Grace during July that unless Pan American would consent to the filing of an application by Pan American-Grace, the Grace Company would request the Civil Aeronautics Board to institute a proceeding to determine whether Pan American was justified in the position it had taken?

A. Yes; that is correct.

Q. What did Pan American do as a result of that?

A. We told Grace that we had an agreement with them made in 1939 which provided for arbitration on this very question of an extension by Pan American-Grace north from the Canal Zone, and that although they had made no claim of any breach on our part under the agreement, we were entirely willing to go to arbitration on the agreement as provided.

Q. Did Grace advise Pan American of its position in writing?

A. Yes, it was.

[fol. 3627] pp. 1698-1700:

Q. Now, let's get back to where we were. We just had marked for identification, I think, Exhibit P-168, which is a letter from Mr. Iglehart to Mr. Whitney. I don't recall whether you had stated whether that is a copy of a letter that was received by Mr. Whitney at about that time.

A. Yes, that is the letter.

Q. You testified this morning as to the position which Pan American took in regard to this proposed extension at the time and I ask you how Pan American's position was conveyed to W. R. Grace & Company.

A. It was conveyed by Mr. Whitney in two telephone calls to Mr. Iglehart, made during the meeting of our executive committee on July 21, 1941; both of these were heard by the other directors present as well as myself, and they were later confirmed in writing.

Q. Now, is the writing to which you refer the letter of July 22, 1941, which appears on page 36 of Exhibit 35?

A. Yes, it is.

Q. Did Mr. Whitney ever say to you that he did not consider the arbitration provisions of the agreement of Febru-

ary 14, 1939, to be applicable to an extension of Pan American Grace to New Orleans?

A. No. Not only did he never say this to me, but his telephone talks with Mr. Iglehart during the meeting of our executive committee on July 21, 1941, which I heard, in which he requested arbitration under the 1939 agreement, related specifically to an extension to New Orleans.

Q. Would you turn, please, to page 24 of Exhibit P-37? There is a minute of the meeting of the executive committee held on July 22, 1941, which authorized the forwarding of a written communication confirming the telephone request which Mr. Whitney made to Mr. Iglehart for arbitration. Was Mr. Whitney present at that meeting?

[fol. 3628] A. Yes, he was, and our minutes so show.

Q. Did Grace ever answer the letter of July 22, 1941, proposing arbitration?

A. Not to my knowledge.

Q. Didn't they ever answer it?

A. Well, not for four months, and then only after we had again offered to arbitrate under our agreement.

pp. 1703-1704:

Q. Following Mr. Ribl's letter of July 22, 1941, did you have any further discussions with Grace & Company in regard to the Canal Zone-United States service?

A. Yes, we did.

Q. Will you please state what they were?

A. Late in July or early in August, 1941, Mr. Roig suggested that Pan American and Pan American-Grace might arrange for an interchange of equipment along the general lines of the interchange agreement between United Airlines and Western Air Express which had already been approved by the Civil Aeronautics Board.

I remember that Mr. Roig had the Board's opinion with him at our conference.

Q. What did you say to that proposal?

A. I said that it seemed a very constructive proposal and that I would be glad to discuss it further.

Q. Will you tell us, please, why Pan American looked with favor on this proposal?

A. For a number of reasons. We thought that the interchange of four-engine equipment between the two com-

panies at the Canal would be of benefit to the traveling public, eliminating the bottleneck between the Canal and Guayaquil. We thought it would be an operating economy to both companies as well. In addition, Mr. Roig's suggestion appeared to provide a solution for a principal, [fol. 3629] long standing controversy between our two companies which was distasteful to all concerned.

Q. Did you take the matter up with your executive committee?

A. Yes, I did, and they were unanimous in approving the interchange program.

p. 1704:

Q. Now, in putting this matter up to you, did Mr. Roig state that his proposal was an interchange along the general lines of the United Airlines-Western Air Express arrangement?

A. He did.

pp. 1705-1706:

Q. How was this matter of the interchange left by you with Mr. Roig?

A. There were a number of questions that were left open for further discussion. For one thing, the discussion had started on the basis that the northern half of the interchange arrangement should be the route between the Canal Zone and New Orleans for which Pan American had applied. However, Mr. Roig said that he would like to consider whether we would be willing to make the arrangement apply to the Canal Zone-Miami route either in substitution for or in addition to New Orleans.

Q. That he would like to consider or that he would like you to consider?

A. He would like me to consider.

Q. All right.

A. There were questions such as how we would arrange to have approximate equalization of the mileage flown by each company's planes on the question of flight crews and other operating details. While, of course, we did not reach an agreement on all these matters, we were close enough together to take the matter up with counsel.

[fol. 3630] Q. I will ask you whether Mr. Roig stated at the time of your conference with him that he would not ac-

cept any arrangement that would involve a reciprocal interchange.

A. He did not.

Q. Was a draft of an interchange agreement sent?

A. Not for some time. During the next two weeks Mr. Friendly had conferences first with me, then, I understand, with Mr. Cogswell and Mr. Roig, and still later with Mr. Roig and myself. As a result of this last conference we asked Mr. Friendly to work up a draft of an interchange agreement for consideration. Then Mr. Friendly was taken ill, and was out of the picture for several months. In the meantime all of us in Pan American were very much occupied with getting a trans-African transport and ferry route to the Middle East organized, and under way. This project was of such a nature that it took precedence over either Pan American or Pan American-Grace business. As a result, we did not have time to follow up on the interchange agreement.

Later such a draft was prepared by other counsel and was sent to Pan American-Grace early in November.

Q. By "other counsel" you mean other people in our office, do you not?

A. That is correct.

pp. 1707-1708:

Q. Had there been any changes in the equipment situation since your discussion with Mr. Roig in August, which affected the interchange agreement?

A. Yes. All my discussions with Mr. Roig on the interchange agreement had dealt with the interchange of four-engine equipment. By the late fall it was known that neither company could receive any of the four-engine land aircraft which it had ordered until the spring of 1943. As a result of [fol. 3631] this, the the only aircraft which could practicably be chartered were our Boeing 307's. We were not in a position to make a firm commitment with respect to these particular aircraft at the time nor did we ask any such commitment from Pan American-Grace, but we thought it desirable to set up a flexible arrangement under which these aircraft could be operated through to Guayaquil if they were available and Pan American-Grace was willing to accept them.

Q. Was Pan American willing to enter into an interchange agreement with Pan American-Grace along the lines of the United Airlines-Western Air agreement?

A. We definitely were, and have ever since, and are today. The United Airlines-Western Air interchange deal was an agreement entered into between two completely separate companies for the purpose of providing a through service of advantage to the public and also of advantage to both carriers. We, in Pan American, have never understood why our joint company should not be allowed to enter into such an arrangement with us. If the draft which we submitted differed in certain respects in form from the United Airlines-Western Air agreement, it was not our intention to depart from it in substance,—

* * * * * * * *

A. (Continuing)—and if Mr. Roig had desired to work out an arrangement along the United Airlines-Western Airlines ideal, we would have been entirely receptive to any suggestion for changes in the language of the draft.

p. 1709:

Q. Would Pan American have been willing to consider any other suggestions in regard to the draft interchange agreement which it submitted?

A. Yes, of course we would. The document submitted was our draft and we were and always have been willing to discuss the matter.

[fol. 3632] Q. Did you ever hear anything further from Mr. Roig about the interchange arrangement?

A. Yes. We got a letter from him.

Q. When was that?

A. Some weeks after we had sent him the agreement, and I think the day before Grace & Company filed its petition to have Pan American-Grace required to extend to the United States.

pp. 1717-1718:

Q. Was it [problem of Pan American-Grace extension in northern Argentina] so arbitrated?

A. No, it was not.

Q. Why not?

A. We had another meeting with the Grace people at which we suggested the name of an arbitrator. They agreed

to take his matter under consideration. We urged that the arbitration be held as soon as possible and be in as simple form as possible. However, we were not able to get Grace to proceed with this arbitration.

Q. Did Grace deny that an agreement for payment to Pan American had been made?

A. No, not to my knowledge.

Q. Was this matter discussed in connection with the February 1939 agreement?

A. No, not to my recollection.

Q. Has the matter been dropped by Pan American?

A. Only in the sense that after several unsuccessful attempts to get Grace to proceed with the arbitration we did not keep bringing the matter up.

pp. 1746-1743:

Q. I think we have now reached a point where it is appropriate for me to ask you the question which was suggested be deferred yesterday:

[fol. 3633] To summarise the reasons why Pan American has refused to consent to Grace's request that Pan American-Grace be authorized to apply for an extension of its route north from the Canal.

A. Pan American Airways, as early as 1927, had taken steps to organize an airline from the United States to the Canal Zone, and from the Canal Zone down the West Coast of South America.

A United States airmail contract between the United States and the Canal Zone was awarded the company in July 1928.

Prior to that time the active steps which I have mentioned have been undertaken by Pan American to provide service along the west coast.

This was all sometime before there was any arrangement for any possible participation by Grace & Company.

When Grace & Company finally did come into the picture it was only to take a $25,000 participation in a small company which we were to operate in Peru, with an option to buy a half interest in our west coast airline if they decided to do so at a later date.

It was understood that, in the event Grace should decide to exercise their option, our through airline down the west coast was to be under our trade name, which there was also a definite understanding covering the territory to be served by the jointly owned company in relation to other parts of Latin America which were either already served or for which plans were under way on the part of Pan American.

In either words, the airline down the west coast of South America was either to be owned 100 percent by Pan American, or in the event Grace exercised its option it would be owned more by Pan American and up to 50 percent by Grace & Company.

In either event it was to be an integral part of the Pan American system under our operating control, just as much [fol. 3654] so as the line down the east coast of South America, or any other of the Latin American trunk line services that Pan American Airways system has developed in South America.

The West Coast airline is an end on carrier to our trans-Caribbean and Central American services. We have no competitive interests against it.

Every through air passenger down the west coast is a passenger carried over the Pan American lines either across the Caribbean or through Central America, and every through passenger coming from the west coast is a through air passenger over our trans-Caribbean or Central American services.

In this respect our trans-Caribbean and Central American services, together with the west coast service, provide a through Pan American system air service to west coast points and via the west coast to Buenos Aires, just as our service down the east coast of South America provides a through Pan American system air service to east coast points and via the east coast to Buenos Aires, except that Grace, having exercised its option, acquired as our partner on the west coast, a 50 percent interest in the profits or losses of that sector.

Grace's suggestion that this west coast line of the Pan American system in which they are given the opportunity to acquire 50 percent of the stock be now made a competitor

to Pan American Airways is, in our view, a breach of the agreement between the two companies, which was first made in 1928, and which was reaffirmed in 1939.

If this company, in which Grace has had an option to purchase up to 50 percent were to be extended to Miami the company originally created to serve as our end on connection for our Miami Canal Zone service would become the means of destroying that service, at least so far as through traffic to the West Coast of South America is concerned, [fol. 3635] and thereafter Pan American-Grace Airways would not be part of the Pan American Airways system as it was set up to be, and which it has been all these years, but would be an airline competing with Pan American.

In this respect the effect on Pan American Airways of what is proposed here is quite different from that of the proposal that a competitive outside airline be authorized to fly between the United States and the Canal Zone, or even down the West Coast.

Under such a situation Pan American-Grace would continue to be a part, and a most important part, of the Pan American system.

The issue, therefore, as we see it, is not simply whether Pan American-Grace Airways should be allowed to fly between the Canal Zone and Miami in competition with Pan American, but also whether our west coast line now operated by Pan American-Grace Airways should be separated from the system, and Pan American would thereafter be deprived of the benefits of its end-on connection to west coast points which Pan American itself had under way before any arrangement with Grace, and which Pan American-Grace was organized to provide when Grace took up its option.

For these reasons, our directors have felt that the interests of our 9,000 stockholders in every state in the Union would be so prejudiced by this proposal of Grace that we were bound to oppose it in every way.

* * * * * * *

[fol. 3636] By Mr. Cahill:

pp. 2034-2036:

Q. Continuing on this Cali stop, Mr. Trippe: in your testimony, you stated on direct that the interior route to Cali involved a course more than 180 miles longer than the direct route to Guayaquil, page 1608. Do you recall giving such testimony?

A. Yes, I do.

Q. By the words "direct route," you are not referring to the route as previously flown along the coast, are you?

A. No, I am referring to the route as proposed by Pan American directors at that time and possible with the four-engine equipment.

Mr. Friendly: What page is that, Mr. Cahill?

Mr. Cahill: 1608.

Mr. Friendly: I can't find it there. If you are not going to offer any more questions, it is not important.

Mr. Cahill: We might as well check it up. I want the full page reference in the record.

(Discussion had off the record.)

Q. This route, you say, the Pan American directors favored, what was that route, Mr. Trippe?

A. It was the route from Cristobal to Guayaquil for the direct trunk line service and the route from Cristobal to Cali or Balboa to Cali for the local service.

Q. Now, this route from Cristobal to Guayaquil: was that the so-called Grace Circle Course or Route?

A. That is right.

Q. Now, this four-engine equipment that you say, the Pan American directors were suggesting at that time, was that land or marine equipment?

[fol. 3637] A. That was marine equipment with indicated delivery of four-engine inland equipment at a later date.

Q. When was the dated date for the delivery of the four-engine land equipment to which you refer?

A. Well, in 1939.

Q. Now, the DC-3 land plane has a faster speed than the marine equipment you refer to, has it not, Mr. Trippe?

A. Yes, slightly faster, block to block.

Q. What would you say—175 as against 150, for the S-42-B?

A. No, it would be my impression, perhaps about eight or nine miles an hour, cruising speed, long distance cruising speed.

Q. I want to be fair to you in these answers. Your own exhibit, I think, shows the deviation that I have suggested, namely 175 for the DC-3 and 150 for the S-42-B.

Examiner Brown: There may be a difference there in the cruising speed and the block to block speed.

Mr. Cahill: And the block to block, that could be?

The Witness: Yes, and, of course, that depends on the distance of the flight. The cruising speed has to come materially down when long distance flights are attempted with the DC-3.

Q. You agree with your exhibit P-161 as to the cruising speeds, do you not? That shows DC-3 cruising speed 175 and S-42-B cruising speed 150.

A. Again, you would have to interpolate as to the distances that you were going to consider the cruising speed at. For instance, if I can illustrate my point: with the four-engine Boeings, we have what we call a short-range cruising speed of around 168 miles an hour and a long-range cruising speed of perhaps 45 miles an hour less. In other words, the cruising speed has a direct relation [fol. 3638] to the distance of the attempted flight. It depends on the horsepower output of the engines and, of course, at a lower cruising speed, a larger pay load is available on extended distances.

pp. 2037-2038:

Q. And did you do it [ask Pan American Grace not to serve Medellin and Turbo]?

A. Some of the Pan American directors did it. Whether I did it or Mr. Rihl did it, I am not sure. The issue definitely came up and I understood was agreed to by the Grace directors at the time.

By Mr. Harlan:

pp. 2129-2130:

Q. Turning to page 16 of this exhibit, the minutes of the executive committee meeting for August 3, 1937; in the last sentence, it is stated there that the president stated that there were "other circumstances," which made it desirable to transfer control of Scadta essentially to a group of native Colombians. Could you tell us what were those other circumstances?

A. Well, as I stated previously, that was about the time that we were suspicious that the Nazis might in some way have gotten control of Dr. von Bauer. We were rather suspicious because of the fact that both at that time and again a year later, there were offers to purchase control of this company by him, and I think the sentence you have reference to probably refers to a statement along those general lines, which I made to the Pan American executive committee as of that date. We had nothing definite to go by but it just didn't seem reasonable that he should be so anxious to pay us what we considered a very attractive [fol. 3639] price for a substantial part of the stock which we owned in the company, and for that reason we more or less began to watch things in a way that we hadn't before, because up to that time there had been no suspicion on our part that he wasn't acting purely as an individual.

pp. 2131-2133:

Q. I understood that reason, that is, that you were afraid there would be a conflict of interest with Panagra, but that was set forth in the preceding sentence, and then there is this sentence which says that there were other circumstances. I wanted to know what the other circumstances were.

A. It seems to me that that last sentence relates to that general subject, that it would be desirable in our opinion to have Pan American Grace hold part of this stock, and if that were not feasible that it would be desirable that control go not to Dr. von Bauer, even though a proposal was made at that time and at a later time which seemed very attractive, that from the point of view of the United States

and American aviation that it would be helpful that none of the preceding two things happen; that the control be placed in native Colombians, but we didn't see how there was any way to bring that about. This stock was bearers stock, you see, and there was no effective way that we knew of that we could assure it being held by any group of native Colombians. They would be free agents and it seemed that Dr. von Bauer was very anxious to acquire this stock and was willing to pay us what seemed to us a very high price to get control of the majority block.

Q. Actually control of Scadta never was put in the hands of the native Colombians; is that not correct?

A. No, the majority stock today is still owned by Pan American Airways.

[fol. 3640] Q. And you don't remember any other circumstances than those you have already related, which made it seem desirable to transfer that control to native Colombians?

A. No. Of course, there was always a possibility there, that air transport might be brought under the same general type of restriction that prevailed with respect to other public utilities in Colombia. In general, public utilities in Colombia were required to be owned, so far as the majority of the stock was concerned, by Colombian nationals, but there again the question of Colombian nationals was difficult for American citizens to qualify for. German citizens would qualify as Colombian nationals by simply taking out papers and retaining their German citizenship as well. The question had arisen from time to time in previous years as to what effect this might have on the American position if a decree law was enacted in Colombia which would bring air transport within the same general type of restriction that applied to other public utilities. As a matter of fact, legislation along those lines was enacted, I believe, a year later, and it was a problem that I think it fair to state caused us and Pan American a lot of headaches and also caused Government officials concerned a lot of headaches.

Q. The legislation which was passed didn't require majority control to be in the hands of natives?

A. Yes, it did.

Q. How does it come, then, that Pan American still controls Scadta?

A. Well, the date on which that legislation will become effective has been postponed. I don't think I can go into that unless we go into executive session.

[fol. 3641] By Mr. Reynolds:

p. 2179:

Q. What about the services.

A. (Interposing) Competitive to a minor degree, I would say.

pp. 2179-2181:

A. . . . .

I should state here also, Mr. Counsel, that under the laws of Colombia, as I referred to earlier this afternoon, there is a requirement that the majority of the stock of Scadta, now called Avianca, be owned by nationals, and the date of that law becoming effective was 1942, so that had not some other circumstances intervened which we can't discuss here Pan American today would not be in a position to have Avianca or what was formerly Scadta as a subsidiary, and it has not been by our action that that situation has continued during the past year.

I think, for the purposes of long range planning, it would be fair to state that Avianca will not be a subsidiary of Pan American Airways.

Q. Mr. Trippe, do you mean to infer that that your stock will be offered indiscriminately to anyone who wishes to buy it, or as a practical matter won't you be a bit careful about this new stockownership interest?

A. To the greatest degree possible, definitely. I might say also in that connection, that the laws of Colombia have been changed so as to provide for registered stock, so that when the stock is ultimately transferred to Colombian interests it will be possible for the Colombian Government to be fully apprised of the ownership of the stock which, of course, is most desirable.

Q. Well, just as a practical matter, there is nothing to interfere in many sales of stock, offering the stock through

[fol. 3642] a bank or through a particular house, and having connected with the sale a privilege of a look at the brochure and determining whether it is acceptable to the seller that the stock will pass to his hands.

Now, there is nothing about the Colombian law or the Colombian setup that changes that picture, is there, Mr. Trippe.

A. Not that I know of. I felt that we have carried this investment at a considerable sacrifice in recent years, a sacrifice to our stockholders and to our company, and I am sure we want to continue to carry it until word is made known to us that the situation has changed.

Q. Now, with respect to the service to the point of Corumba, is there any doubt in your mind but what Pan American and subsidiaries are in a competitive position with Panagra for traffic moving to and from that point, Mr. Trippe?

A. It would be my opinion that there is absolutely no competition with respect to traffic moving there. The route to Corumba, together with our Brazilian company furnishing end-on carrier service between the Atlantic and Pacific Coast.

Q. Traffic from the United States to Corumba, I suppose, is of an insignificant amount, but whatever there is from that point of origin to point of destination, you are in a competitive position; isn't that true?

A. I wouldn't feel so, no, sir, because of the much shorter distance to Corumba by way of the west coast as compared to the service to Rio and thence backtracking to Corumba.

Q. What would you say about Asuncion? Panagra enters into the picture itself there to a lesser extent than the east coast service, does it not?

A. Yes. I don't think Asuncion is all by Pan American-Grace at the present time.

[fol. 3643] Q. Any passenger seeking transportation from Miami automatically would be routed through Rio?

A. That is correct; yes, sir.

pp. 2187-2189:

Q. Of course, before they actually did that, Mr. von Bauer was subject to the direction of Pan American through stock ownership, was he?

A. No, I wouldn't say that Dr. von Bauer was subject to the control of Pan American through the stock ownership. Definitely not through these years. You have got to appreciate the conditions in Colombia as they existed at the time. First, when we brought into the company, there was certainly a great hostility to the United States manifest in a number of directions. The good neighbor policy of this administration had not begun to take effect. Many citizens in Colombia looked back to what they considered the affront of the United States in backing up the independence of Panama and ultimately acquiring the Canal Zone. There was this controversy between Scadta, as then constituted, and our Government in an attempting to get into the United States.

There was the general fear of all North American activities at that time in Colombia.

Q. And Dr. von Bauer was independent enough that he wouldn't follow your direction even though you owned some 80 percent of the stock?

A. Definitely, because we felt that if we had an open controversy immediately there would be enacted legislation that would require that we divest ourselves of a majority of the stock. All other utilities in Colombia were subject to such regulatory legislation, and we felt that with the standing that the directors of Scadta had at the time, and did enjoy for many years thereafter, that an open [fol. 3644] controversy between Pan American and Scadta or Pan American Grace and Scadta could only end in a decree law that would bring about an independence of the company, and we were particularly concerned about that fact for the period 1937 and subsequent years.

p. 2197:

Q. You have testified that your investment in Scadta has not been profitable, as illustrated by the fact that the dividends have only been two and a half percent.

A. Three and a half percent on our investment.

pp. 2214-2216:

Q. Mr. Trippe, why was it that Pan American acquired Nyrba in the first instance? Was it a matter of competitive possibilities or what?

A. No. I think Nyrba was just about ready to fold financially when we acquired them, and I think it was done only after the matter had been taken up with the Department of Justice and approval had to the purchase of Nyrba by that department.

Q. When you purchased Nyrba's entire assets, including aircraft, did you get any concessions or operating rights along in the deal?

A. Some we had to get out of in order to attempt to salvage bonds that were set up. Most of the concessions we thought were liabilities.

Q. In your purchase, you reimbursed Nyrba for its development costs?

A. Yes. Nyrba had on its books, of course, an item representing its own development activity, and I believe the purchase was on a basis of a balance sheet as of a certain date.

Q. The balance sheet included $2,390,776.24, for development costs, according to the exhibits in the Pan American-Latin American rate case?

[fol. 3645] A. I wouldn't recall the exact figure.

Q. You will take that subject to check, anyway?

A. Yes.

Q. And the total book value per share of Nyrba stock was approximately $10. Now, your original deal with Nyrba was to pay them cash, but, as the deal was consummated, you finally did exchange stock; that was the idea, wasn't it, Mr. Trippe? Didn't you pay in stock?

A. I don't think there was any original deal in terms of cash alone.

Mr. Friendly: Do you mind my stating, I have a fairly clear recollection of it. As I recall it, the purchase price was to be paid in two parts—the first half—this is my best recollection, was a specified number of shares of Pan American stock. The second half was to be either a certain

amount in cash or that same amount in cash translated into Pan American stock, at Pan American's option.

Mr. Reynolds: That was the first contract?

Mr. Friendly: That was the only contract. To be complete, I should say that the contract also provided that during the interval between the payment of the first installment and the payment of the second installment, a check would be made of the physical assets that were being transferred, and that to the extent that it was found that any of the representations or warranties which were made in the contract were not fulfilled, an equivalent reduction should be made in the second installment and a reduction was made—of course, I don't remember the exact figure.

A. That summary would be my recollection of the arrangement.

[fol. 3646] pp. 2218-2219:

Q. When you purchased Nyrba, it was still operating from New York to Buenos Aires, was it not, Mr. Trippe, or maybe Florida?

A. I think it was operating all the way through to Santiago, Chile, at least a spasmodic operation. I don't know whether you would grace it with the name "scheduled operation."

Mr. Friendly: Just to get it clear, I just wondered whether you caught the phrase "from New York"?

Mr. Reynolds: I later added "and Florida."

A. It was Miami, I am confident.

Q. Where were they operating in the interior of Argentina when you bought Nyrba?

A. I think on the route Buenos Aires-Cordoba-Tucuman and Salta, would be my recollection. They were also operating across to Santiago, Chile, on the route Pan-American-Grace utilized.

Q. Let's concern ourselves with the operation from Buenos Aires to Cordoba to Salta, and I would like to know, Mr. Trippe, on what frequency Nyrba was operating at the time you purchased it.

A. On that route?

Q. Yes.

A. I wouldn't recall. The whole operation of Nyrba, to the best of my recollection, was spasmodic. In other words, there was no regularity to amount to anything.

pp. 2226-2227:

Q. That 1939 agreement was proposed and entered into so far as Pan American was concerned for the purpose of settling all your disputes and all your issues, wasn't it, Mr. Trippe?

[fol. 3647] A. No. I recall it was set up to take care of this suggestion by Grace that there be a northern extension by Pan American-Grace from the Canal to a point in the States, and we thought that there was definite machinery set up to cover any possibility of Grace asking for such an extension.

pp. 2238-2243:

Q. Now, Mr. Trippe, let's refer to the minutes of Pan American again, P-37, Page 33, meeting of the executive committee of Pan American Airways, Inc., set forth under date of February 4, 1931, at the top of the page. If you will read that extract please.

A. Yes, I have read it.

Q. Can you tell us that that program was discussed with W. R. Grace & Company and was agreed to and put into effect?

A. Well, the program as I understand it relates to the desirability of a uniform postal structure—

Q. (interposing) Tariffs and schedules?

A. Yes.

(continuing)—being quoted to the Argentines government.

That, of course, is necessary under the international postal code practice of the Berne Bureau.

In other words, postal tariffs have to be coordinated not only in general zones but throughout the world. In other words Argentina has to be in a position of quoting its service, we being Argentina's contractor not the American Government's contractor, for postal service to all coun-

tries, including the United States, and obviously it would be impossible to have the Argentine Government in a position to be quoting different tariffs. They are all standardized throughout the world.

Q. This minute, you say, refers only to a uniform postal service as it affects your dealings with the Argentine Government?

[fol. 3648] A. That would be my understanding. And further also, while the quotations to Argentina were in terms of postal gold francs, they had to relate directly to the quotations for service in the reverse direction by the United States Government to the Berne Bureau, which of course were quoted partly in dollars, we being then on a gold standard ourselves, and partly in gold francs, and I think the tariffs were worked out in consultation with the Post Office Department officials concerned in Washington, particularly Mr. Lamielle who was the expert on that subject.

Q. You do have uniform passenger and freight fares also between Miami and Buenos Aires via either coast, Mr. Trippe?

A. Yes, sir. I believe that has been the practice of the companies.

Q. And is that by definite agreement, Mr. Trippe, or by what?

A. No agreement that I know of. It is just a kind of arrangement that is usually entered into by different carriers serving a common point.

For instance, the domestic lines in this country operating, say, between New York and Los Angeles via different routes, will quote the same through tariffs between the common terminals.

Q. Mr. Trippe, has there ever been an occasion during the history of Panagra where lower rates have been proposed for Panagra, or a more rapid schedule has been proposed which you felt should not be put into operation, and therefore opposed, because of its possible effect on the east coast operation?

A. None that I know of. There was one schedule proposed, I recall, of a one-day service between the Canal Zone and Lima which we had certain reservations about as to its

practicability, but it was put in, and I don't believe ever carried out with any degree of regularity, however.

[fol. 3649] Q. That was a question of practicability and not one of faster flying time between Miami and Buenos Aires accomplished thereby on the west coast as compared to the east coast?

A. We had no objection to the schedule being filed, but we felt it was going to be difficult of accomplishment, and it was filed, and I don't think it proved to be practicable in later days.

Q. Since your rates are uniform between the common points Miami and Buenos Aires, and further since the distance actually traveled by Panagra is shorter, Mr. Trippe, just why is it that Panagra cannot operate at a lower rate for that through traffic than Pan American can on the east coast?

Examiner Brown: Will you read the question, please, Mr. Reporter?

(Whereupon the pending question, as above recorded, was read by the reporter.)

Examiner Brown: I don't understand the question, Mr. Reynolds.

Mr. Friendly: I wonder if Mr. Reynolds could rephrase that.

Mr. Reynolds: Yes, I would be pleased to.

Q. As a matter of business operation, Mr. Trippe, couldn't Panagra operate more reasonably from Miami to Buenos Aires in conjunction with the connecting service than Pan American could from Miami to Buenos Aires down the east coast, and thereby afford a saving to the public in lower fares?

A. Well, I think that is a question difficult to answer, Mr. Reynolds. First of all, the difference in mileage is not very substantial, you appreciate, over the cut-off on the east coast. Second, even though there was a fairly substantial amount, isn't that the sort of thing that is often down by carriers working between common terminals?

[fol. 3650] For instance, I have in mind the tariff between Miami and Cali. The distance is longer by way of Cristobal

than by way of Barranquilla, and yet Pan American absorbs a substantial part of the differential, don't you see.

In other words, to make the route by way of the Canal Zone to Cali as cheap, from the point of view of the public, as is the shorter route by way of Barranquilla to Cali.

Q. It is also the most costly route of the two which determines the minimum at which you can get a fare in that instance, is it not?

A. No. I would say it was just the reverse: that it is the lower rate of the two, because the tariff by way of Cristobal, which I have just referred to, I know was reduced to come down to the tariff by way of Barranquilla.

You see, Scadta operating in local currency and quoting their tariffs in Colombian pesos is able to quote a pretty low rate on the sector between Barranquilla and Cali, if my recollection doesn't fail me, and the rate by way of Pan American to Cristobal, and thence to Cali by Pan American-Grace, was reduced to meet the other rate, and Pan American took a substantial part of the reduction on that part of the route.

Q. It hasn't reached a point where anybody is losing any money on it, however; it is just a matter of not quite as much profit on the operation as otherwise would be the case?

Mr. Friendly: I wonder if we have enough data? It seems to me to determine whether you are losing any money you have to get into allocations of cost.

Mr. Reynolds: I think that will be stipulated, Mr. Friendly.

Mr. Friendly: We may be losing money on the whole passenger service.

Q. One other thing, Mr. Trippe, on the matter of rates and fares. If you have any question about my figures I [fol. 3631] assure you that they can be checked by counsel from the exhibits.

I would like to know why, over a period of years, it apparently has been necessary to have from two to five cents per mile higher fare on a mileage basis between Miami and the Canal Zone than it has been on practically any other

segment of the Pan American Airways operations or system.

A. Well, of course, the operation is a very considerably expensive one, as is particularly the case with a nonstop service, or for the service via Camaguey, or even for the service via Kingston as in the early days. The operation between Kingston and Cristobal, for instance, as compared with the operation between Kingston and Barranquilla was about 135 miles longer nonstop flight, and the pay load capacity of the plane was reduced not only to cover the gas for that amount but also the gas for the higher reserve that would have to be carried with the longer route in proportion to the reserve carried on the shorter route.

In terms of pay load it would be my recollection that on the Commodore, for instance, there was frequently eight or nine hundred pounds additional pay load if service to Cristobal was operated via Barranquilla as compared to the service operated direct to Cristobal.

That is a very substantial part of the total pay load available for any equipment then in operation here or anywhere else in the world, and of course that makes the operation more expensive.

Another illustration would be the 307 direct service which would be a very good illustration.

Q. Larger aircraft and so on?

A. Larger aircraft and still a very limited pay load promised even on the carrying capacity of the larger aircraft over shorter distances.

[fol. 3652] p. 2255:

Q. Now, Mr. Trippe, I wonder if you know as yet who drafted the Panagra certificate of incorporation, who drew it up?

A. No, I don't. I have a suspicion, but I don't know.

Mr. Reynolds: Although that is not awfully good evidence, just to assist us, I wonder if we could have his suspicion as a suggestion?

Examiner Brown: I have no objection.

Mr. Cahill: We will state that.

Mr. Reynolds: You have that information?

Mr. Cahill: Yes. It was prepared under the supervision of Mr. Cogswell.

Mr. Reynolds: And is the same true of the Peruvian certificate?

Mr. Cahill: Yes.

II. TESTIMONY OF JUAN T. TRIPPE IN CAB DOCKET 3500 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE.

p. 3405:

By Mr. Friendly:

Q. Mr. Trippe, have you seen the exhibit which has been identified as Exhibit CON 24, which is entitled "Statement of negotiations relating to agreements between National, Pan American, Panagra, and W. R. Grace and Company"?

A. I have.

Q. Does that exhibit fairly represent what occurred insofar as it relates to meetings at which it is stated that you were present?

A. The meetings referred to occurred many months ago, and stretched over a very considerable period of time. Many different people were present.

[fol. 3653] However, insofar as reference is made to meetings at which I was present, the facts as outlined correspond generally to my recollection.

pp. 3408-3409:

Q. Would Pan American have entered into these agreements with National without a provision for stock participation?

A. No. I am confident they would not.

Q. Would Pan American accept, insofar as you know, a condition approving only so much of these agreements as relate to the leasing of equipment, but without provision for stock participation?

A. No. I am confident our Board of Directors would not accept such an arrangement.

p. 3605:

By Mr. Hardy:

Q. Mr. Trippe, you stated that, with respect to the through flight operations between New York and Latin America, that you would also be faced with foreign competition.

Will Avianca compete with the National-Pan American-Panagra through flight arrangement?

A. Will they?

Q. Yes.

A. As far as I know they will. It would be a matter to be determined by the Board of that company.

Q. Well, Pan American owns what per cent of Avianca?

A. It owns something between 45 and 50 per cent, I believe, and has one director on the Board of Directors.

Q. You do not know what routing Avianca will fly in competition to this arrangement between National, Panagra and Pan American?

[fol. 3654] A. I haven't any idea. Avianca inaugurated their services to the States without any suggestion from us, and without, in fact, knowledge on our part that that decision was going to be reached.

pp. 3641-3642:

By Mrs. Just:

Q. You do know, however, do you not, that Pan American Airways owns certain stock in Latin American companies?

A. That is correct.

Q. To what extent does Pan American participate in their management?

A. Well, as I attempted to outline yesterday, the larger companies in which we hold a minority position operated entirely independently of Pan American Airways.

Take, for instance, our largest single investment, which is Panair do Brasil. We hold one directorship on the Board of Directors of that company.

Without our knowledge, the Board of Directors of that company determined to inaugurate service between Rio and

Buenos Aires paralleling Pan Americans and have actually put such an operation into effect.

I would say that we sit as investors in these Latin American operating companies, in general.

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p. 3643:

Q. Are there any wholly owned companies other than hotel companies?

A. Of a national character?

Q. Of any character, Mr. Trippe.

A. Well, of course, we have one company here, Uraba, Medellin and Ceatral Airways, that is an American flag company holding a certificate in the United States, that [fol. 3655] operates a small shuttle between the Canal Zone and Medellin, that is a wholly owned company.

Q. And Pan American would participate in the management of that company?

A. Well, we own a hundred per cent of it. The Board of Directors is responsible entirely to Pan American, and it operates as a subsidiary under our management.

[fol. 3656]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 411

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TESTIMONY OF R. C. LOUNSBURY IN CAB DOCKET 779 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE

p. 2904:

By Mr. Friendly:

Q. Now, has it been the practice throughout the years to establish a uniform rate between Miami and Buenos Aires via both coasts?

A. Yes; it has.

Q. And in establishing those rates, whose route is controlling: Pan American or Pan American-Grace?

A. Pan American-Grace route is controlling because it is shorter.

[fol. 3657]

PAN AMERICAN WORLD AIRWAYS, INC., EXHIBIT 412

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

I. TESTIMONY OF H. J. ROIG IN CAB DOCKET 779 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE

pp. 745-751:

By Mr. Cahill:

Q. Now, Mr. Roig, if you want to resume your seat, I am going to go into the question of the organization of Panagra.

Are you acquainted with a man named Harold R. Harris?

A. I am. Very well.

Q. When, for the first time, did you meet him?

A. I think sometime around '29, '30 or '31. I can't recall the exact date.

Q. Had Mr. Harris been connected with a company known as Huff Daland Dusters?

A. Captain Harris, as he then was, was a World War aviator in the first war. He is at the present time a colonel in the United States Army connected with the Army Transport Service for which service he was released by Panagra at the very special request of General Arnold. His present title is Colonel and if you don't mind, I will call him Colonel.

Colonel Harris, following the first world war, had gone [fol. 3658] to Peru in the employ of Huff Daland Dusters, that company being engaged in dusting cotton by airplane. There is a great deal of cotton grown in Peru and the dusting problem is a serious one, and the airplane provided a method of covering large areas by dusting from the air.

He was connected with that business.

That company had a concession from the Peruvian Government which, in addition to covering its operations in Peru, also authorized it to undertake commercial operations carrying the mail from Peru to the United States.

Q. Now, when and where did you first meet Colonel Harris?

A. Well, as I have said, I don't recall the exact time or place. It was in one of those three years—'28, '29, '30. I met him on the coast in '30. I met him in Panama, I know, in the summer of 1929. Whether I had met him previous to that, I have searched my memory and I just can't be sure.

Q. Do you know what brought Colonel Harris to New York in the spring or summer of 1927?

A. Oh, yes—

* * * * * * *

A. I am very well acquainted as to what happened at that time.

Q. What happened?

Mr. Friendly: I would like to have it made clear in the record.

A. I have had conversations with Colonel Harris as recently as the last ten days.

Q. Now, will you tell us, Mr. Roig?

A. Colonel Harris is a man of a good deal of vision and while he was engaged in his operations in Peru, he had given a great deal of thought to the question of the impor- [fol. 3659] tance of aviation development in South America. He had not merely thought and dreamed about it, but he had made extensive studies, some trips around, and he had collected a great deal of valuable data on the subject. He had gone further and he had actually prepared a map show-

ing prospective routes. That original map still exists. It is an historical document, and I think it ought to be in the record in this case.

Q. I show you this paper and I ask you is this a copy of matter which you told us Colonel Harris had at that time?

A. That is a copy of it.

Mr. Cahill: I ask that it be marked for identification.

Examiner Brown: The document referred to will be marked for identification as Exhibit G-52.

(The document referred to was marked Exhibit No. G-52 for identification.)

A. It is rather interesting to note how closely that map gives the Panagra route as it is operated today including the diagonal service.

It also shows the East Coast route more or less as it was operated prior to the inauguration of the cut-off service between Belem and Rio.

In the summer of 1927—spring or summer, Colonel Harris came to New York with his map and he went to see Mr. Richard Hoyt at that time a partner in the firm of Hayden Stone & Company.

Examiner Brown: Would you identify that company for the record?

The Witness: Hayden Stone & Company was a banking firm in New York City.

A. (Continuing) That firm had some sort of relationship or control over another concern which I think was called [fol. 3660] Keystone Aircraft Corporation, which, in turn owned the Huff Daland Dusters Company. It was natural, then, when Mr. Stone came to New York with his ideas and his project, to get some support for making it a reality, he should go to Mr. Hoyt.

Q. Mr. Hoyt was a partner in the Hayden Stone firm, I take it?

A. Oh, yes. And I think he was also—well, I know he was interested in commercial aviation development in two or three directions at the time.

Mr. Hoyt also, by the way, had prior to that time had various conversations with W. R. Grace & Company particularly Mr. Patchin, as W. R. Grace & Company had for some time following the Lindbergh flight, been making quite independently of Pan American, with any relationship to their similar activities at that time, studies of quite an extensive character collecting data, making contracts, secured a report from the late General Bard who made a goodwill flight around South America, had had an engineering report prepared, conferred with Postmaster General and other Government officials and gone into it in quite an extensive way.

* * * * * * *

A. When Colonel Harris made his call on Mr. Hoyt, Mr. Hoyt sent for Mr. Trippe—

* * * * * * *

The Witness: I endeavor to testify only to the fact that these—that such conversations took place, that I know of my own knowledge. I shall not testify as to the conversations and I shall not testify to what was said.

Examiner Brown: Go ahead.

A. I refer to the conversations of Mr. Patchin and Mr. Hoyt. Mr. Trippe came to Mr. Hoyt's office and discussed—Mr. Trippe, at that time, I might say, was one of the [fol. 3661] group that was interested in the formation of Pan American, which was then being formed, in one of its predecessor corporations. And Mr. Hoyt also at the same time and at the same interview suggested that Colonel Harris see W. R. Grace & Company, who had been in touch with him and were studying this question of South American aviation.

Colonel Harris did see representatives of W. R. Grace & Company and from that joint meeting there was later formed—well, and the discussions which ensued from it—there was formed Peruvian Airways, a $50,000 corporation, of which Pan American owned half and W. R. Grace & Company, and that company subsequently was succeeded by the present Pan American Grace Airways, a one million dollar corporation with similar stock ownership.

Q. Peruvian Airways was organized in the fall of 1928, was it not, Mr. Roig?

A. That is right.

. . . . . .

pp. 754-756:

Q. Now, turning to the first flights on the route, and beginning with Panagra's predecessor, Peruvian Airways: do you recall when it was that Peruvian Airways made its first flight on the route?

A. Yes, September 13, 1928. Just fifteen years ago, flight between Lima, Peru, and Talara, the big oil center in northern Peru.

Q. Was that a commercial flight?

A. Oh, yes.

Q. Did they fly a single-engined Fairchild on that occasion?

A. Yes.

[fol. 3662] Q. Now, starting from that standpoint, the route was thereafter extended, was it not?

A. I might use the map again.

Q. Yes, will you tell us how and when, to the extent that you wish?

A. Lima is here (indicating), capital of Peru. Talara is up here (indicating).

Examiner Brown: To the north?

The Witness: To the north, yes.

A. (Continuing) That was the first flight. From there the line was extended rapidly in both directions, north to Guayaquil and then following not the route shown on the map but a route proceeding to Salinas on the Coast and around the Coast up to Cristobal; southward the route was extended from Lima across Peru over the northern section of Chile, a nitrate and mining section, down through the beginning of the Agal section to Santiago, and from there it was carried over the Andes, not in a line including Cordoba at that time but in a straight line following the railroad from Mendoza to Buenos Aires and the mail was delivered in—the first mail from the United States was

delivered by Panagra in Buenos Aires on Columbus Day, October 12, 1929, slightly over a year after the initial flight.

Q. So that the first United States mail delivered in Buenos Aires was delivered by Panagra; is that true?

A. That is right.

Examiner Brown: Read that question back.

(The question was read by the reporter.)

Examiner Brown: Make that correction.

A. The mail had come from Miami to Cristobal via Panama. Panagra began in the Canal Zone then as it does today. To the best of my knowledge, the completion [fol. 3663] of that route to Buenos Aires carried American aviation further from home than it had ever been before up to that time. Nyaba was operating some services on the East Coast, but they were not connected through services to the United States.

Q. Was it after carrying of the first air mail to Buenos Aires by Panagra from the United States that the route was extended to Montevideo or was it before that time?

A. It was substantially at the same time. We flew across the Plate River which separates Buenos Aires from Montevideo and we did have a final terminal for some years at Montevideo and Uruguay.

pp. 759-760:

Q. I am going to take up that in a moment; but I am going to ask you two more questions along that line.

There have been differences in the Board of Directors, have there not, on the various steps in this program of development and progress that you mentioned?

A. There have on some of the steps but it would be a great mistake if anyone got the impression that there has been a difference of opinion on everything that happened.

Q. As a matter of fact, Mr. Roig, on all the questions up to the instant one, the extension to the United States, the differences have been resolved, have they not?

A. With the exception of the terminal in the United States and the publicity question, we have reached a conclusion among ourselves, yes, on all these questions.

Q. Leaving aside the publicity question for the moment, and also, of course, the instant question, which is for the Board to consider, these differences have not been permitted to block the steady progress and development of which you speak, in your opinion, have they, Mr. Roig?

[fol. 3664] A. Well, except to the extent that the present controversy has blocked for some years our coming to the United States, and that publicity may have had some bearing, I don't think very direct. The very fact that these other matters have been settled and that they have been in number relatively few, shows that they have gone on, and that isn't a matter of opinion, the record shows it.

pp. 836-837:

By Mr. Friendly:

Q. Would you say that, since your election as president, Mr. Ribl and Mr. Young and Mr. Dean had been cooperative in their approach to matters relating to Pan American Grace operations between the Canal and Buenos Aires, always omitting this question of publicity?

A. Well, omitting the question of publicity, the question is whether they had been cooperative in connection with this matter of the terminal in the United States?

Q. No. I said relating to the operation of the services between the Canal and Buenos Aires.

A. Oh, yes. The idea that we were in each other's hair all the time is nonsense, of course. We have been running a big business. We have been running it for 15 years and making a great success of it. Most of these questions that have been referred to, if they were controversial, it wasn't between the stockholders and the directors as such, and they weren't even controversial. It might be just things on which there was a difference of opinion.

I was anxious to get the opinion of Mr. Ribl and the others, not only because it might reflect the stockholder's opinion, but because they were experienced men in this business, and when we didn't agree about something it didn't mean there was a great stockholders' controversy [fol. 3665] about it; it was just the day to day the way people get together when you are running a business.

pp. 840-842?

Q. Going back to the initiation of the enterprise, did you have any personal participation in the negotiations that led up to the writing of the letter of August 31, 1928? By "personal participation" I mean participation in meetings other than among yourself and your associates.

A. No. As so defined the answer is no.

Q. Who were the representatives of W. R. Grace and Company who did conduct the negotiations with the representatives of Pan American?

A. Mostly Mr. Patchin, to some extent Mr. Cogswell, on at least one occasion Mr. J. P. Grace, and on one or two or perhaps three occasions Mr. D. S. Iglehart.

Q. So the record may be clear, Mr. Hoyt is now dead, is he not?

A. Yes.

Q. Has been since about '35 or '36?

A. Well, I wouldn't have thought it was quite that long, but five or six years anyway.

Q. In connection with Col. Harris' trip back to the United States, don't you know that that actually was in the fall of 1927?

A. My best recollection was that it was along about the spring of '28.

Q. You haven't verified your recollection against any documents as to that date?

A. Well, only relating it to the time when Peruvian Airways was formed, and the first flight of Panagra, which was in September 1928, and I thought that that date checked (fol. 3866) with what Col. Harris told me the other day, but I might be mistaken on the date.

Q. Have you read Exhibit P-34, which contains various documents relating to this early history?

A. No, I don't think I have read that exhibit. I read the Pan American answer, and I read P-51, both of which were highly inaccurate in their statements.

Mr. Friendly: I move to strike that out.

Examiner Brown: It may be stricken.

A. I don't recall having read that.

Q. Don't you know that the concession which Huff Daland Dusters obtained in Peru on May 29, 1942, was obtained with a view to operation by Pan American?

A. I do not know that, no. I never heard it until this minute. First time I ever heard it.

pp. 934-937:

Q. Then, you had talks in July or August of 1941 with Mr. Trippe as to a possible settlement of the controversy between the two companies through an equipment interchange agreement, did you not?

A. A point was reached, I think, in '41 where I suggested as a possible solution, whether it would not be possible to work out some plan under which Panagra might come through to a United States terminal over Pan American's franchise. I think in that connection I mentioned some adaptations of the rule in the Western Airline case, which was then a fairly recent decision, not, however, ever intending and making the making it very clear that I didn't intend that there should be a literal application of that, or that what I meant involved operations over Panagra's route by Pan American.

There were discussions of that subject with Mr. Trippe [fol. 3667] and with Mr. Friendly, and I think I had one discussion with Mr. Root. The lawyers were to endeavor to prepare a draft agreement which might carry out such a program.

There was internal delay in getting the draft in shape, and, in fact, no draft was submitted until some time later when it was submitted in connection with some correspondence then being had between W. R. Grace & Company and Pan American, and it was submitted at that time as a proposal of Pan American's and not as an attempt to carry out the discussions which we had been having, and I was, of course, perfectly willing to accept it as a proposal of Pan American's, because it bore no resemblance to the proposal that I had made or the ideas that we had discussed.

That agreement which was called a traffic exchange agreement was a mere agreement of mutual options under which

Pan American had the option to tender four-engine equipment to Panagra if they saw fit and Panagra had the option to accept the tender if they desired. Conversely, the other company had the same option. Neither could force the other to do anything. It was meaningless as far as Panagra was concerned, because, of course, Panagra had no four-engine equipment at the time. It carefully provided a method of operation which would have meant that Pan American's crews would have operated Panagra's planes north of the Canal Zone so that none of the sanctions which have been discussed from the standpoint of operations and maintenance and so on would have existed.

The agreement from Panagra's standpoint, I considered, and always have, utterly valueless and essentially phoney.

Q. Did you ever submit a counter draft?

A. I did not.

[fol. 3665] Q. Isn't it a fact that after your talk with Mr. Trippe, Mr. Igleheart told you that he didn't want anything done about this equipment interchange?

A. I was never told anything of the kind. I pressed and pressed and pressed. I pressed you and I pressed your office, and I pressed Mr. Trippe for a long period. I kept a diary of the telephone conversations and the stalls that I got, going on for months.

Q. You know you didn't press me, don't you, Mr. Roig?

A. I don't recall anything of the kind. You were taken ill shortly after, so you dropped out. From there on, I certainly didn't press you, Mr. Friendly.

Q. That happened about a week after your first discussions with Mr. Trippe, did it not?

A. When you became ill?

Q. Yes.

A. Well, you know, and I remember having a meeting with you in Mr. Trippe's office, and I think that was the last discussion I had with you on the subject. Whether we had had discussions prior to that meeting, I don't particularly recall. You are quite right. After you became ill, you dropped out of the picture for several months.

p. 1104:

By Mr. Reynolds:

Q Well, are your view that Panagra should or should not set up a joint arrangement in Miami, for instance, such as is in Buenos Aires?

A. I think Panagra in that event should have a more extensive traffic organization than it has at the moment. I would like, however, if it were at all possible, to work that out in such a way that we could cooperate and work with the fol. 3669 Pan American organization so far as that might prove possible, without prejudice to either company.

pp. 1150-1152:

Q. Now, when the LaPaz extension was under consideration in 1935, the Board of Directors meeting of January 2, 1935, the minutes for which appear in G 14 on page 73, authorized Grace to acquire the LaPaz rights.

Mr. Friendly: Just for the sake of clarity, Mr. Reynolds, those are the minutes of W. R. Grace & Company.

Mr. Reynolds: Correct.

The Witness: What is the page reference?

Mr. Reynolds: G 14, page 73.

Q. You explained that somewhat in your testimony yesterday, I believe, Mr. Boig, but I am still not clear as to why Panagra did not take those rights in its own name in the first place.

A. Well, because although Bolivia had been under discussion for a long time, going back several years before this date, the opportunity to secure the concession to operate this route, and with a subsidy from the Bolivian Government by this route, I mean from LaPaz to the Pacific Coast point originally TACA, later Arica that opportunity came up quite suddenly, was presented by cable, and it called for prompt action, failing which the concession would have been given to someone else, and I immediately got in touch with the Pan American. I don't recall at that moment whether it was Mr. Trippe or Mr. Rihl to secure their approval to Panagra's accepting the concession; and they took the matter under consideration, and it was some time before they got around to making up

their minds, and the business couldn't wait that long, and in order to save it, W. R. Grace & Company took the concession in its own name.

[fol. 3670] Q. At that time there was no president of Panagra? Mr. MacGregor apparently didn't have authority to go ahead and do that himself; is that right?

A. Well, that is correct, and it is not a matter which would ordinarily be done by anyone without the approval of the Directors.

Q. Did you know, previous to the time when the opportunity arose, that Pan American had some objection to it or not?

A. No, I don't recall.

Q. It was just a matter of not being able to get a decision; is that it?

A. That is the situation as I recall it.

pp. 1172-1173:

Q. Mr. Roig, to what extent do the needs of the east coast service enter into the setting of the rate for the west coast service?

* * * * * * *

A. I don't know to what extent the east coast factors may have influenced Pan American. They have not influenced Panagra's decision as to the rate except that it may have occurred to us that, in the earlier days—to some extent now—that on a mileage basis the west coast rate might be lower, but it is a well-known fact in transportation that mileage is not always by any means the determining factor and no matter how low we made the rate on the west coast Pan American could have made an equal or lower rate on the east coast, regardless of mileage.

Q. In your rate making procedure has Pan American never suggested that a certain rate would have to be higher, or couldn't come down because they just couldn't meet it on the east coast?

[fol. 3671] A. I don't recall any such issue having actually been reached in any of my discussions.

Q. Incidentally, when both companies operated for a short time between Montevideo and Buenos Aires, the

rates there were the same for both services, were they not?

A. I don't recall that.

Q. It was quite a way back.

A. Yes. And not a very important factor. I would assume that they had been.

pp. 1347-1348:

By Mr. Cahill:

Q. Some questions were put to you by Mr. Friendly, as I recall, in regard to concessions obtained by W. R. Grace and Company, Mr. Roig; do you recall that?

A. Yes, I do. I can't add very much to the answer that I gave at that time. Grace and Company has had considerable experience over the years in dealing with governments of all these different countries in relation to matters which might or might not be termed concessions, and there have been some that could technically be called that, I suppose.

In the days when we got permission to operate mole or dock properties in different countries, permits would be required there.

In the Canal Zone, when we erected our building, being in the zone, arrangements had to be made with Canal Zone authorities for permission, and there have been a variety of similar negotiations and dealings with various government departments in the different countries on a variety of matters.

H. TESTIMONY OF E. J. ROIG IN CAB DOCKET 525 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE

p. 3613:

By Mr. Gambrell:

Q. Will you, as one who has long studied air transportation between this country and Latin America, state whether [fol. 3672] in your opinion there is sufficient traffic potential between the United States and the Canal Zone, to support an air service in addition to that of Pan American?

A. I really have not made a complete study of that question. My studies have been limited quite largely to the feasibility and desirability of Paragra's extending through that section to a gateway in the United States. And the considerations which governed my conclusions under that heading only to a slight extent are related to the local traffic movement between Balboa and the United States. In other words, there are many considerations back of that position which have no relation, instance at all, and which are, therefore, applicable only to Paragra.

III. TESTIMONY of H. J. ROIG IN CAB DOCKET 3560 WHICH PAN AMERICAN INTENDS TO OFFER in EVIDENCE

pp. 4660-4674:

By Mr. Schneider:

Q. Why does not Paragra now operate through flights beyond Balboa over the routes of Pan American to either Houston or New Orleans?

A. Well, I think up to— Is the Pan American New Orleans route in operation by Pan American now?

Q. New Orleans-Balboa route?

A. Yes.

Q. By Pan American?

A. Yes.

Q. It has been in operation for a long time.

A. I was thinking of something else when I asked that question.

The reason that up until the time of last July, when I ceased to be president, Paragra had not gone into those other areas was because the volume of traffic at the time didn't seem to justify it.

[fol. 3678] Q. You don't consider that you are under any legal disability at the present time, from operating your planes through to New Orleans and Houston, do you?

A. Our agreement with Pan American, our through flight agreement, provided specifically for New Orleans. I don't remember if it covered Houston or not.

Q. That is, the agreement provided that when Pan American obtained non-stop traffic from New Orleans to the Canal Zone, that the agreement would be extended to get that Panagra's flights to go through to New Orleans?

A. That is right.

Q. And it is your testimony that Panagra has not done that—that it availed itself of that opportunity because it does not consider at the present time that sufficient traffic is available? Is that your answer?

A. That was the reason up until last July, as far as I was concerned.

pp. 4644-4646:

Q. If these agreements are approved in the proposed form, is it your opinion that Pan American and Panagra will be in competition for traffic from New York to Buenos Aires?

A. Oh, as far as Panagra is concerned, our competitive position will be vastly improved.

Q. Will the two companies be in competition with each other for that traffic?

A. Definitely, so far as Panagra's standpoint.

Q. How will that competition be effected? Separate ticket offices?

A. No.

Q. Same ticket offices? You would continue the present arrangement in Buenos Aires, with the same ticket office?

fol. 3674 A. As far as I know.

Q. Well how will the competition become effective?

A. I might point out—

Mr. Burns: Go ahead.

The Witness: As far as B.A. is concerned, the question of ticket office there, I don't know whether you are aware that Panagra also has its own representatives in Buenos Aires—

By Mr. Schneider:

Q. But you have only one ticket office, do you not, and that is shared by Pan American and Panagra?

A. Yes, a consolidated ticket office, quite a common practice.

Q. What happens when a passenger walks in, Mr. Roig, and wants to go to New York?

A. Well, judging by the volume that has been moving on the West Coast in recent months, I think Panagra gets a fair deal.

Q. That wasn't the answer to my question.

I said what happens when a passenger goes into that ticket office and says, "I want to go to New York."

How is he handled, by the clerks in the ticket office? Do they give him a time table and tell him to take his pick, or do they tell him that it is better up the West Coast because they have DC-6's, with sleepers, as compared with the DC-4 sleeperettes on the East Coast?

A. Well, I haven't been in the position of actually doing it, but from my conversations in Buenos Aires with people who have been, it is my understanding that they tell the man the facts about both trips.

If he is a passenger who is going to stop in Rio, or for any reason wants to come up the East Coast, that settles that.

[fol. 3675] Similarly, if he wants particularly the West Coast, that is easy.

If he is a through passenger to New York, and not interested in the stops, he would be told that on the West Coast he had a Panagra DC-6 and a shorter schedule; and that no doubt he would be told that on the East Coast while it took a little longer he could come straight through to New York and avoid the connecting service at Miami.

Q. In other words, as far as that passenger's handling in that office is concerned, no special effort is made by Panagra to attract that man to Panagra?

A. Oh yes.

Q. No special effort is made by Pan American to attract that man to Pan American's line?

A. I hope the counterman is in that position.

Q. You hope he is attracting him to your line?

A. No, no, because I wouldn't expect to get that kind of an unfair break.

I hope the counterman is reasonably neutral, but fair to both.

But, the influence on the passenger has been exercised very frequently by a Panagra solicitor, or by, tomorrow, an organization there, or by Panagra advertising, or vice versa, by Pan American's advertising.

Q. But as to a man who walks in there without having been approached by Panagra or Pan American in advance, when he goes in there he is given a complete story of both services, and no special effort is made to route him one way or the other?

A. That is my understanding; and that is the terms of our agreement with Pan American.

Q. That is an agreement of 1939, which has been renewed?

A. No, the through flight agreement.

[fol. 3676] Q. The through flight agreement?

A. Yes. And all I can say is that judging by the results it works out reasonably well.

pp. 4648-4649:

Q. * * * * *

Will you tell me how Panagra competes for a passenger to Buenos Aires, with Pan American, other than by its own separate ads in the magazines?

A. Well, we have in New York the general traffic manager of the line and his staff, in the New York Office, who are actively promoting, in a variety of ways, the merits of the West Coast service.

Q. Well, they are the general headquarters personnel. They are not the solicitors, and so forth, that you have out on the line.

A. Well, we haven't any ivory towers in traffic. They are pretty active.

Q. When Mr. deGroot was your general traffic manager, he wasn't running around the streets selling tickets.

A. Well, he was coming pretty close to it. He was traveling around visiting the travel agents and keeping in contact.

Q. Is it your testimony that the general headquarters personnel in New York are your traffic organization in New

York, and that is all? Is that the only traffic organization you have in New York?

A. That is the Panagra traffic organization, yes.

Q. Otherwise, you rely upon Pan American's organization in New York?

A. Well, yes, but don't forget we rely very largely on the travel agents, as they do too, and we maintain direct contacts with them.

[fol. 3677] Q. Right. But if a passenger, wanting to go to B.A., walks in to the Pan American office of New York, how is he handled? In the same way as he is in Buenos Aires?

A. That is the idea. The agreement also, you will recall, provides that in principal Pan American U. S. traffic offices we would have a special Panagra representative and he is supposed to look after the situation.

pp. 4707-4708:

By Mr. Russell:

Q. In that regard, I noticed that the contract which you and National agreed upon, that is National's Exhibit Nat-98—you will recall, I am sure—provided for a term of 99 years, whereas the agreement which was finally signed and presented to the Board for approval here contemplates expiration in 1960. That is the most distant date.

Can you tell me why you didn't work out a 99-year deal, as you started to?

A. Well, I think the 99 years reflected—as that number of years always does—an idea of permanency, and that is what we had in mind in just picking out that symbolic figure.

Actually, our previous experience had shown that there wasn't much likelihood of getting approval of 99 years. The Pan American-Panagra agreement, I think, was submitted in that form and the Board cut it down to three.

I don't think I was present when the 10 was put in, but I presume that was thought to be a little more realistic.

pp. 4726-4727:

By Mr. Hardy:

Q. With respect to your statement, Mr. Roig, you make great ado about the fact that it has been your ambition for some 21 or 22 years to get a route from Balboa through to New York; isn't that correct?

[fol. 3678] A. Yes.

Q. Did Panagra ever apply for such a route?

A. No.

Q. It did not?

A. No.

Q. Would you consider that if you had such a route, that it would be better than the deals at issue here?

A. Yes.

Q. In any respect? I mean in all respects.

A. Not in all respects, but in many respects.

I think from the standpoint of the traveling public, which is a very important factor, assuming that this agreement works out satisfactorily, the result would be substantially the same.

But from the standpoint of the company, and the owners, why naturally you would have a very handsome profit if you had this route all the way through as your own.

[fol. 3679]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 413

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TESTIMONY OF ROBERT H. PATCHIN IN CAB DOCKET 779 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE

pp. 3059-3061:

By Mr. Cahill:

Q. Mr. Patchin, when did you first meet Mr. Richard F. Hoyt?

A. In May 1928—no, I met Mr. Hoyt a year or so previously, but not in any relation to aviation.

Q. What position did Mr. Hoyt occupy at the time, Mr. Patchin?

A. Mr. Hoyt was a partner of Hayden Stone and Company of New York City.

Q. Did you meet Mr. Hoyt prior to the formation of The Aviation Company of the Americas, which was formed in June 1928?

A. Yes. I met him in May.

Q. How did you happen to come into contact with Mr. Hoyt?

A. Well, in the course of my affairs about aviation and the study on the subject, I heard that he was very much

interested, very active. There were a number of companies in the aviation situation stirring up the development of the business.

[fol. 3680] I heard of him, was told by persons of his activity, and I called him up one day and went over and called upon him.

Q. I show you a memorandum dated May 23, 1928, entitled "Memorandum for Mr. Iglehart", relating to a conversation had by you with Mr. Hoyt.

Mr. Cahill: I ask that this be given a number for identification.

Examiner Brown: It will be marked for identification G-143.

(The document referred to was marked for identification as Exhibit G-143.)

By Mr. Cahill:

Q. I ask you whether G-143 accurately sets forth the substance of your conversation with Mr. Hoyt related therein.

A. I believe it does; yes, sir.

Q. This memorandum was made practically contemporaneously with the conversation with Mr. Hoyt, was it not, Mr. Patchin?

A. Yes, sir.

Q. Will you tell us how many conversations you had with Mr. Hoyt between May and August of 1928?

A. I can not recall the number, but there were several where I talked with him in his office, and I believe he came over and called on some of my associates in Grace and Company. I used to meet him occasionally outside.

pp. 3097-3098:

By Mr. Friendly:

Q. I would like to ask you a few questions about your talk with Mr. Hoyt on May 23, 1928. Do you have a copy of G-143 before you?

A. Yes, I have it.

Q. I want to refer to the statement in the second paragraph: "It is his understanding that the Post Office Depart [fol. 3681] ment will soon advertise for bids for mail service from Cuba to Colon via Central America and later will advertise for bids on a mail contract from Colon to Valparaiso," and then consider in connection with that the sentence at the bottom of the page: "He said that he recognized that we were in an advantageous position which was the reason why he hoped we could cooperate with the Pan American Airways, but that if we were disposed to go ahead on our own, he would be inclined to stand aside," and so forth. Now, is it your testimony that this offer to stand aside applied to the Cuba-Colon route or to the route farther south or to both?

A. I think it applied more particularly to the west coast of South America.

Q. I think you testified this morning that Mr. Hoyt told you either at this talk or shortly thereafter that Pan American was planning to move right in on the route to the Canal, had he not?

A. I think he left me with that impression. How definite that was, I don't know. I notice it isn't mentioned here, but that was implied, at least.

Q. Did you, on behalf of Grace & Company, express any interest in this Cuba-Colon route?

A. No, we did not.

p. 3699:

Q. Now, it did come to your attention, did it not, that this route from Cuba to the Canal or, rather, as it turned out, a route from the United States to the Canal, which Mr. Hoyt told you about, was advertised on May 31, 1928?

A. Yes.

Q. You knew that that had been issued, did you not?

A. The advertisement was issued on the 31st of May?

Q. Yes.

A. Did I know it when?

[fol. 3682] Q. Did you know it shortly thereafter?

A. I am sure I did.

Q. Did W. R. Grace & Company consider subquitting a bid on that route?

A. No.

p. 3127:

By Mr. Wanner:

Q. Referring to that sentence, the first sentence of the second paragraph, did his [Mr. Hoyt's] statement in that connection indicate to you that he had in mind financial participation of W. R. Grace and Company?

A. Not entirely.

Q. You say "not entirely"?

A. No, I don't think so. I don't think it was just that.

Q. Did it include financial participation?

A. Well, I suppose so, yes.

Q. You don't know definitely, though?

A. Why, yes. He had said that they were obliged to raise some capital.

Q. Pardon me?

A. The memo says that they were obliged to raise some capital—over on the next page. It says they would require people to come in.

[fol. 3683]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 414

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TESTIMONY OF W. F. COGSWELL IN CAB DOCKET 779 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE

pp. 3311-3312.

By Mr. Reynolds:

Q. Mr. Cogswell, you drafted the charter for the Peruvian Corporation, as I understand it, as set forth in Exhibit G-105; is that correct?

A. I drafted it or it was done under my supervision, yes.

Q. And with whom did you consult after having prepared the draft?

A. I have no distinct recollection on that point, Mr. Reynolds.

Q. Do you know whether it was submitted to Mr. Trippe or any of the gentlemen of the Pan American organization?

A. I have no recollection either in the affirmative or the negative. In other words I don't remember doing it and I don't remember not doing it.

Q. Well, do you remember from what source if any you took the statement of purposes set forth in that charter?

A. I think I probably took the statement of purposes from the charter of some airline.

[fol. 3684] Q. But you have no direct recollection on that; is that right?

A. Well, I know that Mr. Morris sent me, at Mr. Trippe's request, the charter of a Delaware corporation known as the Buffalo Central Airlines, I think it was, and I had that, and then I sent that back, and I think I may have used that as a guide.

Q. And was there a meeting of the representatives of the two owners to approve the charter before the actual process of obtaining a certificate of incorporation was undertaken?

A. I have no recollection that there was, and I have no recollection that there wasn't.

Q. Now, when you drafted that charter, I suppose you have no recollection as to whether there was any discussion as to the territory in which the company was to operate; is that right?

A. I don't recall any.

Q. When you drafted the charter for—

First, I assume it is understood that you also drafted the charter for the original Panagra corporation also.

A. That is right.

Q. And, in drafting that charter, you merely copied the purposes in substance from the previous charter; is that right?

A. Yes, I think so.

Q. That is, the previous charter of the Peruvian company.

A. That is right.

[fol. 3685]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 415

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TESTIMONY OF DOUGLAS CAMPBELL IN CAB DOCKET 3500 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE

pp. 4905-4906:

By Mr. Burns:

Q. Mr. Campbell, have you a judgment with respect to the success of the through flight with Pan American, so far as traffic is concerned?

A. Yes.

Q. Would you give us that judgment, please?

A. In the 12 months preceding the inauguration of the through flight operation, namely, the period June, 1946, to May 31, 1947, inclusive, the through passengers carried by Panagra and Pan American from Panagra points, to and from Miami, numbered 12,322.

Examiner Brown: 12,322?

The Witness: That is correct.

In the 12 months period after the inauguration of the through flight agreement, which began May 31, 1947, the number of through passengers was 14,865; and it will be noted from our Exhibit PGR-23; to which I added the actual

1949 figures yesterday afternoon, that in the calendar year 1949 the number of passengers to and from Miami was 17,613.

[fol. 3686]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 416

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TESTIMONY OF THOMAS J. KIRKLAND IN CAB DOCKET 3500 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE

p. 5066:

By Mr. Russell:

Q. When have you investigated last the Pan American reservations center in Miami to determine whether it was performing competent service for Panagra?

A. I personally investigated it about three weeks ago.

Q. Did you find everything in order?

A. As far as I was concerned, yes.

[fol. 3687]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 417

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

Excerpts from the testimony of W. Irving Glover, Second Assistant Postmaster General of the United States.

1. *Hearings on H.R. 7213 and H.R. 8337 Before the Committee on the Post Office and Post Roads, House of Representatives*, 70th Cong., 1st Sess. (Jan. 12, 1928), pp. 15-17

Mr. Glover. Mr. Chairman and gentlemen, the Postmaster General has covered the subject so fully that there is very little left for me to say, I am afraid. Speaking to the Pan American air bill, I want to say that I believe the Post Office Department, with the other executive departments, are intensely interested in this. There is a great deal, sir and gentlemen, that I would not like to go on the record. I would like to have just a round-table talk with you for a minute and tell you the picture back of this.

The Chairman. Do you wish this off the record?

Mr. Glover. If I may, please.

(There then ensued discussion which the chairman ordered not reported.)

Mr. Glover. I can say, with the great strides aviation has taken in this country, that there is no concern in the

United States, as rich, strong, and big as they are, that [fol. 3688] can start a line from Key West and go to Cuba and across the long stretch of air there down the coast, the same line that Colonel Lindbergh has taken, and open our markets and increase the trade in Central and South America, and do it on the proceeds they receive on the freight and express they carry without Government backing. We must be fair and honest with ourselves, and the Government has to stand by us for a while.

The Chairman. Was Colonel Lindbergh's trip promoted by the Government?

Mr. Glover. No, sir. I think that was entirely financed from his own pocket, if I am correct. But he has led the way, and within a few hours at their meeting in conference in Habana—our President goes down there—they will discuss these matters. They want to be friendly with the United States. They are friendly, but they are demanding air mail service. They want you to come down there and cut down the upward of 12 or 14 days from the capital of Costa Rica to New York, and if we do not do it they are asking, "Well, then, you have no objection to our taking our place in the world by having these foreign lines fly over the Panama Canal, through Mexico, into the United States," and it is a very difficult thing for us to say, "No, gentlemen, we will not establish any air mail service from the United States, and we will not permit any air mail to come into the United States with foreign capital."

* * * * * * *

Mr. Kelly. The Department of Commerce has assured me, General Glover, that our business with Central and South America decreases just as we have no communication. For instance, the further away and the longer it takes to make communication, business drops off, and the Bureau [fol. 3689] of Domestic and Foreign Commerce insists that if we could get rapid air mail transportation we will get increased business.

Mr. Glover. Absolutely right. Here is the French line who have gotten past the stage of talking about a bill. They have introduced a measure in the French House of Deputies, and they have appropriated millions of gold francs for a line from France to South America, and we stand

idly by and debate the question of whether we should go into Pan America, or whether we should close the door and say: That field is entirely lost to the American commercial interests, and, gentlemen, I make the prediction that we are slowly slipping in Central America and Pan America.

Mr. Ramseyer. What is your opinion if this bill were made into law, and you could make the proper negotiations with Mexico and the Central American countries, whether you have got companies here who are able and willing to go into this and do this work?

Mr. Glover. At the present time the contractor for the route between Key West and Havana is pioneering the way themselves, taking the dollar out of their own pockets. They have bought a plane and they are putting on three of their own representatives and they are going over this very same route, down through the Central American countries; just a tour of good will.

Mr. Ramseyer. They are doing it now?

Mr. Glover. They are preparing within the next 10 days, the Pan American Airways.

* * * * * * *

Mr. Romjue. I notice on page 2 of this bill there are two methods provided for the pay for transportation of the mail. For instance, it says in one place it shall not exceed $2 or more.

[fol. 3690] Mr. Glover. Yes.

Mr. Romjue. And in the other instance it is based on poundage.

Mr. Glover. Yes, sir.

Mr. Romjue. In view of what the General has said about the development, and with which I agree, does that really mean we have only one method and that by poundage, because if they were getting $2 per mile only, wouldn't that have a tendency to lessen the development of the mail?

Mr. Glover. That was put in there for the express purpose that we did not know whether we wanted to pay the contractor on the poundage basis or the mileage basis. It is so much in the creative state that nobody knows.

Gentlemen, I hold nothing up my sleeve. This line has to be subsidized and the amount of that subsidy will depend

upon the action of you gentlemen after you have given us the authority, and we want it either on the pound rate or the mileage basis.

Mr. Romjue. I don't see any harm in that.

Mr. Ramseyer. Did you say this line has to be subsidized or not subsidized?

Mr. Glover. As I say again, this line must be subsidized for a period. We must stand back of whoever takes it over.

Mr. Ramseyer. Of course it would depend afterwards on the appropriations Congress made.

* * * * * * *

2. *Hearings on H.R. 11801 Before a Subcommittee of the Committee on Appropriations, United States Senate*, 70th Cong., 1st Sess. (Dec. 10, 1928), pp. 29-30

Senator Overman. I can see where it would be of great benefit, but it will be very costly, because the returns will be very little, I suppose.

[fol. 3691] Mr. Glover. I will agree to that, Senator. It will always be costly; but the great South American countries, where is the last stand of commercial development, I think should be claimed by the United States. I am sorry I did not bring with me a map of the French line, the Aerial Postale, which is already flying three days a week from France right to the east coast of South America; and if it had not been that your Post Office Department had started circling the Caribbean Sea by putting in these contracts, they were already knocking at your door, asking to come in with the foreign lines, the French, the Germans and the English; and of course the State Department was far from happy to know that these foreign lines were coming in asking that they be received at Colon and flying on to Key West.

3. *Hearings on the Post Office Appropriation Bill, 1931, Before a Subcommittee of House Committee on Appropriations, House of Representatives*, 71st Cong., 1st Sess. (Nov. 19, 1929), p. 128

Mr. Byrns. Suppose you should establish a line from Buenos Aires. As I understand it, this line now extends from Santiago to Buenos Aires, across the Andes.

Mr. Glover. Yes, sir.

Mr. Byrns. Would it be the idea to keep all of those routes in operation? In other words, if you had a line down the east coast to Buenos Aires, would you then continue the other line across the Andes, for which we are paying a pretty high price?

Mr. Glover. Yes, sir; I admit that.

Mr. Byrns. What would be the advantage of having a route between Buenos Aires and Santiago?

Mr. Glover. The advantage would be this, that we have to keep it there alongside the parallel line of the French and Germans, which is now going over there. The advan- [fol. 3692] tage would be in paralleling their line. The Germans are coming up the west coast now, paralleling the Pan American Grace Line. It is just a question for you to decide whether you want to withdraw from down there and leave it to these foreign aggressions, so far as the commercial development is concerned.

Mr. Byrns. Are those private lines, or are they under the Government?

Mr. Glover. They are private lines, just as ours are.

Mr. Byrns. But they are being subsidized by the Government.

Mr. Glover. Yes, sir. The French have just within the year subsidized the French lines to the extent of $5,000,000 gold additional.

4. *Hearings on the Treasury and Post Office Departments Appropriation Bill (H.R. 8351) Before a Subcommittee of the Committee on Appropriations, United States Senate*, 71st Cong., 2nd Sess. (Feb. 5, 1930), p. 20

Senator Oddie. Mr. Glover, can you tell us in a brief way, what the activities of the foreign air-mail companies are, the foreign aviation companies?

Senator McKellar. He has just been telling us about that.

Senator Oddie. I was out of the room then.

Senator McKellar. He just covered that a few moments ago.

Senator Oddie. The activities, for instance, between the west and the east coasts of South America.

Mr. Glover. The principal development there, Senator, has been the development of the aeropostale, which is a

very heavily subsidized line by the French Government, having a contract for 10 years with a subsidy of $8,000,000 a year, and they are flying from Toulouse down to Dakar, and across to Natal, and to Pernambuco, and so on, down the coast. It is a very successful service. They have some 40 ships in operation, 80 pilots, and it is a very worthwhile organization.

[fol. 3693] The Germans are also coming across from the west coast of Africa to the east coast of South America through the Deutch Luftbausa Co.

Just recently one of the officers of the company has been here, and called on the Postmaster General, and I had the pleasure of talking with him, and he told somewhat of the developments down there and what they have in mind.

Senator Oddie. Well, what are their arrangements for transferring mail from the American ships to the foreign?

Mr. Glover. Well, that is a problem that we have had to meet, Senator. Of course, you can understand that that is a problem, and we have never been interested in allowing foreign countries to come into the Panama Canal Zone. You can, of course, appreciate why.

Senator Oddie. Yes.

Mr. Glover. But there is a certain condition in the northern tier of States of South America which made it necessary for us to get down across there, and in turn for that we would have to give them landing rights in the Canal Zone, and so that has been done; and we are perfectly willing now with our American lines which are now operating from Cristobal over to Paramaribo—we are willing to meet the French and Germans there and take their mail and carry it into the Zone ourselves rather than allow foreign operated companies to come in there, which would be the result if we did not go down into that territory.

The whole Caribbean Sea has been covered by air mail lines and the northern territory of South America has been covered as far as Paramaribo, on the east coast, and covered as far as Montevideo, by the line going down via Santiago and over the Andes, as I said, to Buenos Aires and Montevideo, and so only that space in South America [fol. 3694] from Montevideo up via Rio and around the cape to Paramaribo is not covered.

Senator Phipps. Now if we contract for a new line from Montevideo up to Rio, we will be duplicating foreign lines now in existence, will we not?

Mr. Glover. Yes, sir.

Senator Phipps. That are operating now.

Mr. Glover. Yes, sir.

5. *Hearings on the Post Office Appropriations Bill, 1932, Before a Subcommittee of the House Committee on Appropriations, House of Representatives*, 71st Cong., 3rd Sess. (Nov. 15, 1930), pp. 127-128

Mr. Wood. In these contracts that are now running, have you any way of scaling these contracts so as to bring the amount that you will have to pay out within this appropriation of $7,000,000?

Mr. Glover. On some of the lines we can do that. We did that on No. 9, from Cristobal to Montevideo; we reduced that for the second trip. The rate was $1.80 and we reduced that to $1.60 for the second trip.

Mr. Wood. That is the largest one you have?

Mr. Glover. Yes, sir.

Mr. Wood. Can you do that with some of the rest of them?

Mr. Glover. No, sir; we can not.

Mr. Wood. Why?

Mr. Glover. Well, the provisions in the contract will not allow a reduction, and we feel that these lines that have gone down there and pioneered into Central America and South America ought not to be cut down the same as we might some of the other lines.

Mr. Thatcher. It would have to be a voluntary matter on their part? In other words, under your contract, have you any discretion in the matter?

[fol. 3695] Mr. Glover. No, sir. In the lines to Central and South America, when you take into consideration the fact that our Government has spent almost $40,000,000 in lighting the way, giving radio service, intermediate landing fields, and all the safety that goes to the art of flying in this country to our operators here, when you consider that these operators have gone down to Central and South America and have had to pay their way, they have had to pay

for their radio stations and their weather reports and all their landing fields, you will understand the situation.

Mr. Wood. How are you getting along on those two lines in South America, one on the east coast and one on the west coast?

Mr. Glover. Since you gave us permission last year to increase the frequency on the west coast, the business has also increased, and the business on the east coast is now united with the service across the Andes.

[fol. 5396]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 418

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

Excerpts from the testimony of Walter F. Brown, Postmaster General of the United States (1929-33); *Hearings Before the United States Senate Special Committee on Investigation of Air Mail and Ocean Mail Contracts*, 73rd Cong., 2nd Sess. (1934)

pp. 2458-2463:

The Chairman. May I ask you to read this letter into the record, please, sir, if it is your signature? First, I will ask you to read the one of July 2, 1931, from Captain Doe to you.

Mr. Brown. Do you want me to read this one first?

The Chairman. Yes, because it precedes the other one.

Mr. Brown (reading). "July 2, 1931" — it is on the stationery of Eastern Air Transport, Sperry Building, Manhattan Bridge Plaza, Brooklyn, N. Y. [Continues reading:]

Thomas B. Doe, President.

Hon. Walter F. Brown,
Postmaster General, Washington, D. C.

Dear Sir: The situation in Cuba is rapidly coming to the point where, in order to protect our interests and carry out our agreement with the Cuban Government, it will be necessary for us either to enter into a working agreement with Pan American or an open fight. Up to the present they have, through control of the business from Miami to Havana, made it difficult for us to develop as we should. Twice I have taken steps to prevent lines being opened between Miami and [fol. 3697] Havana, in hopes that Mr. Trippe would eventually see the wisdom of concentrating on the through business and leaving the local business to our Cuban company.

At present we are operating mail and passenger lines from Havana to Santiago and from Santiago to Antilla and Baracoa, under government guarantee that enables us to about break even. Cubans resent the moves made by Pan American to encroach on the strictly Cuban business, and I am convinced that the money and effort spent by Pan American in trying to force us out of Cuba is building up ill-will, whereas a proper working agreement, which would enable us to proceed with our plans to develop the Cuban business would build up good will for both of us and effect important economies.

I believe that a continuation of the present attitude would result in another service from Miami to Havana, with a working agreement between the Seaboard Air Line Railway and our Cuban company. I also believe that the Cuban Government would welcome such a

move, as it would produce more traffic and therefore more revenue for Cuba. They, of course, know that Pan American has a $2 a-mile contract, and many of them feel it is unfair for this to be used as a club to prevent their developing their own aviation.

I am making every effort to arrange a proper agreement, rather than have an open fight, and I am taking the liberty of enclosing letter from Mr. E. W. Smith, receiver for the Seaboard Air Line, and also letters from Mr. W. D. Pawley, president of our Cuban company, which, of course, were meant to be confidential and which I would appreciate your returning to me.

I would not presume to bother you with this matter if it were not for the fact that we wish to, in every way, cooperate with your plans for development of aviation, and do not wish to make any move which is contrary to your desires. I appreciate that you are loath to step into these matters, but would certainly like to have such indication of your wishes in this matter as you might feel at liberty to give me.

Very truly yours,

Thomas B. Doe.

The Chairman. Will you look at the next letter and see if that is your signature, and if it is, read it into the record, please.

Mr. Brown. I think it is. It is very badly blurred, but I think probably it is.

[fol. 3628] July 7, 1931.

Capt. Thomas B. Doe,
Eastern Air Transport, Inc., Sperry Building,
Brooklyn, N. Y.

My dear Captain Doe: Your letter of July 2 has received careful attention. While I, of course, appreciate the desirability of cordial relations existing between the various interests that are carrying the mails by air, I am of the opinion that the Department ought

not to be drawn into controversies that are wholly outside our jurisdiction.

I have stated frankly to the air mail operators that in the present state of the industry it did not seem the part of wisdom to invade each other's territory with competitive services and that I did not believe that money paid for postal service should be used to set up services to injure competitors. In pursuance of this policy I suggested the abandonment by the Pan American Co. of the domestic field in the United States, and as a result of that suggestion you are now negotiating with the Pan American Co. for the taking over of their Atlantic City service. Their field is the international service to Mexico, Central and South America, and the West Indies. Consistently with the policy outlined, it would seem improper for any of our domestic air mail operators to use mail pay to invade the peculiar field of the Pan American Co.

For your information I have another letter from Mr. Vidal, of the Ludington Lines, protesting against the extension of your service to Atlantic City, and again offering to carry the air mail from New York to Richmond at a saving of a thousand dollars a day over the compensation paid the Eastern Air Transport Co.

Sincerely yours,

And apparently my signature.

The Chairman. I see you stated in this letter, "In pursuance of this policy I suggested the abandonment by the Pan American Co. of the domestic field." Is that correct?

Mr. Brown. The Pan American Co. on numerous occasions tried to edge into the domestic field, and I thought as they were getting $2 a mile for their operation, and we were paying these domestic fellows just barely their out-of-pocket costs, that that was not a good policy.

The Chairman. Did you suggest, as you have stated here—

[fol. 3699] Mr. Brown. That Pan American keep out of the domestic field?

The Chairman. Yes.

Mr. Brown. Yes.

The Chairman. Did you also suggest that other companies keep out of the foreign field?

Mr. Brown. Well, I suggested to Doc very plainly there, I think, that that seemed to me a wise disposition of the services in the state of the art at that time, where it could live only on a subsidy.

* * * * * * *

The Chairman. I will ask you now to look at this letter to the Secretary of State, dated June 25, 1929, and if it is your signature, read it into the record.

Mr. Brown. It is my signature.

Office Postmaster General,
June 25, 1929.

The Honorable Secretary State.

My dear Mr. Secretary: I have your letter of June 21 in the matter of rendering diplomatic service to American companies seeking concessions to the establishment of service to Guatemala and El Salvador.

As stated in previous correspondence, the Pan-American is the contractor on route no. 5 between Miami and the Canal Zone, whose contract provides for extension of service on the route to Guatemala and El Salvador. The same company is contractor for this Department on air mail, route no. 8 from Brownsville, Tex., to Mexico City, or Vera Cruz, Mexico, and the contract for service to that route provides the service may be extended to Vera Cruz, Port of Mexico, and—

Some other place I cannot pronounce—

Mexico to one or more places in Mexico. This does not apply for air mail service. Since the Pan American Airways has a contract for this Department under

which service may be extended, it is requested diplomatic assistance be rendered that company in preference to any other company.

The Chairman. May I ask, Mr. Brown, if it is not true you wrote a number of other letters to the State Department [fol. 3700] ment asking them to give a preference to Pan American in South American countries over all other companies, American or foreign?

Mr. Brown. I don't remember any such letters. If you have them, I will be very glad to tell you whether I did.

The Chairman. Don't you remember that was your policy?

Mr. Brown. Well, we had a contract with Pan American, and we were trying very hard to help them get enough revenue so they could return postage to us and make the company self-sustaining. It seemed as though one company with a contract was enough for us to support at that time. We had a contract with Pan American; we were interested in their making good under the contract. I don't know whether this Latin American company was a United States company, or whether it was not; but I do know that whatever we did in the matter we did with a view to making Pan American self-sustaining so the burden on our Government would be very small, so the postage would be sufficient to pay the $2.

The Chairman. Returning to the question, the question that I would like to ask you is if you remember—and I assume you would remember your general policy—

Mr. Brown. I think I told you no.

The Chairman. I did not understand you to say no.

Mr. Brown. I don't remember any such letters.

The Chairman. I did not ask you about the letter. I asked you if you did not remember it was your policy as expressed to the State Department, the policy under which you acted for several years, that the Post Office Department asked the State Department to give a preference to the Pan American over all other companies, foreign or American, in South American territory. Was not that the acknowledged and accepted policy of the Post Office Department?

[fol. 3701] Mr. Brown. Well; perhaps it was. I would not dignify it with the term "policy", but that is the practice we certainly followed on several occasions.

The Chairman. Do you remember when another American company started to establish a line on the west coast of South America?

Mr. Brown. No; I don't unless you mean at the time that Mr. New awarded the contract to Pan American.

The Chairman. Do you remember whether or not the State Department at first declined to render diplomatic assistance to Pan American in preference to other companies, American companies?

Mr. Brown. I have no recollection of that whatever.

The Chairman. I will ask you to look at the last paragraph of this letter on pages 2 and 3, from the State Department [give the date, and the one to whom it is addressed.

Mr. Brown. This letter is addressed to the Postmaster General, June 21, 1929. The Postmaster General at that time was Mr. New. I do not know anything about the whole matter.

The Chairman. I want to see what they said their policy was.

Mr. Brown. I don't know whether that is an "s" or not. I think that is a "9".

The Chairman. I think that is "9".

Mr. Brown. I think that is "9", but it is a very bad "9". You want me to read something on the second page?

The Chairman. The last paragraph, if you desire. If you look over it, it might be you would want to read it all.

Mr. Brown (reading):

> This Department is very reluctant

I think perhaps we had better read the whole letter. (Reading:)

[fol. 3702] June 21, 1929.

The Honorable the Postmaster General.

Sir: With further reference to your letter of June 7, 1929, regarding the policy to be followed in rendering diplomatic assistance to American companies seek-

ing concessions for the establishment of air mail services in Latin American countries, I have the honor to request an expression of your views regarding the situation which has arisen in Guatemala and El Salvador because of the competition there between two rival American companies.

Both the Pan American Airways and the Latin American Airways, which is understood to be a corporation financed on the Pacific coast of the United States, have been endeavoring to obtain concessions for the extension through Guatemala into El Salvador of the routes which they propose to establish from the American border through Mexico to the Guatemalan frontier. Their competition, both in Guatemala and El Salvador, has been of such a nature as to make it possible that no American company will obtain the desired privileges, and their activities have, therefore, been a source of concern both to this Department and to its representatives abroad. The problem of extending diplomatic support to the companies concerned has been made difficult not only by their rivalry between themselves, but by the fact that both propose to operate through companies incorporated in Mexico. It has not been the practice of this Department to extend assistance in obtaining business to foreign corporations, even though their stock is controlled by American interests.

The American Minister at Guatemala City recently reported that he had succeeded in persuading the two companies to abandon their activities against one another upon the understanding that the Pan American Airways would seek permission to extend its Miami-Cristobal service to Guatemala and El Salvador, while the Latin American Airways would seek permission to establish a service from the Mexican frontier to Guatemala City. It appears, however, that the Pan American Airways subsequently refused to abide by this agreement on the ground that your Department had "ordered" the company to extend its present Browns-

ville-Mexico City route to Guatemala. The situation with regard to assisting the two companies diplomatically is, therefore, still a difficult one.

This Department is very reluctant to extend diplomatic assistance to one American company against the other, particularly where the interests of different sections of the United States appear to be involved, as in the present case where one company appears to be endeavoring to establish a route from the western part of the United States into Central America, and the other from Texas. It would be unfortunate on the [fol. 3703] other hand if the rivalry between the two companies resulted in the failure of either to obtain permission to enter Guatemala and El Salvador. In this connection information regarding the views of your Department with respect to air mail service in the countries referred to would be very helpful.

I have the honor to be, sir,

Your obedient servant,

Henry L. Stimson.

For the Secretary of State.

The Chairman. May I ask if it is not true, and if you do not recall, that in every single instance where a contract has been sought by the Pan American during your administration, and the same contract was sought by others, that your Department has requested the State Department, and has taken the position that you desired that the assistance be rendered to the Pan American Co.?

Mr. Brown. Well, no contracts were ever awarded by me to the Pan American Co. except two, I think. The matters referred to in these letters are concessions in these cities. The contract let or awarded on the 2d of March 1929, just before I came to the Post Office, provided for extensions of service under the terms of those contracts into all these cities in Central and South America. Now, when it was time to start the service, of course, an American company could not fly into those countries without the

permission of the Government, and the right way to deal with the Government, as we all know, is through our own Government, through the State Department. So we were interested in the Post Office Department in seeing our contractor who was carrying our mail under our contract would have the concessions necessary to make him live up to the contract. I was not asking the State Department to give Pan American any contracts.

The Chairman. I will change the question. Is it not true that during your entire administration when there came [fol. 3704] up a question as to whether the Pan American Co. would get a concession in South America, or some other company would get a concession in South America, that you asked the State Department to intervene through its ambassadors and consuls in favor of the concession to the Pan American Co.?

Mr. Brown. I don't know as to that, but I know that I did on several occasions.

The Chairman. Is it not also true in several occasions where the parliaments of the country had unanimously voted against the concessions being granted to Pan American, that you asked the State Department to assist the Pan American in obtaining the concessions?

Mr. Brown. I have to answer that in the negative, because I never heard that the parliaments did object.

The Chairman. You never heard there were any objections among the members of the parliaments or law-making bodies?

Mr. Brown. No; I never did.

pp. 2465-2466:

The Chairman. Did you know after these objections had come from not only these countries, but many others, that the State Department—

Mr. Brown. Please tell us what "these companies" mean.

The Chairman. This company, Pan American—these countries I have just asked you about—that the State Department continued to send messages in favor of the Pan American to Panama, Honduras, Guatemala, El Salvador,

Chile, Bolivia, Peru, Colombia, Venezuela, Ecuador, and Brazil?

[fol. 3705] Mr. Brown. I didn't know that, but I think the State Department finally reached the conclusion the United States Government was in partnership with the Pan American in a mail service to South America in which they took the mail from our country down and brought the mail from the other countries back, and they are very anxious to get a complete service and justify the expenditure, and I suppose the State Department did just what I did, tried to make a success of it.

The Chairman. Don't you know the State Department's attitude was based on answers to specific inquiries from them to you as to what their policy should be from time to time with reference to these concessions?

Mr. Brown. I think when we started—some of it comes back to my mind now—when we started the conversations with the State Department, they were not aware that we had a contract, had made a contract with Pan American for this service, and they thought they were asked to choose between two companies that were on the same footing, but when they finally reached the conclusion the Government itself had an interest in Pan American, then I think they exerted themselves in every proper way.

The Chairman. Do you not know in some instances the other American companies had started out first in South America?

Mr. Brown. It did not make any difference about that because they did not have any contracts with our country.

The Chairman. They could have gotten them, could they not?

Mr. Brown. They did not get them. There was one contract let, and only one, in South America, except that small contract down to San Quas, and subsequently extended to Montevideo.

[fol. 3706] The Chairman. Do you remember the Tri-Motor Safety Airways case in which they had a contract in South America?

Mr. Brown. No; I don't. They did not have any contract with the United States Post Office Department.

The Chairman. They could not get any, could they?

Mr. Brown. I do not know whether they were in existence when the Pan American contract was awarded or not.

The Chairman. Did you know that in compliance with the request of the Post Office Department, and the policy the State Department set in a document no. 811.7961/1-17:

> That we would be justified in informing our lines in Argentine, Brazil, Chile, and Venezuela that Pan-American Airways as an American concern, is entitled to all proper diplomatic assistance, but no assistance should be rendered to Tri-Motor Co. because of the probability such an assistance would be helpful to foreign as against American interests.

Mr. Brown. Would be heplful to foreign?

The Chairman. Yes; do you remember the Tri-Motor Co. at all?

Mr. Brown. No; I don't, but I would think if Mr. Stimson thought another company was working in the interests of some foreign organization, that he would be entirely within his rights in doing what he could to circumvent it.

The Chairman. Did you know that only a few months previous to this action by the Department that it had instructed the Embassy in Paris to support the Pan American Airways in negotiations looking to the establishment of air service in Latin America, then pending with the French interests, Leltonera, the same company whose alleged arrangement with the competitor of Pan American was shortly thereafter deemed sufficiently threatening to offer certain support—with still other companies competing with Pan American?

Mr. Brown. I didn't know about that. There was quite a bit of competition between our company and the German [fol. 3707] and French companies. They were all trying to get a footing, and our State Department was supporting the American company.

The Chairman. The evidence in the State Department shows the Tri-Motor was an American company.

Mr. Brown. I cannot help you with the Tri-Motors, for I don't know anything about it.

pp. 2639-2641:

Senator Austin. I would like to ask you something about Pan-American. Your attention was called to the question of whether preference was shown to Pan-American as against other American companies in respect to the carriage of foreign mail. I would like to ask you what would have been the effect on the Government's return from the Pan American's operations in South America if a competing American company had entered the field there and received the United States mail contract?

Mr. Brown. Well, if I get the drift of it, perhaps I can explain it with a little time. The Pan American contract, which was let before my time, awarded before my time, provided for the carrying of mails from the United States to South American countries, and the carrying of the mails back to the United States from South American countries. The Post Office Department fixed the rates, the postage rates, for outbound air mail destined to South American countries—that is, the postage that nationals in our country would have to put on letters that were being dispatched to South American countries. Under the terms of the contract, Pan-American was to get $2 a mile each way, and any postage that they got on the return trip from South America for bringing letters to our country from South American countries was to belong to the United States, and to be credited on what we owed them.

The Department, as I say, fixed the postage outbound from the United States to these other countries, and re- [fol. 3708] quired that Pan American collect from the same countries the same rate on north-bound, or United States-bound mail—that is to say, the rate that we fixed in moving mail from our country to South American countries, Pan American was obliged to get from these countries in dispatching mail to us. Now, if another company had gone into that field down there and taken a contract to move the mails from South America to the United States, and agreed to pay him at a lower rate than the rate we had fixed up here for carrying the mails south-bound, which necessarily was the rates Pan-American had to collect, at once those countries would have said, "Here, we are not going to pay

Pan-American more than we have to pay any other company" and the matter would have had a complication which was a very serious one, and would at once have reduced the amount of postage the United States would have got for moving that mail to our country, and the United States was really in partnership with Pan-American, because we pay $2 a mile outbound and inbound and get all the revenues both ways to apply on it, and the more revenue we can get, the quicker the whole operation will be self-sustaining; and so for that reason the Post Office Department was anxious to get concessions for Pan-American in the Central and South American countries, to swell that revenue that all applied on the contribution the United States Government was making to this operation.

Does that make it clear?

Senator Austin. Yes, sir. I am going to ask you, however, a hypothetical question, which I think is very near the facts. Assume that an American company, known as Nyrba, procured concessions from Argentina, Uruguay and Brazil to carry mails from those countries to the United States for rates of $10 per pound downward, what would have been the effect on the financial return to the United [fol. 3709] States from South American mails if Nyrba Company with those contracts had been incorporated in our foreign mail operations?

Mr. Brown. Well, the average charge that the Post Office Department made for outbound mail to South American countries was about $25 a pound, what was collected, and that was the amount that Pan American had to pay the Post Office Department for any mail it moved to our country originating in those South American countries.

Now, if any other company had taken the north-bound mail at a lower price, the natural thing that would happen would be that Pan American would get no north-bound mail, at least unless they met the price, and if they met the price, our Government would not get it—that is all; and if we did not get the mail at all we would not get the revenue.

Senator Austin. In net cash, it would mean this, does it not, that the whole north-bound revenue would come out of the United States in an assumed case like that?

Mr. Brown. Yes, sir.

Senator Austin. And it would therefore be against the public interest, would it not?

Mr. Brown. Exactly.

Senator Austin. Now, then, as a matter of judgement for this committee to pass upon, and perhaps recommend to the United States Senate, in your opinion, should we recommend any other practice than to support our partner in that carriage of foreign mails?

Mr. Brown. No; I think it is the only thing that has any common sense at all.

[fol. 3710]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 419

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket No. 2423

In the Matter of

PAN AMERICAN-PANAGRA AGREEMENT

Room 5042, Commerce Building
Washington, D. C.
Thursday, December 19, 1946

The above entitled matter came on for argument before the Board at 10 a.m., pursuant to notice.

BEFORE:

JAMES M. LANDIS, Chairman
OSWALD RYAN, Vice Chairman
HARLLEE BRANCH, Member
JOSH LEE, Member.

APPEARANCES:

HENRY J. FRIENDLY, 135 East 42nd Street, New York, New York, and

FOWLER HAMILTON, Southern Building, Washington, D. C. on behalf of Pan American Airways, Inc., 135 East 42nd Street, New York, New York.

GERHARD A. GESELL, 701 Union Trust Building, Washington, D. C., on behalf of Panagra.

E. SMYTHE GAMBRELL and W. GLEN HARLAN, 825 C&S Bank Building, Atlanta, Georgia, on behalf of Eastern Air Lines.

WILBUR LA ROE, JR., 743 Investment Building, Washington, D. C., on behalf of Port of New York Authority, 111 Eighth Avenue, New York 11, N. Y.

EDW. D. RAPIER, 1025 Whitney Building, New Orleans 12, La., on behalf of Orleans Airport Commission, New Orleans, Louisiana.

L. L. HIGHSAW, JR., Public Counsel.

HUBERT A. SCHNEIDER, 815—15th Street, Washington, D. C., on behalf of Braniff Airways.

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[fol. 3711] Mr. LaRoe: Mr. La Roe.

Mr. Chairman, counsel have agreed if it meets with your convenience to let me go ahead of Braniff, since I favor the principle of through routes and uninterrupted service.

Chairman Landis: Public Counsel?

Mr. Highsaw: Mr. Highsaw.

Chairman Landis: 45 minutes.

I guess we are ready to proceed.

ARGUMENT OF HENRY J. FRIENDLY, PAN AMERICAN AIRWAYS, INC.

Mr. Friendly: I plan, Mr. Chairman, to use about 35 minutes.

I would appreciate a warning at 30. It is with something more than ordinary pleasure that we are here today to place before the Board the Through Flight Agreement between Pan American Airways and Panagra.

We think this agreement is constructive in the highest sense. Constructive because it eliminates a barrier to the free flow of air travel between the United States and seven

great nations of South America, because it provides better air service to people who are now air travelers, and by so doing will make more air travelers. Constructive also because it does all this without unwarranted duplication of facilities or schedules. And constructive finally because it represents a solution of a problem which has been of deep concern to the Board and, I assure you, also to the parties, for many years.

Let me outline the division of labor for today's argu-

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[fol. 3712] ment between Mr. Gesell and myself. My argument will be devoted entirely to the agreement which is sometimes called Agreement "A" between Pan American Airways, Inc. and Panagra, and as to that agreement I shall deal primarily with what might be termed general public interest considerations.

Mr. Gesell will discuss certain features of that agreement relating to problems that are peculiarly Panagra problems. He will argue the legal question as to whether this involves Panagra's performing air transportation north of the Canal Zone and will cover all questions relating to Agreement B between the two parent companies.

First, a statement, necessarily brief, of what the agreement provides.

The basic principle of the agreement is that Pan American as requested by Panagra, will charter aircraft which Panagra operates into Balboa from Lima or points farther South, for through operation from the Canal Zone over one of Pan American's routes to the Continental United States.

The aircraft are to be operated by Panagra's flight crews.

Pan American will pay Panagra a charter hire consisting of the direct flight expenses, an allocated amount, which we estimate to be about $43,000 a year at the outset, representing such portion of Panagra's indirect expenses as are directly related to the services performed, and a reasonable return on Panagra's investment in the aircraft used.

The initial route over which these flights are to be operated, is Pan American's certificated route between the

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[fol. 3713] Canal Zone and Miami. However, if and when

the Board permits a straightening out of our route to New Orleans, in accordance with an application which we already have on file, Panagra may request that through flights be operated also over that route.

Now, the agreement also takes account of Pan American's pending domestic route application. It provides that if the Board grants Pan American the route from Miami along the East Coast, flights under the agreement may proceed to Washington and New York, the two points that are of primary importance for Panagra traffic, and likewise from Miami to Chicago.

There are also provisions that, subject to suitable certification and subject to the existence of sufficient traffic, stops might be made at Philadelphia and Boston, and that the agreement might ultimately be applied to the operation, if it is authorized, between New Orleans and Chicago.

Now, the through flights provided for in this agreement are not simply to be superimposed upon service which Pan American is offering and its certificated routes. Rather, they are to be an integral part of Pan American's service.

Not only will all revenues and expenses on these flights North of the Canal be for Pan American's account exactly as with flights performed by Pan American's own aircraft, these flights will be available for and used by local as well as through passengers and that is an important point.

Panagra's traffic to or from the Canal splits at that point. About 60 per cent of it goes to the Miami gateway, the rest

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[fol. 3714] to the Western gateway.

Now, that means that, to maintain a satisfactory load factor on through flights that are operated even to Miami, which is the heaviest gateway, it is important that Panagra be able to draw—or that these flights rather, be able to draw—on local Balboa-Miami traffic.

Now, it is true that the through flights are to be scheduled primarily for the convenience of the through traffic, and that the agreement provides for reasonable space assignments to prevent them from being blocked by local traffic—something, I may say, which the intervenors seek to make

appear very wicked indeed, although of course it is every day practice for every airline and for that matter, on every airline in the United States.

However, these flights will receive substantial support from local passengers.

The agreement thus permits Panagra's traffic to reach the United States on Panagra's aircraft operated with Panagra's crews, but with the flights north of the Canal an integrated part of Pan American's already certificated operations.

It provides also practical measures for enabling that Panagra traffic to be effectively sold.

Pan American is to continue as general sales agent for Panagra, as it has been ever since the two companies started. The advantages of such an arrangement seem to me to be obvious.

Panagra by itself could never afford sales offices and an organization for dealing with travel agents throughout the

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[fol. 3715] United States, of anything like the same extent as Pan American's.

However, the agreement recognizes Panagra's separate identity and makes detailed provision for its development from a traffic and sales standpoint.

At all airports in the United States to which Panagra's aircraft may be operated under this agreement, its name is to be displayed, and if it desires a reasonable number of its own traffic and Panagra service employees may be stationed.

Pan American also agrees that at its more important city sales offices it will designate a particular Pan American employee who is to be specially charged with promoting the sale of Panagra traffic.

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[fol. 3716] In short, we have tried to set this agreement up from a traffic and sales standpoint in a way in which Panagra will receive the benefit of Pan American's sales effort exactly as it would if it were any other part of Pan American's operation, except that Panagra's individuality, corporate and otherwise, is to be fully preserved.

Now, I am going to leave to Mr. Gesell to outline to you the provisions of the agreement relating to maintenance and training. We made this agreement for 99 years. We did that, not because that term has any particular magic, but because it is symbolic of an agreement intended to be permanent and while we intend to bind ourselves, we of course had no intention of similarly binding the Board. We drew the agreement knowing full well that it required approval under section 412 and that such approval could be withdrawn at any time if experience under the agreement or other factors made it appear adverse to the public interest.

Now that, of course, is the barest outline of a contract some 24 printed pages long. I was a little pained at the statement in public counsel's brief that this contract to which Mr. Gesell and I had devoted nearly two months of intensive work, "was drawn in a great hurry", and in general was a pretty sloppy performance.

If there are defects in the text, I can assure the Board that they are the result of personal inadequacy on the part of the draftsman and that they don't come from lack of time or application by the party.

If the criticism is simply that in an agreement intended to last for a long time, we didn't intend to dot every "i" and

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[fol. 3717] another petition will have to be filed and the formality of another hearing had.

Now, let's look at the approach that must be made to this case. Under either 412 or 408, it is altogether different from that in a certificate case. Before the Board may disapprove this agreement, it must be shown that it is contrary to the public interest but the difference is not merely one of burden of proof.

Here, the parties already have the franchise to carry the traffic to which this agreement relates. Therefore, we do not have such questions as possible burdens on the treasury for additional mail pay, or even for that matter, of competitive effect upon other carriers, unless, of course, the situa-

tion calls into play the monopoly provisions of 408 B, a suggestion which is made here only by Eastern, and which I don't think even warrants reply.

The bundle of rights in a certificate, a fortiori, whatever there is in a certification application, does not include a right to prevent improvements in the service of carriers already certificated. You made that very clear in your opinion in the United Western case. This through flight agreement serve the public interest, first and foremost by doing just what it says, namely, permitting through flights.

That is a statement of fact that is simple and plain and easily understood and yet unless it is sufficiently emphasized it becomes lost in the fog that is generated by the intervenors, who by building up small incidents to tremendous proportions, seek to obscure the simple fact that it is a very good thing not to route passengers out of here at

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(fol. 3718) Balboa in the middle of the night. It is for the purpose of serving those passengers. The American Tourist going to Quito. The Chilean business man enroute to New Orleans, the Peruvian delegate to the U.N. in New York, that this company has spent the millions of dollars that it has in developing air service and that this Board was called into exist.

It is for those people, not Braniff, Eastern, or for that matter, Pan American of Panagra, that all that was done. The record here shows that during the first half of 1946, nearly 7500 passengers traveled between the United States and points on Panagra's route south of Balboa. Sixty per cent of those, or about 25 a day, passed through the Miami gateway. That number, of course, will increase. It has got to increase tremendously to support the new American flag and foreign flag competition which lie ahead.

Yet at present, everyone of those Panagra passengers has to change planes at Balboa. Bad as connecting services have been in the past as compared with one plane service, they will be relatively worse in the future. With the speed of the DC6, for example, the additional hour required for a connection at Balboa over and above the stop that would have to be made on a through flight, is the equivalent of a

quarter of the flight time from Balboa to Miami, and sleeper planes introduce a still further problem.

The exhibits here show that suitable afternoon departures, either from New York or Buenos Aires, will put schedules through Balboa in the early morning. A rather exact parallel, in every day experience, to this requirement of a Balboa transfer on a DC6 flight between New York and

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[fol. 3719] Buenos Aires, would be if all rail passengers between New York and Florida were required to get out of their berths at Richmond. We passed that long ago in our rail service. And yet, everything I have said up to this point leaves out the worst feature of a connecting service, namely, the danger of a missed connection. The relative infrequency of the schedules into and out of Balboa, as compared with those at important junction points within the United States, makes the consequences of such a missed connection peculiarly severe, and the length of the route on either side of Balboa accentuates the risk of such a miss.

I think it is fair to ask just what there is in this agreement so contrary to the public interest that you gentlemen should require a load of passengers to be dumped out at Balboa 365 nights a year, and on some of those nights find there connections missed.

I suggest that the burden of persuasion which that simple fact places on the intervenors—and I include public counsel there—is a very considerable one, particularly considerable when we consider that section 2 of the Act places upon you a mandate to coordinate transportation between air carriers—a mandate, incidentally, of precisely the same dignity as the often referred to phrase in that section about competition. I suggest that that burden of persuasion is not met by such generalities as talk about undesirable patterns of interchange and the like.

The public simply should not be asked to tolerate the inconvenience of this transfer, and they don't have to tolerate it. South American travelers originating in, or destined to, the portions of the United States served by Braniff,

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[fol. 3720] will use that carrier's service. Passengers to New York can use the services of Braniff and National

connecting at Havana which will involve only one change of plane as compared with the two now required for Panagra and Pan American, and, I think it is only a question of time—or should, I say, rather, of timing—before Braniff and National will make arrangements to eliminate even that.

Moreover, those are by no means the only choices which a traveler will have. While this country has undoubtedly the power to shackle its service between the west coast of South America and Eastern United States, by requiring one change of plane at Balboa and another at Miami, it cannot force others to do the same. The Bermuda agreement provides for British service from New York to Santiago once the British are already operating at Buenos Aires. I don't think you gentlemen have any doubts that there will be an Argentine company operating up the west coast directly between the traffic centers in the northeastern United States.

There is the Peruvian company which General George is now heading, in all likelihood a Chilean company, there are two Colombian companies already authorized to operate into Miami. One of them goes as far as Ecuador and the other as far as Peru already, and then can extend. No one can seriously believe, I think, that a New York business man going to Santiago will have very much difficulty in choosing between a through sleeper service on BOAC, for example, and a three-plane service on Eastern, Pan American and Panagra.

We ought also to beware of the fallacy that comes from thinking only in terms of United States citizens going to

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[fol. 3721] South America. A large amount of the traffic on this route consists of South Americans coming to the United States. United States carriers are going to have a hard enough time competing for the patronage of those people against their own national flag airlines and we ought not to make that task harder unless we are serving some real and substantial public purpose by so doing.

Before I pass to other matters, I want to dwell on one thing which I mentioned previously, namely that this agreement represents a voluntary solution of a troublesome prob-

lem. I can assure you that the last thing that I have in mind doing today is to debate the pros and cons of the so-called Panagra extension controversy, now happily resolved if you approve this agreement, but I think in view of some of the arguments that will be made, you ought to realize that that disagreement reflects a sincere and honest difference of opinion, both as to what Panagra was intended to be and as to what, in its own best interests, it ought to be.

Pan American did not participate in creating Panagra in 1929 simply to make an investment. It conceived Panagra rather as an extension of its already authorized line from Florida to the Canal, and we consider that original intention to be still the best and soundest intention, not only for Pan American but for Panagra also.

We believe that Panagra owes a great deal of its success to the fact that it has been a part of the Pan American Airways system just as it owes another part to the contributions that have been made by W. R. Grace and Company. To place Panagra in paralleling point to point competition

[fol. 3722] with Pan American between the Canal Zone and the United States would have meant a complete and violent change in that relationship, and in our judgment would have seriously impaired the value of our stockholders' investment in Panagra itself. I am not asking you to say that those views are right, although I happen to think they were. I do think it important for you to know that this record shows them to be the views not of one man but of Pan American's entire Board of Directors—views unanimously adhered to after long discussion and after the opposite point of view had been fully and ably presented to the individual Directors by our friends in W. R. Grace and Company, and that holding those views as we do, we feel bound by fiduciary duty to our stockholders to maintain them to the limit of our ability in every proper way.

Any voluntary adjustment of this controversy had to take account of this fundamental view of Pan American's, just as it had to take account of Grace's equally fundamental view, that Panagra's traffic must have direct access to the United States in Panagra's planes operated by Panagra's crews. One of the virtues of the agreement, as I see it,

is that while of course it contains certain concessions, as any such agreement must do, it does not—and indeed it could not—have reaped abandonment by either of the parties of any principle which either of them regarded as fundamental. It is because the agreement meets the fundamental views of both parties that we are so certain that it is a good agreement and a workable agreement. That is why we are so sure that it is so much better than any solution, whatever it might be, imposed as a result of continued litigation and yielded to only as a matter of compulsion.

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[fol. 3723] Now, in the time that remains, let me turn to some of the arguments that will be made against this agreement.

First, it will be claimed that the agreement eliminates competition between Pan American and Panagra. The agreement simply does nothing of the sort. The only competition which has ever existed between Pan American and Panagra is for traffic between the northeastern part of the United States and the two common points of Buenos Aires and Montevideo. The routing is generally controlled by the travelers plan for intermediate stops.

Many passengers wish to go down one coast and up the other, and the traveler whose sole objective is to get to Buenos Aires without intermediate stop as rapidly as possible is a fairly rare bird.

The traffic that is truly competitive is certainly less than five per cent of Panagra's revenue, and, of course, is a very much smaller proportion of Pan American's. The agreement in no way adversely affects Panagra's position to compete with Pan American for that traffic. On the contrary, it very much improves it.

At the moment, Panagra is in a poor position to compete with Pan American for this Buenos Aires traffic or to compete with anyone else's for it. This agreement assists Panagra by eliminating one of the two changes of plane now required, by bringing Panagra's planes into Miami, and as we hope, ultimately to New York, as well as by the traffic and sales provisions which I have mentioned. At this point I should deal with one provision in the agreement to which I did not refer in my initial outline. That is section 13 A,

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[fol. 3724] where the parties recorded their intention that at some reasonable time after the agreement had been working, they would sit down and consider a pooling agreement with respect to traffic to these two common points of Buenos Aires and Montevideo. There is no certainty that any agreement of that sort will ever be made, still less certainty as to what its terms and conditions will be, and, of course, any such agreement would be subject to further approval by the Board.

Far from there being anything sinister about that provision it was inserted rather as a matter of full disclosure, with the thought that if such an agreement were later to be made and submitted, we would not want the Board to feel that there had been any lack of candor about our intentions at the present time.

We have assumed, of course, that the Board's order will leave no room for doubt that it is not now approving even the principle of pooling, and if that is not enough, the Board can disapprove this particular provision without the slightest effect upon anything else in the agreement.

Chairman Landis: Your thirty minutes has passed.

Mr. Friendly: Thank you.

Now, let me turn to what I think is the real argument on the subject of competition, and that is that the agreement terminates the litigation which might have made Panagra a parallel competitor of Pan American on this sector between the Canal Zone and the United States. That, of course, is a sector where Panagra never has competed with Pan American. It is a sector where any possibility of Pan-

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[fol. 3725] agra's competing with Pan American rests entirely upon conjecture as to the outcome of litigation which is still a long way from being concluded.

There is not a shred of evidence in this record that additional competition for Pan American between the Eastern United States and the Canal is required. We have already been given American flag competition by the connection between Nation and Braniff at Havana, a service which has as yet even to be begun, and if it be said that National's and Braniff's is a two-carrier service, what is Pan American's

service at the present time from any city except Miami itself, and the traffic we all know doesn't come from Miami.

Moreover, this sector of the Caribbean will be traversed by every foreign airline operating between the Eastern United States and west and South America, British, Argentine, Chilean, Peruvian, and Colombian.

Yet, the traffic on which all those operations must depend —and I am including the local traffic now as well as the thru traffic—amounted during the first six months of 1946, to about enough to sustain one flight a day with a four-engine airplane, and that is more than the Crozier figure to which you referred in your opinion in the Latin American case.

Of course, that volume will grow, but it will have to grow a good deal to provide reasonable loads for the eight airlines already indicated more than there are on any route within the United States, not to speak of the steamships which were not operating in the first half of 1946, but will be some time in 1947.

To my mind, this whole idea that Panagra must be required in the public interest to compete with Pan American

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[fol. 3726] on the sector between the Canal Zone and the United States, is simply a throw back to a condition that may have existed in 1942, when you instituted docket 779 but the basis for which has now completely disappeared.

I think it is no secret that in 1942 many people in the government and outside the government believed that the most desirable pattern of American flag air service in Latin America would be obtained by utilizing Panagra as a vehicle for competition with Pan American, and, of course, such a pattern would obviously have required something more than the certification of Panagra to the continental United States. But since that time, an entirely different plan has been provided. It has been provided by the certification of no less than seven competing American flag lines and particularly by the extension of Braniff to almost all important traffic points on either coast of South America, and superimposed upon that is a volume of foreign competition, particularly by the Latin American nations, which

certainly was never anticipated in 1942, or for that matter, as I believe, in 1945.

Yet, with more carriers indicated for operation between the Canal Zone and Miami than there are between New York and Chicago, the intervenors continue to mouth this cry of monopoly, and to urge that Panagra be forced to compete with Pan American, and that this constructive solution which the parties have arrived at, should be rejected by you in order that they may be forced to compete with each other on a sector where there is no showing that there is even traffic to support the competition much less to require it.

Thank you

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[fol. 3727]

ARGUMENT OF GERHARD A. GESELL

PANAGRA

Mr. Gesell: I would also like notice after thirty minutes, Mr. Chairman.

I appear here, of course, for Panagra. Panagra most earnestly asks the Board to approve the through flight agreement, and make it immediately effective in order that Panagra's traffic may have the benefit of direct one plane service between the East Coast of the United States and the West Coast of South America—something that has been long awaited and very much needed in Panagra's whole picture.

I concur in the arguments that Mr. Friendly has made about the question of the public interest, and I am going to try to be very careful not to cover the same ground.

I do think there are certain features of this agreement which have to be examined from the point of view of Panagra, and I would like to call attention to those at the outset before I turn to a discussion of some of the legal points which have been raised by Public Counsel and intervenors, and some of the specific arguments.

The Board has recognized, in its opinions, that while, of course, it is concerned primarily with broad considerations of National policy in carrying out the objectives of the Act, there are situations that arise where the strengthening of an individual carrier is required for the sound development of the national system of which that carrier is a part. This is such a case.

We think the Board will want to consider most carefully the extent to which this through flight agreement will pro-

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[fol. 3728] mote the economy and efficiency of Panagra's operations, and enable it to continue what we believe has been a significant role in the development of American air transportation in Latin America.

There has been so much talk about this question of passenger inconvenience at the Canal Zone that I want to emphasize a somewhat different feature of the through flight problem.

It is perfectly clear that the inconvenience to traffic at the Canal Zone is enormous in terms of expense, in terms of time; in terms of delay, but I think you have to look at Panagra's picture a little more broadly than just that question.

Panagra is going through a transformation, a transformation which I think is greater and more fundamental in its operations than any other certificated carrier, whether it be a domestic carrier or a foreign carrier.

Panagra developed its system in terms of being not only a through trunk international carrier, but by developing feeder routes, off-line routes, in an international service.

You know it has extensive services in Ecuador, extensive services in Bolivia, extensive services in the Argentine and Peru, and that a very substantial amount of its traffic is traffic carried between various Latin American countries.

I am sure the Board recognizes what is happening to that traffic.

Cabotage rights, which Panagra has enjoyed are diminishing. They were cancelled the other day in the Argentine

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[fol. 3729] effective January 1. That represents a substantial reduction in Panagra's revenues.

It may require us to come here and consider with the Board the discontinuance of the diagonal route. It is also clear that the bilateral air agreements that are being negotiated are affecting Panagra's traffic picture.

Mr. Mitchel on his current traffic mission is proposing bilateral agreements of which the Board is fully aware. The effect of those upon Panagra's inter-South American country traffic is difficult to estimate now but it is certainly going to have an effect and we think it is going to be a diminishing effect as far as the traffic is concerned.

That means that Panagra's future, Panagra's growth, Panagra's development, is dependent upon its ability to serve the through traffic between the United States and South America.

That traffic already accounts for 51 per cent of Panagra's revenue, but it is going to account for a substantially greater amount. The development of the tourist traffic, and of course the diminishing of the other traffic, are all going to put the through traffic into a very dominant position.

Now, Panagra must be in a position to attract that traffic. If Panagra cannot attract that traffic it will go to competitors. Panagra doesn't want it all. Panagra wants its share. It can't compete with the one plane direct service of Braniff, touching the lucrative points and skipping all the difficult operating points, the difficult traffic points, and

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[fol. 3730] it can't compete with these many foreign competitors who are coming.

Public Counsel, to my amazement, says that the foreign competition is speculative, and he seems to suggest that Panagra should sit still, patiently await that competition to develop, and then come in and talk to the Board.

We must anticipate it and it is only by anticipating that we are going to keep ourselves in a position to hold the important role we have had.

Chairman Landis: It would be difficult, wouldn't it, to think of Panagra's international route pattern as fitting in with the general route patterns being negotiated by countries including the United States and bilaterally?

Mr. Gisella: I think so, Mr. Landis. I think it is more than difficult. I think it is almost impossible as it is now

set up. Six points, I think you serve in Bolivia, if I am not mistaken. Probably more than that.

Chairman Landis: Probably more, and negotiate for perhaps eight to 10 points in Peru.

Mr. Gesell: Probably four or five or six in Peru and maybe eight or ten in Ecuador and six or seven in Argentina.

Chairman Landis: It is hard to think of those points as points for the development of international traffic. Local traffic, yes.

Mr. Gesell: Panagra's conception, of course, Mr. Landis, was that the proper way to develop an international system was to have way to way traffic which would promote adequate frequencies, promote strong equipment, but it is true

[fol. 3731] that that conception is not consistent with the bilateral air agreement approach which is being negotiated by this government now, and that is why I say the through flight agreement is so important.

Chairman Landis: In order to observe a through pattern of that nature, the United States' position would have to be, broadly speaking, that of insisting upon cabotage, the grant of cabotage from other nations, also a completely unrestricted fifth freedom, a position which, if it were being demanded of the United States reciprocally, I am afraid, would not find much favor.

Mr. Gesell: I am sure the chairman understands that I am not criticizing the policy. I am pointing out its effect upon Panagra which I say is more deep biting and more significant than upon any other American flag carrier.

I am not criticizing the policy at all and I think we would get into a discussion quite beyond this agreement.

Chairman Landis: I am not criticizing it, myself, but simply trying to gauge the kind of position that the United States will have to take with reference to world affairs, world air affairs, if it were going to redeem Panagra's route pattern.

Mr. Gesell: It would certainly have to retrace many of the steps already permanently taken, it seems to me, but that establishes, it also seems to me, the deep effect of what is happening upon Panagra.

The point, of course, is not that we must have a route pattern which is consistent with the bilateral and international agreements but that we must have a route consis-

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[fol. 3732] tent with those agreements which will enable us to attract traffic, and this through flight agreement, in the opinion of Panagra, places us in such a position.

Now, we not only obtain, through the through flight agreement, a direct one plane service between points in the United States and points on Panagra's route—something which I think the Board in the Latin American decision recognized was desirable in the overall pattern, but we obtain under this agreement rights and opportunities efficiently to develop that through traffic.

I am not talking alone about sales which, of course, is important to the efficient operation of through flights under a cooperative arrangement such as this.

Mr. Friendly has talked about that.

I would like to talk about the maintenance and training provisions of the contract for a moment. Let's take maintenance.

Panagra has, as the Board is aware, taken commitments not only to take on DC-6 sleeper aircraft, very promptly on the delivery schedule, but it has also equipped itself with DC-4 aircraft.

Those aircraft are large complex multi-motored equipment, as the Board realizes—something quite different from the DC-3.

For Panagra to maintain those planes in South America, at its shops at Lima, or at some other point on its route, would require it in the first place to expand its facilities—an expenditure involving over a half million dollars—it would be required to employ some 300 additional mechan-

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[fol. 3733] ics, and it would be confronted with a tremendous organizational and management problem on top of its present route and traffic problems.

Chairman Landis: Wouldn't the CAA also have to establish some inspection service in Lima if you established your shops down there?

Mr. Gesell: We have our shops down there and it has such a thing now, but I am talking that this must be expanded and changed. The machinery and equipment for the larger planes is quite different.

Panagra has also, although it hasn't been able to maintain its equipment well and up to CAA standards outside the United States, Panagra's costs have been tremendously high, because of maintenance away from the United States.

Mr. Lee: Higher than they would be in the United States?

Mr. Gesell: Very appreciably higher, Mr. Lee. The reasons for that are set forth, and unchallenged on this record. I will briefly review them to point out the problem.

Panagra must maintain much larger inventories. The cost of its equipment and material is much greater due to the transportation. It is perfectly true that national labor in those countries is less expensive than national labor here, but the per hour productivity of that labor, no matter how carefully trained, no matter how carefully supervised, is nothing comparable to what the good American mechanic can do in the United States.

Now, we have made very careful estimates of the effect of these maintenance provisions on our operations, and they

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[fol. 3734] show a saving for one year in maintenance alone for Panagra of $581,000. That is a substantial item for Panagra, and it comes about because our maintenance can be pooled and integrated and fed into the maintenance shop—extensive shops—which you all are aware Pan American maintains at Miami.

We will both get the benefit of larger overhead and we will have substantial savings. The Board has seen and heard a great deal, I think, recently about the desirability of cooperative arrangement in this field of ground facilities of which maintenance is one.

This is a concrete, definite, practical, proposal that will involve very substantial savings. We have shown in detail that our equipment can be fed into this route and brought up there, that Pan American's maintenance schedules and work loads are such that they can take care of this, and we have shown this substantial savings that will help us to

maintain with Pan American a direct one plane through service which is efficient and able to compete with foreigners and others, and the same thing is true of the training.

I wonder if any of you on the Board appreciate Panagra's training problem. Panagra was recruiting its men here and taking them to South America. The expense per annum for travel and training of employees who don't work out, because they don't like South America or because they are wrong under some different heading, is $12,000 a year. Just traveling expense.

By recruiting and bringing these fellows down, by pooling with Pan American in the states, we get not only the

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[fol. 3735] access to the most modern equipment and the latest developments in the art, but we are relieved of substantial expense and in a much better position to recruit and train our people.

Chairman Landis: There seems to me quite a difference between those two arguments.

In order to get the benefits of so called pool maintenance you have to fly your planes up to the shops?

Mr. Gesell: That is right.

Chairman Landis: But in order to get the benefits of pooled training, this extension—not the extension but rather the opportunity to fly these planes profitably up to the United States—doesn't seem to me a requirement.

Mr. Gesell: I think so. Let's take the question of pilot training: Pilots need refresher courses and constant training, as the Chairman is aware.

If our pilots come to the States on productive flying under this agreement, if our pilots are based in the States and can take their training and work with the CAA in joint maneuvers with other airlines and on the radio beams and everything, because they are there in the normal operation of their business, our savings are tremendous compared to getting them up there for that purpose and I think that any operating man would agree that the best place for a training base is close to where operations take place and crews are based.

So that it ties into the through flight arrangement even under the training heading.

The same is true of radiomen and other types of per-

[fol. 3730] sonnel

I think that the Chairman will recognize also that I am referring to these matters not alone because of their relation to the through flight, but to show the comprehensive way in which this very basic problem has been approached.

Now, I think there is another way to look at this matter from Panagra's point of view which I am going to suggest to the Board.

All of us in Panagra are sincerely behind this agreement, not only the personnel of Panagra, but Grace and Pan American and PAA and anyone who has anything to do with it. We are confronted here, however, with what seems to me a rather desperate argument from some of the intervenors who say, that, "Isn't it a terrible thing that Panagra hasn't been allowed to apply for a route in its own name?"

Public Counsel suggests that 779 is the best way out of this problem, and Eastern, a vigorous opponent of solution of the Panagra problem by way of routes, now suggests that it is a terrible thing that that solution isn't possible.

I submit that some of the intervenors that you will hear here are not concerned with Panagra's problem of the merits of the solution but they are anxious to keep the controversy alive. They profit by it. They pick off it. They are not looking at this thing from the point of view of the public interest whatsoever, but I would like to meet the question of whether we should be permitted to apply for a route in our own name, head on.

[fol. 3731] I don't think it is determinative of this issue. If this agreement and arrangement here is in the public interest I can't see that it is determinative whether some other or different procedure would have been better or worse.

779 offers very little as the Board is aware.

If the Supreme Court decides in favor of Grace we are back into protracted proceedings before the Board on merits under every heading, and we see ahead years and months of very onerous litigation, but let us look at some of the

advantages which Panagra obtains under this arrangement, which the record clearly establishes would not have been available to it had it filed a new route application, because I think the argument can be met that way on its merits.

I want to point out in the first place that the service to the public under this arrangement is in every respect the equivalent of the service which would be available if Panagra had its own certificate extended.

The public will travel in a direct one-plane service, a safe service, a service with modern and efficient aircraft, with good meals—an excellent service in all respects.

The fact that Pan American and Panagra provide it jointly rather than Panagra providing it alone does not alter that fact.

Now, the advantages that we get under this arrangement—and ones that were important in reaching the decision on the part of Panagra to enter into the arrangement, are these: the maintenance problem which I have already talked about. Pan American would not have made its facilities

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[fol. 3737] available to us if we had come there on our own certificate, and the testimony is clear on that.

The testimony is also clear under the hearing of training, to the same effect. The testimony is even more clear as to the sales agency situation with respect to which Mr. Friendly has already discussed.

Panagra also under this arrangement is relieved of the obligation of making substantial capital investments which would otherwise be necessary—and that is not a minor consideration in these days of economy and difficult problems in maintaining load factors and showing black figures.

Panagra would not have had as ready access, as we believe we would get under this arrangement, to a number of United States points—at best Miami, beyond all hopes New York, and certainly not opportunities which this agreement presents of Panagra aircraft proceeding to such points as New Orleans, Washington and others.

Also, Panagra's load factors would not be sufficient, in our opinion, in our own, to maintain these through flights except under most strenuous and energetic solicitation of local business between Balboa and Miami.

We are left in this position to develop the international traffic and we get the benefit of PAA's local traffic in our load factors and moreover we are relieved from the very burdensome litigation and placed in a position where we can start to compete now, and not months and years later.

Mr. Ryan: Compete with Pan American you mean?

Mr. Gesell: To compete with Braniff, to compete with the foreign competitors, and to try to get back from Pan

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[fol. 3738] American, under this arrangement, some of the traffic from Buenos Aires which now, of course, is preponderantly in their favor because of their better service.

This enables us better to compete for Buenos Aires traffic, there is no question about that, but I am not pitching this argument on the question of competition with Pan American, but we are in a much better position to compete with them if we had through direct one-plane service between the United States and Buenos Aires. There is no question about that.

Chairman Landis: The solution of extending Panagra northward, on that point, your argument was more or less to this effect: that if this agreement is disapproved, the case now pending in the Supreme Court of the United States would go on. Perhaps as a result of that, Panagra will be in a position to file an application for an extension, and then you would have to go to the merits on that before the Board, and you said more or less you would be in the situation in which you are now.

I am just wondering about that. Time changes scenes a great deal. By the time you went through all that and found that legally Pan American was in a situation to file that application, it may be that three or four or five or six other American carriers would be certificated, that a number of foreign carriers might have entered the scene. It is practically a do or die proposition for you, now, isn't it?

Mr. Gesell: Yes. There is no question about it.

Chairman Landis: It isn't something for the future?

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[fol. 3739] Mr. Gesell: That is why I emphasized the time factor. We must have opportunity now and this agreement provides it. I had intended to speak at some length

to you about this other argument concerning the inherently bad situation which prevails in Panagra, in the view of the intervenors, who have seized upon an isolated phrase in an opinion in the Panagra Terminal Investigation of this Board, written on a jurisdictional opinion without reviewing the case on its merits.

I am not trying to tell the Board what it meant when it referred to an inherently bad situation. I suppose the Board knows that, but the record shows here clearly that there has been only one basic controversy in perhaps operations. That has been this extension problem. The line has prospered and grown.

The partners have cooperated under many headings. There has been a great deal of pioneering and efficient service, and if this solution, which we believe is a solution, is accepted by the Board, any cause for future deadlock or difficulty is eliminated.

Now, I think I had best turn immediately to a discussion of the legal questions which are raised. The first of these is the question whether or not Panagra requires an amendment to its certificate under Section 401 to operate under this agreement.

Chairman Landis: Here is a convenient place, I think, to recess for ten minutes if we can break into your argument. I think you have about 10 minutes left.

(Recess taken.)

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[fol. 3740] over the certificated route. Of course, here we have the radio controls and the operational and ground controls which is quite something different than in the motor field.

Chairman Landis: You ought to develop gliders.

Mr. Gesell: Yes. Some kind of chain of gliders might do it. I wanted to also discuss in my final point this question of Section 408.

Chairman Landis: Your time is about up. About two minutes.

Mr. Gesell: I hope I can go over just a bit. I guess I can take it off rebuttal.

I want to cover this section 408 problem.

There has been a great deal of talk about it. I want to first make clear that the problem has two aspects. One is whether or not Grace and Pan Corp are essential parties to this proceeding, and second, whether the parent company agreement should have been formally filed for approval.

It, of course, was filed as an exhibit and has been before us. I want to make clear what the record shows on this parent company agreement situation. It was attached to Pan American's petition as an exhibit. It has been before the Board since the proceeding was initiated. We stated at the pre-hearing conference, and again on the record, that all facts concerning the execution, operation, and meaning of the parent company agreement were before the Board for consideration.

We presented witnesses from Pan Corp and Grace who were examined at length concerning the agreement, and every aspect of it was gone into. We even said that it was

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[fol. 3741] our view, and we so stipulated it and made clear, that if the Board didn't like some provision of the parent company agreement, it could require its modification as a term or condition attached to the approval of the through flight agreement.

And then, so that there would be absolutely no question about it, we filed a stipulation in this proceeding which was specifically stipulated to by Grace and Pan American Corp, which said, "You can make us parties in this proceeding if you want, from the outset, we recognize the jurisdiction and the power of the Board over us," and they said, "We are here and you can do what you wish concerning us."

That stipulation is set forth in the appendix to our main brief. So that on the facts there has not only been no concealment of this parent agreement but the fullest exploration of all its terms and provisions and the parties to that agreement, Grace and Pan Corp, have recognized and acquiesced in and bowed to any jurisdiction which the Board wishes to take over them in connection with this proceeding.

So that as far as any problem of essential parties is concerned, I can't see that it exists at all.

The other question, however, is whether or not the parent company agreement required approval because under the agreement Grace was acquiring control of Panagra. That seems to be the gravamen of these various arguments about 408—the assertion that Grace has acquired control of Panagra.

We say that is not the case. In the first place, to bring

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[fol. 3742] the agreement before the Board, the Board must find that Grace is an air carrier or a common carrier or a person controlling an air carrier. There has never been any determination on those issues except by Examiner Nye in one of the proceedings, who found that Grace was neither a common carrier nor an air carrier.

We think it falls in none of those categories. It certainly isn't a person controlling an air carrier within the meaning of the section because whatever may be its control of Panagra of a negative sense, the statute obviously has in mind the control—a person who controls one air carrier who seeks to acquire control of another carrier.

But we don't have to decide those because I think on the merits it is perfectly clear that there has been no acquisition of control here by Grace.

Pan American and Grace each continue to own 50 per cent of the stock. Mr. Roig who has been the only President of this company and who has served in that position since 1939, continues in office.

Now, what is then perhaps the difference? Has the President gotten additional powers? Perhaps through that angle it could be said, and that seems to be the argument particularly of Eastern, that the President here has gotten in some way, solidified in a position under the parent company agreement, which gives Grace control.

That is not the fact on the record. The testimony is explicit that the powers of the President had been substantially reduced by this agreement. His activities have been limited in that he has not as much control over the

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[fol. 3743] section of one of the key personnel, the Vice President in Charge of Operation. And there is nothing

in this contract which changes the basic fact that the President is not in a policy position. He remains in the administrative position he has always held in Panagra, a position where he must proceed in consultation with both groups of shareholders and proceed on policies which both groups of shareholders determine.

His testimony in this proceeding was explicit that he had an administrative and not a policy post and that hasn't been changed by this proceeding at all. I think his position has been weakened moreover by the fact that he can now be removed. He used to be a President, sitting in this position and there was no machinery for his removal.

That doesn't exist any longer. The contracts are explicit as to his removal. The cases which Eastern Air Lines has cited in one of its—I can't remember whether it is the first, second or third filing of the particular motion concerning the power to appoint the President being a determinative factor in control are in cases not involving a fifty-fifty company, cases not involving whether there has been an increase in the character of control from an affirmative to a negative control.

They are cases involving small family bus companies where mothers, aunts, sisters and uncles bring in from the outside a trained operator to carry on after the old man has died and he is given policy as well as administrative functions.

Clearly such a man is in a totally different position

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[fol. 3744] in relation to motor carrier than Mr. Roig is in relation to Panagra under the facts as the Board knows them to have existed in Panagra's case.

I, therefore, conclude, again asking the Board to approve the agreement making it immediately effective.

Mr. Lee: I want to ask one question, Mr. Chairman.

Obviously there are some nice questions here, legal questions, as to whether this should be a 401 or 408, and so on. Then there is the question of competition more or less.

What do you conceive to be the real issue in this case though?

Mr. Gesell: I think it is the public interest.

Public interest in terms of providing direct one plane service between the East Coast of the United States and the West Coast of South America, public interest in terms of all of the factors we have had mentioned concerning passenger convenience, concerning building up Panagra as a strong competitive unit, public interest under all of the different standards that the Act in Section 2 indicates—efficiency and economy of its operations, the coordination of air transportation—all of those things we talked about.

Mr. Lee: Do you agree with Mr. Friendly that the competition issue is relatively small and unimportant in this case, that there would be as much or more competition, and even so it is still small, it will be cooperative?

Mr. Gesell: I take it you are talking about competition between Pan American and Panagra?

[fol. 3745] Mr. Lee: Yes, that is what I had in mind.

Mr. Gesell: Because I think Mr. Friendly and I both agree that there is plenty of competition independent of that, but as to that issue, I quite agree that this agreement establishes no competition between Panagra and Pan American north of the Canal, but I say,—and I don't know whether Mr. Friendly touched on this or not—that this agreement enables Panagra better to compete with Pan American for the important Buenos Aires traffic, so to that extent, I think it even furthers the competitive picture.

Mr. Lee: It seems to be competitive and cooperative, if you understood Mr. Friendly, that passengers would have the choice of going down one side of South America and coming back the other.

Mr. Gesell: That is right. Of course, Mr. Lee, I am sure you will recall the statement of Justice Brandis, that the Sherman Act, and those who were concerned with competitive questions, never intended that the competitors couldn't contract in order that competition can exist.

Mr. Lee: But generally the competitive issue between Pan American and Panagra, it is your position and Mr. Friendly's that that is relatively small in this case.

Mr. Gesell: Yes. We say that what has happened with the development of air transportation, is that Panagra

is no longer to be looked upon as an independent regional competitor, along the lines of Mr. Burden's Book "The Struggle for Latin American Airways," for example, that that competition has been supplied by the Board and through Braniff and has been supplied by the great rise

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[fol. 3746] in foreign competition.

Mr. Lee: That is all, Mr. Chairman.

Mr. Branch: Mr. Gesell, I wonder if the public interest couldn't well lie in the question as to Panagra being an independent carrier, independent all the way from Buenos Aires to the United States.

I ask that question and make that observation because I also wonder if maybe some of the competition that Panagra now is facing might not have materialized had Panagra been an independent carrier from B.A. to the United States. If that is true, or if that is a fair assumption, then I am wondering if Panagra still remaining subordinate, and having no extension in its own right to the United States, might not still face some questions of whether there is further needed competition direct from the East Coast down the West Coast of South America through the Canal Zone. All of those questions it seems to me seem to hinge around whether this arrangement provides the competition necessary in the public interest.

I agree with you that this is a public interest question pure and simple, and I don't know—I am not sure in my own mind—but those points do arise in my mind—and I would like to have you, just for a minute or so, see if you could do anything to help me on the question of whether or not we don't still have a problem in competition or lack of competition.

Mr. Gesell: Well, I think I would approach it this way, Mr. Branch.

I would first urge upon you that you take a look at

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[fol. 3747] conditions as they exist today. We have had so much of that Panagra problem up before us so many times and so many different ideas have been advanced as to what its role is, that perhaps in the process some of us have solidified one idea or another as to what its role should be.

You will recall that in this proceeding, in the Latin American case, Braniff urged it be certified into this area because it said one of the advantageous things about that would be that it would bring Pan American and Panagra together in some kind of cooperative arrangement. Whether that was the factor or what the factors were that brought about this agreement it is difficult to say. It has been the product of that. It has been the product of the recognition of the impossibility of obtaining any approval from Pan American to come up as an independent carrier and it has been Panagra's recognition of the fact that its opportunities to compete are not necessarily only in the direction of Pan American, but that it has got to fight for its life against a rising flood of American and foreign competition.

Now, this agreement can be in the public interest, it seems to me clearly, even if it doesn't, in the opinion of the Board, provide sufficient competition in this area. It can be in the public interest because of its effect on coordinated transportation, aid and convenience to the passenger, economy and efficiency of operations, and these other headings.

Now, if the agreement is approved on that basis, and not because it is a means of creating additional compe-

[fol. 3748] tition—because that is only one of the tests—a test which perhaps can be over-emphasized—the Board can take a look at this picture and see whether there is enough competition.

Mr. Branch: Yes and you can't have the—

Mr. Gesell: I would suggest that they not do that until they see what the operations under this agreement show, but that would be for the Board to determine, and I don't think the case should be approached from the narrow question of competition alone. That is just one of the factors.

Mr. Branch: This doesn't change the competitive status between Pan American and Panagra?

Mr. Gesell: Except that it puts us in a better position to try to get some of their traffic at B.A. We can't do a thing without this agreement. We can't compete with

that one plane direct New York San Juan Buenos Aires route.

Mr. Branch: Now, on this lease arrangement, you bring your plane and your load passengers whatever it is up to the Canal Zone and under the charter contract you turn them over to Pan American and Pan American brings them over its certificated route from the Canal Zone to Miami?

Mr. Gesell: That is right.

Mr. Branch: And hopes to bring them to other places, as I understand it?

Mr. Gesell: We hope they will bring them to New York.

Mr. Branch: So you have no more control over it after it leaves the Canal Zone.

[fol. 3749] Now, what happens on these turn trips? Panagra's plane with its name on it and its pilots sitting in the cabin, fly to the United States. When they start back, on whose account are they flying, who sells the tickets going back, who controls the traffic when it leaves?

Mr. Gesell: Pan American under all those headings.

Mr. Branch: So then the competition isn't as clear as it would be, were there two different setups, two operating?

Mr. Gesell: Well, we have a common sales agent Pan American.

Now, Pan American as a common sales agent has taken on obligations under this contract not to discriminate against the East and West Coast traffic.

Mr. Branch: What do you expect to get in the way of traffic to B.A. from the United States?

Mr. Gesell: We expect to get, in traffic that doesn't itself indicate its own route, an equal share. You understand that most of the traffic indicates its own routing. A man says, "I want to go via Lima, I want to go via Santiago, I want to go to Rio," and that gets decided.

Mr. Branch: Oh, of course.

Mr. Gesell: But in the cases where the man is undetermined, we expect to get an equal share of the traffic, judging relative frequencies and matters of that sort.

Mr. Branch: But the tickets are still sold by Pan American?

Mr. Gesell: They are still sold by Pan American, but the agreement contains very detailed provisions to safeguard against any possibility of discrimination and in the

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[fol. 3750] event discrimination should occur, which Mr. Roig, and Panagra, and Grace, and every one are confident will not, because of the manner in which this agreement was entered into, there are provisions in this contract for discontinuing Pan American's sales agency.

Mr. Branch: There was a time not so long ago, was there not, when Panagra had the time and distance advantage between the Canal Zone and B.A., which perhaps it still has, but never was allowed to enjoy the benefits of such time and distance advantage.

Pan American brought the traffic down from the United States to the Canal Zone, and for a long long time it went around by way of Barranquilla and back up while your planes waited at the Canal Zone to take it down to B.A.

In recent years there have been some direct planes and the services have been increased. I don't know how many there are now, how many connections you get direct with Miami?

Mr. Gesell: We get connections for every service we run in there now.

Mr. Branch: For every service you run in?

Mr. Gesell: Yes.

Mr. Branch: So that you don't have the same problems you had a few years ago?

Mr. Gesell: I think it was more than a few years ago. I think it was many years ago.

Mr. Branch: It doesn't seem very long that I was trying to get Pan American to give you a direct service to the Canal Zone?

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[fol. 3751] Mr. Gesell: It was quite a ways back.

Mr. Branch: My questions are directed to the point—maybe it isn't a good one—this arrangement doesn't in any way clear up what might have been lack of competition which may be of interest to the public.

Mr. Gesell: If your decision is that none of these public interest questions which Mr Friendly and I have dis-

cussed here today are as important as launching Panagra as a wholly independent competitor of Pan American, if that is your decision. I can't conceive on the facts how it can be—but if that is your decision, this agreement doesn't accomplish that.

This agreement enables us far better to compete, even with Pan American, and certainly better to compete with Braniff and certainly better to compete with the foreigners. It encourages competition, but it doesn't put us in the position of an independent competitor to Pan American and I don't quite see how that role can be suggested in the light of Pan American owning 50 per cent of Panagra, and in the light of the close working arrangements we have had under the heading of traffic and maintenance and technology of all kinds.

I think it may be an unrealistic approach.

Mr. Branch: So your contention and Mr. Friendly's contention is that regardless of the question of competition, this arrangement does provide something in the public interest and ought to be considered on that basis. If there is any additional competition needed because Panagra is still an arm in the branch of Pan American then

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[fol. 3752] the Board can consider that.

Mr. Gesell: The Board can consider that.

Mr. Branch: The thing before us is the matter of improving the existing condition.

Mr. Gesell: That is right and we would hope that before the Board embarked on considering the competitive situation any further, it would do two things: it would wait a reasonable time to see what happens under this agreement, and it would wait a reasonable time to see what the traffic and competition is in this highly growingly competitive area.

We think we are going to have, Mr. Branch, in just plain fact, we think we are going to have a situation where we, if we were operating between New York and Washington, we will have 41 competitors, that is what we think we are up against. That is the simplest way I can say it.

Judging the traffic, making fullest allowance for the potentials, putting it against the situation which exists

right now between Washington and New York, we think we will have the equivalent of 41 independent competitive airlines, and we think that is pretty hard competition.

Mr. Roig's testimony is explicit and detailed on that and I trust the Board will have an opportunity to glance at it.

Mr. Branch: Thank you.

Mr. Ryan: Mr. Gesell, there would be just as much competition between the United States and South America, through this agreement, as Pan American may permit, will there not?

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[fol. 3753]. Mr. Gesell: I don't understand that question.

Mr. Ryan: I understood you to say Pan American will have control of all of the solicitation agencies facilities within the United States. If Pan American wants to, it could divert traffic, could it not?

Mr. Gesell: No. No it cannot.

Mr. Ryan: Why?

Mr. Gesell: If it diverts traffic it violates the contract.

Mr. Ryan: I mean to say you have the power to divert traffic?

Mr. Gesell: I think it hasn't the legal power. If it diverts the traffic it violates the contract. We can take them immediately to arbitration under this agreement. They cannot, under this agreement, prevent Panagra from taking them to arbitration and if the arbitrator finds that they have discriminated they lose the sales agency.

So, I say, it is unrealistic to say they can discriminate.

Mr. Ryan: How do you know whether or not there has been any discrimination, if you do not have ticket agents alongside the Pan American ticket agents in the United States?

Mr. Gesell: Panagra has been accustomed to watching Pan American in the light of Pan American's sales agency activities.

We have statistics as to what is happening to the traffic. We have many friends who travel over Pan American as well as Panagra. We will have under this arrangement full access and close relations to the actual people selling

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[fol. 3754] the tickets. You understand that in these sales agencies a man, while a Pan American employee, will be designated to watch particularly for Panagra's business just as they will designate a man to watch the North Atlantic or a man to watch the South Pacific, and we will have much opportunity and many ways of knowing whether there is discrimination and if there is discrimination Panagra will take forward the rights it has under the contract, and the matter will be resolved.

I don't think that is going to happen.

Mr. Ryan: If this agreement is approved, and Pan American lives up to the agreement in that respect, there will develop a friendly competition between two branches of the Pan American system, insofar as this operation is concerned?

Mr. Gesell: This agreement doesn't quite reach that stage. If you are talking by analogy, I think it even goes too far. Panagra does not become a branch of the Pan American system. It has its independent management, it has its independent Board of Directors, it continues as a separate identifiable carrier under the management of a different person—W. R. Grace and Company.

Mr. Ryan: I didn't mean that. I meant insofar as this route is concerned, insofar as this operation is concerned, there will be a kind of friendly competition between two branches of the same system.

I am not implying by that question that I think there should be competition between two branches of the system, but I am saying, as a practical fact, it will be a kind

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[fol. 3755] of such competition as will exist will be a friendly competition between two branches of the same office, will it not?

Mr. Gesell: I think it will be competition, and I think it will be friendly.

Mr. Ryan: Let's say cooperation.

Mr. Gesell: Perhaps I haven't adequately made clear to you that Panagra will have its own traffic generating organization as it has today. Not only some staff in the United States, but a tremendous organization in South

America too, and the competition isn't going to be simply the competition where all traffic is sold by a single sales agent.

There is going to be real competition. We are going to sell people on the idea that Quito is a lot better place to go than Rio de Janeiro, that the fishing at Santiago is a great deal better than the fishing at some point on Pan American's route wherever it is. There is going to be real competition.

Mr. Branch: But the people in South America know that, don't they? It is the people up here you want to tell about it.

Mr. Gesell: That is right and we are going to tell them.

Mr. Branch: Do you have sales agencies in the United States?

Mr. Gesell: We have under this agreement a sales agency in the Chrysler Building, with an independent advertising program, with independent persons who call upon the traffic agents.

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[fol. 3756] Mr. Branch: Where do they sell?

Mr. Gesell: They sell in the United States.

Mr. Branch: Where do they advertise?

Mr. Gesell: They advertise in Time Magazine, and all the other periodicals. I am sure you must have seen some of those advertisements.

Mr. Branch: I was just trying to remember.

Mr. Gesell: There has been an extremely active program ever since the war ended to generate that traffic and I am sure if you glanced at any of the periodical currently in your office you will see it, and our Panagra man go and call upon the PAA sales agency setup. You see PAA sales agency is of two kinds. They have got Pan American offices, main coordinating offices, but they have a great mass of agents—people in hotels, people in the steamship business, people in the railroad business, people in travel agencies, and we are in direct contact with those people. We are sending them literature. We are calling upon them. We are urging them to sell Panagra traffic. We are pointing out the advantages of the Panagra route and we are trying to generate traffic in the United States. We are doing it.

Mr. Branch: Under this contract, as I understand you, you are not permitted to sell tickets. They are all handled by Pan American, but you are permitted to have agents who are advertising and trying to convince people that you have something to offer them, and they should go your way?

Mr. Gesell: That is right.

Mr. Branch: I suppose you could have such an educa-

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[fol. 3757] tional agency in Miami as well as in New York?

Mr. Gesell: Yes, surely.

Mr. Branch: And any other place you wish?

Mr. Gesell: Surely. There is nothing in this contract that prohibits that in any way. It is a centralized Panagra Company-wide program that needs some central direction, and it has been in New York for that reason. We have travel films, we are showing them to the agents. We have a very active program.

Chairman Landis: By the way, when I go down here to Union Station and ask for a ticket to New York, do I get it over the Pennsylvania or the B and O?

Mr. Gesell: You get a separate ticket, I think.

Chairman Landis: I don't know. I would like to know.

Mr. Gesell: They ask you which way you are going and you get a separate ticket.

Chairman Landis: Suppose I say "Which way is the best?" what answer would I get?

Mr. Gesell: It depends on the question of which is best—you would probably have to talk to the Pennsylvania man and the B and O man.

Chairman Landis: Who is the man I talk to. Is he a Pennsylvania man?

Mr. Gesell: I understand he is a Pennsylvania man.

Chairman Landis: It is the Union Station.

Mr. LaRoy: It is the Washington Terminal.

Mr. Gesell: I don't know who he is. Maybe he is an employee of the station.

Chairman Landis: You do have separate ticket offices

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[fol. 3758] in Buenos Aires, don't you?

Mr. Gesell: Oh, yes. Well, in Buenos Aires we have a combination agency with Pan American that has existed there for a long time.

Chairman Landis: Today?

Mr. Gesell: Today. We have separate ticket offices all along the West Coast, at all our points.

Chairman Landis: But this agreement, as I remember it, does not extend the point sales agency idea—that is, not the joint sales—but the Pan American sales agency idea, to points other than points in the Continental United States. Is that all?

Mr. Gesell: Well, it continues it in the United States and does not extend it to South America at all. You see it has always been in the United States. That has always been off-line for Panagra, but Panagra has its own organization.

Chairman Landis: So far as competition between Pan American and Panagra is concerned, this agreement does, according to your contentions, improve the service from Miami and Eastern points to Buenos Aires, so far as Panagra is concerned?

Mr. Gesell: That is right.

Chairman Landis: And that improved service you contend enables you to compete more effectively with Pan American than you do today?

Mr. Gesell: That is right. For the common point traffic.

Chairman Landis: For the common point traffic?

Mr. Gesell: And it also enables us to attract people

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[fol. 3759] better to non-common points. A man would be more likely to go to Santiago to fish than if he has to change.

Chairman Landis: I was looking at it from the competitive standpoint. How else does it improve your capacity to compete with Pan American than that?

Mr. Gesell: Other than to the common points.

Chairman Landis: No. To the common points.

Mr. Gesell: It enables us better to compete for the Buenos Aires traffic by reason of the fact that we have under the arrangement a direct one plane, faster service, but it doesn't affect the solicitation of traffic at Buenos Aires.

Chairman Landis: If I may make my point I think it is this: Admitting the efficacy of the agreement to increase your capacity to compete with Pan American, does it at the same time reduce your willingness to compete because of the fact that solicitation along this line in the United States is in the hands—

Mr. Gesell: I don't think so at all.

Chairman Landis: That is the point.

Mr. Gesell: I don't think so at all. I see no reason at all why we should do that.

Chairman Landis: That is the argument against that.

Mr. Gesell: We have developed quite a long ways since the ancient and hoary days of 779. We have quite an independent set up and satisfactory set up in the United States and we are developing a business to Buenos Aires via the West Coast and anything that will help us get our traffic there more efficiently helps us in that drive.

[fol. 3760] and the notion that Pan American is also selling tickets doesn't affect that.

The competition still is there. There is nothing in this agreement that diminishes the situation at all. In fact, I think it approves it on the solicitation level even.

Mr. Branch: If you are in the United States and free to act independently you ought to get the lions share of that business, oughtn't you, from B.A. to the United States, instead of just impartial provision?

Mr. Gesell: Well, Mr. Branch, I don't know. Let's see where we are. Are we talking with Panagra stopping at Miami.

Mr. Branch: I am talking with Panagra coming to the United States, wherever it may be. Whether it is New York or anywhere else?

Mr. Gesell: It is a tremendous difference. The traffic generates around the New York area. We think as long as Pan American has this route here (indicating on map) down through San Juan direct to New York, even if Panagra's planes come under this agreement to Miami under Pan American's route, that we probably won't get the lion's share of the business because we think—

Mr. Branch: You think they will be picked up at New York?

Mr. Gesell: Yes, and we think it is a better service. We think it is a lot better service.

Mr. Branch: I think maybe you are right.

Mr. Gesell: The traffic isn't down here but if this route here is filled in between New York and Miami through

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[Vol. 3761] the domestic case and if this agreement becomes operative so we can fly sleeper planes from New York to Buenos Aires we are going to give them a hell of a good run for their money and probably beat them because we are going to have a faster service and an equally efficient service and I should think we would have more than they do of the traffic.

Mr. Branch: But they sell the tickets at more than you do and give you an impartial livision?

Mr. Gesell: No. You haven't read the contract.

Mr. Branch: I thought you said that?

Mr. Gesell: I said the contract speaks against discrimination, and you, I believe, have mentally said an equal share of the business. The contract says they must develop Panagra traffic in the same way as they develop their own without discrimination which means that if they have the advantage we have the advantage by way of routes and we should get the traffic.

Mr. Branch: Do you expect to do that?

Mr. Gesell: I think if we get to New York we will have more of the Buenos Aires traffic than they do.

Mr. Ryan: Is this agreement responsive to that suggestion in the Latin American aggreement that Panagra—I hate to quote it because I don't recall just what it does say—I wish you would check on it—that Panagra should be brought to the United States.

Mr. Gesell: I think the Board said that they would welcome the filing of an application to enable the determination of whether Panagra should come to Miami, New York or some East Coast point. They were speaking in terms of a route application. This is not a route application.

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[fol. 3762] Mr. Ryan: I think it is responsive to the substance of the Board's thinking on that.

Mr. Gesell: I think the Board must determine that, Mr. Ryan, not I, but I think it is responsive to the mandate, the spirit of the mandate and the problem that the Board was concerned with. I think the Board was anxious to fill this gap—a direct one-plane service between the East Coast of the United States and the West Coast of South America. I think this fills it and I think it does it efficiently.

Mr. Ryan: Earlier you said something about Braniff having been put in in the Latin American decision, had created a competition, and that this was to enable Panagra better to meet that competition.

Braniff operates and would take care of the traffic competitively from Houston and New Orleans but Braniff doesn't extend to the East Coast of the United States. Therefore, would it be necessary, in order to provide a balance of competition between Braniff and the Pan American-Panagra system, to extend Braniff to the East Coast of the United States from the Canal Zone.

Mr. Gesell: Well, Braniff has a little more than a route from Houston. Braniff has a big system as of course you are aware all through the central part.

Mr. Ryan: If I were in New York I wouldn't want to go to Chicago and then take Braniff.

Mr. Gesell: Probably not. I think we are talking there about, roughly, 40 per cent and they would have a direct one-plane service there. One way to balance that is to

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[fol. 3763] give us a direct one-plane service to a bulk of the traffic also.

Mr. Ryan: To Houston?

Mr. Gesell: Even though it is not the same traffic. Even though it is not the same but I think we all have in mind and cannot get out of our mind the fact that the Board brought Braniff across here, [indicating on map] out of its way to Havana, and brought National down to Havana, and we can't get out of our mind the fact that eventually we are going to be confronted with direct one-plane competition by Braniff throughout this whole area.

Now, Braniff, of course, has no such plan indicated in the record. Mr. Schneider has been careful to point out that he knows of no such thing but we think it is inevitable. We think when Braniff becomes familiar with Latin American problems—and I must say they are getting familiar very fast, with their survey flights and what not—we think they will come to it. But we also have one-plane direct competition from the foreign airlines. It is not alone a question of Braniff. We are confronted with direct one-plane competition by BOAC.

I hope if you will go by the Mayflower you will notice the offices they have. Somebody says that is speculative competition. I can't understand. And we are going to have direct one-plane competition from the Chileans, from International, from Peruvian International Airways. We have it in the northern part of our route both from TACA and Avianca now and I imagine there will be others.

Mr. Ryan: So you interpret this agreement then in the

[fol. 3764] light of the Latin American decision as an answer to the Braniff competition plus the foreign competition to which you would be subjected which, as I understand your argument, changes somewhat the decision from what it existed prior to the Latin American decision.

Mr. Gesell: That is right.

Mr. Ryan: In other words, now you are trying to fund your resources and trying to meet the competition of Braniff and the foreigners, and sustaining the public interest from the standpoint of a need for that kind of competition to South America rather than a competition between pre-existing carriers to South America. That is really your position, I think.

Mr. Gesell: Precisely except, as you stated it, you put it, I believe, in a negative sense. We think we are doing something affirmative here quite apart from this competition thing. We think we are creating a direct one plane service to fill this gap, and that it is needed.

Mr. Ryan: That is right but also there would be a public interest in strengthening the Pan American-Panagra system would there not, by putting it in a better position to meet the competition that has been put down there by the United States and by foreign air carriers?

Mr. Gesell: That is our view and we think that competition is far greater than anything we have had so far today.

Chairman Landis: The extent of competition of Pan American and Panagra have been subjected I mean Pan American flag competition—has always been within the

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[fol. 3765] control of the Board, hasn't it?

Mr. Gesell: Even under the mail pay contract days, as a practical matter, it was difficult to operate without the mail contracts and the award of those contracts, and the control of the Post Office Department.

Chairman Landis: So that the government has always controlled the extent of competition?

Mr. Gesell: Yes.

Chairman Landis: Except insofar as Panagra and Pan American may not have competed with each other because of Pan American's 50 per cent control of Panagra.

Mr. Gesell: Yes, that is true. Of course, I think we have an American form of competition now, Mr. Chairman, that I am not sure the government can control, and I speak of the pseudo foreign competition.

We are confronting now and we are going to more and more, American competition in this area that I think nobody can control. We are confronted with Peruvian International Airways, for example, with essentially American and Canadian competition, and the Board I doubt has much control over that, nor the President. Peru determines that General George and his associates are a Peruvian carrier, and I think we are into an area where we are going to meet American competition, even in spite of the Board's efforts.

Chairman Landis: What is to stop Panair do Brasil being designated as the Brazilian carrier up to New York?

Mr. Gesell: Nothing at all.

Chairman Landis: Nothing at all.

Mr. Gesell: Nothing at all. There is in the minds of

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[fol. 3766] some of us, however

Chairman Landis: It may be that your control over Panair will stop it coming into competition directly with Pan American.

Mr. Gesell: We have our TACA problem too.

Chairman Landis: But it is not all white?

Mr. Gesell: It is not all white, no. I don't intend to make it that.

Chairman Landis: That is all I have.

Mr. La Roe.

Mr. LaRoe: I am ready, sir.

ARGUMENT OF WILBUR LAROE

PORT OF NEW YORK AUTHORITY

Mr. La Roe: May it please the Board, the Port Authority was permitted to appear as friends of the court here after two intervening petitions had been denied.

Under those circumstances I do not feel it would be right for me to present the same kind of argument that I would make if I had been permitted to intervene. I feel that one who is permitted to intervene as friend of the court has a certain obligation to deal with principles and to try to be helpful to the Board rather than pleasing his special case.

For that reason I shall make no further reference to New York in my argument. Why is this little case of such tremendous importance. Why are the eyes of the whole aviation industry on this case?

The answer, I think, lies in the fact that there is a very important principle involved here. Last month on

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[fol. 3767]

ARGUMENT OF HUBERT A. SCHNEIDER

BRANIFF AIRWAYS

Chairman Landis: We will have to adjourn in ten minutes. Can you fix your argument accordingly?

Mr. Schneider: If it would be of convenience to the Board I would like to go straight through but if the Board would like to have me stop in ten minutes I will try to find a good breaking point.

Chairman Landis: We would like to make use of that ten minutes if at possible.

Mr. Schneider: Let me say this is not an interchange. There seems to be some confusion there and the best authority I can find you on that statement is Mr. Roig himself as well as counsel for both of the parties. There was much conversation during these hearings as to whether this agreement would be better or worse than an interchange or why an interchange hadn't been worked out and Mr. Roig vehemently stated that he had no interest in an interchange, that that had been suggested to him many years ago by Pan American and he had no interest in Pan American's planes going over his routes.

He wanted his planes to go north and his traffic to go north. I believe Mr. Gesell suggested, "Let's avoid the use of the word interchange. It is a one way street. Panagra's planes go north. This not an interchange."

In the time allotted to me I can not cover all the points involved in this very intricate contract. I suppose the time has now come for some of us to tell you what we think is wrong with it and why it is not in the public interest. Now, the parties here asked you substantially to confine your

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[fol. 3768] examination to the four-corners of this agreement, look within the four corners as to whether it is in the public interest. They don't want you to go outside at all except perhaps to look at contract B in deciding whether contract "A" is good.

Now, I say that you can't do that. You can't determine whether contract "A" is in the public interest without going outside of it. You have got to decide a number of other questions. You have got to decide first:

Who are the parties that have made this question?

What is the likelihood of their working out some of the very complicated provisions here?

What is the background of this contract?

What produced it?

That is what I would like to do in part of the time I have to review the history of that contract and what brought it into being because I don't agree that you can look only at the four corners of this instrument and decide the ques-

tion as posed by the statute under 412. You will recall that back in 1940 when Pan American sought entry into New Orleans, Mr. Roig, then president and still president of Panagra, became quite disturbed about that development. He thought an extension from Guatemala to New Orleans and the Canal Zone would foreclose an entry of Panagra in the future which he was then trying to get and he asked for authority of the Board of Directors to file application and was turned down.

The Pan American Directors on Panagra's Board, didn't see eye to eye with him or with the other directors on this point and they refused to sanction the filing of any such application by Panagra. This gave rise to one of the most

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[fol. 3769] bitter controversies that this industry has yet had. Pan American refused to sanction any action by Panagra which it conceived to be adverse to its own best interests. Its directors refused to attend meetings called to consider this very question and they refused to consider Panagra's welfare divorced from Pan American.

Numerous attempts to solve this difficulty were unsuccessful with the result that Grace was finally compelled to file bitter complaints and various documents with this Board and Pan American filed numerous bitter answers.

Efforts by the Civil Aeronautics Board to reconcile the outstanding differences met with no success. Pan American was adamant in its refusal to permit Panagra to come to the United States. You know that. This resulted in the now famous 779 proceeding in which the Board on its own initiative and without any application from Panagra sought to inquire into the question and into the advisability of whether Panagra should be permitted in its own name to come to some point in the United States.

Mr. Ryan: Required to come to some point. Wasn't it? Wasn't it mandatory?

Mr. Schneider: I believe you were looking at the question from whether the public convenience and necessity under section 404, I believe, the amendment provision of the Act, required the extension of Panagra to the United States.

Now, the full record of that proceeding, the 779 proceeding, has been incorporated by reference into this proceeding. True, over the objections of Mr. Gesell and Mr. Friendly. But we felt that we had to have the whole picture to deter-

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[fol. 3770] mine the question here, so you do now have it. The Examiner admitted it. Now, I haven't any intention to review all of 779. I wasn't in that case. I haven't any where near the familiarity with it that you have, but I do say that you should have it in mind, and the things that were said and the things that went on there are part and parcel of what is going on here today.

Now, that record probably involved as much mutual recrimination and charge and counter charge, or what perhaps might be called aeronautical billingsgate, as any case you have ever had and today they say, "All is light, peace on earth, good will toward men, it is Christmas, we are happy".

Chairman Landis: Sometimes they come.

Mr. Schneider: I intend to show you that they have not yet arrived at that point, sir. I say that record contains in it as unsavory a episode in air transportation as I hope I or any of us will ever see and if this were the answer I would welcome it.

Personally, I have always been sorry that in the 779 case you didn't decide the case on the merits and that you felt compelled to go off on a procedurely point. Apparently, you were of the same minds if I interpret your decision in the Latin American case correctly.

However, the Board's decision holding that it lacked jurisdiction to extend Panagra to the United States did not end the controversy. Grace appealed the Board's decision and met with some degree of success in the second circuit in New York and there also the Court recognized the unhealthy situation existing between those parties but

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[fol. 3771] the fight continued. Pan American appealed the decision of the Second Circuit to the Supreme Court of the United States and apparently it was at that time determined that only the highest court in this land should tell it how to conduct its investment in Panagra and whether or not what it was doing was in the best interests of the public.

Only the Supreme Court should tell them what to do on that, not you. Both parties at this time were beyond reconciliation. Both were determined that the other was guilty of improper motives. Each was determined to force his will upon the other. And that is where the matter stood last May. That is history and it is history contained in the records of 779 and in the records made up in the second Circuit and presumably which would have been made in the Supreme Court, but in May of this year, something happened.

You issued your decision in the Latin American case and your decision brought about something which neither party had apparently expected and which threw as much confusion into Pan American's camp as it did into Panagra's camp.

Suddenly, Pan American and Grace were confronted with another American line having been extended into South America over the top of their company, Panagra. Each had felt himself so secure in his own domain in South America that this contingency had apparently never occurred to them.

While they had been grappling on the mat over the United States extension for Panagra, this Board with the approval of the president, extended Braniff into South America and it is nice for me to speculate whether this Board would have extended Braniff into South America or whether the

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[fol. 3772] president would have told you to put a second line into South America had these parties presented at that time such an agreement as they presented after the fact.

Now, Mr. Friendly, and Mr. Gesell would have you believe that as of the date of the Latin American decision, or shortly thereafter, both parties decided to lay aside their differences and animosities and that they then took the pledge, the pledge serving the public interest.

I believe, however, that a fair interpretation of Mr. Roig's very frank testimony—and let me say to you that never has been a franker witness that appear on this stand before this Board than Mr. Roig—would lead you to the simple conclusion that the fact that the Braniff extension scared

them out of their wits and forced them to abandon their suicidal and mutually destructive struggle in the fact of a common foe. It was no sudden realization of its obligations to the public interest or to the travelling public over Panagra's routes which led Panagra into this agreement; nor was it any change in the course or objective which led Grace to abandon its efforts to get Panagra into the United States in its own name. It was the extension of Braniff into South America. Consider Mr. Roig's testimony.

He stated, without any reluctance at all, that almost immediately after the Latin American decision he called a meeting of the Board of Directors of Panagra to consider this new development, particularly in the light of your language in the Latin American decision that you mentioned, Mr. Ryan, as follows:

"In view of the facts above outlined", in lieu of which

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[fol. 3773] you review the unhealthy situation, "we feel that the joint owners should in the public interest cooperatively enable Panagra to apply for access to the east coast of the United States."

Now, note especially that your decision said, "enable Panagra to apply", and there is nothing in that language about an agreement to bring Panagra's traffic to the United States over Pan American's route.

Chairman Landis: I am afraid I will have to stop you here. We will reconvene at 3 p.m.

(Whereupon, at 12:50 P.M. a recess was taken until 3 p.m. the same day.)

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[fol. 3774]

3 p.m.

AFTERNOON SESSION

Chairman Landis: All right.

You may resume, Mr. Schneider.

ARGUMENT OF HUBERT A SCHNEIDER

BRANIFF AIRWAYS (Continued).

Mr. Schneider: Before we adjourned at the noon recess I had been reviewing the history of controversy between Pan American and Grace and I brought you up to the point of the Latin American decision and was about to tell you what this record shows transpired after the Latin American decision and I told you that Mr. Roig, the President of Panagra called a special meeting of his Board of Directors to consider the Latin American decision and particularly the language in the decision which I read to you.

Now, Mr. Roig had hoped, I am sure to use the language I quoted to bring Pan American around to his point of view—that is, the Grace point of view. However, as it turned out he was doomed to disappointment.

Before coming to the Panagra Board meeting, the Pan American directors on Panagra decided to check in with their own Board to see how they should vote at this forthcoming Panagra meeting.

As the record in this case shows, Pan American instructed its directors on Panagra to continue to withhold approval of Panagra's filing an application for entry into the United States in its own name.

Now, mind you, Pan American took this position right after your decision in the Latin American case and in the

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[fol. 3775] face of the very clear, I think, and unmistakable language that I quoted to you.

I would like to read a few excerpts to you from the Minutes of the Board of Directors meeting of Pan American Grace which Mr. Roig called right after the Latin American decision. I think that will shed some light on just how this agreement came about. This meeting was called for the

fifth of June 1946 very soon after your decision and after a number of routine matters to be taken up by the Board, Mr. Roig brought up the question of the Latin American decision.

It says here: "The President referred to the decision of the Civil Aeronautics Board in the Latin American route case, Docket 525 and he referred specifically to the following statements in the Board's decision." and there it set forth in the minutes the same thing that I read to you.

"After that Mr. Roig stated that this meeting had been called to enable the joint owners cooperatively to enable Panagra to apply for access to the East Coast of the United States in accordance with the said opinion."

Thereupon, Mr. Garni, a Director of Grace offered a resolution to implement Mr. Roig's desires.

"Mr. Garni stated, in support of his resolution that it was the desire of W. R. Grace and Company to comply with the decision of the CAB and the President of the United States and that the resolution he was offering and which the Grace directors were prepared to vote for was intended to implement such compliance. He stated that the most satisfactory route from the point of view of the public

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[fol. 3776] interest and of Panagra, which would comply with the foregoing should be from Balboa to New York via Havana, Cuba and or Miami, Florida, as proposed in the resolution and he recommended that we apply for that route." But he indicated they might be able to work out some other route.

Thereupon, Mr. Dean, one of the Pan American directors on the Board of Panagra stated that the subject matter of Mr. Garni's resolution had been discussed at great length at a meeting of the Board of Directors of Pan American Airways Corporation held on the previous day and that after such discussion the Pan American directors had unanimously adopted the following resolution which I would like to read:

"Resolved that in the opinion of this Board, the Board of Pan American Corporation, an extension of Pan American Grace Airways from Balboa to Miami or New York would not be in the best interests of Pan American Grace

Airways and likewise would not be in the best interests of this corporation, meaning Pan American, or its stockholders, and that consequently, the representatives of this corporation on the Board of Pan American Grace Airways, be instructed not to take action authorizing an application for such an extension by that company."

Now, you will note that there is nothing in that resolution about the public interest which Mr. Friendly and Mr. Gesell were talking about and there is nothing there about dumping passengers at Balboa.

Mr. Ryan: What is the date of that?

Mr. Schneider: That is the fifth of June of this year.

Chairman Landis: Would you read that again?

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[fol. 3777] Mr. Schneider: The resolution in its entirety?

Chairman Landis: That portion you read.

Mr. Schneider: "Resolved that in the opinion of this Board an extension of Pan American Grace Airways, Inc. from Balboa to Miami or New York would not be in the best interests of Pan American Grace Airways Inc. and likewise would not be in the best interests of this corporation or its stockholders, and that consequently the representatives of this corporation on the Board of Directors of Pan American Grace Airways be instructed not to take action authorizing an application for such an extension by that company."

Now, this resolution talks about the best interests of Panagra and the best interests of Panagra and it is apparent that there was no change of heart on the part of Pan American after the Latin American decision insofar as permitting Panagra to come to the United States in its own name.

Now, I say that this resolution displays the same arrogant domination of Panagra and the same complete disregard of the wishes of this government which Pan American has always displayed on this question.

Now, reference was made this morning about fiduciary relationships and I don't want to debate with Mr. Friendly or with Mr. Gesell on that subject but I would like to raise the question of whether the Pan American directors on Panagra don't have some fiduciary relationship to Pan

agra separate and apart from the corporation which sends them there as their nominees.

Mr. Dean, after offering that resolution went on to state

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[fol. 3778] that as a matter of record he wished to make it clear that in the opinion of Pan American the portions of the CAB decision which were quoted by Mr. Roig had not been approved by the President and that the President had merely approved the Board order and the certificates.

Mr. Dean on behalf of Pan American directors and Pan American Airways, Inc. urged that consideration be given to an arrangement whereby Panagra's planes might operate over one or more of Pan American's routes north of the Canal Zone.

Mr. Garni's resolution was put to a vote and it failed of passage on a four to four split.

Then the discussion went on of Mr. Dean's proposal relating to Panagra's planes flying north and the Grace directors said they would like to think it over and there the meeting adjourned.

Now, from a reading of these minutes it is apparent that Mr. Roig didn't get from Pan American what he had hoped for.

Instead he was turned down again, but this time the matter wasn't dropped at that point because Pan American this time offered to work out with Panagra an agreement along the lines of the present contract.

Remember that they never offered such a contract before and that Grace had never asked for such a contract before. The whole history of these two companies shows nothing of a contract of this nature. It does show an interchange proposed by Pan American many years ago but vehemently turned down by Mr. Roig at that time.

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[fol. 3779] Mr. Roig stated quite frankly to Pan American that he would not go along with any such agreement as this unless he saw it spelled out in detail first. He had too much experience, he said, with Pan American to agree on something in principle without seeing the details worked out first.

The details were worked out by Mr. Gesell and Mr. Friendly and the agreement was submitted and approved.

Now, let me say this for Mr. Roig. He did a magnificent job at the hearing trying to sell this agreement and I am sure that he is convinced that it was the best deal that he could get under the circumstances but let me repeat "under the circumstances."

Obviously Mr. Roig was not going to admit at the hearing that there was anything wrong with the agreement.

As he said at the hearing he had been beating his head against a stone wall for years trying to get Panagra into the states in its own name but without any success but no one will convince me that Mr. Roig's attitude toward this agreement isn't to a great extent colored by the realization that this is all he can get out of Pan American.

Now, to support that statement, let me read to you one or two questions.

Mr. Lee: Mr. Schneider, excuse me, my question may come out of the fact that I missed some of the first of your oral argument. What is it you are trying to prove? The attitude? And if so, does that apply to this, and how?

Mr. Schneider: The way I led into it was this way, Mr. Lee: I stated that Mr. Gesell and Mr. Friendly were contending that the public interest question that is involved

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[fol. 3780] here had been determined within the four corners of this instrument and I contend that that is not so, that you must go beyond the instrument, itself, to take along at the circumstances which gave rise to the agreement, the parties to the agreement, the provisions of the agreement and the likelihood of their being worked out in a harmonious and satisfactory way in the light of this background because when you look at the agreement you will find that it isn't a self executing document.

I want to cover that later in my argument but I had been painting a picture of the history of this thing against which the agreement must be measured as to whether it is in the public interest.

At least, that is my contention that it must be construed in that light.

This is on page 476 of the transcript, when Mr. Hickey of the Department of Justice was cross examining Mr. Roig.

"Q. In other words, your belief in competition amounts to this, that you are willing to sacrifice a competitive opportunity for the sake of getting Panagra's line extended to the United States, isn't that correct?"

Mr. Gesell interpolated there that this was argumentative.

"A. That is not correct, Mr. Hickey and I really don't feel it is a fair question. I don't consider that I am sacrificing something that I never had, that I have worn my hair grey and my bodies bare trying to get a great deal of the effort being not only with Pan American Airways but with the Civil Aeronautics Board and

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[fol. 3781] the United States Courts, and have been at every stage of the game refused.

"Now, how could you say in the light of my performance and my efforts to get this route, that I am now prepared to sacrifice it for what you say in eliminating competition. I can't agree with that. I consider it an absolutely unfair conclusion."

A little bit farther down the page on 477 Mr. Hickey asked this question:

"Q. I quite agree that your efforts have been vigorous and that you have made every effort to obtain it. I am merely stating that what you have done now you have merely precluded yourself from making the effort that you have made so arduously in the past. That is a fact, is it not?"

"A. I expect I have precluded myself for the time being but there comes a time when you just can't bang your head against a stone wall forever. When everybody who has the authority to give you what you want refuses to give it to you, you have to do something to improve the competitive position in the rest of your picture."

That is a very frank statement.

In other words, Mr. Roig was willing to take a bird in the hand rather than two in the bush, if I may be permitted

to it, that figure of speech, which doesn't add to the dignity of the Supreme Court.

The Braniff threat was immediate. The Supreme Court remedy was remote and it depended on subsequent favorable action by you.

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[fol. 3782] Mr. Roig faced a dilemma and I can sympathize with his position but the "voluntary" solution of a dilemma does not automatically carry with it the label of public interest. That has to be earned.

Now, as I have stated before, you can't divorce this contract from its background. They go hand in hand. You must remember that those who now profess to be offering this contract as a public interest solution were engaged in a bitter struggle only yesterday and will be again tomorrow if you disapprove this contract.

This contract is full of provisions which are left to future negotiations and agreements by the parties.

I ask you if you have any assurance when you read this contract, in the light of this background, any assurance that these parties can agree on these points, points which are vital to the satisfactory performance of the contract.

The contract as I have said is not self-executing, it is pregnant with possible differences of opinion, and the arbitration provisions of the contract are no solution.

Arbitration was available to the parties in the past, it was not used or successful.

Public Counsel will probably spend a great deal of time discussing the detailed provisions of the contract and I haven't time to go into them except to mention only a few.

In my opinion this agreement by its terms will place Panagra in the position of engaging in air transportation between Balboa and Miami without possessing a certificate covering it. If this type of a contract is approved without

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[fol. 3783] proceeding under Section 401 of the Act then I am afraid that the route certificate concept of Section 401 goes out of the window.

Now, the question was raised this morning as to who is holding out to the public, who is the party holding out as a common carrier to the public, and Mr. Gesell said it is obviously Pan American.

Well, I can't agree with him. Panagra's name is on the airplane, Panagra's crews are in the airplane, Panagra's insignia is worn on the uniforms of the hostesses and the pilots. The whole show is a Panagra show except there is a sign in the airplane which says, "This plane is being operated by Pan American" and there also is in the vestibule of the Carlton Hotel, as you go into it, a sign that says, "This hotel has a liquor license" and I doubt if you have ever seen it and I doubt if any of you ever take the trouble saying that "This airplane pursuant to so and so of the Civil Aeronautics Act is being operated by Pan American Airways."

Panagra's name on the contract is to be displayed on the counters of the United States. The whole agreement contemplates that the public shall think of this as Panagra. I say that comes as close as you can get to a 401 case.

Chairman Landis: That would be evidence, wouldn't it, that Panagra was really competing with Pan American.

Mr. Schneider: That would, yes.

Chairman Landis: I thought the argument was that there wasn't any competition?

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[fol. 3784] Mr. Schneider: That is the external part of it. Then we come to who sells the tickets over this pseudo Panagra operation. I will come to that as to who sells the tickets. Because the public doesn't buy the tickets on the basis of the airplane. They buy the ticket first and then see the airplane, I think.

I also believe that this contract presents Section 408 problems which neither Pan American nor Panagra have presented for your approval.

If the Board can get around the section 401 problem and find that no new air transportation is involved then it seems to me that you have to hold that the contract involves a lease of a substantial part of Panagra's properties, and that is a 408 problem.

That requires approval under Section 408, and no application for approval of such a lease of a substantial portion of Panagra's properties has been filed with you. But the big thing in the problem that bothers me, and this goes to the heart of the whole thing and this, I think should

bother you, is the provision in Section 13 of this contract whereby the parties agree to negotiate in the future a pooling agreement for United States Buenos Aires and United States Montevideo traffic.

That is Section 13 of the contract.

You will recall that Pan American and Panagra are now on paper at least to compete for traffic between these points in South America and the United States.

This competition which because of the San Juan cut off now favors Pan American will become more acute if Pan

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[fol. 3785] agra is extended to Miami or New York or it should become so.

This provision for a future pooling agreement in my opinion fowls the whole contract because it reveals the type of economic thinking these parties are capable of in this day and age of competition, and it indicates to me how they will conduct themselves under this contract if that kind of provision is in there.

It is true, you will get a chance to look at that, you will get a chance to turn it down but doesn't it give you some idea of how the rest of the contract will be performed.

Talking about negotiating a pooling agreement whereby they will arbitrarily allocate to themselves certain portions of the New York to Montevideo, New York to B.A. traffic without regard to the competitive advantages which either party may enjoy by way of superior equipment, shorter mileage, more scenic route and so forth, and they forget all of that and say, "We will pool the traffic and arbitrarily allocate between ourselves."

Why? I say the answer to that question is so that they may fortify themselves to meet the competitive threat of Braniff. They are agreeing in advance not to compete with each other, I say, between B.A. and New York. They want to conserve their energies to turn them loose on Braniff.

Braniff has had some experience in the United States competing with big fellows—American, TWA, and Eastern. We have been competing with those fellows for 10 years or more and we are not afraid of competing with Panagra or Pan American down there.

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[fol. 3786] What we don't want to have to do is to have to compete with Pan American or with W. R. Grace and Company, in a combination of Panagra with the ghost of Pan American always standing behind them.

We will meet anybody down there in free and open competition but that is not what this argument calls for.

Chairman Landis: I thought you were arguing for an extension of Panagra up to the United States?

Mr. Schneider: I may very well be doing that and I may say that I think it would be more in the public interest to extend Panagra into the States.

Chairman Landis: That would really give a good show on the West Coast.

Mr. Schneider: Yes, sir.

Chairman Landis: But I am trying to get your argument. I don't quite get it. You argue: (1), that Panagra should be extended to the United States. That is really the solution to this problem.

Mr. Schneider: No, I haven't come to that point yet. I am going to say that later.

Chairman Landis: Well, it looked to me as if that was implied in your other argument.

Mr. Schneider: I am saying that this agreement will merely strain competition.

Chairman Landis: Mr. Roig had taken that position.

Mr. Schneider: That is right.

Chairman Landis: He urged it upon the Board, Pan American withstood that and offered him something which was less to his liking than the extension of Panagra.

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[fol. 3787] Mr. Schneider: Mr. Roig doesn't agree that it is less to his liking. That would be unfair to him.

Chairman Landis: I don't think so according to the testimony there.

Mr. Schneider: I don't think he would agree with that statement. That is his testimony, yes, sir. It is subject to interpretation.

Chairman Landis: His testimony more or less is to the effect that I tried for a long time to get this thing.

Mr. Schneider: That is right.

Chairman Landis: "I couldn't get it so I agreed to this agreement which I think is beneficial."

Mr. Schneider: That is right.

Chairman Landis: "Which I think is beneficial to Panagra" and I don't just get the theory of what you are trying to get at when you say the fact that Mr. Roig didn't get everything he wanted makes this thing against the public interest.

Mr. Schneider: Sir, I have just about two pages left here and I think that at the completion of that I think I can bundle it up and then come back to your question if I haven't satisfied it.

Chairman Landis: I would like to get it.

Mr. Schneider: All right.

Now, I said I believe before your question that we had no fear of competing with Panagra out in the open or Pan American out in the open, the way we compete with other fellows in the United States right out in the open but I say

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[fol. 3788] under this agreement there is a combination whereby they agree among themselves in effect not to compete with themselves but to turn all their guns loose on us and the foreigners.

Now, these parties don't even compete with each other now and I don't know for the life of me where Mr. Gesell got the information which he gave to some of you people this morning because if you will go and read Mr. Roig's testimony and Mr. de Groot's testimony that was given up in the Wardman Park hearing a week ago, it is absolutely contrary to the statements he made that they maintain separate offices down in B.A. and that they maintain sales agents in the United States.

The testimony is the reverse of that there.

In Buenos Aires today the only Panagra ticket that you can buy effectively is through a subsidiary 100 per cent owned by Pan American, a ticket corporation, 100 per cent owned by Pan American, which undertakes to sell Pan American and Panagra ticket and for that statement I rely upon the testimony of Mr. de Groot given last week, in another record to be sure.

Now, if that is competition then Eastern Air Lines here in Washington might just as well give up its office and let American sell its tickets to New York or we in Chicago might just as well give up our office and save the money and let American sell our tickets to Dallas.

That is not the type of competition that we are used to, that you are used to, or the type of competition that Panagra is going to be exposed when we get down there.

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(fol. 3789) So far as the United States is concerned Mr. de Groot stated that their sales force in New York consisted of him and his people in the general office of Panagra in the Chrysler Building.

There is no Panagra office on the street. There is no Panagra salesman out selling tickets on the streets in New York. He admitted that under cross examination.

The tickets are sold by Pan American.

Now, I would like to conclude now mind you before I conclude I have not said one word about diversion from Braniff. I stood before you yesterday and admitted to you that as far as I am concerned, personally, I think diversion is one of the weakest arguments a person can make down here on a public interest question, and I am not going to argue to you that this should be turned down because it is going to divert from Braniff.

Braniff hasn't even started yet. I couldn't even measure the amount of diversion but it does strike me that when you put us into Havana you had some misgivings about our route and were trying to strengthen us by a connection with National.

To the extent that that is going to be fulfilled if this agreement plus the [*Pan*] American domestic route case is going to be fulfilled I don't know we will have to take our chances on that but I am not going to make a diversion argument on that now.

I think the public interest things I have talked about now far outweigh any diversion from Braniff.

The thing is a lot bigger than that, so I would like to

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(fol. 3790) conclude and close my argument not as counsel for Braniff so much but as an individual.

In my opinion this contract does nothing to cure the basic difficulty between Grace and Pan American which has constantly plagued Panagra and the development of Panagra. Rather, I think that Panagra should be made a completely independent company and allowed to work out its own destiny.

If they can come down here and prove under Section 401 of the Act that public convenience and necessity requires the extension of Panagra to the United States that is what you should do. But I think American Air Transportation, American flag air transportation requires that this Board find somewhere within this Act the power to make this company a truly independent company and we are not afraid to compete with them down there if they are so made.

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[fol. 3791] Chairman Landis: How are we going to do that?

Mr. Schneider: Sir, I wasn't in the 779 case, so I am not too familiar with all the legal problems involved there.

As I said earlier, I regret that the Board couldn't find in the Act the power to do what they set out to do, that they went off on the procedural point which contributed nothing to the basic difficulty.

And I would suggest that the Board should themselves—

Mr. Ryan: You referred to that before. What do you mean by "procedural"?

Mr. Schneider: You construed your powers under the Act not to permit you to extend Panagra to the United States and never got to the merits as to whether they should be extended.

The 779 case never went on to the merits as to whether there was a public need to extend Panagra.

Mr. Ryan: It is pretty substantive. Whether we have the power is pretty substantive.

Mr. Schneider: I mean, you didn't get to the purpose of the investigation as to whether there was a need or wasn't a need. You went off on the language of power.

Chairman Landis: Have you read Judge Frank's opinion in that case?

Mr. Schneider: Yes, sir.

Chairman Landis: What did you think of it?

Mr. Schneider: Not having all the background of 779, it left me quite confused.

Mr. Ryan: It would have left you confused anyhow.

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[fol. 3792] Mr. Schneider: Let me put it this way: Were I in your shoes and had Judge Frank's mandate remanding the opinion, I am inclined to think I would call him up and say "Come again", because I am not quite sure what he does want you to do.

What he does do is to recognize with you the unhealthy situation that did exist.

Chairman Landis: Even assuming—let's take your assumption—that it is an unhealthy situation, but if you take the other assumption that you can't cure it, that there is no power to cure it under the Civil Aeronautics Act, how does this worsen the situation if it helps a little bit?

Mr. Schneider: I don't think it helps a bit.

Chairman Landis: It seems to me that you have the burden of proof to show that.

Mr. Schneider: I will accept that burden.

Chairman Landis: Other than the mere fact that it builds up Panagra's service a little better so it can compete with Braniff, which you admit?

Mr. Schneider: Mr. LaRoe makes a fine argument here today in regard to carrying passengers all the way through with the least inconvenience. That is true and it should be done if possible.

But with this, on paper, competitive situation that we have now at B.A. and Montivideo between Pan American and Panagra which isn't competition at all—they are not fighting each other on the streets trying to sell passengers down there—Panagra has delegated to Pan American B.A. the sale of its tickets.

That is the situation today between here and the Canal

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[fol. 3793] Zone. How will it be worsened? You bring them up to Miami under this agreement and they delegate again to Pan American the sales under this thing.

Mr. Roig says "If Pan American doesn't sell tickets, I will abrogate the contract." How are they going to find

out? Pan American is getting seven passengers this way for every one that goes that way (indicating).

Now, if my competitor is carrying 7 to 1 ratio with me I get out of his ticket office and I open up one of my own and I hire some salesmen.

Now, why does it get worse? It gets worse when you get to Miami because the same thing that happens here happens when you get to Miami.

The same small office will decide which passengers to this way and which to that way.

And you have got the same thing going on in New York and that isn't competition in the public interest as this company knows it.

Chairman Landis: That is happening now?

Mr. Schneider: It will be intensified. They haven't even got a chance at it in Miami today. Pan American isn't making any effort to sell any tickets at Miami over Panagra. There is no word of evidence about that. We talked about the ads this morning. The ads that come out of the New York office are put out by Pan American World Airways System.

Mr. Friendly: I think we should have these ads before we talk about them, as well as some of this other record that Mr. Schneider has been quoting from.

Mr. Schneider: If I am wrong on that, I stand corrected.

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[fol. 3794] But I thought you were referring to the Pan American World Airways System map.

Chairman Landis: We don't want the record misquoted.

Mr. Schneider: If I am wrong, I want to be corrected.

Chairman Landis: But the point I am trying to get at: I am trying to get at how it worsens the situation. You take the assumption that the thing is bad. Take the other assumption. You can't correct it by forcing the extension of Panagra up to the United States. What is there in this agreement that is bad?

Mr. Schneider: It freezes for 99 years. It seems to me it is just an abdication to expediency. The through service argument, so far as I am concerned, isn't that strong. That you must swallow all the other things.

Chairman Landis: We can control that. We can give them a three-year certificate so far as that goes.

Mr. Schneider: That is right.

Chairman Landis: Why not try that?

Mr. Schneider: I think that is a good idea. If the through service argument is so convincing to you, I say try that.

Chairman Landis: In other words: take this provision of the contract, 99 years, and say 3 years and after 3 years come back and we will see whether we continue it.

Mr. Schneider: And knock out Section 13 and knock out some of the other bad provisions, then we will draw a new contract.

Then we will have to come back and have a new hearing perhaps but we were approaching this contract, sir.

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[fol. 3795] Chairman Landis: But this Board has not merely a plain veto. It doesn't have to veto the whole contract. It has a partial veto and can pick out these things in the contract that it says are against the public interest and say "no" on those and say "yes" to the others.

Mr. Schneider: Approving to the parties knocking out of the contract the following provisions?

Chairman Landis: Yes.

Mr. Schneider: It may be.

Chairman Landis: And looking at it that way isn't there something there that is good and that ought to be saved out of this threatening shipwreck?

Mr. Schneider: Mr. Friendly answered that question on cross examination.

I think I have the provision here. There are provisions in here that are good, at least they contend they are good, about training, they are good about maintenance; they are good about the sales arrangement.

In cross examination, Mr. Friendly was asked the question if they were to get the States in their own name would continue these maintenance and sales and training arrangements that you now perform to your associate company, Panagra, and Mr. Friendly said, "That would be silly to do that."

Chairman Landis: When was that?

Mr. Friendly: Could you give us the page?

Mr. Schneider: Yes, sir. I will read it to you. On page 513 of the transcript, question by Mr. Gesell of Mr. Friendly: "I wasn't quite clear, Mr. Friendly as to whether or not you were saying that in the event Panagra were

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[fol. 3796] to come to the United States on its own route, Pan American would continue or discontinue its activities on Panagra's behalf in the nature of its sales agency and engineering services and other assistance in view of the competition which would be created."

"A. Well, I can only say, Mr. Gesell, what I would recommend and what would seem to me to be likely. As to any sales activity or assistance of that sort, I would recommend in the strongest possible terms that that be discontinued. I don't see how we could be in paralleling competition with Panagra between the United States and Balboa and be acting as its sales agent."

Now he doesn't say anything about their not being in competition between B.A. and New York.

He goes on: "I would also recommend that we discontinue any other service which involved the slightest sharing of confidential information or anything of the sort, I think the only things that we might continue would be the type of things that we have done and are doing with our competitors such as this agreement which has been marked with PA Exhibit 32 which is an agreement for radio and so forth, with Eastern at San Juan, for sharing certain operating facilities with Eastern."

"I don't mean to say that we would have any special animus against Panagra certainly, and we would not have any against anyone else, but I don't think we could, in the interests of proper competition, or should do anything more."

If they say they are in competition between B.A., Monti-

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[fol. 3797] video and the United States, then why isn't Mr. Friendly's statement equally true today? To make that statement to be true today then, they must agree that they are not in competition by agreement.

You can't have one without the other.

Chairman Landis: I don't suppose the contention is that they are not part of the system today?

Mr. Schneider: I may have to go to the other record made last week to answer that one, sir. I asked Mr. Roig last week on cross examination in the Domestic Route Case, "Do you consider Panagra to be a truly independent corporation" and he said "I do."

He has always contended that. He contends it most vigorously. No one fights even harder for Panagra and its welfare than Mr. Roig does and no one is more appreciative of the obstacles that he has had to face than Mr. Roig is.

Chairman Landis: Then to go back to my other question: If you assumed that they are not in competition, and that they can't be put in competition, why isn't that a good agreement anyway?

Mr. Schneider: I can't concede, sir, that they can't be put in competition.

Chairman Landis: I would appreciate advice on that point.

Mr. Schneider: Well, perhaps we might try to follow the course laid out as well as we can interpret it by Justice Frank.

Chairman Landis: Well, yes. I mean, even if you assume Judge Frank is right, and that eventually the Supreme

[fol. 3798] will uphold Judge Frank and allow Panagra to apply in its own name or permit the Board somehow to force that extension, the wheels of Justice grind pretty slowly and the scene may have completely changed as of that time.

That is what I asked Mr. Gesell this morning. I pointed out to him that it may be a question you are up against at this time and this time is your last shot at it.

Mr. Schneider: Maybe it is a question for the other Department down the street. If this were not an industry regulated by the CAB, I think the Antitrust Division of the Department of Justice would long since have done something about this, if these were two aluminum corporations or something like that, and if what we are saying here is true, and that that record is brought out in the Department of Justice we know well we will have a remedy then. Of

course the record would have to be made that was made in 779.

Chairman Landis: If anything really operates slowly, I think the wheels of justice under the Antitrust Law operate even more slowly than even this Board.

Mr. Schneider: Then you must weigh that, sir, against the immediate emergency and expediency of getting this fellow on to the same plane at Balboa.

Now, if that is so vital, so emergent, then I can't answer your question, sir, because you just pose a situation that makes it impossible for me to put up something on the other side.

Chairman Landis: To take your other illustration, your other point, approval of this agreement, would that, in your judgment, mean that the Department of Justice, be estopped

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[fol. 3799] from moving somehow or other under the Sherman Act?

Mr. Schneider: Section 412 of the Act gives a great deal of immunity to the contract.

Chairman Landis: To the contract?

Mr. Schneider: Yes, sir.

Chairman Landis: But approval of the contract would not necessarily carry approval of the organization.

Mr. Schneider: No, not the organization, but it is not so much the organization as the things that they are doing under the organization that would be in violation.

Chairman Landis: It seems to me your contention is that the real evil results in the organization.

Mr. Schneider: No. I think that is what starts the wheel rolling. The fact that there is a 50-50 split here just makes an impossible situation, and then each of them has a negative control.

Chairman Landis: Well, we will admit—I mean I start from the base that you lay and I try to get further and I try to find out the viciousness that inheres in this contract itself. You pointed to two things, the 99-year term which you say is too long, and the Section 13 which you say is a mandatory obligation, although it is a general permissive idea, and it does read in a mandatory language.

You say that is bad. Well, those can be knocked out if there is something good left.

Mr. Schneider: I think we would have to stay here and go through each single paragraph and spell out the bad provisions. I skipped over most of those detailed things

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[fol. 3800] having read Public Counsel's brief and in my time not being able to get to it. I mean we didn't all want to repeat the same things.

I was trying to lay a background. Perhaps Mr. Gambrell will go into that, or Public Counsel.

I think on your examination after listening to other counsel, you will find out something. I am disturbed by Section 13. That is the one that bothers me more than anything else.

Not because you won't have control, but it just seems to me to indicate the type of parties we have here. I can't conceive of any domestic air carrier even suggesting such a thing and for the life of me, I don't know why they include it in the agreement.

Chairman Landis: They may have been influenced by the Scandinavians.

Mr. Schneider: I asked the question at the hearing and I didn't get a satisfactory answer to it myself.

Mr. Ryan: Mr. Schneider, I have a question.

Mr. Schneider: Yes?

Mr. Ryan: As I understand it, your statement was that Mr. Roig and the management of Panagra are very vigorously pursuing the interests of Panagra, and that at the same time you make the point that in the working of this agreement Panagra will suffer because its traffic potentialities will be limited, by virtue of the Pan American interests.

Mr. Schneider: That is right.

Mr. Ryan: Is that true?

Mr. Schneider: Well, I can only say what Mr. Roig is doing for Panagra.

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[fol. 3801] I can't say what the rest of Panagra is doing, but I will say categorically that Mr. Roig is always working for the best interests of Panagra.

Mr. Ryan: What I am wondering is how do you explain the fact that Pan American has been able to fool the Grace people and other people here into a contract like this that is going to be so hurtful to them because they are more deeply interested than even you are?

Mr. Schneider: All I can give you is the excerpt I gave you. It bothered me. I asked the question. Mr. Hickey of the Department of Justice asked the question and Mr. Roig stated just as I read to you, "I have been beating my head against a stone wall and wearing my bones bare trying to get what I should get and I can't get it." Why should I compare that with this contract? I want this contract because it is what I have now. I have got that in my hand and the litigation in the Supreme Court and everything else with nobody helping me. That is too remote. You can't compare those with each other. I have got a contract and I think it is a good contract."

And he did his best to sell it. He never hedged a word on it. He thinks it is a good contract, but I say: Realize or think for a minute why he thinks it is a good contract in the light of that background.

He has no alternative.

Mr. Ryan: You think he has no alternative?

Mr. Schneider: He thinks he hasn't.

Mr. Lee: Mr. Schneider, you put considerable emphasis on there being no competition under this contract. Do you think the situation is the same that would put as much

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[fol. 3802] importance on that as it would have before the Board certificated Braniff to these points in South America?

Mr. Schneider: Would I put as much significance to it?

Mr. Lee: Yes. Do you think the competitive argument which you made, that they are not competitive, is as important as it was before the Board certificated Braniff to South America?

Mr. Schneider: I would say it was less important. I would say before you certificated Braniff to South America you had only one possibility of providing competition between these air carriers, and that was between Panagra and Pan American. You waited for that situation to jell in 779 in the Supreme Court and it didn't, and Braniff was ex-

tended to South America. Now you have at least the assurance that Braniff on the one side will compete with this Panagra-Pan American combination so I would say the argument about having competition between Pan American and Panagra is perhaps not as strong today as it was then because you are going to have American-flag competition now whether you like it or not.

Mr. Lee: How important is it now—since, you see, United States is assured of two United States Flag carriers, to certain important points in South America—how important is that argument in the light of this agreement?

Mr. Schneider: We aren't going to be able to compete too effectively for New York traffic if Pan American is already in New York with one-carrier service and Panagra is, too.

Mr. Lee: Does that make any difference to you?

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[fol. 3803] Mr. Schneider: Yes. The only way we can compete for New York traffic is in combination with National.

Mr. Lee: I mean this agreement,—how does that make any difference to you?

Mr. Schneider: Any difference to Braniff?

Mr. Lee: Yes.

Mr. Schneider: That goes to the basic question as to whether Braniff has any status to argue here today at all because I am not arguing that this should be turned down as any protection to Braniff. I say that this is adverse to the public interest.

Mr. Lee: You made two legal points. One was that this was a case under 401. Do you think a decent legal argument could be made on the other side, from the way you argued?

Mr. Schneider: Oh, yes.

Mr. Lee: Or is that a question that could—

Mr. Schneider: Many of these questions are black and white. I made the black one and Mr. Gesell made the white one this morning.

As to whether he made a decent legal argument is perhaps—

Mr. Lee: I mean you don't think that is a foregone conclusion, or that legally there is just no other side to it? It could be decided either way?

Mr. Schneider: Yes, sir.

Mr. Lee: What about your application of 408? You make the legal argument that this question should come under 408. Is that in the same category?

Mr. Schneider: The first one is gray, but the 408 question I would say is distinctly more on my side.

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[fol. 3804] Call it a very light gray. I don't see how you can get away from it—if you say there is no 401 problem, how can you get away from the fact that this is a less of a substantial part of Panagra's property.

Public Counsel in his brief goes to some length to point out the percentages involved of equipment and so forth.

Chairman Landis: Why shouldn't that issue be decided in this proceeding?

Mr. Schneider: We all contended that it should have been at the very opening of the hearing, sir.

Chairman Landis: Is it simply because of the lack of some technical rule?

Mr. Schneider: There has been no application filed under 408 asking for approval of that specific point.

Mr. Friendly: Oh, Mr. Schneider. That can't be left unchallenged. The application specifically says, Mr. Chairman—this is the application of Pan American Airways:

"Wherefore, Petitioner respectfully prays that the Board make and enter an order approving the aforesaid agreement between PAA and Panagra dated July 30, 1946, under Section 412 of the Civil Aeronautics Act, and such other sections of the Act, if any, as may be applicable thereto, and that the Board shall grant such other, further and different relief as to it may seem just and proper."

Certainly, we aren't back in the barren park stage where failure to make specific reference to a section is fatal.

The 408 problem that I dealt with relates to a new contention made just within the last couple of weeks, that an application should have been filed not only by Pan

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[fol. 3805] American Airways, Incorporated but also by Pan American Airways Corp. We say that is wrong. If we are wrong about that, it is a technicality which can be easily remedied.

Mr. Schneider: Well, we had this battle out at the pre-hearing conference.

Mr. Friendly: Not this one.

Mr. Schneider: And the 408 question has been fought through most of this case. I don't like to rely upon a catch-all phrase like that for an application that the Act says is mandatory under 408.

Chairman Landis: What is the substance of the issue that was presented under 408 and 412?

Mr. Schneider: You have got the Section 408(b) provisions. You have got to make a determination there whether there is a monopoly involved and if there is a monopoly, whether it jeopardizes other air carriers.

There are a lot of considerations that are mandatory under Section 408 that are not under 412.

Chairman Landis: Do you then contend that somehow or other this approval would make a monopoly?

Mr. Schneider: No, sir. I think you have got a 408 problem here that you have got to face and I am suggesting that you look at the contract in the light of 408.

Chairman Landis: Can't you help us look at it? You say there is no problem. You are not making the contention

Mr. Schneider: I will say this: That if you look at this contract from the standpoint of 408 and the public interest attached there, you will come out with the same answer as

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[fol. 3806] you would under 412 if you adopt my reasoning but what I would like to see is an opinion come out that you don't have to go to court afterwards.

Let's cover all the sections of the Act that are applicable and I think that is what Public Counsel has tried to do, so that there will be no reversible error here.

Mr. Ryan: Section 408 is practically the same as 412, is it not?

Mr. Schneider: That is right, except the mandatory provision about monopoly under 408; that isn't in 412.

If you find there is a monopoly, then you must disapprove. There is no such provision under 412. Public interest determines the direct competition, as in 411.

Mr. Lee: I have trouble getting the weight of the argument as you see it. You argue that it is against the public

interest to approve this agreement. Suppose the Board just assumes that everything you say is correct. Let us just assume that the whole system, Panagra and Pan American, is one air system.

Just assume that it is one system. Wherein is the public interest damaged as against the situation as it is now?

Mr. Schneider: Well, it isn't one system legally and to make it one system you would have to have a merger and many of the arguments that Mr. Gesell raised this morning to the public interest of a merger.

Now, either let's put these companies together and make them one, or let's pull them apart.

Mr. Ryan: You are going to the legal argument. What about the substance of it and the effect upon public in-

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[fol. 3807] terest?

Mr. Schneider: Well the substance is this: One day we face a situation where they say we are one. And the next day in another type of situation they say we are independent. Now, let's find out what they are.

Mr. Ryan: That might satisfy you legally to find it out but the man with the suitcase, where is that going to affect him?

Mr. Schneider: I think the man in the suitcase who reads the one thinks they are one today.

Mr Ryan: What difference does it make if he gets the rides?

Mr. Schneider: Maybe he would get a better ride.

Mr. Ryan: We assume that Braniff is going to get down there sometime.

Mr. Schneider: Not from New York. That is where the great majority of the traffic comes from.

Chairman Landis: I don't see where you have eliminated competition in the first place. The assumption competition doesn't exist, then, you say you have eliminated competition?

Mr. Schneider: You have eliminated the chance of making it competitive. This competition that we have now should be made effective under this Act, I think.

The parties have chosen to make it ineffective and they have chosen to make it ineffective now for 99 years.

Mr. Branch: Mr. Schneider, didn't the Civil Aeronautics Board, in the Latin American decision which presumably was approved by the President of the United States, because the law says we can't issue these decisions unless the

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[fol. 3808] President approves them—didn't the Board in that decision indicate that it was concerned about the public interest in this matter when it said that these people ought to get together and make it possible for Panagra to come to the United States in its own name?

Mr. Schneider: That is right. I think so, and Mr. Ross thought so.

Mr. Branch: The Board said that in its opinion?

Mr. Schneider: That is right.

Mr. Branch: And the President didn't disapprove it as far as you know, did he?

Mr. Schneider: No, sir.

Mr. Branch: So presumably that was the country, wasn't it?

Mr. Schneider: That is the way I interpreted it.

Mr. Branch: And in that same decision, in which the Board said that, it also granted the certificate to Braniff and to Chicago and Southern, didn't it?

Mr. Schneider: That is right.

Mr. Branch: But it still kept that in the decision, didn't it?

Mr. Schneider: That is right.

Mr. Branch: That is all.

Mr. Ryan: Therefore by implication, the Latin American decision as approved finally, and finally issued, contemplated two additional services to Latin America—one, Panagra to the United States; the other Braniff Airways to the South?

Mr. Schneider: Braniff Airways so read the opinion. He

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[fol. 3809] fully assumed that Pan American and Panagra would get together and file an application in Panagra's name to the United States; Mr. Dean, the Pan American director on Panagra, said he didn't so construe it.

Mr. Ryan: So that would be your answer, then, to the contention made earlier in the day by, I think, Pan Ameri-

can, that the situation had radically changed since the Latin American decision had been announced, namely that there was now—I think it was Panagra's representative—namely, that now there had already been competition put into South America and it was unnecessary therefore—that is the way I interpreted it—unnecessary therefore to consider that there was a great need for any additional competition between these two parts of the Pan American system.

Mr. Schneider: Well, I think that they have not met the language in your decision by this contract.

Mr. Branch: Mr. Schneider, just following up the questions I asked you a moment ago, which were predicated on the assumption that the Board must have thought it was in the public interest to make such a suggestion in its public decision which was approved by the President, then I want to ask you if, now that Panagra, which has made its very diligent fight for years to try to get in, has gone into this agreement, it would seem that Panagra has given up, and that there probably would be no more chances for Panagra to get into United States under its own steam. Isn't that right?

Mr. Schneider: Yes. We asked those questions of vari-

[fol. 3810] ous witnesses, and although there is nothing specific in the agreement on the point it was conceded by the witnesses for the applicants to whom the question was addressed that presumably during the period of this agreement, Panagra would not apply for access to the United States.

Chairman Landis: Supposing Panagra was a completely independent company without any Pan American ownership in it, and it had made this agreement with Pan American, would you still oppose it?

Mr. Schneider: I would have to look at that again. I would be worried still about the 401 problem, as to where that leads us in trackage rights in this whole industry. This is not an interchange, you see. Interchange is one thing. This is trackage rights where one carrier goes up over the other fellow's. There is no reciprocal part to it.

Chairman Landis: It is not uncommon in other fields of transportation, though, is it?

Mr. Schneider: As was pointed out here this morning, there is the question of the cars hooked on to the locomotive, and here it is all one and the same thing. I don't say that we can't work this problem out. We probably have expanded this map to such an extent, or will soon have, that we are going to have to be hard headed about some of these problems as Mr. Warner said several years ago in one of his opinions.

Chairman Landis: Yes, a very interesting dissent, Mr. Warner's, in that Northwestern case.

Mr. Schneider: That is right.

Chairman Landis: Which doesn't seem to be picked up by the industry at all.

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[fol. 3811] Mr. Schneider: As long as there is a chance to get a new route, sir, we are not going to solve these problems.

Chairman Landis: That is exactly it. Maybe the Board ought to be a little tough about the new route situation and get the industry to think along different lines.

Mr. Branch: Maybe the time is nearer than it seems.

Chairman Landis: We might clear our docket that way.

Mr. Ryan: Could it be possible, Mr. Schneider, that Pan American may have read the Latin American decision, and seeing that there had been no majority for any competition into South America, may have concluded, that there having been competition put into South America by action of the President, the majority of the Board probably would not look with great favor, when the time came, upon putting a third competition into Latin America?

Mr. Schneider: I can't answer that question, Mr. Ryan. All I know what Pan American thinks about is contained in their minutes where they said "We don't think it is in our best interests to let Panagra apply."

What went on beyond that, I can't answer that honestly.

Mr. Ryan: If it should be decided that the better way to go is to turn down this arrangement presently presented to us and to seek by one way or another, to get Panagra extended as an independent carrier in one way or the other

to the United States, we will then be voting in favor of a three-fold competition to South America, the same number of carriers that we authorized to operate across the Atlantic, where the traffic, I understand, is 1/23rd, or 1/27th of what it is to South America.

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[fol. 3812] Mr. Schneider: Well, by coincidence, it would be three.

Mr. Ryan: I think I misstated that. I think it is just the opposite. Traffic across the Atlantic is 23 or 27 times—

Mr. Schneider: May I say that my answer is still the same? It is a coincidence, perhaps.

Mr. Ryan: We don't want to discourage Braniff.

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[fol. 3813] Chairman Landis: Eastern Airlines.

ARGUMENT OF E. SMYTHE GAMBRELL

EASTERN AIR LINES

Mr. Gambrell: We prepared that easel map and I have duplicates.

(Handing to the Board)

I would like to be called at the end of twenty minutes. I believe I have thirty.

As we see it, there are two principal issues in this proceeding. The first is whether the public interest requires through one-plane service as proposed by Pan American and Panagra between the west coast of South America and Miami. The applicants talk about service to New Orleans, New York and so forth, but under the contracts involved in this case and Pan American's present certificates, it is clear that Miami is the only city in the United States which could be served as proposed.

The second issue is whether Pan American, the dominant air carrier in Latin America, and Grace which operates the dominant steamship line between the United States and the west coast of South America, should be permitted to increase their present degree of management and control over Panagra so as to make Panagra even more completely their instrument for retraining trade and competition and for effectuating their policies in Latin American.

I will not have time to do more than outline Eastern's position on each of these issues. I may say that Eastern, as has been said before me, filed more than one document in this case. We filed a motion to dismiss for procedurely and

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[fol. 3814] substantive reasons on November 5th, and you have a copy of that, and we filed our brief to the Board on November 11th, and we filed a reply to papers filed by the applicant's on November 27th.

What I will say will be a mere high-lighting of a few of the points. This case, it seems to me, does have more legal and factual meat in it than most cases, and I believe that it has sufficient importance in itself and as a precedent for other situations, to come, that will justify the Board's carefully considering all legalities and all the facts.

Our brief of November 11th, together with the documents which we filed seeking dismissal of this proceeding, sufficiently, we think, discusses all of the major points. Pan American and Panagra have sought to give the impression that this case involves only the question of whether through plane service is better than connecting service. As a part of that effort they have insisted on calling the agreement in this case a through flight agreement, as if through service were the only thing involved.

Of course, no one could contend that connection service between any two points is more desirable than through plane service but the Board must in this case decide far more important questions than that.

Consider for a moment the tremendous scope of the proposal in this proceeding. Pan American and Panagra have repeatedly stated that the contract in question were prepared in response to a mandate of the Board in the Latin American case, and that the proposed service will fill the gap in the Latin American air transportation system which

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[fol. 3815] the Board admitted it left as a result of the Latin American Decision. The Board will recall that in the Latin American Case the Board stated that joint control of Panagra by Pan American and Grace represented an inherently bad situation and urged the parents of Panagra to cooperate to permit Panagra to file application for access to the United States.

That is the mandate to which Pan American and Panagra refer. Now, I might say there that I am not here urging that Panagra be admitted to the United States. That is easy for me to state. I am not here to say that that is the answer. I am here to say that the proposal in today's proceeding is not the answer. We take the position that Panagra, as conceived, was wrong, that Panagra, to use an old fashioned expression that Senator Lee perhaps has heard, "was conceived in sin" 20 years ago.

Now, why do I say that? Well, the Board decided the same thing regarding another proposal of Pan American over in the Mattson situation over in Hawaii. The only difference was that the Board didn't get a chance to pass upon the legitimacy of the conception of Panagra because it was conceived before the Board was conceived.

Now, I think we may as well just adopt that as a major premise in this case, that Panagra ought not to have been. Now, the question is what to do with something that came that ought not to have come. I admit that in this country we don't usually shoot those who are illegitimate. We try to do something with them. I don't think though in this case where public interest is so much at stake and the Board didn't spare any words at all when it talked about the

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[fol. 3816] Mattson combine over in the Pacific when Pan American wanted to get together with Mattson just as they did with Grace down in Latin America. The Board didn't lose any time in saying what they thought of that. Now, if that was inherently wrong in the Pacific, we have to say that that was inherently wrong down there but the timing of it was unfortunate for the Board's attention. What are we to do about it? Are we just to vendor to it? Are we to multiply it? It all adds up to the question of whether the Pan American system shall be dominant on the east coast of South America and on the west coast of South America.

As it is, we all know that they have the advantage and that the situation is unhealthy or rotten or whatever one might call it. Now, is it going to do any good to duplicate the monopoly that Pan American now has from Miami to Balboa? I don't think it is going to do any good to duplicate it there. It only reinforces and makes permanent, or

almost permanent, Pan American's right to use Panagra as a instrumentality.

It seems to me almost laughable that we have wasted a good deal of time today talking about whether Pan American and Panagra ever were or ever will be competitive. I thought the Supreme Court of the United States and most of the courts and commissions had long since held that anybody who has 50 per cent of somebody else's controls it, and I thought that when one controlled another, there wouldn't be competition between them. To my way of thinking there never has been competition and never will be competition.

Now, the Chairman has asked two or three times: Well, what are you going to do about it? I remember when I

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[fol. 3817] was in a certain law school about 25 years or so ago, they said,

"What are you going to do about a fellow who blocks in Georgia and he is misbehaving in Alabama about something the Georgia Court is interest in?"

It seems to me I heard a rather distinguished old equity professor say, "You can provide an arduous alternative".

Now, maybe there can be an arduous alternative provided here. Maybe this Board can do something to make these people behave or make these people disgorge this thing. I think as we intimated a minute ago in regard to this northwest decision, this discussion between the Chairman and Mr. Schneider, as long as people think they are going to get what they want they are going to be pretty stiff and obdurate.

If these two people who did something which I think was unwholesome to start with even if the Board wasn't in existence, if they feel that if they just hold on long enough, the Board will just shell out with whatever they want, I think they will stand out for it.

Now, it seems to me that once these two carriers know—and I think the Board told them—they claimed that they answered the Board's mandate in bringing this in but I don't think they did. As I understand it; the Board in effect said—they didn't say so in so many words—but they said, "Why don't you turn this thing loose and let it be a free

carrier?" There isn't anything in the world preventing those two people right now from forming a syndicate and turning this carrier over to the world, I mean to the public. The only difference is that they are using this as a spring board to multiply their strength down there.

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[fol. 3818] Chairman Landis: I don't quite get that idea clearly in my head. Supposing Panagra were a subsidiary of Pan American, would that be a conception in sin?

Mr. Gambrell: Which is that?

Chairman Landis: If Panagra had been organized as a subsidiary of Pan American, would that have been a conception in sin, as you used the term?

Mr. Gambrell: I think on such a sweeping scale, hemispherically—that is, the east coast and west coast of South America—it would be, but when you add to that the dominant position of the other part, that is the Grace steamship interests, it seems to me that it is if the Mattson deal is that way. In fact, I think this is a worse deal than the Mattson deal which the Board, I think, approved because here you have so much more scope it seems to me—a bigger situation.

Chairman Landis: Then your objection is not so much on the ground that the conception in sin is the lack of competition, but it is rather the existence of the steam-ship interests in this picture?

Mr. Gambrell: Well, both. We say you aggrandize the Pan American air monopoly irrespective of the steamship and then you bring the steamship in and that just multiplies the poison of the situation.

Chairman Landis: Is it bad, is it somehow against the public policy or against the law, that that aggregation of lines shown on that map, should be owned by one company?

Mr. Gambrell: It is my belief that it is, yes, sir.

Chairman Landis: You think it is just too big?

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[fol. 3819] Mr. Gambrell: That is right. And the record will show that they said they had 50,000 route miles in Latin America on their system and I think you haven't got any American flag effective competitor down there. You have got Braniff coming in here (indicating), and I hate to be gloomy but I don't—

Chairman Landis: That interests me because you are sort of intimating that the Board didn't have the solution to this problem of creating effective competition in South America. I suppose we could beat the bush and find some people who would be willing to apply for certificates to run anywhere in South America, especially with a government subsidy.

Isn't that the answer to it? Just certificate more carriers down into South America, if you really think the situation needs the type of competition that you are speaking about?

Mr. Gambrell: Well, I think that this arrangement really reinforces the monopoly which I think is objectionable now.

Chairman Landis: What is objectionable about it? Is it too big?

Mr. Gambrell: Yes, sir. And the main route in Latin America is between Miami and Canal Zone. I mean that is the thickest of all the routes, that is the heart of the watermelon and there is only one carrier running and that is Pan American today.

Chairman Landis: Yes, but that can be cured by this Board at any time. You are an applicant there. National is an applicant. Colonial is an applicant. A series of other applicants can be—we can cure that very easily by simply

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[fol. 3820] certifying some of them.

Mr. Gambrell: These applicants have stated that this is the answer to that and that that clears the whole thing, and as I see it, it doesn't. It only touches Miami and the whole territory is open. I think approving this contract certainly makes all the more necessary an independent force going through there—an independent carrier.

I think one is needed now. I think to reinforce this monopoly makes one all the more needed.

Chairman Landis: Then if we approve this contract, then Eastern would have a better chance to get its application through, wouldn't it?

Mr. Gambrell: I suppose that is one way to look at it. I suppose it is. Well, anyway, I got away from my script, Mr. Chairman. What have these people done to comply with the mandate? No application has been filed by Panagra. On the contract, the contracts in this case represent

an agreement that no such application shall ever be filed. I don't want the chairman or anybody to understand that I am recommending that Panagra come up.

I think they ought to be freed and treated as an independent carrier. The applicants have come forward with a one-way equipment interchange agreement which would amount to an illegal extention of Panagra's operation to the United States, without a certificate. Not satisfied with such a novel proposition, the applicants have added many terms and conditions so that the net effect of their contracts would be to turn over to Pan American and Grace every detail of Panagra's operations and management. Thus, you

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[fol. 3821] will see that the applicants have taken greatest pains not to comply with what they call the Board's mandate in the Latin American decision. Instead of an application they have presented a contract that no application should be filed. Instead of improving the inherently bad situation in Panagra's management control, they have aggravated that situation. The contracts are far more than through flight agreements. They represent an attempt by the largest air and sea interests in Latin America to divide up the control of Panagra and Latin American transportation for the next 99 years.'

Certainly such contracts could not be approved by the Board simply by finding that one plane service is better than connecting service. We are not here trying the Latin American case but I have here page 17 of the Crozier studies. If it is a question of convenience and they did shed big tears this morning about making people get up at Balboa to change over going north or south.

You will note in the pictography here (indicating), Mr. Crozier shows that more people, many more times, move through Miami than through Balboa. The line gets thinner there and when they talk about it is like getting a man out at Richmond, why didn't they say something about the situation at Miami that we have been talking about in the Latin American case for a long time and they have consistently objected to: there are many times as many people inconvenienced by Eastern's Miami transfer as there are down here.

I am not arguing the Eastern case. I am showing the inconsistency of these gentlemen. You know, the line gets thinner the farther south you go and there is much less

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[fol. 3822] inconvenience in a transfer at Balboa than there is a transfer at Miami. At Miami more people are inconvenienced by through service at Miami than by through service at the middle point, Balboa.

I think it is of greatest importance to the Board to consider what would be the effect of certificates of public convenience and necessity if the Board here would approve the scheme presented by Pan American and Panagra. The record shows that many years ago the parties to these contracts considered equipment interchange proposal.

The record shows that Grace never would agree to less than actual extension of Panagra's operations to the United States and without granting any operating concession to Pan American over Panagra's routes. They can't use an interchange agreement as a precedent for this case because they emphasize that this is not an interchange, it is a one-way affair. On this point, Grace has finally won and it seems clear that the proposed contracts contemplates extension of Panagra's own operations to the United States using the certificate of Pan American. Our brief of November 11, at pages 12 through 18, shows the many respects in which Panagra would have absolute control over the proposed operations between the Canal Zone and the United States. Panagra would fix the number, nature and times of all schedules. Remember that. Panagra would fix the number, nature and times of all schedules, provide the planes and crews, have control over all space on such planes, approve or disapprove Pan American personnel charged with handling Panagra matters to the United States, and assume all risk of loss of aircraft or other property on the Canal Zone-United States flights. Panagra's name and

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[fol. 3823] insignia would be on all the planes and on all the uniforms and the service would be advertised as being operated with Panagra's aircraft and over Panagra's routes—I mean Pan American's routes—both of them. Panagra would have the right to prevent abandonment of Pan American's United States-Canal Zone routes.

I say what right has Panagra got to be telling Pan American when it can abandon a route. It seems to me that is a matter for the Board to decide, or to take such routes over for itself.

Without discussing these points in detail—and we have discussed them all in detail in the briefs, it is apparent that for all practical purposes the operation between the United States and the Canal Zone as proposed would be a Panagra operation.

Now, they do provide a very fine-spun formula whereby the revenues come to Pan American and the salaries are paid by Panagra and they get together on accounting.

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[fol. 3824] Mr. Lee: Is it your point that the steamshipping company has increased its control in this case?

Mr. Gambrell: Yes, sir. I will come to that in a minute.

Mr. Lee: I understood you at first to say Pan American had increased its dominance?

Mr. Gambrell: Both of them have. They have virtually reduced to a shell this Panagra. They have taken away its autonomy. They have made a piece of blunder out of it. It was already virtually so, and they finished the job here.

Since Panagra had no certificate for such operation and is seeking no such certificate it is obvious that such an operation would be illegal.

Pan American and Panagra have cited certain I.C.C. decisions which are alleged to prove similar contracts. It is sufficient to say that not one of those cases even remotely resembles the instant case. Most of the cases cited involved a leasing by one carrier of the entire franchise of another.

We assumed that the applicants do not contend that this is such an arrangement.

Now, Mr. LaRoe this morning said something about Bekins van lines equipment being here. I think we are all familiar with that. It is not in the record but I think we can talk about it since he did.

We know that there are roving commissions and franchises and Bekins can come here and Mayflower here can go to the West Coast. That has nothing to do with franchise operations.

Eastern Air Lines can carry a football team to Seattle,

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[fol. 3825] I suppose if it wanted to but that has nothing to do with regular operations.

I submit that the Board ought to be most cautious in approving any operation by one carrier over the route of another. Whatever may be the case in other forms of transportation, the flexibility of air transportation, and the many possible repercussions from a single such operation would make such a precedent seem to be inadvisable.

Pan American and Panagra contend in their brief that the proposed through service will fill the acknowledged gap in the Latin American route pattern established by the Board in Docket 525.

And that, of course, concerns me, that they should say that this is the answer to all the trouble in Latin America. That is their attitude here.

Mr. Lee: It is your position that it would would it result in maybe more traffic from Panama to Miami?

Mr. Gambrell: I don't think it would. I think it would freeze up that track that our passengers have to go on at present. We are subject to a monopoly now, and this thing reinforces that monopoly and provides, for instance, in Section 9, a preference for the long haul traffic of those two carriers, and we can't get one of our passengers on that track Pan American's track, between Miami and Balboa, until these people have satisfied their mutual obligations to each other under the terms of this contract.

I went into great detail and into cross examination of the witnesses there and they promised that they will

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[fol. 3826] mutually prefer each other on their long haul.

For instance, from New York to B.A., if, say, National or somebody else, or maybe Pan American pulls it around here in some way into Miami, would get there those people have priority on this segment (indicating on map) and Eastern then has to wait.

Suppose Eastern is trying to do business with Braniff on a three-carrier haul. Eastern changes at Miami and turns it over to Pan American and goes to Ballast and goes on to Braniff.

We have got to stand by until these people fulfill their mutual obligations under the contract before we can get through. Why? Because our participation in that is a short haul participation, and they say their own long-haul passengers should have first call and even though ours is a long-haul to us, it is a short haul to them and it stands by and I say that is one of the iniquities of the whole situation. There are many of them.

Mr. Lee: I don't get that.

Mr. Gambrell: Suppose Eastern had got a passenger going from Washington or New York to Lima, and we get down to Miami, that is as far as we go. We hit the present monopoly there. There is no contract that has been blessed by the Board so we do our best to get through which is not good now.

So, when this contract is approved under Section 9 there is a provision that Pan American will allocate seats preferentially to Panagra down here and it was testified on my cross examination that if some other person seeks to get

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[fol. 3827] the local haul—I mean for Eastern, shall we say, and Braniff between Miami and Balboa, we are not a part of that long haul priority beneficiaries. We are only a local hauler on this line, although we are a long hauler as between ourselves, Eastern and Braniff.

Mr. Lee: If you sold the passenger the ticket at New York to Lima you would control the line that goes over, wouldn't you, from Miami?

Mr. Gambrell: We would control it to Miami but we are at the mercy of the monopoly now and it would be redoubled monopoly if this thing goes through and we would have to take what they would give us and they would say, "Wait if we have got anything left after we get through with what Panagra and Braniff wants we will take care of you then.

Mr. Lee: I want to know what would they do and what does Panagra do that makes you unhappy about this?

Mr. Gambrell: Say he goes through to Miami and wants to go to Lima.

Chairman Landis: Can you sell him a ticket to Lima?

Mr. Gambrell: I am not a ticket expert but I think we can. I think we can sell him a ticket all the way. All respectable carriers interline their ticket sales. The question is what kind of reservation can you get. We say, "Well, we find we can get you to Miami but we can't get you out of Miami maybe. Why? Well, they don't admit it but it just happens they are holding up the seats here to see who flies Panagra wants them down here because they are under a treaty with each other that we are not a party to and if Panagra doesn't want them we haul them on down

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fol. 3sgs and turn them over to Braniff.

Mr. Lee: It would be the same plane, wouldn't it, that would go from Miami on down to Lima it would be the same plane, wouldn't it?

Mr. Gambrell: We are working with Braniff. I mean, let's assume that we are working with Braniff. That those other people are conspiring against us and we have got to work with Braniff. We are trying to turn the passenger over to Braniff here and we haven't got an independent bridge, we have got to take the bridge of the one-way between Miami and Balboa.

Chairman Landis: That is simply a problem in short haul, isn't it, of which all the carriers are so guilty? They don't want to short haul themselves. They hold up intermediate points until the plane leaves before you can book an intermediate point?

Mr. Gambrell: If new service is put in here it ought to be independent new service, service that would lend itself to competitors with this system.

Mr. Lee: Well, independent or not, wouldn't the monopolies—wouldn't they be just as eager to get that passenger and make connection with him and get an agreement with you so they would have a chance to get that passenger, knowing that you would have an opportunity to sell that passenger to maybe get him over to Havana to Braniff and going down that way?

Mr. Gambrell: As I have just said, sir, the contract says that they will prefer the long haul of their own people and Pan American and Panagra are working together, and

[fol. 3829] if they had anything left over they would give it to us after that, but we would have to wait until they saw whether they could sell it or not.

Chairman Landis: Your stops are what, from Miami up to New York? Miami, Palm Beach?

Mr. Gambrell: Vero Beach, and 8 or 10 stops to Washington.

Chairman Landis: How many seats do you hold on flights from Miami to New York, say for passengers who want to go from Miami to Daytona Beach? Do you hold enough to satisfy traffic if traffic were really offered to you?

Mr. Gambrell: We allocate according to experience and we work out a chart and revise it every month.

Chairman Landis: You don't give priority to long haul as against a short haul.

Isn't that customary?

Mr. Gambrell: Not often. At any rate the point I am making is not only that but we have got here the very people we are competing with all the way to New York and as one might say they wouldn't give us air in a jug because we are in a death struggle with them in competition and if we have got to depend on them and you bless the treaty saying that they shall give it to Panagra, and themselves in preference to anybody elsewhere do we come in, which is what their contract says?

Chairman Landis: I still don't get the point.

Mr. Gambrell: Well, let me try it one more time. Our man is in Washington and wants to go to Lima. Maybe we are working pretty well with Braniff from Balboa down,

[fol. 3830] and so we can get Braniff from Balboa down and we can get ourselves down to Miami but we keep calling on Pan American at Miami to let us through and it is a week ahead, you ought to sell those things ahead.

They have every inclination to favor their own transportation and as long as they think there is any possibility of getting a through haul on the Panagra-Pan American combination they fail to honor our request for a reservation. There we are, can't sell, and our reputation in Washington becomes: "Well, don't try to get Eastern because

they can't get you through. Ride somebody else and go through the other system.

Mr. Lee: I see your point now, Mr. Gambrell.

Now, do you think it would be any different in that respect than it is now since Pan American owns half of Panagra?

Don't you think they are going to, under the present situation? It means more profits to Pan American if Panagra does well, isn't that true? And wouldn't it be the same incentive now?

Mr. Gambrell: I think the Board was correct when it said it is a fundamentally bad situation now but when they get together and say they are going to prefer each other in the future in a written contract and you approve that it is pretty rough on us outsiders, when we have got nobody else to go to but them.

Chairman Landis: Suppose you extended Panagra up to Miami. Would that—

Mr. Gambrell: They are still under the domination of those people. I haven't recommended extending Panagra.

[fol. 3831] I think that is bad.

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Chairman Landis: Suppose they are an independent carrier. Won't they favor themselves as against favoring a competitor? I don't see this as other than a simple problem in short-hauling.

Mr. Gambrell: You are overlooking this overall competitive situation in which Pan American is diametrically in opposition to us in their whole competitive picture.

Chairman Landis: I am not overlooking that at all. I am not overlooking that from Buenos Aires and to Rio as I see it Panagra just hasn't got the breaks, and Panagra and Eastern isn't as good a combination as the one carrier system that is being offered on the other side.

Now, this would improve it a little bit, give Panagra a better break but at the present time I think your real quarrel is with the New York-Puerto Rico extension.

Mr. Gambrell: Of course that was a great blow. The Board said on Page 11 the Latin American decision strengthened Pan American.

Chairman Landis: That is over the dam.

Mr. Gambrell: That is right but it is a background for what we are talking about.

Mr. Lee: If you sold a passenger a ticket over this combination you wouldn't have any trouble getting connections, would you? I mean it is only in the case of your wanting to do business with Braniff that you would have the short-haul problem of getting through from Miami?

Mr. Gambrell: Well, even if we did it the other way; Pan American and Panagra would favor each other, even

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[fol. 3832] if we were giving it to Panagra below. If it would be to their advantage to postpone us they would favor themselves. They could work with National or somebody else. I don't know who. If you will read this brief carefully you will see that Pan American is dead set against us all the way through, and have been in all these proceedings, and we are without our backs to the wall on the whole proposition, and it is of deep concern to us not to have this Board approve a contract that will freeze us out.

Mr. Lee: Has Pan American ever made a proposal to Eastern for an interchange at Miami?

Mr. Gambrell: I haven't heard of it. I don't believe so.

Mr. Lee: Has Eastern ever made a proposal like that to Pan American?

Mr. Gambrell: I don't believe so. We are highly competitive. We could hardly be in a battle on this New York-Pureto Rick-Latin American situation here and then be advertising joint service and working out our engineering problems together on interchange via Miami.

Those things are sort of incompatible. I am speaking now of interchange, not interline—interchange of passengers—I am speaking of interchange of equipment. Interchange of equipment involves joint engineering and endeavors and joint planning together and we couldn't very well do that through the Miami gate and have Pan American all the while undertake to syphon off business, Miami to New York in the first instance.

Chairman Landis: I still don't see how this would hurt Eastern, except insofar as it may threaten Eastern's pos-

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[fol. 3833] sibilities of being extended from Miami to Balboa.

Mr. Gambrell: Well, as you said a while ago, if there is a monopoly now, and it is monopoly piled on monopoly, with the steamship company added, it would make all the more desirable Eastern's getting down there, as I see it, which may be an advantage if one wants to be philosophical about it. The Board's press release announcing the opening of the Latin American case said that "Although the Latin American decision granted extensive new routes in the Caribbean and in Latin America it did not provide one carrier service from the greater portion of the Eastern United States to the Canal Zone nor did it establish one carrier service from that area into certain other Caribbean points."

Now, they say that this is the answer to that, which of course it is not because this service only goes as far as Miami. It touches one American city. The Board's conclusion that the service needed is between the greater portion of the United States and the Canal Zone and Caribbean points is fully supported by the evidence in this case. Such evidence is summarized in our brief at pages 43 through 46.

The Board found in the Latin American case that 38 per cent of the United States-Latin American traffic is to and from the Caribbean and 80 per cent of such traffic is of United States origin.

The record shows that excluding Mexico, 95 per cent of all United States-Latin American traffic was to the West Indies and the Canal Zone whereas only 5 per cent was to all of South America.

Now, mind you, 95 per cent of all the United States-Latin American traffic was to the West Indies and the Canal

[fol. 3834] Zone—that is excluding Mexico; whereas only 5 per cent was to all of South America, showing how much more important it is to maintain unbroken lines at Miami such as Eastern has proposed rather than to merely take care of the 5 per cent who go south of the Canal Zone in the way of convenience at transfers.

The part of the United States served directly by Eastern produces two-thirds of all United States-Latin American traffic. If you will note the map on page 44 of our brief you will see that Eastern can logically and directly serve all of such traffic to and from the Canal Zone and important Caribbean points.

The extension of Panagra's service to Miami would provide one carrier transportation for less than one-half of one per cent of the one carrier, United States-Latin American traffic given such service by Eastern's proposed Canal Zone extension.

This proposal of the applicants in this case would give one carrier transportation for less than one-half of 1 per cent of that which is proposed by Eastern.

The relatively inconsequential traffic benefit which the applicants propose in this proceeding certainly does not justify the great harm which would result from this proposal.

As I have previously pointed out, Panagra and Pan American were not satisfied to present a simple equipment interchange contract which would provide some benefits to the traveling public but they added many provisions which would aid Pan American and Grace in their program to re-

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[fol. 3835] strain trade and competition in Latin America.

The applicants seemed to contend that Pan American and Grace have not acquired any new control over Panagra as a result of the contracts involved in this proceeding.

I shall not have time to discuss this issue fully. I refer you to our brief and to our memorandum in which this issue is discussed at length.

For present purposes, I shall simply list some of the new forms of control acquired by Pan American and Grace. Grace is given in the contract a right to designate the President of Panagra, and such President is given responsible charge of the management of the company.

Grace is given control over Panagra's traffic and sales in virtually all of Latin America including the Panagra countries and Panama City but I believe excluding Buenos Aires.

Pan American is given the right to designate the Vice President in Charge of Operation of Panagra who presumably would be in control of the technical aspects of the business. Pan American is given control of Panagra's traffic and sales in the United States, and in all parts of the world except Panama City and Panagra's countries in South America and Buenos Aires.

Pan American—not excepting Buenos Aires—Pan American is given control over Panagra's principal maintenance and overhaul for the next 99 years.

Pan American is given control over the training of the personnel in the United States.

Now, I might say there, while I am on the point, I cannot

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[fol. 3836] follow their suggestion that they might lose $3500 per pilot in the training program, if the pilot turned out not to be a good man. They say that if they had to train him down in Latin America they would have to ship him back after wasting $3500 on him.

Well, they say they hire him in this country and, their chief executive offices in New York, there is nothing to prevent these people from hiring these new pilots and sending them to the Pan American School in Miami and if he turns out all right they move him on down, if he doesn't they don't move him down, that is the end of it.

I mean that is utterly fallacious. They talk about saving money on maintenance. Well, Mr. Friendly this morning said that only three or four per cent of the ships were involved, he was trying to discuss the application of the law to so small a part of the property.

Then this afternoon or a little bit later, Mr. Gesell comes in and says those ships have to go up to Miami anyway on this arrangement and it wouldn't cost anything to rotate them in and out.

Now I say they have either got to adopt one theory or the other. If only three or four per cent of their property is involved in this utilization up to Miami then it seems to me that should you have very little effect upon what you call the ferrying factor of bringing up ships to Miami for repair, it would cost the same in either case and they say in the contract "ships of all types," whether the types used or whether types that are never used on that particular segment there.

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[fol. 3837] The new acquisition of control over Panagra gained by Pan American Grace we think ought to be disapproved: Grace as the 100 per cent owner of Grace Line, the steamship company, is for all practical purposes a

steamship operator, particularly since it admittedly formulates policies which are followed by Grace line and many of its directs reinterlocking with Grace line.

Under Section 408 it is plain that the Board must disapprove Grace's acquisition of control over Panagra since one attempt has been made to show that Grace can use aircraft to public advantage in its steamship operations.

On the contrary, it is clear that Grace and Panagra will continue to be directly competitive. In the Latin American case and in other cases the Board has made very plain that steamship control over competing air carriers is contrary to the public interest.

It would be particularly so in this case in view of the past record of Panagra's operations and its future prospects.

Chairman Landis: Your time is about up.

Mr. Gambrell: Yes, sir. I think I lost a good deal of that in the discussions we had.

Chairman Landis: No. I think I saved it for you.

Mr. Gambrell: Well, all right. We will assume that they contributed to my argument anyway.

I hope they did and if you will promise to read my briefs I think I will stop right here.

Chairman Landis: We always read the briefs.

Mr. Gambrell: Thank you.

Chairman Landis: Orleans Airport Commission?

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[fol. 3858] Mr. Cross: That is exactly my suggestion. That is, I do not even ask that the Board decide that adversely at this time. I simply ask that that not be decided favorably now, that that be reserved for decision.

Chairman Landis: Of course, we can't quite guess what the effect of that blanket rule will be.

Mr. Cross: And particularly with respect to the other case. That is our position. Thank you.

Chairman Landis: Public counsel.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

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ARGUMENT OF L. L. HIGHSAW, Jr.
PUBLIC COUNSEL

Mr. Highsaw: Mr. Chairman, could I have a warning in about thirty minutes? This proceeding brings before us one transaction involving four companies.

On one side of the transaction is Pan American Airways, Inc., the operating air carrier, and its holding company, Pan American Corporation. On the other side of the transaction is Pan American Grace Airways Incorporated, an operating air carrier known as Panagra, and W. R. Grace and Company, a holding enterprise which owns 50 per cent of Panagra and 100 per cent of the Grace Lines, a steamship operator.

The transaction involving these four corporations has evidenced itself in two separate contracts executed on July 31, 1946.

One of these contracts, which for the purposes of the record, is called contract A, was executed between Pan American and Panagra and provides for through plane operation between the United States and various points on Panagra's route in South America.

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[fol. 3839] The other contract which is an integral part of the signing transaction, was executed between Pan American Corporation and W. R. Grace and Company, and provides for the management of Panagra. The discussion of public counsel will be devoted to the merits of contract A, as it is the heart of the transaction before us.

If contract A is disapproved, contract B should fall with it as a part of the whole plan under the doctrine of the Catalina Air Transport Case. Public Counsel does not pretend that the transaction presents an open and shut case, either for or against Board approval. It raises difficult questions of law and policy to decide.

My purpose is to make clear to the Board the reasons why I believe that these issues should be decided against approval of the transaction. So far, Counsel have argued that the contract is either all good or all bad. I would prefer to recognize that like all transactions, it has some good points and some bad ones. I do not dispute the fact that it

will produce certain public benefits as outlined by the parties.

However, as the Board pointed out in the recent Mid-Continent Opinion, the determination of the public interest is a balancing process.

The good points of a transaction are to be weighed against the bad points and a balance struck. Here, I believe that balance is against the public interest, in such a decision I may be wrong, but at least my opinion is not open to the suggest of private interest. I have wrestled with the problems of this case for some weeks and this was the only conclusion that in good faith, as a public servant,

[fol. 3840] I could reach. I also believe it is fair to say that the parties have somewhat over-stated the benefits to flow from the contract.

The two most important are the economy of joint maintenance and overhaul and the elimination of the connecting service at Balboa.

As to the first, the record could indicate that there would be some saving but it certainly does not prove that the saving would amount to $560,000 or to any other particular amount. This figure is based on Pan American estimates as to the cost of its maintenance of the four-engine equipment and their has not been enough experience in such maintenance to justify any particular estimate.

As to the elimination of the connection service at Balboa, no one could argue that there is not now an undesirable situation.

However, actually, not many people will be benefited. Under existing facts at 1946 levels of air transportation, only about 23 people a day would use the through service as far South as Guayaquil and that number would dwindle rapidly to three and 1/2 between Lima and Buenos Aires.

Those figures are based on the exhibits put in by Pan American for air travel during the first six months of 1946.

Mr. Lee: Does that mean that 20 would stop at Quayaquil?

Mr. Highsaw: That means that 20 would stop at Quayaquil and get off at Quayaquil or Lima.

Disapproval of the contract on the basis of the objection I will raise would not prevent the parties from entering into an interchange agreement free of those objections.

I shall now turn to a brief discussion of each of my rea-

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[fol. 3841] sons for disapproving contract A.

My first reason for disapproval of contract A is that it is in violation of the Civil Aeronautics Act because it provides Panagra with an operation between Miami and Balboa for which it is not certificated.

Throughout this proceeding, there has been a considerable amount of reference to through-operations which will relieve the difficulties created by connecting service at Balboa.

The import of these references is to create a picture of two connecting air carriers bargaining at arms length to supply a public need by providing a through service.

If this picture of contract A is accepted it would be impossible to clearly evaluate the intent and effect of the agreement. The only way in which that intent and effect can be evaluated is by recognizing that the contract is merely a vehicle for compromising the direct conflict between the aspirations of the two co-owners of Panagra, Grace and Pan-American, as to the ultimate destiny of that carrier. Counsel for Pan American yesterday stated about the same thing when he said that the agreement met the fundamental views of the parties.

This could only be the views of Pan American and Grace, the owners of Panagra. What then are those views? On the part of W. R. Grace and Company, those objectives have been the extension of Panagra to the United States under its own name. On the part of Pan American, they have been the keeping of Panagra as a connecting carrier at Balboa to which Pan American could feed traffic for the west coast of South America, and which would not compete

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[fol. 3842] with Pan American as a independent air carrier, either between Balboa or Miami, or effectively with the east coast of South America. The attempt of each corporation to achieve its aspirations has carried all the way to the United States Supreme Court in docket No. 779.

The record shows that they were impelled to try and

reach some agreement here only because of the Board's action in placing Braniff into South America as a competitor in its decision in docket No. 525.

On the basis of past history, it was not likely that either Grace or Pan American would agree to anything which failed to preserve the essence of its position. Grace had already made that plain when in 1941, the Grace designated president of Panagra refused an offer of an interchange agreement by Pan American and stated that Panagra was not interested in any plan which did not provide TWA operations to the United States.

Grace had made its position even plainer by filing its petition to the Board in docket 707 and the complaint in docket No. 744, and in fighting the issues in docket 779, to the Supreme Court. Likewise Pan American has always consistently made clear its intent and purpose.

When the negotiations for contract A started in June 1946, inflexible purposes of Grace and Pan American were still clear. Grace wanted first a certificate for Panagra in its own name to the United States, and second, an agreement whereby Panagra would operate over Pan American's route between Miami and Balboa, and the two would share the revenues.

Negotiations which included discussion as to Pan American buying out Grace interests in Panagra, proceeded and

[fol. 3843] contract A was executed, which read in the context of its creation, "preserve the essence of both Grace and Pan American aspirations". The parties claim that there is no violation of the Civil Aeronautics Act because the operation north of Balboa is entirely a Pan American one. They have variously referred to the agreement as a through plane operation and a charter operation, and would ask the Board to regard each flight between Balboa and the United States as an operation in a plane chartered from Panagra by Pan American.

They have even gone so far as to contemplate that in the future this charter may occur while the Panagra plane is flying over Balboa in a non-stop flight. They would have the Board reach this result through two paths.

On one hand they would have the Board look at the contract nomenclature and take at face value the language of paragraph six which purports to give Pan American full control and responsibility north of Balboa and on the other hand apply a broad holding-out test.

I believe that the history of railroad and motor carrier regulation shows that the Board must determine whether Pan American has full control and responsibility in the light of the factual situation and all of the surrounding circumstances of this contract, and not by the words of the contract alone.

Moreover, I believe that the application of this test shows that Pan American does not have such full control and responsibility. A reference to the history of interchange operations in the railroad field and the motor carrier field do not bear out the contentions of Pan American and Grace.

Yesterday, some reference was made to railroad experi-

[fol. 3844] ence, and the impression was left that trains run just with any old place over the tracks of many roads without any requirements of obtaining ICC operating rights or even permission. That is not so. In the field of passenger operations, the Commission for some time vacillated on the issue of whether a railroad which required trackage rights by agreement, to operate a train over the tracks of another carrier, was required to obtain a certificate of convenience and necessity under the Interstate Commerce Act.

By around 1920, it decided that such a requirement was necessary and was upheld by the United States Supreme Court.

In 1940, agreements for trackage rights were put under section 2 of the Interstate Commerce Act and required Commission approval after hearing on a finding that they were in the public interest. I have found no case in the railroad field involving the situation now before us.

However, it is clear from the history of that form of transportation that a rail carrier had and was expected to keep full control of its tracks and that an agreement which relinquished a part of that control to another rail

carrier required approval under the certificate provisions of the Interstate Commerce Act.

Chairman Landis: Isn't that just what is happening here?

Mr. Highsaw: That is my view of the situation, Mr. Chairman.

Chairman Landis: Isn't that what 412 was created for?

Mr. Highsaw: You mean the application is similar to the 5 (2) of the Interstate Commerce Act?

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[fol. 3845] Chairman Landis: Yes.

Mr. Highsaw: I think that the situation as of today is the same with this difference. Under the Interstate Commerce Act, the Commission is required to find that it is in the public interest, and all that the Board is required here to find is that it is unable to find that it is adverse to the public interest.

Chairman Landis: That is the only difference?

Mr. Highsaw: That is the only difference. I have cited this early history simply to show that previous to legislative determination of how this question should be handled, which was made in 1940, that under a situation similar to this one, the ICC might well have held that they had to get a certificate of convenience and necessity for trackage rights.

I don't contend that that is clear because I have found no case which involves exactly this situation. I just wanted to point that out to refute the impression that was left yesterday from some of the argument, that trains run just about any place they please.

Chairman Landis: Cars, not trains.

Mr. Highsaw: I had the impression from the argument that it might have been trains, but that is the purpose of why I brought it out. A reference to the decision of the Commission and the U. S. Supreme Court under the motor carrier act, which is similar to the Civil Aeronautics Act before us, points out the legal test to be applied to claims of Pan American and Panagra. These decisions which public counsel has gone into more extensively on brief, show clearly that the test is primarily whether Pan Ameri-

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[fol. 3846] can has full and exclusive control of the opera-

tion. Panagra has pointed to the cases in the Supreme Court as setting up an additional test of whether Panagra is holding itself out to the public as a carrier. However, the Commission—that is the Interstate Commerce Commission—has interpreted those decisions—and rightly—as applying to a situation where the control and responsibility tests would show two operations instead of one but where history of the two operations showed only a single integrated service. This would not help Panagra at all here since there is no single integrated operation here by Pan American.

The only single integrated operation that you could find in this case would be by Panagra. The decisions of the Commission and the Supreme Court have also shown that in looking for control and responsibility, an examination can not be confined to contract nomenclature, which may be self serving, but that all of the surrounding circumstances and conditions of the operation must be scanned.

Do we find full control and responsibility in Pan American on the basis of such an examination here? If this were a straight interchange agreement each carrier would have complete physical control of the operation of the aircraft over its own segment through operation by its own crews and cabin attendants. Also each carrier would have complete control of the number of schedules to be run over its routes by aircraft of another company, and would have complete control of the timing of those schedules. A through operation would result when each carrier, exercising this complete control over its own segment, brought the aircraft

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[fol. 3847] up to and away from the exchanging point. Each carrier would be completely responsible to its own crews and for the care of the aircraft in its possession. Such was the type of agreement that the Board had before it in the United and Western Interchange Case. What are the differences from that situation here?

Only one carrier can and does have physical control of the air craft at all times, through operation by its employees who must look to it for pay and must look to it for compensation in case of injury. That carrier is not Pan

American, it is Panagra. Only one carrier has the real power to determine the number of flights that will be operated at all times over all segments of this operation, between the United States and Buenos Aires. That carrier is Panagra.

Only one carrier has the power to enforce its will as to what the schedules shall be of the aircraft it has determined will operate in this service. That carrier is Panagra.

Only one carrier is liable for the crews and cabin attendants of the planes at every stage of the operation. That carrier is Panagra.

Only one carrier is primarily liable for loss or damage to the aircraft at all times between the United States and Buenos Aires. That carrier is Panagra.

What other actual controls Panagra would exercise over the operation if it were certificated in its own name would be small in comparison.

Furthermore, paragraph 6, upon which Pan American heavily relies, does not itself purport to give Pan American full control and responsibility. It is qualified by the phrase "as provided in this agreement". That qualification was

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[fol. 3848] necessary as Pan American did not in fact have full control and responsibility. If it is not a reasonable inference from these contract terms, that the agreement in essence provides for a Panagra operation north of Balboa, I believe that such an inference does arise when the terms are realistically read in the light of the circumstances previously outlined.

In the words of Panagra's president, it always wanted at a minimum "something under which Panagra was operating under Pan American's franchise".

If Panagra were just receiving a promise by Pan American to operate Panagra planes there is no real consideration, for the price paid by Panagra, in barring itself from a route to the United States in its own name for a period of 99 years.

Chairman Landis: There are two things in there, I would like to get the force of your argument. There is nothing that is against the public interest in all these things you cite, but Panagra being in control and so on. So your argu-

ment there is directed purely to the point that the issue should have come up under 401 rather than 412?

Mr. Highsaw: That is correct, Mr. Chairman.

Chairman Landis: And yet, as I view this proceeding, especially in the light of triple or quadruple examination of the traffic situation of the Caribbean by this Board, aren't we in substance considering exactly the same question we would consider in a technical 401 proceeding?

Mr. Highsaw: Yes, Mr. Chairman to a great extent we are. When I get around to discussing the point of this as a precedent for route pattern, I intend to bring out that point, and that is one of the question which has bothered

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[fol. 3849] me considerably in the consideration of this contract—that under a 412 proceeding we can in effect consider a contract which may grant all of the essence of a certificate operation to a carrier, and yet it doesn't have a certificate.

Now, there are some differences, as I intended to point out later, in a 412 proceeding and in a section 401 proceeding and in the former proceeding—

Chairman Landis: If you are going to come to that later on—

Mr. Highsaw: Yes, I intend to come to that.

Chairman Landis: The other point I wanted to ask you is this:

Is there anything in this contract which forecloses Panagra's opportunity to apply to the Board for an extension to the United States?

Mr. Highsaw: I intended to take that point up later on, Mr. Chairman.

Chairman Landis: I am sorry.

Mr. Highsaw: I believe that it does as a matter of fact.

Chairman Landis: Go ahead.

Mr. Highsaw: Further, the real intent of this contract appeared in counsel's statement yesterday morning to the effect, "If we get into New York", referring to Panagra's counsel's statement. There has been some suggestion by Panagra that if the Board should find contract A to be in violation of the Act, the petition filed in this case is broad

enough to cover a request for an exemption order under section 410 B of the Act.

This request alone constitutes some indication that the

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[fol. 3850] that the parties are not quite so sure that the operation would not violate the Act as would be indicated from the arguments made by their counsel. Moreover, the petition was filed by Pan American and Panagra concurred therein, only to the extent of the request for approval under section 412, in spite of warnings from practically all counsel in the proceeding, so that there is not now on file with the Board any request for action under any other section of the Act except by Pan American and the only operation that would call for an exemption order would be a Panagra operation.

Finally, although Public Counsel raised the legality of the proposed operation at the prehearing conference in this proceeding, Panagra never mentioned anything about an exemption order until its brief to the Board, and the record does not contain one scintilla of evidence in support of such an order unless such can be implied from evidence of Pan American's refusal to permit Panagra to apply for a certificate in its own name. The use of such evidence to support an exemption order would be doing the greatest violence to section 412.

At this point, I would like to take up the question I raised in my brief with respect to the precedents set in this case for approving this as a pattern for interchange agreements. This question was discussed at some length in the brief and I do not intend to go into it fully here for the reason that after a full consideration of this issue in the time which followed after the brief time in which we had to prepare briefs, some very serious questions have arisen in my mind along the lines that the Chairman has previously indicated,

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[fol. 3851] as to the logic of the position which was taken in the brief. In the brief, I pointed out the difference between the interchange agreement of the type that we had in the United Western case and the proposed type of agreement here, and I indicated that the sole proper purpose of an interchange agreement was to achieve through

plane operation between two connecting carriers, that this agreement had a considerably larger purpose in mind, and that I thought that there was some danger that approving this type of agreement would set a precedent so that when a similar type of agreement came up between any two connecting air carriers in the United States, there would be a grave danger that the route structure would be undermined, by such agreements.

After very careful consideration of this question following the writing of the brief, I arrived at the logical difficulty which the Chairman has just stated, namely, that in a 412 proceeding, we have to consider, under the public interest, apparently all of the question which were involved in a consideration under section 401 of the Act.

Consequently, it would logically appear that the Board in considering a contract such as this under section 412, would have ample opportunity to consider all those issues, and logically there would be no question about undermining the route structure.

However, I am still troubled by one fact, and I think that without going into this question at great length, I shall leave that to the Board.

I have no answer to it frankly, but it still troubles me and I think that it should be considered, and that is that

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[fol. 3852] in a case involving four applications for a certificate, hearing is mandatory; interested parties automatically have notice, and presumably a Board decision would be based upon a majority of the members of the Board that sat upon the case.

In a proceeding under section 412, although the public interest may be considered, the situation is not quite the same. The Board could approve the agreement the day after it was filed, without filing any notice to any interested parties at all. It is not even clear that if it intended to disapprove the agreement that a hearing is required under the constitution. It certainly is not required under any statutory provision.

Also, there is a very serious question under section 412 and the Board may be confronted with it in this very case. Where there are only four members of the Board sitting,

and the Board should possibly split two and two on a matter of this kind, what the effect of that would be. All that section 412 states is that you have to find that it is adverse to the public interest in order to disapprove. All of those questions have troubled me at great length on that matter, and I have no answer for them.

I am just quite frankly raising them here this morning and hoping that the Board can find a better answer than I have been able to find.

Chairman Landis: Well, maybe the Board ought to look at a statute of this nature. Most statutes are rather imperfect when they are granted, and in their conception, look at this statute as a dynamic thing and relate its procedure accordingly and to use the phrase Mr. Friendly used

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[fol. 3853] the other day, that we don't fall into an attitude in these cases, before us with the technique of Barron Parke. There is a great deal of legalism that is creeping into the administrative machinery.

Mr. Highsaw: I agree, Mr. Chairman that that might well be the approach to the question. I don't know that that is the answer to it though and I just wanted to raise the problem here. As I said I wanted to be quite frank with the Board. I made that argument on my brief and after having considerable time to look into it, the logical difficulties which you raised, Mr. Chairman, presented themselves to me.

Chairman Landis: We appreciate your consideration of it.

Mr. Ryan: As I understand it, all of the issues of public interest that could be raised under a 401 case could be raised in the present case?

Mr. Highsaw: That would seem to me so and the point that troubles me, Mr. Ryan, is that in a 412 proceeding which may be entirely different than a 401, proceeding, you can effect or grant to a party the essence of all the rights which the section 401 provides for.

Chairman Landis: In this particular case, we might take judicious notice of the fact that it has been fought less violently and less severely than a new route case.

Mr. Highsaw: I think that is true. My next reason for disapproval of the contract A is that it bars Panagra from

seeking a new route to the United States in its own name and destroys the possibility of competing with Pan American as an independent air carrier. In view of yesterdays discussion, it should be made clear that this point does not

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[fol. 3854] raise the question of the destruction of existing competition between Pan American and Panagra. There now is no such competition between the United States and Balboa and is limited to competitive points in South America by reason of the connection service in Balboa. This point relates solely to Panagra's future status in the air transport picture in relation to Pan American.

The record is clear that this agreement does destroy all future possibility of competition between the carriers, although there is no specific provision in the contract to prevent Panagra from applying for a certificate to the United States, in its own name, the record is clear that it intended to and will operate to bar Panagra from seeking such a route.

Moreover, the existence of the provisions of paragraph six of contract B between Pan American Corporation and Grace for staying the proceedings in docket 779 plus the record in contract A destroy all possibility of ultimate conclusion to docket No. 779 which would enable the Board to grant Panagra such a route. In addition to the intent of the contract with respect to the United States-Balboa segment the contract is intended to eliminate competition between the United States and the competitive points in Montevideo and Buenos Aires by providing the pooling and division of revenues to those points.

Although the terms of the pooling agreement had not been formulated the contract binds the parties to negotiate such an agreement. If they fail to do so, then the terms will be decided by arbitration. Counsel for Panagra says that there is no certainty that a pooling arrangement will

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[fol. 3855] ever be entered into. Under the contract, the parties are committed and it as certain as anything in the agreement.

The reason for the decision by Grace and Panagra to execute this agreement instead of continuing to seek a certificate and establish Panagra as an independent air carrier is clearly shown in the words of Mr. Roig, Panagra's president. I believe these words were read yesterday as part of a larger quotation, but I would like to repeat a part of them now as I believe they are important. When asked whether or not he was sacrificing a competitive opportunity in making this agreement, Mr. Roig, at page 476 of the transcript replied:

"That is not correct * * * and I really don't feel that it is a fair question. I don't consider that I am sacrificing something that I have never had, that I have worn my hair gray and my bones bare trying to get, a great deal of the effort being not only with the Pan American Airways and the Civil Aeronautics Board in the United States Courts, and have been at every stage of the game refused."

Here is the picture of a man who was literally bludgeoned into giving up the hope that Panagra could operate in relation to Pan American as a completely independent air carrier in its own name. This result, and the status for Panagra pictured here, are clearly contrary to the Board's expressed opinion as to the public interest as set forth in docket No. 525, only seven months ago. In that opinion the Board outlined the Grace Pan American controversy and concluded as follows:

"IN addition, we have long recognized the desirability of application to the Board which would permit a determination of the question of extending Pan American Grace

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[fol. 3856] Airways from its present terminal at Balboa to a point in the United States."

"In view of the facts above outlined, we feel that the joint owners"—i.e. Panagra—"should in the public interest cooperatively enable Panagra to apply for access to the east coast of the United States."

It would appear to public counsel that in this opinion, the Board concluded that even with Braniff certificated to

South America, it was in the public interest to have the Board consider in a certificate case the issue of letting Panagra operate to the United States in its own name as a competitor of Pan American. Everyone in this proceeding has so interpreted the decision, even Mr. Roig—and Mr. Friendly concurred in Mr. Roig's statement on this point—conceded that a literal reading of the decision meant that Panagra should have its own certificate.

His own action at the time the decision was issued would refute any other claim. Even now, the parties do no more than assert that the agreement before us complies with the spirit of the decision. I believe that the Board's decision in docket No. 525 and the reading of contract A in the light of such decision poses the fundamental problem in this case other than the legal issue which I have already raised. The transaction before us is squarely contrary to the Board's declared position on the possible future status of Panagra. Indeed, the agreement is an open flouting of that decision and the challenge of the Board to make it good.

The Board must now face the fact of whether it desires to reverse its declared position of seven months ago on the public interest and approve this agreement, or stick to its

[fol. 3857] then held concept of the public interest and disapprove the agreement. That is not an easy dilemma but it is one that I believe must be faced.

Public Counsel, in the absence of any facts of record which would show a change of circumstance in the last seven months as to indicate the basis of that decision no longer stands, does not see how he can conclude otherwise than that the opinion of the Board as there expressed still does stand and he must examine the contract in that light.

If the public interest requires that Panagra apply to come to the United States as a carrier in its own name as indicated by the Board seven months ago, this contract is bad. It is not only bad, but represents an open defiance of the Board no different in content from any other defiance of the Federal government. In the light of such circumstances, I believe that the Board should disapprove this

contract and do all that it can to permit Panagra to apply for a certificate in its own name. The Board should not take any position which would interfere with the prosecution of docket 779 or anti-trust proceedings against either Pan American or Grace or both.

I believe that approval of this contract would destroy all hope of continuing docket No. 779, and would seriously hamper any anti-trust action. It would give complete immunity from the anti-trust laws for any act taken pursuant to the agreement.

Since this contract grew out of the controversies in both docket 744 and docket 779, I believe that the approval would also interfere as a practical matter with the prosecution of a suit based on facts there shown or alleged. On the points raised yesterday by you, Mr. Chairman, as to

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[fol. 3858] whether or not it is now a question of do or die for Panagra, I would like to say that I don't believe that that alternative is presented. The parties to this contract have had it in their power from the beginning and to me they could execute a straight interchange agreement free of the objections to this agreement.

Moreover, it is within the power of one of those parties to let Panagra apply for a certificate in its own name. The refusal to do so constitutes no reason why an agreement otherwise not in the public interest should be approved. The responsibility for killing Panagra, if that should result from disapproval should rest where it lies, not on the Board, but squarely on Pan American.

Chairman Landis: I don't think you quite got my point on that. You draw a picture of Panagra being bludgeoned by Pan American into this contract, don't you?

Mr. Highsaw: That is correct.

Chairman Landis: I wonder who is doing the bludgeoning, whether it is Pan American or whether it is the Board.

Mr. Highsaw: Pan American or the Board?

Chairman Landis: Yes.

Mr. Highsaw: Well, I think the Board's—

Chairman Landis: Mr. Roig's head was bloody but unbowed until the Latin American decision comes along and then the Latin American decision comes along and accord-

ing to your picture of it, he then decides his bones are too bare and makes the agreement, and what is the additional thing that is coming there but the bludgeoning factor of the Board, so the picture can be looked at differently it seems to me, than saying bludgeoning. It had bludgeoned and as

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[fol. 3859] I say, Mr. Roig's good and firm until the Latin American decision came down, and furthermore, on the problem of do or die for Panagra, I wonder as to the effect of the re-opening of the Latin American case, with regard to segment to Balboa. That perhaps has a bludgeoning effect even in excess of the Latin American decision.

Mr. Highsaw: Mr. Chairman, I agree with you that the decision of the Board in docket 525 was a bludgeon to compel Pan American to recede even a little bit from its previous position. However, I think it is a question of the size of the bludgeon. Apparently, it wasn't quite big enough to Pan American to force it to recede completely from its position and letting Panagra apply for a route as Panagra wanted to.

It was sufficient for Pan American to recede to the extent of trying to get this agreement through the Board first, which it would prefer rather than a route, and I think that Panagra, as Mr. Roig indicated, pretty well worn out by the whole business, did take this, although I think they bargained strongly to get as much as they could, but they did take this as an alternative.

Chairman Landis: If the situation had remained stable so far as the South American situation was concerned, Mr. Roig might have stood firm, but here, with the actual threat to Braniff which occurred as a result of 525 and to which the record has reference, and the potential threat of moving the point of communication with the United States from Miami to Balboa, as a result of the reopening of the Latin American case, doesn't that change and alter the entire picture drawn by those remarks in 525?

Mr. Highsaw: No. You mean you are referring to the

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[fol. 3860] two things—the opening of the Latin American case and the foreign competition situation, is that the two things?

Chairman Landis: Well, I am not referring so much to the foreign competition, but suppose—take this as an illustration—suppose an independent American carrier is extended to Balboa. Doesn't that do just about the same thing as extending Pan American up to Miami?

Mr. Highsaw: Panagra up to Miami?

Chairman Landis: I mean Panagra up to Miami.

Mr. Highsaw: If an independent American carrier is extended to Balboa?

Chairman Landis: Yes.

Mr. Highsaw: I don't think that it does the same thing that the Board had in mind when it issued the decision in 525 which was namely providing a one-carrier service from the United States down the west coast of South America. I think that to the extent that it would provide a competitive carrier in between the United States and Balboa it would do the same thing.

Chairman Landis: Well, of course, it doesn't exactly do the same thing but the necessity for getting Panagra an access to the United States, not through Pan American would be solved by the extension of an independent carrier to Balboa, if that is the problem, because you certainly can't put Panagra into every city in the United States.

Mr. Highsaw: I would like to call attention to one other fact, Mr. Chairman.

I don't remember the exact date on which the Pan American case was re-opened, but it is my impression that the

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[fol. 3861] negotiations for this contract were begun immediately after the Latin American decision and not after the Latin American case was re-opened, and that they had probably progressed almost to the point where this contract was agreed upon before that case was opened.

Chairman Landis: Well, of course, it is pretty hard to draw those facts, because briefs urging reconsideration of that phase of the Latin American case were filed long before the Board issued its order to re-open the case, but how much that may have swayed—what does the record show on that—anything?

Mr. Highsaw: The contract was authorized to be signed on July 31, 1946, but it is my impression from the record—

I may be wrong on that—I am willing to stand corrected if Mr. Friendly or Mr. Gesell say I am wrong—that the basic outline of the plan had been agreed upon relatively around the first of July, but I could be wrong.

Chairman Landis: Maybe so, but whether there may be a relationship of fact there, you can readily see that after the decision in 525 the opportunity that had been there just lying in front of Panagra for years—the desirability of extending it up to the United States—that would seem to me to be radically changed after 525. Then the issue becomes as to whether we ever want Panagra in the United States. I mean you have had a long experience with this controversy, this Pan American Panagra controversy—even some proceeding which would release Panagra, still not perhaps make it an independent carrier. The history of the anti-trust laws, of course, is full of that, of decrees being issued, companies being reorganized and yet like

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[fol. 3862] Ropards not being able to change their spots, and that being the case, doesn't 525 indicate a new approach to the whole South American situation by the Board?

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[fol. 3863] Mr. Highsaw: Mr. Chairman, I don't think I know the answer to that because I really don't know what influenced the Board in reopening 525. That, of course, would be within the Board.

It is possible, I agree with you that that interpretation is possible that the Board reexamined 525 and did not think it was in the public interest possibly for Panagra to be extended and it was going to look into the situation further in this reopening and therefore its language in the opinion is no longer of any effect, but I don't know whether that is what the Board really thought or not.

But, I certainly think that if the Board approved this agreement it is going to have to find some grounds to get around its decision in 525 that makes sense, and would have to explain that fact.

Chairman Landis: Wait a minute.

The decision in 525 doesn't say this, does it: it doesn't say, "Despite the fact that we have put competitive service into South America by the extension of Braniff, by

the extension of Chicago and Southern, despite all that we still think that the answer to the South American situation is to extend Panagra to the United States."

Does it say that or does it say, rather:

"A nice solution to this thing would have been, instead of taking an inexperienced carrier in the international field, such as Braniff—a nice answer would have been to extend Panagra."

Mr. Highsaw: The language of the opinion indicates to me that it is not referring to something which might have

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[fol. 3864] been, but rather to something for—

Chairman Landis: The future.

Mr. Highsaw: —in which it looks to the future.

These words "in view of the facts above outlined we feel that the joint owners should in the public interest cooperatively enable Panagra to apply for access to the East Coast of the United States" seems to me to indicate that the Board was looking to the future.

Again, I can't read the Board's mind. I am just interpreting the words on paper.

Chairman Landis: Of course it is not a question of reading the Board's mind. It is trying to see what those words mean. If those words mean—you will recall that after 525 there was still open an important link from Balboa to the United States. Panagra made no application.

I imagine this interchange business was going on.

Then the Board reopened that.

Now, the reopening of that case also has a bearing on this situation, doesn't it?

Mr. Highsaw: I would agree with you, Mr. Chairman.

Chairman Landis: Perhaps the answer is: "Oh, we have fooled around with Panagra long enough. Let's not bother with that any more. Let's see if there is not a better solution.

Mr. Highsaw: I agree with you, Mr. Chairman, that the Board may well have changed its mind.

Chairman Landis: It isn't a matter of changing its mind. Here it had been giving this opportunity to Panagra, and in fact freezing onto a situation in the hope that something

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[fol. 3865] would happen to this Panagra-Pan American mess. Nothing did happen. Therefore you think of other ways to skin the cat.

Mr. Highsaw: I am not quite sure I follow you there. You mean nothing happened between the time the 525 decision was issued and the determination to reopen?

Chairman Landis: Nothing happened. At least, I am not sure that the record shows. Certainly no application was filed by Panagra.

Mr. Highsaw: That is right. That was a space of six weeks or so and I agree with you that it may have influenced the Board in that matter.

Mr. Branch: That is just speculative though, isn't it?

Mr. Highsaw: It seems speculative to me.

Chairman Landis: Anybody could have their own interpretation about it. There is nothing that is conclusive in the 525 proceeding on this point.

Mr. Highsaw: There is nothing that is conclusive. It is just a question of reading the words and drawing a reasonable interpretation and that is the reasonable interpretation which I drew of them, Mr. Branch.

Mr. Branch: Tell me your interpretation.

Mr. Highsaw: My reasonable interpretation that I drew of them was that the Board indicated there that it had not finally settled this South American situation that it thought in addition to the fact that it put Braniff down there that it should still have Panagra come up to the United States if there was some way of letting it apply for a certificate, and I think that certainly the record indicates that is cer-

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[fol. 3866] tainly the interpretation that Panagra and Mr. Roig put on it because it had no sooner come off the press than he jumped to that conclusion and made an effort to so apply and was refused by Pan American and there is no indication in the record that any of the parties to this proceeding interpreted it any other way and all they have ever said in regard to this matter of complying with the Board's mandate is that they think they "substantial" have complied, to quote Mr. Friendly.

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[fol. 3867] Mr. Branch: I think your interpretation is good. Your interpretation coincides with my interpretation and I participated in the case. I think it is a good interpretation.

The Board has for two or three years indicated quite an interest in this matter, hasn't it, in more than one case and it has spoken very plainly about it, hasn't it?

Mr. Highsaw: It runs back several years, the Board's interest in this, and my interpretation all along is that the Board's interest has flown in the direction of getting Panagra to the United States.

Mr. Branch: And several months ago, in May I think it was, in the Latin American case, it stated, in very plain words, that it was its opinion that the joint owners of this Panagra enterprise should get together and, in the public interest, permit that carrier to apply for an extension to the United States.

Nothing the Board has said since then indicates that the Board has changed its mind about it, does it?

Mr. Highsaw: I didn't think so, Mr. Branch, or I wouldn't have taken the position I have in this proceedings. I felt as Public Counsel, I was bound—

Mr. Branch: The fact that the Board granted a petition for reconsideration in the Latin American case, or in certain phases of it, namely, the question of whether there should be another carrier from the United States to the Canal Zone—and I believe whether Pan American should go into Curacao or Caracas, didn't indicate that the Board had changed its mind about the desirability in the public interest of Panagra to apply for an extension, did it?

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[fol. 3868] Mr. Highsaw: I don't believe that it did, Mr. Branch.

Mr. Branch: We were confronted with a situation. Nothing had been done, and we had very insistent application or applications here for reconsideration on that one point.

The Board had not had anything over the years that it had anything to encourage it that was going to get anything to result from the Latin American opinion so it reopened it so it could take another view of the situation.

Now, the decision to reopen the case didn't say aaything, nor as far as I can see even intimate that because Braniff had been put in, Chicago and Southern had been put in, that the Board had abandoned any further interest in Panagra coming to the United States. I don't know of anything, do you?

Mr. Highsaw: I don't know of anything, Mr. Branch.

Mr. Branch: Now, if an independent carrier is extended to Balboa, it would be a little different sort of a situation than if Panagra, a company at least 50 per cent controlled, and negatively controlled, by another air carrier, should be allowed to come into the United States, wouldn't it?

Mr. Highsaw: It would be different in several respects. It would be different as between Balboa and the United States, that operation, because, as you say, Panagra would still be controlled 50 per cent by Pan American.

Mr. Branch: It would not be a completely independent carrier.

Mr. Highsaw: It would be different to the extent that you would still have a connecting service at Balboa between Pan American and Panagra and whatever that third carrier was.

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[fol. 3869] Mr. Branch: Panagra does have some advantage in that it operates all the way down the West Coast from the Canal Zone and then cuts over down at the southern extremity of South America to B.A. in Argentina, so that if it is extended there would be some public advantage there over what it has now, what it can provide now by reason of the fact that it dead ends at the Canal Zone, is that right?

Mr. Highsaw: That is correct.

Mr. Branch: And if it were extended into the United States, the public who traveled on the West Coast there, even though Pan American had some sort of veto power on it, it nevertheless could provide a better public service than it can now.

Mr. Highsaw: That is right.

Mr. Branch: But that doesn't mean the same sort of situation if an independent carrier went down, does it, so far as the public interest is concerned?

Mr. Highsaw: That is right.

Mr. Branch: I was just a little worried about the interpretations that are being placed here. The Board's decision in the Latin American case renewed in stronger terms the suggestion that it made in previous cases, about that matter, the desirability?

Mr. Highsaw: It seems to me—

Mr. Branch: Now, that could be called a bludgeon if you want to, but it wasn't a very effective bludgeon, because the Board didn't say anything about a charter arrangement.

The Board had in mind from the beginning an arrangement whereby Panagra would operate here on its own rights.

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[fol. 3870] Mr. Highsaw: That is my interpretation.

Mr. Branch: And this does not do that.

Mr. Highsaw: It does not.

Mr. Branch: So that if it was a bludgeon it was not a very effective bludgeon.

Mr. Highsaw: I didn't believe it was.

Mr. Branch: So what resulted, what it had in mind, was the proposal—was that not what it had in mind?

Mr. Highsaw: That is my position and I think it is the very point that is going to have to be faced up to in this proceeding.

The Board may very well decide that its opinion in Docket 525 should be changed, that it isn't in the public interest under the present circumstances to extend Panagra to the United States, but I think it is going to have to face up to that issue because I think it has a direct relation on this contract.

Chairman Landis: I believe I didn't make myself clear, Mr. Highsaw. Your argument rests upon the statement of the Board in the 525 case that Panagra should be extended to the United States. That is basically your argument, isn't it?

Mr. Highsaw: That is correct.

Chairman Landis: Is there any statement by the Board at any time to the effect that Panagra should be extended to the United States even though an independent carrier is put into Balboa.

Mr. Highsaw: I know of no such statement, Mr. Landis.

Chairman Landis: Is that issue pending before the Board now?

Mr. Highsaw: That issue is now pending in reopened 525

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[fol. 3871] I believe.

Chairman Landis: Therefore, in order to support your position you must insist that an independent carrier should not be put into Balboa?

Mr. Highsaw: No, I don't believe that necessarily.

Chairman Landis: Or else you have to rely upon a statement by the Board to the effect that it is desirable to extend Panagra to the United States even though an independent carrier is put into Balboa. I can see no other basis upon which you can rest.

Mr. Highsaw: I don't believe that that necessarily follows, Mr. Landis. The reopened 525, as I understand, can't put any carrier beyond Balboa. It can't have a service from Buenos Aires all the way up the West Coast of South America to the United States and it seems to me that the Board's decision in 525 was directed to that point and the most that can happen in the reopened 525 is to establish an additional connecting service and it may well be that the Board perhaps thinks that that offsets or changes its views in 525. I don't know the answer to that, but I don't believe that it is the same thing as if the circumstances had been such that the Board could have completely reopened the Latin American route case and considered applications running all the way up the West Coast of South America to the United States.

Chairman Landis: That isn't the issue. Let me go through that reasoning that I went through before. You start from the statement in 525: It is desirable to extend Panagra to the United States. Let's assume that that state-

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[fol. 3872] ment correctly represents the situation. My point is that there is no statement by the Board at any time that it is desirable to extend Panagra to the United States even though the independent carrier is put into Balboa.

There is pending before the Board an issue as to whether an independent carrier should be put into Balboa?

Mr. Highsaw: Yes.

Chairman Landis: If the Board concludes that it shouldn't be then I suppose you fall back on the statement which justifies your argument, to-wit: that Panagra should be extended to the United States.

Mr. Highsaw: That is correct.

Chairman Landis: But if the Board concludes that it shouldn't put an independent carrier into Balboa, then the validity of that statement—I mean the statement in 525—would have to be completely reconsidered and you would have to consider the point that it would be desirable to extend Panagra to the United States despite the fact that an independent carrier has been extended.

Mr. Highsaw: I think that is dependent, Mr. Landis, strictly on what the Board had in mind when it did these various things.

Chairman Landis: The Board had in mind a situation which was governed by—as far as I can see—it was governed by its conclusion of not putting an independent carrier into Balboa and I fail to read the Latin American case to say that despite the fact of putting an independent carrier into Balboa it is still desirable to extend Panagra to the United States.

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[fol. 3873] Mr. Highsaw: That is a possible interpretation, Mr. Landis, and I wouldn't dispute that fact. It is not the way I read the opinion, but I think it is a possible interpretation.

Chairman Landis: Wait a minute. I don't think you could question that. Do you argue that the statement in 525 is to the effect that despite whatever is done, whatever may in the future be done with reference to extending an independent carrier to Balboa, nevertheless it is desirable to extend Panagra to the United States.

Mr. Highsaw: I think it is open to that interpretation. I don't know that that is conclusive but I think it is open to that interpretation.

Chairman Landis: You have to argue that interpretation in order to support your argument?

Mr. Highsaw: Well, I think the Board, when it said that in 525 in regard to Panagra, was not thinking just of the

Balboa-Miami segment, that it was thinking of the whole South American picture and the through operation from Buenos Aires in contrast to the through operation of Pan American down the East Coast.

That is what I would base my views on in the matter, and it was not thinking just of that one local service.

Chairman Landis: Well, the Board had denied that service, it had left that gap in its pattern, when it makes this statement?

Mr. Highsaw: That is true.

Chairman Landis: Now, I just want to find a statement by the Board, if I am to follow your argument, to the

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[fol. 3874] effect that whether or not an independent carrier is extended to Balboa, nevertheless it is desirable to extend Panagra to the United States.

Mr. Highsaw: I don't think you can find that statement.

Chairman Landis: I can't find it.

Mr. Highsaw: That is correct.

Mr. Ryan: Let me ask you a question that also goes into history. I will go a little bit further.

Has the Board ever made a finding that the public interest, public convenience and necessity, required the extension of Panagra to the United States, independent carrier or no independent carrier being in the picture?

Mr. Highsaw: No, Mr. Ryan. This statement in 525 that I read goes strictly to the point of Panagra applying for the certificate.

Mr. Ryan: Applying, that is right.

Mr. Highsaw: So the Board could consider the issue.

Mr. Ryan: Now go to the main history behind that, as recited in there. That was the history and the main point of that history was that the Board instituted an investigation to determine whether or not the public interest would require the compulsory extension of Panagra to the United States.

Did the Board, at any time in that proceeding make a finding that the public convenience and necessity required the extension of Panagra to the United States. That is the early history.

Mr. Highsaw: I don't remember all of the facts of that decision but I would say that it did not.

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[fol. 3875] Mr. Ryan: Now, remember the history in the background. There was a complaint made by Panagra that Pan American, its 50 per cent stockholder, was restraining its management from filing an application for an extension of Panagra to the United States.

The Board had just handed down a decision in the Matson contract case, in which it had disapproved the Matson contract because its contract with Pan American contemplated the creation of an air carrier in the Pacific which would be limited under the terms of the contract in its ability to apply for new routes.

The Board disapproved that on the ground that that was a restraint upon the freedom of carriers in the public interest to make applications and to permit the Board to pass upon the question of whether their route system should be extended.

There then followed—by the way, that was an insistence by the Board of the right of that carrier, which would be created according to the terms of the Matson contract, to apply for routes before this Board.

The Board has never, in its subsequent action, in which it has denied Hawaiian, for example, the opportunity to go to Japan and China and to the United States, has never apparently given any indication that when it disapproved that Matson contract it was making, in effect, a finding that there was the public convenience and necessity for extending that supposed airline, expected to be created, to the United States or anywhere else.

I am just wondering whether, upon the history here,

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[fol. 3876] whether it is proper for us to interpret the action of the Board in the investigation of Panagra, the investigation of the question of whether it should apply for a certificate to come to the United States, and whether we should construe this statement in the Latin American, which also speaks of the ability of Panagra to apply for a certificate to the United States—whether we should construe that as an implied finding by the Board upon the

merits of the issue, as to whether it should be brought to the United States.

It seems to me that you have to stretch language considerably, in the light of the history, in order to work out a finding there that Panagra should be extended to the United States.

Isn't it also reasonable to construe it as we did in the Matson contract case, namely: we want Panagra, because it has filed a complaint with us and said it was not free—we want Panagra to have the same ability to file an application that we wanted that carrier created by the Matson contract to have—a freedom to file an application, giving this Board the opportunity to determine the public interest, rather than any implied finding that the public interest demands that Panagra be brought to the United States.

Isn't that as reasonable a construction as the one which you place upon it?

Mr. Highsaw: Let me say first, Mr. Ryan, I don't believe the Board could legally, and it certainly would have been an unwise policy to have stated in Docket No. 525, or any other case for that matter, without a proper certificate proceeding, that Panagra should be extended to the

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[fol. 3877] United States, because it would almost have foreclosed itself when a 401 proceeding did come along, if it did.

So, consequently, I think it had to adopt the language that it did adopt here.

Mr. Ryan: That is to say that that language, the right to apply for a certificate to the United States, must be construed as an intention—as a statement—by the Board, that it should be brought to the United States, is that right?

Mr. Highsaw: That it should be brought to the United States.

Mr. Ryan: Yes.

Mr. Highsaw: I don't think that the Board could have stated that in so many words for the reason I have just stated. However, I do think that the whole history of the terminal investigation and the statement here in Docket 525, indicates that the Board was perhaps going further than in the Matson case.

It wasn't interested just simply in the right of Panagra to apply. It was also interested in the possibility of getting Panagra into the United States.

Mr. Ryan: If the public interest upon the record of the case justified.

Mr. Highsaw: That is right. It had to hold back that qualification. It couldn't legally do anything else.

But now that, remember, was in a period before the Latin American decision. That was at a time when we had no competition at all into Latin America, and the Board apparently was of the opinion that there wasn't traffic enough

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[fol. 3878] —not sufficient traffic potential—to have put an additional carrier into South America, and it dangled with the possibility, if the public interest should be revealed upon the record that way, that maybe we could accomplish the competition purpose, by breaking up a system which was under control here, one branch of which was under the control of the other—at least negative control —and establishing two independent competitive air carriers, and so, even then, it only was exploring the possibility —first the legal question, whether it had the right to compel the extension, and second, whether, if having the right to compel the extension, it would be in the public interest to order the extension.

Mr. Ryan: It seems to me that the Latin American decision changed the picture, so that now you have the competition in South America that you didn't have at the time of the institution of the Panagra investigation.

Mr. Highsaw: I agree with you, Mr. Ryan, that the circumstances are different now than they were from the time of the Pan American terminal investigation, which dates back a few years.

However, the language which I have been referring to here was in the Docket 525, which was at the same time that the Board created the present competitive situation in South America, and following along with it, and its language looking, in in futuro toward the possibility of extending Panagra to the United States in a proper proceeding.

Mr. Ryan: But even there the Board in that decision might say "We think that since Braniff is the independent

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[fol. 3879] air carrier now competing in South America and since the only point here is to fill up a gap in a pattern, that perhaps Braniff should be given a route from the Canal Zone to Miami thereby providing the single independent carrier competition in South America." There was no foreclosing of that possibility.

Mr. Highsaw: If the Board had held a 401 proceeding on application for Panagra, I think it could have explored that possibility.

Mr. Ryan: That possibility all emphasizes the fact, doesn't it, that you must not put any unnatural or excessive meaning upon the suggestion in that Latin American decision that Panagra ought to be allowed to apply for a route to the United States.

Mr. Highsaw: My position simply is that the parties have not carried out the Board's suggestion there and Panagra has not had an opportunity to apply for a route.

Mr. Ryan: And even if the Board had specifically said we think that from all the circumstances and all the facts before us now that Panagra should be extended to the United States, it still would not prevent this Board—should not prevent this Board—from taking a look at that problem at this stage, entirely free from any shackles that the Board might have put upon its own action in that respect.

Administrative bodies frequently say a thing by way of dictum—I take it that this was a dictum because it was unnecessary to the decision in the Latin American case—the Board frequently takes back—I wouldn't say frequently—but an administrative body frequently takes back dicta which it has written into the decisions, isn't that true?

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[fol. 3880] Mr. Highsaw: Legally your position is sound, Mr. Ryan. If the interpretation that you have just suggested were possible on the language in 525, that the Board would have to find some sort of change in the factual situation in order to justify itself.

I mean you have just suggested the possibility of a change in the factual situation in a period of seven months. I don't think the record in this case shows any change in the factual situation.

I think it is a problem that the Board has to face up to though and it has to explain away its language there in some way.

Maybe you can do it in the manner you have suggested, but somehow I think an opinion is going to have to be written by the Board explaining that away if it approves this agreement and I think that is the dilemma that this Board is in.

Mr. Ryan: Yes, but it isn't a dilemma that disturbs me because I am arguing for freedom to act in the public interest upon all the facts and upon the entire record in this case instead of regarding myself as hamstrung by what may have been—but what may have been a mistake in the dictum put in the Latin American opinion. I don't think that we are so infallible that we ought to perpetuate our own mistakes.

Mr. Highsaw: I agree with you, Mr. Ryan.

Chairman Landis: Are you suggesting that stare decisis applies to administrative tribunals?

Mr. Highsaw: No, I am not suggesting anything like that.

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[fol. 3881] This opinion was rendered a few short months ago and it is standing on the books and I think, as a matter of fact, when the public comes along and reads an opinion they are going to want some sort of explanation and I believe the Board is going to have to explain it.

I don't think it could approve this contract and write an opinion in which it ignored this language here. I agree that you may be able to find some explanation of it and to arrive at a different conclusion.

You can frankly say you are reversing yourselves. You can arrange that the factual situation has changed. I might argue along the lines suggested by Mr. Ryan but I think you are going to have to find some explanation.

Chairman Landis: I am a little worried by your approach, because your approach, looking at it as a whole would bring a sort of creeping paralysis over administra-

tive tribunals, saying that their policy judgments that they make one time, must remain whatever the scene is, whatever the change in personnel.

I can hardly see stare decisis applying to certain decisions in the policy field. These tribunals are supposed to be alive not dead.

Mr. Highsaw: I agree with you but in view of the very short time which has elapsed since this decision was rendered I don't think it is quite the same thing. There is nothing to keep the Board factually or legally or any other reason from completely reversing itself. I have two things I would like to bring out.

Chairman Landis: My only question was this, whether it

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[fol. 3882] it advisable to have a recess now or whether you can complete in about 15 minutes.

Mr. Branch: I will be through in about a minute. I have just one or two points I want to go at him now.

Mr. Schneider: Mr. Chairman, since I made the same argument yesterday, I wonder if I could be given the opportunity to reply to them.

Chairman Landis: I think not, Mr. Schneider.

Mr. Branch: Don't we want all the light we can get on it.

Chairman Landis: We have a certain amount of time.

Mr. Schneider: I wish I had the opportunity yesterday to answer that question because it is an interesting one.

Mr. Branch: I would like to know, Mr. Highsaw, what has happened since the Board's decision in the Latin American case providing for certain certificates down in that area, in making this suggestion, except that granting of the motion to reconsider certain points—what has happened that would probably change what the Board had in mind when it made its suggestion to the joint owners of Panagra?

Mr. Highsaw: Well, in addition to the suggestion that the chairman made about the reopening of 525, I think there have also been some facts that have occurred with respect to foreign competition there. I am not sure of my dates on it there. I know that the Peruvian National Airways have applied for a route from here to New York. There has been a route granted to TACA de Colombia.

Mr. Branch: All that was things that the Board could anticipate at the time. These things were going on with regard to the foreign permits and the Board knew they

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[fol. 3883] were going to grant some of them.

Mr. Highsaw: So far as the record goes, I know of nothing other than the reopening of 525.

Mr. Branch: I have forgotten just what the Board said now but my recollection is, as Mr. Ryan's is, up to a point, that when we examined the situation down South of the Canal Zone in South America, we came to the conclusion that perhaps competition down there wasn't justified at that time.

My recollection is that we were not so sure about the desirability of competition between the Canal Zone and the United States, and that this suggestion was made because, if competition wasn't needed all the way down at that time, if the potential traffic didn't seem to justify it, you might improve that through service, which was then dead ending at the Canal Zone and still not be destructive in the competition.

I don't know how far we outlined that in the decision, I will say, but I wonder, and this is my question:

What reason would the Board have under the circumstances for making this suggestion in the language in the way it did. Was there anything pending in that case about the general abstract thing of letting people make applications in their own name?

Mr. Highsaw: I don't think so.

Mr. Branch: Isn't all the indication there that the Board had in mind that this might be a very desirable thing to do and wanted this carrier to apply so it could pass on it?

Mr. Highsaw: That is my interpretation of it, Mr.

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[fol. 3884] Branch, they were thinking of the possibility of extending Panagra. That seems to me a reasonable interpretation of the language.

Chairman Landis: Let's have a recess for a few minutes.

(Recess taken.)

Chairman Landis: Go ahead, Mr. Highsaw.

Mr. Highsaw: I believe that I made myself clear previously on this matter of stare decisis, but I would like to say just one other thing, to be sure that it is clear on that point.

I am not urging any rule of stare decisis here. I simply as counsel had to examine this contract to find out whether or not it was in the public interest and in so doing I found the words of the Board to be the most persuasive statements and other matters that had a bearing on that issue.

The other matters I want to take up is this contract being too indefinite and speculative. I don't urge this reason alone to be a reason for disapproval of this contract but I do think it should be considered along with the other points which I have raised.

I didn't intend in raising this question in my brief to cast any aspersions on the draftsmanship of Mr. Friendly. However, the fact is that only about two months elapsed from the date of the 525 opinion to the dates of execution of the agreement and because of such facts or otherwise, the Board is presented with a contract here which contains many broad general areas of agreement which are not precisely tied down, and others are the purest speculation.

Thus, in paragraph 2 the Board is asked to approve

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[fol. 3885] extensions to certain points without knowing whether any such services can or ever will exist.

In paragraph 10, there is a request for approval of sales agency arrangements with no specific agreement of any kind before the Board. The same observation is applicable to paragraph 8, the training program, paragraph 13, the pooling agreement and paragraph 14, dealing with advertising and publicity agreements.

I do not believe it is in the public interest to approve loosely drawn arrangements of this nature, the importance and the effect of which will depend on how they are implemented by specific agreements entered into at some subsequent date.

This is especially true of paragraphs 8, 10, and 14 all of which are integral parts of the contract as claimed by

counsel and which will involve allocation of expenses between the parties in a manner now unknown to the Board.

It is clear from the record that there was no intent at the time the contract was drafted to submit many of these specific arrangements, when and if agreed upon, to the Board for approval. The theory advanced by the parties is that all such matters can be ironed out in mail rate proceedings.

I do not believe that this is an adequate protection of the public interest. The practical difficulties in the way of tracking down from an accounting standpoint all of the expenditures, especially in the face of numerous allocations based on judgment, and of disallowing large amounts, presents an undesirable situation.

I believe that it is better to have a clear understanding

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[fol. 3886] now of all that is involved rather than to attempt later to unravel a maze of intercompany accounting.

My last point with respect to contract "A" deals with the financial provisions. There, I wish to urge two things: first, that Pan American has no real control over the costs here, because it has no real control over the number of flights flown.

The number of flights that are flown may exceed what it would have put in between Miami and Balboa on its own account, and it has to reimburse Panagra for the expenses of those flights, both direct expenses and some indirect expenses.

Consequently, I believe that in that respect the contract is loose. Also the provisions of paragraph 17 and its annexes which deal with the financial provisions of the contract set up a procedure whereby Pan American has reimbursed Panagra for all direct costs incurred by Panagra in the operation north of Balboa and a reasonable proportion of such indirect costs as are fairly attributable to the operation.

These costs are to be allocated on the basis of provisions which take up some four printed pages of the contract. I would like to call the Board's attention to the second paragraph of paragraph No. 1 on page 21, which provides for allocation of flight costs, paragraph numbered "C" on page

22 which provides for allocation of training flight crews and other similar expenses and pages 23 and 24 of the contract which provide for the allocation of indirect expenses.

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[fol. 3887]. Chairman Landis: Your objection there is that they are too loosely drawn.

Mr. Highsaw: I have several objections to that which I am going to point out, Mr. Chairman,

Public Counsel believes it is adverse to the public interest that this agreement contain financial provisions based on a series of complicated cost allocations.

The proper supervisions of such allocations by the Board's staff for mail rate purposes is made exceedingly difficult.

The identification of costs of a carrier which are subject to prorating may become a mere matter of guess. This is especially true in this particular case because the fact that cost allocations here are based on vague terminology, such as major items properly allocable, New York expense, maintenance and communication departments, financial and accounting departments, personnel departments, all of which have meaning only with reference to the Panagra organization.

The difficulties involved in the allocations of costs are further multiplied in the case before us by the fact that Pan American has other contracts calling for allocations and Panagra has one other with Pan American.

As these allocation contracts pile up, less and less of the costs of the carrier are clearly distinguishable. The costs left over after all of the allocations represent a residue which has no real meaning as a reflection of costs of actual operations.

Moreover, allocations in this contract are based in large

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[fol. 3888] part on such variable elements that it is impossible for the Board to know at this time what the financial effect of the contract might be. What is the cost of the accounting department today, may be a cost of some other department tomorrow and a third department, the day after.

This fact was admitted by Pan American. Thus insofar as such cost allocations are concerned, the Board would be giving the parties a blank check.

Finally, Pan American's accounting is already seriously delayed at the close of the year in part by reason of these inter-company allocation contracts. "As of" accounting should not be further encouraged by more allocation contracts.

The difficulty with the financial provisions of this contract may be traced to the same source as all of the other objectionable features.

This simply is not an interchange agreement to provide through service. It is merely a peg on which to hang a compromise between Pan American and Grace, and every part of it must contribute to that compromise.

With respect to the conditions of approval—

Chairman Landis: Before you go to that point, is it your position here that approval of this agreement means the approval of these cost allocations for rate purposes?

Mr. Highsaw: I think that it certainly would, Mr. Landis.

Chairman Landis: I should doubt that.

Mr. Highsaw: I believe that if the Board approves them under Section 412, that all the Board can look at is to determine whether or not the cost allocations have been accu-

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[fol. 3889] rately made under the contract, when it comes up in a mail rate proceeding, and my point here is the difficulty in making that determination, when and if it does come up in the mail rate proceeding.

Chairman Landis: I don't quite see that, that we would necessarily be estopped in a mail rate proceeding by having approved this contract. You say the formula used, to be approved in the contract, and employed for cost allocation there, would bind us in a mail rate proceeding.

Mr. Highsaw: I believe, Mr. Chairman, that the finding that these cost allocations are in the public interest, in the operations of these carriers would have that effect.

Chairman Landis: There must be some type of cost allocation if you are going to approve a contract of this type.

Mr. Highsaw: That is one of my objections to this contract. This kind and type of contract which is drawn here, I agree with you that it does result in such cost allocations and that raises the difficulty which I—

Chairman Landis: Then if I get your point correctly, it is this: that contracts of this nature, so complicate corporate allocations that they are undesirable for that reason.

Mr. Highsaw: That is correct. I think these two companies here are treating themselves as one company for the purposes of accounting here, when actually they are two companies.

Mr. Ryan: Why couldn't we follow our customary plan there and put a condition there approving, if we should

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[fol. 3890] approve the contract—approving it and explaining that this is not to be interpreted as an approval of any particular cost allocation which may be involved in a future rate case.

Mr. Highsaw: Yes, I was going to suggest that Mr. Ryan and the conditions if the Board decides to approve the contract. I think that is subject to some difficulty, however, in that when you do get a mail rate proceedings you still have to check through the allocations that were made and see if they have been properly made on any basis either under the contract or some other basis which certainly raises tremendous supervisory problems when you get enough of these kinds of contracts.

Mr. Ryan: We are familiar with difficulties in the allocations process.

Mr. Highsaw: That is correct. That is the reason I thought it was quite important.

Chairman Landis: There are so many difficulties now that to complicate them a little further wouldn't hurt.

Mr. Highsaw: This might be the straw that breaks the camel's back. If the Board should decide that this contract should be approved Public Counsel believes that such approval should be conditioned upon the number of amendments to the contract.

In brief, to the Board, Public Counsel listed and discussed 14 such changes. The most important relates to

knocking from the contract those provisions where the parties have failed to present anything to the Board other than a general agreement.

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[fol. 3891] A precedent of approving such loosely drawn contracts should not be started. In addition, paragraph 9 which limits the passengers to be carried on Panagra flights to through traffic would appear to be in violation of the prohibitions against discrimination in Section 404(b) of the Act.

Finally, the financial provisions of the contract should be tightened, the terms of the contract should be cut to not more than seven years, the parties should be required to file with the Board revisions in the method of payment under the contract which the record shows they did not intend to file, and finally, the condition along the lines suggested by Mr. Ryan that the approval of this contract does not constitute approval of the formula for allocation therein should be inserted in the order of approval.

There is one other point I would like to bring up.

On page 39 of my brief, there were some figures relating to traffic and it was there stated that that traffic was between Miami and Balboa. Those figures which I gave should reflect from all three Pan American gateways to Balboa and I would like the record to be corrected to show that.

Chairman Landis: I think most of the intervenors have absorbed them there.

Do you want to take two minutes?

Mr. Schneider: I just wondered if I could.

Chairman Landis: Two minutes.

Mr. Schneider: That is right. I think I can do it.

REBUTTAL ARGUMENT OF HUBERT SCHNEIDER, BRANIFF AIRWAYS.

Mr. Schneider: I want to address myself solely to the

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[fol. 3892]

REBUTTAL ARGUMENT OF GERHARD A. GESELL

PANAGRA.

Mr. Gesell: Mr. Friendly and I are going to divide the rebuttal time so I guess I have about ten minutes.

Chairman Landis: That is right.

Mr. Gesell: I am not going to try to tell the Board what it meant in the Latin American decision, but I think I can tell the Board, and Mr. Branch particularly, what the Latin American decision and subsequent events meant to Panagra.

I think perhaps the best way of doing that is to review more or less chronologically what happened.

When the Latin American decision was decided—came down—Mr. Roig did the very natural thing. He called a meeting of the Panagra Board and said, "I want authority to file an application."

That matter was not handled by the Panagra Board as a routine renewal of the old problem. There was a considerable interval of consideration. During that time Mr. Roig and other representatives of Grace called upon the various Pan American officials, the directors of Pan Corp as well as the Pan American, discussed the matter pro and con in great detail.

When the Panagra meeting was finally reconvened there was a flat refusal on the part of Pan American to approve the filing of an application. The Board had said that it wanted an application filed, everything possible had been done to bring that about, and it was clear that on the determination of every one in Pan American acting as a corporation, and these various people concerned with it

[fol. 3893] acting individually, that that was impossible. There was then a counter proposal made by Pan American, and I was brought into the picture at that time.

I say brought into it—I have been working with Panagra and the Grace people on Panagra problems I guess for six years, constantly. I don't suppose a week has gone by that I haven't talked intimately about this matter with Mr. Roig and Mr. Garni and Mr. Patterson and the other Grace people.

I was very familiar with the background, very familiar with what Grace thought was best in the interests of Panagra and what Grace thought was best in the interests of the public. We started on this negotiation of the contract, Mr. Friendly and I, with absolutely no authority to conclude any kind of agreement.

Mr. Roig and his associates said, "I am not going to agree in principle to anything. I have had experience discussing various kinds of arrangements with Pan American. I am not going to do that. I am going to see what can be worked out and when it is worked out I will look at it, not before.

"I have no instructions as to what Grace was willing to do under this heading or that heading, and what Panagra was willing to do under this heading or that heading."

So, we went into these conferences and while it is true they took only two months, they were two of the most strenuous months that I have ever spent and I am sure two of the most strenuous months that any of us concerned with it have ever spent.

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[fol. 3894] The Constitution, itself, was written in four months and while I don't say this is as important as the constitution, we worked on it and worked on it hard.

Chairman Landis: Perhaps they had better talent.

Mr. Gesell: Quite likely.

In the course of those negotiations and discussions, we recognized that the Board, itself, was opposing any extension of Panagra to the States through Docket 779.

Mr. Highsaw, who now points to that as a solution, had colleagues on the brief opposing it as a solution at the time.

We were confronted with another fact which occurred in the middle of the negotiations and which had a very vital effect on the negotiations, in my opinion, and that was the reopening of the Latin American case. We saw in the reopening of the Latin American case further evidence that the Board was not going to wait patiently again for something to happen in this Panagra situation.

We saw in it a very real possibility that Eastern Air Lines would be brought to the Canal.

We saw in it that if Eastern Air Lines was brought to the Canal there would be a totally different possibility for Panagra and Panagra's future.

The time factors were very acute.

The realistic and practical problem was to solve this matter at the time or we couldn't see the solution ahead. We saw it remotely, as a matter of litigation, over many years.

Competition was rising. It was a matter of doing something now, and doing it however on a basis which did not

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[fol. 3895] depart from what we thought the Board had in mind in terms of the public interest and what Grace and Panagra had thought were desirable in terms of the pattern.

You have heard arguments here that Grace succeeded in what it was trying to do. I don't think Grace succeeded. I don't think Pan American succeeded. I think what happened was that under the impetus of the Board's firm and forthright position we were able to work out an agreement that had never occurred to anyone before, an agreement that was totally different than we had ever discussed in our previous negotiations, something which I am sure those of us on the Panagra-Grace side could never conceive would have been possible.

The reason for that, as Mr. Roig testified: Panagra was in a strong bargaining position, a bargaining position strengthened by the action of this Board and by the events I have just related—the decision, itself, and the reopening of it.

We worked out an arrangement which Mr. Roig testified in this proceeding, that as best he would now be able to say had never been suggested to him in the past during this long and tortuous controversy, would have been acceptable to Panagra. It was acceptable because while it may not have been an ideal solution in terms of an application, it was a solution which worked out for the public the advantages of the through service, which Mr. Roig and his associates in Panagra have been most concerned with, and it was a solution which was practical from a business point of view in terms of financial provisions, in terms of

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[fol. 3896] financial provisions, in terms of operating questions.

That was why the contract was entered into. It represented no departure from the position that Panagra and Grace had taken in this proceeding from the outset as far as ultimate objectives for the public interest are concerned.

Now, I am sure that when the Board referred to the filing of an application, it couldn't have given consideration to alternative methods.

No more than I at the time would have thought that an agreement like this was possible, could the Board have been saying in Docket 779 "We say you must file an application. We don't want to look or consider anything else."

This was something brought about by that decision and by the events, and something wholly outside anything any of us could have anticipated.

We want to submit it to you on the merits. We think your obligation is to determine whether or not this agreement is in the public interest, whether it meets the standards of the Act, and we present that problem for your consideration rather than the question of whether or not this meets or doesn't meet a particular mandate or a particular sentence of a particular opinion, written under other conditions than prevail at the present time.

We feel that the events have strengthened our position in urging an approval of the contract.

Now, I want to turn briefly to one other phase of the arguments that we have heard.

I am not going to try to discuss some of the questions of whether or not Panagra was conceived in sin, and some of

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[fol. 3897] the other arguments which I find it difficult to understand.

You know Panagra's history. You know that its organization and the manner in which it was organized was carefully reviewed at the time we undertook the pioneering job. Its performance we reviewed at page 11 of our reply brief.

We believe it is a good performance. I don't think the fact that we have settled a controversy here mitigated what we have done. I think it assisted it. Certainly public policy looks with favor on the discontinuance of controversies. I want to look at this problem of traffic because I don't think we have a clear understanding as between us and the

Board as to what Panagra's traffic situation is at the present time.

I want to first mention briefly the problem in South America. That has not been changed by this agreement. Panagra has its separate sales offices, it generates its traffic, the Buenos Aires office remains the same. Panagra has something better to sell under this agreement, but the traffic arrangements are essentially the same.

It is not a Pan American office at Buenos Aires, as Braniff would lead you to believe. It is a joint sales office. Panagra has its own personnel and sells its own tickets, an office as a matter of fact, which is run by a former Panagra employee.

In the United States the situation is changed and it is changed very favorably to Panagra. Panagra gets a far better and fairer break on this traffic matter than it had before. There has a lot of water gone over the dam since 779 and in that process advertising and publicity arrangements and schedule arrangements have been substantially

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[fol. 3898] improved and the connecting service problem greatly minimized since the days of that controversy.

Panagra was given its own advertising and publicity department, and much of that had already been accomplished by the time of this agreement, but this agreement goes further. It was worked out with recognition for the many problems which had arisen concerning Panagra's relations to Pan American as sales agent, what Pan American's responsibilities were, and what Pan American's obligations were.

We went painstakingly through all phases of that problem—advertising, publicity, and the generation of traffic—and worked out concrete specific provisions by which Pan American is bound and which we think clearly plays the whole arrangement on a much better basis—in fact on a basis with which we can't find any grounds for criticism.

We looked further ahead, even, and felt that we should put into the contract provisions which would enable us to discontinue the sales agent if it didn't work out, and those provisions are here. If it isn't satisfactory to Panagra in terms of its needs, if Pan American doesn't fulfill its obli-

gations, Pan American loses its sales agency under provisions of this contract. That gives Panagra the great leverage. It also gives it an opportunity to discontinue it entirely if our belief as to what is going to happen over the period of years doesn't work out.

Mr. Schneider has been kind enough to say that he would permit me to make a correction of the statement he made yesterday concerning Panagra's independent advertising, for example. I think I told you that Panagra had an inde-

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[fol. 3899] pendent advertising program and I think you, Mr. Branch, said you hadn't seen it.

The official Steamship and Airway Guide, for example, which I have here presents the thing in pretty clear shape and I would like to hand it up to you if I may.

You will see on the front side a system advertisement of Pan American Airways System, which mentions incidentally, Panagra points and gives Panagra traffic benefit but turn it over on the back and you will see a Panagra advertisement, resulting from the Panagra publicity, financed by Panagra funds, devoted exclusively to a development, and holding out of Panagra's traffic.

And you will find advertisements in Fortune such as this one in the current issue, a full page, wholly Panagra advertisement, and you will find advertisements in the New Yorker, and in Time, and in News Week and there is a big program going on in the New York papers. That is independent advertising undertaken by Panagra in the generation of its own traffic.

Mr. Lee: He gave you a good opportunity with that question, didn't he?

Mr. Gesell: Well, I cite it not to prove that Mr. Schneider was wrong, Mr. Lee.

Mr. Schneider: I was.

Mr. Gesell: But to give you concrete evidence that Panagra is in a position to generate and develop traffic in the United States, and it is not at the beck and whim of Pan American.

We call upon their agents, of whom they have a great many, over 250, we are in direct contact with them, with

[fol. 3900] sales literature and we feel we are going to get a fair and good break in developing our traffic.

Mr. Branch: May I interrupt just to make this observation: that I have seen some of these advertisements and the thing that I realize now threw me off is the little note at the bottom which talks about "For full information and reservations apply to Pan American World Airways office," which are your agents, I suppose?

Mr. Gesell: That is right, they are our agents: Under that arrangement we have offices at 300 places throughout the country. 11 of those are Pan American offices but the rest of those are agency setups. They are not Pan American controlled. They are traffic people all around, in the hotel lobbies and everywhere. We are in direct contact with them through our own staff.

Mr. Branch: You have direct arrangements?

Mr. Gesell: Direct contact with them. Our people call on them. We present our literature to them, we haul them into conventions and show them motion pictures and give them speeches. We do all the activity in generating traffic with those agents as Braniff does with its agents or Eastern does with its agents or anyone else does. We have our own facilities for doing that, they are independent of Pan American, and that is perpetuated and preserved and broadened in this contract, and made in our opinion more effective.

Mr. Lee: I would like to ask a question on another point: Does this contract include the route to New Orleans?

Mr. Gesell: It does in this way: the contract provides

[fol. 3901] that in the event Pan American obtains non-stop rights between Balboa and New Orleans, which it does not have at the present time due to the route situation requiring a stop at Guatemala City, that Panagra may operate its aircraft to Balboa and tender them to Pan American for Pan American operation over its route to New Orleans in the event that traffic conditions justify such an operation.

Mr. Lee: Any other access points in the United States included in this agreement?

Mr. Gesell: Yes. In the event Pan American gets certain additional route rights, then the agreement becomes

operative as to those route rights, principally—and of course most important to us—is the Miami-New York route which is involved in the domestic route case.

Mr. Lee: Is that automatic or is that operation on the part of Pan American?

Mr. Gesell: It is automatic.

Mr. Lee: When they get, for example, non-stop routes from New Orleans to Balboa then it is automatic?

Mr. Gesell: The contract is automatic on the East Coast to New York. It depends upon traffic considerations when we talk about operations up through New Orleans to Chicago. In other words, it is automatic in the place where Panagra's traffic requires the service most.

The other is dependent upon traffic conditions, and we didn't want it automatic so far as Panagra is concerned, because we don't want our operation so fanned out here (indicating) that we don't carry through on the aircraft that Panagra tenders to Pan American, the traffic to its

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[fol. 3902] principal destination point, but it is automatic where it counts.

Mr. Ryan: And where it counts is on the East Coast, is that correct?

Mr. Gesell: Yes. I say where it counts in terms of where that is the most important place.

Chairman Landis: Before you leave, Mr. Gesell, I would like to ask you one general question on this agreement.

Has there ever been any suggestion made that this agreement would be a violation of the Sherman Act except for approval by the Board? Do you get my point on that?

Mr. Gesell: You are talking about the through flight agreement.

Chairman Landis: Yes, I am talking about the through flight agreement.

Let's assume, for example, that there was no approval required by the Civil Aeronautics Board of that agreement. Would you then violate the Sherman Act?

Mr. Gesell: I don't know the answer to that. That suggestion has not appeared in this proceeding.

Chairman Landis: It has not appeared?

Mr. Gesell: As far as I can recall. I don't think it has been suggested by anyone.

Chairman Landis: Of course our approval of the agreement gives you immunity from the Sherman Act.

Mr. Gesell: I think that the problem is difficult to resolve in terms of the Act, because of Panagra's peculiar relationships to Pan American.

Chairman Landis: I am not talking about the other

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[fol. 3903] phases of it but I am just talking about this agreement.

Mr. Gesell: So far as I know that has not been suggested in the proceeding at all.

Chairman Landis: And the Department of Justice representatives were at the hearing and have had the opportunity to raise any objections?

Mr. Gesell: I think they made no statement, however, as to their view either way, as to the legality or illegality of that contract under the Sherman Act apart from approval here.

I will ask Mr. Friendly to check me on that.

Mr. Friendly: There was no such thing.

Mr. Gesell: I think that is the situation.

REBUTTAL ARGUMENT OF HENRY J. FRIENDLY, PAN AMERICAN AIRWAYS, INC.

Mr. Friendly: I would like, if I may, to begin by adding two points to Mr. Gesell's remarks in connection with Docket 525, with which I fully associate myself.

The first of these is that you have an opportunity in this case to bring Panagra's traffic, Panagra's planes, Panagra's crews, to the United States, and to do it now.

There is nothing to show that you ever had that opportunity, or would have had it, if an application by Panagra for a certificate had been made.

You have never heard argument, much less made a finding, that the traffic warrants the certification of Panagra on that route.

You have never heard argument on some of the legal questions—or let me put it, rather—questions specifically

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[fol. 3904] related to the identity of Panagra, which would be brought up against its certification by some of the very

persons who now appear so enthusiastic about it, such as the argument that it would involve Pan American competing with itself, or the argument related to the half-ownership of Panagra by a steamship company.

You very properly, in 525, talked about an application by Panagra, though with no certainty as to what such an application would result in or would ever have resulted in on the merits.

Now, I think also that we ought not simply to take those words that you gentlemen used, but to try to get behind them to the reasoning behind them. Why was it that you were interested in an application being filed by Panagra.

Mr. Lee: Before you leave, you may have it, but comment, Mr. Friendly, on the legal point raised by Public Counsel that approval of an agreement like this might involve replacing a 401 case, at your most convenient point.

Mr. Friendly: I would be very glad to do it now, Mr. Lee.

We think there is simply no merit in that contention of public counsel. The motor carrier cases we believe are perfectly clear that one certificated carrier can make an arrangement whereby operations over its routes are conducted by the equipment and crews of another carrier without any problem of new certification being raised.

As we see it, the Board, in the Catalina case, went way beyond anything that is remotely suggested here.

There, United had made an agreement with Catalina, whereby not only the operations were to be conducted with

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[fol. 3905] United's planes and crews, but United was to establish the rates, collect the revenues, and the entire operation was to be for United's account.

That was approved under 412, with no suggestion that any 401 problem is raised. I don't think unless you want me to, that it is necessary for me to retrace the steps that were gone over by Mr. Gesell yesterday, showing how completely control of that operation north of the Canal is vested in Pan American and not in Panagra, except that I would like to comment on two points raised by Public Counsel, which I think may warrant a little comment.

First of all, he says that whereas in the ordinary interchange agreement the fixing of schedules is left completely with each party, here it is not.

Well, that seems to me a perfectly academic approach to the whole purpose of a through operation of equipment agreement, is that the equipment should go through and obviously there has to be some meeting of the minds as to the schedule.

No purpose would be served take the United Western case. If a Western airplane had gotten into Denver at 12 in the morning and United had chosen not to run it out until 4 a.m., the whole purpose of the thing is that the plane shall go through, and this agreement provides that the parties shall adjust their schedules so that that shall be done.

That isn't giving Panagra any control over Pan American's schedules. The other point that was raised was that some control of the number of these flights was vested in Panagra.

Well, the answer to that is that it is vested only initially, and that the agreement contains provisions whereby

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(fol. 3909) if the load factors on these flights drop to a level that Pan American considers uneconomical, the matter has to be taken up and proper adjustment made.

Therefore, those, to my mind, are the only features of the agreement which raise even remotely a question of who is the carrier, or any 401 question.

I think they are completely without merit.

Chairman Landis: Isn't there a situation in Canada that is not unlike that Catalina case? Isn't a subsidiary of the Canadian Pacific operating across on one of those border routes under a permit issued to Trans Canada?

Mr. Friendly: I am just not familiar with that, Mr. Chairman. I think that there is no 401 problem whatever, that this agreement falls clearly within the I.C.C.'s action in the motor carrier cases, action which has behind it the sanction of the Supreme Court in the Thomson case, the Rosenbloom case, and is a far smaller thing than you, yourselves have approved in the Catalina case, which I would think disposed of the matter completely.

I wonder if I may get back to the language in 525. I think we must see what you gentlemen had in mind—try to speculate about it. I think that one thing that you had in mind was the very thing that this agreement does: getting through service between the Eastern United States and the West Coast of South America.

So, on that basis, Mr. Branch, when you inquire, quite properly, whether anything is changed, I think the answer is that this agreement is the change, and I think that we are entitled to inquire, as Mr. Gesell suggested, whether if this

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[fol. 3907] agreement, which nobody thought of, and it is very unfortunate that it hadn't been thought of, and we all can sensor ourselves—I mean we, on this side of the table—that it hasn't been thought of before.

If that agreement had been on file on May 1 instead of on August 1, would that language have been as it was, and unless it would have been, I don't see that it is of any importance, unless the language was addressed not simply to the provision of through service, but to the provision of additional competition between Miami and Balboa, and between Pan American and Panagra, and if that is such an overmastering need that everything else is subordinate to it, why then of course as we said yesterday, this agreement falls, but we don't think that that is the case.

Mr. Lee: If this is approved, what other services, if any, does Pan American propose as between the Panama Canal Zone and Miami?

Mr. Friendly: This agreement, Mr. Lee, will only cover through flights operated from Lima or points south on Panagra's routes and Miami.

In addition to those flights we have the obligation, under our certificate, which we fully intend to discharge, to operate such flights between Miami and Balboa, terminating there as the needs of the traffic justify and require.

Some via Camaguey and Kingston, some non stop, depending on what the traffic warrants.

Now, it seems to me that to say that because this agreement must fail, either on account of that statement in 525 or otherwise, competition between Pan American and Pan-

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[fol. 3908] agra on this Miami-Balboa sector is so vital forgets a great number of things.

In the first place it forgets the fact, as I mentioned yesterday, that 2(d) is only one part of Section 2. Section 2 puts other mandates on the Board, fosters sound economic conditions in air transportation, to improve the relations between air carriers, to coordinate transportation by air carriers, to promote adequate and economical and efficient service at reasonable charges.

All of those objectives at which this agreement is very definitely aimed.

In the second place, the arguments would seem to insist that these two companies compete with each other on that sector regardless of how much other competition there was, and in that connection, I would like to say a word about the idea that there is now no competition between Miami and Balboa, or between the Eastern United States and Balboa, which seems to be prevalent.

There already is competition between the Eastern United States and Balboa,—or there will be as soon as Braniff commences its operation.

Take the situation from New York, for example—the most important single source of traffic, although not the only one, as sometimes seems to be assumed.

From New York to Balboa there is going to be a service by National to Havana and thence by Braniff, which should be fully competitive with the service of Eastern and Pan American, or National and Pan American, through Miami.

There is already competition there. We are not all by

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[fol. 3909] ourselves.

Furthermore, I would like to come back to a point which I made before in other cases, that there is no evidence of traffic potential between Miami and Balboa justifying additional competition, whether by Panagra or anybody else.

You were shown some charts yesterday, pictographs, of the volume of traffic between Miami and the Canal, which is greater than the amount South of the Canal, but it is greater by comparison only.

Mr. Crozier's figures, which you cite in your opinion, were 36 outbound passengers a day to Balboa from all United States gateways, or less than 22 from Miami, and

to serve that traffic you already have the service of Pan American, the service of Braniff, and about six foreign carriers either authorized or about to be authorized, and what the need is for a 9th carrier in that—

Chairman Landis: But those foreign carriers can't take some of that traffic, can they?

Mr. Friendly: They cannot take traffic from the United States destined to this one little section here (indicating on map). They can take traffic from the United States to Panama, and they can take traffic from the United States to every other country there, and the idea that anything hinges on the Canal Zone versus Panama in the light of what are likely to be the changes in airport rules down there, does not seem to me in any way important.

Discount them if you will. Let's say that the six foreign carriers are only equal to three or two, because of fifth freedom or other limitations, where is the need for a fifth

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[fol. 3910] carrier, say, between the United States and Balboa when the other day you said that the question of having four unrestricted carriers between Chicago and Washington was a very speculative matter and you refused to approve it.

I do think that we must beware of this double standard—one for domestic and another for international, particularly now that you have established competition abroad.

When it comes to a question of additional competition there certainly is no reason for applying any different test.

Just a word on the arguments of Braniff and Eastern. Braniff very candidly did not make any claim that this agreement should be disapproved because of any injury to it. Its whole case is based on some claim that it was wrong of W. R. Grace and Company to seek this practical solution to the problem instead of pursuing litigation to the end, as if Braniff, forsooth, would heartily approve of an application by Panagra for a Balboa-Miami-New York route.

Well, we have simply been doing what Braniff told us to do. When they were seeking this route of theirs in South America, they said this: this is from page 46 of their brief to the Examiners:

"Such competition" that is, by Braniff "would also compel Pan American and W. R. Grace and Company, out

of motives of self interest, to cease their quarrelling and cooperate in the improvement of service between the United States and South America."

So, we followed the Braniff trail, and we regret that

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[fol. 3911] they now think they gave us poor advice.

Mr. Lee: At least that prediction came true, didn't it?

Mr. Friendly: Yes. That is, it did as far as we are concerned, Mr. Lee. There is only one thing lacking to make it complete.

Now, as to Eastern, the first thing that is clear is that so far as Eastern's present routes are concerned, the effect of this agreement can only be beneficial to it. Anything that puts traffic into Miami benefits Eastern, and this agreement will.

The claim that Eastern is prejudiced by the provision of this agreement relating to space assignments is a poor sham. Those are nothing more than the automjes which each airline assigns to its own stations, and which airlines assign to each other.

Panagra has precisely that kind of an arrangement today, not only with Pan American but also with Eastern.

Reference was made to this Washington-Lima passenger whom Eastern gets.

Well, that is precisely the passenger we want, as you have pointed out, I think, Mr. Lee. That is the passenger for whom this kind of arrangement exists.

Now, if Eastern chooses instead to route him over Braniff South of Balboa, we will handle him too—handle him on these through flights, on space other than the assigned space, or we will handle him on local flights.

In any event the situation would be exactly as it will be if this agreement doesn't exist.

Now, Eastern's motive isn't anything related to its ex-

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[fol. 3912] isting routes. It thought, as Mr. Gesell said, that it was about to profit from this disagreement between Pan American and Grace, and it is moving heaven and earth to prevent us from settling that disagreement. It is as disconfitted as a hawk that started to swallow a chicken and then found that the chicken was running off.

It doesn't pretend as Braniff does that it might like to help Panagra or see Panagra extended to the United States. It wants to keep Panagra just where it is, it wants to get to the Canal, itself, and then with its control of the preponderance of the United States originated traffic, not only from New York but from all of these other cities, reaching far into the territory which Braniff would have access to, it wants to be in a position to control the destiny of both Braniff and Panagra, and to do that until it felt the time had come for an advance from the beachhead, as Mr. Gambrell called the Canal Zone when he argued the Latin American case, unless, in the meanwhile, to use the phrase that he did yesterday, Panagra's owners had seen fit to disgorge.

Eastern isn't here to help Panagra or to help Braniff. It is trying to drive a wedge between Braniff and National, and it is trying to drive a wedge between Pan American and Panagra.

I am not going to follow Mr. Gambrell in further rearguing the Latin American argument, except to say two things: First, to refer back to these traffic figures which I think show that a second operation—or another operation—between Miami and the Canal, in addition to all that have

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[fol. 3913] been now authorized, is simply not supportable, and in that connection, I would like to refer you gentlemen to the opinion which you wrote just the other day on reconsideration in the Pacific case, and to suggest that the course which you followed there is the course of statesmanship on the Miami-Balboa route also.

We share Eastern's views as to the desirability of giving the convenience of one carrier service to Latin American travelers proceeding through the Miami gateway, but we have a different method of providing that solution, one which will come before you in due course.

Now, if I could have another moment—I am sure I have already overrun my time and this will take about one minute—I would like to talk just a bit about the idea which has been generated by some of the intervenors that Pan American has some generally adverse interest to Panagra, and

that we are not sincere in wanting to see this agreement approved and to see Panagra flourish.

The fact is that those two companies, in spite of this controversy about the extension matter, have worked in the closest cooperation as a glance at the map will show that they necessarily have to do. There seems to me to be two mirages about Panagra's traffic. The first is that all of it goes to Buenos Aires. The fact of the matter is that as this record shows, of the United States originated or destined traffic, 82 per cent of the passengers are to and from points in South America other than Buenos Aires, points such as Quito, Lima, Santiago, where of course Pan

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[fol. 3914] American is 100 per cent interested.

Now, what about the other 18 per cent? Are they all from points for which Pan American's New York route or Miami route is competitive to Buenos Aires? Why, not at all. Take the fellow in Los Angeles, of whom there are quite a number. Is Pan American's salesman in Los Angeles interested in selling Panagra to Buenos Aires?

Well, of course, he is. Is the travel agent in Denver or New Orleans, whom we are working with—are they interested in selling Panagra's route? Well, of course they are.

And take even the part of this 18 per cent of the passengers who could go to Buenos Aires by one route as well as another? Do we regard them as completely lost to us if they travel over Panagra?

Well, of course not. We have the haul to the Canal. When they go over Panagra's route they are not going over the route of a stranger, they are going over one of our own companies. We have entered into a perfectly clear and definite contract to sell that traffic over those two routings—this traffic that is competitive, which is a small part of it—fairly and without discrimination, and we wouldn't have made that contract, and I wouldn't be presenting it here, if we didn't intend to live up to that promise fully. And apart from our sincerity and good faith in that, I suggest that our interest in getting an extra half share out of a portion of the haul on those few passengers, is not such that we are going to imperil a relationship that is as valuable as Pan American's with Panagra.

[fol. 3915]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 420

Kahn/mh

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket No. 2423

In the Matter of an Agreement filed under section 412(a), and any other applicable provision of the Act, by and between

PAN AMERICAN AIRWAYS, INC.

and

PAN AMERICAN-GRACE AIRWAYS INC.

relating to interchange at Balboa

Room A, Departmental Auditorium
Washington, D. C.
Monday, October 7, 1946.

The above-entitled matter came on for hearing at 10 o'clock a.m., pursuant to notice.

BEFORE:

THOMAS L. WRENN, and
WARREN E. BAKER, Examiners.

APPEARANCES:

GERHARD A. GESELL, and
CHAS. M. DAVISON, 701 Union Trust Building, appearing on behalf of Pan American Grace Airways, Inc.
Chrysler Bldg., New York, New York.

FOWLER HAMILTON, Southern Building, Washington, D. C., appearing on behalf of Pan American Airways, Inc., 135 East 42nd Street, New York, New York.

HUBERT A. SCHNEIDER, 815 15th Street, Washington, D. C., appearing on behalf of Braniff Airways, Dallas, Texas.

EDWARD J. HICKEY, JR., Special Asst. to Atty. General, U. S. Department of Justice, 10th and Constitution Avenue, Washington, D. C.

JAMES L. HIGHSAW, JR., Public Counsel.

EDW. D. RAPIER, 315 Camp Street, New Orleans 12, La., Orleans Airport Commission, New Orleans, La.

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RICHARD A. FITZGERALD, 1518 K. Street, N.W., Washington, D. C., appearing for National Airlines, Inc., 3240 N.W. 27th Avenue, Miami, Florida.

WILBUR LA ROE,
JOHN MOORE, and
WM. BLUM, JR., 743 Investment Building, Washington, D. C., appearing on behalf of Port of New York Authority, 111 Eighth Avenue, New York City, New York.

JOSEPH McDOWELL, Department of Justice Building, U. S. Department of Justice, Washington, D. C.

R. S. MAURER,
J. M. VERNER, and
T. M. MILLER, Municipal Airport, Memphis, Tennessee, appearing on behalf of Chicago & Southern Air Lines, Inc., Memphis, Tennessee.

E. SMYTHE GAMBRELL, and
W. GLENN HARLAN, 825 C & S Bank Building, Atlanta, Georgia, appearing on behalf of Eastern Air Lines.

ROGER J. WHITEFORD, appearing on behalf of Braniff Airways, Dallas, Texas.

ALEXANDER C. DICK, Appearing on behalf of Colonial Air Lines, Inc., 630 Fifth Avenue, New York City.

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[fol. 3917] PROCEEDINGS

Exam. Wrenn: Come to order please, gentlemen.

The Civil Aeronautics Board has assigned this time and place for hearing in the matter of an agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc., dated July 30, 1946, being Docket No. 2423.

Will you please enter your appearances?

Pan American?

Mr. Hamilton: Fowler Hamilton.

Exam. Wrenn: Panagra?

Mr. Gesell: Gerhard A. Gesell and Charles M. Davison.

Exam. Wrenn: For Braniff?

Mr. Schneider: Hubert A. Schneider and Roger J. Whiteford.

Exam. Wrenn: Colonial?

Mr. Dick: Alexander C. Dick.

Exam. Wrenn: For Eastern?

Mr. Gambrell: E. Smythe Gambrell and W. Glen Harlan.

Exam. Wrenn: For National?

Mr. Fitzgerald: Richard A. Fitzgerald.

Exam. Wrenn: For Chicago and Southern?

(No response)

Exam. Wrenn: Department of Justice?

Mr. Hickey: Edward J. Hickey, Jr. and Joseph McDowell.

Exam. Wrenn: Public Counsel?

Mr. Highsaw: James L. Highsaw, Jr., Elison D. Smith, Jr.

Exam. Wrenn: Are there further appearances?

Mr. LaRoe: John W. Moore and Wilbur La Roe, Jr., for

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[fol. 3918] Port of New York Authority.

Exam. Wrenn: Appearing pursuant to a petition to intervene.

Are there further appearances?

Mr. Gesell: There was a gentleman from the New Orleans Authority who asked to have his name entered. He said he had spoken to you.

Exam. Wrenn: He had another hearing.

He intended to enter an appearance at the Waterman. I suppose that is where he is at this time.

COLLOQUY BETWEEN EXAMINERS AND COUNSEL

Before proceeding with the case of the applicants, are there any matters that should be considered at this time?

Mr. Hickey: Mr. Examiner?

Exam. Wrenn: Mr. Hickey?

Mr. Hickey: On behalf of the intervenor, Department of Justice, I would like to make a motion at this time that Pan American Corporation and W. R. Grace Lines be made parties to this proceeding. The Department is particularly interested in the control features exercised in the Panagra arrangements and it feels that these two parties are necessary to the proceeding.

We feel that that position is consistent with the position already taken by Public Counsel that both contracts are necessary to the proceeding.

We would like to urge at this time that an order be entered making them parties. It is my understanding that such an arrangement would not meet with serious resistance on the part of petitioning parties in view of the letter which has been written and made a part of this proceeding with

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[fol. 3919] respect to both contracts.

If desired by the Board the second contract can be made part of this proceeding and I presume it necessarily follows parties to that contract would also be.

Exam. Wrenn: I had a question I wanted to address to you but in view of your statement about the willingness of the parties I would like to hear from them first.

Mr. Hamilton: Speaking for Pan American, Mr. Examiner, I don't think that Mr. Hickey's statement is correct. We do take the position that Pan American is not a necessary party to this proceeding—Pan American Corporation.

The letter to which Mr. Hickey referred is the letter of August 27, and the third paragraph of that letter which

was evidently the one that he had in mind states that the contract was not formally filed under Section 412 or any other provision of the Act for the reason that we are of the opinion that there is not any provision requiring its filing, and that is still our position.

The letter proceeds, however, to say: "As stated at the pre-hearing conference, however, we considered that the Board in connection with its approval of the contract may attach such terms and conditions to it"—I am not reading the precise language, I am summarizing—"and that the conditions will relate not alone to that contract but to any undertakings involved in the contract between Grace and Co. and Pan American Airways."

As I say, that is still our position. It is our position that while the Board may quite properly consider in connection with the PAA Panagra contract, the contract be-

[fol. 3920] tween Pan American Corporation and Grace, that contract has not been submitted to the Board for its approval.

We concede that it is closely related to the contract between Panagra and PAA. As to the question as to whether the Board should exercise jurisdiction, our position on that is as stated in the August 27 letter in which we said, "without waiving our position with regard to the statute not requiring the filing of the Pan American-Grace contract, we are authorized by the parties to state that if the Board should be of the opinion that the contract between them should be passed upon by reason of its relationship to the contract filed, the parties will not contest the Board's jurisdiction under the circumstances."

That is to say the Board's power to assert jurisdiction over the contract.

Exam. Wrenn: What would be the position if, after consideration of the evidence, the Board should determine that W. R. Grace and Pan American Corporation should be parties to the proceeding?

Mr. Hamilton: As far as Pan American is concerned I think it is our position that while the statute does not require them to seek approval of their contract with the Grace Corporation, that as stated in this letter it would not op-

pose the assertion by the Board of jurisdiction over the contract and over it as a party to the contract.

Exam. Wrenn: The point I am driving at is this: if the Board should determine that W. R. Grace and Pan American Corporation should be parties to this proceeding, would the fact that they are not parties be fatal—that is,

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[fol. 3921] to the agreement.

Mr. Hamilton: You mean, would the Board be deprived of jurisdiction to approve the Panagra PAA contract?

Exam. Wrenn: Yes.

Mr. Hamilton: If the Board should determine as a matter of law that they were necessary parties later on?

Exam. Wrenn: My point is this: If after considering all the evidence, the Board should reach the conclusion that W. R. Grace and Pan American Corporation should be parties to this proceeding, what would be the status of the proceeding?

Mr. Hamilton: I think under this letter it could make that determination, that they should be parties to the proceeding.

Mr. Hickey: Mr. Examiner?

Exam. Wrenn: Yes, Mr. Hickey.

Mr. Hickey: It is our position that the very receipt of evidence is dependent largely upon Pan American Corporation and W. R. Grace being parties to this proceeding.

We don't feel that it would be proper to make them parties after the receipt of evidence and we would like to urge that this matter be decided by the Board immediately.

It would be my suggestion that petitioning parties might be agreeable to having them designated as parties, with a view to speeding up the proceeding.

If that is not agreeable to them we would amend our motion to the effect that the hearing be deferred until they are made parties.

Exam. Wrenn: Would you determine that they are

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[fol. 3922] proper parties until you have heard the evidence in this proceeding?

Mr. Hickey: We feel that the very receipt of evidence is dependent on their being made parties.

Exam. Wrenn: I am not convinced from what I have heard this far. Mr. Gesell, are you empowered to speak for W. R. Grace or not?

Mr. Gesell: I think I can state our position without talking for W. R. Grace at this moment. It seems to us that there are two separate issues here: One, whether or not the contract can be considered in this proceeding.

Now, everyone has said, including Grace and Pan American, that the contract can be considered if the Board determines by reason of its relationship to the contract filed, that it must be treated as all one ball of wax. That is a different question from whether or not Grace and Pan American have agreed to be here at this proceeding.

They have both agreed that the contract be considered and I should think the question of whether Grace or Pan American Corporation appear here is a matter purely up to them.

They are not necessary parties in the sense that they are parties subject to the jurisdiction of the Board. They are not air carriers. They are not for the Board here in that sense and since they have agreed that the contract can be considered on the basis indicated in the letter they naturally would be bound by any letter which the Board issues in respect of the contract. Isn't that about where we stand?

Exam. Wrenn: I think so.

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[fol. 3923] Any other parties have anything to say on this?

Mr. Schneider: I would like to ask Mr. Gesell whether Mr. Roig and Mr. Friendly are going to be limited in cross examination to their representation of Panagra and Pan American Airways, Inc., and whether questions can be directed to them in their capacity as representatives of Grace and Pan American Corporation?

Mr. Gesell: I think it is perfectly clear that questions can be directed to them in any capacity as long as the questions are concerned with relevant issues. Certainly Mr. Roig isn't going to refuse to answer questions as to W. R. Grace and Co. which are relevant to this case, nor Mr. Friendly as to Pan American Corporation.

Mr. Gambrell. Mr. Examiner, I wish to concur in the request made by the Department of Justice for the reasons given by Mr. Hickey and for other reasons, and throwing light on the applicability of the law, Section 408 and 412, to W. R. Grace and Company and Pan American Corporation, I wish to quote what someone I sometimes regard as good authority, and that is Mr. Friendly in his memorandum, November 16, 1942 in Docket 779, page 11 of the memo where he said:

"It is of course immaterial that Grace's 50 per cent stock ownership of Pan American-Grace antedated the Civil Aeronautics Act. An air carrier controlled by a surface carrier before enactment of the Act can stand on no better ground than the surface carrier itself. Yet that is the very case as to which the Board stated in the American Export decision that it would apply the

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[fol. 3924] test laid down in Section 408(b).

"Moreover, as previously pointed out, the inevitable result of the extension of Pan American-Grace's certificate to the United States would be an increase in the control exercised by Grace. Actually since the enactment of the Civil Aeronautics Act, Grace has already increased the degree of control exercised by it over Pan American-Grace without obtaining the approval of the Board, and on a state of facts in which such approval could not have been granted under the terms of Section 408(b)."

I have some other quotes from the opposite side, but there it is made plain that Grace is to be treated as an air carrier in relation to 408, and if Grace hadn't been regarded as an air carrier under the law, it seems to me that point wouldn't have been made in the memorandum.

Certainly W. R. Grace and Company is subject to 408 as an air carrier, or something substantially an air carrier under the law.

Now just a very short three-line quote from W. R. Grace and Company in its memo of November 16, 1942 in Docket No. 7. I quote from page 4 of the memo of Grace:

"If Section 408 were relevant, it would be necessary to determine whether Grace is a person comprehended by Section 408(a). The terms of Section 408(a) do not include Grace, (although they do include Pan American) and we cannot follow the argument that the last proviso of Section 408(b) modifies the clear language of 408(a) so as to include Grace within its

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[fol. 3925] terms."

There Grace is saying that this applies to Pan American Corporation, which I assume Mr. Gesell today would not deny in view of previous commitments of Grace in that connection.

Now, if Pan American Corporation says it applies to Grace and Grace says it applies to Pan American Corporation, in a proceeding which we might call ante litem motam, then I say that should have weight here.

Now, one other short quote from Public Counsel in its memo of the same date—in their memo of November 16, 1942, in the same case, page 7:

"Mr. Warner: It must be recognized, of course, that the present case goes beyond the actual statement of the Board in the American Export case. That case involved the entry of a new company into the field whereas W. R. Grace and Company now have negative control of an established air carrier and will continue to have it regardless of the outcome of this proceeding. That case involved an application for a new route whereas the present case involves the extension of an existing route. The former case also involved an application, whereas the present proceeding involves a proceeding instituted by the Board on its own motion."

Exam. Wrenn: You are quoting there?

Mr. Gambrell: Yes. I am st quoting:

"It is submitted, however, at none of these elements constitute a reason for distinguishing the two cases.

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[fol. 3926] It remains true in both cases that unless the principles and tests of 408 are applied, it will be pos-

sible for a common carrier (or its parent) to obtain control over an airline operation which it did not previously control. Inasmuch as the Board has stated that it does not wish to approve any such acquisition without considering the tests of Section 408, these tests must be applied in the present case."

That is all the quoting I want to make just here but it seems plain to me that Pan American and Grace and Public Counsel have previously taken positions indicating that this hearing would be sadly incomplete as to facts

Exam. Wrenn: What hearing?

Mr. Gambrell: I mean the present hearing. —by a knowledge without having those people who were regarded as so essential in the previous hearing, and the both documents, A and B in this particular case.

Exam. Wrenn: Suppose the things you have been quoting and tossing back and forth at each other were true. What is the situation now? How does it bear on this case?

Mr. Gambrell: It seems to me they did not regard these holdings as within the purview of 408 and it seems to me they each have taken contrary positions previously.

Exam. Wrenn: Are you addressing yourself exclusively to the question of jurisdiction now?

Mr. Gambrell: It is hard to separate it all. It seems to me that if these parties are probably essential it is fairer to them and to all concerned that they should be in now rather than later at which time they might claim that they

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[fol. 3927] have not had an opportunity to be confronted with evidence and to be bound by it.

Exam. Wrenn: On the strength of what I have heard here yet, speaking for myself I am unwilling to direct that these parties be brought in here when first they are contesting the jurisdiction and second they have said it has no bearing on it and have made a statement that if the Board determines it here they will consent to the jurisdiction.

Mr. Gambrell: Both of the parties and of the contracts, is that their position?

Exam. Wrenn: They speak for themselves. I don't put words in their mouth. I want to clear up your point.

Mr. Gesell: Our position is made clear in the letter of August 27, 1946 wherein Mr. Friendly and I spoke both for Pan American and Panagra and for Pan American Corporation and Grace, and in that stated that if the Board considered it had jurisdiction over this contract by reason of the relation of the Grace-Pan American Corporation contract to the one that has been filed no objection would be raised to the Board asserting that jurisdiction.

Mr. Gambrell: Could we go beyond that and inquire whether or not they would regard it as unseasonable making of them parties if it was felt that they ought to be parties, that this has been an injustice by waiting so long to bring them in.

I would like to know if they would make that point.

Mr. Gesell: I think it is perfectly clear from the letter that they have no basis for raising any objection to any order which the Board issues with respect to the contracts.

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[fol. 3928] Mr. Gambrell: Or making them parties either,

Mr. Gesell: That is clear.

Mr. Hamilton: I thought I had stated that position before, Mr. Examiner.

Mr. Hickey: Mr. Examiner, the bases on which the Department of Justice intervened in this proceeding were alleged restraints of trade and competition.

Now, I didn't labor this discussion purposely this morning for the reason that I felt it was perfectly obvious that with such an issue of public interest involved in the proceeding, it was obvious to all that the parties who exercise control of Panagra would have to be parties to the proceeding since it is only through such parties that any restraints of competition if they exist could be exercised and it is on that basis principally that we urge that Pan American Corporation and Grace Lines be made parties to this proceeding.

Mr. Gesell: Certainly Mr. Hickey doesn't mean Grace Lines. He has twice referred to Grace Lines.

Mr. Hickey: Grace and Company.

Mr. Gesell: W. R. Grace and Co.

Exam. Wrenn: Let me ask this question: In view of what has been said about Mr. Friendly and Mr. Roig being

here to answer questions, will that take care of your situation?

Mr. Hickey: I do not think it will.

Exam. Wrenn: Who can you get down here if you have W. R. Grace and Company? What information do you want that isn't available now?

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[fol. 3929] Mr. Hickey: Mr. Examiner, we feel that —

Exam. Wrenn: I am taking an undue amount of time to hear this but I want to get a full statement of the parties grounds here.

Mr. Hickey: Our full statement is that the parties who control this corporation, Panagra, necessarily are parties to this proceeding when the issue of restraint of competition is before the Board.

We have raised that issue by our petition for intervention, and that petition has been granted. We don't feel that the subsidiary corporation should bind the other corporation speaking at this hearing, even if it were conceded by petitioning parties that they could make certain statements regarding Grace and Company or Pan American Corporation.

Exam. Wrenn: I haven't heard from Public Counsel. Do you have any statement on it, Mr. Highsaw or not?

Mr. Highsaw: Mr. Examiner, as Mr. Gesell has said, there are two points involved here: one is the question of jurisdiction over the parties and the other is the question of jurisdiction over the contract.

With respect to the question of the Board's jurisdiction over the parties, Public Counsel wants to reserve the right to urge before the Board that the Board does have jurisdiction over the parties here, and that Grace is a carrier and that Pan American Corporation is an air carrier.

With respect to the contract that is involved, I believe that public counsel's position was pretty well summed up at the pre-hearing conference and in the letter of Septem-

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[fol. 3930] ber 3, 1946, in answer to Pan American and Panagra's letter of August 27.

There is just one point that I would like to try to get clear now and that is this question: Pan American and

Panagra have said that if the Board wants to take jurisdiction over the contract they are willing for the contract to be before the Board. However, the Board has no authority to issue an order saying that Grace and Pan American Corporation are parties before the Board unless they have filed an application for this contract to be considered, and it is Public Counsel's understanding of the letter of Pan American, set out on August 27, that if the Board should decide to take jurisdiction over this contract, that Pan American and Panagra and Grace and Pan American Corporation will all be considered as having applied under Section 412 of the Act and any other section that is applicable thereto.

I would like to get it clear that that is their position now.

Mr. Gesell: It must sound to some ear, Mr. Examiner, as though we are dancing a lot of angels on a pinpoint but we are not. There are two distinct questions:

Grace and Pan American Corporation, as I understand it, have no desire that the Board not fully consider the Grace-Pan American Corporation contract, and all the implications which that contract in relation to the other contract involves.

On the other hand to say that Grace and Pan American Corporation should come in and say, just because Mr. Gambrell would like us to say so that they are air carriers

[fol. 3931] or that we are common carriers or that we are engaged in the phase of aeronautics, and we don't think we are, it seems to me to be putting the burden pretty heavy.

We have said that if the Board wishes to issue an order which involves that contract in any respect, it can, and naturally the parties will be affected by that Board and it will determine their relationship to this situation just as much as anything else but the idea of their coming in here as parties seems to us to be pretty beyond that, much beyond that, particularly when they have had notice of this hearing after all, officers of both companies are here, and I don't see why we have to labor time on the question of whether or not they are formal parties.

Exam. Wrenn: Does that answer your question, Mr. Highsaw?

Mr. Highsaw: No, it doesn't. I don't think that Mr. Gesell has yet stated what I understand to be the position stated in his letter of August 27 and as stated in my letter of September 3. There is some sort of twilight zone here or something where Grace and Pan American Corporation are.

If the Board takes jurisdiction over the contract it seems to me that the Pan American and Panagra and Grace and Corp. all have to agree that under those circumstances they will have applied to the Board.

Otherwise there is no way for that contract to get before the Board because under Section 412 of the Act you have to have an application by the air carrier, one air carrier that is involved, and a concurrence by all of the other air carrier parties thereto, so that I don't see how the contract

[fol. 3932] could get before the Board unless it would take the position that the Board, believing the contract is under the jurisdiction of the Board, that they would consider this application in this case to emanate from all the parties.

Exam. Wrenn: And if the contract couldn't get before the Board who would be damaged.

Mr. Highsaw: I believe it would be Pan American, Panagra, W. R. Grace and Pan American Corporation.

Exam. Wrenn: In other words, it couldn't be approved?

Mr. Highsaw: That is my present understanding.

Exam. Wrenn: Any further statement on that, Mr. Gesell?

Mr. Gesell: How would this be: if we stated that in that event we will have been deemed to have applied for purposes of this proceeding, because of the relationship of the contract to the contract filed, but that we are not waiving in any way our position that neither Grace nor Panagra Corporation are air carriers subject to the jurisdiction of the Act.

Exam. Wrenn: That is the way I understood your letter.

Mr. Gesell: I am trying to state it succinctly and I think that is what the letter says.

Mr. Schneider: The difficulty is: if at that time the Board says we have jurisdiction over the contract between Grace and Panagra Corporation obviously you can't pass

upon the contract unless the people who executed the contract are parties to a proceeding.

If the Board says you, at this time, become parties you have actually no record in which those parties participated.

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[fol. 3933] You have no record on which to pass upon the contract. I don't see what the objection is on the part of counsel for Grace and Pan American Corporation to being considered as parties now. They have already stated Mr. Roig and Mr. Friendly are available to testify for the two companies.

It seems to me they ought to cover the procedural defect that may take place months from now.

I would like to get this case decided and not go to court.

Exam. Wrenn: Mr. Highsaw is Mr. Gesell's additional statement clear in answer to your question?

Mr. Highsaw: That is one view that can be taken of it, Mr. Examiner, but in the event that the Board should decide that Pan American Corporation and W. R. Grace are an air carrier and a carrier respectively, it does clear up the situation.

Exam. Wrenn: Very well. Insofar as the motion, as addressed to me is concerned, it will be overruled.

Mr. Hickey: Do we have leave to file this motion with the Board, Mr. Examiner?

Exam. Wrenn: If you so desire.

Mr. Hickey: We so desire.

Exam. Wrenn: Then you better act fast on it.

Are there any other matters to be cleared up?

Mr. Dick: Mr. Examiner, I would like to make a statement at this time on behalf of Colonial Airlines and retire from the proceeding.

Exam. Wrenn: All right, sir. Go ahead.

Mr. Dick: The Colonial Airlines intervened in this pro-

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[fol. 3934] ceeding by reason of an interest which we thought no one else would protect, that interest arising from certain applications now pending before the Board, particularly on reconsideration by the Board of the decision in Docket 525.

Though the interest is real, it is to a certain extent contingent. I may say it is very much contingent. For that reason, we do not wish to participate in the proceeding and indulge the right of cross examination.

Also we are offering no evidence in the proceeding.

We do appear here, however, to protect our rights as intervenor, if that is necessary, to be allowed to file briefs, argue before the Board, and take any other part in the proceedings which we have a right to do.

We do not operate into Miami at this time. Pan American does not operate from Miami to interior domestic points. It seems to us that all exhibits and evidence offered to support any merged operations of Pan American's routes from Miami to points into the interior is irrelevant and immaterial, depending for its validity entirely on the supposition that Pan American's domestic routes case, hearing on which commences on October 30, will result in an award to Pan American of such domestic points as Washington, New York and Boston.

We would like to express at this time an objection to such evidence, but my understanding of the procedure is that if evidence is taken which is immaterial, the rights of the parties are protected without exception thereto.

Exam. Wrenn: That is right.

Mr. Dick: If, prior to the decision in this case, Colonial is awarded the Southern route to Balboa or to Barranquilla,

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[fol. 3935] we reserve, insofar as we can reserve by this notice, the right to demand that the proceeding be reopened if necessary for introduction of evidence bearing on the adverse effect which approval of this agreement would have on Colonial's route.

May I further call attention to the fact that Colonial has been a pioneer in offering to enter into equipment exchange agreements, and particularly to Exhibit A in Docket 525 in which the President of Colonial offered of record to enter into equipment exchange agreements with other carriers where the same would be practical, particularly the carriers of South American countries at any point of entry on the North coast.

Exam. Wrenn: Thank you, Mr. Dick.

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[fol. 3936] Mr. Gambrell: May I ask him a question?

Examiner Wrenn: All right.

Mr. Gambrell: Not to labor the point, but to be sure I know where we are now in the parliamentary situation, may I inquire whether we are considering only Exhibit A or Exhibit A and B filed?

As I understand, we are considering only Exhibit A filed in the case at this time.

Examiner Wrenn: In what case?

Mr. Gambrell: The instant case. The application shows two contracts; A and B.

Examiner Wrenn: Are you referring to the statement Mr. Dick made?

Mr. Gambrell: Not at all.

Examiner Wrenn: That was the reason for my question. I thought you were referring to Mr. Dick's statement.

Mr. Gambrell: Is it correct to understand that only Exhibit A, Contract A, is being offered for approval at this time?

Examiner Wrenn: I will let the applicant speak on that.

Mr. Gambrell: He can say "yes" or "no".

Mr. Gesell: I would prefer to say something a little more than that, Mr. Gambrell. My answer to that is: We are considering both contracts. We said that at the present hearing conference. We said it in the letter of August 27. Our position is absolutely clear, that the Board can go into all of the issues raised by both contracts to the extent it feels necessary to approve the contract filed.

Examiner Wrenn: Do you mean, Mr. Gambrell, whether

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[fol. 3937] or not the Examiner will restrict you from asking questions on the contract as filed between Grace and Pan American Corporation? If so, no.

Mr. Gambrell: We will treat them both alike in dealing with them here.

Examiner Wrenn: I will permit you to cross examine and consider both of them before the witnesses if that is what you mean.

Mr. Gambrell: I want to know which one they want to approve. I want to know if they want contract B approved in this proceeding. I think that is a fair question.

Examiner Wrenn: Doesn't the application state for itself? I don't want to argue with you, Mr. Gambrell. I don't think that is the Examiner's business.

Mr. Gambrell: They can say "yes" or "no" whether they want Contract B approved.

Mr. Gesell: We want the contract B approved if it is necessary for the approval of the contract filed.

Mr. Gambrell: May I ask who are parties to this proceeding, parties applicant or offering contracts? I know that Pan American, Inc. is.

Is Pan-American-Grace Airways, Inc. a party to this proceeding, and I would like for Mr. Gesell, if the Examiner will permit, the answer on that.

Mr. Gesell: I can't.

Examiner Wrenn: Isn't that shown by the order?

Mr. Gesell: We filed a letter and asked to be made a party, and I assume we are a party.

Mr. Gambrell: That is an easy answer.

[fol. 3938] Mr. Gesell: The Examiner will have to answer the question.

Examiner Wrenn: For the purposes of this proceeding, the Examiner rules they are considered a party, if that will clear it up for you.

Mr. Gambrell: Is Pan American Airways Corporation now a party to this proceeding?

Mr. Hamilton: If the Examiner please, I will be glad to restate the position that has been stated several times before, that Pan American Airways Corporation's position in that respect is stated in the letter of August 27, 1946.

Mr. Gambrell: A great deal has been said since. You can just state whether or not Pan American Airways Corporation is a party or whether—

Examiner Wrenn: Do you mean whether or not W. R. Grace and Pan American Corporation are parties to this proceeding?

Mr. Gambrell: I was asking each one separately, yes, sir.

Examiner Wrenn: Is that what you mean?

Mr. Gambrell: Yes.

Examiner Wrenn: I think we have had that argued here before, that they aren't.

Mr. Gambrell: Is that Mr. Gesell's understanding, of W. R. Grace and Company, that they are not now parties?

Mr. Gesell: I understand that Grace is not a party, whatever good that is.

Examiner Wrenn: Haven't we gone just about far enough into this matter now?

Mr. Hickey: Not quite. In order that the record may be

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[fol. 3939] perfectly clear, I would like to also make a motion that this hearing be suspended until the Board can make a ruling on my motion for making Pan American Corporation and W. R. Grace and Company parties to this proceeding.

Examiner Wrenn: The motion is overruled. Let's proceed. Mr. LaRoe?

Mr. Gambrell: Could I ask another question?

Examiner Wrenn: All right, Mr. Gambrell.

Mr. Gambrell: Are we to understand that counsel for the applicants and other counsel are agreed to the stipulation as to facts offered by Public Counsel?

Eastern is willing that that stipulation should be considered approved, and I would like to know if counsel for the applicants approve of that stipulation as to facts.

Examiner Wrenn: Mr. Highsaw, do you have anything to say about it?

Mr. Gambrell: Could I ask the counsel for the applicants whether they approve it or not?

Examiner Wrenn: I haven't seen the stipulation myself. I would like to know something further about it.

Mr. Highsaw: Mr. Examiner, I think it is important here to understand just what stipulation we are talking about.

Examiner Wrenn: I would think so.

Mr. Highsaw: In accordance with your instructions at the present hearing conference under date of September 5, I circulated a stipulation which contained nothing but the suggestions as to documents from Docket 779 that were to be included by stipulation, as they had been suggested to Public Counsel by the parties.

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[fol. 3940] On September 27, Public Counsel circulated to all of the parties a second stipulation which included all of the material that was circulated in the first stipulation plus material which Public Counsel was including from Docket 525 and other material that ordinarily goes into stipulations in Board proceedings.

The Pan American and Panagra has informed Public Counsel that the inclusion of any documents from Docket 779 in the stipulation is not agreeable to those two parties.

They have also informed Public Counsel that the inclusion of some of the documents from Docket 525, which were circulated in the stipulation sent out on September 27, were not acceptable to those two parties.

They also made certain suggestions for additions to the stipulation. In accordance with those suggestions, Public Counsel has prepared a third stipulation which he has circulated to the attorneys here this morning, which includes all material that has been brought up in these various discussions, and excludes the material in Docket 779 and Docket 525 to which Pan American and Panagra would not agree.

Examiner Wrenn: I would like to request that counsel give consideration to this stipulation sometime during the morning.

Mr. Gambrell: May I note in passing, Mr. Examiner, that Eastern, on October 1, addressed a letter to Public Counsel suggesting further stipulation, and that we are willing to consolidate all that has been suggested by Public Counsel as a general stipulation?

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[fol. 3941] Harold J. Roig, called as a witness, having been first duly sworn, examined and testified as follows:

Direct examination.

By Mr. Gesell:

Q. Mr. Roig, you have been President of Panagra since 1939, have you not?

A. Yes.

Q. And you are Vice Chairman of the Board of W. R. Grace and Co.?

A. Yes.

Q. Will you make a brief statement of the events leading to the signing of the contract which was before us in this proceeding from the date of the Board's decision in the Latin American route case?

A. The Board's decision in 525, the Latin American route case, was made public the latter part of May—I think May 24. It had a very direct and important impact on the problem which Panagra had been wrestling with for a number of years in that it not only authorized another American line, Braniff, to practically parallel our international route in South America, with the exception of Chile, but it also contained a very direct mandate that the owners of Panagra should take prompt steps to make it possible for Panagra to provide through service.

I immediately called a special meeting of the directors of Panagra to consider the proposal that Panagra apply to extend its route to the United States.

The meeting was called for within a few days after the

[fol. 3942] notice and I think within a week of the publication of the decision in 525.

Pan American requested a slight adjournment of the meeting in order to make it possible to bring the matter before a meeting of their board of directors which was—I think it was a regular meeting, it was scheduled to come along within the next week or ten days.

I agreed to that adjournment and during the interval, in order that our situation, and what I considered the very important implications of 525, might be fully presented to

Pan American

the directors of ~~Panagra~~, I arranged a series of meetings

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between Mr. Grace, Mr. Garney and myself, with Mr. Trippe and Mr. Dean, and with the outside directors of Pan American who were available.

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I don't mean by that that Mr. Grace, Mr. Garney and I were present at all of those interviews, but that between us we saw these gentlemen to whom I have referred.

Mr. Grace and I, as I recall, personally, saw Mr. Charles Francis Adams in Boston. We went there especially for the purpose. I saw Admiral McDonald. I think Mr. Garney and Mr. Grace saw Mr. Sherman Fairchild. They also discussed the matter with Mr. Trippe and Mr. Dean.

I have forgotten the others whom I saw, but we have pretty well covered those who were available at the time.

Partly perhaps as a result of that, but undoubtedly the matter presented it self to Pan American also as an important decision to make, the matter when it came before the Pan American Board of Directors, I am told, received very full and complete consideration.

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[fol. 3943] Our directors meeting was held a day or two after the Pan American meeting. At that time Mr. Dean and Mr. Friendly reported that the matter had very full consideration by Pan American's Board, and that they had reached the conclusion that they could still not support an application by Panagra.

They accordingly voted against a resolution which was offered at that meeting, and voted for by the Grace directors that Panagra extend to the United States.

On the other hand, Mr. Dean and Mr. Friendly explained to the meeting that their directors had indicated a strong desire to work out this matter in some other form if it were possible, and they suggested that they felt that something in the way of an alternate arrangement which would still comply with the sense of the Board's mandate in 525, could be worked out.

The Grace directors were not inclined to accept that just at face value, although we were impressed by the general manner in which the thing was presented as an indication of a disposition on Pan American's part, we felt to go a great deal further than they had ever been willing to go before.

I stated at the meeting that while ordinarily in a case of this kind, one would accept an idea in principle and then work out the details; I felt that in view of the experience that we had had in that matter, that we would

have to reverse that usual order of procedure, and that we could not accept the proposal in principle until we saw what it looked like in detail.

Accordingly, Mr. Friendly and Mr. Gesell were delegated to endeavor to work out some sort of an implementation of Pan American's proposal, which would be satisfactory

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[fol. 3944] to Panagra and which would be in compliance with the Board's mandate.

They spent the next two months in a really intensive effort to work out such agreements.

During that process of course Mr. Gesell was in contact with me and Mr. Friendly, I assume, with his clients, and there was no agreement in principle that we were going to execute anything—no such agreement on either side, until we were both satisfied.

As a result of the very arduous efforts that had been made by Mr. Friendly and Mr. Gesell, to effect the essential purposes which Panagra sought in this service—I will say there was no agreement until we saw what that actually looked like in black and white.

When that point was reached we held our Panagra meeting on the 30th of July and approved the contract and signed it.

Q. Did you state what the proposal of Pan American was at the meeting at which it was decided that Panagra would not file an application?

A. Do you mean the meeting when the resolution was offered and did not pass?

Q. Right.

A. Pan American's proposal at that time was that we endeavor to work out some plan. It was expressly stated that that plan was to be something totally different from the plan that we had discussed several years ago, and which I had found so unacceptable, but it was to be some plan which would make it possible in the first instance for the public to receive the benefit of through service, with one

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[fol. 3945] plane and without change, to destination in the United States, as the primary objective, and along with that would take care of the various points in which Panagra

was interested, and which had been the subject of some previous discussion.

Now, that was very very far at that moment from being spelled out in any such detail as it appears in these contracts. It was just a general concept of what might be done.

Q. You referred to the important implications of Docket 525. What do you have in mind in that connection?

A. Well, several things. It seemed to us that the award of a certificate to Braniff immediately changed the whole picture so far as American aviation in South America was concerned, because it meant that the character of Panagra's position was going to be somewhat changed in that we were going to have a direct American competitor in addition to all the local and foreign competition which was growing very rapidly, and that time was a matter of the greatest importance in accomplishing our idea of, in some manner or form, reaching a United States terminal.

Grace had won an important victory in the circuit court of appeals which had been taken to the Supreme Court. That proceeding might have worked out a satisfactory result over a period of almost endless years, but 525, the injection of Braniff into the picture, meant that prompt action was necessary unless we were going to have a fruitless result.

Q. Will you state what the considerations were which led you as President of Panagra and the Grace directors of Panagra, to be willing to enter into this agreement, in lieu of continuing efforts to have Panagra come to the

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[fol. 3946] United States on its own route?

A. Well, as I have just stated, the time factor was a very important consideration.

As I have also just stated, the fact that under this contract the public would have the benefit of through plane service was a dominant consideration, because that would put us in a position where we could compete with Braniff and the foreign competitors who were having through services to the United States and would enable us to offer the public at least as good a service as they could offer.

In addition to that, and from the, in a sense, Panagra angle, but also in a sense the public angle too, because a

great many of these things involved large questions of aviation economics, which I think have more than just party to party significance, but the contract gave us several advantages, some immediate and others prospective, which we would not have had on our own certificate, and which we had to weigh against any loss from not having our own certificate.

In the first place, we attached a great deal of importance to the maintenance and training provisions which this contract provides.

Under the contract there are provisions by which we can maintain our equipment with Pan American in the United States—that is, they maintain it for us,—and we can do our pilot training in the United States.

With DC-4 equipment and even with other equipment,—particularly with DC-4 and other four-engine equipment—that is a matter of very great importance in reducing the cost not only the capital cost but the day to day expense

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[fol. 3947] account, and we believe improving the efficiency.

The item of training alone where we have to send boys down south before we know how they are going to pan out, and then bring them back—the expense of that was a very very important item.

In addition to the maintenance and training provisions there was a plan worked out under which we could avail ourselves of the Pan American sales organization in the United States and all over the United States, in a far more efficient manner than we ever had been able to before.

Ample provisions for Panagra publicity, the right to use the Panagra name, provision for special employees charged with the responsibility of furthering Panagra sales, and representation advertising provisions insuring a good ~~reputation~~ in the advertising.

Q. Did you feel that the agreement gave any greater assurance that Panagra's planes would be able to fly through to appropriate points in the United States?

A. Well, of course, that—I was coming to the points that were not immediately at hand.

The agreement contains provisions which enabled Panagra's planes to be operated by Pan American through to various points other than Miami in the United States if Pan American is awarded domestic routes, and we certainly felt that that was a facility to our traffic, of very great importance and the prospect of our securing it in this form was substantially greater than on our own.

Of course, also, implicit in some of the other points I have mentioned on the way by, there are provisions here

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[fol. 3948] under which we felt that machinery was provided for disposal of such questions as had on some previous occasions led to misunderstandings and difficulty.

Q. Are you referring to provisions with respect to the powers of the President?

A. Yes, and I think not only the powers of the President but the general provisions about deadlocking, on all matters related to the contract and appropriate action related to seeing that Panagra is receiving what it is entitled to under the contract, the President without any voice of the Board is authorized to act, and that is a very important prerogative.

Q. You refer to savings under the heading of P and L in terms of maintenance and training. Was any consideration given to the effect of those provisions on the capital account?

A. Well, of course, if Panagra had gone through on our own certificate we would have had to provide all the capital necessary to provide the ground facilities, radio, and all that goes with setting up an air route which would have been a very substantial item.

It would even have included, I am afraid, shops because I think we would have had to provide shops to maintain four engine equipment in this country in any case.

Q. In discussing this matter you referred to the competitive situation and the need of speed in the face of competitive developments.

I wonder if you would turn to the exhibits, particularly Exhibit 4, and describe, perhaps illustrate, the nature of the competition which Panagra is now confronting or will

[fol. 3949] confront in the near future, with particular reference to the ability of the competitive carrier to operate a through flight between the United States and points on the West Coast of South America.

A. Well, of course, this exhibit speaks for itself as far as it goes.

I say as far as it goes, because it only shows the carriers who are presently in operation or authorized, but it doesn't show the ones that are just ready to be placed in that position, nor does it show all of the local competition.

It doesn't really emphasize the problem which confronts Panagra in maintaining an adequate traffic volume, and which I am afraid is not generally understood or appreciated.

The total population of all the cities served by Panagra in South America is about six million and a half, and of those three million and a half are in the single city of Buenos Aires.

There is no other city on our route with a population of a million and only two cities with a population of over 500,000.

Only three with a population of over a hundred thousand. The remaining 23 points which we serve have populations of under one hundred thousand and 20 of the 23 a population of under 50,000 each. To serve this total population of six million and a half Panagra must provide first class modern air service over a route 8800 miles long, as long or longer than the domestic routes of American, Eastern, United, or TWA.

Panagra must maintain its position over this long line through a thinly populated area in competition not only with another American Airline, Braniff, which has been

[fol. 3950] authorized to parallel practically our entire international route except in Chile but also in competition lines on with 9 South American and European ~~countries and~~ various sections of our route.

Virtually every important city served by Panagra already has local or foreign competition.

Thus in Colombia we have competition of Avianca with recently authorized extension to the United States.

Between Balboa and Peru, Ecuador and Colombia, with extension to the United States, we have TACA, which also provides local competition in Colombia, Ecuador and Peru.

Locally in addition to TACA we have Andosa in Ecuador and Faucett in Peru. In Bolivia we have LAB, in Chile, LAN, and between Chile and Argentine the British line already running, and LAN and FAMA just about to start.

All this competition exists today.

In near prospect we have in addition to Braniff a British line paralleling our whole international route with extension to New York.

Peruvian International Airlines and Tampa New Orleans and Tampico projected between Peru and New York.

FAMA the national Argentine Company paralleling our entire Argentine route and competing for Buenos Aires traffic with extensions to the United States at New York via the East Coast and Los Angeles via the West Coast.

On no airline in the United States serving anything remotely approaching a comparable population and comparable route mileage has competitive service been deemed justified.

Between Washington and Boston, for example, a distance

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[fol. 3951] of less than 500 miles there is a population within easy reach of the airlines in the area of about 25 to 30 million.

Boston, New York, Philadelphia alone account for almost 18 million. Yet only one line, American Airlines, is authorized for unrestricted operation in this 500 mile sector.

A second line, Eastern, is restricted in its operation to Boston by the requirement it can only carry traffic to Boston on flights originating south of Richmond or West of Charleston, West Virginia.

A number of other lines enter the sector from other territory and carry traffic between some intermediate points. National between Philadelphia and New York, TWA between New York and Philadelphia, Penn Central between Baltimore and Washington, Northeast between

New York and Boston, and Colonial between Baltimore and Washington.

But only one line, American Airlines, is authorized for completely unrestricted service between these points, and a second line, Eastern, for restricted service.

On the basis of two American lines in Panagra's territory, there should be 8 to 10 lines with unrestricted operation between Washington and Boston.

Based on two American lines in Panagra's territory, plus eight foreign lines with extensions to the United States, all competing for through United States traffic between all or part of Panagras territory and the United States there should, absurd as it may seem, be 30 to 40 unrestricted lines between Washington and Boston.

That is the difference between the standards under which Panagra is working and the standards which are recognized

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[fol. 3952] in this country.

By Mr. Gesell:

Q. I wonder if you could explain what effect that situation had on the need of Panagra operating the through flights as contemplated under this agreement?

A. Well, making any corrections or adjustments in these figures or in comparison, you please, the comparison can leave no doubt in any one's mind of the seriousness of the traffic problem confronting Panagra. It makes clear beyond any possibility of doubt two vital facts, first that Panagra must be put in position to obtain and develop its through traffic with the United States by through plane service as provided by these contracts.

With our local way to way traffic beset by constantly increasing competition from both local and international lines, our through United States traffic should not be imperiled by our being left in a position inferior to that of our American and foreign competitors.

In other words, we should be placed in position to at least compete on equal terms with our United States and foreign competitors for United States traffic by through plane service under these contracts.

The second implication, equally important, and a part of the same problem is that no other American Airline should be granted an extension to Balboa.

An extension of Eastern to Balboa, for example, would mean that it would make Balboa and not Miami the transfer point for Southbound South American traffic.

As the original carrier Eastern would have first contact

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[fol. 3593] with this traffic, thereby being able in large measure to influence the routing of the traffic from Balboa South.

If it divided this routing equally between all of the lines including Panagra, as it might be expected to do in order to receive reciprocal consideration northbound, it would mean it would automatically divert a large amount of Panagra's United States traffic, present and potential between Balboa and Buenos Aires, even after Panagra is enabled to offer through plane service to the United States under these contracts.

Through sale of round trip tickets Eastern would also be in a position to control the routing on much of the northbound traffic to Panagra's loss. Local traffic between Balboa and Miami already thin by reason of the services already operating between these points, is particularly necessary to supplement load factors on Panagra's planes between these points, to offset the fact that a substantial amount of the traffic Panagra brings to Balboa, forks off at that point to Central America, New Orleans, Brownsville, and Los Angeles, and the same of course applies in reverse on traffic in the opposite direction.

In other words, extension of another American line to Balboa would seriously impair the benefits Panagra would derive from through plane service under those contracts by diverting to competitive lines a large part of the United States traffic between Balboa and Buenos Aires which should normally and properly move over Panagra's route and by diverting from Panagra's planes local traffic necessary to fill the places vacated at Balboa by Panagra traffic

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[fol. 3594] originating south of Balboa, and transferring there to Central America and to middle and western United States destinations.

Q. It is contemplated under the agreement, is it not, Mr. Roig, that Panagra planes operated by PAA north of Balboa, will carry local traffic between Balboa and Miami as well as the through international traffic?

A. It is definitely so provided in the contract and it provides that they will be given the same treatment as Pan American's own planes. The whole thing is just our plane, our physical plane, ~~fits~~ fitted into their operation, that is all there is to it. It is their operation. They ~~have~~ have more of an interest in a sense than we have, because they are paying the expenses and benefiting from the receipts of the line.

Mr. Gesell: I think, Mr. Examiner, this would be a good place to adjourn. I don't think we will finish before the lunch hour. I have a number of specific questions concerning the contract which Public Counsel was anxious to straighten out. I think perhaps a breathing spell before that—

Exam. Wrenn: All right. We will adjourn until 2 o'clock p.m.

(Whereupon, at 12:30 o'clock p.m. the hearing was adjourned to 2 o'clock p.m. the same day.)

* * * * * * *

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[fol. 3955] Q. Now, I would like to take up with you a number of specific contract provisions in question which were raised by public counsel, in order to clarify the agreement under various headings.

The first relates to provision 2 (e) of the contract which states that Panagra aircraft chartered to the PAA are not to be operated over any of PAA's routes other than those described above, except by mutual consent.

Public counsel has referred to that provision as a blank check provision, permitting Panagra and PAA to proceed over—to put this agreement in operation over any of PAA's routes on a regularly scheduled basis without approval of the Board.

A. I can see that possible question, but actually it was intended for just the opposite purpose. The intention was that Panagra should not be in a position to ask that our planes be used on any other route, and Pan American should not be in a position to, and there is no intention of their

~~there~~ being operated on any except the routes referred to in the contract.

Q. If any regular operation over any other routes is undertaken, and it is thought to make this agreement applicable, the approval of the Board would first be sought. Is that correct?

A. Oh, yes.

Q. Now, I want to direct your attention to paragraph 2 (b) and (c) of the agreement which contain various provisions for Panagra planes proceeding over routes of PAA under various circumstances, but those routes are not as

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[fol. 3956] yet authorized by the Board.

Public counsel has asked—has raised the question as to the importance of those provisions in the agreement, and as to whether or not they should not be postponed for consideration until it appears whether or not Pan American is going to have the various routes.

Would you comment on that problem, please?

A. Well, of course, I think it is very important to the extent possible they should be covered in this proceeding, because they were an important inducement in the making of the contracts. They were an important element in the service, the public service which Panagra will be able to provide to its traffic if Pan American gets these routes.

Now, of course, the basic question, namely, whether there is any public convenience and necessity, which warrants the granting to Pan American of domestic routes, that is necessarily the subject of a separate proceeding.

But once that has been determined, why then whether it is contrary to the public interest for Pan American in performance of those services to use the physical aircraft of

~~at~~ Panagra, which carries with it the very great, although quite incidental, I should think, from the legal angle, bene-

fit, of being able to give the traffic on Panagra's route through service, without change.

That is a question which I should think could be covered by this proceeding, and by this contract.

Q. Were these provisions of significance in the working out of the agreement?

A. Oh, very definitely.

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[fol. 3957] Q. The next question has to do with paragraph 8 of the contract which is the provision concerned with training.

Public counsel have raised the question as to whether detailed arrangements, worked out by the parties to implement that provision, will be submitted to the Board for prior approval.

A. Well, if there is any legal reason for it, or any consideration that makes it desirable, there is certainly no objection to filing it.

Q. With respect to paragraph 14 concerned with advertising and publicity, public counsel has inquired as to whether any arrangements made under that provision will involve the filing of contracts with the Board.

He apparently has in mind particularly the last sentence which says: "In this connection PAA and Panagra will work out from time to time appropriate programs for advertising the through service," and so forth, "and will establish the relative contributions to such advertising to be made by Panagra and PAA."

How did you contemplate that that would be handled, as a practical matter?

A. So far as the first part of that is concerned, the programs, I should think would be a routine business matter. It would not ordinarily come before the Board.

The question of division of expense is a matter in which the Board would be interested in connection with rate making in the mail rate determination, if for no other, and while that would be ordinarily worked out between the parties, I assume in the first instance it would automatically

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[fol. 3958] come before the Board, the first rate case that comes afterwards.

And if the matter were handled in a matter not satisfactory to the Board, it would be readjusted in determining the rate.

Q. With respect to paragraph 17, concerning the financial provisions, public counsel has directed attention to the provisions for arbitrating any question that arises between the parties concerning payment to be made in pursuance of the contract, and inquired as to whether or not the decision of the arbitrator, should that be necessary, would be considered by the parties as binding upon the Board.

What is your comment on that?

A. I think the same comment I made on the other point would be applicable here. We don't assume in any way to usurp any jurisdiction of the Board in this contract. Matters of that character would be within their jurisdiction, obviously.

Q. Your answer, then, would be the same as to any agreement reached by arbitration under paragraph 13, concerning further agreements.

If the arbitrator decided what the terms to such agreement would be, the agreement would still have to be filed with the Board for its approval before it became effective.

A. You would know the answer to that as a legal matter better than I would. But I should think so.

Q. There was no thought there that the arbitrator could determine independently the Board's requirements what the agreement should be under paragraph 13?

A. No.

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[fol. 39569] Q. Public counsel has raised the question, which seems to me is answered by the wording of the paragraph, and I will try to cover it, in connection with paragraph 18 as to whether or not Pan American is prohibited for a period of 99 years, under the agreement, from seeking any modification of its certificate.

A. That section applies to modifications which would affect their ability to carry out their obligations under this contract; not to anything else.

Q. In other words, they are otherwise free to change their certificate any way they wish.

A. Oh, certainly.

Q. Now, the question has also been raised concerning paragraph 21, by public counsel, as to what the effect of the provisions concerning the term of the agreement are in the event of a future disapproval of the contract by the Board.

I take it the question is: Do these provisions prevent the Board from subsequently disapproving the contract?

A. As I understand it, the contract is legally subject to the present and continuing approval of the Board. And if it is not approved now, or at any time later, the ~~Board~~ approval is withdrawn; the contract is finished.

Q. Public counsel also raised the question whether the cancellation of the 1939 Pan American-Grace agreement has in any way affected the continued performance by Pan American and Grace of managerial and administrative services for Panagra.

What is the situation as to that?

[fol. 3960] A. Well, those provisions of the 1939 agreement have been continued and will continue until the 1939 agreement is, by the approval of this contract, automatically come to an end.

Q. Is it contemplated that thereafter there will be any managerial agency services performed by the parent companies for Panagra?

A. Yes, on the basis to be arranged.

Q. Mr. Roig, when will Panagra be in a position to tender aircraft to Pan American for operation north of the Canal, assuming the agreement is approved?

A. The moment the Board approves it. We have the DC-4 aircraft now. We can put them into service at once.

Q. Are you prepared to do so?

A. Absolutely; anxious to.

Mr. Gesell: I guess those are all the questions I have.

Examiner Wrenn: Do you have any questions, Mr. Hamilton?

Mr. Hamilton: No, sir.

Examiner Wrenn: Mr. Schneider, you may cross-examine.

Cross examination.

By Mr. Schneider:

Q. Mr. Roig, I believe you stated that this agreement arises out of the Latin American decision. Is that correct?

A. I said the Latin American decision was the matter that brought that was the occasion to bring this thing for prompt determination.

Q. Prior to the decision of the Board in the Latin Amer-

[fol. 3961] ican case, you were not, were you, negotiating with Pan American with respect to any agreement such as this?

A. No. We were proceeding along the lines that you are familiar with.

Q. That is, the litigation now pending in the Supreme Court?

A. Yes. We had had a similar negotiation to this quite a number of years ago, back about 1941, or 1942, I think.

Q. But you were unable to arrive at a satisfactory solution.

A. That was the occasion when this so-called "interchange agreement" was submitted, which we did not find acceptable.

Q. You testified that after the Latin American decision, a meeting of the Board of Directors of Panagra was called which was subsequently adjourned at the request of Pan American directors, who later returned to the meeting of the Panagra Board and advised that Pan American could not go along with respect to the Panagra applying itself, as suggested in the Latin American decision.

A. That is right.

Q. What were the reasons for the Pan American's position?

A. There are several reasons. They felt and stated that they did not consider it in the interest of either Panagra or of Pan American. There were reasons under the former heading, the only ones that I was interested in, and they were that it would set up a violently and destructively

[fol. 3962] competitive situation in this area between Panagra and Pan American; that it would greatly weaken Panagra's ability to maintain itself in the face of the Braniff and foreign competition which was entering the picture; that it would require an extended investment in capital and operating expenses; it would require the setting up of a sales organization in the United States, and that it would in those ways and others generally deprive Panagra of the benefits which it had been originally contemplated, had always contemplated, should arise from the association of these two companies in certain respects.

Q. Those reasons break themselves down into two classifications, do they not, one set of reasons for the protection of Pan American and one set for the protection of Panagra?

A. Yes.

Q. Now, the reasons advanced for the protection of Pan American, were they any different from the reasons they have consistently advanced?

A. I don't recall any new argument.

Q. As far as the reasons assigned for the connection of Panagra, were those reasons any different from the ones previously advanced?

A. Well, they were necessarily different in the context in which they presented themselves.

Q. What I mean is, the reason they advanced for Panagra not applying its own name, were they not substantially the same reasons they had consistently advanced?

But

A. No. ~~Because~~ you cannot tear the reasons apart from

[fol. 3963] the context, and the context on this occasion included the machinery under which we could bring our traffic through to the United States, and the context also included the fact that a new American competitor had been authorized in this area.

A reason that may mean one thing today may mean a totally different thing under another situation tomorrow.

Q. You assigned as one of the reasons given by the Pan American directors for not permitting Panagra to apply,

that it would cost a lot of money for Panagra to extend itself to the United States, if successful.

A. Yes.

Q. That reason has been advanced many times by Pan American.

A. Not in this context. I am not going to agree that this is a mathematical thing that you can slice like baloney. The fact of the matter is that on that very point it was quite one thing to incur that expense when you did not have Braniff in the field and when you did not have any other way of getting to the United States.

That was a totally different thing than when you had Braniff in the field and you had machinery under which you could bring your traffic to the United States.

in

Now, literally, and the letters of the alphabet, it was the same, but the substance was entirely different.

Q. Did you agree with the reasons they assigned, the Panagra reasons? Did you think they had any validity?

A. I think that coupled with the alternative proposal, and with the change in the situation with Braniff in the

—85—

[fol. 3964] picture, and the rise in foreign competition, the had validity which they are in a different kind although you may say I did not think they had validity five years ago.

Q. But you wouldn't undertake to state today, would you, Mr. Roig, that you would prefer this kind of an arrangement to an arrangement which would permit Panagra to apply in its own name?

A. I would find very great difficulty in answering that question categorically because I went through that problem, that mental process, in great detail in deciding whether to come along with this contract.

Now, there are some provisions here that obviously— I mean, there are some advantages obviously in connection

certificate

with out own ~~contract~~. But there are also definite advan-

certificate

tages here which do not exist with our own ~~contract~~.

I

And if this— myself, back in 1941 and 1942, as I said a moment ago, proposed some form of a contract settlement

of this problem. And if—it is always very difficult to say what you might have done in the past, but to the best of my lights
~~likes~~ today, if we could have worked out anything like this at that time, I would have accepted it.

Q. Eliminating the time factor, that is, the length of time it might take to decide the pending litigation in the Supreme Court, the filing of an application before the Board, and satisfactory disposition, wouldn't you—I am asking you now as a representative of W. R. Grace—prefer to have Panagra instead of ing extended to the United States, ~~and so named~~, enter into this 99-year contract?

A. *I can't answer* that yes or no. All I can say is that

[fol. 3965] I weighed, and we all weighed all of the considerations on one side, and the other, and we decided on this course in preference to the other.

Q. Well, is it fair for me to say that you agreed to accept this as the next best substitute to that?

A. No. I wouldn't even agree to that. You can characterize it that way if you like, but it is—it was more than a substitute, because it had provisions in this that we would not have had under our own setup.

Q. Now, in your direct testimony you spent some time pointing out the competition to which Panagra is subjected in Latin America.

Isn't it a fact that all of this competition, except for the Braniff competition, existed before the Latin American decision?

A. No. That definitely is not the fact.

Q. How much new competition has come along since the Latin American decision?

A. I don't recall the exact dates when the Avianca and Taca, U. S. extensions were authorized. I don't recall the dates when Taca extended its operations to all points on the route. Some were before, and some after.

I do know that the British service between Santiago and Buenos Aires has just begun within the last few days. I line know that the FAMA, the Argentine ~~thing~~, which is a very

serious competitor, that that is just taking shape in these days. It was in a quite confused state in the spring. I could, perhaps, if you like, go through all of them.

Q. No.

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[fol. 3966] A. That is a sample.

Q. Do you think that Panagra, W. R. Grace interests in Panagra, would have entered into this agreement with Pan American Airways, had Braniff Airways not been extended into South America over the Latin American routes in the Latin American decision?

Mr. Gesell: Isn't that an "iffy" question? I don't object to questions about the alternative difference between this and the route because I felt that the Board would be interested in that.

But the question of what they would have done if something had happened, or not happened, and trying to slice this so thin, taking so many different alternatives, which are not the facts, purely suppositions. The fact is they had been authorized to get the route.

Mr. Schneider: In answer to Mr. Gesell, I am saying it arises directly out of direct testimony which, as I recall, is that the Latin American decision which put Braniff Airways over Panagra's routes in Latin America, brought these two parties together.

Now, what I want to know is would they have been forced together a a result of this FAMA business, BOAC, and so

for forth, or is it all because of Braniff?

Examiner Wrenn: Let the witness answer. Go ahead, Mr. Roig.

The Witness: I think considerable light on that question exists in the fact I mentioned a moment ago, in another question, that as long as in the early '40's, we were trying to work out some sort of a contract settlement of this

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[fol. 3967] problem, and my feelings so far as I can recall it, with accuracy, is that had we been able to make this contract then, we would have taken it, and Braniff at that

time was not, as far as I know, even considering South American routes.

By Mr. Schneider:

Q. What I am getting at, Mr. Roig, is that, when all of us know, from previous records that you made many times to work out some arrangements something like this, but you were unsuccessful and it was not until the Latin American decision extending Braniff into South America?

Now, was it because Braniff went to South America that show the two parties got together, or was it because of other things?

A. I think, as I said, the fact that Braniff got the route, and the fact that the Board had, in their opinion, virtually mandated Panagra to clear up the situation, combined to bring the thing to a head.

Q. Do you construe this agreement as meeting the desire of the Board, expressed in the Latin American case?

A. I do in substance, yes.

Q. Now, you referred several times to negotiations for an interchange of agreement with Pan American in years past. May I ask why this agreement is not a simple interchange agreement rather than a complicated character with many other rights beyond a simple interchange agreement?

A. You mean in comparison with the agreement we considered on the previous occasion?

Why

Q. ~~What~~ wasn't a simple interchange agreement entered

[fol. 3968] into? Wouldn't that have solved this through service problem?

A. No, it would not, because a simple interchange agreement in the first place involves, as I understand it, involves reciprocal mileage. We would have operated our planes, or they would have been operated a thousand miles,

to Miami

let us say, 1200 miles over Pan American's route ~~to Lima~~, and Pan American planes would have been operated an equal distance, let us say, to Lima, over our route.

We never liked that kind of a setup, or thought it was a sound kind of a setup.

This contains no—this lacks the essentials, as I understand it, of what is usually called "interchange agreement" in that respect. It is not an interchange agreement.

Q. The reciprocal point that you bring out merely arises from the desires of particular parties. There is nothing inherent in the interchange that calls for each party operating only the same mileage.

A. Unless I have forgotten my Latin, it is inherent in the word itself.

Q. Is there anything to prevent, by agreement, Pan American planes being flown by Panagra south of the Canal Zone over Panagra's entire system, and Panagra's planes being flown by Pan American north of the Canal Zone on their system?

A. There is absolutely nothing in the agreement on the subject, but it would be contrary, so far as I am concerned; to the position I have taken in the last ten years, and it would never be done except over my dead body.

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[fol. 3969] Q. But that would provide through service.

A. But it would not provide the kind of through service we are talking about, and moreover, a simple interchange agreement would not have contained any of these other provisions on which have no relation to that thing, no matter what you call it.

Q. You are talking about pilot training maintenance and so forth. They could be covered by other arrangements.

A. They could be, if the parties would agree.

Q. That is right, certainly.

A. But I have no reason to believe that Pan American would agree to those things, with respect to parts of total agreements, any more than we would agree to those things except as parts of total agreements.

Q. Would you refer to paragraph 1 of the agreement, Exhibit A? I see no reference in paragraph 2 (b) to Houston. Is that deliberate, the omission of Houston?

A. Well, I should say it was.

Q. And you do not include Houston, do you, in the description of points on the east coast of the United States?

A. No.

Mr. Gesell: You don't include Houston on the east coast of the United States?

Mr. Schneider: Paragraph 2 (b) has the clause: "Any other points on the east coast of the United States," and I asked him if he contemplates Houston as falling within that definition.

The Witness: No, I contemplate points from Florida north; not the Gulf.

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[fol. 3970] By Mr. Schneider:

Q. You said this paragraph 2 was an important inducement to you to enter into the contract. Is that correct?

A. That is correct.

Q. How would you feel about this contract if Pan American were unsuccessful in its domestic route case?

A. Well, I would feel that we had lost an important inducement, but not one which we made a basis of determination if they did fail.

Q. Well, if Pan American is not successful in its domestic route case being extended north of Miami to New York, and this contract were in existence, you still would not have through plane service to the West Coast from South American to New York, would you?

A. No, but we would to the United States. Miami is a port of entry, after all.

Q. You mean it all links on terminating on a point in the United States, or does it hinge upon the number of connections that ar .nvolved?

Mr. Gesell: What hinges? I don't understand that question.

Mr. Schneider: The import of this contract. I will put it another way.

Is the important thing from your standpoint about this agreement the fact that you can get access to a point in the continental limits of the United States, or that it provides the least number of connections in service between South America and the United States?

The Witness: The basic point is that we get to a base

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[fol. 3971] in the United States.

Now, the secondary point is that the more we can fan out in the United States, obviously the better. But getting to the United States in itself is the first thing.

By Mr. Schneider:

Q. Now, throughout this agreement I see the phrase: "operated by Pan American," or "Pan American operations," and yet I notice throughout that they are to be Panagra's planes flown by Panagra crews, and manned by Panagra cabin attendents.

What do you mean by "operated by Pan American," except, perhaps, that it flies over Pan American certificated routes?

A. Well, and for their account, which is a very important thing. After all, it is the difference between, you might say, a time charter, or bare boat charter, to use a steamship comparison, or the lease of an apartment house with janitor service, or without it.

There are many situations where you can lease a unit with certain human operating facilities that go with it.

can

You lease a farm that way.

Q. But in the normal sense of the word as we use it in this business, Pan American will do no operating of the aircraft.

A. Oh, they do all the operating of the aircraft as a commercial unit. The engineer on the locomotive doesn't operate the train. He gets his instructions from the people who are operating the line.

Panagra

Q. I take it then that the ~~Pan American~~ pilots flying

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[fol. 3972] Panagra ships north of the Canal Zone are subject to the direction by Pan American.

A. Certainly.

Q. Panagra pilots?

Mr. Gesell: The contract so provides, expressly.

The Witness: Yes.

By Mr. Schneider:

Q. Now, turn to paragraph 10 (b). I notice in the last few lines of paragraph 10 (b) the words "Panagra shall cooperate with Pan American." I notice no agreement on the part of Pan American to cooperate with Panagra.

Is that because of the previous history of the cooperation with Pan American?

A. No, it is not. That is not ~~the reason of a~~ a reasonable question based on the statement of the contract, either.

Q. Why does it read that Panagra shall cooperate with Pan American—

A. Read the whole paragraph.

Q. Let me ask the question, please.

Why is it that if Pan American fails to do something, Panagra agrees to cooperate to straighten it out? Why doesn't Pan American agree to straighten it out?

A. I think in most cases they do. I want to read this paragraph a moment.

Well, it would seem to me, it may not be too aptly worded, but it would seem to me that the import of that language was that Pan American would establish adequate disciplinary machinery for preventing any further conduct of the type indicated, and that Panagra would cooperate

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[fol. 3973] in the form of suggestions to what that might be, or going along with what might be worked out.

Q. It is the only last thing that is spelled out, that Panagra would cooperate.

A. No, the last thing spelled out is the "establishment by the latter," which is Pan American, "of adequate disciplinary machinery."

Q. Is there any agreement there on the part of Pan American to either cooperate, or to establish adequate disciplinary machinery? Is there anything more in 10 (b) than an agreement on the part of Panagra to cooperate in helping Pan American establish disciplinary procedures?

A. Well, you can—the words are there. You can argue one way or another. It is perfectly true, however, that in other provisions of the contract there are general provisions that on this whole question of the kind of sales service which Pan American gives to Panagra, if Panagra is not satisfied with it, there are very adequate provisions under which they can make their desires felt, resulting finally in arbitration and ultimately, if it does not come

sales agency

through, in termination of the ~~contract~~.

So, I would not consider any quibble over that language of any significance.

Q. We have a 1939 agreement before us now, Exhibit 29, and that had in paragraph 4 thereof quite detailed provisions to resolve disputes between the two parties, ending up in arbitration.

Now, was arbitration ever used on the 1939 agreement to settle your difficulties?

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[fol. 3974] A. No.

Q. Do you contemplate that it would be used under this agreement if you had differences?

A. Yes.

Q. Why?

A. Well, because the differences which are—for which arbitration is provided under this agreement are, I think, pretty generally—there might be one or two exceptions arbitration of matters of administration, matters of operations, matters of sales administration, matters which are pretty readily susceptible of arbitration.

The only question that ever arose here where there was any question about arbitration—

Mr. Gesell: When you say "here"—

The Witness: Under the 1939 agreement—was a question of quite a different character, which we did not think was a proper subject of arbitration under that contract, there was a difference of opinion on it.

But we did not think it was intended to be included in this arbitration clause, and it certainly was a question of doubt how you are going to arbitrate, because it in-

volved all kinds of questions of policy of extending an air line.

By Mr. Schneider:

Q. Now, turn to paragraph 13, please.

With which party did this provision originate? Grace? Pan American?

Mr. Gesell: Which part of 13 are you talking about, Mr. Schneider, please?

Mr. Schneider: 13 (a). Sorry.

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[fol. 3975] The Witness: What was the question?

(Question was read by the reporter.)

The Witness: I think it originated with Grace. It has been discussed at various times over a good many years, but in connection with this particular contract, I think we brought it up.

By Mr. Schneider:

Q. Assuming this agreement is approved, why wouldn't you be willing to compete with Pan American for traffic from the United States to Buenos Aires on an open competitive basis?

The Witness: Will you read the question?

(Question was read by the reporter.)

The Witness: Why wouldn't we be willing?

By Mr. Schneider:

Q. Yes.

A. Well, obviously from Balboa north, the approval of this agreement would make any competition impossible. From Balboa south and for the Buenos Aires traffic, and I suppose your question is related to the pool, we would certainly spare no effort to get all the traffic that we possibly could on our planes.

Pooling agreement, contrary to what is sometimes thought, do not have by any means a complete strangling effect on competition.

Q. Do you mean, Mr. Roig, that if this agreement is approved, that you would be—

Mr. Gesell: What agreement?

Mr. Schneider: Exhibit A.

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[fol. 3976] Mr. Gesell: We have two agreements. I am not trying to interrupt. I thought Mr. Roig thought you were talking about the pooling agreement, and you were talking about the other.

Mr. Schneider: Yes. An agreement is an agreement.

By Mr. Schneider:

Q. If the agreement in Exhibit A is approved, do I understand your testimony to be that you would then be at a competitive disadvantage with Pan American for traffic between the United States and Buenos Aires, and that that competitive disadvantage could only be cured by entering into the agreement contemplated in 13 (a)?

A. No. That would not be the purpose of the agreement on 13 (a).

Mr. Schneider: Off the record.

(Discussion off the record.)

Mr. Schneider: I would like to have the last answer read.

(Answer was read by the reporter.)

By Mr. Schneider:

Q. You say the approval of this agreement, Exhibit A, would make competition impossible between Ralboa and the United States.

A. No.

Q. Were you talking about Exhibit A when you answered that question?

A. Yes. That was Exhibit A.

Mr. Schneider: I am not talking about competition between Balboa and the United States. I am talking about

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[fol. 3977] competition in traffic between Buenos Aires and the United States.

The Witness: I thought you were talking about my answer, which expressly was limited from Balboa to Miami. I was taking it in sectors.

By Mr. Schneider:

Q. All of 13 (a) relates to the United States to Buenos Aires traffic.

A. Yes.

Q. It is not broken down. So we are only talking about traffic from the United States to Buenos Aires.

A. Yes.

Q. Now, to what extent will the approval of Exhibit A, the overall agreement, improve your competitive situation; that is, the Pan American for traffic between the United States and Buenos Aires?

A. I think the approval of Exhibit A would put us in an equality with Pan American on traffic between the United States and Buenos Aires with the exception that while Pan American is coming to New York, and we are in Miami, Pan American will have some definite advantages—

Q. We will then—

A. —which will not be obviated unless and until we can—

Q. The competitive advantage being that they are first in New York.

A. Yes.

Q. Is there any competitive advantage in the mileage basis, they being in New York?

[fol. 3978] A. No. I think that would be in our favor, probably.

Q. Well, then, whereas they have the New York entry on their side, you have the mileage perhaps on your side; is that correct?

A. But not a great amount of mileage.

Q. Why aren't you willing to compete with Pan American on an even basis for all traffic from the United States to Buenos Aires?

A. I would rather compete with Braniff, and some of these outsiders.

Q. Why?

A. Because we have to maintain our position, and we can cooperate with somebody. When you have about ten other competitors on your back, you certainly improve your position to someone, and the fellow you can cooperate with the best is the fellow who can give you the most in the way of reciprocal facilities.

Q. I still don't understand why you have to add 13 (a) —superimpose an agreement pursuant to 13 (a) on top of this agreement, to protect yourself competitively with Pan American, for Buenos Aires traffic.

A. I don't know that we have to do it. We haven't yet done it, and if we do, the agreement has to come before the Board for approval, and I suppose all of those points will be relevant at that time.

Q. That leads to my next question.

Is an agreement under Section 13 (a) a "must" under Exhibit A? I mean, is it the heart of Exhibit A?

A. Well, it can't be the heart of it, because all it says is

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[fol. 3979] that they will negotiate with the objective of entering into an agreement. There is no—

Q. And if they don't agree, they don't agree.

A. If they don't agree, they don't agree. Or if they do agree and the Board doesn't approve, it doesn't count.

Q. Now, under paragraph 17 (c), page 15—17 (c) on page 15. Do you have it?

A. I have it.

Mr. Gesell: That is an accounting question, Mr. Schneider. I don't want to suggest that you not question Mr. Roig. We will have accounting witnesses here for details of that sort.

Mr. Schneider: That is all right. I will withdraw any questions I have. I would rather have an accountant answer it.

I have no further questions.

Examiner Wrenn: Mr. Gambrell? Mr. Gambrell, you may examine the witness.

By Mr. Gambrell:

Q. Let us look at the beginning of the petition, if you have it.

A. I have it.

Q. Paragraph 3. You say: "A substantial amount of the business between the continental United States and Canal Zone originates at or is destined to points on Panagra's routes in South America.

Do you know, off hand, what percentage it is, dollar-wise?

A. I think the exhibits show that, and I think it is about

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[fol. 3980] 51 per cent, isn't it?

Mr. Gesell: Exhibit 7 covers that, Mr. Gambrell.

By Mr. Gambrell:

Q. Paragraph 4, you speak of various foreign flag and other American flag carriers that are about to begin operations between continental United States and countries in South America where Panagra is certificated.

You use the plural on "American flag carriers." Will you tell what American flag carriers are being certificated in what we may call Panagra territory, or have been?

A. Well, Braniff, of course, is definitely.

Q. What other?

A. The other American lines which have been certificated to South America are not physically in Panagra's territory, but some of them may come to points which would have a bearing on Panagra business.

Q. Are you willing to modify that language and say that there is one carrier, one American flag carrier, only, and that is Braniff, that is threatening to operate in your territory?

Mr. Gesell: You asked a moment ago—

The Witness: Eastern is anxious to go to Balboa.

By Mr. Gambrell:

Q. Eastern is anxious to go to Balboa? I move that that question be stricken. There is no application of Eastern pending.

Examiner Wrenn: You move that the question be stricken. All right, I will strike the question.

Mr. Gambrell: I said the answer.

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[fol. 3981] Examiner Wrenn: I understood you to say the question.

Mr. Gambrell: I move that the answer be stricken because he has no authority to make any such statement as that.

Mr. Gesell: We are glad to hear that the application is withdrawn.

The Witness: The application ~~was~~ must have been withdrawn very recently.

Mr. Gambrell: I asked a simple question, Mr. Examiner. We can make time if we can get a simple answer out of this, without wisecracking.

Examiner Wrenn: The answer may stand. Proceed.

Mr. Gambrell: Does the Examiner overrule my objection to Mr. Roig's answering that Eastern has tried to get Balboa?

Examiner Wrenn: I understood you to move that the answer be stricken, and I overruled the objection, Mr. Gambrell.

By Mr. Gambrell:

Q. Do you know of any company that is at this time about to begin operations in the Panagra territory outside of Braniff Airlines; any American flag company?

The Witness: Will you repeat the question?

(The question was read by the reporter.)

The Witness: Well, I am not sure that I quite understand the question, Mr. Gambrell, because that is not what we were talking about in "4". That is, not what "4" says. "4" says between the continental United States and countries of South America," which Panagra serves.

Now, that is a different thing from operation within the

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[fol. 3982] territory which Panagra serves.

By Mr. Gambrell:

Q. Well, I am asking you if you know of any besides Braniff that is about to begin operations in the territory that you directly serve.

A. If by "in" you mean between two points on our route, the answer is no. I do not.

Q. Do you know of any American flag carrier at all which is about to begin operations between the eastern half of the United States, that is, east of the Mississippi, and the Braniff—the Panagra territory?

Examiner Wrenn: Isn't that a repetition of the previous question, Mr. Gambrell?

Mr. Gambrell: No, sir.

Mr. Gesell: I suppose he wants us to say that Braniff isn't applying for a route to New York, yet.

Mr. Gambrell: I think the witness is capable.

Examiner Wrenn: You may answer the question, Mr. Roig.

The Witness: Well, the only certificated route to Balboa, up to now, is, I think, the Braniff route.

By Mr. Gambrell:

Q. I asked a simple question.

The Witness: Just read the question.

Examiner Wrenn: I would like to know what the argument is.

The Witness: I am asked to recall from memory a very complicated situation. I have to feel my way a little bit.

Mr. Gambrell: Certain statements are made here. I want to narrow the presentation of them.

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[fol. 3983] Examiner Wrenn: The point I have to make is you have to have the Board's decision to say whether they are or not.

Mr. Gambrell: We have to lay some premises, Mr. Examiner, to ask some other questions.

Examiner Wrenn: Go ahead.

The Witness: What is the question?

By Mr. Gambrell:

Q. Do you know of any other flag carrier that is about to commence operations between the eastern half of the United States, that is, east of the Mississippi, and Balboa, or points south on Panagra's route, American flag carrier?

A. I would consider the hookup between National and Braniff such an application.

Q. One company, I say; any single company going through. Do you know of any such carrier?

A. Braniff.

Q. That is west of the Mississippi.

A. Yes.

Q. I am asking east of the Mississippi.

A. Except through the National connection, no.

Q. Do you agree with the Board's statement in Docket 779 in its original order to the effect that the bulk of the traffic in relation to the Panagra territory originates or is destined to that portion of the United States east of the Mississippi?

A. Yes.

Q. If that be so, is it your contention in this proceeding that Panagra and Pan American need some strengthening in order to compete with the presently authorized service

[fol. 3984] between this country and Latin America?

A. I think Panagra does, very definitely. I am not speaking for Pan American.

Q. You feel that the Braniff authorization which is the only direct authorization into your territory, and which swings west to Texas and points north, is a serious menace to your system: Is that right?

Mr. Gesell: Mr. Examiner, it isn't the only authorization. Mr. Gambrell has jumped from pinning Mr. Roig down about U. S. carriers to saying now it is the only authorization. He knows it is not the only authorization. There are other authorizations which are foreign authorizations, and I don't like that kind of tricky question.

By Mr. Gambrell:

Q. The only American flag authorization. You spoke a while ago that Braniff coming in had changed the picture very seriously.

A. Yes.

Q. I would like for you to analyze the economic seriousness of Braniff's threat on your system, considering how it is carrying into the United States west of the Mississippi.

A. I refuse to look at it in that narrow way. I look at it in conjunction with the hookup with National.

Q. Is it your thought that it is easier for National to make a hookup in Havana than it is for you and Pan American to make a hookup in Balboa?

A. It is easier?

Q. Yes.

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{fol. 3985} Is it an easier thing to accomplish, hookup between National and Braniff in Havana than it is between Pan American and Panagra in Balboa?

A. Well, of course the Pan American hookup in Balboa up to now is only to Miami.

Q. Is there anything—

A. There are certain difficulties. Of course they both have involved the difficulty of a connecting service. No question about that.

Q. Is there anything inherently different between the two transfers that we are speaking of now, as far as facility is concerned?

A. I should say that Havana was an easier place for a hookup than Balboa for a great many reasons. In the first place, Balboa is in the Canal Zone, and in recent times, during the war, it has had very many complications connected with the transfer at Balboa.

Also, it is further from destination. By "destination" I mean the United States, and that presents some difficulties.

I think the hotel problem is easier, much easier than it is in Balboa. I haven't considered the thing.

Q. Would you say that a transfer between American carriers can be better handled in a foreign country than

it would be between American carriers in an American territory like the Canal Zone?

A. No, I don't say that. Whether it is foreign, or domestic presents another series of questions.

Q. You were speaking a while ago about not having any

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[fol. 3986] Pan American service north of Florida, as perhaps a factor in the economic situation.

I show you a press release of Pan American Airways, dated June 27, 1946, regarding the New York-San Juan service starting July 1, 1946.

I call your attention to the second paragraph as well as the others, reading as follows:

> "Connecting at San Juan with established Pan American routes to all parts of Latin America. The link will afford direct air service from New York to all the 37 countries and Colonies of South and Central America and the West Indies served by Pan American's 50,000 mile network of Latin American trade routes."

You can look at it all, if you like.

Do you accept the representation of that press release that Pan American now does have direct air service from New York to San Juan to all the 37 countries and Colonies of South and Central America and the West Indies, served by Pan American's 50,000 mile network?

A. Well, they do in the sense it is described here, with a connection at San Juan.

Q. It says: "Direct air service from New York to all 37."

A. That means direct carrier.

Q. It says direct service from New York to all of them.

A. It is direct carrier. It is the same carrier.

Q. Wouldn't that mean direct service—

A. I don't know. I didn't write it.

Q. —all the way from New York to Panama and the

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[fol. 3987] west coast of South America?

A. I don't know what it was intended to mean. It speaks for itself. It is the English language.

Q. Are you familiar with the nonstop procedures that have been adopted by Pan American in the last two or three months in relation to Puerto Rico and other Caribbean points?

A. I am not familiar with it.

Q. How did you happen upon the 99-year term as a proper term on this contract?

A. Well, there was no magic in it. It is a figure that is sometimes used to ~~men~~ mean a long term, virtually perpetual contract.

Q. In other words, that may well be regarded as a permanent arrangement between Pan American and its subsidiary, and by the two holding companies. Is that right?

A. That is correct. Subject to any subsequent action by the Board.

Q. Is it your thought that if the Board approves this the Board is not bound by any approval?

A. Oh, no. I consider the Board bound by their approval, but I also consider that under various sections of the Act the Board can always move into these situations anew in the light of new circumstances and new facts.

Q. If there are no new facts, would you consider that the Board if it had approved this would bind itself for the 99 years?

A. Well, I don't understand the use of the word "bind" as related to a Governmental agency which is not entering into a contract. It is not bound in that sense. It is not bound in the sense that the parties are bound.

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[fol. 3988]

Q. If no new fact enters into a situation, would you—is it your thought that the Board should not be in position, say a year from now, to revoke its approval?

A. I don't know what the law on that is, Mr. Gambrell. Whatever it is, that is what the power of the Board will be.

Examiner Wrenn: How do your questions tie up with Section 412 (b), Mr. Gambrell?

By Mr. Gambrell:

Q. On top of page 2 of the application that is, paragraph 6, you speak of—

Mr. Gesell: I would like to have an answer to the Examiner's question. Didn't you ask a question? I was interested in the same question.

Mr. Gambrell: Pardon me. I did not hear the question. I beg your pardon.

Examiner Wrenn: I assume it will be developed on brief. Go ahead.

By Mr. Gambrell:

Q. Looking at paragraph 6 of the application, which speaks of long term arrangement through plane service between points on Panagra's system and points on Pan American's routes in the United States, I would like to ask if it is your position that Panagra's United States routes are peculiarly—

Mr. Gesell: Are what?

By Mr. Gambrell:

Q. —are peculiarly appropriate for interchange, or char-

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[fol. 3989] ter arrangements as distinguished from the routes of other U. S. carriers in relation to this country.

I meant Pan American's route, Pan American's domestic—Pan American's United States' routes.

Maybe I should ask it over.

Do you regard Pan American's United States certificates as peculiarly suited to Panagra interline arrangements; that is, interchange of equipment, as distinguished from other routes of other carriers?

A. Well, as related to this particular kind of contract, which you call interchange—I don't call it that—I would say yes, because at the present time Pan American is the only route certified between Balboa and Miami.

Braniff is certified for a different route and we could hardly be expected to make such agreement with Braniff

anyhow in view of the fact that they are out competitor on every inch of the international route.

Q. Do you regard Pan American in South America as a competitor of Panagra?

A. In a certain very definite sense, yes, but in other senses, like Braniff, no. I mean, they are not competing with us for every point along our route the way Braniff is. The competition is from Buenos Aires.

Q. If some other U. S. flag carrier should be certificated south from Florida to the Canal Zone, would you regard the possibility of Eastern or National asyñudeal with Pan American for such an interchange arrangement as you have?

A. I think I would cross that bridge when I came to it. It depends on a great many things. There are a great

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[fol. 3990] many things that Eastern or National would be—would not be in a position to provide that are provided by this contract.

Q. Is it your thought that Panagra, being a subsidiary of the Pan American system, is a reason in favor of interchange, or is it one objection to interchange?

A. Pan American Grace is not a subsidiary of Pan American. It is an affiliated company. It is not a subsidiary.

Q. You mean the 50 per cent—

A. Yes. But I consider that the stock relationship is a reason for cooperation, yes. I do.

Q. In other words, if Pan American were a stranger to Panagra, you would think there was less reason for this than there is where Pan American owns 50 per cent of Panagra.

A. I think so.

Q. Will you explain why?

A. Well—

Examiner Wrenn: What are you getting at?

Mr. Gambrell: I am getting at whether or not it is a wholesome arrangement.

Mr. Gesell: That is not a Pure Food and Drug hearing.

Examiner Wrenn: Do you want the question, Mr. Roig?

The Witness: Yes.

(The question was read by the reporter.)

The Witness: Well, for one reason, there is some community of interest Pan American has in Panagra that an outsider would not have.

Another reason which covers a lot of territory—I don't want to seem frivolous, but after all we have worked with Pan American for a great many years, and while the going

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[fol. 3991] has not always been satisfactory, we have gone along, built up a big business. We know each other. Sometimes, the devil you know is better than the one you don't.

By Mr. Gambrell:

Q. If Eastern were in the Canal Zone, if it should be granted its Latin American application to the Canal Zone, would Panagra be willing to enter into an interchange with Eastern?

Examiner Wrenn: That, does it have any bearing on this, Mr. Gambrell?

Mr. Schneider: I am interested to have him answer that question, Mr. Examiner, to find out whether the agreement is in the public interest; whether it is for the public, or whether it is an accommodation of two parties here combined to do something which they wouldn't do with anyone else.

By Mr. Gambrell:

Q. If Eastern should get to the Canal Zone, would Panagra in your opinion be willing to join up with them on an interchange arrangement?

Mr. Gesell: What do you feel about that, Mr. Examiner? Is that a proper question in this proceeding?

Examiner Wrenn: I don't know. I am waiting to hear the answer to see.

The Witness: Wouldn't that divide itself into two situations, if Eastern got to Balboa and this agreement were approved, so that Panagra was getting to Miami in this

in

form, or at least our traffic were getting there ~~in~~ this form?

Examiner Wrenn: Let him answer. Go ahead.

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[fol. 3992] The Witness: If you assume that, why then, of course, there would be an element of competition which would have to be considered before entering into an agreement with Eastern.

And I have also felt and testified in 525 that I felt Eastern's going to Balboa might be the first step toward coming on further south, and that would have to be weighed, but if this contract were not approved, and we had no arrangement with Pan American, and it were possible to make such an arrangement with Eastern, mind you, I say, if it were possible, if Eastern were disposed to agree to all things that Pan American has agreed to, I wouldn't say I wouldn't look at it. I would have to consider it in the light of the circumstances at that moment.

I have been very much preoccupied in the last two or three months in trying to make an arrangement with Pan American. I haven't had much time to think what I might do in various eventualities.

But I am determined that Panagra shall get to the United States, or its traffic rather shall get to the United States in some form or another. I hope it will be in this form.

By Mr. Gambrell:

Q. If this route through the Canal Zone should be approved as proposed here, into the New York area, would it not be that there would be two Pan American system routes dominating the entire eastern half of the United States in relation to Latin America all the way to Buenos Aires?

Examiner Wrenn: Let us confine the situation, if we can, to the existing situation we have before us. You are

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[fol. 3993] conditioning that on another case.

Mr. Gambrell: That was brought up this morning. It is put into their maps. If they will be ruled out, then I won't go further.

Examiner Wrenn: I think we will deal better with the situation as we have it here, Mr. Gambrell.

Mr. Gesell: Mr. Examiner, I am inclined to side with Mr. Gambrell in this instance. We are seeking permission of the Board to operate over routes which we trust will be awarded to the Pan American in the near future, and I should think it would be an appropriate question on what the situation is, that will develop in the event Panagra can proceed over those routes.

Examiner Wrenn: I have no question of going into the eventualities, but I do wish you would stick with the situation.

If this case ties up with the Pan American domestic route case, maybe we are in the wrong hearing.

Mr. Schneider: Mr. Examiner, if you will recall the statement I made at the prehearing conference, if you go through these exhibits of Pan American, it is hard to find one that stops at Miami and doesn't go through to New York.

Mr. Gambrell: Exhibit 1, Mr. Examiner.

Examiner Wrenn: Go ahead.

By Mr. Gambrell:

Q. Isn't the layout of Pan American's Exhibit 1 in contemplation of the establishment of new single plane service between New York and Buenos Aires via Miami and Balboa on the part of Panagra and Pan American running virtu-

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[fol. 3994] ally parallel to the existing through service now operated by Pan American between New York and Puerto Rico, Buenos Aires? Isn't it in effect a proposed parallel, all within the Pan American system?

A. I don't see that it is, Mr. Gambrell, because the Puerto Rico New York service has no connection with any point on the West Coast of South America except Buenos Aires.

Q. You don't take any stock in that press release of Pan American of recent date where they said that it went direct from New York to every one of the 37 Latin American countries, through Puerto Rico?

A. Oh, I don't think it makes any difference whether I do or not. That is their way of stating it. The facts are clear from the statement.

Mr. Gesell: Let him answer the question, please. He is in the middle of an answer.

Mr. Gambrell: Very well.

The Witness: The statement is clear what it says. You can quarrel over the inference.

By Mr. Gambrell:

Q. Is it your thought in saying that the fact that you are half owned by Pan American is a reason why you should have this arrangement with Pan American rather than another American carrier? Is that because you think that the two main routes from New York to Buenos Aires and intermediate points should both be in the same system?

A. No, I should think that was just incidental, even if true. I don't consider it true in view of the fact that

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[fol. 3905] I have just mentioned that the West Coast is in no way benefitted by this—or served by this route from Puerto Rico.

Q. Would there be any competition between this projected charter operation on the Balboa-Miami segment and what you could call the normal Pan American operations on the Balboa-Miami segment?

Would there be any competition between those two operations if you could distinguish them from each other?

A. There is no competition between Balboa and Miami because the Panagra plane merely fits into the Pan American schedules as one of the units on their operation.

Q. You recognize that as far as one company's service goes now, American flag service, Pan American Airways has a monopoly between Miami and Balboa, do you not?

A. No. That is not true.

Q. What other single company, American flag operator, operates all the way?

A. There are none that run at this moment straight between Miami and Balboa, but there are plenty of connections between Miami and Havana. You can get Braniff.

Q. I was not asking for that.

A. No, but I was making it clear because that is part of the picture.

Q. I asked for a single carrier—

Examiner Wrenn: Do you mean that you have a monopoly if you have single carrier service?

Mr. Gambrell: I didn't catch the observation.

Examiner Wrenn: In view of your first question that it was a monopoly, and the second that it was single carrier

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[fol. 3996] service, are you talking about the same thing?

Mr. Gambrell: Yes, sir. It is the only single carrier operator there.

Examiner Wrenn: Then if you are agreed on it, proceed.

The Witness: There is Avianca, and other lines. Any talk of monopoly in this area is obsolete.

By Mr. Gambrell:

Q. Isn't one of the main purposes of your application here to get around a transfer at Balboa, Mr. Roig?

A. Yes, sir.

Q. If it is then, you are not going to belittle a transfer between National and Braniff at Havana, are you? You are not going to say in one case that it is inconsequential, and in the other that it is not.

A. No, that wasn't the question. I am not saying it is inconsequential.

Q. Is it your position in this case that if there is to be expedited and improved service between the eastern half of the United States and Buenos Aires, via Balboa, that it should be provided for not by carriers entirely independent of the Pan American system, but by carriers within the Pan American family?

Do you argue that—do you take the position that it is in the public interest to establish this expedited service which you claim is needed on that route via merely enlarging the Pan American picture, or wouldn't it be better to establish it via giving greater strength to independent carriers who might get together on it?

Mr. Gesell: I think I must object to that.

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[fol. 3997] Examiner Wrenn: I think you are going to argue with the witness the rest of the afternoon on that point.

The Witness: Shall I answer the question?

Examiner Wrenn: If you like. Go ahead.

The Witness: There is only one carrier in this area that I am interested in, and that is Panagra.

There is only one way that Panagra can adequately serve its traffic, and that is by making it possible for the traffic which boards its planes south of Balboa to go through to a terminal in the United States.

Now, it happens that it is the only way of working that out at the moment—is with Pan American.

By Mr. Gambrell:

Q. Following that, have you considered the position of Eastern and the extension of Eastern to Balboa as a possible solution for that?

A. I have considered that very seriously, but not as a solution, but as a menace.

Q. Don't you realize that in respect to the traffic flowing between this country and the area now served by Panagra that there is a greater volume passing through Miami than through the Canal Zone gate, of that traffic? The stream of traffic is larger in Miami than it is in the Canal Zone. Is that right?

A. I don't understand the question. You mean the stream of traffic to all points?

Q. On your system, on the one hand, and points Miami and north on the other. Don't you know that the stream of—

A. I don't understand the question.

[fol. 3998] Q. Don't you know that the stream of traffic in relation to this country gets thinner and thinner the further south you go?

A. You mean in South America, or in United States?

Q. Well, Miami, Balboa and points south. It gets thinner the further down you go. Isn't that right?

thicker.

A. Not on Panagra, no. It gets ~~thinner~~.

Q. I am talking about U. S. traffic.

A. Oh, yes, U. S. traffic, that is correct.

Examiner Wrenn: We will take a five minute recess at this time.

(A short recess was taken.)

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[fol. 3999] By Mr. Gambrell:

Q. You said that in relation to traffic between this country and points on your system and South America, the traffic gets thinner the further down you go. I am not counting the local traffic, just counting the traffic that goes through this country.

A. Well, yes, but the point is where it begins of course to get thin, whether people who are going to Ecuador get off at Barranquilla or Peru get off there. By the time you get to Chile it is still further less but that doesn't necessarily mean that it is less at Balboa than at Miami because there is a good deal of pick up at Balboa from other routes, Central America and Pan American and central routes.

Q. That would be transferred traffic at Balboa anyway, wouldn't it?

A. Yes.

Q. It wouldn't be through traffic?

A. It would not be through plane traffic.

Q. That is what I am getting at. The through plane traffic gets thinner the further south you go from Miami, doesn't it?

Mr. Gesell: May I inquire whether Mr. Gambrell means through traffic to Miami or through traffic to all the United States gateways.

Mr. Gambrell: I am speaking of the traffic that passes through Miami in relation to Balboa and points beyond. It gets thinner the further down it goes.

By Mr. Gambrell:

Q. Doesn't it?

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[fol. 4000] A. Well, if you start a plane from Miami and run it to Buenos Aires there will be fewer United States

travelers who got on at Miami on that plane at Santiago, we will say, than there were at Lima, assuming somebody got off at Lima and they usually do.

Q. If there has got to be a transfer somewhere the transfer will involve fewer people at Canal Zone than it will at Miami. There has got to be a break at Miami or break at Canal Zone—would say the break at Canal Zone would involve fewer transfers of through passengers, is that right?

A. Of course that is only one factor in the case but I don't see how that would be true except to the extent that traffic got off at Balboa or on at Balboa.

Q. You took pains in your direct examination to emphasize that you people didn't want Eastern to come to Canal Zone didn't you?

A. Yes.

Q. That has been your stand all along?

A. Yes.

Q. And you stated that you didn't want to cooperate with Braniff, that you wanted to cooperate with your parent company, Pan American, isn't that right?

A. Well, for the reasons which I have indicated, yes.

Q. Doesn't your proposal in this case then boil down to seeking a mechanical and economic arrangement whereby the Pan American system which now dominates the eastern route hemispherically, you are trying to achieve an arrangement whereby the Pan American system can lock out the efforts of Eastern, National and Braniff on the western

[fol. 4001] route of the hemisphere. Isn't that the objective?

Mr. Hamilton: If the Examiner please, I don't think there is anything in the record that supports a lot of the assumptions in that question.

By Mr. Gambrell:

Q. Isn't that a fair interpretation? You don't want Eastern there. You don't want to cooperate with Braniff. You want to cooperate with the Pan American system. Doesn't that mean then that you are trying to freeze out any effective what you might call hemispheric competition of ex-

peditng service from North America to South America involving the eastern half of the United States?

A. It doesn't mean that to me.

Q. You speak in paragraph 6 of settling the controversy. You have referred in paragraph 5 to four proceedings.

Exam. Wrenn: Now, you are talking about the petition itself, are you, Mr. Gambrell?

Mr. Gambrell: That is right. Still on the petition.

By Mr. Gambrell:

Q. Can you state in a word or two what the controversy is so that we may know what we are settling or trying to settle in this case?

A. Well, the controversy has been the difference of opinion regarding extension of Panagra's route to a terminal in United States.

Q. It is a controversy between whom?

A. It is a controversy between Panagra and Pan American and between Grace and Pan American.

Q. And the Pan American Corp. too or not?

A. I think they were parties to 779. I am not sure.

[fol. 4002] Q. You mean both Pan Americans?

A. I think so.

Q. Pan American and subsidiary?

A. I think they were both parties in 779.

Q. Does that controversy exist right now?

A. No.

Q. Is this agreement the only thing that has happened to dissipate it?

A. Well, this agreement is the settlement of the controversy.

Q. While that controversy was on was there competition between Panagra and Pan American Airways?

A. Well, about to the same extent that there will be after the agreement with the exception of the pooling agreement if that is adopted.

Q. You think there may be less competition after the agreement than before?

A. I think if the pooling agreements is adopted it would be somewhat less but apart from that I think it is about the same. It might be a little more or less.

Q. Is it your thought that it is in the public interest to reduce competition if there be any between Panagra and Pan American?

A. Well, I think that is a philosophical question and I will have to give you a philosophical answer. I think in an area such as this where we have got 10 or 15 companies in existence and in prospect, most of them foreign companies, it is in the interest of the American companies to put up a reasonable front against that foreign situation

[fol. 4003] even at the cost of eliminating a certain amount of destructive and ruinous competition between themselves.

Q. It is the desire, is it not, of Pan American and Panagra in this proceeding to establish an arrangement which will permit just as few passengers as possible to be hauled by and between Eastern and Braniff hemispherically, isn't that right?

Mr. Gesell: I don't understand that question, Mr. Examiner.

A. That involves an assumption that Eastern is in this picture in getting to Balboa. They are not out there yet.

Exam. Wrenn: Clarify your question, Mr. Gambrell. You are talking about an arrangement between Eastern and Braniff where?

Mr. Gambrell: In North America and South America and Central America.

Exam. Wrenn: I understand but under the present conditions as they are now.

Mr. Gambrell: Well they have to get a bridge between them to get there.

Exam Wrenn: Then it isn't possible yet. I am trying to clarify it so the witness can answer your question.

By Mr. Gambrell:

Q. Mr. Roig, you will assume, will you not, that Eastern, which has been virtually the 100 per cent carrier north

of Miami is struggling to maintain its position in relation to Latin American traffic. You will assume that, won't you?

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[fol. 4064] A. Well, I assume that they have had until National came into the picture a monopoly on the carriage of that traffic and I assume when the Pan American domestic route case comes up they will struggle to maintain it.

I didn't know there was any struggle going on at the moment. The only struggle is to chisel in on somebody else. It isn't to maintain what you have got.

Q. Is it the position of Panagra and Pan American as depicted on Pan American-Panagra Exhibit No. 1 in this case, is it their purpose to provide a service which will minimize as far as possible the hauling of passengers by and between Eastern and Braniff and any other carriers between North America and South America. Is it your desire to minimize their participation as far as you can?

Mr. Gesell: I don't understand that question, Mr. Examiner. It is the same question we tried to get clarified before. Mr. Roig has testified several times as to what the purpose of the agreement is.

Mr. Gambrell: He is on cross examination.

Exam. Wrenn: Do you understand the question, Mr. Roig?

A. Well, it is Panagra's purpose to get all of the traffic in the area that we can just as I assume it is Braniff's and Eastern's and everybody else's.

By Mr. Gambrell:

Q. So, when you wanted to keep Eastern, as you said a while ago, out of Canal Zone; it was with the thought of preventing Eastern from having a substantial share of the Western Hemispheric business, wasn't it?

Mr. Gesell: What is the Western Hemispheric business?

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[fol. 4065] A. At one moment you are asking me a question that seems to imply that it is wrong to compete and the next minute that it is wrong to compete if that competi-

tion what you call minimizes Eastern's position.

I understand competition. I don't understand minimizing. It is our object to get all the traffic we can.

By Mr. Gambrell:

Q. And to prevent Eastern from getting all that you can prevent Eastern getting, isn't that right?

Exam. Wrenn: Where?

Mr. Gambrell: On the route between the West Coast of South America and Balboa and Miami and points north.

Mr. Gesell: Eastern isn't in that route until we get to Miami.

Mr. Gambrell: Just let the witness answer.

Mr. Gesell: No, I won't, Mr. Gambrell.

Mr. Gambrell: Then, let Mr. Gesell take the stand.

Mr. Gesell: I think my remarks were addressed to you and not Mr. Gambrell.

I say Eastern isn't in that route and therefore the question isn't appropriate.

He talked about the western hemisphere a moment ago which is equally vague and indefinite.

Mr. Gambrell: I tried to—

Exam. Wrenn: Just a minute. I want to know whether you are talking about preventing the extension of Eastern from Miami to the Canal Zone or are you talking about the situation there with Eastern as it now exists at Miami?

Mr. Gambrell: I asked it in general terms. It would be applicable either way. I asked if his efforts in this case

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[fol. 4006] are to provide a service which would—

Exam. Wrenn: If that is the purpose, why don't you ask the question if the intent of this agreement is to prevent Eastern from getting to the Canal Zone.

Mr. Gambrell: I didn't want that. I didn't ask that question. That isn't my question.

Exam. Wrenn: Then I am confused as to what you did ask.

Mr. Gesell: So am I.

Mr. Gambrell: If Mr. Gesell will rest—

Exam. Wrenn: Let's let Mr. Gesell alone. I want to know what this is.

Mr. Gambrell: I will ask the question again.

Exam. Wrenn: Go ahead.

By Mr Gambrell:

Q. Is the purpose of this agreement, Exhibit A and B, or either, to capture, control, and haul or preserve to Pan American just as much of the business between South America and North America via the Miami gate as possible?

A. Speaking for Panagra the object is undoubtedly to preserve as much of our traffic as we now have and hope to get and are reasonably entitled to between Balboa and Buenos Aires by offering that traffic the same kind of service through to destination in the United States that our competitors are offering.

Q. Which competitor?

A. Braniff at the moment, FAMA.

Q. Just a minute.

A. You asked for them. I will give them to you.

Exam. Wrenn: Let him answer the question.

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fol 4007 A. Aviaman, TACA, British Overseas, Peruvian International, Tampa New Orleans and Tampico and Tampico and FAMA, in addition to Braniff.

By Mr. Gambrell:

Q. Will you explain how you are trying to give the same sort of service to the same traffic as Braniff is giving?

A. By making it possible for a passenger on our plane in that respect we are aiming to give better than Braniff take gives because we want to ~~take~~ our passengers straight through to a terminal in the United States.

Q. You are not seeking to give the passengers at Houston and Kansas City any service, are you?

A. We can't attempt to serve every port of entry.

Q. Braniff isn't threatening your business in relation to the eastern half of the United States, is it?

A. Very definitely with this national hookup.

Q. I mean by direct service.

A. But that is a question of degree. Of course it isn't as good as a direct service but of course it is a very definite threat to our business.

Q. Let's look at agreement A. I notice in paragraph 1 you speak in the third line of aircraft operated by Panagra into the Canal Zone from Lima or any point south. Why was that limited to that?

A. Well, it was thought that through flights with Panagra planes ought to have a reasonable relation to through traffic from Panagra's territory, and they shouldn't, for instance, to take the other extreme case, just put on planes at Balboa which would have no particular significance in

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[fol. 4008] connection with the through traffic. Lima was picked out as a convenient and reasonable point.

Q. Is it contemplated that this agreement will have relationship to all of Panagra's planes or only a certain selected few?

A. At the present time the exhibits show that we contemplate one schedule through with DC-4 and an additional one with DC-6 when that plane comes into service. That would mean that our interior service which we are now operating and expect to continue to operate, into Balboa, would not proceed through and if we added additional services it would be a matter of our indicating additional schedules. The interior service is a local service.

Q. What I was getting at is: Will all of your DC-4 airplanes be impressed into this operation, or will there be some that will never be involved in it?

A. Well, the physical planes, I take it, there will be some operating for instance between Santiago and Buenos Aires on local runs that might not get up here at all except when they were put on an international run but the idea is that the through international services which we run from Buenos Aires to Balboa would, with those planes, be carried on through.

Q. I get that point. I was just wondering about the separation of your fleet into two parts, one part that is rotated into Miami and another part that isn't?

A. Well, the only part that wouldn't be rotated in would be a plane that might be in the south running locally between Buenos Aires and Santiago or some other spot on the

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[fol. 4009] line. It would only be rotated in there when it happened to suit to put it into international service.

Q. At the bottom of paragraph 1 it says "If Panagra shall deem it impractical for the particular aircraft operated by Panagra into the Canal Zone to continue the flight to the Continental United States Panagra may substitute another aircraft."

Why is it that Pan American has no option to reject a plane and only Panagra can make the switch.

A. Well, Pan American have the option to reject planes which they don't consider properly equipped or properly qualified and so on. This particular thing, the sentence you read was to cover a particular situation of a plane arriving at Balboa and owing to some schedule exigency or some necessity of maintenance or something, it wasn't prepared to go right on through. We then have the right to transfer our traffic in that emergency to another plane which has not been south of Lima.

In the absence of such a provision we might lose that through carriage on the ground that the plane had not been south of Lima. It is purely an emergency provision.

Q. In paragraph 2 you have selected Canal Zone Miami. Why did you select Canal Zone-Miami rather than some other direction?

A. Well, because that is the most direct route available at the moment. Pan American's other routes through central America are not as ~~correct~~ direct as this for our purposes.

Q. Is it also because that is the heaviest traffic route?

A. It is the heaviest in international traffic, yes.

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[fol. 4010] Q. You speak of operating non-stop unless experience demonstrates the desirability of making stops. How would that be determined?

A. Well, if the loads were running excessively heavy you might say and we wanted to stop in order to lighten fuel load or conversely the loads were running light and we wanted to pick up some local traffic, any number of conditions of that kind which related to volume of traffic quite largely.

Q. In 2(b) you speak of going to other routes which Pan American may get.

Is it your thought that this agreement would permit such operation without further negotiation with CAB; in other words, that CAB now bind its hands for 99 years--

Exam. Wrenn: Mr. Gambrell, I think you are covering matters that were brought out on direct. It may have been before you came in. I will let the witness answer the question though.

A. My understanding is that the Board has to decide in the first instance the question of public convenience and necessity justifying Pan American's routes in the United States.

Now that being decided they pick out the equipment and decide what equipment they are going to use.

I would assume that this language would authorize them to use the Panagra equipment on some of their schedules.

By Mr. Gambrell:

Q. In other words it would authorize the interchange provided a certificate is granted, it would authorize it without an interchange proceeding?

A. Not an interchange. It would authorize Pan American to use on some of its schedules Panagra planes under

{fol. 4011} this agreement. As a legal matter I can't tell you. Perhaps that question would be opened and could be thrashed out in that Pan American proceeding. I don't know.

Q. You use the words here "shall proceed over such routes."

A. That is between the parties.

Q. If the Board approves that wouldn't you assume that the Board would be prejudging an interchange at the time of the granting of the certificate?

A. Well, I would assume so unless the Board made certain reservations. I presume this matter would be discussed in that proceeding and if the Board didn't want their decision to be that extensive I suppose they would say so.

Q. In that connection, may I ask whether or not these two agreements, in your view, are interdependent? That is, contract A and contract B can either stand alone, practically.

A. Well, it wouldn't be exactly the same if they were separated.

Q. Would Grace—

Exam. Wrenn: Let him finish. Did you have something more?

The Witness: I was just going to look to see a little bit.

Exam. Wrenn: All right. I am sorry, Mr. Gambrell, go ahead.

By Mr. Gambrell:

Q. Would Grace or Panagra be willing to go through on one if the other were denied?

A. Well, I will tell you, Mr. Gambrell, in the preparation

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[fol. 4012] of these agreements, as I recall it, there was some question of which provisions properly belonged in one and which in another, and I think there are some legal considerations involved in that and I think Mr. Friendly can answer that question better than I can.

I think some of the provisions in B might have been incorporated in A. I am thinking now, for instance, of things like the termination clause.

Q. I am not asking for the Pan American or Pan American Corporation but for Grace or Panagra. Would Grace or Panagra be willing to have either of these contracts if the other would disapprove?

repeat I

A. I ~~think he~~ can't answer that question without studying the thing at length. I have never thought of it.

Q. You spoke a moment ago of the Board's possible modification of the contract. Could you throw a little light on the record as to where and to what extent Grace or Panagra would be willing to yield on any of the paragraphs or parts of these contracts?

Mr. Gesell: I don't think that is a proper question.

A. I don't think that is appropriate.

Mr. Gesell: We are submitting this agreement for approval.

By Mr. Gambrell:

Q. The point is that Mr. Roig says he is in a great hurry. I thought if he could point out the ones that are not essential it would help things along a little bit?

A. I am not in such a hurry that we haven't got time to have a good agreement and I think this is a good agreement.

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[fol. 4013] Exam. Wrenn: All right. Go ahead, Mr. Gambrell.

By Mr. Gambrell:

Q. At the bottom of page 1, paragraph 2, you speak of "Traffic experience demonstrates the desirability" of certain arrangements; to whom would that demonstration be?

A. It says to the satisfaction of both parties.

Q. In subparagraph C of 2 you speak of "If Panagra shall so request Pan American will file for non-stop between Canal Zone and New Orleans."

Is it contemplated that if Pan American wanted to do the non-step and Panagra didn't ask for it, it couldn't be done?

A. Oh, no. It says in so many words that Pan American can go ahead irrespective of our request. I mean it is all right here.

Q. Subparagraph D in the middle of page 3: "Pan American Airways agrees to use its best efforts to obtain from the Civil Aeronautics Board authority to operate the various routes and non-stop services referred to in this paragraph, and Panagra agrees to support Pan American Airways to this end."

What do you mean by "The best efforts" there, Mr. Roig?

A. Well, it means that they would seriously press their application and present their case in the best possible form the same way you would present a case.

Q. Do you conceive of new route proceedings as being in the nature of legislative proceedings?

Mr. Gesell: Is that relevant?

Exam. Wrenn: I am willing to hear the relevancy of it.

Mr. Gambrell: I am leading to a point.

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[fol. 4014] By Mr. Gambrell:

Q. Isn't it true that constitutionally speaking the Supreme Court has often said that granting franchises is a matter of legislation or sublegislation?

Mr. Gesell: Is that within the witness' qualifications?

Exam. Wrenn: How does that tie in?

Mr. Gambrell: I am leading up to the question of the propriety of a great system like Pan American and the great system getting together and conspiring to procure what constitutional decisions have held to be legislation.

Mr. Gesell: That characterizes this in an unfriendly and unfair manner. I don't think it is appropriate on the record and I move it be stricken.

Mr. Hamilton: I associate myself with that motion.

Exam. Wrenn: Any reason why it should remain, Mr. Gambrell?

Mr. Gambrell: I merely want to ask him: does he realize that that is an agreement between these groups to obtain legislation?

Exam. Wrenn: All right. Strike the previous sentence about which the motion was made.

Do you have the question?

The Witness: I don't consider myself qualified to answer this question. As far as my opinion goes I certainly do not consider this legislation in the sense that you have referred to it.

By Mr. Gambrell:

Q. You have also undertaken, I believe, to put forth your best efforts to have this agreement approved. What

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[fol. 4015] have you done to have it approved? What efforts have you made?

A. Well, we are here today. We have prepared the exhibits and have prepared all of the necessary supporting testimony and we are here placing it on the record.

Q. In a preparatory way in your direct you spoke of following the mandate of the CAB decision. Did anyone undertake to explain to you what the CAB decision meant —any official of any kind?

Exam. Wrenn: What do you mean? Official of Panagra or Pan American or what?

Mr. Gambrell: Any public official. He was acting under public—

Exam Wrenn: You said public official. That is all I wanted to know. Go ahead.

By Mr. Gambrell:

Q. You said you were acting under public mandate?

A. What I meant by that was the language of the decision itself which I did feel personally quite competent to interpret. It seemed very clear to me.

Q. Has any public official stated to you or your company that this arrangement that you have brought here is in compliance with what you call the mandate of the Commission?

A. No.

Q. Have you discussed it with any public official?

Mr. Gesell: Do you see any relevance to this, Mr. Examiner? The Witness has stated that no witness has said that it is consistent with the mandate? Isn't that sufficient for Mr. Gambrell's purposes?

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[fol. 4016] Exam. Wrenn: I am inclined to think it is.

Mr. Gesell: The witness has given his own opinion that it is consistent with the mandate of the Board. Isn't that sufficient?

Exam. Wrenn: You have a question pending. Let him answer it.

A. I don't recall having discussed this mandate question or this contract with any official.

Q. You haven't discussed it with any official of the government as to whether this is the answer that was contemplated in the CAB decision?

A. No, I don't recall.

Q. You haven't had any conference with any public officials about it?

Mr. Gesell: That is too broad a question. What does he mean—conference with government officials about the agreement.

Exam. Wrenn: Do you have reference specifically to CAB?

Mr. Gambrell: Not necessarily.

Exam. Wrenn: What would any other have to do with it?

Mr. Gambrell: My question was inspired by his statement that he had come in with this document because—

Exam. Wrenn: Just tell him what you are talking about.

The Witness: I think I have answered the only question.

Exam. Wrenn: I am not trying to curtail your questions but I want you to make it specific so the witness knows what you are answering about and let's get the answer.

Mr. Schneider: The witness understands the ques'on

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[fol. 4017] I am sure. If anybody is confused it isn't the witness.

Mr. Gambrell: I just wanted the benefit of his views as to how responsive this is to the mandate and whether or not any public official had told him it was.

By Mr. Gambrell:

Q. Has anyone indicated it was?

A. No.

Exam. Wrenn: Any public official?

By Mr. Gambrell:

Q. You haven't asked any public official whether it was responsive?

A. No.

Q. In paragraph 3: "At least 30 days prior to the first schedule through flight, Panagra shall give notice to PAA about the number and nature of flights."

Why is it that only Panagra is given this privilege and not Pan American as to designating the number and nature of the flights?

A. Well, you see Pan American has the right to designate the total number of flights that they are going to operate, but we have the right to designate the number that are to be operated with our through planes.

Q. Well, if this is a Pan American operation as I thought you one time said—

A. It is.

Q. —then why shouldn't Pan American have some say in the nature and number of these flights?

A. Well, this was a very important concession to us and to our traffic and it was felt that we should be in a posi-

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[fol. 4018] tion to decide the number of schedules that were necessary to accommodate our traffic, and Pan American agreed to that proposition. They might have refused it. If they had the contract would have been much less attractive and much less in the public interest.

Q. Why did you use the Panagra crews all the way? Why did you provide for that?

A. Well, you see, one of our problems over a good many years has been the fact that we have been operating wholly outside of the United States—we have been the only American airline in that position—and one of the things that we were very anxious to accomplish was to make it possible to bring crews to the United States so that men could alternate on the possibility of coming to their home country.

Also it isn't altogether sentimental. There are certain very definite advantages in having crews come to this country and be stationed in this country from time to time where there was a greater body of aviation knowledge being passed about all the time. That was one reason.

The other reason is the desirability, we thought, of having the crew of the company whose plane it is flying the plane, to always have the question, when one company is flying the plane of another, a question of division of responsibility, difference of opinion perhaps as to the condition of the plane and all that kind of thing, and as a

practical operating matter I think it is more efficient operation to have the same crew that has flown the plane uply it right through.

Q. Do you think that it is preferable to have a familiar

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[fol. 4019] plane and a familiar flight crew rather than to have a familiar flight crew with a familiar ground crew?

A. Well, I think you have to make some choice under that headings You might argue, and perhaps in the old days would have, that it was desirable to have all three the same, but actually in the present development of aviation, and with all the war experience, the ground crew, I think any operating man would agree, was the lesser choice between two people who operate airplanes over all kinds of routes without controlling the ground crew.

Q. Paragraph 4. You say that the two parties will consult with a view to fixing the schedules. Who will decide?

A. Well, if you read on you will see there that there is a complete provision of what happens in the event of disagreement. The first sentence contemplates that they will be able to agree but then it goes on and specifies in detail what happens if they do not agree.

Q. What will be the relationship of the schedules through the Canal Zone route and the schedules through the Puerto Rico route?

A. It has never occurred to me that there would be any relationship between them.

Q. They will all be going from the eastern half of the United States to Buenos Aires?

A. There might be some relation at the other end that is true, or either end.

Q. Why is it that Panagra shall fix the hours of arrival northbound and departure southbound at the Canal Zone?

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[fol. 4020] Why does Panagra have that right as distinguished from Pan American?

A. That again was another important concession like the one we were speaking of a moment ago. It is very important to us to be able to do that because that is the control on our whole schedule South of Balboa, and it means that

we can control our schedules South of Balboa and still be assured of a connection through to United States.

Q. At the top of page 5 you have the expression "respective personnel." Whose personnel are in the plane while it is flying from Balboa to Miami?

A. Panagra's.

Q. So Panagra has to instruct its personnel regarding operations north of the Canal Zone, is that right?

A. Well, that particular clause wasn't intended to relate to that situation. It may be a little blind. It might have that implication. What it had to do with, as appears later on, was the question of late arrivals.

For instance, if we have a plane that is due at Balboa from the South, let's say at 9 o'clock in the morning, and is to fly right on to Miami after the usual just short stop at Balboa but suppose the plane is three or four or five hours late, and it suits us, in order that it remain on its next schedule, to turn it around, not take it on to Miami.

and ~~been~~

That happens ~~every day~~ on Eastern ^ ~~I have put off quite frequently~~ on every line in the United States to meet that

in the United States.

situation. It is common operating practice^. Or you might have a plane arrive with a delay let's say and meanwhile there would be another Pan American plane ready to take

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[fol. 4021] right off that didn't have a load and it might be simpler to transfer the traffic. It is to cover all kinds of operating problems of that sort.

Q. But you state that when you refer to respective personnel there, and that the parties will instruct their personnel, that Panagra in that connection would be instructing the flight crew and not Pan American?

A. No. I am not thinking of our flight crew at this time. I am thinking of the respective personnel. What we had in mind was the personnel of Panagra and Pan American at Balboa.

Q. Don't you think, Mr. Roig, that this contract, as you have given exposition of it would provide a great deal of foggy no man's land of responsibility in respect to personnel here? That is, where the personnel wouldn't know

whether they were following Panagra's instructions or Pan American's instructions?

A. As a matter of fact, a great deal of effort was made to avoid just that sort of thing, and I think it is successful to a remarkable degree. I think just the opposite of what you said.

Q. Isn't it your view that a cleancut lease where everything is turned over to Pan American on a rental basis north of Canal Zone, would constitute a much sounder and more responsible organization than this commingling of flight personnel and ground personnel all the way up to Miami?

A. In my opinion just the opposite is the case.

Q. In subparagraph C, page 5, you say: "Pan American Airways shall have a right to inspect any aircraft which is

[fol. 4022] not satisfactory in the light of regulations." Shouldn't that be "shall" and not "may?"

A. Well, I assume they would.

Q. Let's turn to page 6. You speak of having control over the operation of Panagra's aircraft, Pan American having control. Would Pan American have control of the crew too? The crew wasn't mentioned as such.

A. Yes. Well, on their sector.

Q. Who pays the crew?

A. Well, in the first instance I have forgotten the detailed provision but I think in the first instance perhaps Panagra would pay them but all of the expenses of the operation are for Pan American's account.

Q. Who trains the crew?

A. We have a special provision here for training by Pan American of our crews. As a matter of fact the initial crews we would use are already trained. They are crews that were trained by Panagra when we were operating the Army Transport Service out of Miami. They have flown the route many times.

Q. Isn't one company training the crew of another in itself a dilusion of morale and responsibility?

A. Well, that is a matter of opinion. I think that until the airlines develop the idea of working a lot of things together that they have thought, that they had to work

road

separately, they have got a long ~~row~~ ahead in getting out of the red. There is more nonsense talked under that heading than almost any other in practical airline operations.

Q. You spoke in your direct of the advantage of training

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[fol.4023] in this country. Do you know of any reason why that training in this country by Pan American or Panagra's personnel couldn't be accomplished without this interchange arrangement that you are speaking of?

A. I have no reason as I said this morning to believe that it could be arranged separately.

Q. I mean physically it could be, couldn't it?

A. Physically?

Q. Yes.

A. Yes, it could be except that it wouldn't be as expeditious if we were training crews isolated up here (indicating) instead of, say, people who were in co-pilot positions or taking check training and so on as they went along, and who were normally moving in and out of here.

The expense of moving people up and down is something terrific. I am going to answer that question because it has to deal with the practical side of it. We estimate that when we send a man down to the Coast to Lima for training and put him through the course and he doesn't pan out and we have to bring him back it costs us $2500 or $3500.

Only in the month of August in closing the account for the month of August, we set up a reserve on our books of $12,000 a month to cover traveling expenses of people who just have to move back and forth,—not all co-pilots—and in the month of August we had to pick up $34,000 extra for that reserve because it was overdrawn by that amount.

The expense of moving people down there and having them not stick, or having them not check out, and then hav-

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[fol. 4024] ing to bring them back and send somebody else down is a very enormous item and a saving of that expense is one of the great advantages we hope to get from this contract.

By Mr. Gambrell:

Q. Let's consider the application of what you said to your situation?

A. Yes.

Q. Let's assume you don't have any interchange, and let's assume that you and Pan American are willing to have the training done anyway by Pan American. It would be done we will say in Miami in either case. Will that be a reasonable assumption?

A. No. It is an assumption out of whole cloth. How can you assume that I can go out and make contracts with Pan American on a basis which I have never discussed and have no reason in the world to believe they would agree to.

Q. You misunderstand me.

A. I don't think so.

Q. I am speaking of the Miami location, the Miami school. Is that where the school is?

A. Yes.

Q. All right. If you don't have an interchange contract, the pilot you hire to spend a week or a month or whatever time in Miami studying in the Pan American flight school?

A. Yes.

Q. And when he gets good enough, if they check him out he goes on down to Balboa and starts to work for you.

Mr. Gesell: What is this?

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[fol. 4025] Mr. Gambrell: Just a minute, let me finish.

By Mr. Gambrell:

Q. Now, let's assume that this is approved and it is done the other way by Pan American under this contract, you still have that pilot landing in Miami there from Wichita or wherever he comes from, and spending time at Miami and getting checked out as a good pilot and then he goes on down and starts operating for you, so it is the same from a physical and rotational standpoint either way you go, isn't it?

Mr. Gesell: Mr. Examiner, I object to that long question because it is based on an assumption which the witness

says is not present here. He says he has no basis to feel that there would be any such agreement possible.

Now, why go in and discuss something that we haven't got before us, which isn't agreed before the parties, and which the witness has said he doesn't think is possible.

Mr. Gambrell: I don't think we want to put a premium here on obstinacy and refusal to contract, and say that this thing shall be approved because—

Exam. Wrenn: All right. I think your argument is more in the form of your question there. I think you can get what you want in a different form.

As I take it what you are trying to find out is whether the advantages claimed for this pilot training can be disassociated from this contract.

Mr. Gambrell: Right.

Exam. Wrenn: I am perfectly willing for the witness to answer that.

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[fol. 4026] By Mr. Gambrell:

Q. Let's assume that the parties are willing to do business regarding training even though this contract doesn't go through. You say they wouldn't but let's assume for the sake of discussion they would.

Do you know any reason why that couldn't be physically carried out?

A. By physically, you mean the location in Miami.

Q. It is the same geography in either case.

A. Miami is the same in either case.

Q. That is right.

A. I do think however that there are considerations which make it more advisable under this contract and with our pilots coming through, than otherwise, but the detail of that I would rather let Mr. Kirkland, who is our operating man here go into it. I am not qualified to go into the details.

Q. You are not arging that training feature then as a very powerful factor in this case, are you?

A. Yes.

Q. And you are saying that—

The Witness: Now, that is where the fallacy of this assumption, Mr. Wrenn, comes in.

Exam. Wrenn: All right. Go ahead.

The Witness: The question is now asked based on the theory that we could make this contract and I have no reason to believe that we could.

By Mr. Gambrell:

Q. Would you make it if Pan American were willing?

Mr. Gesell: Isn't that increasingly iffy?

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[fol. 4027] The Witness: Sure. It is an iffy hypothetical question. We are getting nowhere.

Exam. Wrenn: I don't see where we are going. I think I see the point you are driving at here but we don't seem to be reaching it.

Mr. Gambrell: We could if he were a willing witness.

Exam. Wrenn: I don't know about that. That is open to argument.

Mr. Gambrell: He says it can't be done. I want to know if it is because Panagra objects or because Pan American objects.

Mr. Gesell: It has never been broached and never discussed. How can it be determined?

Mr. Gambrell: Then how can he say it is utterly absurd to conceive of it?

Exam. Wrenn: If you are trying to tie this in as to how much of the benefits arising out of this particular provision—let's put it this way: If you are trying to find out how much of the contract depends upon the benefit arising out of this particular provision, I am perfectly willing to have you get it and I think the witness is perfectly willing to give you his opinion on it.

Mr. Gambrell: The witness stated a while ago that it was out of the question to consider this thing because it couldn't be done. I understood that Mr. Gesell, his counsel, agreed with him, and yet Mr. Gesell says a minute ago it has never been considered.

The Witness: I did not say it could not be done and that I had is just where your question goes over the falls. I said no

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[fol. 4028] reason to assume or believe that it could be. How can I assume, without ever having discussed the thing with you, that I can make a certain contract with you.

Exam. Wrenn: I think we have argued this enough.

Mr. Gambrell: May I ask if Panagra is willing to enter into such a disassociated training agreement?

The Witness: I will not answer that question. I can't answer it this minute. I will have to consider the thing as a realistic proposition.

By Mr. Gambrell:

Q. Do you know any reason why it couldn't be handled as a disassociated project? I am asking this for the benefit of the five members of the Board and these two examiners.

A. You mean from Panagra's angle assuming Pan-American were willing?

Q. And from Panagra's and Grace's angle?

A. From that angle if Pan American were willing it would be perfectly possible to make an agreement to cover training at Miami but I do not think it would be the same agreement or have the same effect as this one.

Q. May I ask if you know of anything to indicate that Pan American or Pan American Corp. wouldn't be willing to make such agreement? Have you heard that they wouldn't?

A. I don't know anything one way or the other. They can answer that themselves.

Q. Now, as to the maintenance, you spoke of that as a large factor and the avoidance of moving equipment back and forth for maintenance in Miami. Do you undertake to state that the fact that a certain number of these airplanes

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[fol. 4029] are brought into Miami will solve the problem of bringing those in that aren't brought in on service there?

Mr. Gesell: What is that question again please?

Exam. Wrenn: Read the question please.

(Question read)

Exam. Wrenn: What are you talking about, Mr. Gambrell?

The Witness: I think I know. I think I can answer the question.

Exam. Wrenn: All right. Go ahead.

The Witness: As a matter of fact, so far as four-engine equipment is concerned all of our planes would come to Miami in regular course under this contract except possibly on the run one that might be stationed in the south ~~of a line~~ between Santiago and Buenos Aires. Two, if you like. I don't think there would be two but suppose there were, as to those planes they would be absolutely uniform with the ones on the through run and the practice which would be followed by every airline under similar circumstances would be followed. When those planes were due to come to the shop they would be put on the line and brought through. That would leave our two engine ships which would not be coming through, and at the present time we have no plan for maintaining those ships at Miami.

We plan to continue to maintain those in Lima.

By Mr. Gambrell:

Q. It would mean then that you would have to maintain a base of your own and then hire somebody else to do base work for you too?

A. So long as we have that set up, yes, that is true.

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[fol. 4030] Q. And you don't expect to dispense with two-engine ships, do you?

A. Not at the moment, no.

Q. Now, a question about the stimulation of competition, and engineering and other procedural developments referred to in Section 2 of the Act. Is it your belief that your company can render its greatest contribution to air transportation in respect to maintenance efficiency and maintenance cost by delegating your maintenance to another company?

A. To the extent that we have in mind delegating it I think it is sound aviation economics, yes.

Q. Do you consider the extent of your contemplated delegation as substantial or only inconsequential?

A. I think it is quite substantial.

Q. Then you feel that an airlin as great as you regard yours can very well abdicate on maintenance and turn it over to somebody else in working out its destiny.

Mr. Gesell: I have no objection to the question.

Mr. Gambrell: All right.

A. Well, we don't intend to abdicate on maintenance. I do think very strongly, Mr. Gambrell, as I said before—and there is quite a tendency in that direction—that it is sound aviation economics for people to get together on a good many things. There have been a lot of newspaper articles and magazine articles written on it and all that kind of thing.

So far as I know this is the only realistic step that has been taken in that direction and I think it is a sound step.

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[fol. 4031] By Mr. Gambrell:

Q. Where do you draw the line on what they should do together and where they should get into different camps and compete with each other?

Exam. Wrenn: Aren't we getting a little far afield?

Mr. Gambrell: I don't think so.

Exam. Wrenn: It seems to me you are. It isn't clear to me.

By Mr. Gambrell:

Q. Would you say the same thing about your personnel training that you should abdicate there and have that done by somebody else?

A. A certain part of the technical training, that would be possible but a certain part of the other training would not be possible because that relates directly to your direct situation but there is a great deal of training—there is a lot of talk and it should have been done if it hasn't been done already.

There is the question of training stewardesses, that is one of the questions brought up by Mr. Smith in his article in the Post that everybody had to train their stewardesses. It is just nonsense.

Q. Isn't it true that there are peculiarities regarding your route as distinguished from domestic operations which makes it all the more desirable that your personnel should be trained in Latin America?

A. That is certainly true of certain personnel but even that personnel to some extent could be trained up to a point—up, say, to a common denominator.

[fol. 4032] Q. How would you control your training costs if they are in the hands of Pan American?

A. Training course of whom?

Q. Costs. C-o-s-t-s. How would Panagra control the cost of its training program if it is in the hands of Pan American?

A. I think that is a matter that has to be arranged. I think the contract says the details of that training program are to be arranged and we would have to decide on the basis of our past experience and what it was costing others whether the charges we were paying were reasonable.

Q. What I am getting at is reducing the cost of air transportation by economy and efficiency of operation including training of personnel and including maintenance. Don't you when you abdicate, open the door wide to loss of control and the loss of keeping down your costs in the public interest?

A. I don't think so. I am not opening it that wide. I am not giving anybody a blank check.

Q. If the training is 1200 miles away from your operations, isn't it too far away for you to manage that training?

A. But we propose to have supervision of the training and maintenance even though it is 1200 miles away. We have always had an office in New York.

Q. If you are going to supervise the training and maintenance, isn't it better, after all, just to have it in that United States territory and Canal Zone in the first place?

A. That is a matter of opinion but our experience of the Canal Zone—when you speak of the Canal Zone as being

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[fol. 4033] United States territory, if you intend to create
is the same *under*
the impression that it ~~has any heading~~ except ^ some tech-
as
nical legal heading ~~to~~ the United States you are creating a totally erroneous impression because it isn't so.

Q. Are you attempting to say that Pan American's flight training and Pan American's maintenance has been efficient and economical, more so than your own?

A. I think the costs of Pan American's maintenance have been less than ours because of certain reasons based on—perhaps they are better than we are, I don't know, but I mean quite apart from arguing over that subject, there are certain factors based on the difference between maintenance in this country and abroad.

To begin with, you have the factor of spare parts, the volume of spare parts that is necessary to carry, when you are operating at a distance from the factories, and where the transportation, especially as it has been in the last few years is uncertain, is a big item, and the obsolesence of those parts is a big item.

It is also true that in the places where we operate mechan-
for
ics are not ~~to~~ be had by just advertising ~~to~~ them, or sending to an agency and getting them. You have to train your mechanics from the ground up. That involves a great deal of expense in itself. The expense of supervision is an important item, and the overall unit costs, although the hourly wage may be less, seem to work out higher than up here.

Now, Mr. Kirkland will go into that in great detail. It is quite an interesting study.

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[fol. 4034] By Mr. Gambrell:

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Q. You are not conten^ing that Pan American's costs for maintenance have been comparable to the costs of Braniff or Eastern or National, are you?

A. I have never made the comparison.

Q. Would you say it would follow from your previous statements here that Braniff ought also to have its maintenance done in the Pan American shops at Miami?

Exam. Wrenn: I don't get the reference to that.

A. I know nothing about Braniff's problems. They have maintenance shops of their own in the United States. They have that advantage to start with that we haven't got. They have got a great big operation. I don't know whether that is applicable to their situation or not.

Q. Going further to the question of joint efforts you, I believe, have provided in here that Pan American shall have exclusive sales representation for Panagra in the United States, isn't that right?

A. That is correct. Not quite exclusive. They have the general agency but there is a provision also that they will designate certain Grace offices as subagents and of course their exclusiveness doesn't mean that they don't use all the travel agencies and all the usual distribution means. They are the general sales agents.

Q. Am I correct in understanding your thesis to be that pooling this personnel training and pooling this maintenance and pooling this sales in the United States, and thereby cutting down any rivalry that might exist between Panagra as such and Pan American as such, is good for the

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[fol. 4035] industry in South America?

A. In our particular case, and our particular facts and circumstances, my answer is yes. I am not generalizing in that question. I am dealing with a specific problem.

Q. Would you not recognize, Mr. Roig, that pooling training and pooling maintenance and pooling sales, all tend inevitably to a complacency on the part of these two members of Pan American system—that is Panagra on the one hand and Pan American Airways on the other.

A. Not so long as W. R. Grace and Company owns 50 per cent of Panagra and I draw the breath of life. No complacency at all.

Q. Is there any joint effort on the part of W. R. Grace and Company and Panagra in the way of operations or joint effort or joint expenses in South America, comparable to what we were talking about in relation to Pan American a minute ago?

The Witness: Read the question.

(Question read.)

Mr. Gambrell: If you don't understand it—
The Witness: I understand the question.
Mr. Gambrell: All right.

A. There is a relationship between Panagra and W. R. Grace and Company, yes.

By Mr. Gambrell:

Q. What do they do together?

Exam. Wrenn: Let him finish.

A. Well, it isn't a case so much of doing something together as it is Panagra availing itself of services of W. R.

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[fol. 4036] Grace and Company in connection with quite a variety of matters—traffic, governmental relations, a good deal in the way of legal matters, local customs, and all that sort of thing.

W. R. Grace and Company provides office space in our building. They supply financial and cashiers service, and a great variety of matters of that kind, but I say it is a case where Grace is rendering certain services to Panagra.

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[fol. 4037] "DOCKET 2423"

"Pan American Airways Corporation, a Delaware corporation, and W.R. Grace & Co., a Connecticut corporation, owners respectively of 50 per cent of the stock of Pan American-Grace Airways, Inc., and parties to a certain agreement dated July 30, 1946, annexed as Exhibit b to the petition of Pan American Airways, Inc., herein dated August 1, 1946, hereby stipulate and agree as follows:

"1. That they understand and agree that the Board may consider the said agreement in determining any and all issues of this proceeding;

"2. That if the Civil Aeronautics Board shall be of the opinion that either or both of them are necessary

parties to this proceeding, the Board may direct that they may be made parties as from the beginning of this proceeding:

"3. That if the Civil Aeronautics Board shall be of the opinion that the said agreement requires formal approval under the Civil Aeronautics Act, said agreement shall be deemed filed for such approval by Pan American Airways Corporation, and such filing shall be deemed concurred in by W. R. Grace & Co., in the same manner as the agreement between Pan American Airways, Inc., and Pan American-Grace Airways, Inc.;

"4. The foregoing is without prejudice to the right of the parties to argue before the Board that the said agreement does not require formal approval under the Civil Aeronautics Act and that accordingly they ought not be made parties to this proceeding."

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[fol. 4038] A. I don't think there is intended to be any very violent distinction. It is the legal way of saying a thing twice.

Q. Paragraph 10: do you regard this provision for Pan American's being a general sales agent for Panagra as an essential part of this so-called interchange agreement?

Mr. Gesell: It isn't an so-called interchange agreement.

Examiner Wrenn: All right. Strike interchange and call it agreement.

A. I consider paragraph 10 to be an essential part of this agreement, Exhibit A, yes.

By Mr. Gambrell:

Q. Do you feel that paragraph 10 could not be in a separate paragraph regardless of this operating agreement?

Mr. Gesell: It is in a separate paragraph, isn't it?

Mr. Gambrell: Separate contract.

A. You mean assuming that there was or was not an agreement for through flight service in another paper.

Mr. Gambrell: Yes.

By Mr. Gambrell:

Q. Suppose there is no through flight service contemplated at all. Is there any reason, if this is desirable, this paragraph 10 provision, is there any reason why it couldn't be done in a separate contract?

A. I suppose there are lots of reasons why it couldn't be done and lots of reasons why it could. I suppose it is conceivable that you might work out such an agreement. I don't know. I never tried.

Q. Wouldn't you say that having such an agreement, I

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[fol. 4039] believe covers all the territory in the United States and maybe some places outside, that that tends to restrain any conceivable competition between the service on the East Coast of South America and the service on the West Coast?

A. Well, there are various provisions intended to prevent that. I think it is conceivable, but we were confronted with a practical problem that isn't practical for Panagra to maintain in the United States a sales organization which is in any way comparable with the one that Pan American can obtain.

From a financial standpoint it would be utterly impossible. We felt that the benefits derived from the extent and size of this organization as against what we might otherwise have, were a reasonable offset against that risk, but we weren't content with that, and we therefore put in various provisions to insure adequate Panagra representation and adequate sales offices and *ade*quate Panagra publicity and adequate cooperation and sales methods and sales techniques and all that sort of thing, and all of that is primarily related to Buenos Aires traffic and on that point we also have this possibility of considering a pool.

Q. Wouldn't this arrangement have the effect of reducing the prospects of Eastern Air Lines for developing a large volume of interline business between North and South America in connection with Pan American Airways system?

A. Well, I can't see how, so long as this extends to Miami. As far as it is concerned now going to Miami, a very large part of it moves over Eastern and National anyway, and would continue to do it, I suppose.

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[fol. 4040] Q. Isn't it your view that the preference contained in 9 and the general sales agency contained in 10 would influence wherever possible a movement via some carrier to the New York or Miami gate and then over this route from Miami to South America, the route in question in this case, to the detriment of Eastern, which might be trying to assemble that business and haul it down and turn it over to National conceivably to Havana and then to Braniff for South American points?

Mr. Gesell: Could we have that question read, Mr. Examiner? I don't think I understood it.

(Question read.)

Mr. Gambrell: I will simplify it.

By Mr. Gambrell:

Q. Aren't paragraphs 9 and 10 designed to make more difficult Eastern and other carriers independence of the Pan American system—to make more difficult their developing and hauling business between North and South America?

A. I don't see, Mr. Examiner, that I should concern myself about lines which are not yet in that area. Eastern is not in that area between North and South America at the present time.

Examiner Wrenn: Mr. Boig, let's take the situation enumerated there: A passenger from New York to South America going by Eastern to Miami and then National and Braniff. Take that routing in mind. Can you answer his question?

The Witness: I will say this: It is the object of our sales organization as it is that of Eastern or Braniff or National

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[fol. 4041] or anybody else, I assume, to sell all the traffic

we can over our own routes. It isn't our object to sell it over other people's routes if we have a competitive one.

By Mr. Gambrell:

Q. And this contract constitutes a compact between you and the largest of all of them to get together and work for each other to the exclusion of others, isn't that right?

A. I wouldn't so characterize it. You can characterize it that way if you like. I wouldn't.

Q. Didn't you state yesterday on your direct before I questioned you at all, that one thing you wanted sure was that Eastern shouldn't go to the Canal Zone, isn't that right?

A. Yes.

Q. And didn't you say that the reason you didn't want Eastern to go to the Canal Zone was that if Eastern got there, that a part of the business south of the Canal Zone would be diverted to Braniff?

A. Well, I say diverted to—

Mr. Gesell: Let's have the page of his testimony. I don't recall his saying that. I recall his saying that the traffic would be diverted to a number of carriers at that point.

A. That is what I said.

By Mr. Gambrell:

Q. Do you deem it in the public interest under 412 or 408 that the Board should sanction this contract with the thought that it would create and maintain a situation that would deny Eastern the right to do business with Braniff?

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[fol. 4042] Examiner Wrenn: You are arguing with the witness. I have no objection to you asking factual questions and bringing such things out but do you have to argue with him and make such characterizations?

Mr. Gambrell: He made that statement yesterday.

Examiner Wrenn: I have no objection to your bringing out the facts but you are arguing with the witness.

Can't you bring out the facts without introducing your own argument there? You are not going to get the witness to agree with your characterization of that.

Mr. Gambrell: I think this is a matter of economic philosophy and traffic science.

Examiner Wrenn: I don't object to your getting all the facts in there but do you have to argue with the witness and use your own characterization of things to get the facts?

By Mr. Gambrell:

Q. Paragraph 10(b) provides that if passenger presents evidence to Pan American that a Pan American employee has diverted or attempted to divert any traffic intended for transportation over Panagra's routes, certain things would be done about it.

What do you mean by the word "intended" there? Intended by whom?

A. Well, it might mean intended by the passenger. That would be the most obvious meaning.

Q. Could it be intended by anybody else?

A. It could be, yes.

Q. In other words, it might be intended by Pan Ameri-

[fol. 4043] can or Panagra?

Mr. Gesell: No. That isn't what he said.

A. It couldn't be that, could it?

By Mr. Gambrell:

Q. Who else could it be besides a passenger?

A. Well, I think that you have gradations of expression by the passenger. You might have in the clearest case a passenger who came in and definitely stated he wanted to go by the West Coast, and this case might cover a situation where he had been sold out of that idea, to go down the East Coast.

On the other hand, there are a great many shadings of that. A person might be uncertain which way he wanted to go, but there might be some reasons in the situation where he would more advantageously go by the West Coast, but those advantages weren't pointed out.

The intent is to be very broad, to see to it that nothing is done to result in just the situation that you were concerned about a moment ago under this other clause.

The intention is to be very broad to see that Panagra's legitimate and reasonable traffic moves over Panagra's route and is not interfered.

Q. Suppose that there is a situation where it is obvious that the passenger, to his own advantage, should ride by Braniff or Eastern and National, and this Pan American agent of Panagra makes bold enough to say: "I think you ought to ride that way." Would that be a ground for complaint here?

A. That wouldn't have anything to do with this, no. This

[fol. 4044] is just between Pan American and Panagra.

Q. Isn't this in effect a provision to police the restraint provided in 10 above? That is to keep all these passengers—

Mr. Gesell: That is an argumentative question, Mr. Examiner. What restraint? There is no testimony about any restraint provided.

By Mr. Gambrell:

Q. If this is an ideal arrangement why do you have to put this policing provision in there?

A. Most ideal states require a certain amount of supervision.

Q. Let's go to 10(c). Is it your understanding that provision means that Panagra can set up any plan of getting business, and Pan American is expected to put it into effect without Board approval?

A. Well, if it were the sort of thing which required Board approval, of course not. It certainly was never my intention that this clause never related even remotely to anything requiring Board approval. It is just ordinary sales practices.

Q. It is between two companies, isn't it?

A. Well, it is between two companies in the sense that

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one is the principle and the other is the agent. When an airline is dealing with a travel agent or with a railroad, or even a steamship line—because after all steamship lines sell a great many air tickets—the airline will prescribe

methods of how they want their business handled. It never occurred to me that that was a thing you had to take up

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[fol. 4045] with the CAB. I thought they were busy on more important matters.

Q. 10(d). Why was Grace W. R. Grace and Company designated?

A. Well, W. R. Grace and Company has an office or the Grace Line as a matter of fact have an office in Radio City, and W. R. Grace and Co. itself has a transportation office in our building on 7 Hanover Square, where we sell a very substantial amount of air traffic.

Q. You sell steamship traffic there also?

A. Yes and we sell air traffic over Eastern Air Lines and a good deal of it. We have very pleasant relations with them. Braniff too, for that matter.

Q. What are the affiliated companies referred to there?

A. I have never found any objection on their part.

Mr. Schneider: Nor will you.

The Witness: Braniff solicited the business only quite recently.

By Mr. Gambrell:

Q. Who are the affiliated companies mentioned in sub paragraph (d)?

A. In the case of the Radio City office it would be the Grace Line because that happens to be their office. There might at any time be another. I don't recall another at the moment.

Q. Paragraph 11: What is the purpose of contracting to have the Panagra name displayed at the various Pan American stations in this country?

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[fol. 4046] A. Well, that is a bit of history. There has been some question between Pan American and Panagra as to the advisability of using that name "Panagra" instead of Pan American Grace Airways, and it was thought advisable to clear up that question by agreeing that we could use the word "Panagra."

Q. Either Pan American Grace Airways or Panagra—why is it essential that that should be displaced at the Pan American office in this country?

A. Well, because in South America Pan American Grace Airways—as a matter of fact, Pan American Airways in many places—is generally commonly referred to as Panagra.

On the West Coast Pan American Grace is always referred to as Panagra, and after all, the people who come into the Pacific office in the United States are in large part South Americans to whom that name is immediately familiar.

Q. I think you misunderstand me. I am not speaking of the condensed name. I am speaking of why should your organization have its name around in the Pan American Airways offices in this country, whether it be Panagra or Pan American Grace?

A. Well, to emphasize the fact that that is the place where you can buy tickets on the Panagra route from Balboa to Buenos Aires or any point in between, the same as we run ads in the magazines to advertise our existence.

Q. You spoke of having business with Braniff. Do you insist upon that in the Braniff offices in this country?

Mr. Gesell: He talked about Braniff having business with him.

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[fol. 4047] By Mr. Gambrell:

Q. You have an interline arrangement.

A. No. Nothing of the kind. All I said about Braniff was that W. R. Grace and Company's transportation department sells Braniff tickets. They sell Eastern tickets. I suppose Braniff and Eastern and all the airlines sell Panagra tickets on an interline basis the same as we sell all the other tickets but that is a different proposition.

Q. Is this provision in other parts of this agreement for putting your name in the Pan American offices, is it with the thought of emphasizing a sort of general identity with the Pan American system?

A. On the contrary it is with the object of pointing out the identity of Panagra as a separate entity.

Q. Is it then to give the impression to the passenger that Panagra is in Miami or Panagra is in New York or at Chicago as the case may be? Are you trying to teach the public that you extend all the way into this country?

A. We are trying to sell the public tickets on Panagra *in* and to make plane the fact that they can get through service on the Panagra plane over the Pan American system to Balboa and our own system from there on, but the through flight, the through service, the one plane thing, we are *meet* trying to emphasize. We have to emphasize it to ~~meet~~ the competition which is using it against us.

Q. You would feel that it is wrong to give the impression that Panagra comes into this country unless it does?

A. Well, I don't see that we are giving that impression, except by plane. The contract contains numerous provi-

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[fol. 4048] sions that that should not be done.

Q. 11(a)—

A. The ticket will show it.

Q. In 11(a) you have provision that Panagra personnel may come and stay in these Pan American stations?

A. Pardon me. What paragraph?

Q. 11(a). You provide that Panagra personnel may come and work in the Pan American stations to assist in the handling of traffic.

A. Yes.

Q. If Pan American's agency is an efficient and competent agency why do you need to have your personnel at considerable expense detatched—

Mr. Gesell: There is no testimony about considerable expense.

Mr. Gambrell: Do they work for nothing, Mr. Roig?

Examiner Wrenn: We have had enough of that. Go ahead with the question.

A. This, Mr. Gambrell, is something quite different from what we have been talking about. This personnel is not

in the sales offices. This personnel is in the ports of arrival—let's say, Miami.

Now, the reason that we have that provision is because we have had *personnel* for sometime in Miami already, although we have not had any planes coming through, and we have found that it served a very useful purpose. We have passengers that we bring from let's say Buenos Aires, Santiago or Lima, and they transfer at Balboa and arrive at Miami.

Many of them speak no English, are wholly unfamiliar

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[fol. 4049] with the habits and customs in this country. They require a special attention which it cannot be expected that any general traffic organization will give them, but which we consider it good business to give from a goodwill angle, and it has been abundantly demonstrated that it pays handsome dividends.

Examiner Wrenn: And that is the purpose?

The Witness: That is the purpose of this: To have these special representatives to give special extra attention to passengers arriving primarily to take care of these passengers arriving from South America, but we also find it is a very satisfactory thing going southbound, and with American passengers too, they have the question of transferring at Miami to Eastern and National or the railroad and it is a great convenience to have a little personal service and we believe in personal service.

We have built up our business on personal service. Our whole concept of an airline operation is totally different from anything that exists in the United States under that heading.

Examiner Wrenn: I wanted to be sure that I understood you, Mr. Roig. Is it my understanding that this was contemplated only at ports of entry, is that right?

The Witness: Yes, that is right.

By Mr. Gambrell:

Q. It is not in any sense to give the impression to the traveler that Pan American's operations extend into this country—I mean Pan American Grace?

A. No more so than the man we have had in Miami for

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[fol. 4050] the last five or ten years was to give that impression.

Q. Was he to give that impression?

A. No. He was to look after these people.

Examiner Wrenn: Why is it so important anyway, Mr. Gambrell?

Mr. Gambrell: Well, if they are asking the Board to approve it for 99 years, it seems to me we ought to find out what is its purpose. It costs money although Mr. Gesell says it doesn't.

Examiner Wrenn: I don't see why it is so important when as a matter of fact the record shows they do not extend in the United States.

Mr. Gesell: Isn't it time also, Mr. Examiner, that Mr. Gambrell took cognizance of the testimony on the record and the provisions of the statute which make it clear that the Board can disapprove this agreement at any time.

Examiner Wrenn: I don't know. I addressed that question to him yesterday.

Mr. Gambrell: If the approval is not of any effect it seems to me we ought not to spend time getting the approval. There must be some advantage.

Examiner Wrenn: Are you clear on paragraph 11(a)? If so, proceed.

By Mr. Gambrell:

Q. There is no reason, no practical reason, why this arrangement could not be set up as a disassociated arrangement apart from the matter of operating your planes all the way through, is there, Mr. Roig?

A. You mean this matter of a representative?

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[fol. 4051] Q. Yes.

A. Oh, no. As I said, we are doing it now and have for a number of years without this contract.

Examiner Wrenn: Does Eastern Airlines advance the contention that this particular paragraph should be disapproved or there should be a condition attached?

Mr. Gambrell: I am trying to find out what it means, sir, and to find out, of the Board wanted it in, whether it could be handled without the extended service.

Examiner Wrenn: You were talking about paragraph 12.

Mr. Gambrell: Yes, sir.

By Mr. Gambrell:

Q. Without going into the details there, you have provided that the tickets, if possible, shall show that this service is conducted under the particular arrangements made. If this is a clear responsibility of Pan American Airways north of Canal Zone, why it is necessary to explain to the passenger that this plane is rented from Panagra?

A. Well, that isn't quite what this says. I am not quite up to date on this question, but my recollection is that it has been decided that it isn't practical to have that on the tickets anyway.

Mr. Gesell: Mr. *DeGroot* is the witness on that. He will testify that we are going to continue to use the same tickets precisely as are used at the present time.

Mr. Gambrell: I am not undertaking to say they are right or wrong. I wanted to know why the passenger must be told this.

Examiner Wrenn: All right. Proceed. You have had an

[fol. 4052] answer.

Mr. Gambrell: I am answering Mr. Gesell now.

Examiner Wrenn: I don't think we need any more answers one way or the other on that. We will proceed.

A. (Continuing) The thought was that if practical, as it now turns out not to be, the ticket should indicate that the plane trip was being made on Panagra aircraft in order to emphasize the fact of through flight service, which is the whole object of the contract.

By Mr. Gambrell:

Q. Look at 12(e). What is the advantage of having Pan American act as tariff and schedule publishing agent for Panagra?

A. Well, we have always done it that way and it has worked out satisfactorily. They have a larger organization than we have to handle that sort of routine work.

Q. Is it because you regard your service as a part of the Pan American Airways system?

A. Well, if you imply anything sinister from that, no. Obviously it is because we are associated that they are willing to do it. I suppose if we asked Eastern or Braniff to do it they would say, "Why should we bother?"

Q. Is it because there is a special effort to coordinate and synchronize your schedules—yours and Pan American's?

A. The filing officers and the filing employees are not the people who decide those questions. That is another question. Whether or not we coordinate schedules depends on traffic policy considerations in which traffic people are consulted, and others also, but this particular thing relates

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[fol. 4053] entirely to a mechanical process of filing schedules and tariffs.

Q. Then you would say that it has no relationship to the fact that Pan American Corporation owns 50 per cent of Panagra?

A. You can draw any inference you like from that. I have explained as best I can.

Q. Paragraph 13: Would you indicate what sort of an agreement is contemplated here—I mean the framework of such an agreement?

A. You are speaking now of "A," the Buenos Aires pool?

Q. Yes.

A. Well, it would relate as indicated to Buenos Aires and Montevideo assuming they were the two common points. I assume it would follow the usual form of a pooling agreement which generally provides for each of the parties to the arrangement carrying a certain percentage of the trade, and if they don't carry it, adjusting the differences.

Now, the percentages of the trade are usually determined by the actual situation as it exists at the time, and the settlement for differences, and this is why pooling agreements do not restrict competition in the sense that it is commonly supposed, because these adjustment provisions

in practice, always work out that unless a line is carrying its percentage of the trade, it doesn't just get a free ride.

When the pooling agreement is renewed the percentage is reduced so that under a pooling agreement there is a definite incentive to maintain at least your percentage in

. . . . . .

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[fol. 4054] The Witness: ~~We~~ *They* have one.

By Mr. Gambrell:

Q. What?

A. National through Havana.

Q. You think that is adequate?

A. I think it is an outlet. I don't know whether it is adequate or not. Time will tell. It has certain weaknesses.

Q. You spoke yesterday about wanting Eastern to come in because it would divert traffic to Braniff or give Braniff more traffic.

Mr. Gesell: Mr. Examiner, he did not say that. That is the third time we have had that up. Mr. Roig's testimony is clear. He said when Eastern got to the Canal it could divert the traffic to all the carriers, not to Braniff. He is misrepresenting the statement on the record.

By Mr. Gambrell:

Q. Is it your position that Braniff is not entitled to any traffic moving to and from the eastern half of the United States?

A. I think Braniff is entitled to all the traffic they can get.

Q. But you feel that your company is entitled to a pool that locks it up from Braniff?

A. We don't lock up the traffic from Braniff. We just divide it between the two of us already in the business and who pioneered it. But anybody is welcome if CAB authorizes them to come in.

You seem to have the idea, Mr. Gambrell, some how, that

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[fol. 4055] the whole stage should be set to benefit the people who have never been in the business, never pioneered it at all, who are walking in to skim the cream after somebody else has raised the cow, and that all that should be done at the expense of the people who have been there all this time, and that the people who were there, have been there all this time do anything to protect themselves and to put themselves on a parity with these newcomers that there is something wrong about it.

I don't understand the psychology.

Q. Didn't you state this morning that Eastern had had until recently 100 per cent of the Latin American haul, all of that South American business, north of Miami?

A. I said a few moments ago, that until National came into the field Eastern had such business from that area as moved over Eastern, or moved over air. There was no other airline, but I did not say they had 100 per cent of it.

A great deal of it came by railroad. A lot of it was moving before Eastern was in existence. Pan American and Panagra were moving this service before Eastern went to Miami. It came by railroad.

Mr. Gambrell: Let us check it.

Mr. Gesell: The what?

Chairman Wrenn: We can get the facts without so many characteristics.

By Mr. Gambrell:

Q. You spoke about the fellow pioneering being entitled to it, and that it was wrong for some person to come along and skim the cream. Is it not true that Eastern had 100 per

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[fol. 4056] cent of the air carrier haul between Miami and New York up until a year or two ago, over a period of some 15 or 20 years? You can say yes or no on that.

A. By virtue of their being there, and nobody else being there.

Q. And you had virtually 100 per cent of the U. S. flag haul from the Canal Zone south, down the west coast.

Examiner Wrenn: Now you are arguing back and forth.

Mr. Gambrell: No. Isn't that right?

The Witness: Yes.

By Mr. Gambrell: Do you take the position that by reason of your position and Eastern's position you should be the one to provide a service with Pan American in addition to the present Pan American service between the Canal Zone and Florida, in contradistinction to Eastern?

A. All I am asking is that Panagra should be enabled to be in at least an equal position with newcomers, and should have such protection in its—as a result of its pioneering position, as the CAB in decided cases has held that a company in that position is entitled to. Nothing more.

Q. You are not claiming that Panagra is any more of a pioneer than Eastern, are you?

A. Oh, yes.

Examiner Wrenn: I don't care who is more of a pioneer. This has gone far enough. That is enough on that score. Let us have another line of questioning.

Mr. Gambrell: I would like to explore that.

Examiner Wrenn: Go ahead.

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[fol. 4057] Mr. Gesell: You have in mind my continuing motion here to strike this, Mr. Examiner.

Mr. Gambrell: I am willing to strike his remark about Eastern not being a pioneer.

Examiner Wrenn: When we strike his remark we are going to strike the question.

Mr. Gambrell: It is stricken?

Examiner Wrenn: Not yet.

By Mr. Gambrell:

Q. You know that both services were originated about 1928, do you not?

Examiner Wrenn: Mr. Gambrell, what relation does that have to the matter here?

Mr. Gambrell: I want to know myself. He brought it up.

The Witness: You asked the question.

Examiner Wrenn: We will have no more questions on that matter of pioneers.

Mr. Gambrell: He brought out the pioneer subject. I did not bring it out. If you will confine him to the questions we will save a lot of time.

Examiner Wrenn: Will you address another question, please?

By Mr. Gambrell:

Q. Let us look at paragraph 14. Do you regard the provisions of that paragraph as essential to this contract?

A. Yes.

Q. Why?

A. Well, because under them, as I explained before, we

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[fol. 4058] clear up the matter of the use of the name "Panagra" and we provide for, provide a plan under which Panagra may derive certain definite advantages from Pan American's advertising and publicity, which, is very extensive in the United States; far more so than Panagra could provide for its own account.

Q. Do you feel that that would be—that that arrangement of publicity is designed to get more business for the operations of Pan American and Panagra?

A. Why certainly.

Q. Is it your thought that it will be likely to divert from other carriers in the territory between the United States and South America business which they might get?

Mr. Gesell: That is too general. We will have to know what carriers he is talking about.

By Mr. Gambrell:

Q. Any carriers.

A. Well, I certainly hope that it will succeed in getting business for Panagra. Just as I dare say you and Braniff expect that your advertising will get business for your lines. Braniff has been advertising the route all

over the South American territory on the South American map for almost a year. They have only been certified for a few weeks and they are not yet running it. But it is perfectly legitimate for them to publicize for business. I suppose that is what we spend advertising money for.

Q. Paragraph 15. Why are the Panagra employees exempted in the second and third lines?

Mr. Gesell: Mr. Examiner, these liability and financial provisions of the contract are going to be covered by Mr. Ferguson and Vidal. I don't want to limit this examination in any way, but since they are going to be discussed in detail with those witnesses, I suggest they are the more appropriate witnesses.

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[fol. 4059]

Mr. Gambrell: I am willing.

By Mr. Gambrell:

Q. If this is, in fact, a Pan American operation, north of the Canal Zone, why can't Pan American just assume to pay the crews and other expenses connected with the operation instead of having the bookkeeping routed through Panagra in respect to salaries and other expenses?

Mr. Gesell: Is that a financial question which I thought would be directed to the other witnesses?

Mr. Gambrell: I thought you said—yes; excuse me.

By Mr. Gambrell:

Q. Paragraph 18. Is it your understanding of that paragraph, sir, that if the occasion should arise wherein it might be in the public interest for Pan American to transfer a certificate, say, New Orleans, Merida, Canal Zone route, say to Chicago and Southern, that you want to have here the Board approve a contract whereby you could block such a development?

A. That is not the object of the clause. Again, somebody has to think of Panagra. Everybody else seems to be thinking of everybody else. I am not thinking about blocking somebody else, but I am thinking about seeing to it ~~that~~ *for*

that
Panagra, ~~the~~ Pan American, keeps itself in a position to render this service to Panagra.

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[fol. 4060] Now, if the Board approves this contract that will be a determination of the public interest in respect to that matter which is the only one before us.

If a new question of public interest comes along, presumably the Board would have to withdraw its approval of this contract, or something of that sort. I don't know what.

Q. You are familiar with Section 401 (i) and Section 401 (k), having to do with the Board's jurisdiction on the transfers and abandonments, are you not?

A. I am not, I am sorry to say.

Mr. Gesell: That is a legal question.

By Mr. Gambrell:

Q. Isn't Panagra willing to leave to the Board's present jurisdiction and its present wisdom the matter of when and if Pan American shall transfer, or abandon a certificate without trying to tie the Board up by decision on that question now?

Mr. Gesell: He has testified, Mr. Examiner, that there was no effort here to tie the Board up; that the Board could disapprove or qualify the approval of this so that it would be free to act in any other case. Mr. Gambrell is putting words in the witness' mouth.

Examiner Wrenn: I think his testimony is clear on that point, Mr. Gambrell.

By Mr. Gambrell:

Q. Is this an essential provision in this contract?

A. Yes.

Q. Do you wish the Board to be bound by its decision on this matter?

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[fol. 4061] A. Well, I expect the Board to be bound by the decision it takes and I expect them to take such decision as they deem wise and qualify it in such form as they deem necessary.

Examiner Wrenn: Let us get what the witness and counsel are talking about.

I may be wrong, but it seems to me like you are speaking at cross purposes.

Mr. Gesell: We thought there was a Section 412 (b) in the Act, which was applicable here.

Mr. Examiner, you asked yesterday about that, and brought no answer from Mr. Gambrell. It is perfectly clear that the Board can disapprove this contract at any time. We have testified to that effect, that we consider, despite the term provisions of the contract—Mr. Roig testified on direct—it was the understanding that the Board at any time could disapprove this arrangement.

Now, isn't it clear? What possible confusion is there on the record on that question? We come back to it and back to it.

Examiner Wrenn: The only point I want to clear up there, if there is any need for clearing, is Mr. Roig's idea of what that particular provision means from the Panagra standpoint.

The Witness: Our ideas, as I tried to state, were to bind Pan American to continue to retain the certificates without which we would be unable to provide the service which is the object of the contract to enable us to provide.

Examiner Wrenn: Thank you, sir.

By Mr. Gambrell:

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[fol. 4062] Q. Let us look at paragraph 19. What right does Pan American Airways, Inc., have to say who shall represent or take the position for Panagra? That is, that should make this provision necessary. I note you have agreed here, in paragraph 19, rather, Pan American agreed, that any action taken by Panagra under this agreement may be taken on behalf of Panagra by its President. Has Pan American Airways, Inc., any control over Panagra, or any rights to designate who shall represent Panagra?

A. It has no control over Panagra, but as a party to a contract with Panagra, I should think it had the right to agree who in Panagra might take action with respect to the specific clauses of that contract, which is what this provides.

Q. I note that the latter part of paragraph 19 saves from that provision General Board action on policy questions, meaning, particularly, among others, purchase of equipment, the establishment of reserves, and the financing of depreciation rates.

Are we to understand that at present Pan American, or Pan American Airways Corporation has the veto power on the question of purchasing Panagra equipment?

A. No,-not as such, but the Pan American Airways Corporation owns half of the stock, and naturally is in a position to elect half of the directors.

The import of that provision is that the question of control of this company continues to rest, as it always has, dating back before the Civil Aeronautics Act was passed, and coming along under the grandfather clause, in these

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[fol. 4063] stockholders and Board of Directors on this 50-50 basis, and the authority given the President - this is intended to make perfectly clear - is not in any way to effect that question of control.

Actually the authority given the President is merely to inaugurate processes for the determination of questions which might arise under the contract. The President is given no authority to settle these questions. He may inaugurate the processes without risk of deadlock, but the processes are in every case negotiation, or arbitration.

But even those processes are wholly unrelated to the question of control of this company which remains where it always has been.

Q. Parenthetically, reference was made in the paragraph to purchase of equipment. Are we to understand that purchase of equipment is solely a matter for the Board of Directors of Panagra, four of whom are on one side, and four on the other?

Mr. Gesell: There is nothing about sides here. There is nothing about sides in this record at all.

The Witness: Purchase of equipment. By that we mean substantial equipment. I buy small stuff all the time; but when it comes to buying airplanes, that matter always goes before the Directors of this company.

By Mr. Gambrell:

Q. As a practical matter in the operation of the corporation, is it correct that if the four directors coming from Pan American Corporation do not agree to the purchase of equipment, it can not be bought?

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[fol. 4064] A. Theoretically that question would be true, but it has never arisen in our 18 years. We bought several types of equipment; we have had suggestions and discussions about that—I am talking about flying equipment now—we have had discussions about the type of equipment that was best suited. Pan American had ideas sometimes that differed from Grace. We have always decided on the type that was best for our peculiar problems on this operation without any difficulty of any kind.

Examiner Wrenn: Mr. Roig, does paragraph 19 eliminate any possible continuation of that; what you have described as a theoretical condition?

Mr. Gesell: Are you talking about equipment, or the matter in general?

Examiner Wrenn: Equipment.

The Witness: As to equipment, I don't consider that 19 changes the situation as it has previously been. In fact, it expressly perpetuates it. But as I say, it ha never been a problem.

Examiner Wrenn: What I was getting at was whether the intent of 19 was to meet a condition of that kind. Your answer is no.

By Mr. Gambrell:

Q. Paragraph 20—

The Witness: Perhaps I might say a little more, Mr. Examiner, in answer to your question.

Examiner Wrenn: Go ahead.

The Witness: While one of the directors of Grace has been designated as President of this company since 1939,

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[fol. 4065] and it is intended to continue on that basis, the President's functions have always been strictly administrative.

He has never been put in a position of control of the company, and it is only through the President that Grace has ever been in any different position than Pan American; and that, as I say, has not been one of control, but merely one of taking on a very laborious job of administration.

This contract does not change that ~~an~~ in ~~a~~ any sense. If it changes it in any way, it reduces even the position of the President as it has presently existed, because, in the first place, it provides very clear and specific methods of getting rid of a President.

Up to now the President has been in the position that once in it might be quite difficult to get him out with a 50 50 situation. That difficulty has been removed.

Also, there is a provision which is now in this contract, that the operating Vice President must be subject to the approval of Pan American. So that, actually the powers of the President, which, as I say, are the only things that I can see that can be regarded as having any bearing on this control question, have been actually reduced.

Examiner Wrenn: Thank you, sir.

By Mr. Gambrell:

Q. Let us now go to paragraph 20.

Mr. Gesell: I don't object to questions to Mr. Roig on this, but this is the area concerning the actual court proceedings. I think Mr. Friendly would be a more appropriate witness of what is going to occur. We will leave that to the Examiner.

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[fol. 4066] Mr. Friendly has had the discussions concerning the implementation of that paragraph with the various attorneys and court officials.

Examiner Wrenn: If that is agreeable, we will defer questions to Mr. Friendly; then, if you need Mr. Roig, I assume he will be available.

Mr. Gambrell: I won't ask but a question or two. I would like to ask him now if I may.

Mr. Gesell: It is all right with me.

By Mr. Gambrell:

Q. You helped to negotiate this contract, did you not?
A. Only indirectly, yes.
Q. You signed it?
A. Yes. There is not anything in it, I think, that I am unfamiliar with.

Mr. Gambrell: Off the record.

(Discussion off the record.)

Examiner Wrenn: Go ahead.

By Mr. Gambrell:

Q. I note that you state that the parties will use their best efforts to obtain such approval as expeditiously as possible, approval by the Civil Aeronautics Board.
Have you done anything along that line other than testify here?

Examiner Wrenn: Are you speaking about Mr. Roig, personally?
Mr. Gambrell: Yes, sir.
The Witness: It was simply preparation for the hearing.

By Mr. Gambrell:

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[fol. 4067] Q. Have you discussed this contract with anybody, either in the making of it, or since? I mean, any public official.

Examiner Wrenn: Aren't you repeating testimony questions you asked yesterday afternoon?
Mr. Gambrell: I don't think so.
Mr. Schneider: The question yesterday—I think, if you check the record—was whether Mr. Roig had discussed the interpretation of the Latin American decision and the mandate of that, as to whether this contract met that mandate.
Examiner Wrenn: What is the difference between this?
Mr. Schneider: Quite a difference.
Mr. Gesell: What is the question? Did he discuss the contract with anyone? If so, it is yes. He talked with a

lot of people about that, to Mr. Friendly, and everybody else.

By Mr. Gambrell:

Q. Have you undertaken with any public official to discuss the makeup of the contract, or its being in the public interest, or not in the public interest?

Mr. Gesell: I object to that, Mr. Examiner. I can't see its relevancy to this proceeding at all, who Mr. Roig has talked to, or what he said. What possible bearing has it on this contract?

Mr. Gambrell: I would like to know what he has done to fulfill that obligation, to have it approved.

Mr. Gesell: That is a different question than the one you are asking. The question is what steps Mr. Roig has taken to have this contract approved.

Examiner Wrenn: I don't object to that.

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[fol. 4068] Mr. Gesell: I think that question is pertinent.

By Mr. Gambrell:

Q. Have you discussed it with any public official?

Mr. Gesell: That is the question I object to. I do not see its relevancy here at all.

Mr. Hickey: I think that is relevant. It bears on public interest.

Mr. Gesell: If we are going to go into that, Mr. Examiner, I had not thought of it on the public interest, I think we should make it perfectly clear that there should be called here witnesses from Eastern Airlines and Braniff and the other airlines to discuss the activities of their officials in respect to this matter, and the discussions they have had.

And then, perhaps, I think we should have the various public officials in to bring out what they said about Panagra.

Mr. Hickey: We would be glad to. It all depends on with whom he spoke, Mr. Examiner. It could be quite relevant. It depends on the answer to the question.

Examiner Wrenn: I still don't see the materiality of it. Go ahead and ask him what steps he has taken toward getting this contract.

By Mr. Gambrell:

Q. What action have you taken with respect to this contract in relation to public officials?

Mr. Gesell: That is not the question. I thought the question, Mr. Examiner, indicated what steps had been taken to expedite the approval of this contract. I think that is

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[fol. 4069] the proper question.

Mr. Schneider: And that includes the necessity of the narrow question which Mr. Gambrell asked.

Mr. Gesell: It does not.

Mr. Schneider: It is phrased in general; maybe not specific.

Mr. Gambrell: I asked the question, and Mr. Roig has not answered it. I am willing to ask another question without withdrawing my question.

Mr. Hickey: Before we pass this question I would like to suggest the clear relevance to it. I know this is an impossible situation, but to show the clear relevance: If Mr. Roig had discussed this matter with you, there would be no question about its relevance in this proceeding, would there?

Examiner Wrenn: If you are asking the question of me—

Mr. Hickey: Of course he hasn't, but I am trying to show how material the question is, and why it is relevant for Mr. Gambrell to ask him.

Examiner Wrenn: I can't agree with you on the illustration you used at all.

Mr. Hickey: I am trying to make the illustration as ridiculous as I can to show how clear its relevancy is.

Mr. Gambrell: I will go to another question, not having had an answer to the previous one.

By Mr. Gambrell:

Q. Looking to paragraph 20 (b), I note that you provide that except for paragraph a. of 20 (b), and paragraph 22, which became operative immediately, the agreement is sub-

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[fol. 4070] ject to the approval of the Board.

Now, do you consider that paragraph 20 (a) is now in effect, Mr. Rolz?

under *Pan American was forthwith to*

A. Yes, because "(a)" ~~if under that was to forthwith~~ file application, and they have filed it.

Q. Are you familiar with the language of Section 412 (a) of the Act, which says that "Any agreement for co-operative working arrangement must be filed for approval, and it is subject to the Board's approval?"

A. Yes, that is why we filed it.

Q. Is paragraph 20 (a) a cooperative working arrangement, or is paragraph 22—a cooperative working arrangement?

A. We are in a complete circle now.

Mr. Gesell: Mr. Examiner, Mr. Gambrell knows very well that if all carriers waited for approval under 412, of all agreements filed, before they were acted on, we wouldn't have any airline industry today. People are constantly filing agreements under 412 and proceeding with them, and they do not wait for approval; and that is perfectly well understood.

The Witness: No, but this is just apparently according to Mr. Gambrell, we were supposed to have gotten the Board's approval before filing the application.

By Mr. Gambrell:

Q. You don't think you should have had the Board's approval before you agreed to do everything possible to have this contract approved?

A. No, I don't think so, because that really means the

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[fol. 4071] two things there—the only things that are agreed to, to be effective immediately; one is that we agreed that

Pan American would file, and that we will carry the thing through.

Q. You agreed to work in concert to get this thing approved?

A. Yes.

Q. And you feel that that is binding?

A. I would have thought it was.

Mr. Gesell: The customary provision in all agreements of this kind.

The Witness: You have to break in the circle to get started.

Mr. Gesell: It has been proven again and again.

By Mr. Gambrell:

Q. Paragraph 21. Why do you use the expression "as between the parties" there? "This agreement shall be for a term of 99 years." Just the term, "as between the parties".

A. That is the point we had up so repeatedly that we did not assume it would preclude the Board from its right to terminate it any time they saw fit.

Q. I note that you have said in 21 (a) that if at any time subsequent to December 31, 1948, Panagra shall not be satisfied, certain things may happen.

Why did you limit them to action after the end of the year 1948?

A. Well, we thought there ought to be some reasonable trial period, that this involved certain adjustments and there was no point in making a contract that would just be torn up the next week.

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[fol. 4072] Q. You would say the same thing as to the first line in subparagraph (b), I suppose.

A. Yes.

Q. I note at the end of subparagraph (a) you have a three month's notice provision and at the end of subparagraph (b) you have a one year provision. Why the distinction, giving Panagra a year in which to make amends and Pan American only three months?

A. Well, I must say I have forgotten the considerations that led to that. Perhaps I could recall if I could ~~remember~~ *read* the whole thing over again.

Q. Let us go to paragraph 22.

A. If I recall this afternoon, I will be glad to state.

Q. I note in paragraph 22, in effect, provides that this agreement and the things done in connection with it, and pursuant to it, are without prejudice to the parties if the agreement should be disapproved, or at any time after the agreement terminates. In general, that is the effect of it.

Why do you regard that as a desirable part of this agreement?

A. Well, if the Board should disapprove this agreement, and we had to go back to the legal proceedings, we certainly did not want the effort to arrive at a settlement to be considered prejudicial; efforts and negotiations for compromise and settlement are ordinarily not considered prejudicial, if they don't succeed.

Q. Would that go so far in your opinion as to inhibit Pan American from using the testimony you are delivering

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[fol. 4073] here if it desired to use it in the uncompleted Docket 779, at a later time?

A. Well, that is a legal question. I don't know. But I have no objection except on legal considerations to the use of any testimony I give in any hearing, in any other hearing.

Q. As you understand it, there is no effort here to keep without reach of another proceeding any testimony that might be delivered in this hearing.

A. Well, I say as far as I am concerned, I am not taking *position* any ~~compromise~~ one way or another involving myself in the legal technicalities.

But when I make a statement, wherever I make it, I consider it good at all times.

Q. When you state the truth in this hearing it is the truth in any other hearing.

A. That is my endeavor.

Q. I notice in paragraph 23 (a) reference to the intention of the parties being to liberally construe this agreement to the end that through traffic will be handled with efficiency.

I suppose that through traffic you refer to as the same through traffic you referred to earlier this morning.

A. Yes.

Q. And it would not include the traffic moving between Eastern's system and Braniff's system via Miami and the Canal Zone gates, would it?

A. It would include such traffic moving through the Miami gate. Yes, precisely; because that—if the Eastern or Na-

[fol. 4074] tional delivered traffic to us at Miami—to Pan American at Miami for destination Lima, Santiago—that would be through traffic.

Q. Back on Braniff, the Canal Zone, Eastern's system in this country, through Miami, and Braniff's system in South America through the Canal Zone, that would be local in your view, wouldn't it?

A. Yes.

Q. Do you know whether Mr. Trippe, who signed this agreement, will be present?

A. It is not the intention.

Examiner Wrenn: Ask counsel for Pan American.

Mr. Gesell: He is not on the list of witnesses. He is in Europe, isn't he?

By Mr. Gambrell:

Q. Mr. Roig, do you know whether he would be available for questions, if called now?

A. I really know nothing about Mr. Trippe's movements.

Q. Looking now to Annex 1—

Mr. Gesell: That is accounting matters, again, Mr. Examiner. That is covered by the same thing.

Mr. Gambrell: Excuse me. I will pass that.

By Mr. Gambrell:

Q. Let us go to Exhibit B for a moment. You did not sign this document, did you?

A. No.

Q. Will Mr. Grace be within reach for questions? I note he signed it.

A. He would be available if necessary. I am thoroughly

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[fol. 4075] familiar with it; rather more so than he is.

Q. You stated yesterday that in the making up of these contracts there was a good deal of debating as to whether certain parts should go in one or the other.

Do you remember any particularly important paragraphs that are more or less in the interchangeable status?.

A. No. I think Mr. Friendly could tell you about that. I was not personally a party to those discussions. They were discussions rather than debates, I should say.

Q. Do you regard this contract as one of complete mutuality? I note that you say "Under the terms of the agreement it is the consideration of mutual companies."

Mr. Gesell: It couldn't be a contract if there was not mutuality.

By Mr. Gambrell:

Q. Is this a contract in which Grace gets something, and Pan American does not, or vice versa, or do they both acquire rights under this, as you understand it?

A. Well, they both undertake to—well, now, wait a minute. May I have that question again?

Examiner Wrenn: Read the question.

Mr. Gesell: Doesn't the contract speak for itself, as to what rights the parties get under it? It is perfectly explicit. It has paragraphs and says one party undertakes to do certain things and the other undertakes to do certain things. Isn't it perfectly clear when you read it that that is what happens. What does the question have to do with this proceeding?

Examiner Wrenn: I think it is perfectly clear. Let him

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[fol. 4076] answer.

(Question was read by the reporter.)

The Witness: I think that the clause which essentially falls within that question is the very first clause, under

which they each ratify the other contract, Exhibit A, and each acquire whatever rights and assume whatever obligations that may impose on them, or on their jointly owned company.

Then, going on to the other provisions, they are somewhat regulatory.

Under 3, Pan American undertakes to implement the provision that a Grace director shall be present by undertaking that its directors will so vote.

In No. 4, Grace has the right under certain circumstances to either require correction in the administration of Pan American's sales contract, or if it is not provided—if it is not corrected after arbitration, to secure termination.

There are a number of things. You see them as you go through. Those are the high spots.

By Mr. Gambrell:

Q. Do you regard ratification by Grace and Pan American Corporation of the Contract A as essential to its binding effect upon parties to Contract A?

A. Well, there are certain contracts that require approval of stockholders. ~~A contract~~ *There* used to be, as I remember, an old-fashioned rule that a contract which extended beyond the term of the directors then in office, it would be a good idea to get it ratified by the stockholders.

I don't suppose any of the present directors will live

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[fol. 4077] 99 years. ~~There~~ *That* may have been the idea. I suppose there was *discussion* between the lawyers—they can answer for themselves—but on a contract of this importance, and of this duration, stockholders' ratification was certainly desirable.

Q. And you regard Grace and Pan American Corporation as being bound hereby to exercise their best efforts to see that Contract A is carried out if it is approved by the CAB.

A. Yes.

Q. I note that they inhibit themselves, at the bottom of paragraph 1, from exercising their rights as owner of voting shares in such a manner as to interfere, or impede the performance of Contract A.

Don't you feel that that tends to restrain what is a desirable freedom on the part of business enterprises to make decisions as they arise, and not to be tied up 99 years in such a manner?

A. Well, what I think—I think when a business decision has been taken, and embodied in a contract, such as this has, and the contract is approved by the Board, that the period for that consideration has ended, and thereafter the primary obligation of the parties is to see that the contract is carried out until, by mutual agreement, they decide to change it.

Q. Do you believe that it is reasonable in an industry that is moving as rapidly as air transportation that two independent, or two separate corporations can foresee so far as with business prudence to make a commitment for 99 years?

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[fol. 4078] A. That is the reason that we put in the provision over in Section 23 of the "A" contract, that it was the intention of the parties that the contract should be broadly and liberally construed to contemplate technical, international and regulatory developments in the field of air transportation, to the end that through traffic be handled to the maximum efficiency, and in a manner to meet changing competitive conditions.

Q. Suppose it should be concluded in the minds of regulatory bodies having jurisdiction that the Pan American system ought not to operate on the west coast of South America, and the east coast, too. Would you regard this contract as in anywise being an obstacle to some proceeding, to make the west coast service of U. S. flag utterly independent of the Pan American system?

Examiner Wrigh: What statement—

The Witness: The contract has nothing to do with that situation at all.

Mr. Gesell: I can't follow that question.

Examiner Wrenn: What do you mean by an obstacle? Obstacle to whom?

Mr. Gambrell: Would it interfere with the Board initiating such a move, or any other public body?

Examiner Wrenn: Is this witness the one to ask what will interfere with the Board's power and on the Civil Aeronautics Act?

Mr. Gambrell: I am trying to find out what this contract means.

Examiner Wrenn: Do you content that a contract be-

[fol. 4079] tween these parties can restrict the action of the Board under that?

Mr. Gambrell: It seems to me that the Board's sanctioning a contract gives a pretty weighty moral sanction to it that might upset the Board later.

Mr. Gesell: Mr. Gambrell is not on the Board. It is perfectly clear that the Board has authority to disapprove it. We have gone through that.

Examiner Wrenn: I don't see what materiality your question has as to the power of the Board, Mr. Gambrell.

Mr. Gambrell: We will pass on to the next paragraph.

By Mr. Gambrell:

Q. Regarding the representation of Panagra in paragraph 2, your comments would be similar to what they were in respect to the comparable paragraph in the other contract, wouldn't they?

A. Yes. You mean the action by the President?

Q. Yes.

A. Yes.

Q. Paragraph 3. Does that mean, as you understand it, that if W. R. Grace and Company continues to nominate you as President, Pan American is expected to support that nomination?

A. Pan American always has the right to approve the Grace nomination with the proviso that the approval shall not be unreasonably withheld. If at any time Grace nominated me or anyone else, and Panagra did not approve, and the approval were—

Mr. Gesell: Pan American.

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[fol. 4080] The Witness: —Pan American did not approve, and the failure to approve were found to be reasonable, they would be under no obligation to go ahead.

By Mr. Gambrell:

Q. Is the second sentence in paragraph 3 a fair definition of the duties and authority of the President? It says, "The president of Panagra shall be in responsible charge of its management." That is the second sentence.

Is there anything else in that contract, or any other contract that should be considered in connection with the President's power, or authority?

A. Yes. I think there must be considered in connection with that proviso in the other contract that policy and control rests in the Board of Directors and not in the President.

Q. Paragraph 4. Doesn't this paragraph, in effect, provide that the holding company, Grace, can, under certain conditions, require that a contract, Contract A, to which it is not a direct party, may be amended? Isn't that the effect of it, that Grace, under paragraph 4 here, and under certain conditions, require that contract A be changed?

A. That wouldn't be my interpretation.

My understanding of 4 is that Grace may demand performance by Pan American of certain obligations which it has undertaken under another contract, and failing such performance by Pan American, may take the matter to arbitration, and failing such performance by Pan American, if the arbitrators sustain the Grace position, terminate the other contract.

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given

[fol. 4081] The reason for Grace being ~~vice~~ that being put in that position is obviously to have somebody who can act without any risk of deadlock.

Panagra might not be in a position to take that action itself because of the fact that Grace does not control Panagra.

Q. You note that reference is made in this paragraph 4 to Contract A, and that previous paragraphs in Contract B refer to Contract A.

Wouldn't you say that in paragraph 4, and other references to Contract A, make it essential that the two of them be considered as inseparable and more or less one ball of wax, as someone said yesterday?

A. I don't know what the legal implications are of that. I take them together. But actually this contract is a complete contract in itself.

Examiner Wrenn: Which contract?

The Witness: "A".

By Mr. Gambrell:

Q. In your opinion—

The Witness: The whole operation would not be quite the same. It ~~would~~ *could* be dropped out. But it would be workable.

By Mr. Gambrell:

Q. Is "B" essential to the practical approval and putting into effect of "A"?

A. To my mind, as a practical businessman, it is.

Q. Let us look at 5. I note there that if these Pan American routes, which may be thought of as tracks for

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[fol. 4082] operation in this case, if any one of them should be canceled, or disposed of in violation of paragraph 18, Contract A, I note that there is a provision that Pan American Corporation will consent to Panagra's making application to amend Panagra's own certificate so as to include the route which formerly Pan American held, but which now, under the supposition is eliminated.

Why was that provision put in?

A. That was put in so that in the event that Panagra's through flight service, under Contract A, was unable to function, Panagra would then be in a position, without any risk of deadlock, or anything of the kind with its

Board of Directors, to apply to this Board for a route in its own name.

Q. In the preliminary paragraphs of the petition for approval of the contract A, I note reference to the fact that these contracts are designed to settle differences.

Are we to understand that paragraph 5 of Contract B settles the difference about locked Board of Directors in relation to new route applications?

A. No. Only in respect of this one situation referred to in that paragraph. It has no relation to any other situation that might arise.

Q. Does it purport to settle the so-called deadlock reflected in Docket 779?

A. Not in this particular agreement, but the whole thing definitely does settle.

Q. Contract A and Contract B, do they, if approved, do they settle the deadlock referred to in Docket 779?

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[fol. 4083] A. They definitely do, because the issue in 779 was whether or not Panagra should be extended to the United States. That was the deadlock which led to that proceeding. That controversy has been settled by this arrangement under which through flight is provided under the terms of this contract.

Q. Let us explore that a minute. When you say "settled" what do you mean?

A. Well, I mean—

Q. In practical effect.

A. I mean that it is settled by mutual agreement in the terms of these contracts.

Q. Does it mean—do you mean that it is settled in that a different way out is provided?

A. This is a different way out, yes.

Q. Does that imply that the original extension is no longer contemplated, and is not to be sought?

A. Yes.

Q. By Grace management?

A. It implies that, yes. It doesn't so expressly provide, but obviously this is a substitute.

Q. That from here on out those who run the affairs of Panagra have an understanding that Panagra will not seek to come from the Canal Zone to the United States.

A. I did not so testify, and that is not the fact. The only agreement between us on that point is in these papers.

Q. You said it settled it.

A. No. I said it was a fair implication. After all, you

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[fol. 4084] don't keep on running after the trolley after you got aboard, and we have accepted this, at least for the moment, and as far as I can see, for a good long time. I hope so.

Q. For 99 years.

A. I hope so, as a settlement of this controversy.

Q. Do you apprehend that if this contract is approved and put into effect, these two contracts, that W. R. Grace and Company will be agitating for the extension of Panagra to the United States?

apprehend.

A. No, I do not so ~~hope~~.

Q. Do you anticipate that the persons who manage Panagra, meaning Mr. Roig and his Vice Presidents, themselves, will cherish as they have in the past a feeling that Panagra ought to be extended to the United States?

A. No, because before I agreed, and the rest of us agreed to go into this contract, the matter was very fully ventilated with all of the chiefs of Panagra, some of whom will testify, to make sure that they felt that this was a reasonable compromise of that question.

Q. Paragraph 6 of Contract B.

Examiner Wrenn: Are you about finished, Mr. Gambrell?

Mr. Gambrell: Off the record.

(Discussion off the record.)

Examiner Wrenn: We will recess until 2 o'clock.

(Whereupon, at 12:35 p.m., a recess was taken, to reconvene at 2 o'clock p.m., same day.)

[fol. 4085]

AFTERNOON SESSION 2 p.m.

Examiner Wrenn: Please come to order.

Mr. Gambrell, you may continue your examination.

HAROLD J. ROBB, resumed the stand, was examined and testified further as follows:

Cross examination (Continued).

By Mr. Gambrell:

Q. Let's look at paragraph 6 of contract B.

A. Yes.

Q. Is it your understanding that if these contracts are approved and put into effect they will dispose of the pending cases therein referred to which I assume are the ones enumerated in paragraph 5 of the petition—that is, at least 707 and 744 and 779.

A. That is my understanding.

Q. I will not ask you about 7 and 8 because I assume your answers would be the same as to corresponding paragraphs in the other contract?

A. Yes.

Q. Paragraph 9, like paragraph 25 of the "A" contract has to do with arbitration. Is it your opinion that arbitration is a workable and practical provision for potential disputes such as contemplated here.

Mr. Gesell: Nothing about disputes being contemplated here, Mr. Examiner.

A. Well, as limited, to relate to disputes as to the construction or operation of this agreement, I think it is quite workable.

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[fol. 4086] By Mr. Gambrell:

Q. Has your experience with arbitration in connection with the relationship between Panagra and Pan American Corp. been satisfactory?

A. We have never had one.

Q. Didn't you have an arbitration agreement in your 1939 contract?

A. Yes, but we never had an arbitration under it.

Q. Well, you have had a good deal of the dispute didn't you?

A. We did have a good deal of conversation about whether or not there should be one under it.

Q. You had a lot of disputes that needed settlement, didn't you?

A. No. Not of the character that—

Examiner Wrenn: Did the disputes relate to the subject matter covered by the arbitration agreement?

Mr. Gambrell: Well, as far as I can see the arbitration provision—

Examiner Wrenn: Let the witness answer that question. If they did all right, I am willing to have him elaborate on it. If they didn't I think that takes care of it.

hear

The Witness: Let's ~~here~~ the question again.

Mr. Gambrell: I thought the Examiner asked the question.

Examiner Wrenn: That is what I mean. I want to know if the disputes you referred to fell within the scope of the arbitration agreement in the 1939 agreement.

The Witness: Well, the discussions about arbitration

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[fol. 4087] under the 1939 agreement related to whether or not we should arbitrate the question of whether or not Pan American's connecting service was adequate, and therefore whether or not Panagra should file an application for a route. That question, owing to a great variety of reasons, did not seem to me susceptible of arbitration. It was a very different kind of question than the questions involving controversy and interpretation of a specific contract like this.

By Mr. Gambrell:

Q. Didn't you have many other disputes not relating to the extension of Panagra which were within the purview of your 1939 arbitration provision where you didn't arbitrate?

A. Any disputes that we had of that kind we settled among ourselves. In one instance we did get to the point of endeavoring to draw an arbitration agreement and the appointment of an arbitrator was ~~point~~ agreed on and arbitrated and at that point we settled the matter ourselves. We settled all our problems except this one.

Q. Will you state whether in your opinion arbitration for the matters referred to in the 1939 contract was a successful means of adjustment?

A. No. I can state the facts. I can't draw the conclusion because we didn't, except in one instance, get anything up to the point of arbitration.

We settled them ourselves.

As a means of settling the question of Panagra coming through to the United States it was not a successful provision in my opinion.

Q. I will pass on and come back to that in prior testimony

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[fol. 4088] that I want to bring to your attention.

Paragraph 10, contract B, the contract of February 14, 1939, is the one that has been attached as Exhibit 29 to the Pan American-Panagra exhibits, is that right—same one?

A. Yes. The one we had here yesterday morning.

Q. Will the taking effect of this contract B completely terminate that contract and have it no longer effective in any way?

A. No. There will still remain the question of determining what services Grace and Panagra are to render for this company and the basis of payment for those services. It was contemplated that that will necessarily be subject to revision in the light of provisions of this contract.

Q. But I am speaking of the 1939 contract. That goes completely out when contract B takes effect?

A. As a contract it is out, yes but I am stating that certain states of fact which exist and which came to light to some extent to existence in part under that contract must go on outside of the contract until they are reorganized.

Q. Is there any other working contract between Grace and Pan American Corp. or Panagra or Pan American having to do with the policy making and operation of Panagra?

A. I don't think of any.

Q. Wasn't there a contract of 1928?

A. Oh, that famous letter.

Q. Well, whatever you call it. Is that a dead letter or is that a live document now?

* * * * * * *

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[fol. 4089]

PROCEEDINGS

Examiner Wrenn: Please come to order, gentlemen.

Mr. Gesell: Mr. Examiner, I have a stipulation to propose.

We have considered, over the evening recess, the problems which were discussed here yesterday, having in mind particularly the suggestion of the Examiner that some effort be made by way of stipulation to meet the problems presented by the efforts of the other parties to introduce portions of Docket 779.

We feel, as we expressed, yesterday, that material from that docket is irrelevant and immaterial, but we recognize that under the rulings of the Examiner and the procedure that has been adopted by the parties that in the long run most of this record is going to find its way, on some basis, into the record of this proceeding, and accordingly, we have a stipulation to propose which we think will accomplish that more expeditiously and at the same time assure a more complete record.

We hope also that the stipulation will serve to expedite this proceeding and facilitate consideration of the issues of public interest presented by the contract which has been filed.

I would like to read the stipulation for the record and I have copies here which we will distribute to counsel so that they can study the wording.

The stipulation will read as follows:

"It is hereby stipulated and agreed by the parties that for the purpose of this proceeding all exhibits and testi-

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[fol. 4060] mony received in evidence in CAB proceeding known as Panagra Terminal Investigation, Docket No. 779, shall be deemed to be offered in evidence in this proceeding by all parties, except Pan American Airways, Inc. and Panagra, as part of their direct cases and received in evidence by the Examiner over the objections of Pan American Airways, Inc. and Panagra; provided that Pan American Airways, Inc. and Panagra shall each be entitled to renew their objections at any stage of this case to the introduction of any or all such exhibits and testimony upon any grounds (except authenticity) including materiality, relevancy or otherwise, and to contest the probative value and scope thereof in the same manner and to the same extent as if such testimony and exhibits were being offered originally in this proceeding, and provided further that Pan American Airways, Inc. and Panagra shall be granted the right to file reply briefs."

One further thing concerning the stipulation: Of course, if Pan American Corp. or Grace are found to be necessary parties to this proceeding, or ordered to be parties by the Board under the stipulation which is already on file, presumably the rights to object to this evidence at any stage in this proceeding would be rights which they would have as well as Pan American Airways and Panagra.

I would be glad to answer any questions concerning the stipulation which any counsel or the Examiner may have.

Mr. Schneider: Mr. Examiner?

Examiner Wrenn: Yes, Mr. Schneider.

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[fol. 4091] questions that are raised by 779.

Mr. Gesell: That is right.

Mr. Schneider: Simultaneous filing of original briefs and simultaneous filing of reply briefs for all parties.

Mr. Gesell: That is right. That is what I mean.

Mr. Gambrell: Is there going to be any limit on the length of those briefs.

Examiner Wrenn: I presume the Board's Rules of Practice of 50 pages would apply.

Mr. Gambrell: 50 pages would apply to all of them.

Examiner Wrenn: That is the way the Rules of Practice provide.

Mr. Gambrell: If that be so, in view of what Mr. Gesell has said, I think that Eastern would be willing to go along on this.

Mr. Schneider: Let's amend the last two lines to cover your point and we are all set.

Mr. Gesell: Isn't it clear on the record that it is amended and that the agreement of the parties to the stipulation was on that condition.

Mr. Schneider: He has copied the other one. I would rather have it drafted correctly and put in.

"Provided further that all parties shall have the right to file simultaneous reply briefs."

Mr. Gesell: Limited to the issues raised by Docket No. 779.

Mr. Schneider: I accept that.

Mr. Gesell: And I think we ought to have the time period clear. We suggest ten days because I think if we

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[fol. 4092] are going to have reply briefs we ought to understand what the time limit is. It is understood it is ten days, isn't it?

Examiner Wrenn: It is understood it is ten days.

Mr. Highsaw: Mr. Examiner, public counsel is raising no objection to the agreement between the parties that has been reached as amended. However, public counsel would like to pass somewhat of a different position from the other parties. I would like the record clearly to reflect the fact that Public Counsel does not raise any objection to the

stipulation as agreed upon, does not in any way reflect the fact that the Board was to be bound to receive and grant the reply briefs that are so stipulated.

Examiner Wrenn: I think that is understood.

Mr. Gossell: I think counsel for public counsel isn't going to oppose this motion to reply briefs. He has been one of the most articulate persons in getting it before us. He is not going to oppose reply briefs.

Mr. Hughes: That is correct, public counsel is not going to oppose it but public counsel doesn't want the fact that he has not made any objection to the stipulation to be used as an argument that the Board is thereby bound to grant the reply briefs.

Examiner Wrenn: We will consider the stipulation agreed to and I want to express my appreciation to counsel for Pan American and Panagra for their efforts in working out their cooperation in working out the solution to this problem which has been before us.

Mr. Gambrell: Is the stipulation going to be filed?

(fol. 4056) Examiner Wrenn: The stipulation was read in the record.

Mr. Gambrell: Amendments, I meant to say.

Examiner Wrenn: Amendments, yes, as proposed by Mr. Schneider and Mr. Gossell.

Mr. Gossell: Mr. Examiner, I want to raise one question, the Department of Justice isn't here.

Examiner Wrenn: Yes, Mr. McFarland.

(Discussion off the record)

Hayes J. Reiz, resumed the stand, was examined and testified further as follows:

Examiner Wrenn: Let's proceed with the examination of the witness, Mr. Gambrell.

Cross-examination (Continued).

By Mr. Gambrell:

Q. Mr. Reiz, as we closed yesterday, we were discussing Mr. Paulin's memo. It is now in and I won't burden you further with questions on that.

In your direct you mentioned a series of meetings and conferences leading up to the formulation of these contracts A and B. Were you in substantially all of those conferences?

A. Do you mean the conferences during which the agreement was being formulated?

Q. Yes. The framework was laid and the basic principles outlined.

A. No. I was not present at those conferences, with, I think, one exception. The conferences I think I testified were between Mr. Friendly and Mr. Gesell.

Q. Didn't the top executives of the company lay out

[fol. 4094] the framework and tell the lawyers to get busy and put it in form?

A. No. I testified quite fully on that, I think, the other day. It was quite the opposite. I stated at the outset that I could not accept the proposal in principle, that I could only look at it in detail after it had been worked out, and these other gentlemen worked it out. It was only then that it was accepted.

Q. And those negotiations did not commence until after the Board's decision in Docket 525 in the Latin American case?

A. That is correct.

Q. You started with a clean sheet after that.

Mr. Gesell. Clean or a dirty sheet, Mr. Examiner. *This is the*

Third time we have testimony that this started after the decision in 525.

Examiner Wrenn: I think that is clear from the record, Mr. Gambrell. I think you will find it on page 61 of the transcript.

Mr. Gambrell: Some statement but I submit that if Mr. Gesell had a direct examination on this I am entitled—

Examiner Wrenn: We have settled that question now. Let's don't get back to it in this question of arguing between counsel.

Mr. Gambrell: If Mr. Gesell will attend to his examination I will attend to mine.

Examiner Wrenn: I beg your pardon. I am sorry what was that remark?

Mr. Gambrell: I said if Mr. Gesell will attend to the

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[fol. 4095] direct examination I will attend to the cross.

Examiner Wrenn: You attend to your cross examination and we will take care of Mr. Gesell.

By Mr. Gambrell:

Q. Did you have a carry over of anything from preceding negotiations or did you start without any nucleus after the Latin American decisions?

A. We had behind us the longstanding difficulty presented by 779 and it was that difficulty that we set out to settle. We didn't start with any—you mean did we start with any such abortive agreements, suggested agreements, as we were discussing yesterday—we didn't start with any of those.

Q. Would it be possible to supply for the record copies of all minutes of board meetings or committee meetings of Panagra and of Grace and of Pan American Corp. and of Pan American relating to the composition or formulation of these two agreements.

Examiner Wrenn: Now, that has in mind since the date of the decision in 525.

Mr. Gambrell: Yes. Now, I am asking for that.

Mr. Gesell: We will be glad to submit those as far as Panagra and Grace are concerned. I am sure that is what this witness has control over.

Mr. Gambrell: Would it simplify if I could ask the same question in respect to—

Examiner Wrenn: Go ahead. The same question in respect to Pan American.

Mr. Gambrell: That will apply to Pan American Corp.

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[fol. 4096] and Pan American.

Mr. Hamilton: That is right.

Examiner Wrenn: We are clear on that. That is minutes and so forth relating to this particular contract, Exhibits A and B.

By Mr. Gambrell:

Q. Could that include memoranda in the files of those companies addressed to this subject and to correspondence in the files of those companies addressed to this subject?

A. There was no correspondence so far as I know anything about. So far as I am concerned there were no memoranda that I recall.

Q. Could we agree that if there is correspondence or if there are memoranda that will be included in this request?

A. I will not so agree.

Mr. Gambrell: Decide that?

Mr. Gesell: I will have to have a much better idea of what Mr. Gambrell wants.

Mr. Gambrell: Anything in writing in the books and records of those four corporations addressed to this subject.

Mr. Gesell: What subject?

Mr. Gambrell: The subject of making these two agreements.

Mr. Gesell: I am not clear what he is talking about.

Examiner Wrenn: Can you identify it a little further? I see no reluctance on the part of counsel to give what is necessary here but I do think they are entitled to have a specific identification for it.

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[fol. 4097] Mr. Gambrell: We have agreed on certain things.

Examiner Wrenn: That is right. The minutes of the four companies.

Mr. Gambrell: Minutes as to Board meetings and directors meetings.

Examiner Wrenn: Yes, that is right.

Mr. Gambrell: Now, I would like all writings, including so-called memoranda, or correspondence in the files of any of the four companies, having relationship to the composition, formulation, or execution of these documents, these two contracts, and having to do with getting in motion and prosecuting their petition for approval of these two contracts.

Mr. Gesell: None of that material was requested, Mr. Examiner, at the pre-hearing conference, when things of this sort are supposed to be worked out between the parties.

I can't see the relevance of submitting here at this proceeding, if there are such documents—I don't know what there are—we would have to look—concerning various suggestions by different people as to how a particular clause should be written in this contract.

Matters of that sort seem to me to be washed out when you present an agreement. That is the agreement and understanding between the parties, and suggestions made in negotiation about how a contract should be formulated is certainly not relevant to any issue at all. I don't see its materiality.

Mr. Gambrell: It seems to me that a document of this sort is comparable in a way to an act of a legislature and that the history of the document and the memoranda and working notes and correspondence form a background that

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[fol. 4098] is very essential to an understanding of the meaning of the contract and the objectives sought to be attained.

Examiner Wrenn: You don't have any testimony in the first place that there is anything of that kind.

Mr. Gambrell: No, we haven't. I have asked if it could be supplied if there is anything of that sort.

Examiner Wrenn: Are you addressing a request to me?

Mr. Gambrell: Well, maybe I should ask if counsel for the contracting parties decline to supply it. Do they?

Mr. Gesell: Certainly Panagra declines to supply it.

Mr. Hamilton: Pan American does too.

Mr. Gambrell: We would like to take under consideration filing a form of subpoena duces tecum for that material and would ask that it be not disturbed until such a document is filed, that everything be preserved.

Mr. Gesell: Mr. Gambrell can be assured that if there is any material it won't be disturbed.

By Mr. Gambrell:

Q. Did the same negotiators work on both contract A and B, or were there different negotiators?

A. The same.

Q. Did Mr. Trippe or Mr. Grace personally participate in any of the conferences or negotiations on this subject?

A. There was one meeting—I said a moment ago that I attended one meeting—and Mr. Trippe was present at that meeting.

Q. What meeting was that?

A. That was a meeting after the contract had advanced to a certain point at which several of the principals met

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[fol. 4099] with the lawyers.

Q. It wasn't a board meeting?

A. No.

Q. It was just a conference of interested persons?

A. Oh, yes. It was some representatives of both sides. Mr. Trippe is not a member of our Board.

Q. Where was it held?

A. Held at the Cloud Club.

Q. That is on top of the Chrysler Building?

A. Yes.

Mr. Gesell: Just ~~above~~ *about* on top.

Mr. Gambrell: I will be glad to wait until Mr. Gesell finishes up.

Examiner Wrenn: Proceed.

Mr. Gambrell: I move to strike out Mr. Gesell's remark.

Mr. Gesell: I concur.

Examiner Wrenn: All right. It will be stricken.

By Mr. Gambrell:

Q. What considerations were advanced as to why the contracting parties or any of them should recede from former positions taken with respect to interchange?

A. There were no considerations advanced because it was never suggested as far as—I mean no consideration as far as Panagra was concerned, for any change because there had been no change on our part.

Q. Did Mr. Trippe or anyone else representing the other side indicate any reason why they were receding from any position they had previously taken?

A. At the meeting I referred to, the matter was not

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[fol. 4100] discussed. The only expression I can recall at this moment being made to me by anyone connected with Pan American on that subject was the statement Mr. Friendly made at the meeting when the proposal to endeavor to work this thing out was made, and I replied at that time that I would not be interested in proceeding along any such line as we had discussed at the time that G-58, I think, was before us, and he stated at that time that was not their intention to proceed along that line, that he considered that the way that discussion had developed had been unfortunate, because he recognized that it had not, as I have testified repeatedly, developed along the lines which we had originally contemplated—at least he and I had contemplated.

Q. Do you, as a part of your functions as Vice President and Director of W. R. Grace and Company—Co-Vice Chairman of its Board—do you help to formulate the general policies of that company?

A. Yes.

Q. Do you likewise help to formulate the policies of Grace Lines, Inc., the shipping company, its wholly-owned subsidiary?

A. I am a director of that company, and to that extent, yes.

Q. Is it still the position of W. R. Grace and Company that the public interest would be served by Pan American's divesting itself of sufficient of its stock so that it could not exercise negative control over Panagra?

The Witness: Just repeat that question please.

Examiner Wrenn: Read the question.

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[fol. 4101] (Question read)

A. No.

By Mr. Gambrell:

Q. You are not of the opinion that it is in the public interest, or would be, for Pan American Corp. to have its interest reduced below 50 per cent?

Examiner Wrenn: You are speaking to Mr. Roig's personal opinion now?

Mr. Gambrell: Yes, sir.

Examiner Wrenn: All right.

A. No, I don't.

By Mr. Gambrell:

Q. Didn't you at page 1014 of the Docket 779 transcript testify as follows:

A. Could I see it please if we are going into that record?

Examiner Wrenn: That record has all been stipulated in here.

Mr. Gambrell: I want him to reconcile his view.

Examiner Wrenn: You have got his view here. He has stated he doesn't any longer hold that opinion. Ask him why he doesn't if that is your point.

Mr. Gambrell: I have got a right to—

Examiner Wrenn: You have got it in there. Do we have to physically repeat all of that in this record now?

Mr. Gambrell: He contradicts himself.

The Witness: I am perfectly willing to admit that on previous occasions under different circumstances I have held a different view and I am perfectly willing to give my reasons for changing.

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[fol. 4102] Examiner Wrenn: Go ahead.

By Mr. Gambrell:

Q. You stated previously that you thought it was desirable that Pan American should divest itself of negative control, didn't you?

Examiner Wrenn: He has just stated that he did.

Mr. Gambrell: He hasn't. He made some generalization, Mr. Examiner. I am trying to be specific.

Examiner Wrenn: I am going to rule he has answered the question. Go ahead.

Mr. Gambrell: I submit that the witness has not answered my question and the Examiner has not answered my

question and that I am not getting a fair trial here, Mr. Examiner.

Examiner Wrenn: Mr. Gambrell, those facts are not borne out by the record whatsoever.

Mr. Gambrell: He said I may have made a statement somewhere. He didn't say he had.

The Witness: I did not say I may have made a statement. I said that I had previously entertained the view that it would be in the public interest for Pan American to be divested of part of their stock, that I no longer entertained that view and that I was perfectly willing to explain my reasons why.

Anything that I said in 779 is in the record and I stand by it.

By Mr. Gambrell:

Q. Will you now explain why you have a different view?

A. Because the problem which led me to believe that that

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[fol. 4163] would be desirable has been solved by these contracts.

Q. And what was it?

A. Back in the 60's we had a war between the states. The South wanted to withdraw. The matter was settled *has*
and it stayed settled for 80 years—not quite 99—and the *it was settled.*
fact that you had this agreement and ~~the settlement~~ naturally changes your viewpoint.

Q. Well, you have said that these contracts settled it. How do they make your view on that subject different? Why do they?

A. Because the one outstanding problem, and my testimony in 779 will show that I testified the same way then, between Pan American and Panagra has been the question of extending our route to a terminal in the United States. I say the one outstanding problem. I mean by that the one outstanding problem that hadn't been settled. We have had other problems. We are an active company. We have an active live board of directors. We are not a one-man show.

We have constant discussions in our board of directors as every healthy board should have, but every question that has come up, all the questions discussed in 779, except that one question, were resolved and determined, and these contracts have now settled that question.

Examiner Wrenn: And therefore you have changed your views?

The Witness: I see no occasion for continuing a battle after the war is won.

Examiner Wrenn: All right, sir. Do you have any further questions, Mr. Gambrell?

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[fol. 4104] Mr. Gambrell: Yes, sir.

By Mr. Gambrell:

Q. I want to call your attention to Docket 779, Exhibit P-35, page 27, which is a letter from W. R. Grace and Company to Mr. Garni and Mr. Roig, dated June 17, 1941. I want to call your attention in particular to one paragraph:

"We furthermore feel that you should consider carefully the advisability of issuing further stock and of offering this stock to us in order that our government—"

Mr. Gesell: This is in evidence. Can't the witness just read it, Mr. Examiner?

By Mr. Gambrell:

Q. — "our government may have two distinct entities to deal with—"

Examiner Wrenn: Mr. Gambrell, let the witness see the document.

Mr. Gambrell: I am halfway through a question that I would like to resume if it is possible to do so.

The witness: Am I permitted to read the letter? I don't think it is occasioning any delay.

Mr. Gambrell: I thought I would ask him the question and then let him look at the document and answer it. As it is, I will have to start it over.

Examiner Wrenn: Let him read the letter.
The Witness: Yes, sir.
Examiner Wrenn: All right.
Now, your question, Mr. Gambrell.
Mr. Gambrell: May I borrow my book back sir?
Examiner Wrenn: All right.

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[fol. 4105] By Mr. Gambrell:

Q. I call your attention to the third from the last paragraph of the letter. I will read it and ask you if that expresses a view narrowed to the matter of extensions:

"We furthermore feel that you should consider carefully the advisability of issuing further stock and offering this stock to us in order that our government may have two distinct entities to deal with and in order that the question which has constantly arisen as to the interest of your company being made subservient to that of the Pan American Airways Corp. interest, may be definitely removed."

Was that complaint there of constant subservience confined to the extension of Panagra to the United States?

A. That was a letter written by Mr. Iglehart. It was not written by me, and expressed his views which were not always in accordance with my own on these subjects.

Q. He was the top executive officer of the company.

A. Of W. R. Grace and Company, he was President at that time.

Q. Was he on the Board of Panagra at that time?

A. He was never on the Panagra Board and it is my definite feeling that that paragraph was still, while it is broad in its language, related primarily to this outstanding problem as the rest of the letter, I think, indicates.

Q. Is it your feeling that all of the matters complained of in Docket 744, by W. R. Grace and Company against Pan American Corporation and others will be fully settled and all friction removed?

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[fol. 4106] A. I think you mean 779.

Q. No. 744.

A. 744.

Q. Yes, sir. Where Grace complained generally about Pan American's exercising its half interest in Panagra in such a way as to thwart its development, interfere with its progress.

A. Do you consider that this contract removes all points of friction?

A. It doesn't remove the points of friction that are always inevitable among strong minded men with definite ideas, but in my opinion, by removing the basic objection and the basic difficulty, and the only one which has never been solved, it will remove any basis for complaint made in 744.

As a matter of fact, 744 is already quite a few years old and it related to a good many matters which even then were not all entirely fresh, and there has been a great deal of improvement in relations all along the line, even before this contract was made. As a matter of fact if there hadn't been, I don't believe the contract could ever have been made.

Q. Isn't it true that Pan American's handling of publicity in this country for Panagra has been poor and has resulted in Panagra's interest being subordinated to those of Pan American?

A. In recent years it has been to our entire satisfaction. Anything we weren't satisfied with we have battled out one way or another.

Q. Hasn't it been your position that Panagra should have a separate and independent publicity department in the

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[fol. 4107] United States?

A. Well, in effect, we have gone somewhat along that direction in having one, and I think the present basis—that is, we have, under Mr. De Groot, a man who takes—and with Mr. De Groot, himself, in fact—takes an active interest in publicity. It is done in cooperation with Pan American's publicity department.

It doesn't always work a hundred per cent, but it has improved and I think will further improve under this contract.

Q. You had Mr. De Groot, in 1943 when you were complaining about that, didn't you?

A. Yes. I say there has been a definite improvement in recent years.

Q. Pan American presently has and exercises a veto power as to all rates and fares placed in effect on Panagra, does it not?

A. They do not.

Q. Haven't they until recently done so?

A. They never did.

Q. I point to transcript 139 in Docket 779—that is page 139 through 142.

Examiner Wrenn: Is that this witness' testimony?

Mr. Gambrell: It is the testimony of Mr. De Groot.

By Mr. Gambrell:

Q. Would you look at it and see whether that refreshes your recollection?

A. This is testimony of Mr. De Groot in 779 in which he states that in the preparation of new rates and fares that it is customary to confer with Pan American and that they

[fol. 4108] collaborate on the calculation of new fares because many of them involve connecting fares. "In a number of cases there are competitive fares via alternate routes which are partly or wholly under the jurisdiction of Pan American Airways."

It says further: "As a matter of fact, in setting new rates for Panagra, are they always cleared with Pan American Airways, Inc." and the answer is "Yes," but that doesn't mean that Pan American has a veto. I never understood that Pan American had a veto over our fares. They were discussed with them of course for the reasons indicated.

Examiner Wrenn: You can clear it up with him, Mr. Gambrell. He will be a witness.

(Discussion off the record.)

Examiner Wrenn: Take a five minute recess.

(Recess taken.)

Examiner Wrenn: Gentlemen, let's be in order. Proceed, Mr. Gambrell.

By Mr. Gambrell:

Q. Mr. Roi, I show you a document here dated December 14, 1944, labeled, "Brief of W. R. Grace and Company, intervenor before the Examiners" in Docket 525 of the CAB.

Do you recognize that as the brief of the company of which you are co-chairman?

A. Yes.

Mr. Gambrell: We wish to have it identified for the possibility of introduction of a quoted portion which we can put in later.

Examiner Wrenn: All right. It may be marked for iden-

[fol. 4109] tification as EAL No. 1.

Mr. Gesell: What is the date of the brief?

Mr. Gambrell: December 14, 1944.

Shall we introduce—

Examiner Wrenn: Have you distributed them?

Mr. Gambrell: No, sir. We can now.

Examiner Wrenn: All right. Go ahead.

Mr. Gambrell: In lieu of the entire brief an extract commencing at the middle of page 17 and going through to the middle of page 23, and mark that EAL-1 instead of brief itself.

Examiner Wrenn: All right, Mr. Gambrell, it will be so marked for identification.

(Eastern Air Lines Exhibit EAL-1 was marked for identification.)

By Mr. Gambrell:

Q. The brief we spoke of was filed with Grace's authority for Grace, wasn't it?

A. Yes, sir.

Mr. Gesell: Mr. Examiner, we will be glad to cooperate with Mr. Gambrell to speed this kind of process up. If

there is any kind of brief which has been filed by Grace or by Panagra that he wants to have identified just go ahead and have it identified.

We will stipulate that those are briefs that don't have to be identified by the witness unless he wants it.

Mr. Gambrell: I have one other brief of W. R. Grace and Company dated April 21, 1945, in Docket 525.

Examiner Wrenn: What brief is that—the one that is

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[fol. 4110] filed with the Board?

Mr. Gambrell: That is right. On exceptions.

Examiner Wrenn: All right.

Mr. Gambrell: And there is no question about that.

Mr. Gesell: As to its authenticity none at all.

Examiner Wrenn: We will mark that for identification as EAL No. 2.

Mr. Gambrell: We do not wish to introduce the entire brief but we wish to introduce a paragraph in the middle of page 10. It is very short and I can quote it in the record.

Mr. Gesell: Wait minute. It isn't in evidence.

Mr. Gambrell: I beg your pardon. It is included in EAL-1 and I move to strike the other. I had forgotten it.

Examiner Wrenn: All right. And strike my identification as EAL No. 2. It is already included in EAL No. 1 which has been marked for identification.

Examiner Wrenn: All right. Let's be in order. Go ahead.

By Mr. Gambrell:

Q. Mr. Roig, I want to refer to the brief filed for Panagra in Docket 525 dated April 21, 1945. I don't want to introduce the brief as a whole but I want to call your attention to a statement in the brief and ask you if you concur in it.

Top of page 38: "No man can serve two masters."

A. You don't expect me to disagree with that.

Q. "Inevitably the carrier will favor one service to the detriment of the other. This may take the form of economizing and thereby rendering inferior service in one branch of the operation, or it may take the form of earning too

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[fol. 4111] much out of one branch of the operation. The Board would find it difficult if not impossible to so supervise and regulate as to insure the proper development of both services.

Its problem of securing adequate services and proper rates would be greatly confused by the dual operation. The closest scrutiny of accounts and investigation of operations would be necessary if the Board were to come anywhere near living up to the standards which it has set for itself."

Mr. Gesell: May I see that document?

The Witness: You would like to see it here and see what it relates to.

By Mr. Gambrell:

Q. Is that a fair statement of good regulatory principles as you understand it?

Examiner Wrenn: Let's leave the question pending for a minute while the witness and counsel look at the document.

A. I think it is sound doctrine as related to the subject to which it refers, which is the combination of domestic and international operations by Eastern and Braniff between the United States gateways and Balboa.

By Mr. Gambrell:

Q. Do you mean to say that it wouldn't have application to anybody except the two you have mentioned?

A. That is the connection in which the statement is used. The first statement—as I say that is a general statement—but the rest is related to this situation or one that was strictly analogous to this one, obviously.

Q. Would you say that if Panagra and Pan American

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[fol. 4112] join up in a compact such as represented by contracts A and B, that that would have a dual control presenting some of the problems referred to in this quotation.

A. No.

Q. What would be the difference between your two carriers and any other two carriers getting together?

A. That is a very long story. It would depend on how the other carriers were getting together. The only part of it that

Examiner Wyman: I don't know where we are going. I have no objection whatsoever to the witness making any answer he deems necessary to reconcile his answer with your question relating to the views expressed in the quotation you have just read, Mr. Gambrell, but I don't think we ought to get too far afield from that. Go ahead if you can answer the question.

A. (Continuing) I consider that the extent to which these parties have got together under the terms of these contracts, are a perfectly workable specific arrangement. How that might compare with a different arrangement that might be made between other carriers, I can't generalize to that extent.

By Mr. Gambrell:

Q. Do you take the position that there might not be a favoring of one and a penalizing of another in respect to publicity or in respect to handling of maintenance and allocation of costs in the contracts now under consideration?

A. Oh, no. I think that such a theoretical, and if you like, other possibility exists, but I think the contracts con-

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[fol. 4113] tain provisions which are calculated to meet that situation and which I think will meet it.

Q. But you don't think two other carriers could get together and do that?

A. No, I don't think that at all. I think two other carriers signing an agreement exactly like this would, in principle, be in the same position that Pan American and Panagra are in.

Q. Do you believe that if Eastern were projected to the Canal Zone and entered into such an arrangement as this with Panagra, that that would be good and workable and desirable in the public interest?

A. In principle I certainly could raise no objection to it provided it was identical with this.

How that might be affected by other circumstances I would have to judge on the facts of the particular case, but certainly in principle I would agree with you.

Q. Is Panagra planning to make a strenuous effort to capture cargo business from here on?

A. Very definitely and not only from here on but always. Panagra was the first United States certificated airline to operate a regular scheduled freight service—and I mean first. We began that service on a pioneering basis. We have developed it and continued to develop it and we expect to keep on doing it.

Q. In fact, in the very early days heavy mining transport operations were handled through air service in the Andes, weren't they?

A. They were by Panagra and still are by Panagra. We

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[fol. 4114] have an operation of that kind now. But that is not what I was referring to. I was referring to the scheduled cargo service over our whole international route between Buenos Aires and Balboa.

Q. Is Grace Line Inc., the steamship company, going to push energetically the cargo business also between points on the West Coast and Canal Zone and Caribbean and New York City?

A. Yes.

Q. Steamships?

A. Yes.

Q. You expect to press both of them—I mean the W. R. Grace interests will press both the air service of freight and the boat service of freight?

A. Oh, yes. Of course the competitive area as I said the other day is not identical at the moment. I might add, Mr. Gambrell, when you say is Grace going to press both, that it is a totally separate, totally independent, differently compensated, differently managed organization, which is doing the pressing.

Q. Grace Line, Inc., the steamship company is a hundred per cent owned by Grace and Company, is it not?

A. That is correct.

Mr. Gesell: That has been answered before.

Examiner Wrenn: All right. The question has been answered. Go ahead.

By Mr. Gambrell:

Q. Let's look at Exhibit 2 of Pan American Panagra, please. Do you know the mileage differential in respect to

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[fol. 4115] New York-Buenos Aires, air service, as between Pan American's shortest route through Puerto Rico on the one hand and the connecting service by shortest routes through the Canal Zone on the other?

A. I haven't the exact figure in mind but I think that the connecting service through Miami, proceeding from Balboa over the Panagra great circle route, is slightly shorter.

Mr. Schneider: Excuse me. You mean the great circle from Balboa to BA or the point to point great circle?

The Witness: Well, it would be the same. I can't say —I mean as shown by this map—all the way.

Examiner Wrenn: That is Exhibit 2.

The Witness: We couldn't have a point to point comparison because he is asking about Buenos Aires.

Mr. Schneider: I mean it is the great circle from Balboa to BA non-stop.

The Witness: You are speaking of time rather than mileage.

Mr. Schneider: No.

Examiner Wrenn: He means do you follow down this heavy black line as shown as Exhibit 2 when you compute the mileage?

The Witness: I am figuring the dotted line.

By Mr. Gambrell:

Q. The dotted line represents the authorization received in 525, does it?

A. Yes. That involves some stops.

Examiner Wrenn: Mr. Friendly tells me he has the figures here. If you have them let's—just a minute, Mr.

Gambrell. I think Mr. Friendly said he had the figures

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[fol. 4116] here if you want them.

Mr. Gambrell: I am willing for him to tell them to Mr. Roig and let him give them.

Mr. Gesell: We don't have to go through all that.

Mr. Friendly: The mileages given to me for the following route, New York-Washington-Miami-Balboa and thence by the dotted line shown on Exhibit P.A.A. 2 from Buenos Aires is 5735 miles.

The mileage by Pan American's route, New York-San Juan-Trinidad, Belen, Rio, Sao Paulo, Buenos Aires, is 6255; Panagra's route being slightly less than 500 miles shorter.

Examiner Wrenn: Thank you, Mr. Friendly.

By Mr. Gambrell:

Q. Does that represent the shortest possible flight via Pan American through the Puerto Rico gate or does that represent some unnecessary zigzagging from a non-stop standpoint?

In other words, is that the shortest flight that Pan American can make through the Puerto Rican gate?

Mr. Friendly: Substantially. There might be a few miles saved by cutting out Trinidad but very few.

Mr. Gambrell: It does take advantage of the so-called cut-off of the hump.

Mr. Friendly: Oh, yes, definitely.

By Mr. Gambrell:

Q. Would you say, Mr. Roig, that the 500 mile differential in favor of the Canal Zone route would compensate for the fact that there must be a transfer at Canal Zone in

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[fol. 4117] respect to attracting business from New York to Buenos Aires?

A. No, I would not.

Q. Do you think the 500 mile distance advantage is not equal to the disadvantage of transfer at Canal Zone?

A. Well, there are other considerations. I consider the 500 miles a very important competitive advantage which I intend to use to the fullest possible limit, but it isn't the complete answer to the transfer point for a variety of reasons.

Just to mention one, if you have to transfer at Balboa your whole investment in sleeper planes may become a loss because we can't undertake to transfer people at Balboa let's say, in the middle of the night if that is the way the schedule worked out, and compensate them by telling them that they were saving a couple of hours in time which was being wasted in those transfers. They are not comparable things.

Q. What is Panagra's relationship to the thin line system northeast of Lapaz on the map there?

Examiner Wrenn: That is Exhibit 2 you are still talking about?

Mr. Gambrell: Yes.

The Witness: Yes.

A. That thin line service mostly north of Cochobamba, is that what you mean?

By Mr. Gambrell:

Q. That is right.

A. Yes. There are two little lines which are part of the same picture. That is the route of Lloyd Aereo Boliviana. It was a German route prior to the war. It was

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[fol. 4118] considered a matter of great strategic importance that it should be Americanized. The United States government asked Panagra to assist them, and in cooperation with the United States government and Bolivia, arranged to Americanize or nationalize—when I say Americanize now I mean in the broad sense of North and South America—to nationalize that operation.

We, accordingly, in cooperation with the two governments—and under circumstances which were extremely dramatic, to say nothing more, from the war angle, which I needn't go into here—succeeded in working out a reorganization of that Lloyd Aereo Boliviana, under which the

Bolivian Government became the principal stockholder and that was over 51 per cent.

Bolivian Nationals who already were investors in the company, were carried along to the extent, I think of about 25 per cent or 20 per cent, something of that sort, and Panagra entered into a contract with LAB under which Panagra undertook to provide technical and administrative supervision of that operation and to build it up as a Bolivian National line for a period of five years.

In return for those services Panagra received a small cash payment which was very substantially less than our cash outlays in performing the contract, and we also received the right to purchase each year certain shares of the company for cash and to receive certain shares as partial compensation for our services.

Under that arrangement we have acquired a total of I think about 25 per cent.

Q. Do you have contract rights that may put you in possession of a great percentage as the relationship goes

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[fol. 4119] on?

A. No. Actually the contract was modified about a year or two ago to reduce the number of shares which we might acquire—reduced by discussion with our consent—and the entire contract expired in August, I think, of this year, the five years being up.

We are going along on a modified basis at present, but under a basis which gives us no rights to subscribe to any shares at all nor to receive any shares as compensation.

Q. On Monday I understood you to stress the point that your company, Panagra, serves a country that Braniff is not authorized to serve. Was it Chile?

A. Chile is the principal spot, yes.

Q. And I believe you press the point that there is a substantial community of interest, and then later on, in another connection, you stress the fact that Braniff was substantially blanketing you throughout except Chile.

Now, do you mean to stress Chile as an important point that you serve that is not served by Braniff, or do you mean

to say that Braniff's blanketing of Panagra is so comprehensive that the Chilean difference doesn't amount to anything?

The Witness: Well, without going back to explain what may have been a correct or incorrect inference from anything I have said before, may I just answer the question now?

Examiner Wrenn: Certainly. Go ahead.

A. Braniff parallels our international route, in substance, all the way along, except Chile. Chile is not an unimportant part of our route. It is an important part of

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[fol. 4120] our route. From Braniff's angle of course that is offset by the fact that he goes to Rio which is a many times larger traffic generating section than Chile.

By Mr. Gambrell:

Q. Have you any way of comparing Braniff's United States traffic potential in relation to points south of Balboa and the traffic potential that would normally flow from that portion east of the Mississippi through Miami.

Mr. Gesell: Mr. Examiner, Mr. De Groot is the witness on these questions of traffic estimates and things of that sort, and he is prepared to answer several questions that public counsel has raised right on this point.

Mr. Gambrell: Very well.

Mr. Gesell: If Mr. Gambrell would like to defer, I think, we could get along.

Mr. Gambrell: All right.

By Mr. Gambrell:

Q. Looking at Exhibit 4:

Mr. Gesell: Before we leave Exhibit 2, may I correct a couple of inaccuracies on the exhibit?

Examiner Wrenn: Go ahead.

Mr. Gesell: And to speak of one new development. This exhibit does not show that Panagra has reinstated its service between Quito and Cali but that service is now operated, I think, on a daily basis.

It also fails to show that we are authorized to operate to a point in Ecuador named Riobamba.

It also fails to show the order of the Board which was issued after this exhibit was prepared, eliminating the

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[fol. 4124] Corumbá connection on the border of Bolivia and Brazil with Panair do Brasil and permitting Panagra, under a temporary exemption order, to proceed further into Brazil to a point known as Campo Grande, slightly to the southeast of Corumba, where connections will be made with Panair do Brasil.

Examiner Wrenn: All right.

By Mr. Gambrell:

Q. In connection with Lloyd Aereo Bolivia, still looking at Exhibit 2, does W. R. Grace and Company have any other subsidiary interests than that and Panagra as far as air transportation is concerned?

A. This is not a W. R. Grace and Company interest except as W. R. Grace and Company is interested in Panagra.

Q. I broadened it in order to include everything.

Are there any other airlines inside the W. R. Grace and Company system besides Panagra and Lloyd Aereo Bolivia?

A. W. R. Grace and Co. as such has no substantial holding of any airline except Panagra and Eastern.

Q. Does it have any in fact?

A. I think W. R. Grace and Company owns a few shares of the Faucett Company in Peru of which Panagra owns 25 per cent and I know that W. R. Grace and Company owns a thousand shares of Pan American Airways.

Q. Without laboring the point, are there any other holdings in airlines of W. R. Grace and Company or of any of Grace's subsidiaries, including Panagra—I mean without asking it all—you know what I mean, I think.

A. No. I think that the only airlines that we have,

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[fol. 4122] as a group—

Q. Directly or indirectly?

A. Directly or indirectly, regardless of percentage that *we have*

which any ownership in in is primarily Panagra: the

next largest is Eastern and there are these two small holdings of Grace ~~and~~ in Pan American and Faucett, and there are the Panagra holdings in Lloyd Aereo Boliviana and Faucett.

Q. W. R. Grace and Company owns about three and a half per cent of the stock in Eastern, is that right?

A. It has been substantially reduced. It isn't a very large percentage, I think about 80,000 shares.

Q. Around 3½ per cent?

A. I should think that it was about right, yes.

Q. Does the record show where Faucett operates?

A. I don't know whether it does or not but I can readily tell you if you are interested.

Q. Just generalizing?

A. Faucett is a Peruvian Airline operating entirely within Peru. They operate routes along the coastal cities of Peru, and also to the interior point of Iquitos over towards the Brazilian border, Arequipa, and I think they have a service to Cuzco.

Q. Does the relationship of Grace and Panagra with Faucett and with Lloyd Aereo Boliviana, vouchsafe to the Grace airlines preferential ratings?

Examiner Wenchel: Preferential what did you say?

Mr. Gambrell: Preferential routings.

Mr. Gesell: What is the Grace Airlines?

Mr. Gambrell: I can cite them if you want to— Panagra

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[fol. 4123] tions with National which serves the eastern United States, and New Orleans which is in the middle of the Mississippi, more or less.

Q. Exhibit 25. Do you have listed here all of the agreements between Panagra and or W. R. Grace and Company on the one hand, and Pan American Airways, Inc. and or Pan American Airways Corp. on the other, in respect to arrangements for air transportation?

A. I shouldn't think that it does include every—well now, wait a minute—that I presume is something that has

to be filed. There are working understandings in connection with joint facilities perhaps. I don't know whether they are all here or not.

Q. Some of these do not appear in your notations to have been approved. Have all of these been approved by the Board?

A. I couldn't answer that, Mr. Gambrell. I would assume that the ones that required approval have been and that the ones that were merely required to be filed have been filed.

Q. Has the 1939 agreement been filed with the Board?

A. It was not filed; it was discussed with them at the time it was made.

Q. Do you have knowledge of that, or who has best knowledge of that?

A. I have some knowledge, because I was personally on one of the occasions present.

Q. Well, does that agreement not come within the terms of 408 and 412 of the Act?

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[fol. 4124] Mr. Gesell: Isn't that a legal question, Mr. Examiner?

Examiner Wrenn: I think it is.

Mr. Gesell: I object to it.

By Mr. Gambrell:

Q. Do you know why you didn't file the document, if it wasn't filed?

A. My only recollection is that it was because the contract was between Pan American Corporation and W. R. Grace and Company, who were not carriers, air carriers. It was not because of any disposition that it shouldn't be fully understood because I have explained it was discussed with the Board.

Q. Don't those two companies control air carriers?

A. W. R. Grace and Company does not control any air carriers.

Q. Does it not have negative control of Panagra?

A. It owns 50 per cent of Panagra. It does not control it, in my opinion.

Q. Has any body adjudicated that W. R. Grace and Company is not an air carrier under the terms of the Act?

A. I don't recall any case in which it has been decided.

Mr. Gesell: I can throw some light on that.

Examiner Wrenn: Go ahead.

Mr. Gesell: There was a decision by Examiner Nye on that question, of the Civil Aeronautics Board.

By Mr. Gambrell:

Q. Was this document, the 1939 contract, submitted and did the Board render an opinion that it was not subject to the requirements for filing?

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[fol. 4125] A. No.

Q. Have you any record to show the Board's consideration of it in any way?

A. Well, my recollection is all I can think of at the moment. Whether I have any written record or not, I don't know, but I ~~have no~~ doubt that I have.

Q. You haven't even a letter or anything in writing indicating that the Board has indicated its lack of interest in that contract for filing purposes?

A. I am sure there is no such letter from the Board.

Mr. Gambrell: That is all.

Examiner Wrenn: Mr. Fitzgerald, you may examine the witness.

Mr. Fitzgerald: I have a couple of questions, Mr. Examiner.

(Off the record)

Cross examination.

By Mr. Fitzgerald:

Q. Mr. Roig, is it true that Panagra will not receive any of the benefits of the revenues which accrue through the operation of your planes between Balboa and Miami?

A. Not directly as revenue from the operation. We will receive a charter hire which includes our expenses and a return on our capital investment.

Q. Isn't it fair to say, then, that any diversion which might accrue from that particular segment of the service, will not be of any harm to Panagra?

A. You mean any diversion of traffic from the Pangra plan?

. . . . . .

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[fol. 4126] least as far as National is concerned, certainly not to favor us but to just treat us as one of many in the field.

Q. In that case, if National did that, you at least would get a share of National's traffic which you won't get at all under the present certification?

A. No. I think that under—well, under our present certification, without this through flight service to Miami:—but I am not considering that. That is a desperate situation. What little crumb we could pick up ~~under~~ *from National* ~~that~~ would not be of very much nourishment to us. We would have to have something more than that.

Q. When you were testifying regarding negotiations leading up to this agreement, you used the term "We", I believe, to describe yourself and certain other persons who I believe are on the Board of Panagra.

When you have used that term "we", were you thinking of yourself as a director of Panagra or as a representative of W. R. Grace and Company?

A. I couldn't answer the question without seeing the particular case. It may have been one in one case and another in another.

Q. Let me ask you this: Is it true that the negotiations in this case were in essence between W. R. Grace and Company and Pan American rather than between Pan American and Panagra?

A. Well, that is somewhat metaphysical, but actually what happened was the matter was brought up in the first instance in the Panagra meeting as a Panagra matter.

When it was decided that we would endeavor to work out

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[fol. 4127] something, I asked Mr. Gesell, who was Pan-

agra's lawyer, and not Mr. Cahill, who had been Grace's lawyer in 779, to work the thing out.

I think the relative relationship is evidenced by the terms of the agreements. Now, no doubt that was a matter in which Grace was interested as well as Panagra, but Grace's interest was because of its interest in Panagra, not because of any outside consideration.

Q. Isn't it true that as long as the Pan American directors had one position and the remainder of the directors had another, that Panagra as such did not have a position on the case?

A. Yes.

Q. Now, Mr. Roig, there are certain elements in this contract which I believe we might call extra concessions which Pan American made to Panagra in connection with the negotiation of this arrangement.

Do you think that is fair to say that?

A. Yes.

Q. As president of Panagra, wouldn't it be fair to say that you would be glad to accept an arrangement whereby you merely chartered your planes and crews to Pan American for the through operation into the United States, without these extra concessions?

A. Oh, no. I would rather have this.

Q. Now, suppose you couldn't have it, wouldn't you take the other?

Mr. Gesell: Mr. Examiner, shouldn't we, to avoid any confusion here, ask Mr. Fitzgerald to state what the extra concessions are, because Mr. Roig might have one thing

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[fol. 4128] in mind and Mr. Fitzgerald another?

Mr. Fitzgerald. I will state them briefly. I mean the agreement whereby Pan American does maintaining work, training work, and sales work for you?

By Mr. Fitzgerald:

Q. Wouldn't you be willing to take the through plane agreement without those things?

A. No. Not in the sense you mentioned, because you referred to a straight charter, just turning over our plane for so much an hour.

Q. I mean with your crews and just exactly as you have it, that is, take everything away from this agreement except that.

A. That would be very, very far from giving us what we have here.

Q. I agree, but wouldn't you take it?

A. You mean if that is all I could get?

Q. That is right. If that was all you could get.

A. I wouldn't take it as against the possibilities which I would consider certainly worth fighting for, in that case, of something better.

I wouldn't consider that a satisfactory disposition of the problem, in other words.

Q. But it would get you to a terminal in the United States which is your No. 1 objective.

A. It would get our plane through with our through traffic, that is true, but there again, not unless it were coupled with some of these other provisions such as the regulation of schedules, and a lot of things of that kind.

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[fol. 4129] Q. Which have to do with that operation?

A. Yes.

Q. Well, let's just say suppose the Board were to say to you "Mr. Roig, you can have this, but you can't have this training agreement; you can't have this maintenance agreement and you can't have this Pan American sales service;" would you take that?

Mr. Gesell: What does he mean, Mr. Examiner? I object. I can't see the relevance to what Mr. Roig would take personally. It seems to me the question is very "iffy" and I can't see the materiality.

Examiner Wrenn: Let's get back to the point. I think what Mr. Fitzgerald has in mind, is that he may intend arguing certain provisions of this contract are contrary to the public interest and should be either disapproved or conditioned, and I take it what he is trying to get from Mr. Roig is the essential nature of those things to this agreement, and how much Panagra feels like they could accept

Mr. Fitzgerald: I think, Mr. Examiner, that they have a lot of things in this agreement which really have nothing to do with the interchange—I am sorry, I withdraw that—with

this through flight agreement, and I want to explore that just a moment.

By Mr. Fitzgerald:

Q. I am not trying to bring in anything that isn't in the contract. I am just talking about those three or four major concessions which Pan American made in addition to the contract to operate your planes into the United States and the incidental provisions which are necessary for the proper operation of that operation.

A. I think the maintenance comes pretty close to being

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[fol. 4130] a part of that, but I wouldn't take any commitment at this time as to what I might do at some future time under a totally different set of facts.

Q. Now, Mr. Roig, do you believe that Pan American agrees with you in your conclusion that the maintenance of Panagra's planes in the United States is a substantial benefit to Panagra?

A. I think they do; yes.

Q. And do you believe they have the same opinion regarding the training of personnel in the United States and the sales and promotion provisions?

A. I think so. Mr. Friendly can answer directly.

Q. Do you believe that Pan American would agree to do those things without the through service agreement?

A. I can't answer that. I have no way of knowing.

Mr. Hamilton: Mr. Examiner, I object to that and suggest that the questions be addressed to the proper witness.

Mr. Fitzgerald: I wanted to ask him if he thought they would.

Mr. Gesell: He has been asked it once in this proceeding and said he didn't know.

Examiner Wrenn: I think it is more properly addressed to Mr. Friendly when he testifies.

By Mr. Fitzgerald:

Q. Doesn't Pan American do some of your sales and traffic work in the United States now?

A. Oh, yes.

Q. Could you give me a general idea as to how that is going to be augmented?

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[fol. 4131] A. It is going to be modified as well as augmented in a number of important respects. In the first place, there is going to be an adequate Panagra display in the sales offices of our name and so on. In the second place, there is going to be one man in the principal sales office, particularly charged with looking after Panagra interests in connection with sales, with appropriate proceedings coordinating that work with the work of Panagra's independent general sales manager to see that the job is properly done.

Panagra's

There is also a provision that ~~Grace~~'s traffic organization may propose methods of sale and handling to be carried out in the Pan American sales offices and means for liquidating any difference of opinion as to the advisability of those suggestions.

There are also clear provisions on the subject of advertising and publicity. I consider that the changes made have the effect of completely revolutionizing the methods of handling Panagra sales through the Pan American sales offices.

Q. Did you ever make any effort to have this sort of a change made prior to this agreement?

A. Some of the things we have, yes.

Q. And you were unsuccessful?

A. Yes. Not on everything, but on these particular matters. I am trying to recall whether any of these particular matters have been specifically suggested on a previous occasion. I am not sure that they were in this specific form. Perhaps Mr. DeGroot could be a little more exact on that.

Q. Has Pan American been your agent in the United

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[fol. 4132] States in the past?

A. I have just so testified.

Q. And they will continue to be; that part is not clear, then.

A. Well, that is just a work. They will continue to be now in a totally new form—

Q. There will be additional things added on?

A. Not only additional, but a total, as I expressed it, revolutionary change in the whole thing.

Q. Has W. R. Grace also been an agent of Panagra in the United States?

A. Not in the United States; although we have sold, in a general sense it might constitute an agency; we sell Panagra tickets; yes.

Mr. Fitzgerald: That is all.

Examiner Wrenn: Department of Justice may examine the witness.

Mr. McDowell: If the Examiner please, we are somewhat embarrassed by the necessary absence of Mr. Hickey this morning who had been preparing to cross examine the witness. I wonder if it would be convenient for the Examiner to break for the luncheon session now, so we can have Mr. Hickey here this afternoon to conduct that examination?

(Off the record)

Mr. Highsaw: Mr. Examiner, there has been a great deal of ground covered and I will make an attempt not to duplicate any of the questions, but I might inadvertently do so, and if you will just call my attention, I will withdraw them.

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[fol. 4133] Cross-examination.

By Mr. Highsaw:

Q. How many of the Grace Company directors are also directors of Panagra, Mr. Roig?

A. Mr. Garni and I, who are directors of Panagra, are also directors of W. R. Grace and Company.

Q. How many directors does W. R. Grace have altogether?

A. I think we have a dozen or more. About 12, 13 or 14; I don't know exactly.

Q. Could you get us the same information as between W. R. Grace and Grace Lines?

A. You mean between Grace Line and Panagra?

Q. W. R. Grace and Grace Lines.

A. W. R. Grace and Company and the Grace Lines—suppose I get that accurately instead of trying to remember it. I will get it on to you during the noon recess and give it to you accurately.

Examiner Wrenn: All right.

By Mr. Highsaw:

Q. Are any of the directors of Panagra also directors of Grace Lines?

A. Yes.

Q. How many of those? Could you give that information?

A. As I recall right now, I am a director of Grace Lines and Mr. Garni is, and Mr. Patchen is.

Q. How many directors does Grace Lines have?

A. That I will look up for you.

Q. Does Panagra make any payments to Grace Lines for management whatever?

[fol. 4134] A. No payment to Grace Lines for management whatever.

Q. To W. R. Grace and Company?

A. Yes.

Q. Do you know how much that was during the past year?

Mr. Gesell: Aren't the Form 380's in evidence here? They show that information.

Examiner Wrenn: Aren't they contained in your stipulation?

Mr. Highsaw: Yes.

By Mr. Highsaw:

Q. Are any services rendered, Mr. Roig, by Panagra, for either W. R. Grace or the Grace Lines?

A. Only in that W. R. Grace & Company, I guess, is Panagra's best customer. Grace Line is an important customer too; I mean we render service to both of them in carrying personnel and mail and express from time to time.

Q. In other words, W. R. Grace performs services for Panagra and Panagra performs services for Grace?

A. The only service that Panagra performs for Grace is precisely the same as performed for any member of the public.

Mr. Fitzgerald: Revenue traffic?

The Witness: That is all. It is just traffic. As a common carrier we carry a great many Grace Line personnel, but we don't render any service outside of that.

By Mr. Highsaw:

Q. I assume they are paid for just like any other passenger would be?

A. Yes.

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[fol. 4135] Q. These services that W. R. Grace performs for Panagra—you said there were such services—are they under some sort of contract arrangement?

A. It is not under any written contract except as the '39 agreement refers to it, but services rendered Panagra by both W. R. Grace and Company and Panair are the development of a ~~man~~ *plan* that has been carried out through the years. It varies from time to time.

Q. That is the management service?

A. That is it. Just to prevent any misunderstanding on that question of tariff, the Grace employees, I might say that up until some years ago there was a reciprocal arrangement between the Panagra and the Grace Line under which employees received reciprocal discounts. That was discontinued several years ago. There is no account of that kind. W. R. Grace and Company had a similar discount.

Q. Did the Board of W. R. Grace and Company discuss the contract between Pan American, Inc. and Panagra, which is Contract "A" in this proceeding?

A. When I submitted the matter to the W. R. Grace and Company Board, I naturally gave them the whole picture.

Q. They did discuss that contract, then?

A. The thing was discussed as a whole.

Q. Was the contract between Pan American, Inc. and Panagra, which is referred to as Contract "A", submitted to the Board of W. R. Grace and Company for approval before Panagra signed it and executed it?

A. No, it was not.

Q. Did W. R. Grace and Company, during the negotia-

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[fol. 4136] tions, express any opinions as to any of the provisions, and urge you to have certain provisions put in, or other provisions suggested by Pan American changed?

A. The discussion with the W. R. Grace and Company Board didn't get down to fine points. It was related more to the overall picture and whether this was going to be a reasonable solution of our difficulties.

I don't recall discussions in our Board's meeting of any particular clause. I wouldn't say there wasn't, but I don't recall it.

Q. Do you remember who suggested the revision of the Grace-Pan American 1939 management contract as a part of this arrangement? That is, which source, whether it was from Pan American's side or the Panagra-Grace side?

Mr. Gesell: There is no testimony here, is there, Mr. Examiner, that there was any suggestion of a revision of the management relationship? I don't understand what Mr. Highsaw has in mind.

Mr. Highsaw: We have a contract here which terminates the 1939 agreement, as I understand it, so I would assume that the 1939 agreement has in some way been revised.

Examiner Wrenn: All right.

A. Well, except as the 1939 agreement is, as I said before, revised from time to time—it has been over the years—there have been no changes as yet made as a result of these contracts.

Examiner Wrenn: Mr. Gesell, there isn't any inference in their overruling you with respect to there not having

take it

been testimony on that. I ~~am taking~~ Mr. Highsaw has been

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[fol. 4137] talking about the particular provision in the

agreement relating to it and he wants information as to why that provision was put in there.

I think that is true, isn't it, Mr. Highsaw?

Mr. Highsaw: My question doesn't go to the mere fact of that one word in there. My question goes to the fact that —I will withdraw the word "revision" if that will suit Mr. Gesell. What I want to know is who suggested a substitution of this present contract B for the 1939 management agreement.

A. Well, the suggestion of this type of contract as a settlement of the whole problem came from Pan American, as I pointed out. If you are interested in the particulars, does that answer your question?

By Mr. Highsaw:

Q. That answers it. Do you remember, Mr. Roig, from what source the particular provisions in Contract B, relating to the management of Panagra—that is, the election of the president, and those particular provisions, from what source they came?

Were they suggested by Panagra, Grace or Pan American?

A. In the first instance that came forward as a carry-over from the 1939 agreement more or less automatically.

Various changes in the way of restrictions on that power, to which I have testified before, I think came from Pan American's side. Other clauses relating to it, I don't know whether they came from the Pan American side or the Panagra side.

Mr. Friendly, who was a party to the discussions with

[fol. 4138] Mr. Gesell, would know that. I was not a party to those discussions.

Q. Do you have any similar information regarding the arbitration provisions or would you rather I would ask Mr. Friendly about that?

A. I would rather have you have Mr. Friendly answer that.

Q. Mr. Roig, would you regard Panagra as being in a

strong bargaining position in the renegotiation of these two contracts that we have here?

Mr. Gesell: What is the relevance of that? I object to what Mr. Roig thought was Panagra's bargaining power in this proceeding.

Mr. Highsaw: It has considerable relevancy on what they eventually arrived at.

Mr. Gesell: Mr. Roig has certified that this agreement was an agreement that was considered by him and by the Panagra people and the Grace people and it was determined that it was a sound business proposition.

Doesn't that cover that? He said it was perfectly clear from the testimony. There hasn't been any duress here. Is that what counsel has in mind?

Mr. Highsaw: I am not suggesting duress.

Mr. Gesell: What other meaning can it have?

Mr. Highsaw: Mr. Examiner, I think the witness is capable of expressing an opinion as to his position of his company at the time this agreement was entered into in relation to Pan American. I think that is quite relevant.

Mr. Gesell: But the mere assertion of that statement a

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[fol. 4139] second time doesn't make it relevant, Mr. Examiner. Mr. Highsaw hasn't explained the relevancy to it. I would like to hear it.

Examiner Wrenn: What is the purpose of it? That is what I would like to get at.

Mr. Highsaw: Panagra in this contract as entered into has made various concessions and have received back concessions from Pan American.

Now, the question as to the element of the public interest that was involved in their negotiating and making decisions as to whether they were going to make a particular concession or whether they were not; it seems to me to be directly related to the opinion of the president of Panagra as to what the position of his company was in the negotiations.

If they didn't attempt to bargain at here, that is a fact that the Board should know, and if they were in a weak bargaining position, I think that is a fact that the Board should know in considering this contract.

Mr. Gesell: If there is any suggestion that this wasn't a hard negotiated contract, I think Mr. Roig be allowed to answer the question. I will withdraw my objection.

Examiner Wrenn: All right.

A. I consider that Panagra was in a very strong bargaining position. In the first place, Grace had some months before secured an opinion from the Circuit Court of Appeals, the Second Circuit in New York, which I thought greatly strengthened Panagra's whole stand in connection with this route extension. To be sure it was before the

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[fol. 4140] Supreme Court on appeal, I was not concerned about the outcome any more than anyone is concerned about the outcome of any litigation. I felt confident about it. In addition to that, I felt that with the changed situation in the Caribbean, which had arisen with the new routes that had been granted there by 525, that Pan American might well be more disposed to make a reasonable proposal, as the events showed that they were, and I felt also that the language of the Board in 525 instructing the stockholders of Panagra to get together and provide some system of providing through service gave us a very strong trading position which we didn't fail to use.

Examiner Wrenn: Is this a convenient point to break, Mr. Highsaw?

Mr. Highsaw: Yes, sir.

Examiner Wrenn: We will recess until 2 o'clock.

(Whereupon, at 12:37 p. m., hearing in above-entitled matter recessed, to reconvene at 2 o'clock p. m., same day.)

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[fol. 4141] AFTERNOON SESSION 2 p.m.

Examiner Wrenn: Let's come to order please.

Due to press of other matters, later in the afternoon Mr. Hickey of the Department of Justice has requested permission to cross examine at this time and Mr. Highsaw has agreed to that so Mr. Hickey you may proceed with cross examination of the witness.

HAROLD J. ROIG, resumed the stand, was examined and testified as follows:

Cross examination.

By Mr. Hickey:

Q. Mr. Roig, Panagra was organized in February 1929, was it not?

A. Yes.

Q. And from the time of its organization up to and including the present time it has been jointly owned and controlled by Pan American Airways Corporation and W. R. Grace and Company?

A. Yes.

Q. That is by virtue of the fact that each of those companies possess 50 per cent of the voting stock?

A. Yes.

Q. I believe you testified Monday to the effect that the Board of Directors of Panagra is composed of four directors who represent Pan American and four who represent W. R. Grace and Company?

A. Well, it is composed of four directors from each side. I have always considered they represented the stockholders of Panagra once they became a director of Panagra.

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[fol. 4142] Q. But they are nominated by each of those companies?

A. Yes.

Q. And does that Board of Directors of Panagra determine and control all policy and action by Panagra?

A. Yes.

Q. Including the—

A. Except such matters as properly go to stockholders.

Q. Including the determination of what rates and fares for air transportation shall be charged by Panagra?

A. Yes.

Q. And including the determination of what routes will be sought and what schedules will be maintained in their operation?

A. Yes.

Q. So that as a practical matter it is true, is it not, that no air transportation rates or routes unacceptable to either Pan American Airways Corporation or W. R. Grace and Company, have or could be affected by Panagra?

A. Well, there have been, certainly in the matter of routes, there have been routes proposed which in the first instance have been considered unsatisfactory by Pan American, let's say, and after discussions have been agreed to.

Q. I realize that but I mean that it is impossible, is it not, that if Pan American finds a route or a rates unacceptable, it would be possible for Panagra to initiate it, isn't that so?

A. Mathematically that is so. Historically, based on 18 years of experience, with the exception of this extension to United States, it is not a realistic view of the situation.

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(fol. 4143) Q. That is just as true today, under the agreement here in issue, as it was prior to the adoption of these contracts, exhibits A and B to your petition?

A. Yes.

Q. And it is a well known fact, is it not, that prior to the consummation of the present contracts all efforts by Panagra to secure a terminal within the United States were unsuccessful because unacceptable to Pan American Airways Corporation?

A. Yes.

Q. And that is also necessarily true, is it not, with respect to any route which Panagra might desire, or rates which it might want to charge, for air transportation?

A. I have answered that question, I think.

Mr. Gesell: Mr. Examiner, may I inquire who Mr. Hickey has in mind when he says "Panagra?"

Mr. Hickey: I have the company in mind of which Mr. Roig is the President.

Examiner Wrenn: All right.

Mr. Hamilton: Mr. Examiner, I think I may be in error about this, that the phraseology of Mr. Hickey's second question imports into it the first question.

I would like if I may, to have the reporter read it back. I don't think he intended that.

Examiner Wrenn: Read the question back please.

(Question read.)

Mr. Hickey: I will withdraw the question and rephrase it. I can see your point.

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[fol. 4144] By Mr. Hickey:

Q. That would necessarily follow, would it not, with respect to any route which Panagra might desire and Pan American would be opposed to?

A. Well, as I have explained: theoretically, yes; historically, ~~not~~ *and* realistically, ~~yes~~ *no*.

Q. Has Panagra ever to your knowledge considered the desirability of operating a route along the East Coast of South America?

A. No.

Q. You never have?

A. No.

Q. Well, is there any reason why they wouldn't, in view of the natural development of the traffic potential which would inure to you as a result of such routes?

A. Well, except that when Panagra was originally formed the Grace interest was essentially on the West Coast of South America. That is where most of our business has always been, and our business in an airline at this time was one serving the West Coast of South America and Buenos Aires.

At the time the company was formed, Pan American had already started or laid out a route down the East Coast, and Panagra was set up with a view to operating on the West Coast, and we have always gone along on that basis.

Q. Do you mean by that that you respected each other's territories, spheres of operation?

A. In effect that has been true. There have been a number of quite important departures from it, however.

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[fol. 4145] For instance, some years ago, when we decided that we wanted to run down from Lima through Bolivia and down through the center of the Argentine to Buenos Aires, on what we ~~consider~~ *call* our "diagonal route," that was brought up for discussion, although it was well over on the

eastern side, and after discussion—some considerable discussion—it was agreed that Panagra could apply for that route.

We did apply for it and have been operating it ever since. Later on, of course, we went to Corumba just inside the Brazilian border, along Bolivia, and now within these recent days have extended that to Campo Grande which is some 300 miles further inside the Brazilian border.

We also originally operated in the northern sector along the coast, Pacific Coast of Colombia, and at a later date by agreement diverted the route to an overland route serving Cali in Colombia.

Q. Isn't it a fact that your election to the presidency of Panagra was pursuant to an agreement between Pan American and Grace that the management of Panagra would be in the hands of a Grace and Company representative?

A. Well, that was—I was elected President under the 1939 agreement. The agreement speaks for itself and it says that "one of the Grace directors of Panagra who shall also be a director of Grace will be elected President of Panagra, and placed in responsible charge of the management of the company. If at any time the company's affairs are not being conducted to Pan American's reasonable satisfaction, then the President will resign."

That was the statement of the agreement which was

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[fol. 4146] reached between the parties at that time.

Q. Wasn't it implicit also in that agreement that Panagra would confine its operations to the West Coast of South America, the few exceptions you have mentioned and would not operate north from the Canal Zone into the United States?

A. That has been a subject about which there has been great difference of opinion. When you go over the record in 779 which has been incorporated into the proceeding this morning you can see both sides of that question.

I have always maintained the negative of that issue.

Q. Except that you have also maintained that it would surprise you very much—I believe you used that expression in answer to one of Mr. Friendly's questions—that it would surprise you very much if Panagra would operate

down the East Coast of South America and it would equally surprise you if Pan American were to operate down the West Coast of South America?

A. Yes, it would, in view of the way the companies were originally set up and the way they have always gone along.

Q. In other words, if there isn't anything express in this contract, there is at least an understanding between the two companies.

Mr. Gesell: What contract?

Mr. Hickey: Excuse me, agreement.

Mr. Gesell: You are talking about the '39 agreement?

Mr. Hickey: Yes.

Mr. Gesell: I just wanted to be sure.

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[fol. 4147] By Mr. Hickey:

Q. There isn't anything express in that agreement, there at least exists an understanding between the two companies that they will operate in that manner?

A. It never occurred to me that this agreement had anything to do with that subject.

As I say, the companies were originally set up that way, and while there has never been anything approaching a formal agreement on the subject, that general method of operation has been accepted on both sides.

Q. Now, referring back to your testimony on Monday—

A. When I say accepted on both sides, I mean without any limitation on the right of anybody to bring it up, as we have in numerous instances, to extend.

Q. Referring back to your testimony on Monday: Aside from the benefits which you say that at that time would inure to Panagra as a result of this agreement—that is, if I summarize them correctly, maintenance and training provisions, and the sales promotion by Pan American, and the right to operate on Pan American's domestic routes within the United States if subsequently granted by the Board—aside from those alleged benefits, Panagra is just as subject to control by Pan American Corporation and W. R. Grace and Company today as it always has been, isn't that correct?

A. Well, I think that there are certain other provisions in the agreement which facilitate the operation of the administration, so to speak, of the business.

On the question of corporate control there has been no change.

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fol. 4148 Q. I believe you also testified on Monday under cross examination—I believe it was Mr. Gambrell that the issue of Pan American's monopoly was irrelevant in your opinion. I believe you used that expression.

A. Yes.

Q. And in support of that statement you stated the fact that Braniff plus approximately nine foreign companies were offering Pan American competition in South America.

A. Yes.

Q. Is that correct?

A. Yes, I think, substantially.

Q. Now, in support of that contention are you prepared to state what percentage of total air traffic, each of those approximately nine foreign companies and Braniff, control between Latin America and the United States.

A. I think there is a little confusion in the question there because the nine companies that I referred to, foreign companies, were companies flying in territory.

Some of those are also in Pan American's territory, others are not and there are additional companies in Pan American's territory that are not in ours. Is it Pan American or Panagra that you are interested in?

Q. Neither, strictly speaking. I meant only such companies as operate between Latin America, excluding Mexico, and the United States.

A. Of the companies that operate between Latin America and the United States I can't give you the percentages either of the total traffic or what they may be carrying of the traffic on the lines which are now operating and begin operating

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fol. 4149 Q. Can you name any companies which are now operating

A. Yes. You have between the United States and South America companies which are carrying important traffic

KLM, TACA which operates from both Balboa and I think from Brazil—I think that line is still running from Brazil—and there are other lines: Avianca, I don't know whether they have actually begun their service but they have been authorized.

Q. I mean now. Excuse me. Let's try to put this question:

Now, operating between a United States Terminus and Latin America?

A. Well, I am not sure whether Avianca is actually operating at this moment or not. I know that TACA and KLM are.

Q. You state you don't know what percentage of traffic anyone of those or all of them in the aggregate control?

A. No, I do not.

Q. Do you know what percentage of total air traffic between Latin America and the United States is at present controlled by Pan American?

A. No. If I did I would know the others. It would be the difference. I have no doubt that Pan American is larger now, but I don't think this question can be decided entirely on the basis of what is existing now.

After all, Braniff isn't running yet. British Airlines isn't running yet.

Q. That is an argument that can be made.

Mr. Hamilton: It isn't an argument.

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[fol. 4150] Mr. Hickey: I was merely trying to get the figures as to this incidental.

The Witness: I think some of our later witnesses can give you those figures but I don't know them.

By Mr. Hickey:

Q. Mr. Gambrell also asked you a question regarding the coincidence of Grace Lines ports and Panagra's air terminals along the West Coast of South America, and I believe you testified that many of the points served by Grace Lines were also served by Panagra, is that so?

A. Well, it depends how literal you are in that. Actually the number of common ports is relatively few. In the first

place, the Grace Line naturally serves only the ports whereas Panagra goes to the interior cities, but from the standpoint of the coastal area it is fair to say that they are serving to that extent a common territory.

When you get back of the coastal area I mean really back—why then you are in an ~~line~~ area which Grace Line of course doesn't serve at all.

Q. Is it also fair to say that the principal ports along the West Coast of South America are served both by Panagra and Grace Line?

A. No, definitely, not because the principal ports on the West Coast of South American are first Colombia, the Port of Buenaventure, Grace Line goes there, Panagra does not.

The next important port is Guayaquil. We both go there.

The next important port is, you might say, Talara, we both go there.

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[fol. 4151] The next would be Callao, ~~the~~ a port of Peru. Grace Line goes there, Panagra does not. Panagra goes to Lima, the capital, back of Callao, served by Callao, however.

Then there are a number of other Peruvian ports, to none of which Panagra calls. Panagra calls in Peru are Talara, Lima and Arequipa. Arequipa is an inland point in the mountains and the Grace Line does not go there.

When you get to Chile, both Panagra and Grace Line call at Antofagasta. Grace Line calls at Valparaiso and Panagra calls at Santiago.

Q. I believe you also testified on Monday that approval of this agreement would make competition between Pan American and Panagra impossible. I think that is the word you used from Balboa north into the United States. Isn't that so?

A. I don't know the words that I used, but it is true that between Balboa and Miami, where Panagra has never had any service and Pan American has, there will not be competition between these two companies.

Q. By competition, what form of competition do you

mean? All forms, including service as well as rates and fares?

A. Well, we will simply not be running any planes in that area. We will be providing the public with through service through that area, but Panagra will not be operating planes in that area under this agreement any more than it has before. But that is no reduction in competition, and it is no prohibition about what the future may contain if there is a different set up, but under this contract, com-

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[fol. 4152] petition between the two companies in that area is not contemplated any more than has existed in the past.

Q. As you say, it is obvious that the service as well as the rates and fares will be as determined heretofore by Pan American.

A. Panagra will have nothing to do with determination of rates in that area. We will have the selection of the airplane which we send through. It will be our plane.

Q. I think you further stated that if the pooling arrangement contemplated by Provision 13(a) of the agreement, were subsequently effectuated between the parties and approved by the Board, that there would also be no competition south from Balboa.

Mr. Gesell: I didn't so understand his testimony, Mr. Examiner.

Mr. Hickey: I haven't quite finished.

Mr. Gesell: I am sorry.

Examiner Wrenn: Go ahead.

Mr. Hickey: Maybe I can make this clear.

By Mr. Hickey:

Q. —that there will be no competition from the points served under the pooling arrangement any more than there would be north of Balboa?

A. That is not my understanding. If I said anything that led to that conclusion it wouldn't be a correct conclusion because as I thought I pointed out on a number of occasions, when talking about the pool, pools do not limit competition necessarily to the extent often supposed, for the reason that pools are generally set up on the basis of the

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[fol. 4153] position which the members have in a particular trade at the time the pool is set up, but thereafter, unless each member maintains his position, at least up to what it was when the pool was formed, the other members cut him down. They don't carry him along.

Q. But it is true, I think you were talking to Mr. Schneider about this matter on Monday, it is true that you stated that as a result of this agreement, less rather than more competition would result in the final analysis.

A. Well, less competition could only be as between the members of the pool, and whether the result is more or less depends on all these other considerations.

Q. Let me refer to something else in your testimony.

Mr. Hickey: I want to say to Mr. Gesell that I am not trying to paraphrase this inaccurately at all because I wrote it down as it occurred.

I believe the expressions are about what Mr. Roig said.

Mr. Hamilton: Could you give us the reference to the record as you went along.

Mr. Hickey: No, I can't. I don't have the record with me.

Mr. Gesell: Would it be possible, Mr. Examiner, and Mr. Hickey, just to avoid this problem of trying to paraphrase a record which you don't have, wouldn't it be better to ask the direct question?

Examiner Wrenn: I think so.

Mr. Gesell: Concerning what the situation is, and get the answer of the witness.

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[fol. 4154] Mr. Hickey: I will ask the question, and if you feel that it is objectionable.

Mr. Gesell: I feel it might be a little simpler for us all.

By Mr. Hickey:

Q. I believe you stated that your decision to enter into arrangements of this character were motivated: (1) by a desire to cooperate with Pan American to keep other competitors — and I am trying to quote you here — off your neck — I think that is about what you said — and secondly,

because it was perfectly proper in your opinion to eliminate ruinous competition between yourselves—meaning Panagra and Pan American—to withstand the threat of competition from foreign air carriers, is that substantially your testimony?

A. Well, whatever I said or in whatever form it may have been said, certainly those were not the primary considerations.

The primary considerations were to solve the problem which had been pending for a number of years, and which had arisen before this competitive situation developed, and the primary problem was to enable Panagra to compete at all—I mean long before we began to worry about any restriction of competition by a pool, it has to be considered that without this agreement, or some other means of getting through to the United States, Pan American-Grace—Panagra—was rapidly getting into a position where it couldn't compete with Pan American at all, much less compete with anybody else, because with Pan American

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[fol. 4155] always having had a through route to United States, and with the Puerto Rico case having a direct route through to the United States, Panagra was in no position to compete with Pan American at all, and this agreement, far from reducing the competition with Pan American, makes it possible for Panagra to compete with them in a way that they couldn't possibly do without some such arrangement.

Q. In what way will you compete with Pan American?

A. For Buenos Aires traffic and for traffic—tourist traffic, based on relative advantages of the two coasts—but primarily in connection with Buenos Aires traffic.

Q. Pan American is going to run the planes from Balboa up into the United States, aren't they?

A. Oh, yes, but the traffic I am concerned about is the traffic that moves over our route from Balboa to Buenos Aires, but which will not take our route if they haven't got the benefit of through service to the United States.

Anyone going from Washington to Buenos Aires, and having a decision to make whether he will go by Eastern to Miami, Pan American to Balboa, and Panagra to Buenos

Aires, as against getting on a plane of Pan American in New York and going straight through, why, the chance of his taking our route is almost zero.

Q. In other words, you are saying that this agreement enables you to compete better with Pan American within South America?

A. Over our route.

Q. But it doesn't in any way enhance your ability to

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[fol. 4156] compete with Pan American between the United States and South America?

A. Well, it does, Mr. Hickey. Not between Miami and Balboa.

Q. That is what I mean.

A. But between every other point on our route in South America, and including particularly Buenos Aires, which is the competitive point, it definitely improves our ability to compete with Pan American, and that has been the basis of the discussion over all these years, and that was the primary object that we have been seeking and which we have accomplished through these agreements.

Q. You wouldn't deny, would you, Mr. Roig, that one of the—if not the only one, one of the principal motivations in reaching this agreement was the threat of competition proposed by these foreign companies to which you refer, and by Braniff's newly approved route you wouldn't deny that, would you?

A. No, I wouldn't deny that.

Q. So that you wouldn't say now that you were entirely wrong when you said that it was proper to agree among yourselves in order to eliminate ruinous competition forced on you by others, would you?

Mr. Gesell: I must object, Mr. Examiner. We have gotten confused here between what Mr. Roig said about the Buenos Aires pool, which is not before us here, and this agreement which is before us, and Mr. Hickey has. I am sure not intentionally confused these two things and included this agreement here for approval in a discussion of the Buenos Aires pool.

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[fol. 4157] Those are two separate and wholly distinct problems from a competition view and I think we must try to keep the testimony clear on it.

Examiner Wrenn: I think the testimony should be kept clear on that. I presume the testimony you have reference to is set forth on pages 97, 98 and 99 of the transcript.

Mr. Gesell: That is where the phrase "ruinous competition" was used, for example, in connection with the Buenos Aires pool, not in connection with this agreement.

Mr. Highsaw: Isn't there a provision in this agreement contemplating a Buenos Aires pool?

Mr. Gesell: Of course there is. Mr. Highsaw misses my point entirely. What Mr. Roig says as to the reasons and motivations behind the possibility of the Buenos Aires carriers pooling is not something he said as to this agreement which is before us here for approval. That is my point.

Mr. Hickey: I think he made the statement generally.

Mr. Gesell: Can you show us in the transcript where he did?

Mr. Hickey: I can. I haven't got it here.

Mr. Gesell: I can give you a copy.

Mr. Highsaw: Mr. Examiner, that distinction escapes me. As a part of this agreement, anything he said about that, I don't see how it can be about something else. It has to be about this agreement.

Examiner Wrenn: I am perfectly willing to have the witness state what he had in mind. I have no objection to Mr. Hickey asking him what he had in mind but let's be clear.

Mr. Hickey: I certainly intended no other result than

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[fol. 4158] the one you state. I just asked the witness. My recollection was that at the time he made the statement he made it generally and he didn't limit it.

A. I would like to state, Mr. Examiner, if I may, since the question has been raised, just what our position is vis a vis competitors other than Pan American.

I have just explained what it was in connection with Pan American, and how this contract improved our competitive position in that situation.

Now, so far as other competitors are concerned we are not seeking under this agreement any unfair advantage against anybody. There has been a great deal of talk in this hearing about protecting Eastern, protecting National, protecting Braniff.

What we are trying to protect is the traveling public. We are trying to enable the public to travel over Panagra's route, to come through to the United States on our route just the same as they do on any other route.

We are not asking for a new route. We are not asking for anything except to give the traveler on our line a better ride, and at the same kind of a ride he can get on other lines.

By Mr. Hickey:

Q. You are speaking particularly for Panagra now?

A. I am speaking entirely for Panagra.

Q. That is the point I want to make clear.

Examiner Wrenn: Go ahead, Mr. Roig.

A. Now, in the matter of our dealings with competitors, we have offered Braniff our ground facilities and they are using them. They are using them on their survey flights

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[fol. 4159] which are just about now completed.

We have offered the same services to Avianca and TACA and they are using them.

We intend to offer them to others and have offered them to others, but we do feel that we are entitled to give the public that travels over our route the same kind of a service that he gets in other places, and while we are not going to compete unfairly in any of these matters, or tie up with anybody to the prejudice of anybody else, we are going to compete with everybody—Pan American, Grace Line, Braniff, all the others—we are going to compete with them in ability to serve the public by giving the public the best kind of service that we know how in equipment and in schedules and above all, because experience has demonstrated its great importance, in a through flight from point of origin or destination on our route through to the United States.

Q. I just want to say, Mr. Roig, I fully appreciate the reasonableness of your statement made as a representative of Panagra and of course it wouldn't be fair to ask you what were the motivations behind Pan American's acceptance of this agreement—I am not going into that.

A. No. They would have to answer that.

Q. What was the purpose, if you know, Mr. Roig, of inserting the pooling arrangement contemplated by Provision 13(a) of Exhibit A as it now stands?

It is merely an agreement to agree sometime in the future, is it not?

Mr. Gesell: He was asked that precise question on direct

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[fol. 4160] and gave a full answer.

Mr. Hickey: May I ask him again if the Examiner please?

The Witness: Can we refer to the record if we have got the record here? Because I have answered it three or four times.

Examiner Wrenn: Certainly you can.

Mr. Gesell: He has answered it in great detail and we might as well have it.

Mr. Hickey: I don't believe that specific question was ever answered.

Mr. Gesell: I will find it for you.

Examiner Wrenn: What point do you have to bring out?

Mr. Hickey: I want to know why it was necessary to include—I want to ask him this question—to include this agreement to agree sometime in the future where Board approval was still a requisite in this particular agreement.

The Witness: That is a different question.

Mr. Hickey: I think it is.

The Witness: I am afraid you would have to ask Mr. Friendly or Mr. Gesell for the answer to that.

Mr Gesell: There is an answer in the record. I am sure. I will try to find it.

Examiner Wrenn: Go ahead with your examination, Mr. Hickey.

By Mr. Hickey:

Q. Mr. Roig, do Exhibits A or B to this petition contemplate that during the term of this contract, Exhibit A, which

is a 50 year term. Panagra will not seek an independent franchise to the United States.

fol. 4161 A. There is no provision to that effect in the agreement unless it be the general provision that the contract will be liberally interpreted to accommodate itself to future conditions.

But it certainly is not within the reasonable understanding of this agreement that so long as we are able to fly the traffic through under this agreement we would seek to come through on a certificate of our own.

Q. May I refer your attention to provision 3 of Exhibit B to the agreement and read that provision, the second from the last paragraph? Pan American will consent to Panagra's application for an independent franchise are the terms set forth, are they not?

A. Well, there is one condition, one set of facts, under which Pan American will consent, yes, that being their inability to carry out their part of the contract by reason of cancellation of their certificates.

Q. Also I call it to your attention of their failing to fulfill their obligations under the agreement to you, isn't that also included?

A. No, I don't think so. I think this paragraph is related to Pan American's inability to operate where it is impossible for them to perform, owing to some infirmity having developed in their certificate.

Mr. Gesell: That testimony on the point I was talking about appears at page 75 of the transcript.

The Witness: But the question was different.

By Mr. Hicks:

Q. Referring again to my question, Mr. Rentz, isn't it implicit there in this provision that except for default of certificate, Pan American is under no obligation to consent to Panagra's application for an independent franchise?

fol. 4162

A. That is correct.

Q. As a part of this contract, did Grace agree that Panagra should not apply for an independent franchise?

A. Well, Grace has agreed to execute this exhibit B and have executed it. They have not entered into any agreement on that subject other than what is in print here. (indicating).

Mr. Hickey: That is all I have, Mr. Examiner.

Thank you very much for allowing me to go ahead.

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[fol. 4163] Examiner Wrenn: Thank you, Mr. Highsaw, for interrupting your cross examination.

You may continue now.

Further cross examination.

By Mr. Highsaw:

Q. Mr. Roig, right before lunch I believe you said you would be able to get the information for me on the relations between W. R. Grace and Grace Lines as to directors.

A. Yes, and I now have that information.

Q. Will you put that in the record, please?

A. Yes. There are 14 directors of W. R. Grace and Co. two of whom are on the Panagra Board, those two being Mr. Garni and myself.

There are nine directors of Grace Line, three of whom are on the Panagra Board: Mr. Garni, Mr. Patchen, and myself.

Q. That covered the relations between W. R. Grace and Grace Line?

A. I didn't cover the last one. Did you want that too?

Q. Yes, I want that too.

A. On Grace Line, out of 9 directors, six are directors of W. R. Grace and Company: Messrs. Holloway, Garni, Roig, J. P. Grace, Jr., and J. T. Kirby.

Q. Before lunch I mentioned something about management fees. I believe you testified that there was a management fee paid to Grace by Panagra. Is that determined by some sort of agreement between Panagra and Grace?

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[fol. 4164] A. Well, it is determined by the decision of the

CAB in our last rate case which fixed the basis of working the fee out.

Q. There is also a fee paid to Pan American?

A. Yes.

Q. And is there any kind of agreement between Panagra and Pan American and Grace and Pan American for the division of that fee—division of the fees between Grace and Pan American?

A. You mean—I don't understand quite what you mean.

Q. Well, as to how much of the fee goes to Pan American, or is that determined too by the

A. Well, actually this practice developed prior to the time when it came before the CAB in a rate case, and during that previous period the matter had been worked out by discussion and negotiation and agreement each year.

During those periods the amount was not the same every year—it isn't now—and the amounts received by each party were not the same each year.

I think generally speaking Pan American received a somewhat larger fee than did W. R. Grace and Company. Since the CAB time was before the CAB I think at that time we were receiving the same or substantially the same—I think that is about the way it is now. There might be some slight difference.

Q. There was never any set formula or agreement, it was always a year to year negotiation?

A. Yes. Until the CAB basis was determined.

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(fol. 4165) Q. Since then, has it always been made on that basis or have there been subsequent changes?

A. It has been made on that basis with adjustment only to cover the mileage.

I think the CAB indicated a certain amount per revenue mile, something of that kind, and for at least the amount that they allowed that year figured out so much a revenue mile. As the revenue miles have increased, the amount per revenue mile was reduced.

Q. Is there anything in either one of these agreements, A or B, which would affect such a situation at all?

A. No. I think I have explained, however, that it is contemplated that the fee situation will be revised and adjusted

to the new situation created by this new agreement if approved, but that isn't in the four corners of the instrument.

Q. You contemplate that that will be done by agreement of some sort?

A. Yes.

Q. Have any of those agreements ever been filed with the Board?

A. They are not really anything to file. They are just a determination of the matter, as I say, before the rate case on one basis, and afterward on another.

The same thing has been gone into before the Board in rate cases.

Q. You expect the Board to take a look at it in the rate case, then, don't you?

A. Oh, yes.

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[fo. 4166] Q. I believe you just mentioned to Mr. Hickey that there was no commitment by Pan American as to Panagra applying for a route to the United States other than what is contained in this Paragraph 5, is it?

A. Yes.

Q. —of the Contract B?

A. Yes.

Q. During the negotiations for these two contracts, did you, Mr. Roig, attempt to bargain with Pan American at all on the question of whether or not, in the event this agreement should be disapproved by the Board, that Panagra would have a right to apply for a route into the United States?

Mr. Gesell: I object to that question, Mr. Examiner. I don't think it is appropriate in this proceeding to review the various offers and negotiations back and forth between the parties in reaching this compromise of their difficulties. That is what this question involves.

Mr. Highsaw: Mr. Examiner, this agreement purports to be more than just an agreement to operate a through service. If that is all there is to it, we wouldn't have so many of these difficulties, but it purports also to settle some of the situations which have existed down there and as long as it purports to be that, it seems to me proper to go into

some of those matters such as I am trying now to find out what the parties did between signing [illegible] settlement which they have not [illegible]

Mr. Goodlet: I quote [illegible]

fol. 4107 can look at the [illegible] on the public interest, [illegible] between the parties in [illegible] the various offers [illegible] other certainly doesn't seem to be [illegible]

Examiner Wrenn: How extensively are you going into this subject?

Mr. Highsaw: I think [illegible] have on at right now.

Examiner Wrenn: [illegible] at least for the time being.

A. I think Mr. Ferguson [illegible] those discussions, [illegible] than I can.

By Mr. Highsaw

Q. The question I asked Mr. [illegible] you, as president of Eastern, [illegible] with Pan American, [illegible] with Pan American, [illegible] the Board.

A. I discussed [illegible]

Q. And you [illegible]

A. No. I think [illegible] the reason I suggested Mr. Ferguson would be a better witness than I. He has [illegible]

Q. The only attempt on your part to [illegible] discuss it with your attorneys.

fol. 4108 A. That's right. I never discussed it with anybody on the Pan American side.

Q. Did you tell your attorneys that you wished them to try to obtain that?

A. I don't recall just what I told him, but in effect that was one of the things, at one stage of the discussions.

Q. Do you ever recall his reporting back to you on that point?

A. The point was not isolated; it was along with others, and my general recollection is, as refreshed by its absence that from the contract, that he reported back, ~~and~~ it had not been agreed to.

Q. There has been a considerable amount of discussion here as to the purposes of this agreement. I am not quite sure the record shows in one place just what all of the purposes are. There has been a considerable amount of questioning on individual purposes.

Mr. Highsaw: I don't want to duplicate a question, Mr. Examiner, but I would like for Mr. Roig to state now for the record what he conceives to be the chief purposes of the agreement. As I understand it, they have been to provide this new through service, and secondly, to settle outstanding differences between Pan American and Panagra and I am not clear whether there are any others.

If I have misstated those, I am willing to stand corrected.

The Witness: Those are the purposes. I think there are various purposes incidental to the first one, which you haven't referred to, but which is clear enough in the agree-

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[fol. 4169] ment itself.

By Mr. Highsaw:

Q. Do you wish to say any more on that point?

A. I don't think so.

Q. Which one of these purposes do you consider the most important to the Board's consideration of the agreement?

A. I think the purposes are quite closely interwoven, and of them to which I referred, without going into them, inseparably interwoven, but the outstanding purpose of this agreement is to enable Panagra to offer the public a through flight service to points on its route to the United States.

Q. This next question also deals with a point that I am not quite clear on. There have been several individual

questions asked about whether this settled specific disputes in specific dockets that are before the Board.

I am not clear whether you have given an answer on the question or whether or not this agreement makes an attempt to settle the basic question of the divided responsibility in the ownership, excepting so far as that may be reflected in the specific disputes that this agreement covers.

Mr. Gesell: I am not sure I understand that question. Could I have it read?

Examiner Wrenn: Read it back, please.

The Witness: Perhaps you could state it another way.

(Question read)

Mr. Gesell: I don't understand it.

Mr. Highsaw: I will rephrase the question.

Examiner Wrenn: All right, Mr. Highsaw.

By Mr. Highsaw:

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Fol. 4170 Q. What I have in mind is: In the decision in 779 the Board, at page 678 stated: "Deadlock between the two interests equally represented in the ownership of the company is always possible and certain to occur from time to time, especially in view of the special interests and the other activities of the two co-owners." The question to which I addressed myself is whether or not this agreement attempts to settle that specific problem which was referred to in that quoted language.

A. The agreements attempt to settle the one question of that character which over the years has proved insoluble. It goes further, however, and it not only provides for methods of settling the details of that question, but I think under the general arbitration clause, it does provide a fairly broad basis of determination of even some broader questions.

Q. That last phrase of yours is what I am not quite clear on. Would you mind clarifying that a little bit? Do you mean broader questions these specific points that are covered in the agreement such as advertising?

A. Well, you see, there is a method of avoiding deadlocks on all the questions incidental to the execution of the contract. So there can't be deadlocks under that heading. The contract itself takes care of the only question between the parties through the years that it hasn't been possible to settle between themselves.

Q. But the agreement does not, I take it then, attempt to settle any deadlock which might arise. There is no procedure in the agreement for that?

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[fol. 4171] A. No. "any", however I want to be sure of the sense in which that is used. In the sense that it means some, the answer is no. In the sense that it means "all" the answer is yes.

Q. Was any consideration given in the negotiation as to this agreement as to the settlement of that broad basic question of the possibility of deadlocks arising out of the fact that there were two equal co-owners?

A. I don't recall any discussion of any contract provision to that end. I don't think so.

Q. Mr. Roig, do you consider that as president of Panagra, you are better protected in the management of Panagra's affairs under agreement A here as implemented by Agreement B than you were under the old 1939 management agreement which has been introduced here in evidence?

A. On balance, I should say it was the same. There point
are some particular provisions that ~~splint~~ in both directions.

Basically the administrative function of the president under his agreement is the same as it was before. Actually that has been limited, in one respect, by the Pan American approval of the operations manager, and by the provisions for the removal of the president, which I testified about yesterday.

On the other side of the picture, under this agreement, the president is given certain authority to inaugurate processes leading to the determination of questions that arise under the contract, which is an advantage.

Q. You would say, then, on balance of all the results, that it comes out practically the same?

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fol. 4172 A. About the same.

Q. Mr. Roig, are you acquainted with the arbitration provisions of Agreement A, I believe paragraph 25? I wanted to ask you something about the American Arbitration Society but if you are not acquainted with that, I will address that to Mr. Friendly.

A. Yes, if you will, please. He knows more about it than I do.

Q. Does Paragraph 25 refer only to the arbitration of disputes arising under agreement A or Agreement B?

A. It was my understanding that 25 in "A" refers to disputes under that contract and that the analogous paragraph, No. 9 in "B", the disputes arising under "B".

Q. What would happen under Paragraph 5, Mr. Roig, if all the officers of the American Arbitration Society turned out to be in any way associated with one of the parties here?

A. Well, I guess that is something that hasn't been provided for. Lawyers always leave out something.

Q. Is it your understanding of these arbitration provisions, that if one of the parties refused to arbitrate, that the arbitration can go on without them and proceed to a successful conclusion, or to a conclusion, I should say?

A. I can't answer that question, but I should assume that the party could not block the arbitration by refusing to appear.

Mr. Gesell: Mr. Examiner, the New York statute is clear on that.

Mr. Highsaw: That they have to proceed?

Mr. Gesell: Yes.

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[fol. 4173] By Mr. Highsaw:

Q. Mr. Roig, I would like to take up with you for just a moment, this matter of the Board's power over the contract in the future, in event it should approve either one or both of these agreements.

I have understood you already to say that it was your understanding that the Board could in the future disapprove the contract if it should decide that it was in the public interest:

Do you know whether that fact was ever transmitted to the directors of Panagra while they were considering this contract?

A. I am sure the directors were fully conscious of it.

Q. You mean either you or Mr. Gesell told them of the fact?

A. I don't recall by what process, but after all, I am a director myself. I certainly was fully conscious of it.

Q. Mr. Roig, you wouldn't consider that a Board approval of either contract A or Contract B, if it should take jurisdiction of Contract B, would in any way create a moral or any other kind of obligation on the Board to continue the approval for any particular length of time?

A. Well, I think the Board is bound by law, not by moral obligation of that sort. I think whatever the legal implication is, that is what it would be.

Q. Would you, Mr. Roig, as president of Panagra, object to the amendment of the contract to reflect the Board's continuing jurisdiction over all of it or any part

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[fol. 4174] of it if that should prove to be the case?

A. What do you mean "if that should prove to be the case?"

Q. It is possible that the Board might decide that it didn't have continuing jurisdiction over it, but if the understanding that it does have continuing jurisdiction is true, would you object to the amendment of the contract to reflect that?

A. Well, I would like advice of counsel on that, but as far as the purely business angle of it is concerned, I would not object.

Q. Aside from advice of counsel, then, you would not object; is that your position?

A. Yes.

Q. For a moment I would like to refer to your statement about the extension of Panagra or Panagra coming into the United States, in Docket 525.

I believe you stated on gross examination not cross examination yes, I guess it was cross examination

Mr. Gesell: What page?

Mr. Highsaw: Early in Mr. Gambrell's cross examination. I am going to quote only one word.

Mr. Gesell: All right.

By Mr. Highsaw:

Q. —that you construed this agreement as meaning the Board's mandate in Docket 525 "in substance". I believe that is right.

A. Yes.

Q. Either "in substance" or "substantially." Yes?

[fol. 4175] A. Yes.

Q. Could you clarify that statement for us a little bit?

A. Is it the word "mandate" or "substantial"?

Q. Substantial.

A. I think the language of the Board's decision in 525 reads in terms of an extension of Panagra's route to the United States, and taking that literally, this is not an extension of Panagra's route, but substantially I consider it, especially from the public angle, as providing the public with the service contemplated by the Board's decision.

Q. Would you refer to Agreement A again, Mr. Rolph? There is one point in paragraph 1 that I don't believe has been covered.

If it has, I will withdraw the question. I am a little confused by the provision in there that the Panagra planes will be taken by Pan American and flown from the Canal Zone to the continental United States, and for return operations from Canal Zone over "the same route".

What I have in mind is in the event Pan American should be awarded domestic routes to other points in the United States, would that provision mean that when one of the Panagra planes was flown over those routes it would have to come back over the same way, couldn't be sent to another domestic point and come back over another route to Balboa?

A. Prima facie it would be the former, because if one of our planes was taken up to Chicago, for instance, we would want that to bring our Chicago traffic back, and not have it go around to New York and then leave the Chicago berth uncovered, but I suppose it wouldn't pre-

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[fol. 4176] vent a substitution as long as our plane was kept in position in the schedules.

Q. Do you contemplate, Mr. Roig, that the Panagra flight crews which are going to continue on these planes north of Balboa, will wear any different kind of uniforms than they have been, or will they have any sort of insignia on their uniforms to indicate their status?

A. I had assumed they would wear their Panagra uniforms and insignia which are—I think the uniforms are entirely identical, the insignia, almost so.

Q. There won't be any kind of Pan American insignia on them, then?

A. It hadn't occurred to me that there would. There can be.

Mr. Gesell: Mr. Highsaw understands, I am sure, from looking at the folder of our exhibits, what the similarity of the two insignia is. On the face of our exhibits appears both the Pan American and Panag. insignia. It is probably not in evidence, as Mr. Schneider points out.

Mr. Schneider: I am not pointing it out.

The Witness: You would have to look very closely to notice a difference.

Mr. Gesell: Those insignia are there.

By Mr. Highsaw:

Q. Referring to paragraph 2(b) of the agreement, Mr. Roig, what kind of operating experience is contemplated in that provision as a basis upon which to extend the operations to Boston and other points?

A. What kind of operating experience?

Q. That is right.

A. You mean flight operations?

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[fol. 4177] Q. Does that refer to some technical experience or difficulty in operating?

A. I don't see the clause.

Q. It is the next to-the-last line in paragraph 2(b).

A. "Provided operating or traffic experience demonstrates the desirability thereof."

Q. Yes.

A. I was thinking of something else. Well, the traffic experience, of course, means the volume of traffic offering between the points, and the operating experience means the standpoint of the feasibility of the stops from operating schedules and similar considerations.

In other words, the—it is not referring to technical operating technique, such as the CAA controls.

Q. What is your understanding, Mr. Roig, as to who will make the decision as to that operating and transfer experience under paragraph 2(b)?

A. I assume it would be made by mutual agreement, or failing that, by arbitration.

Q. That isn't specifically spelled out there.

A. No, but in a number of places where it isn't specifically stated, I assume is a matter of contract interpretation. Either party is entitled to take the position that traffic or operating experience does demonstrate.

Q. That is your understanding?

A. Yes. The other party may agree. If he doesn't, it is a controversy to go to arbitration.

(Off the record)

By Mr. Highsaw:

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[fol. 4178] Q. Mr. Roig, referring to paragraph 2(c) of the contract—Contract A—what is your understanding as to the phrase "In the light of competitive conditions" that appears therein?

A. Well, that has to be read together. "If that route is obtained through flights may be made by Panagra aircraft under this agreement between the Canal Zone and New Orleans to such extent as Panagra shall determine

appropriate from time to time in the light of competitive conditions and the relative amount of traffic available for such route."

I understand that to mean that if we decided that there was not enough traffic to justify our operation of the route either because of intensive competition which left no room for us, or for any other reason, we would not be required to provide the plane for that trip.

Q. Referring to paragraph 2(c). Mr. Roig: In the pre-hearing conference, Public Counsel raised some question about that, and your counsel had you specifically answer it, and as I understood, your answer was to the effect that this paragraph was for the purpose of preventing Pan American from using Panagra's planes on other routes.

You said it might have been an inartistic way of stating it, but that was the intention of the paragraph. Would you have any objection, then, to deleting or modifying or rewriting this paragraph in the event of approval of this agreement?

A. If it isn't entirely clear, I would have no objections, again subject to the opinion of counsel to prevent implications that might arise in some other direction, but I certainly have no objection to anything being clarified

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[fol. 4179] that needs it.

Q. It did contemplate that there might be an operation by Pan American over some other routes sometimes, didn't it?

I don't quite understand that "mutual consent"; what purpose that would serve otherwise.

A. I think perhaps Mr. Friendly or Mr. Gesell, who know the detailed discussion, may have a better answer. It might be, however, that the idea had been that: for instance, suppose a Panagra plane were at Miami and were, in normal course, scheduled to go tomorrow, let's say, back to Balboa, today it was ready to go and some situation—Pan American might have a shortage of equipment at the moment and it would be a convenient thing to send it over to Puerto Rico—there wouldn't be any objection to doing that, providing it was mutually agreed

to. That could be done irrespective of the contract, but Pan American couldn't just automatically decide that that would suit and send it over.

Q. If that were done, would all of the terms of this contract apply to the operation of that plane you were referring to?

A. No.

Q. It would not?

A. The terms of this contract would not apply, to my understanding, to any operation other than those specifically referred to in the contract.

Q. That would have to be a matter of separate agreement between Panagra and Pan American?

A. Yes. That would relate only to the physical use of the plane, not to the extension of the contract.

Q. If this provision 2(e) were left in Contract A, would

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fol. 41840 you contemplate that the kind of agreement you were talking about would be submitted to the Board for approval?

A. Well, in my Puerto Rico illustration, I presume that all that would happen would be that the plane would be chartered to Pan American.

Q. And you wouldn't contemplate submitting that kind of agreement?

A. No, unless a charter agreement has to be submitted. I don't know whether it does or not.

Q. Referring to Paragraph 8(a), Mr. Roig, at the top of page 4, the second sentence: The agreement there reads "subject only to operating or other conditions beyond or

Panagra's or PAA's control."

What is your understanding as to the other conditions?

A. That is simply the usual force majeure clause. It doesn't covers anything beyond our control.

Mr. Gesell: Mr. Gambrell, our Latin expert, isn't here.

By Mr. Highsaw:

Q. Referring to paragraph 4, the requirement in that paragraph that "Pan American and Panagra will consult to cooperate in establishing schedules for the benefit of through traffic," between the United States and points on Panagra's routes in South America. Does that contemplate that the schedules will be established primarily for the benefit of that traffic?

A. Yes. As appears in a number of places, the Panagra plane is intended to be so handled as to accomplish its intended purpose of providing through flights of Panagra traffic.

[fol. 4181] Mr. Gesell: You understand, Mr. Highsaw, that clause relates only to the schedules that are going to utilize Panagra aircraft. Not to all Pan American schedules.

Mr. Highsaw: That is between Miami and Balboa?

Mr. Gesell: Right.

The Witness: Yes.

By Mr. Highsaw:

Q. Is it your understanding that under this agreement Panagra has absolute control of schedules for this through operation in a case that you can't agree.

A. Yes. I think under this next language Panagra is given certainly an important role in the determination of the schedules on which our own plane is operated, and has no bearing on any other schedules that Pan American may put into service.

Q. Mr. Roig, I would like for you to clarify just a little bit. You said "an important role". I was wondering if you had control over it. As I read the agreement, if you and Pan American couldn't get together, then you could set the schedules, and I was just wondering whether that is a correct reading.

A. Well, it doesn't exactly say that. What it says is that Panagra shall fix the hours of arrival of northbound

through flights at the Canal Zone. That means that we determine when our plane northbound gets to the Canal Zone. That doesn't say that we fix the exact moment when Panair carries that through. It does imply that if we are going to have a through flight it should be carried through with reasonable dispatch, but it doesn't give us control

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[fol. 4182] of that schedule, and similarly southbound we decide when the plane will leave Balboa, and Pan Amer-

should have it

ican's there to go on at that point, but that doesn't enable us to fix the departure hours from New York or beyond.

Q. Pan American isn't obligated under the contract, then, to meet that schedule that you set?

A. Oh, yes. I think they are.

Q. They are?

A. Oh, yes.

Q. And if they fail to do it, it would be a violation of the contract, within your understanding?

A. Yes. Oh, yes.

Q. Would Pan American's failure to adjust their own schedules so as to meet those schedules that you set in and out of Balboa be a kind of dispute which you would regard as coming within arbitration provisions of the agreement?

A. Yes. You see, that involves such questions as how much time they are going to allow at the airport, how fast they are going to run the planes.

We have no control of that. That is their operation.

Q. But if they didn't set them to satisfy you, as meaning that you would be able to arbitrate that question within your understanding of paragraph 25?

A. Precisely; if we thought they were unreasonable.

Q. Turning to paragraph 6 of the agreement, Mr. Roig: In the handling of the passengers, passenger service and handling of traffic under that agreement, could you give us some sort of a clarification as to the time when Panagra's control ends going north and Pan American's control be-

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[fol. 4183] gins under this provision, and vice versa?

Mr. Gesell: Mr. Examiner, I think those questions are more appropriate for Mr. Kirkland and Captain Brock, who is concerned with the operating details of the Canal.

Mr. Highsaw: That is perfectly all right.

Mr. Gesell: It is complicated by the fact that as you know, Pan American already has a relation to Panagra's operation south of the Canal.

Examiner Wrenn: Let's take a five-minute recess.

(Short recess)

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[fol. 4184] Examiner Wrenn: You may proceed.

By Mr. Highsaw:

Q. I believe we were on paragraph 6, Mr. Roig. Is it your understanding of that agreement that any question relating to Pan American's obligations under this provision would be subject to arbitration under paragraph 25 if you were not satisfied with the way they were carrying them out?

A. Yes.

Q. Let's look for a moment at paragraph 8 of the agreement, Mr. Roig?

A. Yes.

Q. Just a moment. Before we go to 8, I would like to ask the same question with respect to paragraph 7 that I asked you with respect to paragraph 8.

If you weren't satisfied with the way Pan American was carrying out any of its obligations under that paragraph it is your understanding that you could take that to arbitration?

A. Yes.

Q. Referring to you paragraph 8 now, has there been anything done so far as you know in the development of the training plans which were referred to there.

A. Yes. Mr. Kirkland has been working on it and he can tell you exactly what primary progress has been made.

Q. In the pre-hearing conference Public Counsel raised the point about the provision in paragraph 8 relating to compensatin. Pan American for the training that is provided in that paragraph.

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[fol. 4185] Your counsel asked you yesterday your understanding with respect to the filing of any agreement for such compensation with the Board and I believe you stated that you had no objection if there was any legal reason or any reason to make it desirable. That last confused me just a little bit, Mr. Rose.

I wonder what you had in mind by that.

A. I had in mind if the Board considered they would like to have it that would make it desirable in my mind.

Q. Even though you didn't think you legally had to file it, is that right?

A. Yes.

Q. Referring now to paragraph 10 of the agreement, Mr. Rose, this may have been asked before. I am not quite sure. Is there at present some sort of a sales agency agreement between Pan American and Panagra?

A. Well, we touched on that this morning. Part of the services which Pan American render Panagra, for which they receive a management fee, about which you were speaking a moment ago, part of those services consist in acting as sales agent for Panagra in the United States.

But as I explained this morning in some detail on a basis which is quite different and in our opinion much less effective than the plan provided by this contract.

Q. Are they going to continue to be paid as a part of the management fee, or are you going to arrive at some separate basis of compensation?

A. That is one of the things that I had in mind specifically when I said that the management fee would have to be

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[fol. 4186] revised to accommodate itself to the changes effected by this agreement.

Q. Then you intend to reach some sort of a separate adjustment or agreement with respect to this matter?

A. Yes.

Q. I take it, it is also your understanding that any of the matters in paragraph 10 that are not carried out to your satisfaction can be made a subject of arbitration under paragraph 25 if you so desire.

A. Yes.

Mr. Gesell: If I may interrupt.

Examiner Wrenn: Certainly.

Mr. Gesell: While we are trying to understand the contracts. You will have in mind that there are more detailed provisions concerning how that is to be arbitrated in the Grace-Pan Corp. contract which discusses it.

Mr. Highsaw: You mean the procedure?

Mr. Gesell: Procedure for handling any unsatisfactory performance by PAA as general sales agent.

The Witness: Paragraph 4 of contract B.

Mr. Highsaw: It will be arbitrated under one of the procedures.

The Witness: Oh, yes.

Mr. Gesell: My point is that in this instance the standards are clearly defined in the other contract.

Mr. Highsaw: In contract B.

Mr. Gesell: Yes.

By Mr. Highsaw:

Q. Referring to Paragraph 11, Mr. Roig, there was con-

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[fol. 4187] siderable discussion about the personnel of Panagra referred to therein and I believe you gave quite an extended discussion as to the particular reasons why you felt they were needed.

The one point that wasn't clear in my mind was whose direction will those personnel be under when they are at the Pan American bases performing those services that you mentioned?

A. Panagra in that case.

Mr. Gesell: If there is any detail about that, Mr. DeGroot can give it.

Mr. Highsaw: I didn't want to go into detail. I just wanted to ask the general question.

By Mr. Highsaw:

Q. Is it your understanding that any question in regard to their performing those services that there might be a dispute about is subject to arbitration under these agreements before us.

A. Well, yes to the extent that it involves any relationship with Pan American. To the extent it involved any question between Panagra and its own employee that is a different matter, but if Pan American should fail to provide reasonable access for these persons or, in other words made it impossible for them to function, that would be a matter to be arbitrated with them.

You see some of these provisions like the one we just spoke of about termination of the sales agency where there is specific arbitration provision in paragraph 4 of contract B, some of those things are specifically covered by

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[fol. 4188] specific arbitration provisions but all of those others are covered by the general language of Section 25

and all

which says "Any ~~misunderstanding~~ disputes as to the construction or operation of this agreement shall be submitted to arbitration."

Q. Let me ask you something at this point—I was going to ask it later but it would probably be well to bring it up now.

Mr. Roig, what was the reason for according the sales agency problem a particular treatment in paragraph 4 of contract B in treating all of these other questions under the provisions of paragraph 25 of the contract A?

A. The sales agency, for example, and the management question, and the Grace President, are a different category than the other questions, partly because of their importance and partly because the machinery provided there is one which may result in termination of this contract.

The other cases don't contemplate winding up in a termination of the contract but in merely a termination of the dispute.

Q. You regarded the sales agency services then of particular importance in this contract?

A. Oh, yes, because it is the proper administration of that sales agency provision that enables Panagra to maintain its independent and competitive position.

Mr. Gesell: I think perhaps for clarity, Mr. Examiner, the witness misspoke in referring to the termination of the agreement when I think he meant the termination of

the sales agency arrangement or the termination of the management and I don't want any confusion about what the contract provides.

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[fol. 4189] The Witness: That is correct.

By Mr. Higlisaw:

Q. Then the sales agency part of it can be cut out of the contract without affecting the rest of it, is that right?

A. Under that provision.

Q. Paragraph 13, our old friend, is back, Mr. Roig. I believe that you said that one of the purposes of the kind of arrangement contemplated by paragraph 13 was to eliminate destructive competitive practices between PAA and Panagra.

If that is so, could you clarify and enumerate for the record some of the destructive competitive practices you have in mind as contrasted with what you might consider good competitive practices?

A. Well, I think an outstanding example of a destructive competitive practice was the—it is a good many years ago now—but when United and American began advertising which went over the highest mountains between the East and the West Coast of the United States—things which—practices and sales methods—which have a tendency to sacrifice the development of air traffic as a whole in favor of a momentary advantage of a particular company. That is a rather outstanding kind of thing that I call destructive competition.

Q. Do you have in mind anything else particularly for that?

A. Well, there are, in transportation history, a good

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[fol. 4190] approval of this contract would not represent in this principle or substance an approval by the Board of a concept of an agreement such as involved in paragraph 13(a).

We would consider that would have to be looked at on its merits from A to Z under the conditions which prevail at that time under the terms of the agreement.

I presume Pan American would agree to that stipulation.

Mr. Hamilton: Yes, I would join in that stipulation on the part of Pan American.

Examiner Wrenn: All right. Is that sufficient for you, Mr. Highsaw?

Mr. Highsaw: That is sufficient.

By Mr. Highsaw:

Q. Referring to paragraph 19 of the agreement, Mr. Roig: there was considerable discussion in cross examination about what the Board of directors of Panagra could or could not do under this section and there was some specific talk about equipment, but I don't believe that the line of demarcation was ever very clearly drawn and I would like for you to clarify it as much as you possibly could.

A. Well, my understanding is that the Board of Directors of Panagra retains all the powers and prerogatives which pertain to a board of directors under corporate law, except as that may be modified by this contract in these limited respects.

Q. Just exactly what is your understanding as to those limited respects?

A. Well, they are stated here. It says: "Pan American agrees that any action to make any claim or take any

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[fol. 4191] position or to enforce any rights of Panagra under this agreement may be taken on behalf of Panagra by its President."

I understand that to mean that if such a claim arises, or the necessity of taking such a position or enforcing any rights of Panagra under this agreement, that instead of going to the Board of directors and getting their approval to corporate action, that in those particular kind of instances the President is authorized to act on his own initiative.

Q. Just one more point, Mr. Roig:

Turning to paragraph 14 of the agreement: at the prehearing conference Public Counsel raised some question about agreements for the relative contributions to the advertising that is provided in there.

Yesterday your counsel asked you to state your position on that, and as I understood it, you stated your position to be that such agreements for the division of the relative contributions contemplated there will automatically come before the Board in its first rate case.

A. Yes.

Q. Do I understand from that that you do not intend to file any agreement concerning such contributions for the Board's approval under Section 412?

A. Well, if counsel advises that the filing of such an agreement were required, of course, that would be done too.

Mr. Highsaw: Will counsel state now what their contemplation is on that score?

Mr. Geseli: I have never been able to understand the

[fol. 4192] point Mr. Highsaw raises. If the Board of Directors of Panagra meets and decides that Panagra will contribute "X" dollars to a joint advertising program which has been laid out by Pan American and Panagra. I have not assumed that that action of the Board of Directors required filing of 412. I had also not assumed that if Mr. DeGroot and some representative of Pan American get together and discuss the question of how Pan American's and Panagra's services and routes and schedules will be advertised in the time table, that when they get back they both have to sit down and draw up a memorandum and file it under 412 and get approval.

The net effect of it from my point of view, and the advice that I would give, unless some basic program is decided upon, involving some continuing allocation, I would advise that it is not necessary to file under 412.

Mr. Highsaw: That is sufficient answer.

Thank you very much, Mr. Roig.

Examiner Wrenn: Do you have anything on redirect, Mr. Gesell?

Redirect examination.

By Mr. Gesell:

Q. You stated on questioning by Mr. Hickey, Mr. Roig, that speaking for Panagra you were anxious to go into this agreement for the purpose of facilitating Panagra's ability to compete with other carriers, and explained your reasons in some detail.

Mr. Hickey was quite careful on three occasions to say that you were speaking for Panagra. Would your answer be the same if you were speaking for Grace?

[fol. 4193] A. Absolutely. I have been with W. R. Grace and Company thirty years. I have lived in an atmosphere of competition all my life. I wouldn't know how to live in any other atmosphere. I have always believed in competition and practiced it.

I was for a number of years in charge of the import department of W. R. Grace and Company, dealing in big basic commodities—coffee, cotton, wool—things which are the most competitive articles in the world.

I have always been in competitive business. Grace Line has always had competition. Panagra has generally had competition. Certainly W. R. Grace and Company's whole career and whole philosophy has been one of living in a world of competition.

Q. Was it your intention or the intention of Panagra or the intention of Grace to enter into this agreement for the purpose of keeping competitors off your neck?

A. Well, not in any such sense as that might sound. It was for the purpose of enabling us to maintain our own position in competition with Pan American and Grace Line and all comers, and without through service which this provided we just wouldn't be in a position to do that.

On that whole subject of competition and the attitude of Grace on the subject I might say that when the question of a chosen instrument was up I came down here as an officer of W. R. Grace and Company and testified before the Senate Committee against the idea of a chosen instrument and in favor of a competitive philosophy in aviation.

I don't think competition consists in me just tying my

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[fol. 4194] hands behind my back and not being able to provide the public with a competitive service when everybody else is being put in a position to do it.

Q. Has Panagra or Grace denied facilities to Braniff Airways in the development of its routes in South America?

A. On the contrary, we have offered them our facilities and they are using them.

Q. What facilities do you speak of?

A. I speak of ground facilities and radio, and line maintenance on this survey flight.

Q. Do you consider that Panagra will be in a position to compete with Braniff or with the Braniff-National service, providing through connection at Havana in the event your traffic does not go through north of the Canal on your own planes?

A. I do not think in that case we would be able to compete.

Q. Mr. Schneider asked you whether Houston was left out of the agreement deliberately and you said it was left out deliberately. What did you mean?

A. Well, I think what I meant was that when we were considering service to different ports of entry, Houston was mentioned as one possibility. It was left out because we didn't feel that we could serve all the ports of entry with adequate traffic from our route in South America.

Q. Was it left out on any notion that you did not want to compete with Braniff?

A. Oh, no.

Q. Does Panagra have American competition from non-

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[fol. 4195] scheduled operators in this region—charter operators?

A. Yes, there have been a number of charter operators flying down there—Skyways—and some of them are now seeking to regularize their operations.

I think both Skyways and Veterans Airways have applied for certificates in our territory.

Q. Do you consider the provision of the agreement that the through flights must initiate at Lima or a point south

thereof as restrictive of your competitive position in any way?

A. Not at all.

Q. Mr. Gambrell, in asking you about the competitive exhibit in this proceeding, I think it is Exhibit 4, was quite careful not to ask you about BOAC.

Do you contemplate that —

Mr. Gambrell: I object, Mr. Examiner, to Mr. Gesell's talking about my being quite careful not to do something. I don't think there is any justification for any such statement.

Examiner Wrenn: You don't object to the fact that you did not ask about BOAC, do you? Is there any question there?

Mr. Gambrell: I just object to his characterizing my question in any such way.

By Mr. Gesell:

Q. Mr. Gambrell did not ask you about BOAC in discussion of Exhibit 4.

Do you consider that you will have competition from BOAC?

A. Definitely. We have it today. That isn't anything

[fol. 4196] in the future. The British line is operating today between our most dense traffic centers—Buenos Aires and Santiago.

Under one of these international agreements, I think the Bermuda one, they have been authorized to operate a route from New York down the West Coast paralleling our international route all the way.

Q. Have you any reason to believe that American citizens and citizens of other nationalities such as you carry on the Panagra route will be carried on BOAC?

A. Certainly they will. The Chairman of the CAB just traveled on that line to Europe. It is a perfectly good line and a well run line. Lots of Americans travel on it.

Q. Mr. Gambrell asked you concerning Grace Line, whether or not it would seek to divert passengers from Panagra to Grace Line.

Would you consider that good business?

A. Well, I consider that the Grace Line will seek to sell traffic by water and will offer such inducements as it has in the way of an ocean voyage which is an appeal to a great many people.

In doing that, they will not in any way, remotely or to the slightest extent, interfere with Panagra's seeking to sell a parallel trip, if you like, by air.

Q. Would you say that the extent of the activity of the Grace organization on the West Coast of South America, in developing traffic for Panagra has lessened or increased over the years?

A. I think it has increased, and I think in the earlier

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[fol. 4197] years it was one of the things that had perhaps more than any single thing to do with the rapid development or the rapid acceptance of air travel in that area.

Mr. Gesell: That is all.

The Witness: Mr. Examiner—

Examiner Wrenn: If the witness has a firm statement to make, go ahead.

The Witness: All I was about to say before leaving the stand, in looking at the transcript I noticed some corrections that ought to be made in my testimony.

For instance, it stated that the director's meeting which approved this contract was held on June 30. It ought to be on July 30. There are quite a number of other points. I would like the opportunity of having the record correct.

Examiner Wrenn: On that point if you have an opportunity to go through during the course of this hearing and file them before the end of it and we will do so and if not, provision will be made whereby you can file them after the close of the hearing.

Mr. Schneider: May we conduct the usual recross examination?

Examiner Wrenn: Not unless there are points arising out of what Mr. Gesell has brought up.

Mr. Schneider: I will let someone object if I violate that principle but may I proceed on the recross examination?

Examiner Wrenn: Does it arise out of points that have been brought up subsequently?

Mr. Schneider: I think so or I wouldn't be asking them.

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[fol. 4198] Mr. Examiner.

Examiner Wrenn: All right.

Recross examination.

By Mr. Schneider:

Q. You stated in answer to a question by Mr. Gesell that you didn't think Panagra could compete effectively with a National-Braniff combination by connection at Havana. Will you give your reasons?

A. I understood him to say that we couldn't compete effectively with the Braniff-National hookup if we remained deadended at Balboa.

Q. That is right.

A. The reason is that, speaking merely now of competition with Braniff, that Braniff has direct connection to some points in the United States, direct through plane, through carrier service, that through National at Havana they have a hookup with Eastern Territory and with Chicago and Southern at the New Orleans territory, and I would expect—I might be wrong in this—that it would not be long before there would be some interchange or some agreement like this worked out between those companies, because I am sure you will find before you have been operating as long as I have, that that is the way to run that kind of service, and that you have got to have something to get over this breaking point.

Q. All right.

Now, if the agreement A and B are approved, you then would be able to fly your ship as far as Miami and will be

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[fol. 4199] able to provide two plane service to the eastern part of the United States, will you not?

A. That is right.

Q. And that will be substantially the same type of service that Braniff and National will be able to offer in the absence of an interchange between the eastern part of the

United States and West Coast of South America, is that correct?

A. I am not sure I quite understand your question.

Examiner Wrenn: Read the question.

(Question read)

By Mr. Schneider:

Q. Do you understand the question, Mr. Roig? If you don't I will be glad to rephrase it.

A. I am afraid I don't.

Q. All right. There was a question preliminary to that to this effect, that if agreement A and B are approved here, Panagra will then be in a position to provide two plane service between the West Coast of South America and New York?

A. Yes.

Q. That is by connection with carriers at Miami?

A. That is right.

Q. And that will be substantially the same type of service as Braniff and National can provide between the same points in the absence of an interchange?

A. Yes.

Q. Now, if Pan American is successful in its domestic route case, in being extended from Miami to New York,

[fol. 4200] Panagra then will be in a position of providing one plane service from the West Coast of South America to New York, will they not?

A. That is right.

Q. Would you at that time oppose an interchange between Braniff and National which would seek to provide the same one plane service between the same points?

A. Well, that is a hypothetical question based on two things that are not yet in existence. I think I testified yesterday—and I stand by it—that I would not, in principle, oppose this type of an agreement in any situation where it was comparable, and I think the one you speak of would be comparable.

Q. Even if it would be competitive?

A. Now, there might be other factors in connection with it that will present themselves at that time, and I certainly am not going to make any commitment one way or the other, but my opinion would be that on principle I couldn't see any objection to that sort of arrangement.

Mr. Schneider: That is all.

Examiner Wrenn: Anything further of the witness? You had a question, Mr. Highsaw?

Mr. Highsaw: I want to clear up one point here. I believe Mr. Roig said he had competition now with BOAC and then he mentioned something about BOAC flying between Buenos Aires and Santiago and it left me in a little doubt as to whether or not they were flying between Balboa and down the West Coast of South America at the present time.

The Witness: Not as yet. At the present time they oper-

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[fol. 4201] ate—the subsidiary has some other name—but the British Line operates between London and Buenos Aires, and then extends over to Santiago.

Mr. Highsaw: Thank you very much.

Mr. Hickey: Mr. Examiner, I have one question suggested by the redirect.

Examiner Wrenn: All right, Mr. Hickey.

Recross examination.

By Mr. Hickey:

Q. Mr. Roig, I believe you just stated to Mr. Gesell that you favored competition, is that correct?

A. Yes.

Q. As, among other reasons, being in the public interest?

A. Yes.

Q. And you also favor this agreement, do you not?

A. Yes.

Q. And you testified that by this agreement competition between Panagra and Pan American north of Balboa to the United States was impossible, is that correct?

A. By a belief in competition I—

Q. Excuse me. Didn't you testify that it was impossible?

A. The record will show exactly what I testified. I think I testified that there never had been competition between these companies between those points and that that condition would remain unchanged under these agreements.

Q. These agreements necessarily precluded competition did they not, between those two points?

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[fol. 4202] Examiner Wrenn: Between those two carriers.

Mr. Hickey: Between those two carriers and these points.

A. So long as these agreements are functioning and Panagra has not been granted a route in that area, which I, for one, have tried for a good many years unsuccessfully to get, there would not be competition, but I don't consider I am under any obligation to compete with people who are flying between London and Paris, some place where I have never flown before, between Shanghai and Calcutta. Over the route I have been flying, that I have been certified to operate. This agreement will definitely and substantially increase our ability to compete with Pan American Airways for Buenos Aires traffic and not only with Buenos Aires but with other competitors.

Q. In other words, your belief in competition amounts to this: that you are willing to sacrifice a competitive opportunity for the sake of getting Panagra's line extended to the United States, isn't that correct?

Mr. Gesell: That is an argumentative question.

A. That is not correct, Mr. Hickey, and I really don't feel it is a fair question. I don't consider that I am sacrificing something that I have never had, that I have worn my hair grey and my bones ~~bear~~ are trying to get, a great deal of the effort being not only with Pan American Airways but with the Civil Aeronautics Board and the United States Courts, and have been at every stage of the game refused.

Now, how could you say in the light of my performance

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[fol. 4203] and my effort to get this route, that I am now

is an
prepared to sacrifice for it what you say ~~is~~ elimination of competition. I don't agree with that. I consider it an absolutely unfair conclusion.

Q. I don't consider it unfair at all.

A. That is my opinion.

Examiner Wrenn: Let's don't argue with the witness.

Mr. Hickey: I am not arguing, Mr. Examiner. I am merely trying to clarify my statement here.

Examiner Wrenn: Go ahead.

By Mr. Hickey:

Q. I quote agree that your efforts have been rigorous and that you have made every effort to obtain it. I am merely stating that what you have done now, you have merely precluded yourself from making the effort that you have made so arduously in the past. That is a fact, is it not?

A. Well, I expect I have precluded myself for the time being, but there comes a time when you just can't bang your head against a stone wall forever.

When everybody who has authority to give you what you want refuses to give it to you, you have to do something to improve the competitive position in the rest of your picture.

Mr. Gesell: When you say that you precluded that you mean, do you not, if the Board determines that this agreement and arrangement furthers the objectives of the Act?

A. Certainly.

Mr. Hickey: As far as Mr. Roig is concerned he has precluded himself. He signed the agreement as far as Panagra

[fol. 4204] is concerned. That is all.

Examiner Wrenn: All right. You may be excused Mr. Roig.

Thank you, sir.

(Witness excused)

(Discussion off the record)

Mr. Schneider: Mr. Examiner, I would like to state now for the benefit of other parties that Braniff Airways does not expect to put on an affirmative case in view of the stipulation agreed upon this morning, but I would like to state in explanation of some of the questions I have asked, which involved a proposed or contemplated interchange in the future between National and Braniff, that no such agreement is presently under contemplation nor have any discussions been held between the two companies. I raised the question only as a hypothetical question.

Examiner Wrenn: Now, as a matter of procedure, Mr. Friendly will go for Pan American at this time.

Mr. Hamilton: That is right.

Examiner Wrenn: And you will alternate back and forth rather than the Pan American witnesses testifying consecutively?

Mr. Hamilton: Yes. If that is agreeable.

Examiner Wrenn: That is quite agreeable.

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 421

HENRY J. FRIENDLY, was called as a witness, having been first duly sworn, was examined and testified as follows:

Mr. Hamilton: If the Examiner please, I have here a document entitled, "Experience and Qualifications of Henry

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[fol. 4205] J. Friendly, which I should like to have marked for identification.

Examiner Wrenn: All right. That will accompany the combined exhibits of Pan American and Panagra which have previously been marked.

Mr. Hamilton: It has not been marked.

Examiner Wrenn: Now, but I am directing that it accompany the exhibits which have previously been filed.

Mr. Hamilton: And will be marked consecutively.

Examiner Wrenn: That is right. That will be Exhibit 31.

(Pan American's Exhibit No. 31 was marked for identification.)

Direct examination.

By Mr. Hamilton:

Q. Mr. Friendly, are your education and experience correctly stated in Exhibit No. 31?

A. Yes, they are correctly stated, but I would like to add a little bit to them.

Q. All right.

A. I think that, except for Mr. Trippe, who is leaving tomorrow for Europe to attend some meetings connected with International Air Transportation, my knowledge and experience relating to Panagra go back longer than any officer of Pan American at the present time—back to 1929, I think about a month after I first had any acquaintance with Pan American.

Since that time I have had the privilege of conducting certain legal matters for Panagra in addition to those that I have conducted for Pan American, including, if I might

[fol. 4206] mention one, assisting Mr. Roig in the work that he described in connection with the elimination of German Airlines in Bolivia and Ecuador.

For a time I was a director of Panagra. I think that I might add also, since it is a little unusual for me to be on this side of the table, two special reasons that led me to appear here.

One is that, as has appeared from testimony that has already been given, I did play an active part in the making of this agreement, and felt that my testimony might well be required in any event.

The other is a somewhat personal note which I hesitate a little bit to advance, and yet do, perhaps in anticipation of possibly becoming somewhat intense about this later on:

I feel very proud of having played a part in the conclusion of this agreement. I think it was one of the greatest services that I have ever been able to render and that it was a service not simply to Pan American but to the public, and I felt that, having carried it as far as I had, that I ought to do anything I could to make my knowledge of it available to the Examiners and to the Board.

Q. Mr. Friendly, I direct your attention to Exhibits numbered 1, 4, 5 and 25. Those are the PAA-Panagra exhibits which you are sponsoring—and ask you if they are true and correct?

A. Yes, they are to the best of my knowledge, with one exception, I think.

Exhibit 4, which shows the competitive picture, shows the lines of TACA de Colombia extending only as far south

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as

[fol. 4207] Guayaquil. Whether or not that was correct at the time the exhibit was prepared, I do not know, but I am informed that they now extend as far south as Lima.

Q. Mr. Friendly, with reference to the agreement, is it the intention of Pan American, in entering into that agreement, to impose any restraints on air transportation?

A. No. It was the intention of Pan American to free air transportation from a barrier that it is now subject to, namely, the necessity of changing from one plane to another at Balboa.

Q. Was it the intention of Pan American, in entering into that agreement, to impose any restraint on Panagra?

A. No. On the contrary, it was our intention to enhance Panagra's ability to obtain traffic, and to obtain it not only against other companies but against Pan American.

Q. Was it the intention of Pan American to impose any restraint on Braniff?

A. Certainly not. It was our intention simply to develop a method whereby Pan American and Panagra, together, could handle more effectively, and give better service to the public, traffic which they have been authorized to handle for years, in competition with Braniff. There was some reference to the phrase "getting together" and it is perfectly true that we got together, but I want to make it perfectly clear that all we got together to do was to provide the same type of through plane service on our routes which the Civil Aeronautics Board has permitted Braniff to provide on its route.

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[fol. 4208] Q. Was it the intention of Pan American to impose any restraints on Eastern lines?

A. Not in the slightest degree. As far as Eastern Air-

lines' present operations are concerned, it will be decidedly beneficial, in my opinion.

Q. Do you have any additional statement to make as to why you deem the agreement in the public interest?

A. It seems to me that we might get back to what I thought, at least yesterday, was the forgotten man in this case—I mean the man who wants to go from the United States to Lima or Santiago or via that route to Buenos Aires, or the Chilean or Peruvian or Bolivian who wants to come to this country.

I think what Mr. Patterson used to call the man with the suitcase. We have been hearing a great deal about Braniff and Eastern and Pan American and Panagra, but the basic purpose of the agreement, and its greatest advantage is for the fellow who is going down to South America or coming from it and who, but for this agreement, might be put out at Balboa in the middle of the night, and would be put out at some time.

It seems to me very hard to look at a map of the routes of these companies and not have this idea of the desirability of this type of arrangement impress itself on one.

Q. Mr. Friendly, I now direct your attention to the following question: After the failure of the 1941 negotiations which Mr. Roig has referred to, why wasn't the matter pursued further?

A. I should say there were two reasons. In the first

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[fol. 4209] place, the 1944 negotiations failed, either late in November or early in December of that year. There was an important event in the history of this country right at that time and one which made it perfectly clear—at least made it clear within a few weeks—that the 4-engine equipment which we had been talking about was not going to be available to the airlines for some time to come.

Also, at the time that the negotiations were broken off, Grace initiated the litigation with which we are familiar. I think Docket 770 was filed the very day or the day after a letter from Mr. Roig announcing his dissatisfaction with the draft which has been identified here.

While that litigation was pending, we felt that on the whole, there was very little possibility, even after the 4-

engined equipment situation commenced to change—and that wasn't for some years—we felt that there was relatively little possibility that through service arrangements would be very seriously entertained.

Q. What led to the discussions that culminated in this agreement?

A. Mr. Roig has stated the facts as to what transpired, completely and accurately, and I have no reason to add or subtract anything as far as that statement is concerned, except, as I assume you wish me to, to give some of the thinking that occurred on the Pan American side, and which led to the advancing of the proposal at the Panagra Board meeting in early June.

As has appeared from other testimony, the idea of some type of through flight agreement was not new, had been

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[fol. 4210] discussed at various times in the past, but had not been actively discussed recently for the reasons that I have mentioned.

However, we felt that with the coming down of the Latin American decision and the other events that Mr. Roig described, that we ought to give further thought to that possibility of solution.

There were a number of reasons for that. One was that, as has been referred to, the certification of Braniff and the growing competition made it evident that as a business matter, arrangements ought to be made to provide this through service if Panagra and Pan American were to keep any competitive place in this trade.

The other idea, or the other fact, rather, was that it seemed to us that the certification of Braniff put a good deal of different light on an idea that had been talked about a good deal. It had been talked about by Grace, and some of the documents that have been referred to have been talked about in other quarters; namely, the idea of making Panagra, in some form or other, Pan American's competitor in South America.

It seemed to us that the certification of Braniff completely changed that. The president had directed that Braniff be put in practically every point on Panagra's route except in Chile—every important point.

Also, to Rio and Sao Paulo, the two most important traffic centers in Brazil on Pan American's route; and to Buenos Aires on the route of both Pan American and Panagra, and it appeared to us that the pattern which was now formulating, and which the president intended to have

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[fol. 4211] formulated, was one in which Pan American and Panagra, in cooperation, should compete against Braniff, and the connection at Havana with which Braniff had been provided.

We were impressed also with those remarks in the Board's opinion addressed to the owners of Panagra, to which Mr. Roig referred, and it was for those reasons that we felt, not only that we ought to do anything within our power to advance a proposal that might accomplish the result of making this through service possible, but also that it might be received by our partners, and that it might be developed, and the result was that Mr. Dean and I made the proposal, and I think Mr. Roig has stated what happened after it.

Q. With reference to the agreement, would you care to elaborate in greater detail the specific advantages accruing to the public from the agreement?

A. Well, I mentioned one of them once, but I am going to mention it again, although it is so obvious that somehow it gets buried, and that is that thousands of people will be spared the inconvenience of transferring from one plane to another at Balboa.

Another advantage—and I call it a public advantage—is that it is vital, in our opinion, to enable Pan American and Panagra to maintain and develop the through service to the points to which they are already certificated, against the competition that they are now confronted with, the kind of service that the public interest requires that they render.

Q. What is that competition?

A. Well, I want to start off with Braniff, because it seems to me that there has been some failure to appreciate

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[fol. 4212] the strength of Braniff's position. We have heard some questions of Pan American dominating the east coast, and Pan American dominating the west coast, and there hasn't been much mention of the fact that Braniff

reaches every worthwhile traffic point on both the east and west coasts, except Chile and Montevideo perhaps, which they can reach quite easily through Buenos Aires.

Then we have heard a good deal about the great proportion of the South American traffic that comes from the east of the Mississippi. I think in that connection it is very illuminating to look at the figures in Exhibit PAA-8. I am referring to those at the bottom of the page which show, for the year 1945 and the first six months of 1946 the distribution of the Pan American traffic delivered to Panagra and received from Panagra through the various gateways.

Now, when you analyze those figures, taking the 18 months' period as a whole, you will see that 42 per cent of the Panagra traffic, which is no mean proportion, was from the Western Gateways and not from Miami.

Now, I may add in that same connection—I would like to comment on some of the questions that were addressed to the map which is P-A-5, showing the Braniff territory, and there was some suggestion made that that had been overstated.

In that connection, I would like to call the Examiner's attention—

Mr. Hamilton: I wonder if we could have that marked for identification?

The Witness: I have before me Braniff Exhibits in Dockets 525 and I am referring specifically to Exhibit No. B-3.

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[fol. 4213] Mr. Hamilton: Mr. Examiner, is there any objection to the stipulation of that exhibit into the record?

Mr. Schneider: I will surprise you and say "no".

Mr. Gambrell: I am not familiar with it. Would it be possible for me to see it?

Mr. Hamilton: Mr. Examiner, then I take it it is agreeable?

Examiner Wrenn: I don't hear an objection.

Mr. Gambrell: I don't see the weight of it, but I don't see any reason to object.

Examiner Wrenn: Did you want to stipulate it into the record?

Mr. Hamilton: Yes, if there is no objection.

Mr. Gambrell: Without admitting the weight of it at all.

Examiner Wrena: All right. It may be incorporated by reference, then.

The Witness: I would comment briefly on it. Braniff there showed two types of generating areas, one which they call primary and the other secondary.

The primary area which they showed for themselves included all of the states except the territory west of the Mississippi and of that territory it included Minnesota, Iowa, and the northwestern half of Missouri.

For the second area, half of the generating area it included Wisconsin, Michigan, Illinois, the balance of Missouri, and Arkansas.

It did not include Tennessee although at that time Bran-

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[fol. 4214] iff was not yet certificated to Tennessee.

Now, so much for the area which Braniff reaches directly. Then we have superimposed upon that, Braniff's ability to reach the eastern area through its connection with National. While, of course we fully accept Mr. Schneider's statement that no discussions looking toward an interchange agreement have yet been made, I think it is only realistic for us and for the Board to assume that these two parties who were put together by the Board—put together at Havana, I mean—will make the most effective arrangements possible. That means that Braniff with an interchange with National would have through plane service to very large areas of the United States as indicated in this map—or could have.

Then there is another factor which has been mentioned, but I think not sufficiently emphasized, and that is the Chicago and Southern connection at Havana, which is important because it gives Braniff a shorter route than its own to Chicago and access to the very important centers of Detroit and St. Louis.

Now, when you add upon all that the fact that Braniff and National and Chicago and Southern would have the advantage of getting to the traffic at the source—that is, the United States-originated portion of the traffic at the source—whereas Pan American and Panagra, at least at

present, are dependent on connecting carriers, most of whom are active competitors, at least in other fields.

I think that is the story on the American-flag end.

Mr. Hamilton: Mr. Examiner, I wonder if it would be appropriate for us to adjourn at this time?

Examiner Wrenn: All right. Mr. Highsaw, did you have

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[fol. 4215] a statement you wanted on the record?

Mr. Highsaw: Mr. Examiner, I would like to make one statement with respect to the stipulation between the Grace and Pan American Corp. that was filed the other day, with respect to their becoming parties.

I don't believe that ordinarily Public Counsel would need to say anything about that stipulation, but because of the fact that we had considerable discussion, and my discussion of it might be taken as a statement that that might be a way to solve the problem, I would like to say that I have been examining the stipulation and there have been some doubts created in my mind as to whether or not that does solve the problem, and it may well be that the parties should follow a procedure of filing the agreements involved subject to receiving their right to contest the jurisdiction of the Board rather than the procedure outlined in that stipulation.

There is a very serious question in my mind as to whether or not the parties can put an agreement before the Board without actually filing it as they have tried to do in this stipulation, and then having the filing relate back ab initio.

I am not taking any position on that at this moment, but examination of the stipulation has brought that to my mind and I would like for counsel for Pan American and Panagra to consider that because I think it was primarily their problem.

I just didn't want to feel bound by it in case that question arose.

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[fol. 4216] Examiner Wrenn: We will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 4:55 o'clock p. m., hearing in above-entitled matter adjourned, to reconvene tomorrow morning, October 10, 1946, at 10 o'clock.)

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[fol. 4217]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket No. 2423

In the Matter of:

PAN AMERICAN-PANAGRA AGREEMENT

Room A, Departmental Auditorium
Washington, D.C.
Thursday, October 10, 1946

The above-entitled matter came on for hearing at 10 o'clock a.m., pursuant to adjournment.

BEFORE:

THOMAS L. WRENN, and
WARREN E. BAKER,
Examiners.

APPEARANCES:

As heretofore noted.

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[fol. 4218]

PROCEEDINGS

Examiner Wrenn: Will you please come to order?

HENRY J. FRIENDLY, resumed the stand, was examined and testified as follows:

Direct examination (Continued).

By Mr. Hamilton:

Q. Mr. Friendly, when the hearing adjourned yesterday, you just finished describing the American flag carrier com-

petition confronting Pan American and Panagra on their service from Miami by the Canal Zone to points on Panagra's route on the West Coast of South America.

I would like to ask you now to describe the foreign flag competition confronting these carriers in this area?

A. I will try to be brief about it because a good deal of the ground has been covered. I think perhaps the most important of the foreign competitors is BOAC, which has a

route from New York through Havana and various points in the Caribbean to every important point in South America as far as Santiago served by Panagra, ~~was~~ given by the Bermuda agreement, and which, under other agreements that it has with South American countries goes on from Santiago to Buenos Aires and from there to Rio and Europe.

We expect that BOAC on any route that it operates is going to be a very important competitor. The importance of it from the standpoint of this proceeding is that BOAC's service from New York to places on Panagra's route in South America will be a through one plane service whereas without this agreement Panagra and Pan American will

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[fol. 4219] have a three plane connecting carrier service.

It may be of some interest also to point out the importance of the BOAC route not only from the standpoint of United States-Latin America travel but also from the standpoint of travel between Europe and the West Coast of South America via the United States.

BOAC is in a position to give a one-carrier service to that traffic whereas under the present set up the United States would try to compete with a four carrier combination.

Then starting at the other end, we have the Argentine company, FAMA, which will undoubtedly have a route up the West Coast to the Continental United States.

As to what points may not be certain but New York definitely, and ~~perhaps~~ probably others.

FAMA will have the same advantage in the way of access to traffic in the Argentine, traffic originated in the

Argentine, as I have already mentioned in the case of the domestic airlines for traffic in the United States.

I won't repeat that story for the Chilean Company and the Peruvian Company. The situation I should say would be the same as PAMA's, with respect to their particular countries.

I think it is worth making one point, however, about the two Colombian Companies—TACA and Aviança, because there was some suggestion that they were not effective competitors by virtue of the fact that they, at least their present authorizations, do not cover service between the United States and the Canal Zone.

The fact is nevertheless that their routes reach Ecuador

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(fol. 4220) and Peru, and there the mileage via Bogota is very slightly, if any, greater than via the Canal Zone.

There is no peculiar virtue about going through the Canal Zone as a means of getting to the West Coast of South America. It seems to me that, summing up the picture of domestic and foreign competition, it is pretty clear that without this agreement, Pan American and Panagra are in a perfectly hopeless position to compete for the West Coast traffic.

Q. In your description of competition the competition that Panagra and Pan American are facing upon this routes you mean that they are facing mere competition from other American flag carriers and from foreign flag carriers in terms of number of carriers, or are you also taking into account the traffic potential?

A. I have been talking thus far about the number of carriers that they are subject to, but, of course, it is true that that is only part of the problem, and that the rest of the problem is the thinness of the traffic which has to be considered in connection with the number of these carriers.

I think those figures ought to be borne in mind, because we sometimes forget them. I think the Crozier Report shows that the 1938 sea traffic of all classes, including the third class and the 1941 air traffic to all the countries on Panagra's route—I should say between the United States and all countries on Panagra's route—and including the whole of the Argentine traffic, amounted to about 18 [illegible]

passengers in each direction per day, which is about half

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[fol. 4221] what would be hauled in one Pullman car that is going between New York and Miami, and just to give some idea what a different order of magnitude that is, the flow of traffic by surface and air on the route to Miami, simply from points north of Washington on the East Coast —and I am talking now about only traffic to Miami and not about traffic to points between Washington and Miami or between other points on the route, was 223,000 a year or 305 passengers in each direction per day, and, of course, there, I am using the figures of the 1933 rail and bus traffic which ~~were~~ was the lowest point of the depression.

It seems to me that those historic figures show that the air traffic that we are talking about to the West Coast of South America, isn't something that now exists or has existed in any volume. It is something that has got to be developed and that in order to develop it successfully, Pan American and Panagra ought not to be handicapped by this purely artificial barrier of a necessity of changing planes at Balboa if the public interest is to be served as it ought to be.

Q. Mr. Friendly, I would like to ask you now why Pan American was willing to enter into this agreement with Panagra, although it had long opposed Panagra's application for a certificate into the United States?

A. Well, I think I can sum it up by saying that the agreement preserves precisely those relationships which the granting of a certificate to Panagra would have destroyed.

Q. Do you want to elaborate on that?

A. Yes, I can. I would like to emphasize, in the first

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[fol. 4222] place that Pan American's position with respect to Panagra's applying for a certificate to the United States was something that was altogether separate and distinct from the general question of competition in international air transportation, or from the question of competition in American flag competition, I mean—

Of course, there was never any question about foreign flag competition, or even from the question of American

flag competition to Latin America or even South America. That latter question was a broad question of air transport economics and of governmental policy.

The question with respect to Panagra's applying involved on the contrary, very specific considerations applicable to the particular facts of this case.

Now, the first of those considerations was the effect which the granting to Panagra of a Balboa-Miami certificate would have had on Pan American.

It would have completely deprived Pan American of an outlet to the West Coast of South America. To have such an outlet was the very purpose for which Pan American, back in 1928, had joined with Grace in creating Panagra.

The figures in this record show that 40 per cent of the traffic which Pan American moved in the last 18 months between Miami and Balboa was traffic destined to points on Panagra's route and we believe that percentage will probably be higher in the future rather than lower. That

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is ~~the~~ reason affecting Pan American.

The other reason is a reason affecting Panagra, and Pan American's investment in Panagra. We felt that the grant-

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[fol. 4223] ing of such a certificate to Panagra would simply have transformed the relationship between the two companies, which had existed since the beginning, and that in the course of doing that would have wrought a very serious injury on Panagra, in addition to the injury I have described as to Pan American.

Q. Mr. Friendly, what has that relationship between Pan American and Panagra that you mentioned, been?

A. From the beginning, Panagra has had a very close relationship with Pan American, and it is a relationship which we think has been exceedingly beneficial to Panagra.

Just to give a few instances of it, one of them has already been mentioned, that from the beginning Pan American has acted as Panagra's sales agent in the United States, and has given Panagra a coverage which Panagra could not possibly have obtained on its own.

Along with that general sales agency have gone a great variety of other traffic services.

On the whole question of traffic procedures, experience in handling various types of traffic matters, handling of claims, and so on, filing of tariffs, the use of Pan American's departments that are are organized for that purpose, the immediate benefits of any arrangements that Pan American has made for the handling of traffic.

I might mention as one instance the agreement with Railway Express Agency. Of course all these things now seem very easy and matter of fact, and all that anyone has to do now is go out and copy them, but I know of my own knowledge that that agreement was the result of at least a

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[fol. 4224] year's negotiations on the part of Pan American and when made, of course, Panagra immediately came in on them and got the resulting benefits.

Turning to another quite different field: that of engineering and technical services: I don't pretend any expert knowledge on that subject, but I think it is general reputation in the industry that Mr. Priester and his department have pioneered a great many techniques, again many of which are now standard, and that Pan American maintains an excellent engineering organization which is certainly far beyond anything that Panagra could have afforded or for that matter could now afford.

Then, there is the question of procurement of equipment. We like to think, and I believe the record bears this out, that Pan American has the most progressive record on equipment of any company in the business, and whatever Pan American has done in that field is immediately available to Panagra, and not when the contract has become public knowledge but from the very time when negotiations take form, when Panagra has an opportunity to come in or not to come in as its own interests dictate.

Q. How would the extension of Panagra affect this relationship that you have just described?

A. Well, it would have affected it simply by destroying it. It would have put Panagra into direct paralleling competition with Pan American between Balboa and the United States. The very figures that I have given, or that are in this record, show that Panagra in its own interests, would have had to go after the local Miami-Balboa traffic—that is

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[fol. 4225] local United States Balboa traffic—gone after it vigorously, and we would have defended it vigorously.

Also, I don't suppose it is to be thought that Pan American would simply have smiled and handed over the haul to Balboa on the through traffic to Panagra. That doesn't seem to me to be competition, and we would have had to do what we could to keep some of that by making alliances with foreign carriers who were operating south of Balboa, or any way we could.

In other words, if the Civil Aeronautics Board had decided that Panagra was to compete with Pan American we would have assumed that they meant it and we would have competed—felt that we had to.

Q. What did Pan American consider that the effect of this change in relationship would be upon Panagra?

A. Well, we believed that that change would have been exceedingly destructive of Panagra and of our investment in it. We always thought so and we think so now more than ever.

Panagra is up against very big league competition as what I have said already shows. Pan American simply didn't believe that Panagra is in any position to take on that competition, and in addition the competition of Pan American with any great prospect of success.

I don't want anything that I say in this connection to be deemed belittling of Panagra because we are very proud of Panagra and we think it has done a fine job, but one has to face the fact that Panagra does have a long thin line, and that while it has a very long route mileage it does not

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[fol. 4226] have a volume of business and it does not seem likely that it will have a volume of business which in any way corresponds to that. Its passenger revenues in 1945, which I think was the biggest year in its history, were somewhat less than Braniff's, and with Braniff now extended so as to duplicate everything Panagra has, and with an extension into Mexico in addition, even if Panagra were to be extended to United States it would still be a good deal smaller than Braniff, not to speak of BOAC and Pan Amer-

ican, and we think that it would have very great difficulty in meeting that competition.

I think one has to recognize that the situation of Panagra in that respect would be quite unlike the situation of some of the smaller domestic lines which have given a very good account of themselves.

For example, there is Mid-Continent, which was described in the recent opinion. Those lines draw traffic largely from the very territory in which they operate, they have no great problem of obtaining sales coverage. They, on the whole, are not exposed to great competition from bigger lines than themselves, at least on many of their hauls.

Panagra would have had to draw its traffic from the whole United States, and to do that against the competition of these foreign flag monopolies and of Braniff and of Pan American, and we don't see any future for Panagra in that, and never have.

Q. Mr. Friendly, what will Pan American's policy be, with reference to the operation of local Miami-Canal Zone service upon the approval of the contract?

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[fol. 4227] A. Well it is impossible now, Mr. Hamilton, to lay down what our policy will be if by that you mean the precise number of schedules. We have given some illustrations here which other witnesses will cover.

Perhaps I might—I think about all one can do is to take a look at the figures and see what they indicate as to what a possible pattern might be and I hope that in doing that I won't be taken to have made any commitment that it will be done precisely this way.

I can't do that for the reason, among others, that one doesn't know how far the proportions shown in these figures will be characteristic of the future, what with changes in the traffic movement, competition, and so on.

However, if it would be helpful, I could give a little indication. The figures in Exhibit S, particularly those at the bottom of the page, show how the Panagra traffic to or from the United States, breaks at Balboa among the three gateways.

As I said yesterday, about 60 per cent goes to the Miami gateway and 40 the others. I think it was 58 and 42 per cent, but take it as 60 40, that would mean that about 40 percent of the space on these through flights north of Balboa would be available for the carriage of local Canal Zone-United States passengers.

When you look at the figures as to total carryings between Miami and Balboa, which is shown on the top line of that exhibit, and deduct the proportion of that which is through traffic for Panagra and the proportion which might be carried on these through flights, it would look as if one would

[fol. 4228] have to operate—as if there would be, rather, traffic enough to support about one local schedule for every two through schedules.

As I say, that is simply an indication from these figures and one will have to work the thing out as we go along. It is definitely our intention to provide such number of local schedules as is necessary for the proper accommodation of local traffic.

Q. In examination of previous witnesses, the question has been raised as to what the effect of approval by the Board of the financial provisions of this contract might be upon subsequent mail pay cases. I will ask you to express your views on that question.

A. Well, my thought in the preparation of the contract and its submission to the Board is this: of course I don't know that my views count very much, it is going to be the Board's views that govern, but I think the theory of our presentation was this, that there are certain provisions of the contract where the whole question of financial arrangements is left for subsequent determination even by the parties.

I might cite paragraph 8 of Exhibit A which relates to training. The basis of that isn't even stated in the contract. It is perfectly obvious that in a case of that sort, approval of the contract wouldn't indicate approval of any arrangement since there is no arrangement stated.

There are other provisions of the contract such as the general basis for the charter hire which are laid out in some

detail. We would suppose that if the Board approved the contract containing such provisions it would not at least

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[fol. 4229] in the first instance, raise any question in a mail pay case as to the general line which had been stated, although of course it would be entirely free to question whether the principle had been properly ~~allied~~ applied in the actual charges that had been made.

Of course it has been repeatedly brought out that if at any time the Board felt that the contract was operating improperly in that respect or in any other, it has means at its disposal for dealing with the situation.

Q. I will ask you to direct your attention to a question that Mr. Schneider asked Mr. Roig as to the meaning of Paragraph 10(b) of the contract, and ask you to comment on that.

A. I will confess that Mr. Schneider's question took me by some surprise. It had never occurred to me that Pan American was not under an obligation to establish adequate disciplinary machinery although I can see that the language leaves something to be desired. If there is any doubt on that, I would be very glad to state that we consider ourselves bound to establish such machinery and have that stand as a binding construction of the contract.

Q. Mr. Friendly, reference has been made to agreement whereby Pan American renders services and facilities to Eastern Air Lines on its Miami-Puerto Rico route. Is it true that that arrangement relates only to communications?

A. No, that is not true.

Mr. Hamilton: Mr. Examiner, I have here copies of that agreement which I would like to have marked for identification at this time.

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[fol. 4230] Examiner Wrenn: That will be marked for identification as PAA-Panagra Exhibit No. 32.

(PAA-Panagra Exhibit No. 32 was marked for identification.)

By Mr. Hamilton:

Q. Directing your attention to this agreement, was this agreement—

A. Do you want me to identify it first.

Q. Yes I expect that would be a good idea. Will you identify this PAA Exhibit 32?

A. I had something to do with the making of it and it has been furnished by our New York office as a correct copy of the agreement.

Q. Was this agreement an isolated act or an unusual occurrence?

A. It certainly was not an isolated act. It was the first of what we expect will be quite a series of acts. It is a part of Pan American's announced policy of its willingness to make its operating facilities and personnel available to other carriers that have been certificated by the Civil Aeronautics Board insofar as feasible. When I say the first of a series of acts, I think I ought to correct that. It is the first perhaps as far as American flag carriers in this particular area are concerned, but of course we have been doing this kind of thing for foreign flag carriers for a long time. We have had arrangements for sharing our facilities with BOAC, oh, I guess going back to 1937 when the Bermuda first service operated, and had arrangements with KLM in the Caribbean for many years, and so on.

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[fol. 4231] Q. I would like to now direct your attention to a question which Mr. Hickey directed to Mr. Roig as to the character and extent of the competition facing Pan American on its route to Miami down the East Coast of South America, and ask you to comment on that question.

A. Well, I simply want to have the record perfectly clear that the list of competing carriers that have been given, was as I believe Mr. Roig made clear, only the carriers that have an effect on the combind services of Pan American and Panagra.

If you are talking about Pan American "monopoly", you have to introduce a great many other factors. There is no use in my describing the routes of the other American flag lines which, in addition to Braniff, and include American and Eastern and National and Chicago and Southern and

Western, because those are all in the record. I am not going to take the time to describe all of the foreign flag services but I think perhaps the record ought to have some indication of a few of them in view of this persistent use of the word "monopoly," so I will try to be reasonably brief about it, although necessarily incomplete.

In the first place, KLM, which has been operating in the Caribbean for years, an airline of the very highest excellence, and so known throughout the world, which has been given a permit to operate into Miami, and is now operating from Miami through various points in the Caribbean to its headquarters in the Netherlands West Indies, whence its lines extend on down to Rio and Buenos Aires.

Then the British—we have discussed the British line

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[fol. 4232] down the West Coast but the Bermuda agreement also authorizes British operations between various islands of the West Indies into Miami.

The French have a service in the West Indies also, although it has not at present reached the Continental United States.

Then, turning to the Latin American countries and starting at the bottom, from a geographical latitude standpoint only, FAMA has plans for lines up the East Coast as well as up the West.

The recent agreement concluded with Brazil provides for Brazilian lines to operate to New York and Miami and to New Orleans, and we know that the Brazilians have excellent airlines which are set up and ready to go.

A permit has been issued to the National Airline of Venezuela, LAV, to operate both to Miami and through New York to Montreal.

In Cuba we have Espreso as well as our own Cuban Company which we are proposing to sell to Espreso.

Mexico, there are great numbers of companies.

Superimposed upon all that are the various TACA com

panies. TACA in Colombia already has a permit to operate to the United States. Other TACA companies have applications pending, and they afford, taken together, a complete network of operations ranging from Mexico City

where they have some kind of arrangement with American companies reaching that point, from Mexico City on the North as far as at least Rio, and I think Buenos Aires, on the South; almost a complete duplication of the routes that Pan American has.

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[fol. 4233] Above all that are many non-scheduled operators, some of them—one of them at least—strike out some using equipment which bears the name of a very large domestic airline.

All that discussion has dealt only with foreign lines which are either operating or are about to operate, between the United States and countries of Latin America. It has not dealt with the legion of other operators that are operating between countries in South America such as the British and French lines that operate down the coast of Brazil and compete directly with Pan American between Rio and Buenos Aires, as Mr. Roig has testified they compete with Panagra between Buenos Aires and Santiago. It does not relate to the other Brazilian companies that are operating between Brazil and the Argentine. It does not attempt to cover the two other Venezuelan airlines which are operating international services.

It does not attempt to cover airlines such as Aerovias Braniff which is operating or proposing to operate various international lines in addition to its proposed operation across the border.

Well, I think that gives some idea, although as I say it is incomplete.

Q. Mr. Friendly, I would now like to address your attention to a question that Mr. Highsaw, yesterday asked Mr. Roig, with reference to a quotation from the decision of the Civil Aeronautics Board in Docket 779.

Mr. Hamilton: I am referring now, Mr. Examiner, to page 441 of the transcript.

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[fol. 4234] By Mr. Hamilton:

Q. The excerpt from the decision quoted by Mr. Highsaw appears there and I shall read it, if that is agreeable.

Examiner Wrenn: Go ahead.

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[fol. 4235] By Mr. Hamilton:

Q. I am quoting from the quotation: "Deadlock between the two interests equally represented in the ownership of the company is always possible and certain to occur from time to time, especially in view of the other activities between the two owners."

I will ask you if you care to comment upon that question.

A. I don't think one could quarrel with the statement that deadlock between the two interests equally represented in the ownership of the company is always possible.

It probably depends on the tone of voice in which you read it and where you put the emphasis. I would put it on "possible". Of course it is possible in the case of Panagra and possible in the case of any company where the ownership is equally divided, which I may say is not an unusual thing in American business life to have such a company.

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However, I certainly do not accept the statement that it certain to occur.

Mr. Roig said yesterday, the agreements settled the only matters where there has been a deadlock of any standing, and they provide their methods for settling others, and it certainly seems to me to be worthwhile pointing out also that an extension of Panagra wouldn't have avoided those possibilities of deadlock; in fact, to my mind it would have increased the friction between the two owners to a point where the deadlocks might have occurred more rather than less.

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[fol. 4236] Coming back to this "certain to occur" and to the reference to the special interests and other activities of the two co-owners, I would like to take advantage, if I might, of an opportunity to say a word about what seems to me to have been a feeling that has crept into some of the questions, that Pan American has some interest against Panagra, and I want to deny that just as emphatically as I can.

Pan American is just exactly as interested in the welfare of Panagra as anybody could be. Pan American had

a large share in their having been a Panagra. There was a lot of debate in Docket 779 as to whether or not the larger share, as we think we did, but we are not going to debate that now, because it is not important here, but Pan American has been very proud of what it did in bringing about what Panagra, and of ~~course~~ Panagra has accomplished, and it wants to see Panagra continue on a very high plane.

Now, lest I be thought to be preaching a sermon here, I wish to state that that interest is not of a purely sentimental character, although that does exist, and any suggestion that Pan American's financial interests are opposed to those of Panagra, seems to me to be completely belied by the least analysis of the figures, and I would like to talk a little about the figures in Exhibit 7 which show the content of Panagra's passenger revenue, and I think when you analyze those, you see just how little basis there is for any theory that Pan American's interest could be anything other than one of the most intense support.

In the first place, my remarks are all going to deal with the right-hand column, which deals with passenger rev-

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[fol. 4237] enue, not the number of passengers.

49 per cent of Panagra's revenues, that is, the difference between the 100 and 51, is from what might be called inter-port traffic. That is traffic between points on Panagra's route from Balboa south.

That traffic is obviously completely unavailable to any route which Pan American has. Pan American has just as much interest as our partner in the development of that traffic.

We get just as much out of it. We haven't the slightest adverse interest as to that.

Now, let's look at the other 51 per cent, and you go right down the analysis of that until you come to the last figure of 14.7 per cent, which is the traffic between the United States and Buenos Aires.

I suggest we call it 15 to make it a little easier to talk.

In other words, of the 51 per cent of Panagra's traffic which is traffic between the United States and points on its route, 36 per cent is to points which Pan American

does not serve and couldn't possibly get to any route of its own.

Now, I say that as to that 36 per cent, Pan American's interest in building up Panagra is not only as great as that of our associate, but if you want to talk about it, it is even greater, because in addition to getting just as much financial benefit out of what Panagra does with it, we have a very good chance at least of getting the haul between the United States and the Canal, which inures completely, to our benefit.

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[fol. 4238] Now, let's look at this 15 per cent. That is traffic between the United States and Buenos Aires; it is not traffic between Miami and Buenos Aires.

As I have said before, 40 per cent of that roughly comes from the western gateways and presumably the man who goes through the Brownsville gateway, or who comes from Los Angeles, is not going to take the East Coast route to Buenos Aires anyway, because it is too roundabout, so you have to deduct 40 per cent of the 15 per cent, and that brings you down to 9 per cent of Panagra's revenues, which might be thought to be subject to possible diversion to the East Coast route.

Let's look at that 9 per cent now. Passengers are not just cattle. They have their own ideas as to how they want to go. Many of them do, at least. Many people certainly many tourists, and also many businessmen who go to Buenos Aires want to go down one way and come back the other.

Other people have special reasons for going down the west coast because they want to stop at Lima or Santiago or some other point. I have no statistical measure of how many of those there are, but it would seem reasonable to assume that, say, half of the passengers have some reason for taking a particular route, and couldn't be diverted no matter what was desired.

So it seems to me you are down to about 4½ per cent of Panagra's revenues which Pan American might be able to change over to its East Coast right to Buenos Aires if

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[fol. 4239] it wanted to and the suggestion is that in order

to prevent W. R. Grace and Company from getting the share of the profit to which it is entitled, from that 15 per cent of Panagra's business, Pan American is going to prejudice its ability to derive the profit from 50 per cent of the business.

An awful lot of things have been said about Pan American in the past, but I don't think we have generally been accused of being fools, and it seems to me that nobody who wasn't a complete fool, could do anything as silly as that, and the difference of opinion between us and our partner in Panagra, has not been at all over the question of whether Panagra ought to be developed, but how it should be developed, and now happily we have found a solution of that problem which is acceptable to both of us, and as we think at least, highly beneficial to the public, and we hope that we can be allowed to carry it out.

Mr. Hamilton: I think that is all, Mr. Examiner.

By Mr. Gesell:

Q. I wasn't quite clear, Mr. Friendly, as to whether or not you were saying that in the event Panagra were to come to the United States on its own route, Pan American would continue or discontinue its activities on Panagra's half before in the nature of its sales agency and engineering services and other assistance, in view of the competition which would be created?

A. Well, I can only say, Mr. Gesell, what I would recommend, and what would seem to me to be likely.

As to any sales activities or assistance of that sort, I would recommend in the strongest possible terms that that

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[fol. 4240] be discontinued. I don't see how we could be in paralleling competition with Panagra between the United States and Balboa and be acting as its sales agent.

I would also recommend that we discontinue any other service which involved the slightest sharing of confidential information, or anything of the sort. I think the only things that we might continue would be the type of things that we have done and are doing with our competitors

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such as this agreement that has been marked ~~with the~~ PA Exhibit 32, for sharing certain operating facilities with Eastern.

I don't mean to say that we would have any special animus against Panagra, certainly, that we would not have against anyone else, but I don't think that we could or, in the interests of proper competition, should do anything more.

Q. The question has been raised in this proceeding as to whether or not it would be possible for Panagra to work out with Pan American procedures for handling Panagra's maintenance in the United States at PAA's base and having cooperative activity under the heading of training, with or without this through flight provision for Panagra planes coming to a United States point over PAA's routes, and I want to ask you what has been the policy of Pan American with respect to performing maintenance and training services for other carriers.

A. Our policy has been to do it or not to do it, as our own operating requirements dictated. We have at times done certain maintenance for companies in which we have an interest. For that matter, we have at times done some

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[fol. 4241] for companies in which we have no interest.

We would simply, in the absence of an agreement of this sort, deal with that matter from time to time, and look at each problem as it arose. We would not undertake any long-term commitment.

Q. Are you saying that you would not undertake a commitment which involved a regular and continuing obligation to perform maintenance and training to the extent that this agreement contemplates? That is the case?

A. That is definitely the case, and perhaps I ought to elaborate on the reason, because it surely wouldn't seem to be sheer obstinacy on our part. We have found, taking the maintenance problem, for example, that you go up in kind of steps, that you increase your maintenance facilities and at times you can take on other work and do it to your own advantage, then as your operations expand that condition ceases and it becomes a burden.

In the absence of some general agreement of this sort, we would not take on a commitment which might be inconvenient at various times.

Q. Now, on a somewhat different subject—

A. There is one other thing I would like to say also: that of course I have dealt with this only from the standpoint of Pan American. There is another question that shouldn't be confused with this, and that is how far the through operation of these planes into the United States is necessary from Panagra's standpoint to make these maintenance and training provisions as beneficial as they now are.

I assume other witnesses will deal with that.

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[fol. 4242] Q. Another question somewhat unrelated, which I think can be asked in this matter, to cover inferences at least raised by questions of other counsel in this case. Is it the intention or purpose of Pan American to throw obstacles in the way of carrying out of this agreement by unreasonably restricting Panagra's right to establish rates and schedules or routes, or acquiring equipment or developing airways or constructing landing fields, and other matters of that sort which might come before the Board of Directors from time to time in the management of the company, and involve questions of business policy?

A. That certainly is not the intention, and I thought that my somewhat extended answer to Mr. Hamilton's last question indicates the reason, or at least one reason, in addition to good faith in carrying out this agreement, which leads to that, that it would be the height of stupidity for Pan American, in its own self interest, to follow any such policy as that.

Q. And what have you to say about this question which is raised by the fact that Pan American has—in 779 at least—in the past charged Grace or Grace Line with suppressing Panagra in the interests of the steamship business or some other interest? Do you consider that that situation is in any way affected or changed by this agreement or other developments?

A. Well, I would say at the start that we are not concerned about that situation in the slightest degree. I don't know how far you want me to elaborate on it.

Q. Well, you certainly have been concerned about it in
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[fol. 4243] the past, have you not?

A. Yes. I am familiar with the charges that you refer to. Perhaps I should expand on my answer. I would like to preface that by the general statement that what I am about to say does not relate to steamship companies in air transportation in general. It relates to W. R. Grace and Company and Pan American-Grace Airways in the particular circumstances that we have in this case.

We made those charges in Docket 779, and we sincerely believed them. They related even when they were made—the evidence in support of them, I should say—went back to a period some years past, a period antedating Mr. Roig's election to the presidency of Panagra. We have lived with Mr. Roig and W. R. Grace and Company for a great many years.

We have lived with them very closely since then, and we do not have any fear of any such suppression on their parts, of this airline, as we did at the time when we made those statements.

I think also—let me break in there too. I don't want to put this on too personal a note, because we are making an agreement for a long time, and someone might say "No matter how confident you are in Mr. Roig, you shouldn't let that influence you."

We know other people in W. R. Grace and Company, and as was said, that is not a one-man show. I think that anyone who has had contact with Grace can't but be impressed with the stress that that company puts on the development of younger men who know what the policies are, and who are
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[fol. 4244] developed so that they are ready to step in when occasion arises, and I am confident that Mr. Roig, and the others—Mr. Garni and so on—have impressed their personalities and their enthusiasm for air transportation upon those other men.

Turning to another phase, however, there are protections in this arrangement which certainly would not exist if you had a case of a steamship company owning an airline.

The solicitation of the business in the United States under these agreements is to be very largely in Pan Ameri-

can's hands. Arrangements have been made whereby the traffic end in South America is largely handled by Panagra's own employees.

I don't know the details of that as well as Mr. DeGroot, but I know the general effect, so that we are not placing the traffic solicitation for this airline in the hands of the steamship interests.

That about covers it.

By Mr. Gesell:

Q. There are a couple of questions that relate to somewhat legal problems that came up during Mr. Roig's examination which were deferred for you, and perhaps they ought to be covered.

One had to do with what is contemplated by the parties to this agreement with respect to the clause concerning the pending litigation. Could you state for us what the present status of that litigation is, and what is contemplated by that provision of the agreement?

A. Petitions for certiorari in Docket 779—or rather the

[fol. 4245] review of the decision of the court of appeals for the 2nd Circuit in Docket 779 were granted by the Supreme Court and are on the Supreme Court docket.

Shortly after the execution of this agreement, I took the matter up with the clerk of the Supreme Court and informed him what had occurred, addressed a letter in cooperation with counsel for W. R. Grace and Company to the clerk requesting that in the light of the making of the agreements and the pendency of this proceeding, we should

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not be put to the expense of printing a record which we would otherwise have had to do before now.

The clerk said that he considered that request reasonable and wrote a letter indicating that while this proceeding was pending, we would not be required to print the record, and the case would not be docketed for argument.

Mr. Gesell: That is all, Mr. Examiner.

Examiner Wrenn: Mr. Schneider, you may examine the witness.

Cross examination.

By Mr. Schneider:

Q. May I say first, Mr. Friendly, I trust we may never find ourselves in the reverse situation? I am a little confused by the answer you gave to Mr. Gesell in connection with the steamship business of W. R. Grace.

In Docket 779, Pan American took a very firm position with respect to the steamship tie-up of W. R. Grace, did it not?

A. Yes. The record speaks for itself. It is in here.

Q. That is right. And I take it now that the position

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[fol. 4246] of Pan American is somewhat changed from what it was in 779; is that correct?

A. I stated what our position is now.

Q. Do you consider it to be different than what it was in 779?

A. Yes, to the extent that comparison will reveal.

Q. You are not as vigorously opposed today to the tie-up between W. R. Grace and Grace Lines as you were then?

A. We are not opposed to W. R. Grace and companies owning the stock that they own in Panagra and having the rights that they have under these agreements.

Q. Are you still opposed to W. R. Grace having a tie-up with the steamship business?

A. We have nothing to say about that.

Q. Well, I ask for an answer to my question. Is Pan American still opposed or isn't it?

A. I can't contribute anything on that beyond what I have, Mr. Schneider. I have said that we are not concerned about this situation in this particular case under the circumstances that I have mentioned.

Q. Mr. Friendly, leaving aside this case, does Pan American still hold the position it held in Docket 779 with respect to steamship company affiliation of W. R. Grace?

Mr. Hamilton: Mr. Examiner, I object. I think the witness has answered that question.

Mr. Schneider: I submit he has not. He has said that he does not oppose the steamship affiliations in so far as they affect this contract.

Examiner Wrenn: On the basis of your question, what

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[fol. 4247] is the materiality of it?

Mr. Schneider: The materiality is this: If Pan American Airways took a position in 779 against W. R. Grace steamship affiliations, I want to know if they still think that is bad, and if it is, then I can argue whether it affects this contract as well as he can argue that it does not affect this contract.

Examiner Wrenn: I understand, but I am going on the basis of your question as you have just stated it, Mr. Schneider. I don't see what bearing it has. As I understand you, you said leaving aside this contract in this case here. If we are getting into something abstract, I am going to have to sustain the objection on that basis.

Mr. Schneider: All right. Let me rephrase the question.

By Mr. Schneider:

Q. Leaving aside any consideration of this contract, Mr. Friendly, has Pan American Airways changed its mind on the steamship affiliation question as set forth in 779?

Mr. Hamilton: I submit, Mr. Examiner, that Mr. Friendly has already testified on that to the extent that it is relevant.

Mr. Schneider: Mr. Examiner, we have already had a ruling from you by stipulation to the effect that the material in 779 is relevant. That was the effect of the stipulation. It was received in evidence as being relevant over the exception of counsel for Grace and Pan American-Grace.

Now, if that has been received in evidence over their objection as relevant, I am entitled to know to what extent

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[fol. 4248] they still take the position in that material?

Examiner Wrenn: As I understand your question and maybe I am wrong: you were excluding any considera'ing of this proceeding we have here before us now, and if that is the import of your question, I can't see the relevancy of it.

Mr. Schneider: Certainly, I can't take Docket 779 which is now in this record, and make an argument that Pan American felt so-and-so about a steamship affiliation of

W. R. Grace unless I know whether they still think that. I am trying to be fair to Pan American.

Examiner Wrenn: The part I am trying to find out is if we leave aside any consideration of this case that we have before us—

Mr. Schneider: I didn't say "leaving aside any consideration." I said "leaving aside any possible effect on the terms of this contract."

Mr. Hamilton: It comes to the same thing.

Mr. Schneider: Mr. Friendly said "I don't think that the steamship affiliation of W. R. Grace particularly hurts this contract; they had not any adverse effect upon this contract."

I am asking the broader question. Do they still think it is wrong for W. R. Grace to have steamship affiliations? They say they did here. I want to know whether I can still make the argument from 779 from what they have said there. If they have changed their mind, I can't make the argument. That is all I want to know. Have they changed their mind?

Examiner Wrenn: I will let him answer it.

A. All I can say is this: On the general question of steamship control; by that I mean a hundred per cent control

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[fol. 4249] or something the equivalent of that: that gives the steamship company complete "say" about an airline, we were the first to oppose that, I believe, and we still oppose it.

As to the ownership of W. R. Grace and Company of the stock of Panagra under the arrangement contemplated by these agreements which are before the Board, we do not think that such stock ownership is adverse to the public interest; we do not make any complaint about it and we don't intend to.

By Mr. Schneider:

Q I take it from your testimony, then, that if this agreement were not in existence, you would still adhere to the position you took in 779 in this question?

A. I will decide that when the question arises.

Q. You refuse to answer the question?

A. I have answered it.

Examiner Wrenn: He has answered it.

By Mr. Schneider:

Q. Mr. Friendly, in your negotiations with Mr. Gesell with respect to this contract, did he at any time attempt to obtain for Panagra the right to apply in its own name for a route to the United States?

A. That had been fully debated at the meeting of the Panagra board. It was perfectly evident that Pan American was not going to agree to that. The negotiation didn't include that as a possibility.

Q. Then, I take it, your answer is that Mr. Gesell did not raise the point in his negotiations with you?

A. We started on the basis that we were to find a way that would give Panagra the things that it thought it needed without involving such an extension.

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[fol. 4250] Q. Then as part of the bargaining and negotiating for this particular contract; he didn't attempt to acquire as one of the conditions of the contract a right to apply in its own name to the United States?

A. You mean right now?

Q. That is right.

A. No, he did not.

Q. Now, Mr. Friendly, do you understand, as a result of contracts A and B, that Panagra is prevented from applying for a route to the United States in its own name?

A. No.

Q. There is no informal understanding on that basis?

A. Well, my understanding is exactly as Mr. Roig has testified: that there is no express provision in the agreement on the subject; there is nothing whatever in the agreement that would prevent Panagra, upon proper action of the Board of Directors, from making an application. There is an understanding which you can say is implicit in the agreement, or which you can say is a result of the express provisions in regard to the dismissal of litigation, that Grace and Company will not agitate for such an extension.

Q. The reason I raised it: I wanted to see if your answer was the same as Mr. Roig's.

A. Precisely the same. If I haven't phrased it the same, I will adopt his, because it was undoubtedly better.

Q. One last question, merely to clarify the record, Mr. Friendly: In your reference to the extension of Braniff to South America, I believe you said that the president had directed that Braniff be extended. You are aware that

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[fol. 4251] the decision in the Latin American case shows that the President merely decided the need for a second carrier and that CAB made the choice of carriers?

A. I believe that is correct, Mr. Schneider. Thank you for correcting me.

Mr. Schneider: That is all.

Examiner Wrenn: Mr. Gambrell, do you have any examination of the witness?

Cross examination.

By Mr. Gambrell:

Q. Mr. Friendly, am I correct in understanding that you, as an officer and executive of Pan American Airways, Inc. and Pan American Corp., were the chief negotiator with W. R. Grace and Company and Panagra in the development of these two contracts?

A. Well, the facts were as already testified. I would say, Mr. Gambrell, that I had my other suit on during those negotiations and was acting as a lawyer rather than as a corporate officer.

Mr. Gesell and I met as counsel for the respective parties. We did a good deal of talking. We didn't have any idea that anything—strike that out.

We often made proposals that we made simply for the purpose of seeing what each other thought about them without having had prior clearance with anyone.

Our idea was to put our heads together and see if we could create something which our principals would accept. It was done in that spirit.

Q. You agree with Mr. Roig, who stated that the chief executives of the companies on each side did not, in the

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[fol. 4252] first instance, create a framework or a basic outline of agreement and tell you lawyers to develop it, that you didn't have a basic outline or basic framework, and you were not told as lawyers merely to do the editing or creation of the literature for that agreement; is that right?

A. That is correct.

Q. But you went out and started from the ground up and developed something which was finally acceptable by the boards of the affected companies; is that right?

A. That is substantially right; the only qualification being that there had been a little ground laid at the board meeting of Panagra, but that was in very general terms indeed.

Q. Were there exchanges of memoranda and correspondence between the representatives of the four companies which ultimately signed these two contracts?

A. I can recall none. There were of course drafts of the agreement, but my recollection is that I at least wrote no memoranda to anyone.

Q. Were there any communications from one side to the other in writing or between the negotiators or officials on one side and those on the other?

A. Not to the best of my recollection. You mean written communications now?

Q. Yes.

Mr. Schneider: May I interrupt just for a minute? As I understand when you were cross examining Mr. Roig, there was an understanding that minutes of the board of directors meetings would be furnished.

Mr. Gesell: That is right.

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[fol. 4253] Mr. Gambrell: And executive committee meetings.

Mr. Schneider: Are they available now?

Mr. Gesell: I have the Panagra minutes; I do not know about the others.

Mr. Schneider: Could we have those now, Mr. Examiner?

Mr. Gesell: I don't mind.

Mr. Schneider: When will the Pan American minutes be ready?

Mr. Hamilton: I don't know. I will let you know during the noon recess as soon as I hear from New York.

(Off the record)

Mr. Gambrell: May I ask whether the minutes referred to in respect to Pan American Corp. and Pan American Airways were already established and approved, Mr. Hamilton? Have they already been cleared?

I know sometimes minutes aren't completely written up at the time of meetings. Have the minutes that were referred to already been written and established records of the company?

Mr. Hamilton: I am afraid I can't answer that now, Mr. Gambrell, because I don't keep the minutes and I am not familiar with it. I will be glad to report to you on it as to what the status now of the minutes is.

Mr. Gambrell: When the report is made, it will indicate when the minutes were prepared?

Mr. Hamilton: Yes. I will be glad to make a report to you on that question that you raised whether they have been prepared or not.

Mr. Gambrell: And when?

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[fol. 4254] Mr. Hamilton: Well, I suppose they will show when they become official documents.

Mr. Gambrell: May I inquire of Mr. Gesell as to when these minutes were established?

Mr. Gesell: I don't know, but it was long before your request, Mr. Gambrell. These minutes were all set long before you asked for them.

Examiner Wrenn: In view of this discussion about minutes and so on, I want to see what the state of the record is there.

(Question read)

By Mr. Gambrell:

Q. Mr. Friendly, would you be willing, as vice president and general counsel of Pan American Airways and as a representative of Pan American Corp. to also make available to parties in this hearing any and all memoranda or copies of memoranda prepared or interchanged between the people who were negotiating for these agreements?

A. I would not, unless I was ordered by the board and I would argue very strenuously before the Board that I should not be so ordered.

Q. Do you take it that the proper interpretation of these two contracts, and the objectives sought to be attained through them, would in some measure be reflected by the work notes and interchange of correspondence, and memoranda and conferences which contributed to the development of these contracts?

Mr. Hamilton: Mr. Examiner, I submit that Mr. Friendly has stated his position on that question, and that this is not

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[fol. 4255] a proper scope of cross examination.

Mr. Gambrell: I am developing the importance and relevancy and I would appreciate it if he would answer it.

Mr. Hamilton: I object to it.

Examiner Wrenn: So far as I am aware of the testimony here, I haven't heard that there is any such.

Mr. Gesell: That is the point.

Mr. Gambrell: He said that he wouldn't be willing to let us see them.

Examiner Wrenn: Go back up the road a little further to your previous questions.

By Mr. Gambrell:

Q. Were there any memoranda, or was there any exchange of communications in writing between the representatives of these four companies?

A. I have testified, Mr. Gambrell, that to the best of my recollection, there was no exchange of communications between the representatives of the two companies in writing. There were of course earlier drafts of these agreements.

Q. And those drafts in part, some of them at any rate finally ended up in the documents, I assume; is that right?

A. You know what a draft is, Mr. Gambrell?

Q. I am asking the question. A draft might be anything.

Mr. Hamilton: I object to the question, Mr. Examiner.

By Mr. Gambrell:

Q. Did some of those drafts ultimately contribute to the contracts as adopted?

Mr. Hamilton: I object to the question, Mr. Examiner.

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[fol. 4256] Examiner Wrenn: What particular bearing does it have?

Mr. Gambrell: It shows the relevancy of the draft, the materiality of it.

Mr. Hamilton: Mr. Examiner, I submit that the witness has already stated his views on that question.

By Mr. Gambrell:

Q. Do you have in your files or do you know whether there are in the files in either of the Pan American companies any copies of any such drafts?

A. Yes, I have copies.

Q. Would you be willing to supply them for the light that they might throw on the purposes, objectives and meaning of these two contracts?

A. I have answered that once.

Q. I didn't ask just that before. Will you answer it now?

A. The answer is the same.

Q. Will you state what the answer is?

Mr. Hamilton: Mr. Examiner, I submit the record shows what the answer is.

Examiner Wrenn: The record shows it. He says the answer is the same as he made to the previous question.

Mr. Gambrell: He could just say "yes" or "no".

Examiner Wrenn: I submit that he has answered the question.

Mr. Gambrell: I am not sure which he said. I have never said. I have never asked him for just that and I want the record to protect me on that question, sir.

Mr. Hamilton: Mr. Examiner, I submit that it is clear

[fol. 4257] on the record.

The Witness: I will save time.

Examiner Wrenn: Go ahead.

The Witness: I am not supplying [illegible] as ordered by the Civil Aeronautics Board and I will oppose to the best of my ability the making of any such order.

By Mr. Gambrell:

Q. Do you consider that the conferences and discussions and proposals that enter into the making of these two contracts would have a function of interpreting the meaning of those contracts similar to the function of discussions before committees of Congress in interpreting laws of Congress?

Mr. Hamilton: Mr. Examiner, I feel that I must object to that question. It is irrelevant.

Mr. Gosell: The same question, Mr. Examiner, that came up with the prior witness on cross-examination as to whether this was more like a law than it was a contract, came up, and more like a contract than it was a regulation. I don't see that has anything to do with this case at all.

By Mr. Gambrell:

Q. Is it your position that such drafts would throw no light, Mr. Friendly, upon the meanings, purposes, or objectives of these contracts?

Mr. Hamilton: I object to that question, if the Examiner please. The witness has stated his position as clearly and categorically as a man could with respect to this whole matter.

Mr. Gambrell: No further questions.

[fol. 4258] Examiner Wrenn: I don't know whether he has covered that particular phase of it.

Mr. Gambrell: I would like a ruling on it. I have asked him a question.

Mr. Hamilton: Let's have the question read back.

Examiner Wrenn: I was trying to rule on it. Do you want the question read back?

Mr. Gambrell: Yes.

Examiner Wrenn: All right, read it back.

(Question read)

Mr. Hamilton: I have my objection on the record, Mr. Examiner.

Examiner Wrenn: I am going to overrule the objection, Mr. Hamilton.

A. I would say, Mr. Gambrell, if there is some ambiguity in the contract, which I have not heard of up to date, a draft might throw some light on it. As to the purposes and all of the other things that you mentioned, I consider them wholly irrelevant. I don't consider that things that Mr. Gesell and I put down on paper in an effort to reach an agreement would have the slightest bearing on the question of whether what we eventually reached is in the public interest or isn't in the public interest. If there is some provision in this agreement which is of concern to the public as distinguished from concern to the parties, which is ambiguous, I think that can be developed, but I have heard of none to date.

Mr. Gambrell: No other questions.

Mr. Gesell: Mr. Examiner, I now have the Panagra

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[fol. 4259] minutes requested by Mr. Gambrell. I have two copies of them, which I can make available to the Examiner for such distribution as he thinks appropriate. They consist of 10 pages.

Possibly one means of handling it would be to have the 10 pages copied into the transcript.

Mr. Gambrell: We first want to see them. We ask that we be permitted to see them.

Mr. Gesell: Certainly you can see them.

Examiner Wrenn: We will take a five-minute recess and you can look at them at that time.

(Short recess)

Examiner Wrenn: Let's come to order, gentlemen.

Mr. Gambrell: Mr. Examiner, that completes our cross-examination. We are going to study these minutes during the day.

Examiner Wrenn: I would like the record also to show that pursuant to a request, counsel for Eastern Airlines made on yesterday and agreed to by counsel for Panagra, the copies of the minutes have been furnished by Panagra, and pursuant to counsel for Eastern's statement, they are now being examined.

Minutes of Pan American have not yet been furnished and counsel for Pan American stated that he will have further information on the subject after the noon recess.

The Department of Justice may examine the witness.

(Off the record)

Examiner Wrenn: Go ahead with your examination, Mr. McDowell.

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[fol. 4260] Cross examination.

By Mr. McDowell:

Q. Mr. Friendly, in response to Mr. Gambrell's last question, I understood you to state that if there be any provision in these contracts now involved in this proceeding which affect the public interest, then you think it possible that drafts of contracts may possibly be relevant to consideration in this proceeding?

A. That is not what I said, Mr. McDowell.

Examiner Wrenn: Will you read back Mr. Friendly's answer to Mr. Gambrell's question on that?

The Witness: I think I can answer it just as quickly.

Examiner Wrenn: All right.

A. What I said or what I intended to say was that I understood that where there is ambiguity in the contract, drafts sometimes are of use in enabling the court to determine the true meaning. I haven't yet heard of any provision of this contract as to which there is any ambiguity or at least, if there be one, as to which it isn't quite possible to arrive at the correct understanding by questions of the two parties in this proceeding.

I therefore see no occasion to resort to drafts to cure any ambiguity, because there haven't been any pointed out.

By Mr. McDowell:

Q. I would like to ask you whether that answer extends, then, to the question of intent of the parties in making the contract. Do you feel that that intent is sufficiently apparent on the face of the contract without reference to any contracts?

[fol. 4261] A. I think it is, but I would like to supplement it, if I might, as to the character of these drafts.

These drafts are not representations of the positions as between the parties. They were not submitted as official offers and counter-offers. They were work that Mr. Gesell and I did as lawyers, in many cases at least at the outset, without our clients, at least in my case, having seen them, in an effort to reach an agreement and I cannot conceive what possible relevancy such pieces of paper have.

Q. I am not sure whether I understood you correctly, but my impression is that you stated on direct examination that the discussions looking toward this contract originated with the Board of Directors of Panagra; is that correct?

A. That is right.

Q. Can you tell me on which side of the ownership of Panagra the motivation came?

Mr. Gesell: That was all described, Mr. Examiner, by Mr. Roig and the minutes show precisely what happened at those meetings. Mr. McDowell must not have been here when that was discussed because that was gone into at great length.

Examiner Wrenn: I think it is perfectly clear on the record. Do you have some particular point? Was it a question of your not having heard it, Mr. McDowell, or was it a point—some specific point—in addition to what has been said?

Mr. McDowell: I merely have not been informed on that point Mr. Examiner, and I think that the question bears upon the intent of the parties in making the contract.

Mr. Gelsell: I have no objection. I just wanted to point out it has all been covered.

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[fol. 4262] Examiner Wrenn: I think it has been answered, but the witness may answer it again.

The Witness: As Mr. McDowell wasn't here, perhaps we should, although it has been covered.

Perhaps it would be easier for him to read Mr. Roig's testimony.

Mr. McDowell: I see the answer is included in the minutes of Panagra which have been produced here. I will withdraw the question.

By Mr. McDowell:

Q. Mr. Friendly in response to a question by Mr. Schneider on cross examination, I understood you to say that there was nothing in the agreement involved in this proceeding to prevent Panagra from applying for an independent franchise to enter into the United States; is that correct?

A. That is right.

Q. I would like to know whether there is any understanding outside of the agreement now involved in this proceeding which would so prevent Panagra from applying?

A. There is no understanding whatever in regard to Panagra's applying or not applying. Panagra can apply at any time if its board of directors so authorized.

Q. Is it understood that this contract, and the arrangements contemplated under it for charter operation into the United States will settle the dispute which has existed for sometime between Pan American and Grace as to whether Panagra should be permitted to apply for an independent entry to the United States?

A. Yes, I should say so.

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[fol. 4263] Q. And as part of the settlement of that dispute, is it understood between the parties that Panagra will not, so long as this contract is in effect, apply for such independent entry?

A. No. I don't want to seem unduly technical, Mr. McDowell, but I want to be perfectly clear about this. There is nothing in these agreements that limits the ability of Panagra as a corporation to make such an application.

Of course, Panagra can make such an application only by authorization of the Board of Directors. Pan American's views have been opposed to the making of such application for the reasons that I have indicated. So far as I can see at the moment, I see no reason, and I have no reason to think that Pan American's views would change.

What may happen over 99 years is more than I can say. Now, as to the understanding with respect to Grace, that has already been testified to by Mr. Roig, and I am in complete accord with what he said.

Q. Mr. Roig said in another connection, in the course of his testimony, Mr. Friendly, that this contract removes the basic difficulty which has existed between Pan American and Grace with respect to Panagra.

Do you concur in that opinion?

A. One hundred per cent.

Q. In other words, you think the basic difficulty has been the question of whether Panagra should be permitted to come into the United States independently?

A. I certainly do. I don't mean to say that we haven't had other matters on which we have had differences of

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[fol. 4264] opinion just as officers of a company may have differences of opinion with each other, but over the years this is the only one—at least over recent years—the only one that has given rise to any real difficulty.

Q. Mr. Friendly, would you not agree with me that that so-called basic difficulty is really merely an outgrowth of a more fundamental difficulty, which is the division of ownership in Panagra and division of control in such a way that each of the parties have disparate interests on occasion and have the power to exercise control which will block Panagra from taking any action detrimental to the interests of either party?

A. No, I would not agree with that.

Q. It is true, is it not, Mr. Friendly, that since the formation and beginning of operations of Panagra, the board of

directors of Panagra, composed of four representatives each from Pan American and from Grace, has on many occasions been on dead center, incapable of resolving the corporate will because of a dispute between Grace and Pan American as to whether the contemplated exercise of the corporate will was proper?

A. Well, there are two inaccuracies in that, Mr. McDowell—one minor and the other major. The minor one which I correct simply for the sake of the record, is that while it is true that Pan American and Grace have each always been represented by the same number of directors, the number has not always been four. There was a period when it was 3. It may have been less.

Getting, however, to the real intent of your question,

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[fol. 4265] I can think of no issue other that this, when all these philosophical consequences have ensued.

Q. Is it not true that from time to time there has been inability on the part of the Board of Directors of Panagra to resolve questions concerning areas in South America in which Panagra should operate?

A. ~~You~~ would say not, Mr. McDowell. The only question which I can remember on which there was a difference of opinion for an appreciable time, was the question of operation through Cali. Those discussions did take some months. There was a difference of opinion on it that was ultimately resolved. The view held by the Grace directors prevailed.

Q. And the existence of a difference of opinion has also occurred with respect to types of equipment to be used, has it not?

A. Well, there have been differences of opinion, but as I recall it, certainly I can recall no instance within the last 12 years when there was any difference of opinion with respect to equipment, as between Grace on the one hand and Pan American on the other, except perhaps this question that was directly related to the Cali matter.

We have had discussions about equipment just as I can assure you there are many differences of opinion within the Pan American board about types of equipment, and we have

discussed those as businessmen and we have come to conclusions.

Panagra has bought many types of equipment different from Pan American, with our complete approval, within the last two years. There have been two occasions of that:

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[fol. 4266] one within the last few months. Pan American was buying twin-engined equipment for replacement of the DC-3's. We surveyed the available planes, came to the conclusion that the Consolidated 240's were the best for our purposes.

All of the results of our surveys have been available to Panagra all the time. Panagra has studied the matter in cooperation with our technical department, came to the conclusion that for its purposes the Martins were preferable, because of the high altitude airports out of which Panagra operates.

After some discussion—I don't know whether it was 30 minutes or 3 days—our technical people were entirely in accord. Panagra bought the Martins and we bought the 240's.

Panagra has bought the DC-6's whereas we have not. There have been differences of opinion between individuals, as there are within any company, and I would certainly want always be in any that I was connected with, but there has been no difference of opinion on party lines, and there has been no delay in action beyond the delay that I would think ought to occur before large commitments were made, to be sure you were doing the right thing.

Q. These differences of opinion have also existed with respect to—

Mr. Gesell: What does he mean "these differences of opinion"?

Mr. McDowell: The differences we have been discussing. This question goes back to the earlier question, and the differences of opinion between the directors serving on Panagra's board as representing on the one hand, Grace,

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[fol. 4267] and on the other hand, Pan American.

By Mr. McDowell:

Q. Now, these differences of opinion have existed also, Mr. Friendly, have they not, with respect to the type, nature and extent of facilities necessary to discharge Panagra's service to the public?

A. I of course am going to object—or not going to fall in for this "also". I presume you don't have any evil intent in it, but I want to be clear about my answer.

I know of no instance to my knowledge that has occurred within the last 10 or 12 years—I should think that might be long enough—where there has been any division of opinion about ground equipment or facilities as between Grace on the one hand and Pan American on the other. There were some differences of opinion, if you want to go back to the late 20's or the early 30's, about radio and such things, but they were resolved, again after a reasonable period, and they have not occurred again on any basis, that involved a conflict

~~contract~~ between the two owners.

Q. That difference of opinion to which I referred earlier, Mr. Friendly, is also true with respect to the —

A. Why can't we have the question directly?

Mr. Hamilton: I have no disposition to be captious, but I do suggest it would be more appropriate if Mr. McDowell phrased his questions independently, instead of carrying forward an overtone that I don't believe that the record supports.

Mr. McDowell: I think, Mr. Examiner, that the witness has understood the questions without difficulty and I think it is a convenient way of shortening the record.

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[fol. 4268] Mr. Hamilton: Mr. Examiner, I suggest that the witness just previously stated that he didn't.

Examiner Wrenn: Suppose you clarify your question.

By Mr. McDowell:

Q. Shall I say then, Mr. Friendly, that directors on the Board of Panagra representing the Pan American and directors representing Grace on the Board of Panagra have

also differed with respect to the adequacy and character of services performed for Panagra by each of the parent companies?

A. I can't recall that that matter has come before the directors, or in the last analysis, occasioned any real difference of opinion. There have been times which Mr. Roig has felt that certain services performed by Pan American were not what they desired, and he has called those to our attention, and we have to the best of our ability remedied the defects of which he complained.

don't

I assume, although I know—perhaps I shouldn't say so—there have been occasions when we had some fault to find about services rendered in South America by Grace.

Those matters never came before the Board of Directors at all. They were handled by administrative action by the officers of the company, and the disposition of the parties rendering the services was to cure any inadequacies that had been found.

Q. The question of the inadequacy of Pan American's Miami Canal Zone connecting service—

A. That of course you appreciate, Mr. McDowell, is not

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[fol. 1269] within the ambit of your question about services rendered by the parent company.

Pan American's connecting service to Canal Zone is an independent transportation operation conducted by Pan American Airways in which to be sure Panagra had a very vital interest. There were complaints about it certainly.

Q. Mr. Friendly, would you agree with me that the record in Docket 779 will show that with respect to each of these differences of opinion and failures to agree between Pan American and Grace directors on the Board of Panagra, charges were made by Pan American on the one hand and Grace on the other, and a great deal of evidence was offered by both in the course of that proceeding, to bring out these differences of opinion, for the purpose of showing that in various instances each of the parent companies had blocked action by Panagra or had retarded action by Panagra as being contrary to the special interests of that particular parent.

Mr. Hamilton: Mr. Examiner, I don't wish to be technical but I submit that what the record in 779 shows is established best by that record.

Examiner Wrenn: I think you are right on that. The record has been incorporated in here. I don't get the pertinency of your question, Mr. McDowell.

Mr. McDowell: The purposes of the question, Mr. Examiner, is to secure from this witness his answer and opinion as to whether or not these difficulties in making up the corporate mind of Panagra have actually been attributable to the differences in the fundamental interests of

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[fol. 4270] the two owners.

Mr. Hamilton: Mr. Examiner, as I recall it, that was one of the very first questions that Mr. McDowell put to Mr. Friendly and it was answered.

Examiner Wrenn: I rather feel that he has answered the question, Mr. McDowell. I don't have any desire to prevent you from developing any information that you think is material and necessary toward deciding this case.

Mr. McDowell: Well, I will put it this way, Mr. Examiner: I understood the witness to say that the only real conflict there had ever been between the parties in the Panagra board was the question of Panagra's independent entry into the United States.

Examiner Wrenn: Do you want him to reflect

Mr. McDowell: I want the record to reflect that there have been other serious difficulties and delays in the exercise of Panagra's corporate will occasioned by the special private interests of the two parent companies.

Mr. Hamilton: Mr. Examiner, I believe that has all been covered.

Mr. Gesell: It seems to me that gets down particularly, Mr. Examiner, to the whole area of who is at fault? That is one thing I thought we were at least getting pretty clearly out of this record. Every one of these issues is

Examiner Wrenn: I certainly have no desire to get that in this record. I don't think that has any bearing, who is at fault.

Mr. McDowell: I am not attempting to raise the question of who is at fault. I think you can appreciate what I am

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[fol. 4271] getting at here.

Examiner Wrenn: What are you getting at, whether there has been one basic difficulty or whether there have been more?

Mr. McDowell: That is right.

Examiner Wrenn: I have no objection to his answering that.

A. I think I have answered it once, but I would like to state that—I am going back now over a period of 17 years, and I am doing my best, but as I look back on that period, apart from this question of the extension to the United States, I can think of only two matters in which there was any appreciable delay in arriving at a settlement.

One was the Cali matter, the other was the question of radio and so forth, which goes back to practically prehistoric times.

Now, I don't say that, as to either of those matters, the delay was in any way inordinate. ~~There~~ They were serious matters, the views on ~~every~~ each side were strongly held and sincerely held, I think, and they were solved.

Now, as to what the motivation was or wasn't, I am not going to testify. The record will show what it will show. But the facts are that with the exception of this extension issue there has been no issue which has not been solved within a reasonable time and so far as my recollection goes, only those two that took any substantial time at all.

By Mr. McDowell:

Q. Do you agree that with respect to any difference of opinion which might arise between Grace and Pan Americ-

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[fol. 4272] an Corporation, in the management of Panagra, either of the latter two has the power, should it consider that matter in issue to be sufficiently important, to block any determination of the question by Panagra's board of directors.

Examiner Wrenn: Is that under this contract or independent of it now?

Mr. McDowell: Independent of this contract.

A. I think that is a very important exception, of course, differences of opinion
Under this contract machinery for handling A has been arrived at.

As to other questions which might conceivably arise, it is perfectly true that as a theoretical matter, that either party could block action just as in any other case, where the stock of a corporation is owned half by one party and half by another, and each is equally represented, of which there are many hundreds in this country.

By Mr. McDowell:

Q. Now, as you suggested, Mr. Friendly, there are provisions in this contract which look to the resolution of any such difficulties, and I would like to ask whether you are relying principally on the provision for arbitration.

A. No. We are relying on the fact that we are all businessmen, that we are interested in this company, that we have quite a large financial stake in it, and that we *will* get along with each other, as we have in the past, in substantially every question that has arisen.

Q. I understood you, Mr. Friendly, to say in response to a question by Mr. Schneider, that you continue to be of the opinion today that 100 per cent control by a steam-

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[fol. 4273] ship company of an air carrier would be bad and not in the public interest, is that correct?

A. That is correct.

Q. Do you not agree, Mr. Friendly, that if Grace continues to have, under this basic arrangement between Grace and Pan American for the divided ownership of Panagra, a 50 per cent control which at least gives theoretical power, as you put it, of negative control?

A. I think that is true.

Q. But you do not consider that bad?

A. Not in the particular circumstances we have here, I do not, under these agreements.

Q. Mr. Friendly, I was particularly interested in your remarks about Pan American's "monopoly" and you recited quite a substantial list of other companies engaged in air transportation.

I wonder if you could give us the percentage of the traffic between the United States and South America which is carried on one hand by your swarming competitors, as against that percentage carried by Pan American, including Panagra, on the other hand.

A. Well, if you want me to give the percentage now, I can give that, and if you want to ask a fair question and not one limited to a situation where these other people are just getting started and have just received authorization, I will answer that, too.

Examiner Wrenn: Suppose you give us the benefit of both of them.

Mr. McDowell: I think the record should show both, al-

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[fol. 4274] though I have some difficulty in seeing how you can say what percentage of the traffic future competitors will carry.

The Witness: I can see tremendous difficulty, and I have been seeing it for years in any government department looking at a situation based on a keyhole view which doesn't go beyond the end of your nose and refusing to look at agreements that this very government has signed which are just as certain to produce results as two and two are to make four, Mr. McDowell.

Now, let's get back to the situation: I can't give you percentages. KLM is carrying a very large amount of traffic between Miami and Havana and Port au Prince and Curacao. The records of the Board show how much. There was an opinion about it showing it was very substantial.

The T.A.C.A. system which does a lot of carrying which it is not authorized to do has been operating a great number of flights into Miami all of last winter. They ran as much as, I think, ten flights a day from Havana until the season was over, and I can't say whether that was 5 per cent or 10 per cent, but it was big business.

The American companies, of course, are getting started. Eastern started its service to Puerto Rico early in September, and our load factors on that route took a very nice drop immediately.

American Air Lines has been operating into Mexico, and in part because of the inadequate service that we get from

Eastern, American carries much more business to Mexico than we do

Aerovias Braniff, a Mexican Company, which Mr. Tomc.

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[fol. 4275] Braniff went down and organized in Mexico, and got a permit to go over to the border connecting with his own line carries a very large amount of traffic into Mexico City.'

Espreso, the Cubag Company, is a substantial carrier now between Havana and Miami. It carries all the Cuban mail, I may say, which we had previously carried.

I could go on.

Let's look ahead. What is the sense of closing your eyes

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to BOAC and just assume that it doesn't exist which we have been doing for the past few years. Do we think that

are fooling

the British, idling, that they don't intend to do anything in the air? Do we think they came here and got these rights to run an airline through the United States to Latin America just to have something on paper?

Don't we know enough about what transportation means to Great Britain to understand that the British are going after that and going after it in a big way. Talk to some of the members of the Civil Aeronautics Board who have been negotiating with the Argentines and the Brazilians and see what they think as to whether these foreign companies are going to carry some business.

I am not going to say as to whether in the future it is going to be 30 per cent foreign and 70 per cent American, or 50 per cent foreign and 50 per cent American, or exactly what the percentage of the American share Pan American is going to have, but I am sure that our percentage is going to be very very well under the 50 per cent when we get all through, well under it.

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[fol. 4276] By Mr. McDowell:

Q. Thank you, Mr. Friendly.

Now, passing for a moment to the question of future competition, could you give us past and present percentages on competition now existing between the United States and South America?

A. No, I can't.

Q. Could you undertake to supply that information?

A. No. We can give you our own figures. Other agencies can give you the rest.

Q. With respect to some of the South American companies which you mentioned as being competitors in South America: do you exclude therefrom, Mr. Friendly, those South American companies in which Pan American owns a substantial interest?

A. Do I exclude them?

Q. Exclude them from that list of competitors?

A. Well, they are competitors. Why should I exclude them.

Q. You don't consider Panagra a competitor, do you?

A. I don't consider Panagra a competitor except to Buenos Aires because that is the only common point we have with them. They are competitors to Buenos Aires, definitely, and to Montevideo.

Q. How about some of the others? Could you tell us what percentage of control Pan American owns in a number of the competitors in the South American companies which you listed as competitors?

Examiner Wrenn: I think you are a little vague and indefinite there. Do you have a particular company in min'?

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[fol. 4277] Mr. McDowell: I am referring to the companies which he listed. I don't know what companies he had in mind. He said there were a great many companies, and I think with respect to the companies which he is putting forward as competitors the record doesn't show to wh' extent they are independent competitors and to what extent they are competitors of the sort that Panagra is a competitor.

The Witness: I will be glad to answer.

Examiner Wrenn: All right.

A. I referred to Brazilian companies. There are, I don't know how many airlines in Brazil, Mr. McDowell, probably 10 or 12. We have less than a majority interest in one of them. Whether that is the airline that the Brazilians will authorize to come to the United States is not yet determined. They may authorize one or two or three.

Certainly I don't think ours will be the only one that they authorize.

By Mr. McDowell:

Q. Could you give us the exact percentage?

A. If you won't hold me to one or two per cent, it is in the neighborhood of 46 per cent. It might be 47 but it is in that range.

Q. What is the name of the company?

do

A. Panair do Brasil.

In Mexico—well, there are probably about 20 airlines there conservatively in which we have an interest in two.

The only one of those two that is planning any operation to the United States is Mexicana. We have again about a 45 or 46 per cent interest in that.

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[fol. 4278] There are other Mexican airlines that are candidates for permits to operate to this country.

Of the two Colombian companies that we have spoken of—TACA de Colombia and Avianca—we have a stock interest in Avianca amounting, I think, to 48 per cent.

However, under the Colombian law our voting rights are limited to 25 per cent.

In Cuba—

Q. May I ask your percentage ownership. You say you had a percentage in TACA.

A. Oh, no.

Q. I am sorry. I misunderstood you.

A. Control of that is in TWA. We have had a company in Cuba which I did not mention as a competitor because we were expecting to sell it. Cubana—our stock interest in that, the only one of these in which we have had a majority in recent months—is 52 per cent, but that we are proposing to sell to the Espreso Company in which we have no interest whatever and will have none after the sale is consummated.

I want, however, to add one thing: we have spoken about stock ownership. That gives a wholly misleading impression. The directors of these companies are and in many cases have to be—Nationals of their various countries. In

some cases we do not have any representative on the board. In other cases we may have one.

In no case do we have anything approaching—not only not a majority—we don't even have anything approaching a substantial minority. The executive administration of

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[fol. 4279] these companies is vested in men who are prominent citizens of their own country, who run those companies as their national interest dictates, and we encourage them to do that, and when they want to compete with us, they compete with us without any let or hindrance on our part.

If you want to put those companies in a compartment, brand them as somewhat different, I have no objection to it, I think that should be noted, and I assure you I had no intention to conceal it, but in the first place it is not true that we control them, and in the second place they are only a small element in this entire competitive situation.

(Discussion off the record)

By Mr. McDowell:

Q. Mr. Friendly, have you mentioned all the companies in South America, all the air operating companies, in which Pan American owns an interest?

A. All the ones that are engaged in international operations.

Q. You have mentioned only those that are engaged in international operations?

A. That is right.

Q. Those that are not engaged in international operations are also important in the air traffic there, are they not?

A. To some minor extent.

Q. Could you give us the information concerning those?

A. I don't have that at hand. There are a number of

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[fol. 4280] them. They are companies of very small size.

Q. Would you be willing to undertake to supply that?

A. If it has any relevancy here. I confess I can't see it.

Mr. McDowell: I think it is quite relevant, but there is no argument about that, is there, Mr Examiner?

The Witness: I suggest we also get some statistics as to non-competitive air routes in the United States at the same time.

Mr. McDowell: I will not undertake to put in the information which I think your counsel would like to have brought forward, Mr. Friendly.

Examiner Wrenn: Now, what is the situation here? Is there going to be an agreement to--

Mr. McDowell: I understand that there is an undertaking by the witness to produce the information which I have requested concerning the ownership by Pan American in non-international South American air operating companies.

Mr. Hamilton: That is right. We will produce that.

Examiner Wrenn: Did I also understand that in doing that, Mr. Friendly wants to show something regarding non-competitive companies in this country, is that it?

The Witness: Yes and I think we ought to get in the TWA network and a few other things if we are going into all these things.

Mr. McDowell: I have no objection, Mr. Examiner.

Mr. Gesell: It is my impression that the Form 2380's were stipulated into this record at the request of Pan American and Panagra and that those forms show the

[fol. 4281] holdings of all the airlines and other airlines, and it is all laid out here, isn't that true?

Examiner Wrenn: Is that correct, Mr. Highsaw?

Mr. Schneider: I looked it over and I can't find it. It is not available.

Mr. Gesell: Is Mr. McDowell asking this question for you?

Mr. Schneider: No, he isn't.

Mr. McDowell: In the light of the witness' answer a few moments ago about the competition which Pan American is meeting in South America, it is appropriate that the record disclose directly on the face of the record and not through an exhibit the extent to which that is genuine competition.

Mr. Hamilton: We will provide information which is not already in the record in this case and of course reserve

the right to amplify it any way we see fit to give additional information to give a complete picture to which I take it Mr. McDowell has no objection.

Mr. McDowell: Oh, no.

Examiner Wrenn: The record will so show.

Mr. McDowell: I would like to know if that could be expanded a little bit to include—unless Mr. Friendly is able to supply that information at the moment—information concerning past ownership by Pan American in South American air operating companies.

Examiner Wrenn: Back to when?

Mr. McDowell: Back as far as 1928. I would like to ask, in order to bring out the relevance of that request for

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[fol. 4282] information, I would like to ask Mr. Friendly whether it is not true that Pan American has in the past controlled or held stock ownership in South American air operating companies which control or ownership has subsequently been disposed of, with agreements with the purchasers which have a bearing, and affect the question of the future ability of those companies to compete with Pan American.

By Mr. McDowell:

Q. Is that not true, Mr. Friendly?

A. Which question? Will you ask one question at a time? May I have that done, Mr. Examiner?

Mr. McDowell: I think the record will show that first I asked counsel if he would undertake to supply the information about past ownership, and when the question was raised as to its relevance, then I asked this question, Mr. Friendly:

As to whether or not it is true that in the past Pan American has owned control or ownership shares:—certain South American Companies—which control or ownership shares have been disposed of with agreements with purchasers which restrict the competition of those companies with Pan American.

Mr. Hamilton: If the Examiner please, I am a little confused on the state of this record. My understanding

was that I undertook to supply Mr. McDowell information, if the point were not adequately covered by the record, information on the extent to which Pan American now owns stock interests in airlines in South America together with such additional information as we thought appropri-

[fol. 4283] ate in order to give a well-rounded and complete picture.

Examiner Wrenn: That reflects my understanding of the undertaking.

Mr. McDowell: It reflects mine to.

Now, I am asking whether it can be expanded.

The Witness: I can answer the question.

We have at times owned a larger percentage in some of the companies I mentioned than we now do. We have disposed of what we have, ~~and~~ pursuant to the requirements of local law in some instances, and because of our belief that it was consistent with this government's policy toward Latin America to have ~~those~~ Nationals of those countries own these companies. I know of no instance in which any such agreement as you describe has been made.

By Mr. McDowell:

Q. Mr. Friendly, could you extend that answer as to no instance in which such an agreement has been made, as to the sale by Panagra of any previous ownership which it held in any South American operating company?

I know

A. No, ~~I~~ nothing about that.

Mr. McDowell: I would like to ask Mr. Gesell whether you could supply information of the same sort that Mr. Hamilton is going to supply?

Mr. Gesell: It has been all supplied in the record already.

By Mr. McDowell:

Q. Mr. Friendly, I understood you to testify, in describing the relationship between Pan American and Panagra, that there has in the past been a very close relationship,

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[fol. 4284] and that under this relationship Panagra got the benefit of commercial arrangements negotiated by Pan American in the United States, including particularly the sales representation, engineering and technical service and procurement of aircraft.

And that the independent entry into the United States of Panagra would destroy this relationship, put Panagra into competition with Pan American, and destroy Panagra, is that a fair summary of your testimony on that point?

A. Except for the last word. I don't think I said it would destroy Panagra. I said it would seriously injure Panagra and prejudice our investment in it.

Q. There was a difference of opinion on that point between Pan American and Grace, was there not?

A. Certainly was. Both people held their views very sincerely strongly and very ~~singularly~~, I am sure.

Q. Do you have respect for the business judgment of the Grace directors on the Panagra Board?

Examiner Wrenn: Where are we going on that, Mr. McDowell?

Mr. McDowell: I am merely undertaking to qualify the statement made by the witness concerning the injurious effect of an independent relationship between Panagra and Pan American upon Panagra, showing by getting the witness to agree, that Pan American's partner in that joint enterprise known as Panagra, had an entirely different opinion and fought for that independent relationship.

Examiner Wrenn: Then what bearing does that have on the statement they have made in the first page of the application for agreement, I believe, that they have re-

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[fol. 4285] solved their differences and are here now pressing this contract.

Mr. McDowell: I think it has a very important bearing on the question as to whether or not the contract brought forward here for approval is really in the public interest and is really necessary for the continued welfare of Panagra and Pan American.

Examiner Wrenn: I don't see your point when you have the chief official of Panagra here and the Vice President of Grace and the Vice President and General Counsel of Pan American both testifying on their present attitude. I don't see your point, admitting what has taken place in the past.

Mr. McDowell: I think, Mr. Examiner--perhaps I am merely not expressing it clearly, but it seems to me that it is simply a question of whether Mr. Friendly would agree that people who held a different partners in the enterprise held a different point of view, and that they were actually effective businessmen participating actively in the enterprise.

Mr. Hamilton: I submit the witness has stated.

Mr. Gesell: I think I could testify for Mr. Friendly on this point that he perhaps would not want to testify to that obviously when he has a difference of opinion even with a good businessman he thinks his own opinion is better than that of the businessman and I can't see what that has to do with this case.

Mr. McDowell: Is it your understanding, Mr. Examiner, that the information is clear enough on the record?

Examiner Wrenn: So far as I can understand your [fol. 4286] question, Mr. McDowell, I feel like it has been answered.

Mr. McDowell: I will withdraw the question then.

Examiner Wrenn: You can let it stand if you like. I feel like it has been answered as far as I understand it.

By Mr. McDowell:

Q. Mr. Friendly, you stated that Pan American has no interest contrary to the interests of Panagra, I believe, is that correct?

A. I would much prefer if you could ask me direct questions, Mr. McDowell, ~~except~~ instead of "you stated this and you stated that." The record will show what I stated. I don't say there is a substantial inaccuracy but we can't get these

matters from the record. I remember what I stated and if it is not clear I will be glad to try to explain it.

Q. I appreciate that and I think you appreciate it as very difficult to set up the question without giving that.

A. I am sorry. I don't understand that at all.

Q. I have no intention to misstate your previous testimony.

Examiner Wrenn: How much more examination do you have of the witness?

Mr. McDowell: I should think perhaps five minutes.

Examiner Wrenn: Without any thought of curtailing you or anything if you think you can finish within that time we will continue. Otherwise we will adjourn for lunch.

Mr. McDowell: I would like very much to continue.

Examiner Wrenn: All right.

Mr. McDowell: I don't recall whether the question is before the witness or not.

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[fol. 4287] By Mr. McDowell:

Q. I want to ask, Mr. Friendly, whether in his opinion the fact that only 4½ per cent of Panagra's revenues represent traffic to and from Buenos Aires, and I want to add parenthetically that that 4½ per cent is accepting your figures—in other words, I am not suggesting that that is the figure—

A. I understand.

Q. —but assuming for the sake of argument that you are correct on that, do you think that the smallness of that percentage renders Panagra, in its present geographical limitation, not competitive to Pan American?

Mr. Hamilton: I would like to know what the implications of the "limitation" are. You mean by that, Mr. McDowell—well, frankly, I just don't quite understand the question.

The Witness: I think I do.

Mr. Hamilton: If the witness understands it, all right.

Mr. McDowell: In deference to the witness I am not repeating his testimony but he said he could recall.

A. Of course we compete for Buenos Aires traffic. Whether the amount is 1 per cent or 10 per cent we compete for it. What I was endeavoring to point out was that any theoretical interest which Pan American might have in diverting this very small percentage of Buenos Aires traffic that it could divert from a company which it owns half of, and where in addition it get a haul of substantial length on its own run, it is insignificant compared to the benefits which Pan American gets from a healthy Panagra with 95½ per cent of the traffic beyond any possible power of Pan

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[fol. 4288] American to divert, that there is no danger whatever from the public interest standpoint in that position.

Q. It is only when Panagra threatens to enter the United States independently that you consider Panagra a threat to Pan American competitivewise, is that correct?

A. I didn't say that.

Q. I am asking you whether you agree to that.

A. Of course what I said, and I would like to have it clear, was that we felt that for Panagra to get itself into that position was not a good thing for Panagra.

So far as its effect on Pan American was concerned, it is perfectly clear to my mind that if Panagra were extended from Miami to Balboa, or vice versa, it would have a most serious effect upon Pan American's Miami-Balboa route.

Panagra, assuming that it could equip itself with the proper kind of sales organization, which it would do at great expense and perhaps come to the Treasury for assistance on that, would in some way get a great deal of the through business and a great deal of the local business.

It would get more of the through business, I think, than we could hold unless we were able to work out some arrangement with a foreign airline or someone else south of Balboa, and it should do quite well I should think on the local business, and we would be placed in direct paralleling competition, which the Civil Aeronautics Board has recognized as the most virulent form of competition on that route, and with Panagra having a considerable advantage in its ability to handle the through traffic.

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[fol. 4289] By Mr. McDowell:

Q. I didn't want to cut you off, Mr. Friendly, but I wanted to ask you:

There has been reference here to the fact that in the past Panagra rates and schedules have been submitted—confine the question to rates—have been submitted to Pan American for clearance.

Do you agree that that has been the fact?

A. I would prefer if you would ask that of Mr. Lounsbury or Mr. deGroot. I don't have the details which those witnesses have.

Q. I think perhaps you are in a better position to answer the question I want to ask with respect to that, and that is whether or not, assuming that that has been the practice, that such practice has been pursuant to an agreement between Pan American and Grace?

A. Well, I certainly know of no agreement whatever between Pan American and Grace on that subject. I think that what has been done—and my reluctance to answer your previous question is simply that I don't have the detailed knowledge of the technical terms and exactly what the procedures are. The matters have been taken up simply as a matter of good business and nothing more than that.

Mr. Hamilton: Mr. Examiner, I can just state for Mr. McDowell on the record that we will have witnesses who will be prepared to go into detail on the rates and fares procedures and practice.

Mr. McDowell: The reason I raised the question with this witness—I appreciate he is not going to testify on rates

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[fol. 4290] and fares—but I understood him to say in qualifying himself, that with the exception of Mr. Trippe he was the best qualified person in the United States, or language to that effect, to discuss the question of the relationship of Pan American and Panagra from the Pan American point of view.

Mr. Hamilton: I think he has testified that he has been associated with Pan American-Panagra matters for a long time.

Examiner Wrenn: The record will show that. Do you have many additional questions?

Mr. McDowell: I have two more questions, and I just don't know how long the witness will take to answer them.

By Mr. McDowell:

Q. The reason I asked that question, I wanted to know what you would testify with respect to the understandings between Grace and Pan American which were part of the original contract of association and formation of Panagra.

A. I can definitely testify that there is no agreement of any kind or description between Grace and Pan American on the subject of rates.

Q. Do you know whether or not there was an agreement at the time Panagra was organized, between Pan American and Grace, agreement or understanding, that Panagra would confine its operations to the West Coast whereas Pan American would confine its operations to the East Coast.

Mr. Gesell: Mr. Examiner, that is the subject of 779. That is what 779 had been concerned with until the record was closed. There was dispute between the parties as to

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[fol. 4291] that; that dispute continues and all the facts are in the record. What is the purpose of asking Mr. Friendly to recite his side of that controversy again, which is clearly set forth in the record? Where are we progressing for? The public interest in this contract? Honest to goodness, as I listen to these proceedings I wonder whether anybody remembers the contract.

Examiner Wrenn: All right, Mr. McDowell.

The Witness: May I have the question read?

Examiner Wrenn: Do you want to answer the question?

The Witness: No. I thought you had taken a position.

Mr. McDowell: The reason I asked this question of Mr. Friendly is for the same reason I indicated to Mr. Hamilton a moment ago that I asked the rate question, that Mr. Friendly is represented here as a man who is particularly familiar with the early organization of Panagra from the Pan American point of view and I would like to have his answer on that question.

I think it is very relevant to the determination of this matter.

Examiner Wrenn: Of what importance is it? Is it important only if they have changed any such position?

Mr. McDowell: I think it is important whether they have changed it or not. If they haven't changed, I think it is important, the original relationship between Pan American and Grace I think is very important in determining, in the history of that relationship, in determining the suitability of Panagra to discharge the service which it proposes to undertake under this contract.

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[fol. 4292] Examiner Wrenn: Aren't you going back to 779?

Mr. McDowell: That matter was touched upon in 779 but we do not in 779 have the benefit of Mr. Friendly's testimony on it.

Examiner Wrenn: I don't see what bearing Mr. Friendly's testimony has on the question of us, on that point, I mean.

Mr. McDowell: From the point that he has represented himself as an expert on that matter, the best informed man in the United States.

The Witness: I object to that characterization. It seems to me we are entitled to a little fairness from a representative of a great agency in the government.

Mr. Gambrell: I would like to have the information, Mr. Examiner. I think it is most pertinent.

Examiner Wrenn: On the strength of what I have heard I am going to sustain the objection. If there is any more, I think we better recess for lunch.

Mr. Highsaw: Mr. Examiner, is there a formal objection to that question?

Mr. Gesell: There most certainly was.

Mr. Schneider: By counsel for Mr. Friendly?

Mr. Gesell: I have a right as a party to object to any question.

Mr. Schneider: I am merely asking for information. I was not raising a point. I want to know whether Mr. Hamilton objected.

Mr. Hamilton: I think the record shows that Mr. Gesell objected.

Mr. Schneider: I merely wanted to know.

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[fol. 4293] Examiner Wrenn: We will recess until two o'clock.

(Whereupon, at 12:30 o'clock p.m. a recess was taken to 2 o'clock p.m. the same day.)

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[fol. 4294] AFTERNOON SESSION 2 p.m.

Examiner Wrenn: Come to order please.

Mr. Hamilton: May I state for the record that the Pan American minutes that were referred to in the morning session will be here and be available in the morning.

Examiner Wrenn: All right. Thank you, sir.

Mr. McDowell: Will there be sufficient copies to supply copies to counsel or will they be included in the record?

Mr. Hamilton: We will be glad to supply copies. I believe the record also shows that I have an objection to the question that is pending.

Examiner Wrenn: While we are on that point when you said Pan American, were you referring to all the minutes of Pan American?

Mr. Hamilton: All the minutes that have been requested.

Examiner Wrenn: What about the situation on the Grace?

Mr. Gesell: Same.

Mr. McDowell: May I interrupt there?

Examiner Wrenn: All right, Mr. McDowell.

Mr. McDowell: I am not certain from Mr. Hamilton's answer whether he understood that the Department of Justice is requesting that the minutes of the Pan American Corp., the holding company, be included as well as those of the operating company.

Mr. Hamilton: Did you say you had an objection pending? I wasn't quite clear as to the state of the record.

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[fol. 4295] Examiner Wrenn: I thought there had been a ruling. Any way, we will pick up and go ahead, Mr. McDowell.

HENRY J. FRIENDLY, resumed the stand, was examined and testified as follows:

Cross-examination (continued).

By Mr. McDowell:

Q. Mr. Friendly, we were discussing at the close of the session this morning the relationship between Pan American and Panagra in South America. I would like to ask you whether Pan American owns, either directly or indirectly, any operating rights in countries located on the West Coast of South America?

A. No, unless you consider the fact that we also operate into the northern part of Colombia,—we have rights of course that cover our operations there—but we do not own the rights under which Panagra operates.

Q. Pardon me.

A. We do not own any rights or have any rights in Colombia under which Panagra operates.

Q. I am speaking apart from your interest in Panagra.

A. We operate into Colombia and we have a right to do it through the Colombian government.

Q. Is that through a subsidiary?

A. Actually we have two operations in Colombia; one our own and the other a very small operation known as CMCA, which operates from Panama Canal to Turbo and Medellin.

Q. Does your operation in Colombia connect with the routes operated by Panagra in that country?

A. No.

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[fol. 4296] Q. Other than those operations which you mentioned, I want to be clear that you own no interest—also that your answer include or preclude any possibility of your having any interest through other companies which own operating rights on the West Coast other than Panagra.

A. Avianca, of course, is a Colombian company which operates in Colombia and also to Ecuador and plans to operate further south. I am not familiar with just what

they have, but they obviously must have some permits from Ecuadorian government to permit them to do that.

Q. I believe you testified this morning, Mr. Friendly, that Pan American owns some interest in Avianca.

A. Yes. I think it is approximately 48 per cent, although under the Colombian law we can only vote up to the extent of 25 per cent.

Q. Is the route of Avianca on the west coast of South America physically competitive with the route of Panagra?

A. It would be as far as Avianca operates.

Q. How far can you say again, is that?

A. Into Ecuador.

Q. From where?

A. Avianca is a Colombian airline that operates to a great many points in Colombia. I think the actual routing is shown on the time tables that are in evidence, Mr. McDowell. It is in Exhibit 15, time table 6-A shows—yes, if you look at the—there is a route from Cali, Quito, to Guayquil, which operates three times a week, also an operation from Tipiales to Quito which operates once a week.

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[fol. 4297] Q. Do you know whether Panagra owns any operating rights in any countries on the East Coast of South America?

A. Not to my knowledge except of course that it operates into the Argentine.

Mr. Gesell: And Brazil?

A. Oh, yes, and over the Brazilian border. It has rights which are provided for in Brazil under the recently negotiated governmental agreement, simply to operate to a point right over the border.

By Mr. McDowell:

Q. Is there any agreement or understanding between Pan American and Grace so far as you know which would preclude either Pan American from buying operating rights or undertaking operations on the West Coast, or on the other hand Panagra from buying operating rights or undertaking operations on the East Coast?

A. Well, that subject of course was covered at great length in Docket 779, and was reviewed by Mr. Roig. There is the letter of September 1928 which goes back before my time which states the general basis on which Panagra was organized which was to operate an airline down the west coast.

There was a difference of opinion as to what the legal effect of that is, as to whether it is simply a general statement of plan or something more, but I don't know that I can add anything to that.

Q. Perhaps you can bring the matter up to date. What is your understanding of the situation at the present time

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[fol. 4298] with respect to any such understandings?

A. Well, there has been no change in the situation since the record in Docket 779 was completed, it occurs to me.

Q. In connection with the negotiation of the contract involved in this proceeding, did you participate in any discussions with reference to such a division of territory?

A. No.

Q. Mr. Friendly, I would like to know in brief how you as an officer of Pan American viewed the relationship between Pan American and Panagra, the essential relationship between the two companies?

Do you regard Panagra's essentially as a subsidiary of Pan American or as an independent entity?

A. I regard Panagra as a company in which Pan American has a 50 per cent stock interest and equal representation on our Board of Directors which connects with our line at Canal Zone and in whose welfare we have a very great interest. You can draw your own inferences from what particular terms you wish to apply to that. I don't think of the matter in those terms.

Mr. McDowell: That is all.

Examiner Wrenn: Public Counsel may examine the witness.

Mr. Highsaw: I assume these references to all these agreements like the Bermuda agreement, that those agreements are to be considered as a part of the record for brief writing and that sort of thing.

Mr. Gesell: Certainly the Board can take notice of something like this Bermuda agreement which has been nego-

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[fol. 4299] tiated.

Mr. Hamilton: I have no objection.

Cross examination.

By Mr. Highsaw:

Q. Mr. Friendly, do you know whether this agreement has ever been filed with the Board between Pan American and Eastern?

A. I have seen a copy of the letter transmitting it for filing.

Examiner Wrenn: You are talking about the one we marked this morning—32.

Mr. Highsaw: That is right, Mr. Examiner.

By Mr. Highsaw:

Q. I believe there was some reference to hundreds of companies in the United States in which there was a co-owner situation, either similar or somewhat similar to the Panagra situation. In that reference, did you intend to refer to any similar situation existing in air transportation?

A. I know of none, although I don't know that there aren't.

Q. Did you intend in that reference to refer to any similar situation in any other transportation field?

A. I am sure there are a great many of them. I know there are many of them in the motor field. I know that the Matson Line and the American Hawaiian Line had such a company which operated to the South Pacific, and I have been told by both parties that it operated with great success and harmony. I am sure there are a great many such instances.

Q. You say there are some in the motor field?

A. Oh, yes.

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[fol. 4300] Q. Do you know of some in the motor field?

there are

A. I think ^ a great many.

Q. Do you know of any similar in the railroad field?

A. I believe the Burlington is owned fifty-fifty by the Great Northern and the Northern Pacific. I am not saying there aren't many more. I might mention another one very near here which is owned in equal proportions, namely, the RF and P. That isn't a fifty-fifty, but I think it is a 33⅓ between the Southern, the Seaboard, and the Atlantic Coast line.

Q. Do you know anything about the experiences of these particular companies you have been naming, other than the reference you made to the steamship?

A. No. It keeps me busy knowing Pan American.

Q. Referring to competition between Pan American and Panagra, in the event that Panagra should have a route in the United States, I gathered you definitely thought that competition was bad and I also gathered you thought that the volume of traffic was not sufficient to support such competition, isn't that correct?

A. Well, there are quite a few things wrapped up in that, Mr. Highsaw. I tried to make it clear that I regarded this question of competition between Panagra and Pan American as something quite separate and distinct from any general questions as to competition. I never thought that competition was bad. The whole argument, with which you are familiar, has never been about the question of competition as being bad but about the question of whether it was a good idea for the United States to divide its own

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[fol. 4301] efforts up as against foreigners or not.

However, the important point is that we regard this question of Panagra's operations between Miami and the Canal Zone as resting on very special facts, and not really related to the general question.

However, in answer to your other question, I definitely think that the volume of traffic between the United States and the Canal Zone which in my opinion is not enough to support two American flag services in addition to all of the foreign competition that we are going to have there, is certainly not sufficient to support a third, which is the problem as it now poses itself.

Q. In referring to the contract, I believe that you made reference to several provisions where they have been worked out in general terms and the details have not been worked out. I have noticed at least three or four paragraphs, 8, 13, 14 and 17, I believe. I was wondering why the details were not worked out to any greater extent than they were at the time this contract was executed. Is it matter of time or you just didn't feel this was the proper place to put them?

A. I think it might be more proper if we took them up one by one.

Q. All right.

A. I would prefer not to make a general answer. 8, I believe, is the first one.

Q. Paragraph 8, yes.

A. I think the reason for not working out paragraph 8, which deals with training in more detail, was that a

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[fol. 4302] training plan involves the development of a curriculum which the person desiring the training wishes, and a method of payment, designation of a place where it is to be done—all those things change from time to time, depending on the type of personnel.

They are not controversial. We did a great deal of that type of work for the Army and the Navy during the war. We had all different kinds of forms of contracts. I don't think the negotiation of any one of them took over five hours apiece, and it was thought that it was better to leave that flexible and handle it as the occasion arose.

Q. 13 is the other one. That is just a contemplated pooling arrangement?

A. I think there our feeling was that it was a very difficult subject to handle, and that we didn't have enough light on the facts and also I think the question of time was involved. We thought if we ever did make such an agreement we would want to spend a good deal of time on it.

Since we were not proposing to make it immediately we didn't want to hold this one up until all those possible future arrangements had been settled.

Q. The next one I guess is paragraph 14, the establishment of the relative contributions in advertising?

A. Those will depend on the particular advertising program that was adopted from time to time, and the amount of emphasis given to services of each company.

We really couldn't do anything about that. We might have settled it—had some very general phrase but it would have been so general that it would not have been much

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[fol. 4363] better than this.

Q. The next one I note was the last sentence of paragraph 17(b). It is not quite the last sentence. It is up toward the top, the last sentence, that paragraph right there (indicating).

A. Paragraph 14(b) deals with the basis of payment by Panagra for maintenance and overhaul performed by Pan American. It would have been possible to prepare an annex dealing with that, the same way as we did for the charter hire. It seemed to me that we had gone far enough in establishing a formula that was pretty readily understandable and that the detailed provisions were really matters of accounting which we didn't want to encumber this contract with.

Q. Mr. Friendly, to what extent do you feel that the granting of the domestic routes which are pictured in these exhibits affect the public interest element of the service as proposed here?

A. Well, I would put it this way: we think that this is a great instrument of public service as Pan American's routes now stand. It will become a still greater one when the domestic routes are granted.

Q. It is just a question of degree then in your mind.

A. Yes.

Examiner Wrenn: They have no dependence, one on the other, as far as the approval is concerned.

The Witness: No. Either is advantageous. Each will be more advantageous with the other.

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[fol. 4394] Q. I don't believe it has yet been stated for the record, Mr. Friendly, that Pan American, Inc. is 100 per cent owned by Pan American Corp., is that true?

A. That certainly is true.

Q. Mr. Friendly, how many of the directors of Pan American Corp. are also directors of Pan American, Inc.?

A. Well, they are exactly the same except for the technicality that some, such as myself, have interlocking relationship applications pending and therefore are not as yet able technically to serve on the board of the company to which we were elected later.

Q. Does Pan American Corp. have any interest in any other corporations or carriers?

A. Yes. One is Panagra. I think that the only other interests which are held directly by Pan American Airways Corporation are the stock interest in Avianca which was described and a 20 per cent interest in the new China National Aviation Corporation.

Q. Does Pan American, Inc. pay any fees to Pan American Corp. for services rendered?

A. No.

Q. Was the agreement between Pan American, Inc. and Panagra presented to the Board of Pan American Corp. for consideration previous to its execution?

A. Well, the Board are the same people, the meetings are usually held at the same time and place, and the two agreements were presented simultaneously and were considered together.

I assume that the resolution shows separate action, but they certainly were considered by both boards.

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[fol. 4305] Q. We have come to that arbitration question now, Mr. Friendly. I was just interested in having the record show who this American Arbitration Society is, whether it is a partnership or corporation, or just a group of people, or just exactly what it is?

A. Subject to correction, I believe it is what is called a membership corporation. It is a non-profit body. I will check on that and if I am wrong I will have the record fixed accordingly. It is a well known body—I should say the most well-known of the various bodies which have interested themselves in the adoption and application of arbitration procedures. It has been designated, I think,

at the instance of the anti trust division as an arbitral agency in some important matters.

The Board of Directors is made up of men of high reputation and standing. ~~It is a~~ Its panel of arbitrators likewise. We picked it as an organization of such high reputation that there could simply be no question about it.

Q. To your knowledge, is there anyone connected as an officer or director of Pan American, Inc., Pan American Corp., W. R. Grace, or Panagra, interested in or a participant in any way in this society—that is, as an officer?

A. From a Pan American standpoint, I just can't be positive. Mr. Evan Young in his life time was very active in this and I have an impression that Mr. Bixby has become so in a lesser degree. I can check on that.

Q. Would you supply that later?

A. Certainly.

Mr. Highsaw: Mr. Gesell, could you supply the same information later with respect to Panagra?

Mr. Gesell: Yes.

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[fol. 4306] By Mr. Highsaw:

Q. Do you know whether or not the president of the Society has been consulted as to whether he will undertake to appoint a third arbitrator in a case where it is needed under paragraph 25, Contract A?

A. Not to my knowledge, but that is just what the Association is for, and its rules provide for its acting. I hardly think that would be necessary.

Q. Do you know whether or not any fee will be paid to the Society for the president appointing an arbitrator as provided in paragraph 25?

A. Exhibit No. 30 shows the schedule of fees for holding arbitrations. I don't know whether there is any special fee for just appointing an arbitrator.

Q. There is one other point on the arbitration here I would like for you to clear up, Mr. Friendly. It says the results of the American Arbitration Association having general application. Could you shed a little light on this phrase "having general application"?

A. Yes. We had in mind the set of rules which had been marked as Exhibit No. 30. There are certain special rules that have been formulated from time to time in arbitration in particular trades such as the woolen trade, and our intention was to designate those rules, not some which relate to a particular industry with which we were not concerned.

Q. Would the sanction which would be provided for the decision of this arbitral society something that appears in the laws of the State of New York?

A. Yes. New York has a very effective arbitration law

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[fol. 4307] which you will find in the New York statute.

Q. There is just one other point and I think probably this is some information which you could supply later easier. In looking over those rules of the Arbitration Society, it occurred to me that some of them might not be applicable here, such as initiating the proceedings. I would appreciate it if you would look those over and if there are any which do not apply here, let us know in connection with these other questions.

A. I will be glad to.

(Public Counsel)

Q. Is it your understanding of this agreement, Mr. Friendly, that if either Pan American or Panagra desires it, that any question concerning interpretation of any word, phrase or provision of this Agreement A, or any operations under it can be arbitrated in accordance with paragraph 25?

(Mr. Friendly)

A. Yes.

Q. And you have a similar understanding as to the contract which is identified as Exhibit B with respect to the arbitration provisions, I believe it is paragraph 9.

A. I do.

Q. Turning for a moment to this question of subsequent action by the Board with respect to either or both of these agreements: Is it your understanding, Mr. Friendly, that if the Board acts and approves either or both of these agreements, later on the Board may disapprove them if it finds them to be adverse to the public interest?

A. That is what the law says, and I expect that to be done.

Q. Would you consider the Board in any way morally

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[fol. 4308] bound to continue with its approval of either one or both of these agreements in the event of such approval in the event that approval is granted in this proceeding?

A. I don't understand that Government agencies have moral obligations and their legal authority is set forth in Section 412 of the Civil Aeronautics Act.

Q. Strange as it may seem, that point has been raised previously.

A. Well, I may say I wouldn't expect them to turn around the next day and disapprove it, but that is not a moral obligation; that is simply a proper respect for the administrative process, I would say.

Q. Would you have any objection to the amendment of either one of these agreements to reflect the continuing jurisdiction of the Board?

A. No.

Q. Or a condition applied to the approval if that were possible?

A. No. If the Board deems it necessary, it would seem to me not to be, but if they feel it necessary, I would have no objection to it. Just what the law says.

Q. Turning to Agreement A, Mr. Friendly: paragraph 2(c) it is. Is it your interpretation of the contract, that this phrase here in the middle of the paragraph 2(c) "to such an extent as Panagra shall determine appropriate from time to time" as modified by the requirements of paragraph 3 with respect to notices of flights?

A. Oh, yes. Paragraph 3 in regard to notice applies to everything, but that is simply a mechanical method so that

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[fol. 4309] Pan American knows a little ahead of time what schedules will be run of the Panagra aircraft so as to be able to make its plans. It is not any limitation on the rights of Panagra except that they have to give some reasonable advance notice, and of course if in a particular instance it were convenient we would be glad to consider waiving it or reducing it.

Q. Mr. Friendly, I believe we have already had some interpretation from the Panagra side, of paragraph 2(c).

Could you state your understanding of that provision for the record?

A. It is precisely the same as Mr. Roig's.

Q. Namely, that that was put in there to be intended to prevent Pan American from operating Panagra's planes over other routes of Pan American except under unusual circumstances or emergencies; something like that?

A. Yes. That we could not operate them at all on any other routes without Panagra's consent, and that it doesn't contemplate any such regular operation would be done without formulating a new agreement and bringing it down for approval.

Q. That is what I was trying to get at. There is no thought there that if you wanted to extend some sort of scheduled operations to another point, that you would just start operating a Panagra plane and consider it covered by this agreement?

A. No, there was no thought of it although I can see that the language could have been somewhat better chosen.

Q. Referring to paragraph 10 again: Will you explain for the record why nothing more was done to put more

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[fol. 4310] detailed provisions in the contract? I wonder if Pan American has done anything yet about formulating such plans?

A. Yes, they have, but Mr. Kirkland and Mr. Brock can tell you much more about them than I can.

Q. Referring to paragraph 10 of the agreement: Is it an advantage for Pan American to act as a general sales agent for Panagra under this provision or was this an accommodation or concession by Pan American?

A. Well, I think there are advantages moving in both directions. I think, as I have stated before, that it is of great advantage to Panagra to have the kind of sales representation in the United States that Pan American can give

Panagra

it. That is an advantage to ~~Pan American~~. It is an advantage to Pan American for one thing, because of Pan American having the interest that it does in Panagra, and because of the connecting service.

By connecting, I mean route connection. Both a through service operated under this agreement, and other schedules which Pan American operates that connect with Panagra. Anything that improves Panagra's business is good for Pan American.

There is also another advantage to Pan American in the shape of the fact that we will be paid a reasonable basis somewhat for this work and it undoubtedly gives us a ~~very much~~ greater volume of sales over which to spread certain costs than we would otherwise have.

I think the point about whether it is a concession or not a concession, is again, that it is for a very long term and that it would not be made certainly with a company in which we were in direct paralleling competition.

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[fol. 4311] Q. Referring to paragraph 10(b), Mr. Friendly: Is that phrase "evidence reasonably indicating" a matter to be determined by Pan American or can that be arbitrated if Pan American disputes whether or not the evidence is reasonably indicated what is there set forth?

A. I think it could be arbitrated. I would make quite a guarantee that we would settle that in some more expeditious way.

Q. In other words, it is not intended under this agreement that Pan American could flatly refuse to accept the Panagra evidence and that would be the end of it?

A. No, it certainly is not.

Q. If Pan American should continue to refuse to accept it, then it would be covered by the arbitration provisions of the agreement?

A. Correct.

Q. Referring to the phrase, "availability of Panagra's services" there in the middle paragraph 10(b), would the operations contemplated under this agreement be one of those services?

A. Let me be clear about that. If all that had happened was that we had not called to the attention of a passenger that he could go to the Canal Zone—that is, a local passenger to the Canal Zone, that he could go on one of these planes as distinguished from some other, I would not think that that came within the language, but of course, if the

subject was a passenger who is going to a point on Panagra's route by these planes, certainly the provision applies to that.

Q. In other words, that provision would only apply to

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[fol. 4312] a through passenger south of the Canal Zone?

A. Yes. Traffic in which Panagra has a financial interest.

Q. Will you turn over to paragraph 13, Mr. Friendly?

A. Yes, sir.

Q. Could you explain the advantage of the pooling arrangement from Pan American's point of view? I think we have already had it from Panagra's, but I would like the record to show what Pan American thinks of it.

A. I think the considerations were the same. I really have nothing to add to what Mr. Roig stated.

Q. You adopt all of Mr. Roig's statements?

A. Yes.

Q. Referring to paragraph 13(b), Mr. Friendly, do you at present have anything in mind in the way that that might be accomplished?

A. I think I ought to call Mr. Gesell at this point. That was one of his particular brainchildren and I never could believe it was very important, but he did and so it went in. That is about all I can say on that.

Q. I am frankly just a little stumped.

Mr. Gesell: I can explain it, Mr. Examiner.

Examiner Wrenn: Go ahead, Mr. Gesell.

Mr. Gesell: We felt that if over the period of 99 years there should be developments in aircraft which made it possible, to fly, let us say, nonstop from Lima, Peru, to (sic)

Balboa, and operating and other conditions traffic-wise, and so forth, made that a desirable thing, that we wished to be free to have a basis for working out that type of flight

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[fol. 4313] without having to to continue to stop enroute. It is conceivable that that will take place in 99 years, and we were trying to look a little ahead.

Mr. Highsaw: I was wondering whether you think that at present it could legally be done under the Civil Aeronautics Act.

Mr. Gesell: We certainly indicated our doubts about that in the paragraph which sets up all the existing regulations and requirements of the Civil Aeronautics Board, but we assumed that the Board would be people as aggressive as we were and if it became operatively possible, the Board would find some way to work out some way that we could do it.

By Mr. Highsaw:

Q. Do you believe that the traffic flow between Miami and Balboa is at present heavy enough or will be in the immediate future, for Pan American to make money out of this operation?

A. That is a very large question. It depends upon rates and costs and competition, and present and future, and what not. I will say this—perhaps this is the point you are getting at—I think that the arrangements that are provided in this agreement will improve by a good deal Pan American's ability to make money out of that operation.

Q. That agreement?

A. Yes. It will do so, I might add, by stimulating the flow of traffic to Panagra's routes—to points on Panagra's routes in South America which will travel over that sector of Pan American's route.

Q. What I had in mind was not the total sector—that is, the Pan American flights that fly Pan American planes,

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[fol. 4314] but just the operation provided for by this agreement in which Pan American will be flying Panagra planes between Miami and Balboa.

A. Well, as we see it—Mr. Ferguson can go into greater detail on this if you desire—the operation of the Panagra planes will be no more expensive in relation to the type operated, than would the operation of our own planes. If it is going to bring more traffic, therefore, it is going to help us.

Q. In the discussions yesterday, Mr. Roig stated that the agreements that are now before us meet in substance what he regarded as the Board's mandate in Docket 525.

Could you give us your views on that for the record, please?

A. Well, we feel that they do. We feel that what the Board was after was through service between the United States and points on the west coast of South America, and not the particular means by which that was afforded, and that this meets it completely, and in a very satisfactory form.

Q. I understood Mr. Roig to say that this didn't meet it in accordance with the exact letter of the Board's statement, but in effect he thought it met it in spirit; would that be your position?

A. Precisely.

Q. Suppose that Panagra's president insists upon arbitrating something of Pan American's performance under this contract that he might be dissatisfied with: can Pan American avail itself of paragraph 3 of Agreement B to

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[fol. 4315] question that action of the Panagra president in insisting upon such arbitration?

A. Well, I suppose it is like asking "Can a man bring a lawsuit" to which the answer is always "yes".

Literally he can, but I can't imagine that any responsible company would say that the mere fact that someone had made a complaint was a cause for invoking these procedures. I know what my own views would be about such a course of conduct.

Q. You don't feel, then, that Pan American would ever be dissatisfied with Mr. Roig or any other Panagra president merely because he insisted upon arbitrating some provision of one of these agreements?

A. Certainly not.

Q. Is there any understanding, Mr. Friendly, formal or informal or otherwise, between Pan American, Inc. and Panagra, Pan American, Inc. and Grace, Pan American Corporation and Panagra, and Pan American Corp. and Grace, as to permitting Panagra to apply for a route to the United States in the event either one or both of these contracts were disapproved?

A. There is not.

Q. Is there any understanding, formal or otherwise, of any kind, between the same parties as to what will be done to meet the threat of competition which you have depicted in your testimony, in event that either one or both of these contracts were disapproved?

A. No. We are hoping and expecting they will be approved. We haven't had the time or desire to think of what we would do if they are not. At least, I haven't.

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[fol. 4316] Q. Mr. Friendly, in your estimation, is the threat of competition in the areas covered by this operation, so severe as to force Pan American and Panagra to work out some other kind of arrangement if this particular one were disapproved by the Board?

A. Well, you have heard what I said about the competition, and I think it is most important that Panagra and Pan American should be in a position to offer through plane service. Certainly if the Board turned down this agreement and in so doing gave any hope of any other kind of agreement, I would do my level best to work it out, but I really can't say just exactly what I would do under circumstances that haven't arisen and I hope will not arise.

Q. During the negotiations for these agreements, Mr. Friendly, did you ever put forward a straight interchange agreement similar to the United-Western agreement as a basis for an arrangement?

A. If by "these negotiations" you mean as I think you do, the negotiations that began in June of this year—

Q. That is right.

A. —the answer is "no".

Q. One other question, Mr Friendly. Has any thought been given by Pan American as to what the—

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A. May I ~~ad~~just one word?

Q. Certainly.

The we

A. ~~A~~ reason why ~~it~~ did not is that it was made perfectly clear by us at the meeting of the Panagra board which I initiated, that we would not propose any such type of arrangement. The whole basis on which the negotiations were

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[fol. 4317] entered into would have precluded any such suggestion being advanced.

Q. If that had not been the case, would you have advanced such a suggestion, Mr. Friendly?

A. I think if that had not been the case, there wouldn't have been a negotiation.

Mr. Highsaw: I think that is all, Mr. Examiner.

Examiner Wrenn: Anything on redirect?

Mr. Hamilton: No redirect.

Examiner Wrenn: Very well, then. You may be excused. Thank you, sir.

(Witness excused)

Mr. Gesell: Mr. Kirkland?

(Off the record).

Examiner Wrenn: Let's come to order, gentlemen.

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 422

T. J. KIRKLAND called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gesell:

Q. Mr. Kirkland, what is your position in Panagra?

A. I am the vice-president in charge of operations.

Q. How long have you been employed by Panagra?

A. 15 years last August.

Q. A substantial amount of that time you were in South America and were directly familiar with the operations there, are you not?

A. That is correct.

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[fol. 4318] interest in Panagra.

Mr. Schneider: That is all. Thank you, Mr. Roig.

Examiner Wrenn: Are there any other questions of Mr. Roig?

(No response)

Examiner Wrenn: All right. You may be excused.

(Witness excused)

Examiner Wrenn: Are there any questions of Mr. Friendly?

Mr. Schneider: I have no questions of Mr. Friendly in the light of that.

Examiner Wrenn: Then is it understood by counsel that Mr. Friendly and Mr. Roig are free to leave if their interests so dictate?

(Off the record)

Examiner Wrenn: Let the record show we will hold that question open until just prior to adjournment for lunch.

Mr. Schneider: Mr. Examiner, I would like to offer in evidence at this time the minutes of the meetings of Board of Directors and Executive Committees of the following corporations: Pan American Airways Corporation; Pan American Airways, Inc.; Pan American-Grace Airways, Inc.; and W. R. Grace and Company; those being the minutes which were requested of counsel for those parties and distributed by counsel.

I assume you have a full set now.

Examiner Wrenn: Yes, I have a full set.

(Off the record)

Examiner Wrenn: Is there objection to the receipt in evidence of the tender that Mr. Schneider has made, which

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[fol. 4319] C. Lounsbury", which I would like to have marked for identification.

Examiner Wrenn: All right. That will be marked for identification as PAA Exhibit No. 35.

(Document above referred to was marked PAA Exhibit No. 35, for identification)

Mr. Hamilton: I would like the record to show one correction in Line 13. For the phrase "his present", the word "the" should be substituted.

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 423

Examiner Wrenn: Proceed.

Direct examination.

By Mr. Hamilton:

Q. Mr. Lounsbury, does Pan American Panagra Exhibit No. 35 correctly state your qualifications and experience?

A. Yes, sir.

Q. Mr. Lounsbury, are you sponsoring Pan American Panagra Exhibits

~~Pan American~~ Nos. 6, 11, 12, 13, 14, 15 and 24?

A. That is correct.

Q. I would like to direct your attention to Exhibit No. 24, please. Does that exhibit refer both to offices maintained directly by Pan American and sales offices maintained by agents of Pan American?

A. Yes, that is correct. Out of this total number of cities and offices there are 10 sales offices which are Pan American offices, and the others are agents.

Q. Would you name the 10 cities in which the Pan American sales offices are located?

A. Los Angeles; San Francisco; Washington, D. C.; Miami; Chicago; New Orleans; Boston; New York; and there is one at Laredo which is not shown on here; and at Seattle.

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[fol. 4320] Q. Did you hear testimony of Mr. De Groot as to the advantages that the through flight service contemplated by the contract would have over the existing connecting arrangements?

A. Yes, sir. I did. I think he described the advantages very well. The public would thereby have a through one-plane service which would eliminate the necessity of deplaning at Balboa, and that would be of special advantage in the operation of sleeper planes because it would be very

inconvenient for passengers to disembark at Balboa and get on again in the middle of the night; also, in connection with the problem Mr. De Groot described of delayed planes causing missed connections, I think there is one point that he might also have emphasized, namely, that any businessman in the higher salaried brackets, of which there are many traveling in Latin America, loses considerable time when delays are caused because of missed connections, and that in addition to the actual outlay of 20 dollars a day is something of considerable importance to a great many of the traveling public.

Q. So as I understand it, you concur in his statement of the disadvantages and add in the loss of time factor?

A. That is correct.

Q. Mr. Lounsbury, what difference will there be, if any, in the ticketing procedures, with reference to Miami and points on Panagra's route after the contract is approved?

A. There would be no difference in the procedures under the contract as compared to the present ticketing procedures.

[fol. 4321] Q. Mr. Lounsbury, in your opinion, are the reservation control procedures provided for in the contract feasible?

A. Yes, I think they are quite feasible, and the reservation control would be considerably simplified, especially in view of the fact that the problem of missed connections would be eliminated, and that in itself—when that occurs, rather—reservation control becomes particularly complicated.

Q. Would you care to elaborate on how reservation control procedures become complicated when a connection is missed?

A. When a connection is missed, the passengers who were intended for the onward carrier's planes have to be cancelled out, the charts have to be changed at the terminal points as well as any central control point, which means numerous radio messages back and forth, and then of course if there are other passengers who perhaps can be booked at the last minute, those have to be added to the charts, the control charts for the plane, and each onward destination advised so that all in all it becomes a rather

complicated problem and one that has to be handled within a very short period of time.

Q. What advantages, if any, will accrue to Pan American, from the traffic point of view, by virtue of the through flight service provided for by the contract?

A. I think this can be compared to the advantages that would accrue to any business concern from improvement of its service. I think it is quite usual that improvement of

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[fol. 4322] product means increased sales.

Q. With reference to the present practice as to publishing of Pan American tariffs: would there be any change in that practice as a result of the arrangements contemplated by this contract?

A. No. There would be no change necessary.

Q. Now, with reference to the procedures relating to joint rates, would this contract cause any change in those procedures?

A. No, sir. There would be no change necessary in that either.

Q. In so far as traffic matters are concerned, Mr. Lounsbury, is Pan American now prepared to undertake the operations covered by the contract?

A. Yes, sir. We would be prepared to undertake them immediately. The only time required would be that necessary to file schedules within the 10-day period required by the Civil Aeronautics Act.

Mr. Hamilton: I think that is all, Mr. Examiner.

Examiner Wrenn: Mr. Gesell, do you have any questions of Mr. Lounsbury?

Mr. Gesell: No.

Examiner Wrenn: Mr. Schneider isn't present.

Mr. Harlan, do you have any questions?

Mr. Harlan: Yes. I have two questions.

Cross examination.

By Mr. Harlan:

Q. Mr. Lounsbury, isn't it true that Pan American has for a number of years provided preferential accommoda

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[fol. 4323] tions for Panagra's traffic with respect to the Miami and Balboa segment?

A. What do you mean, sir, by "preferential accommodations"?

Q. I really mean that you have provided preferential reservations for those passengers.

A. If you mean that we have maintained a through seat allotment of a certain number of seats, that is correct.

Q. That has been true and is true now, isn't that right? I mean that has been true for several years and is true at the present time.

A. That is correct.

Q. With respect to these various sales offices shown on Exhibit 24, do these offices presently sell transportation over Panagra?

A. Yes, sir, they do.

Q. Could you tell us how many of these are Pan American's own offices and how many are traffic agencies?

A. I think I read that—

Mr. Hamilton: Mr. Examiner, I believe he testified on that—covered it on direct examination.

(Off the record)

Mr. Harlan: I will withdraw the question.

By Mr. Harlan:

Q. Mr. Lounsbury, with respect to points which are where you have a travel agency, could you explain, just in general, how you choose the agency?

A. How we choose the agency?

Q. Yes.

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[fol. 4324] A. Yes. In the first place, the agency is required to be an established travel bureau, and also we choose the agencies whom we think will produce the most business for us and Pan American Grace. We have a method of testing that out which other airlines also use, which seems to be quite effective. The result has been that we have built up the number of active agencies which you see listed here in Exhibit 24.

Q. In most instances do you initiate the negotiations with the travel agency or is it the other way around?

A. Well, it depends largely on circumstances.

Recently, since the war, many agents have been coming back into business that were in business before the war and had closed, and sometimes they come to us and advise us that they are ready to open again, and in other cases we have noticed it through other means, and have solicited their business.

I might say that we have actively at all times a very active solicitation campaign going on among all these agents to be sure that they are adequately serviced with information about Pan American and Pan American Grace services.

Q. Just as an illustration of this—and this is all I have on the point—I notice that there is only one city in New Mexico where you have such an agency and that is the city of Taos. I would assume that you didn't choose that one city as the best city in New Mexico for Pan American to have an agency in, is that correct?

A. Well, there are other cities in New Mexico such as

[fol. 4325] Albuquerque and Santa Fe who might have agents at the present time. They might not be active enough for us to have taken on the servicing of them.

Mr. Harlan: That is all.

Examiner Wrenn: Does the Department of Justice have any questions?

Mr. McFarlane: No, sir.

Examiner Wrenn: Public Counsel?

Mr. Highsaw: Yes.

Cross examination.

By Mr. Highsaw:

Q. Mr. Lounsbury, I believe we have a little bit of unfinished business from Mr. DeGroot with reference to these load factors on this operation between Miami and Balboa. Could you give the anticipated load factors in the immediate future for this operation, both southbound from Miami to Balboa and northbound from Balboa to Miami?

A. I am afraid I would not want to predict any exact load factor in percentages, because I don't think anybody is capable of doing that with any accuracy, but I do think from recent experience, and experience in the past when service has been improved, that the traffic carried, and the load factors resulting therefrom, thereby substantially increased.

Q. That is, over the figures shown in Exhibit No. 7?

A. Yes, sir.

Q. That is as close as you would care to come to a statement on it?

A. Yes. I simply think that the improvement in service

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[fol. 4326] and the additional frequency of service as contemplated in some of these exhibits on schedules, will in themselves generate more business.

I think we also should realize from these exhibits that have been shown here, that the service during some of this period at least, has not been adequate to supply the demand. Mr. De Groot mentioned that, and if the service had been more adequate; which we were both unable to make it, because of the lack of aircraft, the total figures here would be higher than they are.

Q. In advising Pan American on this contract, is that all the advice you gave them, just that general statement as to what you thought the traffic would be there?

A. We arrived at a judgment estimate in the form of numbers of schedules. We did not attempt to estimate exactly the number of passengers that we probably would carry, because we believe in the idea of making the service fit the demand.

If there is more demand than there is service, now that we are able to get more aircraft, we will put more service on.

Q. I would like the record to be fairly clear on this matter of Pan American acting as tariff publishing agent of Panagra. As I understand it, there is an agency or power of agency on file with the Civil Aeronautics Board whereby you act as Panagra's agent for filing tariffs?

A. That is correct. There is a power of attorney on file appointing me for the filing of passenger tariffs, and

another one appointing another man, Mr. Colbert, for the

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fol 4327 handling of express tariffs, cargo tariffs.

Q. Of course, on through rates it is necessary for you to get together in accordance with the Act to decide upon a joint rate?

A. That is correct.

Q. Where Panagra submits a rate only for its own route or own operation, that is not a joint rate, is there any discussion with Pan American or with you about that report submitted, or is that made unilaterally by them?

A. The fundamental rate level is made up entirely by Panagra, and they send it to me for publication.

Sometimes, since we have the job of doing the rates, compiling at Panagra's direction, there are certain minor adjustments that have to be made as to the case in making any tariff before it comes to publication, and those adjustments are frequently suggested by me for Panagra's approval. They are not published without their approval.

That is only a mechanical process, however, Mr. Higgins saw.

Q. Other than these minor adjustments you have just mentioned, you have never made any suggestions to Panagra as to any change in any rate, rule or regulation that they have submitted to you to publish under the agency power?

A. All I can say is that if I notice something that occurred to me as possibly an impractical rate between a certain set of points, I might suggest to them that they reconsider it, but I certainly have no control over the decision.

Q. I take it that you have never refused to publish a rate or a rule or regulation which they have submitted to

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fol 4328 you?

A. That is correct. I have never refused to publish anything. That is not my job.

Q. Mr. Lounsbury, have you done anything looking toward the establishment of a similar rate to B.A. by the west coast and the east coast in the event that this contract is approved?

Mr. Gesell: I don't understand that, Mr. Examiner.

The Witness: I don't either, quite. I am sorry.

Mr. Gesell: What is the question?

Mr. Highsaw: I will try to explain it. What I am trying to get at is this: Is there any thought on Pan American's or Panagra's part that if this joint fact is approved and there are two services, one running down the east coast and one running down the west coast, that you will have the same rate to Montevideo and B.A. which are the two common points, irrespective of this pooling arrangement that is talked about?

A. Well, there hasn't been any discussion of this in connection with the contract. The fact is now, and has been for a long time, that the rates to those two common points are the same, and that is quite common practice as I think you will realize, between many carriers.

Between New York and Chicago, for example, there are something like 25 or 26 different routings via different airlines, different combinations of airlines, where the rate is exactly the same.

That condition has obtained between Miami and Buenos Aires and Montevideo for a good many years. I have no idea what may happen in the future, but it is a very practical situation.

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(fol. 4329)

Mr. Highsaw: I have nothing further.

Examiner Wrenn: Any redirect?

Mr. Hamilton: No, sir.

Examiner Wrenn: You may be excused.

(Witness excused)

(Off the record)

Examiner Wrenn: Let the record show that the off-the-record discussion pertained to, first, the question of schedule of future witnesses and the time that will probably be consumed, and, secondly, the representative of the Department of Justice stated that he had no further questions of Mr. Friendly.

I think that will clear up the state of the record that was left a while ago when the Examiner stated that the ques-

tion of whether Mr. Friendly would be released would be kept open until we adjourned for lunch.

We will recess until 2 o'clock.

(Whereupon, at 12:30 o'clock p. m., hearing in above-entitled matter adjourned, to reconvene at 2 o'clock p. m., same day).

[fol. 4330]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 424

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

ADDITIONAL TESTIMONY OF JUAN T. TRIPPE IN CAB DOCKET 779 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE

pp. 1567-1579:

By Mr. Friendly:

Q. Shortly after Pan American Grace Airways was organized, did any question arise as to its management?

A. Yes. The question arose as to the choice of a president of the company and who should be in charge of its operations.

Q. Will you tell us what the question was?

A. Pan American had understood that since the agreement provided that it should have charge of the joint com-

panies' operation, it should designate the president. Grace had carried out this understanding in the case of Peruvian Airways Corporation but Grace now refused to do so in the case of Pan American-Grace and an impasse developed.

Q. What did Pan American do about this?

A. We asked Mr. Hoit to attempt to straighten out the matter in line with the agreement.

Q. Do you know what he did?

A. I only know the result.

Q. And what was that?

A. No one was elected president at the time and Mr. MacGregor was elected vice president and general manager. [fol. 4331] Q. Will you tell us who Mr. MacGregor was, please?

A. Mr. MacGregor was an employee of the Atlantic Gulf and West Indies Steamship Company.

In the spring of 1928 an American had arranged to obtain a loan of his services from the AGWI—that is the Atlantic Gulf and West Indies Steamship Company—and he had been in Central America negotiating various concessions for us.

I should say in this connection also that Mr. Hoit was an official and an important stockholder in the AGWI Steamship Company.

Q. Did Pan American consider that the election of Mr. MacGregor was a solution of the management problem?

A. We did not feel that it was a sound arrangement or in accordance with our contract. The matter kept coming up from time to time.

* * * * * * *

Q. Will you tell us what your recollection is?

A. The matter of placing a Pan American nominee in responsible charge of the operations of the company continued to come up. Pan American considered that Grace was constantly interfering in the management, including attempts to edit instructions sent to the field by the company's head office here. The company's business, in our opinion, was not being conducted as efficiently as elsewhere on the system. We did propose to Grace that an arrangement whereby we be permitted to buy out their interest be discussed, but we got nowhere.

Q. Were there then further discussions between you and W. R. Grace & Company as to the management of Pan American-Grace Airways?

A. Yes.

Q. Will you tell us what they were? By the way, these discussions were primarily with Mr. Roig, were they not? [fol. 4332] A. That is correct.

Q. Now, tell us what they were.

A. Grace suggested that Pan American be given the presidency of the joint company, their nominee, Mr. Roig, serving as chairman of the Board, also that an executive committee to consist of the chairman and president be appointed.

The Grace Houses were to continue to serve as general agents in charge of Governmental negotiations, traffic solicitation, and general business problems of the company as well.

However, the Grace Houses, as agents, were not to report to the executive department of Pan American Grace Airways but directly to Mr. Roig.

Q. Did Pan American consider that to be a sound and workable arrangement?

A. No, we did not; and we so advised Mr. Roig.

. . . . . .

Q. Were these discussions in the spring of 1930, Mr. Trippe?

A. Yes, they were. At the time of the meeting referred to in the minutes of the Grace Board, which we have just discussed.

Q. That is, then, either the winter or the end, or the spring of 1930?

A. That is correct.

Q. They continued over some period of time?

A. They did for several months.

Q. Now, what reasons did you give in your discussions with Mr. Roig as to why you did not consider this proposal to be sound and workable?

A. We stated that we felt that a chief executive of a company should be in responsible charge to the executive committee and Board for the operations of the company,

and, in our opinion, the company could not function successfully with a two-man head working from entirely different offices.

. . . . . .

[fol. 4333] Q. Do you recall this meeting of March 17, 1930?

A. Yes, I do. I don't recall any details, but remember the subject and also remember that we were always supporting the Pan American-Grace management in trying to get more flight equipment on the line, better hotel accommodations on the ground, and larger equipment and improved facilities generally, and that the Grace directors were many times on the other side of the fence.

Q. Do the minutes of the meetings of the Board of Directors of Pan American-Grace Airways set forth all of the discussions which took place at those meetings?

A. The one which I have looked over in the past few weeks certainly do not. They appear to be confined to matters on which some decision was reached.

Q. Who keeps the minutes of Pan American-Grace meetings?

A. The secretary of the company, Mr. Cogswell.

Q. Has he been the secretary from the outset?

A. That is correct.

Q. Were there other controversies in regard to flight equipment in these early years?

A. Yes. Pan American believed that all operation should be conducted by multi-engine planes, as they were on other Pan American trunk line operations.

Q. Did the Grace directors oppose this?

A. Yes. They wanted to continue running the single-engine planes in the Argentine until they were worn out.

Q. Did they wish to carry passengers in them?

A. Yes.

Q. Did the management of Pan American-Grace make any request of the directors as to the procurement of radio?

A. Yes. Actually the first order for radio equipment was placed with Pan American in the fall of 1929, by Mr. [fol. 4334] Jacobs, the former employee of Grace who had become an employee of Pan American-Grace.

However, the Grace directors insisted that this order be countermanded. From the very early days, Mr. MacGregor and Colonel Harris were constantly urging the installation of radio, and the Pan American directors were as constantly supporting them.

Q. What was the attitude of the Grace directors?

A. There was one objection after another. These are all set forth in the exhibits. I don't remember all the details, but the correspondence is set forth in the minutes.

Q. What was the result of the attitude taken by the Grace directors?

A. The result was that Pan American-Grace did not have radio, not only in 1929, but throughout 1930, and well into 1931.

Q. What did Pan American do about this?

A. By March, 1931, Pan American felt that the operation of single-engine airplanes, the lack of radio, and the lack of proper passenger stations on Pan American-Grace route were threatening the good name which we had been building up during the past three and a half years over the rest of the Pan American Airways System. I have had the figures looked up and find that at the end of 1930 the average investment in ground facilities per mile of route was $12.57 on Pan American-Grace as against $213 per mile on the other international routes of the system in Latin America.

* * * * * * *

Q. Will you proceed, Mr. Trippe?

A. While we continued to try to avoid open controversy with our Grace partners, we felt that we would be delinquent in our duty if we kept silent.

The result was the protest which was presented at the meeting of the Board of Directors of the joint company on March 18, 1931.

[fol. 4335] Q. Did the making of this formal protest by Pan American lead to any improvement in the equipment or facilities of Pan American-Grace?

A. It led to some improvement. Arrangements, as desired by the management for the installation of radio, were finally made, and in the summer of 1931 the Grace directors

accepted the management's recommendation for the purchase of two more Fords, but only on condition that the single engine equipment should be used as spares until all remaining mileage had been gotten out of it, and that Pan American should not even make a request of the Grace directors for the purchase of additional multi-engine equipment until this had been accomplished.

Q. There has been some reference to the fact that Pan American's original proposal for radio did not contemplate the sale of radio equipment, but the operation of radio by its own personnel. Can you explain why that was done?

A. Well, first, we had a very serious patent problem. We had developed these sets largely ourselves, and while the Radio Corporation of America was making no objection to our using them on our own operations, they did not look with favor on our selling them. It was not until May, 1931, that we had any formal agreement with the Radio Corporation.

Q. Is the agreement which appears on page 42 and following of Exhibit P-36-A the one to which you have reference?

A. Yes. And I might add here that the negotiations of this agreement was a most difficult task involving many months and numerous conferences with the Radio Corporation officials in some of which I participated. Another and broader agreement was negotiated some years later.

Q. Were there any other reasons for Pan American's making the proposal which it did?

A. I do not know whether this also would qualify as a reason, but we certainly did feel that for us to operate [fol. 3336] Pan American-Grace's radio under a contract such as we proposed was entirely consistent with our agreement with Grace.

Q. Was Pan American able to make any progress at this time on the provision of suitable passenger facilities for Pan American-Grace?

A. Not at this time or for a long while afterward.

Q. Will you please summarize for us what the situation as to the management of Pan American-Grace Airways was in 1931 and 1932?

A. Mr. MacGregor, as general manager of the company, and Colonel Harris were doing the best that they could; but the Grace directors, instead of confining themselves to major items of policy, were interfering in details concerning the day to day operation.

pp. 1587-1597:

Q. After the inauguration of service with the S 42s on the trans-Caribbean route, was Pan American willing at all times to operate the trips to the Canal without a stop at Barranquilla if the Post Office Department had been willing so to designate them?

A. Yes, and we made numerous efforts to get them to do so.

Q. Has your connecting service between Miami and the Canal Zone been affected by the service operated by Pan American-Grace south of the Canal?

A. Definitely, from the very beginning.

Q. Has that sector of Pan American-Grace's route immediately south of the Canal been what is called a bottleneck?

A. Yes, it has.

Q. Would you explain, please, what you mean by that word?

A. I think the word is used in various senses,—

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A. (continuing) —but the conditions on the northern sector of Pan American-Grace's route qualify it, in my opinion, [fol. 4337] for all of them.

In the first place this was a sector of the route which had to carry all of the through traffic in addition to traffic that was local to the sector.

In the second place it involved at least at the onset, and for years thereafter, the longest nonstop flight made by Pan American-Grace:

The distance of 442 miles between Cristobal and Buenaventura, compared with the distance of 499 miles between Kingston and Barranquilla, and later of 631 miles between Kingston and Cristobal which Pan American was flying on its trans-Carribbean service with much larger equipment.

In the third place the aircraft operated over this sector have always been too small, in my opinion, for the job, and have had to be operated with restricted loads.

Q. When you use the word "bottleneck" in regard to this sector, you are using it in the various senses that you have just described?

A. I am.

* * * * * * *

Q. Has Pan American made efforts from at least 1932 on to eliminate the bottleneck on the route of Pan American-Grace immediately south of the Canal?

A. Yes, it has.

Q. And how would the elimination of that bottleneck have affected Pan American-Grace's business?

A. The elimination of the bottleneck would have permitted the development of considerably more through traffic between the United States and Ecuador, Peru, Chile, Bolivia, and the Argentine.

Q. Why was the elimination of this bottleneck a matter of concern to Pan American?

[fol. 4338] A. For various reasons. In the first place, our company's interest as a stockholder, in building up the business of Pan American-Grace. Second, our interest as a connecting carrier in building up a bigger outlet for our two services to the Canal. And third, our general interest as an airline connecting the United States with Latin America and building up in every possible way commercial traffic so that we could carry on at the earliest opportunity without subsidy.

Q. Pan American emphasis to the management of Pan American-Grace the desirability of securing flying equipment that would lead to Pan American-Grace's becoming independent of subsidy?

A. Yes, this was always Pan American's policy, and we discussed it frequently with the Pan American-Grace management.

Q. When you speak of Pan American-Grace management in this period, you refer primarily to Mr. MacGregor, do you not?

A. That is correct.

Q. Do you recall talks with the management of Pan American Grace as to the desirability of its securing flying equipment for the bottleneck that would give it greater carrying capacity there?

A. Yes. We discussed this repeatedly.

Q. After the delivery to Pan American of the four-engine S-40's, which appears from the exhibits to have been in 1931, did Pan American go to work with aircraft manufacturers on the development of new and larger types of four-engine aircraft?

A. Yes, we did, in 1932, and out of that work there came the four-engine flying boats eventually known as the Sikorsky S-42 and Martin 130 series.

Q. Did you at about this time take up with the management of Pan American-Grace the desirability of its operating S-42's on the sector immediately south of the Canal?

A. Yes, we did.

Q. Do you recall when you first did this?

[fol. 4339] A. Only that it was while our discussions with the manufacturers were still proceeding, and, therefore, it must have been in 1932.

Q. With whom were those discussions had?

A. Initially with Mr. MacGregor.

Q. Were you able to give Mr. MacGregor detailed performance figures on the S-42?

A. Not at the time of my first conversation with him on this subject.

Q. Why was that?

A. The detail performance figures were not available inasmuch as Pan American's engineers were still working with the manufacturers. The actual procurement contract was not let for some months thereafter.

Q. Was it Pan American's position in 1932 that Pan American Grace should acquire a new type of four-engine flying boat for use on the sector immediately south of the Canal?

A. Yes, it definitely was.

Q. Did Pan American later give to Pan American-Grace performance figures on the S-42?

A. Yes, we did. Some time early in 1933, and after the procurement contracts had been completed.

Q. Those figures, of course, were not based on actual performance, were they?

A. No, they were based on the manufacturer's specifications since the airplanes themselves were not flown for over a year thereafter.

Q. Can you tell us generally in regard to the performance of the S-42?

A. The S-42 was an outstanding transport, far ahead of its time. At the manufacturer's trials 12 world's records for flight performance were recovered for the United [fol. 4340] States. This high speed clipper had accommodations for some 30 passengers, a high degree of luxury was provided in comparison with other aircraft of that period, including both the DC-2 land transport and the S-43, amphibian or flying boat type. In carrying capacity over medium ranges, this aircraft was outstanding. It carried a 5-man flight crew, including an engineer and radio operator. The safety standards were also greatly improved over previous types, through provision of a number of separate watertight bulkheads, unique at that time in marine transport construction.

Q. Was the S-42 type later put into successful operation by Pan American in Latin America?

A. Yes, it was. On the east coast as well as the trans-Carribbean services.

Q. Let us come back to the bottleneck on Pan American-Grace's route, and will you tell us, please, what the situation was in 1933.

A. By 1933 the S-38 was a year older, and their inadequacy for operation on the northern sector of Pan American-Grace's route was even more apparent than a year before. We felt that on this bottleneck of the trunk line down the west coast, Pan American-Grace should acquire equipment of a capacity that would permit it to handle the trans-Caribbean traffic which Pan American could be in a position to offer with the bigger and faster equipment it had on order.

Q. I would like you to look at Exhibits G-53 and G-54. Do you recall any discussions that you had with Mr. Roig around the date of these letters?

A. Yes, I do.

Q. Tell us what they were, please.

A. The Grace directors were in favor of a more modern twin-engine amphibian to replace the S-38, whereas we wanted Pan American-Grace to operate the four-engine S-42's.

[fol. 4341] Q. Was it Pan American's proposal that Pan American-Grace should purchase an S-42 or should charter an S-42?

A. Pan American was willing to agree to any equitable form of arrangement agreeable to the Grace directors. We were willing that Pan American-Grace should purchase an S-42; we were willing to charter an S-42 to them to operate with their own personnel; we were willing to run an S-42 through from Miami to Guayaquil with our flight crews Pan American-Grace paying the ratable share of the cost.

Q. Did Pan American insist that S-42's which might be operated by Pan American-Grace over the bottleneck should be operated for Pan American-Grace by Pan American or by Pan American flight crews?

A. No, it did not. We were interested in getting a ship of sufficient size in operation on this sector to cut out the bottleneck. If the most efficient and economical arrangement would have been to have the S-42's operated by Pan American flight crews at the start, we saw no reason why this should not be done, but if there was objection to this, we were quite willing to agree to any other form of arrangement that would have put this fine equipment in use and overcome the bottleneck. The discussions never proceeded to this stage because the Grace directors would not agree to equipment of this size. The question of the method of operation became academic.

Q. Is it correct, then, that throughout 1933 Pan American was unable to secure any action on a proposal that Pan American-Grace should make arrangements for either the purchase or charter of S-42's?

A. That is correct.

[fol. 4342] pp. 1700-1701:

Q. Reference has been made, Mr. Trippe, to a conference held with the Civil Aeronautics Board on October 28, 1942, and to Grace's letter to the Board of that date, which is Exhibit G-75. Would you tell us, please, the rea-

sons why Pan American was unwilling to agree to the proposal of an odd director except with the limitations that are referred to in the letter of Grace's?

A. Yes, it appeared to us that without these limitations this 9th director would simply be an arbitrator of the entire controversy with respect to the extension north of the Canal. I heard Mr. Roig testify the other day that this odd director would in effect act as an arbitrator. In 1939 we had made an agreement with W. R. Grace & Company which we considered had reaffirmed the original understanding as to the territorial scope of the company's operations and it provided for enlarging that scope as to include an extension to the United States in the event that a particular issue with respect to our connecting service was decided by arbitration against us. We felt that if there was to be arbitration, it should be under this supplementary agreement—

Q. (Interposing) Under this what?

A. Supplementary or settlement agreement.

(Continuing) —which the two companies had made in 1939 and which Grace, in our opinion, had walked out on. We saw no reason why Grace should now be permitted to have a separate arbitration on the issue of territorial scope which we considered to have been one of the points settled once and for all in 1939.

Q. Did Pan American agree to the appointment of a ninth director who would have power to break any deadlock on any questions arising in connection with operations of the company that fell within what Pan American considered its territorial scope?

A. Yes, we did.

[fol. 4343] Q. Was Pan American willing in the event that such a ninth director were appointed to proceed to arbitration with Grace under the 1939 agreement?

A. Yes, we were, as I have been at all times since, and are today.

pp. 1709-1710:

Q. Have you any other comments to make upon the subject of the connecting service between Miami and the Canal Zone, as it bears upon this controversy?

A. I would like to say this: There have, of course, been instances since the beginning of the national emergency when we have not been able to provide transportation between Miami and the Canal Zone for passengers destined to points on the Pan American Grace route, particularly those not holding priorities.

There have also been many occasions when Pan American-Grace has not been able to handle passengers to whom we have provided or could have provided transportation to and from the Canal.

There have been times during this period of emergency when the congestion on our lines to the Canal may have been slightly greater than on the sector to the south. Right now the situation is reversed.

pp. 1723-1726:

Q. Will you tell us now how this general program applies to the service between Miami and the Canal?

A. The Miami-Canal Zone link to the west coast of South America is one of our most important routes, and would of course be flown by the most modern equipment, attracting increased traffic not only by more comfortable and speedier aircraft, but by lower fares and higher frequencies.

We still favor the through operation of equipment to suitable point or points on the route of Pan American [fol. 4344] Grace under equitable arrangements for the interchange of equipment.

Q. Do you believe it is practicable to work out an interchange arrangement that would relieve the present bottleneck between the Canal Zone and Guayaquil?

A. Yes. An interchange program could be put into effect as soon as the Pan American-Grace pilots could be checked out so that they could operate four-engine land equipment.

Q. How could this be done?

A. A reciprocal interchange agreement between Pan American and Pan American-Grace could be concluded with a provision that would permit Pan American-Grace to utilize Pan American Boeing 307s over the Canal Zone-Guayaquil bottleneck until such time as Pan American-Grace is able to obtain additional four-engine equipment.

Q. In what ways would this be helpful to Pan American Grace?

A. The traffic congestion south of the Canal Zone would be reduced and the availability of this additional equipment on this sector of the route would help the entire west coast service.

Also it would give Pan American-Grace pilots a chance to acquire experience in the operation of four-engine land planes before the time when Pan American-Grace obtains its own four-engine equipment.

Q. Do you think it would also be practicable to have three-way interchange agreements whereby aircraft would be operated directly over Eastern Airlines from, say, New York and Chicago through Miami and Canal to points on the west coast?

A. Yes. I think that would be entirely practicable and should be considered when the respective carriers have acquired suitable equipment.

* * * * * * *

Q. Would you state what efforts Pan American has made to increase the frequency and the service offered by Pan American-Grace?

fol. 4345 A. Our efforts began with the very early days. Our very first estimate was on the basis of three trips a week with multi-engine equipment, as against Grace's proposal of one trip a week with single engine equipment. After Grace had exercised its option to take up its full 50 percent interest in the west coast route, we pressed for the installation of passenger service on all parts of the route, and that all such operations should be flown with multi-engine equipment.

We urged that more adequate hotel facilities be provided, suggesting arrangements similar to those we had made on the east coast of South America to improve hotel accommodations at overnight stops for our passengers.

We repeatedly urged the Post Office Department to provide for increased frequencies on Pan American-Grace's route as well as elsewhere on the Pan American system.

After the Civil Aeronautics Act was passed we again pressed for a program of increasing the frequency over two trips per week on both coasts.

We had numerous talks with the Civil Aeronautics Board and with the Post Office Department in an effort to convince them that the Post Office Department had authority to increase those services without the delay inherent in waiting for the Civil Aeronautics Board to fix new rates under the Act.

pp. 1731-1740:

Q. What other specific benefits has Pan American-Grace received as a result of its affiliation with the Pan American Airways System?

A. These benefits are too numerous to mention here except, in most general terms, with a few illustrations. In dollars and cents, the most direct benefit has come from Pan American's traffic and sales organization. There are literally hundreds of travel and tourist agencies throughout the United States that act under Pan American's supervision as sales representatives for the Pan American Airways System. These arrangements have been developed by years of effort, those agencies are serviced by a well organized system of district traffic offices, located in the largest travel markets in the country.

The sales organization has given Pan American-Grace equal representation with every other part of the Pan American Airways System and in our judgment deserves a considerable portion of the credit for the financial success of Pan American-Grace's operations. Had Pan American-Grace been an independent airline, it could not have had a sales representation anything like what it has received.

I don't see how, for example, its schedules, routes, and tariffs could have been better publicized than through their inclusion in the Pan American System timetables of which over 600,000 have gone out annually for many years, first on a quarterly basis and later on a monthly basis. I will not stop to dwell on the numerous efforts that Pan American's traffic department has made over a long period of

time to foster the development of South American air travel, by Around South American tours and the like.

I would, however, like to list some of the techniques and procedures which have been originated by Pan American Airways and passed on to Pan American-Grace as an to Pan American-Grace as an integral part of the system. They include the development of the combination ticket and exchange order which makes it possible to route traffic between South America and points on the 78 domestic airlines in the United States in addition to points on connecting railroad and steamship lines; the years of work and effort that have been put into the development of its ticket and ticket contract which afforded the maximum protection to which the international air carriers are en- [fol. 4347] titled under the governing international conventions; the development of the valuable business in credit sales under Pan American's credit and transportation contracts; the origination and development of a most successful reservation code which now forms the basis of the American Air Traffic Conference Code and the establishment of the area reservations control system. All these Pan American-Grace has taken full advantage of and properly so.

It has had like benefits from Pan American's work in the field of express traffic. The contract entered into between Pan American and the Railway Express Agency has made available to Pan American-Grace the 23,000 offices of that organization for the promotion and sale of air express. Likewise Pan American-Grace has enjoyed the result of Pan American's work in the development of the techniques of handling express traffic. The through airway bill, which represented nearly two years of research and development, and which in a single document handles all the matters which normally require numerous consular and shipping documents for other forms of transportation, is the finest example of the work that the Pan American System has done in this field. This international air express system was installed on the Pan American-Grace route by one of our senior express officials, familiar with all its ramifications. Reference should also be made to

the fact that the experience which Pan American's traffic department has amassed in the handling of passenger and express traffic is reflected in the passenger and express traffic manuals which the system has created and which Pan American-Grace now uses.

Pan American's airmail specialist was largely instrumental in organizing all arrangements relating to international mail traffic in the west coast countries served by Pan American-Grace and in integrating Pan American-Grace's air mail service from these countries with the whole complicated structure of international airmail, which is coordinated through the Berne Bureau in Switzerland. [fol. 4348] In short, all the various steps which we have taken to develop passenger, express, and mail traffic have redounded greatly to the benefit of Pan American-Grace.

(Discussion had off the record.)

By Mr. Friendly:

Q. Will you also briefly summarize and illustrate the benefits which Pan American-Grace has derived from its affiliation with the Pan American Airways System in the technical field such as operations and maintenance?

A. From the very outset the operations of Pan American Airways have served as a practical clinic in the development of international air transportation. Not only has this been so—

Mr. Cahill: I am awfully sorry and I do apologize, but will you give me that question, please?

(The question was read by the reporter.)

A. (Continuing) Not only has this been so with respect to the art of aircraft operation itself, but it has been equally true in matters such as maintenance procedures, the development of pilot training techniques, including pioneering in blind flying, the development of training programs for maintenance personnel, and the development and application of radio and meteorology to international aviation, plus many other technical matters too numerous to mention.

That, alone, however, is only half of the story, for, in addition to being an aviation clinic, the system also has been the foremost aviation research laboratory in the air transport industry. We believe, with considerable pride, that through its engineers, Pan American has had much to do with such improvements as the increase in horsepower output of engines, the lowering of fuel consumption, the development of more efficient propellers, the elimination of fire hazards in aircraft and the improvement in aviation fuel and lubricating oils. From all of these research projects Pan American-Grace has benefitted.

[fol. 4349] I have given a general outline of the various technical fields in which Pan American has been able to afford Pan American-Grace the benefits of its experience and research. I would like to mention, however, a few specific instances of this nature.

They have, of course, occurred from the very time of the organization of the joint west coast operation. When eventually radio facilities were installed on the Pan American-Grace line a good part of the equipment was developed and manufactured by Pan American Airways and with it went trained system radio operators. The system brought to Pan American-Grace the desirability of establishing our procedure for the collection of weather information and we furnished them with their first meteorologist. Afterward, when we had satisfied Pan American-Grace as to the desirability of employing a weather forecaster, he likewise was furnished from our staff.

We developed in connection with the manufacturers the first streamlined loop direction finder and cooperated with Pan American-Grace in the installation of such equipment on its planes. The same is true, I believe, of the system's original development of the gasoline dump valve which has had such an important effect upon provisional loads.

Just as one illustration of the laboratory research work that I have mentioned before, I would like to refer briefly to the studies which we have caused to be made with respect to the subject of flight crew fatigue. This research made by the system medical director, Dr. McFarland, includes investigations of the effects of high altitude opera-

tion in the Andes. This resulted in the development of certain techniques for combatting fatigue and keeping fit for flying thus increasing safety in air transport.

[fol. 4350] We made application of our findings by establishing field medical centers at the main system bases of operation to improve the physical fitness of ground as well as flight personnel. In the development of this medical program and as in many other similar instances, Pan American-Grace has had the opportunity of fully sharing in the benefits to be derived therefrom.

Pan American-Grace now has its own medical center at its base in Lima which is participating in the cooperative system effort of medical research.

Q. Have the various procedures for operation and maintenance which Pan American Airways System has developed been adopted by Pan American-Grace?

A. Yes, gradually. Pan American operations and maintenance manuals have been adopted and are now followed by Pan American-Grace.

Q. Is it true, Mr. Trippe, that Pan American's interest in the Miami-Canal Zone service lies primarily in providing a local service between Miami and Balboa, and in serving its other operations in Central and South America?

A. Decidedly not. Our original interest in the route to the Canal was as a link in the through route to the west coast.

The local traffic to the Canal has never been important except under the extraordinary circumstances that have prevailed since 1940.

The Miami-Canal Zone route has not served Central America directly since 1931, and whatever minor importance it ever may have had for Central American traffic has certainly disappeared now that the New Orleans gateway has been opened.

As to the north coast of South America, a stop was made there between 1931 and the spring of 1939, because Pan American-Grace, with its limited capacity could not fill our ships on a direct flight to the Canal, and because the Post Office Department routed the flights that way.

[fol. 4351] The direct route to the Canal which is separately described in our certificate does not serve the north coast at all.

Q. If the Board were to order an extension of Pan American-Grace's certificate to include an operation between the Canal Zone and Miami, and this should be placed in operation, what would be the effect upon Pan American's service between Miami and the Canal?

A. It would be disastrous. In normal times the greater portion of the traffic carried by us on direct flights on our route between Miami and the Canal Zone was traffic destined for or originating at points on the routes of Pan American-Grace.

Even if we assume that our military establishments at the Canal Zone would be on a larger scale after the war than they were before, I doubt that this would greatly affect the situation, since I believe the military would perform a large part of their own air transport work.

If Pan American-Grace's own operations were ever to be extended to the United States northbound business from the West Coast to points most conveniently reached through the Miami gateway would be almost wholly diverted from Pan American, since Pan American-Grace, as the originating carrier would control this traffic through to the United States.

Southbound the situation would be almost as bad since Pan American-Grace would naturally give preference in making reservations to through passengers originating on its own lines in Miami, rather than hold space at the Canal for Pan American bookings, which would be contrary to its own interest.

In other words, Pan American's route from Miami would be almost completely cut off from participation in the business to and from the west coast of South America, and the west coast operation would not be part of the Pan American Airways system service as it was set up to be and still is today, but would become an integral part of a competitive air route.

[fol. 4352] Q. In your opinion, would the requiring of Pan American-Grace to extend its line from the Canal to the United States constitute a constructive step in the development of air transportation between the United States and the countries of South America now served by Pan American-Grace?

A. No, I do not think that it would.

Q. Why do you say that?

A. Because I think that the constitution of the company would prevent it from developing this service as it should be developed.

Q. Will you please explain what you mean by that?

A. The company would be placed in the position where there was a conflict of interest, not only between it and Grace, as has been true in the past, but with both of its two owners.

From the very onset the Grace Company as owner of the Grace Line has had an interest adverse to the through passenger business of Pan American-Grace.

While this adverse interest, of course, has been dormant since 1940, I think it will be revived when the Grace Line resumes passenger operations, and that it will be felt to the same extent in the field of air cargo when that part of the air transportation business develops.

In addition, if this extension were to be made, Pan American-Grace would be placed, for the first time, in the position where Pan American also had a direct adverse interest.

[fol. 4353]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 425

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN GRACE AIRWAYS, INC.,

Defendants.

TESTIMONY OF CHRISTOPHER DE GROOT IN CAB DOCKET 779 WHICH PAN AMERICAN INTENDS TO OFFER IN EVIDENCE

pp. 161-162:

By Mr. Friendly:

Q. Mr. Wanner's question about the stop-over passengers, the percentage of Buenos Aires traffic that stop over some place en route, could you give us an idea whether that percentage, admitting that you have no accurate figures, is substantial, and perhaps divide your answer between business and tourist travel?

A. It is quite obvious that no tourist would spend $700 of the better part thereof to go nonstop from Miami to Buenos Aires. Even business men would not go straight through except under rare circumstances, because it is true that there are not too many business men who would just have a transaction to attend to in Buenos Aires without stopping off en route. The present emergency has, I think, increased the number of people who would travel nonstop such as couriers and those on military missions.

Q. In normal times, men such as commercial travelers or representatives of the United States, firms having large interests in South America would normally stop at one of more points en route, would they not?

A. Yes, I think that could be assumed.

[fol. 4254]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 426

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN GRACE AIRWAYS, INC.,

Defendants.

TESTIMONY OF A. B. SHEA PRESIDENT OF PANAGRA AND FIRST VICE PRESIDENT OF W. R. GRACE AND COMPANY, IN CAB DOCKET 88-2 ON OCTOBER 11, 1951, WHICH TESTIMONY PAN AMERICAN INTENDS TO INTRODUCE IN EVIDENCE.

pp. 1195-1199:

A. B. Shea was called as a witness for and on behalf of Pan American Grace Airways, Inc., and having been first duly sworn, was examined and testified as follows:

Direct examination.

by Mr. Burns:

Q. Mr. Shea, will you state your position, experience and qualifications?

A. I am president of Pan American-Grace Airways and a director. And I am first vice president and a director of W. R. Grace and Company.

Q. I would like to have you set forth Panagra's position regarding the Pan American-Panagra through flight agreement.

A. Well, we urge very strongly on the board that approval of that agreement be extended for as long a period as possible. The agreement has been in operation since 1947. Performance under the agreement has, in my judgment, been thoroughly satisfactory, and I think has been of great benefit to the travelling public, and has been of mutual benefit to Pan American and to Panagra.

[fol. 4355] Q. Have you any comment to make about the maintenance experience, under this contract?

A. Our maintenance experience has been very good. I think the record speaks for itself in that regard. Our costs, which were rather high when we started, have been steadily brought down and are still being further reduced, and with the acquisition by Pan American of DC-6B aircraft, they should be still further reduced and substantially, because then we would have more or less uniform equipment.

Q. Have you a comment to make about a possible advantage in the through flight because of the pilot arrangements?

A. Well, the through flight agreement as it was conceived and as it has operated, was extremely useful in solving a pretty thorny pilot personnel problem that we had.

Prior to that all our flight crews were based in Lima, Santiago and Buenos Aires, but principally in Lima, and naturally those men did not look forward with a great deal of pressure to spending the rest of their active lives in the South American countries, with children growing up and so forth, and as a result of the through flight agreement we were able to bring a substantial number of pilots and co-pilots and their families to the United States and base them in Miami.

Q. Where does the training of Panagra pilots take place?

A. The four-engine training takes place in Miami.

Q. And you regard that as desirable?

A. I do, yes sir.

Q. Will you state briefly to the Examiner your views as to Panagra's need of an interchange?

A. You mean an interchange which would bring our planes through to New York?

Q. That is right.

[fol. 4356] A. Well, I think that whole subject has been so thoroughly ventilated, and there is such a unanimity of opinion on the desirability of a through one-plane service from Buenos Aires, via the west coast of South America, to New York, that it is hardly necessary to elaborate very much.

All the benefits have been presented on the record, but essentially, it suits the convenience of the public very substantially to be able to get on an airplane in Buenos Aires and get off the same airplane in New York, and vice versa, and avoid missed connections, and I think the approval of an interchange would be substantially increasing the volume of traffic over the routes we are talking about.

* * * * * * *

Q. There is before the Board now the question, under the issues framed, as to the approval of the proposed National-Panagra interchange?

A. Yes.

Q. Will you express for the record your views on that?

A. Yes, my views on that are as follows: I am advised by counsel that there is a valid and binding contract between Panagra and National subject, of course, to Board approval, for a Panagra-National interchange. If the Board approves that agreement, I will do everything in my power that I can to see that that agreement is implemented and becomes effective.

Q. Now, would you state what your views are with reference to the tendered interchange with Eastern, under the provisions of the Pan American-Eastern agreement, which is now before the Board?

A. Well, the interests of Panagra lie in operating into New York through an interchange agreement or arrangement, and it suits Panagra's interests, and Panagra should operate an interchange under whatever arrangements the Board approves.

[fol. 4357] Q. Suppose the Board should approve the Eastern-Panagra interchange? What steps would you think Panagra should take?

A. I think Panagra should execute an agreement with Eastern Airlines, as provided in the Pan American-Eastern interchange agreement, and start operating under it at the earliest practical moment.

pp. 1207-1223:

Cross-examination.

By Mr. Russell:

Q. Mr. Shea, you have testified that you would be willing to have Panagra enter into an interchange which would permit Panagra aircraft to be operated over the Miami-New York route of either Eastern or National, as the CAB might determine.

Now, would you state what you would consider to be the preferable and more advantageous arrangement from Panagra's standpoint, and why?

A. Yes. At the time that I applied to the CAB for approval of the Panagra-National agreement—after all these incidents took place—my principal consideration was the saving of time that could thereby be accomplished.

The Board, as you know, temporarily approved the agreement and then rescinded its approval and now we are at the point where we are considering not only that but the other arrangements as well. I haven't listened to the testimony in this case, but I have read most of it, and it seems to me that if the Board should either approve the Panagra-National agreement, or should order a compulsory interchange between Pan American and National with Panagra equipment, which are two possibilities, that the Board, and Panagra, might be faced again with protracted litigation.

On the other hand, if the Board should approve the Pan American-Eastern-Panagra interchange, with all the [fol. 4358] parties to it willing and voluntary parties, there would hardly be any prospect of delay by litigation or by further proceedings in connection with the Board's orders.

Therefore, should the Eastern agreement be approved, I think that the likelihood of Panagra beginning its through one-plane operation into New York, immediately, or promptly, would be much better than if we had to rely on a Panagra-National interchange or on a compulsory Pan American-Panagra-National interchange.

That is the first and perhaps the most important consideration.

Another consideration, however, to which I also attach real importance, is the likelihood that with things as they are today, despite the great strides that National has made in the last few years, I think that probably the amount of traffic that Eastern would feed to Panagra would be greater than if we were working with National.

On the basis of those two considerations, therefore, and speaking solely from the Panagra viewpoint, it seems to me that as a commercial and practical proposition, the Eastern interchange would be preferable.

Q. And you believe that an interchange agrangement under which Panagra's aircraft would operate or be operated over Eastern Miami-New York route would be in the public interest?

A. I certainly do.

* * * * * * *

By Mr. Fitzgerald:

Q. Mr. Shea, you testified that Panagra might be somewhat better off to go along with Eastern and Pan American, in that deal, because it would avoid delays due to litigation.

Do you feel that the public interest would be similarly served by bowing to Pan American's and Eastern's demands?

A. I don't know what you mean by "bowing to Pan American's demands."

[fol. 4359] My feeling is that the public interest will best be served by getting a through one-plane service into operation at the earliest practical moment, with Panagra aircraft operating from the points served by us in South America.

Q. And you also stated that another consideration from Panagra's viewpoint was the fact that Eastern would feed more traffic to Panagra than National.

I am not sure I stated it exactly correctly, but I thought that was your point.

A. That is my opinion.

Q. Why, in your opinion, would Eastern be able to generate more traffic for Panagra than National?

A. Well, because, as I said, with all due regard and respect for the National sales organization, which I also said has made tremendous strides in the last few years, I say that as things are today, with the extensive Eastern sales organization, and with the extensive Eastern route pattern, I believe that Eastern would feed us more traffic than National would, as things are today.

Whether that would be true in two or three years, I don't know.

Q. You mean you think they would have the ability to do so, not that they would do it, but that they would have access to more traffic, is that correct?

A. That is correct.

Q. And is that based on the fact that Eastern is larger and better established in this Northeastern market? Is that one of the considerations?

A. No, it is due to the fact that Eastern carries more people than National does. Eastern still has a tremendous pull in the market, because of the fact that they have been in the business for so long, and for so many years, they are [fol. 4360] very aggressive sellers, and I think that as things are today, they have much more of a pull than National has, although National has made strides and is making strides to cut into their business.

Q. You mean because Eastern not only carries people out of New York and Miami, but because they have contacts with people going to Houston, Atlanta, and all of the other points on the Eastern system, increases their ability—

A. To sell.

Q. —to sell and to give traffic to Panagra?

A. I think that is right.

pp. 1258-1262:

By Mr. Fitzgerald:

Q. Mr. Shea, at the time of the National-Panagra-Pan American agreements were before the Board for approval, before the decision in the temporary case, you testified, and you believed, did you not, that the approval of that interchange agreement was very much in the public interest?

A. Yes.

Q. And is there any difference between the situation as it then existed and the present situation, except for the fact that Pan American indicates it will not go along with that?

A. Well, there is the time elements, as I said. Both matters are now being indicated simultaneously. At the time the temporary approval matter was up there was a possibility that the approval would stick and that we could start operating immediately.

Q. But otherwise except for this factor of possible delay because of litigation, you would still testify that the Panagra-National agreement is just as much in the public interest today as it was before?

A. I think that is right.

[fol. 4361] Q. Is your decision to go along with the Eastern agreement in any way influenced by the efforts of the Pan American directors on Panagra's board?

A. No sir.

* * * * * * *

By Mr. Schneider:

Q. This question arises out of something Mr. Burns said that confuses me.

In answer to Mr. Russell's question, did you say, Mr. Shea, that you did prefer an Eastern interchange over National, or did you say that Eastern's would have more advantages?

A. My recollection is I did not use the word "prefer." I thought I said and I say now that I thought it would have greater advantage to Panagra than the National interchange.

Q. Then I take it Panagra doesn't state any preference today with respect to one over the other?

A. Well, only to that extent. I say it would be more advantageous to us to have the Eastern interchange than it would be to have the National.

Q. That is what I am getting at. Mr. Burns raised some distinction between preference and statement of advantages. When you say Eastern would have certain advantages, do you mean to say you prefer to have the one that has those advantages?

A. Now that we are attaching so much to the word "prefer," I will stand on what I said. From the commercial viewpoint, the Eastern interchange would be more advantageous in our opinion than a National interchange.

Q. You are not stating any preference?

A. No further than that.

[fol. 4362]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 427

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

HEARINGS BEFORE THE ANTITRUST SUBCOMMITTEE (SUBCOMMITTEE NO. 5) OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES, EIGHTY-FOURTH CONGRESS, SECOND SESSION.

pp. 2489-2491:

The Chairman. Proceed.

Mr. Trippe. Mr. Chairman, I would like briefly to go back to the history of our company, over the past 29 years.

It was founded in 1927 by 12 young ex-World War military pilots who invested on the average $25,000 apiece in the enterprise in order to provide the total capital in the amount of $300,000 that we started business with.

The first international operations were between Key West and Havana. We also had services in Alaska.

. . . . . .

Mr. Keating. Were you one of those 12 original people that put $25,000 in it?

Mr. Trippe. I was; yes.

The Chairman. Go ahead.

Mr. Trippe. Mr. Chairman, the company gained its present position in the international field, first by pioneering throughout Latin America. We extended from Florida to Cuba, down through the West Indies, as far as Trinidad and the Dutch Guiana, in 1929, extensions were also made from Brownsville, Tex., the other original terminus in the United States, through Mexico and Central America to the [fol. 4268] Canal, and across the north coast of South America. Later, the system was extended so that at the end of 6 years, it served every single country in Latin America.

During that period, Mr. Chairman, our European competitors were not asleep. They not only extended their services from Europe across the South Atlantic to serve Latin America through that principal trade route, but they were extending out through the Middle East and to the Orient, the rich market of the Orient, from which we were separated by 5,000 miles of ocean.

We started back in the early 1930's to organize the first trans-pacific service. We had hoped to operate through Alaska and Siberia. The then Colonel, now General Lindbergh, our technical adviser, made the first flight in 1931 from the United States to Alaska, and through Soviet territory and Japanese territory to China, surveying that so-called great-circle route for our company.

We commenced active operations in Alaska in 1932, and as I say, we hoped to extend those operations through to the Orient and China in 1934 and 1935.

We had an agreement with the Amtorg Trading Corp., then the agency for the Soviet Government, whereby we

would organize for the Soviet Government a chain of airports from the Bering Sea through their territory in Siberia. The agreement contemplated that we would have the right to operate over that airway to connect the United States with our affiliate in China, China National Airways, a corporation owned 45 percent by Pan American and 55 percent by the Chinese National Government.

Unfortunately, Mr. Chairman, at that time also, difficulties prevailed between our Government and the Soviet Government. There was the question of working out a solution for American debts then outstanding. Our Government asked that we not implement that contract at the time. [fol. 4364] Mr. Hull was the Secretary of State. A year later there was a settlement of the debt situation. We were told that we could proceed. Then unfortunately the Soviet Government changed its mind. We were advised it would be impossible to operate through Soviet territory. We were prohibited, therefore from arranging a route from the United States through Alaska and, with our affiliated operations in China, to the Orient.

The relations between our Government and Japan were deteriorating in those days. The only practical route available to an American-flag airline was the roundabout route across the Pacific, using steppingstones in the control of our Government, Honolulu, Midway, Wake, and Guam en route to Manila and Hong Kong. That service was set up in 1936. It was the first airline to operate over a major ocean route. It was flown by an airplane built in the United States in charge of an American captain and an American flight crew—by an American company, flying the United States flag.

We were proud that the first overocean service for mail, passengers, and cargo was set up under our house flag.

Several years later service was extended to New Zealand and Australia. I won't go into the details, unless the committee is interested. Also before the outbreak of the European war, World War II, we pioneered air service across the Atlantic to Europe, operating over the southern route via Lisbon to France and over the northern route via New Foundland and Ireland to Great Britain.

Then war came and most of our service went into direct operation for the military, including our services to Europe

and our services across the Pacific. Only a small part of our operations were left in the form of commercial operations.

I am happy to be able to say that over half of all of the military work entrusted by our Government to the American-flag civil airlines was entrusted to Pan American during the war years.

[fol. 4364a]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 428

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants

---

Before The Honorable Thomas F. Murphy, District Judge

PRETRIAL BRIEF OF
PAN AMERICAN WORLD AIRWAYS, INC.

PART II
VOL. 8

PAN AMERICAN DOCUMENTARY EVIDENCE

Minutes of IATA Traffic Conference
Meetings, Bermuda, May 8-28, 1951. P-428

[fol. 4365] (Emblem)

INTERNATIONAL AIR TRANSPORT ASSOCIATION

165 BROADWAY

NEW YORK 6, NEW YORK

[fol. 4366]

COMPOSITE and JOINT MEETINGS
TRAFFIC CONFERENCES 1, 2 and 3
MINUTES

•••

Castle Harbour Hotel, Bermuda
May 8–28, 1951

Sixth Meeting of Traffic Conference 1
Eighth Meeting of Traffic Conference 2
Seventh Meeting of Traffic Conference 3
Eighth Joint Meeting of Traffic Conferences 1 and 2
Eighth Joint Meeting of Traffic Conferences 2 and 3
Eighth Joint Meeting of Traffic Conferences 3 and 1
Sixth Joint Meeting of Traffic Conferences 1, 2 and 3

[fol. 4367] PLEASE NOTE

1. Most of the sessions of this meeting were held on a "composite" or "joint" basis. Frequently, matters affecting one Conference were discussed and acted on in the presence of the other two. However, in the interest of economy and efficiency, only one set of minutes has been produced.

2. To avoid confusion in the future, the Members are requested to address correspondence to the individual Secretaries in accordance with the division of work among them, as follows:

Traffic Conference 1,
Joint Meetings of Conferences 1 and 2,
Global traffic matters involving
Conferences 1, 2 and 3:

Mr. E. S. Pefanis
New York

Traffic Conference 2,
Joint Meetings of Conferences 2 and 3:

Mr. V. de Boursac
Paris

Traffic Conference 3,
Joint Meetings of Conferences 3 and 1:

Mr. H. J. Dedekam
Singapore.

[fol. 4368]

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[fol. 4377] CHAIRMANSHIP

Mr. R. E. S. Deichler, as Chairman of Conference 1, the host Conference, was in the Chair for Composite Meetings and when Conference 1 was in individual session.

Mr. J. W. S. Brancker was in the Chair when Conference 2 was in individual session.

Mr. B. L. Anderson was in the Chair when Conference 3 was in individual session.

ATTENDANCE RECORD

Company	*Name*
Aer Lingus Teoranta	R. D. Keyes McDonnell M. Stuart-Shaw
Aero O/Y	A. Nystroem
Aerovias Guest	L. E. Cooper J. R. Joyce
Aerovias Nacionales de Colombia. (AVIANCA)	J. Ucros P.
Air France	G. Delelaux R. de Seife M. de Villeneuve J. Lesueur
Air India International, Ltd.	A. F. Dubash
American Airlines	R. E. S. Deichler J. H. Mahoney
Avio Linee Italiane	A. Farini
Braniff International Airways	C. E. Beard R. Brack L. Person
British Commonwealth Pacific Airlines	A. W. Gill I. Lawson

Company	*Name*
British European Airways	J. Dolby
	J. L. Grumbridge
	P. C. F. Lawton
	O. Lewis
	S. F. Wheatcroft

[fol. 4378]

British Overseas Airways Corporation	J. W. S. Brancker
	H. M. Clarke
	J. Fowler
	A. C. Hughes
	L. Mayhew
	L. W. Rashbrook
	A. Snell rove
Canadian Pacific Airlines	C. W. Budd
Central African Airways	R. A. Weeden
	R. A. R. Wieland
Chicago & Southern Airlines	R. S. Maurer
	T. H. Miller
	L. J. Priester
Compania Cubana de Aviacion	L. G. del Portillo
Cyprus Airways, Ltd.	D. J. Platt
Eastern Airlines	H. Dobbs
	W. A. Weeks
El Al Israel National Airlines	Dr. D. Bar-Nes
IBERIA Compania Mercantil Anonima de Lineas Aereas	M. de las Penas
KLM Royal Dutch Airlines	J. W. Croes
	A. D. Hijlkema
	J. W. Meijer
	J. G. van Reeken
	F. von Balluseck
Linea Aeropostal Venezolana	H. Held

Company	*Name*
National Airlines	W. C. Baker W. Sternberg
Northwest Airlines	A. Culbert J. Ravlin R. Watson
Panair do Brasil	H. Graham R. Teichholz
Pan American-Grace Airways	R. de Murias J. Shannon

—3—

[fol. 4379]

Pan American World Airways, Inc.	F. J. Crosson W. G. Lipscomb R. C. Lounsbury J. A. Maciag G. Smith W. R. Stevens P. Velte
Philippine Air Lines	B. L. Anderson W. H. Cross E. S. de Vicuna
Qantas Empire Airlines	C. W. Nielson T. Roff
SABENA Belgian Airlines	J. E. Desmet L. Schoevaerts J. C. van Cutsem
Scandinavian Airlines System	P. Backe J. Dillenbeck D. Handover A. Honne F. Kruhoffer V. Mathisen J. Nielsen T. Nilert
South African Airways	W. B. Pratt

Company	*Name*
Swiss Air Transport Company	W. Imhof
	C. Messmer
	E. Schneider
	R. Ulmer
Tasman Empire Airways	J. W. Veale
Trans-Canada Air Lines	J. Lane
	W. G. Wood
Trans World Airlines	J. R. Barch
	E. O. Cocke
	W. B. Price
	G. Spater
	E. Sullivan
United Air Lines	W. D. Dilworth
	R. Ireland

—4—

[fol. 4380]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

SECRETARIES

E. S. Pefanis	Acting Secretary, Traffic Conference 1 (Secretary of Composite and Joint Meetings)
V. de Boursac	Secretary, Traffic Conference 2
H. J. Dedekam	Secretary, Traffic Conference 3

OTHERS

Sir William P. Hildred	Director General
S. P. Thouvenot	Deputy Director General
R. Feick	Chief Enforcement Officer
W. M. Sheehan	Legal Drafting Officer
A. L. Young	Secretary, Traffic Committee
J. H. Krasman	Assistant Secretary, Traffic Conference 1

ABSENT

Aerolineas Argentinas
Aero Portuguesa, Ltda.
Air Ceylon, Ltd.
Air Liban
Ceskolovenske Aerolinie
Divisad de Exploracao dos Transportes Aereos (DETA)
East African Airways
Empresa de Viacao Aereo Rio Grandense (VARIG)
Flugfelag Islands (Iceland Airways)
Greek Airlines, TAE
Hellenic Airlines, S. A.
Iraqi Airways
Jugoslovenski Aerotransport JAT
Linea Aerea Nacional
Linee Aeree Italiane, S. P. A.
MISRAIR, S. A. E.
New Zealand National Airways Corporation
Polish State Airlines (LOT)
Servicos Aereos Cruzeiro do Sul, Ltda.
Transportes Aereos Portugueses, TAP
West African Airways Corporation

[fol. 4381] —5—

COMPOSITE MEETINGS

MINUTES

OPENING OF MEETING

M/1 Mr. R. E. S. Deichler, Chairman of Traffic Conference 1, called the meeting to order and introduced Captain The Hon. Bayard Dill, Chairmand of the Board of Civil Aviation of Bermuda, who welcomed the delegates. Sir William Hildred, Director General of IATA, thanked Captain Dill on behalf of the association.

M/2 The Chairman informed the Conference that to expedite progress, a set of Traffic Conference Rules and Procedures had been drafted and suggested that these be adopted by the Conference. These rules as at Appendix "A" were accepted to govern the proceedings of this and future Conference meetings.

M/3 Members were requested to refrain from discussing the business of the Conference with the press. At the close of the meeting a press communique would be drafted and would be available to delegates before issue.

M/4 The Chairman advised Members that no verbatim records would be made of the proceedings and that Members should inform the Chairman whenever they wished to have their remarks taken down for the record. A Situation Report would be issued daily and would form the basis of the minutes.

EXAMINATION OF CREDENTIALS OF REPRESENTATIVES

M/5 The Chairman announced that the credentials had been examined by the Secretary and had been found to be in order.

DETERMINATION OF VOTING MEMBERSHIP

DETERMINATION OF MEMBERS OPERATING SCHEDULED COMMERCIAL INTERNATIONAL AIR TRANSPORT SERVICES BETWEEN THE AREAS OF

Conferences 1 and 2
Conferences 2 and 3
Conferences 3 and 1
Conferences 1, 2 and 3

[fol. 4382] —6—

M/6 The Chairman announced that the list of Voting Members as shown on the first pages of the resolutions of the Conference and as at Appendix "B" and the list of Members operating between Conferences as at Appendix "C", had been determined and approved in accordance with the Conference Provisions.

APPROVAL OF MINUTES OF PREVIOUS MEETINGS

M/7 The Conference approved the minutes of the Madrid meetings as previously circulated with the following amendments:

M/68 (p. 19)—Add the following sentence:

"PAA stated that the mileage of 2,580 miles stated by QEA between San Francisco and New York was not correct."

M/84 (p. 22)—Reads as follows:

"Several Members were opposed in principle to the inclusion of the escape clause for Conference 2 fare and rate agreements and preferred to close them for a definite 12 months period. When it became clear that for tariff considerations it was proposed to insert the escape clause for all areas Aer Lingus, who opposed the insertion of this escape clause in Conference 2 fares and rates tables, went on record as stating that the re-opening of fares and rates in Conference 2 was primarily a matter for Conference 2 carriers and not for carriers in some other part of the world, and for that reason hoped that the escape clause would not be invoked and that Conference 2 carriers would not be involved in an autumn Conference unless they, themselves, desired to re-open Conference 2 fares and rates."

M/154 (p. 32)—Delete the initials "U.S." in the second line.

M/214 (p. 42)—Delete the following sentence at the end of Items 3 and 4:

"No details given."

Add the following sentence at the end of Items 3 and 4:

"Details are contained in the carriers' tariffs."

M/215 (p. 42)—Add the following sentence at the end of this minute:

"Except as permitted by Resolution 200."

M/252 (p. 48)—Instead of:

"There was no support for..."

this minute should read:

"There was no sufficient support to agree on...".

REPORT OF COMPOSITE FRCS COMMITTEES

M/8 In the absence, due to illness, of Mr. S. F. Wheatcroft, during the first week of the meeting, Mr. J. R. Barch, Chairman of Conference 1 FRCS, commented on the Composite FRCS report.

Fare and Rate Level in Conference 1

M/9 Detailed questions leading to the closing of fares and rates in Conference 1 were discussed at individual sessions of this Conference. Under the terms of the final agreement reached, Members accepted the fares and rates contained in the tariffs of seven (7) Members (Braniff, Chicago & Southern, Eastern Airlines, National Airlines, Pan American World Airways, Pan American-Grace Airways, Trans-Canada Air Lines) as a basis for building up the Conference specified Fares and Rates Table. A draft table was prepared but time did not permit Members to finalize this document. The Conference instructed, therefore, that the FRCS Committee should meet in New York in June in order to complete the work.

M/10 The Conference recognized that at the FRCS meeting certain fares and rates would require negotiation. It was decided, therefore, that, in the absence of any unanimous agreement regarding a fare or rate under dispute, the lowest fare or rate in the tariffs of any one of these seven (7) Members would become the specified minimum fare in the table. It was the understanding, however, that

this condition would not apply in the case of cabotage sectors.

M/11 TCA stated that they were prepared to adjust their cargo rates so as to avoid Canadian cargo rates being lower than rates from points south of Canada such as New York. Carriers concerned also agreed to use a 10% discount for round-trip fares from and to Canada and the U. S. regardless of the effect of the domestic 5% discount. American Airlines agreed to specify United States/Mexico fares and rates in resolution form but felt that since they were the only direct air carrier operating competing services between the points concerned, no apparent practical purpose was served in specifying the United States/Mexico fares and rates.

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M/12 Resolutions 160/051 and 160/051a will be filed with Governments when the fares and rates tables referred to above are completed.

Closing Fares and Rates in Conference 1

M/13 The FRCS Committee reported that at its meeting in Nicosia there was unanimous agreement in principle to close fares and rates. It was necessary, however, for the Conference to resolve conditions on which Members stated they required agreement before the area could be closed. From statements made by Members present at Bermuda, the following were identified as the essential conditions to be satisfied:

(i) Acceptance of the seven (7) carriers' tariffs as a basic fares and rates table.

(ii) An effective currency resolution.

(iii) A fast escape clause to meet competition.

(iv) Construction rules embodying circuity provisions and the ability to combine fares.

(v) A satisfactory charter resolution.

(vi) Determination of the liability of General Agents.

(vii) A limiting definition for first and tourist class services.

M/14 The above questions were developed and resolved at both individual sessions in Conference 1 and joint sessions of the three Traffic Conferences and are discussed under the appropriate headings of this report.

M/15 In agreeing to close fares and rates in Traffic Conference 1, the interests of unanimity and the desire to establish a stabilized world-wide fares and rates structure influenced Members' final decisions. In the spirit of cooperation, agreements were reached by Members yielding on positions they stated previously that they would accept no compromise.

Fare Level of the North Atlantic

M/16 Several meetings of the North Atlantic Ad Hoc Committee were held to discuss the North Atlantic fare level and attendant problems. The report of this Committee, which was accepted by the Conference, provided for a fare pattern based on a one-way fare between London and New York at U. S. $395, round-trip off-season fare at 1⅓, 17 day special round-trip fare at 1-1/10 and the introduction of an experimental tourist service across the North Atlantic on October 1, 1952.

[fol. 4385] —9—

North Atlantic Tourist Services

M/17 Pan American World Airways' proposal to introduce a tourist service across the Atlantic at U. S. $225 one-way and $405 round-trip during the Fall of 1951, dominated discussions regarding level of fares across the North Atlantic. This proposal, full details of which are given as at Appendix "D", contemplated no increase of the normal one-way fare and the elimination of discounts for off-season transportation.

M/18 Pan American World Airways stated that they could not agree to the closing of fares across the North Atlantic unless Members made definite provision for the introduc-

tion of a tourist class service across the North Atlantic. It was recalled that Pan American World Airways' first proposal to institute tourist services was made at Bermuda in 1948.

M/19 Carriers expressed their willingness to be committed to tourist service but could not agree to the dates suggested by Pan American World Airways. Opposition to the early introduction stemmed from the fact that the majority felt that the whole question required thorough study from political, technical, commercial and economic points of view. They felt that to take action on the dates proposed by Pan American World Airways would be premature and when once committed to tourist class service the carriers could not retract in the event of this service across the Atlantic proving unsuccessful.

M/20 Other proposals, designed to provide a more gradual approach toward the ultimate accomplishment of mass reduced transportation across the North Atlantic, were considered. TWA, suggested a 17 day year-round 1-1/10 round-trip fare in combination with a special student fare to be introduced for application during the summer vacation months. Neither this proposal nor any others of a similar nature were acceptable to Pan American World Airways.

M/21 After much discussion within the Ad Hoc Committee, an agreement which was accepted later by the Traffic Conferences, was drafted. The basic terms of this agreement are as follows:

(i) The normal one-way fare New York to London was raised from $375 to $395.

(ii) The off-season round-trip fare during the months of September 1st to March 31st Eastbound and December 1st to June 30th Westbound, was fixed at 1⅓ the normal one-way fare.

(iii) A 17 day round-trip fare valid for travel during January 1 and March 31, 1952, was fixed at 1-1/10 the normal one-way fare.

(iv) Members may introduce experimental tourist class services on October 1st, 1952 and a long-range tourist service on April 1st, 1953.

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(v) The one-way tourist fare between New York and Shannon be not less than $195 and not more than $220.

(vi) A North Atlantic Operators' Committee was created for the purpose of studying, reviewing and recommending action as to both the experimental and long range phases of the tourist service program. Terms of reference of this Committee covered the technical, commercial and economic aspects of this type of service.

(vii) The actual fare of the experimental phase, within the range mentioned in (vi) above, to be agreed on the recommendation of the North Atlantic Operators' Committee by mail vote action to be concluded by October 10th, 1951. When meeting to decide this fare the majority vote shall rule and it was understood that Pan American World Airways would agree to reconsider the range of fares should economic factors make this necessary. In the event of failure of this mail vote, a joint meeting of Traffic Conferences 1 and 2 will be convened for November 13th.

(viii) Prior to the meeting of the North Atlantic Operators' Committee, meetings of cost and technical experts will be held. To facilitate these studies, replies to the North Atlantic Tourist Service Questionnaire, would be made available to the appropriate study groups.

(ix) Failure to agree the level of the one-way tourist fare, or in the event of a Government disapproving the tourist service program in whole or in part, would result in an open rate situation across the North Atlantic.

(x) The North Atlantic Operators' Committee to recommend minimum seat densities for various

aircraft. This recommendation will be made on the basis of study undertaken by carriers' technical representatives and for the guidance of this group, the following densities were suggested at Bermuda:

Aircraft Type	*No. of Seats*
DC-4 M1	48
DC-4	55 to 60
DC-6	60 to 64
L-49	60 to 64
B-377	91

(xi) During the experimental phase, the maximum frequency of service, including extra sections, of each Member across the North Atlantic shall be 4 round-trips per week.

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(xii) The North Atlantic Operators' Committee to recommend the scale of charges for meals, drinks, ground transportation and other incidental services.

M/22 When the North Atlantic agreement was presented to the Traffic Conferences the question of combination of tourist class and normal fares was discussed. Carriers were concerned that unless a formula could be established which would limit the tourist service to the gateways, the TC2 fare structure would be destroyed. One suggestion made was that where the tourist class service extended into TC2, combination services be offered at fares that equalize the through-tourist class fares provided that the passenger is not carried on standard service for more than 25% of the journey. This formula was not accepted but the Conferences felt that this proposal should be given further study by the FRCS.

M/23 Agreement was finally reached to hold the tourist fares to the gateways and constructing through fares East of Shannon and Prestwick by combinations using the lowest normal fare for all sectors.

M/24 At the request of El Al an exception was made in the case of Lydda. This Member explained that because of equipment limitations it would be necessary for them to operate tourist class high density seating aircraft over the whole route from New York to Lydda. They could not accept the principle that with such a service they should compete at the same through fare against a combination of tourist class service New York, London or Paris and a first class service from these points to Lydda. To overcome this difficulty, it was agreed to allow El Al to offer an exceptional fare between New York and Lydda, based on a combination of a tourist fare between New York and Shannon and a normal fare between Shannon and Lydda at 25% less. El Al would be permitted to quote this reduced fare until such time as they increase the frequency of their services—standard or tourist class—to three times weekly. During this concessionary period, other Members may offer the same fares between New York and Lydda on tourist services not in excess of two round-trip services per week.

M/25 The above agreements resulted in Resolutions JT12(8)001a, JT12(8)054, JT12(8)155a and JT12(8)180. Eleven Members voted in favor and the following abstained:

American Airlines
Air India International, Ltd.
Aer Lingus Teoranta
British European Airways
British Commonwealth Pacific Airl.
British Overseas Airways Corp.
Braniff International Airways
Central African Airways Corp.
Canadian Pacific Air Lines
Chicago & Southern Airlines
Cyprus Airways Ltd.
IBERIA Compania Mercantil Anonima de Lineas Aereas
National Airlines
Northwest Airlines
Philippine Air Lines
Qantas Empire Airways
Scandinavian Airlines System
Swiss Air Transport Co., Ltd.
Trans-Canada Air Lines
Trans World Airlines
United Airlines

[fol. 4388]

M/26 With reference to the above vote, the following statements were recorded:

British Overseas Airways Corporation

"I would like, if I may, to explain the position of BOAC in respect of this resolution.

"We believe very sincerely that cheap fare facilities must be introduced on the North Atlantic as soon as this can be done. We believe equally sincerely, however, that in introducing these facilities we must avoid both uneconomic operation and equally any general collapse of the existing worldwide rating structure.

"Either of these eventualities can only have a singularly unfortunate effect on both the Members of this Association and ultimately the general public. We shall not be fulfilling our function if we produce chaos.

"During the discussions which have taken place, we have consistently suggested that the Conference should adopt suitable resolutions to ensure that immediate and practical steps should be taken to make a comprehensive study of the whole problem. This study would be directed to solving the outstanding difficulties of which we believe there are many, and permitting the introduction of separate tourist service at the earliest practical moment. It seems to us, however, unwise to determine any definite date for this introduction until further progress has taken place in the industry-wide examination. To avoid penalizing the public while this examination is being made, we feel that there should be an extension of some of the cheap round-trip and off-season fares on normal services. We are already accustomed to use these fares; they do not upset any other rate structures, and they do not make it necessary for transatlantic operators to rush into expensive equipment programmes before having full information available.

"These appear to us to be the sentiments of the great majority of the operators concerned.

"It may appear illogical for BOAC to take this attitude with regard to North Atlantic tourist services and at the same time to be co-sponsor of a paper recommending the introduction of a tourist service between the United Kingdom and South Africa.

"I would merely say that in the case of this particular service, we gave general notice of the intention and the proposed fares at the FRCS in Nicosia; we submitted every ascertainable fact and detailed costs and revenue to the Conference; every precaution was taken to pre-

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[fol. 4389] vent this service upsetting the rest of the structure, and we were ready to adopt other limitations to meet the wishes of other operators. Furthermore, although this proposal had, by its very nature, very much less effect on the general rate system, we do not threaten an open rate situation with all its troubles, if the Conference—in its wisdom—decides not to accept it.

"We still urge that a study of the North Atlantic tourist services should proceed as quickly as possible, regardless of the ultimate fate of these resolutions. I would again emphasise that BOAC is in favor of the introduction of tourist services as quickly as possible, but the proposed resolutions dealing with North Atlantic fares have the following objections.

"It appears extremely unwise to determine a tourist fare within such close brackets for introduction in October 1952; it may well be that this level will prove economically impractical.

"Similarly, no attempt has yet been made to settle completely the repercussive effect of such services, nor to overcome all the known problems.

"There is as yet no agreed definition of a 'tourist service.'

"An experiment conducted during the winter is unlikely to produce reliable data, and it is obviously going to be difficult for Members wishing to participate to convert aircraft during the high season.

"Finally, no arrangements have been included to give improved cheap fare facilities on normal services during the Summer of 1952.

"For the reasons given, therefore, BOAC does not consider that the proposals are really in the best interests of either the public or the industry. As, however, they may represent a compromise which is sufficiently acceptable to prevent an open rate situation, and may ultimately accelerate the introduction of tourist services, we feel our only course is to abstain from voting."

Trans-Canada Air Lines

"TCA wishes to record the following statement in the minutes as to its reasons for abstaining on Resolution JT12(8)(180):

"1. We believe tourist service is both necessary and desirable provided such service is offered to the public

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[fol. 4390] at fares the industry agrees are reasonable and economically sound.

"2. We feel that the fare which has been agreed is not economically sound.

"3. We feel that an unrealistic approach is being made to the problem of providing tourist or second class service and that only after a full-blown study should the service be initially inaugurated.

"4. TCA thinks that as a result of this study just referred to, the proposed relationship between tourist and standard *must be* altered so that the percentage differential will be substantially lower in order to reduce diversionary effect.

"5. In our opinion, the proposed fares cannot be justified on a full-allocated cost basis and this fact will

be evidenced by the IATA Cost Study. In view of this, the experimental period which has been agreed to will hamper our joint efforts to bring about a satisfactory solution to the problem of reaching the potential market at cheaper fares.

"6. In our opinion, alternative proposals featuring special promotional fares calculated to tap a vast new potential market would be preferable and at the same time allow the Member carriers to sample and digest the problems associated with cheaper fares, at no additional expense to the carriers and with a reasonable opportunity to increase their revenue considerably."

Trans World Airlines

"I would like to make a statement for the record in connection with our abstention from the last vote.

"TWA has always endorsed low fares and has taken a leading position in urging promotional fare devices that have been made available in the past.

"The North Atlantic operators were unanimously agreed on the principle of tourist class service but we, and I believe others, were reluctant to set a specified fare and other details of operation including a starting date for such service without an adequate study of the economics of such an operation.

"The need for study is obvious since no one has produced figures showing the estimated profit or loss of any proposed tourist class service or its operating results on a system basis after giving effect to diversion

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[fol. 4391] from standard services or how much additional subsidy from Governments will be required to sustain it.

"Nevertheless from the outset of this Conference, we have stated that we would not attempt to force our individual views on the other transatlantic operators and that we would not oppose the tourist class service if it was the will of the Conference that such a service should be agreed upon at this time."

Scandinavian Airlines System

SAS, in registering their abstention from voting on the North Atlantic tourist service program, wish to record the following statement:

"Mr. Chairman, with all the seriousness and sincerity in my command, I would like to go on record with a short outline of basic reasons why SAS are opposing the proposed tourist class as placed before us by Pan American World Airways in Bermuda, May 7th.

"I am speaking on behalf of my company, SAS, here. Although it is a small carrier, only responsible for some 8% of the total traffic carried across the Atlantic, it is generally acknowledged around this table that it is a sound operator, carrying its traffic in a dependable, regular way and with a high standard of service, probably second to no other carrier. I think it is also known, through our Cost Committees, that we are a low cost operator and I would also like you to rest assured that we conduct our affairs purely on a business and commercial basis. I am not certain whether it is generally known, but it is a fact that we have during the five years of our operations, received no subsidy whatsoever for our North Atlantic service and have yet been able to make a profit including proper allocations for depreciation and development costs. This record, I think, entitles me to defend and explain our attitude.

"I think part of a good defense is attacking the opponent's weak points and, therefore, I will look a little bit into the record of the carrier proposing tourist class.

"But first I would like to say that to my great disappointment we have been spending ten days in Bermuda with one carrier trying, without success nor single support, to convince a compact majority of eleven operators that its idea was to the benefit of the public and the airlines. We are all here as international operators trying to solve our problems by negotiation and com-

[fol. 4392] promise. That is what we call the IATA spirit. The carrier involved has even indicated that due to his Government's interest in tourist class he can see no other solution to this problem—apart from giving way to the majority point of view—than to create an open rate situation.

"It is known to all around this table that the Government agency of this carrier has advised its IATA Members, that although they are interested in the introduction of the tourist class, they have a second thought in case the majority of international carriers are opposed to the introduction of tourist class at present. I hesitate to believe that this means that this carrier's Government will be in agreement with an open rate situation. I do not think that we are entitled to enter into either domestic or international politics, but with the experience of this Government's tremendous effort to create goodwill and cooperation, help and assistance to those who need it, it is difficult to understand such an interpretation by the carrier of this Government's policy.

"Secondly, I would like to underline that as far as we are concerned, we are here just as men of business and to talk business. The carrier, who during this Conference, has singled himself out as not willing to go along with the majority is not exactly representative of what I would call profitable affairs. During the last couple of years, which I have casually investigated and which appear to have been quite profitable years for ourselves and others, this carrier in 1949 in its annual report, has reported a mail pay of $19,000,000 on its Atlantic Division. Out of this, around $9,000,000 have been actually received, the balance still pending appropriate authorities' decisions. If this carrier during 1949 on its Atlantic Division operations (which include North Atlantic, Bermuda, Africa and through to Calcutta, as far as my information goes) had only received the appropriate international mail rate payment (6 gold francs, etc.) on the same proportion of differ-

ent categories of mail as SAS have carried, they would have sustained a loss of around 8.2 million dollars. The equivalent figure for 1950, as far as I can make out, is 6.9 million dollars. The figures can naturally be discussed but the tendency is clear. If one carrier is given such tremendous support by its Government it is easy to understand why such a carrier can involve itself in costly experiments which might ruin carriers who want to carry out their traffic and fulfill their responsibility, without any charge to the taxpayers.

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[fol. 4393] "I have difficulties in understanding that this carrier's government will accept such an experiment if it cannot be proved to be founded on business-like principles and at the same time also implies the effect on others that their sound economic base will be destroyed. I hesitate so much more because this carrier's Government is known during the last years to have made immense efforts to to carry out economic aid to those nations whose carriers are represented around this table. It may be true that this carrier's Government has good reasons for this policy and it may also be true that the same Government has assisted other nations' carriers to create a North Atlantic service through currency measures and economic aid which have allowed the purchase of American aircraft, but I hesitate again in accepting, that this Government —contrary to the previous intentions—now should be willing to possibly ruin the business of the carriers which hitherto have been aided through this Government's policy.

"If political principles like this are involved in our discussions about North Atlantic fare levels, I can as a man of business do nothing better than leave these questions in the hands of those who are more able to deal with them than myself and my company.

"Then I would revert to a discussion of the business in the proposed tourist class service. Firstly I want to deal with the question looked upon as a separate North

Atlantic problem. I will ignore the completely unknown counter-actions which we may have to face from our competitors in the steamship business in the event of the introduction of the tourist class on the North Atlantic. I think I can trustfully leave the aspect of this problem to the imagination of my colleagues around this table. Thereafter, I want to consider for a moment the impact of a tourist class on the North Atlantic on the European rate structure and even the impact on the worldwide route net and fare pattern of other Members.

"The Pan American paper placed before us on May 7 is a very complicated document dealing with a still more complicated problem. We would not think that the carrier intentionally has delayed the presentation of this document until we were all divorced from our headquarters with our files, statistics, and experts, and the views of our managements, but I think it is asking for much if it has been seriously expected that we should be able to discuss the details of the proposal based upon that preliminary paper during this Conference.

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[fol. 4394] "The document is not sufficiently accurate nor complete to imply the element studies and element figures and has not tried to evaluate important aspects of the proposal.

"I will not take up your time with the many facts which I could state here, but just turn to the two important pages of all business, the cost page and the revenue page. On the cost side I want it to be known that this paper has quoted a cost figure less depreciation, which is in itself lower than the cost figure presented by the same carrier in Brussels in February, 1949. This is in spite of the fact that everybody round this table will agree to general increases in operating costs. Even the same carrier has reported a roughly 30% increase in operating costs between February 1949 and February 1951 on their standard operations costs within the IATA Cost Committees.

"Then turning to the revenue side, there has been no attempt in the Pan American study to evaluate the diversion from the normal standard fare traffic. I want you to bear in mind that we have been presented with a factor diversion of at least 65% by the same carrier regarding their 1-1/10th fare traffic experience. On our own operational cost experience with 82 round trips, during one calendar year, using DC-4 tourist class aircraft equipped with 55 seats, the proposed 40% reduced fares will show a net loss of $680,000—or something between ½ and ¾ million dollars—based on 60% load factor and assuming that four out of every ten passengers carried on the tourist service were diverted from the standard services—a diversional factor of 40%. I can vary the figures and diversion factors but the result remains: loss. As I said, this is based upon the experience of a carrier operating far into the black on this section with the know-how of profitable business. You can yourself figure out the results Pan American would achieve with their documented cost figures, operation 365 flights per year or 4-5 times as many as ourselves.

"So far I have concerned myself with purely North Atlantic operations and have made no reference at all to the impact which it is bound to have on European shorthaul operations. We ourselves operate a very considerable network in Europe, but we have had the advantage of access to the proposal and been in a position to make rough and ready calculations as to the effects. Our colleagues in IATA who are not so fortunate are completely in the dark as to the effect of this proposal on their services. If our ideas are indicative—and I am certain they are—many of these carriers will be faced with economic disaster if this proposal is allowed to go forward in its present form. I think this is one of the most important points to bear

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[fol. 4395] in mind before any agreement to the institution of a tourist class is given. Although the proposal purports to contain the North Atlantic tourist

class within gateways, it must be quite obvious to everybody that this is impossible and the extent to which the tourist class will creep on is almost without limit.

"I have always been willing to go along with other carriers in our Conferences and I will continue to do so. But I am not in favor of the introduction of tourist class service according to PAA's unsupported proposal—I hesitate to make a statement in favor of something in the future which is unknown. Therefore, I can not either go along, Mr. Chairman, with your proposal kindly submitted to us tonight, but I would like to say that if necessary we will accept the introduction of a tourist class when time is right and I am willing to discuss, negotiate and accept the view of the majority with regard to such timing. This is our position in this matter and our attitude towards IATA, an association which we like, which we will back and which I hope will continue in the future to the benefit of all of us."

SAS stated that they also joined with TWA and BOAC in regard to the statements made for the records of Conferences 1/2.

Pan American World Airways

"It has been the position of a number of the Members operating North Atlantic services that, while they agree in principle with the introduction of a tourist service across the North Atlantic, they think that the matter should be given more study, before any such service, even an experimental one, should be inaugurated.

"This position is not new. In effect it has been advanced by these Members every time within the last three years that Pan American raised the matter. It was advanced at the meeting of the Conferences in Bermuda in 1948 when Pan American first proposed the tourist service. It was advanced at the meeting of the Ad Hoc Committee of the North Atlantic operators

which met in February of 1949, in Brussels, for the sole purpose of considering a detailed tourist service proposal submitted by Pan American. It was advanced, again, when Pan American raised the matter of its tourist service proposals at the meetings of the Conferences in Nice in May 1949, in Mexico City in November 1949 and in Madrid in May 1950.

"This procrastination has continued in spite of the fact that at the Nice meeting Pan American openly offered to make available to the Members its detailed studies of the tourist service proposals. Only two of the Members availed themselves of this offer.

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[fol. 4396] "In Pan American's opinion for the Conferences further to have deferred a definite tourist service program on the grounds of additional study would have been shortsighted and contrary to the interest of the public and of the Members themselves."

M/27 The following were nominated to represent their respective Conferences on the North Atlantic Operators Committee:

Traffic Conference 1

Mr. C. E. Beard	—	Braniff International
Mr. R. W. Ireland	—	United Air Lines

Traffic Conference 2

Mr. M. Stuart-Shaw	—	Aer Lingus Teoranta
Mr. P. C. F. Lawton	—	British European Airways

Traffic Conference 3

Mr. A. Culbert	—	Northwest Airlines
Mr .B. L. Anderson	—	Philippine Airlines

Mid-Atlantic Fares

M/28 In the absence of a specific recommendation from the FRCS, the Conferences set up a working group to examine the Mid-Atlantic fare structure. The report of the group, which was accepted by the Conferences, provided for a fare pattern as follows:

(i) With the exception of fares to and from Madrid, a general increase of the one-way fares by $20 was

agreed. To remove the inconsistencies existing in the present Mid-Atlantic table, it was necessary, in some cases, to apply greater increases.

(ii) The normal on-season round-trip fares were established at 180% of the one-way fares and off-season round-trip fares at a reduction of $150 over the normal round-trip fares.

(iii) A 17 day fare established at $225 less than on-season round-trip fares was agreed.

(iv) Miami, Nassau, Tampa and West Palm Beach were common-rated at $428 from London with routings via New York or Bermuda-Azores.

M/29 With reference to the fares to and from Madrid, IBERIA was opposed to any increases. AVIANCA, however, suggested that Barranquilla and Caracas should be common-rated. This Member felt that since the mileage

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[fol. 4397] between these two points and Madrid were approximately the same, the present fare differential in favor of Caracas could not be justified. After negotiation between the Members concerned, the Madrid/Caracas fare was raised from $454 to $461.

M/30 Air France notified the Conference of its intention to introduce a service between Paris and Martinique via a more direct route than that at present operated over the Mid-Atlantic. This would have the effect of reducing fares between the Southeastern area of the Caribbean and points in Europe. To allow for this eventuality, the Mid-Atlantic fares agreement included an alternate table of lower fares between certain points to become effective 45 days after a Member notifies the Conference that a service over a more direct route will be inaugurated.

M/31 In view of the fact that the Caribbean area is also served by Members operating via the North Atlantic route, the FRCS had suggested that, as a basis for applying the 15% deviation rule, mileages between points should be specified. This proposal was not acceptable and it was agreed instead to name specific basic routings against fares. Furthermore, it was agreed that when the routing from

Aruba, Barranquilla, Caracas, Curacao, Maracaibo or Port of Spain to points in Conferences 2 or 3 via New York is within 15% of the basic routing, Members would be permitted to quote the same fare via routings over Montreal.

M/32 PAA stated that since some of the routings specified were not the shortest operated as defined in the Construction Resolution JT12(8)014a, they understood that Members may quote the same fare via any routings within 15% deviation of the basic routing.

M/33 Provision was made to enable any Member operating over the Mid-Atlantic route to meet any undercuts arising from the application of combination of fares via the North Atlantic.

M/34 Air France informed the Conferences of its intention of applying a resident fare between Paris-Martinique-Guadeloupe at approximately $395 one-way. This and other cabotage sectors were designated in the fares table as being included "for information only" and that "no other fare shall be used for construction purposes."

M/35 It was the opinion of the majority that a North Atlantic tourist service would have an immediate effect on Mid-Atlantic fares and that it would be unrealistic to suppose that a tourist service across the North Atlantic could be contained by imposing restrictions on advertising and sale of such fares in the Central American and Caribbean traffic generating areas, or by any other means. These carriers felt that they would be compelled to introduce Mid-Atlantic tourist service fare levels despite the economic considerations involved and notwithstanding the fact that because of operational limitations—in particular the long section Azores-Bermuda, high density seating could not be utilized profitably.

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M/36 Because of the close relationship between Mid and North Atlantic fares, it was decided to cover the Mid-Atlantic agreements—Resolutions JT12(8)054b and JT12-(8)155b—with a Special Effectiveness Resolution JT12-(8)001f. Under this resolution if, for any reason, the

North Atlantic fare agreement becomes void, any Member operating the Mid-Atlantic route could, upon notice to the Conference, void the Mid-Atlantic fares agreement.

South Atlantic Fares

M/37 The Conferences accepted Resolution JT12(8)054c prepared by a Working Group of South Atlantic operators. On the assumption that a satisfactory currency resolution would be adopted by the Conference, the Group recommended retention, with minor adjustments, of the present fare pattern.

M/38 The Conferences also agreed to renew the Special Spanish Resident fares which, at IBERIA's request, were increased by approximately 19%. Provision was made to enable the Resolution JT12(8)054d passed to become effective on July 1, 1951.

M/39 During discussions in the Working Group, two Members favored Northbound fare reductions of 25% for the reason that with the present rate of exchange for the Argentine peso at 14.03 to U.S. $, the selling fares in that country had reached a point which made sales difficult. There was also a desire to be in a better competitive position, vis-a-vis steamship carriers. Other Members considered that load factors were satisfactory and that no reduction was necessary. With reference to surface competition, Air France, who had been asked by the FRCS to make a survey of the position, informed the Group that as from April 15 steamship companies had increased their fares from Buenos Aires by 15% and recent statistics indicated a diversionary trend of passenger traffic in favor of air.

M/40 A proposal that the present North and Southbound fares between Rio de Janeiro and Europe be equalized by removal of the $90 differential found little support.

M/41 The effect that a possible institution of tourist fares to Europe would have on the South Atlantic fare structure was considered. A rough calculation of fares from South America via North America to Europe compared with South America direct to Europe showed that a tourist

class service from Brazil and Chile to Europe via North America would undercut first class fares from South America direct to Europe by approximately 10% but would not undercut fares from Argentina and Uruguay. At the present level of Southbound fares, practically no undercuts would result. For the time being, therefore, the Conferences considered that the possible effect of North Atlantic tourist class services on the South Atlantic fare structure could be disregarded.

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M/42 Resolution JT12(8)164d, governing off-season fares between Europe and South America, was adopted unanimously. This resolution permits off-season fare constructions combining South Atlantic crossings with crossings via the North and Mid-Atlantic routes.

Fares in Conference 2
Europe only

M/43 The FRCS reported that cost estimates submitted by Members justified a 10% overall increase of the fares in Europe. Mail Vote Resolution 200(Mail 17)052 had the effect of increasing those fares in Europe which required adjustment in order to raise fares from Europe to the Middle East.

M/44 Using the mail vote figures as a basis, and taking into account the FRCS recommendations, the European Working Group met in Paris on April 10 and prepared a table of fares. The fare structure recommended to the Conference eliminated the undercuts caused by the mail vote and removed the existing differential fares between Switzerland and Germany/Austria. Several questions which the Working Group were unable to settle were referred to the Conference for action.

M/45 Air France reminded the Conference that at Nicosia they had voiced the opinion that, compared with surface transport, the level of air fares in Europe was too high. Furthermore, to attract the large percentage of passengers in Europe who still travelled by surface means,

they had been considering the introduction of tourist class services in the near future. In the meantime, Air France felt that there was a need for lower fares.

M/46 Specifically, this Member requested a reduction of the fares between France and Switzerland and the removal of the present directional feature of these fares.

M/47 SWISSAIR, who stated that their present load factors were good, believed that the fares were at an economical level and that very little extra traffic would be gained by decreasing fares.

M/48 The Members concerned agreed to accept a compromise proposal which would diminish the prevailing directional differential. The fares from France were kept at approximately the present level but the fares from Switzerland were reduced. Resolution 280/052a, which was adopted, provides that these new fares and also directional fares from Geneva to Amsterdam/Brussels come into force at the same time as the mail vote. Air France and SWISSAIR notified the Conference that it might be necessary for them to use the escape clause if the mail vote fares were disapproved.

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M/49 It was agreed that the fares within Germany would not be increased although several Members wished to make upward adjustments. SAS accepted increased fares in Scandinavia but gave notice that they wished to file special 8 day round-trip fares within Scandinavia.

Fares between Europe and Middle East

M/50 The Conference agreed to revalidate, with adjustments to eliminate undercuts, the fares as increased by the mail vote. To permit ALI, using DC3 equipment on their routes within the Middle East, to remain competitive, the Conference granted their request that Class "B" fares be introduced between Rome-Athens and Rome-Beirut.

Fares between Europe and Africa

M/51 Mail Vote 18, together with upward adjustments of fares to East Africa, formed the basis of the fares agreed between Europe and Africa.

M/52 PAA explained that according to their understanding, Resolution 200 (Mail 18)052 would not disturb the existing relationship between fares but would be in the nature of an overall increase. Since the mail vote did disturb the relationship, PAA was obliged to vote negatively.

M/53 BOAC informed the Conference that they were now prepared to increase fares to East Africa and thus restore the balance between East and West African fares. With this assurance and bearing in mind that the period of validity of the fares proposed by Mail Vote 18 was only for three months, PAA withdrew their negative vote.

Tourist Service between Johannesburg and London

M/54 SAA, with BOAC as co-sponsor, submitted full details of the tourist service they wished to introduce between Johannesburg and London.

M/55 Commenting on their proposal, SAA stated that they had no traffic rights between Lydda and London and that they undertook not to institute a tourist service between London and Cairo until tourist class services had been agreed in Europe.

M/56 The proposal envisaged a weekly return service between Johannesburg and London operated by DC4 aircraft with 54 seats. The service was designed to cater solely for through passengers from Johannesburg/Livingstone/Nairobi to Rome/London and to protect other carriers on the route passengers would not be carried at tourist class fares between the intermediate points. According to SAA's estimates, assuming an end-to-end load factor of approximately 64%, the unit cost per seat mile in respect of the tourist service would be about 33⅓% lower than that of the standard class constellation service.

M/57 BOAC drew attention to the fact that unless SAA were permitted to operate this tourist class service, a non-IATA carrier—Pan African Air Charters—would be au-

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[fol. 4401] thorized by the South African Transport Commission to operate a similar service for a five year period. BOAC contended that IATA Members would encounter greater difficulty in competing with such a service operated by a non-IATA Member than if it were operated by SAA. They believed that the case was not parallel to the North Atlantic in that the South African route was an end-to-end route which did not have repercussions on the IATA fare structures beyond the termini. Furthermore, whatever decision was taken by the Conference, a tourist class service would exist; if not operated by South African Airways, then by its non-IATA competitor—Pan African Air Charters.

M/58 SAS believed that it would be difficult to accept SAA's proposal to be effective in October 1951 when the tourist service across the North Atlantic had been postponed until October 1952. They felt that the same reasons which governed the decision taken on the North Atlantic should apply to the South African proposal and that the matter was of such importance that it should be given more complete study. This view was supported by other Members and it was agreed, therefore, to provide for an experimental weekly tourist service to commence on October 1, 1952, and a study program similar to that agreed for the North Atlantic. This decision resulted in Resolution 280/180 with Air India International, BEA, KLM, QEA, SABENA, SAS, TWA recording abstentions. SABENA abstained from voting as they were not aware of their Government's attitude to this tourist service which might affect the fare structure of their operations to and from the Belgian Congo.

Special Fares in Conference 2

M/59 Resolution 280/155 extends the validity of a number of Conference 2 excursion fares at present in force.

M/60 The Conference adopted Resolution 280/155c providing for a special directional round-trip fare Paris-London-Paris proposed by BEA. This Member explained that on the London-Paris route there is a very large directional flow of traffic at the main holiday weekends such as Easter, Whitsun, August Bank Holiday, etc. This traffic necessitates the operation of numerous extra services which carry full loads from London to Paris for the few days before the holiday and return empty, whereas for the few days following the holiday they operate empty from London and return full.

M/61 BEA believed that the return traffic from Paris to London could be created by the introduction of this very low fare for the periods when the flow was heavy in the opposite direction. To prevent diversion of normal traffic, it was agreed that these fares would be valid for 5 days and would be available for sale only in Paris. The effective date of this resolution was set for July 1, 1951.

M/62 Resolution 280/155d specifies the 17 day special round-trip fares between points in Europe agreed by the Conference.

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M/63 When the level of normal fares in Europe was discussed, Air France agreed to increases and to maintaining directional fares to and from Switzerland provided they would be permitted to introduce special round-trip fares between France on the one hand and Switzerland and Italy on the other hand. This Member proposed a special 10 day round-trip fare at 110% of the normal one-way fare.

M/64 It was established that 61% of the traffic on the routes to Switzerland consisted of persons not resident either in Switzerland or France and it was thought that the introduction of these special fares might have a diversionary effect on traffic on other routes.

M/65 After much discussion and negotiation between the Members concerned, agreement was reached. Resolution

280/155h which becomes effective on July 1, 1951, permits 17 day special round-trip fares between France and Switzerland at approximately 125% one-way. Also included in this resolution are agreed 23 day special round-trip fares from Geneva to Amsterdam and Brussels. Sale and advertising of these fares are restricted to the country of commencement of travel.

M/66 Air France's request for reduced round-trip fares between France and Italy was met in part by the adoption of Special Winter Resident Fares—Resolution 280/171, valid until April 30, 1952. These 8 day fares are available only to French and Italian nationals proving permanent residence in France and Italy. Air France notified the Conference that they would request a mail vote to extend the effect of this resolution beyond April 30 as it was their desire to offer these special fares during the whole period of the fares and rates agreement. PAA abstained from voting since these fares were available only to French and Italian citizens.

M/67 Resolution 280/156b which permits Members to establish special one-way night fares during the summer season of 1952 between London and Dublin was agreed unanimously.

M/68 In order to make adequate provision for the special nature of the heavy flow of traffic between Western Europe and the oil fields in the Persian Gulf, the following series of fares were agreed. To prevent IATA agreed or constructed fares being undercut, these fares may be combined only with North Atlantic fares.

(i) Resolution 280/164a—Off-season specified directional return fares commencing from points in Europe good for travel from March 1 to June 30 Eastbound and from October 1 to February 29 Westbound. Sales of these fares are restricted to U.K., U.S.A., Canada, France, Belgium, Switzerland and Netherlands.

(ii) Resolution 280/165—Special round-trip fares at 20% discount on twice the normal one-way fares,

sales being restricted to those countries in TC2 between which the fares apply and North America.

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(iii) To encourage vacation traffic from the Persian Gulf to Europe, two 17 day round-trip fare resolutions were agreed. In both resolutions sales are restricted to the Persian Gulf, but whereas tickets sold under Resolution 280/165a are valid for travel only between 1st December and 15th February, those under Resolution 280/165b are available for travel between 15th October and 15th April.

M/69 The following Class "B" (now referred to as "B" fares) in the Middle East were approved. These fares were expressed in specific amounts instead of percentage reductions from the normal fare. These fares were agreed in deference to Middle East regional operators who were unable to accept increases in the local fare structure. In permitting this departure from the accepted method of expressing Class "B" fares and also in agreeing larger differentials than hitherto allowed, the Conference wished to record that they were not thereby creating a precedent.

Abstained.

s. 280/172	Athens—Cairo	One-way	Shs. 429	PAA, SAS, TWA
s. 280/172d	Damascus or Beirut-Istanbul	" "	Shs. 300	Cyprus, PAA, PAB
s. 280/172e	Athens—Beirut	" "	Shs. 540	Cyprus, PAA
s. 280/172f	Rome—Beirut	" "	Shs. 910	ALI, KLM, PAA, PAB, SAS, TWA
s. 280/172g	Athens—Alexandria	" "	Shs. 393	PAA, TWA
s. 280/172j	Athens—Khartoum	" "	£49.10.0	PAA, SAS
s. 280/172m	Rome—Athens	" "	Shs. 504	PAA, SAS, SWISSAIR, TWA

Fares between Conferences 2 and 3

M/70 Fares between Conferences 2 and 3 based on Resolution JT23(Mail 3)055 with further increases to India/Pakistan/Ceylon, Australia and New Zealand were agreed and resulted in Resolution JT23(8)055.

M/71 These fares were prepared by a Working Group of Conference 2/3 operators who examined and recorded the different views held by Members as to the level of fares.

M/72 Air India International and SAS represented the extremes and the latter explained that in their opinion fare levels should be based on cost, a reasonable profit and what the traffic can bear. Their experience showed that cost of operations to the East was higher than on other trunk routes whilst on the other hand, fares expressed on a mileage basis were lower. In any case, an increase of 20% in fares appeared necessary to compensate for the increase in costs as established by the Costs Committee.

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M/73 SAS drew a comparison between sea and air fares and explained that whilst the actual shipping fares were lower, a combination of these fares, the expenses incurred en route and elapsed time presented a different picture.

M/74 Air India International stated their position and explained that owing to a delay their cost figures had not been included in the representative data established by the Cost Committee. Their latest cost figures showed a 7% decrease on the previous figures. This Member requested the Conferences to keep the special commercial considerations prevailing on the Indian sub-Continent in mind. In their opinion an increase in the air fares would divert traffic to surface carriers. They were, however, willing to accept a small increase in fares, but their main concern was the off-season when very little traffic is carried.

M/75 Air India International stated that they had experimented with a three month validity round-trip excursion fare which had not proved successful. On the other

hand, the result of an off-season round-trip fare had been very encouraging, but they felt that to exploit the off-season market to the fullest extent, a supplementary one-way off-season fare was required. By this means they hoped to tap 3 new types of traffic, normal surface traffic travelling first-class, government employees travelling second-class and student traffic between Europe and India.

M/76 The level of off-season one-way fares proposed by Air India International was based on a Bombay-London fare of £100. The 2a carriers were willing to study the proposal but were apprehensive of the effect these fares would have on other sectors, including around-the-world fares. They felt that unless through fares were protected, AII's proposal was unacceptable. A carrier proposed the introduction of a new type ticket with a special validity for the return journey. Under this system a certificate would be issued to the passenger indicating that the return ticket is directionally valid for a specified time but limited to a certain period of the year. This proposal was rejected as being impracticable. Other methods of attacking the problem such as residential qualifications, control through currency restrictions, travel subject to space available and limitation of sales to Indian, Pakistani and Ceylanese nationals were also explored. Finally Members decided to base eligibility to travel on residential status.

M/77 Resolution JT23(8)164e gave effect to the off-season fares agreed by the two Conferences. This resolution set the one-way Bombay—London fare at £115 and the off-season from 1st October to 28th February. QEA and PAL abstained from voting. These Members qualified their abstentions as follows:

(i) "QEA is not in favor of low one-way off-season fares, however restricted, owing to their far-reaching effect on the fare structure. Also in this particular case it has serious repercussions on fares in the immediate area and in our opinion

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[fol. 4405] the net result will be to dilute revenue rather than to increase it. However, in order to

allow AII to try the experiment, we shall abstain from voting, but it is felt that full details should be made available to the next Conference as to the results actually achieved."

(ii) "Philippine Air Lines are opposed to the introduction of this resolution because our traffic records did not show the need for such reduced fares, which will, in the opinion of PAL, only result in dilution of revenue. PAL does not wish, however, to stand in the way of an experiment desired by a carrier whose main traffic stems from sectors directly concerned with the above resolution. Nevertheless, PAL requests that supporting traffic data be produced at the next Conference to justify consideration of these reduced fares should their continuation be desired by any carrier."

M/78 PAL also abstained from voting on Resolution JT23(8)155g for the same reasons as given above. This resolution was proposed by Air India International and permits Members to offer Special Christmas 17 day round-trip fares at 110% of the normal one-way for travel commencing in India, Pakistan and Ceylon to points in Europe. Air India International maintained that there is a demand for these fares amongst European residents in India, Pakistan and Ceylon wishing to spend the Christmas holidays in Europe.

London-Sydney Fares

M/79 Three carriers were in favor of an increase in the London-Sydney fare, two wished to maintain the status quo.

M/80 BOAC and QEA qualified their position by stating that competition from shipping companies is extremely acute on this route and an increase would divert traffic to surface carriers offering transportation at substantially lower fares; moreover, the latter, who were scheduled to put new ships in service, had no intention of increasing their fares.

M/81 PAA felt that the traffic referred to by BOAC and QEA was essentially of a round-trip nature and suggested an increase of the one-way fare, but retaining the present round-trip level by a special round-trip fares. This suggestion found no support.

M/82 After many proposals were considered, BOAC and QEA, supported by the majority, expressed their willingness to agree on an increase to £280 of the London-Sydney Eastabout fare, provided the fare via the Western Hemisphere is fixed at a higher level of £290. PAA, although accepting the proposal as a compromise solution, felt that the £10 differential was disproportionate to the difference in mileage and contrary to the principles applied in the construction of fares.

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M/83 Other fares, related to the London-Sydney fares, were agreed as follows:

London—Wellington/Auckland £285 (both directions)

London—Noumea £290.

Fare Level in Conference 3

M/84 Except for small upward adjustments to fares from India/Pakistan to Siam/Hong Kong/Philippines/Japan, fares at levels substantially the same as those provided for in the recent Mail Vote Resolution 300(Mail 2)053, were agreed. Additionally, the sectors not affected by the mail vote were increased.

M/85 TEAL abstained from voting on the fares from Sydney to Nandi/Suva via Auckland. Nandi and Suva were common-rated at Sh. 1100, whereas TEAL felt that the Sydney-Suva fare should be Sh. 60 lower than the Nandi fare.

M/86 The Conference accepted Air India International's proposal to increase fares between India, Pakistan and Ceylon and to maintain the principle of differential trunk and regional service fare levels. Resolution 370 053 also provides for a reduction of the fares between India,

Pakistan and Ceylon, contingent upon lower fares being applied by any regional operator.

Special Fares in Conference 3

M/87 Resolution 370/155 extends the validity of Conference 3 excursion fares.

M/88 The Common Interest Group Travel Resolution between Australia and New Zealand was re-adopted. At TEAL's request, Resolution 370/158 reduces the number of passengers constituting a group to ten.

M/89 Resolution 370/164 reintroduces off-season fares between Sydney and Singapore and also extends off-season facilities to cover traffic between Singapore and Auckland/Wellington.

M/90 Resident fares between Colombo and Singapore were revalidated for another year, as at Resolution 370/171a.

Fares between Conferences 3 and 1
Central and North Pacific fares

M/91 Except for increases from Singapore to the West Coast set at $780 direct and $835 via Sydney, the fare levels were not changed.

M/92 The Conferences agreed to specify fares between the West Coast gateway points and Bangkok, Delhi and Karachi but not to Calcutta. TWA opposed the inclusion of these fares since they felt that between India and North

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[fol. 4407] America fares should be constructed over the Atlantic gateway points. They agreed, however, to withdraw their objection on the condition that transpacific fares to India are constructed over the Pacific gateway points and not equalized with fares constructed over the Atlantic.

M/93 PAA stated that the distance curve had not been used for the construction of transpacific fares and considered that fares via the Pacific would not undercut fares via the Atlantic.

South Pacific Fares

M/94 In view of the increase in the fare from London to Sydney, BCPA and CPAL recommended an increase between the Canadian and U.S. West Coast points on the one hand and Australia and New Zealand on the other. They suggested an upward adjustment of 8% but would agree to a smaller increase.

M/95 PAA did not desire any increase and since no agreement could be reached, it was decided to maintain the status quo.

M/96 Resolution JT31(8)056 reflects the fare levels between Conferences 3 and 1.

Around-the-World Fares—Resolution 154a

M/97 In arriving at a solution to the problem of around-the-world fares, which has been a subject of disagreement since Mexico, two schools of thought had to be reconciled. On the one hand, Members interested primarily in encouraging certain markets, especially those in the Western Hemisphere, stressed the advantages of an agreed specified fare from all points of origin. Opposed to this, other Members maintained that they would, as a consequence, lose revenue by charging less than if the circle-trip construction principles were used to compute fares.

M/98 In the final agreement reached, the Conferences, acting on the recommendation of a Working Group, decided in favor of constructing around-the-world fares by the application of the circle-trip construction rule. However, to a certain extent the fixed price feature from on-line points in North America was retained. This was made possible by Members agreeing to apply the full amount of the North American sector of the journey regardless of the point of origin.

M/99 In Resolution 154a, which was adopted unanimously, fares from U. S and Canadian points are constructed on the basis of one-half the lowest round-trip fare between point of exit from and entry into North America plus one-half the sum of the lowest on-season round-trip of the

portion of the journey travelled outside the U. S. and Canada. The fare for trips originating outside Continental North America is a summation of the lowest through round-trip on-season fares from the point of commencement of the trip. The resolution limits construction to the use of the through fares, including jointly published through fares, as published by the Member performing the transportation, and advantage cannot be taken of other fares published by a carrier not performing the carriage.

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M/100 Resolution 154, defining around-the-world trips, as distinct from circle-trips, was accepted by all Conferences.

Relationship between London and Paris—Transatlantic and Eastern Hemisphere Traffic

M/101 Air France explained that when the relationship between London and Paris in conjunction with transatlantic and Eastern Hemisphere traffic was originally discussed some 5 years ago, consideration was given in the first place to traffic between U. S. and Western Europe only. Circumstances have since changed and much of the traffic now proceeds beyond Europe. The present differential of $20 for transatlantic traffic was held to be unfair when related to the prevailing rate per mile over the North Atlantic route. Air France proposed a reduction to $14.

M/102 Although there was sympathy for the point of view expressed by Air France, the Conferences were unable to agree to this adjustment since it would have the effect of disturbing the North Atlantic fare structure. In this connection the question arose as to whether the difference of $6 should be added to the London—New York fare, should be deducted from the Paris fare or should be divided between the two fares. There was considerable opposition to further increases in the New York/London fare which traditionally set the transatlantic level and which had already been agreed at $395. There was also considerable opposition to reducing the Paris fare by $6 as this would in turn reduce the Amsterdam, Brussels and Scandinavian fares. For the same reasons, Members were opposed to

splitting the difference. In view of the importance of obtaining agreement at this meeting, Air France accepted the present differential on the understanding that their proposal would be accepted at the next Conference.

Possible effect of Cabotage fares on the IATA fare Structure

M/103 The FRCS at Nicosia had given careful study to this question and had suggested two methods to prevent extended use of special cabotage fares undermining the IATA fare structure.

M/104 One method proposed that in the fare tables of fares affected by cabotage sectors should be identified and that in the event of these being changed by the cabotage carrier during the period of the fare agreement, other Members would be permitted to adjust the other fares affected by the alteration. The cabotage carrier should not have the power to protest these changes.

M/105 Alternatively, it was suggested that the Conferences resolve that all carriers draw the attention of their governments to the desirability of giving maximum regard to the effect on the international rate structure of any cabotage fare of rate alterations. Carriers themselves would undertake formally to continue to observe the policy already followed by which every effort is made to limit the effect of cabotage fares and rates on adjacent international points. Specifically, carriers should undertake to ensure that cabotage fares and rates are governed where necessary by imposing conditions such as residential qualifications,

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[fol. 4409] proof of nationality, short period return limitations, etc. A great deal of experience in the administration of such precautionary measures has already been obtained by many companies and these Members believed that an exchange of information and a comparison of methods will show that the elements of an entirely satisfactory means of control exist.

M/106 Supporters of this suggestion maintained that it was hardly practicable for the carriers responsible for the

cabotage sectors to bind themselves not to alter the cabotage fares and rates between Conferences without Conference action because governments may direct changes and carriers cannot themselves place limitations on the freedom of action of their governments. Nevertheless, they believed that it would be possible to agree on the basis of a Recommended Practice that unless exceptional circumstances arose, all other interested carriers would be given 30 days notice of any contemplated cabotage sector changes.

M/107 PAA considered that the two methods represented opposite extremes and that neither was satisfactory. This Member proposed that all cabotage fares be included in IATA rate structures as agreed specified fares.

M/108 BOAC, Air France and SABENA were unable to agree to the PAA proposal. BOAC stated that it has been their policy, where operating over routes regarded as cabotages by their government, to avoid dislocation of the international fare and rate structure. This had been done voluntarily and they had hitherto refrained from making changes except in order to conform with governmental policy or where domestic national considerations dictated the necessity for making changes. Air France stated that they regretted that they could not agree to the proposal since traffic within the French Union was more important to them than other international traffic. The French Government had no statutory control over the fares of other air lines operating within the French Union but had complete control over the fares of Air France. It would be quite impossible for this Member to relinquish their rights to alter fares on their cabotage sectors as proposed.

M/109 The Conferences were unable to agree on any of the various proposals made. It was decided, therefore, to continue the present policy of specifying cabotage sectors in fares and rates agreements for construction purposes only.

Duration of Fare and Rate agreements

M/110 With the exception of the North Atlantic and TC1 rate agreements for which special escape clause provisions

were made, fare and rate agreements were established for a period of 12 months beginning October 1st, 1951, with the proviso that notice of rescission of approval can be given by any one carrier on or before October 9th, 1951 and such notice of rescission to take effect for the period following March 31st, 1952.

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Rate Level in Conference 1

M/111 The level of rates in the tariffs of seven Members (Braniff, C & S, Eastern, National, PAA, Panagra, TCA) were adopted as the basis on which rates in Conference 1 were to be agreed. A draft rates table was prepared but time did not permit Members to eliminate the discrepancies contained in the draft. The Conference instructed the FRCS to meet in New York in June to finalize the table and ruled that in the absence of unanimous agreement on any rate, the lowest rate appearing in the tariff of any one of the seven Members would become the minimum specified rate in the table.

Rate Level over the North Atlantic

M/112 The Conferences agreed to increase basic cargo rates by 10%.

Rate Level over the Mid-Atlantic

M/113 The present Mid-Atlantic specified rates were increased approximately 10% with rates to additional interior points in Conference 1 being included in the specified table.

Rate Level over the South Atlantic

M/114 Agreement was reached to increase South Atlantic rates by 10%.

Rate Level in Conference 2

M/115 Rates within Europe were increased approximately 10% except in those cases where the Conferences felt that certain sectors could not absorb such an increase without materially affecting the traffic flow.

M/116 The Chairman of the FRCS reported that when preparing the European rates table, KLM had submitted a list of the routes over which they did not desire to see increases. This list included nearly all the routes they operate in Europe which, in view of the importance of this Member's network, would have prohibited the application of an overall 10% increase in European cargo rates. KLM were of the opinion that an increase would result in more commodity rates being filed. To overcome KLM's apprehension it was agreed that all commodity rates at present in effect would expire with the resolution. They would then have to be refiled, and the Board was directed by the Conference to increase the net revenue available from commodity rates and to limit the number of rates to be accepted.

M/117 A general commodity rate for consignments of over 500 kgs. at the present rate of Shs. 1 was agreed for the Frankfurt/Berlin and the Nuremburg/Frankfurt/Munich/Berlin routes.

M/118 Eastbound rates to Middle East were increased by 10% above the level agreed in Mail Vote 20 but Westbound rates were left unchanged. PAA, TWA and SAS were

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[fol. 4411] opposed to the principle of directional rates and believed that the Commodity Rates Board should be used to cover directional rates.

M/119 SAS drew attention to the fact that rates from Lydda to points in Scandinavia were extremely high compared with rates to other European points. They were prepared to accept this relationship and not to decrease rates to Scandinavian points if it were possible to file a commodity rate of Shs. 4/3 for textiles from Lydda to Copenhagen. This Member stated that they were losing considerable traffic because shipments were being despatched from Lydda to points in Europe—notably Zurich—and then carrier to destination by truck at very low rates. Members agreed that if SAS filed a commodity rate as suggested it would be given sympathetic consideration.

M/120 Cyprus Airways were opposed to any increases in the cargo rates in the Middle East or between the Middle East and European gateways.

M/121 A 10% increase Southbound and no change Northbound was agreed for the Europe-Africa cargo rates.

Rate Level between Conferences 2 and 3

M/122 Rates between Conferences 2 and 3 were increased in the Eastbound direction only from 5% to 15%.

M/123 The Conferences agreed to add cargo rates between Auckland and London to Resolutions JT23(8)055 and JT123(6)057 at Shs. 40.25 Southbound and Shs. 27.92 Northbound.

Rates within Conference 3

M/124 With certain adjustments to eliminate undercuts, the rates within Conference 3 were maintained at the present level.

M/125 Air India International had recommended a 25% increase in the regional cargo rates. This Member stated that they intended bringing the matter up again at the next Conference and in the meantime requested other Members to study the possibility of increasing their rates or alternatively to discontinue quantity rebates.

Rates between Conferences 3 and 1

M/126 With the exception of adju..nents to eliminate undercuts, the existing level of rates was maintained.

Construction Rules for Passenger Fares and Cargo Rates—Resolutions 014a and 014b

M/127 Mr. Bareh, Chairman of the Ad Hoc Committee set up by the FRCS at Nicosia to study questions connected with construction of fares and rates, presented a comprehensive report on the subject.

M/128 Mr. Barch recalled that at the Madrid meeting, two draft resolutions were submitted to the Conferences. The first was an elaboration of an existing contruction resolution and the other dealt with indirect routings and introduced several far-reaching principles. Although these proposals were discussed at great length, the Conferences were unable to accept them and they were referred back to the composite FRCS for further study and clarification.

M/129 The FRCS at Nicosia attacked the problem by drawing up a detailed questionnaire and appointed a committee under Mr. Barch as Chairman to analyse the results. For want of time, the committee was unable to finish its work at Nicosia and it was arranged therefore that the Chairman, in collaboration with the LDO, would make a complete analysis and prepare a report for submission to the Conferences.

M/130 On the basis of studies made, the many difficulties and various principles involved in formulating construction rules were segregated under two headings as follows:

(i) Those principles on which there was unanimous or nearly unanimous agreement.

(ii) Those principles on which there was a clear division of opinion.

M/131 The report also discussed the generally accepted fundamental principles of IATA rate-making which, in the opinion of the committee, form an integral part of construction rules to make these sound and workable. Briefly, these principles were identified as follows:

(i) *Definitions*

An agreed basic terminology was regarded as a first essential. In the past it had been found useful to classify all rates set out definitely in a Conference resolution as "specified" and those established between meetings as "constructed." A "normal" fare is regarded as the full fare charged for a regular or standard service whilst a "special"

fare denotes a reduced fare based on some limitation of service, period of validity, class of persons eligible, type of aircraft, etc.

(ii) *Establishment of fares and rates at Conference meetings*

One of the principal functions of a Conference meeting is to agree fares and rates. Those agreed as normal are specified in the 050 series of resolutions and any special fares are specified in the 150 series of resolutions.

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Experience has shown that every fare between two points must be specified in relation to a particular route, otherwise it would be difficult if not impossible to apply construction principles such as the indirect routing rule.

Whilst it is axiomatic that at meetings Conferences must have complete freedom to take whatever action is considered necessary with regard to fares and rates, nevertheless, certain procedures (Recommended Practice 1014) have been established and are followed as closely as practicable.

Agreed specified fares and rates may be either higher, lower or equivalent to the amount that would be derived from the direct application of construction principles. If a fare or rate is made higher, it is essential that it be identified or "flagged" as not being subject to any between-Conference construction rules, otherwise after termination of a meeting, these rules would immediately unsettle the higher agreed fare or rate. Similarly, those fares or rates established in amounts equal to those obtained by the application of normal construction principles must also be "flagged."

(iii) *Construction of Fares and Rates between Conference meetings*

The IATA rate-making machinery attempts to reach a practicable compromise between two conflicting principles, namely stability and flexibility. Stability is obtained by specifying the maximum number of fares and rates at Conference meetings and these may not be changed until they expire. Members look to the between-Conference construction rules for flexibility. Greater stability is achieved by either flagging a great many key sectors or by making the between-Conference construction rules severely restrictive. Conversely, a higher degree of flexibility is obtained by minimizing the number of flagged fares and rates or by making a construction resolution less restrictive.

(iv) *Basic Construction Principles*

Construction rules have been sufficiently flexible to enable Members to make between-Conference adjustments in order to meet competition from any scheduled air carrier. It has also been the practice to establish a floor, below which Members may not go, determined by any one of the three principles, namely, the "lowest combination principle", "more distant point principle" and the "indirect routing principle."

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The construction rule is worded so that a Member may apply whichever one of these principles is the most favorable (the lowest). In addition to these basic principles, the construction rule should deal with new routes, combination of different types of fares, notice of newly constructed fares, basic currency, and what shall be done when sectional fares are increased between Conferences.

M/132 In order to finalize their recommendation to the Conference, the Ad Hoc Committee submitted a list of policy matters requiring Conference decision and on the basis of such decisions construction resolutions for passen-

gers and cargo were drafted. For the sake of clarity, examples and diagrams were included wherever appropriate and the construction rules were dealt with in the following manner:

Para. (1) lists series of agreed definitions.

Para. (2) explains 3 basic principles—"lowest combination," "more distant point" and "indirect route."

Para. (3) reflects the Conferences' decision with respect to the "higher intermediate fares" or "backhaul principle."

Para. (4) establishes the method of constructing fares over new routes in a manner which protects existing specified or constructed fares.

Para. (5) defines the procedure to be followed by a Member constructing, between Conferences, a fare lower than an existing IATA specified or constructed fare.

Para. (6) defines the procedure to be followed to effect an upward adjustment of a specified or constructed fare in cases where the sectional fare over which the through fare has been constructed is increased by any Member.

Para. (7) establishes the rule that special fares may not be combined with other special or normal fares unless expressly authorized by the appropriate fare resolution.

Para. (8) reflects the recommendation made by the Traffic Committee with respect to the combination of tourist and normal fares.

Para. (9) explains the purpose of proportional fares and ensures that these fares shall not be used to circumvent or defeat the agreed principles of construction.

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Para. (10) stipulates that all fares and rates shall be constructed initially in the basic currency of the Conference.

Para. (11) establishes the date on which all existing fares other than specified fares must conform with the construction resolution.

Para. (12) provides that any fares constructed between Conferences are subject to subsequent action by the Traffic Conference.

M/133 In presenting the draft resolution for the construction of passenger fares, the LDO explained that it represented the result of extensive study and experience gained by Members over a period of years. With reference to paragraph (3) dealing with higher intermediate fares, SAA felt that since no attempt had been made to control the lim of backhaul, some additional words should be added in order that carriers could specify points where they did not wish the backhaul principle to apply. This view was not supported since the rule as set out in the resolution had general acceptance and, furthermore, it was recognized that any particular situation could be protected in a Conference fare agreement.

M/134 PAA, whilst they did not object in principle to the exception made in paragraph 3 where a portion of the indirect fare is in U.S. and Canada, felt that the resolution should not give special privilege to any Member or area. In their opinion, adjustments of a similar nature are frequently necessary on domestic sectors in several parts of the world where cities of iimportance are located fairly close together. This Member suggested an amendment to the resolution enabling the exception to be applied in other domestic areas. This was not agreed.

M/135 A further suggestion made by PAA that, to avoid confusion, the term "regular fare" be substituted for "normal fare" was not accepted.

M/136 The passenger construction rules Resolution 014a recommended by the Ad Hoc Committee were accepted by Traffic Conferences 2 and 3 and all joint meetings.

[Handwritten notation—Minutes—Bermuda—May 8-28, 1951]

M/137 With reference to the position in Traffic Conference 1, Members decided that it would be unrealistic during this initial period of closing of fares and rates for the Conference to impose stringent construction rules. It was agreed, therefore, to adopt the recommended passenger construction resolution with certain modifications. These were:

(i) Deletion of the indirect route or 15% deviation rule.

(ii) Deletion of the higher intermediate fare or backhaul rule.

(iii) That fares established between Conferences should not be subject to the right of protest.

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(iv) That although the resolution becomes effective on October 1, 1951, Members would be given until January 1, 1952 to adjust any fares other than those specified in the agreed fares table, introduced before October 1, 1951 to conform with the resolution.

M/138 The Conferences agreed that where appropriate, the provisions of the construction rules for passenger fares should be applied for the construction of cargo rates. Certain principles differed however. It was the opinion of the Conferences that a rate could be met over an indirect route. However, if the indirect route exceeded the direct route by more than 15%, the rate via the indirect route could not be altered although carriage may take place via the indirect route at the same rate. In other words, cargo destined to a farther point may be carried via an indirect route through a higher rated area.

M/139 Another important question concerned the combination of special and normal cargo rates. The Conferences were of the opinion that IATA general commodity rates

may be combined with domestic rates or other IATA general commodity rates, but unless expressly authorized by the appropriate specific commodity rate or class rate resolution, these should not be combined with any specific commodity or class rate to produce lower through rates.

M/140 The above decisions were reflected in resolutions agreed by the Traffic Conferences and joint meetings. Resolution 160/014b adopted by Traffic Conference 1 modified the resolution accepted by the other Traffic Conferences to to the extent described in paragraph M/137 above.

M/141 Members congratulated Messrs. Barch and Sheehan on the excellent results of their studies.

Meeting Special Fares in other Areas—Resolution 014c

M/142 Joint meetings 23, 31 and 123 accepted an amendment to the present resolution to cover student and tourist fares. Basically this resolution permits carriers operating the Pacific to take account of discounted fares on routes across the North Atlantic as they might affect traffic moving between the Far East and the Western hemisphere.

Special Construction Rule—Directional Fares and Rates—Resolution 014d

M/143 Traffic Conference 2 adopted Resolution 280/014d governing the construction of fares where directional fares are involved. The resolution applies to Europe only.

Special Canadian Construction Rule—Resolution 014e

M/144 TCA proposed that paragraph 8(a) of Resolution 014a be amended by the addition of the words "except that this paragraph should not apply to constructions to and

[fol. 4417] from the U. S. and Canada." This Member referred to previous discussions when TCA stated that their acceptance of the North Atlantic fares was conditional upon their right to take tourist fares into the domestic area where no tourist service is operated

M/145 The Conferences felt that a separate resolution should be adopted to cover TCA's point. PAA suggested that an exception could be made by specifying the London/Vancouver fare. TCA, however, opposed this as they did not wish to be held to a specified fare level.

M/146 PAA, supported by NWA, stated that they were not in favor of a resolution making it possible for a carrier to charge a fare to and from Vancouver based on the sum of the Seattle/New York coach fare plus the New York overseas first class fare and to provide first class service between origin and destination. It was suggested that if TCA wished to quote a tourist fare for the transcontinental portion of the journey, the solution would be for this Member to introduce a coach service.

M/147 Resolutions JT12(8)014e and JT123(6)014e which were adopted, represent a compromise limiting the applicability of the special construction rule to routings via Montreal. This resolution also contains a protest feature based on 50% of the carriers concerned and provision is made that the resolution will be rescinded if and when TCA introduce a transcontinental tourist service in Canada.

Advertising and Combinations of Special Fares

M/148 The FRCS meeting at Nicosia made an analysis of the combination provisions of existing resolutions and recommended inclusion in the construction rules of a clause which would preclude, in general, the combination of special and normal fares. The FRCS further suggested various methods of enforcing a "no combination" rule.

M/149 Whereas the Conferences accepted the proposal to incorporate a "no combination" rule in the construction resolution, it did not consider it practicable to adopt a further resolution covering the advertising of special fares. As far as possible, this matter is covered in the existing resolutions on special fares. It was felt that it is virtually impossible to prohibit insertion of special fares in Members' tariffs, timetable and in official guides and that the advertisement of fares in national and international newspapers and periodicals, which Members must have the right

to continue, cannot be controlled in such a manner as to prevent their appearance in print in a country other than those designated.

M 150 With reference to the recommendation made by the FRCS that action be taken to explain to agents the "no combination rule" and the reason for it, it was agreed that the Agency Committees of the Traffic Conferences prepare a letter on this subject for dispatch to all IATA approved agents. By this means, agents should be advised that infringements of these regulations constitute a violation of their Sales Agency Agreement and also if a passenger

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[fol. 4418] misses a connection regarding two or more fares in combination, he may be charged a "no show charge" at the point of connection. The FRCS Committee was requested to continue study of the question of the combination of fares and in particular to examine the possibility and desirability of applying residential qualifications to all special fares.

Advertising and Ticketing of Tourist Fares—Resolution 120

M 151 At Bermuda, the Traffic Committee was requested to study the combination of normal fares and tourist class fares and also the problem of competition between fares based wholly upon normal service and those based wholly or in part on tourist service. With reference to the latter question, the Traffic Committee recommended the adoption of a resolution providing that all advertising and promotional material for journeys involving in whole or in part tourist fares should make it clear to the public that a tourist service is involved. It was further suggested that on the front cover of a ticket sold in connection with a fare wholly or partly tourist, the word "tourist" should be printed or rubber stamped.

M 152 This proposal was accepted by all Conferences and joint meetings as at Resolution 120 with the addition of the provision that for the purpose of this resolution the term "tourist" includes Class B and coach fares.

Accumulation of Discounts

M 153 The Conferences agreed the following principles recommended by the FRCS:

(i) That discounts allowed under Resolution 158 (Common Interest Group Travel) should apply only to normal on-season and off-season fares and that off-season fares should be taken to include off-peak, off-hour and Special Night Fares.

(ii) That children's and infants' discounts be cumulative with any Special Fares.

(iii) That the 25% discount in Resolution 268 810e could only be allowed on the normal through one-way fare.

M 154 With reference to the 50% discounts permitted for tour conductors in Resolution 204, Conferences could not accept the FRCS view and agreed that the discount should not be applicable against the normal one-way fare, but against the fare applicable to the tour.

M 155 The FRCS was requested to give further study to the question of accumulation of discounts.

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Conversion Rates—Resolution 021a

M 156 Mr. de Murias, Chairman of the Conversion Rates Ad Hoc Committee explained that the draft prepared by the FRCS Committee does not depart materially from the existing principles except insofar as it provides that the rates of exchange in Resolution 021b shall be used to convert from published fares to selling rates. Most of the other changes were made either as a result of this change, or to provide solutions to the specific problems raised by Members.

M 157 For Conference 1, it appeared necessary to make the resolution considerably more restrictive in order to minimize the effect of the large spread between official rates and free market rates for certain currencies in the Western Hemisphere. For instance, the draft resolution

recommended for adoption by Conference 1 goes as far as possible in restricting the acceptance of currencies at an undesirable exchange rate for sales made in the currency of the country of sale. The device employed was to require that other sales be made in Canadian or U. S. dollars.

M/158 The draft submitted for Conferences 2 and 3 were accepted as at Resolutions 280 021a and 370 021a. Conference 1 adopted Resolution 160 021a as drafted, with an amendment permitting British subjects in Argentine to purchase tickets in sterling for transportation from this country to Europe. Braniff abstained from voting in Conference 1.

Conversion Rate Table—Resolution 021b

M/159 Conferences agreed, with certain changes, the table of conversion rates prepared by a Working Group.

Rounding-Off and Application of Discounts—Resolution 023

M/160 The Conferences considered the draft submitted by the FRCS which introduced a formula for the rounding-off from published to selling fares and rates. This formula uses a numerical factor designed to eliminate one or more rounding-off steps.

M/161 A new section (2c) was added to provide for handling of minimum value charges, and value surcharges. The new draft elaborated the method of rounding-off prorates by the addition of the prorate provisions covered in Resolution 017. The FRCS reported that the reason for the numerical factor formula was due to the shortcomings of the present resolution. Three round-ups are required under the existing method before final rate in pounds(lbs.) is obtained, and this gives rise to a high percentage of cargo rates being approximately one cent higher per pound when converted from a currency other than the basic currency. The proposed resolution is aimed at avoiding these three round-ups and reduces the calculating time and improves accuracy by permitting the establishment of consistent numerical factors in calculating machines.

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M 162 There was opposition to the new proposal being applicable to passenger traffic as it did not result in exact round-trip fares of 180% of the one-way fare. It was agreed, therefore, to adopt the ERCS proposal for cargo and excess baggage, but to retain the present method in respect to passenger traffic.

M 163 It was the understanding of the Conferences that under Paragraph 1 of the present Resolution 023, that when using fares quoted by a non-IATA source in local currency other than dollars for £(Sterling), it would be correct to convert the through one-way fare into the IATA basic currency and then apply the round-trip discount and round-off.

Meeting Rates and Practices in Traffic Conference 1— Resolution 150/115

M 164 Braniff had stated that they could not agree to the closing of fares and rates in Traffic Conference 1 unless they were permitted under a Conference resolution to meet, with a minimum delay, any competitive situation arising from action by either a non-IATA or an IATA air carrier.

M 165 Braniff submitted a draft resolution for consideration by the Conference. With reference to the paragraphs of this draft resolution which concerned meeting competition from IATA carriers, the majority considered that Braniff's proposal, which virtually allowed the carrier to take the law into their own hands, was a radical departure from the principles as set forth in the Conference Provisions. It was felt that it would not be proper to introduce an additional and novel method of enforcement before the present machinery had been tested. The suggestion made by Braniff might give the impression that Members already considered the enforcement machinery as already created inadequate.

M 166 Braniff stated that they had foreseen the very same objections voiced by the majority, but they considered it essential to provide for a fast escape clause on the lines

of their proposal if fares and rates were to be closed. This Member was willing, however, to meet the Conference's view by extending the escape clause from 30 days to 60 days and in this way allow sufficient time to determine the effectiveness of the present enforcement machinery for giving relief to carriers injured by unfair competition.

M/167 In view of the peculiar situation connected with the closing of Conference 1-fares and rates, Braniff's proposal was accepted in redrafted form as at Resolution 160/115.

Meeting Non-IATA Competition in the Middle East — Resolution 280/115

M/168 The FRCS Committee drew attention to the very serious situation in the Middle East where in a number of instances local operators have been compelled to reduce their fares in order to meet non-IATA competition. With short distance operations and seasonal traffic, the ability of local operators to hold on in the face of rate cutting by non-IATA carriers is very much less than in the case of the trunk route operators. The non-IATA carriers in the

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[fol. 4421] area use the same type of equipment as the IATA local operators and, therefore, the latter are more affected than the trunk line operators using superior equipment.

M/169 Local IATA operators are unable to wait for normal Conference action and, as a solution, the FRCS recommended the adoption of a resolution which would permit greater flexibility than can at present be given by annual Conference meetings and the mail vote procedure.

M/170 The draft resolution contained a protest clause which would protect all carriers as much as does a mail vote. The main difference between fares being put into effect on the basis of the recommended resolution as compared to a mail vote lies in speedy action due to simpler machinery which avoids the complicated procedure of return ballots.

M/171 Traffic Conference 2 accepted the recommendation made by the FRCS as at Resolution 28t 115b with certain

amendments proposed by Members. The protest period in paragraph 3 was reduced from 30 to 20 days and provision was made for the fare to become effective 50 days from the date of original notice. Malta, Cyrenaica and Tripolitania were added to paragraph 8(a) and Italy was added to paragraph 8(b).

India/Africa

M 172 Air India International requested that a non IATA competition resolution be adopted to apply for traffic between Conferences 2 and 3 to cover their routte from India and Pakistan to Aden and Kenya. This was agreed and Resolution JT23(8)115 was adopted.

"B" Fares in the Middle East—Resolution 280/172k

M 173 The FRCS recommended that there should be a clear distinction between "B" fares as established in the Middle East and tourist and other reduced fares which are principally of promotional value. The Committee considered that the introduction of "B" fares should be only for the purpose of equalizing the competitive difference between various types of aircraft used by Members serving the same or similar points, so that Members operating inferior equipment have the opportunity of participating in the traffic. This description was included in the draft resolution submitted to the Conference.

M 174 The FRCS also considered that the problem of non-IATA competition in the Middle East should be dealt with separately under another resolution. Furthermore, it was recommended that a "B" fare should not be regarded as a specified fare but as an agreed percentage reduction to the normal or any other special fares applicable to be applied by a carrier operating inferior equipment.

M 175 With minor changes the Conference accepted the FRCS draft resolution. Malta, Tripolitania, Cyrenaica were added to paragraph 5(a). ALI suggested that Italy also be added, but in view of strong objection, withdrew their proposal.

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M 176. Considerable discussion took place as to the term to be used for this type of fare. The words "regional" and "local" were held to be confusing as they are used with other meanings in IATA. Several carriers objected to the expression "Class 'B' fares" as they held that when the term "class" was used in advertising it implied inferior maintenance, air crew, etc. Other Members believed that publicity should denote that the services using this type of fare were below normal, which in fact is the case.

M 177 Finally, for want of a more suitable term, "'B' fares" was agreed upon, and the resolution was amended to provide that when published or shown in the companies' timetables, the fares must be specified as "B" fares and should not be advertised as normal class fares. ALI and SAS abstained from voting.

M 178 ALI abstained since they felt that they should not be compelled to use any special expression when advertising these fares. Furthermore, they considered that the resolution adopted does not favor the development of Class "B" air traffic which, in their opinion, was represented by that segment of the public who were not able to pay normal fares. In their opinion, Class "B" fares should remain independent of possible future increases in the normal fares and should in all cases be agreed as specific amounts and not percentage reductions.

Cost of Ground Transportation—Resolution 105

M 179 A proposal to make it mandatory in all Conferences to charge passengers for road transport from the airport to town terminals was defeated. However, Recommended Practice 160 1105 as at Appendix "L" containing this provision was adopted by Conference 1 and it was agreed that this Recommended Practice, in the form of a resolution, would be submitted for mail vote on January 1, 1952.

M 180 In Conference 2, Recommended Practice 280 1105 as at Appendix "F" was adopted as an interim measure. This recommends that Members give early consideration to

the proposition that passengers be charged for ground transportation and provides for study of the proposition on an area basis at local meetings of Members' representatives. Members were requested to give the question of making a charge for ground transportation further study and to submit comments to the Secretary of Traffic Conference 2. Based on these comments, the Secretary was authorized to issue a mail vote on January 1, 1952.

M 181 In view of the fact that Conferences 2 and 3 did not agree to make a charge for ground transportation, it was necessary to consider means of controlling practices in certain areas where long-distance surface transport is being provided free of charge to common rated points. Resolution 280 105 and 370 105 were adopted to restrict such practices. In this resolution no money may be paid directly or indirectly to the passenger in lieu of ground transportation and when one or more cities or town terminals are served by an airport, free ground transportation may not

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[fol. 4423] be offered to a city-center other than the nearest one, except if 30 days written notice is given to Conference Members and no protests are received.

M 182 Certain Members applied for immediate exemption under the terms of this resolution, as follows:

(i) Permission was granted in respect of Jan Smuts Airport which lies between Johannesburg and Victoria and serves both these cities.

(ii) Permission was granted in respect of Livingston Airport to serve both Livingston and Victoria Falls which are separated by a distance of 14 miles.

(iii) Permission was granted in respect of Dusseldorf and Cologne which are separated by a distance of some 40 kilometers and can each be served from the airports of Wahn and Lohausen.

(iv) SAS requested that an exception be made for their service which operates alternatively to Beirut and Damascus. Permission was not granted by

the Conference since Beirut and Damascus were in different countries and approximately 65 miles apart by road.

Sleeper Surcharge—Resolution 250

M 183 *Traffic Conference 1.* A sleeper surcharge of $15 for an upper berth and $25 for a lower berth per trip was agreed with five Members abstaining. Resolution 160 250 reflecting this decision does not apply to transportation between Honolulu and the West Coast points in Canada and the United States.

M 184 *North Atlantic.* TWA moved that a sleeper surcharge of $50 be applicable over the North Atlantic. 8 Members were in favor, 2 voted against.

M 185 *Mid-Atlantic.* A sleeper surcharge of $50 per trip was agreed across the Mid-Atlantic via the Southern route.

M 186 A motion by PAA that the sleeper surcharge for transportation across the Mid-Atlantic, including to and from points in Europe, be $25 per night. This received 2 favorable votes and 14 Members abstained from voting.

M 187 *South Atlantic.* It was agreed that the sleeper surcharge across the South Atlantic would be fixed at a minimum of $50 per trip.

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M 188 *Europe/Africa.* A sleeper surcharge of £15 for single occupancy and 220 for double occupancy per trip was agreed. PAA abstained from voting.

M 189 *Balance of Conference 2.* A motion that the sleeper surcharge be £15 for single occupancy and £20 for double occupancy failed by one vote. PAA explained that they could not accept a higher charge within Traffic Conference 2 than that over the North Atlantic on services which extended into Traffic Conference 2 as far as Beirut. As an alternative, PAA proposed $25 per night. The motion was carried by two favorable votes and 11 abstentions.

M 190 *Between Conferences 2 and 3.* A sleeper surcharge of £15 for single occupancy and £20 double occupancy per trip was agreed with three abstentions.

M 200 *Conference 2.* The present resolution was amended to show a sleeper surcharge of £15 single occupancy and £20 double occupancy. PAA abstained.

M 201 *Central and North Pacific.* A motion that the surcharge be $50 per trip failed by one vote. PAA moved a surcharge of $25 per trip. This was agreed with 10 abstentions.

M 202 *South Pacific.* A motion that the surcharge be $25 failed.

Free Baggage Allowance—Resolution 310

M 203 No change was made to the free baggage allowance resolution at present in effect in Conference 1 and for Joint 1 2 traffic.

M*204 A proposal to increase the free baggage allowance in Conference 2 from 20 to 30 kgs. failed. It was agreed however, to increase the free baggage allowance in the Middle East to 30 kgs. and to reduce the break-point from £50 to £25 for passengers travelling within Southern and East Africa. Members stated that equipment limitations prevented an increase in Europe although in principle a uniform allowance throughout the Conference was favored.

M 205 A proposal to permit passengers to carry briefcases weighing no more than 5 kgs. was defeated.

M 206 In Conference 3 the free baggage allowance between India, Pakistan and Ceylon was reduced from 30 to 20 kgs.

M 207 The application of the free baggage allowance for around-the-world journeys and the London Sydney route was considered. After a protracted discussion as to whether the 40 kgs. free baggage allowance for around-the-world passengers would be retained or the free baggage allowance universally be reduced to 30 kgs. (with the exception of cer-

[fol. 4425] tain areas where an allowance of 20 kgs. applies), it was finally agreed to maintain the 40 kgs. free baggage allowance for around-the-world journeys. Furthermore, in order to cover the London Sydney problem,

the Conferences accepted the QEA proposal to permit passengers travelling between Europe on the one hand, and Australia, New Zealand and New Caledonia on the other hand, to be granted a similar allowance.

M/208 Resolutions 280/310, 370/310, JT23(8)310 and JT 123(6)310 reflecting the above agreements were agreed unanimously.

M/209 PAA recommended that Resolution 310 be amended to ensure that, in respect of cabotage services, Members do not grant free baggage allowances in excess of those provided for in Resolution 310. Air France, speaking as a carrier operating cabotage services, confirmed that they had been directed to give French civil servants returning from Colonies a greater allowance during off-season periods. This Member stated that they had no control over the matter since they were acting on instructions from their Government. The Conferences were informed, however, this practice had been discontinued several months ago and that Air France would make every endeavor to avoid undercutting IATA rates if, in the future, they are directed to re-introduce these baggage allowances.

Pooling of Baggage—Resolution 319a

M/210 This new resolution governs the pooling of baggage and permits two or more passengers travelling as one party to pool their baggage and grants a free baggage allowance equal to the combination of the individual free baggage allowances.

Baggage Excess Weight Charge—Resolution 311

M/211 The FRCS recommendation was agreed by all Conferences and Joint Meetings with an amendment to paragraph 3 to the effect that the reduced charge for pooling of baggage should apply after the first 10 kilograms instead of after each passenger had contributed 10 kilograms. A Member proposed that the excess charges be expressed in pounds in areas where pounds are considered the unit of weight. This was agreed and for the purpose of this reso-

lution, a conversion rate of 2.2 pounds per kilogram was established.

Charges for Specific Baggage Items - Resolution 311a

M 212 The new resolution as drafted by the FRCS was accepted by Traffic Conference 2. A motion to extend the application of this resolution to the Middle East received no support and was withdrawn.

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Freight Forwarders and Consolidators

M 213 The FRCS reported that PAA had proposed a revision of the quantity discount and mixed consignment resolutions in order to adapt IATA rate structure so that IATA carriers could derive more benefit from the sales efforts of air freight forwarders. Specifically, PAA suggested larger margins upon which freight forwarders could work and proposed introducing special discounts for shipments of over 500 and 1500 kilos which would apply to all the charges normally applicable to the consignments making up a shipment. Taking into account these additional breakpoints, it was not contemplated that commission would be payable on these shipments.

M 214 The advantages of encouraging the activities of freight forwarders was stated to be:

(i) That this policy will give the air carriers large consignments instead of the present multitude of small consignments and, therefore, lead to a reduction in carriers' accounting and handling costs.

(ii) That it would give the air carriers the benefit of the sales organizations of the freight forwarders.

(iii) That it would ensure that in the U.S.A. the Government would continue its policy of requiring a freight forwarder to deal only with scheduled air carriers.

M 215 As against PAA's proposal, other Members pointed out the following disadvantages:

(i) That there was a danger of air cargo being held up whilst consolidators gathered sufficient consignments to meet larger breakpoints.

(ii) That the system tended to isolate the air carrier from its shippers by the creation of a middle man.

(iii) That existing IATA-approved cargo agents would be antagonized by the development. In those countries where freight forwarders were not controlled as they are in the U.S.A., it would be difficult to make a distinction between the activities of a freight consolidator and an IATA-approved cargo agent.

(iv) That although the consolidator would always pay the carrier the agreed IATA rate for the total shipment, he would nevertheless be in a position to quote lower rates to the public than those quoted by IATA-approved agents and the carriers themselves. In consequence, the IATA rate structure would be endangered.

(v) That the development of the system would tend to give the consolidator a large measure of control over the IATA rate structure.

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M/216 Although the majority of the Committee was opposed, at this stage, to encouraging the development of freight forwarders, cognizance was taken of the fact that freight consolidation already took place on a fairly large scale, not only in the U.S.A., but in other parts of the world and the practice was spreading. It was held to be necessary that IATA should set up machinery for the regulation of freight consolidation which would take into account the different situations in countries where, unlike the U.S.A. freight forwarders are not regulated by a Governmental Agency. The possibility of control and development of freight forwarders was considered by the FRCS to fall into three categories:

(i) Control of margins allowed by quantity discounts.

(ii) Degree of consolidation on commodity-rated consignments by terms of the mixed consignment resolution.

(iii) Registration and regulation of freight forwarders with IATA in the same way as IATA approved agents. In this connection the FRCS recommended that this should be studied by Agency Committees together with the question of whether IATA approved agents should receive commission when handling shipments presented by a freight forwarder.

M/217 The Conferences appointed an Ad Hoc Committee composed of FRCS and Agency experts to study this complex problem but the Group was unable to reach agreement on questions such as registration of freight forwarders and the payment of commissions. It was decided, therefore, to refer the matter to the Legal Committee and a joint FRCS and Agency Committee for study between now and the next Conference meeting.

Quantity Discounts—Resolution 530

M/218 Resolution 530 was agreed in all areas except Conference 1 on the basis of a 25% reduction against the basic rate at a 45 kilogram breakpoint. Aer Lingus and BEA abstained from voting in Traffic Conference 2 and AH abstained from voting in Traffic Conference 3.

M/219 SAS desired an increase in cargo revenue and felt that this could be obtained by reducing the rebate on quantity discounts. This Member was prepared to accept the continuation of the present system provided that cargo rates themselves were appreciably increased.

M/220 PAA proposed a breakpoint at 1500 kgs. with a ceiling of 3¢ per ton-mile over the North Atlantic. Their experience indicated that without this breakpoint traffic was being lost. However, in view of the unanimity amongst carriers in accepting the 45 kilogram breakpoint at 25% discount, they were, with extreme reluctance, prepared to abandon their suggestion for the time being. It was agreed,

however, to instruct Commodity Rate Boards to give special consideration to the filings involving shipments of 1500 kilograms and over.

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M 221 Resolution 160 530 adopted by Conference 1 establishes a floor for shipments weighing 1500 kilograms or more.

Charges on Mixed Consignments—Resolution 513

M 222 The FRCS proposed a liberalization of the present resolution but also realized that this might give rise to handling difficulties particularly in those countries where freight forwarders are not regulated by government action. An Ad Hoc Committee was created to study this question and submitted a redraft of the present resolution which was adopted by all Conferences and Joint Meetings.

M 223 It was noted that the mixed consignment rule filed by several carriers in Barrington's tariff does not conform with the present resolution.

Minimum Charges for Cargo—Resolution 501

M 224 When minimum charges for cargo were studied by the FRCS at Nicosia, consideration was given to the suggestion made by the Executive Committee arising from its meeting with the Universal Postal Union. The Executive Committee proposed that to avoid competition between administrations and air carriers for light parcel traffic a minimum charge be set for 5 kilos.

M 225 The FRCS was unable to accept this suggestion entirely because a flat rate on 5 kilos would result in extremely high charges on certain long route sectors such as the South Atlantic or the Pacific. The draft resolution submitted to the Conferences did, however, use the Executive Committee figure of 5 kilos but set a maximum of $5. ($7. for JT12 and JT123) and a minimum of $1 and further exempted route sectors where parcel post services are not available. In the latter case, the minimum charge recommended was set at 1 kilo or 5 shgs., whichever is higher.

M/226 These changes have the effect of increasing the minimum charge wherever practicable and provide greater uniformity. The Conferences and Joint Meetings adopted the FRCS recommendations with amendments to ensure that all sectors where parcel post facilities are not available are excluded. At the request of TCA, the resolutions for JT12 and JT123 provides for a minimum charge of $5 instead of $7 for consignments originating in Canada.

Cargo Classification

M/227 The FRCS reported that it had studied the question of a cargo classification scheme and come to the conclusion that whilst such scheme could cover transportation from Europe to U.S.A. and Canada via the North Atlantic, it would not offer any appreciable simplification in Europe over the present commodity rate system. Although the principle of a classification scheme was favorably received, the FRCS believed that a change at this time would be premature. It recommended, therefore, that coordinated study be continued by the respective working groups of the New York and Paris Boards and that this study should include an analysis of the classes of the commodities carried by surface transport. In the meantime, Commodity Rate Boards should seek to establish greater order in their rates.

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M/228 The views expressed by the FRCS were accepted by the Conferences.

COMMODITY RATES

Commodity Rates Board—Resolution 552b

M/229 In view of the success of the Commodity Rate Board machinery, the FRCS recommended an extension of the jurisdiction of the Paris and New York Boards and also a broadening of membership of all existing Boards.

M/230 In the revised resolution submitted to the Conferences, a new paragraph (4) was inserted to emphasize that deviations from the normal practices relating to minimum charges, density requirements and charges in relation

to value must be clearly specified in the filing notice. A further provision (paragraph (3)(c).) was inserted to indicate the procedure to be followed where it is desired to establish a rate higher than the existing rate or to cancel the existing rate. Paragraph (8) was revised to deal with the effectiveness of rates established under previous resolutions. An amendment to permit filings on a per item basis was also recommended.

M/231 In principle, the FRCS proposal was accepted. Air India International did not wish the Board to have jurisdiction over commodity rates from India, Pakistan and Ceylon to Traffic Conference 1, Europe, or the Middle East as they believed that the system of filing their commodity rates with the Secretary and all Members under Resolution 552c was satisfactory.

M/232 Traffic Conference 1 authorized the New York Commodity Rates Board to approve or disapprove specific commodity rates wholly within Traffic Conference 1 in accordance with the resolution governing joint 12 traffic. It was also agreed that all specific commodity rates at present in effect be filed with the Commodity Rates Board by October 1, 1951 for study and appropriate recommendation. The Board was not authorized to change such rates without the consent of the Members concerned.

M/233 A motion to increase the membership of the New York Commodity Rates Board to five was agreed and the order in which panel representatives may sit on the Board was rearranged to prevent any individuals serving on the Board for more than three months during a 12 month period. It was understood that a representative nominated by a Member to serve on the Board must be a person wholly employed by such Member. The above decisions resulted in the adoption of Resolutions 160/552b, 280/552b, JT12(8)552b and JT31(8)552b.

Specific Commodity Rates—Resolution 552c

M/234 Resolutions 552c (specific commodity rates in areas where there are no Boards) were altered to reflect the modified jurisdiction of the Specific Commodity Rates

Boards. At the recommendation of the FRCS further modifications were made to bring this resolution into line with Resolution 552b with respect to the protest and cable notice filing procedures. 280 552c, 370 552c, JT23(5)552c and JT123(6)552c were adopted on the basis of the FRCS proposal.

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Application Form for Specific Commodity Rates

M 235 The form for the filing of Commodity Rates Resolution 552d was altered so that more information may be available to judge the necessity for a commodity rate being placed into effect. Resolution 160 552d, 280 552d, 370 552d, JT12(8)552d, JT23(8)552d, JT31(8)552d and JT123(6)552d were adopted by the Conferences and Joint Meetings. Air France and TWA abstained from voting.

Description of Commodities

M 236 At the request of the FRCS at Nicosia, an alphabetical list of commodities was compiled by a Working Group and this list was submitted to the meeting. While it was realized that advantage would be gained by standardizing the numbering and description system for commodity rates, the Conferences did not wish to pass a formal resolution on this matter. It was decided, however, that with effect from January 1, 1952, Commodity Rate Boards be directed to adopt the numbering and description system and that new filings should be made in accordance with the new list of descriptions. The Secretary was instructed to circulate this list to all Members.

Charges in Relation to Value—Resolution 503

M 237 The FRCS reported that although it was not fully satisfied with the present resolution, it was averse to making any change at this stage which would involve new instructions to staff. It recommended, therefore, the revalidation of the present resolutions by all Conferences and joint meetings. This was agreed with the exception that the term "basic rate" was changed to "normal rate."

M/238 In Conference 2 Aer Lingus abstained from voting and made the following statement for the record:

> "A considerable degree of uncertainty exists with regard to legal liability on routes between Ireland and the United Kingdom. This position results from certain difficulties with regard to the ratification of the Warsaw Convention. As the result of this situation Aer Lingus is unable to offer a choice of rates for carriage of cargo and collects valuation charges for local traffic moving between these two countries. Aer Lingus does not wish to oppose the adoption of Resolution 503 and abstains from voting on the understanding that the Conference appreciates these difficulties and agrees that Aer Lingus be exempted from applying provisions of Resolution 280/503 for traffic between Ireland and the United Kingdom until such time as the position as to the legal liability with respect to the carriage of such traffic has been resolved."

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Proration of Valuation Charges—Resolution 503a

M/239 The Insurance Sub-Committee of the Financial Committee drew the attention of the Conferences to the confusion that exists, particularly in Europe, regarding the extent to which Resolution 503a is being applied. According to a circular letter issued by the IATA Paris Office on this subject, certain carriers were applying paragraph (1) of Resolution 503a without restriction, some were applying it with restriction, and others did not indicate whether or not they are applying the resolution at all. As a consequence, many carriers were experiencing considerable difficulty from an insurance standpoint. The Conferences noted these comments and urged Members, in their own interests, to conform to the provisions of Resolution 503a.

Air/Rail and Air/Bus Interchange

M/240 The FRCS recommended that Conference 2 appoint a Committee to study the possibilities of interchange arrangements with railway and bus companies in Europe. This was agreed and the following were appointed to ex-

plore the matter and to make recommendations to the Conferences at its next meeting:

G. Delelaux
D. Handover
P. C. F. Lawton
J. W. Meijer.

Sea/Air Transportation—Resolution 160/153

M/241 Resolution 160/153 amends the existing sea-air transportation resolution in Conference 1 by the deletion of the words "and the fare of the sea portion shall be ½ of the round-trip sea fare." This deletion was made in recognition of the fact that IATA cannot make provision for the fares steamship companies may charge.

Mileages and Routes for Tariff Purposes

M/242 PAA believe that the listing of mileages applicable against each fare and rate caused unnecessary work. The Conferences, however, agreed that it would be extremely useful for mileages to appear on the FRCS working papers but did not consider that it was desirable to specify mileages in formal fares and rates agreements adopted by Conferences.

Proration of Joint Fares and Rates—Resolution 017

M/243 The Conferences and Joint Meetings adopted Resolution 017 based on the recommendations made by the FRCS Committee. These recommendations provide for the determination of prorates in basic currency and a formula to prorate directional fares and rates so as to limit a carrier's prorated portion to not more than its applicable fare or rate. The new resolution also clarifies that minimum charges are to be prorated on the same basis as normal charges.

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Proration of Involuntary Re-Routed Consignments Resolution 018

M/244 This new resolution clarifies the method of proration to be employed in the case of involuntary re-routed

consignments or shipments. Attention was drawn to the fact that the draft prepared by the FRCS covered only part of the problem. Certain legal difficulties are involved and the Clearing House Sub-Committee had stated that a new waybill should be prepared by the re-routing carrier. The Conferences considered, however, that the draft was an improvement over the present situation and accepted the resolution as an interim measure. The FRCS was instructed to give the matter further study at its next meeting.

M/245 It was noted that the adoption of this resolution by all Conferences and Joint Meetings necessitated an amendment to the IATA Interline Handling Agreement.

M/246 Air France, Aer Lingus, Air India, SABENA and KLM abstained from voting. KLM made the following statement for the record:

> "According to our information the Clearing House and Revenue Accounting Sub-Committees noted that considerable accounting difficulties would be made if prorating of re-routed shipments are dealt with according to the above proposal. As this Committee will discuss this question at its next meeting, KLM has suggested that no specific action be taken by the Conferences at this time and that the question be referred to the FRCS and Revenue Accounting Sub-Committees."

Stop-Overs—Resolution 160/040

M/247 Consequent upon the closing of Conference 1 fares, Members were willing to accept the same conditions governing stop-overs as at present in force in other Conference areas.

M/248 Resolution 160/040 was agreed unanimously.

Changes in Fares—Resolutions 049 and 049b

M/249 The Conferences agreed to maintain the present resolution with the inclusion of exchange orders in paragraph 1. This decision resulted in the adoption of Resolution 049 for all Conference areas. BEA abstained from

voting as they do not favor the principle of passing on increases to passengers.

M 250 Resolution 280 049b was adopted at the request of BEA and Air France. These Members explained that they had agreed to an increase in the off peak fare between London and Paris from £10 to £11 effective from June 1, 1951. Some 12,000 passengers had already purchased tickets for travel after July 1, 1951 and in view of the administrative difficulties involved in collecting the extra £1, BEA and Air France requested the Conference to grant exemption from the application of Resolution 049 in this particular instance.

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Passenger Expenses at Connecting Points—Resolution 102a

M 251 The FRUS recommended that paragraph 3 of the present resolution be amended to prevent money being paid to passengers or sales agents and, furthermore, revised paragraph 4 to restrict advertising and publicity.

M 252 Since the Conferences considered that these provisions were too severe, the resolution was redrafted to provide for Members filing notices, without protest, naming the city where money is paid to a passenger or sales agent for passenger expenses, the amount thus paid and the period of layover. With reference to paragraph 4 dealing with publicity and advertising the wording of the existing resolution was preferred although a small alteration was made to emphasize that Members should not advertise the absorption of transit costs as an inducement to travel.

M 253 In all resolutions adopted by the Conferences and Joint Meetings, specific provision was made for traffic from Australia or New Zealand traveling to Europe via North America. Members may advertise and pay such passengers a sum not exceeding $15 U.S. in lieu of hotel accommodation and airport transfer charges in North America provided they are ticketed to depart from the North American continent within 84 hours after arrival. Braniff abstained from voting in resolution adopted by Conference 1.

Round-Trip Discount—Resolution 150a

M 254 The Conferences accepted the changes to Resolution 150a, recommended by the FRCS. The resolution adopted by Conference 1 recognized that Members grant a lower discount than 10%, therefore, Resolution 160 150a sets the 10% discount as a maximum and not a specific discount as in the case of other Conference areas. It was also agreed that the constructed fare for traffic from Conference 1 to other areas should take into account the lower discount appertaining to the part of the journey in Conference 1.

M 255 In Europe where many round-trip fares have been introduced and those cases where specific points are served by more than one carrier, it has not been clear whether Members are prepared to accept re-routed passengers for the return trip at half the special fare. The question whether special round-trip fares are automatically available over the lines of two Members as in the case with the round-trip discount and also whether carriers should debit the issuing carriers half the normal return fare or only half the special fare was discussed.

M 256 Some Members stated that they would accept passengers at half the special round-trip fare, others declined to do so.

M 257 It was agreed that in order to clarify the situation, Members wishing to participate in any special fares introduced in Europe would so notify the Secretary who, in turn, would circulate this information to Members.

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M 258 In Conference 2 the provision governing the validity of the combination of the international fare and a domestic short-validity round-trip fare was deleted. It was felt that this provision should be covered when special fares are filed under Resolution 159.

Circle-Trip Discount—Resolution 151a

M 259 The draft submitted by the FRCS provides against the use of backhaul fares in the circle-trip reduction which results in undercutting round-trip fares. The Conferences and Joint Meetings adopted resolutions based on this draft.

M 260 In the case of Resolution JT12(S)151a, special provision was made for directional fares involving South Atlantic circle-trips.

Open-Jaw Trip Discount—Resolution 152

M 261 The only significant change in the resolution adopted by all Conferences and Joint Meetings was the deletion of paragraph 2 from the previous resolution. This paragraph now forms a separate Resolution 152b.

Filing of Open-Jaws—Resolution 152b

M 262 Although the FRCS recommended against the filing of open-jaws by rule, the Conferences accepted this proposal made by PAA. This change was considered necessary because some Members interpreted the previous resolution as requiring that open-jaws be filed as specific amounts between individual points. The new rules governing the filing of open-jaws requires the refiling of all open-jaws at present in effect. It also stipulates that an open-jaw shall not become effective if protested by a Member.

Common Interest Group Travel—Resolution 158 and 158a

M 263 The Middle East Working Group recommendation to extend the application of Resolution 270 158 to cover traffic between Europe and the Middle East was not accepted. Traffic Conference 2 did, however, agree to an extension for traffic carried wholly within the area of the Middle East as defined in Resolution 280 158 and to add Iceland to the definition of Europe.

M 264 Resolution 280 158a moved by CAA and amended by Air France, permits Common Group Interest discounts to be offered wholly within Southern Africa and between Mauritius and Reunion on the one hand and Mauritius on the other.

M 265 At the request of TEAL, Resolution 370 158 was agreed amending Resolution 360 158 to apply between Australia and New Zealand. The number of people constituting a group was reduced from 15 to 10.

Creative Fares—Resolution 159

M/266 The FRCS recommended revalidation of the present resolutions with an additional paragraph 7 permitting off-hour, on-hour combinations of half of the sum of the off-hour round-trip fare and the normal round-trip fare in the outbound direction. Filings of round, circle and open-jaw trips are also permitted under the new Resolutions 160/159, 280/159 and JT23(8)159, and it was also agreed to standardize journey time to 8, 17, 23 or 30 days, except within Europe where 30 day duration will not apply.

Special Round, Circle and Open-Jaw Trips—Resolution 159a

M/276 In Conference 3 and for Joint 31 traffic, Resolutions 370/159a and JT31(8)159 were adopted to replace the existing special round, circle and open-jaw trip fares. Standardized ticket validities of 8, 17, 23 and 30 days apply and mileage limitations of 5,500 miles and 3,500 were agreed for Conferences 3 and 31, respectively.

Family Fares—Resolution 166

M/268 In agreeing the closing of fares and rates within Traffic Conference 1, Members decided that all rules contained in carriers tariffs would be expressed in resolution form. PAA drafted a Resolution 160/166—Family Fares—reflecting family excursion fares at present in their tariff. This resolution was adopted by the Conference.

M/269 CAA moved the revalidation of the present resolution which permits Members to establish discounted family fares between Johannesburg, Bulawayo and Salisbury. Resolution 280/166 was adopted and amends Resolution 270/166 to the extent that these fares are applicable to Johannesburg from Bulawayo, Livingston and Salisbury.

Special Event Fares—Resolution 168

M/270 Amendments to the existing resolution were proposed by the FRCS in order that more information should

be submitted by the proponent so as to provide some restriction in the use of Special Event Fares. Also, for the sake of uniformity, the protest rules applicable in Resolution 159 were inserted in Resolution 163. Resolutions 280/163 and JT23(8)163 incorporating these changes were accepted by Conference 2 and for Joint 23. A motion to adopt similar resolutions for Conference 3 and Joint 31 failed.

Student Fares—Resolution 167

M 271 Conferences 23, Joint 12, 23 and 31 adopted student fare resolutions setting the 26th birthday as the age limit.

M 272 In the joint resolutions covering travel to and from the United States and Canada, the student fare discount does not apply beyond the gateways of the North American continent. An exception was made in the case of 31 traffic

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[fol. 4436] to interior points of Canada where the discount is carried through to Montreal. Student fare reductions are permitted over the North and Mid-Atlantic routes during the off-season periods only. It was further agreed that a student should not be eligible unless he is attending a course of not less than a school year. The Conferences felt that owing to the administrative and distribution difficulties involved, a standard form of certificate was not considered necessary. However, the FRCS was requested to prepare a list of the information required from school or university authorities in order to determine a student's eligibility to receive a discount.

M/273 SAA proposed concessional fares for students travelling in groups for educational purposes during vacation periods between South Africa and Europe and South Africa and Israel. This proposal received no support.

Student Nurses' fares—Resolution 280/167a

M/274 Resolution 280/167a was adopted by Traffic Conference 2 at the request of Aer Lingus. This permits student nurses registered for training at any recognized nurses training establishment in Ireland or the United Kingdom to travel between these two countries at the student fare discount.

Period of Ticket Validity—Resolution 280/276

M/275 Arising from discussions on student fares, it was noted that validity of tickets in Europe was only 6 months and that this would be inconsistent with the student fare resolution. It was agreed, therefore, that the validity of normal fare tickets in Traffic Conference 2 would be 12 months with the exception of South Africa and East Africa, where the validity would be 6 months. Resolution 280/276, incorporating this change, was agreed unanimously by Conference 2.

Conversion of Ticket Classification

M/276 Resolution 278, adopted by all Conferences and Joint Meetings, contains the same provisions as the present resolution but in addition to round, circle and open-jaw trips, around-the-world trips are also covered.

Free and Reduced Fare Transportation—Resolution 200

M/277 It was the general sense of the meeting that the present resolution was unsatisfactory but Members were divided as to what steps should be taken to improve the regulations governing free and reduced fare transportation. On the one hand some Members proposed the liberalization of the resolution by the addition of a clause permitting the use of "principal's privilege." Other Members favored liberalization by the addition of other specific categories of persons to whom free and reduced transportation may be granted.

M/278 SAS stated that they had suffered considerable hardship under this resolution and quoted a recent case where they were unable to grant a free passage to a person who was travelling on business intimately connected with

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[fol. 4437] the affairs of the Company. This Member felt that in such instances managements should have the right to issue free transportation and suggested that the Conferences adopt the rule used for considerable time by the North Atlantic Shipping Conference to regulate the concession.

This rule reads as follows:

"Principals of the lines may, on purely personal grounds, grant free or reduced rates passages. Particulars of any such concessions to be reported to the Conference Secretary within a week of passenger's embarkation. The spirit of this clause is understood to be that reductions shall not be granted on personal grounds where the business is competitive."

M/279 Several Members strongly supported the necessity of this clause but others felt that the liberalization as proposed would result in lack of control, and in any case it would have difficulty in gaining acceptance by certain Governments.

M/280 An Ad Hoc Committee consisting of FRCS and Agency experts was created to study the problem. This Committee also considered a draft resolution proposed by TCA governing free transportation in connection with public relations contacts such as the press, publishers, etc., and its report recommended the adoption of a resolution incorporating the following:

(i) The provisions of the present Resolution 200 with the amendment to paragraph (1)(c)(1) identifying an employee of a public relations agency regularly retained by an air carrier as an employee of the air carrier under the terms of the resolution. Similar recognition was extended to a business consultant or an employee or a member of a business consultant retained by an air carrier.

(ii) Provisions, based on the draft submitted by TCA, permitting Members to grant free transportation to public relations contacts.

(iii) Provisions, defining the basis on which "principal's privilege" may be exercised.

M/281 The Conferences considered that the last two mentioned questions should be covered by separate resolutions and adopted Resolution 200 applicable in all Conferences and Joint Meetings based on (i) above.

Free Transportation—Public Relations—Resolution 209

M/282 Speaking to the draft prepared by the Ad Hoc Committee created to study the general question of free and reduced transportation, some carriers feared that in spite of the fact that Members would be required to report

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[fol. 4438] to the Secretary details of any free transportation granted, the situation would get out of control. These Members however, were agreeable to the introduction of this resolution in Conferences 2 and 3 but were not willing to accept it in Conference 1 or for Joint 1 and 2 traffic.

M/283 SAA proposed that free transportation be limited to "permanent" members of the editorial staff of newspapers or magazines. This was agreed although it was recognized that, in practice, it would be difficult to determine the exact meaning of "permanent" and some Members felt that unless the resolution was worded in more precise terms it would be impossible for the Enforcement Office to perform its duties.

M/284 At the insistence of a Member, the paragraph permitting free passes to "any recognized professional freelance writer, such as photographer or cameraman" was deleted. The Conferences recorded, however, that this category of persons could travel without charge on special assignments.

M/285 With the above amendments the draft resolution prepared by the Ad Hoc Committee was approved by Traffic Conferences 2 and 3 and by Joint 23. Air India International, IBERIA, NWA, PAA, PAB, SAA and TWA abstained from voting.

Free Transportation—Personal—Resolution 210

M/286 The privileges granted under this resolution, which was based on a draft prepared by the Free and Reduced Transportation Ad Hoc Committee, are essentially the same as those contemplated by SAS and other Members in their suggestion that the Conferences adopt a "principal's privilege" clause in Resolution 200. The Ad Hoc Committee had

pointed out that it was virtually impossible for the Conferences to agree upon a definition of "principal" and for this reason had avoided use of the expression in the draft resolution. They had, instead, recommended empowering Member as such, to grant free or reduced transportation at their own discretion, but defined the terms under which such concession may be given and also set up machinery to enable each Member's activities to be kept under constant surveillance by other Members and the IATA Enforcement Office. In this manner they hoped that abuses would be avoided and that the resolution would not be used as a device to extend the granting of free and reduced transportation in order to promote sales.

M/287 Resolution 210 was adopted by Conferences 2 and 3 and for Joint 23 traffic but was not accepted by Conference 1 or other Joint Meetings. Air India International, ALI, Aer Lingus, BCPA, BEA, CPAL, Cyprus Airways, NWA, PAA, TWA and SAA abstained from voting.

Children's Fares—Resolution 201

M/288 Traffic Conference 1 adopted a new Resolution 160/201 which eliminated the charge for infants under two years of age.

M/289 The FRCS was instructed to study the applicability of children's fare reductions to student fares and to fares filed under Resolutions 159 and 163.

[fol. 4439]

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Free or Reduced Fares for Tour Conductors—Resolution 204

M/290 The Conferences considered a re-draft of Resolution 204 which contained modifications intended essentially for the purpose of clarification.

M/291 It was pointed out that in those areas where Resolution 158 is not applicable, Resolution 204 was being used as a device to grant common interest group travel discounts. The meeting felt that a clear distinction between the purposes of these two resolutions should be made and in the opinion of some Members, the present weakness

was to be found in the inadequacy of the definition of a "Tour Conductor." Attempts to improve upon the present definition were unsuccessful.

M/292 The main points of difference between Resolution 204 accepted by all Traffic Conferences and Joint Meetings and the present resolution are as follows:

(i) One free passage may be issued for a tour conductor for a group of 15 and for each of the multiple of 15 thereafter.

(ii) Paragraph 5(d) stated what has hitherto been implied—i.e. that the free passage for the tour conductor will not be used to rebate cost of the tour to any of the members of the tour.

(iii) Paragraph 5(e) states in greater detail the requirements concerning advertising literature.

(iv) That the terms "round-trip" and "circle-trip" used in Resolution 204 include transportation partly by air and partly by surface means.

(v) Paragraph 8 stipulates the condition under which circumstances passengers must travel together and provides a workable solution whenever a carrier is obliged to transport groups on more than one flight owing to lack of space, and also when operating conditions prevent passengers from commencing transportation on the flight scheduled.

M/293 It was agreed that in the event of any government withholding approval of this resolution, a new Resolution 204a will be submitted for mail vote.

M/294 PAA abstained from voting in Conference 1, Joint 12, Joint 31 and asked that the matter be referred to the Agency Committees for study and further recommendation to the next Conference n eting.

[fol. 4440]. —64—

Change of Routing—Resolution 279

M/295 At the FRCS meeting in Nicosia no agreement could be reached regarding standard procedures to be

adopted for endorsement of tickets, reroutings, interchange or fare adjustments and the Conferences were requested to examine two draft resolutions, one submitted by BEA and another by TCA. An Ad Hoc Committee was created to consider these drafts and the Conferences and Joint Meetings accepted their recommendation as at Resolution 279.

Low Density Cargo—Resolution 280/502a

M/296 Resolution 280/502a adopted by Conference 2 for application wholly within Europe admits the convenience of expressing the low density factor in the metric system of measurement only and establishes the volumetric equivalent of 1 kilogram at a rounded off figure of 7,000 ccs.

Lower Charge in Higher Weight Category—Resolution 504

M/297 The Conferences and Joint Meetings agreed to make general the rule contained in Resolution 503 that the maximum charge for consignments in each weight group need not be more than the minimum charge for consignments in the next higher group.

Livestock—Resolution 280/511a

M/298 Traffic Conference 2 adopted Resolution 280/511a as recommended by the FRCS Committee. This modifies the present resolution by the addition of a new paragraph providing that the charge is applicable to both the animal and its container, the deletion of the word "unaccompanied," and the substitution of the word "normal" for "basic."

Transfer Charges for Interline Shipments—Resolution 512

M/299 The Conferences considered that the draft submitted by the FRCS lacked clarity and expressed a preference for the present resolution since it provided free transfer between Members at one airport.

COD Service Charge—Resolution 512a

M/300 Resolution 512a adopted by all Conferences and Joint Meetings establishes a "minimum minimum" COD service charge of 2/6 (Sterling) or $0.35 U.S. and it was agreed that the collecting carrier shall retain those charges.

Information Concerning Cargo Handling Charges

M/301 The Conferences did not accept the FRCS recommendation to adopt a resolution governing the compilation and circulation of information concerning cargo handling charges and suggested that the matter be developed further by the FRCS.

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Special Rates for Gold, and Platinum and Platinum Metals —Resolution 560

M/302 The FRCS recommended that for Joint 12, 31 and 123 traffic special rates for gold shipments of 1,000 kilos or more should be applied at the 45 kilogram rate between the gateways. This was agreed but an exception was made in the case of gold consignments between Johannesburg and New York as SAA maintained that this traffic could stand the higher rate.

M/303 Resolution 560 was adopted by all Conferences and Joint Meetings. In TC 1 it was decided that no value charge or value surcharge will be assessed.

Carriage of Gold as Baggage

M/304 PAA reported that some Members permit the transportation of gold as baggage and in their opinion this was contrary to Resolution 560.

M/305 Air France stated that they had been accepting gold as baggage for some time. They felt that this was not contrary to the resolution since their charges were higher than those prescribed under Resolution 560. For instance, to Montevideo they charge approximately 500 francs per kilo more than they would charge if they applied the normal cargo rate plus the 150% surcharge for gold.

M/306 PAA explained that they considered the practice undesirable as it exposed Members to unnecessary restrictions, but were prepared to withdraw their objection on the understanding that carriers document the shipments as baggage and charge the gold rate.

Newspapers and Periodicals—Resolution 561

M/307 Resolution 561 adopted by all Traffic Conferences and Joint Meetings amends the present resolution to the extent that it removes the limitation that periodicals must necessarily be published "at least once a month" and also allow the discount to be applied against books. Where carriage is wholly within Europe, other than in Germany, the maximum discount applicable was agreed at 33⅓% as against 50% in other areas.

Carriage of Human Remains—Resolution 280/562

M/308 Most railway companies in Europe require that coffins be carried in separate freight cars and rates charged for such traffic are exceptionally high. In consequence, shipments of coffins by air are on the increase and it was the opinion of the FRCS that this traffic in Europe could stand a surcharge of 200%. This proposal was agreed and Resolution 280/562 was adopted. It was also decided that no quantity discounts on human remains would be permitted.

[fol. 4442] —66—

Special Rate for Personal Effects—Resolution 563

M/309 In accordance with the Conference Provisions, PAA had given notice to rescind Resolution 563. This Member maintained that shippers use the subterfuge or personal effects to break the cargo structure and great quantities of merchandise are shipped at this reduced rate. Other Members who favored keeping the resolution stated that they were not conscious of such abuses and believed that the special rate was a factor in competing with steamship companies as it stimulated traffic by reducing to some extent the disadvantage of the limited baggage allowance by air.

M/310 A proposal that the use of this resolution be limited to passengers travelling by air and that travellers' samples be excluded specifically was not acceptable to PAA. In consequence, therefore, Resolutions 140/563, 260/563, 350/563, JT123(4)563, Special Rate for Personal Effects will be rescinded 90 days after the Bermuda meeting.

Diplomatic Bags—Resolution 630

M/311 The Joint Meetings agreed to adopt the present resolution with a slight amendment n paragraph 5. The expression "IATA cargo rates" has been modified to "applicable IATA cafgo rates."

No-Show and Cancellation Charges—Resolutions 728, 728a and 728b

M/312 Under the present resolutions a "no-show charge" applies in Conference 2 and 3 and for all Joint Meetings. In addition, cancellation fees are charged in Conferences 2 and 3 and for traffic between these two Conferences. A motion to abolish all no-show and cancellation charges was defeated. A further motion to abolish cancellation charges, but to agree upon a minimum worldwide standard no-show charge of £5 also failed. Although a great deal of time was devoted by a working group and the Conferences to this question, it was not possible to achieve worldwide uniformity. The final position with respect to these charges is as follows:

(i) *No-Show Charge*

A no-show charge of £25 ($70 U.S.) maximum and £2 ($5.60 U.S.) minimum was agreed for Conferences 2, 3, JT23, JT31, JT123 and JT12 (traffic between South America and Conference 2 only).

(ii) *Cancellation Charges*

Cancellation charges of the same amounts were agreed for Traffic Conferences 2, 3 and JT23 and 12 (from points in South America to Europe and Africa only).

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(iii) At the request of Aer Lingus it was agreed that where the full fare is less than £2 ($5.60 U.S.), no-show and cancellation charges will be assessed for the amount of the full fare.

M/313 To give effect to the above decisions, no-show Resolutions 280/728, 370/728, JT12(8)728, JT23(8)728,

JT31(8)728 and JT123(6)728 were adopted with IBERIA abstaining in Conference 2 and IBERIA and BRANIFF abstaining in the vote for JT12. The cancellation charges Resolution 280 728a and JT12(8)728a were agreed. No resolutions were required by Conference 3 or 23 since the present resolutions have an indefinite expiry.

Consideration of Recommended Practices

M 314 The Conferences noted that the FRCS Committee had not been able to agree unanimously to recommend the disposal of recommended practices. It was decided, therefore, that the matter be referred back to the FRCS for further study.

Flight Line Numbers on Extra Sections

M 315 TWA raised the question concerning the use of flight line numbers whenever a Member is operating extra sections. It was the sense of the meeting that the usual flight line number should not be used. The Traffic Handling Committee was requested to study this matter.

Air Waybill—Conditions of Contract—Resolution 340b

M/316. BOAC in a letter to the Secretary of Traffic Conference 1 pointed out that insurance practices vary considerably and make it virtually impossible for international carriers who employ their individual brokers to be aligned on the question of all-risks covered. This Member suggested, therefore, that the wording of Clause 8 of the Conditions of Contract should be made optional to enable carriers to obtain the fullest possible cover which might conceivably also include cover which is specifically excluded by the existing Clause. It was noted that the Insurance Sub-Committee of the Financial Committee had supported this suggestion.

M 317 PAA referred to the position taken by the Legal Committee which apparently had felt that this provision should remain mandatory. However, since BOAC's suggestion would give the shipper more liberal treatment, PAA stated that they were willing to accept the change proposed.

This was agreed by all Conferences and the amendment was accomplished by the insertion of a new paragraph (2) in Resolution 540b which reads as follows:

"(2) that notwithstanding anything above the exact wording of Condition 8 of the Conditions of Contract shall be optional with each Member."

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Glossary of Traffic Terms

M/318 PAA recommended that the Conferences review the terms relating to fares, rates, charges and schedules contained in the Glossary of Traffic Terms and agree formally on definitions of such terms. This Member pointed out that, from time to time, meetings among Members relating to the meaning of resolutions are handicapped because of the differences of the opinions as to the meaning of the term used in resolutions.

M/319 The Conferences agreed that the Glossary to date did not carry enough weight and although it had been approved by the Traffic and Legal Committees, the definitions set out in this Glossary were frequently overlooked in discussions.

M/320 An Ad Hoc Committee was set up to study this matter and reported as at Appendix "G" that it did not recommend formal binding action at this meeting of the Conferences. It did, however, suggest that the Glossary be submitted to the Traffic and Legal Committees to prepare appropriate recommendations for consideration by the Conferences at the next composite meeting. This report was adopted and the Conferences emphasized that the necessity to agree upon definitions was of vital importance to the interpretation of all resolutions.

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TRAFFIC COMMITTEE RECOMMENDATIONS

Standard Form of Effectiveness Resolution

M/321 The Chairman of the Traffic Committee explained that the new recommendation (TC11/001) was intended to tidy up the effectiveness resolution and to eliminate the

weaknesses found in the previous form of effectiveness resolutions used by the Traffic Conferences.

M/322 The Legal Drafting Officer added that in order to clean out the mass of the old effectiveness resolutions in the Traffic Manual of Resolution, the new draft included an additional clause to the effect that all resolutions heretofore adopted would be made subject to the new standard effectiveness resolution.

M/323 It was also explained that the basis of the proposal was that each resolution should carry its own indication of type, its own filing date and its own expiry date, if any. By this means, 90% of the resolutions adopted at each meeting could be covered by a single effectiveness resolution for each individual Conference or combination of Conferences. Different effectiveness resolutions would only be required to cover special cases.

M/324 This recommendation by the Traffic Committee was agreed unanimously.

Joint Fares with non-Scheduled Operators

M/325 It was noted that the Traffic Committee had come to the conclusion that it was impossible at present to take any further action on joint fares with non-scheduled operators. However, the Committee was prepared to consider the matter again, if necessary.

M/326 One Member referred to the report of the Middle East Working Group which inter-alia dealt with this problem. It was agreed that the report should go to the Traffic Committee as it outlines some of the difficulties of the small carriers and the various steps which might be taken.

Charters—Resolution 045

M/327 The Chairman of the Traffic Committee pointed out that the recommendation submitted to the Conferences had been drafted with a view to stopping the use of Charters as a means of undercutting fares. At the same time the Traffic Committee had intended to leave a reasonable amount of freedom to Members and had taken into consideration the Legal Committee's comment on the subject.

M/328 NWA referred to their particular situation of having approximately 50% of their aircraft grounded and this Member hoped that these difficulties would be taken into consideration when redrafting the resolution. Whilst they had every intention to living up to IATA rules and regula-

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[fol. 4446] tions, they felt that they should be left with the necessary amount of freedom with respect to chartering equipment.

M/329 PAA drew attention to the new regulation set up by the CAB pertaining to the chartering of aircraft and felt that this had a bearing on the Traffic Committee's proposal. Air India Ltd. stated that their government had authority to requisition space on their services at any time, and requested that this aspect of the problem be borne in mind. Chicago & Southern referred to their recent introduction of the sale of "speed-pack units" on a rate per mile basis and hoped Conferences did not consider this practice as being contrary to the resolution. At the request of the Conferences, the Traffic Committee re-examined its recommendation in the light of the CAB's action and of the various comments expressed by Members.

M/330 At the latter stages of the meeting, the Traffic Committee submitted a revised draft of a charter resolution. The Traffic Committee pointed out that while only U. S. carriers were bound to implement the CAB regulation, there was likelihood that the CAB would take action which would adversely affect all scheduled carriers operating to the United States if IATA did not work out a satisfactory resolution. For this reason, the new draft, although based on the Traffic Committee's previous recommendation, took into account the CAB's requirements and in particular, attempted to be more specific with respect to the meaning of the term "general public."

M/331 Attention was drawn to the fact that while the proposed resolution might be satisfactory with respect to operations regulated by the CAB, it might not be suitable for application to other operations, such as those within

Europe. For example, it did not permit charters to agents for passenger transportation and intra-European operators might feel that carriers should be free to make such charters. The Traffic Committee suggested that even if they were not disposed to adopt the resolution at present, Members in other areas such as Traffic Conference 2 might perhaps be able to discuss with their governments the possibility of undertaking to bind themselves to such a resolution in the future.

M/332 The Traffic Committee felt that during the current sessions, Conference 1, Joint 12 and Joint 31 might well adopt the draft resolution and in other areas allow the current resolution to remain in effect.

M/333 The Conferences then considered Traffic Committee's latest recommendations. Air France point out that they were compelled by government contract to carry mail on all services whether chartered or not. This Member was unable to accept any limitation for carriage of mail in the charter resolution.

M/334 A further draft was prepared incorporating changes required by Members, and this was submitted to Conference 1, Joint Meetings 12 and 31. The Joint Meetings were unable to accept the new resolution. Members

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[fol. 4447] acknowledged that it represented an improvement over the present resolution but they were reluctant to adopt charter rules which had not been given legal clearance. In particular, they felt the full implications of paragraph 11 required careful study, and they believed that the conditions imposed under paragraph 9 relating to the charter or leasing of aircraft from one air carrier to another were unworkable as it presumed to regulate the action of non-IATA carriers.

M/335 In view of the objections received, it was decided to revalidate the present JT12 and JT31 resolutions and to refer the draft back to the New York Charter Working Group set by the FRCS at Nicosia for further study. This Group was authorized to draft a charter resolution for mail vote action by Conference 1 and JT12 and JT31. It was also

authorized to finalize its work with respect to a minimum rate formula for Conference charter rates and to prepare a resolution for mail vote.

M/336 At an individual meeting of Traffic Conference 1, Braniff again stated that they could not agree to the closing of fares and rates in Traffic Conference 1 unless a satisfactory charter resolution was adopted. This Member considered the final draft submitted by the Traffic Committee as a suitable resolution. In view of the firm position taken by this Member, the Conference accepted a resolution based on this draft. Resolution 160/045 amended the draft to the extent that paragraph 11 was deleted entirely and the provisions contained in paragraph 4 of the present resolution 045 replaced paragraph 9.

M/337 Conferences 2 and 3 agreed to retain Resolutions 270/045 and 338/045 respectively. KLM gave notice that they would not be bound by Resolution 270/045 90 days after the next Conference meeting.

M/338 The charter question was also discussed at an individual session of Traffic Conference 2 when it was recognized that the present resolution required modification. Since time did not permit this being done at Bermuda, it was agreed that a Committee be appointed to study charters and report to the next meeting. Various interpretations of the present resolution were discussed but the Conference was unable to arrive at satisfactory conclusions. The main questions causing difficulties were:

(i) Does Resolution 045 permit the same aircraft to be chartered to more than one charterer at the same time and for the same journey?

(ii) May a Member resell space on a chartered aircraft to th general public at IATA fares and rates?

(iii) May an individual person resell charter to another individual person and if so, what is the relationship between the rates charged?

M/339 The Conferences felt that it would be necessary to coordinate study of the charter question and with this in

mind requested the Secretary of the Traffic Committee to prepare and circulate a charter questionnaire to all Members. On the basis of replies received to this questionnaire

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[fol. 4448] and the reports of the study groups (the New York Group and the Committee to be established by Conference 2), the Traffic Committee, at its next meeting, should undertake a global study of the charter question.

Alcoholic Beverages

M/340 This matter was discussed at some length but no agreement could be reached. One group felt that since carriers did not live up to the present resolution, it should be rescinded. Other Members opposed this proposal. Finally, it was agreed to retain the present resolution but to ask the Traffic Committee to consider the whole question of "giveaways."

Family Travel Plan

M/341 The Conferences agreed that no action be taken at the present time.

Bulk Travel Plan

M/342 The Conferences agreed that no action be taken at the present time.

Free and Reduced Transportation

M/343 This item is discussed under M/277 to M/281 of this report.

Carrier Names and Abbreviations—Resolution 275c

M/344 In the draft Resolution (TC11/275c) recommended by the Traffic Committee provision was made for the addition of new abbreviations between Conference meetings.

M/345 On the question that Members publish all abbreviations in tariffs and timetables, it was pointed out that there were good legal reasons for doing so in order to obtain maximum benefit under the Warsaw Convention. BEA suggested that this requirement was too exacting. This view

was supported by other Members and as a compromise, it was agreed to delete this mandatory provision in Resolutions 160/275c, 280/275c and 370/275c adopted by the Conferences.

Form of Baggage Tag—Resolution 300

M/346 The Madrid Traffic Conferences had adopted a new form of baggage tag for use as from January 1, 1951. The reason for this was to bring the IATA baggage tag into line with that of the ATC. However, as the ATC had made certain changes since it had introduced the form which the Conferences had adopted for Madrid, the IATA form was still out of line with that of the ATC. Furthermore, there had been no standard procedures covering the use of the ATC type of tag as there had been no opportunity to prepare these during the Madrid meeting.

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M/347 The Traffic Committee had studied the matter and in their recommendation (TC11/300) felt that in order to obtain uniformity with the ATC, the Conferences should be asked to adopt the latest ATC tag. Minor drafting changes in the procedure were also submitted by the Traffic Committee.

M/348 In essence the draft resolution was found acceptable to the Traffic Conferences and Resolutions 160/300, 280/300 and 370/300 were adopted.

M/349 American Airlines stated their experience showed that the practice of indicating the transfer cities in code is conducive to error. It was agreed, therefore, to spell out city names in full rather than to use abbreviations.

M/350 With reference to the tag itself, it was agreed that the date of issuance could be left out unless its inclusion is particularly required by the Legal Committee and that the method of stapling together of baggage tags be optional.

M/351 Air France, supported by PAA, suggested a few changes such as making allowance for space to insert the number of checked baggage items and to show the total weight of the baggage. Accordingly, paragraph 3 was amended to show that it is optional to make space for the total weight and for the total number of pieces.

M/352 Since some carriers used the 24 hour clock, the reference to A. M. and P. M. on the baggage tag was deleted.

M/353 It was agreed that the attention of the Traffic Handling Group of the Traffic Committee be drawn to the above changes with a view to similar changes being agreed by the ATC.

Excess Baggage Ticket—Resolution 301

M/354 The Conferences agreed to amend Resolution 140/301, 260/301, 350/301 by the insertion of the following in paragraph (11):

"(h) inclusion and use of an additional line entitled 'Excess Wt. Chge. @ ..... per kilo Cy.' immediately below the line similarly entitled."

Transshipment and Terminal Charges—Resolution 512b

M/355 The Conferences were unable to accept the Traffic Committee's recommendation (TC11 512b) that the transshipment and terminal charges lying solely within the control of Members be eliminated as much as possible since the accounting costs involved are not compensated by the revenue which accrues.

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M/356 BEA pointed out that under transshipment charges, cartage between airports was a major item of expense and could not agree that Members should absorb these charges.

Place and Airport Name Abbreviations—Resolution 538

M/357 The Conferences accepted the Traffic Committee's recommendation (TC11 538) which was aimed at facilitating interline cargo handling. It was agreed, however, that the Cargo Handling Working Group should make a further study of the question of designators as it was understood that certain Members are at present using four letter city designators instead of the three letter designator shown in the Universal Interline Reservations Code.

Form of Air Waybill/Consignment Note (AWB)—Resolution 540

M/358 The Chairman of the Traffic Committee pointed out that the recommendation submitted to the Conferences did not contemplate any changes to the form of the air waybill but did recommend improvements to the procedures.

M/359 The Conferences agreed to alter paragraph (2)(a) to read as follows: "proof of receipt of the goods for shipment" and to delete sub-paragraph (2)(c).

M/360 The KLM suggestion to use a maximum number of seven digits in the serial number was accepted.

M/361 In the opinion of one Member, copy 8 should be kept by the first carrier in case of prepaid consignments but should go forward whenever the transportation charges are to be collected at destination. The Cargo Handling Group was requested to give this matter study.

M/362 With reference to paragraph 9 (o) it was agreed to modify the wording in order that subsequent carriers, not only the first carrier, may make a notation on the air waybill on the apparent condition of the goods and of the packing. It was noted that this provision is already included in the Conditions of Carriage.

M/363 SWISSAIR suggested that since carriers are entitled to inspect passenger's baggage, this Member felt that carriers should be entitled to make a similar inspection in the case of cargo. The meeting supported this view and requested the Cargo Handling Group to study the matter.

Irregularity Report (IRP)—Resolution 543

M/364 The Conferences adopted the Traffic Committee's recommendation (TC11/543) with an amendment in paragraph 1 to provide that the IRP should be "forwarded by airmail or fast means normally used" and with the further amendment that the number of copies to be prepared be left to the carrier's discretion.

Cargo Accounting Advice (CAA)—Resolution 544

M/365 The Traffic Committee's recommendation (TC11/544) was adopted with minor drafting changes. Paragraph (1), third line, was amended to read "IATA *or* ATA Revenue Accounting Manuals."

Transfer Manifest (TRM)—Res. 545

M/366 The Traffic Committee's recommendation (TR11/545) was adopted. KLM abstained from voting and stated that:

> "with regard to the mandatory use of the transfer manifest for interline cargo shipments, according to the information received from the KLM representative at the meeting of the Clearing House and Revenue Accounting Sub-Committee, there was a general feeling that instead of the transfer manifest another document such as a transfer coupon accompanying each individual shipment would offer a better solution and suggested that the problem be referred back to the Clearing House and Revenue Accounting Sub-Committee."

Cargo Identification Tag or Label—Resolution 546

M/367 The Conferences adopted the Traffic Committee's recommendation (TC11/546) with a minor drafting change in the first line of paragraph (1). The expression "lot" was changed to "bulk lot". It was understood that the label may also be used for consignments consisting of one package.

Aircraft Differentiating Label—Resolution 549

M/368 The Traffic Committee Recommendation (TC11/549) was accepted unanimously by all Conferences with the amendment that the Spanish text on the label should be amended to read: "No cargar en aviones de pasajeros."

Interline Tracer (TRC)—Resolution 550

M/369 The Conferences adopted the Traffic Committee's recommendation (TC11/550).

Prepaid Ticket Advice (PTA)—Resolution 740

M/370 Braniff strongly recommended that the draft resolution submitted by the Traffic Committee (TR11/740) be modified to indicate clearly that the issuing carrier should be held responsible for the validity of the issue wire.

M/371 PAA referred to Section B covering "Scope" and suggested that it should be extended to cover various forms of taxes and other incidental charges.

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M/372 SAS proposed that Section D, paragraph (3) be modified to reduce the period from three months to one month in the case of a prepaid ticket advice being unpaid.

M/373 With the above amendments, the Conferences adopted the Traffic Committee's recommendation.

Reservations for Cargo—Resolution 751

M/374 Traffic Conference 2 agreed to rescind Resolution 220/751 as recommended by the Traffic Committee (TC11/751).

Form of Interline Cargo Handling Agreement—Resolution 850b

M/375 The Conferences adopted the Traffic Committee's recommendation (TC11/850b) as amended by the Legal and Financial Committees.

M/376 KLM made the following statement for the record:

"As this resolution embodies the same provisions for proration and re-routed cargo shipments as Resolution 018, the same objections recorded in respect of Resolution 018 apply to the Interline Cargo Handling Agreement. According to our information the Clearing House and Revenue Accounting Sub-Committee noted that considerable accounting difficulties would be encountered if prorating of re-routed cargo shipments are handled in this manner. As this Committee will discuss the question at its next meeting, KLM suggests that no specific action be taken by the Conference at this time and that the question be referred to the FRCS and Revenue Accounting Sub-Committees."

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

**APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

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19—Cable to Santiago from Valverde and Patchin, dated February 8, 1929	4710	4651
20—Cable from Santiago to Valverde and Patchin, dated February 27, 1929	4711	4652
21—Translation of cable from Santiago, dated February 28, 1929	4712	4653
22—Cable from Metzner to Patchin, dated March 2, 1929	4714	4654
23—Cable from Patchin and Valverde to Santiago, dated March 12, 1929	4715	4655
24—Letter to Patchin from Second Assistant Postmaster General, dated May 6, 1929	4716	4656
25—Telegram to Second Assistant Postmaster General from Patchin, dated May 6, 1929	4717	4657
26—Cable from Grace-Lima to Patchin, dated January 25, 1929	4718	4657
27—Cable from Patchin to Grace-Lima, dated January 26, 1929	4719	4658
28—Letter to Patchin from White, dated March 16, 1929	4720	4659
29—Letter to Patchin from White, dated March 20, 1929	4721	4659
30—Newspaper clippings on Junius B. Wood's record air flight, dated October 18, 1929	4722	4661
31—Letter to Directors, Pan American-Grace Airways, Inc. from J. D. MacGregor, dated September 26, 1930	4736	4675
32—Letter to Patchin from Roig, dated October 4, 1930	4743	4681
33—Cable to Grace-Lima from Cogswell, dated July 26, 1929	4748	4684
34—Memorandum, dated July 30, 1929	4751	4686
35—Cable from Metzner to Roig and Cogswell, dated July 10, 1929	4752	4687
36—Letter to Grace-New York from Grace-La Paz, dated August 15, 1929	4753	4688
37—Cable from Grace-La Paz to Cogswell, dated December 4, 1929	4754	4690

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
W. R. Grace and Company Exhibits—Continued		
38—Telegram to Roig from Patchin, dated December 6, 1929	4755	4691
39—Letter from Patchin to Roig, dated October 15, 1930	4756	4691
40—Letter from Roig to Patchin, dated October 24, 1930	4759	4694
41—Letter to Iglehart from Roig, dated May 6, 1935	4762	4698
42—Letter to Hoyt, dated April 2, 1930	4768	4704
43—Letter to Akerson from Patchin, dated April 4, 1930	4769	4704
44—Letter to Hoover from Patchin, dated April 4, 1930	4770	4705
45—Letter to Glover from Patchin, dated April 12, 1930	4771	4706
46—Letter to Cogsw from Roig, dated October 20, 1930	4772	4707
47—Memorandum of telephone message from Roig, dated December 5, 1930	4774	4709
48—Letter to Roig from Cogswell, dated October 18, 1930	4777	4712
49—Letter from Roig to Patchin, dated October 28, 1930	4779	4715
50—Cable to Roig from Iglehart, dated December 15, 1930	4783	4720
51—Minutes of Meeting of Board of Directors of Pan American-Grace Airways, Inc. held on January 5, 1931	4787	4725
51X—Letter from Roig to Patchin, dated October 30, 1930	4790	4727
52—Letter to MacGregor from Harris, dated July 12, 1931	4793	4730
53—Letter to Patchin from Harris, dated September 15, 1931	4795	4732
54—Cable to Roig from Cogswell, dated August 15, 1934	4797	4734
55—Cable from Roig to Iglehart, dated August 26, 1934	4801	4739

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
W. R. Grace and Company Exhibits—Continued		
56—Letter to Pan American Airways, Inc. from Harlee Branch, dated August 27, 1935	4804	4744
57—Cable from Iglehart to Roig, dated May 4, 1936	4806	4745
58—Cable from Garni to Iglehart, dated August 3, 1936	4812	4754
59—Letter to Roig from Garni, dated August 6, 1936	4813	4756
60—Letter to Roig from MacGregor, dated September 19, 1936	4821	4761
61—Letter to MacGregor from Harris, dated December 7, 1936	4823	4763
61X—Memorandum of conversation with Trippe on September 14, 1934 . . . corresponds with G-282	4825	4765
62—Letter to Roig from Iglehart, dated August 22, 1934	4831	4770
63—Letter from Grace—New York to Beebe, dated December 28, 1928	4836	4774
64—Letter to Trippe, dated August 9, 1929	4838	4776
65—Order of Postmaster General, dated August 20, 1929	4839	4777
65X—Letter from Rihl to MacGregor, dated October 8, 1931 . . . corresponds with G-84	4840	4777
66—Letter to Roig from Iglehart, dated June 7, 1932	4841	4779
67—Letter to Iglehart from Roig, dated June 17, 1932	4845	4782
68—Letter to Parmerton, dated November 18, 1930	4846	4783
69—Cable from Grace-La Paz, to Roig, Zalles, Patchin and Cogswell, dated December 27, 1934	4848	4785
70—Memorandum for Iglehart from Cogswell, dated November 25, 1931	4849	4787

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
W. R. Grace and Company Exhibits—Continued		
71—Letter to Roig from Garni, dated April 12, 1933	4851	4788
72—Cable to Grace-La Paz from Grace-New York, dated December 27, 1934	4853	4790
73—Letter to MacGregor from Harris, dated February 2, 1935	4859	4797
74—Letter to Roig from Iglehart, dated June 5, 1932	4860	4798
75—Letter to Roig from Iglehart, dated June 27, 1932	4865	4802
76—Letter to Roig from Iglehart, dated April 18, 1935	4870	4806
77—Letter to Roig from Iglehart, dated June 6, 1932	4876	4812
78—Letter to Pan American Grace Airways, Inc., New York from Harris, dated February 11, 1930	4877	4813
79—Letter to MacGregor from Harris, dated January 22, 1931	4881	4816
80—Letter to MacGregor from Harris, dated April 8, 1933	4882	4817
81—Letter to MacGregor from Harris, dated October 27, 1933	4884	4819
82—Letter to Roig from Garni, dated March 8, 1934	4893	4831
83—Letter to Harris from MacGregor, dated January 26, 1935	4898	4835
84—Letter to Roig from Iglehart, dated February 24, 1935	4901	4838
85—Letter to Iglehart from Roig, dated May 29, 1936	4904	4841
86—Letter to Roig from Campbell, dated April 23, 1935	4907	4844
87—Letter to Roig from Iglehart, dated May 5, 1936	4910	4846
88—Draft letter to Branch from Pan American-Grace Airways, Inc., dated December, 1936	4911	4847

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
W. R. Grace and Company Exhibits—Continued		
89—Cable from MacGregor to Roig, dated December 23, 1936	4917	4851
90—Letter to Sumner Welles from Pan American-Grace Airways, Inc., dated February 5, 1937	4918	4852
91—Letter to Shea from MacGregor, dated February 27, 1937	4920	4853
92—Memorandum to directors of Pan American-Grace Airways, Inc. from J. D. MacGregor, dated March 2, 1937	4922	4855
93—Letter from Garni, dated December 15, 1937	4925	4859
94—Minutes of Adjourned Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc., dated January 27, 1938	4929	4862
95—Letter to Iglehart, dated January 28, 1938	4933	4865
96—Letter to Harris from MacGregor, dated June 2, 1931	4935	4867
97—Letter from Harris to MacGregor, dated June 14, 1931	4938	4869
98—Minutes of a Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc. dated July 6, 1931	4944	4873
99—Letter to Redshaw, dated July 7, 1931	4948	4877
100—Memorandum for Hoyt, dated December 28, 1929	4951	4880
100X—Memorandum for Patchin and Cogswell, dated April 18, 1929 . . . corresponds with G-400	4955	4884

[fol. 4453] —77—

REPORT OF THE COMPOSITE AGENCY GROUP

M/377 Mr. E. S. Sullivan, Chairman of the Composite Agency Group which met in New York on April 10, 1951, presented the Agency report.

General Sales Agents—Resolution 800

M/378 The Composite Agency Group had recommended revalidation of the Resolution with deletion of paragraph 12 and with the addition of a new paragraph to allow the Enforcement Office to inspect books and records of General Sales Agents relating to the sale of air transportation.

M/379 KLM stated that they had not been able to submit the information called for by the Madrid meeting of the Conferences since Resolution 800 was not being implemented fully by all carriers, and, in consequence, they were not able to assess the degree of hardship with which the restrictive clauses of this resolution imposed upon them.

M/380 With reference to the new paragraph permitting the Enforcement Office to inspect books and records of General Sales Agents, the LDO drew attention to the Conference Provisions relating to enforcement machinery and suggested redrafting this paragraph to bring it into line with the wording of the Provisions. The Conferences accepted these recommendations and adopted Resolution 800 incorporating the new paragraph. Two other amendments which were proposed when other questions relating to Agency administration were developed were also agreed upon.

M/381 To prevent the sales agency rules being circumvented by General Sales Agents individually or General Sales Agents in collaboration with Members, it was considered necessary to insert a new paragraph which defines clearly, the terms under which a General Sales Agent may disburse commission. A second paragraph was added prohibiting the disbursement of all or any portion of a General Sales Agent's overriding commission.

Sales Agency Rules—Resolution 810

Definition of "Suitable Practices"—Section C (1)

M/382 The Agency Committees have, for some time, experienced difficulty in deciding whether the employment by an Agent of personnel formerly employed by an IATA Approved Sales Agent which had gone into default would disqualify an agent under Paragraph C(1) of Resolution 810 referring to "suitable practices." The IATA Legal Adviser and the Legal Drafting Officer had given the question careful consideration, and had provided a legal opinion covering this subject.

M/383 The Conferences accepted this opinion and directed Members and Agency Committees to be guided accordingly. In Members' own interests, it was agreed that under no circumstances would the advice given Members by legal counsel be divulged to agents.

[fol. 4454] —78—

Procedure for Approval or Retention of Agents—Section B

M/384 Consequent upon the decision to discontinue the use of a combined passenger and cargo form of agency application, it was necessary to amend the third sentence in Section B, Paragraph (1), which now reads "there shall be *two* types of agency application forms. . . .".

M/385 The Conferences noted that all governments had approved Resolutions 810i (General Sales Agents of Non-IATA Air Carriers) and 810j (Equality of Commissions) and accepted the Agency Group's recommendation that the terms of these resolutions be incorporated in the Sales Agency Rules under Section B. This required the addition of two new paragraphs (9) and (10).

Rates of Commission—Passenger Transportation—Section J

M/386 A Working Group was set up to study the problems connected with rates of commission for passenger transportation, and this Group recommended a complete revision of Section J to clarify its various provisions.

M/387 SAS felt that the inclusion of Paragraph (10) under Section B might lead to complications unless Section J governing the payment of commission on charters was amended. According to the present rules, an agent may not receive rates of commission from a non-IATA carrier on charters higher than the IATA rate for scheduled services. IATA Members, on the other hand, could, if they so desire, pay commissions on charters exceeding the rate for scheduled services. This Member suggested the deletion of the reference to charter rates in Section J or alternatively, an amendment to read "that where practical commissions on charters shall not exceed 5%, but in no case more than 7½%." In essence, this amendment was accepted by all Conferences.

M/388 For clarification and to avoid misinterpretation, the Conferences decided to define in precise terms an agent's commission entitlements with respect to subsidized immigrant traffic. Under the revised provisions of the resolution, an agent may receive commission only on that portion of the fare he actually collects or, in cases where a government pays a portion of the fare, an agent may claim commission if the government transportation request is drawn in his favor, it is cashed by him and he remits the proceeds to a Member.

M/389 An amendment was made to reflect the accepted interpretation covering the payment of commission on "prepaid" business. An agent making a "prepaid" sale is entitled to the commission applicable, notwithstanding the fact that the fare might be paid by the purchaser directly to the Member and the agent himself does not collect the fare.

M/390 The Traffic Conferences agreed that these new provisions should not become effective until January 1, 1952.

[fol. 4455] —79—

Rate of Commission—Cargo Transportation—Section K

M/391 The Conferences agreed to limit the rate of commission for carriage of international air cargo on chartered aircraft to 5%. This was accomplished by the deletion of

the words "when practicable" in the third line of Section K, Paragraph (1).

Limitations on Payment of Commissions—Section M

M/392 The Agency Group drew attention to the fact that under the present Resolutions 810 and 851, it is possible for a non-approved sales agent to collect commission indirectly from an IATA carrier. A non-IATA carrier with whom a Member has an interline agreement is not subject to the provisions of Resolution 810, except that commissions exceeding the agreed IATA rates cannot be paid. Resolution 851 grants this exception. In practice, therefore, a non-IATA carrier may disburse all or portions of its commissions to its sub-agents whether or not they are IATA approved.

M/393 To eliminate this conflict, the Group had suggested amendments to both resolutions which would prevent a non-IATA carrier, approved as a sales agent under the special rules relating to non-IATA carriers, rebating commissions to agents not approved by the Association.

M/394 The Conferences favored the suggestion in principle, but felt that an exception should be made in the case of steamship companies qualified as approved agents under the special rules and also members of the Air Traffic Conference of America. An Ad Hoc Committee, which was set up to study the matter, recommended that the situation be regulated under Section M of the resolution rather than under Section P, as suggested by the Composite Agency Group. The Conferences accepted the Ad Hoc Committee's proposal which, in addition to clarifying the present limitations of payment of commissions, reflected the wishes of Members.

M/395 In Traffic Conference 3 Members took cognizance of special conditions prevailing and agreed that, within the area falling under the jurisdiction of the Hong Kong Agency Investigation Board, agents may disburse all or portions of their commissions to sub-agents or brokers whose names are submitted to the Board. CPAL abstained

from voting on this motion and made the following statement:

"That while 'recognition of the non-IATA approved 'Hong Kong Brokers' is a step in the right direction and while Canadian Pacific Air Lines and other Member airlines will, undoubtedly, make a true endeavor to apply and live with the resolution as it is now to be amended, we, Canadian Pacific Air Lines, feel bound to inform the Conference of our views and recommendations in this matter:'

[fol. 4456] —80—

"(i) The filing of a list of 'Brokers' used by each IATA approved sales agent will tend to falsify what is not a fairly clear situation.

"(ii) Placing the onus to maintain such a list and keep the AIB properly informed of changes etc. on the IATA approved sales agent is not considered to be realistic.

"(iii) The 'IATA approved sales agent' is being forced by this amendment to 'split' his commissions and this is not a recommended procedure.

"(iv) We have, as yet, done nothing to prevent or at least discourage rebates to passengers.

"It is, therefore, recommended that Conference study and perhaps capitalize on the experience of the steamship companies who also faced the Oriental ways of doing business, and who have for many years found it necessary to recognize the 'Hong Kong Brokers'.

"We believe the Steamship Conference eventually decided that their Members must deal directly with both Steamship Conference agents and separately with the 'Hong Kong Brokers', but that their Conference agents would be paid 5%, whereas the 'Brokers' would only receive 3%.

"Canadian Pacific Air Lines suggests that the 'Hong Kong Broker', through our approved agents, receives too great a commission, and this encourages 'Rebates.'

"Canadian Pacific Air Lines proposes that Member airlines at Hong Kong should be permitted to deal directly with the 'Brokers', and follow the example of steamships in limiting Brokers' Commission to 3%.

"Canadian Pacific Air Lines suggests that the matter be studied by the Agency Committee, which will report and prepare a recommendation for the next Conference meeting."

Standard Sales Agency Agreements—Section G

M/396 To allow for difficulties experienced in certain areas, it was agreed to amend Section G, Paragraph (1), which at present makes it mandatory for a Member appointing an approved sales agent to execute a Standard Sales Agency

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[fol. 4457] Agreement. Under the new provision, a Member may enter into an agreement with an agent either in the form of the Standard Sales Agency Agreement or in a form which will give legally binding effect to the terms and conditions contained in the Standard Sales Agency Agreement.

Payment of Commission to Employees

M/397 Section M(4) of Resolution 810 permits a Member to pay agency commission to its directors, officers or full-time employees. The Agency Committee of Traffic Conference 3 reported that in the Hong Kong area there was evidence that employees of the Members, receiving remuneration on the basis of commission on sales, made a practice of rebating commission to agents and in some cases passengers. To combat this irregular practice, the Agency Committee of Traffic Conference 3 recommended the insertion of clauses in Resolution 810 specifically prohibiting employees rebating commission. This recommendation received the majority of support of the Composite Agency Group and further recommended that the amendment should apply on all areas.

M/398 SAS objected to the proposed amendment on the basis that they considered that employees of Members are included in the term "Member" used throughout IATA

resolutions and, as such, carriers themselves would be in violation of the sales agency rules if they permitted the rebating of commissions by their employees. This view was accepted by the majority of Members and a motion to adopt the amendment proposed by the Agency Group was defeated.

Appropriate Notation on Air Waybill to Establish the Right to Commission

M/399 The Chairman of the Composite Agency Group reported that the Group was unable to recommend a solution to the difficulties arising from the implementation of the last sentence of Section K(2). The Agency Committees of Traffic Conferences 1 and 2 had recommended the inclusion of a special box on the air waybill reading "Commission payable to ————" for use by carriers who would decide to whom commission is payable. This suggestion was rejected by the Group on the grounds that one of the parties concerned might regard such action as arbitrary and make legal claim for the commission involved. The Conferences accepted the Agency Group's views and suggested that the matter be given further study by the Agency Committees.

Office Space Shared by Member and Agent

M/400 The Composite Agency Group was of the opinion that this practice was undesirable and had recommended the addition of a new paragraph in Resolution 810 prohibiting a Member and an agent occupying the same office space unless permitted to do so by the Agency Committee. KLM explained that for reasons of economy they had several such agreements with agents and suggested that unless substantial reasons were provided against the continuation of agreements, their present arrangements should stand. They also felt that authorization to share office space with an agent should be in the hands of the Conferences and not the Agency Committees.

[fol. 4458] —82—

M/401 The Conferences felt that the matter required further study by the Agency Committees and that question of

restriction should only be applicable in cases where it can be established that a Member gains a competitive advantage by the arrangement.

Payment of Commission on Insurance Premiums

M/402 The Composite Agency Group had considered the question of whether a carrier acting as a broker for an insurance company was in violation of the Agency Resolution if he allowed an agent commission on insurance sold. It was pointed out that Section K(1) distinguishes clearly between transportation charges and other charges such as insurance, taxes and COD charges and the Conferences endorsed the opinion that the practice of paying commission on insurance premiums was not a violation of the resolution.

Single Agency Agreements concluded by the Secretary on Behalf of IATA Members

M/403 The Chairman of the Composite Agency Group explained that under the scheme proposed, Conference Secretaries would be authorized to conclude that part of the sales agency agreement relating to terms and conditions with agents on behalf of Members. Members would be relieved of a considerable administrative burden. Although the proposal was intended specifically, to cover agency administration in U.S. and Canada, it could be adapted for application for the rest of Traffic Conference 1 and also Conferences 2 and 3.

M/404 The LDO stated that, aside from administrative difficulties, there appeared to be some doubt as to the ability to prove the existence of a contract. He felt that before the scheme is adopted by the Conferences, the Legal Committee should clear this point and also the question of the applicable law when agreements with agents in a number of countries are signed by the Secretary.

M/405 NAL confirmed that the ATC scheme had been cleared by their attorneys. However, the question of the applicable law had not presented difficulty since the ATC scheme only covered agents in U. S. and Canada. In the opinion of this Member, it would be advantageous for IATA

to test the scheme in North America. BEA and BOAC stated that they were not in favor of introducing the scheme in one area and not in others. Members had not had much time to study it in detail and suggested, therefore, that it be referred back to the Legal Committee and Agency Committees for further examination.

M/406 A Member pointed out that since the Agency Committee of Conference 1 had been responsible for drafting the proposal and had already recommended its adoption in U. S. and Canada, there was no reason to refer it back to this Committee. It was suggested that as far as Conference 1 was concerned, this scheme should be submitted to the Members for adoption by mail vote since it was cleared by the Legal Committee. In the meantime, the question could be studied by the Agency Committees of the other Conferences. It was agreed to adopt this procedure.

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Joint IATA/ATC Agency Administration

M/407 Members of Traffic Conference 1 noted the views of its Agency Committee regarding the question of joint IATA/ATC administration of agents in the United States and Canada. The Committee had studied the matter and acknowledged the desirability of joint administration, but had come to the conclusion that this would not be possible until the IATA and ATC resolutions covering Sales Agency Rules contained identical provisions. It was suggested that it would be more convenient for the ATC to adopt IATA Sales Agency Rules than vice versa, since it appeared unwise to disturb the worldwide uniformity of agency procedures which the Association had achieved.

M/408 The meeting was informed that the Executive Committee had also studied the question and had authorized the Director General to develop the matter further.

Agency Fees

M/409 The Conferences accepted the Agency Group's recommendation and the Entrance and Agency Fees for the calendar year 1952 were agreed upon at the present level. In regard to Traffic Conference 1, where the position

is influenced by IATA's close relations with the Air Traffic Conference of America, it was agreed that the Association should offer to collect, at the same time as the billing of IATA sales agents, the amount of the fee required by the ATC from those of their agents who are also IATA approved.

M/410 ALI stated that the Entrance and Agency Fees were extremely high for agents in soft currency countries, and requested that the possibility of reduction in fees for these agents be studied by the Agency Committees. In principle, the Conferences did not approve of such discrimination, but agreed that the matter be studied.

M/411 SAS stated that they still preferred to see the practice of collecting fees from agents abolished altogether.

M/412 BEA suggested that if Agency Fees were to be retained, a token reduction should be made. This Member pointed out that agents had been told that fees were collected to cover agency administration and the cost of bonding. However, they were aware that the bond had been cancelled, and expected a reduction of the fee. This view received little support. Attention was drawn to the fact that a substantial reduction was made following the Nice Meeting Conferences, and although the previous bonding scheme no longer seemed practicable, other methods of protection were being studied. It was agreed, however, that a letter explaining the present position and purpose of the Agency Fees should be drafted and circulated to agents.

[fol. 4460] —84—

Commission on Prepaid Business

M/413 The Conferences considered the proposal made by Air France that a handling fee should be paid to the handling agent on prepaid business involving two agents. This Member explained that it had been approached by numerous agents suggesting that airlines adopt the same practice as shipping companies. In their view, traffic was being diverted to surface transportation because agents received handling fees.

M/414 On a point of clarification, it was confirmed that on sales handled through two offices of the same agency enterprise, no handling fee would be payable.

M/415 A motion to permit payment of handling fees was defeated and it was decided to refer the matter to the Committees for further study.

M/416 PAL informed the meeting that they would request the Agency Committee of Conference 3 to study the situation in Manila where carriers had been approached by agents suggesting that both Members and agents charge 25 pesos whenever they are required to take care of a passenger's documentation. PAL stated that although shipping companies in Manila followed this practice, this Member did not feel it was necessary for air carriers to introduce similar procedures. This view was supported.

Consolidated Form of Application for Cargo Sales—Resolution 160/810b

M/417 Traffic Conference 1 accepted a revised form of agency application for cargo sales as at Resolution 160/810b. This new form was recommended by the Agency Committee of Conference 1 and represented the results of study conducted to determine the information required from an applicant in order to evaluate his ability to handle air cargo traffic.

M/418 Members of Traffic Conferences 2 and 3 stated that they were not prepared to accept the new form until it had been studied by the respective Agency Committees.

Form of Agency Application, Combined Passenger and Cargo Sales—Resolution 810c

M/419 The Conferences agreed that this form served no useful purpose and Resolution 810c was rescinded.

Modification of Verbatim Clause in all Forms of Agency Application

M/420 The recommendation of the Composite Agency Group was adopted unanimously by the Traffic Conferences as at Resolution 810a.

Inclusive Tours—Resolutions 810d and 810e

M/421 The Composite Agency Group expressed the opinion that the principles on which the present Inclusive Tour Rules are based are unsound, and recommended that the Conferences set up an Ad Hoc Committee consisting of

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[fol. 4461] agency and fares experts to study the whole question and formulate more simple rules. The Group felt that contrary to the fundamental principles of the Inclusive Tour Program, under which Members should prepare to grant tour operators additional commission in order to promote this type of traffic, it was found that considerable volume of normal traffic is being diverted and qualified as extra commission traffic. The Conferences accepted the Group's recommendation and created the following Committee to study Inclusive Tour questions and to report before the next meetings:

J. M. Bamford —Air France
J. R. Barch —Trans World Airlines
J. W. Croes —KLM Royal Dutch Airlines
J. L. Grumbridge—British European Airways
H. Heim —Pan American World Airways
A. Honne —Scandinavian Airlines System
J. H. Mahoney —American Airlines

M/422 For purposes of clarification, Traffic Conference 1 agreed to an amendment of Resolution 810d (Inclusive Tours Initiated by Members) reading as follows:

"The provisions of this resolution shall apply only to tours sold within the area of Traffic Conference 1 for transportation wholly within that area."

M/423 The present Resolution 260/810e covering Inclusive Tours Initiated by Producers in Conference 2 allows a discounted fare instead of commission in Europe. The Middle East Working Group had recommended that this facility be extended to the Middle East. The Conference was not disposed to permit inclusive tour facilities between Europe and the Middle East but agreed to extend the application of the resolution to transportation wholly within the

area of the Middle East and also between Cyprus and Greece. Resolution 280 810e was adopted giving effect to this decision.

Implementation of Resolutions 810i and 810j

M/424 It was agreed that applications from General Sales Agents of non-IATA carriers for exemption from the provisions of Resolution 810j should be referred to the Agency Committees for action.

M/425 The Secretary of Conference 3 was requested to send a letter to all agents of Conference 3 informing them that they are now subject to Resolutions 810i and 810j. The form of the letter to be sent should be similar to that already sent to agents in Traffic Conferences 1 and 2.

M/426 At an individual meeting of Traffic Conference 2 a letter from the International Federation of Charter Operators (FITAP), asking certain questions relating to the application of Resolutions 810i and 810j, was con-

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[fol. 4462] sidered. The letter asked what criterion would be used by the Conferences in maintaining or withdrawing IATA approval of General Sales Agents of non-IATA companies. The Conference was of the opinion that each case should be judged individually and on its own merits.

M/427 FITAP also asked for a definition of "General Sales Agents" and "Approved Sales Agent." The Conference was of the opinion that the term "General Sales Agent" was well-known in the trade and did not require definition. However, the principal difference between the two was that a general sales agent supervised the activities of sales agents on behalf of a carrier.

M/428 In answer to another question, the Conference confirmed that an approved sales agent, when appointed as a general sales agent, ceased being an approved sales agent.

M/429 In replying to a further question concerning approval by governments of IATA resolutions, it was suggested that FITAP refer to national carriers of each individual country for the information they require.

Form of Passenger and Cargo Sales Agency Agreements—Resolutions 820 and 821

M/429 The Conferences agreed that the form of Sales Agency Agreements should be amended to permit carriers and IATA Enforcement Officers to inspect an agent's records relating to the sale of air transportation offered by a carrier. It was also agreed that IATA Enforcement Officers should be given adequate opportunity to interview and gain information from any officer or employee of an agent whom the Enforcement Officer has reason to believe is in possession of information concerning a complaint under investigation.

Agency Interline Agreements with non-IATA Carriers—Resolution 851

M/430 This resolution was amended to reflect the new provisions agreed upon by all Conferences in Section M(3) of Resolution 810 relating to the limitation on payment of commissions. CPAL abstained for the same reasons as recorded under Minute 395.

Reduced Fares for Agents—Resolution 203

M/431 Several carriers opposed the recommended liberalization of Resolution 203 permitting group travel of agents for educational purposes. One Member felt that it would create an unfair situation for small carriers and another Member expressed the view that tourist organizations and hotels should be called upon to meet a portion of expenses.

M/432 SAS stated that in Scandinavia, local tourist organizations were unable to contribute the necessary funds and that surface carriers granted rebates to groups of agents on educational tours. PAA felt that the two annual

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[fol. 4463] passes permitted under the present resolution were intended for the purpose of educating agents and this Member could see no reason for further liberalization.

M/433 A motion to adopt the agency group's recommendation in all areas failed. However, Traffic Conference 2

adopted this resolution as at 280 203b applicable only to European agents for tours formed wholly within Europe. BEA, Cyprus Airways, PAA and TWA abstained from voting.

M/434 PAA proposed that Resolution 203 be amended to prohibit granting of transatlantic free and reduced rate transportation to agents during the high traffic season. This Member suggested that agents, requesting free and reduced transportation during the on-season, imply that a refusal might lead to a diversion of their business to other Members more amenable to allowing such transportation. This proposal received no support.

M/435 Air France informed the meeting that ASTA had been invited to hold their next convention in Paris, and this Member had been requested by the Official French Tourist Organization to grant free or reduced transportation to members and allied members of ASTA.

M/436 The majority of Members were opposing in principle to the granting of free or reduced transportation to allied members of ASTA and felt that normal members should use their annual free tickets for the purpose of attending the Paris convention.

Rules for Participation by Members in Conventions of Travel Agents

M/437 The Composite Agency Group reported that there was a tendency on the part of organizers of travel agency conventions and similar functions to impose upon Members' hospitality. To protect Members, the Group recommended the adoption of rules to govern the participation in conventions and functions of travel agents. NAL explained that a similar resolution had been passed by the Air Traffic Conference of America because the ATC Members found that they were required to pay a large portion of expenses at such conventions. In the opinion of this Member, IATA carriers should adopt similar protective rules.

M/438 The Conferences accepted the Agency Group's recommendation and adopted Resolution 812 governing

Members' participation in international, national, regional and district conventions of sales agents.

Numerical Code of Countries, Currencies, Cities and Agents

M/439 The Conferences were in favor, in principle, of applying the numerical code developed by the IATA Clearing House and Revenue Accounting Sub-Committee to agents as proposed by KLM. It was recognized that administrative machinery would be required to implement this scheme and until this work is completed, it would not be possible to decide the date of introduction of the code.

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General Sales Agency Appointments

M/440 *Traffic Conference 1*

Socca, 2a, Avenida Norta 11
San Salvador, El Salvador

In the absence of full details regarding the appointment of this agent by SABENA, no action was taken by the Conference.

M/441 *Traffic Conference 2*

The following Sales Agents appointed as General Sales Agents were authorized to receive commissions for sales over the lines of all Members:

(i) Jules Boutin Travel Bureau Ltd., Dinard, France
Appointed by Air France

(ii) Societe d'Exploitation de l'Aeroclub du Touquet, Le Touquet, France—Appointed by Air France

(iii) Karnak Syrian National Tourist and Transport Co., Ltd. Damascus, Syria—Appointed by BOAC

(iv) Mitchell Cotts & Co.—Aden
Appointed by Air India International

(v) Scottish Aviation, Ltd., Prestwick, Scotland
Appointed by Hellenic Airlines

(vi) Dwyer and Co. (Iraq) Ltd.
Appointed by KLM

(vii) Peltours—Tel Aviv, Israel
Appointed by Cyprus Airways
KLM & SAS abstained from voting.

M/442 *Traffic Conference 3*

Forbes, Forbes and Campbell & Co., Ltd.,
Bombay and Karachi—Appointed by Air Ceylon

It was decided to defer action on the application submitted by Air Ceylon in order to be given an opportunity to submit the necessary details why it was desirable to extend such authority to their general sales agent.

M/443 China Travel Service, China—Appointed by PAL

It was decided to defer action until the political situation in China clears.

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M/444 Messageries Maritimes, Singapore and Malaya
Appointed by Air France

The Conference unanimously voted in favor of granting authority to this company. PAA abstained from voting.

M/445 Warner, Barnes & Co., Ltd., Manila
Appointed by BOAC, CPA and QEA

Authority was granted to this agent for a period of twelve months subject to review by the Agency Committee and the Traffic Conference.

Agency Matters—Traffic Conference 3

Relationship with Air Transport Association of India

M/446 The Conference endorsed the recommendation that a joint meeting of the Karachi AIB and the ATA be arranged to discuss the matters suggested by the Agency Committee. The latter will not act on any recommendation forthcoming from such meeting except in consultation with the Conference Chairman.

Membership of AIBs and Attendance at AIB Meetings

M/447 The Conference expressed the opinion that only full-time regular employees of Members will attend AIB meetings.

Directive to AIBs

M/448 The Conference noted that the Agency Committee had amended the Directive to AIBs to the effect that only representatives of Members of Traffic Conference 3 can attend AIB meetings as voting delegates. The Conference was in agreement with this interpretation as it considered the AIB to form a part of the Conference machinery. One Member wished to reserve his position.

Confidential Nature of AIB Reports

M/449 The Conference strongly supported the viewpoints of the Agency Committee that AIB reports are confidential and should only be divulged to Members.

M/450 The Conference adopted the recommended procedure that any Member or its employee(s) aware of such violations would be called upon to disclose the name of the offender. The Secretary will inform Members of the Agency Committee, which will consider the report at its next meeting with the view to adopt a vote of censure and decide upon disclosure to the employing airline in order that the latter may take the disciplinary action it deems required.

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Hong Kong AIB

M/451 The Conference commended the Members of the Hong Kong AIB on their efforts to clarify and improve the agency situation in Hong Kong.

MISCELLANEOUS AGENCY ITEMS

Air Tour Construction Fares—Resolution 160/810g

M/452 This resolution, proposed and drafted by Pan American World Airways forms part of the undertaking to reflect existing fares and conditions in the closing of

Conference 1 fares and rates. The Resolution 160/810g, applicable only in Traffic Conference 1, authorizes Members to set up limited validity circle, round-trip and open-jaw tours at a 25% discount (first class or tourist) to include specified tour features on which agent's commission is payable. The total cost of the air tour construction fare must not exceed the base fare and children's reductions are not allowed.

INTERPRETATION OF CERTAIN PARAGRAPHS OF RESOLUTIONS 800 and 810

M/453 Pan American World Airways requested consideration of this item by the Conferences and referred to a recent decision made by a Commission created under Article XII of the Provisions for the Regulation and Conduct of Traffic Conferences.

M/454 Since the Chairman of the Composite and Joint Meetings had been a Member of this Commission, the Chairman of Traffic Conference 2 was requested to take the chair during the discussion of this item.

M/455 PAA raised the question whether a Member, having an appointed General Sales Agent in a given territory, is required to execute Sales Agency Agreements with every agent in that territory in addition to the agreements which the General Sales Agent makes with these agents. In their opinion, such duplication of Sales Agency Agreements was not required.

M/456 Several carriers thought it was necessary only to have a Sales Agency Agreement in the name of that Member acting as General Sales Agent, otherwise, the administrative problem would be enormous.

M/457 The Legal Drafting Officer, whose opinion was sought, stated that the apparent thought behind Resolution 810 was that every agent with whom a Member, directly or indirectly, is doing business must have an Agency Agreement in a certain form covering every phase of the relationship between the principal and the agent. He considered it a good principle to authorize Members acting as

General Sales Agents to appoint Sales Agents, and as far as IATA is concerned if a Sales Agent has signed an IATA Standard Sales Agency Agreement he thereby comes under the Association's control.

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M/458 British European Airways stated that in their opinion an IATA Member was responsible for the acts done under his name and on his behalf by his agents, including his General Sales Agents. An IATA Member appointing a General Sales Agent, whether a Member or not, would do so in the form of an agreement, and the General Sales Agent would then be compelled to observe all IATA resolutions, including the execution of written agreements with all the Sales Agents it appoints. If the Sales Agency Agreement is violated, and the original Member thereby sustains damage, the carrier should have recourse against the General Sales Agent who has failed in his obligation.

M/459 A proposal was made that the matter be submitted to the Legal Committee, and during the ensuing discussions a show of hands was taken as to whether a Member should be held liable in cases where his General Sales Agent, who is also an IATA Member, fails to execute written agreements with Sales Agents. Nine Members felt that the appointing Member would be held liable and seven Members were opposed to this view.

M/460 The Conferences agreed to refer the question to the Legal Committee and endorsed the Chairman's opinion that the intent of the resolution should be clarified in such a manner as to avoid misinterpretation and to permit proper enforcement.

REPORT OF THE MIDDLE EAST WORKING GROUP

M/461 The report of the Middle East Working Group was considered at an individual meeting of Traffic Conference 2.

M/462 The general questions raised under the heading of "Problems of the Small Operators in the Middle East" were referred to the Traffic Committee with the request that they be considered at its London meeting so that early action by the Conference may be taken.

M/463 The Executive Committee was requested to consider the MEWG papers concerning its terms of reference, Conference dues, and the Group's views regarding the creation of local airline panels.

M/464 The Conference believes that the creation of panels should be encouraged and that these panels should consist of local representatives or district managers who would not have executive powers. Recommendations on local problems would be made to head offices of Members who would then take up questions through already-established IATA Committees. Such panels should not be regarded as part of the official IATA machinery.

M/465 The view was expressed that action on terms of reference for the MEWG and on the creation of panels was not required as urgently as the general question of the small IATA carrier in the Middle East. Furthermore, it was suggested that there might be advantage in permitting the situation to develop of its own accord before setting up governing rules and procedures.

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M/466 The Conference felt that the revised Resolution 021 which would become effective in October 1951 would overcome the currency difficulties at present being experienced in the Middle East.

M/467 With reference to the particular situation in Lebanon, the Secretary was requested to arrange for a meeting of the local representatives in the Middle East as soon as possible with a view to agreement being obtained on the basis of the revised resolution.

M/468 The Conference recorded that sympathetic consideration should be given to requests from Middle East Regional Operators for exemptions under paragraph 4 of the General Sales Agency Resolution 800.

M/469 The Agency Committee of Traffic Conference 2 were requested to examine the possibility of new applicants seeking IATA agency approval being granted temporary certificates through Agency Investigation Boards. The Conference sympathized with the proposal provided it

avoided delays in agency administration and could be applied within the terms of the existing resolution. Cases were quoted where agents in the Middle East approached Members with a view to breaching resolutions. It was recommended that AIBs be notified of such approaches by agents so that all Members may be placed on their guard. The Agency Committee was requested to examine this matter and also the possibility of withdrawing IATA agency approval in those cases where unsuitable business practices are proven.

M/470 Resolution 280/105 was adopted to prevent the practice of passengers and agents receiving money in lieu of ground transportation.

M/471 MEWG recorded a proposal that commission on passenger transportation in the Middle East be increased from 5% to 7½%. This proposal was rejected unanimously.

POSTAL MATTERS

Standardization of Distances for Postal Purposes—Resolution 655

M/472 The Chairman of the Conference called upon Mr. Dolby, the Chairman of the Postal Sub-Committee of the Traffic Committee to explain how the "Yellow Book" of standardized postal distances had come into being. Mr. Dolby explained the arguments and the processes leading up to the formula on which the table of standardized distances had been drawn up. The object had been to maintain as closely as possible the existing cost to postal administrations and the existing revenue to air carriers.

M/473 Some European Members objected to the Yellow Book on the grounds that:

(i) the use of standard distances rather than the distances for the routes travelled by the mails would give rise to accountancy problems as it would be difficult to teach the Post Office how to pro-rate the revenues between carriers;

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(ii) the UPU would not accept the use of a different percentage increase on the great circle distances in different areas of the world and would require a standard percentage increase for worldwide application;

(iii) the use of a twice weekly frequency as a minimum resulted in unduly inflated figures in some cases.

They suggested the establishment of a Committee to work out an alternative proposition.

M/474 The Director General pointed out that in postal matters IATA was fighting what might be regarded as a rearguard action. The Yellow Book was one phase of this action. If the carriers could not agree on standard distances, the Post Offices were likely to decide the distances for them and they could not expect that the distances established unilaterally by the Post Offices would be to their liking. The Yellow Book might not be perfect, but it was the best proposition that IATA had been able to produce.

M/475 The European carriers, who had objected to the Yellow Book stated that they were willing to cooperate in its submission to the UPU, but that the Members should agree on an alternative proposition in case the Yellow Book is rejected.

M/476 Other Members pointed out that it was impossible to produce distances which would satisfy all Members and all Post Offices. Members' postal experts had spent much time on producing the Yellow Book and the Conferences should give it their backing.

M/477 The point was made that Members had a strong case for asking the UPU to accept the Yellow Book because it represented the continuance of the present level of payments by the Post Offices. The UPU had asked the carriers to standardize distances and any other proposition would cost carriers money.

M/478 A vote showed that 30 Members favored acceptance of the Yellow Book, 2 were opposed while 4 abstained. Both dissenters stated that they supported the objectives of the Yellow Book but opposed it in matters of mechanics.

M/479 The Chairman pointed out the importance of reaching agreement in this problem which involved 20-30% of carriers' revenues and appointed a Committee under Mr. Dolby to study the points which had been made and to report back to the Conferences.

M/480 The Chairman of the Committee on Postal Distances presented his report, and outlined the points which had been discussed by the Committee. In particular he drew attention to the Committee's recommendation that application of through distances should not be restricted to single

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[fol. 4470] carrier service. This would mean that the list would have to include the distances between any two points in the world between which closed mails were exchanged. The list would, therefore, have to be amplified as soon as possible on the basis provided for in paragraph 2 of the proposed resolution.

M/481 The question was raised as to when the distances would become effective. It was stated that, once the UPU had accepted them, the Postal Administrations would be asked to put them into effect immediately.

M/482 The question was also raised as to how the distances would be applied in the case of indirect routings. It was indicated that the choice of routes was a matter to be decided by the Postal Administrations and that the carriers concerned would have to establish prorates for the routings chosen by the administration. The Conferences considered that machinery would have to be set up to work out the accountancy side and they requested that for this purpose a Working Group should be established comprising accountancy people from the following Members: BEA, AF, SAS, PAA, TWA and KLM.

M/483 After drafting amendments had been made, the resolution submitted by the Committee was adopted as at Resolution 655 by all the Conferences and Joint Meetings with the following abstentions: Conference 2: QEA, Conference 3: CPA, BCPA, QEA, TEAL, Joint 23: QEA, Joint 31:BCPA, CPA, QEA, Joint 123: QEA, BCPA, CPA. This resolution would be taken by Mr. Dolby to the St. Gall Meeting of the UPU.

M/484 The Conferences recognized that agreement to use specific distance figures was only part of the postal problem confronting Members and that there was also need for an IATA resolution which would bind Members to quote specific rates.

M/485 The Director General pointed out the difficulties of the U.S. carriers with respect to Conference action on postal rates. He said that IATA was trying to create law and order by degrees. The Postal Administrations had wanted distances, so a start had been made with distances. However, it was hoped in due course to overcome the difficulties with respect to action on rates.

M/486 Attention was drawn to the fact that the interpretation of that part of the resolutions of UPU/IATA Meeting in Cairo which dealt with the application of a single basic rate to replace combination rates had not yet been properly resolved. In such an uncertain situation, there was a considerable danger of rates being undercut. Attention was also drawn to the fact that the 3 and 6 gold franc rates for "A" and "B" routes were referred to in the Cairo resolutions as "maxima," whereas from the carriers point of view they should be regarded as "minima." It was suggested that the Conferences should cover these points by a resolution.

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M/487 The meeting felt, however, that there would be no objection to the Conference adopting a resolution which would express approval of the Cairo resolutions, would provide for a literal interpretation of their provisions respecting combinations, and would provide for Members considering A and B category rates as minima. The U. S. carriers would have to abstain and leave to their Government the final decision whether they should be directed to act in conformity with this resolution.

M/488 The Conferences and the Joint Meetings thereupon adopted Resolution 652 with the following carriers abstaining: PAA, TWA, PANAGRA, NORTHWEST, NATIONAL, AMERICAN, UNITED, BRANIFF, CHICAGO

& SOUTHERN, BCPA, CPA, QEA, PAL and AIR FRANCE.

M/489 At a later stage of the meeting, the Director General read a cable received from M. Briend to whom he advised the text of Resolution 652. This resolution had been presented to the Executive and Liaison Commission of the UPU and M. Briend cabled informing the Conference that the resolution would probably be acceptable if IATA agreed a reduction to five gold francs.

M/490 The Conference would not consider any question of an immediate reduction. A suggestion that Conference adopt a resolution freezing the Category "A" area was not developed because it was considered that it would be inadvisable to adopt a further resolution on such a complex problem at this stage of the meetings.

M/491 The feeling was that if the Executive and Liaison Commission would not accept the Conferences' interpretation of the Cairo resolution with respect to the application of the 5.25 gold franc rate, there was no alternative but to revert to pre-Cairo-conditions and let combinations continue. In these circumstances it was emphasized that, if Postal Administrations should approach any Members to extend the Category "A" area or to allow combinations to be applied where they had not been applied prior to Cairo, such approaches must be met by all Members with a firm refusal.

RESOLUTIONS OF THE THIRD INTERNATIONAL CONGRESS OF AFRICAN TOURING

M/492 The Conferences made no comment on the resolutions adopted by the Third International Congress of African Touring. These resolutions were referred to IATA by the President of the Alliance International de Tourisme under whose auspices the Congress was convened.

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ANY OTHER BUSINESS

M/493 Time did not permit full discussion on the paper submitted by KLM regarding the scheduling of Conference

meetings. It was agreed, therefore, that Members should submit their comments to IATA Head Office, Montreal, to permit full consideration to be given to this question before the next meeting. KLM's views were circulated to all Members under cover of their letter HAG/TAR.611/Cr/PW of April 20, 1951.

CONFERENCE ADMINISTRATION

Filing of Special Event and Creative Fares with Civil Aeronautics Board

M/494 Traffic Conference 1 agreed that the Secretary of Conference 1 should file creative and special event fares with the CAB on behalf of U. S. carriers.

Conference and Enforcement Office Budgets

M/495 Conferences 1, 2 and 3 approved budgets for 1951 as at Appendices "H" to "K". These budgets included appropriations for the Enforcement Office (Appendix "K"). In this connection it was noted that collections from fines imposed would be credited in the first place to the Conferences against the expenses chargeable to it by the Enforcement Office.

M/496 In the event of there being no meeting in the Autumn of 1951 the Conferences authorized the Treasurer to assess Members for 1952 dues in the same amount as for 1951. The Conferences also agreed that this method of assessment may be regarded as an automatic procedure and that it should not be necessary in the future for the Treasurer to seek interim powers.

M/497 The Conferences noted that a special reserve had been created for funds derived from the collection of agency fees and that the Treasurer had asked for suggestions as to how these funds should be used. One Member believed that it should be used to continue efforts to secure a bond. Other Members were opposed to bonding and suggestions were made that funds should be used to reduce fees for small operators or generally to reduce Conference dues.

Method of Assessment of Conference Dues

M/498 Conferences 1, 2 and 3 adopted unanimously the following method of assessment of Conference membership dues to commence with the 1951 assessment:

(a) One-third of Budget Expenses Assessable to Members to be shared equally by all Conference Members, with non-voting Members paying one-half of the share of the voting Members;

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(b) Two-thirds of Budget Expenses Assessable to Members, to be apportioned to all active Members in direct relation to their international scheduled mileage in operation within the Conference area, for the months of March and September of the preceding year according to the following scale of discounts to be applied to any international scheduled mileage in excess of 10% of the total mileage reported by all Members of the Conference:

The	proportion	for	the	1st	10%	of	total	scheduled	mileage	—	100%
"	"	"	"	2nd	10%	"	"	"	"	—	80%
"	"	"	"	3rd	10%	"	"	"	"	—	60%
"	"	"	"	4th	10%	"	"	"	"	—	40%
					All	mileage	thereafter			—	20%

(c) All assessments to be computed to the nearest U.S. dollar;

(d) To calculate the international scheduled mileage, the IATA definition of "International Air Services" shall apply except that the measurement from (or to) the country of the reporting carrier shall commence (or terminate) at the normal gateway point (see note). In the case of carriers flying in an Easterly or Westerly direction, the distances are to be calculated to the border line of the Conference areas as set out in the master map on file with the Director General and referred to in Section I of the Provisions for the Regulation and Conduct of the Traffic Conferences of IATA;

(e) New and resigning Members shall be charged on a monthly pro-rata basis (to the nearest full month).

In the event that a new Member had no international scheduled mileage for the base period, its mileage shall be based on the first two complete months of operation within the Conference area regardless of whether or not the carrier was Member of a Conference at the time the operations commenced; or if the first complete month of operation should fall between March and September of the year for which the scheduled mileage figures are normally reported the mileage should be based upon the first complete month of operation together with the month of September;

(f) Adjustments in the Conference billings shall be made at the end of the year to give effect to new and resigning Members' assessments as outlined in (e), above;

(g) The calculation of the international scheduled mileage figures mentioned in (d) above, shall be made by

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[fol. 4474] the Conference Members and shall be submitted to the Conference Secretary not later than December 31st of the year for which scheduled mileage figures are reported. If the figures are not in the hands of the Secretary by that date, the Secretary is authorized to calculate the figures himself. The Members which have not submitted their own figures must accept the calculations made by the Secretary as the basis for the assessment of the dues.

Note: A "gateway point" means the last scheduled traffic stop within the boundaries of the operator's state on a flight from a foreign country destined to the operator's state. For the purpose of defining "gateway point", however, in the case of flights destined for a foreign country from the operator's state or return from a foreign country to the operator's state by way of territory subject to its sovereignty, suzerainty, protection or mandate, "State" shall mean the Metropolitan State or mother country only.

Unpaid Conference Dues

M/499 At the Bermuda meetings in November 1948, the Conferences agreed that new and resigning Members should be charged Conference dues for the broken portion of the year in which they join IATA or resign from IATA on a monthly prorate basis to the nearest full month. In order to simplify the settlement of the resigning Members' dues, both for the year of resignation and for any prior year, the Conferences approved the following procedure which had been suggested by the Treasurer.

(i) In the event of a Member's resignation, the Treasurer is authorized to charge such Member, in final settlement of Conference dues for the year of resignation, a share of the Conference budget or Conference budgets with which the Member is concerned, computed in the manner in which agreed by the Conferences;

(ii) If such Member has not paid the Conference dues for the year of resignation, and/or dues for any prior year, by the date when the final expenses for the year of resignation are distributed among Members of the Conference, the Executive Committee may authorize the Treasurer to cancel both the original assessment for the year of resignation and any other outstanding assessments, to exclude such Member from the assessment of the final expenses of the Conference or Conferences concerned for the year of resignation, and to charge the other Members of the Conference or Conferences concerned for any unpaid assessments pertaining to prior years together with and in the same manner as the final expenses of the year of resignation;

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(iii) Any amount written off according to the above procedure and subsequently collected shall be used to reduce the expenses of Conference or Conferences concerned in the year when such collection is made.

Apportionment Between Conferences of Costs of this Meeting

M/500 It was agreed that the cost of this meeting would be divided in the following proportions:

Conference 1—2 parts
Conference 2—2 parts
Conference 3—1 part.

Election of Officers to take Office as from the Closing of the 1951 General Meeting

M/501 The following officers were elected:

Traffic Conference 1:

Chairman	—	R. Ireland
1st Vice Chairman	—	J. Shannon
2nd Vice Chairman	—	W. Sternberg

Traffic Conference 2:

Chairman	—	J. W. S. Braneker
1st Vice Chairman	—	F. von Balluseek
2nd Vice Chairman	—	L. Schoevaerts

Traffic Conference 3:

Chairman	—	B. L. Anderson
1st Vice Chairman	—	A. W. Gill
2nd Vice Chairman	—	C. W. Budd

Date and Location of Next Composite Conference Meetings

M/502 In view of the uncertainty as to whether or not an Autumn meeting would be required it is felt that a definite choice of location could not be made.

Press Release

M/503 A Press Release, as at Appendix "L", was prepared by a Drafting Committee and approved by the Conferences.

Votes of Thanks

M/504 A vote of thanks to the Chairman, Mr. Deichler, for his able and patient handling of the meeting was moved by PAA and unanimously endorsed by all Members. The Members also thanked the Chairmen of the FRCS and Agency Committees, the Ad Hoc and Working Groups and the Secretariat for their contribution in making the meeting a success.

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APPENDICES

to

MINUTES

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Appendix "A"
to
Minute M/2

IATA TRAFFIC CONFERENCE RULES AND PROCEDURES

Purpose

1. The purpose of the IATA Traffic Conference Rules of Procedure is to ensure that the business of each meeting will be conducted as quickly, efficiently and in as orderly a manner as possible.

Chairman

2. The Chairman, as the presiding officer of the meeting, shall be responsible for:

(a) maintaining order;
(b) protecting the rights of all representatives; and
(c) seeing that business is properly brought before the meeting and acted on.

3. The Chairman shall conduct the meeting impartially. Normally he will confine himself to statements of fact. If he wishes to express a personal opinion, he shall appoint a temporary Chairman and not resume the chair until the matter under discussion has been decided.

4. The Chairman shall rule out of order all remarks that are not relevant to the matter under discussion.

Members

5. No person shall speak without first obtaining recognition from the Chairman.

6. All remarks shall be made to the Chairman and not to the meeting or to any other person.

7. Only one representative (as well as one interpreter, if used) of each Conference Member shall sit at the Conference table, and, unless otherwise permitted by the Chairman, only one adviser or alternate shall sit immediately behind him.

8. The Chairman shall ensure that all statements are expressed in a clear and audible voice.

Agenda

9. Action shall be taken on matters which have been clearly and fully noticed on the Agenda for action.

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10. Business will be taken up in the following order:

(a) Meeting called to order by the Chairman;
(b) Minutes of previous meeting approved;
(c) Committee Reports received and acted on;
(d) Unfinished business acted on;
(e) New business acted on;
(f) Budget matters;
(g) Election of officers;
(h) Date of next meeting; and
(i) Meeting adjourned.

11. In order that available time shall be utilized efficiently, the Chairman may impose in advance a time limit for each item of the agenda or for each speaker.

Motions

12. Matters shall not be debated or discussed unless:

(a) a written proposal has been filed with the Secretary; and

(b) the matter has been proposed in the form of a motion by one person and seconded by another.

13. A motion once decided shall not be reconsidered, unless upon consent of all the representatives present and voting.

14. The Chairman may entertain at any time in his discretion a motion to "put the question" under consideration; if such a motion is carried by a majority of the representatives present and voting, the question shall be voted upon forthwith.

Amendments

15. Amendments that are relevant to the motion under discussion may be proposed and seconded; if adopted, the amendment shall be incorporated into or substituted for the motion.

16. The Chairman shall not accept any amendment to a motion that has the effect of completely nullifying the motion.

17. An amendment to an amendment may be proposed, but no more than two amendments to the same motion shall be before the meeting at one time.

18. In the event of general consent, amendments may be adopted without a formal vote.

19. Amendments may be proposed verbally during the discussion; provided that the Chairman may, in his discretion, require the proponent to make written presentation thereof.

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20. Amendments shall be voted on in the reverse order in which they have been made; e.g. where a motion, followed by Amendment A, then Amendment B, has been made, the order of voting will be:

(a) Amendment B;
(b) Amendment A (as modified by Amendment B);
(c) The motion (as modified by Amendments B and A).

Voting

21. The Chairman will restate the motion before putting it to a vote. If he should not do so, a restatement may be requested by any representative.

22. Procedural motions shall be adopted by a majority vote of the representatives present and voting. Substantive motions (i.e. motion intended to result in binding Conference action) shall be by unanimous vote, except as otherwise stated in the Traffic Conference Provisions.

23. Normally the Chairman will not vote. But, if he elects to cast his company's vote, he shall explain the reasons for so doing.

24. Motions shall be acted upon in the order in which they appear on the agenda. The voting on one motion shall not be delayed pending action on another, unless the subject matter of both are definitely inter-related.

Punctuality

25. Meetings, including all sessions thereof, shall commence promptly on time or as soon as the quorum (one-third of the Conference Members) has been assembled.

Committee Reports

26. Due weight shall be given to all recommendations contained in Committee or Sub-Committee reports. Where the vote in the Committee or Sub-Committee has been unanimous or by a strong majority, the Chairman shall endeavor to avoid any discussion of the subject.

Legal Interpretations

27. Representatives may request legal interpretations of the L.D.O., but these shall have only the weight of his personal opinion and shall not be binding in subsequent arbitration proceedings.

Adjournment

28. Meetings shall be adjourned upon a unanimous vote of the representatives present and voting.

Working Hours and Duration of Meetings

29. The working hours and duration of meetings shall be as unanimously agreed.

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Appendix "B"
to
Minute M/6

DETERMINATION OF VOTING MEMBERSHIP

TRAFFIC CONFERENCE 1

Mr. R. E. S. Deichler — Chairman
— First Vice Chairman
Mr. Johannes Nielsen — Second Vice Chairman

Membership

Voting:

A/B. Aerotransport
Aerolineas Argentinas
Aerovias Guest, S. A.
Aerovias Nacionales de Colombia (AVIANCA)
Air France
American Airlines, Inc.
Braniff International Airways
British Commonwealth Pacific Airlines
British Overseas Airways Corporation
Canadian Pacific Airlines, Ltd.
Chicago & Southern Air Lines
Compania Cubana de Aviacion, S. A.
Det Danske Luftfartselskab A/S
Det Norske Luftfartselskap A/S

Empresa de Viacao Aereo Rio Grandense (VARIG)
IBERIA Compania Mercantil Anonima de Lineas Aereas
KLM Royal Dutch Airlines
Linee Aeree Italiane, S.P.A.
Linea Aerea Nacional
Linea Aeropostal Venezolana
National Airlines, Inc.
Northwest Airlines, Inc.
Panair do Brasil, S. A.
Pan American-Grace Airways (PANAGRA)
Pan American World Airways, Inc.
Philippine Air Lines
Servicos Aereos Cruzeiro do Sul, Ltda.
Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA)
Trans-Canada Air Lines
Trans World Airlines, Inc.
United Air Lines

Non-Voting:

Eastern Air Lines

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DETERMINATION OF VOTING MEMBERSHIP

TRAFFIC CONFERENCE 2

Mr. J.W.S. Braneker — Chairman
Mr. M. Stuart-Shaw — First Vice-Chairman
Mr. P. Beck Nielsen — Second Vice-Chairman

Membership

Voting:

A. B. Aerotransport
Aer Lingus-Teoranta
Aerolineas Argentinas
Aero O. Y.

Aero Portuguesa, Ltda.
Air Ceylon, Ltd.
Air France
Air India International, Ltd.
Air Liban
Avio Linee Italiane Flotte Riunite, S. A.
British European Airways Corporation
British Overseas Airways Corporation
Central African Airways Corporation
Ceskoslovenske Aerolinie
Cyprus Airways, Ltd.
Det Danske Luftfartselskab A/S
Det Norske Luftfartselskap A/S
Divisao de Exploracao dos Transportes Aereos (DETA)
East African Airways Corporation
El Al, Israel National Airlines
Flugfelag Islands, H. F.
Greek Airlines, TAE
Hellenic Airlines, S. A.
IBERIA Compania Mercantil Anonima de Lineas Aereas
Iraqui Airways
Jugoslovenski Aerotransport JAT
KLM Royal Dutch Airlines
Linee Aeree Italiane, S.P.A.
Misrair, S.A.E.
Panair do Brasil, S.A.
Pan American World Airways, Inc.
Philippine Air Lines
Polish State Airlines (LOT)
Qantas Empire Airways
Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA)
South African Airways
Swiss Air Transport Co., Ltd.
Trans World Airlines, Inc.
Transportes Aereos Portugueses—TAP
West African Airways Corporation

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DETERMINATION OF VOTING MEMBERSHIP

TRAFFIC CONFERENCE 3

Mr. B. L. Anderson — Chairman
Mr. A. W. Gill — First Vice Chairman
Mr. C. W. Budd — Second Vice Chairman

Membership

Voting:

A. B. Aerotransport
Air Ceylon, Ltd.
Air France
Air India International, Ltd.
British Commonwealth Pacific Airlines
British Overseas Airways Corporation
Canadian Pacific Airlines, Ltd.
Det Danske Luftfartselskab A/S
KLM Royal Dutch Airlines
New Zealand National Airways Corporation
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Philippine Air Lines
Qantas Empire Airways
Tasman Empire Airways
Trans World Airlines, Inc.

Non-Voting:

Indian Overseas Airlines, Ltd.

Appendix "C"
to
Minute M/6

DETERMINATION OF MEMBERS OPERATING SCHEDULED COMMERCIAL INTERNATIONAL AIR TRANSPORT SERVICES BETWEEN THE AREAS OF CONFERENCES 1 and 2

A. B. Aerotransport
Aerolineas Argentinas
Aerovias Guest, S. A.
Aerovias Nacionales de Colombia (AVIANCA)
Air France
British Overseas Airways Corporation
Compania Cubana de Aviacion, S. A.
Det Danske Luftfartselskab A/S
Det Norske Luftfartselskap A/S
El Al, Israel National Airlines
IBERIA Compania Mercantil Anonima de Lineas Aereas
KLM Royal Dutch Airlines
Linee Aeree Italiane, S.P.A.
Panair do Brasil, S. A.
Pan American World Airways, Inc.
Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA)
Swiss Air Transport Co., Ltd.
Trans-Canada Air Lines
Trans World Airlines, Inc.

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DETERMINATION OF MEMBERS OPERATING SCHEDULED COMMERCIAL INTERNATIONAL AIR TRANSPORT SERVICES BETWEEN THE AREAS OF CONFERENCES 2 and 3

A. B. Aerotransport
Air Ceylon, Ltd.
Air France
Air India International, Ltd.
British Overseas Airways Corporation
Det Danske Luftfartselskab A/S
Det Norske Luftfartselskap A/S
KLM Royal Dutch Airlines
Pan American World Airways, Inc.
Philippine Air Lines
Qantas Empire Airways
Trans World Airlines, Inc.

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DETERMINATION OF MEMBERS OPERATING SCHEDULED COMMERCIAL INTERNATIONAL AIR TRANSPORT SERVICES BETWEEN THE AREAS OF CONFERENCES 3 and 1

British Commonwealth Pacific Airlines
Canadian Pacific Airlines, Ltd.
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Philippine Air Lines

[fol. 4486] —110—

DETERMINATION OF MEMBERS OPERATING SCHEDULED COMMERCIAL INTERNATIONAL AIR TRANSPORT SERVICES BETWEEN THE AREAS OF CONFERENCES 1, 2 and 3

Pan American World Airways, Inc.

Appendix "D"
to
Minute M/17

PAN AMERICAN WORLD AIRWAYS

PROPOSED TRANSATLANTIC FARE AND SERVICE POLICY 1951-1952

SUMMARY

1. All-year normal first-class fares to be maintained at existing levels, based on $375 one way between New York and London and 10% discount for round trip.

2. A limited frequency, high density tourist-class service to be adopted on a year-round basis, based on $225 one way between New York and London and 10% discount for round trip.

ALL-YEAR NORMAL FIRST-CLASS FARE

Although there may be some reason for modification of the basic all-year first-class transatlantic fare, there are certain factors which should be considered in discussing any change at this time.

The present fares have generated a satisfactory volume of traffic. A first-class fare lower than $375 between New York and London would result in unnecessary dilution of passenger revenues. On the other hand, it is possible that a higher fare could lead to a loss of traffic to the steamship lines. The present all-year first-class fare is equivalent to 10.87 cents per mile one way and 9.78 cents round trip between New York and London, as compared with an average of 10 cents per mile for typical first-class steamship accommodations for round-trip transportation between New York and Southampton. There is a marked differential insofar as other classes of steamship travel are concerned: six and a half to seven cents per mile on single-class

steamers, six to six and a half cents for cabin-class accommodations, and four and a half to five cents for tourist-class accommodations.* A higher air fare might permit the steamship lines to capture a substantial volume of passenger traffic that otherwise would move by air. Furthermore, the prevailing all-year normal fare by air has gained public and industry acceptance, and any basic change at this time might not be desirable.

An important reason for not increasing the present all-year first-class fare structure lies in Pan American's further proposal to abandon discounts for off-season transportation.

At the present time there are four basic fare levels across the Atlantic during the off-season; e.g., one-way fare, off-season round-trip fare (fare and a third), on-off season round-trip fare, and the special 15-day round-trip excursion fare (fare and a tenth). This fare structure has been needlessly complex and the overlapping periods involved in on-off season transportation, particularly when combined with the fare and a tenth program have caused public

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[fol. 4488] confusion as well as ticketing difficulties and added accounting problems.

The present off-season fare structure has undoubtedly caused diversion from the higher fare level. A passenger questionnaire survey conducted by Pan American between January and March 1951 revealed that at least 65% of the users of the 15-day excursion fare plan would have travelled by air anyway at the higher fare. Furthermore, it is apparent that the 1950-1951 program, which permitted eastbound transportation from September 1 through March 31 (seven months) and westbound from December 1 through June 30 (seven months), with no other limitation on the time of completion of the round trip, involved excessive diversion from full first-class fares. Although on-season transpor-

* Rates given are for standard accommodations on steamer services between the United States and Southampton, as shown in the Official Steamship and Airways Guide, April 1951.

tation covers a period of five months in either direction, there are only two months which coincide as one-season months in the two directions.*

The elimination of off-season discounts would effectively increase the passenger revenue yield, since transatlantic air travel to and from Europe in the winter months is relatively less elastic than at other times of the year. It should be noted that steamship lines currently offer only a nominal reduction for off-season travel, as shown by the following table (fares are between New York and Cobh or Southampton):

Minimum Transatlantic Steamship Fares (Round Trip)

	on season			off season		
	First	Cabin	Tourist	First	Cabin	Tourist
Queen Mary	$750	$470	$340	$730	$450	$330
Ile de France	670	460	340	650	420	330
America	650	440	330	590	400	320
De Grasse	490	372	—	440	352	—

YEAR-ROUND LIMITED FREQUENCY AND HIGH DENSITY TOURIST SERVICE

Although Pan American believes that the prevailing first-class fare, based on $375 one way between New York and London, should be maintained, it is important to realize that a choice of fares is available to most other major overseas destinations, on a *year-round* basis, whereas, transatlantic rates lower than first class have been available only during those periods of the year which are least popular for transatlantic travel. Typical comparisons are shown in the following table:

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* On-season period:
Eastbound—April, May, June, July, August
Westbound—July, August, September, October, November

[fol. 4489]

(From New York Round Trip)

To:	Miles	First Class Fare		Cheapest Available Year Round Fare	
		$ Amount	¢ per mile	$ Amount	¢ per mile
London	6,904	675.00	9.8	675.00	9.8
Lima	7,466	712.00	9.5	539.60	7.2
Honolulu	10,142	588.00	5.8	508.00	5.0

(From Chicago Round Trip)

To:	Miles	First Class Fare		Cheapest Available Year Round Fare	
		$ Amount	¢ per mile	$ Amount	¢ per mile
London	8,352	745.80	8.9	745.00	8.9
Lima	7,902	723.60	9.1	615.45	7.8
Honolulu	8,618	504.20	5.8	458.00	5.3

The transatlantic area, however, is the most heavily travelled to and from the United States and offers an already existent and potential market at least equal to that of all other world areas combined. As shown in detail in Attachment L, a total of 1,071,999 persons travelled between Europe and the United States in 1950, having increased from 611,577 in the prewar period. It should be noted, however, that despite this numerical increase, the relative importance of transatlantic travel has become increasingly less to total overseas travel to and from the United States. During the immediate prewar period it accounted for 57.8% of all travel between the United States and all overseas areas; in 1948, it accounted for only 45.7%; and in 1950, despite the influence of Holy Year and adverse factors which reduced transpacific travel, the proportion was only 49.7%.

It is likewise significant that 68.6% of total transatlantic passengers still travel by boat, as compared, for example, with only 19.9% of combined sea and air passengers be-

tween the United States and all Latin America.* In other words, for every three transatlantic air passengers, there were almost seven transatlantic passengers who travelled by boat. This is shown by the following table** which analyzes 1950 transatlantic travel:

[fol. 4490]

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	Number of Passengers	% of Total
Air	316,827	31.4
Sea		
First Class	160,895	16.0
One & Cabin Class	235,554	23.4
Tourist Class	294,746	29.2
Total Sea	691,195	68.6
Total, Sea and Air	1,008,022	100.0%

A continued policy of high fares for transatlantic air travel will undoubtedly continue to divert potential airline traffic to surface carriers as well as to other world areas. This can best be appreciated by examining the fare levels for each classification of transatlantic travel. All-year air and first class steamer rates are generally comparable—nine and a half to ten and a half cents per mile—and air accounts for twice as many passengers as first-class steamer. But first-class air fares are not at all competitive with one and cabin-class rates—which range between six and seven cents per mile—and are even less competitive with tourist-class fares ranging from four to five cents per mile. Yet each of these two classes of steamship passengers is larger than first-class steamship. In other words, on-season first-class air fares are competitive with fares paid by only 23.3% of the 691,000 transatlantic steamship passengers.

There is an obvious demand for lower cost air transportation across the Atlantic and it seems clear that a year-round air fare of six and a half cents per mile—the one-way

* Reports of the U.S. Immigration and Naturalization Service.

** Taken from monthly IATA Traffic Reports.

tourist-class level proposed by Pan American would receive very substantial traffic support. It is significant that tourist-class steamship passenger volume is higher than that of any other single steamship class, and accounted for 43% of all transatlantic steamship travel in 1950 (see Attachment II). Moreover, it is an established fact that the low and medium-priced steamship accommodations are utilized *over the full-year period* at a higher rate than the luxury classes (Attachment II).

Analysis of historical travel, however, does not reflect the wholly new travel which would be developed among people who could and would pay $400 or so for round-trip travel between the United States and Europe, but who do not have the month's vacation which is the sensible minimum for boat travel.

All published travel market surveys are unanimous in their findings that the market broadens very considerably as the cost of travel decreases.* Data taken from a Curtis Publication survey** reveals that 2.4% of U. S. families spend

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[fol. 4491] over $1,500 per year for vacations and is corroborated by other independent market research studies.† According to the U. S. Census Bureau††, there are 39,200,000 families (family groups of two or more persons) in the United States, in addition to 9,000,000 individuals (single persons not living within a family group), meaning that 940,800 families spend over $1,000 per year on vacations, exclusive of a large but indeterminate number of single persons not living within a family group and for which no vacation expenditure data is readily available.

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* An independent survey among Time and Newsweek subscribers (January 1951) indicated that 74% of all transatlantic travellers had incomes of $5,000 a year or more.

** The Vacation Travel Market of the U.S., 1951, Curtis Publishing Company.

† See for instance American Magazine's Annual Travelogue, 1949.

†† Bulletin Series P-60, No. 7, February 8, 1951, U.S. Bureau of the Census.

At a round-trip fare of $405 the average couple vacationing in Europe would find a budget of $1,300 ample for a trip lasting 17 days. Total expenses of the average individual tourist to Europe would be approximately $750. Thus, a trip to Europe at the tourist fare level presented herein is within the normal vacation expenditure of a tremendous number of U.S. families and individuals. Obviously, the time saved by air would permit tourists trips to Europe not possible by boat. Studies by the U.S. Bureau of Labor Statistics* shows that 86% of all employees in private industries work under some form of paid vacation plan; the bulk of these people receive two weeks' vacation and are immediate prospects for a transatlantic tourist service.

Furthermore, annual income level is not necessarily the determinant in measuring the potential market, since an important source of traffic for the tourist service lies in the relatively low income groups represented by teachers, students, office workers and others. Many of these people are not financially able to take extended trips every year, but will accumulate savings toward one every other year. Not only will the tourist fare program permit more of these people to undertake a European trip, but it will permit them to take such trips more frequently than is now possible.

The tourist fare level will likewise broaden the potential transatlantic market within Europe. There is a higher volume of westbound steamship traffic over the Atlantic than is the case eastbound. A substantial portion of this traffic is represented by immigrants, the majority of which now go by boat; a tourist air fare would permit the airlines to compete more effectively for this available market.

Economic and Operational Considerations

In view of the market clearly available to the North Atlantic air carriers under a tourist fare program based on $225 one way between New York and London, as compared with a first-class fare of $375, it is now appropriate to analyze the economic soundness of such a tourist-class service. This

* U.S. Bureau of Labor Statistics, Monthly Labor Review, February & March 1945.

is set forth in detail in Attachment III. The tourist service would be operated with 61-seat DC-4 aircraft, which would average 55 seats available by operating via Keflavik when advantageous to do so. Frequency of Pan American's service would be limited to seven round trips per week (four to London and three to Paris) during June through September, and four round trips per week (two to London and two to Paris) during the other eight months of the year.

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[fol. 4492] Passenger service would be restricted, with meals available for sale to passengers at compensatory and reasonable prices. Fares would be based on $225 from New York to London, subject to 10% round-trip discount. Even with an allocation of overhead costs to this service, it would break even with an average of 33 passengers per trip, equivalent to an average seat factor (based on 55 seats available) of 60%. These calculations include charging the tourist service with $690,000 of overhead cost, thereby relieving the normal first-class operations of Pan American's Atlantic Division of an almost equivalent amount. Stated differently, if these overhead charges were not allocated to the tourist service, it would break even at a 49% seat factor.

There is not the slightest doubt that Pan American would carry more than the number of passengers necessary to average the 60% seat factor. Hence, the tourist service, viewed by itself, will clearly be economically sound.

In the event of concern as to the possible diversionary effect of a tourist service upon the first-class regular service, it is only necessary to examine the history of those areas in which tourist (or coach) services already are in operation. Experience demonstrates that first-class traffic more than maintains prior levels after the inauguration of tourist service.

One good illustration is the domestic coach field in the United States. Most of the U.S. domestic coach operations were inaugurated in the latter part of 1949 and the early part of 1950, and the impact of coach service on first-class revenues can be found by comparing 1949 and 1950 revenues. As shown in Attachment IV, coach-service passenger revenues in 1950 amounted to $43,242,000, as compared

with only $9,592,000 in 1949. However, first-class passenger revenues of these same carriers amounted to $346,970,000 in 1950, an increase of $14,558,000 over 1949.

Even more significant are the traffic results of domestic coach and first-class services. Shown in Attachment V are the revenue passenger miles developed by the principal operators of domestic coach services. It will be readily apparent from this data that first-class traffic and seat factors have risen over earlier levels *at the same time that coach services were operating at extremely high seat factors.* For instance, the coach services operated by American and TWA had seat factors ranging between 75 and 80% throughout the entire year of 1950, despite higher traffic and improved seat factors on their first class services. Reference to similar data for Eastern and National reveals the same general characteristics.

Another good illustration is found in Pan American's Bermuda operations. Tourist-class service, inaugurated on October 1, 1950, resulted in the carriage of 10,170 passengers in the tourist service during the next five months, while the volume of first-class passengers increased 11% at the same time.* In addition, there was a very substantial improvement in the seat factor on the first-class service. This is set forth fully in Attachment VI.

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[fol. 4493] (It should be noted that the combined traffic carried by Pan American and Colonial, between October 1950 and February 1951, was double the total traffic carried by Pan American, Colonial and BOAC in the same five months a year before** and was more than seven times the traffic carried by BOAC alone; it is apparent that the additional traffic was newly generated and not gained by BOAC's withdrawal from Bermuda service.)

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* Although the officially designated tourist service became effective on October 1, 1950, a round-trip $85 excursion fare on DC-4 aircraft was instituted on June 1, 1950 and resulted in an extremely high level of traffic to and from Bermuda throughout the summer months.

** BOAC suspended its U.S.-Bermuda service in March 1950.

In Attachment VII is traced the traffic history of Pan American's tourist and first-class service between New York and San Juan from the inception of the tourist service in 1948. Total traffic, as well as traffic on both tourist and first-class flights, has increased consistently to the point where the tourist service throughout 1950 had a year-round seat factor of approximately 75% in both directions and almost 80% on the first-class service. Pan American likewise operates parallel tourist and first-class flights over another major overseas route—between New York and the east coast of South America. This route does not offer the tremendous potential available over the North Atlantic; notwithstanding, however, the tourist service to Buenos Aires had an overall seat factor of 71.0% in January 1951 and 66.7% in February 1951, as compared with 75.2% and 78.2% respectively on the first-class service in these months.

Operation of tourist service under a restricted frequency arrangement moreover will provide an effective limit on any potential adverse effect upon first-class service. The tourist-class seats which Pan American proposes to operate during the summer months would approximate only 18.6% of its total North Atlantic service.*

A transatlantic tourist service need not be limited to DC-4 aircraft. Certain minimum requirements, however, applicable to every carrier, could be easily established, including (a) high density seating; (b) restricted passenger service; and (c) limited frequency.

A 61 seat DC-4 tourist aircraft is equivalent to approximately 50% additional seating capacity compared to a standard configuration in first-class transatlantic service. Utilizing the standard configurations employed by the Civil Aeronautics Board in its rate-making procedures applicable to U.S. carriers operating over the North Atlantic**, the following relationships are derived:

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* Based on the *combined* capacity of first-class and tourist services proposed.

** CAB Order E-3880-1-2, February 7, 1950.

Aircraft Type	Number of Seats: Standard Transatlantic Configuration per CAB	Tourist Configuration at 150% of Standard
DC-4	40	60
DC-6	43	64
L-49	43	64
B-377	61	91

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[fol. 4494] A limitation on tourist service frequency could be established as a percentage of first-class seats operated. An analysis is set forth below comparing the volume of regular first-class service which the North Atlantic carriers will operate during the summer of 1951* with the comparable volume of tourist-class service resulting from application of a ratio of 20% of first-class seats, a proportion suggested by the Civil Aeronautics Board as a reasonable limit:

Scheduled One-Way North Atlantic Passenger Capacity To and From U.S., Summer 1951, and Approximate Proposed Tourist Service Capacity

Carrier	Regular Summer Service: Weekly Trips	Weekly Normal Seats Available**	Proposed Tourist Service: Weekly Seats Available†	Approximate Weekly Trips††
Air France	12	496	99	1.8
BOAC	14	812	162	2.9
KLM	10	412	82	1.5
LAI	2	90	18	1.0
PAA	32	1684	337	6.1
SABENA	5	235	47	1.0
SAS	7	308	62	1.1
Swissair	3	132	26	1.0
TWA	21	890	178	3.2
Total	106	5059	1011	19.6

* Based upon carrier schedules shown in Official Airline Guide, May 1951, which for most carriers includes increased schedules for summer operation effective in June.

** Based upon standard maximum seats available for each aircraft type.

† Computed at 20% of indicated first-class seats available.

†† Based on operation of DC-4 aircraft with 55 seats normally available; number of trips weekly are derived by dividing previous column by 55 and allowing a minimum of one round trip weekly.

Pan American is convinced that a tourist-class service over the Atlantic would be successful, as it has been in every other heavy traffic area where it has been tried. In addition to the benefits which would accrue to the carriers in terms of increased traffic and revenues, a tourist fare program would redound to the obvious advantage of Europe's economy. Tourism is a leading dollar-earner in Western Europe—in 1950 the ERP countries earned approximately $396,000,000 from travel by U.S. residents.* However, as pointed out in a report on the role of tourism in the European Recovery Program, " . . . to accomplish these and further earning increments, more adequate transatlantic transport capacity is needed, especially at lower rates. . . . American and foreign flag carriers are being encouraged to make more transatlantic passenger capacity available at moderate rates. . . ."**

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[fol. 4495] In conclusion, it is particularly pertinent to refer to a recent address' by the Chairman of the Civil Aeronautics Board on "Aviation Policy in 1952," in which he stated in part as follows:

> "In March, the Board announced its policy for 1951 on trans-Atlantic charter operations. We decided that we would issue no further exemptions to authorize trans-Atlantic charter operations except where the regularly certificated trans-Atlantic carriers—both U. S. and foreign—are unable or unwilling to provide reasonably adequate charter service at established charter rates. We provided that our certificated U. S. trans-Atlantic air carriers will be authorized to contract for the flight equipment and the flight personnel, if necessary, of other air carriers to perform this charter service.

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* Business Information Service, No. 16, April 1951, U.S. Dept. of Commerce.

** Tourism in the European Recovery Program, Economic Cooperation Administration, June 1950.

' "Aviation Policy in 1952", Address by D. W. Rentzel, CAB Chairman, April 20, 1951, at annual conference of Airport Operators Council, Memphis, Tennessee.

"But we did something else when we established this policy that I believe may have far reaching consequences on the development of world trade and travel by air. We proposed that consideration should be given to the establishment of a low fare for individual passengers on regularly authorized trans-Atlantic service.

"That means that trans-Atlantic air travel may be brought within the financial reach of millions of people who cannot now afford the fare of the present luxury services. It may mean that large numbers of American citizens will be able to travel to Europe on a one or two-week vacation and come home with a better understanding of the cultural and political problems of Europe and their relationship to our national life than ever before existed."

TOTAL PASSENGER TRAVEL BETWEEN THE U. S. AND OVERSEAS AREAS - PRE-WAR, 1948 AND 1950 1/

Geographic Area	Prewar 2/	Percent of Total	1948	Percent of Total	1950	Percent of Total
Europe	611,577	57.3	776,447	44.0	1,071,999	48.3
Middle East	3,222	.3	15,208	.8	20,776	.9
Africa	1,826	.2	15,441	.9	9,943	.5
Total Transatlantic	616,625	57.8	807,096	45.7	1,102,718	49.7
Caribbean	214,692	20.1	551,507	31.3	663,979	30.0
Central America	39,115	3.7	86,630	4.9	83,559	3.7
South America	26,187	2.4	133,574	7.6	140,936	6.3
Total Latin America	279,994	26.2	771,711	43.8	988,474	46.0
Bermuda	106,691	10.0	77,006	4.4	115,247	5.2
Asia	53,667	5.0	100,156	5.7	74,844	3.4
Australasia	11,063	1.0	[illegible]	.4	41,319	1.8
Total Transpacific	[illegible]	6.0	106,893	6.1	115,163	5.1
All Areas	1,068,360	100.0	1,762,714	100.0	2,221,602	100.0

1/ Source: U.S. Immigration and Naturalization Service. Excludes travel between the U.S. and its possessions; between the U.S. and Canada, and travel across the land border of Mexico.

2/ Represents the average of fiscal years 1936, 1937, and 1938.

[illegible]

EXHIBIT Attachment) 1

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PASSENGERS CARRIED BY TRANSATLANTIC PASSENGER STEAMSHIP COMPANIES

1950

Eastbound
Number of Passengers

Period	First Class	One and Cabin Class	Tourist Class	Total Passengers	% Tourist to Total
Jan 1 - Jan 28	2,317	4,157	4,260	10,934	39.0%
Jan 29- Feb 25	2,625	2,842	4,599	10,066	43.7
Feb 26- Mar 25	4,220	7,295	8,041	19,556	41.1
Mar 26- Apr 22	8,906	9,583	10,907	29,396	37.1
Apr 23- May 20	10,947	13,735	14,696	39,378	37.3
May 21- Jun 17	11,174	13,692	14,386	39,252	36.6
Jun 18- Jul 15	12,210	14,220	14,681	41,111	35.7
Jul 16- Aug 12	5,695	11,465	11,927	29,087	41.0
Aug 13- Sep 9	5,240	13,585	12,936	31,761	40.7
Sep 10- Oct 7	4,340	6,477	11,365	22,182	51.2
Oct 8- Nov 4	3,342	3,022	9,502	15,866	60.0
Nov 5- Dec 2	2,835	2,123	5,897	10,855	54.3
Dec 3- Dec 30	2,047	2,591	11,599	16,237	71.4
Totals	76,098	104,787	134,796	315,681	42.7%

Westbound
Number of Passengers

Jan 1 - Jan 28	1,846	3,686	6,934	12,466	55.6%
Jan 29- Feb 25	2,079	5,626	6,196	13,901	44.6
Feb 26- Mar 25	2,774	7,384	9,279	19,437	47.7
Mar 26- Apr 22	4,846	6,893	11,012	22,751	48.4
Apr 23- May 20	5,590	10,015	12,674	28,279	44.8
May 21- Jun 17	7,459	9,955	11,214	28,328	39.6
Jun 18- Jul 15	7,007	11,783	12,584	31,374	40.1
Jul 16- Aug 12	9,173	12,810	13,286	35,269	37.7
Aug 13- Sep 9	13,140	17,230	16,978	47,348	35.8
Sep 10- Oct 7	11,684	17,022	14,698	43,404	33.9
Oct 8- Nov 4	9,916	12,191	17,352	39,459	44.0
Nov 5- Dec 2	5,368	7,912	13,102	26,382	49.7
Dec 3- Dec 30	4,215	8,260	14,641	27,116	54.0
Totals	84,797	130,767	159,950	375,514	42.6%

NOTE: Includes passengers carried by all members of Transatlantic Passenger Conference.

Source: Monthly IATA Reports.

[fol. 4498]

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APPENDIX D
ATTACHMENT III

OPERATING PLAN AND COST DATA

OPERATING PLAN

Under normal operating and traffic conditions, it is planned that all trips will be operated on the Great Circle Course via Gander-Shannon. If required, westbound trips may be operated via Iceland.

For purposes of this study, it was assumed that all westbound trips would be operated over the longer route via Iceland.

Based on average wind components and normal alternate routings the following payloads will be available:

	Pounds
Gander-Keflavik	10,100
Keflavik-Gander	11,500
Gander-Shannon	11,050
Shannon-Gander	8,100

All flights will be operated with crew complements consisting of a Captain, 1 Pilots and 1 Steward. Reserve crews will be maintained at required points.

STATISTICAL INFORMATION

Route Mileage

New York-Boston	184
Boston-Gander	910
Gander-Keflavik	1,579
Keflavik-London	1,168
London-Shannon	370
Gander-Shannon	1,982
Shannon-Paris	565
Keflavik-Shannon	923

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ATTACHMENT "B"
Attachment XII

Operating Statistics

	Revenue Miles Flown	Revenue Tons Flown *
On-Season		
London Service	928,845	2,644
Paris Service	408,561	1,139
Off-Season		
London Service	504,759	2,653
Paris Service	542,935	2,860
	2,385,080	10,296

* Computed at 191 MPH

ESTIMATED COST OF OPERATION

	Cost per Hour	Cost per Mile
Direct Aircraft Operating Expenses		
Flying Operations	$344.00	$ .754
Direct Maintenance - Flight Equipment	38.85	.800
Depreciation - Flight Equipment	38.87	.098
	$800.95	$ 1.052

The above estimates are generally based upon the experience in the Atlantic Division during the first 9 months of 1950. It provides for a crew complement consisting of 4 pilots. Depreciation and aircraft rental has been provided on the basis that 5 aircraft will be required to operate on-season and 3 aircraft will be required to operate off-season schedules.

[fol. 4500]

APPENDIX C
Attachment III

	Cost per hour	Cost per Miles
Direct Aircraft Operating Expenses (Continued)		
The unit cost per hour and per mile has been adjusted where required for a provision of 8 non-revenue flying.		
Ground and Indirect Expenses		
Estimated Additional Cost Directly Applicable to Tourist Service	$ [illegible]	$ .2[illegible]
These costs represent additional out-of-pocket expenses attributable directly to the tourist service such as landing charges, flight service personnel and travel and incidental expenses.		
Overhead Costs Allocable to the Tourist Service	.0[illegible]	.0[illegible]
A direct allocation of divisional and general office overhead costs which would include Ground Operations, Ground and Indirect Maintenance, General and Administrative, and Ground Equipment Depreciation Accounts, is made to the tourist service on the basis of available ton miles.		
Total allocation of overhead to the tourist service per year - $690,000.		

APPENDIX D
Attachment III

	Cost per Hour	Cost per Mile
Total Cost before Traffic and Sales, Advertising and Passenger Expenses other than Flight Attendants	$ 323.90	$ 1.6[illegible]
Traffic and Sales, Advertising and Passenger Expenses Estimated at 14% of Total Cost	$ 52.73	$ .27[illegible]
Total Cost of Operation or Total Revenues Required to Break Even	$ 376.63	$ 1.97[illegible]
Passengers Required to Break Even per Mile		33
Estimated Passenger Load Factor Required to Break Even on Basis of 55 Seats		6[illegible]%
Total Passengers Required in each Direction to Break Even per Year		3,54[illegible]

[fol. 4502]

APPENDIX D
Attachment IV

COMPARISON OF DOMESTIC TRUNKLINE
COACH AND FIRST CLASS PASSENGER REVENUES
1949 & 1950

	Passenger Revenue (000)		
	Coach	First Class	All Services
	$	$	$
1950			
American	4,761	92,340	97,101
Capital	4,418	17,761	22,179
Delta	1,700	13,896	15,596
Eastern	10,954	58,930	69,884
National	3,085	10,329	13,414
Northwest	6,915	17,664*	24,579
TWA	7,499	53,391	60,890
United	1,691	76,268	77,959
Western	2,219	6,391	8,610
Total	43,242	346,970	390,212
1949:			
American	29	84,886	84,915
Capital	3,218	16,019	19,237
Delta	5	12,631	12,636
Eastern	809	60,484	61,293
National	17	10,211	10,228
Northwest	3,507	18,991	22,498
TWA	1,788	50,953	52,751
United	--	72,389	72,389
Western	209	5,848	6,057
Total	9,592	332,412	342,004

*1950 first class revenues for Northwest are for eleven months only.

Source: CAB Forms 41;
Special carrier reports on coach traffic filed with CAB.

COMPARISON OF COACH AND FIRST CLASS PASSENGER TRAFFIC FOR SELECTED DOMESTIC TRUNKLINES

Revenue Passenger Miles (000)

a. American and TWA

	American			TWA		
	Coach	First Class	All Services	Coach	First Class	All Services
1950:						
January	4,174	100,742	104,916	7,272	52,281	59,553
February	3,498	93,165	96,663	6,669	47,779	54,448
March	•	85,492	85,492	10,483	66,655	77,138
April	6,800	133,425	140,225	9,739	69,879	79,618
May	10,800	146,715	157,575	12,571	83,863	96,620
June	11,901	165,429	177,330	18,939	97,040	115,979
July	11,938	152,515	164,453	19,093	89,268	108,361
August	11,183	159,823	171,006	19,960	91,699	111,659
September	11,313	154,866	166,179	19,132	92,058	111,190
October	11,973	163,380	175,353	16,479	96,591	113,070
November	9,266	140,557	149,823	13,290	76,675	89,965
December	10,259	146,159	156,418	16,471	84,112	100,583
Total	103,165	1,642,268	1,745,433	170,098	948,086	1,118,184
Seat Factor	79.4%	69.1%	69.7%	75.1%	64.0%	65.4%
1949:						
January	-	99,086	99,086	-	55,318	55,318
February	-	94,766	94,766	-	53,965	53,965
March	-	116,421	116,421	-	69,280	69,280
April	-	129,747	129,747	3,262	76,301	79,563
May	-	138,902	138,902	3,524	85,494	89,018
June	-	150,886	150,886	5,816	97,106	102,922
July	-	136,657	136,657	6,384	86,139	92,523
August	-	136,030	136,030	5,972	83,029	89,001
September	-	142,960	142,960	6,046	86,841	92,887
October	-	143,030	143,030	4,718	81,489	86,207
November	-	116,659	116,659	4,015	62,853	66,868
December	660	102,254	102,914	5,744	55,206	60,950
Total	660	1,507,398	1,508,058	45,481	893,221	938,702
Seat Factor	16.5%	64.8%	64.8%	74.6%	60.3%	60.8%

• Service curtailed due to strike.

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[fol. 4504]

APPENDIX L
Attachment V

COMPARISON OF COACH AND FIRST CLASS PASSENGER TRAFFIC
FOR SELECTED DOMESTIC TRUNKLINES

Revenue Passenger Miles (000)

B. Eastern and National

	Eastern			National		
	Coach	First Class	All Services	Coach	First Class	All Services
1950:						
January	14,458	77,254	91,712	4,843	15,306	20,149
February	16,835	83,462	100,297	6,878	17,395	24,273
March	23,658	99,472	123,130	7,575	19,797	27,372
April	24,242	87,793	112,035	7,362	16,697	24,329
May	20,137	74,528	94,665	5,210	11,382	16,592
June	25,734	77,244	102,978	6,410	11,358	17,768
July	26,315	72,080	98,395	5,464	11,981	17,445
August	24,041	73,967	98,008	4,794	13,485	18,279
September	24,167	71,308	95,475	5,092	14,328	19,420
October	22,846	79,127	101,973	5,522	15,356	20,878
November	21,746	75,378	97,124	5,453	16,844	22,297
December	24,612	89,024	113,636	7,362	19,919	27,281
Total	269,359	960,069	1,229,428	72,235	183,848	256,083
Seat factor	80.0%	58.0%	61.7%	70.4%	49.0%	53.6%
1949:						
January	-	78,406	78,406	-	15,134	15,134
February	-	86,495	86,495	-	16,386	16,386
March	-	102,538	102,538	-	17,668	17,668
April	-	92,332	92,332	-	14,938	14,938
May	-	82,153	82,153	-	12,234	12,234
June	-	87,172	87,172	-	13,024	13,024
July	-	81,145	81,145	-	13,779	13,779
August	-	74,280	74,280	-	11,633	11,633
September	449	78,356	78,805	-	12,377	12,377
October	3,030	78,681	81,711	-	13,207	13,207
November	3,367	70,218	73,585	1,868	10,821	12,689
December	10,170	69,321	79,491	3,418	12,538	15,956
Total	20,016	978,097	998,113	5,286	163,739	169,025
Seat factor	72.5%	55.1%	55.4%	58.9%	44.6%	44.9%

Source: CAB Form 41;
Special carrier reports on coach traffic filed with CAB

[Doc. 4505]

PASSENGERS CARRIED BY PAN AMERICAN BETWEEN THE UNITED STATES AND BERMUDA

Period	Southbound			Northbound			Both Directions		
	Tourist Service	First-Class Service	Total	Tourist Service	First-Class Service	Total	Tourist Service	First-Class Service	Total
October 1950	831	1,023	1,854	894	940	1,834	1,725	1,963	3,688
November 1950	881	688	1,569	1,004	775	1,779	1,885	1,463	3,348
December 1950	1,153	1,002	2,155	1,025	741	1,766	2,178	1,743	3,921
January 1951	884	542	1,426	1,016	896	1,912	1,900	1,438	3,338
February 1951	1,250	898	2,148	1,237	915	2,147	2,482	1,813	4,295
Five Months' Total:									
Passengers	4,999	4,153	9,152	5,171	4,267	9,438	10,170	8,420	18,590
Seat Factor	64.4%	69.6%	66.7%	67.1%	69.1%	68.0%	65.8%	69.4%	67.3%
October 1949	--	969	969	--	1,043	1,043	--	2,012	2,012
November 1949	--	584	584	--	678	678	--	1,262	1,262
December 1949	--	704	704	--	627	627	--	1,331	1,331
January 1950	--	523	523	--	766	766	--	1,289	1,289
February 1950	--	860	860	--	818	818	--	1,678	1,678
Five Months' Total:									
Passengers	--	3,640	3,640	--	3,932	3,932	--	7,572	7,572
Seat Factor	--	38.8%	38.8%	--	42.1%	42.1%	--	40.5%	40.5%

Source: Company records.

APPENDIX D
ATTACHMENT VI

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[fol. 4506]

APPENDIX D
Attachment VII

NUMBER OF REVENUE PASSENGERS CARRIED BY PAN AMERICAN
ON LOCAL TOURIST AND FIRST CLASS FLIGHTS BETWEEN NEW YORK AND SAN JUAN

	SOUTHBOUND			NORTHBOUND		
	Tourist Service	First Class Service	All Services	Tourist Service	First Class Service	All Services
1950:						
January	1,139	1,159	2,298	3,727	1,142	3,869
February	1,107	1,078	2,185	1,845	865	2,710
March	1,360	1,069	2,429	2,134	1,272	3,406
April	1,330	987	2,317	2,809	1,250	4,059
May	1,552	893	2,445	3,[illegible]	1,941	4,437
June	3,085	1,382	4,[illegible]67	5,[illegible]	1,338	6,483
July	5,136	1,514	6,[illegible]50	7,[illegible]	1,[illegible]95	8,455
August	3,580	1,217	4,[illegible]97	6,[illegible]81	1,[illegible]25	7,406
September	2,678	970	3,648	6,[illegible]	[illegible],175	7,835
October	3,306	1,162	4,468	3,[illegible]	[illegible],137	5,069
November	2,266	1,148	3,414	2,[illegible]	879	3,564
December	4,666	1,702	6,368	2,[illegible]34	995	3,429
Total	30,235	14,281	44,486	46,687	14,034	60,721
Seat Factor	66.1%	79.2%	69.8%	87.5%	77.1%	84.8%
No. of trips	888	395	1,283	920	393	1,313
1951:						
January	1,799	380	2,179	2,505	648	3,153
February	1,[illegible]77	228	1,505	1,835	332	2,167
March	1,222	129	1,351	2,281	290	2,571
April	1,[illegible]16	109	1,525	2,753	263	3,016
[illegible]	1,530	66	1,596	3,485	355	3,[illegible]40
June	2,864	646	3,510	4,462	294	4,756
July	4,200	771	4,971	5,291	522	5,813
August	3,044	923	3,967	4,716	886	5,602
September	2,135	886	3,021	4,635	1,197	5,832
October	1,783	1,039	2,742	3,039	756	3,795
November	1,142	873	2,015	2,027	677	2,704
December	3,177	1,528	4,705	1,616	818	2,[illegible]34
Total	25,589	7,578	33,167	38,645	7,038	45,683
Seat Factor	62.5%	60.4%	62.1%	85.5%	53.2%	78.2%
No. of trips	715	302	1,017	756	295	1,051

Source: Company records.

[fol. 4507]

Appendix "E"
to
Minute M/179

Recommended Practice

COST OF GROUND TRANSPORTATION

160/1105—RECOMMENDED, that a reasonable charge for ground transport service between the airport used by the passenger and the city being served shall be made at origin, destination and stopover points.

[fol. 4508]

Appendix "F"
to
Minute M/180

Recommended Practice

COST OF GROUND TRANSPORTATION

280/1105—RECOMMENDED, (1) that Members operating international scheduled air services wholly within Traffic Conference 2 give early consideration to the proposition that passengers be charged a fare for ground transportation provided by or operated on behalf of Members between the airport and its respective city centre (town terminal) at points or origin, stopover, and destination;

(2) that such proposition shall be considered on an area basis at local meetings of Members' representatives;

(3) that in the event that agreement can be reached in any area for the application of a fare, such agreement should be put into effect at the earliest date permissible under Conference procedures;

(4) that any fare that may be agreed upon shall be separate from and additional to the air fare paid by the passenger.

[fol. 4509] 133

Appendix "G"
to
Minute M 329

REPORT OF THE GLOSSARY AD HOC COMMITTEE

Pursuant to the direction of the Chairman of the composite meeting of the Conference, the Glossary Ad Hoc Committee considered the matter of the advisability of the Conferences, at the meeting adopting the Glossary of Air Traffic Terms as set forth in the Traffic Handbook, in the form of a resolution.

2. As a result of its discussions of the matter, the Ad Hoc Committee recommends that:

(i) the Conferences, at this meeting should not adopt the Glossary either in the form of a resolution or in any other form having binding effect on the Members;

(ii) the Conferences should refer the matter to the Traffic and Legal Committees and request those Committees to prepare appropriate recommendations for consideration by Conferences at the next composite meeting;

These recommendations are based on the following considerations:

(a) It was not possible for the Ad Hoc Committee, within the time available to it, to study adequately the effect which each of the terms contained in the Glossary would have on the presently existing resolutions and those in the process of adoption. Accordingly the Ad Hoc Committee is not prepared to state that the definitions of each term contained in the Glossary is consistent with the intended meaning of that term where and as used in any of the resolutions.

(b) The Ad Hoc Committee is of the opinion that the seriousness and importance of giving binding effect to the definitions is such as to warrant greater deliberation and care than is possible at this meeting.

3. In addition to the matter of the Glossary the Ad Hoc Committee under the directions of the Chairman of the composite meeting considered that part of the report of the special committee (created at the Madrid meetings) on the application to Conference No. 4 of certain ambiguous resolutions containing a list of recommended definitions of certain terms frequently used in the resolutions. These recommended definitions are as follows:

Traffic Terms and Definitions

Fare, Normal	means the full, on or off-season fare established for a normal, regular or usual service, the application of which is not dependent upon any specially limited period of validity or other special circumstance.

[fol. 4510] —134—

Fare, Class B	which is equivalent to the terms tourist fare and second class fare, means the full on or off-season fare established for Class B (tourist or second class) service, the application of which is not dependent upon any specially limited period of validity or other special circumstance;
Fare, Specified	means the fare specified in an applicable Conference resolution;
Rate, Specified	means the rate for the carriage of goods specified in an applicable Conference resolution;

Fare, Constructed	means the fare established in accordance with the provisions of an applicable Conference construction resolution;
Rate, Constructed	means the rate established in accordance with the provisions of an applicable Conference construction resolution;
Rate, Normal,	means a rate established for commodities in general, the application of which, with respect to a given consignment is not dependent upon the existence of any special qualifications, such as minimum quantities or nature of the commodity;
Fare, Basic	means either a specified or constructed fare expressed in the basic currency (Sterling or U.S. Dollars);
Rate, Basic	means either a specified or the constructed rate expressed in the basic currency (Sterling or U.S. Dollars).

4. While the Ad Hoc Committee, as in the case of the Glossary, recommends that the Conferences at this meeting should not adopt definitions of these terms in a form having binding effect, it realized that the Conferences may desire nevertheless to do so, in which event the Ad Hoc Committee would recommend the following amendments and additions:

(a) amend "Fare, Normal" so as to read:

> Fare, Normal means a fare for a regular and usual service, the application of which is not dependent upon any specially limited period of validity or other special circumstance;

(b) add a new term and definition "Fare, IATA Normal" to read:

Fare, IATA Normal means a specified or constructed normal fare;

[fol. 4511] —135—

(c) add a new term and definition "Fare, IATA Normal First Class" to read:

Fare, IATA Norm First Class means the highest minimum IATA normal fare;

(alternate definition)—means the minimum IATA normal fare established for First Class services

Note: The first of these recommended definitions would be incorrect in the case of points or places between which only a tourist fare was established by the Conferences.

(d) add a new term a definition "Fare, IATA Normal Tourist Class" to read:

Fare, IATA Normal Tourist Class, means the minimum IATA normal fare established for tourist class services;

(e) amend the term and definition of "Fare, Class B" to read as follows:

Fare, IATA Normal Class B, means the minimum IATA normal fare established for Class B services;

(f) amend the definition of "Constructed Rate" by inserting before the word "established" the words "for the carriage of goods";

(g) add a new term and definition as follows:

"Rate, IATA Normal, means a specified or constructed normal rate".

5. In the light of the said list of terms and definitions (as amended and added to by the Ad Hoc Committee), the Ad Hoc Committee examined each of the presently existing resolutions to determine what effect thereon the proposed new terms and definitions would have. For obvious reasons no such complete examination was attempted in respect of the resolutions in the process of adoption. Parenthetically, it seems advisable to state that this is one of the principle reasons why the Ad Hoc Committee recommends that the Conferences should not adopt the list at this meeting.

6. The results of the said examination are as follows:

(i) In Resolutions 014e, 270 045, 052, 360 053, JT12(7)054a, JT12(7)054e, 057, 155a, 155c, 156, 157, 157a para (d), 157b para (d), 270 158 para (h), 360/158 para (g), 159, 159a, 163, 164a, 164c, 164d, 166, 167, 169, 171, 172c, 270 728a, 330 728b, the word normal would have to be deleted and the words "IATA Normal First Class" inserted instead.

[fol. 4512] —136—

(ii) In Resolutions 051, 051a, 150, 150a, 151a, 152a, 201, 204, 276, 260 130, 150 311, 270 311, 260 810e, immediately before the word "normal" the letters "IATA" would have to be inserted.

(iii) In Resolutions 159 (Para 8) and 163 (Para 8) the word "basic" would have to be deleted and the words "IATA Normal First Class" would have to be inserted.

(iv) In Resolution 503 the word "basic" would have to be deleted and the words "IATA Normal Rate" would have to be inserted.

7. In respect to the Ad Hoc Committee's recommended definition of the term "Fare, Normal", some of the Members were of the opinion that, while it would be inadvisable to do so now because of the use in many resolutions of the term normal round trip, it might be desirable for any committees studying the Glossary problem in its entirety to consider defining the term so as to mean only a one-way fare.

fol. 4513]

Appendix "N"
to
Minute M/495

TRAFFIC CONFERENCE 1

BUDGET

Calendar Year 1951

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Salaries	$37,300.	$19,200.	$56,500.
Pension Fund	1,600.	500.	2,100.
Travelling Expenses	6,300.	500.	6,800.
Rent and Maintenance	5,000.	2,800.	7,800.
Office Supplies and Expenses	4,300.	3,000.	7,300.
Printing	400.	600.	1,000.
Postage	3,500.	2,600.	6,100.
Telegrams and Telephones	3,500.	1,000.	4,500.
Books and Publications	50.		50.
Taxes and Social Insurance	1,700.	700.	2,400.
Insurance	150.	100.	250.
Miscellaneous	500.	200.	700.
Organization of Meetings	5,500.	150.	5,650.*
Entertainment	200.	50.	250.
Depreciation	700.	400.	1,100.
Enforcement Section	28,400.	-	28,400.**
	$99,100.	$31,800.	$130,900.

*Assuming there is only one Conference meeting.

**If receipts arising from Enforcement procedures do not cover expenses, Conference Members must cover deficit in accordance with Conference Provisions.

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Carried Forward.....	$99,100.	$31,800.	$130,900.
Less: Charge to Head Office for Branch Office Services.....	12,000.	-	12,000.
Total Conference Budget.....	$87,100.	$31,800.	$118,900.
Less: Recoverable by Receipts from Agency Fees.....$31,800***			
Enforcement Levies..... 28,400.			60,200.
Net Assessment to Members			$58,700.

*** Estimated total collections for all Conferences in 1951, including entrance fees - $131,000.

[fol. 4515]

Appendix "I"
to
Minute 4/105

TRAFFIC CONFERENCE 2

BUDGET

Calendar Year 1951

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Salaries	$30,400.	$16,300.	$46,700.
Pension Fund	1,500.	500.	2,000.
Travelling Expenses	8,000.	800.	8,800.
Rent and Maintenance	3,000.	1,700.	4,700.
Office Supplies and Expenses	5,200.	2,000.	7,200.
Printing	600.	200.	800.
Postage	3,300.	2,700.	6,000.
Telephones and Telegrams	5,900.	1,700.	7,600.
Books and Publications	50.	-	50.
Taxes and Social Insurance	4,800.	2,500.	7,300.
Insurance	250.	150.	400.
Miscellaneous	700.	300.	1,000.
Organisation of Meetings	5,350.	200.	5,550.*
Entertainment	350.	50.	400.
Depreciation	1,300.	700.	2,000.
Enforcement Section	28,400.	-	28,400.**
	$99,100.	$29,800.	$128,900.

* Assuming there is only one Conference Meeting.

** If receipts arising from Enforcement procedures do not cover expenses, Conference Members must cover deficit in accordance with Conference Provisions.

Appendix "J"
to
Minute M/495
(Continued)

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Carried forward.....	$99,100.	$29,800.	$128,900.
Charge to Head Office for Branch Office Services.....	12,000.	-	12,000.
Total Conference Budget.....	87,100.	29,800.	12,000.
Less: Recoverable by receipts from Agency Fees.....	29,800. ***		
Enforcement Levies.....	28,400.		58,200.
	Net Assessment to Members		$58,700.

*** Estimated total collections for all Conferences in 1951, including entrance fees - $111,000.

fol 4517

Appendix "J"
to
Minute M/405

TRAFFIC CONFERENCE 3

BUDGET

Calendar Year 1951

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Salaries	87,500.	82,200.	89,700.
Pension Fund	150.	50.	200.
Travelling Expenses	3,300.	100.	3,400.
Rent and Maintenance	1,050.	250.	1,300.
Office Supplies and Expenses	650.	350.	1,000.
Printing	50.	50.	100.
Postage	2,200.	1,000.	3,200.
Telephones and Telegrams	1,700.	400.	2,100.
Books and Publications	50.	-	50.
Taxes and Social Insurance	50.	-	50.
Insurance	100.	50.	150.
Miscellaneous	400.	50.	450.
Organization of Meetings	2,950.	50.	3,000.*
Entertainment	50.	50.	100.
Depreciation	300.	100.	400.
Enforcement Section	15,800.	-	15,800.**
	$36,300.	$4,700.	$41,000.

* Assuming there is only one Conference Meeting.

** If receipts arising from Enforcement procedures do not cover expenses, Conference Members must cover deficit in accordance with Conference Provisions.

Appendix "F"
to
Minute 11/195

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Carried Forward.....	$36,300.	$4,700.	$41,000.
Less: Charge to Head Office for Branch Office services....	4,000.	-	4,000.
Total Conference Budget.....	$32,300.	$4,700.	$37,000.
Less: Recoverable by receipts from:			
Agency Fees.....	4,700.***		
Enforcement Levies.....	15,800.		20,500.
Net Assessment to Conference Members			$16,500.

*** Estimated total collections for all Conferences in 1951, including entrance fees - $131,000.

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Appendix "B"
to
Minute M/L 5
(Continued)

ENFORCEMENT OFFICE

BUDGET

Calendar Year 1951

Salaries			$30,300.
Pension and Group Life Insurance			1,000.
Travelling Expenses			
Direct Conference 1		12,000.	
" " 2		12,000.	
" " 3		7,500.	
		31,500.	
Indirect		1,700.	33,200.
Rent and Maintenance			1,200.
Supplies and Expenses and Printing			250.
Postage			300.
Telephones and Telegrams			1,000.
Taxes and Social Insurance			1,000
Insurance			100.
Miscellaneous			500.
Commission Meetings:			
Direct Conference 1		1,400.	
" " 2		1,400.	
" " 3		800.	3,600.
Depreciation			150.
			$72,600.

Distribution by Conferences

	Direct	Indirect	Total
Conference 1	$13,400.	$15,000.	$28,400.
Conference 2	13,400.	15,000.	28,400.
Conference 3	8,300.	7,500.	15,800.
	$35,100.	$37,500.	$72,600.

Appendix "I"
to
Minute 1/SC3

PRESS STATEMENT

An increase of 5.3% across the North Atlantic for air fares, beginning October 1, 1951, reflects the action, in general, taken in Bermuda by the Sixth Meeting of the Composite and Joint Traffic Conferences of the International Air Transport Association.

In some areas fares were not increased, and plans were made for the introduction in October 1952 of low-fare tourist service, notably across the North Atlantic and between London and South Africa. The Conference decided to continue the popular winter excursion fares across the North Atlantic and to encourage student travel between their homes and college, 50% reduction will be granted to students up to the age of 26 years.

Mr. R.E.S. Deichler, Chairman (Vice President, American Airlines) stated that a review of operating costs of the carriers, representing 65 airlines from 42 nations, shows an average increase of operating expenses in the excess of 20%. He stated that the fare increase did not reflect these higher costs of gasoline and oil, salaries, materials and government fees to the full extent, because the airlines of the world had increased efficiency and business sufficiently to off-set the inflationary increase in expenses.

The Bermuda Conference was a milestone in the achievement of uniformity and standardization of services to the public. For the first time in the history of air transportation has the international air traffic between the countries of North, Central and South America been brought under a uniform fares and rates pattern. The operators serving this area were able to achieve this agreement without disturbing the present level of fares and rates, thereby assuring to the public a continued high standard of service at no increase in cost. The ability of operators to come to this agreement, which has been sought for a number of years, is further proof that international co-ordination in air transport is well on it way to perfection.

The sixty-five Member carriers, representing all leading international airlines of the world, and aggregating more than half a million route air miles also perfected the standard practices of tickets, reservations, baggage handling and cargo procedures to a point never before considered, so that travel and shipment by air on international flights becomes convenient and easier for the public the world over. On the other hand the Conferences permitted the flexibility necessary in certain special areas where local conditions required some change in the application of the rules.

All traffic agreements made by the Members of I.A.T.A. are subject to approval by Governments before they may become effective.

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Appendix "B"

TRAFFIC CONFERENCE 1

Committee Membership

Agency
(Approval of Agencies and Their Administration)

Member	Company	Alternate
P. Rousselle	AF	
D.L. Urquhart	AA	Frank Baker
Juan Ucros P.	AVIANCA	J. de Brigard
C. R. Beattie (Vice-Chairman)	BNF	A. S. Aldrige
H. F. Good	BOAC	
K. J. Howe	CAB	
C. W. Budd	CPAL	
Shaun Mahoney	KLM	
S. Aldunate Videla	LAN	
H. . Held	LTV	V. B. Chataing
William A. Perry	NAL	
L. R. Kinports	NWA	C. R. Hussey
N. T. Blake	PAA	
R. de Murias	PANAGRA	
H. P. Heim	PAL	
R. C. Hardon	PAL	
Stir B. Anderson	SAS	
L. Michaelis	SAB	A. J. Butler and I. Kondakis
F. Merry del Val	SERVICOS CRUZEIRO	
R. E. Deyman	TCA	G. E. Gray
E. Sullivan (Chairman)	TWA	
K. P. Hughes	UAL	

Cost
(Analysis of Operating Costs

Member	Company	Alternate
H. J. Lecleur	AF	
J. B. Scott (Chairman)	BOAC	
C. C. Adams	BNF	
T. F. Hambleton	CAB	
J. C. Gilmer	CPAL	
S. Aldunate Videla	LAN	
J. E. Mariner	NWA	
J. H. Melowet	PANAGRA	
R. J. Ferguson	PAA	L. S. Hiester
J. Dillenbeck	SAS	
T. Brabant	SAB	F. J. Martens
M. S. Pacheco	SERVICOS CRUZEIRO	
R. S. Harvey	TCA	N. E. Taylor
. McCurdy	TWA	

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Appendix "W"
(Continued)

TRAFFIC CONFERENCE 1

Committee Membership

Fares, Rates, Charges & Schedules

Member	Company	Alternate
M. J. Lesieur	AF	
J. Mahoney	AA	
L. A. Person	BNF	
L. J. Rashbrook	BOAC	M. M. Clarke
L. J. Priester	CAS	
C. W. Budd	CPA L	M. t. Stamp
J. W. Cross	KLM	
Sergio Aldunate Videla	LAN	
S. Meiman	SAS	
R. Teichhols	PAN	
G. G. Mason	PANAGRA	
W. R. Stevens	PAA	
H. Gyllensward	SAS	J. Church
F. J. Martens	SAS	
O. Breyer	SERVICOS CHEQUERO	
J. Lane (Vice Chairman)	TCA	
J. R. Burch (Chairman)	TWA	

[fol. 4523]

TRAFFIC CONFERENCE 2

Committee Membership

Air Guide

Member	Company	Alternate
G. Delclaux	AF	
J. P. van der Hayden	KLM	
G. E. Kotby	MISR	
W. B. Pratt	SAA	
J. C. van Cutsem	SAB	
R. Schultz	SAS	
J. R. Burch	TWA	

Agency
(Approval of Agencies and their Administration)

Member	Company
J. N. Beaford (Chairman	AF
H. J. ... Hill	BOAC
... C. Hughes	CAA
R. A. R. Wieland	CDT
B. Meguerditche	DNL
... Honne	KLM
J. W. Meijer	MISR
M. F. Raafat	PAA
H. P. Hoim	PAB
E. Schoueri	SAB
... Cliquet	SAS
J. T. Pratt	SWISSAIR
F. Kreis	TWA
H. J. Verderber	

Cost
(Analysis of Operating Costs)

Member	Company
J. B. Scott (Chairman)	BOAC
All Conference Members	

Appendix "BB"
(Continued)

TRAFFIC CONFERENCE 2

Committee Membership

Fares, Rates, Charges & Schedules

Member	Company	Alternate
G. Delclaux	AF	
S. F. Wheatcroft (Chairman)	BEA	
L. W. Rashbrook	BOAC	
V. Mathisen	DDL	
J. W. Cross	KLM	
O. E. Kolby	SILSR	
W. R. Stevens	PAA	
E. Schoeneri	PAB	
W. B. Pratt	SAA	
J. C. van Cuteem	SAB	
W. Imhof	SWISSAIR	
J. R. Baroh	TWA	

TRAFFIC CONFERENCE)

Committee Membership

Agency
(Approval of Agencies and their Administration)

Member	Company	Alternate
S. R. Knight	AIRCZY	
. Evrard	AF	
J. Minchan	BCPA	
... C. Hughes (Chairman)	BOAC	
... W. Budd	CPAL	
J. W. Meijer	KLM	
J. Farrell	NWA	
H. D. Yates	NZAC	
H. P. Heim	PAA	
C. N. Biondi	PAL	
N. D. Jones	QEA	
T. Petersen	SAS	
H. M. Denton	TEAL	
E. Sullivan	TWA	

Cost
(Analysis of Operating Costs)

Member	Company
P. Hebrard	AF
... Lowe	BCPA
J. B. Scott	BOAC
J. C. Gilmer	CPAL
J. ... Mariner (Chairman)	NWA
R. G. Ferguson	PAA
R. Igoa	PAL
F. C. Derham	QEA
D. W. Banks	TEAL
W. McCurdy	TWA

Fares, Rates, Charges & Schedules

Member	Company	Alternate
P. Hebrard	AF	
E. V. Wall	BCPA	
L. W. Rashbrook	BOAC	
C. W. Budd	CPAL	M. R. Stamp
J. V. Croes	KLM	
J. W. Mariner (Chairman)	NWA	
H. D. Yates	NZAC	
W. R. Stevens (Vice-Chairman)	PAA	
C. N. Biondi	PAL	
T. W. Roff	QEA	
H. M. Denton	TEAL	
J. R. Baroh	TWA	

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PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 429

Orders
Serial Numbers E-5623

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 17th day of August, 1951

Agreements C.A.B. Nos. 5326 R-1, 3, 5-8, 11-17, 25, 27, 29-39, 41-44, 46-48, 50, 51, 53, 54, 58-88, 98-105, 107, 120-125, 134, 135, 142, 143

In the matter of certain resolutions adopted at Traffic Conference Meetings of the International Air Transport Association at Bermuda between

PAN AMERICAN WORLD AIRWAYS, INC., VARIOUS AIR CARRIERS, FOREIGN AIR CARRIERS, AND OTHER CARRIERS

relating to rate matters

ORDER

There has been filed with the Board pursuant to Section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain agreements between various air carriers, foreign air carriers, and other carriers embodied in resolutions of the Traffic Conference of the International Air Transport Association at meetings in Bermuda in May 1951 evidenced by the above designated agreement numbers.

In order to clarify the relationship between Board action on IATA agreements and Board action with respect to similar subjects in other Board tariff and rate proceedings, the Board believes it appropriate, prior to a specific consideration of the agreements now before it, to point out some of

the factors which must be considered in passing on IATA agreements which do not apply in the case of Board action with respect to tariffs in air transportation.

There are two basic factors which must enter into our consideration of IATA agreements. First, is the fact that the Board has no statutory authority over rate levels in foreign air transportation and lacks the statutory power to suspend tariffs for foreign transportation. Accordingly it may in some cases be less adverse to the public interest to approve an IATA agreement on rates, even though the rates agreed on fail to meet the standards of justness and reasonableness applicable to interstate and overseas air transportation, than to disapprove the agreement and leave the carriers free to file rates which depart to an even greater degree from these standards.

[fol. 4540] Second, it must be remembered that IATA is an organization of air carriers of many countries with varying national interests and differing concepts of transportation principles. It is obvious that such an organization cannot function without a large degree of mutual accommodation. If each government involved were to withhold approval of any agreement which did not in every way measure up to that government's conception of national interest and proper transportation principles no agreements could ever be reached. In the light of this situation the Board believes that it should be slow to disapprove agreements which do not apply in air transportation or adversely affect such transportation, even though the particular agreement may not accord with our national law or our concepts of proper transportation practice.

We believe that the foregoing discussion of some of the basic factors entering into our consideration of IATA agreements will serve to indicate that our action with respect thereto is of little relevance or precedent value in connection with rate and tariff proceedings involving air transportation, and also provide a background for the findings which follow.

After consideration of the above designated agreements[1] submitted for our approval we make the following findings with respect thereto.

[fol. 4541] 1. Subject to the general conditions that:

(a) Approval of any resolution herein shall not be deemed approval of the application to such resolution of any other resolution except to the extent permitted by any approval of such other resolution.

(b) No approval of any resolutions herein shall extend beyond the period during which Board approval of the "Provisions for the Resolution and Conduct of the Traffic Conference of the International Air Transport Association" is in effect.

(c) Approval of any effectiveness resolution is limited to the extent that it provides effective dates for other approved resolutions.

We do not find the following resolutions or portions of resolutions to be adverse to the public interest or in violation of the Civil Aeronautics Act.

---

[1] In order to simplify reference to the large number of resolutions involved, the following system has been adopted:

All IATA resolutions bearing the same IATA series number have been designated by the same R number under CAB agreement No. 5326. So, for example, the resolution on "Free Transportation—Personal" which applies in Conference 2, Conference 3 and Joint Conferences 23, and carries the IATA numbers 370 210, JT 23(8) 210 and 280 210 would be listed as follows:

IATA No.	C.A.B. No.	Title	Applicability
210	R-87	Free Transportation—Personal	2, 3, 2-3

Any reference to R-87 would be a reference to all resolutions bearing the IATA No. 210. If reference is made to the 210 series resolutions applying in specific Conferences e.g., Conference 2 and Joint Conferences 23, the reference would be R-87 (2; 2-3).

If the Application is indicated as "worldwide" it means the resolution applies in all seven Conferences i.e., 1, 2, 3, 1-2, 2-3, 3-1, and 1-2-3.

IATA No.	C.A.B. No.	Title	Applicability
001	R-1	Standard Effectiveness Resolution	Worldwide
001b	R-3	Escape Clause Effectiveness Resolution	Worldwide
001d	R-5	Special Effectiveness Resolution—Class B. Fares	2
001e	R-6	Special TC1 Effectiveness Resolution	1
001f	R-7	Special Effectiveness Resolution—Mid-Atlantic	1-2
014a	R-11	Construction Rule for Passenger Fares	Worldwide
014b	R-12	Construction Rule for Cargo Rates	Worldwide
014d	R-14	Special Construction Rule—Directional Fares and Rates	2
018	R-17	Proration of Involuntarily Rerouted Consignments	Worldwide
052	R-25	Conference 2 Fares and Rates	2
054b	R-29	Mid-Atlantic On and Off-Season Fares and Rates	1-2
[fol. 4542]			
054c	R-30	South Atlantic Fares and Rates	1-2
054d	R-31	South Atlantic Fares—Spanish	1-2
055	R-32	JT23 Fares and Rates	2-3
057	R-34	Sydney, Auckland and London Fares	1-2-3
102a	R-35	Passenger Expenses at Connecting Points	Worldwide
105	R-36	Cost of Ground Transportation	2, 3
150a	R-41	Round-Trip Discounts	Worldwide
151a	R-42	Circle-Trip Discounts	Worldwide
152a	R-43	Open-Jaw Trip Discounts	Worldwide

IATA No.	C.A.B. No.	Title	Applicability
152b	R-44	Filing of Open-Jaw Fares	Worldwide
154	R-46	Definition of Around-the-World-Trip	Worldwide
154a	R-47	Around-the-World-Trips	Worldwide
155	R-48	Excursion Fares	2, 3
155b	R-50	Mid Atlantic 17 Day Special Round-Trip Fares	1-2
155d	R-51	Special Round-Trip Fares	2
155g	R-53	Special Xmas Fares—India-Europe	2-3
156b	R-54	Passenger Night Fares	2
164	R-61	Off-Season Fares	3
164a	R-62	Off-Season Fares—Europe-Middle East and Return	2
164d	R-64	Off-Season Fares, South America-Europe	1-2
165	R-65	Special Round-Trip Europe-Persian Gulf	2
165a	R-66	Special Fares, Persian Gulf-Europe	2
165b	R-67	Special Fares, Persian Gulf-Europe	2
166	R-68	Family Fares	1, 2
167	R-69	Student Fares	2, 3, 1-2, 2-3, 3-1
167a	R-70	Student Nurses Fares	2
[fol. 4543]			
171	R-71	Special Winter Resident Fares, Paris-Italy	2
171a	R-72	Resident Fares—Colombo-Singapore	3
172	R-73	B Fares, Athens-Cairo	2
172d	R-74	B Fares, Damascus or Beirut-Istanbul	2
172e	R-75	B Fares, Athens-Beirut	2
172f	R-76	B Fares, Rome-Beirut	2

IATA C.A.B. No.	No.	Title	Applicability
172g	R-77	B Fares, Athens-Alexandria	2
172j	R-78	B Fares, Athens-Khartoum	2
172m	R-80	B Fares, Rome-Athens	2
201	R-83	Children's Fares—Amending	1
250	R-88	Sleeper Surcharge	1, 2, 3, 1-2, 2-3, 3-1
311	R-98	Baggage Excess Weight Charges	Worldwide
311a	R-99	Charges for Specific Baggage Items	2
501	R-100	Minimum Charges for Cargo	Worldwide
502a	R-101	Low Density Cargo	2
503	R-102	Charges in Relation to Value	Worldwide
504	R-103	Lower Charge in Higher Weight Category	Worldwide
511a	R-104	Livestock	2
512a	R-105	C.O.D. Service Charge	Worldwide
530	R-107	Quantity Discounts	Worldwide
560	R-120	Special Rate for Gold, Platinum and Platinum Metals	Worldwide
561	R-121	Newspapers and Periodicals	Worldwide
562	R-122	Carriage of Human Remains	2
630	R-123	Diplomatic Bags	1-2, 2-3, 3-1, 1-2-3
051	R-142	Conference 1 Fares and Rates	1
051a	R-143	Specified Local Currency Rates and Fares	1

[fol. 4544]

002c R-8 Revalidation Resolution 1, 2, 3, 1-2, 1-2-3, except for those portions as to which we find in finding paragraph 3 that action should be deferred.

056 R-33 Normal Fares and Rates 3-1, except for those portions as to which we find in paragraph 5 that action should be deferred.

2. Subject to the general conditions in paragraph 1 we do not find the following resolutions or portions of resolutions to be adverse to the public interest or in violation of the Civil Aeronautics Act provided that this finding as to each resolution or portion of a resolution, or group of resolutions is subject to the conditions specified thereunder.

(a) 053 R-27 Normal Fares and Rates 3

(1) That proposed fares for regional services or regional operators shall apply only on two engine equipment.

(2) That such fares shall be available to any carrier using such equipment.

(3) That such fares are not to be used to promote combinations with through fares or construct any through fares.

(4) That the publishing of such fares in tariffs or time tables and the advertising and sale of tickets based on such fares is restricted to India, Ceylon and Pakistan.

(b) 014c R-13 Meeting Special Fares in other areas 2-3, 3-1, 1-2-3

That except with respect to the described substitution of continental tourist or coach service for transatlantic tourist service, the reduced fare is applied with the same restrictions that may be applicable to the fare being equalized.

(c) 017 R-16 Proration of Joint Fares and Rates Worldwide

That approval of this resolution does not constitute approval of any method of apportioning rates other than on a pro rata basis and that any agreement concluded by United States air carriers providing for apportionment upon any other basis shall be filed with the Board for review and action thereon.

(d) 115 R-37 Meeting Rates and Practices 1

That the notice referred to in Paragraph 3(c) of the resolution be circulated to all Members and

[fol. 4545] that air carrier Members file with the Board all notices received and sent pursuant to this resolution within 5 days from the date such notices are received or sent, or alternatively, arrange that the Conference Secretary send such notices to the Board at the time of circulation to the Members.

(e) 115a R-38 Meeting non-IATA competition in Middle East 2

115b R-39 Meeting non-IATA competition India-Africa 2-3

172k R-79 B-Fares in the Middle East 2

That air carrier Members file with the Board copies of all notices and protests received and sent pursuant to this resolution within 5 days from the date such notices or protests are received or sent, or, alternatively, arrange that the Conference Secretary send such notices and protests to the Board at the time of circulation to the Members.

(f) 159 R-58 Creative Fares 1, 2, 2-3

159a R-59 Special Round, Circle, Open-Jaw Trip Fares 3, 3-1

163 R-60 Special Event Fares 2, 2-3

(1) (a) That air carrier Members file with the Board copies of all notices and protests received and sent pursuant to this resolution within 5 days from the date such notices or protests are received or sent; or (b) alternatively, arrange that the Conference Secretary send such notices and protests to the Board at the time of circulation to the Members.

(2) That no proposed fare is to become effective if the Board should disapprove it within 35 days from the date of circulation of the original notice by the Conference Secretary (if (1)(*a*) above is employed) or within 20 days (if (1)(*b*) above is employed).

(g) 139 R-58(1) Creative Fares 1

That the first sentence of Note (1) shall be inapplicable to the resolution.

(h) 180 R-81(2) Africa Europe Tourist Service Program 2

That this tourist service program shall not become effective unless the Board approves the decision of the Conference required by paragraphs 3 and 4 of this resolution.

[fol. 4546]

(i) 200 R-82 Free and Reduced Fare Transportation Worldwide

That approval of this resolution by the Board shall not be construed as:

(a) an exemption from the requirements of filing tariff provisions as a condition precedent under Section 403 of the Civil Aeronautics Act, to the issuance of passes to any person described in the said resolution;

(b) a determination as to whether a violation of Section 404 of the Civil Aeronautics Act will result from the issuance of a pass to any person named in the said resolution pursuant to such resolution whether or not tariff provisions applicable hereto have been previously filed with the Board;

(c) an acceptance by the Board of any of the definitions or terms used in the said resolution.

(j) 810e R-134 Inclusive Tours Initiated by Producers 2

That reasonable modifications of a tour are limited to minor adjustments, involve no extra expense to the carrier and are applied alike to all passengers.

(k) 164c R-63 Off-Season Fares, India, Pakistan, Ceylon, Europe 2-3

Except as to paragraph (c) and (d) in which we find in paragraph 4 that action should be deferred,

That paragraph (h) thereof be construed to make the fares applicable to those points in Europe other than those listed in Appendix A for which the normal specified or constructed fares are lower than the normal specified or constructed fares to the European points listed in Appendix A.

3. We find that action should be deferred pending final Board action in the Free and Reduced Rate Transportation case, Docket No. 2737 et al on

204	R-85	Free or Reduced Fares for Tour Conductors	Worldwide
002e	R-8	Revalidation Resolution	1, 2, 3, 1-2, 1-2-3

insofar as it revalidates Resolutions 130/203, 250/263, 340/203 and JT 123 (3) 203, Reduced Fares for Agents.

4. We find that the resident fare provisions of paragraphs (c) and (d) of the following resolution may result in unjust discrimination and be adverse to the public in-
[fol. 4547] terest and that action should be deferred on said paragraphs 164c R-63 Off-Season Fares, India, Pakistan, Ceylon, Europe 2-3

5. We find that the following resolution may be adverse to the public interest by agreeing on uneconomically low cargo rates from the Orient and that action should be deferred thereon:

(a) Insofar as it would commonrate North American points other than the West Coast gateways with respect to cargo transportation to the Orient across the Pacific;

(b) Insofar as it would commonrate North American points other than the West Coast gateways and New York with respect to cargo transportation from the Orient across the Pacific;

(c) Insofar as it specifies cargo rates to New York from points in the Orient across the Pacific lower than required to equalize with cargo rates to New York from points in the Orient across the Atlantic, and provides a basis for construction under the provision of resolution JT31 (8) 044b of cargo rates from points in the Orient to any North

American point other than the West Coast gateways or New York which are lower than the lowest combination of rates available to such point by combining the rates from such points to a West Coast gateway or New York and the rates from the West Coast gateway or New York to points in the Orient.

056	R-33	Normal Fares and Rates	3-1

6. We find that the following resolutions result in agreements establishing rates or charges to be quoted or charged any nation for the transportation of mail and that action [fol. 4548] thereon should be deferred because participation therein by any United States air carrier would violate the condition on such air carrier participation in IATA traffic conferences imposed by Order Serial No. E-3888, dated February 9, 1950.

652	R-124	Air Mail Conference UPU/IATA	Worldwide
655	R-125	Standard Postal Distances for Foreign Air Mail	Worldwide

7. We find that the following resolution may be adverse to the public interest in permitting the furnishing of first class service at tourist or coach fare and that action should be deferred thereon.

014e	R-15	Special Canadian Construction Rule	1-2, 1-2-3

8. We find that the following resolutions may be adverse to the public interest in that they promote uneconomic competition through permitting the furnishing of free and reduced rate transportation and that action should be deferred thereon.

203b	R-84	Educational Tours for Agents	2
209	R-86	Free Transportation—Public Relations	2, 3, 2-3
210	R-87	Free Transportation—Personal	2, 3, 2-3

9. We find that the following resolution provides for fares in air transportation which may be unjustly discriminatory and may result in uneconomic rate reductions; that such resolution may be adverse to the public interest

and in violation of the Civil Aeronautics Act; and that action should be deferred thereon:

810g R-135 Air Tour Construction Fares

Accordingly, IT IS ORDERED THAT:

1. The agreements embodied in the resolutions or portions of resolutions listed in finding paragraphs 1 and 2 be, and they hereby are, approved subject to the conditions, provisions, or limitations specified with respect to each in said finding paragraphs;

[fol. 4549]

2. Action on the agreements embodied in the resolutions listed in finding paragraph 3 be deferred pending final Board action in the Free or Reduced Rate Transportation Case, Docket No. 2737 et al;

3. Action on the agreements embodied in the resolutions or portions of resolutions listed in finding paragraphs 4 through 9 be deferred.

IT IS FURTHER ORDERED THAT:

1. Any air carrier party to any resolution which has been approved above subject to a condition, provision, or limitation may within 15 days of the date hereof petition for reconsideration or modification of such condition, provision or limitation, which petition shall be accompanied by the reasons and data in support thereof.

2. Any air carrier party to a resolution as to which action has been deferred in whole or in part, (other than a resolution listed in finding paragraph 3) may within 15 days of the date hereof submit in writing such reasons as it deems appropriate for not disapproving such resolution or portions thereof together with supporting data, and may, in addition, request a hearing thereon.[2]

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

[2] If no protest is received within 15 days from the date of this order with respect to any such resolution or any part of any such resolution, the Board will by subsequent order disapprove said resolution.

[fol. 4549a]

United States District Court
SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

against

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.

Defendants.

[redacted]

Statistical Exhibits

Submitted By

PAN AMERICAN WORLD AIRWAYS, INC.

Volume I

[fol. 4550]

PAN AMERICAN WORLD AIRWAYS, INC.

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Exhibit No.	Description
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PS-3	Pan American World Airways, Inc. History Of Miami-Canal Zone Operations. Years 1930 - 1958.
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PS-10	Pan American World Airways, Inc. Average Tons Of Cargo And Mail Per Plane Mile Flown On PAA's Miami-Balboa Route. Years 1936 - 1945.
PS-11	Pan American World Airways, Inc. Passenger Load Per Plane Mile Flown On PAA's East Coast Route (Only Sectors South Of Port Of Spain Included) March And September Combined.
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PAN AMERICAN WORLD AIRWAYS, INC.

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[fol. 4552]

Pan American World Airways Inc.,
Statistical Exhibit 1 .

Pan American World Airways, Inc.
Description Of Aircraft Used By Latin American Division
Years 1929 - 1958

Aircraft Model	Number of Engines	Passenger Seating Capacity	Cruising Speed
Fokker C-2	3	10	85
Fokker F-7	3	10	85
Loening	1	4	85
Keystone	3	10	85
Fairchild FC-2	1	2	90
Sikorsky D-36	2	6	95
Fokker F-10	3	12	115
Fokker F-10A	3	12	115
Ford 5-AT	3	12	115
Fairchild 71	1	5	110
Sikorsky S-38	2	8	105
Commodore	2	20	101
Sikorsky S-41	2	10	100
Sikorsky S-40	4	36	110
Sikorsky S-42	4	28	155
Sikorsky S-42B	4	32	150
Sikorsky S-43	2	14	150
Lockheed Electras	2	8	160
Douglas DC-2	2	14	165
Douglas DC-3	2	21	175
Douglas DC-3A	2	21	175
Boeing B-307	4	33	185
Fleetster	1	4	110
Martin M-130	4	32	130
Boeing B-377	4	52-107	260
Douglas DC-6A	4	57-106	290
Douglas DC-6B	4	57-109	290
Douglas DC-7B	4	58-88	335
Douglas DC-7C	4	58-88	325
Douglas DC-4	4	52-78	210
Douglas DC-6	4	55-70	280
Lockheed Constellation	4	44-68	270
Convair 240	2	40	275
Curtiss C-46	2	All cargo	215

Source: CAB Docket No. 779, Exhibit No. P-20.
CAB Docket No. 9921 et al. Exhibit No. PA-10.

[fol. 4553]

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 2

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1928
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Fokker	F-7	1	Key West-Havana, Miami-Havana
Fokker	C-7	1	Key West-Havana, Miami-Havana
Fokker	F-10A	2	Miami-Havana
Sikorsky	S-38	2	Key West-Havana, Miami-Havana
Fairchild	FC-2	1	Training
Loening		2	
Ford	5-AT	1	Not Used
Keystone		1	Not Used
Total		11	

Year 1929
Eastern Division

Fokker	F-10A	10	Miami-San Juan, Miami-Havana
Fokker	F-10	1	Miami-San Juan, Miami-Havana
Sikorsky	S-38	14	Miami-Nassau, Miami-Havana, Cristobal-Guayaquil, Cristobal-Curacao, Miami-Havana-Belize-Cristobal (Jan.-March), Miami-Managua (Apr.-Nov.), Miami-Tela (Dec.), San Juan-Port of Spain-Paramaribo (beg. in Sept.)
Ford	5-AT	4	Managua-Cristobal (Apr.-Nov.), Havana-Santiago, Cuba-Cristobal, Tela (Dec.)

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of
Route on wh[illegible]craft Types Used

Year 1930
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Fokker	F-10A	7	Miami-San Juan
Fokker	F-10	1	Miami-San Juan
Sikorsky	S-38	19	Miami-Tela (Oct.-Dec.), Cristobal-Curacao, Cristobal-La Guaira (Oct.-Dec.), San Juan-Paramaribo until June 1930, San Juan-Rio beg. in June until October, Havana-Camaguey (July-Nov.), Miami-Nassau, Miami-Havana-Puerto Cabezas-Cristobal until 12/2/30
Sikorsky	S-41	1	
Ford	5-AT	6	San Lorenzo-Cristobal, Tela-Cristobal. Two used by Panair do Brasil
Stearman		2	Trainihg, San Jose-Puntarenas until 8/11/30
Fairchild		4	San Jose-Puntarenas after 8/11/30
Fleetster		5	Stored at B. A. - taken over from NYRBA
Fleet		3	Stored at B. A. - taken over from NYRBA
Commodore		10	Miami-Rio in October and November. Thereafter San Juan-Port of Spain-Belem only*, Miami-Cienfuegos-Kingston-Cristobal beginning 12/2/30
Lockheed		2	Used by Panair do Brasil
Total		60	

* After Nov. 1930, the Belem-Rio route was operated by Panair do Brasil.

[fol. 4555]

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1931
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Fokker	F-10A	5	Miami-San Juan, Miami-Havana
Fokker	F-10	1	Miami-San Juan, Miami-Havana
Sikorsky	S-38	14	Miami-San Lorenzo, after 4/29/31 Miami-Salvador, Miami-Belem, Cristobal-La Guaira, Miami-Nassau, beginning 5/1/31 Barranquilla-Port of Spain
Sikorsky	S-40	2	Miami-Kingston-Barranquilla-Cristobal, Miami-San Juan, proving flights (Nov.-De.)
Sikorsky	S-41	2	Miami-Belem
Ford	5-AT	4	San Lorenzo-Cristobal
Stearman		1	Training
Fairchild		3	Training, San Jose-Puntarenas
Fleetster		5	Stored at B. A. -taken over from NYRBA
Commodore		8	Miami-Barranquilla-Cristobal, Miami-Belem, beginning 12/19/31 Miami-Havana, Miami-Nassau
	Total	45	

Year 1932
Eastern Division

Fokker	F-10	1	Miami-San Juan
Sikorsky	S-38	10	Miami-Merida-Salvador, San Juan-Belem, San Juan-Kingston, San Juan-Ponce, San Juan-St. Croix, Barranquilla-Port of Spain, Miami-Nassau
Sikorsky	S-40	3	Miami-San Juan, Miami-Havana, Miami-Barranquilla-Cristobal (June-Dec.)

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Type Used

Year 1932 (Cont'd.)
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-41	2	Miami-Merida-Salvador, Miami-Belem, Barranquilla-Port of Spain
Fairchild		1	Training
Fleetster		5	Stored
Commodore		8	Miami-Belem, Miami-Barranquilla-Cristobal, Miami-Havana, Miami-Nassau
Eastern Div. Total		30	

Western Division*

Ford	5-AT	4	Brownsville-Cristobal
Fokker	F-10A	4	Used in Mexico by Aerovias Centrales
Sikorsky	S-38	2	Merida-San Salvador, Cristobal-Medellin
Fairchild		3	Brownsville-Cristobal
Stearman		1	Training
Western Div. Total		14	
Grand Total		44	

*Note: Prior to 1932 all Western Division Flight Equipment was carried on the books of Compania Mexicana de Aviacion.

[fol. 4557]

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1933

Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	7	Miami-Merida; after 2/1/33 Havana-Merida, San Juan-Belem, Barranquilla-Port of Spain, San Juan-Kingston, after 2/6/33 Kingston-St. Domingo, San Juan-St. Croix
Sikorsky	S-40	3	Miami-Barranquilla-Cristobal, Miami-San Juan, Miami-Havana, Miami-Nassau (Dec.)
Sikorsky	S-41	2	Miami-Merida, after 2/1/33 Havana-Merida, San Juan-Belem, Barranquilla-Port of Spain, Miami-Nassau
Commodore		8	Miami-Barranquilla-Cristobal, Miami-Belem, Miami-Havana, Miami-Nassau, after 12/4/33 Tampa-Havana
Eastern Division Total		20	

Western Division

Ford	5-AT	5	Brownsville-Cristobal
Sikorsky	S-38	2	Merida-San Salvador, Cristobal-Medellin.
Fairchild	71	1	Training
Stearman		1	Training
Western Division Total		9	
Grand Total		29	

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1934
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	8	Miami-Merida, Kingston-Sto. Domingo, Port of Spain-Barranquilla, Miami-Havana, Miami-Nassau (June)
Sikorsky	S-40	3	Miami-Barranquilla, Miami-San Juan, Miami-Havana, Miami-Nassau
Sikorsky	S-41	2	Miami-Merida, San Juan-Belem, Port of Spain-Barranquilla, Miami-Nassau (May)
Sikorsky	S-42	2	Miami-San Juan
Commodore		8	Miami-Barranquilla-Cristobal, Miami-Belem, Miami-Havana, Miami-Nassau, Tampa-Havana.
Clark	GA-43	1	Not used
Eastern Div. Total		24	

Western Division

Ford	5-AT	4	Brownsville-Cristobal
Sikorsky	S-38	1	Merida-San Salvador
Fairchild	71	1	Training
Douglas	DC-2	3	Brownsville-Mexico City
Western Div. Total		9	
Grand Total		33	

[fol. 4559]

PAN AMERICAN

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1935
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	7	Miami-Merida, Port of Spain-Barranquilla (Jan.-Nov.), beg. in May Maracaibo-Port of Spain, Kingston-Sto. Domingo, Miami-Havana, Rio-Buenos Aires (Nov.)
Sikorsky	S-40	3	Miami-Baranquilla, Miami-Havana, Miami-Nassau
Sikorsky	S-41	2	San Juan-Rio, Port of Spain-Barranquilla
Sikorsky	S-42	3	Miami-San Juan, (1st 6 months), Miami-Belem beg. Nov. 1,. 1935 Miami-Buenos Aires
Commodore		6	Miami-Barranquilla-Cristobal, Miami-Belem, Miami-Havana, Miami-Nassau
Fairchild		2	Training
Lockheed Electra		2	Leased to Cubana
Eastern Division Total		25	

Western Division

Ford	5-AT	1	Brownsville-Cristobal
Douglas	DC-2	7	Brownsville-Cristobal
Commodore		1	Cristobal, Standby
Lockheed Electra		2	Leased to Aerovias Centrales, S. A. Used on Los Angeles-Mexico route
Western Division Total		11	
Grand Total		36	

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1936
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	5	Maracaibo-Port of Spain, Havana-Merida-Belize, Rio-B. A. (5 months), Kingston-Sto. Domingo (8 months), Kingston-Port au Prince, Kingston-San Juan
Sikorsky	S-40	3	Miami-Barranquilla, Miami-Nassau, Miami-Havana
Sikorsky	S-41	2	Barranquilla-Port of Spain
Sikorsky	S-42	6	Miami-Barranquilla, Miami-Buenos Aires
Sikorsky	S-43	6	Miami-Barranquilla-Cristobal, Barranquilla-Port of Spain, Miami-San Juan (1 mo.), Miami-Buenos Aires (1 mo.), Miami-Rio (3 mo.)
Commodore		5	Miami-Nassau, Miami-Havana, Miami-Barranquilla (1st half year); Miami-Buenos Aires (1st. half of year), Miami-San Juan(2nd half of year)
Fairchild		1	Training
Lockheed Electra		3	Leased to Cubana
Clark	GA-43	1	Not used
Eastern Div. Total		32	

Western Division

Ford	5-AT	3	Guatemala-Cristobal
Douglas	DC-2	5	Brownsville-Cristobal
Fairchild	71	1	Training
Western Div. Total		9	
Grand Total		41	

[fol. 4561]

PS 2
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Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1937
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	2	Miami-Merida-Belize
Sikorsky	S-40	3	Miami-Nassau, Miami-Havana
Sikorsky	S-41	2	Miami-Merida-Belize (Sept.-Dec.)
Sikorsky	S-42	7	Miami-Barranquilla-Cristobal, Kingston-Cristobal (Dec. only), Miami-Rio A. In Dec. Miami-Rio only. Miami-Havana, (Jan.-May).
Sikorsky	S-43	6	Cristobal-Port of Spain, Miami-Belem (first 1/2 of yr.) Miami-Rio(last 1/2 of yr.)
Commodore		3	Miami-Nassau, San Juan-Kingston
Douglas	DC-3	2	Rio-Buenos Aires
Lockheed Electra		4	Leased to Cubana
Eastern Div. Total		29	

Western Division

Ford	5-AT	2	Tapachula-Cristobal
Douglas	DC-2	4	Brownsville-Cristobal
Douglas	DC-3	4	Brownsville-Cristobal, Cristobal-La Guaira
Fairchild	71	1	Training
Commodore		1	Standby
Western Div. Total		12	
Grand Total		41	

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1938
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	2	Miami-Merida-Belize. Training
Sikorsky	S-40	3	Miami-Nassau, Miami-Havana. Training
Sikorsky	S-41	1	Miami-Merida. Training.
Sikorsky	S-42	7	Miami-Barranquilla-Cristobal, Miami-Kingston-Cristobal, Miami-Havana, Miami-Rio. Beg. in June Miami-Maracaibo
Sikorsky	S-43	6	La Guaira-Port of Spain, Miami-Rio, San Juan-Kingston
Commodore		4	Miami-Cat Cay. Training
Lockheed Electra		3	Leased to Cubana
Douglas	DC-3	2	Rio-Asuncion-Buenos Aires, Rio-Porto Alegre-B. A.
Eastern Div. Total		28	

Western Division

Ford	5-AT	1	Cristobal-Panama City, Training
Douglas	DC-2	4	Brownsville-Cristobal-Barranquilla
Douglas	DC-3	3	Brownsville-Cristobal-La Guaira
Fairchild	71	1	Training
Western Div. Total		9	
Grand Total		37	

[fol. 4563]

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1939

Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	2	Training
Sikorsky	S-40	3	Miami-Nassau, Miami-Havana
Sikorsky	S-41	1	Miami-Merida(last 1/2 of year), Training
Sikorsky	S-42	7	Miami-Kingston-Barranquilla, Kingston-Cristobal, Miami-Havana, Miami-Rio, Miami-Maracaibo
Sikorsky	S-43	5	Miami-Rio, Miami-Merida, La Guaira-Port of Spain, Kingston-San Juan
Commodore		3	Miami-Cat Cay - Training
Lockheed Electra		3	Leased to Guiana
Douglas	DC-3	2	Rio-Asuncion, Buenos Aires, Rio-Porto Alegre-Buenos Aires
Eastern Div. Total		26	

Western Division

Ford	5-AT	1	Cristobal-Panama City - Training
Douglas	DC-2	3	Brownsville-Cristobal
Douglas	DC-3	4	Brownsville-Cristobal-La Guaira
Fairchild	71	1	Training
Western Div. Total		9	

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1940
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	2	Training
Sikorsky	S-40	3	Miami-Nassau, Miami-Havana (Jan.-Aug.), Training
Sikorsky	S-42	7	Miami-Kingston-Barranquilla, (Jan.-Aug.) Kingston-Cristobal, Miami-Havana, Miami-Maracaibo, Miami-Rio (Until Aug.), Miami-San Juan
Sikorsky	S-43	4	Miami-Rio, Kingston-San Juan, Miami-Merida (May-Dec.)
Commodore		3	Miami-Cat Cay, Training, Beginning Oct. 1940 Navigation School
Douglas	DC-3A	4	Rio-Asuncion-Buenos Aires, Rio-Porto Alegre-Buenos Aires, Belem-Barreiras-Rio (Sept.-Dec.), Training
Boeing	B-307	3	(Sept.-Oct.) Miami-Cristobal, (Nov.-Dec.) Miami-Balboa, (Jul.-Aug.) Miami-Barranqu Mia mi-San Juan (Aug.), Miami-Belem (Sept.-De..)
Stinson	SR-10J3	1	Training
	Eastern Div. Total	27	

Western Division

Douglas	DC-3 &		Brownsville-Cristobal-LaGuaira Cristobal-

[fol. 4565]

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1940 (Cont'd.)
Western Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Stinson	SR-10J3	1	Training
Western Div. Total		11	
Grand Total		38	

Year 1941
Eastern Division

Sikorsky	S-38	1	Training
Sikorsky	S-40	3	Miami-Nassau (Jan.-May), Miami-Cat Cay, Navigation School
Sikorsky	S-42	6	Miami-Kingston-Barranquilla, Kingston-Cristobal (extra flights), Miami-San Juan, Miami-Havana (Jan.-June)
Sikorsky	S-43	4	Miami-Rio, Kingston-San Juan, Miami-Merida (Jan.-Feb.), Miami-Nassau
Commodore		5	Navigation School
Douglas	DC-3A	4	Training, Belem-Barreiras-Rio, Rio-Buenos Aires, Miami-Havana, (Jul.-Dec.), Miami-Merida (Feb.-Dec.), Miami-Nassau
Boeing	B-307	3	Miami-Balboa, Miami-Belem
Stinson	SR-10J3	1	Training
Rearwin		1	Training
Cessna	T-50	2	Training
Eastern Div. Total		35	

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1941 (Cont'd.)
Western Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Douglas	DC-3A	12	Brownsville-Cristobal-Port of Spain
Stinson	SR-10J3	1	Training
Cessna	T-50	1	Training
Western Div. Total		14	
Grand Total		49	

Year 1942
Eastern Division

Sikorsky	S-40	1	Navigation School
Sikorsky	S-42	4	Miami-Kingston-Barranquilla, Miami-San Juan Miami-Maracaibo (Jan.-Oct.), Miami-Nassau, one chartered to Defense Supplies Corporation
Sikorsky	S-43	2	Miami-Belem, Belem-Rio(Jan.-Aug.), San Juan-Kingston, Miami-Nassau
Commodore		4	Navigation School
Douglas	DC-3A	19	Miami-La Guaira (Oct.-Dec.), Miami-Havana, Miami-Nassau, Miami-Merida, Miami-San Juan, Miami-Rio(June-Dec.), Belem-Barreiras-Rio, Rio-Asuncion-Buenos Aires, Rio-Porto Alegre-Buenos Aires
Boeing	B-307	3	Miami-Belem(Jan. May), Miami-Balboa, Miami-San Juan (Jan.-Sept.)
Stinson	SR-10J3	5	Training
Cessna	T-50	2	Training
Lockheed Electra		1	Training

[fol. 4567]

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Par American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1942 (Cont'd.)
Western Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Douglas	DC-3A	10	Brownsville-Balboa-Port of Spain
Douglas	C-53	2	Brownsville-Balboa
Stinson	SR-10J3	2	Training
Cessna	T-50	1	Training
Western Div. Total		15	
Grand Total		56	

PAN AMERICAN
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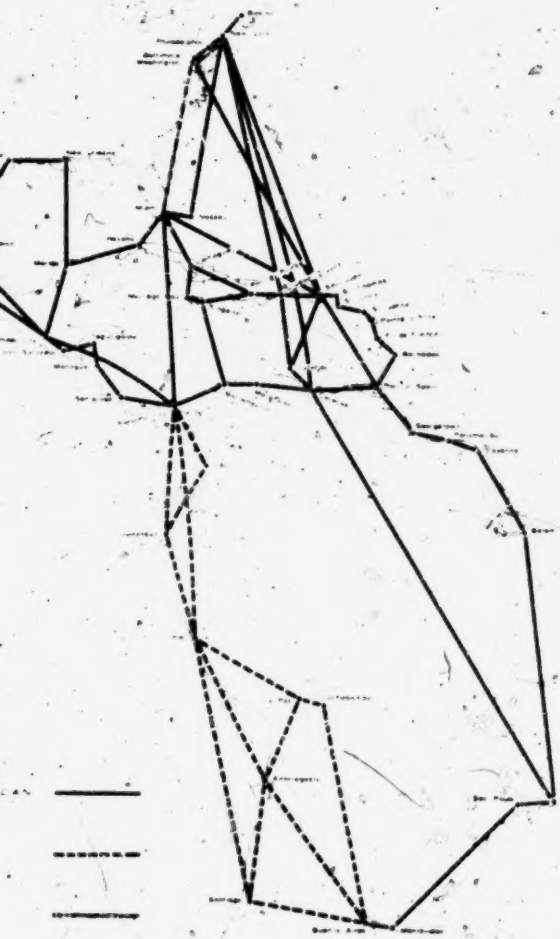
PAN AMERICAN - PANAGRA



PAN AMERICAN
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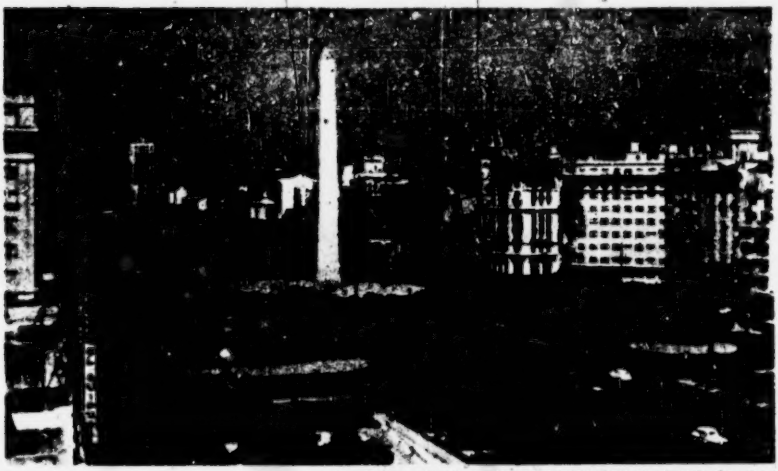
Pan American World Airways Int'l
Example of Through Service Advertising
1951



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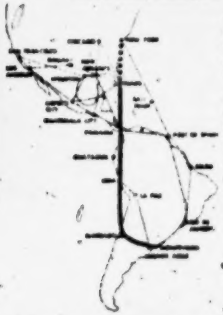

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Newspapers—1951

United States District Court
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

against

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.

Defendants.

PS-101 through PS-129

PAN AMERICAN WORLD AIRWAYS, INC.

STATISTICAL EXHIBITS

Prepared By

UNITED RESEARCH, INC.

CAMBRIDGE, MASSACHUSETTS

[fol. 4620]

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PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 101

Comparative Density Of Air Passenger Traffic Flow Over U. S. - South American Routes And Other Major Categories Of U. S. Air Routes
1957

	Revenue Passenger Miles Flown (000)	Route Miles Operated	Revenue Passenger-Miles per Route Mile per Day
Domestic Trunk Operations	24,499,510	60,599	917.8
Local Service Carriers	747,288	25,563	80.0
Foreign and Overseas Operations 1/	5,391,027	103,563	142.6
Pan American (LAD) 2/			
Within South America	143,442	5,517	71.2
South America plus Miami-Balboa Sector	212,185	6,683	87.0
Panagra	168,641	5,458	84.6
Braniff			
South of Balboa	45,317	4,887	25.4
International Division	92,381	7,092	35.7

1/ Exclusive of Pan American (LAD), Panagra, and Braniff (International).

2/ Revenue passenger miles determined from segment traffic data reported to ICAO for the months of March and September 1957. Data for these months are annualized by multiplying the sum of March and September by a factor of 6.

Source: Civil Aeronautics Board, Monthly Report of Air Carrier Traffic Statistics, December 1957.
ICAO Digest of Statistics, March and September, 1957.

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 102

Comparative Density Of Air Passenger Traffic Flow For Pan American (LAD), Panagra, Braniff (International) And Local Service Carriers

1957

Carrier	Revenue Pass. Miles (000)	Route Miles	RPM's per Route Miles per day
Southwest	70,000	1,172	163.6
Mohawk	79,587	1,348	161.8
Allegheny	76,845	1,658	127.0
Piedmont	82,656	1,871	121.0
North Central	10,350	2,365	120.4
Pan American (LAD) [1/] South America plus Miami-Balboa Sector	212,185	6,683	87.0
Panagra	168,641	5,458	84.6
Pan American (LAD) [1/] Within South America	143,442	5,517	71.2
West Coast	44,720	1,728	70.9
Bonanza	32,023	1,283	68.4
Ozark	62,941	2,762	62.4
Trans Texas	54,220	2,761	53.8
Frontier	57,620	2,976	53.0
Southern	37,518	1,949	52.7
Lake Central	25,171	1,448	47.6
Braniff International Division	92,381	7,092	35.7
Central	23,244	2,252	28.3
Braniff South of Balboa [1/]	45,317	4,887	25.4

[fol. 4624]

Changes In Income And Expenses Under Alternative
Three Carrier Route Patterns Between The U.S. And South America
Pan American (LAD)
1957

13/ Increased Passenger Revenue ($2,775,000) x 1957 PAA-LAD experienced per cent Advertising of Passenger Revenue (5.3%).
14/ Increased Total Revenue ($3,236,000) x 1957 PAA-LAD experienced per cent Commissions are of Passenger Revenue (5.0 per cent).
15/ Increase in Other Cash Expenses ($4,841,000) x 1957 PAA-LAD experienced per cent General and Administrative Expenses of Other Cash Expenses (5.3%).
16/ Three DC-7's @ $2,200,000 depreciated 7 years to 10 per cent residual ($848,571) plus Ground Equipment Depreciation on Exhibit PS-123 ($42,000).

Source. Form 41 Reports to CAB.

Comparative Density Of Air Passenger Traffic Flow
For Pan American (LAD), Panagra, Braniff
(International) And Local Service Carriers

1957

1/ Revenue passenger miles determined from segment traffic data reported to ICAO for the months of March and September 1957. Data for these months are annualized by multiplying the sum of March and September by a factor of 6.

Source Civil Aeronautics Board, Monthly Report Of Air Carrier Traffic Statistics, December 1957.

ICAO Digest Of Statistics, March and September 1957.

[fol. 4625]

Pan American World Airways Inc.,
Statistical Exhibit 103

Number Of U. S. Air Carriers
Serving South American Cities (Including Balboa)
And Volume Of Traffic Enplaned
1957

City 1/	No. of Enplaned Passengers	No. of U. S. Carriers Serving
Balboa, Canal Zone	89,918	2 2/
Caracas, Venezuela	48,784	2
Buenos Aires, Argentina	37,271	2 2/
Lima, Peru	23,131	2
Santiago, Chile	17,138	1
Quayaquil, Ecuador	15,597	2
*Quito, Ecuador	14,107	1
Rio de Janeiro, Brazil	12,982	2
La Paz, Bolivia	8,306	2
Sao Paulo, Brazil	7,658	2
Barranquilla, Colombia	7,455	1
Cali, Colombia	5,889	1
*Maracaibo, Venezuela	4,702	1
*Montevideo, Uruguay	4,374	1
*Asuncion, Paraguay	3,705	2
Santa Cruz, Bolivia	3,096	1
Cochabamba, Bolivia	2,732	1
Cuenca, Ecuador	2,683	1
Bogota, Colombia	2,567	1
Paramaribo, Surinam	2,083	1
Belem, Brazil	1,909	1
Talara, Peru	825	1
Cayenne, French Guiana	780	1
Medellin, Colombia	744	1
Manta, Ecuador	597	1
Antofagasta, Chile	564	1
Oruro, Bolivia	555	1
Porto Alegre, Brazil	537	1
San Ignacio, Bolivia	475	1
Arica, Chile	401	1
Concepcion, Bolivia	352	1
San Jose, Bolivia	331	1
Esmeralda, Ecuador	254	1
Robore, Bolivia	217	1
Puerto Suarez, Bolivia	196	1
Arequipa, Peru	77	1

Additional carriers authorized but not providing service

1/ Cities ranked in order of number of passengers enplaned by U. S. carriers

2/ Pan American and Panagra consolidated data

Source: Statistical Reports of CAB, Table 10 of Official CAB Route Maps

[fol. 4626]

PAN AMERICAN WORLD AIRWAYS INC., STATISTICAL EXHIBIT 104

Number Of U. S. Air Carriers Serving South American Cities (Including Balboa) And Volume Of Passenger Traffic Exchanged With The U. S.
1957

Cities	Passengers 1/	U. S. Carriers Serving
Caracas, Venezuela	43,092	2
Balboa, Canal Zone	36,336	2 2/
Buenos Aires, Argentina	19,116	2 2/
Lima, Peru	15,072	2
Rio de Janeiro, Brazil	9,234	2
*Maracaibo, Venezuela	9,234	1
Sao Paulo, Brazil	6,402	2
Bogota, Colombia	6,174	1
Santiago, Chile	4,830	1
Guayaquil, Ecuador	3,942	2
Cali, Colombia	3,210	1
*Quito, Ecuador	2,856	1
Barranquilla, Colombia	2,712	1
La Paz, Bolivia	2,010	2
*Montevideo, Uruguay	1,530	
Belem, Brazil	972	
Talara, Peru	870	
Paramaribo, Surinam	870	1
Medellin, Colombia	774	1
Antofagasta, Chile	702	1
*Asuncion, Paraguay	474	1
Cochabamba, Bolivia	294	1
Porto Alegre, Brazil	138	1
Oruro, Bolivia	126	1
Arica, Chile	66	1
Cayenne, Fr. Guiana	54	1
Arequipa, Peru	47	1
Santa Cruz, Bolivia	18	1
Cuenca, Ecuador	6	1
Concepcion, Bolivia	6	1

* Additional carrier authorized but not providing service.

1/ Number of annual passengers exchanged with U. S. points.

2/ Pan American and Panagra considered as one carrier.

Source: Civil Aeronautics Board, Airline Traffic Survey, March and September, 1957.

[fol. 4627]

Pan American World Airways Inc.,
Statistical Exhibit 105

Volume Of Air Passenger Traffic Between
The U. S. And Foreign Cities Receiving Service
From Two Or More U. S. Flag Carriers
1957

Between the U. S. and	No. of Passengers	No. of U. S. Carriers	No. of Passengers Per Carrier
Nassau, Bahamas	172,122	2	86,061
Montreal, Quebec	168,336	2	84,168
Hamilton, Bermuda	137,100	2	68,550
Havana, Cuba	301,734	5	60,347
Mexico City, Mexico	154,500	4	38,625
London, England	61,152	2	30,576
Paris, France	50,568	2	25,284
Rome, Italy	48,102	2	24,051
Caracas, Venezuela	43,692	2	21,846
Balboa, Canal Zone	36,336	2 1/	18,168
Frankfurt, Germany	30,732	2	15,366
Montego Bay, Jamaica	26,286	2	13,143
Tokyo, Japan	24,036	2	12,018
Shannon, Ireland	21,270	2	10,635
Port au Prince, Haiti	19,662	2	9,831
Buenos Aires, Argentina	19,116	2 1/	9,558
Lima, Peru	15,072	2	7,536
Edmonton, Alberta	14,346	2	7,173
Manila, Philippine Islands	13,278	2	6,639
Ciudad Trujillo, Dom. Rep.	15,402	3	5,134
Rio de Janeiro, Brazil	9,234	2	4,617
Sao Paulo, Brazil	6,402	2	3,201
Lisbon, Port.	6,036	2	3,018
Guayaquil, Ecuador	3,942	2	1,971
Santa Maria, Azores	2,106	2	1,053
La Paz, Bolivia	2,010	2	1,005
Gander, Newfoundland	1,830	2	915

Indicates city in South America or Canal Zone

1/ Pan American and Panagra considered as one carrier.

Source: Civil Aeronautics Board, Survey of Air Traffic, March and September, 1957.

[fol. 4628]

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 106

of 1 Page

Comparative Development Of Air Passenger Traffic Between The U. S. And South America And Between The U. S. And Other Major Geographic Areas Of The World
Fiscal Year 1957

Area	Number of Passengers Fiscal Year 1957 1/	Gross National Product 2/ (000,000)	Passe Milli Gros
South America (All Countries in South America Plus the Canal Zone)	272,055	$ 37,185	
Europe (Includes the United Kingdom, W. Germany, France, Scandanavia, and Italy)	755,977	200,614	
Australia and Asia (Includes the Philippine Islands, Japan, Australia, and India)	168,206	66,645	

1/ From Immigration and Naturalization Service Annual Report, 1957

2/ Gross National Product in millions of 1956 U. S. dollars.

Source: U. N. Statistical Yearbook, 1957.

Pan American World Airways, Inc
Example of Pan American-Panagra-National Advertising
of New York-Buenos Aires Interchange Service
1956

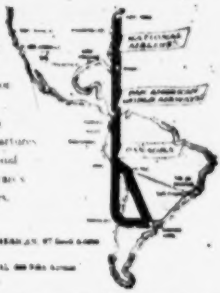
5 hours faster

than any other service from

New York to Buenos Aires

— and no change of plane

Your finest, fastest way to South America is by first class Star flights of *El Inter-Americano* DC 7B. Radar for smooth flight, day and night. Daily service. Now, with new excursion fares - 20% off your Travel Agent offers tours *at the lowest cost ever.* Fly now - Pay later! Convenient p.m. departures on the shortest possible way via National Airlines route to Miami, Pan American to Panama, Panagra c/to Buenos Aires.



National · Pan American · Panagra

National Airlines — Pan American World Airways — Pan American-Grace Airways

PAN AMERICAN
WORLD AIRWAYS INC

Pan American World Airways, Inc.
Example of Pan American-Panagra
Round South America Service Advertising
1958

30% off your fare...
low prices while you're there

Now's the time to Skycruise amazing South America

PANAGRA
PAN AMERICAN-GRACE AIRWAYS

PAN AMERICAN
PAN AMERICAN WORLD AIRWAYS

Pan American World Airways Inc., Statistical Exhibit 107

OPERATING RATIOS

Pan American (LAD), Panagra, and Braniff (International) and U. S. Domestic Trunk Lines

Total Operating Revenues (000) 1/

Year	Domestic Trunk Lines	Pan American (LAD)	Panagra	Braniff	PA, PG, BN Total
1947	$ 352,490	$ 58,578	$ 13,644		$ 72,222
1948	413,353	62,244	15,639	$ 1,130	79,013
1949	459,785	65,513	16,826	3,926	86,265
1950	524,109	59,989	15,288	5,664	80,941
1951	658,521	64,802	16,143	7,593	88,538
1952	768,015	69,785	17,310	8,778	95,873
1953	878,753	74,149	17,698	8,711	100,558
1954	976,218	77,046	18,717	9,629	105,444
1955	1,133,348	75,470	17,479	7,263	101,212
1956	1,262,881	88,039	20,005	7,538	115,582
1957	1,419,614	93,855	20,158	8,566	122,579
1947-1957	8,849,125	790,022	189,407	68,798	1,048,227

Total Operating Expenses (000)

1947	$ 373,390	$ 58,474	$ 15,491		$ 73,965
1948	411,278	59,420	14,803	$ 1,282	75,505
1949	435,157	61,824	15,408	3,921	81,153
1950	461,538	57,684	13,342	5,577	76,603
1951	552,581	65,080	14,485	7,708	87,273
1952	672,892	72,381	15,730	10,109	98,220
1953	790,421	68,625	16,095	9,112	93,832
1954	876,759	68,958	17,138	7,829	93,925
1955	1,010,063	72,838	17,072	7,762	97,672
1956	1,162,988	85,316	18,467	6,663	110,448
1957	1,377,576	95,279	19,444	7,888	123,111
1947-1957	8,126,643	766,381	177,475	67,851	1,011,707

Operating Ratio (%) 2/

1947	105.9	99.8	113.5		102.4
1948	99.5	95.5	94.7	113.5	95.6
1949	94.6	94.3	91.6	99.9	94.1
1950	88.1	96.2	87.3	98.5	94.6
1951	83.9	100.4	89.7	101.5	98.6
1952	87.6	92.5	90.9	115.2	102.4
1953	89.9	92.5	90.9	104.6	93.3
1954	89.8	89.4	91.6	81.3	89.1
1955	89.1	95.9	97.6	106.8	96.5
1956	92.1	96.9	92.3	88.4	95.6
1957	97.0	102.0	96.4	92.1	100.4
1947-1957	91.8	97.0	93.7	98.6	96.5

1/ Including subsidy.

2/ Operating expenses as a percent of operating revenues.

...es of Return for Pan American (LAD), Panagra, and Branif (International)
1947 - 1957

"Net Profit" represents reported net profit (after income taxes) before interest charges. For the years 1947 through 1955, the data are adjusted to reflect the accrual of mail pay and subsidy (less applicable taxes) in the years in which earned rather than reported. The data for 1956 and 1957 are as reported. For the years 1949 through 1957, net profit is adjusted to eliminate capital gains and losses less applicable taxes at the rate of 25% for Pan American and Braniff and 22% for Panagra.

Average Total Investment represents the average of quarterly balances of net worth, long-term debt and notes payable. Where necessary to obtain divisional figures, total system investment has been prorated on the basis of divisional operating expenses.

Including subsidy.

In the Re-opened Transatlantic Final Mail Rate Case, Docket No. [illegible] et al., decided March 23, 1956, the Civil Aeronautics Board found a 10% return on invested capital to be a fair and reasonable rate of return with respect to the international operations of Pan American.

...il Aeronautics Board Form 41 Reports.
...il Aeronautics Board, Quarterly Report of Air Carriers ...ancial Statistics, December, 1957.

Pan American World Airways Inc.,
Statistical Exhibit 110

Aliens as a Percent of Total Air Travelers
Between the U. S. and South America 1/
Fiscal Years 1947-1958

Fiscal Year	Total Arrivals	Aliens Arriving	% Aliens
1947	32,386	17,946	55.2
1948	58,739	28,956	49.4
1949	60,175	27,994	46.5
1950	61,912	29,450	47.6
1951	75,316	40,000	53.1
1952	94,788	51,299	54.1
1953	102,381	55,625	54.3
1954	103,714	54,241	52.5
1955	114,016	59,262	52.0
1956	124,717	66,757	53.6
1957	142,337	77,913	54.7
1958	166,445	93,648	56.2

Fiscal Year	Total Arrivals and Departures	Aliens Arriving and Departing	% Aliens
1952	178,238	94,785	52.6
1953	186,019	95,974	51.6
1954	184,529	95,864	50.6
1955	210,922	106,843	50.6
1956	235,421	119,904	50.9
1957	272,059	136,292	50.1
1958	312,859	163,525	52.3

1/ Including Canal Zone and Panama.

Source: Immigration and Naturalization Service, Annual Report, 1947-1958.

[fol. 4634]

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 111

Percentage Of Aliens Traveling By Air Between The U. S. And South America* Using the Services Of Foreign Flag Carriers
Fiscal Years 1946 - 1958

	Alien Travelers		Percent Using Foreign Flag Air Carriers
	Total	Using Foreign Flag Air Carriers	
Arriving in U. S.			
Fiscal Year 1946	5,921	1,603	26.9
Fiscal Year 1947	17,946	3,552	19.8
Fiscal Year 1948	26,956	7,390	25.3
Fiscal Year 1949	27,994	7,174	25.6
Fiscal Year 1950	29,450	8,415	28.6
Fiscal Year 1951	40,000	11,896	29.7
Fiscal Year 1952	51,249	16,100	31.4
Fiscal Year 1953	55,625	20,845	37.5
Fiscal Year 1954	54,241	21,839	40.3
Fiscal Year 1955	64,267	22,940	35.7
Fiscal Year 1956	66,757	29,862	44.7
Fiscal Year 1957	77,913	36,426	46.7
Fiscal Year 1958	93,648	44,433	47.4
Arriving and Departing U. S.			
Fiscal Year 1952	94,785	31,755	33.5
Fiscal Year 1953	95,974	36,304	37.8
Fiscal Year 1954	95,854	38,710	40.4
Fiscal Year 1955	106,843	41,872	39.2
Fiscal Year 1956	119,904	53,446	44.6
Fiscal Year 1957	136,292	64,474	47.3
Fiscal Year 1958	163,525	83,808	51.2

* Including Canal Zone.

Source: Immigration and Naturalization Service, Annual Report, 1947 - 1958.

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 112

Percentage Of U. S. Citizens Travelling By Air Between The U. S. And South America* Using The Services Of Foreign Flag Carriers
Fiscal Years 1947 - 1958

	Total	Using Foreign Flag Carriers	Percent Using Foreign Flag Carriers
rriving in U. S.			
1947	14,440	962	6.2
1948	29,783	3,907	13.0
1949	32,181	4,028	12.5
1950	32,462	3,697	11.4
1951	35,316	4,445	12.4
1952	43,483	5,962	13.8
1953	46,756	8,057	17.3
1954	48,873	8,206	16.7
1955	54,754	9,473	17.3
1956	57,960	12,994	22.4
1957	64,424	13,750	21.4
1958	72,797	17,768	24.5
rriving and Departing U. S.			
1952	84,453	11,662	13.8
1953	90,045	15,320	17.0
1954	93,475	17,137	18.2
1955	104,079	18,861	18.1
1956	115,517	26,235	22.7
1957	135,767	28,966	21.3
1958	149,334	35,780	24.0

ncluding the Canal Zone.

ource. Immigration and Naturalization Service, Annual Report, 1947-1958.

[fol. 4637]

Pan American World Airways Inc., Statistical Exhibit 114

Summary Of Increases In Subsidy Requirements Under Alternative Three Carrier Route Patterns Between The U. S. And South America

1952

	Pan American	Panagra	Total
Assumption No. 1			
Added Operating Loss	$2,340,000 (PS-124)	$ 877,000 (PS-126)	$3,217,000
Loss of Interchange Return	--	300,000 (PS-126)	300,000
Added Requirement for Return	357,000 (PS-129)	187,000 (PS-129)	544,000
Total	$2,697,000	$1,364,000	$4,061,000
Assumption No. 2			
Added Operating Loss	$2,805,000 (PS-124)	$1,808,000 (PS-126)	$4,613,000
Loss of Interchange Return	--	300,000 (PS-126)	300,000
Added Requirement for Return	1,275,000 (PS-129)	(5,000)(PS-129)	1,270,000
Total	$4,080,000	$2,103,000	$6,183,000

1957

	Pan American	Panagra	Total
Assumption No. 1			
Added Operating Loss	$3,458,000 (PS-125)	$ 319,000 (PS-127)	$3,777,000
Loss of Interchange Return	--	400,000 (PS-127)	400,000
Added Requirement for Return	275,000 (PS-129)	256,000 (PS-129)	531,000
Total	$3,733,000	$ 975,000	$4,708,000
Assumption No. 2			
Added Operating Loss	$2,741,000 (PS-125)	$1,920,000 (PS-127)	$4,661,000
Loss of Interchange Return	--	400,000 (PS-127)	400,000
Added Requirement for Return	2,023,000 (PS-129)	(107,000)(PS-127)	1,916,000
Total	$4,764,000	$2,213,000	$6,977,000

[fol. 4638]

Pan American World Airways Inc., Statistical Exhibit 115

Description Of Route Structure And Schedules Assumed For Alternative Three Carrier Route Patterns Between The U. S. And South America 1952 And 1957

I. Route Pattern Assumptions

Assumption 1

A. Extension of Panagra from Balboa to Miami.

B. No addition of through plane services in either 1952 or 1957. Continuation of interchange service between points north of Miami (New York and Washington) and points in South America during 1957.

C. No extension of existing Pan American routes and no new interchange arrangements.

D. No change in Braniff's operating authority.

Assumption 2

A. Extension of Panagra from Balboa to Miami.

B. Extension of Pan American to the West Coast of South America (in accordance with its application in CAB Docket No. 8597 (Bogota, Quito, Guayaquil, Lima, La Paz, Santiago, and Buenos Aires.)

C. No through plane service to points north of Miami in 1952. Interchange services between points north of Miami and points served by Pan American and Panagra in South America to the extent such services were provided in 1957. Both Pan American and Panagra assumed to participate in such interchange.

D. No change in Braniff's operating authority.

II. Scheduling Assumptions.

Assumption 1.

1952

A. Panagra to offer the schedules operated under the Pan American - Panagra interchange agreement.

B. Pan American to operate a daily service between Miami and Balboa in each direction.

C. No change in Braniff's service.

1957

Same as above.

Description Of Route Structure And Schedules
Assumed For Alternative Three Carrier Route
Patterns Between The U. S. And South America
1952 And 1957

II. Scheduling Assumptions (Cont'd.)

Assumption 2.

1952

A. No change in Braniff's service.

B. Pan American and Panagra to divide the through services between the U. S. and South America which were provided under the interchange agreement equally and each to provide, as a minimum, the number of flights provided by Braniff to and from and within South America, except in those markets where Panagra actually provided less frequency than Braniff.

1957

Same as above.

III. Assumed Scheduling Plan under Assumption 1.

1952

	No. of Weekly One-Way Flights				
	Actual		Assumed		
	PA	BN	PA	PG	BN
Between Miami and Balboa	10	7	7	10	7

1957

	No. of Weekly One-Way Flights				
	Actual		Assumed		
	PA	BN	PA	PG	BN
Between Miami and Balboa	14	8	7	14	8

Pages

Description Of Route Struct
Assumed For Alternative Th
Patterns Between The U S
1452 And

IV. Assumed Scheduling Plan under Ass

1452

Actual Paraguá Schedule (Weekly O

1 - BLB-LIM-BUE
2 - BLB-LIM-SCL-BUE
4 - BLB-GYE-LIM-SCL-BUE
1 - BLB-LIM-ANF-SCL-BUE
1 - BLB-GYE-LIM-ANF-SCL-
1 - BLB-GYE-LIM-LPB-BUE

Assumed Schedule for both Pan Am

1 - BLB-LIM-BUE
1 - BLB-LIM-SCL-BUE
1 - BLB-GYE-LIM-LPB-SCL
2 - BLB-GYE-LIM-SCL-BUE
1 - BLB-GYE-LIM
1 - BLB-LIM

Comparison of Schedule Frequen

BLB-GYE	4
BLB-LIM	10
BLB-LPB	1
BLB-SCL	5
BLB-BUE	3
GYE-LIM	7
GYE-LPB	1
GYE-SCL	2
GYE-BUE	1
LIM-LPB	1
LIM-SCL	5
LIM-BUE	4
SCL-BUE	2
LPB-SCL	1
LPB-BUE	1

1452

Actual Paraguá Schedule (Weekly O

1 - BLB-LIM-BUE
1 - BLB-GYE-LIM-SCL-BUE
4 - BLB-LIM-SCL-BUE
4 - BLB-UIO-GYE-LIM
1 - BLB-GYE-LIM-LPB-BUE
1 - BLB-GYE-LIM-LPB-SCL

Description Of Route Structure And Schedules
Assumed For Alternative Three Carrier Route
Patterns Between The U. S. And South America
1952 And 1957

1957 (Cont'd.)

Assumed Schedule for Pan American

2 - BLB-BOG
2 - BLB-UIO-GYE-LIM
1 - BLB-LIM-BUE
2 - BLB-GYE-LIM-LPB-SCL-BUE
2 - BLB-LIM-SCL-BUE

Assumed Schedule for Panagra

2 - BLB-UIO-GYE-LIM-SCL
1 - BLB-GYE-LIM-BUE
1 - BLB-GYE-LIM-LPB-SCL-BUE
2 - BLB-LIM-SCL-BUE
1 - BLB-GYE-LIM-LPB-BUE

Comparison of Schedule Frequency South of Balboa

	Actual		Assumed		
	PG	BN	PA	PG	BN
BLB-BOG	-	2	2	-	2
BLB-UIO	4	-	2	2	-
BLB-GYE	9	2	4	5	2
BLB-LIM	14	5	7	7	5
BLB-LPB	2	2	2	2	2
BLB-SCL	8	-	4	4	-
BLB-BUE	10	2	5	5	2
UIO-GYE	4	-	2	2	-
UIO-LIM	4	-	2	2	-
UIO-LPB	-	-	-	-	-
UIO-SCL	-	-	-	-	-
UIO-BUE	-	-	-	-	-
GYE-LIM	9	2	4	5	2
GYE-LPB	2	2	2	2	2
GYE-SCL	4	-	2	2	-
GYE-BUE	5	2	2	3	2
LIM-LPB	2	2	2	2	2
LIM-SCL	8	-	4	4	-
LIM-BUE	10	2	5	5	2
LPB-SCL	1	-	2	1	-
LPB-BUE	2	2	2	2	2
SCL-BUE	8	-	4	4	-

Note: All flights originate or terminate in the U.S. Only service to competitive points is shown.

Source: 1952 and 1957 schedule data from Official Airline Guide, August 1952 and 1957.

1/ Because of scheduling considerations, it was necessary to add two more frequencies across this segment than indicated by general scheduling assumptions.

[fol. 4643]

Pan American World Airways Inc., Statistical Exhibit 116

Estimated Changes In Passenger Traffic Distribution Under Alternative Three Carrier Route Patterns Between The U. S. And South America 1952 and 1957

I. Route Assumption 1 - (Panagra Extension to Miami) - 1952

Segment	Actual Revenue Passenger Miles (000) Braniff	Panagra	Pan American	Estimated Increase or (Decrease) in RPM s (000) Panagra	Pan American
ANF - LGA	-	683	356	336	(336)
ANF - DCA	-	14	8	6	(6)
ANF - MIA	-	412	202	202	(202)
ASU - LGA	76	-	-	-	-
ASU - DCA	25	-	-	-	-
ASU - MIA	430	-	-	-	-
BLB - LGA	434	-	5,912	3,478	(3,478)
BLB - DCA	62	-	1,665	979	(979)
BLB - MIA	2,693	-	11,354	6,679	(6,679)
BUE - LGA	358	9,984	3,400	3,400	(3,400)
BUE - DCA	-	719	245	245	(245)
BUE - MIA	1,432	5,752	1,959	1,959	(1,959)
CLO - LGA	-	318	851	851	(851)
CLO - DCA	-	4	10	10	(10)
CLO - MIA	-	136	366	366	(366)
GYE - LGA	116	892	1,336	1,336	(1,336)
GYE - DCA	93	98	146	146	(146)
GYE - MIA	968	948	1,420	1,420	(1,420)
LPB - LGA	138	975	532	532	(532)
LPB - DCA	138	410	224	224	(224)
LPB - MIA	247	898	490	490	(490)
LIM - LGA	696	3,688	2,917	2,917	(2,917)
LIM - DCA	190	522	412	412	(412)
LIM - MIA	4,324	5,730	4,533	4,533	(4,533)
UIO - LGA	-	282	454	454	(454)
UIO - DCA	-	140	210	210	(210)
UIO - MIA	-	182	294	294	(294)
SCL - LGA	-	3,430	1,329	1,329	(1,329)
SCL - DCA	-	1,228	476	476	(476)
SCL - MIA	-	3,646	1,413	1,413	(1,413)
TYL - LGA	-	42	51	51	(51)
TYL - DCA	-	1	1	1	(1)
TYL - MIA	-	262	316	316	(316)
[illegible]					(5,95[illegible])

[fol. 4644]

7 Pages

Estimated Changes In Passenger Traffic Distr
Three Carrier Route Patterns Between The
1952 and 1957 a

II. Route Assumption 1 - (Panagra Exten

Segment	Actual Revenue Passenger Miles (000) Braniff	Panagra	Pan Am
ANF - LGA	-	1,000	
ANF - DCA	-	28	
ANF - MIA	-	470	
BLB - LGA	1,324	-	
BLB - DCA	764	-	
BLB - MIA	5,023	-	
BUE - LGA	744	13,384	
BUE - DCA	82	2,742	
BUE - MIA	1,928	11,800	
CLO - LGA	-	944	
CLO - DCA	-	24	
CLO - MIA	-	496	
GYE - LGA	444	944	
GYE - DCA	1,152	40	
GYE - MIA	860	470	
LPB - LGA	476	1,520	
LPB - DCA	208	166	
LPB - MIA	714	1,028	
LIM - LGA	2,556	7,782	
LIM - DCA	760	1,184	
LIM - MIA	3,674	6,358	
UIO - LGA	-	842	
UIO - DCA	-	164	
UIO - MIA	-	768	
SCL - LGA	-	6,752	
SCL - DCA	-	1,156	
SCL - MIA	-	4,290	
TYL - LGA	-	112	
TYL - DCA	-	1	
TYL - MIA	-	520	
All Segments			

Estimated Changes In Passenger Traffic Distribution Under Alternative Three Carrier Route Patterns Between The U.S. And South America And Between Cities On The Panagra System

III. Route Assumption 2 - (Panagra extension to Miami; Pan American extended to serve Bogota, Quito, Guayaquil, Lima, La Paz, Santiago and Buenos Aires; establishment of new interchange to New York and Washington) - 1952

Segment	Actual Revenue Passenger Miles (000): Branniff	Panagra	Pan American	Estimated Increase or (Decrease) in RPM's (000): Panagra	Pan American
BLB-BUE	1,027	9,184		(4,591)	4,591
BLB-GYE	108	1,018		(509)	509
BLB-LPB	128	860		(430)	430
BLB-LIM	874	5,550		(2,708)	2,708
BLB-SCL		5,598		(2,699)	2,699
GYE-BUE	260	1,728		(864)	864
GYE-LPB	8	8		(4)	4
GYE-LIM	253	1,511		(758)	758
GYE-SCL		608		(304)	304
LPB-BUE	780	906		(453)	453
SCL-BUE		12,950		(6,479)	(6,479)
LIM-BUE	1,521	5,990		(2,995)	2,995
LIM-LPB	108	1,428		(714)	714
LIM-SCL		9,417		(4,708)	4,708
BLB-LGA	4,434		5,912	(2,956)	(2,956)
BLB-DCA	1,305		1,965	(652)	(652)
BLB-MIA	2,093		11,354	(5,677)	(5,677)
BUE-LGA	558	9,984	5,406	(2,592)	2,592
BUE-DCA		774	249	(237)	237
BUE-MIA	1,432	5,252	1,959	(1,902)	1,902
GYE-LGA	111	852	1,554	222	(222)
GYE-DCA	49	98	140	24	(24)
GYE-MIA	968	948	1,420	236	(236)
LPB-LGA	198	978	532	(222)	222
LPB-DCA	198	410	224	(93)	93
LPB-MIA	243	808	490	(204)	204
LIM-LGA	690	5,088	2,917	(881)	881
LIM-DCA	190	22	412	(55)	55
LIM-MIA	4,124	8,730	4,543	(548)	548
SCL-LGA		5,430	1,328	(951)	951
SCL-DCA		228	476	(176)	176

[fol. 4647]

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Page 5 of 7 Pages

Estimated Changes In Passenger Traffic Distribution Under Alternative Three Carrier Route Patterns Between The U.S. And South America And Between Cities On The Panagra System

IV Route Assumption 2 - (Panagra extension to Miami Pan American extended to serve Bogota, Quito, Guayaquil, Lima, La Paz, Santiago and Buenos Aires - Establishment of new Interchange to New York and Washington) - 1957

Segment	Actual Revenue Passenger Miles (000) Braniff	Panagra	Pan American	Estimated Increase or (Decrease) in RPM s (000) Braniff	Panagra	Pan American
BLB - BOG	867			(434)		434
BLB - BUE	1,233	10,477			(5,238)	5,238
BLB - GYE	251	1,351			(612)	612
BLB - LPB	321	1,065			(537)	537
BLB - LIM	1,698	10,153			(5,076)	5,076
BLB - SCL		6,788			(3,394)	3,394
GYE - BUE	136	720			(288)	288
GYE - LPB	82	58			(29)	29
GYE - LIM	412	2,457			(1,081)	1,081
GYE - SCL		338			(169)	169
LPB - BUE	2,062	1,836			(918)	918
LPB - SCL		515			(344)	344
LIM - BUE	936	8,108			(4,054)	4,054
LIM - LPB	886	1,823			(912)	912
LIM - SCL		7,110			(3,555)	3,555
UIO - GYE		2,743			(1,372)	1,372
UIO - LIM		958			(479)	479
SCL - BUE		17,908			(8,954)	8,954
BLB - LGA	1,829		10,788		4,720	(4,720)
BLB - DCA	762		1,569		(683)	(886)
BLB - MIA	5,023		18,763		(5,204)	(8,204)
BOG - LGA	1,802			(901)		901
BOG - DCA	744			(372)		372
BOG - MIA	2,214			(1,107)		1,107
BUE - LGA	744	13,354	4,547		(3,404)	4,404
BUE - DCA	82	2,732	330		(931)	901
BUE - MIA	1,928	10,807	3,689		(5,563)	3,563
GYE - LGA	441	948	1,420		378	(378)
GYE - DCA	152	46	70		19	(19)
GYE - MIA	560	976	1,462		384	(384)

[fol. 4648]

PS-11e
Page [illegible] of [illegible] Pages

Estimated Changes In Passenger Traffic Distribution Under Alternative Three Carrier Route Patterns Between The U.S. And South America and Between Cities On The Panagra System

I. Route Assumptions: (Panagra extension to Miami, Pan American extended to serve Bogota, Quito, Guayaquil, Lima, La Paz, Santiago and Buenos Aires, establishment of new interchange to New York and Washington)

Segment	Actual Revenue Passenger Miles (000) Braniff	Panagra	Pan American	Estimated Increase or (Decrease) in RPM's (000) Braniff	Panagra	Pan American
LPB - LGA	526	1,52[illegible]	85[illegible]		(348)	34[illegible]
LPB - DCA	27[illegible]	[illegible]	[illegible]		(38)	38
LPB - MIA	714	1,07[illegible]	58[illegible]		(245)	245
LIM - LGA	2,550	7,78[illegible]	2,[illegible]58		(813)	813
LIM - DCA	760	1,08[illegible]	85[illegible]		(314)	134
LIM - MIA	[illegible]074	[illegible]	[illegible]33		(704)	704
SCL - LGA		[illegible]	[illegible]		[illegible]	[illegible]
SCL - DCA		[illegible]	44[illegible]		(553)	35[illegible]
SCL - MIA		[illegible]	[illegible]		[illegible]	[illegible]
GLO - LGA		94[illegible]	[illegible]		[illegible]	[illegible]
GLO - DCA		24	[illegible]		[illegible]	[illegible]
GLO - MIA		10[illegible]	[illegible]		[illegible]	[illegible]
TYL - LGA		[illegible]	[illegible]		[illegible]	[illegible]
TYL - DCA		[illegible]	[illegible]		[illegible]	[illegible]
TYL - MIA		[illegible]	[illegible]		[illegible]	[illegible]
Total				[illegible]	[illegible]	[illegible]

(1) Local traffic over the Miami-Balboa sector is estimated to divide 58.8% for Panagra and 41.2% for Pan American after excluding traffic in which Braniff has participated. It is further estimated that Panagra would carry all foreign traffic moving between Miami and points in South America which Panagra serves. The division of local traffic is based on the relative frequency of service assumed (14 round trip flights per week by Panagra and 7 by Pan American).

(2) Local traffic over the Miami-Balboa sector is estimated to divide 58.8% for Panagra and 41.2% for Pan American, based on the relative frequency of service assumed (14 one-way flights per week by Panagra and 7 by Pan American). In dividing local traffic between Panagra and Pan American, Braniff's traffic has been excluded. It is estimated that Panagra would carry all foreign traffic to points served by it.

Intra-South American traffic in Route Assumption 2 is assumed to divide in the same ratio as the frequency of service offered by the competing carriers. Braniff's service and traffic-participation is estimated to remain unchanged. Traffic to the United States from South American points is likewise estimated to divide in the same ratio as frequency of service.

[fol. 4650]

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 117

Gains Or (Losses) In Passenger Revenues Under
Alternative Three Carrier Route Patterns Between The
U. S. And South America
1952 and 1957

	Gain Or (Loss) In RPM's (000's)	Estimated Yield Per RPM (Cents)	Gain Or (Loss) In Passenger Revenue (000's)
I Route Assumption 1 - 1952			
Pan American	(15,065)	4.1	$ (617)
Panagra	15,065	4.1	617
Braniff		4.1	
II Route Assumption 1 - 1957			
Pan American	(62,029)	4.1	(2,543)
Panagra	62,029	4.1	2,543
Braniff		4.1	
III Route Assumption 2 - 1952			
Pan American	25,437	4.1	1,043
Panagra	(25,437)	4.1	(1,043)
Braniff		4.1	
IV Route Assumption 2 - 1957			
Pan American	7,190	4.1	295
Panagra	(54,267)	4.1	(2,225)
Braniff	(2,814)	4.1	(115)

1 Weighted average of one-way first class and tourist fares discounted by 15% to reflect round trip discounts, half fares and fare prorates. Discounted one-way fares were weighted in accordance number of first class and tourist flights provided in each year.

2 Yield per revenue passenger mile experienced by Braniff in each year.

Source: PS-116
Official Airline Guide, August 1952 and 1957 Form 41

fol. 4651]

Pan American World Airways Inc.,
Statistical Exhibit 118

Page 1 of 1 Page

Increase (Decrease) In Non-Passenger Revenue (Excluding Mail Subsidy) Under Alternative Three Carrier Route Patterns Between The U. S. And South America 1952 and 1957

	Gain (Loss) in Passenger Revenue (000's)	Estimated Ratio of Non-Passenger Revenue (Percent)	Gain (Loss) in Non-Passenger Revenue (000's)
I Route Assignments - 1952			
Pan American	$12,005	10.1 [1]	$1,214
Panagra	2,705	10.1 [1]	274
Braniff	-	10.1 [1]	-
II Route Assignments - 1952			
Pan American	(4,346)	10.1 [1]	(439)
Panagra	4,346	10.1 [1]	439
Braniff	-	10.1 [1]	-
III Route Assignments - 1952			
Pan American	5,410	10.1 [1]	547
Panagra	(5,410)	10.1 [1]	(547)
Braniff	-	10.1 [1]	-
IV Route Assignments - 1957			
Pan American	2,778	15.2 [2]	422
Panagra	(2,568)	15.2 [2]	(390)
Braniff	(210)	15.2 [2]	(32)

1 Based on Braniff's experienced ratio in 1952, after deducting the amount of $1,234,000 of mail subsidy included in U.S. mail pay. Non-passenger revenues from scheduled transportation totaled $477,000 as compared passenger revenues of $6,058,000.

2 Based on Braniff's experienced ratio in 1957. Non-passenger revenues for the year amounted to $1,149,000 as compared with passenger revenues of $6,915,000.

Source: PS-117
Form 41 reports to CAB.

Computation Of Increase Or D
Scheduled Under Alternati
Patterns Between The U
1952 And

1 Route Assumptions 1 and 2 - 1952

Segment	Mileage	Actual No. of Weekly Flights 1/		Annual No. of M Scheduled (00	
		Panagra	Pan American	Panagra	Pan Am
BLB-GYE	778	12	-	485	-
BLB-LIM	1,474	8	-	615	-
GYE-LIM	716	11	-	410	-
LIM-ANF	899	4	-	187	-
LIM-SCL	1,535	12	-	958	-
LIM-LPB	665	2	-	69	-
LIM-BUE	1,950	2	-	203	-
ANF-SCL	696	4	-	145	-
LPB-BUE	1,397	2	-	145	-
SCL-BUE	699	16	-	581	-
LPB-SCL	1,209	-	-	-	-
GYE-TYL	192	1	-	10	-
TYL-LIM	596	1	-	31	-
MIA-BLB 2/	1,166	-	40	-	1,213
MIA-BLB 3/	1,166	-	20	-	1,213
Totals 3/				3,838	1,213

1/ Average of February and August 1952 schedules in both directions

2/ Route Assumption 1

3/ Route Assumption 2

r (Decrease) In Aircraft Miles
ative Three Carrier Route
U. S. And South America
And 1957

f Miles (000's) American	Under Assumed Schedule Plans			
	No. of Weekly Flights		Increase or (Decrease in Annual Miles Scheduled (000's)	
	Panagra	Pan American	Panagra	Pan American
	8	8	(165)	325
	6	6	(154)	459
	8	8	(112)	297
	4	-	-	-
	4	4	(659)	319
	2	2	-	69
	2	2	-	203
	4	-	-	-
	-	-	(145)	-
	8	8	(294)	294
	2	2	(126)	126
	1	-	-	-
	1	-	-	-
,213	20	14	1,213	(364)
,213	14	14	848	(364)
,213			(530)	1,725

Computation Of Increase Or (D
Scheduled Under Alternativ
Patterns Between The U.
1952 And

II. Route Assumptions 1 and 2 - 1957

Segment	Mileage	Actual No. of Weekly Flights 1/ Panagra	Pan American	Annual No. of Mi Scheduled (000 Panagra	Pan Am
BLB-BOG	328	-	-	-	-
BLB-GYE	778	10	-	404	-
BLB-LIM	1,474	10	-	766	-
BLB-UIO	723	8	-	301	-
GYE-LIM	716	18	-	670	-
LPB-BUE	1,397	2	-	143	-
LPB-SCL	1,209	2	-	125	-
LIM-BUE	1,950	2	-	203	-
LIM-LPB	665	4	-	138	-
LIM-SCL	1,535	14	-	1,117	-
UIO-GYE	167	8	-	69	-
SCL-BUE	699	16	-	581	-
MIA-BLB 2/	1,166	-	28	-	-
MIA-BLB 3/	1,166	-	28	-	1,69
Totals				4,517	1,69

1/ Based on August 1957

2/ Route Assumption 1

3/ Route Assumption 2

r (Decrease) In Aircraft Miles
ative Three Carrier Route
U. S. And South America
And 1957

Miles (000's)		Under Assumed Schedule Plans			
		No. of Weekly Flights		Increase or (Decrease) in Annual Miles Scheduled (000's	
American		Panagra	Pan American	Panagra	Pan American
-		-	4		68
-		6	4	(242)	162
-		4	6	(306)	460
-		4	4	(150)	160
-		10	8	(372)	298
-		2		-	-
-		2	4	-	251
-		-	2	-	-
-		4	4	-	138
-		6	4	(479)	321
-		4	4	(35)	35
-		8	8	(294)	294
-		28	14	1,697	(849)
698		14	18	849	(606)
698				(1,026)	1,568

[fol. 4654]

Pan American World Airways Inc., Statistical Exhibit 120

Distribution Of Increase Or (Decrease) In Aircraft Miles By Type Of Aircraft Under Alternative Three Carrier Route Patterns Between The U. S. And South America 1952 and 1957

	Increase or (Decrease) In A/C Miles (000's)			
	Route Assumption 1		Route Assumption 2	
	1952	1957	1952	1957
Pan American				
All A/C Types	(373)	(870)	1,766	1,607
DC-4	(124)	--	(124) 1/	
DC-6	(249)	(870)	1,890	(870) 2/
LC-7	--	--	--	2,477
Panagra				
All A/C Types	1,243	1,739	(543)	(1,052)
DC-4	124	--	(124)	--
DC-6	1,119	870	(419)	(1,690) 2/
DC-7	--	869	--	838

Note: Mileages have been converted from a scheduled basis to an actual basis by applying a factor of 102.5% representing the relationship between actual and scheduled miles in 1957 for Panagra.

1/ Assumes replacement of all DC-4 mileage with DC-6 mileage.

2/ Assumes replacement of all DC-6 mileage with DC-7 mileage.

Source: PS-119
Form 41 reports to CAB.
Official Airline Guide.

[fol. 4655]

Pan American World Airways Inc., Statistical Exhibit 121

Aircraft Operating Expenses Per Revenue Mile Flown
For Pan American And Panagra
1952 and 1957

	Aircraft Expense Pe. Revenue Mile (cents) DC-4	DC-6	DC-7
Pan American 1/			
1952			
5100-Flying Operations 3/	60.35	81.59 2/	--
5145-A/C Fuel	28.92	36.33	--
5200-Direct Maintenance	22.49	27.67 2/	--
1957			
5100-Flying Operations	--	75.88	82.29
5200-Maintenance 4/	--	44.26	50.91
Panagra			
1952			
5100-Flying Operations	67.03	81.59	--
5200-Direct Maintenance	25.55	27.67	--
1957			
5100-Flying Operations	--	88.14	88.83
5200-Maintenance 4/	--	54.32	69.56

1/ Revenue miles, after deduction of interchange mileage, used except for 5145-A/C Fuel where revenue miles, including interchange, used.

2/ Assumes rate equal to Panagra, since all PAA (LAD) DC-6 mileage is operated on the Miami-Balboa interchange.

3/ Before Rental charges included in Account 5144.

4/ Includes applied maintenance burden.

Source: Form 41 Reports.

Estimated Additional City Ticket Office Expens
For Panagra Had Independent Sales
Operations Been Conducted
1952 - 1957

Year	No. of Employees	Annual Wages	Size of Office (Sq. Ft.)	Annual Rent
1952				
Under Route Assumption 1				
Boston	6	$ 21,000	1,000	$ 9,000
New York	25	87,500	4,500	75,000
Los Angeles	10	35,000	1,600	13,000
San Francisco	10	35,000	1,600	13,000
Chicago	10	35,000	1,600	13,000
Miami	30	105,000	4,800	48,000
Dallas	6	21,000	1,000	9,000
Washington	10	35,000	1,600	14,400
Total	107	$374,500	17,700	$194,400
Additional Under Route Assumption 2:				
Rio de Janeiro	10	$ 20,000	1,600	$ 6,400
Montevideo	10	20,000	1,600	6,400
Caracas	10	20,000	1,600	6,400
Total	30	$ 60,000	4,800	$ 19,200
Total Under Route Assumption 2	137	$434,500	22,500	$213,600

[fol. 4656]

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 122

Page 1 of 2 Pages

xpense

	Other Expenses	Total Expenses
0	$ 15,000	$ 45,000
0	81,250	243,750
0	24,000	72,000
0	24,000	72,000
0	24,000	72,000
0	29,250	182,250
0	15,000	45,000
0	24,700	74,100
0	$237,200	$806,100
	$ 13,200	$ 39,600
	13,200	39,600
	13,200	39,600
	$ 39,600	$118,800
	$276,800	$924,900

Estimated Additional City Ti
For Panagra Had Inde
Operations Been C
1952 - 195

	No. of Employees	Annual Wages	Size of Office (Sq. Ft.)
Under Route Assumption 1			
Boston	6	$ 30,500	1,250
New York	30	130,000	5,500
Los Angeles	13	52,500	2,000
San Francisco	13	52,500	2,000
Chicago	13	52,500	2,000
Miami	37	157,500	6,000
Dallas	6	30,500	1,250
Washington	13	52,500	2,000
Total	135	$558,500	22,000
Additional Under Route Assumption 2			
Rio de Janeiro	13	$ 26,000	2,000
Montevideo	13	26,000	2,000
Caracas	13	26,000	2,000
Total	39	$ 78,000	6,000
Total Under Route Assumption 2	174	$636,500	28,000

Ticket Office Expense
Independent Sales
Conducted
1857

of ce [illegible]	Annual Rent	Other Expenses	Total Expenses
250	$ 11,000	$ 20,750	$ 62,250
500	75,000	102,500	307,500
000	17,500	35,000	105,000
000	17,500	35,000	105,000
000	17,500	35,000	105,000
000	54,000	105,750	317,250
250	11,000	20,750	62,250
000	17,500	35,000	105,000
000	$221,000	$389,750	$1,169,250
000	$ 8,000	$ 17,000	$ 51,000
000	8,000	17,000	51,000
000	8,000	17,000	51,000
000	$ 24,000	$ 51,000	$ 153,000
000	$245,000	$440,750	$1,322,250

[fol. 4658]

Pan American World Airways Inc., Statistical Exhibit 123

Additional Station Costs For Pan American (L&D) At New Stations To Be Added Under Route Assumption 2

	Ground Operation and Traffic & Sales Expense	Depreciation 1/ Ground Equipment	Total
1952			
Guayaquil 1/	$ 168,741	$ 6,549	
Lima 4/	345,008	16,484	
La Paz 1/	180,225	4,742	
Santiago 1/	238,373	14,379	
Total	$ 852,347	$ 32,154	$ 884,501

	Aircraft and Traffic Servicing Expense		
1957			
Guayaquil 1/	$ 256,015		
Lima 4/	203,740		
La Paz 1/	109,296		
Santiago 1/	197,757		
Bogota 2/	46,844		
Quito 4/	115,569		
Total	$ 929,221	$ 42,000 3/	$ 971,221

1/ Estimated to be comparable with Panagra's experienced costs.

2/ Estimated to equal Braniff's experienced costs at Bogota during the last two quarters of 1957 when service was provided by Braniff. Costs for the six months were doubled.

3/ Estimated to equal 1952 costs at these stations with adjustment for two additional stations at the approximate level of costs at La Paz.

4/ Estimated to be comparable with Braniff's experienced costs.

Source Form 41 reports to CAB.

[fol. 4659]

Pan American World Airways Inc., Statistical Exhibit 124

Changes In Income And Expenses Under Alternative Three Carrier Route Patterns Between The U. S. And South America Pan American (LAD) 1952

	Route Assumption 1 Increase (Decrease)	Route Assumption 2 Increase (Decrease)
Operating Revenue		
Passenger	$(2,605)	$ 1,837
Other	(419) 6/	296
Total	$(3,024)	$ 2,133
Operating Expenses		
Flying Operations	$ (599) 1/	$ 1,118 8/
Direct Maintenance	241 2/	832 9/
Depreciation A/C	309 3/	618 10/
Total Direct	(149)	$ 2,568
Indirect Maintenance	$ 159 4/	$ 944 11/
Passenger Service	(238) 5/	166 12/
Advertising	(147) 6/	104 13/
Ground Operations and Traffic	(211) 16/	1,101 14/
General & Administrative	(97) 7/	418 15/
Ground Depreciation		32 17/
Total Indirect	$ (534)	$ 2,370
Total Operating Expense	$ (683)	$ 4,938
Operating Profit (Loss)	$(2,341)	$(2,805)

1/ Decrease due to elimination of Panagra through flight charge ($966,000), plus DC-6 interchange mileage (1,119,000) x 1952 PAA experienced rate per mile for fuel (36.33¢) plus DC-4 interchange mileage (124,000) x 1952 experienced rate per mile for fuel (28.92¢), less DC-6 mileage to be flown (870,000) x 1952 PGA experienced rate per mile (81.59¢).

2/ DC-6 mileage (870,000) x 1952 PGA experienced rate of 27.67¢ per mile.

3/ Two additional DC-6's @1,200,000 cost each, depreciated 7 years to 10% residual.

4/ Increased Direct Maintenance ($241,000) x 1952 PAA-LAD ratio of Indirect Maintenance to Direct Maintenance (66%).

5/ Decreased Revenue Passenger Miles (35,065,000) x 1952 PAA-LAD experienced rate per Revenue Passenger Mile (.68¢).

6/ Decreased Passenger Revenue ($2,605,000) x 1952 PAA-LAD experienced ratio of Advertising expense for Passenger Revenue (5.68%).

7/ Decreased Other Cash Expenses ($895,000) x 1952 PAA-LAD experienced percentage General & Administration Expense of Other Cash Expense (10.8%).

8/ Increased DC-6 mileage (3,009,000) x 1952 PGA experienced rate per mile (81.59¢), less Panagra interchange flight charge ($966,000), less DC-6 interchange mileage (1,119,000) x 1952 experienced rate per revenue

[fol. 4660]

Changes In Income And Expenses Under
Alternative Three Carrier Route Patterns
Between The U. S. And South America
Pan American (LAD)
1952

mile for fuel (36.33c) less DC-4 interchange mileage (124,000) x 1952 PAA experienced rate per revenue mile for fuel (28.92c).

9/ DC-6 mileage (3,009,000) x 1952 Panagra experienced rate per revenue mile (27.67c).

10/ Four additional DC-6's @1,200,000 cost, each depreciated 7 years to 10% residual.

11/ Increased Direct Maintenance ($837,000) x 1952 PAA-LAD experienced percentage Indirect Maintenance of Direct Maintenance (86%).

12/ Increased Revenue Passenger Miles (24,367,000) x 1952 PAA-LAD experienced rate per Revenue Passenger Mile (.68c).

13/ Increased Passenger Revenue ($1,837,000) x 1952 PAA-LAD experienced percentage Advertising of Passenger Revenue (5.68%).

14/ Station expense at Guayaquil, La Paz, and Santiago as experienced in 1952 by Panagra ($507,000) plus Braniff 1952 experience at Lima ($345,000) plus increased revenue ($2,133,000) x 7.0%, 1952 PAA-LAD experienced commission as a percentage of revenue.

15/ Increased Other Cash Expenses ($3,870,000) x 1952 experienced percentage General & Administration Expense of Other Cash Expense (10.8%)

16/ Reduction in Revenues $3,024,000 x 1952 PAA-LAD experienced Commission rates or Revenues 7.0% ($211,000).

17/ Depreciation Expense at Guayaquil, La Paz and Santiago as experienced in 1952 by Panagra and at Lima as experienced by Braniff (32,154).

Source: Form 41 Reports to CAB.

[fol. 4661]

Pan American World Airways Inc., Statistical Exhibit 125

Changes In Income And Expenses Under Alternative
Three Carrier Route Patterns Between The U.S. And South America
Pan American (LAD)
1957

	Route Assumption 1 Increase (Decrease) (000)	Route Assumption 2 Increase (Decrease) (000)
Operating Revenue		
Passenger	$(4,596)	$2,775
Other	(763)	461
Total	(5,359)	3,236
Operating Expenses		
Flying Operations	(1,688) 1/	350 8/
A/C Maintenance -	443 2/	1,644 9/
Ground Equipment	--	82 11/
Passenger Service	(316) 3/	194 10/
A/C and Traffic Servicing	--	928 12/
Advertising	(244) 4/	1,471 13/
Reservations and Sales	(268) 5/	162 14/
General and Administrative	(110) 6/	256 15/
Depreciation	283 7/	890 16/
Total	(1,900)	5,977
Operating Profit (Loss)	(3,458)	(2,741)

1/ Decrease due to elimination of interchange charges ($2,405,000) less proposed DC-7 mileage of (870,000) x 1957 PAA-LAD experienced rate per Revenue Mile (82.29c).

2/ Proposed DC-7 mileage (870,000) x 1957 PAA-LAD experienced rate per Revenue Mile (50.91c).

3/ Reduction in Revenue Passenger Miles (62,029,000) x 1957 PAA-LAD experienced rate per Revenue Passenger Mile (.51c).

4/ Reduction in Passenger Revenue ($4,596,000) x 1957 PAA-LAD experienced per cent Advertising of Passenger Revenue 5.3 per cent.

5/ Reduction in Total Revenue ($5,359,000) x 1957 PAA-LAD experienced per cent Commissions of Total Revenue (5 0%)

6/ Reduction in Other Cash Expenses ($2,074,000) x 1957 PAA-LAD experienced per cent General and Administrative Expenses of Other Cash Expenses (5.3%).

7/ One additional DC-7 @ 2,200,000 each depreciated 7 years to 10 per cent residual.

8/ Proposed DC-7 mileage (3,348,000) x 1957 PAA-LAD experienced rate per Revenue Mile (82.29c) less interchange charges ($2,405,000).

9/ Proposed DC-7 mileage (3,348,000) x 1957 PAA-LAD experienced rate per Revenue Mile (50.91c).

10/ Increased Revenue Passenger Miles (37,965,000) x 1957 PAA-LAD experienced rate per Revenue Passenger Mile (.51c).

11/ Ground Equipment Maintenance and Depreciation of Panagra at GYE, LPB and SCL fourth quarter 1957 x 4 plus Braniff experience in 1957 at BOG, LIM and UIO ($124,000) less Ground Equipment Depreciation in 16 ($42,000).

12/ A/C and Traffic Servicing Expense at Guayaquil, LaPaz and Santiago in 1957 for Panagra ($563,000) plus A/C and Traffic Servicing Expense at Lima, Quito and twice Bogota in 1957 for Braniff ($365,000).

[fol. 4662]

Changes In Income And Expenses Under Alternative
Three Carrier Route Patterns Between The U.S. And South America
Pan American (LAD)
1957

13/ Increased Passenger Revenue ($2,775,000) x 1957 PAA-LAD experienced per cent Advertising of Passenger Revenue (5.3%).
14/ Increased Total Revenue ($3,236,000) x 1957 PAA-LAD experienced per cent Commissions are of Passenger Revenue (5.0 per cent).
15/ Increase in Other Cash Expenses ($4,841,000) x 1957 PAA-LAD experienced per cent General and Administrative Expenses of Other Cash Expenses (5.3%).
16/ Three DC-7's @ $2,200,000 depreciated 7 years to 10 per cent residual ($848,571) plus Ground Equipment Depreciation on Exhibit PS-123 ($42,000).

Source: Form 41 Reports to CAB.

[fol. 4663]

Pan American World Airways Inc.,
Statistical Exhibit 126

Changes In Income And Expenses Under Alternative Three Carrier Route Patterns Between The U.S. And South America
Panagra
1952

	Increase or Decrease	
	Route Assumption 1	Route Assumption 2
Operating Revenue	($000)	($000)
Passenger	$2,605	$(1,910)
Other	419	(306)
Total	$3,024	$(2,216)
Operating Expenses		
Flying Operations	1,097 1/	(425) 10/
Direct Maintenance	376 2/	(148) 11/
Depreciation A/C	281 3/	281 3/
Total Direct	1,754	(292)
Indirect Maintenance	357 4/	(14) 12/
Passenger Service	235 5/	(170) 13/
Advertising	222 6/	(163) 14/
Ground Operations and Traffic	869 7/	583 15/
General and Administrative	454 8/	(235) 8/
Ground Depreciation	10 9/	10 9/
Total Indirect	2,147	(116)
Total Operating Exp.	3,901	(408)
Operating Profit or (Loss)	(877)	(1,808)
Loss of Interchange Return	(300)	(300)

1/ Increased DC-6 mileage (1,243,000 miles) x Panagra's experienced Cost per plane mile (81.59¢) plus increased DC-4 miles (124,000) x Panagra's cost per mile (67.03¢).

2/ Increased DC-6 mileage at Panagra's cost per mile (27.67¢) plus increased DC-4 miles at 25.55¢ per mile.

3/ Amount charged to Pan American for depreciation of flight equipment used in interchange.

4/ 95% of direct maintenance, based on Panagra 1952 experience.

5/ Increased revenue passenger miles (35,065,000) at Panagra cost per RPM in 1952 (.67¢).

6/ Increased passenger revenue ($2,605,000) at Panagra 1952 ratio (8.54%).

7/ Based on Balboa experience of Panagra in 1952 ($271,000) plus added city ticket office expense ($806,000), less commissions paid to Pan American on sales ($467,000) plus agents commissions of 7% on 50% of increased revenue ($10[illegible],000) plus 7% agents commission on 50% of PAA sales ($153,000).

8/ At 14.4% of change in other cash expenses.

[fol. 4664]

PS-126
Page 2 of 2 Pages

Changes In Income And Expenses Under Alternative
Three Carrier Route Patterns Between The U. S. And South America
Panagra
1952

9/ Estimated additional expense at Miami.

10/ Decrease in DC-6 miles at Panagra's cost per mile (81.54¢) plus reduction in DC-4 mileage costs at 67.03¢ per mile.

11/ Decrease in DC-6 miles at Panagra's cost per mile (27.67¢) plus reduction in DC-4 mileage costs at 25.56¢ per mile.

12/ At 95% of direct maintenance.

13/ At .67¢ per RPM lost. (25,337,000)

14/ At experienced percentage of passenger revenue (8.54%).

15/ Based on experienced costs at Balboa ($127,000) plus added city ticket office expense of ($925,000) less commissions actually paid Pan American ($467,000) less 7% agents commission on 50% of decreased revenue ($155,000) plus 7% agents commission on 50% of Pan American's sales ($153,000).

Source: Form 41 Reports to CAB.

fol. 4665]

Pan American World Airways Inc.,
Statistical Exhibit 127

Changes in Income and Expenses Under Alternative Three-Carrier Route Patterns Between the U.S. And South America
Panagra
1957

	Route Assumption 1 Increase (Decrease) (000)	Route Assumption 2 Increase (Decrease) (000)
Operating Revenue		
Passenger	4,596	(4,596)
Other	583	(434)
Total	5,179	(4,991)
Operating Expenses		
Flying Equipment	1,598 [1]	(1,107) [10]
Traffic Servicing	1,088 [2]	(944) [11]
Ground Equipment Maintenance	192	29 [12]
Passenger Service	372 [3]	(108) [13]
Ticket and Traffic Service	734 [4]	434 [2]
Advertising	511 [5]	(726) [14]
Transportation and Taxes	388 [6]	929 [15]
General and Administrative	453 [7]	(82) [8]
Depreciation	68	(42) [16]
Total	5,676	(1,971)
Operating Profit (Loss)	(319)	(1,920)
Plus: Interchange Return	(400)	(400)

1/ Increased 30.7 miles for Panagra in 1957 (869,000) multiplied by experienced rate per mile (93.33c), plus increased 30.6 miles for Panagra in 1957 (869,000) multiplied by experienced rate per mile (88.14c).

2/ Increased 30.7 miles for Panagra in 1957 (869,000) multiplied by experienced rate per mile (68.56c), plus increased 30.6 miles for Panagra in 1957, multiplied by experienced rate per mile (74.0c). Increase 25,000 increase due to increase of Miami terminal activities.

3/ The increased revenue passenger miles for Panagra in 1957 (62,020,000) multiplied by the experienced rate (7.40c

4/ Assumes an increase in Aircraft and Traffic Servicing expense equal to Panagra's expenses in 1957 (734,000).

5/ Increased Passenger Revenue ($ 4,596,000) x 1957 and the experienced per cent Advertising of Passenger Revenue (8.94%).

6/ Assumes an increased city ticket office expense of $1,169,000, less (a) commissions ($398,000) plus 7 per cent on Cargo Commissions on 50 per cent of increased Revenue $186,000), plus 7 per cent Agents' Commission on 50 per cent of P/A sales ($109,000).

7/ Assumes that Panagra's General and Administrative Expense increases at the experienced rate with respect to all cash expenses (9.37).

8/ Increased 30.7 mileage (869,000) multiplied by Panagra's experienced rate per mile of (37.64c); plus 30.6 mileage of (870,000) multiplied by Panagra's experienced rate of (25.36c) plus additional expense adjustment of ($15,000).

Changes in Income and Expenses Under Alternative
Area Actual Route Patterns Between the [illegible] And South America
Panagra
1957

[illegible] miles for Panagra in 1957 (x,xxx,000) multiplied by
experienced rate of (xx.xx¢), minus all of Panagra's experienced
expense of ($x,xxx,000)

[illegible] mileage for Panagra in 1957 (x,xxx,000) multiplied by
experienced rate of (xx.xx¢), minus all of Panagra's experienced
expense of ($x,xxx,000)

ction in revenue passenger miles under Route Assumption 2
(87,000) multiplied by Panagra's experienced rate of (.60¢)
ease in Passenger Revenue ($2,565,000) x 19% (Panagra experienced
ent Advertising of Passenger Revenue (8.2%)
ses increased 11% ticket office expense of $1,322,000, less
commissions ($598,000) less 7 per cent Agents' commission on
ct cent of decreased Revenues ($[illegible]) plus 7 per cent Agents'
ssion on 50 per cent of PAA sales ($204,000)
ss increase of ($25,000) due to additional expense at Miami, minus
r's experienced rate depreciation of ($xxx,000), plus an increase
additional DC-7 mileage (xxx,000) multiplied by Panagra's
erated rate of (xx.xx¢)

[illegible]

[fol. 4667]

Pan American World Airways Inc.,
Statistical Exhibit 128

Increases And Decreases In Investment Requirements Under Alternative Three Carrier Route Patterns Between The U. S. And South America 1952 And 1957

		Pan American (000's)	Panagra (000's)	Total (000's)
I.	Route Assumption 1 - 1952			
	Aircraft and spare parts	$ 2,400[1]	$ --	$ 2,400
	Ground equipment[2]	--	220	220
	Net working capital[3]	(248)	903	690
	Total	2,152	1,123	3,310
II.	Route Assumption 1 - 1957			
	Aircraft and spare parts	$ 2,200[8]	$ --	$ 2,200
	Ground equipment[2]	--	257	257
	Net working capital[3]	(546)	1,283	737
	Total	1,654	1,540	3,194
III.	Route Assumption 2 - 1952			
	Aircraft and spare parts	$ 4,800[4]	$ (78)[5]	$ 4,722
	Ground equipment[2]	1,809	220	2,029
	Net working capital[3]	1,072	(175)	1,017
	Total	7,681	(33)	7,768
IV.	Route Assumption 2 - 1957			
	Aircraft and spare parts	$ 8,800[8]	$ (600)[7]	$ 8,200
	Ground equipment[2]	2,116	257	2,373
	Net working capital[3]	1,272	(303)	969
	Total	$12,188	(646)	$11,542

1/ It is estimated that two DC-6 s would be required to provide a daily round trip frequency between Miami and Balboa, at an investment of $1,200,000 each.

2/ Required investment in ground equipment estimated on the basis of the increase or decrease in ground equipment maintenance expense in 1952 (in Panagra's experienced ratio of $22.00 of ground equipment investment per $1.00 of ground depreciation expense) and in 1957 on the basis of Panagra's experienced ratio of $25.74 ground equipment investment per $1.00 ground depreciation expense.

3/ Increase or decrease in net working capital requirements based on changes in cash operating expenses, in the ratio of $1.00 increase or decrease in net working capital per $4.00 increase or decrease in cash expenses.

4/ At least four DC-6 aircraft, at $1,200,000 each including spare parts, would be required to operate 3,..99,000 annual miles.

5/ To reflect retirement of one fully depreciated DC-4 aircraft which would be excess due to a decrease of 530,000 annual scheduled miles.

6/ Increased investment in four DC-7 aircraft at $2,200,000 each, required to provide 3,348,000 annual miles.

7/ To reflect retirement of one DC-6B aircraft, at an approximate net book value of $500,000, plus spares valued at an additional 20%. This equipment would be excess due to a decrease of 1,026,000 scheduled miles.

8/ Increased investment in one DC-7 aircraft, at $2,200,000, to provide a daily round-trip frequency between Miami and Balboa.

[fol. 4668]

Pan American World Airways Inc.,
Statistical Exhibit 129

Increases Or (Decreases) In Rate Of Return Requirements
Under Alternative Three Carrier Route Patterns Between
The U. S. And South America
1952 And 1957

	Route Assumption 1		Route Assumption 2	
	Increase or (Decrease) in Investment (000's)	Increase or (Decrease) in Return Requirements 1/ (000's)	Increase or (Decrease) in Investment (000's)	Increase or (Decrease) in Return Requirements 1/ (000's)
1952				
Pan American	$2,152	$357	$7,681	$1,275
Panagra	1,123	187	(33)	*(5)
Total	3,275	544	7,648	1,270
1957				
Pan American	$1,654	$275	$12,188	$2,023
Panagra	1,540	256	(646)	(107)
Total	3,194	531	11,542	1,916

1/ Return requirement estimated on the basis of a 9% return after taxes and capital structure comprised of 40% debt on which the interest is 5%. The before tax rate is 16.6%.

Source: P

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[Vol. 4669]

Pan American World Airways Inc.,
Statistical Exhibit 130

COMPARISON OF PS-114 THROUGH 129 AND GX-1139
ESTIMATED FINANCIAL RESULTS OF PANAGRA
EXTENSION TO MIAMI
1957

	1957 Estimates		
	PS-114 Through 129 (000)	GX-1139 (000)	Amount Difference (000)
rating Revenues			
assenger	$ 4,596	$ 4,482	$ 114
ther	763	1,014	(251)
Total	5,359	5,456	(97)
rating Expenses			
irect Expenses			
Flying Operations	1,539	1,165	374
Maintenance*	1,103	829	274
Depreciation	548	538	10
Total	3,190	2,532	658
ndirect Expenses			
Passenger Service	372	355	17
Aircraft and Traffic Servicing	284	458	(174)
Reservations and Sales	968	650	318
Advertising	411	250	161
General and Administrative	453	149	304
Total	2,488	1,862	626
Total Operating Expenses	5,678	4,394	1,284
rating Profit or (Loss)	(319)	1,062	(1381)
s of Interchange Return	(400)	(396)	(4)
urn on Additional Investment Required	(276)	-	
rease in Subsidy Requirement	995	-	

estimates in GX-1139 are restated, insofar as possible, in the CAB account forms in effect since January 1, 1957.

* Including indirect maintenance

rce: PS-114 through 129 and GX-1139

COMPARISON OF PS-114 THROUGH 129 AND GX-1139 WITH ACTUAL
PANAGRA SYSTEM EXPERIENCE
1957

	Panagra System Actual (000)	Estimates Assuming Extension to Miami — Amount (000) PS-114 Through 129	GX-1139	Per Cent Increase PS-114 Through 129	GX-1139
Operating Revenues					
Passenger	$14,965	$4,546	$4,442	31%	30%
Other	5,816	763	1,014	13	17
Total	$20,511	$5,359	$5,456	26%	27%
Operating Expenses					
Direct Expenses					
Flying Operations	4,962	1,539	1,165	31	23
Maintenance*	3,701	1,103	829	30	22
Depreciation	1,757	546	536	31	31
Total	10,420	3,190	2,532	31	24
Indirect Expenses					
Passenger Service	1,010	372	355	37	35
Aircraft and Traffic Servicing Reservations and Sales	5,125	1,252	1,108	24	22
Advertising	1,314	411	250	31	19
General and Administrative	1,554	453	149	29	10
Total	9,003	2,488	1,862	27	21
Total Operating Expenses	19,443	5,678	4,394	29	23
Revenue Aircraft Miles	5,456	1,739	1,667	32	31
Revenue Passenger Miles	168,641	62,029	61,062	37	36

* Including indirect maintenance

Note: Estimates in GX-1139 are restated, insofar as possible, in the CAB account forms in effect since January 1, 1957

Source: Form 41 Reports to CAB
PS-114 through 129 and GX-1139

[fol. 4671]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff.

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

DOCUMENTS

WRG 1 thru WRG 33

[fol. 4672]

W. R. GRACE AND COMPANY EXHIBIT 1

IMMEDIATE RELEASE
MARCH 2, 1929

INFORMATION SERVICE
POST OFFICE DEPARTMENT

today

Postmaster General New [A] awarded to the Pan-American-Grace Airways, of New York City, the contract for carrying the air mail between Cristobal, Canal Zone, and Santiago, Chile, which route, when put into operation, will be the longest one in the world.

In awarding the contract, Postmaster General New made the following statement:

[Handwritten initials in first paragraph—PAG.]

"It is directed that the proposal of the Pan American Grace Airways, Inc., of New York, N. Y., submitted in response to the advertisement of January 31, 1929, for air mail service on the route between Cristobal, Canal Zone, and Santiago, Chile, for service as stated in the advertisement be accepted at the rate of $1.80 per mile and $.80 per pound, as stated in their proposal.

"In making this award the matter of the financial ability of the leading bidders or the integrity of the competing companies is not considered. That may be conceded. The award of contract is based on other but very material considerations.

"This is the most important air mail contract that has yet been awarded. Its importance goes not alone to the financial ability of the bidders but more directly and to a far greater degree to their proven and recognized capacity for performing the service contemplated.

"The Pan-American Company has filed evidence of extensive preparation for the operation of an air mail route through the countries with which arrangements are necessary. It has had this particular service in view for the last two years and has for that length of time been conducting negotiations and perfecting arrangements for the [fol. 4673] carrying on of the service if in the ruhness of time it should be awarded the contract for it. It has the required franchises under which to operate in the countries to be served and over which the line passes. It is indeed operating through subsidiary companies already in existence over a considerable portion of the route under consideration. In addition to this it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly established service by sea along the whole line of the proposed air mail route.

"The low bidder does not have these facilities. It has not the advantage of a functioning organization and of an operating personnel already in the field. According to the statement of its president, which is a part of the file

scribed to this company's stock but it is admitted by its president that these subscriptions are dependent upon the award of contract to the company. It is thus plainly apparent that it has not the important advantage of possessing a fixed and functioning organization equipped to enter upon the work. I am convinced that under the most favorable circumstances the low bidder could not possibly place itself in position to perform this service without the lapse of much time.

"In awarding the contract to the Pan-American Company I am also greatly influenced by information obtained direct from the United States Ambassador to Cuba, Honorable Noble B. Judah. The Ambassador has informed me that the president of the company appearing as low bidder has figured in one or more projected aeronautical enterprises in Cuba, where his experiences have been unfortu- [fol. 4674] nate, resulting in complete failure. On the other hand, the Ambassador states that the Pan-American Company is now operating lines to and through Cuba in a conspicuously successful manner.

"I would repeat that the contract in question is for a route most difficult to serve but at the same time of very great and far-reaching importance not only to the public but to the whole future of transportation by air. Failure would be a serious blow to the prestige of American aeronautical enterprise.

"Because of the facts herein enumerated, I am firm in the opinion that the best interests of the service, the Government, and the public to be served require that the award be made to the company best equipped to perform the service and I therefore make the award to the Pan-American-Grace Airways, Inc., of New York."

[fol. 4675]

W. R. GRACE AND COMPANY EXHIBIT 2

FOREIGN AIR MAIL CONTRACT

Route No. 9

Cristobal, CANAL ZONE to Santiago, CHILE

Ten Year Period

Beginning April 1, 1929

[fol. 4676]

CONTRACT FOR FOREIGN MAIL SERVICE

Route No. F. A. M. 9

This contract, made this 21 day of March, 1929, by and between the United States of America (by the Postmaster General) and the Pan American Grace Airways, Inc., a corporation organized and existing under the laws of the State of Delaware, Contractor:

WITNESSETH, That whereas the said Pan American Grace Airways, Inc., has been accepted as contractor on route No. F. A. M. 9 in conformity with the advertisement inviting proposals for the service specified herein, issued by the Postmaster General under date of January 31, 1929:

NOW THEREFORE, The said contractor undertakes, covenants and agrees with the United States of America:

1. To carry mails for the United States of the specified load of not exceeding 800 pounds a trip each way and any excess mails required to be carried in safe and suitable aircraft from Cristobal, Canal Zone, by Buenaventura and Tumaco, Colombia, Esmeraldas and Guayaquil, Ecuador, Talara, Truxillo, Lima, Lomas and Mollendo, Peru, Arica, Iquique, Antofagasta, Caldera and Coquimbo to Santiago, Chile, and return, three times a week, by a schedule satisfactory to the Postmaster General, and to perform the services and undertakings in connection therewith as specified in this contract, for and during the term of ten (10) years beginning April 1, 1929. (The Contractor may be permitted

to omit service south of Mollendo, Peru, for a reasonable time at the discretion of the Postmaster General, pending completion of operating arrangements.)

2. To receive and deliver the mails at each post office on the route, unless other provision is made by the Department. The contractor also undertakes, covenants and agrees with the United States and binds itself to be answerable in damages to the United States for the proper care and [fol. 4677] transportation of the mails, and to be accountable for any loss or damage resulting to any such mail or any part thereof by reason of the failure to exercise due care on the part of any of contractor's officers, agents or employees in the custody, handling or transportation thereof.

For the service herein specified when performed in accordance with the provisions of this contract and evidence thereof shall have been filed with the Postmaster General, the said contractor is to be paid by the United States at the rate of $1.80 per mile each way for the specified load of not exceeding 800 pounds each way, plus the rate of 90 cents per pound per thousand miles or pro rata thereof for greater or less mileage for any excess mails required to be carried in the same aircraft, based on statute miles by the shortest practicable airway distance between points on the route as determined by the Postmaster General; payments to be made monthly and as soon after the close of each month as accounts can be adjusted and settled; said pay to be subject, however, to be reduced or discontinued by the Postmaster General as hereinafter stipulated, or to be suspended in case of delinquency.

It is further stipulated and agreed by the contractor—

1. That in case of failure from any cause to perform any service required by this contract a pro rata deduction shall be made from the compensation of the contractor on account of such omitted service, except that pro rata pay will be allowed for the airway distance flown between stated points on the route traversed on a partially completed trip if no delay in the mails over the ordinary means of transportation has resulted.

2. That deduction from pay may be made for suffering the mails to become wet, damaged or destroyed, or when a

grade of service is rendered inferior to that stipulated in the contract, or for the loss of or depredation upon the mails in the custody of the contractor or its agent, provided the loss is occasioned by their fault, or for other delinquencies, in the discretion of the Postmaster General.

[fol. 4678] 3. That the Postmaster General may annul the contract or impose forfeiture, in his discretion, for repeated failures or for failure to perform service according to contract; for violating the Postal Laws and Regulations; for disobeying instructions of the Post Office Department; for subletting service without the consent of the Postmaster General, or assigning or transferring the contract; for combining to prevent others from bidding for the performance of postal service, and such annulment shall not impair the right of the Department to claim damages from the contractor and its surety.

It is further stipulated and agreed—

1. That if in the opinion of the Postmaster General the development of aircraft should be such as to render the equipment used on the route obsolete, so that it no longer meets the needs of the Department, the Postmaster General may call upon the contractor to provide suitable equipment and in the event of its failure to do so within such reasonable time as shall be given it, may terminate the contract.

2. That mail apartments in all planes shall be made fireproof to the satisfaction of the Post Office Department.

3. That the Department may increase or decrease the number of intermediate stops, or the number of trips per week, and change the termini of the route, dispatch mail on any plane of the contractor flown over the route, and modify or change the schedule as the needs of the service require; and the Department may also extend or curtail the route, with pro rata allowance or reduction of pay.

4. That service on this route may be extended at the option of the Post Office Department from Santiago, Chile, by such intermediate points as the Postmaster General may determine, to Buenos Aires, Argentine, and Montevideo, Uruguay, at not exceeding pro rata allowance of additional pay.

5. That the contractor must make its own arrangements for landing fields, lighthouses, radio stations and such other

aids to navigation as may be necessary for the proper performance of the service.

[fol. 4679] 6. That this contract covers all mails to and from the United States or its possessions, including parcel post; provided that the Contractor shall have the right to make arrangements with intermediate countries for the exchange of local mails between such countries.

7. That during the continuance of this contract, if the postal interests shall require, by mutual agreement between the contractor and the Postmaster General, the contract rate of pay herein may be changed, but shall never exceed the rate herein provided.

8. That the Contractor may be permitted to sublet the service to acceptable persons, by permission of the Postmaster General, at not less than the contract rate of pay.

9. That no Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or agreement or to any benefit to arise thereupon.

10. That the Contractor shall use flying equipment on the route of United States manufacture, shall use other equipment if practicable of United States manufacture, and shall employ necessary pilots and flying crews of United States citizenship where practicable to do so.

The contractor warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

[fol. 4680] This contract is also subject to all the provisions of the advertisement (though not all specifically

stated herein) and to the provisions of the Postal Laws and Regulations applicable to this service.

IN WITNESS WHEREOF, The Parties hereto have executed this contract.

THE UNITED STATES OF AMERICA

By (Signed) HARRY S. NEW
Postmaster General

Signed March 4, 1929 in the presence of

(Signed) E. R. WHITE

PAN AMERICAN-GRACE AIRWAYS, INC.

By (Signed) J. T. TRIPPE, Agent

Signed March 4, 1929.

Witnesses:

(Signed) WM. P. PALMER
W. F. COGSWELL

The United States bonds notes described in the annexed schedule are hereby pledged as security for the performance and fulfillment of the foregoing undertaking in accordance with section 1126 of the Revenue Act of 1926, approved February 26, 1926, and Treasury Department Circular No. 154, dated April 30, 1926.

PAN AMERICAN-GRACE AIRWAYS, INC.,

By (Signed) J. T. TRIPPE, Agent
Contractor

Approved as to fact:

(Signed) W. IRVING GLOVER (eeg)
Second Assistant
Postmaster General

Approved as to form:

(Signed) HORACE J. DONNELLY
Solicitor

[fol. 4681] I, W. F. COGSWELL, certify that I am the Secretary of the corporation named as contractor herein; that J. T. TRIPPE who signed this contract on behalf of the contractor, was then Agent of the said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Signed) W. F. COGSWELL

(Corporate Seal)

CERTIFICATE OF OATH OF CONTRACTOR

I, the undersigned, being employed in the care, custody and conveyance of the mails as contractor on the route named in the foregoing contract, do solemnly swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post offices and post roads within the United States; and that I will honestly and truly account and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear that I will support the Constitution of the United States: So help me God.

(Signed) J. T. TRIPPE, Agent

PAN AMERICAN—GRACE AIRWAYS, INC.
Contractor

Sworn to and subscribed before me a Notary Public this 4 day of March, 1929.

(Signed) CHARLES E. WARREN
Notary Public

My commission expires
Nov. 4, 1930.

(Seal)

[fol. 4682] Schedule of United States bonds deposited as collateral security for performance of service on Route F. A. M. 9, as described in the foregoing contract.

Title of Bond	Coupon	Total face amount	Denomination
United States of America, 3½% Treasury Bond of 1940-43	June 15, 1928, and subsequent coupons attached	$10,000	$10,000 No. 6476 F

[fol. 4683]

W. R. Grace and Company Exhibit 3

January 3, 1928

Memorandum of conversation with Dr. von Bauer

Dr. von Bauer began with the Scadta Company as Manager but in 1921 when they were in financial difficulties, he invested heavily in the Company and became its head. He is now the principal stockholder. Scadta is a Colombian Company. They have recently organized two other companies in connection with their new services.

The Company has a liberal concession in Colombia which while it does not give them any monopoly, does give them certain advantages in the way of exemption from export duty on planes, spare parts, supplies, etc. and the right to conduct what virtually amounts to a private mail service, the Company selling their own stamps and delivering their own letters at destination.

The Company, even on the small service which it is now running, has eleven planes, maintains an airport at Barranquilla which represents an investment of $200,000, and smaller airports at Girardot, Cartagena and Buenaventura. Dr. von Bauer explained that the land plant is quite as important as the flying machinery pointing out the difficulty of maintaining adequate repair shops, and the necessity of

maintaining supplies of repair parts, etc. in order to make necessary repairs at a point so far distant from the factory. He stated that an engine costs $7,000. and the larger Dornier whale planes up to as much as $100,000. Scadta's practice is to write off the entire investment in a plane in twelve to eighteen months although ordinarily the plane is [fol. 4684] in use much longer than that, 4,000 running hours being estimated as the commercial life.

The Colombian service maintains reserve planes which are stationed at strategic points and proceed in search of any plane which does not pass within a certain period after schedule time. Insurance is carried on the planes although the rate is 20% to 25%, though in Scadta I imagine the Company carries part of their own insurance as Dr. von Bauer said they had an insurance reserve of $100,000. Insurance for the pilots is optional with them and paid for by deduction from their salaries. Dr. von Bauer stated that few of the pilots carry insurance as they prefer the cash.

Asked for his ideas regarding a West Coast of South America service, Dr. von Bauer stated that the matter would require very careful study in detail and that it was impossible to reach any conclusion without this study. The question of the best type of plane for the service would itself require very careful investigation. For example, for a part of the service hydroplanes would probably be desirable and for other sections, land planes. On account of the rains between the Canal and Guayaquil, all metal planes would probably be required here. Among the difficulties to be overcome which he mentioned, were the prevalent rains between the Canal and Guayaquil, the fogs from there to Lima and the possible heavy seas below that point, and all along the course, the difficulty of finding suitable landing places. As indicative of the possible cost of such a [fol. 4685] service, it may be noted that on a Florida/Guatemala/Cuba triangular service, which Dr. von Bauer figured on some years ago, he estimated that an investment of $2,000,000 would be required.

[fol. 4686]

W. R. GRACE AND COMPANY, EXHIBIT 4

[Handwritten notations—Mr. Cogswell please note and return, RHP.

Mr. Patchin, I read both and find them very interesting indeed. It looks as if in a year or two it might be practicable to do something on the West Coast.]

New York, March 13, 1928.

D. S. Iglehart Esq.,
Del Ray, Florida.

Dear Mr. Iglehart:—

We have had a very interesting conversation with the aviation representative of the Ford Motor Co., who states, on behalf of that organization, that their three motored all metal plane with a capacity of 12 passengers and 1500 pounds of mail and or freight can be operated at 75¢ a mile including overhead and maintenance for 100,000 miles. This includes depreciating the motors 100% during 100,000 miles of flying and depreciating the plane, other than the motors, 20% a year. Also insurance at 25%.

The Ford people declare that they are achieving this experience in actual service between Detroit and Chicago and Detroit and other points. These figures are far lower than the ones we previously had and, if confirmed, would make the profitable operation of airplanes in conjunction with our steamers much more of a commercial possibility than we have hitherto believed.

I am having some new figures prepared that I think you will find of interest upon your return. Meanwhile, you may find the enclosed report of the Guggenheim Fund worth reading.

With kindest regards, I am,

Very truly yours,

R. H. PATCHIN

RHP.C

[fol. 4687]

W. R. GRACE AND COMPANY EXHIBIT 5

MEMORANDUM

G 21201

DATE March 22, 1928

TO MR. DEPT.

FROM MR. DEPT.

SUBJECT: AVIATION

The following are the operating results of a mail service between Los Angeles and Salt Lake City for one year, ending August 31st, 1927, which has been operating for several years:

The equipment consists of five Douglass planes, single motors, carring 500 pounds pay-load.

In seven months last year this service carried 269 passengers.

Number of miles flown	—	306,597
Number of hours flown	—	3,165.04
Cost per hour	—	66.88
Miles per hour		96.87
Cost per mile		69.00

Based on the above experience, The Western Airways Express now operating a mail and passenger service between San Francisco and Los Angeles with special tri-motor Fokker planes, with maximum speed of 140 miles an hour and a cruising speed of 120 miles an hour, have made the following estimate of costs of service on 365 mile run or 730 miles round trip, totalling 21,900 miles per month:

Overhead	.1153
Traffic	.0533
Maintenance fields	.0204
" equipment	.0893
Transportation (Pilot salaries, etc.)	.1140
Communication	.0168
Depreciation	.2840
Collision Ins. **	.0689
	.7620

** All other insurance included in figures under each headin

[fol. 4688]

PERSONNEL—LOS ANGELES TO SAN FRANCISC

Los Angeles

1 Engineer overhaul mechanism	$175.00
1 maintenance mechanic	200.00
1 Helper	100.00
	$475.00
Radio operator (additional pay)	25.00
	$500.00

San Francisco

1 field manager—chief mechanic	225.00
1 maintenance mechanic	200.00
1 assistant " "	175.00
1 helper—truck driver—office	100.00
1 radio operator	150.00
1 night watchman	125.00
Total per month	$975.00

Pilots

3 pilots @ $150.00 base pay (On 2 off 1 day)	$450.00

24,000 miles @ .025 per mile

Fuel—$9.50 per hour

San Francisco

Hangar
Office
Gas Station
Truck
Radio Station

Salaries—Operation		$2,525.00
Mileage pro rate of present overhead		
President	$500.00	
V. Pres.	350.00	
Traffic Mgr.	250.00	
Crew & Steno	250.00	
Traffic solicitors	400.00	4,275.00
Fuel		2,280.00
Depreciation Flying Equipment		6,250.00
" general "		500.00
Collision Insurance		1,500.00
Other "		300.00
[fol. 4689]		
Forward		$15,105
Maintenance expense other than salaries		1,672.00
		16,777.00

Daily mileage—730
Monthly " 21900

[fol. 4690]

W. R. GRACE AND COMPANY EXHIBIT G

MEMORANDUM

G 2121

DATE, March 22, 1928.

TO MR. ——— DEPT.

FROM MR. DEPT.

SUBJECT: INSURANCE

AVIATION INSURANCE DATA SUPPLIED BY MR. SALMON OF JOHNSON & HIGGINS, INC.

Insurance for Aviation Service of Ford—Detroit, Cleveland

10 passengers—Accident to passengers

$10,000.—for any *one*

$100,000.—aggregate

Rate: $2190.00 per plane per annum

$10,000 / $30,000 public liability
$116.00 per plane per annum

$5,000 property damage
$90.00 per plane per annum

$100,000 Fire—all
$5,000.

Accidental damage
10% deductible
9½% to 17½%

[fol. 4691]

W. R. GRACE AND COMPANY EXHIBIT 7

March 22, 1928.

MEMORANDUM OF CONVERSATION WITH REAR ADMIRAL H. E. CONE, MR. PATCHIN AND MR. COGSWELL. 3 22 28

Admiral Cone felt that a service from Panama South should be undertaken only with tri-motored planes and

he was of the opinion that it would require for the service between the Canal and Callao sea-planes and south of that point, land-planes. He thought that amphibians were not practical for landing in such a seaway as would prevail in these altitudes. He considered navigating conditions favorable, particularly from northern Peru south and not at all favorable between the canal and northern Peru although the excessive heat there would be an adverse factor.

Admiral Cone said he thought it would be impracticable for us to reach any conclusion without employing a competent man familiar with aviation, both in its operation and equipment aspects and having him make an investigation on the ground. He thought Commander Grow of the U.S. Naval mission in Peru, who is in charge of the Peruvian government's air forces probably had more knowledge than any other man of the air navigation situation between Perú and the Canal. He considers Grow a high class man and recommended that we obtain his views. He is now working on the establishment of an American service with the Peruvian Government from Lima to Iquitos.

Admiral Cone thinks the costs shown by Western Airways Express and other efficiently managed aviation companies are conservative; he is especially impressed with the results of the Western Air Express because it has accumulated from their revenues from carrying air mail, passengers and freight, maintaining landing fields, aviation schools and [fol. 4692], taxi service, a substantial surplus. The Guggenheim Fund made a substantial equipment loan to Western Air Express with which it bought the new Fokker planes now being operated between Los Angeles and San Francisco. Admiral Cone expressed the opinion that, with quantity production, the price of planes and engines will rapidly decrease. He thought the Wright Whirlwind engine now sold at $4,000.— actually costs less than $1,000.00 to build. He says that Ford is seeking by all possible means to increase his output in order to bring the plane down to a reasonable price and Admiral Cone thinks

within a few years that airplane engines will cost very little more than first class auto engines and that the planes complete will cost no more than a high class automobile. He concurred in Mr. Patchin's opinion that when a high price plane bought today is depreciated at the end of say two years, it will probably be possible to buy two or more planes with depreciation fund.

As regards metal versus wood and fabric planes, Admiral Cone said that it was an open question. Duralumin, the rustless metal of which the Ford planes are built ~~is~~ has not, in his opinion, been ~~entirely~~ fully established as superior under all conditions to wood and fabric.

Admiral Cone said that very satisfactory progress was being made on devices to prevent stalling, i.e., loss of control of the plane in taking off or in landing. The Guggenheim Fund expects great progress to be made in this respect during the next two years.

The necessity of en route repairs, Admiral Cone said, was likely to be over-estimated by steam-ship men and likewise the ground personnel needed for operations and repairs at the various ports of call. The modern airplane [fol. 4693] engine requires very little repairs that can be made en route. If it goes wrong it would probably have to be sent back to the factory for an overhaul, therefore the repair problem is met by having spare engines distributed at certain points along the route. If engine trouble develops, the tri-motored plane may be expected, ordinarily, to reach the next port where a spare engine is located whereupon the spare is substituted in a very few minutes. Except in the case of a serious smash, other parts of the plane seldom requires repairs as the mechanism is simple and accessible.

In response to our request, Admiral Cone mentioned the following persons experienced in aviation who might be available for employment:

Chas. T. Blackburn.
c/o L. A. Young Industries,
208 La Salle Street,
Chicago, Ill.

Former Commander in U. S. Navy; resigned to become assistant to general manager of air transport company operating a mail service from New York to Chicago; resigned as result of disagreement in organization. Is understood now to be figuring on establishment of a passenger air service from New York to Chicago.

J. Parker Van Zant.

Formerly U. S. Army officer, now running Scenic Airways Corp'n. General Manager of company operating planes out of Detroit. This is a service which takes tourists by airplane to Grand Canyon, Yellowstone Park and other points of scenic interest. This concern is understood to be backed by Mr. Mayo, Ford's chief engineer, H. Coffin and other aviation experts.

[fol. 4694]
Reid Chambers,
Kew Gardens, Long Island.

Organizer of the Florida Airways from which he later retired. Has studied thoroughly the question of Caribbean air transportation. Understood to be very intelligent with wide knowledge of aviation, but usually disagrees with associates.

Major Bane,
P. O. Box 506,
Monterey, Calif.

Formerly head of the design staff of U. S. Army air force. Has high class aeronautic experience. Retired or resigned from Army after dispute with General Patrick. Reported to be well off financially. Now raising chickens in California.

Admiral Cone's comment on various planes, is as follows:—

Boeing Company of Seattle—Have not yet built tri-motored planes but have built two-motored. Very progressive and able company.

Ford and Atlantic Aircraft Corporation (Fokker) are the only concerns now building tri-motor planes. Ford all of metal. Fokker, have metal fuselage—remainder of plane is fabric and wood.

Loenig builds excellent amphibians.

Sikorski is producing very excellent construction in a single-motor amphibian now being used by Standard Oil Co. in Colombia and Venezuela.

[fol. 4695]

W. R. GRACE AND COMPANY EXHIBIT 8

[Emblem]

U.S. ARMY PAN AMERICAN FLIGHT

April 20, 1928.

My dear Mr. Patchin:

Since you were in the other day discussing the matter of an air line from the Panama Canal southward to Valparaiso, I have given this matter additional thought which leads me to believe that perhaps between my own personal files of information and the library in the Pan American Union, sufficient data are available to warrant the tentative layout of an air line over this route.

I realize investigation would be quite costly and this should be reduced or entirely avoided if at all possible. There is no doubt that the line would have to follow the coast as far as Peru before a choice became available of a water route or land route, and even in the southern part of Peru the route would have to again follow the coast line. In Chile, there is again the choice of the route following the longitudinal railroad or the coast line. With regard to the inland routes, I have little or no information; but after consideration of all the factors involved, I am quite sure that the coast line route is to be preferred and, in fact, is the only practicable route over a large

portion of the journey. I, therefore, believe that at least for the present the consideration of interior air lines paralleling the coast might be disregarded.

Again with an idea of reducing cost and at the same time retaining a reasonable degree of safety in flight, I feel that the single motored amphibian plane would be very suitable. The tri motored plane would have an excellent effect on the morale of the passengers, but the air cooled radial engine now coming into extensive use in airplane construction has proved its reliability to such a marked extent that it is a very dependable motor. The Loening amphibian is now being built with a Wasp, 9 cylinder, air cooled motor and has given excellent results. The cabin type of plane built by Mr. Loening and which is being exhibited at the Aircraft Show in Detroit, this week, has great possibilities for commercial use.

[fol. 4696] I, therefore, believe you would be perfectly justified in going ahead on plans for a commercial air line from Panama southward along the Pacific Coast, utilizing the single motored amphibian type of airplane. I should be glad to go into this matter more thoroughly with you at any time that you might desire should you care to make further investigation.

Assuring you of my great interest in the success of commercial air ~~factors~~ *ventures* and of my willingness to give whatever assistance I can, I am,

With kindest personal regards,

Very sincerely yours,

/s/ H. A. Dargue
H. A. Dargue,
Major, Air Corps.

Mr. Robert H. Patchin, Manager,
W. R. Grace & Company,
7 Hanover Square,
New York, N. Y.

[fol. 4697]

W. R. Grace and Company Exhibit 9

[Emblem]

U.S. ARMY PAN AMERICAN FLIGHT

May 26, 1928.

My dear Mr. Patchin:—

In reply to your letter of May 23rd, I shall be glad to go ahead at the earliest possible moment with the preparation of as comprehensive a report as my information permits on an air transport route from Colon to Valparaiso.

I am completely tied up for the next few days with pending legislation but with the adjournment of Congress in view on next Tuesday, it would appear that immediately thereafter I shall be able to start the study you desire.

I shall be very glad to see you when you come to Washington next week.

With very kindest personal regards, I am,

Sincerely yours,

/s/ H. A. Dargue
H. A. Dargue,
Major, Air Corps.

Mr. R. H. Patchin,
Mgr. W. R. Grace & Co.,
Post Office Box 286,
Hanover Sq., New York.

[fol. 4698]

W. R. Grace and Company Exhibit 10

[Letterhead of Nitrate Agencies Ltd., Antofagasta—Tocopilla—Taltal—Pisagua]

Personal.

No.....

[Handwritten notation—Mr. Patchin—Mr. Cogswell—Pls note & return—P.]

Iquique,

12th. April, 1928.

Luis Valverde, Esq.
c/o Messrs. W. R. Grace & Company,
Hanover Square,
NEW YORK.

Dear Valverde,

AVIATION.

I am in receipt of your letter No. 4203 and note your enquiries in regard to the possible development of the United States Mail Service to the West Coast, and I will make the necessary investigations and keep you posted on anything that should develop.

As a coincidence there appeared in the "Provincia" yesterday an article in regard to an Air Mail Service from Santiago to Iquique for which Señor Luis Testart already holds a concession, the reading of which will no doubt be of interest to you.

Assuring you that I will keep you fully in touch with anything new,

Yours very truly,

F. J. Harpel.

FJH/CET.

NITRATE AGENCIES Ltd.
Iquique
Antofagasta—Tocopilla
Taltal—Pisagua

Form 4

[fol. 4680]

W. R. Grace and Company Exhibit 11

[Letterhead of Pan American Airways, Inc., New York City.]

August 14th, 1928.

Mr. W. F. Cogswell,
c/o The Grace Line,
10 Hanover Square,
New York City.

Dear Mr. Cogswell:

In reading over the draft memorandum which I handed you in Mr. Hoyt's office yesterday, I find that several corrections should have been made.

I have made these corrections and am attaching herewith revised copy of the memorandum.

I have arranged to have Mr. Harris return to New York on Tuesday, August 21st. At that time, he will be prepared to spend several days calling on the major American companies operating in Peru, to tie up, if possible, some southbound mail revenue.

Please telephone me as soon as you are prepared to further discuss this matter.

In the meantime, I will have made up some detailed figures covering the initial six months' operations, and if possible, some sort of figures covering capital requirements for the year following the acquisition of a United States mail contract.

Yours very truly,

/s/ J. T. Trippe
J. T. Trippe

JTT s
Enclosure.

[fol. 4700]

W. R. Grace and Company Exhibit 12

Similar letter to:
The Pacasmayo Agencies Co., Pacasmayo;
The Paita Agencies Co., Paita;
Grace y Cia., (Peru), Secc. Piura, Piura;
Grace y Cia., (Peru), Secc. Trujillo, Trujillo;
Vda. de Piedra e Hijos, Pimentel.

November 7th. 1928

International Petroleum Co., Ltd.,
TALARA.

Dear Sirs,

PERUVIAN AIRWAYS CORPORATION.

Our New York House have entered into an arrangement with the Aviation Corporation of the Americas, which owns all the stock of the Pan American Airways Inc., to form a Corporation under the name of the Peruvian Airways Corporation. This new company has taken over the mail contract and concession previously held by the Huff Daland Dusters, Inc., and will operate between Lima and Talara the airplane which up to the present has been operated by the Huff Daland Dusters Inc.

This service, we hope will be the nucleus of a through service between the United States and Chile and there is consequently the possibility that the service will be augmented in the future. The success of the primary operation will naturally depend on keeping expenses to a minimum and obtaining as much business as possible. With this in view we are appointing you as agents of the Company in Talara and enclose herewith copy of the present proposed schedule. For the present as Agents we will give you a 5% commission on any business either cargo or passengers which you may secure for the service. In addition an Agency Fee of S/. 25.00 per month will be paid you for the present and naturally when the service is augmented by the addition of more airplanes, this Agency Fee will be

[fol. 4701], increased. However, we are putting this at a low figure to start with in order to give the Company an opportunity to stand on its own feet and the success of the venture will be a great deal due to the interest taken by Agents with the idea of using every effort to stimulate this business and be of all assistance possible.

Mr. Harold R. Harris is Vice President & General Manager of the concern with offices in Grace Building in Lima and consequently he will be in charge of the operations and will from time to time give you full details as to just what he requires of his Agents in order to make the service benefit and have everything running smoothly.

As W. R. Grace & Co., are 50% holders in the Peruvian Airways Corporation, we would like to have you assist as much as possible in helping us to make this venture a success and we assure you that any assistance you can give will be greatly appreciated.

For your information we enclose herewith clipping from a recent number of the "WEST COAST LEADER" which gives an outline of the importance of the new service and the possibilities for its future.

Trusting you will be able to help the Peruvian Airways Corporation in your district, we are,

Yours very truly,

p.p. W. R. Grace & Co.,

CGB/h.

copy to Mr. Harris
copy to New York

[fol. 4702]

W. R. Grace and Company Exhibit 13

October 22nd, 1928.

Mr. R. H. Patchin,
W. R. Grace & Company,
10 Hanover Square,
New York City.

Dear Mr. Patchin:

I am enclosing, herewith, copy of letter received from the State Department today, answering my letter of October 16th. This letter is mild, compared to the attitude taken by Mr. Francis White, Assistant Secretary of State, in conversation. He takes the position that Pan American Airways, Inc., has been favored in every way in establishing itself in the Caribbean area, and that the Department looks to this Company to carry the banner of American Air Transport on the West Coast of South America.

He has advised emphatically that now is the proper time to begin negotiations with Chile, because of the failure of the French to live up to their concession, and urges most strongly that we make plans to open up negotiations with the Chilean Government, for a definite concession, in the very near future.

From what little I know of the South American Air Transport situation, I feel that he is correct, and that we can possibly obtain, at this date, a much more favorable concession than we could hope to get at a later date.

In view of the fact that we have no one available at the moment to send to Chile, for the purpose of undertaking negotiations, it occurred to me that you might be able to have one of your men down there undertake these negotiations for us. We could supply the form of concession desired and give him the benefit of the experience we have had in negotiating this concession in Central America.

If this suggestion meets with your approval, I would be glad to talk it over with you in further detail, at your convenience.

Yours very truly,

John A. Hambleton,
Vice President.

JAH:B
cc: W.F.C. V

[fol. 4703]

W. R. Grace and Company Exhibit 14

chieftain 169 from METZNER. 11.14.28

1 169: your 224
2 27th and 28th word

Form B sent for your information study closely cable before our meeting pan american airways wednesday your opinion *how much of it obtainable from chile*

we and
3 american ambassador approached
4 minister and
5 postal authorities (in) our opinion
6 is no definite
7 declaration will be
8 obtained until we
9 present preface
10 to Min del Interior
11 which we consider
12 shouldbe done immediately
13 giving it maximum
14 publicity so as to
15 create popular
16 feeling and
17 ahow ambassador
18 create similar
19 feelingwith (feeling with)

20 government as we expect
21 difficulty with Min de Guerra
22 who is strongly in favor of
23 maintaining chilian
24 internal air
25 service in the hands of
26 army or at
27 least insist upon
28 having chilian
29 pilot sentence ends our opinion
30 is there would be
31 difficulty some
32 points clause-s
33 7 to 13 inclusive
34 director-s general
35 post office fear-s
36 too long a
37 period clause 16
38 X Also we consider it advisable
39 get Daville
40 communicate with his
41 government about
42 form B

Mr Valverde
Mr Patchin
Mr Cogswell.

[fol. 4704]

W. R. Grace and Company Exhibit 15

chieftain 172 from METZNER. 11.16.22

1 172:

2 our 169

we and american ambassador approached minister and postal authorities etc.

pan american airways

ambassador

3 suggests that you keep
4 in close touch with state dep

[fol. 4705]

W. R. Grace and Com

moradas 14 from SANTIAG

1 private
2 14: referring your
3 chieftain
4 cable 1
5 to Valparaiso.
authorise you
behalf of chili
form under uni
application
6 formally presented
7 (to the government ambassad
(today
8 cooperating
9 actively message ends

department

Mr. Valverde
Mr Patchin
Mr Cogswell

OMPANY EXHIBIT 16

AGO (Grace v. Cia) 12.19.28

to present application on
ian airways which we will
ited states laws etc.

lor

Mr Patchin
Mr Cogswell

(fol. 4706)

W. R. GRACE AND COMPANY EXHIBIT 17

chieftain 14 to METZNER. 12.24.28

1 14: your 14
2 from Santiago
Chilian Airways: application forma
presented today to the government
ambassador cooperating actively
3 organization Chilian Airways corporation
4 has been completed

Mr Patchin
Mr Cogswell

(fol. 4707)

W. R. GRACE AND COMPANY EXHIBIT 18

Moradas 18 to SANTIAGO (Grace) 2.7.29

1 18:
2 your 20 44th to 46th word
get state department cable his instruc-
tions without delay
3 state department promised
4 yesterday cable
5 ambassador assist you
6 we will follow
7 this up sentence ends
8 chilian ambassador promised
9 cable government
10 on our behalf sentence ends he
11 said would
12 remind them him that
13 when concession
14 given Latee
15 oere he
16 asked that
17 door be kept

18 open for
19 american companies
20 and government
21 replied to him
22 'door was
23 open and would
24 remain open
25 we believe inadvisable
26 you disclose
27 this information but
28 suggest that you emphasize
29 that we had been
30 led to understand
31 chile would
32 welcome american
33 air transport-
34 16th to 18th word

permit to carry international mail o

essential
35 for success of
36 undertaking that
37 permit also
38 cover passengers

Mr Iglehart
Mr Valverde
Mr Patchin

(Fol. 4708)

moradas 20 from SANTIAGO (Grace) 2.7.29

1 20: your 15
2 3rd to 5th word

cable essential points your application

soon*
3 private letter 8500
4 49 dated
5 december 18th 1928
6 the whole thing
7 is that
8 military regime
9 against our proposal
10 as presented

11 and will not
12 listen to reason
13 war department still
14 opposed have
15 hopes obtain
16 permit carry
17 international mail
18 only if this
19 obtained what do you
20 propose regarding
21 landing place
22 as cannot use
23 those of
24 army or
25 navy
15th to 18th word
are boeing or other united states companies seeking concession
26 negative reply
19th and 20th word
is american ambassador supporting
27 affirmative reply ambassador
28 cabled washington
29 today
asking for i.e. february 6th
30 definite instructions to make
31 energetic representation
32 chilian government allow
33 international mail
34 in United States
35 airplanes
36 to deliver into
37 chile as far as

continued.

[fol. 4709]

from Santiago. 2. 2.7.29

38 santiago up to the present
39 he has acted upon
40 our suggestion and

41 without government
42 instructions ambassador
43 suggests you
44 get state department
45 cable him
46 instructions without delay
47 your 16

essential convince minister importance
serious character our project etc.

we have
48 repeatedly put
49 forward all your
50 arguments had
51 interview Min del Interior
52 today

i.e. february 6th

he is
53 favourably disposed promised
54 discuss our
55 petition with
56 Min de Guerra and
57 will willingly
58 sign any
59 concessions latter's
60 agrees to (it)

Mr Valverde
Mr Patchin

[fol. 4710]

W. R. Grace and Company Exhibit 19

moradas 19 to SANTIAGO (Grace) 2.8.29

1 19:
2 your 20 57th and 58th word

mail in united states airplanes:

deliver as far as santiago

3 insufficient essential
4 have right

5 carry united states
6 mail through to
7 argentine uruguay

Mr Valverde
Mr Patchin

[fol. 4711]

W. R. Grace and Company Exhibit 20

moradas 24 from SANTIAGO (Grace) 2.27.29

1 24: your 28
if these points threaten delay
permit beyond today try to get
permit immediately leaving
points for early adjustment

2 owing to impossibility
3 obtaining official
4 permit in time
5 we requested ambassador
6 to assure if it would be
7 granted and
8 Min de Relaciones Exteriores told
9 him this morning
10 after cabinet
11 meeting that
12 decision was
13 taken to give
14 permit to
15 CAC to
16 enter and
17 fly in chile
18 also use
19 temporary landing
20 fields and
21 give some other
22 facilities and
23 that this
24 decision would be
25 notified to the

26 U S Embassy some
27 time this week
28 ambassador is
29 also cabling
30 the foregoing
31 to state department

Mr Valverde
Mr Patchan

[fol. 4712]

W. R. Grace and Company Exhibit 21

(TRANSLATION)

moradas from SANTIAGO 2-28-29

Our twenty-five

following are conditions stipulated in official memorandum received late this afternoon from minister of interior concerning permit quote

"1—It shall be understood that those who obtain the permit submit themselves to Chilean laws on public health, police, custom house, or those of any other category.

"2—The permit shall be understood to be conceded subject to the dispositions of the Havana Convention before mentioned insofar as these are applicable to it.

"3—The frontiers shall be crossed by the planes on their entering the country or on their leaving same, through Tomasiri in the North, and through Uspallata in the West.

"4—Hydroplanes or flying boats shall only fly over territory or waters under Chilean jurisdiction after submitting themselves to an examination by custom house, public health and police authorities in the airdrome or port nearest to the point of crossing the frontier.

"5—The pilots of the ships must be nationals of the United States or Chile.

"6—When flying over Chilean territory or waters they must be accompanied by a pilot of Chilean nationality.

"7—The landing points in each place in the Republic must be submitted for the approval of the Government.

"8—During the life of the permit the landing fields of the concessionaires can be used by the Military Aviation Department without charge to the state.

[fol. 4713] "9—This permit does not include any authorization or concession of commercial or postal character.

"10—It shall run for a period of no longer than six months while the basis for a definite agreement is established, and

"11—The permit shall not have any character of monopoly or privilege.

(Signed) Guillermo Edwards Matte"

[fol. 4714]

W. R. Grace and Company Exhibit 22

chieftain 9 from METZNER. 3.2.29

1 9: your 59
with reference to your negotiations with government to get as favourable as possible an air concession etc.

2 we and ambassador
3 absolutely sure
4 no competitors have
5 or are applying for
6 concession-s Montg-
7 omery entirely
8 unknown here ?? ambassador
9 is ready to
10 push all possible
2nd to 5th word
your negotiations with government to get as favourable as possible an air concession

11 but before proceeding
12 act energetically

13 wish to know
14 if you have got
15 contract as otherwise
16 we might be adding
17 competitors

Mr. Patchin.

[fol. 4745]

W. R. Grace and Company Exhibit 23

moradas 32 to SANTIAGO (Grace) 3.42

1 32: american ambassador
2 report s state department
3 Late cocre
4 urgently seeking
5 contract carry
6 chilian mail
7 bolivia peru sentence ends
8 this obviously
9 designed to forestall
10 our service think you should
11 urgently claim
12 same opportunity also
13 pointing out
14 that we will be
15 in best
16 position furnish
17 this service as
18 our contract with
19 united states government requires
20 us to carry
21 mails to the United States
under 22 44 arrangement
23 made by united states government
24 with foreign
25 government s such as
26 chile therefore
27 thank greatly
28 to advantage chile

29 make no compromise
30 with Late-
31 coere pending
32 full discussion of our
33 service sentence ends
34 our service will be extended
35 from mollendo
36 into chile
37 immediately operating
38 personnel
39 additional equipment can reach
40 there message ends

Mr Valverde
Mr Patchin

[fol. 4716]

W. R. Grace and Company Exhibit 24

[Handwritten notation—Copy to Pan Grace]

POST OFFICE DEPARTMENT
SECOND ASSISTANT POSTMASTER GENERAL
WASHINGTON

May 6, 1929.

Mr. R. H. Patchin,
Care W. R. Grace and Company,
Hanover Square, Post Office Box 286
New York City.

My dear Mr. Patchin:

Following up your telephone conversation and, as well, telegram of even date, I communicated with Assistant Secretary White of the State Department who was glad to have the information and advised me that he would cable tonight to Ambassador Culbertson at Santiago of the satisfactory outcome of the matter of the contract between the Post Office Department and the Pan American-Grace Airways.

I also suggested that he carry in his cablegram the information that the service would be established to Mollendo

at an early date and the extension would come very soon into Chile.

Am glad to have been of service to you in this matter.

Very sincerely yours,

W. IRVING GLOVER
Second Assistant Postmaster General.

[fol. 4717]

W. R. GRACE AND COMPANY EXHIBIT 25

[Western Union Telegram Form]

May 6 1929

W. IRVING GLOVER
SECOND ASSISTANT POSTMASTER GENERAL
POST OFFICE DEPARTMENT
WASHINGTON, D. C:

PAN AMERICAN GRACE AIRWAYS REPRESENTATIVE SANTIAGO, CHILE CABLES IMPORTANT STATE DEPARTMENT OFFICIALLY ADVISE AMERICAN AMBASSADOR SANTIAGO OUR CONTRACT CONFIRMED. RESPECTFULLY REQUEST YOUR DEPARTMENT ARRANGE STATE DEPARTMENT SEND SUCH MESSAGE TODAY AS IT WILL HELP EXPEDITE OUR ARRANGEMENTS EXTENSION SERVICE CHILE

R. H. PATCHIN

[fol. 4718]

W. R. GRACE AND COMPANY EXHIBIT 26

morades 134 from LIMA. 1.25.29

1 134: following is for Patchin

2 press reports

3 Lindberg

4 will fly to

5 peru american ambassador

6 advises if you confirm this

7 he can arrange
8 special invitation
9 extended by
10 president of peru
11 which he feels
12 will give
13. wide propaganda
14 to peruvian airways corporation
15 and help him in
16 his desire to
17 eliminate competition

Mr. Patchin.

[fol. 4719]

W. R. Grace and Company Exhibit 27

(TO:—W. R. GRACE & CO., LIMA) (PERU)
(CABLE NO. 241 DATED JAN. 26TH.1929)

-0-0-0-0-0-0-

(MORADAS CABLE)

1— (MORADAS)CABLE NO. 241 REFG. TO YOUR CABLE NO. 134 6TH.WORD RE.LINDBERG PLY TO PERU ADVISE IF YOU CONFIRM)
2— WE ARE ADVISED HE HAS NO
3— PLANS GO
4— SOUTH PANAMA
5— AT THIS TIME.
6— SENTENCE ENDS TELL
7— AMBASSADOR GREATLY APPRECIATE
8— HIS INTEREST

(MR.RHP)

[fol. 4720]

W. R. GRACE AND COMPANY EXHIBIT 28

[Handwritten notation—Mail Contract]

ASSISTANT SECRETARY OF STATE
WASHINGTON

March 16, 1929.

Dear Mr. Patchin:

I received this morning your letter of March fifteenth. After what you said to me by phone yesterday, I immediately sent a further and fuller cable to the Legation in Ecuador setting forth this Government's interest in having the air mail carried through to Chile, and I hope this will be of some use in meeting the attacks against the Pan American Grace Airways, Incorporated. If there is anything further that we can properly do, please let me know.

Yours, very sincerely,

/s FRANCIS WHITE

Mr. R. H. Patchin,
Care of W. R. Grace and Company,
Hanover Square,
New York, New York.

[fol. 4721]

W. R. GRACE AND COMPANY EXHIBIT 29

ASSISTANT SECRETARY OF STATE
WASHINGTON

March 20, 1929

Dear Mr. Patchin:

With reference to recent correspondence, I quote herewith the following telegram dated March 19, 2 p.m., which we have just received from the Legation at Quito:

"Ratification not necessary. No effective opposition in Assembly. Plane Lioning arrived Guayaquil yesterday."

Yours, very sincerely,

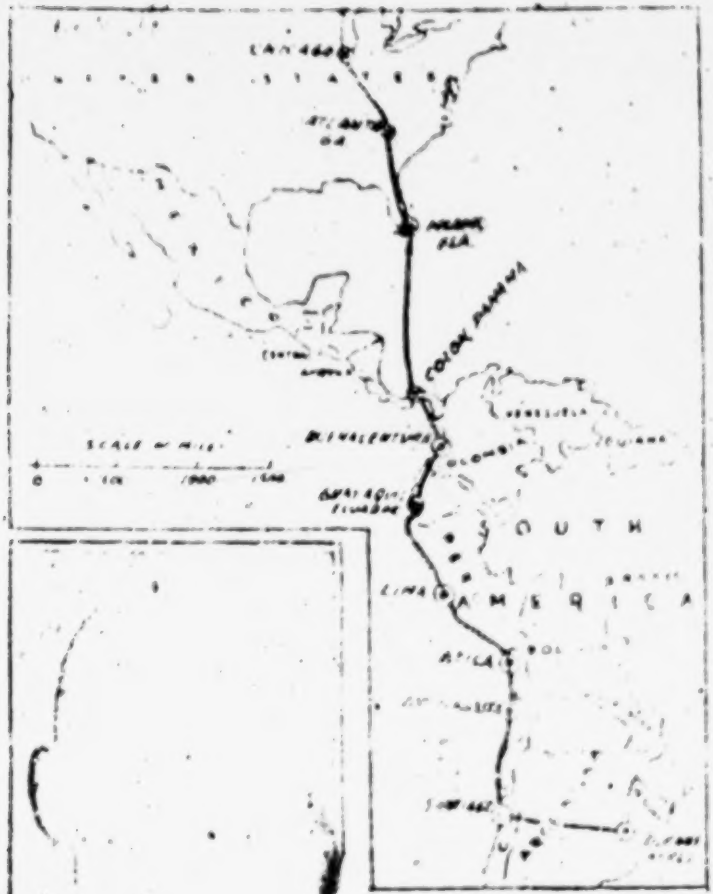
/s/ FRANCIS WHITE

Mr. R. H. Patchin,
Care of W. R. Grace and Company,
Hanover Square,
New York, New York.

MATERIAL UNSUITABLE FOR MICRO-CARDING

CHICAGO DAILY NEWS Oct. 18, 1928.

ROUTE OF RECORD AIR FLIGHT



Junius B. Wood (below), a staff correspondent of The Chicago Daily News, will attempt to traverse the air route indicated above, starting to-

JUNIUS B. WOOD BEGINS LONGEST AIR MAIL FLIGHT

Hops from Buenos Aires

told. Today I start on an air flight with a letter for the United States 9,000 miles away on the other side of the hemisphere, from a continent basking in sunny springtime to a north of autumn shivers over the world's longest mail line.

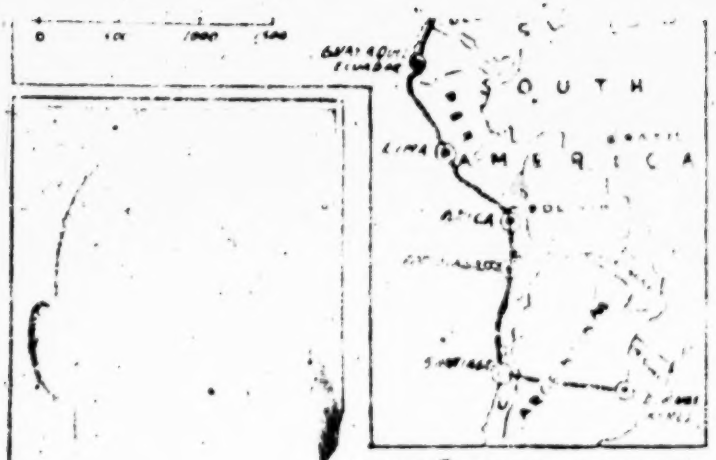
Other letters may travel farther but none without change from land to sea, while this one nearer each day on man-made wings until it reaches our Atlantic coast and is passed up to other planes humming through the night to the farthest corner of the United States on the world's fastest mail delivery.

Each day the story will be told. From the days when the Grecian bards sang of the winged Mercury, the world's first messenger, the sagas of the mail service have been sung—tireless Indian runners, trotting slippered postmen through bandit-ridden China, reindeer teams in Siberia, camel trains across the desert, long black trains thundering past lonesome stations in the night, chubby hands stretching on stubby toes to drop a letter in the corner box and the faithful man in gray bringing a letter. All this is the romance of travel and [illegible]

A Century's Progress

From the days of the pony express until the [illegible] department established two [illegible] with a search [illegible] the air mail is a [illegible] years [illegible] [illegible] [illegible]

W. F. Hall Printing Company Exhibit



Junius B. Wood (below), a staff correspondent of The Chicago Daily News, will attempt to traverse the air route indicated above, starting tonight from Buenos Aires for Chicago. The Pagal Air Line will carry Wood from Buenos Aires to Santiago, Chile. From that point, he will travel in a Grace Lines plane to Panama, thence by Pan-American plane to Miami. At Miami he will transfer to a plane operated by the Pitcairn company which will carry him to Atlanta. The last leg of the journey will be made in a Nicaraguan plane operated by the Interstate Lines.

JUNIUS B. WOOD BEGINS LONGEST AIR MAIL FLIGHT

Hops from Buenos Aires on 9,000-Mile Trip with Letter to U. S.

CROSSING 13 NATIONS

BY JUNIUS B. WOOD

SPECIAL CABLE

To The Chicago Daily News Foreign Service

Copyright, 1929 The Chicago Daily News Inc.

Buenos Aires, Argentina, Oct. 18 — The story of the world's longest and fastest air-mail route, the crowning achievement in the romance of mail delivery through the ages, is to be to drop a letter in the corner box and the faithful man in grey bring us a letter. All this is the romance of travel and [illegible]

A Century's Progress

From the day of the pony express until the radio, departing from enabled two continents with an area through the air waves, [illegible] years ago [illegible] progress symbolizes a century of man's triumph over nature. A week ago the first flight started here, just 437 years from the day Columbus discovered the continent. In those days, before radio and cable linked the world, travelers disappeared for a few years when they sailed across the sea. Today a letter comes from continent to continent in nine days. Those lords voyagers have gone into history as the world's greatest adventurers. Perhaps those who daily fly in planes over mountains and seas are greater adventurers to an age when adventure palls on a surfeited world.

This air flight which starts today is the second on this long journey and it may show that possibly wind and rain will provide thrills, but whether there be sunshine or clouds, nature will be picturesque and the story of how the mail came through always will be interesting.

Crosses Thirteen Countries

This mail route crosses four times between here and Miami the Cordilleras known as the Rocky mountains in North America and the Andes in South America. It flies over a part of the Pacific ocean, the Gulf of Mexico and the Atlantic. Over Panama, where ships seem below like toy boats in a ditch, and over Nicaragua, where another great canal soon will link the two oceans. It crosses thirteen countries and connects with as many more, stretching through the air from the Arctic on the north to the Antarctic on the south, in that long flight skimming over the sea along the coast, soaring 20,000 feet above the snow-mantled Andes, fac-

WOOD CONQUERS ANDES STORM; TACNA IS NEXT

BY JUNIUS B. WOOD.

SPECIAL CABLE

To The Chicago Daily News Foreign Service

Copyright, 1929, The Chicago Daily News Inc.

Arica, Chile, Oct. 21.—Landed at El Buitre airfield in Tacna province at 5:32 p. m. today.

BY JUNIUS B. WOOD.

SPECIAL CABLE

To The Chicago Daily News Foreign Service

Copyright, 1929, The Chicago Daily News Inc.

Antofagasta, Chile, Oct. 21.—The first air mail for the United States which left Buenos Aires Saturday morning stopped here today after covering 1,276 miles of its 9,000-mile flight.

Under low-hung clouds with lightning playing on the tips of the wings, the big metal plane in which I was a passenger passed over Argentina Andes and was halted for the night at Mendoza, Argentina, by a blizzard raging around the peaks of the Andes. It fought its way across the barrier on Sunday to Santiago, Chile. The Chilean mail was put aboard another plane and at 4:38 p. m. we were 420 miles farther north along the Chilean coast. The schedule takes us to Tacna on the northern limit of Chile's long seacoast today.

A steady twenty-four hour rain had become a downpour when half a dozen automobiles bringing the Argentine mails and airplane staff slipped and slithered on the muddy road to the Pacora field after daylight Saturday morning. The bespectacled postal agent was accompanied by his corps of clerks who watched to see the plane and a serious policeman.

The guard carefully counted the mail bags and had the pilot sign a manifest. Argentina takes the air mail seriously and all was properly sorted in separate bags to drop off at the different stops on the journey from Mendoza to faraway Miami.

The little group on the field was huddled under the shelter of one of the big wings of the trimotor Ford metal plane. The engines were being warmed up. The Pan-American commander, Capt. Elmer Boyd, and Capt. Ralph O'Neill, veteran Andes flyer, were in the cockpit. Capt. Boyd was to pilot the plane to Mendoza, 600 miles away, and Capt. O'Neill was to fly it on to Santiago.

Low-hanging patches of white clouds flecked the fields of green and brown below. Then the big plane found itself between two floors of solid cottony clouds, white above and white below. All else was invisible, like a bare room stretching to infinity. In thirty minutes the upper clouds changed into rain. A hole appeared below the plane which dived through it and skimmed 100 feet above the ground.

Traveling 110 Miles an Hour

We had been flying by compass but now the Los Andes railroad station showed where we were. The speedometer was registering 110 miles an hour. We followed the railroad tracks where there was brief glimpse of Argentine windmills bobbing up as an unpleasant surprise.

Clouds are not interesting and I slept for two hours. I was awakened by a shout of "the big prairie fire" nearly jolted me from my seat and Williams the San Francisco pilot and Peter Pickup, the mechanic, both looked back, laughing heartily. Below was a herd of cattle throwing dignity to the winds and with tails out and heads down charging wildly across the field. "The sun was shining brightly and the plane with a playful dive stampeded the herd. "Cheer up the sun is shining" shouted Williams above the roar of the motors. "See Argentina first!"

The sunshine lifted to a brighter red the two bare heads of the young Americans in the cockpit and I could not fail to thrill with patriotic pride at the thought of what Americans are doing and daring in distant lands.

Start to Climb Foothills

Half an hour of sunshine and then rain again. At 11:30 a. m. the big squares of cultivated fields and grazing herds were left behind and we slowly started to climb the bare and scrubby foothills of the Andes. Scattered haciendas appeared and then solid vineyards of grapes along the banks of the rivers and streams. Then we were over the Andes.

"It was a beautiful day yesterday," said one of the aviation enthusiasts at Mendoza yesterday. "We could see the entire Cordilleras from here."

Storm Grows Worse

But it was not beautiful this afternoon and hourly reports came that the storm was getting worse. "That would cover our wings with ice in ten minutes and we could not fly," said Williams. So he looked up the plane in the field and went to the Plaza hotel, which is the best in Argentina. This was some satisfaction.

In the last fortnight I have flown across the Andes twice but the first time we needed to rise only 18,500 feet to surmount nature's barrier. Every minute and every hour its mood changes from a smiling air to strong storms and capricious winds. On each flight the mail pilot takes a new look and new chances of slipping through when and how he can. The orders are not as to how is to be done but that is to get the mail through.

Andes Hidden by Clouds

Dull blue clouds hid the Andes when we returned to the Los Tamarindos airdrome at Mendoza on Sunday morning. Toward the south a break showed lighter clouds over another pass 4,000 feet lower than the Uspallata pass, but Chile will not permit commercial airplanes to cross there, probably believing that some military secret would be disclosed. A report from the peaks said that the winds were still strong, but that the snow had stopped.

"We will make a try for it so that you will know what this jump is like," said the red-haired pilot.

"Bumpo" agreed the lone policeman carrying a rifle, who had stood on the field guarding the plane through the night a symbol of Argentina's vigilance over the mail.

None of the spectators who had thronged the field on the previous day showed up that early, not believing that an attempt to cross the mountains would be made.

It did not look any too good with a solid wall of clouds banked along the base of the mountains, but we started and flew steadily, enveloped by fog. Mendoza is 2,900 feet above sea level. We were off the ground at 8:13 o'clock Sunday morning. We were 7,000 feet up at 8:20, 9,500 at 8:22, 13,000 at 8:28, 17,500 at 9 o'clock,

ning playing on the ups of the wings, the big metal plane, in which I was a passenger, passed over Argentina Saturday and was halted for the night at Mendoza Argentina by a blizzard raging around the peaks of the Andes. It fought its way across that barrier on Sunday to Santiago Chile. The Chilean mail was put aboard another plane and at 4:38 p. m. we were 436 miles farther north along the Chilean coast. The schedule takes us to Tacna, on the northern limit of Chile's long seacoast, today.

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The guard carefully counted the mail bags and had the pilot sign a manifest. Argentina takes the air mail seriously and all was properly sorted in separate bags to drop off at the different stops on the journey from Mendoza to faraway Miami.

The little group on the field was huddled under the shelter of one of the big wings of the trimotor Ford metal plane. The engines were being warmed up. The Pan-American company's agent signed the last documents including one disclosing that I was an assistant pilot. The pilot and mechanic were in the cockpit and I with the mail was in the big passenger compartment built to carry fourteen, which eventually it will do over the Andes.

The motors tempo increased with a deafening roar. James D. Summers, vice-president of the Pan American company, holding a watch. There was a small group of spectators who were shivering on the lee side of the plane. Mr. Summers waited until it was exactly 8 o'clock when he waved his

chauffeur-was registering 110 miles an hour. We followed the railroad tracks where there was less change of an Argentine windmill bobbing up as an unpleasant surprise.

Clouds are not interesting and I slept for two hours. I was awakened by a flop of the big plane that nearly lifted me from my seat. Ned Williams, the San Francisco pilot and Peter Prokup, the mechanic, both looked back, laughing heartily. Below was a herd of cattle throwing dignity to the winds and with tails out and heads down charging wildly across the field. The sun was shining brightly and the plane, with a playful dive, stampeded the herd. "Cheer up, the sun is shining," shouted Williams above the roar of the motors. "See Argentina first."

The sunshine tinted to a brighter red the two bare heads of the young Americans in the cockpit, and I could not fail to thrill with patriotic pride at the thought of what Americans are doing and daring in distant lands.

Start to Climb Foothills

Half an hour of sunshine and then rain again. At 11:30 a. m. the big squares of cultivated fields and grazing herds were left behind and we slowly started to climb the bare and scrubby foothills of the Andes. Scattered haciendas appeared and then solid vineyards of grapes along the tree-lined roads. Mendoza was below. A charge into the wind and then down on the rain-swept field at 1:45 p. m. It was the fastest trip made from Buenos Aires. The time was less than five hours for the 360 miles over a road which 100 years ago horsemen in relays, leaving their spent, spurred and dying mounts along the trail, occasionally did in seven days.

Toward the west, the Uspallata pass was hidden in clouds. A message from the All-American cable office at Lascuevas brought from the relay station told of a storm raging there 17,000 feet above the sea with the thermometer showing 38 degrees below zero.

Andes Hidden by Clouds

Dull blue clouds hid the Andes when we returned to the Los Tamarindos airdrome at Mendoza on Sunday morning. Toward the south a break showed lighter clouds over another pass 4,000 feet lower than the Uspallata pass, but Chile will not permit commercial airplanes to cross there, possibly believing that some military secret would be disclosed. A report from the peaks said that the winds were still strong, but that the snow had stopped.

"We will make a try for it, so that you will know what this jump is like," said the red-haired pilot.

"Bueno," agreed the lone policeman carrying a rifle, who had stood on the field guarding the plane through the night, a symbol of Argentina's vigilance over the mail.

None of the spectators who had thronged the field on the previous day showed up that early, not believing that an attempt to cross the mountains would be made.

It did not look any too good with a solid wall of clouds banked along the base of the mountains, but we started and flew steadily, enveloped by fog. Mendoza is 2,000 feet above sea level. We were off the ground at 8:13 o'clock Sunday morning. We were 7,000 feet up at 8:20, 9,500 at 8:22, 13,000 at 8:26, 17,500 at 9 o'clock, 20,000 at 9:03 o'clock and 20,700 at 9:11. It was steep climbing, but the plane popped out of the clouds above the mountains as was expected. If it had been less steep the flight probably would have ended in an abrupt bump against the side of the mountain.

Beacon Towers 12,650 Feet

Once in the pass the big plane bucked and bumped in the wind like an ocean leviathan in a storm, but the ceiling of clouds had gone and there was a clear wild below to where the precipitous railway was starting. The peaks above the valley were covered with perpetual snow and below

WOODS FLYING WITH THE MAIL

Map with unbroken line showing territory already covered by Junius B. Wood of The Chicago Daily News foreign service. The broken line indicates territory he will fly over in mail plane.

In a couple of days from now the letters which we carried over the Andes will be aboard another plane skimming over the ocean around the equator, with a perspiring pilot in his shirtsleeves and linen trousers. Just now my head is aching. Lights are dancing in front of my eyes and I have a desire to sleep instead of looking out of the windows. These feelings with a shortage of breath caused by the abnormal altitude discourage romancing over the scenic variety which comes to the air mail traveler. Solitary and in the vast space without a sign of life, the big plane was buffeted by the winds and seemed merely a sparrow in a gale, and every plunge and dive appeared to be a tumble with death. This must seem to be a tremendous effort for the thirty-four pounds of mail which we are carrying from Buenos Aires. The service, however, must start. When the saving of time is considered, it seems to be worth while.

French Plane Passes

Then off to our left into the sun flashed a French mail plane going east. This was the one thing real in the myriad spots twinkling before our eyes.

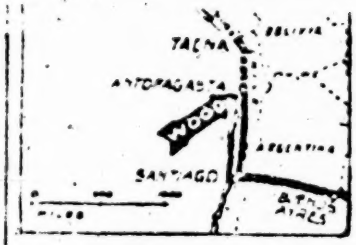
During the California gold rush a shipload of Frenchmen walked from Buenos Aires to Santiago. It took them three months. A few years ago, with good luck, one might cross the Andes by rail in eight days. Then the railroad dug a tunnel and when there are no snow blockades trains get over in twelve hours. But this Sunday morning the French and American planes slid past each other on the airway 20,000 feet up across the Andes in one or two hours, each having the mail to its own country on different continents on opposite sides of the Atlantic in nine days.

"We have passed through the worst," the pilot shouted. It is 10:15 and the altitude is still 20,700 feet. Two minutes later it is 20,000 feet, three minutes more it is 15,000 feet, two minutes more it is 12,000 feet. Santiago is in view ahead under clouds. At 10:23 we are bumping across the field with our ears cracking as if machine guns as we try to get back to normal. Our heads are [illegible] from what seemed to be a [illegible]. Other thrills seem only pin pricks as compared with such a flight while the plane which brought me takes the United States mail to Santiago, whence it continues to Buenos Aires.

The government of Chile had kindly given me special permission to travel on the plane as a passenger.

Wisconsin Man New Pilot

Robert Reste of Wannakee, Wis., is the new pilot who will continue to Lima, 1,750 miles away, on the longest aviation run in the world. The mail exchange having been made, and the last greetings having been said, the third plane on which I have been a passenger in a day left the ground. It bumped and bucked in a cross wind sweeping the hilltops and struck across the ocean. After about two hours it came down in spirals onto another well-kept army field after we had made only 586 miles for the day but when the altitude is considered many more. Copiapo was one of the most important towns in Chile before the mines were worked out. It lies in the last green valley we will see for another 1,000 miles. Copiapo has rain only twice a year. Today the sun is shining and dust is blowing. It is a different world from that of the morning in Mendoza where an overcoat was comfortable in the chilly rain.



Map with unbroken line showing territory already covered by James H. Wood of The Chicago Daily News foreign service. The broken line indicates territory he will fly over in mail plane.

[illegible]

[illegible] Pass next to the [illegible] Then [illegible] [illegible] [illegible]

[fol. 4736]

W. R. GRACE AND COMPANY EXHIBIT 31

NEW YORK

September 26, 1930.

DIRECTORS, PAN AMERICAN-GRACE AIRWAYS, INC.

Gentlemen:

I take the opportunity afforded by the second anniversary of the commencement of operations by our Company on the West Coast of South America to give the Directors a brief resume of the operations, to date, and to remark on past and present performance.

The Directors may recall that on September 13, 1928 our operations were inaugurated by a flight of a plane piloted by Mr. Harris from Lima to Talara. Operations between the Canal Zone and Mollendo were commenced on May 17, 1929. Extensions of the route to Santiago, Chile, were made on July 16, 1929. The line was further extended to Buenos Aires on October 12, 1929, and to Montevideo on November 30, 1929.

The Post Office ordered twice-weekly service on July 1, 1930, at the same time cutting the running time two full days between the Canal Zone and Montevideo.

I refresh the Directors' minds with these dates so that they may appreciate the fact that within the space of practically one year Panagra has increased its mileage from 1200 miles per week to 18,000 miles per week. It has also increased its miles flown per day from 170 to 2570.

It was inevitable that such a rapid increase in route and mileage, coupled with the distance from the source of supplies, would entail added responsibilities and increased
[fol. 4737] effort on an already hard-working organization. The necessary additions to that organization could not be made at a moment's notice. Men capable of doing their best work and also of handling themselves diplomatically in Latin America have to be very carefully chosen. They

could not be chosen and sent down beforehand, because of the policy that only a minimum expenditure must be incurred until we were placed on a twice-weekly basis.

It is, therefore, a source of gratification to your management, and I am sure it will be to the Directors, to be able to state that since operations commenced, in spite of high-pressure work throughout the organization, there has been no case of loss of life or limb to passengers and flying personnel, and not even a forced landing from motor failure whilst maintaining almost an unbroken schedule. It would be extremely unjust to attribute this record solely to undeserved good fortune. The men on the ground and in the air who have contributed to this record by unfailing diligence under difficult working conditions, and sometimes inclement weather, in foreign countries, should receive due credit.

It has been called to your management's attention that certain unfavorable reports have been received concerning the appearance of our planes, and an apparent lack of organization throughout our operations.

I have not been favored with a copy of these criticisms, but as far as I am able to determine, only one such was received from an individual who had any previous experience to qualify him as a judge. It is, therefore, impossible to make detailed answer. I know of no operations in any industry that could not be criticized if a person were so [fol. 4738] disposed. I would, therefore, beg the Directors to examine the following illuminating data:

Miles flown Sept. 1928 to May 17, 1929	46,000
" " May 17, 1929 to Dec. 31, 1929	282,100
" " Dec. 31, 1929 to Aug. 31, 1930	440,364
Miles flown weekly since July 1, 1930	18,000
Planes in operation May 17, 1929	5
" " " Dec. 31, 1929	11
" " " Aug. 31, 1930	15
Hours flown per plane per day	1.7
Pilots on Pay-roll Aug. 31, 1930	13

Flying hours per pilot per day		1.97
Motors in operation		25
Motors — Spares		45
Mechanics on Pay roll — Dec. 31, 1929		29
" " Aug. 31, 1930		52
Value of spare parts — Dec. 31, 1929		$ 20,300
" " " June 30, 1930		33,400
" " " July 31, 1930		39,600
Operating Costs per mile flown — 1929		$ 2.20
" " " " — to		
August 31, 1930		$ 1.72
Operating Costs per mile flown — July and August, 1930		$ 1.47
Passenger Revenue — 1928		$ 5,700.
" " 1929		$ 72,500.
" " 1930 (to Aug. 31st)		$ 84,400.

Commenting upon the above data I would respectfully draw the Directors' attention to:—

First: The notable and rapid increase in mileage flown.

Second: Planes have been placed in operation to care for the increase, so that each plane is in the air less than two hours per day.

[fol. 4739]

Third: Pilots have been hired to the extent that each pilot is not required to fly more than 750 hours per year.

Fourth: Motors have been purchased for 80% replacement, and spare parts have been laid down for approximately six months in advance. A substantial increase in the mechanical force has been made. Of the above 52 mechanics, 20 are Americans and experts in shop and line service.

Fifth: Our operating costs, which include Depreciation and Obsolescence, Crash Reserve, etc., have

shown a gradual decrease, commensurate with the additional mileage flown.

Sixth: Our passenger service seems to be giving satisfaction, as in the face of strenuous competition from a competing American Company in Peru, the passenger revenue shows notable increase.

It will be recalled that your management was instructed to exercise the strictest economy in expenditures for operations, and that no large sums for permanent facilities were to be appropriated until the Post Office ordered at least twice-weekly service. This carried with it the obligation to delay the building of hangars and shops until it was definitely known where these could be strategically located. It was, therefore, not until after July 1st, 1930 that the determination of what looked to be a permanent schedule permitted the expenditure for permanent facilities.

A re-allocation of appropriations was immediately asked for. The construction of a hangar at Lima was commenced. This is now ready for occupancy. Other facilities are either completed or in process of completion.

The services of a maintenance engineer were secured—[fol. 4740] Mr. C. C. Cole, late of the Western Air Express. Mr. Cole arrived in Lima the first part of August, 1930, with instructions to report immediately as to what should be done to place our maintenance on a level with that of any successful airline. Mr. Cole's reputation is so high that the Department of Commerce has appointed him to inspect planes for re-license from Talara to Montevideo, and will accept his statements as to the fitness of Panagra planes. Mr. Cole's recommendations will be carefully studied and placed before you for approval.

It is the intention of the management to have the use of the facilities of four overhaul stations along the route—Panair at Cristobal, Panagra at Lima, Curtiss Co. at Santiago, and either Panair or Panagra at Buenos Aires. This latter depending upon the plans for the extension of "Alas" activities. Where necessary Flight Mechanics will accom-

pany the planes, and Ground Mechanics will be located at intermediate points.

It is believed that it will not be necessary to purchase airports in Peru, Chile or the Argentine, but that by arrangements with the Governments and private Companies, the necessary facilities can be more cheaply obtained. I again call the Directors' attention to the anti-monopolistic policies of the large South American countries, and to their evidenced desire to control commercial aviation within their territorial limits by the erection of Government airports at which all commercial aircraft will be ordered to clear. An incident such as the recent invasion of Chile by a revolutionary plane, piloted by American aviators, will strengthen the determination of the Governments to enforce such policies.

[fol.4741] It will undoubtedly be of interest to the Directors to read the latest impressions of travellers over our lines. I, therefore, attach to this report extracts from letters from Mr. C. C. Cole, from Commercial Attache Walter J. Donnelly, and from two other important passengers.

I most respectfully request that the Directors hasten the settlement of the unpaid bills for Panair and Grace services during 1929, and the first eight months of 1930. Our estimated Cash Position at October 1st will be:

Cash in Banks Sept. 25th		$ 222,100.
P. O. accruals including September estimated revenue		280,000.
		$ 502,100.
Unpaid bills including supplies purchased	$ 24,000.	
Appropriated for Chile	87,500.	
Unexpended appropriations	30,000.	141,500.
	Available Cash	$ 360,600.

These figures would seem to show that the Company is entirely solvent. No proper statement of Profit or Loss

MICRO CARD
TRADE MARK ®

21

12220

MATTHEW BENDER & COMPANY
MB

136-63

m
microcard

can be made, however, until it is definitely decided what we must pay for supervision by Panair and for W. R. Grace agency fees. If a reasonable figure is established for these services, it will be possible to provide, from current revenue the additional equipment and facilities necessary to insure the continuance of successful operation.

Respectfully,

s/ J. D. MacGregor.
J. D. MacGregor.

GR 363

[fol. 4742] Extract from letter from Commercial Attache Walter J. Donnelly, dated February 10, 1930.

"Bogota.

"Last month I returned from a 7,000 mile airplane tour of the West Coast of South America. It is a real service. In my opinion it is far superior to the Scadta and much more difficult."

Extract from letter from Mr. C. C. Cole, dated August 12, 1930.

"I wish to take this occasion to thank you for the most interesting airplane ride I have ever made. It was also instructive to me. The crew of the plane and the plane were above reproach and did everything possible to make the trip a pleasure. The engines functioned perfectly from start to finish and the time taken to service at the stopping points was a real eye opener to me under the conditions. You are to be congratulated on the operation and I believe it to be the most interesting airplane trip that can be had."

Extract from letter from Mr. John T. Faris, D. D., Editor of the Board of Christian Education of the Presbyterian Church in the U.S.A. dated September 23, 1930.

"On Friday last I returned from South America. I wish to tell you how helpful were your letters, and how wonderful were all the arrangements made for me.

I did not use the plane from Arequipa because of the revolution. It was considered unwise by those who advised me not to go to La Paz and Cuzco. Therefore, I took the plane at Lima, and rode to Cristobal. Later I had the Pan American plane from Cristobal to Puerto Cabello and return.

My contact with your representatives to whom you wrote, and in fact all other representatives of the Airways whom I saw and with whom I rode, was delightful. You certainly have a remarkable organization."

[fol. 4743]

W. R. GRACE AND COMPANY EXHIBIT 32

No. 1.

Airmail October 6th 30.
due NY October 10 30.
Copy Sta Maria Oct.7 30.
due New York Oct.17 30.

Lima, Oct. 7th, 1930.

R. H. Patchin, Esq.,
NEW YORK.

Dear Patchin:

Your No. 2.

I expect to write the Panagra directors shortly regarding what we are doing here. In the meantime you may take my word for it that we are running a real transportation business in Peru along thoroughly sound lines and Trippe and all others concerned have nothing to worry about. Incidentally I think Trippe should lay off this line until he comes down here and sees for himself what is being done and makes any specific constructive suggestions which he may have to offer. At the present time, so far as Peru is concerned, he simply does not know what he is talking about.

I personally saw something of Capt. Wooten on his recent inspection trip here, and his reports, to me at least, are most satisfactory and should leave no basis for misgiving in Washington or in any other quarters. His personal opinion of our service is best shown by the fact that

he is making a personal trip with his wife over our entire line from Santiago to Cristobal, and in a speech at the Canal reported by the newspapers he said:

> "'One of the finest operating airways in the world is in operation between Cristobal and Montevideo,' he declared, in referring to the Panagra system. 'This is largely due to the fact that this company has as its head of operations a man who has a thorough knowledge of aircraft operations.'
>
> "Unless you have made the airtrip down the Pacific Coast of South America you have no real knowledge [fol. 4744] of the countries over which these Panagra planes fly. It is one of the most educational voyages one can take in Latin America."

As a result of my observations I am more than ever convinced that this business if our partners will let us run it in a business-like way, will be a very important success and I think Mr. Iglehart was right when he took the position long ago that if there were any buying or selling to be done we should be the buyer and not the seller. Coupling Trippe's remarks to you and the proposed financing of Panafr I can easily imagine that Trippe would like to get complete ownership of our line to assist in new financing. You may tell him in unequivocal terms that he is not going to get it now or at any other time. While I agree in principle with his theory that neither party should ~~not~~ sell without offering to the other, and told him the day before I sailed that we would not think of doing so, I think the question is academic because we have no intention of selling and I would not consider for a moment entering into any agreement whatsoever on this subject.

From the standpoint of successful operation on the commercial side the one most important thing is for us to get our 3rd trip. The outstanding reason for this, to my mind is as follows: We have more than enough equipment for 2 trips a week but could probably not get along on much less. We could run 3 trips without any materia increase in equipment. One of our biggest expense items is depreciation [fol. 4745] tion and obsolescence. While I believe that our

depreciation figure is an arbitrary one and that we can get more out of our equipment than our estimated life I fear that our obsolescence period of 2 years may not be far wrong. Improvements in flying equipment and the necessity for more speed may very well result in the obsolescence of our equipment at the end of two years or thereabouts, although naturally we hope for a little longer life. But assuming that the foregoing assumptions are correct it follows that the only way we can avail of the excess life of our equipment over and above our depreciation basis is to get in that life within our two year obsolescence period. This, of course, means more extensive use of our equipment. A comparison of our depreciation and obsolescence under the one trip and two trips a week schedules shows this very graphically. With one trip a week our depreciation was running way behind our obsolescence. With two trips a week the two figures are brought much closer together. With three trips a week our depreciation would run ahead of our obsolescence which would mean that we could save any life which our equipment may have in excess of our depreciation basis. Bearing in mind what a tremendous part of our total expenses depreciation is it is unnecessary for me to point out to you what a large amount of money added to profits this means. The same is, of course, true on all our general overhead and capital charges, but I think it worth while to develop this one point principally because my examination of the figures here has made it so impressive.

[fol. 4746] Unless the Chilian situation has been settled by the time I get there or unless I get some new light on the subject after my arrival I shall probably be sending some pretty strong cables on this subject and I hope you will get back on them, and if necessary, draw Mr. Ingleheart into the picture to see that we bring that issue to a conclusion. I do not wish to be overly suspicious but I do not wish our partner to land us in an awkward situation in Chile at the end of our two year period which he can take advantage of to get his East Coast line extended to Buenos Aires or perhaps even to Santiago. After all we are making money in Chile, conditions there are exceptional, and I

he is making a personal trip with his wife over our entire line from Santiago to Cristobal, and in a speech at the Canal reported by the newspapers he said:

> "'One of the finest operating airways in the world is in operation between Cristobal and Montevideo,' he declared, in referring to the Panagra system. 'This is largely due to the fact that this company has as its head of operations a man who has a thorough knowledge of aircraft operations.'
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> "Unless you have made the airtrip down the Pacific Coast of South America you have no real knowledge [fol. 4744] of the countries over which these Panagra planes fly. It is one of the most educational voyages one can take in Latin America."

As a result of my observations I am more than ever convinced that this business, if our partners will let us run it in a business-like way, will be a very important success and I think Mr. Iglehart was right when he took the position long ago that if there were any buying or selling to be done we should be the buyer and not the seller. Coupling Trippe's remarks to you and the proposed financing of Panair I can easily imagine that Trippe would like to get complete ownership of our line to assist in new financing. You may tell him in unequivocal terms that he is not going to get it now or at any other time. While I agree in principle with his theory that neither party should not sell without offering to the other, and told him the day before I sailed that we would not think of doing so, I think the question is academic because we have no intention of selling and I would not consider for a moment entering into any agreement whatsoever on this subject.

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think we can afford to pay even a little too much to get that situation cleared rather than continue to take unreasonable chances. After all we can pay for the Chilian concession out of Chilian profits. The Latecoere situation, as I stated at the last directors' meeting which I attended, makes this matter of increasing importance as I expected that it would. Latecoere have entered Peru, and with conditions as they are here I do not think we are going to be able to stop them. This means that they can make transfer arrangements with the Chilian National Lines in the south and with Scadta or someone else in the north, or even extend their own lines there with the result that we shall only
not have a strong competing line all along this Coast but Chile's interest in us as the only international line to the
[fol. 4747] United States will be very measurably diminished.

As Cogswell's Nos. 2 and 3 seems to call for no special reply I would suggest that you show him this letter for his guidance. It might also be well to show it to Mr. Iglehart and our other associates at 7 Hanover Square, thereby making it unnecessary for me to write them separately on this subject.

Your truly,

(*Sgd*) HAROLD J. ROSS

HJR t.

[fol. 4748]

W. R. GRACE AND COMPANY EXHIBIT 33

moradas 117 to Lima. 7.27.29.

1 117: following is strictly private
2 we have received
3 confidential information from
4 metzner who
5 states source
6 cannot be revealed
7 that chilian minister
8 colombia at the

9 request of scadta
10 has requested
11 chilian government name
12 official representative
13 to attend
14 conference in Lima
15 in august in conjunction with
16 scadta faucett
17 and lloyd
18 boliviano to
19 make arrangement-s transfer
20 mail at
21 arica to chile
22 aereo authorities
23 from colombia
24 ecuador bolivia
25 and vice versa
26 independent of
27 pan american grace airways inc. sentence ends
28 scadta assuring
29 difficulties with
30 peru already
31 overcome sentence ends
32 chilian government have
33 named director
34 of aviation as
35 delegate and
36 requesting peru
37 permit him to
38 fly to lima
39 sentence ends this
40 shows combination
41 between chilian government
42 curtiss aero co and
43 companies named
44 to try to
45 stop progress
46 of pan american grace airways inc.
[fol. 4749]
47 QUOTATION ENDS following from us to you

48 discuss confidentially
49 with Harris
50 and cable us
51 your ideas message ends

Mr Cogswell.

[fol. 4750]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

DOCUMENTS

WRG 34 thru WRG 72

[fol. 4751]

W. R. GRACE AND COMPANY EXHIBIT 34

W. R. GRACE & CO.
NEW YORK

New York, July 30th, 1929.

Assistant Secretary White of State Department advised R.H.P. by telephone today, that Ambassador Culbertson at Santiago had reported that proposed meeting at Lima is a part of plan among The Scadta, Faucett, Lloyd Boliviano and Chilean Military Service directed against Pan American and that the New York, Rio and Buenos Aires working

with Latecoere and the Curtiss interests working through Faucett are parties to.

The Ambassador says that the Chilean Government is more liberally inclined towards company in Chile which merely undertake to deliver mail and passengers to particular points than Pan American hence his recommendation for cooperation between Pan American and Chilean Lines.

[fol. 4752]

W. R. Grace and Company Exhibit 35

Chieftain 152 from METZNER (Santiago) 7.10.29

1 152: We have,
2 learned through
3 reliable sources Trimotor
4 Airplane company
5 have secured mail contracts
6 with Uruguay
7 and Argentina
8 to New York they are represented
9 in Buenos Aires
10 by Bunge
11 and
12 Savala
13 who are (in) treaty with
14 Chilean government for
15 similar mail contracts
16 they state
17 service inaugurated
18 by first
19 airplane Washington (D.C.)
20 already arrived
21 Rio de Janeiro Chilean government
22 are evidently
23 ready to sign
24 similar mail contracts
25 as Argentina
26 and Uruguay
27 provided certificates

produced that
Trimotor Company
working in conjunction with
Latecoere Company
stop We are
confidentially informed Trimotor
not an American
Company and that
United States Government not disposed to
grant mail contract-s
for the United States we have been
informed that party
at back
of Trimotor
is Royal Mail Steam Packet Co.
foregoing for your information.

Mr. Roig
Mr. Cogswell

[fol. 4753]

W. R. Grace and Company Exhibit 36

[Handwritten notation—Map of Bol enclosed]
[Mr. Zalles \ ~~Mr. Roig~~ ~~Mr. Patchin~~ P.—Mr. Cogswell]

W. R. Grace & Co.
La Paz

PRIVATE LETTER #4387

LA PAZ, 15th August 1929.

Messrs. W. R. Grace & Co.,
NEW YORK.

Sep 3 1929

Dear Sirs;

PAN-AMERICAN GRACE AIRWAYS INC.,
LLOYD AEREO BOLIVIANO.

We confirm our private letter #4371 of the 8th inst, and we beg to advise you that, according to verbal information, the renewed activities of the Lloyd consisted in

their having applied for a permit from the Chilean Government to land their planes in Chilean territory. The reply was evasive and ambiguous, to the effect that there would be no objection, provided that the Bolivian Government would allow the Chilean planes to land in their country. It further transpired that deputy Peña, a brother of one of the members of the Directorate of the Lloyd, intends to present a protest to the Congress, asking to grant to the Lloyd exclusive rights for international postal service.

Both Mr. Rocca, Postmaster General, and Mr. Flores official Mayor, of the Communication Department are of the opinion that it is entirely out of the question that the Bolivian Government will even consider the idea of allowing Chilean planes to land here, and that the entire plan of the Lloyd is impracticable.

We cannot of course vouch for the aforementioned information, but it shows that the Lloyd is active and anxious to exercise a monopoly in this country. There are also aware that our exclusive option expires in 3 months, and Mr. Kyllmann is continually inquiring what news we have of the expected arrival of Mr. MacGregor, or of another representative of the Company.

We enclose herewith a map of Bolivia, which may be of interest to you. You will notice that besides the established air lines, amongst the projected ones marked therein, are those which are covered by our option.

We shall be pleased to receive further news from you, and remain,

Yours very truly,

p.p. W. R. Grace & Co.,
/ / (Signature illegible)

Enclosure.
JL/l.

[fol. 4754]

W. R. Grace and Company Exhibit 37

zallchart 49 from LAPAZ. 12.4.29

1 49: your 50.
in the event proposition outlined panagra
No 9 unsuitable it is of utmost impor-
tance that door be left open for us to
operate across bolivia especially to bue-
nosaires and that no other company be
given monopoly this route

2 LLOYD using
3 strong influence
4 in congress
5 in order to obtain exclusive
6 monopoly bolivia
7 we on our part
8 likewise working
9 hard cross
10 proceeding-s LLOYD
11 but doubt if
12 we shall be successful
13 sentence ends consider it essential
14 United States government interfere
15 through diplomatic
16 channels to arrive
17 at international
18 convention air
19 way service between
20 United States and
21 Bolivia,

Mr. Cogswell.

[fol. 4755]

W. R. Grace and Company Exhibit 38

(Western Union Telegram Form)

CB10 23 COLLECT—U WASHINGTON DC 6 1236P
H J ROIG, W R GRACE AND CO—

STATE SAYS WILL INSTRUCT LAPAZ TODAY TO MAKE REPRESENTATIONS AGAINST ANY MONOPOLY TENEING RESTRICT OPPORTUNITY AMERICAN COMPANY THEY ARE STUDYING TREATY SUGGESTION—

R H PATCHIN

103P

[Stamp—Collect—Dec—6 1929.]

[fol. 4756]

W. R. Grace and Company Exhibit 39

W. R. GRACE & CO.
NEW YORK

Letter No. 5

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

New York, October 15, 1930.

KENNETH C. HAWKINS

Dear Roig:—

George Barr Baker who, as you know, accompanied Mr. Hoover as publicity secretary on his trip around South America, recently introduced to me Kenneth C Hawkins, late operations manager of the northern division (New York to Para) of Nyrba and who has been let out as a result of the merger. He wants to be located and I passed him along to MacGregor with whom he is to have some

further conversation but I do not understand that there is, at the moment, any vacancy in which his services can be utilized.

I am not pressing him on MacGregor but I am impressed by the unusual background of aviation and radio experience which he claims to have as indicated by the following record:

Graduate of Annapolis, 1919, standing 96 in class of 524.
7 months naval transport service.
Chief Engineer of a destroyer for two years.
Attended U.S. Naval Destroyer Engineering School, Sperry Gyro Compass School, Submarine School.
Served in Submarines for two years; as chief engineer for one year and Commanding Officer for one year.
Attended Naval Aviation School and was rated as a pilot in 1923.
Served on U. S. S. Nevada with the aircraft squadron of the battle fleet.
Had two years' service with seaplanes and for six months was communication officer on the staff of Admiral Reeves, commanding the aircraft squadron of the battle fleet.
For two years, 1926-8, was communications officer of the naval air station of San Deigo, Calif., in Nov. 1928 went to U. S. S. Maryland as aviation officer and commandered that vessel with Hoover on cruise around South America.

Mr. Hawkins resigned and joined Nyrba as pilot, flew their second Sikorsky from Tampa to Buenos Aires and was finally appointed Operations Manager of their northern division.

Hawkins claims to have extensive experience in operation and construction of radio. He says efficient sets can be manufactured much cheaper than the prices quoted by R.C.A. and that patent infringement suits need not be [fol. 4757] feared as R.C.A. stated at the Radio Conference in Washington, last fall, that they would not interfere with any aviation company in the foreign field which built its

own sets. I am checking up on this as it seems a very broad statement.

Anyway, Hawkins seems to have a lot of radio and practical aviation experience and he might be just the man to take into Panagra in some executive capacity, *not necessarily as a radio engineer*, but with the idea that he could develop the possibility of equipping the planes with simple radio installation and to work with the ground stations already existing. It seems to me that it ought to be possible to get service from the governmental ground stations in Peru and Chile cheaper than putting in our own ground equipment at heavy expense.

I am sending you Hawkins' record for your information but I have told him simply that he would have to sell himself to MacGregor and Harris.

Webster, whom I encountered on the street last week said he understood the Chilean aviation Administrate has a very ambitious program of government airports which it is hopeful of getting financed in the United States. I should think the chance of this was pretty slim at this time.

Have just received and read with the greatest interest, your letter No. 1 and I am delighted with the good report of the service. I am writing Rebstock to send me the original newspaper clipping quoting Wooten's endorsement of Panagra. I will have it photostated and placed where it will do the most good.

I fully realize all you say about the importance of the third trip and will work steadily towards that end but I am bound to say that I consider the chance slender at least for the next fiscal year.

It seems to me that the penetration of our foreign competitors must have a powerful motive for the extreme extensions recently made are so remote from their genuine commercial interests.

[fol. 4758] I am very glad you are now in Santiago and we are looking for important cables from you at any mo-

nent. Sommers has just cabled PanAir suggesting that we propose to Chile and Argentina that inasmuch as the Brazilian revolution has impaired the service and carriage of air mail from Chile, Argentine and Uruguay to Europe that we bring all the air mail for Europe to New York for despatch by the fastest trans-Atlantic steamers. This seems a good idea and we may be cabling Santiago later in the day about it.

I have shown your letter #1 to Mr. Iglehart and all others concerned.

Wall Street has been misbehaving. After the Prince & Whitely failure, several houses have been quietly salvaged by the banks. Common report says among them were Pynchon & Co. and Otis & Co. In commercial lines there is some indication of improvement but I think it is retarded by the bad picture in the stock market.

Faithfully yours,

/s/ R. H. Patchin

[fol. 4759]

W. R. Grace and Company Exhibit 40

No. 3.

SANTIAGO, 24th October, 1930.

R. H. Patchin Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Patchin,

Your Nos. 4 and 5:

So far as our foreign competition is concerned I believe that it is based upon a political motive; Deering told me in Lima that he believed that it was a part of the French idea of Latin consolidarity in preparation for the next war, and I dare say he is correct. Whether he is or not, however, and whatever the motive may be, the competition is a very substantial fact.

As soon as Rihl arrives next week I hope we can make some substantial progress in clearing up our Chilean situation. I believe that the present moment is a favourable one, and that with fair cooperation from New York we ought to be able to get in substance everything we want, except radio ground stations, but we will have to be given a little latitude in the matter of detail, and not have too much insistence on the exact manner in which everything we want is formulated. On this whole subject I refer you to my letter to Cogswell of October 20th. So far as the radio ground stations are concerned, I not only feel that we cannot get them, but personally I am not interested in pressing the point. If we get permission to instal them it is very likely to be in some form requiring us to instal them within a fixed time, and perhaps in accordance with Chilean Government specifications and regulations, which may not suit us. Moreover I see no reason why we should incur this capital expenditure so long as we can use Government ground stations; even though our use of Government ground stations is bound to be subject to certain regulations which may at times be a little irksome; I believe that even if we had our own stations, they would be subject to quite similar regulations.

The point which Hawkins mentions that plane sets can be constructed economically is of very great interest. I should suppose that this might be the case, as if it were otherwise I do not believe Panair would have developed their sets. I think you should follow up this idea very closely, because, in Chile at least, radio is I am afraid going to become more and more a necessity. In Peru,* where flying conditions are much easier on account of more natural landing fields and better weather, it is not so pressing, but at this end of the line we must have it in the not too distant future, especially if we get into the passenger business. It is apparently the only practical thing over the Andes. Radio beacons and beams, while of some value where it is possible to fly in a straight line, are of little value over the Andes, where owing to weather conditions it is repeatedly [fol. 4760] necessary to divert from such a line.

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* (except Arica/Arequipa) and Northern Chile

I would like to reemphasize what I said in my letter of October 14th about free passengers, and carrying of any passengers where we are not regularly in the passenger business. On the latter point it has come to my attention that the letters which we give people taking them into our service in order to be in a position to carry them at all, lead to frequent misunderstanding. The holders of these letters, innocently or otherwise, seem to take them rather seriously, telling people both in the "Panagra" and Grace organization and outside that they are connected with our Company. This results in our own people talking to them far more intimately than there is any occasion for doing, and the holders of the letters, or at least some of them, seem to be entirely without shame in the matter of asking questions about the most private details of our business. As many of the pilots and some others enjoy talking freely and seem to delight in making a display of their knowledge about everything they know, or think they know, this is at any time likely to have disagreeable consequences. So far as the newspaper and publicity men are concerned, I have still to find anyone along the coast who considers their publicity of any value here, and personally I think it is of infinitesimal value in the United States, the more so since all their stories are bound to be coloured with the spirit of adventure. Commercial aviation has no interest in adventure, and that kind of publicity creates just the opposite of the impression which we must build up, which is to the effect that transportation by air is a regular established means of transportation, no different from any other except that it is quicker and more comfortable.

So far as our equipment, operations and maintenance at this end of the line are concerned, I prefer not to go into details until I have been able to devote a little more time to the problem. Even then I may not do much writing on the subject, as by the time I have reached my conclusions I shall probably be heading North anyhow and can discuss the whole question more fully upon my arrival. In the meantime, however, any matters which I can agree upon with Harris I shall endeavour to quietly put into force on the ground without making them matters of state by cables

and letters. I will say, however, that before undertaking passenger business over the Andes we must give that problem a good deal closer study than it has yet received. Unless the Falcon proves the exception of the rule, as I trust it will, the advice we have received from our partners on this problem, which ought to be one where they would be particularly helpful, has been pitiful to a degree. Such progress as we have made has been due entirely to our own personnel, and in spite of expensive errors of our associates, we shall have to go along the same lines. My idea is that C. C. Cole will have to spend a protracted period in this Division, that he should certainly be here all through next winter to become thoroughly familiar with the actual conditions, and if possible that Harris should also spend a good bit of time here, particularly next winter. It is most unfortunate that this was not done during the winter just closing. This will, of course, be expensive, but I see no way of avoiding it.

[fol. 4701] While Hawkins has certainly had some very interesting experience I do not quite see where we can use him at the moment, as with the two Coles I think we have sufficient high category technical assistants for the time being. The weakness in his record seems, of course, the fact that he has had so little commercial experience, and that with a company where most of what he has learnt will probably have to be forgotten before he becomes of much use to us.

With kindest regards, I am,

Very sincerely yours,

HJR FL.

P.S. Please number my unnumbered letter to you as follows:—

October 4th—No. 1.
" 14th—No. 2.

[fol. 4762]

W. R. GRACE AND COMPANY EXHIBIT 41

Letter No 70

(HJR trip series)

GRACE y Cia (Chile) S. A.

SANTIAGO

Airmail 5.9.35
NY 5.15.35

[Handwritten notation—Copy to—Mr. Garrú \ ~~Mr. Patchin~~ P.—Mr. Cogswell \ —Mr. Campbell \ ]

(Stamp—May 15 1935—Ansd 5/21/35)

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

Santiago, May 6, 1935.

D. S. Iglehart, Esquire,
New York.

Dear Mr. Iglehart,

WASHINGTON

I have read with the greatest interest your No 36 and enclosures on this subject. It seems to me that our case was very well presented and that the concession, since we had to make it, was made as gracefully as possible. From your letter as well as from what Vidal tells me there seems to have been no escape from this bitter pill.

I note from your letter that you are proposing to draw Clark into the picture and have no doubt that being in the same firm with Root this will help to insure so far as possible a united form of representation. In spite of all its difficulties I still feel that this is desirable so long as at all possible for I am worried lest, with one partner proposing one form of cut and the other another form, the Post Office will simply adopt both suggestions. In this connection I am, of course, particularly concerned about the Montevideo run and hope it may be possible to present a united front on

this point. There are now 3 trips there which the Post Office may consider too many. Obviously we having been there first, the Pan American stop is the one which should be discontinued. Moreover, Trippe ought to be willing to discontinue it, for, since he is paid mileage from Buenos Aires to Rio in any case, the call at Montevideo means little if any additional mileage for him and the efficiency of his service would be improved by omitting this call, because, once they have a one-day schedule between Buenos Aires and Rio they will have a full day's flying to do and they can well afford to conserve the half hour or so of daylight required for this Montevideo stop. The difficulty, of course, from the P.O. standpoint in omitting the Panair stop is that it will not really save them any money for even though the [fol. 4763] rate is higher the omission of their stop would save little or no mileage between Rio and Buenos Aires and the only way to make a real saving in their case is to make Montevideo their terminal, which is hardly logical. I am concerned, therefore, lest the Post Office cut off one of our trips which would be almost as bad as losing both for the expense of maintaining an amphibian and crew to make one trip would be about as great as for two trips.

A very important consideration in connection with this service is the fact that it has cost us a great deal of money and effort to secure our flying rights and establish ourselves in the Argentine and Uruguay. The cost to the Post Office in maintaining the present service to Montevideo under which they are in effect paying for only two trips a week in any case, is a trivial amount compared to the importance of maintaining the foothold which has been secured. This is particularly true in the Argentine and Uruguay where the United States occupies a distinctly inferior position. Anything such as this American air service which helps to improve this position ought to be maintained and extended rather than restricted. The rights to maintain these services were not secured without difficulty. If they are thrown away now it may not be possible to secure them again later.

I wish the men who are passing on this question in Washington could see what our Line is doing today and appreciate what it has meant to reach this point. — could have just a

faint realization of the struggle and the problems involved in the establishment of these United States air lines in these countries over-seas. Nothing in domestic aviation development compares with it either in cost of attainment or importance of the result. The job is far from finished. Continued effort and expense along the lines of the past will [fol. 4764] be necessary to hold our present position and steadily advance it. We have built up a standing and good will in these countries which is of the greatest value. But it can readily be lost. The cancellation of United States domestic airmail contracts undoubtedly had an unsettling effect and I am constantly asked about the attitude of our Government toward the foreign airmail. We cannot expect goodwill abroad if it appears that we do not enjoy it at home.

After all, we are still a foreign line in these countries and our relationship with them on which our whole development must depend can only be maintained if it is based on a clear mutuality of interest which must consist, not only of providing continually better international service, but development of local services and cooperation with local interests. The program of development and expansion on which we are embarked, including the Bolivian extension, local services by Aerovias in Peru, better equipment, faster schedules, improved airports (notably the very constructive air port program we are working out in cooperation with the Peruvian Government) and lighting in cooperation with the Chilean Government, will serve to strengthen and solidify this position and to build American aviation into the life of the countries along our Line in a manner which will be of inestimable value to them and a definite contribution toward solidifying relations between them and the United States. A narrow view with regard to these collateral developments will be utterly destructive of any real American aviation progress abroad.

It may perhaps be said that from the standpoint of foreign Government relations, equipment and operations we have completed a pioneering stage or at least a definite phase of it. Our present program of expansion and improvement represents, in a sense, a secondary stage of [fol. 4765] development which is only made possible by the

conservation of the experience and resources of the earlier period. The fact that we have proceeded cautiously, avoiding waste and building up reserves by a policy of conservatism during the first period in which we have been acquiring our experience, should not be used as a reason for penalizing us by a reduction of mail pay now based upon figures which chance to exist at what is really merely a moment of transition from one period of development to another.

The phase upon which we are now entering will be no less free of problems than the past and no less expensive perhaps substantially more so. Some idea of what we have had to face to date in the way of equipment alone may be had if we just stop to think that four years ago we were operating with Fairchilds and just going to Fords. Already the Fords are replaced with Douglases, three sets of equipment in five years. And there is no reason to believe that future progress will be less rapid. On the commercial side we are still very much in the pioneering stage. Increase of mail, express and passenger revenue, while encouraging, is still very much short of enough to make possible the frequency of service which in the case of domestic lines goes so far toward tarrying overhead and capital charges and thereby making reduction in their subsidies possible. Increased Government support to the Chilean Line and to Air France (see clipping enclosed) and extension of Lufthansa activities to this Coast at the instigation of the German Government, give some indication of what we may expect in the way of increased competition. With the increase in Japanese influences here and Trans-Pacific flying now a reality, the possibility of developments in that direction are not to be ignored. Now, halfway across the stream, is certainly not the time for the United States [fol. 4702] Government to reduce its support of their airlines in these countries. If the authorities in Washington could but feel the pulse of this development and but sense its far-reaching importance on the ground, I am confident that their efforts would be directed toward the furthering of this development in every possible way rather than its restriction. I am hopeful that the Post Office Commission now going over the lines may catch the spirit of the situ

ation and be able to transmit it to the Government upon their return to Washington.

NORTHERN EQUIPMENT

I am at a loss to understand Campbell's report that the S-43's would not be available until the first half of next year. All of our recent information has been to the effect that they should be available much sooner. United Aircraft's representative, whom I saw in Lima, was certain that the first ones would be ready by the middle of this year and you will have seen Beatty's letter which I sent to Patchin with my No 69.

I will see what can be done to further the idea of this Colombian survey. I spoke to Trippe about his overland possibility several months ago and Hargis, when in New York, also discussed it with him and prepared a memorandum on the subject which you will find in my files. Trippe put Harris off at the time with the statement that Pan American, Scadta and the Colombian Government might not be agreeable and did not take a copy of his memorandum. This memorandum, by the way, resulted in Harris' receiving a rather strong letter from MacGregor (Miss Boucher can give you copy of this letter from my files) which may lead him to be rather cautious about embarking again on this terrain.

I have recently heard that with the close of the Winter season to the West Indies, Panair have a number of Com- [fol. 4767] modores laid up at Miami. If so this ought to make this equipment available for us at least during the Summer.

CONDOR

I of course saw Mr. Fritz Hammer when he was here but, as he did not seem to be particularly communicative, it occurred to me that it might be a good id a to get Koch in touch with him as they were at least semi-compatriots and could talk things over together in German. I accordingly asked Koch to have a talk with him which he did on Satur-

[Handwritten notation in margin near second full paragraph 4th line: "will be sent out tomorrow"; also near 10th line is word "attached."]

day and the result was the very important information which I passed to you in my cable No 33. I am very hopeful that this may give us the key to the situation and that we may be able to work out some arrangement along the lines indicated which will enable Condor to meet their problem without coming to this Coast. If they come here I do not see how it can possibly cost us less than $50,000. per year and a good deal more if we become embarked on rate wars and other retaliatory practices. The whole promising business we have built up between here and Buenos Aires will be seriously injured. Unless you have other ideas, in which case I would be glad if you would cable me, my plan would be in the first place to spare no effort to endeavor to work out some arrangement for giving them the West Coast European mail at Buenos Aires if this will result in their withdrawing their contemplated service to Santiago, or, failing this, endeavor to come to some satisfactory traffic agreement with them designed to minimize the loss to us as far as possible. If there seems to be any promise of a reasonable agreement along these lines, I would prefer to make it at the outset because we would probably come to it in the end and I would like, if possible, to avoid a preliminary period of ruinous competition at heavy loss.

Very truly yours,

/s Roberne

[Ex. 4768]

W. R. Grace and Company Exhibit 42

April
Second
1930.

Richard F. Hoyt Esq.,
c/o Hayden, Stone & Co.,
25 Broad Street,
New York City.

Dear Mr. Hoyt:—

In my opinion the most important thing now effecting Pan American Grace Airways Inc. is the appropriation

necessary to increase the service to two trips a week. The President has recommended that this be done as indicated by his attached message to the Senate.

The Senate Appropriations Committee has included the proposed increase in the Bill.

Understand Nyrba is doing everything possible to get this appropriation earmarked for the East Coast.

Very truly yours,

[fol. 4769]

W. R. Grace and Company Exhibit 43

April
Fourth
1930.

George Akerson Esq.,
Secretary to the President,
The White House,
Washington, D.C.

Dear Mr. Akerson:—

You may recall that by your arrangement the President received me a short time ago to speak about the South American airways situation.

I will greatly appreciate it if you will bring to his attention the attached letter and enclosures dealing with the same subject.

I would not, of course, claim his attention for it if I did not feel it was pertinent to his very keen interest in the matter.

With kindest regards, I am,

Faithfully yours,

Patchin

[fol. 4770]

W. R. Grace and Company Exhibit 44

April 4, 1930.

The President,
The White House,
Washington, D.C.

My dear Mr. President:—

Since you were good enough to permit me recently to bring to your attention certain facts regarding South American air mail, may I submit the attached data showing how the three principal air mail routes by which the Post Office Department is now forwarding air mail via Central America and the West Coast of South America to Argentina and Uruguay on the East Coast, serve seventy percent of our total commerce with Latin America.

These three routes directly serve fifteen of the twenty-one Republics. Bolivia and Paraguay are indirectly served. The only country with large commerce left out is Brazil and it can be reached by a short additional route from Montevideo to Rio.

This demonstrates, I think, that the Post Office Department by creating this through trunk line is providing the greatest possible service at the least possible expense. Eighty-five percent of the total United States investment in Latin America is in countries along these three routes.

Pan American Airways Inc. and Pan American Grace Airways Inc. have just submitted to the Post Office a new schedule whereby the schedule from the United States to Buenos Aires and Montevideo will be greatly reduced. As previously explained to you greater frequency of service is indispensable to the operation.

Respectfully,

Patchin

Encl (1)

[fol. 4771]

W. R. Grace and Company Exhibit 45

April 12, 1930.

W. Irving Glover Esq.,
Second Assistant Postmaster General,
Post Office Department,
Washington, D.C.

Dear Mr. Glover:—

I notice that the Senate passed the P. O. Appropriation Bill with increase and appropriation for air mail.

I gave Chairman Wood of the House Appropriation Committee a copy of the memorandum which I recently left with you showing the distribution of United States investment along the three routes, 5, 8 and 9, which form the trunk line from the United States via Central America and the West Coast of South America to Buenos Aires and Montevideo. This clearly shows that the Post Office is serving our most important political relationships, the largest number of countries, the largest commerce and the largest investment of United States capital by the least possible mileage. Although the population figures are not contained in my memo, it is a fact that more population is served by these three connecting routes than could be reached in any other way.

Some confusion is caused by the habit of referring to Route #9 as a *West Coast* service. This leads many people to think that it is exclusively on the West Coast whereas, in fact, the great River Plate market is its terminal and perhaps its most important section.

Very truly yours,

Patchin

[fol. 4772]

W. R. Grace and Company Exhibit 46

SANTIAGO, 20th October, 1930.

W. F. Cogswell Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Bill,

Chilean Situation

Your Nos. 5 and 6:

When it is suggested that we are paying a "shocking amount" for this concession, and that we should be "hard-boiled" and withdraw our offers by a fixed date unless our terms are accepted, you can probably not imagine how strange these ideas sound at this end. Such ideas overlook, in the first place, the fact that we are dealing with military authorities, who regard the whole subject of aviation as one of national policy and not to be treated as a commercial matter in any sense; Valverde can explain what this means better than I can. You are also assuming that the original decree 2001 has already been whittled away, and that its original terms requiring lighted airways throughout the entire length of Chile have long since been abandoned, and it is simply a question of the Government accepting what we are willing to offer or get nothing. This again is a wholely erroneous conception. As matters now stand the terms of 2001 are still in force, and will be in force when our two years are up, unless in the meantime they have been modified by *mutual* agreement. To date no such agreement has been reached on any point, and if we permit the two years to run off without reaching such agreement we will be forced at the end of the two years into a purely diplomatic battle, which, even should it result in better terms (personally I cannot conceive of its doing so) than we can now arrange, in my opinion bad will with the local authorities which will result from such a situation will cause us in the long run many times the amount which we are now con-

sidering paying; I am not alone in this opinion. Bear in mind too that we are the only foreign company commissioned to fly throughout the length of Chile, and the local authorities here do not regard that as an insignificant privilege by any manner of means. Latecoere have had to pay much more, for which they have received less, and so NYRBA would have had to do, had they continued. I would far rather pay the amount we are talking about than have to expend the amount which Latecoere did in developing an airport which is 25 miles out of town, and which they are not permitted to use except for storage and repairs. The idea, therefore, of standing out on impossible terms in the hope of getting better is simply forcing us inevitably into what would be an extremely awkward position at the [fol. 4773] end of the two year period, which is very near at hand. In my opinion if we let things go to the last minute, we are sure to have a most difficult situation on our hands, which in grief and bad feeling will give us more than the amount we are now talking about, even in the remote possibility of our being able at that time to reduce that amount in the first instance. If we are to be forced into this position I feel that the responsibility for it and for getting us out of it when the time comes must be put up very squarely to the Pan American.

It is because of the above that I am very glad Mr. Rihl is coming over, for I believe that once he sees the situation at close range and gets the feeling of it, which it is impossible to convey by correspondence, he will agree with me that we should avail of our present opportunity (if it is not lost by that time) to get this matter closed up, removing this long standing bone of contention between us and the authorities, working with them on a friendly basis, and relying upon the development of mutual understanding and confidence to work out the balance of our problems. I shall, of course, have to rely on you and Patchin to get the other Directors in line should Rihl agree with me to any extent, because I realize the strong likelihood that, even if he does, that will not be the end of the matter. If that point is reached it may be necessary to ask Mr. Iglehart to take up the matter with Mr. Hoyt. If Rihl does not agree with me, or if he does but his principals fail to back him up, I

confess I shall be at the end of my rope with nothing to suggest, except that Trippe responds for the responsibility which he has assumed by coming down here and handling the matter himself. While it is always possible that some miracle might come to pass which would enable him to make a far better arrangement than anything which is now possible, my mind is very clear that we should settle the matter up in the light of facts as they now exist, and not wait for some supernatural condition to come to our assistance.

It is somewhat difficult to keep the matter open now that I am here, but I am going off to Concepcion today, which will leave a little time, and in the meantime I have left a memorandum with Mr. Dagnino, as per copy enclosed.

I trust that you have already written us replying fully to Mr. Dagnino's letter to Mr. Valverde No. 15032, because if you have any comments on any of the specific language in the proposed form of decree sent you with that letter we ought to have them promptly.

Yours sincerely,

P.S. "Ley y Reglamento de Aeronavegación" 1930, of which you have a copy, gives a good idea of the general view here towards the whole subject of aviation. Articles 11 and 12 on page 28 are of interest on the question of Radio.

[fol. 4774]

W. R. Grace and Company Exhibit 47

December 5, 1930

Substance of Telephone Message Received at 11:30 A.M. to-day from Mr. Roig in Santiago, Chile—

The Minister this morning signed a decree which was being sent to the President for signature (President leaving this afternoon). Roig was able to intercept the decree before it got to the President, and this is what the decree contained.

In the first place the Minister advised that this was not a decision of the Aviation Department but that it had been taken up fully by the Cabinet and it was the decision of the Chilean Government. He stated that they had a definite policy with reference to Aviation that was of a permanent character, and that there was a limit to which they were willing to go in granting concessions to foreigners flying in the country. That the Chilean Government proposed to maintain its sovereignty in the granting of these concessions and he indicated that this decree represented the limit to which they would go in granting a concession to us.

First: They entirely omitted the most favored nation clause. Roig says that as this was entirely omitted that it leaves open for discussion any condition that might arise, and he thinks there is no objection to omitting it. He says he is not sure that the Ambassador feels just as he does about it, but he thinks that if the Ambassador did object to this point it would be the only one to which he would raise any serious objection. He feels, however, that we should convince the Ambassador to agree to this.

[fol. 4775] Second: The clause with reference to flying with single motor planes has been reworded to state that in the transport of passengers, planes preferably of two or more motors should be used, but that if single motor planes are used they should be of at least four hundred horse power. A further clause was added stating that precautions should be taken for sufficient security to passengers and assurance of arrival on time, etc. This is merely a general clause and has no particular importance.

Third,
Cabotaje: It is specified that no rights should be granted for Cabotaje, but in spite of this fact in occasional cases where Cabotaje might be carried on, previous consent of the Government must be gotten and the charge for obtaining this will be agreed upon, but it will be not less than 50% of the passengers. Roig explained that the Government's contention is that we have been carrying a lot of free passengers and that this has interfered with the Government service, and their feeling is that we ought to abandon the idea of carrying Cabotaje passengers at all.

Fourth: There is a general provision that a clause specifying that flying has to be done in accordance with rules and regulations of the Aviation Laws of Chile.

Fifth: The Force Majeure has been restored in a satisfactory form.

Sixth: For compensation we are to have the option of lighting the two fields within 7 months or paying 500,000 pesos within thirty days.

Seventh: The duration of the concession. The clause represents substantially as follows:

Permission to run for four years from the date of this de- [fol. 4776] cree and extended for another equal time if company has complied with the obligations imposed by this decree, and if the Government "lo estime conveniente". Roig feels that if we go along operating satisfactorily in Chile that at the end of the first four years no one will know that the four years has expired and that we will go along for the succeeding four years without any difficulty whatever. He feels, furthermore, that if we don't go on smoothly and we have serious trouble, that we will have impediments no matter what clause there is in the decree. He feels, however, that if we can get to a definite working agreement with the Government and could abandon discussion as to what basis we are flying on, that we will be able to work up a mutually good faith that would give us more or less permanent rights in the country.

Now the question comes as to what will happen if we refuse to accept this decree. Roig says that the Ambassador has been a party to the whole discussion, that he has been in touch with the Ambassador, has made definite representations to the Minister, and he feels that if we refuse to accept this decree we would either have to try to fire some sort of a diplomatic gun, which, however, he feels would be fired without much enthusiasm or confidence on the part of the Ambassador; the alternative to firing this gun being merely to let matters go along as they are, in which case he is of the opinion, and the Ambassador is also, that our position will become less favorable and that we will eventually be forced to accept a less favorable settlement.

W. R. GRACE AND COMPANY, LIMITED 48

W. R. GRACE & CO.
NEW YORK

Letter No. 7

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

Airmail—10 20 30
Arr. Sant.—10 26 30
Santa Maria—10 24 30
Arr. Valpo—11 9 30

NEW YORK, October 18th, 1930.

Dear Roig:—

Chile Concession: We were able to get the whole Board together the evening of the receipt of your cable #52 and had a session from six to eight at the office of Panair. All that we were able to accomplish was to get Trippe to agree to send Ribl a cable instructing him to proceed immediately to Santiago. Trippe stated he had talked to him on the phone after receipt of your cable and Ribl had expressed the opinion that he did not consider it advisable to make the proposed payment. Hoyt stated bluntly that it was no use sending Ribl if his mind was already made up on the subject, but Trippe promised he would go there with an open mind and would report on the situation as he now finds it. We, of course, have no real assurance as to what private instructions will be sent him on the subject. During the course of the meeting, our partners went into another room and talked the matter over between themselves for about half an hour. As to their individual attitudes, Trippe, as you know, is strongly opposed to spending any substantial amount, ostensibly because of the principle involved. There is no doubt that if we should [illegible] right to fly through Chile the East Coast picture [illegible] be materially brightened. Whitney also appears to have quite decided views on the subject. Hoyt, I believe, would

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

European Mail: As the Latecoere service through Brazil has been interrupted, we have taken the matter up with the Post Office here and they have agreed to use every effort to facilitate the despatch from New York of mail coming from South America for Europe via our route. This mail is of considerable quantity and while, of course, we cannot expect to hold all or even a major part of it, after Latecoere resumes service, nevertheless, we should retain part, especially in view of the fact that their service is only once a week. MacGregor was somewhat opposed to pushing this as he is afraid of the volume of mail interfering with our passenger-business, but it seems to me [fol. 4778], that this is a golden opportunity to advertise and strengthen the West Coast route.

Laidlaw: We have arranged with Panair to send Laidlaw from Rio to Buenos Aires and Santiago. As you probably know, he was formerly in the postal service and is an expert in those matters. His salary is only $375. a month and I believe it will be worth many times what it will cost us to have his assistance in putting the handling of the mails on a more satisfactory basis. For example, the weights reported by the Postmaster at the Canal Zone of mails from Argentina and Uruguay are consistently higher than those on which we are collecting from those Governments, and this, of course, represents a loss to us as the United States Post Office collects on the basis of the amount reported from the Zone.

Enclosed herewith copy of letter from MacGregor to Harris in reference to plan to avoid the sections of the Peruvian Airways concession which require that company to place its planes at the disposal of the Government. It seems to me the plan is rather thin, but this is, of course, largely a matter to be decided by the people on the ground. As you know, Panagra as such has no operating rights or concession in Peru. One objection to the scheme is that it would seem to be pretty clearly a subletting under our United States mail contract. If you consider this point serious, I should appreciate your cabling me on the matter.

The report in your letter #1 to Patchin in reference to our operations was most interesting. We will be interested to hear your views as to Chile, although Wooten's speech and the fact that he and the Ambassador are both using our line for their families, it would seem to show that conditions there are equally satisfactory.

While the obsolescence period of two years on our planes may not be far wrong, nevertheless, at the end of that period a plane should in all probability be suitable for relief or reserve purposes; in other words, it will not be necessary for us to have as many new planes and therefore the obsolescence charge should be less. The third trip a week seems to be out of the question during this fiscal year.

Sincerely yours,

s/ W F Coggswell

Harold J. Roig, Esq.
c/o Grace y Cia. (Chile) S.A.,
Santiago, Chile.

No. 4

H. H. Pattison, Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Pattison,

This letter is written merely as a memorandum for use in connection with subsequent developments.

Mr. Rihl arrived late last night, and we had our first conference with him at the Grace office this morning. There were present at this conference, besides Mr. Rihl and myself, Messrs. Metzner, Heavey, Dagnino and Harris. I explained to Mr. Rihl the whole situation as I understood it, revealing the history of our Chilean negotiations from the beginning, and dwelling in detail upon the present state of the negotiations, and the reasons why I considered it desirable to bring those negotiations to a conclusion at this time. I stated that the difficulties in the way of this seemed to be: first, Mr. Trippe's idea that we might possibly avoid any payment by letting matters drift to the end of our two year period, second, New York's insistence on radio ground stations, and third, New York's insistence on 50% of the mail. I explained that the other minor points could, I thought, be arranged satisfactorily, and my reasons for considering the three points mentioned impossible, with the possible exception of the last named.

Mr. Rihl stated that he had discussed this matter by telephone with Mr. Trippe, and that he had told Mr. Trippe that he considered that it would be establishing a very bad precedent for us to pay anything to Chile for the right to deliver international mail in Chilean territory. He stated that so far as the 50% of the mail was concerned he did not consider this of any importance, as under the London Conference the Post Office would deliver the mail in any case to the line maintaining the best service, and he was

inclined to agree with my statement that, even though Latecoere had an agreement giving them a percentage of the mails, the Chilean Post Office paid no attention whatever to this agreement in their despatch of the mails. So far as Radio is concerned his idea was that, if the Chilean Government was acting in good faith in offering us the use of their ground sets, it was unnecessary for us to have ground sets of our own, but that if it was merely their idea to avail of this to exact improper charges from us then the matter was of more consequence.

In the course of preliminary conversation he had stated that he saw no reason for extending the East Coast service beyond Punta Alegre unless the Buenos Aires service from the West Coast were discontinued and that he felt there was some possibility of the latter in view of the difficulties in crossing the Andes. He also had stated that the [fol. 4780] various services which the Panair were operating out of Buenos Aires to Montevideo and other points could not be made profitable unless they received some sort of Government subsidy.

After we had explained the whole situation, shown him various documents and answered various questions which he had raised, he suggested that, since Chile had never accepted any of the proposals we have made as alternatives to Decree 2001, why should we not simply let the two years period provided by this decree run off, telling Chile that unless at the end of that time they gave us a satisfactory concession without any payment, we would deliver the mail at Arica and divert our Argentine service by way of La Paz and the Argentine. I suggested that there was no point in our taking this position merely as bluff unless we were prepared to go through with it, and that when it came to going through with it I saw nothing in it, because to make this change would cost us in the long run as much as we were now proposing to pay the Chilean Government, and when we got through we would have a West Coast service which would be wholely inadequate in that it failed to serve Chile, the leading West Coast country. While naturally I did not say so, I immediately formed an impression (and the others formed exactly the same impression) that the

result of this proceeding might easily be that the United States Post Office would terminate our line at Arica and arrange for delivery of the Buenos Aires mail by way of the East Coast, the more so since Ribl in his preliminary conversation had emphasized the fact that he saw no reason why the United States Post Office should subsidize the double service to Buenos Aires, which would be the inevitable result of continuing our line and at the same time extending the East Coast line to that point.

Following these conversations Messrs. Ribl, Metzner and the writer proceeded to the Embassy in order that Ribl might have an opportunity to get the views of the Ambassador. He took the same line with the Ambassador, namely that we should retire all offers, and, if we could not make satisfactory arrangements, divert our line at Arica. The Ambassador stated very promptly that however advisable this might have been as an original proposition, he did not consider that, in view of the history of these negotiations in the course of which we had repeatedly promised Chile some payment, the Company could now take this tack without a violation of the Company's honour, which would have a very bad effect on the company's future standing. He also emphasized the fact that it would be folly to adopt this course merely as bluff unless we were prepared to go through with it. At this point I again emphasized the fact that as a practical matter this would save us no money, and that we would be going to all this trouble merely to avoid establishing a precedent, which, in my opinion, was of no consequence anyhow, as in the other countries, as well as in Chile, we would be obliged as a practical matter to settle these questions on the best basis possible whenever they arose, and that what had been done in one country would have little weight as precedent in any other. In this the Ambassador concurred.

[fol. 4781] Ribl then stated that we could, of course, not make this threat unless we were prepared to go through with it, and that, therefore, before making the threat we would have to take the matter up with Washington to satisfy ourselves that the Post Office Department would agree to this change in our route. He stated that in that case the

question would doubtless become a diplomatic one to be settled by the Department of State, and asked the Ambassador categorically what his recommendation would be if in that case the State Department asked him for his views. The Ambassador stated that in that case he would have to advise the State Dept. that in his opinion, as a matter of national policy, Panagra should be told to make some settlement with Chile, and that consent should not be given to this diversion of the route. He stated as his reason for this the fact that if Panagra were to withdraw from Chile it would leave the field clear open for the completion of arrangements with Latecoere, which would result in a weakening of American influence and a corresponding increase in French influence on the West Coast of South America, which, in his opinion, was highly undesirable from the standpoint of American foreign policy.

The Ambassador also stated that he considered there was little chance of our securing radio ground stations. He also raised the question whether the flight from La Paz to Buenos Aires would not be considerably more difficult from an aviation standpoint, to which Rihl replied that while he considered flying conditions entirely practicable over this route, there would, of course, be the difficulty of carrying heavy loads owing to the lessened efficiency of planes flying at the altitude which this route would necessitate. The Ambassador also pointed out on the question of radio and on the general situation the same fact which we had previously emphasized, that it must be borne in mind in dealing with Chile that we were dealing with a military Government which considered all aviation questions purely in this light. He also emphasized the importance of arriving at some working arrangement with the Chilean Government which would remove the existing spirit of antagonism and make possible the developement of a spirit of mutual confidence and understanding, which he felt would enable us to settle our routine problems when they came along. In this connection he emphasized the point that we had to work with the Chilean authorities for the next ten years and that we should consider this fact in forcing any unacceptable settlement at the outset, his theory being that in the long run we would gain more by

working along on a friendly basis than by making a hard trade at the start, which would only serve to plague us in the next ten years. All in all the Ambassador confirmed 100% the views which we had expressed, and gave no encouragement whatever to the line of procedure which Rihl had suggested.

As matters now stand Rihl has yet to make up his mind whether to insist on the idea of forcing a settlement without any payment, or diverting our line at Arica, and will probably be communicating with Trippe on this subject. So far as concerns Radio 50% of the mail and the other [fol. 4782] minor points, I think we will have no difficulty in agreeing with him on what is the practical course to pursue. On the main question, however, I feel clear that we must stand absolutely firm on the action of the Directors of the Company authorizing the payment of $500,000 C'cy. and loan of $200,000 C'cy. to Chile in order to clear up our situation, and must not for a moment be drawn into any idea of diverting our line at Arica. Such a course would wholely discredit Panagra in Washington, and would in my mind without the slightest doubt be availed of by Panair to reduce our line to a mere spur to Pera, with the main mail movement moving down the East Coast. If the attempt is made in New York to push this idea I think your position should be that this point has already been discussed by the Directors and the point definitely decided that we will make this contribution to Chile to clear up our Chilean situation, and that we must proceed to clear it up in accordance with this authorization, and that our partners cannot insist upon arbitrary terms calculated to defeat this end, when such terms are in fact not insisted upon in good faith, but merely for the purpose of making it impossible to arrive at a settlement.

Very truly yours,

HJR/FL.

[fol. 4783]

W. R. Grace and Company Exhibit 50

[Handwritten notation—Not uptown.]

criterion 218 to IQUIQUE 12.15.30
cable 38 to Roig.

1 218: following is for Roig
2 passenger Aconcagua
3 sentence ends No 38
i.e. cable 38 to Roig (as follow
4 as we feel
5 Trippe's
6 whole effort
7 is to stall
8 with the ultimate
9 object of getting
10 mail contract transferred from
11 west to
12 east coast we feel
13 inadvisable bring
14 up as many
15 point-s as suggested
16 in your cable
17 as we fear
18 will lead to
19 endless discussion-s
20 furthermore we think
21 would be dangerous
22 for either
23 Trippe or Rihl
24 go to chile
25 sentence ends we would
26 suggest your
27 cabling to Trippe
28 more or less as follows
29 QUOTATION BEGINS chile
30 do not recognize un-
31 ratified convention-s
32 and we think it unlikely
33 they will agree (to)
34 anything which

35 directly or indirectly
36 commit-s them to its
37 policy sentence ends
38 while plan
39 you suggest
40 omits some
41 objection-s to one
42 suggested telephone
43 neither ambassador
44 dagpino
45 nor I consider
46 government would entertain
47 either sentence ends

continued.

48 ambassador consider-s
49 the time for
50 new proposal-s
51 has passed
52 and that we must
53 now await
54 decree and when
55 issued either
56 accept with reservation-s
57 or reject
58 sentence ends this must (be)
59 done before expiration (of)
60 60 days from date of
61 decree sentence ends
62 400 hp point-s
63 academic
64 now and if it become-s
65 important later
66 believe we can get it
67 changed sentence ends
68 precedent point-s
69 simply sacrificing
70 settlement very
71 special present situation
72 in order to avoid contingency
73 which may ~~arise~~ never
74 arise and if

75 it does
76 can be much easier
77 handled than
78 present difficulty
79 sentence ends no other
80 south american country
81 has position in
82 aviation comparable
83 to chile and none
84 can give facility-ies
85 they are giving us
86 sentence ends in the face of
87 chilian national
88 policy aviation
89 which has todate
90 excluded all
91 foreign companies
92 except ours
93 flying over
94 chilian territory
95 we feel impossible
96 obtain more favourable
97 terms sentence ends
98 our friend-s position
99 extremely strong
100 and while we
101 have gone by
102 him government

(continued)

[fol. 4785]

103 will not ignore
104 his view-s and
105 decree represent-s
106 best possible compromise
107 obtainable sentence ends
108 while prepared to
109 cooperate with any
110 course company
111 decide-s (upon) ambassador
112 personal view-s
113 wisest course

to accept decree
with reservations previously
suggested everyone
here agrees
this view sentence ends Min del Interior
already being
criticized on the ground that
terms too
favourable sentence ends
I feel emphatically
that decree
should be accepted
with reservations we have indicated
and furthermore
feel that unless
it is accepted
we are likely to
run into
great difficulty and
our position and
prestige in the
country be
weakened and our
problems practical
operations will be
increased and
in the end we will
probably be
forced to accept
a basis less
favourable than
the one I now
recommend sentence ends I am
convinced that if we can get
on to a working basis
and eliminate the
basic contentious
questions we will
gradually get on
to a very

154 friendlly working basis
continued.
[fol. 4786]
155 which will enable us
156 by giving
157 good service to
158 steadily improve
159 our position and continually
160 iron out
161 minor difficulities
162 as they arise
163 sentence ends I am returning
164 aconcagua arriving
165 new york december 31st
166 as I feel
167 there is nothing
168 further that
169 I can accomplish
170 here and furthermore
171 take it for
172 granted that
173 in a personal
174 discussion and
175 explanation of local condition-s
176 many point-s
177 which you have
178 raised will be
179 clear and feel
180 confident that you will
181 then agree with the
182 view-s that
183 I have expressed
184 QUOTATION ENDS MESSAGE ENDS

Mr Iglehart.

[fol. 4787]

W. R. Grace and Company Exhibit 51

Minutes of a regular meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Hayden, Stone & Co., 25 Broad Street, New York, N.Y. on the 5th day of January, 1931 at 11:30 o'clock in the forenoon.

PRESENT:

Messrs. R. F. Hoyt
R. H. Patchin
H. J. Roig
J. T. Trippe
C. V. Whitney

being a quorum of the Board.

Mr. J. D. MacGregor, Vice President and General Manager of the corporation, was also present.

Mr. Roig called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr. MacGregor acted as Secretary of the meeting.

On motion duly adopted, the proper officers of the corporation were authorized to charter from Pan American Airways, Inc., on a bare boat basis, Sikorsky 306N for operation on the northern division during the period of overhaul of Sikorsky 300N, and Sikorsky 945M, at a charter hire of $46.16 per hour with a minimum of 208 flying hours; the charter party to provide that this corporation should have the option to purchase Sikorsky 306N at any time within thirty days from the commencement of the charter at a purchase price of $24,980, any charter hire earned prior to the purchase to be credited on the purchase price; the proper officers of the corporation were also au-

[fol. 4788] thorized to agree to pay Pan American Airways, Inc. the sum of $6,000, being one-half of the standby

charges of the reserve plane for the northern division from July 1, 1930 to December 31, 1930, such standby charge to cease on the arrival at the Canal Zone of Sikorsky 945M after overhaul, and thereafter (provided this corporation should purchase Sikorsky 306X) Pan American Airways, Inc. to pay this corporation standby charges at the Canal Zone at the rate of $1000 per month and charter hire at the rate of $46.16 per flying hour for the use of a standby plane for any period during which Pan American Airways, Inc. should require a standby plane in connection with its operations between the Canal Zone and Venezuela unless Pan American Airways, Inc. should maintain a standby plane of its own at the Canal Zone or some other point on the North Coast Route.

Mr. Roig made a detailed report to the meeting of his recent negotiations in Chile with regard to the Chilean concession which had resulted in the issuance of a decree in the form attached. He stated that a last minute change had been made in this decree without consultation with us, the effect of which was to eliminate the right to use single motor planes in carrying passengers.

Mr. Roig stated that he had been advised that the United States Ambassador had taken exception to this last minute change made after Mr. Roig had left Chile and had protested to the President of Chile who had given him an appointment next week to discuss the matter. The Ambassa- [fol. 4789] dor had advised that he believed he could get this change corrected provided he were authorized promptly to accept the decree provided this correction were made. After full discussion, it was, on motion duly adopted,

RESOLVED that the American Ambassador at Santiago be authorized to accept on behalf of this corporation decree in the form presented to this meeting provided Paragraph 3 thereof be amended to restore the right to use single motor planes without limitation of horsepower and provided that Paragraph 11 be omitted from the decree and the payment of 500,000 pesos therein mentioned be handled privately as in settlement of the controversy with re-

spect to the old decrees and not for the right to fly in Chile.

There being no further business, the meeting adjourned.

/s/ Harold J. Roe
Chairman of the Meeting

/s/ J. D. MacGregor
Secretary of the Meeting

[fol. 4790]

W. R. Grace and Company Exhibit 51X

=168

No. 5.

SANTIAGO, 30th October, 1930.

R. H. Patchin Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Patchin,

Our Santiago-Buenos Aires Division is, I believe, at the moment, and will continue increasing to be the object of Trippe's desire.

From what I can gather from conversations with Rihl and others, Panair, since the absorption of NYRBA, find themselves with an enormous expense account in Buenos Aires and no business. They have taken over the huge NYRBA offices, hangars and shops, but, apart from using the latter for reconditioning the Commodores also taken over from NYRBA, they have no manner of use for all this show, as the only service they are running is a daily service between Buenos Aires and Montevideo, which Rihl states does not pay of itself, and which we know from experience never will pay without some form of subsidy. They are, of course, talking about running passenger line to connect with their mail line at Santos and also talking of other passenger lines to other points in the Argentine, but these too we know will never pay without a subsidy, because one of the few thoroughly well established facts with regard to

commercial aviation is that a well equipped passenger line with multi-motor planes cannot be made to pay, even if it carries maximum loads every mile flown. I reckon that Panair cannot be losing less than between $50,000 and $100,000 Cag. per year in the Argentine at present, and I would not be surprised if it were in excess of the latter figure.

The result of all this is that Panair are going to be desperate to get their East Coast line extended to Buenos Aires in one form or another. Ribl states that he sees no reason why the United States Government should subsidize two air services to the Argentine and that therefore so long as our line runs to the Argentine there is no reason why the United States should extend their East Coast line beyond Punta Alegre. This is perfectly obvious, but it of course concentrates the pressure on our line as about the only way Panair can get their East Coast line extended to Buenos Aires is by discontinuing our line from Santiago. I cannot escape feeling that this is behind Trippe blocking all efforts to get the Chilean situation settled on a reasonable basis and a good deal of his other conduct. You may recall that he suggested to me a long while ago that we ought to turn over the operation of this line to them, which would probably be the first step in getting it discontinued and switched to the East Coast.

[fol. 4791] In my low moments I have sometimes thought that it might be worthwhile falling in with Trippe's idea and stopping our line at Santiago, provided we can in exchange get a controlling stock interest in Panamerican Grace, which might not be utterly impossible. This would certainly be worth some sacrifice, and we would not be giving up very much in direct revenue, because the Buenos Aires run is not going to be very profitable anyhow. I have always abandoned this idea, however, because of the fear that if our line stopped at Santiago the shrinkage in our mail movement would be such that there would be little possibility of a third trip, and we might even lose our second trip. The loss of either of these would, of course, offset any financial disadvantage from the operation of the Buenos Aires Division; I am therefore of the opinion that we should hold on to this Division, which, in my opinion,

means that we must fight for it, because our friend in his usual relentless fashion will never let up unless he has his way.

Fighting to retain this Division means, in my opinion, spending a great deal more money on it than we have ever previously contemplated, and even facing the possibility of having this line show a constant loss. I am naturally hopeful that this latter contingency may be avoided, or the loss held down to a very small figure, but there is not the slightest use of considering that we are making an adequate fight unless we are prepared to spend money and take whatever loss is necessary to win the fight. If we are only going to do a half-way job we may as well not waste any money, but make the best trade we can at this time and abandon the Buenos Aires service.

The expenditures which I believe necessary to put this line on the best possible basis are:

1. Procurement of radio services, ~~and~~ combined perhaps with radio beam, at the earliest possible moment. If we cannot get Panair radio, as seems likely, we will have to go ahead and get it elsewhere.

2. In addition to the Falcon, which, of course carries no passengers, at all, we should, I think, equip one of our Fords for use over the mountains, so that we may institute a passenger business. This will involve some expense in special equipment for the Ford, and, since the high gear-ratio will make it impossible to run the Ford beyond Mendoza, our obsolescence on this Ford will be terrific, as the amount of mileage we will get out of it will be extremely small. This will mean that the Ford will probably a little more than break even; even with a good passenger business and, if the passenger business does not develope, will actually lose a money.

3. Put a faster plane between Mendoza and Buenos Aires, and an amphibian (we may be able temporarily to use the Loening) between Buenos Aires and Montevideo; we are now using a land plane on a run which [fol. 4792] is entirely over water.

4. Make the most intensive study possible of flying conditions over the Andes, and provide promptly whatever improvements that study indicates to be reasonably necessary.

The above may not increase our actual operating efficiency as much as 2%, but it will evidence the disposition to do everything possible and offer a service reasonably comparable to what Panair will offer down the East Coast, which, I believe, will be of very great, if not indispensable, psychological importance. Since I have been here I have experienced the sensation of waiting two hours for a pilot reported to be lost coming over the "hump", and I can assure you that, if he had not got in successfully, the absence of radio, irrespective of whether it would have been of any use to him, would have been prejudicial to us. Moreover, when Capt. Wooten or any other Government representatives look over our service and form impressions about what we are doing, they are bound to have a wholely different impression of a layout such as I have described above than they must have today when they look at the litle red Fairchild which constitutes our Transandean equipment.

Very truly yours,

HJR FL.

[fol. 4793]

W. R. Grace and Company Exhibit 52

=697-A

PAN AMERICAN-GRACE AIRWAYS, INC.
122 East 42nd Street, New York, N. Y.

ORIGINAL AIR MAIL LETTER

LIMA, July 12, 1931 PERSONAL = 375

Mr. MacGregor, New York

PANAIR POSSIBLE OVERNITE STOP AT BARRANQUILLA

Receipt is acknowledged of your personal =107 on the subject of possible change in our schedule to leave Cristobal

at one o'clock. The first time I read this letter I nearly burst into flame. It seems to me that things of this sort have gone too far already with Panair. By their operation Miami-Kingston-Barranquilla-Cristobal they have managed to delay our South American schedule a whole day over the schedule that was previously in force via Porto Cabezas. They have also managed, by making the Barranquilla hop, to increase the total mileage from Miami to Buenos Aires via the west coast.

However if we get this scheme slipped over on us and have to change our whole operating schedule because Panair have trick ideas, we could stay at Buenaventura overnite and could make Pimentel the next night, Arica the next night if we step on it, Santiago the fourth night, and have the fifth in Buenos Aires & Mont'video.

Pimentel is a better stop for the overnite stop than Santa Elena. However it is not too good.

This scheme would probably mean an increase in the number of Fords we would require and possibly increase the number of pilots, besides interfering very seriously with our plans for the location of radio stations, repair bases, etc., etc. Likewise this has the distinct disadvantage of eliminating the overnite stop in Lima, which place is very desirable to stay overnite in from the standpoint of the thru passenger. It also makes us go into Buenaventura [fol. 4794] late in the afternoon when it is very rainy, keeping us overnite in the rain at this point, necessitates a landing at Pimental late in the afternoon (the field not being lighted) eliminates the advantage of the lighted airport at Las Palmas, Lima.

If you think there can be any serious possibility of the institution of this proposed schedule, please let me know and I will work up the detail of this schedule and approximately what it will cost us.

I certainly hope you can kill the idea before it gets started. It seems to me that every effort should be made to resume at least the mail transport direct from Miami to Cristobal. Naturally the Panair extension to Barranquilla cuts us out of the big advantage we had in the Buenaven-

tura-Bogota connection for passengers, giving the B
quilla-Bogota run to Scadta. In this connection it se
me that Panair have gone out of their way to help S
to our decided disadvantage. I feel sure that you
already considered these points and have taken all po
steps in connection with it.

H. R. Harri
H. R. Harri

HRH:CBR

[fol. 4795]

W. R. Grace and Company Exhibit 558.

CRISTOBAL, September 15,

PRIVATE & CONFIDENTIAL

[Handwritten notation: I understand you are taking
of this matter. HJR]

Mr. R. H. Patchin
W.R.Grace & Co.
New York

Dear Mr. Patchin:

In view of the fact that Mr. MacGregor is not in
York at present and will not arrive in Cristobal before
departure of this airmail, I am writing the following
to you since it seems to me that they may be of certain
portance just at this time.

Apparently Panair are planning to commence a one
service from Miami to Barranquilla, in the near fu
which will mean our departure from the Canal Zone s
bound at approximately noon instead of early in the m
ing. This would mean that we would have to make
overnite stop in Buenaventura, forcing us to take ad
tage of the Scadta hangar and other facilities there wi
presumably high expenditure. In addition this would d
the mail south of the Canal Zone by at least half a
over a possible one day run from Miami to the Canal Z
Buenaventura is a very unsatisfactory point for an o
nite stop on account of the heavy rains that are
countered there.

s 14 to ROIG (LIMA) august 13

m

14:

your s

do you think I can safely plan
santiago until concessions renew
quiring possibly extended perio
will go santiago when trippe
ete.

we consider
your
panagra
task
so
important
that we
should make
every possible
sacrifice
allow
you to
conclude it
without interruption
sentence ends
clarks
opinion
is one
of the
strongest
defences
would be
adefinite
step;
now in
improvement
of service
and
think you should

15th 1934

an remain
newed re-
riod if so
e arrives

31 develop
32 with
33 harris
34 a plan
35 for
36 making
37 the
38 most important
39 step
40 compatible with
41 conservatism
42 and
43 security sentence ends
44 . we are pre-
45 occupied
[fol. 4798]
46 by the
47 fact
48 that
49 whole
50 publicity
51 effort
52 has been
53 directed
54 toward
55 improvement
56 east coast
57 service
58 and the
59 further
60 fact
61 that
62 in
63 conversation with
64 trippe
65 we
66 found
67 he was
68 preparing to
69 present
70 a 6 day

71 schedule
72 for the
73 west coast
74 and
75 takes the
76 attitude
77 that the
78 east coast
79 and
80 west coast
81 schedule-s
82 should be
83 the
84 same sentence ends
85 he was
86 intending to
87 present
88 the
89 6 day
90 schedule
91 in
92 washington but
93 has
94 agreed to
95 postpone
96 doing so
97 until he
98 return-s
99 sentence ends we
[fol. 4799]
100 do not think
101 united states post office department
102 would
103 support
104 him in
105 contention
106 that
107 there must be
108 equal
109 schedule-s
110 and that

111 in order to protect
112 east coast
113 services
114 we must (not)
115 fail
116 to take advantage
117 of the
118 shorter
119 distance
120 the
121 faster
122 land
123 equipment
124 and the
125 possibility of
126 night flying
127 sentence ends
128 Trippe has
129 brought
130 up the
131 question of
132 their
133 chartering
134 commodore
135 and
136 subsequently
137 clipper
138 to us
139 for
140 northern
141 division
142 sentence ends
143 we appreciate
144 you will probably
145 have
146 difficulty
147 on
148 both of
149 these
150 points
151 but

152 hope that
153 you will be able to
[fol. 4800]
154 work out
155 a solution
156 with
157 trippe
158 on the ground
159 sentence ends regarding
160 chilean concession
161 garni
162 and my
163 feeling
164 is that
165 it is
166 better to
167 take
168 this
169 for
170 granted
171 at least
172 for the present
173 and
174 work on
175 cabotaje
176 which would
177 probably
178 automatically
179 give us
180 the extension
181 of
182 concession
183 sentence ends
184 we feel
185 rather
186 strongly
187 that
188 account
189 the
190 strong
191 national-
192 istic

193 feeling
194 in chile
195 it may be
196 preferable
197 to avoid
198 too
199 direct a
200 foreign
201 approach
202 and avail of
203 some
204 strong
205 chilean
206 influence
207 to help
208 in
209 obtaining
210 results
[fol. 4801]

Mr. Cogswell.

W. R. Grace and Company Exhibit 55

iglehart 18 from ROIG, Santiago Aug: 26, 1934
9 am

1 18 may 17 ??
2 1/16th words

trippe has agreed to buy one more (douglas)
which harris considers all necessary
harris expect to be able to cable
authorization to newyork tonight

3 confirm-s
4 to me
5 unequivocally
6 today
7 and will
8 order
9 with
10 panair
11 after

12 his
13 return
14 New York X
15 suggest that you
16 follow up
17 on his
18 arrival
19 30/41st words

for your private information says ge
motors selling eastern air express and
implies panair try to get control

20 now
21 adds
22 president
23 commission
24 returning
25 september 1st
26 prepared
27 recommend
28 plan my
29 hand
30 written
31 letter
32 Patchin
33 X
34 Suggest
35 patchin
36 contact
37 commission
38 with
39 trippe
} s M. PATCHIN
40 43 50th words

taking very arbitrary stand regarding

41 although
42 yesterday
43 told
44 harris
45 I was
46 wrong
47 asserting (that)
48 we had

general

49 bought
[fol. 4802]
50 comod-
51 ores and
52 they
53 proposed
54 sell them
55 new
56 company
57 for
58 operation
59 new orleans ?? to
60 jacksonville (florida)
61 Miami
62 told
63 me
64 today
65 perfectly
66 willing
67 to sell
68 to us
69 but
70 their
71 direction-s (probably "director-s")
72 did not
73 think we should
74 buy
75 but will
76 leave
77 open
78 pending
79 my
80 talks
81 rihl
82 your cable 25
83 33/40th words

what was trippes general reaction
to douglas publicity program.

84 promised
85 cable
86 Van

87 Duesqa
88 foday
89 cooperate (with)
90 patchin
91 your cable 22
92 your cable 24

speeding up delivery air mail all
from miami

93 while
94 agree
95 in
96 principle
97 feel
98 rather
99 delicate
100 and doubtful
101 how
102 to go
103 about
[fol. 4803]
104 X Valverde
105 suggests
106 approach
107 might be
108 state department
109 having
110 indications
111 this end
112 go to
113 local
114 United states ambassador
115 X I feel
116 most
117 effective
118 pressure
119 should be
120 through
121 C Z

ll way

125 complain
126 and by
127 planting
128 idea
129 with Pio
130 people
131 such as
132 Grey
133 son X
134 I am
135 also
136 inclined (to)
137 take up
138 vigorously
139 direct
140 with
141 Rdil
142 on the ground tha
143 taster
144 equipment
145 enables them (to
146 make
147 canal
148 by
149 present
150 route
151 in
152 1 day
153 and
154 still
155 reach
156 Barranquilla
157 in day
158 and a
159 half
160 failure
161 do so
162 can only

166 deliberate
167 effort
168 prejudice
169 our line.
170 to
171 advantage
172 their
173 east coast
174 line and
175 seadta

Mr. Garni
Mr. Patchin
Mr. Cogswell

[fol. 4804]

W. R. Grace and Company Exhibit 56

(Handwritten notation—Mr. Roig—note page 24)

Rec'd by us 9-5-35—3 P. M.

August 27, 1935

Pan American Airways, Inc.
New York

Gentlemen:

The recent survey of the Pan American Airways, Inc. and the Pan American-Grace Airways, Inc. foreign airmail contract lines, disclosed that on your F.A.M. Route No. 8 and that part of F.A.M. Route No. 5 from San Salvador to Cristobal, you are operating planes capable of maintaining a much faster schedule than is kept at the present time. The same condition obtains as relates to F.A.M. Route No. 9 which contract is held by the Pan American Grace Airways, Inc. from Cristobal to Buenos Aires, the only exception in the latter being that part of the route between Cristobal and Guayaquil.

The survey also disclosed that it is essential to inaugurate faster schedules on all of the international lines; first, to provide satisfactory mail facilities and, second, to meet foreign competitive air service which is rapidly developing in some of the countries traversed by our contract lines.

During the conferences which officers of your company recently had it was tentatively understood that not later than February 15, 1936, your company would have faster planes operating from Miami along the East Coast of South America to Buenos Aires and between Miami and Cristobal by way of Barranquilla. It is the desire of the Department to inaugurate the faster schedules as soon as practicable. Accordingly, as it is now possible to have the faster service from Brownsville to Buenos Aires by way of the West Coast, there does not appear to be any reason for further delay in inaugurating new schedules on these particular lines.

[fol. 4805] With regard to faster service from Miami to Buenos Aires by way of Barranquilla and Cristobal and along with the West Coast, the only drawback appears to be over that part of F.A.M. No. 5 between Miami and Cristobal. It is the opinion of the Department that faster service should be provided immediately between these two points named in order to connect with fast planes operating along the West Coast of South America. This should be done regardless of when faster service may be started along the East Coast.

Therefore, you are kindly requested to advise as to the earliest possible date you can provide faster service to Cristobal both from Miami and Brownsville.

Very truly yours,

(sgd) HARLEE BRANCH
2nd Asst. Postmaster General

[fol. 4806]

W. R. GRACE AND COMPANY EXHIBIT 57

iglehart 2 from IGLEHART (Santa Lucia) May 4, 1936 9 am

1 2 following is for Roig
2 referring (to)
3 our
4 discussion re

MICRO CARD
TRADE MARK ®

21

12202

MATTHEW BENDER & COMPANY

39-63

microcard

83 our
84 faster
85 boats go
86 W (west) rather than
87 east of
88 cuba
89 south bound
90 as well as
91 north bound
92 as at present
93 a quick
94 stop
95 at miami
96 for
97 mail and passengers
98 which
99 would mean
100 that
101 service-s
102 by steamer-s
103 almost the same (as)
104 by air
105 X find
106 go on ??
107 many
108 tourists
109 on board
110 are from
111 south
112 including
113 one
114 party from
115 palm
116 beach
[fol. 4808]
117 and another
118 from miami and
119 call

122 quite
123 important (to)
124 tourist
125 trade
126 X discussion-s of
127 this
128 would probably
129 bring
130 Tripp e
131 to terms.
132 on schedule
133 XXX
134 discussion-s with
135 people
136 well informed
137 make
138 me feel
139 still more
140 strongly
141 that we
142 should get
143 inland
144 into
145 colombia X
146 if you
147 could arr ge
148 S 43 fly
149 into
150 cauca
151 valley and
152 south
153 cali to guayaquil
154 overland
155 would tap
156 district-s
157 city-ies
158 of which
159 alone

162 over
163 500,000 and
164 in addition (to)
165 which
166 most of
167 area is
168 quit (quite)
169 intensively
170 popul-
171 ated X
172 would it be
173 practicable
174 fly over
175 this
[fol. 4809]
176 area
177 maintaining
178 sufficient
179 altitude
180 and keeping
181 near
182 enough to
183 sea
184 so that
185 sea or
186 river.
187 could be used (for)
188 emergency
189 landing
190 if so
191 suggest
192 Douglas Campbell
193 and or
194 Allen go
195 down
196 for our account
197 observe

201 several
202 trips-
203 and if
204 result-s
205 observation-s
206 favorable
207 then
208 have D C
209 remain
210 in bogota
211 carefully
212 look over
213 legal
214 situation
215 discuss the matter (with)
216 president of colombia,"
217 who is
218 very much interested
219 in developing
220 south
221 and see
222 if we can arrange
223 permit-s
224 or
225 concession-s for
226 flying
227 including
228 cabotaje
229 we might
230 even
231 if necessary
232 get a concession
233 in our name
234 offering it
[fol. 4810]
235 to panagra

240 I am
241 informed
242 UMCA
243 establishing
244 douglas
245 service
246 cristobal
247 turbo
248 medellin
249 bogota
250 and that
251 panair
252 consider
253 run no
254 more difficult
255 que su (than their)
256 douglas
257 service-s
258 mexico
259 central america
260 furthermore
261 learn
262 scadta air mail co
263 pilot-s
264 advised
265 smith
266 on
267 medellin to cali run
268 which was
269 considered
270 difficult
271 they were
272 delayed on account of bad weather
273 only
274 twice
275 last year X
276 from our/my
277 general
278 inquiry-ies
279 indication-s is/are
280 weather

281 would be
282 good
283 along
284 our
285 whole
286 suggested ??
287 route
288 with
289 possible
290 exception (of)
291 quito
292 to guayaquil
293 XX by
294 following
[fol. 4811]
295 above
296 course
297 we might
298 conceivably
299 develop
300 practicability
301 using
302 douglas
303 northern division
304 and so
305 unify
306 whole
307 service
308 to great advantage
309 and
310 consider
311 buying
312 douglas
313 instead (of)
314 another
315 S 43 X
316 think you should
317 give instructions
318 immediately
319 collect

320 information
321 origin-s
322 destination-s
323 routing-s
324 of each
325 passenger
326 cristobal
327 lima
328 stgo BA
329 in order to be able (to)
330 study
331 whole matter
332 more
333 intelligently

Mr. Roig

[fol. 4812]

W. R. Grace and Company Exhibit 58

iglehart 1 from GARNI (CRISTOBAL) august 3rd 1936. 10am

[Handwritten notation—Evidence of really bad service—Confirm and send copy of letter to Whitney]

1 1:
2 although
3 arrived on schedule
4 miami
5 did not
6 take off
7 there
8 until
9 9.15 am
10 consequently
11 stayed
12 overnight
13 kingston (jamaica)
14 passenger-s
15 having to
16 get up

17 3.45 am
18 2 (to) make
19 up time
20 but as
21 sorting
22 of
23 mail at
24 barranquilla
25 where we
26 arrived at
27 8.40 am
28 took over
29 6 hours
30 we did not
32 arrive here
32 until
33 5.25 pm
34 sentence ends am
35 reliably
36 informed that
37 since
38 inauguration
39 new schedule
40 only one
41 plane
42 made
43 it to
44 here sentence ends
45 intention
46 now is
47 make
48 lima
49 monday (i.e. august 3rd)
50 santiago
51 tuesday (i.e. august 4th)

[fol. 4813]

W. R. GRACE AND COMPANY EXHIBIT 59

Air Mail 8.9
New York 8.13

No. 2
(AG Trip Series)
W. R. GRACE & Co.
7 HANOVER SQUARE, NEW YORK

A. GARNI
FIRST VICE-PRESIDENT

[Handwritten notation—8/13/36]

SANTIAGO, August 6, 1936.

Harold J. Roig, Esq.,
NEW YORK

Dear Roig:

PANAGRA

The following actual itinerary of my trip, together with the various observations, may serve a useful purpose in future discussions:

July 31–Feb. 4—New York to Santiago

Left New York	Fri.	10.10 PM	Arr. Miami	Sat.	6.02 AM
Left Miami	Sat.	9.10 AM	" Havana	"	10.40 AM
" Havana	"	11.15 AM	" Kingston	"	2.56 PM
" Kingston	Sun.	5.25 AM	" B'quilla	Sun.	8.40 AM
" Barranquilla	"	2.56 PM	" Cristobal	"	5.25 PM
" Cristobal	Mon.	5.40 AM	" Balboa	Mon.	6.00 AM
" Balboa	"	6.08 AM	" B'ventura	"	8.59 AM
" Buenaventura	"	9.18 AM	" Tumaco	"	10.35 AM
" Tumaco	"	10.48 AM	" Guayaquil	"	12.41 AM
" Guayaquil	"	12.56 PM	" Talara	"	2.09 PM
" Talara	"	2.22 PM	" Chiclayo	"	3.33 PM
" Chiclayo	"	3.37 PM	" Trujillo	"	4.20 PM
" Trujillo	"	4.25 PM	" Lima	"	6.22 PM
" Lima	Tues.	6.15 AM	" Arequipa	Tues.	9.15 AM
" Arequipa	"	9.43 AM	" Arica	"	10.53 AM
" Arica	"	11.21 AM	" Antof.	"	1.25 PM
" Antofagasta	"	1.46 PM	" Santiago	"	5.36 PM

(*All Eastern Standard Time*)

New York/Miami: This was the smoothest part of the whole trip and as you will see from the above itinerary we arrived only a few minutes late.

Transfer from one Miami Airport to the Other: The first detail that struck me was that the passengers were left to sort out their own bags and carry them to the bus, although there appeared to be a man there detailed to this particular job but he was still rubbing his eyes. The bus took the passengers in a very roundabout way to the air- [fol. 4814] port, first going to Miami and stopping at Panair's office for about 35 minutes, where passengers were told they could avail of the opportunity to get some coffee next door. I asked the bus driver why he did not go straight to the airport and he replied that normally he did go direct but would then have to come back to Miami to pick up a few passengers and that in this way he could save a trip.

We arrrived at Panair's airport in ample time to go through the usual performance of re-weighing luggage, filling out various forms, etc., but when the hour of departure arrived, 8 A. M., nothing happened to our plane, which was still sitting on dry land. As time went on I inquired the reason for holding up the procession and I was told that they were waiting for a spare part coming from Bridgeport. If seems that this spare part came with us from New York but the transfer from one airport to the other appeared to have taken two hours, as according to my observation they did not get busy with it until shortly after 8 o'clock, with the result that we took off 1 hour and 10 minutes late.

On arrival at Panair's airport at Miami I noticed the same old sign which I saw last February, announcing departures for Havana as also for Cristobal at 8:15 A. M. I said to one of the men behind the counter that I thought the hour of departure for both planes had been changed to 8 A. M. and he smilingly replied that I was correct but that they did not as yet get around to changing the sign.

Miami/Barranquilla: The delay of 1 hour and 10 minutes [fol. 4815] at Miami made it impossible to reach Barranquilla as the captain of the boat said that the deadline for taking off at Kingston was 2:55 P. M. (as indicated in my

letter No. 1). The passengers destined for Barranquilla, of whom there were two of the nine we carried, were quite disappointed. We took off at Kingston as indicated in the itinerary and although you told me before leaving that the sorting of mail at Barranquilla was reported to take six hours, I did not at the time take you seriously. Now, however, I know differently and can confirm that you were out to the extent of only about ten minutes as we arrived at 8:40 A. M. and the sorting of mail began at once, and we took off when it was finished at 2:56 P. M., or exactly six hours and 16 minutes after arrival.

Barranquilla/Panama: As you know, before approaching Panama, just after passing the San Blas Islands, they go straight overland, and I imagine it is the same kind of country you would find from Panama to Turbo, and I must say that to attempt to make that trip to Turbo with a land plane is flirting with danger.

Panama/Santiago: As you probably know, we made Panama/Lima in one day, as also Lima/Santiago. We encountered a great deal of fog, particularly between Panama and Buenaventura, where practically nothing could be seen until we arrived. The two bad spots, however, which preoccupy me considerably were from south of Paramonga, particularly from Chancay to the Lima Airport. At that time the sun set and it began to get dark rapidly just as were heading into an impenetrable fog which made the [fol. 4816] approach to the Lima Airport impassable, or at least so it seemed to a non-connoisseur. Captain Colliver, however, headed straight towards the sea, taking no chances, until he found a hole in the wall enabling him to get to Limatambo, where it was relatively clear.

Arica was another bad spot where nothing whatever could be seen and Captain Cantwell headed a considerable distance west over the ocean where we circled around for, I should say, about 10 minutes. This does not seem very long when you sit in a soft office chair but it is different when you go through it in a plane through dense fog.

From Arica south we headed straight over the ocean, although I was under the impression that this was prohibited. However, we had not much choice as there was

quite a thick fog all along the pampa. We passed close by Iquique and shortly after that we headed towards the pampa.

The last 200 miles or so before arriving in Santiago is very impressive and picturesque but it is still a puzzle to me what would happen in case the engines gave out, as I could not for the life of me see anything but a lot of sharp peaks. I suppose, however, that anyone having made the trip a dozen times or so would not feel a bit apprehensive about these contingent risks.

While it has been demonstrated several times that Panama/Santiago can be made in two days my impression is that we are running some risk in doing this regularly dar- [fol. 4817] ing winter time when it gets dark in Santiago, for instance, at about 5:30/5:40 E. S. T., bearing in mind also the fact that fogs seem to be more prevalent in winter than in summer. During the summer months I believe it would be feasible to adopt a 2-day itinerary but I repeat that I would not do it during the winter months as there is no margin whatever to make either Lima or Santiago in daylight, as you can see from the above itinerary, which was so rapid that practically all the way from Panama to Santiago I could never smoke a pipe in peace as just about when I got going well we had to hop off again.

According to my observation they went considerably above the normal speed to make the above itinerary, which will undoubtedly be reflected in additional gasoline consumption.

Miami/Panama In One Day: It is not possible to make Panama in one day and arrive in daylight, unless they leave Miami at about 6:30 A. M., because even if they had left at 8 o'clock they would have arrived at Kingston 1 hour and 10 minutes earlier, or say at 1:46, and allowing 20 minutes for taking on gas and passengers, would have arrived at Barranquilla at 5:21 P. M., and giving them 19 minutes to take on gas there, they would have taken off at 5:40 P. M., arriving at Panama at just about 8 P. M., which, of course, would be too late. It seems to me, however, that for the purpose of getting the New York mail at Newark airport, the Eastern Airways, instead of leaving at 10:10 P. M., might

easily leave at 8:30 or 9 P. M., and instead of allowing two hours at Miami this might be cut down to an hour and a half [fol. 4818] or even an hour and a quarter. In this way we could get about an hour and a half or two hours additional time, which is just about the margin they need to make Panama with reasonable safety. There is one ~~unfortunate~~ feature about this three-day summer itinerary to Santiago, namely, the fact that when it is summer here it is winter up north, but whether it be summer or winter at Newark or Miami it is just as easy to take off there at 8:30 or 9 P. M. as it is at 10:10 P. M.

You will appreciate that when I am groping around for a three-day itinerary I am referring only to the South American summer period as I do not believe that with the existing equipment it is feasible to have a regular two-day itinerary between Panama and Santiago during the South American winter. Of course, the most direct solution would be to go from Kingston straight to Panama. The purser on board the boat from Barranquilla to Panama tells me that the distance from Kingston to Panama direct is 501 miles as against 652 miles via Barranquilla. As far as the weather conditions across the Caribbean are concerned, I know, of course, nothing about them, but I think that any statement to the effect that it is more hazardous going direct rather than via Barranquilla is just a lot of bunk. Furthermore, I believe that to land at Panama even after sunset is not nearly as hazardous as it is to land after daylight in some other places, as, for instance, Lima.

Handling of Luggage: One thing drew my attention, namely, the fact that they still have no "through arrange- [fol. 4819] ment" to take care of charges for excess luggage. Everything is carefully weighed at Newark and a lot of "papeleo" is made out covering excess baggage and the passengers pay for such excess for the Newark/Miami section only. At Miami you go through the same performance again, all of which, of course, means delay, particularly if you happen to have six or eight passengers with excess luggage, as the amount of paper work connected therewith is quite considerable.

At Panama the luggage was again rechecked and reweighed but no papers had to be made out in my case and

no payment was requested, presumably because I am connected with the company and the charge will be made by debit note.

Luncheons: The luncheon taken on at Miami was excellent but the same cannot be said of the luncheon served on board between Panama and Lima, and less so of the luncheon between Lima and Santiago. The service in this respect leaves much to be desired as when you consider that you are not allowed to smoke you get ever so much hungrier than you ordinarily do and have nothing that is fit to eat for two days running.

Outside of the luncheon criticism my impression was that the Panagra service is better than the Panair. The individual attention is more impressive and all in all there is much more snap to every kind of function both on board and on the ground. The personnel generally inspires one with considerable confidence, particularly the pilots, and I think they deserve a great deal of credit for the handling [fol. 4820] of the ships.

Now, I know that probably none of the foregoing information is new to you for after all, you have done so much more travelling by air than I have, but I could not resist the temptation to give you my impressions as also to submit to you the actual itinerary followed on this particular trip.

Very truly yours,

/s/ A. GARNI

[fol. 4821]

W. R. GRACE AND COMPANY EXHIBIT 60

CRISTOBAL

September 19, 1936.

Mr. H. J. Roig,
NEW YORK.

Dear Mr. Roig:

Thanks very much for "LOST HORIZONS" which I read with a vey great deal of interest. Mr. Harris will

arrive this afternoon from Lima, and I shall deliver to him the book you kindly sent to him.

I had a very delightful trip south. We were, of course, very fortunate to escape any effects whatsoever from the hurricane which was raging in the east and which, from the papers, it would appear is now harrying the sea-coast around New York.

I have a cable from Mr. Vidal telling me that George Rihl will leave New York on Tuesday via Mexico City and will arrive in Lima October 1st. I take for granted that George interviewed you during the last week and that he will bring with him very definite instructions for our work in Buenos Aires. I plan to leave for Lima tomorrow, Sunday, and may possibly, if I find there is time, run up to La Paz to see Guzman Tellez before Rihl's arrival. I just missed Mr. Garni at Barranquilla, but understand he had a pleasant trip from Santiago. He should have reached New York before the present bad weather set in.

You will, of course, have noted that the last southbound Panair-trip #150 overnighted at Kingston. The local Panair office never receives information as to what causes a delay, because their radio communication only goes as far as Kingston, and Miami. Operations never advise the reason for delays. The only way our Cristobal office can obtain the information is through friendship with the crew of the plane, and such information as they are able to get is, of course, not available until the plane arrives. Please take [fol. 4822] this into account in connection with these delayed arrivals. Also, it is possible the Panair crews have now been advised to say nothing because of the recent adverse criticisms in the local press, and the fact that we ourselves have displayed a knowledge for the causes for the delays which could only have been received from talking with the members of the crew.

Yours very truly,

J. D. MacGregor

JDM AW

[fol. 4823]

W. R. GRACE AND COMPANY EXHIBIT 61

Copy for Mr. A. Garni.

[Handwritten notations—Mr. Roig √ Mr. Cogswell √ Mr. Patchin √—File—Mr. Garni]

Hotel Tivoli
Ancon, C. Z.
December 7, 1936.

Mr. J. D. Mac Gregor,
BUENOS AIRES.

Mr. Branch expressed a desire on December 4th to observe the physical transfer of airmail from Panagra to Panair at Cristobal. Consequently he and Mr. Michaelson, Balluder and I took our plane from Balboa on regular schedule December 5th to Cristobal. At Cristobal we were joined by Mr. Campbell and Mr. Taylor, the Cristobal Postmaster. Mr. Branch apparently had no criticism of the physical exchange but asked a number of questions about the safety of the mail for Central America which is stored overnight in the vault in the Panair passenger station at France field.

We remained in Cristobal overnight in order to take advantage of a trip which I had arranged with Major Taylor, acting Commanding Officer of France Field, to take Mr. Branch and Mr. Michaelson on a fishing trip December 6th. This fishing trip carried, in addition to Major Taylor, Captain N. B. Harding, Mr. Branch, Mr. Michaelson, Mr. Flexer, American Chargé d'affairs in Panama, Mr. Balluder, Campbell, and me, and proved to be most satisfactory to all on the trip even though no fish were caught. The United States Army Air Corps crash boat was used. The trip was made from France Field through the breakwater to the mouth of the Chagres river, where we disembarked and visited Fort San Lorenzo on foot. This is a most interesting ruin of the Spanish time, captured and sacked by Morgan's men in 1671.

The fishing trip was resumed up the Chagres as far as the launch could go, when we disembarked and walked to

the Gatun locks, from where we returned to France Field by automobile and from France Field to Albrook Field in a special Panair Ford through the courtesy of Mr. Balluder.

During the launch trip Mr. Branch took the opportunity to speak to Mr. Balluder, Mr. Campbell, and me about the negotiations he had been having with Pan American Airways in regard to the additional services on the East coast of South America. He stated that a final agreement had been reached in writing whereby Pan American Airways would receive payment for a second service from Miami to Pará until such time as Mr. Branch could secure additional funds with which to pay for a second trip on the East coast all the way down. This payment for the second trip was also predicated on the establishment by Pan American Airways of a one day service from Miami to the Canal Zone, and Mr. Branch made this the key note of his conversation with us, also that Panair would operate a second trip through Brazil on a cut-off, thus eliminating what Mr. Branch called "the Brazilian elbow." Mr. Branch led us to believe in his conversation that if these two promises by Panair—that is, Miami/Canal in one day and operation of the Brazilian cut-off—were not forthcoming in six months after the payment on the East coast second trip South of [fol. 4824] Pará was commenced he would consider that Pan American Airways had violated their agreement, with presumably the consequent cancelation of the mail pay on the second trip. Mr. Branch intimated that he felt that so far Pan American Airways had not shown entire good faith in connection with their operation between Miami and the Canal. As far as he could see they were not taking any steps toward the implantation of a direct service Miami to the Canal in one day. Mr. Branch stated he had told Mr. Trippe that improvement on the East coast—by which I presume he meant airmail payment for a second trip—was only justified if the West coast service to Buenos Aires was speeded up by means of a one day connection between Miami and the Canal, and that this matter was in his mind of vital importance.

You will note that this above conversation confirms what Mr. Branch told Mr. Garni and me in our postal conference

as reported in my letter to you of November 28th (JDM 2123).

/s/ HRH
H. R. Harris

HRH:KW

cc—NY
Mr. Garni√

[fol. 4825]

W. R. GRACE AND COMPANY EXHIBIT 61X

[Handwritten notation—Panagra]

MEMORANDUM OF CONVERSATION WITH
J. T. TRIPPE, SEPTEMBER 14, 1934
AT HIS OFFICE 4:00 PM

oooOooo

After discussing various general matters, I said that we had all become convinced as a result of certain recent developments and particularly various matters which had come to my attention on my trip, that a serious situation existed with regard to Panagra which we would have to find a way to remedy and, painful though it might be to do so, I felt that we should discuss the matter with the utmost frankness.

After some general exchanges we proceeded to the situation in the northern division. I pointed out that some time before I went south I had discussed with Trippe what the ultimate equipment should be in this division and since that must necessarily be somewhat delayed what temporary equipment we could secure in the meantime. He had himself suggested the Commodores at a price, as I recall it, of $20,000 each without motors and I had acquiesced in this suggestion, it being at the same time decided that we should get new estimates on the boat which had previously been worked out to our specifications. I was, therefore, very much surprised now to find that there was any question about these Commodores.

He said that at the luncheon in question I had not taken any definite commitment about the Commodores nor had

he but that the matter had merely been discussed, he pointing out that they might have use for the Commodores in other directions, including sale to the Gulf Line. I replied that I had no recollection of any mention of the Gulf Line and that to the best of my recollection the matter had been [fol. 4826] to all intents and purposes settled at that time. He pointed out that we had at that time discussed the other possibility of a Ford on floats or use of Panair's Sikorskies. I agreed that we had discussed both of these but that he had been opposed to the former and I the latter. He then launched out on a long discussion of the advantages of the Sikorskies, pointing out that there would be a great saving from this operation as well as a great improvement of equipment. I replied that I had seen no figures to indicate any saving and that quite apart from other reasons already discussed I saw no use in putting on such big equipment on this division when Pan American, through their foreign subsidiary Scadta and Umca were chiseling away all the traffic in West Coast Colombia and diverting it away from our line, this applying not only to passengers but also to mail and express. He denied that they were doing this, stating that the reason our traffic had gone off was because of the S38s and that with better equipment, such as the Sikorskys, we would find the travel returning to our line. I pointed out that this would have no bearing on mail and express and was impossible as to passengers so long as he was favoring this territory with a better service via Barranquilla than he was giving our line and that the only solution to this was a one day service to the Canal. I pointed out that such a service was perfectly possible with the new faster equipment and that the advantage of this excess speed which was being provided by his U. S. mail subsidy should be made available to the West Coast line which was also a U. S. line and not to the foreign lines operating in Colombia. He said that this was not a fair statement because the Kingston/Barranquilla hop was the result of [fol. 4827] experience in flying the other way and represented a saving of 200 miles over water flying which meant not only greater safety but the saving of $50,000 or more to the U. S. in mail pay. I replied that I was sure there was some way of making the trip in one day to the Canal if he

wanted to do so and felt that the real reason for their not doing so was to prefer the East Coast Line in every possible way over the West Coast. I pointed out that this was further emphasized at the other end of the line where every effort was made in B.A. to emphasize the fact that Panagra was merely a West Coast line and that the only way to the States was via the East Coast. I pointed out that this was further emphasized by the elaborate publicity directed to this end which he had conducted in connection with the Brazilian Clipper and the directly opposite view he took with regard to all publicity in the U. S. and B. A. in connection with the Douglases; that his suggestion of publicity in Santiago and Lima was ridiculous and academic because, of course, we would have publicity there and that the important point we wanted to emphasize was that our line was a line between the U. S. and Buenos Aires. I called attention to the fact that although he had radioed me that he invited the people in the Brazilian Clipper to return by the West Coast, I knew for a fact that he had on the contrary urged even those who wanted to come that way not to do so and that upon my return I had found him knocking our line in the newspapers and that the only conclusion that could be drawn from his attitude in all these matters was that he was seeking in every way to prejudice the West Coast line to the advantage of the East Coast and that this was no way for a partner to act. He asked me if I thought [fol. 4828] that he had said what had appeared in the World Telegram. I told him that I thought he had, if not in words, in effect, because it was the way he felt and the way he had frequently expressed himself to me and in substance the way he had expressed himself to at least some of the newspaper men on the Clipper. I said that when I first heard of the article I told George Rihl I felt sure that he was not the source of this statement but that upon returning to New York I found it had come out in an interview with him and that in that interview or on some other occasion he must certainly have said something which constituted the basis for this statement.

He took emphatic exception to the conclusion that he had taken an improper attitude with respect to the West Coast

line, stating that he had invited all of his guests on the Brazilian Clippe to return by the West Coast but that he had urged them not to do so as he felt that for them to travel up the West Coast and through Central America on the Fords would destroy what he was trying to accomplish by the trip; that it meant giving up places in his Central American planes while running empty seats in the Clipper; that in spite of our knowing his views on this subject Patchin had asked various of his guests to return via the West Coast and that far from surpressing Panagra's service he had in his speech in B. A. called attention to our service and the fact that we were putting new Douglases on shortly. I called his attention to the fact that there was no reason why he should have made disparaging remarks about the Fords; that they were still perfectly first class equipment and that to criticize them would only give rise to the unwarranted impression that they were not suitable planes to travel in; that it was not our fault that the Douglases [fol. 4829] ordered almost a year ago had not been delivered and that in fact the people who had taken the West Coast trip found the Fords perfectly acceptable.

In connection with the foregoing and in support of the point that he was preferring the East Coast line I also went into the subject of schedules stating that we should have a four day schedule and that his attempt to hold our schedule down to a point where the East Coast could meet it was absolutely unwarranted as we were entitled to the natural advantages which came from a shorter mileage and the increased speed of land equipment and that he was deliberately defeating these natural advantages not only by the schedule imposed but by hampering the development in the northern division by delaying the use of faster equipment there and proposing the use of his slow Sikorskys which would keep us indefinitely held down to a slow schedule in this division. He replied that as long as I was speaking of his knocking our line he had learned from Government officials that we were regularly planting in their minds the fact that Panagra's line was shorter to prejudice the East Coast Line, stating further that from a financial standpoint the West Coast Line was more expensive to the Government

than the East Coast, the net cost on the East Coast being reduced by a larger mail revenue to the Post Office, stating that if the Post Office wanted to run the most economical service they should divide the present three trips 1½ to each Coast by running an alternate service every five days. He emphasized the fact that he had never used this point and that all of his figures always combined the mail figures of the whole system although he could at any time have emphasized this situation by showing the East and West [fol. 4830] Coast Post Office revenue separately. I replied that as I had never seen his figures I knew nothing about them and that it nevertheless was the fact that our line was the more direct.

On the subject of Douglas publicity, his objection was that publicity in Washington at this time would be contra procedenti, and a ceremony in New York or elsewhere in the United States would not be effective as the planes were not new and both Pan American and TWA recently had tried a ceremony of this kind which had been complete failures. His idea seemed to be publicity on the Coast which could be reported here. He said that he might be able to arrange for a radio hookup here to report any proceedings on the Coast. There was no particular discussion of publicity in B. A. but as he has stated his views on this subject on other occasions I do not infer from this that he would approve of such publicity.

He asked me what my impressions of the line were, recalling that I had said when I went away that I hoped after my return to have some clearer views on the basis of which we might work out a more satisfactory modus operandi. I told him I would come to all this in due course, that in general while as in any business there were always some possibility of improvement, my experience with the line had convinced me that it was a first class operation and that his ideas to the contrary were not well founded.

[fol. 4831]

W. R. Grace and Company Exhibit 62

W. R. GRACE & CO.
NEW YORK

PRIVATE AND CONFIDENTIAL

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

Airmail	8/22/34
Lima	8/29/34
Santiago	9/1/34

New York, August 22, 1934

Harold J. Roig, Esq.,
Lima, Peru

Dear Roig:

As a result of my talks with Grenville Clark, Root came to see me yesterday. He said that he had for some time had an idea that he or Clark, or both, might in some way mitigate the friction or relative impasse existing in Panagra administration. He asked me for my opinion. I replied that there were two fundamental causes of misunderstanding. First, a wide cleavage of policy—Trippe's line leading strongly toward promotion and ours more in the direction of older fashioned business methods. I gave great importance to the promotion and propaganda activities of Trippe and felt that they had not only benefited Pan American but also Panagra greatly but that we were in favor of more caution in expenditure and that at the same time we were always strongly in favor of having ample and most up to date equipment and service. I explained that our policy was a constructive one as evidenced by the fact that we are about as up to date steamer operating people as any company in any country.

Again, I told him that in the matter of policy there was also a cleavage of views, our idea being that Panagra should, as originally contemplated, be operated as a sepa-

rate enterprise and on its own feet, whereas Trippe's idea was that it should be thrown bodily into his operating system and at least to a relative extent lose its identity.

The second point of difficulty I told him I considered a fundamental and very serious one which I explained to him, of course in strictest confidence, was a lack of complete confidence between the partners. He replied that he had [fol. 4832] never seen any evidence of lack of confidence in us on the part of Trippe except the suggestion from time to time that we were in the steamship business and might give preference to the steamship interest to the prejudice of the air interest. He asked me what reason I had to believe that there was a lack of confidence and I explained to him that we were fearful of Trippe's giving preference to the East Coast service at the expense of the West Coast. He said that he had never seen any evidence of this and asked me what cause I had for this suspicion. I explained to him that the issue had come up directly or indirectly from time to time and that Trippe some time ago took the attitude that he was justified in giving preference to a 100% interest as against a 50% interest. Root replied that he was dumbfounded at Trippe or anyone taking such an attitude. He said he couldn't imagine a man sitting on a board of directors here and failing to act fully in the interest of that company because he had a competing company on 42nd Street in which he had a larger interest. I then explained to him the recent incident of the schedule as outlined to you in Cogswell's handwritten letter. He said here again that these facts were surprising and on the one hand gave him an entirely new light on Trippe's attitude and, on the other hand, gave him the impression that this created a very serious condition. After thinking the matter over for some time, he said that even from the selfish standpoint of Pan American, he felt that Trippe was making a very serious mistake in taking this attitude for various reasons which he gave me. Root said that with the Government hearings coming on he thought it very serious indeed that there should exist in Trippe's mind any feeling of discrimination between the two services. I told him that we felt this also and although I didn't say so, I think that he

appreciated that he as counsel for both companies, was rather responsible for seeing that no action was taken by a representative of one company which was prejudicial to the interests of the other.

[fol. 4833] From this standpoint I was very happy to have had this frank talk with Root. I don't think it had entered his head before that Trippe was capable of taking such an attitude.

Now as to the solution of the impasse. Root said that he, in view of what I had told him, almost despaired of reaching a solution as he felt that Trippe would resist any plan which solved it. After some discussion in which I explained to him that you and Trippe had at one time been discussing a division of responsibility, it finally occurred to me to make the following suggestion, namely, that the Board of Directors of Panagra should be composed of three members, namely, you, Trippe and Lindbergh. I explained to him that a division of responsibility between you and Trippe would only work out provided there was a third member of the Board who could decide any contentious question and I suggested Lindbergh because, in the first place, he is knowledgeable and, in the second place, he can be relied upon for absolute fair dealing. Root agreed with me that on both of these points, Lindbergh was about 100% and Root finally said that he considered that, if this suggestion could be carried out that it would in his opinion be an adequate solution of the difficulty and would probably result in Panagra's being built up on sound, strong lines. He said that the two hurdles to be overcome were, in the first place, to get Trippe to agree and, in the second place, to get Lindbergh to agree. He said he thought from his knowledge of the two men that there was about a 50% chance of accomplishing it. He said that he wanted to think the matter over pending Trippe's return and would then, provided no objection occurred to him in the meantime, make the suggestion to Trippe. He said that he would make it as his own suggestion as if Trippe suspected that it came from us it would be prejudiced.

I should like to have had an opportunity of consulting you before making this suggestion but as a matter of fact, it [fol. 4834] developed in the conversation and I rather took it for granted that you would approve of it. If by any chance you do not, or you have any observations to make with reference to it, you might let me have them by cable promptly. As a matter of fact, if you approve of it you had better cable also as I will feel sure of my ground in case there should be any further discussion with Root. I am going to see Clark on Friday as he is coming down from Dublin and I am going to see whether there is any way we could take up the matter with Lindbergh and get his consent before we take it to Trippe. It may be difficult or impossible to do this but the idea I have is that if we put forward this proposal and had Lindbergh's consent it would be almost impossible for Trippe to reject it. On the other hand, if we put the proposal first to Trippe, he might maneuver to get Lindbergh to refuse to act. My idea is that if Lindbergh should refuse conceivably we might get Root to act as the third man or, if not Root, then perhaps Clark. Every day, however, I become more convinced of the necessity of getting this problem definitely settled provided there is a practicable way of doing so.

In talking over the problem of equipment, I explained to Root Trippe's desire to fly his clippers down as far as Guayaquil and our idea that this might be worked out provided we actually owned our share of the equipment and provided they were operated over our section of the line under our supervision and control. He said to me that this appeared to him a very reasonable attitude on our part and indicated that if Trippe insisted upon taking over the operation as far south as Guayaquil, that this was an evidence of a desire to chisel into our territory. He also felt that Trippe's attitude in flying the planes to Puerto Colombia and giving a service to the West Coast with the Scadta Line in competition with our line and his failure to [fol. 4835] fly direct to Panama in order to give us quick service, was quite an unjustifiable act on his part.

Nothing may come of this talk with Root in the way of solving our fundamental problem but I am rather hopeful that something will be accomplished.

Very truly yours,

(Sgd.) D. S. Iglehart

cc to Santiago

[Handwritten notation—If we could work out a set up as above then we could get a first class man and make him President. I am asking Cogswell to offer you 2 more Douglas planes so that you may have them in hand when you talk to Trippe.]

[fol. 4836]

W. R. Grace and Company Exhibit 63

December 28, 1928

David C. Beebe Esq.,
United States Aviation Underwriters,
80 John Street,
New York City.

Re: South American Aviation

Dear Mr. Beebe:—

In accordance with our conversation of today, I am setting forth herewith a rough summary of our present organization in Peru, with the discussion of our proposed expansion.

We are joint owners with the Pan American Airways of the Peruvian Airways Corporation which is an American Corporation operating in the Republic of Peru. The equipment on the ground consists of two Fairchilds planes and a few spares and we are preparing to ship one or two additional planes next week.

We have organized under the same ownership, the Chilean Airways Corporation for the purpose of operating commercial air lines throughout the extent of Chile. Although there is no equipment on the ground at the present

time, yet we are preparing to ship one or two planes in the immediate future to encourage a service between Santiago and Arica.

The above two lines are simply the neucleus of our proposed extensive system which will operate a commercial air line from the Panama Canal Zone to Santiago, Chile and possibly to Concepcion during 1929. Subsequently, we shall most probably install an air line between Santiago, Chile and Buenos Aires, Argentina. This latter section is not however included in our immediate program.

While I thoroughly appreciate that the present set-up of our companies does not present an attractive picture to you, yet it is essential that we develop some definite policy on insurance to cover the ultimate extensive service which we shall perform. It is impossible to estimate the total capital which will be invested in flying equipment but you can readily see that it will be a very considerable sum and must necessarily be protected.

[fol. 4837] At this time we are particularly interested in obtaining proper coverage for passenger liability in Ecuador as we have planned to extend our service into that country as soon as possible. At the same time we are developing the service to connect Ecuador with Panama through Colombia and so it will be necessary for us to work out some coverage in this latter country.

We shall shortly organize one holding company which will operate each and all of the subsidiary companies which are now being formed in the various Republics. At such time as this is accomplished, it will unquestionably be desirable to transfer these local operations to the holding company that we may better develop a uniform insurance covering the entire flight subject only to local differences in the Law of each country.

The foregoing has been roughly discussed with our agents, Parker & Co., Philadelphia, Pa., to whom I shall send a copy of this letter.

In closing I cannot emphasize too strongly our urgent desire to arrange coverage for Ecuador and Chile that

we may extend our services as we have outlined in our program.

If there is any further information that you might require, do not hesitate to call on me at your convenience.

Very truly yours,

W. R. Grace & Co.

WPJ.C

[fol. 4838]

W. R. Grace and Company Exhibit 64

August
Ninth
1929.

J.T. Trippe Esq.,
Dunmere Lane,
East Hampton, Long Island.

Dear Mr. Trippe:—

Mr. White and Mr. Glover told me in Washington yesterday that they anticipated no difficulty in asking us to make the extension to Argentina. When I called Mr. Glover to confirm this today he said that they were ready to call on us to extend but they had nothing official from us as to a date but that Mr. White had in mind October 3rd.

I told him we would like October 30th better and he said it would make no difference to him if we would send in official letter.

Very truly yours,

P.S.—I am trying to get you on the telephone to-night.

[fol. 4839]

W. R. Grace and Company Exhibit 65

August 20, 1929

ORDER

From October 12, 1929, extend service from Santiago, Chile, by Buenos Aires, Argentina, to Montevideo, Uruguay, and return, once a week, including such intermediate points as may be acceptable to the Governments of these countries and designated by the U. S. Post Office Department, the contractor to be allowed $1.80 per statute mile flown each way based on the shortest practicable airway distance between points on the route as determined by the Postmaster General for the specified load of not exceeding 800 pounds each way, plus 90 cents per pound per thousand miles or pro rata thereof for greater or less mileage for any excess mails required to be carried in the same aircraft.

W. Irving Glover
Second Assistant
Postmaster General

[fol. 4840]

W. R. Grace and Company Exhibit 65X

(Letterhead of Panair do Brasil S.A., Edificio da a Noite—Rio de Janeiro)

Via "Air Mail"

October 8th, 1931.

Mr. J. D. MacGregor, Vice President & General Manager
Pan American Grace Airways, Inc.
910 Av. Roque Saeñz Peña
BUENOS AIRES. Argentina.

Dear Mac,

I had explicit instructions from Mr. Trippe to setfle with you the question of charter business arising at Buenos Aires. Unfortunately I forgot all about bringing this point up.

At the present time you have a Fairchild at Buenos Aires which has had considerable charter work. At the moment this does not hurt our interests as the Fairchild we have is in the shop waiting to be overhauled. However as soon as we get our Fairchild in shape we will be in the market to take charter flights and then a disagreement will surely arise unless it is plainly understood which company is to have preference on charter business.

My understanding is that Pan American has the right to any aviation business in the Argentine not directly connected with the operation of the international service via the West Coast. If my assumption is correct there will be no argument as to who will take the charter flights.

If the assumption mentioned above is incorrect and you insist on undertaking charter flights when we have equipment available, it will be necessary for you to register your plane in the Argentine and your company for domestic work. So far nothing has been said about you competing with domestic charters, but the question will undoubtedly come up as there are two or three owners of planes in Buenos Aires who make charter flights. These men will unquestionable complain to the government about your competition. We cannot be criticised as we have an Argentine company and will register the plane engaged in charter business under the Argentine flag.

In order to avoid complications it would seem to me that both companies should abide by the original understanding. I will appreciate your advising me as to what you recommend to your Directors.

With kindest regards,

Yours faithfully,

/s/ Geo. L. Rihl
Geo. L. Rihl, Vice President
Pan American Airways, Inc.

cc. Mr. Trippe, President
Mr. Young

GLR/PS.

[fol. 4841]

W. R. Grace and Company Exhibit 66

Letter No. 24
(D.Sd. Trip series)

Tumaco,
On board m/v "Santa Inez",
June 7, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

AIRMAIL—TUMACO

I hand you herewith copy of my letter to Harper.

My attention was called to this condition by the fact that I wanted to get a letter down to Harper at Salaverry and there is a plane going South today from here. I found, however, that I could not send this letter by our own plane. I went out to see Dunn, the pilot of the plane, at the fleet and he said that if the letter dealt with the business of Panagra he was allowed to take it but that if it was other than Company business he could receive no mail or passengers in Tumaco. It seems to me that as Scadta is giving only a weekly service from Buenaventura to Tumaco and no service to the South, it is quite ridiculous for them to prevent Panagra from rendering a service to this locality. Even if Scadta's contract permits them to do so it seems to me most illogical that they should exercise this authority and stand directly in the way of our developing the West Coast business without their getting any benefit whatever by doing so.

SIKORSKYS

I talked over with Dunn the question of Sikorskys and he says that they are undoubtedly short of capacity, and that, if the water is quiet and there is no wind as is usually the case at Buenaventura, it is extremely difficult to get into the air and he feels that the Northern run is losing

business every day due to the fact that they have not the capacity to handle it.

[fol. 4842] I feel strongly that we ought to get to work ourselves to see whether we cannot find or develop a plane that is more suitable for this Northern run. I asked Dunn about the Commodores and he said that he had flown them on the East Coast, and, although they were a very nice plane, he did not recommend investing any money in them as they were too slow. He said that to put any considerable amount of capital in a plane that could not make over 80 to 90 or 95 miles an hour was he thought going backwards and that we should not consider buying anything that could not make 115 or 120 miles an hour.

I talked to him about the Douglas Amphibian and he said that, although he had not flown one, he was not sure that they were an established success but thought we ought to look into them pretty carefully. He said that the new big Sikorskys are also worth looking into but that he believed that the speed of these would have to be pretty carefully established; furthermore, that they had the same serious objection that all Sikorskys have, namely, that the spray is thrown up into the propellers and they, going at high speed, are nicked and broken. I examined the propeller of his plane that had only flown 5 or 6 hours and it had teeth all along the edge and he said that at times pieces one-half an inch long would come out of the propeller as they hit the water that was thrown up by the pontoons and the body of the fuselage. He said what Kirkland said also, namely, that no water plane was satisfactory unless the motors and propeller were far enough away from the water to avoid being hit by the wash of the spray.

I was particularly anxious to talk to these men who actually fly the Sikorskys from day to day as I have had [fol. 4843] a feeling for some time that they, although satisfactory from a technical standpoint, are deficient in carrying capacity and are standing in the way of our development of through traffic. Therefore, I feel that we ought to pick out the best technical man we have available in our organization and set him to work on this problem.

I feel there is no reason why we should not work out either with Sikorsky or with some of the other builders the design of a plane in the same way that we work out the design of a ship or of a plant or piece of machinery.

The more I think of this aviation business the more I feel that we will gradually develop the plant that is required for the particular conditions under which we operate each one of these services and that we will build up our equipment in the same way that we have done in all of our other activities. I am sure you will find the opportunity of tactfully arranging to bring a competent man from the Coast to New York so that we can gradually build up this phase of Panagra's administration.

Very truly yours,

Enc

[fol. 4844]

Tumaco,
On board m/v "Santa Inez",
June 7, 1932.

F. J. Harper, Esquire,
Salaverry.

Dear Harper,

AVIATION

Under Scadta's agreement with the Government apparently we cannot receive mail in Tumaco either for other Colombian points or for foreign points, and, in talking to our Agents and to the local authorities they tell me that there is a very decided complaint to the Government on this point. Scadta has only one plane a week to Tumaco, and, in order to get a letter to New York they have to wait for Scadta's plane, which takes it as far as Buenaventura and there it has to be transferred to one plane to go North. It seems that the local interests complained to the Government in Bogota and the Government answered that the planes of Panagra could not take mail in Tumaco as they were unable to land there. This naturally amused the local people as apparently Bogota thinks that Panagra makes no Tumaco stop.

I think you might look into this whole matter; in fact, I would like to have you follow up the Panagra service as far as Colombia is concerned with a good deal of interest because we have Scadta in competition and, as Pan American is interested in their Company and I think now practically controls it, we must see that Panagra's interest is protected.

Very truly yours,

[fol. 4845]

W. R. Grace and Company Exhibit 67

Letter No. 7
(H.J.R.)

W. R. GRACE & CO.
NEW YORK

New York, June 17, 1932

[Handwritten notation—Airmail Rec'd]

D. S. Iglehart, Esq.,
London, England

Dear Mr. Iglehart:

Airmail—Tumaco

Your No. 24.

The point you raise here has been a sore one for some time and I will be very glad indeed if Harper can do anything to correct it. While the mail revenue is not an important consideration, at the same time, it is something and we cannot afford to overlook anything. Moreover, it seems too ridiculous that the people of Tumaco should be limited to a once a week service when they might just as well have a three times a week service. The Scadta hold on Colombian mail, however, has always been pretty tight as you can imagine from the fact that the Government has paid so little attention to the request of the people of Tumaco. The excuse given for denying that application was not, in my opinion, based on any ignorance in Bogota.

In view of Pan American's being now a practically dominating influence in Scadta, what would you think of my attempting a little pressure on Trippe on this point? While I do not think he is likely to be very receptive, we might, by keeping at it, get somewhere with him in time provided you do not feel that this would interfere with Harper's activities at the other end.

Very sincerely yours,

/s/ H J R

[fol. 4846]

W. R. Grace and Company Exhibit 68

No. 10,023

AirMail original leaves N.Y. Nov. 20
" " " arrives Buenava Nov. 23
Stemer mail copy leaves N. Y. Nov. 21
Arrives B'a. Nov.

New York, November 18, 1930.

Mr. J. H. Parmerton,
Corporacion Maritima Colombiana,
Buenaventura, Colombia.

Dear Parmerton:-

I refer to your letter No. 384, and acknowledge receipt of the enclosures, "Diarios Oficiales Nos. 18709, 21233, and 21065", and copy of the "Convencion sobre Aviacion Commercial celebrada entre las Republicas Panamericanas en la Sexta Conferencia Panamericana de La Habana de 1928".

As you state there are no privileges granted to the "Scadta" for air traffic, as the Colombian Constitution does not allow any monopolies or exclusive concessions to be granted.

The reason why "Panagra" does not want to compete with the "Scadta" on the Pacific Coast is that, according to the

agreement between Colombia and "Panagra" of February 23rd, 1930, which reads as follows:

> "Que las estipulaciones deL ACUERDO SOBRE SERVICIO DE AVIACION COMERCIAL, suscrito en Washington por los goberrnos de COLOMBIA y ESTADOS UNIDOS DE NORTE AMERICA et 23 de febrero ultimo sobre establacimiente de servicios de Aviacion Comercial, los faculta en tal sentido:
>
> Que al conceder a la PAN AMERICAN GRACE AIRWAYS INC. el permiso en referencia debe dar complimiento a todas y a cada una de las obligaciones que con caracter de reciprocidad han sido consignadas en el Acuerdo citado; y
>
> Que dichas obligaciones, iguales a las impuestas en los ESTADOS UNIDOS DE NORTE AMERICA y ZONA DEL CANAL para las naves aereas de matricula colombiana."

Colombia has the right, in its territory, to enforce all of the conditions that the United States enforces in the Canal Zone, and one of the United States' conditions is that the "Scadta" cannot carry either passengers or mail from one part of the Canal Zone to another. Consequently if "Panagra" should start passenger and mail service between Buenaventura and Tumaco, the government of Colombia might stop that traffic at any time, because of the reciprocity agreement with the United States.

[fol. 4847] If the people of Buenaventura and Tumaco wish "Panagra" to carry passengers and mail between these two points, they ought to appeal to the Colombian government to have the government waive this restriction or grant special permission to, and request "Panagra" to establish this service.

If the Colombian government asks "Panagra" to establish this service, probably, they will be willing to undertake it.

Yours very truly,

JEZ/R

[fol. 4848]

W. R. Grace and Company Exhibit 69

icequake 84 from LAPAZ. dec 27th 1
9am

1 84:
2 chilian minister
3 negotiating with
4 bolivian government
5 secure contract
6 airplane
7 service
8 arica
9 lapaz
10 also
11 representative-s
12 LUFT
13 HANSA
14 in conjunction with
15 LLOYD
16 AEREO
17 AND CO-
18 NDOR
19 trying to contract
20 airmail for
21 europe
22 stop
23 in order to
24 block
25 these
26 negotiation-s
27 I have
28 interviewed
29 bolivian
30 president
31 informing
32 him
33 that on
34 visit.

35 Lima I
36 discussed with
37 pan american grace airways
38 possibility
39 extension
40 local
41 weekly service
42 taena
43 lapaz
44 president
45 very much interested
46 and
47 willing
48 arrange immediately
49 contract with
50 pan american grace airways
51 recommend you
52 take matter up with
53 pan american grace airways
54 and have
55 harris
56 fly to
57 lapaz

MR ROIG
MR ZALLES
MR PATCHIN
MR COGSWELL√

[fol. 4849]

W. R. Grace and Company Exhibit 70

[Handwritten notation—file—Harris—Aviation]

November 25, 1931.

MEMORANDUM FOR MR. IGLEHART:

ALTERNATE ROUTE TO BUENOS AIRES FROM ANTOFAGASTA VIA SALTA

The distance between Antofagasta and Buenos Aires via Santiago is 1455 miles—699 miles from Antofagasta to Santiago and 756 miles from Santiago to Buenos Aires. The distance from Antofagasta to Buenos Aires via Salta is approximately 1060 miles. The pass at Salta is five miles wide at a height of 15,000 feet, the highest peak being 19,000 feet. There is, therefore, no advantage in this respect over the route we now fly. The weather conditions, on the other hand, are more favorable due to the lack of rain and snow.

Mr. MacGregor and Mr. Harris have just surveyed the route between Antofagasta and Tucuman and are mailing report and possibility of one-day flight between Antofagasta and Buenos Aires. It would seem, however, as if the principal advantage of this route would be for use in emergency when the crossing at Santiago is blocked in the winter. So far as time is concerned, we can save a half day from our present two-day schedule between Antofagasta and Buenos Aires by spending the night at Mendoza, but this would be unsatisfactory from a point of view of passengers between Santiago and Buenos Aires.

The report of the flight of Mr. MacGregor and Mr. Harris will, of course, give us more accurate information than we now have. As they also flew to La Paz via La Quiaca and [fol. 4850] Oruro we will be in a position to judge of the practicability of a service from Arica to Buenos Aires via La Paz if we should have difficulty in operating through Chile.

/s/ WFC
W. F. Cogswell

[fol. 4851]

W. R. Grace and Company Exhibit 71

No. 203
(AG Trip Series)

W. R. GRACE & CO.
7 Hanover Square, New York

ORIGINAL LETTER
STEAMER COPY FOLLOWS

Air Mail 4.15
New York 4.19

A. Garni
VICE-PRES. & TREAS.

[Handwritten notation—Mr. Zalles]

LIMA, April 12, 1933.

[Stamp—Apr 20 1933]

Harold J. Roig, Esq.,
NEW YORK

Dear Roig:

ARICA/LA PAZ AIR SERVICE.

I attach hereto a copy of Guzman Tellez's letter of the 6th instant, together with a copy of my answer. You will appreciate, of course, that I merely submitted the matter to you at the time because Zalles, Guzman Tellez and I all happened to be on the Coast. Any further discussions will, of course, have to be carried on direct with New York, as in the first place I am not in a position to have a definite opinion, and in the second place, I want to keep our wires with reference to the supervision over Bolivia very clear.

My wife and daughter went to Paramonga yesterday, taking the plane at Las Palmas at 7 o'clock. The moment the plane took the air I went back to the hotel by motor and before I finished my coffee I had a telephone message at 8:05 that Altana and Adelaide had arrived at Paramonga. I don't believe that you have ever been in Paramonga, but when you visualize that the trip had to be made by train, leaving here at 9 A. M. and with good luck arriving at

Paramonga any time between 6 and 10 P. M., you will understand how impressed I was in finding that a passenger can get from Las Palmas to Paramonga practically as quickly as I could get back to Lima, including the getting of my breakfast.

There is no doubt but that travelling by air will eventually make a tremendous inroad into travelling by trains and steamers, and it is equally clear that the territory which we cover by air is in most parts ideal for the purpose.

[fol. 4852] I do not know just what it would cost us to run a shuttle service fro Arica to La Paz and possibly from La Paz back to Antofagasta, but if the service could be initiated and carry its expenses at the outset, I believe we ought to do something about it. In thinking about this there whole matter again I am wondering if ~~it~~ is not some way in which we could cut out the Buenos Aires/Montevideo run and apply the corresponding mail revenue to an Arica or Tacna/La Paz run. In this way the U. S. Government would not spend any more money than they are doing now and would extend the U. S. aerial activities to a new territory.

In view of the fact that I have never been very close to Panagra's detailed policy, it is possible that the above suggestion may look perfectly ridiculous, or that it has already been explored from every angle, but I could nevertheless not resist the temptation of writing you again on the subject, as I feel definitely that within a short time somebody will start an air service whereby La Paz can be reached more quickly from the two seaports, namely, Arica and Antofagasta.

Very truly yours,

/s/ A. Garni

Enclosures

[fol. 4853]

W. R. Grace and Company Exhibit 72

menter 5 to LAPAZ. dec 27th 1934.
745pm

1 5: your 84
2 41st to 53rd word

weekly service tacna lapaz president very much interested and willing arrange immediately contract with pan american grace airways recommend you take matter up with pan american grace airways

3 as we are
4 unable
5 reach
6 trippe
7 cannot get
8 immediate decision
9 panagra
10 but if necessary
11 t close
12 authorise you
13 do so
14 for account
15 W R Grace and Co
16 to be
17 turned over
18 to panagra
19 later
20 if they agree
21 otherwise
22 new company
23 to be
24 formed by
25 W R Grace and Co
26 contract to
27 be on

28 following basis sentence ends
29 weekly
30 mail service
31 lapaz
32 tacna
33 and return
34 to be
35 inaugurated
36 within six months
37 subject to our
38 obtaining
39 permission
40 peru and
41 subject
42 our right-s
43 change
44 connection
45 main line

[fol. 4854]

46 from
47 tacna
48 to other
49 point
50 in peru
51 or
52 chile
53 if we
54 later
55 find
56 more suitable
57 sentence ends company
58 operating
59 lapaz
60 tacna
61 service
62 to have
63 option for
64 one to
65 2 years
66 permitting
67 them

68 if they
69 later
70 see fit
71 to extend
72 operation-s
73 from lapaz
74 to peru
75 via
76 puno
77 or any
78 other point-s
79 on
80 peruvian
81 border
82 and/or
83 to chile
84 via oruro
85 uyuni
86 and
87 ollague
88 or any
89 other point-s
90 on the
91 chilean
92 border
93 and/or
94 to argentine
95 via
96 la quiaca
97 or any
98 other point-s
99 on the
[fol. 4855]
100 argentine
101 border
102 with
103 full
104 cabotaje
105 privilege-s
106 along
107 these
108 routes

109 even if not
110 extended to
111 adjoining
112 countries
113 sentence ends
114 time for
115 exercise
116 this
117 option
118 necessitated
119 for
120 survey of
121 routes
122 obtaining
123 concession-s
124 other countries
125 etc
126 all of which
127 will involve
128 considerable time
129 and expense-s
130 sentence ends
121 concession
132 to cover
133 local
134 and
135 international mail
136 passenger-s
137 express
138 and freight
139 over
140 all
141 routes
142 operated
143 and to
144 provide
145 assurance
146 government will not grant
147 other
148 concession-s
149 on same
150 or

[fol. 4856]
151 parallel
152 routes
153 during
154 period
155 our concession
156 which should be
157 not less than
158 10 years
159 sentence ends company
160 must have
161 right
162 select
163 own
164 personnel
165 erect
166 operate
167 radio station-s
168 at
169 suitable
170 point-s
171 and on
172 planes
173 also
174 permission
175 to use
176 any
177 government
178 civil
179 and
180 military
181 airport-s
182 without charge
183 and to
184 erect
185 hangar-s
186 and other
187 facilities
188 thereon
189 in addition to
190 right to

191 construct
192 its own
193 airport-s
194 where necessary
195 sentence ends we
196 understand you will
197 obtain
198 subsidy
199 1200 dollars us currency
200 monthly
201 for lapaz
202 tacna
203 service from
204 bolivian government

[fol. 4857]

205 and
206 banks
207 as stated
208 by
209 guzman tellez
210 this
211 subsidy
212 to be
213 transferable
214 to other
215 route
216 in
217 contingency
218 referring to words of this cable
219 43rd to 52nd word
220 sentence ends
221 if possible
222 submit
223 draft
224 contract for
225 our approval
226 before signing
227 54th to 57th word

have harris fly to lapaz

228 impossible

229 now as
230 he is
231 in new york
232 but
233 can arrange
234 someone else
235 make
236 flight
237 if
238 panagra
239 decide-s
240 operation
241 for their account
242 referring to words this cable
243 3rd to 9th word
244 hope to reply tomorrow
245 definitely

Mr. Roig.

[fol. 4858]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

DOCUMENTS

WRG 73 thru WRG 99

[fol. 4859]

W. R. Grace and Company Exhibit 73

NEW YORK,
February 2, 1935.

Mr. J. D. MacGregor,
SANTIAGO

In regard to the proposed Tacna/La Paz extension the whole program is being very carefully worked up in order that there may be no question by either Panair or Grace as to the completeness or the propriety of the proposed operation. Since all the details have not yet been put on paper it is not possible for me to forward them to you by this mail. However, the next mail should have your copy of the memorandum which I am going to submit early in the week to Mr. Trippe and Mr. Roig.

It is very possible that there will be some explosive happenings about Panagra operations this forthcoming week since apparently the Grace people are not very happy about the attitude that Panair have taken in failing to give any cooperation, suggestions, or assistance to the Panagra operations. I expect to have a conference with Mr. Roig about this on Monday, and if anything startling develops I will let you know at once, probably by cable.

Inquiry at the Hospital for Joint Diseases about Bobby's operation brought us the report this morning that he was resting comfortably. They tell us that the operation was entirely successful. Apparently everything is progressing satisfactorily, and he should be out of the hospital in the next couple of days.

/s/ H R H
H. R. Harris.

HRH:KW

[Handwritten notation—Air mail copy sent to La Paz.]

[fol. 4860]

W. R. Grace and Company Exhibit 74

Letter No. 15
(D. S. I. Trip series)

On board m/v "Santa Inez",
June 5, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

PAN AMERICAN GRACE AIRWAYS

I spent yesterday morning with Kirkland going over his plant and his problems. I was very favorably impressed with him, not only as a man, but also he impressed me as having a very good grasp of his task and to be dealing with it on very intelligent and broad lines. I was happy to see that he was working for Panagra heart and soul, and, although he seemed to be working in close harmony with the Pan American Airways management, that he was defending his own business very actively.

He seemed to think that he was having to spend a very considerable amount in maintenance, but he seems to think that he is getting his maintenance service from Pan American Airways as cheaply as he could supply it to himself. He thinks the principal cause of his high maintenance cost is the character of the plane that he has to use. He stated that the Sikorsky, though it seems to be as good as any amphibian that has been brought out, has very serious defects that make maintenance too high. He says that the annual general overhaul of the planes in Miami is very expensive but that this is due largely to the fact that the supply of parts by Sikorsky is a racket. He says that a part which should cost $25. costs $150. and that even small parts that should cost $5. or $10. are billed by Sikorsy at $50. or $60.; furthermore, that the general design of the plane as well as its detailed character makes necessary the replacement of a large number of parts at very frequent

intervals, and, that no amount of care prevents the wearing and exhaustion of these parts. This racket on parts is, of course, an established one with many manufacturers. I [fol. 4861] have noticed it particularly with the automobile manufacturers. There are a few of them who supply parts at reasonable prices and apparently Sikorsky are very serious offenders in this respect. I think you might have someone who is knowledgeable make a thorough study of all of these maintenance expense accounts; in fact, I think a very competent man might conceivably earn his way in Panagra studying analytically this whole question of maintenance of all our planes expense, ^ and that you might work out some plan under which when you buy any new planes you get an agreement on the price of all parts for a period of two or three years, and, that the price of these parts is checked up with the practical man to be sure that it is a reasonable one. Under normal conditions manufacturers might not agree to this, but today they are so anxious to get new business in units that I think they could be forced to agree to a big reduction in price on parts. I do not want to suggest any plan that means antagonizing Pan American, but I feel that in the same way that they are strengthening their ^ (i.e. Panagra) independent machine in South America in the administration of the business, you in New York should be strengthening your administrative machine independently of Pan American Airways, (Pan Amer. Airways,) ways. I think ~~Panagra~~ are probably improving their administration but what I have seen leads me to believe that it is still run on very extravagant lines and that it is quite out of step with our own ideas of economic industrial administration. Therefore, I think that you should try to arrange that MacGregor should have alongside of him a competent technical man who could independently check up on all maintenance expense and on the prices of all materials that are purchased, particularly in view of the fact, [fol. 4862] which Kirkland made clear to me, that we are now paying exorbitant prices for a lot of the material that we are buying for maintenance. This is true certainly regarding Sikorsky and it may be true with reference to the

Fairchilds, to the motors and Fords. This whole matter is one that deserves careful attention and I think you will find the means for getting MacGregor to put alongside of himself a man with sufficient technical knowledge to build up a check on technical work in the same way vidal has built up an independent control of accounts.

TRAFFIC

Kirkland feels that the Sikorskys with their limited capacity and their uncomfortable seating facilities and with their difficulty in getting off the water except with a limited load, make them an inadequate unit for a run between Panama and Ecuador. He showed me the figures and went over in some detail with me his traffic movement, and he is emphatic in the statement that he could double his movement over his route if he had a plane like a Ford instead of a Sikorsky. I have no way of verifying this estimate but he seems very intelligent and is handling his work pretty well, and I was rather impressed by his interest, on the one hand, and the fact that he is so convinced of the possibility of doubling his traffic, on the other. I asked him what plane he recommended in place of the Sikorsky and he said that he had two ideas, one of which was to put a Ford on pontoons. I asked him whether this had been done and he replied that it was being used successfully by the fire service in Canada. He said that it had never been experimented with much, but he felt that it was a perfectly feasible thing and that, if pontoons were properly designed and adjusted, the Ford would, in his opinion, be the best unit [fol. 4863] to adopt. To be sure he would have certain problems, as he would have to shift over to the Naval field at Panama and would have to provide some way of handling his plane in Guayaquil as the Ford would not be an amphibian but a sea plane.

The second idea that he had was a Douglas Amphibian which is made in California and has been in use for about a year. I went over to the Army hangars to see two which they have there and which they report are operating successfully. Kirkland did not like the engines but they could be equipped with Wasp engines. It is a monoplane with

the engine mounted above the wing and the fuselage below and the fuselage is quite a well-designed boat; in fact, as a boat it looks better designed than even the Commodore planes. It is much lighter than the Commodores and smaller and less capacity. It has seats I think for about six passengers and ample space for luggage. I believe the Army has had some difficulty with the shock absorbers on the tail gear but this was not serious and otherwise they report very favorably on the operation of these amphibians. Of course, I know nothing about airplanes and have no right to an opinion, but, after going over a detailed explanation of the qualities and problems of each plane, I was rather well impressed with the looks of the Douglas plane and feel inclined to suggest that you should have someone look into these planes carefully. In this connection again an independent technical man would be invaluable to you for, as we know, the people who are running the Pan American Airways have close connections and interests with plane manufacturers and this means that any technical opinion that you get on this subject may be colored by this interest; in [fol. 4864] fact, it is perfectly natural that it should be and there is no way to avoid this color. I saw a Commodore and went over it carefully, and, although it seems to be a good practical well-designed plane, it is too heavy for its power and is consequently too slow to be practical of adoption by us.

To make a practical suggestion, I would be inclined to pull out some man like Shannon or like Kirkland and bring him up to New York as assistant to MacGregor. To be sure the logical man to be in New York would be Harris, but he is too urgently needed at this end of the business at present. I fancy that either Shannon or Kirkland might be spared by picking out one of the good men down the line to replace him. I will be able, after I have seen more of the men in the field, to have a little clearer opinion as to their character. However you and MacGregor probably know all of the men already fairly well and you will probably be able to decide out of hand which man from the Coast would be most suitable to bring to New York as MacGregor's assistant on technical matters. The man whom you select you can gradually build up in your policies and he would be on hand

to send out to replace Harris later on should the time come when you want to bring Harris to New York. That time may be some distance ahead, but I think it important to be building up a man of your own who might in an emergency replace Harris and I think whoever you select to go to New York should be your man of outstanding ability in order that you may mold him into a future chief. Kirkland is a Navy man and I don't know just how far his ability extends. I should think that he may possibly be limited, although he impressed me as being very intelligent as well as having a good deal of commercial sense.

Very truly yours,

[fol. 4865]

W. R. Grace and Company Exhibit 75

VIA
CORREO AEREO
PANAGRA

[Handwritten notation—Recd 7/6/32 ans'd 7/8/32]

Letter No. 61
(D.S.I. Trip series)

En route Valparaiso
On board s/s "Boskoop",
June 27th, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

I received your various letters at Antofagasta this morning.

Your #4—Panagra Equipment for Northern Division

Without expressing any opinion as to the superiority of the Douglas plane over the Sikorsky as far as comfort or security in operation are concerned, I got the impression

that the maintenance problem would be greatly simplified due to the fact that the motors are far enough from the water to avoid splashing from the water and tearing up the propellers in the way that is being done by the Sikorskys; in fact, I think the big problem of the maintenance of the Sikorskys is the proximity of the motor and the propeller to the water. In this respect at least the Douglas is a great improvement.

Regarding the advisability of considering the Ford on floats, as you say that would involve boat operation rather than amphibian and this today offers certain practical problems. On the other hand, I feel that as far as passenger traffic is concerned this leg of our service is the neck of the bottle and that we would get more way traffic as well as more through traffic if we had enough available capacity to permit us to go out and look for passengers on the northern range in the way that we are doing on the other ranges.

INDEPENDENT TECHNICAL MAN IN NEW YORK

I quite appreciate that Trippe would object to this, but, after all, it is only doing in New York what they are doing on the Coast in maintaining an independent traffic man. I agree with you, however, absolutely that we must do nothing that will make more difficult the problem of keeping our organization and that of Panagra working as a unit [fol. 4866] on the Coast and of getting from New York the support that you are getting from MacGregor to bring this about.

Quite apart from the question of the amount of money that the Grace Organization on the Coast can make out of Panagra, I consider that it is vital to the progress and success of Panagra that the great mass of combined influence of all of our offices and of our men all along the line should be making its full daily contribution, and only by keeping this all working in the very closest harmony will the enterprise get the benefit to which it is entitled through the Grace Organization. As I travel along the thing that impresses me most is the splendid efficiency of our men all along the whole range and I am similarly im-

pressed with the character of the technical men who are handling the operation of Panagra. The daily collaboration and the unity of effort between these two elements is the thing that has made Panagra what it is and that is the thing that is going to continue its success and eventually make a great big enterprise out of it. Therefore, any step that you take in the direction that I have indicated must be taken with great tact and I think the time will come when you will be able to take the step in the form of promoting a very competent technical man to New York to be MacGregor's assistant, and this move would have to come from MacGregor and in a natural and constructive spirit.

ECONOMIES

I am very interested in receiving your letter #5 and seeing that you are exercising the steady pressure that is necessary to bring and keep our expense account in line with our turnover and in making economies that are so necessary in order to accomplish this.

[fol. 4867]

BANK

Your No 6 is very interesting and it is a source of great comfort to me to know that you are in daily touch with McKnight and watching the Bank's position in such a way as to assure the satisfactory management of that business.

AIRMAIL TUMACO—Your No 7

If I were you I would get directly in correspondence with Harper regarding this and get his views as to what he considers he will be able to accomplish and how he proposes to go about doing it. You then can decide whether anything would be gained by taking the matter up with Trippe. In accordance with our general understanding with Trippe, Panagra was to operate on the whole West Coast of South America and across to Buenos Aires and, I think, Montevideo. The operating by them of a service from Buenaventura to Tumaco is not compatible with this arrangement and, as I do not think that Scadta can possibly be making

anything out of this service, it would seem a very natural thing for them to retire from it; in fact, I think we really have a right to ask them to retire, particularly if they suffer no prejudice by doing so.

PANAGRA—Your #9

I take it you have sent a copy of your letter to Marshall to Harper and will in future correspond with him. The seating capacity in those planes is not the limit. The real limit is the weight with which the planes can get off the water. I am not sure but my impression is that if the water is still and there is no wind, these Sikorskys cannot possibly get off the water with all the seats occupied. In considering the capacity of these planes Marshall considered not the number of seats that were in the planes, but the risk of filling [fol. 4868] all the seats and finding it impossible to carry the passengers that he had booked. It is in view of this condition that he said to me that he was not looking for passengers for Panagra. He said the planes usually came up from the South with as much weight as they could handle provided conditions of water and wind were unfavorable. What I am trying to do is to get in a position where we will have enough capacity so that Marshall and our people in Bogota and all along the line are hustling for passengers for the planes just as they are for the steamers.

Regarding the suggestion that the United Aircraft make of our joining with them in designing a special plane for this service, I feel that if we could put a considerably more powerful motor in the Douglas plane it would have a greater real capacity than the Sikorsky. In comparing these two planes I was rather impressed with the fact that the fuselage of the Douglas was more like a boat and would probably land and take off better than the Sikorsky. This, however, is just a sort of a hunch that I got from comparing the bodies of the two planes looking at them as boats rather than as airplanes.

BUENAVENTURA—Your #10

We now have a House in Colombia and Harper is, I think, a careful man. Buenaventura has a large movement

and is going to become a very important port. At present it is just a mud hole and I think that, from the standpoint of the Colombian Government, they are quite justified in using some of the income of that port to make it a place in which the people who are responsible for the port can live. I think the most serious danger is the putting of a port in the hands of foreigners and I think that it is quite [fol. 4869] conceivable that we might lose as much in prejudice on this account as we might gain in benefit to our steamers through an effective control of the port. I always think that the men on the spot are the men who are the best judges of this and, if, after Harper has been thoroughly warned regarding these points, he still recommends our going into the thing and if you and Garni and J. P. Grace agree to it, then I would come along. I do not, however, feel strongly enough about it to support the idea unless it had the approval of my associates.

Very truly yours,

(Sgd.) D. S. IGLEHART

[fol. 4870]

W. R. GRACE AND COMPANY EXHIBIT 76

Letter No. 30
(H.J.R. Series)

Airmail 4/20/35
Santiago 4/27/35

New York, April 18, 1935

Harold J. Roig, Esq.,
Santiago, Chile.

Dear Roig,

Garni is in Washington with Cogswell, Trippe, etc. for a hearing with Hewes regarding the matter of reducing the rates that Panagra is receiving.

Patchin and Cogswell attended the last meeting but we felt, and Garni did also, that he ought to get his hand into this very important matter. My feeling is that we should be willing to accept a reasonable reduction, say about 10%, provided it was horizontal and applied to all foreign airways in the same ratio. I rather felt that Garni could convince Howes that it would be eminently unfair to reduce our subsidy in a larger ratio than the others merely because we had handled our business well and more profitably than others. All the arguments have been marshalled, and our idea is that we will probably have to get Clark's help in the matter.

It is refreshing to see how Panagra matters on the coast all began to move the moment that you arrived there. There is a Spanish proverb which says "El ojo del amo engorda el cabello".

ECUADOREAN LAWYER

I feel, and I think Garni will feel after seeing all of your explanations, that you did very well in employing Dr. Ponce and that he will be an invaluable help in handling important matters that are continually coming up with reference to Panagra.

CHILEAN CABOTAJE

I felt a little hesitant about having you pass a written memorandum to the LAN because these written memoranda, although not signed, always bind us but don't bind the other fellow, and they are so often used merely as a [fol. 4871] basis for trading by the other man. I do not know just what plan you are following with LAN but with reference to that negotiation my general feeling is that in practice you will not obtain a satisfactory arrangement with LAN unless you bring to bear a criollo influence of a very influential character. My knowledge of Merino rather leads me to think that it is going to be a very difficult and perhaps quite an impossible task to come to terms with him and his group in any direct dealings between you and them and that other very carefully selected influences will in all probability be necessary in order to bring about results.

I am not sure that Juivaedo or Dagnino agree in this theory but at any rate that has been my own experience in negotiations of this character in Santiago. Two years ago I suggested the idea of getting Francisco Echenique to undertake this task for us and at the time I was convinced that he could have accomplished it. We would have had to compensate him in some satisfactory way but he was so close to the Government and to all the Chilean aviation influences that I am satisfied that there was a very fair chance that he might have pulled the trick. Since that time he has been working very closely with the Chilean/Argentine/Peruvian and Bolivian Governments and has done a business in airplanes which has made quite a fortune for him. I do not know whether he is still available to undertake this task as I got a cable from him saying that he was thinking of coming up to play polo at Meadow Brook during this season, but even if he remains in Chile I do not know whether he would still feel that he was able to undertake this task or whether it would be practicable to have him do so as I don't think that he and Valverde are particularly friendly.

The second suggestion I made was that we should retain one of the President's sons, who is I believe the lawyer of [fol. 4872] LAN, and who is a lawyer of so high a category that it appeared to me that we might be justified in retaining him without running any risk of being accused of using undue influence with the government. Valverde turned down this idea also and he may have been right in doing so. Now whether you use one of these media or some other I rather feel that you are likely to need assistance of this general en route to help you perform this difficult task. Bulnes is an excellent lawyer, highly respected but lethargic, inclined to be timid, and I think not too effective.

Now these observations I make to you are more or less a shot in the air and they may be of no value to you whatever but I throw them out to you on the chance that they may be of some use.

BUENOS AIRES

I was delighted to hear that you were going over there. In the competition which now exists and will become more accentuated in the future, B.A. is really a key point and although it may cost Panagra a little money to have a first-class man of their own in this point, I think that in the long run it will be money well invested.

NORTHERN EQUIPMENT

I ran into Sonny Whitney day before yesterday at the Racquet Club and had a long talk with him. He has been out in Hawaii and is immersed in this whole eastern question, as Trippe is also. I explained to him that for two years we have been trying to get Trippe to agree to putting adequate equipment on the northern section and that Trippe had stalled because he wanted to fly his Clippers down our coast as far as Guayaquil or Talara. I explained that we were not going to accept this plan and made clear to him that we were losing a lot of business and losing ground generally due to Trippe's failure to agree to our acquiring equipment. Whitney said he was delighted to hear that we [fol. 4873] needed equipment and that he thought we ought to get it as soon as possible and promised to talk to Trippe about it. Whether anything will come of this I do not know. Garni is seeing Clark in the next few days to discuss the matter from another standpoint as I feel that we must put some pressure on Trippe to get a prompt settlement of this and other pending questions.

If we can get a Sikorsky promptly it would undoubtedly be the best solution. If we cannot, then I think we ought to make an effort to fly that northern section with a Douglas plane. I am asking Campbell to look thoroughly into the plan they have for putting buoyant bags on the Douglases so that they will remain afloat under any conditions. If that plan looks practicable then my idea would be to have Campbell and Allen see Lindberg and see what he thinks about it.

Knowing the character of the waters of the Caribbean and of those between Panama and Buenaventura, and know-

ing that during nine months of the year the Caribbean is an extremely rough piece of water and that apart from tropical showers the weather between Panama and Guayaquil is almost always favorable, I would rather be a passenger in a Douglas plane south of Panama, provided it was made buoyant, than I would be in a Clipper crossing the Caribbean. I have talked over the matter of the Clipper boats with two or three people here, and the impression I got is that they absolutely must not land in rough water and that if they did they would certainly not be able to rise from it.

The more I think of this northern equipment the more I lean to meeting the situation now and trying to work out a scheme of flying that section with land planes. All that we would need to do would be to find two or three emergency fields and I think we should start an immediate survey to see if we cannot locate sites for them. Campbell tells me that there is an army field 150 miles south of Panama on [fol. 4874] the Pacific side and from there there is a 300 mile hop to Cali. If we could find between these two places two or even one emergency fields, then I fancy that flight might be made perfectly safely with a land plane. The survey would have to continue south of Cali to see whether we could locate some emergency landing places which I myself believe exist although I have only very general evidence to support the theory. In a word, my feeling is that if we could get an S-43 plane promptly, then that is the solution. If we cannot, then I would make a hard stab at flying that northern section with land planes. I am convinced that we will eventually fly it with land planes and I feel that we would be making a very long step forward if we could find a means of doing it now.

MANAGEMENT

I suggested to Garni the idea of sending Vidal to the coast and putting Campbell in his place for the reason that in the first place I think Vidal is the most competent man connected with Panagra for the extremely important task that you have in view. Our efforts over a period to control or even to understand expenses and get a proper analysis

of them here have been relatively futile, and the future success of Panagra would require a man with the mind of a merchant, alongside of men of the type of Harris, Kirkland, etc. if we are going to really manage that business on sound commercial lines.

Regarding replacing Vidal, my idea of suggesting Campbell is that I think Campbell has the ability to be the future head of Panagra. I think he understands enough about accounting to direct the control work and has certainly had enough commercial experience in his eight years at Cartavio to look at problems from a commercial standpoint, and in addition has a knowledge of aviation which he is increasing daily, and is of the type of man who I believe [fol. 4875] might get the complete confidence of men like Priester and others and even the confidence of Trippe. The latter is going to be terribly busy with bigger schemes in the next year or two and if we had as the head of Panagra a man that he trusted, it is just conceivable that he would allow him to run the business. In other words, Campbell would replace Vidal, have a really good young accountant and comptroller alongside of him, and would replace MacGregor as soon as he got hold. I rather feel that we ought to push into Panagra two or three young men of commercial experience and of good quality—men who would be training up here to take a post such as you have in B.A., or to go down to become assistant to Vidal. I am going to talk over with Holloway the matter of selecting one or two of these young men and a plan for training them.

Yours very truly,

D. S. Iglehart
(Dictated but not read)

[fol. 4876]

W. R. GRACE AND COMPANY EXHIBIT 77

W. R. GRACE & CO.
NEW YORK

[Handwritten notation—Recd 6/16/32]

Letter No 19
(D.S.I. Trip series)

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

Buenaventura
On board m/v "Santa Inez",
June 6, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

PANAGRA

Following up my letter #15, I have talked over the situation in Buenaventura with Marshall. He says that he believes that he could get an important number of passengers for the trip north from here to Panama, but that the planes cannot accommodate them for they usually come up from the south with as much of a load as they can handle. When there is no wind and the sea is smooth they are finding a good deal of difficulty in getting off the water, and, although now and then they are able to take passengers from here, Marshall says that as a rule there is no certainty of being able to accommodate anyone. This brings out again I think, and perhaps a little more clearly, the fact that as far as through traffic is concerned the Sikorskys are the neck of the bottle, and I believe that we should set someone to work on this problem to see whether we cannot get a capacity on this northern run which is comparable with that on the other runs and that we should prepare ourselves to handle the traffic that is offering or that could be obtained by adequate solicitation. If we continue with

the present inadequate service I think we are likely to have Scadta in competition with us on this run, and I think this should be avoided; furthermore, I feel that we should keep facilities a little bit in advance of traffic requirements and must make steady progress in building up our movement. The years pass by quickly and we must build up a movement that will put this business pretty firmly on its feet before our present mail contracts expire.

Very truly yours,

/s/ D. S. IGLEHART

[fol. 4877]

W. R. GRACE AND COMPANY EXHIBIT 78

(Letterhead of Pan American Grace Airways, Inc., New York City)

H.R.H. series #68.

[Stamp—Received Feb 12 1930]

[Handwritten notation— HRH #261—March 5—1930]

LIMA,
February 11th, 1930.

Pan American Grace Airways Inc.,
NEW YORK.

Dear Sirs,

Receipt is acknowledged of your letter #152 H.R.H. series. I have delayed answering this pending a report from our attorneys who have submitted a preliminary report saying that the laws are now being reworked in Congress and they do not think we are justified in taking any action pending the final definition of the law.

Receipt is acknowledged of your letter #205 H.R.H. series. As I have already informed you I propose to arrange to have the same powers as I possess to be held by a Grace apoderado in each country in which we are operating with the possible exception of the Argentine and Uruguay. I have already substituted my power of attorney to Mr. von

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Linde and will substitute to Mr. Rebstock as soon as I go to the Canal Zone. The only powers I possess at the present time are for the Canal Zone, Republic of Panama, Republic of Peru and Republic of Ecuador, all the above in the name of the Pan American Grace Airways Inc. and a power for Peru in the name of the Peruvian Airways Corporation. The Ecuadorian and Peruvian powers are limited to $5,000.00.

Receipt is acknowledged of your letter #206. Please do not blame Mr. van Law for the arrangement for taking Colombian mail in Buenaventura and Tumaco—this was done by him on my instructions based upon a report from Willcox and an understanding which I had with Mr. von Bauer that mail secured by us in Buenaventura and Tumaco would not be considered by them as an infringement of [Vol. 4878] their rights in Colombia. If Dr. von Bauer is still in New York I suggest that you take up the matter with him reminding him that this was a verbal understanding with him in view of the verbal agreement which he and I made whereby Pan American Grace Airways would carry Scadta mail from Colombia as far as Arequipa and Mollendo for onward despatch from these points by train or steamer to Bolivia, Argentine and Chile.

By next mail I expect to report the progress I have made on the rearrangement of the postal rates with the Marconi Company in Peru.

Receipt is acknowledged of copy of memorandum from Mr. Priester to Mr. MacGregor dated January 17th. stating that Mr. Priester believes that I should decide between a Fokker Super-Universal and a Curtiss Kingbird. My own impression is that we should purchase another Fairchild in view of the points which we have previously exchanged by letters and cables. Second choice would be a Fokker Supe Universal.

It is expected that the Santa Mariana will be back in first class condition by approximately March 1st. The plane was returned to Lima after temporary repairs on the field. In this connection I believe that we should have available at all times here at least one spare Ford in addition to those

in operation on our lines or else we should give up the use of Fords in favour of an airplane similar to the Fokker F-10 which can be easily, cheaply and quickly repaired in the field with spares which are easily kept in stock and do not require special ordering from the United States. It is very probably true that in final analysis the Ford depreciation rate will be less than a construction of the Fokker type but a question of quick repair with a minimum of investment in spare parts particularly when considering the distance from source of supply would indicate that we might well carry on our operations with welded steel fusilages with veneer or fabric covered wings.

[fol. 4879] Your attention is called to your H.R.H. series letter #181 last paragraph. Upon my arrival in Lima I have been shown a Westinghouse Catalogue #250 showing B-10 electric furnace which would seem exactly suitable for our work in heat treating Ford rivets. I had previously been informed by you that it was necessary to have a furnace built for this work. Unfortunately the price of the B-10 furnace is higher than we would seem to be justified in paying for the relatively small amount of work which this equipment would be called upon to do but I do not believe that it will be necessary for us to have a special furnace designed and built at such time as we decide that we do require this type of equipment.

I am enclosing copy of envelope and paper furnished gratis to large business houses by the Latecoere Co. As I understand it this gratis distribution is carried on for approximately thirty days after the opening of new lines, after which period they sell the paper at approximately cost. I suggest that we obtain quotations on similar stationery for similar use by us.

My present program calls for my completing arrangements with the Peruvian Government for the installation by us of passenger stations, ~~and various~~ hangars and other buildings at various points in Peru and in addition to complete with arrangement with the marconi Company for new air mail rates.

I am having breakfast with Mr. Culbertson tomorrow morning and will discuss with him at that time the desir-

ability of my proceeding to Santiago upon his arrival there. However, I do not think that this will be necessary in view of the excellent representation we have in Messrs. Metzner, Heavy and Dagnino of the Grace Company. I propose to [fol. 4880] proceed to the Canal Zone upon completion of the work I have outlined in Peru in order to put the Cristobal/Guayaquil run on a more satisfactory basis as regards operation by ourselves is concerned. It would appear from information which I have from the Canal Zone that we are not securing as complete service and attention from the P.A.A. as we might desire. However, I am unable to definitely make this statement until I have investigated the matter further.

With regard to the actual shop equipment which will be required in Lima and Montevideo, this problem is being studied and definite plans will be submitted to you as soon as possible.

Yours very truly,

Pan American Grace Airways Inc.,

/s/ H. R. Harris
Vice President.

HRH/h.

copy to Mr. MacGregor,
Mr. Hoyt
Mr. Trippe
Mr. Cogswell
Mr. Patchin.

[fol. 4881]

W. R. Grace and Company Exhibit 79

#533

Pan American Grace Airways, Inc.

LIMA, January 22, 1931 #252

Mr. MacGregor, New York
CHARTER OF SIKORSKY 306-N

I am sorry that you did not give me the details of the charter of Sikorsky 306-N. These details are now at hand

in a copy of your private letter #74 which you sent to Cristobal. I must confess that I have yet to see the instance where Panair has erred on the side of generosity with regard to any equipment which we have secured from them.

/s/ H. R. Harris

HRH/CBR

[fol. 4882]

W. R. Grace and Company Exhibit 80

(Letterhead of Pan American-Grace Airways, Inc., New York, N. Y.)

[Handwritten notation—JDM—HRH #1165—4/14/33—BA/Montevideo Operations—P-3 Accident]

Cable Address #549

Letter No. 1362
(to be furnished later by Mr. Large)

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY SECOND AIRMAIL

YOUR LETTER NO.

[Stamp—Received by Airmail—Apr 13 1933—Pan American-Grace Airways, Inc.]

Cristobal, April 8, 1933.

Mr. J. D. MacGregor,
Vice President & General Manager,
Pan American-Grace Airways, Inc.,
New York, N. Y.

Dear Mac:

Receipt is acknowledged of your Personal 1130 of March 27th, on the subject of Buenos Aires-Montevideo operations.

The first page of your letter has been covered in previous correspondence, and I sincerely trust that you will be able to arrange to station one of our Sikorskys for

the Buenos Aires-Montevideo operation, at least during the winter.

With regard to page 2, I believe that the possibility of trouble in connection with the P-3 accident is not particularly acute, since it would appear that Alurralde and Shannon have been able to get the necessary information before the proper people in order to quiet any outcry by our Buenos Aires newspaper friends. In this connection, I understand that one of the Panair officials who was in Buenos Aires at the time of the accident (apparently de Kuzmik) made very little effort to hide his belief that the accident occurred as result of our authorizing them to do an unsatisfactory repair job. I suggest that this be called to the attention of George Rihl for quiet investigation, since I am getting damned tired of hearing Panair say what lousy organization Panagra is, particularly with regard to maintenance and repair. I used to be somewhat impressed by their self advertising in this connection, but after seeing the condition of the Ford they sold us, which they claimed was in first-class condition, and also the condition of the motors in that Ford and the other motors which they have overhauled for us, my impression is that [fol. 4883] ~~Panair is that~~ Panair had better come down and learn how to do things from Panagra, and not make wisecracks like that made by the Panair inspector in regard to the carburetor of one of the motors installed in one of the new Sikorskys at the factory, the history of which carburetor is still being investigated.

I am not ready to state that it did not come from Lima on the last carburetor overhaul, but I am ready to say there is no justification in the inspector's remarks that "this is another example of the bum Lima maintenance", which remark I understand was made at the Sikorsky factory, and by which you are possibly puzzled.

/s/ H. R. Harris
H. R. Harris

HRH AW

PS: Since writing the above I have just read Kirkland's #1251—Private addressed to Sago, dated April 7th, on

the subject of the carburetor mentioned above, where it is definitely determined that this carburetor was last overhauled by Panair and was never out of Panair's possession up to the time it was shipped to the Sikorsky factory for installation.

(initialed) HRH

[fol. 4884]

W. R. GRACE AND COMPANY EXHIBIT 81

PERSONAL 1634

NEW EQUIPMENT

HRH/FL

LIMA, October 27, 1933.

Mr. J. D. MacGregor, New York.

Your personal #1393 (Oct. 19):

This is a most interesting letter and has so much meat in it that I shall cover the points that I see in it which require, or seem to require, comment from me page by page.

I am interested to note that the maximum number of the small Sikorsky amphibions (by "small" I mean the S-43) which could be absorbed by the entire Panair System under the present conditions would be five to six, and that in view of the small number and the increased cost due to this small number and the NRA price raising arrangement, we would have to pay $120,000 USCy. apiece for such of these amphibions as we desired for Panagra. Also, of course, we would have a very long delay in getting delivery on this sort of new aircraft should be try to purchase them, although you don't mention this extremely important point.

It is interesting to note that Mr. Trippe anticipates a heavy increase in mail and express service, in addition to an increase in the free baggage allowance to each passenger. I am glad that this is recognized and accepted in principle, since I feel that the increase in free baggage weight for our passengers is a necessary and logical move in the near future, and that we should up our present 15, 20 and 25 kilos baggage limits by ten kilos each.

COMPARATIVE DATA

	SIKORSKY S-38 AMPHIBIAN	CONSOLIDATED "CONSODORE"	S-43 No. 1 RIG.	S-43 SUPPLEMENT
ENGINES	2-(7:1)WASPS	2-(7:1) HORNETS	2-(5:2) SIRIC	2- (DD) HORNET
TOTAL SEA-LEVEL POWER	850 HP.	1,150 HP.	1100 HP.	1240 HP.
GROSS WEIGHT	10,480 LBS.	27,600 LBS.	15,847 LBS.	16,115 LBS.
USEFUL LOAD	3,980 "	7,100 "	6,900 "	7,066 "
FULL LOAD OF FUEL TO GIVE RANGE OF S-38	1,980 "	2,604 "	1,788 "	1,968 "
CORRESPONDING FULL LOAD OF OIL	180 "	245 "	190 "	200 "
RADIO EQUIPT. & CREW	427 "	597 "	597	597
PAYLOAD	1,405 "	3,654 "	4,325 "	4,301 "
WING LOADING	14.3 LBS/FT.^{2}	15.8 LBS/FT.^{2}	19.40 LBS/FT.^{2}	19.73 LBS/FT.^{2}
POWER LOADING	12.3 #/HP.	15.3 #/HP.	14.40 #/HP.	13.00 #/HP.
SEA-LEVEL RATE-OF CLIMB	745 FT./MIN.	600 FT./MIN.	925 FT.	945 FT.
MAXIMUM SPEED AT SEA LEVEL	125 MPH.	125 MPH.	162.0 MPH.	163.3 MPH.
CRUISING SPEED- 75% HP.	112.0 MPH.	112.5 MPH	1458 "	150.0 "
FUEL CONSUMPTION	52 GALS./HR.	70 GALS./HR.	69 GALS./HR.	78 GALS./HR.
ENDURANCE	6.3 HOURS	6.2 HOURS	4.52 HOURS	4.2 HOURS
RANGE	690 MILES	690 MILES	690 MILES	690 MILES
MILES PER LB. OF FUEL	0.52	0.54	0.398	0.320

LIMA, October 27th, 1933.

With regard to Mr. Trippe's idea about our chartering a Clipper for the service between Cristobal and Guayaquil, rather than investing $250,000 in building two planes of our own, it is, of course, impossible for me to give this any accurate study until I know what charter rate we would have to pay and also the cruising performance in speed [fol. 4886] and gasoline consumption of this S-42, as well as the actual payload available for the non-stop distances involved in our flights over this route. Incidentally, Mr. Trippe's idea would undoubtedly cause us some difficulty at times, in that any delay by Panair due to hurricanes, motor trouble etc. would make it impossible for us to commence our schedule out of the Canal Zone within twenty four hours of its scheduled departure, since we would have no high-speed aircraft to carry out our own departure. F.A.M. 9, of course, is not dependent directly for its subsidy payments upon the arrival in the Canal Zone of Panair plane from Miami, and I feel that we must, to the extent of securing our subsidy payments, look out for our own interests as best we can, rather than have to cancel an entire trip for our 4,551 miles because the Panair Miami plane does not arrive in Cristobal.

In connection with making Guayaquil the overnight stop, you will already have noted that by Cristobal's SAGO #1775 (Oct. 5) to me on the subject of Cristobal/Talara one-day service, Cristobal feel it is perfectly feasible to operate from Cristobal to Talara in one day with our present Sikorsky S-38's. I can see, therefore, no reason why we should operate only Cristobal/Guayaquil if we have higher-speed equipment than our S-38's. From present indications it may be possible for us to put in a combined land- and seaplane base at Talara, and some of the seaplane pilots have informed me that Talara will be satisfactory for flying boat operations, even though it was unsatisfactory for our Fairchild on floats, since the flying boats will stand the fairly rough water outside the Talara harbor if, it ever becomes necessary for them to have such a long take-off. It is expected that the flying boats will be in the air long before they reach the open water, however, which was of

course not true with our loaded Fairchild on floats. Perhaps the installation of a joint land- and seaplane base at Talara will involve more of an expenditure than a similar joint land- and seaplane base at Guayaquil. This, of course, remains to be seen and is now being actively studied; at least as far as Talara is concerned; I hope to have some additional constructive information for you in the airmail leaving here a week from today with regard to Talara possibilities. Talara, of course, has the very great advantage of the tremendous International Petroleum shops there to handle any special work that could not be handled by the fairly complete overhaul and repair shop that I would plan to put in at any joint land- and seaplane base which we might decide to install. On the other hand Talara has the disadvantage of having no reasonable hotel facilities such as are available at Guayaquil, and we would presumably have to put in our own hotel accommodations for our passengers if Talara was the overnight stop.

as Kirkland

I am afraid I cannot get as enthusiastic about the possible number of passengers that might be available for a 26-passenger plane between Cristobal and Guayaquil. Whereas by reducing our tariffs somewhat we might fill this plane to a reasonable percentage between Cristobal and Buenaventura, I feel that south of Buenaventura we would never have more than an average of seven passengers, unless we materially reduced our present tariffs. Tumaco is, of course, an interesting possibility in connection with the possible Buenaventura movement, but after all [fol. 4887] Tumaco is a relatively small place and the road which is now being built to connect Cali with Pasto will undoubtedly carry a good deal of the interior traffic which now has to come down to the coast to get to Cali. It is quite right that we have a continuous flow of Company personnel; up to the present time we have had very few cases of Company personnel being held over at either end of the line, or in the middle, because of lack of space in our Sikorskys (S-38's). However, that situation is gradually becoming more difficult because of increased movement of our Company personnel and also because of increased

In order to make a study of existing and prospective planes for our Cristobal/Guayaquil and/or Talara run, I have had the attached comparative figures put on one sheet. Unfortunately I have here absolutely no data about the S-42, which is, I presume, the Clipper that you refer to in your letter, although as you recall the S-40 is also called the Clipper; the S-40 is, from reports I have had from the operating people of Panair, so unsatisfactory in almost all respects that it seems not worthwhile to attempt to make any comparison at this time with the S-40. In order to make my comparative table more complete and thus enable me to revise my ideas, if necessary, I request that you secure the complete performance calculations of the S-42 and/or the flight test information, if flight test has already taken place, in order that I can make additional figures.

The attached table shows some very interesting things. The S-38 figures and the Commodore figures are from the performance of these aircraft without controllable propellers. As you know, we now have controllables on our S-38's and find that our cruising speed at 75% BHP is somewhat in excess of the 112 mph. shown in the attached data as cruising speed of the S-38, and it is to be presumed that the Commodore would also show an increased cruising speed with controllable propellers. Also the Commodore [fol. 4885] figures as given are for the Commodore as furnished NYRBA and which Panair are now operating; these planes have the engines between the wings. As you probably already know, Panair are planning to change over all of these Commodores to install engines in the entering edge of the top wing, which I understand will increase the cruising speed by about 5mph., irrespective or not of whether they put on the controllable propellers. The additional cost of changing the engines I understand will amount to about $5,000 USCy. per plane. I should imagine that in studying the matter we would be safe in assuming a cruising speed for the Commodores with the new engine location of 115 mph.

You will note from the tabulations given herewith that the comparison between these four airplanes (two existing planes and the two S-43 proposals which seem to me to be

most satisfactory for our service) that they are all based on the same miles flight range for purposes of this table, thus assuring equal comparison as regards payload. On this basis we find that the best S-43 has only 671# more payload than the Commodore, or approximately four passengers. The S-43 has, of course, the advantage of approximately 30 mph. increase in cruising speed, and is more economical by a good deal for gasoline consumed per mile flown.

According to your letter Panair has a firm contract with Sikorsky for the construction of several Clippers, presumably the S-42's. Presumably some, if not all, of these S-42's will be used to replace the present Commodores now being operated by Panair, in view of the necessity Panair finds of speeding up their east coast service in order to give reasonable flight time in comparison with our west coast service to B.Aries. I believe therefore that we might purchase from Panair two, or perhaps three, of these used Commodores, have them rebuilt by Panair, or by our own organization here in Lima, (preferably by Panair), have the motor mounts put into the entering edge of the top wing and controllable propellers installed. We would require new Hornet motors for these planes, together with four spare Hornet engines, two spare propellers complete, and also two spare sets of propeller blades without hubs. I believe that two Commodores would be enough, because our present S-38's (having the same approximate cruising speed) could be used as standby and emergency planes to replace the Commodores at such time as they had to be overhauled. This emergency-plane arrangement to replace planes under overhaul would be much more difficult to secure at reasonable expense if we went into higher speed equipment (such as the S-42 from Panair will presumably be), because our entire schedule would be radically interfered with during the time when such planes were undergoing overhaul, provided we had only two of the high speed planes, unless we chartered during that overhaul period an additional high-speed plane of the same type from Panair, and as you recall our experience with Panair on chartering airplanes from them has been anything but happy, at least from the financial standpoint.

cash business. However, I don't see any movement which would justify our putting in a 26-passenger plane of the S-42 type.

If our line is to depend, as it possibly may in the near future, for its income only on its passenger and other payload with a curtailment or complete loss of U.S. mail subsidy, we might then find it necessary or desirable to secure really large passenger airplanes, either through purchase or charter. But in the meantime I believe we are better advised to purchase the Commodores, which are much less costly to purchase in the first place as well as being less costly to operate during the period when we don't have an overwhelming passenger demand. In connection with the cost of the Commodores I have written Laddon of the Consolidated outfit to secure from him an unofficial estimate of what brand-new Commodores, of the type Panair now own, would cost us. Laddon told me when I was at the factory that he could let us have these very cheaply, inasmuch as they were all tooled for manufacture of these planes, both from their NYRBA contract and also from the great many planes of this type they had furnished the U.S. Navy; you will recall that these are the planes which recently made the non-stop flight from Newport News to Cristobal and from Cristobal one-stop to San Diego with much marked success by Naval pilots. My estimate is that we ought to be able to purchase new Commodores from the factory for about $60/65,000 each.

With regard to Mr. Trippe's explanation that it will be almost impossible for Panair to operate between Miami and Cristobal with the Clipper in less than two days, I am indeed amazed! It would seem from this remark that Mr. Trippe does not propose to take any advantage of the presumed higher speed of the Clippers over the present Commodores and the S-40's. I notice by the press releases which were issued some time ago in connection with the purchase of the S-42's that the cruising speed was estimated at about 125 mph. It is possible that this has been increased, as would seem to be indicated by your letter, to 150 mph, ~~but~~ this seems a really surprising increase, but even if it is

135 mph as mentioned in your letter, departing from Miami at the same time as their present departure time (08.00) the 1667½ miles between Miami and Cristobal (via Havana, Cienfuegos, Kingston and Barranquilla) can be covered in a total flying time of slightly less than 12½ hours. Assuming four stops of 45 mins. each, we find a total of stops plus flying time of 15½ hours from Miami to Cristobal. It should be perfectly feasible for Panair to operate from Miami 08.00 and reach Cristobal over the route mentioned before midnight of the same day with only about an hour's [fol. 4888] night flying between Kingston and Barranquilla, but with the Barranquilla/Cristobal flight entirely at night. Northbound departure from Cristobal for Barranquilla would be at midnight under this possible schedule, arriving Miami the afternoon of the same day. This 08.00 departure southbound from Miami is apparently perfectly feasible, since Panair have been doing it for a long time and have been taking passengers from the trains and the Eastern Air Transport planes, so that I cannot understand the apparent proposed departure from Miami at 09.30 with the Clippers, instead of at 08.00 as at present. In connection with a possible one-day service between Miami and Cristobal, I should think it would be perfectly feasible for Panair to operate in the way that they formerly did, from Miami via Puerto Cabezas, which would give them a total flying time according to their own figures of 10½ hrs. for the 1,434 miles, with stops at Havana and Puerto Cabezas of 45 mins. each, thus arriving at Cristobal at 20.00 with a 08.00 departure from Miami. I have never had it explained to me yet why the U.S. Post Office is willing to give Colombia a better airmail service than Canal Zone, and would certainly think that in the long run Panair would be better off if they would give the Canal Zone a one-day service and still give Colombia the same service as they have at present, since they could operate a shuttle line from Cristobal to Barranquilla, or else handle their mail direct into Bogotá via the UMCA line, thus eliminating the Cristobal/Barranquilla, Barranquilla/Kingston and the Kingston/Havana operation.

I am wondering why Panagra has to bear the brunt of any stepping up of the through schedule from the U.S. to

B.Aires, since it would seem to be in order for Panair to assume a certain part of that burden. This, of course, is none of my business, but I have drawn up some possible schedules which are attached herewith, based on increased speed of varying amounts over different portions of our line. As I have previously written you, it is possible today to promptly cut one day off our service with our present equipment by making Talara the first overnight stop, Arica the second overnight stop, Santiago the third night and Montevideo the fourth night. For ease in figuring any particular schedule over any portion of the line for a number of different speeds, I have had the attached chart drawn up showing the U.S. Post Office mileages between all points, our present flying time between these points as scheduled, and the minimum amount of time I believe necessary at each one of the stops.

I had hoped to get some schedules worked out for various other combinations than the two combinations shown on the attached schedule. I am also not satisfied with the schedule as worked out for the combination of the Commodore, Douglas and Ford, but the general idea is pretty well demonstrated on the attached schedules and the times can, of course, be juggled to suit the convenience of any particular arrangement of overnight stops which may seem better. Any schedule across the Argentine pampa at night is likely to lose us a certain amount of cabotaje business in the Argentine. However, as I mentioned above, an infinite number of schedules can be arranged which would throw the night-flying section of the route to some other point, preferably Chile as long as we have no cabotaje rights there.

[fol. 4889] In summary, I recommend that we very seriously consider and exhaustively pursue the question of immediately purchasing from some source two Commodores for our Northern Division operations, in order that we can in the very near future replace our S-38's with airplanes of a greater capacity and with at least equal speed at a reasonable figure, rather than attempt to turn over our Northern Division operations to Panair, who, as you recall, did a

bad job of operations in this section during the time that they had it when Panagra was first getting started. Please don't fail to send me all the information you can get on the S-42, which is, as I stated before, the Clipper that I believe you are talking about in your letter under answer. In the meantime if this matter becomes acute I can arrange to come to New York at a moment's notice.

(initialed) HRH
H. R. Harris

Assume Clipper 135 mph
Douglas 175 "
Ford present schedule

Assume Commodore 110 mph
Douglas 175 "
Ford present schedule

	S.B. Lv.	S.B. Arr	Equip.	N.B. Arr	N.B. Lv.	S.B. Lv.	S.B. Arr	Equip.	N.B. Arr	N.B. Lv.
Cristobal	8.40		C	16.55		6.00		C	19.05	
B'tura	12.35	12.05	C	13.00	13.30	10.40	10.10	"	14.25	14.55
Tumaco	14.20	14.00	"	11.15	11.35	12.45	12.25	"	12.20	12.40
Guayaquil	6.00	17.35	"	17.10	8.00	17.15	16.45	"	7.50	8.20
Talara	7.40	7.10	D	15.30	16.00	6.00	19.05	"	18.05	6.00
Piura	8.05	8.00	"	15.05	15.10	6.25	6.20	D	17.40	17.45
Chiclayo	9.00	8.40	"	14.10	14.30	7.20	7.00	"	16.45	17.05
Pacasmayo	9.20	9.15	"	13.50	13.55	7.40	7.35	"	16.25	16.30
Trujillo	10.00	9.45	"	13.10	13.25	8.20	8.05	"	15.45	16.00
Lima	12.20	11.50	"	10.50	11.20	10.40	10.10	"	13.25	13.55
Pisco	13.10	13.00	"	10.00	10.10	11.30	11.20	"	12.35	12.45
Arequipa	15.45	15.25	"	7.25	7.45	14.05	13.45	"	10.00	10.20
Tacna	16.55	16.35	"	6.15	6.35	15.15	14.55	"	8.50	9.10
Arica	6.00	17.10	"	16.50	6.00	16.00	15.30	"	8.05	8.35
Antofagasta	8.25	8.05	"	14.25	14.45	6.00	18.05	"	16.25	6.00
Ovalle	11.30	11.15	"	11.20	11.35	9.05	8.50	"	13.20	13.35
Santiago	13.10	12.40	"	9.40	10.10	10.45	10.15	"	11.40	12.10
Mendoza	15.10	14.40	F	7.40	8.10	12.45	12.15	F	9.40	10.10
V.Mercedes	17.20	17.00	"	5.30	5.50	14.55	14.35	"	7.30	7.50
B.Aires	21.20	20.50	"	1.30	2.00	18.55	18.25	"	3.30	4.00
Montevideo		22.50	"		Minite		20.25	"		2.00

Overnight Guayaquil
Arica

Overnight Talara
Antofagasta

Lima, Oct. 27, 1933.

fol. 48921

ELAPSED TIME REQUIRED BETWEEN STOPS

NEAREST 5 MINUTES

	Time at stop-min	Miles between stops	Present sche dule, Oct. 1933	110 MPH	125	130	135	140	150	175
Cristobal										
B'ventura	30	466.5	4:20	4:10	3:40	3:35	3:25	3:20	3:05	2:40
Tumaco	20	189.	2:00	1:45	1:30	1:30	1:25	1:20	1:15	1:05
Guayaquil	30	436.5	4:45	4:00	3:30	3:20	3:15	3:10	2:55	2:30
Talara	30	203.5	2:05	1:50	1:40	1:35	1:30	1:30	1:20	1:10
Piura	5	66.	:45	:35	:30	:30	:30	:30	:25	:20
Chiclayo	20	110.	1:15	1:00	:55	:50	:50	:45	:45	:35
Pacasmayo	5	44.	:30	:25	:20	:20	:20	:20	:20	:15
Trujillo	15	70.5	:40	:40	:35	:30	:30	:30	:30	:25
Lima	30	322.0	3:00	2:55	2:35	2:30	2:25	2:20	2:10	1:50
Pisco	10	120.5	1.10	1;05	1:00	:55	:55	:50	:50	:40
Arequipa	20	396.5	3:25	3:35	3:10	3:05	2:55	2:50	2:40	2:15
Tacna	20	137.0	1:10	1:15	1:05	1:05	1:00	1:00	:55	:50
Arica	30	38.5	:20	:20	:20	:20	:15	:15	:15	:15
Antofagasta	20	363.0	3:15	3:20	2:55	2:50	2:40	2:35	2:25	2:05
Valle	15	489.0	4:00	4:25	3:45	3:45	3:40	3:30	3:15	2:50
Santiago	30	210.5	1:45	1:35	1:40	1:35	1:35	1:30	1:25	1:10
Mendoza	30	151.0	1:30	1:25	1:10	1:10	1:05	1:05	1:00	:50
V. Mercedes	20	200.5	1:50	1:50	1:35	1:30	1:30	1:25	1:20	1:10
aires	30	405.0	3:30	3:40	3:15	3:10	3:00	2:55	2:40	2:20
Monte		132.0	1:30	1:10	1:05	1:00	1:00	:55	:55	:45
TOTALS	380	4551.5	42'45"	41:20	36:15	35:05	33:45	32:35	30:25	26:00

[101 4891

of these boats from the Panair, the repairs to two of the Sikorskys could be avoided, thereby saving $20,000., plus an additional $10,000. which he considers to be the salvage value of one (I am not sure whether he meant two) Sikor-[fol. 4894] skys.

Up to this point I just looked and listened and when MacGregor had his speech finished I asked Harris's opinion, which, of course, I had previously known. Harris stated in unmistakable language that whereas he agrees that the Sikorskys must be replaced by some other ships, he is entirely opposed to the purchase of the Commodores, as in the first place they are getting to be pretty old and in the second place they would require major overhauls, whereas by equipping the Fords with floats we would have a tried plane which would travel at least as fast as the Commodores, with adequate passenger capacity, and all this at a cost of only about $10,000. per plane.

This started the usual controversy about the impracticability of landing Fords on floats in case of an emergency, to which Harris replied that he is quite sure that a Ford on floats can land safely at any point where we land. Furthermore Harris stated that he has personally made flights in Fords on floats and that these same planes on floats are used continually in Canada.

MacGregor's answer was that whereas the Fords on floats might land in smooth water, rivers, etc., it had not been proven that in case of an emergency landing in the rough ocean they would stand up. Harris answered that he thought they could, but that in any case it still remained to be proven that Commodores could land under such conditions, as according to his knowledge they had not had this particular experience on the East Coast.

At this stage of the conversation, if you can call it [fol. 4895] such, MacGregor said that Panair's expert engineers are definitely opposed to the idea of equipping and using Fords on floats, and it was then that Harris blew up, asking MacGregor whether he thought that he (Harris) did not know what he was talking about and whether MacGregor placed the judgment of an engineer who has not

been on this Coast above his judgment, etc., etc. I told them to keep their shirts on and look at the whole thing from a practical viewpoint, adding that while I did not pretend to know very much about the subject it seemed to me that Panagra ought to place Mr. Harris's judgment above that of anyone sitting up in New York, but that as long as there is some doubt in anyone's mind as to the safety factor, the logical thing to do, at least to my way of thinking, seems to be to risk $10,000., equip one of the Fords with floats, and then have Harris and his experienced pilots give this plane a thorough test under various conditions.

MacGregor, while then beginning to weaken, said that he did not think that Mr. Trippe would ever agree to what he considers a useless expenditure. I told him that I did not believe that any sane, thinking man could object to such a program and that I felt that if he, MacGregor, agreed in principle to give the Fords a thorough test in the way outlined, all the Directors of Panagra would approve of this course. MacGregor went on to say that he tried to get this idea across for three years and that he had proved himself a poor salesman.

A great deal more was said, but the above about portrays in a general way the sum and substance of the discussions, during which it was quite apparent that Trippe is determined to palm off one or more of his Commodores [fol. 4896] at what looks like a fancy price, and that MacGregor is committed to put the idea across with Harris who, however, took a very determined stand against MacGregor's proposal.

Reverting to the passenger capacity of the Fords on floats, Harris stated that eight passengers could be accommodated but that he wants to check this figure up further before definitely committing himself to this statement.

Turning the whole matter over in my mind, it seems to me that as we will soon have various Fords available and as a set of floats can be delivered within 90 days at a cost of about $10,000., and furthermore as our General Manager of Operations, Harris, is most emphatic in saying

that from a technical viewpoint these planes would be perfectly satisfactory, we should lose no time in ordering one set of new floats. I say "new" floats because when MacGregor finally weakened and reluctantly accepted the idea of giving the Fords a trial, if the Directors agree to it, he mentioned something about saving money by buying a set of floats from Panair, but here again he reached into a hornet's nest as Harris seemed to know all about the particular set of floats MacGregor had in mind, telling him point-blank that those Panair floats are not suitable for our purpose and that he would be opposed to anything but a new set of floats.

In giving you this epistle, I appreciate that you have probably gone through this same agony on a number of occasions, but as the time is approaching rapidly when something *has* to be done, and as it is so thoroughly illogical to invest an important sum of money in relatively old [fol. 4897] planes of lesser speed than the Fords, or certainly no more, I think this whole question should be taken up very vigorously and settled once and for all; otherwise we will soon find ourselves with fast planes and ample passenger accommodations from Tumaco or Talara south, with a definite bottleneck in the Northern Division, which will be highly unsatisfactory.

Incidentally I want to add that while I brought up the question of operating cost of the Commodores as compared with Fords, I was not able to get a definite statement from MacGregor with reference to the operating cost of the Commodores except that he kept on answering that he did not think it was much more than the cost of running Fords, emphasizing, however, that we would have much more carrying capacity on the Commodores than on the Fords. To this I answered that if the Fords can carry 8 passengers on the northern run, I felt that this capacity would meet our requirements for a year or two, by which time we would have to have a different kind of a plane anyway.

Very truly yours,

/s/ A. Garni

[fol. 4898]

W. R. Grace and Company Exhibit 83

#560

COPY

SANTIAGO
Jan. 26, 1935

Mr. H. R. Harris,
New York

I have the copy you sent me of the memo. you wrote to Mr. Roig on January 17th in compliance with a request from Mr. Roig as to a definite recommendation from you regarding future operations in the Northern Division.

To say that I am surprised at the strong recommendation contained in the last paragraph of your memorandum is understating the facts, and that a recommendation of such a drastic nature was made by you without an interchange of ideas with me leads me to believe that you have received information or held conversations of which so far I have not been advised.

As I recall it, we discussed the Northern Division operations quite at length in Lima and we agreed that we might possibly extend our land-plane operations as far north as Tumaco but that operations between Tumaco and Cristobal must of necessity be carried on with either seaplanes or amphibians. We further agreed that of the two latter types the amphibian would be the more advisable, because in case of delayed schedules or shortage of equipment further south, the amphibian could operate as a land-plane as far as we desire it so to do. I mentioned to you that at odd times I had been asked by one or other of the Grace Directors what I thought of the idea of flying over Colombia as an alternate or substitute for our present route, and I informed you that I answered the inquiry by stating that such a radical change would have to be the subject of an intensive study and the feasibility of making the change determined by actual flight surveys. I did not, I believe, go very deeply into my reasons for lack of enthusiasm at the idea because it did not occur to me that these ideas were in any way definite enough to warrant a written recommendation.

He told me by the way that he had had lunch with Trippe the day before and Trippe had expressed very emphatic objections to our making Talara the first night on the ground that the schedule was too tight to make this possible. Harris took the position that he was not prepared to agree to this until he had seen more of the S-43's performance. Trippe's idea is that we should figure on Guayaquil as a permanent overnight stop and at our own expense arrange for one floor in the new hotel to be fitted up by Panagra for accommodation of their passengers. Trippe also tried to get him to agree to the omission of Tumaco on the ground that it would save half an hour's time on the schedule. Harris definitely opposed this on the ground that on many trips we would have to make the stop anyhow for gas, that it would involve loss of 69 miles of mail pay and [fol. 4905] that if we were not doing enough business in Tumaco now we ought to be working toward doing more, including carriage of mail, rather than less. They also discussed the question of new equipment for Aerovias and although Trippe has heretofore taken the position that if we bought any new planes we should buy second-hand Fords, Harris said he came along this time without objection on the suggestion of making replacements with new more up-to-date equipment. If we can make P & L figures which will justify it I, of course, favor this latter course not only from the general operating standpoint but as a step toward building up Aerovias in the nationalizing program.

You will be interested to know that Harris went out of his way to speak in the highest terms of the work which Campbell is doing. He said that he felt that through his work, through his connections in aviation circles, and through his general tact in working with these connections and with Panair we were in a position to keep abreast of new developments in aviation in a far more effective way than heretofore and that having connected with Panagra New York someone with Campbell's technical knowledge a void which he had long felt to exist was being very well filled. He said that he had suggested and would press with MacGregor the idea of taking an extra room at the Pan-

agra uptown office which Campbell could have for his use there where he could work and see people quietly; also that Panagra should provide him with a full time stenographer.

Very truly yours,

/s/ H. J. R.

Enclosure
to Kirby No. 20

[fol. 4906] *P.S.* I should have mentioned above another important matter which came up in the conversation between Trippe and Harris above referred to. Trippe asked Harris if he felt that the Grace people in Santiago had done and were doing everything reasonably possible to secure cabotaje. Harris replied that cabotaje was not something which could be secured at any given moment; that he felt the Grace people had not only done everything possible directly to secure it but that indirectly they were gradually building up a very important goodwill for Panagra which in the long run would contribute to procuring cabotaje. He mentioned various specific instances evidencing goodwill toward Panagra in governmental circles of a character which showed great progress in this direction, among other things referring to the recent suggestion by the government that we have our own radio at Cerrillos. Trippe said that he had considered at various times whether Grant should be sent down to try to get cabotaje but had hesitated to push the idea for fear Grace would object. He said that Consul General Grez had told Grant that cabotaje could be secured provided the right people went after it but that Grace could not get it. Harris did not support this idea but as I recall what he told me did say that he felt sure that if Trippe felt that Grant could accomplish anything Grace would not raise any objection to his trying.

H. J. R.

Had I been advised that facts and figures should be compiled and a recommendation made, I would have gone into the matter a great deal more thoroughly and I would have endeavored to estimate the initial expense involved in making the change. The recommendation so strongly made by you for immediate action is not supported by estimates and other pertinent information as it should be in order to have full force and effect. I take it for granted, therefore, that this matter has been talked over with you and that you have been presented with facts and figures of which so far I am uninformed.

In connection with your recommendation, I presume you have fully considered and studied the position that the Scadta Company, the UMCA Company and the Samper Company would take with regard to what seems to me a deliberate invasion of their territory. I presume you have also been informed that the Colombian Government would readily modify our permits to permit us to handle international traffic along the route you specify. Recent advices from Colombia would seem to indicate that the Government is not only going to institute airmail and passenger service within its frontiers but is going to make some modification to the Scadta contract which will have the effect of lessening the influence and possibly circumscribing the operations of that Company. Unless you have some exact information, I can see where the Colombian Government might strongly object to the interjection of a fourth commercial aviation company, American owned and operated, and ask-
[fol. 4899] ing the privilege of entering territory which the Government itself intends to exploit with its own planes.

Again, this is the first time a recommendation has been made with regard to a change in operations where an actual flight survey has not been made by our own planes and our own pilots. As you know, I personally have flown over a considerable area of Colombian territory on Scadta planes, and I recall any number of instances where the planes either did not set out or started and returned to base because of impossible weather conditions at certain periods of the year. Just last week Keeley informed me that when he came south the Cali district was absolutely closed in with

clouds practically to the ground. The terrain which must be flown by land planes is nearly entirely uninhabited, covered with jungles and the possibilities of immediate rescue, even if the planes alighted safely, are extremely remote. Tropical storms are the rule rather than the exception, lightning discharges are frequent and the danger to all-metal planes from the latter has been recently evidenced in a striking manner in the K.L.M. operations.

It would seem to me, therefore, that for no particularly good reason, in view of the fact that the acquisition of an amphibian of the type of S-43 would ensure extremely rapid transportation along the sea coast, you recommend abandoning a safe and sane operation for the hazards of mountain flying in the tropics. In addition, we forego the gradually increasing traffic we are bulding up north and south of Buenaventura. I am confident that before many months have passed Panair will be ordered to make the trip between Miami and Cristobal in one day. Even although we, as Panagra, have not so far officially pressed this matter in Washington, I am confident that many letters have been written by passengers and possibly people connected with the U. S. government calling attention to the unreasonably slow Miami/Canal Zone operation and recommending that Panair be instructed to remedy this defect. If my surmise is correct, what would we gain by flying over Colombia as against building up traffic on the easiest portion of our route?

It may be that you are influenced in your recommendation by the statement you say Lindbergh made to you that the future of air transportation lay in land-plane operation. I believe Lindbergh had an entirely different picture in mind. He was thinking about trans-atlantic or trans-pacific operations with stratisphere or semi-stratisphere planes flying tremendous distances at high speed. I do not think for one moment that Lindbergh had in mind our 1,000 mile stretch between Cristobal and Guayaquil.

It may be that I am unduly influenced in my views because of our present troubles in Chile which originate primarily from the fact that we are flying through the centre of the country. We would have no troubles to speak of

were our operations confined to the sea coast. With the Chilean picture in mind, with the very evident desire of the Peruvian Government to ease us out of cabotage in Peru, with propositions being made to Ecuador for the establishment of a domestic line within the country, with the Argentine intimating it will soon start service in the interior with army planes, it would seem to me that we have enough trouble on our hands. Why, therefore, you should recommend taking on another burden I cannot conceive unless, as I said before, you have some information that I do not possess.

[fol. 4900] Personally I see no reason for changing my previous recommendation that, if possible, we run our landplanes as far north as Tumaco, if even that is considered necessary. The acquisition of two or three S-43's would ensure adequate, comfortable, speedy and safe transportation along the coast where we could always pick up enough shorter haul passengers to take the seats not occupied by our long haul clients.

I am sending a copy of this letter to Mr. Roig because I would wish our Directors to know that until I have much further information than that contained in your memo. to Mr. Roig, I cannot subscribe the recommendation made by you.

(sgd) J. D. MacGregor

[fol. 4901]

W. R. Grace and Company Exhibit 84

(Copy of handwritten letter)

Delray, February 24, 1935

Dear Roig,

PANAGRA—The weekly summaries which I receive have given me the impression that this is the business which has the most serious problems and the one which requires the most able attention for the present.

In *Chile* and in most of the other countries of the coast we have questions which vitally affect the destiny of this

business. Furthermore, the men who are handling them are not competent to get the results which we must obtain. In fact it is our experience that when serious problems occur we must go out from headquarters to handle them.

Your mind has been working in the same way as I learn from Garni that you propose to go out to the coast at once to undertake again the task that you started at last Autumn and at which you were interrupted to return to handle the Washington matter which you did so ably.

The Panagra task has grown so varied and spread out that I feel you will need a good deal of help in order to get it all in hand in a reasonable time.

CHILE—Garni tells me that you are thinking of taking Vidal with you. That sounds like a good idea. Chile is a tough nut to crack and I fear that with the development (L.A.N.) of the N.A.L. it will become tougher. It will take your imagination and judgment and also a very criollo connection to get a satisfactory connection.

ARGENTINE—You need an *able, loyal* man there as we are not getting anything like a square deal in B.A. The selection and location of that man is very important.

BOLIVIA—We need the best technical advice we can get. I thought of employing Allen for a month or two to make [fol. 4902] an exhaustive study of the Bolivian area and making a report regarding flying conditions and traffic movement that would be a fixed guide for us. Campbell would probably help him with this.

PERU—You ought to get Kirby and Shea headed on a clear course and get them to follow it actively and effectively reporting to you very frequently and getting results. My feeling is that Kirby is the man upon whom you are going to be able to rely for most help in the future provided we can get him somewhat freed of the Lima management.

ECUADOR—You need a very top class lawyer in Quito and with this continual visits by MacGregor and Harris under your close guidance.

COLOMBIA—Here again I think we need Allen to make an exhaustive survey perhaps with Douglas Campbell and a report that will be thorough, intelligent, and that will carry weight in our minds, in Lindbergh's and perhaps also in other Panagra minds. We don't know ourselves today whether we need a Seaplane, an amphibian, a Douglass on pontoons or a Douglas land plane. I would be inclined to put Douglas on this task along with Allen or some equally competent and authoritative man and have them dig and dig until they come out with the answer.

I don't see how we can handle the problem of equipment for the Northern section until we get this study and this report. The ideal thing would be to fly over that whole section in a land plane and although it might cost something to build emergency fields I am not sure that it might not be the cheapest course in the end for land planes are much faster and will develop much more quickly than the sea planes. I think that Lindbergh's mind was working somewhat on that line. At any rate no one can tell until we [fol. 4903] study that whole Colombian matter more thoroughly. If we could tap the interior population it would enormously increase the scope of our enterprise in the same way that if we could touch the centres of population in Bolivia the interest of that section would be greatly increased and the whole problem in Chile would be made infinitely easier.

So get hold of a first class technical man like Allen, and set him on these problems in Bolivia and Colombia (and Ecuador) and get your *facts* as a basis for your conclusions.

It won't be many years until we (W.R.G. & Co.) will need a well equipped aviation staff. Now is a fine chance for you to begin building it up. It will cost something but we should be ready to invest some of our profits in Panagra in working out intelligently and expertly the problems of today and preparing for the task of tomorrow.

Ten years from now our aviation business may have become comparative in importance with the steamship business to the West Coast. So let us select able men and begin

to build them up. We are building up Campbell and some men on the coast. But we need a technical man now who will have outstanding ability and whose name will carry weight. We might start with Allen on a part time basis and have him handle special investigations with the idea that he would become not an employee but a regular consultant. If this is not xxxxxx practicable then we might get Lindbergh or Allen to suggest a man of this type who could become either an employee or a consultant.

I wish you a fine trip. I fear it will be a rather long one. Let me hear from you from time to time.

Yours sincerely,

D. S. IGLEHART

[fol. 4904]

W. R. GRACE AND COMPANY EXHIBIT 85

#571

Letter No. 68
(D.S.I. Trip Series)

New York, May 29, 1936

D. S. Iglehart, Esq.,
Guayaquil, Ecuador

Dear Mr. Iglehart:

I enclose copy of letter to Kirby amplifying my cable No. 24 to you. As I have said right along I have no doubt whatever of our being able to work out this Livingston matter satisfactorily. I wish we could do it more quickly but as you so well understand these matters take a little time. The idea, however, is so fundamentally sound that it is in the end bound to be so recognized and put into effect.

I had lunch and spent the afternoon yesterday with Harris at the University Club and believe we made considerable progress in a number of directions. He seemed in every way to be under less tension than when I saw him the day before and was I felt thoroughly cooperative on all of our pending problems.

[fol. 4893]

W. R. GRACE AND COMPANY EXHIBIT 82

ORIGINAL LETTER
STEAMER COPY FOLLOWS #554

No. 62
(AG Trip Series)

(Letterhead of W. R. Grace & Co., New York, N. Y.)

A. GARNI
VICE-PRES. & TREAS.

Air Mail 3.10
New York 3 (Illegible)
3/15/34

LIMA, March 8, 1934.

Harold J. Roig, Esq.,
NEW YORK.

Dear Roig:

PANAGRA

Northern Division/Commodores: I attended a lengthy discussion between MacGregor and Harris with reference to a change in the existing equipment in use in the Northern Division.

It seems that the pow-wow between the two had been going on for some time prior to my appearance at the meeting, so that when I got into the discussion Harris and MacGregor already had each other by the wool over a very definite difference in opinion as to which planes are the most suitable, both from a technical as well as from a financial viewpoint.

It was quite obvious that MacGregor came down here determined to push the Commodore idea down Harris's throat, as, with reference to these boats about to be discarded by Panair, he had his speech down pat. MacGregor stated emphatically that as the Sikorskys are about to undergo serious overhaul, costing approximately $10,000. per boat, and as they are inadequate both as regards comfort and capacity the only logical solution of this problem is to take advantage of the Panair's offer and purchase from them a Commodore at $50,000. He then went to a devious calculation to show that the net cost of a Commodore would really only be $20,000., as by purchasing one

With regard to the radio navigation devices, in view of Allen's opinion, I think we should take active steps to improve these regardless of what kind of flying equipment we use on the Northern Division and that we should make an investigation of development along these lines in this country, placing on Panair the burden of proof that they have something better.

Very truly yours,

(sgd) DOUGLAS CAMPBELL

enc.

[fol. 4910]

W. R. GRACE AND COMPANY EXHIBIT 87

[Handwritten notations—I have so much that I would like to write about but must leave it until I get on the ship for Chile.

Since dictating this I have your letter about schedules and am discussing it with Shea. It looks pretty good to me. I thoroughly agree about the purchase of the second S43.]

Letter No. 15 #341
(Trip series)

On board "Santa Lucia",
May 5, 1936.

H. J. Roig, Esquire,
New York.

Dear Roig,

PANAGRA — COLOMBIA

Referring to my cable on this subject and your reply, I want to make it quite clear to you that in suggesting that the S-43 should fly overland I do not mean to suggest that any unwise risks should be run but rather that we should make a very cautious approach to the solution of the problem.

I do feel that it is of the most serious importance for us to get Trippe to agree to our going into Cali and that some method should be discovered for putting pressure on him in order to obtain his consent. I rather think that

the discussion of putting our ships into Miami north and southbound or to get a hookup of our own to Panama might conceivably be used as a lever to bring him into line on some of these matters. I am not at all sure that it is a practical thing to stop in Miami and I am not sure, even if we contemplate doing so, whether it suits you to talk about it much until we have a definite plan worked out. On the other hand, I feel that even if you find that it is not practical to do this, the idea might be played up in a way that would frighten him into giving us a better schedule to Panama or allowing us to go into Cali, or both.

I am very glad to learn from your cable that you are getting Allen and Campbell to work on the Colombian idea and I am sure you will also find the means of bringing Trippe into line in one way or another. I will await developments of all this with great interest.

Very truly yours,

/s/ D. S. IGLEHART

[fol. 4911]

W. R. GRACE AND COMPANY EXHIBIT 88

ANCON, C. Z., December , 1936.

Hon. Harllee Branch,
Second Assistant Postmaster General.

Dear Mr. Branch:

The territorial invasion by European companies which has for some time been an ever increasing menace to Pan American-Grace Airways, Inc., in its capacity as carrier of U. S. mail between ~~United States~~ *Canal Zone* and Buenos Aires over F. A. M. Route #9, ~~via~~ *along* West Coast of South America *and over Andes*, has reached a stage where prompt action must be taken.

The heavily subsidized German line, Condor Syndicate, has recently extended its airmail and passenger service from Buenos Aires to Santiago, Chile, which is now the western terminus of its trunk line from Europe to South

Realizing, however, that the authorization for the establishment of such a service might not be forthcoming, as quickly as is necessary to meet the situation described, it is suggested that the following method be adopted as a temporary expedient:

1. Extend one of the weekly international trips from Arequipa (Peru) through La Paz (Bolivia) and Córdoba (Argentine) to Buenos Aires.

2. Include as a scheduled stop on the existing twice-weekly service from Santiago to Buenos Aires, the important Argentine city of Córdoba, connecting there with the service described in the preceding paragraph.

We attach herewith a statement showing the additional mileage to be operated. The total additional mileage involved is 162,760 miles per year, which at the contract rate [fol. 4915] of compensation of $1.50 per mile, amounts to $244,140. In order to cooperate in starting this service, we would be willing to waive until such time as a third through service could be authorized, payment for 33,488 miles, or $50,232. per year, making the total compensation which we are respectfully requesting for this new service, the sum of $193,908. per year.

We attach a map showing the route of the services proposed above.

For the reasons outlined above, prompt announcement of this service is most important in order to protect the United States airmail position in South America. On our part, we would use every effort, once authorized, to install and commence operation at the earliest possible moment.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.,

Vice President.

Enclosures

[fol. 4916]

	Route Miles	Miles Per Year	Per Mile	Cost
Additional mileage:				
Arequipa to Córdoba, via La Paz, Oruro, Uyuni, Salta and Tucumán	1,385	144,040	$1.50	$216,060.
Additional mileage deviation of two existing services via Córdoba	90	18,720	1.50	28,080.
Additional Mileage	1,475	162,760	$1.50	$244,140.

Cost at $1.50 per mile	$244,140.
Less Waiver, 33,488 miles at $1.50	50,232.
NET ADDITIONAL COMPENSATION	$193,908.

[fol. 4917]

W. R. GRACE AND COMPANY EXHIBIT 89

grace:
dated 23rd
3 pm
from MACGREGOR (buenosaires) december 23 1936

1 ROIG
2 confidential
3 I had
4 long
5 conversation
6 Sum-
7 ner (XX)
8 Wells
9 this morning
10 who
11 unreservedly
12 agrees
13 there should be

kind of concession in Ecuador, although I have not yet seen a copy of it. The concession is ad referendum, but to whom it is to be referred, I don't know.

At the same time you will have undoubtedly learned that L.A.B. has secured what seems to be an exclusive contract for "cabotaje" in Bolivia, and also the exclusive right to make *new* international connections. I presume this means that such international connections as are included in the Panagra contract can be carried out by Panagra.

What disturbs me in this is the fact that SCADTA proposes to be an international operator. Hammer is a former SCADTA employee and is also connected with Lufthansa. Assisting Hammer at Quito was a man of the name of Simon, his brother-in-law and a distant relative of Mr. Kyllman, President of L.A.B. Hammer was also assisted by a man by the name of Carstanjen who, although he claims he is connected with the hardward store of Otto Woolf of Colon, broadcast that he was also indirectly connected with the Hammer project and was representing in that connection the interests of Lufthansa and the German Government. Carstanjen stated on a steamer on which Mr. Kloditz was travelling that after the Quito deal was put through he would proceed to Caracas with the intention of negotiating with the Venezuelan Government so that a Quito/Caracas service could be established.

Holguin says that he has learned that the Hammer proposal seems to be part of a three-cornered arrangement now being worked out by foreign interests. It would seem, therefore, that the Germans are getting ready to establish a round-South America cordon under the auspices of Lufthansa and the German Government.

[fol. 4921] I am telling you this so that you may quietly investigate and find out if possible how they propose to join L.A.B. and the Hammer Company in Quito. Do you think there is any possibility of their dickering with Hughie Wells, or is there a possibility of their buying out Faucett at a price which Faucett would find it hard to refuse? To be forewarned is to be forearmed in these matters and, as a scheme of the kind I have indicated would be a direct

attack on American interests as represented by Panagra, I should wish to have the fullest possible information in order that our Directors could determine whether representations should be made to our Government.'

You will, of course, treat this letter as highly confidential because of its nature.

Kind regards,

Sincerely yours,

J. D. MacGregor.

JDM/Q
cc: Mr. A. Garni

[fol. 4922]

W. R. Grace and Company Exhibit 92

Copy

March 2, 1937.

Personal Memorandum for the Directors:

In connection with the purchase of two DC-3s for our Santiago/Buenos Aires service and in addition to the technical and traffic reports presented to our Directors, I feel it is my duty to apprise the Directors that, in my opinion, it is essential to provide more modern and larger equipment as a means of protection against what I feel confident is a rapidly progressing plan to encircle the South American continent by an air service through a combination of local Companies, the policy of which will be directed by the German Air Ministry. Recent developments, in my opinion, have shown clearly this trend.

The Directors know that the Condor Company, a subsidiary of Lufthansa, is already carrying mail and passengers from Para, Brazil, via Buenos Aires to Santiago, Chile. They are aware that the Condor Company also operates to the Brazilian/Bolivian border at Corumba where it delivers and receives mail to and from Lloyd

Aereo Boljviano, anothers Company controlled by German interests.

Recently the Brazilian Government has granted permission to the Bolivian planes to land at Corumba in Brazil. The Bolivian Government has recently, through the efforts of the German Minister at La Paz, given a ten-year contract to Lloyd Aereo Boliviano which practically insures it exclusive "cabotaje" rights in Bolivia and gives it the refusal of any international extensions other than those already granted to Panagra.

In the north, the SCADTA Company announces air service between Bogota and Quito via Cali and Dos Rios, once a week, commencing in February. This move is into what has been considered as Panagra territory.

In Ecuador, Mr. Hammer, formerly with SCADTA, and with the Condor Company and also with Lufthansa, has just secured an ad referendum contract for internal services, of which I have not yet a copy, but which will undoubtedly permit him to make international connections as opportunity offers. Assisting Mr. Hammer to secure this contract was a Mr. Simon, who is a brother-in-law of Hammer and a relative of Mr. Kyllman, President of Lloyd Aereo Boliviano. Hammer was also assisted by a Mr. Carstanjen who, although he claims he is connected with the hardware house of Otto Woolf of Cologne, Germany, states that he is connected with the Hammer project and represents the interests of Lufthansa and the German Government. Carstanjen also states that as soon as the deal in Quito is satisfactorily concluded he will leave Ecuador and proceed to Caracas, Venezuela, to initiate similar negotiations.

[fol. 4923] Yet, more startling, is the fact that another assistant to Mr. Hammer is a man by the name of Griesbach who is the Quito agent for Mr. Chanange, and that Mr. Chanange was the agent of the SCADTA Company when it operated previously to Guayaquil.

From the above we see that German interests have already completed their plans in the south and are in the

process of completing them in the north. I have repeatedly been told by disinterested parties in South America that the German Government is supplying young Army pilots to the German Companies in South America requesting only that these Companies pay the pilots a living allowance on the understanding that, at a moment's notice, they can be recalled to the Colors.

How can these two spheres be joined? Most evidently through the acquisition of rights in Peru or by the acquisition of Companies already possessing those rights.

In Peru there are two Companies that could be acquired by German interests—The Faucett Company and Condor Peruana, of which Hughie Wells, former Pan American Airways employee, is the President. I have not the slightest doubt that Condor Peruana could be purchased by Lufthansa at a very reasonable price. This Company has temporary rights to carry freight to the mining districts and is applying for rights to engage in internal services. It owns, presumably, the four Condor planes which were destined for Bolivia and were grounded in Peru. Of these four planes, only one is at present in condition to operate. The Company has no financial resources and therefore, in my opinion, would be aldt to turn its vexatious problems over to a strong financial group. If it acquired the necessary financial backing, the Peruvian Government would be only too glad to give it the necessary licenses.

In connection with the Faucett Company, recent conditions have caused Elmer Faucett to feel the pinch of competition. A lack of discipline amongst his pilots, condoned by Faucett, has caused rumors to circulate amongst the travelling public that to travel on Faucett's planes is somewhat risky. This fact is evidenced by a recent visit to our Lima offices by Mr. Miguel Pardo, a heavy stockholder in Faucett, who is asking whether we would now be willing to enter into a traffic agreement for the maintenance of rates. This is the first overture ever made by the Faucett Company and, in my opinion, would never have been made if things were "rosy" with them. It is possible, therefore, that Faucett would welcome a buyer who would be will-

[fol. 4907]

W. R. GRACE AND COMPANY EXHIBIT 86

#566

Letter No. 34
(H.J.R. Trop Series)

NEW YORK, April 23rd, 1935.

Harold J. Roig, Esq.,
Santiago, Chile.

Dear Mr. Roig:—

ALLEN. I enclose copies of memoranda Nos. 2 to 5, all of which I think will be of interest to you. I have passed No. 2 on to Harris with a letter, of which I enclose a copy.

The subject of memorandum No. 3 was brought up by Vidal, who had some doubts as to the safety of the Trans-andean crossing with the 16,500 pound load, and I am clearing this matter through him as he specifically asked me to get Allen's opinion.

AIRPORTS. With regard to memorandum No. 4, Allen makes these comments on your memorandum regarding airports and will have further comments to make after he has had more time to study the question. In order to form a more accurate opinion of the proper distance between emergency fields, he proposes to study the engine failure records of both Eastern Air Lines and the TWA and has promised to send me complete record of these, showing the causes of such failures and the distances flown on one engine before making a safety landing.

USE OF LAND EQUIPMENT NORTHERN DIVISION. In line with Mr. Iglehart's letter #30 to you, I took up this matter with Allen yesterday on his return from the south and he has given his preliminary reaction to it in memorandum No. 5. He further states that the Douglas people are very bitter about the Department of (*the Department*)
Commerce having cancelled a flight to Hawaii they were
[fol. 4908] planning to make in a Douglas plane some three

or four weeks ago, as they feel that the trip was cancelled through pressure which Trippe put upon the Department of Commerce in order that his clipper might make the flight first. Allen feels that they would be very much interested in any project which would tend to prove the adequacy of land planes for across water flights and as the Vice President and Chief Engineer of Douglas are now in New York he proposes to mention the matter to them today.

As I see it, the project involves three major problems: first, location of one or more additional emergency landing fields and study of their adequacy both as to position and in relation to weather. This cannot be done without an aerial survey involving a number of flights along the shore line. Second, definite improvement of radio navigation facilities; you will note that Allen is not at all enthusiastic about our present direction finders. Third, securing permission of Colombian Government to land at Cali and to establish emergency fields.

Although today I would prefer to use over-water equipment if it were available, I nevertheless feel that we will eventually fly land planes on this division and that our going ahead with this study would be advantageous from the point of view of future development. If we could be sure of getting an S-43 before the end of this year, the land plane idea would probably not bring about a more rapid solution of our immediate problem, but we have seen this matter delayed so many times that I think it is well worthwhile to make an active study of this project now even [fol. 4909] if the only immediate result will be to hasten the acquisition of over-water equipment.

In this connection, I note the statement in your memorandum regarding airports that the efforts to secure the use of the island at Tumaco should be continued, and I feel that these efforts should be intensified as soon as possible. I could take this matter up with MacGregor in order to have him push the matter through Uribe Holguin and the Government of Colombia unless you feel that it would be preferable to make a deal on the spot with the owner of the property and try to have it made a Government airport later.

America. We have been advised that these German interests have the intention of extending their operations at a future date further north along the West Coast of South America. This Company is also running a line from Sao Paulo to Corumbá, Bolivia, where it connects with Lloyd Aéreo Boliviano. The latter, while ostensibly a Bolivian Company, has strong German connections and extends across Bolivia to La Paz.

Simultaneously, Chilean National Airline (LAN), the [fol. 4912] Bolivian National Airline (LAB), and the Peruvian Airline (Faucett), have already consummated an agreement under which they plan to preempt Bolivia, joining their respective facilities to establish connections between Bolivia and the West Coast countries.

We also have advices that the subsidized French line, "Airfrance", which has operated between Europe and Santiago (Chile) for a number of years, is considering the possibility of establishing an international extension of this line from Buenos Aires to Bolivia.

The seriousness of this situation is accentuated by the fact that Bolivia, unlike all other countries on the West Coast, has no through international airmail service; is determined to have such a service, and has appointed a special commission to study the whole question and report to the President. In order to secure the prompt establishment of such a service connecting with both the West Coast and the Argentine, there is no doubt that the Bolivian Government would offer exclusive operating rights to one of the foreign companies if Pan American-Grace Airways cannot immediately take a commitment to operate such service. There is ample evidence to substantiate the urgency and seriousness of this situation and the general manager of Pan American-Grace Airways, who has recently again been over the ground, continues writing:

"The situation in Bolivia is extremely delicate."

- - - - - - -

[fol. 4913] "The Germans are pushing vigorously their plans for penetration in South America."

- - - - - - -

"The President of Bolivia is extremely anxious to have an international airmail service run through his country to Buenos Aires."

- - - - - - -

"If we do not fall in with his views, we may find him offering the German Company attractive terms (operating rights) to run the European service from B. A. through Bolivia to Peru and Ecuador."

- - - - - - -

The foregoing is corroborated by a very recent letter dated November 7, from the general manager of our Agent in Bolivia, who has close contacts with the Bolivian Government, and in this letter he stated:

"The Bolivian Government is determined to get an international airmail service and has, in fact, already appointed a special commission to study the question and report to the President."

It is obvious that in order to protect the present position and future development of the U. S. airmail network, both as a business and effective carrier of airmail between the U. S. and these countries, immediate steps must be taken to preempt the Bolivian route for Pan American-Grace Airways. The establishment of a complete third service from the U.S.A. to Buenos Aires, via La Paz (Bolivia) and Córdoba (Argentine), would be the most effective way to meet this serious menace, as not only would the establishment of such a service effectively forestall the attempt of foreign lines to parallel the existing U. S. mail routes along [fol. 4914] the West Coast, but would at the same time materially improve the U. S. mail service to the West Coast of South America and Buenos Aires. That increased frequency and reduced time contribute materially to the increased use of airmail service is clearly evidenced by a statement recently made by the chairman of the Imperial Airways when he said:

"*The majority of that increase was due to the rapid growth in Empire airmail which had risen 78% in the year, due in part to the doubling of the frequency of service and in part to the substantial reduction in airmail rates by the General Post Office.*"

14 third
15 service
16 west coast
17 and
18 wish-es to
19 confer
20 with us/me
21 early ?
22 opportunity
23 after
24 his
25 arrival
26 WASH(ington) (X)
27 January 15th
28 JDM (MacGregor)

Mr Roig:

[fol. 4918]

W. R. GRACE AND COMPANY EXHIBIT 90

February 5th, 1937.

Honorable Sumner Welles,
Assistant Secretary of State,
Department of State,
Washington, D.C.

Dear Mr. Welles:—

We are informed that the Condor System which operates the German air service in South America has applied to the Chilean authorities for a permit to operate a second trip each week between Santiago and Buenos Aires. That will make two trips a week for the Germans, one for the French and five for Panagra. Panagra now receives pay on only two of these trips but maintains the other trips for the purpose of fortifying its competitive position.

Panagra is also advised that Fritz Hammer, a high official of the Lufthansa group, which controls the Condor Syndicate, who is now in New York, intends to proceed shortly to Guayaquil and that this interest has taken a

house for two years in Quito. Also that persons very close to him have stated that the Germans plan to parallel Panagra's west coast service and also to operate from Guayaquil to Quito.

As you already know, we have had reports of the Germans plan to operate from the East Coast up the Amazon through Manaos and Iquitos to the Pacific Coast.

[fol. 4919] Panagra have also been advised by their representative in Colombia that the Dutch K.L.M. has obtained a permit from the Colombian Government to operate air-mail, passenger and express service between the Dutch West Indies and Barranquilla.

I send these items of information as indication of the extreme activity of European aviation enterprises.

Sincerely yours,

[fol. 4920]

W. R. Grace and Company Exhibit 91

PERSONAL

NEW YORK,
February 27, 1937.

Mr. A. B. Shea,
LIMA.

Dear Mr. Shea:

Thank you very much for your personal letter of February 20th.

I shall be very interested to know the result of the informal discussions you have with Recavarren concerning the Iquitos extension.

I am quite disturbed about the activities of the Germans. I presume you have heard that SCADTA is advertising that it will establish service between Bogota and Quito during this month. I understand Hammer has secured some

I told him that as far as I could see, they considered there is too much Grace intervention, going on to say that if this were a fact, which I did not admit, I felt convinced that any Grace intervention was beneficial rather than destructive; conversely, I added that if there was too much Grace intervention it must be admitted that there was also too much Panair intervention and that I was prepared to show that the latter condition was in many respects destructive to the normal development of Panagra's operations. I said that we now have about half-a-dozen reports, including reports from Panair's own people, all agreeing unanimously on the feasibility of running the Northern Section overland and that the idea of linking this up with any organization chart or some other quibbling over the form in which cables are handled or any restrictions placed upon the general manager, if this indeed be the case, was just too ridiculous [fol 4927] to merit discussion and that while I was not competent to have much of an opinion on Priester's statement with regard to the unpreparedness of our pilots to run planes overland in Colombia, it was my opinion that first we ought to decide whether in principle both partners agree that Panagra's Northern Section should be run with land planes over the route indicated, adding that once this is agreed to, which we wanted to decide now and not later on, it is up to Priester or Juan or somebody else to go down to the Coast to confer with Harris to decide on a program to get our pilots thoroughly trained for that operation.

At this juncture I mentioned that there was quite a difference of opinion in this respect, as from all appearances it seems that our pilots are trained *now*, but that if this is not the case this question would have to be worked out between our operating staff on the Coast and Priester or someone else of Panair, as we are not prepared to get into an indefinite controversy on this point. I said that while this is being done we should take immediate steps to ask for permits necessary to operate this route overland, my feeling being that this feature, plus the additional education which the pilots may or may not require, should be completed almost simultaneously so that in the near future land operations can be started.

I went at George rather strongly, telling him that I knew how distasteful this conversation must be to him and that we are not prepared to go on in this childish way indefinitely.

Before the conference was finished I had to leave for Washington but I talked to Roig this morning, who seems to have been equally incensed over Juan's attitude, and he just told me that he intends to write a strong letter on the whole subject to Sonny Whitney, with a copy to each Director of Panair.

[fol. 4928] Roig will no doubt talk to you about this today or tomorrow but I thought I would give you the high spots of the conversation so that in a day or two we can exchange ideas. The situation is becoming intolerable and a break is imminent.

Sincerely yours,

/s/ A. GARSI

[Handwritten notation—P.S. Since dictating the foregoing I have visited ~~Harlle~~ Branch, and amongst other things also talked Panagra, explaining to him in particular the above situation with reference to Columbia and telling him that Juan is obstructing every move that would tend to improve the air service to BA via the West Coast. He understands that situation thoroughly. A.G.]

ing to leave him in charge of operations and supply him with the money with which to purchase multi-motored equipment and extend his operations. Especially, because of the added prestige he would gain through becoming an international operator by means of traffic agreements with Companies operating in Bolivia to the south, and Ecuador and Colombia to the north.

It will be seen, therefore, that the German plan to encircle South America can be consummated at an early date.

Pan American Airways System has, so far, maintained a privileged position, but it has not heretofore been faced [fol. 4924] with a concerted attack sponsored by a European Government. If we intend to maintain our position, it will have to be by increased frequency and the use of the most modern equipment. In addition to the German plans, I am apprehensive that other European nations will appear on the scene before long.

A recent dispatch from Rome states that, upon the expiration of the Argentine contract with Air France, it will not be renewed and that in its place a contract will be signed with the Italian Government by which Italian Civil Aviation have obtained a five-year contract for running a service from Buenos Aires to Uruguay, Paraguay, Chile, Bolivia and Patagonia. The dispatch states that the negotiations were begun in Buenos Aires by General Aldo Pellegrini, Director General of Aviation, and were concluded by Premier Mussolini in Rome, so that, again, we have a foreign Government to deal with. I need hardly state that an Italian organization would be a much sterner competitor than Air France, not only because the Italians have shown their ability to organize a first class air force, but Argentina has been colonized by Italians and is, therefore, related to Italy by blood ties.

Other European activities are in the wind. K. L. M. has recently received a permit to connect Curacao with Barranquilla. During my recent visit to Buenos Aires, I conversed with a newspaper man from London who told me that the talk in newspaper circles in England was that British Imperial Airways were considering a service to South America

in competition with Air France and Condor across the South Atlantic. I think European nations are altogether apprehensive of the increasing trade trend between the United States and South America, due largely to the advent of rapid transportation. They are also apprehensive of the results of the Peace Conference with its show of solidarity and they will not give up their present dominating commercial relations with South America without the fiercest kind of a struggle, with no holds barred.

(Signed) J. D. MacGregor.

[fol. 4925]

W. R. Grace and Company Exhibit 93

[Handwritten notations—12/15/37—Unable to locate the beginning of letter—12/14/52 E]

Panagra: Roig and I had a couple of hours' talk yesterday with George Rihl and the upshot of the conversation is that Juan will do everything possible to block the contemplated overland development in the northern division.

[fol. 4926] At one stage he said that according to Priester our personnel is untrained to operate land planes over that territory and that it would take at least a year before they would be properly educated; furthermore that before deciding anything about this Colombian development we would have to clear up other matters, such as the organization chart, the question of having Panagra do its own cabling, etc., etc. He finally produced a memorandum purporting to summarize these and other points and I finally lost my temper.

They claim that there is too much Grace interference, that the General Manager of Panagra is not allowed to function the way any other general manager of a company without a president functions, etc., etc. George felt very sheepish and the whole conversation was undoubtedly very distasteful to him, particularly as it was apparent that he himself did not believe any of the stuff he had to serve up.

[fol. 4929]

W. R. Grace and Company Exhibit 94

Minutes of Adjourned Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc., held at the office of Pan American Airways, Inc., Chrysler Building, New York, N. Y. on the 27th day of January, 1938, at 12.45 P.M.

PRESENT:

Messrs W F Cogswell
A Garni
H P Morris
R H Patchin
H J Roig
J T Trippe
E E Young

being a quorum of the Board.

Mr J D MacGregor, Vice President and General Manager of the corporation, was also present.

Mr Trippe called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr Cogswell, Secretary of the corporation, recorded the minutes.

Mr Roig called for the vote on his resolutions regarding overland operation in Colombia as set forth in the minutes of the meeting of December 23, 1937. A vote upon such resolutions having been had, the same were declared adopted, Messrs Cogswell, Garni, Patchin and Roig voting in favor of same and Messrs Morris, Trippe and Young not voting.

Messrs Morris, Trippe and Young desired to have their views appear in the record as follows:

In view of the recommendations of the Vice President [fol. 4930] in Charge of Operations, as submitted to the Board by the Vice President and General Manager, that

the service now operated on that sector of the present West Coast route between Cristobal, C. Z. and Guayaquil, Ecuador be transferred to operate via Cali, Colombia, and Quito, Ecuador; and in view of the support of this recommendation by Messrs Cogswell, Garni, Patchin and Roig, Messrs Morris, Trippe and Young did not wish to delay a move which the management has recommended. They, therefore, refrained from voting against the resolutions offered.

They stated that, in their opinion, the continuance of operations via a coastal route, contemplated in the Kellogg-Olaya Treaty between the United States and Colombia, would be to the best interests of Pan American-Grace Airways, Inc.

They pointed out to the meeting that, while they felt the route via Cali and Quito could be established, they are of the opinion that the more direct route between Cristobal and Guayaquil, following the great circle course (or with an intermediate stop at Buenaventura if desired), would:

(a) In the aggregate, prove to be faster, as well as shorter;

(b) Be preferable from a technical operating standpoint;

(c) Permit greater schedule regularity and fewer interruptions on through service between Cristobal and Ecuador, Peru, Chile, Bolivia and the Argentine; and

(d) Over a period of time be more profitable to the company commercially, on account of the greater volume of total traffic that would accrue to it, [fol. 4931] with especial reference to through passenger traffic between the United States and Ecuador, Peru, Chile, Bolivia and the Argentine.

They further pointed out that if the traffic which might be developed between the West Coast city of Cali and Cristobal was an objective in the plan for the interior route, they felt that such traffic might best be developed by

means of a separate shuttle service between Cristobal and Cali, thus providing full capacity of equipment as compared with the limited capacity that would be available by including Cali as a point of call on the more circuitous through service.

Messrs Morris, Trippe and Young also pointed out that although their fellow Directors present have in the past indicated as a matter of policy that they did not view with favor a program contemplating large four-engined equipment operating through to Guayaquil on a charter or other mutually cooperative basis with Pan American Airways on one or more weekly round trips on account of the possibility of prejudicing Pan American-Grace's position as an independent company, they were still of the opinion that such a program was feasible and would be to the best interests of Pan American-Grace Airways as well as to the general public, in view of the greater capacity and efficiency of flight equipment thereby possible.

Messrs Cogswell, Garni, Patchin and Roig made the following statement on the record with respect to their vote [fol. 4932] in favor of the resolution:

While regretting the necessity of acting without the full concurrence of their associates, Messrs Cogswell, Garni, Patchin and Roig feel that the welfare of the service calls for action without further delay and that the recommendations of the management, being sustained by the reports referred to below, should be adopted by the Board.

The land operation over Colombia has been the subject of careful study over several months. The conclusions reached by the management are based on detailed studies and reports. The Company has the planes with which to institute the service. We are unable to concur in the conclusions of our associate directors based on what they believe to be the commercial advantages of the plan they propose.

There being no further business, the meeting adjourned.

/s/ J. T. Trippe
Chairman of the Meeting

/s/ W F Cogswell
Secretary

[fol. 4933]

W. R. Grace and Company Exhibit 95

Letter No. 40

January 28, 1938

D. S. Iglehart, Esq.,
Delray, Florida

Dear Mr. Iglehart:

PANAGRA-COLOMBIA

Referring to our telephone conversation, I enclose Minutes of yesterday's meeting, copy of Resolutions as adopted, —also a further Memorandum from Eddie Allen.

At yesterday's conference, Trippe submitted figures intended to show that the big boat (S42B) operation flying on the Great Circle Route direct from Cristobal to Guayaquil, which makes a saving of about 250 miles as against the overland route, could be operated for about the same cost as the overland route and urged that we at least give this a trial for three months before going to the overland operation. His figures have to be adjusted, of course, to take up the loss in mail pay from the shorter mileage with the result that taking everything into account, it looked as if the big boat operation might cost about $90,000 minimum more per year than the overland route. In practice, Garni and I feel it would be more than this, but even on this basis it would mean we would have to get an average of two additional passengers per trip over every mile flown on the entire route to B.A. in order to be on the same financial basis as the land operation.

The advantages which Trippe claims for his plan are:

1. That with Panair operating one S42 direct from Miami to Guayaquil and Panagra operating a second S42 over the same route all the way to Miami, we would get an efficiency of operation which would offset what would otherwise be the prohibitive expense of Panagra operating big boats between Cristobal and Guayaquil.

gone as far as they consider their equipment would justify, but I feel that to purchase this equipment and place it in operation in land so far distant from R. C. A. headquarters would entail a burden which, at this time, I am unwilling to assume or to have you assume.

I have prepared figures for Operations showing that even by paying Panair between $100,000 and $120,000 per year for radio service, and operating multimotored equipment throughout our line, we can still make healthy profit. Frankly, I am unable to fathom the reason for the Grace Directors' insistence that we buy R. C. A. equipment. Their position is exactly the opposite to the position they have consistently taken with regard to other equipment. Our flying equipment must be standard and must have been proven by continual and efficient service by other operators. Why should we not be consistent with radio?

In addition, to operate our own line, will entail the further delay consequent upon having to negotiate radio rights in Argentine, Uruguay, Colombia, and Paname, in which countries Panair already has rights.

Referring again to the contract with Panair, there is a great deal of what, to my way of thinking, is useless verbiage, used by our respective lawyers to endeavor to cover every conceivable contingency. As a practical matter there would be no trouble and we would get the service. I cabled you today that we are still studying the matter.

[fol. 4937] I also recommended the purchase of the two Panair Fords, although I was only able to secure them at a price of $20,000 each. If we fly them to Lima, fix them up for our line, and put in high speed equipment, we would still have two practically new Fords at $30,000. each, or at approximately half price. A decision on this has been held up pending the solution of the radio question, because we cannot operate Fords in Chile without radio. However, I have insisted that the ships should be purchased while radio is being discussed, so that when a decision is finally reached, the ships will be ready to operate, and our passenger service south of Arica can be commenced.

I hand you also a copy of a letter written by Mr. Patchin, outlining the Grace position, and also a copy of Mr. Trippe's answer thereto.

You will please treat this entire letter and its attachments as confidential.

Very truly yours,

J. D. MacGregor.

JDM/Q
Encs. by airmail.

[fol. 4938]

W. R. Grace and Company Exhibit 97

#492

LIMA, June 14, 1931 PERSONAL #351

Mr. MacGregor, New York

PANAIR VS RCA RADIO SCHEME

Receipt is acknowledged of your personal #87 on the subject of radio. You did not enclose the letters from Mr. Patchin to Mr. Trippe and the latter's reply nor the RCA letters of April 18, and April 21; but Miss Quinn forwarded them in the following mail.

Judging from all the information you have given me to date, it would seem that there are two ways to judge this matter. First we are anxious to go immediately into passenger operation south of Arica. For this operation in Chile we desire radio installation in multimotored airplanes. It is therefore desirable for us to immediately secure radio equipment which can be put on an operation basis at once. This points most decidedly to a contract with Panair.

The other alternative is to develop our own radio program with the minimum of expenditure without the hurry which would seem to be required by an immediate opening of our passenger service. This would seem to point toward RCA or other source of supply with the building up of our own radio staff.

[fol. 4939] Both schemes have definite advantages in my opinion but taking everything into consideration I rather favor the second scheme.

If you do not already know it, Shannon is quite a radio expert and it might well work out that when he takes over his work as my assistant that he might specially handle radio problems in addition to his general duties.

I believe that we can develop competent radio operators among our flight mechanics and/or pilots or stewards so that we can eventually have radio without the usual disadvantage of a radio operator who does not do other work.

I agree with you that if we go into the radio business ourselves we will have lots of grief and this with our present limited personnel is decidedly to be avoided if we can justify the difference in what it will cost us to have the work done by someone else and what we estimate we can do it for ourselves. Judging from Panair's figures, it seems to me that they will be making a direct profit of at least $20,000 a year not to mention the use they would have of the joint stations at Montevideo, Buenos Aires and Cristobal for other than Panagra business.

Going over the estimate of radio investment based on data of RCA proposed investment which you attach to your letter, I want to point out the following. At present our radio traffic thru Cristobal is handled, both in and out, [fol. 4940] by the Navy. There is no reason to believe that we could not continue this arrangement. Consequently no investment for a station in Cristobal is required. This would be a saving of $7050 without counting additional receiver. I do not understand why you added an additional receiver at each one of the ground stations. The elimination of this item would be a saving of $3276.

The other ground stations seem to be safely figured with the exception of the Mendoza station where I believe we should add an additional $2000 to cover the cost of the modulator units for telephony at this station. You will note that the Radio Corporation quote $1500 F A S for each

modulator unit and I estimate that the additional $500 will cover the other miscellaneous costs. This would make a total ground equipment cost of $8326 less than you show in your estimate. That is a new total of $59680.

As I have previously written you I see no reason for getting more than 12 plane sets no matter whether we buy our own or have Panair furnish them for us. Under the RCA scheme this would be a saving of $5760 giving a total investment in plane sets of $23,040. The combined figure of $82,720 would include the cost of ground and plane sets, transportation, duties, installation, etc.

[fol. 4941] With regard to your estimated operating cost I note that under the Panair scheme, they only allow $3600 for what corresponds to your chief engineer whom you have listed at $8500. They allow $9900 against the $10,000 you list for assistant engineers. They allow $2724 against the $5000 you list for engineer's travel. Their figure for ground operators is practically the same as yours altho under the scheme I point out above only eight ground operators would be required, thus making a saving of $2550 per year. I note that you have taken the same plane operators salary and travelling expenses that they have. Panair make not provision for the six service men which you list at $15300 and I agree with Panair that these men do not seem necessary. On the other hand Panair carries $3300 more insurance than you show and $4000 more for miscellaneous parts and expenses than you show. In other words, they show a yearly operating cost of $86,158 not including depreciation against your $120,641 which includes $19,361 depreciation.

Under my suggested scheme the operating cost not including depreciation would be $80,000 per year, since I propose to eliminate the chief engineer's salary (using Shannon as head of radio) and one ground operator salary.

[fol. 4942] In conclusion I believe that there is nothing fundamentally wrong with Panair's radio proposal except that it will be in the long run more expensive for Panagra. It has the distinct advantage that it can be put into operation almost overnite for our entire system; but it does put our radio communication completely in the

[fol. 4934]

2. That the attractiveness to travellers of the water route as against the land route would result in a large increase in traffic by air from the United States to Guayaquil and points south which would more than offset the loss of Colombian traffic

3. That the water route would be subject to fewer schedule delays on account of weather.

4. That this shorter and quicker trip to Guayaquil would make more readily feasible a one day operation to Lima.

5. That if we were adverse to giving up Colombia entirely we could at least serve Buenaventura by operating one of the two trips per week with the S43 calling at Buenaventura and if we insisted on serving Cali that could be served in some rather vague way by a shuttle service. At one point he also suggested that they take care of Colombia by selling us part of Scadta and Umca.

There were other points discussed, but these are the principal ones about which the discussion centered. I need not trouble you with our answers to each of these points in detail. They will be obvious to you. In a general way, however, our position was that the expense of his proposal would in practice be a good deal more than the land operation for many obvious reasons and that if we served Colombia at all in either or both of the methods he suggested, the differences would be astronomical; that we would be incurring this additional expense merely to provide additional payload which was not called for by traffic possibilities and at the cost of giving up effective service to one of the most important countries on our route.

Sincerely yours,

Enclosures

[fol. 4935]

W. R. Grace and Company Exhibit 96

PERSONAL #87

NEW YORK,
June 2, 1931.

Mr. H. R. Harris,
Lima, Peru.

My dear H. R.:

Please don't turn a handspring when you read the attached contract with Panair for radio service, which I recommended to be accepted at once. So far, no agreement has been reached, although there is another Directors' Meeting next Friday.

Grace & Co. Directors have declared themselves against using Panair services. They prefer to buy from either Panair or R. C. A. and operate themselves. I am not able to agree with them because Panair is prohibited from selling its sets, and the R. C. A. telegraph telephone set has not been operated in any commercial airline, to date.

I prepared figures for the Board of Directors, a copy of which I attach, showing that the purchase from R. C. A. of the necessary equipment, on the basis of that Company's sales offer, would mean an immediate investment of $96,000. Even this figure is not complete because it provides for no spare transmitters for use when the original transmitter is under repair.

In order that you may have complete information, I hand you copies of R. C. A. letters of April 18th and April 21st.

The acceptance of the Panair offer would insure us complete two-way communication, at least as cheaply as we could install and operate it for ourselves, and would relieve us of the responsibility for the successful operation of the service. Panair accepts a penalty if they do not provide 98% efficiency in service.

[fol. 4936] The R. C. A. equipment is not guaranteed in this fashion. R. C. A. is anxious to make this sale and have

hands of our associated Company who have very distinctly shown in the past that their idea of co-operation is on a cost plus basis.

Personally I incline to a modified RCA scheme along the lines I have outlined in this letter. This may take us six months longer to install over the whole line but will give us in the end control of our own communications and will, I feel sure, work out better for Panagra in the long run.

Pending final decision on radio, I believe that we can secure a waiver from the Chilian Government to allow us to put in our international passenger service with our multimotored machines without radio. It may be necessary for us to sell only six seats in our Fords in order to technically secure their consent but I rather think that the number of times we will sell more than six seats on any one trip in Chile will be limited for some time to come.

[fol. 4943] I have neglected to mention that RCA have, thru their hookup with All America Cables, competent radio engineers at most all points on our line so that we would have very little difficulty in getting expert engineers for RCA equipment if we needed them.

I agree with you that a combined telephone-telegraph set is desirable over the Andes. It may also be desirable to put a ground telephone transmitter at Buenos Aires to handle the Montevideo-Buenos Aires flights. However this is an added refinement that need not be taken up at present.

You mention the difficulty we would have under the RCA scheme in negotiation for radio in Uruguay, Argentine, Colombia and Panama. I see no reason for negotiating radio rights in Panama and see no reason for difficulty in negotiating radio rights in Argentine or Uruguay. I know nothing about Colombia.

/s/ HAROLD R. HARRIS

HRH/CBR

cc second mail (no steamer copy)

[fol. 4944]

W. R. Grace and Company Exhibit 98

#495

Minutes of a special meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways, Inc., 122 East 42nd Street, New York, N. Y., on the 6th day of July, 1931 at 4:30 o'clock in the afternoon.

PRESENT:

Messrs. W. F. Cogswell
R. H. Patchin
H. J. Roig
J. T. Trippe

being a quorum of the Board.

Mr. J. D. MacGregor, Vice President and General Manager of the corporation, was also present.

Mr. Trippe called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr. Cogswell, Secretary of the corporation, acted as Secretary of the meeting.

The minutes of a special meeting of the Board of Directors held June 10th, 1931, were read and approved.

Mr. MacGregor submitted to the meeting copy of waiver of 20¢ per mile from the contract rate of pay on the second round trip per week on F.A.M. Route No. 9 for the fiscal year beginning July 1, 1931 only, which had been executed under date of June 26, 1931 in the name of the corporation by himself as Vice President and Mr. Cogswell as Secretary. On motion duly adopted, the execution of this waiver was ratified, approved and confirmed.

The Secretary presented to the meeting copy of letter dated July 25, 1930 whereby this company agreed to indemnify and save harmless Grace y Cia. (Chile) S. A. from

[fol. 4945] and against liabilities and expenses which might be incurred by reason of this corporation not being registered in Chile, such agreement being limited to obligations incurred on or before July 8, 1931. On motion duly adopted, the proper officers of the corporation were authorized to execute an agreement in similar form limited to obligations incurred on or before July 8, 1932.

On motion duly adopted, it was resolved that the following expenditures at present capitalized be charged off to expense:

W. P. Jacob's salary and expenses	$10,547.12
Wasp motor donated to Chilean Government	6,928.20
Part fee paid to Dr. Vicente Lopez (corresponding to year 1930)	2,501.68
Part cost of cables	7,420.76

that the following expenditures at present charged off to expense be capitalized:

Part 1929 bill—W.R.Grace & Co., Chile	$10,000.00
Part 1930 bill—W.R.Grace & Co., Chile	7,500.00
Additional J.D.Summers' expenses	4,186.20
Part 1929 bill—Guayaquil Agencies Co., Guayaquil	2,600.00
	$24,286.20

and that after the foregoing adjustments the expenditures which have been capitalized be classified as follows:

Nature of Item	*Concession or Contract*	*Amount*
Payments to Root, Clark, Buckner, Howland & Ballantine	U.S. Mail	$16,578.54
Washington Office Jan 1/May 15, 1929	"	4,000.00
Proportion expenses J.D.MacGregor at Panama	Panama	2,144.38
Survey flights	Panama	4,839.90
"	Colombian	4,839.90
"	Ecuadorean	4,839.90

Nature of Item	*Concession or Contract*	*Amount*
H. C. Willcox	Colombian	19,068.33
Legal fees Ecuador	Ecuadorean	5,722.06
Part 1929 payment Guayaquil Agencies Co., Guayaquil [fol. 4946]	Ecuadorean	2,500.00
Purchase Huff Daland Concession	Peruvian	15,000.00
Cables	Chilean	1,200.00
"	Argentine	368.16
Part payment W.R.Grace & Co., (Chile)		
1929	Chilean	10,000.00
1930	Chilean	7,500.00
J. D. Summers (1929)	Argentine	7,323.89
	Uruguayan	3,442.51
Vicente Lopez (1929)	Argentine	5,000.00

It was also resolved that the foregoing be written off over a period of ten years from the date of the United States mail contract or the life of the respective concessions or contracts if there should be an earlier expiration date therein.

Mr. MacGregor submitted to the meeting letter from Pan American Airways, Inc. dated June 25, 1931 and draft of proposal enclosed with said letter, whereby Pan American Airways, Inc. would sell to Pan American-Grace Airways, Inc. equipment for five complete radio ground stations and fifteen aircraft sets at the price of $50,347.50; also, at the option of Pan American-Grace Airways, Inc., supervise and assist in the installation of the radio system for a flat fee of $17,500 and provide or cause to be provided a service from ground stations at the Canal Zone or Panama, Buenos Aires, Montevideo and Buenaventura at a specified percentage of the cost thereof. On motion duly adopted, it was resolved that Mr. MacGregor be authorized to accept this proposal in its entirety in behalf of this corporation provided Pan American Airways should further agree: (1) to sell this corporation such spares and parts accessory to

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In the first place, it is necessary that we secure at the earliest possible moment necessary authorization from the Peruvian Government for the installation of our ground sets and the establishment of our radio communication. This is the point where we need your assistance; not only to get powers as broad as possible but also to get our rights promptly. In view of the improvement in the service which radio will provide and the expense which we are incurring to give Peru as fine an air service as there is anywhere in the world, there should really be no difficulty in getting the necessary rights but having in mind the difficulties we have had in location of facilities at Las Palmas, I am anxious that the campaign to get our radio rights should be carefully thought out before it is launched and pushed vigorously and in the manner best calculated to get these rights promptly. Pan American will send their experts to Peru not only to assist in the Governmental negotiations but to [fol. 4949] erect the ground stations and put the system in operation. If we are delayed in getting necessary permits and accordingly have to keep these people on the Coast for a long time the expense of this work will be very greatly increased. This we are naturally most desirous of avoiding. Mr. Harris will be receiving official advices from the Panagra New York office of the terms of our arrangement with Panair from which he will see how important this is and the corresponding necessity of having the work laid out to the best possible advantage and securing our Peruvian rights as promptly as possible. I would be glad if you would discuss the matter fully with him as I think Mr. Miranda can be of a good deal of assistance at this juncture.

The other point which I am particularly concerned about is that the transition from the installation by Panair to the operation by Panagra should be accomplished in a manner which will remove all friction and insure effective operation. As a result of the very exhaustive study of the matter we have made here we are convinced that Panair's radio system is by far the best obtainable for our purpose. We propose to engage shortly and send promptly to the Coast a man to take charge of Panagra's radio operations. It is our intention, if possible, to get a man familiar with the Panair system and practices and in sympathy with them.

Having decided to install their system there would be no point in taking on someone to run it who thought some other system was better. It will be time enough for us to make our own improvements after we have had some experience with what Panair have already done. I consider it of the utmost importance that this man be engaged and on the job when the installation work is in progress so that he can inspect it and accept it for us and will be satisfied that it is properly installed. We do not want any alibis for defects in operations based on errors in installation. If we take on a Panair man it will, of course, be necessary for him to understand thoroughlily that from the day he goes on our payroll he is working for us alone and I have no doubt that Harris can make this very plain and handle the matter satisfactorily from the outset. Incidentally, Harris will, of course, be the man responsible to the Directors for the installation and operation and whoever is in immediate charge will be responsible only to Harris.

I am writing this letter to you rather than direct to Harris, in the first place, because I wish to ask your fullest cooperation along the lines indicated and, in the second place, because I do not think it suits to have directors carrying on separate correspondence with the Vice-President in charge of operations. You will, of course, discuss the matter fully with Harris as all steps taken will have to be in conjunction with him and so far as I am concerned I have no objection to his seeing this letter.

Very truly yours,

the equipment covered by said proposal as may from time to time be required, at the fair market value of similar [fol. 4947] apparatus manufactured by others, provided that it should have the same in stock, and (2) to cooperate so as to keep the expenses of this corporation at a minimum if it should develop that it would be impossible to install all of the ground stations within the period of 120 days referred to in Part II of the proposal, and in this connection, if practicable, to temporarily withdraw and assign elsewhere personnel engaged in the work, and extend the said period of 120 days for the number of days during which said personnel is withdrawn, only charging this corporation for the necessary lost time and expenses involved in such procedure.

Mr. MacGregor reported to the meeting that there was an unexpended balance of approximately $6,000 of the total sum of $34,000 which had been authorized for advertisement and propaganda for the year commencing July 1, 1930. On motion duly adopted, the proper officers of the corporation were authorized to spend the sum of $40,000 for advertisement and propaganda for the year commencing July 1931; this amount of $40,000 to include the aforementioned unexpended balance of $6,000.

There being no further business, the meeting adjourned.

/s/ J. T. TRIPPE
J. T. Trippe
Chairman of the Meeting

/s/ W. F. COGSWELL
Secretary

[fol. 4948]

W. R. Grace and Company Exhibit 99

#496

New York, July 7, 1931

H. H. G. Redshaw, Esq.,
Lima, Peru

Dear Redshaw:

At the Pan American-Grace directors' meeting yesterday we authorized the installation of complete two way radio over our entire line. The matter has been delayed a good while owing to basic difference of opinion in the Board on the question whether we should own and operate our own radio or engage Pan American to install and operate the system they in this case, of course, being the owners of the equipment. It was my understanding from my talks with Mr. Harris that he preferred a system under which we owned and operated our own radio system and I have accordingly held out for an arrangement of this kind which we have now succeeded in working out. I judge from some of Mr. Harris' correspondence which I have seen that he has felt that some of the directors were opposing the installation of radio. This is quite incorrect as the board has been unanimously in favor of radio. The delay has been occasioned very largely by the effort to get the radio set-up in the form which I understood Mr. Harris favored. Incidentally, I was in entire sympathy with his opinion.

Under the arrangement we have made Pan American will install the system and supervise the inauguration of the service so that our organization may get the full benefit of their experience in this rather technical business. We are making a considerable expenditure in order to secure this service. I consider the expenditure money well spent but am very anxious to see that we get the full benefit of it. In order to do so two things are necessary and in one of these at least it is necessary for me to ask the fullest cooperation of the Lima management.

(e) And in the face of the foregoing he writes the New York office, under date of November 26th, the following:

> "In one of your letters I recall you said that you would not furnish my room until I returned. This will be your authority to proceed to acquire the necessary furniture. The room should be carpeted with some rich dark color. Dark brown, or dark green. I do not know the size of the room, but understand it is a corner room with good light, such as I had with P.A.A. Therefore there should be a roll-top desk, with ample size swivel chair and a good-size table, with glass top so that I can work at either desk or table, without leaving the chair. There should be an additional table for examining maps and plans. Two or three good-looking chairs for visitors. A large map of South America should be on the wall. Also several framed pictures of our equipment, such as were taken in Lima of the Fords. The Fairchild flying over Misti, would be appropriate. Be sure the necessary telephones and buzzers are installed. Also wastepaper baskets and two cuspidors, with rubber mats on each side of the table. I want the room to be a credit to the Company, and suitable for the Chief Executive. Important visitors and executives from other companies will frequently come to see me and I should not wish them to have cause for criticism."

I believe the most serious mistake this company has made to date was the purchase of five Fords. Mr. MacGregor strongly recommended this course before he left for the Coast and was inclined to give no weight at all to my suggestion at that time that we purchase less than five. When I was in Panama in June and became convinced after a close study of operating costs, that five Fords were a serious mistake, and cabled New York

to endeavor to cancel some of these Fords I got no pathy for this idea from Mr. MacGregor. On the trary, even after he left Panama, I cabled him Panama (No. 2) to which he replied as per cabl [fol. 4953] tached (No. 3). With his concurrence prompt action at that time we could probably have celled at least two of the Fords instead of one.

3. From the foregoing as well as from my extended sonal conversations with Mr. MacGregor at Pa when I endeavored to get his ideas regarding capital operating budgets for this company, I have reached definite conclusion that he is essentially of the pron and publicist type rather than the organizing and agement type which we require. I do not for a mo depreciate the value of the former qualities in a business like ours, but this is not the job for whic are primarily looking to Mr. MacGregor. We are ing to him to build up an organization and to ma our business along sound business lines. In my opi he has no adequate qualifications to perform eithe these functions. I very much doubt if Mr. MacGr has any clear idea at this moment of the actual fina position and operating results of the company. D his entire absence he never at any time gave any cation in any of his cables of any concern or intere these matters.

4. Mr. MacGregor's manner and personality are no culated to get the best results in South America. methods which he apparently found successful in Central American countries have not worked out well in South America. In Panama he antagonize least two very important people in Mr. Peck, the mercial Attache at the American Legation and Mr. the Postmaster General of the Canal Zone, who is [fol. 4954] the correspondent of the New York T In Chile his methods developed very great antago on the part of the Chilean authorities, as he hi tacitly admits in his letters and as is strongly cont by private letter from our manager, Mr. Metzner 4) and by reports we have received from wholly o and disinterested sources.

[fol. 4950]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

#34

DOCUMENTS

WRG 100 thru WRG 131

[fol. 4951]

W. R. GRACE AND COMPANY EXHIBIT 100

[Handwritten notation—12/28/29]

STRICTLY PRIVATE AND CONFIDENTIAL

MEMORANDUM FOR MR. HOYT (DIRECTOR, PAN AMERICAN-GRACE AIRWAYS)

MR. MACGREGOR

1. Mr. M Gregor went to South America to get our business t e organized. These are the results of his trip:

(a) He left Panama without having t d up the necessary ends to give Pan American-Grace Airways operating rights in the Canal Zone, Colombia or Panama or taking any steps or making any recommendations looking to the taking over by Pan American-Grace Airways of the Panama/Guayaquil run. Apart from conferences with

Mr. Trippe and Mr. Roig, these matters were the only Pan American-Grace business of major importance which MacGregor had to attend to at Panama.

(b) From Panama he went to Chile, his particular mission there being to straighten out our relations with the Government and get our concession in order. He was quite unable to accomplish this and finally left Chile for the reason, as he himself stated in his gable of October 26th:

> "I am of opinion there is better chance modifying decree if I leave Chile sentence Think my leaving Santiago will clear atmosphere and permit W. R Grace & Co officials negotiate modification sentence They are thoroughly familiar (with) your instructions and can conduct negotiations less formality-ies we all consider inadvisable to force government to make decision all disputed points."

(c) Governmental difficulties in the Argentine had been largely removed before Mr. MacGregor went there so his only mission was to organize our business at this point. Beyond recommending the employment of Delfino & Co., steamship agents, on a five year contract to look after our interests in Buenos Aires, upon terms which we have not found practical, his accomplishments by way of organizing our Argentine business may be judged from Mr. Summers' cable to Mr. Trippe attached (No. 1).

(d) He spent only a few days in Bolivia where he submitted a proposal prepared in New York without any suggestions from him and left without waiting for the outcome and predicting failure because he "had not been able to reach La Paz sooner as in that event there would have been no difficulty". (See his letter of November 25th)

TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY, 1962

arrangement is made with reference to facilities on the Isthmus and the Colombian concession, the transfer to Pan American Airways Company would be without compensation to Pan American except for out of pocket expenditure.

The matter as to where the pilots on the Isthmus should live is one that should be dealt with by the Operating Vice President. My own experience is that in places like Panama, where there are excellent hotels and boarding houses, it is preferable to let men live where they like, rather than to go to the expense of providing a mess house for them, which they very seldom appreciate. This is a detail which should be attended to by the Vice President in charge of operations.

I think it would be a great mistake to organize a complete office in Cristobal and I would not agree to that under any circumstances. The Chief Accountant should be in New York and not in Cristobal. It seems to me that in Cristobal there should be a local traffic man in the same way that there should be in the other two units, but the traffic work should be done individually by the three units, and that, with reference to traffic, although they would keep closely in touch with the Operating Vice President, their responsibility would be direct to New York. Whether the Vice President in charge of operations should have an engineer alongside of him for supervising the work in the three units is a practical matter about which my opinion is not of much value. The point, however, that I want to bring out clearly is that the Cristobal office should be merely one of the three units, and should operate its own unit, in the same way that Lima operates its own unit and Santiago operates its own unit; and, that, although the Operating Vice President makes his headquarters at Panama, he should have no staff there and should spend practically all of his time moving over his operating territory.

I should like to have an opportunity to discuss this all with you provided it is not quite clear, as I think that many of the points brought out are essential ones to the economical and successful administration of this business.

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I have only the kindest feelings toward Mr. MacGregor personally and regret exceedingly to find myself in my present position with regard to him. But considering the matter as we must, purely from the standpoint of the company's welfare, I feel very strongly that our only course, if we are to succeed in this venture, is to secure at once a new General Manager in whom both of the owners of the company can have complete confidence.

Director, Pan American Grace Airways

December 28, 1929

[fol. 4955]

W. R. Grace and Company Exhibit 100X

[Handwritten notation—file] April 18, 1929

MEMORANDUM FOR: MR. PATCHIN
MR. COGSWELL.

I looked over Mr. MacGregor's undated memorandum.

EQUIPMENT

He indicates that a large amount of plant and planes, etc. will be required to do the service, but he gives no figures as to what these would cost or what the inoperating expenses would be. It is to be kept in mind that the Company has a capital of $1,000,000.; that it was estimated that this was sufficient to equip the Company in every respect, and also supply the working capital necessary to carry out the mail contract. I think it would be wise to see that Mr. MacGregor keeps in mind the fact that the Company has a fixed capital; that it is to operate within this capital; and that we are not inclined to agree to increasing the capital or to carrying on an expansion that has been so rapid as that of Pan American Airways.

CRISTOBAL OFFICE.

The way that he has this laid out makes it the head office rather than New York, and I think it is a mistake. My idea

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Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

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UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

is that the operation should be from distant points that in all matters except the actual operation of the planes these three units should report direct to New York. The only way in which New York can keep adequate control on that business is to have all the cash deposited here, to have accounts kept here, and to have control of expenditure, so all dominated entirely from New York. Sufficient copies should be sent to the Operating Vice-President in Cristobal to enable him to do his work intelligently.

The matter of handling accounts ought to be worked out [illegible] carefully, and my thinking is that the accounts of the three units ought to be handled in our Coast offices and that all cash disbursements should be made through our Cashier's Department. I think the practical way to do this is for us to have a special employee to handle this work in our Coast offices, and that this employee should be a regular part of our staff and entirely controlled by our management. I think that one man in our office in Cristobal, one in Lima and one in Santiago, with possibly one in Guayaquil, should be able to attend to all of this work in an entirely satisfactory way. I don't think that the Pan American-Grace Airways needs to have any independent employees in any of these places, except pilots and mechanics, in other words, men who have to do with the actual operation of the planes. This plan means minimum expenditure and maximum control.

I should therefore have answered Redshaw in that sense and told him that he was to delegate a man of our own staff to handle this work, and that this man should be our employee, rather than have called in the sense that you did.

I think it most important to get this matter of handling of accounting control, of cash and clerical work into the shape that I have indicated and to lay down a definite policy with reference to it at the start.

SERVICE OF PAN AMERICAN AIRWAYS.

I understand that in New York all that would be used would be their technical staff. I understand that if the

Coming back to my observation regarding the rapidity with which most Airway companies decide on expansions, etc., we naturally want to avoid any tendency in this direction on the part of the Pan American-Grace Airways, Inc. and while we do not want to encourage what might be called undue interference with their management we must rely upon you to tactfully guide and generally direct whatever activities take place in the territory under your jurisdiction, so that a sound business like policy is followed with reference to any future developments.

This may look like a disjointed sort of a letter and I admit it is; but nevertheless I want to write to you about our relations with the Pan American Airways, Inc., how well we think of them and what the general tendency is on [fol. 4964] the part of most Airways companies and last but not least, to tell you to keep your ears to the ground with reference to anything that develops in your territory in connection with the Pan American-Grace Airways, Inc.

Yours very truly,

(Signed) A. GARNI

[fol. 4965]

W. R. GRACE AND COMPANY EXHIBIT 104

January 29, 1929.

MEMORANDUM FOR MR. PATCHIN

Do you not think it advisable to arrange that Jacob should come down here at regular intervals; and, in fact, it might be well for him to come down for an hour every day. He could, during this time, go over correspondence and arrange to dictate correspondence to our Coast Houses and do a great deal of the work that is to be done in connection with this aviation business.

Furthermore, I rather think that when Tripp goes to Washington on anything connected with our aviation work, or when you go to Washington, that it is advisable to have Jacob accompany you or him, in order that he will keep

hold of the strings of this business and become gradually educated in it and gradually equip himself to handle all of its phases under your general direction.

I feel that on each steamer we ought to write out to Lima, Valparaiso, Guayaquil and possibly also La Paz, and perhaps a little later to Buenos Aires, letters commenting on what is being done in their territory, making suggestions as to what might be done, asking questions and seeking data that may form the basis for further constructive suggestions and gradually building up the interest and enthusiasm, as well as as guiding the effort of the men in our South American Houses who are attending to this aviation work. A man like Bush is very good, but he is not very full of imagination and he requires constant stimulation and guidance. Jacob ought to be able to handle all of this correspondence and you will decide whether it had better go out of this office or the office uptown.

[fol. 4966]

W. R. Grace and Company Exhibit 105

[Handwritten notation—Rec'd 7-6-32 ans'd 7-8-32]

[Stamp—Via Correo Aereo—Panagra]

Letter No 62

(D.S.I. Trip series)

En route Valparaiso
On board s/s "Boskoop",
June 27, 1932.

H. J. Roig, Esquire,
NEW YORK.

Dear Roig,

LIMA FLYING FIELD

I went over this, and, although the field is a bit rough, I think the whole equipment is a good one and appeared to be working smoothly and effectively. I have an idea that

not lose sight of the fact that we own 50% of the Shares of the company; furthermore, that we have a knowledge of South American enterprises and must gradually acquire a knowledge of the air business in South America, and that we must avail ourselves of our knowledge of local conditions and our experience in business management in order that this whole enterprise is well managed and profitably administrated from day to day.

As Arica is going to be a landing port of the Pan American Grace Airways, Thomnen must be acquainted with the policy outlined in this letter, but I should suggest that you do not transcribe this whole letter to him, as it is confidential and only for your guidance. You ought to instruct him to give the Pan American Airways the very best service and to assist them by watching the expenses and avoiding any extravagance, and practicing the strictest economy. You ought to tell him to write to you as often as possible regarding the movement and conditions of the Pan American Airways in Arica, giving you his personal views on all subject of importance, which information you in turn, will pass on to us.

Yours very truly,

Vol. 4992 W. R. GRACE AND COMPANY Exhibit 103

Personal Letter #304

S.S. Essequibo 6 12
due Iquique 6 29

New York, June 7, 1929

F. J. Harper, Esqe.
Nitrate Agencies Ltd.,
Iquique, Chile.

Dear Harper:

PAN AMERICAN-GRACE AIRWAYS, INC.

I believe you are fully aware that the airways development at present covering Panama to Santiago, and w

will ultimately be extended to Buenos Aires, to the Pan American-Grace Airways, Inc. and that party is owned equally by W. R. Grace & Co. and Pan American Airways, Inc.

Our partners in Pan American-Grace Airways, Inc. are most reputable in the business in Peru. They are active and progressive citizens who have made sound investments and has been set up to watch the operations of American-Grace Airways, Inc. and Mr. Mann has been engaged and assigned to the Peruvian Mr. Harris in Peru and Mr. Angle, who is on our staff, as also Mr. Vogt, who will have the airport to accomplish the purpose of this business. [illegible] American-Grace Airways, Inc. in New York and that is the Pan American Airways and very close contact with the operations of the American-Grace Airways, Inc.

There is, however, a tendency [illegible] new investments and [illegible] about the speed of an airplane [illegible] what different [illegible] tion I do not mean to say that the Pan American Airways belong exactly to the category, but it is nevertheless advisable to watch all developments carefully, particularly with regard to [illegible] gets, etc. that may in future be made available to [illegible] tors.

I have just seen an interesting letter you wrote with regard to a [illegible] reference to the maestranza facilities you may offer in case of need. Suggestions of this sort are constructive and we want you to send us your frankly and quite apart from any official reports. I wish you would write me occasionally giving the [illegible] or news you may have with reference to the Airways opment.

fog is our greatest enemy in the Lima district, and, from my own knowledge of the surroundings of the city, the present field behind the Chorrillos Hills and a little distance from the sea is subject to fog and this is I fancy accentuated by the fact that planes must land from the north or north-east into the south and south-west winds. The districts to the north and east of the field are also subject to fog. The Panagra people will doubtless have looked into this whole matter, but when I was living about Lima, the place where there was most sun and least fog was the district right along the sea extending from Magdalena del Mar round to the mouth of the Rimac River. The district of what used to be known as Mar Bravo and is between La Perla and Callao is one which was never developed much agriculturally because it was so near the sea and the south-west wind and spray came across the land and made it salty and unfit for agriculture. I asked Mariano I. Prado, who owns a property called Otranto, which is near the present Country Club and runs down to the sea there, whether my opinion regarding sunshine and fogs was correct and he said that it was. He said, furthermore, that he thought land could be obtained at very low prices at various points in the region that I have indicated.

We are in this air business permanently and Lima will [fol. 4967] undoubtedly be an important terminal or stop-off point, and, before we put any more money into the present location I think we ought to have a thorough survey made of atmospheric conditions and of the available land in the district that is most naturally suitable for our purpose. In view of the fact that the wind always comes practically from one quarter I fancy that all we would need would be a long and relatively narrow strip of land running down to the sea as near as possible. When you get down to Mar Bravo the land has dropped to such an extent, that it is very little above the sea and I feel that, in developing a permanent station and headquarters, we should endeavor to locate it about there. I am merely now giving you impressions and suggesting a thorough investigation from the standpoint of them. I will take this matter up with Harris when I see him.

SANTA ELENA

The other point that I had in mind was regarding the overnight stop at Santa Elena. I take advantage of every opportunity to talk to people who have come through from the north and I get the impression that the overnight stop at Santa Elena is pretty uncomfortable. I think it is quite as important that people should have comfortable overnight stops as it is that they should have comfortable accommodations in flying. Would it not be possible to get a building at Santa Elena of a very simple character that could be cleaned and kept immaculately clean; that could be properly screened; and, the rooms of which could be furnished with very simple inexpensive but comfortable beds of a character that could also be kept sweet and clean; furthermore, in which a very simple dining room could be provided with very excellent food of a simple but a very well served character? If this were done my idea would be [fol. 4968] to get hold of some woman like Mrs. Kennedy, who is an excellent cook herself and an excellent housekeeper, to run the place really well. I think we would change the impression made upon through passengers and it would be all to the good.

I don't know much about the way over-night accommodations are provided at the various over-night stops, but I feel if we could by careful study and small expenditure make all of these comfortable and bring them up to more or less the standard of our flying service that we might add greatly to the goodwill of this enterprise.

Very truly yours,

D. S. Ingraham

we should have, on say about the first of the month, a cable summary.

I am writing you in the hope that you can assure this being regularly done.

I think the accounts should be accompanied by pretty full "remarks" which will bring into the record any unusual circumstances which will enable us to see the financial picture more clearly.

Bush and Harris ought to be able to amplify the accounts and give them very complete and satisfactory permanent form. I suppose Bush as Treasurer is closely watching all expenses and committments. We ought soon to receive pretty complete inventory of property etc. to date. We have to date no list of employees of Peruvian Airways Corporation.

Will greatly appreciate anything you can do along the lines indicated.

Faithfully yours,

RHP.Cx

[fol. 4960]

W. R. Grace and Company Exhibit 102

297

No. 611

June 8th, 1929

Confidential

Mr. G. Stimmann,
Hamburg, Germany.

Dear Stimmann:

For your private guidance I want to tell you what our position is with reference to the development of the Pan American-Grace Airways.

Our partners, the Pan American Airways, are very able and a very efficient concern which has made rapid progress but in dealing with them we find that those people are much more inclined to rapid expansion than ours is, and in order to keep working smoothly with them we have to find a way of conciliating their ideas and ours from day to day. Our theory is that this business should be developed in the same way that we have developed all of our businesses, namely, that we should make very careful estimates before we go ahead with anything; that we should work on a budget of expenditure as well as on a very carefully estimated budget of income; that we should watch every item of expenditure with the greatest care, and that we should follow a policy of the strictest conservatism that is compatible with a sound and enterprising development.

As far as your territory is concerned, we look to you to watch this business carefully and guide it along a policy of conservatism and profitable administration. We want your ideas continually and quite apart from the regular official correspondence that is carried on with your office and the head office of the Pan American Grace Airways here. We will want your personal views on all subjects of importance to guide us in generally directing the course of this enterprise.

There is a tendency on the part of most aviation developments in this country to go ahead very rapidly with extensions and in many cases to lose sight of the importance of measuring expenditure and of making the business pay from day to day. We want to avoid any tendency in this direction on the part of the Pan American Grace Airways, and we rely upon you in a fatherly way to guide and generally direct the activities in your territory on the lines of a sound businesslike policy.

[fol. 4961] Mr. MacGregor with Mr. Harris and Mr. Jacob, and Mr. Vidal assisting him, have the direct responsibility for the administration of this business, and in exercising any authority that we will want exercised, it will obviously have to be done in such a way that we do not relieve these men of the responsibility of handling this business and making a success of it. Nevertheless, we must

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[fol. 4969]

W. R. GRACE AND COMPANY EXHIBIT 106

W. R. GRACE & CO.
CALLAO

Letter No 93
(D.S.I. Trip series)

ORIGINAL PARA CORREO AEREO

COPIA VA POR CORREO ORDINARIO

On board m/v "Santa Barbara",
July 13, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

PANAGRA

I spent some time with Harris and Vidal. I said to them, in the first place, what I feel strongly, namely that the class of men that Panagra has along the Coast, the spirit in which they are working and the service that Panagra is giving, as well as the splendid prestige that has been built up, are a great credit to the Management of this business. I feel that as far as actual operations on the Coast are concerned, the combination of Harris with our offices all along the route is building up something that has importance today and may have very great importance in the future. MacGregor deserves great credit for all of this.

RELATION BETWEEN PANAGRA AND GRACE

Harris and also Vidal, and, in fact the Panagra men all along the line are enthusiastic in their appreciation of the help and backing that they get from Grace from day to day. I think it is a credit to both Panagra and Grace that there has been built up so satisfactory and so harmonious a collaboration between them. The only point where any friction or dissatisfaction occurred, and this by the way was more

acute than I had any idea of, was in Santiago [and the cause of it was Heavey. Vidal spoke very bitterly of him and Harris [, though very moderate,] said that he felt that the change of moving Heavey from Santiago to Valparaiso and the establishing of a closer relation between the Panagra men and Metzner himself was a great improvement and that he felt that it was going to result in Panagra working as closely with Grace in Santiago as it did in Lima. With the new setup in Santiago they both feel that they will be able to [fol 4976] avail of the advice and help of Valverde and of Metzner, Simon and Kirby in the same way as they are daily availing of the help of Redshaw, Miranda, Bush and Parker. I was quite surprised and pleased to find how much Harris and Vidal lean on these men and how highly they value their assistance.

[In discussing the importance of Grace back of Panagra Harris said that he felt as I did that the difference between the results on the East Coast and the results on the West Coast was attributable at least to a very large extent to this element.]

PANAGRA MEN

I did not see all of them but I think I met all of the outstanding ones. Vidal and, I think, also Harris have singled out Shannon as the ablest man that they have. I could not get myself to agree, as, although Shannon has a clear head, I feel that he is very young and inexperienced and has the mental attitude of an aviator. In developing men for Panagra I think we must make up our minds that the pilots are very difficult to develop into administrators and still more difficult to make into businessmen. In their line they have very much the same attitude that engineers have in technical industry. Their whole training and mentality unfits them for business and it is only a great exception like Harris or like Lipscomb that learns the practical side of things. The three men that impressed me most connected with Panagra were Kirkland, who has a good deal of fineness and I think has innate quality of mind and character; Ferris, who impressed me as having possibili-

[Brackets made by hand.]

[fol. 4958]

W. R. GRACE AND COMPANY EXHIBIT 101

New York, January 3, 1929.

H. H. G. Redshaw Esq.,
W. R. Grace & Co.,
Lima, Peru.

Dear Redshaw:—

PERUVIAN AIRWAYS CORPORATION

We have not been receiving anywhere near as much information, either general or in the form of financial accounts and statements of operating expenses and results as we should have to follow the developments of the air transport enterprise intelligently.

The accounts as of October 31st came forward in pretty good shape but those of December 1st were quite inadequate which prompted us to cable as indicated by the attached letter to Harris. In reply to this cable we got only a statement of operating revenue but nothing on expenses so we had to cable again yesterday for the expenses.

The reason that Mr. Bush was made Treasurer of Peruvian Airways Corporation was to insure a close check on all financial operations and the Directors of both Peruvian Airways Corporation and Grace expect to have just as much information about Peruvian Airways Corporation operations as Grace gets about Cartavio or any of its own enterprises on the Coast. In fact it is necessary to have even more information as this is a new venture with the technique of which we are not familiar. Mr. Trippe, President of the Peruvian Airways has written Mr. Harris (or at least said he was going to write him) suggesting that Harris every Saturday write him a very comprehensive letter telling him everything that happened during the preceding week and everything that is in his mind regarding the future of the enterprise.

[fol. 4959] The financial accounts ought to come forward on the first mail steamer after the first of the month and

unjust compensation of their representatives in Chile, but that Panagra, which depends so much for its life on its general prestige and the goodwill of the public, is in a particularly delicate situation in this respect.

The other way in which I feel Panagra could use its currency in Chile is by buying gasoline in currency. The West India Oil Co. is selling gasoline generally throughout Chile in pesos and at a price which figured at the real rate of exchange is lower than the price Panagra is paying in gold. I mean by this that Panagra would be delighted to convert their present holding of 250,000 pesos at 30 to the dollar, and, if you figure 30 to the dollar then gasoline is being sold to chauffeurs in Santiago in currency at a cheaper price than Panagra is buying it. This situation should be remedied and I have an idea that with very tactful handling it might be remedied. Panagra has a contract running till the end of the year. I don't know who has the contract or whether it buys through the Grace office or what Grace's interest in it may be, but I feel that under today's conditions Panagra is suffering in the way that I have in-
[fol. 4974] dicated; furthermore they are held up in the development of their traffic until they get into a position where they can disburse currency in the same way that they have to take currency. This matter requires pretty prompt attention.

BOLIVIAN TRAFFIC

We have discussed at various times the idea of running a shuttle route from La Paz to Arica. The Germans put this in and have temporarily abandoned it. On studying the map and looking over the whole position I decided to suggest to Harris that we should run our regular international route from Lima to Arequipa, from Arequipa to La Paz, La Paz to Oruro, Oruro to Antofagasta. I figure that it means an increase of about 180 miles, but I think that the route would go over two important cities and go past Chuquicamata for a possible stop and would tap the two most important centers of a new country pre-empting that territory and giving us a very important new source of revenue. The increased distance is so small and we have so

much slack in the Antofagasta Santiago leg that we could probably arrange to make the night stop in Oruro instead of Antofagasta and then fly through from Oruro to Santiago the same day. I am not sure that you know that there are very important Chilean interests located in Bolivia and there is a steady movement of passengers from Santiago to Bolivia through Antofagasta. Furthermore, there is a fairly big movement of passengers from La Paz to Arequipa and to Lima. This movement today is not large but under normal conditions it is quite a big movement and one that ought to fill up our planes from Lima to La Paz and from La Paz and Oruro to Santiago. I submitted this suggestion to Harris, who says that the plan is entirely [fol. 4975] practicable and that he is in favor of it. He will doubtless be writing to Mr. MacGregor about it giving his views fully. I have no right to any opinion as to the feasibility of this program from a practical flying standpoint but from a commercial viewpoint it would, I think, add something quite important to our enterprise. It would make, I believe, very profitable all of the range from Arequipa to Santiago, which at present is very thin.

[Handwritten notation—I am not sure this is true but that is the spirit.]

CABOTAJE

Regardless of all of Love's protestations I feel, and I think that Harris feels, that he and the United Aircraft have put the Peruvian Government into the aviation business. Harris says that he has felt in the last few weeks a distinct change of attitude on the part of the Government and he has just been served with a notice that Panagra will not be allowed any cabotaje privileges at the end of their present 5-year concession. This means that Peru is going the way that Chile has gone and that we have a very definite and serious problem in Peru as we have in Chile.

I feel that the course to take is to study carefully the means of going into the cabotaje business with a national company in each country using our reserve planes that have been completely amortized for this purpose and registering them locally. My idea is that we cannot build up this

The other thing that I have in mind c
erence to equipment for the Northern ru
Douglas people whether they could build
same general design as their present ampl
a more ample cabin and with three Was
Cyclone motors. Harris says that the Dou
very competent and very nice people to d
think it would be worth while getting the
idea. The reason that I like the Douglas
that the motors are well away from the
fuselage is really in the form of a boat a
like a good deal more sensible equipment tha
This again is a taxman's view and may be
neous. I put the suggestion forward merel
sideration.

[fol. 4979] The maintenance of the Sikorsk
per mile whereas the maintenance of the
only 12c keeping in mind that one has two
other has three.

HARRIS

I feel that he is doing a great job. I thi
for New York to keep me very close touch
think that as a matter of general policy
arranged that Mr. MacGregor would go dow
every year and Harris would come to N
a year, that it would keep the whole outf
with the maximum smoothness and efficien
if you think well of it I think you might
with Mr. MacGregor.

Very truly yours,

D. S

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asp motors or 3
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if it could be
down to the Coast
New York once
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talk this over

S. DEHART

business with high-priced planes and with high-priced pilots and mechanics, and that we would have to use either European pilots that we could contract at about one-third of the [fol. 4976] cost of American pilots, or preferably use men of the country whom I think we can find and train to be excellent pilots and mechanics. This latter point I have discussed fully with Harris and he says definitely that he is developing men both as mechanics and also as competent pilots who could man the planes of a national company in a way that would reflect credit on our service. The matter of the ownership of the national company and of its privileges is a legal matter that requires a lot of study. I have asked Harris and Vidal to take this up at once with Moreyr and García Gastañeta in Peru and have asked them to write to Valverde in Chile to see whether we couldn't revamp the Cia. Porteña de Vapores adding "y Aviacion" to the name and making any necessary changes in the by-laws. I think that we will have to bide our time and choose our opportunity with a good deal of circumspection but I think it may be quite a practical thing to get a national company operating national planes in the cabotaje business in each of the countries, and furthermore that we might work out a program under which these companies would serve practically as reserves, at least as far as planes are concerned, for handling our international service.

You have given this whole matter a great deal of thought and I have unfortunately been able to give it little time, but from my cursory view of the situation in the two countries I get a rather definite impression as to what we should endeavor to do and this I pass along to you for what it may be worth. You will understand that what I am driving at is to quietly put ourselves in both countries into a position where the Army and the Navy of the country cannot drive us out of the cabotaje business.

[fol. 4977] In Ecuador the only idea that I have in mind is that as Mann is considering having the steamship service make its call at La Libertad and as we seem to have difficulty in making the flight up to Guayaquil, we might run a shuttle service from La Libertad to Guayaquil and have a very comfortable place to handle passengers in

La Libertad, and then fly there back and forth to our planes and to our steamers, making the flight in about an hour and making it just as comfortable trip to make the connection. In this way we could speed up our international service of both steamers and planes, and, if we could get passengers to fly freely, it might be a happy solution for both of our services. I talk it over with Harris; in fact, the suggestion came out of our discussion and I think came from him. Please talk this over fully with Mann, as, whereas I feel that a call at La Libertad under present conditions is not going to retard the Guayaquil and Quito trade, it is possible that an airplane shuttle service may do so if it were very ably handled.

NEW EQUIPMENT

The Sikorsky equipment is the neck of our bottle. There is no doubt about that. Harris is the man on whose judgment I think we should rely as to as practical flying problems and equipment are concerned in the field. He is satisfied that a tri-motor Ford on floats is the unit that we need for the Northern run. Therefore, I would be inclined to back his judgment and to get a set of floats for one of the Ford planes, provided this can be done for a reasonable figure. Harris says that they want $18,000, plus $2,000, for supplying these floats. When I asked him why [fol. 4978] they wanted such a ridiculous sum, he said that that was the way the airplane manufacturers were and that they were extortionate in their charges whenever they got an opportunity for being so. Is there not some way in which we could put all these manufacturers into active competition on purchases of this sort. Can we not get an outstanding designing engineering company, like Gibbs in steamers, to draw a design and specification for floats for a Ford, or can we not get the exact design and specification for the pontoons that are being used on Fords in Canada or wherever they are being used successfully and cannot we pass those designs and specifications out for active competitive bidding. It cannot cost $18,000, or half of that to build these pontoons today. This is a buyer's market. Let's get busy!

I feel there is for you in developing this field alone, quite apart from the matter of passengers, about as big an opportunity as we have in anything anywhere.

Very truly yours,

P.S. Yesterday in talking to the head of the West India Oil Co. he said that they had voluminous reports that they wanted to get to New York quickly but on which the airmail cost was too high and he was working on the idea of sending them by air express.

[fol. 4984]

W. R. GRACE AND COMPANY EXHIBIT 169

[Handwritten notation: Auth. 5 17 36 Answered 5 21 36]

W. R. GRACE & CO.
NEW YORK

No. 46
(D.S.E. Trip Series)

New York, May 11th, 1936.

Dear Mr. Aglehart:

PANAGRA TRAFFIC

The clerks in the Fifth Avenue office have been instructed in the selling of airway tickets and a memorandum of instructions is being prepared which can be supplied to other Grace offices. The combined air and steamer tours detailed in the folder gotten up for the benefit of Cook's are being pushed harder.

Photographic enlargements of Panagra planes in flight and scenes en route have been made for the Fifth Avenue office and after display there will be passed on to Cook's who have indicated a desire to use them.

We will arrange some publicity when the new Sikorsky is taken over, probably late this week. Harris is at Bridgeport today and we are arranging for suitable photographs

when the plane is delivered. Enlargements of these photographs will be displayed in the Fifth Avenue office.

I am trying to bring about some joint reference to Panagra connections in the Grace advertising but Mann has been so occupied with the strike that we have not had a chance to get down to details of this.

Roig wrote you last week about the status of the new schedules which is still undetermined.

Air Express—Traffic figures show that only a small part of the total air express handled by Panagra in 1955 originated in the United States, 11.5% the rest out of a total of 155,939 lbs. This can and must be built up. George Smith, formerly at the Canal Zone, who has recently completed a trip over the line in the interest of stimulating express traffic is due here on the "Export" May 19th. I will take [fol. 4985] advantage of what he has learned to perfect a plan for a more effective solicitation of air express traffic from here. Am personally contacting some of the big stores, jewelry houses, pharmaceutical companies and other manufacturers of high cost products who are logical patrons of air express. I think a personal visit by Smith will help when he gets here.

I will write you in greater detail as results develop.

Hoping you are keeping well and having a good trip, I am,

Faithfully yours,

R. H. PATCHIN

D. Stewart Iglehart Esq.
Lima, Peru.

Copy to Antofagasta.

ties; and, Thommen, who is a well trained businessman and one who, though limited in his scope at present, might conceivably spread his wings if he got an opportunity. I am not sure about this latter, however, as Europeans of his type are often definitely and permanently limited. I have no reason to believe that he is and I would like to give him a chance at handling a job like Shannon has in Santiago.

[fol. 4971]

EXCHANGE

This has been troubling Vidal and Harris. They have piled up 250,000 pesos in Chile and the answer to the question in your No 15 as to why the Transandine movement is falling off is that they can't take payment for passages freely in Chilean currency. This is a route where there is a movement of passengers back and forth and in which I think is similar in its character to the cabotaje movement, and I feel it is rather futile to try to build it up on the basis of gold passages except in the case of foreigners who are travelling through Chile on an international route.

When Harris put up this Chilean exchange problem to me I answered that as far as the Chilean movement is concerned he ought to put the business of that unit on a basis in which his currency disbursements would offset his currency income. I explained to him that at least in Chile it was not only illogical but entirely unjust and was furthermore unwise to pay his head men, not only in gold, but to actually give them the American dollars which they are bootlegging about the market contrary to the spirit of Chilean Government regulations and in a way that prejudices Americans in Chile and prejudices Panagra. At a time when there was a definite and more or less permanent relation between the monies of different countries it was quite excusable to pay a man in one country in the money of another, but this relationship has been entirely abandoned in practice;

[fol. 4972]

in fact to such an extent that no one knows today in Chile what a dollar is really worth. Furthermore, men who are getting dollars in Chile and who are spending pesos can live comfortably on 20% or 30% of their income. We have the position of a mechanic getting $250. which he bootlegs at 40, meaning that he gets 10,000 pesos a month

and a mechanic working alongside of him at the bench who, though a first class man, is amply paid at 1,000 pesos. I think we only have one such mechanic in Chile but even one creates a situation which is simply ridiculous and which if continued, would undermine seriously the morale of (Panagra's)
our own organization. Panagra are paying, I believe, $4,000 a month in gold salaries to nine men in Chile. The least that they could do would be to pay those men in currency at the legal rate of 16.50. This would be the just thing to do and would enable Panagra to take 60,000 pesos more currency in for Transandine passengers. Even Cosach which has been the most extravagant spender in Chile has recently adopted the plan of paying only a certain percentage of salaries in gold and are paying the remainder in currency at the official rate. [Before I arrived, Vidal had already put forward the suggestion of paying a third or a half of the gold salaries in Chile at the official rate, and, as he told me that Harris had refused to accept this idea, I had to handle the conversation carefully with Harris to avoid his thinking that Vidal had put me up to it.] I believe[,] however,[] that I was able to put the whole idea
(Harris)
forward in a new way to him and I believe that if he is
might
instructed to adopt a basis such as I have suggested, he will do it quite willingly. I would suggest taking this up with him if necessary by cable at once.

In this whole connection I want to make clear to you that [fol. 4973] there is quite a bit of feeling in Santiago and throughout Chile against large American interests who continue to compensate their men in Chile by paying them dollars. They are, on the one hand, spending money lavishly,
who are
and, on the other hand, they are the men making the market of the "Bolsa Negra" which has been one of the most powerful influences in debasing the Chilean peso. Anything which creates anti-American feeling today is a serious matter and I think not only should all American enterprises appreciate the prejudice that is coming to American concerns generally through the extravagant and

C
O
P
Y

La Panagra esta trabajando admirablemente bien. Es una organizacion admirable y sus hombres todos son unos ases muy competentes. Los viajes los esta efectuando Jardine Hawkins, quien vino acompañandolo volo Domingo y Lunes, regresando el Martes por tren a Arequipa. Es un sueño lo que esto sera. Estan haciendo hasta cinco viajes al dia con maquinaria del Cuzco a nuestro campo. Gente muy simpatica y muy correcta. Pensar que con mulos solo puede transportarse piezas de trescientas libras y que tardan hasta 30 dias! Estos transportan 1500 libras cinco veces al dia! Un viaje lo han hecho hasta en 21 minutos. Figurate que durante el vuelo cada 15 minutos se comunican con su estacion de Lima. Todo se hace con una precision matematica, no pierden ni un minuto. Llegan con la carga y tan pronto como quedan suspendida con la grua, inmediatamente parten. Yo creo que esto tendra una enorme trascendencia en el pais y resolvera muchos problemas. Ellos estan haciendo un record mundial. Ya que, si bien es cierto en Africa se ha trasportado maquinaria pesada en esta forma, eso ha sido a nivel del mar y aqui estamos a 9000 pies. Probablemente el dia 30 terminaran y seran trasladados a Lima.

[Vol. 4983]

W. R. GRACE AND COMPANY EXHIBIT 108

Letter No. 25
(Trip series)

Santiago, May 24, 1936

R. H. Patchin, Esquire,
New York.

Dear Patchin,

I have your letters Nos. 45 and 46.

PRESS INTERVIEW—CHILE

I am very much obliged to you for the suggestion of a Chilean interview. I am adding to it somewhat so as to touch upon one or two other points.

PANAGRA TRAFFIC

As I go along I get more and more enthusiastic about the prospects of building up traffic for Panagra and especially the possibilities of getting that and the steamer traffic solicitation and schedules combined and dovetailed in a way that will give a great push to Panagra movement and at the same time bring color and benefit to the Grace Line picture. I know how hard you will be working on this and I will be very interested in hearing continually from you as to the progress that is being made.

AIR EXPRESS

There is an almost unlimited field, I think, for developing this business for movement originating in the United States. The other day, I was in Guayaquil and was talking to Clark Stop, who is in charge of the Pennsylvania Power Plant and he happened to mention that he needed a small spring for one of his delicate instruments and that it was sent out by airmail and arrived so quickly and in splendid condition; and, he mentioned that this was a wonderful facility that was not generally appreciated or taken advantage of

[fol. 4986]

W. R. GRACE AND COMPANY EXHIBIT 110

Letter No. 50
(D.S.I.—Trip Series)

New York, May 14th, 1936.

D. S. Iglehart Esq.,
Santiago, Chile.

Dear Mr. Iglehart:—

AIR EXPRESS

Herewith copy of a letter sent, after consultation with Roig, to all Grace managers re the importance of building up air express traffic.

I find that Harris and Vidal are distinctly of the opinion that the Grace passenger solicitation on the Coast is consuming practically all of the time of the men assigned to it and that express is secondary.

I learn that the domestic lines are making a big drive this year to build up express revenue and some of them are even inclined to sacrifice passenger capacity for this purpose.

We are tabulating from Panair records (Panagra has none) the shippers and consignees of all express that moved during the last year to or from points on Panagra route and they will all be solicited actively.

However, in view of the fact that the outward express movement from the United States will always be larger and that commercial shipments are seldom routed by air express unless the consignee so directs, it seems very important that consignees on the West Coast be very actively worked on and by men of sufficient maturity and judgment to be persuasive.

The decline in Santiago Montevideo express revenue is said to be due largely to the reduction in the lobster traffic and if so, would pretty nearly account for the total reduction of the entire system but you will observe that every division of Panair showed a substantial increase.

[fol. 4987] I think it possible to get some air express from Europe via New York for points on the West Coast. Occasionally express shipments come from the West Coast for transshipment to Europe from here. In fact one shipper in Guayaquil has threatened suit because he claims to have been erroneously advised that an express shipment would connect with a certain steamer here.

I am giving attention to the possibility of routing express shipments to Cristobal by steamer, then by air, but have not gotten very far with it yet.

Sincerely yours,

Encl (2)

P.S. Since dictating the above I have read your No. 5 of April 28th to Roig and will endeavor to carry out all of the suggestions therein made. I have also noted your letter No. 12 to Roig.

[fol. 4988]

W. R. Grace and Company Exhibit 111

[Handwritten notation—Lima 6-3-36]

W. R. GRACE & CO.
NEW YORK

Letter No. 61
(D. S. I.—Trip Series)

New York, May 27th, 1936.

D. S. Iglehart Esq.
Lima, Peru.

Dear Mr. Iglehart:—

AIR EXPRESS

Daulton is quite thoroughly aboard on the idea of developing steamer-air express and is willing to undertake its solicitation on a comprehensive scale. He thinks we ought to work up joint steamer air express schedules and publish a tariff. This has the advantage of utilizing the regular solicitation connections of Grace Line such as freight forwarders, railroads and express companies.

Mr. George Smith, the Panagra man now working here on air express is fully aware of the possibilities of this steamer air tie-up but a little apprehensive of the possible attitude of Panair. However, Panair can have no sound reason for objecting to any traffic that a steamship company may originate and deliver to Panagra as an on-carrier. As a matter of fact such solicitation by Grace Line will probably produce traffic to be sent on to Central American and Colombian points by Panair, and in time they will probably recognize that it is a valuable connection for them as well as Panagra.

Daulton will put a first class young man on this job and I will continue to give it all possible attention.

The Sikorsky S-43 came to Newark yesterday and we all took a flight finding the ship handsome, comfortable and easily handled. The ventilating system was a little at fault but is now being corrected. The interior seems much roomier than the Douglas and I think the effect on travel should be very good indeed. We had photographs taken for publicity purposes. Two are enclosed.

Very truly yours,

/s/ R. H. Patchin

[fol. 4989]

W. R. Grace and Company Exhibit 112

= 345

LETTER NO. 34
(H.J.R. Panagra Series)

September 15, 1936

Andrew R. Shea, Esq.
Lima, Peru

Dear Shea:

We enclose a report from G. P. Smith to J. M. Van Law, dated September 3rd, relating to the development of air-express. This is handed to us by Panagra here in response to our inquiry as to the results of Mr. Smith's work since being transferred to Lima.

You will recall our letter #16 of May 14th, in which attention was called to the fact that airexpress traffic is declining and the need for solicitation by Grace as *Traffic Agents for Panagra*. At that time you advised us that steps were being taken to provide the direct solicitation which is necessary to produce results in this new field to which we attach great importance. The Pan American system as a whole has steadily increased express revenue, but on Panagra it seems to be standing still.

Mr. Smith's report gives the impression that little or nothing has been done until now. You will note that he stresses the necessity of close solicitation, advertising and specialized sales effort. His report is a rather extensive resume of the obvious steps necessary to develop this class of business, but what surprises us is the suggestion throughout that all of this is now to be undertaken for the first time. The report indicates Mr. Smith or that Panagra itself must undertake all of this plan, whereas, it has always seemed to us that Grace, as Traffic Agent for Panagra ought to be doing all of the obvious things and covering the ground thoroughly in order to increase express revenue for Panagra and also justify the Panagra payments for service. Please note this connection to Paragraph #4 on Page 4:

> "An attempt to make the agents take more interest in selling expres , possibly through commission payments or otherwise."

When Mr. Smith was here he dwelt on the fact that consignees on the Western Coast ought to be solicitated, but that some Grace Agents were not very keen about this because they received no commission on inbound business. I think he made this point more particularly about Buenaventura. Inasmuch as all Grace Houses are compensated for their services to Panagra, it seems pretty far fetched for anyone, no matter how far down the line, to be entertaining the idea that solicitation of consignees is gratuitous service.

Of course, it is not unusual for a new "broom" like Smith to get the idea that nothing has happened before

his advent, but it is hard for us to believe the situation is so barren of previous effort as this report implies. We suspect such is by no means the case. Even if the report errs in this respect, we do not deem it worth while to [fol. 4990] make any issue over it with Panagra. On the other hand it would be unfortunate all around if the Grace efforts in behalf of airexpress was so negative as to give any excuse for such a report. The Grace Organization is supposed to know more about traffic and have more ways of getting it on the West Coast than any Panagra man, but this ought not to be a matter of supposition, it ought to stand out as a fact so plain that nobody could write such a report.

Yours very truly,

AIRMAIL

ENC:

[fol. 4991]

W. R. Grace and Company Exhibit 113

Letter No. 7 = 46

New York, March 18, 1930

D. S. Iglehart, Esq.
Del Ray, Florida

Dear Mr. Iglehart:

AVIATION

I, of course, entirely agree with the last paragraph of your letter of March 13th that whatever we may ultimately decide, the best trading position is to not show any interest in selling and that is precisely the course we have been following. In fact this necessitated at least one rather sharp exchange some weeks ago as the only way of getting Trippe off the subject. The purpose of my No. 2, however, was to ventilate the idea among ourselves in case a favorable opportunity to bring the matter to a head with Trippe should present. As you are getting the private cables, you will have noticed cables exchanged with Valverde and

Garni on this subject. As matters stand I will, of course, continue to give no encouragement whatever to the idea of our selling out.

Meanwhile, I am pressing Trippe to get in writing his proposed modifications to our management program. After promising this for over a week he yesterday called up and wanted to go ahead without putting anything in writing which I objected to on the ground that it would simply lead to further misunderstanding. Of course, what he really has [fol. 4992] in mind is, having stalled on getting rid of MacGregor for two months after it was decided upon, he now wants to get rid of him and leave Pan American Grace without any organization and dump the whole thing into Pan American without any clear understanding of the basis. I do not feel that this suits us at all. In any case, however, there is no doubt that the matter will still be in a formative stage when you return and that it will not be necessary to take any final decision regarding the management plan until I have an opportunity to go over it all with you.

I have, of course, not seen the figures on which Trippe's profit is calculated. I take it for granted, however, that his profit is without figuring any interest on his capital but after his usual depreciation reserves which are liberal.

My trouble in this whole picture comes about not because I "find it difficult to deal with Trippe" personally. I have not dealt with the nitrate importers for some years without becoming absolutely callous so far as dealing with difficult personalities is concerned. What does trouble me, however, is the responsibility for a business where it is so well nigh impossible to come to definite understandings and to have these understandings carried out. In this particular business the responsibility is particularly heavy because of my constant fear of some accident on the line. That this fear is not without some foundation you may [fol. 4993] gather from the following:

1. Rihl, Vice-President of Pan American, who is just returning from South America has made some very unfavorable reports regarding our operations. He declined to fly on the line although he did cross the

Andes after insisting that the motors on the plane be changed. We may, of course, assume that his views are not entirely disinterested.

2. Mr. Love, President of United Aircraft, while in Peru recently chartered one of our planes for a flight. He found the plane in what he, at any rate, considered such an unsatisfactory condition that he declined to fly in it and has made some rather uncomplimentary statements since his return to New York.

3. The condition of our Loening as evidenced by report enclosed herewith seems to me to indicate that maintenance is not what it should be. We are shipping this plane back to the United States for a complete overhaul. The plane was grounded by the Canal authorities making it impossible to fly it without this overhaul and there are no available facilities at the Canal for this work.

4. The enclosed report on recent relicensing of one of our Fairchilds in Chile gives me much concern. This plane was shipped to Chile about a year ago, was in warehouse there until July 1st last and had flown only about 250 hours at the time of this inspection.

5. The enclosed cross correspondence between Harris and Rihl, particularly the second paragraph on page two of Harris' letter does not appeal to me. Incidentally, we have cabled Harris with regard to this paragraph as per copy enclosed.

As a matter of information, you may be interested to know that we have finally, after a good deal of investigation, purchased a Curtiss Kingbird for service over the Andes. This is a two motor plane which upon test attained [fol. 4994] a ceiling of 25,525 feet. With extra motor and spares the cost comes to about $30,000. Harris and our own people in Chile felt strongly that the Ford with a maximum ceiling of 20,000 feet was not satisfactory for this service and it is in any event a pretty expensive ship to run with-

out passenger revenue. The Kingbird should not only serve the immediate purpose in the Andes but, being a land motor ship, would be available for international passenger business in Chile at any time. We considered very carefully a Lockheed for the Andes which had an original cost of about $7,000 less and some other advantages but these we decided were outweighed by the fact that it was a single motor plane, lands at a very high speed and is so designed that repairs are costly. Perhaps the controlling factor against it was the fact that underwriters would not insure it in this run except at a very excessive premium and it was not even certain that we would get insurance on that basis.

Very truly yours,

[fol. 4995]

W. R. Grace and Company, Exhibit 114

= 555

No. 70
(A46 Trip Series)

(Letterhead of W. R. Grace & Co., New York)

On Board M. S. "Santa Clara",
March 15, 1934.

[Handwritten notation: 3-19-34]
Harold J. Roig, Esq.,
NEW YORK.

Dear Roig:

PANAGRA

With the change in schedule, together with the Chilean cabotaje and the Peruvian airport question, Panagra really have more problems than I imagined.

I have maintained as much of a contact with MacGregor and Harris as I could in what they of necessity must consider an unofficial capacity, and in general found MacGregor quite receptive to anything I said. I am convinced now that something has to be done and done very promptly with

prospects of earning small commissions for your office on steamer passages, etc.

I do not doubt you will appreciate Mr. Garni's recommendations and be guided by them.

Yours very truly,

(Signed) J. E. ZALLES

[fol. 5004]

W. R. GRACE AND COMPANY EXHIBIT 116

No. 10392

Airmail 11/4
Due 11 -

November 4th, 1933.

Mr. F. J. Harper,
Grace & Co. C. A.,
Cali, Colombia.

Dear Harper:

PANAGRA AGENCY COMPENSATION.

For your private information I attach copy of letter 462 to Mr. Valverde and letter 10629 to Mr. Redshaw, written by Mr. Garni. Please give definite instructions to Cormarco in the sense indicated by Mr. Garni and impress upon them the necessity of giving Panagra first class service and following strictly the recommendations made by Mr. Garni in the attached correspondence.

Yours very truly,

(Signed) J. E. ZALLES

[fol. 5005]

W. R. Grace & Co. Exhibit 117

La Paz, December 4th, 1900

J. E. Zalles Esq.
New York.

Dear Mr. Zalles:

PANAGRA

With reference to my letter No. 1881 of September 17th, I regret very much that up to the present I have not yet received a reply on this subject, namely the agency commission for the Arica Agencies Co.

The Arica Agencies Company have already spent more than Sch 5,000.— in favour of the Panagra, which sum they expected to cover with the agency commission which would be asigned them by the Panagra. In this account we have not included the salary of the employee who is spending most of his time in the reception and dispatch of the ships.

However, in spite of repeated complaints we have not even received a reply from the Panagra on this subject.

I consider it very unfair on behalf of the Panagra to leave this matter in abevance for such a long time. We have had a lot of extra work in acting as agents for the Panagra and for which the Arica Agencies Company has not received the slightest remuneration up to the present. If we are to continue this service without remuneration in the general interest of the firm, I expect that at least the Panagra will reimburse our actual expenses.

I should like to have this matter settled by the end of the year in order not to delay the closing of the annual balance of the Arica Agencies Company, and I would thank you if you would kindly take this matter up again to deal with the Panagra, asking them for a final decision after the

and daylight was only just beginning to break through the dark when we took off.

According to Holguin, somebody seems to have spent about a million sucres in preparing the Guayaquil airport. Just how they spent this sum I do not know, as outside of what looks almost like a shack, in which I presume they store gasoline, etc., there is nothing except a piece of land I surmise, however, that the bulk of whatever money has been spent went towards draining the land, for as you know, all those sections are practically swamps and I imagine that it would be extremely difficult to locate any land anywhere near Guayaquil other than swamps at least it appears so when you fly over that section.

If, as is probable, we will make the new schedule alright on land and take off from land, I see no solution other than an arrangement with the Government under which we can use the above referred to airport. I understand there is [illegible] 4920 a suitable runway now of only 1,000 meters at least. Holguin gave me these figures, and it is my impression that additional money will have to be spent to make that ground suitable for an airport.

I have, of course, not had very much time to go into details but my offhand impression is that we ought to find out how much is to be spent to make the airport entirely suitable for our purpose and then approach the Ecuadorian Government, perhaps on the basis of our finishing the airport, and then deducting the corresponding advance from the rental we would have to pay and which would have to be at relatively small sum, perhaps something like 500 to 1,000 sucres per month.

I appreciate that the foregoing information adds nothing to what you already know. Somebody will have to go into this whole situation specifically and thoroughly before anyone can formulate a definite opinion as to what has to be done and how the matter should be approached. Any negotiations of this character with any [illegible]

Buenaventura, we had to drop down at La Perla, one of [fol. 5001] the first islands south of Panama, to take on a supply.

The more I think of this northern division, the more I become convinced that while we develop whatever our new and fast seaplane will be, we should immediately order at least one set of floats to let Harris try Fords on ~~the~~ *floats* ~~Lima~~. The Fords are such comfortable planes and so extremely steady that I just cannot get it through my head why we should not use at least as a temporary measure, the Fords which will be available when the Douglas planes come out. In this connection you will recall that Harris is very definite that Fords on floats will from a technical standpoint be a practical solution. Without any reference to our conversations with Harris on this subject, I asked Kirkland in an offhand way what he thought about Fords on floats for the Northern run, and he stated in a most unequivocal manner that in his opinion they would be entirely safe in the kind of water we have to land in.

Personnel: The more I see of Panagra's personnel up and down the Coast, the more I am impressed. Every one of your pilots, without exception, seems extremely capable and practically all of them have a very pleasing personality. The pilot who brought us up from Talara (unfortunately I have forgotten his name) is an extremely nice fellow, who not only seemed to handle his plane quite ably but went out of his way to please the passengers. Even at Guayaquil he looked after all details and posted the inexperienced travellers as to conditions in Guayaquil. I think such a condition stands greatly to the credit of those who select the personnel.

[fol. 5002] *Weather*: From Lima to Panama we encountered all kinds of weather. Heavy fogs at Paramonga, where Pilot Moore made a most beautiful landing; we encountered heavy rains and again heavy fogs from Guayaquil north, and it is really admirable how the pilots handle their equipment. All in all we had a very nice trip but the Sikorsky trip practically ruined my limbs. I had such pains in my side this morning that if I had not had my appendix

out recently I would have sworn that I
of appendicitis. However, after a few
few hours the pains disappeared and
on being cramped in that Sikorsky toy

General: As far as I can see, you
out for several weeks to come, as the
portant problems such as the Lanca
the Chilean cabotaje rights, you have
and Guayaquil airport problems, both
solved too in the near future. Then
the question of deciding about the Fok
think you should not only approve but
the idea of making at least a trial.

Very truly yours,

[Fol. 5003]

W. R. GRACE AND COMPANY

No. 10380

Mr. Manuel Holguin,
Guayaquil Agencies Co.,
Guayaquil, Ecuador.

Dear Holguin:

PANAGRA AGENCY COMPA

For your private information I attach
to Mr. Valverde and letter #10629 to
written by Mr. Garni and I am sure
phasize to you that it is in the inte
Organization to give first class servic
demonstrate to them that the Guaya

MICRO CARD
TRADE MARK ®

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MATTHEW BENDER & COMPANY MB -63

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I should recommend you to tell your man in Arica not to let up in any way on the efficiency of the service as if he does both he and you will get into serious trouble. The service, by the way, has not proved quite perfect recently as in one case Arica forgot to tell the plane that they should stop at Cañete to pick up a passenger, and this week we have had to inquire about a mail bag for Buenos Aires which failed to go through and was eventually found in Arica. It is a very serious thing for foreign mail not to go right through and Mr. Harris is awaiting for an explanation from Arica to send up to New York.

I know you will take the advice given in this letter in the spirit that it is meant. I do not want to butt in on your affairs but I really do think you should not let your Arica people do anything but give 100% efficient service to Panagra, for Arica is a very important link and I have not a doubt good service rendered will be taken into account.

Yours truly,

(Initials Illegible)

[fol. 3669]

W. R. Grace and Company Exhibit 126

Handwritten notation Mr. H[illegible] Mr. [illegible]
Mr. Campbell, Mr. [illegible]

[illegible] & Co. (Grace) S.A.
Santiago

Letter No. 26
CHR/ltp-original

ORIGINAL AIR MAIL LETTER

[illegible] Santiago, April 9, 1965

[illegible] Grace Building

A. Gattis, Esquire,
New York.

Dear Gattis,

RELATIVE SERVICES RENDERED BY GRACE AND PANAM

In view of Trippe's conversation about arbitration [illegible] I have had another talk with MacGregor about the relative services rendered by the two companies. He assures me most emphatically that in the event of arbitration he would have no alternative but to state the truth as he sees it and that this would be that views rendered by the Grace organization were [illegible] in excess of those rendered by Pan American. He [illegible] that Grace have carried out work [illegible] and [illegible] cooperation of their whole organization [illegible] to the Line which were contemplated in the original

[fol. 50006]

W. R. GRACE AND COMPANY EXHIBIT 118

=64=

COPY

No. 14

La Paz, December 5th, 1930.

W. R. Grace & Co.
La Paz.

P. L. Thommen Esq.,
C/o Pan American Grace Airways Inc.,
LIMA.

Dear Thommen,

PANAGRA AGENCY COMMISSION FOR ARICA

Attached please find copy of my airmail letter No. 15020 to Mr. Zalles treating on the agency commission for the Arica Agencies Company for work rendered in connection with the Panagra. The contents of this letter are self-explanatory.

It is really too unfair that this matter has been pending so long and that the Panagra do not take the slightest notice of my repeated letters to New York.

I would ask you to take this matter up with Mr. Harris and explain to him the expenses the Arica Agencies Co. have had for account of the Panagra, hoping to cover this sum by the corresponding agency commission. Most of the money was disbursed during your time in Arica and I therefore ask you to explain the position to Mr. Harris. Should the Panagra consider the work the Arica Agencies do for them at Arica simply as an honour then I am afraid that my opinion differs from theirs. I am giving Arica instructions not to spend any more a single cent in the future on the Panagra until this matter has been favourably settled.

Awaiting your news, I remain,

Very truly yours,

GS OB
Encl.

G. Stimmann

[fol. 5007]

W. R. GRACE AND COMPANY EXHIBIT 119

=69

LIMA, Dec. 27th, 1930.

G. Stimmann, Esq.,
LA PAZ.

Dear Stimmann:

PANAGRA AGENCY AT ARICA

I have seen your letter No. 14 to Thommen together with copy of your No. 15020 to Mr. Zalles. I quite understand that you are greatly upset at not having any agency commission to cover your out of pocket expenses and also services given to handle the Panagra business, but the fault is not with Mr. Harris who is very desirous of getting the commission question fixed up for all offices. It is not a question of Panagra's considering the work done at Arica as simply an honor, but that the controllers of the business, who are, of course, our people in New York and the Panair people, have for some reason or other not yet taken a definite decision. I spoke about this to Mr. Roig as he went through the other day and I think that you will very soon receive news from Mr. Zalles that an arrangement has been made. Meanwhile as regards remuneration I suppose you are leaving the out-of-pocket expenses in your "cetas, por liquidar", and you need not doubt that later on this will be paid to you plus something for employee's salary, services, etc.

I see that you have told Arica not to spend a single cent in the future until the matter has been favorably settled, and I think that you must be looking for trouble as W. R. Grace & Co. has a lot of money in the Panagra and it must be considered a part of your job to do all we can to keep up a good Panagra service even if at the moment it does [fol. 5008] not look as if we were getting much out of it.

It seems to me that Trippe's talk of arbitration is pretty much sheer bluff.

Very truly yours,

(Sgd.) HAROLD J. ROG

[fol. 5610]

W. R. GRACE AND COMPANY EXHIBIT 121

[Handwritten notation — Mr. Holloway \ Mr. Cogswell \ Mr. Mann \ Mr. Patchin \]

[Stamp — Rec'd JUN 5]

Letter No 96
(Trip series)

Airmail 6.1.35
NY 6.5.35

W. R. GRACE & Co.
LIMA-PERU

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

Lima, May 31, 1935.

A. Garni, Esquire,
New York.

Dear Garni,

GRACE LINE AGENTS OF PANAGRA & PANAIR

Mr. Chenea has expressed himself on a number of occasions as very much impressed by the effectiveness of the agency service on the West Coast. He has on a number of occasions asked why the Grace Line in New York could not sell Panair and Panagra tickets and I have told him that I would look into this matter on my return.

It occurs to me that this suggestion might afford a very convenient way for developing some independent Panagra traffic effort in New York which I feel to be definitely desirable. Specifically, it would fit in with Mr. Ickehart's suggestion discussed in my letter No 7 as the man who is

doing this work might well fill in the rest of his time as the Panagra representative in the Grace Line office and in soliciting business from New York. I am not sure how the idea would appeal to Daulton but I do not see that it would be doing anything different in New York than we are in effect doing all along the Coast. Incidentally there expressed strong belief in the theory of having people in the steamship business also handling air traffic as he feels that the two work together very well and that the air business does not suffer from this association in any way. Daulton may, of course, feel that the same is not true of the association as far as the steamship business is concerned.

PANAIR OFFICE, CRISTOBAL.

Mr. Chotea has also expressed a strong desire that Panair have their office in our building at Cristobal. There are [fol. 5011] of course, a good many advantages in this from our standpoint but there are also some important disadvantages. I would not be in favor of a joint office here such as in Buenos Aires because it would only be fair that such an office should be under our direction and I am not sure that it would suit us to be in the position of having to begin backwards in such a joint representation. If it were a case of Panair simply having a separate office in our building I don't quite see how we could find room for them. In any case I doubt if Trippe would approve of this idea.

Very truly yours,

S. Hixson J. Rose

4936

1fol. 5018.

W. R. Grace and Company Exhibit 126

W. R. GRACE & CO.
NEW YORK

Delray, March 2, 1938

Dear Roig,

I have been corresponding with Patchin about his work, and attach hereto a letter I have written to him today making a suggestion which I think has merit.

As I wrote to you the other day, the success of Panagra depends not only on cutting down expenses, but on continually increasing revenue. I feel that when we inaugurate the direct Douglas service from Cristobal to Buenos Aires by the two routes, both of which go into the centre of Colombia and touch all the important points of Peru and Ecuador, one of which touches all the important points of Bolivia and most of those of the Argentine, and the other the points of Chile and most of the other important points of the Argentine, we have something to sell to the public which is exceptional. Furthermore, with the entry into Colombia and Ecuador, and the protecting of the diagonal service, we have much more to sell than we have had in the past.

I want to avoid doing anything that would relieve Chenea of the interest that he has in building up business. On the other hand, I don't think that his effort is bearing great results, and I feel that if we are going to fill our planes we will have to supplement his effort with a campaign of our own.

Patchin has all the knowledge and qualifications for beginning quietly to undertake this, and I would be inclined to authorize his taking on a young man to undertake it. The investment in French has been a profitable one.

fol. 3015

W. R. Grace and Company Exhi

Delray,
January

Dear Roig,

PANAGRA

I think I mentioned to you the idea tha
Russell Grace had called attention to
Cargill turning his mind to the expensi
so vitally important that we should bring
all along the line, and it is also so impo
should be done with a benefit and not a pr
agra service, that if you can spare Dougla
good thing for him to cut out everything e
trate on this particular problem with th
could gradually work out a program which
into force.

If you are successful in working out, thro
assistance, some plan for improved manage
rather important for you to take anoth
on the ground,
promptly to work out a definite plan of a
efforts along the lines I have indicated wou
way for your action.

Yours sincerely,

(Sgd) P. S

Harold J. Roig, Esq.,
New York, N.Y.

...mmar 124

...y, Florida
...ary 11, 1968

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...s reduction. It is
...ng down expenses
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...hrough Whitney's
...gement. I think it
...other trip fairly

... action. Douglas'
...ould prepare the

S. Lenhart

fol. 5016

W. R. G

Dear Roy:

I have your lett

The memorandu
ported to me yes
Branch and Lano
that they were alle

I feel that the
trip for Panagra
creased income w
I rather feel that
creased, although
We are not anxious
ing the third trip.

The other emplo
Gregor and get a
analysis of expens
ing operations, c
every minute neces

Garnt obviously
agree to a solutio
be practical to ad
the other hand, he
can undertake. M
you is to get out o
and get expenses
with you, it seem
thority to do about

fol. 5017 The

GRACE AND COMPANY EXHIBIT 122

No. 93

NEW YORK, March , 1928.

Esq.
AY, Florida

r's:

EASTERN AIRWAYS

ed yours of the 4th instant. Joe Ighehart
elling me confidentially that some time be
and 20th April the share issue of the new
s will be offered, and that if we wanted to
probably be arranged.

e total issue will be 100,000 shares at $10
company's earnings for 1927 were sup
neighborhood of $350,000.

matter to Mr. Grace, who was at first
ed to make an investment of this char
, however, that over a period of years
r operate a service right up to Miami
up with Eastern Airways or else change
e long run it will probably be considered
save that enterprise in its present posi

ring the next few years the number of
plean will probably be increased from
ntially to six trips

Scadta is now 31% but that we were not quite sure as to the exact form in which the 50 odd percent which Panair previously held in addition to the 31% had been actually [fol. 5020] disposed of. In other words, he understood quite clearly from this that Panagra's line is seriously menaced by the Lufthansa people, who may or may not be aided by Scadta, who in turn may or may not be American-controlled.

Coming back to the beginning of my conversation, I stressed the importance of losing no time to work out some sort of a traffic pool agreement with Lufthansa and Air-france but that before taking any commitment we felt it our duty to advise the Post Office Department of these developments. Mr. Branch said that while we were not obligated to do this legally, he was naturally interested in developments of this character and went on to suggest that we discuss this fully with some member of the Inter-departmental Committee on Aviation. This latter step has already been taken this morning by Patchin, who discussed it fully with Judge Moore, who expressed himself about in the same way as did Mr. Branch.

In other words, we are entirely clear on this score and free to go ahead with the negotiation with Lufthansa.

After disposing of this question, Patchin and I discussed the unsatisfactory Miami Panama service at some length and I finally summarized the situation by telling Mr. Branch that there are three reasons why we can no longer defer our request that both trips on this route should be direct trips, i.e., Miami Kingston Panama should be made ~~on~~ in one day. ~~the same day.~~

The first reason I gave him was the imminent Lufthansa expansion up the West Coast to Barranquilla, which, when it materializes, would, with a tie-up by Panair from Bar- [fol. 5021] ranquilla to the U. S. A., virtually enable them to give a faster service between this country and the West Coast of South America, or vice versa.

Mr. Branch seemed to appreciate this fact fully and was, I think, quite impressed.

As a second reason, I outlined to him the facts given us by you in your letter No. 2, which shows conclusively that whereas on the direct trips there are very few delays at the Isthmus, about 75% of the indirect trips are subject to delays of one nature or another. I stressed in some detail the great expense resulting from an unbalanced service, even if the respective arrivals were on time, and the still greater expense to the firm and the inconvenience passengers are put to on the delayed indirect trips.

As a third reason, I stated that we have for many months been actively working on the question of running our entire route from Panama to Buenos Aires over the land route and using uniform equipment up and down the line. In this connection I did not think it necessary to differentiate between DC2s and DC3s. I went on to say that as long as the northern situation, i.e., between Miami and Panama, is not solved by having all of our subsidized trips - at present two per week - run on an even schedule and in one day, it is futile for us to attempt to improve the service south of Panama, not omitting to mention that in order to balance the service south of Panama we now have to run the direct trip late out of Panama on what might be termed a slow schedule as it is not advisable to go beyond Guayaquil, [fol. 5022] whereas the indirect trips, particularly when they are delayed for reasons indicated in your letter, has to be speeded up; also that on occasion we even have to overnight in Buenaventura, which is altogether unsatisfactory.

I do not think I added anything that cannot be substantiated, nor did I leave out any points of importance as discussed between us in cables and correspondence. The upshot of this conference was that Mr. Braniff fully appreciated the situation we are in and he was very frank in saying that our suggestion should be supported if we can get Trippe to agree to it. He went further than this and said that there is so much talk in Washington nowadays about Panair's monopolizing all off-shore aviation, that from the standpoint of Panair, the Post Office Department and Panagra, it would really be better to separate the two enterprises entirely and have Panagra extend its services to the U. S. A., i.e., Miami.

I told him that this has been our idea for some time; that we were ready to put up the necessary capital; and he promptly proceeded to ask what rate we would give him on such a Caribbean service. I told him that this is a matter that would have to be studied, and in reply to his question as to whether we had any experience in operating overwater, I referred him to our water route from Panama to Guayaquil, which we have operated successfully for ten years with sea equipment.

commercially

He also asked whether we could operate a line from Miami to Panama without going to Kingston, and I told [fol. 5023] him that we believe a sufficient amount of international traffic could be developed to make a direct route from Miami, via Havana, Providence Island, etc., pay.

The final net result was that Branch suggested that with reference to the additional direct trip to Panama, we should make our presentation, giving our reasons as outlined in the conversation, and regarding the question of extending Panagra's operation to the U. S. A., we should study this matter in an effort to find a solution.

These are about the high spots of our conference and I may write you a little more in detail by next week's air mail.

Very truly yours,

[fol. 5024]

W. R. Grace and Company Exhibit 128

COPY OF HANDWRITTEN LETTER

PERSONAL.

[Handwritten notation—Plan to meet the German drive.]

Hotel Statler, Cleveland,
September 5, 1938

Dear Harold,

All the members of the C.A.A. are here. Also the Administrator, The Secretary, General Counsel (your old

sents for us—Panair and Panagra—to lay out a new campaign. I felt the same way. Of course there is the question will the U.S. come across. I think, yes.

As to B's strong feeling the W.C. route U.S. to B.A. should be separate, I fear he may be getting too far out in front at this stage. There is a strong White House influence always *potential* in these matters and if the word should be passed from above that it is best that the Government back *one company* or one system in L.A. B's ideas would encounter formidable resistance and how long he would persist in such a situation is problematical.

Later—When I saw him again this A.M. he remarked that what he said to us he had said long ago to J.T. He added that even out here aviation people were constantly taking him aside and asking why Panair should have so much of a monopoly in the foreign field. Why couldn't the North Atlantic be opened up to more competition, etc., etc.

There is, he says, no particular person that he knows of fomenting the agitation in New Orleans but the N.O. Association of Commerce long ago pled with the P.O. Dept. for service to Yucatan.

I go to Chicago tonight and probably sit in at the Conference the C.A.A. is to have with representatives of the [fol. 5026] industry which is to be just a sort of a get acquainted meeting I believe. I'll leave Chicago at 1 p.m. for New Orleans by train. The C.A.A. goes back to Washington Tuesday p.m. or Wednesday a.m.

Sincerely yrs.

RHP

[fol. 5027]

W. R. GRACE AND COMPANY EXHIBIT 129

No. 10
(HJR Trip Series)

ATLANTA, Ga., October 18, 1938.

D. S. Iglehart, Esq.,
NEW YORK.

Dear Mr. Iglehart:

ATLANTA CRISTOBAL MAIL SERVICE

Referring to our several telephone conversations, our further comments on the plan suggested in your letter No. 1 are as herein.

Route:

The route in a general way appears preferable to the New Orleans route. For the entire distance to Havana it is at no time more than 120 miles off shore and over this entire sector is at all times within relatively easy distance of existing airports in Georgia, Alabama, Florida and Cuba. The 950-mile sector between Cuba and Cristobal is over open water, there being so far as we know no airport for land planes in Jamaica.

The following comparative route mileages are of interest and would appear to indicate that, granted equipment of equal speed and same departure from New York, the Atlanta route offers a considerable advantage over New Orleans, but not over Miami. From Chicago, however, the Atlanta route offers an advantage over Miami. The Atlanta route as a mail line only seems also more practical than a passenger route from Miami on the same schedule because such a schedule would hardly be practical for passengers on account of the middle-of-the-night arrivals at way stations.

ably encounter resistance from the Post Office, whose disposition would probably be rather to move the present 6 o'clock departure to 8 or 9 o'clock in order to get the full mail movement on the day of departure. The present N. Y. P. O. closing time for the 9 o'clock mail from Newark is, I think, 6 PM, and assuming the same three hours between closing and departure time on the new service, would mean that a 5:20 o'clock departure would require a 2:20 N. Y. P. O. closing. This would probably not be attractive to the Post Office, especially in connection with a purely mail service. On the other hand, it would seem that the three hours' time might be improved, and, in any case, with departures only two or three times per week the mail of the full day of departure is not after all the principal part of the mail and should not be given the same significance as it might be entitled to in the case of a daily service. Most letters even on the day of departure could be mailed by noon.

On the basis of the above assumptions the southbound [fol. 5031] schedule could be worked out as below. For purpose of ready comparison we have set it up in parallel with existing schedules.

SOUTHBOUND

Present Schedules			*New Route Schedule*	
Fri.	9:00 PM	Lv. Newark	5:20 PM.	Fri.
		Ar. Atlanta	10:20 PM	"
		Lv. Atlanta	10:50 PM	"
Sat.	5:30 AM	Ar. Miami		
"	7:30 AM	Lv. Miami		
"	5:05 PM	Ar. Cristobal	8:15 AM	Sat.
	(Panagra)			
Sun.	6:30 AM	Lv. Cristobal	8:45 AM	"
	(UMCA)			
"	7:35 AM	Lv. Cristobal		
	(UMCA)			
"	11:10 AM	Ar. Medellin		

Present Schedules			*New Route Schedule*	
	(Panagra)			
"	No stop	Ar. Medellin	11:45 AM	"
		Lv. Medellin	12:00 M	"
"	1:45 PM	Ar. Cali	1:45 PM	"
		Lv. Cali	2:05 PM	"
"	5:15 PM	Ar. Guayaquil	5:15 PM	"
Mon.	6:00 AM	Lv. Guayaquil	6:00 AM	Sun.
"	12:10 PM	Ar. Lima	12:10 PM	"
"	12:44 PM	Lv. Lima	12:45 PM	"
Tues.	1:50 PM	Ar. Santiago	1:50 PM	Mon.
Wed.	7:15 AM	Lv. Santiago	7:15 AM	Tues.
"	2:45 PM	Ar. B. Aires	2:45 PM	"

[fol. 5032] Elapsed time on this proposed new route schedule between Newark and Cristobal is 14 hours and 55 minutes against 20 hours and 5 minutes elapsed time between the same points via Pan American's present direct trip, a saving of 5 hours and 50 minutes. Additionally the earlier departure from New York makes possible a connection at Cristobal which puts the mail at destination from there on 24 hours ahead of present schedule.

Northbound our present schedule arrives in Cristobal at 3:40 PM. On the basis of the same assumptions as above and the inauguration of a connecting Eastern Air Line service between Atlanta and New York and assuming in this case that the Post Office, as would be necessary to avoid delay at Crisfobal, would work the mail on the plane between say Cali and Cristobal, we could offer the following northbound schedule:

Tues.	3:40 PM	Ar. Cristobal (present schedule)
"	4:16 PM	Lv. Cristobal
Wed.	1:35 AM	Ar. Atlanta
"	2:05 AM	Lv. Atlanta
"	7:05 AM	Ar. Newark

This would give a day's advantage over the present Cristobal/Miami/New York schedule under which mail arriving via Panagra on Tuesday night does not leave Cristobal

until Wednesday morning and gets to New York Thursday morning.

Atlanta Airport and Facilities: Exhibit 1, attached, gives description of these. As the fields regularly used by DC-3's there would presumably be no difficulty with Lockheed 14's. Eastern Air Lines' main shops are in Miami and apparently such work as they have done in Atlanta is done by the [fol. 5033] Delta Air Line shops. These would probably not be adequate for complete maintenance of our Lockheeds but presumably we could arrange with Delta to provide some additional machinery and have them attend to major maintenance of the Lockheeds on a basis.

Capital Investment: We estimate this as below on the following assumptions: Use of existing airports at Atlanta and Cristobal, use of existing fields as emergency fields en route, use in part of existing radio ground facilities at terminals and en route, major overhaul by existing shops (with some additions) at Atlanta and minor repairs by Pan American Airways at Cristobal. Atlanta shop and radio facilities will have to be looked into more fully when the plan has reached a point making it practicable to arrange with Delta to go into the matter in detail.

Flying Equipment:	
2 Lockheed 14's at $85,000. each for planes plus $5,000. each for flotation equipment	$180,000.
2 spare engines	18,000.
2 spare propellers	4,000.
Plane and engine spares	27,000.
Radio:	
D. F.'s in planes and 1 spare	1,500.
Radio in planes and 1 spare	6,000.
Radio spares	4,000.
Radio maintenance equipment	2,000.
Additional ground radio facilities	15,000.
Additions to Delta shop facilities at Atlanta	25,000.
Automobiles	
2 station wagons, one at each terminal	2,000.
Forward	$284,500.

[fol. 5034] Forward	$284,500.
Surveys and Familiarization Flights	20,000.
Furniture & Fixtures, Stationery, Supplies, etc.	2,500.
Cash:	
Guarantee deposits	25,000.
Self-insurance fund, if carried	90,000.
Working capital, 2 months' expenses	60,000.
Total	$482,000.

Expenses: We estimate these roughly, based on route mileage of 1,725 miles, 2 round trips per week, making 358,800 productive flying miles per year, as follows:

General Salaries	
Manager, Engineer, Bookkeeper and Stenographers	$ 15,000.
Operations	
Salaries and wages	39,840.
Fuel	36,732.
Sundries (including joint facilities)	28,896.
Maintenance	
Joint facilities	50,000.
Materials	27,360.
Sundries	25,596.
Radio	
Salaries and wages	15,000.
Sundries (including joint facilities)	23,400.
Forward	$261,824.

[fol. 5028]

	To Cristobal via			
	Atlanta	N. O.	Miami-Present Route	Miami-Direct Route
Newark to Atlanta (EAL)	802			
Chicago to Atlanta (EAL)	648			
Newark to New Orleans (EAL)		1,231		
Chicago to New Orleans (C&S)		909		
Newark to Miami (EAL)			1,196	1,196
Chicago to Miami (EAL)				1,275
Atlanta to Cristobal	1,725			
New Orleans to Cristobal (via Merida)		1,650		
Miami to Cristobal			1,300	1,140
Total Newark to Cristobal	2,527	2,881	2,496	2,336
Total Chicago to Cristobal	2,373	2,559	2,575	2,415

Schedule:

Assuming operation with Lockheed 14's as suggested in Eddie Allen's memorandum of August 8, 1938, on the basis of the non-stop route and the operating figures given in that memorandum, the southbound schedule, based on existing Eastern Air Lines schedule and allowing one hour in Atlanta and two hours (the average time now used although schedule only allows one and a half hours) in Cristobal to work the mails, would be, in Eastern Standard Time, as follows:

6:00 PM	Leave Newark
12:55 AM	Arrive Atlanta
1:55 AM	Leave Atlanta
11:20 AM	Arrive Cristobal
1:20 PM	Leave Cristobal

In order for Panagra to reach Guayaquil by daylight and have its schedules meet satisfactorily weather conditions through Colombia we ought to leave Cristobal not later than our present scheduled departure hour on the Wednesday

trip connecting with the Barranquilla plane, say not later [fol.5029] than 9:30 AM. Even this does not allow time for a Quito stop. For the same reasons indicated above, our deadline for leaving Cali is 2:30 PM. To make a 9:30 departure from Cristobal we would have to find 5 hours 30 minutes improvement in the above schedule. To carry out the plan, we would also have to find an additional 45 minutes between Cristobal and Cali for the Medellin diversion and stop. This would mean advancing the Cristobal departure from 9:30 to 8:45, which could readily be done, and passengers from Miami make their connection, assuming Pan American connects from Miami in one day on both trips, or on the trip via Barranquilla, arrives at Cristobal at 8 AM in accordance with schedule. But this would not allow time for working of the mail from Barranquilla unless it were done on the planes between there and Cristobal. We assume, however, Pan American would, under this plan, run two direct one-day trips from Miami to Cristobal.

Eastern Air now take 6 hours 55 minutes to fly the 802 miles between New York and Atlanta on the night trip. It would seem that this might be reduced by at least one hour and fifty-five minutes to five hours. On their day schedule leaving Newark at 9 AM they take only five and a half hours for the run and this is an easy schedule which might well be cut by 30 minutes.

If the working of the mails, for which three hours is allowed in the above schedule, could be done on the planes, as you suggest, the time required for shifting the mail from Eastern Air Lines plane to the Lockheed at Atlanta might be cut down to 30 minutes, and from the Lockheed to Pan [fol. 5030] agra's plane at Cristobal to 30 minutes, a total of an hour, giving us a saving under this heading of 2 hours. This would make a total saving in the above schedule of 3 hours and 55 minutes, leaving 40 minutes of the additional 45 minutes for the Medellin call to be found by advancing the departure time from Newark to 5:20 PM. Any amount by which EAL's running time could not be cut down by the one hour and 55 minute estimate would have to be found by further advancing their departure time from Newark. Any advance of departure time from Newark would prob-

[fol. 5035] Forward	$261,824.
Depreciation	
Planes	29,000.
Engines	12,240.
Propellers	3,700.
Radio	7,100.
Shop Equipment	5,000.
Automobiles	1,000.
Furniture & Fixtures	800.
Self-insurance (8c per mile)	28,704.
Public (Mail Clerks) and Employees Liability	5,000.
Agency Fees (Panama Agencies Co.)	1,500.
Total	$355,868.

The total of these expenses, $355,868., on the basis of 358,800 productive flying miles, would be say $1.00 per productive mile, and that is the U. S. Mail subsidy we would need to break even.

Needless to say, the carrying out of this plan presupposes favorable solution of a number of assumptions on which it is based. Various questions of policy referred to in my No. 6 also seem to me to merit some little further consideration. Eddie Allen's figures should, I think, be checked with him further, especially the question of speed under actual operating conditions, prevailing winds, etc. Whether the Safety Board would approve the use of the Lockheed 14 for an exclusively mail service on this run, only they can say. Unless it were contemplated to run the line more or less indefinitely for mail only it ought perhaps also to be borne in mind that its expansion into a passenger service whenever that was undertaken would be confronted [fol. 5036] by the problem of a considerable capital expenditure and somewhat limited traffic possibilities due to the absence of stops between the terminals.

Granted favorable resolution of all the foregoing, the plan would certainly give a greatly improved mail service

with a minimum capital investment and at a minimum cost to the government.

Very truly yours,

(Sgd.) H. J. Ross

P. S. If we could only find some way to work it out through Panagra instead of as an independent Grace operation, a beautiful picture might be made operating the Atlanta route via the above schedule with Boeing 307 stock planes as we at one time discussed and continue them through to Guayaquil, their extra speed permitting inclusion of the Quito call. Campbell suggests we might even make an arrangement with EAL under which they would run the planes right into New York over their route, the Atlanta New York sector being to their account. On such a run, while there would be no way business between Atlanta and Cristobal, it is not impossible that the through Colombian business (Scadta could make a good connection with the above schedule from Bogota) passengers, mail and express (all fairly heavy) would more than compensate for the lack of way to way traffic north of Cristobal. This would enable a traveller from Colombia to have lunch in [fol. 5037] Bogota or Medellin and be in New York for breakfast the next morning. Or in reverse, to leave New York at the end of a business day and be in Medellin or Bogota in time for lunch the next day.

H. J. R.

[fol. 5038]

W. R. Grace and Company Exhibit 130

NEW ORLEANS ROUTE

Tuesday—April 29, 1941

Mr. Trippe telephoned regarding Government airport development and publicity with particular reference to my memorandum to Mr. Young dated April 3rd. After discussing these matters, I brought up the question of New Orleans and stated that Garni and I would like to

talk to him alone, or with Mr. Whitney, about this subject. He was entirely non-committal as to whether he would or would not talk about it but said he was leaving for Washington that day and would not be back until Friday morning. As the hearing was set to begin on Friday morning, this meant that the conversation would probably take place after the hearing was under way.

Wednesday—April 30, 1941

Garni and I went to the Washington office of Pan American Airways. We saw Mrs. Archibald and told her we were anxious to talk to Mr. Trippe. She said that he was out at the moment. We suggested that we would see him any time he came in, have lunch with him, or see him any time during the afternoon at his convenience. She said that he had an appointment for lunch and did not know what his afternoon appointments might be. I asked her to speak to Mr. Trippe when he came in and tell him we had called and were anxious to see him and would come over any time at his convenience.

Thursday—May 1, 1941

Between 4:30 and 5:00, at the Grace Line office in Washington, I spoke to Henry Friendly and asked him if it would be possible to postpone the New Orleans hearing which was coming on the next morning in order to give us an opportunity to discuss with Mr. Trippe the possibility of Panagra's filing an application. I told him of our effort to see Mr. Trippe on Wednesday as explained above, and that we had heard nothing from him or from Mrs. Archibald from that time to this which put us in a very embarrassing position with the hearing coming on the next morning. He said that while a short delay might not be prejudicial, he could not ask even for a short delay on behalf of Pan American and would be obliged to oppose any such request as he had been opposing applications for adjournment by Export and could not now be put in the position of asking

adjournments. I told him that this might, of course, require that W. R. Grace & Co intervene in the proceedings in some way or another to hold the line.

Friday—May 2nd

Having decided, in view of Mr. Trippe's failure to see us, and Friendly's inability to adjourn the hearing, that there was no course open but for W. R. Grace & Co to move to intervene and file separate application, I called up Mr. Whitney from Washington to advise him what we were doing. I was unable to get either Mr. Whitney or his secretary, Miss Burgess, learning later that Mr. Whitney was in the West. Mr. Giarni later tried to (Fol. 5033) get Mr. Whitney at the New York office and Mr. Trippe at the same place and in Washington for the same purpose, but without success. He was also unable to get Mr. Young who was away from the office ill but did get Mr. Ribl to whom he explained the situation. We filed intention to file application for the New Orleans route and informal application, serving the former on all U. S. air carriers as per list received from the C.A.B. Later on, Friendly asked Patchin for copies of the papers which were handed him. Friendly said at that time that he was not surprised in view of his conversation with me the other day, that we had taken the action we did.

Saturday—May 3rd

Filed this morning application to intervene and served copies on parties to the New Orleans proceeding.

[fol. 5040]

W. R. Grace and Company Exhibit 131

=758

copy

July 23, 1941.

Mr. H. Preston Morris, Secretary,
Pan American Airways Corporation,
135 East 42nd Street,
New York City, N. Y.

Dear Sir:

I have your letter of July 22, 1941, in which the suggestion is made that your company and W. R. Grace & Co. submit to arbitration the question of whether Pan American-Grace Airways, Inc. or W. R. Grace & Co. may, under the terms of the agreement of February 14, 1939, apply for a route from the Canal Zone to New Orleans.

The agreement of February 14, 1939, although an agreement between W. R. Grace & Co. and Pan American Airways Corporation, in no way was intended to limit the freedom of action of W. R. Grace & Co. Paragraph 4 of the agreement specifically provides that only "disputes * * * which cannot be settled by the Board of Panagra" shall be determined by arbitration. The question of whether W. R. Grace & Co., directly or through a wholly-owned subsidiary, may file an application with the Civil Aeronautics Board for a route is not a matter over which the Board of Panagra has any control or which can be settled by the Board of Panagra. Under these circumstances, I must respectfully reject your suggestion of arbitration in so far as W. R. Grace & Co. is concerned.

In so far as Pan American-Grace Airways, Inc. is concerned, however, I am glad to submit to arbitration under Paragraph 4 of the agreement of February 14, 1939, the question of whether Pan American-Grace Airways, Inc. may file an application in its own name for a route from the Canal Zone to New Orleans without violating any provision of that agreement. It has always been our position

that the most logical applicant for the proposed route is Pan American Grace Airways, Inc., and for the past several months we have endeavored repeatedly to persuade the Board of Directors of Panagra to this view. As you know, the Directors on the Board of Panagra representing your company have consistently refused to sanction any such action. I therefore, welcome any procedure which may make it possible for Panagra to file for the proposed route in its own name, and I shall be glad to discuss with Mr. Whitney (or any other person) the details of arbitrating this question.

It is recognized, however, that arbitration proceedings of the nature contemplated will consume a considerable time. The hearings in connection with the applications of Pan American Airways Company and American Export Airlines, Inc. have already been concluded and briefs filed with the Examiner, and these cases now stand submitted [fol. 5044] to the Examiner for his report. It is, therefore, urgent that some application be filed with the Civil Aeronautics Board by W. R. Grace & Co. or by one of its wholly-owned subsidiaries immediately in order to preserve our rights in the matter. Under these circumstances, it is our present intention to file an application with the Civil Aeronautics Board by Gulf & Caribbean Airways, Inc., a wholly owned subsidiary of W. R. Grace & Co., and to advise the Civil Aeronautics Board at that time that arbitration proceedings are presently pending between your company and this company as to whether Pan American-Grace Airways, Inc. should be permitted to file for the route, and that in the event it is determined that Pan American-Grace Airways, Inc. may file for the route, the application of Gulf & Caribbean Airways, Inc. will be withdrawn and substituted by the application of Pan American-Grace Airways, Inc.

As you know, this matter has been under discussion for many months without any conclusion having been reached. We do not feel that we can let this matter carry on this way any longer and, although willing to submit to arbitration in so far as Panagra is concerned, we are unwilling to

jeopardize our interests in this matter by withholding the filing of an application by Gulf & Caribbean Airways, Inc.

Very truly yours,

W. R. Grace & Co.

By .....
President

[fol. 5042]

UNITED STATES DISTRICT COURT

For the Southern District of New York

Civil Action No. 90-259

United States of America,

Plaintiff.

—against—

Pan American World Airways, Inc., W. R. Grace and Company and Pan American-Grace Airways, Inc.,

Defendants.

TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

DOCUMENTS

WRG 132 thru WRG 166

[fol. 5043]

W. R. Grace and Company Exhibit 132

[Handwritten notation—sent in this form]

June 20, 1941

C. V. Whitney, Esq.,
Pan American Airways Corporation,
Chrysler Building,
New York City

Dear Sonny,

I hope you will not consider me unduly insistent in asking that Pan American Airways Corporation reconsider its attitude in refusing to agree to Pan American-Grace Airways' applying for the extension of their service from Panama to an American port (New Orleans). Due to the situation in Washington, the matter has become very urgent and requires immediate attention.

I decided to write a letter to the Board of Directors of the latter company, copy of which I attach. I desired that you should see this letter before submitting it but I found that you were not available. I then asked Mr. Roig to see Mr. Morgan or Mr. Colt but they were both absent as is Mr. Trippe. I stated to you in our last meeting that I could not complacently permit that the interests of our jointly owned company should be sacrificed to a theory, the wisdom of which is being seriously put in question and which may have to be abandoned.

I particularly wanted, however, to speak to you before moving again in the matter as whatever I do must be entirely in harmony with our relationship. I have given very care-
[fol. 5044] ful thought and taken advice as to whether our action is at variance in word or spirit with our agreement. I am convinced that it is not.

I am available at any time and hope that you will call me as soon as you are ready to discuss the matter further. I feel that, in this just as in other difficulties in the past, we will find a solution.

I am, with kindest regards,

Sincerely yours,

(Dictated by)
D. S. IoLEHART

[fol. 5045]

W. R. GRACE AND COMPANY EXHIBIT 133

[Handwritten notation: Sent Mr. Whiteford, 11-12-41]

November 12, 1941

Pan American Airways Corporation,
15 Exchange Place,
Jersey City, New Jersey

Dear Sirs:

We refer to your letters of November 4th and July 22nd.

It seems hardly necessary to reply to yours of November 4th in detail. The facts speak for themselves. There was no "agreement under which Pan American Grace was organized" in conflict with the idea of their coming through to a terminal in the United States. There is nothing in the agreement of February 14, 1939 which prohibits the question being raised in the manner in which it has been. The meeting called for November 5, 1941 was in pursuance of that agreement and your refusal to permit your representatives on the Panagra Board to attend that meeting was in direct violation of its explicit terms.

As you will recall, immediately following our receipt of your letter of July 22nd, discussions were begun between Mr. Trippe and Mr. Roig looking to a settlement of our problems and reply to that letter was accordingly deferred pending the outcome of these discussions.

Both of your letters under reply suggest arbitration under the agreement of February 14, 1939. In our opinion the questions at issue do not come within the arbitration clause of that agreement at all except the question of the adequacy of your connecting service between Miami and [fol. 5046] the Canal Zone. As to that, and the other ques-

tions at issue, we would call your attention to the fact that the agreement specifically provides that the questions to be arbitrated are those "which cannot be settled by the Board of Panagra". The action of your representatives who are directors of Panagra in refusing to attend meetings of Panagra called for the purpose of discussing the questions at issue has made impossible even an attempt by the Board of Panagra to dispose of these questions as directors of Panagra acting under their full legal responsibility as such and has thereby eliminated these questions from the arbitration clause of the agreement.

In our opinion, it is in the manifest interest of Panagra and in the public interest that Panagra should apply for a route between the Canal Zone and a terminal in the United States. Your letters under reply deny this and repeat what you have so often and so frankly said before that your Board of Directors and your Executive Committee have considered the matter and decided that this is not in the interest of your company. In our opinion this matter is not one to be decided by your Board of Directors or by your Executive Committee, nor one to be decided with reference to the interests of your company. In our opinion the directors of Panagra are under not only a general legal responsibility as directors but also under a very special duty by virtue of various provisions of the Civil Aeronautics Act and the order of the Civil Aeronautics Board permitting them to hold the interlocking positions which they occupy, to administer the affairs of Panagra as an independent air carrier entirely and exclusively in the interest of Panagra and in the public interest. The [fol. 5047] position which has been so repeatedly and so outspokenly taken by your company and by the representatives of your company who are directors of Panagra, namely, that while acting as directors of Panagra their actions in matters where they consider there is a conflict of interest should be dictated by your Board of Directors and by your Executive Committee and should be governed primarily by what is in the interest of Pan American Airways rather than by what is in Panagra's and the public interest, is at the base not only of the present difficulty but of others which have arisen from time to time.

We feel that the orderly administration of Panagra's affairs, provision for its normal growth and development and its ability to be of maximum service to the United States Government requires prompt clarification of the existing situation. The body best qualified to determine the paramount public interest in the situation is the Civil Aeronautics Board. We see no alternative but to submit the entire matter to the Board for its determination of th following propositions:

1. Whether or not directors of Panagra should pass upon Panagra business brought before them as directors of Panagra and entirely from the stand point of what is in the best interest of Panagra and in the public interest and without regard to the interest of any other company with which interlocking relationships exist.

2. Whether or not Panagra should have the full standing of an independent air carrier in every respect and be in position to take prompt and uncontrolled action in any and all matters without deadlocks, refusal to attend meetings or other negative action by some of its directors having the effect of putting one air carrier (Pan American) in control of another (Panagra).

[fol. 5048] 3. Whether or not Panagra should in the public interest as well as in its own interest forthwith take steps to bring its service through from the Canal Zone to Miami and or New Orleans thus providing an independent through trunk line over the Panagra Route from Buenos Aires to the United States.

Very truly yours,

W. R. Grace & Co.

(sgd) A. Garni
First Vice-President

[fol. 5050]

W. R. Grace and Company Exhibit 134

[Handwritten notation – Office file copy]

[Stamp– Docket 11 17 42 FWB Diary Not Entered FWB —In Charge FJK]

BEFORE THE

CIVIL AERONAUTICS BOARD

Washington, D. C.

Docket No. 707

In the Matter of the Petition and Complaint of

W. R. Grace & Co.

for the alteration, amendment and modification of the certificate of public convenience and necessity of Pan American-Grace Airways, Inc., so as to name a point within the United States as a terminal thereof pursuant to Section 401 (h) of the Civil Aeronautics Act of 1938, as amended.

COMMUNICATIONS FROM THE BOARD WITH RESPECT TO THIS PETITION SHOULD BE SENT TO THE FOLLOWING:

A. Garni, First Vice-President,
W. R. Grace & Co.,
7 Hanover Square,
New York City, New York,

and

Whiteford, Hart & Carmody,
815 Fifteenth Street, Northwest,
Washington, D.C.

[fol. 5051]

BEFORE THE

CIVIL AERONAUTICS BOARD

Washington, D. C.

In the Matter of the Petition and Complaint of

W. R. GRACE & Co.

for the alteration, amendment and modification of the certificate of public convenience and necessity of Pan American-Grace Airways, Inc., so as to name a point within the United States as a terminal thereof pursuant to Section 401 (h) of the Civil Aeronautics Act of 1938, as amended.

This petition and complaint of W. R. Grace & Co. represents to the Civil Aeronautics Board as follows:

1. The full name and address of the Petitioner is W. R. Grace & Co., 7 Hanover Square, New York, New York.

2. Petitioner, a Connecticut corporation, has been engaged in business in Latin America, particularly the countries on the West Coast of South America and Central America, for nearly a century. In 1929, jointly with Pan American Airways Corporation, hereinafter referred to as "Pan American",* Petitioner formed Pan American-Grace Airways, Inc., hereinafter referred to as "Panagra", and has at all times since owned 50% of the stock of Panagra, the other 50% being owned by Pan American. Petitioner (and its subsidiaries) have represented Panagra since its organization in all countries of the West Coast of South [fol. 5052] America. Petitioner is a very large user of Panagra's service for mail and passengers. Various of the

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*Pan American Airways Corporation is the parent corporation of the Pan American System, of which Pan American Airways, Inc. is the main operating subsidiary. Whenever "Pan American" is used herein, it refers to Pan American Airways Corporation or Pan American Airways, Inc., as the meaning may require.

officers and directors of Petitioner, who are also officers and directors of Panagra, take a direct and active part in all matters pertaining to the management and administration of Panagra's business.

3. Panagra is an air carrier within the meaning of the Civil Aeronautics Act of 1938, as amended, and at the present time holds a certificate of public convenience and necessity issued to it by the Civil Aeronautics Board, which authorizes it to engage in air transportation of persons, property and mail as follows:

> Between the terminal point Cristobal, Canal Zone, the intermediate points Cali, Colombia; Quito, Esmeraldas, Manta, Salinas, and Guayaquil, Ecuador; Talara, Chiclayo, Lima, and Arequipa, Peru; Arica, Antofagasta, and Santiago, Chile; Mendoza and Cordoba, Argentina, and the terminal point Buenos Aires, Argentina; and also between the intermediate point Arequipa, Peru, and the terminal point Buenos Aires, Argentina, via the intermediate points Arica, Chile; La Paz, Oruro, and Uyuni, Bolivia; Salta, Tucuman, and Cordoba, Argentina, and also between the intermediate point Guayaquil and the terminal point Lojo via the intermediate point Cuenca, Ecuador; and also between the intermediate point Oruro, Bolivia, and the terminal point Corumba, Brazil, via the intermediate points Cochabamba, Sucre, Vallegrande, Santa Cruz, Concepcion, San Ignacio, San Jose, Roboire, Puerto Suarez, Bolivia.

4. Panagra was incorporated under the laws of Delaware, February 21, 1929, for the purpose of engaging in commercial air transportation. In March, 1929, it was awarded Foreign Airmail Contract for Route No. 9 by the United States Post Office Department. It was the first American airline to operate a regular scheduled air transport service to Buenos Aires with connections to the United States. Its route runs from the Panama Canal Zone along the West Coast of South America to Arequipa, Peru, where one branch continues along the West Coast to Santiago, Chile, and thence across the Andes to Buenos Aires and the

[fol. 5053] other proceeds across Bolivia and Central Argentina to the same destination. Commencing operations in Peru by July, 1929, Panagra had extended its route to the Canal Zone on the North and to Santiago, Chile, on the South. By October 12, 1929 service had been extended over the Andes and across the Argentine to Buenos Aires. In 1935, an extension of the route from Arica, Chile, to La Paz, Bolivia, was inaugurated, thus connecting Bolivia with the international airway. In July, 1937, the route between Santiago, Chile, and Buenos Aires was diverted to include the important city of Cordoba. In April, 1937, the so-called "Diagonal Route" was instituted, being an extension from La Paz through the central portion of the Argentine to Buenos Aires via Cordoba, serving en route the important cities of Salta and Tucuman, Argentina. In July, 1938, the route which had thus far been operated between Cristobal and Guayaquil over water, was diverted inland with land-plane operation to serve Cali, the principal commercial city in western Colombia. In March, 1939, the route between Cali and Guayaquil was further modified to include Quito, the capital of Ecuador. In 1940 and 1941, in connection with the elimination of German services on the West Coast of South America, hereinafter referred to, Panagra has added to its route extensive local services in Ecuador, a new international service across Bolivia to the Brazilian border where it makes connection with Panair do Brasil at Corumba to provide a second South American trans-continental service and, by management agreement with Lloyd Aereo Boliviano, has assumed management responsibility for the important local services of that company in Bolivia. As a result of all this development and expansion, Panagra is at present operating about 8,000 route miles,—more route mileage than that of any domestic airline in the United States.

5. Coincident with this expansion of its route Panagra has also, particularly during the last two or three years, greatly increased its frequencies, reduced its flying time between terminals and increased its traffic. Frequencies [fol. 5054] over the entire route have been doubled, from two to four round trips per week. Between various points

on the line there have been additional increases in frequency, schedules between Buenos Aires and Santiago having been recently increased to a daily basis. In its pending rate case Panagra is seeking daily service over its entire route and believes such service to be abundantly justified by existing traffic conditions. Scheduled time for the trip between the Canal Zone and Buenos Aires, which was seven days when the service was first begun, is now a little over three days, flying time between terminals having been reduced recently by half a day on three of the four trips and by a full day on the fourth trip. Passenger traffic in the year 1941 will be almost twice what it was in 1940, which was in turn almost twice that of 1939. Panagra has become a great international trunk line providing international air service between Argentina, Chile, Brazil, Bolivia, Peru, Ecuador, Colombia, Panama (all of the countries of South America except the Guianas, Venezuela, Uruguay and Paraguay), the Canal Zone and thence via connecting service of Pan American to the United States. Public convenience and necessity indicate the next normal and logical step in this development to be an extension of this international route to a terminal in the United States.

6. Petitioner believes and therefore alleges that the public convenience and necessity require that Panagra's great international trunk line have a terminal in the United States and that therefore the certificate of public convenience and necessity which Panagra holds should be altered, amended and modified so as to make the northern terminal of Panagra's route, as defined by said certificate, some point or place in the United States, such point or place being Miami or Tampa, Florida, or New Orleans, Louisiana, as the Board may determine to be most suitable in the public interest. Such a terminal would measurably facilitate and improve the service between the United States and the eight [fol. 5055] important South American countries on Panagra's route. It would improve efficiency of operations by making possible through routing of equipment and crews. It would greatly facilitate freight handling in the coming development of that business which Panagra has under active study and which would be greatly handicapped by

transshipment at the Canal Zone. It would enable Panagra to adopt schedules between the Canal Zone and the United States best adapted to the most satisfactory service on the Panagra Route without regard to service on other routes. It would facilitate preferential accommodations between the United States and the Canal Zone for traffic destined to and from points on the Panagra Route south of the Canal Zone. It would make possible basing of crews in the United States. It would forever free the Panagra service from dependence on a connecting carrier between the Canal Zone and the United States whose interests can never be expected to be exclusively service to the Panagra Route. It would give the Panagra Route the standing of an independent American international air line with a terminal in the United States such as every other comparable American foreign air service has and to which Panagra's record and present position abundantly entitle it. By improving and strengthening Panagra's position in these respects, thereby enabling it to render service to the entire satisfaction of the countries on its route, Panagra will be enabled the better to perform its enlarged functions in the present emergency and to retain during the emergency and thereafter the position it now occupies over most of its route as the exclusive instrumentality chosen by the South American countries through which it operates to carry on international air service to and within those countries. All of this is manifestly in the national interest and required by public convenience and necessity.

7. Past experience has demonstrated the importance of these considerations to public convenience and necessity. Panagra's primary function in the public interest is to provide air transportation over its route for passengers, mail [fol. 5056], and express to and from the United States. With its terminal at the Canal Zone its service is always dependent on a connecting carrier between the Canal Zone and the United States. This inevitably restricts its freedom of action and places the efficiency of its operation to some extent beyond its control and in the hands of a connecting line with interests besides the single purpose of serving the Panagra Route. For some time prior to February, 1939,

the connecting service provided by Pan American between Miami and the Canal Zone was not satisfactory and complaint about it was made to Pan American by Petitioner and by Panagra. The matter was discussed from time to time with representatives of Pan American and on February 14, 1939, an agreement was entered into between Petitioner and Pan American Airways Corporation, the two stockholders of Panagra, whereby Pan American undertook to provide better connecting service between the Canal Zone and Miami. A copy of this agreement is attached hereto marked Exhibit "A". Subsequent to the execution of this agreement it was discussed with representatives of the Civil Aeronautics Board, but being an agreement between Pan American Airways Corporation and the Petitioner, and not between air carriers within the meaning of Section 412 of the Civil Aeronautics Act, it was not submitted for approval by the Board. This agreement even at the time of its execution was at best but a partial solution of the problem but it was hoped that it might meet the situation for a period at least. Following the execution of this agreement Pan American provided improved connecting service but such service has always been, and is now, subject to the difficulties and infirmities which obtain with respect to any connecting service, and in recent months has become increasingly inadequate. In recent months large numbers of persons wishing to travel between the United States and countries on the Panagra Route have been unable to do so owing to lack of accommodations on the connecting service between Miami and the Canal Zone provided by Pan Ameri- [fol. 5057] can. No direct connecting service between Miami and the Canal Zone has been provided by Pan American to connect with Panagra's fourth trip inaugurated August 26, 1941, and connection with that trip must be made by slower and more circuitous routes via Brownsville southbound and via Barranquilla northbound. The contemplated service via New Orleans whether furnished by Pan American or by American Export Airlines, Inc. will not relieve the situation as the routes contemplated by both of these parties are not direct connecting services to the Canal Zone but services via Guatemala, designed primarily with a view to Central American traffic. These services will be definitely

slower and provide less accommodation for Panagra traffic than a direct service. The existing connecting service via Miami is generally late in arriving at the Canal Zone making it difficult and on many occasions impossible for Panagra to maintain its southbound schedules and Pan American is now contemplating a change in its connecting schedule which will greatly accentuate this difficulty. Panagra and Petitioner have complained to Pan American of the inadequacy of their direct connecting service in the respects above indicated and have demanded adequate direct connecting service but Pan American have failed to provide such service. Panagra has likewise been unable to obtain any clear assurances as to just what connecting services Pan American will provide for Panagra's additional trips when Panagra service is increased to a daily basis as above indicated. Petitioner alleges that the public convenience and necessity require that regardless of the reasons on which Pan American may rely for not providing adequate connecting service, Panagra should be placed in position to meet the situation itself without being helpless except by dependence on a connecting carrier, to give adequate service between the United States and the countries on the 8,000 mile Panagra Route.

8. During the past year in cooperation with the Governments of the several South American countries concerned [fol. 5058] and with various departments of the United States Government, in furtherance of hemisphere solidarity and defense, Panagra has replaced German airlines over its entire route between the Canal Zone and Buenos Aires. The German route mileage replaced by Panagra includes 590 miles in Ecuador, 670 miles in Peru, 4109 miles in Bolivia and 870 miles in Chile and Argentina. As a result of this development, the only airlines operating on the West Coast of South America are Panagra and bonafide local national lines. The importance of this accomplishment has been greatly increased with developments of the past few days bringing the West Coast of South America into an increasingly important strategic position. It is of the utmost importance in the public interest that Panagra's present position be maintained not only during the present

emergency but after the termination thereof. Dissatisfaction in South America with the American air service which Panagra is able to render will make it easy for European airlines to regain in South America the position they have just lost. Panagra's position can only be maintained by providing service between the countries on the Panagra Route and the United States of a kind which will justify the confidence which those countries have placed in the assurances given by the United States and in the air service provided by Panagra. Petitioner believes that this clearly involves putting Panagra's West Coast international air service on the same operating basis as Pan American's service to the East Coast of South America and on the same basis as all other comparable American foreign air services in respect of a terminal in the United States.

9. Subsequent to the execution of the agreement of February 14, 1939, Pan American applied to the Civil Aeronautics Board for a route between New Orleans and the Canal Zone (Docket No. 3731). A similar application was filed with the Board by American Export Airlines, Inc. (Docket No. 4071). Petitioner was granted leave to inter- [fol. 5059] vene in these proceedings. The report of the Examiner who heard these applications recommends the granting of the application of Pan American. The award of the New Orleans gateway to either Pan American or to American Export Airlines, Inc. would close to the Panagra Route for many years if not forever one of the last remaining important gateways to the United States from South America. Public convenience and necessity require that before this occurs Panagra take appropriate action to place its position as herein described before the Civil Aeronautics Board. Petitioner has been unsuccessful in its efforts to secure authorization from the Board of Panagra for Panagra to file an application for the New Orleans route, or for connecting service via Miami, in accordance with the Agreement of February 14, 1939, and is for that reason obliged to bring the matter before the Civil Aeronautics Board by its own motion. Petitioner has no desire to bring before the Board under existing war conditions any matter which might more appropriately be deferred to a later date and

agrees with the policy expressed by the Board in its re-lease of December 12, 1941. However, believing that the applicants may urge that considerations of national defense require immediate authorization of the New Orleans route, Petitioner feels required in the public interest to see that all facts regarding Panagra's position in the situation are before the Board, before a decision is reached regarding the award of any additional connecting service between the United States and the Canal Zone. Furthermore, Petitioner believes that this petition is the only means by which the Board can be apprised of the importance of a terminal in the United States to the ability of Panagra to perform fully its obligations with respect to national and hemisphere defense.

10. Petitioner is prepared to submit to the Board full and complete evidence in support of the allegations made herein at a public hearing called for that purpose, and to show that Panagra is able to operate a connecting service to a terminal in the United States (subject, of course, to [fol. 5600] governmental regulations regarding equipment and personnel) and that authorization of such service will not unduly prejudice any lines at present operating such connecting service. Prompt disposition of the matter will be greatly in the public interest as it will aid Panagra in the performance of its obligations in South America with respect to national interests and defense and will speed Panagra's preparations to assume additional important operations in the national interest which the future will impose upon it.

11. Petitioner has this day caused a notice of its intention to file the petition and complaint here in with the Civil Aeronautics Board to be served upon each of the scheduled air carriers whose names appear in the list of such carriers issued by the Civil Aeronautics Board on September 30, 1941, by mailing to each scheduled air carrier on the date hereof, by registered mail, postpaid and properly addressed, a copy of the notice attached hereto and made a part hereof as Exhibit "B".

WHEREFORE, Petitioner prays: (1) that in accordance with Section 401 (h) of the Civil Aeronautics Act of 1938,

Southern Aviation Corp., 1000 American Trust Bldg., Nashville, Tenn.

Southwest Feeder Airlines, Inc., Sinclair Bldg., Ft. Worth, Texas.

Transcontinental & Western Air, Inc., 10 Richards Road, Kansas City, Missouri.

Tri-State Aviation Corporation, Irwin, Pennsylvania.

United Air Lines Transport Corp., 5959 S. Cicero Avenue, Chicago, Ill.

Uraba, Medellin & Central Airways, Inc., 135 E. 42nd St., New York, N. Y.

Waterman Airlines, Inc., Merchants National Bank Bldg., Mobile, Ala.

West Coast Airlines, Inc., 627 Insurance Bldg., Seattle, Washington.

Western Air Lines, Inc., P. O. Box 391, Burbank, California.

Wichita Falls Air Transport Company, The, Box 84, Wichita Falls, Texas.

Wiggins, E. W., Airways, Inc., P. O. Box 1089, Providence, R. I.

Wilson, Ray, Inc., Park Hill Airport, Denver, Colorado.

You, and each of you, are hereby notified that W. R. Grace & Co., 7 Hanover Square, New York City, New York, is, this day, filing with the Civil Aeronautics Board a petition and complaint under Section 401 (h) of the Civil Aeronautics Act of 1938, for the alteration, amendment and [fol. 5065] modification of the certificate of public convenience and necessity of Pan American-Grace Airways, Inc., so as to make the northern terminal of Pan American-Grace Airways' route, as defined by said certificate, some point or place in the United States, such point or place being Miami or Tampa, Florida, or New Orleans, Louisiana,

as the Board may deem to be most suitable in the public interest.

W. R. GRACE & CO.,

By /s/ A. GARNI

A. Garni, First Vice-President

December 16, 1941.

[fol. 5066]

W. R. GRACE AND COMPANY EXHIBIT 135

W. R. GRACE & CO.,
7 Hanover Square, New York

April 27, 1942

To the Civil Aeronautics Board,
Washington, D. C.

Dear Sirs:

Pan American-Grace Airways, Inc. has become one of the foremost air carriers in the world. Its route comprises not only one of the longest but also one of the strategic international air routes. As a result of competent and experienced management and operating organization, Pan American-Grace Airways, Inc. has attained a stature which not only justifies but requires its existence as a completely independent air carrier. At the present time its ability as an independent air carrier to fulfill its obligations to the public, and to the Governments of the United States and the eight South American countries which it serves, is being suppressed and its growth and development are being restricted by Pan American Airways Corporation, one of its own stockholders, in order that such developments may not interfere with Pan American's own interests and conflict with its own supposed monopoly of foreign air transportation.

Facts constituting the basis of this allegation are set forth in the memorandum submitted herewith. We stand ready to submit to the Civil Aeronautics Board such further

information as may be required by it in making a full and complete investigation of the matters referred to herein.

We have long hesitated to place this matter before you, hoping that some other solution might be possible, but we have been reluctantly forced to the conclusion that there is no other way of remedying the existing situation. The urgent war needs, the need for better service, for economy of men and equipment, and for erasing the obstacles and impediments to these accomplishments, the need to extend and make more valuable and effective the great organization which Pan American-Grace Airways, Inc. has built up, and to give it full opportunity to render the service to the nation which it is highly competent to render and anxious to perform:—these urgent needs, as well as the long-range interests of the line itself, make it impossible to leave unremedied the difficulties under which Pan American-Grace Airways, Inc. has so long labored.

We, therefore, respectfully request that the Civil Aeronautics Board require Pan American Airways Corporation to cease and desist from the matters and things complained of and require Pan American Airways Corporation [fol. 5067] to divest itself of its ownership of the stock in Pan American-Grace Airways, Inc. to such extent as may be necessary to divest itself of its present negative control of Pan American-Grace Airways, Inc., all in accordance with and as required by Section 411 of the Civil Aeronautics Act of 1938, and Sections 18 and 21 of the Clayton Act (Title 15, U.S. Code) and we further respectfully request that the Civil Aeronautics Board consider and grant the petition dated December 16, 1941 (Docket No. 707) and amend the Certificate of Public Convenience and Necessity of Pan American-Grace Airways, Inc. so as to name a point within the United States as a terminal of the route of Pan American-Grace Airways, Inc.

Respectfully submitted,

W. R. GRACE & CO.

By .....

D. S. Iglehart
President

[fol. 5069]

W. R. GRACE AND COMPANY EXHIBIT 136

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

STATEMENT OF FACTS IN SUPPORT OF LETTER OF W. R. GRACE & CO. TO THE CIVIL AERONAUTICS BOARD, DATED APRIL 27, 1942, RELATING TO PAN AMERICAN-GRACE AIRWAYS, INC.

COMMUNICATIONS FROM THE BOARD ARE TO BE SENT TO THE FOLLOWING:

D. S. Iglehart, President,
W. R. Grace & Co.,
7 Hanover Square,
New York City, New York

and

Whiteford, Hart & Carmody,
815 Fifteenth Street, Northwest,
Washington, D. C.

[fol. 5070]

STATEMENT OF FACTS IN SUPPORT OF LETTER OF W. R. GRACE & CO. TO THE CIVIL AERONAUTICS BOARD, DATED APRIL 27, 1942, RELATING TO PAN AMERICAN-GRACE AIRWAYS, INC.

1. W. R. Grace & Co., hereinafter referred to as "Grace", is a Connecticut corporation with its principal office at 7 Hanover Square, New York, New York. It has been engaged in business in Latin America, particularly the countries on the West Coast of South America and Central America, for nearly a century. With long experience in foreign transportation it saw very early the great future of international air transport. In 1928 it joined with Pan American Airways, Inc., hereinafter referred to as Pan

Subscribed in my presence and sworn to before me by the affiant above-named this 16th day of December, 1941.

MILTON H. BATHRICK
Notary Public

My Commission expires March 30, 1943

MILTON H. BATHRICK
NOTARY PUBLIC
Bronx Co. Clerk's No. 27, Reg. No. 28 B-43
New York Co. Clerk's No. 367, Reg. No. 3 B-231
King's Co. Clerk's No. 34, Reg. No. 3155
Queen's Co. Clerk's No. 1425, Reg. No. 5027
Nassau County Clerk's No. 14 B-43
Certificate filed in Westchester County
Commission Expires March 30, 1943

[fol. 5062]

Exhibit "A"

1. One of the Grace directors of Panagra (who shall also be a director of Grace) will be elected President of Panagra and placed in responsible charge of the management of the Company. If at any time the Company's affairs are not being conducted to Pan American's reasonable satisfaction, then the President will resign.

2. Pan American will inaugurate on or before April 1, 1939, a second direct trip between Miami and Cristobal, and will maintain an adequate direct connecting service between Miami, or some other U. S. port agreed upon, and Cristobal connecting with Panagra's through mail schedules. If at any time Pan American shall not comply with the foregoing, then Pan American will cause its directors on the Board of Panagra to take such action as will permit Panagra's applying to the C.A.A. for a certificate to operate this connecting service, provided that, irrespective of any determination made as provided in paragraph 4, Pan American shall not be in any way precluded from maintaining before the C.A.A. that its service is satisfactory and should be continued and that no other service is required in the public interest. With the exception of the second direct trip between Miami and Cristobal above referred to, Pan American

shall not be obliged to operate any schedules and service not designated by the Post Office Department as mail schedules but will use their best efforts to have designated as mail schedules any additional trips required to make connection with any increase in Panagra's through mail schedules.

3. It is agreeable to the parties that Pan American-Grace shall continue to utilize the respective services of Grace and Pan American and said services in the same proportion as presently allowed, provided that the services to be rendered by the respective parties are satisfactory to Pan American-Grace.

4. Any disputes arising under this general plan and every phase thereof, including without limiting the generality of the foregoing, determination of "Pan American's reasonable satisfaction" referred to in paragraph 1 above and of "adequate direct connecting service" referred to in paragraph 2 above, which cannot be settled by the Board of Panagra shall be determined by Messrs. D. S. Ingleheart and C. V. Whitney. If Mr. Ingleheart or Mr. Whitney shall be unable to act, or unable to agree in connection with any matter arising under the foregoing paragraphs, then, unless otherwise agreed between Grace and Pan American, such matters shall be determined by arbitration by an arbitrator or arbitrators appointed by Messrs. Ingleheart and Whitney, or failing such appointment, by three arbitrators, one appointed by Grace, one by Pan American, and a third by those two, and the party adjudged in default shall, at the discretion of the Arbitrator, be given such reasonable time to correct the default as the Arbitrator may fix.

5. This agreement shall continue to February 1, 1944, and thereafter until cancelled by Pan American or Grace on six months' written notice.

AGREED—February 14, 1939

W. R. GRACE & CO.

By (Sgd) HAROLD J. ROSE—Vice Pres.

PAN AMERICAN-AIRWAYS CORPORATION.

By (Sgd) J. T. TRIPPE, Pres.

[fol. 3063]

Exhibit "B"

To Aero Pickup Service Corp., 3110 N. Boulevard, Richmond, Va.

Aerovias Nacionales Puerto Rico, Inc., 37 Recinto Sur St., P. O. Box 528, San Juan, Puerto Rico.

All American Aviation, Inc., 200 West 9th St., Wilmington, Del.

American Airlines, Inc., New York Municipal Airport, La Guardia Field, New York, New York.

American Export Airlines, Inc., 25 Broadway, New York, New York.

Automatic Air Mail, Inc., Lost Nation, Iowa.

Braniff Airways, Inc., Braniff Building, Oklahoma City, Okla.

Burke, Andrew J., 614 East Cook Street, Santa Maria, Calif.

Canadian Colonial Airways, Inc., New York Municipal Airport, New York, N. Y.

Caribbean-Atlantic Airlines, Inc., P. O. Box 3214, San Juan, Puerto Rico.

Catalina Air Transport, Catalina Airport, Avalon, Calif.

Chicago & Southern Air Lines, Inc., Municipal Airport, Memphis, Tenn.

Continental Air Lines, Inc., Municipal Airport, Denver, Colorado.

Delta Air Corporation, Selman Field, Monroe, Louisiana.

Eastern Air Lines, Inc., 10 Rockefeller Plaza, New York, New York.

Essair, Inc., Republic Bank Building, Dallas, Texas.

Hannaford Aircraft Co., 1604 Pioneer Bldg., St. Paul, Minn.

Inland Air Lines, Inc., Box 1811, Casper, Wyoming.

Inter-Island Airways, Ltd., Inter-Island Building, Honolulu, Hawaii.

Kansas City Southern Transport Company, Inc., 114 West 11th St., Kansas City, Mo.

Marquette Airlines, Inc., Lambert St. Louis Municipal Airport, Robertson, Mo.

Mayflower Airlines, Inc., Nantucket, Mass.

Mercury Development Corp., 445 N. Pennsylvania St., Indianapolis, Ind.

Mid-Continent Airlines, Inc., Municipal Airport, Kansas City, Missouri.

National Airlines, Inc., Municipal Airport, Jacksonville, Florida.

[fol. 5064] New York and Bermudian Air Lines, 77 River Street, Hoboken, New Jersey.

Northeast Airlines, Inc., Boston Municipal Airport, East Boston, Mass.

Northwest Airlines, Inc., Holman Municipal Airport, St. Paul, Minnesota.

Oregon Airways, Inc., Administration Bldg., Swan Island Airport, Portland, Ore.

Pan American Airways, Inc., 135 E. 42nd St., New York, N. Y.

Pan American Airways Company (Delaware), 135 E. 42nd St., New York, N. Y.

Pan American-Grace Airways, Inc., 135 E. 42nd St., New York, N. Y.

Pennsylvania-Central Airlines, Corp., Allegheny County Municipal Airport, Pittsburgh, Pa.

Seaboard Airways, Inc., Seaboard Airline Railway Bldg., Norfolk, Va.

the Board, after due notice and hearing, and due finding that public convenience and necessity so require, alter, amend and modify the certificate of public convenience and necessity held by Panagra so as to make the northern terminal of Panagra's Route, as defined by said certificate, some point or places in the United States, such point or place being Miami or Tampa, Florida, or New Orleans, Louisiana, as the Board may deem to be most suitable in the public interest; (2) that further action in Dockets Nos. 373 and No. 497, be stayed pending determination of this proceeding; and (3) that the Board take such further action in the premises as it may deem necessary or proper.

Respectfully submitted,

W. R. GRACE & CO.

By /s/ A. GARNI

A. Garni, First Vice President

Dated December 16, 1941

[fol. 5062]

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

A. Garni, being duly sworn, deposes and says: That he is First Vice President of W. R. Grace & Co., Petitioner herein; that he has read and is familiar with the contents of said Petition and Complaint; that he intends and desires that the Board, in acting pursuant to said Petition and Complaint, shall place complete and full reliance upon the accuracy of each and every statement contained therein; that he is familiar with the facts therein set forth and to the best of his information and belief, every statement contained in the Petition and Complaint is true and no such statement is misleading.

/s/ A. GARNI

A. Garni, First Vice President

interviews and comments of its officials, as well as in its official conduct in such matters as those hereafter referred to, repeatedly and consistently sought to subordinate Panagra's position as an independent entity and to establish the position that Panagra is not an independent company but merely a subordinate part of the Pan American Airways System, controlled by Pan American Airways Corporation. Similarly, in pursuance of this policy, Pan American, although in its own activities an outstanding example of expansion, has resisted much of the expansion and development of the Panagra Route as above described. For example, Pan American opposed Panagra's overland route across Colombia via Cali. Pan American delayed approval of Panagra's extension into Bolivia to such an extent that Grace was itself obliged, in order to prevent its falling into the hands of a German controlled company, to acquire the concession from the Bolivian Government in its own name. Grace subsequently turned over this concession to Panagra without payment. Over a period of years and even now, when the public interest and the national defense so urgently require it, Pan American is preventing any application by Panagra for an extension of its route to any terminal in the United States.

(fol. 5075) 6. The so-called "Camaguey stop" incident is illustrative of the precariousness of Panagra's position as an independent air carrier when its interests come into conflict with Pan American's. On November 25, 1941, Pan American filed an application (Docket No. 689) with the Civil Aeronautics Board for authorization to include Camaguey, Cuba, as an intermediate stop on its route between Miami and the Canal Zone. The Camaguey stop while in itself desirable, would, by reason of the additional mileage and ground time, under then existing schedules, have so increased the flying time between Miami and the Canal Zone as to destroy the existing connection with Panagra at the Canal Zone and greatly increase the flight time from the United States to points on the West Coast of South America, as well as to Buenos Aires. The President of Panagra, both before and after the filing of this application, directed the attention of Pan American to the adverse

affect upon Panagra which the approval of this application would have. While these discussions were being held, Pan American, without prior notification of any kind to Panagra, filed with the Civil Aeronautics Board on December 3, 1941, a request for an Exemption Order which would have the effect of permitting the immediate inauguration of Camaguey without the notice and hearing required by the Act. Pan American in making this request omitted to notify the Civil Aeronautics Board in any way of Panagra's interest and concern in the matter and sent a letter to the Board requesting this Exemption Order stating:

> "To the best of the applicant's information and belief, no air transportation enterprise other than applicant's Cuban subsidiary which commits operations to and from Camaguey, has any interest in the condition of service to that point by the applicant."

On December 12, 1941, the President of Panagra filed, on behalf of Panagra, with the Civil Aeronautics Board a petition of intervention in Docket No. 689, so that whenever the Camaguey proceeding was set down for hearing, or otherwise became active, Panagra's interests would be represented and protected. At that time he had no knowl- [fol. 5076] edge of the fact that an exemption request had already been filed by Pan American and had, in fact, already been granted by the Civil Aeronautics Board on the previous day. (Order Serial No. 1434.) Immediately the fact that the Exemption Order had been issued became known to him, he requested an opportunity to appear before the Civil Aeronautics Board in order to present the entire situation. This opportunity was granted and on December 15, 1941, the President of Panagra informed the Civil Aeronautics Board that Panagra was vitally interested in the matter, and that Panagra had had no knowledge of the exemption request. He requested that the Exemption Order be modified so as to postpone the inauguration of service to Camaguey until the stop could be made by Pan American without prejudice to Panagra's service and schedules. This request was granted by the Board and incorporated in an amended Order issued December 16, 1941. (Order Serial No. 1445.)

sions. Because of Pan American's 50% ownership of Panagra, the latter cannot act in such matters except with Pan American's approval. Panagra's resulting utter dependence upon Pan American with respect to connecting service inevitably restricts Panagra's freedom of action and places the efficiency of its operation to a large extent beyond its control and in the hands of a connecting carrier possessing other interests than the single purpose of serving Panagra's route. This obviously places Panagra in a weak and definitely inferior position to Pan American with respect to this competitive service of Panagra and Pan American between the United States and Buenos Aires. At the present time, to maintain competitive schedules between the United States and Buenos Aires equal to or faster than those operated by Pan American, Panagra must rely completely upon the adequacy of connections provided at the Canal Zone by Pan American and over which Panagra has no control whatsoever. Recent developments and the requirements of national defense indicate conclusively that the continuation of Panagra's dependence upon Pan American [fol. 5079] for an outlet to the United States is not in the public interest and should be eliminated and Panagra placed in a position of complete independence with respect to the development of the international air service which it seeks to perform.

9. Grace has repeatedly urged upon Pan American and its directors on the Panagra board that because of the foregoing considerations Panagra should make application to the Civil Aeronautics Board for an extension of its route to a terminal in the United States. Pan American has consistently refused to permit Panagra to file such an application. Early in 1940, when Pan American (Docket No. 373) and American Export Airlines, Inc. (Docket No. 497) applied for the route between New Orleans and the Canal Zone, Grace again endeavored to persuade Pan American to permit Panagra to apply for this connecting route. It was apparent that the award of the New Orleans gateway to either Pan American or American Export Airlines, Inc. might foreclose Panagra from entering any important gateway from South America into the United States. Grace and

the Grace directors on the Panagra Board accordingly urged upon Pan American that it should not permit Panagra's service to be jeopardized by this development but that it should permit the Pan American directors on the Panagra Board to vote to authorize Panagra to apply for the New Orleans route. All of these efforts were unsuccessful. While these discussions were taking place, the applications of Pan American and American Export Airlines, Inc., above referred to, came on for hearing and in order to protect its interests and those of Panagra, pending further negotiation with Pan American, Grace filed an application to intervene in said proceeding which was granted by the Civil Aeronautics Board. Further efforts to persuade Pan American to permit Panagra to apply for the route met with no success. The President of Panagra called various special meetings of the board of directors of Panagra to consider the matter and to authorize action to protect Panagra's position but the Pan American directors of Panagra, constituting one-half of the Board, repeatedly failed and de-
[fol. 5080] clined to attend such directors' meetings and ad-
journments thereof, thus making action by the Panagra board of directors impossible. Pan American itself failed to attend a stockholders' meeting of Panagra called at its request for the purpose of considering the matter, thus rendering impossible any action by the stockholders. Such action and conduct on the part of Pan American and its directors on the Panagra Board was intended and had the effect, by negative control, of preventing Panagra from taking any action whatever toward securing an extension of its services believed to be required in the public interest. Such action and conduct prevented Panagra from even submitting to the Civil Aeronautics Board for consideration the wisdom and public convenience and necessity of any such extension. Pan American considered any such extension to be competitive with its existing service between Miami and the Canal Zone and between Brownsville and the Canal Zone, as well as with its prospective service between New Orleans and the Canal Zone and accordingly exercised its 50% stock interest in Panagra in such a manner as to frustrate any possible adverse competitive result. Action by Panagra being thus rendered impossible, Grace on De-

American*, in forming Peruvian Airways Corporation, which subsequently became Pan American-Grace Airways, Inc., hereinafter referred to as Panagra. Grace has at all times since owned 50% of the stock of Panagra, the other 50% being owned by Pan American. The Board of Directors of Panagra is composed of eight persons, four being nominated by Grace and four by Pan American. Grace and its subsidiaries have represented Panagra since its organization in all countries on the West Coast of South America and in this way its executives everywhere (already highly experienced in foreign transportation) have gained a wide experience in foreign air transport problems and management. Various of the officers and directors of Grace who are also officers and directors of Panagra take a direct and active part in all matters pertaining to the management and administration of Panagra business. Harold J. Roig, a Vice President of Grace, has from the outset been especially active in Panagra's affairs and since 1939, when he became President of Panagra in responsible charge of its business, has devoted most of his time and efforts to Panagra.

[fol. 5071] 2. Panagra is an air carrier within the meaning of the Civil Aeronautics Act of 1938, as amended, and at the present time holds a certificate of public convenience and necessity issued to it by the Civil Aeronautics Board, which authorized it to engage in air transportation of persons, property and mail, as follows:

"Between the terminal point Cristobal, Canal Zone, the intermediate points Cali, Colombia; Quito, Esmeraldas, Manta, Salinas, and Guayaquil, Ecuador; Talara, Chiclayo, Lima, and Arequipa, Peru; Arica, Antofagasta, and Santiago, Chile; Mendoza and Cordoba, Argentina, and the terminal point Buenos Aires, Argentina; and also between the intermediate point Are-

* Pan American Airways Corporation is the parent corporation of the Pan American System, of which Pan American Airways, Inc. is the main operating subsidiary. Whenever "Pan American" is used herein, it refers to Pan American Airways Corporation or Pan American Airways, Inc., as the meaning may require.

quipa, Peru, and the terminal point Buenos Aires, Argentina, via the intermediate points Arica, Chile; La Paz, Oruro, and Uyuni, Bolivia; Salta, Tucuman and Cordoba, Argentina, and also between the intermediate point Guayaquil and the terminal point Lojo via the intermediate point Cuenca, Ecuador; and also between the intermediate point Oruro, Bolivia, and the terminal point, Corumba, Brazil, via the intermediate points Cochabamba, Sucre, Vallegrande, Santa Cruz, Concepcion, San Ignacio, San Jose, Robore, Puerto Suarez, Bolivia."

3. Panagra was incorporated under the laws of Delaware on February 21, 1929, for the purpose of engaging in commercial air transportation. In March, 1929, it was awarded Foreign Airmail Contract for Route No. 9 by the United States Post Office Department. It was the first American airline to operate a regular scheduled air transport service from Buenos Aires with connections to the United States. Its present route runs from the Panama Canal Zone along the West Coast of South America to Arequipa, Peru, where one branch continues along the Coast to Santiago, Chile, and thence across the Andes to Buenos Aires. The other branch proceeds across Bolivia to Oruro where it again divides into one branch proceeding across Bolivia to Corumba, Brazil, and the other through central Argentina to Buenos Aires. Commencing operations in Peru in 1929, by July of that year Panagra had extended its route to the Canal Zone on the North and to Santiago, Chile, on the South. By October of that year service had been extended over the Andes and across the Argentine to Buenos Aires. In 1935, an extension of the [fol. 5072] route from Arica, Chile, to La Paz, Bolivia, was inaugurated, thus connecting Bolivia with the international airway. In July, 1937, the route between Santiago, Chile, and Buenos Aires was diverted to include the important city of Cordoba. In April, 1937, the so-called "Diagonal Route" was instituted, being an extension from La Paz through the central portion of the Argentine to Buenos Aires via Cordoba, serving en route the important cities of Salta and Tucuman, Argentina. In July, 1938, the

route which had thus far been operated between Cristobal and Guayaquil over water, was diverted inland with land-plane operation to serve Cali, the principal commercial city in western Colombia. In March, 1939, the route between Cali and Guayaquil was further modified to include Quito, the capital of Ecuador. In 1940 and 1941, in connection with the elimination of German services on the West Coast of South America, Panagra has added to its route extensive local services in Ecuador, a new international service across Bolivia to the Brazilian border where it makes connection with Panair do Brazil at Corumba to provide a second South American Transcontinental service and, by management agreement with Lloyd Aereo Boliviano, has assumed management responsibility for the important local services of that company in Bolivia. As a result of all this development and expansion, Panagra is at present operating about 8,000 route miles,—more route mileage than that of any domestic airline in the United States.

4. Coincident with this expansion of its route Panagra has also, particularly during the last two or three years, greatly increased its frequencies, reduced its flying time between terminals, and increased its traffic. Frequencies over the entire route have been increased from two to five round trips per week and steps are now being taken to increase this to daily service. Between various points on the line there have already been additional increases in frequency, schedules between Buenos Aires and Santiago having been recently increased to a daily basis. Scheduled [fol. 5073] time for the trip between the Canal Zone and Buenos Aires, which was seven days when the service was first begun, is now three days, flying time between terminals having been reduced recently by half a day. Passenger traffic has been increasing about 100% per year during the past several years. Thus Panagra has become a great international trunk line providing international air service between Argentina, Chile, Brazil, Bolivia, Peru, Ecuador, Colombia, Panama (all of the countries of South America except the Guianas, Venezuela, Uruguay and Paraguay), the Canal Zone and thence via connecting services of Pan American to the United States.

3. A considerable part of the expansion of Panagra's route has been accomplished at the insistence of Grace and in the face of Pan American's opposition. Soon after the organization of Panagra in 1928, it developed that Grace and Pan American entertained basically different philosophies regarding Panagra's status and destiny and that difference of view has continued. Grace has at all times maintained the view that Panagra, while availing itself of the facilities and experience provided by both Grace and Pan American, should be an independent unit free to operate, develop and expand as its own welfare and the public interest might dictate and that its policies, organization and operations should be conducted independently and free of any adverse domination by either of its stockholders. With this in view Grace, while placing at the disposal of Panagra the services and experience of its ranking officials and of its extensive organization in South America, as well as in the United States, has always taken the position that Panagra's affairs should be administered and decisions regarding its policy, management and daily operations taken solely with reference to the best interests of Panagra and the public interest which it is Panagra's duty to serve, and without reference to opposing collateral or related interests of Grace or of Pan American or of any part of Grace's or Pan American's organizations. Pan American, on the other [fol. 5074] hand, has consistently maintained that Panagra should be administered primarily as a part of the so-called Pan American Airways System, that it should be held out to the public as a subordinate part of such system rather than as an independent entity and that its policies and affairs should be determined and administered and its destiny controlled by what Pan American might from time to time deem to be in the best interests of itself and the Pan American Airways System, and in accordance with the broad general view which Pan American has always maintained that all American international air transportation should be in the hands and control of the Pan American Airways System. In pursuance of this policy, and despite efforts of Grace and of the Panagra management to the contrary, Pan American has, in its publicity, advertising, financial reports, published schedules and timetables, public

The President of Panagra had filed the petition of intervention with the Civil Aeronautics Board without seeking authorization from the Board of Directors of Panagra, because he had reason to believe that such authorization could not be secured as the Pan American directors on the Panagra Board would not approve it. At or before the above hearing, Pan American submitted to the Civil Aeronautics Board a letter in which, referring to the action by the President of Panagra in intervening in the proceeding, it is stated:

> "We do not propose to question his authority to do so, although we are entirely aware of the fact he is acting without authorization from his Board of Directors."

The object of this statement was perhaps to cast doubt upon the validity of the action taken by the President of Panagra, possibly to quash Panagra's intervention on that ground without regard to the merits. At best it is a clear warning that Panagra can only act with Pan American's acquiescence even in self defense. The statement leaves no doubt as to the position in which Panagra finds itself with regard to its connecting service between the Canal Zone [fol. 5077] and the United States. Panagra can not even protect this connecting service on which its life is so vitally dependent except by the acquiescence of Pan American which provides that connecting service. Panagra is utterly dependent on the favor of Pan American, its own hands legally tied whenever Pan American wishes to tie them, in any matter where its interests are contrary to those of Pan American.

7. Conclusively demonstrative of the situation complained of is the record of Grace's efforts to have Panagra bring its line through from the Canal Zone to a terminal in the United States. For several years Grace has felt that an extension of Panagra's Route beyond the Canal Zone to a terminal in the United States would be a normal, logical and necessary step in Panagra's development and would be in the public interest. Such an extension would measurably facilitate and improve the services between the United States and the eight important South American countries

on Panagra's route. It would substantially improve efficiency and economy of operations by making possible through routing of equipment and crews, thus increasing utilization of equipment and reducing time lost by crews. It would enable Panagra to establish schedules between the Canal Zone and the United States best adapted to the most satisfactory service on Panagra's route without regard to service on other routes operated by associated lines. It would facilitate preferential accommodations between the United States and the Canal Zone for traffic destined to and from points on Panagra's route south of the Canal Zone. It would make possible the basing of crews in the United States. It would greatly facilitate traffic handling in the coming development of that business, which Panagra has under active study, and which would be greatly handicapped by transshipment at the Canal Zone. It would relieve the Panagra from dependence on Pan American for a connecting service between the Canal Zone and the United States. It would put Panagra's West Coast service on the same operating basis as Pan American's East Coast service. [fol. 5078] It would give Panagra's route the standing of an independent American international airline with a terminal in the United States such as every other comparable American foreign air service has and to which Panagra's record and present position abundantly entitle it.

8. Experience has demonstrated the importance of the considerations mentioned in the foregoing paragraphs. Panagra's primary function is to provide air transportation for passengers, mail and express between the United States and the eight South American countries which it serves. With its northern terminal at the Canal Zone, Panagra's service is now and always has been dependent upon a 50% stockholder, Pan American, for connecting service between the Canal Zone and the United States and any inadequacy or failure of that service creates changes or modification in it by way of schedule changes, service to additional intermediate points, or otherwise, has its effect upon the service which Panagra can render over its route. Problems of this character have arisen on a number of occa-

cember 16, 1941 (Docket No. 707), itself filed an application, pursuant to Section 401 (h) of the Civil Aeronautics Act of 1938, for the alteration, amendment and modification of the certificate of public convenience and necessity of Panagra, so as to name a point within the United States as a terminal of Panagra's route. Reference is made to said application for further facts bearing on this matter. Said application is still pending before the Board. Pan American has filed no answer to said petition but has not changed its previous position since the petition was filed.

10. While conditions such as those above referred to may perhaps be suffered in time of peace, they are intolerable in time of war when the national interest demands that every instrumentality of defense such as an airline in foreign service be free to function to maximum efficiency unhampered by impediments of the character referred to. The situation described does not interfere with the efficient man-
[fol. 5081] agement and administration of Panagra's day to day business, but it has interfered and under existing war conditions will interfere to an increasing degree with the formulation and realization of important policies affecting the present and future welfare of Panagra, and the public service it is able to render, whenever such policies come into conflict with Pan American's present and proposed activities or ambitions. Considerations of national defense require prompt disposition of the questions involved. The public interest and the interests of national defense demand that Panagra be a free and independent air carrier in position to maintain its relations with the public and with the United States Government as an independent entity. It should have an independent standing in the minds of the public and an independent name which will give it that standing, a name under which it can assume full responsibility for its own conduct and avoid criticism for conduct over which it has no control. Its stock ownership and the constitution of its board of directors should be such that it will be in a legal position where it can act in all matters in accordance with the public interest and its own welfare without reference to the desires, interests, or aspirations of any other air carrier and where it can

present to the Civil Aeronautics Board for its determination as provided by the Act, matters involving its interest and the public interest without having its hands tied by the interest of any other air carrier. The war emergency has imposed greatly added burdens and responsibilities on Panagra as an air carrier operating in eight South American countries. Panagra has, in furtherance of national defense, taken over German operations in various parts of South America, has increased its route mileage and augmented its frequencies and will undoubtedly be called upon to further expansion of this character. The present emergency is creating many rapid changes in the international air map and in the duties and responsibilities placed upon United States air carriers engaged in foreign air transportation. The complete withdrawal of American passenger steamship [fol. 5082] service between the United States and the South American countries served by Panagra, places the burden upon Panagra of maintaining vital communication between the countries on its route and between them and the United States, so essential for defense and hemispheric solidarity. The effectiveness of Panagra's service in the national defense is necessarily prejudiced by the power of Pan American through the exercise of its negative control of Panagra to tie Panagra's hands and prevent it from taking any action whatsoever, even to submitting the matter to the Civil Aeronautics Board, which Pan American may deem adverse to its own interests. Even now, while Panagra is precluded by Pan American from proceeding in its own behalf to request authorization from the Civil Aeronautics Board to institute through service to the United States, various events are occurring which constitute actual and potential inroads and threats to the territory pioneered and developed by Panagra. Other air carriers are extending or are about to extend their operations into Mexico, Central America and the Caribbean areas. What steps those carriers will take to extend their services into and in the territory served by Panagra has not as yet been fully revealed. Pan American itself, while barring Panagra from applying for any service between the Canal Zone and the United States, is rapidly expanding its own service in this area and may at any time press for early integra-

tion of its proposed service over the New Orleans-Canal Zone route. The present situation whereby Panagra, solely as the result of the exercise of Pan American's negative control of its actions, must stand by helpless and watch other air carriers moving into and strengthening their position in an area where Panagra should be operating to complete its own service, is prejudicial to the interests of Panagra, to the public interest and to the national defense.

Respectfully submitted,

W. R. GRACE & Co.

By .....
D. S. Iglehart,
President

Dated April 27, 1942.

[fol. 5083]

VERIFICATION

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

D. S. Iglehart, being duly sworn, deposes and says: That he is President of W. R. Grace & Co.; that he has read and is familiar with the contents of the foregoing Statement of Facts; that he intends and desires that the Board shall place complete and full reliance upon the accuracy of each and every statement contained therein; that he is familiar with the facts therein set forth and, to the best of his information and belief, every statement contained in said Statement of Facts is true and no such statement is misleading.

.....
D. S. Iglehart, President

Subscribed in my presence and sworn to before me by the affiant above-named, this ... days of April, 1942.

.....
Notary Public

My Commission expires .....

[fol. 5084]

W. R. GRACE AND COMPANY EXHIBIT 137

CIVIL AERONAUTICS BOARD
WASHINGTON

(Emblem)

[Handwritten notations— Panair Matter— file HB]

[Stamp— Jun 26 1942]

Mr. D. S. Iglehart, President
W. R. Grace & Co.
7 Hanover Square
New York, New York

Re: Docket No. 744

Dear Mr. Iglehart:

On April 29, 1942, W. R. Grace & Co. filed with the Civil Aeronautics Board a letter and an accompanying statement of the facts in which it alleged that certain actions of Pan American Airways Corporation with respect to Pan American-Grace Airways, Inc., had violated section 411 of the Civil Aeronautics Act of 1938 and section 7 of the Clayton Act. W. R. Grace & Co. requested that the Board order Pan American Airways Corporation to cease and desist from the matters complained of and require Pan American Airways Corporation "to divest itself of its ownership of the stock in Pan American-Grace Airways, Inc., to such an extent as may be necessary to divest itself of its present negative control of Pan American-Grace Airways, Inc."

Upon consideration of this matter the Board has decided to undertake an investigation for the purpose of securing all the facts relevant to the matters complained of by W. R. Grace & Co. This investigation will be entirely informal and will not involve a hearing. Moreover, it should be pointed out that the undertaking of the investigation referred to does not imply that a complaint has been issued against Pan American Airways Corporation

under either section 411 of the Civil Aeronautics Aeronautics Act or sections 7 and 11 of the Clayton Act. Rather, this investigation is for the purpose of determining whether such a complaint should be issued. In the event the Board decides to issue a complaint pursuant to section 411 of the Civil Aeronautics Act or sections 7 and 11 of the Clayton Act, Pan American Airways Corporation will, of course, be given an opportunity to file an answer and a [fol. 5085] public hearing will be held before an examiner of the Board.

An identical letter is today being sent to Mr. Juan T. Trippe, President of Pan American Airways Corporation.

Very truly yours,

/s L. W. Pogue
L. W. Pogue
Chairman

Copy to: Whiteford, Hart & Carmody

[fol. 5087]

W. R. Grace and Company Exhibit 138

[Handwritten notation—10 26 42]

BEFORE THE CIVIL AERONAUTICS BOARD

Docket No. 779

In the matter of the alteration, amendment and modification of the certificate of public convenience and necessity of

Pan American-Grace Airways, Inc.

under Section 401(h) of the Civil Aeronautics Act of 1938, as amended, to provide for a route terminal in the United States.

ANSWER OF PAN AMERICAN AIRWAYS, INC. AND PAN AMERICAN AIRWAYS CORPORATION AND PETITION OF PAN AMERICAN AIRWAYS CORPORATION FOR AN INVESTIGATION UNDER SECTION 415 OF THE CIVIL AERONAUTICS ACT

Now come PAN AMERICAN AIRWAYS, INC. (hereinafter referred to as "Pan American Airways") and PAN AMERICAN AIRWAYS CORPORATION, (hereinafter referred to as "Pan American"), and respectfully show to the Board as follows:

1. *Description of the parties.*

Pan American Airways is a corporation organized and existing under the laws of the State of New York. All of its stock is, and at all times hereinafter referred to, has been owned by Pan American. It is a party to this proceeding by virtue of the Board's order of September 10, 1942.

Pan American is a corporation organized and existing under the laws of the State of Delaware. It owns, and from the date of organization of Pan American-Grace Airways, Inc. has owned, 50% of the capital stock of Pan American Grace Airways, Inc. As such owner, it has an important interest in this proceeding and has filed a petition for leave to intervene herein.

[fol. 5088]

2. *Reasons for filing this answer and petition at this time:*

Pan American has refrained for many months from answering the petition and complaint filed by W. R. Grace & Co. (hereinafter referred to as "Grace") under date of December 16, 1941 (Docket No. 707), and the letter and so-called "Statement of Facts" filed by Grace under date of April 27, 1942 (Docket No. 744). It has done this because a public controversy at this time between Grace and Pan American, the two largest American transportation enterprises serving Latin America, did not appear to be in the interests of the war effort, and also because the Civil Aeronautics Board's statement of policy of Decem-

However, Pan American's directors consider that the initiation of this proceeding, which raises, among other questions, the issue of surface carriers being allowed to dominate air transportation, makes it impossible for Pan American longer to remain silent, and requires that Pan American shall set forth the facts as to the organization and history of Pan American Grace Airways and other relevant matters. Pan American believes that these facts show, not only that the extension of the certificate of Pan American Grace Airways which is sought by Grace would not be proper, even if the Board had the power to order such an extension, but also that the Board should take affirmative action to free Pan American Grace Airways from the handicap of domination and control of its steamship competitor, the Grace Line.

[fol. 5089]

3. *The formation of Pan American Grace Airways (1928-1929).*

Grace's petition in Docket No. 707 and its letter and so-called "Statement of Facts" in Docket No. 744 wholly omit reference to the fact that the capital invested in Pan American Grace Airways, Inc. by its founders was not dedicated to the performance of air transportation service generally, but rather to the operation of air transport services in a delimited territory. The capital invested in Pan American Grace definitely was not dedicated to the purpose of engaging in air transportation between the United States and the Canal Zone. On the contrary, Pan American-Grace was organized as a joint venture on the part of its two founders *for the limited purpose of conducting a route in air transportation on the west coast of South America.* The capital invested in it was devoted to that purpose and to that purpose alone.

Instead of Pan American being guilty of an attempt to "suppress" or "restrict" Pan American Grace Airways, as alleged by Grace, the facts are that Grace has been engaged for the past four years in attempted repudiation of the very basis on which it was permitted to participate

(2) A Grace director was to be elected President of Pan American-Grace "and placed in responsible charge of the management of the Company." However, technical, traffic and other services were to be rendered to Pan American-Grace by Pan American Airways as heretofore.

(3) Any dispute as to any phase of the plan was to be referred to arbitration.

Since the making of this 1939 agreement, Pan American-Grace has continued generally to be operated, from technical and traffic standpoints, as a part of the Pan American Airways System. However, although the mileage of the Company has been considerably expanded, largely at the instance of various agencies of Government, Grace has continued the same policies which have been previously reviewed. As a result, Pan American-Grace is still not rendering the service to the west coast of South America which it ought to render in the public interest.

The Civil Aeronautics Board has recently had occasion to fix new rates of mail pay both for Pan American-Grace and for Pan American Airways' other operations in Latin America. It found that, in order to break even and make a [fol. 5098] reasonable return on its investment, Pan American-Grace required a payment of 50.7 cents per revenue mile. On the same basis, Pan American Airways required a payment of only 17.83 cents, or slightly more than *one-third* as much. There is no substantial difference in the operating conditions of the two carriers,—certainly none sufficient to account for this wide discrepancy in operating results. This difference of 32.94 cents per mile in mail pay, as applied to Pan American-Grace's annual mileage, means an extra cost of considerably over a million dollars a year to the taxpayer.

6. *The adequacy of Pan American Airways' connecting service between the Canal Zone and the United States.*

While Grace has taken full advantage of the provisions in the 1939 settlement which were favorable to it, Grace repudiated almost immediately the provisions of the con-

tract whereby the two owners of Pan American-Grace agreed that the basic understandings with respect to the scope of the operations of Pan American-Grace were not to be disturbed unless Pan American Airways failed to supply adequate connecting service between the Canal Zone and the United States.

From the outset Pan American Airways has recognized its obligation, which accords directly with its interests, to furnish adequate connecting service to Pan American-Grace. As early as 1930, it had taken the initiative in straightening the then circuitous route between Miami and the Canal Zone, inaugurating for the purpose what were the longest over-water flights in the world. For many years it had operated four-engined service to the Canal, in addition to service on the routes through Central America and via Barranquilla connecting with the twin-engined service which Pan American-Grace has offered to the south.

After the conclusion of the 1939 agreement, Pan American Airways fully complied with both the letter and the spirit [fol. 5099] of its provisions with respect to connecting service.

Pan American Airways promptly inaugurated the "second direct trip" referred to in the agreement, thus affording two direct four-engined connections with Pan American-Grace's two twin-engined trips south of the Canal. After Pan American Airways obtained delivery of the four-engined Stratoclipper B-307 planes in 1940, it placed them in service on the Miami-Canal Zone route, operating three schedules a week, two of them without mail pay, to connect with Pan American-Grace's twin-engined schedules operating over the Canal Zone-Guayaquil bottleneck. The frequency of this service has been constantly expanded. Daily service has been afforded since April, 1942. Improved utilization of equipment, resulting from substitution of DC-3A for marine equipment, has recently permitted Pan American Airways further to improve its service by concentrating the B-307 equipment on the trans-Caribbean route to the Canal Zone. Pan American Airways' daily capacity from the United States into the Canal Zone is now

directors in some instances to prevent the development of the services of Pan American-Grace in a manner that would injure Grace's steamship business. As air transportation has developed from principally an airmail service to large-scale passenger and express operation, this conflict of interest between the west coast airline and the Grace Steamship Line serving the same territory has become more and more evident. In normal times, almost every passenger carried by Pan American-Grace between the Canal and Santiago, who flies through or local, is a passenger lost to the Grace Line, and almost every connecting through passenger carried by Pan American between the United States and the Canal is likewise a passenger lost to Grace.

(a) *Flight Equipment.*

The conflict began on the issue of flight equipment. Pan American urged from the outset that Pan American-Grace should keep pace in the quality of its flight equipment with other services of the Pan American Airways System in Latin America. Grace took quite a different view, at one time actually using its negative control over Pan American-Grace to continue the operation of single-engined equipment on a section of the west coast trunk line to Buenos Aires. The results of these policies of Grace are shown by the fact that although Pan American Airways has had four-engined marine equipment in operation in Latin America since 1931, and four-engined land equipment since 1940, [fol. 5094] Pan American-Grace today still has none.

(b) *Ground Facilities.*

A similar policy was followed by Grace with reference to ground facilities. Pan American pressed from the outset for the installation by Pan American-Grace along the west coast of South America of ground facilities equivalent to those provided on other sections of Pan American Airways' routes in Latin America. This was resisted by Grace. Even today investment in ground facilities per route mile on the route of Pan American-Grace is very considerably less than that on Pan American Airways' routes in Latin America.

Grace has exercised its negative control over Pan American Grace particularly to postpone the installation of adequate passenger facilities on the west coast route. Grace's attitude toward the airline's passenger facilities has been in marked contrast to its provision of luxurious facilities for steamship passengers on the west coast. At the very time when Grace was contending in favor of continued use of single-motored equipment on the west coast air route and was opposing passenger facilities which it described as "mere conveniences and luxuries," it was advertising the first of a fleet of "sparkling new Santa Lucias," which offered "all outside staterooms" and "dancing under the moon." The recently existing situation is described in Pan American Grace's submission to the Civil Aeronautics Board in its rate case, extracts from which are set forth in Exhibit B hereto attached. Throughout all these years there has been no single instance in which a Pan American director has opposed the improvement of facilities by Pan American Grace.

[fol. 5095] (c) *The Canal Zone-Guayaquil sector.*

From a public interest standpoint, perhaps the most serious instance of Grace's use of its negative control over Pan American Grace has been its attitude with respect to the northernmost sector of Pan American Grace's route between the Canal Zone and Guayaquil.

The Canal Zone and Guayaquil are located almost on the same meridian, 775 miles apart. Over this section of Pan American Grace's operation must move not only the traffic for points within it, but also the through traffic to Peru, Chile, Bolivia and the Argentine. Every consideration of transportation economies calls for the provision of maximum speed and capacity on this sector.

Four-engined equipment capable of flying the great circle course from the Canal Zone to Guayaquil with high payload capacity has been available at least since 1950. Pan American urged that Pan American Grace operate the direct route and, to that end, offered to charter to Pan American Grace on any fair basis four-engined equipment owned by Pan American Airways. Grace insisted, however,

Grace was to have an option to acquire an interest in the company to be organized for the purpose, "not to exceed, however, more than fifty percent of the total capitalization." The proposal further stipulated that Pan American Airways was to "have charge of the operation of the service [fol. 5461] from the Canal to Valparaiso," while the Grace "houses on the West Coast of South America will be the agents of the Company." A copy of this letter of August 31, 1928, which constituted the basis for Grace's participation in the west coast airline, is attached as Exhibit A.

Pursuant to this agreement, Grace acquired 50% of the stock of Peruvian Airways Corporation. That company, under the same management as the predecessor company which had been active in Peru, instituted transport operations in Peru and also secured the necessary operating rights in Ecuador.

Pan American Airways initiated its services to the Canal early in 1929. On January 31, 1929, the Post Office Department advertised to bids for the carriage of foreign airmail on route No. 9. Pursuant to the agreement of August, 1928, Pan American Grace Airways was organized to bid for this contract, Grace exercising its option to acquire a 50% interest in that company. Pan American Grace became the successful bidder.

The new enterprise formed in accordance with the 1928 agreement was in no way competitive with any activity of Pan American Airways. It simply constituted a logical extension of Pan American Airways' route to the Canal, an extension on which Pan American Airways was already well embarked before its negotiations with Grace. On the other hand, Grace acquired a 50% stock interest in an airline *directly competitive* with its steamship lines. Upon such a state of facts, it is surprising, indeed, to find Grace now making the claim that the acquisition of stock in Pan American Grace by *Pan American* was a violation of the anti-trust laws.

With the consent of the two stockholders the scope of operation of Pan American Grace was later extended to Buenos Aires.

[fol. 5092] The 1928 agreement clearly contemplated that Pan American Grace was to be operated and developed by Pan American Airways as an integral part of the general system of air transportation which it was inaugurating between the United States and South America, and that Grace's position was to be that of an investor and the Company's agent on the west coast. This was a natural agreement for Pan American to demand. Pan American was an aviation enterprise. It knew air transportation, how to conduct and to develop it. Its interests were, and are, wholly in that field. Grace, being the steamship operator on the west coast, it was natural and proper for Pan American to insist that Grace should not exercise managerial control over Pan American Grace.

4. *Grace's negative control over Pan American Grace (1929-1937).*

Many of the provisions of the 1928 agreement with respect to the management of Pan American Grace have been carried out as was originally intended. On the technical side the Company has been operated generally as a part of the Pan American Airways System. Operations and maintenance procedures and standards have been made available to Pan American Grace in the same way as to the divisions of Pan American Airways. Pan American Airways' traffic department has laid down ticketing and tariff procedures and regulations for the handling of passengers, goods and mail, and has acted as sales agent for Pan American Grace in the United States, in the same way as for wholly owned operations of Pan American. Pan American Airways' purchasing department has handled procurement problems of Pan American Grace along with those of the various Pan American divisions. Even Pan American Grace's insignia conforms to the System insignia except for the addition of the word "Grace."

[fol. 5093] It was not long, however, before it appeared that Grace did not intend fully to live up to the provisions of the 1928 agreement, whereby Pan American was to "have charge of the operation of the service" of Pan American Grace, but rather would use its position on the board of

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that Pan American-Grace's operations between the Canal Zone and Guayaquil should be conducted instead by twin-engined equipment over a circuitous route, crossing and recrossing mountain ranges at an altitude of 12,000 feet, via Cali, Colombia, where the aircraft remain overnight.

The results of this course of action, in which Pan American yielded to the insistence of Grace over its own better judgment, have been as follows:

(1) The flight from the Canal to Guayaquil is over a mountainous route 985 miles by the "shortest practicable airway distance" as set forth in the recent mail rate decision of the Civil Aeronautics Board, as against 775 miles by the direct over-water route, which has been feasible at least for five years. Every through passenger to Guayaquil or beyond suffers this 200 mile penalty.

(2) Operation over the Cali route means that passengers from the United States do not reach Guayaquil [fol. 5096] and Lima until the second day, whereas operation over the direct route, with proper scheduling, would permit a one day service as far south as Lima, with attendant saving in time to and from points beyond.

(3) As against the large capacity which four-engined aircraft would have over this sector, Pan American-Grace's 21-passenger airplanes have at times been able to carry only 12 or 13 passengers from the Canal through this bottleneck, and load factors on this sector consistently exceeded 90% even when Pan American was operating into the Canal Zone only one flight daily directly from Miami and one flight daily through Central America.

As a result of long experience with these difficulties, Pan American Airways in 1941 again offered to charter to Pan American-Grace four-engined equipment for direct operation south of the Canal Zone (leaving Pan American-Grace's twin-engined equipment to give service via Cali) on any fair basis which the Civil Aeronautics Board might

approves. Pan American-Airways' offer contemplated an interchange of equipment so as to permit the through operation of four-engined land aircraft between Miami and Guayaquil, following the same general lines as the mutual change of equipment between United Air Lines and Western Air Express which the Civil Aeronautics Authority had approved a year before (1 C.A.A. 729). The plan comprehended not only the immediate operation of Pan American Airways' four-engined land equipment through to Guayaquil or Lima, but also, when and if Pan American-Grace itself acquired four-engined aircraft (three of which were then on order), the operation of such aircraft over Pan American Airways' route between the Canal Zone and the United States. These offers were again declined by Grace.

5. *Grace's attempts to secure position of control of Pan American-Grace (1938-1942).*

In the fall of 1938 Grace commenced its repudiation of the basis on which it had acquired its interest in Pan American-Grace by demanding that the stipulated scope of operation, to which the capital invested in the joint company had [fol. 5097] been dedicated, should be expanded to include service between the United States and the Canal Zone, and that management of the enterprise should be turned over to Grace.

Pan American realized that Grace had neither the legal nor the moral right to make these demands. It desired, however, to attempt to live in harmony with its partner, and early in 1939 it consented to a compromise adjustment, which was to extend for five years. The principal provisions of this agreement, which were set forth in a memorandum of February 14, 1939, were as follows:

> "(1) Grace's demand that the 1928 agreement be disregarded so as to permit Pan American-Grace to apply for a certificate between the Canal Zone and the United States was withdrawn, the only exception being that if Pan American Airways should fail to maintain an adequate direct connecting service," Pan American would take proper action to permit the application to be made.

Pan American therefore requests that the Board institute an inquiry, pursuant to Section 415 of the Civil Aeronautics Act, into the management of the business of Pan American-Grace Airways, Inc. and the facts and circumstances set forth in this answer, and that upon making such inquiry the Board should make such order with respect to termination of the control of Pan American-Grace Airways, Inc. by Grace as is required by the Civil Aeronautics Act and such other laws as may be applicable in the premises. If, as a result of such inquiry, the Board should conclude that Grace should be required to divest itself of part or all of its stock in Pan American-Grace, Pan American reaffirms its offer, previously made to Grace, to acquire such stock, and to do so on such terms and conditions as the Board may determine.

Dated, October 26, 1942.

Respectfully submitted.

PAN AMERICAN AIRWAYS, INC.

By EVAN E. YOUNG
Evan E. Young,
Vice-President

PAN AMERICAN AIRWAYS CORPORATION.

By EVAN E. YOUNG,
Evan E. Young,
Vice-President

[fol. 5105]

STATE OF NEW YORK,)
: ss.:
COUNTY OF NEW YORK,)

EVAN E. YOUNG, being duly sworn, deposes and says: that he is Vice President of Pan American Airways, Inc. and Pan American Airways Corporation, the answering parties and petitioners herein; that he has read and is familiar with the contents of the foregoing answer and petition and the attached exhibits; that he intends and

desires that in consideration of said answer and in acting upon said petition, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; and that, to the best of his information and belief, every statement contained in the said answer and petition is true and that no such statement is misleading.

Evan E. Young
(Evan E. Young)

Subscribed and sworn to
before me, a Notary Public in
and for the County of New
York, and state of New York,
this 26th day of October, 1942.

Ethel M. Wilson
Notary Public

NOTARY PUBLIC, Kings County
Kings County Clk's No. 284
Kings County Reg's No. 3015
New York County Clk's No. 55
New York County Reg's No. 3-W250
Commission Expires March 30, 1943

[Notarial Seal]

[fol. 5106]

EXHIBIT A

W. R. GRACE & COMPANY

NEW YORK
August 31, 1928

Aviation Corporation of the Americas,
300 East 42nd Street,
New York City.

Attention: Mr. J. T. Trippe

Dear Sirs:

This will confirm a arrangement under which we will associate for the commencement of an airplane service in Peru

La Paz. "The present building at La Paz was constructed in 1937. Even prior to the inauguration of the Bolivian service to Corumba this passenger station was congested and generally inadequate."

Oruro. "There are no facilities at this point at the present time."

Uyuni. "Facilities at the airport are practically non existent, and no satisfactory hotel arrangements can be made in the nearby town. In the winter it becomes extremely cold at this point. The new facilities will provide arrangements to feed, sleep and warm passengers. At the present time, passengers must sleep either on the floor of a house owned by an Englishman who is interested in a local railroad operation or in the planes."

Cordoba. "At the present time the only passenger facilities at this point are a small portable building."

[fol. 5109]

W. R. GRACE AND COMPANY EXHIBIT 139

[Stamp—Office Copy—Docket [illegible]29/43 RWB—Diary Not entered FWB—In Charge FJK]

BEFORE THE
CIVIL AERONAUTICS BOARD

Docket No. 744

In the matter of the informal investigation instituted by the Board to determine whether or not a complaint should be issued with respect to the acquisition of the stock of Pan American-Grace Airways, Inc.

ANSWER OF PAN AMERICAN AIRWAYS CORPORATION AND PETITION FOR AN ORDER REQUIRING W. R. GRACE & CO. TO DIVEST ITSELF OF THE STOCK INTEREST HELD BY IT IN PAN AMERICAN-GRACE AIRWAYS, INC., PURSUANT TO SECTIONS 7 AND 11 OF THE CLAYTON ACT

Communications with respect to this Answer and Petition should be sent to the following:

John C. Cooper, Vice President and
Assistant to President,
Pan American Airways Corporation,
135 East 42d St.,
New York City, N. Y.

and

Root, Clark, Buckner & Ballantine,
31 Nassau St.,
New York City, N. Y.

[fol. 5110]

BEFORE THE
CIVIL AERONAUTICS BOARD

Docket No. 744

In the matter of the informal investigation instituted by the Board to determine whether or not a complaint should be issued with respect to the acquisition of the stock of Pan American-Grace Airways, Inc.

ANSWER OF PAN AMERICAN AIRWAYS CORPORATION AND PETITION FOR AN ORDER REQUIRING W. R. GRACE & CO. TO DIVEST ITSELF OF THE STOCK INTEREST HELD BY IT IN PAN AMERICAN-GRACE AIRWAYS, INC., PURSUANT TO SECTIONS 7 AND 11 OF THE CLAYTON ACT

Now comes PAN AMERICAN AIRWAYS CORPORATION and for its answer to the letter and so called "Statement of Facts" of W. R. Grace & Co. dated April 27, 1943 and for its petition for an order requiring said W. R. Grace & Co. to divest itself of the stock interest held by said W. R. Grace & Co. in Pan American Grace Airways, Inc., respectfully shows to the Board as follows:

a concession for air transport operations and a contract for the carriage of air mail in that country. Pan American had an option on this concession and air mail contract, and had drawn plans for the organization of a subsidiary for the purpose of receiving a formal assignment.

At that time, for all practical purposes, the only transportation facilities connecting the countries on the West Coast of South America with each other and with the United States were the steamships of Grace. This monopoly of transportation, however, was only one phase of the dominating position over trade and commerce between the countries on the West Coast of South America and between those countries and the United States which Grace had built up over many years. Grace was at that time, as it is today, an organization of tremendous financial strength, tied in to nearly every phase of transportation and commerce between the countries on the West Coast of South America and between those countries and the United States, and with large interests in industry and in banking as well.

A. Grace's acquisition of stock in a competing transportation corporation.

When Grace learned of Pan American's plan to inaugurate an air service down the West Coast of South America which would compete directly with the steamers of the Grace Line serving those countries, Grace determined to seek to acquire a stake in this new and competitive form of transportation. Pan American, with its then limited available financial resources, was willing to offer a participation to Grace, under certain terms and conditions which Pan American believed at the time would safeguard the West Coast airline against domination in the interest of its steamship competitor.

The result of the negotiations between the two companies [fol. 5114] was embodied in a formal proposal dated August 31, 1928 that each company should invest $25,000 in a Corporation (Peruvian Airways Corporation) "for the commencement of an airplane service in Peru." If Pan American should determine that it was advisable "to bid on a contract for carrying the mails between the Panama Canal

and Valparaiso". Grace was to have an option to acquire an interest in the company to be organized for that purpose, "not to exceed, however, more than 50% of the total capitalization." The proposal further stipulated that Pan American was to "have charge of the operation of the service from the Canal to Valparaiso" while the Grace "houses on the West Coast of South America will be the agents of the Company." A copy of this letter of August 31, 1928, which constituted the basis for Grace's participation in the West Coast airline, is attached as Exhibit A.

Pursuant to this agreement, Grace acquired 50% of the stock of Peruvian Airways Corporation. The vice president of the company associated with Pan American which Peruvian succeeded became general manager of Peruvian. That company instituted transport operations in Peru and also secured the necessary operating rights in Ecuador.

Pan American began its services to the Canal early in 1929. On January 31, 1929, the Post Office Department advertised for bids for the carriage of foreign air mail on route No. 9. Pursuant to the agreement of August, 1928, Pan American-Grace was organized to bid for this contract and Grace exercised its option to acquire a 50% interest in that company. Pan American-Grace became the successful bidder.

These facts clearly demonstrate that Pan American-Grace was a direct descendant of the company associated with Pan American which was negotiating in Peru as early [fol. 5115] as 1927, and undertook a business which Pan American had been planning for many months to undertake for its own sole account. This new enterprise was in no way competitive with any activity of Pan American. Thus there could not be any substantial lessening of competition with Pan American or tendency toward monopoly which are required to constitute a violation of Section 7 of the Clayton Act. The new operation was to be simply a logical extension of Pan American's route to the Canal. Section 7 of the Clayton Act expressly exempts transactions in which corporations engaged in "commerce" cause "the formation of subsidiary corporations for the actual

approximately four times Pan American-Grace's capacity south of the Zone.

Immediately after delivery of the Stratoclippers, Pan American took the next step to improve its services, ordering a fleet of 40 Lockheed Constellation four-engined aircraft, the longest range and highest speed transport aircraft and the largest land type transports planned up to that time, and far superior to anything that Grace has ever proposed for Pan American-Grace. Except for military factors beyond Pan American's control, Pan American would now be operating with these planes a number of scheduled flights each day between the United States and the Canal Zone.

The facts which stand out from this history are (1) that Pan American-Grace is receiving a direct connecting service between Miami and the Canal Zone operated by the [fol. 5100] only American flag four-engined land aircraft now in commercial operation anywhere in the world; (2) that Pan American-Grace is not in a position to supply connecting service anything like the equivalent of what it now receives; and (3) that Pan American Airways' record demonstrates that when four-engined equipment again becomes available for purchase by the airlines, the United States-Canal Zone route will receive all the service that could be justified.

7. *The claim that extension of Pan American-Grace's certificate is desirable in the national defense.*

Grace's submissions to the Board contain vague and unsupported assertions that an extension of Pan American-Grace's route would contribute to the national defense. Not a single fact is cited in support. The fact is that Pan American has whole-heartedly encouraged the undertaking by Pan American-Grace of services for the armed forces, *regardless of territory*, and has placed at the disposal of Pan American-Grace its own maintenance, operations, communications and meteorological facilities throughout the area to be served. Pan American has also stated that it would favor Pan American-Grace's offering to undertake

additional service for the armed forces to the full extent that available personnel, over and above those required for the maintenance of essential service on Pan American-Grace's own route, will permit.

8. *The interests of Pan American-Grace and the public interest.*

Pan American believes that the primary duties of Pan American-Grace Airways under present circumstances are the improvement of service upon the important route which it was formed to operate, and, to the extent of any additional available resources, the rendition of service for the armed forces. Apart from this, Pan American considers [fol. 5101] that an extension of the certificate of Pan American-Grace to a terminal in the United States would be contrary not only to the public interest but to the true interests of Pan American-Grace.

From the standpoint of the public interest, such an extension of Pan American-Grace's certificate under its present ownership would be directly contrary to the statement of fundamental policy laid down by the Board in its opinion dated July 29, 1942 in Docket No. 544. The Board there held that the organization of a new company, half owned by steamship interests and half owned by an airline, to operate over a route competitive with both the airline and one of the steamship owners, would be contrary to the public interest. Pan American-Grace is now an integral part of the Pan American Airways System, and, with its present operations, there is no inconsistency of interest between it and Pan American. On the other hand, extension of its certificate to a terminal in the United States would bring the case directly within the purview of the Board's decision. If the *organization* of a company owned jointly by an airline and a steamship company to operate in competition with both of them is contrary to the policy of the Act, an *extension* of the operations of an existing company so as to create the same conditions must be equally contrary to the public interest.

The question here presented is not, as Grace seeks to represent, the broad question whether Pan American Air-

ways, in addition to foreign flag competition, should have American flag competitors in the Caribbean. The Government is in a position to permit American flag competition whenever it sees fit. The issue here is whether the Board should, or can, force the west coast unit of the Pan American Airways System itself—a company which Pan American created as an extension of its operations to the Canal to serve the west coast, and in which more than two mil- [fol. 5102] lion dollars of its stockholders' money are invested—into competition with Pan American itself.

Actually, it cannot be seriously supposed that if the Board were to select a competitor for Pan American Airways in the Caribbean area, its choice would fall upon a company half owned by Pan American and constituting an integral part of the Pan American Airways System. When Grace speaks of Pan American-Grace becoming a competitor of Pan American Airways, it therefore impliedly assumes that Pan American will part, either voluntarily or under compulsion, with its interests in Pan American-Grace—leaving that company under the domination of Grace.

This case is, therefore, an attempt by a great shipping company to take over its airline competitor. But it is more than this. It is also an attempt by a closely held private holding company, which for nearly a century has exercised domination over transportation and commerce between the United States and the west coast of South America, to oust the one outside American interest that has attempted to engage in transportation in this area dominated by Grace. In this connection it is pertinent to inquire why if Grace wishes to compete in air transportation with the Pan American Airways System, it has not applied for a certificate on its own behalf. This, of course, it has been and is entirely free to do. Indeed, in the spring of 1941, it organized a subsidiary known as Gulf & Caribbean Airways, Inc. for that very purpose, and announced that a certificate application to operate between the United States and the Canal Zone would shortly be filed by that company.

The question here presented is thus not simply whether creation at the present time of a competitive American flag

airline between the United States and the Canal Zone is a wise policy, but whether, if there is to be competition, it should be furnished by an airline controlled by a company [fol. 5103] which not only is the airline's steamship competitor but also dominates other forms of trade and commerce with the area in question. Such a course not only would run counter to the general policy outlined by the Board in the *American Export* case, Docket No. 319, but would solidify the control of Grace over transportation and trade between the United States and our sister republics on the west coast of South America.

9. *Affirmative steps to be taken by the Board.*

We believe that the Board's duties here go beyond a merely negative disposition of this proceeding.

Pan American has been forced to the conclusion that the west coast airline in South America will never be developed as it should be, so long as either positive or negative control of Pan American-Grace rests in the hands of its steamship competitor. This control would be even more detrimental to the public interest in the future, as air transportation develops and becomes a strong competitor of steamship lines.

Some months ago Pan American offered to Grace that, in order to eliminate any question as to the Company's discharging its responsibilities in the war effort, the parties should name a ninth director of Pan American-Grace for the duration of the emergency, who would have power to break any deadlock on any questions arising in connection with operations of the Company that fall within the scope of the dedication of capital made by the two stockholders. Pan American reiterates this offer. It would be Pan American's hope that, as a result of such a course, Pan American-Grace not only would make improvements in facilities and service on its own route but also would undertake further services for the Army Air Forces. Equally important, the election of a ninth director would permit the making of equipment interchange agreements with Pan American Airways for through service, in such form as the Civil [fol. 5104] Aeronautics Board may approve.

1. *Description of the companies concerned:*

Pan American Airways Corporation is a corporation organized and existing under the laws of the State of Delaware. Pan American Airways Corporation owns all of the issued and outstanding capital stock of Pan American Airways, Inc., a corporation organized under the laws of the State of New York,* and half of the issue and outstanding capital stock of Pan American-Grace Airways, Inc.

Pan American-Grace Airways, Inc. (hereinafter referred to as Pan American-Grace) is a corporation organized under the laws of the State of Delaware.

[fol. 5111] W. R. Grace & Co. (hereinafter referred to as Grace) is a corporation organized and existing under the laws of the State of Connecticut. Grace owns the other half of the stock of Pan American-Grace.

2. *Reasons for filing this answer and petition.*

Since the order of the Civil Aeronautics Board dated September 10, 1942 (Serial No. 1928) instituting the proceeding designated Docket 779, Pan American has considered that, in line with the indication in paragraph 6 of the recital preceding said order, the general charges made by Grace in its complaint in Docket 744 would be considered in Docket 779. Pan American, under date of October 26, 1942, filed a formal answer and petition in Docket 779 which refuted the allegations contained in the letter and so-called "Statement of Facts" filed by Grace herein, and asked for certain affirmative action by the Board under Section 415 of the Act.

However, in view of doubts which have recently been expressed as to the scope of the issues presented in Docket 779, and also in view of the need that the Board's inquiry into violation of the Clayton Act should apply to Grace, Pan American feels obliged to set forth in this separate answer and petition the true facts bearing on the issues posed by Grace's letter and so-called "Statement of Facts."

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*As used herein, "Pan American" means Pan American Airways Corporation and or Pan American Airways, Inc., as well as predecessor corporations of either.

These facts demonstrate not only that Grace's complaint against Pan American is wholly without legal basis, but also that, if the Clayton Act is applicable, Grace has violated Section 7 of that Act by its acquisition of stock in Pan American Grace, and that the Board should exercise its power under Section 11 of said Act and order Grace to divest itself of the interest so acquired.

[fol. 5112]

3. *The transportation facilities in Latin America at the time of the formation of Pan American-Grace.*

Any inquiry as to whether the acquisition of stock in Pan American Grace constituted a violation of the Clayton Act must begin by a consideration of the situation existing when the acquisition occurred. It is fundamental, of course, that any violation of Section 7 of the Clayton Act occurs at the time when the stock is acquired.

Prior to the fall of 1927 transportation between the countries of Latin America and between those countries and the United States was primarily by steamship. With a few outstanding exceptions not here material, rail transportation was a negligible factor in international transportation. No American flag air transportation company had entered the Latin American field.

In July, 1927, Pan American was awarded a United States mail contract between Key West and Cuba and began operations on that route in October of the same year. This route was considered simply as a laboratory for a complete system of air transportation serving all portions of the Caribbean, and Central and South America. During 1927 and early 1928, Pan American made studies of a proposed air route from the Canal to Valparaiso, and through an associated company, began negotiations for concessions and mail contracts on the West Coast of South America.

By the summer of 1928, Pan American had become the United States foreign air mail contractor between the United States and the Canal Zone. Plans for extension of this operation to the south were well advanced. A company associated with Pan American had begun certain commer-
[fol. 5113] cial aviation activities in Peru and had obtained

with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff Daland Dusters, Inc. the sum of $15,000 for an assignment which will convey all of the rights of that Company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by this company in Peru and every effort will be made to put the business there on a paying basis.

We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U. S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South America will be the agents of the company on a reasonable compensation basis, such agency to continue during the life of transportation contracts undertaken by the company.

The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

Very truly yours,

W. R. GRACE & Co.

William F. Cogswell
Assistant Secretary

[fol. 5107]

EXHIBIT B

Extracts from Description of Passenger Facilities in Statement of Evidence submitted by Pan American-Grace Airways, Inc. to the Civil Aeronautics Board in Docket No. 716 (pp. 290-295)

Cali. "The present passenger facilities at Cali are practically non existent."

Talara. "This passenger station was built at a time when Panagra was operating aircraft having a maximum capacity of 12 passengers and has not been enlarged since that time in spite of fact larger planes are of course now in use."

Arica. "At the present time there is no passenger station at Arica. Passengers are handled from an office in the corner of the hangar."

Antofagasta. "Present passenger facilities at Antofagasta are wholly inadequate."

Mendoza. "At this point it will be practically necessary to construct an entirely new building. The present building is a small structure which is rented from the Aero Club. Traffic at Mendoza has steadily increased and the facilities are inadequate. This is particularly noticeable in the wintertime, when, because of conditions over the Andes, it is necessary for planes to stop overnight at Mendoza. On such occasions there is literally inadequate space to bring all passengers under cover, and the entire arrangements are such that passengers are subject to great inconveniences."

(3) Any dispute as to any phase of the plan was to be referred to arbitration.

Pan American fulfilled its obligations under the 1939 agreement completely, and there was comparative peace between the partners for a short period while Grace consolidated its gains. By the fall of 1939, however, war had broken out in Europe, and the American defense program [fol. 5120] was under way. Tremendous burdens were placed on all transportation facilities, particularly on Pan American's route between the United States and the Canal, and Grace was quick to seize upon this temporary emergency condition to raise the old cry that the connecting service to the Canal was inadequate and that Pan American was now bound to consent to Pan American-Grace's extension to the United States. Pan American offered to arbitrate this question as provided in the 1939 agreement, but Grace consistently refused. It seems clear that Grace has believed that if the extension of Pan American-Grace's route were compelled by the Board, Pan American, finding itself in the position of competing with its half-owned subsidiary between the United States and the Canal, would dispose of its interest in the subsidiary, presumably to Grace. In this way Grace's program for complete domination of transportation between the United States and the West Coast of South America would be fulfilled.

7. Conclusion

If, as contemplated by the original partnership agreement of 1928, Grace had been satisfied with its position as an investor in Pan American-Grace and as the airline's agent on the West Coast of South America, and had left the actual management and operation of the airline in the hands of Pan American, any adverse effects of the conflict of interest between Pan American-Grace and the Grace Line could have been prevented by Pan American, and the acquisition by Grace of stock of Pan American-Grace might not have resulted in substantial lessening of competition between the airline and the steamship line or tendency toward a monopoly. However, the succession of events out-

lined above, culminating in a move by Grace for an extension of Pan American-Grace's route to the United States, which can only be interpreted as an attempt to force Pan [fol. 5121] American to dispose of its interest in Pan American-Grace, leaving Grace in control of all forms of transportation between the United States and the West Coast of South America, makes it clear that Grace's acquisition of stock in Pan American-Grace must be invalidated as a violation of Section 7 of the Clayton Act (15 U. S. Code § 18).

Pan American has been forced to the conclusion that the West Coast airline in South America will never be developed as it should be, so long as either positive or negative control of Pan American-Grace rests in the hands of its steamship competitor. This control would be even more detrimental to the public interest in the future, as air transportation develops and becomes a strong competitor of steamship lines. The abuse by Grace of the power flowing from its ownership of stock in Pan American-Grace is exactly the kind of evil that Section 7 of the Clayton Act is designed to prevent.

Pan American respectfully requests that the Board issue a complaint against Grace under Section 11 of the Clayton Act (15 U. S. Code § 21) charging Grace with violation of Section 7 of said Act (15 U. S. Code § 18) by its acquisition of stock of Pan American-Grace and that after proper inquiry into the facts and circumstances, including those set forth in this answer and petition, an order be issued requiring Grace to divest itself of the stock so acquired.

Pan American also repeats the request made in its answer and petition of October 26, 1942 in Docket 779, that the Board institute an inquiry, pursuant to Section 415 of the Civil Aeronautics Act, into the management of the business of Pan American-Grace and that, upon making such inquiry, the Board should make such order with respect to termination of the control of Pan American-Grace by Grace as is [fol. 5122] required by the Civil Aeronautics Act and such other laws as may be applicable in the premises.

Pan American also reaffirms the offer made in its answer and petition of October 26, 1942 in Docket 779, that if the

Board concludes that Grace should be required to divest itself of part or all of its stock in Pan American-Grace, Pan American is willing to acquire this stock on such terms and conditions as the Board may determine.

Dated, January 27, 1943.

Respectfully submitted,

PAN AMERICAN AIRWAYS CORPORATION

By EVAN E. YOUNG
Evan E. Young,
Vice-President

[fol. 5123]

EXHIBIT A

W. R. GRACE & COMPANY

New York
August 31, 1928

Aviation Corporation of the Americas,
100 East 42nd Street,
New York City.

Attention: Mr. J. T. Trippe

Dear Sirs:

This will confirm arrangement under which we will associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff-Daland Dusters, Inc. the sum of $15,000 for an assignment which will convey all of the rights of that Company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by

this company in Peru and every effort will be made to put the business there on a paying basis.

We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U. S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South American will be the agents of the company on a reasonable compensation basis, such agency to continue during the life of transportation contracts undertaken by the company.

The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

Very truly yours,

W. R. Grace & Co.

William Cogswell
Assistant Secretary

whether through or local, is a passenger lost to the Grace Line, and almost every connecting through passenger carried by Pan American between the United States and the Canal is likewise a passenger lost to Grace. The answer filed in Docket 779 shows in detail how Grace has used its negative control over Pan American-Grace to retard the acquisition of multi-engine flight equipment, to prevent the development of adequate ground facilities, to force Pan American-Grace into operation over a circuitous and mountainous "bottleneck" route between the Canal Zone and Guayaquil instead of developing the direct over-water route which has been feasible for at least five years, and to prevent Pan American-Grace from accepting offers of equipment charter and interchange which could only have [fol. 5118] been beneficial to the true interests of Pan American-Grace and the public interest.

6. *Grace's attempt to secure affirmative control of the transportation system competing with its steamship lines.*

The agitation for an extension of Pan American-Grace's route to the United States which has been consistently pressed by Grace since the fall of 1938, is another manifestation of Grace's general program to dominate this competing mode of transportation in its territory.

By the fall of 1938 the Grace interests had evidently determined that mere negative control of the airline, which was constantly becoming a more serious competitor of their steamship lines, was not enough. To secure affirmative control, however, Grace had to eliminate Pan American. Grace's actions during the past four years have been uniformly directed toward attainment of that end. The record compels the conclusion that Grace's insistence that Pan American-Grace's route be extended to the United States in direct competition with Pan American is simply one phase of its effort to force Pan American to dispose of its interest in Pan American-Grace, with Grace the only likely purchaser.

In line with this purpose, Grace demanded, in the fall of 1938, that the scope of operations of Pan American-Grace

contemplated by the 1928 agreement be expanded to include service between the United States and the Canal Zone, and that management of the enterprise should be turned over to Grace. The principal excuse offered in attempted justification for the demand that Pan American-Grace be extended to the United States was a claim that Pan American's connecting service between the United States and the Canal Zone was inadequate. A comparison of the services of Pan American to the Canal with those of Pan [fol. 5119] American-Grace south of the Canal shows the hollowness of this claim. From the very beginning Pan American has recognized its obligation, which accords directly with its interests, to furnish adequate connecting service to Pan American-Grace. The service of Pan American to the Canal has always been far superior to that of Pan American-Grace south of the Canal. At the present time, Pan American's daily capacity from the United States to the Canal Zone is approximately four times Pan American-Grace's capacity south of the Canal Zone.

Pan American realized that Grace had neither the legal nor the moral right to make these demands. It desired, however, to attempt to live in harmony with its partner, and early in 1939 it consented to a compromise adjustment, which was to extend for five years. The principal provisions of this agreement, which were set forth in a memorandum of February 14, 1939, were as follows:

(1) Grace's demand that the 1928 agreement be disregarded so as to permit Pan American-Grace to apply for a certificate between the Canal Zone and the United States was withdrawn, the only exception being that, if Pan American Airways should fail to "maintain an adequate direct connecting service", Pan American would take proper action to permit the application to be made.

(2) A Grace director was to be elected President of Pan American-Grace "and placed in responsible charge of the management of the Company." However, technical, traffic and other services were to be rendered to Pan American-Grace by Pan American Airways as heretofore.

[fol. 5127]

BEFORE THE CIVIL AERONAUTICS BOARD

Docket No. 779

In the matter of the alteration, amendment and modification of the certificate of public convenience and necessity of

PAN AMERICAN-GRACE AIRWAYS, INC.

under Section 401(h) of the Civil Aeronautics Act of 1938, as amended, to provide for a route terminal in the United States.

REPLY OF W. R. GRACE & CO. TO ANSWER OF PAN AMERICAN AIRWAYS, INC. AND PAN AMERICAN AIRWAYS CORPORATION AND PETITION OF PAN AMERICAN AIRWAYS CORPORATION FOR AN INVESTIGATION UNDER SECTION 412 OF THE CIVIL AERONAUTICS ACT

Now comes W. R. Grace & Co. (hereinafter referred to as "Grace") and respectfully shows to the Board as follows:

1. The present proceeding (Docket No. 779) was initiated by the Board on its own motion to determine whether the public convenience and necessity requires that Pan American-Grace Airways, Inc. (hereinafter referred to as "Panagra") have a route terminal in the United States. Pan American Airways Corporation (hereinafter called "Pan American") has used its 50% ownership in Panagra to prevent Panagra itself from applying to the Board for an extension of its route to a terminal in the United States.

[fol. 5128] 2. Panagra operates in every country in South America, except Venezuela, Uruguay, Paraguay and the Guianas, over more than 8,000 miles of airways. Panagra is the only American international air carrier operating abroad which does not come through to a terminal in

the United States. All of the divisions of Pan American Airways operate to and from United States terminals. The northern terminus of Panagra is at Balboa in the Canal Zone and Panagra is dependent upon Pan American for connecting service from that point to the United States. This connecting service has been and is inadequate in fact and in the nature of the operation any connecting service in air transportation on a major trunk line is inherently inadequate and unsatisfactory and tends to defeat one of the major advantages which air transportation can offer, namely, origin to distination travel. Moreover in this particular service Pan American's interest in the Miami Balboa flight lies primarily in providing a local service between Miami and Balboa and in serving Pan American's other operations in Central and South America. It is only in part concerned with providing Panagra with a connecting service. Panagra, on the other hand, is basically interested in providing a through service to the United States which will adequately serve the 8,000 miles of airways operated by Panagra in South America.

3. Pan American is unable to refute the proposition that the public interest and the effective development of Panagra requires the extension of the Panagra route to the United States. Its strategy has therefore been to use its [fol. 5129] ownership in Panagra to prevent Panagra from applying to the Civil Aeronautics Board for an extension of the Panagra route to the United States. Pan American has done this in line with its avowed intention of maintaining a monopoly of American air transportation, entering and leaving the United States. Failing in this basic strategy by the action of the Board itself in ordering these hearings, Pan American now attempts in this proceeding to divert attention away from the real issue in this case and to confuse the issue by charging Grace with a monopoly of passenger transportation by water on the west coast of South America through its ownership of Grace Line, Inc. and by charging that Grace, in the interests of Grace Line, has prevented the development of Panagra. Neither of these charges is germane to the issue here involved of whether Panagra should be permitted to have an American

terminal or whether the Pan American monopoly should be permitted to continue to relegate the public and Panagra to an inadequate connecting service between the Canal Zone and the United States. In addition both charges made by Pan American are absurd.

4. As to the charge that Grace has a monopoly of passenger transportation by water in the areas served, it should be pointed out that throughout the period of normal operations before the present war, Grace Line had many competitors in the areas served, which included American Pioneer Line, Barber Line, Chilean Line, Dollar Steamship Lines, French Line, Hamburg American-North German Lloyd, Johnson Line, Italian Line, N.Y.K. Line, Pacific Steam Navigation Co., Furness Lines, Panama Line, Pan [fol. 5130] ama Pacific Line, Royal Netherlands S.S. Co., Standard Fruit and S.S. Co. and United Fruit Company. At the present time Grace Line is not carrying any commercial passenger traffic anywhere in the world and its entire cargo operation is for Government account.

5. As to the charge that Grace, in the interests of Grace Line, has prevented the development of Panagra, the entire history of Panagra and the position of the parties in this proceeding show that Grace has always been the one pressing for the expansion and development of Panagra. The action of Pan American in this proceeding is merely another illustration of what Pan American has always done. Pan American has been the one holding back the development of Panagra whenever its development has had any bearing on Pan American's other interests.

6. Grace is not a steamship company nor is it a holding company existing for the purpose of owning steamship shares. Its ownership of stock in Grace Line is only one of the many interests which Grace has. Grace is a large operating company engaged in many forms of business and owning stock in companies engaged in many lines of activity. The interest of Grace in Panagra was an important factor in making Panagra the "best" though not the lowest bidder when the original airmail contract was awarded Panagra in 1929. Without that contract Pan-

agra would have been non-existent. The long experience of Grace on the west coast of South America has, since the [fol. 5131] very inception of the Panagra service, been a vital, constructive influence in the successful development of Panagra.

7. The assertion made by Pan American that "in normal times, almost every passenger carried by Pan American-Grace between the Canal and Santiago, whether through or local, is a passenger lost to the Grace Line, and almost every connecting through passenger carrier by Pan American between the United States and the Canal is likewise a passenger lost to Grace" is contrary to all of the facts of the traffic movement, both air and water, in the areas referred to. Furthermore, it is based on the naive thesis that air transportation has no field of usefulness except to replace surface transportation and must look for its traffic solely to business diverted from surface transportation. The conflict of interest between Pan American and Panagra is real. The alleged conflict between Grace Line and Panagra is illusory.

8. The remainder of the Pan American Answer and Petition consists of an attempted defense of the Pan American connecting service between Miami and the Canal Zone, an attempt to disparage the services and equipment of Panagra, and an attempt to read limitations into Panagra's corporate purposes. Because of its central importance in the present proceeding, we will first discuss the inadequacy of the connecting service.

[fol. 5132]

INADEQUACY OF CONNECTING SERVICE FROM MIAMI TO THE CANAL ZONE

9. Facts showing the inadequacy of Pan American's connecting service between the Canal Zone and the United States are set forth in Grace's Petition in Dockets Nos. 707 and 744 and will be more fully presented and brought down to date at the hearing. Pan American's defense of the connecting service neither meets the charges against it as it actually exists and as it has existed over the years nor does

[fol. 5124]

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

EVAN E. YOUNG, being duly sworn, deposes and says: that he is Vice-President of Pan American Airways Corporation; that he has read and is familiar with the contents of the foregoing answer and petition and the attached exhibit; that he intends and desires that in considering said answer and in acting upon said petition, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; and that, to the best of his information and belief, every statement contained in the said answer and petition is true and that no such statement is misleading.

EVAN E. YOUNG
Evan E. Young

Subscribed and sworn to before me, a Notary Public in and for the County of New York, and State of New York, this 27th day of January, 1943.

/s/ DAVID E. GRANT
Notary Public

W. R. Grace & Company Exhibit 140

BEFORE THE CIVIL AERONAUTICS BOARD

Docket No. 779

In the matter of the alteration, amendment and modification of the certificate of public convenience and necessity of

PAN AMERICAN GRACE AIRWAYS, INC.

under Section 401 (d) of the Civil Aeronautics Act of 1938, as amended, to provide for a route terminating in the United States

[Stamp: Office Copy — Argued or Submitted 6/25/46 Docketed 7 & 43 M. L. — Diary M. L. — Discharge F/K]

REPLY OF W. R. GRACE & CO.
TO
ANSWER OF PAN AMERICAN AIRWAYS, INC. AND PAN AMERICAN AIRWAYS CORPORATION AND PETITION OF PAN AMERICAN AIRWAYS CORPORATION FOR AN INVESTIGATION UNDER SECTION 412 OF THE CIVIL AERONAUTICS ACT

Communications from the Board with respect to this Reply should be sent to the following:

A. Garni,
First Vice President,
W. R. Grace & Co.,
7 Hanover Square,
New York, N. Y.

Wright, Gordon, Zachry, Parlin & Caldwell,
62 Wall Street,
New York, N. Y.

it attempt to answer the obvious truth that no connecting service other than one of its own which brings Panagra through to a terminal in the United States can adequately serve the public interest and meet Panagra's needs. Pan American's defense does not indicate that its greater capacity between the United States and the Canal Zone than Panagra's south of the Canal Zone is required by other than Panagra traffic which Pan American carries on this service, and that this excess capacity is by no means fully available for Panagra traffic. Pan American's defense also omits reference to the fact that most of such improvements as it has made in the connecting service over the years have been made under pressure from Grace.

10. In recent months Pan American has admitted the inadequacy of the connecting service, attempting to excuse this inadequacy on the ground of the war. It has then confirmed its admission and repudiated its excuse by doubling the connecting service under the pressure of this proceeding and the proceeding in Docket No. 778. This additional service has been pleaded both in this proceeding and in [fol. 5133] Docket No. 778 as a basis for the contention that adequate service now exists. But the extra service is strictly a "fighting ship" operation and has been carefully kept on a "voluntary" basis. Moreover, upon the recent inauguration of service on the New Orleans-Guatemala route (Docket No. 373) Pan American has diverted part of the equipment from the Miami-Balboa service to the New Orleans operation, with the result that the second daily flight on the Miami-Balboa route can only be flown three days a week at most, and this only under the most favorable conditions. This latest development is illustrative of the position in which Panagra always finds itself in relation to this connecting service. A brief history of this service over the past eleven years is set forth below.

11. From January 1, 1932 to July 15, 1936 the Pan American connecting service between Miami and Cristobal was a two-day trip, one day Miami to Kingston, one day Kingston to Barranquilla and thence to Cristobal. For four and a half years Pan American made no improvement in the time required for this service, although Panagra during

the period reduced its schedules over its much longer routes from Cristobal to Buenos Aires from five days in 1932 to three and a half days in 1935. Not until July, 1936 was any improvement made in the connecting service, and then the schedule was reduced by only one half a day.

12. The Grace directors continued to insist on further improvement, maintaining that it was perfectly feasible to operate this service direct between Kingston and the Canal Zone without the deviation to Barranquilla, and that a one-day service between Miami and the Canal Zone could [fol. 5134] thus be established. Pan American claimed that for operating and traffic reasons this was impossible. Under great pressure, however, Pan American was finally induced in July, 1937, to undertake operation of the connecting service on a one-day schedule, not direct but retaining the diversion via Barranquilla, which it claimed was the best that could be done.

13. Pan American never carried out this one-day schedule southbound and the Grace directors continued to insist that it could readily be done if the deviation to Barranquilla were omitted. Finally, in December, 1937, one flight a week was inaugurated direct from Miami to Cristobal via Kingston. A second trip was operated indirectly via Barranquilla scheduled to leave there early in the morning in time for a 9:30 A.M. Panagra departure from Cristobal. At that time Panagra maintained two flights a week south from Cristobal but all efforts of the Grace directors to have both connecting trips operated direct from Kingston to Cristobal were unavailing.

14. Despite Pan American's feigned warnings and misgivings, actual performance under the December, 1937, schedule showed a very high percentage of schedule performance on the one-day direct Miami-Kingston-Cristobal trip and a very large percentage of schedule failures on the trip via Barranquilla. None of the prophesied operating difficulties were encountered on the direct trips. In the first six months under the December, 1937, schedule practically all direct trips were on time, whereas very few of the trips via Barranquilla were on time in Cristobal and

[fol. 5143] is entirely misleading. The fact is that Pan American has never had four-engined marine equipment or four-engined land equipment in operation "*in Latin America*" over land routes. Pan American is today operating "*in Latin America*" two-engined DC3 and DC3A equipment exactly similar to that operated by Panagra.

31. The four-engined marine and land equipment which Pan American states it is using "*in Latin America*" is actually being used in the operation of *over water* routes between the United States and Latin America. At one time the marine equipment was used in over water routes along the east coast of South America but that is not true today. Even in over water routes today Pan American is operating two-engined DC3 and DC3A equipment exactly similar to that operated by Panagra. The Pan American east coast route all the way from Miami to Buenos Aires, including the long over-water flight between Miami and the South American mainland via Cuba, Puerto Rico and Trinidad, is using Douglas DC3As.

B. *Ground Facilities*

32. Grace has never resisted provision of reasonable and adequate passenger facilities. It has resisted extravagance and waste of the taxpayer's money during the period when the operation of all airlines was so preponderantly dependent on government subsidy. It has never regarded expenditure *per se* to be a virtue and does not consider "investment in ground facilities per route mile" as of any significance. Grace regards the adequacy and suitability of the facilities themselves and not their mere cost as the test of wisdom of management.

[fol. 5144] 33. The truthfulness and sincerity of Pan American's attack upon Panagra under this heading may be judged by its method of quotation from Panagra's submission of evidence in its rate case on which it relies in this matter of ground facilities. For example, Pan American quotes:

> "The present passenger facilities at Cali are practically non-existent."

under instructions from the Pan American Board of Directors, Pan American failed to attend a stockholders' meeting of Panagra called at Pan American's own request for the purpose of considering the matter, thus creating a lack of a quorum and rendering impossible any action by the stockholders. Such action and conduct on the part of Pan American and its directors on the Panagra board was intended to and did prevent Panagra from taking any action.

19. In July, 1940, Panagra's services from the Canal Zone south were increased from two to three trips a week. Pan American continued to provide only two direct connecting trips per week. These connecting trips continued [fol. 5138] to be flown with the old Sikorsky Flying Boats although Pan American had, in the meantime, begun using modern and faster Boeing 307s to modernize and speed up its own service along the east coast to Buenos Aires. Not until September, 1940, and then only in response to insistent demand by Panagra under the February 14, 1939 Agreement, did Pan American institute three direct connecting trips with Boeing 307s, these trips flying non-stop from Miami to Balboa.

20. In November, 1940, Panagra instituted a fourth trip between Cristobal and Guayaquil which was increased to a full fourth trip over the whole line in August, 1941. Pan American made no corresponding increase in its direct connecting service and continued to operate only three direct services from Miami connecting with Panagra's four services out of Balboa.

21. In February, 1942, Panagra again increased its service from four to five a week. Pan American made no corresponding increase in its direct connecting services and continued to operate only three such services from Miami to Balboa to connect with Panagra's five services out of Balboa.

22. Not until April, 1942, when Panagra's services were increased to six (which was increased to seven in the following month) did Pan American by the inauguration of daily service provide a sufficient number of direct services out of Miami to connect with all of Panagra's services out of Balboa.

[fol. 5139] 23. During a period of almost a year and a half, from December, 1940, to April, 1942, Pan American failed to provide a sufficient number of direct connecting services from Miami to correspond with Panagra's services out of Balboa, the deficiency being 25% during part of the period and 40% during the balance. Not only was the number of Pan American trips inadequate during this period, but the service itself was subject to many delays which caused serious interruption in Panagra's schedules. During the period July 1 to November 16, 1941, for example, 25% of Panagra's southbound trips from Balboa were obliged to defer departure to the following morning by reason of Pan American's late arrival.

24. In the midst of this intolerable situation, in utter disregard not only of Panagra's position but of Pan American's own obligations under the February 14, 1939 Agreement, Pan American proposed that its Miami Balboa flight (which had theretofore operated non-stop) should include a stop at Camaguey, Cuba. It was perfectly obvious and subsequent experience abundantly demonstrated that this could not be done without further adding to the already serious delays which existed in the connecting service. On November 25, 1941 Pan American filed an application (Docket No. 689) with the Civil Aeronautics Board for authorization to include this Camaguey stop on its route between Miami and the Canal Zone. Panagra on learning of this application pointed out to Pan American that the additional mileage and time required for this stop would so increase elapsed time between Miami and the Canal Zone as [fol. 5140] to destroy the existing connection with Panagra at the Canal Zone and thereby greatly delay schedules from the United States to points on the west coast of South America as well as to Buenos Aires.

25. While these discussions were in progress, Pan American without prior notification of any kind to Panagra filed with the Civil Aeronautics Board on December 3, 1941 a request for an exemption order which would have the effect of permitting the immediate inclusion of the Camaguey stop without the notice and hearing required by the Act. Pan American in making this request omitted to no-

tify the Civil Aeronautics Board in any way of Panagra's interest and concern in the matter and in its letter to the Board stated:

> "To the best of the applicant's information and belief, no air transportation enterprise other than applicant's Cuban subsidiary, which conducts operations to and from Camaguey, has any interest in the rendition of service to that point by the applicant."

26. This was the situation when W. R. Grace & Co. brought the matter to the attention of the Civil Aeronautics Board by the filing of its Petition in December, 1941 (Docket No. 707). Following the outbreak of the war and the withdrawal of steamer service between the United States and the Canal Zone, there was an enormous growth of traffic, passengers, mail and express, originating at or destined to the Canal Zone or immediately adjacent areas which absorbed a great deal of the space available on the Pan American connecting service. The result was that the space on the connecting service available for Panagra traffic be- [fol. 5141] came greatly reduced despite the fact that the carrying capacity of the 307s was obviously larger than that of Panagra's DC3s. The space on the 307s has never been exclusively available for Panagra traffic and, with the condition above referred to, has become less and less.

27. A connecting service with the above record and which can only be kept up to an approximation of adequacy by the constant struggle and effort and the series of crises above described is manifestly not an adequate connecting service. Nor, so long as this condition exists, can there ever be any sound development of air transport between the United States and the west coast of South America and Argentina properly adapted to the needs of the foreign and domestic commerce of the United States.

PANAGRA'S FLIGHT EQUIPMENT AND SERVICES

28. Pursuant to its theory that the conflict of interest between Pan American and Panagra and the facts with respect to Pan American's policy of protecting its monop-

oly at the expense of Panagra may in some manner be obscured by an attack, however unfounded, upon Grace. Pan American seeks to disparage the services and equipment of Panagra and to accuse the Grace directors of responsibility for ulterior motives for fictitious deficiencies in the Panagra operations. This charge, advanced for the first time in these proceedings, is so unwarranted and so unjust and so unfair to the men (many of them being unconnected with Grace) who have devoted years to Panagra's service that it cannot be left unanswered.

[fol. 5142] A. *Flight Equipment*

29. The use by Panagra of single engine equipment in the first years of operation was with the approval of Pan American and with a 100% passenger safety record. As soon as practicable this equipment was replaced by multi-motor equipment. The first American multi-motor airplane available to the commercial airlines was the Ford tri-motor in 1929. The Panagra directors unanimously authorized the purchase of such equipment in May, 1929 and placed it in operation a few months thereafter. The Ford tri-motor plane was followed in quick succession by Douglas DC2, DC3 and DC3A two-motor equipment as these planes became available and Panagra is currently using the best two-motor equipment procurable. With the development of the four-engined land plane, Panagra in 1939 began consideration of the use of four-engined land planes on its routes. As long ago as March, 1940, Panagra authorized the purchase of three four-engined planes (Douglas DC4s) and later contracted for two additional four-engined planes (also DC4s) as Pan American well knows. Delivery of these planes has been prevented by the war.

30. Panagra's operations are over land or along the coast line and are carried on with the same type of equipment as is used by Pan American and the domestic airlines in the United States in similar operations. Pan American's allegation that "although Pan American Airways has had four-engined marine equipment in operation *in Latin America* since 1931, and four-engined land equipment since 1940, Pan American-Grace today still has none"

35. The other extracts are equally misleading. Exhibit A hereto attached completes the quotations from which Pan American's Answer gives only a part and shows the other relevant facts.

C. *The Canal Zone-Guayaquil Sector*

36. Pan American cites as "perhaps the most serious instance of Grace's use of its negative control" over Panagra its attitude with respect to the route between the Canal Zone and Guayaquil. The substance of Pan American's complaint is that Panagra changed on this portion of the route from slow amphibian equipment to the same kind of equipment (Douglas DC3s) as Pan American itself used on its east coast route and changed the route so as to service the City of Cali in Colombia.

37. When the Panagra operation was begun, high altitude transport planes were not in existence and it was thought that the northern sector of the route between the Canal Zone and Guayaquil must be flown over water. Operations were, accordingly, begun with a small amphibian S38 which was subsequently replaced by an amphibian S43 and for a short period by a Commodore, a flying boat. This [fol. 5146] route was never satisfactory from a traffic standpoint or from the standpoint of proper service to Colombia since there are no important cities on the Pacific Coast of Colombia which an over water operation could serve and an amphibian plane was not suitable for crossing the mountain range between the coast and the interior. The one most important city in western Colombia, Cali, is inland, a six hour railroad trip from the port of Buenaventura.

38. When the DC3 became available and it became perfectly practicable to operate the northern sector with DC3s, the Grace directors immediately urged that such action be taken in order to give Cali direct service, to permit of uniform equipment over the Panagra route, and to provide faster service in this sector to the benefit of the whole line. Pan American had done the same thing in 1937 on the east coast by substituting DC3s for four-engined boat operation between Rio and Buenos Aires.

39. Pan American at that time owned about 84% of the German dominated Scadta which had a monopoly of the inferior business in Colombia including service to Cali. Pan American objected to Panagra's going direct to Cali for the reason that this might be prejudicial to Scadta, might interfere with Scadta's business to Cali, and might impair Scadta's monopoly in Colombia. These and neither of the other reasons to which it now refers or those which it spread on the minutes at the time were the real reasons for its objections. There was no mystery about this at the time and, in fact, in the course of the discussions Pan Amer- [fol. 5147] ican sought at one point to satisfy the situation by offering to sell a portion of its Scadta stock to Panagra or to Grace. Grace declined to permit this German dominated company to interfere with Panagra's development. After weeks and months of discussion and after the operating management of Panagra recommended such action on the basis of careful surveys checked and approved by Pan American's technical staff, Panagra provided for the transfer of the northern sector operation to the over land route in January, 1938. The Pan American directors of Panagra, after first blocking the change by refusing to provide a quorum, finally permitted it to pass by appearing but refraining from voting.

40. The results of adopting the overland route via Cali were not at all those indicated in the Pan American Answer and Petition:

(i) While the flight from the Canal Zone to Guayaquil inland via Cali is slightly longer than via the water route, this difference is offset by the greater speed of DC3s.

(ii) The only reason why Panagra's planes stop overnight at Cali and passengers today do not travel between the Canal Zone and Lima in one day is because the present schedule provides for midday rather than morning departure from the Canal Zone connecting with Pan American's schedule leaving Miami the same morning and arriving in Balboa at 12:50 P.M. Not only is it entirely possible to fly the Balboa Lima

given certain "options." When Panagra was formed, Pan American had no pre-emptive or other rights to the air service over what subsequently became the Panagra route. Before any discussions with Pan American began, Grace had undertaken an investigation of air transport possibilities in South America on its own account. In joining with Grace, Pan American received at least as much as it gave. Grace was a large and well-established business in South America and elsewhere. Pan American was a small struggling company, but a few months old and with extremely meagre operations, consisting of little more than routes between Miami, Havana, Nassau and Puerto Rico, with the barest commencement of service to the Panama Canal. Indeed, when Pan American and Grace satisfied the Postmaster General in 1929 that Panagra was the "best" though not the lowest bidder for the airmail contract [fol. 5151] awarded to Panagra in that year, the organization, offices and executives of Grace were pushed forward as cogent reasons for the award to Panagra. The organization, offices and executives of Pan American were mentioned only secondarily, or not at all.

46. Panagra began operations in 1929 under a Certificate of Incorporation containing the purpose clause:

> "To carry, convey, transmit, or transport, as, when and *where lawful*, goods, freight, express, articles of merchandise of every nature and description, securities, passengers, mail and intelligence by means of air craft."

Panagra's original route from Cristobal to Santiago, and then to Buenos Aires, a distance of 4500 miles, was considerably longer than all of Pan American's then routes combined. Panagra was itself a pioneering operation and not an "investment" in any sense. As a result of extensions and modifications of the original route made during the past fourteen years Panagra is today operating more route miles off the original "Panama Canal to Valparaiso, Chile" route than on it. These extensions include Santiago to Buenos Aires (and for a time to Montevideo); inland route across Colombia; interior service in Ecuador; interior service in Bolivia first to La Paz, then to the Argentine

border, then through the length of the Argentine by way of Salta, Tucuman and Cordoba to Buenos Aires, and recently entirely across Bolivia to Corumba, Brazil.

47. All of these extensions of the original route were effected by action of the Board of Directors of Panagra without any suggestion of a new "dedication of capital." These changes brought about by action of Panagra over the years with the acquiescence of Pan American's directors on the Panagra board can hardly now be called [fol. 5152] "repudiations" by Grace. Though the Pan American directors have often endeavored by every means at their command to block the expansion of Panagra into actual or potential competition with Pan American, the dedication of capital theory was not conjured up by Pan American as an aid to the protection of its monopoly until recently. In view of the history of Panagra, it is apparent that the fictitious theory of limitations upon the dedication of capital and upon the corporate purposes of Panagra is a last resort on the part of Pan American.

OTHER MATTERS

48. It is unnecessary and inappropriate to reply here to all of the trivial and irrelevant allegations, unwarranted conclusions, insinuations and inferences and to the purely argumentative matters set forth in Pan American's Answer and Petition. Several items falling within these categories, however, may be briefly commented on as follows:

(a) The facts leading the Board to fix different rates of mail pay in the Pan American and Panagra cases are well known to the Board and need not be discussed here. We believe that the records in the two cases show that operating expenses of Pan American and Panagra were not far apart and that the difference between the two cases results almost entirely from Pan American having a larger revenue resulting from the highly concentrated traffic which it enjoys in Central America and between the United States and South American and the West Indies. In this connection it is interesting to note that Pan American's original Post Office mail contracts were on the

run via Cali in one day with DC3s, but Panagra has [fol. 5148] done it on many occasions when delays in Pan American's connecting service from Miami have required Panagra to delay departure until the following morning. One-day service with S42s, the only four-engined ship available in 1937, would have been impossible.

(iii) Placing Cali on the main line added greatly to the usefulness of Panagra's service and contributed important income revenue. Uniform equipment and elimination of expensive boat or amphibian operation which it made possible resulted in substantial reduction of operating expense.

41. The experience of Panagra from the time this change of route was made to date demonstrates its wisdom. It must be borne in mind that at the time the step was taken the choice was between DC3s and S42s. The present four-engined land plane had not been heard of in 1937. The four-engined equipment offered by Pan American in order to induce Panagra not to serve Cali was wholly uneconomical for the purpose proposed by Pan American. If Panagra had loaded itself down with such slow flying boat equipment, it would never have ceased to regret the loss of prestige not to mention the financial loss it would have sustained.

42. Pan American's reference to an offer of four-engined equipment in 1941 is similarly misleading. That offer was an attempt to prevent Panagra from applying for the extension of its route to the United States here at issue. When the New Orleans route was under consideration Grace sug- [fol. 5149] gested that Panagra apply for this gateway. Pan American declined. While the matter was under discussion, Grace suggested as a possible compromise an arrangement under which Panagra might be permitted to operate its planes through to the United States over Pan American's franchise. Panagra was obviously not interested in any reciprocal arrangement whereby Pan American would operate its planes over Panagra's route.

43. Pan American professed to be interested in the proposal, but dragged the matter along until Grace again made demands for improvement in the connecting service in October, 1941. Then Pan American submitted a counter proposal whereunder Panagra could *offer* to Pan American Panagra four-engined equipment for operation by Pan American on Pan American routes, and Pan American could *offer* to Panagra Pan American four-engined equipment for operation by Panagra on Panagra routes. Either party could refuse such offer. The proposal gave neither party any right to the interchange of any equipment and in view of the fact that the counter proposal related to four-engined equipment, which Pan American had and which Panagra did not have, it was obviously designed not to enable Panagra to fly direct to the United States, but instead to secure to Pan American a foothold on the Panagra route.

THE SCOPE OF PANAGRA'S CORPORATE PURPOSES

44. The capital invested in Panagra is not "dedicated" to any such restricted air service as Pan American contends nor is the right of Panagra to extend its route to a United States terminal forever precluded by any such newly discovered "dedication of capital". Pan American's theory [fol. 5150] is based upon a letter dated August 31, 1928 written as a part of the negotiation leading to the formation of the joint enterprises, finally culminating in Panagra. Practically none of the terms of that letter were ever carried out. Peruvian Airways, the company mentioned in the letter and formed after the letter was written, was never used for the through service contemplated by the letter; the line never ran to Valparaiso and does not run there today; Pan American except in a technical advisory capacity has never had "charge of the operation."

45. Before Grace had any contact whatever with Pan American, Grace had begun an investigation of the possibilities of air transportation in South America. Grace did not join with Pan American in the formation of Panagra as a mere "investor" permitted to "participate" and

30% reached Cristobal too late for Panagra to make Guayaquil that day.

[fol. 5135] 15. These delays in Pan American's indirect connecting trip overnighting at Barranquilla were inherent in the schedule on which that service was operated. Arrival of this trip in Cristobal in time for Panagra to leave on schedule was exposed not only to possible delays in the trip between Miami and Barranquilla but also to two additional possibilities of delay which did not exist on the direct trip. The plane from Miami to Barranquilla did not proceed on to Cristobal but transferred its mail, passengers and express at Barranquilla to the plane operating between Venezuela and Cristobal. This meant that in order to reach Cristobal on time (1) the plane from Venezuela to Cristobal, which picked up Panagra's traffic at Barranquilla, had to arrive at Barranquilla on the same day as the plane from Miami and (2) on the following morning this Venezuela plane had to leave Barranquilla at the scheduled hour of 5:45 A.M. and arrive at Cristobal at 8:00 A.M. Weather or any other delays on any of these intervening sectors meant that Panagra's long international flight to Buenos Aires, delayed, in any event, to a 9:30 A.M. departure to accommodate this inadequate indirect connection, could not leave Cristobal on schedule and must [illegible] at the very start of its 4500 mile run. In addition to [illegible] delays inherent in this indirect service via Barranquilla, that service was subject to the further handicap that increase in volume of Colombian and Venezuelan traffic cut down space available for passengers, mail and express destined for the Panagra route.

16. Not only did Pan American give Panagra an inadequate service but the retention of the Barranquilla deviation was manifestly dictated by the interest of Pan Ameri-[fol. 5136] can in the Scadta Company in which Pan American owned some 84% of the stock. The Scadta Company, which was operated by Germans, was competing with Panagra for international traffic to and from certain interior points in Colombia. The Pan American-Barranquilla connection gave a direct service to Scadta and an indirect service to Panagra, obviously putting Scadta in a preferential

position. It was quite apparent that Pan American was favoring the company in which it had the larger interest.

17. It was this long record on Pan American's part of lack of progress, lack of cooperation and lack of any recognition of any obligation to provide Panagra with adequate connecting service (even to the point of refusing to institute the second direct Miami Kingston Cristobal service in the face of the above experience) which led Panagra to the conclusion that only by operating its own connecting service could the public interest be served and Panagra's operating problems in this respect be solved. Protracted discussions ensued which were finally terminated by the compromise agreement dated February 14, 1939. Two of the basic provisions of that five year agreement were: First, that Pan American would inaugurate the second Miami Kingston Cristobal direct connecting service which it had up to then declined to do and would maintain an adequate direct connecting service for Panagra's through mail schedules; and second, that if Pan American failed to provide such adequate direct connecting service it would cause the Pan American directors on the Panagra board to take such action as would permit Panagra to apply for a certificate to operate a connecting service of its own. [fol. 5137] Pan American instituted the second direct Kingston Cristobal service on or about April 1, 1939, in accordance with the terms of the above agreement.

18. Early in 1940 when Pan American (Docket No. 373) and American Export Airlines, Inc. (Docket No. 497), applied for the route between New Orleans and the Canal Zone, the Grace directors of Panagra endeavored to persuade the Pan American directors to permit Panagra to apply for this connecting route as a solution to the connecting service problem. Pan American declined to acquiesce in this. The President of Panagra sought to bring the matter before the board of Panagra. Various special meetings of the Board of Directors were called in 1941 for this purpose but the Pan American directors of Panagra, constituting one-half of the board, repeatedly failed and declined to attend such directors' meetings, thus making action by the Panagra Board of Directors impossible. This was done

Pan American omits to quote the immediately following sentences:

> "The field is a military field and the local authorities will not permit buildings at this point. New arrangements must be made. It is anticipated that a new field will be constructed. The sum of $150,000 represents Panagra's share of new passenger facilities which will be in all probability shared with Aviatca."

Moreover, Pan American fails to state that the facilities above referred to are those of its own affiliate, "Aviatca," and that since the statement of evidence referred to was prepared, arrangements have been entered into between Panagra and Aviatca for the construction of a new airport at Cali in which Panagra will have half ownership and will accordingly be in a position to see that adequate facilities are provided.

34. As another example, Pan American quotes with respect to Oruro:

> "There are no facilities at this point at the present time."

Pan American omits to quote the immediately following sentences:

> "The airport which was used up to six months ago was not satisfactory under all weather conditions, and its continued use by Panagra was uncertain. Accordingly, a new airport has been constructed and the passenger and radio station must be set up at the new site. It (fol. 5145) is significant in this connection that Oruro is the junction of the Bolivian operation with the national operation on the international run, and movements through this point has actually, in terms of trips, quadrupled in the last six months."

Pan American also fails to state that since the date of the statement of evidence an entirely new attractive and commodious passenger station has been erected on the new airport and is now in actual service.

Pan American failed to state that the airport at Cordoba is a military field, making it impossible up to date to make arrangements for permanent passenger facilities.

[fol. 5161]

W. R. Grace and Company Exhibit 141

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 779

[Stamp—Office Copy—Received 3 10 43 M.L.—Docketed 3 11 43 M.L.—Diary Not Entered PWB—In Charge FJK]

In the Matter of the alteration, amendment and modification of the certificate of public convenience and necessity of

Pan American-Grace Airways, Inc.

under section 401 (h) of the Civil Aeronautics Act of 1938, as amended, to provide for a route terminal in the United States.

AMENDMENT TO THE PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

Thurman Arnold
Assistant Attorney General

Arne C. Wiprud
William R. Kuefener
Special Assistants to the Attorney General

Clarence J. Nickman
Special Attorney

[fol. 5162]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 7[illegible]

In the Matter of the alleged unauthorized and unlawful [illegible] of the certificate of public convenience and necessity [illegible]

Pan American-Grace Airways, Inc.

under section 401 (h) of the Civil Aeronautics Act of 19[illegible] as amended, to provide for a route between the United States [illegible]

AMENDMENT TO THE PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

TO THE HONORABLE
THE CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

WHEREAS, your petitioner, the Department of Justice, having filed with this Board a petition for leave to intervene in the above entitled proceedings, and a petition to intervene having been granted on November 12, 1945, and order of the Board, your petitioner now desires to amend said petition, and prays leave so to do in the following manner:

1. Strike paragraph II of the petition and substitute in lieu thereof the following:

That the Federal antitrust laws are applicable to carriers engaged in interstate commerce by air and petitioner avers that your petitioner is concerned with the agreement, arrangement, contract or conspiracy between carriers which restrains competition or tends to create a monopoly. It is petitioner's interest that Pan American Grace Airways, Inc., hereinafter referred to as [illegible] [fol. 5163] agra, which operates in foreign transportation [illegible]

America, and otherwise, is now owned by Pan American-Airways Corporation and W. R. Grace & Company, hereinafter respectively called Pan American and Grace, and has been so owned since the organization of the joint enterprise in 1929. That Pan American is the parent corporation of the Pan American Airways System, of which Pan American Airway, Inc., is the principal operating subsidiary; and Grace is the parent corporation of the Grace enterprises, which include shipping and other commercial interests on the west coast of South America; that Pan American and Grace each own one-half of all of the issued and outstanding voting stock of Panagra.

That complaint by Grace against Pan American, and answer and petition by Pan American against Grace have been filed with this Board, each alleging therein that the other has engaged in restrictive and suppressive practices and that both have sought to control, limit and suppress the growth and development of Panagra in their own interests. These and other allegations and counter allegations together with the public issues of monopoly of air transport and the control of one form of transport by another raise questions of public interest under the antitrust laws that are the immediate concern of the petitioner whose interest herein is, among others, to ascertain the facts as they may bear upon any violation of said antitrust laws by either or both parties to this proceeding.

Respectfully submitted

ARNE C. WIPRUD
WILLIAM R. KUEFFNER
Special Assistants to the Attorney General

CLARENCE J. NICKMAN
Special Attorney

By direction of

THURMAN ARNOLD
Assistant Attorney General

Dated March 9, 1943
Washington, D. C.

[fol. 5164] WILLIAM R. KUEFFNER, being duly sworn deposes and says:

That he is Special Assistant to the Attorney General and is authorized to execute and file the foregoing motion; that he has read and is familiar with the contents thereof; that he intends and desires that in granting or denying the amendment hereon, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief every statement contained in the instrument is true and no such statement is misleading.

WILLIAM R. KUEFFNER

Subscribed and sworn to before me this 9th day of March, 1943.

Notary Public, D. C.

(SEAL)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing amendment to the petition for leave to intervene has been served on each party to the above entitled proceeding.

WILLIAM R. KUEFFNER

Dated at Washington, D. C.

March 9, 1943

cannot use these planes indefinitely. The DC4s would be [fol. 5167] unsuitable for a variety of reasons and Martins or Convairs even if they can be made effective at these altitudes would be pretty expensive.

All of this would be relatively unimportant if we could see a large revenue accruing from calling at these points. The trouble here, however, is that our haul on the heavy U. S. traffic is limited to the short sector between these points and Balboa. Unless there is reason to believe that considerable traffic could be found between these Colombian points and B.A. they would not, therefore, prove very satisfactory revenue stops for us.

In spite of all these considerations I think it would be well worthwhile to avail of your visit to Colombia to see if you could get any ideas on the advisability of our moving in to these points and the likelihood of our securing Colombian authorization if we did so. If any basis can be found for making this move satisfactory, there is nothing to prevent our making it so far as Panair is concerned. Avianca would, of course, oppose. Braniff would also oppose so long as they entertain any intentions of some day serving Bogota but I should think that their position might not be too serious if we had a plan for moving in promptly in contrast to their long delay in doing anything effective in this direction.

Sincerely yours,

(sgd) HAROLD J. ROSE

copies sent to
Guayaquil and Bogota

[fol. 5168]

W. R. GRACE AND COMPANY EXHIBIT 144

W. R. GRACE & CO.
HANOVER SQUARE
NEW YORK 5, N. Y.

May 17th, 1949

MEMORANDUM TO MR. ANDREW B. SHEA

When do we plan to file application for Bogota? I feel it is important that we file before CAB.

I don't think that Latorre knew that Pan American had an application pending when he made the statement that we should get permission in Colombia first.

J.P.G. Jr.
(Signed) JPG

[fol. 5169]

W. R. GRACE AND COMPANY EXHIBIT 145

September 12th, 1949

MEMORANDUM TO MR. ANDREW B. SHEA

I presume now that you have letter =12-900 from Latorre, you will have papers filed with the C.A.B. immediately, asking for Panagra's right to go to Bogota.

J.P.G. Jr.
(Signed) JPG

basis of $2.00 per mile, whereas Panagra's was on the [fol. 5153] basis of $1.80 per mile and that even with subsequent reductions the basic Panagra Post Office mail rate was lower than that of Pan American in similar services for a period of over twelve years.

(b) Panagra's war services are similarly too well-known to the Board to require reiteration here. In this connection it may be stated that Pan American has never suggested any war service which it considered Panagra should undertake. On the contrary, Pan American through its negative control prevented Panagra from volunteering the operation of a service under the Board's order in Docket No. 775 and has sought to take avail of the war situation to gain for itself control of certain airports on the Panagra route.

(c) With reference to Pan American's recent alleged offers to name a ninth director and to arbitrate, we merely wish to point out that Grace agreed to the immediate appointment of a ninth director to decide all matters involving Panagra's operations with regard to which the Pan American and Grace directors might not be able to agree. Pan American, however, insisted that the ninth director should only have "power to break any deadlock on any questions arising in connection with operations of the company *that fall within the scope of the dedication of capital made by the two stockholders.*" Obviously such an offer by Pan American begged the entire question and was not a real offer at all.

CONCLUSION

49. The present proceeding is the culmination of efforts on the part of Grace covering many years to permit Panagra to develop as an integral air carrier and to assume the independent responsibilities which its position in South [fol. 5154] America requires, over the persistent attempts of Pan American to thwart the development of Panagra in order to protect from competition routes in which it has more than a fifty percent interest. Pan American, in its own operations, has always recognized the vital importance of bringing its lines through to terminals in the United

States and not interposing connecting services over its own. Its Atlantic, Pacific, Western and Eastern divisions all come to terminals in the United States. Several years ago it arranged that its Mexican subsidiary come through to Los Angeles.

50. At the very moment when Pan American is opposing Panagra's coming to United States terminals, it has caused to be filed with this Board applications by its 100% owned foreign subsidiaries, Panair do Brasil, and Compania Nacional Cubana de Aviacion, S.A., to extend their routes to United States terminals. Since the present proceedings were begun, various foreign companies have filed applications with the Board to extend their routes to the United States, including an application by Taca to extend to Miami a service operating from the Canal Zone via Central America. Eastern Airlines and National Airlines have filed applications to extend their domestic routes from United States terminals to the Canal Zone. Pan American itself has been granted a certificate from New Orleans to Guatemala where it connects with its route to the Canal Zone via Central America.

51. Unless Panagra is permitted to extend its route to the United States in this proceeding, it may later on find that so many others have already entered the field that its [fol. 5155] extension is impracticable despite its urgent desirability from the standpoint of the public interest in a through route. Unless relief is granted Panagra in this case there is grave danger that a situation may arise, where this great international service will be the only one operating in South America desiring a United States terminal which is denied this facility and where for lack of this facility it will be placed at a ruinous disadvantage in the struggle for the air which will certainly follow the termination of the war.

52. We respectfully submit that every consideration of sound public policy dictates that Panagra, the pioneer American international line in South America which has over fourteen years built up and successfully operated a line serving practically all of South America and with a route mileage second only to that of the Pan American Air

[fol. 5165]

W. R. Grace and Company Exhibit 142

= 825

Letter No. 2
H. J. B. Trip Series

Buenos Aires
February 23, 1946

A. Garni, Esquire
New York, N.Y.

Dear Garni:

Your letter No. 3.

I trust Knauer's information does not prove correct, as it would be a pity to have this matter still further protracted with legal technicalities. I had hoped that something constructive might be accomplished, as suggested by your No. 1. In any case, the fact that our friends are filing for rehearing in 779 simultaneously with motion for re-argument in the Circuit Court of Appeals seems to indicate that they have little confidence in the likelihood of securing a re-argument.

With the growing competition which I see everywhere here, and the rapid expansion of all the lines here, it seems fantastic that Pan American should continue to prejudice their own and Panagra's future by further delaying our extension to the United States.

Sincerely yours,

[fol. 5166]

W. R. GRACE AND COMPANY EXHIBIT 143

J.P.G. Jr. Trip Series No. II

New York, November 5, 1948

Mr. J. P. Grace, Jr.,
Lima, Peru

Dear Peter:

PANAGRA, COLOMBIA

Your trip series No. 1.

You are right in your understanding that Panagra may at any time apply for inclusion of Bogota and Medellin in their route. There is, however, no arrangement under which Western Colombia is considered Panagra territory or under which Panair will sell Cuba to Panagra. Pan American has always made it clear that they would seek a service of their own to Bogota. I think it quite likely that once one American line gets into Bogota that fact would be used as an argument against others even though our experience in other places, as for example in connection with Braniff, has been quite otherwise.

There are, as you know, a number of reasons why we have not moved to go into Bogota and Medellin. Our financial position has hardly justified taking on a route diversion which could hardly show a profit. We could not, of course, consider diverting our DC6 service to these places, even if the airports were suitable which I understand is not at the moment the case. With Bogota it is not merely the mileage diversion but the weather hazard at Bogota which would pretty nearly wreck our through schedule, already having difficulties enough under this heading. Our DC3 service would be far from competitive and to make it competitive equipment-wise would involve a considerable capital investment. As a matter of fact, the future of this whole DC3 service is somewhat problematical as we obviously

[fol. 5158] ARICA

"At the present time there is no passenger station at Arica. Passengers are handled from an office in the corner of the hangar. *This arrangement has become increasingly unsatisfactory with the increased traffic.*"

Pan American failed to state that Panagra is required to use the military airport and military facilities at this point. Although Panagra has long endeavored to make arrangements to provide more attractive facilities and is still working on the problem, this has not as yet been possible. It should also have been mentioned that the unsatisfactory nature of the facilities at Arica does not arise from the size of existing facilities, which is ample, but is rather a question of attractiveness from the public relations point of view.

ANTOFAGASTA

"Present passenger facilities at Antofagasta are wholly inadequate. *At the time the building was constructed, Panagra was not certain as to the length of time it would be given operating privileges at this point, and indeed the very status of the building itself remained in doubt. Accordingly a very small and somewhat temporary structure was erected. Now that services are increasing substantially and satisfactory arrangements have been made with local authorities concerning use of the airport and related matters, it seems appropriate to improve the passenger facilities.*"

LA PAZ

"The present building at La Paz was constructed in 1937. Even prior to the inauguration of the Bolivian services to Corumbá, this passenger station was congested and generally inadequate. *With the development of the additional Bolivian services, immediate improvement becomes essential. This station is now one of the more important points from the point of view of traffic movement and original facilities have not been ex-*

panded to keep pace with developments. Building costs at La Paz are extremely high."

[fol. 5159] Thus, Pan American failed to bring out the fact that enlargement of the facilities at La Paz has become necessary because of Panagra's expanding activities in Bolivia and that such enlargement is being undertaken.

ORURO

"There are no facilities at this point at the present time. *The airport which was used, up to six months ago was not satisfactory under all weather conditions, and its continued use by Panagra was uncertain. Accordingly, a new airport has been constructed and the passenger and radio station must be set up at the new site. It is significant in this connection that Oruro is the junction of the Bolivian operation with the diagonal operation on the international run, and more mail through this point has actually, in terms of trips, quadrupled in the last six months.*"

Again Pan American failed to state that since the date of the statement of evidence an entirely new, attractive and commodious passenger station has been erected on the new airport and is now in actual service.

UYUNI

Pan American failed to state that Uyuni is not an overnight stop except in emergency and that it is obviously impossible to provide hotel accommodations at every point where an emergency overnight stop may be necessary. Pan American also failed to state that despite this fact Panagra has recently completed at Uyuni a small new station adequate for present and immediate future needs.

CORDOBA

With respect to Cordoba, Pan American quoted:

"At the present time, the only passenger facilities at this point are a small portable building."

ways System itself, should be authorized and required to extend its route to a terminal in the United States.

Dated: June 25th, 1943.

Respectfully submitted,

W. R. GRACE & Co.,

By A. Garni
First Vice-President.

(fol. 5156)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

A. GARNI, being duly sworn, deposes and says: that he is First Vice-President of W. R. Grace & Co.; that he has read and is familiar with the contents of the foregoing reply and the attached exhibit; that he intends and desires that in considering and acting upon said reply, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; and that, to the best of his information and belief, every statement contained in said reply is true and that no such statement is misleading.

A. Garni

Subscribed and sworn to before me, a Notary Public in and for the County of New York and State of New York, this 25th day of June, 1943.

Catherine L. Purcell
Notary Pujblic.

CATHERINE L. PURCELL
NOTARY PUBLIC
Kings Co. Clerk's No. 375, Reg. No. 138-P-5
New York Co. Clerk's No. 323, Reg. No. 228-P-5
Nassau Co. Clerk's No. 18 P 45
Commission expires March 30, 1945.

[fol. 3137] EXHIBIT A

CONTENT AND EXPLANATION OF THE EXTRACTS FROM DESCRIPTION OF PASSENGER FACILITIES IN STATEMENT OF EVIDENCE SUBMITTED BY PANAGRA TO THE BOARD IN DOCKET NO. 716 AS QUOTED BY PAN AMERICAN IN EXHIBIT B TO THE ANSWER AND PETITION OF PAN AMERICAN IN THE INSTANT PROCEEDING.

Extracts which Pan American quoted are in plain type and matter which Pan American failed to quote is italicized.

CALI

"The present passenger facilities at Cali are practically non-existent. *The field is a muddy hole and the local authorities will not permit buildings at this point. New arrangements must be made. It is anticipated that a site will be selected.* The cost of *Panagra's proposed* [private] share of *such passenger facilities which will be in all probability shared with Avianca.*"

Pan American also failed to state that the facilities referred to as being practically non-existent are those of its own affiliate "Avianca" and that since the statement of evidence from which the quotation was taken was prepared arrangements have been concluded between Panagra and Avianca for the construction of a new airport at Cali at which Panagra will have half ownership, enabling it to see that adequate facilities are provided.

TALARA

"*The new Standard will be used to provide the passenger station which has not been adequate due to the increased movement of traffic.* The passenger station was built at a time when Panagra was operating aircraft having a maximum capacity of 10 passengers and has not been enlarged since that time in spite of fact larger planes are at present now in use."

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matics, furnished a detailed report on the subject some months ago.

Questioned yesterday, the present Director, Major Escandon, manifested that it was true that informal conversations were being carried out on the subject; that the Kellogg Olaya agreement is still in force and clearly establishes the mutual agreement between both countries that their commercial aviation companies establish service to the ports of cities of the Atlantic coast as occurs presently with Pan American and Braniff which come to Barranquilla and in turn the Avianca Colombiana comes up to New York.

Naturally, added the Director of Aeronautics, upon agreement with companies such as Pan American and Braniff to come to the capital, it will be necessary to make a new aviation agreement which will modify the Kellogg Olaya pact which presently governs the aviation relations of the two countries. The Director of Aeronautics added that the authorization for the mentioned North American aviation companies to extend their service to Bogota merits careful study especially as concerns the compensation that Colombia should receive, taking into account that said routes are being served by Colombian companies.

With reference to the advice published by some newspapers to the effect that a decree is being prepared nationalizing the country's airports, the Director of Aeronautics and the Sub-Director, Mr. Wolton, manifested yesterday to the reporter of this paper that they did not know of any recent decree on the subject.

It is noted in this respect that quite sometime ago a law was presented to the Colombian Congress which ordered the creation of the Corporacion de Aeronautica y Radiocomunicaciones. Said law was never approved and according to the financial calculations of that period this [illegible] measure would have cost the National Treasury approximately 5,000,000 pesos. Presently it is calculated that the cost of nationalizing the airports would be 50,000,000 pesos.

d. 5176]

W. R. GRACE AND COMPANY EXHIBIT 149

A.B.S. SERIES LETTER
NO. 11392

March 29, 1950

Jorge Hernan Latorre
BOGOTA, Colombia

APPLICATION FOR BOGOTA ROUTE

ar Dr. Latorre:

Although we appreciate from your ABS #13040 that the AC may not wish to take any action in authorizing a new international service to Colombia until completion of negotiations of the Bilateral Agreement with the U.S.A., we still el that an application should be filed directly with the AC for an extension of Panagra's route to Bogota. It ould be borne in mind that Panagra has been providing international service to Colombia for many years and at its application is not the same as that of a carrier asking to provide a new service. Panagra's application is erely for an extension of an existing service and we are e that you can convince the DAC that it should be treated such. This line of reasoning also applies to the sugstion that Panagra's application should be submitted rough diplomatic channels. While we appreciate that pplications from carriers not already serving Colombia ould possibly be submitted through the State Depart ent, Panagra's application is not in this category and we e sure that when this is pointed out to the DAC, they will preciate the distinction.

As an additional argument to those contained in our BS #11382 justifying our original plan to consider the ute to Bogota as an extension of Panagra's present route rough Colombia, you may wish to point out to the DAC d. 5177] that for operating reasons resulting from the ture of the terrain and the location of existing air naviga nal aids, Panagra would almost certainly have to operate m Bogota to Ecuador via the Cauca Valley, possibly

crossing the Cordillera ridge to the west of Cali and proceeding outside that range of mountains. Whether the operation were conducted up and down the Cauca Valley or outside the western Cordillera range, Panagra's planes would fly almost directly over Cali. For this reason, the location of both Cali and Bogota on the same north-south route through Colombia would not represent any appreciable diversion from the most direct route from Bogota to the south.

We would like very much to have Panagra's application filed now so that it may be considered as soon as possible. Will you please arrange for this filing direct with the DAO unless, after consideration of the foregoing, you are convinced that filing at this time would result in total prejudice against such application so as to seriously injure the chances of its approval. If you are so convinced, please let us know as soon as possible.

Very truly yours,

J. P. Gra[illegible], Jr.

P.S. In your ABS #1361 you say that you have been told unofficially by the American Embassy that Colombia will agree to Panagra, Pagnit and "one other airlines. Braniff, Eastern or Delta" making Bogota a scheduled stop. We are puzzled about the reference to Delta inasmuch as no reference to a Delta application has been found here. Will you please clarify this reference for us.

informado ya ampliamente, y precisamente el señor Alejandro Perey Wolton, actual sub-director de la aeronáutica, suministró una detallada información sobre el particular, hace algunos meses.

Interrogado ayer el director actual, mayor Escandón, manifestó que efectivamente se adelantan conversaciones informales sobre el particular; que aún rige el convenio Kellog-Olaya, que claramente establece el mutuo consentimiento de los dos países para que sus empresas comerciales de aviación establezcan líneas hasta los puertos o ciudades de la costa del Atlántico, cómo ocurre actualmente con la Pan American y la misma Braniff, que llegan hasta Barranquilla, y a su vez la Avianca colombiana, llega hasta Nueva York.

Naturalmente, agregó el director de aeronáutica, al convenirse con empresas como la Pan American y la Braniff, que llegarán hasta la capital, habría necesidad de verificar un nuevo convenio aéreo, que modificaría el pacto Kellog-Olaya que rige en la actualidad las relaciones aéreas de los dos países. El director de aeronáutica añadió que la autorización para que las empresas norteamericanas de aviación citadas llegarán a ampliar sus líneas hasta Bogotá, merece detenido estudio, especialmente en lo que concierne a la compensación que debería recibir Colombia, teniendo en cuenta que dichas líneas están siendo servidas por empresas colombianas.

NACIONALIZACION

En referencia con las noticias publicadas por algunos diarios, según las cuales se prepara un decreto nacionalizando los aeródromos del país, el director de aeronáutica, y el sub-director, señor Wolton, manifestaron ayer al cronista de este diario que no conocían ningún decreto reciente sobre el particular.

Se anota al respecto que desde hace ya bastante tiempo fue presentada una ley al congreso de Colombia que ordenaba la creación de la Corporación de Aeródromos y Radiocomunicaciones. Dicha ley nunca fue aprobada, y según los cálculos fiscales de aquella época, la medida mencionada

costaría al tesoro nacional aproximadamente veinte millones de pesos. En la actualidad el valor de la nacionalización de los aeropuertos se calcula en cincuenta millones de pesos.

Por lo demas, y por informaciones de este diario público se halla perfectamente enterado del proyecto nacionalización de los aeropuertos, por publicaciones petidas que se han hecho. En cuanto a la realización proyecto mencionado, se calcula que es muy remoto cumplimiento, teniendo en cuenta las razones aducidas terriormente.

[fol. 5173]

W. R. GRACE AND COMPANY EXHIBIT 148

A. B. S. Series
=14336

New York, February 2

Dr. Jorge Herman Latorre
BOGOTA, Colombia

Dear Dr. Latorre:

PANAGRA SERVICE TO BOGOTA

I refer to my A.B.S. Series Letter =14186 of August 1949 and your A.B.S. Series Letter =12800 of September.

As you are aware Panagra filed an application with the United States Civil Aeronautics Board on October 2 for permission to conduct scheduled operations to and Bogota. Panagra is now requesting that the docket this application be expedited, and we would like to your opinion as to whether the time has not come to application for this service with the proper authorities Colombia.

Very truly yours,

ABS

[fol. 5178]

W. R. GRACE AND COMPANY'S EXHIBIT 150

C
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P
Y

PAN AMERICAN GRACE AIRWAYS, INC.
CHRYSLER BUILDING
NEW YORK 17, NEW YORK

April 17, 1950

Honorable Joseph J. O'Connell, Jr.
Chairman
Civil Aeronautics Board
Commerce Building
Washington 25, D. C.

RE: Docket No. 4159

Dear Mr. Chairman:

On October 24, 1949, Pan American Grace Airways, Inc. (Panagra) filed application for an amendment of its certificate of public convenience and necessity that would permit it to serve Bogota, Colombia as an intermediate point on its present Balboa-Cali-Guayaquil route. This application has been assigned Docket No. 4159 but no hearing has yet been scheduled with respect thereto.

Panagra wishes to request hereby that this application be set down for hearing as soon as possible. You will understand that Panagra is naturally anxious to extend its service to the capital and the largest city of Colombia. Prompt initiation of such service is particularly important at this time in view of the fact that AVIANCA, a Colombian carrier, has, for almost a year operated direct Bogota-New York service. Since Panagra's Bogota traffic is now transferred to and from AVIANCA at Cali, it is apparent that AVIANCA's one-plane service from Bogota to New York greatly reduces Panagra's traffic potential in Bogota. AVIANCA naturally will not stress the routing of Bogota-U. S. A. traffic via Cali, for transfer there to Panagra, so long as its own direct New York service is available. This

serious competitive handicap should be eliminated as soon as possible.

In addition to the existing foreign flag competitive advantage, you are undoubtedly aware that LANSA, another Colombian carrier, has recently filed with the Board an application for a Bogota-Miami route. The pendency of this proceeding indicates that early action on Panagra's application is desirable if the international carriers of both (fol. 5479) Colombia and the United States are to secure substantially equal reciprocal treatment. Certainly the spirit of the Kellogg-Olaya Agreement of 1929, as interpreted by the Board, would justify Panagra's application. Though the agreement does not in terms provide general reciprocal rights in each country to commercial aircraft of the other, the Board so treated it in its Order E-2348 granting AVIANCA the Bogota-New York route.

There is at present no one plane, or one-carrier service between the capital of Colombia and the capitals of Peru, Chile, Bolivia or Argentina. Granting of Panagra's application will enable it to provide this service.

It should be noted, moreover, that Panagra has recently completed the altitude performance tests necessary for obtaining CAA certification of DC-4 equipment for airports as high as that of Bogota. Panagra is therefore for the first time in a position to serve the projected extension with four-engine equipment.

The ground facilities at Bogota are adequate for the service proposed by Panagra and virtually all the necessary equipment and personnel needed to undertake the route extension applied for are already available. Panagra is therefore in a position to undertake the service promptly upon the granting of its application with only the minimum of capital expense.

These considerations suggest that action on Panagra's pending application, Docket No. 4159, should be taken by the Board at the earliest possible moment. We shall greatly appreciate any steps you can take to bring this about.

Yours very truly,

[fol. 5180]

W. R. GRACE AND COMPANY EXHIBIT 151

[Handwritten notation—Bogota file]

June 9, 1950

MEMORANDUM TO MR. J. P. GRACE, JR.

Your London New York memorandum of the 27th re the Aviation Daily report of testimony of HJR and myself.

As usual, the Aviation Daily's report is incorrect. Neither Mr. Roig nor I testified that the interchange agreements would not be carried out unless the stock options were approved. We did testify on cross examination that the interchange agreements and the stock option approval are interdependent by their terms which, of course, is the case.

Trippe did testify that the interchange agreements would not become operative if the Board disapproved the stock options as submitted.

Dodero did not testify and Schneider did not take his deposition. Toomey did testify in executive session and denied all allegations in Dodero's affidavit.

A. B. S.

[fol. 5181]

W. R. GRACE AND COMPANY EXHIBIT 152

July 6, 1950

MEMORANDUM TO MR. A.B. SHEA

RE: BOGOTA ROUTE

Status in U.S.

1) As you know, we applied to the CAB last October for an amendment of our certificate to permit us to serve Bogota as an intermediate point on our present Balboa/Cali Quito Guayaquil route. Docket #4159 was assigned but no hearing has yet been scheduled.

2) On April 17th we requested expeditious hearing on our application, by the CAB, using loss of business to Avi-

anca (operating direct Bogota New York), the application of LANSA for a Bogota Miami route, the absence of one carrier service between the capital of Colombia and the other Panagra South American capitals, and our CAA altitude certification for DC-4 equipment as reasons justifying an early hearing.

3) On June 8th the CAB wrote, saying that expeditious hearing did not seem warranted since Braniff had not been able to obtain the right to serve Bogota. On June 28th we answered the Board stating that our application should not be related to Braniff's position and we repeated our request for early hearing.

Status in Colombia

1) We wrote Dr. Latorre in February, ABS 11353, asking whether the time had come to file an application for Bogota route in Colombia.

2) In his ABS 13021 he replied that the time for filing seemed appropriate but that in earlier conversations with the DAC, Senor Wolton and Major Escandon had stated that we should apply for a new route Balboa [fol. 5182] Bogota Quito Guayaquil instead of an extension which would include Bogota in our present Balboa Cali Quito Guayaquil route.

3) In our ABS 11382 (March 17th) we explained that practical considerations made it important to Panagra to have Bogota added to its present route instead of establishing a new route. We said that if Cali and Bogota could not receive service on the same route (although not necessarily the same trips), Panagra might have to schedule duplicating trips over these sectors or serve the two cities on alternate trips and thereby deprive them of maximum potential service. We also gave other reasons in favor of the "extension" approach.

4) In Dr. Latorre's ABS 13040 (March 25th) he stated that in a later conference, Escandon, told him that Colombia (the DAC) was not disposed to act on any route applications until the bilateral was negotiated, and that if we

[fol. 5170]

W. R. GRACE AND COMPANY EXHIBIT 146

GRACE Y CIA. (CHILE) S. A.

JTK TRIP SERIES #2

SANTIAGO, December 9, 1949
(Dictated on "El Interamericano"
between Lima and Santiago, Dec. 9)

[Handwritten notation—WSH\ —HJR\ —ABS\ —BH\ —HLC\]

[Stamp—DEC 13 REC'D.]

Mr. J. P. Grace, Jr.
NEW YORK, N. Y.

Att: Mr. A. P. Shea

Dear Peter:

PANAGRA

On Wednesday I discussed with Latorre the question of Bogota and he confirmed that the indication had been made to the Colombian Government as to Panagra's interest.

When I left Bogota on Thursday morning for Lima, I found a clipping in the "Tiempo" which I enclose herewith.

It makes me a little nervous to see all the reference therein to Braniff and Panair; it sounds very much like the remarks which Healey made at Rickenbacker's cocktail party in Bogota which I mentioned to you at the Canal, wherein Healey indicated Avianca's opposition to Panagra going to Bogota and his opining that Eastern would more likely go there than Panagra.

Fortunately, Jim Stebbins did a good job in developing Welton o[illegible] Colombian C.A.B., referred to in the clipping, and maybe my fears in connection with this matter are groundless, but I felt you would want to have Latorre report on this clipping, so I am sending him a copy of this letter and asking him to write to you about it.

Yours very truly,

(Sgd.) KIRBY

1 Enclosure
cc: Dr. Jorge Hernan Latorre

[fol. 5171]

W. R. GRACE AND COMPANY EXHIBIT 147

TRANSLATION

"EL TIEMPO" – BOGOTA – DECEMBER 8, 1947

NORTH AMERICAN AVIATION COMPANIES WILL EXTEND THEIR SERVICE TO BOGOTA

INFORMAL CONVERSATIONS WITH BRANIFF AND PAN AMERICAN AIRWAYS

FOR THE MOMENT THE NATIONALIZATION OF AIRPORTS IS DIFFICULT

From information from civil aeronautics sources it is known that presently informal conversations are taking place with the representatives of the North American aviation companies of Braniff Airways and Pan American Airways with the object of arriving at an understanding to grant permission to said companies to extend their commercial lines to the capital of the Republics.

The foregoing disposition, when approved, will require not only a detailed study of civil aeronautics but the corresponding diplomatic arrangement between the Governments of Colombia and the United States which would change the terms of the present aviation agreement between the two countries, which as is known, is the Kellogg Olaya agreement which was signed by the President of Colombia, Dr. Enrique Olaya Herrera and Mr. Kellogg, American Secretary of State, in 1929 when the Colombian American aviation pact was signed which still governs the relations of the 2 countries in matters of aviation regulations.

Initial Studies:

In regard to the future agreement which may be concluded between the U.S. and Colombia on aviation matters, we have already advised fully and clearly Mr. Alejandro [fol. 5172] Perez Welton, present Sub Director of Aero-

carrier, as the result of the lack or delay of affirmative action on the part of its own Government, in the position of competing under less favorable conditions than foreign flag carriers and of being limited by its own Government to the operation of a service less attractive and less effective than that which is permitted to and offered by foreign flag carriers.

I cannot urge too strongly the urgent necessity of immediate action by the appropriate authorities of the United States Government (a) to approve the perfectly practical arrangement permitting Panagra aircraft to offer one-plane service to and from New York over Panagra and Pan American routes, and (b) to defer the granting of the aforementioned permits to foreign flag carriers, at least until the U. S. flag carrier (Panagra-Pan American) is permitted to compete with them on equal terms.

Yours very truly,

Douglas Campbell

[fol. 5195]

W. R. Grace and Company Exhibit 156

JOCANTIS 17
february 25th

from SHEA(lima)
february 26th 1948
reed 9AM

1 17
2 your letter
3 27
4 two
5 most important
6 factors
7 increased
8 next word change con:
9 PIA
10 passenger movement ????
11 since november
12 were

13 suspension
14 DC-6s
15 and
16 local currency
17 collection-s
18 sentence
19 importance (of)
20 DC-6
21 suspension
22 shown by
23 following
24 next word change con:
25 PIA
26 movement
27 november 1947
28 199
29 december 1947
30 526
31 january 1948
32 524
33 february
34 through
35 23rd
36 489
37 as compared (with/to)
38 panagra
39 main
40 line
41 movement
42 balboa
43 santiago
44 sector-s
45 3678
46 3848
47 3303
48 2425
49 respectively
50 sentence
51 with respect to
52 february
53 total

ways Corporation and W. R. Grace & Company, hereinafter respectively called Pan American and Grace, and has been so owned since the organization of the joint enterprise in 1929; that Pan American is the parent corporation of the gigantic Pan American World Airways system of which Pan American Airways, Inc., is the principal operating subsidiary; and Grace is the parent corporation of the extensive Grace enterprises, which include banking, mining, shipping, exporting and importing on the west coast of South America.

III

That in 1941, Grace filed an application (Docket No. 707) for an extension of Panagra's certificated routes so as to provide a terminus in the United States. In April 1942, Grace filed with this Board (Docket No. 744) a letter with an accompanying statement of facts making certain charges against Pan American as to how Pan American had by its 50% stock control blocked and retarded the proper development of Panagra. Pan American answered (in Docket No. 744) in January 1943 making certain counter-charges against Grace. On September 10, 1942, the Board upon its own motion instituted a proceeding (Docket No. 779) to determine whether the public convenience and necessity require that Panagra's certificated routes be extended so as to provide a terminus in the United States; that after hearing and consideration this Board decided it did not have jurisdiction to determine the issues thus presented. Grace duly appealed to the Circuit Court of Appeals for the Second Circuit, which on January 28, 1946, remanded the case to the Board: "To decide whether Panagra should be treated as applying for the extension; and if that turns out to be true, whether the public convenience and necessity require the extension to be granted." Pan American duly appealed to the Supreme Court of the United States where writ of certiorari was granted on June 10, 1946, and at the present time said case is pending undetermined.

[fol. 5189]

IV.

That the facts and circumstances surrounding the agreements (Exhibits A and B to the petition of Pan American

Airways, Inc., and the terms and conditions of said agreements, and the arrangements proposed to be established thereunder, are such as to give rise to important questions under the antitrust laws and the Civil Aeronautics Act as to the legality and propriety of the said agreements and arrangements, and as to the effect thereof upon the public interest, especially with respect to the maintenance of sound competitive conditions in air transportation, and as to the effects thereof upon the authority and jurisdiction of this Board to regulate air transportation and to prescribe geographical limitations required to be observed by air carriers operating under and by virtue of certificates issued by this Board containing the said limitations, and as to the effect thereof upon the legal rights and interests of duly certificated carriers other than those parties to the said agreements and arrangements.

V

That because of their property interests the private parties to this proceeding are not primarily concerned with the substantial public issues involved; that the Department of Justice is the governmental agency primarily charged with the duty of dealing with matters relating to monopolies and restraints of trade and such agreements as may tend to the establishment or maintenance of such restraints and monopolies; and that the ends of justice and orderly administration of law require that your petitioner, by reason of the important public issues involved in this proceeding and your petitioner's substantial interest therein, be permitted to participate in the full and fair hearings required for the proper determination of such issues and that your petitioner be made a party to this proceeding.

WHEREFORE, your petitioner prays leave to intervene and be treated as a party hereto, with the right to have [fol. 5190] notice of all proceedings herein, and that hearings be held herein, and that your petitioner be allowed to appear and participate in all proceedings herein, including the right to be present at the taking of testimony, to pro-

XPEDITE RECONSIDERATION OF ITS ORDER-
ERIAL, NO. E-5581, AUGUST 8, 1951, AND GRANT
ANAGRAS APPLICATION FOR AN EXEMPTION,
S REQUESTED IN OUR PETITION FOR RECON
IDERATION, AUGUST 27, 1951

ANDREW B. SHEA, PRESIDENT
PAN AMERICAN-GRACE AIRWAYS INC.

(MESSRS SHEA CAMPBELL CLARK
(CABLE A.C

Vol. 5186]

W. R. GRACE AND COMPANY EXHIBIT 154

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 2423

In the Matter of

An Agreement Between

PAN AMERICAN AIRWAYS, INC.

and

PAN AMERICAN-GRACE AIRWAYS, INC.

Dated July 30, 1946.

PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

WENDELL BERGE
Assistant Attorney General

JAMES E. KILDAY

WILLIAM D. MCFARLANE

EDWARD DUMBAULD

EDWARD J. HICKEY, JR.
Special Assistants to the Attorney General

[fol. 5187] BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 242

In the Matter of

An Agreement Between

PAN AMERICAN AIRWAYS, INC.,

and

PAN AMERICAN-GRACE AIRWAYS, INC.

Dated July 30, 1946

PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

Comes now your petitioner, the Department of Justice, and respectfully represents that it has a substantial interest in the matters and controversies in the above-entitled proceeding and desires to intervene in and become a party to said proceeding and for ground of the proposed intervention says:

I

That the Department of Justice is the governmental agency upon which rests the duty and responsibility for the enforcement of the federal antitrust laws; that the federal antitrust laws are applicable to carriers for hire engaged in interstate and foreign commerce; and that your petitioner is concerned with the agreements between such air carriers which may restrain competition or tend to establish a monopoly.

II

That your petitioner is informed that Pan American-Grace Airways, Inc., hereinafter referred to as Panagra, which operates an airline from the Canal Zone to Buenos Aires via the west coast of South America, and otherwise, [fol. 5188] is now owned 50% each by Pan American Air-

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96 one
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101 14th
102 movement
103 of
104 acceptance
105 currency
106 to
107 new york
108 not apparent
109 for . . . reasons
[fol. 5197]
110 given
111 above
112 I am
113 convinced
114 had
115 this
116 step
117 not been
118 taken
119 panagra
120 movement
121 would have
122 shown
123 much
124 sharper
125 decline ????
126 and
127 furthermore
128 that not
129 only
130 is it
131 helping
132 maintain
133 our

approved Through Flight Agreement provides for this service as soon as Pan American's route is extended to cover the Miami-New York sector.

Although the hearings on the Pan American Domestic Route proceeding took place some 15 months ago, no decision has been rendered and, in the meantime, certain developments have taken and are taking place which greatly impair Panagra's position not only as a commercial enterprise, but as an instrument of United States policy in South America.

[Tol. 5193]

(1) Peruvian International Airways has been granted permits as a Peruvian Company which enable it to offer one-plane through service between New York and Washington and Peru and Chile. It has actually been operating such a service for several months. Through service between these points without change of planes has been the keynote of all their advertising, and it is very effective.

(2) The Colombian national Company, Avianca, has now applied for a permit to operate its airline from Colombia through to New York. Since Avianca also serves Quito and Guayaquil, Ecuador, the granting of such a permit would enable it immediately to provide one-plane service between New York and a point as far south as Guayaquil, Ecuador, one of Panagra's principal points.

(3) In connection with bilateral negotiations which are being conducted with the Dutch Government, the latter have requested a route New York-Curacao; however, it is obvious that this is merely to facilitate the real plan which is to operate New York-Curacao-Ecuador-Peru-Chile-Argentina. A high official of the Dutch airline KLM has recently stated to the undersigned that they plan to operate Curacao-Ecuador-Peru-Chile, and has requested the use of some of Panagra's facilities. There are also very definite indications that they plan to make a survey of a portion of this route during the present week.

(4) In the course of current negotiations for a modification of the bilateral agreement between Great Britain and the United States, the former have requested a non-stop route from New York to Jamaica. British South American Airways is already operating Jamaica-Lima-Santiago-Buenos Aires and it is obvious that the New York-Jamaica sector would be availed of to operate through one-plane services between New York and the points mentioned.

Apart from the above, extension to the south by the Venezuelan Company LAV, already operating directly Venezuela-Cuba-New York, and the proposed operations of FAMA from Argentina to a New York terminus can be expected to affect the general picture substantially.

Even if the Miami-New York segment of CAB Docket 1803 had already been approved and Panagra aircraft were already operating over Pan American and Panagra routes between New York, the West coast of South America, and Argentina, it would not, in my opinion, be in the public interest to permit foreign air carriers to operate over the same or paralleling route. This route, as you know, is one of relatively low traffic density and, while it is susceptible of gradual development, the introduction of numerous air lines to compete with each other in this thin market can only result in making the U. S. flag carrier more and more dependent upon large subsidies. The present traffic movement falls considerably short of filling an average of even one 50-passenger plane per day.

[fol. 5194] But to grant this facility for providing one-plane service between New York and the West coast of South America to foreign flag carriers *before* the U. S. flag carrier combination (Panagra-Pan American) is permitted to compete on equal terms with them, does not, in my opinion, make sense from the standpoint of either United States air policy or of United States overall western hemisphere policy. This situation, which already exists with respect to Peruvian International Airways, and which the authorization of the permits requested by Aviança, the Dutch, and the British would greatly aggravate, places the U. S. flag

[fol. 5196]

54 movement
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56 down
57 and
58 effect
59 panagra
60 change in (of)
61 in
62 policy-ies
63 currency
64 collection
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66 reflected
67 in
68 result
69 through
70 february 14th
71 because
72 change-s
73 not made ????
74 in
75 santiago
76 until
77 february 16th
78 and
79 panagra
80 tariff
81 increase-s
82 february 1st
83 undoubted-ly
84 caused
85 some
86 loss-es
87 new
88 booking-s
89 to
90 next word change con:
91 PIA
92 sentence
93 referring to your ????

wished to serve Bogota, we should apply through diplomatic channels.

5) In our ARS 11302 (March 29th) we stated that our serving Bogota should not be considered as creating a new international service in Colombia. We merely wished an extension on a long existing international service provided by Panagra in Colombia. We requested again that he file Panagra's application with the DAC. We followed this up with PG #10 dated April 20th.

6) In his PG 53 (May 12th) Dr. Latorre said he had visited Escandon again and that this time Escandon said he was willing to support our application but requested Latorre to see the President of the National Council of Aeronautics who is also the Minister of War. Escandon said he would support our application if the Minister of War agreed to its being presented.

[illegible] 7) In his PG #84 (dated May 30th) Dr. Latorre said that he had discussed the matter with the Minister of War and that the Minister had said it would be difficult for the government to pass on our request before deciding questions of general policy relating to the requests of other companies to operate to Bogota. The other companies mentioned were Pan American, Braniff, Eastern and certain European lines such as KLM and Air France. He also mentioned Avianca's general opposition to opening up Bogota. The Minister finally agreed that he was in favor of opening Bogota's International Airport but that he would have to take up the matter of our request with Hoyos, the President of Avianca, as well as again with Escandon. Both Escandon and Hoyos were away during June and as the matter now stands, Dr. Latorre is to take up the matter again with Escandon on his return from the ICAO meeting at Montreal. This meeting is of course now over and we are wondering what progress Dr. Latorre has made. One further complication mentioned by the Minister of War was whether the Ospina Perez administration would define questions of international air policy or whether they would leave such questions to the new administration.

5) In summary fashion, it seems that the Minister of War and the DAC seem to feel that a mere extension of our route would be satisfactory to them. The question is whether our application will be permitted to become involved in the broad question of international service to Bogota. It is our hope of course that Dr. Latorre will be able to obtain permission for Panagra without awaiting the solution of this larger question.

/s/ H. L. C. Jr.
H. L. C.

(fol. 5184)

W. R. Grace and Company Exhibit 153

XXX.

W R GRACE & CO

NL

HONORABLE D W NYROP, CHAIRMAN
CIVIL AERONAUTICS BOARD
WASHINGTON D.C.

8 PM WU HFP P 32
AUG 30 1951

WE UNDERSTAND THAT AGREEMENT HAS BEEN REACHED ON THE TERMS OF THE UNITED STATES COLOMBIAN BILATERAL AND THAT ALL FORMALITIES ARE EXPECTED TO BE COMPLETED SHORTLY. AT THAT TIME, IT WILL BECOME POSSIBLE FOR AMERICAN FLAG CARRIERS TO SERVE BOGOTA DIRECTLY, AND BRANIFF WILL HOLD AUTHORITY TO DO SO. PANAGRA THUS FACES THE IMMINENT LOSS OF VIRTUALLY ALL OF ITS BOGOTA TRAFFIC, NOW SERVED BY CONNECTION AT CALI, UNLESS THE BOARD ISSUES AN EXEMPTION PERMITTING PANAGRA TO SERVE BOGOTA. PANAGRA CAN COMPETE EFFECTIVELY FOR THE TRAFFIC IT BUILT UP OVER MORE THAN TWENTY YEARS ONLY IF IT CAN PROVIDE DIRECT SERVICE. ACCORDINGLY, WE REQUEST THAT THE BOARD

duce and to cross-examine witnesses, and to be heard upon brief and at the oral argument, if oral argument is granted

Respectfully submitted.

(Signed) JAMES E. KILDAY

WILLIAM D. MCFARLAND

EDWARD DUMBAULD

EDWARD J. HICKEY, JR.

Special Assistants to the Attorney General.

By direction of:

WENDELL BERGE
Assistant Attorney General

August 8, 1946.

[fol. 5191] JAMES E. KILDAY, being duly sworn deposes and says:

That he is Special Assistant to the Attorney General and is authorized to execute and file the foregoing petition; that he has read and is familiar with the contents thereof; that he intends and desires that in granting or denying the petition herein, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief every statement contained in the instrument is true and no such statement is misleading.

(Signed) JAMES E. KILDAY

Subscribed and sworn to before me this 8th day of August, 1946.

MAY S. SIMPSON
Notary Public

(SEAL)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing petition for leave to intervene has been served on each party to the above-entitled proceeding.

JAMES E. KILDAY

[fol. 5192]

W. R. GRACE AND COMPANY EXHIBIT 155

—Copy—

February 17, 1948

Hon. Norman Armour
Assistant Secretary of State
for Political Affairs
Department of State
Washington 25, D. C.

Dear Sir:

I take the liberty of calling the following matter to your attention because I feel that it is an important item affecting the implementation of United States policy in the western hemisphere.

Since May 31, 1947, the Through Flight Agreement between Pan American Airways and Panagra, which was approved by the Civil Aeronautics Board on May 7, 1947 (Docket 2423), has been functioning smoothly and has enabled Panagra aircraft to operate a rapid one-plane through service over the routes of Pan American and Panagra between Miami and the Canal Zone, Ecuador, Peru, Chile and Argentina with adequate connections to other interior points served by Panagra in Colombia, Ecuador, Peru, Bolivia, Argentina and Brazil.

A segment of the so-called Pan American Domestic Route proceeding (CAB Docket 1803) calls for extension of Pan American's routes from Miami to New York, and an affirmative decision on that segment of Pan American's application would immediately enable Pan American and Panagra to offer one-plane service with Panagra aircraft between New York and the principal points mentioned above. The

295 really
296 competitive basis
297 and
298 to be able (to)
299 provide
300 first class
301 saperior
302 service
303 it is
304 of course
305 of utmost importance
306 that
307 panagra
308 be
309 permitted
310 in conjunction (with)
311 panamerican
312 offer
313 through
314 plane
315 service
316 to and from
317 new vork
318 sentence
319 in this connection
320 next word change con:
321 PIA
322 plans
323 start
324 fourth
325 service
326 between
327 new york
328 lima
329 march 5th
330 sentence no
331 result-s
332 apparent
333 from
334 next word change con:

1161 5201
335 PLA
336 recent
337 publicity
338 effort-s
339 as
340 movement
341 balboa
342 lima
343 week ending
344 february 7th
345 68
346 four
347 trips
348 week ending
349 february 14th
350 47
351 week ending
352 february 21st
353 44
354 as compared (with)
355 total
356 their
357 southbound
358 movement
359 this
360 sector
361 january
362 181
363 comparative
364 panagra ???
365 figure-s
366 205
367 179
368 230
369 tot-l
370 614
371 january
372 873
373 four

374 taking into account
375 adverse
376 factor-s
377 existing
378 november
379 through
380 january
381 and
382 apparent
383 improvement-s
384 northbound
385 movement-s
386 last
387 10 days
388 as well as
389 advance
[fol. 5202]
390 booking-s
391 present
392 load
393 factor-s
394 may be
395 expected
396 improve
397 and
398 substantial-ly
399 so
400 with
401 restoration
402 10%
403 service
404 which
405 particularly
406 important
407 buenosaires
408 movement
409 sentence
410 basis
411 all of foregoing

412 I would not
413 recommend
414 any reduction
415 main line
416 frequency ies
417 particularly
418 in view of
419 imminent
420 increase s
421 next word change con:
422 PIA
423 frequency ies
424 and
425 in any case
426 we should
427 allow
428 reasonable length of time
429 observe
430 effect
431 measures
432 recently
433 taken
434 sentence five
435 review of)
436 daily
437 movement
438 last
439 2 months
440 indicate s
441 Sunday
442 movement
443 about the same ???
444 weekdays
[ol 5203]
445 therefore
446 from
447 traffic
448 point of view
449 any day
450 could be
451 selected

215 above
216 figures
217 next word change con:
218 PIA
219 percentages
220 total
[fol. 5199]
221 movement
222 weeks
223 mentioned
224 santiago
225 lima
226 6.7
227 13.5
228 82
229 lima
230 balboa
231 20.8
232 20
233 19
234 percent
235 three
236 it is
237 obvious
238 that
239 competitor-s
240 position
241 has
242 substantial-ly
243 improved
244 in
245 last
246 3 months ????
247 probably
248 for
249 reasons
250 given ???
251 above
252 13/17
253 words
254 and

255 public
256 confidence
257 in operation
258 steadily
259 growing
260 however
261 taking into account
262 passenger movement
263 only
264 operation
265 simply
266 cannot be
267 producing
268 anything
269 but
270 substantial
271 losses
272 sentence with
273 new
274 paragra
275 policy
276 on
277 currency
278 collection s.
279 am
[fol. 5290]
280 hopeful
281 will
282 check
283 further increases
284 and with
285 reestablishment
286 DC-6
287 services
288 may
289 recover
290 some
291 lost
292 grounds
293 but to
294 get on

134 traffic
135 but will
136 result in
137 substantial
138 increase-s
139 at
140 expense-s (of)
141 competition
142 particularly
143 with
144 increase-s (of)
145 next word change con:
146 PIA
147 tariff
148 effective
149 today
150 sentefice
151 thfis is
152 substantiated
153 by
154 following
155 figures
156 northbound
157 DC-4
158 movement
159 panagra
160 next word change con:
161 PIA
162 respective-ly
163 santiago
164 lima
165 week ending
[fol. 5198]
166 february 7th
167 167-12
168 february 14th
169 141-22
170 february 21st
171 180-16
172 lima
173 balboa

174 february 7th
175 160-42
176 february 14th
177 120-30
178 two
179 increase-s ????
180 only
181 february 21st
182 162-38
183 sentence
184 week ending
185 february 14th
186 included
187 carnival
188 holiday-s
189 which
190 affected
191 northbound
192 movement
193 sentence ??
194 panagra
195 advance
196 booking-s
197 santiago
198 lima
199 february 25th
200 29th
201 138
202 march 1st
203 march 7th
204 112
205 lima :
206 balboa
207 february 25th
208 february 29th
209 167
210 march 1st
211 march 7th
212 124
213 two
214 as shown

452 on which
453 competitors
454 not
455 scheduled

MR ROG
$130.20

[fol. 5204]

W. R. GRACE AND COMPANY EXHIBIT 157

November 10, 1948

MEMORANDUM

PANAGRA'S OPERATIONS IN SOUTH AMERICA

History

Panagra (Pan American-Grace Airways, Inc.) is the pioneer airline along the West Coast of South America. Panagra's operations began just over twenty years ago. In September, 1928, it made its first scheduled passenger and mail flight between Lima, Peru and Talara, Peru. As the pioneer airline in the area Panagra had to negotiate operating rights and airmail contracts with each of the governments along its route. It built airports, provided navigational facilities and developed equipment required for operation at the high altitudes necessary to cross the Andes.

Panagra's original route between Lima and Talara, Peru has been expanded until it includes a network of routes totaling more than 8,000 miles. It has used a succession of equipment ranging from its first single engine Fairchild monoplane to its present four-engine 300 mile per hour, Douglas DC-6 aircraft. On its present routes between the Canal Zone and Buenos Aires, Panagra serves eight countries Panama, Colombia, Ecuador, Peru, Bo-
[fol. 5205] livia, Brazil, Chile and Argentina.

In May, 1947, the Civil Aeronautics Board approved an agreement between Panagra and Pan American Airways, Inc. under which it was possible for the first time for Pan

agra to send its planes over the routes of Pan American to a point in the United States. Under that agreement, Panagra has established a daily, through, one plane service between Miami and points on the West Coast of South America and Buenos Aires. South of Balboa it operates several other local and secondary services.

Need for service to New York.

The greatest handicap to Panagra's service has been its inability to reach the East Coast of the United States where the greater part of its traffic to South America is generated. As long ago as October, 1944, W. R. Grace & Co. sought an extension of Panagra's route from Balboa to New York. The route was not granted in that proceeding but the subsequent Through Flight Agreement between Panagra and Pan American made it possible for Panagra's planes to reach New York over Pan American's routes, in the event that Pan American should secure a route between Miami and New York. Pan American's application for such a (tol 5206 route, supported before the Civil Aeronautics Board by Panagra, is presently under consideration by the Board. Until and unless such a route is granted, it will be impossible for Panagra to offer the through one plane service, requested by the traffic to and from New York and Washington. Meanwhile such service is being offered by a foreign flag carrier, Peruvian International Airways, under authorization by the Civil Aeronautics Board.

Competition.

The extent to which Panagra is subject to competition along its South American routes, is frequently underestimated. Competition by foreign national airlines is growing rapidly and is supported by various concessions which are unavailable to Panagra. During its early years, for example, Panagra was the only airline operating across the Andes between Santiago, Chile and Buenos Aires. There Panagra had cabotage rights, the right to carry passengers between local points within Argentina. Argentina has now withdrawn cabotage rights and Panagra is competing for traffic between Santiago and Buenos Aires with two

Argentine airlines, PAMA and ZONDA, and with LAN, a [fol. 5207] Chilean national airline, and British South American Airways. PAMA expects to extend its operations to the United States paralleling Panagra's route to Balboa. North of Santiago to Lima, Panagra competes with LAN, BSAA and Peruvian International Airlines (PIA). In Peru Panagra faces competition from PIA, a company organized by North Americans and in which United States and Canadian nationals hold 70 percent of the outstanding stock, and Faucett Airlines, a local company in which Panagra has minority interest. In Bolivia, competing services are offered by Lloyd Aereo Boliviano, in which Panagra owns a minority interest, and a transport service to be operated by the Bolivian air force is now being organized. In Colombia and Ecuador competitors are AVIANCA, Transandina, and ATECA.

Further competition from the United States was authorized by the Civil Aeronautics Board in 1946 when it certificated Braniff Airways to operate along a route almost parallel to Panagra's. Braniff's service to Lima, Peru as it is now operated is flown directly on Panagra's route from Balboa.

Foreign Exchange

The growing dollar shortage in South America is creating a serious new problem for Panagra. New exchange restric- [fol. 5208] tions are being set up by the governments along the route and local currencies are being devalued. To meet the competition of local airlines it is necessary for Panagra to accept local currencies in payment for transportation. As a result of the restrictions, it is impossible to avoid the accumulation of the devalued local currencies in some countries.

The handling of COD shipments from the United States has become almost impossible because of the difficulties of securing dollars to transmit to shippers. Panagra has had to absorb exchange losses on the local sale of onward transportation over the lines of connecting U.S. domestic carriers whose tickets must be paid for in dollars. An ex-

treme situation had developed in Chile where the government now requires that Panagra sell to it at the official rate of exchange any dollars which Panagra may receive in Chile in payment for its transportation services."

Peruvian Capacity Discussions

At the present time a member of the Civil Aeronautics Board is in Peru to discuss, at the request of the Peruvian government, the capacity being flown into and through Peru [fol. 5209] by United States air carriers. The discussions were initiated by the Peruvian government because of its desire to secure more traffic for PLA, the airline in which Peruvian nations hold a minority stock interest. Panagra has for several years been operating its present number of schedules into Peru. It operates at a competitive disadvantage to PLA because of that line's ability to operate direct one-plane service to both Washington and New York. During the period of its operation, PLA had also steadily increased the frequency of its flights to the U.S.

Panagra takes the firm position that its frequencies, which existed before the signing of the bilateral Air Transport Agreement with Peru, cannot be reduced under that agreement.

[fol. 5210]

W. R. Grace and Company Exhibit 15s

ABS Trip Series
Letter No. 21

New York, February 27, 1948

Andrew B. Shea, Esq.
Lima, Peru

Dear Andy:

Your cables Nos. 17 and 18.

These give us just the kind of information we need.

We have decided not to alter our frequencies, at least for the time being, but to proceed with the idea of daily

service with DC6s. The only mainline schedule change we have in mind is the idea of running two of these flights over the Cutoff nonstop Buenos Aires/Lima/Balboa/Miami and the other five by way of Santiago stopping all or part of them at Guayaquil. This will, of course, reduce Santiago frequencies two times a week but from a traffic angle this seems abundantly justified as the other trip could carry the movement and putting two fast trips on the Buenos Aires service should give us an additional leverage on that large movement. The thing which is still troubling us is that it means giving up two Argentine frequencies so far as Chile is concerned and under the bilaterals, etc. it may be impossible to get these back later on.

We are, of course, all very conscious of the importance of the New York extension and are pressing this in several directions. We expect the Examiners' Report momentarily but, unfortunately, have been expecting it for a long time and the battle will be a long way from finished even if we [fol. 7211] get a favorable recommendation from that quarter which, of course, is by no means certain.

Your point about PIA's fourth trip in relation to the bilateral seems well taken but we are not disposed to press it. We feel that there is too much risk that if we press this here, PIA will press at the other end for reduction of our frequencies. If Shannon is freed of some of the things which are swamping him here, we will try to get him to Lima as you suggest. I would particularly like him to come while you are there, possibly with the idea that at that time the switch of traffic handling to Grace may be consummated. This changeover would be considerably facilitated if you and he were there when it was done.

I had lunch with Slim Faucett yesterday. He said he was having some difficulty with the Board with regard to the management of the company. When he left for this trip he gave instructions that one of his assistants (whose name I do not recall) other than Bentin should run the business while he was gone. Bentin seems to have spiked this with the support of the Board. Slim is very emphatic that the other man is a much more competent manager than Bentin

and I must say I have never been much impressed by the latters performance. Slim seemed to think we may be of some help to him in carrying out his plan. I would appreciate it if you would look into this and if Slim's idea is really sound I should think we might well support him in it as it is of very great importance as you know that he have some really competent assistant coming along who can manage this business.

Sincerely yours,

/s/ HAROLD J ROIG

[fol. 5212] P.S. What I said above about the New York extension was obviously dictated before we had the news contained in my cable No. 21.

[fol. 5213]

W. R. GRACE AND COMPANY EXHIBIT 159

JOCANTIS 21 - to A.B. SHEA (lima) feb 27, 1948

650pm

1 21
2 examiners
3 report
4 Pan American
5 domestic
6 route
7 case
8 recommends
9 lima
10 new york
11 route
12 including
13 stops
14 washington
15 baltimore
16 philadelphia
17 limiting
18 frequencies
19 to those
20 primarily
21 related to

22 international
23 trips
24 all other
25 routes
26 denied
27 sentence
28 advise
29 walker

MR ROIG
$4.77

[fol. 5214]

W. R. GRACE AND COMPANY EXHIBIT 160

Exhibit No. CON-24
CAB Docket No. 3500

STATEMENT OF NEGOTIATIONS RELATING TO AGREEMENTS BETWEEN NATIONAL, PAA, PANAGRA, AND W. R. GRACE & CO.

I. Summer of 1948

During the summer of 1948 (probably in August) Mr. Baker of National had one or two talks with Mr. Trippe as to the acquisition by PAA of a substantial amount of the stock of National. It is Mr. Baker's recollection that he took the initiative in seeking out Mr. Trippe. Most of the discussion related to Pan American's acquiring sufficient National stock so that Pan American would own something like eighty percent (80%) of the stock of National. Along with this would come agreements for the operation of PAA and Panagra equipment over National's routes. There was a good deal of discussion as to whether payment for the National stock should be made in cash or in Pan American stock, and, if the latter, whether the Pan American stock should be taken at its book value, at its market value or at some intermediate figure. There was also question as to how the National stock should be valued. In general, Mr. Baker's position was that the National

stock should be taken at its book value plus an allowance (fol. 5215) for certain assets which he believed to be undervalued on National's balance sheet. Whereas the Pan American stock should be taken at, or below its market value. Mr. Trippe, on the other hand, favored a book value basis for both sides. No conclusions were reached as a result of these discussions.

H. December, 1948 and January, 1949

On December 15, 1948, Mr. Baker addressed a letter to Mr. Roig proposing an interchange of equipment between Panagra and National at Miami. (Exhibit NAL-97, p. 1). A copy of this letter was sent to Mr. Trippe. Similar letters were sent by Mr. Baker to several other airlines.

Mr. Roig discussed with the Pan American representatives on the Board of Panagra the response he proposed to make to Mr. Baker's letter to him. Mr. Roig's letter, dated January 6, is reproduced in Exhibit CON-20, p. 3. On January 5, Pan American made a response on its own account, referring Mr. Baker to the recommendation of the CAB Examiner that PAA be authorized to connect Miami with points in the Northeastern United States and emphasizing the Latin American points served by PAA itself through the Miami gateway for which through service was required. (fol. 5216)

Shortly after sending its letter of January 5, Pan American received Mr. Baker's telegram of that day reading:

> "Morrison tells me that you are willing to discuss possibility of interchange agreement. When and where can we get together. Regards."

Mr. Trippe answered Mr. Baker's telegram as follows:

> "Received your telegram after sending my letter January 5. Cannot believe that in view of our different routes radiating from Miami and other regions mere interchange agreement would in any way meet our problem. However, I am always glad to see you in New York for discussion any matters of mutual interest. Regards."

Mr. Baker's response to this telegram was a letter dated January 14, 1949, set forth in Exhibit CAN-20, p. 6.

On January 17, 1949, Mr. Baker and Mr. Scott came to New York and met with Mr. Trippe at his home. This meeting was followed by two long conferences on the following day, January 18, one in the afternoon and another (fol. 5217) in the evening. These conferences were attended by Messrs. Trippe, Dean, Friendly, Baker, Scott, Thomas and Fell. Mr. Thomas is a Director of National and both he and Mr. Fell are partners in Lehman Bros. which acted as underwriters in the public offering of National's stock. The discussions included the operation of through and shuttle flights over National's route by Panagra and PAA equipment, and the purchase of a 45% stock interest in National by PAA.

PAA's general position was as follows:

1. The need for through service between the Northeastern United States and Latin America by way of the Miami gateway was not limited to the points on Panagra's route (although it was clearly stated by PAA that any agreement must include an extension of the Panagra Through Flight Agreement and that no agreement would be made by PAA without Panagra's consent), but included other areas in Latin America served by PAA. Such through service was required for the convenience of travelers and shippers, the development of traffic, and the meeting of foreign competition.

(fol. 5218) 2. In addition to these through flights with Panagra and PAA equipment, PAA required, as a means of improving the economy of its operations, a facility for getting the planes based in New York to the Miami overhaul base without ferrying. This could not be done simply on international flights both because the number of such flights would not be sufficient (at least if Havana were excluded as a destination and particularly if the AOA acquisition was approved) and because the Boeing equipment was too large both trafficwise and airportwise for operation on certain of the Latin American routes through Miami.

3. The Miami-New York operation would constitute such a vital part of Pan American's business from both a traffic and an operational standpoint that it could not rely on a mere contractual arrangement with National. Pan American felt it should have a sufficient interest in National so that its views with respect to management problems, while not controlling, would be given very great weight.

4. PAA insisted also that it was entitled to have weight given to its position in its Domestic-Route Case. Examiner Madden, the only disinterested person to review the [illegible] question, had upheld PAA's position and had recommended that PAA be certificated for operations over the New York-Miami route with a restriction confining such operation to flights "primarily providing international service". PAA took the position that in the long run it was not going to be blocked off at Miami from access to the true origin and destination of the bulk of the travel to Latin America and that if PAA was to make an agreement that would relieve National of PAA's competition between Miami and New York, it was fair that PAA should become a substantial owner in National. It emphasized also as a further reason for such stock participation that the Latin American traffic which would be handled by National under an interchange agreement would be largely traffic which had been developed by PAA through its advertising and sales efforts, both in Latin America and in the United States and that PAA was entitled to profit therefrom.

National's position on these subjects was substantially as follows:

1. Mr. Baker questioned the volume of through traffic between the Northeast and Latin America flowing through [illegible] Miami, other than to points on Panagra's route. If there was enough such traffic, he would be willing to have through flights to handle it, but he was unwilling to make any commitment on the subject.

2. Mr. Baker welcomed the idea of shuttle flights between New York and Miami with PAA equipment, notably the Boeings, during the high traffic season, but was unwilling to make any commitment with respect to the off-season.

3. Mr. Baker did not specifically oppose the acquisition by PAA of stock in National up to say 45% of the total stock. However, he insisted that the National stock should be appraised at book value plus an allowance for items which he believed would increase the book value, while, if payment was made in Pan American stock, this should be taken at market value with a discount in the approximate amount of the underwriting commissions which Pan American would have to pay on the sale of so large a block.

The meeting broke up in a friendly spirit, Mr. Trippe and Mr. Baker both proceeding to Washington to attend the Presidential inauguration ceremonies, but without any
fol. 5221 agreement having been reached. In the light of this, it was felt necessary to reply to Mr. Baker's letter of January 14, 1949, since it was believed that all these letters would go into the record in Docket 3500. This was done in a letter dated January 25, 1949, pointing out the volume of traffic between the Northeastern United States and points in Latin America other than those on Panagra's route.

On January 21, 1949, Mr. Trippe had lunch with Mr. Peter Grace and advised Mr. Grace of the negotiations which had been had with Mr. Baker. This talk and assimultaneous meeting which Mr. Roig had with Mr. Baker in Washington, in which Mr. Baker informed Mr. Roig of the National PAA negotiations, led to a meeting on Wednesday, January 26, 1949, between Messrs. Dean and Friendly on behalf of PAA and Messrs. Roig and Shea on behalf of W.R. Grace & Co. Mr. Roig began the meeting by stating that he felt that the delay in Pan American's Domestic Route Case arising from Docket 3500 called for the consideration of alternative methods of getting Panagra's through flight into New York. Dean and Friendly said that while they continued to believe that the acquisition of
fol. 5222 Miami-New York rights by PAA would be by far the most satisfactory method of solving PAA's and Panagra's problems, PAA likewise had recognized the desirability of exploring alternatives and, as Mr. Grace had been informed, had had talks with Baker which, if any

progress had been made, would have been brought to Panagra for its consent. Mr. Rolz expressed the hope that negotiations with Baker but said he thought Panagra should have a seat at the table. Dean and Friendly said they could not see the merit of this position. Under the Through Flight Agreement, it was PAA's responsibility to do what it could to get the right to fly to New York. Once PAA had gotten such a route, Panagra would have had the right to have its airplanes flown over this route, but the entire financial interest in the route was to be that of PAA and not of Panagra. If developments had made it desirable to explore alternative arrangements for getting the right to operate between Miami and New York, which Mr. Rolz agreed was the case, PAA's obligation was to see that Panagra was protected to the same extent as Panagra would have been had PAA gotten the route in its own name, but there was no obligation to allow Panagra or Grace any ownership interest in respect of the route. Dean and Friendly assured Rolz and Shea that in any future negotiations between PAA and Baker, they would continue to insist on the operation of Panagra's aircraft between Miami and New York being provided for, and also that PAA would not enter into any such arrangement with National except after fully advising Panagra and making sure that Panagra was satisfied, but they were unwilling to go beyond this.

On January 24 Mr. Trippe was in telephone contact with Mr. Baker and, with Mr. Baker's permission, with Mr. Scott. These telephone conversations led to Mr. Scott's letter of January 24, 1948 stating that he would recommend to the Board of Directors of National an arrangement under which Pan American would acquire 174,000 shares of National stock for cash at $50.50 a share or a price equivalent to 90% of the average daily closing price of National stock from January 1, 1948 to the day preceding the date of delivery and payment, whichever was greater. National would also agree to sell additional stock to PAA sufficient so that PAA would own 45% of the total outstanding stock. In the case of this latter sale, the National stock was to be taken at book value, plus upward adjustments and payment was

to be made in cash or in PAA stock at 90% of its market
fol. 5224 value for 60 days prior to the date of delivery. This memorandum also called for interchange agreements "where the same shall be mutually advantageous," these to include Panagra, the leasing of flight equipment "where the same shall be mutually advantageous," and joint use of facilities "where the same shall be mutually advantageous." Mr. Trippe phoned Mr. Scott that this memorandum seemed to be a considerable advance toward an agreement and this in turn appears to have led to Mr. Baker's wire of January 26:

> "Talked with Scott. Suggest you forward memorandum of your proposal for discussion with our Directors Monday."

Shortly after this Mr. Baker and Mr. Scott arrived in New York. During the morning of January 27 they met with Messrs. Grace, Roig and Shea. Baker outlined the course of the negotiations with PAA and stated he believed it would be advisable for Panagra or Grace to have a stock interest in National. He felt that a financial interest on the part of all companies to the proposed interchange was essential to make the interchange work effectively. Grace, Roig and Shea agreed that such financial participation was desirable and various proposals were discussed.

fol. 5225 Mr. Baker and Mr. Scott met with Messrs. Trippe, Dean and Friendly on the afternoon of the same day. They stated that they had come from a meeting with W.R. Grace and Co. and indicated that they were no longer willing to go forward on the basis outlined in Mr. Scott's memorandum of January 24. Their proposal was that some 48% of National stock should be acquired but that this should be divided approximately half to Pan American and half to Panagra, or in the alternative, somewhat more than half to PAA and somewhat less than half to W.R. Grace & Co. The PAA representatives said that this represented a complete change in the proposal; that they had no objection to W.R. Grace & Co. acquiring stock in National if such was desired, but that this should be over and above the 45% which it had been agreed PAA should have.

[fol. 5231] of the detailed agreements to carry this out. A number of points of difficulty arose, such as the hours when schedules should be operated, the extent to which PAA and Panagra had the right to "put" schedules to National, the mechanics for making PAA stock available as payment of the purchase price in the event of the exercise of its option in a manner consistent with the provisions of the Securities Act, etc. After various meetings in New York, it was decided that the best way in which to bring matters to a conclusion was to have a general meeting in Miami. Accordingly, Messrs. Grace, Shea, Hayes, MacElwain, Dean and Friendly went to Miami early in May to meet with Messrs. Baker, Scott, Cross and others representing National. As a result of three days' work between May 5 and 7, substantially final drafts were prepared. These were taken to New York for printing and were executed on May 11.

[fol. 5232]

W. R. Grace and Company Exhibit 161

(Letterhead of Loftin, Anderson, Scott, McCarthy & Preston, Miami 6, Florida)

8883

January 24, 1949

Mr. Juan T. Trippe, President
Pan American World Airways System
Chrysler Building
135 East 42nd Street
New York 17, N. Y.

Dear Mr. Trippe:

The attached memorandum is an outline of an arrangement which I would be willing to recommend to the Board of National. With kindest personal regards, I am

Very sincerely,

/s/ Paul R. Scott

PRS:mc
Enclosure

COPY

[fol. 5233] PAA will purchase 174,000 shares of NAL's unissued stock for cash at $6.50 per share, or at a price per share equivalent to 90 percent of the average of the daily closing price of NAL on the New York Stock Exchange from January 1, 1948 to the day preceding the date of delivery and payment, whichever is the greater. Delivery and payment thereof to be made as soon as a contract can be prepared and signed by PAA and NAL formalizing the following agreement:

(a) NAL to increase its authorized shares to 1,500,000. Subject to the approval of the CAB, PAA agrees to purchase additional shares of NAL so that immediately after the 174,000 shares it will own 45% of the total outstanding stock of NAL after such additional purchases. NAL now has pending an application for increased mail pay retroactive to July 14, 1947. On the last day of the month in which the CAB shall finally determine said application and NAL shall accept such determination, the adjusted book value of NAL's stock shall be determined. In such determination, flight equipment, including spares, and real estate shall be valued at then current market values. If the parties cannot agree on market values, the same shall be fixed by arbitration. Said adjusted book value shall be arrived at within sixty days from the last day of the month in which NAL's pending mail pay application shall be finally determined and accepted. Within ten days after NAL's adjusted book value shall have been so determined, PAA shall make payment for said additional shares at a price per share equal to said adjusted book value, either in cash or at the option of [fol. 5234] PAA by delivery to NAL of PAA shares at a price per share equal to 90 percent of the average daily closing price on the New York Stock Exchange for sixty days prior to the date of delivery.

(b) Subject to the approval of the CAB, interchange agreements between PAA and NAL, where the same shall be mutually advantageous; it is understood that such equipment interchange shall include Panagra

This proposal was considered by the Directors of W.R. Grace & Co. and the decision reached to accept the stock purchase.

III. March, 1949

On March 2 the offer of stock of National was accepted by W.R. Grace & Co. (Exhibit No. CAB 20, p. 229).

On the same day, Mr. Peter Grace called on Mr. Trippe and advised him of the execution of the agreement of February 28, 1949 between W.R. Grace & Co. and National, (of 5228) and of Grace's exercise of its option to purchase 174,000 shares of National's stock at $5.50 per share. The other terms of the agreement of February 28 were discussed briefly, and Mr. Trippe then stated to Mr. Grace that PAA would have to consider the situation thus created in the light of its own interests and the obligations of PAA and Grace under the Through Flight Agreement.

PAA decided that, before coming to any conclusion whether to endeavor to secure a modification of the February 28 agreement that would make this more acceptable from PAA's standpoint, the possibilities of an arrangement with Eastern should be fully explored and negotiations to that end were instituted.

Meanwhile, the month of March was passing. When PAA allowed the March 10 deadline to pass without taking any action, the Grace representatives indicated they would insist on the matter being considered by the Panagra Board prior to the Panagra deadline of March 30. A meeting was held about March 23 between Messrs. Dean, Friendly, Rouse and Sloan to discuss the matter. Dean and Friendly inquired, without commitment, whether there would be any interest on the part of National and Grace in discussing a (or 5229) modification of the February 28 agreement in the following particulars:

1. The ratio of PAA's stock to Grace's stock should be 50-50, instead of 24-24;

2. PAA would have the right to acquire not merely the higher priced stock as provided in the February 28 agree-

ment, but 30,488 of the 174,000 shares which Grace had bought at $5.50.

3. The PAA National interchange agreement should include, in addition to a through flight proceeding over one of PAA's international routes, twice daily shuttle flights between New York and Miami.

4. The term of the interchange agreements should be reduced from the 99 years provided in the Grace-National Agreement to July 1, 1953, subject to extension for seven years, in the case of the PAA agreement if PAA exercised its option to purchase National stock, and in the case of the Panagra agreement if both PAA and Grace exercised their options. Those options were to continue to July 1, 1953.

5. PAA was to have the right to pay for its optioned National stock in PAA stock at market value.

tol. 5/25/51 Mr. Ross characterized this as a constructive proposal and said they would talk about it with their associates and with National. Shortly after this, Messrs. Shea and Grace departed for Miami to negotiate with National. Commencing with the latter part of the week, there was a good deal of proposing and counter proposing as to various points.

A Directors' meeting of Panagra had been called for Tuesday, March 29. The parties were still apart on certain matters, such as who should have the right to determine whether Panagra would extend its interchange agreement, the length of the options, and National's demand that Pan American stock taken in payment for National stock should be valued by bona fide market. However, after discussions on March 29, there appeared to be sufficient basis of agreement so that instead of holding the Directors' meeting, Trippe, Dean, Grace, Ross and Shea proceeded to Washington to meet with Baker, Cross, Fogarty and Gesell. As a result of further negotiations, an agreement was signed early in the morning of March 30.

Subsequent to the execution of the March 30 agreement, counsel for the various parties set about the preparation

(c) Subject to the approval of the CAB, agreements for the leasing of flight equipment, where the same shall be mutually advantageous.

(d) Joint use of facilities, where the same shall be mutually advantageous.

(e) On approval of the CAB, NAL agrees that five of its eleven Directors shall be nominees of PAA.

[fol. 5235]

W. R. GRACE AND COMPANY EXHIBIT 162

= 887

February 28, 1949

W. R. Grace & Co.
7 Hanover Square
New York 5, N.Y.

Dear Sirs:

Referring to our letter to Pan American-Grace Airways of December 15, 1948, their reply of January 26, 1949 and ours of January 14, 1949 and confirming our recent conversations with you, we make you the following offer, subject to the provisions of paragraph 8 hereof and approval of the Civil Aeronautics Board where required:

1. We will enter into an "equipment interchange" agreement with Pan American-Grace Airways (Panagra) in the form attached hereto and into any further agreements which may be necessary to make such "equipment interchange" agreement operate, provided Panagra executes such "equipment interchange" agreement not later than March 30, 1949.

2. Provided we enter into the above "equipment interchange" agreement with Panagra we are also prepared to enter into a substantially similar "equipment interchange" agreement with Pan American Airways, Inc. (PAA) provided PAA shall notify us in writing not later than March 10, 1949 of its intention to execute such agreement and

provided we can agree with PAA on the terms of such agreement not later than March 30, 1949.

3. Until the "equipment interchange" agreement or agreements referred to above have been approved or disapproved by the Civil Aeronautics Board, we will not enter into any "equipment interchange" agreement providing for the operation of airplanes over our certificated routes or any part thereof with any other carrier operating in South or Central America, except interchange agreements which would provide only through service between cities on National's routes and cities located within the continental United States on the domestic routes of such other carriers.

4. We hereby grant you an option to purchase 174,000 shares of our stock at $5.50 per share, provided you exercise the same by payment in cash not later than March 30, 1949. Upon the approval by the Civil Aeronautics Board of the "equipment interchange" agreement referred to above between Panagra and ourselves, we will sell to you and you will buy from us 346,000 shares (or 172,000 shares in the [fol. 5236] event you purchase the 174,000 shares mentioned above) of our stock at the book value thereof (as agreed to by the parties or in the event of failure to agree then as determined by independent auditors mutually agreed upon) as of the last day of the month in which the Civil Aeronautics Board shall approve the "equipment interchange" agreement between Panagra and ourselves and the acquisition of said stock by you provided that:

(a) National now has pending an application for increased mail pay retroactive to July 14, 1947. In the event said retroactive mail pay shall not have been determined until after the purchase of said shares you agree, on such determination, and upon the payment of such retroactive mail pay to National, to pay to National an additional amount equal to the value added to said shares by such retroactive mail pay up to the date of the valuation of said shares.

(b) National is considering the sale of its real estate and buildings at Miami. If said real estate and buildings at Miami are sold after the date of valuation of said

9. If such commitments as you now have so permit, we will appoint you and your subsidiaries as our exclusive general sales agents in Colombia, Ecuador, Peru, Bolivia, and Chile and if such commitments so permit, you will accept such appointment.

10. It is understood that nothing herein is to be construed as restricting Panagra from continuing to maintain its present position in Docket Nos. 1861 and 2500 and in [fol. 3238] the event of PAA's being awarded the route between Miami and New York Panagra shall have the right at its option upon thirty days' notice to terminate any "equipment interchange" agreement entered into with us pursuant to this offer.

Very truly yours,

NATIONAL AIRLINES, INC.

Osgd) O. T. BAKER
President

[fol. 3239]

W. R. GRACE AND COMPANY EXHIBIT 163

TELETYPE

to COVINGTON, WASHINGTON

oct 19 1950
420PM

following for mr gesell to be delivered to mr verner this afternoon

docket 3500— panagra national panamerican national interchange and collateral agreements in docket serial no. E 2023 issued september 28, 1948, the board instituted an investigation to determine whether the transfer of any of the routes of national airlines inc would be in the public interest.

after negotiations extending from january to may 1949, panagra and national and pan american and national signed on may 11, 1949, separate "interchange" agreements, under the panagra agreement, panagra planes on flights originat-

ing or terminating at points south of the canal zone are to be operated by national on national's miami new york route. under the pan american agreement, national is to operate with pan american aircraft three round trips daily between miami and new york at least one of which must be a through flight originating and terminating at certain points on pan american's route. the other trips will be round trips between miami and new york with pan american aircraft not engaged in through flights. simultaneously with the interchange agreements, collateral agreements were executed between pan american and national and w. r. grace & co. & national whereby pan american acquired an option to purchase up to 30 percent of national's stock and grace acquired the option to maintain at 18 percent its holdings of national's stock. in the course of the negotiations leading to the agreement, grace has acquired 174,000 shares or 18 percent of national's stock at a cost of approximately $1,000,000.)

[fol. 5240] the pan american, panagra and grace agreements are all interdependent by their terms so that should the board fail to approve the pan american national agreement the panagra national agreement would not become effective unless the condition of interdependence should be removed.

all the agreements (other than the grace national agreement) were filed for approval on may 12, 1949 under docket nos. 3785 and 3786 and these applications were later consolidated into docket 3500 (national route investigation).

public hearing on these applications started on march 14, 1950 and was adjourned june 14, 1950 with a record of 4833 pages.

each of the interchange agreements provides that national will pay to pan american and panagra respectively an amount which shall compensate them on a fair and reasonable basis for the use of their aircraft under the agreements. the payments are to include reimbursement for all costs incident to the charter plus a fair return on investment. the agreements also provide that should the parties not reached agreement upon the amount of the

rental they will submit any unresolved questions to the CAB "for binding determination in such manner as the board shall direct".

prior to the commencement of the public hearing panagra and pan american had agreed with national on the cost element of the aircraft rental, but had not agreed on the return on investment and the parties were formally advised that the board would not undertake "to complete the agreement by fixing such rate of return".

[fol. 5241] since the adjournment of the hearings, panagra and national have executed and filed with the board an agreement on the return on panagra's investment and there are no further points now at issue between national and panagra under the panagra interchange agreement, pan american and national however have failed to agree on the rate of return and in order serial no. E-4707 dated october 6, the board granted motions of braniff, C & S and eastern to dismiss the applications for approval of the national/pan american and panagra and related agreements unless the supplemental agreements covering the matters still at issue should be filed within a specified period which now expires on october 23, 1950.

as stated above, the only point still open, agreement on which is necessary to complete the applications and to enable the board to pass on the merits of the proposed interchanges and stock acquisitions, is the relatively trivial matter of the return payable by national to pan american, on pan american aircraft operated by national under the pan american-national interchange agreement. it appears most unlikely that the parties will reach agreement on this point before october 23 and unless the board undertakes to fix such rate of return or specifies a method whereby such rate of return shall be fixed, (which would bind the parties under the agreement), the board's order of dismissal applicable not only to the pan american interchange but also to the panagra interchange (as the agreements by their terms are interdependent on each other) will become effective.

[fol. 5242] the primary and absolutely controlling interest of panagra and grace in this proceeding is to enable panagra to offer through one plane service between new york and washington and lima, peru, santiago, chile and buenos aires, the principal capitals now served by panagra. the united states terminus of panagra's flights is now miami. it is unnecessary to enlarge here on the considerations of public interest which demand through one plane service between new york and the west coast of south america and buenos aires. the importance to the public interest of providing such service between those points has been emphasized by the president and by the C.A.B. in previous proceedings.

aside from this, another highly important consideration of public interest is the desirability of a constructive outcome of docket 3500 (national route investigation). in his article "the air-route pattern problem" (vol 17 - the journal of air law and commerce - no. 2 - page 129) mr. russell. adams, a member of the civil aeronautics board, summarized pan american panagra grace national agreements and referring to them said "especially to be noted in the procedural progress of this case is the fact that specific actionable proposals have been submitted to the board to be examined concurrently with the board's detailed study of the entire national problem . . . to the extent that the board's determination may be reasonably met by the proposals submitted by national grace & co., panagra, pan american, and eastern, the proposals may be approved." it is obviously most desirable in the public interest that the board pass upon the merits of these proposals and not permit them all to be dismissed because of failure of two of the parties to agree on a relatively trivial matter.

[fol. 5243] assuming failure by pan american and national to agree on the rate of return and assuming refusal by the board to fix the rate of return the board has other alternatives under the agreements including that of directing the parties to arbitrate.

WASHINGTON SAID:— ok two copies will be delivered to mr verner today

MR GRACE
MR CLARK

shares for an amount in excess of the amount at which they are carried on the books of National on the date of valuation you agree to pay to National an additional amount equal to the value added to said shares by reason of the sale of said real estate and buildings.

(c) National now owns twelve Lodestars which are carried on its books at zero. National is considering the sale of said Lodestars for a substantial amount. National also owns seven DC4s and is considering the sale thereof at a price substantially in excess of the amount at which said DC4s are carried on its books. If said Lodestars and/or DC4s are sold after the date of valuation of said shares you agree to pay to National an additional amount equal to the value added to said shares resulting from the sale of either or both the Lodestars and DC4s.

(d) National has been depreciating its DC6s and "component parts" as defined in Civil Aeronautics Board accounting procedure over a five year period. It is understood that in the determination of book value depreciation on said DC6s and "component parts" shall be adjusted to a seven year basis.

It is understood that if at the time you are to purchase the above 346,000 shares or 172,000 shares, Pan American shall not have entered into the "equipment interchange" agreement with us referred to in paragraph 2 or said agreement shall not have been approved by the Civil Aeronautics Board or PAA shall not have purchased the stock of our company referred to in Paragraph 5 below, you shall have the right at your option to reduce your total purchase of our stock referred to in this Paragraph 4 to the 174,000 shares mentioned above, purchased by you not later than March 30, 1949.

[fol. 5237] 5. In the event that PAA shall enter into an "equipment interchange" agreement with us as provided above and said agreement is approved by the Civil Aeronautics Board, PAA shall have the right until ten days

after such approval to purchase from us and we will sell to them, at book value as defined in Paragraph 4 above, up to the same number of shares of our stock as you may purchase. We may also sell to PAA such additional shares of our company at such price and terms as we may mutually agree with them.

6. It is agreed that should you sell to Panagra all or any part of the number of shares retained by you after the exercise of the rights provided for in Paragraphs 4 or 5 such sale shall be on the condition that the voting rights of the shares sold to Panagra may be exercised by the President of Panagra in his absolute discretion.

7. Upon consummation of the sales of shares pursuant to Paragraphs 4 or 5 we agree that, subject to the approval of our stockholders, in the form prescribed by the laws of Florida, our Certificate of Incorporation and By-Laws shall contain whatever provisions may be necessary to fix the total number of Directors at 11 and to insure at all times cumulative voting rights in respect to the shares purchased under paragraphs 4 and 5.

8. Should we agree with Panagra upon the terms of an "equipment interchange" agreement as provided in Paragraph 1 and the Civil Aeronautics Board should disapprove such proposed agreement this offer shall expire, or in the event we agree with Panagra on the terms of an "equipment interchange" agreement and prior to the approval or disapproval of said "equipment interchange" agreement by the Civil Aeronautics Board we determine that it is necessary for us to do equity financing, we shall have the right to terminate on fifteen days' written notice your right to purchase shares of our stock not already purchased and not subsequently purchased during such fifteen day period specified in said notice. In the event of our exercising the right of termination herein provided, you shall have the right, at your option, to terminate the "equipment interchange" agreement theretofore entered into between us and, at your option, to tender to us any of our stock which you have theretofore purchased hereunder and we agree to repurchase from you any stock so tendered to us for cash at the price you paid us therefor.

case. Grace, therefore, decided to sell its entire holding in National and on July 19th, the day before the Board issued the order denying temporary approval, Grace completed the sale of its stock. The purchaser was National Airlines. The issue of whether Grace controls National is therefore a dead issue and can no longer be used by any of our opponents in the New York Balboa Through Service Proceeding as a pretext for arguing that Panagra should not come into New York under a National interchange.

Braniff Route Extension Proceeding

Braniff, as you know, has had pending for sometime an application before the C.A.B. for an extension of its route from Havana to Washington and New York, and from Lima to Santiago.

During the course of the Panagra National interchange proceeding Braniff had filed a motion for immediate hearing on that application and had also applied for an "exemption" which would permit Braniff to inaugurate immediately service beyond Havana to Washington and New York.

In order 5540, also enclosed, the Board denied both these motions.

[fol. 5252]

Braniff Extra Into Miami as Intermediate Point on Its Houston-Havana-South America Route.

In its order E-5542 issued on July 20th, also attached, the Board took further action seriously prejudicial to Panagra. The order provides that effective immediately and until issuance of a final order in the New York Balboa Through Flight Proceeding or until further order of the Board Braniff shall have the right to go into Miami as an interim stop on its Houston Havana South America route. The order restricts Braniff's use of Miami to the extent that they may not carry local passengers between Houston and Miami or between Miami and Havana but that, of course, does us no good. This action by the Board seems to me to be wholly unwarranted and both Panagra and Pan American are attacking the order vigorously. It is my personal opinion that the order is evidence of the Board's irritation

at its inability, for the reasons stated above, to effect an intermediate through service with Panagra between Washington and New York. This is borne out by the following extracts from the opinion:—

> "We recognize that the remedy we are here employing is unusual, but the circumstances warrant the employment. The Board has earnestly endeavored to establish improved service to Latin America by means of the temporary interchange in which National, Panagra and Pan American would participate. That effort has failed completely. While we recognize that the extension of Braniff to Miami will not be a complete solution of the problem, it will contribute to the development of improved service to Latin America, and afford an opportunity for even greater improvement through interchange between Braniff and other National Eastern."

The order seems open to attack on several grounds. In the first place Braniff never applied for it. In the second place no notice was given to anybody that the Board was contemplating such an order. In the third place [fol. 5258] Braniff into Miami contributes no traffic whatsoever to the improvement of the service between New York and Washington and South America, and will accrue merely in diversion from the Pan American-Panagra aircraft of whatever traffic Braniff might be able to [illegible]. I feel safe in saying that it will not generate new traffic even by one single passenger who would not have traveled otherwise via the Panagra route.

The foregoing about sums up the effect of the C.A.B. orders which came out last Friday.

What I want to drive home as emphatically as I can is that while the effect of the orders is highly unsatisfactory, and I make no effort to conceal that fact, there is no reason whatsoever to be discouraged or to be downhearted. It is recognized by the Board and by every party to the proceeding that as a matter of public interest, and in the interest of Panagra, through service between New York and West

[fol. 5244]

W. R. GRACE AND COMPANY EXHIBIT 104

June 4, 1952

MEMORANDUM TO MR. A.B. SHEA

In connection with any letter you may be planning to write about renewal of Panagra's Brazilian permit, you may wish to have before you the following summary of events relating to Panagra's Brazilian operations:

1. In 1941 at the request of the State Department, acting on behalf of the War Department and with the cooperation of the Defense Supplies Corporation and the Bolivian Government, Panagra commenced service westeast across Bolivia into Brazil replacing the services provided by the German Lufthansa. Panagra also undertook to manage LAB and built ground facilities in eastern Bolivia as far as the Brazilian border.

2. From 1941 to January 31, 1951, Panagra operated continuously across Bolivia, first into Corumba and subsequently into Campo Grande, Brazil where connections were made with PAB flights to Rio and Sao Paulo. At the time the permit was cancelled, two DC-3 flights were being operated per week.

3. Prior to 1946 Panagra's Brazilian flights were approved by Brazil for an indefinite period based on the filing of a schedule. In 1946 a Bilateral Air Transport Agreement was entered into by the U.S. and Brazil and until 1950 Panagra served Campo Grande as a U.S. carrier designated by the U.S. under this agreement.

4. In 1950 Brazil notified the U.S. that it did not consider Panagra's service as covered by the bilateral agreement and denied Panagra's right to continue its operations in Brazil. Panagra learned in 1950 that the 1946 formal note delivered by the U.S. Embassy to Brazil designating Panagra to serve Campo Grande under the [fol. 5245] agreement, had been poorly drawn and was subject to misinterpretation if the Brazilians were looking for

9 months period commenced November 8, 1951 and expires August 6, 1952.

11. Panagra to commence its service to Brazil, terminating at Corumba rather than at Campo Grande, on November 24, 1951 after ascertaining that the Brazilian authorities at Corumba had been notified of the Brazilian authorization. A schedule was filed with the Brazilian Government but no further formalities were necessary. No formal permit was received from Brazil and the only supporting item in Panagra's files is the letter from the Bolivian DAC transcribing the message from the Bolivian Minister of Foreign Affairs to the effect that Brazil had authorized our service for 9 months.

12. Panagra has a long term contract with the Bolivian Government dated May 6, 1943 under which Panagra undertook to operate a twice-weekly service between Bolivia and Brazil.

13. The reasons for Brazil's desire to terminate Panagra's Brazilian operations have never been clear to Panagra nor to the U.S. representatives involved, and it is believed that Brazil's attitude has been arbitrary and without cause. All U.S. west east routes to Brazil are to be eliminated under the U.S. Brazilian Bilateral Air Transport Agreement when the north south Manaos Corumba 5247 route is activated. With this limit the possibility of Panagra's operating forever into Brazil from Bolivia is not an issue.

The service provided by Panagra between Brazil and Bolivia has always been of benefit to the public. Transportation is a vital factor in the promotion of cultural and commercial relations between countries and it makes sense for Brazil and Bolivia to promote such relationships by continuing the service provided by Panagra.

H. L. C.

porary approval of the Panagra National agreement given by the Board in its tentative order of April 12th. This, of course, means that the question of how Panagra planes will operate a through one-plane service between New York and points on the Panagra route is left for decision in the "New York Balboa Through Service Proceeding".

This action by the Board is, of course, most disappointing. Both our counsel and myself had, of course, been thoroughly aware of the fact that some very thorny legal problems existed in the temporary approval proceeding. The principal legal hurdles to be overcome were:

1. The so-called interdependent clauses of the various Pan American and Panagra and National agreements, and

2. The question of whether or not Pan American's consent would be required under the Through Flight Agreement to enable the Panagra National interchange to become effective by delivery to National of our aircraft at Miami and return of the aircraft by National to Pan American at Miami.

Strong arguments on both sides of these questions were presented to the Board in briefs and in the final oral argument. The Board has not decided those questions but has stated:

"If we should make final our tentative opinion and order approving the two agreements now before us, it would be necessary to dispose of all of these serious problems. If we were here considering the question of permanent approval of the agreements and the provision of a permanent through service, such an undertaking would, of course, be a part of our normal responsibilities. However, in our opinion the advantages that would flow from an interim service are not sufficient to warrant undertaking the solution of the foregoing problems, particularly in view of the apparent fact that our efforts would end in a futility". (Page 10).

[illegible] The Board then goes on to say that since all they could do by their order would be to give their permis-

sion for the operation of the Panagra National interchange and could not compel the cooperation of Pan American in the activation of the interchange agreement so that its passage order would be ineffectual.

I refer you also to pages 8 and 9 of the opinion in which the Board clearly upholds our contention that the immediate initiation of a through service was in the public interest, and judged solely from the viewpoint of public interest should be made effective now without awaiting the "substantial period of time" involved in a more comprehensive long-range solution of the through service problem.

There is one other matter involved in the case with respect to which I should like to go into some detail.

As you know, Pan American, Eastern and Braniff had taken the position that the acquisition of W. R. Grace & Co. of 174,000 shares (6.7%) of National stock constituted control of National by Grace and therefore required approval by the Board. Grace had contended that its holding did not constitute control of National, pointing out that Mr. and Mrs. Baker together owned more stock than Grace; that Grace had no representation on the National Board; that it had taken no part in National management decisions; and that therefore its acquisition of the stock did not require Board approval.

A few days after the oral argument in the temporary interchange proceeding the Board issued an order in the stock control case reopening that case for the taking of further evidence on the control issue although the Board in that order stated that all parties had already had [fol. 5251] opportunity to be heard on the issue when it was raised in the National Panagra Pan American interchange proceeding.

When the order in the stock control proceeding was issued Grace, of course, had no idea as to what action the Board was going to take in the temporary interchange proceeding. Grace did feel that with the reopening of the stock control case decision on the temporary interchange might be delayed pending the outcome of the stock control

...ion and points on Panagra's route is absolutely n...
The only question remaining to be decided is how ...
accomplished. The Board has ordered that hearin...
New York Balboa Through Service Proceeding ...
later than October 1st. Panagra took the positio...
first pre-hearing conference in that proceeding w...
held yesterday, the 24th, that Panagra's only inter...
establishment of such through service and that we...
pared to do so by any means which the Board ma...
or approve, whether that be a Panagra Nation...
change, Pan American National interchange, or...
American Eastern interchange. The much distort...
of Grace control of National and the revived ...
"steamship issue" have been eliminated. We shall ...
by every fair means to press for Board action at the...
possible moment. In the meantime it is of the...
[fol. 2254] importance that there be no letdown w...
but on the contrary that there be an improvement ...
possible way in the very fine and unexcelled serv...
Panagra is providing today and an intensification ...
very fine work done by our sales organization in th...
offices. I know that those objectives will be attaine...

Very truly yours,

sgd ANDREW E. SM...

Encs. (3)

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SHEA

[fol. 5255]

W. R. GRACE AND COMPANY

(Letterhead of Pan American Wor
Miami, Florida

February 29, 195

Stamp

MR. E. BALLUDER

Dear Erwin:

This confirms my previous impressi
Grace have been doing a diamond dr
agra on the West Coast.

Regards.

WLM:PA

Encl.—(1)

[fol. 5256]

Stamp—Received Feb 25 1952—Pa
Enc.—Vice-President—Illegible

MEMORANDU

SEND ORIGINAL BY FROM

Vice-President

DEPT. Latin-American DEPT
OR DIV. Division

LOCATION Miami Florida LOCATI

DATE: February 18, 1952

SUBJECT: Report # 3 (February 1 t

REFERENCE:

CONFIDENTIA

PRESS RELATIONS

MICRO CARD
TRADE MARK ®

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12232

MATTHEW BENDER & COMPANY
MB
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microcard

Athearn, Braniff's Manager in Peru and Bolivia, when he first heard of my new assignment and said: "My God, all these Panagra people, all these Grace people and now Pan American too".

Another factor contributing to the relatively low percentage of travel agency sales is that seven of the top ten Lima agents are very active in the sightseeing or ground tour business to points in and around Lima and they derive a steady and proportionately large share of their income from these operations. The W. R. Grace Company is also in this field of activity as representative of the American Express Company, but they do not solicit tour business from other U. S. agencies. However, when Panagra is asked to arrange land excursions for individuals or groups (such as the MacKay group) they work the W. R. Grace Company into the deal. There are quite a few land tours to offer in this area and having this market pretty much themselves it is not so imperative that the larger agencies develop their airline sales.

My first impression regarding the general agency-travel agency relationship in Lima is that the travel agents cooperate somewhat more through pressure and domination than through good will. This, however, is not all bad, in my estimation as I saw how quickly the travel agency situation [fol. 5258] can get out of hand as it did in Buenos Aires and I think that Grace should make a real effort to keep their travel agency sales below 40%.

In summary of the Lima sales situation I would repeat that between W. R. Grace and Panagra the Lima market is very well covered, although from Pan American's point of view a good percentage of the local contact work, particularly on the social side is being done by Panagra executives, fifty percent of which expense is, I believe, borne by Pan American. In other words, Pan American is paying more than 10% to get their general agency job done here in Lima but in face of intense Braniff competition, which is nonexistent in Santiago and considerably less intense in

Buenos Aires, I would say it is well worth the price if the cost does not get out of hand.

GENERAL AGENCY AGREEMENTS

I believe it would be of help to me if I could receive copies of whatever agreements there are between Pan American and Panagra relating to the general agency status of the Grace offices. Also, I would like copies of any agreements between Panagra and W. R. Grace which pertain to representation activities for the PAA System on the West Coast.

DIRECT SALES

Although I fully understand that it is not my particular function to become involved with individual sales to the travelling public through my various contacts I am able to initiate some nice local sales. My procedure on these is to discuss itineraries and help the passenger plan his trip and turn him over to the local agency for handling. During the past two weeks I handled the following:

MRS. MILLER AND MRS. REEF OF MUNCIE, INDIANA

These ladies were friends of a friend from my days in Chicago and had tickets Miami-Lima-Miami. I was successful in having them change their trip into an RSA with *new revenue* of $800.00 for PAA.

MR. AND MRS. ERNESTO LARRANAGA

On a tip given me by my friend Mr. Alvarez Calderón we sold these two passengers Lima-Los Angeles-Lima via PAA's new Constellation service.

DR. AND MRS. WALTER BRIEGEL

Had a note to me from an Amexco agent in Detroit. They had come to Lima on OW ticket and I sold them Lima-Santiago-Buenos Aires-La Paz-Lima.

Press group on March 5th. Attached is a story on the new office as it appeared in the "Peruvian Times", an English language weekly with a circulation of over 5,000. A similar story will appear this week in the Spanish-language newspapers and magazines and the release to them is being distributed by the local W. R. Grace press relations man.

LIMA MARKET COVERAGE

During the period of Report #3 I have visited all the Lima travel agents at least once in the company of the Grace Agency Supervisor, Mr. Pedro Tosso, a very capable and hard-working employee. The Grace Agency has done an excellent job here in distribution of propaganda material to agents, particularly as regards ATLAS posters and the large, blue system wall map. All agents also displayed the LAD Comfort Folder-Folder advertising the new Panama Los Angeles Constellation service. Statistics showing Lima travel agents production figures for PAA System in 1951 is attached.

My first impression of Lima Agents is that they are nowhere near as aggressive as Buenos Aires agents and this is partially evidenced by the fact that normally only 30% of our system sales in Lima are handled by travel agents as against almost double this percentage in Buenos Aires. There are several factors contributing to this situation and certainly the most important is that the combined sales and contact efforts of the W. R. Grace and Panagra organizations are far too powerful for any agent or group of agents to buck. The Lima market for air travel is extremely concentrated and the executives and junior officials of W. R. Grace and Panagra *really* cover this market through business and social contacts. In addition to their coverage it is important to note that the Grace Company is the most powerful commercial organization of its kind in Peru and each of its persistent and loyal employees not only feels zealously the interests of his particular department *and every other department of the Company.* In other words the sugar, textile, banking and general management executives are almost as concerned with the Panagra-

Braniff competitive picture as the airline people themselves [illegible] Examples [illegible] officials directly concerned with airline activities in Latin

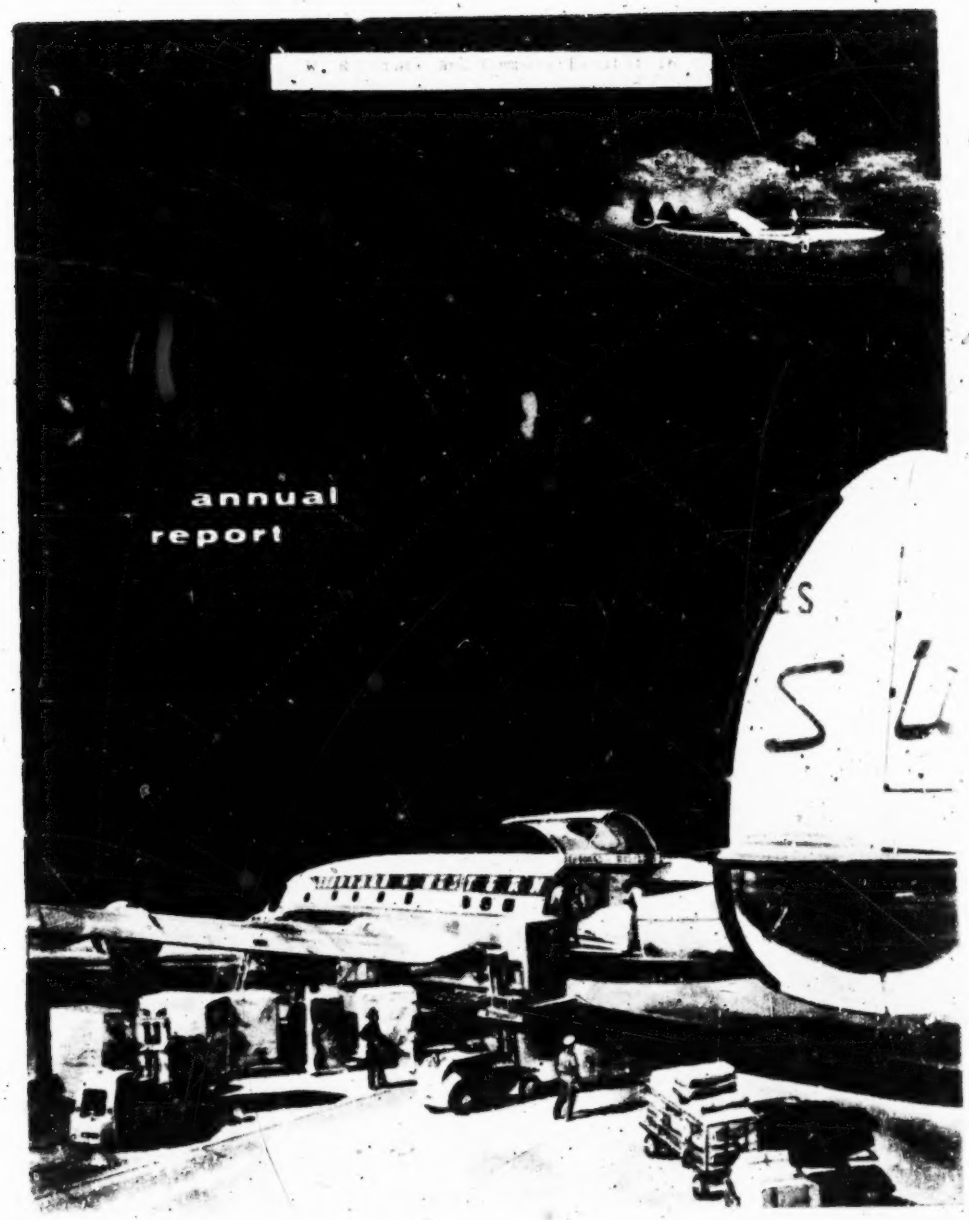
James Walker	Panagra Regional Manager
James Scholtz	Panagra Asst Regional Mgr
James Butler	Panagra Supt of Stations
George Mason	Panagra Traffic Manager
Gordon McCrum	Panagra Sales Manager
Ben Holt	Panagra Press Relations Mgr
Roberto Ribeiro	Panagra Representative Sup't
Harold Ely	Panagra Passenger Service Mgr
Jack Bradshaw	Panagra Safety Supervisor
Ernie Parsons	Panagra Public Relations
Manuel Roza	Panagra Special Assistant to Reg Mgr
Carlos Velarde	Grace Panagra Manager
Elwood Alexander	Grace Panagra Sales Manager
Roger Rowe	Grace Panagra Asst Sales Mgr
Kent Fry	Grace Hotel Reservations Mgr

All of the personnel listed above are [illegible] executives of Panagra or W R Grace [illegible] Each of them has a large circle of friends and friends and [illegible] encouragement by Panagra and Grace [illegible] at company expense. To the above list of individuals the following groups of people [illegible] Panagra and fighting Braniff, should be added:

1. The Panagra Pilot group
2. The hundreds of additional Panagra employees.
3. The hundreds of additional Grace executive and employees.

Against such an array of talent it is difficult to see [illegible] travel agents do even as much as [illegible] and it is equally difficult to imagine Braniff getting more than just a few passengers to Dallas or Havana. I will never forget the pathetic expression on the face of [illegible]

[fol. 5259a]
W. R. GRACE AND COMPANY, EXHIBIT 107



[fol. 5263]

ernment Competition

One of the most serious problems we have faced in the development of our freight business has been competition from the Military Air Transport Service he United States Air Force.

Previous annual reports have reported the development of a Civil Air Policy nting to the expanded use of air transportation by all Federal agencies because he economies inherent in this form of transportation. In this regard, the Con-ss, the Hoover Commission and the Air Coordinating Committee have recom-nded that services of commercial airlines should be utilized to the fullest extent sible; in preference to government-owned transportation, for carriage of gov-nment traffic.

Behind these recommendations is the viewpoint, based on experience during Berlin Airlift in 1948 and with the Pacific Airlift during the Korean War, t a strong and economically sound air transport system is the most productive least costly (to the taxpayers) means of developing the reserve air transport t needed for the National Defense in time of emergency.

Despite directives and recommendations to the contrary, the Military Air nsport Service has been developed and continually expanded as a commercial-e airline, diverting to its own transport fleet, in increasing volume, traffic which erwise would move on the normal services of the United States commercial nes.

MATS, as it is known, has become the world's largest single airline. It rates some 450 four-engine transports over 115,000 global route miles to 37 ferent countries. It operates on the same or parallel routes served by United tes commercial airlines, duplicating schedules, services and facilities at great t to the taxpayer.

Units of a 15-ton electronic computer are unloaded in Germany after the flight from New York

MATS cargo and mail traffic on overseas routes, alone, has grown from 43,000 tons in 1951, the first full year of the Korean War, to 150,000 tons in peacetime 1957.

The Atlantic Division of MATS lifted over 60,000 tons of cargo and mail during 1957—more than three-and-one-half times the combined tonnage (16,500) carried by the three United States-flag commercial airlines certificated to operate on the transatlantic route.

The air transport industry believes there should be a strong MATS, equipped and trained to perform a specialized strategic air transport function as required by the combat elements of the Department of Defense. Air route support, such as the commercial airlines performed during the Berlin Airlift and the Korean War, should be a commercial airline function in peacetime as well as in time of national emergency.

The industry has presented its position to the present Congress most vigorously. This, briefly stated, is that the basic mission of MATS is to prepare for wartime emergency, and not to operate a peacetime airline for carriage of government traffic in competition with the commercial airlines. This position was supported by organized labor, including the AFL-CIO, Air Line Pilots Association and the Transport Workers Union, as well as the Civil Aeronautics Board and the Department of Commerce.

In addition the Civil Aeronautics Board, in its annual report for 1957, has stated that it proposes to recommend legislation to the Congress which will confirm the Department of Defense's policy not to engage in competition with commercial airlines.

Your company has participated in Congressional Committee hearings devoted to the MATS situation. It is hoped that an informed Congress will take positive and expeditious legislative action to call a halt to this government competition

[fol. 5267]

with private industry. Congress has already dealt effectively with this problem in the maritime industry wherein the Military Sea Transport Service, the ocean surface counterpart of MATS, is limited by law in the volume of government traffic which can be moved in government-operated vessels.

Similar action to insure that government traffic, presently diverted at its source by the military, will flow freely to commercial air carriers will contribute substantially to the healthy economic growth of the air transport industry as a whole, and to the further development of transatlantic air freight in particular.

Current and Future

Entering 1958, your company continued to incur substantial operating losses. Wherever possible, your management has effected cost reductions to minimize the losses experienced during this period.

It is anticipated that this situation will change for the better in the second quarter when operations are expected to become profitable.

In April a long-term wet-lease agreement with Irish Air Lines - Aerlinte Eireann will take effect. This agreement calls for Seaboard to provide Super Constellation aircraft, flight crews and maintenance for the new Irish flagline operation between New York and Ireland. Cabin attendants will be Irish Air Line hostesses.

The inaugural westbound flight will leave Ireland on April 28 and the first eastbound flight will take off from New York on April 30. Initially, there will be three flights weekly in each direction. This will be increased to a daily schedule on June 1 and continuing through the peak tourist traffic season. During off season periods, flights will be scheduled thrice weekly. Future plans call for expansion of service between Boston and Ireland.

While Aerlinte Eireann is new in the transatlantic field, the Company's management has been eminently successful in European air transportation for 22 years with the operation of Aer Lingus, a sister company which has provided services between Dublin, the United Kingdom and the European continent since 1936. Aer Lingus operates a modern fleet of Viscount prop jet aircraft from Dublin to London, Manchester, Glasgow, Amsterdam, Brussels, Paris, Barcelona, Dusseldorf, Frankfurt, Zurich and Rome, among other points. Connecting services in Ireland between Aerlinte Eireann and Aer Lingus will provide onward service to Great Britain and the Continent for American tourists.

Irish transatlantic operations will be devoted entirely to the new Government-approved economy fare service which is 20 per cent below tourist fares. Transatlantic passenger air carriers anticipate a considerable increase in American tourist traffic to Europe during 1958 as a result of the economy fares.

Apart from the wet-lease contract, Seaboard expects to complete an agreement with Aerlinte Eireann wherein your company will purchase a 25 per cent capital share interest in the Irish company at a cost of $1,400,000. This agreement, which will be subject to approval by the Civil Aeronautics Board, requires your company to take up its allotted shares as capital is required, in any case not later than November 30, 1958.

At Shannon, Ireland, general cargo for the United States is moved to the airplane on a special cargo train.

This agreement also provides, subject to Civil Aeronautics Board approval, for your company to have minority representation on the Irish airline's board of directors.

Civil Aeronautics Board approval of this agreement and the implementation thereof will see your company enter a new and different field of air transportation.

Through Seaboard's participation in the ownership of the Irish Flag Airline and through its minority representation on the board of directors, your company can contribute further to its own development and diversification within the air transport industry. Management of your company believes this new activity will contribute on a continuing basis to the profitable growth of Seaboard.

Seaboard will implement in May another wet-lease agreement with Sabena Belgian World Airlines in connection with that carrier's New York Brussels economy fare service. This contract, which continues through October, will generate about $3,000,000 in revenues during the period specified.

While Seaboard's freight ton-mileage during early 1958 was at a lower level than that of the previous year, growth trends were evidenced in certain phases of cargo traffic which point favorably to the future. Whereas, the ton-mile curve followed a monthly declining line in the first quarter 1957, monthly ton-mileage has followed a rising curve during the same period of 1958.

In this connection Seaboard has taken several steps to reinforce its sales organization and to increase its traffic. Your company has been granted traffic rights at Basel, Switzerland, traditional international shipping center, and expects to begin service to this new point by the end of May. In addition, authority has been received for Seaboard to serve the United States military air base at Chateauroux, France, on Seaboard's scheduled cargo services.

Two new B.M.W. Isettas from Germany are positioned inside a Super Constellation Airtrader.. A 3-ton aircraft engine is tied down behind the cars.

The company has also appointed Scandinavian Airlines System as its general cargo sales agents in Norway, Sweden and Denmark. Seaboard does not presently serve these countries. However, through Seaboard's interline agreement with SAS and through common traffic points at Prestwick, London, Hamburg and Frankfurt, your company hopes to generate additional traffic from Scandinavia to the United States.

Seaboard and Railway Express Agency have terminated by mutual consent the agreement under which REA has acted as Seaboard's general sales agent in the United States. REA has made a significant contribution to the development of transatlantic air freight, particularly in the inland industrial areas of this country. However, increased coverage of this country by cargo agents, freight forwarders and Seaboard's own sales organization has obviated the requirement for a general sales agent to represent your company on a national scale.

A new source of revenue traffic was opened for your company in December when the Civil Aeronautics Board clarified Seaboard's rights, under the company's certificate of public convenience and necessity, to carry foreign mail from European countries on the company's routes to New York. Early in January, Seaboard began to carry this traffic, rates for which are determined by the Universal Postal Union, and which, during 1958, will make a significant contribution to increased revenue.

Apropos of the mail situation your company has applied to the Civil Aeronautics Board for the authority to carry U. S. Mail to the foreign countries Seaboard is authorized to serve. Approval of this application would result in a substantial increase in revenues to the company.

Based on business already in hand and the general outlook for the remainder of 1958, your company expects to overcome losses incurred early in the year and to complete 1958 on a profitable basis. Implementation of favorable legislation with respect to government traffic or successful development of any of the other traffic situations discussed earlier in this report would contribute further to the company's revenues and earnings.

As a result, the directors of your company look forward to the rest of 1958 with confidence as well as determination. Your management extends its appreciation to the company's employees and friends for their continued cooperation and loyalty during 1957.

Reynard A Norden

President.

Approved by the Board of Directors

SEABOARD & WESTERN AIRLINES, INC

Consolidated Balance

ASSETS

	1957	1956
CURRENT ASSETS		
Cash	$ 1,463,503	$ 917,045
Accounts receivable		
U. S. Government	931,247	1,302,291
Other trade	71,404	1,152,828
Other	494,247	306,063
	2,096,898	2,761,182
Federal tax refunds receivable	1,008,432	337,964
Maintenance parts and prepaid expenses	732,368	536,930
Total current assets	5,301,201	4,553,121
DEPOSITS AND NON-CURRENT NOTES RECEIVABLE		
Deposits on purchase of flight equipment	—	1,894,300
Security deposits on leases of flight equipment	1,035,000	1,070,000
Purchase option payments on leased flight equipment	450,000	399,500
Non-current notes receivable due in 1959 and 1960	350,000	300,000
Other deposits and sundry investments	93,496	163,453
	1,728,496	3,367,253
FIXED ASSETS, AT COST		
Flight equipment	9,510,071	913,949
Spare parts and assemblies	2,394,094	1,984,938
Ground and other equipment	792,071	557,901
	12,696,236	3,456,788
Less accumulated depreciation and obsolescence	1,606,635	750,788
	11,089,601	2,706,000
Unamortized improvements to leased flight equipment	888,519	1,198,685
	11,978,120	3,904,685
DEFERRED CHARGES		
Flight equipment rentals	1,233,400	661,400
Unamortized Super Constellation pre-operating expenses	803,730	702,140
Unamortized maintenance facility start-up expenses	272,886	328,325
Unamortized extension and development costs	96,358	133,065
	2,406,374	1,824,930
	$21,414,191	$13,649,989

Reference is made to the accompanying notes

Ten

Sheets *at December 31, 1957 and 1956*

LIABILITIES AND STOCKHOLDERS' EQUITY

	1957	1956
CURRENT LIABILITIES (see accompanying note on notes payable to banks):		
Accounts payable (trade	$ 2,455,348	$ 2,131,000
Accrued salaries and other expenses	1,851,063	997,162
Liability to former stockholders of subsidiary acquired December 31, 1957 (less amount shown below)	1,084,180	
Notes payable to banks (installments due within one year)	1,922,193	149,250
Total current liabilities	7,432,724	3,205,000
NOTES PAYABLE TO BANKS (less installments due within one year)	4,153,667	991,250
PORTION OF PURCHASE PRICE OF SUBSIDIARY REQUIRED TO BE SETTLED BY ISSUANCE OF STOCK NOT PRESENTLY OUTSTANDING	400,000	
RESERVE FOR AIRCRAFT AND ENGINE OVERHAUL	105,373	440,000
RESERVE FOR FUTURE FEDERAL INCOME TAX	1,566,000	977,000
STOCKHOLDERS' EQUITY		
	Number of Shares: 1957	1956
Common stock, $1 par value		
Authorized	1,500,000	1,000,000
Issued	1,002,700	961,404
Less in treasury	4,008	4,008
Outstanding	998,692	957,396
Reserved for exercise of options	28,158	27,750
Reserved for issuance as portion of purchase price of subsidiary	50,000	
	78,158	27,750
Capital in excess of par value of common stock per accompanying statements	4,663,510	4,165,194
Earned surplus, per accompanying statements	2,102,810	1,185,406
Total stockholders' equity	7,764,510	5,348,350
LONG-TERM LEASES AND COMMITMENTS (see Notes)		
	$21,414,191	$13,649,600

Notes to Consolidated Financial Statements are an integral part of this statement.

EABOARD & WESTERN AIRLINES, INC

Statements of Income

For the Years Ended December 31, 1957 and 1956

	1957	1956
OPERATING REVENUES		
Freight	$ 7,277,019	$ 7,149,611
Special, charter and other	14,818,522	11,616,872
	22,095,541	18,766,483
OPERATING EXPENSES		
Flying operations	6,561,479	6,060,993
Flight equipment rentals	3,108,086	2,232,952
Provision for depreciation, obsolescence and amortization	1,368,444	507,457
Maintenance and repairs	6,550,850	4,741,447
Ground operations	1,292,630	1,236,099
Traffic and sales	2,972,733	2,337,752
General and administrative	925,858	1,005,157
	22,780,080	18,121,862
	(684,539)	644,621
OTHER INCOME	102,414	25,934
INTEREST EXPENSE	(254,429)	(66,396)
	(836,554)	604,159
FEDERAL INCOME TAX RECOVERY ARISING FROM LOSS CARRY-BACKS	(1,015,500)	(345,000)
	178,946	949,159
PROVISION FOR FUTURE FEDERAL INCOME TAX	580,500	653,000
NET INCOME (LOSS) FOR THE YEAR	(401,554)	296,159
SPECIAL ITEM		
Gain of $252,114 on sale of flight equipment, less federal income tax applicable thereto		189,114
NET INCOME (LOSS) AND SPECIAL ITEM	$ (401,554)	$ 485,273

1956 figures have been reclassified to conform to 1957 presentation.
Reference is made to the accompanying notes.

else

Statements of Capital in Excess of Par Value of Common Stock and of Earned Surplus

For the Years Ended December 31, 1957 and 1956

	1957	1956
CAPITAL IN EXCESS OF PAR VALUE OF COMMON STOCK		
Balance at beginning of year	$4,103,194	$1,307,624
Excess of amount charged to earned surplus over par value of shares issued as 4% stock dividend	542,863	
Amount received in excess of par value on issuance of shares on exercise of options (3,000 shares in 1957, 1,200 shares in 1956)	17,453	6,981
Amount received in excess of par value of 180,000 shares of common stock sold (less expenses of $250,208)		2,764,792
Excess of amount charged to income over par value of 1,500 treasury shares issued as special compensation to employees		23,797
Balance at end of year	$4,663,510	$4,103,194
EARNED SURPLUS		
Balance at beginning of year	$3,085,614	$2,600,341
Net income (loss) and special item	(401,554)	485,273
	2,683,060	3,085,614
Less: 4% stock dividend—38,392 shares—at market price at date of declaration	580,255	
Balance at end of year	$2,102,805	$3,085,614

Reference is made to the accompanying notes

Notes to Financial Statements

Acquisition of subsidiary

On December 31, 1957, the Company purchased all the outstanding capital stock of Seagull Airtransport Corp. for $1,000,000, of which $200,000 was paid in cash in January 1958, $200,000 by the issuance of notes, payable in twelve equal monthly installments from February 1, 1958 with interest at 5½%, and the balance of $600,000 is payable by June 15, 1958, at the option of Seaboard in any combination of cash or common stock of Seaboard in any at $8 per share. Pursuant to the requirements of a Seaboard bank credit agreement, $400,000 of this amount is required to be settled by the issuance of common stock not presently outstanding.

The principal assets of Seagull at December 31, 1957 were one Super Constellation aircraft (previously leased by Seaboard) and $1,200,000 in cash representing the proceeds of a bank loan dated December 31, 1957. In addition, Seagull had debentures outstanding which were retired at a cost of $404,100 in January 1958. As a result of the Seagull acquisition, Seaboard obtained an additional Super Constellation aircraft at a cost of $1,442,073.

Long-term leases and commitments

The Company has leased six Super Constellation and three DC-4 aircraft, and owns four Super Constellation aircraft.

Three Super Constellation aircraft and twelve spare engines are leased from Aviation Equipment Corporation for a ten-year period which began in September 1954, at a total rental ranging from $1,422,000 during the first year of the agreement to $1,260,000 during the fourth and fifth years and $460,000 per year thereafter. The holders of certificates of deposit for the common stock of Aviation Equipment Corporation have an option which, if exercised, will obligate the Company to purchase 100% of the common stock of that corporation on August 31, 1959, which would result, in effect, in Seaboard acquiring ownership of the three aircraft and spare engines leased from Aviation Equipment Corporation at a cost estimated at $2,250,000. Seaboard has advanced to Aviation Equipment Corporation a security deposit of $1,000,000 of which $640,000 is repayable to the Company in 1959 and will be applied against the purchase of the stock, together with the remaining $360,000 of the deposit, if the option is exercised. If Seaboard does not acquire the common stock of Aviation Equipment Corporation, it has an option to extend the lease for an additional five-year period beginning in 1964 at an aggregate rental of $360,000 per year, and the remaining $360,000 of the security deposit will be payable to the Company during the last year of the lease.

Two Super Constellation aircraft are leased for a seven year period expiring in January 1964 at a total annual rental of $840,000. Seaboard paid $300,000 for assignable options to purchase these aircraft, exercisable not later than February 28, 1963. The option payments may be applied against the purchase price to the extent of $150,000 per aircraft but are not otherwise refundable.

One Super Constellation aircraft and four spare engines are leased for a seven year period expiring in April 1963 at rentals ranging downward during the lease period from $570,000 to $420,000 per annum. Seaboard paid $100,000 for an assignable option to purchase this equipment, exercisable not later than December 31, 1962, which payment may be applied against the purchase price but is not otherwise refundable.

Two DC-4 aircraft are leased to April 1958 at a total annual rental of $240,000 and one additional DC-4 aircraft to March 1960 at an annual rental of $180,000. Seaboard paid $50,000 for an assignable option to purchase the latter aircraft, exercisable not later than January 31, 1959, which payment may be applied against the purchase price but is not otherwise refundable.

As lessee, Seaboard is also responsible for maintenance, overhauls, insurance and other operating costs of all the above mentioned equipment.

Deferred charges

Super Constellation flight equipment rentals under two leases which require declining payments during the lease periods are charged to expense on a straight-line basis. Accordingly, rentals amounting to $572,000 in 1957 and $661,400 in 1956 have been deferred at December 31, 1957.

Expenses of $217,100 in 1957 and $265,700 in 1956, incurred in training flight and ground personnel and other related pre-operating expenses attributable to the substantial increase in number of Super Constellation aircraft operated by the Company have been deferred and are being amortized, together with expenses of a similar nature incurred in prior years, over a period of approximately eight years.

Notes payable to banks

Notes payable to banks consist of:

	Current	Long-term
5½% notes under a $1,000,000 revolving credit agreement which expires December 31, 1958, secured by an assignment of monies due or to become due from the U. S. Government of which $817,229 is included in accounts receivable at December 31, 1957	$ [illegible]	$
5% notes, due in equal monthly installments to March 1962, secured by chattel mortgage on three Super Constellation aircraft and spare engines (included in fixed assets at $6,103,585 after deduction of accumulated depreciation and obsolescence)	1,002,168	3,171,587
5½% notes, due in sixty equal monthly installments beginning in February 1958, secured by chattel mortgage on one Super Constellation aircraft and improvements thereto (included in fixed assets at $1,563,978 after deduction of accumulated depreciation and obsolescence)	220,000	980,000
	$1,922,168	$4,151,587

The credit agreements applicable to the foregoing notes provide, among other things, for the maintenance of minimum amounts of net worth and working capital. At December 31, 1957 the Company's net worth and working capital were $348,123 and $2,874,365, respectively, less than the minimums required and these deficiencies have substantially increased in the first quarter of 1958. The banks have advised the Company that they do not presently intend to take any actions available to them by reason of such defaults (which can include accelerating the due dates of the indebtedness), but have specifically reserved their rights to take such actions as they may deem necessary in the future as the result of such existing defaults or any future ones.

The credit agreements also provide that the Company may not declare dividends, other than stock dividends, in excess of 50% of the net profits (as defined in the agreement) accumulated after December 31, 1955. At December 31, 1957, $2,060,946 of the earned surplus was restricted as to cash dividends under this clause.

Future Federal income tax

Certain expenses incurred during 1957 and prior years which were deferred in the financial statements have been deducted currently for income tax purposes and other items have temporarily reduced taxable income. As a result cumulative taxable income to date has been substantially less than that reported in the financial statements with consequent substantial reduction in Federal income taxes paid. Accordingly, the Company has provided a reserve for the Federal income tax reduction to date which is expected to be payable in the future when the situation is reversed and taxable income exceeds that reported in the financial statements.

Reserve for aircraft and engine overhaul

Effective January 1, 1957, the Company discontinued its policy of providing a reserve for engine overhaul and is now charging expense with the cost of engine overhauls as incurred. As a result of this change maintenance and repairs were reduced by $325,646 and the net loss for the year 1957 was reduced by $[illegible].

Stock options

At December 31, 1956 certain key employees held options on 27,700 shares of common stock. Options on 14,200 shares were exercisable at any time during the two year period beginning July 23, 1956 at an option price of $8.82 per share; of these options on 3,000 shares were exercised in 1957. Options on 14,500 shares were exercisable at various dates beginning in 1957 and expiring in 1959 and 1961 at option prices of $12.94 and $13.78 per share. As a result of the 4% stock dividend declared in 1957 the options were revised to a total of 29,688 shares at option prices ranging from $8.55 to $13.25 per share.

In 1957 an option was granted an additional key employee for 2,500 shares at $9.26 per share (which was 90% of the market value at date of grant), exercisable at any time during the two-year period beginning October 15, 1958.

Operating expenses

In 1957 substantial operating revenues were received under a lease which provided that Seaboard maintain the aircraft while the lessee assumed most of the other direct operating costs. As a result the increase in maintenance and repairs in 1957 has been disproportionate to the increases in other expenses.

Contingent items

Seaboard has claimed substantial amounts from a major supplier of services. In 1956 it accrued the minimum believed by it to be recoverable. It is not possible at this time to state with certainty the amount which may eventually be collected on these claims.

Report of the Auditors

ARTHUR YOUNG & COMPANY
ACCOUNTANTS AND AUDITORS

65 BROADWAY
NEW YORK 6

THE BOARD OF DIRECTORS AND STOCKHOLDERS,
SEABOARD & WESTERN AIRLINES, INC.:

We have examined the accompanying consolidated balance sheet of Seaboard & Western Airlines, Inc. and subsidiary at December 31, 1957 and the related statements of income, capital in excess of par value of common stock, and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. It was not practicable to confirm receivables from the United States Government, as to which we have satisfied ourselves by means of other auditing procedures.

In our opinion, the statements mentioned above present fairly the consolidated financial position of Seaboard & Western Airlines, Inc. and subsidiary at December 31, 1957 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied in all material respects on a basis consistent with that of the preceding year except for the change, which we approve, in accounting for engine overhauls as described in the notes to financial statements.

Arthur Young & Company

March 20, 1958

[fol. 5277]

ATHENS, GREECE
35 Winston Churchill Street

DUSSELDORF, GERMANY
Flughafen, Lohausen

FRANKFURT/MAIN, GERMANY
Am Hauptbahnhof 2 and Rhein Main Airport

GANDER, NEWFOUNDLAND
Gander Airport

GENEVA, SWITZERLAND
Cointrin Airport

GLASGOW, SCOTLAND
83 Buchanan Street

HAMBURG, GERMANY
Fuhlsbuettel Airport

LONDON, ENGLAND
21 Cork Street and London Airport

LUXEMBOURG, G.D.L.
6 Ave. Marie-Therese and Findel Airport

MUNICH, GERMANY
Flughafen Riem

NEW YORK, N.Y.
80 Broad Street and
New York International Airport

NUREMBERG, GERMANY
Nuremberg Flughafen

PARIS, FRANCE
26, Rue de la Pepiniere

SHANNON, IRELAND
Shannon Airport

STUTTGART, GERMANY
Stuttgart Echterdingen Airport

WASHINGTON, D.C.
1001 Connecticut Avenue

ZURICH, SWITZERLAND
Genferstrasse 11 and
Kloten Airport

BELGIUM
Ruys & Co., Brussels

FRANCE, THE FRENCH UNION AND MEXICO
Air France, Paris

ITALY
Air Service International, Milan

THE NETHERLANDS
Ruys & Co., Amsterdam

NORWAY, SWEDEN AND DENMARK
Scandinavian Airlines System
Oslo, Stockholm and Copenhagen

SPAIN
Maritimas Reunidas, S.A., Madrid

UNITED KINGDOM
British Overseas Airways Corp., London

[fol. 5277a]

W. R. GRACE AND COMPANY EXHIBIT 168

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Plaintiff,

against

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY and PAN AMERICAN-GRACE AIRWAYS, INC.,
Defendants.

Civil Action No. 90-259.

ANNEXES TO TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

[fol. 5278]

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ANNEX 1

FROM THE MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII TUESDAY, JULY 31, 1951

Present the Honorable D. E. Metzger, District Judge presiding

Wm. F. Thompson, Jr., Clerk

Wallace G. Forsythe, Court Crier

Albert Grain, Court Reporter

Hawaiian Airlines, Ltd., *vs.* Trans-Pacific Airlines, Ltd.	Civil No. 817

On this day came Mr. J. Garner Anthony of the firm Robertson, Castle & Anthony, counsel for Hawaiian Airlines, Ltd. and Inter-Island Steam Navigation Co., Ltd., and also came Mr. Frank W. Gaines and Mr. Sai Chow Doo, counsel for Trans-Pacific Airlines, Ltd. This case was called for hearing on affidavit and certificate seeking the disqualification of the Court to try this case.

The Court stated that he did not require argument by respective counsel on the matter before the Court.

Thereupon, the Court announced that in view of the allegations made by Mr. Stanley C. Kennedy, President of Hawaiian Airlines, Ltd. in the affidavit charging the Court with bias and prejudice in that the Court had prejudged and predetermined the issues in this case, he was withdrawing from the case as he felt it a more controlling duty to so do whenever such a contention is made, even though the affidavit appeared insufficient to sustain such contention.

[fol. 5282]

Mr. Gaines's attempt to persuade the Court to reconsider its stand met with no success.

The Court, however, informed respective counsel that he would be glad to assist in having a judge from the mainland assigned to this district as soon as possible to conduct the trial of this case and that a conference be held in that connection.

ANNEX 2

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

HAWAIIAN AIRLINES, LIMITED,
Plaintiff,

v.

TRANS-PACIFIC AIRLINES, LTD.,
Defendant and
Third Party Plaintiff,

v.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,
Third Party Defendant.

Civil No. 817

Pre-Trial Order.

Before the Honorable SAM M. DRIVER, United States District Judge, specially designated and assigned to sit in the above entitled proceedings.

Appearances:

Attorneys for TRANS-PACIFIC AIRLINES, LTD., (referred to hereinafter as Trans-Pacific) Defendant and Third Party Plaintiff:

H. MASON WELCH, Esq.,
Continental Building,
15th & K Streets, N. W.,
Washington, D. C.

POWELL, LEAR & GAINES,
1010 Vermont Avenue, N. W.,
Washington 5, D. C.

By: FRANK W. GAINES, JR., Esq.
SAI CHOW DOO, Esq.,
305 Royal Hawaiian Avenue.
Honolulu, Hawaii.

Filed October 15, 1951 at 12 o'clock and 02 minutes p. m.

WM. F. THOMPSON, JR.,
Clerk.

[fol. 5284]

Attorneys for HAWAIIAN AIRLINES, LIMITED, (referred to hereinafter as Hawaiian), Plaintiff, and INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, (referred to hereinafter as Inter-Island), Third Party Defendant:

J. GARNER ANTHONY, Esq.
312 Castle & Cooke Building
Honolulu, Hawaii

ROBERTSON, CASTLE & ANTHONY
312 Castle & Cooke Building
Honolulu, Hawaii

Of Counsel.

PRELIMINARY MATTERS

The pre-trial conferences were started on August 20, 1951, and continued intermittently thereafter up to the beginning of the jury trial on September 11, 1951. The issues and the legal problems involved were informally discussed. A number of motions directed to the pleadings and requests for admission were disposed of and separate orders entered thereon. Shortly after the beginning of the conferences defendant and third party plaintiff, Trans-Pacific, was granted leave to serve and file an amended pleading, which was subsequently filed, designated "Counterclaim and cross-complaint of August 23, 1951." An answer to this pleading was filed by plaintiff, Hawaiian, and by third party defendant, Inter-Island, on August 29, 1951.

Near the outset of the conferences it was agreed between counsel for the parties that no further depositions would be taken except upon good cause shown to the Court and leave obtained. Thereafter Trans-Pacific applied for and was granted leave to take the deposition of Mr. Stanley C. Kennedy. Later Trans-Pacific applied for and was granted leave to take the deposition, upon written interrogatories, of Mr. Clayton L. Burwell, it appearing that Mr. Burwell would be unable to appear in person as a witness for Trans-Pacific.

Trans-Pacific, at the conference, requested the Court to enter an order fixing times for the filing of any motion under Rule 34, F. R. C. P., or for the use of any additional steps provided for in the rules pertaining to the deposition and discovery processes, calling attention to the fact that under an order previously entered no further written interrogatories addressed to Trans Pacific could be employed by Hawaiian and Inter-Island until they should have taken such depositions as they might desire to take from officers or employees of Trans-Pacific. It appearing to the Court, after discussion with counsel for all parties, that there was no need for the order suggested by Trans-Pacific in that no wish on the part of any of the parties to employ further deposition-discovery processes appeared to exist, the order requested by Trans-Pacific was not made.

In the course of the pre-trial conference counsel for Hawaiian and Inter-Island asked the Court to reconsider the order entered by the above entitled Court on November 21, 1949, entitled "Order Settling Issues Pursuant to Rule 56(d)."

Such order was reconsidered and after a number of discussions in which opposing counsel were given opportunity to express their views, the Court ultimately came to the conclusion that while the findings of undisputed facts as set forth in such order should not be disturbed, the Court would revoke and set aside that portion of the second page of the order consisting of paragraph (a), which reads as follows:

> (a) That the organization of Hawaiian by Inter-Island in 1929, to operate as an air carrier over routes substantially parallel to its surface common carrier operation, was a violation of Sections 1 and 3 of the Sherman Act (15 USC 1 and 3).

The Court concluded and ordered that the issue of law involved in the conclusion stated in paragraph (a) quoted above should be left open for determination upon the trial of the cause and that the same should be covered in the instructions of law given to the Jury by the Court at the conclusion of the trial.

[fol. 5286]

ADMITTED FACTS

It is admitted Inter-Island was a water carrier of persons and property operating between ports of Hawaii except during World War II from the year 1883 to 1950, when it discontinued operations as a water carrier; that in 1929 it organized Hawaiian, an air carrier, to operate between points within the Territory of Hawaii and that from the date of its incorporation from January 30, 1929 until the year 1950, Inter-Island held the controlling interest in the stock of Hawaiian and that at all times during this period the two companies had substantially the same officers and directors.

ANNEX 3

IN THE UNITED STATES DISTRICT COURT FOR THE TERRITORY OF HAWAII

HAWAIIAN AIRLINES, LIMITED, Plaintiff, *vs.* TRANS-PACIFIC AIRLINES, LTD., Defendant and Third Party Plaintiff, *vs.* INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Third Party Defendant.	Civil No. 817

Court's Instructions to the Jury.

[EXTRACTS]

INSTRUCTION NO. 11

You are instructed that it was not *per se* or in and of itself an unreasonable restraint of trade or commerce for Inter-Island, a surface carrier, to organize and assume control of Hawaiian, an air carrier, operating over parallel routes. To determine whether or not that relationship, together with its effects and the acts and things done by the parties in connection with it, did actually result in unreasonable restraint of trade, you should consider all of the evidence bearing thereon in the light of the Court's instructions. In this connection you are further instructed that it is unreasonable *per se* to foreclose competitors from any substantial market.

[fol. 5288]

INSTRUCTION NO. 12

A contract, combination or conspiracy not unreasonable either *per se* or because of an illegal specific intent, may become unreasonable in the market situation in which it is effective. In other words it is not always necessary to prove specific intent. It is sufficient if unreasonable restraint in fact results as the consequence of the conduct or business arrangements of the parties charged with violation of the antitrust laws. If you find a contract, combination or conspiracy having the effect of restraining trade existed between Hawaiian and Inter-Island, but find that there was, on the part of Inter-Island and Hawaiian no specific intent to do anything illegal, you must then determine whether or not the contract, combination or conspiracy did unreasonably restrain trade. In so deciding, the dollar volume of trade affected is not of compelling significance. You must look rather to the percentage of business controlled, strength of the remaining competition, whether the action springs from business requirements, or purpose to restrain trade, the probable development of the industry, consumer demands, and other characteristics of the market.

INSTRUCTION NO. 14

The antitrust laws do not forbid the natural and normal growth and expansion of a business to meet the needs of new markets of a community nor the adoption of reasonable measures to protect it from injurious and destructive practices and to promote competition on a sound basis.

INSTRUCTION NO. 18

The law does not make mere size or the existence of unexerted power an offense. It requires overt acts and trusts to its prohibition of them and its power to repress or punish them. It does not compel competition nor require all that is possible. However, in determining whether or not in a given situation a combination or conspiracy unrea-

sonably restrains trade or commerce you may consider size in so far as it affords potential power to control markets and a potential advantage over smaller competitors.

INSTRUCTION NO. 19

The Court instructs you that the anti-trust laws do not apply in exactly the same manner to a regulated air carrier as they do in unregulated business. In this case both Trans-Pacific and Hawaiian are what is known as air carriers and are under the regulation of the Civil Aeronautics Board which was established pursuant to an act of Congress known as the Civil Aeronautics Act of 1938. One section of this act (Section 409) prohibits the existence and maintenance of certain interlocking relationships between air carriers and common carriers unless they are approved by the Board after a showing that the public interest would not be adversely affected thereby. The Court instructs you that pursuant to Section 409 of the Civil Aeronautics Act the interlocking relationships that existed between Inter-Island as a surface carrier and Hawaiian, its air carrier subsidiary, in so far as their having common directors and officers is concerned, have been approved by the Civil Aeronautics Board.

The Civil Aeronautics Act (Section 412) also requires every air carrier to file with the Civil Aeronautics Board a copy or a memorandum of contracts or agreements between air carriers and surface carriers which affect air transportation. This section requires certain agreements and other cooperative working arrangements to be filed with the Board. The Board is required to approve or disapprove any such agreements or arrangements and if they are adverse to the public interest it must disapprove them. The Court instructs you that certain agreements and working arrangements between Inter-Island and Hawaiian have been filed with the Civil Aeronautics Board and have been approved.

[fol. 5290]

10

The Civil Aeronautics Act specifically provides that any person affected by any order made by the Board under Section 409 of the act which relates to interlocking relationships or Section 412 of the act which relates to agreements between air carriers and other carriers is relieved from the operations of the anti-trust laws and of all other restraints or prohibitions imposed by law insofar as it may be necessary to enable such person to do anything authorized, approved or required by such orders.

You are therefore instructed that no inference of violation of the anti-trust laws can be drawn from the fact that Hawaiian and Inter-Island had and maintained interlocking officers and directors or because of the agreements and arrangements approved by the Civil Aeronautics Board as heretofore related.

The Court instructs you that the word "person" as used in the Civil Aeronautics Act includes corporations and individuals and specifically in this case includes Inter-Island as a corporation and the individual officers and directors of Inter-Island and Hawaiian.

ANNEX 4

IN THE UNITED STATES DISTRICT COURT FOR THE TERRITORY OF HAWAII

HAWAIIAN AIRLINES, LIMITED,
Plaintiff,

vs.

TRANS-PACIFIC AIRLINES, LTD.,
Defendant and
Third Party Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,
Third Party Defendant.

Civil No. 817

Judgment.

The counterclaim and cross-complaint of Trans-Pacific Airlines, Ltd., filed in the above entitled cause having come on for hearing before the United States District Court for the Territory of Hawaii, the Honorable Samuel Driver presiding, sitting with a jury, and the jury having returned a verdict in favor of Hawaiian Airlines, Limited, and Inter-Island Steam Navigation Company, Limited.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

That Trans-Pacific Airlines, Ltd., Defendant and Third Party Plaintiff, take nothing by its counterclaim and cross-complaint and that Hawaiian Airlines, Limited, plaintiff, and Inter-Island Steam Navigation Company, Limited, Third Party Defendant, have and recover their costs taxed

[fol. 5292]

in the sum of $618.09, and that the counterclaim and cross-complaint be and it is hereby dismissed.

Dated: Honolulu, Hawaii, October 23rd, 1951.

By the Court:

WM. F. THOMPSON, JR.,
Clerk.

Approved and entry by the clerk is hereby ordered.

SAMUEL M. DRIVER,
District Judge.

[fol. 5293]

ANNEX 5

ENCLOSURE 1
FCC 59-144
69359

Comments of the Federal Communications Commission on S. 4231, 85th Congress, Second Session, a bill to amend the Communications Act of 1934, as amended, to permit consolidations or mergers of international telegraph and marine carriers, and for other purposes.

S. 4231 would add a new section 223, to the Communications Act to make provision for the permissive merger of two or more international telegraph and/or marine carriers. The question of whether to authorize the merger of international telegraph and marine carriers has been considered from time to time by the Congress but, thus far, no legislation authorizing or requiring such mergers has been enacted. The Commission has also had occasion at various times during the past twenty-five years to consider this problem. In the course of such considerations, as well as in the course of its regulatory activities, it has amassed a very considerable volume of material with respect to the physical facilities, operations, services, traffic volume, rates, revenues, expenses and earnings of the carriers. In addition, from time to time, it has had the benefit of staff studies regarding the question of merger wherein all of the underlying data have been reviewed and analyzed in the light of current and expected developments. Finally, the Commission has also received and considered comments on the proposed bill from certain of the carriers subject to its jurisdiction and extensive memoranda and arguments from the American Communications Association which represents the employees of certain international telegraph carriers.

The Commission's studies and data in its files indicate to it that at present the industry is operating effectively

[fol. 5294]

and efficiently; that on the average, over the past decade, its earnings experience and service provided compare favorably with that of communications monopolies subject to the Commission's jurisdiction. The Commission has found it necessary to grant only one rate increase with respect to outbound international telegraph traffic in the past decade. All of the foregoing considerations would tend to point to a conclusion that if present conditions and circumstances could be expected to continue for the foreseeable future, there would be no compelling reasons for legislation which would permit the merger of international telegraph carriers. However, there are certain major events which have taken place in recent years which have convinced the Commission that the relatively favorable position of the presently competitive international telegraph industry cannot continue much longer. These are:

(1) The growing importance of non-message telegraph services;

(2) The fact that such services require costly equipment and greatly expanded facilities;

(3) The growing reluctance of the major foreign countries to undertake the expense necessary to provide and operate duplicating channels for non-message service with competing United States carriers;

(4) The need to develop expensive new radio-transmission techniques and associated equipment for the most efficient utilization of the radio spectrum allocated to international fixed public services to enable them to expand existing services and to provide various new services;

(5) The development and installation of high capacity transoceanic telephone cables capable of being subdivided to provide a very large number of telegraph channels per voice channel; and,

(6) The constantly increasing speed of transoceanic airmail service which brings ever closer the

realization of overnight airmail service between New York and other international airports on the one hand and major cities in Europe on the other hand.

All of the foregoing indicate to the Commission that the present favorable earning position of the competing international carriers could readily be reversed in the next few years when pressures for facilities, which they could not provide individually, might divert traffic and revenues to others. Thus the maintenance of internal competition in the international telegraph field for the next several years could destroy effective competition between international telegraphy and the already existing monopolies of international telephony and airmail. Under such circumstances it appears to the Commission that permissive merger legislation should be enacted now with the end in view that a financially sound company created under prosperous conditions would be in a position to anticipate demands and to provide the necessary expensive facilities and equipment itself thereby obviating the danger that the traffic might be diverted to other channels, and enabling it to compete effectively for a fair share of the international communications dollar.

The Commission, therefore, approves permissive merger legislation in principle and recommends enactment of a statute to that effect. Should the Committee desire the detailed data on which the Commission has based the recommendations set forth herein in connection with hearings on S. 4231, or otherwise, the Commission will of course be happy to furnish it upon reasonable notice. The Commission has also analyzed S. 4231 and has specific suggestions with respect to the particular provisions in that bill. The suggestions and the reasons therefor are attached hereto as Appendix A.

Attachment: Appendix A

Adopted: February 19, 1959

[fol. 5296]

ANNEX 6

Statement of Civil Aeronautics Board Position With Respect to the Major Issues to be Considered at the IATA Traffic Conference Meetings, Cannes, September 23, 1958

I. Fare Differential for Jet Services

The Board considers it inappropriate to resolve at this time the single question of whether or not a fare differential for jet services would be reasonable. It has been the general policy of the Board that fare differentials for particular aircraft types are inconsistent with sound rate-making principles. On the basis of the facts presently before us, the Board sees no reason to depart at this time from this established policy.

The Board considers it essential that jet services be integrated into the fare structure in such a manner as will permit their operation in any class of service. Jet equipment shows promise of being more economical than aircraft presently in service. It is particularly important, therefore, that opportunity to operate jets in the low fare service be protected. This is consistent with the Board's long-standing policy that the more efficient and economical aircraft types should be used in the low fare services, at reasonable maximum utilization of seating capacity, so that the traveling public may be assured of the lowest fares consistent with economical and sound operations. In this connection, the Board notes that a critical factor determining the cost of operating jets will be the seating configuration used, and we expect the carriers to make full use of the carrying capacity of these aircraft. To the extent that jets prove to be more economical, it would appear essential that this cost advantage be reflected in lower fares so as to achieve maximum development of the traffic potential, a potential which lies predominantly in the tourist travel market which is readily responsive to reductions in fares.

II. North Atlantic Fares

Perhaps the most immediate and urgent problem facing the carriers is the need to develop a substantially broader traffic base to support the sharp increase in seating capacity which will attend the introduction of jet equipment. The economy of jet operations will be dictated, in the last analysis, by the ability of the carriers to fill seats. As noted above, the Board is convinced that the future development of air traffic in the volume now required lies primarily in penetration of the tourist travel market.

Viewed in this posture, and recognizing the responsiveness of tourist travel to changes in prices, the Board believes that the currently effective general level of fares should not be increased. In this connection, we note that North Atlantic fares were increased by approximately eight percent as of April 1, 1958. The Board considers it particularly necessary to the stimulation of traffic development that the economy-class service be retained substantially as now constituted, and that the level of fares for this service, which is significantly higher than that originally agreed to, be retained or reduced.

III. Transpacific Fares

The Board believes that the need for substantial traffic generation is likewise a factor which should be kept in mind in considering the level of fares to be applicable on transpacific routes. We take this view notwithstanding the fact that jets will probably not be placed in transpacific service during the year in question and that, as a result, the problem of developing traffic is not as urgent as in the case of the North Atlantic.

Accordingly, the Board is of the opinion that, in the absence of demonstrable reasons to the contrary, the currently effective level of transpacific fares should not be increased.

[fol. 5298]

IV. U. S.-South America Fares

The Board is aware of the present competitive situation in the Caribbean and South American areas. The carriers concerned have not as yet presented any concrete proposals designed to meet this situation. In the absence of any such proposals, the Board is not in a position to comment on this matter.

V. North Atlantic Cargo Rates

The Board reaffirms its endorsement of the specific commodity rating system as providing the soundest foundation upon which to develop the North Atlantic cargo market. This system permits penetration of new markets through selective reductions in rates without sacrifice to the maintenance of optimum carrier revenues. Accordingly, we urge continued development of the present specific commodity rate structure both through further refinement of commodity descriptions by such means as a Commodity Description Guide and through maintenance of all measures necessary to safeguard against the mis-rating of commodities.

As in the case of passenger transportation, however, the Board is concerned with the critical problem presented by the imminent sharp increase in cargo capacity accompanying introduction of jets and the consequent need for generation of a substantial volume of new traffic if cargo operations are to proceed on an economically sound basis.

The Board is convinced that two steps should be taken immediately as an initial step toward broadening the cargo market base on the North Atlantic. First, it is the Board's opinion that weight break-points should be introduced within the present specific commodity rate structure. We do not favor abandonment of the present specific rating system by substitution of a system based upon the principle of volume discounts from the general cargo rate. Further, we take no position as to whether a uniform break-point for all commodities or varying break-points depending upon the characteristics of the particular commodity in question would be more appropriate. However, we believe that

introduction of, at the very least, one break-point throughout the specific commodity rate structure is a necessary step which should be taken at this time in view of the evident need, recognized alike by the carriers and the Board, for generation of greater cargo volume.

As a second measure, the Board urges the carriers to introduce a mixed consignment rule which will provide at least as great an incentive for consolidation of mixed shipments as did the rule which expired January 1, 1957. It is the Board's opinion that, in view of the measures which have been taken in the past few years to tighten the specific commodity rate structure, the risk of incurring abuse of the type which occurred under the previous rule, is minimal.

VI. Absorption of Passenger Expenses En Route

The Board has, for a number of years, urged the carriers to tighten the provisions relating to absorption of passenger expenses at connecting points so as to prohibit this practice except as may be required in isolated situations in the interest of adequate service.

• • • • • •

the present provisions continue to permit unwarranted absorption of passenger expenses with a consequent unnecessary dilution of carrier revenues.

Accordingly, we again urge elimination of this practice on a world-wide basis except in specified situations where maintenance of adequate and competitive service requires otherwise.

VII. Reduced Fares for Cargo Agents

The Board continues to oppose the offering of free or reduced fare transportation to cargo agents and reaffirms its opinion in this regard in the *Free and Reduced Rate Transportation Case*, Docket No. 2737 *et al.*

The Board recognizes that there are certain advantages which accrue from familiarization of travel agents with the carrier's services and the tourist facilities which are avail-

[fol. 5300]

able in the area which it serves. However, it continues to be our opinion that similar familiarization in respect of cargo agents is without sufficient merit to warrant special treatment for such agents. While certain water carriers provide privileged transportation for cargo agents as well as travel agents, the competition in the cargo field between water and air carriers is not as intense as in the passenger field since the inherent characteristics of the respective transportation media largely dictate whether or not air services are used for cargo shipments.

VIII. Transatlantic Charters

In Orders Nos. E-12228 and E-12307, the Board urged the carriers to amend Resolution 045 so as to delineate in specific terms the scope of permissible travel agent activities. It is the Board's intention that the basic participation of a travel agent, in charter activity to and from the United States, be substantially limited to liaison between the group leader and the carrier and to the arranging of land tours. Specifically, the Board urges that the substance of paragraphs 2 through 7 of Part II, Section B of the Board's 1958 Transatlantic Charter Policy be incorporated into Resolution 045.

Further, the Board urges the carriers to adopt group eligibility standards which provide, as does the Board's Transatlantic Charter Policy, that organizations with substantial memberships will be eligible only when the membership solicited is located in a limited geographic area. With respect to groups originating in the United States, we suggest the maxima generally applied by the Board which has found eligible organizations having a nationwide membership of 5,000, a statewide membership of 10,000, and a membership in excess of 20,000 where the organization is located in a limited area.

The Board likewise considers it desirable that the provisions of Resolution 045 be amended so as to permit participation of immediate families (COPY ILLEGIBLE).

[fol. 5301]

IX. Documentation

In the past the Board has indicated its need for complete information on the deliberations of the Traffic Conferences to understand the background of, and to review promptly and effectively the actions taken by the members. In this connection, we note that the minutes of the meeting at Miami, Florida, last year did not reflect any discussion of transatlantic fares, although this matter was a major issue before the Conference. The Board expects the carriers to include in the minutes summaries of all deliberations, formal and informal, whether or not they result in agreed resolutions.

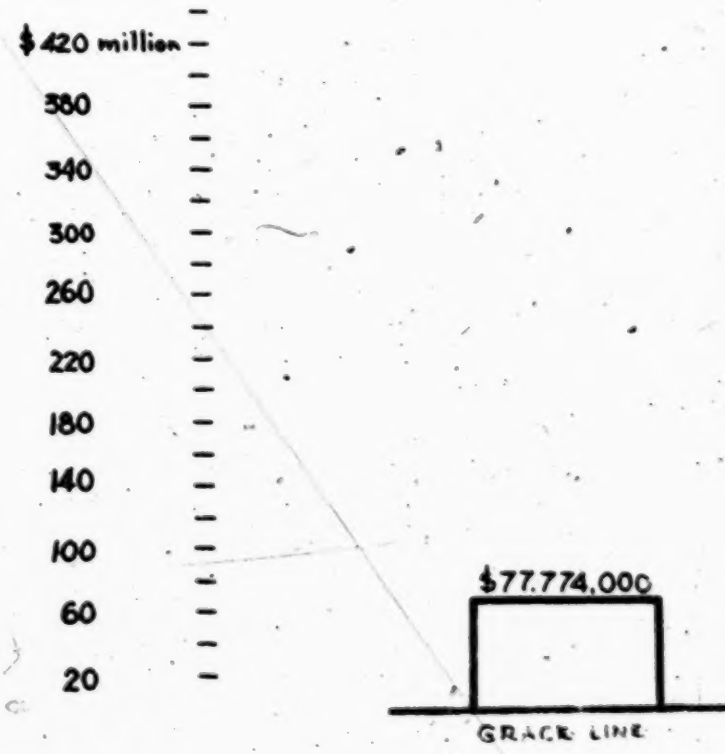
September 4, 1958.

[fol. 5302]

ANNEX 7

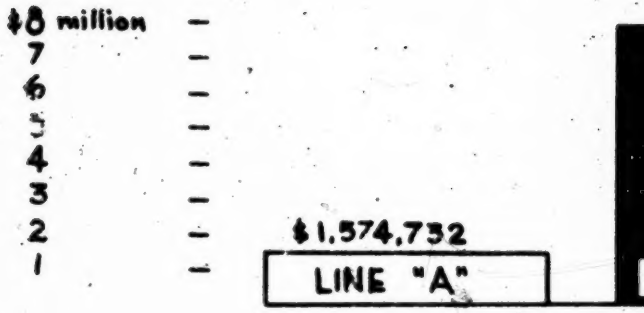
TOTAL SALES AND OPERATING REVENUES
W. R. GRACE & CO. AND GRACE LINE

1958

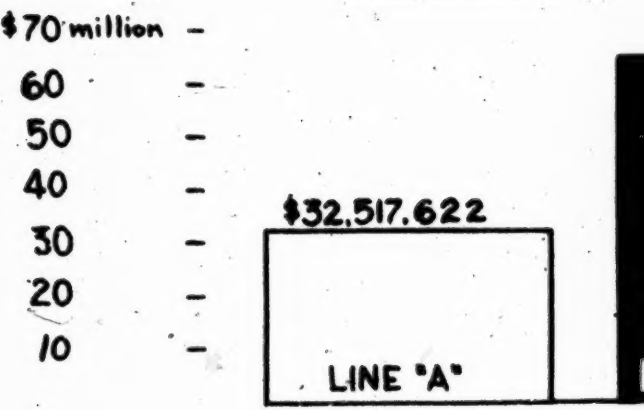


Source: Company Records

Passenger Revenue



Freight Revenue



ANNEX 9

POINTS SERVED BY PANAGRA AND GRACE LINE "A"

January-April 1959

Points Served by Panagra and Grace Line "A"(1)	Points Served by Panagra Alone	Points Served by Grace Line "A" Alone
United States	*United States*	*United States* (2)
New York City (3)	Washington, D. C. (3) Miami, Florida (3)	Philadelphia, Pa Baltimore, Md
Panama	*Panama*	*Panama*
Balboa (Cristobal)		
Colombia	*Colombia*	*Colombia*
Cali (Buenaventura)		Barranquilla Cartagena
Ecuador	*Ecuador*	*Ecuador*
Guayaquil (Puna) Manta	Quito Cuenca Esmeraldas	La Libertad
Peru	*Peru*	*Peru*
Talara Lima (Callao) Arequipa (Mollendo)		Pimentel Eten Chimbote Salaverry
Bolivia	*Bolivia*	*Bolivia*
	La Paz Cochabamba Santa Cruz Oruro Concepcion San Ignacio San Jose Robore Puerto Suarez	
Chile	*Chile*	*Chile*
Arica Antofagasta Santiago (Valparaiso)		Iquique Tocopilla Chanaral Caldera
	Argentina	
	Buenos Aires	

Notes: (1) Cities in parentheses are corresponding Grace Line "A" ports of call.

(2) Grace Line "A" vessels called infrequently at following eight additional Atlantic coast ports during April 1959:
Communipaw, N. J., Wilmington, Del., Newport News, Va., Morehead City, N. C., Wilmington, N. C., S. C., Savannah, Ga., and Kings Bay, Ga.

(3) Served by Panagra planes over routes of National Airlines between New York and Miami, Fla., Miami and Panama.

Source: Company Records

ANNEX 10

ADDITIONAL CITIES SERVED BY GRACE LINE BUT NOT SERVED BY LINE "A" OR PANAGRA (1)

LINE "B" (2)

Canada	*United States*	*United States*
Vancouver, B. C.	Tacoma/Seattle, Wash.	Yaquina Bay, Ore.
Harmac, B. C.	Bellingham, Wash.	Coos Bay, Ore.
Port Mellon, B. C.	Hoquiam, Wash.	San Francisco, Calif.
Port Alberni, B. C.	Portland, Ore.	Los Angeles, Calif.
	Longview, Wash.	Everett, Wash.
	Astoria, Ore.	San Pedro, Calif.
Mexico	*Guatemala*	*Salvador*
Acapulco	Champerico	Acajutla
Manzanillo	San Jose	La Libertad
Salina Cruz		La Union
Honduras	*Nicaragua*	*Costa Rica*
Amapala	Corinto	Puntarenas
	San Juan del Sur	
Panama	*Ecuador*	*Peru*
Puerto Armuelles	Puerto Bolivar	Puerto Chicama
		Paita
		Pacasmayo
		Supe
		Ancon
		Pisco

LINE "C" (3)

United States	*British West Indies*	*Netherlands West Indies*
Jacksonville, Florida	Kingston, Jamaica	Curacao
Port Everglades, Florida	Nassau, B. W. I.	Aruba
Venezuela	*Venezuela*	*Venezuela*
Puerto Cabello	Puerto La Cruz	Cumana
La Guaira	Guanta	Maracaibo

LINE "D" (4)

Notes (1) Some of the ports served by Line "B" are also served by Line "A" but such ports are not repeated above.

(2) Line "B" connects the Pacific Coast of Canada and the United States with the West Coast of South America via Mexico and Central America.

(3) Line "C" service connects the Atlantic Coast of the United States with the North Coast of South America via the British and Netherlands West Indies.

(4) In addition to Lines "A", "B", and "C", Line "D" is authorized to connect the United States and Canadian ports in the Great Lakes and St Lawrence River with the North Coast of South America via Cuba, Jamaica, Haiti, Dominican Republic, Trinidad, and the Netherlands West Indies. Such service is not yet operating.

Source: Company Records.

[fol. 5306]

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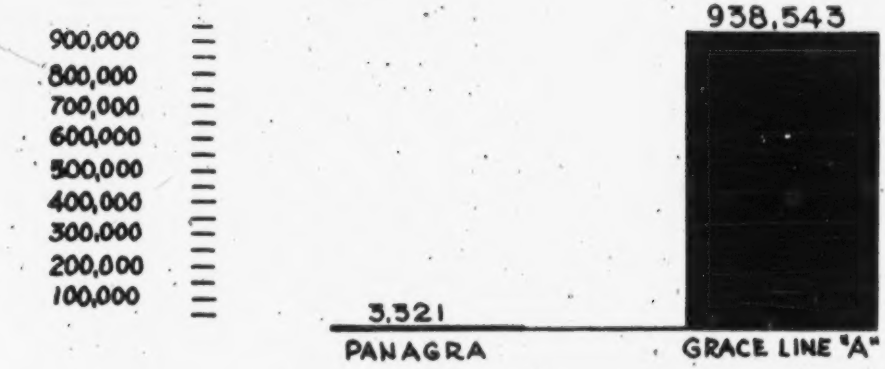
ANNEX 11

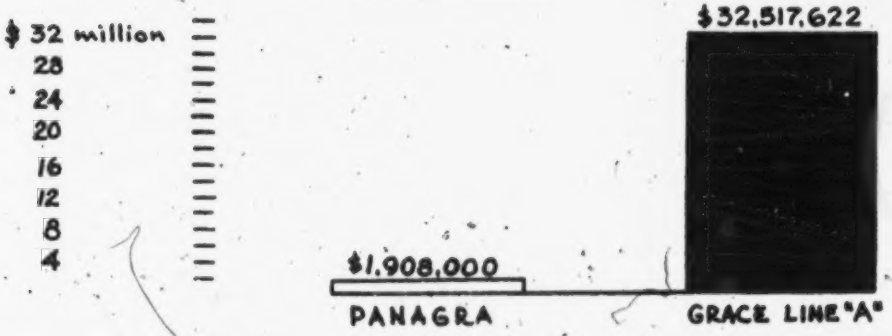
COMPARISON OF FREIGHT TRAFFIC
PANAGRA VS. GRACE LINE "A"

1958

Freight Carried
(In Short Tons)



Freight Revenue



Source: Company Records.

ANNEX 12

COMPARISON OF PASSENGER AND FREIGHT TRAFFIC

PANAGRA VS. GRACE LINE "A"

1950-1958

Year	Passengers Carried	
	Panagra	Grace Line "A"
1950	101,186	5,095
1951	118,960	5,073
1952	120,903	5,334
1953	125,690	5,127
1954	133,848	5,039
1955	137,591	4,951
1956	143,222	4,849
1957	139,409	5,028
1958	128,776	4,347

Year	Freight (In Short Tons)	
	Panagra	Grace Line "A"
1950	2,753	Not Available
1951	3,302	858,225
1952	3,036	907,025
1953	3,752	831,728
1954	3,361	739,441
1955	3,296	817,539
1956	3,485	900,714
1957	3,436	1,070,085
1958	3,321	936,585

Source: Company Records.

[fol. 5308]

ANNEX 13

COMPARISON OF FREIGHT CARRIED BY GRACE LINE "A" FROM VARIOUS COUNTRIES IN SOUTH AMERICA TO THE ATLANTIC COAST OF THE UNITED STATES WITH AMOUNT OF CARGO ENPLANED BY PANAGRA IN THOSE SAME COUNTRIES

(In Short Tons)

	1957	
	Panagra	Grace Line "A"
West Coast of Colombia	37	70,831
Ecuador	920	85,264
Peru	122	280,844
Chile	349	294,550
Total, 4 areas	1,428	731,489

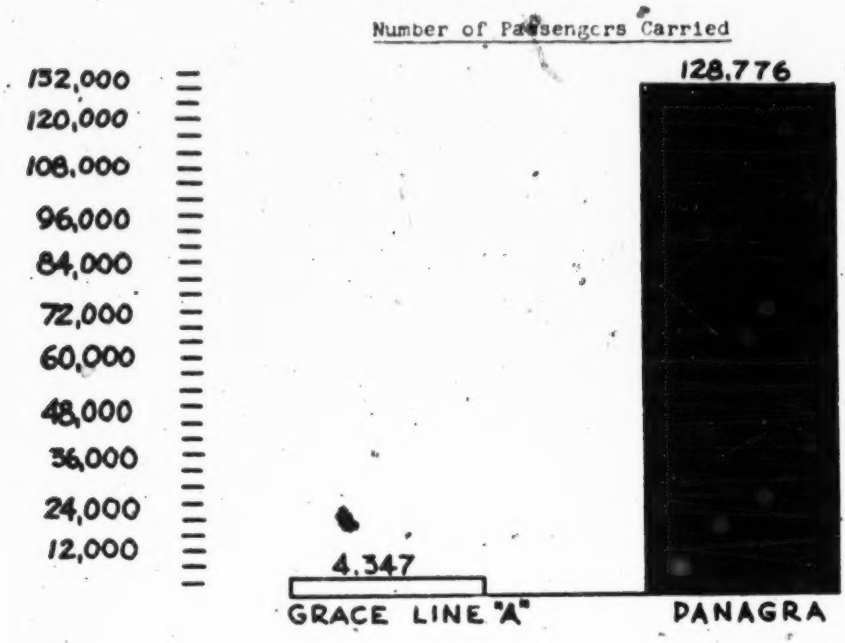
	1955	
	Panagra	Grace Line "A"
West Coast of Colombia	25	81,191
Ecuador	1,847	84,800
Peru	111	172,421
Chile	73	208,133
Total, 4 areas	2,056	546,545

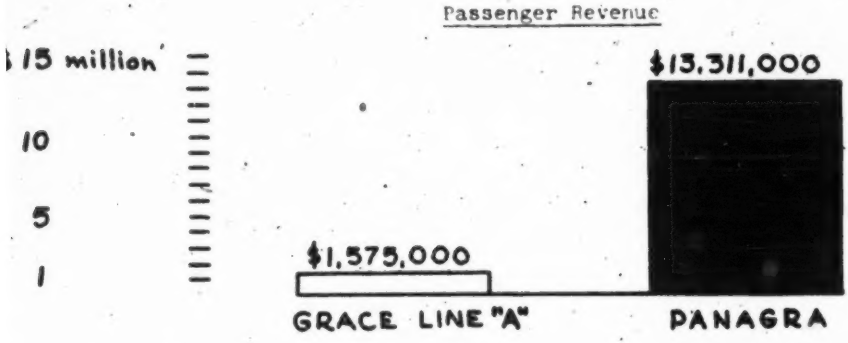
Note: The figures for Grace Line "A" include only cargo carried from the designated country to the Atlantic Coast of the United States. The figure for Panagra includes all cargo enplaned in the country regardless of destination.

Source: Company Records.

ANNEX 14

COMPARISON OF PASSENGER TRAFFIC
PANAGRA VS. GRACE LINE "A"
1958





ource: Company Records

[fol. 5310]

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ANNEX 15

NUMBER OF PASSENGERS TRAVELLING BETWEEN THE UNITED STATES AND SANTIAGO, CHILE PANAGRA VS. GRACE LINE "A"

1957

On Page 157 of its Trial Brief the Antitrust Division states that Panagra participated in carrying an average of 224 passengers per month between the Northeastern United States and Santiago (Chile), while Grace Line "A" carried an average of 121 passengers between the same United States area and Valparaiso. This statement is based upon the figures shown in GS-79.

The Antitrust Division has relied on CAB Origin and Destination Surveys for the months of March and September 1957 in arriving at the monthly average of Panagra passengers. This source shows the air origin and air destination of all passengers. The Maritime Administration records used for Grace Line figures reflect port of embarkation and port of debarkation. Thus a person travelling between Chicago and Valparaiso on Grace Line via New York would be counted as a traveller between the Northeastern United States and Chile. However, a passenger travelling by air from Chicago and going to Santiago via Panagra would be counted as a Chicago passenger and would be excluded from the count for the Northeastern United States. Nor would a Panagra passenger between New York and Santiago be included if he began or ended his journey outside the United States.

Since the Antitrust Division's comparison includes Grace Line passengers whose true origin is outside the Northeastern United States and excludes Panagra passengers whose true origin is outside that area, it maximizes Grace Line traffic and minimizes Panagra traffic, thereby reducing the disparity between the two.

To provide a more accurate comparison of Panagra and Grace traffic between the United States and Santiago, the basis for comparison has been broadened to include, in addition to Northeastern United States, Eastern United States, total United States and total United States including foreign travel passing through the United States. Traffic in the last category is included only when the routing clearly indicates passage through the United States.

	Monthly Average 1957		Total Year 1957	
	Panagra	Grace Line	Panagra	Grace Line
Between Santiago, Chile and				
Northeastern U. S. (1)				
Antitrust Division's Figures	224	121		1,452
Company Records (2)	226	113	2,714	1,354
Eastern U. S. (3)	261	113	3,132	1,354
Total U. S.	379	116	4,542	1,386(4)
Total U. S. Including Foreign Travel through U. S.	426	116	5,116	1,386(4)

(1) Includes New England States, New York, New Jersey, Pennsylvania, Delaware, Maryland and the District of Columbia.

(2) The difference between the Antitrust Division's figures and the figures prepared from Grace Line records may be accounted for by the difference in source documents. The statistics maintained by Grace Line, Inc. are taken from Passenger Manifests on a terminated voyage basis. The Maritime Administration figures used by the Antitrust Division are taken from Forms 7801 and 7802 and apparently represent the number of passengers outbound on a sailing basis and number of passengers inbound on an arrival basis.

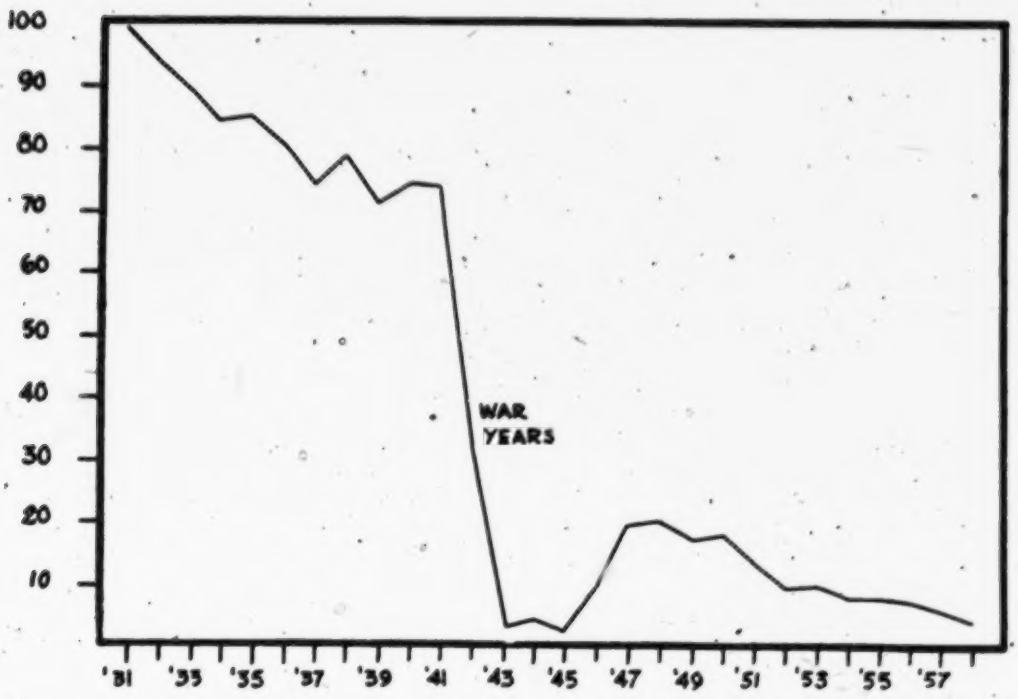
(3) Includes Northeastern U. S., Virginia, N. Carolina, S. Carolina, Georgia and Florida.

(4) Includes 32 passengers between the West Coast of the U. S. and Valparaiso during 1957 on Line "B".

Source: Company Records.

GRAPHS SHOWING DECLINE IN PASSENGER TRAFFIC BY SEA
BETWEEN THE UNITED STATES AND VARIOUS SOUTH AMERICAN COUNTRIES

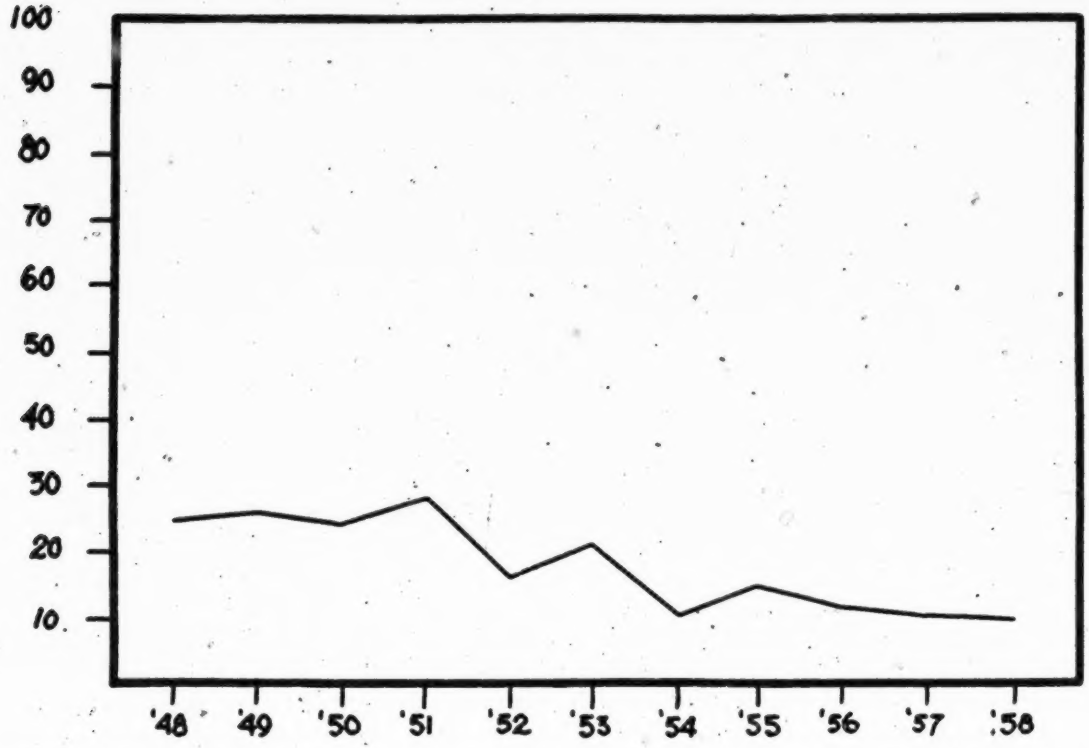
A Sea Travel as a Percentage of Total Travel between the U. S. and Colombia
1931 - 1958



Note: Years ended June 30.

Source: Figures developed from Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

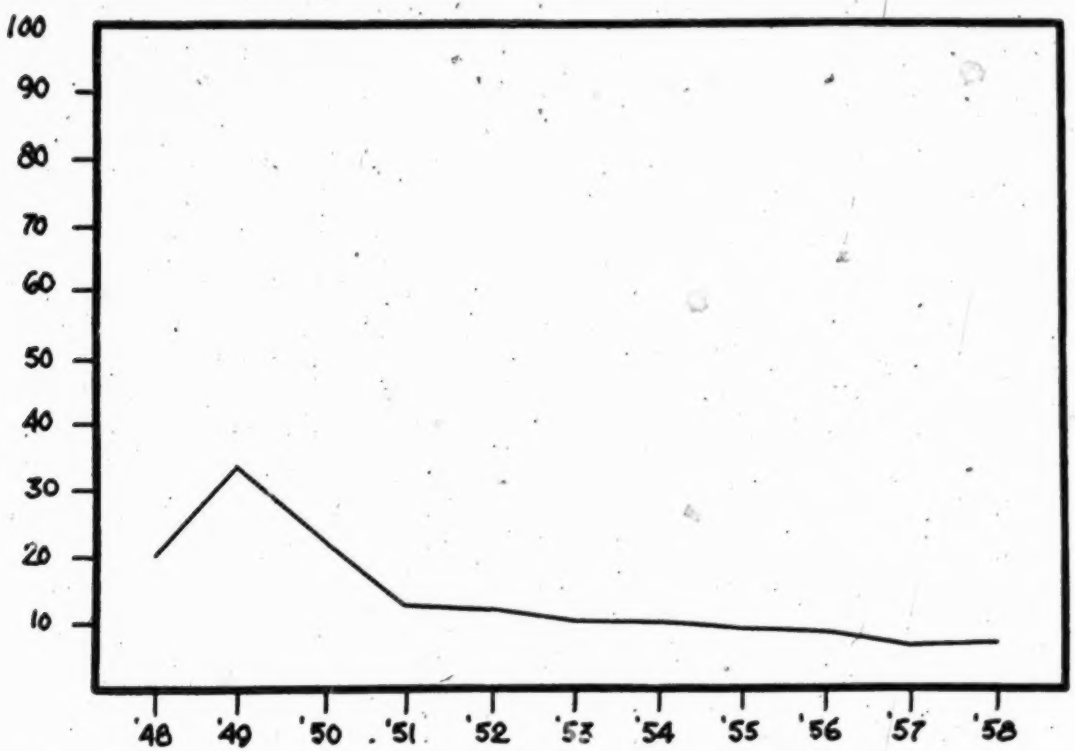
B. Sea Travel as a Percentage of Total Travel between the U. S. and Ecuador 1948 - 1958



Note: Years ended June 30. INS statistics for years prior to 1948 considered unreliable.

Source: Figures developed from Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

C. Sea Travel as a Percentage of Total Travel between the U. S. and Peru
1948 - 1958

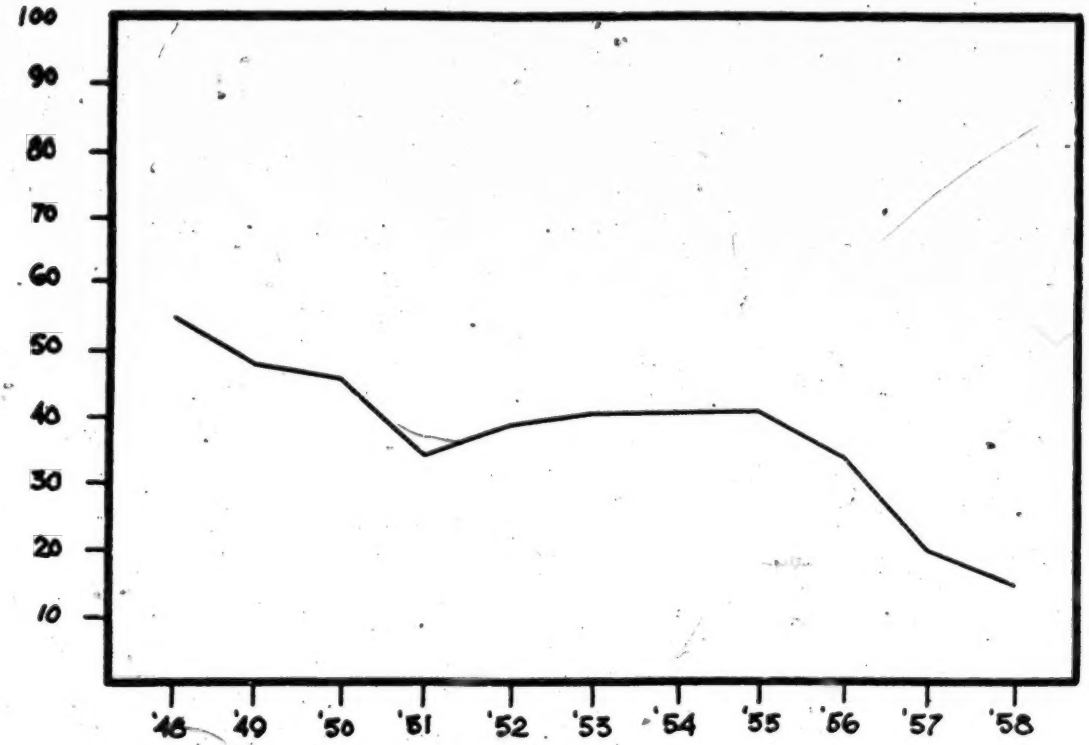


Note: Years ended June 30. INS statistics for years prior to 1948 considered unreliable.

Source: Figures developed from Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

[fol. 5313].

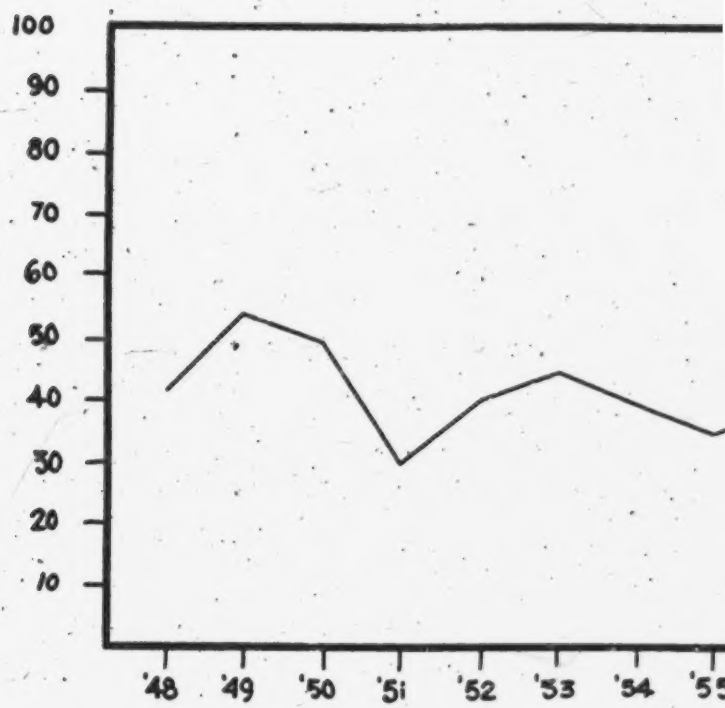
D. Sea Travel as a Percentage of Total Travel between the U. S. and Chile
1948 - 1958



Note: Years ended June 30. INS statistics for years prior to 1948 considered unreliable.

Source: Figures developed from Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

E. Sea Travel as a Percentage of Total Travel between t
1948 - 1958



Note: Years ended June 30. INS statistics for years prio
unreliable.

Source: Figures developed from Immigration and Naturaliza
Department of Justice, published statistics.

[fol. 5315]

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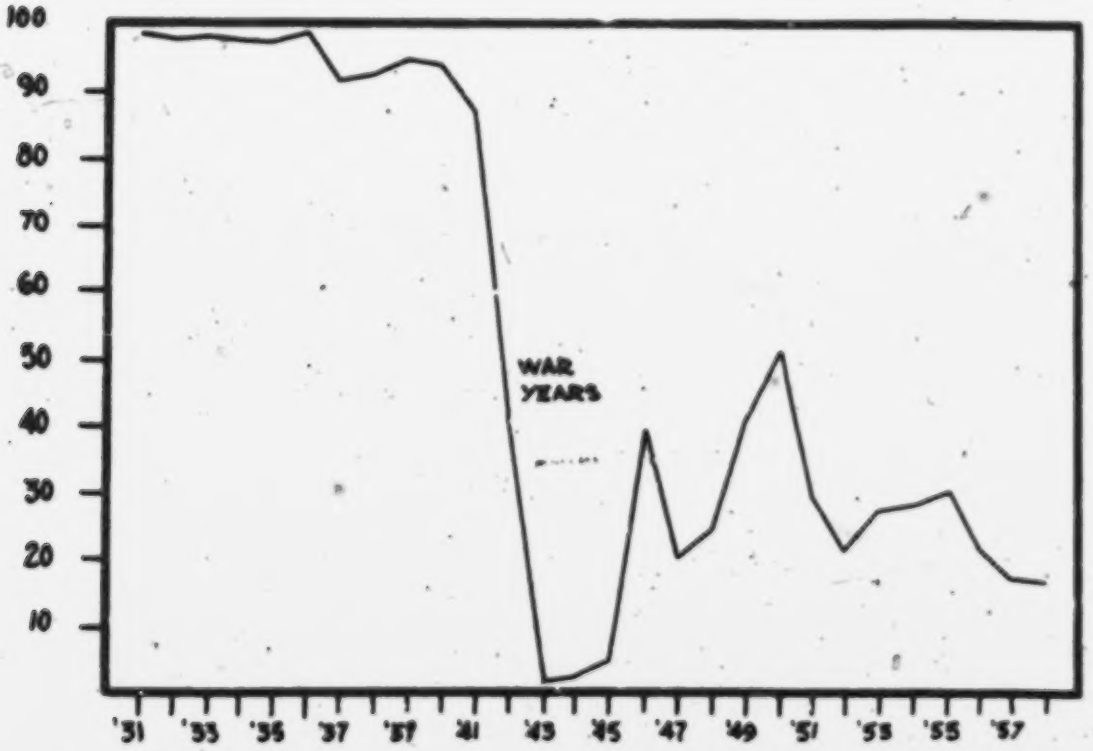
ANNEX 16E

...n the U. S. and Argentina

...rior to 1948 considered

...ization Service, U. S.

F. Sea Travel as a Percentage of Total Travel between the U. S. and Brazil
1931 - 1958



Note: Years ended June 30.

Source: Figures developed from Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

ANNEX 17A

COMPARISON OF AIR AND SEA TRAVEL BETWEEN THE UNITED STATES AND VARIOUS COUNTRIES IN SOUTH AMERICA

(Years Ended June 30)

A. Between the United States and Colombia.

1931-1958

	By Sea	By Air	Total	% Sea to Total
1931	3,120	23	3,143	99.2%
1932	2,529	179	2,708	93.3
1933	2,129	266	2,395	88.9
1934	2,161	403	2,564	84.3
1935	2,531	442	2,973	85.1
1936	2,494	561	3,055	81.6
1937	2,961	1,040	4,001	74.0
1938	3,673	988	4,661	78.8
1939	3,531	1,363	4,894	72.1
1940	4,301	1,454	5,755	74.7
1941	4,907	1,703	6,610	74.2
1942	2,071	4,239	6,310	32.8
1943	184	6,367	6,551	2.8
1944	206	4,327	4,533	4.5
1945	99	4,230	4,329	2.3
1946	772	6,828	7,600	10.1
1947	2,306	9,447	11,753	19.6
1948	3,989	15,964	19,953	20.0
1949	3,219	14,852	18,071	17.8
1950	3,731	16,762	20,493	18.2
1951	3,487	21,619	25,106	13.9
1952	3,373	27,516	30,889	10.0
1953	3,575	31,425	35,000	10.2
1954	2,888	32,679	35,567	8.1
1955	3,043	34,918	37,961	8.0
1956	2,700	32,930	35,630	7.6
1957	1,813	28,679	30,492	5.9
1958	1,676	38,178	39,854	4.2

Source: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

[fol. 5318]

ANNEX 17B

B. Between the United States and Ecuador.

1948-1958

	By Sea	By Air	Total	% Sea to Total
1948	614	1,906	2,520	24.4%
1949	556	1,620	2,176	25.6
1950	739	2,352	3,091	23.9
1951	1,222	3,051	4,273	28.6
1952	862	4,354	5,216	16.5
1953	1,483	5,447	6,930	21.4
1954	805	6,262	7,067	11.4
1955	1,196	6,731	7,927	15.1
1956	987	7,312	8,299	11.9
1957	922	7,794	8,716	10.6
1958	1,175	10,470	11,645	10.1

NOTE: INS statistics for years prior to 1948 considered unreliable.

SOURCE: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

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ANNEX 17C

C. Between the United States and Peru.

1948-1958

	By Sea	By Air	Total	% Sea to Total
8	1,789	6,978	8,767	20.4%
9	3,725	7,280	11,005	33.8
0	2,123	7,230	9,353	22.7
1	1,533	10,015	11,548	13.3
2	2,162	14,885	17,047	12.7
3	1,941	17,089	19,030	10.2
4	1,832	16,513	18,345	10.0
5	1,663	16,223	17,886	9.3
6	1,913	19,721	21,634	8.8
7	1,581	23,106	24,687	6.4
8	1,774	23,651	25,425	7.0

TE: INS statistics for years prior to 1948 considered unreliable.

RCE: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

[fol. 5320]

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ANNEX 17D

D. Between the United States and Chile.

1948-1958

	By Sea	By Air	Total	% Sea to Total
1948	3,251	2,714	5,965	55.0%
1949	2,568	2,754	5,322	48.3
1950	2,697	3,179	5,876	46.0
1951	2,569	4,938	7,498	34.1
1952	2,350	3,710	6,060	38.8
1953	2,453	3,616	6,069	40.4
1954	2,306	3,366	5,672	40.7
1955	2,673	3,922	6,595	41.0
1956	2,596	4,836	7,432	35.0
1957	2,331	10,237	12,568	19.0
1958	2,279	14,434	16,713	14.0

Note: INS statistics for years prior to 1948 considered unreliable.

Source: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

ANNEX 17E

E. Between the United States and Argentina. 1948-1958

	By Sea	By Air	Total	% Sea to Total
1948	7,928	11,054	18,982	42.0%
1949	8,993	7,700	16,693	53.9
1950	6,790	6,867	13,657	49.7
1951	5,300	12,795	18,095	29.3
1952	6,996	10,744	17,740	39.4
1953	6,959	8,619	15,578	44.7
1954	6,957	10,971	17,928	38.8
1955	7,331	13,627	20,958	35.0
1956	7,797	12,065	19,862	39.3
1957	8,548	12,770	21,318	40.1
1958	7,248	14,492	21,740	33.3

Note: INS statistics for years prior to 1948 considered unreliable.

Source: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

[fol. 5322]

ANNEX 17F

F. Between the United States and Brazil.

1931-1958

	By Sea	By Air	Total	% Sea to Total
1931	4,478	81	4,559	98.2%
1932	3,029	83	3,112	97.3
1933	2,884	64	2,948	97.8
1934	3,436	98	3,534	97.2
1935	3,761	115	3,876	97.0
1936	4,545	58	4,603	98.7
1937	5,278	449	5,727	92.2
1938	4,903	358	5,261	93.2
1939	5,367	287	5,654	95.0
1940	6,731	413	7,144	94.2
1941	8,408	1,256	9,664	87.0
1942	4,009	5,374	9,383	42.7
1943	388	28,001	28,389	1.4
1944	306	16,054	16,360	1.9
1945	442	8,085	8,527	5.2
1946	5,353	8,197	13,550	39.5
1947	4,359	17,208	21,567	20.2
1948	6,358	19,785	26,143	24.3
1949	11,194	16,157	27,351	40.9
1950	13,508	12,667	26,175	51.6
1951	10,121	24,709	34,830	29.1
1952	8,046	27,833	35,879	22.4
1953	8,829	23,236	32,065	27.2
1954	9,015	23,059	32,074	28.1
1955	10,051	24,820	34,871	30.1
1956	8,732	29,759	38,491	22.7
1957	8,768	41,712	50,480	17.4
1958	8,677	42,580	51,257	16.9

SOURCE: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

ANNEX 18

COMPARISON OF TRAVEL TIMES
PANAGRA VS. GRACE LINE "A"

NEW YORK TO:	Panagra		Grace Line "A"	
	A.	B.	C.	D.
Balboa, Canal Zone	10 hours		6½ to 7½ days	
Cali (Buenaventura), Colombia	13 "		7½ to 9½ "	
Guayaquil (Puna), Ecuador	14	to 16 hours	10	to 12 "
Talara, Peru	14	to 17½ "	11	to 13 "
Lima (Callao), Peru	16	to 20 "	12½	to 14 "
Arequipa (Mollendo), Peru	18	to 20 "	15½	to 17 "
Arica, Chile	19	to 21 "	16	to 17 "
Antofagasta, Chile	20	to 24 "	17½	to 20 "
Santiago (Valparaiso), Chile	21½	to 27 "	20	to 21½ "

NOTE: Cities in parentheses are corresponding Grace Line "A" ports of call. Travel times, shown for Panagra are shortest (Column A) and longest (Column B) elapsed times per the April 1959 schedule. Travel times shown for Grace Line "A" are average elapsed times for the combination cargo/passenger ships (Column C) and the C-2 freighters (Column D) during the year 1958.

SOURCE: Company Records.

[fol. 5324]

ANNEX 19

COMPARISON OF PRESENT FARES

NEW YORK TO VARIOUS POINTS IN SOUTH AMERICA

PANAGRA VS. GRACE LINE "A"

	PANAGRA (2)		GRACE LINE "A" (3)			
	Winter Season (Southbound: January 1—February 28)					
	Per Person		Minimum Per Person		Maximum Per Person	
New York to: (1)	Tourist Class	First Class	(2 per cabin)	(1 per cabin)	(2 per cabin)	(1 per cabin)
Guayaquil (Puna)	$240.80	$314.80	$450.00	$ 750.00	$660.00	$1,320.00
Lima (Callao)	308.80	399.80	515.00	860.00	755.00	1,510.00
Santiago (Valparaiso)	414.80	546.10	645.00	1,075.00	945.00	1,890.00
	Regular Season (Southbound: March and June 1 to December 31)					
	Per Person		Minimum Per Person		Maximum Per Person	
	Tourist Class	First Class	(2 per cabin)	(1 per cabin)	(2 per cabin)	(1 per cabin)
Guayaquil (Puna)	$240.80	$314.80	$415.00	$ 695.00	$590.00	$1,180.00
Lima (Callao)	308.80	399.80	475.00	795.00	675.00	1,350.00
Santiago (Valparaiso)	414.80	546.10	595.00	995.00	845.00	1,690.00
	Reduced Season (Southbound: April 1—May 31)					
	Per Person		Minimum Per Person		Maximum Per Person	
	Tourist Class	First Class	(2 per cabin)	(1 per cabin)	(2 per cabin)	(1 per cabin)
Guayaquil (Puna)	$240.80	$314.80	$380.00	$ 635.00	$530.00	$1,060.00
Lima (Callao)	308.80	399.80	435.00	725.00	610.00	1,220.00
Santiago (Valparaiso)	414.80	546.10	545.00	910.00	760.00	1,520.00

Notes:

(1) Cities in parentheses are corresponding Grace Line "A" ports of call.

(2) Figures shown for Panagra are all year round one-way southbound fares per adult. Upper and lower berths available on first class flights between Miami and South America at an additional charge of $55.00 and $75.00 respectively, regardless of destination.

(3) Figures shown for Grace Line "A" are minimum and maximum (depending on location of cabin) one way southbound fares per adult on the combination cargo/passenger ships (52 passengers) assuming one or two adults per cabin. Most cabins will accommodate 3 persons but the lowest per person fare on this basis is higher than the minimum per person fare shown for cabins which accommodate only 2 persons. Line "A" also offers passenger service on its freighters (8 or 12 passengers), however, during 1958 this service averaged only 3 passengers outwardbound from the Atlantic Coast of the U. S. and 1 passenger inwardbound per voyage. Passenger rates per adult on the freighter service are: New York to Puna, $290.00; New York to Callao, $370.00 and New York to Valparaiso, $450.00.

Source: Company Records.

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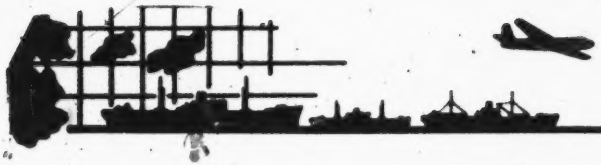
[fol. 5327]



UNITED STATES TRANSOCEAN TRANSPORT REQUIREMENTS IN PEACETIME ARE LARGE

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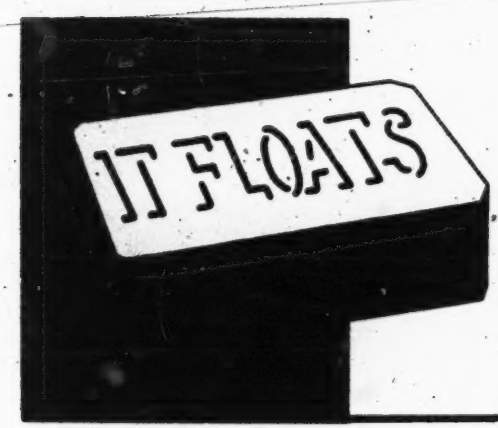
- SHIPS CARRY 99.15% OF THE MILITARY TONNAGE.



OVERALL, SHIPS CARRY 99.501% OF THE TOTAL TRANSOCEAN TONNAGE

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Steamship Lines
1000 Conn Ave

SEA AND AIR TRANSPORTATION SYSTEMS

F THE CHIEF OF NAVAL OPERATIONS

SEA AND AIR *Transportation* SYSTEMS

REVISED APRIL 1957

[fol. 5326]

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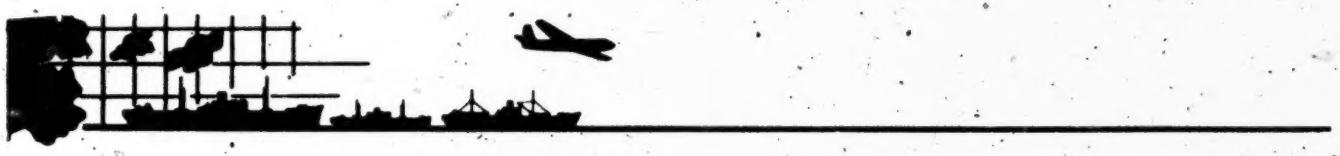
5207



IF THE GREEN BAR REPRESENTS THE AIRLIFTED TON MILES OVERSEAS DURING THE LAST YEAR, THEN THE BROWN BAR IS NECESSARY TO DISPLAY THE SEALIFTED TON MILES TO THE SAME SCALE.

AIRLIFT

SEALIFT

MILLIONS OF TON MILES OF TRANSOCEANIC TRAFFIC

COMMERCIAL AIRLIFT

604

MILITARY AIRLIFT

669

AIR TRANSPORT ACCOUNTS
FOR LESS THAN 1/2 OF 1%

COMMERCIAL SEALIFT

175,546

MILITARY SEALIFT

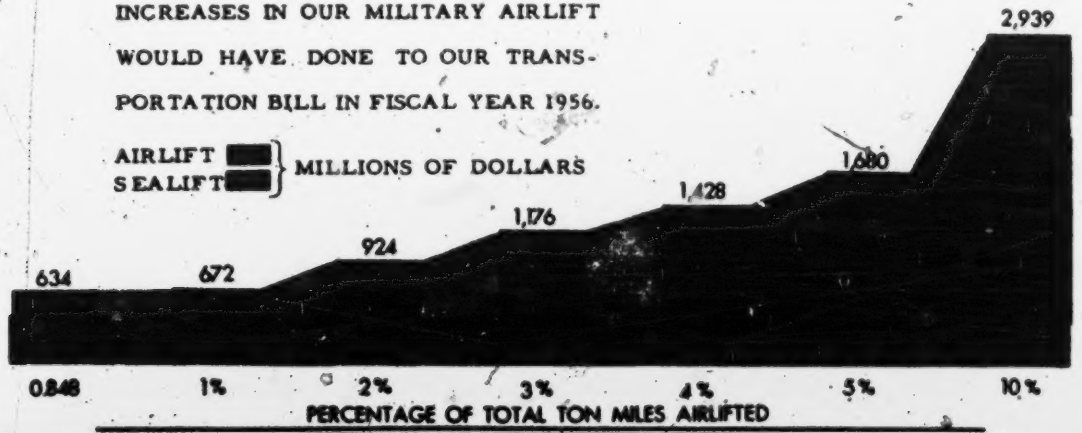
78,254

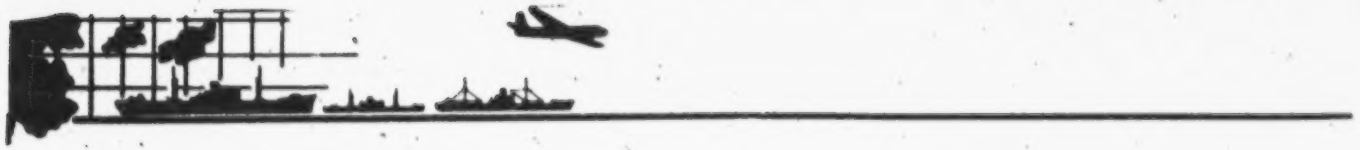
THE U. S. ECONOMY REQUIRED THIS TONNAGE FLOW LAST YEAR

[fol. 5330]

AIRLIFT IS COSTLY . . . ABOUT 40 TIMES AS MUCH AS SEALIFT, TON MILE FOR TON MILE

NOTICE WHAT SMALL PERCENTAGE INCREASES IN OUR MILITARY AIRLIFT WOULD HAVE DONE TO OUR TRANSPORTATION BILL IN FISCAL YEAR 1956.





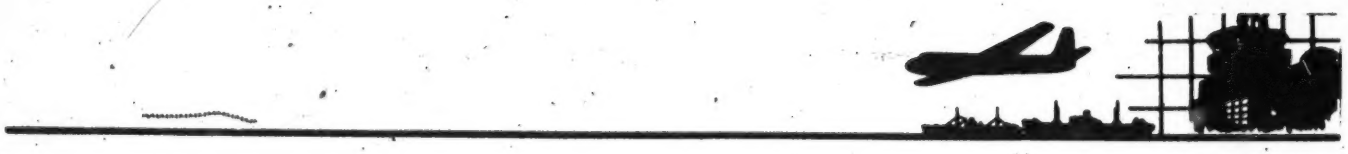
SEALIFT IS FASTER THAN AIRLIFT FOR THE REQUIRED MASSIVE LOADS, BECAUSE REPEATED AIR TRIPS ELIMINATE THE TIME ADVANTAGE, AND BECAUSE LONG AIR TRIPS USE MORE FUEL WEIGHT THAN THE LOAD LIFTED.

USUALLY, THIS AIR FUEL MUST BE PRE-PLACED OR REPLACED BY SURFACE SHIP.

TO COMPARE THE MERITS OF MILITARY SEALIFT AND AIRLIFT, LET'S LOOK AT A MODERATE-SIZED, LONG RANGE JOB WHICH BOTH COULD DO--UNDER IDEAL CONDITIONS OF AIRLIFT CAPABILITY--THAT IS, IF THE AIRLIFT FUEL IS ALREADY IN PLACE AT THE OVERSEAS TERMINAL AND ENROUTE STOPS.

HERE'S WHAT EACH TYPE LIFT WOULD REQUIRE IN THE WAY OF EQUIPMENT AND TIME.

THIS IS NOT A PAGE BORDER BUT



WHAT WE PUT IN . . . A COMPARISON

- MANHOURS TO BUILD THE HULL OR AIR FRAME AND INSTALL SUBCONTRACTED EQUIPMENT.
- UNIT COST BASED ON 30 AIRCRAFT PER ORDER.
- 9 HOURS/PLANE/DAY EVERY DAY FOR A YEAR (TWICE PRESENT MILITARY USAGE).
- PROGRESSIVE MAINTENANCE FOR AIRCRAFT.
- SHIP OVERHAUL AND VOYAGE REPAIRS ALLOWED FOR.

TOTAL OFFICERS AND CREW	21	49
MANHOURS TO BUILD	600,000	740,000
UNIT COST	$5,000,000	$4,000,000
MANHOURS TO MAINTAIN PER YEAR	36,500	23,460

SEALIFT IS MASSIVE

[fol. 5336]

5217

WHAT WE GET BACK

- PLANE LOADED TO CRITICAL OVERSEAS CAPABILITY.
- SHIP FULLY LOADED.
- OVERHAUL AND MAINTENANCE TIME ALLOWED FOR.
- LOADING, UNLOADING AND TIMES TO BERTH AND UNBERTH ALLOWED FOR.

NOTE THE AMOUNT BY WHICH THE SHIP OUTCARRIES THE AIRCRAFT FOR EACH OF THE COMPONENTS OF THE INPUT.

	MILLIONS		RATIO
PER OPERATOR	0.87	13.7	15.7
PER CONSTRUCTION MAN HOUR	30.5	907.5	29.7
PER INITIAL DOLLAR	3.7	167.9	45.4
PER MAINTENANCE MAN HOUR	501.4	28,407.4	56.6
ANNUAL TON MILES	18.3	671.6	36.7

SEALIFT IS BIG

TO DEPLOY 10,000 TONS 8,000 MILES BY AIR OR BY SEA

AIR

122 SUPER-AIRCRAFT (4 TRIPS EACH)

5 TANKER LOADS OF FUEL

24 DAYS

APPROXIMATELY 100% OF OUR MILITARY OVERSEAS AIRLIFT CAPACITY

SEA

1 MARINER TYPE SHIP (1 TRIP) . . . 22 DAYS

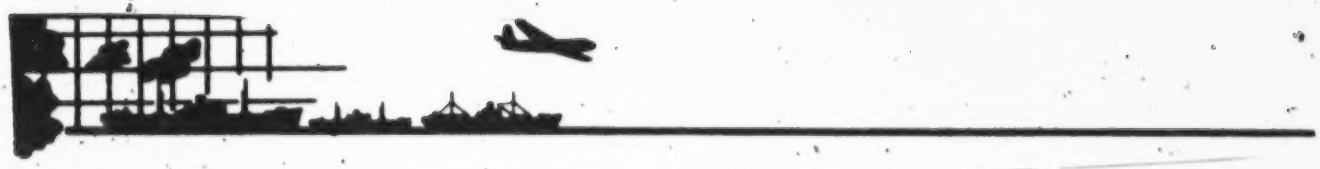
APPROXIMATELY 1% OF OUR MILITARY OVERSEAS SEALIFT CAPACITY

122 SUPER-AIRCRAFT AND 5 BIG SHIPS TO POSITION FUEL OR 1 BIG SHIP

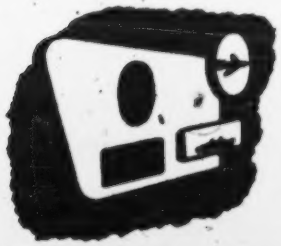
A CONTINUATION OF THE SEALIFT BAR

[fol. 5334]

5215



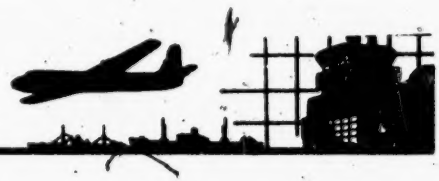
ANOTHER CASE . . . HAD WE STARTED AN ARMED FORCE OUT BY SEA, HOWEVER, AND THEN HAD WANTED TO EQUIP THEM WITH MODIFIED FUZES FOR THEIR AMMUNITION, OR OTHER ITEMS TO ACCOUNT FOR A CHANGE IN THEIR MISSION, A FEW AIRCRAFT WOULD DELIVER TO THEIR DESTINATION BY THE TIME THEY ARRIVE . . . AND NO OTHER TRANSPORTATION SYSTEM CAN DO THIS.



THE RIGHT POD IN THE RIGHT HOLE

WHAT IS A CORRECT USE OF AIRLIFT IN PEACETIME? SPECIALLY QUALIFIED PERSONNEL, AND CARGO FOR WHICH BREAKAGE COSTS OR INVENTORY CONSIDERATIONS RENDER SEA TRANSPORT COSTLY, CAN BE MOST ECONOMICALLY TRANSPORTED BY AIR.

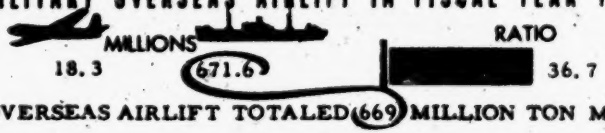
SEALIFT IS BIG



DID YOU NOTICE WHAT THAT ONE VICTORY SHIP CARRIED?

671.6 MILLION TON MILES IN SAILING FROM NEW YORK TO BREMERHAVEN AND RETURN IN A YEAR OF OPERATION.

COMPARE IT TO THE TOTAL MILITARY OVERSEAS AIRLIFT IN FISCAL YEAR 1956.



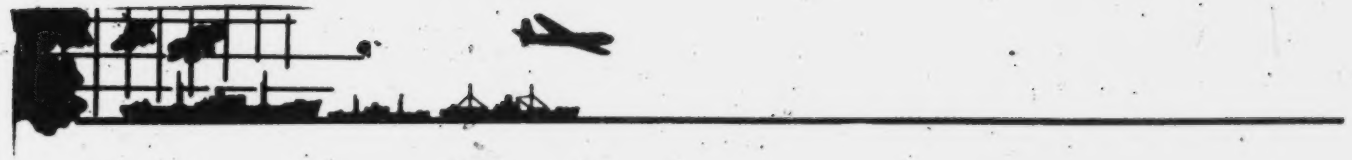
FISCAL YEAR 1956 MILITARY OVERSEAS AIRLIFT TOTALED 669 MILLION TON MILES

IN ANY SITUATION OF LIMITATION . . . THE BUDGET IN PEACETIME, TOTAL RESOURCES IN WAR . . . WE EXCHANGE FORMS OF TRANSPORT, ONE FOR ANOTHER . . . AND AT AN UNEQUAL RATE.

USING THE MOST EFFICIENT AIRCRAFT IN PROSPECT, IT WOULD STILL BURDEN OUR RESOURCES AS MUCH TO SEND ONE TON BY AIR AS TO SEND 25 TONS BY SEA. THAT IS THE RATE WE WILL PAY TO EXCHANGE SEALIFT FOR AIRLIFT.

SEALIFT IS MASSIVE

[fol. 5338]



WE **"ROB PETER TO PAY PAUL"** ....BUT EVERY UNIT WE PAY PAUL WILL TAKE AT LEAST **25** FROM PETER.

SINCE IT WILL TAKE THE SAME RESOURCES AND EFFORT TO MOVE ONE TON BY AIR AS **25** TONS BY SEA, THEN WE MUST BE SURE THAT THE ONE UNIT SENT BY AIR WILL **REALLY** SUBSTITUTE FOR **25** SENT BY SEA.

IN A HYPOTHETICAL SITUATION, THEN WE MIGHT HAVE TO MAKE A CHOICE OF SENDING OVERSEAS:

75 DIVISIONS BY SEALIFT, OR
50 BY SEA AND ONE BY AIR, OR
25 BY SEA AND TWO BY AIR, OR
3 BY AIRLIFT.

AT THE EXPENDITURE OF APPROXIMATELY THE SAME RESOURCES AND EFFORT IN EACH CASE.

TO THE SCALE SHOWN ON PAGE 6

ANNEX 22

COMPARISON OF CARGO EXPENSE PANAGRA AND GRACE LINE "A"

Panagra

The direct, out-of-pocket expense of operating Panagra's DC-4 all-cargo service from July, 1957 (its inauguration) through January, 1959 was $531,524.(1)

During the nineteen month period the all-cargo service flew 1,491,755 revenue ton miles.(2)

The average cost per revenue ton mile to Panagra for operating the all-cargo service during the nineteen month period was, therefore:

Expenses Per:	Dollars and Cents
Revenue Ton Mile	$0.356

Grace Line "A"

During the yea. 1958 Grace Line "A" freighter service(3) incurred direct out-of-pocket expenses of $12,043,484.(4)

The above expenses were all incurred directly in the operation of Grace Line "A" C-2 freighter service between the U. S. and the West Coast of South America during 1958. Had the Grace Line not operated this service during 1958, the above expenses would not have been incurred and they are, therefore, considered direct, out-of-pocket expenses. No depreciation expense ($550,289) or allocation of overhead expenses ($1,590,203) is included.

During the year 1958, the freighter service of Grace Line "A" steamed 1,845,522,392 revenue ton miles.(2)

The average cost per revenue ton mile to Grace Line for its C-2 freighter service on Line "A" during the year 1958 was, therefore:

Expenses Per:	Dollars and Cents
Revenue Ton Mile	$0.00653

[fol. 5346]

Panagra and Grace Line "A"

A comparison of revenue ton mile costs between Panagra's all-cargo service and Grace Line "A" freighter service is as follows:

Expenses Per:	Dollars and Cents — Panagra	Grace Line "A"
Revenue Ton Mile	$0.356	$0.00653

NOTES:

(1) Broken down as follows:

1. Crew Salaries	$ 74,633
2. Direct aircraft maintenance	302,482
3. Fuel	128,657
4. Hull insurance	9,405
5. Crew expenses	7,516
6. Landing fees	28,175
7. Ground handling	20,569
8. Custom overtime	5,771
9. Visa expenses	2,840
10. Colombian communication charges	529
11. Sales Commissions, advertising, insurance on cargo	80,927
	$541,524

The above costs (with the exception of items 7, 8, 9, and 11) were arrived at by taking total direct costs for DC-4 aircraft (which are used both in all-cargo and passenger service) per aircraft mile and allocating them to the all-cargo service on the basis of the number of miles flown in all cargo service. Items 7, 8, and 9 are actual expenses incurred by the all-cargo service. Item 11 was estimated at 10% of revenue. None of the above expenses would have been incurred had the all-cargo service not been operating and they are, therefore, considered to be direct, out-of-pocket expenses. No depreciation expense (estimated at $4,124) or allocation of overhead expense (estimated at $30,930) is included.

(2) A revenue ton mile defined as a short ton (by weight) of revenue producing cargo carried one statute mile.

(3) Figures for Grace Line "A" freighter service and Panagra's all-cargo service have been used rather than figures for Grace Line "A" combination passenger/freight service and Panagra regular passenger-cargo flights because of the difficulty of allocating expenses between the passenger and freight functions.

(4) Broken down as follows:

1. Vessel operating expenses	$ 4,754,885
2. Fuel	982,065
3. Port charges	563,653
4. Canal tolls	520,761
5. Other voyage expense	83,291
6. Cargo handling	4,388,224
7. Freight commissions	603,659
8. Claims and insurance	146,946
	$12,043,484

Source: Company Records.

THIS

OBVIOUSLY, WE WILL BE DEPENDENT UPON SEALIFT FOR THE MAIN MILITARY OVERSEAS MOVEMENT FOR THE FORESEEABLE FUTURE . . NOTHING IN PROSPECT PROMISES SIGNIFICANT ALTERATION TO THIS FACT. THERE IS, HOWEVER, NO SUBSTITUTE FOR AIRLIFT IN THE AREA OF THOSE SMALL LOADS WHICH HAVE NOT BEEN . . OR COULD NOT BE . . FORESEEN IN TIME FOR SEALIFT. WE NEED BOTH . . BUT EACH IN ITS PROPER ROLE.

". . . FOR WANT OF A NAIL THE SHOE WAS LOST; FOR WANT OF A SHOE . . . , ETC."

-BENJ. FRANKLIN "POOR RICHARD'S ALMANAC" (1737)

NOT THIS

THAT CRITICAL NAIL BELONGS IN THE AIRLIFT

...BUT WE SHOULDN'T AIRLIFT THE HORSE!

THIS IS THE SEALIFT BAR

WERE THIS DEPICTED FOR WAR THIS BAR WOULD HAVE [illegible] FOR NEARLY [illegible] FEET MORE

15

[fol. 5340]

5221

ANNEX 21

COMPARISON OF FREIGHT RATES

PANAGRA AND GRACE LINE "A"

APRIL 1959

NEW YORK TO:	PANAGRA(1) Shipments Under 100 Pounds Per Pound	PANAGRA(1) Shipments Over 3300 Pounds Per Pound	PANAGRA(1) Shipments of 2000 Pounds	GRACE LINE "A"(2) Per Revenue Ton
Guayaquil (Puna)	$ .80	$ .41	$ 940.00	$80.56
Lima (Callao)	1.02	.51	1,180.00	92.00
Santiago (Valparaiso)	1.44	.70	1,660.00	90.00

(1) An airline pound is defined as a pound of weight or 250 cubic inches of volume.
(2) A steamship revenue ton is defined as 2000 pounds or 40 cubic feet of volume.

The Panagra rates shown are the highest (for shipments under 100 pounds) and the lowest (for shipments over 3300 pounds) general commodity rates. The cost of a shipment via Panagra weighing exactly 2000 pounds is also shown using the applicable rate. Roughly half of Panagra's cargo shipments move at the general commodity rate, which is higher than specific commodity rates.

The Grace Line "A" rate shown is the general cargo rate per revenue ton which is substantially higher than some of the specific commodity rates. Most Grace Line "A" traffic moves at specific commodity rates. The rates for most imports from South America carried by Line "A" are on a weight basis. The rates for some exports are on a volume basis which results in a greater rate per ton of weight than the rate shown above.

Some examples of specific commodity rates between New York and Lima (Callao) are as follows:

	Between New York and Lima (Callao) — PANAGRA Per Pound(1)	PANAGRA Per 2000 Pounds	GRACE LINE "A" Per Revenue Ton(2)
Auto Parts (3)	$ .54	$1,080.00	$34.00
Pens and Pencils (3)	.61	1,220.00	92.00

	Between New York and Santiago (Valparaiso) — PANAGRA Per Pound(1)	PANAGRA Per 2000 Pounds	GRACE LINE "A" Per Revenue Ton(2)
Auto Parts (3)	$ .63	$1,260.00	$32.00*
Drugs (4)	.75	1,500.00	90.00*

* Plus 3% Chilean Tax.
(1) Pound defined as a pound of weight or 250 cubic inches of volume.
(2) Revenue ton defined as 2000 pounds or 40 cubic feet of volume.
(3) Panagra rate shown applicable only to shipments over 220 pounds.
(4) Panagra rate shown applicable only to shipments over 550 pounds.

[fol. 5344]

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In addition to the specific commodity rates shown above for Grace Line "A", there are numerous lower specific commodity rates for bulky items for which Panagra has no corresponding rate. Some examples follow:

New York to:	Callao	Valparaiso(1)
	Per Revenue Ton(2)	
Wheat	$21.00	$19.00
Flour	23.00	21.00
Asphalt	25.00	23.00
Steel beams	27.00	25.00
Sand, gravel	30.00	28.00
Edible tallow	32.00	30.00

(1) Plus 3% Chilean Tax.

(2) Revenue ton defined as 2000 pounds or 40 cubic feet.

Source: Company Records.

ANNEX 23

PAN AMERICAN-GRACE AIRWAYS, INC.
PROFIT AND LOSS—ALL-CARGO OPERATION
July 1957-January 1959

	Revenue	Total Expenses	Profit (Loss)
1957			
July	$ 18,280	$ 18,833	$ (553)
August	24,102	23,233	869
September	32,348	31,188	1,160
October	21,672	21,925	(253)
November	22,944	26,032	(3,088)
December	17,984	21,282	(3,298)
1958			
January	20,052	27,442	(7,390)
February	22,358	22,600	(242)
March	19,077	24,707	(5,630)
April	16,160	24,140	(7,980)
May	18,203	23,847	(5,644)
June	28,355	33,976	(5,621)
July	31,490	39,663	(8,173)
August	36,954	44,221	(7,267)
September	40,069	37,772	2,297
October	37,293	36,869	424
November	20,989	23,422	(2,433)
December	46,083	45,015	1,068
1959			
January	34,867	40,416	(5,549)
TOTAL	$509,280	$566,583	($57,303)

[fol. 5348]

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ANNEX 24

COMPARISON OF AVAILABLE CAPACITY FILLED WITH FREIGHT

BRANIFF SYSTEM, BRANIFF INTERNATIONAL AND PANAGRA

1950, 1953, 1955, 1957

	FREIGHT TON MILES				
Year	Panagra	Braniff International	Braniff International as % of Panagra	Braniff System(1)	Braniff System as % of Panagra
1950	1,815,688	948,090	52.2%	3,968,721	218.6%
1953	2,849,848	1,038,730	36.4	4,995,351	175.3
1955	2,863,903	961,022	33.6	5,789,328	202.1
1957	4,533,261	871,695	19.2	7,367,955	162.5

	AVAILABLE TON MILES				
Year	Panagra	Braniff International	Braniff International as % of Panagra	Braniff System	Braniff System as % of Panagra
1950	29,038,262	16,008,618	55.1%	67,302,344	231.8%
1953	33,160,140	24,334,789	73.4	116,588,540	351.6
1955	37,219,399	22,705,176	61.0	140,052,987	376.3
1957	40,597,864	22,751,751	56.0	219,588,905	540.9

	PERCENTAGE OF AVAILABLE LIFT CAPACITY FILLED WITH FREIGHT(2)		
Year	Panagra	Braniff International	Braniff System(1)
1950	6.3%	5.9%	5.9%
1953	8.6	4.3	4.3
1955	7.7	4.2	4.1
1957	11.2	3.8	3.4

NOTES: (1) Figures for Braniff System include both Freight and Express statistics of Braniff Domestic.

(2) Percentage arrived at by dividing freight ton miles by available ton miles.

SOURCE: *Summary of U. S. International (and Domestic) Airline Revenues and Expenses (and Traffic)* Compiled by American Aviation Publications from official C. A. B. data.

BOTH S

SEALIFT AND A

IRLIFT

ANNEX 28

ANNEX 30B

B. Comparison on Same Basis Used by the Antitrust Division in Exhibit GS-10 Except Western South America Redefined to Includ areas Served by Both Panagra and Braniff.

Area	Number of Passengers — March	Number of Passengers — September	Average per Month — Number	Average per Month — % of Total
Between U. S. and Western S. A. (1)				
Total U. S. flag	3,254	4,114	3,684	100.0%
Pan American and Panagra	2,827	3,036	2,932	79.6
Pan American	671	750	711	19.3
Panagra	2,156	2,286	2,221	60.3
With Pan American	2,042	2,215	2,129	
With Other Airlines	114	71	92	
Other U. S. flag carriers	427	1,078	752	20.4

The Antitrust Division in Exhibit GS-10 defines Western South America to include Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires. This definition includes areas served by Panagra which Braniff is not authorized to serve (Western Colombia and Chile). It does not, however, include areas served by Braniff which Panagra is not authorized to serve, (Eastern Colombia and Paraguay). A proper comparison would include these areas. The above schedule, therefore, includes in the definition of Western South America all of Colombia, Ecuador, Peru, Bolivia, Chile, Paraguay, and Argentina, except Buenos Aires.

(1) Includes Government definition of Western South America plus Eastern Colombia and Paraguay

[fol. 5356]

ANNEX 30C

C. Comparison of Passengers Travelling Between the U. S. and Western South America, as Defined by the Antitrust Division in Exhibit GS-10 Except That Each Carrier is Credited With All Traffic in which It Participated.

Area	Number of Passengers — March	Number of Passengers — September	Average per Month — Number	Average per Month — % of Total
Between U. S. and Western S. A. (1)				
Total U. S. flag	2,747	3,013	2,880	100.0%
Pan American and Panagra	2,271	2,407	2,339	81.2
Pan American	123	135	129	4.5
Panagra	2,148	2,272	2,210	76.7
With Pan American	2,035	2,203	2,119	
With Other Airlines	113	69	91	
Other U. S. flag carriers	476	606	541	18.8

The Antitrust Division's Exhibit GS-10 is distorted because it attributes to Panagra all traffic in which Panagra had any participation with another carrier whereas it does not attribute to other U. S. flag carriers traffic in which they participate with Panagra or Pan American. The above schedule attributes to each carrier all traffic in which it had any participation. This results in some traffic being counted twice so that the "Total U. S. Flag" figure exceeds the total number of passengers who actually traveled on these routes. This schedule, however, represents a more accurate picture of the traffic shared by the respective carriers.

(1) Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

ANNEX 29

COMPARISON OF TOTAL ASSETS
BRANIFF (TOTAL SYSTEM) AND PANAGRA
1946—1957
(As of December 31)

Year	Braniff	Panagra
1946	$ 7,188,000	$10,821,000
1947	12,680,000	11,826,000
1948	11,610,000	17,435,000
1949	10,736,000	16,371,000
1950	10,681,000	18,315,000
1951	14,980,000	19,778,000
1952	26,572,000	15,012,000
1953	33,265,000	15,664,000
1954	35,137,000	19,453,000
1955	30,132,000	27,111,000
1956	51,915,000	25,960,000
1957	59,066,000	25,476,000

Source: Braniff figures taken from annual reports to its stockholders. Panagra figures taken from Company Records.

[fol. 5354]

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ANNEX 30A

AIR TRAVEL BETWEEN THE UNITED STATES AND WESTERN SOUTH AMERICA ON U. S. FLAG CARRIERS

MARCH AND SEPTEMBER 1957

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U. S. FLAG CARRIERS

A. Comparison on same basis used by the Antitrust Division in Exhibit GS-10 (1).

Area	Number of Passengers		Average per Month	
	March	September	Number	% of Total
Between U. S. and Western S. A. (2)				
Total U. S. flag	2,633	2,907	2,770	100.0%
Pan American and Panagra	2,271	2,407	2,339	84.4
Pan American	123	135	129	4.6
Panagra	2,148	2,272	2,210	79.8
With Pan American	2,035	2,203	2,119	
With Other Airlines	113	69	91	
Other U. S. flag carriers	362	500	431	15.6

Notes: (1) Above figures were developed from the O-D Survey of the C. A. B. for March and September 1957, the same source used by the Antitrust Division in Exhibit GS-10. Figures above differ only slightly from those shown in GS-10 with the variance in Total U. S. Flag passengers totalling only twelve for the month of September. The major variances from Exhibit GS-10 occur in the breakdown of Panagra passengers between Pan American and Other Airlines. In the breakdown of Panagra passengers shown above, Pan American has been credited if it participated to any extent in a passenger's journey. Presumably, the Antitrust Division used some other basis for allocating Panagra traffic.

(2) Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

ANNEX 30D

D. Comparison Based on the Geographical Redefinition Described in "B" Together With the Correction for Distortion Described in "C".

Area	Number of Passengers		Average per Month	
	March	September	Number	% of Total
Between U. S. and Western S. A. (1)				
Total U. S. flag	3,421	4,322	3,872	100.0%
Pan American and Panagra	2,827	3,036	2,932	75.7
Pan American	671	750	711	18.3
Panagra	2,156	2,286	2,221	57.4
With Pan American	2,042	2,215	2,129	
With Other Airlines	114	71	92	
Other U. S. flag carriers	594	1,286	940	24.3

This schedule combines the geographical correction made in "B" above with the additional correction made in "C" above. It provides the most accurate basis for comparing the share of traffic carried by the respective U. S. flag carriers between the entire U. S. and Western South America.

(1) Includes Government definition of Western South America plus Eastern Colombia and Paraguay.

[fol. 5358]

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ANNEX 30E

E. Comparison of Passengers Travelling by Air on U. S. Flag Carriers Between Eastern U. S. As Shown in Exhibit GS-10, and Redefined Western South America (B) Crediting Each Carrier With all Traffic in which It Participated (C).

Area	Number of Passengers		Average per Month	
	March	September	Number	% of Total
Between Eastern U. S. (1) and Western South America (2)				
Total U. S. flag	2,201	2,937	2,569	100.0%
Pan American and Panagra	1,916	2,121	2,019	78.6
Pan American	385	345	365	14.2
Panagra	1,531	1,776	1,654	64.4
With Pan American	1,462	1,728	1,595	
With Other Airlines	69	48	59	
Other U. S. flag carriers	285	816	550	21.4

This schedule shows travel by air between the Eastern U. S., as defined in Exhibit GS-10, and Western South America as redefined in "B" above with the additional correction for distortion made in "C" above. The figures above provide the most accurate basis for comparing the share of traffic by the respective U. S. flag carriers between the Eastern U. S. and Western South America.

(1) Includes the New England States and the States of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

(2) Includes all of Colombia, Ecuador, Peru, Bolivia, Chile, Paraguay, and Argentina, except Buenos Aires.

ANNEX 30F

F. Comparison of Passengers Travelling By Air on U. S. Flag Carriers Between Central U. S. and Redefined Western South America (B) Crediting Each Carrier With all Traffic in which It Participated (C).

Area	Number of Passengers — March	Number of Passengers — September	Average per Month — Number	Average per Month — % of Total
Between Central U. S. (1) and Western South America (2)				
Total U. S. flag	596	625	610	100.0%
Pan American and Panagra	414	410	412	67.5
Pan American	146	172	159	26.1
Panagra	268	238	253	41.4
With Pan American	240	228	234	
With Other Airlines	28	10	19	
Other U. S. flag carriers	182	215	198	32.5

The Antitrust Division has emphasized in their exhibits Panagra's share of air travel on U. S. flag carriers between the Eastern U. S., the one area of the U. S. served directly by Panagra planes, and Western South America. It is just as logical to highlight travel between the Central U. S., an area served by Braniff both on its domestic and international routes and Western South America. The figures above show passenger travel between the Central U. S. states served by Braniff and Western South America as redefined in "B" above with the additional correction made in "C" above.

(1) Includes the States of Texas, Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Iowa, Tennessee, Illinois, Minnesota, Colorado, North Dakota, South Dakota and Nebraska.

(2) Includes all of Colombia, Ecuador, Peru, Bolivia, Chile, Paraguay and Argentina, except Buenos Aires.

Source: *Origin—Destination Airline Revenue Passenger Survey*, International Section, March and September 1957, published by the Air Transport Association of America from information compiled by the Civil Aeronautics Board.

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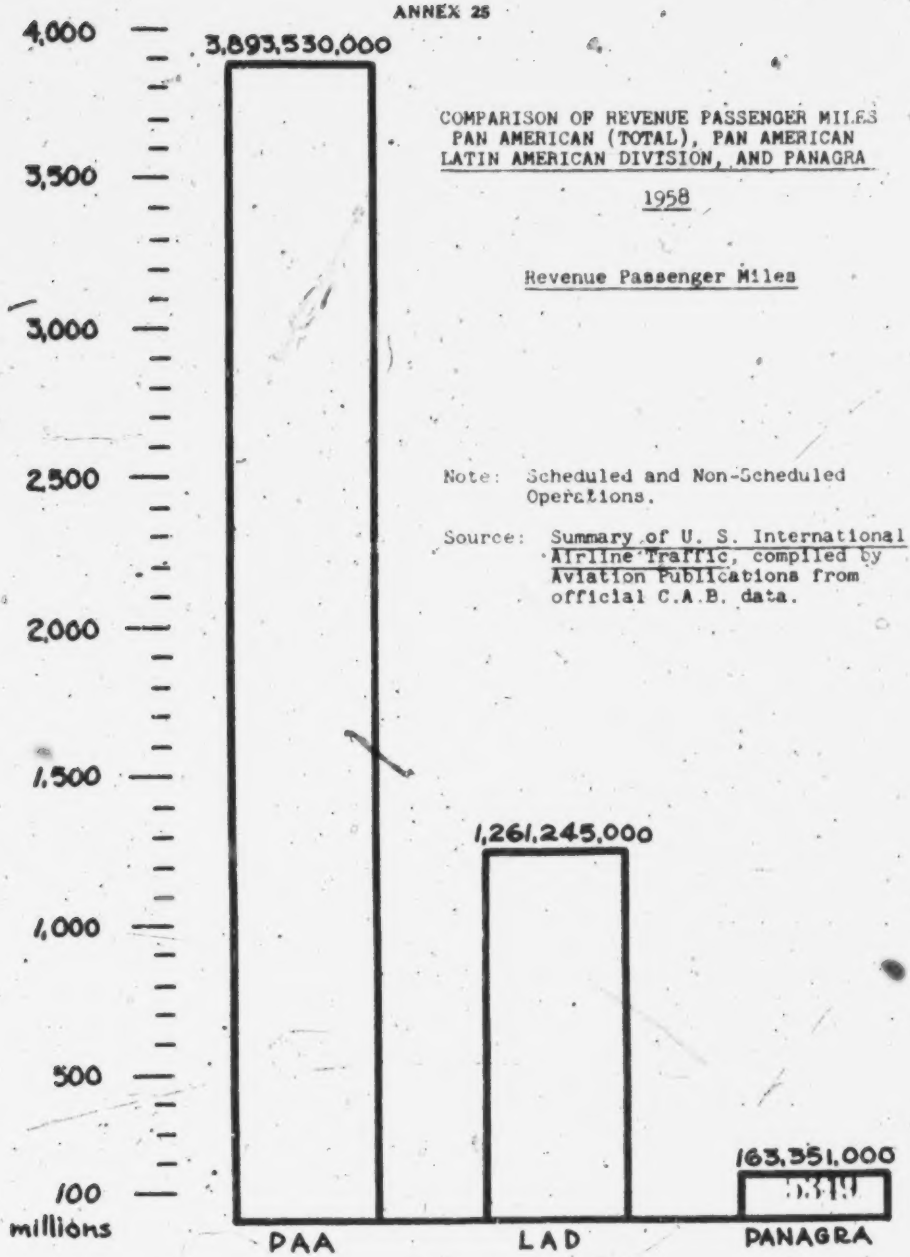
ANNEX 25

COMPARISON OF REVENUE PASSENGER MILES
PAN AMERICAN (TOTAL), PAN AMERICAN
LATIN AMERICAN DIVISION, AND PANAGRA

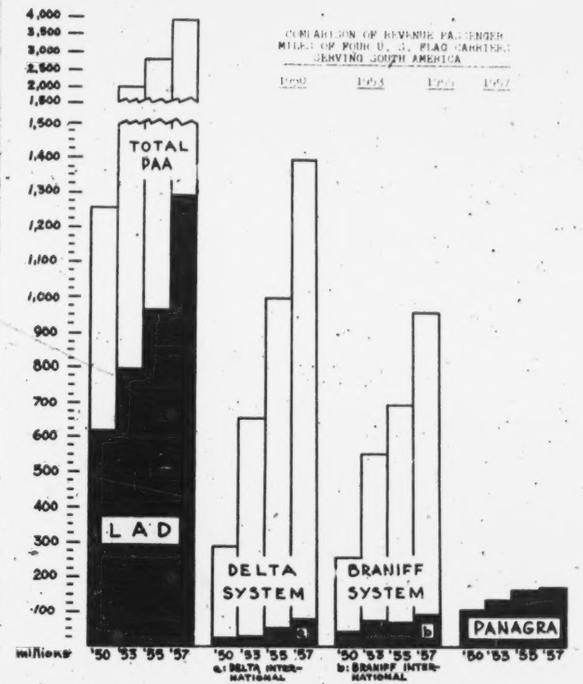
1958

Revenue Passenger Miles



Note: Scheduled and Non-Scheduled Operations.

Source: Summary of U. S. International Airline Traffic, compiled by Aviation Publications from official C.A.B. data.



Note: Included Scheduled and Non-Scheduled Operations.

Source: Summary of U. S. International Airline Traffic, compiled by American Aviation Publications from Official C.A.B. data.

TRAFFIC RATINGS - U. S. SCHEDULED AIRLINES

1957

Rank	Airline	Originating Passengers
1.	Eastern	8,145,138
2.	American	7,649,153
3.	United	6,293,653
4.	Trans World	4,817,764
5.	Capital	3,949,844
6.	Delta	2,723,132
7.	Pan American	2,661,169
8.	BRANIFF	2,047,875
9.	Northwest	1,493,930
10.	National	1,430,037
11.	Western	1,379,650
12.	Continental	826,659
13.	Northeast	764,882
14.	Mo. Central	658,810
15.	Allegheny	440,389
16.	Mohawk	418,341
17.	Hawaiian	416,524
18.	Piedmont	401,168
19.	Ozark	390,753
20.	Pacific (SWA)	337,200
21.	West Coast	294,062
22.	Trans Texas	243,348
23.	Caribair	226,501
24.	Frontier	219,360
25.	Southern	211,916
26.	Trans Pacific	180,168
27.	Lake Central	160,784
28.	Bonanza	150,423
29.	PANAGRA	139,409
30.	Central	118,867
31.	Pac. Northern	107,875
32.	N. Y. Airways	68,060
33.	Ellis	63,168
34.	Alaska	62,943
35.	Chi Helicopter	55,310
36.	Alaska Coast	51,841
37.	Los Angeles	31,283
38.	Wien Alaska	28,413
39.	North Conso.	20,446
40.	Cordova	19,738
41.	Reeve	8,907
	Aexico	
	Aerovias	
	Flying Tiger	
	Riddle	
	Seaboard & Western	
	Slick	
	TOTAL	49,670,893

Rank	Airline	Revenue Passenger Miles (000 omitted)
1.	American	5,142,594
2.	United	4,868,308
3.	Eastern	4,815,246
4.	Trans World	4,396,498
5.	Pan American	3,876,073
6.	Capital	1,513,845
7.	Delta	1,401,049
8.	Northwest	1,247,865
9.	BRANIFF	962,987
10.	National	953,260
11.	Western	702,727
12.	Continental	363,254
13.	Northeast	246,095
14.	PANAGRA	173,736
15.	Mo. Central	106,723
16.	Pacific Northern	105,820
17.	Piedmont	83,808
18.	Mohawk	81,405
19.	Allegheny	77,011
20.	Pacific (SWA)	72,994
21.	Ozark	63,835
22.	Hawaiian	62,907
23.	Frontier	59,343
24.	Trans Texas	55,330
25.	West Coast	45,128
26.	Southern	38,318
27.	Bonanza	33,044
28.	Trans Pacific	28,192
29.	Lake Central	25,549
30.	Alaska	25,233
31.	Central	23,726
32.	Caribair	16,048
33.	Wien Alaska	9,621
34.	Reeve	7,027
35.	North Conso.	6,630
36.	Cordova	5,135
37.	Alaska Coast	4,629
38.	Ellis	3,382
39.	N. Y. Airways	1,276
40.	Los Angeles	1,131
41.	Chi Helicopter	899
	Aexico	
	Aerovias	
	Flying Tiger	
	Riddle	
	Seaboard & Western	
	Slick	
	TOTAL	31,707,677

Rank	Airline	Mail Ton-Miles
1.	Pan American	31,213,926
2.	United	26,238,388
3.	Trans World	20,850,372
4.	American	17,911,668
5.	Northwest	16,727,002
6.	Eastern	9,555,251
7.	Delta	3,919,633
8.	Capital	3,574,984
9.	BRANIFF	3,351,774
10.	Western	2,097,231
11.	National	1,772,215
12.	Pac. Northern	1,120,959
13.	Continental	1,023,538
14.	PANAGRA	740,605
15.	Alaska	592,144
16.	Wien Alaska	398,752
17.	Northeast	355,095
18.	Mo. Consol.	277,202
19.	Reeve	195,789
20.	Mo. Central	191,862
21.	Flying Tiger	178,404
22.	Riddle	151,139
23.	Trans Texas	137,689
24.	Frontier	122,152
25.	Ozark	117,004
26.	Southern	105,722
27.	Slick	100,654
28.	Piedmont	98,259
29.	Allegheny	96,940
30.	Pacific (SWA)	93,401
31.	Mohawk	63,871
32.	Hawaiian	48,530
33.	Alaska Coast	48,116
34.	Los Angeles	46,415
35.	Central	43,790
36.	Cordova	42,856
37.	West Coast	42,084
38.	Bonanza	31,640
39.	Lake Central	30,541
40.	Chi Helicopter	26,412
41.	Ellis	24,049
42.	N. Y. Airways	19,360
43.	Caribair	18,300
44.	Trans Pacific	14,368
	Aexico	
	Aerovias	
	Seaboard & Western	
	TOTAL	143,823,086

Rank	Airline	Express Ton-Miles
1.	United	9,552,104
2.	American	9,003,998
3.	Trans World	7,345,486
4.	Eastern	5,297,267
5.	Delta	2,881,983
6.	Northwest	2,703,169
7.	Capital	2,373,007
8.	BRANIFF	1,419,089
9.	Western	1,095,196
10.	Slick	719,265
11.	National	660,509
12.	Continental	457,645
13.	Flying Tiger	422,116
14.	Mo. Central	364,478
15.	Riddle	323,532
16.	Northeast	248,591
17.	Allegheny	202,791
18.	Ozark	186,102
19.	Aexico	171,791
20.	Mohawk	160,925
21.	Lake Central	160,526
22.	Southern	129,797
23.	Piedmont	115,884
24.	Trans Texas	95,785
25.	Frontier	91,389
26.	Pacific (SWA)	54,949
27.	Bonanza	27,829
28.	Central	26,543
29.	West Coast	25,683
30.	Los Angeles	22,511
31.	N. Y. Airways	11,407
	Aerovias	
	Alaska	
	Alaska Coast	
	Caribair	
	Chi Helicopter	
	Cordova	
	Ellis	
	Hawaiian	
	Northern Consolidated	
	Pacific Northern	
	Pan American	
	PANAGRA	
	Reeve	
	Seaboard & Western	
	Trans Pacific	
	Wien Alaska	
	TOTAL	46,351,347

Rank	Airline	Freight Ton-Miles
1.	Pan American	96,594,104
2.	American	86,063,699
3.	Flying Tiger	82,986,089
4.	United	57,450,315
5.	Slick	49,799,653
6.	Trans World	34,268,074
7.	Riddle	31,554,761
8.	Seaboard & Western	17,938,744
9.	Northwest	17,097,443
10.	Eastern	16,765,965
11.	Delta	9,608,457
12.	Aerovias	8,848,739
13.	BRANIFF	5,948,866
14.	National	5,561,563
15.	PANAGRA	4,533,861
16.	Capital	4,516,907
17.	Alaska	3,791,202
18.	Pacific Northern	2,964,863
19.	Western	2,930,684
20.	Wien Alaska	2,472,488
21.	Aexico	2,335,399
22.	Continental	1,560,822
23.	Cordova	1,439,232
24.	Hawaiian	1,427,977
25.	Mo. Consol.	873,238
26.	Frontier	745,782
27.	Northeast	645,483
28.	Reeve	377,877
29.	Trans Texas	281,706
30.	Mohawk	250,624
31.	Allegheny	171,431
32.	Piedmont	167,511
33.	Ozark	163,434
34.	Trans Pacific	126,947
35.	Central	86,383
36.	Pacific (SWA)	78,992
37.	Bonanza	74,419
38.	West Coast	59,983
39.	Alaska Coast	48,425
40.	Caribair	39,290
41.	Ellis	32,545
42.	N. Y. Airways	7,037
43.	Southern	2,638
	Chi Helicopter	
	Lake Central	
	Los Angeles	
	North Central	
	TOTAL	552,713,052

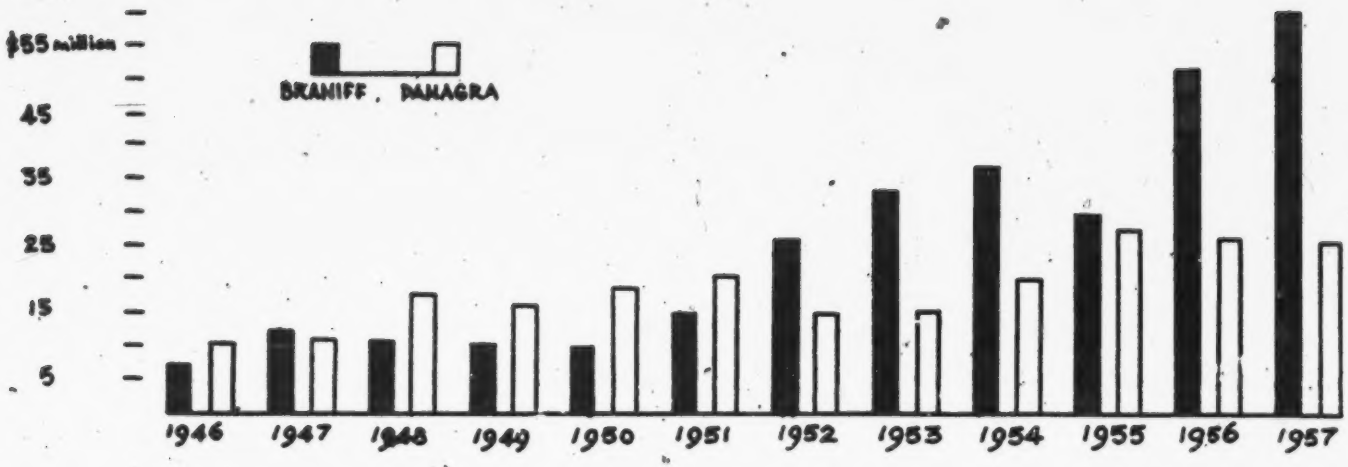
Notes: In above tabulations, domestic and international operations of companies are combined.
Figures include both scheduled and non-scheduled operations.
Mail ton-miles include air parcel post and first class mail carried by air.

Source: American Aviation, American Aviation Publications, Inc. April 21, 1958 issue, page 79.

COMPARISON OF TOTAL ASSETS
BRANIFF (TOTAL SYSTEM) AND PANAGRA

1946 - 1957

(As of December 31)



Source: Braniff figures taken from annual reports to its stockholders. Panagra figures taken from Company Records.

ANNEX 28

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[fol. 5352]

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MICRO CARD
TRADE MARK ®

21

MATTHEW BENDER & COMPANY
MB-63

microcard

1224

ANNEX 31

COMPARISON OF AIRLINE SERVICE FROM THE UNITED STATES TO SOUTH AMERICA BRANIFF INTERNATIONAL AND PANAGRA

APRIL 1959

		MONDAY				TUESDAY		WEDNESDAY				THURSDAY			FRIDAY				SATURDAY		SUNDAY		
		PANAGRA		BRANIFF		PANAGRA		PANAGRA		BRANIFF		PANAGRA		BRANIFF	PANAGRA		BRANIFF		PANAGRA		PANAGRA		BRANIFF
	Flight No.	F (a) 701	T (b) 733	F/T 985	F/T 403	F (a) 701	T (b) 719	F (a) 701	T (b) 733	F/T 603	F/T 985	F (a) 701	T (b) 733	F/T 971	F (a) 701	T (b) 719	F/T 985	F/T 991	F (a) 701	T (b) 733	F (a) 701	T (b) 719	F/T 971
	Equipment	DC-7	DC-6B	DC-6	DC-6	DC-7	DC-6B	DC-7	DC-6B	DC-6	DC-6	DC-7	DC-6B	DC-7C	DC-7	DC-6B	DC-6	DC-6	DC-7	DC-6B	DC-7	DC-6B	DC-7C
NEW YORK	Cumulative Elapsed Time																						
WASHINGTON		1:40(c)		1:40(c)		1:40(c)		1:40(c)			1:40(c)	1:40(c)		1:35(c)	1:40(c)		1:40(c)	1:40(c)	1:40(c)		1:40(c)		1:35(c)
DALLAS					1:10					1:10													
HOUSTON																							
MIAMI		5:00	4:40	5:30		5:00	4:35	5:00	4:40		5:30	5:00	4:40	4:55	5:00	4:35	5:30	5:30	5:00	4:40	5:00	4:35	4:55
HAVANA					6:35					6:35													
PANAMA		10:10	10:05	10:40	11:05	10:10	10:10	10:10	10:05	11:05	10:40	10:10	10:05	10:00	10:10	10:10	10:40	10:45	10:10	10:05	10:10	10:10	10:00
BOGOTA				13:14							13:14						13:14						
CALI							12:50									12:50						12:50	
QUITO							14:45									14:45						14:45	
GUAYAQUIL			14:15		14:45	14:00	16:05		14:15				14:15		14:00	16:05		14:25		14:15		16:05	
TALARA							17:30						15:40			17:30					14:35		
LIMA		16:05	17:55		18:15	17:15	20:00	16:05	17:55	17:25		16:05	18:10	15:55	17:15	20:00		17:55	16:05	17:55	17:15	19:45	15:59
SAO PAULO										26:30				23:55									23:55
RIO DE JANEIRO										28:20				25:40									25:40
LA PAZ			21:30		21:40				21:30									21:20					
ASUNCION					24:50													24:30					
ANTOFAGASTA			24:10									19:55							19:55				
SANTIAGO		21:35	27:15			22:50		21:35					20:15		22:50						22:50		
BUENOS AIRES		24:45	30:45		29:05	26:00		24:45	27:40			24:00	27:45		26:00			28:45	24:00	27:30	26:00		

Notes: (a) On May 1, 1959 flights 701/700 become dual configuration, Tourist-First Class flights.
(b) On March 26, 1959 flights 733/732 and 719/720 become dual configuration, Tourist-First Class flights.
(c) Time elapsed from departure previous station to departure next station. In all other cases, time elapsed is calculated from departure to arrival.

Source: Official Airline Guide, World-Wide Edition, April 1959.

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ANNEX 33
AMERICAN AVIATION MAGAZINE, DECEMBER 30, 1957

Panagra sells luxury, frequency in South American service

by Anthony Vandyk

EVERY DAY of the year at 4 p.m. Eastern Standard Time a Panagra DC-7B leaves New York International Airport headed south. And almost every day at least one of the passengers on the flight looks up with a start when an announcement is made in Spanish that the aircraft is bound for Panama, Lima, Santiago and Buenos Aires as well as Washington and Miami.

What the surprised passenger does not know is that the National flight 701—New York-Washington-Miami—is part of Pan American's and Panagra's flights 701. This interchange schedule not only provides commuter service between New York and Washington but also between New York and the capitals of the South American west coast republics and Argentina.

Panagra's daily first-class flight to South America represents perhaps the most luxurious commuter service ever offered on a daily basis on such a long route. The airline pulls out every stop to emphasize service. Nothing but the best is the order of the day on "El Inter Americano," the name used for the first-class flights.

For passengers desiring a cheaper class of service, Panagra has a daily DC-6B tourist flight, "El Pacifico," which also operates under interchange arrangements with National and PAA from New York and Miami to Panama, and points south on a daily basis.

Combats cut-rates

The combination of ultra-high luxurious first-class service and fast tourist service, operated with pressurized equipment, together with the advantage of a twice-daily frequency, is enabling Panagra to combat, to some extent, the effects of the cut-price services offered by various Latin American operators (AMERICAN AVIATION, Dec. 16).

Speed is a particular feature of both services. This writer was able to complete a full day's work in Washington and then take the evening El Inter Americano flight to Lima, arriving at 7:35 the next morning in time for a full day in the Peruvian capital.

The travel time between Buenos Aires and New York by the interchange service is 22 hours 40 minutes, as compared with 19 days required by the fastest steamship.

Panagra's service to South America will be considerably faster in 1960, when the airline plans to introduce its four Douglas DC-8s. In practice, however, it may not be possible for the jets to operate at all the major cities currently served on the north-south trunk route.

Despite grandiose paper plans of the countries concerned, the airport situation for jets does not look encouraging at Guayaquil, Lima, La Paz and Santiago de Chile. Unless the present programs are accelerated and more financing is found, Panagra and other carriers will only be able to serve some of these cities with jets by accepting heavy payload penalties.

This situation is particularly aggravating to Panagra, because it has poured millions of dollars into providing the west coast of Latin America with airports and air navigation facilities. Even today the airline still operates all air navigation facilities in Chile, Ecuador and Bolivia. In Bolivia it also operates eight airports.

Last month it was announced that the Argentine government had signed an agreement with Panagra for the installation of a network of very-high-frequency/omni-directional range stations (VOR) in Argentina.

PANAGRA's TRUNK ROUTE today, from Panama to Buenos Aires, is little different from that operated in 1929, a year after the airline's formation. Panagra also operates feeder services in Ecuador, Peru and Bolivia.

Ancient and honorable history

Panagra's investment in South America dates back almost 100 years. W. R. Grace & Co., which owns 50% of Panagra, has been developing trade industry and transportation between the U.S. and the west coast countries of South America since the latter part of the 18th century.

The other 50% of Panagra is owned by Pan American World Airways. When the company was formed in 1928 it was indeed logical to couple W. R. Grace's knowledge of the west coast of South America with the aviation know-how of PAA. The full name of the company—Pan American Grace Airways—reflects the 50-50 ownership.

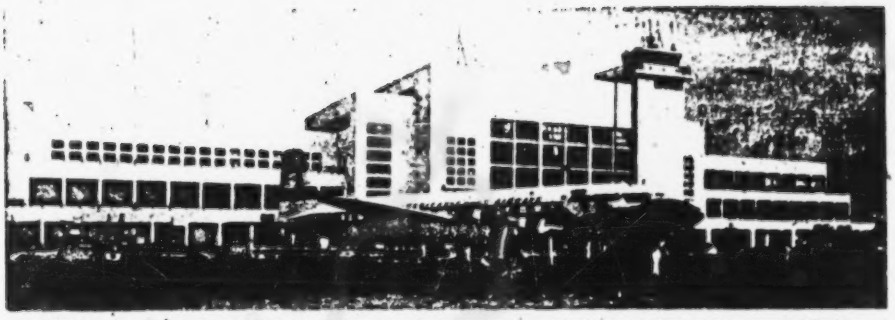
The beginnings of Panagra in 1928 were humble. Grace and PAA agreed to pay $15,000 for a small crop-dusting company established in Peru by Harold R. Harris who later was to become well-known in the airline industry. It was on Sept. 13, 1928, that the new airline, then known as Peruvian Airways Corp., started operations using a four-passenger Fairchild single-engine aircraft. Its first flight was from a race track in Lima to a football field in Talara, Peru.

Shortly afterwards operations were extended north to Guayaquil and in July 1929, Panagra was authorized by the U.S. Post Office Department to inaugurate mail service to Chile. Pan American carried the mail from Miami to Panama and then a Panagra amphibian flew it down the west coast of South America as far as northern Peru, where it was transferred to Fairchild equipment for the remainder of the distance to Santiago.

The most dramatic sector of Panagra's route is that from Santiago across the Andes to Buenos Aires. Today this operation is strictly routine—the airline has made more than 25,000 crossings of this highest mountain range in the western hemisphere—but in 1929 the task of getting across the mountains represented a formidable challenge.

Mail service over the trans-Andean route was started by Panagra in 1929 with a single-engine Fairchild equipped with no radio and provided with no weather reports. The pilot would climb up to 14,000 feet above Santiago, take a look at the pass through the range and, if the weather

[fol. 5362]



A PANAGRA DC-7B operating the first class El Inter Americano service is seen in front of Lima's modern terminal building at Limatambo Airport. Unfortunately Limatambo will be inadequate for the jet age so the useful life of the terminal is limited.

were clear, would continue through to Argentina. Passenger operations over this difficult route started in October 1929 with Ford Trimotor equipment. This connection made it possible to fly from New York to Buenos Aires in a total travel time of 11 days!

Although in the intervening years travel time between New York and Buenos Aires has been cut from 11 days to 22 hours, Panagra's route system has changed very little in the 28-year period. Feeder services were opened in Ecuador, Peru and Bolivia, but the trunk route remained essentially what it is today (see accompanying map).

Panagra's official northbound terminal is Panama and its southbound terminal is Buenos Aires. Thanks to the interchange, operations are extended northward from Panama to Miami and New York. In fact, between 1946 and 1953 Panagra's route mileage decreased by 12%.

Employment totals 1,400

Through the years the airline has remained relatively small in size and many of the key personnel who were with the organization in the pioneering period are still with it. Panagra has only about 1,400 employes, including 104 pilots and 79 cabin attendants (all the stewards and stewardesses are Latin Americans). Its fleet—all Douglas—is also small: five DC-7Bs; five DC-6Bs; two DC-4s; and four DC-3s (powered with R2000s).

The DC-7Bs and DC-6Bs not only fly the Panagra system but are also used on the interchange to the U.S.—PAA and National contribute no aircraft in return. One of the DC-4s is used for an all-cargo service along the trunk route. The DC-3s, overhauled in Lima, are used entirely for feeder operations.

A look at Panagra's traffic statistics would not give the impression that the airline has such a small fleet. In 1956, it carried 143,222 passengers and operated 172,103,000 passenger-miles (more than Western Airlines). Its freight traffic in 1956 involved the performance of 4,029,161 freight ton-miles, making it a bigger freight carrier than Capital Airlines. Load factors in 1956 were 57.36% for the DC-7B fleet, 61.75% for the DC-6B fleet and 65.21% for the DC-4 fleet.

Exceptional food

These load-factors are particularly creditable in view of the very high service frequency Panagra operates. There is no question that Panagra captures and holds its traffic by its superlative in-flight service.

Much of Panagra's reputation for superlative service is due to Mike Clavarino, who supervises the food service.

Based in Lima, Clavarino imports most of the foodstuffs that are used in Panagra's "gourmet galleys" from all parts of North and South America. He has even established a special farm near Lima high up in the mountains where pure mountain water is used for irrigation. The produce from this farm provides the vegetables used in Panagra's main flight kitchen at Limatambo Airport, Lima.

Meals served in flight by Panagra are as sumptuous as can be found on any airline, but Clavarino's organization also realized that at certain times a big meal is not always desired by passengers. For example, flying across the Andes between Santiago and Buenos Aires passengers are more interested in enjoying the spectacular scenery than in eating a large meal. Hence on this 2½-hour flight Panagra sets up in the lounge of its DC-7Bs a special buffet table consisting of rolled cold meats, cheeses, aspic salads, assorted vegetables and fresh fruits.

For children, who often do not appreciate seven-course luxury meals, Panagra has simple items such as fruit cup, hamburgers and pot pies on hand.

Superb service, twice-daily frequency and modern aircraft make Panagra's operation eminently successful. Unfortunately, however, the future of the airline is somewhat clouded by an anti-trust suit filed by the Justice Department in January 1955 to break up the 50-50 joint ownership of the airline.

Until this suit is settled, relations between the co-owners will continue to be uneasy, and Panagra will be unable to consolidate its past successes and follow the normal developmental trend of the air transport industry.

LA PAZ, 13,400 ft. above sea level, is world's highest commercial airport. AMERICAN AVIATION's International Editor Anthony Vandyk and llama stand in front of a Panagra DC-6B operating the El Pacifico tourist service. In background is the airfield's uncompleted terminal building.

[fol. 5364]

ANNEX 34

COMPARISON OF REVENUE PASSENGER MILES PANAGRA AND BRANIFF INTERNATIONAL

1929—1958

Year	(000 Omitted) Panagra	Braniff	Braniff as Percent of Panagra
1929	338	—	—
1930	985	—	—
1931	1,336	—	—
1932	3,073	—	—
1933	4,052	—	—
1934	5,791	—	—
1935	7,017	—	—
1936	8,505	—	—
1937	10,349	—	—
1938	8,400	—	—
1939	9,281	—	—
1940	14,326	—	—
1941	22,796	—	—
1942	40,828	—	—
1943	53,622	—	—
1944	63,109	—	—
1945	73,339	—	—
1946	89,135	—	—
1947	106,511	—	—
1948	103,663	6,912	6.7%
1949	105,404	29,020	27.5
1950	103,783	43,339	41.8
1951	125,747	64,320	51.4
1952	133,186	80,323	60.3
1953	136,038	76,670	56.4
1954	149,099	80,409	53.9
1955	160,681	75,291	46.9
1956	168,650	69,452	41.2
1957	168,641	92,381	54.8
1958	160,145	88,802	55.5

Note: Panagra figures include non-scheduled operations for years 1929 through 1946 since breakdown not available for these years. Figures from 1947 through 1958 reflect scheduled operations only for both carriers. Braniff began international service June 3, 1948.

Source: Panagra—Company Records. Braniff International—Form 41 submitted to the C. A. B. by Braniff.

[fol. 5365]

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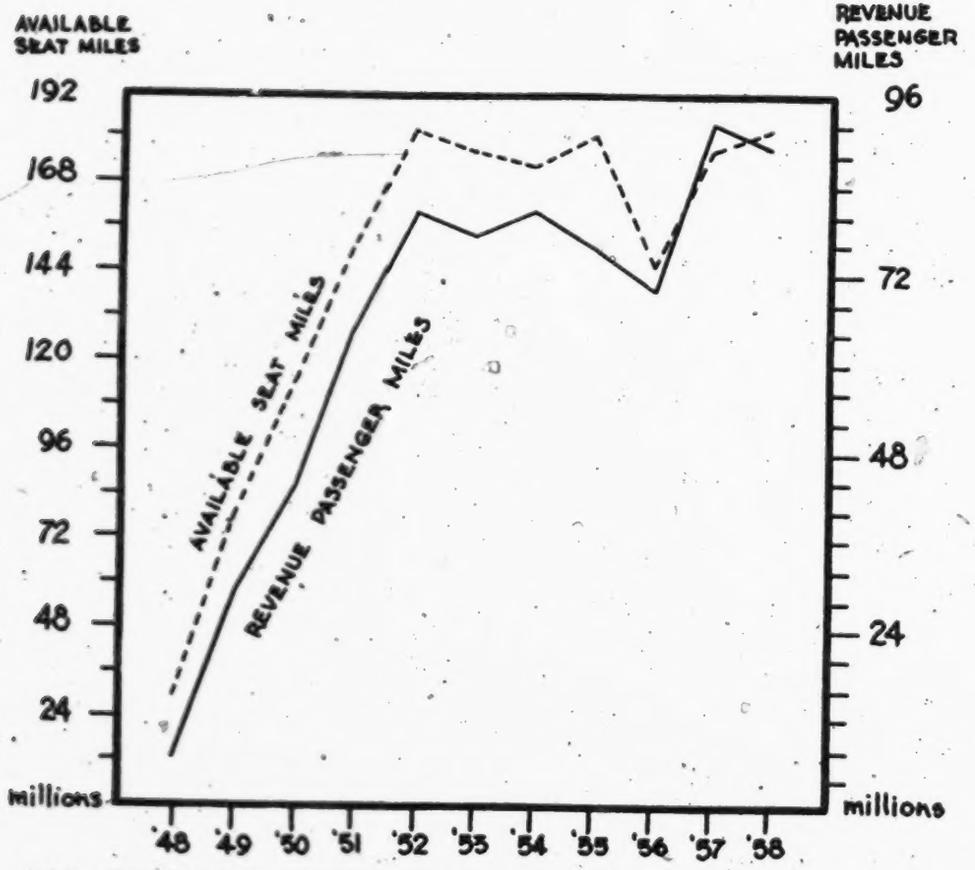
ANNEX 35
COMPARISON OF AVAILABLE SEAT MILES
AND REVENUE PASSENGER MILES
BRANIFF INTERNATIONAL

1948 - 1958



Note: Braniff began international operations June 3, 1948.

Source: Summary of U. S. International Airline Traffic, Compiled by American Aviation Publications from Official C.A.B. Data.

[fol. 5366]

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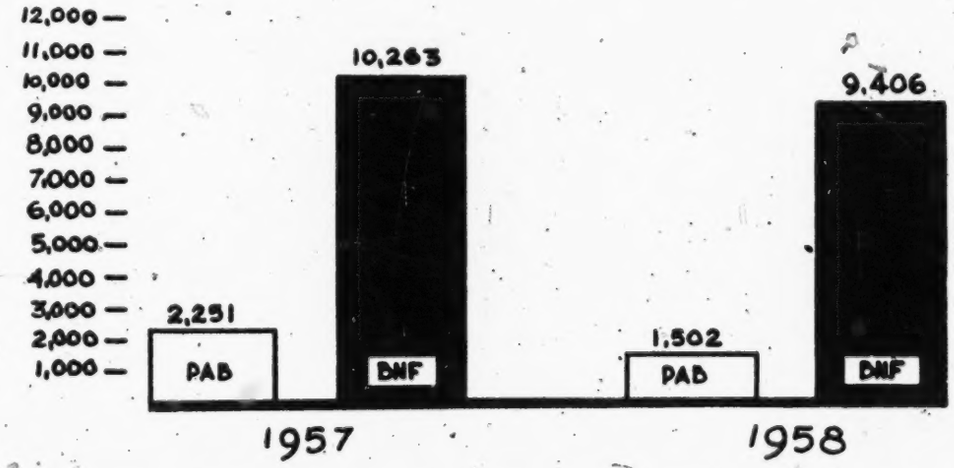
ANNEX 36

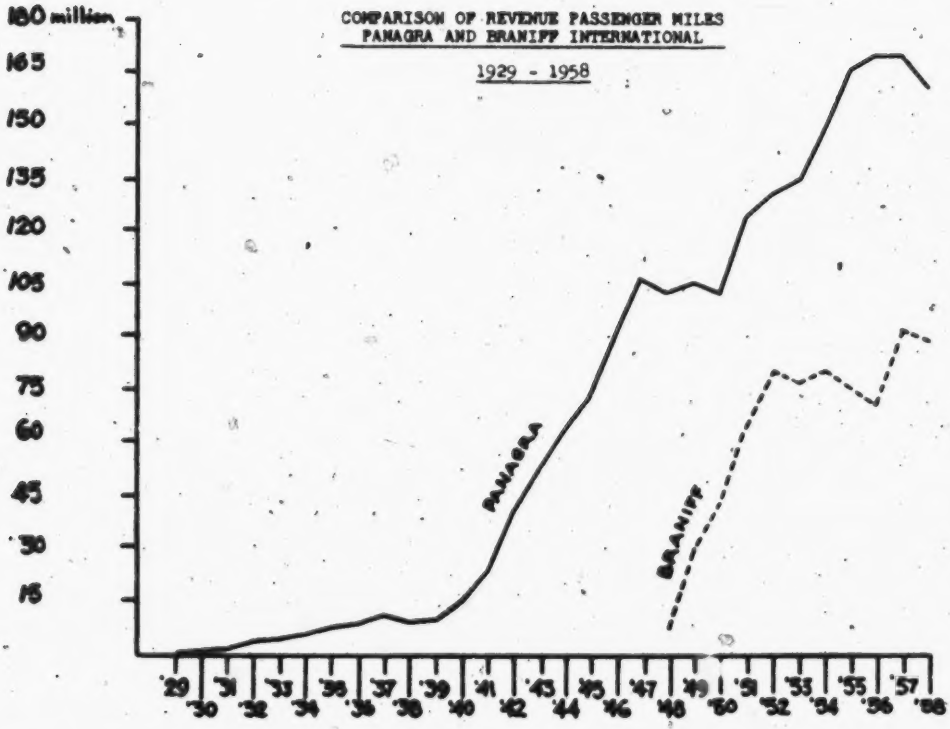
COMPARISON OF TOTAL TRAFFIC BETWEEN
RIO DE JANEIRO/SAO PAULO, BRAZIL AND LIMA, PERU
CARRIED BY BRANIFF AND PANAIR DO BRASIL,
THE ONLY TWO AIRLINES SERVING THIS ROUTE

1957 - 1958



Note: This route connects Rio de Janeiro and Sao Paulo, Brazil, the second and third largest cities on the East Coast of South America, with a combined population of over 4 million, with Lima, Peru, the second largest city on the West Coast of South America with a population of over 500,000.

Source: Figures developed from Braniff and Panair do Brasil manifests on file with, and available for public inspection at, either the Customs Service or the Office of the Director of Civil Aviation, Lima, Peru.



Note: Panagra figures include non-scheduled operations for years 1929 through 1946 since breakdown not available for these years. Figures from 1947 through 1958 reflect scheduled operations only for both carriers. Braniff began international service June 3, 1948.

Source: Panagra - Company Records. Braniff International - Form 41 submitted to the C.A.B. by Braniff.

Colombia	32.4	67.6	29.6	70.4	28.8	71.2	32.0	68.0	32.9	67.1	30.3	69.7
Ecuador	N.A.	N.A.	70.1	29.9	81.1	18.9	84.8	15.2	86.9	13.1	74.5	25.5
Peru	73.0	27.0	78.3	21.7	84.4	15.6	89.8	10.2	98.9	1.1	99.9	0.1
Paraguay	N.A.	N.A.	77.5	22.5	82.7	17.3	98.9	1.1	100.0	-	99.1	0.9
Uruguay	N.A.	N.A.	79.0	21.0	78.7	21.3	86.1	13.9	97.7	2.3	99.4	0.6
Venezuela	58.8	41.2	72.7	27.3	64.3	35.7	59.3	40.7	57.7	42.3	55.5	45.5
Guianas & Falkland Islands (2)	N.A.	N.A.	92.0	8.0	96.2	3.8	99.1	.9	99.7	.3	99.3	.7
Other South America (3)	55.2	44.8										
Total South America	53.2%	46.8%	60.9%	39.1%	59.9%	40.1%	62.8%	37.2%	65.1%	34.9%	63.1%	36.9%

Notes: (1) No foreign flag carrier operates directly between the U. S. and Bolivia. Only Braniff and Panagra offer one-plane through service. Passengers to and from the U. S. and Bolivia can connect with numerous foreign flag carriers at Lima. However, such passengers are reported as travelling between the U. S. and Peru since INS statistics are compiled from airline manifests. Manifests reflect travel between the U. S. and the first point in South America where the passenger deplanes or they reflect travel between the last point in South America at which the passenger enplanes for the U. S. INS statistics do not necessarily reflect true origins or destinations.

(2) For the years 1953 through 1957 travel to and from the U. S. and the Falkland Islands, British Guiana, French Guiana, and Surinam (Netherlands Guiana) totalled as follows: 1953 - 1,980, 1954 - 2,363, 1955 - 2,170, 1956 - 2,521, and 1957 - 3,193.

(3) The 1958 figure for Other South America totalled 32,734 and includes travel to and from the U. S. and the four aforementioned areas plus Bolivia, Chile, Ecuador, Paraguay, and Uruguay. No breakdown of this figure by country or by flag of carrier is available from published INS calendar year statistics and the Department of Justice reported such a breakdown for 1958 was not yet available.

Source: Figures for Argentina, Brazil, Colombia, Venezuela, Total South America, Peru (1958 only) and Other South America (1958 only) developed from published Immigration and Naturalization Service statistics. Figures for Bolivia, Chile, Ecuador, Paraguay, Peru (1953-1957) and Uruguay developed from INS statistics supplied by the Department of Justice. Figures for Guianas and Falkland Islands developed from figures arrived at by subtracting from Total South America the sum of passengers to and from the individual countries.

[fol. 5370]

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ANNEX 37D

THE NEW YORKER

February 28, 1959

TIME

February 9, 1959

[fol. 5369]

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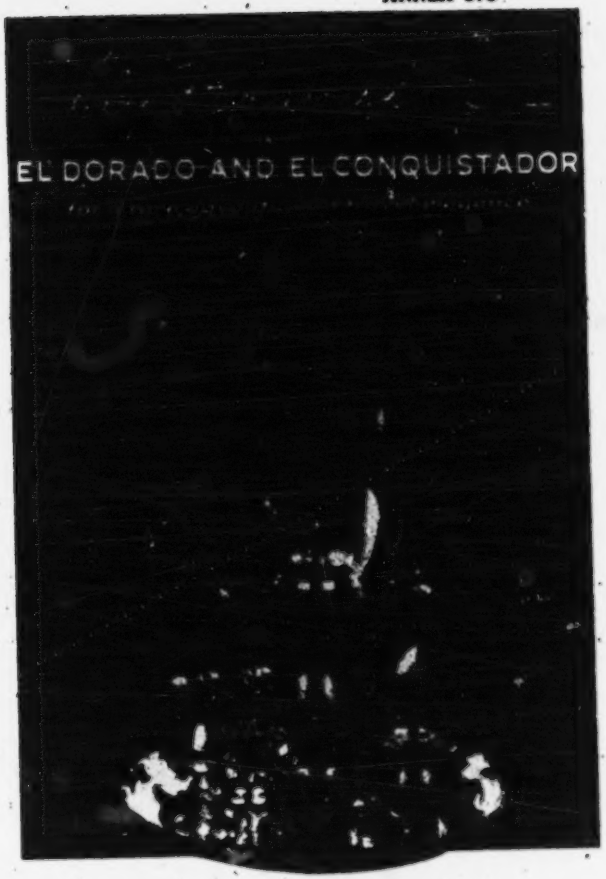
ANNEX 37C



THE NEW YORKER

March 22, 1958
April 12, 1958
May 10, 1958
June 7, 1958

TIME

March 17, 1958
April 21, 1958
May 19, 1958
June 16, 1958

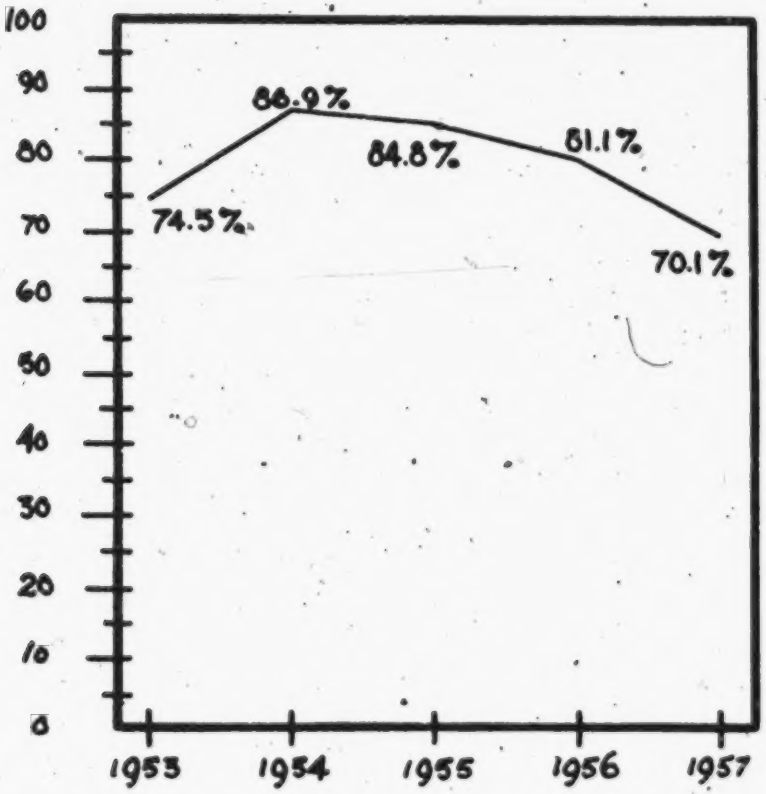
Braniff serves more major cities
in the U. S. A. and SOUTH AMERICA
. . . than any other airline

Braniff serves both Idlewild and Newark airports in New York

[fol. 5373]

ANNEX 38C

C. Passenger Traffic by Air Between the United States and Ecuador - U. S. Flag Traffic as Percentage of Total Traffic.



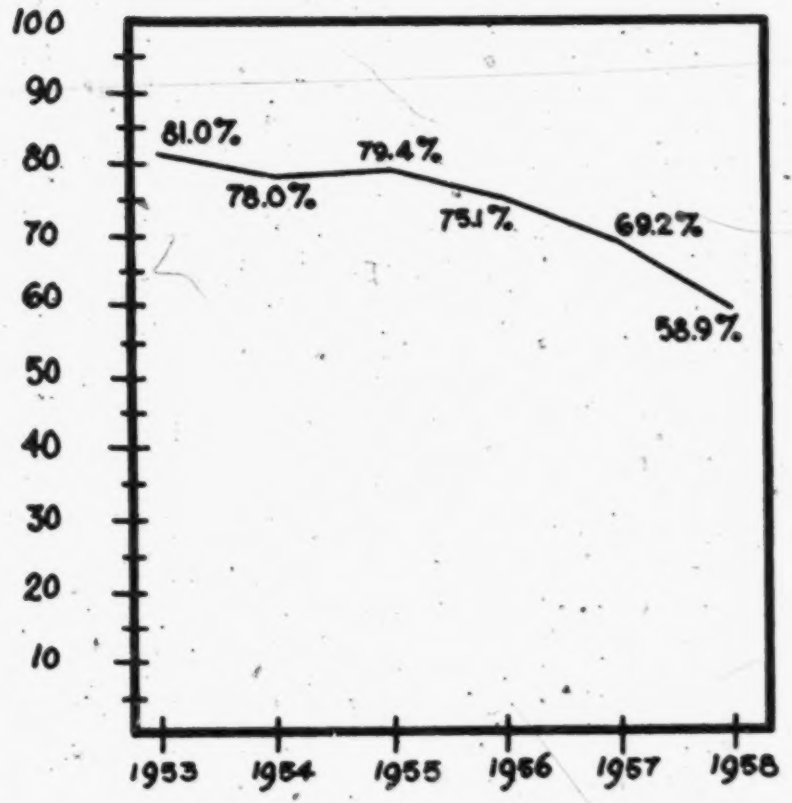
Note: Ecuadorean airline, Aerovias Ecuatorianas (AREA), began operating between Quito and Miami July 1951. It suspended international service in February 1954 and has since operated only domestic service within Ecuador.

Source: Based on Immigration and Naturalization Service statistic supplied by the Antitrust Division. 1958 figures for Ecuador are not available.

[fol. 5374]

ANNEX 38D

D. Passenger Traffic by Air Between the United States and Argentina - U. S. Flag Traffic as Percentage of Total Traffic.



Source: Based on Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

[fol. 5376]

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ANNEX 39

DECLINE IN U. S. FLAG PARTICIPATION IN PASSENGER TRAFFIC BY AIR BETWEEN THE UNITED STATES AND SOUTH AMERICA

1953 - 1958

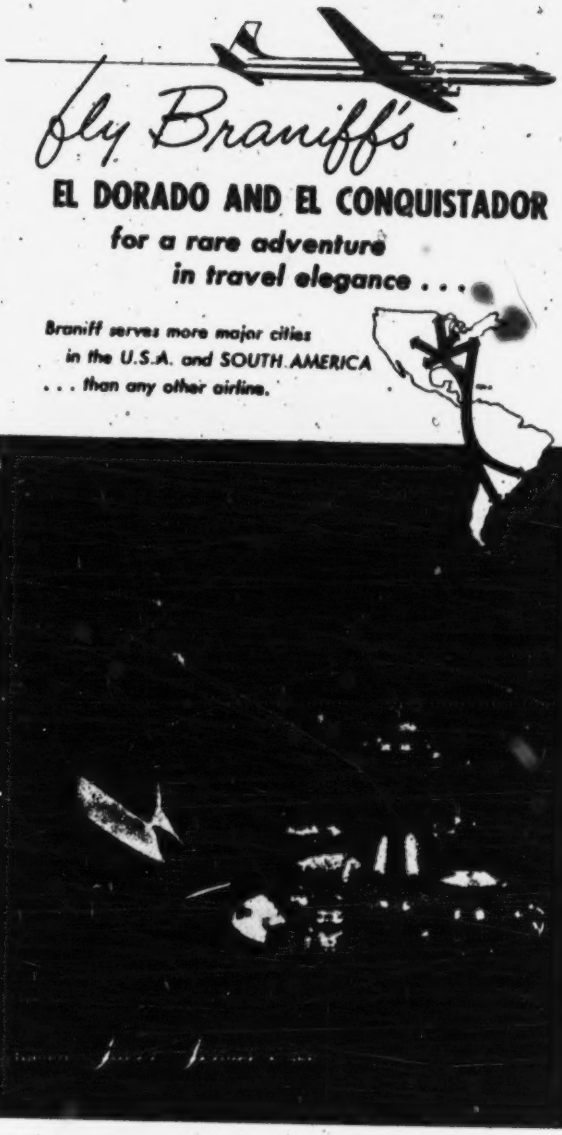
Passenger Traffic by Air Between the United States and South America
U. S. Flag and Foreign Flag Traffic as Percentage of Total Traffic

	1958		1957		1956		1955		1954		1953	
Country	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign
Argentina	58.9	41.1%	69.2%	30.8%	75.1%	24.9%	79.4%	20.6%	78.0%	22.0%	81.0%	19.0%
Bolivia (1)	N.A.	N.A.	100.0	-	100.0	-	100.0	-	100.0	-	100.0	-
Brazil	41.6	58.4	48.1	51.9	45.5	54.5	66.1	33.9	80.2	19.8	78.2	21.8
Chile	N.A.	N.A.	36.6	63.4	73.9	26.1	96.6	3.4	98.3	1.7	99.8	0.2
Colombia	32.4	67.6	29.6	70.4	28.8	71.2	32.0	68.0	32.9	67.1	30.3	69.7
Ecuador	N.A.	N.A.	70.1	29.9	81.1	18.9	84.8	15.2	86.9	13.1	74.5	25.5
Peru	73.0	27.0	78.3	21.7	84.4	15.6	89.8	10.2	98.9	1.1	99.9	0.1
Paraguay	N.A.	N.A.	77.5	22.5	82.7	17.3	98.9	1.1	100.0	-	99.1	0.9
Uruguay	N.A.	N.A.	79.0	21.0	78.7	21.3	86.1	13.9	97.7	2.3	99.4	0.6
Venezuela	58.8	41.2	72.7	27.3	64.3	35.7	59.3	40.7	57.7	42.3	55.5	45.5
Guianas & Falkland Islands (2)	N.A.	N.A.	92.0	8.0	96.2	3.8	99.1	.9	99.7	.3	99.3	.7
Other South America (3)	55.2	44.8										
Total South America	53.2%	46.8%	60.9%	39.1%	59.9%	40.1%	62.8%	37.2%	65.1%	34.9%	63.1%	36.9%

Braniff serves more major cities in the U.S.A. and South America ...than any other airline!

BRANIFF *International* **AIRWAYS**

General Offices: Dallas, Texas



THE NEW YORKER

July 12, 1958
August 9, 1958
September 13, 1958
October 11, 1958

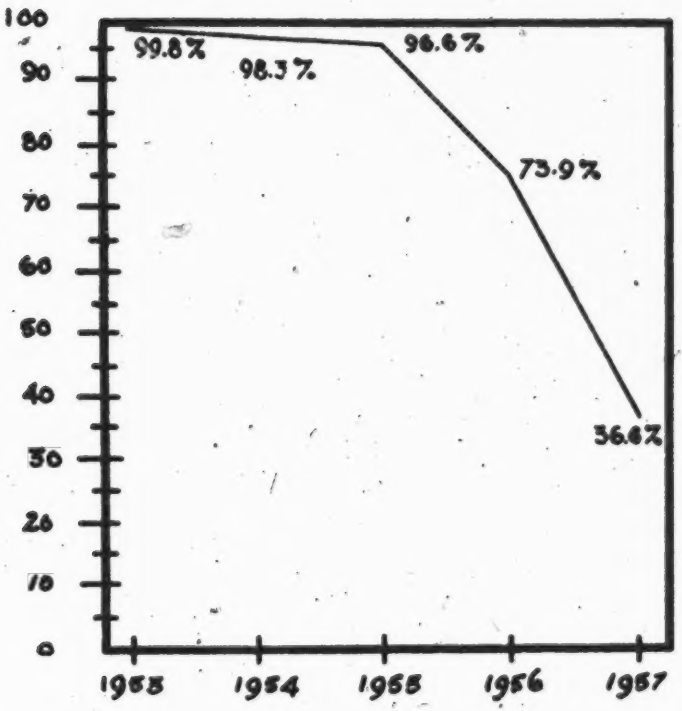
TIME

July 21, 1958
August 18, 1958
September 22, 1958
October 13, 1958
November 17, 1958
December 8, 1958

ANNEX 38A

GRAPHS SHOWING DECLINE IN U. S. FLAG PARTICIPATION IN PASSENGER TRAFFIC BY AIR BETWEEN THE UNITED STATES AND VARIOUS SOUTH AMERICAN COUNTRIES

A. Passenger Traffic by Air Between the United States and Chile - U. S. Flag Traffic as Percentage of Total Traffic.

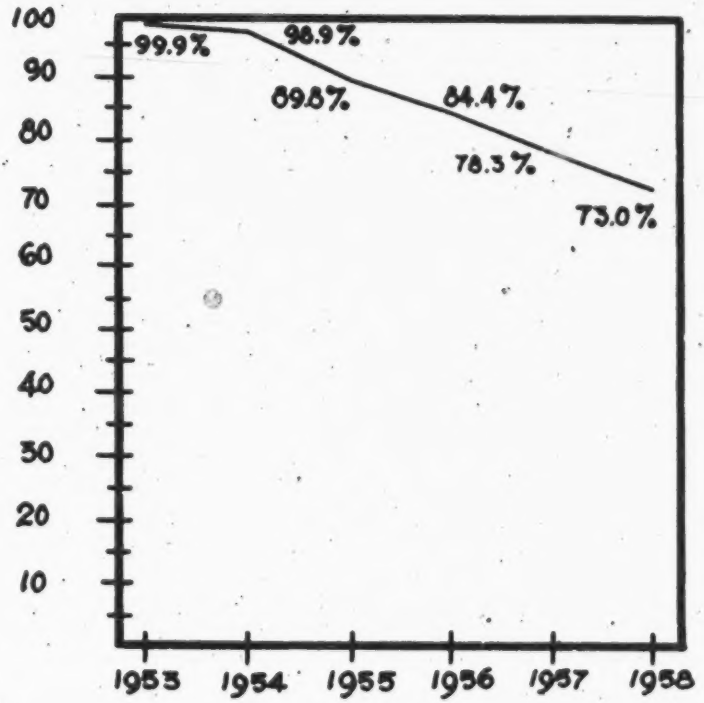


Source: Based on Immigration and Naturalization Service statistics, supplied by the Antitrust Division. 1958 figures for Chile are not available.

[fol. 5372]

ANNEX 38B

B. Passenger Traffic by Air Between the United States and Peru - U. S. Flag Traffic as Percentage of Total Traffic.

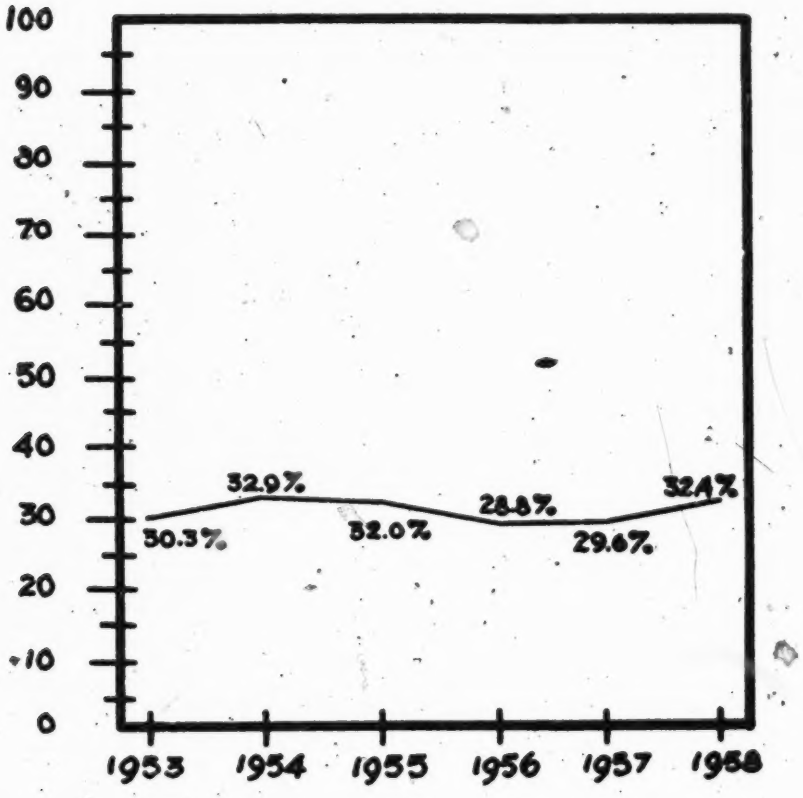


Source: 1950 through 1957 figures based on Immigration and Naturalization Service statistics, supplied by the Antitrust Division. 1958 figures based on published Immigration and Naturalization Service statistics.

[fol. 5375]

ANNEX 38E

E. Passenger Traffic by Air Between the United States and Colombia - U. S. Flag Traffic as Percentage of Total Traffic.



Note: Braniff inaugurated thrice weekly New York/Bogota, Colombia service via Washington, Miami, and Panama effective May 15, 1957.

Source: Based on published statistics of the Immigration and Naturalization Service, U. S. Department of Justice.

tries such as Brazil spawned one airline after another. Towering mountains and swamp jungles made railroad construction a gigantic task. But given a small clearing and even a secondhand plane, airlines could get around the countries.

Both Pan Am and Panagra saw a huge, untapped market. Pan Am, for one, established inter-country routes, then helped set up feeder lines such as Costa Rica's LACSA.

After the war, Latin countries raced to get into the international airline business. They felt more closely oriented to the U.S. than to Western Europe—for the first time in their history. Sensitive about national pride, they wanted the prestige of flag-carrying airlines, just like European and other countries. Beyond that, as U.S. domestic airlines modernized, a raft of cheap DC-3s and DC-4s—just right for small landing strips and hardy use—glutted the secondhand plane market.

• **Tit for Tat**—Then came the jostling for air rights, into the U.S. and between Latin countries. Under bilateral agreements, the U.S. and Latin countries would grant reciprocal rights for each others' carriers. But Latin countries did not always act that politely toward each other. For instance, Aerovias Panama (APA) recently was struggling for a foothold on the highly competitive Panama-Miami run. Panama refused passenger pickup rights to Ecuador's Compania Ecuatoriana de Aviacion (CEA). Ecuador retaliated by refusing rights for APA into Guayaquil.

• **Bonanza for Miami**—Meantime, Miami International Airport has become the second busiest airport here, with some 30 U.S., Latin, and European lines flying to and from the islands and the continent to the south. Today, this gateway handles nearly 1-million foreign passengers, mostly Latin Americans, or twice the figure of a decade ago. Air-cargo traffic also is soaring. Pan Am handled 43.3-million lb. during the first half of 1958—8% above the same period last year.

Miami also has turned into a nuts-and-bolts servicing depot for a horde of airlines. Four companies—Aerodex, American Airmotive, ACES, and L. B. Smith—did a reported $35-million business last year overhauling Latin fleets.

IV. Skies Full of Trouble

Clearly, as even the most optimistic airline executives admit, the battle of the Latin airways can't go on forever.

The Latin lines have had some obvious advantages. As REAL's Miami manager points out, the pay scales for flight and ground crews in Brazil "are a lot lower than in the U.S., though they have the same qualifications." They also can appeal directly to the Latin American's national pride and, in many cases, small pocketbook. Probably the lower fares have been a good thing—opening travel to Latinos who knew little about their neighbors to the U.S., forcing U.S. lines to dress up their somewhat stodgy service.

But the plethora of new airlines faces all sorts of troubles. While some, such as TACA—owned by New Orleans' Waterman Steamship Lines—provide daily Viscount service around Central America, others have barely enough equipment to maintain international schedules. Quite a few lack modern radar equipment, and also have frequent, little-publicized crashes. All too many live off sizable, long-term handouts from governments—Chile, for example, is backing LAN airline to put it in the race. And a handful are simply heading straight for bankruptcy.

• **Small Potatoes**—Beyond that, Latin America, though generating far more traffic than it did five years ago, is still small potatoes, compared to Western Europe. U.S. tourists spent only $36-million in South America last year, against $609-million in Europe.

Then, with riots and revolutions still plaguing Latin America, many carriers get more headaches from Latin politics than from Latin airline competition. The wave of troubles earlier this year—Perez Jimenez' overthrow in Venezuela, Rebel Leader Fidel Castro's planned general strike in Cuba, and the stone-throwing at Vice-Pres. Nixon—cut sharply into airline revenues.

In addition, it will take more business connections and skill than many Latin lines can muster to finance their way into the jet age. Brazilian lines, for one, have $55-million worth of jets ordered. Even with financial help from the plane makers and Export-Import Bank loans, this outlay will help squeeze Brazil's already tight dollar shortage.

To top it off, there's no place to land jets in Brazil except at the new jungle capital, Brasilia—and other countries have this same problem.

• **Merger Is Out**—One answer to all this competition is a broad merger of non-IATA carriers into one company or conference. Though much discussed, this solution seems far off. Another idea, which makes good sense, is greater teamwork between two or three lines. Nicaragua's Lanica, reportedly controlled by Dictator Somoza, is working closely with TACA. In Mexico, Compania Mexicana de Aviacion, S.A. (partly owned by Pan Am) and Aeronaves de Mexico, S.A. (owned by ex-Pres. Aleman) seem to be edging toward an informal merger deal.

As for Pan Am, which expects no letup in competition, one official says: "We've just got to develop more business from customers wanting to fly with a more efficient outfit." end

AVIATION WEEK - MARCH 16, 1959 80

ANNEX 40B

AIR TRANSPORT

Latin Rate War Nears Showdown Stage

Predicted settlement of fare cutting dispute not expected to trim foreign-carrier competition.

By L. L. Doty

Miami—Stormy rate-cut war that has embroiled some 60 airlines throughout Latin America and the Caribbean for the past five years finally appears headed for a showdown.

However, any settlement of the conflict, which reached its peak with the under-cutting of established fares by as much as 40% by some South American carriers, is not expected to stem the torrent of competition that has built up against the U.S. airlines. Despite the apparent harmony reached on the rate and fare issue, hidden protective barriers—created by the strong surge of nationalism that has swept the Latin American continent since World War II—will continue to stifle attempts by U.S. carriers to meet that competition squarely.

Most observers here close to the Latin American picture feel the fare war will be resolved only because the undercutters are now threatened with the possibility of being undercut themselves. Recently, U.S. airlines and other member carriers of the International Air Transport Assn. won the right to charge fares 10% less than the low rates offered by non-members of IATA.

Latest Developments

Here are the latest developments in the airline situation in South America:

• **Meeting of governments** in Rio de Janeiro in January (AW Jan. 19, p. 30) created an air of optimism that an equitable fare pattern could be reached that would bring a halt to cut-throat competition. Participating countries agreed in principal that IATA fare levels would be set as standards in South American rate structures. Meanwhile, present fares have been frozen temporarily to stave off an all-out war until all airlines concur on IATA standards.

• **Meeting of airlines operating in South America**, scheduled to begin today at Lima for the purpose of setting rates, has been postponed temporarily. U.S. is waiting for assurance that rate of currency exchange and agent commission issues will be resolved before any meeting on fares is convened. Observers say the postponement does not indicate a delaying action on the part of South American carriers, but that is simply the result of time-consuming efforts to coordinate all countries on all the issues involved.

• South American carriers are still determined to impose stiff restrictions on Fifth Freedom traffic. These airlines are insisting that 75% of all traffic traveling between two South American countries should be diverted to the flag carriers of those countries.

Small balance of 25% to be flown on U.S. carriers will have a depressing effect on gross revenues of those airlines, according to officials of companies here.

Principal problem lies in the large number of airlines which now saturate the Latin American and Caribbean markets. And, of the 62 carriers competing for business up there, 47 operate to the U.S. as compared with 14 scheduled airlines that serve the U.S. through the transatlantic route.

Among the scheduled carriers competing for business throughout the area are eight major European airlines, with KLM, for example, serving as many as 28 cities in Latin America and the Caribbean. Japan Air Lines this year plans to begin scheduled service on its South American route to add to the runaway battle for traffic (AW Dec. 29, p. 30).

Latin American Story

Cut-rate war among South American carriers has focused attention on the problems U.S. airlines are facing in the development of Latin American air travel markets. Following a survey of carriers serving Latin America, Aviation Week has prepared a series of two articles analyzing the major issues creating these problems. The accompanying article covers the fare issue as it now stands. A second article next week will deal with specific traffic problems as they are related to rates and to the bilateral pacts between the U.S. and Latin American countries.

Majority of the South American carriers are IATA members, as are all U.S. flag carriers offering scheduled passenger service south of the U.S. border—American, Braniff, Delta, Eastern, National, Panagra, Pan American and Western. However, in the foreign flag carrier group there are 13 non-members of IATA which refuse to abide by IATA fare standards and offer bargain rates far below fares charged by their competitors.

Round Trip Rates

For example, CINTA, a Chilean airline and non-member of IATA, quotes a fare of $515 round trip between New York and Santiago as compared with the $771.60 tourist and $983.10 first class rate published by Panagra. Aerolineas Peruanas offers a $451.90 round trip Miami-Buenos Aires fare as compared with Pan American's tourist fare of $778 round trip between the two points.

Attempts to force such carriers to hike their rates to more reasonable levels have failed in the past. Generally, these operators have been able to survive lower revenues because of low costs.

They have purchased second-hand aircraft with low writeoff charge and kept wage-scales at minimum levels. They hold down overhead costs through such devices as renting ground equipment from airport operators or other carriers for the short periods of time it is actually needed and used. Also, the cut-rate lines generally confine service to the plush, profitable routes leaving the less productive areas to IATA members.

AVIATION WEEK - MARCH 9, 1959

U.S. Flag Lines Feel Competitive Pinch

By Glenn Garrison

New York—Increased foreign competition, slowed traffic growth, and labor troubles helped make 1958 a problem year for most U.S. flag carriers as they struggled to handle the transitional problems and financial load of expensive jet fleets now rolling off production lines.

Pan American World Airways kicked off the U.S. jet age last fall with transatlantic Boeing 707-120 schedules, but heavy impact of jets on the international market won't be felt until they are delivered in quantity sometime next year. Meanwhile, U.S. operators faced a snarl of international controversy over jet surcharges and bilateral agreements as they prepared for full-scale jet services.

Foreign-flag carriers with expanded piston and turboprop fleets made the most of the interim last year and cut into the U.S. share of the total traffic. The U.S. carriers registered slight gains for the most part in 1958 but in some cases suffered decreased traffic totals. For various economic and political reasons, services to some geographical areas were particularly hard hit and everywhere business was still booming, as on the North Atlantic, the U.S. share was smaller.

Pan American, biggest U.S. flag operator, gained only 9,720 passengers last year on its world-wide services—an increase of 0.3% to 2,892,894. Its Atlantic operation was responsible for this small gain, since Pan American's Latin Division and Pacific Alaska Division traffic were well under 1957 totals.

Latin Price War

Trans World Airlines, hit by a mechanics' strike last fall, carried 273,870 scheduled passengers on its international routes, a gain of 9% over the previous year. TWA, however, carried 44,933 charter passengers, mostly under Military Air Transport Service Contract, during 1958, for a total scheduled and charter increase of 13.7%. Panagra's traffic between the U.S. and South America dropped from 139,409 passengers to 128,776. The airline went to the Civil Aeronautics Board last fall with a request for subsidy, blaming its losses on cut-rate foreign competition and expressing the fear of an all-out price war in the South American air market.

Delta Air Lines' international traffic fell from 70,062 to 57,829 passengers. President C. E. Woolman listed the economic recession and political unrest in the Caribbean as factors in the 1958 results. United Air Lines carried 100,160 passengers in its territorial operation to Hawaii, a drop of 1.8%.

American Airlines carried 127,000 passengers between the U.S. and Mexico, down from 138,000 in 1957. American last January began flying daily non-stops between Chicago and Mexico under new authority resulting from the Mexican-U.S. agreements of 1957. Nonstop character of the flights resulted in an increase in passenger miles for the year from 100,303,000 to 115,302,000. A pilots' strike and increased foreign and U.S. competition to Mexico were factors in the passenger drop.

Other Gains

Braniff Airways' South American operations showed a 6.2% gain in 1958 for a total of 46,548 passengers. National Airlines carried 51,433 passengers on its routes to Cuba from Miami, New York and Tampa, up from 40,168 in 1957.

Total travel market between the U.S. and foreign countries increased last year, but at a slowing pace. Air passengers totaled 3,402,333 during the year ended June 30, 1958, an increase of 11% compared to a 15% increase during the previous year (most Canadian traffic is excluded from these figures). U.S. scheduled and non-scheduled flag lines' share of the total was 60% during the year ended June 30, 1958. This was a drop of 2%.

Foreign flag carriers increased their total of passengers into the U.S. by 13% and of passengers departing the U.S. by 23%. Respective U.S. air carrier increases were 5% and 10%.

Airlines fared extremely well, however, compared to sea carriers during the year ended June 30, 1958. Arrivals in the U.S. from foreign countries by sea dropped 7% to 634,644 passengers. Departures increased by only about 5,000 passengers for a total of 584,906. Air traffic led sea traffic for the period by 2,182,783 passengers.

Pan American's appearance last year as the first U.S. jet operator on the international scene emphasized a number of political, economic and operational problems the U.S. flag carriers face. In one of the hitter battles over traffic right agreements between this country and others, inauguration of Pan Am's jet service to Paris was threatened by France's denunciation of its bilateral pact with the U.S. It appeared uncertain almost up until the Oct. 26 inaugural date whether France would let the Pan American jet come into Paris. France's requests for a polar route and broader service rights in the U.S. are still under negotiation. They are typical of the controversial problems which exist in this area as foreign carriers seek to expand their U.S. markets and U.S. carriers battle against the inroads of foreign competition.

Another battle with Pan American in the thick of the fray broke into the open last fall when International Air Transport Assn. members deadlocked on the question of jet fares. At their traffic conference in Cannes, the airlines failed to agree on this hotly-fought issue of whether a surcharge shall be applied to all turbojet fares. Pan American, backed by British Overseas Airways Corp. among others, resisted imposition of a surcharge and the conference ended without a solution. It reconvened last month and was striving hard for a compromise agreement by March 31, date the current fares expire. Unless the IATA members agree, an open-rate crisis could develop on the North Atlantic this year.

Noise Problem

From the operational standpoint, the first big hurdle Pan American had to clear with its jets was the noise barrier thrown up at Idlewild by the Port of New York Authority. An 11th-hour approval by the Port Authority allowed the airline to bring in the 707-120 under rigid operating restrictions which were gradually reduced by the start of service. The remaining anti-noise restrictions severely handicapped the jet in its first scheduled operations by limiting runway use and hence takeoff weight, resulting in a service that was rarely nonstop. BOAC's smaller de Havilland Comet 4 jet transport was also cleared for Idlewild operation and New York-London service began Oct. 4. The Comet service was not hampered by the restrictions. The situation has been improved for the Boeing by runway extensions at the airport.

For similar anti-noise reasons, Pan American had to shift its Paris jet operation from Orly to Le Bourget. Another problem arose at Rome, where the airline's initial Paris-Rome continuing flights were made with piston aircraft instead of jets because the Italian government found difficulties in the proposed jet operation at Rome's airport. Italy was accused at the time of taking its stand because of the surcharge issue, in which Alitalia is a leading proponent of a higher jet fare. The ban was lifted, however, and Pan American is now flying its jets to Rome.

The airline's contract with its pilots

AMERICAN AVIATION, WASHINGTON, D. C.
DECEMBER 15, 1957

South American airlines' cut-rating hits U.S. carriers

by Anthony Vandyk

SANTIAGO, CHILE—The extraordinary situation under which cut-price non-IATA carriers are winning traffic from the established IATA carriers may have dire consequences for the U.S. taxpayer.

If the present trend continues, Panagra's traffic may drop to such an extent it will be forced to appeal to the CAB to go back on subsidy. Braniff International Airways, too, may have to have its subsidy increased as a result of the fierce competition from these small carriers.

Both the U.S. State Department and CAB seem to be unaware of the large amount of traffic non-IATA airlines are taking away from U.S. flag carriers between the U.S. and the west coast of South America.

After an on-the-spot investigation of the situation in Peru and Chile, this writer fully confirmed the state of affairs reported in AMERICAN AVIATION Aug. 12, and which at the time was labeled "fantastic."

Competition from these cut-price carriers is increasing continuously. At present they operate eight flights weekly from Santiago to Miami, New York or Havana. From Lima there are eight flights weekly to Miami.

How big a saving do these "discount houses of the air" offer to travelers? Plenty. For example, the latest attractive fare to be offered is a $446.30 rate for a trip around South America. For this sum the passenger can travel from Miami to Santiago, across the Andes to Buenos Aires and then back to Miami via the west coast of South America.

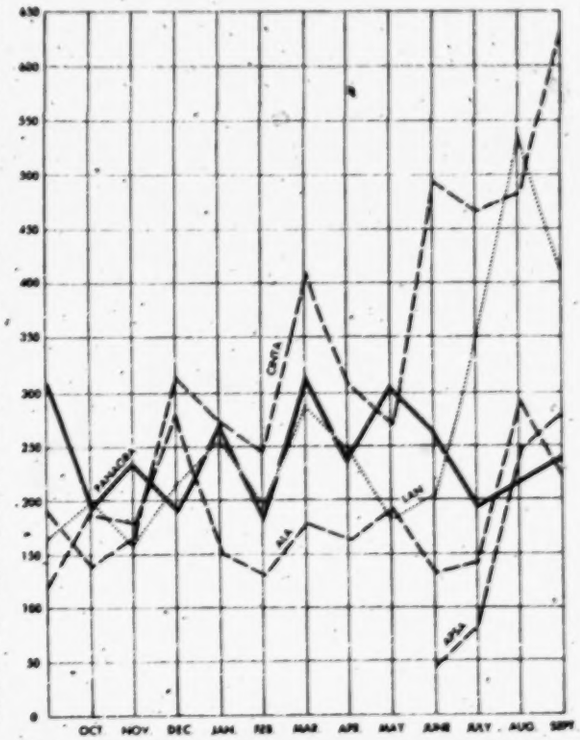
The $446.30 fare compares with IATA Miami-Buenos Aires one-way first class fare of $510 and the round-trip fare of $779 in tourist class. In fact for $446.30 you can't even get a roundtrip ticket from Miami to Lima tourist class on an IATA carrier (that fare is $473.40).

Other fares offered by the non-IATA carriers offer equal savings. For example AIA, the Chilean airline, advertises a New York-Santiago one-way fare of $269.50 which compares with the IATA first class fare of $542 and the tourist fare of $412.

Another Chilean airline, CINTA, has a $230 Miami-Santiago fare which contrasts with the IATA tourist fare of $368. This carrier also has a family fare plan, offering further savings. Between Lima and Guayaquil APA has a $75 30-day excursion fare which is exactly the same as the one-way IATA tourist fare, the IATA roundtrip tourist fare is $135. Under-the-counter discounts often reduce the discounters' fares even more.

Who are these cut-price carriers? There are six now operating on the west coast of South America. Three of

How South American airline traffic has been increasing



INCREASING TRAFFIC being carried by cut-rate carriers on west coast of South America is shown in this chart which covers all northbound passenger movements from Santiago, Chile, between Sept 1956 and Oct. 1957. Panagra and LAN, Chile's government-owned airline, are the only two IATA carriers.

ALA'S OVERHAUL BASE at Santiago, Chile, is modest. Newly delivered DC-4 looks like a DC-6 because of paint job which disguises shape of windows. CINTA uses similar scheme on its "Super DC-4B's" which are painted in colors similar to those used by Panagra.

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ANNEX 40C

AMERICAN AVIATION - JANUARY 28, 1959

Fare-Cutting Practices of Latin American Airlines May Be Ended

Some hope of relief from the bitter and sharp fare-cutting practice of many Central and South American airlines was seen by U.S. carriers following a meeting of the Latins in Montevideo last month.

Called together for the first "working meeting" since the group organized the Asociacion Latino-Americana de Transportadores (ALTA) in April of last year, the group expressed an awareness that only by technical and financial arrangements between each other can they prevent a situation that in the long run will prove ruinous to the whole airline business in Latin America.

Two resolutions of primary importance were adopted at the meeting. The first was mainly in support of a meeting of Latin American civil aeronautics authorities representing the various governments. It would be held in Rio de Janeiro sometime this month and would be aimed at coordinating air legislation between the countries. The ALTA resolution supported the need for meetings of this type at regular intervals so that problems might be tackled in their early stages and it also endorsed proper rate structures covering the various types of services in the area.

The second resolution gave each member of ALTA the freedom to become a member of IATA and at the same time expressed hope that concerted action between the two associations might be reached at a future date.

The Montevideo meeting was presided over by Dr. Emilio Rodriguez Larrain of Aerolineas Perunas. One of the principal speakers was Sr. Rubem Berta, executive head of Brazil's Varig and also a member of the IATA executive committee. Sr. Berta described the general operating conditions of IATA and the advantages it offers members and, in turn, their responsibilities.

Berta said that he sympathized with the problems facing the carriers and declared that he is prepared to propose to the IATA executive committee that those carriers aspiring to membership in IATA be permitted a period of grace in which they would be allowed to operate at their present lower rates while establishing themselves in a position to live up to IATA obligations.

Also addressing the meeting was Sr. Rene Pairoa, executive head of Cinta-Ala of Chile, which operates low price services between Chile and the U.S.

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He stated that most of the small Latin airlines hoped someday to join IATA and that the formation of ALTA was a step in that direction.

"We have created an economical type of service to suit the needs of travelers in Latin America," he said. "We operate in good faith and have established a place for ourselves in the travel market which we intend to defend. It is not *fair* to say that we have deviated traffic from the big carriers. Maybe there is some deviation of traffic to us because of our lower rates, but the bulk of our customers are people who could not otherwise have traveled by air."

Pairos stated that he was convinced that establishing ALTA was a good thing and that "in time some harmonious relationship can be established between ALTA and IATA—and, in fact, it might eventually be possible for all of us to join IATA because we recognize the need for standardization of rates for different qualities of service, and the organization of resources for the benefit of the traveling public and the airlines themselves."

These expressions of interest in some possibility of meeting IATA regulations and operating conditions at a future date made U.S. flag carriers wonder. That they have a right to wonder is unquestioned, for unhampered by IATA regulations, paying lower wage scales, flying less expensive equipment, often strongly subsidized by their governments, and frequently concentrating on only the richer routes, the carriers from south of the border have been a persistent thorn in the financial sides of U.S. airlines.

These Latin carriers have far lower labor costs due to the cost-of-living. Their monthly pay for a top captain ranges from about $300 a month in Brazil to $1,100 a month in Cuba. This compares with $2,000 a month for top captains of Pan American flying the routes. Further examples are Pan Am's pay for top copilots of about $1,250 a month compared to a range of $250 to $575 for the Latins. And Pan Am stewardesses make around $418 per month whereas $250 is the very top for the competition.

A recent study shows that in the past half-decade airlines flying into Miami from Central and South American countries climbed from 11 to 23 and that the number of flights doubled, reaching 178 from 89. The impact is being presented by Miami civic organizations for the drawing-off of passengers from U.S. carriers is slicing airline revenues. This means one thing: labor layoffs, which is easily understood in all countries despite language barriers.

NEW YORK TIMES . JANUARY 28, 1959

LATINS FOR AIR CURBS

Would Limit Foreign Lines on Passenger Traffic

Special to The New York Times.

RIO DE JANEIRO, Jan. 27—South American nations moved today to restrict United States and European airlines in carrying passengers between South American points. All seven South American delegations to the regional civil aviation conference voted to recommend limiting extra-continental airlines to 25 per cent of the regional passenger traffic and dividing the remaining 75 per cent among South American airlines.

The United States delegation refused to discuss multilateral agreements on passenger traffic and abstained from the voting.

All delegates approved a recommendation to allow so-called underdeveloped airlines to charge 10 per cent less than regular rates.

South American West Coast Cut-Price Operators

Airline	TAN	APSA	CEA	APA	ALA	CINTA
Country	Honduras	Peru	Ecuador	Panama	Chile	Chile
Aircraft	C-46	C-46	C-46	C-46	L-49	DC-4
No. of seats	36	36	36	40	54	55
No. of flight attendants	2	2	2	3	3	2
Free hot food	yes	yes	yes	yes	yes	yes
Free cocktails	no	no	no	*	yes	yes
Free wine	no	no	no	yes	yes	yes
Free champagne	no	no	no	yes	yes	yes
Free liqueurs	no	no	no	yes	yes	yes
Baggage allowance	66 lbs.	66 lbs.	66 lbs.	66 lbs.	66 lbs.	55 lbs.
Flight crew nationality	U.S.	U.S.	*	U.S.	Chilean	Chilean
On-time performance	very good	fair	*	fair	fair	good
Publicity	excellent	fair	*	good	good	excellent

* No data available.

them operate in close cooperation—TAN (registered in Honduras), Compania Equatoriana de Aviacion (registered in Ecuador) and Aerolineas Peruanas S.A. (registered in Peru).

Observers close to the scene believe that TAN is the guiding force and that this carrier makes available aircraft and pilots to the other two. C. N. Shelton, a vice president of TAN, is said to be responsible for much of the success of the operations of the three carriers. CEA and APSA use TAN's facilities and reservations system in the U.S. The three carriers operate C-46 equipment exclusively.

The cut-price airline operating the most modern equipment from the west coast of South America north is ALA, a well-heeled company which actually is a division of Compania Salitrera de Tarapaca y Antofagasta, a huge nitrate company. This carrier now owns the L-49 Constellation which it previously leased from Cubana to fly up the west coast from Santiago to Havana. While this aircraft was being overhauled, Cubana leased a Super-G Constellation to ALA. APA also uses C-46s to fly to Panama which connect with APA flights to Miami. It recently took delivery of some DC-4 equipment.

Perhaps the best-known of the cut-price carriers is CINTA, which has the financial backing of Compania Sud Americana de Vapores Chilen, a major steamship company. This carrier uses DC-4 equipment painted in the same colors as the aircraft of Panagra. It names its flights to the U.S. Latin Americano which is very much like the name long used by Panagra for its first class service—Inter Americano.

The sixth cut-price carrier is Aerovias Panama Airways (APA) which operates twice weekly between Miami and Lima. Its schedules are also coordinated with those of Rutas Aereas S&M, a Colombian affiliate of KLM, to provide service at cut rates to Medellin and Bogota. APA operates C-46s on its flights down the west coast.

The $446.30 round-South American fare offered by TAN, CEA and APSA involve the use of the Brazilian cut-price airline REAL from Buenos Aires to Miami. This carrier has operated DC-4s for many years at lower-than-IATA fares. Currently it flies four times weekly between Argentina, Brazil and the U.S. (three flights terminate in Miami while the fourth continues to Chicago).

Soon, however, REAL will introduce Super-H Constellations on this service and at the same time will increase its fares to IATA tourist levels.

How can U.S. carriers protect themselves against the increasing traffic from non-IATA airlines on the west coast of South America? Undoubtedly, if they so desire, they could beat the cut-price airlines at their own game. This might involve using DC-4s or DC-6s operating a frequent service at prices competitive to those charged by the non-IATA group. But this, the U.S. carriers feel, might divert traffic from the present services.

Another method would be for protests to be made to State Department and CAB. This, however, might invite retaliatory action.

The problem is worrying two U.S. carriers. The cut-price carriers are actually developing a market of traffic for there is no question that many of the travelers who use their services would not fly at all if they had to use IATA carriers at their present fares. They just could not afford it.

To the carriers who have opened up South America to commercial aviation, built airports, installed navigational facilities and educated the local people to regard the aircraft as a transport vehicle rather than an object of fear, the situation is frustrating. But every day it continues and more passengers flock from the U.S. carriers to the cut-price airlines.

Chances are that, in the end, it will be the U.S. taxpayer who pays.

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ANNEX 40F

WALL STREET JOURNAL

JANUARY 29, 1958

Latin Airlines

They Swarm Into U.S.; Lower Fares Win Trade From Yankee Rivals

They Cut Costs With Cheaper Planes, Labor; Some Draw Big Government Subsidies

Flying the Barefoot Trade

By Cal Brumley
Staff Reporter of The Wall Street Journal

MIAMI—"We taught the Latins to fly and now they are taking our business," grumbles an executive of the Latin American division of Pan American World Airways here.

When the roar of a Convair Super 340 passing overhead recedes, the executive adds: "And don't let anyone kid you. This Latin airline competition is serious. In our Latin division, where only nine international airlines competed for traffic in 1946, there are more than 30 flying today."

The hard-pressed U.S. airline industry, already buffeted by rising costs and shrinking profits, is worriedly watching a flourishing number of Latin-owned air carriers slice off bigger and bigger hunks of the U.S.-Latin America traffic. Nearly 1.5 million travelers annually fly between the U.S. and the score of American republics that lie to the south, some 50% more than the number that fly between the U.S. and Europe each year.

And the Latins' inroads appear to be just beginning. Additional Latin airlines are planning to compete with U.S. carriers on U.S.-Latin America routes. And some of the Latin lines are laying plans for extending their operations to compete with U.S. carriers on Atlantic and Pacific routes.

Latin Lure

The chief Latin lure: Lower fares, made possible by cheaper equipment, low cost labor and, in some cases, heavy government subsidies. For example:

The one-way fare from Miami to Guatemala City on Empresa Guatemalteca de Aviacion, the Guatemalan government airline, is only $88, excluding taxes. Pan American's fare is 30% higher.

A flight from New York to Santiago, Chile, costs only $280 on Cinta, a Chilean line, while the cheapest fare on Panagra, its U.S.-owned competitor, is $412.

And it is $43 cheaper to fly from Chicago to Sao Paulo, Brazil, on Real Aerovias, a Brazilian carrier, than it is to take Braniff Airways.

Foreign Competition

While more than 80 lines battle for Latin American traffic, including such U.S. carriers as Pan Am, Braniff Airways, American Airlines, National Airlines, Eastern Air Lines, and Pan American-Grace Airways, only eight foreign carriers contend with Pan American Airways and Trans World Airlines for the trans-atlantic traffic, and only two foreign airlines compete with Pan American and Northwest Airlines for the cross-Pacific business to and from the U.S.

Foreign-owned airlines raked in some $238 million from globe-trotting Americans in 1956. This was 44% of the total the U.S. travelers spent on international air travel that year and compared with 43% in 1955.

Growing foreign competition is particularly painful to American carriers now. The average profit margin of the U.S. carriers has plunged to about 3.2% from as high as 7% in 1952. One U.S. airline, Braniff, already is receiving a Federal subsidy on its South American routes: $700,000 for fiscal 1958, for instance. And there is talk in the industry that other lines, such as Panagra, soon might ask for Federal aid. Even an interim 6.4% increase in fares, granted this week by the Civil Aeronautics Board, is termed "inadequate" by many of the U.S. airlines to solve their growing financial troubles.

In addition, the toughening competition comes just at the time the Yankee lines are trying to raise more than $2 billion to purchase some 340 new jet and turbo-prop craft which they have on order.

Pan Am's Revenues

Pan American officials say the Latin competition is becoming so rigorous that its Latin division yields only 5.8 cents on each mile traveled by a paying passenger compared with a yield of 7.9 cents per passenger-revenue mile on Pan Am's transatlantic flights.

For an idea of how the Latin airlines are swarming into this country, stroll down the flight line here at Miami's International Airport, the favorite port-of-entry for the Latin lines. No fewer than 22 Latin American airlines touch down here with such craft as DC-4's, Constellations, Viscounts and converted C-46's. Five of these lines have made their maiden flights to the U.S. within the past year. Ten years ago only two airlines from the south ventured this far north.

More newcomers are expected this year. "There probably will be one or two Argentine airlines, one from Haiti and another from Ecuador in Miami shortly," says Thomas R. Green who makes a practice of keeping track of such plans. Mr. Green is president of Dispatch Services, Inc., which contracts to operate ground crews and ticket agents for the foreign lines.

The U.S. doesn't permit foreign lines to compete with domestic carriers for business and passengers traveling between U.S. cities. However, a foreign line with proper permission can offer its international service to and from other points in the U.S. besides just such coastal spots as Miami. Consequently, many Latin lines are now pushing their service inland and to the busy U.S.-European runs to compete with the international service of U.S. lines.

Continued From First Page

naves de Mexico started Mexico City-New York flights in December. Empresa de Viacao Aerea Rio Grandense, a Brazilian airline known as Varig, is negotiating for approval to begin service to Europe this year. In these European operations, of course, the Latins also compete with U.S. airlines.

And at least one Latin line is hoping to invade the U.S. West Coast and slice off a share of the transpacific business. Real-Aerovias Brasil System, which has been flying to Chicago for the past year, hopes to obtain landing rights at Los Angeles or San Francisco as a stopover for a planned route to Tokyo. "We also would like a New York terminal," says Arlindo Maura, U.S. general manager for Real.

When a foreign airline wants to enter the U.S., or seeks to extend its service within this country, it must apply to the Civil Aeronautics Board and the State Department for approval.

U. S. Lines Complain

Yankee lines complain the C.A.B. and the State Department have been too free-handed in granting such permission. The agencies argue that permission is granted only on a reciprocal basis; when a Brazilian line, for example, is granted the right to enter the U.S., Brazil, in turn, must grant similar rights to a U.S. line. The agencies say that no permission has been granted without repayment.

"By and large," claims an executive of one Latin American line, "the United States has given the Latin lines a shabby deal. Until the recent bilateral agreements between the U.S. and Mexico, there were nine U.S. lines operating into Mexico and only one Mexican line going into the U.S. and it was partly owned by Pan American."

There are some reasons besides lower fares that explain why Latin airlines are doing so well. For one thing, many South and Central Americans prefer to fly on lines operated by fellow-countrymen as a matter of national pride.

Lower Fares

But the main reason is the lower fares offered by many of the Latin airlines. In the word of a Honduras airline executive: "You might say we fly the barefoot trade."

Not all Latin airlines offer fares lower than their North American competition. Some of them, like most U.S. lines, belong to the International Air Transport Association which sets uniform prices on overseas runs. These include such lines as Cubana de Aviacion and Varig, a Brazilian line, which fly such up-to-date planes as the Viscount and Super Constellation. A majority of the Latin lines, however, do not belong to the I.A.T.A. and consequently do not abide by the association's rules on fares.

One reason these lines are able to tempt passengers with lower fares is that they fly what the U.S. lines are inclined to class as jitney or second-hand equipment. Most bargain-priced Latin international flights are made in DC-4's which lumber along at 220 miles per hour. A Constellation cruises at 300 and a Super Constellation or DC-7 sails along at 340 to 360 miles per hour.

Cost of jitney equipment, most of which was purchased used or from Government surplus, is much lower than that of new planes used by the North American lines. Transportes Aereos Nacionales, a Honduran airline known as TAN, which flies four converted C-46's, paid only $3,000 for its first plane, says its vice president and general manager, C. N. Shelton. He declines to name the prices paid for the other three, but says, "We couldn't operate without the inexpensive equipment." A new DC-7B carries a price tag of $3,250,000.

Another reason that the Latins can operate on the low fare schedule is cheaper wage rates. The president of a line in Peru says wages in South America are a third less than in the United States.

Also helping the Latins keep their fares down is considerable aid from their own governments. The Air Transport Association complains that in a recent eight year period Argentina put $83 million into its airlines either in direct cash subsidy or stock ownership. And some of the lines, of course, are government-owned and can get by with smaller profits than privately-owned carriers.

Lower Taxes

Too, many of the Latin flyers are not hit as hard by taxes as their Yankee competitors. For example, while U.S. corporations pay income taxes as high as 52% of their profits, Honduras, the home of TAN, has a tax rate of 20% to 25%, says TAN's Mr. Shelton. "There's no doubt about it," he says, "lower income taxes are one reason we can charge lower fares."

Another cost-cutting technique peculiar to the Latin lines: A freer mixing of cargo and passengers than the U.S. lines. "We may have diplomats and a consignment of monkeys, ant eaters, snakes, tropical fish or even penguins on the same flight," says George Poulos, district traffic and sales manager for Aerovias Panama. Thus, a flight short on passengers can make up the difference by increasing its cargo. TAN, for instance, equips its planes with fold-away seats to expand or contract the passenger and cargo compartments depending on the day's business.

Many passengers are lured to the Latin lines because they often offer more direct routes than a competing North American line.

Non-Stop Flight

"We fly cheaper than anyone else because our route goes direct and non-stop from Miami to Guatemala City," says John Farrow, a sandy-haired Englishman who is U.S. traffic and sales manager for Aviateca. Pan Am's flight to the same point has stops at Havana and Merida, Mexico.

While most Latin planes are older and slower than their competing U.S. counterparts, their safety records are as good as those of U.S. flights, the Latins stoutly insist.

They also offer, in some instances, passenger amenities comparable to their Yankee competition.

Aerovias Panama Airways, which charges only $66 for a one-way flight from Miami to Panama City, compared with $94 on a U.S. line, serves hot meals, has three stewardesses to look after the comfort of passengers and serves beverages including cocktails and hard liquor, free.

"We can serve free drinks because we buy

[fol. 5388]

our liquor at Panamanian instead of U.S. prices," explains A.P.A.'s Mr. Poulos. A note for Scotch fanciers: He says a fifth of Ballentine's Scotch whiskey sells for $2.80 in Panama compared with $6.50 in the United States.

To meet the Latin competition the U.S. lines rely on faster schedules and better equipment and stress Yankee know-how. Panagra will get four of the first Douglas jets delivered to Pan Am to assure Panagra a "strong competitive position in its area." Panagra is owned by Pan Am and W. R. Grace & Co.

The Latin lines are also making progress toward modernization of equipment. Cubana de Aviacion already is flying Vickers Viscount turbo-props and is ordering Boeing 707 jets and Bristol Britannia turbo-props. Varig has two French Caravelle jets on order and is considering increasing the number to five.

More Modern Planes

The Latin lines hope to be even more competitive as they get additional modern equipment. "We expect a lot of business out of the Midwest when we put Super Constellations on our flight to Chicago," says Real's Mr. Moura. Real will take delivery on four Super H Constellations early this year to replace DC-4's on the company's runs connecting Buenos Aires, Rio de Janeiro, Miami and Chicago.

Ironically, the U.S. lines are responsible, in part at least, for the vitality of the Latin airlines. Pan American started 13 Latin lines to act as short-haul feeders for its international service and mapped out routes, trained pilots, ground personnel and pioneered public acceptance. Now many of the lines, in which Pan Am still holds a minority interest, are competing internationally.

North Americans still supply many Latin lines with know-how. TAN, Aerolineas Peruanas and Compania Equatoriana de Aviacion, for example, use American pilots.

North Americans also bankroll some of the growing Latin lines. American Winston Guest, for example, financially backs Guest Aerovias Mexico, 52% of which is owned by Mexican nationals, according to Mr. Merteiro, the line's general manager.

Just how fat the bankrolls of the Latin airlines are is hard to determine. Most of the lines are reluctant to talk about their financial health. Their status is further complicated by a frequent intermingling of private and government money in the enterprise.

TAN's general manager, Mr. Shelton, says the now-profitable airline hardly broke even from the time it was established in 1947 until its route was extended to Lima in 1954. "It was a struggle until then," Mr. Shelton says.

Compania Mexicana de Aviacion, whose stock is listed in Mexico City, is another profitable company. In 1956 it earned over $1 million, or 7.5% on gross receipts.

Pan Am executives ruefully point out, the lucrative Atlantic Div. is carrying the losses suffered by its former help mate.

I. Pan Am's Battlefields

One hot spot in the passenger war is Caracas, Venezuela.

A year ago, Pan Am was doing a thriving business on the blue-ribbon run to New York. In 1956, LAV, the Venezuelan government's own flag carrier, had begun losing its 55% share of traffic on the same run because of several crashes. Pan Am's 45% share gradually rose to 60%.

Then, KLM obtained a route from the island of Curacao in the Dutch West Indies to New York. That linked up nicely with its four flights weekly from Curacao to Caracas. Now KLM has grabbed 10% of the Caracas-N. Y. traffic, and its share is rising. To keep the customers happy, it serves up plenty of drinks, food, liquor samples for men, and small bottles of perfume for women even on the one-hour hop from Caracas to Curacao.

To protect LAV, the Venezuelan government is holding down KLM's flight frequency and lift capacity out of Caracas. Pan Am is taking its case to the government, claiming that KLM is soaking up the overflow from Pan Am and is asking permission to operate more flights. Meanwhile, KLM has behind-the-scenes leverage—the government's desire to keep on good relations with the Netherlands because of large Dutch investments in Venezuela oil fields.

• **Trouble Spreads**—To the south, Pan Am is feeling the bite of competition from Brazil's REAL, which flies from Buenos Aires through Caracas to Miami and Chicago. At first, REAL's cut-rate fares put a dent in Pan Am's traffic. Now, with two REAL flights converted to the higher IATA fares, Pan Am is taking a licking only on the Monday flight to Miami that the Brazilian line continues to run at discount prices.

That's not all the competition, either. Argentina's new Transcontinental is seeking passenger rights to Caracas.

LAV, bolstered by government subsidies, is trying to make a comeback on the Caracas-N. Y. route. American-owned Guest Aerovias Mexico is hurting Pan Am on the Caracas-Mexico City leg of the milk run to Los Angeles.

Pan Am is striking back to maintain its position. At hot Maiquetia airport, it has installed the terminal's only air-conditioned waiting room; it has just started a fly-now, pay-later plan. Two months ago, it sparked up its cabin service on its east coast route through South America by adding a third stewardess and offering free liquor to first-class passengers at all hours.

II. Panagra's Arena

Panagra, on its part, has seen a flood of newcomers in the past few years, all pocketing for west coast business.

Braniff, operating through Lima, flies over the scenic Andes to both Rio de Janeiro and Buenos Aires. It boasts top-quality "Golden Service" on its first-class flights: charcoal-broiled steaks, rock cornish game hen, and bassinets and specially prepared foods for babies. Late next year, it will begin using Boeing 707s—after, as a Braniff official puts it, "Pan Am and others have done the spadework of getting the public to accept jets."

• **Cut-Rate Poachers**—Panagra's real stumbling block has not been Braniff, but the cut-rate carriers that have been poaching on its territory since 1956. One of these is Chile's CINTA, a tiny line that started business domestically by flying from Santiago to the Chuquicamata and Potrerillos copper mines. Then, two years ago, it won rights into New York. It charged a round-trip tourist fare Buenos Aires to New York roughly one-third Panagra's price. It ran fully booked flights twice weekly. Soon, Panagra was flying the same run with many empty seats.

To make matters worse, Honduras' TAN got into the act. This fast-moving line was formed nine years ago by American businessmen, with not much more than a few C-46 Curtiss Commandos. It spread its wings to Central American capitals and to Miami, Havana, Quito, and Lima; soon worked out an interchange with Aerolineas Peruanas (APSA) to carry TAN passengers from Lima on down to Buenos Aires. Finally, it acquired three DC-6s. It sold round-trip tickets Miami-Buenos Aires for $451.80, against the IATA rate of $779. Before long, TAN was winning acceptance from U.S and Latin businessmen (partly because it gave first-class baggage allowances on a tourist ticket).

• **Retaliation**—Smarting from this competition, Panagra snapped back by selling tickets in Santiago at a special peso rate. This cut its prices in Chile by several hundred dollars. Then, Panagra, Pan Am, and other IATA carriers won permission to sell round-trip tourist flights in the U.S. at a special 30-day excursion rate—$638.40 New York-Buenos Aires.

III. The Rich Market

It's no surprise, when you look at Latin American geography, that so many lines have sprung up. Even before World War II, when Latin countries were far less developed than now, coun-

ANNEX 40G

TIME - NEW YORK, N.Y. - MAY 5, 1958

TRANSPORT

Aerial Battle

International airline operations in Latin America, only 13 years ago the virtually unchallenged preserve of Pan American World Airways and Panagra, have become the world's hottest commercial aerial battle. Fifty-six international lines, including 37 fast comets incorporated in Latin America, now fight for passengers.

The newcomers are grabbing business mainly by making themselves the "discount houses of the air." Brazil's big Real-Aerovias, charges only $432 for the round-trip excursion flight between Miami and Buenos Aires, as compared with the $779 asked by International Air Transport Association members such as Pan American. Panama's Aeroviss flies from Panama to Miami for $55, v. the standard $90—and serves Scotch highballs on the house. Last week, grimly preparing to meet the competition, Panagra got set to introduce an excursion fare of its own that will undercut I.A.T.A. rates by 30%.*

On the Cheap. Latin American airlines make rate-cutting work by an assortment of economies. Many fly aerial jitneys, such as war-surplus C-46s converted from U.S. Air Force freighters into lumbering passenger planes. Chile's thriving Linea Aerea Nacional paints its four-engined sixteen-passenger yellow and green, and calls one flight *El Latinoamericano* in courtesy association to Panagra's crack *El Inter-Americano*—but not even dubbing the plane "Super DC-4B" makes it anything but an unpressurized, 230-m.p.h. DC-4.

Other lines save enough on wages and low taxes to spy up-to-the-minute equipment. To fly four 325-m.p.h. Super-H Constellations, Real's chief pilots get $1500 a month, only about half what a U.S. captain makes for the same job. Nicaragua's tiny Lanica line recently put a pair of turboprop Viscounts on its Miami-Lima service.

Champagne Fare. But many Latin American airlines in the international runs have not had to cut rates to get business. Chile's Linea Aérea Nacional, for example, is subsidized by the government, does a sizable business at I.A.T.A. rates by appealing to national pride. Others offer special services, such as the direct European flights of Panair do Brasil. Cubana Airlines and Colombia's 38-year-old Avianca.

Varig of Brazil offers champagne-and-lobster catering. The turboprop Britannias of Aeronaves de Mexico feature speed; they have cut the New York-Mexico City flight to 6½ hours. Safety standards are generally high because international airlines must meet the requirements of the strictest country they land in, which in the case of 16 Latin American airlines is the U.S.

Fair Prospects. "Sure there's plenty of international competition," says Real-Aerovias President Linneu Gomes, "but we can beat it. We offer speed, service, safety and new planes." Real has built its fleet to 120 (v. Panagra's 19), and most of the other lines have big plans. The state-owned Argentine Airline is wrapping up a $28 million deal for six de Havilland Comet 4 pure jets to start 13-hour service between Buenos Aires and New York (almost a year before Panagra gets DC-8 jets on the same run). Varig has ordered French Caravelle jets; Real has bought four Convair jet 880s, will fly a route to Tokyo.

The effect is bound to be a tighter squeeze on U.S. carriers. Braniff Airways, which began flying to Buenos Aires in 1948 and still gets a U.S. subsidy ($550,000 in the first half of 1957), may have to ask for more. Pan American's Latin American division, which in 1956 went off subsidy that had been averaging $11 million a year, and Panagra, which went off subsidy at the end of 1954, may have to appeal again for aid from the U.S.

* Sample round-trip fares:

	Panagra excursion	I.A.T.A. tourist
New York-Lima	$268.40	$367.40
New York-Santiago	376.80	771.60
New York-Buenos Aires	432.40	872.60

[fol. 5390]

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ANNEX 40H

Latin America Threatens U. S. Supremacy in Aviation

By John B. McDermott

Chicago Daily News Service

BARRANQUILLA, Colombia, Sept. 21. — Aerial congestion in Latin America is beginning to resemble bumper-to-bumper Sunday driving in the United States. It also is endangering the position of the United States as world leader in commercial aviation.

Privately owned American companies are being caught in a squeeze play by foreign government-operated airlines—especially European companies—which do not have to worry about profit and loss to stay alive.

A quick check of airlines operating in this part of the world — from Florida and Texas to Argentina—brings some startling disclosures in commercial air development.

A crazy-quilt pattern of more than 30 international air carriers headed by Pan American World Airways, and countless domestic and nonscheduled airlines, criss-crosses Central America, the Caribbean and South America.

Rugged mountains and underdeveloped or nonexistent surface means of travel have resulted in airlines giving many of these nations access to the outside world.

These hop, skip and jump routes have made it possible for tourists, businessmen and freight alike to be shuttled from one country to another with clock-like regularity. Trade and commerce among the nations of North and South America, as well as an interchange of ideas, is one of the important results from this air expansion.

But so great has it become, that it threatens to choke some of the carriers.

The lack of break-even payloads would long since have thinned the ranks had the airlines been forced to depend on their own earnings. Many of the non-American lines, however, are government-subsidized and profit or loss from a strictly business viewpoint makes little difference to them.

The big influx of foreign carriers into the Latin American field cultivated by PAA came immediately after World War II.

Up to 1940, only 10 international airlines served Latin America. By 1951, with European carriers moving in en masse, the total had jumped to 44. It now stands at better than 80, with others attempting to move in.

Royal Dutch Airlines (KLM), British Overseas Airways Corp. and Air France are now almost as conspicuous at many international airdromes in Latin America as is the big blue and white wing-of-the-world symbol of PAA.

Italian, Spanish, Scandinavian and Swiss aircraft also are flying in this hemisphere, along with fast-developing airlines sponsored by many of the Latin governments.

BOAC first started service to the Caribbean area to serve the British West Indies. It now flies all the way to Buenos Aires and across to Santiago, Chile. KLM, which moved southwestward from Europe to serve the Netherlands West Indies and Surinam, now reaches into Mexico and Central America.

Even Japan is bidding for Latin American connections.

WASHINGTON POST

and

TIMES HERALD

SEPTEMBER 22, 1954

ANNEX 42A

COMPARISON OF FARES CHARGED BY COMPETING AIRLINES (SOUTHBOUND)

April 1959

	Regular Tourist Fares	
	One Way	Round Trip
New York to Santiago		
Panagra	$414.80	$771.60
Aerolineas Argentinas	351.20	632.20
CINTA-ALA	296.10	525.60
Miami to Santiago		
Panagra	368.00	678.00
LAN	258.00	464.00
CINTA-ALA	232.50	418.50
TAN/CEA/APSA	210.00	378.00
Lima to Santiago		
Panagra, Canadian Pacific and LAN	126.00	242.00
TAN/CEA/APSA	70.00	126.00
Panama to Santiago		
Panagra	284.00	526.00
LAN	180.00	345.00
CINTA-ALA	177.00	318.60
TAN/CEA/APSA	160.00	288.00
New York to Buenos Aires		
Panagra, Pan American, Braniff and Varig	461.50	878.00
Transcontinental	458.00	872.60
Aerolineas Argentinas	351.20	632.20
Miami to Buenos Aires		
Panagra, Braniff	414.70	784.40
LAN	288.00	519.00
TAN/CEA/APSA	251.00	451.80
Lima to Buenos Aires		
Panagra, Braniff, Canadian Pacific and LAN	180.00	340.00
TAN/CEA/APSA	111.00	199.80
Miami to Lima		
Panagra, Braniff	262.00	473.40
LAN	183.00	331.00
LANICA	180.00	324.00
TAN/CEA/APSA	150.00	270.00
APA	145.00	260.00

Source: Official Airline Guide, World-Wide Edition, April 1959.

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ANNEX 43

COMPARISON OF FARES CHARGED BY COMPETING AIRLINES (NORTHBOUND)

APRIL 1959

	Regular Tourist Fares			
	One Way		Round Trip	
Santiago to New York				
Panagra	$414.80(a)	$208.65(b)	$771.60(a)	$386.27(b)
CINTA-ALA	192.80(b)(c)		347.04(b)(c)	
Aerolineas Argentinas	173.94(b)		313.09(b)	
Santiago to Miami				
Panagra	368.00(a)	155.10(b)	678.00(a)	279.17(b)
TAN/CEA/APSA	157.14(b)		282.86(b)	
LAN	155.10(b)		279.17(b)	
CINTA-ALA	152.48(b)(c)		274.46(b)(c)	
Santiago to Lima				
Panagra	126.00(a)	48.00(b)	242.00(a)	92.19(b)
Canadian Pacific	126.00(a)	70.20(b)	242.00(a)	153.68(b)
LAN	51.22(b)		92.19(b)	
TAN/CEA/APSA	48.00(b)		86.40(b)	
Santiago to Panama				
Panagra	284.00(a)	119.35(b)	526.00(a)	214.84(b)
LAN, CINTA-ALA, and TAN/CEA APSA	119.35(b)		214.84(b)	
Buenos Aires to New York				
Panagra, Pan American, Braniff and Varig	461.50(a)		878.00(a)	646.10(d)
Aerolineas Argentinas	461.50(a)		878.00(a)	671.30(d)
Transcontinental	458.00		872.60	582.96(d)
Buenos Aires to Miami				
Panagra, Braniff	414.70(a)		784.40(a)	580.60(d)
LAN	288.00		519.00	
TAN/CEA/APSA	251.00		451.80	
Buenos Aires to Lima				
Panagra, Braniff, Canadian Pacific, LAN	180.00(a)		340.00(a)	
TAN/CEA/APSA	111.00		199.80	
Lima to Miami				
Panagra, Braniff and LAN	183.00(a)		331.00(a)	
LANICA	180.00		324.00	
TAN/CEA/APSA	150.00		270.00	
APA	145.00		260.00	

Notes (a) Regular IATA Tourist fare

(b) Chilean peso fares converted to dollars at 1,050 pesos per U. S. $, the free market exchange rate on April 2, 1959.

(c) Change of plane at Havana.

(d) 45 day round trip excursion fare.

Source: Official Airline Guide, World-Wide Edition, April 1959 and Company Records.

PRINCIPAL COMPETING CARRIERS SERVING PANAGRA ROUTES OR ALTERNATES

April 1959

IATA Carriers	Carrier	Nationality	Commenced Competing	Principal Competitive Routings	Equipment Used	Fare Structure
ARG	Aerolineas Argentinas	Argentine	1950	Santiago/Buenos Aires/Rio/New York	DC-6(a)	IATA
AF	Air France	French	1958	Lima/Quito/Bogota/Caracas/Europe	Constellation	IATA
AVIANCA	Aerovias Nacionales de Colombia	Colombian	1957	Lima/Quito/Bogota/Miami	Constellation	IATA
BN	Braniff International Airways	U. S.	1948	Buenos Aires/Asuncion/La Paz/Lima/Guayaquil/ Panama/Miami/Washington/New York	DC-7C, DC-6	IATA
CPAL	Canadian Pacific Airlines	Canadian	1953	Buenos Aires/Santiago/Lima/Mexico	DC-6B	IATA
KLM	Royal Dutch Airlines	Dutch	1952	Santiago/Buenos Aires/Rio/Europe/Lima/ Guayaquil/Panama/Europe	DC-7C Constellation	IATA
LAN	Linea Aerea Nacional de Chile	Chilean	1932	Buenos Aires/Santiago/Lima/Panama/Miami/ Santiago/Arica/La Paz	DC-6B Martin 202	Cut rate(b)
LAV	Linea Aeropostal Venezolana	Venezuelan	1951	Lima/Caracas/New York	Constellation	IATA
LH	Lufthansa German Airlines	West German	1958	Santiago/Buenos Aires/Europe	Constellation	IATA
PAA	Pan American World Airways	U. S.	1929	Buenos Aires/Rio/Caracas/New York	DC-7B	IATA
REAL	Aerovias Brasil System	Brazilian	1948	Buenos Aires/Rio/Miami	Constellation	IATA
SA	Scandinavian Airlines System	Scandinavian	1951	Santiago/Buenos Aires/Europe	DC-7C	IATA
VARG	Empresa de Viacao Aera Rio Grandense	Brazilian	1955	Buenos Aires/Rio/New York	Constellation Convair 240	IATA
NON-IATA Carriers						
(c) TAN	Transportes Aereos Nacionales	Honduran	1954	Tegucigalpa/Miami	DC-6	Cut rate
(c) CEA	Compania Ecuatoriana de Aviacion	Ecuadorean	1957	Santiago/Lima/Guayaquil/Quito/Cali/Panama/Miami	DC-6	Cut rate
(c) APSA	Aerolineas Peruanas S. A.	Peruvian	1957	Buenos Aires/Antofagasta/Lima/Guayaquil/ Tegucigalpa/Miami	DC-6	Cut rate
APA	Aerovias Panama Airways	Panamanian	1955	Lima/Guayaquil/Panama/Miami(d)	DC-4	Cut rate
CINTA-ALA	Chilean Airlines	Chilean	1956	Santiago/Guayaquil/Panama/Havana(e)	Constellation	Cut rate
LAB	Lloyd Aereo Boliviano	Bolivian	1958	Arica/La Paz/Cochabamba	DC-4	Cut rate
LLOYD	Lloyd Aereo Colombiano	Colombian	1958	Bogota/Barranquilla/Miami	C-46	Cut rate
LANICA	Linea Aerea de Nicaragua	Nicaraguan	1958	Lima/Guayaquil/Managua/Miami	Viscount	Cut rate
TRANSCONTINENTAL	Transcontinental, S. A.	Argentine	1958	Buenos Aires/Sao Paulo/Rio/Caracas/New York	Constellation	IATA
Carriers Planning Operations						
AUSTRAL	Austral Compania Argentina	Argentine		Buenos Aires to U. S. via West Coast of S. A.	C-47	Cut rate
INI	Aerolineas Ini y Cia.	Argentine		Buenos Aires/Santiago/Antofagasta/Lima	DC-6	Cut rate
PAW	Peru Airways	Peruvian		Buenos Aires/Santiago/Lima	DC-4	Cut rate
PLUNA	Primeras Lineas Aeras Uruguayas	Uruguayan		Montevideo/Buenos Aires/Santiago/Lima	Viscount	Cut rate

Notes:

(a) Pure jet Comet 4 service BUE/SCL April 10, 1959. Pure jet Comet 4 service BUE/LGA May 29, 1959.

(b) This carrier is a member of IATA but charges reduced fares pursuant to a Resolution 115 filing.

(c) TAN and APSA operate under an interchange agreement and along with APA and CEA appear to be under common management and control.

(d) Connects once weekly with RAS (Rutas Aereas de Colombia) at Panama; flight continues Panama/Medellin/Manaos/Rio.

(e) Interchange with Cubana at Havana for Miami and New York.

Source: Official Airline Guide, World Wide Edition, April 1959.

ANNEX 401

AVIATION DAILY .. JULY 30, 1958

U.S. - SOUTH AMERICA FARE WAR THREATENS

An all-out fare war between airlines on U.S.-South America routes is now a distinct possibility.

U.S. airlines fear that the result of such a war would be a return to substantial subsidies. At least some of them believe it is urgent that the U.S. government attempt to stabilize the fares through conferences with South American nations.

Lineas Aereas Nacional (Chile), a member of the International Air Transport Association, has already informed the world's airlines that it will break the IATA fare level and offer cut rates when it opens service in August between Miami and South American points. An IATA member is permitted to take this step to meet non-IATA competition.

The IATA carriers have faced cut-rate competition for a long time on South American routes, but the non-IATA lines have been operating with obsolete equipment such as C-46s and DC-4s. Now, however, newer planes are being put into service. For example, Transportes Aereos de Honduras (TAN), a non-IATA carrier, is advertising DC-6 service Miami-Buenos Aires for $251 one-way, with complimentary hot meals and mixed drinks. The IATA tourist fare is $412. TAN also offers Miami-Lima service for $150 against the lowest IATA fare of $262.

LAN will break IATA fares from Miami to Panama City, Lima, Santiago and Buenos Aires, and from Panama City to Lima and Santiago. It said it was doing so to meet competition of the following non-IATA lines: Aerovias Panama Airways (APA), Aerolineas Peruanas S.A. (APSA), Compania Ecuatoriana de Aviacion (CEA), CINTA Chilean Airlines, Lineas Aereas de Nicaragua S.A. (LANICA), Transportes Aereos de Honduras (TAN), and Primeras Lineas Aereas Uruguayas.

LAN Tells of Unsurpassed Number of Competitors

LAN told IATA that "in the last year the non-IATA competition along the west coast of South America and the United States has come to a never surpassed limit in the number of carriers involved, the quality of equipment operated, the kind of service provided, and the level of fares being applied. The fares and practices agreed by IATA members at Miami and subsequent meetings have provided no relief from this competition to sustain a member's revenue factors.

"We realize that the fares we are hereby filing will eventually result in breaking the IATA fare level throughout a large portion of Conference 1, but, as LAN has so continuously stated, there is no other way to meet this competition or defend a member's interest. Therefore, we intend to maintain this filing in effect until the reasons and needs for it have ceased to exist."

Even with older equipment, the low-rate carriers have drained considerable business from Pan American, Panagra and Braniff, and the situation is worsening. Some observers say this can lead to a return to subsidy. Likewise, an all-out rate war could lead to subsidy.

Those close to the situation believe that the only solution is for the U.S. government to attempt to get assurances from South American nations that all U.S.-South America services will adhere to IATA fares. They emphasize that this must be handled by governments.

A high airline official told the DAILY: "It's ridiculous to say that IATA is a cartel that keeps fares high -- all you have to do is to look at the low profits being made on international operations. There's a lot of argument and a lot of give-and-take in IATA before agreements are reached on fares. Also, the governments have the final say anyway because they have to approve the fares. A rate war certainly isn't the answer."

ANNEX 40J

NEW YORK HERALD TRIBUNE

APRIL 3, 1958

Reds Challenge U. S. For Civil Air Lead

Defense Dept. Concerned Over Soviet Drive in South America

By Ansel E. Talbert
Military and Aviation Editor

Herald Tribune Special

The Defense Department is gravely concerned today about the "formidable capability" which the Soviet Union is developing to challenge United States leadership in international civil aviation.

"This is a world-wide matter which will affect political, military and economic affairs in the Middle East, the Far East, Western Europe and Africa and in the opinion of top American government experts on Russian affairs "represents the maturing of long-standing Soviet objectives." But the Defense Department is particularly concerned right now over Soviet activities and intentions in many parts of Latin America—not generally recognized at the moment as a really active theater of Soviet expansion.

In one of the clearest and most unequivocal official statements made on the enormous past, present and future value of America's international air lines to national and hemispheric security, the Judge Advocate General's Department of the Air Force, on behalf of the Defense Department, has within the last month told the Civil Aeronautics Board:

"The Soviets appear to be fully aware of the value of (civil) air transportation as a means to achieve their goals. . . . This Latin America is an important target is evidenced by the increasing Soviet efforts to penetrate the area through trade agreements and offers of economic assistance. . . . The Department of Defense is mindful of the experiences of the United States government prior to World War II with respect to foreign-dominated air lines in Latin America. . . . To avoid any possibility of similar situations occurring in Latin America or elsewhere in the world, it appears to the department that American companies should be encouraged to assist smaller nations in the development and operation of their transportation systems with particular emphasis on domestic and regional operations."

What Defense Department chiefs have in mind is the fact that on the eve of World War II in 1939, there was a Nazi-controlled or influenced air transport network of more than 12,000 miles of routes in Latin America — as compared with less than 6,000 miles of routes operated or sponsored by the United States. Over a year before the war's outbreak, the New York Herald Tribune revealed the existence of "a serious threat to the commercial air supremacy which this country has enjoyed for years in South America, thanks to . . service operated by Pan American and Pan American-Grace Airways (Panagra)."

The threat was described as consisting of a "vastly expanded system of German-operated air lines penetrating to nearly all capitals of the continent."

With the full co-operation of pro-American groups in Latin America and the encouragement and assistance of the United States government, this Nazi-dominated air network was broken up and replaced with American-flag services. Latin American air lines also were helped to organize and given widespread technical and managerial assistance.

Pan American, for example, did a tremendous job and up to the present has continued to supply "know-how" and in some cases retained a minority stock interest in national air lines in Brazil, Costa Rica, Venezuela and several other Latin American nations. It was a current C. A. B. hearing on the question of whether Pan American should be allowed to retain 33 per cent interest in Lineas Aereas Costarricenses, S. A., which drew official Defense Department comment that it is "militarily important that domestic air transport operations in Costa Rica continue under aegis of the United States."

The State Department also offered its opinion in a classified document which has not been made public. But there would appear to be no disagreement between the Defense Department and State Department positions for the official "State Department Bulletin" in December quoted Douglas Dillon, Deputy Under Secretary of State for Economic Affairs, as saying:

"If the Communists succeed in winning over the peoples of the less developed countries, or any substantial number of them, the free world will be gravely weakened—just as certainly as it would be if these countries had been conquered by Red Armies."

Mr. Dillon stressed that the "moderate help" from the United States which might mean the difference whether these less developed nations stayed free must include "technical assistance — training in such fields as . . . transportation" and "help in industrial beginnings."

Boom Line Gets Help

The unofficial pre-Point Four aviation program south of the border carried on for nearly two decades has been taken up and used as a means of strengthening the Free World's economy on many other continents. Trans World Airlines, the chief competitor of Pan American over the North Atlantic, for example, gave invaluable aid to Lufthansa — West Germany's new air line whose name and prestige from pre-Hitler days the East German government has tried to appropriate. T W A helped to organize the post World War II Italian and Greek air line systems. At present the line has management contracts to provide American experts to run the air lines of Ethiopia and Saudi Arabia.

In 1954 Congress enacted a public law designed to establish "a program of self-help and mutual co - operation among free nations designed to develop their economic and social well-being." When the governments of Turkey, Pakistan, Thailand and Afghanistan needed technical assistance in developing their national air lines, the International Cooperation Administration—the agency responsible for administering technical assistance programs—called upon Pan American World Airways to furnish such aid. The air line did this by sending teams to each whose experience covered every phase of commercial air transport and the results in comfort, safety and economy have been remarkable.

Transocean Air Lines, an American company which is the world's largest air charter carrier, today has managerial contracts with Air Jordan, Iranian Airlines and has lent Japan Air Lines more than a score of top pilots.

Both T W A and Pan American have aided Philippine Air Lines.

The Defense Department says that American private enterprise should be "encouraged to maintain and enter into arrangements to assist technically backward nations in development of their air transport system where such assistance is welcomed by the countries concerned."

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ANNEX 44

C. R. A. C.

CONFERENCIA REGIONAL DE AVIACAO CIVIL

RIO DE JANEIRO, BRASIL

FINAL ACT

of the

FIRST REGIONAL CIVIL AVIATION CONFERENCE

Rio de Janeiro—1959

The Aeronautical Authorities of Argentina, Brazil, Chile, Colombia, the United States of America, Ecuador, Peru and Uruguay, having been invited by the Aeronautical Authorities of Brazil to participate in a Regional Civil Aviation Conference, nominated the following Delegations, which met in Rio de Janeiro during the period from January 19th to 26th, 1959.

ARGENTINA

Chief of Delegation:	Brigadier Angel Garcia Bollini, National Director of Civil Aeronautics
Delegates:	Dr. Antonio Pandolfo
	Dr. Oswaldo Ovidio Peres Arguelles
Advisers:	Dr. Jose Chalen
	Mr. Eduardo Morgan
	Mr. Guillermo Mendez

BRAZIL

Chief of Delegation:	Air Brigadier Dario Cavalcanti de Azambuja, Director General of Civil Aeronautics
Delegates:	Dr. Antonio Paulo Moura
	Dr. Trajano Furtado Reis
	Eng. Jose Chrysantho Seabra Fagunde
	Dr. Jose Carlos de Noronha
	Cap. Francisco Pedro Locio Cavalcanti
	Dr. Aylzio Jose de Moura Alves de Souza

CHILE

Chief of Delegation:	Dr. Vicente Gumucio, Secretary of the Civil Aeronautics Board
Delegate:	Eng. Mauricio Yanquez
Adviser:	Dr. Rene Pairoa

COLOMBIA

Chief of Delegation:	Colonel Hernan Medina, Director General of Civil Aeronautics
Delegate:	Dr. Arturo Arias A.
Advisers:	Dr. Joaquim Londono
	Dr. Juan Ucros

UNITED STATES OF AMERICA

Chief of Delegation:	Senator Chan Gurney, Vice-Chairman of the Civil Aeronautics Board
Delegate:	Mr. Irving Roth
Secretary:	Mr. John Hugh Crimmins

ECUADOR

Chief of Delegation:	Dr. Miguel Antonio Vasco, Secretary of the Rio de Janeiro Embassy of Ecuador

PERU

Chief of Delegation:	Major General Luis D. Cayo, Director General of Civil Aeronautics
Delegates:	Mr. V. Errol Marchena
	Mr. Rene Hooper Lopez
Advisers:	Dr. Luis Noya Larco
	Mr. Alfredo Oscar Llorens

URUGUAY

Chief of Delegation:	Eng. Cesar Piacenza, Director General of Civil Aeronautics
Adviser:	Mr. Luis Pena

After the inauguration of the Conference by the Brazilian Minister of Aeronautics, Air Major Brigadier Francisco de Assis Correa de Mallo, the Conference elected Air Brigadier Dario Cavalcanti de Azambuja (Brazil) as Chairman, Engineer Cesar Piacenza (Uruguay) as First Vice-Chairman, and Colonel Hernan Medina (Colombia) as Second Vice-Chairman, being appointed Secretary General Dr. Aylzio Jose de Moura Alves de Souza, Delegate of Brazil. The Conference then approved the agenda which included the following:

a) a study of the tariff situation and an examination of the causes of tariff imbalance in South America;

b) a study of measures to correct the causes of tariff imbalance;

c) regional and inter-continental air traffic;

d) competition during the transition period of air transport involving the simultaneous use of conventional and jet aircraft;

e) consultations and exchange of information between the Civil Aeronautical Authorities—American Civil Aviation Commission.

Two Committees were constituted for the study of the various items of the Agenda, viz.:

A Tariff Committee

A Legal-Economic Committee

Dr. Ovidio Perez Arguelles (Argentina) was elected Chairman of the Tariff Committee, and Dr. Rene Pairoa (Chile) as its Vice-Chairman. Engineer Jose Chrysantho Seabra Fagundes (Brazil) was elected its Rapporteur.

Dr. Vincente Gumucio (Chile) was elected Chairman of the Legal-Economic Committee; Dr. Miguel Antonio Vasco (Ecuador) Vice-Chairman and Dr. Victor Marchena (Peru) Rapporteur.

In its Plenary Sessions held on January 24th and 25th, the Conference examined the proposals of the Committees, and, after discussing them and amending some of them, approved the following recommendations, contained in the attached documents which form an integral part of the Final Act:

RECOMMENDATION No. 1: Concerning the adoption of general rules and procedures for the constructions of tariffs;

RECOMMENDATION No. 2: concerning the expression of uniform basic tariff rates in standard currency;

RECOMMENDATION No. 3: concerning agents' commissions;

RECOMMENDATION No. 4: concerning measures for avoiding unauthorized changes in tariffs;

RECOMMENDATION No. 5: concerning the establishment of a tarfff differential for jet aircraft;

RECOMMENDATION No. 6: concerning the study of operation with jet aircraft;

RECOMMENDATION No. 7: concerning the adoption of a uniform criterion for the utilization of regional traffic;

RECOMMENDATION No. 8: concerning the convocation of a Second Regional Civil Aviation Conference, and measures for coordinating the implementation of the recommendations of the Conference.

At the closing of the Plenary Sessions a Drafting Committee for the three languages was appointed, composed of:

Mr. Oswaldo Perez Arguelles (Argentina)—Chairman
Mr. Trajano Furtado Reis (Brazil)
Mr. Irving Roth (United States of America)

[fol. 5400]

During the work of the Conference various documents were issued, some of which contain the statements of some delegations on various subjects under discussion.

And, in order to make this a matter of record, the Closing Plenary Session, held on January 28, 1959, approved this Final Act, which was signed by the Delegates present at this Session in three copies, in English, Spanish and Portuguese, which shall remain deposited in the files of the Directorate of Civil Aeronautics of the Ministry of Aeronautics of Brazil, together with the documents issued during the Conference.

RECOMMENDATION NO. 1

GENERAL NORMS AND PROCEDURES TO GOVERN TARIFF CONSTRUCTION

The Regional Civil Aviation Conference

RECOMMENDS that:

1—equal tariffs, fares, rates and conditions of carriage be applied to comparable services;

2—the following be observed by all carriers enumerated in the attached list:

a) the present tariffs and their respective regulations shall be maintained in force until April 1, 1959;

b) the carriers enumerated in the attached list, duly authorized by the respective Aeronautical Authorities, when necessary, shall meet on March 16, 1959 in order to determine tariffs (fares, rates and rules) and conditions of carriage which, after approval by the governments in accordance with their respective legislation, shall become effective in lieu of those mentioned in Item a);

c) the meeting referred to in Item b) shall determine the excursion fares for travel from South America to North America, in both directions and from South America to Panama and to Cuba, in both directions which may be deemed necessary, equivalent to a minimum of seventy percent (70%) of twice the one-way fares, to become effective April 1, 1959, without prejudice to the introduction of other excursion fares on the American Continent.

d) the decisions referred to in the items b) and c) shall be unanimously adopted by the carriers. Nevertheless, if unanimity is not attained, the Governments shall, in accordance with their respective legislation, establish the tariffs to be applied by the carriers;

3—the measures adopted in keeping with these recommendations be applied simultaneously with the adoption of the free market rate of exchange;

4—the tariffs to become effective on April 1, 1959, be applied, for the period of one year, with a differential not to exceed ten percent (10%) for services of carriers considered by the respective Governments as "under-developed". This differential shall be eliminated or reduced whenever there is a change in the classification or development of any carriers, and the principle of Item 1 shall come into effect in such case.

ANNEX 40K

TRAVEL COURIER (N.Y.)
DECEMBER 1957

Fare Cuts Stir Trade Interest in Potential for So. America

A blueprint for spirited competition among IATA and non-IATA carriers, all intent on developing the vast potential in travel to South America, gave promise this month of record traffic to that continent during 1958.

Fast-moving developments included the following:

1. Major IATA lines have asked for authorization to liberalize and simplify conditions governing excursion fares.

2. TAN Airlines, operating out of Miami to Central and South America, announced in conjunction with Real Aerovias Brazil and other carriers, a round-South America fare of $446.30, or $130.50 less than the most favorable R.S.A. rate granted by IATA lines on the new group excursion plan.

3. A record number of tour offerings will be available to travel agents in 1958, including more sponsored by wholesalers already active in the South American market, plus some by newcomers now entering the field.

4. At long last there are indications that some South American countries may step forward with urgently-needed promotion for their areas. Among those flirting with the idea are Colombia, Uruguay and Brazil.

Subject to government approval, the new provisions requested by IATA members will go into effect January 1, 1958, as such carriers as Pan American-Grace Airways, Pan American World Airways, Braniff International Airways and Varig Airlines of Brazil. The revisions apply to southbound traffic, but the carriers have also requested an excursion fare program for South Americans traveling to North America.

The basic excursion fare now in use applies to individuals or groups traveling from the U. S., Canada, Cuba, Mexico, Jamaica, Haiti and the Dominican Republic to Buenos Aires, Santiago or Montevideo (depending on the airline), with four additional stops in South America required on the tour, two in each direction. The fare reduction on this trip is about 30 per cent and it must be concluded within 30 days.

The new fare structure is specifically designed to encourage group travel. For groups of eight or more persons the "most" destination of Buenos Aires, Santiago, or these cities, and return together. All and any scheduled stopovers are permitted and all travel must be completed within 30 days.

Savings for group members under the new plan, for example, are as follows: New York to Lima, round-trip tourist class, $428.40, as compared to the regular fare of $561.40; first class for the same trip is $554 as against $714.60; around South America, New York—Buenos Aires, and return is $638.40 round-trip tourist class as compared to $867; first class is $768.60 as contrasted with $988.20. From Miami round South America tourist class fare is $576.80 against the regular rate of $779.

According to officials of the carriers affected by the expansion of the excursion fare set-up, the new structure makes travel to South America highly competitive with European travel. In some instances, on a mile-by-mile comparison, rates to South America will be lower than those to Europe.

The carriers also feel that agents will be able to offer more Montevideo has been eliminated, along with the requirement of four additional stopovers.

The group—to be eligible—must travel together from the point of origin to Lima, or Rio de Janeiro, or other points south of

low-cost South America packages than previously and that there will be a greater movement to that continent by teachers, students, farmers, business and sports groups, as well as just average tourists.

A similar group excursion fare structure has also been requested by the airlines for travel from South America to North America, as well as to specific Caribbean and Central American destinations. The 30 per cent reduction would apply to passengers originating in Lima, Rio, or other cities to the south of the two capitals. The carriers have also proposed reductions for excursion group travel within South America.

Excursion fares (southbound) with the present 30 per cent discount were first introduced in April, 1956, for two or more persons traveling together. Held unfair to tourists traveling alone by the Civil Aeronautics Board, the system was revised to include this category in June, 1957.

WORLD REVIEW OF HOTELS & TRAVEL, NEW YORK, N.Y.

DECEMBER 14, 1957

ALONG THE AIR LANES

Pan American World Airways and Panagra will cut as much as 30 per cent from the regular fares to South America for groups of eight or more persons traveling together to the land of Good Neighbors. The new low fares are effective on Jan. 1 if approved by the government.

The cost for a person traveling tourist-class in a group of eight or more from New York to Lima and return will be as little as $428.40, compared to the regular fare of $561.40. The first-class fare for the same trip will be $554 as against the regular fare of $714.60.

For the traveler who wants to make the swing around South America—New York—Buenos Aires and return, the first class fare will be $768.60 as compared with the usual fare of $988.20. Tourist fare will be as low as $638.50 or $228.60 below the standard fare.

Eligibility for the new low fare requires that a group must start together from any point in the United States, Canada, Cuba, Jamaica, Haiti, or the Dominican Republic, and travel together from their point of origin to Lima, or Rio or points south of these cities and return. All travel must be completed within 30 days.

GENERAL RULES AND PROCEDURE TO GOVERN TARIFF CONSTRUCTION

List of International Carriers Referred to in Paragraph 6

1—Aerolineas Argentinas
2—Aeronaves de Mexico, S. A.
3—Aerovias Ecuatorianas, C. A.
4—Aerovias Guest, S. A.
5—Aerovias Nacionales de Colombia, S. A.
6—Aerovias Venezolanas, S. A.
7—ALA—Sociedad de Transportes Aereos Ltd.
8—Alitalia—Linee Aeree Italiane, S. p. A.
9—American Airlines, Inc.
10—APA—Awrovias Panama Airways
11—APSA—Aerolineas Peruanas
12—AUSTRAL—Cia. Argentina de Transportes Aereos
13—AVIATECA—Empresa Guatemalteca de Aviacion
14—Bahamas Airways Ltd.
15—Braniff Airways, Inc.
16—British Overseas Airways Corporation
17—British West Indian Airways, Ltd.
18—Canadian Pacific Air Lines, Ltd.
19—Compagnie Nationale Air France
20—CAUSA—Cia. Aeronautica Uruguay, S. A.
21—Cia Cubana de Aviacion, S. A.
22—CINTA—Chilean Airlines
23—Cia. Dominicana de Aviacion, C, por A.
24—Cia. Mexicana de Aviacion, S. A.
27—Delta Air Lines
28—Eastern Air Lines, Inc.
29—"Iberia", Compañia Mercantil Anonima de Lineas Aereas
30—K.L.M.—Royal Dutch Airlines

[fol. 5402]

31—LANICA—Lineas Aereas de Nicaragua, S. A.
32—Linea Aerea Nacional—Chile
33—Linea Aeropostal Venezolana
34—Lineas Aereas Costarricences, S. A.
35—Lloyd Aereo Boliviano—LAB
36—Lloyd Aereo Colombianao—LIC
37—Mackey Airlines, Inc.
38—National Airlines, Inc.
39—Northwest Airlines, Inc.
40—Pan American World Airways, Inc.
41—Pan American Grace Airways, Inc.
42—Panair do Brasil, S. A.
43—PLUNA—Primeras Lineas Aereas Uruguayas
44—"Q" Airways
45—RAS—Rutas Aereas de Colombia
46—RANSA—Rutas Aereas Nacionales, S. A. (Air Freight (
47—Real-Aerovias Brasil
48—S. A. Empresa de Viacao Aerea Rio Grandense (V.A.R.I
49—SABSA—Servicio Aereo de Honduras, S. A.
50—Scandinavian Airlines System
51—Servicos Aereos Cruzeiro do Sul, S. A.
52—SWISSAIR, Swissair Transport Company, Ltd.
55—Trans-Canada Air Lines
56—Transcontinental, S. A.
57—Trans World Airlines, Inc.
58—United Air Lines, Inc.
59—Uraba, Medellin & Central Airways, Inc.
60—Western Air Lines, Inc.

RECOMMENDATION NO. 2

STANDARD CURRENCY AND EXCHANGE

The Conference

RECOMMENDS that:

1—For the adoption of tariffs, the Aeronautical Authorities take as a basic values in standard currency;

2—Only the free market exchange rate be applied in the conversion of these basis tariffs into the currency of each country;

3—While the existing conditions of the international monetary market prevail, the U. S. dollar be the standard currency adopted for tariff construction.

RECOMMENDATION NO. 3

AGENTS' COMMISSIONS

The Conference

RECOMMENDS that:

1) The Carriers pay to sales agents and general agents, directly or indirectly, percentages of commission not to exceed the following:

Passengers

a) seven percent (7%) to travel agents, except as provided for in (b) and (c);

b) an additional three percent (3%) for sales made by general agents;

c) an additional three percent (3%) to travel agents for organization and advertisement of "all expense" tours.

Cargo

a) five percent (5%) to cargo agents;

b) an additional 2½% for sales by general agents;

2) The percentages of commission to intermediaries, if there be such, be included in the percentages indicated in Item 1, which in no case may be exceeded.

RECOMMENDATION NO. 4

MEASURES FOR AVOIDING UNAUTHORIZED TARIFF CHANGES

The Conference

RECOMMENDS that:

1—The Aeronautical Authorities take all the necessary measures to avoid any unauthorized changes in tariffs;

2—These measures should apply to those persons participating in sales, whether directly or indirectly.

[fol. 5404]

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RECOMMENDATION NO. 5

CREATION OF DIFFERENTIAL IN TARIFFS FOR JET AIRCRAFT

The Conference

RECOMMENDS that:

1—With the introduction of jet aircraft on the routes operated by conventional aircraft (piston and turbo-props), the following factors must be considered:

a) larger capacity;

b) greater speed;

c) greater range;

d) greater comfort.

2—These factors being considered, it is necessary to establish a differential to increase the tariffs applicable to jet aircraft as related to first class and tourist class tariffs for conventional aircraft, *unless the capacity and range of the jet aircraft make unnecessary such differential.*

RECOMMENDATION NO. 6

OPERATIONS WITH JET AIRCRAFT

The Conference

RECOMMENDS that: [illegible in copy]

RECOMMENDATION NO. 7

A CRITERION FOR THE UTILIZATION OF REGIONAL TRAFFIC

The Conference

RECOMMENDS that:

1—The South American Governments participating in this Conference adopt a uniform criterion for the utilization of regional traffic;

2—This criterion be, provisionally, the assignment at least 75% of the regional traffic to the carriers of the two States interested therein, the following bases being taken into consideration:

a) each of these two States shall have half of this percentage for its own carriers;

b) in case the traffic volume of the carriers of one State does not attain the percentage of 50% referred to in item *a*, the carriers of the other State shall have preference to increase their respective traffic volume until the carriers of that State attain 75% of the traffic;

c) the traffic volume of carriers of third States in regional traffic shall not exceed, in total, 25% of this regional traffic, except when the traffic volume of the regional carriers does not attain the index of 75%;

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ANNEX 47

United States Department of
COMMERCE
Sinclair Weeks, Secretary Washington 25, D. C.

Federal Maritime Board
Maritime Administration

BOARDMAN — STerling 3-5200, Ext. 4461 NR 58 — 46

FOR RELEASE MONDAY AM, JULY 14, 1958 TRADE ROUTE 2 FINDINGS PUBLISHED

A review of the essentiality and service requirements of Essential U. S. Foreign Trade Route 2 (U.S. Atlantic ports to the West Coast of South America) has been tentatively approved by Clarence G. Morse, Maritime Administrator, U. S. Department of Commerce.

The requirement for United States-flag sailings with freight vessels has been increased from the present two to approximately four per month. The recommendation for approximately weekly sailings of combination cargo-passenger vessels remains unchanged. Description of the route, unchanged from the findings as published in the Federal Register of January 6, 1955, is: Between U. S. Atlantic ports (Maine-East Coast Florida to but not including Key West) and ports on the West Coast of South America (Pacific Coast Colombia, Ecuador, Peru and Chile).

It was found that outbound liner cargo traffic on T. R. No. 2 increased from the 1951-1955 level of 500,000 tons annually to approximately 600,000 tons in 1956 and 1957. This higher level of traffic is expected to continue as a result of industrial development projects in the West Coast of South America area, and an upward adjustment in U. S.-flag freighter sailings will be necessary to meet foreign-flag competition on the route.

A finding of essentiality and determination of service requirements on a route is required before operating-differential subsidy may be paid to qualified U. S. operators on the route. At the present time Grace Line, Inc., provides the only U. S.-flag liner service on Trade Route 2, which it serves under an operating subsidy contract with the Government.

The C2 freight and combination passenger-freight vessels now operated on the route were found suitable for present service, but replacement ships tentatively scheduled for delivery in 1960-61 will need to be superior in speed and to provide substantially more total refrigerated space and dry cargo capacity than present ships. Passenger requirements will need to be re-evaluated before replacement of present combination ships according to the tentative findings.

Principal imports from the foreign area of Trade Route 2 include iron, tin, copper, lead, zinc, nitrates, coffee and bananas. Exports on the route from the Atlantic coast of the U. S. consist of a wide variety of manufactured goods and foodstuffs. Total dry cargo exports and imports on the route in 1956 were over 3 million long tons.

Any interested person, firm, or corporation may submit comments on these tentative findings to the Maritime Administration within 15 days of the date of publication in the Federal Register.

[fol. 5410]

ANNEX 48

GRACE LINE—BERTH CAPACITY

1939—1958

1939

	No. of Voyages	1st Class Capacity	1st Class Berth Capacity for year in each direction	3rd Class Capacity	3rd Class Berth Capacity for year in each direction
Santa Barbara	8	138	1,104	32	256
Santa Clara	9	159	1,431	32	288
Santa Maria	9	135	1,215	32	288
Santa Lucia	9	225	2,025	50	450
Santa Ines	8	69	552	48	384
Santa Rita	9	69	621	48	432
Total Berth Capacity In Each Direction			6,993		2,098

1958

	No. of Voyages	1st Class Capacity	1st Class Berth Capacity for year in each direction	Freighter Class Capacity	Freighter Class Berth Capacity for year in each direction
Santa Barbara Santa Cecilia Santa Isabel Santa Luisa Santa Margarita Santa Maria	51	52	2,652	—	—
Santa Catalina	7	—	—	8	56
Santa Elisa	7	—	—	12	84
Santa Ines	10	—	—	8	80
Santa Olivia	7	—	—	8	56
Santa Rita	10	—	—	12	120
Total Berth Capacity In Each Direction			2,652		396

d) the adjustment of the participation of carriers of third States to this remaining traffic shall be made gradually.

3—The quotas corresponding to the application of the percentages referred to in this Recommendation be calculated, for each year, on the basis of the average traffic volume fof the previous two years;

4—For tbe purpose of this Recommendation, regional traffic be that traffic embarked within the territory by a State and destined for the territory of a bordering State;

5—For the adoption of the criterion herein recommended, the Aeronautical Authorities of the South American States participating in this Conference take the necessary measures for its implementation in conformity with their respective legislation and with the bilateral agreements to which they may be parties.

RECOMMENDATION NO. 8

CONVOCATION OF THE SECOND REGIONAL CIVIL AVIATION CONFERENCE AND IMPLEMENTATION OF THE RECOMMENDATIONS OF THE FIRST CONFERENCE

The Conference

RECOMMENDS that:

1—The Second Regional Civil Aviation Conference be held in the Argentina Republic next year, and that consequently the National Director of Civil Aeronautics of Argentina be requested to convoke that Conference at a time deemed opportune by him after consulting the Aeronautical Authorities of the other States;

2—The National Director of Civil Aeronautics of Argentina remain in continuous contact with the Aeronautical Authorities of the other States in order to coordinate information and communications concerning the implementation of the RECOMMENDATIONS of the First Regional Civil Aviation Conference, and convoke whenever necessary, special meetings after consulting the Aeronautical Authorities of the other States.

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ANNEX 48

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 12th day of March, 1959

In the matter of an agreement filed pursuant to section 412(a) of the Federal Aviation Act involving PAN AMERICAN WORLD AIRWAYS, INC. PAN AMERICAN-GRACE AIRWAYS, INC. and BRANIFF AIRWAYS, INC. concerning joint discussions.	Agreement CAB No. 12938

ORDER APPROVING AGREEMENT

The First Regional Civil Aviation Conference, attended by representatives of Argentina, Brazil, Chile, Colombia, Ecuador, Peru, Uruguay, and the United States of America, was held in Rio de Janeiro during January, 1959, to review various common air rate matters, including tariff construction, standard currency and exchange rates, and agents' commissions. It was the recommendation of such Conference, *inter alia*, that all carriers operating international flights in the South American area meet on March 16, 1959, to attempt to agree, subject to government approval, upon basic fares and excursion fares, and certain related matters.

On March 11, 1959, Pan American World Airways, Inc., Pan American-Grace Airways, Inc. and Braniff Airways, Inc. filed with the Board under section 412 of the Federal Aviation Act an agreement, designated CAB No. 12938, requesting that the Board "authorize the United States air carriers to participate in a meeting of Western Hemisphere carriers by air, scheduled to be held on March 16, 1959, to discuss and endeavor to arrive at agreements with the other participants, be they members or nonmembers of IATA, with respect to fares, rates, rules, agency commissions, rates of exchange to be used in converting basic dollar values into other currencies for selling purposes, and related matters."

The Board, as indicated by its representatives at the aforesaid Conference, believes that a meeting of the carriers concerned is desirable to explore further methods of resolving difficulties common to all

Accordingly, the Board finds that approval of the aforementioned agreement under section 412 is not adverse to the public interest or in violation of the Act, subject to the conditions hereinafter set forth.

ACCORDINGLY, IT IS ORDERED THAT: Said agreement be and it hereby is approved, subject to the following conditions:

1. That the approval shall terminate on April 15, 1959;

2. That the air carrier parties shall keep, and file with the Board within ten days after such meeting full and detailed minutes of the discussions herein authorized, including the record of each vote taken;

3. That any agreement or agreements reached as a result of such discussions be filed with the Board in accordance with section 412 of the Act and approved by the Board prior to being placed in effect;

4. That the approval granted herein shall extend to any other certificated air carrier which may wish to become a party to Agreement CAB No. 12938, provided such carrier files with the Board a written concurrence in said agreement; and

5. That the discussions be limited to fares, rates, rules, agency commissions, and rates of exchange pertaining to the geographical areas mentioned in Recommendation No. 1 of the Final Act of the First Regional Civil Aviation Conference.

By the Civil Aeronautics Board:

/s/ MABEL MCGART
MABEL MCGART
Acting Secretary

(SEAL)

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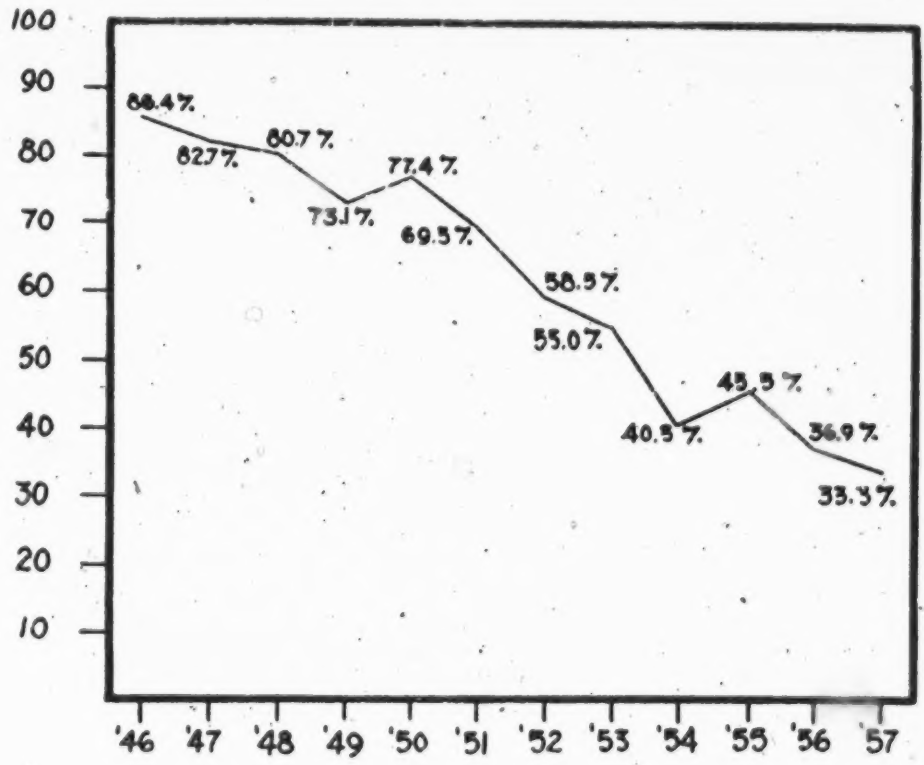
ANNEX 46

U. S. FLAG PARTICIPATION IN CARRIAGE OF DRY CARGO BY SEA BETWEEN THE UNITED STATES AND THE WEST COAST OF SOUTH AMERICA

1946 - 1957

Percentage of Total Dry Cargo Carried by U. S. Flag Vessels



Source: Statistical Abstract of the United States, Bureau of the Census, U. S. Department of Commerce.

[fol. 5411]

starting April 8th

AEROLINEAS ARGENTINAS *Jets* YOU THERE IN LESS THAN ½ THE TIME!

It's here! The first—the only jet service to Buenos Aires, now, an incredible 12 swift hours (non-stop New York! (It's 27 hours via conventional flights).

Suddenly a whole new direction in travel—a whole new continent of adventure is brought within your reach. Trinidad . . . a mere away! Fabulous Rio . . . closer in time than our trips you've taken! And beautiful Buenos Aires—at the end of a jet "bridge" built for you in the skies by Aerolineas Argentinas. Truly, you have never experienced a more serene, restful and carefree w . . . of air travel.

At New York's International Airport you board the Comet 4—the most thoroughly tested and best developed jet aircraft in the world. Minutes later you're soaring above the weather in a world of unbelievable softness and silence and smoothness. First Class or Tourist, you are treated to an utterly new standard in service and attention, bound up very closely with the deep-felt Argentinean traditions of courtly and dedicated hospitality. You relax in air conditioned, living-room comfort . . . as are served tempting hot foods, noble Argentine wines. The stewardesses . . . ak English of course, and with time literally floating by, you jet directly to . . . nos Aires, or enjoy stop-over privileges at Trinidad and Rio that are yours to . . . stay for days—or for . . . year! Your A . . . ve adventuresome vacation planning today to *Argentine Airlines. Aerolineas Argentinas!*

For further information . . . a treasury of information . . . consult your travel agent or . . .

AERO LINEAS ARGENTINAS

[fol. 5412]

ANNEX 50

U. S. FLAG PARTICIPATION IN CARRIAGE OF DRY CARGO BETWEEN THE UNITED STATES AND THE WEST COAST OF SOUTH AMERICA

1946—1957

Percentage of Cargo Carried in U. S. Flag Vessels

Year	Exports	Imports	Total Trade
1946	74.5%	90.0%	86.4%
1947	70.2	87.0	82.7
1948	58.6	84.9	80.7
1949	47.9	78.9	73.1
1950	39.3	84.7	77.4
1951	41.1	77.2	69.5
1952	36.9	65.1	58.5
1953	34.3	59.0	55.0
1954	38.2	46.9	40.5
1955	41.2	46.6	45.5
1956	38.6	36.4	36.9
1957	42.0	32.0	33.3

SOURCE: *Statistical Abstract of the United States*, Bureau of the Census, U. S. Department of Commerce.

ANNEX 81A

U. S. ATLANTIC COAST IMPORTS AND EXPORTS TO WEST COAST OF SOUTH AMERICA

1955

All Tons of 2,000 lbs.

Source: Bureau of the Census

	Regular Carriers			Irregular Carriers			Regular and Irregular Carriers Combined		
	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %
Exports									
Colombia (West Coast Ports Only)	164,235	50,793	30.93	6,171	—	—	170,406	50,793	29.80
Ecuador	44,581	9,335	20.44	489	3	0.61	45,070	9,338	20.79
Peru	136,837	90,247	65.95	21,308	—	—	158,145	90,247	57.00
Chile	101,266	56,280	55.58	151,835	10,690	7.04	252,101	66,970	26.56
	446,919	206,655	46.02	179,803	10,693	5.03	625,722	217,348	34.73
Imports									
Colombia (West Coast Ports Only)	139,057	78,162	56.21	386	—	—	139,443	78,162	56.05
Ecuador	86,422	66,113	76.50	163,030	44,756	27.45	249,452	110,869	44.44
Peru	233,571	165,652	70.92	1,642,344	428,273	26.08	1,875,915	593,925	31.66
Chile	441,538	231,916	52.52	1,317,143	863,252	65.54	1,758,681	1,095,168	61.70
	900,588	541,843	60.16	3,122,903	1,336,281	42.78	4,023,491	1,878,124	46.70
Exports & Imports									
Colombia (West Coast Ports Only)	303,392	128,955	42.50	5,557	—	—	309,849	128,955	26.56
Ecuador	131,003	75,448	57.59	163,519	44,759	27.36	294,522	120,207	40.81
Peru	370,408	255,899	69.08	1,663,652	428,273	25.74	2,034,060	684,172	33.63
Chile	542,804	288,196	53.09	1,468,978	873,942	59.49	2,010,782	1,162,138	57.80
	1,347,607	748,498	55.54	3,302,706	1,346,974	40.78	4,649,213	2,095,472	45.07

Notes:

1. Imports-Exports from and to Bolivia are included in the Peru-Chile Figures.
2. Tonnage shown is "Dry" Cargo only except in so far as carried in tanks of carriers whose main characteristic is "Dry" Cargo.
3. Tonnage excludes all shipments valued under $500.00. The amount of cargo falling into the "under $500.00" category is not substantial. In 1957 the total amount of dry cargo exported in liner service between the United States and the West Coast of South America, excluding shipments valued under $500.00, was 2,339,700,000 pounds. A sampling of shipments between $100-$499 indicated that the total including all shipments in excess of $100 was 2,397,900,000 pounds. Bureau of the Census, Report No. FT-1000, January-December 1957.
4. Not included are shipments of the Dept. of Defense (M. A. T. S.).

[fol. 5414]

ANNEX 51B

U. S. ATLANTIC COAST IMPORTS AND EXPORTS TO WEST COAST OF SOUTH AMERICA

1936

All Tons of 2,000 lbs.

Source: Bureau of the Census

	Regular Carriers			Irregular Carriers			Regular and Irregular Carriers Combined		
	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %
Exports									
Colombia (West Coast Ports Only)	137,108	42,011	30.64	648	544	83.95	137,756	42,555	30.89
Ecuador	33,638	4,506	13.40	319	68	21.32	33,957	4,574	13.43
Peru	204,442	138,779	67.88	6,558	5,168	78.80	211,000	143,947	68.22
Chile	195,936	83,344	42.54	239,487	6,923	2.89	435,423	90,267	20.73
	571,124	268,640	47.03	247,012	12,703	5.14	818,136	281,343	34.38
Imports									
Colombia (West Coast Ports Only)	131,924	67,735	51.34	920	—	—	132,844	67,735	51.12
Ecuador	93,769	64,437	68.77	134,663	24,406	18.12	228,432	88,893	38.91
Peru	281,200	248,311	88.30	1,953,939	141,763	7.26	2,235,139	390,074	17.45
Chile	400,525	184,129	45.97	1,782,438	917,289	51.46	2,182,963	1,101,418	50.45
	907,418	564,662	62.24	3,871,960	1,083,458	27.99	4,779,378	1,648,120	34.48
Imports & Exports									
Colombia (West Coast Ports Only)	269,032	109,746	40.78	1,568	544	34.60	270,600	110,290	40.75
Ecuador	127,407	68,993	54.15	134,982	34,474	25.53	262,389	93,467	35.60
Peru	485,642	387,090	79.70	1,960,497	146,931	7.44	2,446,139	534,021	21.82
Chile	596,461	267,473	44.84	2,021,925	924,212	45.70	2,618,386	1,191,685	45.51
	1,478,542	833,302	56.36	4,118,972	1,096,161	26.61	5,597,514	1,929,463	34.29

Notes

1. Imports-Exports from and to Bolivia are included in the Peru-Chile Figures
2. Tonnage shown is "Dry" Cargo only except in so far as carried in tanks of carriers whose main characteristic is "Dry" Cargo
3. Tonnage excludes all shipments valued under $500.00
4. Not included are shipments of the Dept. of Defense (M. A. T. S.)

ANNEX 51C

U. S. ATLANTIC COAST IMPORTS AND EXPORTS TO WEST COAST OF SOUTH AMERICA

1957

All Tons of 2,000 lbs.

Source: Bureau of the Census

	Regular Carriers			Irregular Carriers			Regular and Irregular Carriers Combined		
	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %
Exports									
Colombia (West Coast Ports Only)	105,470	42,904	40.68	14	—	—	105,484	42,904	40.67
Ecuador	38,099	4,039	10.60	16	—	—	38,115	4,039	10.59
Peru	205,958	154,849	75.18	31,470	—	—	237,428	154,849	65.64
Chile	180,271	90,931	50.44	195,987	—	—	376,258	90,931	24.16
	529,798	292,723	55.25	227,487	—	—	757,285	292,723	38.66
Imports									
Colombia (West Coast Ports Only)	157,385	71,324	45.32	75	—	—	157,460	71,324	45.33
Ecuador	105,700	80,256	75.93	153,890	11,369	7.39	259,590	91,625	35.68
Peru	313,592	281,674	89.72	2,346,086	—	—	2,659,678	281,674	10.59
Chile	553,558	284,430	51.38	2,971,804	1,307,932	44.01	3,525,362	1,592,362	45.16
	1,130,235	717,684	63.49	5,471,855	1,319,301	23.92	6,602,090	2,036,985	30.85
Exports & Imports									
Colombia (West Coast Ports Only)	262,855	114,228	43.35	89	—	—	262,944	114,228	43.06
Ecuador	143,799	84,295	51.68	153,906	11,369	7.38	297,705	95,664	32.10
Peru	519,550	436,523	84.01	2,377,556	—	—	2,897,106	436,523	15.10
Chile	733,829	375,361	52.65	3,167,791	1,307,932	41.64	3,901,620	1,683,293	43.14
	1,660,033	1,010,407	60.85	5,699,342	1,319,301	23.13	7,359,375	2,329,708	31.66

Notes:

1. Imports-Exports from and to Bolivia are included in the Peru-Chile Figures.
2. Tonnage shown is "Dry" Cargo only except in so far as carried in tanks of carriers whose main characteristic is "Dry" Cargo.
3. Tonnage excludes all shipments valued under $500.00.
4. Not included are shipments of the Dept. of Defense (M. A. T. S.).

[fol. 5416]

ANNEX 51D

U. S. ATLANTIC COAST IMPORTS AND EXPORTS TO WEST COAST OF SOUTH AMERICA

1958

All Tons of 2,000 lbs.

Source: Bureau of the Census

	Regular Carriers			Irregular Carriers			Regular and Irregular Carriers Combined		
	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %
Exports									
Colombia (West Coast Ports Only)	89,683	39,599	44.15	52	—	—	89,735	39,599	44.12
Ecuador	41,011	8,215	20.03	10,564	—	—	51,575	8,215	15.89
Peru	147,591	121,386	82.24	16,836	—	—	164,427	121,386	73.82
Chile	151,464	75,443	49.81	192,339	—	—	343,803	75,443	21.93
	429,749	244,643	56.93	219,791	—	—	649,540	244,643	37.66
Imports									
Colombia (West Coast Ports Only)	166,998	74,563	44.65	13,220	—	—	180,218	74,563	41.37
Ecuador	123,748	92,857	75.04	92,530	—	—	216,278	92,857	42.93
Peru	282,801	135,174	73.95	1,571,099	—	—	1,753,900	135,174	7.13
Chile	581,780	291,981	50.19	3,453,555	949,592	27.50	4,035,335	1,241,573	38.26
	1,055,327	594,575	56.34	5,130,404	949,592	18.50	6,185,731	1,544,167	24.96
Imports & Exports									
Colombia (West Coast Ports Only)	256,681	114,162	44.48	13,272	—	—	269,953	114,162	42.28
Ecuador	164,759	101,072	61.34	103,094	—	—	267,853	101,072	33.47
Peru	330,392	256,560	77.63	1,587,935	—	—	1,918,327	256,560	13.37
Chile	733,244	367,424	50.10	3,645,894	949,592	26.04	4,379,138	1,317,016	30.07
	1,485,076	839,218	56.51	5,350,195	949,592	17.74	6,835,271	1,788,810	26.17

Notes:

1. Imports-Exports from and to Bolivia are included in the Peru-Chile Figures.
2. Tonnage shown is "Dry" Cargo only except in so far as carried in tanks of carriers whose main characteristic is "Dry" Cargo.
3. Tonnage excludes all shipments valued under $500.00.
4. Not included are shipments of the Dept. of Defense (M. A. T. S.).

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Q. And, in drafting that charter, you merely copied the purposes in substance from the previous charter; is that right?

A. Yes, I think so.

Q. That is, the previous charter of the Peruvian company.

A. That is right.

Q. At the time when that charter was drafted were there any discussions as to whether the scope of the operations of Panagra were to be other than those actually set forth in the charter?

A. Not that I can recall, no.

Q. When is the first time that you ever heard of Pan American's theory that the original agreement, a part of which is founded upon the letter of August 31, 1928, restricted the operations of Pan American Grace in so far as territory is concerned?

A. Mr. Reynolds, I think that was sometime in 1938 but I couldn't place it exactly.

Q. You have no recollection of ever having heard it before?

A. No.

Q. Not in connection with any other extensions, Mr. Cogswell?

A. No.

[fol. 5424] pp. 3324-3325

Q. Mr. Cogswell, have you had a check made recently, by employees of the Grace Line, as to the amount of gold shipments from Ecuador?

A. I had a check made as to the gold shipments for the years 1935, 1936, 1937, and 1938.

Q. Can you tell me the total amount of the gold shipments from Ecuador on the Grace Line for those years?

A. Do you mean—

Q. (Interposing) In terms of revenue.

A. In 1935, carried 7,369 pounds, Revenue $21,144.52. 1936, carried 2,783 pounds; revenue $9,470.28. In 1937 and 1938 there were no gold shipments from Ecuador to New York on the Grace Line.

Q. For the purpose of comparison, could you give us the total Grace Line revenue leaving out mail subsidy for those years?

A. You mean Grace Line revenue on this route between New York and west coast of South America?

Q. The entire—

A. (Interposing) I haven't the figures. I have the figures for the operation from New York to Valparaiso and return.

Q. All right. Let's have it on this route, then.

A. In round figures, in 1935, leaving out mail pay, four million dollars; 1936, the same; 1937—

Mr. Cahill: There were no shipments in 1937.

[fol. 5425] pp. 3417-3418

Mr. Cahill: * * * I wanted to pick up a figure that was mentioned yesterday.

Examiner Brown: Thank you, Mr. Roig.

(Witness excused.)

Mr. Cahill: At Page 3325. The question I put begins, "All right, let's have it on this route then." It is in the middle of the page. Has everybody found it? The answer reads:

"In round figures, in 1935, leaving out mail pay, four million dollars."

The correct figure there should have been $7,334,244.37.

1936, instead of reading the same, should read $8,116,942.61.

Is that correct, Mr. Cogswell?

Mr. Cogswell: Yes, sir.

pp. 3325-3326

By Mr. Knauer:

Q. I would like to show you P-165, copy of a letter from Mr. Whitney to Mr. Iglehart dated November 19, 1938.

A. I see it.

Q. Can you tell me whether that letter is the first occasion on which you ever saw any statement or identification

A. Not to my recollection.

Q. And when you were called upon to draft this letter, and did, was it your purpose to limit the scope of the new company to an operation—

Mr. Friendly (interposing) I object to that, as to what its purpose was. We have gone considerably farther than would ever be permitted in a court as to what he drafted, but I submit that putting in what the purpose is is going beyond the bounds even in an administrative proceeding.

Mr. Reynolds: I would agree with Mr. Friendly's viewpoint if these two parties were able to agree as to the meaning of the very letter itself, but their argument indicates an ambiguity which is perfectly proper to explain by inquiring into the circumstances surrounding the drafting of the document itself.

Mr. Friendly: Well, it is perfectly well settled that, where there is ambiguity, while you can go into the background, which has been done by everybody at some length, although I think not to the extent that was just done by [fol. 5421] Mr. Reynolds in his preceding questions, that you can not ask the writer of a document to state what he meant by it, or what his purpose was in drawing it as he did. The document speaks for itself.

Mr. Reynolds: Except that this document does not speak clearly, and I am not asking as to what he meant: I am asking as to his purpose. It is an entirely different thing.

Examiner Brown: I don't see the difference though, Mr. Reynolds.

Mr. Friendly: I don't see any difference. If he had a purpose different from what the words said, and didn't express them, that is not binding on anyone else.

By Mr. Reynolds:

Q. Mr. Cogswell, after you drafted this letter, with whom did you clear it, or to whom did you show it?

A. I have no specific recollection, but I certainly showed it to Mr. Roig, and I may have shown it to Mr. Garni, and I think I showed it to Mr. J. P. Grace.

Q. I assume that they all agreed to its being sent in this form?

A. Oh, yes.

pp. 3311-3313

Q. Mr. Cogswell, you drafted the charter for the Peruvian Corporation, as I understand it, as set forth in Exhibit G-405; is that correct?

A. I drafted it or it was done under my supervision, yes.

[fol. 5422] Q. And with whom did you consult after having prepared the draft?

A. I have no distinct recollection on that point, Mr. Reynolds.

Q. Do you know whether it was submitted to Mr. Trippe or any of the gentlemen of the Pan American organization?

A. I have no recollection either in the affirmative or the negative. In other words I don't remember doing it and I don't remember not doing it.

Q. Well, do you remember from what source if any you took the statement of purposes set forth in that charter?

A. I think I probably took the statement of purposes from the charter of some airline.

Q. But you have no direct recollection on that; is that right?

A. Well, I know that Mr. Morris sent me, at Mr. Trippe's request, the charter of a Delaware corporation known as the Buffalo Central Airlines, I think it was, and I had that, and then I sent that back, and I think I may have used that as a guide.

Q. And was there a meeting of the representatives of the two owners to approve the charter before the actual process of obtaining a certificate of incorporation was undertaken?

A. I have no recollection that there was, and I have no recollection that there wasn't.

Q. Now, when you drafted that charter, I suppose you have no recollection as to whether there was any discussion as to the territory in which the company was to operate; is that right?

[fol. 5423] A. I don't recall any.

Q. When you drafted the charter for—

First, I assume it is understood that you also drafted the charter for the original Panagra corporation also.

A. That is right.

ANNEX 51E

U. S. FLAG PARTICIPATION IN MOVEMENT OF DRY CARGO BY SEA BETWEEN U. S. ATLANTIC COAST AND WEST COAST SOUTH AMERICA

	1955	1956	1957	1958
Exports				
Regular Carriers	46.02	47.03	55.25	56.93
Irregular Carriers	5.03	5.14	—	—
Regular and Irregular Carriers	34.73	34.38	38.66	37.66
Imports				
Regular Carriers	60.16	62.24	63.49	56.34
Irregular Carriers	42.78	27.98	23.92	18.50
Regular and Irregular Carriers	46.70	34.48	30.85	24.96
Exports & Imports				
Regular Carriers	55.54	56.36	60.85	56.51
Irregular Carriers	40.78	26.61	23.13	17.71
Regular and Irregular Carriers	45.07	34.29	31.66	26.17

Note: This chart is a summary of Annexes 51A-51D.

[fol. 5419]

W. R. Grace and Company Exhibit 169

Excerpts from Testimony of
William F. Cogswell in
C.A.B. Docket 779

pp. 3306-3308

Direct examination.

By Mr. Reynolds:

Q. Mr. Cogswell, if you will turn to Page 46 of P-34 the letter of August 31, 1928.

A. Yes, I have it.

Q. You will note, as this letter is reproduced in exhibit form, it does not indicate who signed it, other than the title of assistant secretary. This letter was signed by you was it?

A. That is right.

Q. And were you a party to the discussions which led up to the propositions set forth in this letter, Mr. Cogswell?

A. Not most of them. I was in on some of the discussions but not most of the discussions, no.

Q. How did you happen to be selected to write the letter?

A. Well, just as a lawyer, I guess.

Q. At the request of whom?

A. I don't remember. Someone in our office. Perhaps Mr. Roig, perhaps Mr. Garni.

Q. Mr. Iglehart?

A. I rather doubt it.

[fol. 5420] Q. At the time when you drafted this letter had you had discussions with anyone in which you learned it was the intention of either Grace or Pan American to restrict the operations of the proposed new venture in such a manner that they would never go elsewhere than between the Panama Canal and Valparaiso, Chile?

A. No.

Q. Were there any discussions, regarding the subject of confining the company's operations, of any nature, Mr. Cogswell?

from the Pan American directors of Panagra or from Pan American as to a limitation on the scope of Panagra's operations based on its original inception?

A. Yes, to the best of my recollection.

[fol. 5426]

W. R. Grace and Company Exhibit 170

Testimony of R. H. Patchin in
CAB Docket 779

pp. 3050-3055

By Mr. Cahill:

* * * * * * *

Q. Will you tell us the position you occupied with W. R. Grace & Company in 1927?

A. I was a manager of W. R. Grace & Company.

Q. At that time were you interested in the development of air transportation?

A. I became interested in it in that year.

Q. What was your interest at that time?

A. Well, I felt that the flight of Colonel Lindbergh across the Atlantic established aviation as transportation.

Q. And what did you feel in regard to W. R. Grace & Company?

A. W. R. Grace & Company had always been interested in transportation. I felt it would be an excellent line of activity for the company, a splendid thing for the development of the South American Countries with which we were doing business and in which we were doing business.

Q. After Colonel Lindbergh's flight which occurred as I recall in May, 1927, did you commence investigations into the prospects of air transportation in South America?

A. I did.

Q. What did you do?

[fol. 5427] A. I may say first I sought to familiarize myself with the progress of aviation in this country and the fundamentals of it. I then went to work on its application to transportation to Latin America. I interviewed manufacturers of planes, pilots, officials of the—

Mr. Friendly: I would like to have these names as we go along, Mr. Examiner.

A. Well, I got in touch with the Curtis Company, which I think had not yet been combined with Curtis-Wright, and with the Ford people who were—I don't recall whether the Ford tri-motored plane had yet been developed, but it was in the course of development. I talked with the officials of the Guggenheim Foundation which had been established for the encouragement of commercial aviation. I discussed the matter with the Assistant Secretaries of Navy and Commerce. I think Assistant Secretary of the Navy for Air at that time was Colonel Clarence Young. Also with some naval officers who were fliers whose names I do not recall at the moment. Generally I sought to inform myself as fully as possible.

By Mr. Cahill:

Q. Did you talk with any Congressmen?

A. Yes. I talked with some of the people in Congress. I talked with the—I don't remember whether this was immediately in 1927 or not, but subsequently with members of the Post Office Subcommittee of the House Appropriations Committee. I talked with Colonel Lindbergh very soon after his return from his flight. I talked several times with him. He was very kind and gave me information that I wanted.

[fol. 5428] Q. How about diplomats with the South American countries?

A. In the course of my studies I talked to various ones who were then representing their Governments of the countries on the west coast of South America.

Q. How about the managers of the various Grace Houses on the west coast?

A. The managers of the various Grace Houses, as they came to New York from time to time, I discussed the matter with them, and with those resident in New York having charge of our west coast Houses.

Q. Did you discuss the possibility of air transportation in South America with any administrative officials of the United States Government?

A. Mr. Hoyt was a partner of Hayden-Stone and Company of New York City.

Q. Did you meet Mr. Hoyt prior to the formation of The Aviation Company of the Americas, which was formed in June 1928?

A. Yes. I met him in May.

Q. How did you happen to come into contact with Mr. Hoyt?

A. Well, in the course of my affairs about aviation and the study on the subject, I heard that he was very much interested, very active. There were a number of companies in the aviation situation stirring up the development of the business.

I heard of him, was told by persons of his activity, and I called him up one day and went over and called upon him.

Q. I show you a memorandum dated May 23, 1938, entitled "Memorandum for Mr. Iglehart", relating to a conversation had by you with Mr. Hoyt.

[fol. 5432] Mr. Cahill: I ask that this be given a number for identification.

Examiner Brown: It will be marked for identification G-143.

(The document referred to was marked for identification as Exhibit G-143.)

By Mr. Cahill:

Q. I ask you whether G-143 accurately sets forth the substance of your conversation with Mr. Hoyt related therein.

A. I believe it does; yes, sir.

Q. This memorandum was made practically contemporaneously with the conversation with Mr. Hoyt, was it not, Mr. Patchin?

A. Yes, sir.

Q. Will you tell us how many conversations you had with Mr. Hoyt between May and August of 1928?

A. I can not recall the number, but there were several where I talked with him in his office, and I believe he came over and called on some of my associates in Grace and Company. I used to meet him occasionally outside.

Q. What did Mr. Hoyt indicate about his plans, in those conversations?

A. Well, he told me, in a very general way, immediately, what is set forth in the memorandum here.

• • • • • • •

Q. I press the question: Is there anything else you can tell us about what Mr. Hoyt indicated as to his plans in these conversations?

[fol. 5433] A. Well, he said that this company—that he had understood the post office was going to advertise service from Cuba to Colon, and that the company with which he is associated, or whatever the exact corporate form at that time was—I think he was chairman of Pan American Airways—Corp. or Inc.—I don't remember the distinction—and that they were going to seek the contract to the Canal, and I think he also said to Puerto Rico and elsewhere.

Q. Did Mr. Hoyt speak of the date of commencing operations on this service from Panama Canal to Puerto Rico?

Mr. Friendly: From the Panama Canal to Puerto Rico?

The Witness: No.

Mr. Cahill: Two separate services: on the services to Panama Canal and to Puerto Rico.

A. I do not recall specific mention of the dates, but I think that those routes had been advertised about this time for, I believe, Pan American got the contract to the Canal in July, and I think it was well understood that the Post office Department was going shortly to begin extension of foreign airmail routes in the areas indicated at first.

By Mr. Cahill:

Q. Was Mr. Trippe present—

Examiner Brown (interposing): Was that an answer to your question?

Mr. Cahill: I take it that it is an answer to the best of the witness' recollection.

A. Yes. A foreign airmail act had been passed, I believe, in 1927, and I discussed the matter with the Post Office Department.

Q. With whom did you talk there?

A. With the then Postmaster General, Mr. Harry New, the Second Assistant Postmaster General, Mr. W. Irving Glover, who had immediate charge of foreign mails, and foreign airmail, and Mr. White, who was Chief of the Foreign Mails Division, Post Office Department.

Q. Did you talk to officers of the State and Commerce Departments?

A. Yes. The Department of Commerce had an Aeronautical Branch. I talked to them.

Q. Did you talk to Dwight Morrow?

[fol. 5429] Q. Mr. Dwight Morrow had been Chairman of the Government Commission which sat in the controversy arising from the efforts of General William Mitchel to awaken greater military interest in aviation, and I believe, as I recall it, that that commission made certain recommendations which related to the development of military, naval, and civil aviation policy, and Mr. Morrow was, I thought, quite well informed on Government policy and aviation, generally.

Q. Did you talk to the then Secretary of Commerce?

A. Mr. Hoover was Secretary of Commerce, and I discussed the matter with him.

Q. Did you have any surveys made as to the possibilities of air transportation on the west coast?

A. In 1927 we retained the services of an Aeronautical engineer named Archibald Black. He was of the firm of Bigelow and Black or Black and Bigelow, since dissolved, I believe, and he at my request prepared a report on the feasibility of air transport on the west coast of South America, figures based on the cost of equipment and distances to be flown.

Q. Do you have a copy of Mr. Black's reports?

A. No. Mr. Black's report I have been unable to find in recent years. I don't know where it is, and he had no copy. I communicated with him and he said that he retained no copy of it personally, and when his firm went

out of business a great many of their old records had been destroyed.

Q. The employment of Black was about July, 1927, was [fol. 5430] it not?

A. Yes.

Q. Did you obtain reports from any other air transports?

A. Yes; in the following year, during late 1927 or early in 1928, the United States Army sent an air squadron clear around Latin America on what was, I believe, called a good will flight, or the Army-Pan American flight, and I think it consisted of five or six planes—amphibians, I believe—and was commanded by Major Herbert A. Dargue of the Air Force or Air Corps, as I believe it was then called, and I met Major Dargue in Washington, looked him up, as a person who probably knew more about the flying conditions in South America and Latin America, generally, than anyone else, and had many conversations with him about the feasibility of American aviation down there, and finally asked him to prepare a report for us elaborating such a project from all available information and his own experience in flying down there.

Q. When was General Dargue's report, which you have told us about, made?

A. Well, as I say, I had conversations with him in the spring of 1927 and finally in May of that year asked him to make the report and he submitted it in July.

Mr. Friendly: Did you mean '27, Mr. Patchin?

The Witness: The second time, just how?

Mr. Friendly: Yes.

The Witness: No, I did not. It was '28. Thank you.

[fol. 5431] pp. 3059-3066

By Mr. Cahill:

Q. Mr. Patchin, when did you first meet Mr. Richard F. Hoyt?

A. In May 1928—no, I met Mr. Hoyt a year or so previously, but not in any relation to aviation.

Q. What position did Mr. Hoyt occupy at the time, Mr. Patchin?

[fol. 5437] pp. 3074-3084

By Mr. Cahill:

* * * * * * *

Q. Now, you testified that you first met Mr. Trippe, as you recalled, about August 1, 1928. Did Mr. Trippe at any time indicate that the proposed joint company could not operate via the interior of Colombia?

A. No. I do not recall that he made any such statement.

Q. Now, Mr. Trippe has testified, Mr. Patchin, in this proceeding, that Grace & Company did not exercise its option to take up 50 percent of the stock of the air company to be formed until about February 19, 1929. I would like to ask you a few questions as to what happened between the letter of August 31, 1928, and February 1, 1929. My first question is: Is it not a fact that during the organization of Peruvian Airways, Grace & Company took an active part in the management and development of that company?

A. That is true.

Q. Now, is it not a fact that when additional funds were needed by that company—and I refer to Peruvian Airways, Grace & Company and Aviation Corporation of the Americas each advanced $25,000 to Peruvian Airways?

A. Yes.

Q. Is it not a fact that there was some discussion that the operations of the service would be carried on in Chile by a separate corporation?

A. Yes.

[fol. 5438] Q. And to meet this eventuality, was not the Chilean Airways Corporation formed in December, 1928?

A. It was.

Q. And I ask you: did not W. R. Grace & Company and Pan American Airways each subscribe and pay $25,000 in cash for the stock of that company?

A. Yes.

Q. Now, I ask you if it is not the fact that in January, 1929, a corporation was formed in Delaware known as South American Airways Corporation, with a capital of a million dollars?

A. What date was that?

Q. January 25, 1929.

Mr. Friendly: Will you give us the exact date, Mr. Cahill? I think it is there in the record.

(Discussion had off the record.)

A. Yes.

By Mr. Cahill:

Q. Will you tell us who drew the charter of this corporation?

A. Mr. Cogswell.

Q. And who attended to the filing of it?

A. Mr. Cogswell.

Q. Do you know whether Mr. Cogswell consulted with representatives of Aviation Corporation of the Americas in reference to the formation of South American Airways Corporation?

A. I believe he did.

. . . . . .

[fol. 5439] Examiner Brown: Let's have the record show that Mr. Cogswell has advised that his conversation was with Mr. Trippe.

By Mr. Cahill:

Q. Now, the contract for F.A.M. 9, the record shows was advertised on January 31, 1929. Subsequently on February 21, 1929, the name of South American Airways Corporation was changed to Pan American-Grace Airways, Inc., was it not?

A. Yes.

Q. And the organization meeting of that corporation was held on the same date, namely, February 21, 1929, was it not?

A. Yes.

Q. And at that meeting subscriptions were reported from Aviation Corporation of the Americas and W. R. Grace & Company, each in the amount of $500,009?

A. Yes.

Q. Now, Mr. Patchin, can you tell us whether or not Aviation Corporation of the Americas knew long before

[fol. 5434] By Mr. Cahill:

Q. Do you have any further recollection as to whether anything was said by Mr. Hoyt as to when his company could commence operations on the services to the Canal and Puerto Rico?

A. No, except that he intended to move in on them very shortly.

Q. Now, I ask you: was Mr. Trippe a party to these early conversations between Mr. Hoyt and yourself that you have described to us here?

A. I did not meet Mr. Trippe until somewhat later. The exact date of that meeting I do not recall.

Q. Up to the time that Mr. Trippe and you met—and I want to make that a cut-off point at this time—tell us, up to that time what was the situation between—

Mr. Friendly (interposing): I would like to have a date on that, Mr. Cahill. Can we have a date fixed?

Mr. Cahill: All right.

By Mr. Cahill:

Q. Will you fix for us, if you can, the date when you met Mr. Trippe?

A. I would not remember. I recall that he put it at about August 1 in his testimony, and I think that was probably correct.

Examiner Brown: August 1, 1928?

The Witness: 1928. I think that is probably correct, Mr. Examiner.

[fol. 5435] By Mr. Cahill:

Q. Assuming it was August 1, 1928, the date when you met Mr. Trippe, tell us: up to that time what was the situation between Mr. Hoyt and his group and W. R. Grace and Company?

A. Well, the discusion ran to whether they could work together, whether it would be desirable to associate for the development of aviation in South America.

Q. What point had you reached in these discussions just before you met Mr. Trippe?

A. Well, I think we had had a pretty fair meeting of minds that it was desirable and that we both wished to do it.

Mr. Hoyt had stated initially that he wished to do it, and it seemed to us desirable.

Q. Those preliminary arrangements of which you speak —did those preliminary arrangements contemplate the formation of a corporation to carry through the plans, Mr. Patchin?

A. I think so, yes, as well as I can recall it.

Q. And that corporation was, by name, if you recall—?

A. Do you want me to stay on the other side of August 1?

Q. Yes.

A. I don't recall that any name was given to the corporation or any details perfected regarding it.

Q. At the time of your discussions with Mr. Hoyt in the summer of 1928, was the postoffice considering a route from the Canal to Valparaiso?

[fol. 5436] A. Yes. There were indications that it would at some time advertise a foreign airmail route beyond the Canal.

Q. I would like to show you Exhibit P-147. I want you to look at it.

Do you remember the meeting with Colonel Harris which Colonel Harris reports in P-147?

A. I do not remember this luncheon meeting. I remember meeting Mr. Harris in our offices and elsewhere, but I do not have any specific recollection of this luncheon meeting.

Q. Have you any recollection of discussing with Col. Harris the subject of passenger service?

A. Yes. That was a part of our discussions, of course.

Q. Did you at any time express any reluctance to engage in passenger service by air?

A. No. Not when the preparations had been completed so that it was safe.

Q. What did you say in regard to your feelings about safety?

A. We naturally wished not to undertake any operation that would be a hazard to travelers in the countries where we were operating.

February 21, 1929, that W. R. Grace & Company was going into this enterprise on a 50-50 basis?

• • • • • • •

The Witness: I was taking it for granted that we were going along on a 50-50 basis.

• • • • • • •

Examiner Brown: Can't you be more definite than that? Who knew and how did they know?

[fol. 5440] The Witness: Well, we had subscribed equally in the companies that had been formed initially, and in supplying additional capital to one of them when it was required, and we certainly had that idea on our side and I think there was no concealment of it although there was no direct commitment at that time.

Examiner Brown: Your statement was based on an understanding from past facts rather than any direct recollections?

The Witness: My statement is based on a general recollection of the state of mind on both sides at that time so far as it was apparent to me.

• • • • • • •

Q. Now, will you tell us why it was that the Board of Directors of Grace & Company did not act until February 20, 1929?

• • • • • • •

A. The action was taken at a regular meeting of the Board of Directors, and it is the practice very frequently in the company for action to be taken with the knowledge of the directors, without there having been formal action by the Board of Directors. In W. R. Grace & Company the directors—many of the directors are active executives and all are very close to the management, and frequently action is taken, commitments made which are subsequently acted upon by the Board of Directors.

• • • • • • •

[fol. 5441] Q. Mr. Patchin, do you have any knowledge of the manner in which Panagra obtained a concession from the Argentine Government?

A. Yes.

Q. Will you tell us what you know about that?

A. Pan American had a representative there on his way to Argentina early in the year 1929, and late, I believe, in 1928 I had suggested to Mr. Hoyt in the course of discussion of carrying this operation to Argentina, that Dr. Vincente Lopez, a prominent lawyer of Argentina, who had recently ceased to hold an important legal or fiscal position in the Government, and who had been retained—who had previously acted for W. R. Grace & Company in other business in Argentina, would be by reason of his influence and his ability, an excellent person for us to retain to obtain operating rights in Argentina, and early—some time in 1929 he was engaged for that purpose, and my recollection is that he was extremely effective in getting for us operating rights into Argentina before we bid on the mail contracts.

Q. In your opinion was he the man most responsible for obtaining this concession?

A. In my opinion, he was.

Q. Was Mr. Lopez employed as a result of the suggestion set out in your letter which has been marked G-99? I will show you G-99. (Handing to the witness)

A. Yes.

Q. Your answer to my question is yes?

A. Yes.

[fol. 5442] Q. And Mr. Lopez thereupon commenced negotiations with the Argentine Government?

A. Yes.

Q. Now, what was the situation in the Argentine at this time?

A. Well, at this time an American company called Trimotors Safety Airways had an operation of sorts in Argentina and was seeking to get a monopolistic concession.

Q. Did that company subsequently become Nyrba?

A. Yes. That is my understanding.

Mr. Friendly: Could we have the date of this fixed a little better, Mr. Cahill? Is this the early winter of 1929?

Mr. Cahill: Will you fix the date, Mr. Patchin?

The Witness: Yes. Early—I think January or February of that year. I think that Tri-motors Safety evolved—by what steps I do not know—into Nyrba.

By Mr. Cahill:

Q. This Tri-motor Safety Airways had a headstart in the Argentine in this matter, did it not?

A. Yes.

Q. And was it en route toward getting an exclusive concession?

A. We feared that it was and were so advised at the time.

Q. And what did Dr. Lopez do in that connection?

A. He prevented their getting a monopolistic concession.

Q. Did you and Mr. Trippe collaborate in drawing a telegram of instructions to Dr. Lopez?

[fol. 5443] A. I think at that time we did collaborate—my recollection is we collaborated on instructions to him.

Q. Did you play any part in the obtaining of concessions for Panagra in other South American countries, particularly Colombia?

A. Well, in the situation obtaining at the end of 1928 and early in 1929 I studied that situation, I talked to the State Department about it, Mr. Francis White, who was Assistant Secretary of State, and other officials of the State Department, I went on two occasions to see Dr. Olaya Herrera, and I sought to cooperate with Mr. Trippe wherever I could in the effort to pave the way for operating rights for American companies through Colombia.

Q. Who was Dr. Herrera?

A. Dr. Olaya Herrera at that time was the Colombian Minister to Washington, subsequently President.

Q. Will you continue your answer?

A. Colombian Minister in Washington, and subsequently President of Colombia.

Q. Now, will you tell us the instructions which W. R. Grace & Company gave to the Grace Agencies in South America in connection with their proposed representation of Panagra?

• • • • • • •

A. We talked constantly. We had our managers from the West Coast of South America coming here very frequently, and we talked to them at all times and kept them posted when they were here orally on the situation.

[fol. 5444] Q. Now, will you tell us what the instructions were?

A. The instructions were to cooperate in every possible way in making this enterprise successful, Grace having been designated as the traffic agent, to assist in the negotiation of Governmental relations and every possible way.

[fol. 5445] pp. 3094-3095

Q. Just a couple of final questions.

At the time of any of the extensions of the Panagra route, did Mr. Trippe or any of the representatives of Pan American state that Panagra's capital was dedicated to a venture limited to the Canal Zone-Valparaiso route?

A. No.

Q. Was there ever any question of a waiver or liberalization of this so-called dedication of capital in connection with any of these extensions?

A. No.

Q. Was there ever any agreement, to your knowledge, by any representative of Grace that Panagra would not extend north of the Canal Zone?

A. No, sir.

Q. Now, Mr. Patchin, in connection with these extensions of routes of Panagra, can you tell us whether the Grace directors or the Pan American directors were more active in pushing these extensions?

Examiner Brown: What extensions, Mr. Cahill?

Mr. Cahill: The various extensions of Panagra's route.

Examiner Brown: That have taken place, you mean?

Mr. Cahill: Yes.

A. I believe—my recollection is very distinct that in all cases the initiative, the effort, and the final stages of accomplishment of these concessions were accomplished chiefly as a result of the work of the Grace directors.

[fol. 5446] Q. Did you use the word "concessions"?

A. I meant "extensions". In some cases those involve, of course, the obtaining of operating rights, sometimes loosely called concessions.

[fol. 5447] pp. 3095-3099

Cross examination.

By Mr. Friendly:

Q. Mr. Patchin, can you fix the date of the conversations with the manufacturers and Government officials which you testified this morning any more definitely than you have done up to this time in the early years?

A. In 1927—no, I cannot, Mr. Friendly, from memory.

Q. How do you fix them as being in 1927 rather than in 1928?

A. Because I started—I began to work on this thing early in the summer of 1927, and I worked continuously and those were among the first things that I did.

Q. I think you said that you were able to fix the date of your talk with the Post Office officials as being after the enactment of the foreign airmail act; is that right?

A. Well, I didn't recall, as I was speaking, just the date of that, Mr. Friendly.

Q. Was your talk with them after the Act had been passed?

A. No. I think it began very soon after my interest began, because there was talk about foreign airmail. I would be glad to be refreshed as to the date of the airmail Act.

Q. Well, the date of the Act was March 8, 1928.

Mr. Reynolds: That is the second Act?

[fol. 5448] Mr. Friendly: No. That is the first Act. The first Foreign Airmail Act.

The Witness: 1928?

Mr. Friendly: Yes.

The Witness: Then, I was mistaken, Mr. Friendly. It was before that, but at that time there were limited airmail operations, I suppose, on a poundage basis.

By Mr. Friendly:

Q. Now, in 1928 the Grace Line received its financial assistance from the Government in the form of mail pay, did it not?

A. Yes. They got a mail contract—ocean mail contract.

Q. And you were concerned, were you not, that aviation might have some effect on these ocean mail contracts?

A. My recollection is that the ocean mail contracts ran for a period of 10 years?

Q. When was the contract to expire?

A. I think the contract was obtained in 1928.

Q. New contract?

A. New contracts, yes.

Q. Isn't it a fact that at the outset your interest in aviation so far as the west coast of South America was concerned was primarily in the mail feature of it?

A. No, sir. I foresaw, with many others, that it would become real full-fledged transportation, not only of mail but of persons.

Q. I would like to ask you a few questions about your talk with Mr. Hoyt on May 23, 1928. Do you have a copy of G-143 before you?

[fol. 5449] A. Yes, I have it.

Q. I want to refer to the statement in the second paragraph: "It is his understanding that the Post Office Department will soon advertise for bids for mail service from Cuba to Colon via Central America and later will advertise for bids on a mail contract from Colon to Valparaiso," and then consider in connection with that the sentence at the bottom of the page: "He said that he recognized that we were in an advantageous position which was the reason why he hoped we could cooperate with the Pan American Airways, but that if we were disposed to go ahead on our own, he would be inclined to stand aside," and so forth. Now, is it your testimony that this offer to stand aside applied to the Cuba-Colon route or to the route farther south or to both?

A. I think it applied more particularly to the west coast of South America.

Q. I think you testified this morning that Mr. Hoyt told you either at this talk or shortly thereafter that Pan American was planning to move right in on the route to the Canal, had he not?

A. I think he left me with that impression. How definite that was, I don't know. I notice it isn't mentioned here, but that was implied, at least.

Q. Did you, on behalf of Grace & Company, express any interest in this Cuba-Colon route?

A. No, we did not.

Q. Now, I noticed that your letter to General Dargue which is G-140 is written on the same day as your memo-
[fol. 5450] randum to Mr. Iglehart relating your conversation with Mr. Hoyt. Is that purely a coincidence or was one the result of the other?

Mr. Cahill: May we have that read, please?

(The question was read by the reporter.)

A. No. I had discussed the matter previously—of making a report for us previously—with Major Dargue and this was simply confirmation of that.

By Mr. Friendly:

Q. I don't suppose you can remember whether you wrote the letter to Major Dargue before you had your talk with Mr. Hoyt or not, can you?

A. I do not remember.

Q. Now, it did come to your attention, did it not, that this route from Cuba to the Canal or, rather, as it turned out, a route from the United States to the Canal, which Mr. Hoyt told you about, was advertised on May 31, 1928?

A. Yes.

Q. You knew that that had been issued, did you not?

A. The advertisement was issued on the 31st day of May?

Q. Yes.

A. Did I know it when?

Q. Did you know it shortly thereafter?

A. I am sure I did.

Q. Did W. R. Grace & Company consider submitting a bid on that route?

A. No.

[fol. 5451] Q. Did you have any discussions about it at all within the Grace organization?

A. We may have had. I do not recall at the present time.

[fol. 5452] pp. 3122-3132

Cross examination.

By Mr. Harlan:

Q. Mr. Patchin, at the time of your conversation with Mr. Hoyt, which is reflected in the memorandum marked Exhibit G-143, was it your understanding that Pan American was planning to make a similar arrangement with the other steamship companies mentioned to that which eventually was made with W. R. Grace and Company?

A. Mr. Hoyt stated that he intended to approach them, and I assumed that he had already done so, as he was a director, I believe AGWI and had some relationship to Colombia Steamship Company.

Q. Do you know if they planned to have an equal partnership with these steamship companies?

A. I do not know.

Q. Was that the original proposal made to W. R. Grace and Company?

A. I don't recall just which side the proposal emanated from, or what time the 50-50 idea came under active discussion.

I feel quite sure that at no time did we wish to be a minority stockholder in an important enterprise at this time.

Q. You don't remember any time that Pan American suggested that you have less than a 50 percent stock ownership in the new airline?

A. No.

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[fol. 5453] Cross examination.

By Mr. Wanner:

Q. Mr. Patchin, in the early part of your testimony you spoke of conversations with quite a number of people—Colonel Lindbergh and Mr. Hoover, and others. Did that all take place in 1927, or also in the early part of 1928?

A. I think it took place in—well, in the summer of 1927 and then continuously on until we got into this enterprise.

Q. Could you place it as all taking place before your discussion with Mr. Hoyt?

A. All discussion with everybody—all kinds of people?

Q. That is right.

A. No. It was continuous even after that. We continued very actively after the conversations went on.

Q. Would you say that a substantial portion of those conversations took place before your discussions with Mr. Hoyt?

A. Yes, I would say a substantial portion, but not necessarily—I don't know what percentage that would be. It would be a very difficult thing to say. The thing intensified as we went along.

Q. Do you know whether you spoke to the Postoffice officials before that time?

A. Before discussion with Mr. Hoyt?

Q. That is right.

A. Oh, yes.

[fol. 5454] Q. How about the Department of Commerce officials, Mr. Patchin?

A. I don't remember at just what point I went to talk to the Department of Commerce, but I am quite sure before I talked to Mr. Hoyt I talked to everybody in Washington that I thought had any relationship to this question of developing air transport service to South America.

Q. Are you able to recall whether those discussions with the people in Washington, as you call them, took place after you had been in touch with the manufacturers and the Guggenheim foundation?

A. I think they were, more or less contemporaneous. I spent a good deal of time in Washington.

Q. Would you place your discussions with the State Department at about the same time with your discussions with Postoffice and Commerce?

A. I should think so, yes. I had occasion to go to the State Department on other business, and I was pretty well steamed up on this whole question. I think I talked to everybody who was willing to listen to me, and some who were not.

Q. Incidentally, if you don't recall on some of these questions, just say so.

A. Yes, sir.

Q. I am probing some rather ancient memory.

Now, in connection with the employ of Archibald Black, I think you said he was an aeronautical engineer; is that correct?

[fol. 5455] A. Yes, sir.

Q. I take it that the survey he made was an aeronautical survey and not commercial; is that correct, Mr. Patchin?

A. As I recall it—unfortunately I haven't the report it was an estimate of costs of operation rather than revenue.

Q. That is your best recollection?

A. Yes.

Q. Were you able to place the date of that at all, Mr. Patchin?

A. Yes. I think we had the date as July 1927.

Q. '27 or '28?

A. '27. Maybe later. It was during that summer.

Q. How much earlier had you requested the report; do you recall that?

A. I think a month or six weeks, or something like that.

Mr. Archibald Black was an author of a book, I think entitled "Air Transport," which was rather widely read at that time.

Q. At that time, from the time you were talking to officials in Washington and hiring Archibald Black, did you personally have in mind going into partnership or combination with any other interest for the west coast service?

A. I don't recall any detailed partnership suggestion at that time, or ideas. I thought that it was entirely practicable for us to attempt it ourselves.

[fol. 5456] Q. By "ourselves" you mean W. R. Grace and Company, Mr. Patchin?

A. Grace and Company, with due preparation.

Examiner Brown: The plans hadn't reached any tangible state at that time?

The Witness: No, they had not.

Examiner Brown: Very tentative arrangement, I take it? I mean, probing into the possibilities of air transportation, which was in its infancy at that time.

The Witness: Going into the matter very carefully, sir.

By Mr. Wanner:

Q. Coming up to the time of your discussions with Mr. Hoyt, and referring to G-143: As I understand it, that memorandum—

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A. Yes, sir.

Q. Do you recall whether it took place on that day, or possibly a day or two before?

A. I am sure—I am reasonably sure that it took place on this day or the day before. I am sure that I wrote the memorandum very promptly after the conversation.

Q. Did you arrange with his office to go to his office and meet him?

A. My recollection is that I called him up and I told him I heard he was interested in aviation in the international field, and so was I, and I would like to have a talk with him.

[fol. 5457] Q. You arranged the meeting?

A. That is my recollection.

Q. You initiated it?

A. My recollection seems to be supported by the fact that it says that he had intended to approach us.

Q. Referring to that sentence, the first sentence of the second paragraph, did his statement in that connection indicate to you that he had in mind financial participation of W. R. Grace and Company?

A. Not entirely.

Q. You say "not entirely"?

A. No, I don't think so. I don't think it was just that.

Q. Did it include financial participation?

A. Well, I suppose so, yes.

Q. You don't know definitely, though?

A. Why, yes. He had said that they were obliged to raise some capital.

Q. Pardon me?

A. The memo says that they were obliged to raise some capital—over on the next page. It says they would require people to come in.

Q. Do you recall whether he had the intention of obtaining financial participation from the other steamship companies mentioned in the first paragraph?

The words used in the memorandum there are "participation and cooperation".

A. I don't know what his detailed plans were with regard to them, further than it may be indicated in the memo.

[fol. 5457a] Q. Now, referring to the last sentence on the first page of G-43, beginning, "He said that he recognized we were in an advantageous position" and so forth, and then continuing over, "He stated that he would be inclined to stand aside and not compete if Grace is disposed to go ahead."

At that time did you indicate whether Grace would go ahead on its own?

A. I do not recall. We certainly intended to get into aviation.

Q. You were not able to make any commitment at that time, however, or take any position on whether you would go ahead on your own?

A. There wasn't any discussion of that.

Q. Do you recall when it was decided to take an equal participation in the Peruvian company?

A. Sometime between the time of my first meeting with Mr. Hoyt and the time the Peruvian corporation was organized, I should think, maybe along the latter part of July or August.

I should think maybe some time in July, but that is a conjecture at this distance.

Q. Would it be very shortly before the letter of August 31 was written?

A. Could my recollection be refreshed as to when the Peruvian corporation was organized?

Mr. Friendly: September 6, I think.

The Witness: September 6, yes.

By Mr. Wanner:

Q. You will recall, however, that the August 31 letter provided for each company furnishing $25,000; is that right?

[fol. 5458] A. Yes, that is right. It was sometime in August, I should say, probably—maybe in July.

Q. Referring to the second page of G-143, the first complete paragraph on that page refers to the Huff Daland Dusters outfit.

Did you know, before your meeting with Mr. Hoyt, that Huff Daland was a subsidiary of Keystone, or in any way related to Mr. Hoyt?

A. I don't remember now. I think I might. I have heard of their activities in Peru, but I don't recall specifically.

Q. Did you know that Colonel Harris was with the Huff Daland Dusters at that time—1928?

A. I don't believe I had met Colonel Harris up to that time, and I don't know that I had identified him with that—in 1928, I mean.

Q. You wouldn't be able to state, then, whether your knowledge of the Huff Daland activities was one of the things that sent you to Mr. Hoyt—that induced you to go to him?

A. It may have been. We knew of Huff Daland in Peru, of course.

Q. But you didn't know it was a Hoyt company, or related to Hoyt?

A. I do not know at what time I learned that fact, Mr. Wanner.

Q. Do you recall who it was that sent you to Mr. Hoyt? Did any particular person have anything to do with it?

[fol. 5459] A. I think I heard from several persons, and I think he was in the newspapers in connection with the aviation news from time to time, too, and I think Mr. Guggenheim, or somebody of the Guggenheim Foundation, may have mentioned his interest to me.

* * * * * * *

Q. It is your best recollection that he knew of your interest at the time of your May 23, 1928, meeting?

A. That would be my recollection, yes.

Q. And that he so stated at that time?

A. Well, I think so, yes.

Q. Now, coming to a somewhat later period, between the time of the formation of the Peruvian company and the decision of Grace to exercise its option: did any of the Pan American officials—Mr. Trippe or Mr. Hoyt or Mr.

Whitney—to your knowledge attempt to get a commitment from the Grace people as to whether the option would be exercised?

That is, were they urging that a decision be taken on the exercise of the option, to the best of your recollection?

A. That is, when we moved into the formation of a larger company?

Q. That is correct.

A. I think that there was some suggestion from Mr. Trippe and Mr. Cogswell that, if Pan American didn't want to take a—if Pan American-Grace—it was not then Pan American-Grace--

[fol. 5460] Q. If Grace did not want to?

A. If Grace did not wish to take a substantial interest in the company to be formed, if one was formed, for the purpose of bidding, that they would prefer to operate it as Pan American Airways.

Whether that was intended as pressure for a commitment I do not know.

Q. Well, if I may refresh your recollection a little on that: That was part of a series of letters written on August 31 and immediately thereafter.

Now, during the succeeding months did Pan American try to have Grace make up its mind as to whether that option would be exercised?

A. I think we had pretty well made up our minds on the subject and wished to go ahead on that basis, and I do not recall of any particular pressure, and the need was not apparent, because the progress of the situation had not opened up where there could be an operation at that time.

[fol. 5461]

W. R. Grace and Company Exhibit 171

Testimony of Mr. Roig in
CAB Docket 779

pp. 771-2

By Mr. Cahill:

Q. Coming back to Colombia again: you have told us of Pan American's purchase of an important interest in Scadta. Scadta, you have told us, was originated as a German company in Colombia; is that not true?

A. That is my understanding, yes, it was organized by a man by the name of von Bauer. He was either German or Austrian.

Q. Even after Pan American's stock purchase, did Scadta continue to be operated under German management?

A. Yes, up until the outbreak of the present war.

Q. Scadta operated local services in Colombia, did it not?

A. Yes.

Q. Now, is it your testimony that Pan American did not want Panagra to enter Colombia?

A. That is what we were told at the time.

Q. And by whom?

A. By Mr. Trippe and others.

Q. Now, if Panagra could be tied to a flying boat operation, Panagra would not be enabled to enter Colombia; is [fol. 5462] that true?

A. That is correct. We would have been confined to the coast—Buenaventura, Tumaco.

[fol. 5463] pp. 931-34

By Mr. Friendly:

Q. Now, it is a fact, is it not, that as early as 1940, you were concerned over the possibility of some other airline applying for a certificate to operate from the Canal down the West Coast?

A. I have been concerned about that a good many times. I wouldn't say that as early as 1940 was any too early.

Q. You are concerned about it now, I take it?

A. Very much.

Q. You recall, do you not, that in the fall of 1940 American Export Airlines had filed an application for the New Orleans-Canal Zone?

A. Yes, I recall it, and that recalls what you probably have in mind. I stated at that time, and I felt very clearly, that if they obtained that and got as far as Balboa, there would be considerable danger of their proceeding further south, and any operation operating south of Balboa is not unlikely to follow the Panagra route.

Q. Now, W. R. Grace & Company never filed any application for New Orleans-Canal route in accordance with the regulations of the Civil Aeronautics Board, did it?

[fol. 5464] A. That is correct.

Q. Did you have any further discussions as to filing such an application?

A. Among ourselves, you mean?

Q. Among yourselves, yes.

A. Well, either before or around the time of this application, we organized the Gulf and Caribbean Airways, with the idea of using that company in this connection. It subsequently developed that owing to the situation which arose—already existed, as a matter of fact, and became increasingly worse—it was impossible for any new company to obtain equipment at that time of any kind suitable for such an operation.

[fol. 5465] pp. 1003-04

Examiner Brown: Before you leave that subject, Mr. Friendly, I would like to ask one question on this R.C.A. matter:

Mr. Roig, in the event the local agency refused to or failed to sign, was that the end of the matter? You say that an R.C.A. required the signature of a number of individuals. Were those R.C.A.'s forwarded to New York if the local agency failed to sign or did the matter stop there?

A. Oh, it did not stop there by any manner of means. If any of the different people who were to sign were unwilling to sign, the matter then became one of discussion,

and I would decide it. I can't at the moment recall a single case of that kind.

Examiner Brown: I was just wondering.

The Witness: That would be what would happen.

Examiner Brown: All right, Mr. Friendly.

By Mr. Friendly:

Q. How would that work in the period before you were president, if you know?

A. Mr. MacGregor would have decided it at that time. He was the general manager.

Q. He would have had to take it up with the Grace people in New York, would he not?

[fol. 5466] A. He would probably have discussed it with me. He wouldn't have had to, as far as I know.

[fol. 5467] pp. 1021-22

By Mr. Gambrell:

Q. You spoke a minute ago of the dissatisfaction of depending on Pan American connections to the United States because Pan American had other interests to serve. Would you say that by a parity of reason it could be said that the Grace people should not be in control because their handling of the services of Panagra and the outlets to the United States would be largely influenced and restricted by considerations of the numerous other Grace interests in Latin America?

A. I would not only not say that, but the latter part of it I would most vigorously deny.

Q. Is it not true that when a passenger is sold transportation over Panagra, he thereby loses his potential as a possible passenger on Grace Line down the West Coast of South America?

A. I don't think so. I am not interested in potentials. I am interested in actuals. Panagra is carrying today as many passengers in a month as the Grace Line carried when it was operating in a year, and I think any theory that an air passenger is necessarily lost to a surface line presents a very meager and naive view of the future of air trans-

portation. Not only the future but the present and the past. [fol. 5468] Air transportation has not been developed that way abroad. It has created most of the traffic which it carries. The traffic which it carries was never a potential for the steamers.

[fol. 5469] pp. 1045-46

Q. *Isn't the Grace Line Steamship operation the* principal passenger operation on the West Coast?

A. It is not. In normal times— Now, there again you are coming to this question of principal. That would involve adding up steamers and adding up accommodations, and all that sort of thing, but in normal times, between the Canal Zone and Chile, where Panagra operates and where the Grace Line operates, there are many other steamship lines engaged in business, and without seeing the figures—I think we have a gentleman here who will give them—I am not prepared to say who has the most tonnage, but W. R. Grace and Company does not carry even half of the passengers or cargo in that area.

[fol. 5470] pp. 1073-74

By Mr. Gambrell:

Q. Mr. Campbell yesterday or the day before testified as to the possibility of an interchange of equipment between Pan American and Panagra at certain times. In your opinion, would an arrangement, under Board Authority, whereby Panagra would operate its equipment on Pan American's route between Canal Zone and Florida, solve the difficulties you have spoken of?

A. It would not solve it.

Q. Could you say why?

A. When you speak of a traffic exchange agreement between Panagra and Pan American, I necessarily think of the form of such agreement which Pan American prepared and submitted to us and not of some imaginary agreement that I know nothing about. That particular agreement, as I explained yesterday, would not accomplish any of the objectives that we are interested in, other than the mere objective of making it possible for passengers to come through to the United States on perhaps the same plane.

Even that, however, would involve Pan American's operation of their plane over portions of the Panagra route which I do not consider advisable. It would not, as drawn, have permitted bringing Panagra's crews through to the [fol. 5471] United States. It would not give Panagra any bases in the United States with all of the advantages and benefits flowing from that which Mr. Campbell and others have described.

[fol. 5472] pp. 1075

Q. May I ask if there has been any filing of the agreement of January 4, 1939, with respect to the management of the company and providing service—that is, since the effective date of the law?

A. You mean January 4, 1939?

Mr. Gambrell: February 14.

A. February 14?

By Mr. Gambrell:

Q. Yes.

A. That agreement was discussed with the Board. To the best of my knowledge, it was not filed because counsel and the Board's counsel with whom it was discussed did not consider that it came within the filing requirement. To the best of my knowledge, since the passage of the Civil Aeronautics Act, all agreements required to be filed under the law have been filed.

[fol. 5473] pp. 1144-45

By Mr. Reynolds:

Q. And various occasions where you have had the equipment interchange proposals, even the early ones as well as the more recent one, it again has been true that Pan American wanted to operate the planes themselves on the Panagra route; is that not true?

A. That is true. We have felt that there have been a number of instances of that kind, where, if their proposals had been followed, Panagra would have ceased to become

an independent company in any real sense at all, it would have become a division of the Pan American Airways.

Q. Is it correct to state that a major portion of your controversies have involved that element of Pan American, on the one hand, wishing to operate for Panagra and Grace, on the other hand, endeavoring not to permit it?

A. Well, in a broad way, I have always felt that our controversies could be grouped under the heading of "Panagra Independence," "Route Extensions," an "Publicity," and under the first heading, "Panagra Independence," fall a very considerable number of matters, some of which you have referred to.

[fol. 5474] p. 1160

Q. Do you recall, Mr. Roig, any instance in which Mr. Trippe has taken the position—or Pan American has taken the position—that Panagra was prevented from operating to or from a certain place or in a certain manner, because of an agreement which Pan American had entered into with some other company or with some other Government?

[fol. 5475] pp. 1163-64

Q. Pan American also insisted that if Panagra be allowed to go into Cali, it also be understood that Panagra would keep out of the Caribbean area, did it not?

A. There was an attempt made at that time and I think again in connection with a proposed Scadta extension to Cali, certain draft agreements prepared by Pan American were submitted which contained clauses which were intended to prohibit Panagra and Grace from entering the Caribbean, and we also refused to enter into any agreement containing any such provision.

Q. Were those agreements so drafted that one of the advantages accruing to Panagra would be the operation into Cali, or is this entirely something different?

A. No. I don't recall any particular agreement of that sort in connection with Cali. I do remember, in connection with Quito, I think, in the proposal that Scadta should go to Quito, I remember some written agreements were made at that time, and I remember after a certain draft had been

made and then submitted to Pan American, it came back with this Caribbean idea in it which, as I recall, had not been discussed up to that point. The discussions were related to quite different matters.

[fol. 5476] Q. The result of your discussions was that no such agreement was ever signed, I take it?

A. Oh, yes. We declined to sign any such agreement.

Q. In connection with none of these arrangements have you agreed that Panagra would actually keep out of the Caribbean?

A. No.

[fol. 5477] pp. 1172-73

By Mr. Reynolds:

Q. Mr. Roig, to what extent do the needs of the East Coast service enter into the setting of the rate for the West Coast service?

Mr. Cahill: If at all? There has been no foundation for it.

Mr. Reynolds: If at all. Apparently there has been an understanding on it, and I just want to know what factors have been brought into play thereby.

A. I don't know to what extent the East Coast factors may have influenced Pan American. They have not influenced Panagra's decision as to the rate except that it may have occurred to us that, in the early days—to some extent now—that on a mileage basis the West Coast rate might be lower, but it is a well-known fact in transportation that mileage is not always by any means the determining factor and no matter how low we made the rate on the West Coast Pan American could have made an equal or lower rate on the East Coast, regardless of mileage.

By Mr. Reynolds:

Q. In your rate-making procedure has Pan American never suggested that a certain rate would have to be [fol. 5478] higher, or couldn't come down because they just couldn't meet it on the East Coast?

A. I don't recall any such issue having actually been reached in any of my discussions.

[fol. 5479] p. 1303

By Mr. Cahill:

Q. Do you recall, Mr. Roig, any complaint by Pan American prior to the present proceeding that the Grace Line or W. R. Grace & Company was taking any action prejudicial to the best interests of Panagra?

A. I do not.

[fol. 5480]

W. R. Grace and Company Exhibit 172

Testimony of Mr. Sinclair in
CAB Docket 779

pp. 2576-2578
2599-2600

By Mr. Cahill:

Q. Now, you know that Pan American Airways handled all Panagra traffic in the United States, do you not, Mr. Sinclair?

A. Yes.

Q. And has done so from the very beginning, has it not?

A. To the best of my knowledge.

• • • • • • • •

Q. Do you know any one man in Pan American, in all your years of experience in this traffic work—do you know of any one Pan American man who has devoted all his time to Panagra traffic in the United States?

A. No, I personally don't.

Q. You told us about this ticket counter in the Canal Zone. I want to ask you: Did the Panagra people on that counter ever try to steal Grace line customers for Panagra?

• • • • • • •

A. After the incidents occurred I myself tried to do so, yes.

[fol. 5481] By Mr. Cahill:

Q. Did you ever hear that Panagra people were instructed by the managers of Grace agencies to go on to the decks of the Grace Line steamers and endeavor to sell the Grace Line passengers tickets on Panagra?

The Witness: I didn't get that question very clearly.

Examiner Brown: Read the question.

(Whereupon the pending question, as above recorded, was read by the reporter.)

A. No, I never heard that.

By Mr. Cahill:

Q. Did you ever know that Pan American Grace representatives went aboard the Grace Line steamers with the consent of the Grace managers, to sell Grace Line passengers tickets on Panagra?

A. No. It is news to me. I went on board myself the Grace Line steamers. It was the latter part of my service, but that is news to me that they had instructions to do so.

Q. What were you doing on board the Grace Line steamers on these occasions?

A. Well, they were pleasant steamers. We used to go on board to have dinner sometimes, get a little party together, [fol. 5482] meet a number of friends there. I personally, I can assure you that I never solicited business. Not that I had no desire to solicit business. I used to send a man on board for that purpose.

Q. To solicit business for Panagra?

A. To solicit business for Panagra. I would like to add something to that. I would like to clarify that: that my man invariably worked through the purser of the Grace liners.

I mean, he didn't go up and contact passengers indiscriminately. He invariably worked through an employee of the steamer.

• • • • • • •

By Mr. Reynolds:

Q. When you were in the Canal Zone and had a man soliciting traffic on board ship—

A. That is right.

Q. I believe you testified that you had instructed such a man to do that.

A. That is right.

• • • • • • • •

[fol. 5483] Q. Did they [Grace] know that you were sending that man, or those men, or whatever it is, aboard ship to solicit traffic?

A. I don't believe I ever made it known to them.

Q. How did you happen to send him? Was it your own idea?

A. No. They had been doing that before I arrived in the Canal Zone.

Mr. George P. Smith had been sending a boy by the name of Korval aboard all steamers, not only the Grace liner, but all steamers.

[fol. 5484]

W. R. Grace and Company Exhibit 173

Testimony of Mr. Trippe in
CAB Docket 779

pp. 1515-1517

By Mr. Friendly:

Q. When did you first hear of a proposal—and by "you" I mean you personally—that W. R. Grace & Company might take an interest in the company that was to operate under the Peruvian concession?

A. I did not hear of it until around August, 1928.

Q. How did you hear of it?

A. Mr. Hoyt told the officers of Pan American that he had conversations with Mr. Iglehart, and I think Mr. Patchin of the Grace Company, whereby the Grace Company might acquire up to a 50 percent interest in our route from the Canal Zone down the west coast of South America.

• • • • • • • •

Q. Did you see Colonel Harris again at about this time?

A. Yes. Colonel Harris had come to New York for discussions with us as to the steps to be taken in setting up the operations in Peru. At about this time Colonel Harris informed me that at Mr. Hoyt's suggestion he had met with certain officers of the Grace Company.

Q. Did Colonel Harris give you this information in writing or orally?

A. In writing and also orally.

[fol. 5485] Mr. Friendly: I would like to have marked for identification a memorandum dated August 1, 1928, from Colonel Harris to Mr. Trippe.

Examiner Brown: The document will be marked for identification Exhibit P-147.

(The document referred to was marked Exhibit No. P-147 for identification.)

By Mr. Friendly:

Q. Is the memorandum which has been marked for identification as P-147 the writing to which you have just referred?

A. It is.

Q. What position did you take with respect to the making of arrangements with Grace & Company?

• • • • • • •

A. I had certain misgivings, particularly Colonel Hamilton, our vice president, and I had misgivings about the steamship angle. However, we considered that Mr. Hoyt was pretty well committed and that there was really no point in debating the pros and cons.

[fol. 5486] pp. 1558-1559

By Mr. Friendly:

Q. What is your recollection as to whether it was the existence of the Grace Line that led Pan American to be interested in W. R. Grace & Company? How did you regard the matter?

A. I looked upon Grace & Company as a whole. While, as I have said, we considered Pan American was committed before I came into the matter, I felt the only real advantage to us was the participation of a company with many connections in the west coast countries of South America where the line was to operate, and with a chain of established agencies which had close contacts with most of the west coast countries. Also they were acting for the steamship line, but certainly I did not feel that the conduct of a competitive steamship was an advantage.

Q. Do you consider that the participation of W. R. Grace & Company has had advantages for Pan American Grace Airways?

A. Of course, I do. I do not want my testimony to be construed at all as meaning that Pan American-Grace has not benefitted in some important ways from the participation of Grace & Company, particularly, the ability of men such as Mr. Grace, Mr. Iglehart, Mr. Garni, and Mr. Roig.

[fol. 5487] pp. 1621-1625:

By Mr. Friendly:

• • • • • • •

Q. What reasons led Pan American to enter into the agreement of February 14, 1939?

A. We had tried every other compromise without success. We knew that because of Mr. MacGregor's desire to retire a new issue would shortly arise in an attempt to secure an independent president. It seemed best in the interests of avoiding a stalemate that we accept the Grace suggestion on management in return for their agreement that the issue of the extension was not to be raised again except on the finding of an arbitrator that our connecting service was inadequate. We were, of course, also mindful of the ill effects of a public quarrel between the two principal American flag transportation systems in Latin America, ours in the air and Grace on the water.

• • • • • • • •

Q. When did Grace next bring up the proposal that Pan American-Grace extend to the United States?

A. In the fall of 1940.

Q. What reason did they give for bringing up the matter at that time?

[fol. 5488] A. The reason given was the application which had been filed by American Export Airlines for a certificate between New Orleans and the Canal Zone. They said they were afraid that American Export would get this route as against Pan American, and would then find that the New Orleans-Canal Zone route did not offer sufficient traffic in and of itself, and would probably seek to extend its lines down the west coast in competition with Pan American-Grace.

Q. In connection with this request by Grace, was any complaint made concerning the connecting service of Pan American between Miami and the Canal?

A. Not to my knowledge.

Q. Was any claim made by that time of breach by Pan American of the February, 1939, agreement?

A. No.

Q. What happened when the proposal was made?

A. We told the Grace people that we could see no reason for departing from our agreement of 1939 and that we were not impressed by the reasons which they had advanced.

Q. Was the proposal dropped?

A. We heard nothing further about it for some months.

Q. When did Grace again bring up this matter of extending Pan American-Grace north from the Canal?

[fol. 5489] A. They brought it up again in the spring of 1941.

Q. What reason did they give for bringing it up again at that time?

A. It was again the New Orleans issue, which was now about to be heard.

Q. Were there further discussions of the matter during the spring of 1941?

A. Yes, there were, largely with Mr. Rihl.

Q. Was there any change in Pan American's position?

A. No. Not at all.

[fol. 5490] pp. 1714-1716

By Mr. Friendly:

Q. Do you recall the various proposals that were made in regard to Pan American-Grace's operations into Bolivia?

A. Yes. The question of operating through Bolivia was discussed in the very early days when there was difficulty in making arrangements in Chile.

Although Bolivia was not on the route mentioned in the letter of August 31, 1928, it had been mentioned along with the Argentine in my original memorandum, and we agreed that the company's territory might be broadened to include Bolivia, which we considered to be definitely a west coast country, although not actually on the sea coast.

What was under discussion at this time was not a shuttle service but diverting the whole route to Buenos Aires through Bolivia if the Chilean situation could not be handled.

We rather favored this idea and had Mr. Rihl go to Bolivia to explore the situation.

However, the Chilean matter was subsequently worked out and the Bolivian proposal was dropped.

I have no recollection that the question of operating into Bolivia was raised by Pan American-Grace again for some time.

[fol. 5491] Q. Do you recall being told, around 1934, that an opportunity had presented itself for Pan American-Grace to establish a shuttle service from Tacna to LaPaz?

A. I recall the incident, although not the precise dates.

Q. What was Pan American's position?

A. We had some doubt about it, simply on the business side.

La Paz was a high altitude airport, something over 13,000 feet, and with existing equipment only a small pay load could be available, particularly on westbound flights. Pan American was not sold on the operation as a business proposition with the equipment then available, and without United States mail pay.

Q. Did Pan American later agree to the inauguration of the Tacna-LaPaz service?

A. Yes, we subsequently did, suggesting amendments to the proposed franchise that were included.

[fol. 5492] pp. 1878-1879

By Mr. Cahill:

• • • • • • •

Q. Mr. Trippe, everything is important, and I am asking you for your present recollection, I am not asking you for something you can get up, but that is all you can remember at this time. Isn't it true that the development of the Panagra line as well as the development of the Pan American line is a pioneering venture?

A. Yes, I believe that would be a proper statement.

[fol. 5493] pp. 1946-1951

By Mr. Cahill:

• • • • • • •

Q. Now at that time Mr. Hoyt was controlling the Aviation Corporation of the Americas, was he not?

A. I wouldn't say he controlled it. I would say the Board of Directors controlled it.

Q. Mr. Hoyt was a very important person in the Aviation Corporation of the Americas, was he not?

A. He was our chairman.

Q. And that corporation was a holding company for Pan American at the time, was it not?

A. In the late summer of '28—

Q. (Interposing) '28?

A. (Continuing) —I believe it was, yes.

Q. Mr. Hoyt was a director of the Atlantic Gulf West Indies Steamship Company, was he not?

A. Yes, he was.

Q. And his father-in-law's family, the Stone family, of Hayden Stone were in control of that steamship line, were they not?

A. I wouldn't know that.

[fol. 5494] Q. Have you any recollection of that?

A. No, I have none.

• • • • • • •

Q. Now, the Madison Steamship Line owned 27,500 shares of Pan American, did it not?

A. It did own some time ago.

Q. Yes.

A. Whether they still own them or not, I am not sure.

Q. The United States Line, another 27,000 shares, did they not? In Pan American?

A. That is correct. A small percentage.

Q. What you say that they did some time ago, that means at the time you filed an exhibit as to the stockholders in Pan American in this case; isn't that true?

A. With respect to the Matson Company?

Q. With respect to both the directorship of W. H. Standley in Electric Boat, and with respect to the ownership of Matson and with respect to the ownership of United States Steamship, all in Pan American.

A. What date would that be, Mr. Counsel, so I could get it?

Q. I don't know, Mr. Trippe. Your counsel can probably give it to you.

[fol. 5495] (Discussion had off the record.)

Mr. Friendly: The end of 1942 or thereabouts.

By Mr. Cahill:

Q. Do you know of any change in the stockholdings of these two steamship companies, the United States Lines since the date of this exhibit?

A. No, not that I know of.

Q. Or Matson?

A. Yes, I have heard that Matson had disposed of part of their shares.

Q. Do you know that to be a fact?

A. I just heard that.

Q. Just rumor?

A. Yes, I would say it is just rumor.

Q. These two companies, on the basis of your exhibits in this case, are among the few top stockholders in Pan American, are they not, these two steamship companies, calling to your best recollection?

A. Yes. I believe I did say that. I would be glad to elaborate on that and show you just what assistance these—

Q. (interposing) I am just asking you for the fact, Mr. Trippe.

[fol. 5504] A. (continuing)—other international airlines received from the steamship companies.

Q. I am just asking you for the fact, whether you so testified.

A. The steamship companies were not interested—

[fol. 5505]

W. R. Grace and Company Exhibit 174

Growth in Air Traffic between the United States and South America (Including Canal Zone)

1961 (First 6)	141,600	air travelers
1962 (First 6)	[illegible]	air travelers
[illegible] (First 6)	12,655	air travelers

Sources

1. Cherington testimony (Tr. 616).
2. PS-[illegible].

DEFENDANTS

EXHIBIT

MAY [illegible] 1969

5505

A. What would you mean by "few top stockholders," within the top three or four?

Q. I am asking you, Mr. Trippe.

A. No, I wouldn't say they were among the three or four top stockholders.

[fol. 5496] Q. I am not asking you about three or four. Aren't they among the most substantial stockholders of Pan American?

A. They own, or did at that time, some two or three percent of the stock of the company.

Q. Will you please answer my question? Are they among —these two steamship companies—the largest stockholders that Pan American has?

A. They are not the largest stockholders.

Q. Are they among the largest, I asked you.

A. No, I would not say they are among the largest.

Q. Would you put them among the first 10?

A. Yes, I would put them in among the first 10.

Q. In the first 10 of the largest stockholders of Pan American?

A. Yes.

Q. And that is the first 10 out of 9,000, if I understood your testimony the other day. You told us you had 9,000 stockholders?

A. We have over 9,000.

Q. Now, speaking of the holdings of Mr. Hoyt, you said, didn't you, that you didn't think he was in control of the Aviation Corporation of the America?

[fol. 5497] Do you know what stock Mr. Hoyt owned in the Aviation Corporation in 1928?

A. No, I don't have any figure in mind.

Q. Do you know what stock the Stone family owned in the Aviation Corporation at that time?

A. No, I don't.

Q. Didn't the Hayden Stone group have a substantial interest in the Aviation Corporation in 1928?

A. Yes, they had a substantial interest, but certainly not a control interest, according to my recollection.

[fol. 5498] pp. 2280-2283

By Mr. Wanner:

• • • • • • •

Q. Now, you testified that you did not learn of the negotiations relating to the participation of Grace in the west coast service until about the first of August, 1928. Do you recall that?

A. Yes, I believe that was my testimony.

Q. Did you say that you learned of that from Colonel Harris?

A. Well, I recall a discussion with Colonel Harris whom I think had also had some meeting with the Grace officials at the time. Whether I heard it first from Colonel Harris or Mr. Hoyt, I don't know, but I don't recall knowing anything about the discussions prior to that time.

Q. Don't you recall learning it from Colonel Harris at the time he was in New York at the end of July, negotiating in part for the purchase of Fairchilds for the Peruvian operation?

Mr. Friendly: July, 1938?

Mr. Wanner: That is right.

A. No. I don't recall that.

[fol. 5499] By Mr. Wanner:

Q. You don't remember that?

A. No.

Q. When you did learn of the negotiations, you learned did you not, that they had actually been going on for some time prior to the date that you found out about it?

A. Yes, I believe I heard—

Q. Do you know how much prior to that time they had been going on?

A. No, I don't know.

Q. Who was Mr. Atkins in Mr. Hoyt's organization?

A. Is that Mr. Robert Atkins you refer to?

Q. I believe so, yes.

A. I think he was an associate of Mr. Hoyt in Mr. Hoyt's firm. Whether he was a partner in Hayden Stone or not, I don't know.

Q. You had quite a number of dealings with him in the spring and summer of 1928 in connection with the west coast negotiations, did you not? Do you recall that?

A. Yes, I do.

Q. Didn't he call to your attention the fact that Mr. Harris had advised him that Mr. Patchin had been inquiring of the Post Office Department concerning a possible [fol. 5500] west coast service as early as April of 1928? That is, a west coast service by airplane?

A. No, that that I can recall.

Q. That doesn't refresh your recollection. You don't recall his mentioning that to you at any time?

A. Not at all.

Q. That was Mr. Atkins?

A. No, I don't recall at all.

Q. In the summer—do you recall in the summer and spring of 1928 participation of the Marconi Company or one of the Marconi Companies in the west coast service being considered?

A. I recall that the mail contract in Peru in some way brought the Marconi Company in the picture, and my recollection would be that the Marconi Company was a British organization that held the franchise for operating mail service in Peru.

Q. Yes, but I am not referring to that. I am referring to negotiations here in New York with respect to financial participation of that company in the west coast service similar to the participation of Grace.

A. No.

Q. You don't recall that?

A. No, I have never heard of any such move.

[fol. 5501] Q. The negotiations during that period were carried on primarily by Mr. Hoyt?

A. Yes, sir.

[fol. 5502] pp. 2727-2729

By Mr. Calfill:

Q. Do you recall, on a previous occasion, having been asked this question:

"Is any steamship company tied in with you?

"Mr. Trippe: Yes, sir; the United States lines operating transAtlantic service and the Matson Line operating trans-Pacific service."

Do you recall that question having been put and your having given that answer?

A. I may have. I don't know. Certainly both companies are associated with Pan American; that is true.

Q. Well, I refer you to your testimony before the Subcommittee on Appropriations, the House of Representatives, on the Postoffice Appropriation Bill for 1942, Pages 640 to 643 of the record.

Now, isn't it a fact that you testified at that time that Pan American received considerable advantage from the steamship companies that it was tied in with?

A. That is correct. We do receive certain advantages. I would be glad to outline those if you like.

Q. Now, at that time the help you thought you got primarily was the use of the steamship agencies abroad; isn't that true?

[fol. 5503] A. That was one form of assistance. Another was the fact that the steamships of these two lines were in a position to provide rescue service at sea in the event one of our clippers should go down.

In these early pioneering years that was a possibility we had very much before us, naturally, and we sought to do everything possible to see that appropriate assistance was rendered them in the event of such a contingency.

Q. Do you think it is necessary to have a stock interest in a steamship line to have that steamship line go to the assistance of an airplane that is in distress; is that the intendment of your testimony?

A. No. The intent of my testimony was that the financial arrangements that would relate to the action were fully covered. That arrangement we felt was very much to the interests of Pan American Airways.

Q. Isn't it the fact that before the Senate you said that the use of these agencies abroad enabled you to follow the precedents of the German, British, and French international airlines systems?

[fol. 5506]

W. R. Grace and Company Exhibit 175

Growth in Revenue Passenger Miles on Pan American Miami-Balboa Sector

1945	20,928,000[1]
1952	42,880,000[2]
1957	68,284,000[3]

Sources

1. PS-9.
2. PS-116, p. 1, 3rd col. (sum of Pan American actual revenue passenger miles).
3. PS-116, p. 2, 3rd col. (sum of Pan American actual revenue passenger miles).

or PS-101 (difference between Pan American revenue passenger miles flown within South America and within South America plus Miami-Balboa sector, which is 68,743,000 revenue passenger miles. This figure is slightly larger than that derived from PS-116. The apparent reason for this is that some passengers fly over the Miami-Balboa sector to destinations other than those included in PS-116.)

DEFENDANT'S
EXHIBIT
U. S. D. C. S. D. of N. Y.
MAY 22 1959
5506

[fol. 5507]

W. R. Grace and Company Exhibit 176

Comparative "Density of Air Traffic Flow" - 1957 (Professor Cherington's Criterion PS-101)

	Revenue Passenger Miles Flown (000)	Route Miles Operated	Revenue Passenger Miles per Route Miles per Day
Foreign and Overseas Operation	5,391,027	103,563	142.6 [1]
Northwest (foreign and overseas)	259,806	13,283	53.6 [2]
Pan American (LAD)			
Within South America	143,442	5,517	7..2 [1]
South America plus Miami-Balboa Sector	212.185	6,683	87.0 [1]
Miami-Balboa Sector	68,743	1,166	161.5 [3]

Sources

1. PS-101.
2. CAB Monthly Report of Air Carrier Traffic Statistics, December, 1957.
3. Taking differences between Pan American figures given in PS-101 and applying Formula:

$$\frac{\text{Revenue passenger miles flown}}{\text{Route miles operated} \times 365}$$

DEFENDANT'S EXHIBIT U S Dist Court S D of N Y MAY 22 1959

[fol. 5508]

W. R. Grace and Company Exhibit 177

Increase in "Density of Air Traffic Flow" (Professor Cherington's Criterion PS-101) 1945-1957

Balboa-Miami Sector

	Revenue Passenger Miles Flown	Route Miles Operated	Revenue Passenger Miles per Route Miles per Day
1945	20,928,000 [1]	1,201 [2]	47.7 [3]
1957	68,743,000 [4]	1,166 [4]	161.5 [4]

Sources

1. PS-9.
2. PS-12 (1945 figure assumed to be the same as 1944 figure).
3. $\frac{20,928,000}{1201 \times 365}$
4. WRG-176.

DEFENDANT'S EXHIBIT U S Dist. Court S D of N Y MAY 22 1959

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[fol. 5509]

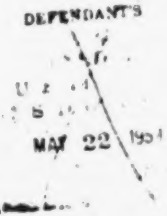
W. R. Grace and Company Exhibit 178

Growth of Average Passenger Load per Plane Mile Flown on Pan American's Miami-Balboa Sector (Mr. Ferguson's Criterion - PS-9)

	Plane Miles	Passenger Miles	Average Passenger Load
1945	1,188,771	20,9[illegible],000	17.6[1]
1957	1,739,000[2]	68,284,000[3]	39.3

Sources

1. PS-9.
2. PS-120 (increase in Panagra aircraft miles representing diversion to it of miles actually operated by Pan American in 1957.)
3. WRG-175.



[fol. 5510]

W. R. Grace and Company Exhibit 179

COMPARATIVE DEVELOPMENT OF AIR PASSENGER TRAFFIC BETWEEN THE U. S. AND SOUTH AMERICA AND BETWEEN THE U. S. AND OTHER MAJOR GEOGRAPHIC AREAS OF THE WORLD - BASED ON COMPARISON OF EXPORT AND IMPORT TRADE WITH THE UNITED STATES.

(Compare with Pan American Exhibit PS-106).

Area	Number of Passengers Fiscal year 1957 1/	Total Export-Import Trade 2/ Calendar year 1957 (00,000)	Passengers per hundred thousand dollars of trade
South America	272,055	$53,109.19	5.11
Europe	755,977	58,381.31	12.9
Australia and Asia	166,266	34,687.92	4.8

Notes:

1) Number of air passenger figures are taken from PS-[illegible].

2) Export-Import Trade figures are taken from the Statistical Abstract of the United States - 1[illegible], pp. 894-97. These figures are broken down on the following sheets.

DEFENDANT'S EXHIBIT U.S. D.C. S.D. MAY 22 [illegible]

5510

[fol. 5511]

A. TOTAL TRADE BETWEEN THE UNITED STATES AND SOUTH AMERICA

EXPORTS	
South America	$2,613,141,000
Panama, Republic	84,497,000
Canal Zone	21,077,000
Total	$2,718,715,000
IMPORTS	
South America	$2,573,345,000
Panama, Republic	24,303,000
Canal Zone	576,000
Total	$2,598,224,000
Total Exports	$2,718,695,000
Total Imports	2,598,224,000
Total Trade	$5,316,919,000

[fol. 5518]

PAN AMERICAN-GRACE AIRWAYS, INC. EXHIBIT 195

DIRECT SERVICE AVAILABLE BETWEEN VARIOUS CITIES WITHIN SOUTH AMERICA

Pan American-Grace Airways, Inc. Exhibit 195

APRIL 1959

BUENOS AIRES TO SANTIAGO

	PANAGRA	AEROLINEAS ARGENTINAS	ROYAL DUTCH AIRLINES (KLM)	LINEA AEREA NACIONAL (LAN)	SCANDINAVIAN AIRLINES SYSTEM (SAS)
Frequency (per week)			2	6	2
Elapsed Time (Hours) (3)	2:30/3:00	2:45	2:45	2:45	2:30
Equipment	DC-7B, DC-6B	DC-6	DC-7C	DC-6B	DC-7C
O.W. Fare (U.S.$), F.C./T.C.	67.00/55.00	- /55.00	- (1)	- /55.00	- (1)

SANTIAGO TO LIMA

	PANAGRA	CARRERAS PACIFIC AIRLINES (CPAL)	COMPAÑIA SUDAMERICANA DE AVIACION (CSA)	LINEA AEREA NACIONAL (LAN)
Frequency (per week)	8	2	1	2
Elapsed Time (Hours) (3)	5:00/8:30	5:30	5:30	5:30
Equipment	DC-7B, DC-6B	DC-6B	DC-6	DC-6B
O.W. Fare (U.S.$), F.C./T.C.	165.00/126.00	165.00/126.00	70.00 (2)	- /126.00

LIMA TO GUAYAQUIL

	PANAGRA	BRANIFF	LINEAS AEREAS DE NICARAGUA (LANICA)	ROYAL DUTCH AIRLINES (KLM)	COMPAÑIA SUDAMERICANA DE AVIACION (CSA)	AEROVIAS PANAMA AIRWAYS (APA)	AEROLINEAS PERUANAS (APSA)
Frequency (per week)	9	2	2	2	1	1	2
Elapsed Time (Hours) (3)	3:00/3:30	3:00	3:00	3:00	3:00	3:00	3:00
Equipment	DC-7B, DC-6B	DC-6	Viscount	Super Const.	DC-6	DC-6	DC-6
O.W. Fare (U.S.$), F.C./T.C.	98.00/75.00	98.00/75.00	60.00 (2)	- (1)	40.00 (2)	50.00 (2)	40.00 (2)

LIMA TO PANAMA

	PANAGRA	BRANIFF	AEROVIAS PANAMA AIRWAYS (APA)	COMPAÑIA ECUATORIANA DE AVIACION (CEA)	LINEA AEREA NACIONAL (LAN)
Frequency (per week)	14	5	1	1	2
Elapsed Time (Hours) (3)	5:00/9:00	7:00/9:30	6:30	9:00	6:30
Equipment	DC-7B, DC-6B	DC-7C, DC-6	DC-6	DC-6	DC-6B
O.W. Fare (U.S.$), F.C./T.C.	209.00/168.00	209.00/168.00	100.00 (2)	90.00 (2)	- (1)

Notes: (1) No fares shown
(2) Carrier offers one class service which combines first and tourist class features.
(3) Figures for Elapsed Time denote trips of shortest and longest duration.

Source: Official Airline Guide, World Wide Edition, April 1959.

[fol. 5514]

W. R. Grace and Company Exhibit 180

Comparative Operating Ratios
(Compare with PS - 107)

Year	Domestic Trunk Lines	U.S. Local Carriers (a)	Pan American (LAD)	Panagra	Braniff	PA, BO, BN Total
			Total Operating Revenues (000) (1)			
1956	1,262,881	6,505	88,039	20,005	7,530	115,582
1957	1,419,614	8,374	93,855	20,150	8,566	122,579
			Total Operating Expenses (000)			
1956	1,162,988	6,720	85,318	18,467	6,663	110,448
1957	1,377,516	8,406	95,779	19,444	7,808	123,.31
			Operating Ratio (%)			
1956	92.1	103.3	96.9	92.3	88.4	95.6
1957	97.0	100.4	102.0	96.5	92.1	100.6

(a) Group of five local service carriers including Southwest, Mohawk, Allegheny, Piedmont, North Central - from PS 102

(1) Including subsidy

Source: Civil Aeronautics Board, Quarterly Report of Air Carriers Financial Statistics, December 1957

DEFENDANT'S EXHIBIT
U.S. DISTRICT COURT
S.D. OF N.Y.
MAY 22 1959

[fol. 5515]

W. R. Grace and Company Exhibit 181

Comparative Rates of Return
(Compare with PX 1987)

Year	Net Profit (Loss) (000)	Average Total Investment (000)	Rate
		Pan American (Lat)	
1956	[illegible]	[illegible]	
1957	[illegible]	[illegible]	
		Panagra	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
		Braniff International	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
		Domestic Trunk Operations	
[illegible]	[illegible]	[illegible]	
1957	[illegible]		
		[illegible] Carriers	
1956	[illegible]	[illegible]	
1957	[illegible]	[illegible]	

Source: Civil Aeronautics Board, Quarterly Report of Air Carriers Financial Statistics.

[illegible]
EXHIBIT
U.S. [illegible]
B.D. [illegible]
MAY 22 63

5515

[fol. 5516]

W. R. GRACE AND COMPANY EXHIBIT 182

Comparison of Local and Through Traffic carried by Pan American over Miami-Nassau Sector - 1957

		Revenue passenger miles
Total Traffic	-	68,284,000 1/
Local Traffic	-	18,763,000 2/
Through Traffic	-	49,521,000

1/ PS - 116, total of figures on page 2, col. 3

2/ PS - 116, page 2, traffic on NAS-MIA segment

DEFENDANT'S EXHIBIT
U S DISTRICT COURT
S D OF FLA
MAY 22 1961

[fol. 5517]

PAN AMERICAN-GRACE AIRWAYS, INC. EXHIBIT 194

COMPETITIVE SERVICES AVAILABLE FROM VARIOUS CITIES IN SOUTH AMERICA TO THE UNITED STATES

APRIL 1959

BUENOS AIRES TO NEW YORK

	PANAGRA	BRANIFF	PAN AMERICAN	AEROLINEAS ARGENTINAS (1)	TRANSCONTINENTAL	AEROLINEAS PERUANAS (APSA) (2)	LINEA AEREA NACIONAL (LAN) (2)
Frequency (per week)	11	1	6	2	3	2	2
Elapsed Time (Hours) (6)	24:00/30:45	28:45	25:00/27:30	27:30/29:30	27:30	24:00	22:30
Equipment	DC-7B, DC-6B	DC-6	DC-7B	DC-6	Super H. Const.	DC-6	DC-6B
O.W. Fare (U.S.$), F.C./T.C.	556.70/461.50	556.70/461.50	556.70/461.50	- /351.20	- /458.00	251.00 (4)	- /288.00

BUENOS AIRES TO MIAMI

	PANAGRA	LINEA AEREA NACIONAL (LAN)	COMPAÑIA SUDAMERICANA DE AVIACION (CSA)	CHILEAN AIRLINES (CHILE - PAA) (3)
Frequency (per week)	8	2	1	2
Elapsed Time (Hours) (6)	18:30/21:30	17:30	21:00	19:00
Equipment	DC-7B, DC-6A	DC-6B	DC-4	Constellation
O.W. Fare (U.S.$), F.C./T.C.	368.00/368.00	- /258.00	210.00 (4)	232.50 (4)

LIMA TO MIAMI

	PANAGRA	BRANIFF	AEROLINEAS PERUANAS (APSA)	LINEA AEREA NACIONAL (LAN)	AVIANCA	AEROVIAS PANAMA AIRWAYS (APA)	LINEAS AEREAS DE NICARAGUA (LANICA)
Frequency (per week)	14	3	8	2	3	1	2
Elapsed Time (Hours) (6)	10:00/10:30	10:00/11:00	12:00	12:00	17:00	14:00	12:00
Equipment	DC-7B, DC-6B	DC-7C, DC-6	DC-6	DC-6B	DC-4	DC-4	Viscount
O.W. Fare (U.S.$), F.C./T.C.	319.00/262.00	319.00/262.00	150.00 (4)	- /383.00	319.00/262.00	145.00 (4)	180.00 (4)

GUAYAQUIL TO MIAMI

	PANAGRA	BRANIFF	AEROLINEAS PERUANAS (APSA)	COMPAÑIA SUDAMERICANA DE AVIACION (CSA)	CHILEAN AIRLINES (CHILE - PAA) (5)	LINEAS AEREAS DE NICARAGUA (LANICA)
Frequency (per week)	9	1	2	1	2	2
Elapsed Time (Hours) (6)	8:00/10:30	8:00	9:30	11:00	10:00	8:30
Equipment	DC-7B, DC-6B	DC-6	DC-6	DC-6	Constellation	Viscount
O.W. Fare (U.S.$), F.C./T.C.	234.00/194.00	234.00/194.00	110.00 (4)	110.00 (4)	122.50 (4)	158.00 (4)

PANAMA TO MIAMI

	PANAGRA	BRANIFF	LINEA AEREA NACIONAL (LAN)	COMPAÑIA SUDAMERICANA DE AVIACION (CSA)	CHILEAN AIRLINES (CHILE - PAA) (5)	AEROVIAS PANAMA AIRWAYS (APA)	LINEAS AEREAS CENTROAMERICANAS (LACSA)
Frequency (per week)	14	6	2	1	2	3	2
Elapsed Time (Hours) (6)	4:00/4:30	4:00	4:30	4:30	6:00	5:00/5:30	9:00
Equipment	DC-7B, DC-6B	DC-7C, DC-6	DC-6B	DC-6	Constellation	DC-6, DC-4	Convair 340
O.W. Fare (U.S.$), F.C./T.C.	110.00/94.00	110.00/94.00	- (3)	55.00 (4)	72.50 (4)	59.00 (4)	130.00/94.00

Notes: (1) Effective May 29, 1959 Aerolineas Argentinas will operate Comet-4 Jets to New York as follows: Frequency (per week) 3
Elapsed Time (Hours) 15:15
O.W. Fare (U.S.$) Not known

(2) No Miami origin. (3) No fares shown. (4) Carrier offers one class service which combines first and tourist class features.
(5) Change of plane at Havana. (6) Figures for Elapsed Time denote trips of shortest and longest duration.

Source: Official Airline Guide, World Wide Edition, April 1959.

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PAE-194

[fol. 5512]

B. TOTAL TRADE BETWEEN THE UNITED STATES AND EUROPE.

EXPORTS	
United Kingdom	$1,099,720,000
West Germany	953,482,000
France	586,722,000
Italy	661,418,000
Norway	[illegible]
Sweden	[illegible]
Denmark	[illegible]
Total	$3,707,206,000
IMPORTS	
United Kingdom	$ 765,359,000
West Germany	604,000,000
France	250,022,000
Italy	245,145,000
Norway	83,332,000
Sweden	116,713,000
Denmark	73,099,000
Total	$2,126,925,000
Total Exports	$3,707,206,000
Total Imports	2,126,925,000
Total Trade	$5,834,131,000

[fol. 5513]

TOTAL TRADE BETWEEN THE UNITED STATES AND AUSTRALIA AND ASIA

EXPORTS	
India	$ [illegible]
Phillipines	[illegible]
Japan	[illegible]*
Australia	[illegible]
Total	$ 2,249,487,000
IMPORTS	
India	$ 211,059,000
Phillipines	261,445,000
Japan	600,475,000
Australia	146,326,000
Total	$ 1,219,305,000

Total Exports	$2,249,487,000
Total Imports	1,219,305,000
Total Trade	$3,468,792,000

MICRO CARD
TRADE MARK ®
21

52
122

MATTHEW BENDER & COMPANY
MB
3-6-93

microcard

[fol. 5522]

WHITE & CASE, Esqs.,
Attorneys for Defendant Pan American-Grace Airways, Inc.;
Thomas Kiernan, Esq.,
Thomas Leary, Esq.,
Lowell Wadmond, Esq., *of Counsel.*

MURPHY, *D. J.*

Introduction

Nominally this is a government antitrust action brought pursuant to §4 of the Sherman Act, 15 U. S. C. 4, in which the defendants, Pan American World Airways, Inc., W. R. Grace and Company and Pan American-Grace Airways, Inc.,[1] are charged with violations of Sections 1, 2 and 3 of that act (15 U. S. C. 1, 2 and 3). Actually it is a continuation of a bitter family quarrel rampant since 1941 arising out of the unhappy and quondam unholy union of Pan American and Grace, each of whom owns 50% of the stock of Panagra, that the Civil Aeronautics Board (C.A.B.) could not resolve.[2]

Briefly, the complaint charges defendants with unlawful combination and conspiracy to restrain and monopolize trade and commerce between the United States and South America, particularly the west coast of South America. The relief sought is a decree requiring Pan American and Grace to divest themselves of their ownership of Panagra and enjoining all defendants from any and all challenged activities that are found to be violative of the antitrust laws. The ultimate objective of the government is to facilitate the merger of defendant Panagra with Braniff International Airways (Braniff), the only other American

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1 Hereinafter referred to as Pan American, Grace and Panagra, respectively.

2 The C.A.B. in 1945 and again in 1953 requested the Attorney General to institute this suit.

[fol. 5523]
flag carrier operating between the United States and South America aside from Pan American and Panagra. This is in accordance with the recommendation of the C.A.B. in 1954 in order to make possible thereby "effective" competition between American carriers in that area and to reduce substantially the heavy burden of subsidy presently borne by this government. *New York-Balboa Through Service, Reopened*, 18 C.A.B. 501, 505.

The principal defenses urged are condonation by the government of the acts complained of, estoppel and laches; immunity because many of the agreements and mergers and acts complained of were approved by the Civil Aeronautics Board under a grant from Congress that absolved the defendants from antitrust violations and, as far as Pan American is concerned, that this court has no jurisdiction at this time because of the primary jurisdiction conferred by Congress in the Civil Aeronautics Board.

The Parties

Pan American is a corporation organized in 1927 under the laws of the State of New York as Pan American Airways, Inc. In 1950 its corporate name was changed to Pan American World Airways Inc. Pan American directly operates routes in air transportation of persons, property and mail between the United States and various points in Europe, Asia, Africa, Australia and Central and South America. It is today the largest international air carrier in the world. It also has a number of subsidiaries, including foreign corporations engaged in the transportation by air of persons, property and mail.

Grace is a corporation organized in 1899 under the laws of the State of Connecticut with its principal office in New York City. Grace has subsidiaries which engage in

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3 We disregard Delta Airlines, Inc., whose operations to Venezuela subsequent to 1946 are not significant to the problems of this case. Braniff was certificated for South America in 1946 and commenced such operations in 1948.

[fol. 5519]

Pan American-Grace Airways, Inc. Exhibit 196

Comparison of Fares Charged by Competing Airlines (Northbound)
April 1959

	Regular Tourist Fares			
	One way		Round Trip	
Santiago to New York				
Panagra	$414.80(a)	$208.65(b)	$[illegible].60(a)	$386.27(b)
CINTA-ALA	192.80(b)(c)		347.04(b)(c)	
Aerolineas Argentinas	173.94(b)		313.04(b)	
Santiago to Miami				
Panagra	368.00(a)	155.10(b)	678.00(a)	279.17(b)
TAN/CEA/APSA	157.14(b)		282.86(b)	
LAN	155.10(b)		297.17(b)	
CINTA-ALA	152.48(b)(c)		274.46(b)(c)	
Santiago to Lima				
Panagra	126.00(a)	48.00(b)	242.00(a)	92.19(b)
Canadian Pacific	126.00(a)	70.20(b)	242.00(a)	133.68(b)
LAN	51.22(b)		92.19(b)	
TAN/CEA/APSA	48.00(b)		86.40(b)	
Santiago to Panama				
Panagra	284.00(a)	119.35(b)	526.00(a)	214.84(b)
LAN, CINTA-ALA, and TAN/CEA/APSA	119.35(b)		214.84(b)	
Buenos Aires to New York				
Panagra, Pan American, Braniff and Varig	461.50(a)	-	878.00(a)	646.10(d)
Aerolineas Argentinas	461.50(a)	-	878.00(a)	671.30(d)
Transcontinental	458.00	-	872.60	582.96(d)
Buenos Aires to Miami				
Panagra, Braniff	414.70(a)	-	784.40(a)	580.60(d)
LAN	288.00		519.00	
TAN/CEA/APSA	251.00		451.80	
Buenos Aires to Lima				
Panagra, Braniff, Canadian Pacific, LAN	180.00(a)		340.00(a)	
TAN/CEA/APSA	111.00		199.80	
Lima to Miami				
Panagra, Braniff and LAN	183.00(a)		331.00(a)	
LANICA	180.00		324.00	
TAN/CEA APSA	150.00		270.00	
APA	145.00		260.00	

Notes (a) Regular IATA Tourist fare.
(b) Chilean peso fares converted to dollars at 1,050 pesos per U.S.$. the free market exchange rate on April 2, 1959.
change of plane at Havana.
(d) 45 day round trip excursion fare.

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[illegible] Airline Guide, World-Wide Edition, April 1959 and Company [illegible].

COMPARISON OF FARES CHARGED BY COMPETING AIRLINES (SOUTHBOUND)
APRIL 1959

	Regular Tourist Fares	
	One Way	Round Trip
New York to Santiago		
Panagra	$414.80	$771.60
Aerolineas Argentinas	351.20	632.20
CINTA-ALA	286.10	525.60
Miami to Santiago		
Panagra	368.00	679.00
LAN	258.00	464.00
CINTA-ALA	232.50	418.50
TAN/CEA/APSA	210.00	378.00
Lima to Santiago		
Panagra, Canadian Pacific and LAN	126.00	242.00
TAN/CEA/APSA	70.00	126.00
Panama to Santiago		
Panagra	284.60	526.00
LAN	180.00	345.00
CINTA-ALA	177.00	318.60
TAN/CEA/APSA	160.00	288.00
New York to Buenos Aires		
Panagra, Pan American, Braniff and Iberia	461.50	878.00
Transcontinental	458.00	872.60
Aerolineas Argentinas	351.20	632.20
Miami to Buenos Aires		
Panagra, Braniff	414.70	784.40
LAN	288.00	519.00
TAN/CEA/APSA	251.00	451.80
Lima to Buenos Aires		
Panagra, Braniff, Canadian Pacific and LAN	180.00	342.00
TAN/CEA/APSA	111.00	199.80
Miami to Lima		
Panagra, Braniff	262.00	473.40
LAN	183.00	331.00
LANICA	180.00	324.00
TAN/CEA/APSA	150.00	270.00
APA	145.00	260.00

Official Airline Guide, World-Wide Edition, April 1959.

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[fol. 5520a] [File endorsement omitted]

[fol. 5521] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civ. 90-259

UNITED STATES OF AMERICA,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

OPINION—March 8, 1961

APPEARANCES:

WILLIAM P. ROGERS, Esq.,
Attorney General
EDWARD R. KENNEY, Esq.,
E. RIGGS MCCONNELL, Esq.,
HERBERT F. PETERS, Esq.,
JOSEPH H. SHORTELL, Esq.,
Trial Attorneys, Department of Justice,
For the Plaintiff.

CLEARY, GOTTLIEB, FRIENDLY & HAMILTON, Esqs.,
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James W. Lamberton, Esq.,
John K. Mallory, Esq.,
David W. Peck, Esq.,
Edward A. Woolley, Esq., *of Counsel.*

CAHILL, GORDON, REINDEL & OHL, Esqs.,
Attorneys for Defendant W. R. Grace and Co.;
Laurence McKay, Esq.,
William E. Hegarty, Esq.,
Raymond L. Falls, Jr., Esq., *of Counsel.*

[fol. 5524]

various aspects of industry, trade and commerce including Grace Line, Inc., which operates a steamship route, among others, for the transportation of persons, property and mail between the United States and the west coast of South America.

Panagra is a corporation organized in 1929 under the laws of the State of Delaware. Panagra is engaged in air transportation of persons, property and mail over routes between the Canal Zone and Buenos Aires, Argentina, via the countries on the west coast of South America. It is wholly owned by defendants Pan American and Grace, each of whom owns 50% of the stock thereof. The principal offices of Pan American and Panagra are located in New York City.

Civil Aeronautics Board

Commercial aviation in this country is a highly regulated industry, but became such only after Congress passed the Civil Aeronautics Act of 1938 (C.A.A.).[4] That act authorized the creation of the Civil Aeronautics Board and established for the first time a comprehensive system of economic regulation of air transportation and removed, or attempted to remove, the threat of uneconomic and destructive competition in that field by providing that no air carrier may engage in air transportation without first receiving a certificate of public convenience and necessity. It gave to the President of the United States approval and veto power for such certificates as related to "overseas" and "foreign" air transportation (49 U. S. C. 601). Since, however, a number of air carriers were in operation prior to the act it provided that as to those they could receive certificates of public convenience and necessity,

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4 This Act, 52 Stat. 977, as amended, 49 U. S. C. 401 *et seq.*, was superseded by the Federal Aviation Act of 1958, 49 U. S. C. 1301, *et seq.*, and as far as relevant to this case the provisions are identical and reference will be made only to the Civil Aeronautics Act.

[fol. 5525]
under the so-called "grandfather" clause (49 U. S. C. 481(e)). Accordingly, Pan American and Panagra received certificates of convenience and necessity for the operations which had been conducted by them under the various foreign mail contracts.

Congress also provided what policy the C.A.B. should follow as being in the public interest and in accordance with the public convenience and necessity, and defined that policy as follows:

> "(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;
>
> "(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;
>
> "(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;
>
> "(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense; * * * " (49 U. S. C. 402).

Congress also gave to the C.A.B. the power to approve or disapprove rates and tariffs, all types of mergers, consolidations, acquisitions, pooling and other agreements (49 U. S. C. 481 *et seq.*) and with reference to certain of its orders antitrust immunity (49 U. S. C. 494).

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Conclusions

On the facts hereinafter found we have concluded (1) that the joinder of Grace and Pan American was not the result of conspiracy, but was a lawful combination with legitimate ends; (2) the division of territories understanding under which the operations of the two airlines were conducted was not unreasonable under the circumstances and not a *per se* violation; (3) that Pan American's restraints against Panagra and its continued determination to suppress the extension of that airline to the United States, in itself, and in combination with other conduct on the part of Pan American constitutes a monopolization of commerce that contravenes the provisions of the Sherman Act, and would seem to require divestiture by that defendant; (4) that Grace's stock ownership in Panagra does not *per se* violate the Sherman Act; (5) Grace and Panagra have not been found guilty of any antitrust violations; (6) price fixing for the most part is a mooted issue and in view of our decision with regard to Pan American need not be considered at length; (7) we will defer to the primary jurisdiction of the C.A.B. the legality of the joint advertising, sales and offices, etc. agreements between the two airlines; (8) we will defer to the primary jurisdiction of the C.A.B. the question of Grace's control in the management of Panagra.

The Facts

In 1927 substantially all transportation between this country and Latin America was by steamship. International commercial aviation was in the experimental stage and as yet no American air transportation company had entered upon operations from the United States to South America.

In October, 1927, Pan American began operations under the first United States Post Office contract for the carriage of the mails by air to a foreign country, by inaugurating

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such a service between Key West, Florida, and Havana, Cuba. Pan American also had a contract with the Cuban government for the carriage of Cuban mail to this country.

Between 1920 and 1927 several German and French companies had established commercial air transportation services in South America, in Colombia, Bolivia, Brazil, Argentina and Chile, and were receiving financial and diplomatic assistance from their governments necessary to the establishment and maintenance of such services. These foreign companies had envisioned routes throughout South America and had sought also to extend into the Canal Zone and to the United States.

Our government was greatly concerned for political, military and business reasons with the successful establishment of an American system of air transportation to Latin America, and recognized the need for legislation under which financial aid could be rendered to American companies to engage in international air transportation. The result was the enactment by Congress in March, 1928, of the first Foreign Air Mail Act (45 Stat. 248, amended, March 2, 1929, 45 Stat. 1449) which authorized the Postmaster General to let contracts for not more than ten years for the transportation of mail by airplane to foreign countries or insular possessions of the United States. The method of payment established by the Postmaster General was based on the mileage flown without relation to the amount of mail carried. It was in essence, subsidy.

On May 8, 1928, Pan American was awarded a contract under that act which superseded its 1927 contract for service between Florida and Cuba.

Pan American had started some time in late 1927 to formulate plans looking to the establishment of a complete system of air transportation serving all parts of the Caribbean, and Central and South America. It was aware of the potentialities of the Latin American market, as yet untapped by American international companies, and

The Complaint

The government's case was fashioned along three major lines which, however, are interdependent both theoretically and evidencewise.

The first line deals with alleged restraints of trade relating to a division of markets in the transportation of passengers, cargo and mail in commerce between the United States and South America asserted to be illegal both from the standpoint of reasonableness and as a *per se* violation of law. It is the government's claim that Pan American and Grace entered into an agreement prior to the formation of Panagra whereunder the proposed jointly owned company was to have the exclusive right to traffic along the west coast of South America from the Canal Zone south free from Pan American competition, and Pan American was to be free from competition from the proposed jointly owned company elsewhere throughout South America and between the Canal Zone and the United States.

The second line of attack relates to alleged restraints imposed upon Panagra by its two parent companies, Pan American and Grace. To a large extent the evidence of restraints on Panagra in the categories of joint offices, communications, equipment, publicity and sales are matters of agreement that must be initially approved by the C.A.B. and to a large degree have been approved and others are awaiting approval or extension of approval previously granted.

These agreements are, however, interrelated to the third line of attack wherein the government alleges that Pan American and Grace conspired to monopolize transportation between the eastern coastal areas of the United States and South America, particularly the western coastal areas of South America and Buenos Aires, Argentina. It is alleged that Pan American and Grace agreed to combine in

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the formation of Panagra, equally controlled by them to engage in a limited operation from the Canal Zone south along the west coast of South America with the intent and purpose of preventing competition between Pan American and Grace with respect to transportation by air and preventing the establishment of an air transportation service independent of the control of themselves which would be competitive with the projected air services of Pan American and the surface operation of Grace Line, Inc.

It is claimed that these defendants, pursuant to such alleged conspiracy, organized Panagra in such a fashion that they each have a negative control of the latter's competition with their independent operations, and have prevented Panagra's extension of its routes in South America and to the United States, and from developing its own facilities in the United States independent of the control of Pan American, and in South America independent of the control of Grace. In addition, they are said to have acquired the stock or assets of, or have entered into agreements with competing airlines in pursuance of their design to restrain and monopolize; and have retarded, restrained or eliminated competition from local airlines in South America, as well as having attempted and committed illegal restraints with respect to the operations of Braniff.

Grace, in addition, is charged with monopolizing or attempting to monopolize transportation by air and surface carriers between the United States and the western coastal areas of South America. The government also argues that the ownership and control of a competing air carrier by the dominant surface carrier in the same market necessarily violates the antitrust laws.

As to Panagra the government claims that it, together with Pan American, after 1946 engaged in restrictive practices to restrain and impede other airlines on the west coast of South America.

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can-Grace Airways, Inc., on February 21, 1929. Grace exercised its option to acquire 50% of the stock, and Panagra submitted a bid for the mail contract. Pan American and Grace each subscribed $500,000 to the capital stock of Panagra, including the amounts previously subscribed by them to the stock of Peruvian Airways Corporation.

On March 2, 1929, the Postmaster General awarded to Panagra the contract for Foreign Air Mail Route No. 9. Panagra was not the lowest bidder for this contract[8] but was found by the Postmaster to be the lowest responsible bidder that could satisfactorily perform the service to the best advantage of the government. In making the award, the Postmaster stated, *inter alia*:

> "This is the most important air mail contract that has as yet been awarded. Its importance goes not alone to the financial ability of the bidders but more directly and to a far greater degree to their proven and recognized capacity for performing the service contemplated.
>
> "The Pan American company has filed evidence of extensive preparation for the operation of an air mail route through the countries with which arrangements are necessary. It has had this particular service in view for the last two years and has for that length of time been conducting negotiations and perfecting arrangements for the carrying on of the service if in the fulness of time it should be awarded the contract for it. It has the required franchises under which to operate in the countries to be served and over which the line passes. It is indeed operating through subsidiary companies already in existence over a considerable portion of the route under consideration. In addition to this it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly estab-

8 The award of this contract was protested by the low bidder (American International Airways, Inc.), which protest was denied after the Attorney General rendered an opinion sustaining the legality of the award. See 36 Ops. Atty. Gen. 33.

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lished service by sea along the whole line of the proposed air mail route.

* * * * *

"I would repeat that the contract in question is for a route most difficult to serve but at the same time of very great and far-reaching importance not only to the public but to the whole future of transportation by air. Failure would be a serious blow to the prestige of American aeronautical enterprise."

Panagra commenced operations under this contract on July 12, 1929, and later, on October 12, 1929, inaugurated operations from Santiago to Buenos Aires after the route was ordered extended by the Postmaster General in August, 1929.

Until November of 1929 operations on Panagra's routes as far south as Guayaquil, Ecuador, were conducted by aircraft and personnel of Pan American because Panagra had not until that time secured operating rights in Colombia in its own name. By the end of 1929, Pan American's routes having been extended by the Postmaster General, it was operating regular service along the north coast of South America to Paramaribo, Dutch Guiana.

The joinder of Pan American and Grace, with their complementary resources, in the formation of Panagra to establish American air transportation on the west coast of South America was of decisive importance to the Postmaster General in awarding to Panagra the United States Mail contract for the west coast route. Such a contract was the umbilical cord of any proposed American flag international air operations in South America, without which they could not long survive. It is beyond peradventure that the successful inauguration of an international air transportation system in South America, with the flying equipment then available, with no airfields or ground facilities but what defendants supplied or arranged themselves, with only the air to fly in and the ground to land on, was

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tion to Pan American's application to the Colombian government, and entered into an agreement granting to Pan American exclusive use of its landing facilities along the north and west coasts of Colombia and in Ecuador, subject to its receiving permits from the Colombian government. In February, 1929, a treaty was signed between the United States and Colombia providing for reciprocal rights to aircraft of the two countries for landing rights in the Canal Zone and Colombia. The oral agreement for the purchase and sale of SCADTA stock was reduced to a formal writing in February, 1930, and finally executed in April of 1931.

In early 1928 Grace had independently begun to inquire into the possibilities of a west coast airline and had caused a study to be made with respect thereto. It began inquiries with governmental officials and in time became apprised of the activities of the Pan American interests and their plans for a west coast route. Pan American at this time was seeking to interest the principal shipping companies along the various proposed routes in financial participation as well as to secure the benefits of association with steamship lines, including air-sea rescue arrangements, and use of communication and agency facilities of these lines which would considerably decrease the amount of capital investment for such facilities immediately necessary in the operation of air transportation companies.

In May 1928, officials of Grace and Pan American conferred with a view to joint participation, and again in the following months. Grace's approach was a conservative one at the outset. It was naturally interested in the new form of transportation and fully appreciated the commercial possibilities of the airplane. It also appreciated the potentially competitive aspects of air transportation, but felt that it was quite risky at that early stage and no immediate threat as a competitor of its steamship lines.

At this time Grace was aware of the impending contracts to be offered by the Post Office, including the Miami-Canal

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Zone route which eventually went to Pan American, but its interest was limited to the proposed Canal Zone-Valparaiso route.

In the fall of 1928 Pan American entered into an agreement with Grace, evidenced by two letters dated respectively August 31st and September 7th,[7] whereunder each

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7 "August 31, 1928.

"Aviation Corporation of the Americas,
100 East 42nd Street,
New York City

Attention: Mr. J. T. Trippe

"Dear Sirs:

"This will confirm arrangement under which we will associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

"A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff-Daland Dusters, Inc. the sum of $15,000 for an assignment which will convey all of the rights of that company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by this company in Peru and every effort will be made to put the business there on a paying basis.

"We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U. S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

"If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

"You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South America will be the agents of the company on a reasonable compensation basis, such

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agreed to subscribe equal amounts to the capital stock of a corporation to be formed under the laws of Delaware to operate an airplane service in Peru with the view to ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile. The agreement pro-

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agency to continue during the life of transportation contracts under taken by the company.

"The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

Very truly yours,

W. R. Grace & Co.
William F. Cogswell,
Assistant Secretary."

"September 7, 1928.

"W. R. Grace & Company,
10 Hanover Square,
New York City

Attention: Mr. William F. Cogswell.

"Dear Sirs:

"We beg to confirm the arrangement set forth in your letter of August 31st.

"Supplementing paragraph four, however, we would point out the fact that in the event you decide not to take up a substantial interest in a jointly owned Company, organized or to be organized for the purpose of submitting a bid on the contract for carrying mails between Panama Canal and Valparaiso then, and in that event, we would prefer to bid on the contract through the medium of Pan American Airways, Inc., or some other wholly owned subsidiary.

"If this were done, we would arrange to allow you, if you desired, to take a further stock interest in Aviation Corporation of the Americas, in addition to the $25,000 referred to in paragraph five.

"Our Directors are delighted that we are to be associated with your firm in the development of air transportation on the West Coast of South America, and we look forward to a most pleasant and profitable relationship.

"We would appreciate your advising us if this letter, in connection with yours of August 31st, covers your understanding of our arrangement.

Yours very truly,

AVIATION CORPORATION OF THE AMERICAS

By J. T. Trippe,
Vice President."

[fol. 5535]

vided that the two companies would cooperate in studying the costs of operations on such route and that if Pan American determined that it was advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the amount contributed by Grace to the stock of the company which was to operate in Peru should be treated as a contribution to the stock of the company making the bid and Grace was to have an option to take an additional interest in such a company not to exceed 50% of the total capitalization. Pan American was to "have charge of the operations of the service from the Canal to Valparaiso" and the Grace houses on the west coast of South America were to act as agents for the company.

Pan American's study of this route indicated that even with the revenue of a United States mail contract, conditions did not then justify its undertaking to install an air transportation service in that area. By combining with Grace, however, they mutually concluded that they could operate a west coast service more economically than could any other air transportation company, including the French and German companies.

The Delaware company referred to in the letters was formed under the name "Peruvian Airways Corporation" and it began operations in Peru in September, 1928, under the Peruvian concession and contract referred to above. In January, 1929, Grace and Pan American secured operating rights in Chile and, as stated earlier, Pan American's negotiations with SCADTA had set the stage for a concession from Colombia. On January 31, 1929, the Post Office Department issued an advertisement for a contract for Foreign Air Mail Route No. 9, from the Canal Zone down the west coast of South America to Santiago, Chile, with an option in the Postmaster General to extend the service from Santiago across the Andes to Buenos Aires, Argentina, and Montevideo, Uruguay.

Panagra was formed on January 25, 1929, as South American Airways Corporation and changed to Pan Ameri-

equally aware of the impending legislation to subsidize American air lines. With knowledge of the projected routes of the Post Office Department (see House Report 481, 70th Cong., 1st Sess., 1928) or better, the active sponsor of them, it began studies in early 1928 of proposed routes from Miami, Florida, to the Canal Zone, and the Canal Zone to Valparaiso, Chile.

Pan American's ambitions, however, were not equalled by its assets[5] or financial resources, and ultimately, in June 1928, all of its stock was acquired by a holding company formed for the purpose of raising capital to enable Pan American to bid on the mail contracts advertised or about to be advertised by the Postmaster General, and to conduct operations under contracts it was awarded. This company was called the Aviation Corporation of the Americas (ACA) and included among its assets acquired at the time of the acquisition of Pan American, was an option to operate a concession by the government of Peru for the establishment of an air transportation service between the United States and Peru. In June 1928 ACA acquired a contract for the carriage of Peruvian air mail to the United States. The concession and mail contract were intended ultimately to be assigned to Pan American if and when it began a west coast service contemplated in its plans.

On July 13, 1928, Pan American was awarded the United States mail contract for the route from Miami to the Canal Zone, for ten years, with an option in the Postmaster General to extend the route along the north coast of South America via Trinidad, as far as Paramaribo, Dutch Guiana. On the same day Pan American was awarded a 10-year contract for a route from Miami to Puerto Rico, with a similar option for the extension of this route to Trinidad.

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5 It owned three airplanes—two Fokkers and one Fairchild.

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In order to engage in air transportation operations into or within any of the countries of South America at this time, as well as today, such operating rights must be granted by the government of each such country whether by permit or concession. Wi hout such rights Pan American or any foreign company could not even fly over these countries.[6] By the end of July 1928, Pan American had instituted negotiations for operating rights in Panama, Colombia and Ecuador. By reason of the option in Peru it was assured of rights in that country (or it could subcontract that portion of its proposed west coast operations to a Peruvian subsidiary). If it could secure rights in the first mentioned countries and in Chile the way would then be clear for the proposed operations under a contract to be advertised by the Postmaster General from the Canal Zone to Valparaiso, Chile. In Colombia, however, Pan American's efforts to acquire operating rights were opposed by German interests who controlled SCADTA, a Colombian air line organized in 1920 and operating in that country and between Colombia and Ecuador. The owners of SCADTA were influential with the Colombian government. They had sought to extend their line to the Canal Zone and thence to this country since 1925 or 1926 but without success. Being thus situated, they had successfully opposed Pan American's applications for Colombian rights and thereby blocked the extension of American flag operations south of the Canal Zone.

As early as 1927, Pan American sought to purchase all of the stock of SCADTA, and these negotiations continued until January 1929, at which time the principal stockholder and managing director of the company orally agreed with Pan American to sell sufficient stock to enable Pan American to gain control of the company. The agreement to purchase SCADTA stock immediately opened the way for the establishment of an American flag west coast airline, for as part of the agreement, SCADTA withdrew all opposi-

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6 Cf. *Northeast Airlines, Inc.—North Atlantic Route Case*, 6 C.A.B. 319, 322.

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in the truest sense a pioneering endeavor.[9] The technical and physical resources possessed by each of the defendants, together with the financial and diplomatic assistance rendered by this government, were pooled to facilitate the success of Panagra, the American entry on the west coast of South America.

In September, 1930, Pan American acquired the assets of New York, Rio & Buenos Aires Line, Inc. (NYRBA), an American company which had been formed in March, 1929, by persons independent of Pan American and Grace with the purpose of operating an airline service under mail contracts obtained in South America, from Miami through the Caribbean, and down the north and east coasts of South America to Buenos Aires, and across the Andes to Santiago, Chile.

The key to the successful maintenance of an American airline in Latin America was a United States Post Office mail contract, without which a company could operate only at a heavy loss. The joint company (Peruvian Airways) which preceded Panagra operated at a loss on the west coast prior to the awarding of the contract to Panagra for that route. Pan American had instituted competitive services on the east coast with NYRBA prior to September, 1930, without the benefit of a United States mail contract for that route and it too, as well as NYRBA, sustained heavy losses amounting to about $40,000 a month. It nevertheless so operated in order to put itself in position to compete with NYRBA in bidding for a proposed United States mail contract for the east coast route. NYRBA had two wholly owned subsidiaries, Trimotor Safety Airways, Inc. and NYRBA do Brasil, and together they had secured contracts from the governments of Argentina, Brazil, Uruguay, Chile and Venezuela, for the carriage of mail from those coun-

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9 See a newspaper account of 10-day inaugural flight, Buenos Aires to Miami, Chicago Daily News, October 18th–November 1, 1929. See, too, *Latin American Air Service Case*, 6 C.A.B. 857, 865.

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tries north to the United States. These contracts were at considerably lower rates of pay than those awarded by our Post Office Department, and because of the scheme of its contracts, it created a problem for the Post Office Department with possible embarrassment with countries on the west coast of South America who contracted with Panagra. The situation also created a problem with respect to the award of a satisfactory mail contract if there was to be competitive bidding between NYRBA and Pan American. The Postmaster General determined not to advertise for an airmail route down the east coast of South America from Paramaribo unless some satisfactory arrangement could be made between Pan American and NYRBA, and apparently suggested that the two companies merge. Pan American was concerned about possible antitrust implications in the proposed merger and sought advice and "clearance" from the Department of Justice.

In a memorandum to that department dated July 18, 1930, Pan American set forth the details of the proposed acquisition of all of the assets of NYRBA, the competitive situation between the two companies, as well as with respect to foreign airlines in the area, and also as regards competition from steamships along the proposed route. Pan American demonstrated the economic impossibility of continued competition between itself and NYRBA on the same route without an air mail contract from the United States Post Office, and that it was the policy of the Post Office Department not to subsidize two contractors in South America for the same route. Pan American pointed to the diplomatic and financial assistance given to its foreign competitors by the French, English and German governments, and that effective similar assistance from the State Department could be rendered to only one American operator in the same area. In this memorandum Pan American disclosed its interest in Panagra, indicating that Panagra was part of the Pan American system, and also that the assets of NYRBA included NYRBA's wholly owned subsidiaries.

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Pan American made a persuasive argument to indicate that the acquisition would be of substantial benefit to the public, and was of particular interest to the Post Office Department, the Department of Commerce, and to the State, War and Navy Departments as well. On August 1, 1930, the Department of Justice responded, *inter alia*, as follows: "Upon the basis of the information thus furnished the Department does not at the present time deem that any action by it would be warranted if the proposed acquisition should be effected. This, however, cannot under the law limit the full freedom of the Department to take such later action as future developments, further information or a subsequent consideration of the questions involved may in its judgment warrant."

Pan American made no mention of its earlier agreements, first oral and then written, with regard to its purchase of control of SCADTA, the acquisition of 84% of whose stock was thereafter completed in April, 1931. It claims that both the oral and written agreements were required by the seller to be kept strictly confidential until the sale was completed, and that Pan American adhered to that condition, disclosing it, one of its officers testified many years later, only to the Secretary of State on a personal and confidential basis. What effect disclosure of its impending acquisition of SCADTA may have had on Pan American's application for "clearance" from the Department of Justice we can only speculate.

As we said above, Pan American did acquire the assets of NYRBA in September, 1930, together with the stock of NYRBA do Brasil as contemplated in its memorandum to the Department of Justice, and in October, 1930, the name of that subsidiary was changed to Panair do Brasil. (In 1935, Pan American secured its own operating concession from Brazil and then reduced its stock in Panair do Brasil to 58%, and again in 1947 to 48%. In 1940 SCADTA merged with another Colombian airline and the name was changed to AVIANCA. Pan American received 64% of

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the stock of AVIANCA, which was reduced in 1945 to 48% and as of 1954 it owned 38% of AVIANCA. The 1940 merger was precipitated by the Colombian government which passed a law in that year requiring the majority of SCADTA stock to be owned by Colombian Nationals. How it disposed of its stock and to whom, and what the relationship was or is, was not disclosed by the evidence.)

On September 24, 1930, the Postmaster General awarded to Pan American a contract for a route from Paramaribo down the east coast to Santos, Brazil, with an option to extend the route to Buenos Aires. Pan American inaugurated service to Buenos Aires under this contract in 1931.

This last extension of Pan American's east coast route rounded out the United States air mail service throughout South America. The entire northern and eastern part, and the northern portion of the western part from Miami to the Canal Zone were operated by Pan American, and the southern portion of the western part from the Canal down the west coast and across the Andes operated by Panagra.

In August, 1931, Pan American organized UMCA, a Delaware corporation, to which was assigned a concession theretofore granted by the Colombian government to one of its nationals for a route between Medellin, Colombia, and Panama. The concession required as a condition that the proposed airline become associated with an American company to be approved by the Colombian government. The assignment to UMCA, in which Pan American acquired a 75% voting interest, was approved by the Colombian government and UMCA commenced operations in July, 1932. (In 1947 Pan American acquired all of the stock, which it retains to this day. In 1948 Pan American sought approval from the C.A.B. of its proposal to acquire all of the assets of UMCA and, though the hearing examiner recommended it, the C.A.B. has never acted on the

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recommendation. In 1959 UMCA applied for leave of the C.A.B. to abandon its certificated operations.)

Pan American and Panagra merely had landing rights in Colombia along their international routes at this time. The acquisition of UMCA enabled Pan American to carry traffic into Colombia, which was one of the reasons for its acquisition and, additionally, Pan American considered this route as a link in a possible short-cut route across South America to Buenos Aires and Rio de Janeiro. SCADTA had a monopoly in the carriage of Colombian mail and a virtual monopoly for all intra-Colombian traffic, partly because of the air policy of the Colombian government and partly because of a tripartite agreement among Pan American, Panagra and SCADTA, whereunder SCADTA withdrew from operations into Ecuador in competition with Panagra and withdrew its opposition to the efforts of Pan American and Panagra to acquire landing rights in Colombia. In return Pan American and Panagra agreed not to press for rights to operate within Colombia.

In 1934 Panagra formed a Peruvian company, Aerovias Peruanas, in order to protect its position in that country. At the same time the original joint company, Peruvian Airways, was dissolved. After about four years of very strong competition between Panagra, and its Peruvian subsidiary on the one hand, and Faucett Aviation Company, the leading Peruvian company, on the other hand, with both sides sustaining heavy losses, Panagra and Faucett reached an agreement whereby Panagra's subsidiary withdrew from all operations in Peru, and Panagra acquired 20% of the stock of Faucett. Panagra's local service in Peru was to be limited to that incident to its international itinerary and its tariffs for such local service was to be based upon its international rates, which would effectively maintain a differential between its fares and those charged by Faucett. Faucett was thereafter to confine its activities to local service within Peru and to re-

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frain from entering into any connection with any international company without the consent of Panagra.

In 1944 Panagra submitted this agreement to the C.A.B. for its approval. In 1949 the C.A.B. disapproved the above provisions which were accordingly cancelled by Panagra and Faucett. Today Panagra's stock ownership in Faucett amounts to about 19%. A law passed by the Peruvian government in 1949 effected a suspension of Panagra's rights to carry local traffic (cabotage) along its international route. Panagra re-established their local services in Peru within their international lines in 1952, after agreeing with Faucett, in consideration of the latter's not opposing such re-establishment, to calculate its rates for such local service on the basis of its international rates, and not to advertise within Peru, such local services.

At the instigation of the State Department and in cooperation with other federal agencies, Panagra in 1941 acquired a stock interest in a Bolivian airline, Lloyd Aeros Bolivianos (LAB) and entered into a management agreement to manage that line. This acquisition was pursuant to this country's de-Germanization program with respect to South American airlines. Panagra's stock interest in this company amounts to about 21% today.[10]

The prime objective of the defendant airlines in the first decade of operations was to secure and solidify the position of their main international trunk lines throughout the countries in South America through which they ran. They considered the maintenance of local subsidiaries essential to that end and the bulwark of their international links. Through these lines they sought to obtain the good will of the nationals of these countries and the cooperation of local governments. They also served as feeder lines for their through routes and as the instrumentalities through which they could secure from the local govern-

10 To complete the picture, Pan American also owns today, some 30% of the stock of a Venezualan airline, AVENSA.

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to have agreed not to seek to extend their joint company to the United States in competition with Pan American.

The conspiracy theory is appealing, because if it were found to be the fact a court of equity would not hesitate to order both defendants to divest themselves of their interest in Panagra, and to thereby definitively rectify an unhealthy situation that exists in the South American phase of American aviation, attributable to Pan American and Grace's joint ownership. *Pan American-Matson-Inter-Island Contract*, 3 C.A.B. 540, 548; *Panagra Terminal Investigation*, 4 C.A.B. 670, 678; *Latin American Air Service Case, supra*, at 914. See, too, discussion *infra*, page 45 *et seq.* re C.A.B. litigation.

We have carefully considered all of the evidence relating to the conspiracy charge and, in our opinion, no such conspiracy existed between Grace and Pan American. The only agreement we can find that approaches conspiracy is their understanding that Pan American and Panagra were not to parallel each other's routes. In our opinion this was not a conspiracy to monopolize and restrain trade and commerce.

The defendants' dominant position in South America which they enjoy today, and have over the years, may be explained in simple terms without unlawful implications: Pan American and Panagra got there first as American flag carriers (discounting NYRBA) by virtue of the foreign airmail contracts of the first decade and, since under the aegis and control of the C.A.B. and the President with respect to the certification of additional carriers since 1938, have enjoyed the South American market, so far as American flag carriers are concerned, exclusively until the start of operations by Braniff in 1948.

For approximately 20 years these two defendants were the sole American entries in South America and as such had exclusive claim to such aid that could be expected from this government in solidifying their position to the advantage of this country. They built up their services and good

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will correspondingly. And if it were not for the action of Pan American in suppressing Panagra's extension to the United States, they would in all probability remain the only two American carriers in South America. At the time of Braniff's certification, at the end of World War II there was expected a significant increase in traffic sufficient to support a third carrier in the South American market. That traffic has not materialized. Moreover, foreign competition has increased. Cf. *New York-Balboa Through Service, Reopened, supra* (concurring opinion).

Prior to 1938 there was no legislation regulating commercial aviation. The C.A.A. makes express provision for the approval by the C.A.B. of mergers, acquisitions and all manner of agreements between air carriers with antitrust immunity. 49 U. S. C. §§488, 492, 494. The absence of such legislation in the experimental stage of international aviation did not obviate the necessity for such action in that period by carriers within the framework of the antitrust laws. The experience gained between 1928 and 1938 must have emphasized the need therefor. Defendants' acquisitions and agreements among themselves and with foreign airlines may well have been approved by the C.A.B. were it then in existence. We find substantial reasons and circumstances then extant that might have justified such approval. Under the circumstances, we feel constrained to accept those consistent with innocence from among the equivocal inferences permissible from the evidence presented.

The joinder of Grace and Pan American of their complementary facilities was a natural and mutually advantageous combination, and an economically sound arrangement for the establishment and successful development of American commercial aviation on the west coast of South America. Grace had the established branches and agencies on the west coast and all the facilities used in connection with the operations of the steamship line that could be used to such advantage in connection with the new airline opera-

tion. Grace also had widespread commercial contacts, a respected trade name and considerable influence in the countries along the proposed route. Pan American was further advanced than any other American company in the carriage of foreign air mail, and had the technical aviation skill which Grace lacked at that time. The union of their physical and technical resources assured the maximum possibilities of success in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280 (6th Cir., 1898) modified and aff'd 175 U. S. 211.

Grace's principal interest at the time was in transportation. Its interest in a new technique of transportation which to a large degree was most surely to generate its own traffic is readily understandable quite apart from consideration of the threat of competition with its steamships. Grace recognized the potential of air transportation in the commercial development of the South American countries in which it had extensive investments, and it had a great deal to offer to enhance that development. We cannot, from the evidence adduced, make out an unlawful intent to restrain aviation competition in the Grace participation in the formation of Panagra, and the history of Grace's activity in the affairs of Panagra preponderatingly demonstrates that it fostered and fought for Panagra development and expansion. To be sure, Grace sought continuously to control the management of Panagra, and its efforts were crowned with success in 1939. Its desire to control the management can as readily be explained as an aggressive business instinct, intensified in the light of the conflicting, containing attitude of Pan American, as well as from the standpoint of its asserted attempt to monopolize all transportation on the west coast. We are buttressed in our choice of the former in that the record before us fails to disclose any antitrust violations on the part of Grace vis-à-vis Panagra, unless

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it be *per se* violative of the Sherman Act for Grace to own the stock that it does in that company. We will defer discussion of that issue to later in this opinion.

Clearly, Grace did not contemplate joining in the venture as a mere investor, though the terms of its agreement with Pan American as disclosed in the two letters, *supra*, did not contemplate that it would actively manage the line. The question of its ascendency to that management, since it occurred in 1939 subsequent to the creation of the C.A.B., is one that the C.A.B. has always been in a position to remedy if it in fact is in contravention of the C.A.A. §408(b) (49 U. S. C. 488(b)).[13] The apparent reluctance of that body to entertain the issue probably is rooted in dilemma. If Grace were divested of the management Pan American would succeed thereto. The progression would be from merely theoretical to further and more complete actual restraint and suppression. If Pan American is ordered to divest itself of Panagra the question of Grace management of Panagra may then be disposed of by the C.A.B.

Division of Territories

Consideration of the defendants' agreement or understanding with respect to the respective spheres of operations for the two airlines, when viewed in the light of the conditions under which they undertook, as foreigners, to establish an American system of international aviation in South America, the policy of this government and its stake in fostering their efforts, and the dedication of public monies involved,[14] as well as the relation of the parties one to the other and the nature of the industry itself,

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13 Cf. *New York-Balboa Case*, Order No. E-5737 (Sept. 21, 1951). See, also, C. A. A. §§408 and 415 (49 U. S. C. 489 and 495).

14 For example, between 1947 and 1958 the government gave Pan American $61,480,000; Panagra $13,925,000 and Braniff $15,461,000 by way of pure subsidy.

ments the rights to carry local traffic along the points of the international lines. These subsidiaries served also as a wedge whereby defendants could successfully oppose the efforts of local national companies that sought to secure monopolies within their own countries. It was a costly and losing proposition, however, to maintain these subsidiaries. It was more economical and ultimately more advantageous to acquire a stock interest in an influential national company.

Conclusions Re Conspiracy

The acquisitions, alleged predatory practices,[11] division of territories[12] and agreements with competitors have long been known to this government, and there is no dispute as to the facts and surrounding circumstances. The dispute relates to the inferences which we are asked to draw from the evidence. The argument for the inference of conspiracy is appealing to a mind bent on finding conspiracy.

From the outset, both Grace and Pan American had to fully appreciate the dangers of competition between themselves for the air mail contract about to be advertised for the west coast route. Neither of them might get it, or one could succeed but probably at a prohibitively low bid. They also must have realized that conflicts would arise in their partnership.

Grace was aware of the competitive potential of air transportation with its large steamship investments. So was Pan American aware of potential competition, but its ambitions were far more extensive than Grace's in air transportation at that time. Pan American sought to extend its system throughout Latin America. It could not do so without all of the mail contracts to be awarded. Grace's interest

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11 See discussion *infra*, page 65 *et seq.*

12 See discussion *infra*, page 29 *et seq.*

[fol. 5545]

was confined to the west coast of South America where it was strongly established, and that was the only area where it faced competition from an airline. The award of a Post Office contract for each sector of South America, in effect, assured the American contractor of a monopoly in that sector insofar as American flag operations were concerned, and the invaluable assistance of the State Department and Post Office Department in the carrier's relations with the countries along its route.

By joining with each other in a joint venture on the west coast, Grace on the one hand would be assured against the entry of an independent American airline competitor into its west coast domain, and gain time to acquire the experience and know-how of this new industry, and one day perhaps to succeed to complete domination of the joint company. Pan American on the other hand would be substantially free from American flag competition in the rest of Latin America. Their method of organization of the joint company appears calculated to give each negative control of the company to insure against the possible treachery of the other to expand the operations of the company in competition with their respective independent lines, and their divisions of operational and agency functions of Panagra was similar added protection.

Each of these two defendants occupied a strong bargaining position. They needed the attributes of each other in the operation of an airline on the west coast, and they feared the consequences of each other's opposition. Together they were an irresistible combination bidder to the Post Office Department. Their combined interests on the west coast could insure the greatest possibilities for the success of an American carrier in that area, and at the same time protect their independent systems from the competition of such carrier. An agreement to divide the territory of operations between the two air carriers is consistent with such a design, and it is equally consistent for Grace

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compels the conclusion on our part that it involved no violation of the antitrust laws.

The defendant airlines had to be self-contained enterprises involving large amounts of fixed capital outlay for facilities that would normally be made available to them in this country by governmental authorities. They had to build their own landing fields, provide their own meteorological service, and maintain their own communications system, and in connection with building up operating and traffic organizations they of course had to maintain offices in all of these countries and establish good will with the governments and peoples through whose territory the lines must pass. And in addition to technical and equipment problems they contended with substantial competition for the available traffic from foreign lines that had established themselves before the defendants and who were maneuvering for monopoly concessions that would have precluded defendants from their markets. The State Department actively assisted defendants in defeating the foreign company designs for monopoly concessions and in securing American operating rights along their routes. The contracts awarded by the Post Office Department defined the international route of the contractor, and so to a large extent defined the area of development and expansion of any such contractor. The Post Office policy during the years 1928 to 1938 was to award but one contract for each route, in effect to subsidize one American carrier in a particular sector. The ideal route pattern as envisaged by the C.A.B. today is to have two carriers, Pan American and a merged "Panagra-Braniff," and the only difference from that existing prior to Braniff's entry would be the extension of "Panagra-Braniff" to the United States. Competition among American carriers under the policy of the Post Office Department under the foreign mail contracts, was economically impossible, and most likely detrimental to the sound development of American flag service, which would have complicated or embarrassed the effective rendition

[fol. 5551]

of diplomatic assistance from the State Department, and actually cause a waste of public monies. Competition between Panagra and Pan American certainly was not encouraged by this government. On the contrary, there appears to emerge from the evidence presented a definite policy of the government approving a sort of "zoning" for the operations of the American international carriers in the nature of east and west coast spheres as was ultimately arranged between Pan American and Panagra. Agreement not to parallel each other's service in South America seems perfectly consistent with the air transportation policy of this country in those formative years. It is only with respect to the northern extension of both lines to the United States that restraint of competition between Pan American and Panagra whether by agreement or unilateral action, in our opinion, falls under the condemnation of the antitrust laws. This relates primarily or wholly to the question of Panagra's extension to a United States terminal.

There is no doubt that defendants came to agree upon a division of territories; the dispute relates to when such agreement came about and what its details were. Pan American says that it and Grace reached agreement prior to the formation of Panagra that Panagra was to operate only on the west coast of South America from the Canal Zone to Valparaiso, Chile, and that was to be the entire extent of its operations. Pan American was to conduct operations throughout the rest of South America, including operations within the interior of South American countries, as well as its other services in the Caribbean and Central America, and between the United States and the Canal Zone, for which areas it had already secured the United States mail contracts. By reason of the mail contract ultimately awarded to Panagra, its terminal in Chile was changed to Santiago, and the scope of Panagra operations was extended to Buenos Aires and Montevideo. The gov-

ernment apparently accepts Pan American's version of the agreement.

Grace on the other hand contends that their territorial agreement was entered into *after* Panagra's formation and was, in general terms, to the effect that Panagra was to operate on the west coast and in all the countries of the west coast through which its international mail line ran, as well as over the Andes to Buenos Aires and Montevideo, and that there was no intention one way or the other contemplated *mutually* by them with respect to possible extension of Panagra's line to the United States. As for pre-Panagra agreement, Grace says that it was merely to combine their efforts, talents and resources in a jointly owned company to operate an air transportation service on the west coast, and specifically, to bid on the proposed mail contract for that west coast route. Grace contends that it was only in November, 1929, after Panagra's route had been extended by the Postmaster General at its request, to Buenos Aires, that any detail was added to their east coast-west coast understanding, and this concerned Panagra operations in the Argentine.

Pan American had organized an Argentine subsidiary (ALAS) in June, 1929, to operate locally in Argentina to give it legal standing there, and to develop cabotage business for Pan American's operations. Because of the operations of this subsidiary, ALAS, Panagra and Pan American reached an understanding whereby Pan American and ALAS had the exclusive right to Argentine traffic throughout that republic with the exception of that traffic between the points on Panagra's route—between Buenos Aires and Mendoza, Panagra had exclusive right, and between Buenos Aires and Montevideo, Panagra would compete with ALAS.

The understanding was again given substance after Pan American had acquired NYRBA, when in September, 1930, ALAS made some flights to Santiago from Buenos Aires, parallel to Panagra's route. Pan American put a stop to these flights when Grace complained.

[fol. 5553]

Their agreement with respect to the Argentine figured again in the development of Panagra in 1935 when Pan American finally consented to Panagra operating a service from Tacna, Peru, to La Paz, Bolivia, on condition that there would result no prejudice to the arrangements or understanding relating to the traffic interests of Panagra in Argentina. This question arose because the Bolivia operations were sought by Panagra as a prerequisite to its instituting an alternate route to Buenos Aires through Bolivia and several Argentine cities. Panagra instituted such an alternate route to Buenos Aires in 1937. Pan American withheld its consent to that alternate route hoping to get Panagra to pay for a portion of the expense of its acquiring NYRBA, because NYRBA supposedly had incurred expenses in developing part of the route over which the new alternate route of Panagra's passed. No payment was ever made.

In early 1937 Panagra, at the invitation of the Colombian president, wanted to divert its international line into interior cities of Colombia, viz., Cali and Medellin. SCADTA had opposed this deviation and, in addition, threatened to extend its own line to Ecuador in competition with Panagra. Pan American opposed the proposed Medellin stop because it would divert traffic from its wholly owned subsidiary, UMCA, operating between Medellin and Panama. Panagra agreed to settle for the Cali stop, and Pan American helped overcome SCADTA opposition thereto, as well as to overcome the threatened competition of SCADTA to Ecuador. The Cali stop was approved by Panagra's board in January, 1938, Pan American's nominees abstaining.[15]

In 1951 Pan American's subsidiary, Panair do Brasil, at the instigation of the government of Brazil extended its routes from Rio to Santiago and Lima. Grace had sought

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15 After the Through Flight Agreement of 1946, discussed *infra*, page 50 *et seq.*, Pan American approved of Panagra's extension to Medellin and Bogota, Colombia.

[fol. 5556]

of the United States entirely on foreign flag lines. In addition it is published for only two months of the year, viz., the months of March and September. In this case the latest one used by the government economist was the September, 1957, survey.

The other source of statistical information is the I.N.S. series. This information does cover foreign flag carriers but it does not provide the name of the carrier involved. It makes no distinction between passengers who fly on a non-revenue basis or on non-scheduled flights or in non-commercial planes. It does not include passengers in a military class. Its total statistics, therefore, are larger than the comparable statistics for the United States flag carriers as collected by the C.A.B. and therefore are more advantageous to the defendants if those statistics are used exclusively.

We find that by the use of both, a reasonably reliable picture of the relative positions of Pan American and Panagra is reflected and their relative participation in the traffic shown.

From these statistics it is obvious that Pan American and Panagra have retained a very high degree of dominance over other United States flag airlines in the transportation of passengers between the United States and South America. In fact they have either together or separately participated in the movement of from 75% to 88% of the passengers who used United States flag airlines between the United States and South America during the period 1950-1957.

With respect to such journeys between points of origin (or destination) in 16 eastern states[16] and South America,

16 Includes the New England states and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia and Florida. It is estimated that this area accounts for about two-thirds of the United States-South American passenger traffic.

[fol. 5557]

Pan American and Panagra have participated in carrying from 88% to 96% of the passengers during 1950-1957.

Panagra is the dominant United States flag airline participating (almost entirely with Pan American) in the movement of passengers between the United States and points in western South America (western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, other than Buenos Aires). During the 1950-1957 period Panagra carried between 79% and 86% of this traffic and from 84% to 93% of the eastern United States, western South America traffic.

Pan American is the dominant United States flag carrier participating in the transportation of passengers between the United States and eastern South America (eastern Colombia, Venezuela, the Guianas, Surinam, Brazil, Paraguay and Uruguay). Without any participation by Panagra it accounted for 66% to 85% of this traffic and between 84% to 95% of the eastern United States–eastern South America traffic during the 1950-1957 period.

Both lines, Panagra and Pan American, fly to Buenos Aires by separate routes (Panagra via western South America and Pan American by eastern South America) and are obviously competitive in that category. Together they have accounted for 92% of all the passengers carried by United States flag airlines between the United States and Buenos Aires, and 94% of such traffic between eastern United States and Buenos Aires during the 1950-1957 period. During this period Panagra (in participation primarily with Pan American) carried more than one-half and Pan American (with no Panagra participation) carried two-fifths of the United States-Buenos Aires traffic on United States flag lines.

Using the I.N.S. statistics so as to round out the picture and include the foreign flag carriers, we find that Pan American and Panagra have participated in the transportation of approximately 50% of the total number of

to have Panagra apply to extend its routes from Lima to Rio some time earlier but Pan American would not agree.

We find that the agreement between the defendants as to spheres of operations and its evolution was substantially in the manner described by Grace. We accept the version of Pan American, not as respects mutual agreement between it and Grace, but as representing its own intentions for the destiny of Panagra.

An agreement not to duplicate or parallel each other's service in South America would seem to be consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938, and it was this type of competition from Pan American, through its subsidiary ALAS, and through SCADTA which Pan American controlled at the time, against which Grace invoked successfully the territorial agreement. Pan American, through its negative control of Panagra was always capable of preventing paralleling of its routes by Panagra, and Pan American over the years has in addition successfully delayed or prevented within-South America extensions of Panagra which would not have resulted in paralleling its operations.

For the purposes of this suit, however, we find sufficient basis in the Pan American suppression of Panagra efforts to extend to a United States terminal upon which to predicate our conclusion that Pan American monopolized that sector of commerce between the United States and South America and between the United States and the Canal Zone to warrant relief against it.

Pan American's Restraints Against Panagra

The thrust of the government's evidence was directed to the alleged monopolization or attempted monopolization by Pan American of air transportation between the United States and South America. While it also charges monopo-

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lization by Grace of air and steamship transportation, that charge is treated *infra*, page 61 *et seq.*

The market or the "area of effective competition" which is the subject matter of this inquiry is air transportation between the United States and South America, particularly the west coast. Whether it should include only American flag carriers or all carriers is debatable, but to resolve it most favorably to the defendants we will treat the problem separately and jointly. It would seem fair, too, because of the areas involved to subdivide, as the government has, several appropriate markets or relevant market segments and correlate these to United States flag carriers and all carriers.

In the early 1930's less than 5% of the passengers between the United States and South America were carried by air, but since 1954 the airlines are handling 80% of such traffic. Pan American is the largest international airline in the world and in 1957 flew 3,500,000,000 passenger miles. One-third of its business is in Latin America.

There does not exist a completely accurate record of statistical data measuring the volume of traffic moving by air or sea between the United States and South America. The available sources developed by different agencies of the government and using somewhat different reporting procedures are those prepared by the C.A.B. and the Immigration and Naturalization Service (I.N.S.). The OD survey of the C.A.B. shows the origin and destination of air travellers and their complete air journeys; it shows the airlines involved in carrying people between those points and is limited to passengers who fly on commercial airlines in scheduled flights and on a revenue basis. It is limited, however, to carriers, as far as international traffic is concerned, who are certificated by the C.A.B. and includes only those passengers who either entirely or in some part of their journey used United States flag air carriers. It does not cover passengers who travelled out

passengers travelling by air between the United States and South America on United States flag and foreign flag carriers during the period from 1952-1957. Approximately one-sixth of the total traffic was carried by other United States flag carriers and about one-third was accounted for by foreign flag carriers in this period.

The dominance of Pan American and Panagra in the United States-South America traffic market is obvious since the traffic that was not carried by Pan American and Panagra (approximately 50% of the total) was divided among at least ten[17] other airlines, i.e., eight foreign flag carriers and two other United States flag carriers. In this connection, too, it should be observed that two of the foreign flag carriers, Avianca and Avensa, that carry passengers between the United States and South America are "affiliates" of Pan American, i.e., Pan American owns a substantial minority share of their outstanding stock.

The I.N.S. statistics show that with respect to passenger traffic between the United States and the four western South American countries (Ecuador, Peru, Bolivia and Chile), Panagra participated in carrying almost 75% of the total traffic in the 1952-1956 period and about one-half of the total in 1957. Between the United States and the seven eastern South American countries (Venezuela, Brazil, British Guiana, French Guiana, Surinam, Paraguay and Uruguay), Pan American alone accounted for about two-fifths of the total traffic during the period from 1952-1957. Between the United States and Argentina, Pan American and Panagra shared better than three-quarters of the traffic during the 1952-1957 period. Between the United States and Colombia, Pan American and Panagra (each serving different parts of that country) accounted for one-third of the total traffic in the 1952-1957 period, while the foreign flag traffic was three-fifths of the total. However, practically all of this foreign flag traffic is carried by Avianca.

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17 According to Pan American there are at least 18 foreign airlines operating between the United States and South America or Panama.

[fol. 5559]

Pan American has submitted evidence and expert testimony on the relevant markets and area of effective competition. Some of its statistics, however, include sea passenger traffic added to the air traffic, thus considerably diluting the percentages testified to by the government economist and supported by its statistics. This was done in a post-trial brief based upon certain evidence the government submitted insofar as the complaint related to Grace. We reject this combination of air and sea traffic figures as not close substitutes and not truly the same relevant market.[18] It is significant, too, that at the trial Pan American's expert witness and employee produced no statistics from their own records showing the share of air passenger traffic by Pan American or Panagra in any relevant market.

Accepting the government's evidence and rejecting Pan American's as deficient, we find that there is and has been for many years active substantial competition between Pan American and Panagra in the transportation of air passengers to the United States and South America to a substantial degree and that, but for the Pan American suppression of Panagra, that competition would have been much greater.

Finding, as we do, the existence of such competition the next inquiry is whether defendant Pan American monopolized or attempted to monopolize such trade and commerce. We find that it did both.

We need not discuss alleged violations of §1 of the Sherman Act in this part of the opinion. We have heretofore found no conspiracy between Grace and Pan American to restrain or monopolize, and we concluded in substance that their original joinder was not a combination in restraint of trade; we found that their combination was a legitimate one with legal ends—to foster the development

18 Cf. *Times-Picayune Publishing Co.* v. *United States*, 345 U. S. 594, 612 n. 31.

of a new form of transportation. That the combination, or joint enterprise subsequently developed differences of opinion as to the growth and development of their jointly owned company does not, in our opinion, operate to make their joinder or combination, *in limine*, one in restraint of trade, or their combination presently, *qua* combination, one in restraint of trade.

The antitrust restraints that we find here requiring judicial remedy were unilaterally imposed by Pan American and for that reason, if they are illegal at all under the Sherman Act it must be under §2 thereof. More specifically, they must constitute monopolization or attempt to monopolize.

In our opinion, Pan American's successful blocking of Panagra's extension to its own terminal in the United States constitutes an unlawful exercise of the power it had to exclude Panagra as a competitor in the United States-South American market, and to thereby maintain its virtual monopoly position over that market at least until the entry thereinto of Braniff in 1948. Thereafter and to date, it remains the dominant carrier in that market and maintains its power to participate in substantially all United States origin or destination traffic carried by Panagra through its continued suppression of a Panagra-United States extension.

While we were not provided with any statistical breakdown of the passenger traffic carried by air between the United States and South America for the years prior to 1950, it is clear that Pan American and Panagra's share was 83% or better. And it is safe to say that prior to 1947 substantially all such traffic was carried by Pan American alone. It was not until then, 1947, when the C.A.B. approved the Through Flight Agreement, that Panagra planes actually flew beyond the Canal Zone to the United States; but then it was only in participation with Pan American pursuant to such agreement.

[fol. 5561]

Since 1938 half of Panagra's board of directors (Grace nominees) sought to file a voluntary application with the C.A.B. for an extension of Panagra's routes to the United States. Pan American would not consent to such action and directed its nominees on Panagra's board accordingly, because "it would not be in the interest of our stockholders [Pan American stockholders] for our directors to authorize an application by [Panagra] to extend north of [the Canal Zone] in competition with Pan American."

Pan American has never retreated from this position which is predicated upon the proposition that Panagra is part of the Pan American system; that it (Panagra) was so set up to be the west coast link of the Pan American system, and that if it were permitted to extend to a United States terminal its character would be changed to that of a competitive carrier. Pan American has expressed the fear that if Panagra were permitted its own route to Miami the effect upon Pan American's service between the Canal Zone and Miami would be disastrous, because the greater portion of Pan American's traffic between those points on its direct flights was traffic destined to or originating at points on Panagra's routes. Generally, all through traffic between points on Panagra's west coast route and Miami or other United States cities conveniently reached through the Miami gateway would be almost wholly diverted from Pan American. The same would go for most any west coast traffic bound for a United States point conveniently reached from any United States terminal to which Panagra may be certificated, whether it be Miami, New Orleans, New York or any other city.

It is beyond dispute therefore, that Pan American blocked Panagra's independent entry into the United States-South American market in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States and bound for points on Panagra's west coast routes. Prior to Braniff's entry into the market (and Delta's too), and prior to the Through Flight operations, Pan American en-

joyed a virtual monopoly of the United States-South American market. We assume that it had come by that monopoly legally however, originally; but we find that it maintained that monopoly illegally, in contravention of the Sherman Act when it utilized its stockholdings and representation thereunder on Panagra's board of directors to frustrate Panagra's entry into the market. Pan American's justification for its blocking actions is bottomed upon a fallacious predicate; Panagra is *not* part of the Pan American system except to the extent that it is reduced to that status through the subjugating exercise of Pan American's negative control over its destiny. Panagra is not a subsidiary of Pan American; its co-equal stockholder, Grace, never so intended it to be (and never intended to be a mere investor in Panagra), nor has Panagra's abstention from independent entry into the United States-South American market been the result of *concerted* action between it and Pan American. If Pan American were the majority shareholder in Panagra or if Panagra were a wholly owned subsidiary of Pan American it might make a decisive difference in this case. Cf. *Report of the Attorney General's National Committee to Study the Antitrust Laws* (1955), pp. 32-34. If Panagra were wholly owned by Pan American we have no doubt that its extension to a United States terminal would have been effected decades ago.

Pan American, to be sure, has contributed substantially to the success of Panagra within the territorial limits to which Pan American has permitted its operations. Pan American has always considered Panagra as part of the Pan American system, and its major premise is that its capital investment in Panagra was dedicated to a limited operation on the west coast from the Canal Zone south.

Panagra, however, is an independent entity and the dedication of American taxpayer money,[19] without which it could

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19 See footnote 14 *supra*, also, *Local, Feeder and Pick-up Air Service Case*, 6 C.A.B. 1, 3.

[fol. 5563]

not have survived as Pan American so readily argues, is paramount to any private investment consideration due Pan American. It most certainly must have been thought by this government that it was subsidizing two air transportation companies to develop the South American markets, each with equal opportunities in time to operate to this country and not necessarily by parallel routes.

If the competitive effect of a Panagra extension to the United States would have been as disastrous as feared by Pan American, it would have been a genuine issue for it to urge before the C.A.B. in opposing such extension which that body would have to weigh together with the public convenience and necessity in favor of the extension. Pan American then and since has arrogated to itself the function of determining what the public convenience and necessity requires. The economic arguments advanced by Pan American to justify its actions in preventing Panagra's extension to the United States are irrelevant to the issues of this case. Its intentions in excluding Panagra from that sector are beyond doubt.

While we have discussed the market which we find Pan American has monopolized or attempted so to monopolize, as the United States-South American sector of air transportation of passengers by all carriers, foreign and American, there is a more limited market over which Pan American has maintained a more complete monopoly and which would appear to be one that may be appropriately considered separately. That is the United States-Canal Zone sector of air transportation. Under the Civil Aeronautics Act such transportation would be deemed "overseas" transportation, as distinguished from "foreign" transportation, and as such would be reserved exclusively to United States flag carriers. Cf. *Pan American-Matson-Inter-Island Contract, supra.*

Prior to Braniff's certification and entry into this market, Pan American was the sole United States carrier therein.

[fol. 5564]

Its actions in suppressing and thereby excluding Panagra from the United States terminal to which Panagra aspired are equally applicable to a consideration of this more limited market, and compel the same conclusion of monopoly or attempted monopoly.

Pan American argues that under the C.A.A. exclusive control over the entry into the market is vested in the C.A.B. and the President (§§401 and 801, 49 U. S. C. 481 and 601) and that, therefore, it does not have power to exclude competitors, i.e., monopoly power. It does not and cannot deny, of course, that it has the power to and has effectively excluded Panagra from the market in question.

In our opinion, under the circumstances of this case Pan American need not have the affirmative power to ultimately approve Panagra certification for its own route to the United States to qualify as a monopolist. What Pan American seeks to do is to confound power of admission with power of exclusion. It is the exercise of the latter that the Sherman Act condemns.

We would like it clearly understood that it is not our opinion that every defendant who exercises similar negative control over a single potential competitor and thereby excludes such competitor from a relevant market necessarily monopolizes thereby. It is a relative concept which can only be applied in a given context. Here, the excluded competitor is the most potential of a very limited number of competitors and one that enjoys a substantial share of the relevant market, and in which share the exclusionary action of Pan American guarantees it participation. One result is that competition between the two for their significant shares of the market is to a substantial degree restrained. Other factors we considered are the nature of the industry, the size and strength of the two companies involved, and the limited market potential.

We feel that the affirmative blocking of a Panagra application to the C.A.B. is sufficient under the facts pre-

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sented to make out the violation by Pan American of monopolization and that the following history of Pan American's actions gives a definitive picture of its 20-year subjugation and restraint on Panagra. It will also show the attitude of the C.A.B. and its consequent frustration towards Pan American's antagonistic and purposeful restraint.

We start with 1938, the turning point for United States flag international aviation. With the enactment of the C.A.A. that year the period of foreign airmail contracts ended; under the Act mail pay or subsidy was to depend, not upon contract, but upon the needs of each certificated carrier in contributing to the maintenance and development of air transportation. In accordance with the objectives set out in §2 (49 U. S. C. 402) thereof, in sum, to promote an economically and technically sound air transportation system, the C.A.B. was authorized to prescribe the extent of air transportation which each certificated carrier may engage in, and to allow for regulated and economic competition designed in part to stimulate research and experimentation and to induce refinements which would inure to the benefit of the foreign and domestic commerce; the Postal Service and the national defense.

A policy of regulated competition replaced the "no-parallel" policy of the first decade, and with it and the new policy with respect to subsidy, it became feasible for Panagra to seek to extend its routes to the United States. Such an extension would give it direct access to one or more of the major gateways for through traffic between the United States and Latin America and was entirely normal and desirable from Panagra's viewpoint as it would then no longer be so dependent upon connections with Pan American at the Canal Zone for onward passage of a large part of its traffic travelling between the United States and the west coast of South America and Buenos Aires. See *Panagra Terminal Investigation Case, supra,* at 671. However, such an extension of Panagra represented a serious com-

petitive threat to Pan American which ran counter to the latter's philosophy that it alone should conduct all international commercial air transportation operations under the United States flag, a philosophy which Pan American unavailingly urged upon the C.A.B. whenever competition for Pan American was proposed. See e.g., *American Export Airlines, Inc., Trans-Atlantic Route Service Case*, 2 C.A.B. 16; *Northeast Airlines, Inc., North Atlantic Route Case, supra* at 324; *Latin American Air Service Case, supra* at 861, and *Hawaiian Airlines, Ltd., Hawaiian Case*, 7 C.A.B. 83, 103.

Grace's efforts of 1938 to secure Pan American cooperation for a northern extension of Panagra resulted in a compromise embodied in an agreement dated February 14, 1939, whereunder Grace nominees succeeded to the presidency and management of Panagra, Pan American promised to provide an adequate connecting service between Miami and the Canal Zone,[20] and Grace was to cease agitating for the United States extension of Panagra. However, in late 1940 Grace again pressed the question of Panagra's extension because at that time American Export Lines was evidencing an interest in a New Orleans-Canal Zone service which Grace feared might eventually extend down the west coast in competition with Panagra. Grace's suggestion that Panagra file an application with the C.A.B. for this route was rejected by Pan American which, incidentally, had already filed its own application therefor. Pan American further decided that its nominees on the Panagra board would not attend any meetings at which this subject was to be discussed. Thereafter, Grace brought the matter before the C.A.B. and that body ultimately instituted a proceeding which became known as Docket 779, the Panagra Terminal Investigation. The intermediate

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20 Pan American's connecting service was a source of much friction between defendants and its alleged inadequacy gave rise also to threats by Grace to inaugurate its own air transportation service between Miami and the Canal.

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steps are set out chronologically in the C.A.B. opinion in the case as follows:

"When efforts to secure the filing of an application by Panagra failed, Grace, on May 3, 1941, filed a petition for leave to intervene in the *New Orleans* case alleging that since Panagra was not filing an application Grace proposed to file an application in its own behalf for a certificate for a route between the United States and the Canal Zone. Grace was granted leave to intervene, but did not file an application for a certificate during the time that case was pending.

"On December 16, 1941, Grace filed a petition and complaint, Docket No. 707, requesting the Board to institute a proceeding pursuant to section 401(h) of the Act to alter, amend, and modify Panagra's certificate of public convenience and necessity so as to make the northern terminal of its route a point in the United States such as Miami or Tampa, Fla., or New Orleans. On April 29, 1942, Grace filed a second complaint, Docket No. 744, requesting the Board to require Pan American Airways Corporation, pursuant to section 411 of the Act and sections 7 and 11 of the Clayton Act, to cease and desist from certain matters alleged by Grace to be in violation of those sections, and to divest itself of its ownership of the stock of Panagra to the extent necessary to divest itself of its present negative control of Panagra; and also renewing its request in Docket No. 707.

"No formal steps were taken by the Board in connection with the Grace petitions in Dockets Nos. 707 and 744 until September 1942. During this period all action in the *New Orleans* case also was postponed under the Board's policy, announced December 12, 1941, of suspending further action in all proceedings pending before it under sections 401(d) and 401(h) of the Act 'in order that the immediate and maximum attention of air carriers and their personnel, and that of the Civil Aeronautics Board, as well as other Government agencies concerned, may be available for the most efficient discharge of the emergency demands' arising out of the war.

> "However, the Board did explore the possibility of working out a voluntary settlement of the controversy between Pan American and Grace. Numerous conferences were held by the Board with both parties. Finally, the Board suggested that the parties enter into an agreement under which sufficient shares of the two stockholders would be transferred to an independent public voting trustee or trustees to permit the election to the Panagra board of an independent director or directors, or under which such an independent public director or directors might be otherwise appointed, who would be able to break the deadlock resulting from the equal division of the ownership of Panagra stock between Pan American and Grace. After it became apparent that no satisfactory voluntary arrangement could be mutually agreed upon by the parties and that all efforts to mediate the differences between them would be unsuccessful, the Board, on September 10, 1942, * * * [instituted Docket 779]" 4 C.A.B. 670, 671-72.

In May, 1944, the C.A.B. dismissed the proceeding without reaching the merits of the question of the public convenience and necessity involved in a Panagra extension. The dismissal was on the ground that the Board was without power to compel such an extension in the absence of a voluntary application from Panagra. The Second Circuit Court of Appeals, *W. R. Grace & Co.* v. *C.A.B.*, 154 F. 2d 271 (1946), reversed the C.A.B. and remanded the proceeding saying: "if Grace * * * could prove that the opposition of Pan American * * * to Panagra's applying for an extension was due to 'illegality and fraud' it would follow that this proceeding should be regarded as a voluntary application for the extension" (pp. 281-82). On June 10, 1946, the Supreme Court granted Pan American's petition for certiorari, 328 U. S. 832.

In the meantime, in consolidated hearings, the C.A.B. had been considering a number of applications by carriers seeking, *inter alia*, certificates to engage in operations between the United States and the Canal Zone. The C.A.B.

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Examiners and its Public Counsel reported that while the extension of Panagra to a terminal in the United States would best serve the public interest they considered such recommendation to be foreclosed by the decision of the Board in Docket 779, and consequently, they recommended that routes between the United States and the Canal Zone be awarded to other carriers. The brief of the Public Counsel noted, in substance, that Panagra was entitled to a certificate for a United States-Canal Zone route which would provide the west coast countries in South America with the convenience of one-carrier service to the United States, but since the action of Pan American prevents the recommendation of the "best possible service, we must turn to the next best solution." *W. R. Grace & Co.* v. *C.A.B.*, *supra*, p. 282 n. 5.

Nevertheless, the C.A.B. thereafter divided evenly on the question of authorizing other carriers to South America and for want of a majority, additional services between the United States and the Canal Zone also failed. The President thereafter directed the Board to provide for the extension of an additional carrier to South America and Braniff was ultimately selected. In the course of its opinion the C.A.B. had occasion to say that it had long recognized the desirability of a voluntary application which would permit a determination by it of the question of extending Panagra from the Canal Zone to a point in the United States, and that if such extension were made to Miami or New York, or some other point on the eastern seaboard, the eastern part of the United States would be afforded a fast direct service to the west coast of South America and to Buenos Aires. The Board declared that Pan American and Grace, in the public interest, "cooperatively should enable Panagra to apply for access to the east coast of the United States." *Latin American Air Service Case, supra,* at 914.

Thus, while it is true that the C.A.B. has never explicitly stated that it would grant an application if one were volun

tarily presented by Panagra, it is unrealistic to suppose that it would not have. We find it difficult to conclude otherwise than that the Board waited in vain for such an application, or stated differently, for Pan American to cease blocking Panagra in the interest of the public welfare.

Braniff's certification was in May, 1946. Pan American and Panagra entered into the Through Flight Agreement in July, 1946. Under this agreement Pan American theoretically charters Panagra planes on flights north of the Canal Zone. Actually, what Pan American does is to share with Panagra in the expenses and profits of such flights by Panagra planes flying over Pan American's routes.* After the Board certificated Braniff, Panagra was faced with two alternatives: (1) to enter into the Through Flight Agreement and immediately improve its competitive position with Braniff, or (2) continue to press for its own certificates. Under the latter course Grace, on behalf of Panagra, would continue the litigation which it had initiated before the C.A.B. in 1941 which was then pending review by the Supreme Court on certiorari to the Second Circuit.

The outcome of the appeal of course was uncertain, and assuming it were favorable to Panagra, the matter would still then have to return to the C.A.B. for a consideration of the merits of the action. Panagra simply could not afford the delay which this course of litigation would entail. Its economic life hung in the balance. If Panagra did not get to the United States, at least by way of a through flight interchange agreement with Pan American, and if Braniff commenced such operations under the authority granted by the Board, Panagra's economic position would rapidly deteriorate. Cf. *New York-Balboa Through Service, Reopened*, 18 C.A.B. 501, 505.

Grace and Panagra succumbed to the restraint of Pan American and acquiesced in the Through Flight Agreement.

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* In 1955 the C.A.B. approved an interchange agreement among Pan American, Panagra and National Airlines under which Panagra's planes fly to New York from Miami over National's routes.

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The C.A.B. approved the agreement in May, 1947;* it did not approve the suppression of Panagra by Pan American in the process as Pan American contends. Such approval was in no sense necessary to do that which was authorized. (See further discussion re Pan American's claim of immunity *infra*, page 52.)

The loser of course, as always, was the public. Braniff has proved to be an ineffective competitor; the United States share of the market has declined; foreign competition has increased, and the federal subsidy has greatly increased.[21] The C.A.B. has expressed a fear for the economic effects of a successful conclusion of this suit by the Attorney General, and the emergence as a consequence of an independent Panagra in South America. *New York-Balboa Through Service, Reopened, supra.* It should be noted that in 1957 Grace, on behalf of Panagra, filed with the C.A.B. applications for Panagra's own routes to Miami, New York and to the west coast of the United States. Action thereon is suspended pending the outcome of this suit.

Pan American has monopolized or attempted to monopolize the market in issue and in the process has seriously restrained competition from Panagra and caused the creation of a situation that cannot be righted so long as it retains the negative control that it now possesses over Panagra.

Pan American's conceptions of the perpetual limited character of Panagra operations are now and ever have been based on its own unilateral intentions in joining with Grace to form a west coast airline. That intent, and the economic

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* On November 24, 1947, on Pan American's motion the Supreme Court dismissed the writ of certiorari previously granted, as moot. 332 U. S. 827.

21 In 1946, Pan American's Latin American Division showed a profit of $2 million and in 1953 it required $11 million subsidy; Panagra in 1946 required just under $1 million which rose to over $2 million in 1953; Braniff required about $560,000 in 1948 and its break-even need in 1953 was over $3 million. *New York-Balboa Through Service, Reopened, supra* (concurring opinion).

arguments which it has advanced in its brief against Panagra's extension to the United States are no defense to the monopoly charges *sub judice*. Its economic arguments would have been proper to urge before the C.A.B. upon hearings on the merits of an application by Panagra for such extension. While Pan American's conduct in preventing Panagra from clearing the first hurdle for that extension, to wit, presentation of an application to the C.A.B., may be understandable from a selfish business standpoint of one faced with making a choice, nevertheless the quandary was of Pan American's own making and its choice was unlawful.

Pan American Immunity

Pan American asserts that it is immune from antitrust violations because the Civil Aeronautics Board approved the arrangements made between it and Grace respecting the area of Panagra's operations. It points out that in 1947, again in 1950 and again in 1955 the C.A.B. approved the Through Flight Agreement between Pan American and Panagra and the related Parent Company Agreement between Pan American and Grace. It states that the approval was given after a most thorough inquiry from which it appeared abundantly clear that the Through Flight Agreement was in lieu of Panagra's coming to the United States and represented a reconciliation and settlement of the controversy between Pan American and Grace over Panagra's coming to the United States.

It relies on §414 of the C.A.A. (49 U. S. C. 494) which relieves any person affected by an order of the C.A.B. made under sections 408, 409 or 412 (49 U. S. C. 488, 489, 492) of the operations of the antitrust laws.

The claim of immunity is without substance because no such approval was ever sought or obtained from the Civil Aeronautics Board.

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What the Board approved was in effect an interchange agreement between Pan American and Panagra which was completely silent with respect to the problem here involved and a related management agreement which contained, among other things, a provision that Pan American would consent to a Panagra application for service to the United States in the event of transfer, modification or cancellation of Pan American's own certificate. This provision consenting to an extension in the event of the contingencies described did not negative consent under other circumstances or in terms constitute an undertaking or an understanding that Pan American would continue to block Panagra's efforts for expansion.

One of Pan American's principal officers testified, "There was nothing in the agreement • • • to prevent Panagra from applying for an independent franchise to enter the United States" and that there was no side agreement or understanding to that effect. He was specifically asked, "Is it understood between the parties that Panagra will not so long as this contract is in effect apply for such independent entry?" He answered, "No." The president of Panagra when asked whether the agreement implied "that those who run the affairs of Panagra have an understanding that Panagra will not seek to come from the Canal Zone to the United States," he replied, "I do not so testify and that is not the fact. The only agreement between us on that point is in these papers."

Not a word in the opinion of the Board (8 C.A.B. 50) approving the agreements is devoted to this question, nor is there any basis for an inference that it understood that it was approving a prohibition against Panagra's seeking an independent franchise.

The Board's approval of the Parent Company Agreement was only in relation to the interchange agreement. It was done in order to prevent avoidance of its jurisdiction over contracts affecting air transportation (and which would

be subject to approval if made by operating carriers) through the device of their being made by parent companies not in themselves operating carriers and whose contracts would not normally be subject to the Board's approval.

Since the contracts do not specifically provide that Panagra should not seek its own certificate and the parties themselves testified that the contracts should not be so construed the Board cannot be held to have approved and granted antitrust immunity to Pan American to use its negative control over Panagra to prevent its applying to the Board for its own certificate to fly to the United States, nor has it ever approved or granted antitrust immunity in relation to Pan American's and Grace's control over Panagra. This control antedates the Civil Aeronautics Act and is beyond the purview of §408.[22] Exemptions from the antitrust laws are not favored and should be accorded only on a showing of compliance with the precise manner and method prescribed by Congress. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 226-27. This has not been done.

Primary Jurisdiction

Pan American in its post-trial brief has raised the defense of primary jurisdiction. It argues after trial that the allegations of the complaint are within the jurisdiction of the Civil Aeronautics Board and the President. Therefore, the court should not decide the matters in issue until after the Board and the President have acted.

The primary jurisdiction rule is, "a principle, now firmly established, that in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not

22 *Railroad Control of Northeast Airlines*, 4 C.A.B. 379, 386; *National Air Freight Forwarding Corp.* v. *C.A.B.*, 197 F. 2d 384, 389 (D. C. Cir. 1952).

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be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure." *Far East Conference* v. *United States*, 342 U. S. 570, 574-575.

Whether or no such defense should have been raised by motion or by answer in accordance with Rule 12 F. R. Civ. P. when the complaint was served six years ago is academic since we find it without merit. Parenthetically, although of no legal significance, this latest tactic of Pan American is characteristic of its litigious nature and of its determination to continue and persevere in its restraint on Panagra.

There can be no question that only a United States District Court has jurisdiction in actions under the Sherman Act, and that the Civil Aeronautics Board does not (15 U. S. C. 4). The necessary defendant W. R. Grace and Company, not being an air carrier, would not ordinarily be subject to the jurisdiction of the Board, except perhaps on the question of acquisition of control and management of an air carrier. See note 13 *supra*.

In *S.S.W., Inc.* v. *Air Transport Ass'n of America*, 191 F. 2d 658, 661-62 (D. C. Cir., 1951) the court analyzed the approach to accommodation of court and agency roles in the following language: "[I]n each case brought against a regulated company under the antitrust laws, the subject matter and remedy afforded by the regulatory statute are compared with that of the antitrust laws. If the latter either cover subject matter outside the scope of the Com-

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mission's power or provide a remedy which the Commission may not give, then they remain in effect to that limited extent. This sort of approach gives the greatest possible effect to congressional intent. It subjects problems intended to be dealt with in a uniform manner within the framework of a particular industry to the agency empowered to regulate that industry. At the same time, it gives effect to the antitrust laws in those areas not carved out from them by more specific economic regulation."

The complaint in this case relates to many matters that existed prior to the creation of the C.A.B. and over which the C.A.B. would have no jurisdiction. In addition, the major relief prayed for in the complaint is that the court order Pan American and Grace to divest themselves of their stock holdings and other interests in Panagra. Such relief or the power to grant it is not vested in the Civil Aeronautics Board as to pre-1938 acquisitions[23] and such power exists only in a court of equity. In fact there is no provision in the antitrust laws for such a drastic remedy. *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 602.

Applying the suggested test in *Air Transport Ass'n*, it is clear to us that so much of the subject matter in the government's complaint is outside the scope of the Board's power and it seeks a remedy which the Board may not give, that Pan American's argument and motion, if it is a motion addressed to the primary jurisdiction of the Board, must be and is denied.

As a practical matter this case is here because the Civil Aeronautics Board found itself powerless to act and requested the Attorney General on two occasions to institute this suit.

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23 See note 22 *supra*.

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Claim of *Per Se* Violation by Grace

The government contends that the Sherman Act makes unlawful the mere ownership or control by a steamship company of an airline operating a parallel route.

Leaving aside for later discussion the factual questions whether or no Grace competes with Panagra and whether Grace has in any respect exercised any restraint on Panagra, it is undisputed that Grace owns the Grace Line and that it carries the bulk of passengers who travel by sea between the Atlantic coast of the United States and the west coast of South America.

The government stakes its claim of *per se* violation on a series of railroad cases relating to mergers of competitive transportation companies and a district court case in Hawaii. The railroad cases the government relies on are *Northern Securities Co.* v. *United States,* 193 U. S. 197; *United States* v. *Union Pacific R.R. Company,* 226 U. S. 61, and *United States* v. *Southern Pacific Company,* 259 U. S. 214. We hold that these cases are inapposite. In *Northern Securities Co.* the problem related to the acquisition by banking interests through a holding company of the controlling interest in Northern Pacific Railroad and the Great Northern Railroad, which systems operated parallel lines through the northwest. Actually the roads served different geographical areas although they had common termini and the actual competition between the two was small. The Supreme Court in striking down the arrangement held that (p. 327), "[t]he mere existence of such a combination and the power acquired by the holding company as its trustee, constitute a menace to, and a restraint upon that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected." In *Union Pacific* the Supreme Court again held that the consolidation of two great competing railroads by a transfer to one of a dominating stock interest

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Metzger's order and the entry of a contrary ruling. The government has in effect conceded this.

At the subsequent trial the court (Driver, *J.*) instructed the jury: "You are instructed that it was not per se in and of itself an unreasonable restraint of trade or commerce for Inter-Island, a surface carrier, to organize and assume control of Hawaiian, an air carrier operating over parallel routes." The jury returned a verdict for Hawaiian and Inter-Island and the court entered judgment dismissing Trans-Pacific's counterclaim.

There is, however, another case in the District of Hawaii in which, the government agrees, the "precise issue" was raised but a contrary conclusion arrived at, i.e., contrary to Judge Metzger's. This is *United States* v. *Inter-Island Steam Nav. Co.*, 87 F. Supp. 1010 (D. Hawaii, 1950). In that case Judge McLaughlin stated the issue as follows: "Is there a violation of the Sherman Anti-Trust Act in the mere organization and control of a subsidiary air common carrier by a water common carrier for the purpose of having the former transport passengers over routes substantially paralleling the latter's routes and serving areas substantially similar to those served by the latter?" (p. 1014).

In coming to a conclusion diametrically opposed to that of Judge Metzger, Judge McLaughlin held: "There is nothing in the statute to prevent a corporation from entering a virgin field, and, through a subsidiary or otherwise, engaging in a pioneer enterprise. That was precisely what was done in 1929 by Inter-Island in the instant case. The antitrust laws were enacted to promote and not to retard the economic growth of the nation. In a word, the Sherman Act is not an instrument of stagnation. The Supreme Court repeatedly has given a clean bill of health to 'an expansion to meet legitimate business needs'" (pp. 1016-1017).

The government's *per se* argument seeks to succor support from the various Congressional Acts relating to the

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control of interstate commerce, and more particularly, §408(b) of the Civil Aeronautics Act, 49 U. S. C. 488(b), and from a number of administrative decisions under those acts.

But we are here concerned with the question of Sherman Act *per se* illegality and it seems to us that statutes relating to the jurisdiction of administrative agencies to approve or disapprove, *inter alia*, acquisitions of control by surface carriers of air carriers, *provided* such acquisitions do not restrain competition, are irrelevant. Especially is this so, we feel, where the particular acquisition with which we are concerned was at no time subject to the provisions of those statutes. *Railroad Control of Northeast Airlines, Inc., supra; National Air Freight Forwarding Corp.* v. *C.A.B., supra.* We hold, therefore, that it was not, and is not, *per se* violative of the Sherman Act for Grace to acquire and now own 50% of Panagra's stock.

Grace Line's Competition With Panagra

The government has submitted evidence in support of its charges that there is active passenger competition between Panagra and Grace Line as between the continental United States and the west coast of South America. It also called witnesses and introduced some statistics to prove that at the present time there is an area of competition between them, and ships and airplanes generally with respect to cargo, and that within the near future this competition will greatly increase.

Speaking broadly, steamship transportation and air transportation are in some measure competitive, though the government frankly admits that services rendered by airplanes and ships are distinct and that each has its own inherent advantages. But that they are competitive in some sense does not resolve the problem. We think everyone will concede that a passenger by sea from New York to

Even adopting the statistics of the government as showing substantial passenger competition between Grace Line and Panagra, there is no proof nor could we find that the passengers thus carried by ship were potential air passengers or that they were passengers whose needs or desires could only be met by sea transportation.[24] Air transportation is quick, efficient and functional transportation for passengers over long distances. Steamship companies cater to those who have the leisure and inclination for a sea voyage. They are not, under the proof submitted, two forms of transportation "reasonably interchangeable" and do not make up a single market.

We hold, too, that the same reasoning applies with respect to cargo traffic. The airlines cater to traffic that demands high speed transportation of either relatively small lightweight shipments or heavier shipments where the cost of transportation is not a factor or an important factor. Steamships on the other hand meet the need for low cost transportation of all kinds of commodities, particularly those which are heavy or bulky.

It is true that the government has submitted evidence tending to show that the air cargo field, particularly as it relates to heavy cargo, is on the upswing and that possibly in the future it will present an effective reasonably interchangeable service with sea cargo carriage.

We were furnished no statistics of any substantial value to show a relevant market. A few instances were shown where Panagra carried cargo between the same points as Grace Line did. However, there was no evidence of the rates or other factors. The sum total of the evidence shows that as between the two the volume of cargo carried by Panagra as compared to Grace was minuscule. The most the government experts and the witnesses connected with transportation by air who testified on its behalf showed

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24 Cf. *Latin American Air Service* case, *supra* at 867.

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was that indications are that there is developing *some cargo* competition between Grace and Panagra, and between shipping companies and airplane companies, i.e., in some situations it may be competitive. What was clear is that all-cargo air transportation is in an experimental stage and most of the operations are marginal at best.

But the government does not prove violations of the antitrust law by showing that Grace Line competes with Panagra, assuming that it does. It must show that Grace has restrained or monopolized trade or commerce, or attempted to do so. This the government has not done. When Grace entered the virgin field of air transportation in 1929, through Panagra, it was the dominant surface carrier to the west coast of South America. Its entry at that time was not illegal. Through defendants' efforts and with the help of this government Panagra became and remains the dominant air carrier in that area, not through unlawful efforts of Grace or Panagra. If anything has been established it is that Grace has been the only one of Panagra's two partners that has persistently and continuously attempted to improve its service and extend its routes to the United States. Not only has it not prevented the development of Panagra but absent its continuous objections to Pan American's restraints this case would not be here.

Panagra

The case against Panagra may be divided into three categories, (1) the alleged unlawful acquisition of stock in competing airlines and consequent restraint; (2) by reason of its dominant power in air transportation it allegedly has impeded development of competition between it and Braniff, and engaged in restrictive practices to restrain and impede Braniff from utilizing airports, terminals and other facilities in South America, and (3) price fixing.

in the other created a combination which restrained interstate commerce. In the *Southern Pacific* case, the court again condemned as a menace to freedom of commerce the combination, and resulting unified control, of established and naturally competitive rail systems, springing from the formation of holding companies rather than as a result of normal and natural growth (p. 230).

None of these cases presents a situation comparable to Grace's interest in Panagra in 1929 but rather, involve combinations of railroad giants of many years existence where the obvious purpose was to eliminate competition. It is apparent that the principle upon which these cases were decided applied to combinations of existing companies which were in substantial competition with one another prior to their combination. Cf. *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 531; Handler, Industrial Mergers and the Antitrust Laws, 32 Columbia Law Review 179, 212; Friedmann, Antitrust Law and Joint International Business Ventures in Economically Underdeveloped Countries, 60 Columbia Law Review 780.

In 1929 Grace's 50% ownership in the joint enterprise to establish a system of transportation which did not theretofore exist and which participation appears to have been of considerable importance in the decision of the Postmaster General in awarding Panagra the mail contract for the west coast of South America is, to our mind, not a *per se* violation of the antitrust laws. Except for the district court decision in Hawaii discussed hereafter there never before has been such a holding and the history of Grace's 50% participation in Panagra has not demonstrated any result thereof that must form the basis of a *per se* doctrine, i.e., that Grace's half ownership in Panagra from its very nature must result in restraints injurious to the public. Grace's stock ownership in Panagra cannot be said to have such a "pernicious effect on competition and lack of any redeeming virtue" as to conclusively presume that ownership to be an unreasonable restraint on trade and commerce.

[fol. 5579]

Northern Pacific Railway Co. v. *United States*, 356 U. S. 1, 5.

The government originally relied on *Hawaiian Airlines, Limited* v. *Trans-Pacific Airlines, Ltd.*, an unreported case (Civil 817, D. Hawaii, 1949), as an authoritative decision on the "precise issue." We surmise that the government no longer places such reliance on this case. Actually it was an oral decision of two sentences by Judge Metzger on a motion for summary judgment. In that case the Inter-Island Steamship Navigation Co., Ltd., had been operating a steamship service in the Hawaiian Islands from 1883. In 1927 Hawaii passed a statute designed to encourage the organization of an air carrier within the territory by creating certain tax exemptions. In 1929 Inter-Island organized the Hawaiian Airlines. Having failed to interest the public in a subscription of the air carrier's stock, Inter-Island took up the majority of the shares and from 1929 through the early 1950's both the ship and air operations were carried on by it. During the same period its steamship operations were curtailed considerably. In 1947 Trans-Pacific Airlines, which also operated in the area, filed a triple damage counterclaim under the Sherman Act against Hawaiian and Inter-Island, alleging the mere ownership of the airline by the steamship company violated that law. At the conclusion of the arguments on a motion for summary judgment the court rendered the following decision from the bench: "It is my firm opinion that the creation of Hawaiian by Inter-Island to operate over routes that were parallel to its own operation at a time when it is said that there was no air carrier competing in any way with Inter-Island that that was a violation of the antitrust laws of the United States. I am convinced that that is so by the weight of the interpretations put on the act and the motion for summary judgment * * * by the Trans-Pacific Airlines is granted in conformity with this conviction."

Grace has called our attention to the fact that further proceedings in that suit resulted in a revocation of Judge

any port on the west coast of South America has bought and hopes to enjoy a commodity or service substantially different from an air journey to the same place. In the first place the time element is so vastly different, e.g., from New York to Santiago by air takes today about 12 hours—by steamer 20 to 21 days. Steamer is also more expensive. The Panagra fare from New York to Lima, for example, depending on tourist or first class, ranges from $308.80 to $390.80; by steamer $515 to $1510 in the winter season, and $435 to $1220 in the summer season. Query: Are these interchangeable commodities? Does a substantial portion of the travelling public substitute one for the other with variations of rate and service? *Times-Picayune Publishing Co.* v. *United States, supra*; *United States* v. *E. I. du Pont de Nemours & Co.*, 351 U. S. 377. Is the passenger who is willing to spend six weeks on a steamer the same as a person who wants to fly somewhere and back in a hurry? Is the person who desires to transact business in a far away South American city and return a potential steamship passenger to and from the same city?

We are not persuaded that the proof in this case shows that the market is the same. This does not mean that we disagree with the Court of Appeals for the District of Columbia Circuit in *Lehman* v. *Civil Aeronautics Board*, 209 F. 2d 289, which rejected the argument advanced by Lehman and Pan American that there was no competition between Pan American and United Fruit Line in the limited area of passenger tourist traffic going to the Caribbean area from the Gulf Ports of the United States. In that case the C.A.B. examiner had found that although the companies did not compete for tourist passenger traffic between all points of the Caribbean, both United Fruit and Pan American would be competing for tourist travel between the United States points and the same vacation travel area. Both the C.A.B. and the Court of Appeals adopted that finding as being logical and reasonable. In the instant case the market was not so narrowly defined nor was there proof of actual competition, aside from bare statistics.

[fol. 5583]

But assuming that the market is the same, let us examine the statistical evidence submitted by the government on the issue of the existence of substantial passenger and cargo traffic competition.

Not only does W. R. Grace and Company, the defendant, own the Grace Line, it has many interests, commercial, banking and manufacturing. The operating revenues of Grace Line for the year 1958 were less than one-fifth of its total sales and operating revenues. The only route of Grace Line that can be said to be in competition with Panagra is its Trade Route 2 between the Atlantic coast of the United States and the west coast of South America. It operates three other routes.

Trade Route 2, called Line A, provides regular liner service between substantially the same areas served by Panagra although it is not co-extensive, each serving areas not covered by the other. Line A accounts for one-fifth of Grace Line's total passenger revenues and for less than one-half of its freight revenues. One of the most important points of difference is that Buenos Aires is a city not served by Grace Line and is the most important city in South America served by Panagra. But we will assume this difference in geography would not be sufficient for a finding that they are not serving identical markets. They cater primarily to two different interests—Panagra sells passenger transportation predominantly whereas Grace Line's principal service is the carriage of freight. Between the years 1950 and 1958, Panagra carried less than four-tenths of 1% of the tonnage of cargo carried by Grace on its Line A.

Between the years 1950 and 1958 the ratio of passengers carried by Panagra and Grace was about 25 to 1 in favor of Panagra, e.g., in 1958 Panagra carried 128,776 passengers while Grace's Line A carried 4,347. During that same period Panagra's increase of passengers carried was 25% while Grace's volume remained substantially constant.

MICRO CARD
TRADE MARK ®

21

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1220

MATTHEW BENDER & COMPANY

39-6

microcard

[fol. 5586]

Much of the proof in support of these charges relates to matters long since resolved or matters within the special competence of the Civil Aeronautics Board. §§408, 411, 412, C.A.A. (49 U. S. C. 408, 491, 492).

The acquisitions complained of relate to Panagra's interest in LAB and Faucett, previously discussed. Today Panagra owns 21.5% of LAB stock and about 19% of Faucett. As pointed out above, Panagra acquired its stock interest in LAB at the specific request of this government and in aid of its de-Germanization program in South America in the early years of World War II. We have heretofore held in effect that such acquisitions involved no Sherman Act violations and in the subsequent years its minority interests have not been shown to be of any significance antitrustwise.

As to LAB, Panagra admits that its motives were not completely patriotic and concedes that it hoped there would be some economic benefits earned from its affiliation. After the war when its management contract with LAB expired, its influence and control decreased accordingly. It has only two nominees on a board of directors of six and LAB is in active competition with it on two route sectors in Bolivia.

With regard to Faucett, it and Panagra are in competition on the Lima/Talara sector of Panagra's international route. Panagra received its stock in Faucett when it sold Aerovias Peruanas which had been formed to help Panagra obtain cabotage rights in Peru. All of this has been well known to the C.A.B. Those provisions in its original agreement with Faucett that might be considered to be in violation of the antitrust laws were removed after the C.A.B. disapproved of the agreement in 1949. The amended agreement, which includes a provision for the Panagra stock interest and its two of the nine directors, was specifically approved by the C.A.B. in 1950.

[fol. 5587]

Also with respect to Faucett, it was the government's claim that Panagra, relying on its agreement with Faucett, prevented that carrier from entering into an interline agreement with Braniff. We are not persuaded. The most that the proof showed was that when Braniff attempted to make such an agreement with Faucett, Faucett refused. No evidence was offered to show that the refusal was at the direction or with the approval of Panagra. On the contrary, it was shown that Panagra was never consulted by Faucett on that question at all.

The government did prove, and proved conclusively, that in the late 1940's Panagra carried on a bitter and consuming price war with PIA, an alleged Peruvian air carrier. After unsuccessfully opposing PIA's certification as a foreign flag carrier it soon found that PIA was making serious inroads on Panagra's traffic by accepting payment for tickets to the United States in local Peruvian currency.

Panagra took up the challenge and it, too, accepted local currency. It lost money, but so did PIA. As Panagra so well states, "fare cutting is a chronic disease in the air carrier industry, and it is a very serious disease; PIA died of it." It expired in 1949.

The government also proved, without alleging so in its complaint, that prior to 1951 Panagra and Pan American participated in many price fixing arrangements. Exactly what the terms of these arrangements were is not shown but, reading between the lines, we are convinced that it was a common practice. However, in 1946, International Air Transport Association (IATA), formed for the purpose of setting rates for all its members in international air transportation, was approved by the C.A.B. and became effective as to United States-South America carriers in 1951. Panagra is a member—so is Pan American. The rates agreed upon at IATA conferences are approved by the C.A.B. pursuant to §412 of the C.A.A. (49 U. S. C. 492)

[fol. 5590]

cause on the 24th day of March, 1961, why such decree should not contain a provision directing it to divest itself of its stock in Panagra.

This opinion is filed in lieu of findings of fact and conclusions of law pursuant to Rule 52(a), F. R. Civ. P.

THOMAS F. MURPHY
U. S. D. J.

Dated, New York, N. Y., March 8th, 1961.

[fol. 5591] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

FINAL JUDGMENT—May 8, 1961

This case having come on for trial and the Court having filed its Opinion and Findings of Fact and Conclusions of Law on March 8, 1961 now therefor in accordance with the Opinion and Findings of Fact and Conclusions of Law;

It Is Ordered, Adjudged and Decreed:

1. This action is hereby dismissed with respect to defendants W. R. Grace and Company and Pan American-Grace Airways, Inc.

2. Defendant Pan American World Airways, Inc. shall divest itself of ownership of its stock in Pan American-Grace Airways, Inc. at such time and pursuant to such plan of divestment as the Civil Aeronautics Board shall, subject to the approval of this Court, direct pursuant to the standard prescribed by Section 102 of the Federal Aviation Act.

3. Pending such time as Pan American World Airways, Inc. divests itself of its stock in Pan American-Grace Airways, Inc. pursuant to paragraph 2 of this judgment, it is enjoined from taking any action, direct or indirect, which would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-

[fol. 5588]

and such agreements, pursuant to §414 of the C.A.A. (49 U. S. C. 494), are thus clothed with antitrust immunity. No proof was offered by the government relating to any such agreements after 1951, except that it did show that prior to conferences Pan American and Panagra would discuss prices and rates in violation of the rules of IATA. But since Pan American is Panagra's agent for such purposes with C.A.B. approval how else could it act?

The remaining charges relate to Panagra's opposition to Braniff and its stubborn resistance to lending a helping hand to a new competitor, Braniff; also to the petty and amusing instances of retaliation and business skullduggery. The government evidence seems to picture Braniff, an experienced carrier, as an innocent tyro in the air transportation business, being buffeted and barked at by Panagra. The government showed that even though Panagra was helpful and courteous to Braniff in its initial survey flights after it was certificated, it became pigheaded and uncharitable when it insisted upon being paid for the use of its facilities and supplies and services. We get the impression that Braniff wanted everything for nothing, including routes not certificated. The action of Panagra in trying to keep some of Braniff's employees out of the Rotarians and warning their employees not to fraternize with Braniff's employees, and bribing a South American petty official to turn over manifests in order to learn what passengers Braniff was carrying, are all colorful incidents but hardly add up to antitrust violations.

Not much more need be said other than to add that despite all of Panagra's restraints and restrictive practices against Braniff, Braniff continues to get its fair share of the South American traffic. Although Panagra has been in the market for 30 years and Braniff a little over 10 years it does more than half as much business as Panagra.

In short, all of the charges against Panagra relate to matters in the distant past or are minor incidents in a

fol. 5589]

highly competitive field. They are matters of doubtful antitrust significance and without present day consequences.

Instead of showing any Sherman Act restraints or monopolization by Panagra the proof convinces us that the competition is real and active and expensive to the American taxpayer and as the foreign competition increases it will become more expensive.

Defense of Laches

Finally, Grace and Pan American have interposed the affirmative defense of laches. In view of our disposition of the case against Grace we need only discuss this defense as it applies to Pan American, and as to it, the defense is untenable.

In the course of our opinion it was made to appear, we believe, that governmental efforts to alleviate the adverse effects of Pan American's restraints upon Panagra began as early as 1941 and continued thereafter even subsequent to the institution of this suit. Any delay in bringing this action was due to concerted efforts designed to work out a compromise and to thereby avoid suit if possible in the interests of all concerned including Pan American. It can hardly be said to be inexcusable delay and certainly no prejudice to it has been shown by Pan America.. as a result thereof.

Decree

In accordance with all of the foregoing, it is hereby ordered and decreed that the complaint, insofar as it relates to W. R. Grace and Company and Pan American-Grace Airways, Inc., be and is dismissed; and that the government is entitled to a decree in its favor as against Pan American World Airways, Inc. In order to fashion such final decree it is ordered that Pan American show

Grace Airways, Inc. to alter, amend, modify, or extend its routes.

Thos. F. Murphy, United States District Judge.

Judgment entered May 8, 1961.
Herbert A. Charlson, Clerk.

Dated: New York, N. Y.
May 8th 1961.

[fol. 5592]

UNITED STATES DEPARTMENT OF JUSTICE

Washington, D. C.

(Seal)

LL:WWK

60-228-16

April 20, 1961

Honorable Thomas F. Murphy
United States District Court
Southern District of New York
Foley Square
New York, New York

Re: United States v. Pan American
World Airways, Inc., et al.—
Civil Action No. 90-259

My dear Judge Murphy:

We feel that it is inappropriate for the Government to submit a proposed judgment for your consideration at the hearing in this case on April 24. Accordingly, we are enclosing a draft of a judgment which we feel carries out your holdings in the Opinion filed March 8 in every respect. We have discussed this proposed judgment with the Civil Aeronautics Board and are authorized to state that it meets the requirements of the Board in its present concern with the working out of flight patterns in the South American trade.

Sincerely yours,

Lee Loevinger, Assistant Attorney General Antitrust Division.

Enclosure

[fol. 5593] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF MOTION AND MOTION TO SUSPEND INJUNCTION PENDING APPEAL—Filed May 12, 1961

Please take notice that on the 18th day of May, 1961, before the Honorable Thomas F. Murphy, at the United States Court House, Foley Square, City of New York, at 10:00 o'clock in the forenoon or at a time to be fixed by the court, the undersigned will move this Court pursuant to Rule 72 of the Federal Rules of Procedure and Rule 18 of the Rules of the Supreme Court of the United States, for a suspension pending appeal of the injunction entered against it in this proceeding, as follows:

Upon the complaint and all the affidavits and other papers filed, and all the proceedings heretofore had herein, and the affidavit of John C. Marie attached hereto, the defendant Pan American (hereinafter referred to as the "defendant") moves this Court for an order suspending the injunction heretofore entered against the defendant in so far as it restrains the defendant from taking action to prevent any application to the Civil Aeronautics Board by Panagra to alter, amend, modify or extend its routes, pending the hearing and determination of defendant's appeal to the Supreme Court of the United States from the decree of this Court entered on May 8, 1961, or for such [fol. 5594] other or further relief as the Court finds appropriate in the premises.

Defendant does not at this time move this Court to suspend the injunction heretofore entered against it in so far as it imposes upon defendant a conditional order of divestiture of its stock interest in Panagra, because it does not now appear that the Civil Aeronautics Board will undertake consideration of divestiture before the appeal can be decided.

Sullivan & Cromwell, By David W. Peck, A Member of the Firm, 48 Wall Street, New York 5,

N. Y.; Cleary, Gottlieb, Steen & Hamilton, By John K. Mallory, A Member of the Firm, 52 Wall Street, New York 5, N. Y., Attorneys for Defendant Pan American World Airways, Inc.

[fol. 5595]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION TO SUSPEND INJUNCTION PENDING APPEAL

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN C. PIRIE, being duly sworn, deposes and states as follows:

1. I am Vice President and Associate General Counsel of Pan American World Airways, Inc., a defendant in the above-entitled proceeding, and make this affidavit in support of Pan American's Motion to Suspend Injunction Pending Appeal to the Supreme Court of the United States.

2. The defendant, Pan American, filed its Notice of Appeal to the Supreme Court of the United States with the Clerk of this Court on May 12, 1961.

3. The final judgment of this Court, entered on May 8, 1961 (a copy of which is annexed hereto as Exhibit A), grants plaintiff two forms of injunctive relief against defendant, Pan American:

[fol. 5596] (a) Pan American is ordered to divest itself of ownership of stock in Pan American-Grace Airways, Inc. at a time and under a plan to be determined by the Civil Aeronautics Board with the Court's approval; and

(b) Pending such divestiture, Pan American is enjoined from taking any action, direct or indirect, which

would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. (hereafter, Panagra) to alter, amend, modify or extend its routes.

4. Pan American does not at this time seek a stay of the conditional order for divestiture, because it does not appear that the Civil Aeronautics Board will undertake consideration of divestiture before the appeal can be decided.

5. The present Motion is directed only to the injunctive provision that would, in effect, force Pan American to concur in the filing with the Civil Aeronautics Board of an application by Panagra to extend its route to the United States. Failure to stay that injunctive provision could result in irreparable damage to Pan American if its appeal from the judgment entered herein on May 8, 1961 is successful. It is Pan American's position that, under the agreement pursuant to which Panagra was formed, the parties agreed that Panagra would be part of the Pan American System and that Panagra's operations would be limited to those from the Panama Canal down the West Coast of South America. This Court did not agree with Pan American's interpretation of the agreement, but held that Pan American's insistence upon performance of the agreement as interpreted by it constituted a violation of the Sherman Act. Pan American's appeal includes appeal from that finding. However, if Pan American's appeal is successful, the reversal of the decision of this Court might [fol. 5597] be meaningless if, in the meantime, Panagra, with Pan American's concurrence, were to have filed an application with the Civil Aeronautics Board inconsistent with the proper interpretation of the Panagra formation agreement as it would have been found and determined by the Supreme Court. W. R. Grace & Company (hereafter, Grace) would probably be in a position to prevent the withdrawal of such application, even if the Civil Aeronautics Board would permit withdrawal. Thus, Pan American might be faced with an application before the Civil Aeronautics Board even though such application was con-

trary to a valid contract and even though it had succeeded in having the order vacated which required it to permit the filing of such application. Clearly, such a result would cause irreparable injury to Pan American. On the other hand, the stay sought in this Motion would not adversely affect anyone. Any route amendment application by Panagra would undoubtedly be processed as part of an over-all review by the Civil Aeronautics Board of the air transport route pattern for Latin America. Pan American agrees, and in fact urges, that such a review should proceed as promptly as possible. However, any definitive action in such a proceeding, including action on any Panagra application, would be materially influenced by any change in the ownership and control of Panagra. This in turn will depend upon the outcome of Pan American's appeal herein and of the appeal which the Government has stated its intention to take from the decision herein as to Grace. Accordingly, no useful purpose would be served by the filing of a Panagra route amendment application before such appeals are decided.

6. For these reasons, Pan American believes that it must request a stay of the injunctive provision of the final [fol. 5598] judgment until after its rights can be determined on its appeal to the Supreme Court.

JOHN C. PIRIE

Sworn to before me this
12th day of May, 1961.

CHRISTINE A. BARTON
Notary Public

CHRISTINE A. BARTON
Notary Public, State of New York
No. 24-5205375
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1962

[fol. 5599]

EXHIBIT A TO AFFIDAVIT

US DISTRICT COURT
FILED
May 8, 1961
SD of NY

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action

No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

FINAL JUDGMENT

This case having come on for trial and the Court having filed its Opinion and Findings of Fact and Conclusions of Law on March 8, 1961, now therefore in accordance with the Opinion and Findings of Fact and Conclusions of Law,

IT IS ORDERED, ADJUDGED AND DECREED

1. This action is hereby dismissed with respect to defendants W. R. Grace and Company and Pan American-Grace Airways, Inc.

2. Defendant Pan American World Airways, Inc. shall divest itself of ownership of its stock in Pan American-Grace Airways, Inc. at such time and pursuant to such plan of divestment as the Civil Aeronautics Board shall, subject to the approval of this Court, direct pursuant to the standard prescribed by Section 102 of the Federal Aviation Act.

[fol. 5600] 3. Pending such time as Pan American World Airways, Inc. divests itself of its stock in Pan American-Grace Airways, Inc. pursuant to paragraph 2 of this judgment, it is enjoined from taking any action, direct or indirect, which would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. to alter, amend, modify or extend its routes.

Dated: New York, N. Y.
May 8th, 1961

Thomas F. Murphy
United States District Judge

Judgment entered May 8, 1961

Herbert A. Charlson,
Clerk

[fol. 5601]

UNITED STATES DEPARTMENT OF JUSTICE

April 20, 1961

Hon. Thomas F. Murphy
United States District Court
Southern District of New York
Foley Square
New York, New York

Re United States v. Pan American
World Airways, Inc., et al.
Civil Action No. 90-259

My dear Judge Murphy:

We feel that it is not inappropriate for the Government to submit a proposed judgment for your consideration at the hearing in this case on April 24. Accordingly, we are enclosing a draft of a judgment which we feel carries out your holdings in the Opinion filed March 8 in every respect. We have discussed this proposed judgment with the CAB and are authorized to state that it meets the requirements

of the Board in its present concern with the working out of flight patterns in the South American trade.

Sincerely yours,

Lee Loevinger
Assistant Attorney General
Antitrust Division

[fol. 5602] Proof of service (omitted in printing).

[fol. 5603] Proof of service (omitted in printing).

[fol. 5604]

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civ. 90-259

UNITED STATES OF AMERICA, Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

MEMORANDUM ON MOTION TO SUSPEND JUDGMENT—
June 13, 1961

MURPHY, D.J.

Motion by Pan American for an order suspending the injunction heretofore entered against it insofar as it restrains Pan American from taking action to prevent any application to the Civil Aeronautics Board by Panagra to alter, amend, modify or extend Panagra's routes pending the hearing and determination of Pan American's appeal to the Supreme Court of the United States from the decree of this court entered on May 8, 1961, is granted, unless W. R. Grace and Company serve and file within ten days of the date hereof a stipulation agreeing that, in the event the Supreme Court of the United States reverses the find-

ings and conclusions of this court that Pan American's conduct in blocking Panagra applications to the C.A.B. was in violation of the antitrust laws, it will cause its nominees on Panagra's board to vote in favor of a resolution to withdraw any application that Panagra may file with the C.A.B. to alter, amend, modify or extend its routes during the pendency of such appeal. If such a stipulation be filed, then in that event this motion by Pan American is denied.

This is an order. No settlement is necessary.

THOS. F. MURPHY
U. S. D. J.

Dated: New York, N. Y.
June 13, 1961.

[fol. 5605] Copy of preceding page.

[fol. 5606] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

STIPULATION OF W. R. GRACE AND COMPANY—
Filed June 22, 1961

Whereas, on May 8, 1961 the Honorable Thomas F. Murphy filed a judgment dismissing this action with respect to defendants W. R. Grace and Company and Pan American-Grace Airways, Inc., ordering Pan American World Airways, Inc. to divest itself of ownership of its stock in Pan American-Grace Airways, Inc., and enjoining Pan American World Airways, Inc. from taking any action, direct or indirect, which would interfere with the filing and processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. to alter, amend, modify or extend it routes; and

Whereas, on May 12, 1961 Pan American World Airways, Inc. filed its notice of appeal to the Supreme Court of the

United States from the judgment of this Court filed on May 8, 1961; and

Whereas, on May 12, 1961 Pan American World Airways, [fol. 5607] Inc. served a motion to suspend pending appeal that portion of the judgment filed on May 8, 1961 which enjoined it from interfering with the filing of applications by Pan American-Grace Airways, Inc.; and

Whereas, on June 13, 1961 the Honorable Thomas F. Murphy filed a memorandum granting the said motion "unless W. R. Grace and Company serve and file within ten days of the date hereof a stipulation agreeing that, in the event the Supreme Court of the United States reverses the findings and conclusions of this court that Pan American's conduct in blocking Panagra applications to the C.A.B. was in violation of the antitrust laws, it will cause its nominees on Panagra's board to vote in favor of a resolution to withdraw any application that Panagra may file with the C.A.B. to alter, amend, modify or extend its routes during the pendency of such appeal";

W. R. Grace and Company hereby stipulates and agrees that, in the event the Supreme Court of the United States reverses the findings and conclusions of this court that Pan American's conduct in blocking Panagra applications to the C.A.B. was in violation of the antitrust laws, it will cause its nominees on Panagra's board to vote in favor of a [fol. 5608] resolution to withdraw any application that Panagra may file with the C.A.B. to alter, amend, modify or extend its routes during the pendency of the appeal by Pan American World Airways, Inc. from this Court's judgment of May 8, 1961.

Cahill, Gordon, Reindel & Ohl, By Laurence F. McKay, A Member of the Firm, Attorneys for Defendant W. R. Grace and Company, 80 Pine Street, New York 5, N. Y.

[fol. 5609] Proofs of service (omitted in printing).

[fol. 5610] [File endorsement omitted]

States sought to dissolve the union between Pan American World Airways and W. R. Grace & Co., who have combined with one another since 1928 under the corporate form Pan American-Grace Airways, Inc., ("Panagra") 50% of whose stock is held by Pan American and 50% by Grace. The district court held that Pan American's course of conduct in restraining the competitive activities of Panagra constituted monopolization and attempted monopolization of trade, but that Grace and Panagra itself had not been guilty of any antitrust violation. The court decreed that Pan American divest itself of its interest in Panagra, subject to a plan to be devised by the Civil Aeronautics Board. The questions presented are:

1. Whether Grace and Panagra illegally combined and conspired with Pan American to allocate territories in air transportation service between the United States and Latin [fol. 5616] America and within Latin America.

2. Whether Grace attempted to monopolize, conspired to monopolize, and monopolized all or part of Latin America air transportation service.

3. Whether in view of Grace's ownership of extensive water carrier interests serving the west coast of South America-United States trade routes, its acquisition and retention of a 50% interest in an air carrier, serving the same areas by a competing mode of transportation, constitutes a combination in unreasonable restraint of trade.

Edward R. Kenney, E. Riggs McConnell, Herbert F. Peters.

[fol. 5617] Certificate of service (omitted in printing).

[fol. 5618]

SUPREME COURT OF THE UNITED STATES

No. 257—October Term, 1961

PAN AMERICAN WORLD AIRWAYS, INC., Appellant,

vs.

UNITED STATES

ORDER POSTPONING JURISDICTION—Filed January 15, 1962

Appeal from the United States District Court for the Southern District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits and the case is transferred to the summary calendar.

[fol. 5619]

SUPREME COURT OF THE UNITED STATES

No. 583—October Term, 1961

UNITED STATES, Appellant,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., et al.

ORDER POSTPONING JURISDICTION—Filed January 15, 1962

Appeal from the United States District Court for the Southern District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. The case is transferred to the summary calendar and set for argument immediately following No. 257.

[fol. 5611]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed May 12, 1961

I. Notice is hereby given that Pan American World Airways, Inc., one of the defendants above named, hereby appeals to the Supreme Court of the United States from the final order adjudging it to be in violation of the antitrust laws of the United States entered in this action on May 8, 1961.

This appeal is taken pursuant to 15 U.S.C. §29.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record of the proceeding.

III. The following questions are presented by this appeal:

1. Whether Pan American has monopolized or attempted to monopolize air transportation between the United States and South America in violation of §2 of the Sherman Act.

2. Whether Pan American has monopolized or attempted to monopolize air transportation between the United States and the Panama Canal Zone in violation of Section 2 of the Sherman Act.

[fol. 5612] 3. Whether the allegations of the complaint and the violations found by the district court are within the primary jurisdiction of the Civil Aeronautics Board and therefore not within the competence of the district court until decision by the Civil Aeronautics Board.

4. Whether there was an agreement between Grace and Pan American under which Panagra was to operate

only between the Canal Zone and Buenos Aires, Argentina.

5. Whether the relief contained in the final judgment is erroneous, in that remedies imposed against Pan American exceed those reasonably necessary or appropriate in this case.

Sullivan & Cromwell, By David W. Peck, A Member of the Firm, 48 Wall Street, New York 5, New York; Cleary, Gottlieb, Steen & Hamilton, By John K. Mallory, A Member of the Firm, 52 Wall Street, New York 5, New York, Attorneys for Defendant Pan American World Airways, Inc.

[fol. 5613] Proof of service (omitted in printing).

[fol. 5614] Proofs of service (omitted in printing).

[fol. 5615] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 7, 1961

I. Notice is hereby given that the plaintiff, the United States of America, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on May 8, 1961, to the extent that it dismisses the action with respect to the defendants W. R. Grace & Co., and Pan American-Grace Airways, Inc.

This appeal is taken pursuant to 15 U.S.C. 29.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include therein the entire record before the district court.

III. The Questions Presented: In this action brought under Sections 1, 2 and 3 of the Sherman Act, the United

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1961

No. [redacted] 93

PAN AMERICAN WORLD AIRWAYS, INC.,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Respondent

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

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May 12, 1961. The District Court, on July 7, 1961, entered an order extending until July 25, 1961, the time for docketing the appeal in this Court. The jurisdiction of this Court is conferred by §2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. §29, as amended. *United States* v. *Yellow Cab Company*, 332 U. S. 218 (1947); *United States* v. *du Pont & Co.*, 351 U. S. 377 (1956).

Statutes Involved

Sections 1, 2 and 3 of the Sherman Act, Sections 102d, 411 and 801 of the Federal Aviation Act and Section 414 of the Civil Aeronautics Act are set forth in the Appendix (74a-77a).

The Questions Presented

1. When Pan American World Airways, Inc. (Pan American) accepted W. R. Grace & Co. (Grace), a non-competitor, as a 50% participant in a joint company, Pan American-Grace Airways, Inc. (Panagra) in 1928 to engage in a new airline operation from the Canal Zone down the west coast of South America connecting with the developing Pan American system of air transportation between the United States, Central America, the Canal Zone and South America, did not Pan American and Grace agree that the jointly owned company would be restricted to a route from the Canal Zone down the west coast of South America, and would not expand its operation to the United States in competition with Pan American; was not the District Court clearly in error in finding the absence of such agreement; and was not such agreement a part of the agreement that "Pan American and Panagra were not to parallel each other's routes" which the District Court found to exist and to be legal?

2. Regardless of any agreement on the subject, was it not lawful under the antitrust laws for Pan American to exercise its 50% interest in the joint company to prevent an expansion of the joint business in competition with its own operations between the Canal Zone and the United States?

3. In view of the fact that the extent of competition is controlled and regulated by the Civil Aeronautics Board ("CAB") and by the President of the United States in the international air transportation industry, can Pan American monopolize and, if so, did it monopolize, air transportation between the United States and South America, and the United States and the Canal Zone, in violation of §2 of the Sherman Act?

4. Is not Pan American's refusal to permit Panagra to apply for routes to the United States a "competitive practice" within the meaning of §411 of the Federal Aviation Act (49 U. S. C. §1381) and therefore within the primary jurisdiction of the CAB, and was it not therefore error for the District Court to decide the issue under the antitrust laws prior to allowing the CAB to exercise its primary jurisdiction?

5. Did not the CAB's orders in 1947, 1950 and 1955, approving the Pan American-Panagra Through Flight Agreement and the accompanying Parent Company Agreement between Pan American and Grace, constitute approval of Pan American's refusal to allow Panagra to apply for routes to the United States, and thus result in immunity for Pan American from the antitrust laws as provided in §414 of the Civil Aeronautics Act (52 Stat. 1004)?

6. Does the prevention by Pan American of the filing of an application with the CAB by a single potential com-

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IN THE

Supreme Court of the United States

October Term, 1961

PAN AMERICAN WORLD AIRWAYS, INC.,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

Opinion Below

The opinion of the District Court is reported at 193 F. Supp. 18; the final judgment entered by it is not reported. The opinion and judgment are set forth in full in the Appendix hereto (1a-73a).[1]

Jurisdiction

This antitrust suit was originally brought under §1, §2 and §3 of the Sherman Act, 15 U. S. C. §§1, 2 and 3. The final judgment of the District Court was entered on May 8, 1961, and the notice of appeal was filed in that court on

[1] Page numbers of the District Court's opinion are hereinafter referred to with an "a" following, in designation of the page number of the Appendix hereto.

petitor, Panagra, in which it had a 50% interest, constitute monopolization in violation of §2 of the Sherman Act, particularly in view of the fact that Braniff Airways, Inc. (Braniff), has been certificated to fly the route and the District Court found that if Panagra had been a successful applicant Braniff would not have been certificated?

7. Can Pan American be held to have violated §2 of the Sherman Act by monopolizing or attempting to monopolize air transportation between the United States and the Canal Zone when §2 by its terms applies only to trade or commerce between the several states or with foreign nations and the Canal Zone is neither a state of the United States nor a foreign nation?

8. Did not the District Court abuse its discretion in ordering Pan American divested of its interest in Panagra?

Statement of the Case

Pan American started in 1927 to formulate plans for the establishment of a comprehensive system of air transportation between the United States and Central and South America and commenced operations that year between Key West, Florida, and Havana, Cuba. In July, 1928, Pan American obtained the United States mail contract between Miami and the Canal Zone which was the forerunner of an extension of the contract to the east coast of South America and the establishment of Pan American air service between Miami and the Canal Zone and down the east coast of South America (Op. 9a-10a).

Pursuing its plan to establish like service down the west coast of South America, Pan American had discussions with W. R. Grace & Company, then an established company on the west coast of South America, operating among other

enterprises a steamship service between the United States and the west coast of South America. Conversations between the two companies looked to the formation of a jointly owned airline to bid on and operate the mail contract from the Canal Zone down the west coast of South America. Grace was interested in airline development, but its "interest was confined to the west coast" (Op. 24a-25a). The result was that in September, 1928, the company, later known as Panagra, with Pan American and Grace as equal 50% owners, was formed to operate from the Canal Zone down the west coast of South America (Op. 12a-17a). In Pan American's view the evidence clearly establishes that Panagra was organized pursuant to an agreement between Pan American and Grace that Panagra would operate only from the Canal Zone down the west coast of South America and that Pan American and Panagra would not parallel each other's routes. Panagra was the successful bidder for the airmail contract for the west coast route from the Canal Zone south and operated this route while Pan American secured, and operated under, airmail contracts which covered the east coast of South America.

In 1938 commercial aviation became a regulated industry with the passage of the Civil Aeronautics Act (52 Stat. 973, as amended, 49 U. S. C. §401 *et seq.* and superseded by the Federal Aviation Act of 1958, Sections 101 *et seq.*, 49 U. S. C. §1301 *et seq.* which, in the portions relevant here, is substantially identical). This Act gave to the CAB and the President of the United States comprehensive responsibility, subject to certain grandfather rights, to regulate air carriers and the existence and extent of competition between them.

Beginning in 1938 Grace caused its nominees on the Panagra board of directors to urge the filing of an application by Panagra with the CAB for extension of Panagra's routes from the Canal Zone to the United States, seeking to

JURISDICTIONAL STATEMENT

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other contemplated *mutually* by them with respect to possible extension of Panagra's line to the United States" (Op. 30a, 32a, 34a).

The District Court found that the agreement not to parallel routes was not a conspiracy to monopolize and restrain trade and commerce, and that the defendants' position in South America, acquired by virtue of air mail contracts and maintained under the aegis and control of the CAB and the President, "may be explained in simple terms without unlawful implications" (Op. 26a).

It is clear from the opinion that the court would have regarded the full agreement (including non-paralleling of the Pan American route from the Canal Zone to the United States), which Pan American maintains was the agreement between the parties, as being altogether as lawful as the less complete agreement which the court found to exist. The absence of finding the full agreement, which, in the nature of things and in line with the court's finding of an agreement not to parallel routes, must have existed, permitted and prompted the court to find that Pan American's insistence on keeping Panagra from paralleling Pan American's route from the Canal Zone to the United States, and voting its 50% interest in Panagra accordingly, was a unilateral restraint against Panagra and hence a monopolization of commerce between the United States and the Canal Zone.

As the decision of the District Court thus turns upon its finding with respect to the scope of the agreement not to parallel routes, the true scope of that agreement becomes a question not only substantial but of the utmost importance. Correspondingly, from what has been stated, it may readily be seen that the subsidiary question of whether the District Court was not clearly in error in finding the absence of an

agreement with respect to the route between the United States and the Canal Zone is a very substantial question.

2. Should this Court nevertheless now find that there was no agreement as to Panagra's extension to the United States, Pan American still maintains and will argue that each of the participants in this lawful joint venture may lawfully resist any attempt to alter the original joint business in a manner which would make it competitive and conflicting with its own pre-existing enterprise. It is abundantly clear that such action does not violate §1 of the Sherman Act since there is no agreement and hence no conspiracy. While this Court has never passed on the question of whether such an exercise of equal ownership in a joint company of lawful venture can constitute a violation of §2 of the Act, it is submitted that it is clearly lawful for an equal owner in a joint venture, lawfully undertaken for a specific purpose, to insist that the joint venture not be extended to conflict with his own business, and to vote his stock against such an extension.

II.

Questions Concerning the Effect of the Civil Aeronautics Act.

3. There is here a basic question of whether a United States air carrier can "monopolize" international air transportation within the meaning of §2 of the Sherman Act when the amount of competition is determined by the Government. This is the first antitrust case ever decided by a District Court holding that a company in an industry in which the extent of competition is strictly regulated and controlled by an administrative agency (the Civil Aeronautics Board) and by the President of the United States has the requisite power to monopolize or attempt to

parallel the route which Pan American had even before the formation of Panagra. Pan American, taking the position that the agreement pursuant to which Panagra was formed limited its operations to the route from the Canal Zone down the west coast of South America and barred its extension to parallel Pan American's service to the United States, refused to authorize the proposed application. As a result Panagra, which has an equal number of Grace and Pan American representatives on its board of directors, did not apply for this route.

In an effort to satisfy Grace, an agreement between the two parent companies was entered into in February, 1939 under which Pan American agreed that a Grace representative would become president of Panagra and be placed in charge of the management of the company; Pan American agreed to maintain between Miami and the Canal Zone adequate, direct, connecting service with Panagra, and agreed that if such connecting service was not reasonably adequate Panagra would be allowed to apply to the CAB to operate to the United States. Grace, having acquired control of the management of the jointly owned company by this arrangement, disregarded the agreement within two years and again agitated to have Panagra apply for a route from the Canal Zone to the United States. Pan American again refused to allow Panagra to apply for the route on the grounds that such an application was contrary to the agreement under which Panagra was formed and also contrary to the 1939 agreement.

Nonetheless, in 1941 Grace, over Pan American's objection, filed with the CAB an application on behalf of Panagra to extend Panagra's routes to the United States (Docket No. 707). After a hearing the CAB held that it could not treat the Grace application as being a Panagra application. On Grace's appeal to the Court of Appeals for the

Second Circuit that court reversed to the extent of holding that Grace's application should be said to be Panagra's if Pan American's refusal to allow Panagra to apply was the result of "illegality and fraud." *W. R. Grace & Co.* v. *C. A. B.*, 154 F. 2d 271 (2d Cir. 1946). This Court granted certiorari. 328 U. S. 832 (1946) (sub nom. *Pan American Airways Corp.* v. *W. R. Grace & Co.*).

The case was never acted on by this Court, as Grace and Pan American negotiated a settlement of the dispute by entering into two related agreements, a Through Flight Agreement between Pan American and Panagra, under which Pan American operated Panagra aircraft over Pan American's Canal Zone-United States routes, thereby providing through plane service, and a related Parent Company Agreement between Grace and Pan American. After an extensive hearing the CAB approved both agreements. Although the District Court did not make findings on this point, it is undisputed in the evidence that both Grace and Pan American officials testified at the CAB hearing that a primary purpose of the agreements was to settle the dispute between them and end the controversy over a Panagra extension, unless both parents should agree to have Panagra apply for an extension. When the agreements were approved, this Court dismissed as moot the writ previously granted. 332 U. S. 827 (1947). Despite these agreements and the Board's approval of them, Grace again in 1957 filed an application allegedly on behalf of Panagra, for routes to the United States (Op. 46a-50a, 52a-54a). This application is now before the Board.

In 1946 Braniff was certificated to service routes from the United States to the Canal Zone and South America (Op. 50a). It is the announced policy of the CAB, in view of the available traffic, that the public interest requires that no more than two United States air carrier systems

monopolize. In foreign air transportation, entry into the market is controlled by the CAB and ultimately by the President of the United States (49 U. S. C. 1302d, 1461). The Board and President alone can certificate any number of airlines to operate in the markets involved and, if necessary, subsidize such airlines, just as Pan American and Panagra have been subsidized, and just as Braniff, which operates in competition with them has also been subsidized. As the District Court said, the defendants' position in South America has been maintained "under the aegis and control of the C. A. B. and the President." Pan American will argue, therefore, that it does not and cannot have monopoly power, dependent as such power is upon the power to exclude competition. In any event, under the facts found by the District Court, Pan American did not have such power.

4. This question presents an important issue, not heretofore passed on by this Court, of authority and priority as between the court and an administrative agency in the determination of the propriety of the action of Pan American which is in issue on this appeal. The CAB has specific power under Section 411 of the Federal Aviation Act (49 U. S. C. §1381) to investigate the trade practices and methods of competition of air carriers, and to terminate such practices as it finds to be unfair. Pan American will argue that the firmly established doctrine of primary jurisdiction, *Texas & Pacific Ry.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426 (1907); *Far East Conference* v. *United States*, 342 U. S. 570 (1952), required the District Court to refrain from acting until the CAB had been afforded the opportunity to exercise the jurisdiction conferred on it by Congress to pass upon the action of Pan American in utilizing its stock interest in Panagra to prevent that company from applying for routes that would parallel those of Pan American.

5. There is here presented for the first time a question of the scope and effect of Section 414 of the Civil Aeronautics Act (52 Stat. 1004), in which Congress has specifically provided immunity from the antitrust (and other) laws to carriers acting pursuant to agreements approved by the CAB. Pan American will argue that the Board's approval of its Through-Flight Agreement with Panagra and the related Parent Company Agreement between Pan American and Grace "authorized, approved or required" Pan American's refusal to give its consent to a Panagra application for routes to the United States so long as the agreements remain in effect. Pan American will argue that the effect of the CAB's approval of the agreements was at least to protect Pan American from a prosecution which is inconsistent with administrative action and the legal consequences thereof. The result reached by the District Court, if allowed to stand, must ultimately hamper airline regulation by the authority of government vested with the responsibility of such regulation.

III.

Novel Questions of Construction of Section 2 of the Sherman Act.

6. The question is whether the power to exclude and the exclusion of only one of many potential competitors is monopolization within the comprehension of §2 of the Sherman Act. The District Court did not find that Pan American has or ever has had the power to affect in any way the entry into the market of potential competitors other than Panagra. Plainly no such power exists in Pan American. Pan American will argue that its limited power over the joint company, and its exercise of that limited power to refuse to permit it to apply for a route to the United States, cannot be found to constitute the *power to*

exclude competition which is necessary to a finding of a violation of §2. There is no authority to support the District Court's conclusion of a §2 violation on such facts, but the conclusion is contrary to a decision of the District Court, in the same circuit, affirmed by the Court of Appeals. *Interborough News Co.* v. *Curtis Publishing Co.*, 127 F. Supp. 286 (S. D. N. Y. 1954), aff'd, 225 F. 2d 289 (1955). The circumstance of direct appeal, therefore, brings before this Court a fundamental question of the scope of Section 2 in the context of conflict within a single judicial district and circuit.

7. The District Court has found that Pan American monopolized air transportation between the United States and the Canal Zone in violation of Section 2 of the Sherman Act. Section 2 of the Sherman Act by its terms applies only to commerce between the states and with foreign nations. Pan American will argue that, since the Canal Zone is neither a state of the United States nor a foreign nation, the finding of a violation of Section 2 of the Sherman Act by monopolization of the United States-Canal Zone market is not sustainable. While Section 3 of the Sherman Act does apply to commerce between the United States and a territory, it does not include within its embrace single-firm monopolization or attempts to monopolize. It makes illegal only a "contract, combination in form of trust or otherwise, or conspiracy" in restraint of trade. It therefore requires agreement or combination, that is, action by more than a single entity. The District Court found illegal only unilateral action by Pan American. Thus, Pan American will submit that monopolization of the United States-Canal Zone market, even if it existed, could not constitute a violation of Section 2 or Section 3 of the Sherman Act.

IV.

The Question of Relief.

8. This Court has frequently reviewed the propriety of drastic antitrust relief granted by a single district judge, cautioning against the indiscriminate use of divestiture as a remedy when "other effective methods, less harsh, are available." *Timken Co.* v. *United States*, 341 U. S. 593, 603 (1951). Pan American will argue that other available relief would amply redress the only violation found or threatened, and that it was an abuse of the District Court's power to order even conditional divestiture in this case.

CONCLUSION

We submit that the questions presented by this appeal are substantial and of large public importance.

Respectfully submitted,

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serve South America. Pursuant to this policy, the CAB has stated that the certification of yet another independent carrier would be directly contrary to the public interest. Approximately two months after the Government commenced this action, the CAB stated in *New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501, 504 (1954):

> "The successful conclusion of the Attorney General's suit against Pan American and W. R. Grace would lead to a wholly independent Panagra and, thus, to three competitive United States-flag systems. Yet we are convinced that the available traffic potential in South America will not warrant the subsidy support of three such services, and that their existence would lead to 'a waste of public money or private investment.'"

The Government reiterated this to the court in December, 1958. Pan American's evidence submitted at the trial and held by the court to be irrelevant (Op. 43a) substantiated the CAB's views of the undesirability and the uneconomic nature of a three-carrier system between the United States and South America.

The Complaint

The Government's complaint may be summarized as follows:

1. Pan American and Grace entered into an agreement in connection with the formation of Panagra under which Panagra was to have the exclusive right to traffic along the west coast of South America from the Canal Zone south, free from Pan American competition, and Pan American was to be free from Panagra competition elsewhere

throughout South America and between the Canal Zone and the United States.

2. Grace and Pan American imposed restraints on Panagra by preventing it from establishing and maintaining its own research, procurement, advertising, sales and commercial activities in the United States independent of Pan American, and from establishing and maintaining facilities, sales and commercial representation in South America independent of Grace.

3. Pan American and Grace conspired to monopolize transportation between the eastern coastal areas of the United States and South America, particularly the western coastal areas of South America and Buenos Aires, Argentina.

4. Pan American and Grace organized Panagra in such a fashion that each has negative control of Panagra's competition with its independent operations and prevented Panagra's extension of its routes in South America and to the United States.

5. The defendants acquired the stock or assets of competing airlines in South America and used their power to restrain competition from other United States air carriers and engaged in restrictive practices to impede and restrain United States air carriers in South America.

6. Grace, a steamship owner, monopolized and attempted to monopolize transportation by air and surface carriers between the United States and the western coastal areas of South America.

7. Grace, the owner of a steamship company, violated §1 of the Sherman Act by controlling a competing air carrier.

The Opinion of the District Court

The District Court found that there was no combination or conspiracy to monopolize or to restrain trade between Pan American, Grace and Panagra and no violation of §1 of the Sherman Act. It found further that, although there was an agreement between Grace and Pan American that Panagra and Pan American would not parallel each other's routes, such agreement did not constitute a conspiracy.

As the court stated in its opinion:

> "We have carefully considered all of the evidence relating to the conspiracy charge and, in our opinion, no such conspiracy existed between Grace and Pan American. The only agreement we can find that approaches conspiracy is their understanding that Pan American and Panagra were not to parallel each other's routes. In our opinion this was not a conspiracy to monopolize and restrain trade and commerce.
>
> • • • • •
>
> "The joinder of Grace and Pan American of their complementary facilities was a natural and mutually advantageous combination, and an economically sound arrangement for the establishment and successful development of American commercial aviation on the west coast of South America. • • • The union of their physical and technical resources assured the maximum possibility of success in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280 (6th Cir., 1898), modified and aff'd 175 U. S. 211.
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> • • • • •
>
> "Consideration of the defendants' agreement or understanding with respect to the respective spheres of

> operations for the two airlines, when viewed in the light of the conditions under which they undertook, as foreigners, to establish an American system of international aviation in South America, the policy of this government and its stake in fostering their efforts, and the dedication of public monies involved, as well as the relation of the parties one to the other and the nature of the industry itself, compels the conclusion on our part that it involved no violation of the anti-trust laws" (Op. 26a, 27a-28a, 29a-30a).

Stating that "There is no doubt the defendants came to agree upon a division of territory; the dispute relates to when such agreement came about and what its details were."—the court reached the conclusion that the agreement as to "spheres of operations," made after the formation of Panagra, was an agreement not to duplicate or parallel services in South America, without any "intention one way or the other contemplated *mutually* by them with respect to possible extension of Panagra's line to the United States." The agreement so found was deemed "to be consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938" (Op. 34a). As the court found that there was no intention one way or the other "contemplated mutually" by Pan American and Grace with respect to Panagra's extension to the United States, the court did not pass on the legality of such an agreement, but it would seem clear that all that the court said as to the legality of the agreement which it found would apply equally to the agreement which the Government and Pan American say existed, namely, that Pan American and Panagra were not to parallel each other's routes, including routes between the United States and the Canal Zone as well as south of the Canal Zone.

The court then considered the further allegations of the complaint charging Pan American, Grace and Panagra, under §2 of the Sherman Act, with monopolizing or attempting to monopolize air transportation between the United States and South America, particularly the west coast of South America. As to Grace, the court held that steamship control of a competing airline was not illegal *per se* and that the question of Grace's control over the management of Panagra was within the primary jurisdiction of the CAB. As to alleged restraints regarding joint Panagra-Pan American offices, advertising, sales efforts, purchasing and maintenance, the court held that these matters were similarly within the primary jurisdiction of the CAB and for the most part had been approved by the Board. The court also held that Panagra did not monopolize air transportation between the United States and South America or within South America.

The only illegality found by the court was that Pan American, by its unilateral action in refusing to allow Panagra to apply for routes to the United States, monopolized and attempted to monopolize air transportation between the United States and South America and between the United States and the Canal Zone in violation of §2 of the Sherman Act.

The Final Judgment

On May 8, 1961, the District Court entered its final judgment dismissing the action with respect to Grace and Panagra (Appendix 71a-73a). It ordered Pan American to divest itself of ownership of its Panagra stock at such time and pursuant to such plan of divestment as the CAB directs pursuant to the standards prescribed by §102 of the Federal Aviation Act, subject to the District Court's approval.

Until such divestment, Pan American is enjoined from so exercising its interest in Panagra as to interfere with the filing or processing of route applications by Panagra before the CAB.

THE QUESTIONS ARE SUBSTANTIAL

I.

Questions Concerning the Joint Company.

1. The one factual question in this case, basic to the court's decision, is the scope of the territorial agreement between Pan American and Grace in their formation of Panagra. As the opinion of the District Court makes clear, Pan American started in 1927 on the establishment of a comprehensive system of air transportation serving the Caribbean, and Central and South America (Op. 9a). It first established and started operations on the link from Florida to Cuba and then Miami to the Canal Zone. At the same time that it projected for itself airline operations from the Canal Zone down the east coast of South America, it joined with Grace in 1928 in establishing Panagra to operate an airline from the Canal Zone down the west coast of South America. Not only was Grace's interest "confined to the west coast of South America" (Op. 24a-25a), but as the District Court found, and as was natural and economically essential, the parties agreed "that Pan American and Panagra were not to parallel each other's routes" (Op. 26a). Inconsistently and unwarrantedly, however (plainly so, we say, from the opinion itself), the court elsewhere stated in its opinion that the "understanding with respect to the respective spheres of operation for the two airlines" extended only to an east and west division of the coasts of South America and "there was no intention one way or the

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. 90-259

UNITED STATES OF AMERICA,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

OPINION

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MURPHY, *D. J.*

Introduction

Nominally this is a government antitrust action brought pursuant to §4 of the Sherman Act, 15 U. S. C. 4, in which the defendants, Pan American World Airways, Inc., W. R. Grace and Company and Pan American-Grace Airways, Inc.,[1] are charged with violations of Sections 1, 2 and 3 of that act (15 U. S. C. 1, 2 and 3). Actually it is a continuation of a bitter family quarrel rampant since 1941 arising out of the unhappy and quondam unholy union of Pan American and Grace, each of whom owns 50% of the stock of Panagra, that the Civil Aeronautics Board (C.A.B.) could not resolve.[2]

Briefly, the complaint charges defendants with unlawful combination and conspiracy to restrain and monopolize trade and commerce between the United States and South America, particularly the west coast of South America. The relief sought is a decree requiring Pan American and Grace to divest themselves of their ownership of Panagra and enjoining all defendants from any and all challenged activities that are found to be violative of the antitrust laws. The ultimate objective of the government is to facilitate the merger of defendant Panagra with Braniff International Airways (Braniff), the only other American

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1 Hereinafter referred to as Pan American, Grace and Panagra, respectively.

2 The C.A.B. in 1945 and again in 1953 requested the Attorney General to institute this suit.

flag carrier operating between the United States and South America aside from Pan American and Panagra.[3] This is in accordance with the recommendation of the C.A.B. in 1954 in order to make possible thereby "effective" competition between American carriers in that area and to reduce substantially the heavy burden of subsidy presently borne by this government. *New York-Balboa Through Service, Reopened*, 18 C.A.B. 501, 505.

The principal defenses urged are condonation by the government of the acts complained of, estoppel and laches; immunity because many of the agreements and mergers and acts complained of were approved by the Civil Aeronautics Board under a grant from Congress that absolved the defendants from antitrust violations and, as far as Pan American is concerned, that this court has no jurisdiction at this time because of the primary jurisdiction conferred by Congress in the Civil Aeronautics Board.

The Parties

Pan American is a corporation organized in 1927 under the laws of the State of New York as Pan American Airways, Inc. In 1950 its corporate name was changed to Pan American World Airways Inc. Pan American directly operates routes in air transportation of persons, property and mail between the United States and various points in Europe, Asia, Africa, Australia and Central and South America. It is today the largest international air carrier in the world. It also has a number of subsidiaries, including foreign corporations engaged in the transportation by air of persons, property and mail.

Grace is a corporation organized in 1899 under the laws of the State of Connecticut with its principal office in New York City. Grace has subsidiaries which engage in

3 We disregard Delta Airlines, Inc., whose operations to Venezuela subsequent to 1946 are not significant to the problems of this case. Braniff was certificated for South America in 1946 and commenced such operations in 1948.

various aspects of industry, trade and commerce including Grace Line, Inc., which operates a steamship route, among others, for the transportation of persons, property and mail between the United States and the west coast of South America.

Panagra is a corporation organized in 1929 under the laws of the State of Delaware. Panagra is engaged in air transportation of persons, property and mail over routes between the Canal Zone and Buenos Aires, Argentina, via the countries on the west coast of South America. It is wholly owned by defendants Pan American and Grace, each of whom owns 50% of the stock thereof. The principal offices of Pan American and Panagra are located in New York City.

Civil Aeronautics Board

Commercial aviation in this country is a highly regulated industry, but became such only after Congress passed the Civil Aeronautics Act of 1938 (C.A.A.).[4] That act authorized the creation of the Civil Aeronautics Board and established for the first time a comprehensive system of economic regulation of air transportation and removed, or attempted to remove, the threat of uneconomic and destructive competition in that field by providing that no air carrier may engage in air transportation without first receiving a certificate of public convenience and necessity. It gave to the President of the United States approval and veto power for such certificates as related to "overseas" and "foreign" air transportation (49 U. S. C. 601). Since, however, a number of air carriers were in operation prior to the act it provided that as to those they could receive certificates of public convenience and necessity,

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4 This Act, 52 Stat. 977, as amended, 49 U. S. C. 401 *et seq.*, was superseded by the Federal Aviation Act of 1958, 49 U. S. C. 1301, *et seq.*, and as far as relevant to this case the provisions are identical and reference will be made only to the Civil Aeronautics Act.

under the so-called "grandfather" clause (49 U. S. C. 481(e)). Accordingly, Pan American and Panagra received certificates of convenience and necessity for the operations which had been conducted by them under the various foreign mail contracts.

Congress also provided what policy the C.A.B. should follow as being in the public interest and in accordance with the public convenience and necessity, and defined that policy as follows:

> "(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;
>
> "(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;
>
> "(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;
>
> "(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense; * * * " (49 U. S. C. 402).

Congress also gave to the C.A.B. the power to approve or disapprove rates and tariffs, all types of mergers, consolidations, acquisitions, pooling and other agreements (49 U. S. C. 481 *et seq.*) and with reference to certain of its orders antitrust immunity (49 U. S. C. 494).

The Complaint

The government's case was fashioned along three major lines which, however, are interdependent both theoretically and evidencewise.

The first line deals with alleged restraints of trade relating to a division of markets in the transportation of passengers, cargo and mail in commerce between the United States and South America asserted to be illegal both from the standpoint of reasonableness and as a *per se* violation of law. It is the government's claim that Pan American and Grace entered into an agreement prior to the formation of Panagra whereunder the proposed jointly owned company was to have the exclusive right to traffic along the west coast of South America from the Canal Zone south free from Pan American competition, and Pan American was to be free from competition from the proposed jointly owned company elsewhere throughout South America and between the Canal Zone and the United States.

The second line of attack relates to alleged restraints imposed upon Panagra by its two parent companies, Pan American and Grace. To a large extent the evidence of restraints on Panagra in the categories of joint offices, communications, equipment, publicity and sales are matters of agreement that must be initially approved by the C.A.B. and to a large degree have been approved and others are awaiting approval or extension of approval previously granted.

These agreements are, however, interrelated to the third line of attack wherein the government alleges that Pan American and Grace conspired to monopolize transportation between the eastern coastal areas of the United States and South America, particularly the western coastal areas of South America and Buenos Aires, Argentina. It is alleged that Pan American and Grace agreed to combine in

the formation of Panagra, equally controlled by them to engage in a limited operation from the Canal Zone south along the west coast of South America with the intent and purpose of preventing competition between Pan American and Grace with respect to transportation by air and preventing the establishment of an air transportation service independent of the control of themselves which would be competitive with the projected air services of Pan American and the surface operation of Grace Line, Inc.

It is claimed that these defendants, pursuant to such alleged conspiracy, organized Panagra in such a fashion that they each have a negative control of the latter's competition with their independent operations, and have prevented Panagra's extension of its routes in South America and to the United States, and from developing its own facilities in the United States independent of the control of Pan American, and in South America independent of the control of Grace. In addition, they are said to have acquired the stock or assets of, or have entered into agreements with competing airlines in pursuance of their design to restrain and monopolize, and have retarded, restrained or eliminated competition from local airlines in South America, as well as having attempted and committed illegal restraints with respect to the operations of Braniff.

Grace, in addition, is charged with monopolizing or attempting to monopolize transportation by air and surface carriers between the United States and the western coastal areas of South America. The government also argues that the ownership and control of a competing air carrier by the dominant surface carrier in the same market necessarily violates the antitrust laws.

As to Panagra the government claims that it, together with Pan American, after 1946 engaged in restrictive practices to restrain and impede other airlines on the west coast of South America.

Conclusions

On the facts hereinafter found we have concluded (1) that the joinder of Grace and Pan American was not the result of conspiracy, but was a lawful combination with legitimate ends; (2) the division of territories understanding under which the operations of the two airlines were conducted was not unreasonable under the circumstances and not a *per se* violation; (3) that Pan American's restraints against Panagra and its continued determination to suppress the extension of that airline to the United States, in itself, and in combination with other conduct on the part of Pan American constitutes a monopolization of commerce that contravenes the provisions of the Sherman Act, and would seem to require divestiture by that defendant; (4) that Grace's stock ownership in Panagra does not *per se* violate the Sherman Act; (5) Grace and Panagra have not been found guilty of any antitrust violations; (6) price fixing for the most part is a mooted issue and in view of our decision with regard to Pan American need not be considered at length; (7) we will defer to the primary jurisdiction of the C.A.B. the legality of the joint advertising, sales and offices, etc. agreements between the two airlines; (8) we will defer to the primary jurisdiction of the C.A.B. the question of Grace's control in the management of Panagra.

The Facts

In 1927 substantially all transportation between this country and Latin America was by steamship. International commercial aviation was in the experimental stage and as yet no American air transportation company had entered upon operations from the United States to South America.

In October, 1927, Pan American began operations under the first United States Post Office contract for the carriage of the mails by air to a foreign country, by inaugurating

such a service between Key West, Florida, and Havana, Cuba. Pan American also had a contract with the Cuban government for the carriage of Cuban mail to this country.

Between 1920 and 1927 several German and French companies had established commercial air transportation services in South America, in Colombia, Bolivia, Brazil, Argentina and Chile, and were receiving financial and diplomatic assistance from their governments necessary to the establishment and maintenance of such services. These foreign companies had envisioned routes throughout South America and had sought also to extend into the Canal Zone and to the United States.

Our government was greatly concerned for political, military and business reasons with the successful establishment of an American system of air transportation to Latin America, and recognized the need for legislation under which financial aid could be rendered to American companies to engage in international air transportation. The result was the enactment by Congress in March, 1928, of the first Foreign Air Mail Act (45 Stat. 248, amended, March 2, 1929, 45 Stat. 1449) which authorized the Postmaster General to let contracts for not more than ten years for the transportation of mail by airplane to foreign countries or insular possessions of the United States. The method of payment established by the Postmaster General was based on the mileage flown without relation to the amount of mail carried. It was in essence, subsidy.

On May 8, 1928, Pan American was awarded a contract under that act which superseded its 1927 contract for service between Florida and Cuba.

Pan American had started some time in late 1927 to formulate plans looking to the establishment of a complete system of air transportation serving all parts of the Caribbean, and Central and South America. It was aware of the potentialities of the Latin American market, as yet untapped by American international companies, and

Honorable Thomas F. Murphy, *U.S.D.J.* in
dated March 8, 1961.

equally aware of the impending legislation to subsidize American air lines. With knowledge of the projected routes of the Post Office Department (see House Report 481, 70th Cong., 1st Sess., 1928) or better, the active sponsor of them, it began studies in early 1928 of proposed routes from Miami, Florida, to the Canal Zone, and the Canal Zone to Valparaiso, Chile.

Pan American's ambitions, however, were not equalled by its assets[5] or financial resources, and ultimately, in June 1928, all of its stock was acquired by a holding company formed for the purpose of raising capital to enable Pan American to bid on the mail contracts advertised or about to be advertised by the Postmaster General, and to conduct operations under contracts it was awarded. This company was called the Aviation Corporation of the Americas (ACA) and included among its assets acquired at the time of the acquisition of Pan American, was an option to operate a concession by the government of Peru for the establishment of an air transportation service between the United States and Peru. In June 1928 ACA acquired a contract for the carriage of Peruvian air mail to the United States. The concession and mail contract were intended ultimately to be assigned to Pan American if and when it began a west coast service contemplated in its plans.

On July 13, 1928, Pan American was awarded the United States mail contract for the route from Miami to the Canal Zone, for ten years, with an option in the Postmaster General to extend the route along the north coast of South America via Trinidad, as far as Paramaribo, Dutch Guiana. On the same day Pan American was awarded a 10-year contract for a route from Miami to Puerto Rico, with a similar option for the extension of this route to Trinidad.

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5 It owned three airplanes—two Fokkers and one Fairchild.

In order to engage in air transportation operations into or within any of the countries of South America at this time, as well as today, such operating rights must be granted by the government of each such country whether by permit or concession. Without such rights Pan American or any foreign company could not even fly over these countries.[6] By the end of July 1928, Pan American had instituted negotiations for operating rights in Panama, Colombia and Ecuador. By reason of the option in Peru it was assured of rights in that country (or it could subcontract that portion of its proposed west coast operations to a Peruvian subsidiary). If it could secure rights in the first mentioned countries and in Chile the way would then be clear for the proposed operations under a contract to be advertised by the Postmaster General from the Canal Zone to Valparaiso, Chile. In Colombia, however, Pan American's efforts to acquire operating rights were opposed by German interests who controlled SCADTA, a Colombian air line organized in 1920 and operating in that country and between Colombia and Ecuador. The owners of SCADTA were influential with the Colombian government. They had sought to extend their line to the Canal Zone and thence to this country since 1925 or 1926 but without success. Being thus situated, they had successfully opposed Pan American's applications for Colombian rights and thereby blocked the extension of American flag operations south of the Canal Zone.

As early as 1927, Pan American sought to purchase all of the stock of SCADTA, and these negotiations continued until January 1929, at which time the principal stockholder and managing director of the company orally agreed with Pan American to sell sufficient stock to enable Pan American to gain control of the company. The agreement to purchase SCADTA stock immediately opened the way for the establishment of an American flag west coast airline, for as part of the agreement, SCADTA withdrew all opposi-

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6 Cf. *Northeast Airlines, Inc.—North Atlantic Route Case*, 6 C.A.B. 319, 322.

tion to Pan American's application to the Colombian government, and entered into an agreement granting to Pan American exclusive use of its landing facilities along the north and west coasts of Colombia and in Ecuador, subject to its receiving permits from the Colombian government. In February, 1929, a treaty was signed between the United States and Colombia providing for reciprocal rights to aircraft of the two countries for landing rights in the Canal Zone and Colombia. The oral agreement for the purchase and sale of SCADTA stock was reduced to a formal writing in February, 1930, and finally executed in April of 1931.

In early 1928 Grace had independently begun to inquire into the possibilities of a west coast airline and had caused a study to be made with respect thereto. It began inquiries with governmental officials and in time became apprised of the activities of the Pan American interests and their plans for a west coast route. Pan American at this time was seeking to interest the principal shipping companies along the various proposed routes in financial participation as well as to secure the benefits of association with steamship lines, including air-sea rescue arrangements, and use of communication and agency facilities of these lines which would considerably decrease the amount of capital investment for such facilities immediately necessary in the operation of air transportation companies.

In May 1928, officials of Grace and Pan American conferred with a view to joint participation, and again in the following months. Grace's approach was a conservative one at the outset. It was naturally interested in the new form of transportation and fully appreciated the commercial possibilities of the airplane. It also appreciated the potentially competitive aspects of air transportation, but felt that it was quite risky at that early stage and no immediate threat as a competitor of its steamship lines.

At this time Grace was aware of the impending contracts to be offered by the Post Office, including the Miami-Canal

Zone route which eventually went to Pan American, but its interest was limited to the proposed Canal Zone-Valparaiso route.

In the fall of 1928 Pan American entered into an agreement with Grace, evidenced by two letters dated respectively August 31st and September 7th,[7] whereunder each

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7 "August 31, 1928.

"Aviation Corporation of the Americas,
100 East 42nd Street,
New York City

Attention: Mr. J. T. Trippe

"Dear Sirs:

"This will confirm arrangement under which we will associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

"A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff-Daland Dusters, Inc. the sum of $15,000 for an assignment which will convey all of the rights of that company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by this company in Peru and every effort will be made to put the business there on a paying basis.

"We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U. S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

"If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

"You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South America will be the agents of the company on a reasonable compensation basis, such

can-Grace Airways, Inc., on February 21, 1929. Grace exercised its option to acquire 50% of the stock, and Panagra submitted a bid for the mail contract. Pan American and Grace each subscribed $500,000 to the capital stock of Panagra, including the amounts previously subscribed by them to the stock of Peruvian Airways Corporation.

On March 2, 1929, the Postmaster General awarded to Panagra the contract for Foreign Air Mail Route No. 9. Panagra was not the lowest bidder for this contract[8] but was found by the Postmaster to be the lowest responsible bidder that could satisfactorily perform the service to the best advantage of the government. In making the award, the Postmaster stated, *inter alia*:

> "This is the most important air mail contract that has as yet been awarded. Its importance goes not alone to the financial ability of the bidders but more directly and to a far greater degree to their proven and recognized capacity for performing the service contemplated.
>
> "The Pan American company has filed evidence of extensive preparation for the operation of an air mail route through the countries with which arrangements are necessary. It has had this particular service in view for the last two years and has for that length of time been conducting negotiations and perfecting arrangements for the carrying on of the service if in the fulness of time it should be awarded the contract for it. It has the required franchises under which to operate in the countries to be served and over which the line passes. It is indeed operating through subsidiary companies already in existence over a considerable portion of the route under consideration. In addition to this it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly estab-

8 The award of this contract was protested by the low bidder (American International Airways, Inc.), which protest was denied after the Attorney General rendered an opinion sustaining the legality of the award. See 36 Ops. Atty. Gen. 33.

lished service by sea along the whole line of the proposed air mail route.

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"I would repeat that the contract in question is for a route most difficult to serve but at the same time of very great and far-reaching importance not only to the public but to the whole future of transportation by air. Failure would be a serious blow to the prestige of American aeronautical enterprise."

Panagra commenced operations under this contract on July 12, 1929, and later, on October 12, 1929, inaugurated operations from Santiago to Buenos Aires after the route was ordered extended by the Postmaster General in August, 1929.

Until November of 1929 operations on Panagra's routes as far south as Guayaquil, Ecuador, were conducted by aircraft and personnel of Pan American because Panagra had not until that time secured operating rights in Colombia in its own name. By the end of 1929, Pan American's routes having been extended by the Postmaster General, it was operating regular service along the north coast of South America to Paramaribo, Dutch Guiana.

The joinder of Pan American and Grace, with their complementary resources, in the formation of Panagra to establish American air transportation on the west coast of South America was of decisive importance to the Postmaster General in awarding to Panagra the United States Mail contract for the west coast route. Such a contract was the umbilical cord of any proposed American flag international air operations in South America, without which they could not long survive. It is beyond peradventure that the successful inauguration of an international air transportation system in South America, with the flying equipment then available, with no airfields or ground facilities but what defendants supplied or arranged themselves, with only the air to fly in and the ground to land on, was

in the truest sense a pioneering endeavor.[9] The technical and physical resources possessed by each of the defendants, together with the financial and diplomatic assistance rendered by this government, were pooled to facilitate the success of Panagra, the American entry on the west coast of South America.

In September, 1930, Pan American acquired the assets of New York, Rio & Buenos Aires Line, Inc. (NYRBA), an American company which had been formed in March, 1929, by persons independent of Pan American and Grace with the purpose of operating an airline service under mail contracts obtained in South America, from Miami through the Caribbean, and down the north and east coasts of South America to Buenos Aires, and across the Andes to Santiago, Chile.

The key to the successful maintenance of an American airline in Latin America was a United States Post Office mail contract, without which a company could operate only at a heavy loss. The joint company (Peruvian Airways) which preceded Panagra operated at a loss on the west coast prior to the awarding of the contract to Panagra for that route. Pan American had instituted competitive services on the east coast with NYRBA prior to September, 1930, without the benefit of a United States mail contract for that route and it too, as well as NYRBA, sustained heavy losses amounting to about $40,000 a month. It nevertheless so operated in order to put itself in position to compete with NYRBA in bidding for a proposed United States mail contract for the east coast route. NYRBA had two wholly owned subsidiaries, Trimotor Safety Airways, Inc. and NYRBA do Brasil, and together they had secured contracts from the governments of Argentina, Brazil, Uruguay, Chile and Venezuela, for the carriage of mail from those coun-

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9 See a newspaper account of 10-day inaugural flight, Buenos Aires to Miami, Chicago Daily News, October 18th–November 1, 1929. See, too, *Latin American Air Service Case*, 6 C.A.B. 857, 865.

tries north to the United States. These contracts were at considerably lower rates of pay than those awarded by our Post Office Department, and because of the scheme of its contracts, it created a problem for the Post Office Department with possible embarrassment with countries on the west coast of South America who contracted with Panagra. The situation also created a problem with respect to the award of a satisfactory mail contract if there was to be competitive bidding between NYRBA and Pan American. The Postmaster General determined not to advertise for an airmail route down the east coast of South America from Paramaribo unless some satisfactory arrangement could be made between Pan American and NYRBA, and apparently suggested that the two companies merge. Pan American was concerned about possible antitrust implications in the proposed merger and sought advice and "clearance" from the Department of Justice.

In a memorandum to that department dated July 18, 1930, Pan American set forth the details of the proposed acquisition of all of the assets of NYRBA, the competitive situation between the two companies, as well as with respect to foreign airlines in the area, and also as regards competition from steamships along the proposed route. Pan American demonstrated the economic impossibility of continued competition between itself and NYRBA on the same route without an air mail contract from the United States Post Office, and that it was the policy of the Post Office Department not to subsidize two contractors in South America for the same route. Pan American pointed to the diplomatic and financial assistance given to its foreign competitors by the French, English and German governments, and that effective similar assistance from the State Department could be rendered to only one American operator in the same area. In this memorandum Pan American disclosed its interest in Panagra, indicating that Panagra was part of the Pan American system, and also that the assets of NYRBA included NYRBA's wholly owned subsidiaries.

Pan American made a persuasive argument to indicate that the acquisition would be of substantial benefit to the public, and was of particular interest to the Post Office Department, the Department of Commerce, and to the State, War and Navy Departments as well. On August 1, 1930, the Department of Justice responded, *inter alia*, as follows: "Upon the basis of the information thus furnished the Department does not at the present time deem that any action by it would be warranted if the proposed acquisition should be effected. This, however, cannot under the law limit the full freedom of the Department to take such later action as future developments, further information or a subsequent consideration of the questions involved may in its judgment warrant."

Pan American made no mention of its earlier agreements, first oral and then written, with regard to its purchase of control of SCADTA, the acquisition of 84% of whose stock was thereafter completed in April, 1931. It claims that both the oral and written agreements were required by the seller to be kept strictly confidential until the sale was completed, and that Pan American adhered to that condition, disclosing it, one of its officers testified many years later, only to the Secretary of State on a personal and confidential basis. What effect disclosure of its impending acquisition of SCADTA may have had on Pan American's application for "clearance" from the Department of Justice we can only speculate.

As we said above, Pan American did acquire the assets of NYRBA in September, 1930, together with the stock of NYRBA do Brasil as contemplated in its memorandum to the Department of Justice, and in October, 1930, the name of that subsidiary was changed to Panair do Brasil. (In 1935, Pan American secured its own operating concession from Brazil and then reduced its stock in Panair do Brasil to 58%, and again in 1947 to 48%. In 1940 SCADTA merged with another Colombian airline and the name was changed to AVIANCA. Pan American received 64% of

the stock of AVIANCA, which was reduced in 1945 to 48% and as of 1954 it owned 38% of AVIANCA. The 1940 merger was precipitated by the Colombian government which passed a law in that year requiring the majority of SCADTA stock to be owned by Colombian Nationals. How it disposed of its stock and to whom, and what the relationship was or is, was not disclosed by the evidence.)

On September 24, 1930, the Postmaster General awarded to Pan American a contract for a route from Paramaribo down the east coast to Santos, Brazil, with an option to extend the route to Buenos Aires. Pan American inaugurated service to Buenos Aires under this contract in 1931.

This last extension of Pan American's east coast route rounded out the United States air mail service throughout South America. The entire northern and eastern part, and the northern portion of the western part from Miami to the Canal Zone were operated by Pan American, and the southern portion of the western part from the Canal down the west coast and across the Andes operated by Panagra.

In August, 1931, Pan American organized UMCA, a Delaware corporation, to which was assigned a concession theretofore granted by the Colombian government to one of its nationals for a route between Medellin, Colombia, and Panama. The concession required as a condition that the proposed airline become associated with an American company to be approved by the Colombian government. The assignment to UMCA, in which Pan American acquired a 75% voting interest, was approved by the Colombian government and UMCA commenced operations in July, 1932. (In 1947 Pan American acquired all of the stock, which it retains to this day. In 1948 Pan American sought approval from the C.A.B. of its proposal to acquire all of the assets of UMCA and, though the hearing examiner recommended it, the C.A.B. has never acted on the

recommendation. In 1959 UMCA applied for leave of the C.A.B. to abandon its certificated operations.)

Pan American and Panagra merely had landing rights in Colombia along their international routes at this time. The acquisition of UMCA enabled Pan American to carry traffic into Colombia, which was one of the reasons for its acquisition and, additionally, Pan American considered this route as a link in a possible short-cut route across South America to Buenos Aires and Rio de Janeiro. SCADTA had a monopoly in the carriage of Colombian mail and a virtual monopoly for all intra-Colombian traffic, partly because of the air policy of the Colombian government and partly because of a tripartite agreement among Pan American, Panagra and SCADTA, whereunder SCADTA withdrew from operations into Ecuador in competition with Panagra and withdrew its opposition to the efforts of Pan American and Panagra to acquire landing rights in Colombia. In return Pan American and Panagra agreed not to press for rights to operate within Colombia.

In 1934 Panagra formed a Peruvian company, Aerovias Peruanas, in order to protect its position in that country. At the same time the original joint company, Peruvian Airways, was dissolved. After about four years of very strong competition between Panagra, and its Peruvian subsidiary on the one hand, and Faucett Aviation Company, the leading Peruvian company, on the other hand, with both sides sustaining heavy losses, Panagra and Faucett reached an agreement whereby Panagra's subsidiary withdrew from all operations in Peru, and Panagra acquired 20% of the stock of Faucett. Panagra's local service in Peru was to be limited to that incident to its international itinerary and its tariffs for such local service was to be based upon its international rates, which would effectively maintain a differential between its fares and those charged by Faucett. Faucett was thereafter to confine its activities to local service within Peru and to re-

frain from entering into any connection with any international company without the consent of Panagra.

In 1944 Panagra submitted this agreement to the C.A.B. for its approval. In 1949 the C.A.B. disapproved the above provisions which were accordingly cancelled by Panagra and Faucett. Today Panagra's stock ownership in Faucett amounts to about 19%. A law passed by the Peruvian government in 1949 effected a suspension of Panagra's rights to carry local traffic (cabotage) along its international route. Panagra re-established their local services in Peru within their international lines in 1952, after agreeing with Faucett, in consideration of the latter's not opposing such re-establishment, to calculate its rates for such local service on the basis of its international rates, and not to advertise within Peru, such local services.

At the instigation of the State Department and in cooperation with other federal agencies, Panagra in 1941 acquired a stock interest in a Bolivian airline, Lloyd Aeros Bolivianos (LAB) and entered into a management agreement to manage that line. This acquisition was pursuant to this country's de-Germanization program with respect to South American airlines. Panagra's stock interest in this company amounts to about 21% today.[10]

The prime objective of the defendant airlines in the first decade of operations was to secure and solidify the position of their main international trunk lines throughout the countries in South America through which they ran. They considered the maintenance of local subsidiaries essential to that end and the bulwark of their international links. Through these lines they sought to obtain the good will of the nationals of these countries and the cooperation of local governments. They also served as feeder lines for their through routes and as the instrumentalities through which they could secure from the local govern-

10 To complete the picture, Pan American also owns today, some 30% of the stock of a Venezuelan airline, AVENSA.

agreed to subscribe equal amounts to the capital stock of a corporation to be formed under the laws of Delaware to operate an airplane service in Peru with the view to ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile. The agreement pro-

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agency to continue during the life of transportation contracts undertaken by the company.

"The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

Very truly yours,

W. R. Grace & Co.
William F. Cogswell,
Assistant Secretary."

"September 7, 1928.

"W. R. Grace & Company,
70 Hanover Square,
New York City

Attention: Mr. William F. Cogswell.

"Dear Sirs:

"We beg to confirm the arrangement set forth in your letter of August 31st.

"Supplementing paragraph four, however, we would point out the fact that in the event you decide not to take up a substantial interest in a jointly owned Company, organized or to be organized for the purpose of submitting a bid on the contract for carrying mails between Panama Canal and Valparaiso then, and in that event, we would prefer to bid on the contract through the medium of Pan American Airways, Inc., or some other wholly owned subsidiary.

"If this were done, we would arrange to allow you, if you desired, to take a further stock interest in Aviation Corporation of the Americas, in addition to the $25,000 referred to in paragraph five.

"Our Directors are delighted that we are to be associated with your firm in the development of air transportation on the West Coast of South America, and we look forward to a most pleasant and profitable relationship.

"We would appreciate your advising us if this letter, in connection with yours of August 31st, covers your understanding of our arrangement.

Yours very truly,

AVIATION CORPORATION OF THE AMERICAS

By J. T. Trippe,
Vice President."

vided that the two companies would cooperate in studying the costs of operations on such route and that if Pan American determined that it was advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the amount contributed by Grace to the stock of the company which was to operate in Peru should be treated as a contribution to the stock of the company making the bid and Grace was to have an option to take an additional interest in such a company not to exceed 50% of the total capitalization. Pan American was to "have charge of the operations of the service from the Canal to Valparaiso" and the Grace houses on the west coast of South America were to act as agents for the company.

Pan American's study of this route indicated that even with the revenue of a United States mail contract, conditions did not then justify its undertaking to install an air transportation service in that area. By combining with Grace, however, they mutually concluded that they could operate a west coast service more economically than could any other air transportation company, including the French and German companies.

The Delaware company referred to in the letters was formed under the name "Peruvian Airways Corporation" and it began operations in Peru in September, 1928, under the Peruvian concession and contract referred to above. In January, 1929, Grace and Pan American secured operating rights in Chile and, as stated earlier, Pan American's negotiations with SCADTA had set the stage for a concession from Colombia. On January 31, 1929, the Post Office Department issued an advertisement for a contract for Foreign Air Mail Route No. 9, from the Canal Zone down the west coast of South America to Santiago, Chile, with an option in the Postmaster General to extend the service from Santiago across the Andes to Buenos Aires, Argentina, and Montevideo, Uruguay.

Panagra was formed on January 25, 1929, as South American Airways Corporation and changed to Pan Ameri-

ments the rights to carry local traffic along the points of the international lines. These subsidiaries served also as a wedge whereby defendants could successfully oppose the efforts of local national companies that sought to secure monopolies within their own countries. It was a costly and losing proposition, however, to maintain these subsidiaries. It was more economical and ultimately more advantageous to acquire a stock interest in an influential national company.

Conclusions Re Conspiracy

The acquisitions, alleged predatory practices,[11] division of territories[12] and agreements with competitors have long been known to this government, and there is no dispute as to the facts and surrounding circumstances. The dispute relates to the inferences which we are asked to draw from the evidence. The argument for the inference of conspiracy is appealing to a mind bent on finding conspiracy.

From the outset, both Grace and Pan American had to fully appreciate the dangers of competition between themselves for the air mail contract about to be advertised for the west coast route. Neither of them might get it, or one could succeed but probably at a prohibitively low bid. They also must have realized that conflicts would arise in their partnership.

Grace was aware of the competitive potential of air transportation with its large steamship investments. So was Pan American aware of potential competition, but its ambitions were far more extensive than Grace's in air transportation at that time. Pan American sought to extend its system throughout Latin America. It could not do so without all of the mail contracts to be awarded. Grace's interest

11 See discussion *infra*, page 65 *et seq.*

12 See discussion *infra*, page 29 *et seq.*

was confined to the west coast of South America where it was strongly established, and th . was the only area where it faced competition from an airline. The award of a Post Office contract for each sector of South America, in effect, assured the American contractor of a monopoly in that sector insofar as American flag operations were concerned, and the invaluable assistance of the State Department and Post Office Department in the carrier's relations with the countries along its route.

By joining with each other in a joint venture on the west coast, Grace on the one hand would be assured against the entry of an independent American airline competitor into its west coast domain, and gain time to acquire the experience and know-how of this new industry, and one day perhaps to succeed to complete domination of the joint company. Pan American on the other hand would be substantially free from American flag competition in the rest of Latin America. Their method of organization of the joint company appears calculated to give each negative control of the company to insure against the possible treachery of the other to expand the op rations of the company in competition with their respective independent lines, and their divisions of operational and agency functions of Panagra was similar added protection.

Each of these two defendants occupied a strong bargaining position. They needed the attributes of each other in the operation of an airline on the west coast, and they feared the consequences of each other's opposition. Together they were an irresistible combination bidder to the Post Office Department. Their combined interests on the west coast could insure the greatest possibilities for the success of an American carrier in that area, and at the same time protect their independent systems from the competition of such carrier. An agreement to divide the territory of operations between the two air carriers is consistent with such a design, and it is equally consistent for Grace

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to have agreed not to seek to extend their joint company to the United States in competition with Pan American.

The conspiracy theory is appealing, because if it were found to be the fact a court of equity would not hesitate to order both defendants to divest themselves of their interest in Panagra, and to thereby definitively rectify an unhealthy situation that exists in the South American phase of American aviation, attributable to Pan American and Grace's joint ownership. *Pan American-Matson-Inter-Island Contract*, 3 C.A.B. 540, 548; *Panagra Terminal Investigation*, 4 C.A.B. 670, 678; *Latin American Air Service Case, supra*, at 914. See, too, discussion *infra*, page 45 *et seq.* re C.A.B. litigation.

We have carefully considered all of the evidence relating to the conspiracy charge and, in our opinion, no such conspiracy existed between Grace and Pan American. The only agreement we can find that approaches conspiracy is their understanding that Pan American and Panagra were not to parallel each other's routes. In our opinion this was not a conspiracy to monopolize and restrain trade and commerce.

The defendants' dominant position in South America which they enjoy today, and have over the years, may be explained in simple terms without unlawful implications: Pan American and Panagra got there first as American flag carriers (discounting NYRBA) by virtue of the foreign airmail contracts of the first decade and, since under the aegis and control of the C.A.B. and the President with respect to the certification of additional carriers since 1938, have enjoyed the South American market, so far as American flag carriers are concerned, exclusively until the start of operations by Braniff in 1948.

For approximately 20 years these two defendants were the sole American entries in South America and as such had exclusive claim to such aid that could be expected from this government in solidifying their position to the advantage of this country. They built up their services and good

will correspondingly. And if it were not for the action of Pan American in suppressing Panagra's extension to the United States, they would in all probability remain the only two American carriers in South America. At the time of Braniff's certification, at the end of World War II there was expected a significant increase in traffic sufficient to support a third carrier in the South American market. That traffic has not materialized. Moreover, foreign competition has increased. Cf. *New York-Balboa Through Service, Reopened, supra* (concurring opinion).

Prior to 1938 there was no legislation regulating commercial aviation. The C.A.A. makes express provision for the approval by the C.A.B. of mergers, acquisitions and all manner of agreements between air carriers with antitrust immunity. 49 U. S. C. , 488, 492, 494. The absence of such legislation in the experimental stage of international aviation did not obviate the necessity for such action in that period by carriers within the framework of the antitrust laws. The experience gained between 1928 and 1938 must have emphasized the need therefor. Defendants' acquisitions and agreements among themselves and with foreign airlines may well have been approved by the C.A.B. were it then in existence. We find substantial reasons and circumstances then extant that might have justified such approval. Under the circumstances, we feel constrained to accept those consistent with innocence from among the equivocal inferences permissible from the evidence presented.

The joinder of Grace and Pan American of their complementary facilities was a natural and mutually advantageous combination, and an economically sound arrangement for the establishment and successful development of American commercial aviation on the west coast of South America. Grace had the established branches and agencies on the west coast and all the facilities used in connection with the operations of the steamship line that could be used to such advantage in connection with the new airline opera-

tion. Grace also had widespread commercial contacts, a respected trade name and considerable influence in the countries along the proposed route. Pan American was further advanced than any other American company in the carriage of foreign air mail, and had the technical aviation skill which Grace lacked at that time. The union of their physical and technical resources assured the maximum possibilities of success in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280 (6th Cir., 1898), modified and aff'd 175 U. S. 211.

Grace's principal interest at the time was in transportation. Its interest in a new technique of transportation which to a large degree was most surely to generate its own traffic is readily understandable quite apart from consideration of the threat of competition with its steamships. Grace recognized the potential of air transportation in the commercial development of the South American countries in which it had extensive investments, and it had a great deal to offer to enhance that development. We cannot, from the evidence adduced, make out an unlawful intent to restrain aviation competition in the Grace participation in the formation of Panagra, and the history of Grace's activity in the affairs of Panagra preponderatingly demonstrates that it fostered and fought for Panagra development and expansion. To be sure, Grace sought continuously to control the management of Panagra, and its efforts were crowned with success in 1939. Its desire to control the management can as readily be explained as an aggressive business instinct, intensified in the light of the conflicting, containing attitude of Pan American, as well as from the standpoint of its asserted attempt to monopolize all transportation on the west coast. We are buttressed in our choice of the former in that the record before us fails to disclose any antitrust violations on the part of Grace vis-à-vis Panagra, unless

it be *per se* violative of the Sherman Act for Grace to own the stock that it does in that company. We will defer discussion of that issue to later in this opinion.

Clearly, Grace did not contemplate joining in the venture as a mere investor, though the terms of its agreement with Pan American as disclosed in the two letters, *supra*, did not contemplate that it would actively manage the line. The question of its ascendency to that management, since it occurred in 1939 subsequent to the creation of the C.A.B., is one that the C.A.B. has always been in a position to remedy if it in fact is in contravention of the C.A.A. §408(b) (49 U. S. C. 488(b)).[13] The apparent reluctance of that body to entertain the issue probably is rooted in dilemma. If Grace were divested of the management Pan American would succeed thereto. The progression would be from merely theoretical to further and more complete actual restraint and suppression. If Pan American is ordered to divest itself of Panagra the question of Grace management of Panagra may then be disposed of by the C.A.B.

Division of Territories

Consideration of the defendants' agreement or understanding with respect to the respective spheres of operations for the two airlines, when viewed in the light of the conditions under which they undertook, as foreigners, to establish an American system of international aviation in South America, the policy of this government and its stake in fostering their efforts, and the dedication of public monies involved,[14] as well as the relation of the parties one to the other and the nature of the industry itself,

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13 Cf. *New York-Balboa Case*, Order No. E-5737 (Sept. 21, 1951). See, also, C. A. A. §§409 and 415 (49 U. S. C. 489 and 495).

14 For example, between 1947 and 1958 the government gave Pan American $61,480,000; Panagra $13,925,000 and Braniff $15,461,000 by way of pure subsidy.

compels the conclusion on our part that it involved no violation of the antitrust laws.

The defendant airlines had to be self-contained enterprises involving large amounts of fixed capital outlay for facilities that would normally be made available to them in this country by governmental authorities. They had to build their own landing fields, provide their own meteorological service, and maintain their own communications system, and in connection with building up operating and traffic organizations they of course had to maintain offices in all of these countries and establish good will with the governments and peoples through whose territory the lines must pass. And in addition to technical and equipment problems they contended with substantial competition for the available traffic from foreign lines that had established themselves before the defendants and who were maneuvering for monopoly concessions that would have precluded defendants from their markets. The State Department actively assisted defendants in defeating the foreign company designs for monopoly concessions and in securing American operating rights along their routes. The contracts awarded by the Post Office Department defined the international route of the contractor, and so to a large extent defined the area of development and expansion of any such contractor. The Post Office policy during the years 1928 to 1938 was to award but one contract for each route, in effect to subsidize one American carrier in a particular sector. The ideal route pattern as envisaged by the C.A.B. today is to have two carriers, Pan American and a merged "Panagra-Braniff," and the only difference from that existing prior to Braniff's entry would be the extension of "Panagra-Braniff" to the United States. Competition among American carriers under the policy of the Post Office Department under the foreign mail contracts, was economically impossible, and most likely detrimental to the sound development of American flag service, which would have complicated or embarrassed the effective rendition

of diplomatic assistance from the State Department, and actually cause a waste of public monies. Competition between Panagra and Pan American certainly was not encouraged by this government. On the contrary, there appears to emerge from the evidence presented a definite policy of the government approving a sort of "zoning" for the operations of the American international carriers in the nature of east and west coast spheres as was ultimately arranged between Pan American and Panagra. Agreement not to parallel each other's service in South America seems perfectly consistent with the air transportation policy of this country in those formative years. It is only with respect to the northern extension of both lines to the United States that restraint of competition between Pan American and Panagra whether by agreement or unilateral action, in our opinion, falls under the condemnation of the antitrust laws. This relates primarily or wholly to the question of Panagra's extension to a United States terminal.

There is no doubt that defendants came to agree upon a division of territories; the dispute relates to when such agreement came about and what its details were. Pan American says that it and Grace reached agreement prior to the formation of Panagra that Panagra was to operate only on the west coast of South America from the Canal Zone to Valparaiso, Chile, and that was to be the entire extent of its operations. Pan American was to conduct operations throughout the rest of South America, including operations within the interior of South American countries, as well as its other services in the Caribbean and Central America, and between the United States and the Canal Zone, for which areas it had already secured the United States mail contracts. By reason of the mail contract ultimately awarded to Panagra, its terminal in Chile was changed to Santiago, and the scope of Panagra operations was extended to Buenos Aires and Montevideo. The gov-

ernment apparently accepts Pan American's version of the agreement.

Grace on the other hand contends that their territorial agreement was entered into *after* Panagra's formation and was, in general terms, to the effect that Panagra was to operate on the west coast and in all the countries of the west coast through which its international mail line ran, as well as over the Andes to Buenos Aires and Montevideo, and that there was no intention one way or the other contemplated *mutually* by them with respect to possible extension of Panagra's line to the United States. As for pre-Panagra agreement, Grace says that it was merely to combine their efforts, talents and resources in a jointly owned company to operate an air transportation service on the west coast, and specifically, to bid on the proposed mail contract for that west coast route. Grace contends that it was only in November, 1929, after Panagra's route had been extended by the Postmaster General at its request, to Buenos Aires, that any detail was added to their east coast-west coast understanding, and this concerned Panagra operations in the Argentine.

Pan American had organized an Argentine subsidiary (ALAS) in June, 1929, to operate locally in Argentina to give it legal standing there, and to develop cabotage business for Pan American's operations. Because of the operations of this subsidiary, ALAS, Panagra and Pan American reached an understanding whereby Pan American and ALAS had the exclusive right to Argentine traffic throughout that republic with the exception of that traffic between the points on Panagra's route—between Buenos Aires and Mendoza, Panagra had exclusive right, and between Buenos Aires and Montevideo, Panagra would compete with ALAS.

The understanding was again given substance after Pan American had acquired NYRBA, when in September, 1930, ALAS made some flights to Santiago from Buenos Aires, parallel to Panagra's route. Pan American put a stop to these flights when Grace complained.

Their agreement with respect to the Argentine figured again in the development of Panagra in 1935 when Pan American finally consented to Panagra operating a service from Tacna, Perú, to La Paz, Bolivia, on condition that there would result no prejudice to the arrangements or understanding relating to the traffic interests of Panagra in Argentina. This question arose because the Bolivia operations were sought by Panagra as a prerequisite to its instituting an alternate route to Buenos Aires through Bolivia and several Argentine cities. Panagra instituted such an alternate route to Buenos Aires in 1937. Pan American withheld its consent to that alternate route hoping to get Panagra to pay for a portion of the expense of its acquiring NYRBA, because NYRBA supposedly had incurred expenses in developing part of the route over which the new alternate route of Panagra's passed. No payment was ever made.

In early 1937 Panagra, at the invitation of the Colombian president, wanted to divert its international line into interior cities of Colombia, viz., Cali and Medellin. SCADTA had opposed this deviation and, in addition, threatened to extend its own line to Ecuador in competition with Panagra. Pan American opposed the proposed Medellin stop because it would divert traffic from its wholly owned subsidiary, UMCA, operating between Medellin and Panama. Panagra agreed to settle for the Cali stop, and Pan American helped overcome SCADTA opposition thereto, as well as to overcome the threatened competition of SCADTA to Ecuador. The Cali stop was approved by Panagra's board in January, 1938, Pan American's nominees abstaining.[15]

In 1951 Pan American's subsidiary, Panair do Brasil, at the instigation of the government of Brazil extended its routes from Rio to Santiago and Lima. Grace had sought

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15 After the Through Flight Agreement of 1946, discussed *infra*, page 50 *et seq.*, Pan American approved of Panagra's extension to Medellin and Bogota, Colombia.

to have Panagra apply to extend its routes from Lima to Rio some time earlier but Pan American would not agree.

We find that the agreement between the defendants as to spheres of operations and its evolution was substantially in the manner described by Grace. We accept the version of Pan American, not as respects mutual agreement between it and Grace, but as representing its own intentions for the destiny of Panagra.

An agreement not to duplicate or parallel each other's service in South America would seem to be consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938, and it was this type of competition from Pan American, through its subsidiary ALAS, and through SCADTA which Pan American controlled at the time, against which Grace invoked successfully the territorial agreement. Pan American, through its negative control of Panagra was always capable of preventing paralleling of its routes by Panagra, and Pan American over the years has in addition successfully delayed or prevented within-South America extensions of Panagra which would not have resulted in paralleling its operations.

For the purposes of this suit, however, we find sufficient basis in the Pan American suppression of Panagra efforts to extend to a United States terminal upon which to predicate our conclusion that Pan American monopolized that sector of commerce between the United States and South America and between the United States and the Canal Zone to warrant relief against it.

Pan American's Restraints Against Panagra

The thrust of the government's evidence was directed to the alleged monopolization or attempted monopolization by Pan American of air transportation between the United States and South America. While it also charges monopo-

lization by Grace of air and steamship transportation, that charge is treated *infra*, page 61 *et seq.*

The market or the "area of effective competition" which is the subject matter of this inquiry is air transportation between the United States and South America, particularly the west coast. Whether it should include only American flag carriers or all carriers is debatable, but to resolve it most favorably to the defendants we will treat the problem separately and jointly. It would seem fair, too, because of the areas involved to subdivide, as the government has, several appropriate markets or relevant market segments and correlate these to United States flag carriers and all carriers.

In the early 1930's less than 5% of the passengers between the United States and South America were carried by air, but since 1954 the airlines are handling 80% of such traffic. Pan American is the largest international airline in the world and in 1957 flew 3,500,000,000 passenger miles. One-third of its business is in Latin America.

There does not exist a completely accurate record of statistical data measuring the volume of traffic moving by air or sea between the United States and South America. The available sources developed by different agencies of the government and using somewhat different reporting procedures are those prepared by the C.A.B. and the Immigration and Naturalization Service (I.N.S.). The OD survey of the C.A.B. shows the origin and destination of air travellers and their complete air journeys; it shows the airlines involved in carrying people between those points and is limited to passengers who fly on commercial airlines in scheduled flights and on a revenue basis. It is limited, however, to carriers, as far as international traffic is concerned, who are certificated by the C.A.B. and includes only those passengers who either entirely or in some part of their journey used United States flag air carriers. It does not cover passengers who travelled out

of the United States entirely on foreign flag lines. In addition it is published for only two months of the year, viz., the months of March and September. In this case the latest one used by the government economist was the September, 1957, survey.

The other source of statistical information is the I.N.S. series. This information does cover foreign flag carriers but it does not provide the name of the carrier involved. It makes no distinction between passengers who fly on a non-revenue basis or on non-scheduled flights or in non-commercial planes. It does not include passengers in a military class. Its total statistics, therefore, are larger than the comparable statistics for the United States flag carriers as collected by the C.A.B. and therefore are more advantageous to the defendants if those statistics are used exclusively.

We find that by the use of both, a reasonably reliable picture of the relative positions of Pan American and Panagra is reflected and their relative participation in the traffic shown.

From these statistics it is obvious that Pan American and Panagra have retained a very high degree of dominance over other United States flag airlines in the transportation of passengers between the United States and South America. In fact they have either together or separately participated in the movement of from 75% to 88% of the passengers who used United States flag airlines between the United States and South America during the period 1950-1957.

With respect to such journeys between points of origin (or destination) in 16 eastern states[16] and South America,

16 Includes the New England states and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia and Florida. It is estimated that this area accounts for about two-thirds of the United States-South American passenger traffic.

Pan American and Panagra have participated in carrying from 88% to 96% of the passengers during 1950-1957.

Panagra is the dominant United States flag airline participating (almost entirely with Pan American) in the movement of passengers between the United States and points in western South America (western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, other than Buenos Aires). During the 1950-1957 period Panagra carried between 79% and 86% of this traffic and from 84% to 93% of the eastern United States, western South America traffic.

Pan American is the dominant United States flag carrier participating in the transportation of passengers between the United States and eastern South America (eastern Colombia, Venezuela, the Guianas, Surinam, Brazil, Paraguay and Uruguay). Without any participation by Panagra it accounted for 66% to 85% of this traffic and between 84% to 95% of the eastern United States–eastern South America traffic during the 1950-1957 period.

Both lines, Panagra and Pan American, fly to Buenos Aires by separate routes (Panagra via western South America and Pan American by eastern South America) and are obviously competitive in that category. Together they have accounted for 92% of all the passengers carried by United States flag airlines between the United States and Buenos Aires, and 94% of such traffic between eastern United States and Buenos Aires during the 1950-1957 period. During this period Panagra (in participation primarily with Pan American) carried more than one-half and Pan American (with no Panagra participation) carried two-fifths of the United States-Buenos Aires traffic on United States flag lines.

Using the I.N.S. statistics so as to round out the picture and include the foreign flag carriers, we find that Pan American and Panagra have participated in the transportation of approximately 50% of the total number of

passengers travelling by air between the United States and South America on United States flag and foreign flag carriers during the period from 1952-1957. Approximately one-sixth of the total traffic was carried by other United States flag carriers and about one-third was accounted for by foreign flag carriers in this period.

The dominance of Pan American and Panagra in the United States-South America traffic market is obvious since the traffic that was not carried by Pan American and Panagra (approximately 50% of the total) was divided among at least ten[17] other airlines, i.e., eight foreign flag carriers and two other United States flag carriers. In this connection, too, it should be observed that two of the foreign flag carriers, Avianca and Avensa, that carry passengers between the United States and South America are "affiliates" of Pan American, i.e., Pan American owns a substantial minority share of their outstanding stock.

The I.N.S. statistics show that with respect to passenger traffic between the United States and the four western South American countries (Ecuador, Peru, Bolivia and Chile), Panagra participated in carrying almost 75% of the total traffic in the 1952-1956 period and about one-half of the total in 1957. Between the United States and the seven eastern South American countries (Venezuela, Brazil, British Guiana, French Guiana, Surinam, Paraguay and Uruguay), Pan American alone accounted for about two-fifths of the total traffic during the period from 1952-1957. Between the United States and Argentina, Pan American and Panagra shared better than three-quarters of the traffic during the 1952-1957 period. Between the United States and Colombia, Pan American and Panagra (each serving different parts of that country) accounted for one-third of the total traffic in the 1952-1957 period, while the foreign flag traffic was three-fifths of the total. However, practically all of this foreign flag traffic is carried by Avianca.

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17 According to Pan American there are at least 18 foreign airlines operating between the United States and South America or Panama.

Pan American has submitted evidence and expert testimony on the relevant markets and area of effective competition. Some of its statistics, however, include sea passenger traffic added to the air traffic, thus considerably diluting the percentages testified to by the government economist and supported by its statistics. This was done in a post-trial brief based upon certain evidence the government submitted insofar as the complaint related to Grace. We reject this combination of air and sea traffic figures as not close substitutes and not truly the same relevant market.[18] It is significant, too, that at the trial Pan American's expert witness and employee produced no statistics from their own records showing the share of air passenger traffic by Pan American or Panagra in any relevant market.

Accepting the government's evidence and rejecting Pan American's as deficient, we find that there is and has been for many years active substantial competition between Pan American and Panagra in the transportation of air passengers to the United States and South America to a substantial degree and that, but for the Pan American suppression of Panagra, that competition would have been much greater.

Finding, as we do, the existence of such competition the next inquiry is whether defendant Pan American monopolized or attempted to monopolize such trade and commerce. We find that it did both.

We need not discuss alleged violations of §1 of the Sherman Act in this part of the opinion. We have heretofore found no conspiracy between Grace and Pan American to restrain or monopolize, and we concluded in substance that their original joinder was not a combination in restraint of trade; we found that their combination was a legitimate one with legal ends—to foster the development

18 Cf. *Times-Picayune Publishing Co. v. United States*, 345 U. S. 594, 612 n. 31.

of a new form of transportation. That the combination, or joint enterprise subsequently developed differences of opinion as to the growth and development of their jointly owned company does not, in our opinion, operate to make their joinder or combination, *in limine*, one in restraint of trade, or their combination presently, *qua* combinatien, one in restraint of trade.

The antitrust restraints that we find here requiring judicial remedy were unilaterally imposed by Pan American and for that reason, if they are illegal at all under the Sherman Act it must be under §2 thereof. More specifically, they must constitute monopolization or attempt to monopolize.

In our opinion, Pan American's successful blocking of Panagra's extension to its own terminal in the United States constitutes an unlawful exercise of the power it had to exclude Panagra as a competitor in the United States-South American market, and to thereby maintain its virtual monopoly position over that market at least until the entry thereinto of Braniff in 1948. Thereafter and to date, it remains the dominant carrier in that market and maintains its power to participate in substantially all United States origin or destination traffic carried by Panagra through its continued suppression of a Panagra-United States extension.

While we were not provided with any statistical breakdown of the passenger traffic carried by air between the United States and South America for the years prior to 1950, it is clear that Pan American and Panagra's share was 83% or better. And it is safe to say that prior to 1947 substantially all such traffic was carried by Pan American alone. It was not until then, 1947, when the C.A.B. approved the Through Flight Agreement, that Panagra planes actually flew beyond the Canal Zone to the United States; but then it was only in participation with Pan American pursuant to such agreement.

Since 1938 half of Panagra's board of directors (Grace nominees) sought to file a voluntary application with the C.A.B. for an extension of Panagra's routes to the United States. Pan American would not consent to such action and directed its nominees on Panagra's board accordingly, because "it would not be in the interest of our stockholders [Pan American stockholders] for our directors to authorize an application by [Panagra] to extend north of [the Canal Zone] in competition with Pan American."

Pan American has never retreated from this position which is predicated upon the proposition that Panagra is part of the Pan American system; that it (Panagra) was so set up to be the west coast link of the Pan American system, and that if it were permitted to extend to a United States terminal its character would be changed to that of a competitive carrier. Pan American has expressed the fear that if Panagra were permitted its own route to Miami the effect upon Pan American's service between the Canal Zone and Miami would be disastrous, because the greater portion of Pan American's traffic between those points on its direct flights was traffic destined to or originating at points on Panagra's routes. Generally, all through traffic between points on Panagra's west coast route and Miami or other United States cities conveniently reached through the Miami gateway would be almost wholly diverted from Pan American. The same would go for most any west coast traffic bound for a United States point conveniently reached from any United States terminal to which Panagra may be certificated, whether it be Miami, New Orleans, New York or any other city.

It is beyond dispute therefore, that Pan American blocked Panagra's independent entry into the United States-South American market in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States and bound for points on Panagra's west coast routes. Prior to Braniff's entry into the market (and Delta's too), and prior to the Through Flight operations, Pan American en-

joyed a virtual monopoly of the United States-South American market. We assume that it had come by that monopoly legally however, originally; but we find that it maintained that monopoly illegally, in contravention of the Sherman Act when it utilized its stockholdings and representation thereunder on Panagra's board of directors to frustrate Panagra's entry into the market. Pan American's justification for its blocking actions is bottomed upon a fallacious predicate; Panagra is *not* part of the Pan American system except to the extent that it is reduced to that status through the subjugating exercise of Pan American's negative control over its destiny. Panagra is not a subsidiary of Pan American; its co-equal stockholder, Grace, never so intended it to be (and never intended to be a mere investor in Panagra), nor has Panagra's abstention from independent entry into the United States-South American market been the result of *concerted* action between it and Pan American. If Pan American were the majority shareholder in Panagra or if Panagra were a wholly owned subsidiary of Pan American it might make a decisive difference in this case. Cf. *Report of the Attorney General's National Committee to Study the Antitrust Laws* (1955), pp. 32-34. If Panagra were wholly owned by Pan American we have no doubt that its extension to a United States terminal would have been effected decades ago.

Pan American, to be sure, has contributed substantially to the success of Panagra within the territorial limits to which Pan American has permitted its operations. Pan American has always considered Panagra as part of the Pan American system, and its major premise is that its capital investment in Panagra was dedicated to a limited operation on the west coast from the Canal Zone south.

Panagra, however, is an independent entity and the dedication of American taxpayer money,[19] without which it could

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19 See footnote 14 *supra*, also, *Local, Feeder and Pick-up Air Service Case*, 6 C.A.B. 1, 3.

not have survived as Pan American so readily argues, is paramount to any private investment consideration due Pan American. It most certainly must have been thought by this government that it was subsidizing two air transportation companies to develop the South American markets, each with equal opportunities in time to operate to this country and not necessarily by parallel routes.

If the competitive effect of a Panagra extension to the United States would have been as disastrous as feared by Pan American, it would have been a genuine issue for it to urge before the C.A.B. in opposing such extension which that body would have to weigh together with the public convenience and necessity in favor of the extension. Pan American then and since has arrogated to itself the function of determining what the public convenience and necessity requires. The economic arguments advanced by Pan American to justify its actions in preventing Panagra's extension to the United States are irrelevant to the issues of this case. Its intentions in excluding Panagra from that sector are beyond doubt.

While we have discussed the market which we find Pan American has monopolized or attempted so to monopolize, as the United States-South American sector of air transportation of passengers by all carriers, foreign and American, there is a more limited market over which Pan American has maintained a more complete monopoly and which would appear to be one that may be appropriately considered separately. That is the United States-Canal Zone sector of air transportation. Under the Civil Aeronautics Act such transportation would be deemed "overseas" transportation, as distinguished from "foreign" transportation, and as such would be reserved exclusively to United States flag carriers. Cf. *Pan American-Matson-Inter-Island Contract, supra.*

Prior to Braniff's certification and entry into this market, Pan American was the sole United States carrier therein.

Its actions in suppressing and thereby excluding Panagra from the United States terminal to which Panagra aspired are equally applicable to a consideration of this more limited market, and compel the same conclusion of monopoly or attempted monopoly.

Pan American argues that under the C.A.A. exclusive control over the entry into the market is vested in the C.A.B. and the President (§§401 and 801, 49 U. S. C. 481 and 601) and that, therefore, it does not have power to exclude competitors, i.e., monopoly power. It does not and cannot deny, of course, that it has the power to and has effectively excluded Panagra from the market in question.

In our opinion, under the circumstances of this case Pan American need not have the affirmative power to ultimately approve Panagra certification for its own route to the United States to qualify as a monopolist. What Pan American seeks to do is to confound power of admission with power of exclusion. It is the exercise of the latter that the Sherman Act condemns.

We would like it clearly understood that it is not our opinion that every defendant who exercises similar negative control over a single potential competitor and thereby excludes such competitor from a relevant market necessarily monopolizes thereby. It is a relative concept which can only be applied in a given context. Here, the excluded competitor is the most potential of a very limited number of competitors and one that enjoys a substantial share of the relevant market, and in which share the exclusionary action of Pan American guarantees it participation. One result is that competition between the two for their significant shares of the market is to a substantial degree restrained. Other factors we considered are the nature of the industry, the size and strength of the two companies involved, and the limited market potential.

We feel that the affirmative blocking of a Panagra application to the C.A.B. is sufficient under the facts pre-

sented to make out the violation by Pan American of monopolization and that the following history of Pan American's actions gives a definitive picture of its 20-year subjugation and restraint on Panagra. It will also show the attitude of the C.A.B. and its consequent frustration towards Pan American's antagonistic and purposeful restraint.

We start with 1938, the turning point for United States flag international aviation. With the enactment of the C.A.A. that year the period of foreign airmail contracts ended; under the Act mail pay or subsidy was to depend, not upon contract, but upon the needs of each certificated carrier in contributing to the maintenance and development of air transportation. In accordance with the objectives set out in §2 (49 U. S. C. 402) thereof, in sum, to promote an economically and technically sound air transportation system, the C.A.B. was authorized to prescribe the extent of air transportation which each certificated carrier may engage in, and to allow for regulated and economic competition designed in part to stimulate research and experimentation and to induce refinements which would inure to the benefit of the foreign and domestic commerce, the Postal Service and the national defense.

A policy of regulated competition replaced the "no-parallel" policy of the first decade, and with it and the new policy with respect to subsidy, it became feasible for Panagra to seek to extend its routes to the United States. Such an extension would give it direct access to one or more of the major gateways for through traffic between the United States and Latin America and was entirely normal and desirable from Panagra's viewpoint as it would then no longer be so dependent upon connections with Pan American at the Canal Zone for onward passage of a large part of its traffic travelling between the United States and the west coast of South America and Buenos Aires. See *Panagra Terminal Investigation Case, supra,* at 671. However, such an extension of Panagra represented a s[illegible]us com-

petitive threat to Pan American which ran counter to the latter's philosophy that it alone should conduct all international commercial air transportation operations under the United States flag, a philosophy which Pan American unavailingly urged upon the C.A.B. whenever competition for Pan American was proposed. See e.g., *American Export Airlines, Inc., Trans-Atlantic Route Service Case*, 2 C.A.B. 16; *Northeast Airlines, Inc., North Atlantic Route Case, supra* at 324; *Latin American Air Service Case, supra* at 861, and *Hawaiian Airlines, Ltd.; Hawaiian Case*, 7 C.A.B. 83, 103.

Grace's efforts of 1938 to secure Pan American cooperation for a northern extension of Panagra resulted in a compromise embodied in an agreement dated February 14, 1939, whereunder Grace nominees succeeded to the presidency and management of Panagra, Pan American promised to provide an adequate connecting service between Miami and the Canal Zone,[20] and Grace was to cease agitating for the United States extension of Panagra. However, in late 1940 Grace again pressed the question of Panagra's extension because at that time American Export Lines was evidencing an interest in a New Orleans-Canal Zone service which Grace feared might eventually extend down the west coast in competition with Panagra. Grace's suggestion that Panagra file an application with the C.A.B. for this route was rejected by Pan American which, incidentally, had already filed its own application therefor. Pan American further decided that its nominees on the Panagra board would not attend any meetings at which this subject was to be discussed. Thereafter, Grace brought the matter before the C.A.B. and that body ultimately instituted a proceeding which became known as Docket 779, the Panagra Terminal Investigation. The intermediate

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20 Pan American's connecting service was a source of much friction between defendants and its alleged inadequacy gave rise also to threats by Grace to inaugurate its own air transportation service between Miami and the Canal.

steps are set out chronologically in the C.A.B. opinion in the case as follows:

> "When efforts to secure the filing of an application by Panagra failed, Grace, on May 3, 1941, filed a petition for leave to intervene in the *New Orleans* case alleging that since Panagra was not filing an application Grace proposed to file an application in its own behalf for a certificate for a route between the United States and the Canal Zone. Grace was granted leave to intervene, but did not file an application for a certificate during the time that case was pending.
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> "On December 16, 1941, Grace filed a petition and complaint, Docket No. 707, requesting the Board to institute a proceeding pursuant to section 401(h) of the Act to alter, amend, and modify Panagra's certificate of public convenience and necessity so as to make the northern terminal of its route a point in the United States such as Miami or Tampa, Fla., or New Orleans. On April 29, 1942, Grace filed a second complaint, Docket No. 744, requesting the Board to require Pan American Airways Corporation, pursuant to section 411 of the Act and sections 7 and 11 of the Clayton Act, to cease and desist from certain matters alleged by Grace to be in violation of those sections, and to divest itself of its ownership of the stock of Panagra to the extent necessary to divest itself of its present negative control of Panagra; and also renewing its request in Docket No. 707.
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> "No formal steps were taken by the Board in connection with the Grace petitions in Dockets Nos. 707 and 744 until September 1942. During this period all action in the *New Orleans* case also was postponed under the Board's policy, announced December 12, 1941, of suspending further action in all proceedings pending before it under sections 401(d) and 401(h) of the Act 'in order that the immediate and maximum attention of air carriers and their personnel, and that of the Civil Aeronautics Board, as well as other Government agencies concerned, may be available for the most efficient discharge of the emergency demands' arising out of the war.

"However, the Board did explore the possibility of working out a voluntary settlement of the controversy between Pan American and Grace. Numerous conferences were held by the Board with both parties. Finally, the Board suggested that the parties enter into an agreement under which sufficient shares of the two stockholders would be transferred to an independent public voting trustee or trustees to permit the election to the Panagra board of an independent director or directors, or under which such an independent public director or directors might be otherwise appointed, who would be able to break the deadlock resulting from the equal division of the ownership of Panagra stock between Pan American and Grace. After it became apparent that no satisfactory voluntary arrangement could be mutually agreed upon by the parties and that all efforts to mediate the differences between them would be unsuccessful, the Board, on September 10, 1942, * * * [instituted Docket 779]" 4 C.A.B. 670, 671-72.

In May, 1944, the C.A.B. dismissed the proceeding without reaching the merits of the question of the public convenience and necessity involved in a Panagra extension. The dismissal was on the ground that the Board was without power to compel such an extension in the absence of a voluntary application from Panagra. The Second Circuit Court of Appeals, *W. R. Grace & Co.* v. *C.A.B.*, 154 F. 2d 271 (1946), reversed the C.A.B. and remanded the proceeding saying: "if Grace * * * could prove that the opposition of Pan American * * * to Panagra's applying for an extension was due to 'illegality and fraud' it would follow that this proceeding should be regarded as a voluntary application for the extension" (pp. 281-82). On June 10, 1946, the Supreme Court granted Pan American's petition for certiorari, 328 U. S. 832.

In the meantime, in consolidated hearings, the C.A.B. had been considering a number of applications by carriers seeking, *inter alia*, certificates to engage in operations between the United States and the Canal Zone. The C.A.B.

Examiners and its Public Counsel reported that while the extension of Panagra to a terminal in the United States would best serve the public interest they considered such recommendation to be foreclosed by the decision of the Board in Docket 779, and consequently, they recommended that routes between the United States and the Canal Zone be awarded to other carriers. The brief of the Public Counsel noted, in substance, that Panagra was entitled to a certificate for a United States-Canal Zone route which would provide the west coast countries in South America with the convenience of one-carrier service to the United States, but since the action of Pan American prevents the recommendation of the "best possible service, we must turn to the next best solution." *W. R. Grace & Co.* v. *C.A.B.*, *supra*, p. 282 n. 5.

Nevertheless, the C.A.B. thereafter divided evenly on the question of authorizing other carriers to South America and for want of a majority, additional services between the United States and the Canal Zone also failed. The President thereafter directed the Board to provide for the extension of an additional carrier to South America and Braniff was ultimately selected. In the course of its opinion the C.A.B. had occasion to say that it had long recognized the desirability of a voluntary application which would permit a determination by it of the question of extending Panagra from the Canal Zone to a point in the United States, and that if such extension were made to Miami or New York, or some other point on the eastern seaboard, the eastern part of the United States would be afforded a fast direct service to the west coast of South America and to Buenos Aires. The Board declared that Pan American and Grace, in the public interest, "cooperatively should enable Panagra to apply for access to the east coast of the United States." *Latin American Air Service Case, supra,* at 914.

Thus, while it is true that the C.A.B. has never explicitly stated that it would grant an application if one were volun-

tarily presented by Panagra, it is unrealistic to suppose that it would not have. We find it difficult to conclude otherwise than that the Board waited in vain for such an application, or stated differently, for Pan American to cease blocking Panagra in the interest of the public welfare.

Braniff's certification was in May, 1946. Pan American and Panagra entered into the Through Flight Agreement in July, 1946. Under this agreement Pan American theoretically charters Panagra planes on flights north of the Canal Zone. Actually, what Pan American does is to share with Panagra in the expenses and profits of such flights by Panagra planes flying over Pan American's routes.* After the Board certificated Braniff, Panagra was faced with two alternatives: (1) to enter into the Through Flight Agreement and immediately improve its competitive position with Braniff, or (2) continue to press for its own certificates. Under the latter course Grace, on behalf of Panagra, would continue the litigation which it had initiated before the C.A.B. in 1941 which was then pending review by the Supreme Court on certiorari to the Second Circuit.

The outcome of the appeal of course was uncertain, and assuming it were favorable to Panagra, the matter would still then have to return to the C.A.B. for a consideration of the merits of the action. Panagra simply could not afford the delay which this course of litigation would entail. Its economic life hung in the balance. If Panagra did not get to the United States, at least by way of a through flight interchange agreement with Pan American, and if Braniff commenced such operations under the authority granted by the Board, Panagra's economic position would rapidly deteriorate. Cf. *New York-Balboa Through Service, Reopened,* 18 C.A.B. 501, 505.

Grace and Panagra succumbed to the restraint of Pan American and acquiesced in the Through Flight Agreement.

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* In 1955 the C.A.B. approved an interchange agreement among Pan American, Panagra and National Airlines under which Panagra's planes fly to New York from Miami over National's routes.

The C.A.B. approved the agreement in May, 1947;* it did not approve the suppression of Panagra by Pan American in the process as Pan American contends. Such approval was in no sense necessary to do that which was authorized. (See further discussion re Pan American's claim of immunity *infra*, page 52.)

The loser of course, as always, was the public. Braniff has proved to be an ineffective competitor; the United States share of the market has declined; foreign competition has increased, and the federal subsidy has greatly increased.[21] The C.A.B. has expressed a fear for the economic effects of a successful conclusion of this suit by the Attorney General, and the emergence as a consequence of an independent Panagra in South America. *New York-Balboa Through Service, Reopened, supra.* It should be noted that in 1957 Grace, on behalf of Panagra, filed with the C.A.B. applications for Panagra's own routes to Miami, New York a d to the west coast of the United States. Action thereon is suspended pending the outcome of this suit.

Pan American has monopolized or attempted to monopolize the market in issue and in the process has seriously restrained competition from Panagra and caused the creation of a situation that cannot be righted so long as it retains the negative control that it now possesses over Panagra.

Pan American's conceptions of the perpetual limited character of Panagra operations are now and ever have been based on its own unilateral intentions in joining with Grace to form a west coast airline. That intent, and the economic

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* On November 24, 1947, on Pan American's motion the Supreme Court dismissed the writ of certiorari previously granted, as moot. 332 U. S. 827.

21 In 1946, Pan American's Latin American Division showed a profit of $2 million and in 1953 it required $11 million subsidy; Panagra in 1946 required just under $1 million which rose to over $2 million in 1953; Braniff required about $560,000 in 1948 and its break-even need in 1953 was over $3 million. *New York-Balboa Through Service, Reopened, supra* (concurring opinion).

arguments which it has advanced in its brief against Panagra's extension to the United States are no defense to the monopoly charges *sub judice*. Its economic arguments would have been proper to urge before the C.A.B. upon hearings on the merits of an application by Panagra for such extension. While Pan American's conduct in preventing Panagra from clearing the first hurdle for that extension, to wit, presentation of an application to the C.A.B., may be understandable from a selfish business standpoint of one faced with making a choice, nevertheless the quandary was of Pan American's own making and its choice was unlawful.

Pan American Immunity

Pan American asserts that it is immune from antitrust violations because the Civil Aeronautics Board approved the arrangements made between it and Grace respecting the area of Panagra's operations. It points out that in 1947, again in 1950 and again in 1955 the C.A.B. approved the Through Flight Agreement between Pan American and Panagra and the related Parent Company Agreement between Pan American and Grace. It states that the approval was given after a most thorough inquiry from which it appeared abundantly clear that the Through Flight Agreement was in lieu of Panagra's coming to the United States and represented a reconciliation and settlement of the controversy between Pan American and Grace over Panagra's coming to the United States.

It relies on §414 of the C.A.A. (49 U. S. C. 494) which relieves any person affected by an order of the C.A.B. made under sections 408, 409 or 412 (49 U. S. C. 488, 489, 492) of the operations of the antitrust laws.

The claim of immunity is without substance because no such approval was ever sought or obtained from the Civil Aeronautics Board.

What the Board approved was in effect an interchange agreement between Pan American and Panagra which was completely silent with respect to the problem here involved and a related management agreement which contained, among other things, a provision that Pan American would consent to a Panagra application for service to the United States in the event of transfer, modification or cancellation of Pan American's own certificate. This provision consenting to an extension in the event of the contingencies described did not negative consent under other circumstances or in terms constitute an undertaking or an understanding that Pan American would continue to block Panagra's efforts for expansion.

One of Pan American's principal officers testified, "There was nothing in the agreement • • • to prevent Panagra from applying for an independent franchise to enter the United States" and that there was no side agreement or understanding to that effect. He was specifically asked, "Is it understood between the parties that Panagra will not so long as this contract is in effect apply for such independent entry?" He answered, "No." The president of Panagra when asked whether the agreement implied "that those who run the affairs of Panagra have an understanding that Panagra will not seek to come from the Canal Zone to the United States," he replied, "I do not so testify and that is not the fact. The only agreement between us on that point is in these papers."

Not a word in the opinion of the Board (8 C.A.B. 50) approving the agreements is devoted to this question, nor is there any basis for an inference that it understood that it was approving a prohibition against Panagra's seeking an independent franchise.

The Board's approval of the Parent Company Agreement was only in relation to the interchange agreement. It was done in order to prevent avoidance of its jurisdiction over contracts affecting air transportation (and which would

be subject to approval if made by operating carriers) through the device of their being made by parent companies not in themselves operating carriers and whose contracts would not normally be subject to the Board's approval.

Since the contracts do not specifically provide that Panagra should not seek its own certificate and the parties themselves testified that the contracts should not be so construed the Board cannot be held to have approved and granted antitrust immunity to Pan American to use its negative control over Panagra to prevent its applying to the Board for its own certificate to fly to the United States, nor has it ever approved or granted antitrust immunity in relation to Pan American's and Grace's control over Panagra. This control antedates the Civil Aeronautics Act and is beyond the purview of §408.[22] Exemptions from the antitrust laws are not favored and should be accorded only on a showing of compliance with the precise manner and method prescribed by Congress. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 226-27. This has not been done.

Primary Jurisdiction

Pan American in its post-trial brief has raised the defense of primary jurisdiction. It argues after trial that the allegations of the complaint are within the jurisdiction of the Civil Aeronautics Board and the President. Therefore, the court should not decide the matters in issue until after the Board and the President have acted.

The primary jurisdiction rule is, "a principle, now firmly established, that in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not

22 *Railroad Control of Northeast Airlines*, 4 C.A.B. 379, 386; *National Air Freight Forwarding Corp.* v. *C.A.B.*, 197 F. 2d 384, 389 (D. C. Cir. 1952).

be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure." *Far East Conference* v. *United States*, 342 U. S. 570, 574-575.

Whether or no such defense should have been raised by motion or by answer in accordance with Rule 12 F. R. Civ. P. when the complaint was served six years ago is academic since we find it without merit. Parenthetically, although of no legal significance, this latest tactic of Pan American is characteristic of its litigious nature and of its determination to continue and persevere in its restraint on Panagra.

There can be no question that only a United States District Court has jurisdiction in actions under the Sherman Act, and that the Civil Aeronautics Board does not (15 U. S. C. 4). The necessary defendant W. R. Grace and Company, not being an air carrier, would not ordinarily be subject to the jurisdiction of the Board, except perhaps on the question of acquisition of control and management of an air carrier. See note 13 *supra*.

In *S.S.W., Inc.* v. *Air Transport Ass'n of America*, 191 F. 2d 658, 661-62 (D. C. Cir., 1951) the court analyzed the approach to accommodation of court and agency roles in the following language: "[I]n each case brought against a regulated company under the antitrust laws, the subject matter and remedy afforded by the regulatory statute are compared with that of the antitrust laws. If the latter either cover subject matter outside the scope of the Com-

mission's power or provide a remedy which the Commission may not give, then they remain in effect to that limited extent. This sort of approach gives the greatest possible effect to congressional intent. It subjects problems intended to be dealt with in a uniform manner within the framework of a particular industry to the agency empowered to regulate that industry. At the same time, it gives effect to the antitrust laws in those areas not carved out from them by more specific economic regulation."

The complaint in this case relates to many matters that existed prior to the creation of the C.A.B. and over which the C.A.B. would have no jurisdiction. In addition, the major relief prayed for in the complaint is that the court order Pan American and Grace to divest themselves of their stock holdings and other interests in Panagra. Such relief or the power to grant it is not vested in the Civil Aeronautics Board as to pre-1938 acquisitions[23] and such power exists only in a court of equity. In fact there is no provision in the antitrust laws for such a drastic remedy. *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 602.

Applying the suggested test in *Air Transport Ass'n*, it is clear to us that so much of the subject matter in the government's complaint is outside the scope of the Board's power and it seeks a remedy which the Board may not give, that Pan American's argument and motion, if it is a motion addressed to the primary jurisdiction of the Board, must be and is denied.

As a practical matter this case is here because the Civil Aeronautics Board found itself powerless to act and requested the Attorney General on two occasions to institute this suit.

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23 See note 22 *supra*.

Claim of *Per Se* Violation by Grace

The government contends that the Sherman Act makes unlawful the mere ownership or control by a steamship company of an airline operating a parallel route.

Leaving aside for later discussion the factual questions whether or no Grace competes with Panagra and whether Grace has in any respect exercised any restraint on Panagra, it is undisputed that Grace owns the Grace Line and that it carries the bulk of passengers who travel by sea between the Atlantic coast of the United States and the west coast of South America.

The government stakes its claim of *per se* violation on a series of railroad cases relating to mergers of competitive transportation companies and a district court case in Hawaii. The railroad cases the government relies on are *Northern Securities Co.* v. *United States*, 193 U. S. 197; *United States* v. *Union Pacific R.R. Company*, 226 U. S. 61, and *United States* v. *Southern Pacific Company*, 259 U. S. 214. We hold that these cases are inapposite. In *Northern Securities Co.* the problem related to the acquisition by banking interests through a holding company of the controlling interest in Northern Pacific Railroad and the Great Northern Railroad, which systems operated parallel lines through the northwest. Actually the roads served different geographical areas although they had common termini and the actual competition between the two was small. The Supreme Court in striking down the arrangement held that (p. 327), "[t]he mere existence of such a combination and the power acquired by the holding company as its trustee, constitute a menace to, and a restraint upon that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected." In *Union Pacific* the Supreme Court again held that the consolidation of two great competing railroads by a transfer to one of a dominating stock interest

in the other created a combination which restrained interstate commerce. In the *Southern Pacific* case, the court again condemned as a menace to freedom of commerce the combination, and resulting unified control, of established and naturally competitive rail systems, springing from the formation of holding companies rather than as a result of normal and natural growth (p. 230).

None of these cases presents a situation comparable to Grace's interest in Panagra in 1929 but rather, involve combinations of railroad giants of many years existence where the obvious purpose was to eliminate competition. It is apparent that the principle upon which these cases were decided applied to combinations of existing companies which were in substantial competition with one another prior to their combination. Cf. *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 531; Handler, Industrial Mergers and the Antitrust Laws, 32 Columbia Law Review 179, 212; Friedmann, Antitrust Law and Joint International Business Ventures in Economically Underdeveloped Countries, 60 Columbia Law Review 780.

In 1929 Grace's 50% ownership in the joint enterprise to establish a system of transportation which did not theretofore exist and which participation appears to have been of considerable importance in the decision of the Postmaster General in awarding Panagra the mail contract for the west coast of South America is, to our mind, not a *per se* violation of the antitrust laws. Except for the district court decision in Hawaii discussed hereafter there never before has been such a holding and the history of Grace's 50% participation in Panagra has not demonstrated any result thereof that must form the basis of a *per se* doctrine, i.e., that Grace's half ownership in Panagra from its very nature must result in restraints injurious to the public. Grace's stock ownership in Panagra cannot be said to have such a "pernicious effect on competition and lack of any redeeming virtue" as to conclusively presume that ownership to be an unreasonable restraint on trade and commerce.

Northern Pacific Railway Co. v. *United States*, 356 U. S. 1, 5.

The government originally relied on *Hawaiian Airlines, Limited* v. *Trans-Pacific Airlines, Ltd.*, an unreported case (Civil 817, D. Hawaii, 1949), as an authoritative decision on the "precise issue." We surmise that the government no longer places such reliance on this case. Actually it was an oral decision of two sentences by Judge Metzger on a motion for summary judgment. In that case the Inter-Island Steamship Navigation Co., Ltd., had been operating a steamship service in the Hawaiian Islands from 1883. In 1927 Hawaii passed a statute designed to encourage the organization of an air carrier within the territory by creating certain tax exemptions. In 1929 Inter-Island organized the Hawaiian Airlines. Having failed to interest the public in a subscription of the air carrier's stock, Inter-Island took up the majority of the shares and from 1929 through the early 1950's both the ship and air operations were carried on by it. During the same period its steamship operations were curtailed considerably. In 1947 Trans-Pacific Airlines, which also operated in the area, filed a triple damage counterclaim under the Sherman Act against Hawaiian and Inter-Island, alleging the mere ownership of the airline by the steamship company violated that law. At the conclusion of the arguments on a motion for summary judgment the court rendered the following decision from the bench: "It is my firm opinion that the creation of Hawaiian by Inter-Island to operate over routes that were parallel to its own operation at a time when it is said that there was no air carrier competing in any way with Inter-Island that that was a violation of the antitrust laws of the United States. I am convinced that that is so by the weight of the interpretations put on the act and the motion for summary judgment * * * by the Trans-Pacific Airlines is granted in conformity with this conviction."

Grace has called our attention to the fact that further proceedings in that suit resulted in a revocation of Judge

Metzger's order and the entry of a contrary ruling. The government has in effect conceded this.

At the subsequent trial the court (Driver, *J.*) instructed the jury: "You are instructed that it was not per se in and of itself an unreasonable restraint of trade or commerce for Inter-Island, a surface carrier, to organize and assume control of Hawaiian, an air carrier operating over parallel routes." The jury returned a verdict for Hawaiian and Inter-Island and the court entered judgment dismissing Trans-Pacific's counterclaim.

There is, however, another case in the District of Hawaii in which, the government agrees, the "precise issue" was raised but a contrary conclusion arrived at, i.e., contrary to Judge Metzger's. This is *United States* v. *Inter-Island Steam Nav. Co.*, 87 F. Supp. 1010 (D. Hawaii, 1950). In that case Judge McLaughlin stated the issue as follows: "Is there a violation of the Sherman Anti-Trust Act in the mere organization and control of a subsidiary air common carrier by a water common carrier for the purpose of having the former transport passengers over routes substantially paralleling the latter's routes and serving areas substantially similar to those served by the latter?" (p. 1014).

In coming to a conclusion diametrically opposed to that of Judge Metzger, Judge McLaughlin held: "There is nothing in the statute to prevent a corporation from entering a virgin field, and, through a subsidiary or otherwise, engaging in a pioneer enterprise. That was precisely what was done in 1929 by Inter-Island in the instant case. The antitrust laws were enacted to promote and not to retard the economic growth of the nation. In a word, the Sherman Act is not an instrument of stagnation. The Supreme Court repeatedly has given a clean bill of health to 'an expansion to meet legitimate business needs'." (pp. 1016-1017).

The government's *per se* argument seeks to succor support from the various Congressional Acts relating to the

control of interstate commerce, and more particularly, §408(b) of the Civil Aeronautics Act, 49 U. S. C. 488(b), and from a number of administrative decisions under those acts.

But we are here concerned with the question of Sherman Act *per se* illegality and it seems to us that statutes relating to the jurisdiction of administrative agencies to approve or disapprove, *inter alia*, acquisitions of control by surface carriers of air carriers, *provided* such acquisitions do not restrain competition, are irrelevant. Especially is this so, we feel, where the particular acquisition with which we are concerned was at no time subject to the provisions of those statutes. *Railroad Control of Northeast Airlines, Inc., supra; National Air Freight Forwarding Corp.* v. *C.A.B., supra.* We hold, therefore, that it was not, and is not, *per se* violative of the Sherman Act for Grace to acquire and now own 50% of Panagra's stock.

Grace Line's Competition With Panagra

The government has submitted evidence in support of its charges that there is active passenger competition between Panagra and Grace Line as between the continental United States and the west coast of South America. It also called witnesses and introduced some statistics to prove that at the present time there is an area of competition between them, and ships and airplanes generally with respect to cargo, and that within the near future this competition will greatly increase.

Speaking broadly, steamship transportation and air transportation are in some measure competitive, though the government frankly admits that services rendered by airplanes and ships are distinct and that each has its own inherent advantages. But that they are competitive in some sense does not resolve the problem. We think everyone will concede that a passenger by sea from New York to

any port on the west coast of South America has bought and hopes to enjoy a commodity or service substantially different from an air journey to the same place. In the first place the time element is so vastly different, e.g., from New York to Santiago by air takes today about 12 hours—by steamer 20 to 21 days. Steamer is also more expensive. The Panagra fare from New York to Lima, for example, depending on tourist or first class, ranges from $308.80 to $390.80; by steamer $515 to $1510 in the winter season, and $435 to $1220 in the summer season. Query: Are these interchangeable commodities? Does a substantial portion of the travelling public substitute one for the other with variations of rate and service? *Times-Picayune Publishing Co.* v. *United States, supra; United States* v. *E. I. du Pont de Nemours & Co.*, 351 U. S. 377. Is the passenger who is willing to spend six weeks on a steamer the same as a person who wants to fly somewhere and back in a hurry? Is the person who desires to transact business in a far away South American city and return a potential steamship passenger to and from the same city?

We are not persuaded that the proof in this case shows that the market is the same. This does not mean that we disagree with the Court of Appeals for the District of Columbia Circuit in *Lehman* v. *Civil Aeronautics Board*, 209 F. 2d 289, which rejected the argument advanced by Lehman and Pan American that there was no competition between Pan American and United Fruit Line in the limited area of passenger tourist traffic going to the Caribbean area from the Gulf Ports of the United States. In that case the C.A.B. examiner had found that although the companies did not compete for tourist passenger traffic between all points of the Caribbean, both United Fruit and Pan American would be competing for tourist travel between the United States points and the same vacation travel area. Both the C.A.B. and the Court of Appeals adopted that finding as being logical and reasonable. In the instant case the market was not so narrowly defined nor was there proof of actual competition, aside from bare statistics.

But assuming that the market is the same, let us examine the statistical evidence submitted by the government on the issue of the existence of substantial passenger and cargo traffic competition.

Not only does W. R. Grace and Company, the defendant, own the Grace Line, it has many interests, commercial, banking and manufacturing. The operating revenues of Grace Line for the year 1958 were less than one-fifth of its total sales and operating revenues. The only route of Grace Line that can be said to be in competition with Panagra is its Trade Route 2 between the Atlantic coast of the United States and the west coast of South America. It operates three other routes.

Trade Route 2, called Line A, provides regular liner service between substantially the same areas served by Panagra although it is not co-extensive, each serving areas not covered by the other. Line A accounts for one-fifth of Grace Line's total passenger revenues and for less than one-half of its freight revenues. One of the most important points of difference is that Buenos Aires is a city not served by Grace Line and is the most important city in South America served by Panagra. But we will assume this difference in geography would not be sufficient for a finding that they are not serving identical markets. They cater primarily to two different interests—Panagra sells passenger transportation predominantly whereas Grace Line's principal service is the carriage of freight. Between the years 1950 and 1958, Panagra carried less than four-tenths of 1% of the tonnage of cargo carried by Grace on its Line A.

Between the years 1950 and 1958 the ratio of passengers carried by Panagra and Grace was about 25 to 1 in favor of Panagra, e.g., in 1958 Panagra carried 128,776 passengers while Grace's Line A carried 4,347. During that same period Panagra's increase of passengers carried was 25% while Grace's volume remained substantially constant.

Even adopting the statistics of the government as showing substantial passenger competition between Grace Line and Panagra, there is no proof nor could we find that the passengers thus carried by ship were potential air passengers or that they were passengers whose needs or desires could only be met by sea transportation.[24] Air transportation is quick, efficient and functional transportation for passengers over long distances. Steamship companies cater to those who have the leisure and inclination for a sea voyage. They are not, under the proof submitted, two forms of transportation "reasonably interchangeable" and do not make up a single market.

We hold, too, that the same reasoning applies with respect to cargo traffic. The airlines cater to traffic that demands high speed transportation of either relatively small lightweight shipments or heavier shipments where the cost of transportation is not a factor or an important factor. Steamships on the other hand meet the need for low cost transportation of all kinds of commodities, particularly those which are heavy or bulky.

It is true that the government has submitted evidence tending to show that the air cargo field, particularly as it relates to heavy cargo, is on the upswing and that possibly in the future it will present an effective reasonably interchangeable service with sea cargo carriage.

We were furnished no statistics of any substantial value to show a relevant market. A few instances were shown where Panagra carried cargo between the same points as Grace Line did. However, there was no evidence of the rates or other factors. The sum total of the evidence shows that as between the two the volume of cargo carried by Panagra as compared to Grace was minuscule. The most the government experts and the witnesses connected with transportation by air who testified on its behalf showed

24 Cf. *Latin American Air Service* case, *supra* at 867.

was that indications are that there is developing *some cargo* competition between Grace and Panagra, and between shipping companies and airplane companies, i.e., in some situations it may be competitive. What was clear is that all-cargo air transportation is in an experimental stage and most of the operations are marginal at best.

But the government does not prove violations of the antitrust law by showing that Grace Line competes with Panagra, assuming that it does. It must show that Grace has restrained or monopolized trade or commerce, or attempted to do so. This the government has not done. When Grace entered the virgin field of air transportation in 1929, through Panagra, it was the dominant surface carrier to the west coast of South America. Its entry at that time was not illegal. Through defendants' efforts and with the help of this government Panagra became and remains the dominant air carrier in that area, not through unlawful efforts of Grace or Panagra. If anything has been established it is that Grace has been the only one of Panagra's two partners that has persistently and continuously attempted to improve its service and extend its routes to the United States. Not only has it not prevented the development of Panagra but absent its continuous objections to Pan American's restraints this case would not be here.

Panagra

The case against Panagra may be divided into three categories, (1) the alleged unlawful acquisition of stock in competing airlines and consequent restraint; (2) by reason of its dominant power in air transportation it allegedly has impeded development of competition between it and Braniff, and engaged in restrictive practices to restrain and impede Braniff from utilizing airports, terminals and other facilities in South America, and (3) price fixing.

Much of the proof in support of these charges relates to matters long since resolved or matters within the special competence of the Civil Aeronautics Board. §§408, 411, 412, C.A.A. (49 U. S. C. 408, 491, 492).

The acquisitions complained of relate to Panagra's interest in LAB and Faucett, previously discussed. Today Panagra owns 21.5% of LAB stock and about 19% of Faucett. As pointed out above, Panagra acquired its stock interest in LAB at the specific request of this government and in aid of its de-Germanization program in South America in the early years of World War II. We have heretofore held in effect that such acquisitions involved no Sherman Act violations and in the subsequent years its minority interests have not been shown to be of any significance antitrustwise.

As to LAB, Panagra admits that its motives were not completely patriotic and concedes that it hoped there would be some economic benefits earned from its affiliation. After the war when its management contract with LAB expired, its influence and control decreased accordingly. It has only two nominees on a board of directors of six and LAB is in active competition with it on two route sectors in Bolivia.

With regard to Faucett, it and Panagra are in competition on the Lima/Talara sector of Panagra's international route. Panagra received its stock in Faucett when it sold Aerovias Peruanas which had been formed to help Panagra obtain cabotage rights in Peru. All of this has been well known to the C.A.B. Those provisions in its original agreement with Faucett that might be considered to be in violation of the antitrust laws were removed after the C.A.B. disapproved of the agreement in 1949. The amended agreement, which includes a provision for the Panagra stock interest and its two of the nine directors, was specifically approved by the C.A.B. in 1950.

Also with respect to Faucett, it was the government's claim that Panagra, relying on its agreement with Faucett, prevented that carrier from entering into an interline agreement with Braniff. We are not persuaded. The most that the proof showed was that when Braniff attempted to make such an agreement with Faucett, Faucett refused. No evidence was offered to show that the refusal was at the direction or with the approval of Panagra. On the contrary, it was shown that Panagra was never consulted by Faucett on that question at all.

The government did prove, and proved conclusively, that in the late 1940's Panagra carried on a bitter and consuming price war with PIA, an alleged Peruvian air carrier. After unsuccessfully opposing PIA's certification as a foreign flag carrier it soon found that PIA was making serious inroads on Panagra's traffic by accepting payment for tickets to the United States in local Peruvian currency.

Panagra took up the challenge and it, too, accepted local currency. It lost money, but so did PIA. As Panagra so well states, "fare cutting is a chronic disease in the air carrier industry, and it is a very serious disease; PIA died of it.". It expired in 1949.

The government also proved, without alleging so in its complaint, that prior to 1951 Panagra and Pan American participated in many price fixing arrangements. Exactly what the terms of these arrangements were is not shown but, reading between the lines, we are convinced that it was a common practice. However, in 1946, International Air Transport Association (IATA), formed for the purpose of setting rates for all its members in international air transportation, was approved by the C.A.B. and became effective as to United States-South America carriers in 1951. Panagra is a member—so is Pan American. The rates agreed upon at IATA conferences are approved by the C.A.B. pursuant to §412 of the C.A.A. (49 U. S. C. 492)

and such agreements, pursuant to §414 of the C.A.A. (49 U. S. C. 494), are thus clothed with antitrust immunity. No proof was offered by the government relating to any such agreements after 1951, except that it did show that prior to conferences Pan American and Panagra would discuss prices and rates in violation of the rules of IATA. But since Pan American is Panagra's agent for such purposes with C.A.B. approval how else could it act?

The remaining charges relate to Panagra's opposition to Braniff and its stubborn resistance to lending a helping hand to a new competitor, Braniff; also to the petty and amusing instances of retaliation and business skullduggery. The government evidence seems to picture Braniff, an experienced carrier, as an innocent tyro in the air transportation business, being buffeted and barked at by Panagra. The government showed that even though Panagra was helpful and courteous to Braniff in its initial survey flights after it was certificated, it became pigheaded and uncharitable when it insisted upon being paid for the use of its facilities and supplies and services. We get the impression that Braniff wanted everything for nothing, including routes not certificated. The action of Panagra in trying to keep some of Braniff's employees out of the Rotarians and warning their employees not to fraternize with Braniff's employees, and bribing a South American petty official to turn over manifests in order to learn what passengers Braniff was carrying, are all colorful incidents but hardly add up to antitrust violations.

Not much more need be said other than to add that despite all of Panagra's restraints and restrictive practices against Braniff, Braniff continues to get its fair share of the South American traffic. Although Panagra has been in the market for 30 years and Braniff a little over 10 years it does more than half as much business as Panagra.

In short, all of the charges against Panagra relate to matters in the distant past or are minor incidents in a

highly competitive field. They are matters of doubtful antitrust significance and without present day consequences.

Instead of showing any Sherman Act restraints or monopolization by Panagra the proof convinces us that the competition is real and active and expensive to the American taxpayer and as the foreign competition increases it will become more expensive.

Defense of Laches

Finally, Grace and Pan American have interposed the affirmative defense of laches. In view of our disposition of the case against Grace we need only discuss this defense as it applies to Pan American, and as to it, the defense is untenable.

In the course of our opinion it was made to appear, we believe, that governmental efforts to alleviate the adverse effects of Pan American's restraints upon Panagra began as early as 1941 and continued thereafter even subsequent to the institution of this suit. Any delay in bringing this action was due to concerted efforts designed to work out a compromise and to thereby avoid suit if possible in the interests of all concerned including Pan American. It can hardly be said to be inexcusable delay and certainly no prejudice to it has been shown by Pan American as a result thereof.

Decree

In accordance with all of the foregoing, it is hereby ordered and decreed that the complaint, insofar as it relates to W. R. Grace and Company and Pan American-Grace Airways, Inc., be and is dismissed; and that the government is entitled to a decree in its favor as against Pan American World Airways, Inc. In order to fashion such final decree it is ordered that Pan American show

cause on the 24th day of March, 1961, why such decree should not contain a provision directing it to divest itself of its stock in Panagra.

This opinion is filed in lieu of findings of fact and conclusions of law pursuant to Rule 52(a), F. R. Civ. P.

THOMAS F. MURPHY
U. S. D. J.

Dated New York, N. Y., March 8th, 1961.

2. Final judgment by the Honorable Thomas F. Murphy, *U.S.D.J.* in the court below.

U.S. DISTRICT COURT
FILED
MAY 8, 1961
S.D. of N.Y.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

Final Judgment

This case having come on for trial and the Court having filed its Opinion and Findings of Fact and Conclusions of Law on March 8, 1961, now therefore in accordance with the Opinion and Findings of Fact and Conclusions of Law,

IT IS ORDERED; ADJUDGED AND DECREED

1. This action is hereby dismissed with respect to defendants W. R. Grace and Company and Pan American-Grace Airways, Inc.

2. Defendant Pan American World Airways, Inc. shall divest itself of ownership of its stock in Pan American-Grace Airways, Inc. at such time and pursuant to such plan of divestment as the Civil Aeronautics Board shall, subject to the approval of this Court, direct pursuant to the standard prescribed by Section 102 of the Federal Aviation Act.

3. Pending such time as Pan American World Airways, Inc. divests itself of its stock in Pan American-Grace Airways, Inc. pursuant to paragraph 2 of this judgment, it is enjoined from taking any action, direct or indirect, which would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. to alter, amend, modify or extend its routes.

Dated: New York, N. Y.
May 8th, 1961

THOMAS F. MURPHY
United States District Judge

Judgment entered May 8, 1961

HERBERT A. CHARLSON
Clerk

UNITED STATES DEPARTMENT OF JUSTICE

April 20, 1961

Hon. Thomas F. Murphy
United States District Court
Southern District of New York
Foley Square
New York, New York

Re: United States v. Pan American World Airways, Inc., et al., Civil Action No. 90-254

My dear Judge Murphy:

We feel that it is not inappropriate for the Government to submit a proposed judgment for your consideration at the hearing in this case on April 24. Accordingly, we are enclosing a draft of a judgment which we feel carries out your holdings in the Opinion filed March 8 in every respect. We have discussed this proposed judgment with the CAB and are authorized to state that it meets the requirements of the Board in its present concern with the working out of flight patterns in the South American trade.

Sincerely yours,

Lee Loevinger
Assistant Attorney General
Antitrust Division

3. Sections 1, 2 and 3 of the Sherman Act, 15 U. S. C. §§1, 2 and 3.

Section 1. Trusts, etc., in restraint of trade illegal; . . . penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: . . . Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 2. Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 3. Trusts in Territories or District of Columbia illegal; combination a misdemeanor

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

4. Sections 102d, 411 and 801 of the Federal Aviation Act, 49 U. S. C. §§1302d, 1381 and 1461.

Section 102d. Consideration of matters in public interest by Board

In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

* * * * *

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense.

Section 411. Methods of competition

The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

Section 801. The President of the United States

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

5. Section 414 of the Civil Aeronautics Act, 52 Stat. 1004.

Section 414. Legal Restraints

Any person affected by any order made under sections 408, 409, or 412 of this Act shall be, and is hereby, relieved from the operations of the "antitrust laws," as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

JURISDICTIONAL STATEMENT

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. ——

UNITED STATES OF AMERICA, APPELLANT

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., AND PAN AMERICAN-GRACE AIRWAYS, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court is reported at 193 F. Supp. 18. The opinion is reprinted in the appendix to the jurisdictional statement in No. 257, this Term, in which appellee Pan American World Airways, Inc., has appealed from another portion of the judgment in this case. Because of the length of the opinion, we are not reprinting it here; we shall refer to the appendix in No. 257 as "App."

JURISDICTION

The judgment of the district court was entered on May 8, 1961 (*infra*, p. 29), and the notice of appeal

was filed by the United States on July 7, 1961. The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C 29. *United States* v. *Columbia Steel Co.*, 334 U.S. 495; *United States* v. *Crescent Amusement Co.*, 323 U.S. 173.

QUESTIONS PRESENTED

1. Whether appellees unlawfully divided markets in air transportation, in violation of Sections 1 and 3 of the Sherman Act.

2. Whether, in the circumstances of this case, the ownership by appellee Grace of 50 percent of the stock of appellee Panagra, an air carrier which serves the same geographic area that Grace's steamship subsidiary serves, constitutes a combination in unreasonable restraint of trade.[1]

STATUTE INVOLVED

Sections 1 and 3 of the Sherman Act, 26 Stat. 209 as amended, 15 U.S.C. 1, 3, provide in pertinent part:

> SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy declared * * * to be illegal shall be deemed guilty of a misdemeanor, * * *.

[1] We are not pressing the issue, raised in our notice of appeal, whether Grace attempted to monopolize, conspired to monopolize, or monopolized, Latin American air transportation services.

SECTION 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, * * *.

STATEMENT

The government's complaint in this civil antitrust case, filed on January 11, 1954, charged that since 1928 appellees Pan American World Airways, Inc. ("Pan American"), W. R. Grace and Company ("Grace"), and their jointly-owned subsidiary, Pan American-Grace Airways, Inc. ("Panagra"), had engaged in a combination and conspiracy, and had been parties to contracts, to restrain and monopolize air transportation between the United States and South America, and had attempted to monopolize and had monopolized such transportation, in violation of Sections 1, 2, and 3 of the Sherman Act. The complaint alleged, among other things, that Pan American and Grace, when they organized Panagra, agreed that its operations would be confined to the west coast of South America and that Pan American would operate to the east coast of South America and between the United States and the Canal Zone; that, pursuant to

such an agreement, Panagra has refrained from seeking or obtaining operating rights on the east coast of South America; that Pan American used its 50 percent control of Panagra to prevent the latter from securing authority from the Civil Aeronautics Board to extend its route from the Canal Zone to the United States; and that Pan American and Grace had exercised their joint control of Panagra to "block and prevent" any action by Panagra that either of them viewed as "contrary or detrimental to its own particular interests."

After trial, the district court held that Pan American had monopolized and attempted to monopolize such transportation, but that the government had failed to prove its other charges. The court ordered Pan American to divest itself of its stock interest in Panagra,[2] and dismissed the complaint as to the other two defendants.

The underlying facts, as found by the district court and as supplemented by undisputed evidence, are as follows:

1. *Description of the Companies.* Pan American and Grace each owns 50 percent of the stock of Panagra. Panagra has been certificated by the Civil Aeronautics Board as an air carrier to engage in transportation betwen the Canal Zone and the west coast of South America to Santiago, Chile, and across the Andes to Buenos Aires and Montevideo. Panagra provides a through service to and from the United States by equipment interchanges with Pan Ameri-

[2] Pan American has appealed from that part of the judgment. No. 257, this Term, pending on jurisdictional statement.

can between the Canal Zone and Miami, and National Air Lines, between Miami and New York. In recent years, Panagra has carried from 79 percent to 86 percent of the airline passengers on United States flag carriers between this country and western South America, and from 50 percent to 75 percent of such passengers transported by all air carriers (including foreign carriers) (App. 4a, 37a, 50a).

Pan American, the largest United States international air carrier, carries passengers, freight and mail between the eastern United States and the Canal Zone and between the Canal Zone and the east coast of South America. The southern terminal of its route is Buenos Aires (App. 3a, 37a). Pan American and Panagra together presently carry from 75 percent to 88 percent of airline passengers on United States flag carriers between this country and South America, and about 50 percent of such airline passengers transported by all carriers. The other 50 percent of this traffic is divided among more than ten other airlines. Prior to 1948, when Braniff commenced certificated operations between Texas, the Canal Zone, and South America (see n. 7, pp. 10–11, *infra*), Pan American was the only United States air carrier operating between this country and the Canal Zone (App. 36a–38a, 40a, 43a).

Grace is engaged in various industrial and other enterprises in western South America. It wholly owns Grace Line, Inc., which operates a steamship service between that area and the United States. Grace Line is the only United States flag water-carrier providing regularly scheduled service between the

east coast of the United States and the west coast of South America.[3] In this service, Grace carries from 81 percent to 94 percent of all passenger traffic, about 60 percent of all northbound freight and about 50 percent of all southbound freight (App. 3a–4a; Exhs. GS–68–72, GS–87–96).

2. *The Organization of Panagra.* At the time Panagra was organized in 1929, Pan American was seeking to develop an air transportation service throughout South America. Its proposed service to eastern South America was based upon its contracts with the Post Office to carry air mail. Under these contracts, a subsidy was provided for service from Florida to Cuba, Puerto Rico, the Canal Zone and Trinidad. The Postmaster General had an option to extend such subsidized services along the northeast coast of South America to Dutch Guiana (App. 8a–10a).[4] Pan American was also negotiating for operating rights in the western South American countries (App. 11a–12a).

At the same time, Grace was investigating the possibilities of an airline on the west coast of South America. Grace believed that in a decade air service would become "a real competitor of our steamers," and that its early entry into the air transportation field

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[3] Such scheduled service is commonly described as "liner service" or "regular carriage," as distinguished from "irregular" or "tramp" service.

[4] Under the Foreign Mail Act of 1928, 45 Stat. 248, 1449, the Postmaster General awarded ten-year contracts for air mail service, with payment being made on the basis of mileage flown (not the amount of mail carried) (App. 9a).

would put it in a position "to meet any flying competition" (App. 12a; Exh. G-333).

In September 1928, Pan American and Grace agreed to "associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile". The plan was to form a corporation in which the two companies would subscribe in equal shares. Pan American was to "have charge of the operation of the service from the Canal to Valparaiso and [Grace's] houses on the West Coast of South America [were to] be the agents of the company on a reasonable compensation basis" (App. 13a–15a).

Panagra was organized by Pan American and Grace in January 1929. In March 1929, the Postmaster General awarded the new company a contract for air mail service from the Canal Zone down the west coast of South America to Santiago, Chile, which became Panagra's western terminus. In August 1929, Panagra's route was extended by the Postmaster General to Buenos Aires and Montevideo (App. 15a–17a). In September 1930, the Postmaster General awarded Pan American a route from Dutch Guiana to Santos, Brazil, with an option to extend to Buenos Aires. Pan America's service to Buenos Aires was commenced in 1931 (App. 21a).

Shortly after the organization of Panagra, it became evident that there would be a "bitter family quarrel" (App. 2a) between Pan American and Grace because "both interests [were] determined to have

a part in the management" of Panagra (Exh. G–43). During the early years, the disputes primarily concerned the pace and scope of development of the service within South America. Grace sought to exercise control through its South American offices, with the result that officials of Panagra and Pan American charged Grace with providing insufficient support for the new air service and with favoring its own steamship lines.[5] Beginning in the late 1930's, with the expansion of air travel, Grace sought to take over the active management of Panagra. Thereafter, the dispute focused largely on attempts by Grace to extend Panagra's operations north of the Canal Zone to the United States, a route on which Panagra would be in competition with Pan American. These attempts are described in Civil Aeronautics Board decisions.[6]

3. *Division of Territories in South America.* As the district court found, "There is no doubt that defendants came to agree upon a division of territories" (App. 31a) between Pan American and Panagra, under which Pan American would serve the north and east coasts of South America and Panagra would serve the west coast, and the trans-Andean route between Santiago and Buenos Aires. The complaint alleged, and Pan American asserted below, that such

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[5] *E.g.*, Exs. G–45, G–60, G–336, G–344, G–346, G–347, G–363–366, G–375–379, G–381, G–382, G–404, G–416, G–422, G–428, G–430, G–434, G–436–438, G–440, G–442–444, G–453, G–455, G–456, G–458, G–461–464, G–466, G–468, G–477, G–478, G–481, G–484, G–487, G–489.

[6] *Panagra Terminal Investigation*, 4 C.A.B. 670; *Additional Service to Latin America*, 6 C.A.B. 857, 912–916; *Pan American-Panagra Agreement*, 8 C.A.B. 50; *New York-Balboa Through Service Proceeding, Reopened*, 18 C.A.B. 501, 504–506.

an agreement was made at the time Panagra was formed and that it covered not only South American traffic, but also traffic between the United States and the Canal Zone, from which Panagra was to be excluded. Grace contended, on the other hand, that the territorial division was made only after Panagra had been formed, and that it was limited to South America (App. 6a, 31a–32a).

Both Pan American and Grace repeatedly recognized, and endeavored to enforce, the agreement for division of territories. In 1930, Pan American ordered a subsidiary to cease flights from Buenos Aires to Santiago on the ground that the "agreement" prohibited its operation on that route and "likewise restricts" Panagra from operating east of the Andes except on that route (App. 32a; Exh. G–67). In disputes about service in Colombia, Grace insisted in 1931 (and again in 1937) that Pan American stay out of the western part of the country, "definitely in Panagra's territory under our agreement" (App. 33a; Exhs. G–94, G–118, G–120), while Pan American, in 1946, relied upon the agreement to object to any service by Panagra to Bogota (Exh. G–148). Similarly, in 1929 and 1935, discussions between Pan American and Grace about proposed service by Pan American and Panagra to Bolivia were framed in terms of the territorial agreement (App. 33a; Exhs. G–65, G–97).

4. *Panagra's Flights to the United States.* Beginning in 1938, Grace attempted to extend Panagra's service to the United States. Pan American rejected Grace's proposal that Panagra seek to institute such

service. In 1939, Pan American and Grace reached an agreement under which Grace took over the management of Panagra, and Pan American promised to provide an adequate connecting service between Miami and the Canal Zone. Thereafter, to meet the possible threat of competition by another United States air carrier, Grace again pressed for Panagra to apply to extend its route to the United States. Pan American's representatives on the Panagra Board of Directors repeatedly blocked all attempts by Grace to have Panagra file an application for such authority with the Civil Aeronautics Board. Grace then commenced proceedings before the Board on behalf of Panagra to obtain such authority. In 1946, during the pendency of litigation which resulted from that attempt,[7] Pan American and Grace reached a settlement which the Board approved.[7] The settlement included

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[7] Grace filed with the Board a petition to extend Panagra's routes to the United States, and a complaint to require Pan American to terminate certain allegedly illegal conduct. It also intervened in a pending Board certification proceeding in which other carriers were seeking authority to operate between New Orleans and the Canal Zone. After an investigation, the Board concluded that it had no authority to extend Panagra's routes unless Panagra itself applied therefor, and dismissed the proceeding. *Panagra Terminal Investigation*, 4 C.A.B. 670. The Court of Appeals for the Second Circuit reversed, holding that, if Pan American's objection to Panagra's applying for a route extension was due to "illegality and fraud," the Board could entertain the application filed by Grace. *W. R. Grace & Co. v. Civil Aeronautics Board*, 154 F. 2d 271, 281–282. After this Court had granted certiorari to review that decision (328 U.S. 832), Grace and Pan American entered into the 1946 settlement described in the text. The writs were then dismissed as moot. 332 U.S. 827.

In the interim, in May 1946, the Board had certificated Braniff Airways to fly from Texas to the Canal Zone and

a Through Flight Agreement between Pan American and Panagra, under which the latter could fly directly to Miami, under the Pan American certificate. After further prolonged controversy between the parties, the Board in 1955 approved an interchange agreement among Panagra, Pan American and National Air Lines, under which Panagra has been able to provide through service on its planes to New York City[9] (App. 46a–51a).

5. *The decision of the district court.* After trial, the district court found that Pan American had monopolized and attempted to monopolize commerce, in violation of Section 2 of the Sherman Act. The court rejected the government's other charges.

The court found that there was no conspiracy between Pan American and Grace to restrain or monopolize trade (App. 24a–29a). The organization of Panagra by the two companies was, the court found, an economically sound and mutually advantageous joining of complementary resources in a "pioneering venture" to develop United States commercial aviation in western South America (App. 27a–28a). In the court's view, it was the parties' respective strong "bargaining position," not a conspiracy, which resulted in the agreement for joint control and participation. The agreement was intended to assure the best chance of success and also to protect the parents'

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points in Colombia, Ecuador, Peru, Bolivia, Paraguay, Brazil and Argentina. *Additional Service to Latin America*, 6 C.A.B. 857.

[9] C.A.B. Order No. E-9481, August 10, 1955.

"independent systems from * * * competition" by giving each a veto "against the possible treachery of the other to expand the operations of the company [Panagra] in competition with their respective independent lines" (App. 25a).

The court accepted Grace's position on the agreement for the division of territories. It held that the agreement was made after Panagra had been formed and after its route was extended to Buenos Aires in November 1929; and that it covered only the routes of Pan American and Panagra in South America, and not the Canal Zone-United States traffic (App. 32a, 34a). The court held that this agreement for division of territories was valid because it was "consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938" and with the government's policy in those "formative years" of air transportation, which was to subsidize one United States airline on each route (App. 30a–31a, 34a).

The court ruled that Pan American, by blocking the extension of Panagra's operating authority to the United States and thus excluding competition by Panagra, had monopolized and attempted to monopolize air traffic between the United States and South America and between the United States and the Canal Zone (App. 34a–52a).*

As to Grace, the court held that control or 50 percent ownership of an airline by a parallel steamship

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*The court rejected Pan American's arguments that the issues in this case should be referred to the primary jurisdiction of the Civil Aeronautics Board and that antitrust immunity was provided by prior Board approval of various agreements between the parties (App. 52a–56a).

company does not *per se* violate the Sherman Act (App. 57a–61a). It further held that no restraint on competition had been shown to have resulted from the relation between Grace and Panagra. The court was "not persuaded that the * * * market is the same," i.e., that air traffic was competitive with sea traffic to the west coast of South America. The court ruled that the principal business of Panagra is the transportation of passengers, that of Grace the carriage of freight; and that it had not been shown that passengers or shippers of one of these carriers were potential customers of the other (App. 61a–65a). Finally, it ruled that, in any event, the government had to show that Grace had restrained or monopolized commerce. There was, the court believed, no such showing; on the contrary, Grace was the partner which had "fostered and fought for Panagra development and expansion" (App. 28a, 65a).

The court's judgment, entered on May 8, 1961, (1) dismissed the action with respect to Grace and Panagra; (2) directed Pan American to divest itself of its stock in Panagra pursuant to a plan of divestment to be approved by the Civil Aeronautics Board and the court; and (3) pending the divestiture, enjoined Pan American from interfering with the filing or processing of applications by Panagra to modify or extend its routes (App. 71a–72a).[10]

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[10] Thereafter, Pan American moved to suspend the injunction in paragraph 3 of the judgment, pending appeal to this Court. On June 13, 1961, the district court granted the motion unless Grace agreed to stipulate that, in the event of a reversal by this Court, its nominees would vote to withdraw any Panagra application filed with the Board during the interval. Grace filed such a stipulation on June 22, 1961.

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THE QUESTIONS ARE SUBSTANTIAL

This is a major antitrust case which significantly affects air service rendered by United States carriers between this country and South America. For many years, the development of such service has been handicapped by the fact that Panagra, the principal American flag carrier operating between the Canal Zone and western South America, was equally owned by Pan American and Grace, which are, respectively, Panagra's principal air and water competitors. The record shows that, as a result of the joint ownership and control of Panagra by Pan American and Grace and the agreement between the two latter companies which, in order to avoid competition, divided the operating areas of Pan American and Panagra, the economic development of Panagra was seriously hampered. As the district court noted (App. 2a), this suit was brought by the United States at the request of the Civil Aeronautics Board, because of the latter's inability to solve the air transportation problems created by the joint ownership and control of Panagra.

The principal relief sought was the divestment by both Pan American and Grace of their stock interests in Panagra. The district court found that Pan American had monopolized and attempted to monopolize air transportation between the United States, the Canal Zone and South America, and directed Pan American to dispose of its interest in Panagra. The court held, however, that the other co-owner of Panagra, appellee Grace, had not violated the Sher-

man Act, either through its participation in an agreement to divide the South American air transportation market, or by its 50 percent stock interest in Panagra. The effect of this ruling is to permit Grace to continue its control of Panagra—a control that permits Grace to block any action by Panagra that Grace considers to be contrary to its own economic interest. As we show below, the economic interests of Grace and Panagra have frequently clashed in the past, and are likely to do so in the future.

Grace is the dominant regular water carrier between the eastern United States and western South America, and Panagra (as a result of its through-flight agreement with Pan American and National Airlines) is the dominant air carrier between those same areas. The district court erred in holding that the agreement between Grace and Pan American for the division of territories between the latter and Panagra did not violate the Sherman Act. Moreover, contrary to the conclusion of the district court, the record establishes that there is significant competition between Grace and Panagra over these routes and that Grace has not hesitated to restrict Panagra's competitive efforts when they clashed with its own economic interests as a water carrier. In these circumstances, we believe that Grace's 50 percent ownership of Panagra itself constitutes a combination with Panagra in unreasonable restraint of trade and that this combination, like the illegal monopolization by Pan American, should be terminated by an order directing Grace to divest its stock interest in Panagra.

"Divestiture or dissolution has traditionally been the remedy for Sherman Act violations whose heart is intercorporate combination and control" (*United States* v. *du Pont & Co.*, 366 U.S. 316, 329).

1. The district court had "no doubt" that, in 1929, Pan American and Grace "agreed upon a division of territories" in South American air service, under which the west coast of South America and Santiago-Buenos Aires were allocated to Panagra, and eastern and northern South America to Pan American. There is equally no doubt that agreements to divide territories between actual or potential competitors are *per se* unreasonable restraints of trade in violation of Sections 1 and 3 of the Sherman Act. *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 5; *Addyston Pipe and Steel Co.* v. *United States*, 175 U.S. 211, affirming 85 Fed. 271 (C.A. 6). Moreover, agreements to divide markets cannot be saved from illegality by a claim that they aid rather than injure the public or that they actually are in conformity with government policy. *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 220–222; *Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U.S. 457, 467–468; *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439, 458–461. The district court erred in concluding that the 1929 agreement between Pan American and Grace to divide markets in South America was nevertheless legal because it "seems perfectly consistent with the air transportation policy of this country in those formative years" (App. 31a).

Nor can the agreement for division of markets be justified as part of a "pioneering venture" (App. 28a) by Pan American and Grace for the organization and development of Panagra. *First*, such an agreement to divide markets, illegal under the Sherman Act, cannot be justified under common law principles as merely ancillary and necessary to a joint venture. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. at 280–283; *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593; *United States* v. *Paramount Pictures*, 334 U.S. 131, 150, 153. As this Court stated in *Timken*, rejecting the contention that a world-wide division of markets was merely "ancillary" to a legal joint venture, "every agreement and combination to restrain trade" could be labeled a "joint venture" (p. 598). *Second*, the district court found that the agreement for division of territories was made more than one year after the agreement for the organization of Panagra, and about ten months after the formation of that company. Such a subsequent agreement for division of markets would not come within the common-law doctrine, which covers only ancillary restraints imposed at the time that a joint venture is undertaken. See *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. at 282–284, 288–291. *Third*, even if the agreement to divide markets was made at the time of the original agreement between Pan American and Grace for the organization of Panagra (as the complaint alleges, and as Pan American contends, Juris. St. No. 257, p. 5), rather than a year later, the division of territories would still be invalid under

common-law principles. For at common-law an ancillary restraint is valid only if it is reasonably limited both in time and extent.[11] This agreement not to compete, however, was unlimited in duration, and exceeded anything reasonably necessary for the protection of the respective interests of Pan American and Grace in connection with the formation of Panagra. *Fourth*, even assuming *arguendo* that the agreement not to compete was valid when entered into in 1928 or 1929, any reasonable period necessary to protect Pan American and Grace had long expired when, more than 30 years later, the district court decided this case. Indeed, it would seem that such an agreement ceased to be valid no later than 1938, when the Civil Aeronautics Act subjected both Pan American and Panagra to a detailed regulatory scheme under which their entry into new markets required prior government authorization. Cf. *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 12.[12]

2. As the trial court found (App. 37a), "Panagra is the dominant United States flag air line participating (almost entirely with Pan American) in the movement of passengers between the United States and points in western South America * * *. During

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[11] *Shawnee Compress Co.* v. *Anderson*, 209 U.S. 423; *Oregon Steam Navigation Co.* v. *Winsor*, 20 Wall. 64.

[12] If this Court agrees that the agreement for division of markets is unlawful, the district court on remand might conclude that, in view of the close interrelationship between that agreement and the joint ownership and control of Panagra by Pan American and Grace, effective relief against the agreement would require not only cancellation and an injunction against its performance, but also divestiture of Grace's interest in Panagra.

the 1950–1957 period, Panagra carried between 79% and 86% of this traffic and from 84% to 93% of the eastern United States, western South America traffic." The record shows that Grace, through its wholly-owned steamship subsidiary, is the only United States flag water carrier operating a scheduled service between the east coast of the United States and the west coast of South America; in this service, it carries from 81 percent to 94 percent of all passenger traffic, about 60 percent of all north-bound freight traffic and 50 percent of all south-bound freight traffic (see the Statement, *supra*, pp. 5–6). The district court found (App. 63a) that on this route Grace "provides regular liner service between substantially the same areas served by Panagra although it is not co-extensive." It held (*ibid.*), however, that Panagra and Grace "cater primarily to two different interests—Panagra sells passenger transportation predominantly whereas Grace Line's principal service is the carriage of freight"; and that the air and ship transportation, both of passengers and of cargo, provided by these two carriers are not "reasonably interchangeable and do not make up a single market" (App. 64a).

In so holding, the district court applied an erroneous standard for determining whether the corporate interlock between Grace and Panagra constitutes a combination in unreasonable restraint of trade that violates Sections 1 and 3 of the Sherman Act. The test is not whether air and sea transportation between the same areas are "reasonably interchangeable" to all travelers and shippers for all purposes. It is enough that there is a substantial area of competition be-

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
Appellant,

v.

UNITED STATES OF AMERICA,
Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT PAN AMERICAN WORLD AIRWAYS, INC.

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tween the two forms of transportation. The test is whether, in all the circumstances, the ownership and control of an air carrier by a water carrier, where both serve the same markets, does, or is likely to, unreasonably restrain the trade of one carrier in favor of the other.

In *United States* v. *Columbia Steel Co.*, 334 U.S. 495, the question was the validity, under Sections 1 and 2 of the Sherman Act, of the proposed acquisition by United States Steel of the assets of an independent steel fabricator on the west coast. The government charged that the contract for the purchase of such assets was in unreasonable restraint of trade, and that it indicated an intent by United States Steel to attempt to monopolize the market in fabricated steel products (pp. 498–499). This Court, in holding that the acquisition did not violate Section 1 of the Sherman Act, stated (p. 527) that the touchstone for determining the legality of "the acquisition of competitors in identical or similar lines of merchandise" is whether "such acquisition results in or is aimed at unreasonable restraint * * *. In determining what constitutes unreasonable restraint, we do not think the dollar volume is in itself of compelling significance; we look rather to the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market." The Court "agree[d], too, with the government's position that potential competition from producers of presently

non-competitive articles as well as the possibility that acquired facilities may be used in the future for the production of new articles in competition with others may be taken into consideration in weighing the effect of any acquisition of assets on restraint of trade" (p. 528).

A similar standard should govern the legality of the combination of an air carrier and a water carrier that serve the same areas. In both situations, the question is whether the joint ownership and control of firms serving the same market "results in or is aimed at unreasonable restraint" of actual or "potential competition" (*Columbia Steel, supra*). In determining that question, it is immaterial that in one case the restraint results from an acquisition, whereas in the other case the restraint results from existing ownership and control. For the central inquiry in both cases is the effect of the combination upon competition.

We submit that, under the standards enunciated in *Columbia Steel,* Grace's 50 percent stock interest in Panagra violates Sections 1 and 3 of the Sherman Act. For such stock interest is a combination by which Grace is able to restrain, and in the past has significantly restrained, the competition of Panagra—an air carrier serving the same market as Grace that is in actual and potential competition with it for the transportation of passengers and property between the eastern United States and western South America.

a. The record shows that in recent years Panagra has carried about 1,100 persons per month and Grace

Latin America, 6 C.A.B. 857, the Board, in denying applications by Grace and two other steamship owners for authority to operate air service between New York and Puerto Rico, stated (pp. 903-904): "It would be expecting too much to assume that a transportation company engaged in both air and sea transportation would be in a position to provide vigorous competition between its air transportation and its surface transportation on this route." The resulting "inherent conflict of investment interests," which is one of "the realities of business experience," would dampen the vigorous competitive development of the airline. In other regulatory legislation, Congress has similarly recognized the dangers to the economic health of our national transportation system if one mode of transportation is favored at the expense of a competing mode. See the National Transportation Policy of the Interstate Commerce Act, 49 U.S.C. preceding Section 1; *Interstate Commerce Commission* v. *Mechling,* 330 U.S. 567; *Schaffer Transportation Co.* v. *United States,* 355 U.S. 83.

The history of Grace's relationship with Panagra shows that Grace has not hesitated to restrict Panagra's business when it posed a competitive threat to Grace. Thus, in the 1930's Grace insisted that Panagra observe rate differentials that favored water over air transportation,[15] and told a Panagra official to "abstain from soliciting effective or potential Grace Line cargo."[16] During that period, Panagra successfully solicited shipments of gold from Ecuador

[15] Exs. G-337-339, G-342, G-343, G-373, G-482.

[16] Ex. G-382.

to the United States by offering lower rates than the water carriers. Grace eliminated this competition by reducing its own rates and ordering Panagra officials to cease offering discounts.[17] The record shows numerous other instances in which the Grace management and its employees favored Grace over Panagra where the economic interests of the two carriers conflicted.[18]

As long as Grace retains its 50 percent stock interest in Panagra—an interest which, as soon as Pan American is divested of its holdings of Panagra stock, will give Grace unquestioned control of Panagra—Grace will always be able to block Panagra from doing anything that poses a competitive threat to Grace. The air freight business is still in the developmental stage, and further substantial expansion of that business, as well as of passenger traffic, between the United States and South America may reasonably be expected. Both the current competitive situation in the air transportation business between the United States and South America, and "the probable development of the industry" (*United States* v. *Columbia Steel Co., supra,* 334 U.S. at 527), indicate that Grace's ownership of 50 percent of the stock of Panagra constitutes a combination in unreasonable restraint of trade in violation of Sections 1 and 3 of the Sherman Act.

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[17] Ex. 1121, pp. 9–12, G–354–357, G–359–361, G–363. Grace's support for expansion of Panagra developed only after it recognized (in the late 1930's) that its steamship carriage of passengers was inevitably declining in favor of the rising air service. See, *e.g.*, Ex. G–377, G–381, G–449, G–451, G–461.

[18] See exhibits cited n. 5, supra, and Exs. G–33, G–340, G–341, G–345, G–353, G–377, G–424, G–426.

CONCLUSION

The questions presented by this appeal are substantial and of public importance. Probable jurisdiction should be noted.

Respectfully submitted.

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DECEMBER 1961.

APPENDIX

FINAL JUDGMENT

This case having come on for trial and the Court having filed its Opinion and Findings of Fact and Conclusions of Law on March 8, 1961, now therefore in accordance with the Opinion and Findings of Fact and Conclusions of Law,

IT IS ORDERED, ADJUDGED AND DECREED

1. This action is hereby dismissed with respect to defendants W. R. Grace and Company and Pan American-Grace Airways, Inc.

2. Defendant Pan American World Airways, Inc. shall divest itself of ownership of its stock in Pan American-Grace Airways, Inc. at such time and pursuant to such plan of divestment as the Civil Aeronautics Board shall, subject to the approval of this Court, direct pursuant to the standard prescribed by Section 102 of the Federal Aviation Act.

3. Pending such time as Pan American World Airways, Inc. divests itself of its stock in Pan American-Grace Airways, Inc. pursuant to paragraph 2 of this judgment, it is enjoined from taking any action, direct or indirect, which would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. to alter, amend, modify or extend its routes.

Dated: New York, N.Y., May 8th, 1961.

THOMAS F. MURPHY,
United States District Judge.

Judgment entered May 8, 1961.

HERBERT A. CHARLSON,
Clerk.

U.S. GOVERNMENT PRINTING OFFICE: 1961

about 315 persons per month between those areas.[13] Correspondence in the record shows that, in 1951, passenger traffic to those areas was being actively sought by both Panagra and Grace, each of which succeeded in diverting passengers from the other (Exs. G–387–388, 391). A Pan American official testified at the trial (Tr. 516–517) that his company tries to persuade passengers traveling to South America that an air trip is more pleasant than a sea trip, and he stated that Pan American and the steamship lines are "very definitely" in competition for passengers traveling to Buenos Aires and Rio de Janeiro, since "we are both trying to get the same market."

While it is undoubtedly true, as the district court suggested (App. 62a), that businessmen on a quick trip to South America may not be potential steamship passengers, the record shows that more than one half of all air line passenger traffic between the United States and South America is non-business traffic (Tr. 591, 620). Grace and Panagra are plainly in competition for such traffic. Cf. *Lehman* v. *Civil Aeronautics Board*, 209 F. 2d 289 (C.A. D.C.), certiorari denied, 347 U.S. 916. In the cited case the court upheld an order of the Civil Aeronautics Board, under Section 409(a)(1) of the Civil Aeronautics

[13] Exs. GS–79–81. The district court stated (App. 63a) that Panagra carried 25 times as many passengers to South America as Grace did. Most of the Panagra passengers involved in that comparison, however, were to Buenos Aires and Montevideo, which are not served by Grace. On the basis of the figures given in the text, which are limited to the areas actually served by both carriers, Panagra carried only about three and a half times times as many passengers as Grace.

Act, which disapproved, as adversely affecting the public interest, an interlocking relationship between an air carrier (Pan American) and a water carrier (United Fruit Company). The court pointed out (p. 291) that the Board had found that Pan American and United Fruit "are in competition to a substantial degree"; but that such competition "does not * * * extend to the full operations of either company. It is limited to the passenger tourist traffic going into the Caribbean area from the United States." The court rejected the argument "that the difference between a leisurely sea voyage via United Fruit and a fast air trip via Pan American eliminates the element of competition." It stated (pp. 291–292):

> * * * The general area traversed, however, is largely the same; and each carrier offers its own type of service in the effort to obtain the custom. Competition exists between types of vacationing in, and in traveling to and fro, the same area, and therefore between the carriers which seek the traffic. The prospective travelers cannot be isolated into two groups, the members of each of which must be assumed to have determined the kind of transportation they will use, or the kind of vacation they will choose, without considering an available alternative.

The court further stated (p. 292) that although the tourist traffic was only a small percentage of the water carrier's total business, the amount was "consequential", and that it was not "merely incidental" to the water carrier's other operations, but was "an integral part of the whole."

The reasoning of the *Lehman* case is fully applicable to the present case. Here, as in *Lehman*, the "general area traversed * * * is largely the same; and each carrier offers its own type of service in the effort to obtain the custom." The passenger business of Grace is "consequential" and an "integral part" of its operations. Both Grace and Panagra carry a substantial volume of passenger traffic between the eastern United States and western South America, and they plainly are competitors for such traffic.

b. There is also actual and potential competition between Panagra and Grace with respect to cargo traffic. Carriage of freight and express by air has expanded rapidly in recent years, and witnesses in the air cargo business testified that there is active competition between air and water transportation for the carriage of many commodities (*e.g.*, Tr. 78–81, 108, 135). Contrary to the statement of the district court (App. 64a), air shipment is not limited to items for which the cost of transportation is relatively insignificant. Even where transportation expense is a major cost element, air transportation may still be competitive with surface transportation because it avoids multiple handling, overland transportation between interior points and seaports, expensive packaging and warehousing (Tr. 82–91, 109–113, 135–139, 180–181).[14]

[14] Some of the examples of recent transactions in this type of cargo, given by witnesses in the air cargo business, were the transportation of refrigerators and freezers from Indiana to Barbados and refrigerators and washing machines from Miami to Venezuela (Pan American, Tr. 88–89, 97); sinks and cabinets from Ohio to Guatemala (Aerovias Sud America, Tr.

It is true that the total cargo carried by Panagra between the United States and South America is only about one tenth that carried by Pan American. But the total carried by Panagra—4,461,000 ton miles of freight and express in 1957 (Ex. GS–84)—hardly deserves the "miniscule" character assigned it by the district court (App. 64a). Moreover, the record suggests that the weaker position of Panagra vis-a-vis Pan American in the South American air cargo market may well be the result of restraints to which Panagra has been subjected in the past. Pan American's cargo sales manager for the United States testified that Panagra had not made its best efforts to generate carriage of air freight (Tr. 93).

c. The adverse consequences upon the competitive development of an air line that is subject to the control of a water carrier serving the same market have been pointed out by the Civil Aeronautics Board, the expert agency charged by Congress with, among other things, insuring "[c]ompetition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense" (Section 2(d) of the Civil Aeronautics Act of 1938 and Section 102(d) of the Federal Aviation Act of 1958, 49 U.S.C. 1302(d)). In *Additional Service to*

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111); fire bricks from St. Louis to Venezuela, and Bermuda onions from Chile to New York (Riddle Airlines, Tr. 135–136, 168–169). The last shipment, 500 tons of onions a year, had previously been carried by water carriers on the Grace route (Tr. 168–169).

BRIEF FOR THE APPELLANT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
Appellant,

v.

UNITED STATES OF AMERICA,
Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT PAN AMERICAN WORLD AIRWAYS, INC.

(Filed August 31, 1962)

Opinion Below

The opinion of the United States District Court for the Southern District of New York, including findings of fact and conclusions of law, is reported at 193 F. Supp. 18 (R. 5365-5434).

Jurisdiction

This antitrust suit was brought under Sections 1, 2 and 3 of the Sherman Act, 26 Stat. 209, 15 U. S. C. Sections 1, 2, 3. Final judgment was entered by the dis-

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Board as part of the Pan American system, should become a third American carrier into South America.

The district court found that the charge of the complaint was not sustained, that there was no combination or conspiracy of any kind, that the formation of Panagra by Pan American and Grace as a joint venture and their joint ownership of Panagra and agreement that Pan American and Panagra would not parallel each other's routes were lawful, but that the exercise of Pan American's half ownership of Panagra to prevent Panagra from making an application to the CAB for a route between the United States and the Canal Zone, which would parallel Pan American's route, was an exclusion of Panagra from the market, and a unilateral violation of the antitrust laws through monopolization and attempted monopolization on the part of Pan American. The judgment of the district court dismissed the action against Grace and Panagra and decreed a divestment of Pan American alone, with the consequence that Panagra would become a third American carrier into South America.

The questions on this appeal, other than the initial question of whether the order from which the appeal is taken is "final" for the purposes of appellate jurisdiction, are:

(1) Whether, in the light of the finding of the district court that Pan American's stock ownership in Panagra was legal and the agreement that Pan American and Panagra were not to parallel each other's routes was legal, there was any antitrust violation by Pan American in its refusal to allow an application to be made for a Panagra route from the United States to the Canal.

(2) Whether the agreement not to parallel each other's routes did not include the Canal Zone-United States route as well as the routes from the United States down the east coast of South America and from the Canal down the west coast of South America.

(3) Whether it was not lawful, regardless of any agreement on the allocation of territories, for Pan American to exercise its lawful 50% interest in Panagra to prevent an expansion of the joint venture beyond its defined purpose and into a paralleling of Pan American's route which would destroy that route.

(4) Whether Pan American monopolized or attempted to monopolize air transportation between the United States and South America, a question which involves the following subsidiary questions:

(a) Did Pan American "exclude" Panagra from the market.

(b) Is Pan American "dominant" in the market and is Panagra a "competitor" of Pan American, and if so and Panagra was excluded from the market by Pan American, was such an exclusion of a single competitor monopolization, when entry into the market and the fixing of rates are controlled by the CAB.

(5) Whether the CAB did not have primary jurisdiction of the subject matter of the action so that the district court should not have entertained the action.

(6) Whether the CAB's approval of the through-flight arrangements did not confer antitrust immunity on Pan American as to the antitrust violation found by the district court.

(7) Whether, even if the decision of the district court were sustainable on the merits, the decree of divestiture is not unnecessary, unwarranted and unjustified.

Statement of the Case

The Government brought this action in 1954, charging Pan American and Grace, in their joint ownership and operation of Panagra, with a combination in restraint

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trict court on May 8, 1961. Notice of appeal was filed in the district court on May 12, 1961.

Jurisdiction is conferred upon this Court by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U. S. C. Section 29. On January 15, 1962, this Court set down this case, and its companion, No. 47, October term 1962, for argument and postponed further consideration of the question of jurisdiction to the hearing of the case on the merits. 368 U. S. 964 (R. 5449).

Statutes Involved

The statutes involved are Sections 1, 2 and 3 of the Sherman Act, and Sections 401, 408, 411, 412, 414, 415 and 801 of the Civil Aeronautics Act. The sections of the Civil Aeronautics Act have been substantially reenacted as sections of the Federal Aviation Act. These statutes are set forth in the Appendix (pp. 88-94 below).

Questions Presented

The charge of the complaint in this antitrust action brought by the Government against Pan American World Airways, Inc. (Pan American), W. R. Grace & Co. (Grace) and Pan American-Grace Airways, Inc. (Panagra) is that the formation of Panagra by Pan American and Grace as equal owners in 1928, their joint ownership of Panagra then and since and their agreement that Pan American and Panagra would not parallel each other's routes, was a combination and conspiracy in restraint of trade and monopolization and attempted monopolization of air transportation between the United States and South America.

The Pan American-Panagra route pattern, which has existed since the formation of Panagra as a joint venture to operate an airline from the Canal Zone down the west

coast of South America, has been that Pan American has operated from the United States down the east coast of South America and from the United States to the Canal Zone, where it has connected with Panagra, which has operated from the Canal Zone down the west coast of South America, to form a connecting and complementary service between the United States and west coast of South America. A controversy arose and continued for some years between Grace and Pan American over a proposal by Grace that Panagra apply to the Civil Aeronautics Board (CAB) for a route of its own between the United States and the Canal Zone, and a proposal by Pan American that through-flight arrangements be made by which a single plane of Panagra's or Pan American's might make a through-flight over both routes between the United States and South America. An evenly divided board of directors of Panagra failed to agree upon either proposal until the year 1947, when, with the approval of the CAB, a through-flight arrangement was effected in settlement of the controversy, under which Panagra planes make through-flights over the combined Pan American and Panagra routes.

The relief requested by the Government was a decree of divestiture of both Pan American and Grace from their ownership of Panagra, with the ultimate objective that Panagra, freed from the control of either Pan American or Grace, would be merged into the air transportation system of a second American air carrier into South America and would not itself become a third American carrier into South America. The CAB, which had requested the Attorney General to bring the action, had declared that it would be contrary to national policy in air transportation and a waste of public funds and private investment if Panagra, which had been considered by the

coast of South America to Pan American and of the west coast of South America to Panagra. Pan American also acknowledged that the agreement covered the route from the United States to the Canal Zone, which was Pan American's originally established route and the basis of the formation of Panagra and creation of its connecting service to operate from the Canal Zone down the west coast of South America. Grace contended, however, that the territorial division did not include the route from the United States to the Canal Zone and that there was no understanding one way or the other with respect to a possible paralleling of that route by Panagra (Opinion, R. 5395-396).

For ten years no question was raised about Panagra's undertaking to establish a service of its own from the Canal Zone to the United States. Beginning in 1938, however, Grace's nominees on the Panagra board of directors started urging the filing of an application by Panagra with the CAB for an extension of Panagra's route from the Canal Zone to the United States, seeking thereby to parallel (and we will show replace) the Pan American route between the United States and the Canal Zone (Opinion, R. 5405). Pan American took the position that Panagra had been formed to operate on the west coast of South America from the Canal Zone down in connection with the Pan American route from the United States to the Canal Zone, and its representatives on the Panagra board of directors consequently refused to sanction the making of an application by Panagra to parallel the Pan American route. There was compelling reason against the establishment of an independent route for Panagra between the United States and the Canal in the fact (continuing to be the fact) that the available traffic and traffic potential would not support parallel routes of Pan American and Panagra between the United

States and the Canal (R. 184-195). Grace continued its agitation for a paralleling route, however, and for the purpose began to complain of the connecting service supplied by Pan American at the Canal Zone. Grace also began to agitate, contrary to the agreement between the parties that Panagra's operations should be in Pan American charge (Opinion, R. 5377, n. 7), for the election of a Grace representative as president and manager of Panagra (P. Ex. G-182, R. 710). Pan American, seeking to satisfy Grace and remove any source of friction with Grace and within their joint company, agreed in 1939 that a Grace representative should become president of Panagra and be placed in charge of its management, and agreed to maintain an adequate connecting service with Panagra at the Canal Zone (which Pan American maintained it had always done) and that if such connecting service was found not to be adequate, as determined by arbitrators, Panagra would be allowed to apply to the CAB to operate on its own route to the United States (P. Ex. G-190, R. 729).

Two years later, Grace, having acquired control of the management of the joint company, resumed its agitation to have Panagra apply for a route to the United States without making complaint about the connecting service or attempting to arbitrate any question of the adequacy of the connecting service. Pan American declined to accede to the Grace request on the ground that such an application would be contrary not only to the original agreement between Pan American and Grace under which Panagra was formed, but would be contrary to the 1939 agreement under which Grace came into control of the management of Panagra and it was agreed that any application for a Panagra route to the United States should depend on the failure of Pan American to supply an adequate connecting service at the Canal Zone (P. Ex.

Canal was a unilateral suppression of Panagra competition on the part of Pan American and constituted monopolization and attempted monopolization of air transportation between the United States and the Canal and South America (Opinion, R. 5403, 5415), and therefore that Pan American alone should be divested of its stock ownership in Panagra (R. 5372, 5433-434, 5435).

The consequence is (1) a finding of non-conspiratorial, unilateral monopoly, not alleged in the complaint, and (2) a decree which defeats national policy in air transportation as declared by the CAB and renders its attainment impossible by making Panagra under Grace control a third American flag carrier in Latin America.

On this appeal Pan American contends that the decision of the district court is untenable both on the facts and the law, and that the court's holding against Pan American is inconsistent with and contrary to the basic findings of the decision, and that on the basis of the decision alone the conclusion and judgment are clearly erroneous and must be reversed. It is further Pan American's position that entertaining the action by the district court has been an unwarranted exercise of jurisdiction over a subject matter which is within the primary jurisdiction of the CAB, an error on the part of the district court which is exemplified in a decree which so infringes upon and interferes with the jurisdiction of the CAB as to disable the Board from carrying out its responsibility of developing a Latin American route pattern in accordance with declared national policy. Finally, Pan American contends that the approval by the CAB of the through-flight agreements as a settlement of the problem of Panagra's access to the United States, and the Board's finding that no monopoly resulted therefrom, accorded Pan American immunity from any antitrust charge based on its refusal to approve the filing of an application for a Panagra

route to the United States, and constituted an adjudication that Pan American's actions in this respect were not monopolization. As the district court's decision against Pan American rests entirely on its finding that Pan American's votes within Panagra on the question of Panagra's extension to the United States created a monopoly, the decision cannot stand against the contrary finding of the CAB.

SUMMARY OF ARGUMENT

I.

This Court has jurisdiction to hear the appeal. All of the criteria of "finality" stated by this Court in *Brown Shoe Co. v. United States*, 370 U. S. 294 (1962), are satisfied in this case.

II.

The basic findings by the district court of (a) legality in the formation and joint ownership of Panagra by Pan American and Grace and (b) legality in the agreement that Pan American and Grace were not to parallel each other's routes, required a dismissal of the action against Pan American. Although the district court's more detailed finding of the agreement not to parallel routes was that it applied only to Pan American's route on the east side of South America and Panagra's route on the west side of South America and did not include Pan American's route from the United States to the Canal, it is abundantly clear that the territorial division included Pan American's route north of the Canal. Regardless of the nature and scope of the agreement, however, Pan American, as a half owner in the Panagra joint venture, was entitled, when the question arose of a proposed extension of the venture beyond its defined purpose, to vote against the extension.

Panagra was formed only for the purpose of operating an airline from the Canal down the west coast of South America; the route was designed to connect with the previously established route of Pan American between the United States and the Canal, and the two routes were to provide a connecting and complementary service between the United States and the west coast of South America. When Grace made the proposal many years later that Panagra should establish its own independent route between the United States and the Canal, Pan American was fully justified in not acceding to the suggestion of an expansion and change in the character of the joint venture, one which, if adopted, would have resulted in the replacement of Pan American by Panagra on the route between the United States and the Canal and the destruction of the Pan American route, unless Pan American should similarly apply for and obtain a route from the Canal down the west coast of South America paralleling the Panagra route. Competition between Pan American and Panagra could be established only by such paralleling of routes both above and below the Canal. The available traffic would not support two parallel services and such a paralleling would have inflicted heavy losses on both Pan American and Panagra, resulting in a waste of private investment or a waste of public funds in subsidy to make up for the losses. Pan American was thus both legally and reasonably justified in refusing to approve the Grace proposal and in offering and urging a through-flight service, which was finally established in 1947, with the approval of the CAB, under which for the past fifteen years Panagra planes have flown over Pan American routes in a through service between the United States and the west coast of South America. Through service

has been a sound arrangement which has achieved all the public convenience which an independent route for Panagra could have achieved, and it has saved Panagra, Pan American and the public purse from large financial losses.

III.

There is no support for the conclusion of the district court that Pan American has monopolized and attempted to monopolize air transportation between the United States and South America or for the conclusion that Pan American's vote in the Panagra board of directors on the question of Panagra's extension to the United States was an act of monopolization.

The district court has held that Pan American was "dominant" in the market of air transportation between the United States and South America, that it "excluded" Panagra from the market and that such exclusion was a monopolization of air transportation between the United States and South America. The district court was in clear error in holding that Pan American has "excluded" Panagra from the market. On the contrary, Pan American worked out the through-flight arrangements which put Panagra planes on the combined routes of Pan American and Panagra. Pan American did not even have the power to exclude Panagra from the market. It was the assumption of the district court that Pan American had that power by reason of its half ownership of Panagra and power to preclude affirmative action by Panagra's equally divided board of directors in favor of making an application for a Panagra route to the United States. In making this assumption, the district court has disregarded the fact which destroys the assumption, that as long ago as 1946 the United States Court of Appeals for the Second

of trade and monopoly in air transportation between the United States and South America (R. 7-11). The relief requested was that both Pan American and Grace be divested of their ownership of Panagra (R. 11-12).

Pan American was organized in 1927, with the formulation of plans to establish a comprehensive system of air transportation between the United States and all parts of Latin America (Opinion, R. 5367). Service was established that year between Key West and Havana (Opinion, R. 5373-374), followed in 1928 with the establishment of service between Miami and the Canal Zone (D. Ex. P-95, R. 2514).* These routes were the basis of planned extensions of service down the east and west coasts of South America (Opinion, R. 5373-374).

Learning of Pan American's plan and being interested itself in the establishment of air service down the west coast of South America, where it operated a steamship line and conducted varied business activities, Grace entered into negotiations with Pan American looking to the formation of a jointly owned airline to bid on a mail contract and operate from the Canal Zone down the west coast of South America (P. Ex. G-2, R. 336; G-81, R.

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* Pan American exhibits P-2 through P-427, R. 1859-4268, were introduced into evidence at page 359 of the original transcript, a portion of the transcript which was omitted from the printed record. Citations hereafter made to P-2 through P-427 will omit any reference to the point at which they were introduced. Defendants' exhibits will be referred to as "D. Ex." and plaintiff's as "P. Ex." In addition, exhibits were introduced in the court below with letter prefixes to distinguish the defendants and various types of exhibits. For purposes of clarity we will continue to refer to the exhibits in the same manner here, as follows: Pan American exhibits: "P"; Pan American statistical exhibits: "PS"; government exhibits: "G"; government statistical exhibits: "GS"; and Grace exhibits: "WRG". Thus a typical Pan American exhibit will be referred to as "D. Ex. P-2, R. 1859".

531).* This line would be a connecting service with Pan American's line from Miami to the Canal Zone, and the combined lines would provide a service from the United States down the west coast of South America (P. Ex. G-13, R. 349; D. Ex. P-99, R. 2531). An agreement between the parties to this end was reached in September, 1928, and Panagra was formed, with Pan American and Grace as equal owners, to supply the service from the Canal south (P. Ex. G-15, R. 354; G-18, R. 359). Pan American was to have charge of the operation of Panagra, and the Grace houses in South America were to be the agents of the company. Service by Panagra down the west coast of South America and across the Andes to Buenos Aires was established in 1929, and the following year, as was intended, Pan American instituted service down the east coast of South America to Buenos Aires.

In connection with the formation of Panagra, Pan American and Grace reached an agreement as to a division of territories between Pan American and Panagra. The complaint alleges (R. 8-9) and it is the Government's claim that the agreement covered the respective fields of operations of the two carriers: (1) Pan American was to operate from the United States down the east coast of South America free from competition by Panagra, (2) Pan American was to operate from the United States to the Canal Zone free from Panagra competition, (3) Panagra was to operate from the Canal Zone down the west coast of South America free from competition by Pan American.

The agreement was acknowledged by both Pan American and Grace as to a territorial division of the east

*Government exhibits G-1 to G-1124, R. 335-1358, 1455-1850, and GS-1 to GS-100, R. 1359-1454 were introduced at pages 11-12 of the original transcript. Citations hereafter made to G-1 through G-1124 and GS-1 through GS-100 will omit any reference to the point at which they were introduced.

G-192, R. 733; G-206, R. 757). Pan American offered, however, to establish a through-flight service by Pan American and Panagra over the combined routes of Pan American and Panagra, but Grace rejected the offer (P. Ex. G-212, R. 767; G-214, R. 772; G-216, R. 780; D. Ex. P-217, R. 2962).

In 1941, Grace, over Pan American's objection, filed with the CAB an application nominally on behalf of Panagra to extend Panagra's route to the United States (P. Ex. G-193, R. 735). The CAB then undertook its own investigation of the matter which became known as CAB Docket 779, *The Panagra Terminal Investigation*, 4 CAB 670 (1944). The Board held that it could not treat the Grace application as a Panagra application. On appeal by Grace to the Court of Appeals for the Second Circuit, the court modified the CAB decision to the extent of holding that if Grace could establish that Pan American's refusal to allow Panagra to apply for a route to the United States was the result of "illegality and fraud" on the part of Pan American, the Grace application should be considered a Panagra application. *W. R. Grace & Co.* v. *CAB*, 154 F. 2d 271 (2d Cir. 1946). This Court granted *certiorari*, 328 U. S. 832 (1946), but the case was never brought to argument because Grace then agreed to a settlement of the dispute by accepting the through-flight proposal which Pan American had been suggesting (D. Ex. P-2, R. 1859; P. Ex. G-266, R. 889; G-267, R. 892).

The through-flight arrangement established through-service by Panagra aircraft operating with Panagra crews over Pan American's route from the Canal Zone to the United States. After an extensive hearing, in which the evidence indisputably made clear that both Grace and Pan American were accepting the arrangement as a settlement of their dispute over the question of Panagra's extension to the United States, and had agreed

that Panagra would not thereafter apply for a route to the United States unless *both* Pan American and Grace concurred (D. Ex. P-419, R. 3763; P-420, R. 3916; P-421, R. 4142), the CAB approved the arrangement, specifically finding that no monopoly would be created thereby (Docket 2423) (D. Ex. P-316, R. 3284).

Despite this arrangement and the consequent settlement of the controversy and difference between the joint owners of Panagra as to the propriety and desirability of Panagra's establishing its own route to the United States, Grace in 1957 again filed an application with the CAB, allegedly on behalf of Panagra, for a route to the United States. This application (Docket No. 8511) has been before the Board since that time (R. 295).

This action was instituted by the Government in 1954, at the request of the CAB (Opinion, R. 5366, n. 2), for the purpose of divesting both Pan American and Grace from their ownership in Panagra, with the "ultimate objective", as stated by the district court, of merging Panagra into the air transportation system between the United States and South America of Braniff International Airways (Braniff), which had been certificated by the CAB for routes between the United States and the Canal and South America in 1946 (Opinion, R. 5366-367). The Board took the position (*New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501, 504 (1954)), which it has recently reiterated (*United States-South American Route Case*, Docket 12895, Order No. E-17289, August 8, 1961), that there should not be more than two American flag carriers in Latin America because there was not a sufficient traffic potential in that area to support more than two American flag carriers. There was at the time, as there has been since, a two-system pattern, as Panagra was, as stated by the Board, "generally considered • • • part of the Pan American system"

(*New York-Balboa Through Service Proceeding, Reopened, supra* at 504, n. 9). The Board, while supporting divestment of Pan American and Grace from Panagra, specifically stated that Panagra should not become a third American flag carrier in Latin America as such a condition would entail a "waste of public funds or private investment" (*Id.* at 504, quoting *Latin American Air Service*, 6 CAB 857, 865 (1946)).

The complaint in this action alleged that the creation, ownership and operation of Panagra by Pan American, an air carrier, and Grace, a steamship carrier, with an understanding that Panagra would operate only on the west coast of South America from the Canal south and that Pan American would operate on the east coast of South America and from the Canal north, without paralleling of routes as between Pan American and Panagra, was a conspiracy in restraint of trade and monopolization of transportation between the United States and South America (R. 7-9). It was further alleged that, pursuant to the understanding, Panagra had been prevented from establishing its own commercial activities in the United States independent of Pan American and had been prevented from establishing commercial activities in South America independent of Grace, and that Pan American had refrained from seeking to operate on the west coast of South America and Panagra had refrained from seeking to operate on the east coast of South America and had not been permitted to extend its route to the United States (R. 8-10). It was independently claimed by the Government that the ownership of an interest in Panagra, an air carrier, by Grace, a steamship carrier, was *per se* a violation of the antitrust laws (Opinion, R. 5371).

The district court allowed the trial of the action to become as much a proceeding by Grace against Pan

American as by the Government against Pan American and Grace. Although Grace had no standing as a plaintiff or defendant to assert a claim against Pan American, it took the initiative and with its usual aggressive tactics turned its defense into an offense against Pan American, asserting that the agreement between Pan American and Grace relating to routes was only two-thirds of what the Government alleged, and those two-thirds were thoroughly legal, but as to the other third, the Pan American route between the United States and the Canal, there was no agreement, and all that was done to keep Panagra from paralleling that route was the unilateral action of Pan American and was thoroughly illegal (Opinion, R. 5396). Hence it was claimed by Grace that Pan American alone should be declared in violation of the antitrust laws and should be divested of its stock interest in Panagra, with Grace left alone in control of Panagra.

The district court held against the Government and agreed with the defendants in all respects in which they were agreed, that the formation of Panagra as a joint "pioneering venture," creating a business activity which did not theretofore exist, was "useful to the community," and that neither the joint ownership of Panagra by Pan American and Grace nor their agreement that Pan American and Panagra were "not to parallel each other's routes" was unlawful (Opinion, R. 5372, 5390, 5391-392, 5393). Insofar as the case had become Grace *v.* Pan American, however, the district court held with Grace, that the understanding of division of territories ran only east and west and did not extend north to the route between the United States and the Canal Zone (Opinion, R. 5398), and that the refusal of Pan American's representatives on the board of directors of Panagra to vote in favor of an application by Panagra to establish a route by Panagra to parallel Pan American's route between the United States and the

Circuit in *W. R. Grace & Co. v. CAB*, 154 F. 2d 271 (2d Cir. 1946), *writ of cert. dismissed for mootness*, 332 U. S. 827 (1947), in an action brought by Grace against the CAB, that made the declaration if Grace could establish before the CAB that Pan American's refusal to approve an application by Panagra for a route between the United States and the Canal was due to "illegality and fraud," any application made by Grace in the name of Panagra should be considered by the CAB as an application made by Panagra. Thus the so-called power of exclusion has been a power dependent upon its legality, and it has been open to Grace for years to accomplish its purpose if it could make the required showing that there was something illegal about Pan American's vote in the Panagra board of directors against the application which Grace wanted to make.

Assuming, however, that it could be said that Pan American had excluded Panagra from the market, still the exclusion would have amounted to no monopolization or attempted monopolization of the market. Pan American is not dominant in the market; its share of the market does not meet the criteria of dominance; it has no control over entry into the market or the fixing of rates, both of which are under the control of the CAB, which can admit as much or as little competition as it determines desirable. Pan American has no power whatever to exclude competition. Inasmuch as Panagra was a creation of Pan American and was created in the formative years of air transportation to serve as a connecting and complementary carrier with Pan American, it cannot be said that Panagra is a "competitor" of Pan American or that any assumed exclusion of Panagra from the market was exclusion of a competitor. But even if it could be held so to be, still under all the market conditions,

the exclusion of this single "competitor," which is the only carrier over which Pan American has any power, would not be monopolization of the market.

IV.

The CAB has primary jurisdiction of the subject matter of this action and the court should not have entertained the action. All the facts, issues and findings in this case are directly and intimately concerned with, affect and even determine matters which are within the primary and exclusive jurisdiction of the CAB. The entire Latin American route pattern, to which all questions of the routes involved in this action are subsidiary, the allocation of routes and certification of carriers, including all considerations of the ownership of carriers in these connections, fall within the exclusive jurisdiction of the CAB. The court should not have entertained the action when so much or all of the subject matter is within the primary and exclusive jurisdiction of the Board, or, at least, upon entertaining the action, when it found that the complaint was not sustained and the relief requested was not warranted, the court should have dismissed the complaint and not have undertaken, as it did, to frame a decree altogether at variance with what the CAB desired, and one which defeats rather than aids the Board in the exercise of its jurisdiction.

The decree of the court in this action is a demonstration of the error of entertaining the action. The court, by ordering the divestment of Pan American but not Grace, has created the very condition which the CAB most wanted to avoid, that is, Panagra's becoming a third American flag carrier into South America. The decree would remove the possibility of Panagra's fitting into a two-system pattern for American flag carriers into South America, by severing it from Pan American, one of the

two American carriers into South America, and preventing its merger into Braniff, the other American carrier into South America.

The decree more than defeats national policy in air transportation, however. The court in its decision has undertaken to make rulings about routes which are an interference with and usurpation of the jurisdiction of the CAB. It has, on the one hand, declared that the route between the United States and the Canal is free from any agreement between Pan American, Grace and Panagra, while the route from the Canal down the west coast of South America is subject to their agreement that Pan American will not compete with Panagra. The court has similarly declared that the route down the east coast of South America is subject to an agreement of the parties that Panagra shall not compete. All of these related route matters cannot be dealt with in this way by a court. The fundamentals of administrative law have been violated by the court's exercise of jurisdiction and its decision.

V.

The CAB's approval of the through-flight arrangements in 1947 confers antitrust immunity on Pan American in respect to the holding of the district court that Pan American has violated the antitrust laws by voting its stock ownership in Panagra in a way to prevent the filing of an application by Panagra for a route to the United States. The through-flight arrangement was a substitute for the suggestion of an independent route for Panagra and a settlement, approved by the CAB, of the controversy over Panagra's extension to the United States. The agreements approved by the Board and the evidence taken by the Board at its hearing on the application to establish through service made it perfectly clear that the contro-

versy was settled by the through flight arrangement, that the agitation by Grace for an independent route for Panagra was ended, and that, while the possibility of Panagra's applying for a route at some future time was not foreclosed, such an application could and would be made only if Grace and Pan American concurred and Panagra's board of directors authorized the making of the application.

The Board's order approving the through flight agreements contained the finding that the public interest would not be adversely affected by the arrangement and that no monopoly would be created thereby. The Board thus made a finding which is *res judicata* against the finding by the district court that Pan American's actions with respect to the Panagra route application constituted monopolization. Under Section 414 of the Civil Aeronautics Act, the Board's approval of the through-flight arrangements immunized Pan American from any antitrust charge such as the district court has distilled and decided against Pan American.

VI.

Assuming that the district court's finding of an antitrust violation on the part of Pan American is sustainable, the remedy of divestiture decreed by the court is unnecessary, unwarranted and unjustified.

Divestiture is an extremely harsh remedy, adopted only in rare cases and only when no other remedy is adequate for the requirement. In this case a remedy by injunction would be fully adequate and would be preferable on every consideration over the remedy of divestiture. As there has been no holding of illegality in Pan American's ownership of Panagra's stock, and that ownership is not the fruit of any illegality, and the only violation which has been found is with respect to the exercise of that owner-

ship in the one particular of Panagra's extension to the United States, the remedy of injunction, such as is contained in the decree of the district court, against Pan American's interfering with the making of any route application by Panagra, is entirely adequate to meet any requirement for a remedy.

Divestiture would be a serious prejudice to the public interest, in creating a situation which would prevent the CAB from carrying out its declared policy of carrier alignment and avoiding three American flag carriers in the Latin American market. Divestiture would be seriously prejudicial to Panagra in depriving Panagra of the benefits of the many services, facilities and offices of Pan American which Panagra has enjoyed throughout its life. Divestiture would be unconscionably penal to Pan American. First, it would be extremely harsh to deprive Pan American of its investment in Panagra, which it created and has built up and maintained not only by financial support but with all of the services and facilities of the Pan American organization. Second, it would be impossible for Pan American to realize the value of its Panagra stock upon a sale of its interest. With Grace, a steamship operator, left in control, with all the uncertainties about Panagra's future divorced from Pan American, prospective investors would not be interested in purchasing the stock for any amount approaching the present value. Third, the tax consequences of divestiture would be confiscatory. As Pan American's investment in Panagra dates back to its creation and the formative years of air transportation, it has practically no tax base in the stock, so almost the total proceeds of the sale would be subject to a capital gains tax of 25%; or if the stock were distributed to Pan American stockholders, they would have to regard the value of the stock distributed as ordinary income, upon which they would have to pay a tax at ordinary income tax rates.

ARGUMENT

POINT I

The Court has jurisdiction to hear this appeal.

In its order of January 15, 1962, docketing this case for argument (R. 5449), this Court stated that further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. We assume that the jurisdictional question thus suggested is whether the order of divestiture of the district court—that Pan American shall divest itself of its stock in Panagra "at such time and pursuant to such plan of divestment as the Civil Aeronautics Board shall, subject to the approval of this Court, direct pursuant to the standard prescribed by Section 102 of the Federal Aviation Act"—is of sufficient finality to constitute a final order under Section 2 of the Expediting Act, under which this appeal is taken. Pan American believes that there is sufficient finality to the order of the district court and that this Court's jurisdiction of the present appeal is settled by the recent decision of this Court in *Brown Shoe Co. v. United States*, 370 U. S. 294 (1962).

The jurisdictional question considered in the *Brown Shoe* case was whether an order of divestiture had sufficient finality when it did not include a specific plan of divestment but reserved such a ruling pending the filing of suggested plans for carrying into effect the court's order of divestiture. This Court found that such an order did have "sufficient indicia of finality" to hold that the judgment was properly appealable before submission of the plan of divestiture.

Noting that the approach to the question of "finality" is pragmatic and the tests practical, the Court in the

Brown Shoe case recognized three indicia of "finality": first, that the district court disposed of the entire complaint filed by the Government; second, that the character of the decree to be entered required careful and perhaps extended negotiation and formulation and that the unsettling influence of uncertainty as to the affirmance of the initial, underlying decision compelling divestiture, and the delay in withholding review of the issues of the case until the details of divestiture had been approved by the district court and reviewed by this Court, could well mean a change in market conditions sufficiently pronounced to render impractical or otherwise unenforceable the very plan of asset disposition for which the litigation was held; and third, that holding such a decree as was entered by the district court to be less than "final" and thus not appealable would require a departure from the settled course of this Court's practice.

This case meets each of the criteria above set forth. First, the district court has disposed of the entire complaint. By dismissal of the action as to Grace and Panagra and by decreeing divestiture as to Pan American, the district court has dealt with and disposed of all the charges of the complaint and all the Government's prayers for relief.

The second criterion is also fully met. The preparation of a plan of divestiture will require care and time. Withholding review of the issues in the case until the details of divestiture have been approved by the district court and reviewed by this Court would have precisely the same unsettling effect of uncertainty and risk of change in market conditions, under which buyers and bankers must be found to accomplish the order of forced sale, which this Court in the *Brown Shoe* case foresaw as rendering impractical or unenforceable the very plan

of asset disposition for which the litigation was held. Indeed, it must be said that this consideration is even more applicable to the present case than to the *Brown Shoe* case because there are constantly changing factors, other than market conditions, affecting the interest of buyers and bankers in the ownership of an airline, particularly an airline engaged in international transportation. These factors include rulings of the Civil Aeronautics Board and the actions of foreign governments in respect to the certification of routes and regulation of operations. Furthermore, leaving unresolved, until a plan of divestiture is approved and reviewed, the issue as to whether, if any divestiture of Panagra stock is directed, it will include a divestiture of the Grace interest in Paragra as well as the Pan American interest in Panagra, leaves open and subject to the most unsettling uncertainty the question, profoundly affecting buyer and banker interest, whether there will be any stock to be sold, and, if so, whether a half ownership of Panagra or a full ownership of Panagra.

Equally or even more important, as a matter of vital public interest, is the effect of the unsettling uncertainty upon the discharge by the CAB and the President of their responsibility for establishing the route pattern in international air transportation and certificating routes and carriers. Obviously, this function cannot be performed and national policy implemented so long as the underlying decision of the district court remains unreviewed and it remains undetermined whether Pan American and/or Grace, or neither of them, will have an interest in Panagra.

The third criterion is met exactly as in the *Brown Shoe* case. The Court there stated that it had "consistently reviewed antitrust decrees contemplating either future

divestiture or other comparable remedial action prior to the formulation and entry of the precise details of the relief ordered."

In addition to the criteria mentioned and met in the *Brown Shoe* case, there is a reason, sufficient in itself, why this Court should consider the judgment of the district court final and ripe for review. The judgment contains an unconditional injunctive provision which is final (R. 5435). It is that Pan American is enjoined from taking any action which would interfere with the filing or processing of applications before the CAB by Panagra to alter, amend, modify or extend its routes. Not only is this injunction a final order, but it relates to another question of particular pertinency and large importance in this case which would alone dictate a holding that the judgment is final and should be reviewed prior to the formulation of a plan of divestiture. This is the question of remedy and whether divestiture is a proper remedy at all, even assuming that the district court was correct in its conclusion as to an antitrust violation on the part of Pan American. We maintain that if any violation is made out and remedy is required it is not a remedy of divestiture and that a remedy of injunction would be sufficient, serve better and be decidedly preferable in every consideration. It is, therefore, we submit, of the utmost importance, both in the public interest and in the interest of the parties, that the question of relief and remedy, if any is warranted and indicated, be determined on appeal at this time and not be left until after a plan of divestiture is framed with all the time and thought which will be required for the formulation of such a plan.

We submit, therefore, that for all the reasons which this Court found to exist in the *Brown Shoe* case, and for the further reasons enumerated herein, the judgment

of the district court has a finality which makes it appealable to this Court under Section 2 of the Expediting Act at this time.

POINT II

The basic findings by the district court of legality in the joint ownership of Panagra and the division of territories required a dismissal of the action against Pan American. Pan American's vote, as a half owner in a joint venture, against an extension of the venture beyond its defined purpose, cannot be held illegal.

The district court decision is a multiplicity of errors, which are demonstrable from the decision itself without the necessity of looking at the record. When the record is consulted, it becomes apparent that the decision is as erroneous in fact as it is in law.

The district court's first error was to decide a case which was not brought. Its final error was to enter a decree which is not only unwarranted and unjustified as to Pan American, but which runs directly contrary to national policy in air transportation as declared by the agency of government vested with the responsibility of formulating and effectuating that policy. The major intermediate error of decision was holding—in a case where the charge was a conspiracy and combination upon the part of Pan American and Grace in their organization and ownership of Panagra as a joint venture and division of territory between Pan American and Panagra, and in which the charge was in no respect found to be sustained—that Pan American had unilaterally violated the anti-trust laws in the normal exercise of its legal ownership of Panagra stock in voting on the question of the joint

The district court's erroneous approach and treatment of the case is further manifested by its discussion of the agreement between Pan American and Grace in relation to Panagra (Opinion, R. 5395-398). That discussion is not addressed to the claim of the Government, but poses the matter as one of a difference of version and contest as between the defendants, with the Government being regarded almost as a bystander and being alluded to only with the reference that it "apparently accepts" the Pan American version (Opinion, R. 5395-396). It would not be gleaned from the court's discussion of the subject of the agreement that it was the Government who was the complainant, and that it was the heart and whole of the Government's complaint (except for the claim that Grace's ownership as a surface carrier of an interest in Panagra was itself a violation of the antitrust laws) that the division of territories claimed to be illegal covered all the territories in which the two airlines operated and that the limitation on Panagra's expansion to the United States was only part of that understanding (Complaint, R. 8-9). Similarly, the district court mistakenly stated that "the thrust of the government's evidence was directed to the alleged monopolization or attempted monopolization by Pan American" (Opinion, R. 5398). The thrust of the Government's evidence, in line with its complaint, was directed entirely to the allegation of a combination in restraint of trade and monopolization by Grace and Pan American in their joint organization and operation of Panagra (R. 507-905, 1254-1358). There was not a suggestion in the complaint or in the government's evidence that Pan American was acting unilaterally in the alleged monopolization, or other than in pursuance of the understanding of the parties in their organization of Panagra.

Although referring to the "unholy union" between Pan American and Grace, the district court gave no specification in support of the characterization, but specifically found that it involved "no violation of the antitrust laws" (Opinion, R. 5391-392, 5393-394). Because the union was found to be unhappy, however, the court set about treating the action as if it were an action for a divorce brought by Grace against Pan American and the issue was custody of their child, and then reached the wrong result even on that premise.

We shall now point out that the determination made by the district court is inconsistent with the court's basic findings and is refuted by the court's opinion. From the findings made, which we shall forthwith state, we submit that it is impossible to draw the conclusions reached by the district court that the territorial division between Pan American and Panagra, found to be legal, did not include the original route established by Pan American between Miami and the Canal, and that Pan American's protection of that route from the destructive competition of its jointly-owned company, as proposed by the other joint owner, was not every bit as legal as the protection of the joint company's west coast route by Grace. On the contrary, all that is found by the court, except its ultimate conclusion, as will readily be seen, proves that the joint venture which is Panagra was organized only to operate an airline along the west coast of South America from the Canal Zone south, that neither Grace nor Pan American was interested in joining in any other operation, that the service there to be established was to be a connecting service with Pan American's service over its route from Miami to the Canal, that the two services were to be complementary in combination to provide air transportation from the United States down the west coast of South America, that, of course, Pan

venture's expansion beyond its designed and defined purpose.

There was no allegation or charge of such a violation in the complaint. There was no claim by the Government at any time that Pan American's voting of its stock in Panagra on the question of Panagra's extension was in itself a violation of law. There was no request and plainly no desire upon the part of the Government that the case be considered as if the charges against the defendants were several as well as joint, or that a decision be reached or considered which might divest Pan American but not Grace. Plainly, such a result would be the worst possible result, judged by the national policy in air transportation which had been declared by the CAB, for under such a decree Panagra could not fit into a two-system pattern for American flag carriers into South America, because it would no longer be part of the Pan American system and would not become part of the Braniff system, but would become what was least desired, a third American flag carrier into South America.

Indeed, if the case were to be considered on the basis of a third possible alternative to a dismissal of the complaint or divestment of both Pan American and Grace as requested in the complaint, that is, the possibility of a dismissal as to one defendant and divestment as to the other, the result required would be the opposite of the one reached. The factual statement of the case shows indisputably that it was Grace, not Pan American, whose agitation and aggrandizement caused the friction which prompted the Government to institute this action to free Panagra from its divided ownership. It was Grace, not Pan American, which was to be eliminated from the airline industry by the successful prosecution of the action, to the end that the American airline alignment in South

America would be, as it was, a two-system pattern, the only difference being that Panagra would become part of another system instead of remaining part of the Pan American system under a divided ownership with Grace. If, however, that arrangement was not to be achieved through prosecution of the action, and the complaint was not to be dismissed, then, certainly, the judgment should have been one of divestment of Grace rather than Pan American, so that the two-system pattern could be preserved. There would then be the obvious virtue of having Panagra an outright part of the Pan American system, as against the evil of having it become a third American carrier in South America and still remain under divided ownership.

The error which pervades the decision of the district court in treating this action as if Grace were a plaintiff against Pan American, although Grace is only a defendant in this antitrust action with no complaint or cross-claim against Pan American and with no standing to become a complainant or seek relief, is manifested at the very opening of the court's opinion with the statement that "Nominally" this is a "government antitrust action," but "Actually" it is "a bitter family quarrel * * * arising out of the unhappy and quondam unholy union of Pan American and Grace, each of whom owas 50% of the stock of Panagra" (Opinion, R. 5366).

The district court thus adopted an approach to the action, which it followed throughout to the incongruous end, of regarding the action as being only "nominally" a Government antitrust action, and rendering a judgment nominally in favor of the Government but actually in favor of Grace against Pan American, with the worst possible consequence to the Government and the public.

American's route was not to be paralleled by Panagra's route any more than Panagra's route was to be paralleled by Pan American's route, and that it was altogether legal and proper for Pan American to vote its half interest in Panagra against a change in the terms of the joint venture which would turn Panagra into a competing rather than a connecting carrier with Pan American, particularly as Pan American was willing and urged that the combined routes be so used that through flights could be made by Panagra planes over both routes.

The opinion states that in 1927 Pan American began the formulation of plans for the establishment of a complete system of air transportation serving "all parts" of the Caribbean and Central and South America (Opinion, R. 5373). In 1928 it acquired a concession from the government of Peru for the establishment of air transportation between the United States and Peru and established air service between Miami and the Canal Zone. In January 1929 Pan American acquired the stock of a Colombian airline, operating between Colombia and Ecuador, which acquisition, in the words of the opinion, "opened the way for the establishment of an American flag west coast airline" (Opinion, R. 5375). Similarly in 1930, Pan American established air service from the United States down the east coast of South America to Buenos Aires (Opinion, R. 5382).

In 1928 Grace had begun to inquire into the possibilities of a west coast airline and became apprised of Pan American's activities and interest in a west coast route. Officials of the two companies conferred with a view to joint participation in a "west coast" undertaking. As stated in the opinion, Grace, which was aware of the competitive potential of air transportation with its large steamship investments, was "limited" in its interest "to

the west coast of South America" and "to the proposed Canal Zone-Valparaiso route". (Opinion, R. 5376-377, 5388-389).

In the fall of 1928 Pan American and Grace entered into an agreement evidenced by two letters quoted in full at page 13 of the opinion (R. 5377-378, n. 7). The letter from Grace was in confirmation of an arrangement of association for the commencement of an airplane service in Peru, "with the view" of "ultimately" inaugurating a through mail service from the Panama Canal to Valparaiso, Chile. The initial arrangement was for the formation of a corporation of most modest capital, jointly owned, to acquire a Peruvian concession and to study the costs of operation on a route from the Panama Canal to Valparaiso. The letter continues that if *Pan American* shall determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the joint company will be used in such service, and Grace should have a reasonable time to determine what interest, if any, it should take in the company in addition to its initial investment, such interest not to exceed 50% of the total capitalization. The letter also specifies that Pan American shall "have charge of the operation of the service from the Canal to Valparaiso," and the Grace "houses" on the west coast of South America will be the "agents of the company on a reasonable compensation basis."

Confirmation from Pan American was of an association of the two companies "in the development of air transportation on the West Coast of South America" (Opinion, R. 5378, n. 7 (con't.)).

The resulting corporation was Panagra, which was awarded the mail contract between the Canal Zone and Chile, as the Postmaster-General stated, on the strength

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riers made competitive on either section without their being made competitive on both sections and all along the line. Otherwise, the carrier with both routes would get nearly all the traffic on both routes and replace the carrier with only one route.

The undisputed evidence here is that if Panagra were given a route between the United States and the Canal unless Pan American was given a corresponding route from the Canal down the west coast of South America — Panagra would take eight-ninths of all the traffic moving over the route between the United States and the Canal (P. Ex. G-1139, R. 273, 1703; D. Ex. PS-116, R. 245, 4595; R. 366, 532). This is necessarily so as to all the through traffic, which is two-thirds of the traffic over the route, as to which the district court made the observation that "generally, all through traffic between points on Panagra's west coast route and Miami or other United States cities conveniently reached through the Miami gateway would be almost wholly diverted from Pan American" (R. 5405). This observation would be almost equally true as to the local traffic because the through carrier would have the ability of maintaining more frequent service.

Thus, there is only an illusion of competition in the idea that Panagra should parallel Pan American between the United States and the Canal, unless, correspondingly, it is assumed and assured that Pan American will parallel Panagra from the Canal south down the west coast of South America. So it is beyond reality, rationality and possibility that there could have been any such one-sided understanding as Grace asserts and which the district court has found, that Pan American was not to parallel Panagra's route south of the Canal, but Panagra might parallel Pan American's route north of the Canal. Indeed, the Grace pretense of such an understanding and its

pose as Panagra's champion against the "suppression" of Panagra by Pan American as a "monopolist" makes things seem just the opposite of what they are. It is Grace who would effectively eliminate Pan American from the route north of the Canal, and who is attempting monopolization, by having Panagra, which it has done everything to convert into a Grace airline, keep for itself, free from Pan American competition, the route south of the Canal, with the consequence that Panagra would have for itself the whole of the service from the United States to the west coast of South America.

We need not and shall not labor the "details" of the agreement respecting the division of territories and its application to Pan American's initially established route between the United States and the Canal, because if that agreement was not expressed, as was clearly the fact, it was implicit (*Latta* v. *Kilbourn*, 150 U. S. 524, 541 (1893)), and inherent in the "method of organization of the joint company," which the district court found to be "calculated" to give each participant "negative control" to "insure" against the expansion of the operations of the company in competition with the "respective" independent lines" of the parties (Opinion, R. 5389).

We shall expand in a moment on the inherence in the agreement of this "negative control," which the court correctly found to be legal, although inconsistently and incorrectly finding that it was illegal for Pan American to exercise that control to prevent Panagra's expansion into competition with Pan American's independent line. Obviously, the quality of legality in this limitation upon Panagra's expansion is exactly the same whether explicitly agreed upon or not, and the exercise of the authority which Pan American had under the method of organization of Panagra to prevent its expansion in competition with Pan American's independent line rests on the same

legal base as the existence of that authority. It is impossible to sustain the district court's conclusion that the existence of the authority was legal but the exercise of it was illegal. The agreement of the parties in the organization of Panagra was thus either illegal *ab initio*, contrary to the district court's finding, or being legal, as the district court found, remains legal in its effectuation precisely in accordance with the intention of the parties which was inherent in the method of organization of Panagra.*

It is supererogation, therefore, to dwell upon the "details" of the agreement of the parties with respect to the territorial division, but accuracy compels the observation that all the evidence, commencing with the exchange of letters between the parties agreeing upon the formation of Panagra and its field of business and operations, with no evidence to the contrary, establishes that the division protected Pan American's route between the United States and the Canal Zone as well as Panagra's route south of the Canal Zone.

Not only would Pan American, which had just established its own route from the United States to the Canal (Opinion, R. 5395), and was about to establish its route

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* We need not, in the light of the district court's findings of legality in the formation of Panagra as a joint venture of a pioneering nature creating a new business not theretofore existing and beneficial to the community, retrace the elementary ground covered before the district court as to the legality of joint ventures in relation to the anti-trust laws. See *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (6th Cir. 1898), *modified and aff'd*, 175 U. S. 211 (1899); *United States* v. *Imperial Chemical Industries, Ltd.*, 100 F. Supp. 504, 557 (S.D.N.Y. 1951); *United States* v. *Minnesota Mining and Mfg. Co.*, 92 F. Supp. 947 (D. Mass. 1950); *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593 (1951); *United States* v. *Imperial Chemical Industries, Ltd.*, 105 F. Supp. 215 (S.D.N.Y. 1952); *Restatement of the Law of Contracts* §516; Brewster, *Antitrust and American Business Abroad* 206 (1958).

down both the east and west coasts of South America, and which was persuaded to take Grace as a partner *only* on a west coast operation to connect with Pan American's operation from the United States to the Canal to make up a combined and complementary service between the United States and the west coast of South America, never have consented to or considered a partnership arrangement which would carry the possibility of Panagra's becoming a parallel carrier between the United States and the Canal, but Grace was wholly uninterested; as the district court found, in any route other than that south of the Canal down the west coast of South America (Opinion, R. 5376-377). It was positively disinterested in the route above the Canal and wanted to leave that route to the trying development by Pan American alone. That much had to be admitted by Grace at the trial with the explanation in its trial memorandum that Grace was not interested in the "hazardous water crossing of the Caribbean or the alternative of the difficult land route through Central America," but only in a route starting from the Canal which was "a focal point for a large number of steamship companies serving South America from the United States, such as the Grace Line, and from Europe" (Grace Trial Memorandum, p. 11).

And more eloquent than any of Grace's protestations at the trial about the application of the territorial agreement to the route north of the Canal are the conclusive admissions made *ante litem motem* by its senior officers who negotiated the arrangements and represented Grace in all its early dealings with Pan American in respect to Panagra.

When Grace's president Iglehart first had the thought of Panagra's operating north of the Canal, he broached

of *Pan American's* "extensive preparation for the operation" and its acquisition of franchises to operate in the countries to be served and its then existing operation over a considerable portion of the route. The Postmaster-General also noted "in addition" that "it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly established service by sea along the whole line of the proposed air mail route." The contemplated service was established in 1929 and shortly thereafter was extended from Santiago to Buenos Aires (Opinion, R. 5380-381).

As stated in the opinion, United States air mail service throughout South America was "rounded out" by the "entire northern and eastern part, and the northern portion of the western part from Miami to the Canal Zone, [being] operated by Pan American, and the southern portion of the western part from the Canal down the west coast and across the Andes being operated by Panagra" (Opinion, R. 5385).

Under a heading "Conclusions Re Conspiracy" (Opinion, R. 5388), the opinion states that the only agreement which approaches conspiracy is the "understanding that Pan American and Panagra were not to parallel each other's routes" (R. 5390)—a "division of territories," which the court found had "long been known to this government" (Opinion, R. 5388).

After reiterating that Pan American's interest as an airline owner extended "throughout" Latin America and that Grace's interest "was confined to the west coast of South America where it was strongly established, and that was the only area where it faced competition from an airline" (Opinion, R. 5388-389), the opinion states that by joining in a joint venture "on the west coast" Grace was assured against the entry of an independent American

airline competitor into its west coast domain and Pan American was freed from American flag competition in the rest of Latin America. Their "method of organization" of the joint company was "calculated," the opinion continues, to give each "negative control" to "insure" against expansion of the operation of the joint company "in competition with their respective independent lines" (R. 5389). As also stated, "Their combined interests on the west coast could insure the greatest possibilities for the success of an American carrier in that area, and at the same time protect their independent systems from the competition of such carrier" (R. 5389).

The district court's appraisal of the arrangement was that "The joinder of Grace and Pan American of their complementary facilities was a natural and mutually advantageous combination, and an economically sound arrangement for the establishment and successful development of American commercial aviation on the west coast of South America * * *. The union of their physical and technical resources assured the maximum possibilities of success in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280 (6th Cir. 1898), *modified and aff'd*, 175 U. S. 211 (1899)" (Opinion, R. 5391-392). Thus, "The defendants' dominant position in South America which they enjoy today, and have over the years, may be explained in simple terms without unlawful implication * * *" (Opinion, R. 5390).

Speaking specifically of the "Division of Territories," the opinion states:

> "Consideration of the defendants' agreement or understanding with respect to the respective spheres of operations for the two airlines, when viewed in

> the light of the conditions under which they undertook, as foreigners, to establish an American system of international aviation in South America, the policy of this government and its stake in fostering their efforts, and the dedication of public monies involved, as well as the relation of the parties one to the other and the nature of the industry itself, compels the conclusion on our part that it involved no violation of the antitrust laws" (R. 5393-394).

Having so stated the facts, factors and considerations which evidence, explain and justify the establishment of Panagra for operation on the west coast of South America from the Canal Zone south and the understanding that "Pan American and Panagra were not to parallel each other's routes," the opinion unexplainably and inconsistently begins at page 31 (R. 5395) to narrow and vary in "details" the agreement respecting the "division of territories" upon which the defendants "no doubt" agreed. An issue is then drawn and it is stated that Pan American says that the agreement, reached before the formation of Panagra, was that Panagra was to operate only on the west coast of South America from the Canal Zone down (which was precisely the scope of Panagra's operations as agreed between the parties) and that Pan American would conduct operations throughout the rest of South America and on the route between the United States and the Canal Zone, for which route it had already secured the United States mail contract and where it was already operating (Opinion, R. 5395). Grace, on the other hand, it is said, contends that the territorial division was made only *after* Panagra's formation and was only on east and west coast lines and that "there was no intention one way or the other contemplated *mutually* by them with respect to possible extension of Panagra's lines to the United

States." The opinion also states that "the government apparently accepts Pan American's version of the agreement" (Opinion, R. 5295-296). Without explanation or citation of the record, the district court states that it finds "the agreement between the defendants as to spheres of operation and its evolution was substantially in the manner described by Grace" (Opinion, R. 5298).

The "agreement," which was previously found to be "not to parallel each other's routes" (Opinion, R. 5280), is thus narrowed to be "not to duplicate or parallel each other's service in South America," and this agreement, which it is found Grace "invoked successfully" (Opinion, R. 5296-298), is held to be "consistent with the best interests of this country in establishing and developing American international aviation" (Opinion, R. 5298). On the other hand, the court found in the "Pan American suppression of Panagra efforts to extend to a United States terminal," a sufficient basis upon which to predicate the conclusion that Pan American had unilaterally monopolized that sector of commerce between the United States and South America and between the United States and the Canal Zone (Opinion, R. 5298).

This finding is made despite the facts found that in the "formative years" of air transportation it was the policy of this country, as carried out by the Post Office Department, which was then the government agency for the development and subsidizing of American aviation in the international field, to award but one mail contract for each route and to subsidize but one American carrier in a particular sector (Opinion, R. 5294), "competition" being "economically impossible, and most likely detrimental to the sound development of American flag service" (Opinion, R. 5294). The court was able to perceive that there emerged from the evidence a "definite policy of the

government" approving "zoning" for the operations of the American international carriers, but the court only goes so far as to say that this "zoning" was in the "nature of east and west coast spheres," as was "arranged between Pan American and Panagra" (Opinion, R. 5395). There is, however, no statement of the evidence or of reason to support the intimation that the policy ran only east and west and that there was something in the "nature" of those directions which defined and distinguished policy with respect to "spheres." But the inconsequent and wholly unsupported conclusion is reached that "It is only with respect to the northern extension of both lines to the United States that restraint of competition between Pan American and Panagra whether by agreement or unilateral action, in our opinion, falls under the condemnation of the antitrust laws" (Opinion, R. 5395).

We submit that there is no basis, and none is suggested in the opinion, for the conclusion that the agreement between Pan American and Grace "not to parallel each other's routes" was confined to South America, along east and west lines, and did not extend to the route from the United States to the Canal Zone, which was the first and basic route established by Pan American. Likewise, there is no basis or suggestion of a basis in the opinion for holding that the application of the non-paralleling principle to the route between the United States and the Canal Zone is any less legal than the division within South America as between the east and west coasts. Patently, every fact and consideration bearing upon the existence and legality of the territorial division applies as well to the service between the United States and the Canal as to the service from the Canal down the west coast of South America or down the east coast. Every-

thing stated in the opinion of the court down to its inconsequent conclusion shows that the territorial division included the route from the United States to the Canal Zone and that the division as applied to that route was as legal for the same reasons as the division between east and west was legal. We submit that the district court's findings of fact on these issues were "clearly erroneous" and should be reversed. *United States* v. *duPont & Co.*, 351 U. S. 377, 381 (1956); *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 393-395 (1948); *e.g.*, *United States* v. *duPont & Co.*, 353 U. S. 586, 593 ff. (1957).

The crucial fact, about which there is no question, which the district court overlooked or ignored, is that Panagra was created for the specific and only purpose of being a *connecting* carrier with Pan American at the Canal Zone, and to serve with Pan American as *complementary* carriers to supply together air transportation from the United States to South America (*e.g.* R. 216-217; D. Ex. P-96, R. 2520, 2522; P-108, R. 2558, 2559-561). This fact is highlighted by the fact that when Grace first proposed that application be made for a route for Panagra from the United States to the Canal, the agreement reached between the principals was that such an application should be made only if Pan American's connections with Panagra at the Canal should become inadequate (P. Ex. G-190, R. 729). The idea that the two carriers in this joint venture and complementary arrangement would ever become duplicatory, paralleling and competitive over the same routes would never have been entertained. Therefore, as a certainty, the non-paralleling understanding applied equally to both sections of the combined routes, Pan American north of the Canal and Panagra south of the Canal. This is the more obvious when it is understood that the connection cannot be severed and the car-

the idea to vice president Roig, who had been Grace's principal representative in connection with Panagra, in a memorandum of March 1, 1937 (P. Ex. G-118, R. 582), suggesting as a remedy for his charge of inadequacy of Pan American's service between the Canal and Miami, that Douglas Campbell, a former employee of Grace who had entered the employ of Panagra, "might begin a careful study looking toward our putting in our own service from Miami to Cristobal and possibly continuing on to Cali by way of Medellin." Roig responded that,

> "whether it suits to meet one breach of agreement *by threatening another* is a point I find it hard to decide. It may depend somewhat on whether we would prefer to scrap Panagra at the expiration of the present mail contract and form a company of our own to compete with Panair on the new contract" (Italics supplied). (P. Ex. G-119, R. 583).

Shortly thereafter, however, Iglehart pursued the idea with full consciousness of the agreement, taking an occasion, when there was a possibility that Pan American through its subsidiary SCADTA might invade Panagra's west coast territory, to instruct Grace's vice president Garni to notify Trippe, president of Pan American, "that if he backs SCADTA in going to Guayaquil or Quito or helps them to do so, we will be entirely free to enter into competition with him as we would consider it a definite breach of his agreement" (P. Ex. G-118, R. 582).

That, despite its holding, the district court must have thought that the territorial agreement was thoughtfully complete and not thoughtlessly incomplete is revealed from the statements in the opinion: "Their combined interests on the west coast could insure the greatest possibility for the success of an American carrier in that area,

and at the same time protect their independent systems from the competition of such carrier. An agreement to divide the territory of operations between the two air carriers is consistent with such a design, and it is equally consistent for Grace to have agreed not to seek to extend their joint company to the United States in competition with Pan American" (Opinion, R. 5389-390).

These sentences have no meaning or relevance except as a finding that the agreement "to divide the territory of operations between the two air carriers" so as to "protect their independent systems from the competition of such carrier [Panagra]" included the Pan American system from the United States to the Canal Zone, and that the protection was legal in all respects.

Apart from agreement, however, Pan American had the same reason and legal justification for not extending the operation of its jointly owned company into competition with its own route from the United States to the Canal Zone as Grace had for insisting that Pan American not enter into competition with the joint company along its route south from the Canal down the west coast of South America. And certainly, if Grace was entitled by agreement to protect both itself and the joint company from Pan American's competition with the joint company's route, Pan American was equally entitled, whether by agreement or not, to protect its route from competition by the joint company. In this context, on the charge of monopolization, the legality of action with respect to route competition between Pan American and Panagra cannot depend on agreement. Grace cannot justify the protection of Panagra from paralleling by Pan American by the assertion of agreement or tar Pan American with illegality in protecting itself from paralleling by Panagra by the assertion of lack of agreement. What was done

the route between the United States and the Canal was a unilateral antitrust violation on the part of Pan American. When the bold thought of Panagra's applying for such a route, an acknowledged breach of Grace's agreement with Pan American, first occurred to the Grace officials, Roig stated to Iglehart the only possibly legitimate way of Grace's pursuing the matter, and that was "to scrap Panagra at the expiration of the present mail contract and form a company on our own to compete with Panair on the new contract" (P. Ex. G-119, R. 583). It was as unbelievable to Grace then as, we submit, it is unbelievable today, that one of two joint venturers could be expected to countenance the diversion of the venture away from its purpose, as a business connecting, complementary and non-competitive to his own, into a business competitive to and destructive of his own, and be obliged to consent or be ousted from the venture as an antitrust violator.

No case, decision or authority is cited in the opinion of the district court, and we can confidently state that none exists, which would support such a proposition or the decision which the district court has reached. Indeed, we know of no case in which a joint venturer, in a venture legal in its inception, has been held to have violated the antitrust laws by his refusal to consent to an extension of the venture.

The decision here goes even further in its qualifications of the rights of a partner than has been assumed. The case which the court has stated in its opinion is one of the absolute refusal of Pan American to allow Panagra any access to the United States. To test and disprove the validity of the court's thesis we have, up to this point, assumed the case to be as stated. But this is not the

case. Pan American has agreed, and for years before had urged, that arrangements be made for through-flights over Pan American and Panagra routes so that Panagra planes can make a continuous flight over both routes to and from the United States (D. Ex. P-186, R. 2890; P-217, R. 2962; P-228, R. 2988; P-230, R. 2993; P-231, R. 2998; P-232, R. 3001; P-233, R. 3006; P-355, R. 3449, 3453; P. Ex. G-212, R. 767; G-214, R. 772; G-216, R. 780; G-241, R. 827). The district court has dismissed this important fact from consideration and thereby held that a joint venturer must be more than cooperative in meeting his co-venturer's desire for the extension of the business; he must yield his judgment as to how it may and should be done and abdicate in favor of letting his partner decide that it should be done in a way that will put him out of his own business.

The district court's view of a joint venturer's position and obligation, as expressed or indicated in its opinion, is not only unprecedented and untenable, it would have, if accepted, the most serious consequences, prejudicial to the public interest, of discouraging joint ventures altogether and particularly the kind of pioneering ventures and creative developments around the world which are so needed and which call for pooling of resources, ingenuity and sustained effort. The joint venture of Grace and Pan American in Panagra, found to be so "useful to the community" (Opinion, R. 5392), is only illustrative. But there would be no such ventures—certainly Pan American would not have considered taking Grace as a partner in Panagra—if the view which the district court has taken of the duty of a partner to let the venture destroy or compete with his established business were the law.

No principle or precedent of antitrust, corporation or partnership law is cited by the district court, or any

by both Pan American and Grace in respect to route protection from paralleling as between Pan American and Panagra was alike legal or illegal. A finding of legality, as made by the district court, on the part of Grace, dictated a like finding of legality on the part of Pan American.

The legal justification of the division of territories and protection of routes, alike for Pan American and Grace, must not be lost sight of. The principals were not competitors entering into a conspiracy to carve up territories and cut off competition. They were joint venturers in a pioneering enterprise creating a type of business which had not existed before. As such joint venturers they were entitled to agree upon the scope of their venture, and naturally the scope could not be changed or extended unless they agreed, and neither was obliged to approve the extension of the venture into competition with its own business. The district court remembered all this when approving Grace's part in the venture, but forgot it when condemning Pan American's part.

It is the all-important fact in this case that it is a joint venture which is involved and that the sole anti-trust violation found by the district court is a normal exercise of a joint owner's control over the venture in respect to its expansion beyond the scope of the venture contracted for. In the next point of this brief we shall discuss the market facts and figures which would enter into consideration in the usual case of claimed monopolization through suppressing the competition of a competitor —some of which figures were cited by the district court as the basis of its finding of monopolization—and show that a claim of monopolization could not be sustained against Pan American even if Panagra were considered, as the

district court erroneously considered it, an entirely "independent entity" with no affiliation with Pan American. But it is of the utmost importance that the fact be kept in the front of mind throughout the consideration of this case that Panagra is not such an independent and unaffiliated company, but is an original venture of Pan American itself. We deem it clear in such a relationship that the subsidiary is not to be regarded as an outsider or competitor to a parent, and control over the subsidiary exercised by a parent is not to be regarded as pressure exerted on a competitor. That is why we say the ordinary tests of monopolization are not relevant or to be applied to the exercise of the normal rights of ownership of a parent in a subsidiary or of a joint venturer in a joint venture if the venture and ownership are themselves legal. The test of legality must be legality of the venture and ownership. If the venture and ownership do not offend against the antitrust laws, the exercise of the normal incidents of ownership cannot offend. We submit that this proposition is a truism against which the decision of the district court cannot stand.

Only a moment's reflection is required to realize that the kind of "negative control" enjoyed by each of the joint venturers in Panagra, which the court noted was designed to accord route protection to all the parties (Opinion, R. 5389), is inherent, normal and expected in any joint venture and is as legal as the venture is. No joint venture of two persons can be expanded beyond the scope originally contracted for unless both parties agree, and it would be an extremely novel thought, without any authority or legal basis, to suggest that one party must consent to an expansion because the other wishes to expand the venture at some future time,

or that there is anything illegal in the refusal of the reluctant party to expand. Joint venturers do not just go into business generally and leave it up in the air or at the will of either party to determine whether the business will be launched into one field or another at some future time. They specify the scope of their venture in the beginning, contract, contribute their capital and join their efforts for that defined purpose, and neither one party nor the other nor the public has any call upon the venture to depart from its defined business and become a different or expanded business. This is doubly true where the expansion in question would place the venture in competition with the established business of one of the venturers.

Let us take a simple illustrative example. Let us suppose that Jones owns a department store in Boston, doing business across state lines. He is planning to open a similar store in Providence. Smith is a well-known Providence merchant. Instead of Jones going it alone in Providence as he had planned, he decides to take Smith in with him in the Providence venture. They form a corporation to operate a department store in Providence under the names of "Jones & Smith, Inc." Each owns half the stock and names half the directors. Clearly there is no illegality in this—a form of conduct that has gone on for years before and since the Sherman Act without question of legality.

The Providence business succeeds. There is some competition between the two stores in sales to communities in southeastern Massachusetts, but this is a minor part of the business of either store. Years later, a site becomes available in Boston just across from Jones' store. Smith decides that he wants Jones & Smith, Inc. to buy the site and compete with Jones. Jones refuses and instructs

the directors named by him to vote "No." He says that Smith is entirely free to compete on his own account but not to use the assets of Jones & Smith, Inc., in which Jones has a half interest, for a purpose inimical to Jones' established business.

Would any court say that Jones is guilty of an illegal restraint of trade, or of any wrong, in maintaining his say as to what may be done with the assets of a corporation in which he is half-owner, and particularly in maintaining that they may not be turned against him?

The hypothetical case is entirely apt to the proposal made by Grace that Panagra enter into competition with the Pan American route between the United States and the Canal, except that the Panagra case is an even weaker case for a claim of illegality. In the Jones & Smith case, Jones would have been able to continue his own business in Boston in the face of the Jones & Smith, Inc. competition. Here, however, as we have previously pointed out, if Panagra were extended from the Canal to the United States—unless Pan American were similarly extended from the Canal down the west coast of South America—Panagra would obtain 8/9ths of all the business moving over the route and Pan American could not continue as an effective competitor. Surely a partner is not obliged thus to consent to the conversion of the partnership to his own undoing, and there can be no principle of antitrust law which suggests that he must.

Grace recognizes this fundamental as much as anyone would, and acknowledged it until the institution of this action prompted it to try out the ultimate in its bold attempts to take over Panagra and annex it to the Grace empire by arguing that Pan American's refusal to vote in favor of its joint venture's replacing Pan American on

reasoned analysis given, to reach or support the conclusion that in this case Pan American was obliged to surrender the normal and inherent right of the half owner of a corporation or joint venture to exercise his "negative control" with respect to an extension of the business beyond the bounds of the joint undertaking. The only suggested basis for the conclusion that Pan American was obliged to consent and cooperate in its partner's desire to change the "character" of the joint venture into that of a "competitive carrier" to Pan American is that Pan American was mistaken in regarding Panagra as "part of the Pan American system" (which it surely was and was so regarded by the CAB) because Panagra was not, in the court's view, a "subsidiary" of Pan American (Opinion, R. 5406).

Panagra is not a "subsidiary" in the court's view because Pan American is not a majority shareholder. The difference between owning 50% of the stock of Panagra and 51% is, in the court's opinion, a "decisive difference" (Opinion, R. 5406). How this 1% would make a difference in the "justification" for Pan American's vote of its stock interest in Panagra on the Grace proposal of a change in the scope of the joint venture is not indicated.

It is said that the "co-equal stockholder," Grace, never intended to be a mere investor in Panagra and never intended it to be a subsidiary of Pan American (Opinion, R. 5406). The relevance of this comment to the question of whether Pan American as a co-equal stockholder was entitled to vote its stock in opposition to Grace's proposal escapes us. The reminder seems in order again that this is not a stockholder's action. If there was any issue in the case of whether Pan American and its repre-

sentatives on the board of directors of Panagra were acting in accordance with an honest judgment as to the best interests of Panagra, the issue was taken out of the case, in the court's perception, by its holding, as stated in the opinion, that all of Pan American's "economic arguments," in the form of facts and figures which demonstrated that it would be contrary to Panagra's interests to extend its route to the United States (D. Ex. PS-114 to 129, R. 245, 4584-615), were "irrelevant" to the issues of this case (Opinion, R-5407). The district court took the position that Pan American, as a half owner of Panagra, was obliged to accede to the other half owner's request that the joint Company apply for a route which would be destructive of Pan American's own previously established route. In the court's view, this was an absolute obligation of Pan American's: *reason* was beside the point and all the economics, which may have fully supported Pan American's position and demonstrated that the proposed route was not in Panagra's interest, were not to be considered.

We would agree that the "economic arguments" are irrelevant, but only on the diametrically opposite premise from that on which the district court made its assumption of irrelevance. We would say that the arguments are irrelevant because we deem it clear that the half owner of a joint venture, in a position in which Pan American was in relation to Panagra, has the absolute right to say "no" to any proposal for the extension of the venture beyond its agreed purpose, particularly where the proposal is calculated to be destructive of its own business. But, certainly, if this is not true and there can be any question about the right of the joint venturer to say "no," the question must be one of reason in the "economic

arguments," and if the economic arguments are on the side of opposition to the proposal it cannot possibly be said that the opposition is illegal. We shall, therefore, briefly state the economic realities, fully recognized by the CAB, which show beyond question that Pan American was exercising sound judgment in Panagra's interest in opposing a Panagra application for a route to the United States and in proposing the through-flight arrangements.

The South American market is one of the poorest air transportation markets in the world (R. 248 ff.). The number of revenue passengers per route mile per day for Pan American's Latin American division and for Panagra are no more than on the highly subsidized local routes in the United States, where the carriers are not even required to operate in competition with any other air service (R. 248, 250; D. Ex. PS-101, R. 245, 4569). It cannot seriously be contended, therefore, that more competition in the Latin American market is to be desired. If, however, there is to be the competition between Panagra and Pan American of which Grace and the district court speak, the calculations must be based on the assumption that Pan American would get a route south of the Canal when Panagra gets a route north of the Canal. Otherwise, as has been made clear, there would be no competition but only the replacement of Pan American by Panagra. To ascertain what the economics of competition would be, test years of 1952 and 1957 were taken to observe what the financial results of such duplication of routes would have been had such routes existed in those years. The losses of Pan American and Panagra or their additional subsidy requirements would then have been in excess of $6,000,000 in 1952 and have been almost $7,000,000 in 1957 (D. Ex. PS-114, R. 245, 4584). These

economic facts make it clear that the through-flight arrangements were the only reasonable arrangements between the two carriers, to supply a joint service which was supportable as against two separate services which could not possibly be supported by the traffic available.

We need not rest on the cold figures, however. The appraisal of the CAB can be called up, for it has been given in connection with its current study of the Latin American route pattern, in the Board's Order Instituting Investigation in *United States-South American Route Case*, Docket 12895, Order No. E-17289, August 8, 1961. We quote (p. 2):

> "Prior to the decision in the *Latin American Case, supra,* Pan American and Panagra operated in competition with three foreign air carriers. Today, 19 South American foreign air carriers are authorized to serve the United States-South America market. There has also been an increase in service within South America by local carriers. Not only do these services rendered by non-U. S. flag carriers dilute the potential economic support for the services of the U. S. carriers, but also they bring into question the need for point-to-point duplication of such services. In this connection, we cannot be unmindful of the fact that the U. S. flag carriers' operations are marginal economically."

Then, reiterating that its view was the same as it was in 1954, the Board gave the reminder that: "As long ago as 1954, the Board publicly suggested that the available traffic in South America did not warrant continuation of three United States flag services."

The district court's statement (Opinion, R. 5407) that it must have been thought by the Government that in subsidizing Pan American and Panagra each would be given

equal opportunity to operate to the United States, is clearly contrary to fact. The opinion of the court elsewhere notes that all during the period of subsidy by mail contracts, that is, up to 1938, there was a "no-parallel" government policy (Opinion, R. 5409), and it is equally notable that all the subsidy paid since has been paid without paralleling by Pan American and Panagra and without any suggestion that the payment of subsidy was an invitation to paralleling. Instead, the CAB, as we have just noted, has strongly stated its policy against subsidy support for the paralleling of routes which would be involved in constituting Panagra an independent carrier.

We submit, therefore, that on every consideration of fact and law, and, indeed, upon all that is stated in the opinion of the district court down to its conclusion, Pan American was acting both reasonably and legally in the conduct of its part in Panagra affairs.

POINT III.

There is no support for the conclusion of the district court that Pan American has monopolized and attempted to monopolize air transportation between the United States and South America.

The opinion of the court is very loose in its statements of what Pan American's monopolization consisted of, and in its assimilation of distinctly different characterizations of Pan American's conduct and the consequences thereof. The notably different expressions of the factual finding upon which the legal conclusion of monopolization rests range from the statements that Pan American has "excluded" Panagra from the "market" (Opinion, R. 5408)

and has "prevented" Panagra's "extension" to the United States (Opinion, R. 5407), to statements that Pan American has blocked Panagra's "independent entry" into the United States (Opinion, R. 5405, 5406) "to its own terminal" (Opinion, R. 5398, 5404).

The important difference between these appraisals, which the court glides over, is obvious, and requires accurate notice and statement of what it is that Pan American's representatives on the board of directors of Panagra voted for and against, for it is their vote on the question of Panagra's applications to the CAB which has been found to constitute monopolization.

Pan American did not exclude Panagra from the market

Pan American's representatives on the Panagra board of directors voted in favor of, and long affirmatively urged, through-flight arrangements which would make the best possible combined use of Pan American and Panagra facilities, equipment and personnel in service between the United States and the west coast of South America. They voted against the establishment of an independent, unconnected, paralleling service of Panagra's between the United States and the Canal which would replace Pan American's service. These votes were properly in line with the fact that the two services were connecting and were designed and established as connecting services, with no thought on anybody's part that they would be disconnected and converted into paralleling, duplicatory and competitive services (*e.g.*, R. 216-217; D. Ex. P-96, R. 2520, 2522; P-108, R. 2558, 2559-561). The through-flight arrangement was eventually established after Grace had for years opposed and prevented its

establishment. While it can be said, therefore, that Panagra has not made "independent entry" into the United States to "its own terminal," it cannot be said that there has been any exclusion of Panagra from the market.

As the district court has treated the differently expressed incidents as being the same, it has not undertaken to meet or deal at all with the question of whether, assuming that Pan American was under some obligation to cooperate in a modernizing modification of the basic arrangement under which Pan American would fly from the United States to the Canal and Panagra would fly from the Canal down the west coast of South America, with a connection between the two services at the Canal, Pan American did not discharge its obligation and meet any legal requirement by its cooperation in the establishment of a through-flight service over both routes. As the court did not treat with this question, its holding of monopolization and attempted monopolization on the part of Pan American must rest upon the finding that Pan American has "excluded" Panagra from the "market." This is a conclusion which is indisputably contrary to the fact.

Proceeding from the two erroneous assumptions that Panagra is a "competitor" of Pan American and that it has been "excluded" from the market, the court reached the conclusion of monopolization on Pan American's part upon the basis of a few figures relating to shares of the market, not giving any consideration to steamship competition or any sufficient consideration to competition from foreign airlines. We maintain that Panagra, as the creation of Pan American, should not be considered a "competitor" of Pan American and that it may not be considered as "excluded" from the market. But accepting *arguendo* the assumptions of the district court, we shall

point out that a consideration of the relevant facts and figures would compel the conclusion that there is no monopolization or attempted monopolization by Pan American, even upon those assumptions.

Pan American is not "dominant" in the market

The district court found monopoly, without making the finding (essential thereto) that Pan American had the power to exclude competition or control prices (*American Tobacco Co.* v. *United States*, 328 U. S. 781 (1946); *United States* v. *Griffith*, 334 U. S. 100 (1948); *United States v. du Pont & Co.*, 351 U. S. 377 (1956)), on the basis of a finding that Pan American, *together* with Panagra, is dominant in the market. Taking figures which combine Panagra and Pan American participations in the market, the court has reached the strange result of finding Pan American guilty of monopolizing transportation between the United States and points in South America (the west coast) which it does not serve, while Panagra is found not to have monopolized transportation to those very points which it does serve. And the court has reached its conclusion on figures alone, without giving any consideration to key factors bearing on the existence of monopoly power, such as profits, government control of entry into the market, and the decreasing share of the market going to Pan American. Also omitted from proper consideration is the large and growing share of the market taken by foreign air carriers.

The court's discussion of the market occupies only four pages of the opinion (R. 5399-402). It defines the "area of effective competition" as "air transportation between the United States and South America, *particularly the west coast*" (italics ours). The first figures given are the

highly significant figures that in the last thirty years there has been a shift in the competitive positions of the steamship lines and airlines in the transportation of passengers between the United States and South America from the time when the airlines carried only 5% of the passengers to a time when they carry 80%, meaning that there has been and still is constant competition for passengers between the two types of service. Nevertheless, the court later held that there was no substantial competition between steamship lines and airlines into South America, and that figures as to sea traffic were not relevant or worthy of consideration in a look at the market or in determining the share of the market held by any airline (Opinion, R. 5403).

The figures which are cited as relied on to show Pan American dominance in the market between the United States and South America are that Pan American and Panagra *together* have participated in the movement of 75% to 88% of the passengers who used *United States flag airlines* during the period 1950-57 (Opinion, R. 5400). In the "particularly" relevant market, that is, between the United States and the west coast of South America, the only figures given are for *Panagra*, and it is stated that it carried between 79% and 86% of the traffic for this period (Opinion, R. 5401). The only figures given as to Pan American's own participation in any market are in traffic between the United States and eastern South America, a route as to which the district court found there was no question of Panagra's becoming a competitor of Pan American because of the territorial agreement. The one point of competition which the court found between Pan American and Panagra was Buenos Aires, which Panagra reaches from the west and Pan American

from the east (Opinion, R. 5401). The nature and extent of such competition is not explored, however, undoubtedly for the reason that there is no considerable competition between the two airlines for traffic into Buenos Aires, because the choice of routes for nearly all passengers is dictated by their choice of stops along the west coast or the east coast of South America, or possibly by their desire to go one way by one coast and return by the other coast (R. 176-183; D. Ex. P-425, R. 4258-259).

When the court comes to mention competition from foreign airlines, it finds that Pan American and Panagra *together* transported approximately 50% of the passengers travelling by air between the United States and South America during the period 1952 through 1957. Panagra's participation in total air traffic between the United States and western South America is found to be down to 50% in 1957 and Pan American's participation in total air traffic between the United States and eastern South America is found to be two-fifths for the period 1952-1957 (Opinion, R. 5401-402).

The court failed to present any realistic picture of the competition of *nineteen foreign airlines* operating between the United States and South America or Panama (*United States-South American Route Case*, Docket 12895, Order No. E-17289, August 8, 1961). Most of these airlines have commenced operating since 1950 and their share of the market is increasing steadily. The foreign airlines are constantly improving their service with more frequent and faster flights. As a consequence Pan American's and Panagra's share of the market has been declining drastically since 1950. Between the United States and South America, Pan American and Panagra had 73.1%

of the market in 1950; in 1957 they had only 47.3% (P. Ex. GS-32, R. 1388; GS-38, R. 1394). Between the United States and the west coast of South America, the two airlines combined had 84.5% of the market in 1950 and only 53.2% in 1957 (P. Ex. GS-45, R. 1401; GS-39, R. 1395). Between the United States and Buenos Aires, Pan American had 40.5% in 1950 and 34.7% in 1957 (P. Ex. GS-59, R. 1415; GS-53, R. 1409). Foreigners now travel principally by foreign airlines, and 24% of United States citizens travelling between the United States and South America now use foreign airlines (D. Ex. PS-112, R. 245, 4582).

The CAB has recently delivered comments on the development of foreign airline competition in South America which give a perspective on competition there that is much more realistic than the district court's virtual ignoring of the development. The CAB noted that at the time of its decision in the *Latin American* case in 1946 (*Latin American Air Service*, 6 CAB 857 (1946)), when Braniff was certificated, Pan American and Panagra operated in competition with only three foreign air carriers. Today, however, it is stated that "19 South American foreign air carriers are authorized to serve the United States-South American market," and that there has also been an increase in service within South America by local carriers. These services, it is noted, "dilute the potential economic support for the services of the United States carriers" and "bring into question the need for point-to-point duplication of such services." (*United States-South American Route Case*, Docket 12895, Order No. E-17289, August 8, 1961.)

The ever-increasing penetration of the market by foreign flag carriers demonstrates that they compete interchangeably with United States flag carriers for the transportation of air passengers between the United States

and South America. Therefore, the foreign carriers must be considered in the same market. *United States* v. *duPont & Co.*, 351 U. S. 377 (1956); *Times Picayune Publishing Co.* v. *United States*, 345 U. S. 594 (1953). The district court's failure to pay due attention to the competition provided by foreign airlines makes the court's presentation and appraisal of the competitive picture inadequate and misleading.

The figures unquestionably show that Pan American is *not* dominant in any of the markets under consideration. While there are no absolute standards in making a determination of dominance, decisions of this Court have established guidelines from which it is apparent that Pan American does not come within the criteria of dominance. Guidelines established by this Court and other courts indicate that considerably more than a 50% share of a market is necessary to establish dominance. Indeed, a two-thirds share is generally recognized as necessary to permit the trier of the facts to make a finding of monopolization. *United States* v. *duPont*, 351 U. S. 377 (1956); *United States* v. *Columbia Steel Co.*, 334 U. S. 495 (1948); *American Tobacco Co.* v. *United States*, 328 U. S. 781 (1946); *United States* v. *Aluminum Co. of America*, 91 F. Supp. 333 (S.D.N.Y. 1950). Pan American alone does not have more than 44% of any market, i.e., the east coast of South America market (P. Ex. GS-46, R. 1402) and Pan American and Panagra combined have only 50% of the United States-South American market. This, we submit, falls far short of establishing the dominance required for a finding of monopolization.

The finding of dominance here is refuted by more than a lack of a dominant share of the market. It is refuted by the very significant fact that Pan American's share of the market has been declining continuously and drastically over the past ten years. Such a decline in a share of the

market was commented on in *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 533 (1948), where the Court rejected a charge of attempted monopolization:

> "United States Steel, despite its large sales, many acquisitions and leading position in the industry, has declined in the proportion of rolled steel products it manufactures in comparison with its early days. In 1901 it produced 50.1%; in 1911, 45.7%; in 1946, 30.4%. For the period 1937-1946 it produced 33.2%."

In addition, Pan American's "profit" position hardly indicates monopolization. *Cf. American Tobacco Co.* v. *United States*, 328 U. S. 781 (1946). The rate of return has not only been relatively low PAA's Latin American Division had an average return of 2.9% on total investment for the period 1947-1957, with 3.8% and 0.6% in 1956 and 1957, respectively (D. Ex. PS-108, R. 245, 4577)—but an operating loss was sustained for four of the nine years between 1950 and 1958 (D. Ex. PS-14, R. 173, 4551). The district court failed to comment on this fact in discussing monopolization and necessarily failed to point to any case that found monopolization when a defendant had incurred such losses.

Pan American does not have the power to exclude competition from the market

The essential foundation of a finding of monopolization on the part of Pan American would be a finding that Pan American had the power to exclude competition. There is no finding, however, that Pan American had the power to exclude competitors or to control prices. The finding is only that Pan American had the power to prevent a single potential competitor, Panagra, from applying for

a route of its own from the United States to the Canal Zone. The court held that this power alone constituted monopoly power and hence its exercise was a violation of Section 2 of the Sherman Act.

We submit that the holding is clearly untenable for two reasons: (1) Pan American did not have the power attributed to it of excluding Panagra from the market, and (2) such a limited power of excluding a single competitor, assuming that Panagra was a "competitor" and that the power of exclusion existed, would not constitute monopoly power in an industry where entry into the market and the level of prices are entirely matters of Government control.

Pan American did not have the power attributed to it by the district court of preventing Panagra's application to the CAB for a route to the United States, in view of the court's ruling in *W. R. Grace & Co.* v. *United States*, 154 F.2d 271 (2nd Cir. 1946), *writ of cert. dismissed for mootness*, 332 U. S. 827 (1947). In that case, considering the question of whether or not Grace could apply for Panagra's own route despite the contrary vote of the Pan American representatives on the Panagra board of directors, the court held that Grace could make the application in Panagra's name and the application could be considered a Panagra application if Grace could prove that Pan American's opposition was the result of "illegality and fraud" on its part.

Thus, if Pan American were acting in the matter without proper regard for Panagra's interests and inconsistently with antitrust principles, Grace could have made a showing of the impropriety in Pan American's conduct and have prosecuted the application in the name of Panagra. This was the Grace privilege and oportunity as long as fifteen years ago. With the strict qualification

thus imposed on the maintenance of Pan American's position, making the maintenance of the position dependent upon its legality, it cannot be said that Pan American possessed the power of preventing Panagra's extension.

Furthermore, even if it be assumed that Pan American had the power to exclude Panagra from the market and it is assumed that Panagra is a "competitor", such power to exclude a single competitor is insufficient to support a Section 2 violation where the exclusion is not an exercise of monopoly power. See *Lorain Journal Co.* v. *United States*, 342 U. S. 143 (1951); *Gamco, Inc.* v. *Providence Fruit & Produce Bldg., Inc.*, 194 F. 2d 484 (1st Cir.), *cert. denied*, 344 U. S. 817 (1952); *United States* v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 (D. Minn. 1945). In *Mackey* v. *Sears, Roebuck & Co.*, 237 F. 2d 869 (7th Cir. 1956), *appeal dismissed*, 355 U. S. 865 (1957), the court ruled that the destruction of a single competitor, although sufficient to support a cause of action for malicious destruction of a business, did not violate Section 2 because Sears neither had nor thereby achieved such dominance in the market as to constitute monopoly power. In all of the cases in which the power to exclude a single competitor was held to have violated Section 2, the defendant had overwhelming dominance in the market and its power to exclude resulted from that dominance. Pan American's power of exclusion of Panagra, if assumed, was not a power in any way related to its position in the market but existed only in internal corporate arrangements of Panagra and represented only the inherent right of Pan American as a stockholder in Panagra. There is not even a suggestion in the opinion of the district court that Pan American used its market position in any way to exclude Panagra from the market.

Even assuming that the exercise of Pan American's right to vote its stock interest in Panagra on the subject

of whether an application should be made and what application should be made to the CAB to extend Panagra's service to the United States amounted to an exclusion of a potential competitor from the market, still such exclusion would not amount to monopolization or attempted monopolization or constitute an exercise of monopoly power because the power of controlling entry into the market and determining the amount of competition rests solely with the President of the United States and the CAB under Sections 401 and 801 of the Civil Aeronautics Act.* It should be noted that in 1946 five carriers applied for routes paralleling the routes of Pan American and Panagra in South America. *Latin American Air Service*, 6 CAB 857, 912 (1946). With the opportunity which the CAB then had to determine the route pattern, carrier participation and degree of competition, the members of the CAB divided evenly on whether there should be any additional competition in air transportation between the United States and Latin America, and the President decided that the only desirable competition would be the addition of one other carrier and Braniff was certificated to operate in the area.

There can be no question, therefore, that the power rests in governmental authority and has been exercised by governmental authority to determine the nature and extent of competition in the market under consideration and that Pan American's vote of its stock interest in Panagra on the subject of any route application by Panagra has not been an exercise of monopoly power.

This Court in *United States* v. *duPont & Co.*, 351 U. S.

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* The Civil Aeronautics Act was substantially reenacted by the Federal Aviation Act of 1958, 49 U.S.C. 1301, *et seq.* As far as relevant to this case the provisions are identical, and reference will be made only to the Civil Aeronautics Act in accordance with the form of reference used by the district court (Opinion, R. 5368, n. 4).

377 (1956), commented upon the significance to a question of monopoly power of the fact of whether a regulated or unregulated industry is involved, citing the air transportation industry as an example of "market entry" being "carefully regulated" (351 U. S. at 388, n. 14).

The district court did not discuss the question of whether or not Pan American had the power to fix prices, an important consideration in the determination of the existence of monopoly power. It can be categorically stated that Pan American had no such power. The fact is that fares and rates in international air transportation are recommended by conference procedure among all the airlines in the International Air Transport Association ("IATA"), and the establishment of fares and rates is dependent upon approval by the governments of the countries involved, specifically as to the United States by the CAB (Civil Aeronautics Act, section 412, 49 U.S.C. 1382 (1961)). The Articles of Association of IATA were approved by the CAB in 1945 (D. Ex. P-303, R. 3220) and the conference procedure thereunder approved in 1946 (D. Ex. P-304, R. 3222; *IATA Traffic Conference Resolution*, 6 CAB 639 (1946)). This procedure and the participation of the CAB in rate making make it apparent that Pan American does not have monopoly power to fix prices (See also D. Ex. P-305, R. 3224; P-306, R. 3231; P-307, R. 3235).

The key finding of monopolization of air transportation on the United States-Canal Zone sector is wholly lacking in support

While the district court couched its finding of monopolization in the broad terms of a monopolization of the "United States-South American sector" of air transportation, it is apparent that this finding is based entirely on what it terms the "more complete monopoly" in the "more

limited market" of the "United States-Canal Zone sector" (Opinion, R. 5407). Here is the key to the whole finding of monopolization, for it is in this sector alone that Pan American is found to have "excluded" Panagra, and if the finding of monopolization in this sector is not sustained the decision cannot stand in any respect.

The fact is that there is no support whatever in the opinion of the district court or in the evidence for a finding of monopolization in the United States-Canal Zone sector, and that the district court decision rests upon a legal premise which is plainly contrary to law—the fallacious premise that the transportation in question would be deemed "overseas" transportation as distinguished from "foreign" transportation and "as such, would be reserved exclusively to United States flag carriers" (Opinion, R. 5407). With this premise, it seems that the court assumed that there was no need to ascertain or consider any facts as to the amount of traffic involved, the carriers serving the route and their respective shares in the market. Not a fact relating to these matters is mentioned in the opinion, and indeed there is no evidence in the record as to the amount of traffic or division of the traffic among the airlines serving the market. It does appear in the record, however, that two-thirds of the traffic over this route is through traffic, so that nineteen foreign carriers are in competition with two American carriers for the bulk of the traffic. As for the local traffic, the court was mistaken in its understanding that foreign carriers do not participate.

Since 1949 there has been no airport in the Canal Zone serving commercial air transportation to and from the United States or to and from South America (See D. Ex. P-409, R. 3657). The airport has been located in Panama, a sovereign country (*Aviation Agreement Between the United States of America and the Republic of Panama*,

dated March 31, 1949). Under these circumstances, as a practical matter, there is no "overseas" transportation between the United States and the Canal Zone area, all the transportation is "foreign" transportation and, as such, open to foreign flag carriers equally with American flag carriers. As the record discloses, although shares of the market are not shown, eight airlines operate between the United States and Panama, six of which operate between New York or Miami and Panama (D. Ex. WRG-168, R. 5275*; D. Ex. P-409, R. 3657).

No "specific intent" to monopolize or "dangerous probability" of monopolization has been shown

The district court has found that Pan American monopolized and attempted to monopolize air transportation between the United States and South America, without distinguishing between the two. We have covered any possible claim of monopolization. We shall now show that the essentials of a claim of attempted monopolization are also absent.

It has often been stated that "a specific intent to destroy competition or build monopoly is essential" to a finding of an "attempt to monopolize." *Times-Picayune Publishing Co.* v. *United States,* 345 U. S. 594, 626 (1953). See *Swift & Co.* v. *United States,* 196 U. S. 375, 396 (1905); *American Tobacco Co.* v. *United States,* 328 U. S. 781, 814 (1946); *United States* v. *Griffith,* 334 U. S. 100, 105 (1948); *Report of the Atty-Gen's Comm. to Study the Antitrust Laws* 61 (1955).

Likewise, to complement the "specific intent" in the required demonstration of a definite and serious attempt

* W. R. Grace Exhibits WRG-1 through WRG-173 were introduced into evidence at page 625 of the original transcript, a portion of the transcript which was omitted from the printed record. Citations hereafter made to WRG-1 through WRG-173 will omit any reference to the point at which they were introduced.

at monopolization, it is required that there be a showing of "dangerous probability" of monopolization in the attempt. *American Tobacco Co.* v. *United States, supra,* at 785. Even the willful destruction of a competitor is no evidence of the offense of attempted monopolization, without the specific purpose of monopolizing trade and the dangerous probability of the realization of the purpose. *Mackey* v. *Sears, Roebuck & Co.*, 237 F.2d 869 (7th Cir. 1956), *appeal dismissed,* 355 U. S. 865 (1957).

We believe that it is unnecessary to dwell upon the lack of any showing or evidence of a specific intent to monopolize or a dangerous probability of monopolization by Pan American. Perhaps it can be said that a finding of "dangerous probability" is implicit in the court's finding of monopolization, but there is no mention of "dangerous probability" in the opinion of the court and certainly no finding, explicit or implicit, of "specific intent" to monopolize. Indeed, the concept of "specific intent" is not considered in the opinion. Equally plainly, we submit, there was no specific intent to monopolize or dangerous probability of monopolization in Pan American's actions which the court found to be an antitrust offense.

"Specific intent" means something different and more than intending to do what is done. It means doing it with a "plan" or "scheme" for gaining monopoly power. *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 532 (1948); *United States* v. *Aluminum Co. of America*, 148 F.2d 416, 431-432 (2d Cir. 1945); *Fargo Glass & Paint Co.* v. *Globe American Corporation*, 201 F. 2d 534 (7th Cir.), *cert. denied*, 345 U. S. 942 (1953); *Bender* v. *Hearst Corp.*, 152 F. Supp. 569, 578 (D. Conn. 1957), *aff'd*, 263 F. 2d 360 (2d Cir. 1959); *Report of the Atty-Gen's Comm. to Study the Antitrust Laws* 62 (1955).

Pan American here did no more than vote its stock interest in Panagra as it was entitled to do in the exer-

cise of its judgment as to what was right and proper. Certainly, such a normal exercise of the inherent right of a joint owner of a corporation or a joint venturer cannot be considered a plan or scheme to monopolize. The opinion of the district court does not suggest any such scheme on Pan American's part, but finds only that Pan American mistakenly regarded Panagra as a subsidiary, and that its votes within the corporate frame of its own jointly owned company were motivated by its desire to participate in the profits to be made by Panagra's flying over the Pan American route (Opinion, R. 5405-406). This desire to profit from the use of one's franchise can hardly be condemned as an intent or attempt to monopolize.

There is abundant legal authority that good faith action pursuant to an apparent legal right is a complete negation of the element of specific intent essential to an attempt to monopolize. It seems firmly established, for example, that bad faith in the prosecution of alleged patent and trade mark infringements is an essential element in a charge of an attempt to monopolize thereby. See *Kellogg Co.* v. *National Biscuit Co.*, 71 F.2d 662, 664, 665 (2d Cir. 1939); *Kobe, Inc.* v. *Dempsey Pump Co.*, 198 F.2d 416, 424, 425 (10th Cir.), *cert. denied*, 344 U. S. 837 (1952); *Virtue* v. *Creamery Package Mfg. Co.*, 179 Fed. 115 (8th Cir. 1910), *aff'd*, 227 U. S. 8 (1913); *Cape Cod Food Products, Inc.* v. *National Cranberry Ass'n.*, 119 F. Supp. 900 (D. Mass. 1954); *American TCP Corp.* v. *Shell Oil Co.*, 127 F. Supp. 208, 210 (S.D.N.Y. 1955). See also Smith, *Attempt to Monopolize: Its Elements and Their Definition*, 27 GEO. WASH. L. REV. 227, 233 (1958-1959).

There is no suggestion in the opinion of the district court that Pan American acted in bad faith in the vote of its stock interest in Panagra on the subject of the

application which might be made by Panagra for a route to the United States. We submit that it is clear beyond dispute that Pan American was acting at least pursuant to its apparent legal rights. Indeed, it was acting with the reason of compelling economic arguments. What the opinion of the district court really comes down to is that Pan American was mistaken. Even if that assumption be made, we submit that the mistake cannot be blown up into an intent and attempt to monopolize.

It is clear, therefore, that there is no basis for the conclusion of the district court that there has been monopolization or attempted monopolization by Pan American in air transportation between the United States and the Canal Zone and hence monopolization or attempted monopolization of air transportation between the United States and South America.

POINT IV

The Civil Aeronautics Board had primary jurisdiction of the subject matter of the action and the court should not have entertained the action.

The doctrine of primary jurisdiction has been well established ever since *Texas & Pacific Ry.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426 (1907). This case has been followed in *Baltimore & Ohio R.R.* v. *United States ex rel. Pitcairn Coal Co.*, 215 U. S. 481 (1910); *Texas & Pacific Ry.* v. *American Tie & Timber Co.*, 234 U. S. 138 (1914); *United States Navigation Co.* v. *Cunard Steamship Co.*, 284 U. S. 474 (1932); *Far East Conference* v. *United States*, 342 U. S. 570 (1952) and *United States* v. *Western Pacific R.R.*, 352 U. S. 59 (1956).

The doctrine of primary jurisdiction applies with particular force to this case. The underlying problems and

and Pan American but the route south of the Canal is subject to their agreement that Pan American and Panagra are not to parallel each other's routes. By so dealing with the routes which are entirely within the jurisdiction of the Board, the court has seriously interfered with the jurisdiction of the Board to the point of usurping its jurisdiction and preventing it from effectuating national policy.

Whatever justification might have existed to entertain the action and grant the relief requested by the Government, which would have given the CAB that freedom of exercise of its jurisdiction which it desired, ended when the court concluded that the complaint was not sustained, and certainly then the court should have dismissed the complaint and not have undertaken to do many things not requested and diametrically opposed to what was requested, resulting in the most serious compromise of the Board. While, at worst, the consequence is the defeat of national policy as to the number of American flag carriers which should exist in Latin America, there are other very serious consequences in the making of rulings with respect to routes: one ruling as to the route north of the Canal and another ruling as to the route south of the Canal, when any ruling with respect to either route can be made only in consideration of the necessary relation between the two routes and in a consistent manner by the agency which is vested with the responsibility for the route pattern, the allocation of routes and certification of carriers.

We are not presently advised as to what the Government's position may now be in respect to the primary jurisdiction of the Board and the district court's infringement upon and impairment of that jurisdiction. The soundness of our position with respect to the primary jurisdiction of the Board is not affected, however, by the

Government's attitude. The Board should neither be allowed nor required to yield any part of its jurisdiction to the court. The exercise by the Board of its primary jurisdiction should be assured, and only if there is a need for the Board to go to court after its jurisdiction has been exercised should it be allowable for the court to entertain an action. *Trans Pacific Airlines* v. *Hawaiian Airlines*, 174 F. 2d 63 (9th Cir. 1949).

The district court gave two reasons for its decision that the primary jurisdiction doctrine is inapplicable to this case (R. 5419-420): (1) that the Government seeks a remedy which the CAB may not give, and (2) that the complaint covers matters existing before 1938 over which the CAB has no jurisdiction. Neither reason is persuasive.

After this Court's decision in *General American Tank Car Corp.* v. *El Dorado Terminal Co.*, 308 U. S. 422 (1940) and, more recently, in *United States* v. *Western Pacific R.R.*, 352 U. S. 59 (1956), it is plainly incorrect to deny primary jurisdiction on the ground that the administrative agency involved cannot provide the exact remedy sought. In both *El Dorado* and *Western Pacific* this Court held the primary jurisdiction rule applicable even though the agency was unable to grant the exact relief requested. The relevant inquiry is not whether the administrative body has power to grant the relief, but whether some issue involved in the litigation has been designated by Congress to be "within the special competence of an administrative body." *United States* v. *Western Pacific R.R.*, 352 U. S. 59, 64 (1956). See 3 Davis, *Administrative Law Treatise* § 19.07 (1958).

The antitrust area is not outside of the CAB's jurisdiction as the district court seemed to think. Two cases brought against airline associations for violation of the

antitrust laws show that the agency's inability to grant a particular remedy does not proscribe application of the doctrine of primary jurisdiction. In *S.S.W., Inc.* v. *Air Transport Ass'n.*, 191 F. 2d 658 (D.C. Cir. 1951), *cert. denied*, 343 U. S. 955 (1953), and *Apgar Travel Agency, Inc.* v. *International Air Transport Ass'n.*, 107 F. Supp. 706 (S.D.N.Y. 1952) plaintiffs, charging the defendants with conspiracy and monopolization, asked for injunctive relief and treble damages. Notwithstanding the inability of the CAB to grant damages, both courts, finding the primary jurisdiction doctrine otherwise applicable, referred the cases to the CAB.*

As this Court noted in *United States* v. *Radio Corporation of America*, 358 U. S. 334, 346, 350-351 (1959), a "pervasive regulatory scheme" of a regulated industry indicates a Congressional intention to remove the industry from the general antitrust norms of the Sherman Act. We submit that this is clearly so in the letter and spirit of the Civil Aeronautics Act, with its many provisions which leave competition in the industry to the discretion of the CAB. It follows that the existence and exercise of the primary jurisdiction of the Board in relation to antitrust complaints must be correspondingly broad and responsive to the responsibility vested in the Board. This is so clear that it has been suggested that the doctrine of primary jurisdiction should always be applied in antitrust

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* In *Slick Airways, Inc.* v. *American Airlines, Inc.*, 107 F. Supp. 199 (D.N.J. 1951), *appeal dismissed*, 204 F. 2d 230 (3d Cir.), *cert. denied*, 346 U. S. 806 (1953), the court—faced with allegations similar to *S.S.W.*—refused to follow *S.S.W.* and apply primary jurisdiction. However, the plaintiff had withdrawn its request for an injunction and sought only damages. Distinguishing *Slick* from *S.S.W.* and *Apgar* is the fact that in *Slick* the CAB had already had hearings and ordered prospective relief with respect to the principal alleged violations. Thus the court could conclude that "there do not presently appear administrative problems which must be committed to the Board for its determination." *id.* at 216.

actions brought against an airline within the CAB's jurisdiction. See Hale & Hale, *Competition or Control IV: Air Carriers*, 109 U. Pa. L. Rev. 311, 358-360 (1961).

We submit that there can be no question about the applicability of these principles and the doctrine of primary jurisdiction to this case in the light of what the Court of Appeals for the Second Circuit said of the Board's jurisdiction over the subject matter of the district court's decision and decree in this action. *W. R. Grace & Co. v. CAB*, 154 F. 2d 271 (2d Cir. 1946) at 282. In stating the reasons for its conclusion that the CAB had the jurisdiction to determine, and was the proper agency to determine, whether Pan American's opposition to Panagra's application for an extension to the United States was due to "illegality and fraud"—and why the matter should not become the subject of a court suit—the court said:

> "Both those issues demand the same specialized acquaintance with commercial aviation and its ramifications as a decision upon the public convenience and necessity of the extension itself. No court, state or federal, would have that acquaintance; by hypothesis the Board does have it, and the Board alone."

The second reason given by the district court for denying the Board's primary jurisdiction is also unsupportable. There is no suggestion in the opinion as to what the "matters" are that existed prior to the creation of the CAB and over which the CAB would have no jurisdiction. Without some inkling as to what the court had in mind, we cannot think of anything in the pre-1938 history of Panagra which would place current conditions of the company outside of the cognizance of the CAB. The CAB

United States (D. Ex. P-420, R. 3916, 3971-972, 3983). He said that the two agreements definitely settled the deadlock, which had been the subject of CAB inquiry in Docket 779. He stated (D. Ex. P-420, R. 3916, 4047):

> "• • • the issue in 779 was whether or not Panagra should be extended to the United States. That was the deadlock which led to that proceeding. That controversy has been settled by this arrangement under which through flight is provided under the terms of this contract."

When questioned as to whether that implied that the original extension was no longer contemplated and was not to be sought, Mr. Roig replied in the affirmative (D. Ex. P-420, R. 3916, 4048).

Edward Hickey, an Antitrust Division Attorney, put to Roig the question and got the answer which emphasized the fact of the understanding all around that Pan American was no longer under any call from anybody to consent to an independent route to the United States for Panagra (D. Ex. P-420, R. 3916, 4109):

> "Q. Referring back to my question, *Mr. Roig, isn't it implicit then in this provision that except for default of certificate, Pan American is under no obligation to consent to Panagra's making application for an independent franchise?* **A. *That is correct.***" (Italics supplied.)

Henry J. Friendly, Vice President and General Counsel of Pan American, was very precise in his testimony—the agreements settled the dispute as to whether Panagra should be permitted to apply for an independent entry to the United States; such an application was not foreclosed, but it could come only by vote of Panagra's board of directors and it was not foreseeable that Pan American

would change its view and that any such application would be made by Panagra.*

* Friendly testified under examination by counsel for Braniff as follows (D. Ex. P-421, R. 4142, 4175):

"Q. Now, Mr. Friendly, do you understand, as a result of contracts A and B, that Panagra is prevented from applying for a route to the United States in its own name? A. No.

"Q. There is no informal understanding on that basis. A. Well, my understanding is exactly as Mr. Roig has testified: that there is no express provision in the agreement on the subject; there is nothing whatever in the agreement that would prevent *Panagra, upon proper action of the Board of Directors,* from making an application. *There is an understanding which you can say is implicit in the agreement, or which you can say is a result of the express provisions in regard to the dismissal of litigation, that Grace and Company will not agitate for such an extension.*" (Italics supplied.)

Under examination by Mr. McDowell, an attorney for the Antitrust Division, Friendly testified (D. Ex. P-421, R. 4142, 4185-186):

"Q. Mr. Friendly, in response to a question by Mr. Schneider on cross examination, I understood you to say that there was nothing in the agreement involved in this proceeding to prevent Panagra from applying for an independent franchise to enter into the United States; is that correct? A. That is right.

"Q. I would like to know whether there is any understanding outside of the agreement now involved in this proceeding which would so prevent Panagra from applying? A. There is no understanding whatever in regard to Panagra's applying or not applying. *Panagra can apply at any time if its board of directors so authorized.*

"Q. *It is understood that this contract, and the arrangements contemplated under it for charter operation into the United States will settle the dispute which has existed for sometime between Pan American and Grace as to whether Panagra should be permitted to apply for an independent entry to the United States?* A. *Yes, I should say so.*

"Q. And as part of the settlement of that dispute, is it understood between the parties that Panagra will not, so long as this contract is in effect, apply for such independent entry? A. No. I don't want to seem unduly technical, Mr. McDowell, but I want to be perfectly clear about this. There is nothing in these agreements that limits the ability of Panagra as a corporation to make such an application.

"Of course, Panagra can make such an application only by authorization of the Board of Directors. Pan American's views

their ultimate resolution are necessarily for CAB determination. The basic questions—the route pattern and integration of Pan American and Panagra into the route pattern, including dealing with any problems presented by Panagra's ownership—are matters within the primary and exclusive jurisdiction of the CAB. The injection of the court into these matters can only result, as it has resulted, in a prejudice to the exercise of the Board's jurisdiction and prevention of its effectuation of national policy in air transportation.

It may be that if this action had resulted either in sustaining or dismissing the complaint, no harm would have been done to the CAB's jurisdiction and functioning. The Board could readily deal with a Panagra with both Pan American and Grace in or out of ownership. But a court result which would put Pan American out and keep Grace in would create a situation with which the Board cannot deal with requisite administrative authority and latitude or consistently with declared national policy. Grace would be cemented in control of a one-half interest. The other half interest coming into unknown hands would perpetuate the divided and equal ownership with its attendant problems, but worse than any consequence flowing from the joint ownership of Pan American and Grace would be the consequence of Panagra's becoming a third American flag carrier into Latin America, which would be the worst thing for Panagra and the last thing which the Board wants and national policy requires.

The result reached by the district court is thus a demonstration that the action should not have been entertained, or at least that the court should not have undertaken to enter a decree so at variance with the purpose for which the court's jurisdiction was invoked and the

relief which was requested. There certainly was no need, occasion or justification for the court's entertaining an issue not embraced within the complaint, interjected by one defendant against the other, and rendering "relief" not compatible with the action or any jurisdiction which the court might properly or usefully exercise.

With due regard to the fact that the CAB requested the institution of the action, and defined the complaint and remedy, the court's recasting of the parties and issues and reaching of a result which is at odds with the Board's objective in bringing the action makes the entertainment of the action and exercise of the court's jurisdiction intolerable. It cannot have the excuse suggested by the court that the "remedy" requested does not lie within the power of the Board. The Board had the jurisdiction to hear and pass upon any complaint which Grace might make against Pan American's actions with respect to an application by Panagra for a route to the United States, including any claim of an antitrust violation, and to fashion an appropriate remedy. *W. R. Grace & Co.* v. *CAB*, 154 F. 2d 271 (2d Cir. 1946), *writ of cert. dismissed for mootness*, 332 U. S. 827 (1947).* Such a proceeding was instituted before the Board by Grace in 1957 and is presently before the Board (R. 294-295). If, after such a proceeding was heard and the Board's determination made, the Board found occasion to call upon the court in implementation of the Board's jurisdiction and determination,

* Our statement here with respect to the jurisdiction of the Board in any such proceeding is upon the assumption that the matter of any making of an application by or in the name of Panagra is open to question. As we shall show in Point V of this brief, the question is closed by the settlement made and approved by the CAB in the through-flight agreements, which included the dismissal of the appeal to this court from the Second Circuit's decision on the ground that the appeal was moot, 332 U. S. 827.

it might well be that the court would have the jurisdiction to respond. But without a determination by the Board in such a proceeding, the court had no jurisdiction, or should not have exercised any jurisdiction, over a claim of alleged unilateral violation of the antitrust laws by Pan American in its action with respect to an application to the CAB, particularly, as the claim was not asserted by the Government or CAB, but only by a co-defendant with no standing to assert such a claim in this action.

The result reached in this case is a demonstration in still another way of the impropriety of the court's taking jurisdiction and undertaking to deal with a subject with so many ramifications which cannot be handled except in the administrative frame. The opinion of the court itself shows the essential relationship between the route north of the Canal and the route south of the Canal in air service between the United States and the west coast of South America (*e.g.* Opinion, R. 5401, 5405). Obviously, the two sections cannot be dealt with separately and no disposition can be made of one without a corresponding disposition of the other at the same time and in a related way. Most obviously, one body cannot decide the affiliation of one route and another body decide the affiliation of the other. But, as a result of the assumption of jurisdiction by the court in this case and of the decision rendered by the court, the two sections of the air service have been separated and the court has purported to leave it to the CAB to decide what shall be done about the route north of the Canal, while the court has assumed to encumber the route south of the Canal with the adjudication that it is subject to a valid agreement of non-paralleling between Pan American and Panagra.

The impossible situation which the court has thus created is apparent from a crucial fact of which the court

was conscious but not duly appreciative. That fact is, as has been previously noted, that if Panagra was given a route between the United States and the Canal and thereby gained a through route of its own from the United States down the west coast of South America, and Pan American was dead-ended at the Canal, Panagra would get all the through traffic and nearly all the local traffic on the route between the United States and the Canal, so there would be practically no traffic moving over the Pan American route, with the consequence that it could not be maintained. In this setup there would be no introduction of competition between Pan American and Panagra, which is the mirage of the district court's opinion, but there would be a replacement of Pan American by Panagra. That is, unless Pan American were correspondingly given a route from the Canal down the west coast of South America in order that it would have a through service competitive with Panagra. In short, competition between Pan American and Panagra between the United States and the west coast of South America, which is presumed to be the vision, could become a reality only if both carriers had paralleling routes all the way. This, of course is not the vision of Grace, whose aim is not competition with Pan American but the elimination of Pan American from the west coast service, an elimination which would become completely effective by the adoption of its proposal that Panagra have a route of its own between the United States and the Canal, but that Panagra remain free from the competition of any route of Pan American from the Canal down the west coast of South America. Unfortunately and wholly unjustifiably, the district court has ventured to make the disposition which Grace desires by its pronouncement that the route north of the Canal is free of any engagement between Grace

application except in situations which have never occurred. The refusal of Pan American to support such an application has thus been approved by the CAB and immunized from a charge of an antitrust violation.

There is no question of fact in this connection and we do not see how there can be any question of legal effect. The pertinent facts can be briefly stated.

The agreement between Pan American and Panagra, known as the Through Flight Agreement (D. Ex. P-2, R. 1859), reciting that the parties "desire to settle outstanding differences," provided for flights by Panagra planes manned by Panagra crews over Pan American's route from Miami to the Canal. Panagra could terminate the agreement only upon a default in performance by Pan American. Provision was specifically made as to the defined circumstances under which "Pan American will consent to Panagra's making application" for routes held by Pan American. These circumstances were a transfer or abandonment of a route by Pan American. Equally plainly as a corollary, Pan American was under no obligation, except as specified, to consent to a route application by Panagra, but Panagra was under obligation to continue for the term of the agreement with through flight arrangements instead of a route of its own.

The agreement between Pan American and Grace, known as the Parent Company Agreement (P. Ex. G-267, R. 892), made in connection with the Through Flight Agreement, was a joint undertaking of the owners of Panagra to use their best efforts to facilitate the carrying out of the Through Flight Agreement, and each agreed "not to exercise its rights as owner of voting shares in such a manner as to interfere with or impede the performance of said contract in accordance with its

terms." The meaning of this commitment under the circumstances is unmistakable. Any attempt by Grace to use its voting power to cause Panagra to apply for a route included in the through flight arrangements would necessarily "interfere with or impede the performance" of the Through Flight Agreement. The agreement provided, as final manifestation of the definitive character of the disposition of the whole controversy relating to Panagra's routing to the United States, that when the agreement was approved by the CAB the parties would apply for the dismissal of all legal proceedings relating to the controversy, including the appeal pending in this Court from the decision of the Court of Appeals of the Second Circuit. This Court accordingly dismissed the writ of certiorari "on the ground that the cause is moot" (332 U. S. 827 (1947)).

The CAB held an extensive hearing on the application of Pan American, Panagra and Grace for approval of the agreements. The testimony and briefs presented made it crystal clear that the parties had settled their dispute over any route application by Panagra, that the through flight arrangements were the agreed settlement, that the agitation by Grace for a route to the United States for Panagra was ended, and that any application by Panagra would be only upon action of its board of directors, meaning by mutual agreement of the parents (D. Ex. P-419, R. 3763; P-420, R. 3916; P-421, R. 4142).

Roig of Grace, also president of Panagra, testified that it was the desire of the Grace directors to obtain a permanent arrangement between Pan American and Panagra and between the parent companies settling the controversy between Pan American and Grace regarding the extension of Panagra's route to a terminal in the

has the broad jurisdiction under Section 411 of the Civil Aeronautics Act (Appendix at p. 91 below) to issue cease and desist orders against "unfair and deceptive practices" or "unfair competition" arising from the ownership or control of Panagra, and under Section 415 of the Act (Appendix at p. 92 below) the Board is given authority to "inquire into the management of the business of any air carrier." Indeed, presently pending before the Board is a Board-initiated inquiry into the management of Panagra (Docket No. 5140). And, most significantly, the one matter on which the court felt required to act—Pan American's actions on the question of Panagra's application for a route to the United States—falls squarely within the jurisdiction of the CAB as defined by the Court of Appeals in *W. R. Grace & Co.* v. *CAB, supra.* It is a contrariety to suggest that it was necessary to go to court to get effective relief against Pan American's actions in this respect when the jurisdiction to grant the most direct relief has existed in the Board for fifteen years (if the matter was open at all)—the more so when it is noted, as will be pointed out in the closing point of this brief, that the remedies which the Board could adopt and adapt are more suitable than the drastic remedy of divestment which the court has adopted, which creates many problems and solves none.

POINT V

The Civil Aeronautics Board's approval of the Through Flight and Parent Company Agreements, an integral part of which is recognition of Pan American's right to refuse to allow Panagra to extend its route to the United States, confers antitrust immunity on Pan American's exercise of that right.

Section 414 of the Civil Aeronautics Act relieves any person affected by any order made under Section 412 of the Act from the operations of the antitrust laws, insofar as may be necessary to enable such person to do anything "authorized, approved or required" by such order.

On May 5, 1947, the CAB, by order made under Section 412 of the Act, approved an agreement between Pan American and Panagra and an agreement between Pan American and Grace making the arrangements for the through flights by Panagra planes over Pan American's route from Miami to the Canal (D. Ex. P-316, R. 3284). The agreements dated July 30, 1946, were originally approved for a period of three years, and have been re-approved in 1950, 1955 and 1960 (D. Ex. P-318, R. 3308; P-333, R. 3362).

CAB approval thus relieved the parties from the operations of the antitrust laws in respect to anything done or not done in conformity with these agreements.

The agreements, which were a settlement of all controversy over the question of Panagra's applying for a route to the United States, clearly contemplated that no such application would be made unless the board of directors of Panagra authorized such application and that Pan American was not obliged to consent to such an

We submit, therefore, on the CAB record, that there can be no question about these facts and legal consequences which are conclusive against the district court's finding **of an antitrust violation of monopolization on the part of Pan American:**

(1) The Through Flight and Parent Company Agreements were a disposition of any issue relating to Panagra's application for a route to the United States, and, as this issue was the only subject on which the district court found a violation, the agreements were a disposition of the subject matter of the court's decision against Pan American.

(2) Pan American derived antitrust immunity from any antitrust charge relating to its refusal to vote in favor of an application by Panagra for a route to the United States, and was immunized against the violation found by the district court, by virtue of the CAB's approval of the agreements disposing of the matter of any such application by Panagra.

(3) The finding of the CAB that the disposition made by the agreements of the subject of Panagra's coming to the United States did "not result in creating a monopoly" is a conclusive determination of the subject of the court's finding of a violation on the part of Pan American and requires a reversal of the district court's decision.

The discussion of the subject of the effect of the CAB's approval of the through flight arrangements in the district court's opinion does not meet the point. Indeed, the opinion misstates the point and knocks down a straw man.

The opinion states that Pan American asserts it is immune from antitrust violations because the CAB approved arrangements between it and Grace respecting the

"area of Panagra's operations" (Opinion, R. 5416). With this premise which bears no resemblance to the fact, the court could dispose of the matter with the stroke of saying that "no such approval was ever sought or obtained" (Opinion, R. 5416). It was undoubtedly on this premise also that the court stated that the Through Flight Agreement was "silent with respect to the problem," which is not otherwise stated. Accurate enough, but beside the point, are the observations that the provisions of the agreement as to when Pan American was obliged to consent to an application by Panagra for service to the United States "did not negative consent under other circumstances," and that there is no basis for an inference that the Board understood it was approving a "prohibition" against Panagra's seeking an independent franchise (Opinion, R. 5417).

As the facts of the matter have been reasonably fully stated in our preceding discussion, it is not necessary to comment further on the expressions of the district court. It is perfectly clear that the arrangements which the Board approved solved the problem of Panagra's access to the United States by through flight over Pan American's route rather than by Panagra's having a route of its own, and that, while the agreement did not foreclose a future application for such a route when, as and if Panagra's board of directors might make an application, the expectation was that no such application would be made, and certainly it was understood that Pan American was under no obligation to vote in Panagra's board of directors in favor of allowing such an application to be made.

The legal consequence of antitrust immunity to Pan American follows from doing what was authorized and approved by order of the Board approving the agree-

To say now that this creation of Pan American's should be cut off from Pan American, and the value of the investment in Panagra which Pan American has built from the beginning over a period of thirty-five years should be surrendered, is to deal a blow to creative and constructive enterprise which would be very hard to justify, and which, we submit, cannot be justified by the facts of this case, by any finding of the district court, or by any argument that can be advanced in support of the decree.

A remedy by injunction would be fully adequate

Remedy by injunction, rather than by divestment, is indicated by all that the district court has found against Pan American, and there is nothing in the district court's opinion to suggest that remedy by injunction would not serve adequately or that the remedy of divestment is required for any reason.

The district court found nothing illegal in the ownership of Panagra by Pan American. On the contrary, the court found the ownership and all the arrangements between the owners and with the subsidiary to be altogether legal and in the public interest. Significantly, these approved arrangements include joint offices, joint selling and joint publicity between Pan American and Panagra. The only thing which the court found wrong was the normal exercise by Pan American of its half-ownership of Panagra in a vote by the owners on *one matter*, the extension of Panagra to the United States. The court has not suggested any reason why an injunction against Pan American's acting in the way which has been found objectionable in this matter would not serve adequately and satisfactorily as a remedy. Indeed, the

opinion contains no discussion of the vital subject of remedy and gives no indication of any consideration of the subject. A lone sentence in the opinion, wholly conclusory, is all that the district court has addressed to the question. The opinion merely states that Pan American has created a situation that "cannot be righted so long as it retains the negative control that it now possesses over Panagra" (Opinion, R. 5415). Why it cannot be righted by an injunction against the objectionable respects of the exercise of that "negative control," which in both owners has been found to be legal, is not intimated.

We submit that it is clear that an injunction would serve fully well. No complexity or difficulty in the framing or administration of an injunction would be presented. It could be as simple, and, if desired, as broad as the injunction which has been incorporated in the decree as relief "pending" divestment—an injunction against Pan American's "taking any action, direct or indirect, which would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. to alter, amend, modify or extend its routes" (R. 5435-436). In short, Grace could make in the name of Panagra any application it wished, and if Pan American thought that any such application was contrary to Panagra's or the national interest, it could address its "arguments" to the Board, where, in the court's opinion, all such arguments should be heard and determined.

There is no need or warrant whatever to divest Pan American from its interest in Panagra to right the wrong which has been found and to be both corrective and preventive in the remedy. There is no suggestion in this case that Pan American has acted in bad faith, or that

it has improperly used Panagra, or that it would be recalcitrant or uncooperative in carrying out the mandate of the court. All that could fairly be said against Pan American here, if the findings of the district court were sustained, would be that it has made an honest mistake as to its legal rights. With a judicial declaration on the subject, there can be no question about Pan American's following the directive in good faith and proper spirit.

The goal which this Court has set in antitrust remedies is devising "measures effective to restore competition." *United States* v. *duPont & Co.*, 366 U. S. 316, 326 (1961). The competition here sought to be "restored" is competition to be "created" through an application by Panagra to parallel Pan American's route from Miami to the Canal. It remains very much open to question whether the CAB would grant the application. Certainly, an injunction is a measure fully effective to bring the application to the only forum where it can properly be brought, which is the CAB.

An injunction is particularly appropriate where the violation has been only in the partitioning of territory between joint venturers (*Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 604 (1951)) or where the ownership involved, as to which divestiture is suggested, has been legally acquired and an injunction would eliminate the illegal agreements or practices (*United States* v. *National Lead Co.*, 332 U. S. 319, 351 (1947)).

In this case Pan American's creation and joint ownership of Panagra have expressly been found legal by the district court. An injunction against Pan American's voting practices with respect to route applications would eliminate the only violation found.

The full adequacy of an injunction to prevent abuses of corporate voting power is demonstrated by the fre-

quent use that courts have made of injunctions controlling corporate voting powers. Decrees enjoining specified uses of voting power were issued in *United States* v. *Imperial Chemical Industries, Ltd.*, 105 F. Supp. 215, 244 (S.D.N.Y. 1952); *United States* v. *General Electric Co.*, 115 F. Supp. 835, 871-6 (D. N. J. 1953); and *American Crystal Sugar Co.* v. *Cuban-American Sugar Co.*, 152. F. Supp. 387, 400-401 (S.D.N.Y. 1957); *aff'd*, 259 F. 2d 524 (2d Cir. 1958). Corporate or analogous organizational machinery was also regulated by injunction in *Associated Press* v. *United States*, 326 U. S. 1 (1945), where the observance of a by-law was enjoined and in *United States* v. *Minnesota Mining & Mfg. Co.*, 96 F. Supp. 356 (D. Mass. 1951), where a corporate charter was ordered to be amended.

It is submitted that there can be no question about the adequacy of an injunction as the remedy in this case, and, therefore, that the extremely harsh remedy of divestiture should not come into consideration.

Divestiture is inappropriate according to standards established by this Court for determining the appropriateness of divestiture

This Court has defined the purposes to be served by divestiture and thus indicated that divestiture is to be resorted to only when the ends require the means. Thus divestiture has been found appropriate to three ends, as stated in *Schine Chain Theatres, Inc.* v. *United States*, 334 U. S. 110, 128-9 (1948): (i) to put an end to the combination or conspiracy when that is itself the violation; (ii) to deprive the antitrust defendants of the benefits of their conspiracy; and (iii) to break up or render impotent the monopoly power which violates the Act. The ends to be served by the means of divestiture were similarly stated

That the agreements were definitely understood to end the Grace agitation for an independent route of Panagra to the United States and end all controversy on that subject is highlighted by the *Panagra* brief to the CAB, seeking approval of the agreements. In ***bold type*** the brief stated:

> "The controversy which led to Docket 779 [specifically stated in the brief to be the desire of the Grace directors to have Panagra apply for a route to the United States and the refusal of the Pan American directors to allow Panagra to so apply] has been settled and the aggravating cause of earlier deadlocks has been permanently eliminated." (D. Ex. P-242, R. 3038, 3040.)

And on oral argument before the Board (D. Ex. P-419, R. 3763, 3786), counsel for Panagra stated:

> "• • • the record shows here clearly that there has been only one basic controversy in perhaps

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have been opposed to the making of such application for the reasons that I have indicated. So far as I can see at the moment, I see no reason, and I have no reason to think that Pan American's views would change.

"What may happen over 99 years is more than I can say. Now, as to the understanding with respect to Grace, that has already been testified to by Mr. Roig, and I am in complete accord with what he said.

"Q. Mr. Roig said in another connection, in the course of his testimony, Mr. Friendly, that this contract removes the basic difficulty which has existed between Pan American and Grace with respect to Panagra. Do you concur in that opinion? A. One hundred percent.

"Q. *In other words, you think the basic difficulty has been the question of whether Panagra should be permitted to come into the United States independently?* A. *I certainly do.* I don't mean to say that we haven't had other matters on which we have differences of opinion just as officers of a company may have differences of opinion with each other, but over the years this is the only one—at least over recent years—the only one that has given rise to any real difficulty." (Italics supplied.)

> [sic: Panagra's] operations. That has been this extension problem. The line has prospered and grown:
>
> "The partners have cooperated under many headings. There has been a great deal of pioneering and efficient service, *and if this solution, which we believe is a solution, is accepted by the Board, any cause for future deadlock or difficulty is eliminated.*" (Italics supplied)

There was no doubt whatever of the meaning of these agreements at the time and there has been no doubt ever since. The decision of the CAB approving the agreements (*Pan American-Panagra Agreement*, 8 CAB 50 (1947)), noting the applicants' assurance that the agreements were a "settlement of their difficulties" and that the "controversy has been resolved" (8 CAB at 61), was recognition of the fact that Panagra would not come to the United States over its own route. And the purport of the agreements could not be stated more definitely and pointedly than it was stated in the Government's trial brief below (p. 56):

> "This agreement, *which still prevents Panagra from operating to the United States under its own certificate*, was signed on July 30, 1946." (Italics supplied)

Equally clear, beyond question, was the fully appreciated fact that Board approval of the agreements gave the parties antitrust immunity.

Chairman Landis made the observation at the argument that "Of course our approval of the agreement gives you immunity from the Sherman Act" (D. Ex. P-419, R. 3763, 3907).

This consequence was recognized by the CAB in the most practical and pointed way by its action, of which the

Government tells us in its trial brief below (p. 2), in countermanding its 1945 request that the Department of Justice institute this antitrust action against Panagra's two owners.

Finally, the decision of the CAB, approving the through flight arrangements and agreements, contained a finding on the merits of any question which might be raised of possible monopolization on the part of Pan American in refusing to countenance an application by Panagra for a route of its own to the United States. This finding, which is conclusive against the district court's finding against Pan American, was that the "transaction," consisting of the through flight and parents' agreements, "is not adverse to, nor inconsistent with, the public interest, that such transaction does not result in creating a monopoly • • •." *Pan American-Panagra Agreement*, 8 CAB 50, 63 (1947).

This finding of the CAB is of the utmost importance in this case and it cannot be given any narrower meaning than a finding which is *res judicata* of the issue on which the district court has made its finding and rendered its decision against Pan American.

As we have pointed out before, there is not and never was any such issue in this case as the district court has found and on which it has found against Pan American. There was no allegation in the complaint or suggestion in the Government's case that Pan American had monopolized or attempted to monopolize air transportation by voting against an application by Panagra for a route of its own to the United States. All that was alleged in the complaint in respect to the prevention of such an application was that such prevention was "in accordance with" the "agreements and understandings" between Pan American and Grace "to form Panagra and to divide and allocate the areas of air transportation" (R. 10). The

theory of the complaint was that there was a combination between Pan American and Grace which embraced all air transportation between the United States and South America, which took shape in the formation of Panagra and consisted of a division and allocation of all such areas of air transportation between Pan American and Panagra. There was not the slightest hint of a suggestion in the complaint, and the Government certainly never had such a thought, that Pan American's refusal to vote for an independent route for Panagra between Miami and the Canal was alone and unilaterally a monopolization of air transportation between the United States and South America. Such an idea was injected into this case only by Grace, as an opportunity which it saw and seized upon to revive its abandoned claim against Pan American and turn this case into a new Grace offensive against Pan American. Altogether unwarrantedly, we submit, the district court has also seized upon the non-existent issue and made it the basis of its entire decision against Pan American.

In this course of events, the decision of the CAB approving the through flight arrangements takes on a special and conclusive significance. It was addressed directly to any such question as might ever be raised as to whether there was anything monopolistic in the arrangements by which Panagra would fly to the United States over Pan American's route instead of over a route of its own. After the specific determination made by the Board on that question, that no monopoly was created thereby, a determination which by law it had to make in order to approve the through flight agreements, it was no longer open to anyone to claim that there was an antitrust violation in what the district court has termed the "suppression" of Panagra's extension to the United States.

ments. Further, as we have shown, the Board's finding that the arrangement was not monopolistic is a conclusive determination on the merits of any issue, such as Grace has raised and the district court has decided, of whether Pan American has monopolized any trade or commerce by settling its controversy with its partner in the Through Flight Agreement.

POINT VI

Divestiture would be an inappropriate, unnecessary and unwarranted remedy. It would be seriously prejudicial to the public interest and Panagra and severely penal on Pan American and its stockholders.

This point is written on the basis of assuming that the district court's finding against Pan American is sustained. Even if such an assumption were made, it is our submission that the remedy of divestment decreed by the court would be entirely unjustified. The remedy imposed, like the underlying decision, requires a searching review by this Court pursuant to its practice in reviewing antitrust decrees brought up under the Expediting Act from a district court composed of a single judge. *United States* v. *duPont & Co.*, 366 U. S. 316, 322-325 (1961); *International Boxing Club* v. *United States*, 358 U. S. 242, 253, 263 (Frankfurter, J. dissenting in part) (1959); *United States* v. *United States Gypsum Co.*, 340 U. S. 76, 89 (1950).

Divestment is the harshest of remedies, so drastic that it has been ordered by this Court only in rare cases. *United States* v. *duPont & Co.*, 366 U. S. 316, 326 (1961); *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 602 (1951); *Report of the Atty-Gen's Comm. to Study the Antitrust Laws* 354 (1955), noting that in only 24 litigated

cases had orders of divestiture been issued in 60 years of Sherman Act history. The deprivation and depreciation of investment—more punitive than the usual punishment on a criminal conviction—are not to be sanctioned, in a proceeding which is not penal in nature and where relief must not be punitive, unless no other remedy is available and adequate. *United States* v. *duPont & Co.*, 366 U. S. 316, 326 (1961); *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 409 (1945).

We shall make clear here that another remedy—injunction—is not only available and altogether adequate, but that it is much to be preferred on every consideration over divestment; that, indeed, in considerations of public interests, divestment would be a most unfortunate remedy; and that divestment would be unfairly and unconscionably penal upon Pan American stockholders.

The effect of the decree upon Pan American and its stockholders will be our last reference, but it still seems in order to make first reference to the fact that divestment in this case would be so drastic as to be unbelievably unjust. This is no case either of the creation of monopoly with the investment which would be forfeited by divestment, or of use of the investment to create monopoly. It is a case of an altogether creative investment. Panagra is a child of Pan American, as truly as any subsidiary could be child to a parent corporation. Panagra was Pan American's creation in a day when there was no airline industry, and this infant in an infant industry has grown in immense useful public service, not only with the investment and financial support of Pan American but also through receiving from and sharing with Pan American all the skills, experience and promoting effort which have distinguished Pan American as an ever pioneering airline.

in *International Boxing Club* v. *United States*, 358 U. S. 244, 253 (1959).

It is apparent that of the three ends which may be so attained, only the third would be a relevant consideration in this case, the first two being wholly inapplicable, as the district court has found that there was no combination or conspiracy and that the formation and ownership of Panagra have been entirely legal, so it cannot be contended that Pan American's interest in Panagra is in any respect a benefit from a conspiracy or the fruit of a violation of law.

The third end could be suggested as an argument for divestiture only if it could be said that Pan American's stock ownership in Panagra grants monopoly power and hence that the ownership is illegal. But, as the court has found the ownership to be legal, without any suggestion that it grants monopoly power, and that only the vote of the stock in one particular has illegal connotations, it is apparent that divestiture is not required or appropriate, and that an injunction is all that is warranted.

Divestiture would be contrary to law and a serious public harm

We have previously pointed out the grave error which the district court has committed in infringing upon the jurisdiction of the CAB and rendering a decree which defeats national policy in air transportation as declared by the CAB. Everything that has previously been said of this error applies to the present point of the inappropriateness of the remedy of divestiture. That remedy is not merely inappropriate and unwarranted for the reasons already stated, it is positively prejudicial to the public interest and seriously so.

The CAB currently, for some time past and in the future, has the problem of the Latin American route

pattern. The design and development of the route pattern is the responsibility of the CAB, shared only with the President of the United States. A court should do nothing which would interfere with the Board's freedom of action or create a condition which would adversely affect the performance of its task.

Airline ownership is obviously a matter of prime importance affecting the Board's thinking, judgment and action. The ownership of Panagra, whether by Pan American and Grace, Pan American or Grace, Pan American or Grace and anyone else, Braniff or whomever, is a major consideration affecting the determination of the route pattern and allocation of routes. If the court is going to decree divestiture it is going to strike at the foundation of the Board's functioning.

It is no answer at all to this fact to say that the Board came to court and asked the court to make a decree of divestiture. If the court had given the decree requested, whatever else might be said against it, the argument could not be made that the court had interfered with or prejudiced the Board's functioning. But when the court entered a very different decree from that requested and one which presents the Board with new problems and difficulties and necessarily affects its determinations, the court exceeded any proper exercise of its power and prejudiced the performance of a vital governmental task by the responsible agency of government.

Nor is it any answer to say that a court does not have to dismiss a suit or enter a decree as requested by a complainant, even an agency of government. While ordinarily a court has discretion as to the relief to be granted, the present case is no ordinary action. It is so extraordinary that we have contended that it was beyond the court's jurisdiction, or at least that the court should not have entertained jurisdiction, because its decree would

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The words of a recent head of the Antitrust Division of the Department of Justice on the subject of the tax consequences of divestiture are highly relevant:

> "Bear in mind, the 1890 Sherman and the 1914 Clayton Acts, the basic antitrust statutes, became law before the income tax was a reality. And the landmark antitrust cases—dissolving illegal trusts and monopolies via divestiture—were largely a product of an era marked by no income tax or much lower tax rates. Indeed, there is real basis for concluding that some benchmark antitrust divestiture cases listed in attachment A, which I submit for your record, if I may, Mr. Chairman, might well not have been decreed had today's tax rates prevailed." Robert A. Bicks, Assistant Attorney General, *Hearings on H.R. 8126 Before the Committee on Ways and Means, House of Representatives*, 86th Cong., First Sess. 18 (1959).

This Court has stated many times that the sole purpose of an antitrust decree is the restoration of competition and not the punishment of the offender. *United States* v. *duPont & Co.*, 366 U. S. 316, 326 (1961):

> "Courts are not authorized in civil proceedings to punish antitrust violators, and relief must not be punitive."

See also *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 409 (1945); *United States* v. *National Lead Co.*, 332 U. S. 319, 335 (1947). The caveat is particularly pertinent to decrees of divestiture. *E.g., Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 602-603 (1951).

We submit that many considerations, and every consideration, dictate against a decree of divestiture. Even if the decision of the district court were alone taken as the

basis for determining the remedy, there can be found no basis or justification for a decree of divestiture. With the finding of legality in the ownership of Panagra and in all the arrangements under which over the years Panagra operations and the selling of its service have been correlated with Pan American's in joint facilities and offices, and with the lone finding against Pan American that it has offended against the antitrust laws only in respect to its vote on the question of Panagra's extension to the United States, it is clear that divestiture is not required as a remedy and, that it would be unnecessarily and unjustifiably harsh and penal. When facts outside of the decision of the court are considered, the effect of divestiture upon the exercise of the jurisdiction and responsibility of the CAB in formulating a Latin American route pattern and effectuating national policy in air transportation, and the effect of divestiture upon Panagra, Pan American and Pan American stockholders, it becomes all the more apparent that a decree of divestiture is inadmissible.

CONCLUSION

The judgment of the district court against Pan American should be reversed and the complaint of the Government dismissed.

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necessarily impinge on a jurisdiction which only the administrative agency can exercise. Confronted with this fact the only possible justifiable action of a court is dismissal of the complaint or granting the relief requested by the agency. If the court did no more than what the administrative agency asked as an aid, no one could complain on grounds of jurisdiction or public prejudice. But if the court does anything else, other than dismiss the proceeding, and creates a different situation from that with which the administrative agency was confronted when it came to court, and different from the situation it sought to create by coming to court, the court has exceeded its jurisdiction and prejudiced the responsible administration of the governmental function entrusted to the agency.

It cannot be suggested that a decree of divestiture against Pan American would not profoundly alter the conditions with which the CAB will have to deal and profoundly affect the whole administrative decisional process with respect to the Latin American route pattern. How serious the effect would be is not a matter of conjecture. It would be of the utmost seriousness, the defeat of declared national policy, for it would divorce Panagra from Pan American and thus sever it from the two-system American flag pattern of which it is a part, prevent its attachment to Braniff as the only alternative within a two-system American flag pattern, and isolate it as a third American flag carrier into South America. How the CAB could then deal with the situation, and avoid or ameliorate the waste of public funds and private investment which three carriers into Latin America would entail, is beyond speculation or suggestion in this action. But certain it is that a condition which is the antithesis of what the Board has declared to be desirable should not be created by court decree.

The district court has stated that what the Board wanted, for its consideration, was an application from Panagra for a route to the United States, and that what Pan American should have done was to supply the application and then argue out the merits or demerits before the Board. The injunction provision of the decree brings this stated desideratum to pass. Such a decree, at least, does not offend against administrative responsibility and preserves the Board's freedom of action. To go beyond such a decree, however, and fundamentally change the underlying conditions for Board consideration, in a way so contrary to its indicated desires, would be a serious public harm, which is not lessened by the obeisance to the Board in the provision of the decree leaving t' e formulation of the plan of divestiture and its timing to the Board.

The divestment provision of the decree thus runs counter to the fundamentals of administrative law and contrary to law as enacted by the Congress in vesting the regulation of air transportation and the protection of the public interest therein in the CAB.

A decree of divestiture as to Pan American would be contrary to law in still another respect. It would have the effect of passing control of Panagra to Grace. Grace is a steamship company and holds its half interest in Panagra only by reason of the fact that this interest was acquired prior to passage of the Civil Aeronautics Act of 1938 (now named the Federal Aviation Act). Section 408 of that Act (Appendix, p. 90) expressly forbids the acquisition of control of an air carrier by a surface carrier unless Board approval is first obtained. Approval is prohibited unless, among other things, the Board can find "that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition." This is the classic

steamship operations and many other interests, to which Panagra would be subsidiary.

Potential purchasers of Panagra stock would also be concerned about Panagra's route structure. They would realize that Panagra severed from Pan American would have difficulty existing on its present routes. Without the Through Flight Agreement Panagra would be dead-ended at the Canal Zone. Any purchaser, therefore, would know that he was taking a gamble: first, on what, if any, additional routes would be awarded to Panagra by the CAB; second, on how Panagra would fare in the division of business between three competitive American carriers in Latin America, the consequence of which would be, as stated by the CAB, a waste of private investment.

It is extremely doubtful that any other airline would be interested in buying a half interest in Panagra and becoming a 50-50 partner with Grace, and it is equally doubtful that any other corporation or investing group would want to acquire a half interest, except possibly at a bargain price as a speculation. If divestiture were effected by a public offering, it is certain that Pan American could not realize any amount remotely resembling the true value of its investment in Panagra. And if divestiture were effected by a distribution to Pan American stockholders, they would be similarly subjected to loss when they attempted to sell that part of their investment (then represented by Panagra stock) which had been altered against their will by judicial decree into a form radically different from that in which they chose to invest.

Finally, there would be serious harm to Pan American and its stockholders, regardless of the manner of divestment, in the tax impact of divestiture. So serious can the tax consequences of a decree be that it is well recognized that in framing a decree in antitrust cases the court

should give due consideration to the tax consequences (*United States* v. *Minnesota Mining and Mfg. Company*, 96 F. Supp. 356, 357-58 (D. Mass. 1951)), just as it should give consideration to other harm that a decree might inflict upon a defendant's property (*United States* v. *American Can Co.*, 234 Fed. 1019, 1021 (D. Md. 1916), *appeal dismissed*, 256 U. S. 706 (1921)), and avoid unnecessary harm to the investment of a defendant's stockholders (*United States* v. *duPont & Co.*, 366 U. S. 316, 328 (1961); *United States* v. *United States Steel Corp.*, 251 U. S. 417, 453 (1920)).

If Pan American were forced to dispose of its Panagra stock, the gain on such sale would be taxed at a 25 per cent rate. As Pan American acquired its stock in Panagra as a pioneering enterprise in 1928, and has consistently left earnings in the business, Pan American has virtually no tax base in the stock and the capital gain would amount to almost the entire sales price of the stock. Thus, Pan American would be penalized by divestiture by having to pay to the Government approximately 25 per cent of the proceeds of the sale.

The only means of avoiding such a confiscatory levy on divestiture would be by a *pro rata* distribution of Pan American's Panagra stock to Pan American stockholders. But this method of divestiture would only shift the exaction to Pan American stockholders, who would have to regard the distribution of Panagra stock as a cash dividend and be taxed at normal income tax rates on its value.*

---

* Whether the provisions of the recent special relief statute intended to apply only to distributions occurring as a result of the *duPont* case (*United States* v. *duPont & Co.*, 353 U. S. 586 (1956), 365 U. S. 809 (1961)) could be made applicable here is not at all clear. 76 Stat. 4 (1962); S. Rep. No. 1100, 87th Cong., 2d Sess. 1 (1962).

"auxiliary and supplementary" test, first embodied in the Motor Carrier Act of 1935 (49 Stat. 556) and reaffirmed in the Transportation Act of 1940 (54 Stat. 906, as amended, 49 U.S.C. § 5(a)(b) (1959)).

In the administration of Section 408, the Civil Aeronautics Board has *never* allowed a surface carrier to acquire control of an air carrier and it has said that "a construction of this Act which rigidly limits the participation of other forms of transportation in the air transportation field is in harmony with the intent of Congress, and is necessary to attain a full and sound development of our national air transportation system." *Railroad Control of Northeast Airlines*, 4 CAB 379, 381 (1943).

A court order of divestiture, without prior approval by the Civil Aeronautics Board of the new relationship thereby created, would in and of itself violate Section 408. The only interest of Grace in Panagra, which is protected by its "grandfather" rights, is the stock ownership which it held in 1938. Even Grace's present degree of control of the management of Panagra is the subject of a pending Board investigation (Docket 5140). Whatever question may exist as to whether Grace's pre ent degree of control of Panagra violates Section 408, there can be little question that Pan American's divestiture would so firmly cement and complete Grace's control of Panagra as to bring the resulting state of Panagra's ownership under the condemnation of Section 408.

Divestiture of Pan American would be injurious to Panagra

Divestiture would cut Panagra off from the facilities and services of Pan American which have been vital to Panagra all its life. The affiliation of the two companies has meant much more than connecting and complementary transportation services. Panagra has had all the benefits of being part of the Pan American world-wide system. It

has been able to draw upon Pan American's knowledge, experience and organization, including the use of Pan American's servicing facilities, pilot training facilities and sales organization (D. Ex. P-2, R. 1859, 1864-1868). In the CAB hearings on Docket 779 (CAB investigation of Panagra extension to U. S.) and Docket 2423 (Through Flight and Parent Company Agreement approvals) Grace and Panagra officers testified to the value to Panagra of these facilities and services (D. Ex. P-412, R. 3720-721; P-420, R. 4066-067; P-426, R. 4260).

These facilities and services have always constituted prime assets of Panagra and their elimination would be a severe loss to Panagra operationally and businesswise and would reduce the value of Panagra as a business enterprise. Such assets should not be needlessly destroyed. See *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 604 (1951); *cf. United States* v. *General Electric Co.*, 115 F. Supp. 835, 871 (D. N. J. 1953).

Divestiture of Pan American would be a serious injury to Pan American stockholders

The visitation of a serious loss upon Pan American stockholders through divestiture would come from two sources: (1) depreciation in the value of Panagra stock on a sale of Pan American's stock interest in Panagra, (2) confiscation of a large part of the proceeds of the sale.

The value of the divested shares of Panagra stock would be seriously impaired by the severance of Panagra from Pan American and its absorption by Grace. Purchasers would not pay present value for the divested stock. Loss of Panagra's connection with Pan American, upon which the public has relied, would cause the public and any prospective purchasers of Panagra stock to discount the value of Panagra. Also, the public would realize that control of Panagra would go to Grace with its vast

APPENDIX

I. Sections 1, 2 and 3 of the Sherman Act, 26 Stat. 209 (1890), as amended, 15 U.S.C. §§ 1, 2, 3 (1961).

"Section 1. "Trusts, etc., in restraint of trade illegal; * * * penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section 2. "Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section 3. "Trusts in Territories or District of Columbia illegal; combination a misdemeanor

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or

commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

II. Sections 401, 408, 411, 412, 414, 415 and 801 of the Civil Aeronautics Act (superseded in 1958 by the Federal Aviation Act, 49 U. S. C. 1301, *et seq.*).

Section 401. "Certificate Required.

(a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Authority [Board] authorizing such air carrier to engage in such transportation: *Provided*, That if an air carrier is engaged in such transportation on the date of the enactment of this Act, such air carrier may continue so to engage between the same terminal and intermediate points for one hundred and twenty days after said date, and thereafter, until such time as the Authority [Board] shall pass upon an application for a certificate for such transportation if within said one hundred

and twenty days such air carrier files such application as provided herein." 52 Stat. 987 (1938), as amended, 49 U.S.C. §1371(a) (1961).*

Section 408. "Consolidation, merger, and acquisition of control—Prohibited acts

(a) It shall be unlawful unless approved by order of the Board as provided in this section—

* * *

(2) For * * * any person controlling an air carrier, any other common carrier, * * * to purchase, lease or contract to operate the properties, or any substantial part thereof, of any air carrier;

* * *

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

Application to Board; hearing; approval; disposal without hearing

(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition

* 49 U.S.C. §1371(a) differs from Section 401 of the Civil Aeronautics Act in that the language beginning with "Provided" is omitted and the title of the Section 1371(a) is as follows: "Certificate of public convenience and necessity-Essentiality".

of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided,* That the Board shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: *Provided, further,* That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5(8) of this title, such applicant shall for the purposes of this section be considered an air carrier and the Board shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition: * * *"

Section 411. "Methods of competition.

The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier,

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or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition." 52 Stat. 1003 (1938), 49 U.S.C. § 1381 (1961).

Section 412. "Pooling and other agreements; filing; approval by Board.

(a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete memorandum, of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares, charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

(b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this chapter, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this chapter * * *" 52 Stat. 1004, 49 U.S.C. § 1382 (1961).

Section 414. "Legal restraints.

Any person affected by any order made under sections 1378, 1379, or 1382 of this title shall be, and is hereby, relieved from the operations of the "antitrust laws", as designated in section 12 of Title 15, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order." 52 Stat. 1004 (1938), 49 U.S.C. § 1384 (1961).

Section 415. "Inquiry into air carrier management.

For the purpose of exercising and performing its powers and duties under this Act, the Authority [Board] is empowered to inquire into the management of the business of any air carrier and, to the extent reasonably necessary for any such inquiry, to obtain from such carrier, and from any person controlling or controlled by, or under common control with, such air carrier, full and complete reports and other information." 52 Stat. 1004 (1938), as amended, 49 U.S.C. § 1385 (1961).

Section 801. "The President of the United States.

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof." 52 Stat. 1014 (1938), 49 U.S.C. § 1461 (1961).

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC., APPELLANT

v.

UNITED STATES OF AMERICA

No. 47

UNITED STATES OF AMERICA, APPELLANT

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., AND PAN AMERICAN-GRACE AIRWAYS, INC.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 5365–5434) is reported at 193 F. Supp. 18.

JURISDICTION

The judgment of the district court was entered on May 8, 1961 (R. 5435). The notice of appeal was filed

At the same time, Grace was investigating the possibilities of an airline on the west coast of South America. Grace believed that air service would become "a real competitior of our steamers" within a decade, and that its early entry into the air transportation field would put it in a position "to meet any flying competition" (R. 966–968, 5376).

In September 1928, Pan American and Grace agreed to "associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile." The plan was to form a corporation in which the two companies would subscribe in equal shares. Pan American was to "have charge of the operation of the service from the Canal to Valparaiso and [Grace's] houses on the West Coast of South America [were to] be the agents of the company on a reasonable compensation basis" (R. 5377–5379).*

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* The letters which laid the foundation of the combination follow (R. 354–356, 359–360):

"AUGUST 31, 1928.

"Aviation Corporation of the Americas,
100 East 42nd Street,
New York City.

Attention: Mr. J. T. Trippe

Dear Sirs:

"This will confirm arrangement under which we will associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

"A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff-Daland Dusters, Inc. the sum of

Panagra was incorporated by Pan American and Grace in January 1929. In March 1929, the Postmaster General awarded the new company a contract

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$15,000 for an assignment which will convey all of the rights of that company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by this company in Peru and every effort will be made to put the business there on a paying basis.

"We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U.S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

"If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

"You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South America will be the agents of the company on a reasonable compensation basis, such agency to continue during the life of transportation contracts undertaken by the company.

"The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

"Very truly yours,

"W. R. GRACE & Co.

COGSWELL

Assistant Secretary."

[Footnote continued on next page.]

for air mail service from the Canal Zone down the west coast of South America to Santiago, which became Panagra's western terminal. In August 1929, Panagra's air mail route was extended by the Postmaster General to Buenos Aires and Montevideo (R. 5379–5381). In September 1930, the Postmaster General awarded Pan American a subsidized mail

[Footnote 6 Continued]

"September 7, 1928.

"W. R. Grace & Company,
10 Hanover Square,
New York City.

Attention: Mr. William F. Cogswell.

Dear Sirs:

"We beg to confirm the arrangement set forth in your letter of August 31st.

"Supplementing paragraph four, however, we would point out the fact that in the event you decide not to take up a substantial interest in a jointly owned Company, organized or to be organized for the purpose of submitting a bid on the contract for carrying mails between Panama Canal and Valparaiso then, and in that event, we would prefer to bid on the contract through the medium of Pan American Airways, Inc., or some other wholly owned subsidiary.

"If this were done, we would arrange to allow you, if you desired, to take a further stock interest in Aviation Corporation of the Americas, in addition to the $25,000 referred to in paragraph five.

"Our Directors are delighted that we are to be associated with your firm in the development of air transportation on the West Coast of South America, and we look forward to a most pleasant and profitable relationship.

"We would appreciate your advising us if this letter, in connection with yours of August 31st, covers your understanding of our arrangement.

"Yours very truly,

"AVIATION CORPORATION OF THE AMERICAS
By J. T. TRIPPE
J. T. Trippe,
Vice President."

route from Dutch Guiana to Santos, Brazil, with an option to extend to Buenos Aires. Pan American's service to Buenos Aires was commenced in 1931 (R. 5385).

Shortly after the organization of Panagra, the "bitter family quarrel" (R. 5366) broke out between Pan American and Grace which has marked Panagra's entire history: "[B]oth interests [were] determined to have a part in the management" (R. 456). During the early years, the disputes primarily concerned the pace and scope of development of the service within South America. Officials of Panagra and Pan American charged Grace with providing insufficient support for the new air service through its South American offices and with favoring its own steamship lines.[7]

Beginning in the late 1930's, with the expansion of air travel, Grace sought to take over the active management of Panagra. Thereafter, the dispute focused largely on Grace's efforts to extend Panagra's operations north of the Canal Zone to the United States, a route which would have brought Panagra into competition with Pan American.[8]

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[7] *E.g.*, R. 462–463, 504–505, 970, 979–980, 983–986, 1005–1011, 1024–1028, 1030–1033, 1054, 4071–1073, 1080–1082, 1089–1092, 1096–1101, 1103–1105, 1108–1112, 1124–1127, 1131–1133, 1136–1138, 1143–1167, 1177–1180, 1182–1184, 1188–1190, 1192–1194.

[8] For discussion of this problem by the Civil Aeronautics Board, see *Panagra Terminal Investigation*, 4 C.A.B. 670; *Additional Service to Latin America*, 6 C.A.B. 857, 912–916; *Pan American-Panagra Agreement*, 8 C.A.B. 50; *New York-Balboa Through Service Proceeding, Reopened*, 18 C.A.B. 501, 504–506.

3. *Division of Territories in South America.*—As the district court found, "[t]here is no doubt that [Pan American and Grace] came to agree upon a division of territories" (R. 5395) between Pan American and Panagra, under which Pan American would serve the north and east coasts of South America and Panagra would serve the west coast and the trans-Andean route between Santiago and Buenos Aires. The complaint alleged, and Pan American asserted below, that such an agreement was made at the time Panagra was formed and that it covered not only South America, but also traffic between the United States and the Canal Zone. Grace contended, on the other hand, that the territorial division was made only after Panagra had been formed, and that it was limited to South America (R. 5370, 5395–5396).

Both Pan American and Grace repeatedly recognized, and endeavored to enforce, the agreement for division of territories. In 1930 Pan American ordered a subsidiary to cease flights from Buenos Aires to Santiago on the ground that the agreement with Grace prohibited Pan American's operation on that route and "likewise restricts" Panagra from operating east of the Andes except on that route (R. 512–513, 5396). In 1931, and again in 1937, Grace insisted that Pan American stay out of the western part of Colombia, as "definitely in Panagra's territory under our agreement" (R. 545–546, 582–583, 584–586, 5397). Pan American, in 1946, relied upon the agreement to object to any service by Panagra to Bogota (R. 633–634). Similarly, in 1929

and 1935, discussions between Pan American and Grace about proposed service by Pan American and Panagra to Bolivia were framed in terms of the territorial agreement (R. 509–511, 549–550, 5397).

4. *Panagra's Service to the United States.*—Beginning in 1938, Grace proposed to extend Panagra's service (which terminated at the Canal Zone) to the United States, so that Panagra would no longer be dependent on Pan American's service north of the Canal Zone. Prior to 1938, the Post Office Department had enforced a "no-parallel" policy of subsidizing only one carrier on each international route. On its formation in 1938, however, the Civil Aeronautics Board substituted a new policy of regulated competition which would allow the subsidization of more than one carrier on the same route. Consequently, it became possible for Panagra, as well as Pan American, to obtain a subsidy between the Canal Zone and the United States (R. 5405, 5409–5410).

Pan American rejected Grace's proposal for the competing service. It instructed its nominees on the Panagra board of directors that "it would not be in the interest of our stockholders [Pan American stockholders] for our directors to authorize an application by [Panagra] to extend north of [the Canal Zone] in competition with Pan American", for most of the traffic of Pan American between the Canal Zone and Miami originated or was destined to points on Panagra's South American routes and the opening of a parallel Panagra route in competition would divert all or a major part (R. 5405). In 1939, Pan American and Grace reached an agreement under

> between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor * * *.

STATEMENT

The government's complaint in this civil antitrust case, filed on January 11, 1954, charged that since 1928 appellees Pan American World Airways, Inc. ("Pan American"), W. R. Grace and Company ("Grace"), and their jointly-owned subsidiary, Pan American-Grace Airways, Inc. ("Panagra"), engaged in a combination and conspiracy, and were parties to contracts, to restrain and monopolize air transportation between the United States and South America, and attempted to monopolize and monopolized such transportation, in violation of Sections 1, 2, and 3 of the Sherman Act. The complaint alleged, among other things, that Pan American and Grace, when they organized Panagra, agreed that its operations would be confined to the west coast of South America and that Pan American would operate on the east coast of South America and between the United States and the Canal Zone; that, pursuant to such an agreement, Panagra has refrained from seeking or obtaining operating rights on the east coast of South America; that Pan American used its 50 percent control of Panagra to prevent the latter from securing authority from the Civil Aeronautics

Board to extend its route from the Canal Zone to the United States; and that Pan American and Grace had exercised their joint control of Panagra to "block and prevent" any action by Panagra that either of them viewed as "contrary or detrimental to its own particular interests" (R. 1-12).

After trial, the district court held that Pan American had monopolized and attempted to monopolize air transportation between the United States and South America and between the United States and the Canal Zone in violation of Section 2. But the court further held that the government had failed to prove its other charges. It ordered Pan American to divest itself of its stock interest in Panagra because of the violation of Section 2, and dismissed the complaint as to the other two defendants.

The underlying facts, as found by the district court and as supplemented by undisputed evidence, are as follows:

1. *Description of the Companies.*—Pan American and Grace each own 50 percent of the stock of Panagra. Panagra has been certified by the Civil Aeronautics Board as an air carrier to engage in transportation between the Canal Zone and the west coast of South America to Santiago, Chile, and across the Andes to Buenos Aires, Argentina, and Montevideo, Uruguay. Panagra presently provides a through service to and from the United States by equipment interchanges with Pan American between the Canal Zone and Miami, and with National Air Lines between Miami and New York. In recent years, Pan-

agra has carried from 79 to 86 percent of the airline passengers on United States flag carriers between this country and western South America, and from 50 to 75 percent of the passengers transported by all air carriers (including foreign carriers) (R. 5368, 5401, 5417).[2]

Pan American is not only the largest United States international air carrier but the largest in the world. It carries passengers, freight, and mail between the United States and the Canal Zone, between the United States and the east coast of South America, and between the Canal Zone and the east coast of South America. Its southern terminal is Buenos Aires (R. 5367, 5401). Pan American carried from 66 to 85 percent of all the traffic between the United States and eastern South America during the 1950–1957 period, and between 84 and 95 percent of the traffic with eastern United States. Pan American and Panagra together presently carry from 75 to 88 percent of airline passengers on United States flag carriers between this country and South America, and about 50 percent of the airline passengers transported by all carriers. Prior to 1948, when Braniff commenced certificated operations between Texas, the Canal Zone, and South America, Pan American was the only United States air carrier operating between this country and the Canal Zone (R. 5400-5402, 5404, 5407).

Grace is engaged in various industrial and other enterprises in western South America. It wholly owns Grace Line, Inc., which operates steamship

[2] Pan American controls the leg of the flights north of the Canal Zone.

service between that area and the United States. Grace Line is the only United States flag water carrier providing regularly scheduled service between the east coast of the United States and the west coast of South America.[3] Grace carries from 81 to 94 percent of the total passenger traffic on this route, about 60 percent of all northbound freight, and about 50 percent of all southbound freight (R. 1423–1427, 1441–1450, 5367–5368).

2. *The Organization of Panagra.*—In 1928, when Panagra was organized, Pan American was seeking to develop an air transportation service throughout South America.[4] Its proposed service to eastern South America was based upon contracts with the Post Office to carry air mail. Under these contracts, a subsidy was provided for service from Florida to Cuba, Puerto Rico, the Canal Zone, and Trinidad. The Postmaster General had the power to require the extension of such subsidized services along the northeast coast of South America to Dutch Guiana (R. 5372–5374).[5] Pan American was also negotiating for operating rights in the western South American countries (R. 5375–5376).

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[3] Such scheduled service is commonly described as "liner service" or "regular carriage," as distinguished from "irregular" or "tramp" service.

[4] The association of Pan American and Grace in aviation in western South America dates from their letter agreement of 1928 (see *infra*, pp. 8–10).

[5] Under the Foreign Air Mail Act of 1928, 45 Stat. 248, as amended, March 2, 1929, 45 Stat. 1449, the Postmaster General awarded ten-year contracts for air mail service, with payment being made on the basis of mileage flown, not the amount of mail carried (R. 5373).

which Grace took over the management of Panagra, and Pan American promised to provide an adequate connecting service between Miami and the Canal Zone (R. 729–730).

Thereafter, when Panagra faced a threat of competition in western South America by another American air carrier, Grace again pressed for Panagra to apply to the Board for extension of its route to the United States, this time proposing flights from the Canal Zone to New Orleans. Pan American, which was itself seeking the same route, rejected this proposal also, and instructed its nominees not to attend any meetings of the Panagra directors at which the subject was discussed (R. 5405, 5410).

Grace then filed with the Board a petition on behalf of Panagra to extend Panagra's routes to the United States, and a complaint to require Pan American to terminate certain allegedly illegal conduct. It also intervened in a pending Board certification proceeding in which other carriers were seeking authority to operate between New Orleans and the Canal Zone. After an investigation, the Board concluded that it had no authority to extend Panagra's routes unless Panagra itself applied for the extension, and dismissed the proceeding. *Panagra Terminal Investigation,* 4 C.A.B. 670. The Court of Appeals for the Second Circuit reversed, holding that, if Pan American's objection to Panagra's applying for a route extension was due to "illegality and fraud," the Board could entertain the application filed by Grace. *W. R. Grace & Co.* v. *Civil Aeronautics Board,* 154 F. 2d 271, 281–282. This Court granted certiorari. 328 U.S. 832 (R. 5411–5412).

Meanwhile, the Board had been considering the application of numerous carriers for routes between the Canal Zone and the United States and elsewhere in South America. The Board's examiners and public counsel reported that Panagra was entitled to a certificate for a route from the Canal Zone to the United States because this would provide western South America with the convenience of one-carrier service to the United States and would therefore best serve the public interest. However, they said that Panagra could not be given the route because Pan American had prevented an application from being filed. The Board itself divided evenly on the question whether to authorize other carriers on the Canal Zone-United States route and in South America generally and therefore no new service was authorized (R. 5412-5413). After the President directed the Board to choose an additional carrier to South America, Braniff was selected in 1946.[9] In its opinion, the Board said that Pan American and Grace "in the public interest * * * cooperatively should enable Panagra to apply for access to the east coast of the United States." *Additional Service to Latin America*, 6 C.A.B. 857, 914.

In 1946, Pan American and Grace reached a settlement on the issue of Panagra's access to the United States. The settlement included a through flight agreement between Pan American and Panagra, under which the latter could fly directly to Miami by authority of the Pan American certificate over Pan American

[9] The Board certificated Braniff Airways to fly from Texas to the Canal Zone, Colombia, Ecuador, Peru, Bolivia, Paraguay, Brazil, and Argentina. *Additional Service to Latin America*, 6 C.A.B. 857.

by Pan American on May 12, 1961 (R. 5446), and by the United States on July 7, 1961 (R. 5447). On January 15, 1962, this Court postponed consideration of the question of jurisdiction until the hearing on the merits (R. 5449). 368 U.S. 964, 966. The question is discussed below at pp. 25–26.

QUESTIONS PRESENTED

The appeals in these cases grow out of a single antitrust suit. The initial question is whether the order from which the appeal was taken is "final" for the purposes of appellate jurisdiction. The ultimate question on the merits in both cases is whether the combination of Pan American and Grace to form an airline (Panagra) operating on, and confined to, the west coast of South America, in which each would have 50 percent stock ownership, together with their division of markets and other incidental arrangements, was, in its inception and operation, a violation of the Sherman Act requiring a decree ordering both Pan American and Grace to divest themselves of the stock.[1]

Subordinate questions specifically raised by the appeal of the United States (No. 47) are:

(a) Whether the combination and incidental arrangements violate Sections 1 and 3 of the Sherman Act because they were essentially an unlawful division of territory and commercial interests.

[1] The views of the government on this basic issue, which relates to both appeals, will be discussed in this brief. In addition, this brief will discuss the issues peculiar to the appeal of the United States in No. 47. The only issues, except for the customary rebuttal, which will be left to our subsequent brief, are those relating only to Pan American's appeal in No. 23.

(b) Whether the combination violates Sections 1 and 3 because it gave Grace, the holding company which controlled the dominant steamship carrier serving the United States and the west coast of South America, control over the dominant air carrier serving the same area.

STATUTE INVOLVED

Sections 1, 2, and 3 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1, 2, 3, provide in pertinent part:

> SECTION 1: Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy declared * * * to be illegal shall be deemed guilty of a misdemeanor * * *.
>
> SECTION 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor * * *.
>
> SECTION. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or

America, and between United States and the Canal Zone (R. 5398–5416).[10]

As to Grace, the court held that 50 percent ownership of an airline by a parallel steamship company does not *per se* violate the Sherman Act (R. 5421–5425). It further held that no restraint on competition had been shown to have resulted from the relation between Grace and Panagra. The court was "not persuaded that the * * * market is the same," *i.e.*, that air traffic was competitive with sea traffic to the west coast of South America (R. 5426). The court said that the principal business of Panagra is the transportation of passengers, that of Grace the carriage of freight; and that it had not been shown that passengers or shippers of one of these carriers were potential customers of the other (R. 5425–5429). Finally, it ruled that, in any event, the government had to show that Grace had restrained or monopolized commerce. There was, the court believed, no such showing. On the contrary, Grace was the partner which had "fostered and fought for Panagra development and expansion" (R. 5392, 5429).

The court's judgment, entered on May 8, 1961, (1) dismissed the action with respect to Grace and Panagra; (2) directed Pan American to divest itself of its stock in Panagra pursuant to a plan of divestment to be formulated by the Civil Aeronautics Board and

[10] The court rejected Pan American's arguments that the issues in this case should be referred to the primary jurisdiction of the Civil Aeronautics Board and that antitrust immunity was provided by prior Board approval of various agreements between the parties (R. 5416–5420).

approved by the court; and (3) pending the divestiture, enjoined Pan American from interfering with the filing or processing of applications by Panagra before the Board to modify or extend its routes (R. 5435–5436).[11]

SUMMARY OF ARGUMENT

I

This Court has jurisdiction to hear the appeals in these cases under *Brown Shoe Co. v. United States*, 370 U.S. 294.

II

The combination of Pan American and Grace in Panagra, and the incidental undertakings between them, were in their incipiency, and still are, a combination in restraint of trade in violation of Sections 1 and 3 of the Sherman Act.

A. At the time Panagra was formed in 1928, Pan American, which was just becoming an important international air carrier, was developing routes in Central America and eastern South America. Grace was the dominant steamship line between western South America and eastern United States. The undisputed evidence shows, and the district court found, that Pan American and Grace joined to form Panagra in order to protect themselves from competition. Pan American desired to prevent the formation of an independ-

[11] Thereafter, Pan American moved to suspend the injunction in paragraph 3 of the judgment, pending appeal to this Court (R. 5437). On June 13, 1961, the district court granted the motion unless Grace agreed to stipulate that, in the event of a reversal by this Court, its nominees would vote to withdraw any Panagra application filed with the Board during the interval (R. 5443). Grace filed such a stipulation on June 22, 1961 (R. 5444).

ent American flag airline on the west coast of South America which might compete with Pan American in the rest of South America. Grace feared competition with its steamship line from an independent American airline in western South America. Thus, the very purpose of the combination was to impose substantial restraints on trade and commerce.

This purpose was fulfilled. The inherent tendency of the combination, and its actual consequence, were to suppress competition in foreign commerce of the United States between air carriers in western South America, in eastern South America, and on the Canal Zone-United States route, as well as between air and sea transportation in western South America.

1. There was a substantial likelihood at the time Panagra was formed that both Pan American and Grace would soon enter the air transportation business in western South America. Both companies were actively planning the undertaking. Implicit in the formation of Panagra was the intent that neither Pan American nor Grace would compete with their new creation in the area where it was to operate, western South America. In addition, the two parent companies agreed on a division of markets which excluded Pan American from western South America. This entire division of markets was clearly a *per se* violation of the Sherman Act. *Northern Pac. R. Co.* v. *United States*, 356 U.S. 1, 5.

The fact that the competition which was eliminated was potential, rather than presently existing in 1928, is irrelevant, for the Sherman Act has never distinguished "between strangling of commerce which has

been born and preventing the birth of a commerce which does not exist." *United States* v. *United Shoe Machinery Co.*, 247 U.S. 32, 53.

2. The formation of Panagra, along with the accompanying division of markets, also tended to restrain, and has actually restrained, competition in United States foreign commerce with eastern South America. An independent air carrier in western South America would have been a natural competitor for Pan American's operations in eastern South America as their routes expanded and their territories came to overlap. The combination barred Panagra from operating east of the Andes, except from Santiago to Buenos Aires and Montevideo, and Pan American's stock interest gave it power to enforce the agreement.

Both carriers serve Buenos Aires and Montevideo. Had they been truly independent there would have been effective competition in transporting passengers and freight between those points and the United States. Pan American's 50 percent stock interest in Panagra gave it the power, which it did not hesitate to exercise, to minimize the competition and favor its own interests.

3. The combination also had an inherent tendency to suppress, and in operation has actually suppressed, competition in air commerce between the Canal Zone and the continental United States. Pan American had the original routes between the United States and South America. If an independent carrier had

been permitted to develop on the west coast or if Grace had remained free to enter the field, the enterprise would have soon become a potential competitor between the Canal Zone and gateways in the United States. The formation of Panagra, over which Pan American could exercise negative control, gave Pan American the power to block this development. For many years it has exercised its control over Panagra for that purpose, despite criticism by the Civil Aeronautics Board.

4. The formation of Panagra seriously restricted competition between air and sea transportation between western South America and the United States.

Air and sea transportation are clearly within the same market. This fact has been recognized by Congress in numerous statutes, by the independent agencies charged with regulating transportation, and by Pan American and Grace themselves. The Civil Aeronautics Board has denied an application by Grace itself for authority to operate an airline in South America on the ground that air and sea transportation are in competition. And Grace participated in the creation of Panagra because it feared competition from an independent airline.

At the time Panagra was formed, it could readily be foreseen that the new company would become the dominant air carrier to the west coast of South America. This has in fact occurred. Consequently, Grace, the dominant sea carrier between the eastern United States and western South America, has at least negative control by its 50 percent stock interest of the dominant air carrier to western South America. This control has

been used to hold up Panagra's rates in order to lessen competition with Grace.

Grace's control of air and sea transportation between the United States and western South America clearly violates the Sherman Act under the standards laid down by this Court in *United States* v. *Columbia Steel Co.*, 334 U.S. 495. First, the percentage of the transportation business between South America and the United States controlled by Grace and Panagra is extremely high. Second, the strength of the companies in competition with them is very low. Braniff, the only other American flag carrier to western South America, does only approximately one-fifth of the business of Panagra. Third, the purpose of Grace's joinder with Pan American was, as the district court found, to foreclose independent competition with Grace's shipping interests. Fourth, the record shows that the air cargo business will almost certainly expand substantially in the near future. And finally, it is clear that the needs of shippers will be best served by real competition between air and sea carriers which will make air cargo rates competitive on an increasing variety of goods.

B. The district court agreed with the government that Pan American and Grace formed Panagra and agreed upon a division of markets, rather than proceeding independently, in order to restrain competition. Nonetheless, it ruled that there was no "conspiracy" which violated the Sherman Act. It rejected the ultimate legal conclusion that the original combination was illegal, upon the ground that the combination fostered the development of American air transportation in accordance with the policy of the

Post Office Department and brought together two companies having complementary advantages in carrying on a pioneering enterprise.

The combination cannot be saved from illegality by reference to the policies of the Post Office Department. Even though the Post Office may have approved a "no-parallel" policy, there was nothing in the policy that favored giving the carrier which would dominate commerce with the east coast of South America control over the dominant carrier to the west coast, nor anything that favored combining air and sea transportation on the west coast under common control or permitted the kind of continuing arrangement which projected monopoly power into the indeterminate future. In any event, the acquiescence of public officials does not excuse violations of the Sherman Act. *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150.

Nor is it a justification that Pan American and Grace were embarked on a new and otherwise useful enterprise. A division of markets is a *per se* violation of the Sherman Act even though the partners had no other anti-competitive purpose. *A fortiori* the combination is illegal where some of the major purposes of the formation of Panagra were to protect the existing interests of both Pan American and Grace. Even if this were a case governed by the rule of reason, the combination would have to be found illegal in both its inception and execution because the number and severity of the restraints which were inherent in the basic arrangement outweigh any countervailing advantages which it might have provided.

ARGUMENT

I

THE COURT HAS JURISDICTION TO HEAR THESE APPEALS

We submit that here, as in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, the judgment of the court below was a final judgment within the meaning of the Expediting Act, 15 U.S.C. 29, and that therefore these appeals by the United States and Pan American are properly before the Court.

In *Brown Shoe*, the district court held that Section 7 of the Clayton Act had been violated and that divestiture would be required to remedy the violation, but postponed the development of a detailed plan. The jurisdictional question was whether the failure of the district court to adopt a specific plan of divestiture pursuant to its decree deprived the decree of the finality which is requisite to appealability under the Expediting Act. This Court held that it did not. The Court, relying both upon its prior decisions and upon the "practical considerations" of workability in the enforcement of the antitrust laws (370 U.S. at 311), held the decree there to have "sufficient indicia of finality" to be properly appealable under the Act (*id.* at 308).

In the case at bar the same indicia are present. The district court likewise ordered the divestiture of Pan American's interest in Panagra, but did not specify any particular plan for this action. The only distinctions between the decrees in *Brown Shoe* and in this case are that the court here dismissed

the complaint as to Grace and Panagra, and ordered as to Pan American that the Civil Aeronautics Board formulate a plan of divestiture which would be submitted to the court for approval. The dismissal of two parties makes the order in this case, if anything, more final than in *Brown Shoe*. As to them, the district court has left nothing further to be done. The fact that in the present case the court's order sought the expertise of the Civil Aeronautics Board as an aid in formulating the details of the relief awarded against Pan American is irrelevant to the "indicia of finality" upon which this Court relied in *Brown Shoe*. Nothing in the Federal Aviation Act gives the Board jurisdiction over a divestiture or required the district court to seek the Board's advice. The court's decision to have the Board formulate a divestiture plan in the first instance does no more to deprive its divestiture decree of finality than would a decision to have a master formulate such a plan.

The order of divestiture was therefore final under the Expediting Act and the appeals will lie.

II

THE COMBINATION OF PAN AMERICAN AND GRACE IN PANAGRA AND THE CONCOMITANT UNDERTAKINGS BETWEEN THEM WERE IN THEIR INCIPIENCY, AND STILL ARE, A COMBINATION IN RESTRAINT OF TRADE IN VIOLATION OF SECTIONS 1 AND 3 OF THE SHERMAN ACT

The government's basic contention in this case is that the arrangements between Pan American and Grace, resulting in the formation of Panagra, constitute, in both their inception and subsequent operation,

a combination in restraint of trade violating Sections 1 and 3 of the Sherman Act.[12] Therefore, we submit that the district court should have entered a decree requiring not merely Pan American but also Grace to divest itself of any interest in Panagra. Indeed, if our basic contention is sound, the propriety of complete divestiture as a remedy is too plain for argument in this opening brief. *United States v. E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 329, 331, 334. The district court itself recognized the propriety of this relief (R. 5390).

More specifically, the formation of Panagra and the concomitant undertakings between Pan American and Grace in 1928, although they had legitimate business purposes, were also conceived as a means of protecting the territories and interests of the parent companies (see *infra*, pp. 31–32). Pan American, which was just becoming an important international air carrier, sought to protect its operations in Central America and eastern South America against the development of a strong, independent competitor based in western South America. Grace, the dominant steamship line between western South America and the eastern United States, was attempting to protect itself against a new and competing form of transportation. The basic division of control—assignment of 50 percent of Panagra's stock to Pan American and 50

[12] Section 3 may be involved because part of the commerce restrained was between the Canal Zone, a territory, and both foreign nations and the United States, as well as between the United States and foreign nations.

percent to Grace—gave each the power to accomplish these objectives by blocking Panagra from taking any competitive action that threatened its interests. Pan American used this power to prevent Panagra from applying for an extension of its routes to the United States. Grace used its power to limit Panagra's rate reductions to a level which would preclude unwanted competition with its steamships. Implicit in the combination was an agreement between Pan American and Grace dividing territories and commercial interests so as to prevent Panagra from operating in the eastern part of South America or Pan American from entering the west coast territory—an agreement which all parties frequently acknowledged and invoked during the ensuing years and which Pan American could enforce through its power to block affirmative action by Panagra's Board of Directors.

Not only did Pan American and Grace form Panagra with the intent to restrain competition, but this purpose was achieved. As we show below, the joint venture in Panagra, the implicit agreement between the two parent companies dividing markets in South America, and the subsequent operation of all three companies have prevented any competition between the two parent companies or between either and Panagra in air transportation in western South America (see *infra*, pp. 33–38); it has substantially lessened competition with other air companies (see *infra*, pp. 38–39) and between sea and air transportation (see *infra*, pp. 47–66) in western South America, and sig-

nificantly reduced competition with Pan American in eastern South America (see *infra*, pp. 40–43); and for a substantial period of time it eliminated, and it still reduces, competition with Pan American in air transportation between the Canal Zone and the United States (see *infra*, pp. 43–47). In short, we submit that the formation and operation of Panagra by Pan American and Grace has very substantially restrained trade and commerce in violation of Sections 1 and 3.

The district court accepted the government's contention that Pan American and Grace joined together to form Panagra and agreed to the division of territories, rather than proceeding independently, to protect themselves from competition (R. 5389). It further stated that if the combination was an illegal restraint of trade under Sections 1 and 3, "a court of equity would not hesitate to order both defendants to divest themselves of their interest in Panagra * * *" (R. 5390). But, despite its findings of fact, the court concluded as a matter of law that Sections 1 and 3 were not violated because "no * * * conspiracy existed between Grace and Pan American" (R. 5390). The court decreed the divestiture of Pan American's interest in Panagra only because Pan American had attempted to monopolize the Canal Zone-United States segment of commerce with South America in violation of Section 2 of the Sherman Pet.

While we agree that Pan American did violate Section 2, we submit that, more fundamentally, the district court's own findings demonstrate as a matter of law that both Pan American and Grace also vio-

routes (R. 889–898). As a result of the settlement, this Court dismissed the writs of certiorari as moot. 332 U.S. 827. The reason that Panagra entered the agreement, rather than continuing to litigate for its own route to the United States, was the new competition in South America provided by Braniff, which flew to the United States. Panagra's "economic life" would have been seriously threatened pending the outcome of the litigation without through plane service to the United States (R. 5414). After further prolonged controversy between the parties, the Board in 1955 approved an interchange agreement among Panagra, Pan American, and National Air Lines, under which Panagra can provide through service on planes to New York City. *New York-Balboa Through-Service Proceeding, Reopened*, 21 C.A.B. 1005.

5. *The decision of the district court.*—After trial, the district court found that Pan American had monopolized and attempted to monopolize commerce in violation of Section 2 of the Sherman Act. The court rejected the government's other charges.

The court found that there was no conspiracy between Pan American and Grace to restrain or monopolize trade under Sections 1 and 3 (R. 5388–5393). The organization of Panagra by the two companies was, the court found, an economically sound and mutually advantageous joining of complementary resources in a pioneering venture to develop United States commercial aviation in western South America (R. 5391–5392). In the court's view, it was the parties' respective strong bargaining positions, not a "conspiracy", which resulted in the agreement for

joint control and participation. The agreement was intended to assure the best chance of success and also to protect Pan American and Grace's "independent systems from * * * competition" by giving each a veto "against the possible treachery of the other to expand the operations of the company [Panagra] in competition with their respective independent lines" (R. 5389).

The court accepted Grace's position on the agreement for the division of territories. It held that the agreement was made after Panagra had been formed and after its route was extended to Buenos Aires in November 1929, and that it covered only the routes of Pan American and Panagra in South America, and not the Canal Zone-United States traffic (R. 5396–5398). The court held that this agreement for division of territories was valid because it was "consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938" and with the government's policy in those formative years of air transportation, which was to subsidize one United States airline on each route (R. 5394–5395, 5398).

The court ruled that Pan American, in blocking the extension of Panagra's operating authority to the United States and thus excluding competition by Panagra, was not acting pursuant to the valid agreement with Grace for the division of territories. The court held that by this action Pan American had therefore monopolized and attempted to monopolize air traffic between the United States and South

2. The combination tended to suppress, and in operation has actually suppressed, competition in U.S. foreign commerce between air carriers in eastern South America

Independent air carriers operating one on the east coast and one on the west coast of South America could be expected to develop into strong competitors as their routes expanded and their territories came to overlap. Furthermore, because of the geographic shape of South America and the comparative lengths of the flight from continental United States or even the Canal Zone, each would naturally become an alternate route to points like Montevideo and Buenos Aires. The formation of Panagra and the concomitant agreement that Panagra would stay out of Pan American's territory, which Pan American's 50 percent control enabled it to enforce, prevented the development of such competition.

Even today Panagra offers no service to cities in eastern South America, excepting its terminals in Buenos Aires and Montevideo. Pan American blocked a proposal that Panagra institute a competitive service to Medellin, Colombia (R. 545–546, 582–583, 584–586, 5397). Ten years later it objected to service to Bogota (R. 633–634). When Grace had wished Panagra to extend its service from Lima, Peru, to Rio de Janeiro, Pan American would not agree (R. 639–640, 651–652, 1285–1286, 5397–5398). There were

other discussions of routes and service in terms of an agreed division of territory (see *supra*, pp. 12–13, 35).

Both Pan American and Panagra serve Buenos Aires. Together they carry more than 90 percent of the passengers who utilize United States flag airlines between the United States and Buenos Aires (R. 5401) and during the period for which evidence was introduced at trial they accounted for more than 75 percent of the United States-Argentina traffic carried by all airlines, both American and foreign (R. 5402). The west coast route is by far the shortest, because the west coast of South America lies directly south of the Isthmus of Panama and the east coast of the United States. The advantage of the west coast route is reflected in the division of Buenos Aires traffic between Pan American and Panagra; Pan American carries 40 percent of the total on American flag carriers, while Panagra accounts for more than 50 percent (R. 5401). Thus, while in ordinary circumstances Pan American would have faced the pressures of competition from the carrier flying the west coast route to Buenos Aires, its interest in Panagra ensured it of profit no matter which route—east or west—should prove to be the more successful. And the fact that Pan American receives only 50 percent of the profits made by Panagra, compared with the 100 percent share received from its own activities, gives Pan American a powerful incentive to stifle the competitive growth of Panagra in order to divert

traffic, and hence profits, into its own enterprise (R. 228–229). The original combination provided the means.

Thus, Panagra has unsuccessfully urged since 1930 that its proper development required independence from Pan American control of its offices, at least where the two carriers were in direct competition (*e.g.*, R. 1196–1197). Similarly, Grace and Panagra have continuously protested the subordination of Panagra in Pan American's publicity activities ostensibly in behalf of both carriers, particularly with reference to the competitive United States-Buenos Aires route (R. 1219–1254). The tools with which Pan American has fettered Panagra's ability to compete for Buenos Aires traffic range from the distortion of maps used in advertisements (R. 1239) to the issuance of instructions in the carriers' joint offices to sell Pan American tickets to Buenos Aires passengers, unless a Panagra routing was specifically requested (R. 1240).

There is ample support, therefore, for the district court's finding "that there is and has been for many years active and substantial competition between Pan American and Panagra in the transportation of air passengers to the United States and South America to a substantial degree and that, but for the Pan American suppression of Panagra, that competition would have been much greater" (R. 5403). And it needs no argument to demonstrate that the subjection of virtually all United States flag traffic to Buenos Aires to Pan American's control, directly or through

its 50 percent interest in Panagra, is interdicted by the Sherman Act's prohibition of monopolizing. For the power which arises from control, direct or indirect, of 94 percent of a market is a power whose attainment plainly constitutes monopolization. Cf. *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 424, 425 (C.A. 2).

3. The combination tended to suppress, and in operation has actually suppressed, competition in U.S. foreign commerce in air transportation between the Canal Zone and continental United States

A primary route to South America includes a flight between the Panama Canal and the United States mainland. While Pan American flies alternative routes to South America, the Canal Zone is Panagra's northern terminal—its gateway to the United States. For Panagra to extend its route north to the mainland would not only give it a share of that traffic but increase its ability to attract more passengers for Buenos Aires. Pan American's 50 percent stock interest in Panagra gave it the power to exclude the latter from this vital segment of the route.

The district court found that "Pan American blocked Panagra's independent entry into the United States-South American market in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States and bound for points on Panagra's west coast routes. Prior to Braniff's

lated Sections 1 and 3.[13] The finding that the two parent companies formed Panagra to protect themselves from competition and the undisputed evidence that each utilized this power to block any activities on the part of Panagra to which it might object, both require the legal conclusion that Pan American and Grace entered a combination in restraint of trade. The district court erroneously rejected this conclusion on the ground (1) that the presence of concurrent lawful purposes overcame the unlawful anti-competitive motives and effects, and (2) that the venture served American air transportation policy or was otherwise in the public interest. But, as we show below (pp. 66–74), neither of these grounds constitutes a valid legal defense that can justify the combination in restraint of trade. Consequently, Pan American and Grace must both be required to divest themselves of their interests in Panagra.

[13] The district court's holding that no conspiracy had been entered into between Pan American and Grace was clearly not a finding of fact. As indicated above, the district court agreed that the two companies had joined together to protect themselves from competition (R. 5389). The court, however, refused to find a conspiracy because it held that the joint venture of Pan American and Grace was legally justified. In short, the district court's determination that no conspiracy existed was a conclusion of law based on its logically prior legal determination that the combination between Pan American and Grace did not violate the Act.

A. THE COMBINATION OF PAN AMERICAN AND GRACE IN PANAGRA HAD THE PURPOSE AND INHERENT TENDENCY TO IMPOSE, AND HAS ACTUALLY IMPOSED, SUBSTANTIAL RESTRAINTS OF U.S. FOREIGN TRADE AND COMMERCE [14]

The undisputed evidence shows that the purpose underlying the formation of Panagra was to protect Pan American and Grace from competition. As the district court stated, "[f]rom the outset, both Grace and Pan American had to fully appreciate the dangers of competition between themselves for the [Post Office Department's] air mail contract * * * for the west coast route * * *. Grace was aware of the competitive potential of air transportation with its large steamship investments * * *. Grace's interest was

[14] The commerce involved in this case is the transportation of passengers and freight between points in the United States and points in South America. The journey (whether of passengers or goods) may be broken into several legs. Where it is broken, there are opportunities for competition with respect to any segment—not only on the segments between a point in the United States and a point in South America, but also on segments between South American points and between continental United States and the Canal Zone. For convenience, we refer to a whole journey or any segment between continental United States and a South American point as commerce between the United States and South America. For the sake of brevity we refer to the separate legs of a longer shipment or journey in the foreign commerce of the United States simply as "competition in western South America," or "competition in eastern South America" or as "competition between the Canal Zone and the continental United States."

confined to the west coast of South America where it was strongly established, and that was the only area where it faced competition from an airline" (R. 5388–5389). The court also said (R. 5389):

> By joining with each other in a joint venture on the west coast, Grace on the one hand would be assured against the entry of an independent American airline competitor into its west coast domain, and gain time to acquire the experience and know-how of this new industry, and one day perhaps to succeed to complete domination of the joint company. Pan American on the other hand would be substantially free from American flag competition in the rest of Latin America. Their method of organization of the joint company appears calculated to give each negative control of the company to insure against the possible treachery of the other to expand the operations of the company in competition with their respective independent lines, and their divisions of operational and agency functions of Panagra was similar added protection.

The court further observed that the parties appreciated the protection a combination of their interests on the west coast would afford "their independent systems from the competition of [an independent west coast American air] carrier" (*ibid.*).

The very form of the combination not only confirms the finding of an anti-competitive purpose but gave the combination an inherent anti-competitive tendency regardless of subjective intent. Pan American and Grace each secured 50 percent of Panagra's stock and would nominate half the Board of Directors. This arrangement guaranteed that

either company could block any action on the part of Panagra which threatened its individual interests. If Panagra began to develop air transportation for either passengers or freight so vigorously as to injure Grace's steamship interests, Grace's nominees on the Board of Directors could retard its activities. If Pan American found that Panagra was thinking of expanding its routes from its base on the west coast of South America into areas served by Pan American, or of flying its own planes to the United States, Pan American's nominees could vote against the expansion. It would be naive indeed to suppose that neither parent company understood these potentialities of the 50–50 division of the stock. The evil was inherent in the arrangement and has been demonstrated by events.

1. The combination tended to suppress, and in operation has actually suppressed, competition in U.S. foreign commerce between air carriers in western South America

a. Before Panagra was formed in 1928, there was a substantial likelihood that both Pan American and Grace would enter the air transportation business in western South America. In answer to the government's complaint, Pan American acknowledged that, even before its first air mail contracts were awarded, it had "formulated plans" for operations on the west coast of South America (R. 32). Virtually summarizing the government's evidence (see R. 341–343, 345, 347–349), Pan American stated in its answer that "[b]y the end of July, 1928, [it] had instituted negotiations for operating rights to Panama, Colombia and Ecuador, held an option on an oper-

ating concession in Peru which another company had obtained for Pan American's account, and had ordered sufficient aircraft to operate the northern portion of the route from the Canal down the West Coast in addition to its other routes" (R. 32).

Similarly, Grace had for some time before the formation of Panagra been considering entering the air transportation business in the areas served by its steamship line. Grace had taken pains to keep itself informed of the activities of potential competitors in west coast air transportation (R. 336–338, 343–344), it had commissioned a study of possible west coast routes by the leader of the Army's goodwill flight to South America (R. 338–339, 346), and its interest in supplying the government's airmail requirements had led to discussions with the Post Office Department (R. 339–341). Grace "regarded aviation as simply a new development in transportation" (R. 340); its view, shaped by its "big investment in steamers," was that it "should become a party to this new branch of transportation which will yearly become more important and which in ten years will be a real competitor of our steamers" (R. 966–968).

The very formation of Panagra eliminated this possibility of competition between Pan American and Grace in western South America. One inescapable implication of the joint venture was a mutual agreement between Pan American and Grace dividing territory so that neither parent company would offer competing air transportation in the territory to be served by Panagra, and Panagra would not compete in the territory served by Pan American. There was no need to make the agreement explicit. Both

Pan American and Grace recognized its existence later on numerous occasions (see *supra*, pp. 12–13). In 1930 Pan American ordered a subsidiary to stay out of Santiago, Chile, on the ground that this was Panagra's territory (R. 512–513, 5397). Later Grace invoked the agreement to keep Pan American out of Panagra territory in western Colombia (*e.g.*, R. 545–546, 582–583, 584–586, 5397). Pan American invoked the agreement to block the extension of Panagra's routes to points in eastern South America (*e.g.*, R. 512–513, 633–634, 5396). No doubt these restrictive covenants remained implicit and therefore somewhat ill-defined until the occasion arose for their application, and this may explain the district court's finding that there was no division of territory until after Panagra had been formed (R. 5396, 5398); but there cannot be the slightest doubt that a division of territory was an inherent element of the original combination.

A combination of two powerful firms to divide territory is itself a violation of Section 1 of the Sherman Act. In *Northern Pac. R. Co.* v. *United States*, 356 U.S. 1, 5, this Court held that such divisions of markets are included among those "agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use."

The agreement was not the less unlawful because Pan American and Grace were only potential competitors in air transportation. It could readily be

foreseen that commercial aviation would develop rapidly, and each company was well suited to enter the field. Pan American had been the first United States flag air carrier not only in Latin America but in any international market; it operated between Florida and Cuba under a Post Office mail contract in 1927 (R. 5372–5373). After the passage of the Foreign Air Mail Act, it obtained a new contract for the same route (R. 2584–2588, 3565–3566) and extended its operations in Latin America by successfully bidding on various other contracts which the Post Office awarded for the carriage of mail on other and longer routes (R. 2538, 3565–3566). As Pan American put it in its brief in the district court, it "was far ahead in planning, in know-how and in the ordering of equipment" which would facilitate its successful operation of a west coast route (p. 47).

Just as Pan American was in a more powerful position with respect to the proposed west coast line in South America than any other United States airline operator, so Grace had by far the most extensive and influential American business organization in the territory to be served by the new route. Between 1851 and 1928 Grace had built up a network of some sixty agencies throughout the western countries of South America, whose activities ranged from merchandising to the representation of manufacturers, mining interests, and shipping companies, including the wholly-owned Grace Line (Grace Br. in the district court, p. 9). Grace's "established branches and agencies, * * * widespread commercial contacts, * * * respected trade name and considerable influence

in the countries along the proposed route" (R. 5391–5392) gave it a far greater likelihood of success than any other potential entrant in air transportation on the west coast except, of course, Pan American.

A merger of two such potentially strong competitors to enter a new field of commercial development is plainly an unlawful combination in restraint of trade. The Sherman Act has never distinguished "between strangling of commerce which has been born and preventing the birth of a commerce which does not exist." *United States* v. *United Shoe Mach. Co.*, 247 U.S. 32, 53. See also *United States* v. *Griffith*, 334 U.S. 100, 107; *United States* v. *Reading Co.*, 226 U.S. 324, 351, 370–371. It does not allow the foreclosure of competition by the simple device of a union of competitors before they begin actual operations. To countenance such conduct would sanction the destruction of "potential competition in a way later to make actual competition impossible." *Aluminum Co.* v. *Federal Trade Commission*, 284 Fed. 401, 408 (C.A. 3).

The district court suggested that the joint venture did not restrict competition because the Post Office Department would have given a subsidy in the form of an air mail contract to only one American carrier in western South America and such a subsidy was essential for successful operation (R. 5381–5382, 5389, 5394). But even if no actual restraint on competition resulted immediately, the division of markets was a *per se* violation of the Sherman Act going to the heart of the joint venture. Moreover, while it may be that only one of the two parent companies would have been able

to obtain a government subsidy, and hence that only one would have actually begun to operate a west coast airline in 1928, the formation of Panagra deprived the government of competitive bidding on the contract, both as to the subsidy rate itself and as to a choice of contractors. Moreover, the joint venture foreclosed the possibility of competition from the losing bidder at some future time when a subsidy would be less important. Therefore, the government's subsidy policy at that time does not disprove this serious anti-competitive consequence of the preference of Pan American and Grace for a noncompetitive joint endeavor.

The district court also suggested that the union of Pan American and Grace in forming Panagra was a "natural and mutually advantageous combination" because each partner had complementary advantages which assured the maximum possibility of success (R. 5391–5392). No doubt the combination was stronger than either would have been alone, and more powerful than any other carrier that might enter the field; but the creation of such dominant economic power by an agreement between potential competitors would seem to be, not a ground for sustaining the legality of the combination, but a further reason for holding it unlawful under Section 1. The power of a combination of potential competitors with complementary advantages would have a strong tendency to suppress the development of competition from other air carriers. For there is "no more effective exclusion than progressively to embrace each new opportunity as it opened, and to face every newcomer with new capacity already geared into a great organization, having the advantage of experience, trade connections and the elite of

personnel." *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 431 (C.A. 2).

Although one can only speculate as to what would have happened in the absence of the combination, it is noteworthy that Panagra and Pan American together dominate air passenger transportation between the United States and South America. During the period 1950–1957 they handled 50 percent of all air traffic between the United States and South America; the balance was divided among at least ten other carriers (R. 5401–5402). They carried more than 75 percent of the traffic with South America under the United States flag (R. 5400). Panagra became the dominant figure in air transportation in American foreign commerce on the west coast of South America. It participated in the carriage of almost 75 percent of all air traffic between the United States and western South America during the period 1952 to 1956, and of almost 50 percent of the total in 1957 (R. 5402). Measured by air traffic to western South America on United States flag carriers, Panagra's dominance is even more clearly apparent. The district court found that from 1950 to 1957 Panagra carried more than 80 percent of the total, and about 90 percent of that originating in the eastern United States (R. 5401).

We consider below the district court's holding that these anti-competitive purposes and consequences of the combination were justified by the fact that the parties were embarking "on a pioneering venture, useful to the community which did not theretofore exist" (R. 5392; see *infra*, pp. 69–74). First, however, we discuss the other areas in which restraints were contemplated and, later, actually enforced.

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78–81, 91–93, 106–107). Evidence was introduced before the district court showing the variety of freight which has moved to and from South America by air. Pan American, for example, has moved refrigerators and freezers from Indiana to Barbados, B.W.I. (R. 71–72); other carriers have transported sinks and cabinets from Ohio to Guatemala (R. 79–80), bricks from Missouri to Venezuela (R. 91), and onions (which previously had been carried by water) from Chile to New York (R. 104).

Census Bureau reports also make clear the wide range of commodities which are being handled by air carriers. In January 1962 the commodities imported to the United States by air from South America included leather, shellfish, cotton and wool wearing apparel, vegetable food products, wood and paper, textiles, beef and meat products, and books. Bureau of the Census, U.S. Department of Commerce, *United States Airborne General Import Statistics, Report FT 390, January 1962*, p. 8 (August 1962). Similarly, among the commodities exported to South America by air in March 1960 (the most recent period for which data is available) were bakery products, oil drilling equipment, cattle, eggs, large household appliances, television sets, office machines, automobile parts, musical instruments, kitchen and tableware, and industrial machinery parts. Bureau of the Census, U.S. Department of Commerce, Release dated November 10, 1960, pp. 7–8.

There is every reason to believe that the opportunities for competition between air and sea carriage will increase, thus magnifying the anti-competitive effects

of the combination. As we have shown, the volume of air cargo is growing rapidly. Indeed, the court below agreed that the evidence "tending to show that the air cargo field, particularly as it relates to heavy cargo, is on the upswing" (R. 5428). Moreover, the utilization of equipment designed to meet the problems encountered in handling air freight will reduce the carriers' costs to a substantial degree, thereby making a wider range of businesses which presently ship by sea into potential customers of an airline (R. 149–153).[19] This potential sphere of competition between Grace and Panagra is no less important than the portion of the market in which they should now be competing independently.

(iii) *Recognition by Congress and Administrative Agencies of Competition between Air and Sea Transportation.*—The existence of a single transportation market, in which both air and water carriers participate has been recognized by Congress in a variety of regulatory statutes and by the administrative agencies which interpret the legislation. Congress has provided that the administrative agencies regulating the various modes of transportation can grant exemption from the antitrust laws (see, *e.g.*, 46 U.S.C. 813 (ship-

[19] Pan American has recently instituted a major advertising campaign to attract air cargo business on the strength of the radically increased capabilities of such new equipment. The campaign stresses the gains to be made in speed ("45% faster than any other commercial cargo planes flying"), range (more than 25% greater than the best aircraft now in use), and payload capacity ("25% greater cargo capacity than any commercial cargo planes now available"). *Washington Post*, June 29, 1962, p. B11, cols. 6–8.

entry into the market (and Delta's too), and prior to the Through Flight operations, Pan American enjoyed a virtual monopoly of the United States-South American market." (R. 5405–5406).

The record amply supports the finding. Pan American used its negative control over the Panagra Board of Directors to block Panagra's applications to the Civil Aeronautics Board for an extension to the continental United States. As the district court found, Pan American refused from the beginning of the Board's existence to allow the joint company to request a route to the mainland (R. 5410). The very basis of its opposition was the effectiveness of the competition which Panagra would offer for traffic between the United States and points on the west coast of South America (R. 5405). The matter came to a head when Pan American refused even to allow Panagra board meetings to discuss the question of an extension, in the face of an application from another carrier for a route between New Orleans and the Canal Zone which might have led to a new route on the west coast of South America in competition with Panagra (R. 5410). Grace then sought to apply in Panagra's behalf for the extension which Pan American so vehemently opposed.[15] While the application was pending, a route from the United States to South America was awarded to Braniff, which threatened new competition. Thereupon the Panagra litigation was quickly settled by the adoption of the through flight agreement. That agreement was a

[15] The course of the proceedings before the Board is set out in more detail in the Statement, pp. 14–16 above.

direct response to the impending competition of Braniff; it was not intended to solve, nor did it solve, the underlying problems created by the cross-purposes of Grace and Pan American respecting the role of Panagra (R. 5414). Since 1946 Pan American has seized upon the through flight agreement as the rationale for its continued opposition to the establishment of a United States terminal for the joint company, advancing it as the considered solution of the parties and the Board to the question of Panagra flights to the United States (R. 5416). There can be no question but that the extension of Panagra to a mainland gateway would be consistent with the Federal Aviation Act and in the best interests of the United States. The Civil Aeronautics Board has suggested its approval of the extension on several occasions and has also deprecated the impasse in Panagra's affairs that enabled Pan American to block the application. *E.g., Additional Service to Latin America*, 6 C.A.B. 857, 914.

On these facts the district court concluded that Pan American had used its power over Panagra to "'maintain its virtual monopoly position over that [United States-South American] market at least until the entry thereinto of Braniff in 1948" and "[remain] the dominant carrier in that market and [maintain] its power to participate in substantially all United States origin or destination traffic carried by Panagra" (R. 5404).[18] Taking into account "the nature of the indus-

[18] Pan American, of course, receives a substantial percentage of Panagra's revenue from flights to the United States under the through flight agreement (R. 1871–1874, 1879–1883).

As early as 1936 Panagra and Grace found themselves in competition for cargo traffic consisting of gold and platinum shipments to the United States (R. 986–991, 995–1003). While some shipments were ultimately carried by water and others by air, the choice seems to have largely been dictated by the comparative rates (see, *e.g.*, R. 987–988, 1002). When the air cargo rate was set at a level lower than the water rate itself, or even at some higher rate which preserved for the shipper the cost savings inherent in faster transportation, so that the total cost of movement was below the cost via water, Panagra was able to attract the traffic (R. 990, 991, 996, 998–999). And while this particular instance concerns commodities of extremely high value, it illustrates the cross-elasticity of demand between water and air transportation which is manifested by responsive shifts in demand when the rate differential between the two modes of transportation changes.

In recent years the role of air cargo has continued to expand, particularly in the international field. Carriers certificated by the Civil Aeronautics Board have increased their international freight and express business from less than 9 million revenue ton-miles in 1945 to 214 million revenue ton-miles in 1957, the last year for which data was introduced at trial, and to almost 308 million revenue ton-miles in 1961. CAB, *Monthly Report of Air Carrier Traffic Statistics* 54 (December 1961); CAB, *Handbook of Airline Statistics*, p. II–24 (1961). Similarly, the annual growth rate of international air cargo carriers generally, while not constant, has been substantial for every not-

recession year since World War II but one, *Id.* at p. II–25.

Panagra's role as a cargo carrier has become increasingly significant. Its freight business almost doubled between 1951 and 1957, the last year for which data was presented at the trial. CAB, *Handbook of Airline Statistics,* p. III–87 (1961). Since then, the volume has almost doubled again, reaching a figure of more than 8 million revenue ton-miles in 1961. CAB, *Monthly Report of Air Carrier Traffic Statistics* 62 (December 1961). These totals hardly are "minuscule" as the court below called them (R. 5428). Grace and Panagra are plainly in competition for this substantial traffic; if there were no air transportation available it would unquestionably move by water, and only Panagra's competitive advantage can account for its movement by air (see R. 972). Moreover, the record is replete with testimony from witnesses engaged in the air cargo business that they find themselves actively competing with water carriers for the carriage of a variety of commodities (*e.g.*, R. 68–74, 78, 91).

Contrary to the statement of the district court (R. 5428), the opportunities for competition between Panagra and Grace for cargo are not limited to items for which the cost of transportation is relatively insignificant. The record shows that even where transportation expense is a major component of product cost, air transportation may still be competitive with surface carriage because it avoids multiple handling, overland hauling between seaports and the interior, and costly packaging and warehousing (R. 68–74,

merce already discussed with an equally serious restraint on competition between sea and air transportation. And, as we shall show, the latter form of competition has in fact been suppressed.

Since the district court held that sea and air carriage "do not make up a single market" (R. 5428) in which competition can be restrained, we direct ourselves first to the definition of the market.

a. The relevant market includes all forms of commercial transportation

Air and sea transportation are the two dominant forms of transportation for the foreign commerce of the United States with the west coast of South America. The question is whether the "outer boundaries" of the market encompass both modes. As the Court ruled in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325, "[t]he outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it." The evidence before the district court showed a reasonable interchangeability of use, or cross-elasticity of demand, between air and water transportation which is more than adequate to establish transportation generally between the United States and western South America as the relevant product market in which the effect of Grace's control of Panagra is to be measured.

(i) ***Passengers.***—For passengers traveling between the United States and western South America sea and air travel are reasonably interchangeable modes of transportation, with a substantial cross-elasticity of demand. Proof of an unlawful restraint does not

require a showing of cross-elasticity and interchangeability in all cases; hence, it is not decisive that to some passengers time is so important that air travel is in a class by itself. The illegality of a horizontal merger, for example, does not depend upon a showing that the merged companies are competitive in all their activities. *Brown Shoe Co.* v. *United States, supra,* 370 U.S. at 337. Cross-elasticity may be measured by the correlation between (a) changes in price differentials and (b) shifts in demand from one product to another. *United States* v. *E. I. du Pont de Nemours & Co.,* 351 U.S. 377, 400. To the extent, therefore, that there are shifts in customer preferences between air and water transportation in response to changes in passenger fares, there is cross-elasticity. Here, the record shows that sea and air transportation are competitive as to a substantial amount of commerce.

The history of air traffic has been one of competitive struggle between air and other modes of transportation to provide the speediest service, the lowest fares, and the greatest comfort and economy. As a result of these efforts, the air carriers' share of passenger traffic to South America has risen from only one-half of one percent in 1931 to almost 84 percent in 1957 (R. 1359). If sea carriers are desirous of retaining a share of the total passenger traffic, they must likewise lower fares and develop other attractions to compensate for lack of speed. The interplay between these two opposing modes of transportation is competition in a very real sense. The process of promoting and developing alternative modes of transportation is the

result of the competitive process, and requires freedom from the divided loyalties inherent in the Grace-Panagra relationship.

The district court stated that air carriers cater to passengers seeking speed, while steamship companies cater to those who have leisure (R. 5428). But the two classes of passengers are not so easily separated. Pan American's expert witness testified that more than one-half of all air passengers to South America travel for non-business reasons (R. 257, 272). As to these passengers, it is clear that the sea carriers have alternatives to offer which may more than compensate for the speed of an air trip.

The Court of Appeals for the District of Columbia Circuit decided in *Lehman* v. *Civil Aeronautics Board*, 209 F. 2d 289, certiorari denied, 347 U.S. 916, that air and water carriers compete in the same market for passenger traffic. The court upheld an order of the Civil Aeronautics Board which applied Section 409 of the Civil Aeronautics Act, 52 Stat. 1002,[18] to deny a Pan

[17] The district court's conclusion (R. 5429) that Grace, being primarily a cargo carrier, does not compete with Panagra for passengers, is plainly erroneous. The court based its view on its finding that Panagra carries 25 times as many passengers to South America as Grace does (R. 5427–5429). Most of the Panagra passengers involved in that comparison, however, were to Buenos Aires and Montevideo, which are not served by Grace (R. 5427). The record shows that Panagra carries about 1,100 and Grace about 315 persons per month between the areas served by both carriers (R. 1433–1435); on this basis it appears that Panagra carries only about three and one-half times as many passengers as Grace.

[18] Section 409 prohibited interlocking directorates and managements between air carriers on the one hand and other common carriers or aeronautics corporations on the other. The identical prohibition is now found in section 409 of the Federal Aviation Act, 49 U.S.C. 1379.

American director the right to become a director of United Fruit Co., a common carrier by water to eastern South America. Rejecting Pan American's contention that "the difference between a leisurely sea voyage * * * and a fast air trip * * * eliminates the element of competition" between the two carriers, the court of appeals found that they competed by offering different types of service in order to attract traffic. *Id.* at 291–292. "The prospective travelers cannot be isolated into two groups the members of each of which must be assumed to have determined the kind of transportation they will use, or the kind of vacation they will choose, without considering an available alternative." *Id.* at 292.

Similarly, the Court of Appeals for the Second Circuit in *United States Lines Co. v. Civil Aeronautics Board*, 165 F. 2d 849, sustained an order of the Board which disapproved Pan American's retention of United States Lines as its general agent in Europe. The court found that the water carrier was "in a competitive position" with Pan American, and that the Board was therefore justified in fearing failure "in diligence or loyalty." *Id.* at 852.

(ii) *Freight.*—Air and water carriage are also "reasonably interchangeable" methods of transporting freight. The district court's contrary conclusion (R. 5428) is clearly in conflict with the history of Panagra and the present characteristics of the air cargo industry generally, which show that air carriers are in a constant and continuing struggle to wrest portions of the market from water carriers.

try, the size and strength of the two companies involved, and the limited market potential" (R. 5408), the court properly held that the exclusion of "the most potential of a very limited number of competitors and one that enjoys a substantial share of the relevant market, and in which share the exclusionary action * * * guar-States-South American] market at least until the entry antees [the excluder] participation" (*ibid.*) constitutes monopolization or attempted monopolization in violation of Section 2 of the Sherman Act.

The decisions of this Court have made plain that the power to exclude competitors is monopoly power, and that the acquisition, maintenance, or exercise of monopoly power constitutes illegal monopolization under Section 2 of the Sherman Act. *E.g., American Tobacco Co.* v. *United States*, 328 U.S. 781; *United States* v. *Griffith*, 334 U.S. 100. In the case at bar Pan American exercised its power over Panagra to exclude the direct competition of the only company which could provide an effective challenge to Pan American dominance of the United States-Canal Zone segment of the South American trade. Its market share of more than 80 percent was thereby secured from attack. The district court was clearly correct, therefore, in holding that Pan American was guilty of monopolization in violation of Section 2. See *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 424 (C.A. 2).

The district court erred, however, in failing to hold that the union of Pan American and Grace in Panagra was itself an illegal combination from the outset, in violation of Section 1 and 3, because it was this

combination that conferred on Pan American the power to monopolize in violation of Section 2. See *American Tobacco Co.* v. *United States, supra,* 328 U.S. at 809. Thus, Pan American's conduct with respect to air transportation between the United States and the Canal Zone reinforces our more general conclusion that the basic arrangement was an unreasonable restraint of trade in violation of Sections 1 and 3. For monopolization is the ultimate restraint of trade. *Standard Oil Co.* v. *United States,* 221 U.S. 1, 55–56; *United States* v. *Aluminum Co. of America, supra,* 148 F. 2d at 427–428.

4. The combination tended to suppress, and in operation has actually suppressed, competition between air and sea transportation in U.S. foreign commerce with western South America

Although the protection of Pan American's individual interest as an air carrier, and its avoidance of competition in carrying American foreign commerce between continental United States and South America, and between South American points, were major objectives and consequences of the combinatio. a no less important objective was the protection of Grace's interest in water transportation When Panagra was formed, Grace was the largest steamship company operating between the United States and western South America (R. 5429). Panagra had such inherent advantages that it was bound to become the dominant air carrier serving the same areas. The natural tendency, if not the inevitable result, of the combination of these dominant sea and air carriers, would be to couple the restraints upon competition in air com-

ping); 49 U.S.C. 5(11) (railroads)). In conferring this authority on the administrative agencies, Congress made clear its awareness of the damaging consequences of allowing a carrier engaged in one mode of transportation to obtain control of a carrier by another, for the prohibitions and restrictions that Congress imposed are obviously predicated upon the view that rail, water, motor, and air carriers are, in general, all in competition with each other.

Section 5(14) of the Interstate Commerce Act, 49 U.S.C. 5(14), as amended by the Panama Canal Act, 37 Stat. 566, as amended, prohibits rail carriers from owning or otherwise controlling, or from having any interest whatever, in any water common carrier with which the rail carrier "does or may compete for traffic." Relief from the prohibition can be obtained only upon a finding by the Interstate Commerce Commission that the resulting interlock does not prevent operation of the water carrier in the public interest "and with advantage to the convenience and commerce of the people, and that it will not exclude, prevent, or reduce competition on the route by water under consideration." Section 5(16), 49 U.S.C. 5(16).

Similarly, the Motor Carrier Act of 1935, 49 Stat. 543, established a special test for the lawfulness of a railroad's acquisition of motor common carriers. In Section 213(a)(1), as amended, 49 U.S.C. 5(2)(b), the Interstate Commerce Commission is directed to deny approval unless "it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle

to public advantage in its operations and will not unduly restrain competition."[20]

The policy of the Motor Carrier Act has been explicitly carried over into the regulation of air transportation by Section 408 of the Federal Aviation Act of 1958, 49 U.S.C. 1378. That section allows surface carriers to merge with, or acquire control of, any air carrier only with the approval of the Civil Aeronautics Board on the basis of a finding that the interlock is consistent with the public interest, will not unduly restrain competition, and will enable the surface carrier "to use aircraft to public advantage in its operation * * *." The proviso has been described as making "acquisitions of air carriers by water carriers difficult, if not practically impossible * * *." Fulda, *Competition in the Regulated Industries* 421 (1961). The Aviation Act, moreover, contains other examples of Congressional disfavor towards surface carrier control of air carriers: Section 407, 49 U.S.C. 1377, requires the disclosure of stock or other interests held by an officer or director of an air carrier "in any common carrier," while Section 409, 49 U.S.C. 1379, requires approval by the Board of interlocking officerships or directorates between air carriers and other common carriers.

The National Transportation Policy, and the rules of ratemaking through which it is implemented, also

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[20] Further evidence of the legislative recognition of the problems raised by control of one mode of transportation by another is found in Section 411 of the Freight Forwarder Act of 1942, 49 U.S.C. 1011, which prohibits forwarder control of rail, motor, or water common carriers. See also *National Air Freight Forwarding Corp.* v. *Civil Aeronautics Board*, 197 F. 2d 384, 388, 390 (C.A. D.C.).

> * * * It would be expecting too much to assume that a transportation company engaged in both air and sea transportation would be in a position to provide vigorous competition between its air transportation and its surface transportation on this route. * * * Here we find revealed an inherent conflict of investment interests which frequently arises where the same company undertakes different business activities. Any assumption that an automatic competition between two forms of transportation, conducted by the same management and operating over the same route, could develop would be an assumption at war with the realities of business experience and of human nature. * * * We believe, therefore, that the maximum development of air transportation on the proposed route cannot be assured under a plan which carries the inherent danger, in the event of a conflict of interest, that the air transportation may find itself a captive of the surface transportation interests.

(iv) *Recognition by the Parties of Competition Between Air and Sea Transportation.*—This Court stated in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325, that industry recognition of the appropriate market was important evidence of its actual scope. The record shows that both Pan American and Grace considered the area of competition in western South America to include both air and sea transportation. Pan American's treasurer testified on cross-examination that air and sea carriers to South America are "[v]ery definitely" in competition for passengers and "are both trying to get the same market" (R. 229). Similarly, Grace has always candidly admitted that "Panagra is a direct competitor of the Grace line,"

and that Panagra's development had resulted "in prejudice to the Grace line" (R. 1027). One of Grace's highest officers wrote that he "appreciate[d] the fact that steam and air traffic are competitors, but * * * believe[d] that by handling the whole matter * * * [properly] we may avoid the prejudice of competition * * *" (R. 970). Grace recognized that the competition between Panagra and Grace for gold and platinum shipments (see *supra*, p. 52) was an incident "involving a conflict of interest between Panagra and the Grace Line" (R. 1003; see also R. 995, 1041–1042, 1048). Indeed, as the court below found (see *supra*, pp. 31–32), Grace was largely motivated to join in the formation of Panagra by its recognition that airplanes "will be a real competitor of our steamers" (R. 966; see R. 968). We think it plain that an independent air carrier, the kind of company whose activities Grace feared, would have been and still would be an effective competitor in the very market, transportation to western South America, in which Grace itself operated.

b. The combined ownership of air and sea transportation services through Grace's stock interest in Panagra was and is unlawful under Section 1 of the Sherman Act

The decisions of this Court make clear that, since Grace and Panagra are in competition in the same market, Grace's control of Panagra violates Sections 1 and 3 of the Sherman Act. Even prior to this Court's decision in *United States* v. *Columbia Steel Co.*, 334 U.S. 495 (which we will discuss below), it was settled that the kind of horizontal merger which is involved in Grace's control of Panagra was illegal. The Court had repeatedly held that a horizontal merger is unlawful when it involves competitors who are both major

make it clear that Congress, recognizing that the various modes of transportation operate in a single market, intends them to be competitive and independent of the restraints which may flow from control of one mode by another. The National Transportation Policy, 49 U.S.C. preceding Section 1, commands the Interstate Commerce Commission to "recognize and preserve the inherent advantages of each" mode of transportation. This requirement is echoed in the Aviation Act's declaration that the Board should consider "the regulation of air transportation in such manner as to recognize and preserve the inherent advantages of * * * such transportation," as being in accordance with the public interest and necessity. 49 U.S.C. 1302. And Section 15a(3) of the Interstate Commerce Act, 49 U.S.C. 15a(3), recognizes the existence of "competition between carriers of different modes of transportation" and prohibits the Interstate Commerce Commission from holding up the rates of one mode to protect the traffic of another.

It is obvious from these statutes that Congress is opposed to concentration of control of different modes of transportation in the hands of a few powerful companies. The statutes are based upon the view that the relevant competitive market is the entire field of commercial transportation within a particular area. The agencies to which the administration of these statutes has been entrusted have recognized the detriment to the public interest flowing from control over one mode of transportation by another. As the Civil Aeronautics Board said in discussing surface

carrier control of air carriers (*American President Lines, Ltd.*, 7 C.A.B. 799, 803):

> Surface carriers engaging in air transportation would at times be under a strong incentive to act for the protection of their investment in surface transportation interests. Again, by reason of their superior resources and extensive facilities for solicitation, such carriers would often be the possessors of powerful competitive weapons which would enable them to crush the competition of independent air carriers. This threat is not peculiar to air transportation, as will be apparent from those decisions of the Interstate Commerce Commission which have sought to safeguard the development of motor transportation against the unrestricted entry of rail carriers into the motor carrier field.

This view is plainly relevant to the question whether Grace's control of Panagra violates the Sherman Act by reason of the restraint of present and potential future competition between the two companies. Indeed, Grace itself has been denied authority to operate an airline to Latin America upon this precise ground (*Additional Service to Latin America*, 6 C.A.B. 857, 903–904):

> It can hardly be doubted that an indifference on the part of management to the question of whether a prospective traveler uses the company's boats or its airplanes would not be consistent with the fullest development of the potential air travel market. The proposed combined air-sea service would seek the sale of air transportation on the plan of "one way by air—one way by boat." • • •

western South America, besides Panagra and Grace, is Braniff, whose share of the air cargo and passenger traffic is carried under the American flag is less than one-sixth. The district court found that Braniff "does more than half as much business as Panagra" (R. 5432). If we assume that this statement is correct—in fact it considerably overstates Braniff's share of the traffic [21]—it means merely that Braniff does only one-third of the combined business of the two airlines, by no means enough to excuse control of the other two-thirds by the dominant surface carrier in the same market. And Braniff's market share is even less significant when compared with the cargo and passenger business of Grace and Panagra together.[22]

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[21] The record actually shows that in 1957 Panagra carried 79.6 percent of the United States flag air passenger traffic between the United States and western South America, while Braniff obtained only 15.8 percent of the total (R. 1367). Similarly, in that year Braniff carried only 871,000 ton-miles of freight and express, while Panagra's business amounted to almost 4.5 million ton-miles (R. 1438)—more than five times as much as Braniff's.

[22] Grace is the only regularly scheduled United States flag water carrier between the eastern United States and western South America. Hence the percentage of cargo carried on United States flag ships and planes between these areas carried by Panagra and Grace together is overwhelming. For the district court found that between 1950 and 1958 Panagra carried less than four-tenths of one percent of the tonnage carried by Grace (R. 5427); assuming that Braniff's volume of traffic bore the same relation to Panagra's during this period as in 1957 (see *supra*, note 21), Braniff obtained substantially less than one-tenth of one percent of the cargo moved by the three carriers. And while Braniff's share of the three carriers' passenger traffic is not so strikingly small as its share of cargo, it amounts to only 13 percent of the total.

Third, under *Columbia Steel* (*supra*, p. 63), we are to inquire "whether the action springs from business requirements or purpose to monopolize." Here, one purpose of Grace's venture, as the district court found (R. 5388–5389), is to foreclose independent air competition with its shipping interests on the west coast of South America.

Fourth, looking to "the probable development of the industry," the record in this case shows quite clearly that air carriers can secure an increasing share of freight transportation. Grace's control of Panagra during this period of growth would enable it to continue to hinder the development of competition with Grace's steamship operations, whenever Grace's interests require. And the continued Grace control of Panagra will result in the extension of Grace's dominance over water carriage in western South America to air transportation in that area as well. For Panagra's rights under the "grandfather" provisions of the Aviation Act insure that it will continue to dominate United States flag air operations on the west coast of South America. As long as Grace retains its 50 percent stock interest in Panagra, therefore, its power over United States flag transportation in that area will remain despite the growth of what should be its principal competitor—the dominant American air carrier in the same geographic market.

Fifth, it is clear that the needs of shippers are best served by real competition between sea and air carriers. Such competition may well result in the reduction of air cargo rates and improved service which would make air transportation competitive with sea

factors in the same market. In *Northern Securities Co.*, v. *United States*, 193 U.S. 197, *United States* v. *Union Pac. R. Co.*, 226 U.S. 61, and *United States* v. *Southern Pac. Co.*, 259 U.S. 214, combinations of two large railroads were struck down, notwithstanding that in each case the merged company would have faced competition from other rail carriers not parties to the combination. The illegality in each case resulted from the fact that the merger eliminated competition between large enterprises, each doing a substantial proportion of the total business in a field. See Handler, *A Study of the Construction and Enforcement of the Antitrust Laws*, p. 58 (TNEC Monograph No. 38). The case at bar presents a similar violation of the Sherman Act. A "joint venture" is nothing but a partial merger of those of the venturers' assets which are utilized in the joint endeavor. See Bork, *Ancillary Restraints and the Sherman Act*, 15 A.B.A. Antitrust Section 211, 217; cf. Brewster, *Antitrust and American Business Abroad* (1958), pp. 211–212. Pan American and Grace are extremely large transportation companies; at the time they formed Panagra, the former was emerging as the dominant American air carrier in South America and, in fact, the largest in the whole world; the latter was the dominant steamship company in western South America. The two companies, realizing that transportation between the United States and western South America constituted a single market in which air and sea carriers would soon compete, formed a joint venture, Panagra, to prevent competition between themselves. While the restraint was, at first, upon potential rather than actual competition, we have seen that this fact is of no

importance (see *supra*, pp. 35–37). The competition between sea and air carriers since the formation of Panagra shows how great the opportunities for competition between two really independent firms were, and still are.

Turning to the standards more recently laid down by this Court in *United States* v. *Columbia Steel Co.*, *supra*, 334 U.S. 495, it is even more clear that Grace's 50 percent interest in Panagra violated the Sherman Act. Each of the five considerations which the Court there listed as relevant to the issue of unreasonable restraint—"the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands" (334 U.S. at 527)—indicates that Grace's control of Panagra cannot stand.

First, "the percentage of business controlled" by the two carriers is extremely high. Grace was the dominant surface carrier to the west coast of South America at the time of Panagra's formation and is still dominant today. Grace carries 100 percent of the liner traffic to and from that area which moves under the United States flag (see *supra*, p. 7). Panagra was destined to become and still is the dominant air carrier in that area. Panagra carries 80 percent of the air passengers to and from that area traveling under the United States flag (see *supra*, pp. 5–6). The combination put into the hands of Grace substantially all of the opportunities for air and sea competition in commerce between the United States and the west coast of South America.

Second, "the strength of the remaining competition" is small. The only United States flag carrier to

carriage on an increasing variety of goods (see *supra*, pp. 54–55).

Thus, under the principles set out in *Columbia Steel*, the union of Grace's steamship interests with the potentially (and later actually) dominant air carrier, through Grace's 50 per cent control of Panagra, was sufficient, quite apart from the other anti-competitive aspects of the combination, to constitute an unreasonable restraint in violation of Sections 1 and 3.

B. THE SUBSTANTIAL RESTRAINTS OF TRADE AND COMMERCE BY PAN AMERICAN AND GRACE CANNOT BE JUSTIFIED BY THEIR BUSINESS PURPOSES OR ALLEGED CONTRIBUTIONS TO THE NATIONAL INTEREST

The district court found that Pan American and Grace formed Panagra and agreed to a division of territories and commercial interests in order to protect themselves from competition, but the court concluded that there was no "conspiracy"[23] violating the Sherman Act because of two allegedly beneficent consequences of the combination: (1) it fostered the development of American air transportation in accordance with the policy of the Post Office Department and (2) it brought together two companies having complementary advantages that assured "the maximum possibilities of success in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist" (R. 5392). We submit that neither of the proffered justifications excused the imposition of these major restraints on competition.

[23] See *supra*, p. 30, note 13.

1. The combination is not saved from illegality by the policies of the Post Office Department

We do not challenge the district court's finding that the formation of Panagra was consistent with the air transportation policy expressed by the Post Office Department at a time when it was following a " 'no-parallel' policy" and "approving a sort of 'zoning' for the operations of the American international carriers in the nature of east and west coast spheres as was ultimately arranged between" Pan American and Grace (R. 5395). The finding is irrelevant. In the first place, there is nothing in the finding nor in the evidence that even remotely suggests (1) that the policy favored giving the carrier which would dominate commerce with the east coast control over the carrier to the west coast; (2) that it favored, or even permitted, combining air and water transportation under common control; or (3) that it permitted the kind of continuing arrangements which would project restraints upon competition and monopoly power into the indeterminate future. In other words, the policy of the Post Office Department to foster the development of a single American company in carrying the United States mail to western South America could have been fulfilled without any of the inherent restraints created by the formation of Panagra; and it was a policy subject to termination whereas the restraints effected by the parties would continue and intensify so long as Panagra remained in the control of the parent companies.

Second, violations of the Sherman Act cannot be excused by the argument that the conspirators were following a policy expressed by some government agency. In *United States* v. *Socony Vacuum Oil Co.*, 310 U.S. 150, the defendants urged that N.R.A. officials had known of their scheme to put a floor under wholesale oil prices and stabilize the retail profit margin on gasoline, and had at least "acquiesced" in its operation. *Id.* at 201–208. The Court held that "specific Congressional authority" is required for exemption from the antitrust laws, and that to allow immunity to be conferred outside the scope of a clear and explicitly defined mechanism would allow "national policy on such grave and important issues as this [to] be determined not by Congress nor by those to whom Congress had delegated authority but by virtual volunteers." *Id.* at 227. See also *United States* v. *Borden Co.*, 308 U.S. 188, 198–199. Whatever the Postmaster General's air transportation policy in 1929 may have been, it is clear that no authority was ever conferred upon him to grant immunity from the antitrust laws in the administration of the Foreign Air Mail Act.[24]

[24] Thus, the district court plainly erred in holding that the "agreements [of Pan American and Grace] among themselves * * * may well have been approved by the C.A.B. were it then in existence" (R. 5391), and that therefore the division of territories was legal throughout the period before enactment of the Civil Aeronautics Act in 1938. While the Aeronautics Act was not then in effect, the Sherman Act was, and the court's holding amounts to a retroactive grant of exemption from the antitrust laws with no legislative sanction whatever.

[Footnote continued on next page]

2. The combination is not saved from illegality by the beneficent purposes mingled with the parties' unlawful intent

The district court found that among the motives for the formation of Panagra was the desire of both Grace and Pan American to protect themselves against competition in transportation between the United States and South America under the United States flag. The court concluded, however, relying on *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280 (C.A. 6), modified and affirmed, 175 U.S. 211, that the combination was not unlawful because it also had a legitimate purpose: "The union of [Pan American and Grace's] physical and technical resources assured the maximum possibilities of success

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Indeed, the district court itself recognized elsewhere in its opinion that "[e]xemptions from the antitrust laws are not favored and should be accorded only on a showing of compliance with the precise manner and method prescribed by Congress" (R. 5418). For want of such a showing, the court rejected Pan American's claim of immunity under Section 414 of the Civil Aeronautics Act, 52 Stat. 1004, and of the Federal Aviation Act, 49 U.S.C. 1384—which allow the Board to grant exemptions from the antitrust laws—for its exclusion of Panagra from the United States (R. 5416).

Perhaps in recognition of its refusal to accept Pan American's claim of immunity with respect to the exclusion of Panagra from the United States, the district court did not attempt to defend the division of territories by reference to Board policy since 1938. The same absence of compliance with a statutory exemption process which left the Panagra exclusion vulnerable to antitrust attack would clearly negate any defense of the territorial allocation for the period since 1938 based upon its alleged consonance with regulatory policy. See *Isbrandtsen Co.* v. *United States*, 211 F. 2d 51 (C.A. D.C.), certiorari denied *sub nom. Federal Maritime Board* v. *United States*, 347 U.S. 990.

in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist" (R. 5392). We submit that the ruling was erroneous upon several independent grounds.

It is settled law that neither businessmen nor the courts may substitute their views of the public interest for the policy expressed by Congress in the Sherman Act; antitrust violations may not be excused as "promotive of the public welfare * * * and private choice of means must yield to the national authority thus exerted [in antitrust legislation]." *Eastern States Retail Lumber Dealers' Ass'n* v. *United States*, 234 U.S. 600, 613. Similarly, in *Standard Sanitary Mfg. Co.* v. *United States*, 226 U.S. 20, 49, this Court said that the "judgment of the courts cannot be set up against [the Sherman Act] in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results." See also *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207, 211; *Radovich* v. *National Football League*, 352 U.S. 445, 453; *United States* v. *Line Material Co.*, 333 U.S. 287, 310.

This Court has made it particularly clear that division of markets, price-fixing, and similar *per se* violations of the Sherman Act cannot be justified because of any good effects which they may have. In *Northern Pac. R. Co.* v. *United States*, 356 U.S. 1, 5, the Court said, as we have emphasized above, that such arrangements are among those "agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable

and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." Similarly, in *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 220, the defendants sought to justify their price-fixing scheme as one which resulted in "[f]airer competitive prices." Rejecting this defense, the Court held that "Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. * * * Whatever may be [the oil industry's] peculiar problems and characteristics, the Sherman Act, so far as price-fixing agreements are concerned, establishes one uniform rule applicable to all industries alike." *Id.* at 221–222.

The same rule equally proscribes all market divisions, for, like the group boycott (see *Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U.S. 457, 467–468), these go beyond price-fixing in their pernicious effect on competition and eliminate not merely price rivalry but all other forms of competition as well. Particularly is this true when, as here (R. 410–416, 5389, 5429), the parties to the agreement possess substantial or even dominant market power—whether derived from existing resources and previous experience, as with Pan American and Grace, or from governmental protection against outside competition, as with both Pan American and Panagra. For in such cases, there is small chance that others will enter the market and thus mitigate the effect of the elimination of competition between the parties.

the combination unlawful. The existence of the tendency has been confirmed by events.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the district court insofar as it orders the divestiture of Pan American's interest in Panagra (No. 23) should be affirmed, and insofar as it fails to order the divestiture of Grace's interest in Panagra (No. 47) should be reversed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 47

UNITED STATES OF AMERICA,
Appellant,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., and PAN AMERICAN-GRACE AIRWAYS, INC.,
Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR RESPONDENT PAN AMERICAN WORLD AIRWAYS, INC.

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Many of the restraints inherent in the combination between Grace and Panagra are *per se* violations of Section 1. In *Timken Roller Bearing Co.* v. *United States,* 341 U.S. 593, this Court laid to rest the notion that the division of markets and like restraints may be lawful if the corporation has a purpose to conduct a "joint venture" or the like. The Court first observed that it was "to say the least, doubtful" whether the division of territories, price fixing, cooperative market protection, and cartel participation by American Timken, British Timken (30 per cent of whose stock was owned by American Timken), and their jointly-owned subsidiary French Timken, was "merely incidental" to a joint venture, since the court below had found that the parties' "dominant purpose" was to avoid competition among themselves and with outsiders (*id.* at 597–598). But, significantly, the Court went on (*id.* at 598):

> Regardless of this, however, [Timken's] argument must be rejected. Our prior decisions plainly establish that agreements providing for an aggregation of trade restraints such as those existing in this case are illegal under the [Sherman] Act. *Kiefer-Stewart Co.* v. *Seagram & Sons,* 340 U.S. 211, 213; *United States* v. *Socony-Vacuum Oil Co.,* 310 U.S. 150, 223–224 and note 59; *United States* v. *National Lead Co.,* 63 F. Supp. 513, affirmed 332 U.S. 319; *United States* v. *American Tobacco Co.,* 221 U.S. 106, 180–184; *Associated Press* v. *United States,* 326 U.S. 1, 15. See also *United States* v. *Aluminum Co. of America,* 148 F. 2d 416, 439–445.

In *Addyston Pipe* itself, the Court recognized that the sort of "ancillary restraint" here involved was

per se unlawful, when it observed that the Sherman Act would be violated regardless of the intent of the parties if "dealers in any commodity agreed among themselves that any particular territory * * * should be furnished with such commodity by certain members only of the combination, and the others would abstain from business in that territory." 175 U.S. 211, 241. That the chosen means of exploiting the assigned territory is a "joint venture" rather than some other instrument is not significant. *Timken Roller Bearing Co.* v. *United States, supra,* 341 U.S. at 598. Thus, it appears that under the decisions of the Court the division of markets in this case could not be excused even if the only purpose of the combination were to exploit the west coast market; here, as the district court found, that purpose was coupled with an intent to protect Pan American's interests on the east coast and Grace's investment in transportation by water.

Where, as here, one of the purposes of an arrangement restricting competition is illegal, the illegality of the combination is plain; the unlawful motive need not be its "primary purpose." Thus, in *United States* v. *Imperial Chemical Industries, Ltd.,* 100 F. Supp. 504, 518 (S.D. N.Y.), the court held that a patent interchange agreement was illegal on the ground that "[s]o long as *a major purpose* of the agreement was an illegal one, a complementary legitimate purpose does not immunize the parties from Anti-Trust prosecution" (emphasis added). And the court in *United States* v. *National Lead Co.,* 63 F. Supp. 513, 524 (S.D. N.Y.), affirmed, 332 U.S. 319, found illegal a patent cross-li-

censing arrangement which effected a division of markets, on the ground, *inter alia,* that the elimination of competition was "at least one of the principal" objectives of the defendants. Here, as the district court itself found (see *supra,* pp. 31–32), one of the main objects of the joint venture as a whole and the division of markets in particular was to restrict competition. The elusive "primary intent" of the parties, Pan American and Grace, cannot be allowed to obscure their plain violation of the Sherman Act.

Even if the *per se* rule were held inapplicable to the present case, the combination of Pan American and Grace in Panagra must be held an unreasonable restraint of trade within the rule laid down in *Standard Oil Co.* v. *United States,* 221 U.S. 1. Earlier in this brief we discussed separately each of the major restraints upon competition in foreign trade and commerce that was inherent in, and actually resulted from, the combination of Pan American and Grace. Some of the separate anti-competitive aspects of the combination, we submit, would be sufficient to condemn it under Sections 1 and 3 even if each stood alone. But even if we are wrong on that point, the separate restraints cannot fairly be broken down, considered, and dismissed in isolation. The combination did not merely tend to suppress, and actually suppress, competition between air carriers seeking to carry passengers and freight in American foreign commerce in western South America. It also tended to suppress,

and actually suppressed, competition between air carriers in eastern South America, especially of traffic moving from the continental United States or the Canal Zone to Buenos Aires. In addition, the combination was intended to and did enable Pan American to monopolize air commerce between continental United States and the Canal Zone. Still further, the combination brought into the hands of Grace a controlling interest in both air and sea transportation between the United States and western South America, thus suppressing competition between these forms of transportation. The cumulative impact of these restraints is too great to save the combination from illegality by proof that its promoters also carried out a beneficent intent.

This is not an argument from hindsight unmindful of the situation as it existed in 1928. The restraint grew as air commerce developed and we are therefore able to judge the purposes and tendencies of the combination in the light of what occurred. The restraints and power of monopolization, however, were all inherent in the combination from the beginning—inherent in a continuing union of potential competitors in air transportation, inherent in the allocation of markets, inherent in the combination of air and sea transportation, inherent in the basic 50–50 division of control. The damaging consequences of the combination were virtually certain to grow as the enterprise prospered; if they were not inevitable, they were probable indeed. It is that tendency (as well as the parties' anti-competitive purposes) which made

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BRIEF FOR RESPONDENT

ent case. The argument which the Government makes, which finds no support in any case and is contrary to long and firmly established law (*United States* v. *du Pont & Co.*, 118 F. Supp. 41, 219-220 (D. Del. 1953), *aff'd* 351 U. S. 377 (1956); *United States* v. *Imperial Chemical Industries*, 100 F. Supp. 504, 557 (S. D. N. Y. 1951); *Brewster, Antitrust and American Business Abroad* 206 *et seq.* (1958); *Fugate, Foreign Commerce and the Antitrust Laws* 257 (1958)), is that joint ventures are illegal because the joint venturers, except for their joinery together, might have gone into the same business individually and become competitors, hence their joinder is a combination of "potential competitors" in restraint of trade.

The extracts quoted in the Government's brief from the district court's opinion, relating to the arrangements between the founders of Panagra for protecting their independent lines from the competition of their joint creation, from which the Government argues that the "purpose underlying the formation of Panagra was to protect Pan American and Grace from competition" (Brief for the United States 31), do not accurately reflect the court's opinion or adequately present the case, which the court found was *not* a case of a combination of competitors to suppress competition.

We will give fuller quotations or summarizations of the court's opinion which give a truer insight into the organization of Panagra and the nature of the joint venture.

The district court stated:

> "In 1927 substantially all transportation between this country and Latin America was by steamship. International commercial aviation was in the experimental stage and as yet no American air transportation company had entered upon operations from the United States to South America" (Opinion, R. 5372).

* * * * *

"Between 1920 and 1927 several German and French companies had established commercial air transportation services in South America, in Colombia, Bolivia; Brazil, Argentina and Chile, and were receiving financial and diplomatic assistance from their governments necessary to the establishment and maintenance of such services. These foreign companies had envisioned routes throughout South America and had sought also to extend into the Canal Zone and to the United States.

"Our government was greatly concerned for political, military and business reasons, with the successful establishment of an American system of air transportation to Latin America, and recognized the need for legislation under which financial aid could be rendered to American companies to engage in international air transportation. The result was the enactment by Congress in March, 1928, of the first Foreign Air Mail Act (45 Stat. 248, amended, March 2, 1929, 45 Stat. 1449) which authorized the Postmaster General to let contracts for not more than ten years for the transportation of mail by airplane to foreign countries or insular possessions of the United States. The method of payment established by the Postmaster General was based on the mileage flown without relation to the amount of mail carried. It was in essence, subsidy" (Opinion, R. 5373).

The district court then made reference to Pan American's plans, starting in 1927, to establish a complete system of air transportation serving all parts of the Caribbean and Central and South America, and its inauguration of service in 1928 with the award of mail contracts for routes between Florida and Cuba and Miami and the Canal Zone (Opinion, R. 5373-374). Pan American's con-

most parts (D. Ex. PS-2, R. 173, 4499). Pan American had planned the establishment of air service between the United States and all parts of Latin America but had established service only between Miami and Cuba and Miami and the Canal Zone with spurs to Belize, Guayaquil and Curacao. Because the Grace organization on the west coast of South America could be of material aid in the establishment and operation of a pioneering airline down the west coast of South America, Pan American decided that it would be desirable to have Grace participate in that part of the Pan American operation from the Canal Zone down the west coast of South America. Accordingly, Panagra was formed as a joint venture of the two parent companies to own and operate an airline which would connect with Pan American at the Canal Zone and operate from the Canal Zone south down the west coast of South America (Opinion, R. 5377-378, n. 7).

Grace's only interest in airline ownership was in a line which would run from the Canal Zone down the west coast of South America, and Pan American's only interest in joining with Grace was in the operation of an airline from the Canal Zone down the west coast of South America. Panagra was formed for this specific and only purpose with the understanding expressed, implicit and inherent that it would not parallel Pan American's lines, with one of which it would be a connecting service, and that Pan American would not parallel the Panagra route (Opinion, R. 5376-378).

The establishment of the Panagra service, as all other air services into Latin America, was dependent upon Government financial aid in the form of a mail contract. Such a contract, for ten years, was awarded to Panagra

in 1929 (Opinion, R. 3373, 3382; D. Ex. P-406, R. 3651*). The formation of Panagra as a joint venture of Pan American and Grace and the Panagra undertaking by Pan American and Grace were thus approved by the Government and received the support of the Government during an initial ten-year period and for most of the years since. The policy of the Government in subsidizing American air lines in international transportation was a "no parallel" policy at least for the period of the ten years that the subsidy took the form of air mail contracts. Since 1938, entry into the field of international transportation by an American air line has been only upon certification by the Civil Aeronautics Board and the President of the United States and subject to their decisions as to competitive policies.

Summary of Argument

The formation of Panagra as a joint venture of Pan American and Grace to operate an airline connecting with and complementary to Pan American's own line was altogether legal in the nature and circumstances of the undertaking.

Pan American and Grace were not competitors. There was no American airline industry into South America at

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* Pan American exhibits P-2 through P-427, R. 1859-4269, were introduced into evidence at page 359 of the original transcript, a portion of the transcript which was omitted from the printed record. Citations hereafter made to P-2 through P-427 will omit any reference to the point at which they were introduced. Defendants' exhibits will be referred to as "D. Ex." In addition, exhibits were introduced in the court below with letter prefixes to distinguish the defendants and various types of exhibits. For purposes of clarity we will continue to refer to the exhibits in the same manner here, as follows: Pan American exhibits: "P"; Pan American statistical exhibits: "PS". Thus a typical Pan American exhibit will be referred to as "D. Ex. P-2, R. 1859".

the precise question referred to the Attorney General was the rejection of the low bid, it is inconceivable that the chief legal officer of the Government, particularly a lawyer of Attorney General Mitchell's stature, would have failed to voice disapproval if anyone had entertained the slightest notion that Pan American's having taken Grace in as an associate in Panagra violated the antitrust laws. The Government was glad, not sorry, that these two companies had joined forces to perform a difficult assignment which the Government wanted performed in a way that would reflect credit on our country.

Panagra commenced operating with single-engine Fairchild aircraft that had a seating capacity of two passengers, later succeeded by Ford tri-motor planes with a capacity of 12 (D. Ex. PS-5, R. 173, 4526; PS-1, R. 173, 4498). Pan American commenced operating the Miami-Balboa route with Sikorsky S-38s which had a seating capacity of only eight passengers, succeeded by Sikorsky S-41s and Commodores that could carry 10 and 20 passengers respectively (D. Ex. PS-2, R. 173, 4499; PS-1, R. 173, 4498).

When Panagra commenced its Canal Zone-Buenos Aires operation, it operated only once a week. In 1930 this was increased to twice weekly, and it remained there until 1940 when it was increased to thrice weekly. Thus, prior to 1940 Panagra had a capacity of from two passengers a week in 1929, using the Fairchild equipment, to 42 passengers a week in 1939, using DC-3 equipment (D. Ex. PS-1, R. 173, 4498; PS-5, R. 173, 4526). Over this same period, Pan American was operating the Miami-Canal Zone route on a two or three times weekly schedule (D. Ex. PS-3, R. 173, 4514). Thus Pan American had a capacity over this route of between 24 passengers a week

in 1929, using the S-38, and 84 passengers a week in 1939, using the S-42 (D. Ex. PS-1, R. 173, 4498; PS-2, R. 173, 4499; PS-3, R. 173, 4514). Down the east coast of South America, frequency was limited to once a week from 1931 to 1937, when it was increased to twice weekly, where it remained until 1940. Thus, over this long route Pan American was able to carry only 8 passengers a week in 1931 and 56 passengers a week in 1939 (D. Ex. PS-1, R. 173, 4498; PS-2, R. 173, 4499; PS-4, R. 173, 4524).

However, capacity loads were almost never achieved. For example, in 1932 when Panagra planes had a capacity of between 8 and 10 passengers, the average passenger load was only 3.1 passengers; in 1939, when Panagra planes had a capacity of between 14 and 21 passengers, the average passenger load was only 7.6 passengers (D. Ex. PS-7, R. 173, 4532). On the east coast route Pan American had an average passenger load of only 10 passengers in 1936, when the planes used had a capacity of 28 passengers, and in 1939 Pan American's average passenger load over this route was 9 passengers although the capacity of equipment used was between 14 and 28 (D. Ex. PS-11, R. 173, 4546). On the Miami-Canal Zone route Pan American in 1932, using planes with a capacity of 8 passengers, had an average passenger load of only 2.5 passengers; in 1939, using planes with a capacity of 28 passengers, Pan American's average passenger load was only 11.5 passengers (D. Ex. PS-9, R. 173, 4544).

The inevitable result of this combination of planes of small capacity, low frequency of service, and low utilization of even the small capacity offered, along with high costs for maintaining air fields, landing bases, terminals, communications and meteorological facilities, was exactly what had been anticipated—heavy dependence upon subsidy.

IN THE

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Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR RESPONDENT PAN AMERICAN WORLD AIRWAYS, INC.

Question Presented

We accept the government's statement of the question presented on this appeal.

Statement of the Case

We would add to the Government's statement of the case, Pan American's statement of the case in Appeal No. 23 and the following:

At the time Panagra was formed there was no American airline operating in South America or between the United States and South America except to the northern-

the time Panagra was formed. Pan American and Grace joined in a pioneering undertaking to create the industry. It cannot be contended, therefore, that their joint venture was a combination of competitors to suppress competition. Nor can their joint venture be condemned as a combination of potential competitors, for they were no more potential competitors than any joint venturers are.

The joint venture had only the normal incidence of non-competition between parents and a subsidiary. It was formed under Government aegis under the prevailing "no-parallel" policy in respect to subsidizing airlines in international transportation. While that Government policy did not continue firmly after 1938, the Government agency charged with the responsibility of determining the extent of desirable and allowable competition between American airlines in international transportation has certificated only one additional American flag carrier into South America and has declared itself as strongly opposed to authorizing three American flag carriers in the area. It has been economically impossible at all times to have Pan American and Panagra enter into competition with each other. The losses involved in such competition would have been staggering and would not have been sanctioned by the CAB through essential certification and subsidization.

In sum, the situation with respect to Panagra is no different than if Pan American had established the route from the Canal down the west coast of South America alone. Its taking Grace as a partner did not make the joint venture illegal or create the legal expectation that Pan American and Panagra would compete or an illegal implication if they did not compete.

ARGUMENT

The Government in its brief has concentrated on certain aspects of the arrangements between Pan American and Grace in the formation of Panagra and has disregarded the fundamental nature of the Panagra undertaking and the circumstances under which it was undertaken. By erroneously classifying Pan American and Grace as competitors or potential competitors the Government erroneously assigns to the normal, non-competitive relationship between partners, and in this case between parents and subsidiary, the quality of illegality of a combination of competitors to suppress competition between themselves. The classification and the characterization ignore the basic and all important facts that the industry upon which the parties embarked as a joint venture was non-existent at the time, that far from being competitors they were creators of a new industry, joined by the Government in making an American entry into the pioneering field of air transportation in South America. To classify them as potential competitors is to classify all joint venturers in new industries as potential competitors. It is to condemn all joint investments in such fields as the new space industries and underdeveloped countries. Finally it is to ignore the nature of this industry in 1928 as one shortly to be regulated because it was not suitable for unregulated competition, and one which has since become so fully regulated that the whole subject matter of this case, as in point one in our appellant's brief on the companion appeal (No. 23, pages 51 *et seq.*), is within the primary jurisdiction of the Civil Aeronautics Board (CAB).

The cases upon which the Government relies and from which it quotes standard phrases of antitrust law have nothing in common with the case at bar and neither their holdings nor language have any applicability to the pres-

sideration of interesting steamship companies in its Latin American undertaking is explained as follows:

> "* * * Pan American at this time was seeking to interest the principal shipping companies along the various proposed routes in financial participation as well as to secure the benefits of association with steamship lines, including air-sea rescue arrangements, and use of communication and agency facilities of these lines which would considerably decrease the amount of capital investment for such facilities immediately necessary in the operation of air transportation companies" (Opinion, R. 5376).

Grace became interested and agreement was reached that the two companies would cooperate in studying the cost of operations of a route from the Canal Zone down the west coast of South America, and that if Pan American determined that it was advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso a joint company would be used for the purpose and Grace might take such interest in the company as it wished up to 50% (Opinion, R. 5376-379).

> "Pan American's study of this route indicated that even with the revenue of a United States mail contract, conditions did not then justify its undertaking to install an air transportation service in that area. By combining with Grace, however, they mutually concluded that they could operate a west coast service more economically than could any other air transportation company, including the French and German companies" (Opinion, R. 5379).

The present suggestion of the Government that the formation of Panagra "deprived the government of com-

petitive bidding on the contract" of mail carriage from the Canal down the west coast of South America (Brief for the United States 38) is completely refuted by the facts cited in the district court's opinion that the contract was awarded to Panagra, over a lower bidder, *because* Panagra was a joint venture of Pan American and Grace. The Postmaster General, in awarding the contract to Panagra, spoke of the "financial ability of the bidders" (he regarded Pan American and Grace as the "bidders" although Panagra was the bidder), of "their proven and recognized capacity for performing the service contemplated," of the preparation for the operation by Pan American and of the benefit that would be added by the facilities of the Grace Line (Opinion, R. 5380-381). His consciousness of the importance and desirability, in the public interest, of having Pan American and Grace together in the undertaking could not have been more feelingly expressed:

> "'I would repeat that the contract in question is for a route most difficult to serve but at the same time of very great and far-reaching importance not only to the public but to the whole future of transportation by air. Failure would be a serious blow to the prestige of American aeronautical enterprise.'" (Opinion, R. 5381).

The district court naturally and necessarily concluded that:

> "The joinder of Pan American and Grace, with their complementary resources, in the formation of Panagra to establish American air transportation on the west coast of South America was of decisive importance to the Postmaster General in awarding to Panagra the United States Mail contract for the west coast route. Such a contract was the

> umbilical cord of any proposed American flag international air operations in South America, without which they could not long survive. It is beyond peradventure that the successful inauguration of an international air transportation system in South America, with the flying equipment then available, with no airfields or ground facilities but what defendants supplied or arranged themselves, with only the air to fly in and the ground to land on, was in the truest sense a pioneering endeavor. The technical and physical resources possessed by each of the defendants, together with the financial and diplomatic assistance rendered by this government were pooled to facilitate the success of Panagra, the American entry on the west coast of South America" (Opinion, R. 5381-382).

We will state a few further facts from the record which will indicate how remote from reality it is for the Government to speak of the formation of Panagra in the terms of a combination of competitors to suppress competition, and to suggest that the law against restraints and monopolies had any application to the situation.

Airplanes at the time Panagra was formed were small, with a capacity of only a half dozen passengers or less, and with exceedingly limited range and speed (D. Ex. PS-1, R. 173, 4498). Revenues even at full load—and passengers willing to venture in this new form of transportation were few and far between—could not begin to pay operating costs. This was particularly true as regards operations in Latin America where, in contrast to the situation within the United States, the prospective operators faced the task of providing air fields, terminals, and communications and meteorological facilities at their own expense (D. Ex. P-91, R. 2482; P-119, R. 2578; P-417, R. 3742, 748-749).

None of the unsuccessful bidders for foreign airmail contracts ever attempted to inaugurate service. Just how essential a mail contract was to the service here in question is indicated by the fact that as late as 1932, its fourth year of operation, Panagra's commercial revenues amounted to only $366,000, as against operating expenses of $1,837,000 (D. Ex. PS-6, R. 173, 4528).

It was likewise plain to all concerned that only one contract would be awarded by the Government for any particular route. The established policy of the Government was that only one contract should be awarded (R. 191-192; D. Ex. P-149, R. 2716; P-164, R. 2810; P-418, R. 3749). This, of course, was the only sensible policy. With subsidies providing three-quarters or more of the revenue and with the operators making only a scanty return at that, any division of commercial revenues or increase in total costs due to duplicating operations would have frittered away the benefits of the subsidy and imposed additional burdens on the federal treasury. The State Department also was concerned that if more than one American airline were to seek concessions from South American governments, diplomatic complications would ensue (D. Ex. P-418, R. 3749).

The action of the Post Office Department in approving the joinder of Pan American and Grace in Panagra was by no means the last indication of the Government's sanction. Two days after the award of the new contract to Panagra, the low bidder entered a protest. The newly appointed Postmaster General, Hon. Walter Brown, referred the matter to the Attorney General, Hon. William D. Mitchell, who rendered an opinion approving Postmaster General New's action. 36 Ops. Att'y. Gen. 33, May 6, 1929 (D. Ex. P-136, R. 2680; P-137, R. 2680). While

comitant principle that partners would not enter into competition with their partnership, makes the Government's argument inadmissible.

CONCLUSION

The judgment of the district court with respect to its dismissal of the allegations against Pan American under Sections 1 and 3 of the Sherman Act should be upheld.

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Panagra had a large operating loss before mail pay every year between 1929 and 1939. This ranged from $527,000 in 1929 to $1,712,000 in 1931; it was $1,305,000 in 1938 and $996,000 in 1939. During this same period Panagra's revenue from passenger traffic was a mere $85,000 in 1929, $287,000 in 1933, and $697,000 in 1938. Also during this period, Panagra received from the United States Government, in the form of mail pay, between $1,200,000 and $1,600,000 each year after 1929. Even with this substantial subsidy,* Panagra had a loss in its first three years of operation, and as late as 1938 its profit amounted only to $226,000 (D. Ex. PS-6, R. 173, 4528).

Pan American's Latin American Division, which carried on the operations between Miami and the Canal Zone and down the east coast of South America, had an operating loss before mail pay every year during this period. This loss amounted to over $2,700,000 in 1929, over $2,000,000 in 1934, and over $3,000,000 in 1938. Mail pay during this period amounted to over $2,300,000 in 1929, over $4,000,000 in 1934, and over $4,700,000 in 1938 (D. Ex. PS-14, R. 173, 4549).

Pan American's passenger revenue on the Miami-Balboa route amounted to about 29 cents per mile in 1932 while its operating expense amounted to approxi-

* That the so-called mail pay was almost entirely subsidy is shown by testimony (R. 187-188, 203). The amount of mail actually carried was very small. The Government did not even make a pretense of basing mail pay upon the amount of mail carried. The payments were based on miles flown rather than on the amount of mail transported. In 1935, about the middle of the period under consideration, Pan American and Panagra carried about 4,000 pounds of air mail to Argentina. Panagra carried about 2,600 pounds of mail to Peru, and Pan American carried about 5,500 pounds of mail to Canal Zone (D. Ex. P-396, R. 3567).

mately $1.69 per mile. In 1936 its passenger revenue amounted to about 85 cents per mile, while its operating expense amounted to about $1.76 per mile. In 1938 Pan American's passenger revenue on this route amounted to approximately $1.25 per mile, while its operating expense amounted to over $2.00 per mile (D. Ex. PS-9, R. 173, 4544; PS-12, R. 173, 4547; PS-14, R. 173, 4549). A comparison of Pan American's passenger revenue with costs on the east coast route presents an even more unfavorable picture, because the passenger revenue per mile on that route was less than on the Miami-Canal Zone route (D. Ex. PS-11, R. 173, 4546; PS-13, R. 173, 4548; PS-14, R. 173, 4549).

In 1938, the last full year of the ten year term of the mail contract, the comparison of revenues and cost of operation of Panagra and Pan American's Latin American Division is shown by the following figures:

	Commercial Revenues per Mile	Expense per Mile
Panagra (D. Ex. PS-6, R. 173, 4528)	$0.70	$1.56
Pan American (D. Ex. PS-14, R. 173, 4549)	$1.27	$2.03

Only in one year during the period up through 1945 did either company obtain an operating profit before United States mail pay, even with the relatively heavy utilization of capacity resulting from wartime conditions (D. Ex. PS-6, R. 173, 4528; PS-14, R. 173, 4549).

And coming down to date, it is still apparent that competition between Pan American and Panagra by a duplication and paralleling of lines is unthinkable. The President only in 1946 decided, over a divided CAB, that another American carrier should be certificated to operate

to South America to provide competition with the Pan American system, of which Panagra was a part, and Braniff was certificated for the purpose. *Latin American Air Service*, 6 CAB 857, 912 (1946). The traffic figures of all American carriers into South America at the latest date available for incorporation in the record show that the competition between Pan American and Panagra visualized by the Government is out of the question.

The density of air passenger traffic on the American flag carriers operating within South America is exceedingly low (D. Ex. PS-101, R. 245, 4569). For Pan American in 1957 this amounted to only 87 revenue passengers over each mile of route per day if the Miami-Balboa sector is included and to 71.2 if it is excluded.* For Panagra the corresponding figure was 84.6. For Braniff's entire international division the figure was 35.7 and for its operation south of Balboa 25.4. These figures correspond roughly to the 80 revenue passengers per route mile per day carried by the highly subsidized local service carriers in the United States—a type of operation where no competitive service is considered feasible (R. 248, 250); they are approximately half that of the other foreign and overseas operations of United States carriers, and a very small fraction of the 917.8 revenue passengers per route mile per day for the domestic trunk operators (D. Ex. PS-101, R. 245, 4569). Yet there are almost no foreign routes where the United States has three competing carriers; indeed, even on the heavily traveled transatlantic route this experiment was abandoned in 1950. *North Atlantic Route Transfer Case*, 11 CAB 676 (1950).

Understandably, the CAB has taken the position, reiterated as recently as August of last year, that three Ameri-

* All these figures include passengers in both directions. The one-way movement is half of these amounts (R. 249-250).

can flag carriers in Latin America would entail a "waste of public money or private investment." *New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501, 504 (1954); *United States-South America Route Case*, CAB Docket 12895, Order No. E-17289, August 8, 1961. It is not conceivable, therefore, that the CAB, which has considered Panagra part of the Pan American system (*New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501, 504, n. 9 (1954)), would sanction the establishment of paralleling and competing services by Pan American and Panagra, which together with the service of Braniff would bring three American flag carriers into South America.

There is no warrant for the Government's statement that "There can be no question but that the extension of Panagra to a main line gateway would be consistent with the Federal Aviation Act and in the best interests of the United States" (Brief for the United States 45). While the CAB indicated at one time that it thought an application of the kind should have been submitted for the Board's consideration (*Latin American Air Service*, 6 CAB 857, 914 (1946)), it has never indicated that it would grant such an application, and we submit that it is demonstrable from all that the Board has said with respect to its policy against subsidizing three American flag carriers into South America that it would never have created the situation which it has set itself so strongly against.

Further, as we point out in our brief as appellants on the companion appeal (No. 23, Pages 61 *et seq.*), the CAB's approval of the Through Flight Agreement between Pan American and Panagra, whereby Panagra planes make through-flights over the combined routes of the two lines between the United States and western South Amer-

ica, which the Government correctly refers to as a "settlement" of the issue of Panagra's access to the United States (Brief for the United States 15), constituted an approval of not extending Panagra's line to the United States and accorded Pan American antitrust immunity in that respect.

It is only necessary to glance at the financial consequences, in the terms of *increased* subsidy required to maintain such uneconomic competition, to understand why the Board has expressed itself as strongly as it has on the subject.

The *increased* subsidy requirements to underwrite paralleling and competing services between Pan American and Panagra on the west coast route are indicated by calculations which were made as to the amount those *increased* subsidy requirements would have been in sample years 1952 and 1957, upon an assumption (No. 1) that Panagra would be extended from the Canal to Miami and an assumption (No. 2) that Pan American would be extended from the Canal down the west coast of South America. These analyses are summarized in D. Exhibit PS-114 (R. 245, 4584) as follows:

INCREASED SUBSIDY REQUIREMENTS UNDER ALTERNATIVE ROUTE PATTERNS

I. Assumption No. 1 (extension of Panagra from Balboa to Miami).

	1952	1957
Pan American	$2,697,000	$3,733,000
Panagra	1,364,000	975,000
Total	$4,061,000	$4,708,000

II. Assumption No. 2 (extension of Panagra from Balboa to Miami; extension of Pan American to the west coast of South America).

	1952	1957
Pan American	$4,080,000	$4,764,000
Panagra	2,103,000	2,213,000
Total	$6,183,000	$6,977,000

The Government acknowledges that for ten years after the formation of Panagra "the Post Office Department had enforced a 'no-parallel' policy of subsidizing only one carrier on each international route" (Brief for the United States 13). The Government further states that it does not challenge the district court's finding that the formation of Panagra was consistent with the transportation policy expressed by the Post Office Department in its "no-parallel policy" (Brief for the United States 67). The Government states, however, that after the formation of the Civil Aeronautics Board in 1938, it "became possible for Panagra, as well as Pan American, to obtain a subsidy between the Canal Zone and the United States" (Brief for the United States 13), and seems to intimate that the change of government policy should have been anticipated ten years in advance and that when the change came it rendered the formation of Panagra, blessed by the Government at the time, illegal *nunc pro tunc*.

It is true that there is the "possibility" of the Government's subsidizing both Pan American and Panagra on parallel routes at an exhorbitant waste of public funds, but, as we have observed, this is extremely unlikely in the light of the CAB's policy statements with respect to subsidizing uneconomic competition. And certainly,

the fact that Government policy might change with respect to the paralleling of routes cannot rightly be said to make the joint venture in Panagra illegal either originally or subsequently.

Neither the facts nor the district court's opinion support the Government's statement, so far as Pan American is concerned, that "the undisputed evidence shows, and the district court found, that Pan American and Grace joined to form Panagra in order to protect themselves from competition" (Brief for the United States 19, 31). It is undoubtedly true that Grace feared competition to its steamship line from an airline and that its interest, which was confined to the west coast of South America, was in having a hold in the American airline which was to operate from the Canal down the west coast of South America. But there is no evidence that Pan American's willingness to join with Grace in the formation of Panagra was actuated by any motive of protecting itself from competition, and the district court's references to the non-paralleling arrangement made between the parents and their subsidiary do not warrant the Government's statement that Pan American joined Grace in Panagra to protect itself from competition.

Pan American at the time was embarking upon a program entirely of its own to establish air service from the United States throughout Latin America. It intended to establish for itself a west coast route as well as an east coast route and had established its route from Miami to the Canal. It was persuaded to take Grace as a partner on the west coast route from the Canal south only because Grace could bring to the venture in that area helpful facilities and financial support. True, it was explicit, and as the Government observes it would have been im-

plicit if it had not been explicit, that there was not to be a paralleling of routes between Pan American and its own creation. But the situation in this respect, we maintain, is no different than if Pan American had established a west coast service entirely of its own. We submit that Pan American was as much entitled to take a partner in the venture as to go it alone and that the antitrust implications are no different in either case.

It is correct, as the Government contends, that the fact that Panagra was a "joint venture" does not in and of itself make an antitrust difference. Competitors may enter into a combination to suppress competition between themselves through a joint venture as well as through other forms of combination. *Timken Roller Bearing Co. v. United States*, 341 U. S. 593 (1951). But a joint venture of persons who are not competitors for the purpose of creating a business where none has existed cannot be held to be a combination to suppress competition.

The Government's thesis that there cannot be a lawful joint venture of "potential competitors" (Brief for the United States 35, 37), if accepted, would mean that there could never be a legal joint venture. It could be said of any two persons who go into business together that they might have gone into business alone and have competed, and therefore that any joint venture is a combination of "potential competitors." But no court has ever made such a holding and, so far as we know, it has never heretofore been suggested by the Government or by anyone else that one who is interested in going into a business must do it alone or run the risk of being dispossessed after the business has become successful upon the ground that if a partnership had not been formed the partners might have established separate and competing businesses.

If the Government is not correct in its thesis, and plainly it is not, it was entirely legal for Pan American and Grace (subject to any disqualification of Grace as a steamship owner) to embark upon a joint business of creating and operating an airline, and it was equally legal for them to agree upon the territory in which the airline was to operate. Neither singly nor jointly do people go into business without a determination of what the business is to be and where it is to operate. The territorial element is as much a part of the undertaking as the nature of the business. The territory in this case was the only territory in which either of the parties was interested in joining together. It was the one territory in which Grace was interested in participating in an airline, and it was the one territory where Pan American was interested in having a partner. Indeed, in essence the venture was the equivalent of Pan American's own operation and it was considered by the CAB to be a part of the Pan American system.

The Government ignores this basic fact of crucial importance, that the design in the formation of Panagra was to integrate it with the Pan American system and have the two lines serve together as connecting and complementary services between the United States and the west coast of South America. It is as true, as the Government asserts it to be, that it was understood that the two services were not to become competitive, as they were intended to be complementary. But again we cannot conceive of a sustainable antitrust argument to the effect that one who has established a service between two points cannot join with a partner in establishing a connecting service to another point without being under an inhibition against maintaining the service as connecting and a compulsion to allow it to become competitive.

Just as the Pan American and Panagra services were connecting and complementary, it was natural and desirable that they should have some joint offices, joint sales and joint publicity. The Government notes a token objection to these arrangements (Brief for the United States 42), ignoring the sound reason for the arrangements, the fact that the agreements making the arrangements were all filed with the CAB (R. 1852-853), and come within the jurisdiction of the CAB under Section 412 of the Civil Aeronautics Act, and the fact that the district court deferred to the primary jurisdiction of the CAB the legality of the joint advertising, sales and offices agreements between the two airlines (Opinion, R. 5372).

We cannot understand the import of the Government's statement that "If an independent carrier had been permitted to develop on the west coast or if Grace had remained free to enter the field, the enterprise would have soon become a potential competitor between the Canal Zone and gateways in the United States" (Brief for the United States 21-22). Grace was free to enter the field except as it was under a legal restraint not to compete with the partnership in the field of the partnership's operation, which was from the Canal south down the west coast of South America. Grace was free to apply for a route between the Canal Zone and the United States or any other place in Latin America except from the Canal down the west coast of South America. In fact Grace did apply for a route between the United States and the Canal Zone and was rejected on the grounds that it was affiliated with a steamship line. *Latin American Air Service*, 6 CAB 857, 868, 902 *et seq.* (1946). Nor was there any restraint upon any "independent carrier" being "permitted to develop on the west coast." Anyone inter-

ested in developing an airline on the west coast or elsewhere in South America or between the United States and South America was perfectly free to do so, if the CAB and President could be persuaded to allow it, and such an independent line has been developed in Braniff. The so-called restraint against Panagra, as a creation and part of Pan American, becoming a parallel competitor of Pan American is no restraint on the development of an "independent carrier." (See also Brief for Appellant Pan American in Appeal No. 23, pages 34-36).

It is therefore not true, as the Government suggests, that "Pan American exercised its power over Panagra to exclude the direct competition of the only company which could provide an effective challenge to Pan American's dominance of the United States-Canal Zone segment of the South American trade" (Brief for the United States 46). There could have been at any and all times exactly as much competition as the CAB thought desirable or tolerable. We submit that the last place to look for "effective" competition with Pan American would be Pan American's own creation and a part of the Pan American system. Nor is it necessary to look there for competition. The claimed "dominance" of Pan American in the area is completely refuted in our appellant's brief in the Companion Appeal (No. 23) where we point out (page 48) that there are eight airlines which operate between the United States and Panama. We also respectfully refer the Court to our discussion of the whole South American market in our companion brief at page 37 *et seq.*

The Government cannot carry its conflicting arguments, each of which destroys the other, that it would not be expected, in the relationship existing between Pan Ameri-

can and Panagra, that Pan American would promote the competition of its own creation with itself, but that still its own creation was the only expected source of effective competition with itself. The fact is, of course, as the Government both concedes and asserts, that there was never intended to be competition between Pan American and Panagra and there is no reason why such competition should have been expected or looked for or why Pan American should be criticized for not creating it.

The Government's case necessarily comes down to the questions, therefore, (1) whether it was permissible or impermissible for Pan American to establish a connecting service from the Canal down the west coast of South America in a partnership with another party instead of establishing a service entirely of its own, and (2) having established the connecting service on a partnership basis, was Pan American required to let that connecting service become competitive with its own service and, more than competitive, to have it replace Pan American's own service, which would concededly be the case unless Pan American in turn should enter into competition with its own partnership on the connecting service? The full cycle of the Government's argument, therefore, comes back to a claim that a joint venture is either illegal or impractical, for the only end result that could be legal would be highly impractical and undesirable, namely, that the joint venturers would have to allow their joint venture to enter into competition with their own businesses and they would have to enter into competition with their joint venture.

No case has ever suggested such a rule, and the unquestioned legality of joint ventures, with the con-

(a) Whether the district court correctly found that Pan American has monopolized or attempted to monopolize U.S. foreign commerce in air transportation between South America and the continental United States and between the Canal Zone and the United States.

(b) Whether Pan American has been granted immunity by the Civil Aeronautics Board for its antitrust violations involving Panagra.

(c) Whether the Civil Aeronautics Board has exclusive or primary jurisdiction of the matters involved in this action.

(d) Whether divestiture is the appropriate remedy for Pan American's, as well as Grace's, antitrust violations involving Panagra.

ADDITIONAL STATUTES INVOLVED

Sections 408, 411, 412, and 414 of the Federal Aviation Act, 72 Stat. 737, as amended, 49 U.S.C. 1378, 1381, 1382, and 1384, provide in pertinent part:

> SECTION 408. (a) It shall be unlawful unless approved by order of the Board as provided in this section—
>
> (1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;
>
> (2) For any air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any other

phase of aeronautics, to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any air carrier;

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

(4) For any foreign air carrier or person controlling a foreign air carrier to acquire control, in any manner whatsoever, of any citizen of the United States engaged in any phase of aeronautics;

(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

(6) For any air carrier or person controlling an air carrier to acquire control, in any manner whatsoever, of any person engaged in any phase of aeronautics otherwise than as an air carrier; or

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

SECTION 408. (b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of con-

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC., APPELLANT

v.

UNITED STATES OF AMERICA

No. 47

UNITED STATES OF AMERICA, APPELLANT

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., AND PAN AMERICAN-GRACE AIRWAYS, INC.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES IN RESPONSE IN NO. 23[1]

ADDITIONAL QUESTIONS PRESENTED

The questions specifically raised by the appeal of Pan American in No. 23 are:

[1] The "Opinion Below," "Jurisdiction," the portion of the "Questions Presented" and "Statutes Involved" common to both appeals, and the "Statement" are in the government's original brief filed in both Nos. 47 and 23. The issues considered in this brief will be those particularly raised by Pan American's appeal in No. 23.

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In this case, it is clear that Pan American and Panagra were the leading air carriers between South America and the United States and that together they dominated this traffic. Thus, Panagra would normally be expected to be Pan American's strongest competition between the United States and the Canal Zone. The district court found that Pan American and Panagra together carry 50 percent of all air traffic between the United States and South America (R. 5401–5402). Pan American alone carries 30 percent of this traffic and Panagra 20 percent (R. 1388–1394). These percentages were even higher when Pan American first prevented Panagra from applying for a route to the United States in the late '30s and early '40s, before Braniff was certificated to fly between South America and the United States and between the Canal Zone and the United States. Pan American participates in the entire amounts of both Pan American and Panagra traffic by reason of its 50 percent ownership of Panagra and in addition, since 1946, because of the Through Flight Agreement. Profits from flights under the agreement between the Canal Zone and Miami are divided between Panagra and Pan American (R. 1871–1874, 1879–1883).

As Pan American recognizes (Br. 39, 48), the balance of air traffic between the United States and South America is divided among a large number of other carriers. Accepting Pan American's own figures,[3] the balance of the through traffic to South America is divided among 19 foreign carriers, and the

[3] The district court stated that the balance was carried by "at least ten" other airlines (R. 5402).

balance of local traffic to the Canal Zone is divided among eight foreign carriers.[1] Pan American correctly notes (Br. 47) that no evidence was introduced at trial—by it or the government—as to the division of traffic among these carriers. Assuming that they share equally in the traffic, as this Court assumed with respect to sales of advertising space in *Times-Picayune Pub. Co.* v. *United States*, 345 U.S. 594, 612, each competitor for local traffic would have 12½ percent of that business, while each competitor for through traffic (which according to Pan American is two-thirds of the total (Br. 18)) would have only five percent. In the *Times-Picayune* case, this Court stressed the significance of such diffusion, stating that "obviously, if a producer controlling an even lesser share than here [only one-third] is ringed by numerous smaller satellites together accounting for the rest, his mastery of the market is greater than were he facing fierce rivalry of other large sellers." 345 U.S. at 612, note 33.

Moreover, Pan American and Panagra's dominance is reinforced by their position with respect to other American flag carriers. The distinctions between foreign competition and United States flag competition have often been noted by the Civil Aeronautics Board. *Latin American Air Freight Case*, 16 C.A.B. 107, 112; *Additional Service to Latin America*, 6 C.A.B. 857, 863–866; *North Atlantic Route Case*, 6 C.A.B. 319, 325; *American Export Airlines, Inc.*, 2

[1] As the district court found (R. 5402), two of these carriers "are 'affiliates' of Pan American, i.e., Pan American owns a substantial minority share of their outstanding stock."

C.A.B. 16, 32-34. American carriers are normally favored by American travelers, just as the foreign flag airlines have special access to their own nationals. As the Civil Aeronautics Board observed in *American Export Airlines, Inc., supra*, "the part which national loyalties may be expected to play in the routing of traffic must not be forgotten." *Id.* at 32. Not only "national loyalties," but currency exchange regulations, language difficulties, airline office locations, and other intangible factors often militate toward the selection of a carrier flying the flag of the passenger's own allegiance. In addition, passengers and shippers may be required to patronize United States flag carriers by the requirements of various government purchase or subsidy programs that American ships or planes be utilized to a specified degree. See 46 U.S.C. 1241(b) (requiring cargo paid for by the government to be shipped on American flag vessels); 46 U.S.C. 1241(a) (requiring government employees traveling on official business to utilize American flag vessels); S. Con. Res. No. 2737, 87th Cong., 1st Sess. (proposing the same as to air carriers).

By Pan American's own evidence more than three-quarters of the American citizens traveling by air to South America utilize an American carrier (R. 4582).[5] While Pan American correctly observes (Br. 39–40) that the foreign carriers' market share is increasing, the Board's staff has pointed out that for-

[5] Pan American recognizes in its brief (p. 40) that "[f]oreigners now travel principally by foreign airlines." For the same reasons, the overwhelming majority of Americans travel with United States flag carriers.

trol, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided,* That the Board shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: *Provided, further,* That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5(8) of this title, such applicant shall for the purposes of this section be considered an air carrier and the Board shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition: *Provided, further,* That in any case in which the Board determines that the transaction which is the subject of the application does not affect the control of an air car-

rier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition, and determines that no person disclosing a substantial interest then currently is requesting a hearing, the Board, after publication in the Federal Register of notice of the Board's intention to dispose of such application without a hearing (a copy of which notice shall be furnished by the Board to the Attorney General not later than the day following the date of such publication), may determine that the public interest does not require a hearing and by order approve or disapprove such transaction.

SECTION 411. The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

SECTION 412. (a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete memorandum, of every contract

man Act by monopolizing or attempting to monopolize United States foreign commerce in air transportation between South America and the United States and between the Canal Zone and the United States. On the other hand, if our basic submission is correct, questions concerning the legality of Pan American's action judged independently become irrelevant.

In this brief, assuming that our basic argument may be wrong, and that the district court was correct in holding that the original arrangements between Pan American and Grace were not unlawful, we show that the court was also correct in holding that Pan American violated Section 2. This holding was based upon findings that Pan American has been since 1928 the dominant air carrier on the Canal Zone-United States segment of commerce with South America; that by using its 50 percent stock ownership in Panagra, Pan American prevented Panagra from entering that segment of commerce; that Pan American thereby maintained its dominance not only over air transportation between the United States and the Canal Zone, but also between the United States and South America as a whole; and that Pan American thus monopolized or attempted to monopolize this commerce in violation of Section 2 of the Sherman Act. We will first show that these findings are amply supported by the evidence.

Pan American argues (Br. 51–72) that it has received antitrust immunity from the Civil Aeronautics Board for its actions with respect to Panagra, and that, in any event, the matters involved in this antitrust suit are subject to the exclusive or primary

jurisdiction of the Board. We will show, on the contrary, that the Board has approved neither the existence of the unlawful combination from which Pan American's power over Panagra flows, nor Pan American's exercise of that power to stifle Panagra competition with Pan American's independent interests. The decisions of this Court also make it clear that the court below properly entertained this suit even though the Board has regulatory authority over many other aspects of international commercial aviation. Finally, we will show that divestiture is the proper remedy for Pan American's, as well as Grace's, violation of the antitrust laws.

ARGUMENT

I

THE DISTRICT COURT CORRECTLY FOUND THAT PAN AMERICAN MONOPOLIZED OR ATTEMPTED TO MONOPOLIZE U.S. FOREIGN COMMERCE IN AIR TRANSPORTATION BETWEEN SOUTH AMERICA AND THE CONTINENTAL UNITED STATES, AND BETWEEN THE CANAL ZONE AND THE UNITED STATES

One of the primary routes to South America includes a flight between the Panama Canal and the United States mainland. While Pan American flies other alternative routes to South America, Panagra has no route to the United States at all; the Canal Zone is Panagra's northern terminal, its gateway to the United States. While Panagra moves its aircraft under charter to Pan American on Pan American routes from the Canal Zone to the United States, as will be seen below (pp. 17–19), this is not equivalent to a route of its own. For Panagra to extend its route north to the mainland would not only give it a greater

share of the Canal Zone-United States traffic but would increase its ability to attract passengers to South America as well.

Pan American's 50 percent stock interest in Panagra gave it the power to exclude Panagra from this vital route. The district court found that "Pan American blocked Panagra's independent entry into the United States-South American market in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States and bound for points on Panagra's west coast routes. Prior to Braniff's entry into the market * * *, and prior to the Through Flight operations, Pan American enjoyed a virtual monopoly of the United States-South American market" (R. 5405–5406). The market which the district court found Pan American had monopolized or attempted to monopolize was air transportation between South America and the United States. The court further held that the United States-Canal Zone segment of the market was itself a relevant submarket which Pan American had monopolized or attempted to monopolize. These market definitions were correct, and the court's finding that Pan American has monopolized or attempted to monopolize those markets is in accord with recognized antitrust principles.

A. THE RELEVANT MARKETS ARE AIR TRANSPORTATION BETWEEN SOUTH AMERICA AND THE UNITED STATES AND BETWEEN THE CANAL ZONE AND THE UNITED STATES

In our original brief in these cases (pp. 48–61), we contended that the widest relevant market in this case

includes all forms of commercial transportation. But, as this Court recognized in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325, "within this broad market, well-defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes." The two submarkets which the district court found to exist are (1) air transportation between South America and the United States, and (2) air transportation between the Canal Zone and the United States. Since Section 2 of the Sherman Act prohibits the monopolization of "any part of the trade or commerce * * * with foreign nations * * *," Pan American's monopolization or attempted monopolization of either air transportation market would in itself violate the Act.

B. PAN AMERICAN'S ACTIONS EXCLUDING PANAGRA FROM THE UNITED STATES CONSTITUTES MONOPOLIZATION OR ATTEMPTED MONOPOLIZATION OF THE RELEVANT MARKETS

The decisions of the Court have established that the power to exclude competitors is monopoly power, and that the acquisition, maintenance, or exercise of monopoly power constitutes illegal monopolization under Section 2 of the Sherman Act. *E.g.*, *American Tobacco Co.* v. *United States*, 328 U.S. 781; *United States* v. *Griffith*, 334 U.S. 100. In our original brief (pp. 43–47), we showed that Pan American, by combining with Grace, acquired the power, which it has continuously exercised, to exclude the direct competition of Panagra, the company which could best provide an effective challenge to Pan American, from

a crucial segment of the South American trade. Pan American's 50 percent stock interest in the joint company has enabled it to nominate four of Panagra's eight directors, and its consequent ability to throw the Panagra directorate into deadlock has been used to block applications to the Civil Aeronautics Board for a route extension to the continental United States. As the district court found (R. 5410), the Pan American nominees have refused from the beginning of federal regulation to allow the joint company to request a route to the mainland, and when the issue became critical Pan American even boycotted Panagra board meetings in order to preclude a quorum from discussing or voting on the question. The Board has made plain its recognition that Panagra has been excluded from the United States solely by Pan American's exercise of the power conferred upon it by its role in the Panagra enterprise. *Additional Service to Latin America,* 6 C.A.B. 857, 914. As a result of Panagra's exclusion, Pan American's control of more than 80 percent of the United States flag traffic on the Canal Zone-United States route was secured from attack. In addition, the exclusion protected Pan American's traffic between South America and the United States from the effective competition of another carrier able to operate on the entire route to Buenos Aires.

1. *Pan American's Exclusion of Panagra from the Canal Zone-United States Route Constituted Monopolization in Violation of Section 2*

a. In the circumstances of this case, Pan American's power to exclude a single competitor, Panagra, constitutes monopoly power. The Sherman Act is con-

cerned with reductions in the vigor of competition, not solely with the number of parties who may be affected by a restraint. Hence the group boycott of even a single firm transgresses Section 1. *E.g., Klor's, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207. Similarly, the attainment of a monopoly position should not be held beyond the reach of Section 2 merely because in the particular circumstances only one other company was excluded by the monopolist. Thus, the Court has characterized as monopolization a newspaper's elimination of a single radio station which was its only substantial competitor for advertising. *Lorain Journal Co.* v. *United States*, 342 U.S. 143, 154. No suggestion appears in the Court's opinion that the newspaper in the *Journal* case could have excluded more than one station or a competing newspaper.[2]

[2] Like *Lorain Journal*, *supra*, two of the remaining three cases cited by Pan American on this issue (Br. 44) held that the exclusion of a single competitor was illegal monopolization. *Gamco, Inc.* v. *Providence Fruit & Produce Bldg., Inc.*, 194 F. 2d 484 (C.A. 1), certiorari denied, 344 U.S. 817; *United States* v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 (D. Minn.). In the third case, *Mackey* v. *Sears, Roebuck & Co.*, 237 F. 2d 869 (C.A. 7), petition for certiorari dismissed by stipulation of the parties, 355 U.S. 865, the court of appeals held that the complaint's allegation of "an intent by Sears to destroy any business in which the plaintiff might engage and thereby instill fear in its other suppliers" (*id.* at 873) did not amount to an allegation of monopolization of the particular market involved (nursery lamps). Similarly, the court of appeals said that the complaint had no allegations that defendant's acts had lessened competition "to the slightest extent" (*ibid.*). Here, in contrast, the district court found that Pan American had in fact monopolized South American-United States and Canal Zone-United States air transportation.

eign pentration of the market is largely due to what may proye to be a temporary condition—the low-fare services provided by a number of these carriers. *Report on Proposed South American Route Patterns*, accompanying the institution of the *United States-South American Route Case*, Order No. E-17289 (CAB Dkt. No. 12895, August 8, 1961), p. 20. The Report says that the imminent development of a single noncompetitive fare structure for all international carriers will reduce the appeal of the foreign carriers to United States nationals (*ibid.*).

Pan American and Panagra are even more dominant as to American flag traffic to South America than as to South American-United States traffic generally. The district court found Pan American is the overwhelmingly dominant United States flag airline to South America (R. 5400–5401). Its share of United States flag traffic with South America is almost 50 percent (R. 1388–1394). Pan American and Panagra together have in recent years carried from 75 to 88 percent of American flag traffic to South America (R. 5400).

b. Pan American argues that it has not really excluded Panagra from the Canal Zone-United States segment of the South American market. Initially Pan American asserts (Br. 36) that Panagra has not been excluded because Panagra aircraft fly to Miami under the Through Flight Agreement of 1946 with Pan American, and on to New York under the interchange agreement with National Airlines. But this agreement was not reached until after Pan American had used its monopoly power to block any access by

or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

SECTION 412. (b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this chapter, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this chapter; except that the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

> SECTION 414. Any person affected by any order made under sections 1378, 1379, or 1382 of this title shall be, and is hereby, relieved from the operations of the "antitrust laws", as designated in section 12 of Title 15, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

INTRODUCTION AND SUMMARY

The government's basic contention in this case is that the arrangements between Pan American and Grace, resulting in the formation of Panagra, constitute, in both their inception and subsequent operation, a combination in restraint of trade violating Sections 1 and 3 of the Sherman Act. Thus, in our original brief in both Nos. 23 and 47, we demonstrated the illegality of Pan American's joinder with Grace in the Panagra enterprise. As we showed in that brief (pp. 43–47), the illegality of the combination is supported in part by Pan American's restraint of American foreign commerce in air transportation between the Canal Zone and the United States, since this power was conferred upon Pan American by the combination.

Pan American in its original brief chiefly attempts to show that if the district court were correct in holding that the formation of Panagra, the division of its stock, and the concomitant agreements were lawful (contrary to our submission in our original brief), then Pan American ought not to have been held independently to have violated Section 2 of the Sher-

mit that Pan American's reliance upon that decision is misplaced.

First, and most important, Pan American's argument forgets that it has *in fact* excluded Panagra from a direct route of its own to the United States. Indeed, Pan American argues (in the context of its argument that the Board's approval of the Through Flight Agreement gave it immunity) that it is still justified in exerting its power over Panagra to block application for a certificate (Br. 61–72). It surely cannot be argued that there was no power when the power has in fact been, and continues to be, exercised.

Second, the inconclusive manner in which that litigation ended seriously weakens the precedential effect of the *Grace* case. After this Court had granted Pan American's petition for certiorari to review the decision upon which it now relies (328 U.S. 832),[7] Pan American, Grace, and Panagra executed the Through Flight Agreement. They then moved the Court to dismiss the writs of certiorari "on the ground that no controversy between the parties now exists and that these causes have become moot" (Motion to Dismiss Writs of Certiorari, Nos. 4 and 5, Oct. Term 1947, pp. 7–8). The motion was granted "on the ground that the cause is moot." 332 U.S. 827. If the question had come before this Court, the government might have urged, as had the Civil Aeronautics Board in the court of appeals, that the Board is without power to overcome Pan American's obduracy with respect to a Panagra extension. But this Court never had the oppor-

[7] A petition by Eastern Airlines had also been granted (No. 5, Oct. Term 1947, 328 U.S. 832).

tunity to consider this question, and we do not think that this is the proper case in which to decide it. Orderly judicial administration dictates that such a determination be left to a case where a party seeks direct judicial review of a Board determination refusing to consider an application for Panagra to receive a certificate for a route extension—the kind of proceeding involved in *Grace* itself. It is sufficient here that, as we have noted above, Pan American has in fact blocked the Panagra extension.

Third, even if the decision of the Second Circuit is correct so that Grace can file an application with the Board, Pan American still possesses, together with Grace, monopoly power. Pan American and Grace together have the power to block by stipulation the exercise of Board authority, and that power permits Pan American to continue its exclusionary tactics by satisfying the interests not of Panagra but of Grace, a third party. For the Board probably has no authority to compel major route extensions in the absence of an application. *E.g., Panagra Terminal Investigation*, 4 C.A.B. 670, 673. And, unlike persuasion of an independent carrier not to apply for a route, persuasion of Grace not to apply on Panagra's behalf may well fail to supply compensating benefits to the carrier itself.

Finally, Pan American observes (Br. 45) that the power to permit entry into the field of air transportation between the United States and foreign nations lies with the Civil Aeronautics Board and the President and concludes, therefore, that the power to exclude cannot lie elsewhere. As the district court

proved, or required either by the Board order or by the Through Flight Agreement, which the Board approved. The agreement itself contains no provision that Panagra shall never have its own route. Indeed, not a word in the agreement is even addressed to the right of Pan American to block Panagra's route applications.

Pan American argues that the parties to the Through Flight Agreement were impliedly bound not to seek alterations in the circumstances which produced the agreement. A party to an interchange agreement, however, does not violate the agreement if he applies for a direct route to replace the interchange; and on more than one occasion the Board has granted such applications, never intimating that any obligation had been breached. *E.g., Great Lakes-Southeast Service Case,* 27 C.A.B. at 843, 851; *Southern Transcontinental Service Case,* Order No. E–16500 (Dkt. No. 7984), March 13, 1961.

Moreover, there is no indication that the parties to the agreement intended that it permit Pan American to continue to block any Panagra route to the United States. While Pan American contends that the agreement confirmed its right to stop any route application by Panagra, the testimony relied on by Pan American before the Board (Br. 64–67) deals with the prospect of Grace's continued agitation for a direct route for Panagra to the United States. This evidence, at most, suggests that Grace agreed that it would not make further efforts to obtain its own route for Panagra to the United States over Pan American's dissent. This is a far cry from agreement that Grace would never make such a proposal

within Panagra, or that Pan American was entitled to block action by Panagra. Grace's dropping litigation as a weapon in the face of a basic situation that neither Grace nor the Board could alter also falls far short of its accepting either Pan American's possession or exercise of the monopolistic power to vote Panagra stock for the purpose of excluding Panagra's competition. Moreover, while some of the testimony before the Board suggests that Pan American believed that Grace was agreeing not to seek from the Board a route for Panagra to the United States, other portions of the record show that the agreement did not limit Grace or Panagra from seeking a route in any way.*

Regardless of any implied and unexpressed understandings of the parties, the Board did not approve exclusion of Panagra. The Board approves only agreements which are filed with it. Thus, Section 412

* President Roig of Panagra was asked by counsel for Eastern Airlines in the proceeding before the Board whether the agreement "settles the difference about locked Board of Directors in relation to new route applications" (R. 4047). He answered, "No. Only in respect of this one situation referred to in that paragraph. It has no relation to any other situation that might arise" (*Ibid.*). Mr. Roig emphasized that the agreement did not "expressly provide" that a Panagra extension was not to be sought, denied counsel's proposition that "those who run the affairs of Panagra have an understanding that Panagra will not seek to come from the Canal Zone to the United States," and reiterated that he "did not so testify, and that is not the fact. The only agreement between us on that point is in these papers" (R. 4047–4048). He pointed out that Panagra and Grace "have accepted this, at least for the moment," although he hoped this was true "for a good long time" and explained the probable cessation of Grace agitation for an extension only on the ground that "you don't keep on running after the trolley after you got aboard" (R. 4048).

noted (R. 5408), the fallacy of this argument is that it "seeks * * * to confound power of admission with power of exclusion. It is the exercise of the latter which the Sherman Act condemns." Neither the Board nor the President can compel an application for a certificate. The history of Panagra shows that the vigorously expressed desires of the Board (see, *e.g.*, *Panagra Terminal Investigation*, 4 C.A.B. 670, 672; *Additional Service to Latin America*, 6 C.A.B. 857, 914) are insufficient to result in a Panagra application for certification to the United States. If the Board had the power to compel entry which Pan American now ascribes to it, Panagra would, in all likelihood, long ago have been certificated to the United States.

2. *Pan American's Exclusion of Panagra from the Canal Zone-United States Route Constituted, at the Least, Attempted Monopolization in Violation of Section 2*

We have contended above that Pan American and Panagra are the dominant air carriers (and particularly American flag carriers) between the United States and South America and that consequently Pan American, by blocking Panagra's extension from the Canal Zone to the United States, monopolized air transportation between the United States and both South America and the Canal Zone. Even if our contentions are not fully accepted, Pan American is, at the very least, guilty of attempted monopolization in violation of Section 2. For, even if the exclusion of Panagra is not considered as monopolization in view of the other carriers on the Canal Zone-United States and South American-United States routes, or because

Pan American's exclusion of Panagra from this route is not considered to be fully effective after Pan American entered the Through Flight Agreement, it is still clear that Pan American's actions were an attempt to monopolize.

Pan American argues (Br. 48–51) that the government failed to prove two essential elements of an attempt to monopolize. First, Pan American claims, the government failed to show that Pan American had a "specific intent" to monopolize (see the cases cited on page 48 of Pan American's brief). On the basis of undisputed facts, however, the court below found that Pan American was motivated (1) in forming Panagra originally by a specific intent to foreclose competition (R. 5388–5389), and (2) in subsequently blocking Panagra route applications by a specific intent to share in virtually all United States flag traffic to South America (R. 5405, 5407). These purposes constitute the "specific intent" which must underlie a finding of attempted monopolization. While Pan American correctly states that "specific intent" is more than intent to do what is done (Br. 49), it errs in concluding that "specific intent" means a deliberate intent to violate the law as such. It is well established that even a good-faith belief that the law is not being violated is not a valid defense under the Sherman Act (see our original brief, p. 70). Thus, it is not important whether Pan American itself characterized the power it sought or retained as "monopoly power" or believed that its conduct was illegal under the Sherman Act. Rather, the government was required to prove only that Pan American intended "to produce

the result which the law condemns." *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 225, 226, note 59. The findings of the district court show that this burden was sustained—*i.e.*, that Pan American did, or, at least, intended to, acquire, and then to maintain, monopoly power.

The patent and trademark cases cited by Pan American on the nature of "specific intent" (Br. 50) are not helpful in an antitrust case such as this which involves no monopoly rights granted by statute, like patents and trademarks. In the patent or trademark context, a violation of Section 2 necessarily means an unlawful extension of the ordinarily lawful right to exclude others which is conferred by the patent or trademark grant. As the defendant is entitled to the monopoly power conferred by the grant, he must be shown to have intended more than the retention of that power if a Section 2 charge is to be sustained. In the present case, Pan American has no such statutory monopoly.

Second, Pan American claims that the government failed to prove that Pan American's actions produced a "dangerous probability" of monopolization (Br. 48). We have seen, however, that the dominant position of Pan American and Panagra in South American-United States traffic created the strong likelihood that this foreclosure of Panagra from entering under its own certificate into the United States would result in the monopolization of air transportation between the United States and both the Canal Zone and South America (see *supra*, pp. 12–17). Moreover, the "dan-

gerous probability" of success in Pan American's attempt to monopolize is shown by the power which it in fact thereby gained. In our original brief (pp. 40–47) we have reviewed, in detail, the extent of that success. It is more than sufficient to constitute what the Civil Aeronautics Board has called "overwhelming dominance in the air transportation pattern to Latin America" by reason of which "Pan American stands unchallenged in its preeminence." *New York-Mexico City Nonstop Service Case*, 25 C.A.B. 323, 329.

II

THE DISTRICT COURT CORRECTLY HELD THAT THE CIVIL AERONAUTICS BOARD DID NOT GRANT PAN AMERICAN IMMUNITY FROM THE ANTITRUST LAWS FOR ITS EXCLUSION OF PANAGRA

In 1946, Braniff received from the Board a certificate to fly between the United States and the west coast of South America. This gave Braniff a considerable advantage over Panagra's service to this same area since the latter had no route to the United States. The question whether the Civil Aeronautics Board has the power to prevent Pan American from blocking Panagra's entry into the United States was in the Supreme Court. Faced with the certain threat of Braniff competition for Panagra and the uncertain resolution of the pending litigation in this Court on the power of the Civil Aeronautics Board to overcome Pan American's obduracy (R. 5414), Pan American and Grace negotiated, as a compromise, a Through Flight Agreement. In *Pan American-Panagra Agreement*, 8 C.A.B. 50, the Board approved the agreement

Panagra to the United States for a number of years. Moreover, such an interchange agreement is not equivalent to service by a single carrier on the basis of its own certificate of public convenience and necessity either from the standpoint of customers or the carrier.*

The Civil Aeronautics Board has made clear that interchange agreements are not the equivalent of certificated routes from the standpoint of the public. Thus, it has frequently granted applications to replace existing interchange agreements with single-carrier service, because of the greater flexibility in scheduling and other conveniences to the public which were thereby achieved. See, *e.g., Great Lakes-Southeast Service Case*, 27 C.A.B. 829, 843, 851.

These two types of operation—under a company's own certificate and through an interchange agreement—are also vastly different in their impact upon the carrier. Panagra operations to the United States under its own certificate would give that carrier all the benefits of free participation in the market. On the other hand, under the interchange agreement, Pan American, as the holder of the authority under which Panagra aircraft fly to Miami, receives a portion of the revenues from Panagra's through flights (R. 1871–1874, 1879–1883), as does National with respect to the flight from Miami to New York. Simi-

* At the trial one of Pan American's chief executive officers admitted that he would unquestionably prefer a certificated route to an interchange for his own airline, recognizing that an interchange is merely "the next best" alternative to one-carrier service (R. 230).

larly, Panagra's right to even the limited participation in the market which it now enjoys depends entirely upon private contract. The Civil Aeronautics Board has no power to compel interchanges in foreign air transportation, and is limited to approving or disapproving such arrangements as suit the convenience of the parties from time to time. See 49 U.S.C. 1374; *New York-Balboa Through Service Proceeding, Reopened*, 20 C.A.B. 493, 503; *National Airlines, Inc.*, 12 C.A.B. 798, 803. Moreover, the Through Flight Agreement applies only to flights between the Canal Zone and Miami, so that Panagra is excluded from the Pacific Coast and Gulf of Mexico areas of the United States. Thus, the Civil Aeronautics Board explicitly rejected the contention that approval of the Through Flight Agreement was tantamount to the grant of a certificate under Section 401 of the Aviation Act, 49 U.S.C. 1371, holding that "the evidence dispels any belief that the control and responsibility will be in Panagra * * *." *Pan American-Panagra Agreement*, 8 C.A.B. 50, 54.

Pan American also argues (Br. 43–44) that the government's claim that Pan American has excluded competition is answered by the decision of the Court of Appeals for the Second Circuit in *W. R. Grace & Co.* v. *Civil Aeronautics Board*, 154 F. 2d 271, certiorari dismissed for mootness, 332 U.S. 827. There, the court of appeals held that the Board had power to entertain an application by Grace in Panagra's behalf for an extension to the United States, if Panagra's failure to apply was the result of "illegality and fraud" on the part of Pan American. We sub-

as "an arrangement between Pan American and Panagra for providing through one-plane service between the principal points on Panagra's routes and the United States" (*id.* at 52), by the movement of Panagra aircraft under charter to Pan American on Pan American's routes. The Board considered the agreement only as an "action eliminating conflict and looking toward harmony" and specifically disclaimed any implication that the agreement was "the preferable method of resolving a controversy" (*id.* at 61).

In considering the Through Flight Agreement, we should emphasize at the outset that not even Pan American argues that, by approving the agreement, the Board shielded the formation of Panagra and the concomitant agreements between Pan American and Grace from prosecution as an illegal combination in restraint of trade under Sections 1 and 3 of the Sherman Act. Any such argument would be utterly untenable. By approving a small aspect of the overall arrangements between Panagra, Pan American and Grace in the face of a situation with which it believed itself powerless to deal in any fundamental manner, the Board cannot be supposed to have precluded an attack upon the underlying source of harm to the public interest.

Pan American's argument is much narrower but equally lacking in merit. Pan American asserts that the Board's approval of the Through Flight Agreement shields from attack under Section 2 Pan American's use of its monopoly power to exclude Panagra from routes to the United States. In our view, the district court was plainly right in holding that no such

immunity was given both because the approval could not immunize past violations and because it did not explicitly, and was not intended to, authorize future monopolization.

A. THE BOARD DID NOT APPROVE, AUTHORIZE, OR REQUIRE THE EXCLUSION OF PANAGRA

The antitrust exemptions authorized by the Federal Aviation Act extend only to specified conduct which has received the approval of the Civil Aeronautics Board. Section 414 of the Act, 49 U.S.C. 1384, grants immunity from the antitrust laws to any person affected by a Board order with respect to any agreement requiring Board approval, but only "insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order." Thus, except as they are part of an agreement, the Board has no power to approve, and to thus immunize, violations of the antitrust laws.

Initially, it is important to note that the Through Flight Agreement was entered into in 1946. If Pan American were correct that the agreement provided that Pan American could block any extension of Panagra's routes to the United States, the Board's approval of the agreement would immunize Pan American from liability under Section 2 of the Sherman Act from that time forward. Plainly, Pan American's earlier activities preventing Panagra's application to the Board were not approved and remain violations of the Sherman Act.

Furthermore, the exclusion of Panagra from the United States after 1946 was not authorized, ap-

of the Aviation Act, 49 U.S.C. 1382, requires the filing with the Board of "a true copy, or if oral, a true and complete memorandum" of agreements whose approval is sought. Cf. *Isbrandtsen Co.* v. *United States,* 211 F. 2d 51, 57 (C.A. D.C.), certiorari denied *sub nom. Federal Maritime Board* v. *United States,* 347 U.S. 990; *River Plate & Brazil Conferences* v. *Pressed Steel Car Co.,* 227 F. 2d 60, 63 (C.A. 2). Since no agreement has ever been filed providing for Panagra's exclusion, no immunity has been given.

Moreover, the Board can grant immunity only on the basis of its explicit approval of an agreement. No immunity may be implied. See *United States* v. *Socony-Vacuum Oil Co.,* 310 U.S. 150, 225–227; *California* v. *Federal Power Commission,* 369 U.S. 482, 485; *Isbrandtsen Co.* v. *United States, supra; American Cooperative Serum Ass'n* v. *Anchor Serum Co.,* 153 F. 2d 907, 912 (C.A. 7), certiorari denied, 329 U.S. 721. Approval requires thorough administrative scrutiny of the arrangement, with the conclusion expressed in precise findings under 49 U.S.C. 1378 and 1382, that the proposed agreement is not inimical to the public interest. Cf. *Isbrandtsen Co.* v. *United States, supra; Isbrandtsen Co.* v. *United States,* 356 U.S. 481, 499; *Isbrandtsen Co.* v. *United States,* 96 F. Supp. 883, 886, 892 (S.D. N.Y.), affirmed by an equally divided Court *sub nom. Rederi* v. *Isbrandtsen Co.,* 342 U.S. 950. The Board's order expresses no approval of some vague, unexpressed understanding that Pan American could continue for an indefinite period to monopolize air transportation between the

Canal Zone and the continental United States; the Board made no specific findings that the exclusion of Panagra was in the public interest. The Board was not required to accept the unexpressed understandings of the parties. Cf. *Swift & Co. v. Federal Maritime Commission*, C.A. D.C., No. 16,288, decided May 24, 1962, slip opinion, p. 8. It could reasonably adhere to its general rule (see *supra*, p. 28) that an interchange agreement does not impliedly include an agreement that the parties will not apply for a direct route to replace the interchange. In short, the Board could properly approve only the interchange agreement itself. This is precisely what the Board did. The opinion of the Board approving the Through Flight Agreement emphasizes the "improvement over the past situation" which the agreement was expected to bring about. 8 C.A.B. at 61. The Board's finding that the agreement was of benefit to the public interest as an improvement over the existing situation in no way suggests that either Pan American's control over Panagra or the resulting exclusion of Panagra from the American market was in harmony with the public interest. Indeed, the Board carefully limited the scope of its determination by stating that "[t]he question presented to us in this proceeding is whether *this agreement* is adverse to the public interest, not whether it or some possible future proposal is the preferable method of resolving a controversy" (emphasis added). 8 C.A.B. at 61. And the Board made clear that it did not consider the agreement a permanent solution to the problem of Panagra's ex-

Agreement, 8 C.A.B. 50, 63. Such findings are required by Section 408 of the Aviation Act, 49 U.S.C. 1378, before the Board can approve, *inter alia*, a Through Flight Agreement. Pan American argues (Br. 68) that this finding conclusively determined the question whether Pan American's refusal to permit a Panagra route application violates the Sherman Act and thus renders the issues in this antitrust case *res judicata*.

This argument, like the others made by Pan American discussed above in Point II.A, is directly contrary to the Board's clear intention not to pass on the exclusion of Panagra. Thus, the Board stated in its approval order that "[t]he question presented [was] whether *this agreement* is adverse to the public interest" (*Pan American-Panagra Agreement*, 8 C.A.B. at 61) (emphasis added), and it found only that "the competitive situation [was] not changed [by the agreement] in such a way as to result in the creation of a monopoly" (*id.* at 57). The issue in this lawsuit, however, is whether the exclusion of Panagra—which led the Board to accept the agreement as the best available alternative—violates the Sherman Act. As the controversy in this case is entirely distinct from the one before the Board, neither *res judicata* nor collateral estoppel are apposite. *United States* v. *Radio Corporation of America*, 358 U.S. 334, 352.

Moreover, even if the Board had decided that exclusion of Panagra was in the public interest,[10] that

[10] Such a decision, of course, might well grant antitrust immunity if all the conditions of Section 414 were satisfied (see *supra*, pp. 27-33).

decision would not be *res judicata* in this case. The public interest standard is plainly not identical with the principles of the Sherman Act, although it includes antitrust policy. Thus, the Court has held that the Interstate Commerce Commission "has no power to enforce the Sherman Act as such. It cannot decide definitively whether the transaction contemplated constitutes a restraint of trade or an attempt to monopolize which is forbidden by that Act. The Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation facilities and problems." *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 79; accord, *United States* v. *Radio Corporation of America*, *supra*, 358 U.S. at 346, 352 (Federal Communications Commission). Similarly, the Civil Aeronautics Board is neither required nor permitted to decide antitrust issues as such in applying the public interest test. Hence the Board's finding that the Through Flight Agreement was not adverse to the public interest is in no respect a finding under the Sherman Act even with respect to the agreement. Similarly, the Board's determination whether the agreement would "result in creating a monopoly" is not a determination whether there has been an attempt to monopolize under the Sherman Act. Since the Board adjudicated no issues under the Sherman Act when it approved the agreement under Section 408, this antitrust suit is not barred. *United States* v. *Radio Corporation of America*, *supra*; *California* v. *Federal Power Commission*, 369 U.S. 482, 486, 490.

remedies with which the antitrust laws protect competitive conditions. As we have shown (*supra*, p. 35), the Board has no power to enforce the Sherman Act as such. Neither criminal proceedings nor damage suits are allowed by the Aviation Act to be brought before the Board. The Sherman Act can be enforced only by the United States, proceeding civilly or criminally in the district courts, and by private parties suing for damages and injunctions.

Pan American suggests (Br. 59–60) that monopolization or attempted monopolization can be reached by the Board as an unfair method of competition under Section 411 of the Aviation Act, 49 U.S.C. 1381. But the power to end unfair competition, even when the challenged practice is also a Sherman Act violation, is not the power to enforce the Sherman Act itself. Cf. *United States Alkali Export Ass'n, Inc.* v. *United States*, 325 U.S. 196, 208, 210. Indeed, even if the Board applied the same standards as in cases under the Sherman Act, the Board's cease-and-desist power is hardly comparable to the injunctive powers which may be exercised by a court. And the Board has no power to compel the divestiture of control which was acquired prior to its establishment. *E.g., National Air Freight Forwarding Corp.* v. *Civil Aeronautics Board*, 197 F. 2d 384 (C.A. D.C.); *Hawaiian Airlines* v. *Trans-Pacific Airlines*, 78 F. Supp. 1 (D. Hawaii).

Third, the limited character of the immunity which Congress specifically empowered the Board to confer demonstrates both that the antitrust laws apply and that Congress did not intend a blanket immunity. The

Aviation Act provides that Board approval shall immunize the parties from prosecution for making and performing agreements approved by the Board. 49 U.S.C. 1384. Certain consolidations or mergers approved by the Board under Section 408, 49 U.S.C. 1378, are similarly exempted from the provisions of the Sherman Act.

In short, here, as in *United States* v. *Borden Co.*, 308 U.S. 188, 206, the Aviation Act plainly "does not cover the entire field of the Sherman Act." The Aviation Act itself "show[s] beyond question how far Congress intended that the [regulatory statute] should operate to render the Sherman Act inapplicable." *Id.* at 201. Certainly, no intention to confer a blanket exemption for the aviation industry appears with the clarity essential to supercession of the antitrust laws. See *United States* v. *Borden Co.*, *supra*, 308 U.S. at 198; *Georgia* v. *Pennsylvania R. Co.*, *supra*, 324 U.S. at 456–457; *United States Alkali Export Ass'n, Inc.* v. *United States*, *supra*, 325 U.S. at 205–206.

This Court has never held that the fact of regulation places an industry beyond the reach of the Sherman Act, or even that any particular regulated industry is completely outside the prohibitions of the Act. On the contrary, its only decisions bearing on this issue, which involved other regulated industries, demonstrate that the Sherman Act applies to such industries except where specific statutory exemptions have been provided by Congress. In *United States* v. *Borden Co.*, 308 U.S. 188, the Court held that neither the Agricultural Marketing Agreement Act nor the Capper-Volstead Act, which conferred upon the Secre-

III

THE CIVIL AERONAUTICS BOARD HAS NEITHER EXCLUSIVE NOR PRIMARY JURISDICTION OF THE MATTERS INVOLVED IN THIS ACTION

Pan American argues (Br. 51–69) that the issues in this antitrust case are for the Civil Aeronautics Board and not the courts to decide. The argument is a composite of three contentions: First, that the Sherman Act does not apply at all to international aviation (Br. 58–59); second, that certain aspects of international aviation, including those involved in this case, are within the exclusive jurisdiction of the Board (Br. 51–52); and third, that certain issues were within the primary jurisdiction of the Board and should have been referred to it for an expression of its views (Br. 54–56). These challenges to the district court's jurisdiction are without merit.

A. THE SHERMAN ACT APPLIES TO INTERNATIONAL AIR TRANSPORTATION

There is no foundation for Pan American's contention (Br. 58) that the Federal Aviation Act, both by letter and spirit, "indicates a Congressional intention to remove the industry from the general antitrust norms of the Sherman Act." The Aviation Act is not so pervasive a regulatory scheme as to indicate such an intention. The specific exceptions to the antitrust laws in the Act show that no general immunity was intended. This Court has never passed upon the contention, but it is notable that the Court has never held with respect to any other industry that the administrative regulation authorized by a federal statute was

so comprehensive as automatically to place the entire industry in all its activities outside the reach of the Sherman Act. The decisions in analogous cases establish a general principle that the Sherman Act applies to regulated industries except where specific statutory exemptions have been provided by Congress.

First, the Aviation Act does not establish an all-pervasive regulatory scheme for international air carriers. The Civil Aeronautics Board has no power over rates and fares of international carriers; the only manner in which its influence can be exerted is the disapproval of agreements among carriers relating to rates and fares. Similarly, the Board has no power to control the service rendered by international air carriers (such as by compelling interchanges like the Through Flight Agreement) save by the crude and unwieldy device of certificating, or threatening to certificate, competing carriers. The Board's regulation includes only control of routes, prohibition of discriminatory practices and unfair methods of competition, and power over agreements, concerted action, and certain relationships between carriers and others. But, even if the Board did have the further power to regulate international air rates, this would not place the entire industry outside the prohibitions of the Sherman Act. For in *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439, this Court held that such powers of the Interstate Commerce Commission do not put combinations in restraint of trade by railroads outside the scope of the Act.

Second, the Board has not been entrusted by the Aviation Act with the full range of doctrines and

tary of Agriculture the power to exempt specified agreements from the antitrust laws, had foreclosed the applicability of the Sherman Act to other conduct of those subject to the Secretary's exemption power. Because the Sherman Act is "a broad enactment" favoring free competition and designed to reach all anticompetitive conduct throughout the economy (*id.* at 199), the Court rejected the proposition that, by enacting a regulatory statute with respect to agricultural marketing, "Congress intended to create 'so great a breach in historic remedies and sanctions' " (*id.* at 198). The Court stressed the "cardinal principle of construction that repeals by implication are not favored," and restated its holdings that "[w]hen there are two acts upon the same subject, the rule is to give effect to both if possible": only "'a positive repugnancy' " between statutes would justify a finding of repeal by implication, " 'and even then * * * only *pro tanto* to the extent of the repugnancy.' " *Id.* at 198–199. Otherwise, the two statutes were to be considered " 'merely affirmative, or cumulative, or auxiliary.' " *Id.* at 198.

Only last Term in *California* v. *Federal Power Commission,* 369 U.S. 482, this Court made clear that the Sherman Act applied to regulated industries. There, the government brought a civil antitrust action to have the acquisition of stock by one natural gas company in another such company declared to be a violation of Section 7 of the Clayton Act and to require divestiture. Subsequently, the company which acquired the stock applied to the Federal Power Commission for authority to merge the assets of the two companies,

which was granted. This Court held that the Commission should not have decided the merger application while the antitrust action was still pending in the courts. Thus, the Court held that, despite regulation of the natural gas industry, the transaction was not immune from the antitrust laws since such "[i]mmunity * * * is not lightly implied," and there was "no 'pervasive regulatory scheme' * * * including the antitrust laws that has been entrusted to the Commission." *Id.* at 485.

Although *Far East Conference* v. *United States*, 342 U.S. 570, requires prior resort to an administrative agency under a regulatory statute so that the courts may have the benefit of administrative expertise in areas of special administrative competence, the decision does not suggest complete displacement of the courts' role. To the contrary, the Court affirmed that both the antitrust laws and the Shipping Act apply to steamship conference practices (*id.* at 576), and expressly held that a civil antitrust suit could be initiated after the Maritime Board acted on the challenged practice (*id.* at 577).

Pan American's sole reliance (Br. 58) is upon *United States* v. *Radio Corporation of America*, 358 U.S. 334. It is enough to point out that in that case the issue was whether the Federal Communications Commission had primary jurisdiction, not whether the antitrust laws apply to the television industry at all. The Court unanimously held that the primary jurisdiction doctrine did not apply and that the antitrust laws were enforceable in the federal courts against the television industry.

B. THE ISSUES IN THIS CASE ARE NOT WITHIN THE EXCLUSIVE OR PRIMARY JURISDICTION OF THE CIVIL AERONAUTICS BOARD

The doctrine of primary jurisdiction applies "where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body * * *." *United States* v. *Western Pac. R. Co.*, 352 U.S. 59, 64. In determining whether issues are within the special competence of an administrative body, this Court has noted whether "the expert and specialized knowledge of the agenc[y is] involved" (*ibid.*), whether the issues are "within the conventional experience of judges," and whether the case requires exercise of administrative discretion. *Far East Conference* v. *United States*, 342 U.S. 570, 574.

The district court correctly held that the issues raised in this case were not within the primary jurisdiction of the Civil Aeronautics Board. The basic issue is whether the formation of Panagra, the division of control, and the concomitant agreements going back to a period antedating all administrative regulation, were in the inception of the combination, as well as in its subsequent implementation, a combination in restraint of trade violating Sections 1 and 3 of the Sherman Act. In our view the Board has no jurisdiction whatever to deal with that question. We can find no provision of the Aviation Act that gives the Board any power to inquire into it or to take steps to eliminate the evil if it is found that the combination is unlawful. The Board's view is indicated by

the fact that it requested the Department of Justice to institute this action as the only available remedy for an intolerable situation. The Board has no jurisdiction because, to paraphrase the words of the Court in *Georgia* v. *Pennsylvania R. Co., supra*, 324 U.S. at 456, "Congress has not given the [Board] * * * authority to remove [pre-1938] rate-fixing combinations from the prohibitions contained in the anti-trust laws. It has not placed these combinations under the control and supervision of the [Board]. Nor has it empowered the [Board] to proceed against such combinations and through cease and desist orders or otherwise to put an end to their activities." The soundness of this position is virtually conceded by Pan American's admission (Br. 52) that "[i]t may be that *if this action had resulted* either *in sustaining* or dismissing *the complaint, no harm would have been done to the CAB's jurisdiction and function*" (emphasis added).

Contrary to Pan American's contention (Br. 52), this case does not concern the route pattern in South America. A decree in favor of the government will establish no route and will grant no certificates of public convenience and necessity. While, as Pan American also argues, some of the practices attacked by the government in this case might be dealt with as unfair competition under Section 411 of the Aviation Act, it is plain that any relief granted could not go to the basic evil of the combination of Pan American and Grace as co-owners of Panagra, each with full power to prevent Panagra from doing anything to injure the selfish interest of either owner. Just as the power of the Federal Trade Commission to remedy

unfair methods of competition does not bar the United States from maintaining antitrust suits based on the same acts (*United States* v. *Charles Pfizer & Co., Inc.*, 205 F. Supp. 94 (S.D. N.Y.) (criminal); *United States* v. *Cement Institute*, 85 F. Supp. 344 (D. Colo.) (civil)), so the limited power of the Board as to unfair competition should not bar this action. The issues involved here are within the competency of judges—having been considered by the courts since the Sherman Act was passed in 1890. There is therefore no reason why proceedings to check unfair methods of competition and suits to remedy violations of the antitrust laws should not be handled in accordance with the procedure which Congress has established for each.

The cases cited by Pan American (Br. 58) are clearly inapposite. In *United States* v. *Radio Corporation of America*, 358 U.S. 334, 346–347, the Court distinguished "fully regulated industries," such as rail and water transportation, where primary jurisdiction applied, from industries such as television, which had no rate regulation. The Court held that in the latter areas, "there being no pervasive regulatory scheme, and no rate structures to throw out of balance, sporadic action by federal courts can work no mischief. The justification for primary jurisdiction accordingly disappears." *Id.* at 350. Here, as in the television industry, the Board has no power over the rates charged by international air carriers. And, as we have shown (*supra*, pp. 36–41), the industry is not governed by a "pervasive regulatory scheme."

In *S.S.W., Inc.*, v. *Air Transport Ass'n*, 191 F. 2d 658 (C.A. D.C.), certiorari denied, 343 U.S.

955, and in *Apgar Travel Agency, Inc.* v. *International Air Transport Ass'n*, 107 F. Supp. 706 (S.D. N.Y.), the plaintiffs charged concerted action pursuant to agreements which could be, but had not been, approved by the Civil Aeronautics Board. Therefore the courts held that relief could only be had from the Board, which could exempt the challenged conduct from the antitrust laws. The injunctive relief sought in those cases was available from the Board. Cf. *Isbrandtsen Co.* v. *United States*, 211 F. 2d 51 (C.A. D.C.), certiorari denied, *sub. nom. Federal Maritime Board* v. *United States*, 347 U.S. 990. And as the court held in *Slick Airways, Inc.* v. *American Airlines, Inc.*, 107 F. Supp. 199 (D. N.J.), appeal dismissed, 204 F. 2d 230 (C.A. 3), certiorari denied, 346 U.S. 806, plaintiffs could recover their damages after the conclusion of the administrative proceedings with respect to injunctive relief (see 107 F. Supp. at 203), for the Board has no power to grant damages. The *S.S.W.* and *Apgar* cases thus merely apply the rule of *Far East Conference* v. *United States, supra*, 342 U.S. at 576, that conduct which violates both the regulatory statute and the antitrust laws must be challenged before the administrative agency and not the courts in the first instance. Cf. *River Plate & Brazil Conferences* v. *Pressed Steel Car Co.*, 227 F. 2d 60, 63 (C.A. 2).

Nor is the decision of the court of appeals in *W. R. Grace & Co.* v. *Civil Aeronautics Board*, 154 F. 2d 271 (C.A. 2), certiorari dismissed for mootness, 332 U.S. 827, authority for the application of the primary jurisdiction rule to this case. In *Grace*, the Board held that it could consider the illegality under

clusion from the United States, for the Board gave approval to the agreement for only three years despite the fact the agreement itself was for 99 years. *id.* at 64.' In short, there is no basis for inferring that, when the Board approved an agreement to ameliorate the consequences of Pan American's monopolistic conduct, it thereby approved the misconduct itself.

Similarly, the Board gave no indication during the proceedings relating to the agreement which supports Pan American's claim that approval, and hence immunity, was implied. Pan American quotes (Br. 67) a statement by the chairman of the Board that "[o]f course our approval of the agreement gives you immunity from the Sherman Act." This observation was made during a colloquy between the chairman and counsel for Panagra concerning the status of the Through Flight Agreement itself under the antitrust laws, in which the chairman asked whether "this agreement would be a violation of the Sherman Act except for approval by the Board" (R. 3906). After Panagra's counsel admitted his inability to answer (*ibid.*), Chairman Landis made the quoted statement. When counsel for Panagra added that the question was complicated by "Panagra's peculiar relationships to Pan American" (R. 3907), the chairman precluded the interpretation which Pan American would assign to his earlier statement by explaining that he was

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'The approval has since been extended until 1965 or 90 days after the expiration of this antitrust suit, whichever is sooner. Order No. E-16156, December 19, 1960.

"not talking about the other phases of it but * * * just about this agreement" (*ibid.*).

Any suggestion that the Board approved the conduct of Pan American, in excluding Panagra from the United States, is inconsistent with its general opposition toward restraints upon the freedom of carriers to apply for route certificates. Thus, in *Pan American-Matson-Inter-Island Contract*, 3 C.A.B. 540, the Board rejected a proposal for the establishment of a Panagra-type joint company to serve Hawaii, holding that "[a]greements * * * whereby a carrier operating in a particular territory obtains from a prospective competitor an undertaking, express or implied, not to attempt competitive operations, are likely to tend to impede the development of competition to the extent required by the present and future needs of the nation. Accordingly, we are of the opinion that such agreements thwart the purposes of the [Aviation] Act, and that their formation should in general be discouraged" (*id.* at 546–547). In view of the Board's explicit hostility to the very conduct of Pan American in the present case (see *infra*, pp. 46–47), as well as in similar proposals, it cannot be said to have nonetheless approved and immunized the exclusion of Panagra by implication when approving the Through Flight Agreement.

B. THE BOARD'S APPROVAL OF THE AGREEMENT IS NOT *RES JUDICATA*

The Board found that the Through Flight Agreement "is not adverse to, nor inconsistent with, the public interest, [and] that such transaction does not result in creating a monopoly." *Pan American-Panagra*

Section 411 of Pan American's conduct with respect to Panagra in determining whether to entertain a route application by Grace in Panagra's behalf. Nothing in the court's opinion suggests that the Board has power to decide antitrust issues as such, or that Pan American's refusal to permit a Panagra application could not violate the Sherman Act if it were an unfair method of competition under Section 411 as well. The court merely held that the Board was not required to await the outcome of a lawsuit under the Sherman Act before deciding the issues involved in the question of its own jurisdiction as to a Grace application on behalf of Panagra. Compare *California* v. *Federal Power Commission*, 369 U.S. 482. It did not hold that a lawsuit to enforce the Sherman Act would be required to await the outcome of a Board proceeding under Section 411.

The inapplicability of the primary jurisdiction rule to this antitrust case does not leave the courts with the task of acting without knowledge of the Board's views. The Board's opposition to Pan American and Grace's control of Panagra has been repeatedly expressed. *Pan American-Matson-Inter-Island Contract*, 3 C.A.B. 540; *Panagra Terminal Investigation*, 4 C.A.B. 670; *Additional Service to Latin America*, 6 C.A.B. 857; *Pan American-Panagra Agreement*, 8 C.A.B. 50; *New York-Balboa Through Service Proceeding, Reopened*, 18 C.A.B. 501; *New York-Balboa Through Service Proceeding, Reopened*, 20 C.A.B. 493; cf. *New York-Mexico City Nonstop Service Case*, 25 C.A.B. 323. This opposition is also shown in the Board's request that the United States

bring this antitrust case; in the Board's *amicus curiae* brief below; and in the Board's approval of the form of the judgment entered by the district court (R. 5436). The decree entered by the district court ensures that the views of the Board will be considered in the formulation of a detailed plan of divestiture, since the parties are directed to secure Board approval of whatever plan they submit to the court. Thus, in contrast to *United States* v. *Western Pac. R. Co.*, 352 U.S. 59, 64, where the Court found that "the purposes [the primary jurisdiction doctrine] serves will be aided by its application in the particular litigation," referring the issues in this case to the Board can serve no purpose other than delay.

IV

DIVESTITURE OF BOTH PAN AMERICAN AND GRACE'S INTEREST IN PANAGRA IS THE PROPER REMEDY IN THIS CASE

While the district court did not provide a detailed plan, it held that divestiture was the only effective remedy for Pan American's violation of Section 2 (R. 5445) and therefore its decree ordered divestiture of Pan American's interest in Panagra (R. 5441). Under numerous decisions of this Court, the district courts are clothed with broad discretion in framing relief in antitrust cases. *E.g., United States* v. *E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 322–323. We submit that in this case the district court did not abuse its discretion; on the contrary, its determination was plainly correct.

The district court did not order Grace to divest itself of its interest in Panagra because it found no violation by Grace of the Sherman Act. If, however, as we argued in our original brief, Grace's control of Panagra, like Pan American's, violates Sections 1 and 3 of the Sherman Act, divestiture is plainly the only effective remedy. Therefore, we submit that Grace, as well as Pan American, should be ordered to divest itself of its interest in Panagra.

DIVESTITURE IS NORMALLY THE APPROPRIATE REMEDY FOR VIOLATIONS OF THE ANTITRUST LAWS CAUSED BY INTERCORPORATE COMBINATIONS

In *United States* v. *E. I du Pont de Nemours & Co.*, *supra*, this Court held that divestiture is the appropriate "remedy for Sherman Act violations whose heart is intercorporate combination and control." 366 U.S. at 329. Nonetheless, Pan American urges (Br. 72–73) that the infrequency with which divestiture has been ordered should compel reluctance to grant the remedy. But while violations on a scale requiring divestiture may well be relatively few in number compared with the incidence of lesser restraints on competition, the fact remains that divestiture has uniformly been found necessary to protect the public against illegal intercorporate relationships such as that between Grace, Pan American, and Panagra. *Id.* at 329–330, note 11. We recognize that the district court found Pan American's violation to consist in the voting, and not the ownership, of its Panagra stock. But, as Pan American observes (Br. 25–28), the exclusion of Panagra was a mere exercise of the "normal incidents of ownership." The monopolistic restraint imposed upon Panagra's development was

merely a consequence of Pan American's role as the holder of a 50 percent interest in Panagra. And, as we have argued in our original brief, the basic anti-trust violation with which this case is concerned is the combination of Pan American and Grace in the Panagra enterprise. We therefore submit that, as in *du Pont*, the "heart" of Pan American and Grace's anti-trust violations "is intercorporate combination and control" for which divestiture is presumptively the appropriate remedy.

The wisdom of the presumption favoring divestiture in cases such as this one becomes apparent when Pan American's proposal for lesser injunctive relief is examined. Pan American argues (Br. 75) that the violation can be remedied by an injunction which would bar Pan American from voting in such a way as to interfere with Panagra's filing of route applications. But the record shows that Pan American's obstruction of a Panagra extension to the United States has taken a variety of forms, including not merely the refusal of Pan American's nominees on the Panagra board to vote in favor of an application, but even the boycotting of board meetings at which the subject would be discussed. No doubt a wide range of other practices could serve the same monopolistic end. Injunctive relief would have to be framed either with almost impossible specificity or in a manner so broad that any alleged contempt would require extended litigation. Similarly, an injunction which would not deny Pan American the normal incidents of its Panagra stock ownership would require differentiation between opposition to an extension based upon unlawful motives and opposition based upon legiti-

can's brief as appellant. In contrast to the extended showings made in *du Pont, supra* (see 366 U.S. at 320), Pan American offered no proof, or even detailed allegations, with respect to the facts upon the basis of which it attacks the district court's determination. Surely, the district court's exercise of its broad discretion should not be overturned when Pan American has failed even to make a serious showing that the remedy was inappropriate. As this Court has stated, "once the Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor." *United States* v. *E. I. du Pont de Nemours & Co., supra,* 366 U.S. at 334.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the district court should be affirmed insofar as it orders the divestiture of Pan American's interest in Panagra.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 47.

UNITED STATES OF AMERICA,

Appellant,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., and PAN AMERICAN-GRACE AIRWAYS, INC.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR W. R. GRACE & CO.

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mate business considerations. Such a distinction would be extremely difficult to apply (compare our original brief, pp. 73–74; *Standard Sanitary Mfg. Co. v. United States*, 226 U.S. 20, 49). In short, as this Court put it in *du Pont, supra*, 366 U.S. at 334, "an injunction can hardly be detailed enough to cover in advance all the many fashions in which improper influence might manifest itself. And the policing of an injunction would probably involve the courts and the Government in regulation of private affairs more deeply than the administration of a simple order of divestiture."

Two other considerations support the remedy of divestiture. A limitation on Pan American's right to vote its Panagra stock would, as the Court suggested in *du Pont, supra*, have extremely harmful effects. It would, first, "create a large and permanent separation of corporate ownership from control, which would * * * run directly counter to accepted principles of corporate democracy" (366 U.S. at 333), and alter to an undesirable degree Panagra's internal corporate structure, "established under state corporation law" (*ibid.*). Moreover, since Grace's exercise of control over Panagra is also unlawful, as shown in our original brief, there is really no alternative to divestiture. Obviously, both companies cannot be limited in their right to vote, since they hold all of Panagra's stock. And certainly the considerations advanced in our original brief are enough to show that the increase in Grace's control flowing from the sterilization of Pan American's holdings would be contrary to the public interest.

B. THE TAX AND MARKET CONSEQUENCES, AND THE HARDSHIPS WHICH WOULD RESULT FROM DIVESTITURE, DO NOT DICTATE A LESSER REMEDY

Pan American has put forward in the present case the same arguments against the "natural remedy" of divestiture (*United States* v. *E. I. du Pont de Nemours & Co.*, *supra*, 366 U.S. at 329) that were explicitly rejected in *du Pont*—the adequacy of lesser injunctive relief, the tax and market consequences of the decree, and the hardship inflicted by divestiture upon the parties and their stockholders. As in *du Pont*, none of these considerations can justify less thorough relief than divestiture.

The tax and market consequences of divestiture, and its hardship upon the parties and their stockholders, are not appropriate considerations in dealing with the question of relief in this case. This Court's decision in *du Pont*, *supra*, makes plain that these factors have a legitimate bearing only when there is a choice between "two or more effective remedies." 366 U.S. at 327. When, as we have seen, divestiture is the only effective remedy, the hardship arguments advanced by Pan American are irrelevant.

In any event, Pan American's arguments come too late for serious consideration in the present case. Although they rest largely upon factual matters, Pan American's sole presentation on this issue to the trial court consists of twenty pages of argument (not evidence)—which neither the government nor Pan American viewed as sufficiently important to designate for printing in the transcript of record in this Court [11]—and fifteen pages of argument in Pan Ameri-

[11] The transcript of the hearing on relief held on April 24, 1961, is in the original record certified by the clerk of the district court.

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(b) If there was, prior to 1938, an unlawful allocation of territories, does it warrant present relief against Grace?

2(a) Does the steamship service operated by Grace Line, a wholly owned subsidiary of Grace, between the eastern coast of the United States and the western coast of South America, form a part of the competitive market which includes the air service operated by Pan American-Grace Airways, Inc. (hereinafter "Panagra") in that area?

(b) If these services are in the same competitive market, did Grace's 50% participation in the organization and development of Panagra, while it owned all of the stock of Grace Line, constitute a combination in restraint of trade violative of Section 1 or Section 3 of the Sherman Act, such that relief is warranted against Grace?

Statement.

This suit was commenced in January, 1954 in the United States District Court for the Southern District of New York. In 1958 the Government and Pan American submitted a proposed consent decree which District Judge Murphy declined to approve. Trial was had in May 1959. The opinion of Judge Murphy was handed down in March 1961, and judgment was entered in May, 1961.

Grace is the only one of the three parties actively involved in the appeals from the judgment in this case which supports that judgment in its entirety. Grace believes that the opinion of the District Court accurately states the relevant facts. Judge Murphy's findings are, of course, entitled to great weight since this Court has made it plain that in a case like this it will not "try the case *de novo* on the record," *United States* v. *Yellow Cab Co.*, 338 U. S.

338, 340-41 (1949), and that there is a "narrow scope of review" in this Court with respect to issues of fact in anti-trust cases. *Besser Mfg. Co.* v. *United States*, 343 U. S. 444, 446 (1952). Judge Murphy's opinion, like the opinion in the *Yellow Cab* case, was "prepared with obvious care" (338 U. S. at 341).

The statement set out in the brief submitted by the Government is deficient, both in its omission of important material and in the emphasis, or lack of it, put upon various factors. The statement in the brief of Pan American filed in the appeal in No. 23 suffers even more severely in these respects. These defects of omission and emphasis will be corrected in the course of our argument. We believe it appropriate at the outset, however, to bring to the Court's attention certain unique features of this litigation. These unique features can best be delineated by reference to certain anomalies which inhere in the Government's position.

The first anomaly is that the Government seeks, not only to divest Pan American, the perpetrator of a restraint of trade, of the stock interest which it has used as the instrument of restraint, but also to invoke the remedy of divestiture against Grace, the principal opponent and victim of the restraint.

On a reading of Judge Murphy's opinion and of the Government's brief, it soon becomes evident that the principal problem which gave rise to this litigation, and the significant restraint at which the Government's case is aimed, is Pan American's persistent blocking of any application by Panagra to extend its routes to the continental United States. One result of this restraint is that Panagra has been, and now remains, the only American international air carrier without its own terminal in the United States. The record is clear that the party who resisted Pan American and attempted to secure an extension of Panagra's routes was Grace.

Indeed, since Pan American and Grace has each at all times owned one-half of the stock of Panagra and since each has at all times elected one-half of the Board of Directors of Panagra, without Grace's persistent advocacy of Panagra route extensions, no issue would have arisen and Panagra's development would have been even more effectively suppressed. As owner of 50% of the stock of Panagra, Grace was the only party, apart from the general public, injured by Pan American's restraint. Yet, the Government charges Pan American and Grace equally with antitrust violation and seeks the same remedy against both.

The second anomaly is that, while the Government has charged a combination and conspiracy between Pan American and Grace to allocate territories in violation of the antitrust laws, it has characterized the relationship between Grace and Pan American as one of "bitter quarrel" and "impasse."* This would, perhaps, not be surprising if the "impasse" and "bitter quarrel" related to matters other than, and extraneous to, the areas in which the Government alleges combination and conspiracy. But this is not the case. The impasse and bitter quarrel have existed for more than a generation with respect to the very restraint upon which the Government bases its case. The record shows, the District Court found, and the Government admits, that since 1938, when the coming of age of international aviation and the enactment of the Civil Aeronautics Act made it feasible, Grace has persistently sought to extend Panagra's routes to the United States and Pan American has persistently opposed and blocked that extension. For example, when in 1938 Grace sought the approval of Pan American for the making of an application by Panagra for the

* Trial Brief for the United States, Part I, p. 2; Brief for the United States in Nos. 23 and 47 (hereinafter referred to as "Brief"), p. 11.

extension of its route to the United States, the minutes of the Board of Directors of Pan American recorded:

> "Mr. Trippe reported to the meeting on the status of negotiations with W. R. Grace & Co. It was the sense of the meeting that it would not be in the interest of our stockholders [Pan American's] for our directors to authorize an application by Pan American-Grace Airways, Inc. to extend north of Cristobal in competition with Pan American Airways, Inc." (G-182, R. 711; see R. 5405).*

This is what the "bitter quarrel" and "impasse" have been all about.

The third and final anomaly helps, perhaps, to explain the first two. This anomaly resides in the fact that the Government has made it clear that the ultimate purpose and objective of this litigation, in so far as it relates to Grace, is not the vindication of the antitrust laws or the effectuation of their policy, but rather the accomplishment of certain objectives which the Department of Justice has believed would be helpful to the Civil Aeronautics Board in administering the Federal Aviation Act. As Judge Murphy pointed out in his opinion:

> "The ultimate objective of the government is to facilitate the merger of defendant Panagra with

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* The Government's Exhibits, which were introduced in evidence at pages 868-979 of the original transcript, are hereinafter referred to as "G-000"; the Government's Statistical Exhibits, introduced at page 12 of the transcript, are hereinafter referred to as "GS-000"; Grace's Exhibits 1 through 173, which were introduced at pages 800-17 of the original transcript, are hereinafter referred to as "WRG-000"; Pan American's Exhibits, which were introduced at page 359 of the original transcript, are hereinafter referred to as "P-000." The places in the record at which these exhibits were introduced in evidence will not be referred to hereafter.

IN THE

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OCTOBER TERM, 1962.

No. 47.

UNITED STATES OF AMERICA,

Appellant,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., and PAN AMERICAN-GRACE AIRWAYS, INC.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR W. R. GRACE & CO.

Questions Presented.

The questions presented by this appeal are the following:

1(a) Did W. R. Grace & Co. (hereinafter "Grace") and Pan American World Airways (hereinafter "Pan American") agree to allocate territories for the providing of air transportation services between the United States and Latin America and within Latin America and thereby unlawfully restrain the foreign commerce of the United States?

A. Competition between U. S. flag airlines in South America prior to 1938 was economically impossible.

In these days of mammoth jet liners and modern airports, it is difficult to recall and appreciate the circumstances in which air transportation was conducted by an American company in a foreign country in 1929—one year after Lindbergh's historic flight. Some idea of what it was like to fly the United States mail from Buenos Aires over the Andes to the Canal Zone in the equipment used in those days is conveyed by a published journal of the first recorded air mail flight in October, 1929 (R. 4661-73). Such a flight was a challenge and an adventure. The same feeling of adventure was given classic literary expression in "Night Flight" (The Century Co. 1931), where, in Chapter III Saint-Exupery described the French air mail service from Santiago to Buenos Aires and Rio de Janeiro.

Some of the practical problems of international aviation were described by the Federal Aviation Commission in 1935 as follows:

> "The fact that the foreign lines are necessarily self-contained has also to be reckoned with. No government can engage in great engineering undertakings outside its own borders. It is impossible for the Department of Commerce to set up lights and radio stations in Central America or the Orient, and in many cases the countries concerned have found no adequate reason to provide facilities themselves. It has been necessary for the air lines to build their own landing fields, provide their own meteorological service, maintain their own communications systems, and install their own lights if night flying were to be attempted. All that has been supplementary to the development of operating and traffic organizations and the maintenance of offices

> in many lands and working in many languages, and the establishment of good standing with the governments and peoples through whose territory the lines must pass. It is impossible that all that should be done, involving as it does a very heavy capital outlay, without some definite assurance of a continuance of governmental aid over a considerable period" (Sen. Doc. No. 15, 74th Cong. 1st Sess. pp. 88-89 (1935)).*

During these early days an American airline operating in this area was also faced with vigorous competition from foreign airlines which were seeking to develop their own routes. One such effort was a proposed combination in 1929 of Scadta, Faucett and LAB in cooperation with the Chilean authorities to establish a route between Colombia, Ecuador, Bolivia and Chile (WRG-32, R. 4684). Panagra was kept informed of this effort, which also involved Nyrba, the French affiliated company Latecoere, and the Curtiss interests, by the State Department (WRG-34, R. 4686). Another company on the scene was the Tri-Motor Company which, as Grace understood, was not an American company despite its place of incorporation, but was rather backed by the British steamship company, the Royal Mail Steam Packet Co. (WRG-35, R. 4687-88). In addition to the combination of these companies an effort was made by LAB to obtain a monopoly in Bolivia which would have effectively barred to Panagra this alternative route across the Andes (WRG-36, R. 4688-89). At the suggestion of Grace (WRG-37, R. 4690), the State Department instructed the American Minister in Bolivia "to make representations against any monopoly [tending to] restrict [the] opportunity [of an] American company" (WRG-38, R. 4691).

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* An excellent description of the problems faced by Panagra in these first few years will be found in a letter dated May 6, 1935 which appears in the record (WRG-41, R. 4698-4703).

In the light of the difficulty of undertaking air transportation in South America during this period, the extent of the potential foreign competition, and the vital interest of the United States in the development of United States flag air services,* various departments of the United States Government soon developed a policy designed to stimulate, encourage and support United States flag lines. The basic elements of this policy during the 1930's were to provide financial support to United States flag lines, to assist them in securing the necessary concessions from foreign countries, and to assist them in meeting foreign competition. In order to achieve these purposes, these agencies adopted a policy of encouraging United States flag air lines not to parallel one another's routes. That policy, as Judge Murphy found, made the operation of more than one United States flag carrier on any particular route impossible.

The first United States legislation designed to subsidize international commercial aviation was the Foreign Air Mail Act of 1928, 45 Stat. 248 (70th Cong. 1st Sess.) which was approved by the President on March 8, 1928. This Act provided for the letting of contracts by the Postmaster General for the transportation of air mail to foreign countries for periods of not more than ten years at fixed rates per pound carried per mile flown. The Foreign Air Mail Act of 1929, 45 Stat. 1449 (70th Cong., 2nd Sess.), similarly provided for the letting of contracts "On routes between the United

* The legislative history of the foreign air mail legislation evidences this vital interest. House Report 481, 70th Cong., 1st Sess. (1928), particularly pages 1 and 2. It was then "an established principle of our international policy that among the Foreign Relations of the United States as they fall into categories, the Pan American policy takes first place in our diplomacy." Secretary of State Kellogg in January 1928 as quoted in Matthews "Why America Is Vital To Us", *New York Times Magazine*, p. 17 (April 26, 1959).

The State Department also pursued this same policy. It aided the carrier which had been awarded an air mail contract over all other companies in the territory covered by its route (*Id.* at 2461). The State Department expressed itself as being concerned that if competition were permitted between American companies it was "possible that no American company would obtain the desired privileges" from the South and Central American governments (*Id.* at 2462).

One incident strikingly illustrates the policy pursued by the State Department during this period. In a letter to the Postmaster General dated June, 1929, Secretary of State Henry L. Stimson described the difficult diplomatic situation created by the rivalry between Pan American and a company called Latin American Airways, both of which were seeking concessions in Guatemala. Secretary Stimson went on to say that the American Minister in Guatemala had arranged what the Government would now stigmatize as a "division of territories" between the companies as follows:

> "The American Minister at Guatemala City recently reported that he had succeeded in persuading the two companies to abandon their activities against one another upon the understanding that Pan American Airways would seek permission to extend its Miami-Cristobal service to Guatemala and El Salvador, while the Latin American Airways would seek permission to establish a service from the Mexican frontier to Guatemala City" (*Id.* at 2462-63).

The 1935 report of the Federal Aviation Commission cited above similarly recognized the important interest of the United States in stimulating the development of United States flag air lines on international routes. The report

noted that "The policy of the United States should be to support and assist American Airlines in their relations with foreign governments and with foreign competitors" (Sen. Doc. 15, 74th Cong., 1st Sess., p. 91). The report also made the following significant recommendation:

> "The status of American air transport in foreign fields competing with foreign-owned airlines should in general not be one of competition between American lines, but of carefully controlled regional monopoly" (*Id.* at p. 88).

In commenting on this recommendation the Commission stated:

> ". . . an air line operating internationally has to be a self-contained enterprise and provide its own facilities to a much greater extent than any domestic line is required to do, and that it has to meet foreign competition. If American air lines are to compete with lines under foreign direction it would be an obvious absurdity to divide the American strength by competition among a multiplicity of American-flag enterprises. The aid that is appropriated for foreign air transport in any particular part of the globe ought not to be squandered by dividing it among two or more competitors who will use government-provided funds to duplicate each other's facilities" (*Id.* at p. 88).

Adherence to these policies by the United States Government made it economically impossible during the late 1920's and 1930's for more than one United States flag air line to engage in air transportation on any single international route. Judge Murphy so found:

> "Competition among American carriers under the policy of the Post Office Department under the

IV.

Grace agrees with the Government that competition in air transportation between South America and the continental United States has been restrained. The District Court correctly concluded, however, that this restraint of competition was the result of the unilateral and unlawful actions of Pan American.

Pan American, over the strenuous opposition of Grace since 1938, has limited Panagra to routes south of the Canal Zone for the sole purpose of preventing Panagra from competing with Pan American. Pan American's one-half interest in Panagra did not give it the right to prevent Panagra's logical development, in competition with Pan American. In view of Pan American's dominant position, its intent to prevent competition, and the limited number of potential competitors in this particular market, Pan American's restraint of Panagra's development violated Section 2 of the Sherman Act.

Pan American's action is not justified by the economic arguments which it now advances against Panagra's extension. Those arguments, which were advanced for the first time at the trial of this case, never formed the basis of its action. The Civil Aeronautics Board was the proper agency to determine whether extension of Panagra's routes was economically sound and in the public interest; Pan American prevented the Board from making this determination by blocking Panagra from submitting any application to it. The Board has never authorized, approved, or required this anticompetitive behavior by Pan American so as to exempt it from the Sherman Act.

The District Court's order divesting Pan American of its stock interest in Panagra does not interfere with or

encroach upon the exercise by the Civil Aeronautics Board of its proper authority. The District Court took no action with respect to the awarding or cancelling of routes; it merely directed a change in the ownership of fifty per cent of Panagra's stock.

V.

The affiliation between Grace and Panagra is not rendered inherently unlawful by Grace's ownership of the stock of Grace Line.

A. The services offered, respectively, by Grace Line and Panagra are not reasonably interchangeable so as to be competitive within the meaning of the Sherman Act. Grace Line is principally a cargo carrier whereas Panagra is predominantly a carrier of passengers. The passenger service offered by Panagra is both vastly quicker and substantially less expensive than that offered by Grace Line. On these routes, particularly in view of their length, the potential traveller does not regard the services as reasonable alternatives. The operative reason for a passenger's selecting Grace Line's service is the desire for a sea voyage. With respect to cargo, the services are not interchangeable because of, on the one hand, the radical difference in cost, and on the other hand, the great difference in speed of delivery. The Government's evidence demonstrates that there is no substantial likelihood of significant competition for cargo between air and sea carriers on this particular route.

The administrative rulings upon which the Government relies do not demonstrate the existence of competition on this route; they relate to other routes with different characteristics. The Civil Aeronautics Board has recognized

States . . . and foreign countries." The Postmaster General in his advertisement of bidding for such contracts described the particular route and thereby established the territory of the successful bidder.*

The Postmaster General described his policy in administering the foreign air mail acts in the late 1920's and the early 1930's as follows:

> *"I have stated frankly to the air mail operators that in the present state of the industry it did not seem the part of wisdom to invade each other's territory with competitive services and that I did not believe that money paid for postal service should be used to set up services to injure competitors.* In pursuance of this policy I suggested the abandonment by the Pan American Co. of the domestic field in the United States . . . Their field is the international service . . . Consistently with the policy outlined, it would seem improper for any of our domestic air mail operators to use mail pay to invade the peculiar field of Pan American Co." (Hearings Before a Special Committee of the Senate on Investigation of Air Mail and Ocean Contracts, 73rd Cong., 2nd Sess. 1934, page 2459 ("Black Hearings"), (emphasis supplied)).

The Postmaster General's justification for this policy was, first, that it was enough for the United States to support with mail subsidies one company operating at a loss on a particular route and, second, if more than one U. S. flag air line sought concessions from South American governments there might be diplomatic complications which could result in the South American governments granting exclusive concessions to non-United States flag carriers (*Id.* 2460, 2461, 2463, 2469, 2639 and 2640).

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* Panagra was granted a ten-year contract for Foreign Air Mail Route No. 9 between the Panama Canal Zone and Buenos Aires via the west coast of South America.

> Braniff International Airways (Braniff), the only other American flag carrier operating between the United States and South America aside from Pan American and Panagra" (R. 5366-67).

That Judge Murphy accurately stated the Government's objective is evident from the consent decree which the Antitrust Division and Pan American submitted to Judge Murphy in 1958 and which Judge Murphy refused to sign.* The decree provided for the divestiture by Pan American of its interest in Panagra by sale of its stock to Braniff, but made that divestiture contingent on the sale by Grace to Braniff, either voluntarily or as a result of court order, of enough of its interest to give Braniff control.

Consideration of the Government's objective demonstrates that it does not believe that Panagra is in an unduly dominant position on the western coast of South America or that there is an insufficiency of airline competition on that route; its apparent purpose is to eliminate Panagra and thereby secure more concentration, rather than less.

Moreover, as Grace pointed out in opposing the consent decree, the Government apparently sought not only to divest alleged antitrust violators of their stock interests but also to compel them to sell their stock to a particular competitor of the joint enterprise. It did not appear to Grace when the consent decree was presented, and it does not appear to it now, that it is a proper function of antitrust enforcement to supplement the Federal Aviation Act by seeking to compel a merger which the Civil Aeronautics Board has no authority to bring about and by seeking to deprive Grace of an interest in Panagra which is reserved and guaranteed

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* The proposed consent decree and Judge Murphy's order disapproving it are printed as Appendix A to this Brief.

to it by the "grandfather clause" of that Act.* *Cf, St. Joe Paper Co.* v. *Atlantic Coast Line Railroad*, 347 U. S. 298, 305 (1954).

Of course if Grace has violated the antitrust laws it cannot object to being held to account for its violation merely because the Government is seeking to serve some other policy. On the other hand, if an antitrust violation has not been committed, Grace is entitled to object to the use of an antitrust prosecution as a means of achieving objectives which some department of government may have thought desirable but which it is not authorized to secure. Grace submits that Judge Murphy fairly analyzed the record in this case and correctly concluded that no unlawful restraint of trade by Grace was shown.

Summary of Argument.

I.

This Court has jurisdiction to hear this appeal, *Brown Shoe Co.* v. *United States*, 370 U. S. 294 (1962).

II.

A. The issues of this case can only be understood against the background of economic conditions and governmental policies which existed when Panagra was formed. In the light of the economic situation in air transportation in the pioneering years before 1938, and in the light of the policies "enforced," as the Government's brief puts it (p. 13), by the United States Government through the Post Office and State Departments during that period, competition between United States flag carriers within South America was, in the words of the District Court, "economically

* See pp. 93-94, *infra*.

that, under certain circumstances and on particular routes, air and surface transportation may not be competitive.

B. Even if Grace Line and Panagra were competitive, Grace's ownership of an interest in Panagra would not unreasonably restrain trade. In participating in the formation of Panagra, Grace did not acquire an existing competitive facility; rather, it participated in the creation of a new facility—an extension of its interest in transportation into a new means of transportation. The creation of such a facility, unlike a merger, does not eliminate or lessen competition. In any event, even assuming that Grace Line and Panagra compete to some degree, the record demonstrates that they are not sufficiently competitive so that an affiliation between them could constitute an unreasonable restraint of trade. Moreover, there is vigorous competition from other sources, both with respect to air line service and steamship service, which would deprive the affiliation of any possible restraining effect.

Rather than supporting the Government's argument, the congressional and administrative policies upon which it relies support the view that air carrier-surface carrier affiliation ought not to be generally condemned. Such affiliations have repeatedly been held to be lawful, in the public interest, and to have no restraining effect. Even if there were a policy of the kind the Government describes, the existence of such a policy would not demonstrate the existence of a Sherman Act violation in this case.

Although the affiliation between Grace and Panagra has existed for more than thirty years, the Government has presented no evidence of any restraint imposed by Grace

upon Panagra. Rather, Grace's persistent efforts to develop Panagra's operations, demonstrated by the record, found by the District Court, and recognized by the Government, demonstrate that no restraint has occurred and that none will occur in the future.

ARGUMENT.

I.

The Court has jurisdiction to hear this appeal.

We agree with the Government that the decision in *Brown Shoe Co.* v. *United States*, 370 U. S. 294 (1962) is controlling and that the judgment of the District Court was a final judgment within the meaning of the Expediting Act, 15 U. S. C. § 29. We, therefore, agree that the Court has jurisdiction to hear this appeal.

II.

The participation of Grace in the formation of Panagra never was, and is not now, a combination in restraint of trade in violation of the Sherman Act.

Analysis of the Government's charges must begin with an understanding of the state of development of air transportation in the late 1920s, the problems faced in offering an air transportation service abroad, and the other environmental factors and governmental policies which conditioned the organization and development of such a venture up until 1938. Only when these factors are understood can the Government's attack on the organization of Panagra be evaluated.

impossible." Indeed, the Government concedes that this was so.

B. Grace's participation in the organization of Panagra did not unreasonably restrain trade.

Grace had no unlawful intent or purpose in participating in the formation of Panagra. The Government's contention that the District Court found such an intent is based upon an obvious misreading of the opinion below. The District Court found that Grace participated in the formation of Panagra without unlawful intent, and with the sole purpose of creating a successful pioneering venture in air transportation. These findings are not clearly erroneous but find ample support in the record.

Since competition between U. S. flag carriers was economically impossible, the formation of Panagra did not prevent competition between Pan American and Grace and did not restrain trade. Rather, since the complementary resources of Pan American and Grace made possible the development of a venture which it was in the interests of the United States to promote, the formation of Panagra was economically justified and strongly advanced the public interest.

Nor was any allocation of territories between Panagra and Pan American implicit in Panagra's formation. As this Court held in *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593 (1951), competition between affiliated companies is not only possible and consistent with the affiliation, but, indeed, such competition may be required by the Sherman Act.

III.

A. Shortly after the formation of Panagra an understanding developed between Grace and Pan American whereby Panagra was to operate down the west coast of

South America and Pan American was to operate along the east coast of South America. This arrangement was based upon the economic situation existing prior to 1938 and the policies of the Post Office and State Departments during that period, under which competition between United States flag air lines in South America was not possible. It reflected and was defined by the contract routes granted to Panagra and Pan American by the Post Office Department during that period. There was never any understanding between Pan American and Grace limiting possible future operations of Panagra north from the Canal Zone. The east-west zoning arrangement ceased to exist in 1938 when the expiration of Panagra's ten-year mail contract and the enactment of the Civil Aeronautics Act fundamentally altered the situation and made competition possible. Grace never relied upon or recognized any zoning arrangement after that time. On the contrary, as the Government concedes, Grace made persistent efforts subsequent to 1938 to extend Panagra's routes both north from the Canal Zone and within South America. The extensions sought by Grace were blocked by Pan American's negative control.

B. Judge Murphy correctly concluded that the east-west zoning arrangement was lawful during the period when it existed. The arrangement did not restrain or prevent competition since competition was at that time "economically impossible." Even if a restraint had been shown, the Government has not proved its case because it has failed to demonstrate that the east-west zoning arrangement unreasonably restrained the foreign or domestic commerce of the United States. In any event, since the agreement went out of existence in 1938, and since Grace, from 1938, has persistently taken action completely inconsistent with any such agreement, no relief against Grace is warranted.

> in which each would have 50 per cent stock ownership, together with their division of markets and other incidental arrangements, was, in its inception and operation, a violation of the Sherman Act requiring a decree ordering both Pan American and Grace to divest themselves of the stock" (p. 2).

The Court may regard the Government's tardy effort to challenge the original combination of Pan American and Grace in Panagra on the variety of grounds set out in its brief, in addition to challenging the allegedly unlawful allocation of territories and the affiliation of Grace Line's steamship interests with Panagra's air service, as a changing of "the substance of the questions already presented" in the Notice of Appeal in violation of Rules 10 and 15 of the Rules of this Court.*

If, however, the Government's attack upon the original combination of Pan American and Grace in Panagra is entertained, it must be rejected.

In this portion of our brief we will demonstrate that in participating in the formation of Panagra Grace had no intention or purpose of suppressing or restraining competition, but rather intended to participate actively and vigorously in the development of a pioneer venture in aviation. We will also demonstrate that no allocation of territories or other restraint of trade was implicit in the formation of Panagra and that the formation of Panagra did not unreasonably restrain trade by preventing Pan American

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* Rule 10-2 of the Rules of this Court restricts the Government to "the questions set forth in the notice of appeal or fairly comprised therein . . ." Rule 15-1(c)(1) provides that "Only the questions set forth in the Jurisdictional Statement or fairly comprised therein will be considered by the court." Rule 15-1(c)(2) further provides that the Jurisdictional Statement ". . . may not raise additional questions or change the substance of the questions already presented."

and Grace from competing in air transportation along the western coast of South America.

1. Grace had no unlawful intent or purpose in participating in the formation of Panagra.

The Government's argument that the purpose underlying the formation of Panagra was to protect Pan American and Grace from competition is based entirely on an obvious misreading of Judge Murphy's opinion in the District Court. At pages 31 and 32 of its brief the Government quotes extensively from statements by Judge Murphy to the effect that Grace and Pan American appreciated the dangers of competition between themselves, that Grace was aware of the competitive potential of air transportation, and that the parties appreciated the protection a combination of their interests on the west coast would afford against the competition of an independent carrier. The Government seeks to construe these statements by the District Court as findings of fact. Indeed, while the Government states that the "undisputed evidence" shows that "the purpose underlying the formation of Panagra was to protect Pan American and Grace from competition" (p. 31), it refers to no such evidence, but only to the supposed findings of the District Court.

A reading of Judge Murphy's opinion unmistakably reveals that the remarks relied upon and quoted by the Government do not constitute findings or conclusions and do not even represent the views of the Judge. Judge Murphy prefaces the part of his opinion from which the Government quotes with the statement that the principal dispute between the parties "relates to the inferences which we are asked to draw from the evidence" (R. 5388). Judge Murphy then says "The argument for the inference of con-

Judge Murphy's findings were amply supported by the evidence; indeed, there is no evidence to support the Government's contrary contentions.

The Government, in its brief, points out that Grace "'regarded aviation as simply a new development in transportation'" (Brief, p. 34), apparently attaching some stigma to this attitude In point of fact, Grace's interest in this "new development" was a proper business instinct which it proceeded to pursue with vigor and imagination. As Mr. Patchin, a Grace manager at that time, stated in 1928 in the document from which the Government quotes:

> "... we regarded aviation as simply a new development in transportation and as we had always been interested in transportation to the West Coast of South America we were following the matter closely ..." (G-5, R. 340).

In his testimony before the Civil Aeronautics Board in Docket 779* Mr. Patchin described Grace's attitude as follows:

> "... I felt that the flight of Colonel Lindbergh across the Atlantic established aviation as transportation. ... W. R. Grace & Company had always been interested in transportation. I felt it would be an excellent line of activity for the Company, a splendid thing for the development of the South American countries with which we were doing business and in which we were doing business" (G-170, R. 5304).

The documentary record is replete with evidence dating back to the early years of Panagra which reflects Grace's active interest in the vigorous development of Panagra's

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* The Panagra Terminal Investigation, instituted on September 10, 1942.

operations. As Mr. Roig wrote to Mr. Patchin on October 4, 1930:

> ". . . I am more than ever convinced that this business, if our partners will let us run it in a business-like way, will be a very important success . . ." (WRG-32, R. 4682).

In a similar vein the Grace agency in Lima wrote on November 7, 1928 to the various sub-agencies in Peru:

> "This service, we hope will be the nucleus of a through service between the United States and Chile and there is consequently the possibility that the service will be augmented in the future. The success of the primary operation will naturally depend on keeping expenses to a minimum and obtaining as much business as possible" (WRG-12, R. 4642).

Grace instructed its personnel in South America to make every effort to promote the development of the new enterprise. For example, Mr. Cogswell of Grace, in a letter dated September 4, 1928, said:

> "We trust that our houses in Peru will use every effort to stimulate interest in this business and be of all assistance possible" (G-16, R. 358).

Pan American's motive in participating in the joint venture in these early days was apparently the same, *i.e.*,

> ". . . because [Pan American] could contribute to it a knowledge of the air business, whereas [Grace] could contribute a knowledge of South American business, and that working together we should be able to develop a successful enterprise" (G-54, R. 486; see also G-30, R. 412; G-13, R. 349-50).

At least, as the document quoted indicates, this was Grace's understanding of Pan American's motive.

The record demonstrates that Grace was interested in aviation along the west coast of South America as a new development in transportation in an area in which it had long been interested, both as owner of Grace Line and by virtue of its extensive trading and agency operations in that area. The record also demonstrates that Grace embarked upon this new enterprise with the idea of actively and aggressively promoting it rather than with any idea of strangling or suppressing it to enhance Grace Line's steamship operations.

It will be demonstrated in later sections of this brief that Grace's active efforts for the promotion and development of Panagra have continued through the years and up until the present time. For the moment, however, it is sufficient to note that, in participating in the organization of Panagra, Grace's sole interest was to initiate an enterprise which would actively and effectively develop this new means of transportation.

2. The formation of Panagra did not eliminate competition between Pan American and Grace.

The Government next argues that Pan American and Grace were potential competitors and that their joint formation of Panagra prevented competition between them.

When the Government asserts that Pan American and Grace were potential competitors it bases this assertion only on a suggestion that there was "a substantial likelihood" that both Pan American and Grace would enter into the air transportation business in western South America.

In point of fact, there is no basis for such a conclusion. The evidence upon which the Government relies

shows only that Grace kept itself informed of the activities of certain companies which were becoming active in west coast air transportation and that Grace had given some study to possible west coast routes (Brief, p. 34). This does not, however, demonstrate that there was a "likelihood" that Grace would have, in fact, organized a company to engage in air transportation on this route if it had not been able to work out a cooperative enterprise with Pan American. Grace had no previous experience in air transportation and it might well have concluded that the obstacles and difficulties of such a venture made the risks too great. In any event, it is sheer speculation to resolve the question one way or the other.

On the Pan American side, it is clear that it had no intention of embarking on this venture by itself and felt that, without Grace's participation, it would not be able to do so. In a memorandum dated May 23, 1928, Patchin, of Grace, quoted Hoyt, speaking for Pan American, as saying that "if we [Grace] were disposed to go ahead on our own, he would be inclined to stand aside and not compete as he felt we would be in better position than anyone else to undertake it" (G-5, R. 340). Moreover, in submitting Panagra's bid for the air mail contract on the west coast of South America Juan Trippe of Pan American stated that "without the cooperation of the Grace organization . . . no American Air Transport Company could economically survive in this terri y" (G-30, R. 415).

Apart from these evidences of the specific intent of the parties, however, the above description of the conditions and governmental policies affecting air transportation on this route prior to 1938 (pp. 14-21, *supra*) demonstrates the impossibility of competition between Pan American and Grace.

It is quite clear that the Postmaster General might have awarded an air mail contract for the west coast route to Pan American or to Grace, but never to both. As has been demonstrated above, the party who failed to secure the contract would not have been able to survive. The possibility of competition between Pan American and Grace, which the Government postulates, did not exist. Indeed, the Government concedes that this is true when it says in its brief:

> ". . . it may be that only one of the two parent companies would have been able to obtain a government subsidy, and hence that only one would have actually begun to operate a west coast air line in 1928 . . . " (Brief, pp. 37-38).

The Government seeks to prevent the collapse of its argument by suggesting that, even if there was no possibility of competition between Pan American and Grace, the formation of Panagra deprived the Government of competitive bidding on the air mail contract. If the only anti-competitive effect of the formation of Panagra to which the Government can point is a reduction of the number of bidders for an air mail contract which was awarded in 1929 and expired in 1938 with the enactment of the Civil Aeronautics Act, its position is weak indeed.

This is not a case where prospective bidders have gotten together secretly to submit a joint bid. One of the principal reasons why the air mail contract was awarded to Panagra was because the Postmaster General took account of the respective contributions which Pan American and Grace could make to the new enterprise. Thus, in awarding the contract the Postmaster General said:

> "This is the most important air mail contract that has yet been awarded. Its importance goes not alone to the financial ability of the bidders but more

> directly and to a far greater degree to their proven and recognized capacity for performing the service contemplated.
>
> "The Pan American Company has filed evidence of extensive preparation for the operation of an air mail route through the countries with which arrangements are necessary. . . . . In addition to this it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly established service by sea along the whole line of the proposed air mail route" (WRG-1, R. 4619).

Indeed, as the Postmaster General observed, the contract was not awarded to the lowest bidder, but rather to Panagra, because of the resources which Grace and Pan American would be able to devote to the new enterprise (WRG-1, R. 4618-20). The award to Panagra was subsequently upheld by the Attorney General's office over the protest of an unsuccessful bidder, and after the Attorney General had examined "the facts disclosed in the very large record" submitted by the Postmaster General, 36 Op. Atty. Gen. 33 (1929).

The Government's final effort to resuscitate its argument is contained in the suggestion that:

> ". . . the joint venture foreclosed the possibility of competition from the losing bidder at some future time when a subsidy would be less important" (Brief, p. 38).

At this point the Government's argument becomes speculative to the point of absurdity. What the Government is apparently suggesting is that two parties may not join their complementary resources to enter a business in which the United States Government will allow only one company to engage because to do so would prevent pos-

foreign mail contracts, *was economically impossible* . . ." (R. 5394; emphasis supplied).

As the material cited above indicates, Judge Murphy's finding was firmly grounded in the record. In 1935, for example, the Federal Aviation Commission reported that:

> "To maintain a safe and efficient air transportation system under existing conditions *demands direct governmental aid.*" (Sen. Doc. 15, 74th Cong., 1st Sess. 1935, p. 47; emphasis supplied.)

Panagra's own history demonstrates that governmental aid was essential to survival. During every year between 1930 and 1938 its operating loss before taking mail pay into account was in excess of $1,000,000, and in 1938 it was $1,305,000 (Exh. PS-6, R. 173, 4528). It is significant that out of 145 air lines which tried to operate without air mail contracts from 1925 to 1940 only one was still operating in 1941. Puffer, *Air Transportation* (Blakiston, 1941) pp. 53-54.

Since it was not possible during this period to operate without government subsidy, and since the policy of the United States Government was to provide such subsidy only to a single carrier in a particular zone, it was obviously not possible for more than one United States flag carrier to operate in any such zone.

Moreover, if a United States flag line sought to operate in competition with the subsidized carrier on a particular route, it would face, not only all of the difficulties of establishing an air line under the adversities which existed during this period, but, in addition, it would be faced with competition from another United States flag line which had enormous advantages not available to it, *i.e.*, governmental subsidy and diplomatic assistance from the State

Department. It is apparent that, once the Postmaster General had awarded an air mail contract on a particular route, no other United States flag line could hope to survive in competition with that carrier.

B. The organization of Panagra did not unreasonably restrain trade; it was an economically sound arrangement which advanced the policies and interests of the United States.

The Government's contentions on this appeal have undergone a considerable metamorphosis since the filing of the Notice of Appeal and, indeed, even since the filing of the Jurisdictional Statement.

In its Notice of Appeal the Government specified as the questions which it was raising, first, the question whether Grace and Panagra illegally combined and conspired with Pan American to allocate territories in air transportation, second, whether Grace monopolized or attempted to monopolize air transportation in Latin America, and, third, whether the affiliation between Grace Line's steamship service and Panagra's air service unreasonably restrained trade (R. 5448).

In its Jurisdictional Statement (p. 2) the Government indicated that it was "not pressing the issue" stated as the second question above and stated the other two questions in substantially the same way in which they were set out in the Notice of Appeal.

In its brief, however, the Government characterizes a restated version of these remaining issues as "subordinate questions" (pp. 2-3). The Government now regards the "ultimate question on the merits" as:

> "... Whether the combination of Pan American and Grace to form an airline (Panagra) operating on, and confined to, the west coast of South America,

spiracy is appealing to a mind bent on finding conspiracy." (*Ibid.*) In the next four paragraphs of his opinion, the paragraphs upon which the Government relies, Judge Murphy proceeds to set out the conclusions which the "mind bent on finding conspiracy" might accept. After doing so, however, Judge Murphy states his own contrary conclusion as follows:

> "We have carefully considered all of the evidence relating to the conspiracy charge and, in our opinion, no such conspiracy existed between Grace and Pan American" (R. 5390).*

After discussing the sound economic reasons which justified the joinder of Pan American and Grace in forming Panagra, Judge Murphy says:

> ". . . we feel constrained to accept those consistent with innocence from among the equivocal inferences permissible from the evidence presented" (R. 5391).

Against the remarks erroneously cited and relied upon by the Government should be set the following statement by Judge Murphy, which does indeed represent his findings and conclusions with respect to Grace's participation in the formation of Panagra:

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* The Government argues (Brief, p. 30, note 13) that the statement quoted above is not a finding of fact but is merely a legal conclusion based upon the "logically prior legal determination" that the "combination" between Pan American and Grace did not violate the Act. A reading of the relevant portions of Judge Murphy's opinion demonstrates the error in the Government's contention. It is plain from the portions of the opinion quoted above that Judge Murphy's determination that there was no conspiracy and no unlawful intent on Grace's part was not a "legal conclusion" based on some "logically prior" determination, but was rather a finding arrived at after Judge Murphy had "carefully considered all of the evidence" and based on "inferences" from that evidence and the fact that the "evidence" did not "make out" an unlawful intent.

> *"We cannot, from the evidence adduced, make out an unlawful intent to restrain aviation competition in the Grace participation in the formation of Panagra,* and the history of Grace's activity in the affairs of Panagra preponderatingly demonstrates that it fostered and fought for Panagra development and expansion. To be sure, Grace sought continuously to control the management of Panagra, and its efforts were crowned with success in 1939. Its desire to control the management can as readily be explained as an aggressive business instinct, intensified in the light of the conflicting, containing attitude of Pan American, as well as from the standpoint of its asserted attempt to monopolize all transportation on the west coast. We are buttressed in our choice of the former in that the record before us fails to disclose any antitrust violations on the part of Grace vis-a-vis Panagra, unless it be *per se* violative of the Sherman Act for Grace to own the stock that it does in that company" (R. 5392-93; emphasis supplied).

The Government's argument, rather than being based upon findings made by the District Court, flies directly in the face of those findings. Judge Murphy, after a careful review of a massive record, concluded that Grace did not participate in the formation of Panagra to protect itself from competition, but rather that it entered upon this enterprise because it "recognized the potential of air transportation in the commercial development of the South American countries" (R. 5392), because it "had a great deal to offer to enhance that development" (R. 5392), and because its joinder with Pan American represented "an economically sound arrangement for the establishment and successful development of American commercial aviation on the western coast of South America" (R. 5391).

sible competition at some future time, if governmental policy changes, and if, at that time, the other party is able to compete with the party who has already become established with the Government's assistance. To state the argument is to reveal its deficiencies.

A word should also be said about the Government's characterization of Grace and Pan American as "powerful firms" and "potentially strong competitors" (Brief, pp. 35, 37). It is easy to make these characterizations now, but it was not so easy in 1928. At that time Grace was completely without experience of any kind in aviation; Panagra was *its first and only* venture in this field. To identify it as a "potentially strong competitor" is to say what it might be now, not what it was in 1928. Pan American, on the other hand, was a far cry from today's colossus. In October 1927 it began operations under its first mail contract (R. 5372-73), and in 1928 it owned three airplanes (R. 5374, note 5).

Apart from the particular facts surrounding the formation of Panagra which justify the organization of the enterprise and demonstrate that it did not restrain trade, the basic proposition upon which the Government's contention is based will not stand analysis. Apparently the Government argues that, whenever there is a "substantial likelihood" that two companies might enter upon a particular venture individually, those companies are barred by the antitrust laws from undertaking the venture together. Nostrums about "preventing the birth of a commerce which does not exist" (Brief, p. 21) are not helpful in assessing the practical consequences of such

a rule. It is difficult to imagine a principle which would be more stultifying of American enterprise abroad.

Virtually every joint venture which is undertaken is begun by parties who were, prior to the formation of the joint venture, interested to some degree in the enterprise which the venture was formed to undertake. Moreover, most joint ventures are formed in situations where each of two or more parties has something to contribute to the venture, as was the case with Panagra. On the Government's theory, the very fact that each of the parties had something to contribute would be evidence of the likelihood of that party's undertaking the venture alone. If the Government's principle were adopted, it is difficult to imagine any economically sound joint venture which would escape condemnation. And, indeed, the sounder and more logical the venture, the greater the risk of condemnation would be.

3. No allocation of territories was implicit in the formation of Panagra.

In seeking to establish some restraining effect of the formation of Panagra the Government next states that an "inescapable implication of the joint venture was a mutual agreement between Pan American and Grace dividing territory so that neither parent company would offer competing air transportation in the territory served by Panagra, and Panagra would not compete in the territory to be served by Pan American" (Brief, p. 34).

This is another of the Government's arguments which flies directly in the face of the explicit findings of the District Court. Judge Murphy pointed out in his opinion below:

> "Grace . . . contends that their territorial agreement was entered into *after* Panagra's formation . . ." (R. 5396) (emphasis by the Court).

of Panagra would be contrary to the findings of the District Court and the evidence in the case, and would ignore this Court's rulings in the *Timken* case.

4. The formation of Panagra was economically justified.

In holding that there was no illegality in the joinder of Grace and Pan American to form Panagra Judge Murphy found as follows:

> "The joinder of Grace and Pan American of their complementary facilities was a natural and mutually advantageous combination, and an economically sound arrangement for the establishment and successful development of American commercial aviation on the west coast of South America. Grace had the established branches and agencies on the west coast and all the facilities used in connection with the operations of the steamship line that could be used to such advantage in connection with the new airline operation. Grace also had widespread commercial contacts, a respected trade name and considerable influence in the countries along the proposed route. Pan American was further advanced than any other American company in the carriage of foreign air mail, and had the technical aviation skill which Grace lacked at that time. The union of their physical and technical resources assured the maximum possibilities of success in instituting and carrying on a pioneering venture, useful to the community, which did not theretofore exist" (R. 5391-92).

It is submitted that these findings by Judge Murphy accurately sum up the considerations which led to the formation of Panagra. Judge Murphy's findings, and the evidence which supports them, make it plain that the formation of Panagra was not a device to restrain competition but was rather an economically justified business relation-

ship, dictated by the complementary experience and facilities of the two participants in the enterprise, and essential to the development of United States flag air transportation on the west coast of South America in those early days.

It ill behooves the Government at this late date to argue that when Grace embarked upon its venture with Pan American it violated the Sherman Act. The Government concedes that Grace had an important contribution to make to the enterprise (Brief, pp. 36-37). The Government concedes that the union of Grace and Pan American in Panagra resulted in a company which was best able to meet the challenge of foreign competition and develop a venture important to the interests of the United States (Brief, p. 38). The Government concedes that the United States "enforced" a policy which permitted only a single United States flag air line to operate on the western coast of South America (Brief, pp. 13, 37-38, 67). The Government cannot help but concede that Pan American and Grace joined in this venture with the aid, assistance and encouragement of various branches of the United States Government. The Government cannot help but recognize that the formation of Panagra and its operations promoted the national interest by enabling an American carrier to participate effectively in the development of this route.

Now, after the venture has been operating for more than 30 years and after it has succeeded in building a strong United States flag air line, Grace is told that its participation in the enterprise was unlawful from the very beginning. The illegality which the Government charges does not flow from any activities by which Grace, over the course of the intervening 30 years, has restrained competition or otherwise injured the interests of the United States. Rather, the claimed illegality lies in Grace's decision in 1928 to join in the venture in the first place. The Government says that,

It has specifically been held, for example, that a practice which might otherwise be condemned is not unlawful where, as here, it is incident to the creation of a new industry. *United States* v. *Jerrold Electronics Corp.*, 187 F. Supp. 545, 556-57 (E. D. Pa. 1960), *aff'd*, 365 U. S. 567 (1961); *United States* v. *E. I. DuPont de Nemours & Co.*, 118 F. Supp. 41, 219-20 (D. Del. 1953), *aff'd*, 351 U. S. 377 (1956); *General Talking Pictures Corp.* v. *American Telephone & Telegraph Co.*, 18 F. Supp. 650 (D. Del. 1937). Practices which superficially appeared to fall within a category of *per se* illegality have, on a variety of other grounds, been held to be lawful in the particular context in which they occurred. *E.g.*, *United States* v. *Morgan*, 118 F. Supp. 621 (S. D. N. Y. 1953); *United States* v. *National Football League*, 116 F. Supp. 319 (E. D. Pa. 1953); *Union Circulation Co.* v. *Federal Trade Commission*, 241 F. 2d 652, 656-57 (2d Cir. 1957); *United States* v. *Insurance Board of Cleveland*, 188 F. Supp. 949, 954-55 (N. D. Ohio 1960). Indeed, this Court has itself held that price fixing, ordinarily condemned out of hand, may be lawful in a particular context. *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238 (1918).

Special caution in applying a *per se* rule is warranted in a situation where foreign commerce, or operations outside of the United States are involved. *Report of the Attorney General's National Committee to Study the Anti-trust Laws* (1955) p. 83; Fugate, *Foreign Commerce and the Anti-trust Laws* (1957) pp. 344-46; Oppenheim, *Federal Anti-trust Legislation: Guideposts to a Revised National Anti-trust Policy*, 50 MICH. L. REV. 1139, 1176-77 (1952).

It is submitted that the arrangement which Judge Murphy found here had no anti-competitive effect and was not unlawful.

The agreements which this Court has struck down as unlawful divisions of territory have been agreements which prevented competition which, but for the agreements, would have existed. Here the lack of competition did not result from the agreement of the parties; rather, it resulted from the economic conditions and governmental policies within the framework of which the parties operated.

As Judge Murphy found, it was during the period prior to 1938 "economically impossible" for two U. S. flag airlines to parallel each other's routes (pp. 14-21, *supra*). Indeed, the Government concedes that the Post Office Department "*enforced* a 'no-parallel' policy" (Brief, p. 13; emphasis supplied) during this period and concedes further that it was a consequence of this policy that "only one [U. S. flag airline] would have actually begun to operate a west coast airline" during the period when the policy was enforced (Brief, pp. 37-38). Against these facts it is plain that it was not any zoning agreement which prevented competition. Competition was not possible, in any event, and the arrangement merely drew in the details of the demarcation line between the operations of Panagra and Pan American.

It has been universally recognized both by the courts and the commentators that no unlawful restraint of competition can exist where, by virtue of governmental policy or economic factors, the competition allegedly restrained is impossible and cannot exist. This Court recognized the validity of such a principle in *Parker* v. *Brown*, 317 U. S. 341 (1943) where it held that a program controlling the production of raisins did not violate the Sherman Act because the restraint was "imposed" by the State of California as "an act of Government" which the Sherman Act was not intended to prohibit. Similarly, if the Post Office and State Departments adopt and enforce policies which,

These arrangements had no obvious impact on the foreign commerce of the United States and the Government has demonstrated none.

In *Alfred Bell & Co. Ltd.* v. *Catalda Fine Arts Co.*, 191 F. 2d 99 (2d Cir. 1951) the court ruled that an antitrust violation was not made out where the restriction "was meant to have, and did have, at most, only an incidental, peripheral, reference to sales in the United States of America" (191 F. 2d at 105-06). In the same vein, the Report of the Attorney General's National Committee to Study the Antitrust Laws took the view that:

> "We feel that the Sherman Act applies only to those arrangements between Americans alone, or in concert with foreign firms, which have such substantial anti-competitive effects on this country's 'trade or commerce . . . with foreign nations' as to constitute unreasonable restraints" (p. 76).

See also *United States* v. *National Lead Co.*, 63 F. Supp. 513, 524-25 (S. D. N. Y. 1945), *aff'd*, 332 U. S. 319 (1947); *United States* v. *Aluminum Company of America*, 148 F. 2d 416 (2d Cir. 1945).

The Government has failed to show that Grace participated in an arrangement which unreasonably restrained competition anywhere. More particularly, the Government has failed to show any possible impingement on the foreign or domestic commerce of the United States. Judge Murphy correctly held that no unlawful agreement was shown.

D. No relief against Grace is warranted.

Even if the Government had demonstrated that the zoning arrangement which existed prior to 1938 was an illegal agreement to divide territories, it would by no means follow that present relief, either injunctive or otherwise, is warranted against Grace.

As this Court observed in *United States* v. *Oregon Medical Society*, 343 U. S. 326 (1952):

> "It will simplify consideration of such cases as this to keep in sight the target at which relief is aimed. The sole function of an action for injunction is to forestall future violations. . . .
>
> ". . . We agree with the trial court that conduct discontinued in 1941 does not warrant the issuance of an injunction in 1949" (343 U. S. at 333-34).

If this is so, then certainly the existence of an agreement which expired in 1938 and has not been relied upon or enforced by Grace since that time does not warrant present relief.

Moreover, the complete superfluity of relief against Grace is evidenced by Grace's conduct over the last 30 years. Both the District Court and the Government have recognized Grace's vigorous action to develop Panagra's routes and resist Pan American's suppression during that entire period. As Judge Murphy found:

> "If anything has been established it is that Grace has been the only one of Panagra's two partners that has persistently and continuously attempted to improve its service and extend its routes to the United States" (R. 5429).

There is no reason whatever to anticipate that, once Panagra is released from Pan American's restraining hand, Grace will in any way impede Panagra's logical development or prevent it from competing with Pan American for its rightful position in the Latin American transportation market. Indeed, it is evident that no proponent of Panagra's development more active or vigorous than Grace can be found.

Judge Murphy went on to say:

> "We find that the agreement between the defendants as to spheres of operations and its evolution was substantially in the manner described by Grace" (R. 5398).

The terms and legal consequences of the understanding between Pan American and Grace which was given effect during the first decade of Panagra's existence will be considered hereafter. It is clear, however, that Judge Murphy found no agreement as to spheres of operation and no territorial arrangement implicit in the formation of Panagra. The discussion of the evidence with respect to the arrangement which was arrived at, *infra* at pages 38-58, will make it plain that Judge Murphy's finding was well grounded.

The Government's effort to find an allocation of territories "implicit" in Panagra's formation is belied by the subsequent history of Panagra. Grace certainly never recognized that it was implicit in Panagra's formation that Panagra would not compete with Pan American. In the Government's own words, the period since the late 1930's has been characterized by "Grace's efforts to extend Panagra's operations north of the Canal Zone to the United States, a route which would have brought Panagra into competition with Pan American" (Brief, p. 11).

Apparently what the Government is saying is that, whenever one company has an interest, or at least an interest which gives it negative control, in another company, it is implicit in that arrangement that the parent will not compete with the subsidiary and that the subsidiary will not compete with the parent. Such a principle would make nonsense of this Court's rulings in *Timken Roller Bearing Co. v. United States*, 341 U. S. 593 (1951).

In that case Timken owned 30.25% of British Timken; Dewar owned 25% of British Timken and the remainder of British Timken was publicly owned. Timken also owned 50% of French Timken and Dewar owned 50% of that company (341 U. S. at 595, 601, note 10). This Court did not, however, find that there was any division of territories or agreement not to compete inherent in these affiliations. Rather, the Court found that there were formal agreements among the parties allocating trade territories and that, under the circumstances of that case, these formal agreements were unlawful. Thus, the Court said to the defendants that, not only were the cross-affiliations consistent with competition among the companies, but, indeed, that the companies were required by the anti-trust laws to compete, despite the affiliations.

Even those members of the Court who favored divestiture in the *Timken* case did not do so on the ground that there was any unlawful territorial allocation implicit in the corporate affiliations, but rather on the ground that the interests were obtained as part of a plan to promote illegal trade restraints and, if continued, would provide "the temptation and means to engage in the prohibited conduct" (341 U. S. at 600). This is quite the opposite of suggesting that a prohibited restraint was implicit in the affiliation itself. As Mr. Justice Reed pointed out in his concurring opinion:

> "As there were no findings of fact tending to show violation of the Sherman Act otherwise than through formal agreements of partition of territory, we assume that appellant's conduct was otherwise lawful" (341 U. S. at 604).

Acceptance of the Government's argument that an unlawful division of territory was implicit in the formation

despite governmental encouragement and assistance which enabled Grace to join in that venture, and despite the important service which Grace rendered to the interests of the United States by so participating, Grace ought to have recognized that its participation would violate the Sherman Act and should have stood aside. If the Government had told Grace in 1928 what it tells it now, a United States flag air line might never have become established on the western coast of South America at all.

III.

The temporary and *ad hoc* zoning arrangement which existed prior to 1938 was not unlawful.

Having considered the Government's arguments directed to the inherent illegality of the formation of Panagra and the division of territories alleged to be implicit in its organization, we now turn to the explicit zoning arrangement which formed the basis of the Government's position in the District Court and which raises the first issue stated by the Government in its Notice of Appeal.

The zoning arrangement of which the Government complains can hardly justify the bringing of this suit. As the following discussion will make clear, the only zoning agreement which ever existed expired in 1938, and Grace's actions since that time have been completely inconsistent with the course of conduct which such an agreement would call for. Grace has since 1938 pressed for an expansion of Panagra's activities in competition with Pan American, rather than agreeing to avoid competition. Even during the now distant period when the agreement was operative it affected only activities within South America, unrelated to the foreign commerce of the United States, and, even in that geographical area and at that time, it restrained

no competition because competition was economically impossible.

We will consider first the terms of the agreement and its evolution, as found by the District Court. We will then consider whether the agreement which existed was illegal either *per se* or as an unreasonable restraint of trade and whether any relief against Grace is warranted. Finally, we shall consider certain arguments advanced by Pan American to the effect that the findings of the District Court as to the terms, scope, and duration of the agreement were erroneous.

A. The east-west zoning arrangement.

As Judge Murphy observed in his opinion, there has been a sharp difference between Grace and Pan American with respect to the proper scope of Panagra's operations. At the trial both Pan American and the Government contended that Pan American and Grace had agreed, prior to the formation of Panagra, that Panagra was to be restricted in perpetuity to the west coast of South America.

Grace, on the other hand, contended that the only zoning arrangement ever agreed upon was an *ad hoc* arrangement which developed after Panagra's formation. Grace contended that the agreement was only to the effect that Panagra was to operate in the countries of the west coast through which its mail line ran and that Pan American would operate only on the east coast. Grace contended further that there was never any agreement one way or the other with respect to possible extension of Panagra's line to the United States. Judge Murphy summed up this portion of Grace's contention as follows:

> "... there was no intention one way or the other contemplated *mutually* by them [Grace and Pan American] with respect to possible extension of Panagra's line to the United States" (R. 5396; emphasis by the Court).

Grace also contended that this zoning arrangement arose out of the "no-parallel" policy of the Postmaster General and the air mail contracts awarded pursuant to that policy. Thus, the agreement was related to the 10-year mail contract which was awarded to Panagra and which expired in 1938, and the agreement terminated in 1938 on expiration of that air mail contract, together with the change in policy represented by the enactment of the Civil Aeronautics Act. As Grace said in its trial memorandum (p. 50):

> "It [the east-west zoning arrangement] was described in terms of the routes awarded Panagra and Pan American by the United States. It was further, at least in Grace's eyes, an understanding ancillary both in term and purpose to the development of Panagra, the 'mutual interest', under its ten-year mail contract."

After analyzing the contentions of both parties Judge Murphy found as follows:

> "We find that the agreement between the defendants as to spheres of operations and its evolution was substantially in the manner described by Grace. We accept the version of Pan American, not as respects agreement between it and Grace, but as representing its own intentions for the destiny of Panagra" (R. 5398).

That Judge Murphy regarded the east-west zoning arrangement as not having endured past 1938 is evident from his finding that the arrangement was "consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938" (R. 5398), and from his statement that the agreement was "perfectly consistent" with this country's air transportation policy in "those formative years" (R. 5395).

Although the Government argued at trial in support of Pan American's view of the alleged agreement with Grace, the Government is apparently now abandoning that position. We do not understand that the Government now challenges Judge Murphy's findings with respect to the terms of the zoning arrangement which arose by agreement of the parties. The Government's present reliance on an alleged "implicit" agreement makes this clear (Brief, pp. 34-35).

For present purposes, the significant features of the understanding which the District Court found are, first, that it related only to routes within South America and that there was no mutual understanding with respect to routes between the Canal Zone and the United States and, second, that the agreement was related to operations under Panagra's 10-year air mail contract and ceased to have application subsequent to 1938.

B. The east-west zoning arrangement was not per se unlawful.

The Government's argument directed to the east-west zoning arrangement is essentially one of *per se* illegality. It seeks to make that argument by epithetical description rather than by analysis of the terms, circumstances, and consequences of the zoning arrangement. Thus the Government cites and relies principally upon the dictum in *Northern Pacific Railway Co.* v. *United States*, 356 U. S. 1, 5 (1958), that a division of territories is *per se* unlawful, and other cases condemning price fixing, group boycotts and similar practices.

Neither the *Northern Pacific* case, however, nor any of the other authorities upon which the Government relies, demonstrates that a rule of *per se* illegality can be applied automatically and without any reference to the context in which an allegedly unlawful practice occurs.

as "acts of Government," make competition impossible, the restraint does not violate the Sherman Act.

In *United States* v. *Minnesota Mining & Mfg. Co.*, 92 F. Supp. 947 (D. Mass. 1950), Judge Wyzanski observed that:

> "It is axiomatic that if over a sufficiently long period American enterprises, as a result of political or economic barriers, cannot export directly or indirectly from the United States to a particular foreign country at a profit, then any private action taken to secure or interfere solely with business in that area, whatever else it may do, does not restrain foreign commerce in that area in violation of the Sherman Act. For, the very hypothesis is that there is not and could not be any American foreign commerce in that area which could be restrained or monopolized" (92 F. Supp. at 958).

See also *Report of the Attorney General's National Committee to Study the Antitrust Laws* (1955), p. 83.

It is submitted that Judge Murphy was well justified in concluding that:

> "Consideration of the defendants' agreement or understanding with respect to the respective spheres of operations for the two airlines, when viewed in the light of the conditions under which they undertook, as foreigners, to establish an American system of international aviation in South America, the policy of this government and its stake in fostering their efforts, and the dedication of public monies involved, as well as the relation of the parties one to the other and the nature of the industry itself, compels the conclusion on our part that it involved no violation of the antitrust laws" (R. 5393-94).

The Government finds it difficult to disagree. In its Jurisdictional Statement it said that ". . . it would seem that such an agreement ceased to be valid no later

than 1938, when the Civil Aeronautics Act subjected both Pan American and Panagra to a detailed regulatory scheme under which their entry into new markets required prior government authorization" (p. 18). As has been demonstrated above, Grace participated in no zoning agreement subsequent to 1938. The Government apparently agrees with Judge Murphy that the agreement was valid during the period when it existed.

C. The Government has not shown an unreasonable restraint of the domestic or foreign commerce of the United States.

If the Government's argument of *per se* illegality is rejected, then no other argument remains. For the same reasons which make *per se* condemnation improper, the zoning arrangement cannot be found to be an unreasonable restraint.

Moreover, the Government has failed to demonstrate that the zoning arrangement had any restraining effect on the foreign or domestic commerce of the United States.

The only instances in which either Pan American or Panagra successfully relied on the east-west zoning arrangement were in the late 1920's and early 1930's when an arrangement was worked out for Panagra to handle the through and local traffic in Argentina between Mendoza and Buenos Aires while Pan American's subsidiary Alas (Wings) handled other local traffic (G-63, G-64; R. 507-09; G-83, R. 535-38; R. 5396), and in 1930 when Grace objected to Pan American's subsidiary operating between Mendoza and Santiago (G-67, R. 512-13; G-68, R. 514; R. 5396).*

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* In other instances the agreement was invoked, but without effect. Pan American objected to Panagra's instituting a route through Bolivia to Buenos Aires, but the route was nevertheless instituted (R. 5397). Pan American also objected to Panagra's flying through the interior of Colombia by way of Medellin or Cali, but the Cali stop was ultimately approved (R. 5397).

E. The scope, terms and duration of the zoning arrangement were as found by the District Court.

While the Government apparently does not challenge the District Court's findings as to the terms and duration of the zoning arrangement which developed between Grace and Pan American,* Pan American does.** It is therefore appropriate to consider the evidence upon which Judge Murphy relied and the contentions advanced by Pan American.

Both the *ad hoc* and temporary nature of the arrangement and its east-west orientation emerge clearly from a contemporaneous memorandum dated March 26, 1937 and signed by Harold Roig of Grace. That memorandum provided in part as follows:

> "In the early days of Panagra and before Pan American had purchased Nyrba, it was felt that in view of the general relationship between Panagra and Panair and the interest of Panair in Panagra, there should be some general understanding as to the respective sphere of activity of the two companies. A gentlemen's agreement was accordingly reached that Panagra's activities would cover the West Coast of South America and Pan American the East Coast and that in respect of the Argentine, Panagra's only interest would be in the line between Mendoza and B. A. and thence to Montevideo. This was definitely a gentlemen's agreement covering the respective ideas of policy as they existed at that time. It was not contemplated that this understanding was not subject to change when it suited the mutual interest or that in the event of such change money payment should be required by one company to the other as a condition to such change" (G-123, R. 589).

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* The Government does, of course, as is noted above (pp. 33-36), contend that there was a broader agreement *implicit* in the formation of Panagra.

** Brief for Appellant Pan American World Airways, Inc. in No. 23 (hereinafter referred to as "PAA Brief") pp. 9-23.

Pan American also recognized the temporary nature of the arrangement and its relation to Panagra's 10-year mail contract. In a letter dated April 8, 1931 from Juan Trippe, President of Pan American, to Panagra Mr. Trippe said:

> "... it was understood by all parties that our Company was to retain full rights to operate air transport lines in the eastern or central part of South America; that Pan American, *during the term of your United States mail contract*, would use your services on the western coast of South America and your present Trans-Andean route to Buenos Aires, and, except between Buenos Aires and Montevideo, you would use Pan American's services elsewhere in the Argentine and South America, the two companies cooperating in their respective spheres" (G-74, R. 521; emphasis supplied).

It is significant that when the Government enumerates the instances when the zoning arrangement was applied, it adverts to no instance in which Grace recognized or relied upon any such arrangement subsequent to 1938. Thus, at pages 12-13 of its brief the Government refers to instances in 1929, 1930, 1931, 1935 and 1937. The Government also refers to an instance in 1946, but, with respect to that instance, says only that:

> "Pan American, in 1946, relied upon the agreement to object to any service by Panagra to Bogota (R. 633-34)" (Brief p. 12).

Inspection of the document which the Government cites, which is a memorandum dated January 22, 1946 from Mr. Dean of Pan American to Mr. Friendly of Pan American, reveals that this was an instance in which Pan American was resisting pressure for an extension of Panagra's routes, pressure applied by Grace. In another instance referred to at page 40 of its brief, the Government says:

> "When Grace had wished Panagra to extend its service from Lima, Peru, to Rio de Janiero, Pan American would not agree."

References cited by the Government (R. 639-40, 651-52, 1285-86, 5397-98) show that in 1950 and 1951 Grace was strongly pressing Pan American for an extension of Panagra's service from Lima to Rio. The extension was blocked, not by any Pan American-Grace agreement, but by Pan American's negative control and its determination to resist Panagra's extension.

Indeed, while Pan American cited the supposed agreement when it served its own interests, Pan American did not consistently recognize it since, for example, it took the position that its affiliate Panair do Brasil could provide services from Lima to Rio (G-162, R. 651-52).

Grace's own actions, as recognized by the Government, belie any notion that it recognized or adhered to any agreement limiting Panagra's operation to routes south of the Canal Zone. As the Government says, beginning in the late 1930's, the dispute which arose between Grace and Pan American:

> ". . . focused largely on Grace's efforts to extend Panagra's operations north of the Canal Zone to the United States. . . ." (Brief, p. 11).

Judge Murphy's findings and the evidence relied upon, both by him and by the Government, show that the *ad hoc* understanding never barred extension of Panagra's routes to the United States and that even the east-west arrangement was vitiated by the termination of Panagra's mail contract and the enactment of the Civil Aeronautics Act in 1938.

Nor do the contentions advanced by Pan American require any different conclusion. Pan American, in an

attempt to justify its unilateral opposition to the extension of Panagra's routes, argues that it entered into an agreement with Grace which truncated Panagra's routes in perpetuity at the Canal Zone. This argument rests principally on a misreading and misinterpretation of Judge Murphy's opinion and on evidence which says only that, when Panagra was organized, the end immediately in view was the development of the route from the Canal Zone south along the west coast of South America.

Pan American relies heavily (P. A. A. Brief, pp. 12-13, 19, 25), as does the Government, on paragraphs in Judge Murphy's opinion, referred to above (pp. 23-25), which do not purport to be findings but which are Judge Murphy's views as to what the "mind bent on finding conspiracy" might conclude. While Pan American makes an extended effort to suggest confusion and confradiction in Judge Murphy's opinion, a reading of the opinion, rather than Pan American's paraphrases and random quotations, reveals clarity and consistency rather than contradiction.

Turning to the evidence, Pan American grounds its argument that Grace and Pan American agreed to a perpetual confinement of Panagra's routes to the west coast of South America principally on the exchange of letters which resulted in the formation of Panagra (R. 5377-78, note 7; P. A. A. Brief, p. 11). Those letters did, of course, refer to the inauguration of a through mail service from the Panama Canal to Valparaiso, Chile. This was the route for which the Postmaster General was expected to accept bids. This reference, however, to the immediate objective of the venture by no means embodied an agreement between the parent companies that, whatever the future requirements for a logical development of the company, it would always be limited to the route described. Indeed, despite

this reference to Valparaiso, Panagra's route was subsequently extended to Buenos Aires.

Pan American seeks to buttress its argument by stating that:

> ". . . Panagra was created for the specific and only purpose of being a *connecting* carrier with Pan American at the Canal Zone, and to serve with Pan American as a *complementary* carrier to supply together air transportation from the United States to South America, . . ." (P. A. A. Brief, p. 17).

The references cited by Pan American, however, with one exception, indicate only that the establishment of the west coast route was the immediate concern when Panagra was organized. The exception is a statement by R. G. Ferguson, Treasurer of Pan American, in his testimony in the District Court that:

> ". . . the objective of Panagra . . . was to operate a connecting line between the Canal Zone and Buenos Aires" (R. 216-17).

Apart from the fact that this was obviously a self-serving statement made in the course of the trial, Mr. Ferguson admitted that he knew the earlier history of Panagra, not first hand, but only through the testimony in C. A. B. Docket 779 (R. 216).

The next bit of evidence from which Pan American seeks to infer the agreement for which it contends is an exchange of memoranda between Messrs. Iglehart and Roig of Grace in March of 1937 (P. A. A. Brief, pp. 21-22; G-118, R. 582-84). The documents do not support Pan American's argument. In that correspondence Iglehart was suggesting that Grace itself institute a direct service from New York through to Buenos Aires (G-118, R. 582-83).

Iglehart contemplated this action as a means of meeting Pan American's threat to back its affiliate Scadta in going to Guayaquil or Quito in Ecuador. The breaches of agreement to which Roig was referring in speaking of meeting "one breach with another" were Pan American's breach in going to Ecuador in competition with Panagra on the west coast of South America and the breach which would exist if Grace instituted a service in Panagra's area down the west coast of South America. In Roig's view at that time, which was prior to the enactment of the Civil Aeronautics Act and prior to the expiration of the ten-year mail contract, both Pan American and Grace were obliged to refrain from instituting service parallelling Panagra's routes on the west coast of South America. That this is what Roig had in mind is apparent from his statement that the question whether it suited to meet one breach of agreement by threatening another might depend on:

> "whether we preferred to scrap Panagra at the expiration of the present mail contract and form a company of our own to compete with Panair on the new contract" (G-119, R. 584).

If Panagra was to be scrapped in any event, there would be less objection to instituting the proposed Grace service.

It is apparent that this exchange of memoranda in no way suggests that Pan American and Grace had agreed to limit Panagra in perpetuity to routes south of the Canal Zone.

Pan American next seeks to derive an agreement barring Panagra from extension to the United States from the so-called "management agreement" whereby a designee of Grace was placed in charge of the management of Panagra in 1939 (P. A. A. Brief, p. 17). Pan American says of this agreement that it provided that an application for extension of Panagra's routes to the United States:

> ". . . should be made only if Pan American's connections with Panagra at the Canal should become inadequate" (P. A. A. Brief, p. 17).

The agreement contained no such limiting provision.

The management agreement did specifically provide that if Pan American failed to provide adequate connecting service it:

> "will cause its directors on the Board of Panagra to take such action as will permit Panagra's applying to the C. A. A. for a certificate to operate this connecting service . . ." (G-190, R. 729).

The agreement by no means indicated that these were the only circumstances in which Panagra could apply for a route to the United States nor was there anything in the agreement which barred, either directly or by implication, Panagra from making such application. Pan American's brief seeks to distort an affirmative obligation to act in a given circumstance into a negative understanding that Pan American was free to veto competition by Panagra in all other circumstances.

Later on in its brief Pan American makes a similar argument with respect to the Through-Flight Agreement entered into in 1946 (P. A. A. Brief, pp. 61-72). Pan American argues that embodied in the Through-Flight Agreement and the concomitant Parent Company Agreement was an understanding that Panagra was "under obligation to continue for the term of the agreement with through flight arrangements instead of a route of its own" (P. A. A. Brief, p. 62).*

* From this Pan American goes on to argue that the CAB approved of an agreement barring Panagra from extending its routes and that Pan American's blocking of such extension was, therefore, immunized from the antitrust laws.

Pan American's contention is plainly inconsistent both with the agreements submitted to the CAB and with the testimony before the Board with respect to the terms of those agreements.

The only agreements submitted to the Board were the Parent Company Agreement (G-267, R. 892 *et seq.*) and the Through-Flight Agreement (PAA-2, R. 1859 *et seq.*). Roig of Grace testified that the only agreement was "in these papers" (PAA-420, R. 4048) and that there was no agreement "other than what is in print here (indicating)" (PAA-420, R. 4110).

A reading of the agreements reveals that there is no provision in either one to the effect that Pan American, in order to protect itself from competition, may prevent Panagra from submitting an application to the Board for its own route. The only provision which touches upon application by Panagra for its own route is paragraph 5 of the Parent Company Agreement (G-267, R. 896). It is there provided that in the event of transfer, abandonment or cancellation of Pan American's route certificates "Pan American will consent" to Panagra's making application. The testimony before the Board was that this provision settled the question of a deadlock in the Panagra board "only in respect of this one situation referred to in that paragraph. It has no relation to any other situation that might arise" (PAA-420, R. 4047).

This provision imposed an affirmative obligation on Pan American effective in one circumstance. It did not relieve Pan American of duties otherwise owed by it as a Panagra stockholder nor of any prohibition imposed upon it by the Sherman Act as a Panagra competitor. If Pan American had desired to include in the agreement a provision barring Panagra from extending its routes to the United States or authorizing Pan American to vote against such extension,

its experienced counsel could easily have done so. No such provision was included.

The agreement submitted to and approved by the Board accomplished only certain limited purposes: (a) Pan American agreed to charter "at the request of Panagra" Panagra planes over certain Pan American routes (which in effect has meant only the Canal Zone-Miami route) (PAA-2, R. 1860); (b) Pan American agreed to maintain Panagra planes, to train Panagra pilots, and to act as sales agent, with certain safeguards designed to protect Panagra (R. 1864-68); (c) Pan American and Grace agreed not to interfere with the performance of the through-flight agreement "in accordance with its terms" and to dismiss the litigation pending between them (G-267, R. 893, 896).

None of these provisions supports an inference that Pan American could, for its own anti-competitive purposes, prevent Panagra from applying for its own routes. It is clear that an agreement by Pan American to charter planes over the Canal Zone-Miami route "at the request of Panagra" leaves the option in Panagra to apply for its own route if it desires to do so. It is also clear that a through-flight arrangement over this route has nothing to do with possible applications by Panagra for routes to other points, such as New York or the west coast of the United States, applications which Panagra's management later proposed that Panagra make, but which Pan American blocked (G-1131, G-1134, G-1135; R. 1662, 1669, 1673). Finally, it is clear that the dismissal of litigation pending at one point in time, did not, in the absence of further agreement, warrant a conclusion that either Grace or Panagra renounced for all time the right to press for an extension of Panagra's own routes.

The testimony about the agreements supports the inference which the agreements themselves require.

The Pan American testimony was:

> "Q. Now, Mr. Friendly, do you understand, as a result of contracts A and B, that Panagra is prevented from applying for a route to the United States in its own name? A. No." (R. 4175).
>
> • • • • • •
>
> "Q. Mr. Friendly, in response to a question by Mr. Schneider on cross-examination, I understood you to say that there was nothing in the agreement involved in this proceeding to prevent Panagra from applying for an independent franchise to enter into the United States; is that correct? A. That is right.
>
> "Q. I would like to know whether there is any understanding outside of the agreement now involved in this proceeding which would so prevent Panagra from applying? A. There is no understanding whatever in regard to Panagra's applying or not applying. Panagra can apply at any time if its board of directors so authorized" (PAA-420, R. 4185).

Mr. Friendly suggested that there was an implication that Grace would not agitate for a Panagra extension (PAA-420, R. 4175), but for the content of this implication Mr. Friendly adopted the Roig testimony as "undoubtedly better" (PAA-420, R. 4176), and this adoption was repeated (PAA-420, R. 4186).

In the testimony adopted by Mr. Friendly, Mr. Roig expressed his *hope* that the matter would not come up again and he expressly denied that there was an understanding that Panagra would not seek to come from the Canal Zone to the United States:

> "Q. Does that imply that the original extension is no longer contemplated, and is not to be sought? A. Yes.
>
> "Q. By Grace management? A. It implies that, yes. It doesn't so expressly provide, but obviously this is a substitute.

"Q. That from here on out those who run the affairs of Panagra have an understanding that Panagra will not seek to come from the Canal Zone to the United States. A. I did not so testify, and that is not the fact. The only agreement between us on that point is in these papers.

"Q. You said it settled it. A. No. I said it was a fair implication. After all, you don't keep on running after the trolley after you got aboard, and we have accepted this, at least for the moment, and as far as I can see, for a good long time. I hope so.

"Q. For 99 years. A. I hope so, as a settlement of this controversy" (PAA-420, R. 4047-48).

Thus, there was no understanding, express or implied. There was merely the "hope" that the 1946 agreements would obviate, "at least for the moment" and as Mr. Roig hoped "for a good long time," the necessity of again presenting the question of Panagra route applications.

The plain fact is that the agreements were completely silent as to Panagra's right to apply for its own routes. There was no agreement which barred Panagra from applying for its own routes or which barred Grace from pressing for such applications if it later appeared advisable, or which gave Pan American the right to veto the making of such applications in order to protect its own competitive position.

Neither in connection with the formation of Panagra, nor in the management agreement of 1939, nor in the Through-Flight agreement of 1946, nor at any other time, did Grace ever enter into an agreement barring Panagra's extension north of the Canal Zone. Judge Murphy's findings as to the limited temporal and geographical scope of the east-west zoning arrangement are not clearly erroneous. On the contrary, they are solidly grounded in the record.

IV.

The District Court correctly held that the restraints imposed upon Panagra were unilaterally imposed by Pan American pursuant to its unlawful attempt to monopolize and its monopolization; those restraints will be remedied by divestiture of Pan American.

While Grace disagrees with some of the Government's charges of restraint of trade, it does not contend that no restraint of trade has been shown in this case. With respect to the Government's contentions that competition in United States foreign commerce in air transportation between South America and the continental United States has been restrained (Brief, pp. 43-47), Grace disagrees only with the Government's position with respect to the source of the restraint. Grace agrees with the District Court that competition has been unlawfully restrained by the confinement of Panagra to South America and the blocking of any extension of its routes to the United States. It is Grace's view, however, that this restraint is not attributable to any action of Grace or to any agreement in which Grace participated. Rather, the restraint is attributable to Pan American's unlawful action in blocking Grace's repeated efforts to secure for Panagra the route extensions which would have completed its development.

The source of the restraint is apparent from the Government's own description of it:

> "Pan American used its negative control over the Panagra Board of Directors to block Panagra's applications to the Civil Aeronautics Board for an extension to the continental United States" (Brief, p. 44).

In this respect, the Government agrees with the findings of the District Court that:

> "Pan American blocked Panagra's independent entry into the United States-South American market in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States, and bound for points on Panagra's west coast routes" (Brief, p. 43; R. 5405).

Pan American seeks to shift the responsibility for the problem by suggesting in its brief that:

> ". . . it was Grace, not Pan American, whose agitation and aggrandizement caused the friction which prompted the Government to institute this action to free Panagra from its divided ownership" (P. A. A. Brief, p. 6).

Apparently what Pan American means is that Grace caused friction by persistently pressing for the route extensions which were logical to Panagra's development, which the Civil Aeronautics Board had solicited, and which would have produced competition between Panagra and Pan American.

In view of the unanimous recognition that Grace has been the party responsible for the effort to extend Panagra's routes, little attention need be devoted to a recounting of the history of Grace's efforts. A word should however, be said about several distortions of the record which appear in Pan American's brief.

Pan American first says that " no question was raised" about extending Panagra's routes to the United States prior to 1938 (P. A. A. Brief, p. xvi). The reason why the issue was not raised before that time is obvious. First of all, during the first decade of its existence Panagra was engaged in establishing itself on its routes within

South America. Moreover, by virtue of the "no-parallel" policy of the Post Office Department described above, it would have been impossible for Panagra to seek extension of its route north of the Canal Zone in competition with Pan American prior to 1938, in any event.

Pan American next points to Grace's acceptance of the Through-Flight Agreement in 1946 and suggests that, if Grace was dissatisfied with Pan American's action in connection with Panagra route extensions, it could have "made a showing of the impropriety in Pan American's conduct and have prosecuted the application in the name of Panagra" (P. A. A. Brief, p. 43). Pan American impliedly criticizes Grace for accepting the Through-Flight Agreement rather than pressing in this Court the litigation which had arisen out of its application, in behalf of Panagra, for a route extension. The Government echoes this attitude when it states that the litigation was "quickly settled by the adoption of the through-flight agreement" (Brief, p. 44).

Judge Murphy's findings adequately explain Grace's action:

> "After the Board certificated Braniff, Panagra was faced with two alternatives: (1) to enter into the Through Flight Agreement and immediately improve its competitive position with Braniff, or (2) continue to press for its own certificates. Under the latter course Grace, on behalf of Panagra, would continue the litigation which it had initiated before the C. A. B. in 1941 which was then pending review by the Supreme Court on certiorari to the Second Circuit.
>
> "The outcome of the appeal of course was uncertain, and assuming it were favorable to Panagra, the matter would still then have to return to the C. A. B. for a consideration of the merits of the action. Panagra simply could not afford the delay which this course of litigation would entail. Its eco-

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V.

Grace's 50% participation in the organization and development of Panagra, while owning all of the stock of Grace Line, did not, and does not, unreasonably restrain trade.

The final issue to be considered in this brief, and the second issue raised by the Government in its Notice of Appeal, is the question whether there is an inherent illegality in Grace's participating, as a 50% partner, in the creation and development of Panagra while owning, as a wholly-owned subsidiary, Grace Line Inc. The Government argued below that an affiliation between an air carrier and a steamship line is *per se* unlawful. The Government now characterizes the affiliation as an unlawful horizontal "merger" (Brief, pp. 61 *et seq.*), but makes no attempt to instance any restraint upon either Panagra or Grace Line which in fact resulted from the affiliation. The argument remains one of *per* se illegality.*

This issue divides itself into two subsidiary questions: (1) Are air transportation and sea transportation between the eastern coast of the United States and the western coast of South America reasonably interchangeable services which form parts of the same competitive market, so that an affiliation between the two could have anti-competitive consequences? (2) If these two services form parts of the same competitive market, does the affiliation through Grace's stock interests in fact unreasonably restrain trade?

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* It should be borne in mind that the Government indicated in its Jurisdictional Statement (p. 2) that it was "not pressing the issue" stated in its Notice of Appeal as to whether "Grace attempted to monopolize, conspired to monopolize, and monopolized all or part of Latin American Air Transportation Service."

A. The services rendered by Panagra and by Grace Line are not reasonably interchangeable; they do not constitute parts of the same competitive market.

The findings of the District Court, and the evidence upon which those findings are grounded, demonstrate that the air services rendered by Panagra and the sea transportation offered by Grace Line are not reasonably interchangeable. Judge Murphy's findings are not contradicted by any evidence to which the Government can point nor by any analogy or inference which the Government can properly draw from Congressional and administrative policies in other areas.

1. The legal test.

The Government recognizes in its brief that the test whether two products or services are sufficiently competitive to constitute parts of the same market is answered by determining whether there is a "reasonable interchangeability" between those products or services and a "cross elasticity of demand" between them (Brief, p. 48). This Court spelled out the applicable rule in *Times Picayune Pub. Co.* v. *United States*, 345 U. S. 594 (1953), where it said that:

> "For every product substitutes exist. But a relevant market cannot meaningfully encompass that infinite range. The circle must be drawn narrowly to exclude any other product to which, within reasonable variations in price, only a limited number of buyers will turn; in technical terms, products whose 'cross-elasticities of demand' are small" (345 U. S. at 612, Note 31).

As this Court pointed out in *United States* v. *E. I. DuPont de Nemours & Co.*, 351 U. S. 377 (1956):

the right to agree with those companies to allocate territories and not to compete. If a parent's stock interest in a one-half owned subsidiary does not insulate from condemnation an *agreement* with the subsidiary not to compete, it logically follows that the same stock interest will not insulate from condemnation the parent's overriding of the wishes of the co-owner of the subsidiary and his *coercion* of the subsidiary not to compete pursuant to an attempt to monopolize.

Pan American's next argument, that a sound economic basis existed for its restraint, stumbles first on the fact that Pan American never advanced any such "economic argument" until the trial of this case. Prior to that time Pan American had made the reason for its restraint quite clear. When Grace proposed the extension of Panagra's route to the United States in 1938 the matter was considered at a meeting of the Pan American Board of Directors. The minutes of that meeting, held on December 28, 1938, record the following:

> "It was the sense of the meeting that it would not be in the interest of our [Pan American's] stockholders for our directors to authorize an application by Pan American-Grace Airways, Inc. to extend north of Cristobal in competition with Pan American Airways, Inc." (G-182, R. 711; see R. 5405).

Judge Murphy found, on the basis of ample evidence, that this same purpose motivated Pan American's action during Panagra's entire history (R. 5405). Indeed, even in 1956, when the Panagra management recommended to its directors, on the basis of a detailed management study (G-1139, R. 1677-1850), that an application be made to extend its routes to Miami, New York, and the West Coast of the United States, Pan American, and its nominees on the Panagra board, refused to consider the proposals on the merits and argued only that Panagra was restricted in

perpetuity to its existing route (G-1134, R. 1669-70; G-1135, R. 1673-76). As Judge Murphy said, Pan American's "intentions in excluding Panagra from [the Canal Zone-United States] sector are beyond doubt" (R. 5407).

Judge Murphy also pointed out there has at all times been a proper forum available to hear and assess Pan American's economic arguments (R. 5407). If Pan American believes that an extension of Panagra's route would be economically unsound it can present to the Civil Aeronautics Board any evidence and arguments it may have in opposition to such extension.* Pan American has, however, arrogated to itself the power to make this determination and, by blocking any application by Panagra, has deprived the Board of an opportunity to rule on the matter.**

Finally, Pan American has failed to show that the imposition of relief appropriate to its violation will hamper

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* Pan American states in its answering brief in No. 47 (p. 4) that competition between Pan American and Panagra has at all times been "economically impossible" and that it "would not have been sanctioned by the CAB. . . ." If that is so, one wonders why Pan American has been so adamant in opposing an application by Panagra which, in Pan American's view, the Board would never have granted. It is also significant that, while Pan American now argues that competition between it and Panagra is economically impossible it filed itself, in 1957, a petition with the Civil Aeronautics Board for extension of its routes to points on the West Coast of South America now served by Panagra. C. A. B. Docket No. 8597.

** In view of the irrelevance of Pan American's economic arguments no extended effort will be made here to analyze and meet them. We note, however, that even in economic terms they do not prove what they purport to show. The economic arguments adduced were constructed for Pan American by a retained expert. Cross-examination, we submit, showed basic deficiencies and bias in the expert's analysis. (See, for example, R. 279-81, 288-90, 294-97, 297-301, 302-12.) The lack of significance attached by Pan American to its argument that the Balboa-Miami route was a low density sector is indicated by the fact that, at the time of the trial, Pan American was seeking before the Civil Aeronautics Board to parallel the principal international route of Northwest Airlines which had a similarly low density (R. 281-82). Pan American was doing so because, so it said, its route from the West Coast of the United States via Hawaii to Japan was "antiquated" and "will become more so when the

the CAB in the performance of its functions or disrupt the Latin American route structure.

Pan American seeks to create the impression that the District Court's judgment involves an allocating of routes and other functions which fall within the authority of the Civil Aeronautics Board. Thus, Pan American talks about the Court's deciding "the affiliation of [a] route" (P. A. A. Brief, p. 54), and speaks of the consequences of Panagra being "given a route between the United States and the Canal . . ." (P. A. A. Brief, p. 55). Pan American also complains that the District Court's judgment would have "the consequence of Panagra's becoming a third American flag carrier into Latin America . . ." (P. A. A. Brief, p. 52).

A reading of Judge Murphy's judgment reveals that it does none of these things. The judgment provides merely that Pan American must dispose of its stock in Panagra. Judge Murphy's judgment does not award to Panagra any new route, deprive Pan American of any route, or otherwise alter the Latin American route structure. Nor does that judgment have the consequence of making Panagra a "third American flag carrier into Latin America. . . ." Far from being a "third" carrier, Panagra was the pioneering American flag carrier on the west coast of South America.*

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jets come into the picture" in comparison with Northwest's great circle route to Japan (R. 230-31), a description equally applicable to Panagra's truncated route as compared with Pan American's route from New York to Buenos Aires. Pan American's economic evidence should also be compared with the study made by Panagra's management showing the feasability and desirability of extending its routes to the United States (G.-1139, R. 1677-1850).

* As the Civil Aeronautics Board said in 1958:

"Panagra is to be commended for developing a self-sufficient air transport system in the important Latin American market; and the Board is confident that Panagra will continue to make every effort to strengthen its position as a service carrier" (*Pan American-Grace Airways, Inc., Mail Rates*, Dkt. 6958, findings and conclusions of April 25, 1958 confirmed May 13, 1958).

It is evident that the judgment of which Pan American complains does not create a new airline, increase subsidy requirements, or otherwise impair the capacity of the Civil Aeronautics Board to deal with the question of routes. Judge Murphy's judgment further insured that the divestiture of Pan American would not be disruptive of our Latin American air transportation policy by giving the Civil Aeronautics Board an opportunity to participate in the formulation of the divestiture plan. Far from encroaching on the Board's authority, the judgment, by freeing Panagra so that it can make such applications to the Board as appear to be in its and the public's interest, will enable the Board to determine freely what the public convenience and necessity requires.

Judge Murphy's judgment does not create any problem of route structure which did not exist prior to the entry of that judgment. The judgment merely corrects a problem which has long frustrated the Civil Aeronautics Board, *i. e.*, the problem of freeing Panagra from Pan American's unlawful domination.*

It is submitted that the only unlawful restraint which the record shows is the restraint unilaterally imposed by Pan American and that Pan American's restraint can only be adequately remedied by the divestiture which the District Court ordered.**

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* In the United States-South America Route Case, Dkt. 12895, the Board is presently reviewing the South American route structure. After determining what route structure is likely to be soundest the Board proposes to secure that structure by appropriate "alteration, amendment, modification, suspension, or cancellation in whole or in part" of the certificates of Pan American, Panagra and Braniff. Judge Murphy's judgment does not, of course, affect the Board's authority to make such revisions.

** We do not undertake to discuss the issue of Pan American's position in the relevant market or its enumeration of considerations which, in its view, render divestiture inappropriate. Nor do we consider, beyond what is set out above, Pan American's primary jurisdiction argument. We assume that all of these matters will be dealt with in the Government's brief in No. 23. We are of the view, however, that in all of these areas the findings and conclu-

> ". . . one can think of building materials as in commodity competition but one could hardly say that brick competed with steel or wood or cement or stone in the meaning of Sherman Act litigation: the products are too different" (351 U. S. at 393).

Even where products superficially appear to be quite similar, the characteristics of the demand for them may require the conclusion that they are not "reasonably interchangeable." Thus, in *International Boxing Club* v. *United States*, 358 U. S. 242 (1959), this Court held that championship and non-championship boxing matches were sufficiently distinct to constitute separate markets despite their obvious similarities.

It is clear that in determining whether air transportation and sea transportation compete in the sense which the Sherman Act contemplates it is not enough to determine how many people or how many pounds of goods are conveyed by each of the two modes of transportation. The relevant question is: What are the differences between the services and do these differences indicate that a purchaser or potential purchaser of one service would not regard that service as reasonably interchangeable with the other?

2. Passenger transportation.

It is precisely from this point of view that Judge Murphy approached the problem. With respect to passenger transportation Judge Murphy noted the difference in time element: "from New York to Santiago by air takes today about 12 hours—by steamer 20 to 21 days" (R. 5426). While the comparison is slightly less striking on the shorter trips, it is still impressive. Thus, from New York to the Canal Zone by air is a 10-hour trip whereas by steamship it is a voyage of 6½ to 7½ days (WRG-168, R. 5204).*

* Since jets have been introduced the discrepancy is even greater.

Judge Murphy also noted the significant difference in fare, with Panagra in every case offering a less expensive service than Grace Line. The Panagra fare to Lima ranges from $308.80 to $399.80; the steamship fare ranges from $515.00 to $1,510.00 in the winter season and from $435.00 to $1,220.00 in the summer season (R. 5426; WRG-168, R. 5205).

Judge Murphy asked the following very pertinent questions:

> "Is the passenger who is willing to spend 6 weeks on a steamer the same as the person who wants to fly somewhere and back in a hurry? Is the person who desires to transact business in a far away South American city and return a potential steamship passenger to and from the same city?" (R. 5426)

Judge Murphy concluded that he was "not persuaded that the proof in this case shows that the market is the same" (*ibid.*).

The Government says nothing which challenges this conclusion. It does not do so by pointing to the testimony of a Pan American witness (whose bias was apparent) that more than one-half of all air passengers to South America travelled for non-business reasons (Brief, p. 50). It is apparent from the differences between air and sea transportation on this route that the tourist, like the businessman, would not regard these services as reasonably interchangeable. If a person has six weeks to devote to a vacation, he certainly cannot place in the same category an air trip to Santiago which would consume 24 hours round trip and a steamer trip to the same place which would consume the entire six weeks. Such services are interchangeable only in the sense that a ski lodge at Sun Valley competes with The Waldorf-Astoria in New York or a hotel in the Caribbean competes with a fishing lodge in Canada. Of course, all of these present alternatives to the vacationer;

nomic life hung in the balance. If Panagra did not get to the United States, at least by way of a through flight interchange agreement with Pan American, and if Braniff commenced such operations under the authority granted by the Board, Panagra's economic position would rapidly deteriorate. Cf. *New York-Balboa Through Service, Reopened*, 18 C. A. B. 501, 505.

"Grace and Panagra succumbed to the restraint of Pan American and acquiesced in the Through Flight Agreement" (R. 5414).

As has been pointed out above, there was no term of the Through-Flight Agreement, or any related agreement, which barred Panagra from applying for its own routes to the United States. Nor did Grace's action in accepting the Through-Flight Agreement represent an agreement or understanding voluntarily entered into to limit Panagra's development. Rather, in the face of Pan American's opposition, and in the light of the risks and uncertainties ahead, Grace accepted the best alternative available to it at that time.

There can be no real issue as to the source of the restraint which prevented Panagra from extending its routes to the United States. The only issue which deserves discussion is the question whether the restraint imposed by Pan American was unlawful. We submit that Judge Murphy properly held that it was.

While we do not propose to meet Pan American's brief in detail, since that task will presumably be performed by the Government, we believe it necessary and appropriate, as the party principally injured by Pan American's restraint, to sketch, at least in general terms, Grace's position.

Pan American attacks the judgment below on three principal grounds: (1) that its voting against allowing

Panagra to apply for route extensions was a lawful exercise of its rights as a holder of one-half of Panagra's stock; (2) that its opposition to these route extensions was based upon sound economic reasons rather than any attempt to monopolize; and (3) that the order requiring it to divest will embarrass the Civil Aeronautics Board in its development of a sound Latin American route structure.*

Pan American's argument that its half-ownership of Panagra gives it an inherent right to block Panagra's extension to the United States is expressed principally in terms of a "simple illustrative example" (P. A. A. Brief, p. 26). The example postulates a situation where Jones and Smith join in opening a department store in Providence and where Jones subsequently objects to the Providence venture's opening a store competitive with Jones' individually owned store in Boston. The illustration is "simple" and also misleading for the very reason that it excludes the facts which distinguish that example from the situation here, facts which mark Pan American's conduct as unlawful.

In the first place, Pan American's example does not involve a situation in which the proposed extension of the joint venture represents a logical extension of its activities. What Grace has been seeking for Panagra is the natural extension of Panagra's routes to the sources of the bulk of its traffic. There is no similar logic about the extension

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* We will not consider Pan American's further argument that its opposition to route extension for Panagra was specifically approved by the CAB and therefore exempted from the Sherman Act, since we have already demonstrated (pp. 54-58, *supra*) that no agreement authorizing such action was ever presented to the Board. Nor will we consider Pan American's argument that it did not "exclude" Panagra from the Canal Zone-United States market, since we regard it as quite obvious that there is a sufficient "exclusion" in action which allows Panagra access to the market only in a through-flight arrangement with Pan American.

of Pan American's hypothetical venture from Boston to Providence.

Passing this, however, if we add a few additional facts to Pan American's illustration, analogous to facts which the District Court found in this case, the illustration is radically altered. Suppose, for example, that Jones' store in Boston is one of a very few stores in that city and occupies a dominant position in the market. Suppose further that the Providence venture is one of a very few enterprises which could reasonably enter into the Boston market in competition with Jones. Suppose, finally, that the very purpose of Jones' voting against the extension of the Providence venture is to preserve his dominant position. It is submitted that, with this additional background filled in, the violation inherent in Jones' conduct becomes evident.

Judge Murphy did not condemn Pan American's conduct on the basis of the broad kind of ruling which Pan American assumed in constructing its illustration. Rather, he carefully limited his ruling to the situation before him:

> "We would like it clearly understood that it is not our opinion that every defendant who exercises similar negative control over a single potential competitor and thereby excludes such competitor from a relevant market necessarily monopolizes thereby. It is a relative concept which can only be applied in a given context. Here, the excluded competitor is the most potential of a very limited number of competitors and one that enjoys a substantial share of the relevant market, and in which share the exclusiona y action of Pan American guarantees it participation. One result is that competiti n between the two for their significant shares of the market is to a substantial degree restrained. Other factors we con-

> sidered are the nature of the industry, the size and strength of the two companies involved, and the limited market potential.
>
> "We feel that the affirmative blocking of a Panagra application to the CAB is sufficient under the facts presented to make out the violation by Pan American of monopolization. . . ." (R. 5408-09).

Pan American's contention is effectively answered, not only by Judge Murphy's reasoning, but by rulings of this Court. It is of course clear that a party dominant in a market who seeks to monopolize may violate the Sherman Act by the commission of acts or practices which would otherwise be lawful. *E.g., United States* v. *Aluminum Company of America*, 148 F. 2d 416 (2d Cir. 1945). Moreover, this Court has recently emphasized that the exclusion of a single competitor from a market may have antitrust consequences, *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U. S. 207 (1959); *Radiant Burners, Inc.* v. *Peoples Gas Light & Coke Co.*, 364 U. S. 656 (1961). In *Gamco, Inc.* v. *Providence Fruit & Produce Building Inc.*, 194 F. 2d 484 (1st Cir. 1952), *cert. denied*, 344 U. S. 817 (1952) the court ruled that:

> ". . . the latent monopolist must justify the exclusion of a competitor from the market which he controls. . . . The conjunction of power and motive to exclude with an exclusion not immediately and patently justified by reasonable business requirements establishes a *prima facie* case of the purpose to monopolize" (194 F. 2d at 488).

Pan American's argument that its conduct is justified by its stock interest in Panagra is effectively answered by this Court's ruling in *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593 (1951). This Court there held that the fact that Timken owned one-half of French Timken and approximately one third of British Timken did not give it

4. The Government's authorities.

The Government finally seeks to rely upon judicial and administrative decisions, and the policies allegedly embodied in certain statutes, to show that there is competition between air and sea transportation. All of these instances are quite beside the point since none of them says anything about competition between air and sea transportation on the routes here in question. Grace has never contended, and does not now contend, that air and sea transportation can never compete. In determining whether competition exists on particular routes, the characteristics of those routes, and particularly their length, are significant. Grace contends, and believes that it has demonstrated, that air and sea transportation are not reasonably interchangeable on the particular routes involved in this case.

The Government's reliance on the decision in *Lehman* v. *Civil Aeronautics Board*, 209 F. 2d 289 (D. C. Cir. 1953), *cert. denied*, 347 U. S. 916 (1954), is misplaced for this very reason. In that case the court held merely that it would not upset the findings of the Civil Aeronautics Board that the services offered by the two carriers involved in that case were competitive. Moreover, the steamships and the air lines involved there were operating over the relatively short distances of the Caribbean and a great disparity between the duration of the sea and air voyages did not exist. Even in that case Judge Prettyman, in a vigorous dissent, expressed the view that the carriers were not in competition and that the Board's findings should be set aside:

> "To say that the competition between these two could create a conflict of interest which might produce results not in the public interest is without support in the facts, in my judgment. Of course there is

> a sort of competition between them, just as in some senses there is competition between all merchants of goods or services. But the totally different services proffered by these two companies make it wholly unrealistic to say that the public interest would be affected adversely by the presence of the same man on the two boards of directors" (209 F. 2d at 295-96).

The Board's ruling in *Additional Service to Latin America,* 6 C. A. B. 857, 903-04 (1946), also relied upon by the Government (Brief, pp. 59-60), is irrelevant for the same reason. There the route involved was between New York and San Juan, quite a different matter from the much longer routes to western South America. The Board's discussion related to "air transportation and . . . surface transportation *on this route*" (6 C.A.B. at 903-04; emphasis supplied).

The Civil Aeronautics Board has itself held in other circumstances that air and steamship transportation may not be competitive. In *Interlocking Relationships,* 6 C. A. B. 399 (1945), the Board held certain parallel steamship and air services not to be competitive:

> "a substantial portion of the passenger business would appear to be the taking of persons on summer cruises, which obviously is not competitive to the rapid transportation of passengers by air" (6 C. A. B. at 401).

The Government cites a series of statutes which give agencies such as the Interstate Commerce Commission and the Civil Aeronautics Board the authority to regulate to some degree the entry of carriers engaged in transportation by one means into parallel transportation by another means. None of these statutes, however, proves that the particular

by a comparison of the rates charged by the two companies. There was evidence before the District Court which provided a detailed comparison of these rates. This evidence showed, for example, that the rate charged for shipping a ton of goods via Panagra from New York to Santiago was $1,660 whereas the rate charged for the same weight over the Grace Line route was $90 (WRG-168, R. 5224). The evidence in the record also compared the rates charged for certain specific commodities. This comparison showed, for example, that to ship 2,000 pounds of auto parts from New York to Santiago would cost $1,260 on Panagra and $32 on Grace Line. Indeed, on certain bulky items Grace Line offered rates even lower than those specified above (WRG-168, R. 5224-25). With differences in rates of this order of magnitude it is apparent that the two services are not "reasonably interchangeable" and are not used for the same purposes. If they were, Panagra could not long stay in this business.

These differences in the rates charged for transportation by air and sea are grounded in the basic economics of air and sea cargo transportation. They directly reflect a difference of the same order of magnitude between the costs of carrying goods by each of these two means. A detailed break-down of the cost of carriage by Panagra and by Grace Line demonstrates that the cost of transporting goods by air was $0.356 per revenue ton mile whereas the cost of carrying goods by Grace Line freighter service was $0.00653 per revenue ton mile (WRG-168, R. 5227). A publication of the Office of the Chief of Naval Operations describes the cost of air transportation of cargo as being about 40 times as much as the cost of sea transportation (WRG-168, R. 5212).

These comparisons demonstrate that air transportation of cargo is designed to serve a market quite different from

the sea cargo market. Although there may be minimal competition between the two in very limited areas, the air lines will never carry the bulky cargos or great volume of cargo presently carried by sea, nor can the shipping lines meet the need for speed or emergency cargo shipment which is met by the air lines. That this is true was recognized by the Government's own expert witness.

Professor Stanley H. Brewer, who was tendered by the Government as an expert in air cargo operations and the competition between air and sea cargo carriage, testified among other things as follows:

> "When we talk about a future in air cargo we are talking about something less than 1% of the total amount" (R. 112).
>
> ". . . the vast majority of export freight, tons and ton miles, were of commodities that couldn't possibly have been carried by air-plane" (R. 112).
>
> ". . . only a relatively few of the many thousands of commodities which are now moved in world commerce can be considered to be [air] candidates in the foreseeable future" (R. 113).
>
> ". . . steamship rates on quantity movements are far below attainable cost for moving freight by air in the foreseeable future" (R. 115).

His farthest forecast was to 1975 and he predicted that by that time air carriers might achieve 7/10 of 1% of the total cargo movement (R. 123).* Even on the most specu-

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* Even these figures were based upon highly questionable calculations and predictions. Professor Brewer himself recognized that there have long been "predictions of mountains of cargo moving by air" and that the air cargo movement hasn't come up to these expectations (R. 111). He recognized that the data were "very difficult to interpret" (R. 115). His entire testimony rested on the "basic assumption" that cargo valued in excess of $.70 per pound was potential air cargo (R. 124). Yet nowhere in his reports or his testimony was there any basis for this assumption (R. 125-26).

air and sea services involved in the case now before this Court are competitive.

For all of the reasons stated, we submit that Judge Murphy's finding that air transportation and sea transportation between the eastern coast of the United States and the western coast of South America do not form parts of the same competitive market is solidly grounded in the record and cannot properly be set aside as "clearly erroneous."

B. Grace's participation in the organization and development of Panagra while owning all of the stock of Grace Line did not, and does not, unreasonably restrain trade.

Judge Murphy correctly observed, after considering and rejecting the Government's evidence tendered to show the existence of competition between Panagra and Grace Line, that:

> "The Government does not prove violations of the antitrust law by showing that Grace Line competes with Panagra, assuming that it does" (R. 5429).

Even on the assumption that these services are in the same competitive market, the Government has not demonstrated that Grace's entry into the new field of air transportation violated the Sherman Act.

1. A new venture cannot be equated with a merger.

The first objection to the Government's argument is that it rests on the assumption that there is no meaningful distinction between the acquisition of existing competitive facilities and the entry into an enterprise designed to develop facilities which did not theretofore exist. Thus the Government relies solely on cases involving a merger

of existing facilities: three railroad cases* and the decision in *United States* v. *Columbia Steel Co.*, 334 U. S. 495 (1948) (Brief, pp. 61-62). It is apparent, however, that there are important differences between these situations which cannot be disregarded.

A merger necessarily produces some lessening of competition since it brings under common ownership facilities which had previously been able to compete. Development of new facilities, however, has no such effect. The new facilities were not in the market at all prior to the creation of the venture which produced them. This Court recognized in the *Columbia Steel* case that

> ". . . no direction has appeared of a public policy that forbids, *per se*, an expansion of facilities of an existing company to meet the needs of new markets of a community, whether that community is nation-wide or county-wide" (334 U. S. at 526).

See also *United States* v. *E. I. DuPont de Nemours & Co.*, 118 F. Supp. 41, 219 (D. Del. 1953), *aff'd*, 351 U. S. 377 (1956). In *Inter-Island Steam Navigation Co.* v. *United States*, 87 F. Supp. 1010 (D. Hawaii 1950), the court ruled on the very question involved here, *i.e.*, whether it violated the Sherman Act for a water common carrier to organize a subsidiary air common carrier for the purpose of having the latter transport passengers over routes substantially paralleling the water carrier's routes. The court concluded that:

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* This Court cast considerable doubt on the continuing authority of these railroad cases in *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 531 (1948). The cases have been criticized as "reflecting a point of view toward the railroad problem which has long since been abandoned by the country." Handler, *Industrial Mergers and the Antitrust Laws*, 32 Colum. L. Rev. 179, 270, note 328 (1932).

but they surely are not competitive for Sherman Act purposes. If they are, the relevant market must be expanded to include far more than the air transportation offered by Panagra and the sea transportation offered by Grace Line.

Although the Government states that cross-elasticity of demand may be measured by a correlation between changes in price differentials and corresponding shifts in demand, the Government fails to demonstrate the existence of any such correlation. The Government points to the fact that "the air carriers' share of passenger traffic to South America has risen from only ½ of 1% in 1931 to more than 84% in 1957" (Brief, p. 49), but it fails to show that the increasing air traffic was drawn from the sea lanes by a reduction in the differential between the fares or by other means of competition. Indeed, there is nothing in the record to show what the differential in fares was over this period of time. The Government merely makes a completely unsupported statement that if sea carriers are desirous of retaining a share of the passenger traffic they must do so by lowering fares and developing other attractions to compensate for the lack of speed (Brief, p. 49). It is quite clear that the passengers who travel by Grace Line do so, not by virtue of some competitive inducement, but because they want a sea voyage. So far as lowering fares to compensate for the lack of speed is concerned, the record shows that Grace Line's fares are substantially in excess of Panagra's (WRG-168, R. 5205).

The Government is apparently relying upon the kind of reasoning embodied in the statement which it later makes when it discusses cargo traffic that:

> "... if there were no air transportation available it would unquestionably move by water. . . ." (Brief, p. 53).

There are two deficiencies in this kind of argument.

First, there is every reason to believe that the greater part of the presently existing air traffic is traffic which did not exist prior to the development of air lines and which would not have existed if it had not been for that development. A great proportion of the present air traffic, both passenger and cargo, is undoubtedly new traffic which could not possibly have been carried by sea. Among the examples which jump to mind is the tourist who has only two weeks to spend and who now uses it in an air flight to Santiago.

The second difficulty in the Government's approach is that even traffic which once went by sea may be traffic for which steamships could not compete once air lines had come into existence. At the moment when the first air line became established as a safe and reliable means of transportation there was undoubtedly a substantial amount of traffic, which previously went by sea, but for which sea transportation was no longer a reasonable alternative. An example is the man who wishes to go to Santiago solely for the transaction of important business which will require only a few days' time.

A consideration of the important differences between air transportation and sea transportation on these particular routes makes it evident that the great bulk of passengers carried by Panagra are passengers for whom Grace Line's steamships do not offer a reasonable alternative and that the passengers carried by Grace Line are passengers who for some reason desire a lengthy voyage by sea and for whom air transportation does not offer an acceptable alternative. This conclusion is reinforced by the very statistics upon which the Government relies.

As the Government recognizes, a large portion of Panagra's passenger traffic is to points which Grace Line does not even serve (Brief, p. 50, note 17). And even on the routes served by both Panagra and Grace the number of

passengers who travel by sea are only a very small percentage of those who travel by air. Thus, between the United States and Colombia in 1958 only 4.2% of the passengers travelled by sea (WRG-168, R. 5198); between the United States and Ecuador the figure was 10.1% (WRG-168, R. 5199); between the United States and Peru the figure was 7% (WRG-168, R. 5200); and between the United States and Chile the figure was 14% (WRG-168, R. 5201). Moveover, the statistics also demonstrate what is suggested above, *i.e.*, that the bulk of the presently existing air traffic is newly developed traffic, rather than traffic which was secured by competition with the parallel steamship carrier. For example, the number of passengers between the United States and Colombia by sea decreased only from 3,120 in 1931 to 1,676 in 1958 (WRG-168, R. 5198). During this same period the number of air passengers increased from 23 to 38,178 (WRG-168, R. 5198). Similarly, between 1948 and 1958 the number of passengers by sea between the United States and Chile decreased only from 3,251 to 2,279 whereas the number of passengers by air increased from 2,714 to 14,434 (WRG-168, R. 5201).

Although the Government seeks to attribute the increase in air travel to "shifts in customer preferences . . . in response to changes in passenger fares", and speaks of an "interplay" between these services (Brief, p. 49), it cites no evidence in support of the alleged changes in passenger fares or the shifts allegedly resulting from them. The important differences between these modes of transportation strongly support Judge Murphy's conclusion that no significant "shifts" or "interplay" occurs.

3. Cargo traffic.

Turning to cargo transportation, it is first of all relevant to compare, as the District Court did, the total amount of

cargo which is moved by air and sea respectively on the relevant routes. Judge Murphy found that "as between the two the volume of cargo carried by Panagra as compared to Grace was miniscule" (R. 5428). The Government criticizes this characterization and uses the device of describing air freight in terms of "revenue ton miles." The large-sounding figures given for revenue ton miles must be evaluated with recognition of the fact that such a figure represents a multiplication of the number of tons carried by the number of miles over which they are carried. Thus, if one ton is carried 1,000 miles it represents 1,000 ton-miles.*

A comparison with the amount of cargo carried by sea can best be made in terms of the number of tons of cargo carried over the particular routes in question. The record shows that in 1958, the last year for which there was evidence before the Court, Panagra carried 3,321 tons of freight whereas Grace's route from the east coast of the United States to the west coast of South America (Line "A") carried 936,585 tons. In 1957 Panagra emplaned 349 tons of cargo in Chile whereas Grace Line carried 294,550 tons of cargo from that country (WRG-168, R. 5224). The word "miniscule", which Judge Murphy used, was well chosen.**

The vital difference between the cargo service performed by Grace Line and that performed by Panagra is illustrated

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* The Government is to be congratulated for its restraint; it might have spoken in terms of pound-inches.

** Since the Government goes outside the record to refer to the fact that Panagra carried 8,000,000 revenue ton-miles of cargo in 1961 (Brief, p. 53), we will take the same liberty. In 1961 Panagra carried 4,405 revenue tons of cargo and Grace Line carried 999,036 tons on its run between the east coast of the United States and the west coast of South America. (Figures derived from Panagra's Form 41 Reports to the Civil Aeronautics Board and Grace Line's Schedule 3002 of Form MA-172 filed with the Maritime Administration).

lative assumptions which the Government's witness advanced, it is clear that there will be no significant infringement by air cargo service upon the business presently done by the water carriers.

While the Government presented several witnesses (R. 77-89, 89-104, 127-49), whose testimony apparently did not impress the trial judge, for the purpose of citing a few instances of situations in which air cargo carriers had transported goods which might have been carried by steamship, these involved rather special situations which fell far short of demonstrating a "reasonable interchangeability" of the two services. Moreover, the only instance the Government was able to show which involved transportation between the United States and the west coast of South America was a movement of 500 tons of onions from Chile to New York (R. 104). It is on this kind of evidence that the Government attempts to base its demonstration of "reasonable interchangeability" and substantial competition.

The Government seeks to reinforce its statistical arguments by referring to several bits of evidence which it suggests constitute a "recognition by the parties of competition between air and sea transportation" (Brief, p. 60). The first bit of evidence is testimony by Pan American's treasurer, Mr. Cornwall, to the effect that air and sea carriers to South America are "very definitely" in competition for passengers and "are both trying to get the same market" (R. 229). In the context of this litigation Pan American's treasurer can hardly be regarded as an unbiased witness. Moreover, Mr. Cornwall admitted that he had "no particular knowledge" about the movement of cargo between the United States and the west coast of South America (R. 66).

The Government next states that:

> ". . . Grace has always candidly admitted that 'Panagra is a direct competitor of the Grace Line,' and that Panagra's development had resulted 'in prejudice to the Grace Line.' " (Brief, pp. 60-61)

The only thing cited in support of this sweeping statement, however, is a single paragraph which the Government has excerpted from a 1941 draft of a letter which was never sent (G-378, R. 1027). The letter which was actually sent on this particular occasion is G-207 (R. 759-61); the cited paragraph does not appear in that letter. It may be that the paragraph upon which the Government relies was excised from the letter as finally sent precisely because it was not an accurate statement. In any event, this bit of evidence does not constitute an admission by Grace that Panagra is, or was, a "direct competitor" of Grace Line and certainly does not demonstrate that the two companies' services are "reasonably interchangeable" for Sherman Act purposes.

Another bit of evidence relied upon by the Government in this connection demonstrates that instances of competition between Grace Line and Panagra were the exception and that the services were not generally competitive. In a letter from which the Government quotes in part at page 61 of its brief, Mr. Roig of Grace cited certain shipments of gold as ". . . *one of the few instances* which have arisen involving a conflict of interest between Panagra and Grace Line" (R. 1003; emphasis supplied). If the few shipments referred to are the only instances the Government has been able to find in the long history of Panagra where Grace Line and Panagra competed for a shipment, then this, in itself, strongly demonstrates the absence of "reasonable interchangeability."

> "There is nothing in the statute to prevent a corporation from entering a virgin field, and, through a subsidiary or otherwise, engaging in a pioneer enterprise. . . . In a word the Sherman Act is not an instrument of stagnation" (87 F. Supp. at 1016-17).

Judge Murphy also cited and relied on an unreported decision in the District of Hawaii which reached this same result (R. 5423-24).

Even in imposing the more stringent limitations of Section 7 of the Clayton Act, Congress recognized the differences between a merger and the organization of a subsidiary for the development of a new enterprise:

> "Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition."

In seeking to equate the development of this new venture with a "horizontal merger" the Government ignores the fact that the existing facilities of Panagra are the result of Grace's own vision and creative efforts. To say that competition is restrained by Grace's affiliation with an instrumentality which it brought into existence surely misses the mark.

2. No substantial competition is eliminated by the affiliation.

Even if this Court were to apply to the organization of a new venture the same test which has been applied to

the acquisition by one corporation of the existing facilities of another, it would not follow that Grace's interest in Panagra is unlawful. It has, we believe, been shown above that air transportation and sea transportation on the routes involved in this case are not in the same competitive market. If, however, the Court disagrees, the evidence cited above certainly demonstrates at the very least that the areas of actual or potential competition between Grace Line and Panagra are insubstantial.

This Court has held that a merger does not violate the Sherman Act when the pre-existing competition between the merging companies is not substantial. For example, in the *Columbia Steel* case, *supra,* this Court recognized that the acquired company manufactured welded pipe and that one of the acquiring company's subsidiaries manufactured seamless pipe. Relying principally on the significant difference in price between the two products, the Court held that it had not been shown that the competition was "so substantial that its elimination under these circumstances constitutes an unreasonable restraint" (334 U. S. at 530-31).

Analysis and comparison of the operations of Grace and Panagra reveal that, if any possibility of competition exists, it is so insubstantial—both absolutely and in relation to the total operations of Grace and Panagra—that, even if it were eliminated, there would be no unreasonable restraint.

The affiliation which exists here is between W. R. Grace & Co. and Panagra. It should first be noted that Grace Line represents only a small segment of the interests of W. R. Grace & Co. and that Line "A", the line which to some degree parallels Panagra, represents only a small part of the interests of Grace Line. As Judge Murphy found, the operating revenues of Grace Line were less than one-fifth of the operating revenues of Grace (R.

It is respectfully submitted that the judgment of the District Court should be in all respects affirmed.

Respectfully submitted,

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October 15, 1962.

APPENDIX A.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, Plaintiff, *against* PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.	Civ. 90-259.

Memorandum.

MURPHY, D. J.

The court will not approve the proposed consent decree and hereby orders the parties to trial on May 4, 1959.

We have given serious consideration to arguments of counsel for and against the proposed decree and we have written several draft memoranda expressing our reasons for the withholding of our approval. After continued reflection we have concluded it to be a wiser course not to express any opinion but await the outcome of the trial on the merits.

This is an order. No settlement is necessary.

/s/ THOMAS F. MURPHY
U. S. D. J.

Dated, New York, N. Y., January 30, 1959.

5427; WRG-168, 5183), and Line A accounts for only one-fifth of Grace Line's passenger revenues and less than one-half of its freight revenues (R. 5427; WRG-168, 5184).*

The next important difference between the two services is that Panagra is primarily a carrier of passengers whereas Grace Line is primarily a carrier of cargo. As Judge Murphy held, Panagra carried less than four-tenths of one percent of the tonnage of cargo carried by Line A between 1950 and 1958 (R. 5427). Similarly, Panagra carried 25 times as many passengers as Line A during this period (*Ibid.*).**

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* Even Line A is by no means precisely parallel with Panagra's service (WRG-168, R. 5185). For example, the most important South American source of traffic for Panagra is Buenos Aires, which is not served by Line A (R. 5427; WRG-168, 5185).

** The Government criticizes this 25-1 comparison (Brief, p. 50, note). It is submitted that the comparison is, however, useful in showing where the real interests of the two carriers lie. The Government goes on to say that Panagra carries 1,100 persons per month between the areas served by both carriers whereas Grace Line carries 315 persons per month. The Government is referring to figures for 1957 set out in GS-79 (R. 1433). These figures, however, are seriously biased. The Civil Aeronautics Board figures which the Government uses show the initial air origin and the ultimate air destination of each passenger. Thus when the Government sets out Panagra's passenger traffic from the northeastern United States to western South America it includes only those passengers whose air travel actually began in the northeast. The Maritime Administration figures from which Grace Line's passenger traffic is computed, however, are based upon port of embarkation and port of debarkation. Since Grace Line seldom takes on passengers except in the North Atlantic coastal area, virtually all of its traffic is included. Obviously many of Grace Line's passengers commence their journeys elsewhere in the United States. The least biased comparison which can be made on the basis of the Government's figures is to compare Panagra's average monthly passenger traffic between the United States and western South America, for 1957 as shown by GS-10 (R. 1367), which is 2,199, with Grace Line's average monthly passenger traffic for 1957 as shown by GS-77 (R. 1431), which is 310. Following the Government's example and bringing the record up to date, we note that in 1961 Panagra averaged 4,618 passengers per month between the United States and South America (excluding Argentina) whereas Grace Line on Line "A" averaged 278 passengers. (Figures derived from Pan-

Moreover, the considerations adverted to above (pp. 72-82) demonstrate that even with respect to the passenger transportation and the cargo transportation which is conducted by Panagra along the routes where Grace Line operates, most of the traffic is in no sense competitive. Most of the passengers who travel on Panagra planes and most of the freight which is shipped on them could not possibly go by sea. Conversely, the passengers who travel by Grace Line desire a sea voyage which Panagra cannot provide and the great bulk of the cargo which Grace Line carries can never go by air.

It is evident that the area in which Grace Line and Panagra could possibly compete represents only a very small segment of the operations of each.

Indeed, examination of the Government's case reveals a complete failure of proof as to how much, if any, of the traffic which Panagra carries is traffic for which Grace Line could compete. There is no way of determining from the Government's evidence whether Panagra carried a single passenger during the period in question who regarded steamship passage as a reasonable alternative. Nor, apart from a few gold shipments back in the 1930's, has there been any evidence that Panagra carried any freight as to which steamship carriage was a reasonable alternative, or that Grace Line carried any freight as to which air transportation was a reasonable alternative. Since the Government has not shown either that Grace Line and Panagra really compete with respect to any traffic, or, if they compete, the scope of the area in which competition exists, its case is glaringly deficient.

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agra passenger manifests for January, April, July, and October, 1961 and Grace Line Schedule 3002 of Form MA-172, filed with the Maritime Administration). At the present time Panagra has a capacity, on its southbound flights of 4,916 seats per month whereas Grace Line offers 240 berths per month on its southbound sailings on Line "A" to points on the west coast of South America.

3. There is important competition from other sources.

The Government's handling of the question of the strength of the competition from other sources is also inadequate. It is, of course, true that Grace Line offers the only United States-flag liner service from the east coast of the United States to the west coast of South America. This is for the simple reason that Grace Line is the only line subsidized on this route by the United States Government. The Government ignores, however, the very substantial foreign competition which exists both with respect to steamship services and with respect to air services along these routes.

The record shows that United States-flag participation in passenger traffic by air between the United States and Chile decreased from 99.8% in 1953 to 36.6% in 1957 (WRG-168, R. 5252); the United States-flag share of the passenger traffic between the United States and Peru decreased from 99.9% in 1953 to 73% in 1958 (WRG-168, R. 5253); the United States-flag participation in passenger traffic between the United States and Ecuador decreased from 86.9% in 1954 to 70.1% in 1957 (WRG-168, R. 5254). The United States-flag share of the passenger traffic between the United States and Colombia has fluctuated around 30% during the period from 1953 to 1958.

A similar picture exists with respect to steamship competition. The United States-flag share of dry cargo (imports and exports) between the United States and South America decreased from 86.4% in 1946 to 33.3% in 1957 (WRG-168, R. 5293). Between 1955 and 1958 the United States-flag share of the carriage of dry cargo by sea between the United States Atlantic Coast and the west coast of South America decreased from 45.07% to 26.17% (WRG-168, R. 5298).

Against this background the relevant questions are as follows: Would Grace Line's position in the cargo market be enhanced by giving it the power to restrain competition for the miniscule amount of cargo carried by Panagra? Considering the amount of cargo carried by Panagra or likely to be carried by Panagra against the total amount carried on these routes and the amount carried by Grace Line, could the exercise by Grace Line of some leverage with respect to Panagra's operations possibly enhance its competitive position?

Conversely, would Panagra's position in the passenger market be significantly enhanced by giving it the power to restrain competition for the very few passengers carried by Grace Line?

It is evident that an affiliation between Grace Line and Panagra cannot significantly enhance the position of either of them in these markets. Any joint action to increase rates would merely result in a benefit to the competing services.

The above comparisons have not yet taken into account the competition offered by Braniff. Although the Government states that in recent years Panagra has carried from 79 to 86 per cent of the United States-flag traffic between the United States and western South America (Brief, pp. 5-6), this is not the fact. When adjustments are made to those figures to eliminate the bias introduced by the Government's techniques, the figures are significantly altered. They show that Panagra (either alone or with other air lines) carried in 1957 64.4% of the passengers who traveled by United States-flag air lines between the United States and western South America (WRG-167, R. 5235-39).* Moreover, these figures can only be read against the background which explains in part why Panagra carries more passen-

* The necessity for the adjustments made is explained in the exhibit cited.

gers than Braniff. Among the factors responsible, aside from the fact that Panagra has been in the market much longer, are the more frequent service offered by Panagra and the shorter elapsed time of its flights (WRG-168, R. 5241).

It is apparent that, even on the assumptions most favorable to the Government's case, a Grace-Panagra affiliation cannot possibly result in an unreasonable restraint of trade.

4. No Congressional or administrative policy supports the Government's argument.

The Government seeks to buttress its argument that it is *per se* illegal for one carrier to secure control of a competing carrier by referring to decisions under several regulatory statutes (Brief, pp. 56, 58).

These administrative rulings fail to prove the Government's point for two reasons.

First, statutes of this kind can hardly be relied upon when the statute specifically regulating Grace's relationship with Panagra sanctions the continued existence of that relationship. In enacting Section 408(a) of the Civil Aeronautics Act, which governs mergers and acquisitions as between air carriers and other common carriers, the Congress chose to make that provision prospective only in its operation. The Civil Aeronautics Board so held in *Boston and Maine and Maine Central Railroads, Control—North East Air Lines, Inc.*, 4 C. A. B. 379 (1943). More recently, in *National Air Freight Forwarding Corp.* v. *Civil Aeronautics Board*, 197 F. 2d 384 (D. C. Cir. 1952), the court specifically held that:

> "The Board was correct in its view that Section 408 has no effect where a control relationship in existence when the Civil Aeronautics Act was passed has continued unchanged" (197 F. 2d at 389).

The reasoning which no doubt motivated Congress in not making Section 408 applicable to preexisting relationships was stated by Senator McCarran, the sponsor of the bill which was ultimately enacted as the Civil Aeronautics Act, when he commented on the purpose of the "grandfather clause" as follows:

> "It has always been the policy of Congress to give due regard to those who pioneered the respective routes" (83 Cong. Rec. 6768, 75th Cong., 3d Sess., May 12, 1938).

See also 83 Cong. Rec. 6848, 75th Cong., 3d Sess., May 13, 1938.

In the light of the fact that the applicable statute permits the continuance of the relationship between Grace and Panagra, it is anomalous for the Government to seek to deduce from this very statute, and from other similar statutes, a policy condemning the relationship which Congress specifically approved.

The second deficiency in the Government's argument is that the regulatory statutes, and the administrative and judicial rulings under them, do not embody a policy to the effect that common control of parallel carriers always has an adverse effect on the public interest. Indeed while a number of statutes give particular administrative agencies authority to regulate such relationships, those relationships have frequently been approved.* The over-simplification

* In *American President Lines, Ltd.*, 7 C. A. B. 799 (1947), upon which the Government particularly relies (Brief, p. 59), the specific ruling of the Board was that when a steamship company applies for a certificate of convenience and necessity authorizing it to render an air transportation service, it is not required to make a showing that it can "use aircraft to public advantage in its operation," a showing which is required when a steamship company seeks to *acquire* an air line (Civil Aeronautics Act, Section 408(b)). The Board held that it had discretion to determine whether, in the particular case, it was in the public interest

involved in the Government's approach is made evident in a recent careful analysis of the policy of the Civil Aeronautics Board with respect to air carrier-surface carrier affiliation. *Note, Restrictions on Entry of Surface Carriers Seeking to Fly,* 71 Yale L. J. 1529 (1962). The author concludes that "the fear that an entrant [into air transportation] with substantial investment in surface facilities will fail to promote air service seems chimerical" and that "a presumption against granting surface carriers authority to engage in air operations is unwarranted" (71 Yale L. J. at 1550, 1551).

The Civil Aeronautics Board has sometimes approved an affiliation between parallel transportation services. Thus, in the *Great Lakes Area* case, 8 C. A. B. 360 (1947), the Board granted an application by the Yellow Cab Company of Cleveland to operate a helicopter shuttle service from the Cleveland airport over routes paralleling its cab and limousine service; and in *TACA, S. A., Foreign Air Carrier Permit,* 10 C. A. B. 130 (1949), the Board renewed TACA's foreign air carrier permit despite the fact that it was controlled by Waterman Steamship Corporation. In the *Air Freight Forwarder* case, 9 C. A. B. 473 (1948), the Board found that the continued operation of an air express service by Railway Express was in the public interest, saying:

> "Some apprehension was expressed that the railroad ownership of REA may have an adverse effect on the development of the air express potential and may be inconsistent with the public interest. However,

for the surface carrier to enter into air transportation. In *Additional Service to Latin America,* 6 C. A. B. 857 (1946), upon which the Government also relies, the Board specifically noted that it was called upon "to make a choice among several applicants, including surface carriers and air carriers. . ." (6 C. A. B. at 902). Under the circumstances of that case it preferred one of the air carrier applicants.

> there is nothing in the record to indicate that the railroads through their ownership of all of REA's stock and control of its directorate have inhibited or restricted the air express operations to date . . . . it has actively and consistently encouraged the solicitation and development of air express . . . . no tangible evidence has been adduced which would support apprehensions as to the future" (9 C. A. B. at 485).

The Board's ruling in that case was affirmed in *National Air Freight Forwarding Corp.* v. *Civil Aeronautics Board*, 197 F. 2d 384 (D. C. Cir. 1952), cited by the Government at page 57, note 20, of its brief.

Similar results have been reached under other statutes. For example, under the Panama Canal Act of 1912, which regulated railroad acquisitions of competing common carriers by water, and authorized the continuance of existing services only if they would "neither exclude, prevent or reduce competition on the route by water," the Interstate Commerce Commission in a number of cases determined that specific railroad-water carrier affiliations would not restrain competition. *E.g., Steamer Lines on Long Island Sound*, 50 I. C. C. 634 (1918); 183 I. C. C. 323 (1932); *Southern Pacific Company's Ownership of Atlantic Steamship Lines*, 77 I. C. C. 124 (1923).

In *Rock Island Motor Transport Company, Common Carrier Application*, 63 M. C. C. 91 (1954), the Interstate Commerce Commission authorized a motor carrier affiliated with a railroad to conduct unrestricted motor carrier operations paralleling the railroad's line. The Commission examined the applicant's previous operations under a more restricted certificate and concluded that those operations had never been hampered or adversely affected by the railroad affiliation. The Commission noted that:

> "Applicant's operations had been conducted in the same manner as other motor carriers operating in

> the same area . . . . the operations of applicant have not unduly restrained competition, and there is no evidence that its proposed operations would produce such a result" (63 M. C. C. at 105-06).

This Court affirmed the Commission's order in *American Trucking Association, Inc.* v. *United States*, 355 U. S. 141 (1957).

It is quite clear that there is neither an administrative nor a legislative policy which broadly condemns affiliation of parallel carrier operations as adverse to the public interest or unlawful. In any event, the issue is not what proper policy should be in the enactment and administration of regulatory statutes but rather whether a violation of the Sherman Act has been shown in this case.

5. There is no evidence of actual restraint.

In view of the Government's contention that the relationship between Grace and Panagra unreasonably restrains competition, and in view of the further fact that this affiliation has existed for more than 30 years, one would expect the Government's brief to be replete with evidence of the adverse consequences of the affiliation and the restraints imposed by Grace upon Panagra's effective development.

A review of the brief, however, reveals a complete absence of any such showing. The only hint of anything along these lines is the Government's statement in its summary of argument that Grace's "control has been used to hold up Panagra's rates in order to lessen competition with Grace" (Brief, pp. 22-23). Surprisingly enough, however, the Government does not return to this point elsewhere in its brief and, in developing its argument, cites no evidence whatever in the record to show that Grace did anything to "hold up" Panagra's rates.

Consideration of the economic situation and the context of Governmental regulation indicates that any such action on Grace's part would be impossible. Panagra is a member of the International Air Transport Association (IATA). The Traffic Conferences of IATA fix rates to which the members must adhere. All IATA agreements fixing rates which affect transportation to or from the United States must be filed with the Civil Aeronautics Board and approved under Section 412 of the Civil Aeronautics Act. Thus the Board exercises effective control over international air tariffs. Indeed, it issues letters of instruction to IATA members to guide them in attending IATA Traffic Conferences. An example of such a letter appears in the record (WRG-168, R. 5177). Moreover, even if Grace had the power and inclination to hold Panagra's rates at an artificially high level, the effect would be merely to cause Panagra to lose business to the many competing foreign carriers, some of which are not members of IATA and engage in rate-cutting practices (WRG-168, R. 5258-77).

The Government's argument that Grace's affiliation with Panagra restrains competition and its statement, for example, that "If Panagra began to develop air transportation for either passengers or freight so vigorously as to injure Grace's steamship interests, Grace's nominees on the Board of Directors could retard its activities," are difficult to reconcile with the Government's later emphasis on the vigor with which Panagra's air freight traffic has been developed. The Government says, for example, that "Panagra's role as a cargo carrier has become increasingly significant" (Brief, p. 53), and notes that its freight business doubled between 1951 and 1957 and again by 1961 (*Ibid.*). Apparently the Grace affiliation has not completely stultified Panagra's progress. Braniff, which was not burdened with the disadvantage of a water-carrier

affiliation, saw its freight ton-miles of cargo drop from 948,090 in 1950 to 871,695 in 1957, while Panagra's freight ton-miles increased from 1,815,688 to 4,533,261 (WRG-168, R. 5229).

It is also interesting to note that, while the air carriers had been able by 1958 to secure 93% of the passenger traffic to Peru (WRG-168, R. 5200), 86% of the traffic to Chile (WRG-168, R. 5201), 89.9% of the traffic to Ecuador (WRG-168 R. 5199), and 95.8% of the traffic to Colombia in spite of the affiliation between Panagra and Grace, between the United States and Argentina, where no similar affiliation exists, the air carriers had been able to secure only 66.7% of the passenger market (WRG-168, R. 5202). It is evident that neither Panagra nor the air carriers generally have been injured by the Panagra-Grace affiliation.

Rather than evidencing any restraint by Grace upon Panagra over the last 30 years, the record strongly supports Judge Murphy's findings that:

> "Grace has been the only one of Panagra's two partners that has persistently, continuously attempted to improve its service and extend its routes to the United States" (R. 5429),

and that:

> "the record before us fails to disclose any antitrust violation on the part of Grace vis-a-vis Panagra" (R 5392).

If Grace had desired to limit Panagra's development or to diminish its effectiveness along the routes it serves, it could easily have done so merely by allowing Pan American to have its way. The history of its persistent struggle on Panagra's behalf cannot be reconciled with the Government's contention that Grace's affiliation with Panagra either has restrained, or will restrain, Panagra's development.

Conclusion.

The argument directed by the Government against Grace's participation in the creation and development of Panagra and its present one-half ownership of that enterprise does not rest on any showing that Grace has ever restrained the development of Panagra or has imposed any other restraint on competition. On the contrary, the District Court, in findings which the Government cannot challenge, determined that no such restraint exists, or ever has existed.

The Government's argument is based rather upon, on the one hand, the abstract condemnation of Grace's participation in Panagra's formation because, in the Government's view, such participation might have or could have resulted in restraint, and, on the other hand, a sterile analysis of sea and air transportation on the routes here involved which hypothesizes a competition which the facts belie and which postulates a possibility of restraints which have never occurred.

Grace submits that its part in the creation and subsequent growth of Panagra was the lawful and proper extension of its business into the utilization of a new technique. Its participation in Panagra was a participation in the creation of something new, but something related to interests it already had. By dint of much effort, and in cooperation with the Government, Grace has built the enterprise into something of value both to itself and to this country. In the course of that effort Grace has consistently, and at considerable cost in effort and resources, fought to free the enterprise from shackles which Pan American has ever sought to impose.

We submit that, under these circumstances, the Government cannot properly condemn Grace's interest in Panagra as inherently and *per se* unlawful.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
Appellant,

v.

UNITED STATES OF AMERICA,
Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR APPELLANT PAN AMERICAN WORLD AIRWAYS, INC.

David W. Peck,
Sullivan & Cromwell,
48 Wall Street,
New York 5,
New York.

Of Counsel:
John K. Mallory, Jr.,
Edward A. Woolley,
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52 Wall Street,
New York 5, New York.

(F) "Person" shall mean any individual, partnership, association, corporation, or other legal entity.

(G) "Braniff" shall mean Braniff Airways, Inc., a corporation organized and existing under the laws of the State of Oklahoma, with its principal office at Dallas, Texas.

(H) "Board" shall mean the Civil Aeronautics Board or any other agency of the Government discharging substantially the same functions.

(I) "Control" shall mean either control or the power to control, affirmatively or negatively, in the light of all the circumstances, including the ownership of stock other than that held by or for the person whose control is in issue.

(J) "Carrier" shall mean an American-flag airline duly approved and certificated by the Board and the President.

III.

The provisions of this Final Judgment applicable to Pan American shall apply to such defendant, its subsidiaries, officers, directors, agents, servants, employees, successors and assigns, and to those persons in active concert with it who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

(A) Pan American is ordered and directed to divest itself of all its interest in Panagra (whether by sale of stock, assets or otherwise) and to take such action as may be necessary and appropriate to achieve the result of there being a carrier, comprised of or controlled by Braniff through stock ownership (owning more than 50% of the outstanding stock entitled to vote) and not controlled by Grace, and holding Braniff's and Panagra's international certificates, with the approval of the Board and the President, provided that Pan American receives for its interest

in Panagra so divested a fair and reasonable price to be fixed by agreement between the parties, or, if no agreement is reached, by the Board or if the Board declines to fix such price then by the Court or by three arbitrators appointed by the Court and such carrier is precluded from using any name or insignia having reference to or leading to confusion with Pan American.

(B) Pan American is enjoined and restrained after the divestiture required by subsection (A) hereof from retaining any interest in Panagra, Braniff or the carrier, and from acquiring or holding directly or indirectly any interest in any of the said companies in the future.

(C) In the event that any person in which Pan American has or acquires any stock interest, should have or in the future acquires any voting interest in Panagra, Braniff or the carrier, Pan American shall within a reasonable time divest itself of its interest in such person unless this Court shall approve Pan American's retention of its stock interest therein upon a finding that such interest does not afford Pan American the opportunity to influence the affairs of Panagra, Braniff or the carrier.

(D) Within ten days after Pan American's divestiture as required by subsection (A) hereof, Pan American shall cause any of its officers, directors or employees who are officers, directors or employees of Panagra to resign from such positions in Panagra. Thereafter, Pan American shall be enjoined from causing, authorizing or knowingly permitting any of its officers, directors or employees to serve as officer, director or employee of Panagra, Braniff or the carrier.

V.

In the event that it shall not prove feasible to achieve the result stated in subsection (A) of Section IV by July 31, 1961 (or such later date or dates as the plaintiff may approve) a supplementary final judgment may be entered against Pan American:

(A) Containing such relief as the Court may determine after a hearing (which may be simultaneous with the hearing with respect to Grace), to which Pan American shall be a party with the right to adduce evidence, if a Final Judgment by consent shall have been entered against Grace providing (1) for Grace's participation in the plan set forth in paragraph (A) of Section IV on a basis satisfactory to the plaintiff (including provisions with respect to price similar to those stated in paragraph (A) of Section IV), and (2) that if it shall not prove feasible to carry out the said plan prior to July 31, 1961 (or such later date or dates as the Department may approve) a supplementary final judgment may be entered against Grace containing such relief as the Court may determine after a hearing, to which Grace shall be a party with the right to adduce evidence; or

(B) Requiring Pan American to take such action regarding Pan American's stock interest in Panagra without regard to the fact that such stock interest was acquired prior to the effective date of the Civil Aeronautics Act of 1938, as the Board and the President shall determine to be appropriate to establish a sound route pattern between the United States and South America, if a final judgment by consent shall have been entered against Grace providing (1) for Grace's participation in the plan set forth in paragraph (A) of Section IV on a basis satisfactory to plaintiff (including provisions with respect to price similar to those stated in paragraph (A) of Section IV), and (2) that if it shall not prove feasible to carry out the said plan prior to July 31, 1961 (or such later date or dates as the Department may approve), Grace will also agree to be bound by a determination of the Board and the President concerning the action to be taken by Grace regarding Grace's stock interest in Panagra without regard to the fact that such stock interest was acquired prior to the effective date of the Civil Aeronautics Act of 1938, deemed appropriate to the end above described; or

(C) Containing such relief as the Court may determine after a hearing to which Pan American shall be a party with the right to adduce evidence, if the Court shall have made an adjudication that Grace has violated the antitrust laws as charged in the complaint. Such a final judgment against Pan American shall become effective only when such judgment as shall be entered against Grace shall not be subject to further appeal. In the event that there is a finding of liability on the part of Grace, Pan American shall not be entitled to be heard with respect to relief against Grace but shall only be entitled to be heard with respect to the relief against it after the final judgment against Grace shall not be subject to further appeal.

VI.

To ensure reasonable opportunity for effectuation of either of the alternative plans described in Sections IV and V, herein, Pan American shall not dispose of any or all of its stock in Panagra, without the prior consent of the United States, before July 31, 1961; provided however, that this section shall not prevent Pan American from using its stock in Panagra as security for any borrowings.

VII.

(A) If the Government shall have prosecuted the complaint herein against Grace and it shall be finally determined, after all available appellate procedures have been exhausted, that Grace has not violated the antitrust laws, the provisions of this final judgment shall not, in any manner, operate as a bar or estoppel or in any other manner constitute a defense against any suit or proceeding which the United States may institute alleging that the consenting defendant is violating Sections 1, 2, or 3 of the Sherman Act (15 U. S. C. §§ 1, 2, 3) or any of them, regardless of whether the acts alleged to constitute such violation or

Proposed Consent Decree.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, Plaintiff, v. PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, AND PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.	Civil Action. No. 90-259

Final Judgment.

Plaintiff, United States of America, having filed its complaint on January 11, 1954; defendant, Pan American World Airways, Inc., having appeared herein and having filed its answer to the complaint denying the substantive allegations thereof relating to it; and plaintiff and Pan American by their respective attorneys having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by either party with respect to any such issue;

NOW, THEREFORE, before any testimony has been taken, and without trial or adjudication of any issue of fact or law or admission in respect of any such issue and upon consent as aforesaid of plaintiff and Pan American,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter herein, and of the parties signatory hereto. The complaint states claims for relief against Consenting Defendant under Sections 1, 2 and 3 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "Pan American" shall mean defendant Pan American World Airways, Inc., the Consenting Defendant, a corporation organized under the laws of the State of New York, with its principal office at New York, New York.

(B) "Panagra" shall mean defendant Pan American-Grace Airways, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal office at New York, New York.

(C) "Grace" shall mean defendant W. R. Grace and Company, a corporation organized and existing under the laws of the State of Connecticut, with its principal office at New York, New York.

(D) "South America" shall mean the land area comprising the Continent of South America, and in particular the countries of Venezuela, Colombia, Ecuador, Peru, Chile, Bolivia, Uruguay, Paraguay, Argentina, Brazil and the Guianas.

(E) "Subsidiary" shall mean a corporation more than 50% of whose stock entitled to vote upon election of directors (other than preferred stock so entitled to vote upon the failure of the corporation to pay certain dividends) is owned, or directly or indirectly controlled, by another corporation.

violations occurred before or after the date of entry of this final judgment.

(B) In any such suit or proceeding instituted by the United States, the United States shall not, by virtue of this final judgment, be required to show or establish any change in material circumstances occurring subsequent to the date of the entry of this final judgment, nor, in any manner, be barred or estopped, by virtue of any of the provisions of this final judgment, from introducing any testimony or evidence relating to any of the aforesaid acts, whether occurring before or after the date of this final judgment.

(C) Nothing in this Section VII shall prevent Pan American from contending in any such suit or proceeding that the finding of non-liability on the part of Grace referred to in paragraph (A) would preclude a finding of liability on the part of Pan American or the Government from controverting any such contention on the facts or the law.

VIII.

Within three months after the divestiture required by Section IV, there shall be terminated: (1) any and all agreements whereby Pan American or any company in which it has an interest acts as general sales agent for Panagra, or by which Panagra acts as general sales agent for Pan American; (2) any and all agreements by which Pan American renders purchasing, shipping or other management services for Panagra; and (3) any and all arrangements between Pan American and Panagra for the interchange, maintenance and overhaul of flight equipment or the training of personnel; provided, however, (a) that the foregoing shall not prevent the existence as between Pan American and Panagra of such interline traffic and sales agreements or joint facility arrangements, approved or to be approved by the Civil Aeronautics Board, as are commonly entered into by competing airlines; (b) that the termination of such contracts shall not affect the rights or obligations of the parties with respect to transactions previously initiated

thereunder; and (c) that the three months' period for termination may be extended for a further period not to exceed another three months as to any particular contract or contracts if agreed with the approval of the Department.

IX.

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on notice to Pan American, reasonable as to time and subject matter, made to Pan American at its principal office, and subject to any legally recognized privilege, (1) be permitted reasonable access, during the office hours of Pan American, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Pan American relating to any of the matters contained in this Final Judgment, and during the times that the plaintiff shall desire such access, counsel for Pan American may be present, and (2) subject to the reasonable convenience of Consenting Defendant and without restraint or interference from it, be permitted to interview its officers or employees regarding such matters, at which interviews counsel for the officer or employee interviewed and counsel for the Consenting Defendant may be present.

Upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, Pan American shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Judgment. Information obtained pursuant to the provisions of this Section shall not be divulged by any representative of the Department to any person other than a duly authorized representative of the Department, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

X.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment and no others to apply to this Court at any time for such orders or direction as may be necessary or appropriate for the construction, modification, or carrying out of this Final Judgment and for the enforcement of compliance therewith and for the punishment of violations thereof, or for other and further relief.

XI.

The making and entry of this decree shall be without prejudice to any rights of Grace or Panagra in any trial of this case against either or both of them and without prejudice to the rights of Grace or Panagra as to relief.

Dated:

United States District Judge

We hereby consent to the making and entry of the foregoing Final Judgment.

For the Plaintiff:

.....	.....
Assistant Attorney General	
.....	.....
.....	.....
Attorneys, Department of Justice	Attorneys, Department of Justice

For the Defendant:

Pan American World Airways, Inc.

.....

REPLY BRIEF FOR APPELLANT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
Appellant,

v.

UNITED STATES OF AMERICA,
Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR APPELLANT PAN AMERICAN WORLD AIRWAYS, INC.

I

The Government makes no substantial attempt to sustain the district court finding of a Section 2 violation by Pan American after the district court found no Sections 1 and 3 violation by Pan American and Grace.

The Government makes no real attempt to sustain the district court's finding of a unilateral violation of the antitrust laws on the part of Pan American or the district court's decree of divestiture against Pan American alone,

although the Government states (p. 8) that, assuming that its "basic argument may be wrong," the district court was correct in holding that Pan American violated Section 2 of the Sherman Act:

It is plain from reading the briefs of the Government as appellant in No. 47 and as respondent in No. 23 that its claim now, as in its complaint, is only a claim of *combination* on the part of Pan American and Grace to restrain and monopolize trade through their *joint organization and ownership of Panagra*, and that the remedy sought is divestiture of the two owners and not of Pan American alone. As there was no claim in the complaint (R. 1-12), there is no claim now that Pan American committed some unilateral violation of the antitrust laws, or that by reason of anything which it did alone and independently it alone should be divested of its ownership of a half interest in Panagra.

There is no denial of what we said at the beginning of Point II of our appellant's brief, that "The district court's first error was to decide a case which was not brought" and that its "final error was to enter a decree * * * which runs directly contrary to national policy in air transportation as declared by the agency of government vested with the responsibility of formulating and effectuating that policy."

The reality is restated in the "Introduction And Summary" of the Government's brief (p. 7): "The government's basic contention in this case is that the arrangements between Pan American and Grace, resulting in the formation of Panagra, constitute, in both their inception and subsequent operation, a combination in restraint of trade violating Sections 1 and 3 of the Sherman Act," and the action of Pan American with respect to Panagra's

extension to the United States, which was the sole basis of the district court's finding against Pan American, "supported in part" the "illegality of the combination" alleged.

Similarly, in the last point of its brief (p. 47), where the Government seeks to support a decree of divestiture, it is under a heading "Divestiture of Both Pan American and Grace's Interest in Panagra is the Proper Remedy in This Case." And here (p. 48), as elsewhere, it is acknowledged that the violation on the part of Pan American found by the district court was only, as we observed in our appellant's brief, in Pan American's exercise of the "normal incidents of ownership" of its Panagra stock, or, as the Government itself expresses it (p. 49), "merely a consequence of Pan American's role as the holder of a 50 percent interest in Panagra."

While thus repeating as respondent its basic contention as appellant, *there is no attempt on the Government's part to meet the basic contention of Pan American as appellant* that a joint venturer in a venture which has been held to be legal and in which his ownership has been held to be legal may not be held to have violated the antitrust laws by exercising the normal incidents of ownership in voting against an extension of the venture to place it in competition with his own business.

In sum, the Government is necessarily in agreement with the fundamentals stated in our appellant's brief, that "The test of legality must be legality of the venture and ownership. If the venture and ownership do not offend against the antitrust laws, the exercise of the normal incidents of ownership cannot offend."

We submit that we do not have to argue further as appellant. The district court decision cannot stand because it is a contradiction within itself. There can be

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only one of two results in this case, not a third result such as the district court reached. The complaint must either be sustained as to both defendants or dismissed as to both defendants (unless sustained against Grace alone on the ground of the illegality of its ownership of stock in an airline in competition with its steamship line). There was either a combination in restraint of trade in the formation and joint ownership of Panagra by both Pan American and Grace, as alleged by the Government, or there is no basis for the decision against Pan American. When the district court found, properly we maintain, that the joint ownership and arrangements were legal (Opinion, R. 5389-392), including the "understanding that Pan American and Panagra were not to parallel each other's routes" (Opinion, R. 5390) and including the "method of organization of the joint company" by Pan American and Grace which was calculated to insure against expansion of the company "in competition with their respective independent lines" (Opinion, R. 5389), the court was as much obliged to dismiss the complaint against Pan American as against Grace.

The District Court Decision is Not Sustainable Upon the Suggested Ground that Pan American is Dominant on the Canal Zone-United States Segment and Maintained its Dominance by Excluding Panagra

Having observed that the Government as respondent has wholly failed to meet our appellant's case, we shall in reply comment only briefly on the Government's arguments which miss the point.

The holding against Pan American was, as stated by the Government (p. 8), "based upon findings that Pan American has been since 1928 the dominant air carrier on the Canal Zone-United States segment of the commerce

with South America; that by using its 50 percent stock ownership in Panagra, Pan American prevented Panagra from entering that segment of commerce; that Pan American thereby maintained its dominance not only over air transportation between the United States and the Canal Zone, but also between the United States and South America as a whole; and that Pan American thus monopolized or attempted to monopolize this commerce in violation of Section 2 of the Sherman Act."

It is thus clear that the entire holding against Pan American is based upon two findings: (1) that Pan American is "dominant" on the Canal Zone-United States segment, and (2) that its "dominance" was maintained by preventing Panagra from entering that segment.

Neither finding is sustained or sustainable, for there is *absolutely no evidence* to support a finding or permit an argument that Pan American is dominant on the Canal Zone-United States segment or that its "prevention" of Panagra's entering that segment gave Pan American anything approaching a monopoly.

There is no Basis for a Finding or Argument that Pan American is Dominant on the United States-Canal Zone Segment

The reason that we can and do make such a categorical statement on the subject is that the entirety of the evidence on the subject can be stated in one sentence. *The totality of the evidence as to competition on the United States-Canal Zone segment is the single significant fact that eight airlines compete for the traffic.*

The Government acknowledges (p. 15) this fact and that "no evidence was introduced * * * as to the division of traffic among these carriers."

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We submit that the Government's statement with respect to the evidence must be taken as an acknowledgment of the insufficiency of the evidence to support a finding of "dominance" by Pan American on this route.

The reason for the lack of further evidence on the subject is as significant as the absence of evidence itself. The subject of competition on the route was never explored in the district court because there was no claim or suggestion either in the complaint or at the trial that Pan American was dominant on the route.

Of equal significance is the basis upon which the trial court reached its key finding as to Pan American's "monopoly" on the United States-Canal Zone sector. As pointed out in our appellant's brief (p. 47), the district court's finding was not based upon any factual showing or consideration of the facts but upon the mistaken legal premise that transportation on this sector is "overseas" transportation rather than "foreign" transportation and "as such would be reserved exclusively to United States flag carriers" (Opinion, R. 5407). The district court thus either had no realization of the fact or ignored the fact, which was completely destructive of its key finding, that eight airlines competed for the traffic and that it could not possibly be said that Pan American had monopolized transportation on that sector by not cooperating with Grace in an application by Panagra to be added to the competitors on that sector.

The Government now feebly suggests an argument (p. 15), without any facts in the record, that, assuming that all eight carriers on the United States-Canal Zone route shared equally in the traffic, then in some way not indicated monopoly would arise from such diffusion. The argument is not sustainable as an intellectual exercise,

which is all that it is, and it is certainly not sustainable without factual support.

Nor is the deficiency overcome with the suggestion that the competition of foreign airlines should be ignored or minimized by a rationalization about "the part which national loyalties may be expected to play in the routing of traffic" (p. 16). The facts of foreign airline competition, including the fact that Americans in large proportions use foreign airlines, are stated in our appellant's brief (p. 40). Indeed, the Government concedes (p. 16) that we have correctly observed that "the foreign carriers' market share is increasing." The Government's speculation (p. 17) that foreign penetration of the market may be a "temporary condition" is refuted by the source of its speculation, *United States-South American Route Case*, CAB Dkt. No. 12895, Order No. E-17289, August 8, 1961. In that case the CAB emphasized the increasing growth and influence of foreign carrier services which "dilute the potential economic support for the services of the United States carriers" and "bring into question the need for point to point duplication of such services." The report appended to that Order shows that both the proportion of all passengers using foreign flag airlines and the proportion of U. S. citizens using foreign flag airlines continue to increase (compare D. Ex. PS-113, R. 4583 and PS-112, R. 4582 with Appendix 8 to *Report on Proposed South American Route Patterns*, appended to CAB Order No. G-17289, *supra*).

The fact thus emerges clearly, as demonstrated in our appellant's brief (pp. 37-42), considering all the com-

* The hypothetical market figures in *Times-Picayune v. U. S.*, 345 U. S. 594, 612 (1953), referred to by the Government, were not used to hypothesize dominance, but on the contrary were used only as a comparison with the actual market figure to show that the actual figure was not of a magnitude to constitute dominance.

petition which must be considered, that Pan American is not "dominant" in air traffic between the United States and South America, and it cannot even be argued, in support of the essential premise which underlies the district court's finding against Pan American and the Government's attempt to sustain the district court's decision, that Pan American had any dominant position in the United States-Canal Zone segment.

There is no Basis for a Finding or Argument that Pan American Maintained its Dominance on the United States-Canal Zone Segment by Excluding Panagra

As there is no support whatever for any attempted argument that Pan American is dominant on the United States-Canal Zone sector, *a fortiori* it cannot be said that Pan American maintained its dominance by excluding Panagra, a single "potential competitor," from that sector.

After the destruction of the major premise of "dominance," we comment on the argument addressed to the minor premise of the maintenance of dominance through the exclusion of Panagra only to make doubly clear that it falls, as of necessity, with the collapse of the major premise.

The Government argues (pp. 11-12) that there was here an "exercise of monopoly power," being the "power to exclude competitors," in that "Pan American, by combining with Grace, acquired the power, which it has continuously exercised, to exclude the direct competition of Panagra, the company which could best provide an effective challenge to Pan American, from a crucial segment of the South American trade."

Analysis of the argument reveals that each and every one of the ingredients from which it purports to be compounded is lacking:

(1) The "power to exclude competitors" is non-existent. It has not been claimed; it could not be claimed that Pan American has had any power to exclude "competitors" anywhere. The only claim of exclusion is of a single "potential competitor" on the United States-Canal Zone sector.

(2) It cannot be said that Pan American "acquired" the power attributed to it. The words "acquired" and "acquisition" are of meaningful import in antitrust concepts and cases. Pan American "acquired" nothing in relation to Panagra. It "created" Panagra, and whatever "power" it may have with respect to Panagra stems entirely from its creation of Panagra as a pioneering venture in a new field.

(3) The "power to exclude" Panagra did not exist and was not "exercised." The "power" did not exist because it was dependent upon the "legality" of Pan American's action on the subject of Panagra's extension as determined by the CAB. *W. R. Grace & Co.* v. *CAB*, 154 F. 2d 271 (2d Cir. 1946) (see our appellant's brief, pp. 42-44).*

* The Government avoids rather than meets the argument that Pan American did not have the power to exclude Panagra from the United States-Canal Zone run because of the authority existing in the CAB, under the decision of the Court of Appeals for the Second Circuit, to grant an application by Grace for an extension of Panagra to the United States if it was shown that Pan American's opposition to such an extension was the result of "illegality and fraud." The Government argues (p. 20) that the Court of Appeals' decision can be disregarded because Pan American "in fact" excluded Panagra from the route and the litigation involved in the Court of Appeals' decision ended in an "inconclusive manner." We reply that the point is that Pan American did not have the power of excluding Panagra except if it was legally entitled to do so; that it in fact did not do so; that there

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There was no exclusion of Panagra from the United States-Canal Zone segment. On the contrary, Pan American has advocated, from the beginning of the possibility of through-flights, the flying of Panagra planes over Pan American's Canal Zone-United States route, so that when Grace finally agreed to the Pan American proposal, Panagra entered upon that segment under agreements approved by the CAB.**

(4) Panagra could not be considered a company which could "best provide" competition for Pan American on the United States-Canal Zone segment or be contemplated as a "potential competitor" of Pan American at all. As the Government places considerable stress on what might be "expected" from Panagra as "competition" for Pan American, saying (p. 14) that "Panagra would normally be expected to be Pan American's strongest competition between the United States and the Canal Zone," we pause to point out why, in the nature of the organization of Panagra, there could be no such expectation or contemplation.

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was nothing inconclusive about the Court of Appeals' decision after the appeal was dismissed. Further, the whole subject of Panagra's coming to the United States was concluded by the settlement of the issue in the through-flight arrangements approved by the CAB.

** We need not argue the Government's suggestion (pp. 9-10) that a route of Panagra's own would be preferable for Panagra to the through flight arrangements in that "it would increase its ability to attract passengers to South America." There is no citation of the record or evidence in support of the suggestion. We can think of no reason why any passenger flying from the United States down the west coast of South America would patronize Panagra if it had the route for itself but would not patronize Panagra on a through-flight service over the combined routes of Pan American and Panagra (See testimony in CAB Docket 779 of H. J. Roig of Panagra and Grace. D. Ex. P-412, R. 3715, 3733).

Panagra Would Not be Expected to be Pan American's Competitor

It is a primary fact in this case that Panagra was designed and formed to be a connecting and complementary, not competing, carrier with Pan American (see our appellant's brief, pp. 17 *et seq.*). The Pan American and Panagra services between the United States and the west coast of South America were set up as connecting and complementary services, with Pan American rendering the service between the United States and the Canal Zone and Panagra rendering the service between the Canal Zone and the west coast of South America.

The carriers' roles in relation to each other were fixed in the beginning. Indeed, that fact is the premise of the Government's claim of an illegal combination. It is not denied or questioned by the Government, indeed the Government evidence made it clear, that Grace's only interest in participating in an airline at the time Panagra was formed was in an airline which would run from the Canal Zone down the west coast of South America. Equally clear it is that Pan American's only interest in joining with Grace in an airline was one that would run from the Canal Zone down the west coast of South America (see e.g. Opinion, R. 5376, 5388-389). Pan American had already established its route from the United States to the Canal Zone which was the predicate of the Panagra undertaking, in which Pan American agreed to take Grace as a partner instead of going it alone as it would otherwise have done. Panagra was thus, as the CAB termed it, "part of the Pan American system." It could never have been conceived by anyone that the time would come that Panagra would be expected to become a competitor of Pan American on the route between the United States and the Canal Zone, with the

sary to establish that Pan American has "a substantial monopoly" in the area or that the elimination of an additional potential competitor would maintain a monopoly.

What we have said as to the failure to introduce any evidence on the subject of "dominance" of Pan American on the United States-Canal Zone segment, and the reason therefor, bears restatement in connection with the academic discussion in the Government's brief of circumstances under which the elimination of a single competitor could be held to be monopolization. Neither when this action was instituted or tried was the idea advanced that Pan American had monopolized or attempted to monopolize commerce between the United States and the Canal Zone by preventing Panagra from extending its route from the Canal Zone to the United States.

There is no Support for the Suggestion of "Attempted Monopolization" on Pan American's Part

Finally, the argument (pp. 22-25) is not sustainable that, if the decision of the district court cannot be upheld on its finding of monopolization on Pan American's part, it may be upheld on the ground of "attempted monopolization." (p. 23) There is here no satisfaction of the evidentiary requirements for a finding of attempted monopolization.

The Government recognizes (p. 23) that the two essential elements of an attempt to monopolize are (1) "a specific intent" to monopolize and (2) a "dangerous probability" of monopolization resulting from the acts of the defendant. The Government does not suggest that the district court made any finding on either of these essential elements of a case of attempted monopolization. The opinion of the district court gives no indication of thought about these requirements.

The Government claims no more in this connection than that Pan American voted its stock interest in Panagra as it was entitled to do. Its vote against an application for an extension of Panagra's route to the United States is recognized as being nothing more than an exercise of the normal incidents of its stock ownership in Panagra. Such a normal exercise of a stockholder's rights cannot be considered a plan or scheme to monopolize. Nor does the opinion of the district court suggest any such scheme on Pan American's part, but finds only that Pan American mistakenly regarded Panagra as a subsidiary and that the voting of its stock interest in Panagra was motivated by its desire to participate in the profits to be derived by Panagra's flying over Pan American's route (Opinion, R. 5405-406). Such a desire to profit from one's own franchise can hardly be condemned as an intent or attempt to monopolize.

The Government's attempt to distinguish the patent and trademark cases, holding that good faith action pursuant to an apparent legal right negates a claim of a specific intent to monopolize, is not persuasive. A CAB certificated route is comparable to a patent or trademark. A route received pursuant to a grandfather clause is even more analogous. The reason for the defense is the same in either case, that a good faith assertion of any legal right is not the equivalent of a plan or scheme to monopolize. See e.g., *Kellogg Co.* v. *National Biscuit Co.*, 71 F. 2d 662, 666 (2d Cir. 1934). If Pan American was mistaken in its judgment, we submit that the mistake cannot be blown up into a "specific intent to monopolize."

The argument of the Government on "dangerous probability" of monopolization fails for the very same reason that its argument of monopolization fails. There is no "strong likelihood," as the Government suggests, that a

effect of replacing Pan American on that route, and that Pan American should vote its half interest in Panagra for such replacement.

We must also say in this connection that we can see no reflection upon Pan American in the motive found by the district court and cited by the Government (p. 10), for its exercise of the "normal incidents of ownership" in voting against an extension of Panagra to the United States and insisting upon observance of the agreement that Pan American and Panagra would not parallel each other's routes—"in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States and bound for points on Panagra's west coast routes." That was the agreement of the parties and was inherent in the formation of Panagra. That is the reason why Pan American formed Panagra. Nor can we see that the legality or morality of the situation, as far as Pan American is concerned, would be affected by the fact, if it were a fact, that there would be some advantage to the joint venture, meaning the other joint venturer, in having Panagra take over Pan American's route between the United States and the Canal. If it were material, we would rely on the uncontradicted evidence that competition between Pan American and Panagra between the United States and the west coast of South America would be a waste of Panagra's investment as well as Pan American's investment and a waste of public funds. In any event we rely on what seems to us the incontrovertible premise that a joint venturer in what has been held to be a legal venture, and in which his ownership has been held to be legal, cannot be held to be in violation of the antitrust laws for refusing to support the proposal of his partner that the partnership take over his own business.

The Evidence Does Not Even Allow Argument that the Assumed Exclusion of Panagra from the United States-Canal Zone Segment Gave Pan American a Monopoly on that Segment

It remains only to point out and duly emphasize that even if all the the Government suggests as to the "power" to exclude Panagra and the "exclusion" of Panagra from the United States-Canal Zone sector is assumed, there is a fatal failure to make a semblance of a showing that the "exclusion" gave Pan American a "monopoly" on the route.

In the absence of any showing or claim that Pan American excluded or had the power to exclude "competitors," and with the suggestion of "monopoly" coming down to the exclusion of a single potential competitor, it would have been incumbent upon the Government, if it intended to make out a case of that kind, to make a most complete presentation of competitive conditions on the United States-Canal Zone segment, a showing which would support a claim that the exclusion of a single potential competitor would foster a monopoly. The Government would have had to prove a case coming within the holding of *Lorain Journal Co. v. United States*, 342 U. S. 143, 154 (1951), cited by the Government (p. 13) for the proposition that exclusion of a single competitor, when it is the "only substantial competitor," may constitute monopolization.*

Plainly, the presence of eight competing airlines on the United States-Canal Zone route negatives any such case, and certainly, without any other evidence on the subject of competition on the segment, the Government cannot purport to have made a factual showing of the kind neces-

* The holding of the *Lorain Journal* case (p. 154) was that "a single newspaper, already enjoying a substantial monopoly in its area, violates the 'attempt to monopolize' clause of § 2 when it uses its monopoly to destroy threatened competition."

"foreclosure of Panagra from entering under its own certificate into the United States" would result in a "dangerous probability" of monopolization, as the number of competing carriers on the route are so numerous as to make one more or less inconsequential as a monopoly factor. Concededly, the admission of as many carriers to the route as the CAB thinks desirable is within the power of the Board at all times, and the assumed power of exclusion of a single carrier attributed to Pan American, and its own subsidiary at that, cannot possibly be characterized as either monopolization or attempted monopolization.

II

The Civil Aeronautics Board's approval of the Through Flight and Parent Company agreements, an integral part of which is recognition of Pan American's right to refuse to allow Panagra to extend its route to the United States, confers antitrust immunity on Pan American's exercise of that right.

We find that the Government's argument under its Point II (pp. 25-35), addressed to the question of the grant of immunity by the CAB to Pan American on account of its refusal to allow Panagra to extend its route to the United States, in no way counters the showing we have made on this subject in Point III of our appellant's brief (pp. 61-72). In the interest of avoiding unnecessary briefing we refrain from adding anything on this subject in this reply brief, but respectfully ask the Court to refer back to our argument on the subject in Point III of our appellant's brief as our reply to the Government's argument. We respectfully

submit that the Court will find our original argument both responsive to and conclusive against the Government's argument on this point.

III

The Civil Aeronautics Board had primary jurisdiction of the subject matter of the action and the district court should not have entertained the action.

What we have said as to our appellant's brief serving as a reply to the Government's respondent's brief on its Point II applies equally to the Government's Point III on the subject of the exclusive or primary jurisdiction of the CAB (pp. 36-47). Point IV of our appellant's brief (pp. 51-60) is respectfully referred to as a full reply to the Government's argument.

We do, however, think it worthwhile to point out from the Government's own statement that it is arguing an altogether different case from the one presented in this appeal on the question of the jurisdiction of the CAB, and that its argument is in effect an admission that the case presented on this appeal and decided by the district court is one which does fall within the jurisdiction of the CAB.

The Government's argument (p. 42) is pitched to the point that the CAB does not have such a pervasive power or specialized competence in dealing with all antitrust questions relating to the airline industry as to give it primary jurisdiction to deal with the "basic issue" here of "whether the formation of Panagra, the division of control, and the concomitant agreements going back to a period antedating all administrative regulation, were in

the inception of the combination, as well as in its subsequent implementation, a combination in restraint of trade violating Sections 1 and 3 of the Sherman Act."*

We need not argue this posed proposition, which is an accurate statement of the case which the Government brought and lost and now has up on appeal in No. 47, for that is not the case on this appeal. The district court dismissed the case under Sections 1 and 3 of the Sherman Act, and the case presented on this appeal is whether, assuming that there is no Section 1 or 3 violation, Pan American can still be held to have violated Section 2 of the Act by the vote of its stock interest in Panagra against an extension of Panagra to the United States. It is that question which we say falls squarely within the primary jurisdiction of the CAB, and we find the Government

* The cases cited by the Government demonstrate that the Civil Aeronautics Act is a pervasive and comprehensive scheme of regulation. In *United States* v. *Radio Corporation of America*, 358 U. S. 334, 348-351 (1959) and *California* v. *Federal Power Commission*, 369 U. S. 482, 485-488 (1962) this Court pointed out that the standards established for the regulatory commissions in those two cases were "public interest, convenience, and necessity". The standards by which the CAB approved the Through Flight Agreement included not only a standard of "the public interest" but also of whether the transaction resulted "in creating a monopoly" (*Pan American-Panagra Agreement*, 8 CAB 50, 63 (1947)). Thus the CAB was clearly required to weigh antitrust considerations. The Federal Communications Commission in the *R.C.A.* case and the Federal Power Commission in the *California* case were not so required. Moreover, the Civil Aeronautics Act was intended by its drafters to be based upon the Interstate Commerce Act, an Act which the Government has acknowledged to be comprehensive and pervasive (G. Resp. Br. 44; *Hearings on S. 2 Before a Subcommittee of the Committee on Interstate Commerce*, U. S. Senate, 75th Cong., 1st Sess. (1937) 280, 333-40, 427-31; 83 Cong. Rec. 6726). The Government's assertion that the CAB lacks power over international rates is simply mistaken as a matter of fact. International rates are set by agreements approved by the CAB under the same section which this Court has previously ruled grants the CAB power over rates. *United States* v. *du Pont & Co.*, 351 U. S. 377, 388, n. 14 (1956).

The Government cites the case of *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439 (1945) to the effect that even a comprehensive

agreeing rather than disagreeing with us when it concedes (p. 43) that "some of the practices attacked by the government in this case might be dealt with as unfair competition under Section 411 of the Aviation Act." The Government does not specify, but clearly it means Pan American's opposition to Panagra's extension to the United States, for the only relief which it mentions (p. 43) as not being within the administrative authority of the CAB is relief from "the basic evil of the combination of Pan American and Grace as co-owners of Panagra."

As we said in our appellant's brief (p. 52), it may be that if this action had resulted either in sustaining or dismissing the complaint no harm would have been done to the CAB's jurisdiction and functioning. The

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and pervasive regulatory scheme will not oust the federal courts of jurisdiction over conspiracies and combinations which present the regulatory agency with a situation over which it has no control. The Government finds in the 1928 combination of Pan American and Grace to form Panagra an analogy to the rate fixing combination of railroads in *Georgia* v. *Pennsylvania* which presented to the ICC rates and tariffs already fixed by the railroads. The Court there held that primary jurisdiction did not apply because the ICC could not approve nor could it condemn and remedy the rate fixing conspiracy. The differences, relevant to the Government's Section 2 charge, between ICC jurisdiction in that case and CAB jurisdiction over Panagra's extension to the U. S. are made clear by the decision of *W. R. Grace* v. *CAB*, 154 F. 2d 271 (2d Cir. 1946), *writ of cert. dismissed for mootness*, 332 U. S. 827 ('947); but there is also a decisive difference, relevant to the Sections 1 and 3 charges, from the alleged conspiracy and combination of Pan American and Grace. Pan American and Grace formed Panagra in 1928 when the government agency dealing with airlines was the Post Office. Award of an airmail contract was in those days equivalent to certification of a route by the CAB today. The combination of Pan American and Grace, far from being condemned, was expressly cited by the Post Office as the basis for granting Foreign Air Mail contract No. 9. The award of the contract was upheld by an opinion of the Attorney General. 36 Ops. Att'y Gen. 33, May 6, 1929. Moreover, in 1938 Congress confirmed this approval of Panagra's right to operate its routes in its then existing form by granting it a grandfather certificate when the CAB was established (PAA Ap. Br. 89; §401 of the Civil Aeronautics Act).

invasion of the CAB's jurisdiction by the district court here consisted not so much in its undertaking to decide the case which the Government brought, presenting the question of whether the formation of Panagra with its concomitant agreements antedating all administrative regulation was a violation of Sections 1 and 3 of the Sherman Act, but in its undertaking to decide a case which was not brought and holding that there was a unilateral violation of Section 2 of the Sherman Act on the part of Pan American in its action with respect to a Panagra application for an extension of its route to the United States. That action could certainly be dealt with as a question of "unfair competition" under Section 411 of the Aviation Act.

The Government is in error when it states (p. 43) that "this case does not concern the route pattern in South America." It would be more accurate to state that this case, as decided by the district court, is concerned with nothing but the route pattern. That the controversy relating to an application for a route for Panagra between the United States and the Canal Zone, which is the entire subject matter of the decision of the district court against Pan American, is concerned with the route pattern and is a question of "unfair competition" within the jurisdiction of the CAB is not only obvious but was judicially determined by the Second Circuit in *W. R. Grace & Co.* v. *CAB*, 154 F. 2d 271, 282 (2d Cir. 1946), where the court pointed out why the subject was peculiarly within the primary and exclusive jurisdiction of the CAB.

The court said that the "issues" involved in the CAB's examination into Pan American's voting with respect to a Panagra application would be "whether the Pan American Company was opposing the extension because it was pur-

suing its own advantage to the prejudice of the joint interest ('fraud') and because it was engaging in some unfair trade practice ('illegality')." Then the court stated:

> "Both those issues demand the same specialized acquaintance with commercial aviation and its ramifications as a decision upon the public convenience and necessity of the extension itself. No court, state or federal, would have that acquaintance; by hypothesis the Board does have it, and the Board alone."

This case therefore falls squarely within the holding of this Court in *United States* v. *Western Pacific Railroad Co.*, 352 U. S. 59, 64 (1956), cited by the Government (p. 42), in which the Court said that the doctrine of primary jurisdiction applies "whenever enforcement of [a] claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body."

The Government's citation (pp. 43-44) of cases sanctioning antitrust suits at the same time that the Federal Trade Commission is scrutinizing the practices in question as unfair methods of competition are not in point. The industries whose practices are subject to FTC scrutiny are not regulated by that agency as the CAB regulates and controls the airline industry, particularly with respect to route matters. Moreover, the Federal Trade Commission Act, as the cited cases indicate, permits "simultaneous proceedings under both acts." *United States* v. *Cement Institute*, 85 F. Supp. 344 (D. Colo. 1949).

Finally, the error of the district court in invading the province and usurping the authority and responsibility

of the CAB is manifest from its fashioning a decree which is contrary to all that the Board has said is required by national policy. This case thus well illustrates the wisdom of what this Court said in *Far East Conference* v. *U. S.*, 342 U. S. 570, 574 (1952), that if court action is necessary in connection with a matter within the jurisdiction of an administrative agency it should only come after the facts "have been appraised by specialized competence [to] serve as a basis for legal consequences to be judicially defined." Whether resort to the court after the CAB had exercised its jurisdiction might be justified is a matter which we need not contemplate. We submit that it is clear that the district court should not have undertaken to determine matters which the Court of Appeals for the Second Circuit has held were within the "specialized acquaintance" of the CAB and to reach a result which defeats national policy in air transportation as declared by the Board.

IV

Divestiture would be an inappropriate, unnecessary and unwarranted remedy.

The Government's argument under its Point IV in support of divestiture (pp. 47-52) is an argument in favor of divestiture of *both* Pan American and Grace and is markedly lacking in any support of a decree which would divest Pan American but not divest Grace. Significantly, the Government's argument for divestiture is addressed entirely to the case which it sought to establish but failed to establish. The heading of its Point IV (p. 47) is "Divestiture of Both Pan American and Grace's Interest in Panagra is the Proper Remedy in This Case," and the subheading (p. 48) is "Divestiture is normally the

appropriate remedy for violations of the antitrust laws caused by intercorporate combinations." Under these headings the Government argues (p. 48) in support of divestiture as a remedy for "illegal intercorporate relationships such as that between Grace, Pan American and Panagra," and the Government reminds us again (p. 49) that "the basic antitrust violation with which this case is concerned is the combination of Pan American and Grace in the Panagra enterprise." The Government's sole citation (pp. 48-51) in support of divestiture in this case is *United States* v. *du Pont & Co.*, 366 U. S. 316 (1961), in which, as the Government quotes, the "heart" of the antitrust violation was in "intercorporate combination and control."

But the case on this appeal is one in which the intercorporate relationships and the combination of Pan American and Grace in the Panagra enterprise have been held to be legal. Therefore, the Government's argument is out of place in the Government respondent's brief and is altogether inapplicable on this appeal.

We find no Government argument in support of a decree of divestiture against Pan American alone. Indeed, what the Government says (p. 48) points away from divestiture of Pan American, in view of the fact that divestiture under the decision of the district court cannot be predicated upon the existence of "illegal intercorporate relationships" requiring that remedy. Rather, the case, under the district court decision, falls within the class referred to by the Government as the "lesser restraints on competition" which are not on "a scale requiring divestiture." Indeed, a lesser restraint cannot be imagined after it is concluded that the intercorporate relationships are legal, and it is recognized, as the Government acknowledges (p. 48), that the only re-

straint has been "a mere exercise of the normal incidents of ownership."

Thus the Government is altogether unconvincing in arguing (pp. 49-50) that injunctive relief here would not be an adequate remedy for the violation found. After all, the remedy of injunction, which has been incorporated in the decree of the district court, directs Pan American to do exactly what the court said that it should have done about a Panagra application to extend its route to the United States—allow the application to be made and then submit its opposing arguments of "legitimate business considerations" to the CAB for the CAB's consideration and determination. That procedure is also in line with what the Court of Appeals for the Second Circuit said was the province of the CAB in the matter. It is, therefore, clearly not tenable to argue that the remedy of injunction is not adequate for the violation found.

We do not appreciate the Government's argument (pp. 51-52) that our argument on the subject of divestiture comes too late for serious consideration because evidence on the subject was not introduced at the trial. We have no idea of the kind of evidence the Government has in mind or of what it would have had Pan American do in this respect. The requisite facts to support our argument are all in the record. There is nothing which needs to be added or which would have been useful to add. Certainly the "broad discretion" in a district court, which is the Government's last mention, can be no basis for sustaining a decree of divestiture which is unnecessary, unwarranted and positively harmful in many respects, including the serious effect, stated by the Government to be illegal, of increasing Grace's control over Panagra, and the effect of defeating national policy in air transportation as declared by the CAB.

We submit that for all the reasons stated in our appellant's brief (pp. 72-87) the remedy of divestiture is unnecessary, unwarranted and highly inappropriate.

V

Reply to Grace

The Grace brief continues the maneuver of trying to take over the action and turn it from a case of the Government against Pan American and Grace into an action by Grace to oust its partner and complete the conversion of Panagra into a Grace satellite.

Grace seeks first (p. 3) to have the trial court decision sustained without a critical examination on appeal on the premise that this Court has only a "narrow scope of review" with respect to issues of fact in antitrust cases. No more inapposite statement could be made of the premise with which to begin the consideration of this case on appeal. There were no witnesses to the facts involved on this appeal. The evidence is almost entirely documentary. The conclusions to be drawn, whether of fact or law, principally of law, can equally be drawn by an appellate court as by a trial court. None of the considerations which prompt an appellate court to give "great weight" to a trial court's findings apply to this case. Further, our challenge to the decision below is principally on the ground that its errors are demonstrable from the decision itself without the necessity of looking at the record.

Grace's second pretense (p. 3), its assumption of injured innocence, is expressed as the "first anomaly" in the Government's position, the Government's seeking not only to divest Pan American, described by Grace as the "perpetrator of a restraint of trade," but also Grace, which

describes itself as the "principal opponent and victim of the restraint." This is the familiar fashion of placing the face of virtue on aggrandizement.

Of the same piece is Grace's reference (p. 3) to Pan American's opposition to the extension of Panagra to the United States as "the significant restraint at which the Government's case is aimed." This attempt to create the impression that this lawsuit was prompted by and aimed principally at some action of Pan American, and that Grace was mistakenly dragged in as a defendant, is best corrected by a reference to the Government's own statement of its case to which we have previously referred in this reply brief.

Grace's distortion of the case continues with its edited statement of the facts. We quote Grace's basic statement of the facts (pp. 8-9), from which its entire argument springs:

> "Shortly after the formation of Panagra an understanding developed between Grace and Pan American whereby Panagra was to operate down the west coast of South America and Pan American was to operate along the east coast of South America. This arrangement was based upon the economic situation existing prior to 1938 and the policies of the Post Office and State Departments during that period, under which competition between United States flag air lines in South America was not possible. It reflected and was defined by the contract routes granted to Panagra and Pan American by the Post Office Department during that period. There was never any understanding between Pan American and Grace limiting possible future operations of Panagra north from the Canal Zone. The east-west zoning arrangement ceased to exist in 1938 when the expiration of Panagra's ten-year mail contract and the enactment of the

> Civil Aeronautics Act fundamentally altered the situation and made competition possible."

The deficiencies in this statement are evident:

First, the understanding as to where Panagra was to operate was not any mere matter of "understanding" developed "after the formation of Panagra." It was explicitly expressed in the exchange of letters (Opinion, R. 5377-378, n. 7; P. Ex. G-15, R. 354; G-18, R. 359) between the parties pursuant to which Panagra was organized to operate an airline from "the Panama Canal to Valparaiso, Chile," with the possibility of its extension to Buenos Aires. This was not "the end immediately in view," as Grace now states (p. 51). It was "the view," as stated in the letter agreement of the parties, of what the jointly owned airline "ultimately" would be.

Second, naturally and necessarily, the "zoning arrangement" made by the parties and acknowledged by Grace was not merely "east-west," as Grace now describes it, but was equally north-south because Pan American was already operating north of the Canal and Panagra was formed only to operate south of the Canal and to connect with Pan American at the Canal. Everything which Grace states as calling for and justifying the "east-west zoning arrangement" also mandated and justified the north-south zoning arrangement:

> (p. 9) "the economic situation existing prior to 1938 and the policies of the Post Office Department and State Department during that period under which competition between United States flag airlines in South America was not possible."
>
> (p. 9) the zoning arrangement "defined by the contract routes granted to Panagra and Pan American by the Post Office Department during that period."

> (p. 19) Government "policies" which made it "economically impossible" for more than one United States flag airline to engage in air transportation on "any single international route."
>
> (p. 40) "this zoning arrangement arose out of the 'no parallel' policy of the Postmaster General and the air mail contracts awarded pursuant to that policy."

Pan American was on the United States-Canal Zone route by virtue of a mail contract, and it was in reference to that fact that Panagra was formed to operate from the Canal Zone south down the west coast of South America. The "zoning arrangement" between the parties, following the "no parallel" policy of the Government and agreement of the parties, obviously applied equally to the routes north and south of the Canal as to the routes along the east and west coasts of South America.

Third, there is not a semblance of support for the Grace statement that the "zoning arrangement ceased to exist in 1938 when the expiration of Panagra's ten year mail contract and the enactment of the Civil Aeronautics Act fundamentally altered the situation and made competition possible." This newly developed thought of Grace, expanded in its brief with the description of the "zoning arrangement" as being "temporary and *ad hoc*," is more of the fashioning of the facts to fit the argument. It finds no support in the district court's opinion. It is not even supported by the self-serving "contemporaneous memorandum" of ten years later referred to by Grace (p. 48) as proving its point. And in saying that "Grace never relied upon or recognized any zoning arrangement after that time," Grace has forgotten several exhibits to the contrary (P. Ex. G-143, R. 622; G-152, R. 638).*

* As the Government pointed out on pages 46-47 of its "Trial Brief for United States" in the district court, Panagra acknowl-

The zoning arrangement, north-south as well as east-west, was plainly neither temporary nor *ad hoc*, and equally plainly the reason for it did not cease in 1938. It is notable that Grace does not suggest that competition between Pan American and Panagra would be "economically" possible after 1938. The Government has been as concerned about uneconomic competition since 1938 as it was before 1938. It was not until 1946 that the President, overriding an evenly divided CAB, certificated an additional carrier into Latin America, and the CAB has repeatedly said over the past ten years that further American flag competition in the area would not be sanctioned because it would be a "waste of public funds or private investment." *New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501 (1954); *United States-South American Route Case*, CAB Dkt. No. 12895, Order No. E-17289 (August 8, 1961).

Grace also rears its argument on a premise clearly contrary to fact when it charges (pp. 47, 51) Pan American with preventing Panagra's "logical development" in com-

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edged the existence of the "zoning arrangements" or territorial agreement in 1943 and again in 1948. In 1943 Vice President Campbell of Panagra sought to have Panagra extended eastward to Iquitos and Tabatinga in Peru. He acknowledged his awareness of survey flights, on the basis of which Pan American did not consider Iquitos to be west coast territory, but he thought he could prove that Pan American had agreed that all of the country of Peru was Pan American-Grace territory (P. Ex. G-143, R. 622). In 1948 J. Peter Grace, Jr., President of W. R. Grace & Co., objected to a proposed Pan American Miami-Bogota service on the grounds that: "It had been our understanding that it had been agreed at the time that the Panagra Through-Flight Agreement was signed that Western Colombia was Panagra's territory and furthermore that a Gentlemen's Agreement was made that Panagra could at any time petition the C.A.B. for inclusion of Bogota and Medellin on its route between Balboa and Lima and also that if it would facilitate this in any way, Panair would sell Panagra U.M.C.A." (P. Ex. G-152, R. 638).

petition with Pan American. We have already made it sufficiently clear that there is no such "logical development" of Panagra. The explicit contemplation and creation of the parties was of an airline running south of the Canal which would form a connecting and complementary service with Pan American north of the Canal. It was clearly never contemplated, and would have been directly contrary to the understanding of the parties, for Panagra to be extended north of the Canal in competition with and in replacement of Pan American. There would be nothing logical in a development which would be such a departure from the design in Panagra's formation.

Indeed, as we have pointed out in our appellant's brief (pp. 18-19), the idea of "competition" between Panagra and Pan American through a route for Panagra from the United States to the Canal is a mirage and pretense of Grace, a euphemism which it employs for a takeover of the route from Pan American, a substitution of Panagra for Pan American on that route. The unquestionable fact (P. Ex. G-1139, R. 1703; D. Ex. PS-116, R. 4595; R. 194-195, 266, 332), recognized by the district court (Opinion R. 5405), is that the establishment of Panagra on a route between the Canal and the United States, without a corresponding establishment of Pan American on a route from the Canal down the west coast of South America, would result, not in "competition" between Panagra and Pan American, but in the replacement of Pan American by Panagra on the route between the United States and the Canal.

It is this all important fact, entirely ignored by Grace, which sheds the all revealing light on the controversy between Grace and Pan American over the extension of Panagra to the United States. Naturally, and we say entirely legally, Pan American refused to accede to the

desire of its partner that their joint enterprise take over Pan American's route and replace Pan American on the route between the United States and the Canal Zone. Grace, on the other hand, was acting both in breach of contract and in breach of faith with its partner in undertaking to have Panagra, which was designed to be a connecting carrier with Pan American, break the connection and replace Pan American in its part of the joint service. Pan American cannot be cast in the role of the sinner and Grace pose as the saint in this clash of Pan American's defense and Grace's offense.

We stand squarely on the proposition that *there is nothing illegal in one partner's refusing to support the proposal of the other partner that their joint venture be extended to replace his own business.*

Of course, if Grace were successful in having Panagra replace Pan American on the northern sector of the run between the United States and the west coast of South America, and have the whole run all to itself, it would be a coup for Grace through the elimination of Pan American from any part of the run, but if Pan American is not to be sacrificed to Grace's ambitions, and competition is to be created between the two carriers, it would have to be upon the basis of Pan American's being given a route from the Canal Zone down the west coast of South America at the same time that Panagra was given a route between the Canal Zone and the United States. In that competitive frame, which would be the only competitive possibility and reality, the three losers would be Panagra, Pan American and the public, through the waste of public funds and private investment of which the CAB has eloquently spoken (*New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501 (1954); *United States-South American Route Case*, CAB Dkt. No. 12895,

Order No. E-17289 (August 8, 1961); see in addition R. 261 *et seq.*, D. Ex. PS-114 through PS-131, R. 4584-617).*

Further, we submit that Grace cannot maintain the proposition (p. 10), echoed in the decision of the district court, that Pan American was obliged to abandon its judgment and both its right and responsibility as a half owner of Panagra and submit to the CAB the question of "whether extension of Panagra's route was economically sound and in the public interest." Significantly, the Government (pp. 49-50), arguing in favor of divestiture, contends that Pan American should not be placed in that position. Pan American was plainly not obliged to allow an application to be made to the CAB for an extension of the joint venture to take over Pan American's franchise between the United States and the Canal, or to in turn apply for a route of its own between the Canal and western South America to compete with the joint venture, or conduct the controversy with its partner before the CAB as referee. Grace had its right and remedy, if it thought that there was any illegality or fraud in Pan American's action with respect to the Grace proposal for a Panagra route extension, to take the issue to the CAB under the ruling of the Court of Appeals for the Second Circuit in *W. R. Grace & Co.* v. *CAB*, 154 F. 2d 271 (2d Cir. 1946).

* Grace suggests (p. 67) that a filing by Pan American in 1957 of a petition for extension of its routes to points on the west coast of South America (CAB Docket No. 8597) indicates that Pan American does not consider competition between Pan American and Grace "economically impossible." What Grace does not note is that, in line with all that has been said in our briefs about competition between Pan American and Grace requiring competition south of the Canal as well as north of the Canal, Pan American filed the petition referred to only after Grace, in breach of the Through Flight and Parent Company agreements, petitioned for an extension of Panagra's route from the Canal to the United States (CAB Docket No. 8511-12; R. 294-295).

CONCLUSION

The judgment of the district court against Pan American should be reversed and the complaint of the Government dismissed.

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REPLY

BRIEF

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC., APPELLANT

v.

UNITED STATES OF AMERICA

No. 47

UNITED STATES OF AMERICA, APPELLANT

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., AND PAN AMERICAN-GRACE AIRWAYS, INC.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR THE UNITED STATES IN NO. 47

Grace contends that its 50 percent participation in the formation, continuation, and present operation of Panagra is not a combination in restraint of trade. In our original brief in Nos. 23 and 47 (pp. 47–66) we demonstrated, to the contrary, that the 50 percent control by Grace, the dominant steamship line between the United States and western South America, over Pan-

agra, the largest airline in western South America, tended to restrain, and in operation has actually restrained, competition between air and sea transportation in United States foreign commerce with western South America. The legal issues have already been thoroughly discussed, but since Grace's brief gives a distorted view of the facts, it is necessary to set forth the evidence showing (1) that Grace joined in forming Panagra in an effort to meet future competition from airlines; (2) that Grace's 50 percent control of Panagra has in actuality resulted in preventing full and vigorous competition between Panagra and Grace; (3) that air and sea transportation have been and are competitors for large amounts of both passenger and cargo traffic in western South America; and (4) that the agreement to divide territories between Pan American and Panagra was not limited in time.

1. Grace argues (Br. 28) that "in participating in the organization of Panagra, Grace's sole interest was to initiate an enterprise which would actively and effectively develop this new means of transportation." This was not the view of the Grace managers who embarked upon the Panagra enterprise. In March 1930 President Iglehart of Grace wrote to Roig, one of its vice-presidents, that Grace (R. 966):

> went into this business because we felt that in view of our big investment in steamers we should become a party to this new branch of transportation which will clearly become more important and which in ten years will be a real competitor of our steamers.

In a similar letter to Vice President Garni of Grace, Iglehart explained that (R. 968):

> We went into this business because we felt that in ten years from now air transport would be an important competitor of steamer transport in which we have so large a capital investment, and we felt that we, as a matter of policy, should begin to learn and develop this air transport work. From a broad standpoint we must be in this competitive line * * *.

These statements of the chief executive officer of Grace demonstrate that the purpose of Grace in forming Panagra was to control airline competition with its steamship business. As contemporary documents, they are more reliable indicators of Grace's motivation in joining with Pan American than the unsupported assertions of interested officials made before the district court. See *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395–396. The district court, while refusing to hold Grace's participation illegal, had no doubt that it had just such anticompetitive purposes (R. 5389):

> By joining with each other in a joint venture on the west coast, Grace on the one hand would be assured against the entry of an independent American airline competitor into its west coast domain, and gain time to acquire the experience and know-how of this new industry, and one day perhaps to succeed to complete domination of the joint company. * * * Their [Grace and Pan American's] method of organization of the joint company appears calculated to give each negative control of the company to insure against the possible treachery of the other to expand the operations of the company

> in competition with their respective independent lines. * * *
>
> * * * Their combined interests on the west coast could * * * protect their independent systems from the competition of [an independent west coast American air] carrier.[1]

2. The operation of Panagra, in actual practice, led to restraint of competition between Panagra and Grace, the largest air carrier and steamship line, respectively, in western South America. The strategy to be used in building Panagra was not to be allowed to injure Grace's existing steamship interests. In a memorandum to Vice President Roig, Vice President Patchin, and Cogswell, the Manager of Grace in 1931, President Iglehart urged that Panagra be put in charge of (R. 969–979):

> a man who would not only build up the air traffic but would build it up in a way in which it would not necessarily draw traffic away from our steamship line, but on the contrary would tend to build up the whole movement to and about South America and by getting these steamer and air traffic men working together, we would build up a movement that would be reciprocally beneficial to the two interests.

---

[1] Grace argues (Br. 23–24) that the district court was merely reciting the government's arguments when it discussed the anti-competitive motives which impelled Grace to join in the Panagra enterprise. We think it plain on the face of the opinion below that *the court* found Grace to have been in fact so moved, but viewed these purposes as completely legitimate in light of the unique contributions which Grace could make to the success of an American air carrier in western South America.

> I appreciate the fact that steamer and air traffic are competitors, but I believe that by handling the whole matter as I have indicated we may avoid the prejudice of competition and even get general benefit from it.

Grace made several specific efforts to prevent vigorous Panagra competition through lower rates. In February 1933, Harris, a vice president of Panagra, wrote to MacGregor, a vice president and its general manager, that a member of Grace's New York office had stated at a meeting that (R. 974):

> he felt [Panagra's] rates were now at too low a figure compared to the steamer rates; in other words that we were not on a reasonably competitive basis in that our operating costs should be much higher than steamer operating costs, and that consequently our tariffs ought to be much higher.

Two months later, President Iglehart wrote Vice President Garni of Grace (R. 977):

> I think that if you will check it up you will find that * * * you can go from Lima to Arequipa cheaper by plane than you can by steamer and rail. This is a condition which does not exist anywhere, and seems to indicate to me that air rates are getting too low in comparison with steamship rates.
>
> I think that you might * * * see whether your Panagra rates have not actually got too low and whether or not there isn't some way of jacking them up, not suddenly or in a radical way but gradually, for we know that these things can be done gradually without calling attention or creating any opposition, whereas

> if anything radical is done it is spotlighted and always causes difficulty.

Again in 1937, important Grace and Panagra officials had discussions concerning Panagra's fares, in which Grace suggested higher fares for Panagra. Thus, Vice President Roig of Grace wrote Iglehart that "I think he [Muhlfeld, the sales manager of Panagra] is unduly concerned about getting the air rates too much over steamer rates. In making his comparisons, moreover, he takes as the steamer the minimum on the Clara etc. which I think gets him off to too low a start" (R. 1020). As a result of these discussions, increased rates for Panagra were proposed by Muhlfeld (R. 1021).

Panagra sales, in almost all cities, were handled by agencies under the control of Grace (R. 1049), an arrangement which continues in many areas to the present time. Vice President Roig of Grace described the arrangement in 1930 (R. 1051):

> The outstanding features of the Grace agency agreement is, of course, that it places the whole growth and development of the airways business in the hands of the Grace Houses.

While the management of Grace and Panagra attempted to prevent these offices from unduly favoring Grace's interest over Panagra's (*e.g.*, R. 970, 982–983, 1003), the record shows that this effort was often, perhaps even generally, not successful. A letter from Vice President Harris of Panagra to its home office in 1930 said (R. 1054):

> It is my impression that no prop[a]ganda with regard to air travel is being carried out by the

> Panama [Grace] Agencies in either Cristobal or Balboa, and this has been our experience in general in most of the large Grace offices. They are perfectly willing to sell passages on planes if the customer goes in and asks but do very little to increase sales.

In a memorandum in 1932 Cogswell, the manager of Grace, reported that a Panagra traffic man (R. 970):

> has made the statement in a report that he considers Panagra would do better in the sale of passenger tickets at Buenaventura [Colombia] and Guayaquil [Ecuador] if represented by agents who do not also represent steamship lines, which may, in a sense, be considered competitors * * *.
>
> * * * There is somewhat the feeling in Panagra, however that the agents do not go out and attempt to sell tickets, pointing out the advantages of airplane travel, but rather wait until approached by prospective passengers. In other words, their position is passive rather than active.

In 1933, Cogswell submitted a memorandum to Vice President Roig of Grace (R. 1072):

> Mr. MacGregor [the manager of Panagra] has several times stated to me that in his opinion the Grace Houses on the Coast do not actively go after business, either steamer or air, but rather take the attitude that they are glad to sell tickets to anyone who will come in and buy one. While I have naturally taken the position with him that I do not think his impression is correct, nevertheless, I must confess that I have gathered in a general way,

> in the case of Panagra at any rate, that there is something in what he says. Most of the activity and original ideas for getting new business, which is extremely necessary in the case of airways, has originated with Panagra personnel.

Shortly thereafter, Vice President Garni of Grace wrote Roig that, on the basis of a visit to Peru, Cogswell's memorandum seemed accurate (R. 1073). That same year, Kirkland, an official of Panagra in Colombia, wrote MacGregor concerning Panagra's poor record in securing passage tickets to two points in Colombia, in relation to steamships (R. 980):

> Another contributing factor which, while a most ticklish one to mention, nevertheless exists, is that our Colombian representatives are primarily steamship men. I do not at all wish to make again a misstatement which this office once before made to the effect that our agents are our biggest competitors, but I still feel that the major portion of their contact work and solicitation is obviously along the lines of steamship business.

In October 1933, Vice President Harris wrote Vice President MacGregor, both of Panagra, that (R. 1080):

> [O]ur agent in Guayaquil * * *, like some of our other Grace friends, seems to think that Panagra is something to be exploited for the benefit of the agency, regardless how unethical his actions may be.

A few weeks later, Vice President Garni of Grace wrote Grace officials in Peru (R. 981–982):

> [A]n incident such as was reported earlier in the year with reference to the lack of intelli-

> gent passenger solicitation in the Arequipa and other districts, or incidents such as that of one of our employees openly stating and confirming it in a memorandum that when a passenger turns up with an exchange order for a rail or air passage it does not suit that particular office to encourage a trip by air because if he sold air passage he would get no commission * * * has been greatly magnified in the various discussions. I could give you a number of other similar incidents * * *.
>
> Not very long ago someone presented himself at an office of the Grace Line inquiring as to the quickest way to get to a given point. The particular employee behind the counter talked nothing but Grace Line and when the client inquired about air service the ticket seller admitted there was an air service but that steamer travelling was a great deal safer.

Although Garni emphasized that these practices must stop, they apparently continued. In 1934 Kirby, an official in Grace, wrote one of its vice presidents, that (R. 1089):

> I had several conversations with Harris [a vice president of Panagra] along the lines that it was your feeling in New York as well as my own, that Grace was not fulfilling the function it was intended of them by not attending to traffic.

An official of Panagra pointed to an instance of a Grace officer not telling two passengers of Panagra service which could be of use to them, even while using Panagra literature to answer questions about train connections and the countries to be visited (R.

984). In 1935, Vice President Harris wrote (R. 985):

> [T]he Grace organization at the Canal Zone * * * is completely a Grace Line office * * *. A number of times in the past Brown has shown his inability to look on Panagra business as other than competition * * *.

Obviously the two were in competition, and the competition would have been vigorous if the Grace office had not had the responsibility of handling Panagra's business in the Canal Zone.

In 1936, Holguin, a representative of Grace in Ecuador, wrote Vice President Garni (R. 995):

> [T]o have Grace Line lose this business to Panagra after having handled it successfully for so long, would be most unfair. In addition, I have in mind the fact that when shipments are made on Grace Line steamers the whole of the revenue remains in the organization, which is not the case should Panagra transport the gold. After the Panair's proportion of the traffic is deducted, I believe that the Grace share of the revenue would only amount to some 20% of the total freight, since I presume Panagra would take the shipment to the Canal, at which point it would be turned over to Panair as far as Miami, and from Miami to destination some other Line would take a hand in the business. Therefore, on the run Guayaquil/Cristobal Panagra would, I presume, receive only 40% of the total freight paid, and only one half of that amount would remain with the Grace organization.

Garni responded that "[f]rom a net revenue point of view, there is, of course, an added advantage to the Grace organization through the retaining of these shipments for the Grace Line * * *" (R. 998).

Later in 1936, Vice President Roig of Grace wrote Holguin also concerning gold shipments (R. 1003):

> This happens to be one of the few instances which have arisen involving a conflict of interest between Panagra and the Grace Line. I recognize that in this situation your position as representing both concerns is a difficult one.

Roig told Holguin to be neutral. Shortly thereafter, Vice President Harris of Panagra wrote Vice President MacGregor of that same line that (R. 1005):

> [W]hile I feel that Holguin has done a good deal for Panagra in many ways, at the same time I feel that he definitely has steered the Ecuadorean gold shipment from Panagra to the Grace Line, and in his dual capacity has never been prone to give Panagra any breaks which he could give to Grace.

In August 1936, an employee of a Grace agency in Ecuador wrote that he was severely reprimanded and was in danger of losing his job because a memorandum he had written, which included ideas to help Panagra, had been discovered by his superior (R. 1006–1009). The memorandum suggested that "some of the Panagra advertisements * * * [include] tariffs to the more important cities (passenger fares) in the same way that Grace does, in view of the fact that some of our fares for these points are lower than

theirs * * *" (R. 1007–1008). The letter said (R. 1006, 1008):

> [I]t seems to me that everything related to Panagra is looked upon with a jaundiced eye, they [the Grace representatives] are jealous of it and I cannot understand why they can't be more broadminded and permit each Company to carry about its own business in the best way possible.
>
> * * * * *
>
> As was to be [expected] I have no friend on my side at Guayaquil, I am completely alone * * *. I would have against me the whole management, MacLean and Arrarte—the latter has a very special dislike for Panagra, although I cannot understand why. It is because of this that they loathe me, just because I can't agree with them on this.

Shortly thereafter, Vice President Patchin of Grace wrote Roig that (R. 1101):

> Vidal [an official of Panagra] has the idea that at lesser points the Panagra work is left to persons who do it rather perfunctorily and who do not exhaust the full possibilities. I have no personal knowledge, but I can imagine this may be true.

MacGregor, Panagra's vice president and general manager, wrote that "there is no question that the open animosity of Ed. Ford, President of the Grace Line, is responsible for this attitude on the part of steamer personnel" against Panagra (R. 1010).[2]

[2] The particular actions to which MacGregor was objecting were the refusal of Grace Line operating personnel to disseminate Panagra literature to Grace steamship passengers.

In 1938, a Grace representative who had pressed Panagra's interests lost his position in Guayaquil, Ecuador, ostensibly for reasons of economy. In a letter describing the reason for this action, he said (R. 1023):

> [W]e also know the real reasons and that is that it has been brought about by the Grace Line, and by no one else because of the last gold shipment which they lost and which meant $3700 U.S. Cy. for Panagra. They also know that the Central Bank plans to make many large gold shipments during the coming year and they know that if I am let out there will be nobody to handle the competition against them.

After Grace had cancelled an agreement with Panagra to handle Panagra's unaccompanied luggage, Patchin, a vice president of Grace, wrote Roig, another vice president, that a Panagra official "feels that the general run of Grace *Line* traffic people are very unsympathetic, if not hostile, to air traffic * * *" (R. 1025). A week later Roig wrote Patchin that (R. 1027):

> No-one can expect Grace Line to sell air transportation at the expense of steamer transportation any more than Panagra or Panair would be expected to do the reverse, but there must be [s]ome points where we can work together to much advantage. To date we have somehow not succeeded in finding them.

In 1939, a Panagra employee in South America wrote Vice President Harris that the Grace agencies

assigned inferior men to sell for Panagra even though Panagra paid them ample salaries (R. 1125–1127). In 1940, Vidal, another Panagra representative in South America, wrote to Roig, who had become president of Panagra, that the Grace agencies in Ecuador are providing Panagra with inadequate services (R. 1131–1133). A little later, Vidal wrote Roig that (R. 1137):

> I have felt for years that one of the important reasons why Panagra was pretty much of a stranger in Colombia until recently, was the fact that the Grace agencies in that country did not have the time, the inclination or the knowledge to become interested in our problems * * *.

He said that there had been an improvement but much remained to be done.

In 1941, Campbell, a vice president of Panagra, wrote Roig again about the problem of Grace agencies hiring incompetent men to represent Panagra (R. 1138–1140).

In 1942, a Panagra representative in Ecuador wrote Roig about the bad service to passengers by its agents in that country (R. 1148):

> [P]ossibly our agents should set themselves up primarily on footing required to properly handle Panagra business and to take their other activities in stride, rather than appear to take Panagra business in the stride.

Muhlfeld, Panagra's sales manager, wrote Grace's representatives in Colombia that "[o]ur Fr[ei]ght Representative * * * gathered the impression, during his recent visit to Cali [Colombia], that no attempt had been made to secure for Panagra the shipments

of gold which, I understand, are now going forward by steamer from Colombia to the United States" (R. 1029).

A confidential Panagra memorandum in 1943, written by a former employee of Panagra, said that Grace representatives in Peru had refused to allow the purchase of needed technical equipment for Panagra aircraft (R. 1031–1032). The memorandum, in describing events about five years before, stated (R. 1032):

> I made frequent inspection and business solicitation trips over the territory encharged to me. * * * In Ecuador * * * my every move was watched [by Grace representatives] with suspicion and my efforts were frequently checkmated. * * *
>
> * * * The Manager of the Guayaquil Agencies Company [of Grace] and his assistants contended that I must abstain from soliciting effective or potential Grace Line cargo and confine my efforts to soliciting such items as might be "Parcel Post" material. The manager pointed out to me that the commissions earned by his organization in Ecuador (which is 100% Grace-owned) from Grace Line business were enormously more important to him compared to anything he got out of Panagra, with the further consideration that any profits that might be earned on Grace Line business accrued entirely to Grace interests, whereas Grace only obtained 50% of any profits on Panagra business. The discussions were long, to some extent heated—net result an impasse.

After the Panagra representative did secure a gold shipment for Panagra and returned to Guayaquil, he

"came in for bitter remarks on the part of the Grace manager and his assistants" (R. 1033). The memorandum concluded (R. 1033):

> It is nearly five years since I left Panagra and, in the meantime, I understand and believe that the above conditions have radically changed and that as a matter of policy dictated by New York Grace Headquarters, all offices of Grace now watch without bias * * * the interests of Panagra, but obviously if at any time a greater Grace interest were to be adversely thereby affected it is only natural to suppose that the major interest would gain supremacy.

A lengthy memorandum on Panagra operations in Bolivia emphasized that Grace's management prevented the Grace agencies from paying sufficient salaries to hire capable representatives for Panagra and the result was inadequate sales representation (R. 1161–1163). In 1949, Vice President Shea of Grace admitted that Grace's "responsibilities as Panagra's general sales agents [in Santiago, Chile] are not being discharged in a way that is at all satisfactory and * * * the outstanding deficiency is the lack of top direction and management" (R. 1184). Another memorandum in 1953 discussed the bad organization of the Grace office in Santiago (R. 1193):

> The amazing thing to me is that in all of these Grace offices there is practically no way that officials of Panagra can insist that their plans and ideas be carried out.

In fact, Grace employees "show complete unconcern towards any plans for suggestions submitted by a [Panagra employee] unless they happen to strike their fancy at that particular moment" (*ibid*).

Finally, also in 1953, a note by a Panagra representative to his division sales manager shows clearly the meaning of Grace's control of Panagra (R. 1194):

> You will recall that a year or two ago we were endeavoring to assemble evidence which might support the contention that the other ownership interests in Panagra exercised undue control and influence over their policies even to the extent of being detrimental from the standpoint of a purely airline operation.
>
> As this subject tends to flare up from time to time, the attached piece of evidence may be of interest to the top levels of our company. You will note that this evidence consists of a routine reservations and VIP teletype message in which it is indicated that a flag stop will be made at Antofagasta, Flight 300 March 30, to pick up the Executive Vice President of Anaconda Copper per okay by Grace Line, New York. Anaconda Copper, of course, is an important ore shipper on the Grace Line.
>
> * * * [I]t is clearly the case of the airline effecting a flag stop to pick up an executive who is important to the steamship company.

We have noted that Grace's management frequently attempted to ensure that its representatives treated Panagra fairly. The reason for this was, in large measure, that Grace wanted to keep control of Panagra's traffic operations. Thus, Vice President Roig of Grace wrote Vice President Garni in 1933 (R. 1074–1075):

> The difficulty in Santiago as well as in Lima is not that the work is not being well done by the Panagra staff but that they are increasingly

> taking over the work which it was always intended that our officers should perform as agents and if the development along this line continues, our offices are likely to find themselves performing no functions at all * * *.

A year later Roig wrote Garni, in objecting to a proposal that a Grace employee who handled Panagra traffic be transferred to Panagra, that "traffic * * * is an essential part of our Grace agency arrangement and should not be released" (R. 1085). Kirby, an employee of Grace, wrote Garni that he had objected to a proposal by Panagra to establish a sales office of its own in Lima on the ground that "it was an example of the necessity for our handling their traffic as I obviously could not sympathise with the idea of an outside sales office over which we had no control" (R. 1090). See also R. 1091.

Grace was fearful that Panagra's objections to the failure of Grace's representatives to promote Panagra traffic would result in Panagra establishing its own traffic representatives outside Grace control. Thus, Kirby wrote Garni in 1934 that (R. 1092):

> We are particularly a little fearful that criticism will become more and more frequent from Panagra sources and that unless some steps are taken to avoid such criticism, the deficiences of our present set-up might afford an excuse for attempted gradual encroachment of Panagra personnel on our functions.

In 1934 Vice President Patchin wrote Roig that Panagra's dissatisfaction with Grace's efforts to secure traffic for Panagra (R. 1101):

> may produce a state of mind rather menacing to Grace's position as Traffic Agent unless more

thorough traffic solicitation is made apparent by Grace, not only at the principal cities, but throughout the provinces.

Thus, Grace's encouragement of its employees to treat Panagra fairly was not instituted, in large part, in hopes of strengthening Panagra or, certainly, of allowing it to compete vigorously with Grace, but to protect Grace's almost complete control over Panagra's traffic solicitation.

Since the evidence of actual restraint or competition largely involves events in the thirties, immediately after the formation of Panagra, it supports the government's contention (see *supra*, pp. 2–4) that Grace's intent in forming Panagra with Pan American was to restrain competition. For the immediate result of an arrangement goes far to show what was its purpose. Moreover, the evidence of the thirties also illustrates the tendency to restrain competition inherent in a sea carrier's control over an airline. Even assuming that in recent years most of the blatant restraints on competition in the thirties have ceased, Grace would almost certainly prevent vigorous competition from Panagra which would be likely to harm Grace's interest severely.

It is clear from the evidence that throughout the thirties the management of Grace attempted to prevent vigorous rate competition between Grace and Panagra and that Grace's representatives in the field who also represented Panagra preferred the interests of Grace to those of Panagra. It is true that Grace management attempted from time to time to prevent its representatives from practicing outright discrimi-

mation against Panagra. But its lack of success demonstrates the inherent tendency of Grace employees to prefer its interest to Panagra's—particularly when carriage of passengers or cargo on Grace steamships was more profitable to Grace than their carriage on Panagra airplanes since Grace owned only 50 percent of Panagra and therefore received only 50 percent of its profits. The efforts to hold Panagra's rates up show that this tendency applied to management as well as other employees.

We do not doubt that Grace wished the Panagra enterprise to succeed. This is quite different, however, from competition between two independent enterprises.

3. In an effort to show that steamships and airlines are not in sufficient competition for the combination of the two to violate the Sherman Act, Grace argues that the two services are offered in different markets because airline passengers seeking rapid transportation would not travel by boat and aircraft carry less than one percent of the freight. The argument attempts to divert attention from the decisive issue. It is immaterial that there are a great many instances in which an airline and steamship company are not in competition even though their routes are parallel. The decisive point is that there are many travelers and shippers for whose patronage the two carriers can and do compete even though other passengers and shippers have different requirements. It is as absurd to compare the substantial area of competition between air and sea carriers to the total transportation market as it would be to measure the

effect of the combination of manufacturers of anti-friction bearings by their total percentage of manufactured goods in the United States.

The fallacy in Grace's argument is easily illustrated by one of its own examples. Drawing upon the opinion in the cellophane case, *United States* v. *E. I. du Pont de Nemours & Co.*, 351 U.S. 377, 393, Grace asserts that bricks and wood are not in the same market although both are building materials. This over-simplification ignores the context in which the Court used the example. The problem before the Court was to define the market in which duPont was alleged to possess monopoly power—the power to control prices and exclude competitors—in violation of Section 2 of the Sherman Act. If the question were whether a company which manufactured and sold nearly all the brick in a geographical area possessed monopoly power in violation of Section 2, it would be no defense to point to large lumber and stone dealers offering products which could take the place of bricks. This is so because there are many buyers of brick who would not wish to use wood or stone, so that power over the price of those commodities would not be essential to effective control over the price of brick.

Suppose, however, that one company already manufactured and sold nearly all the brick in a geographical area, that another company sold 50 percent of all wood, and that a proposed merger of these two companies were attacked under the antitrust laws. The merger would not necessarily prejudice those buyers who wanted only brick or those who wanted only wood, although the existence of "interindustry

competition" (*du Pont, supra*) might ultimately produce an effect upon the prices paid by even those buyers. The merger would, however, directly injure the group of customers in the middle range, who might use either material. The proper focus of inquiry into the validity of the merger is that area in which competition is thereby eliminated. The true principle was succinctly stated in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 326:

> * * * the boundaries of the relevant market must be drawn with sufficient breadth to include the competing products of each of the merged companies and to recognize competition where, in fact, competition exists.

In short, the market to which one looks depends upon the purpose of the inquiry; and the purpose is to see whether there is a substantial volume of commerce in which competition will be suppressed.[3]

Judge Murphy erred in supposing that the case at bar is directly concerned with the passengers at either extreme who could not and would not use steamer transportation as a substitute for air travel or an airline as a substitute for a sea voyage. Among the 250,000 passengers who travel between the United States and South America each year (R. 1359) there undoubtedly are a large number who might be induced to use either form of transportation, and as to

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[3] See also *Crown Zellerbach Corp.* v. *Federal Trade Commission*, 296 F. 2d 800, 811–812 (C.A. 9), certiorari denied, 370 U.S. 937; *Erie Sand and Gravel Co.* v. *Federal Trade Commission*, 291 F. 2d 279, 281–282 (C.A. 3); *United States* v. *Union Pac. R. Co.*, 226 U.S. 61, 87–89.

them the steamship and airline are competitive. How many are induced to use either form of transportation will depend upon the kind of service each offers and the efforts made to sell that service. As we have shown above, Grace was amply aware of the competition and tried to restrict it.

Similarly, in the case of cargo it is not determinative how much cargo does not, and perhaps could not today, be carried by air. It is sufficient that many shippers are in a position to use either form of transportation, and it is to them that one must look to see whether the combination has the prohibited effect on competition. Nor should the opportunities for growth be ignored, as Grace would do. In 1930, airplanes carried an insignificant percentage of all the cargo. Although it seems doubtful whether air carriers will ever capture as large a share of all cargo, as they have of passengers, the 34-fold increase in the volume of air freight between 1945 and 1961 indicates the strong potential. Indeed, Panagra almost quadrupled its air freight in the decade prior to 1961.

If Grace's present litigating position that airlines cannot really compete for cargo with steamships is also the company's commercial policy, its outlook vividly demonstrates one of the reasons that a combination of airline and steamship interests is an unlawful restraint of trade since other airlines are well aware of the competitive opportunities. Thus, a cargo manager of Pan American testified (R. 67):

> *Q.* From your point of observation would you say that there is an active area of competi-

> tion [in the North American-South American trade] between air carriers and ships?
>
> * * * * *
>
> *A.* Well, yes, I believe there is an active area of competition between surface and air at the present time.

Similar testimony was given by the President and General Manager of an all cargo carrier operating between Florida, Central American points, Bogotá Colombia, and Guayaquil, Ecuador (R. 78):

> *Q.* * * * [w]ould you say there is an active area of competition there between steamships and air cargo carriers?
>
> *A.* Well, our particular phase of operations I consider most definitely competitive.

The witness went on to cite many commodities and instances of effective cargo competition.

We have already referred to three aspects of the proof that Panagra and Grace offer competing services: 1) the evidence that Grace combined with Pan American to form Panagra because of its expectation that airplanes would soon be competitive with steamships (pp. 2–4); 2) Grace's efforts to hold up Panagra's rates to prevent transfer of traffic from Grace to Panagra (pp. 5–6); and 3) the reluctance or even refusal of Grace's employees, who also represented Panagra, to attempt to obtain traffic for Panagra when this traffic was already moving, or was likely to move, on Grace's steamships (pp. 7–15).

As shown in our principal brief (pp. 51–55), air freight is a comparatively new business, and for this

reason the record contains many fewer specific instances of opportunities for competition between Panagra and Grace. However, even in the mid-thirties, active competition was possible and, to a considerable extent, existed between air and sea transportation for gold and platinum shipments. For example, in 1935, Smith, a Panagra representative, wrote its home office that Grace was about to carry twenty-five cases of platinum from Buenaventura to New York "unless we are able to offer a competitive freight rate" (R. 987). A subsequent letter said that the shipment "eventually [went] to our competitors" because of the difficulty in obtaining information on rates until too late and the high cost of insurance on shipments by air (R. 988). A few days later, another letter from Smith inquired (R. 989):

> as to what progress is being made in regard to establishing a competitive rate for the class of traffic involved. There are several other shippers of treasure located on the west coast whom we would like to go after in case we find that we can compete on even terms with our surface competitors.

In answer to the letters, Vidal of the Panagra main office analyzed air and sea charges between Buenaventura and New York. The letter concluded that platinum worth less than $250,000 or possibly more could be shipped cheaper by air—"[i]t is evident, therefore, that our present standard rates are decidedly competitive * * *" (R. 990). Smith wrote the main Panagra office asking for exact information concerning freight charges on platinum shipments so

that he could submit proposals to a company making such shipments by water (R. 1000):

> [T]he only way we can hope for any progress in dealing with such important shippers will be to follow the lead of our surface competitors and offer freighting agreements based on firm prices, unalterable during the life of the agreement. We feel sure that there is nothing unorthodox in making the above suggestion as we have convinced ourselves that it is common practice with such an established firm as the Grace Line, Inc., by their own admittance.

Vidal, who was in Panagra's main office, wrote a Panagra representative in South America in 1936 that air/rail charges for gold from Guayaquil, Ecuador, were "rather expensive * * *. We have no intention of going into a cut-rate war with the steamship companies and we recommend that you attempt to secure frequent gold shipments of smaller sizes. These can be handled at competitive rates by air/rail" (R. 991). Shortly thereafter, in 1936, Holguin, a Grace representative in South America, wrote Vice President Garni of Grace expressing fear that gold shipments from Ecuador to New York, which had been moving on Grace steamships, would be diverted to Panagra because of its lower rates. He recommended that Grace either reduce its rates or secretly refund the difference between air and ship rates (R. 994–996). Grace subsequently reduced its freight charges (R. 999). As a result of reducing its charges on gold, Garni and Holguin believed that Grace would "be able to secure all of the future [gold] shipments of the Banco Central via the Grace

Line" (R. 1001). Meanwhile, Vidal again wrote Panagra's representative that "our present rates on gold shipments to [the United States] compare favorably with those of steamship lines on small lot shipments," and that Panagra could not "enter a cut-rate war with steamship companies for this business" (R. 1002). At least one shipment of gold from Ecuador was carried by Panagra (R. 1033). Considerably later in 1942, Muhlfeld, now the sales manager of Panagra, instructed the Cali, Colombia, office of Panagra to actively attempt to obtain gold shipments "now going forward by steamer from Colombia to the United States" (R. 1029). In 1949, Grace sent a telegram urging a slight increase in Braniff's gold tariff, and asking to be informed "if any diversion from air to steamers actually takes place because of extra charges" (R. 1037).

In 1952, an assistant district sales manager of Panagra wrote the Pepsi-Cola Company in the Canal Zone concerning air shipment of cola concentrate. The letter noted air rates were high in comparison to steamship but suggested a means to offset or reduce the difference (R. 1044).

In addition, there is evidence in the record demonstrating that Grace and Panagra believed that they were potential competitors as to passengers and in fact did compete to some extent. In 1932, the general manager of Panagra, MacGregor, wrote a Grace-Panagra representative in South America that lower rates for passengers on Panagra may be necessary "if we are to compete with the lower steamship through rates now being studied by the Grace Line"

(R. 971). In 1933, an employee of W. R. Grace wrote to Grace Line that (R. 972):

> It is also well to note that the aviation services are taking away first class passengers—especially coastwise. Between the Panagra and the Faucett Co., they are carrying 700 to 800 passengers a month, who would be travelling by steamer, first class, if these companies did not exist.

An employee of Panagra in the Canal Zone wrote MacGregor concerning the small percentage of passengers being flown to and from Buenaventura as compared to Barranquilla, Colombia. He noted among the factors explaining the discrepancy: first, three steamship lines, including Grace, sail from the former and only two, including Grace, from the latter; and second, at Barranquilla the airport is more convenient for passengers than the embarkation point for steamships (R. 979–980). A letter by Vice President Roig of Grace in 1936, discussing the competition of Grace and Panagra for passengers, said that the percentage travelling by air was likely to increase slowly.

In 1937, a Panagra employee, Muhlfeld, wrote its general manager, MacGregor, that Grace was offering discounts on passenger travel to companies. He recommended that (R. 1011):

> [W]e should also give due consideration to this as we are in many instances competing with other surface transportation and naturally we should take into account not only their tariffs, but also special discounts, such as Grace Line are granting.

Vidal, another Panagra employee, subsequently wrote Muhlfeld concerning the possibility of a rate increase by Panagra (R. 1012):

> As the Grace Line, and apparently other steamship companies, have and are revising their passenger rates upwardly because of increased operating costs, and as our own costs are also on the increase, it may well be that this would be an opportune moment for Panagra to raise the prevailing rates throughout the line.
>
> * * * * *
>
> * * * Other tariffs could be adjusted * * * by bearing in mind competitive and pay load conditions over the various sections of the line.

Muhlfeld then wrote various agencies handling Panagra's business in South America concerning the wisdom of a possible 20 percent rate increase and told them to consider among other factors the recent increase of rates by surface carriers in South America (R. 1013). The reply from Panagra's employee in the Canal Zone approved the proposed increases after comparing air and steamship rates and the time needed to make the respective trips (R. 1014–1015). On the basis of his analysis, based in large part on "competitive conditions offered by other airlines and surface means of transportation" and "inherent advantages of air travel over other means of transportation," Muhlfeld recommended to general manager MacGregor of Panagra that only one rate be raised—"[a]ll other tariffs should not be raised because of competition from other air lines and surface means of transportation" (R. 1016). A

little later, Vidal wrote to Muhlfeld that Pan American had "also come to the conclusion that rising operating costs and the higher passenger rates being established by steamship lines" justified it in raising its fares (R. 1019). In 1938 President Iglehart of Grace wrote a letter explicitly stating that Panagra and Grace are in competition (R. 1027):

> Panagra is a direct competitor of the Grace Line and has, year by year, eaten into that line's passenger business in a suppressing way.

A Panagra representative in Chile wrote the home office in 1949 (R. 1038):

> It is most unfortunate that the Grace Line was quot[ing] more attractive rates than Panagra by accepting not only round trip passages in Chilean pesos but also pasajes de llamada. We are losing traffic every day to the Grace Line, especially return business, booking by steamer to take advantage of the facility of purchasing the passage in pesos * * *. This feature now gives them an important sales advantage and we feel that both carriers should maintain the same policy towards pasajes de llamada.

A letter in 1951 to a South American representative of Grace and Panagra cautioned against leaflets advertising both companies because "to a certain extent [they] are competitive services" (R. 1041). A little later in 1951 a letter from a Panagra employee to its Assistant Vice President warned that a problem was raised in giving passenger lists to W. R. Grace (the parent company of Grace Line) because the list would

become "available to our competitor, Grace Line * * *" (R. 1043). In 1952, the Panagra general traffic manager wrote to Braniff that Panagra allowed passengers to accept baggage on board aircraft leaving the United States in order to avoid payment of the luxury tax. The reason, according to the letter, was that "we have found it necessary to be competitive with steamship services * * *. While the number of people who take advantage of it are not very numerous we would not wish to give it up because of the competitive steamship situation" (R. 1045). And in January 1953, Pan American's monthly sales report stated that the competition on the United States-Buenos Aires route (R. 1046):

> is less acute * * * because Moore-McCormack is more expensive than the airlines and Delta only a bit cheaper but every month Flota Mercante, the state-owned steamship line of Argentina, is taking a bigger number of American passengers * * *.

To meet this competition, Pan American was proposing to Flota Mercante agreements between the air and sea carriers and making demonstrations to American companies in South America that it was cheaper to send their vacationing American employees to the United States by air rather than by sea because of the shorter time in transit (R. 1046–1047).

At the trial Pan American's treasurer testified (R. 229):

> *Q.* * * * does Pan American engage in publicity efforts to sell passengers on the idea that

an air trip is more pleasant than a sea trip?
A. Oh, I am sure we do.
Q. Do you consider that Pan American is in competition with these steamship lines?
A. Very definitely. We are both trying to get the same market.

Thus, Panagra and Grace have been potential competitors for passengers from the time of Panagra's formation through the time of trial of this case. Admittedly, the area of potential competition for cargo has in the past been less broad. We submit, however, that the interference with normal airline-steamship competition in the case of passengers, which resulted from Grace's control of Panagra, should not be allowed to extend in the future to cargo as well in an era of increasing competition in freight service.

4. In our opening brief we argued (Br. 33–34, 40–42) that the formation of Panagra was accompanied by a division of territory between the new company and Pan American which reflected the anticompetitive purposes of the partners. The existence of this agreement is hardly open to doubt. In 1930, President Trippe of Pan American, at the request of the general manager of Grace, wired the Pan American office in Buenos Aires (R. 513):

AGREEMENT BETWEEN PANAMERICAN AIRWAYS AND PANAMERICAN GRACE AIRWAYS PROHIBITS PANAMERICAN AIRWAYS OR ALAS OPERATING BUENOSAIRES MENDOZA SANTIAGO LINE ALTHOUGH PERMITTED OPERATE ANY OTHER ROUTES EAST OF ANDES INCLUDING BUENOSAIRES MONTEVIDEO STOP AGREEMENT LIKEWISE RESTRICTS PANAMERICAN GRACE AIRWAYS OPERATIONS EAST OF ANDES TO

SANTIAGO MENDOZA BUENOSAIRES MONTEVIDEO LINE

A similar letter was sent by President Trippe to MacGregor, the vice president and general manager of Panagra, approximat ly seven months later (R. 520–522). On the basis of this and considerable other evidence, the district court found that a division of territories had been agreed upon and the parties do not dispute this finding.[4]

Grace now maintains (Br. 48–50) that the division of South America into protected spheres for Pan American and Panagra was to last only during the ten-year period of Panagra's first mail contract and did not survive the imposition of federal regulation in 1938. The record shows, however, that Grace itself believed that the arrangement continued well after 1938. In 1946, Grace Vice Chairman Roig (as he had become) cabled Grace Vice President Garni that "if avianca in which pan american owns 40 odd [percent] can invade west coast we consider we are entitled [to] serve * * * all colombian points * * *" (R. 635–636). This statement is phrased in terms strongly indicating that Roig believed that, if Pan American, through its subsidiary Avianca, entered the

[4] There is a dispute between the parties as to whether the agreement barred Panagra from entering the United States. Grace has contended that it did not; Pan American and the United States submit that it did. From our standpoint, however, the issue is not relevant. Whether the agreement covered the point or not, the 50–50 division of control gave Pan American the power to exclude Panagra from the United States, and no one can have doubted Pan American's intent to exercise that power. Admittedly, moreover, there was an agreement to divide South America.

west coast area guaranteed to Panagra by the division of territories, Panagra could operate in areas restricted to Pan American by that agreement. In 1948, J. Peter Grace, the President of W. R. Grace, wrote to Vice President Roig that "it had been our understanding that it had been agreed at the time that the Panagra Through-Flight Agreement was signed [1946] that Western Colombia was Panagra's territory and furthermore that a Gentlemen's Agreement was made that Panagra could at any time petition the C.A.B. for inclusion of Bogota and Medellin on its route * * *" (R. 638). This statement shows that the original agreement had specifically been reaffirmed. In 1950, Shea, Grace's First Vice President (R. 645):

> expressed great unhappiness over the plans of Panair do Brasil [a Pan American subsidiary] to establish routes from Rio to Santiago and Lima respectively. * * * He saw the possibility of ambitious plans developing under which Panair do Brasil would eventually want to operate along the west coast of South America to the west coast of the United States. * * * He seemed to feel especially bitter because Panagra could not serve the Lima-Rio route in competition with Braniff and was disappointed because Panair do Brasil, in which Pan American Airways held a substantial interest, was entering Panagra field on the west coast of South America.

Thus, Grace had made clear through its highest officers that as much as twelve years after passage of the Aeronautics Act in 1938 it still regarded South

America as divided into territories between Pan American and Panagra.

We, therefore, respectfully submit that for the reasons stated above and in our original brief, the judgment of the district court insofar as it fails to order the divestiture of Grace's interest in Panagra should be reversed.

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IN THE

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OCTOBER TERM, 1962.

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

REPLY BRIEF FOR APPELLEE W. R. GRACE & CO.

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REPLY BRIEF FOR APPELLEE W. R. GRACE & CO.

The occasion for the submission of this Reply Brief is the filing by the Government of a Reply Brief which refers to and discusses in some detail a number of pieces of evidence which were not adverted to by the Government in its main brief. Since the evidence selected by the Government, and the manner of its presentation, does not fairly represent what the evidence as a whole shows, we regard some further discussion of the several matters considered by the Government in its Reply Brief as appropriate.

The Government's brief considers four points. With respect to each point the Government seeks to reargue the facts, in a manner not attempted in its main brief, in an

effort to upset certain findings of the District Court. We submit that, in each instance, the findings of the District Court were correct.

1. The District Court correctly found that Grace did not participate in the formation of Panagra with an intent to restrain aviation competition.

The District Court specifically found, after analyzing the entire record, that:

> "We cannot, from the evidence adduced, make out an unlawful intent to restrain aviation competition in the Grace participation in the formation of Panagra . . ." (R. 5392).

The District Court further found that the combination of Grace and Pan American:

> ". . . was a legitimate one with legal ends—to foster the development of a new form of transportation" (R. 5403-04).

The Government selects from the record two documents in an effort to upset these findings (R. 966-67, R. 968).

The two documents selected do contain references characterizing the new branch of transportation as a possible future competitor of Grace Line's steamers. They contain no suggestion, however, of an intent to enter the airline business in order to protect the steamship line from an active development of parallel air service. Rather, Iglehart, in the two letters cited, merely recognized that air service was likely to become an important means of transportation and that Grace should take steps to participate in it. As he says in his letter to Garni (R. 968) which the Government cites:

> ". . . we have an exceptional opportunity, not only of developing a successful business, but of making

> money out of it. But it can only be done if all of our men and particularly our men on the Coast are giving enthusiasm and confidence and a very strong effort to make it a success."

These documents are consistent with, and indeed support, the statement of Mr. Patchin, a Grace Manager, in 1928 that:

> "... we regarded aviation as simply a new development in transportation and as we had always been interested in transportation to the West Coast of South America we were following the matter closely" (R. 340).*

The District Court's finding that Grace had no intent to restrain aviation competition was not clearly erroneous.

2. **The District Court was right in finding that the East-West zoning arrangement terminated in 1938 with the passage of the Civil Aeronautics Act and the termination of Panagra's ten-year mail contract.**

The District Court found that the East-West zoning arrangement applied by Pan American and Grace during the decade of the 1930's was "consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938 ..." (R. 5398).

As we pointed out in our answering brief (p. 49), the Government nowhere in its main brief pointed to any

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* The Government says in its Reply Brief that contemporary documents are more reliable than "unsupported assertions interested officials made before the district court". Grace presented no such evidence. Grace did introduce testimony which was taken in C. A. B. Docket 779 in the early 1940's, long before this case was commenced, which supports the description of Grace's motives which is set out above (Grace Answering Brief, P. 26).

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instance in which Grace recognized or adhered to this East-West zoning arrangement subsequent to 1938. The Government now points to three documents, which it did not previously mention, in an effort to show the existence of such an instance.

The Government relies on a letter dated November 1, 1948, from J. Peter Grace, President of Grace, to Vice-President Roig expressing his understanding that there had been an agreement at the time the Through-Flight Agreement was signed that "Western Colombia was Panagra's territory . . ." (R. 638). The Government fails, however, to advise the Court that Mr. Roig, who had negotiated the Through-Flight Agreement, immediately responded to Mr. Grace in a letter dated November 5, 1948, pointing out that Mr. Grace's recollection was faulty and that there was no such agreement. Mr. Roig said:

> "There is, however, no arrangement under which Western Colombia is considered Panagra territory . . ." (R. 5061).*

The exchange of correspondence contradicts the Government's position rather than supporting it.

The Government also relies on a cable sent by Roig to Garni in 1946 (R. 635-36) and on notes of a telephone conversation between Shea of Grace and Balluder of Pan American in December, 1950 (R. 644). These documents do not, however, support any inference that Grace adhered to a zoning arrangement at these times. Rather the documents instance situations in which Grace complained of the inconsistency of Pan American's position in resisting Panagra's development.

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* It is interesting to note that Pan American, in its Reply Brief in No. 23, also refers to Mr. Grace's letter without advising the Court of Mr. Roig's enlightening response (PAA Reply Brief, P. 28, note).

It must be borne in mind that, while Grace has since 1938 refused to adhere to any zoning arrangement, Pan American has at all times taken the position that Panagra's operations are restricted by such an arrangement; indeed, Pan American still holds to that view. Under these circumstances, it was not unnatural for Grace to point out to Pan American that in particular instances Pan American did not even apply its own theory consistently.

This is the thrust of Roig's cable of March 8, 1946 (R. 635-36). Grace had been seeking extension of Panagra's routes to Bogota, but Pan American had refused to permit the extension (R. 633-34). Roig pointed to the inconsistency in Pan American's position whereby it opposed Panagra's extension to Bogota, but allowed Avianca's extension to the west coast. Similarly, in the telephone conversation reported at R. 645-48 Shea was complaining of Pan American's inconsistency in refusing to permit Panagra's operating from Lima to Rio while at the same time supporting Panair do Brasil's service of this same route. The documents cited by the Government show, not that Grace adhered to a zoning arrangement during this period, but rather that Grace complained vigorously of the restrictive policy adopted by Pan American which permitted encroachments upon, but not extension of, Panagra's routes.

The Government makes no effort to reconcile the argument which it bases on these three documents with its own recognition that Grace's actions belie the existence of any zoning arrangement. As we pointed out in our answering brief, the Government has recognized, not only that Grace fought to extend Panagra's routes north from the Canal Zone, but also that Grace has, since 1938, fought to extend

Panagra's rountes to eastern South America (Answering Brief of W. R. Grace & Co., pp. 49-50). There could be no clearer proof of the emptiness of the Government's division of territories argument.

3. The District Court correctly found that Grace's 50 percent control of Panagra has not restrained Panagra's vigorous development.

The District Court found that:

> ". . . the record before us fails to disclose any antitrust violations on the part of Grace vis-a-vis Panagra . . ." (R. 5392).

The District Court further found that:

> ". . . the history of Grace's activity in the affairs of Panagra preponderatingly demonstrates that it fostered and fought for Panagra development and expansion." (R. 5392).

and that:

> ". . . Grace has been the only one of Panagra's two partners that has persistently and continuously attempted to improve its service and extend its routes to the United States." (R. 5429).

The Government in its Reply Brief attempts, for the first time, to dispute these findings by a selective citation of documents from the record.

In its own brief, the Government recognizes some of the deficiencies of the evidence which it cites. Thus the Government recognizes that the evidence it cites "largely involves events in the thirties" and it is willing to assume that "in recent years" most of what it refers to as "blatant restraints" have ceased.

While the Government seeks to suggest that the Grace agencies in South America have not fairly represented Panagra, it at the same time concedes that "the management of Grace and Panagra attempted to prevent [the Grace agencies] from unduly favoring Grace's interest over Panagra's" and that "Grace's management frequently attempted to insure that its representatives treated Panagra fairly."

What the evidence cited by the Government boils down to is a series of isolated instances, almost exclusively in the early 1930's, in which there were organizational difficulties, differences of opinion as to the best way of conducting the airline business, or occasional derelictions by individual local employees in their conduct of the airline's business. That there was no pattern or purpose of restraint is evident from the Government's concession that Grace's management "attempted to insure" that Panagra would be treated fairly. An example of the policy of Grace's management to which the Government is referring is a letter which Garni of Grace wrote on October 27, 1933 in which he said:

> ". . . everyone of our Agents should get wholeheartedly behind this business and not subordinate it in any way to our steamers. I appreciate that this may divert a few passengers from our steamers to Panagra but this is relatively unimportant as in the first place it cannot amount to much per annum and in the second place travelling by air, particularly on the West Coast, is bound to develop very rapidly anyhow over the next few years." (R. 982).

While the Government hypothesizes that this effort was unsuccessful and that Panagra's interests were not well served, that hypothesis is disproved by the record. For example, MacGregor, a former Pan American Vice-Presi-

dent who became Vice-President and General Manager of Panagra stated in 1935 that:

> "... services rendered by the Grace Organization were greatly in excess of those rendered by Pan American ... Grace have carried out wholeheartedly and with the 100% cooperation of their whole organization the services to the Line which were contemplated in the original partnership ..." (R. 4929).

Similarly, in that same year, Mr. Chenea, Pan American's Sales Manager, "expressed himself as very much impressed by the effectiveness of the agency service on the West Coast" (R. 4930). Chenea also "expressed strong belief in the theory of having people in the steamship business also handling air traffic as he feels that the two work together very well and that the air business does not suffer from this association in any way." (*Ibid.*)

The Government refers to an instance involving certain gold shipments in which Panagra's interests were allegedly subordinated, but fails to quote in full the most significant comment on this entire episode, which was contained in a letter written by Roig on March 30, 1936:

> "My attention has been called to correspondence with reference to recent gold shipments from Ecuador.
>
> "This happens to be one of the few instances which have arisen involving a conflict of interest between Panagra and the Grace Line. I recognize that in this situation your position as representing both concerns is a difficult one. When such questions arise, however, they cannot be resolved on the basis of relative stock ownership and the interests of Panagra subordinated because our stock interest in that company is only 50%. If this were to be the test we would be automatically disqualified from acting as Panagra's representative.

> "I do not mean by this that the interests of Grace Line are to be subordinated to those of Panagra. Their representation is also entitled to be properly served. What I do mean, however, is that where a question of conflict of interest is presented, it is incumbent on you as representative of both companies to occupy a neutral position, reporting the facts to the corresponding principals and letting them decide what action is to be taken.
>
> "I am bringing this matter to your particular attention as it is one of the first instances of the kind which has arisen and I want to make sure, for your guidance, that our position is fully understood."

Finally, the Government cites several documents (R. 974, 977, 1020, 1021) in an effort to show that Grace maintained Panagra's rates at an artificially high level. It should first be noted that the most recent document cited in this connection is dated September 28, 1937. Moreover, while the documents indicate that there was some talk about comparative air-sea rates in the mid-1930's, they do not indicate that anything was in fact done to keep the air rates at an artificially high level. Indeed, the first two documents cited indicate that air fares had been established that were lower than the corresponding steamship fares. The two memoranda dated September 28, 1937 (R. 1020-22) show, not that the air fares were pegged at an artificially high level, but rather that they were based on appropriate economic considerations, *e.g.*, rising costs. The proof of the pudding is that the only comparative fares which appear in the record—the fares in effect at the time of trial—show the Panagra fares to be substantially less than the corresponding Grace Line fares (R. 5205). Moreover, as we pointed out in our answering brief, under present rate-making practices and Civil Aeronautics Board

regulation any improper influence by Grace on Panagra's fares is not possible (Brief, p. 97).

The evidence cited by the Government provides no basis for challenging the District Court's conclusion that Grace promoted, rather than restraining, Panagra's development. This is perhaps most evident from the fact that the Government is now able to characterize Panagra as "the dominant air carrier" to the western coast of South America (Main Brief, p. 63).

4. The District Court correctly found that Air and Sea Transportation between the Eastern Coast of the United States and the Western Coast of South America do not form parts of the same competitive market.

The District Court, after carefully considering the similarities and differences between air and sea transportation concluded that:

> "We are not persuaded that the proof in this case shows that the market is the same." (R. 5426).

In its Reply Brief the Government points to nothing which would warrant rejection of that finding.

The Government argues that it need not show that air lines and steamship companies compete for everything they carry, but no one has suggested that it does. The reason the Government's case must fail on this point is that it has failed to show either that Panagra's and Grace Line's services are "reasonably interchangeable" or that there is a significant amount of competition between them in any area of their operations. The Government itself has recognized "reasonable interchangeability" as the proper test (Main Brief, p. 48).

The Government does not materially help its case by its heavy reliance on the biased testimony—rejected by the

District Court—of Pan American's treasurer and Pan American's cargo manager, who conceded he had no knowledge of operations on Panagra's route (R. 66). Nor does the Government justify upsetting the District Court's findings by referring to a few isolated incidents of competition in the 1930's.

We submit that Grace's participation in the organization of one of the pioneer companies in the infant airline industry, and its development of that airline to its present position, have not unreasonably restrained trade. We submit that, for the reasons set forth above and in our original brief, the judgment of the District Court should be affirmed.

Respectfully submitted,

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